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

(Pronounced in the period from January 2018 to June 2018)

By Sunil Moti Lala, Advocate (assisted by CA Bhavya Sundesha)

The Digest contains 2000 important judgments which were pronounced by Courts and Tribunals in the period from January 2018 to June 2018.

Of these, there are 605 judgements on Transfer Pricing, 130 judgements on International Taxation and 1265 judgements on Domestic Taxation.

The author has meticulously and systematically classified the judgments into various categories to enable ease of reference.

The appeal numbers in most cases have been provided so as to enable the judgements to be retrieved from the website of the respective Court or Tribunal.

Digest of Important Judgments on Transfer Pricing, International Tax and Domestic Tax

(Pronounced in January to June, 2018)

Transfer Pricing	*International Tax*	*Domestic Tax*
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– *Profit Level Indicator – Case 255 to 289*		– *Section 43B - Case 1010 to 1019*
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I. Transfer Pricing

a. ***International Transactions / Specified Domestic Transactions***

1. Where the assessee had sold its IPRs to its AE in the prior years (which was benchmarked under the TP provisions) and the AE in the capacity of owner had exploited the impugned IPR in the year under review by entering into transactions with third parties, the Tribunal held that the TPO was incorrect in imputing an adjustment in the hands of the assessee contending that the economic ownership of the IPR was still with the assessee and that income earned by the AE from exploitation of IPR was in effect an international transaction between the assessee and the AE. The Tribunal held that once IPR was sold and the arm's length price of such sale was determined, the IPR became the property of AE and any subsequent transaction between AE with outsiders or outside the jurisdiction of the Indian territory did not give rise to international transaction between assessee and AE. Accordingly, it deleted the TP adjustment made.
DQ Entertainment International Ltd v ACIT - TS-19-ITAT-2018(HYD)-TP - ITA No.441/Hyd/2017 dated 12.01.2018

2. The assessee claimed expenditure relating to payment of remuneration of directors. The TPO upon reference by the AO benchmarked the ALP of the transaction at Nil observing that the transaction was a specified domestic transaction as defined under clause (i) of Section 92BA (transactions referred to under Section 40A(2)(b). The assessee raised an additional ground before the Tribunal contending that since transactions under Section 40A(2)(b) were omitted from the definition of international transactions vide amendment made in Finance Act., 2017, transactions under Section 40A(2)(b) could not be considered as international transactions even for the impugned AY 2013-14. Relying on the rulings of the Apex Court in Kolhapur Canesugar Works and General Finance Co & of the jurisdictional HC ruling in GE Thermometrics, the Tribunal held that once a particular provision of section is omitted from the statute, it shall be deemed to be omitted from its inception unless and until there is some saving clause or provision to make it clear that action taken or proceeding initiated under that provision or section would continue and would not be left on account of omission. Noting that clause (i) of Sec. 92BA was omitted by Finance Act, 2017 w.e.f. April 1, 2017, it observed that it would be deemed that clause (i) was never on the statute more so since while omitting the clause (i) of section 92BA, nothing was specified whether the proceedings initiated or action taken under the section would continue. Therefore, the proceeding initiated or action taken under that clause would not survive at all"; Accordingly, it quashed the reference made by AO to TPO u/s 92CA as well as the consequential order passed by TPO/DRP and directed AO to re-adjudicate the issue of claim of expenditure incurred which could not be done on account of provisions of Sec. 92BA(i).
Texport Overseas Private Limited vs. DCIT - TS-1032-ITAT-2017(Bang)-TP - IT(TP)A No.1722/Bang/2017 dated 22.12.2017

3. The Apex Court dismissed Revenue's SLP challenging the order of the Gujarat High Court wherein the High Court upheld the order of the Tribunal wherein it was held that the assessee and its supplier of rough diamonds viz. Blue Gems BVBA (Belgian entity) were not associated enterprises notwithstanding the fact that there was common control between the two enterprises as none of the conditions laid down in Section 92A(2) were fulfilled.
Pr. CIT vs. Veer Gems - TS-2-SC-2018-TP - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 37719/2017 dated 05-01-2018

4. The Tribunal deleted the TP-adjustment in case of Renault India (assessee) as the transaction of purchase of cars from a resident entity RNAIPL (related entity with 30% shareholding from Renault France and 70% from Nissan Japan) was not international transaction subject to transfer pricing. It rejected TPO's contention that as per the Master Supply Agreement and Master License Agreement, the terms and conditions of transactions were predominantly determined by assessee's foreign parent (Renault France) and therefore, the transaction was an international transaction. Further, the TPO also noted that while the assessee suffered losses, RNAIPL was paying royalty at 5 percent of turnover to

Renault France. It held that the master supply agreement between assessee and RNAIPL as well as master License agreement between Renault France and RNAIPL did not show any influence of Renault France on the price determination for supply of cars by RNAIPL to assessee and that Renault France only had 30% of shareholding in RNAIPL whereas balance 70% was held by Nissan. It observed that the influence that could be exerted by M/s. Renault S.A.S France on M/s. RNAIPL was not such that it could freely decide on the pricing of latter's products. It further held that there was nothing in methodology followed by assessee that could lead to belief that the arrangement was sham or type of scheming which resulted in exorbitant loss for assessee. Accordingly, it held that the transaction could not be classified as a deemed international transaction and accordingly deleted the TP addition.
Renault India P Ltd - TS-87-ITAT-2018(CHNY)-TP – ITA No 1078 / Mds / 2017 dated 30.01.2018

5. The Tribunal deleted TP adjustment in the case of the assessee (engaged in business of providing animation production services) with respect to profit attributed under PSM by the TPO considering the income generated by the AE out of the Intellectual Property Rights sold by the assessee to its AE. It noted that sale of IPR had taken place in earlier AY and the coordinate bench had already deleted the TP adjustment on the basis that once IPR is sold and arm's length price is determined, IPR becomes the property of AE and any transaction of AE with 3rd party would be outside the jurisdictional territory of India and would not fall under the ambit of international transaction.
M/s DQ Entertainment (Intl) Ltd vs ACIT Circle 14(1)- TS-332-ITAT-2018(HYD)-TP ITA No 546/HYD/2016 dated 06.04.2018

6. The Tribunal deleted the disallowance of alleged excess price paid for purchase of components u/s 40A(2)(b) by following the decision of the coordinate bench in assessee's own case for earlier year wherein the said disallowance was deleted noting that the parties were not related in terms of definition provided u/s.40A(2)(b) but they were related to the assessee only in accordance with AS-18 issued by the ICAI.
Hero Moto Corp Ltd vs DCIT [TS-823-ITAT-2018(DEL)-TP] ITA No.6990/Del/2017 dated 20.06.2018

b. ***Most Appropriate Method***

Comparable Uncontrolled Price Method

7. The Tribunal remitted the ALP-determination in respect of assessee's import of goods from AE back to CIT(A). It noted that the TPO/CIT(A) made a TP-addition on imports considering variation in import price for the same unit of good from AE at €204.64 in October 2001 and €75 in February 2002 by discarding the market quote furnished by assessee which supported its contention that there was a drastic fall in the product prices. Relying on the decision of Adani Wilmar [TS-114-HC-2014(GUJ)-TP], wherein the Court held that authentic and reliable market quotes on price publication were relevant while determining the ALP employing the CUP method, the Tribunal directed the CIT(A) to examine the evidence produced by the assessee and verify its authenticity and reliability instead of rejecting it at the threshold level.
DCIT vs. Alcatel India Ltd. - TS-1085-ITAT-2017(DEL)-TP - ITA No. 339/Del/2012 dated 06/12/2017

8. The Tribunal deleted the TP adjustment on call centre services provided by assessee to its US-based AE noting that the assessee's transactions were at ALP under internal CUP, internal TNMM as well as external TNMM. Vis-à-vis internal CUP, it noted that the average hourly rate earned from AE in USA (Rs. 274.39 per hour) was higher than rate earned from Non AEs in UK (Rs. 108.82 per hour) and dismissed the contention of the Revenue that the internal CUP was not an appropriate method considering different pricing mechanism for AE and Non AEs. As regards the TPO's contention i.e. that there was a difference in risk profile between AE and Non-AE transactions for which no accurate adjustment could be made, it held that even if the adjustment was made, it would further reduce the average hourly rate charged from the Non-AEs which was lower than the average hourly rate charged from AE in any case. The Tribunal also adjudicated on the appropriateness of internal TNMM and observed that the services provided to AE and non-AEs were identical and that the functions performed, assets used and risks assumed (FAR) in AE as well as non AE business were also similar and

therefore held that even internal TNMM could be considered as most appropriate method as per which the operating margin for the AE transactions (74.92%) was higher than non-AE transactions (30.90%).
Vis-à-vis External TNMM, it rejected the Revenue's argument for the exclusion of All sec and CG VAK and held that i) All Sec was wrongly excluded on account of non-satisfaction of the export filter of 75 percent whereas its export sales to total sales was 74.45% and ii) CG Vak though functionally comparable was wrongly excluded merely because its segmental turnover was less than 1 crore. Accordingly, it noted that once these two companies were included as comparable, even under External TNMM, the assessee's international transactions would be at ALP.
Effective Teleservices Pvt Ltd vs. ACIT - TS-75-ITAT-2018(Ahd)-TP - ITA. No: 2411/AHD/2014 dated 16 -01-2018

9. The Court admitted the assessee's appeal on the following questions of law – "1. Did the ITAT fall into error in reversing the CIT (A)'s decision on the appropriateness/maintainability of CUP as the most appropriate for determining the ALP in the circumstances of the case? 2. Did the ITAT fall into error in its treatment of the foreign exchange fluctuation as far as the ALP determination was concerned?"
Ecocat India Pvt. Ltd vs. Pr. CIT - TS-111-HC-2018(DEL)-TP - ITA 152/2018 dated 09.02.2018

10. The Tribunal restricted TP-adjustment in respect of assessee's s sale of finished goods to AEs in Thailand & Hong Kong. The Tribunal noted that while had assessee applied TNMM, TPO/CIT(A) rejected the same and proceeded to apply CUP-method for benchmarking the transaction. However, the Tribunal considered assessee's submission that CUP rates for Hong Kong only should be compared to work out the said disallowance as against average rates of various countries taken by TPO. The Tribunal thus restricted the TP adjustment and clarified that the above approach shall remain valid only for this impugned AY and would not be applicable in any other AY.
Lupin Ltd vs ACIT (LTU)-TS-398-ITAT-2018(Mum)-TP-ITA No. 7488/Mum/2013 dated 27.04.2018

11. The Tribunal rejected Revenue's contention relating to rejection of books of accounts maintained by the assessee by relying on assessee's own order passed by the Co-ordinate bench for the earlier year as well as the HC order upholding the same on further appeal by the department. In the earlier year, it was held that since the assessee had followed the recognized accounting standard issued by ICAI and no major defects had been found by the AO in the assessee's books, the AO could not reject the said books.
Further, the Tribunal held that the transaction of executing the onshore part of a project by the Indian PE of the Chinese entity (where the project was awarded by Indian companies to the HO of Chinese entity) between the Indian PE of Chinese entity and its HO in China was an international transaction and subject to transfer pricing provisions. The Tribunal further upheld the CIT(A)'s order, relating to rejection of TNMM (applied by TPO) and accepting of CUP method for benchmarking the said transaction consequent to which there would be no adjustment. Further, the Tribunal also held that there was no difference in the functions performed, asset employed, risk undertaken, price charged in comparable uncontrolled transactions and the entire profit of the foreign entity was charged to taxation through its PE in India and thus there was no shifting base of profits.
ADIT (Intl Tax)-II vs Shandong Tijun Electronic Power Eng. Co Ltd – TS-353-ITAT-2018(Ahd)-TP-ITA No 2926/Ahd/2014 dated 13.04.2018

12. Assessee was engaged in the business of leasing and hiring heavy cranes and had purchased nine cranes from it AE during the relevant year. The assessee got these cranes valued from custom authorities and chartered engineers and accordingly benchmarked the said international transactions. The method adopted by assessee for benchmarking the international transactions was rejected by the TPO who applied the CUP Method. The TPO took the written down value of the cranes in books of AE as ALP which resulted into certain adjustments to assessee's ALP. The DRP held that the written down value of cranes in books of AE could not be considered as ALP as it was not derived from transactions between enterprises other than associated enterprises and accordingly the TPO was directed by the

DRP to accept the valuation report of the assessee and delete the additions made on account of ALP of cranes. The Tribunal on appeal did not find any illegal infirmity in the order of the DRP and upheld the same.

ACIT v. Sarens Heavy Lift (I) (P.) Ltd. – [2018] 93 taxmann.com 431 (Delhi – Trib.) - IT Appeal No. 1027 (DELHI) Of 2015 dated April 2, 2018

13. The Tribunal remanded the issue of benchmarking of transaction with respect to payment of management service fee to AE back to the TPO, noting that the TPO and DRP had rejected the assessee's TNMM and had adopted CUP method without selecting any comparable for benchmarking the said transaction so as to arrive at Nil ALP by applying benefit test. It held that for selecting CUP method, the price charged or paid for property transferred or services provided in a comparable uncontrolled transaction, or a number of such transaction was to be identified and thereafter MAM was to be decided.

Gates Unitta India Company (P.) Ltd. v. ITO – [2018] 93 taxmann.com 10 (Chennai – Trib.) – IT Appeal No. 2745 (CHNY) of 2017 dated April 6, 2018

14. The Apex Court dismissed Revenue's SLP against Rajasthan HC decision that had upheld Tribunal's order deleting Rs.2.07cr TP-adjustment. The Tribunal had followed the earlier year decision in the assessee's own case wherein the Tribunal had rejected the TPO's approach of adopting CUP method and determining the ALP at Nil (by applying benefit test). Thus, in the earlier year, the Tribunal had accepted the assessee's benchmarking of the royalty payment to AE using TNMM, holding that the TPO/ AO could not justify the application of CUP method.

Pr. CIT vs. Sakata Inx (India) Ltd [TS-326-SC-2018-TP] SLP (Civil) Diary No.(s) 14221/2018 dated 04.05.2018

15. The Tribunal relied upon the coordinate bench ruling in assessee's own case and adopted CUP as the MAM in respect of the export transaction and deleted the TP-adjustment in respect of export of printed circuit boards (PCBs) by assessee to its AE in Austria [for further sale in Europe as distributor]. It rejected the TPO's adoption of entity level TNMM in respect of the export transaction since the Revenue was not able to demonstrate or bring any cogent evidence or material to prove that CUP method was not suitable for the assessee. The Tribunal noted that that there was no value addition by the AEs in the goods manufactured by assessee and prices at which PCBs were sold by the assessee to AE were equal to the prices at which PCBs were sold by AE to independent customers in Europe. Accordingly, the Tribunal adopted the CUP-method as MAM.

AT & S India (P) Ltd v/s. DCIT [TS-336-ITAT-2018(Kol)-TP] ITA No.77/Kol/2017 dated 11.05.2018

16. The Tribunal remitted the matter of ALP determination of assessee's international transaction in respect of management group cost back to AO/TPO under the CUP method. The Tribunal upheld the TPO's rejection of the assessee's approach of aggregating the "management group cost" and "R&D assistance cost" as a single international transaction and opined that management group costs had to be separately benchmarked since the assessee had failed to establish any inextricable link between the transactions as one not surviving without the other. The Tribunal also observed that in assessee's own case for AY 2011-12, the Tribunal had approved CUP as the MAM. Thus, it directed the TPO to apply CUP and in case of non-availability of relevant data vis-à-vis comparables or any other genuine reason, to apply appropriate method.

***Atotech India Pvt Ltd vs. ACIT [TS-340-ITAT-2018(DEL)-TP] ITA Nos.3419&6571/Del/2016 &1112/Del/2014* dated 11.05.2018**

17. The Tribunal remitted the ALP determination in respect of assessee's guarantee commission received back to AO/TPO since the TPO had used the CUP data obtained by issuing notice u/s. 133(6) of the Act without providing an opportunity to the assessee with it. The Tribunal observed that no one should be condemned unheard and restored the issue so that the TPO could confront the CUP data to the assessee. Further, the Tribunal directed the AO/TPO to keep in mind the directions of the DRP in the

subsequent assessment years wherein it was held that no addition could have been made on account of receipt of guarantee commission and for which the department had not preferred an appeal.
The Bank of Tokyo-Mitsubishi UFJ Ltd. vs. DCIT [TS-824-ITAT-2018(DEL)-TP] ITA No.7212/Del/2017 dated 11.06.2018

Cost Plus Method

18. The Tribunal rejected TPO's selection of external TNMM as the most appropriate method (MAM) for benchmarking of assessee's (engaged in the business of processing blended tea) international transaction of sale of tea to AE and directed the TPO to adopt internal Cost Plus Method (CPM) as adopted by the assessee. It noted that the assessee had adopted internal CPM for export of tea and export of PP Bags and PP Geo frabric but the TPO adopted entity level TNMM and using external comparables proposed an adjustment of Rs. 7.54 Cr despite the fact that the TPO had accepted assessee's CPM as MAM for earlier years. Noting that the nature of international transactions, functions performed and risks assumed by the parties and method adopted were similar to those adopted by the assessee in the earlier years, it held that there was no reason for the TPO to take a different stand in the year under consideration. Accordingly, it remanded the matter back to the file of the AO.
Madhu Jayanti International Ltd vs. DCIT - S-1069-ITAT-2017(Kol)-TP - I.T.A No. 214/Kol/2016 – dated 01.12.2017

19. The assessee had exported spools to its AE wherein cost plus 10% of product cost was charged. However, TPO was of the view that 10% of indirect cost also needed to be charged and hence made an addition. The Tribunal relied on co-ordinate bench ruling in assessee's own case in earlier year wherein it was held that there was nothing on record to suggest that any indirect expenses were considered for determining the ALP of export of spools and the TPO had made no such adjustment for AY 2004-05. Accordingly, the Tribunal deleted the adjustment made on account of indirect costs while computing ALP of the export transaction.
Bekaert Industries Pvt Ltd vs. ACIT [TS-349-ITAT-2018(PUN)-TP] ITA No.2376/Pun/2012 dated 14.05.2018

Resale Price Method

20. The Tribunal upheld the CIT(A)'s acceptance of assessee's selection of RPM over TPO's TNMM for benchmarking assessee trader's import transaction for AY 2003-04. The TPO rejected RPM and adopted TNMM as MAM observing that assessee's P&L account revealed that there were certain expenses which were directly connected with selling & distribution function which had not been considered for comparability in either the case of the assessee or the comparables under RPM and that the benchmarking conducted was faulty. Noting that the TPO had accepted RPM as the MAM in the subsequent years, the CIT(A) reversed TPO's order. Observing that the Revenue had not brought anything on record to substantiate that the facts for the year under consideration were different from the subsequent assessment, the Tribunal held that the CIT(A) was justified in accepting RPM based on the principle of consistency. Further, it relied on the decision of the Bombay High Court in L'Oreal India (P.) Ltd. (2015) 53 Taxmann.com 432 (Bom.), wherein it was held that the RPM was the most appropriate method for benchmarking the ALP of the trading segment.
JCIT v M/s Michelin India Pvt. Ltd - TS-15-ITAT-2018(DEL)-TP - ITA No. 1874/Del/2011 dated 10.01.2018

21. The Tribunal upheld DRP's selection of RPM as MAM for assessee's export of iron ore to AEs and dismissed the TPO's application of CUP method as faulty. The DRP had held that that the TIPS database (used as CUP by the TPO) was unreliable tool to determine ALP of assessee's transaction noting that it provided prices of iron ore exported from Vishakhpatanm port as per iron content which did not match the iron content in the assessee's transaction (50.60 percent). It upheld the DRP's observation that the difference in iron content would directly impact the market value and therefore held that the CUP method could not be adopted. Accordingly, it upheld the DRP's direction to consider the mean GP-rate realised in the exports to non-AEs to benchmark the AE-transactions.

ACIT vs. Billion Wealth Minerals Pvt. Ltd. - TS-43-ITAT-2018(Mum)-TP - /I.T.A./1818/Mum/2015 dated 19.01.2018

22. The Tribunal upheld CIT(A)'s deletion of TP-adjustment in respect of international transaction of import of finished goods, accessories, components and spares by the assessee (engaged in trading) from its AE. The assessee adopted RPM as MAM and compared the gross profit margin earned by it on sale of finished goods imported from AE with margin earned on sale of finished goods purchased from unrelated parties. TPO rejected assessee's approach of computing such gross profit margin earned by considering cost of components, spares, accessories, consumables etc. within the total cost of finished products resold (as their sale price was included in the sale value charged to customers). The Tribunal observed that the assessee was providing power solutions to its customers for which it was not only importing UPS or DP power systems from its AEs but was also attaching various other components, spares, accessories etc. to it including batteries and racks to provide an end-solution to the customers and the assessee had not charged separately for such components. Accordingly, it rejected the TPO's contention and accepted the assessee's transactions to be at ALP.
DCIT vs. Eaton Power Quality Pvt Ltd - TS-186-ITAT-2018(PUN)-TP - ITA No.1025/PUN/2014 dated 12.03.2018

23. The TPO rejected RPM and adopted TNMM as MAM which was upheld by the DRP by observing that the assessee was not a simple distributor since the assessee had incurred substantial advertising, marketing and promotion expenses which had also not been demonstrated by the assessee to have been incurred by the comparables. The Tribunal accepted the assessee's selection of RPM over TNMM applied by the TPO and held that the assessee was a routine market distributor who was selling/distributing products without any value addition on the products. The Tribunal also relied on the order of the coordinate bench in Nokia India Private Limited vs. DCIT (2015) 153 ITD 508 (Delhi Trib.) and held that incurring of high advertisement and marketing expenses by the assessee vis-a- vis the other comparable companies does not in any manner affect the determination of ALP under the RPM.
Burberry India Pvt Ltd vs ACIT [TS-615-ITAT-2018(DEL)-T] ITA No.758/Del/2017 dated 22.06.2018

24. The Tribunal set aside the issue of selection of the most appropriate method (MAM) and determination of ALP for the assessee engaged in distribution of medical equipments like capital equipment and surgical implants. It noted that the assessee had selected Resale Price Method (RPM) on the ground that it was engaged in reselling the imported products without any value addition whereas the TPO applied TNMM on the ground that product profile of assessee was totally different. It noted that the co-ordinate bench of the Tribunal for AY 2002-03 had observed that TPO had accepted RPM as the most appropriate method for AY 2007-08 onwards and had remitted the issue back to AO/TPO in view of lack of clarity as to why the Department had adopted TNMM for earlier years while accepting RPM for later years. Accordingly, relying on the Tribunal order for AY 2002-03, it remitted the matter to AO/TPO for fresh adjudication.
Stryker India Pvt. Ltd v DCIT - TS-441-ITAT-2018(DEL)-TP - ITA No. 351-53/DEL/2015 dated 04.05.2018

25. The Tribunal directed the AO/TPO to apply RPM as the MAM method for benchmarking assessee's import of finished goods from its AE for onwards sale as against the CPM method applied by the TPO. The TPO applied a markup of 11% to benchmark the arm's length price of international transaction undertaken. In arriving at the above decision, the Tribunal noted that the assessee was importing finished goods from its AE and there was no value addition.
Bekaert Industries Pvt Ltd vs. ACIT [TS-349-ITAT-2018(PUN)-TP] ITA No.2376/Pun/2012 dated 14.05.2018

Transactional Net Margin Method

26. The Court dismissed Revenue's appeal and upheld the Tribunal's order accepting TNMM as MAM for exporter assessee and held that since the assessee was an exporter of goods the TPO had wrongly used Resale Method (RM), which was only to be applied to importers. Accordingly, it held that TNMM

method was rightly used for exporters and therefore, the resultant concession granted to the assessee on this count was correct.
Pr CIT v Rahman Exports Pvt. Ltd - TS-23-HC-2018(ALL)-TP dated INCOME TAX APPEAL No. - 7 of 2017 dated 11.01.2018

27. The Tribunal upheld the application of TNMM as MAM for benchmarking the export of finished goods by the assessee to AE and deleted the TP-adjustment computed by the TPO adopting the CUP method by benchmarking the transactions with transactions with the Non-AEs. It held that the CUP method was inappropriate owing to i) difference in the volume of goods, and ii) geographical differences and noted that the Tribunal in the assessee's own case for AY 2002-03 had rejected CUP Method for the identical issue wherein products were supplied to AEs and non-AEs in different countries.
Intervet India Private Limited vs. DCIT - TS-1087-ITAT-2017(PUN)-TP - ITA No.721/PUN/2014 dated 21.12.2017

28. The Tribunal dismissed Revenue's appeals seeking the use of external controlled comparables in the same sector such as JP Morgan Chase and Bank of America under the Profit Split Method, over uncontrolled comparables under TNMM to benchmark assessee's marketing of derivative products on behalf of AEs. It deleted the TP- addition which was based on the difference between assessee's global TP policy prescribed remuneration @ 24.40% of initial net present value (INPV) of derivative transactions as against the 60% multiplier on the same offered by controlled comparables to their Indian branches. At the outset, the Tribunal noted the unavailability of information on the controlled transaction in the public domain, and held that the TPO had violated the principles of natural justice by not confronting the assessee with the comparables used against it which itself was sufficient basis to have the adjustment validly deleted. On the merits, the Tribunal held that it was inappropriate to apply a uniform multiplier effect on the value of sales credit/INPV as the INPV computation was dependent on unique discounting factors that will lead to different values for different banks. Further, following the decision of the Court in Johnson and Johnson ruling, it held that the TPO's application of PSM was adhoc and not as per the rules, since the said method could not be applied for benchmarking marketing support service functions and was mainly adopted when transactions involved unique intangibles. Considering that the TPO did not adhere to the prescribed methods consciously and that the order of CIT(A) suffered from no legal or factual infirmity, it refused to restore the matter to the file of TPO.
Barclays Bank PLC vs. ADIT - TS-11-ITAT-2018(Mum)-TP - /I.T.A./178/Mum/2011 dated 12.01.2018

29. Where the assessee sought to apply internal TNMM to benchmark its international transactions, the Tribunal rejected Revenue's contention that internal comparable could not be considered in view of miniscule turnover of the third party transactions and relying on the decision of the Delhi Tribunal in Lummus Technology Heat Transfer BV ([TS-48-ITAT-2014(DEL)-TP] it held that, in a transaction level comparison within same entity, mere difference in size of uncontrolled transactions would not not render the transaction incomparable. Noting that the assessee has separately submitted segmental accounts reflecting business with AEs, non-AEs and idle capacity, the Tribunal opined that there was no bar in adopting uncontrolled transaction for the purpose of internal TNMM. Vis-à-vis the capacity utilization adjustment, the Tribunal noted that the profit margins were arrived without factoring for idle capacity (70% under-utilization in this case), and held that profitability of the organization would be impacted when there was huge underutilization of the capacity. Accordingly, it held that there had to be an adjustment internally within the organization or an adjustment of idle capacity when compared with outside comparables. Considering that the assessee had not properly maintained allocation of overheads, it set aside the issue to the file of the TPO and directed the assessee to submit the segmental results based on the absorption of overhead on utilized capacity and idle capacity considering segments export to AE, export to non-AE, domestic sales to non-AE and idle capacity; Accordingly, the Tribunal remitted the TP issue back to TPO directing it to consider the revised segmental profit and loss reports and arrive at the ALP adjustment by considering non-AE transactions as one of the comparable in determining ALP.
Srini Pharmaceuticals Ltd vs. DCIT - TS-60-ITAT-2018(HYD)-TP - ITA No. 102/Hyd/2015 dated 19-01-2018

30. The Court admitted assessee's appeal on the following question of law "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in upholding the rejection of segmental Transactional Net Margin Method and adopting the comparable Uncontrolled Price method for determining any adjustment under Chapter X in respect of the purchase of raw materials and sale of finished goods made by the Appellant?"
Henkel Adhesives Technologies India Pvt Ltd vs. DCIT - TS-106-HC-2018(BOM)-TP - INCOME TAX APPEAL NO. 817 OF 2015 dated 20.02.2018

31. In a departmental appeal, The Tribunal set aside the order of the CIT(A) deleting the TP-adjustment as the impugned order was cryptic, non-speaking and stereotyped. The TPO had proposed adjustment on export of cables to AE by using internal TNMM based on margin earned on domestic sale which was deleted by the CIT(A) who observed that the export transaction could not be compared with domestic transaction in view of different economic conditions in different geographic markets. The Tribunal held that under TNMM, a preference was to be given to an internal comparable and that the CIT(A) ought to have carried out FAR analysis for the international transaction and internal comparable transaction (domestic sales) and then made adjustment for differences such as geographical location, etc. Accordingly, it remanded the matter to the file of the CIT(A) to re-adjudicate the issue.
DCIT V Lapp India P. Ltd - TS-129-ITAT-2018(Bang)-TP - LT(TP).A No.114/Bang/2014 dated 17.01.2018
DCIT vs. Lapp India P Ltd - TS-128-ITAT-2018(Bang)-TP - I.T(TP) .. ANos.1017 & 1018/Bang/2014

32. The Court dismissed Revenue's appeal and held that the Tribunal was justified in holding TNMM as MAM for benchmarking exports to AEs. It noted that the TPO made adjustment on approx. 5% of total exports by applying CUP-method on the basis that there were similarities between goods sold to AE and third parties but the Tribunal, considering the customization of finished goods and the geographical, volume, timing, risk and functional differences, came to a conclusion that CUP method could not be MAM and upheld the assessee's stand that TNMM was MAM. It dismissed Revenue's contention that Tribunal had adopted TNMM as MAM without considering FAR-analysis as 'unjustified' noting that Tribunal had done the necessary FAR analysis and therefore opined that the view taken by the Tribunal on the facts before it, was a possible view on the application of appropriate tests.
Amphenol Interconnect India P. Ltd - TS-205-HC-2018(BOM)-TP] INCOME TAX APPEAL NO. 1131 OF 2015 dated 7th MARCH, 2018

33. The Court admitted assessee's appeal on the following substantial question of law i.e. whether the Tribunal was justified in rejecting the principle of aggregation of closely linked transactions using the Transactional Net Margin Method.
JCB India Ltd vs DCIT Circle 13(1)- TS-301-HC-2018(DEL)-TP-ITA No 525/2017 dated 18.04.2018

34. The Tribunal ruled on selection of Internal TNMM Most Appropriate Method (MAM) and use of internal comparables for benchmarking export and import transactions of assessee engaged in manufacture of heavy commercial vehicles. In respect of assessee's export of trucks to developing countries (like South Africa, Ethiopia and Indonesia) through its German AE, it was observed that billings were raised on German AE, but trucks were not routed through Germany and were directly sent to developing countries due to stricter emission norms in Germany. The Tribunal discarding TPO/DRP's approach of rejecting internal comparables (sale of similar products in India) opined that geographical differences would not be relevant where the products were exported to markets similar to Indian markets, where emission norms were less stringent as compared to Germany.
DCIT Circle-9 vs Man Trucks India Pvt Ltd- TS-228-ITAT-2018(PUN)-TP- ITA No 547/PUN/2014 dated 03.04.2018

35. The Tribunal, in the department's appeal, upheld the DRP's aggregation of assessee's distribution & commission segments and application of entity level TNMM for benchmarking analysis following approach adopted by DRP in assessee's own case in preceding AYs and noted that though, the TPO had segregated the financials into 2 segments viz. distribution and commission and applied TNMM and

CUP-method to benchmark distribution and commission segments respectively, the Tribunal upheld assessee's reliance on DRP orders for previous years after noting similarity of the international transactions to be benchmarked, assessee's business model over the past few years and absence of any compelling reasons submitted by Revenue for discarding earlier years' approach (of aggregating the two aforesaid two transactions). It rejected TPO's view that higher appellate authorities had not decided the issue at all and therefore there was no question of accepting assessee's stand to apply aggregation approach accepted in earlier years

DCIT Circle 13(1) vs JDSU Indian Pvt Ltd- TS-287-ITAT-2018(DEL)-TP- ITA No 1120/Del/2015 dated 02.04.2018

36. The Court rejected admission of question of law raised by assessee involving rejection of CUP method by Revenue as the most appropriate method (MAM) for the transaction of sale of railway wagons to AE based on the sale price charged by the AE from the ultimate third-party buyer and noted that Revenue rejected CUP method having regard to the fact that it unduly restricted the choices of the Revenue and TNMM was considered to be a more appropriate method where greater choice was available. The Court thus concluded that appropriateness of the MAM per se does not give rise to a question of law since it involves analysis of facts done first by the Revenue authorities and settled by the Tribunal and held that unless the facts show glaring distortion in the adoption of one or the other method, a question of law cannot be said to arise.

The Court thereafter admitted 3 legal questions raised by the assessee in respect of Tribunal's order on the issues of cherry-picking of comparables, deletion of comparables selected by the assessee, and intra-group services related to management support. The same are as under:

- Whether on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the action of the TPO in cherry-picking comparables and considering Titagarh and Texmaco as comparable companies for undertaking benchmarking analysis of international transaction of main line segment applying TNMM, not appreciating that the said companies did not satisfy the test of comparability as provided in Rule 10B (2) of the Rules?
- Whether on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the action of the TPO in deleting the comparables proposed by the appellant, viz., Braithwaite and Bharat Wagon, (without prejudice and in response to the additional comparables selected by the TPO),completely ignoring that the same are identical in functional profile to the comparables introduced by the TPO for undertaking benchmarking analysis of international transaction of main line (MLN) segment applying TNMM, not appreciating that the said companies satisfy the test of comparability as provided in Rule 10B(2) of the Rules?
- Whether on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the addition made by the TPO on account of intra-group services related to management support by President and his team, human resources, Six Sigma and operation, and quality and other services, received by the appellant from its associated enterprises, on the erroneous reasoning that such services, rendered by the AEs are in the nature of shareholders activities and of no economic and commercial value to the business of the appellant?

Bombardier Transportation India Pvt Ltd vs DCIT- TS-244-HC-2018(Del)-TP-ITA No 223/2018 dated 09.04.2018

37. The Court dismissed Revenue's appeal and upheld Tribunal's application of TNMM as Most Appropriate Method (MAM) for benchmarking assessee's export & import transactions and noted that Tribunal rightly followed co-ordinate bench ruling in assessee's own case for previous AYs (which was subsequently confirmed by HC) wherein for the same transactions, TNMM was upheld as MAM over TPO's CUP-method. Thus, in the absence of any distinguishing facts in subject AY, the court held that the said ratio would equally apply to the facts of the present appeal and accordingly dismissed revenue's appeal

PCIT- 5 Pune vs Amphenol Interconnect India P Ltd- TS-275-HC-2018(Bom)-TP- ITA No. 1388 of 2015 dated 18.04.2018

38. The Tribunal relying on its order of earlier years allowed assessee's selection of foreign AE as a tested party and noted that TNMM was rightfully followed as the most appropriate method for benchmarking transactions of payment of fees for advisory and other services to its AE. In the earlier year, the Tribunal had accepted the assessee's stand of selecting the foreign AE as the tested party, noting that (i) the AE was rendering service to various other entities also (ii) the AE was following a scientific method of allocating cost and charging the same with markup to all the entities at same level and (iii) the relevant details to compute the cost allocation on account of services had been certified and filed before the AO. The Tribunal sent back the matter to AO for limited purpose of verification of assessee's claim that margin was within 5% range of average comparables margin.
Emerson Climate Technologies (India) Pvt Ltd vs DCIT Circle 1(2)- TS-362-ITAT-2018(PUN)-TP-ITA no's 359 & 2847/PUN/2016 dated 25.04.2018

39. Where the assessee was engaged in distribution of books, software, electronic products and reprinting of books, publications, noting that the reprinting of books required deployment of assets, employees and involved risk in publishing and selling, the Tribunal held that TPO was correct in adopting TNMM as opposed to RPM as RPM could not be adopted where there was value addition and application of technology. Therefore, it upheld the order of the TPO.
Cengage Learning India Pvt. Ltd vs ITO - TS-736-ITAT-2018(DEL)-TP - ITA No. 5926/DEL/2010 dated 11.05.2018

40. The Tribunal restored the benchmarking of assessee manufacturer's international transactions for AY 2010-11, noting that the TPO rejected assessee's entity level TNMM and adopted internal TNMM for benchmarking and proposed a TP-adjustment and that the co-ordinate bench in assessee's own case in subsequent AY 2011-12 on similar facts had restored matter back to AO for fresh examination as the DRP had failed to adjudicate the issue.
ASB International Pvt. Ltd vs. ACIT - TS-422-ITAT-2018(Mum)-TP - ITA No.1068/Mum/2015 dated 29/05/2018

41. Relying on the co-ordinate bench ruling in assessee's own case for the assessment year 2011-12 and 2012-13, the Tribunal restored the matter to the file of the AO/TPO to benchmark the assessee's provision of software development services by adopting internal TNMM (adopted by the assessee) as internal TNMM was to be preferred over external TNMM adopted by the TPO.
Brillio Technologies Pvt. Ltd. vs. DCIT - TS-427-ITAT-2018(Bang)-TP - IT(TP)A No.1897/Bang/2017 dated 31/05/2018

42. The Tribunal upheld assessee's [manufacturer of bulk drugs, chemicals and intermediates] application of TNMM over TPO's adoption of CUP-method as the Most appropriate method for benchmarking international transactions of product sales and receipts for contract research services. It noted that while TPO had stated that CUP-method was better than TNMM, he did not mention how TNMM was not applicable on the given set of facts. Further, it held that the DR could not improve the case of the TPO at this level. It also observed that the co-ordinate bench in assessee's own case for AY 2002-03 had upheld assessee's adoption of TNMM as MAM and therefore held that there was no justification for deviating from order of the ITAT passed in similar facts of the same assessee.
DCIT vs. Dishman Pharmaceuticals & Chemicals Ltd - TS-440-ITAT-2018(Ahd)-TP – ITA No 692/Ahd/2011 dated 23 /05/2018

43. In a case where the assessee contested the exclusion of the comparables selected by the assessee itself and no comparables were introduced by the Revenue while determining the ALP under the TNMM method, the Tribunal held that the onus was more on assessee to justify the exclusion / inclusion of the comparables. It held that under TNMM method, only a broad functional comparability is required and the statute, itself, has provided for a tolerance range of +/-5% to weed out the dissimilarities since no two entities could exactly be the identical / similar in all respect. It took note of the judicial pronouncements relied on by the assessee to contend that the comparables initially selected by the assessee could be excluded subsequently, finding them to be functionally or otherwise uncomparable in the circumstances. However, it held that there could not be any cherry picking to suit the requirement of the assessee. The Tribunal thus held that keeping in view the overall factual matrix of the case, the

matter was to be remitted back to the file of the AO /TPO for fresh determination of ALP of the transactions.

Roche Diagnostics India Pvt Ltd vs ACIT Range 8(3)-TS-803-ITAT-2018(Mum)-TP- ITA No 7566/Mum/2012 dated 04.05.2018

44. The Tribunal rejected TPO's approach for entity wide benchmarking of the assessee's international transactions vis-à-vis International express and International freight forwarding segments without considering the segmental accounts, noting that (i) the TPO had not considered segment accounts since he was of the view that the domestic business was suffering losses on account of incorrect allocation of expenses whereas the domestic courier business was suffering losses on account of stiff competition being faced (ii) TPO's observation of volume being the basis of allocation of expenses was flawed since the assessee had actually allocated the expenses on the basis of revenue, weight and volume. (iii) TPO's observation that domestic business was an extension of international business was factually incorrect since the assessee's domestic segment was 10 times the size of the international express segment and was an independent business and also the FAR profile was entirely different.

Aramex India Pvt. Ltd vs. DCIT [TS-351-ITAT-2018(Mum)-TP] ITA No.6749/Mum/2017 dated 18.05.2018

45. The Tribunal upheld the application of TNMM as MAM for benchmarking the sale of products by the assessee to AE and deleted the TP adjustment computed by the TPO adopting the CUP method by benchmarking the transactions with the Non-AEs. It relied on the findings of coordinate bench in the earlier year in assessee's own case wherein CUP method was rejected in light of the geographical factors and difference in the quantity of the products sold.

Dishman Pharmaceuticals & Chemicals Ltd vs DCIT [TS-958-ITAT-2018(Ahd)-TP] ITA No.955/Ahd/2012 dated 20.06.2018

46. The assessee had benchmarked sale of goods to its AE's in Bangladesh, Dubai and the United Kingdom (AE) using TNMM which was rejected by TPO who applied CUP. The CIT(A) accepted TNMM adopted by the assessee. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s application of the TNMM as the MAM as against the CUP applied by the TPO. It observed that the TPO/AO had not made any adjustments owing to the differences in market and economic conditions of countries in which products were sold to independent third parties. Further, TPO had failed to take into account the profile of consumers, preference amongst consumers, purchasing power, etc. Thus, It opined that selective application of CUP Method by TPO was ad hoc, and without any cogent basis, hence the entire approach followed by the TPO in rejecting TNMM was unjustified.

DCIT/ACIT vs. Emami Limited [TS-468-ITAT-2018(Kol)-TP] ITA Nos. 1065 and 1066/Kol/2017 dated 15.06.2018

47. The Tribunal directed the TPO to adopt Internal TNMM based on man hour rates as the MAM for determining the ALP of specialized engineering services provided by the assessee to its AE. The Tribunal accepted the assessee's plea that hourly rates charged by it in providing specialized services to its AEs can be the basis for verifying its stand as to whether the services provided by the assessee to its AEs were at ALP. It further relied upon the coordinate bench decision of DCIT v/s. ManTrucks Pvt. Ltd. [ITA No.547/Pun/2014] wherein it was held that even if costs were identical for providing services to AE, Non-AE's or domestic parties, the margins earned from domestic parties could be compared to benchmark ALP of international transaction and accordingly, it rejected the Revenue's contention that since the cost incurred for transaction with AEs as well as domestic transactions were same, the domestic transactions were controlled and thus tainted.

Magna Steyr India Pvt Ltd [TS-625-ITAT-2018(PUN)-TP] ITA No.314/Pun/2014 dated 05.06.2018

48. The Tribunal relying upon the ITAT order in assessee's own case for the prior year upheld the approach of assessee aggregaring all transactions in the manufacturing segment and adoption of TNMM to benchmark the transaction as compared to CPM applied by the TPO as the MAM. Further, in line with the earlier year, the Tribunal also directed the AO to verify assessee's claim by applying single year data and accordingly, compute the TP-adjustment, if any.

Sandvik Asia Pvt. Ltd (formerly known as Sandvik Asia Ltd) vs. DCIT [TS 444 ITAT 2018] ITA No.1459/Pun/2010 dated 06.06.2018

49. The Tribunal accepted the stand of the assessee of aggregating installation and commissioning/ engineering services with the manufacturing activity (while determining ALP by applying TNMM) by relying on the co-ordinate bench ruling in assessee's own case in AY 2007-08 wherein it was held that activity of installation and commissioning/engineering services are closely linked with manufacturing and ought to be combined and construed as single transaction for determining the ALP of transaction.
Terex India Pvt. Ltd (as successor of Demag Cranes and Components (India) Pvt. Ltd) vs. DCIT [TS-477-ITAT-2018(PUN)-TP] ITA No.583/Pun/2016 dated 06.06.2018

50. The Tribunal upheld the CIT(A)'s adoption of TNMM as MAM over RPM applied by the TPO.since the assessee had incurred huge selling, marketing and advertising and promotion in respect of the import of goods for the subject year. The Tribunal relied upon the co-ordinate bench ruling in assessee's own case for earlier year wherein the reason assigned by the TPO for rejecting RPM was accepted i.e. that the business model of the assessee could not be compared with comparable companies on account of the selling, marketing and advertising and promotion expenses incurred and hence concluded that TNMM would be the MAM.
Abbott Medical Optics Pvt. Ltd. v DCIT (formerly Advanced Medical Optics India Pvt. Ltd) [TS-517-ITAT-2018(Bang)-TP] IT(TP) A No.08/Bang/2014 dated 22.06.2018

Profit Split Method

51. The TPO had rejected the assessee's TP study on the ground that there was no separate FAR analysis of the transactions performed with the AEs and had recharacterized the activity/functions performed by the assessee company as a KPO instead of "IT services" classified by the assessee company. The assessee had argued that principle of consistency would be applicable and even for the previous years i.e. from AYs 2009-10 to 2011-12, the assessee had been accepted as an IT service provider. The Tribunal opined that the TPO was justified in rejecting the TP analysis undertaken by the assessee since it was not made based on each of the functions performed with the AEs. The Tribunal thus remanded the entire TP issue to the file of AO/TPO with a direction to afford a reasonable opportunity to the assessee to furnish a TP study report covering the functions performed, risks analysed and assets employed in respect of the international transactions with AEs.
The Tribunal however also directed the AO/TPO to aggregate the functions having a direct nexus with AdWords distribution programme having regard to the TP study and to benchmark such aggregated transactions by adopting profit split method, relying on the decisions of Orange Business Services and Global one India wherein it was held that Profit split method was the most appropriate method for cases involving multiple interrelated international transactions which could not be evaluated separately.
Google India Private Limited v. Jt.DIT(IT) & others [TS-335-ITAT-2018(Bang)-TP] - IT(IT)A No.69 & 1190/Bang/2014, 374/Bang/2013, 387, 949 & 950/Bang/2017, 68/Bang/2015 & 559/Bang/2016 dated 11.05.2018

Any Other Method

52. Where the assessee had adopted TNMM for benchmarking its international transactions in all previous years but sought to use residual method which was effective for subject AYs and resorted to TNMM only for transactions not covered by the other method, which was rejected by the AO who applied TNMM on all transactions, the Court held that the Tribunal was not justified in remanding the issue back to TPO stating that it did not find any reasons for change in assessee's approach (from TNMM to the Other Method). It observed that the TP-report clearly claimed that 'other method' was MAM and also outlined the reason for shifting from TNMM to the 'Other method', which had neither been considered by the Tribunal nor DRP. Noting that the 'other method' was introduced for the first time during the impugned AY, the Court held that the Tribunal ought to have proceeded with the matter afresh instead of having remanded the matter totally to the TPO. Accordingly, it remitted the matter to the file of the Tribunal.

Springer (India) Private Limited vs. ACIT - TS-1062-HC-2017(DEL)-TP - ITA 1148/2017dated 15.12.2017

General

53. The Tribunal, relying upon ITAT order in assessee's own case for the prior AY remitted the entire TP-issue in case of assessee engaged in import/export and trading of various agricultural/food products. It noted that the TP-adjustments were made in respect of 3 types of transactions viz. a) merchanting transactions b) purchase of fertilizers and c)sale of rice which were benchmarked by the assessee under TNMM for the merchanting transactions and CUP for the others. The TPO rejected the methods selected by the assessee and adopted RPM for the merchanting activities, TNMM for the purchase of fertilisers and TNMM for the sale of rice [which was charged to RPM by the CIT(A)]. Since the issue had not been dealt with properly by the lower authorities so as to reach a logical and reasonable conclusion it directed the AO/TPO to adjudicate the issue de novo.
Cargill India P Ltd v DCIT - TS-92-ITAT-2018(DEL)-TP - ITA No. 2988/Del/2011 dated 09.01.2018

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

ITES Sector / Software Development Services

54. The Tribunal held that the assessee engaged in providing ITES services to its AE could not be compared to:

- Accentia Technologies Ltd as the company had undertaken a extra-ordinary event during the year under consideration.
- Genesys International Corporation Ltd as the company was engaged in KPO service which required advance skill and hence, not comparable with assessee's BPO activity.
- Coral Hubs Ltd as the company outsourced its activities rendering it functionally different to the assessee.
- Eclerx Services Ltd as it was providing high end KPO services

Tracmail (India) Private Limited vs. DCIT - TS-8-ITAT-2018(Mum)-TP - /I.T.A./7519/Mum/2012 dated 05/01/2018

55. The Tribunal held that the assessee engaged in providing ITeS to its AE could not be compared to:

- Accentia Technologies Limited as it had undergone extra ordinary events on account of amalgamation and also was engaged in providing the entire gamut of services under healthcare receivables cycle management viz., medical transcription, medical coding and billing and receivables management services and did not have adequate segmental results.
- Cosmic Global Limited as the company had a different business model as it had outsourced significant work to outside ventures and as such, its employee cost was less than 21.30%
- Fortune Infotech Limited as the company was into web application development including mobile applications, e-Commerce applications and SEO services, developing CMS based website using Drupal, Joomla, WordPress, e-Commerce Magento etc., offering onsite and offsite services to various clients and also into web designing services whereas the assessee was into providing routine ITES to its AE.
- Igate Global Ltd as the company was engaged into providing IT and ITES whereas no segmental information was available in its annual report company and it had also undergone restructuring by way of amalgamation.
- Infosys BPO Limited as it was engaged in different and diversifying services like customer service outsourcing, finance and accounting, knowledge services, human resource outsourcing, legal process outsourcing, sales and fulfillment, sourcing and procurement outsourcing, banking and capital outsourcing, media outsourcing, energy outsourcing, retail, etc. as against assessee which was into routine ITES. Moreover, it noted that the said company had i) huge turnover of Rs.1126.63 crores ii) goodwill of Rs.19.30 crores as per annual report iii) incurred selling and marketing expenses to the tune of 6.96% to enhance its business and iv) had an exceptional year of operation due to acquisition of McCamish Systems LLC to provide end to end services.

- TCS e-Serve International Limited and TCS e-Serve Limited as their operations broadly comprised of transaction processing and technical services and therefore was not comparable to the activities of the assessee
- Satyam BPO Limited as the creditability of a company due to the scam was at stake and therefore could not be considered as a reliable comparable
- Vis-à-vis R Systems it accepted the assessee's plea that a comparable could not be rejected merely on account of different financial year where the company was functionally comparable and the results for the relevant year could be reconciled and remitted the comparability of the said company back to the file of the TPO directing the assessee to provide reconciliation of the profitability with authentic and reliable data

Vertex Customer Services India Private Limited (now merged with Vertex Customer Management India Private Ltd) vs. DCIT - TS-1052-ITAT-2017(DEL)-TP - ITA No.1508/Del./2015 dated 28.11.2017

56. The Tribunal remitted the question of inclusion/exclusion of 5 comparables for assessee's provision of ITeS to AE noting that there was no observation of the DRP on the said issue. Vis-à-vis i) Alphageo, it observed that the company had been excluded in co-ordinate bench ruling in Flour Daniel on grounds of functional dissimilarity and for having a very high net fixed asset/sales ratio as compared to the assessee and accordingly, directed the AO/TPO to verify if the same held good for this case and ii) Mahindra Engineering, it directed the AO/TPO to reject the company as a comparable if its RPT was found to be greater than 25% as the said issue had not been brought before TPO/DRP.

Eigen Technical Services Pvt. Ltd. vs. DCIT - TS-78-ITAT-2018(DEL)-TP - ITA No.244/Del/2012 dated 22-01-2018

57. The Tribunal held that the assessee engaged in providing liasioning, administrative support and other ITeS could not be compared to:

- E-Clerx Services Ltd as the company was engaged in high-end KPO not comparable to the assessee and also since the company had acquired a UK-based Igentica Travel Solutions Limited ("ITS") company during the year
- Accentia Technology Ltd as the revenue earned by it from services was less than 75 percent, the company was engaged in software development and it had undertaken mergers / demergers during the year under review
- Coral Hub Ltd as the working model of the company was outsourcing based and therefore it could not be compared with the assessee moreso considering its employee costs were merely 4.39 percent of its total costs.
- Mod-Tek Technologies Ltd as the company was engaged in providing structural engineering service not comparable to the activities of the assessee.

NCS Pearson India Private Ltd. vs. DCIT - TS-99-ITAT-2018(DEL)-TP - ITA No.5577/Del/2014 dated 03.01.2018

58. The Tribunal held that the assessee engaged in providing call centre services could not be compared to:

- Accentia Technologies Ltd & E4e-health Solutions Ltd as it was engaged in providing high-end KPO services
- Cosmic Global Limited as it was engaged in translation and prescription of data which was entirely different from the functions performed by the assessee and also since it was operating a different business model as it was outsourcing its activities.
- Vishal Information Technologies Limited as it was functionally incomparable to concern providing BPO services since it was outsourcing its work.
- Cross Domain Solutions Ltd & E-clerx Services Ltd as they were engaged in KPO services

Further, it held that CG Vak could not be excluded as comparable on the ground of persistent losses as it earned profits in the earlier years.

Ventura (India) Pvt. Ltd. vs. ACIT - TS-201-ITAT-2018(PUN)-TP - ITA No.1788/PUN/2014 dated 09.03.2018

59. The Tribunal held that the assessee engaged in providing ITES / BPO services to its AE could not be compared to:

- Infosys BPO Ltd as the company was a KPO and it also had huge brand value and possessed intangible assets rendering it functionally dissimilar to the assessee.
- TCS e-Serve Limited as it was engaged in core business processing services, analytics & insights (KPO) and support services for both data and voice processes and no segmental information regarding BPO services were available
- Universal Print Systems Limited as it was into the business of printers whereas the assessee was into the Business Process Outsourcing

Further, it held that BNR Udyog Limited (Medical Transcription segment) could not be excluded as a comparable as medical transcription services fell within the definition of ITES and therefore it could not be held that the company was functionally dissimilar to the assessee.

It also dismissed assessee's contention for exclusion of Excel Infoways Limited and held that the assessee did not furnish any evidence in support of its plea that the company was functionally dissimilar as it was engaged in both IT and ITES services.

Vis-à-vis assessee's plea for inclusion of R Systems and Caliber Point, it held that the said companies could not be taken as comparable as they followed a different financial year ending.

XLHealth Corporation India Pvt. Ltd vs. ACIT - TS-162-ITAT-2018(Bang)-TP - IT{TP)A No. 2311/Bang/2016 dated 09.02.201S

60. The Tribunal held that the assessee engaged in providing IT enabled services to its AE could not be compared to Accentia Technologies Ltd as it earned income from various streams and did not have segmental income. Further, the company had undertaken acquisitions during the year under review rendering functionally dissimilar.

It rejected assessee's contention and held that TCS e-serve International ltd and TCS e-serve Ltd were to be included as comparable. It held that mere high turnover / profit could not be valid grounds for exclusion and further that the companies software testing and validation of software formed part of ITES services and could not be considered as software development . It rejected the assessee's argument that the company had high brand value noting that the companies expended only 0.43 percent of its total expenditure on brand. Further

Further, it rejected assessee's contention to exclude Infosys BPO holding it to be functionally similar to assessee and also rejected the plea relating to brand value and acquisition during year noting that the company incurred insignificant expenses on brand building and had infact incurred loss in the acquired business.

However it accepted assessee's plea to include CG- VAK Software & Exports Ltd and R Systems International Limited as comparable and held that the TPO incorrectly rejected the said companies as comparables. It held that CG Vak could not be excluded merely because it did not satisfy the turnover filter as turnover could not be the basis for rejection of an otherwise functionally similar comparable. Further vis-à-vis R Systems, it held that merely because the company followed a different financial year it could not be excluded where the results of the relevant financial year could be reasonably extrapolated from the data in public domain.

Cadence Design Systems (India) Pvt. Ltd. vs. DCIT - TS-191-ITAT-2018(DEL)-TP - ITA No. 380/Del/2015 dated 05.01.2018

61. The Tribunal held that the assessee engaged in providing ITES services to its AE could not be compared to:

- Eclerx Services Ltd as it was a KPO and mainly engaged in providing high-end services involving specialized knowledge and domain expertise in the field of retail, manufacturing and financial services (including consulting, process outsourcing, process re-engineering and automation services)
- TCS e-serve Ltd as it was engaged in transaction processing and technology services and separate segmental details were not available.

H&S Software Development & Knowledge Management Centre Pvt Ltd vs. ITO - TS-136-ITAT-2018(DEL)-TP] - ITA No. 2200/Del/2014 dated 15.02.2018

62. The Court dismissed Revenue's appeal challenging Tribunal's exclusion of 6 comparables for assessee providing ITeS to its AE. With respect to 3 comparables (TCS E-Serve, TCS E-Serve International and Infosys BPO), it noted the Tribunal had correctly excluded these companies as they had high brand value and therefore, were able to command greater profits, besides they operated on economic upscale. Further, it held that the Tribunal was justified in excluding Accentia Technologies and ICRA Techno Analysis on the grounds of lack of segmental data. It held that e-Clerx Services, a KPO service provider, was also rightly excluded on grounds of functional dissimilarity to assesse BPO.
Pr.CIT vs. Evalueserve SEZ (Gurgaon) Pvt. Ltd - TS-125-HC-2018(DEL)-TP - ITA 241/2018 dated 26.02.2018

63. The Court upheld the order of the Tribunal wherein the Tribunal:
Excluded Infosys BPO as comparable on the ground of its huge brand value
Included R Systems International following the order of the Court in Mckinsey Knowledge Centre wherein it was held that if from the available data on record, the results for financial year could be reasonably extrapolated then the comparable could not be excluded.
However, it admitted 2 questions of law regarding comparability of Surya Pharmaceutical Ltd. and Excel Infosys with the assessee engaged in providing ITES.
Pr. CIT vs. Baxter India Pvt Ltd - TS-135-HC-2018(DEL)-TP - ITA 260/2018 dated 27.02.2018

64. The Tribunal held that the assessee providing business support services & ITeS to AE could not be compared to:
- Infosys BPO Limited as it was a giant company with turnover of INR1,312 crores as against the assessee's turnover of only INR 11.47 crores.
- TCS E-Serve Limited as it had significantly high turnover of INR1,578 crores as against the assessee's turnover of only INR 11.47 crores
- Informed Technologies India Limited as it had granted interest free loan of INR74.56 lakhs to related party which was irrecoverable which had a direct impact on its profitability.

XM Software Solution Private Limited vs. ACIT - TS-190-ITAT-2018(COCH)-TP dated 07/02/2018

65. The Tribunal held that for benchmarking IT enabled services Excel Infoways Ltd was to be excluded as a comparable, as the said company was in the process of shutting down its BPO business for the year under consideration. As regards another comparable namely Universal Print Systems, the Tribunal, relying on the judgement in case of Goldman Sachs directed the TPO to verify employee cost to sales ratio of one comparable company and to exclude the same if the said ratio was less than 25%.
Emerson Climate Technologies (India) Pvt Ltd vs DCIT Circle 1(2)- TS-362-ITAT-2018(PUN)-TP-ITA no's 359 & 2847/PUN/2016 dated 25.04.2018

66. The Tribunal held that assessee providing IT enabled services in the nature of research and analyst services to its AE could not be compared to:
- Infosys BPO Limited considering the huge turnover or giantness of the company (by relying on the precedent judgment namely CIT vs Pentair Water India Pvt Ltd [TS-763-ITAT-2016(PAN)-TP] and New River Software Services Pvt. Ltd Delhi HC)
- Accentia Technologies Ltd due to occurrence of an extraordinary event of amalgamation in the said case.

Further, the Tribunal remanded the following comparable to the file of the TPO
- E4e health care services Pvt Ltd as the annual accounts were not available in public domain. (The Tribunal directed the TPO/AO to provide the copy of financial statements and then decide on the issue of retaining or excluding it as a comparable.)
- Datamatics Financial Services, Optimus Global Services & Sparsh BPO Services as objections raised by the assessee (i.e. negative net worth and export sales filter) were factual in nature, thus required verification.

Further**,** TCS e serve International Ltd was included as a comparable and the Tribunal held that it was functionally comparable to assessee by relying on Cadence Designs System vs DCIT.
M/s. Smart Cube India Pvt Ltd vs ITO ward 24(1) Delhi-TS-379-ITAT-2018(DEL)-TP- ITA No. 1103/Del/2015 dated 27.04.2018

67. The Tribunal held that the assessee engaged in providing IT enables services could not be compared to:

- E4 Health care business services as it was engaged in transcription of medical prescription and thus functionally dissimilar to the assessee
- ICRA Techno Analytics as it was engaged in various activities namely software development, consultancy services web development etc however, no segmental information was available.
- Infosys BPO Ltd as it had huge turnover and goodwill

The Tribunal included Cosmic Global at segment level and directed inclusion only of its medical transcription and consultancy services segment as comparable and further included Jindal Intellicom P Ltd as not specifically pressed by assessee for exclusion.

Keystroke Pro India P Ltd vs ITO Ward 14(3) – TS-333-ITAT-2018(DEL)-TP ITA No 537/Del/2015 dated 10.04.2018

68. The Tribunal relying on the judgement of Special Bench and co-ordinate bench in assessee's own case held that assessee engaged in providing IT enabled services and back office support services to its AE could not be compared to:

- Accentia Technologies Ltd as it provided high-end KPO services
- Infosys BPO Ltd on account of its high goodwill, brand value and higher turnover

As regards Acropetal Technologies Ltd the Tribunal remitted back to AO/TPO for fresh adjudication with reference to segmental results and cost allocations.

Further, the Tribunal included R System International Ltd (following different FY-ending) as comparable after relying on the co-ordinate bench decision in assessee's own case wherein it was held that data available for 9 months in public domain could be extrapolated to make a reasonable comparability analysis.

ACIT 15(2)(2) vs Maersk Global Services Centre (I) P Ltd- TS-299-ITAT-2018(Mum)-TP- ITA No 944/Mum/2016 dated 19.04.2018

69. As the functional profile of Rampgreen Solutions P Ltd and that of the assessee (rendering IT enabled services to its AE) were similar, relying on the judgement of Rampgreen Solutions Pvt Ltd, the Tribunal excluded from the list of comparables Accentia Technologies, I-gate Global Ltd, Infosys BPO Ltd & TCS E-Serve International Ltd stating functionally dissimilarity and extraordinary event of merger.

Further, the Tribunal remitted back the issue with respect to inclusion/exclusion of TCS E-serve Ltd to the file of AO/TPO to decide afresh in light of assessee's submission that the said comparable had substantial related party transactions

GE India Business Services P Ltd. Vs DCIT Circle 10(1)- TS-330-ITAT-2018(Del)-TP- ITA No 6906/Del/2014 dated 27.04.2018

70. The Tribunal held that the assessee company rendering ITES services to AE could not be compared with –

- Acropetal Technologies Ltd as the company was involved in providing engineering design services.
- eClerx Services Ltd. as the company provided high end KPO services.
- TCS E-serve Ltd. as the company was providing technical services involving software testing, verification and validation of software at time of implementation.

DCIT v. Progressive Digital Media (P.) Ltd. - [2018] 92 taxmann.com 426 (Hyderabad - Trib.) - IT APPEAL NO. 426 (HYD.) OF 2016 dated APRIL 11, 2018

71. The Court held that assessee, a captive unit engaged in IT & ITeS to its AE could not be compared to:

- Kals Information Solutions Ltd as it was engaged in software services as well as software product.
- Vishal Information Technology (now known as Coral Hubs) & Cosmic Global Ltd as it was outsourcing the services to be rendered to third party vendors.
- Accentia Technologies Ltd as it was engaged in developing its own software and rendering medical transcription services (the Tribunal had relied on the ruling in Aptara Technology Ltd.)
- Eclerx Services Ltd as it was providing Knowledge Process Outsourcing (the Tribunal relied on the ruling in case of Aptara Technology Ltd and Rampgreen Solutions)

Further, the Court admitted Revenue's appeal for inclusion of one comparable namely Bodhtree Consulting Ltd (which was excluded by the Tribunal) after relying on the HC judgement in case of Mindteck India & Cummins Turbo Technologies

PCIT -2 Pune vs PTC Software (I) Pvt Ltd- TS-276-HC-2018 (Bom)-TP- ITA No 598 of 2016 dated 16.04.2018

72. The Tribunal held that assessee engaged in provision of ITES to its AE could not be compared to:

- Accentia Technologies Ltd as it was engaged in diversified activities like healthcare management receivables, medical transcription, software development and film production and there was no segmental information available. [It relied on coordinate bench rulings in assessee's own case for earlier years.]
- E Clerx Ltd as it was KPO company, outsourcing substantial work to third parties whereas the assessee was providing back office support services with their own human resource. [It relied on coordinate bench ruling in assessee's own case which in turn had followed the ratio laid down in Delhi HC in Rampgreen Solutions.]
- Infosys BPO Limited as the company had a high employee cost base and turnover and intangible in form of brand value which would have huge effect while computing PLI and vitiated the comparability with a company which is a captive service provider without much tangibles and risk.[It relied on the jurisdictional HC decision in BC Management Services Ltd.]
- TCS e-Serve Limited as the company had a high employee cost base and turnover and intangible in form of brand value which would have huge effect while computing PLI and vitiated the comparability with a company which is a captive service provider without much tangibles and risk. [It relied on the jurisdictional HC decision in BC Management Services Ltd.]

Further, it included R Systems International Ltd as a comparable relying on the decision of P&H HC ruling in the case of Mercer Consulting India P. Ltd, wherein it was held that R Systems could not be rejected owing to different financial year ending and the financials could be extrapolated if the quarterly financial results were in public domain. The Tribunal relying on the jurisdictional High Court decision in Chryscapital Investment Advisors India Ltd. wherein it was held that turnover could not be the basis of exclusion if the company was functionally comparable included the companies (i) CG Vak Software and Exports Ltd. (ii) Informed Technologies India Ltd. (iii) Microgenetics Systems Ltd. which were rejected by the TPO on account of low turnover.

Cadence Design Systems (I) P Ltd vs ACIT [TS-955-ITAT-2018(DEL)-TP] ITA No.6315 of 2015 dated 02.04.2018

73. The Tribunal held that assessee engaged in provision of ITES services could not be compared to:

- ICRA Online Limited as it failed to satisfy the 75% export filter
- Infosys BPO Limited as it had a high brand value which would impact its pricing and margins
- Accentia Technologies Ltd. as it had undergone merger for the subject year which would impact its profitability
- Infosys BPO Ltd. as it had high brand value and acquired Australian based company thus impacting profitability.
- TCS E-serve Ltd as it was engaged in diversified business activities such as software testing, verification and validation of software.
- Excel Infoway Limited as it had consistent diminishing revenues.

Further, it rejected assessee's plea with regard to the exclusion of BNR Udyog Ltd noting that on consideration of segmental data of ITES, it passe**d** the RPT filter and 100% of the revenue was from providing ITES (medical transcription) and thus, the company satisfied the filters. The Tribunal accepted the assessee's plea for inclusion of (i) Informed Technologies Limited (ii) Jindal Intellicom Ltd. since they had been consistently considered as a comparable in the previous years. The Tribunal remanded the comparability of Universal Print systems Ltd on the ground that TPO and DRP had not dealt with various objections of the assessee on its functional comparability.

CGI Information Systems and Management Consultants Private Limited vs ACIT [TS-492-ITAT-2018(Bang)-TP] IT(TP)A Nos. 586 (Bang) of 2015 and 183(Bang) of 2017 dated 11.04.2018

74. The Tribunal held that assessee providing IT and IT enabled services to its AE was comparable to:

- Infosys Ltd, Satyam Ltd, Nucleus Netsoft & Vishal Information relying on HC judgement in case of Chryscapital Investment Advisors. It further held that for an otherwise comparable company high/low turnover was not a valid criterion for rejection.
- Blue Star as CIT(A) had while excluding the same failed to provide proper calculation of RPT.
- Maars Software as the merger was called off and hence, no extraordinary event occurred to justify exclusion

The Tribunal further held that Encore Software was to be excluded as comparable by relying to co-ordinate bench judgement in case of Navisite India wherein it was held that company having diminishing revenue not in conformity with normal operations results could not be considered as comparable. Further, the Tribunal excluded Quintegra on the grounds of high RPT percentage and different financial year ending.

DCIT Circle 11(1) Delhi vs FIS Global Business India Pvt Ltd- TS-321-ITAT-2018(DEL)-TP- ITA No 5944/DEL/2010 dated 11.04.2018

75. The Tribunal held that the following could not be included in the final set of comparables in case of assessee rendering ITES to its AE –

- Coral Hubs Ltd. as it was engaged in e-publishing.
- Cross domain Solutions Ltd. as it was providing high-end KPO services and geographical information services.
- Persistent loss making concerns
- Triton Corporation Ltd. and Maple eSolutions Ltd. as both the concerns were fraud companies.

KPIT Cummins Global Business Solutions Ltd. v. ACIT - [2018] 93 taxmann.com 368 (Pune - Trib.) - IT APPEAL NOS. 246 (PUN) OF 2013 AND 459 AND 525 (PUN) OF 2014 dated April 9, 2018

76. In case of an assessee engaged in IT enabled services to its AE, the Tribunal relied on the co-ordinate bench judgements in case of Ameriprise India, Bechtel India & Sun Life India and accepted assessee's plea for exclusion of TCS e-serve International on grounds of functional dissimilarity, absence of segmental details, possession of intellectual property and usage of Tata Brand,

Further the Tribunal accepted assessee's plea for inclusion of Karvy Global as comparable on the basis of functional similarity and similar operating revenues.

Stefanini India Pvt Ltd vs ITO Ward 3(4)- TS-338-ITAT-2018(DEL)-TP- ITA No 5479/Del/2016 dated 25.04.2018

77. The Court dismissed Revenue's appeal and upheld Tribunals exclusion of 5 comparables for an assessee providing BPO services to its AE. The Court noted that the Tribunal rightly relying on the ruling in case of PTC Software excluded 5 companies namely Accentia Technologies, Cosmic Global, Eclerx Services**,** Coral Hubs and Crossdomain Solutions on grounds of functional dissimilarity, as the said comparables were engaged in distinct activities such as payroll activity, KPO service, development of products etc.

PCIT -1 vs BNY Mellon International Operations (I) Ltd- TS-293-HC-2018(BOM)-TP- ITA No 1226 of 2015 dated 23.04.2018

78. The Tribunal held that assessee engaged in providing IT Enabled services to its AE could not be compared to:

- Flextronics Software Systems Ltd as the company was engaged in the business of both software products and services and no break-up was available.
- HCL Comnet Systems and Services Ltd due to unavailability of financial data for the same financial year as that of the assessee
- Informed Technologies Ltd on the ground that the company had super normal growth and abnormally high fluctuating profits
- Infosys BPO, relying on the decision of the co-ordinate bench in American Express [India] {P} Ltd vs DCIT [TS-551-ITAT-2017(DEL)-TP] wherein it was held that since the said company had huge turnover it was not comparable to companies operating on a smaller scale such as the assessee

- Wipro Ltd, relying on the decision of the co-ordinate bench in American Express [India] {P} Ltd vs DCIT [TS-551-ITAT-2017(DEL)-TP], wherein it was held that companies such as Wipro having huge turnover and scale of operations could not be compared to companies operating on a much smaller scale such as the assessee.
- Bodhtree Consulting Ltd as the said company was engaged in both software sales and services and no segmental data was available

Cengage Learning India Pvt. Ltd vs ITO - TS-736-ITAT-2018(DEL)-TP - ITA No. 5926/DEL/2010 dated 11.05.2018

79. The Court admitted Revenue's appeal on whether Tribunal was justified a) in excluding Wipro as a comparable when the TPO/DRP established that the peculiar economic circumstances did not have a bearing on the profits and also whether Tribunal wrongly relied on Sunlife India ruling disregarding the fact that TPO had already established Wipro's functional similarity and b) in excluding TCS as a comparable when TPO/DRP had established that peculiar economic circumstances and higher turnover did not impact its margins.

Pr. CIT vs. Adobe Systems India Pvt. Ltd - TS-429-HC-2018(ALL)-TP - INCOME TAX APPEAL No. - 59 of 2018 dated 24.5.2018

80. The Court admitted Revenue's appeal against Tribunal-order and admitted the following questions – i) Whether the Tribunal was justified in directing TPO to exclude 4 comparables (Accentia Technologies, E-Clerx Services, TCS E-Serve and TCS E-Serve International) when the TPO had already established the functional similarity of these companies with assessee. Ii) Whether Tribunal was justified in relying on its earlier order which in turn relied on Bechtel ITAT ruling & Rampgreen HC ruling (against which SLP was admitted by SC) without appreciating the fact that a company which was held as incomparable in one case may actually be a good comparable in another case and iii) Whether Tribunal (being the last fact finding authority) was justified in deciding the issue of inclusion / exclusion of comparables without upsetting the findings of fact recorded by TPO after appreciating the material and evidence available on record.

Pr. CIT vs. Samsung Heavy Industries India Pvt. Ltd - TS-431-HC-2018(ALL)-TP - INCOME TAX APPEAL No. - 60 of 2018 dated 24.5.2018

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

- Accentia Technologies Ltd. as the his company providing high-end medical transcription services, and having substantial income from coding coming to about 16% gross receipts without availability of segmental results.
- Acropetal Technologies Ltd. as the company was providing high end services.
- Jeevan Scientific Technology Ltd. as the turnover of BPO services segment was less than 1 Cr.

Further, ICRA online Ltd. was remitted back to decide comparability and to verify whether RPT exceeded 15%. iGate Global Solutions Ltd. was remitted back since the Revenue's plea was accepted that this comparable be remanded to AO/TPO to enable them to issue notices u/s 133(6) to get the required segmental details to consider the comparability.

Finastra Software Solutions (I) P Ltd. (formerly Misys Software Solutions India Private Limited) vs. ACIT [TS-404-ITAT-2018(Bang)-TP] - IT(TP)A No.529 & 491/Bang/2016 dated 02.05.2018

82. The Tribunal held that the assessee engaged in the provision of BPO services to its AE could be compared to:

- Ace Software Exports Ltd. as it was not a consistent loss making concern.
- Flextronics Software Systems Ltd. and Genesys International Corporation Ltd as the revenue cannot seek exclusion of comparables which were included by TPO in his TP-analysis.
- Aditya Birla Minacs Ltd and Maple Esolutions Ltd. as they were included in TP study

Further, the Tribunal revised the margins of R Systems International Ltd. after considering audited quarterly results of March 2007 and 20006. The Tribunal also excluded of the comparables viz. Asit C Mehta Financial Services Ltd, Ecterx Services Ltd, Informed Technologies India Ltd., Mold-Tek Technologies Ltd and Vishal Information Technologies Ltd by relying on the decision of Steam International. It rejected Infosys BPO Ltd. since it rendered KPO services.

ACIT v/s.Capita Offshore Services Pvt Ltd [TS-399-ITAT-2018(Mum)-TP] IT(TP) A/7141/Mum/2012 dated 16.05.2018

83. The Tribunal held that the assessee engaged in the provision of CAD/CAE services for automotive services to its AE could not be compared to:

- Jeevan Softech as the said concern was engaged in medical writing, clinical data management, bio-statistics and other services and hence functionally dissimilar.
- BNR Udyog Ltd. as the said comparable was engaged into medical transcription, construction and financial activities and therefore, functionally dissimilar. The Tribunal also noted that the said concern failed the RPT filter since the said entity had a filter of 739.04% greater than 25%.

Faurecia Interior Systems India Private Limited vs. ACIT [TS-396-ITAT-2018(PUN)-TP] ITA No.781/Pun/2015 dated 23.05.2018

84. The Tribunal held that assessee engaged in provision of ITeS and financial support services for AY 2009-10 could not be compared to:.

- Coral Hub Ltd as it was outsourcing majority of its activity;
- Cosmic Global and eClerx Services as they were providing high end services. [The Tribunal relied on the rulings of Mercer Consulting (India), PTC Software and Maersk Global Service Centres to exclude the said comparable.]

GE India Business Services Pvt. Ltd. vs. DCIT [TS-381-ITAT-2018(DEL)-TP] ITA No.1423/Del/2014 dated 18.05.2018

85. The Court admitted the appeal of the assessee [engaged in ITeS] for AY 2010-11 on the question whether the Tribunal erred in holding that M/s. TCS E-Serve Limited, TCS E-Serve International and M/s. Infosys BPO Limited could be taken into account as comparables for ALP determination of the asseessee's international transactions. The Tribunal had included Infosys BPO as comparable and rejected the assessee's plea that it was not comparable in view of its brand value and acquisition made by it during year and further on the ground that only insignificant expense was incurred on brand building and infact loss had been incurred in the acquired business.

The Tribunal had also included TCS E-Serve and TCS E-Serve International, holding that the companies were functionally comparable since the companies were engaged in ITes and BPO segment and that rise in turnover/profit could not be considered to be a ground for exclusion since the company was to be compared on the basis of FAR. There was no information brought on record as to how Tata' brand impacted profitability and it was noted that the expenditure incurred on the brand was miniscule (0.43% of total expenses only).

Cadence Design Systems (India) Private Limited v DCIT [TS-369-HC-2018(DEL)-TP] ITA 592/2018 dated 18.05.2018

86. The Tribunal accepted the Revenue's plea for exclusion of the comparables viz. R System International and Coral Hub for failing financial year filter for assessee providing ITeS to AE for AY 2011-12. Inspite of being functionally similar, they failed the financial year filter adopted by TPO as data for R System International was maintained only from January 1, 2010 to December 31, 2010 and from July 1, 2010 to June 30, 2011 for Coral Hub. The Tribunal relied on the HC ruling in PTC Software and opined that the accounting periods of said two concerns were at variance to the accounting period followed by the assessee and consequently, the margins of said concerns could not be applied to benchmark the arm's length price of international transactions undertaken by the assessee.

DCIT vs. Ocwen Financial Solutions Pvt. Ltd. [TS-350-ITAT-2018(PUN)-TP] ITA No. 511/Pun/2016 and CO No.01 and 14/Pun/2018 dated 14.05.2018

87. The Tribunal held that the assessee engaged in providing low-end ITES services could not be compared to:

- Persistent Systems Limited as it was engaged in software product development services, which was functionally dissimilar to the activities carried out by the assesse.
- Thirdware Solutions Limited as it was into acquisition/purchase of hardware and software including software as a service and was also engaged in software development, implementation and support services

Further, it held that R Systems International Limited was to be included as a comparable even though its financials were prepared for a different Financial year (December ended) as the data for the relevant financial year could be reasonably extrapolated from the data available in the public domain.

Vis-à-vis Acropetal Technologies Ltd, it directed the TPO to consider the margin of the ITES segment as opposed to the health care segment.

It also included Aspire Systems (India) Private Limited as comparable noting that this company and assessee broadly engaged in the same activities and the assessee could not rebut the reasoning for inclusion as provided by the TPO and DRP.

Vis-à-vis Infobeans Technologies Limited it held that since the assessee could not prove how the extra-ordinary event undertaken by the company had an impact on its profits, the company was to be included as a comparable.

Lionbridge Technologies Private Limited vs. ACIT - TS-438-ITAT-2018(Mum)-TP - I.T.A. No. 7304/Mum/2017 dated 21.05.2018

88. The Tribunal held that the assessee engaged in rendering ITeS to AE could not be compared to Infosys BPO and TCS eServe as they had a high turnover, brand value and intangibles and also had been excluded by the coordinate bench in the assessee's own case for earlier year

Further, the Tribunal rejected the contention of the assessee as regards the inclusion of E-Clerx Services Ltd since it opined that acquisition of a new company in USA would not have an impact on the financials of the assessee and the coordinate bench in the assessee's own case had included the said comparable as a company. The Tribunal also retained Crossdomain Solutions as a comparable following the coordinate bench decision of the prior year wherein it had upheld the DRP's observations that engineering design services rendered by assessee are akin to KPO services rendered by the said company.

The Tribunal remanded the comparability of Crystal Voxx to TPO observing that the DRP had not provided an opportunity to the assessee to be heard while holding that the company was functionally not comparable to the assessee.

Hyundai Motor India Engg Pvt Ltd [TS-503-ITAT-2018(HYD)-TP] ITA No.87/Hyd/2017 dated 08.06.2018

89. The Tribunal upheld the DRP's order excluding the following comparables for assessee engaged in the provision of call centre services to its AE:

- Infosys BPO Ltd. as it offered wide range of services viz. platforms like Source-to-pay, Business Order Management, Business platform etc. and had high brand value and segmental information was not available. [It relied on the coordinate bench decision in case of Equant Solutions.]
- TCS E-Serve Ltd. as it was engaged in providing high end technology services like software testing, verification and validation of software and was using Tata brand. [It also noted that DRP in subsequent year had excluded the comparable and relied on the coordinate bench decision of Equant Solutions.]
- TCS E-Serve International Ltd. as it was engaged in providing high end technology services like software testing, verification and validation of software and was using Tata brand.

DCIT vs BA Call Centre India Pvt. Ltd. [TS-470-ITAT-2018(Del)-TP] ITA No.387/Del/2015 dated 08.06.2018

90. The Tribunal held that the assessee engaged in rendering ITES services to its AE could not be compared to Genesys International Corporation Ltd as the company was engaged in diversified business operations providing high-end and complex services such as GIS consulting, 3D mapping, navigation maps, Lidar, photogrammetry etc. as against assessee's rendering of mere back office ITeS. It also held that comparability failed on account of the company being full-fledged risk taking entity vis-à-vis assessee's limited risk profile and had significant intangible whereas the assessee did not own any intangibles.

Exl Service.com India Pvt Ltd vs DCIT [TS-486-ITAT-2018(DEL)-TP] ITA No.2559/Del/2014 dated 18.06.2018

91. The Tribunal upheld CIT(A)'s order deleting TP-adjustment in respect of assessee providing IT enabled services. Relying on ITAT order in assessee's own case for prior year, it excluded Vishal Information Technologies, Wipro Limited, MoldTek Technologies as comparables since there were no change in facts in the present year. Further, it relied on the categorical findings of CIT(A) to exclude Genesys International since its geospatial services were functionally not comparable to assessee and it needed skilled manpower.

DCIT vs Everest Business Advisory India (P) Ltd [TS-622-ITAT-2018(DEL)-TP] ITA No.2562/Del/2013 dated 13.06.2018

92. The Tribunal accepted assessee's plea for exclusion of TCS E-Serve Limited as comparable while benchmarking the assessee's IT-enabled services by relying on the order of the coordinate bench in assessee's own case for earlier year wherein the said comparable was excluded owing to functional dissimilarity, ownership of significant intangibles and impact of 'TATA' brand on its profitability. It observed that there was no change in the facts and circumstances as discussed in the assessee's own case for AY 2011-12, hence the said company was to be excluded as a comparable.

Capital India Private Limited vs DCIT [TS-864-ITAT-2018(Mum)-TP] ITA No.6795/Mum/2017 dated 19.06.2018

93. The Tribunal relying on the decision of co-ordinate bench in the case of Symphony Marketing Services held that the assessee engaged in rendering IT-ES to it AE could not be compared to:

- Acropetal Technologies Ltd. as it was providing high end services such as engineering design service.
- Coral Hubs Ltd as it had low employee cost.
- Crossdomain Solutions Ltd as it was providing high end KPO services, development of product suites and routine low end ITES service and segmental data was unavailable.
- Eclerx Services Ltd as it had super normal profits and provided KPO services
- Genesys International Corporation Ltd as it provided KPO services.
- Infosys BPO Ltd as it was functionally not comparable to to an ITeS provider, had brand value and owned significant intangibles.
- Mold-tek Technologies Ltd as it was providing high end services such as engineering design service
- Wipro Ltd as it was not functionally comparable to an ITeS provider, had brand value and owned significant intangibles

Further the Tribunal upheld the inclusion of Cosmic Global Ltd and held that whether a company provides medical transcription or medical translation, they have to be regarded as being in the ITeS field. It rejected the assessee's contention that as it was engaged in medical translation and was not comparable with an ITeS company.

DCIT vs Mphasis Limited [TS-890-ITAT-2018(Bang)-TP] ITA 325/Bang/2014 dated 01.06.2018

94. The Tribunal held that the assessee, engaged in providing medical transcription services could not be compared to:

- Vishal Information Technologies Ltd as it's employment cost as a ratio of turnover was much less than assessee and it outsourced most of its work.
- Nucleus Netsoft & GIS India Ltd as it had undertaken an amalgamation and also outsourced most of its work.
- Tricom India Ltd as it developed its own software and also since it had a related party to sales ratio of 61.86% percent.

Transcend MT Services Pvt. Ltd. vs. ACIT - TS-1091-ITAT-2017(DEL)-TP - ITA No.4048/Del./2013 dated 12.12.2017

95. Where the assessee was a software development service provider in the gaming sector and could not be compared with the general software development providers due to its unique utilization of technical manpower as selected by the TPO, the Tribunal held that since the activities carried on by the assessee were not properly appreciated by the TPO, the entire matter was to be remitted for fresh benchmarking.

Gameloft Software Pvt Ltd v ACIT - TS-16-ITAT-2018(HYD)-TP - ITA No.598/Hyd/2016

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

- Infosys Ltd on account of its huge turnover (reliance placed on Agnity India Technologies Pvt. Ltd. [TS-312-ITAT-2013(DEL)-TP])
- Exensys Software Solutions Ltd as there was merger of said company and Holool India Ltd which had a material impact on the financial results of the company for the year.
- Thirdware Solutions Ltd as the company was into both software services as well as product development and the segmental details and in particular, details of the expenditure incurred towards software products were not available.

Capgemini Technology Services India Ltd (formerly known as IGATE Global Solutions Ltd vs. ITO - TS-1095-ITAT-2017(HYD)-TP - ITA No.633/Hyd/2011 – dated 29.12.2017

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

- Celestial Bio-labs Limited as it had undergone an extra-ordinary event which resulted in distorted profits
- Avani Cimcon Technologies Ltd as the company had diversified activities and the segmental accounts were not available
- Infosys Technologies Ltd as it owned significant intangible and had huge revenues from software products and the breakup of revenue from software services and software products was also not available
- Kals Information Systems Ltd as this company was engaged in developing of software and was thus not comparable
- Persistent Systems Ltd as it was engaged in product development and product design service and therefore could not be compared to the assessee
- Quintegra Solutions Ltd as it had undergone an extraordinary event and also since it was engaged in business of dealing in proprietary software products.
- Tata Elxsi Ltd since it was predominantly engaged in product designing services and not purely software development services
- Wipro Ltd as it was engaged both in software development and product development services and segmental details were not provided separately and the company also owned intellectual property in the form of registered patents and had several pending applications for grant of patents.
- Lucid Software Ltd as it was engaged in the development of software products

DCIT vs. Verisign Services India Pvt Ltd - TS-1081-ITAT-2017(Bang)-TP - I.T.(T.P) A. No.1230/Bang/2013 dated 25.10.2017.

98. The Court upheld the order of the Tribunal wherein it held that the assessee engaged in software development could not be compared with:

- E-Infochips and Infinite Data Systems as these companies carried out high-end technology-driven services which were entirely different from activities carried on by the assessee
- Accentia Technologies as it operated from multiple locations throughout the globe in healthcare receivable cycle management and also ventured into legal process outsourcing and high-end software service delivery which were functionally different from the assessee‟s activities
- TCS E-Serve Ltd. and TCS E-Serve International Ltd since their established ‘brand value’ drew the profitability upward and also since the merger undertaken during the year had resulted in distortion of the profit figures

  Vis-à-vis I-Gate Global Solutions, the Court held that having regard to the submissions made and the material on record, especially the Tribunal’s observations that I-Gate’s functioning was similar to that of the assessee, it admitted the Revenue’s appeal against the Tribunal’s exclusion of the said company as comparable on the ground that it underwent significant change in its profitability in view of the amalgamation undergone.

Pr CIT v UNITED HEALTH GROUP INFORMATION SERVICES (P) LTD. - TS-1080-HC-2017(DEL)-TP ITA 1180/2017 dated 21.12.2017

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

- Accel Transmatics Limited as its business activities (i.e. services in the form of ACCEL IT and ACCEL animation services for 2D and 3D) were functionally different from that of the assessee, and its related party transactions were more than permitted level.
- Avani Cimcon Technologies Limited as it was engaged in the software products business and was also earning unusually high profit margin for the subject year
- Celestial Labs Limited as this company was mainly engaged in clinical research and manufacture of software products
- KALS Infosystems Ltd this company was engaged in development of software products as well as providing training
- Helios & Matheson Information Technology Limited as this company was found to be functionally incomparable
- Infosys Technologies Limited as this company owned significant intangibles and had huge revenues from software products with no segment break-up.
- Ishir Infotech Limited as the company outsourced its work and did not pass 25% employee-cost filter.
- Lucid Software Ltd as it was engaged in development of software products and thus, was functionally not comparable to assessee.
- Wipro Limited & Tata Elxsi Ltd as they owned intellectual property and had significant R&D activity, brand value, etc. and therefore was not functionally comparable
- Megasoft Limited as the details of the software service segment were not available
- E-Zest Solutions Limited as the company rendered product development and high end technical services which came under the category of KPO services
- Persistent Systems Ltd & Third ware Solutions Ltd as they were engaged in product development & no segmental details were available.
- Quintegra Solutions Limited as the company developed proprietary software products and owned intangibles.

Yodlee Infotech Pvt. Ltd vs. DCIT - TS-1077-ITAT-2017(Bang)-TP - 1138/Bang/2011 dated 15.12.2017

100. The Tribunal set aside the DRP's order and remitted the benchmarking exercise of the assessee's international transactions (viz. provision of back office support services, corporate IT support services and marketing support services to AE) to TPO. It noted that out of 18 comparables selected by the TPO, the DRP had excluded 15 and retained 3 comparables which were either excluded by it in the earlier or subsequent years. Noting that out of TPO's 18 comparables, DRP had excluded 15 and the other 3 were also liable to be excluded based on earlier / subsequent years DRP orders, the Tribunal opined that the TPO's selection of comparables was not proper and therefore restored the matter back to TPO.

Electronic Arts Games (India) Private Limited vs. DCIT - TS-1074-ITAT-2017(HYD)-TP - I.T.A. No. 325/HYD/2016 dated 29-12-2017

101. The Tribunal remitted the comparability of Bodhtree Consulting Ltd vis-à-vis the assessee (engaged in providing software development services) back to the DRP observing that the DRP's order was very cryptic as it included Bodhtree Consulting by only stating that the TPO made elaborate discussion regarding the comparability of entities engaged in providing software development services with entities engaged in development of software product and therefore, there was hardly any ground for rejecting this entity. The Tribunal directed the DRP to pass a speaking order. Further, the Tribunal rejected the Revenue's contention for exclusion of FCS Solutions & Thinksoft Global Services as comparables and following the decision of the co-ordinate bench in Logica [TS-187-ITAT-2016(Bang)-TP] it held that the said comparables could not be excluded merely because of a working capital impact of over 4%.

Sonus Networks India Pvt. Ltd vs. DCIT - TS-1076-ITAT-2017(Bang)-TP - I (TP) A No. 193/Bang/2014 dated 01.12.2017

102. The Apex Court admitted Revenue's SLP against the order of the Delhi High Court wherein the High Court dismissed the Revenue's appeal and upheld the Tribunal's exclusion of 3 comparables while benchmarking the ITeS transactions of the assessee. The High Court confirmed exclusion of a). Coral Hub Ltd (which had different business model as services were outsourced) b) e-Clerx Services (on

account on functional dissimilarity), observing that the issue was covered against the Revenue by the judgment in Rampgreen Solutions Pvt. Ltd. V. Commissioner of Income Tax" and c) Infosys observing that the issue of exclusion of Infosys as a comparable stood covered against the Revenue by way of the decision of the Court in CIT v. Agnity India Technologies Pvt. Ltd.

Pr. CIT Vs Vertex Customer Services India Pvt Ltd - TS-35-SC-2018-TP] - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 41889/2017 dated 19-01-2018

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

- E-Infochips Limited as it was engaged in diversified activities viz. software development, hardware maintenance, IT consultancy and did not have segmental information, it was involved in R&D, and had an exceptional year (grew at rate 5 times more than industry average)
- Infosys Limited as it provided a wide range of services encompassing technical design, engineering design etc and in addition offers software products for the banking industry and did not have segmental information, it owned marketing intangibles and Intellectual Property Rights and was also engaged in R&D.
- Persistent Systems Limited as the company was functionally not comparable being engaged in provision of outsourced product development services and did not have segmental information, it owned intangibles, was engaged in R&D, and had undertaken several acquisitions in the year in consideration
- Acropetal Technologies Ltd. (Seg.) as it was functionally dissimilar
- ICRA Techno Analytics Ltd. engaged in the provision of ITeS services along with software development and did not have segmental details
- Larsen &Turbo Infotech Ltd. as the company owned intangibles for its propriety products & services.
- Sasken Communication Technologies Ltd. as it was engaged in ITeS and also outsourced its services.
- Tata Elxsi Ltd. (Seg) as it owned intangibles

DCIT vs. Philips India Ltd - TS-1088-ITAT-2017(Kol)-TP - ITA No.863 & 539/Kol/2016 dated 15-12-2017

104. The Court upholds exclusion of i) Eclerx Services Ltd and Vishal Information Technologies Ltd considering both companies transacted entirely different business i.e. Knowledge Processing Outsourcing (KPO) ii) Infosys BPO and Wipro BPO Ltd as they had a significant brand presence for profits and large corporate size which could not be compared to the assessee's transactions and iii) HCL Commet Systems & Services Ltd. on the ground that it did not pass the appropriate filter and related party transactions were used for the pricing exercise. However, regarding Accentia Technology Pvt. Ltd. and Bodhtree Consulting Ltd, it admitted the following questions of law: "(1) Did the ITAT err in its consideration as to whether the amalgamation undertaken by Accentia Technology Pvt. Ltd. for A.Y. 2007-08 had any effect on its finance or profitability in the circumstances of the case. and (2) Did the ITAT err in excluding the reliance placed by the TPO upon information collected by him under Section 133(6) of the Act, having regard to Section 92CA(7) read with Section 92D(3) of the Act".

Pr. CIT vs. H & S Software Development and Knowledge Management Centre Pvt. Ltd - TS-9-HC-2018(DEL)-TP - ITA 912/2017 dated 03.01.2018

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

- KALS Information Systems Ltd as it was developing software products and not purely or mainly software development service provider.
- Bodhtree Consulting Ltd as it was a software product company and could be considered as comparable to the assessee merely providing software development services to its AEs
- Tata Elxsi Limited as it operated in the segments of software development services which comprised of embedded product design services, industrial design and engineering services and visual computing labs and system integration services segment and there were no sub-services break up provided in the annual report
- Infosys Technologies Limited as it owned significant intangibles and was functionally different as it generated huge revenues from software products

- Persistent Systems Limited as it was engaged in software product development and product design services, and could not be compared to the assessee merely providing software development services to its AEs.

Further, it included Larsen & Toubro Infotech Ltd and held that the assessee was incorrect in contending that the 15% RPT filter be applied as the RPT filter of 25 percent was well accepted.

Vis-à-vis Thinksoft Global Services Ltd and FCS Software Solutions Ltd it held that the TPO was unjustified in rejecting the companies as comparable merely because their working capital adjustments exceeded 4 percent and accordingly directed the inclusion of the companies as comparable.

TE Connectivity Global Shared Services India Pvt. Ltd vs. ITO - TS-1049-ITAT-2017(Bang)-TP - I.T.(T.P) A. No.1280/Bang/2014 dated 13.12.2017.

106. Pursuant to miscellaneous petition of the assessee wherein the Tribunal accepted the assessee's contention and recalled the order to decide on the comparability of Bodhtree Consulting, Tata Elxsi Limited (Seg.) and Infosys Ltd, the Tribunal i) excluded Bodhtree Consulting as comparable as it was engaged in software products as well as services and therefore could not be compared to companies providing software development services ii) remitted the comparability of Tata Elxsi Limited (Seg.) and Infosys Ltd. back to the file of CIT(A) noting that CIT(A) had not specifically dealt with, examined or considered any of the objections specifically raised by the assessee for non-inclusion / exclusion of these two companies.

Narus Networks Pvt. Ltd vs. DCIT - TS-1047-ITAT-2017(Bang)-TP - i.T. (T.P) A. No.1631/Bang/2014 dated 23.11.2017.

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

- Infinite Data Systems Private Limited as the company was providing services of technical consulting, design and development of software, maintenance system integration, implementation, testing and infrastructure management services which was not comparable to the assessee
- E-Infochips Bangalore Ltd as it was engaged in development and maintenance of computer software, production and sale of software without adequate segmental results
- Infosys Limited as it was functionally different and had significant R&D, huge brand value, huge turnover, and also has a leading banking product known as "Finacle
- Sonata Software Limited if upon verification it was found that the company did not satisfy the RPT filter.

Freescale Semiconductor India Pvt. Ltd. vs. DCIT - TS-1098-ITAT-2017(DEL)-TP - ITA No1263 /Del/2015 dated 08/12/2017

108. Relying on the decision of the co-ordinate bench in Electronics for Imaging India Pvt Ltd [TS-279-ITAT-2016(Bang)-TP], the Tribunal held that the assessee engaged in providing software development services to its AE could not be compared with:

- ICRA Techno Analytics Ltd as it was engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain of business analysis and business process outsourcing, which was functionally not comparable to the assessee
- Persistent Systems Ltd as the company was engaged in diversified activities and earned revenue from various activities including licencing of products, royalty on sale of products as well as income from maintenance contract, etc. the same could not be considered as functionally comparable with the assessee.
- Persistent Systems & Solutions Ltd as this company was earning revenue from software products and services and segmental data was not available
- Infosys Ltd as it had brand value and intangible assets and thus could not be compared with an ordinary entity providing captive services
- Kals Information Systems Ltd as the inventory in the books of accounts of this company showed that it was in the software product business and hence, it could not be compared with a pure software development service provider.

ACIT vs. Cypress Semi - Conductor (I) Pvt. Ltd - TS-118-ITAT-2018(Bang)-TP - IT (TP) A No. 434/Bang/2015

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

- KALS information System Ltd as there was an enormous difference in asset base when compared to assessee. (Reliance was placed on the prior years ITAT order - FreescaleSemiconductor India P.Ltd. [TS-366-ITAT-2014(DEL)-TP]
- Infosys Technologies Ltd and Wipro Ltd as it owned branded / proprietary products.

Further, it remitted the comparability of Bodhtree Consulting back to the file of the TPO to examine the assessee's claim i.e. that the accounting policy followed by the said company (revenue was recognised based on software developed and billed to client) impacted its profitability.

Freescale Semiconductor India Pvt. Ltd. vs. DCIT - TS-1100-ITAT-2017(DEL)-TP - ITA No. 2427/Del/2015 dated 07/12/2017

110. The Court dismissed Revenue's appeal challenging the Tribunal's exclusion of Tata Elxsi Limited and Thirdware Solutions noting that the Tribunal had rightly concluded that they were functionally not comparable to the assessee who was engaged in providing software development services. Further, it held that the Tribunal was justified in including SIP Technologies and Exports Limited as comparable by ignoring its low margin (on the basis of which the TPO had excluded the comparables). However, it admitted the questions of law regarding Tribunal's exclusion of Tata Consultancy Services Limited (TCS) and Infosys Technologies Limited.

Pr. CIT vs. S.T. Ericsson India Pvt. Ltd (Chemical Construction International Pvt Ltd) - TS-59-HC-2018(DEL)-TP - ITA 821/2017 dated 31.01.2018

111. The Tribunal held that the assessee engaged in providing software design and development services could not be compared to:

- Persistent Systems Ltd as it was engaged in product development which was different from software development services and earned revenue from licensing of products, royalty on sale of products as well as income from maintenance contracts and no segmental details were available
- Sasken Communication Technologies Ltd as this company earned revenue from software services as well as software products and the breakup of operating costs and the net profitability between the two segments was not available

Further, it held that Conexant Systems Private Limited vs. DCIT could not be excluded as a comparable merely because of increase in consultancy charges and held that the increase in consultancy charges were proportionate to the increase in turnover.

Conexant Systems Private Limited vs. DCIT - TS-95-ITAT-2018(HYD)-TP - I.T.A. No. 464/HYD/2016 dated 24-01-2018

112. The Tribunal, relying on the co-ordinate bench decision in Cerner Healthcare Solutions P Ltd [TS-28-ITAT-2017(Bang)-TP]held that the assessee, engaged in providing software development services to its AE could not be compared to:

- Infosys Ltd as the company owned intangibles, had huge brand value as well as bargaining power and it was also engaged in diversified services.
- Tata Elxsi Ltd as it was engaged in diversified activities even in software development segment.
- Kals Information Systems Ltd & Persistent Systems & Solutions Ltd as they was functionally dissimilar being engaged in software product business.
- Sasken Communications Tech Ltd as it earned revenue from 3 segments, but segmental margins were unavailable.
- Persistent Systems Ltd as it was earning revenue from various activities including licensing of products, and segmental data was unavailable.
- L & T Infotech Ltd as it had Revenues reported from software development services and products and segmental information was unavailable.

ITO vs. CSR India Pvt. Ltd - [TS-83-ITAT-2018(Bang)-TP - IT (TP) A No. 256/Bang/2015 dated 24.01.2018

113. The Tribunal held that the for the purpose of benchmarking the provision of software development services the application of the onsite filter was a very relevant filter. Accordingly, noting that RS

Software had incurred expenses on foreign branches to the extent of Rs. 12.42 crores (82%) out of total expenses of R.s. 15 crores debited in P & L account, evidencing that it was predominantly an onsite software development company it held that the said company could not be retained as comparable. However, the Tribunal noted that the DRP applied the said filter only in respect of one comparable - RS Software India Ltd and thus directed the DRP to apply the filter to all companies as well as to examine the applicability of all other relevant filters and all other objections such as functional similarity/dissimilarity etc vis-à-vis the other comparables.

ACIT vs. Broadcom Communication Technologies Pvt. Ltd - TS-1105-ITAT-2017(Bang)-TP - IT(TP)A No. 347/Bang/2015 dated 17.11.2017

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

- Infosys Technologies Ltd as it provided diversified services viz. end to end business solutions spanning across entire software life cycle as well as offer software product (viz. "finacle" which is owned by Infosys) for banking industry, for which segmental details were not available
- 3K Technologies Ltd as its employee cost was only 3.70 percent which did not satisfy the employee cost filter of 25 percent as applied by the TPO
- KALS Information Systems as it was engaged in development of software, software products as well as training of professionals of which segmental details were not available
- Persistent Systems Ltd as it was Outsourced Software Product Development (OPD) specialist and therefore not comparable to the assessee providing software development services
- Bodhtree Consulting Ltd as the company provided product engineering services ranging from application development and maintenance, web development and outsourced product development to QA and managed testing services; and had highly volatile margins.
- Zylog Systems Ltd as the company acquired two companies during the year under review and also was a software product company not comparable to the assessee.

Siemens Product Lifecycle Management Software (India) Pvt. Ltd. vs. ACIT - TS-182-ITAT-2018(DEL)-TP - ITA No.5922/Del./2012 dated 22.01.2018

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

- Helios & Matherson Information Technology Ltd as it had turnover of Rs. 213 crore which failed the turnover filter applied by the TPO i.e. Rs.200 crore. It dismissed the Revenue's contention that the company be included as its turnover exceeded the filter marginally
- FCS Software Ltd as it provided both IT services and ITeS and did not have adequate segmental results
- E-Zest Solutions Ltd and Kals Information Systems as the company was engaged in the business of software products which was not functionally comparable to the business carried on by the assessee.

Further, it accepted the assessee's plea for inclusion of CG Vak Software & Exports Ltd and held that the TPO was unjustified in excluding the company as comparable merely because it suffered losses for the year under consideration. It noted that the company earned profits in the earlier years and accordingly held that the TPO incorrectly held that the company suffered persistent losses. Accordingly, it held that the company ought to have been considered as a comparable.

Amber Point Technology India Pvt. Ltd. vs DCIT - TS-172-ITAT-2018(PUN)-TP - ITA Nos.756 & 757/PUN/2014 dated 25.01.2018

116. The Tribunal held that the assessee engaged in providing software development services to its AEs could not be compared to L&T Infotech as the TPO failed not allocate 'Unallocable expenses' to L&T Infotech's Industrial cluster segment which was considered for benchmarking without which the correct amount of operating profits could not be ascertained. Noting that neither the nature of common unallocated expenses was known nor the information concerning the appropriate allocation keys was available in the present case, the Tribunal held that the inclusion of Larsen & Toubro Infotech Ltd. (Seg.) in the list of comparables would vitiate the comparability. Accordingly, it directed its exclusion.

Pitney Bowes Software India Pvt. Ltd vs. ACIT - TS-163-ITAT-2018(DEL)-TP - ITA No.7034/Del/2017 dated 13.03.2018

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

- Akshay Software Technologies Ltd as it was dealing in software products.
- Thinksoft Global services Ltd as it was engaged in software testing which required different skills, software and assets rendering it functionally dissimilar.

It rejected DRP's stand of not considering assessee's contention to include 4 other comparables for which it had filed additional documentary evidence and held that the proceedings before the DRP was a continuation of the assessment proceedings and the purpose of providing the proceedings before the DRP was to ensure due and fair adjudication of the ALP by comparing the operating profit / operating cost of the assessee with that of the functionally comparable companies. Accordingly, it remitted the 4 comparables to the file of the TPO for fresh consideration.

WM Global Technology Services (India) P. Ltd vs. ACIT - TS-144-ITAT-2018(Bang)-TP - I.T(TP).A No.1963/Bang/2017 dated 28.02.2018

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

- Infinite Data Systems Private Limited as the company was providing services of technical consulting, design and development of software, maintenance system integration, implementation, testing and infrastructure management services which was not comparable to the assessee
- E-Infochips Bangalore Ltd as it was engaged in development and maintenance of computer software, production and sale of software without adequate segmental results
- Infosys Limited as it was functionally different and had significant R&D, huge brand value, huge turnover, and also has a leading banking product known as “Finacle
- Sonata Software Limited if upon verification it was found that the company did not satisfy the RPT filter.

Freescale Semiconductor India Pvt. Ltd. vs. DCIT - TS-1098-ITAT-2017(DEL)-TP - ITA No1263 /Del/2015 dated 08/12/2017

119. The Tribunal dismissed the Revenue’s appeal and held that the assessee engaged in providing software development services could not be compared to Infosys Technologies Ltd as it had huge turnover and brand value.

Tieto IT Services India Pvt Ltd vs. DCIT - TS-155-ITAT-2018(PUN)-TP - ITA No.242/PUN/2015 dated : 07.03.2018

120. In the case of an assessee engaged in IT services, the Court dismissed Revenue’s appeal and upheld the Tribunal’s decision of exclusion of 4 comparables company namely Coral Hub, Datamatics Financial (BPO Division), Geneysis International and Mold Tek on the ground of functional dissimilarity between assessee and comparables.

PCIT-6 Vs MPS Ltd-TS-306-HC-2018(DEL)-TP ITA No 255/2018 dated 18.04.2018

121. The Tribunal held that assessee engaged in providing software development & IT services to its AE was not comparable to:

- Aricent Technologies (holding) Ltd. as no separate segment result for software services were available.
- CAT Technologies Ltd.as the company had revenue earnings from consulting services along with software development.
- KPIT Cummins Infosystems Ltd.- as related party transactions were 98.87%,
- Tech Mahindra Ltd as the RPT was greater than 25%, being a filter deployed by the TPO.
- Thirdware Solutions Ltd as the revenue stream of the company consisted of sale of license and revenue from subscription along with software and export services.

As regards Bodhtree Consulting Ltd- The Tribunal remanded the said comparable to verify the issue of accounting entries of revenue recognition from software development and its consequent impact on profit margin of the said company.

M/s. Opera Solutions Management Consulting Services Pvt. Ltd. Vs ITO ward 13(4), New Delhi-TS-389-ITAT-2018(DEL)-TP-ITA no 5761/Del/2014 dated 27.04.2018

122. In the case of an assessee providing software development services to its AE, the Tribunal rejected Revenues plea for inclusion of 3 companies as comparables viz: Infosys Ltd, Sasken Communications Ltd & Sonata Software Ltd- The same were excluded as they had huge turnover as compared to assessee and also had patents. Further, the Tribunal concluded that the above companies fell beyond the Rs 200cr turnover filter, applied by the TPO and thus excluded them from list of comparables.

ITO Ward 1(2) vs Billion Hands Technologies P Ltd- TS-331-ITAT-2018(PUN)-TP- ITA No 372/PUN/2016 dated 27.04.2018

123. In case of an assessee engaged in providing software development services to its AE the Tribunal rejected assessee/TPO's comparable viz: Thirdware Solutions on grounds of functional dissimilarity and absence of segmental results.

The Tribunal further directed the TPO to consider forex fluctuation as operating in nature for both assessee and comparable company relying on the co-ordinate bench ruling in assessee's own case.

Further, the Tribunal allowing assessee's claim for working capital adjustment restored the matter to the file of the AO relying on Co-ordinate Bench ruling in assessee's own case.

Wipro Ltd vs DCIT Central Circle 7(1)-TS-323-ITAT-2018(Del)-TP- ITA No 1594/DEL/2014 dated 11.04.2018

124. The Tribunal relying on the judgement of coordinate bench in case of Hewlett Packard (I) Software Operation Pvt Ltd held that assessee engaged in providing software development services to its AE could not be compared to:

- Avani Cimcon Technologies Ltd due to absence of segmental data with respect to revenue from software services
- Celestial Labs Ltd as it was engaged in clinical research and manufacture of bio products.
- E-zest Solutions Ltd as it was engaged in development services and high end technical services.
- Flextronics Software Systems Ltd as it had different financial year ending and no reconciliation was made by the department.
- Helios & Matheson Information Tech Ltd as it was engaged in sale of software products.
- Infosys Technologies Ltd as it had huge revenues and significant intangibles
- Ishir Infotech as it outsourced its work and failed employee cost filter.
- Kals Information Systems Ltd as it was not purely a software development service provider.
- Lucid Software as it outsourced its work and failed employee cost filter.
- Persistent Systems as Ltd segmental data were unavailable.
- Wipro Ltd as segmental data were not available, and it owned huge intellectual property.

The Tribunal further, remitted back the comparable of Tata Elxsi after relying on coordinate bench in case of Quark System which has been upheld by the HC (wherein the Tribunal had remanded the issue of comparability of companies considered in the assessee's own TP study consequent to assessee's ground challenging the comparability of its own comparable).

M/s. SCM Microsystems (India) Pvt Ltd vs ACIT CC VI(1)-TS-358-ITAT-2018(CHNY)-TP- ITA No 2155/Chny/2011 dated 04.04.2018

125. The Tribunal held that assessee providing software development and consultancy services to its AE could not be compared to:

- Bodhtree Consulting Limited as it was functionally different, and it also failed to qualify turnover filter
- John Deere India P Ltd due to absence of segmental result
- E-zest Solutions Ltd as KPO services of company were not functionally comparable to software development services of assessee
- Helios & Matheson Info Technology Ltd.
- KALS Systems as it was engaged in development of software and other activities.

Further the Tribunal included SIP Technologies & Exports Ltd as comparable based on co-ordinate bench judgement in case of John Deere India P Ltd, where in it was held that exclusion was not warranted as it was not a persistent loss making company and loss in one financial year cannot make it a persistent loss making company

SAS Research & Development (I) Pvt Ltd vs ACIT Circle -6 Pune- TS-313-ITAT-2018(PUN)-TP- ITA No 254/PUN/2013 dated 13.04.2018

126. The Court held that the assessee company rendering software development services to its AE could not be compared with –

- CG Vak Software & Exports Ltd. because apart from earning income form software services it also earned income from 'Business process outsourcing services' which fell in realm of IT enabled services and there was no segmental information qua software services alone.
- Quintegra Solutions Ltd. as the company was incurring persistent losses coupled with declining turnover which indicated its abnormal functional circumstances.

Further, the Court dismissed assessee's plea and included Thirdware Solutions as comparable upholding TPO's view that the company's overseas segment encompassed only export of software services, as identical to the assessee.

Steria India Ltd. v. DCIT - [2018] 92 taxmann.com 120 (Delhi) - IT APPEAL NO. 403 OF 2017 dated APRIL 9, 2018

127. The Tribunal held that assessee engaged in software development services and ITeS could not be compared to:

- Acropetal Technologies Ltd as segmental details relating to export sales was unavailable.
- E- infochips Ltd after upholding DRP's finding that the company did not meet 75% software service income filter.
- Accentia Technologies as the company primarily catered to healthcare industry and lacked segmental data. (The Tribunal relied on the case of Swiss Re Shared Services India Pvt Ltd.)

Further, the Tribunal included RS Software (India) Pvt Ltd as comparable since assessee and TPO both contested to include the comparable and DRP's suo moto exclusion due to its onsite development activities was not justified.

DCIT Circle 2(1)(2) vs M/s. EMC Software and Services (I) Pvt Ltd- TS-487-ITAT-2018(Bang)-TP-IT (TP) No 273/Bang/2016 dated 25.04.2018

128. The Tribunal held that assessee engaged in software development services could not be compared to:

- Accentia Technologies Ltd due to lack of segmental information
- Acropetal Technologies due to functional differences as compared to assessee
- Eclerx Services as it was engaged in KPO activities
- Infosys BPO Limited due to its exceptional size and brand value.
- TCS eServe Ltd due to functional dissimilarity.
- Microgenetic Systems Ltd as significant expenditure of 23% was incurred towards medical transcription services
- Cosmic Global as it had substantial sub-contracting expenses, which represented a different business model from the assessee.

Further, the Tribunal included Crossdomain Solutions Pvt Ltd as comparable to the assessee

M/s. Excellence Data Research Pvt Ltd vs DCIT Circle 17(1)- TS-484-ITAT-2018(HYD)-TP- ITA No 93 & 34/ HYD/2016 dated 25.04.2018

129. The Tribunal held that the assessee engaged in rendering software development services to AE could not be compared to –

- Acropetal Technologies Limited as the segmental information containing break-up of its export sales and employee cost was not available and, thus, it was not possible to ascertain if it passed export earnings and/or employee costs filters.
- L & T Infotech Ltd. as the company was developing its own software products and had huge marketing intangibles.
- E-Infochips Ltd. as it failed to satisfy software service income filter at 75 per cent.

DCIT v. CGI Information Systems & Management Consultation (P.) Ltd. - [2018] 93 taxmann.com 9 (Bangalore - Trib.) - IT APPEAL NO. 502 (BANG.) OF 2016 dated April 6, 2018

130. The Tribunal held that the assessee company rendering software development services to AE could not be compared with –

- Cat Technologies Ltd. as the company was earning Revenue from software development services as well as consultancy services and did not contain any segmental information.
- Thirdware Solutions Ltd. as the company was earning income from software development services as well as sale of licences and the segmental information was unavailable for the same.
- Tata Elexi Ltd. as the company was engaged in making animated films and there was a functional difference between the assessee and the company.
- Akhay Software Technologies Ltd. as the company was earning income from sale of software products as well as software development services and the segmental information about the same was not available.

Virage Logic International-India Branch Office v. JDIT - [2018] 93 taxmann.com 54 (Delhi - Trib.) - IT APPEAL NOS. 6919 & 7044 (DELHI) OF 2014 dated APRIL 16, 2018

131. The Tribunal held that assessee engaged in provision of software development services to its AE could not be compared to:

- Infosys Ltd as it had significant assets and high brand value **and was** a full-fledged risk taking entrepreneur developing and engaged in selling of software products. **[The Tribunal** held it that it could not compared with the captive service and contract software development companies as the comparability analysis failed on all the factors of FAR. It relied on coordinate bench decision **in** assessee's own case which in turn had relied on Delhi High Court ruling in Agnity India.]
- Wipro Technology Services Ltd as **it** earned majority of revenue from Citigroup Inc and was earlier part of Citi Group and subsequently, it was acquired by Wipro and the arrangement of earning revenue from Master services agreement with Citigroup Inc. for the delivery of technology infrastructure services was actually a prior arrangement between assessee's AE (Wipro Ltd) and third party (Citigroup Inc.) and hence in light of the transaction ceased to be a comparable uncontrolled transaction. [It relied on the coordinate bench decisions in Orange business Systems and Ness Technologies.]
- Acropetal Technologies Ltd. as **it** failed the filter applied by the TPO viz. employee cost filter of greater than 25% (as Acropetal's employee cost was only 13.74%).
- E-Infochips Limited as Ltd as it was a software development , software product and ITeS company and as segmental data was not available and not a good comparable to pure software development services undertaken by assessee as a captive service provider.[It relied on the coordinate bench decision **in** Saxo India and Ness Technologies.]
- E-Zest Solutions Ltd. as **it** was engaged in diversified business activities, including product engineering services and outsourced product development services, inventory in the books of account and company's special expertise in emerging technologies. [It relied on coordinate bench decision in Symantec Software.]

Further,

- it remitted the comparability of CG-VAK Software and Exports Ltd. and directed the AO to verify the employee cost filter after considering the cost of services under the expenditure head and accept it as comparable if it passes the employee cost filter.
- With respect to R Systems International Ltd. (having a different financial year from the assessee), it directed the TPO to consider the quarterly financial statements for FY 2010-11 for the purpose of inclusion observing that the coordinate bench decision for assessee's own case had considered it to be functionally comparable.
- It directed the TPO to verify the export sales of Thinksoft Global Ltd. vis-a-vis the total operating revenue from the annual report and to include it in the list of comparables if it passed the export earnings filter.
- It also remanded the comparability of Cat Technologies Ltd. to the file of the TPO to reach a fresh conclusion on the aspect of whether it passes the RPT filter or not.
- It remitted the comparability of LGS Global Ltd. to the TPO to verify whether classification of expenses under the head "purchase and personnel cost" were mainly on account of employee cost since the assessee had pointed out that there were no tangibles or inventory in the books of accounts and directed the TPO to verify again if employee cost filter is satisfied.
- It included Goldstone Technologies Ltd. noting that the DRP in assessee's own case had held it to be a comparable and Revenue was not able to point out any change in business model of the assessee for the subject year.

Cadence Design Systems (I) P Ltd vs ACIT [TS-955-ITAT-2018(DEL)-TP] ITA No.6315 of 2015 dated 02.04.2018

132. The Tribunal held that assessee engaged in provision of software development services could not be compared to:

- Infosys Ltd. as it provided end to end services encompassing technical consulting, design, re-engineering, systems integration etc. and had a high brand value and owned intangible assets.
- KALS Information Systems Limited as it was engaged in sale of software products.
- Persistent Systems Ltd. as it was engaged in diversified activities and and earning revenue from various activities including licencing of products, royalty on sale of products as well as income from maintenance contract, and segmental data was not available.
- Tata Elxsi Ltd.as it was engaged in development of niche products and services coupled with lack of segmental information
- Persistent Systems and Solutions Limited as it was engaged in software development products and no segmental details were available.
- L& T Infotech Ltd as it was a software product company and segmental details for software development services were unavailable.
- Genesys International Corporation Ltd as it was engaged in rendering mapping and geospatial services and and as part of rendering these services it developed software.

CGI Information Systems and Management Consultants Private Limited vs ACIT [TS-492-ITAT-2018(Bang)-TP] IT(TP)A Nos. 586 (Bang) of 2015 and 183(Bang) of 2017 dated 11.04.2018

133. The Tribunal held that assessee engaged in provision of Software Development services to its AE could not be compared to:

- Avani Cincom as it was into production of products such as DExchange, lTrak, Law firm Solution, hotel and restaurant booking engines etc and no revenue bifurcation between Software development services and products was given.
- Bodhtree Consulting Ltd. as it was engaged in Software consulting, web services integration ,Data management and Data warehousing services (which were classified as lTES).
- E-Zest Solutions Ltd as the company was rendering product developmentservices and high end technicalservices which came under the category of Knowledge Process Outsourcing (KPO) services
- Infosys Technologies Ltd. as it owned intangibles and engaged in sale of software products and had no segmental bifurcation between revenue from software development services and products.
- PersistentSystems Ltd. as it was engaged in product development and product design services.
- Quintegra Solutions Ltd.as it was engaged in product engineering and extensive R&D and owned its own intangible
- Tata Elxsi Ltd. as it was predominantly engaged in product designing services and not purely software development services.
- Thirdware Solutions Ltd. as it was engaged in product development and earned revenue from sale of licenses and subscription.
- Wipro Ltd. as it was engaged both in software development and product development services and no segmental bifurcation between them was available.
- Softsol India Ltd. as it had RPT of 18.3% thereby failing the RPT filter of 15%
- Lucid Software Ltd. as it was engaged in software product development and hence functionally dissimilar.

SAP Labs India Pvt Ltd vs Addl CIT [TS-298-ITAT-2018(Bang)-TP] IT(TP)Appeal Nos.981 and 1070 of 2016 dated 06.04.2018

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

- Bodhtree Consulting Ltd it was engaged in product engineering and engineering services while the assessee was engaged in software development.
- E-Zest Solutions Ltd as it rendered product development and technology services, which fell under the category of KPO services which could not be compared to the assessee engaged in providing software development services

- Helios & Matheson Information Tech, relying on the decision John Deere India Pvt. Ltd. [TS-553-ITAT-2015(PUN)-TP], wherein it was held that the company was functionally dissimilar.
- Kals Information System as the company was engaged in development and sale of software products and was not comparable to software development services provided by the assessee.
- Goldstone Technologies Ltd as it was engaged in activities related to Media & IP TV and further carried inventory of set top boxes and movie rights in its Balance Sheet for the previous year rendering it functionally dissimilar to the assessee.

Further, it held that SIP Technologies and Exports Ltd and CG-Vak Software Exports Ltd could not be excluded merely on the ground that they incurred losses for the year under review. It held that companies could be excluded only if they were persistent loss making companies i.e. incurred losses for three continuous years.

Nihilent Technologies Pvt. Ltd vs ITO - TS-658-ITAT-2018(PUN)-TP - ITA No.2428/PUN/2012 dated 10-05-2018

135. The Tribunal held that the assessee engaged in providing software development services to its AE cannot be compared to:

- Thirdware Solution Ltd as it was engaged in the business of software products as well and therefore functionally dissimilar
- Kals Information Technology System Ltd as it was engaged in software services as well as Software products and had reported inventory and work in progress in annual report indicative of the fact that it was functionally dissimilar to the assessee.
- Bodhtree Consulting Ltd as it was a product company and had also undertaken major business restructuring during the year

Vis-à-vis Goldstone Technologies Ltd, it held that the company was erroneously excluded by the TPO on the ground that it was loss making as only companies that were persistently loss making were to be excluded.

MSC Software Corporation India Pvt. Ltd vs. ACIT - TS-489-ITAT-2018(PUN)-TP - ITA No.379/PUN/2014 dated 31-05-2018

136. The Tribunal held that an assessee providing software development services could not be compared to E-infochips engaged in IT, ITES and sale of products due to absence of segmental details following Alcatel Lucent ruling (which was subsequently confirmed by Delhi HC)

M/s. Labvantage Solutions Pvt Ltd vs ACIT Circle 2(1)- TS-405-ITAT-2018(Mum)-TP- ITA No 927 & 2400/Kol/2017 dated 11.05.2018

137. Where the assessee was engaged in providing software services to its AEs and distribution of products on behalf of its AEs, the Tribunal held that the following companies could not be considered as comparable:

- CompU Learn Tech India Ltd as the company was also engaged in R&D to enhance the quality of its products while assessee was into simple software development services.
- E-Infochips Bangalore Ltd as it was not only into software development services but was also into consultancy services and segmental data was unavailable
- Kals Information System Ltd as it was engaged in software services, software products and ITeS and no segments were available.
- Tata Elxsi as the company was functional dissimilarity because of its complex activities.

Further, it held that the following companies were to be included as comparables:

E-Zest Solutions Ltd ('E-Zest') as its operations were similar to the software services rendered by the assessee.

Open Text Corporation India Pvt Ltd (earlier known as Cordys Software India Products Ltd) vs. DCIT - TS-500-ITAT-2018(HYD)-TP - ITA No.486/Hyd/2015 dated 18.05.2018

138. The Tribunal held that the assessee engaged in providing IT based engineering design services to its AE could not be compared to:

- Coral Hub Ltd as it adopted a different business model (outsourcing) and therefore was functionally dissimilar to the assessee
- Chakkilam Infotech Limited as the company did not satisfy the 75 percent export turnover filter

- ICRA Techno Analytics Limited as the financials of the said company and segmental data of the engineering design segment were not available
- ISmart International limited as the financials of the said company were not available in public domain.
- Valuemart Info Technologies Limited as the company was engaged in consultancy and software development which fell within the ambit of KPO Services and could not be compared to the services rendered by the assessee.

Visteon Engineering Center (India) Private Limited vs. ACIT - TS-462-ITAT-2018(PUN)-TP - ITA No.316/PUN/2015 dated 28-05-2018

139. Noting that the assessee's business activities i.e. software development services were similar to the activities carried on by Yodlee Infotech, the Tribunal relying on the decision of the co-ordinate bench in Yodlee Infotech Pvt Ltd [TS-465-ITAT-2014(Bang)-TP] held that the following companies could not be considered as comparable to the assessee:

- Bodhtree Consulting Ltd as it was software product company and therefore functionally different to the assessee
- Infosys Technologies Ltd as it had considerable intangibles like IPR and was also engaged in software product development.
- Persistent Systems Ltd as the company was into product designing services and into software product development.
- Tata Elxsi Ltd as the company was engaged in developing niche products and rendering product designing Services

It remitted the comparability of Larsen & Toubro Infotech to the file of the TPO and held that merely because the company had turnover in excess of 10 times the turnover of the assessee it would not render it non-comparable. Relying on the decision of the Court in Chryscapital Investment Advisors (India) Pvt Ltd [TS-173-HC-2015(DEL)-TP] it remitted the matter to the TPO directing him to attempt to provide a reasonable adjustment to eliminate the material effect of such difference.

Manhattan Associates (India) Development Centre Pvt. Ltd vs. DCIT - TS-464-ITAT-2018(Bang)-TP - IT(TP)A No. 1293/Bang/2014 dated 31.05.2018

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

- Infosys Ltd as the company had been rejected as a comparable on account of functionality, high turnover, brand value and significant AMP expend by the co-ordinate bench in its own case for the earlier year which had been upheld by the High Court - MentorGraphics (India) P Ltd [TS-420-HC-2017(DEL)-TP] and Mentor Graphics (India) Private Limited [TS-799-ITAT-2017(DEL)-TP]
- KALS Information Systems Ltd as the company was engaged in development of software products rendering it functionally dissimilar (as also held in the assessee's own case for the prior year)
- Bodhtree Consulting Ltd as it had fluctuating profitability and was excluded by the co-ordinate bench in its own case for the earlier year which had been upheld by the High Court
- Tata Elxsi Ltd as it was engaged in the development of specialized/niche products which was entirely different from the assessee. (as also held in the assessee's own case for the prior year)
- Avani Cincom Technologies Ltd as the company was engaged in both software products and services and the segmental data was not available.
- Wipro Ltd as the company was engaged in both software products and services and the segmental data was not available.
- E-Zest Solutions Ltd as the company was into software products development services and providing high end technical services which fell under the ambit of KPO services.
- Persistent Systems Ltd as the company was engaged in both software products and services and the segmental data was not available.

Mentor Graphics (India) Pvt. Ltd. vs. DCIT - TS-432-ITAT-2018(DEL)-TP - I.T.A .No. 410/DEL/2013 dated 23.05.2018

141. The Tribunal held that assessee engaged in software development services could be compared to:

- CG Vak Software Exports Ltd- as the company was into software product development which would tantamount to software development services

- L&T Infotech- as it provided software development services to 3 clusters (Banking, manufacturing and telecom), rejecting the assessee's contention that it was functionally dissimilar because assessee was servicing banking segment only. It also rejected the assessee's contention of presence of intangibles and non-availability of segmental data, noting that the said company didn't not own any intangibles in the form of brand and that there was only one segment of software development.
- Persistent Systems as its entire revenue was from software services and there was no software product segment.

The Tribunal also held that assessee engaged in software development services could not be compared to:

- Cigniti Technologies Ltd. engaged in software testing by holding that though software testing was only a part of software development life cycle but could not be equated with software development services

Further, the Tribunal remitted the issue of comparability of Helios and Matheson Information Technology Ltd. (having different financial year-end vis-à-vis the assessee) back to the file of TPO in view of assessee's submission that on the basis of financial results for two years**,** which financial results for relevant financial period could be ascertained.

Advice America Software Development Center Pvt. Ltd. vs. ITO [TS-373-ITAT-2018(Bang)-TP] IT(TP)A No.2531/Bang/2017 dated 23.05.2018

142. The Tribunal held that the assessee, engaged in provision of software development to its AE could not be compared to:

- Acropetal Technologies Ltd. as the company did not satisfy the 75% revenue filter of software development services revenue applied.
- E-Infochips Ltd. as the company was earning revenue from softwareproducts and segmental details were unavailable.
- ICRA Technologies Ltd. as the company was functionally incomparable with pure softwaredevelopment service provider and its RPT was exceeding 15%.
- Infosys Ltd as the company had huge brand value, intangibles and huge turnover.
- Larsen & Toubro Infotech Ltd. as the company's RPT filter was exceeding 15%.
- Persistent Systems Ltd. since it was engaged in diversified activities and earning revenue from various activities including licensing of products, royalty on sale of products as well as income from maintenance contract.
- Sasken Communication Technologies Ltd. as the segmental details were not available for its 3 segments of activities.

The Tribunal held that the assessee, engaged in provision of software development could be compared to Thinksoft Global Ltd on the ground of being functionally comparable and could be excluded for the reason that the working capital adjustment to be done was very high.

Further, with regard to the assessee's contention of excluding E-Zest Solutions Ltd. the issue of functional comparability was remitted back to AO/TPO by following the decision in Toluna India [TS-247-ITAT-2014(DEL)-TP], wherein also the issue of comparability was remanded back to the AO/TPO noting that insignificant variation in activity could not be a determinative factor under TNMM. Similarly, as regards the assessee's contention for inclusion of LGC Global Ltd, the Tribunal remitted the issue of functional comparability back to AO/TPO by relying on the decision of the Tribunal in Applied Materials Pvt. Ltd wherein also the matter was remanded to decide on functional comparability.

Finastra Software Solutions (I) P Ltd. (formerly Misys Software Solutions India Private Limited) vs. ACIT [TS-404-ITAT-2018(Bang)-TP] - IT(TP)A No.529 & 491/Bang/2016 dated 02.05.2018

143. The Tribunal accepted the assessee's contention and excluded E-infochip Ltd. as a comparable relying on the decisions of Philips India and Ness Technologies where the said comparable was excluded in case of assessee's engaged in like activities of provision of software development and technical support services as E-Infochip was engaged in manufacturing and trading of printed electronic circuit boards and had income from software development, hardware maintenance, information technology consultancy and information technology services and selling software product and no separate segmental information was available and was also held to be an undertaking engaged in ITES.

Redknee (India) Technologies Private Limited vs. DCIT ITA No.486/Pun/2016 dated 29.06.2018

144. The Tribunal relying on the decision of co-ordinate bench in the case of 3DPLM Software Solutions held that the assessee engaged in providing software development services to its AE could not be compared to:

- Celestial Lab Ltd. as it was engaged in the manufacture of industrial enzymes and pharmaceutical ingredient
- Avani Cimcon Technologies Ltd as the company was into software products
- E-Zest Solutions Ltd as it was engaged in rendering product developmental services and high end technical services which come under the category of KPO services
- KALS Information Systems Ltd as the company was developing software products and was not purely or mainly a software service provider.
- Persistent Systems Ltd as the company was engaged in product development and product design services and no separate segmental details available
- Tata Elxsi Ltd as the company was predominantly engaged in design services and the segment 'software development services' relates to design services and are not similar to software development services performed by the assessee
- Thirdware Solutions Ltd. as the company was engaged in product development and earns revenue from sale of licences and subscription, which is different from software developmental services.
- Wipro Ltd as the company was into software products also and no seperate segmental details were available.
- Soft Sol India Ltd as RPT filter exceeded 15%
- Lucid Software Ltd as it was engaged in development of software products.
- Infosys Technologies Limited as segmental breakup of towards the products and services segments was unavailable.

DCIT vs Mphasis Limited [TS-890-ITAT-2018(Bang)-TP] ITA 325/Bang/2014 dated 01.06.2018

145. The Tribunal held that a company engaged in providing software development services to its AE could not be compared to:

- Infosys BPO Ltd as the company had a high turnover, global brand value, operations on a large scale, large talent pool and significantly different FAR and was also excluded by ITAT in assessee's own case for earlier years
- TCS E Services Ltd. as the company provided technology services involved in software testing, verification and validation of software at the time of implementation and data in the management. to the assessee. Also it had its own brand value and its scale and operations were different from the assessee.

Further, the Tribunal rejected assessee's plea for exclusion of E-Clerx Services Ltd. on the ground that it was a KPO and provided data analytics, operations management and process improvement and thus functionally different. It observed that since the assessee had been categorized as a KPO in its own case for the earlier year, E-Clerx could not be excluded on the basis of functional dissimilarity.

Avineon India Pvt Ltd vs Dy.CIT [TS-893-ITAT-2018(HYD)-TP] ITA No.82/Hyd/2017 dated 27.06.2018

146. The Tribunal remanded the following comparables to file of TPO for the assessee engaged in the provision of software development services:

- R Systems International Limited with a direction to include the company if the financial results for the year ending on 31.03.2013 can be worked out from audited accounts by relying on the HC ruling in the case of Mercer Consulting (India) Pvt Ltd
- ICRA Techno Analytics Ltd for computing the RPT and also held that RPT filter of 25% was proper
- L&T Infotech Limited for the TPO to be satisfied whether the brand value, hugh profits or high turnover materially affected the price or cost and secondly, an attempt to be made to eliminate the effect of such differences in light of the HC ruling in the case of Chryscapital Investment Advisors Ltd wherein it was held that high profits or high turnover cannot be a reason to exclude a company.
- Mindtree Ltd noting that orders of TPO and DRP were not speaking order on the aspect that the company was engaged in diversified activities and had high IP with a direction to provide the assessee with an opportunity of being heard before considering the aforesaid aspects.

- Persistent Systems Limited noting that the orders of the TPO and DRP were not speaking orders on the aspect that the company was functionally dissimilar and was engaged in product engineering, technology consulting, strategic partnership to build platforms and IP-led business etc. with a direction to provide the assessee with an opportunity of being heard.

Tecnotree Convergence Pvt Ltd vs DCIT [TS-925-ITAT-2018(Bang)-TP] IT (TP) A No.1616/Bang/2017 dated 27.06.2018

147. The Tribunal directed the TPO to conduct a fresh search for comparables for the assessee engaged in software development to determine the arm's length price. The Tribunal observed that the DRP erred in upholding the set of 13 comparables selected by TPO even after noticing that 9 out the 13 comparables were functionally dissimilar. In so far as the assessee's plea for exclusion of Persistent Systems as comparable was concerned, the Tribunal noted that the assessee itself had taken Persistent Systems Ltd as one of the comparables and no objection against the same was raised before the DRP. The turnabout by the assessee at a later stage without raising a specific ground of appeal was rejected by the Tribunal.

Steelwedge Technologies Pvt Ltd [TS-473-ITAT-2018(HYD)-TP] ITA No.385/Hyd/2017 dated 06.06.2018

148. The Tribunal remitted the functional classification of services rendered by assessee to AE for fresh adjudication. The Tribunal noted that the AO/DRP had considered nature of services rendered by assessee as software development services instead of manpower supply/ IT Consulting Services as claimed by assessee. The Tribunal opined that there was merit in the contentions of the assessee that services rendered were of man power/personnel on perusal of the Service Agreement between assessee & AE as well as invoices raised which showed that billing was done on man days of employees, billing rates were different for various grades.

Enzen Technologies Private Limited vs ACIT [TS-533-ITAT-2018(Bang)-TP] IT (TP) A No.2540/Bang/2017 dated 04.06.2018

149. Relying on the co-ordinate bench decisions in the case of Alcatel Lucent and Symantec Software, the Tribunal excluded the following comparables for the assessee engaged in providing software development services to its AE:

- Persistent System and Solutions Ltd. as it was a product development company with diversified services and separate segmental information was not available.
- Sankhya Infotech Limited as it was engaged in diversified services, which included the provision of customized products and services for training purposes. It also owned a research and development center.
- E-Zest Solutions Ltd. as it was engaged in diversified services such as product engineering, outsourced product development, enterprise application development, IT services, industries solutions and technical expertise, without any segmental information. Its high end services were classified as KPO.
- Infosys Ltd as it was not functionally comparable, had hugh scale of operations, high brand value, R&D with significant revenue and capital expenditure which created significant intangibles.
- Wipro Ltd. as it was engaged in the development of a product, namely FLOW which was used in the retail sector and was a result of significant R&D activities
- Sasken Communication Technologies as it was functionally different
- Zylog Systems Limited as the company had earned income from both, software development services and products but no separate segmental information was available

Clear 2 Pay India Pvt Ltd vs ITO TS-757-ITAT-2018(DEL)-TP ITA No.2788,2744 and 594/Del/2017 dated 22.06.2018

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

- Tata Elxsi as the company was engaged in diverse activities, which included product design, services, innovation design, engineering services within the software development segment.

- Akshay Software as the company had onsite revenue.

The Tribunal also included R S Software as a comparable since both the parties i.e. the assessee and Revenue contested against the exclusion of the said comparable by the DRP and had agreed for its inclusion.

Further, the Tribunal remanded the comparability of Evoke Technologies in view subsequent availability of relevant data which was not available during assessment proceedings and also remanded L&T Infotech with specific directions to consider segmental results of the services segment, if available

Autodesk India Private Limited vs DCIT [TS-532-ITAT-2018(Bang)-TP] IT (TP) A Nos.303/Bang/2015 and 422/Bang/2015 dated 08.06.2018

151. The Court dismissed Revenue's appeal and upheld the Tribunal's order wherein the Tribunal had excluded the following comparables in case of assessee providing software services:

- Kals Information System Ltd. as it was a software product company. [The Court noted that the Revenue was not able to distinguish the decision of jurisdictional High Court in PTC Software wherein the aforesaid comparable was excluded in case of assessee engaged in similar business applicable.]
- Cosmic Global Ltd.as it had a different business model (subcontracted its work) as against the assessee which had an in-house business model. [The Court noted that jurisdictional High Court in Aptara affirmed the Tribunal's order in not including Cosmic Global because of identical difference in business model.]
- Transworld Infotech Ltd. as its data pertained to July 2008 to June 2009 whereas the assessee 's financial year was from April to March and did not satisfy TPO's filter. The Court noted that the finding of fact was a possible view and hence no substantial question of law arose
- Compucom Software Ltd as its software development services were different from the assessee and it customer profile was that of government companies whereas the assessee company rendered services to only its AE. The Court noted that the finding of fact was a possible view
- Infosys BPO Ltd. as its turnover was high i.e.(Rs.9028 crores) vis-à-vis assessee (Rs.18 crores). The Court noted that that the finding of fact was a possible view.

CIT vs. Principal Global Services [2018] 95 taxmann.com 315 (Bombay) ITA No.57 of 2016 dated 12.06.2018

Investment advisory services

152. The Tribunal held that the assessee engaged in providing non-binding investment advisory services could not be compared to ICRA Online which was engaged in providing e.knowledge Process Outsourcing and information Services and Technology Solutions which was functionally different as compared to the activities of the assessee.

Sparkles Dhandho Advisors Pvt. Ltd v ITO - TS-18-ITAT-2018(Mum)-TP - I.T.A./1047/Mum/2015 dated :03/01/2018

153. The Tribunal held that the assessee engaged in providing non-binding investment advisory services ('IAS') to AE could not be compared with Ladderup Corporate Advisory as the said comparable was engaged in providing merchant banking services which was functionally dissimilar.

Following its order in the case of the assessee for the earlier assessment year, it held that ICRA Management Consulting and Informed Technologies were to be considered as comparable.

Vis-à-vis CRISIL and ICRA Techno Analytics, it remanded the matter to the file of AO/TPO considering that that no reasonable opportunity of being heard had been afforded to the assessee by DRP on these companies and also observed that i) CRISIL ought to be excluded if found to have RPT of more than 25% and ii) ICRA Techno Analytics ought to be excluded if verified to be a software development service provider.

Temasek Holdings Advisors India Private Limited v ITO - TS-17-ITAT-2018(Mum)-TP - ITA No. 1429/Mum/2017 dated 03.01.2018

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

- Ladderup Corporate Advisory Pvt. Ltd. as the company was registered with SEBI for engaging in merchant banking services which was also duly substantiated by the website of the company as well as its Annual Reports
- ICRA online Ltd as the assessee failed to bring anything on record to prove that the company was comparable to the assessee other than the contention that the Revenue had accepted it to be comparable in the subsequent year.

Further, it held that ICRA Management Consulting Ltd and IDC Ltd were to be included as comparables as they were carrying out investment advisory services similar to that of the assessee.

SUN-Ares India Real Estate Private Ltd (formerly known as SUN AREA Real Estate Pvt. Ltd) vs. DCIT - TS-84-ITAT-2018(Mum)-TP - /I.T.A. No.621/Mum/2016 dated 09 /02/2018

155. The Tribunal held that the assessee engaged in providing non-binding investment advisory services to its AE could not be compared with

- Ladderup Corporate Advisory Pvt. Ltd. as the company was engaged in providing merchant banking services.
- Motilal Oswal Investment Advisors Ltd as it was engaged in four different business verticals such as equity capital markets, merger and acquisition, profit equity syndications and structure debts and its core competence is in the field of merchant banking

Further, relying on the decision of AGM India Advisory Pvt. Ltd [TS-1-ITAT-2017(Mum)-TP] wherein it was held that this company was a valid comparable for assessee providing non-binding investment advisory services. Accordingly, it upheld the assessee's contention for inclusion of ICRA Management Consulting Services Ltd.

It also held that IDC (India) Ltd was to be included as a comparable as it was considered as a valid comparable to companies engaged in providing non-binding investment advisory services by the High Court in General Atlantic Pvt. Ltd and had also been considered as comparable in the assessee's own case for earlier years.

DCIT vs. General Atlantic Pvt. Ltd - [TS-181-ITAT-2018(Mum)-TP – ITA no.1717/Mum./2016 dated – 21.02.2018

156. The Tribunal, relying on the decision of the co-ordinate bench in Temasek Holding Advisors India [477/Mum/2016] held that the assessee engaged in providing non-binding investment advisory services could not be compared with:

- Motilal Oswal Private Equity Advisers India Private Ltd as the company was engaged in investment in portfolio companies, managing the 'India Business Excellence Fund I' and 'India Reality Excellence Fund I' and also had multiple sectors of operations for which no segmental information was available.
- Ladderup Corporate Advisory Private Ltd. as it was engaged in merchant banking /investment banking services.

Further, it held that the TPO erred in excluding i) ICRA Management Consulting Services Ltd merely on the ground that it had fluctuating profit margins without appreciating that the company was accepted to be comparable in the prior assessment year and ii) Informed Technologies Ltd on the ground that it had declining turnover without appreciating that the company was accepted to be comparable in the prior years. Vis-à-vis Informed Technologies, it held that declining turnover was not relevant for service companies as their margins were not dependent on the scale of operations.

Wells Fargo Real Estate Advisors Pvt. Ltd. (Previously known as Wachovia Management Services Private Limited) vs. DCIT - TS-66-ITAT-2018(Mum)-TP - /I.T.A./1520/Mum/2016 dated 17/01/2018

157. The Court dismissed Revenue's appeal and held that assessee engaged in Investment advisory could not be compared to:

- Brescon Corporate Advisors Ltd as segmental result in case of income schemes were not available
- Keynote Corporate Services Ltd due to occurrence of an extraordinary event of Amalgamation approved by the HC

PCIT- 2 vs M/s Chrys Capital Investment Advisors- TS-295-HC-2018(Del)-TP- ITA no 634/2017 dated 16.04.2018

158. The Tribunal held that the assessee engaged in providing investment advisory services could not be compared with:

- Motilal Oswal Investment Advisors Private Ltd as the said company providing a variety of services and had delivery capacity in cross border product acquisition for its clients, which could not be compared to the work done by the assessee
- Khandwala Securities Ltd business operations of this company included investment banking, corporate advisory services, institutional broking and private client broking which could not be compared to the activities of the assessee
- Axis Private Equity Ltd as it was an asset/funds management company entrusted with the responsibility of investing funds in the best possible way whereas the assessee only provided research based information and advised the clients so that they could take informed decisions about where they should invest their money to get maximum returns.
- Almondz Global Securities Ltd as it was engaged in merchant banking, investment advisory and loan syndication fee which was functionally dissimilar to the activities carried out by the assesse.
- Milestone Capital Advisors Private Ltd as the company was more into asset management rather than investment advisory

Sungroup Enterprises Private Limited vs. DCIT - TS-461-ITAT-2018(DEL)-TP - ITA No.1029/Del/2014 dated 21.05.2018

159. The Tribunal restored the functional characterization & selection of comparables in the case of the assessee back to the TPO, noting that the TPO had wrongly characterized the assessee as a stock broking and trading firm whereas the assessee did not provide such services and rendered other financial services. It observed that the Tribunal in the assessee's own case for AY 2010-11 & 2011-12 remitted a similar issue back to the TPO to carry out FAR analysis of assessee after characterizing its activity on the basis of evidence on record and then proceed to select comparables as per law, pursuant to which the TPO had passed orders for AY 2010-11 & 2011-12 admitting that assessee was incorrectly characterized as provider of investment and financial advisory. Accordingly, it remitted the matter back to the TPO in line with the earlier years orders.

Control Risks India Pvt. Ltd vs. ACIT - TS-723-ITAT-2018(DEL)-TP - ITA No. 1480/Del/2017 - 30.05.2018

160. The Tribunal relying upon the ITAT order in assessee's own case for earlier year held that under TNMM, a foreign AE could be used as a tested party in respect of the transaction of payment of fees by the assessee to its AE for advisory and other services and the said transaction was to be benchmarked by comparing the margins of the tested party with the margin of external comparables i.e. foreign companies engaged in providing similar advisory services. In the earlier year, the Tribunal had accepted the assessee's stand of selecting the foreign AE as the tested party, noting that (i) the AE was rendering service to various other entities also (ii) the AE was following a scientific method of allocating cost and charging the same with markup to all the entities at same level and (iii) the relevant details to compute the cost allocation on account of services had been certified and filed before the AO. Thus following the earlier year's order, the Tribunal remitted the matter back to the AO for limited verification that the margin shown by the AE was at ALP vis-à-vis foreign comparables selected by the assessee.

Emerson Climate Technologies (India) Private Limited [TS-531-ITAT-2018(PUN)-TP] SA.No 70/Pun/2017 arising out of ITA No.2432/Pun/2017 dated 06.06.2018

161. The Tribunal held that the assessee engaged in providing investment research services to its AE could not be compared with:

- Brescon Corporate Advisors Limited as the company was mainly carrying out merchant banking, restructuring and syndication of debt. Further, the Tribunal noted that there was no segmental information vis-à-vis various streams of fees, i.e., financial restructuring and re-capitalisation, syndication of debt equity related advisory, M & A Advisory, etc
- Khandelwal Securities as the company was engaged in diversified activities like institutional equity sales, sales trading and research, private client broking and portfolio management services and no separate segmental information was available.
- India Venture Capital as the company was into software products & services while assessee was purely into ITeS in the nature of business and investment research services.

Pipal Research Analytics and Information Services India Pvt Ltd [TS-733-ITAT-2018(DEL)-TP]-ITA No.6374/Del/2012 dated 18.06.2018

162. The Tribunal held that the assessee engaged in providing non-binding investment research services to its AE could not be compared with Motilal Oswal Investment Advisors Ltd as the company was engaged in the business of investment banking/merchant banking activity.

Further it held that ICRA Management Consulting Services Ltd and IDC (India) Ltd were to be included as comparables as they were carrying out investment advisory services similar to the assessee.

IIML Assets Advisors Ltd v DCIT [TS-800-ITAT-2018(Mum)-TP]-ITA No.4060/Mum/2016 dated 20.06.2018

163. The Tribunal following the coordinate bench decision in assessee's own case for AY 2008-09 and held that the assessee was a mere investment advisory company and could not be categorized as a KPO as alleged by the TPO.

The Tribunal excluded the following comparables for assessee engaged in rendering investment advisory to its AE:

- Coral Hubs Ltd. as it was engaged in outsourcing and also the TPO had included it while categorizing assessee as a KPO;
- E-Clerx Ltd. as it was rejected by the Tribunal in assessee's own case for the previous year;
- Cosmic Global as it was engaged in the business of translation services and had a different business model which was functionally different from the assessee

The Tribunal included ICRA Management consultancy P. Ltd relying on the coordinate bench in assessee's own case.

Further, the Tribunal dismissed the Revenue's appeal with regard to the inclusion of IDC(India) Ltd as a comparable since it could not bring anything on record to contradict the findings of the DRP that the company was a market research company dealing in research services and products.

Apax Partners India Advisers Pvt Ltd [TS-832-ITAT-2018(Mum)-TP] ITA No.1682/Mum/2014 and 1738/Mum/2014 dated 08.06.2018

Manufacturing and contracting

164. The Tribunal held that the TPO erred in excluding the following companies as comparable while benchmarking the manufacturing and contracting activities of the assessee:

- Dragger-Frost Tools Ltd as the company was wrongly excluded by the TPO on the ground that the company stopped operations during the year under review, which was not the case.
- Hittco Tools Pvt. Ltd.as the TPO wrongly excluded the company as comparable as it was a consistent loss maker whereas the company was consistently making profits in the subsequent years
- Rajasthan Udyog and Tools Ltd as the company was wrongly excluded on the ground of persistent losses whereas it had earned profits in the earlier years.

DCIT vs. Seco Tools (India) Pvt. Ltd. - TS-1101-ITAT-2017(PUN)-TP] - ITA No.606/PUN/2014 dated 29.11.2017

165. The Tribunal held that Assessee engaged in manufacturing and marketing of measuring instruments, could not be compared to

- Schrader Duncan Ltd as the product manufactured by this company (tyre pressure gauges) were different from assessee as observed, by the Tribunal in assessee's own case for previous A.Y.
- Areva T&D India Ltd as the company was engaged in different business activity (power transmission and distribution business), further it did not meet the turnover filter applied for comparable selection and had different accounting period as observed, by the Tribunal in assessee's case for previous A.Y.

Further, the Tribunal accepted assessee's contentions for inclusion of Aplab Ltd as comparable since the strike of 8 days during relevant year, which was the TPO's basis for rejection the said comparable had insignificant impact on the comparable company's turnover.

The Tribunal also held that ALP-adjustment should be restricted to transactions with AEs only and cannot be made at entity level, relying on Bombay HC ruling in case of Thyssen Krupp Industries India

P. Ltd. It further accepted the additional ground raised by assessee and directed the Revenue to consider foreign exchange fluctuations as part of operating income by relying on Pune ITAT ruling in case of Approva Systems (P.) Ltd

WIKA Instruments India Pvt. Ltd vs DCIT Circle 12 Pune -ITA No 760&764/ PUN/2015- TS-425-ITAT-2018(PUN)-TP dated 25.04.2018

166. The Tribunal rejected assessee's contention and held that Hindustan Copper Ltd, engaged in the manufacture and production of copper wires was comparable to the assessee who was engaged in the manufacture, production and export of Steel Wire Ropes and held that what was required under TNMM was broad comparability and therefore copper and steel being includible within the broad category of metals was indeed comparable.

Usha Martin Limited (Earlier known as Usha Beltron Limited) vs. ACIT - TS-442-ITAT-2018(RAN)-TP - ITA No .68/Ran/2017 dated 31.05.2018

167. The Tribunal noted the proposition laid down in the Delhi High Court decision in Rampgreen Solutions wherein it was held that though product comparability can be of broad level under TNMM, the nature of products manufactured by the comparables, vis-a-vis that of the tested party should be considered and if found to be entirely different from the tested party, such comparables should be excluded. On the above basis, the Tribunal held that the assessee, engaged in manufacturing of a wide range of equipments used for Dynamic Weighing, Feeding and Controlling flow of sold materials could not be compared to Bharat Bijli Limited (manufacturing Electric Motors and Transformers**),** CTR Manufacturing Industries Limited(manufacturing engineering and electronics products being tap changers, capacitors, railway equipments, fire systems, wind turbine generation etc.), GMM Pfaudler Limited (manufacturing chemical process equipments, mixing system, filtration and separation), and even Greaves Cotton Limited (manufacturing diverse products such as high-pressure pumps, gear boxes, etc.) and Lincoln Helios (manufacturing of lubrication systems).

DCIT vs. Schenck Process India Limited [TS-397-ITAT-2018(Kol)-TP] ITA No.130/Kol/2016 dated 18.05.2018

Support Services

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

- Aptico Ltd as it derived the revenue from various sources like skill development, tourism and research studies, project related services etc. thus not functionally comparable to the assessee.
- Choksi Laboratories Ltd as the said company was a leading analysis and research group providing complete solution for improving quality in process, products and services, that it provides contract laboratory services including pharmaceutical analysis, food and beverages analysis, etc and the company treated analytical charges and consultancy receipts as a single segment and the details of segments were not separately reported.
- Genins India TPA Ltd as the company provided third party administrative services in the field of health insurance including receiving of insurance claim and revenue was recognized as and when Medicare policy was issued by general insurance companies in favour of the policyholders and therefore was not functionally comparable
- Rites Ltd as this company has business operations in four distinct fields namely consultancy in transportation infrastructure section, construction activities, export and leasing of railway equipments and running railway system on concession and therefore was not functionally comparable
- WAPCOS Ltd as it was basically engaged into project engineering consultancy and therefore not comparable to the functional profile of the assessee.

Abacus Distribution Systems (India) Pvt Ltd vs. DCIT - TS-34-ITAT-2018(Mum)-TP - ITA Nos.1766 & 2183/Mum/2015 dated 10/01/2018

169. The Tribunal excluded 8 of the TPO's comparables on the ground of non-satisfaction of the 25% export-filter, functional dissimilarity, extraordinary events like amalgamation impacting profitability, non-availability of segmental results, unreliable financial data etc and observed that the TPO had adopted faulty search process wherein only 'ITeS' companies and not those from the fields of 'Back-Office

Support Services' and 'Software Development Services' were analyzed for potential comparables. It dismissed the Revenue's contention to remand the matter to the TPO noting the discrepancies between TPO's order (finalizing 13 comparables) vis-a-vis the show cause notice issued to assessee (wherein 17 comparables were selected) and accordingly held that if the Revenue's contention of remanding the matter was to be accepted it would tantamount to allowing the TPO premium on his carelessness and callousness of the and would encourage unnecessary litigation.

Franklin Templeton International Services (India) Private Limited vs. DCIT - TS-10-ITAT-2018(Mum)-TP - /I.T.A./7472/Mum/2010 dated 10.01.2018

170. The Tribunal held that CG-VAK Software and Export Private Limited could not be excluded as comparable merely because its margin post accounting for working capital adjustments was negative moreso since the company was accepted to be comparable to the assessee in the earlier AY.

Further, it held that following companies were to be excluded while benchmarking the engineering support services rendered by the assessee to its AE:

- Jindal Intellicom as it had different financial year reporting period (15-month) as against that of the assessee (April to March).
- Coral Hub Limited as the company followed an outsourcing model and also followed a different accounting period (April - June) in its preparation of financial statements as compared to that of the assessee
- Cosmic Global Ltd as it had a different business model (outsourcing) as compared to that of the assessee
- Accentia Technologies Ltd as it had undergone and extra-ordinary event during the year and also since the company was not functionally comparable being engaged in transcription, hoarding and billing.
- E4e Healthcare Business Services Pvt. Ltd. as it was engaged in providing healthcare outsourcing services.

Schlumberger India Technology Centre Pvt. Ltd. (formerly known as Schlumberger Global Support Centre Pvt. Ltd.) vs. DCIT - TS-36-ITAT-2018(PUN)-TP - ITA No.640/PUN/2014 dated 10.01.2018

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

- Aptico Ltd. (AL) as it was generating revenue from 10 different sources like skill development, tourism and research studies, environmental management etc.
- Choksi Laboratories Ltd.(CLL) as it was a leading analysis and research company providing complete solution for improving quality in process, products and services
- Genins India TPA Ltd.(GITL) as it provided third-party administrative services in the field of health insurance including receiving of insurance claims
- Rites Ltd as it was engaged in the consultancy business in relation to transport infrastructure sector, construction activities, export and leasing of railway equipments and running railway system on concession
- WAPCOS Ltd as it was engaged in project engineering consultancy

.Abacus Distribution Systems (India) Pvt. Ltd vs. DCIT - TS-116-ITAT-2018(Mum)-TP - ITA Nos.1402/Mum/2014 dated 05/01/2018

172. The Tribunal held that the assessee, engaged in providing marketing support services to its AE could not be compared to TSR Darshaw Ltd as it was engaged in provision of share registry and related financial services and therefore could not be compared with the assessee, a captive market support service provide. Further, it held that Global procurement Consultants Ltd providing shipping logistics, payment and accounting, know-how transfer (training) and bid support services was to be considered as comparable to the assessee.

Freescale Semiconductor India Pvt. Ltd. vs. DCIT - TS-1098-ITAT-2017(DEL)-TP - ITA No1263 /Del/2015 dated 08/12/2017

173. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order rejecting TPO's re-characterization of assessee as 'trader' instead of business support services provider. Relying on the decision of the

High Court in Li & Fung, it observed that in view of the undisputed fact that AEs of the taxpayer was into trading activities of various product and the assessee was merely rendering business support services to these AEs in the form of facilitation services to source goods from India, the activities carried out by the assessee could not be classified as trading activities. It further noted that the assessee did not bear any risk in the nature of credit risk, price risk, inventory risk, storage and handling risk etc and accordingly held that the TPO erred in his recharacterization. Considering that assessee had not developed any intangibles or accorded location savings to AE and had earned net operating profit margin on cost of 129.34% against that of its comparables i.e. 14.05%, it held that the assessee was adequately compensated.

ACIT vs. Itochu India Private Ltd. - TS-120-ITAT-2018(DEL)-TP - ITA No.6612/Del./2014 dated 21.02.2018

174. The Tribunal held that assessee providing marketing support services to its AE was not comparable to:

- Choksi Laboratories as the same was a heavy asset-based company
- WAPCOS as it was a Government Company undertaking engineering contracts and turnkey contracts
- Basiz Fund Services as it possessed huge intangibles.
- HCCA Business Services P Ltd as it was engaged in payroll processing services.

The Tribunal included Cyber Media as comparable as it was engaged in providing marketing and advertisement services being functionally similar to assessee. Further, it remitted back to TPO for evaluating inclusion of one comparable namely ICRA management, after verifying the filter of 25% RPT

Genzyme India Pvt Ltd vs ACIT Circle 1(1)- TS-339-ITAT-2018(DEL)-TP- ITA No 892/Del/2014 dated 20.04.2018

175. The Tribunal held that assessee engaged in Marketing Support and Technical Support Services could not be compared to:

- Aptico Ltd as segmental data was not available. Further, it rejected Revenue's argument that there was no requirement to have identical services for applying TNMM after relying on Rampgreen Sales P Ltd case.
- Mahindra Consulting Engineers Ltd as the company was providing consultancy services in the areas of SEZ, water supply and sewage etc as against the assessee providing installation, commissioning and testing of telecommunication equipment; post implementation equipment support; and after-sales support and maintenance services.
- STUP Consultants Pvt Ltd as the segment being compared was of Civil Engineering and Architecture Consultancy.
- Semac Ltd as the company was primarily engaged in engineering consultancy of industrial projects and related activities.
- Intarvo Technologies as the company was providing call centre services of technical support catering to hardware of computers and installation of BTS equipment for telecom towers.
- Microland Ltd as it was engaged in providing end to end IT infrastructure management services.
- Alphageo (India) Ltd as it was engaged in providing seismic services to the oil exploration and production centres.

Alcatel- Lucent India Ltd vs ITO Ward (1)(4)- TS-256-ITAT-2018(Del)-TP- ITA No 2209/Del/2014 dated 06.04.2018

176. The Tribunal held that the assessee rendering marketing support services to its AE could not be compared with-

- Aptico Ltd. as it provided services in nature of project management consulting, feasibility studies and micro enterprise development.
- Choksi Ltd. as it was engaged in providing testing services for various products and was also offering services in the field of pollution control.
- WAPCOS Ltd. as it was awarded with project of Emergency Transport and Infrastructure development and projects of development and hygiene education development.

Fujifilm Corporation v. ITO - [2018] 92 taxmann.com 411 (Delhi - Trib.) - IT APPEAL NOS. 5826 (DELHI) OF 2011 & 195 (DELHI) OF 2013 dated APRIL 4, 2018

177. The Tribunal held that assessee providing marketing support services to its AE could not be compared to Empire Industries Ltd as its major chunk of revenue was from trading activity whereas the assessee **was** predominantly a service providing entity.
ACIT 14(2)(1) vs Hitachi Data Systems India Pvt Ltd- TS-420-ITAT-2018(Mum)-TP-ITA No 1012/Mum/2016 dated 04.05.2018

178. The Tribunal held that the assessee, engaged in provision of marketing support services to its AE could not be compared to:

- Asian Business Exhibition & conferences Ltd. as it was engaged in organization of exhibitions and events as well as conducting conferences on behalf of the various clients for their various products and businesses.
- AMD India P Ltd as the company derived its income from trading activity and also maintained inventories.

Finastra Software Solutions (I) P Ltd. (formerly Misys Software Solutions India Private Limited) vs. ACIT [TS-404-ITAT-2018(Bang)-TP] - IT(TP)A No.529 & 491/Bang/2016 dated 02.05.2018

179. The Tribunal deleted the TP adjustment and the rejected the TPO's approach of discarding 2 comparables selected by assessee for benchmarking technical support services to BMWAG [a German entity] on the basis that they were not from Germany but from USA and Japan respectively. The Tribunal relied upon the decision of Bharati Airtel and held that difference in geographical location of market is not sufficient reason to reject a comparable until it can be substantiated that the same resulted in different market conditions. The Tribunal accepted assessee's contention that pricing /cost structures and market dynamics of developed countries like Germany, USA Japan were similar and the service providers from developed countries like USA and Japan have similar economic environment as Germany.
BMW India Pvt Ltd v/s. ACIT [TS-401-ITAT-2018(DEL)-TP] ITA No.6160/Del/2014 dated 14.05.2018

180. The Tribunal held that assessee engaged in providing sourcing support services to AE for AY 2013-14 could not be compared to Axis Integrated Systems. The Tribunal noted that assessee was a routine captive sourcing service provider while Axis Integrated Systems was engaged in the business of issuing digital certification, however, TPO/DRP included it as a comparable after holding there was a broad similarity in the functionality as both the companies were providing business support services. The Tribunal observed that TPO/DRP had not elaborated as to how it had reached the conclusion that there was a broad functional similarity between assessee and Axis Integrated Systems. The Tribunal relied on Rampgreen Solutions HC ruling and co-ordinate bench ruling in Avenue Asia Advisors and held that DRP as well as the TPO had overlooked the essential requirement that even under TNMM the standard for selection of the comparable transactions could not be diluted. Thus, it dissented with the findings of the lower authorities that a captive sourcing service provider like the assessee could be considered functionally similar to a company providing liaisoning services like Axis Integrated Systems Ltd and directed exclusion **of the said company**.
Li & Fung (India) Pvt. Ltd vs. ACIT [TS-352-ITAT-2018(DEL)-TP] ITA No.7549/Del/2017 dated 14.05.2018

181. The Tribunal held that assessee engaged in rendering market support services for AY(s) 2007-08 and 2008-09 could not be compared to:

- Priya International Ltd. - as the said entity's business model of earning commission on sales was different from assessee's business model of getting remunerated at Cost plus basis. It was observed that Priya International Ltd. (Seg.) had a huge amount of unallocated expenses which was ignored by the TPO in computing the segmental margin of this company.
- Hightemp Techmat Pvt. Ltd.as the said entity was mainly into Processing business which was different from assessee's business.
- ICRA Management Consulting Services- as the company apart from the corporate advisory practices, had established two specialized divisions, viz., Information technology and Research activities
- IDC (India) Ltd.- as the comparable was a research company, primarily dealing in research and survey services and products, and it was also engaged in selling products

- IL & FS Ecosmart Ltd.- as the company was engaged in four business lines, namely, Waste management; Resource conservation; Information systems; and Consulting & advisory services and there was ostensible differences in activities carried out by this company
- Inmacs Management Services Ltd.- as the true nature of services was not discernible even from its Annual report.
- RITES Ltd.- as the said entity had diverse nature of services and segmental details were not available.
- Shree Raj Travels and Tours Ltd- as the said entity's business model of earning commission on sales was different from assessee's business model of getting remunerated at Cost plus basis irrespective of actual sales.
- Spencer's Travel Services- as the company was engaged in making sales which was not similar to the assessee company
- Choksi Lab Ltd.- as it was engaged in providing testing services unlike assessee company engaged in marketing support services.
- WAPCOS Ltd- as it was engaged in infrastructure development projects
- Interads Ltd.- as the company was earning income from participation fee, onsite service fee and other miscellaneous receipts and thus the nature of services rendered by this company were nowhere close to that of the assesee.
- PL Worldways Ltd- as the company was earning income on commission basis which was distinct from the cost-plus model followed by the assessee.

Brown Forman Worldwide LLC India vs.DDIT [TS-347-ITAT-2018(DEL)-TP] ITA Nos.433 and 6139/Del/2012 dated 11.05.2018

182. The Tribunal restored back to AO/TPO, the issue of TP-adjustment in respect of assessee's project management services (PMS) and marketing support services (MSS) segment for AY 2009-10 to verify as to whether it was a combined segment or a single segment respectively and accordingly, make adjustments. During the assessment proceedings, the TPO had rejected the assessee's approach of aggregating PMS and MSS services and had proceeded to examine the income pertaining to both these services on standalone basis whereas, the coordinate bench in assessee's own case for subsequent year(s) AY 2010-11 and 2011-12 had combined the segments and compared them with comparables providing low end services. However, the Tribunal also noted that assessee had not given any plausible reason as to why these segments should be combined for benchmarking other than relying on the Tribunal order in its own case for AY 2010-11 and 2011-12 .The Tribunal also observed that neither the TPO nor DRP elaborated on this aspect.

Rolls Royce India Pvt. Ltd vs. DCIT [TS-367-ITAT-2018(DEL)-TP] ITA No.1042/Del/2014 dated 02.05.2018

183. The Tribunal directed the AO/TPO to re-examine the functional comparability of the three government companies viz. Certification Engineers International Limited, Wapcos Limited and NTPC Electric Supply Co Limited via-a-vis the assessee providing business development, advisory and other support services to Boeing Group and also to verify if these companies were benefitting from preferential treatment from Government in getting contracts impacting profits, any grants/ subsidies and if so, to exclude the same from the list of comparables.

Boeing International Corporation India Private Limited [TS-471-ITAT-2018(DEL)-TP] ITA No.1118/Del/2014 dated 07.06.2018

184. The Tribunal remanded the comparability of the following comparables for assessee engaged in providing technical support services in the nature of erection, installation, commissioning, etc. of power plants and turbines to its AE:

- HSCC India Ltd as it was not clear whether the company being a government company had received any grants or subsidies. Further, it also directed the TPO to keep in mind that the said company was rejected as a comparable in the assessee's own case for the previous year.
- Mahindra Consulting Engineers Limited to verify the functional profile and clearance of RPT filter.
- Mitcon Consultancy Engineering Services Ltd to verify the RPT filter and segmental information to decide comparaibility..

- Mahindra Engineering Services as the RPT of the company was 58.63 observing that it had been retained as a comparable in the assessee's own case for the last two years.
- EDCA Engineering to decide on the functional comparability

Further, the Tribunal directed for inclusion of MN Dastur & Company Pvt Ltd as the company was functionally comparable since it is engaged in the provision of engineering services which are akin to the assessee's functions and it was selected as a comparable for the previous two years.

Granite Services International India Private Limited vs DCIT [TS-628-ITAT-2018(DEL)-TP] ITA No.740/Del/2017 dated 19.06.2018

185. The Tribunal held that the assessee engaged in providing marketing support services could not be compared to Asian Business Exhibition & Conferences Ltd as the said company was in the business of organizing exhibitions and conferences and it operated as an event manager and hence was functionally dissimilar to the marketing and support activities performed by the taxpayer.

Autodesk India Private Limited vs DCIT [TS-532-ITAT-2018(Bang)-TP] IT (TP) A Nos.303/Bang/2015 and 422/Bang/2015 dated 08.06.2018

186. The Tribunal upheld the DRP's order excluding Basiz Fund Services as a comparable for benchmarking the marketing support services provided by the assessee to its AE. Noting that the detailed analysis of the international transaction, financial statements of the company justify the findings of the DRP that the company was functionally not comparable to the assessee in as much as the company was involved in the fund accounting services, possessed significant intangible assets, had a different employees profile, significant growth in the revenue and was earning of profits at supernormal level. It also observed that the Revenue had not filed an appeal against the DRP order of the earlier year excluding the **said** comparable and held that the Revenue ought to follow a consistent view.

Microsoft Corporation India Pvt. Ltd vs DCIT [TS-926-ITAT-2018(DEL)-TP] ITA No.1206 and 2529/Del/2014 dated 22.06.2018

187. The Tribunal held that assessee engaged in the distribution, agency & marketing support segments could not be compared to:

- Apitco Limited- as it was into diversified business like asset re-construction and management services, project related services, infrastructure planning & development, research studies and tourism, skill development, environment management, cluster development and no separate segmental information is available.
- Choksi Laboratories Ltd as it was providing end to end solution and was into commercial testing and analysis laboratory engaged in analyzing food and agricultural products while the assessee was a routine market service support provider and also there were no segmental details
- Wapcos as it is engaged in high end technical services by rendering technical consultancy services for various projects and absence of segmental details

Corning SAS-India Branch Office vs. DDIT [TS-495-ITAT-2018(DEL)-TP] ITA No.5713/Del/2012 dated 18.06.2018

188. The Tribunal held that assessee engaged in provision of market support services to AE could not be compared to:

- Apitco Ltd as its operations were mainly based on the policy requirements of the government whereas the assessee was a private company in the field of providing business support services.
- Cameo Corporate Services as it was engaged in diversified activities and no separate segmental information was available
- Global Procurement Consultants Ltd. as the company was primarily engaged in preparing and reviewing technical specifications, estimation of castes, selection of vendors, inspection and expediting and quality control and time management and also rendered financial advisory services with a high volatile margin which would not be comparable with routine market distributors.
- Killik Agencies and Marketing Ltd as it was engaged in diversified activities such as agent for various foreign clients for sale of dredgers, Dredging Equipment, steerable Ruddar propulsion, maritime and aviation lighting, acoustic communication equipment etc. and also offered after sales services hence it was functionally dissimilar

- TSR Darashaw Ltd as it was involved in outsourcing with a new global payroll ERP application called RAMCO for its payroll business and undertook registrar and transfer agent activity functions for equity and preference shares, venture instruments and bonds, commercial paper and private placements.

Philip Morris Services India S.A v DDIT [TS-488-ITAT-2018(DEL)-TP] ITA No.827/Del/2014 dated 21.06.2018

Research and Development services

189. The Tribunal held that the assessee, engaged in providing contract research and development services to its AEs could not be compared to:

- Chocsi Laboratories as the said company performed diverse activities and did not have segmental results
- TCG Lifesciences Ltd & Transgene Bioteck Ltd as the said companies, engaged in the pharmaceutical industry were functionally dissimilar to the assessee engaged in the automobile industry. Further, it noted that the companies owned intangible assets and undertook high risks and therefore held that they could not be adopted as comparable.

DCIT vs Akzo Noble Car Refinishes India Pvt. Ltd - TS-51-ITAT-2018(DEL)-TP - ITA No. 2936/Del/2014 dated 08.01.2018

190. The Tribunal remanded comparability of the two companies viz. Celestial Lab Ltd. and Tonira Pharma Ltd. to the AO/TPO for benchmarking product development services carried out by the assessee engaged in research and development activities for its AE:

- Celestial Lab Ltd. as the authorities did not reach a conclusion as to how the company was functionally dissimilar since the company was engaged in activities of research and development in the pharma industry which were similar to the product development services rendered by the assessee to its AE in the pharma industry. Further, noting that the said company launched an IPO which was an extraordinary event, it directed the AO/TPO to exclude the expenses incurred in connection with it for arriving at the PLI;
- Tonira Pharma as the basis of exclusion adopted by TPO that the the said company was having effluent treatment plant/waste disposal system was not justified since the requirement of having the said system was State Policy mandate. Noting that one of the units of Tonira Pharma was hit by an extra-ordinary event of attachment of its inventory by the Excise and Custom Departments, the Tribunal directed that the impact of extraordinary event should be excluded while computing PLI

Ferring Pharmaceutical Private Limited [TS-457-ITAT-2018(Mum)-TP] ITA No.6072/Mum/2014 dated 01.06.2018

191. The Court dismissed Revenue's appeal and upheld the Tribunal's order as regards the inclusion of Dolphin Medical Services Ltd in case of the assessee providing contract manufacture, contract research and development of drugs services to its AE since Revenue had not disputed the Tribunal's finding that the said company was engaged in the business of clinical trial and was broadly similar to assessee

CIT vs Watson Pharma Pvt Ltd [TS-480-HC-2018(BOM)-TP] ITA 124 of 2014 dated 25.06.2018

Others

192. The Tribunal held that the assessee engaged in rendering freight and forwarding services in domestic and international sector (including ancillary services) could not be compared to:

- Balmer Lawrie & Co. Ltd. as company earned revenue from sale of Manufactured goods, Trading goods, Turnkey projects and Services and that the Logistics Segment of the company could not be accurately compared as there were unallocable costs which were wrongly apportioned to the segment based on gross revenue as there were many other considerations such as cost of capital and labour which were to be factored.
- ABC India Limited as the company had 2 streams of income, namely, Transport division and Petrol pump division which could not be compared to the assessee's activities

- S.E.R. Industries Ltd and Delhi-Assam Roadways Corporation Ltd as the companies were not providing any ancillary services, such as, storage and warehousing and custom clearance & documentation etc which were being provided by the assessee
- Transport Corporation of India Ltd. as computation of the profit margin of the Transportation Division of this company by allocating common unallocated expenses in the proportion of revenue was not accurate as held above in the case of Balmer Lawrie.

Further, it held that the following companies were to be included as comparables:

- Premier Road Carriers Ltd as the basis of exclusion adopted by the TPO i.e. it had a high ratio of lease rent to sales of 79.01% was not justified as the assessee itself had a similar ratio of 66.56%
- Roadways India Ltd. as the TPO was incorrect in excluding it merely based on low profits without disputing the functional similarity of the company
- Skypack Service Specialists Ltd as the company was wrongly excluded on the ground of persistent losses wheras it had suffered losses only for the year under review and the immediately preceding year.

CEVA Freight India Private Limited (Formerly Known as EGL Eagle Global Logistics (India) Pvt Ltd) vs. DCIT - TS-40-ITAT-2018(DEL)-TP - ITA No. 4956/Del/2013 dated 18.01.2018

193. The Court dismissed Revenue's appeal against the Tribunal order confirming CIT(A)'s inclusion of three companies as comparables for benchmarking the transactions of the assessee engaged in manufacturing and trading of medical devices and diagnostic equipments. Noting that the CIT(A) and Tribunal observed that the companies all qualified as manufacturers and sellers of medical and diagnostic equipment (Span Diagnostic – manufacture of diagnostic regents, elissa kits for AIDS; Hicks Thermometers – manufacture of elissa kits, thermometers and Centenial Surgical – manufacture of surgical suture), it held that the TPO was unjustified in excluding the comparables. It further held that the exclusion or inclusion of one or the other comparable would by itself not constitute a question of law unless it was shown that there were important functional dissimilarities or that vital material facts which go to the route of profitability or other material circumstances were involved, which was not so in the instant case and accordingly, it dismissed the appeal.

CIT vs. Becton Dickinson India Pvt. Ltd - TS-45-HC-2018(DEL)-TP - ITA 48/2018 dated 16.01.2018

194. The Court admitted 2 questions of law raised by Revenue on comparables selection and risk adjustment viz.- "1. *Did the Income Tax Appellate Tribunal (ITAT) fall into error by including M/s. Petron Engineering Consultants Ltd. and M/s. Simon India Ltd. in the list of comparables for the purpose of ALP determination in the circumstances of the case?* and 2. *Was the ITAT correct in law in concluding that the risk adjustment could be allowed in the comparability analysis on general appraisal of facts and without returning any findings, to displace the reasoning of the Disputes Resolution Panel (DRP), in the circumstances of the case*?"

Pr. CIT vs. Haldor Topsoe India Pvt Ltd - TS-44-HC-2018(DEL)-TP - ITA 74/2018 dated 23.01.2018

195. The Tribunal held that Arcadia Shipping Ltd (ASL) could not be rejected as comparable to the assessee engaged in the business of ship management services considering both these companies were engaged in shipping business and were conducting similar activities. It rejected Revenue's contention that while the overall functions of ASL were similar to assessee some of the activities were different, and opined that TP proceedings especially selection of valid comparables-are not meant to put the proverbial fly in place of a fly and that there might be some differences in each model of business and therefore two comparables could not be expected to be mirror image of each other. Further, it noted that that in earlier year TPO himself had included ASL as a valid comparable and Revenue could not bring out any difference in facts in the subject years and accordingly directed inclusion of ASL. Additionally, it excluded HSCC (a government of India enterprise), selected by TPO/DRP, as comparable on grounds of functional dissimilarity as it was awarded the work of rendering consultancy services for design and engineering, project management, procurement of medical equipments, drugs and pharmaceuticals for various prestigious and big projects and it was participating in exhibitions organised by various agencies & also since it was earning abnormal profit vis-à-vis the previous year. However, it clarified that a government enterprise could not be rejected as a valid comparable merely because it is a government undertaking.

Anglo-Eastern Ship Management (India) Pvt. Ltd. vs. DCIT - TS-29-ITAT-2018(Mum)-TP - /I.T.A./1500/Mum/2016 dated 03/01/2018

196. Relying on the decision of the co-ordinate bench in the assessee;'s own case for the prior year, the Tribunal held that the assessee, engaged in the business of engineering, design and related support services could not be compared to:

- Accentia Technologies Ltd as the company was engaged in sale of products apart from rendering ITeS and both these components of income for which no segmental details were available
- Eclerx Services Ltd as the company was rendering Financial as well as Sales & Marketing services and income from both these services was clubbed without any segmental break-up
- TCS E-Serve Ltd as the company's operations broadly comprised of transaction processing and technical services which was not functionally comparable to the assessee

Samsung Heavy Industries Pvt. Ltd. vs. DCIT - TS-117-ITAT-2018(DEL)-TP - ITA No. 402/Del/2017 dated 01.01.2018

197. The Tribunal held that assessee engaged in business of formulations, purchased from its AE could not be compared to:

- Engineers India Ltd, Rites Ltd and Water & Power Consulting Services Ltd (WAPCOS) as they were Government entities and had different business model
- TCE Engineers Consulting Limited as it was engaged in providing high end engineering services as against the assessee who was engaged in providing low end business support services.

Further, the Tribunal upheld CIT(A)'s decision to determine ALP based on single year data instead of multiple year data as assessee had failed to bring on record any evidence indicating influence of earlier 2 years data on ALP-determination.

M/s Eli Lily & Co (India) Ltd. Vs ACIT Gurgaon- TS-407-ITAT-2018(DEL)-TP- ITA No 6819/Del/2014 dated 11.04.2018

198. The Tribunal held that the assessee company carrying out R & D activities in relation to development of hybrid seeds for its group could not be compared to –

- Venus Diagnostics Ltd. as it was operating a diagnostic centre and was not engaged in research services.
- Syngene International Ltd. as it had two sets of income i.e. income from contract research fees and sale of compounds and the segmental details were absent.

DDIT v. Pioneer Overseas Corporation India - [2018] 93 taxmann.com 274 (Delhi - Trib.) - IT APPEAL NOS. 2934 (DELHI) OF 2013 dated APRIL 13, 2018

199. In respect of the assessee engaged in outsourced publishing services the Tribunal remitted back the issue of inclusion/exclusion of comparables to AO/TPO for fresh consideration based on the following particulars and judgements submitted by the assessee:

- Cosmic Global by taking into consideration assessee's reliance on the decision in case of Xchanging Technology Services, Rampgreen Technologies, Parexel International & Cummins Turbo Technologies on the contention of functional difference
- Fortune Infotech Ltd by taking into consideration assessee's relinace on Symphony marketing solutions and Capital IQ Information system decision for exclusion of the said comparable due to occurrence of extraordinary events
- Jeevan Scientific Technologies Ltd by taking into consideration assessee's reliance on Amtel R&D India Pvt Ltd to emphasize that entire ITeS as classified in schedules of P&L should be considered.

Further, with respect to inclusion of 2 comparable companies namely Caliber Point Business Solution Ltd & R Systems International Ltd, the Tribunal directed assessee to furnish comparables data for verification by TPO.

M/s. MPS Ltd vs DCIT CC 4- TS-337-ITAT-2018(CHNY)-TP- ITA No 963/Chny/2015 dated 03.04.2018

200. The Tribunal after relying on coordinate bench ruling in assessee's own case for previous AY, held that the assessee engaged in rendering advance analytic service related to market research to its AE could not be compared to E Clerx Services Ltd (engaged in diverse functions comprising of consulting, business analysis and solution testing) due to absence of segmental data

M/s. Fractal Analytics Pvt Ltd vs ACIT Circle 9(3)(2)- TS-236-ITAT-2018(Mum)-TP-ITA No 6621/Mum/2017 dated 06.04.2018

201. The assessee was a wholly owned subsidiary of Oriflame Investments Ltd., Mauritius and was engaged in the distribution and sale of cosmetic products manufactured by AE primarily through direct selling channel. During the TP proceedings, the TPO included a comparable viz Modi Care Ltd which apart from cosmetics was also engaged in the marketing of other products. The assessee challenged the inclusion before the Tribunal on the ground that dissimilarity with respect to products sold and the proportion borne by each of the products on turnover would impact profitability of the comparable entity. Although the Tribunal accepted the plea of functional dissimilarity, yet it did not pass an order for exclusion of the comparable and remanded back the matter to the TPO. The Court on further appeal, remanded the matter back to the Tribunal with a direction for disposal of the case on merits and directed the order of the Tribunal, to remand the matter to the TPO, to be set aside.

Oriflame India (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 185 (Delhi) – IT Appeal Nos. 811 to 813 & 825 of 2017 dated April 10, 2018

202. The Tribunal held that assessee being a captive design centre and engaged in providing design services could not be compared to:

- Rolta India Ltd as the company had expertise in CAD/CAM/GIS providing IT solutions addressing customers total requirement of engineering services and generated 90% income from such activity.
- Infosys Technology Ltd as it had high brand values and ownership of proprietary products. (The Tribunal relied on assessee's own case in previous AY and Agnity India Technologies ruling.)
- Quintegra Solutions Ltd as it was mainly engaged in software development and developing own software products.

Further, the Tribunal held that assessee could be compared to:

- Infotech Enterprises Ltd after considering segmental results.
- Federal Technologies Ltd as it was rendering design and development services comparable to assessee
- Mindteck (India) Ltd as it was engaged in area of embedded systems and segmental information were available.

Motorola Solutions India Pvt Ltd vs DCIT Circle-2 – TS-346-ITAT-2018(Del)-TP-ITA No 1652/Del/2014 dated 27.04.2018

203. The Court dismissed Revenue's appeal challenging Tribunal's exclusion of Wipro Technology Services as comparable to assessee and held that exclusion was justified as the said comparable had a strong brand presence and unusual events such as amalgamation, merger which could have a miserable impact on the profits.

PCIT Delhi-1 vs Agnity India Technologies P Ltd- TS-273-HC-2018(Del)-TP- ITA No. 447 of 2018 dated 13.04.2018

204. The Tribunal followed co-ordinate bench ruling in assessee's own case for previous AY 2011-12 wherein the assessee had selected software distributors as comparables in absence of data available in public domain with regard to channel distributors and the Tribunal had remitted the benchmarking of assessee's payment of distribution fee on the ground that the assessee had not furnished agreement with AEs and revenue sharing agreement with Non-AEs (so as to enable the AO to apply internal CUP). Thus, the Tribunal also remitted the benchmarking of assessee's payment of distribution fees to AEs (channel operators) for AY 2012-13.

MSM Discovery Private Limited vs. ACIT [TS-316-ITAT-2018(Mum)-TP] ITA No.1935/Mum/2017 dated 02.05.2018

205. The Tribunal held that the assessee [engaged in the business of transportation to various destinations in the domestic and international sectors] could not be compared to:

- Sical Logistics Ltd. as the company was engaged in the business of port handling, customs house agency, ship agency, road logistics and goodwill travel. It also did not have segmental information and did not have any earnings in foreign exchange, indicating that the company did not have international operations
- All Cargo Logistics Ltd as the consolidated financial statements included financial results of not only the Indian operations but also of the multimodal transport business carried on by the company's subsidiaries in other countries. The Tribunal also noted the asset base of the company vis-à-vis the assessee which was Rs.1330 crores as against the assessee's asset base of Rs. 11crores.
- SDV International Logistics as the company was following a different financial year and quarterly audited financial data was not available in public domain, hence no such adjustment could be made
- Om Logistics Ltd as it was was engaged in providing air cargo, train Cargo services factory relocation, home shifting/office relocation services which by no stretch of imagination could be compared to courier business of assessee.

Further, the Tribunal also held that Indo Arya Central Transport Ltd. could be included as a comparable and the TPO was unjustified in rejecting the company on the reasoning that it was incurring losses. TheTribunal observed that the reasoning was factually incorrect since the said comparable had earned a profit but only post working capital adjustment, it was showing a loss.

Aramex India Pvt. Ltd vs. DCIT [TS-351-ITAT-2018(Mum)-TP] ITA No.6749/Mum/2017 dated 18.05.2018

206. The Tribunal, in second round of proceedings, excluded 7 channel/content owner companies as comparables for assessee's distribution segment. Further, it noted that distribution segment of the assessee was different and independent from assessee's production/ancillary activities which was carried out as a captive service provider and found to be at arm's length by the TPO. It disapproved the action of DRP/TPO of mixing functionality of independent activities of distribution and production/ancillary to distort the functionality to justify the selection of channel owner companies especially when the transaction from such production/ancillary services constituted only 4% of the value of the international transaction. The Tribunal relied on the co-ordinate bench ruling in assessee's own case for subsequent AYs 2007-08 & 2008-09 to re-iterate that that Satellite TV channels and cable network operators had significantly different operating models and directed exclusion of the said companies. The Tribunal accepted the stand of the the assessee that software distribution companies could be considered for comparability analysis by following the co-ordinate bench decision in NGC Network wherein it was held that the aforesaid companies can be taken for comparability analysis, when no direct comparable dealing with distribution of satellite channels are available. Thus, Trijal Industries Ltd (trader in computer packages) as a comparable was accepted and the Tribunal further noted that TPO in subsequent years also had accepted software distributors as valid comparables. However, it excluded Syam Software (also a software distributor) in view of its persistent losses.

Turner International India Pvt. Ltd v ACIT [TS-483-ITAT-2018(DEL)-TP] ITA No.1204/Del/2018 dated 18.06.2018

207. The Tribunal excluded Hindustan Syringe and Medical devices as a comparable for assessee engaged in business of import of assembly of component and re-export of assembled medical disposable balloon catheters] for AY 2010-11 by relying upon co-ordinate bench ruling in assessee's own case for AY 2009-10 wherein it was held that the said company was functionally dissimilar with the assessee since the said company had been using intangible assets for which royalty was paid whereas the assessee was merely a job worker. Further**,** an observation was made that the said company was engaged in trading activities without any segmental accounts available for different activities whereas the assessee was only an assembler.

Degania Medical Devices Pvt Ltd v Dy.CIT [TS-523-ITAT-2018(DEL)-TP] ITA No.1254/Del/2015 dated 27.06.2018

208. The Tribunal dismissed the assessee's appeal for exclusion of Advanced Micronic Devices as it was also engaged in trading of health-care products like the assessee and only the relevant segmental details were considered. Further, the Tribunal remanded the comparability of RFL Ltd. to the AO/TPO to bring

on record sources of information since the TPO was silent on this aspect and also remitted the calculation of margin as it was engaged in diversified activities and segmental information was not available.

Abbott Medical Optics Pvt. Ltd. v DCIT (formerly Advanced Medical Optics India Pvt. Ltd) [TS-517-ITAT-2018(Bang)-TP] IT(TP) A No.08/Bang/2014 dated 22.06.2018

209. The Tribunal held that assessee engaged in providing tourism services to customers of AE could not be compared to:

- Kerala Travels Interserve Ltd as the revenue was from different activities such as airline commission and not from tour operations
- Cox & Kings Limited as the company had its own brand value and was engaged in multiple activities.

Enchanting Travels Private Limited vs ITO [TS-744-ITAT-2018(Bang)-TP] IT (TP) A No.2149/Bang/2017

210. The Tribunal rejected the contention of the assessee for inclusion of Neelkanth Rock Minerals as comparable on the ground that it was functionally dissimilar since it had activities of granite quarrying and processing whereas the assessee was not into mining but only processing. Further, the Tribunal also rejected the contention of the assessee for inclusion of Vajra Granites Ltd. as comparable on the ground that it was functionally dissimilar since unlike the assessee it had quarry land on which the company had claimed depreciation also on the basis of depletion of mineral resources.

Indigra Exports Pvt Ltd v DCIT [TS-509-ITAT-2018(Bang)-TP] IT (TP)A No.488/Bang/2016 dated 22.06.2018

211. The Tribunal remitted the issue of determining the ALP to AO/TPO and directed them to include two comparables viz. Haldiram Bhujiawala and Capital Foods for benchmarking assessee's sale of Ready-to-Serve products to AE. It observed that the comparables had been accepted by the assessee in subsequent assessment year and relied on the ruling of Bobst India where the TPO was directed to include a company in the list of comparables as the said company was found to be comparable entity in the subsequent assessment year.

Tasty Bite Eatables Limited vs DCIT [TS-730-ITAT-2018(PUN)-TP] ITA No.337/Pun/2014 dated 11.06.2018

212. The Tribunal observed that the TPO excluded the three comparables viz. Akasaka Electronics Ltd, DR Electricals & Switchgears Pvt. Ltd. and JK Switchgears& Cable Pvt. Ltd by merely stating that they did not meet the criteria of one or more filters with respect to the assessee engaged in manufacturing of medium voltage switchgear components, ring main unit components, etc. Further, the DRP had confirmed the TPO's order of exclusion without any findings. The TPO/DRP had failed to consider the submissions of the assessee vis-à-vis the comparables satisfying all the filters. Thus, the Tribunal directed the DRP/TPO to give clear finding on their inclusion/exclusion after considering all details and evidence available and remanded the matter.

Efacec Switchgear India Pvt Ltd vs DCIT [TS-830-ITAT-2018(DEL) TP] ITA No.7817/Del/2014 dated 13.06.2018

General

213. The Tribunal remitted issue of determination of functional profile of assessee (engaged in the business of integration of hardware and software in the simulation and services) back to TPO . It noted that the assessee contended that its functions were divided into various departments such as marketing department, technical department, quality department, pricing department and finance, human resource and administration and therefore considered itself to be in the field of project management while TPO considered assessee to be engaged in software development services since the assessee undertook independent verification and validation of software including design, coding and testing in various programming languages. As both assessee & Revenue agreed that these aspects in assessee's TP study were not examined by TPO/DRP while adjudicating the main issue with regard to functional profile of the assessee, the Tribunal opined the matter ought to go back to the TPO to first re-examine

the issue with regard to functional profile of the assessee and thereafter adopt the comparables of same profile.
CAE India Pvt. Ltd vs. ITO - TS-1096-ITAT-2017(Bang)-TP – IT(TP) A No 762 / Bang / 2017 dated 22.12.2017

214. The Tribunal relying on the decision of the High Court in Mckinsey Knowledge Centre ITA 217/2014 held that a functionally comparable company cannot be rejected merely because of different financial year. Accordingly, it remitted the inclusion of R Systems International Ltd for software developer assessee provided that the results for financial year could reasonably be extrapolated.
ST Microelectronics Pvt. Ltd vs. Addl. CIT - TS-48-ITAT-2018(DEL)-TP - ITA No. 4396/Del/2017 dated ITA No. 4396/Del/2017

215. The Apex Court dismissed revenue's SLP against Delhi HC judgment wherein the Court upheld the Tribunal order regarding comparable selection and had upheld exclusion of 2 comparables for the purposes determining the ALP of international transactions observing that no substantial question of law arose from Tribunal order.
Pr. CIT vs. ST Microelectronics Pvt Ltd - TS-46-SC-2018-TP - SPECIAL LEAVE PETITION (CIVIL) Diary No. 42218/2017 dated 22.01.2018

216. The Court admitted 2 questions of law raised by Revenue on comparables selection and risk adjustment; Questions admitted are - "1. Did the Income Tax Appellate Tribunal (ITAT) fall into error by including M/s. Petron Engineering Consultants Ltd. and M/s. Simon India Ltd. in the list of comparables for the purpose of ALP determination in the circumstances of the case? and 2. Was the ITAT correct in law in concluding that the risk adjustment could be allowed in the comparability analysis on general appraisal of facts and without returning any findings, to displace the reasoning of the Disputes Resolution Panel (DRP), in the circumstances of the case?". It listed the final hearing on April 23, 2018.
Pr. CIT vs. Haldor Topsoe India Pvt Ltd - TS-44-HC-2018(DEL)-TP - ITA 74/2018 dated 23.01.2018

217. The assessee was engaged in business of electronic manufacturing service provider and assembling electronic components in printed circuit board for mobile chargers. While proposing TP-adjustment, TPO made certain adjustment to PLI of comparables observing that assessee's capacity utilization was higher than comparables while ratio of depreciation to operating income was higher for comparables companies as against that of assessee. The Tribunal accepted the contention of the assessee that it's capacity utilization was in fact lower than average capacity utilization of the comparables and that the cause of higher employment cost of the comparable companies could not be attributable to their level of capacity utilization as incorrectly done by the TPO. Therefore, it noted that the higher employee cost of the comparables indicated use of skilled labour which was not required in the work done by the assessee. Accordingly, considering the above findings, it held that the comparable companies adopted by the assessee company and the Revenue could not be strictly viewed as comparable companies as the functional analysis with respect to employee cost had not been carried out. Accordingly, it remitted the matter to the file of TPO for fresh adjudication.
Flextronics Technologies (India) Pvt. Ltd. V ACIT - TS-1090-ITAT-2017(CHNY)-TP - I.T.A.No.1195/Mds/2016 dated 04.12.2017

218. The Tribunal accepted Revenue's plea for exclusion of Jindal Intellicom as a comparable while benchmarking the assessee's ITES transactions as the company had a different financial year ending (on 31.12.2008) as compared to assessee's (on 31.03.2009). Referring to Rule 10B(4) as well as the decision of the Bombay High Court in PTC Software (I) Pvt Ltd [TS-835-HC-2016(BOM)-TP] it held that Rule 10B mandated that the comparable ought to have data for the same financial year in which the international transaction had been entered into and if such a data was not available, then, a company could not be considered as functionally comparable.
ITO vs. Copal Research (I) Pvt. Ltd. - TS-32-ITAT-2018(DEL)-TP - ITA No.1865/Del/2014 dated 09.01.2018

219. The Tribunal remitted the functional comparability of 7 companies back to the DRP observing that the DRP passed a cryptic order without deciding on the issue of functional comparability of the individual

companies and merely mentioned that assessee's arguments were dealt with by the TPO. It directed the DRP to pass a reasoned and speaking order on comparability of individual companies. Regarding the treatment of foreign exchange gains/loss while computing the margin of companies, the Tribunal noted that the DRP had not applied its mind while rendering its decision rejecting the assessee's claim, even though arguments were raised before it and accordingly restored the issue to the file of the DRP for examination and adjudication by passing a reasoned and speaking order.
Telsima Communications Pvt. Ltd. vs. DCIT - TS-1084-ITAT-2017(Bang)-TP - IT(TP)A No.1178/Bang/2010 dated 17.11.2017

220. The Tribunal allowed Revenue's appeal and held that the CIT(A) erred in applying the 25% related party transaction (RPT) filter for excluding Wipro BPO Solutions as comparable, noting that the assessee did not raise any ground to that effect before the CIT(A). However, it held that it's finding on the CIT(A)'s erroneous application of the RPT filter would not in any way affect the finding of the learned CIT (Appeals) in excluding Wipro BPO Solutions Limited from the list of comparables on grounds of brand and intangible ownership and huge turnover. Further, it also accepted Revenue's contention that the CIT(A) erred in holding that assessee was eligible to benefit of standard deduction of 5% from ALP under the proviso to Sec. 92C(2) and held that by virtue of the retrospective amendment to the Act made by Finance Act, 2012 w.r.e.f. 1.4.2002 it was clear that the + / - 5 % variation was to be allowed only to justify the price charged in international transactions and not for adjustment purposes.
DCIT vs. Nirvana Business Solutions Pvt. Ltd - TS-56-ITAT-2018(Bang)-TP dated I.T. (T.P) A. No.171/Bang/2012 dated 19.01.2018

221. The Tribunal upheld TPO's aggregation of ITES and software development services (SDS) for benchmarking under TNMM absent assessee's substantiation for bifurcation of the segments as the assessee failed to indicate number of employees actually rendering SDS and ITES and provide evidence such as worksheets/reports of work done for substantiating revenue bifurcation between 2 segments. Further, there was no separate mention of service fee for ITES or SDS in the invoices issued as well as relevant bifurcation in annual accounts and accordingly rejected assessee's contention that since SDS & ITES were benchmarked separately in the past, no deviation should be allowed in subject year. However, it rejected TPO's approach of benchmarking the transactions by only selecting comparables relating to ITES segment and accordingly remitted the ALP-determination for considering comparables which are rendering both SDS and ITES.
Orange Business Services India Solutions Pvt. Ltd vs. DCIT - TS-88-ITAT-2018(DEL)-TP - ITA No.6570/Del/2016 dated 15.02.2018

222. The Court upheld ITAT's application of 25% RPT filter for comparability analysis and held that the RPT filter is relevant and fits in with the overall scheme of a transfer pricing study. It held that if a particular entity predominantly had transactions with its AE in excess of a certain threshold percentage its profit making capacity may result in a distorted picture and therefore the RPT filter was necessary. Further, it upheld the exclusion of Wipro Ltd owing to its significant brand presence in the market, opining that brand value of an entity has a significant role in its ability to garner profits and negotiate contracts despite the fact that the companies are otherwise similar in terms of services or products they offer. Accordingly, it dismissed Revenue's appeal.
Pr. CIT vs. Oracle (OFSS) BPO Services Pvt. Ltd. - TS-67-HC-2018(DEL)-TP - ITA 124/2018 dated 05.02.201

223. The Court admitted Revenue's appeal challenging the exclusion of E-Infochips as comparable on ground of unavailability of segmental data by framing the following question of law as "*Is the impugned order in error of law in so far as it excludes M/s. E-Infochips Limited from the list of comparables on the ground of unavailability of segmental data, in thecircumstances of the case?"*
Pr.CIT vs. Sapient Consulting Pvt. Ltd - TS-124-HC-2018(DEL)-TP - ITA 261/2018 dated 27.02.2018

224. The Tribunal remanded the TP-issue to the file of AO/TPO since the TPO/DRP rejected assessee's TP study and selected a fresh set of comparable without considering turnover filter as a result of which the TPO/DRP's selection of comparables was not correct. Accordingly, it directed the AO/TPO to re-examine matter and give assessee opportunity of being heard on selection of comparables.

PB Systems (India) Pvt. Ltd v DCIT - [TS-132-ITAT-2018(CHNY)-TP - ITA No.3164/Mds/2016 dated 28.02.2018

225. The Tribunal held that Government undertakings/companies are not suitable comparables for benchmarking of assessee rendering network support services and accordingly directed the AO to verify all the Government undertakings either benefitting from preferential treatment from Government in getting contracts etc. or those that are not driven by profit motive alone and to exclude from the list of comparables.
AT & T Communication Services India Private Limited vs. ACIT - TS-127-ITAT-2018(DEL)-TP - ITA No.1016/Del./2015 dated 15.02.2018

226. The Court dismissed Revenue's appeal on selection of foreign AE as tested party issue absent discussion in CIT(A) / ITAT order on the said issue. It noted that the assessee had used 2 tested parties (Dupont Asia Pacific and Dupont USA) and selected 7 and 20 comparables respectively for benchmarking its transactions, however the TPO rejected the same and applied CUP instead of assessee's TNMM. It observed that even the assessee met with only limited success in its transfer pricing exercise and its most appropriate method was also rejected. Accordingly, it dismissed the appeal holding that the question of law framed did not arise for consideration.
Pr. CIT vs. E.I. Dupont India Pvt Ltd - TS-138-HC-2018(DEL)-TP - ITA 25/2017 dated 13.02.2018

227. Where the assessee sought the exclusion of 5 of its own comparables, the Tribunal observing that nothing precluded the assessee from doing so and that prima facie there was a case in favour of the assessee on facts and in law, remitted the matter to the file of the TPO observing that the matter would require input from the TPO.
Vis-à-vis assessee's claim for economic adjustments (capacity utilisation adjustment, working capital adjustment, custom duty adjustment and cash PLI adjustment), noting that the similar issues were remanded by the Tribunal for the earlier year in assessee's own case with a direction to note that such adjustments were allowed in subsequent AYs but were not considered by the DRP/TPO/AO for the impugned AY, it remanded the issue to the file of AO/TPO for fresh adjudication.
NORD Drive systems Private Limited vs. ACIT - TS-140-ITAT-2018(PUN)-TP dated ITA No.509/PUN/2015 dated 07.02.2018

228. Noting that while selecting comparables the TPO failed to apply the filters uniformly to all the comparables the Tribunal remitted the issue back to the TPO to re-examine the comparables of the assessee as well as those of the TPO by applying the same filters uniformly.
Swiss Re Global Business Solutions India Private Ltd vs. DCIT - TS-161-ITAT-2018(Bang)-TP - IT(TP)A No.2028/Bang/2017dated 28.02.2018

229. The Court admitted Revenue's appeal on question of law viz. *"Did the ITAT fell into error in upsetting the concurrent view of the TPO and the DRP with respect to desegregation of the intra group service transaction for the purpose of ALP determination under Section 92CA of the Income Tax Act, 1961 in the circumstances of the case?".*
CIT vs. Corning SAS- India - TS-184-HC-2018(DEL)-TP - ITA 1074/2017 dated 19.03.2018

230. The Court remitted the issue of comparability of Keynote Corporate Service Ltd and Motilal Oswal Investment Advisors Pvt. Ltd vis-à-vis the assessee engaged in investment advisory service back to the file of the Tribunal. As regards Keynote Corporate Service Ltd, it accepted Revenue's contention that abnormal profits could not be a ground for exclusion of an otherwise functionally comparable company in view of co-ordinate bench ruling in assessee's own case (for earlier years i.e. AY 2006-07). However, it also noted assessee's argument that after High Court ruling (wherein the HC remitted the comparability of Keynote back to the DRP), the Tribunal had held Keynote Corporate Services as functionally incomparable to assessee in the earlier year. Accordingly, it remitted the matter back to Tribunal to consider the findings of the Tribunal in the earlier year and to record its appropriate findings year-wise on the issue of functional similarity. With respect to Motilal Oswal Investment Advisors Pvt. Ltd, the Court noted that the Tribunal had adopted RPT filter only in the case of this company and held that adopting one procedure for only one entity and adopting another for all other entities or

comparables would lead to a distorted picture. Accordingly, it remitted the matter to the Tribunal for consistent application of the filter.

Chryscapital Investment Advisors (India) Pvt Ltd vs DCIT - TS-173-HC-2015(DEL)-TP - ITA 417/2014 dated 27.03.2018

231. The Court held that the mere fact that an entity makes high/extremely high profits/losses does not, ipso facto, lead to its exclusion from the list of comparables for the purposes of determination of ALP. It held that that mere huge profit or huge turnover of a company which otherwise conforms to all stipulations in Rule 10B, ipso facto does not lead to its exclusion. It held that the TPO should first ensure that such differences do not materially affect the price or cost, and then attempt to 'adjust' or 'eliminate the material effects'. Further, it rejected assessee's contention for relying on previous years' data and held that while there could be a wide fluctuation in the profit margins of comparables from year-to-year, this by itself does not justify the need to take into account previous years' profit margins and held that Rule 10B(3) would account for such volatility. It dismissed assessee's reliance on OECD Guidelines, firstly, observing that since India is not an OECD member, the Guidelines would only have persuasive status without legal sanction. Further, it acknowledged that in the present case, both OECD Guidelines and Income-tax Rules were in consonance since both did not prescribe automatic exclusion of entities with extreme financial results, and provide for consideration of multiple year data only for the purposes of factoring in material changes in, inter alia, economic conditions, third party variables, etc. Further, remits comparability of 3 high-profit companies to DRP, with the direction to first conduct fresh enquiry regarding functional similarity and then to carry out analysis under Rule 10B(3) for these companies to determine if there were material differences on account of exceptionally high profits, capable of elimination and only if such differences could not be eliminated, would the company be excluded.

Chryscapital Investment Advisors (India) Pvt Ltd vs DCIT - TS-173-HC-2015(DEL)-TP ITA 417/2014 dated 27.03.2018

232. The Court dismissed Revenue's appeal and upheld Tribunal's deletion of TP-adjustment. It observed that the Tribunal deleted the adjustment on the ground that the TPO had wrongly compared transaction of export of components with net margin of domestic sales of finished goods which was unjustified considering the difference in the nature of customers in the domestic and export market and the fact that the exports were of parts whereas the domestic sales were of finished goods. Noting that both the CIT(A) and the Tribunal, on facts, had held that the comparable adopted by the TPO was incorrect, it held that since the finding of fact was not shown to be perverse the question raised by the Revenue did not give rise to any substantial question of law.

CIT vs. Keihin Fie Pvt. Ltd - TS-189-HC-2018(BOM)-TP - INCOME TAX APPEAL NO. 1176 OF 201 dated 21.03.2018

233. The Tribunal dismissed Revenue's appeal and upheld assessee's segregation approach for benchmarking the purchase of Compound Alcoholic Preparation (CAP) from its AE. The assessee, under Bottled in India Scotch ("BIIS") segment, processed CAP, imported from its AE, into scotch/whiskey and sold it in India while in India Made Foreign Liquor ("IMFL") segment [pertaining to domestic business], IMFL was manufactured from a purified form of spirit/alcohol called the Extra Neutral Alcohol which was manufactured by the assessee in India. The assessee benchmarked the import from its AE by segregating the BIIS segment from its IMFL segment. The TPO clubbed assessee's BIIS and IMFL segments and compared the net profit margin (NPM) of the combined manufacturingoperations of the assessee with those of broadly comparable companies. Observing that the manufacturing of ultimate product, market conditions, price and functions of both segments were completely different and distinct, the Tribunal opined that both the segments of the assessee are totally different and independent after noting that TPO / AO did not scrutinize the differences in both segments. It rejected the Revenue's reference to AS-17 stating it was not applicable for undertaking TP-adjustment and observes that assessee had adopted same accounting method on year-to-year basis and filed segmental accounting on both the segments before the authorities below which was undisputed; Thus, it held that the economic analysis undertaken by the assessee in respect of international transaction pertaining to the purchase of CAP following segmental approach by segregating manufacturing operations into BIIS and IMFL business verticals was in accordance with the relevant Transfer Pricing Regulations.

DCIT vs. Allied Domecq Spirits & Wine India Pvt. Ltd - TS-147-ITAT-2018(DEL)-TP - ITA.No.54/Del./2011 dated 09.03.2018

234. The Tribunal in this case sent back the matter to TPO for reapplication of TP analysis as the assessee had not used data for relevant FY for benchmarking its various international transactions. Further the TPO had also made adjustments to non AE transactions.
Makino India Pvt. Ltd. Vs ACIT Circle 4(1)(2) Bangalore- TS -416-ITAT-2018(Bang) TP- IT(TP) No 3/Bang/2012 dated 20.04.2018

235. The Tribunal remitted TP adjustments on various international transactions of assessee such as receipt of licensing revenue, corporate guarantee, payment for media rights and signage fees. With respect to international license revenue receivable by the assessee from its AE, the Tribunal also noted that the assesse had not applied RPT filter for comparables selection and remitted the issue for fresh consideration with a direction to assessee to furnish fresh set of comparable after applying RPT filter. With respect to transaction of purchase of signage and media advertisement rights, it accepted assessee's request for remand back for selection of fresh set of comparables.
Nimbus Communications Ltd. vs. DCIT - TS-520-ITAT-2018(Mum)-TP - LT.A. No. 1988 / Mum / 2016 dated 21.05.2018

236. The Tribunal held that the assessee engaged in the business of market development, dissemination of product information, research and development activities and providing onsite and back office support services could not be compared with Neeman Medical International Asia Ltd as the company was a consistent loss making company.
Further, it accepted assessee's contention that Pfizer was to be included as a comparable observing that the said company had adequate segmental results and was accepted as a comparable by the DRP in the assessee's own case for the preceding years.
ExxonMobil Company India Private Limited vs. CIT - TS-390-ITAT-2018(Mum)-TP - /I.T.A./3601/Mum/2014 dated 23/05/2018

237. The Tribunal upheld the CIT(A)'s order accepting separate benchmarking of assessee's transactions under Business model 1 - receipt of marketing & support services from AE (choosing foreign AE as tested party) and Business model 2 - assessee's rendering of ITeS to AE (choosing assessee as tested party). It noted that under Business model 1, risks and rewards were with the assessee and AEs [which were remunerated on cost plus basis] were insulated from the risks borne by assessee as an entrepreneur and therefore uph**e**ld CIT(A)'s view that AE was rightly chosen as the tested party being the least complex entity. Vis-à-vis Business model 2, it noted that major risks were borne by WNS UK, which functioned as an entrepreneur and therefore held that the assessee (which was only a captive service provider bearing limited risks) was rightly chosen as the tested party. Observing that the transactions undertaken by assessee were not interlinked as various transactions formed part of different business models adopted by assessee, the Tribunal held that the TPO's approach of aggregating these international transactions and benchmarking the assessee at an entity level was not appropriate since the far profile of the **Indian** assessee was different in both the transactions.
ITO vs. WNS Global Services Pvt. Ltd - TS-474-ITAT-2018(Mum)-TP – ITA No 2318 / Mum / 2009 dated 04.05.2018

238. The Tribunal allowed Revenue's miscellaneous petition against its order and accepted Revenue's submission that while remitting comparability of Denison Hydraulics India for verification of RPT filter, Tribunal had inadvertently mentioned RPT percentage at 25% instead of 15%. Accordingly, finding merit in Revenue's petition, the Tribunal modified its order to reflect RPT percentage at 15% and allowed the miscellaneous petition.
DCIT v British Engines (India) P Ltd - TS-430-ITAT-2018(Bang)-TP – MP 114 / Bang / 2018 dated 14.05.2018

239. Where the TPO had excluded India Japan Lighting Ltd [introduced by TPO himself] as a comparable though assessee had not requested for its exclusion and also rejected assessee's contention for inclusion of 6 more comparables having FAR similar to India Japan Lighting Ltd, on perusal of the

TPO/DRP's order, the Tribunal observed that the assessee's plea for including 6 new comparables was rejected in a summary manner without giving a proper reasoning and therefore held that the comparables had not been properly analysed by the Ld. TPO in light of the submissions of the assessee which had been simply disregarded without any reasoning. Accordingly, it restored the entire issue of the selection of the comparables to the file of the TPO for making a fresh comparability analysis after duly considering the evidences and submissions of the assessee.
Denso India Limited vs. ACIT - TS-456-ITAT-2018(DEL)-TP - ITA No. 4788/Del/2010 dated 31.05.2018

240. In the case of assessee engaged in manufacturing of chemicals, the Tribunal remitted back to the file of AO/TPO, comparability of Calchem Industries (India) Limited as comparable which was rejected due to non-availability of annual report, which was later filed by assessee as additional evidence before the Tribunal.
Imerys NewQuest (India) Pvt Ltd vs DCIT [TS-727-ITAT-2018(PUN)-TP]- ITA No 590/Pun/2015 dated 23.05.2018

241. The Tribunal remitted back to the file of AO/TPO, the issue of TP-adjustment in case of assessee engaged in import and distribution of biomedical diagnostic equipment, where the dispute arose as regards the rejection of comparables selected by the assessee by TPO applying the turnover filter exceeding 1000 crores. The Tribunal took note of the fact that the assessee and the Revenue were not able to demonstrate whether turnover filter was relevant for arriving at the margins in the peculiar line of business that the assessee was engaged in.
Roche Diagnostics India Pvt Ltd vs ACIT Range 8(3)-TS-803-ITAT-2018(Mum)-TP- ITA No 7566/Mum/2012 dated 04.05.2018

242. In the case of an assessee engaged in manufacturing of optical and magnetic storage media, the Tribunal directed the AO to re-examine issue of selection of assessee's foreign AE [GDM Dubai] as tested party for AY 2005-06 and 2006-07 in the event the assessee was able to provide complete financials of GDM Dubai along with complete financials of relevant comparables required to benchmark the international transaction. The Tribunal also directed the TPO to verify if the AE was the least complex entity requiring minimum adjustment and for which comparables are available in public domain. It rejected assessee's submission regarding its inability to obtain the required financials of tested party. The Tribunal opined that in case the assessee was not able to provide the financials of its AE as mentioned, it shall be treated as tested party and TPO shall consider the other argument advanced by assessee that it cannot be expected to earn profit more than the combined profit of assessee and AE which was accepted by the Tribunal for earlier year.
Moser Baer India Ltd. vs. DCIT [TS-334-ITAT-2018(DEL)-TP] ITA Nos.883,894/Del/2008 and 988, 1139 and 4484/Del/2013 dated 01.05.2018

243. With regard to assessee engaged in investment advisory services, the Tribunal accepted the assessee's contention by relying on the ruling of Goldstar Jewellery that reimbursements not affecting profitability should be excluded for RPT transactions and hence directed the AO/TPO to recompute the RPT filter for Future Capital which was previously excluded for the reason that its RPT filter exceeded 25%.
Apax Partners India Advisers Pvt Ltd [TS-832-ITAT-2018(Mum)-TP] ITA No.1682/Mum/2014 and 1738/Mum/2014 dated 08.06.2018

244. The Tribunal relying on the Bombay HC ruling in Pentair Water India held that turnover filter is an important filter to select comparables for assessee engaged in the manufacture of bulk drugs. Further, observed that though there were conflicting judgments on the aspect of application of turnover filter, the Revenue failed to bring to its attention any judgment of jurisdictional HC which prohibited application of turnover filter. The Tribunal affirmed the turnover filter criteria applied by the CIT(A) which held that since the assessee has a turnover of 15.84 crores, turnover of companies exceeding Rs.30 crores could not be considered to be comparable. On the basis of filter set by the CIT(A), the Tribunal included Welcure Drugs which was bulk manufacturer of drugs as a comparable and deleted the adjustment since no adjustment would be required as per the provisions of section 92(3) of the Act after the inclusion.

Schutz Dishman Biotech P Ltd [TS-472-ITAT-2018(Ahd)-TP] ITA No.1229/Ahd/2012 and 954/Ahd/2012 dated 05 June 2018

245. The Tribunal held that the assessee engaged in the business of manufacturing of power conditioning systems for solid oxide fuel cell using power electronics technology to its AE could not be compared to Acropetal Technologies as its average operating margin (57.66%) was significantly high vis-à-vis other comparables.
Bloom Energy India Pvt. Ltd v DCIT [TS-626-ITAT-2018(CHNY)-TP] ITA No.2857/Chny/2017 dated 20.06.2018

246. The Tribunal held that the assessee engaged in manufacture of material handing equipments could not be compared to WMI Cranes Ltd. as it had undergone extraordinary event of demerger during the AY 2011-12
Further, the Tribunal included Brady & Morris Engineering Company Ltd. observing that increase in profits from □ 28.61 crores to □ 30.24 crores i.e. turnover shown in the last year as against the turnover of this year, cannot be said to be exceptional.
Terex India Pvt. Ltd (as successor of Demag Cranes and Components (India) Pvt. Ltd) vs. DCIT [TS-477-ITAT-2018(PUN)-TP] ITA No.583/Pun/2016 dated 06.06.2018

247. The Tribunal held that the assessee engaged in the business of trading in Uninterrupted Power Supply (UPS)/ Invertors with its AE could not be compared to Su-Kam Power Systems Ltd. (Rs.680.41 crores) and Swelect Energy Systems Ltd (turnover of Rs.534.64 crores) since it failed the turnover filter criteria applied by the TPO of more than one crore and less than 200 crores.
The Tribunal further noted that as a result of the two comparables being excluded the PLI applying the Berry ratio of comparable left would be within the ±5% margin and there would be no need for any further adjustments.
Socomec Innovative Power Solutions Private Ltd [TS-428-ITAT-2018(CHNY)-TP] ITA No.848/Chny/2018

248. The Tribunal set aside TPO's application of 75% export revenue filter which was neither used in the past or subsequent years and opined that rule of consistency demands uniform filter to be applied for transactions on year to year basis unless there is a material change in facts.
Tasty Bite Eatables Limited vs DCIT [TS-730-ITAT-2018(PUN)-TP] ITA No.337/Pun/2014 dated 11.06.2018

d. ***Computation / Adjustments***

Capacity Utilization Adjustment

249. The Tribunal upheld the assessee's claim for grant of capacity under-utilization adjustment in manufacturing segment and explained the step by step mechanism for computing capacity under-utilization adjustment viz. - (I) ascertain the percentage of capacity utilization vis-a-vis the installed capacity for assessee and comparables, (ii) give effect (positive or negative) to the difference in the percentage of capacity utilizations of the assessee vis-a -vis comparables, one by one, in the operating profit of comparables by adjusting their respective operating costs. Noting that the operating costs could be variable, semi-variable and fixed costs, it held that adjustment was required only in respect of fixed cost and fixed portion of semi-variable cost. Noting that complete financials of comparables were not on records it remitted the issue of computation of adjustment for under-utilization of capacity to AO/TPO with a direction that adjustment should be computed with respect to installed capacity and not licensed capacity.
Daikin Airconditioning India Pvt. Ltd. v DCIT - TS-176-ITAT-2018(DEL)-TP - ITA Nos.2536/Del/2014

250. The Tribunal allowed the in principle, capacity adjustment claim of assessee [engaged in business of manufacture and trade of in-line helical gear boxes, electric motors, shaft mounted gear boxes and

related sub assembly and spare parts that from parts of the Machine Tools and Component industry in India] observing that the assessee's business had taken a hit mainly on account of change in the business conditions in respect of wind mills on account of withdrawal of the accelerated depreciation benefit and the withdrawal of the generation based incentive under the wind power sector (amendments made in 2012). It noted that consequent to such changes the assessee's manufacturing capacity utilization fell to 47% as against national average of 75% (as indicated in RBI's report) during the year under review and therefore held that the assessee was entitled to have the benefit of capacity utilization adjustments. However, observing that capacity utilization data was not available, it granted liberty to assessee to obtain variable data and prove its claim before TPO.

Bonfigioli Transmissions Private Limited vs. DCIT - TS-388-ITAT-2018(CHNY)-TP - /I.T.A.No.2977/CHNY/2017 dated 14-05-2018

251. The Tribunal relied on the coordinate bench ruling in assessee's own case for AY 2008-09 and allowed the adjustment towards rent and maintenance of unutilized area of premises. It directed the TPO to work out the requisite adjustment after giving assessee an opportunity of being heard. The assessee had taken on lease a premises with 6.5 floors out of which only 4.5 floors were being utilized during relevant year while balance remained vacant in anticipation of future growth of business. The Tribunal noted that DRP had accepted that approximately 25% of the assessee's premises were lying vacant/idle and co-ordinate bench in assessee's own case for AYs 2004-05 and 2006-07 had allowed capacity under-utilization adjustment considering assessee was bearing substantial risk of idle capacity.

C.R.M. Services India Pvt. Ltd vs. DCIT [TS-343-ITAT-2018(DEL)-TP] ITA No.5930/Del/2012 and 1630/Del/2014 dated 14.05.2018

252. The Tribunal remitted the issue of grant of adjustment for unutilized capacity cost to AO for AY 2007-08, in respect of assessee's international transactions relating to manufacture of crop protection products for verification of material facts relevant to tested party i.e. assessee as well as to the comparables . The Tribunal had noted that the coordinate bench in assessee's own case for the previous year had remitted the issue of capacity under-utilization adjustment to the TPO while determining ALP of purchase of raw material from AE under TNMM. Further, on Revenue's appeal against the Tribunal's order for previous year, the Court had upheld the remand but kept the question open to be decided on merits whether the adjustment of unutilized capacity cost could be worked out by excluding the unused capacity cost and whether such unutilized capacity cost should be excluded/included in the case of comparables also.

DCIT vs. E.I. Dupont India Private Ltd [TS-354-ITAT-2018(DEL)-TP] ITA Nos.5043&4774/Del/2014 dated 10.05.2018

253. The Court dismissed Revenue's appeal and upheld the Tribunal's order as regards the inclusion of comparable Thirumalai Chemicals Ltd. was concerned. Noting that the Tribunal on facts had held that the assessee and the said company dealt in specialty chemicals and that the capacity utilization of assessee (working at 46% of capacility utilization) and said comparable (working at 50% of capacity utilization) was approximately the same due to an economic downturn, the Court held that on facts the view taken by the Tribunal was a reasonable view.

Pr. CIT vs. Petro Araldite Pvt. Ltd [TS-446-HC-2018 (Bom)] ITA No.368 of 2015 dated 06.06.2018

254. The Court dismissed Revenue's appeal and upheld Tribunal's invocation of Rule 10B(1)(e) (iii) for allowing capacity utilization adjustment to the assessee who was engaged in the business of manufacturing and dealing in basic liquid and solid resins including formulations. The Court noted that the Tribunal had upheld assessee's capacity utilization claim after illustrating how higher capacity utilization would lead to higher profitability as fixed costs would be spread over a larger number of units manufactured and considering that capacity utilization materially affected the profit margin, upheld thus the invocation of rule is valid.

Further, the Court also stated that it was a self-evident position that all aspects/differences between the international transactions and the comparable uncontrolled transactions materially affecting the net profit margin have to be taken into account so as to have the fair comparison while determining the ALP.

The Court also upheld the Tribunal order restricting TP-adjustment only to assessee's international transaction, relying on various precedents including co-ordinate bench ruling in assessee's own case.
CIT -8 vs Petro Araldite P Ltd.- TS-317-HC-2018(BOM)-TP- ITA No 1540 of 2014 dated 26.04.2018

Profit Level Indicator

255. The Tribunal relying on the decisions of the Apex Court in Woodward Governor and Ameriprise India rejected the Revenue's treatment of foreign exchange fluctuation income/loss as non-operating cost while computing assessee & comparables margin.
ST Microelectronics Pvt. Ltd vs. Addl. CIT - TS-48-ITAT-2018(DEL)-TP - ITA No. 4396/Del/2017 dated ITA No. 4396/Del/2017

256. The Court upheld the Tribunal's consideration of forex gain/ losses as operating for assessee & comparables while determining ALP for AY 2010-11 and its rejection of the applicability of Safe Harbour Rules for subject AY 2010-11 (which provided that forex gain/ losses was to be treated as non-operating in nature).
Pr. CIT vs. Rolls Royce India Pvt. Ltd - TS-1066-HC-2017(DEL)-TP - ITA 419/2016 dated 23.10.2017

257. The Tribunal held that foreign exchange gains were to be considered as operating income as it pertained to debtors and thus were revenue items. It rejected Revenue's reliance on Safe Harbour Rules in this respect, observing that Safe Harbour Rules are applicable only to the assessees who have opted for them.
Effective Teleservices Pvt Ltd vs. ACIT - TS-75-ITAT-2018(Ahd)-TP - ITA. No: 2411/AHD/2014 dated 16 -01-2018

258. The Tribunal set aside TPO's order and directed him to consider forex fluctuation gains as operating income for the purpose of PLI computation for AY 2012-13 since the forex fluctuation gains were earned in normal course of business and derived on account of trade sales made during the year. It rejected Revenue's reliance on Safe Harbour Rules (Rule 10TA) and relying on the decision of the Delhi HC ruling in BC Management Services held that Safe Harbour Rules came into force in 2013 and therefore could not apply to AY 2011-12.
Digital Group Infotech Pvt. Ltd. vs. DCIT - TS-185-ITAT-2018(PUN)-TP - ITA No.475/PUN/2017 dated 28.02.2018

259. The Tribunal rejected assessee's plea of adjusting forex loss against interest income and upheld TPO's consideration of considering forex loss as business loss and directed that forex gain/loss should be part of operating income/expense while computing assessee's margin.
Keystroke Pro India P Ltd vs ITO Ward 14(3) – TS-333-ITAT-2018(DEL)-TP ITA No 537/Del/2015 dated 10.04.2018

260. Relying on the Delhi High Court ruling of Ameriprise India (P.) Ltd, the Tribunal held that foreign exchange gains on sale proceeds in respect of its international transaction should be treated as operating in nature.
SAP Labs India Pvt Ltd vs Addl CIT [TS-298-ITAT-2018(Bang)-TP] IT(TP)Appeal Nos.981 and 1070 of 2016 dated 06.04.2018

261. Relying on the decision of the Tribunal in Haworth (India) P Ltd [TS-940-ITAT-2017(PUN)-TP], the Tribunal held that the write back of provision for doubtful debts was to be treated as operating income for computing PLI. Further, relying on the decision of the Tribunal in Approva System Pvt. Ltd [TS-23-ITAT-2015(PUN)-TP], it held that foreign exchange fluctuation gains were to be treated as operating income. It rejected Revenue's reliance on the Safe Harbor Rules to claim these items as non-operating in nature, follows Delhi HC ruling in Cashedge India Pvt Ltd and Rolls Royce India Pvt Ltd wherein it was held that safe harbor rules would not apply retrospectively prior to AY 2013-14.
Imersys NewQuest (India) Pvt Ltd vs DCIT - TS-727-ITAT-2018(PUN)-TP - ITA No. 590/PUN/2015 – dated 23.05.2018

262. The Tribunal dismissed the assessee's appeal praying for treatment of foreign exchange loss as non-operating in nature and followed the assessee's own ruling for AY 2012-13 wherein it was held that forex loss was operating in nature.
Infac India Pvt Limited (TS-387-ITAT-2018(CHNY)-TP) - I.T.A. No.3195/CHNY/2017 dated 03-05-2018

263. The Tribunal restored the issue of consideration of foreign exchange gain as operating income to the file of TPO. The Tribunal noted that the coordinate bench in the assessee's own case for AY 2010-11 and AY 2012-13 had held that forex gains should be treated as operating income since the same related to the business of the assessee.
Rolls Royce India Pvt. Ltd vs. DCIT [TS-367-ITAT-2018(DEL)-TP] ITA No.1042/Del/2014 dated 02.05.2018

264. The Tribunal directed TPO to treat forex gain/ loss as operating in nature considering that it was a part and parcel of trading transactions with AE and followed Ramgreeen HC ruling and DRP's approach of treating the same as operating item for subsequent AY.
M/s. Labvantage Solutions Pvt Ltd vs ACIT Circle 2(1)- TS-405-ITAT-2018(Mum)-TP - ITA No 927 & 2400/Kol/2017 dated 11.05.2018

265. The Tribunal held that the foreign exchange gain and loss was to be treated as an operating item by relying upon the co-ordinate bench ruling in assessee's own case for AY 2009-10 wherein it was held that the fluctuations pertaining to forward contract with respect to purchase of materials was revenue in nature and hedging was a risk mitigating exercise to reduce the cost of imports.
Degania Medical Devices Pvt Ltd v Dy.CIT [TS-523-ITAT-2018(DEL)-TP] ITA No.1254/Del/2015 dated 27.06.2018

266. The Tribunal accepted the assessee's stand that treatment of forex fluctuation gain/loss should be treated as non-operating item following the rulings of co-ordinate bench in BNY Mellon International Operations and DHL Express wherein it was held that forex losses are non-operating since it had no nexus with the main operations of the assessee.
Tasty Bite Eatables Limited vs DCIT [TS-730-ITAT-2018(PUN)-TP] ITA No.337/Pun/2014 dated 11.06.2018

267. The Court admitted the assessee's appeal on the question whether the Tribunal erred in concluding that reimbursement of assessee's expenses by AE could form part of the receipts as well as cost base of the marketing support services segment while determining operating profitability of such segment.
Pernod Ricard India Pvt. Ltd vs. CIT - TS-1082-HC-2017(DEL)-TP - ITA 1177/2017 dated 21.12.2017

268. The Court admitted the assessee's appeal on the following question of law " *Did the Tribunal fall into error in upholding the allocation of expenses as computed by the TPO in the Marketing Support Services segment in complete ignorance of the fact that only one employee was devoted full time to such activity and the other employee spent only a meagre of his time in respect of such activity?"*
Pernod Ricard India Pvt. Ltd vs. CIT - TS-28-HC-2018(DEL)-TP - ITA 1177/2017 dated 09.01.2018

269. Where the AO failed to exclude depreciation from the operating margin of the assessee as well as the comparables as per the directions of the DRP, the Tribunal refused to adjudicate on the other grounds raised by the assessee (i.e. on incorrect selection of comparables) as the AO had failed to follow the directions of the DRP. Accordingly, it remitted the matter to the AO / TPO to calculate the TP adjustment excluding depreciation from the computation of operating margin.
GSS Infotech Ltd. vs. DCIT - TS-1086-ITAT-2017(HYD)-TP - ITA No. 267/Hyd/2014 & 329/Hyd/2016 & ITA No. 602/Hyd/2017 dated 30-11-2017

270. The Tribunal held that while determining the PLI of comparables, cash profits i.e. profits prior to depreciation should be taken by relying on the coordinate bench decision in ICON Clinical Research

wherein it was held that profit before depreciation should be considered while computing PLI on account of higher rate of depreciation charged by the company vis-à-vis comparables which followed Companies Act. It accepted assessee's contention that cash profits should be adopted for computing PLI of comparables as the method of depreciation adopted by various comparables was variable.
Bonfigioli Transmissions Private Limited vs. DCIT [TS-388-ITAT-2018(CHNY)-TP] ITA No.2977/Chny/2017 dated 14.05.2018

271. The Court admitted the Revenue's appeal on the Tribunal's exclusion of depreciation from operating expenses while computing the PLI on account of difference in method of charging depreciation (SLM basis) by the assessee vis-à-vis comparable companies (WDV) and difference in asset turnover ratio between the assessee (ranging from 17%-29%) vis-à-vis comparable companies (71%-177%) **.**
Pr.CIT vs. Sabic Research and Technology Pvt. Ltd. - TS-1026-HC-2018(Guj)-TP – Tax Appeal No. 243 of 2018 dated 01.05.2018

272. The Tribunal directed the AO/TPO to consider margin after excluding depreciation in case of assessee and comparables. The Tribunal followed the DRP's direction in assessee's own case for AY 2012-13 which had relied upon the HC ruling in BA Continuum wherein it was held that PBDIT to Total Cost should be taken as PLI on account of the difference in rate of depreciation charged by the comparables and the assessee .
Indigra Exports Pvt Ltd v DCIT [TS-509-ITAT-2018(Bang)-TP] IT (TP)A No.488/Bang/2016 dated 22.06.2018

273. The Tribunal accepted assessee's plea for inclusion of Rs. 37.49cr representing write back in connection with revenue items as part of operating profit for AY 2007-08 but treated write back in connection with purchase of capital goods made in earlier years as non-operating income. It dismissed the TPO's contention that the write back amount of Rs.37.84cr was non-operating income as it was a mere book entry and not connected with assessee's business operations. Relying on the co-ordinate bench ruling in Sony India and Gillete Diversified Operations (which were both accepted by Revenue absent appeal on this ground before HC) it held that if the reversal of provision / write back was on account of revenue in nature, it was to be included as part of operating income and if the liabilities originally created were on account of capital items then their write back could not be considered to be a normal instance of business and hence to be excluded as operating income. Considering the assessee's argument that if such write back amount was included as operating income, the operating margin would be 42.94% as against 14.36% of comparables requiring no TP-adjustment, it remitted the matter back to TPO for the limited purpose of verifying this contention.
Suessen Asia Private Limited (merged with Rieter India Private Limited) vs. ACIT - TS-1055-ITAT-2017(PUN)-TP - ITA No.1629/PUN/2011 dated 20.10.2017

274. The Tribunal rejected assessee's plea of considering provisions written back as operating income, noting that no specific ground had been raised in respect of the issue. However, the Tribunal stated that the issue of write back related to business taken over by the assessee and therefore any profit arising out of business taken by the assessee constituted capital receipt and cannot form part of the operating income for calculating operating margin of the assessee
Abbott Medical Optics Pvt. Ltd. v DCIT (formerly Advanced Medical Optics India Pvt. Ltd) [TS-517-ITAT-2018(Bang)-TP] IT(TP) A No.08/Bang/2014 dated 22.06.2018

275. The Tribunal upheld TPO/DRP's consideration of provision for doubtful debts as non-operating item while computing profit margins of comparable and stated that provision for doubtful debts cannot be considered for reduction from the profit as it impacts the profit percentage (which is worked out by dividing such profit of the tested party/comparable by its turnover) since only the numerator would be reduced & not the denominator i.e. turnover would not be reduced because turnover is considered in earlier year and not in the present year and thus opined that provision for doubtful debts has to be ignored and added back in the profit of the tested party or of the comparable
Separately, it remitted comparability of 4 companies namely Persistent Systems Ltd, L&T Infotech Ltd, Tech Mahindra Ltd CG- VAK Software & Exports which were excluded by applying 10 times turnover range back to AO/TPO to be decided considering Chryscapital HC ruling (wherein it was held that huge

profit or huge turnover ipso facto did not lead to the exclusion of a comparable and the TPO, first, should be satisfied that such differences did not materially affect the price or cost and if it did, an attempt should be made for making reasonable adjustment to eliminate the material effect of such differences.)

M/s. Marvell India Pvt Ltd vs ACIT Circle 4(1)(2)- TS-253-ITAT-2018(Bang)-TP- ITA No 2173/Bang/2017 dated 06.04.2018

276. The Tribunal relying on the co-ordinate bench ruling in case of Kenexa Technologies held that operating expenses of comparable company should include bad debts and provision for bad debts and directed AO/TPO to re-compute the margins of comparable companies.

Hyundai Motor India Engg Pvt Ltd [TS-503-ITAT-2018(HYD)-TP] ITA No.87/Hyd/2017 dated 08.06.2018

277. The Tribunal remanded the issue of computation of operating profit margins of the comparables back to the file of AO/TPO to be adjudicated after considering the submissions and the relevant material furnished by the assessee to contend that the TPO had considered non operating expenses as operating and hence the operating cost base was incorrect. The DRP had not given any finding on the issue.

GE India Business Services Pvt. Ltd. vs. DCIT [TS-381-ITAT-2018(DEL)-TP] ITA No.1423/Del/2014 dated 18.05.2018

278. The Tribunal upheld CIT(A)'s order vis-à-vis treatment of export benefits received for R&D services as part of operating income considering its direct and intimate connection with export of R&D services transaction. Further, the Tribunal also observed that the said benefit arose from usual activities carried on by the assessee and were part & parcel of the same transaction and therefore, formed part of operating income only.

ACIT vs. Colgate Palmolive (India) Limited [TS-319-ITAT-2018(Mum)-TP] ITA No.2778/Mum/2011 &CO No.126/Mum/2011 dated 04.05.2018

279. The Court dismissed Revenue's appeal and upheld the Tribunal's order accepting assessee's treatment of deferred revenue expenditure (written off over a period of five years) incurred before the start of commercial production as non-operating noting that the Tribunal had rightly observed that deferred revenue expenditure was not in the nature of research and development and not recovered from AE after examining the the agreement with its AE where research and development cost could only be reimbursed by the AE. The Tribunal had also observed that the assessee had suo-moto disallowed the deferred revenue expenditure and it relied on the coordinate bench ruling in Pole to Win wherein it had been held that expenses disallowed while computing taxable income are excluded from operating margin. Thus, the Court rejected the plea of Revenue to treat the deferred revenue expenditure as operating.

Pr.CIT vs. Sabic Research and Technology Pvt. Ltd. - TS-1026-HC-2018(Guj)-TP – Tax Appeal No. 243 of 2018 dated 01.05.2018

280. The assessee made a provision on account of change in stock valuation policy and claimed it to be a non-operating expense on the ground that it was a one-time extraordinary event. The Tribunal noted that the adjustment was made while arriving at 'Stock valuation of raw material / finished goods/work-in-progress at year end and since there was a discrepancy in the corporate tax treatment of this provision, remitted the matter back to the file of Ld. AO / TPO for appreciation of the factual matrix and re-adjudicate the same and directed the assessee to demonstrate / substantiate his stand in this regard. However, on principles, it held that since the stock valuation was done in accordance with policy adopted by the management, the same constituted part and parcel of assessee's trading operations.

Vishay Semiconductor India Private Limited vs ACIT - TS-478-ITAT-2018(Mum)-TP - I.T.A. No.7503/Mum/2012 dated 04/05/2018

281. The Tribunal dismissed the assessee's contention that outsourcing cost incurred by it was non-operating in nature and held that the outsourcing cost was directly related to the software development and services. Noting that the assessee had merely developed a part of the software through outsourcing

instead of in-house development and the outsourced work was incorporated in the work of the assessee in the final software prior to providing the same to the AE it held that the TPO had correctly considered the outsourcing cost as operating expense of the assessee

Lionbridge Technologies Private Limited vs. ACIT - TS-438-ITAT-2018(Mum)-TP - I.T.A. No. 7304/Mum/2017 dated 21.05.2018

282. The Tribunal directed the TPO to verify margins of three comparables viz.Liners India, India Nippon Electricals and Lucas-TVS on merits since expenses (i.e. sundry expenses written back and excess provision credited back in the case of Liners, -Bank charges in the case of India Nippon Electricals and Bill discounting and cash discount in the case of Lucas TVS) had erroneously been considered as non-operating. Further, with respect to Liners India, it considered assessee's contention that TPO had not considered working capital adjustment and that the difference between assessee and the TPO's margin was due to computation error. It thus directed the TPO to verify and re-compute the same.

The Tribunal directed the TPO to treat the provision of doubtful debts as non-operating as provided in Safe Harbour Rules for AY 2009-10. The Tribunal noted that DRP while dealing with the foreign exchange fluctuation losses in the assessee's own case had followed Safe Harbour Rules. The Tribunal observed that since AO did not object to the said direction of the DRP, the claim of the assessee with respect to doubtful debts following the similar rules could not be objected to.

Federal Mogul Ignition Products India Ltd (formerly known as Federal Mogul Automotive Products India Pvt Ltd) vs. DCIT [TS-394-ITAT-2018(DEL)-TP] ITA No.2691/Del/2014 dated 14.05.2018

283. The Tribunal directed the AO/TPO to calculate the margins of the comparables after treating the bank charges as operating expenses and remitted the issue back. The Tribunal also observed that the DRP had given clear directions to the TPO that the assessee's submissions ought to be considered yet the AO has failed to consider the same.

Efacec Switchgear India Pvt Ltd vs DCIT [TS-830-ITAT-2018(DEL) TP] ITA No.7817/Del/2014 dated 13.06.2018

284. In case of an assessee engaged in providing to its AE engineering and design services including offshore construction and drilling in oil and gas sector, the Tribunal deleted TP-adjustment and noted that for working out assessee's PLI, using TNMM, the TPO had allocated operating cost considering man hours committed for AE (81,962 hrs) instead of man-hours actually utilized for AE (8,695 hrs) and accordingly, arrived at TP adjustment. The Tribunal accepted assessee's contention that man-hours actually utilized should be considered as allocation key and not man-hours committed to AE and held that different yardsticks cannot be adopted for cost allocation to AE and non-AE segment. The Tribunal observed that man-hours actually utilized for AE was only 2% of total man-hours utilized and thus, applying the same for cost allocation purpose, concluded that the assessee's transaction would be at ALP.

M/s Triune Energy Services Pvt. Ltd. Vs DCIT Circle 25(2), New Delhi- TS-424-ITAT-2018(DEL)-TP- ITA No. 1744/Del/2015 dated 27.04.2018

285. The Tribunal upheld assessee's approach of benchmarking the international transaction of export to AE by using external comparables with net profit to sales as PLI as against TPO's approach of adopting internal comparables in the form of domestic sales with net profit to cost as PLI, relying on the Tribunal's order in the assessee's own case for previous year wherein it was held that while applying TNMM on aggregate basis, since various transactions are interlinked, comparison had to be made with uncontrolled transactions.

It further held that procurement services were to be aggregated with manufacturing for the purpose of benchmarking after relying upon Delhi HC ruling in Sony Ericsson case and Tribunal's ruling in assessee's own case for previous AY. Further, the Tribunal held that the benefit of 5% varaitaion would not be available if the variation did not exceed the tolerance band.

Cummins India Ltd-TS-805-ITAT-2018(PUN)-TP ITA No. 309/Pun/2014 dated 15.05.2018

286. The Tribunal remitted the matter back to the Assessing Officer to consider the assessee's claim of adopting the PLI of net margin/operating revenue. The assessee engaged in the business of supporting services had used the services of its AE vis-à-vis marketing support services. The TPO had rejected the

assessee's method of computing PLI i.e. operating profit/ total cost and was of the view that in case of operating profit of marketing support service, the PLI should be net margin divided by marketing cost. The Tribunal rejected the contention of the TPO on the ground that in the instant case the ALP of the marketing costs had to be determined and hence could not be considered as a denominator.
First Source Solutions Ltd v/s. ACIT [TS-423-ITAT-2018 (Mum)] ITA No.3094/Mum/2014 dated 01.06.2018

287. The Tribunal dismissed Revenue's appeal and upheld the DRP's order of adjustment to PLI of comparables on account of higher cost of import duty on materials noting that co-ordinate bench in assessee's own case in earlier years had remitted the issue in light of the coordinate bench decision of Skoda auto India to examine the claim of the assessee vis-à-vis higher import cost incurred by it compared to the comparables and eliminate the difference which was materially likely to affect the profit in open market in terms of Rule 10B(3).
DCIT v Terex India Pvt. Ltd [as successor of Demag Cranes and Components (India) Pvt. Ltd] [TS-477-ITAT-2018(PUN)-TP] ITA No.552 & 583/Pun/2016 dated 06.06.2018

288. The Tribunal upheld CIT(A)'s allowance of adjustment of expenses on recall of products for AY 2005-06 which failed quality check conducted by AE, accepting that it was extraordinary event leading to abnormal cost. It further observed that TPO had allowed adjustment for expenses incurred by customer and reimbursed by assessee, however CIT(A) had rightly enhanced adjustment to cover expenses relating to goods recalled and lying in factory.
However, the Tribunal reversed the CIT(A)'s direction to grant adjustment of Rs. 10.73 Cr towards higher cost incurred on material procured from AE which was supplied to customer at lesser price. It held that merely because the assessee had imported a new product from its sister concern for onward supply and subsequently, the prices stabilized, it did not make the cost as extraordinary. Further, it held that it was on account of increase in the cost of production which is in the normal course of business.
Further it remanded back the issue of adjustment on account of valuation of the inventory of 'Unicorn' products (where realizable value was less than the cost) allowed by CIT(A) while noting that risk of diminution in value of inventory was inherent in business. The Tribunal held that any claim to treat expenditure as extra-ordinary and not arising in normal course of business needs to be demonstrated with strict evidence.
Munjal Showa Ltd [TS-345-ITAT-2018(DEL)-TP] ITA No.3296/Del/2013 dated 14.05.2018

289. The Tribunal remitted TP-issue for fresh consideration in case of an assessee engaged in Jewellery business and rejected TPO's comparison of PLI of MD Overseas Ltd (comparable) [-1.14%] with the PLI of assessee's non-AE segment [6.36%] to arrive at adjusted margin of Non-AE segment at 7.5% [6.36%+1.14%]. The Tribunal remitted the issue to the file of the AO to refer the matter afresh to the TPO for further TP study.
Joy Alukkas vs ACIT Corporate Circle 1(2)-TS-374-ITAT-2018(COCH)-TP- ITA No 190/Coch/2015 dated 10.04.2018

Restrict adjustment to AE transactions

290. The Tribunal rejected TPO's application of entity level approach for benchmarking assessee's international transactions for AY 2009-10 and following the ruling of the co-ordinate bench in the assessee's own case for the earlier year (ITA/7868/M/2010) which was upheld by the High Court (ITA No.1873 of 2013) held that TP-adjustment should be restricted to international transactions.
Hindustan Unilever Limited v Addl. CIT - TS-21-ITAT-2018(Mum)-TP - I.T.A./1321/Mum/2014 dated 05/01/2018

291. The Tribunal remitted the computation of TP-adjustment on representation services rendered by the assessee to its AE to the file of the TPO for fresh consideration noting that while computing the TP adjustment, the TPO had included the non-AE transactions as well. Observing that the TPO failed to take into consideration the segmental results of the assessee, the Tribunal directed the TPO to examine the same and compute ALP accordingly.

Messe Dusseldorf India Pvt Ltd vs. DCIT - TS-33-ITAT-2018(DEL)-TP - ITA No.5059/Del./2010 dated 04.01.2018

292. The Tribunal ruled against Revenue's consideration of entity level margin under TNMM to determine ALP of its international transactions of providing software development services despite presentation of segmental results (albeit unaudited) by assessee. It noted that while TPO had complete opportunity to examine the segmental results, he instead simply rejected the segmental result by citing reason that transaction with non-AE is minuscule. It placed reliance on the decisions of Lummus Technology as well as Honeywell Electrical (which in turn relied on 3i Infotec ruling) wherein it was held that segmental results could not be rejected on the ground that the same were not audited and TPO/DRP was required to examine the same if the same were maintained in the ordinary course of business. It held that only international transactions with AEs were to be adjusted for ALP adjustment since non-AE transactions operate on a different model. Accordingly, it remanded the matter to the TPO for fresh adjudication taking into account the assessee's segments.
CSR Technology (India) Pvt. Ltd. vs. ACIT - TS-1071-ITAT-2017(DEL)-TP - ITA No.1895/Del./2017 dated 14.12.2017

293. The Tribunal reversed the DRP order wherein the DRP made entity level TP-adjustment and held that rules that TP-adjustment has to be made only in respect of transactions with AE after comparing the transaction made by similarly placed companies in uncontrolled transaction with non-AEs. Thus, it set aside DRP's order and remitted the matter back to AO.
Yongsan Automotive India Pvt. Ltd. vs. ACIT - TS-1046-ITAT-2017(CHNY)-TP - /ITA No.357/Mds/2017 dated 16.11.2017

294. Where the TPO made a TP-adjustment by considering total costs incurred by assessee in respect of transactions with AEs and non-AEs, the Tribunal held that under TNMM it was not permissible to make transfer pricing adjustment by applying the average operating profit margin of the comparables, on the assessee's universal transactions entered into with both the AEs and non-AEs. It held that the entire exercise under Chapter-X of the Act is confined to computing total income of the assessee from international transactions having regard to the arm's length price and there was no scope for computing income from non-international transactions also having regard to the ALP. Accordingly, it remitted the matter back to AO/TPO for deciding the issue afresh;
Syniverse Technologies Services (India) Pvt. Ltd. vs. ACIT - TS-169-ITAT-2018(DEL)-TP - ITA No.500/Del/2018 dated 13.03.2018

295. The Tribunal dismissed Revenue's appeal and restricted TP Adjustment only to assessee's international transactions, as against TPO's computation of assessee's PLI on entire sales, by relying on the HC ruling in case of Thyssen Krupp Industries and upheld the CIT(A) order.
ACIT Circle-1 nashik vs M/s. Haldex India Ltd.- TS-357-ITAT-2018(PUN)-TP- ITA No 1731/PUN/2015 dated 25.04.2018

296. The Court dismissed Revenue's appeal and upheld restriction of TP adjustment only to assessee's International transactions. Further, the Court upheld Rajasthan Udyog &Tools Ltd & HITCO Tools as comparable on the ground that the Tribunal rendered a finding of fact and the Department had not attempted to show that the finding was perverse and/or arbitrary and thus no question of law arose.
PCIT-5 vs Sandvik Asia Pvt Ltd-TS-315-HC-2018(BOM)-TP- ITA no 1088 of 2015 dated 26.04.2018

297. The Tribunal upheld CIT(A)'s order and directed AO/TPO to re-compute TP adjustment with regard to the international transactions only and to exclude third parties.
DCIT 8(3) Mumbai vs Tara Jewels-TS-309-ITAT-2018(Mum)-TP- ITA no 1385/Mum/2014 dated 12.04.2018

298. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s order accepting that the adjustment should be made vis-à-vis AE transaction only. It relied on the Bom HC ruling of Tara Jewel Exports Ltd., ThyssenKrup and Goldstar Jewellery Design

SAP Labs India Pvt Ltd vs Addl CIT [TS-298-ITAT-2018(Bang)-TP] CO No.41 (Bang) of 2016 dated 06.04.2018

299. The Court dismissed Revenue's appeal and upheld the Tribunal's order where**in** the AO/TPO was directed to benchmark only the transactions only with AE and not at the entity level.
Pr. CIT vs. Petro Araldite Pvt. Ltd [TS-446-HC-2018 (Bom)] ITA No.368 of 2015 dated 06.06.2018

300. The Tribunal relying upon the coordinate bench in Demag Cranes & Components directed the AO/TPO to restrict TP-adjustment only to international transactions with the AE's.
Terex India Pvt. Ltd (as successor of Demag Cranes and Components (India) Pvt. Ltd) vs. DCIT [TS-477-ITAT-2018(PUN)-TP] ITA No.583/Pun/2016 dated 06.06.2018

Risk Adjustment

301. The Tribunal admitted Revenue's appeal by refusing to accept DRP's 1% risk adjustment to the average margin by arbitrarily relying on Intelligent and Hello Soft rulings to account for the risk differential between assessee and comparable companies. Noting that the risk adjustment workings were not provided by assessee before DRP and DRP's order was also cryptic, it restored matter to file of DRP for fresh decision by way of a speaking and reasoned order.
ACIT v Momentive Performance Materials (India) Pvt. Ltd - TS-24-ITAT-2018(Bang)-TP - IT(TP)A No. 385/Bang/2016 dated 08.12.2017

302. The Tribunal held that though OECD guidelines allows a risk adjustment wherever necessary, it does not say that any such adjustment was to be given merely based on estimates. It distinguished the ruling of the Bangalore ITAT ruling in Philips Software Centre which had allowed a flat risk adjustment of 5.25% and noted that the order had been stayed by HC and also distinguished Delhi Tribunal's decision in Sony India ruling which had also allowed a flat 20% as a fair and reasonable risk adjustment and opined that the essential requirement for allowing a risk adjustment was that the assessee should quantify the risk adjustment in its TP documentation based on a clear and logical workings, considering the risk profile of tested party and comparables companies and not based on surmises. Further, it held that just because the assessee was serving a single customer would not mean that it was bearing market risk different from any other competitor and therefore denied the assessee's claim of 5% risk adjustment.
Infac India Pvt. Limited vs. DCIT - TS-387-ITAT-2018(CHNY)-TP - I.T.A. No.3195/CHNY/2017 dated 03-05-2018

303. The Tribunal upheld the DRP order rejecting assessee's claim for risk adjustment in the absence of any working and held that (i) the DRP had rightly rejected the assessee's claim for risk adjustment and held that the assessee's claim was only a theoretical one since it could not quantify the difference in risk adjustment between the tested party and comparables.(ii) the TPO had also given a categorical finding that the assessee had not been able to demonstrate the risk difference, thus in absence of working it dismissed the assessee's appeal.
Tecnotree Convergence Pvt Ltd vs DCIT [TS-925-ITAT-2018(Bang)-TP] IT (TP) A No.1616/Bang/2017 dated 27.06.2018

304. With respect to the allowance of risk adjustment by the Tribunal, the Court observed that Tribunal had recorded the fact that the necessary material supporting assessee's claim (i.e. detailed working of risk adjustment using CAPM) was given by the assessee to the DRP before passing the order which was not shown to be perverse by the Revenue.
CIT vs Watson Pharma Pvt Ltd [TS-480-HC-2018(BOM)-TP] ITA 124 of 2014 dated 25.06.2018

Segments

305. The Tribunal upheld the CIT(A) order deleting TP-adjustment (made in the manufacturing segment of the assessee) on royalty paid by assessee to AE. It held that the TPO was unjustified in rejecting assessee's segmental profitability working (wherein royalty was allocated to the manufacturing as well

as trading segments) and in allocating the entire royalty to the manufacturing segment considering that the royalty agreement provided that the assessee had to pay royalty on goods manufactured as well as traded. Further, the TPO had also included the entire depreciation in the financials towards the manufacturing segment of the assessee which was rightly corrected by the CIT(A) who noted that the amortization of goodwill and other intangibles on acquisition of unit from Hindustan Lever Ltd was to be treated as extra-ordinary item and that the balance depreciation had to be allocated to all segments. It also noted that as even if the TPO's faulty re-casted segments were considered, the margin of the assessee was still higher than the margin of the 5 comparable companies and accordingly, it held that there was no fault in the order of the CIT(A).

ACIT v Diversity India P Ltd (Formerly known as Johnson Diversity India P Ltd) - TS-85-ITAT-2018(Mum)-TP - I.T.A./305/Mum/2012 dated 03/01/2018

306. The Tribunal upheld assessee's contention that while determining ALP of software development services rendered to AE, the segmental result of AE-transactions was to be compared and not entity -level results. It noted that the assessee (engaged in telecom software development for domestic and European market) was incorporated to provide services to third parties, however, due to surplus workforce and other resources availability, it started rendering services to AE and revenue from AE was 43% of total revenue. Further, it observed that for the purpose of arriving at the segmental profits, it observed that assessee had applied scientific method of allocating expenses based on man-hours spent and the same method was applied in APA signed by assessee in other years. It accepted assessee's contention that if segmental profitability was compared, assessee's PLI would be within 5% range of comparables' margin and accordingly held that no TP-adjustment would be required.

Tieto IT Services India Pvt Ltd vs. DCIT - TS-155-ITAT-2018(PUN)-TP - ITA No.242/PUN/2015 dated : 07.03.2018

307. The Tribunal remitted assessee's international transaction of provision of BPO services back to the AO/TPO for verification after considering segmental results. The Tribunal noted that TPO had rejected the segmental results for want of adequate details and justification for allocation of common expenditure and thereafter accepted assessee's plea that segmental results were available on record and allocation of common expenditure details were also submitted. Thus, the Tribunal remitted the file back for re-adjudication.

Your Lifestyle Pvt Ltd vs DCIT 14(3)(1)- TS-288-ITAT-2018(Mum)-TP- ITA No 314/Mum/2016 dated 13.04.2018

Working capital adjustments

308. The Tribunal dismissed Revenue's appeal and upheld the DRP's order directing TPO to grant working capital adjustment to assessee based on the calculation of working capital adjustment furnished by the assessee. Regarding the TPO's objection that assessee had not demonstrated that there was a difference in the levels of working capital employed by it vis-a-vis the comparables which affected price, the Tribunal upheld the finding of the DRP i.e. that holding of inventories, trade debtor/creditors, trade receivable/payable has always an interest cost and also accepted DRP's finding that the average of opening and closing balance of debtors/ creditors would give representative level of working capital over the year.

ITO v H&S Software Development & Knowledge Management Centre Pvt Ltd - TS-41-ITAT-2018(DEL)-TP - ITA No. 6662/Del/2014 dated 04.01.2018

309. The Tribunal, pursuant to the assessee's miscellaneous petition against the original Tribunal order (wherein the issue of working capital adjustment was not adjudicated upon) accepted assessee's contention that the matter be sent back to AO to allow the working capital adjustment based on the actual numbers of the comparables.

Zyme Solutions Pvt. Ltd vs. ACIT - TS-156-ITAT-2018(Bang)-TP – IT(TP) A No 85 / Bang / 2016 dated 09.02.2018

310. The Tribunal relying on Demag Cranes & Components allowed assessee's claim for working capital adjustment.

Further, the Tribunal allowed admission of additional evidence filed by assessee with respect to its transactions relating to cost allocation and cost recharges from its AE and remitted back the computation of ALP to the file to AO/TPO for fresh adjudication considering the additional evidences filed.

Lear Automotive India P Ltd. Vs DCIT Circle- 9 Pune – TS-355-ITAT-2018(PUN)-TP- ITA No 515/Pun/2014 dated 26.04.2018

311. The Tribunal granted working capital adjustment to assessee engaged in IT enabled services to its AE, by holding that working capital difference could materially affect the amount of net profit margin in the open market and hence was allowable as adjustments

Stefanini India Pvt Ltd vs ITO Ward 3(4)- TS-338-ITAT-2018(DEL)-TP- ITA No 5479/Del/2016 dated 25.04.2018

312. The Tribunal upheld the DRP's order directing the TPO to give working capital adjustment while working out the average margin of comparables noting that the direction of DRP was justified view of the impact of trade receivables, trade payables and inventory on interest cost.

Dy.CIT vs JDSU Indian (P.) Ltd. [2018] 93 taxmann.com 295(Delhi-Trib) ITA No.1120 of 2015 dated 02.04.2018

313. The Tribunal remitted the issue of risk adjustment to AO/TPO for fresh consideration since in the subsequent year in AY 2011-12 in assessee's own case, the same was allowed by the Tribunal.

Rolls Royce India Pvt. Ltd vs. DCIT [TS-367-ITAT-2018(DEL)-TP] ITA No.1042/Del/2014 dated 02.05.2018

314. The Tribunal dismissed Revenue's appeal against DRP order allowing working capital adjustment in respect of assessee's international transactions for AY 2011-12. The Tribunal noted that DRP had considered various judicial decisions while allowing working capital adjustment and Revenue did not bring on record any contrary decision to rebut it. The Tribunal observed TPO had actually allowed working capital adjustment after considering assessee's detailed computation of margin of comparables.

DCIT vs. Kyocera Asia Pacific India Pvt. Ltd [TS-376-ITAT-2018(DEL)-TP] ITA No.1029/Del/2016 dated 17.05.2018

315. The Tribunal relied on co-ordinate bench ruling in Capgemini India Private Limited and held that working capital adjustment should be granted to account for differences in working capital employed by the assessee and the comparable companies. The Tribunal accepted the assessee's contention that in case of companies additionally identified by TPO, the TPO had wrongly considered the unadjusted margins.

Aramex India Pvt. Ltd vs. DCIT [TS-351-ITAT-2018(Mum)-TP] ITA No.6749/Mum/2017 dated 18.05.2018

316. The Tribunal upheld the CIT(A) and the AO's order rejecting/denying the assessee's claim for working capital adjustment since the assessee had not furnished sufficient data for proving the said claim. It noted that the assessee had not taken the actual rate of interest paid on the loans by itself or the comparables but considered the prime lending rate @18.5% and there was no data pointing out whether the actual rate of interest paid was @18.5% or if there was any deviation. The Tribunal thus opined that the claim of working capital adjustment at 3.18% was based on mere estimate.

Infac India Pvt Limited (TS-387-ITAT-2018(CHNY)-TP) - I.T.A. No.3195/CHNY/2017 dated 03-05-2018

317. The filed a Miscellaneous petition for rectification of the Tribunal's mistake in not adjudicating the ground raised by the assessee against the TPO's action of unreasonably restricting the working capital adjustment to 1.63%, whereas the TPO had himself worked out the same at 2.72% (before such unreasonable restriction). The Tribunal allowed the assessee's petition and directed the TPO to allow adjustment of 2.72%, following the decision in the case of Zyme Solutions Pvt. Ltd. v ITO [M.P. No.36/Bang/16 in TP(TP) No.465/Bang/2015] wherein the TPO had similarly restricted the said

adjustment on identical reasoning and the Tribunal had directed the TPO to compute adjustment based on actual figures from the final list of comparables without such restriction.
Obopay Mobile Technology India Pvt. Ltd v DCIT [TS-525-ITAT-2018(Bang)] IT(TP)A No.238/Bang/2016 dated 04.06.2018

318. The Tribunal dismissed the assessee's appeal against the TPO/ AO's computation of negative working capital adjustment on the margins of the comparable companies (thus increasing the said margins), where the asessee claimed that it did not bear any working capital risk as it did not have any borrowings and thus no working capital expenditure was incurred. The Tribunal held that the working capital risk and whether there is interest burden or not are not relevant factors for deciding working capital adjustment since the said adjustment is done because working capital position affects the pricing of any service or goods in the open market. In the present case, the TPO had given a finding that working capital position affected the pricing. The Tribunal also refused to follow binding decision relied upon by the assessee for deletion of working capital adjustment wherein adjustment was made for the time value of money lost when credit time is provided to the customers. According to the Tribunal, the aforesaid stand of the assessee had no basis since in TP analysis comparison is made of profit before interest and therefore the interest cost has no relevance. It also held that in those decisions, the aspect that working capital position affects the pricing of any goods and services was not dealt with.
Tecnotree Convergence Pvt Ltd vs DCIT [TS-925-ITAT-2018(Bang)-TP] IT (TP) A No.1616/Bang/2017 dated 27.06.2018

319. The Tribunal directed the AO to compute working capital adjustment only on the opening & closing balance of working capital employed at the beginning and end of the year by relying on the co-ordinate bench ruling in assessee's own case in AY 2009-10.
Degania Medical Devices Pvt Ltd v Dy.CIT [TS-523-ITAT-2018(DEL)-TP] ITA No.1254/Del/2015 dated 27.06.2018

+ / - 5% adjustment

320. Noting the assessee's contention that the price of exported items charged to its AE would be at ALP if an adjustment of commission expenses was granted in the price from unrelated parties and the assessee was granted the +/- 5 percent adjustment, the Tribunal remitted the matter to the file of the TPO for fresh adjudication as the supporting details for adjustment in commission were not provided by the assessee.
DCIT v JSL Ltd. - [TS-1079-ITAT-2017(DEL)-TP] - ITA No.4111/Del/2013 dated 03-11-2017

321. The Tribunal remitted the ALP determination of the assessee's international transaction of purchase of automotive parts directing the AO to verify assessee's claim that ALP is within 5% tolerance range. It noted that the TPO made a downward adjustment of Rs.1.92 crore in respect of international transaction, price of which was Rs.40.24 crore and had therefore arrived at an ALP of Rs.38.32 crore and held that based on the aforesaid figures, the contention of the assessee that the ALP determined by the TPO was within ±5% range as provided in the second proviso to section 92C(2) prima–facie appeared to be correct. It held that as per the said proviso, the ±5% range was applicable to the arm's length price and not arm's length profitability. Accordingly, it remitted the matter back to AO to verify the working of 5% and held that that if the assessee's claim was found to be correct, no TP-adjustment was to be made.
DCIT vs. Exedy India Ltd. (Formerly known as Ceekay Daikin Limited) - TS-160-ITAT-2018(Mum)-TP - ITA no.7220/Mum./2016 dated 21.02.2018

322. The assessee was engaged in in foreign inward money transfers, buying and selling of foreign currencies and traveller's cheques, air ticketing, corporate agency for insurance and provision of other exchange house services. With respect to the assessee's international transaction of selling foreign currency to its AE, the TPO applied RBI reference rate as the ALP and computed the TP adjustment without giving the 5% tolerance benefit under proviso to Sec 92C(2) on the ground that the said benefit was not available when the ALP is determined based on only one price/ rate. DRP upheld the TPO's order. The Tribunal set aside the TPO/ DRP's order denying 5% tolerance benefit under

proviso to Sec 92C(2) relying on the co-ordinate bench ruling in assessee's own case for an earlier year wherein it was held that the assessee was justified in claiming benefit under proviso to Sec 92C(2) as the RBI reference rate itself was derived as an average of several rates. It also noted that the DRP had confirmed the TP-addition primarily on the ground that the Revenue had appealed before HC against Tribunal orders of earlier years. Thus, the Tribunal held that till the time the co-ordinate bench order was not reversed it would hold good for the present case and accordingly it set aside the TPO/DRP's order

UAE Exchange & Financial Services vs DCIT Circle 7(1)(1) TS-261-ITAT-2018(Bang)-TP- IT(TP) No 2788/Bang/2017 dated 13.04.2018

Others

323. The Tribunal rejected AO's attribution of 50% profits made by Corning SAS in France (AE), from direct sales made in India, to its India Branch office (BO) noting that the BO earned commission income @ 3% on direct sales made by it to customers in India and that in all other AYs (preceding as well as succeeding), AO himself had accepted the 3% commission without attributing additional profits to BO in respect of direct sales made by Corning SAS France in India. It rejected AO's assignment of a relative weightage of 60% to the assets utilized by the BO [without providing any rational basis], observing that the BO only provided sales representation services in India and the same prima facie did not involve utilization of assets. Since the sales made by Corning SAS France to the Indian customers were wholly channeled through the BO for which it was remunerated with 3% commission and no substantial functions were performed, and no risks undertaken or assets were employed by BO in India in relation to the direct sales made by Corning SAS France in India, the Tribunal held that no additional profit in addition to the 3% commission income earned, was required to be attributed. Further, stating that "the Economic Nexus is an important feature for Attribution of Profits (profits attributable to the PE) in Corporate World", it held that the ratio of Morgan Stanley SC ruling was applicable to the present case as there was no direct economic nexus between the assessee and the Corning SAS, France in respect of the transaction in dispute.

Corning SAS- India Branch Office (Formerly known as Corning SA-India Branch Office) vs. DDIT - TS-421-ITAT-2018(DEL)-TP - I.T.A .No. 4678/Del/2010 dated 30.05.2018

e. ***Specific Transactions***

Advertisement, Marketing and Promotion expenses

324. The Tribunal deleted the AMP-adjustment made by TPO/DRP on alleged engagement by assessee (trader of life saving devices) in brand promotion on behalf of its AE by i) rejecting TPO's application of the Bright Line Test to assess the alleged AE-benefit and arrive at an arm's length compensation by observing that no such method was prescribed under the Act and the Rules; and ii) observing that in the absence of any agreement for sharing AMP expenses between the assessee and the AE, the marketing expenditure of the assessee could not considered as an international transaction. It noted that the agreements between the assessee and the AE in the present case merely mentioned "best efforts to market and distribute the product or promote the products in a commercially reasonable manner", but did not contain any 'condition' or 'indication' about sharing of AMP expenses.

It held that if the AE was benefitted indirectly by the AMP expenditure incurred by the assessee, it could not be held that the assessee and the AE had entered into agreement for sharing AMP expenses.

India Medtronic Private Limited vs. DCIT - TS-38-ITAT-2018(Mum)-TP - /I.T.A./1600/Mum/2015 dated 17.01.2018

325. Where the Tribunal in the first round of proceedings had remitted the AMP TP adjustment back to the TPO with the specific direction to recompute the ALP after allowing marketing expenses as a deduction but the TPO proceeded to determine ALP afresh, the Tribunal, in the second round of proceedings, remitted the issue back to the TPO observing that the TPO had not been granted any discretion in the first remand and directed the TPO to to calculate ALP exactly in the way directed by it in the first round of proceedings.

St. Jude Medical India Pvt. Ltd vs. DCIT - TS-64-ITAT-2018(HYD)-TP - ITA No.1425/Hyd/2014 dated 24.01.2018

326. The Tribunal, in second round of proceedings, remitted the AMP-issue back to AO/TPO for determining ALP afresh. It noted that, in first round of proceedings, the Tribunal had remitted matter back to AO/TPO for determining AMP-adjustment by applying Special Bench ratio in LG Electronics and also giving certain specific directions for such computation. It rejected assessee's contention that credit notes issued by foreign AE were towards compensation for brand promotion observing that they were only in respect of sales price of product to assessee and not to compensate it for other expenses and therefore held that such credit notes could not be considered as reimbursement of AMP expenses. Regarding assessee's claim for exclusion of selling expenses from the base amount of AMP-expenses, the Tribunal remitted the matter back to AO/TPO for deciding the same after stressing that each and every item of expenditure should be properly examined for ascertaining if it was for promotion of sales or in connection with the sales It rejected the assessee's contention that incurrence of AMP-expenses is not an international transaction as this issue was not raised in first round of proceedings and Tribunal had not restored the entire AMP issue to be decided de novo.

Motorola Solutions (India) Pvt. Ltd vs. DCIT - TS-102-ITAT-2018(DEL)-TP - ITA No. 1933/Del/2017 dated 07.02.2018

327. The Court dismissed Revenue's appeal against the order of the Tribunal setting aside the TPO's application of bright line method in determining whether the advertisement, marketing and promotional (AMP) expenses incurred by the assessee amounted to an international transaction and remanding matter to AO/TPO. It noted that Special Bench's decision in LG Electronics India case (upholding the use of Bright Line Test) was set aside by the High Court judgment in Sony Ericsson Mobile Communication and accordingly held that no question of law arose.

Pr. CIT vs. Sony India Pvt Ltd - TS-137-HC-2018(DEL)-TP - ITA 159/2018 dated 09.02.2018

328. The Tribunal remitted the issue of TP-adjustment on Advertising, marketing and promotion (AMP) expenses incurred by assessee for fresh consideration following earlier year ITAT order wherein the co-ordinate bench directed the AO/TPO to decide on existence of international transaction and also to exclude selling expenses from ALP-computation.

Daikin Airconditioning India Pvt. Ltd. v DCIT - TS-176-ITAT-2018(DEL)-TP - ITA Nos.2536/Del/2014

329. The Tribunal deleted TP-adjustment on Advertising, Manufacturing and Publicity (AMP) expenses incurred by the assessee absent any agreement/arrangement with AE for incurring of AMP-expenses. It observed that the assessee was a new entrant in the field of manufacturing & sale of cosmetic/personal care products and had incurred AMP expenses to promote its products to compete with similar products of other players. It held that there was a subtle but definite difference between product promotion and brand promotion, i.e. in the first case product is the focus of the advertisement campaign and the brand takes secondary or back seat, whereas in second case, brand is highlighted and not the product and held that since the basic purpose for incurring expenses by assessee was to expand its business in India and not to look after AE's interest, it could safely be said that the expenses incurred by the assessee were wholly and exclusively for its own business and not an international transaction. Accordingly, it deleted the TP adjustment.

Nivea India Pvt. Ltd vs. ACIT - TS-187-ITAT-2018(Mum)-TP - /I.T.A./7744/Mum/2012 dated 21/03/2018

330. In assessee's appeal against the Tribunal's order remanding Advertising, Marketing and Promotion (AMP) adjustment back to TPO/AO, the Court noted that TPO made the adjustment on account of AMP's expenses on the basis of bright line test and the Tribunal remanded the same to TPO/AO for re - examination. Further the Court observed that TPO/DRP had applied the reasoning of HC judgement in case of Sony Ericsson Mobile Communication and thus the Court stated that the Tribunal ought to address the issue in light of the Court findings and thus directed the Tribunal to consider the matter afresh and report on the merits of the case.

Callaway Golf India P Ltd Vs PCIT-2- TS-300-HC-2018(DEL)-TP-ITA No 106/2018 dated 20.04.2018

331. The Tribunal dismissed Revenue's appeal challenging deletion of AMP-adjustment in case of assessee engaged in the business of production, marketing and sale of instrument, implants and biomaterials for surgical fixation and noted that issue was covered against Revenue by order of co-ordinate bench in assessee's own case for previous AY's wherein AMP-adjustment was deleted after noting that assessee had made payment under AMP head for promotion of its own business and there was no agreement between assessee & AE for sharing AMP-expenses.

Synthes Medical Pvt Ltd vs JCIT LTU-1- TS-266-ITAT-2018(Mum)-TP- ITA No. 1784/Mum/2016 dated 13.04.2018

332. The Tribunal remitted back to AO/TPO AMP-adjustment in respect of assessee engaged in the business relating to import, manufacture, sale and export of all kind of high end crystal components for jewellery, fashion accessories and home decoration after following co-ordinate bench ruling in assessee's own case for previous AY wherein AMP-issue was remitted for determining existence of international transaction following HC decisions in various cases including Sony Ericson, Rayban Sun Optics & Toshiba India.

Swarovski India Pvt Ltd vs ACIT Circle 22(2)- TS-250-ITAT-2018(Del)-TP-ITA No 4080/Del/2013 dated 02.04.2018

333. The assessee 'Fujifilm' had an Indian branch which was engaged in import and resale of Fujifilm products in India and 'Provision of marketing and technical support services' to its head office. The TPO observed that huge AMP expenditure was incurred by the Indian branch on promoting the brand name 'FUJI' and considered the said AMP expenses as a separate international transaction and proposed the transfer pricing adjustment by applying the bright line test. On appeal, the Tribunal restored the matter back to the TPO and held that the bright line test could not be applied for determining ALP of international transactions of AMP expenses and stated that the TPO applied the bright line test as he did not have any occasion to consider the ratio laid down in various judgments of jurisdictional High Court. The Tribunal further held that as per Article 7 and Article 9 of DTAA between India and Japan, though deduction of AMP expenses was to be allowed but simultaneously, ALP of AMP expenses for brand promotion was also to be determined and the adjustments to the profits had to be made accordingly.

Fujifilm Corporation v. ITO - [2018] 92 taxmann.com 411 (Delhi - Trib.) - IT APPEAL NOS. 5826 (DELHI) OF 2011 & 195 (DELHI) OF 2013 dated APRIL 4, 2018

334. The Tribunal deleted the TP adjustment of AMP expenses by following the High Court ruling in assessee's own case stating that TP adjustment was not sustainable as the Revenue failed to demonstrate existence of international transactions. Further, it deleted TP adjustment on royalty payment made to AE by relying on assessee's previous tribunal judgement, wherein it was held that if goods are sold on principal to principal basis, disallowance of royalty on export was unjustified.

Honda Siel Power Products Ltd vs DCIT Circle 11(1)- TS-402-ITAT-2018(DEL)-TP- ITA No. 1579/DEL/2017 dated 17.04.2018

335. The Tribunal deleted the AMP adjustment by relying upon the decision of coordinate bench in assessee's own case for AY 2010-11 wherein it was held that in absence of any agreement/arrangement between the assessee and its AE for sharing of AMP expenses, it could not be termed an international transaction.

India Medtronic Private Limited vs. DCIT [TS-400-ITAT-2018(Mum)-TP] ITA No.7555/May/2012 dated 04.05.2018

336. The Tribunal deleted the TP adjustment on AMP expenses incurred by the assessee following the coordinate bench decision in assessee's own case for earlier year which had relied on the coordinate bench decision of Thomas Cook to hold that the in absence of agreement between the assessee and AE for sharing of AMP expenses, it was not an international transaction. It also noted that the TPO erred in applying BLT to determine the existence of international transaction after the HC decision in Sony Ericsson. Thus, the Tribunal allowed the assessee's appeal.

India Medtronic Private Limited vs DCIT [TS-318-ITAT-2018(Mum)-TP] ITA No.1246/Mum/2016 dated 02.05.2018

337. The Tribunal deleted the AMP-adjustment for assessee [engaged in manufacturing and marketing of diversified pharmaceutical products] in absence of any agreement obliging assessee to undertake brand building on AE's behalf for AYs 2005-06 & 2007-08. The TPO proposed AMP-adjustment and noted that sales on which royalty was being paid by assessee had recorded a faster growth and AMP expenses [which were the driving force for enhancing business] were to be shared by overseas AE in proportion to benefit accruing to it. It rejected revenue's only argument that brand value of assessee group as a whole had reflected healthy growth during the period 2000-2006. The Tribunal observed that there was no evidence to demonstrate the co-relation between the growth and quantum of AMP-expenditure, and hence the addition on basis of mere surmises could not be sustained. It distinguished Sony Ericsson ruling as it was rendered in the context of distributor of products manufactured by foreign AE and further relied on Bombay HC ruling in Johnson & Johnson and various Delhi HC rulings including Maruti Suzuki & Bausch & Lomb and deleted the AMP adjustment.
ACIT vs. Colgate Palmolive (India) Limited [TS-319-ITAT-2018(Mum)-TP] ITA No.6073/Mum/2014 &CO No.243/Mum/2014 dated 04.05.2018

338. The Court remitted the issue pertaining to advertising, marketing and promotion expenditure and directed the Tribunal to carry out necessary inquiry if needed by resorting to a limited remand to the TPO/DRP as the case may be and decide whether the AMP expenses in the instant case involved international transaction and if so, to what extent.
Vodafone Mobile Services Ltd [TS-419-HC-2018(DEL)-TP] ITA 660/2018 dated 01.06.2018

339. The Tribunal deleted the assessee's AMP adjustment made by TPO in the second round of proceedings on a 'protective' basis for AY 2009-10 by relying upon the co-ordinate bench ruling in assessee's own case for subsequent years.The Tribunal, at the outset, noted that the addition proposed by TPO was on a 'protective' basis and no substantive addition had been made. The Tribunal relied on Delhi HC ruling in Sony Ericsson that Bright Line Test Method cannot be applied for making any kind of adjustment under AMP expenses.
Toshiba India Private Limited vs ACIT [TS-609-ITAT-2018(DEL)-TP] ITA No. 1438/Del/2018 dated 18.06.2018

Loans / Receivables / Corporate Guarantee

340. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of Rs. 14.91 crore TP-addition on account of discounted interest rate charged on AE-loan, noting that CIT(A) order on the same issue for prior AY had not been challenged on this issue by the Revenue authorities. It relied on the Apex Court decision in Radhasoami Satsang [(1992) 193 ITR 321 (SC)] and held that once the Revenue authorities accepted the stand of the CIT(A) on an issue and allow it to reach finality in one assessment year, it could not be open to them to challenge the same in the subsequent assessment year.
Separately, it deleted the TP-adjustment in respect of corporate guarantee provided by assessee on behalf of its AEs by rejecting the 0.75% guarantee fee confirmed by CIT(A). Following the decision of the coordinate bench in assessee's own case for AY 2008-09 which in turn relied on the decision Micro Ink ruling (wherein it was held that issuance of corporate guarantees was in the nature of 'shareholder activities' / 'quasi-capital' and thus could not be included within the ambit of 'provision for services' under the definition of 'international transaction' u/s 92B), it held that the provision of corporate guarantee without any charge of commission would not constitute an international transaction.
Suzlon Energy Limited vs. DCIT - TS-1089-ITAT-2017(Ahd)-TP - ITA No.2074 & 2179/Ahd/2013 dated 22.12.2017

341. The Tribunal allowed assessee's appeal against DRP/TPO's imputing of notional interest on outstanding receivable from AEs noting that the assessee had huge outstanding balances exceeding 6 months in respect of AE-debtors. Relying on the decision of AMD India Private Ltd [TS-840-ITAT-2017(Bang)-TP], it held that the extra credit allowed was to be considered as an independent international transaction and the same was to be compared with the internal CUP being average cost of the total

funds available to the assessee. Since no specific period of credit was agreed upon in the case of the assessee it restored the matter to the file of TPO to ascertain the agreed credit period and benchmark the transaction accordingly.
Ingersoll Rand (India) Ltd. vs. DCIT - TS-1061-ITAT-2017(Bang)-TP – ITA ***251/Bang/2014 dated 10.11.2017***

342. Where the assessee had outstanding receivables from its AEs, the Tribunal, relying on its decision in the assessee's own case for earlier years (ITA No.1338/PN/2010), held that the TPO was incorrect in imputing notional interest @ LIBOR + 300 basis points + 200 basis points [as guarantee commission] and directed the AO / TPO to re-compute the adjustment on account of interest on outstanding receivables from AEs on the basis of LIBOR plus 300 basis points only on those receivables which were outstanding for a credit period exceeding 25 days after allowing the assessee the benefit of interest received by it, if any.
Capgemini Technology Services India Limited, (in the matter of iGate Computer Systems Limited) vs. DCIT - TS-58-ITAT-2018(PUN)-TP - ITA No. 360/PUN/2015 dated 25.01.2018

343. Relying on the decision of the co-ordinate bench in the assessee's own case for the earlier year - [TS-129-ITAT-2015(DEL)-TP] (which was subsequently upheld by jurisdictional HC - [TS-412-HC-2017(DEL)-TP]), the Tribunal held that interest adjustment on the outstanding receivables was not warranted if the working capital adjustment took into account the outstanding receivables. Accordingly, it remitted the issue back to TPO for verification of whether while making the working capital adjustment the outstanding receivables were taken into account or not.
Kusum Healthcare Pvt. Ltd vs. DCIT - TS-65-ITAT-2018(DEL)-TP - ITA No.-1440/Del/2016

344. Relying on the decision of the High Court in Kusum Healthcare, the Tribunal deleted the TP-adjustment towards notional interest on outstanding receivable from AE (beyond 30 days) and held that since the assessee earned significantly higher margin than comparables, there was no justification for charging interest on outstanding AE-receivables. It noted assessee's contention that payments were received only after satisfaction of the customers and therefore, there was delay in receiving the payments and that credit period extended to AE was 57 days as against 66 days in case of non-AEs and accordingly held that the decision of the Bombay HC in Indo American Jewellery was squarely applicable to assessee's case. Accordingly, considering the nature of business of assessee, it held that there was no justification for the authorities below to make adjustment to the income declared by assessee.
Motherson Sumi Infotech & Designs Limited v DCIT - TS-131-ITAT-2018(DEL)-TP - ITA.No.6331/Del./2016 dated 26.02.2018

345. The Tribunal deleted the TP -adjustment towards interest on outstanding AE receivables The TPO had re-characterized outstanding AE-receivable as loan and imputed notional interest at SBI base rate plus 300 points i.e. at 12.87%. The Tribunal relying on the order of the Delhi High Court in Kusum Healthcare held that every AE-receivable could not be characterized as international transaction and such characterization was permissible only where the TPO undertook proper inquiry by analysing the statistics over a period of time to discern a pattern which would indicate that there existed an international transaction intended to benefit the AE. Relying on the aforesaid decision, it held that since the assessee had already factored in the impact of receivables on working capital and thereby on its pricing/profitability vis-a-vis that of comparables, adjustment only on the basis of outstanding receivables was impermissible.
Terradata India Pvt. Ltd v ACIT - TS-133-ITAT-2018(DEL)-TP - ITA.No.7885/Del./2017 dated 21.02.2018

346. The Tribunal relying on co-ordinate bench ruling in Kadimi Tool Manufacturing Co (subsequently confirmed by HC & SC) deleted the TP-adjustment in respect of outstanding AE-receivables observing that the taxpayer was a debt free company and therefore there was no question of charging any interest on receivables by recharacterizing the transaction as loan from its AE and as such, no adjustment on account of arm's length interest on receivables could be made.
Inductis (India) Private Ltd. vs. ITO - TS-154-ITAT-2018(DEL)-TP - ITA No.2075/Del./2015 dated 06.03.2018

347. The Tribunal held that interest on delayed outstanding receivables amounts to an international transaction for subject AY i.e. AY 2013-14 in light of Finance Act 2012 amendment, and held that once any debt arising during the course of business had been ordained by the legislature as an international transaction, if there was any delay in the realization of debts arising during the course of business, it would be liable to be visited with the TP adjustment on account of interest income short charged or uncharged. However, it remitted the issue back to TPO to verify assessee's claim that in none of the cases, assessee realized invoices beyond 30 days and then decide the issue afresh.

Pitney Bowes Software India Pvt. Ltd vs. ACIT - TS-163-ITAT-2018(DEL)-TP - ITA No.7034/Del/2017 dated 13.03.2018

348. The Court dismissed Revenue's appeal against Tribunal's deletion of TP-adjustment on loan given to AE considering LIBOR as a comparable for ALP-determination noting that the co-ordinate bench had dismissed Revenue's appeal for the earlier AY on the same issue. Further, it dismissed Revenue's appeal against Tribunal's deletion of TP-adjustment on advance given to AE in the form of share application money by considering LIBOR as comparable for ALP-determination, relying on the decision of Tata Autocomp Systems and Aurionpro Solutions rulings. However, it admitted Revenue's appeal on whether the Tribunal was justified in holding that provisions of corporate guarantee do not affect profits/income/assets of the assessee.

Pr. CIT vs. Videocon Industries Ltd - TS-194-HC-2018(BOM)-TP - ITA NO. 1178 OF 2015 dated 21st MARCH, 2018.

349. Where the TPO re-characterised the outstanding AE receivables of the assessee as a loan and imputed interest @ 17.22 percent thereon, the Tribunal noting that for delays on similar receivables from non-AEs (average 300 days delay, highest being 1178 days delay), no interest had been charged by assessee; deleted the TP adjustment observing that the assessee's transaction were at ALP under the internal CUP. It held that since under both the scenarios (AE and Non-AE), no interest had been charged on similar nature of receivables, then the transaction with the related parties meets the arm's length requirement vis-a -vis, the transactions with the unrelated third parties and no addition could be made.

Axis Risk Consulting Services Private Limited - TS-168-ITAT-2018(DEL)-TP - I.T.A. No.3693/DEL/2014
dated 22.02.2018

350. The Tribunal held that TP-adjustment towards notional interest on outstanding AE receivable was required to be made noting that the credit period extended to AE was higher than credit period extended to non-AEs. However, it rejected interest rate of 6.75% applied by TPO based on cost of capital, and directed that the adjustment should be made using interest rate for export packing credit of 1.92%.

Mahindra & Mahindra Ltd. vs. DCIT - TS-199-ITAT-2018(Mum)-TP dated /I.T.A./6074/Mum/2013 dated 21/03/2018

351. The Tribunal deleted the TP-adjustment made by TPO/CIT(A) in respect of outstanding AE-receivables noting that the AO invoked Explanation (1)(c) to Sec 92B inserted by Finance Act, 2012 w.e.f. April 1, 2002 in order to determine interest-ALP to be charged by assessee from its AE on extending credit facility/delay in realization of debit balances outstanding in AEs account by considering it as an international transaction and relying the co-ordinate bench ruling in KGK Enterprises held that Explanation (1)(c) to Sec 92B could not have retrospective effect from April 1, 2002. It held that assuming the transaction was an international transaction, it had to be treated as one from AY 2013-14 whereas taxpayer was before the Tribunal for AY 2009-10. On merits, noting that the Agreement with AE allowed a grace period of 180 days for making the payment of the cost plus mark up it held that when the business agreement was categoric enough to grant the grace period of 180 days to make the payment and all the payments have been made within six months, no adjustment on account of interest on receivables could be made. Further, relying on Kusum Health Care HC ruling it held that when undisputedly the profit margin of the taxpayer has been held to be at arm's length, there was no need to make separate addition.

Globerian India Pvt. Ltd vs. DCIT - TS-200-ITAT-2018(DEL)-TP - ITA No.1170/Del./2016 dated 20.03.2018

352. Noting the assessee's contention that no separate adjustment was required to be made on account of receivables as it was subsumed in the working capital adjustment made by the TPO and following the decision of the Tribunal in the assessee's own case for preceding AYs, the Tribunal remitted the TP adjustment on account of interest on receivables to the file of the TPO absent in-depth analysis of receivables. It directed the TPO to recalculate interest in conformity with Kusum Healthcare HC ruling [wherein HC had stated that the impact of working capital of the assessee was to be studied] and noted though the TPO had allowed working capital adjustment to the assessee, it was not clear as to what point of time whether the receivables, inventory and payables were computed on the basis of the yearly average, as required.
D.E. Shaw India Advisory Services Private Ltd vs. ACIT - TS-72-ITAT-2018(DEL)-TP - ITA No.6735/Del/2017 dated 18.01.2018

353. Where the assessee, a Singapore based company, had provided interest free loans to its Indian AE and the TPO imputed interest @ 10.50 percent based on the PLR, the Tribunal rejected assessee's contention that since the interest free loan was given by it to strengthen the Indian AE which in turn would improve its own business, no TP adjustment was required. However, it held that the TPO was unjustified in applying the PLR and held that the adjustment ought to have been computed based on LIBOR. Relying on the decisions of the Bombay High Court and the co-ordinate bench it held that LIBOR + 200 basis points was to be used to benchmark the transaction.
Sabre Asia Pacific Pte Ltd (Earlier Known as Abacus International Pte Ltd.) vs. DCIT - TS-112-ITAT-2018(Mum)-TP - I.T.A. No. 486/Mum/2016 dated 16.02.2018

354. Relying on the co-ordinate bench ruling in the assessee's own case, the Tribunal deleted the TP-adjustment relating to the interest on assessee's foreign currency loan to AE and held that when a loan was advanced to foreign subsidiary in foreign currency, LIBOR and not the domestic prime lending rate was to be used to benchmark the international transaction. It noted that the earlier year's orders were upheld by the High Court and that the DRP in assessee's subsequent year proceedings directed the deletion of the TP-adjustment on interest while in the preceding AY, the TPO himself chose not to propose any such adjustment. Accordingly, it deleted the TP adjustment in the impugned year.
Cotton Natural (I) Pvt. Ltd vs. DCIT - TS-1068-ITAT-2017(DEL)-TP - ITA No.6910/Del/2014 dated 04-12-2017

355. Noting that as per Section 10A(3) of the Act (which was applicable to the assessee) foreign exchange receivables (whether from AEs or Non-AEs) were to be realized within 6 months from the end of the financial year, the Tribunal held that the TPO was unjustified in imputing notional interest on AE receivables outstanding for a period 3 month as the 6 month period as provided in Section 10A was a reasonable period to be allowed to debtors. Accordingly, it directed the TPO to charge interest of LIBOR + 200 basis points only on those receivables outstanding for a period of more than 6 months.
GSS Infotech Ltd. vs. DCIT - TS-1086-ITAT-2017(HYD)-TP - ITA No. 267/Hyd/2014 & 329/Hyd/2016 & ITA No. 602/Hyd/2017 dated 30-11-2017

356. Where the assessee had provided an interest free loan to its parent company AE against which the AE issued shares to the assessee after a period of 3 years, the Tribunal held that the case of the assessee could not be considered as an investment in share capital and therefore distinguished its reliance on the decision of Prithvi Information Solutions Ltd., ITA No. 472/Hyd/2014. However, it remitted the matter to the file of the TPO to determine when the AE had decided to issue shares against the interest free loan and held that if the decision to do so was made in the impugned AY, then the decision of Prithvi Information would apply and the interest free loan would take the nature of investment in share capital on which no notional interest could be computed but if the decision to issue shares was taken subsequently, the TPO was justified in imputing interest @ LIBOR + 3 percent as the transaction could not be considered as investment in equity share capital.
GSS Infotech Ltd. vs. DCIT - TS-1086-ITAT-2017(HYD)-TP - ITA No. 267/Hyd/2014 & 329/Hyd/2016 & ITA No. 602/Hyd/2017 dated 30-11-2017

357. The Tribunal deleted TP-addition in respect of interest on delayed AE-receivables for assessee (engaged in the business of manufacturing of studded gold jewellery) noting that the assessee did not charge any interest on delay in receiving the payment from AE (where average delay was about 290 days) as well as non-AEs (where average delay was about 340 days). Relying on the assessee's own case in the prior assessment year, it held that the TPO was not justified in making adjustment by applying interest @ 10.68% as there was uniformity in the act of the assessee in not charging interest from both AE and Non-AE debtors for delayed realization of export proceeds.

Dania Oro Jewellery Pvt. Ltd vs. ITO - TS-27-ITAT-2018(Mum)-TP - I.T.A./7635/Mum/2014 dated 03/01/2018

358. The Tribunal in the cross appeals for AY 2007-08 and AY 2008-09 deleted TP adjustment towards notional interest on shareholder's deposits by following the Tribunal's decision in assessee's own case for AY 2012-13. It was noted that the outstanding technical know-how fee receivable from the JV entity for period 1981 to 1995 was treated by the JV partners (one of them being the assessee) as shareholder deposits and RBI had permitted assessee to obtain the repayment by 2015. In AY 2012-13, the Tribunal had held that the said deposit could not be considered as international transaction as there was no inflow or outflow of funds during the subject year. In AY 2012-13, the Tribunal had also observed that the standard of arms length is inherent in the provision of the foreign exchange laws of India, under which the permission was obtained by the assessee.

The tribunal further deleted TP adjustment towards interest on outstanding AE- receivables relying on the assessee's previous order wherein it was held that outstanding debit balances could not be considered as international transaction. Further, it also confirmed the CIT(A) order and noted that extending Corporate Guarantee solely is not an international transaction u/s 92B.

M/s Bombay Dyeing & Mfg Co Ltd vs ACIT 2(1) – TS-364-ITAT-2018(Mum)-TP- ITA No 588/Mum/12 dated 02.04.2018

359. The assessee had advanced loan in Australian dollars to its AE in Australia and benchmarked the transaction by adopting CUP method and took ALP rate of interest at 8.91% as was prevailing in Australia. The AO was of the view that 10% interest rate would be a reasonable rate and accordingly, made an adjustment.The Tribunal deleted the TP adjustment on interest on loan advanced by the assessee to its AE noting that the rate adopted by the assessee was at ALP since the assessee had adopted interest rate which an Australian company borrowing from Australian bank would have paid. It relied on the ratio laid down in the Delhi HC ruling of Cotton Natural wherein it was held that ALP on loan advanced to its AE should be computed based on market determined interest rate applicable to currency in which loan is required to be repaid.

Dy.CIT vs Russell Credit Ltd. (2018)52 CCH 0315 KolTrib ITA No.629/Kol/2013 and ITA No.674/Kol/2013 dated 11.04.2018

360. The Tribunal confirmed CIT(A)'s order upholding interest adjustment on advances given by assessee to its AE. The assessee tried to justify non-collection of interest from its AE by submitting that it did not pay commission to its AE on the sale procured by it. The Tribunal observed that assessee had neither brought any material on record to substantiate its claim that AE did some marketing efforts on behalf of the assessee nor any correspondence, to demonstrate that both the parties were waiving their right to collect interest/commission in view of cross services. Further, the Tribunal accepted Revenue's contention that loan and agency were 2 different transactions and opined that alleged marketing efforts could not be linked to the advance given by the assessee interest free and accordingly upheld CIT(A)'s TP Adjustment.

M/s Virgo Engineering Ltd vs ACIT 10(3) Mumbai- TS-303-ITAT-2018(Mum)-TP- ITA No 685/Mum/2014 dated 20.04.2018

361. The Tribunal deleted secondary adjustment towards notional interest computed on amount of TP-adjustment on international transaction of sale of business to AE.

The Tribunal noted that such additional consideration was not received by assessee from its AE and the TPO treated the same as interest free advances to AE and charged interest at 12%. The Tribunal followed its earlier year's order in assessee's own case wherein similar secondary adjustment was deleted and held that, as per the requirement of law, there is nothing further provided to impute any secondary adjustment and the charging interest over and above the amount of adjustment, was not found to be in accordance with the provisions of law.

ACIT 15(2)(2) vs Prudential Process Management Services India Pvt Ltd- TS-804-ITAT-2018(Mum)-TP- ITA No 5526/Mum/2015 dated 13.04.2018

362. The Tribunal remanded the matter back to the Assessing officer and decided the matter in line with assessee's own case before Tribunal for previous A.Y. The tribunal noted that if the loans were advanced to the Associated Enterprise on the basis of LIBOR/WIBOR + then the said transaction would be at arm's length price, if not the TPO could recompute the arm's length price of the transaction

KPIT Technologies Ltd vs ACIT Circle -14 Pune- TS-408-ITAT-2018(PUN)-TP- ITA no 594/PN/2015 dated 12.04.2018

363. The Tribunal accepted assessee's plea for considering Euro PLR as benchmarking rates as against Indian PLR for interest free loan given to step down subsidiary. The Tribunal noted that since the interest free loan**s** were given in Euro Currency, the ALP should be adopted at the rate on the basis of prime lending rate prevalent in Europe.

Synchron Research Services Pvt Ltd vs ACIT Circle 4(1)(2)- TS-363-ITAT-2018(Ahd)-TP- ITA No 899/Ahd/2014 & 418/Ahd/2015 dated 18.04.2018

364. The assessee was providing intragroup services relating to external commercial borrowings made by third parties from assessee's AE. The AE earned interest income and commission fees in respect of the said borrowings/loans which was added by the TPO in the hands of the assessee. The Tribunal relying on its order of the earlier year, directed TPO to restrict TP-adjustment on services rendered by Indian Branch of assessee bank to AE at 20% of agency/commission fee and directed deletion of adjustment towards interest as the assessee had a limited role in sanctioning of loan to Indian customers and the loan was granted by AE who had borne risk as well as reward from such activity.

Further, the Tribunal confirmed CIT(A)'s order deleting TP-adjustment on interest received/paid on money market deposits given to AE/accepted from AE by assessee, observing that the TPO had ignored similar transactions wherein the assessee had earned excess interest from AE or paid lesser interest to AE as compared to benchmark and therefore held that all such closely linked transactions were required to be aggregated to determine TP-adjustment. Thus, relying on co-ordinate bench ruling in Audco India Ltd. and Essar steel ruling, it held that the Tribunals were consistently taking the view that arm's length price should be determined after aggregation and there was no scope for adjustment without aggregation.

Barclays Bank PLC vs ADIT (Intl Tax)-3 -TS-360-ITAT-2018(Mum)-TP- ITA No 2242/Mum/2015 dated 13.04.2018

365. Where the TPO made an adjustment on account of interest (@ 14.45 percent) on receivables outstanding for a period of more than 2 months (the normal credit period of 30 days and a grace period of 30 days) , the Tribunal relying on the decision of the co-ordinate bench in GSS Infotech Limited held that there was no basis for adopting only two months as credit period where the RBI itself allows a year for realization of foreign receivables. It noted that whether it was AE or non-AE receivables, it would be in the interest of business that assessee receives the foreign exchange early so that it can claim deduction u/s. 10A. Accordingly, it held that imposing a limit of two months of credit period was arbitrary and therefore deleted the addition.

United States Pharmacopeia India Pvt Ltd vs DCIT - TS-536-ITAT-2018(HYD)-TP - ITA No. 1927/Hyd/2017 dated 11/05/2018

366. The Court upheld Tribunal's rejection of TPO's re-characterization of assessee's notional interest transaction on delayed realization of trade debts from AE noting that the Tribunal had relied on EKL Appliances Delhi HC-ruling wherein HC had slated the only 2 possible situations where re-characterization of a transition is possible- (i) when the economic substance of a transaction differs from its form and (ii) when the form and substance of the transaction are the same but arrangements made in relation to the transaction, differ from those which would have been in uncontrolled transaction and had categorically held that none of these conditions were satisfied in the present case. Further it noted that the assessee had not charged interest on the delayed realization of debts in non-AE cases as well and therefore held that there could not be any occasion to make ALP adjustment for notional interest on delay in realization of trade debts from AEs. Accordingly it held that the finding given by the Tribunal was based on the facts of the case and therefore no question of law emerged.
Pr. CIT vs. Sharda Spuntex Pvt. Ltd - TS-436-HC-2018(RAJ)-TP - D.B. Income Tax Appeal No. 56 / 2017 dated 11/05/2018

367. The Tribunal considered the outstanding amount of travelling & accommodation expenses incurred by assessee on behalf of AE as an international transaction noting that the expenses were incurred on behalf of and for the benefit of the AEs. It held that the expenses so incurred by the assessee on behalf of its AE, if outstanding, would come within the meaning / explanation of international transaction in section 92B of the Act and rejected assessee's plea of granting 6 months period for recovery of cost incurred from AE. It observed that a prudent businessman would always recover the outstanding amounts at the earliest point of time and therefore held that a period of 60 days (as against DRP's 15 days) was a reasonable period within which the expenses ought to have been recovered from AE. Regarding rate of interest, it rejected assessee's plea to adopt LIBOR since expenditure was incurred in Indian currency and not in dollars and held that SBI-PLR rates alone was to be adopted as the ALP interest rate (without any spread). Noting that the weighted average interest of SBI-PLR on FDs had been calculated at 8.15%, it held that 8.15% was to be adopted while calculating ALP interest on the amounts outstanding from the assessee's AEs.
Allianz Cornhill Information Services Private Limited vs. DCIT - TS-433-ITAT-2018(COCH)-TP IT(TP)A No.489/Coch/2016 dated 30.05.2018

368. The Tribunal relied on the decision of coordinate bench in assessee's own case for AY 2007-08 and restored the TP-adjustment in respect of software developer assessee's outstanding receivables from AE for AY 2010-11. The Tribunal relied on the assessee's own case for AY 2007-08, wherein ALP-determination of similar outstanding receivables was restored back to AO/TPO. The AO/TPO was directed to re-do the exercise of determination of ALP after considering the credit period allowed to AE on realization of sale proceeds along with the main international transaction in respect of sale to AE. It further held that working capital adjustment appropriately takes into account the outstanding receivable, and concluded that any further adjustment on the pretext of outstanding receivables was not warranted.
Information System Resource Centre Pvt Ltd. (Now amalgamated with Larsen & Toubro Infotech Ltd) vs. ACIT [TS-384-ITAT-2018(Mum)-TP] - I.T.A. No. 3712/Mum/2016 dated 22.05.2018

369. The Tribunal deleted the notional interest adjustment made on delay in collection of receivables received by assessee from its AE. The Tribunal accepted assessee's contentions that the notional interest did not accrue or arise in the year under consideration since the invoices were raised on March 31, 2013 and credit period allowed was of 60 days. The Tribunal observed that the assessee was following mercantile system of accounting and interest accrues only when the debt falls due and the same remained unpaid. Since the debt did not fall due for the year under consideration, there was no question of interest accruing or being crystallized. The Tribunal also relied on the Motherson Sumi Infotech ruling and held that the assessee had not indulged in providing any undue credit to its AE. Further, the Delhi HC decision of B.C. Management Services(P) Ltd. was also relied on to hold that notional income on account of delayed payment made by the AO could not be treated as part of income and made subject matter of adjustments.

GVK Power & Infrastructure Ltd v ACIT [TS-385-ITAT-2018(VIZ)-TP] ITA No.530/Vizag/2017 dated 18.05.2018

370. The assessee had charged interest at 8% on loans given to some AEs and the TPO had taken a view that interest should have been charged at uniform rate of 8% to all AEs. Further, the TPO held that assessee should have charged certain fees from AE for meeting its administrative expenses and estimated the same at 0.5% of the average amount of loan given to its AE's and thus proposed TP-adjustments on the above grounds of interest and fees. The CIT(A) upheld the adjustment made towards interest and deleted the adjustment towards administrative expense.
The Tribunal followed co-ordinate bench ruling in assessee's own case for previous AY which had held that LIBOR+300bps should be considered as interest ALP and directed the Assessing Officer to compute TP adjustment by adopting LIBOR rate plus 300 bps as ALP rate of interest. Further, regarding TP-adjustment on administrative charges, the Tribunal, in line with Circular No. 21/2015 dated 10.12.2015 issued by CBDT stated that admittedly, tax effect involved on the above said issue was less than Rs.10 lakhs and hence the Revenue was precluded from pursuing this appeal.
ACIT CC-43 vs Roha Dyechem Ltd- TS-417-ITAT-2018(Mum)-TP- ITA No 1334/Mum/2014 dated 30.05.2018

371. The Tribunal allowed assessee's appeal and deleted the TP adjustment towards interest on loans given to its AE for infrastructure facilities. Noting that the TPO had made an addition on the ground that one of the AE's was charged interest at Euribor+ 3.75% from a bank, it observed that the assessee was the tested party and not the AE. The addition made by the TPO could not be sustained since the assessee was able to demonstrate that the interest charged was at market rate and the assessee was not charging interest at a higher rate than Libor+1% to any of the other parties.
Dishman Pharmaceuticals & Chemicals Ltd vs DCIT [TS-958-ITAT-2018(Ahd)-TP] ITA No.955/Ahd/2012 dated 20.06.2018

372. The Tribunal relying on the decision of the coordinate bench in Pregasystems Worldwide India Ltd (ITA Nos.1758 and 1936/Hyd/2014) held that notional interest on outstanding receivables is not chargeable to tax under the provisions of transfer pricing and accordingly no TP adjustments ought to be made and further, relied on the HC ruling of Kusum Healthcare and decision of coordinate bench in EPAM Systems India to hold that since the working capital adjustment was considered by the A.O, interest on receivables had been considered.
Hexagon Capability Center India Private Limited [TS-449-ITAT-2018(HYD)-TP] ITA No.258/ Hyd/2016 dated 08.06.2018

373. The Tribunal held that advancing interest-free loans to subsidiary companies constituted international transaction on plain reading of of sub-clause (c) of clause (i) of Explanation to section 92B relating to capital financing. It was the contention of the assessee that the interest free loan advanced to its AE later converted into equity was not an international transaction. The Tribunal rejected the recharacterization of transaction by assessee and called it a colourable device. Further, the Tribunal relied on the co-ordinate bench ruling in CIT vs Tech Mahindra Limited and held that rate of interest prevailing in the country where loans were received by the AE should be applied.
EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP)A No.1394/Bang/2012, ITA No.1332/Bang/ 2010 and IT(TP) A No.163/Bang/2012 dated 28.06.2018

374. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s deletion of interest adjustment. The Tribunal noted that assessee had granted loan to its AE namely, Emami International FZE of USD 45 million and charged interest @8% p.a. However, the TPO had computed ALP of such loan at 11% p.a. [5% (cost of funds) + 600bps (risk premium)] and made an upward adjustment of Rs. 48.94 lakhs. The Tribunal opined that the risk premium of 600 bps taken by the TPO was excessive. It noted that suitable risk premium would work out to be lower than 300 bps considering the facts of the case and credit rating of the assessee. In view of the aforesaid findings, it appreciated the CIT(A)'s view that even following the methodology proposed by the TPO viz., cost of funds plus risk premium, the ALP of the loan would work out to 8%. Thus, the Tribunal held that the TPO/Assessing Officer had grossly erred in

applying notional interest @11% (i.e. cost of procurement of funds by assesse @5% + 600 basis points) whereas the cost of procurement of similar funds from third part was LIBOR + 600 basis points, which worked out to 7.20%.(that is, prevailing USD LIBOR rate, which was 1.2% plus 600bps). Hence it confirmed CIT(A)'s order that the interest rate of 8% charged by the assessee from its AE was at arm's length. Further, it also observed that the Revenue had accepted the interest of 8% charged on the same loan to be at arm's length in the earlier as well as succeeding transfer pricing assessments and following the priniciple of consistency, the same would prevail.

DCIT/ACIT vs. Emami Limited [TS-468-ITAT-2018(Kol)-TP] ITA Nos. 1065 and 1066/Kol/2017 dated 15.06.2018

375. The Tribunal remanded the matter to the file of the AO/TPO to compute the adjustment in respect of the interest due on loans advanced by the assessee to its AE's for AY 2011-12 following its earlier year order. AO had applied BPLR rates whereas the DRP applied the benchmark of LIBOR + 5%. The co-ordinate bench in assessee's own case in earlier year had directed AO to verify whether the loans were advanced to associated enterprises on LIBOR+ or WIBOR+ rates, as the case may be, and if so, to consider the said transaction to be at arm's length price. If the loan was not advanced at the said rates, the TPO was directed to re-compute the arm's length price of the international transactions.

KPIT Technologies Ltd (earlier known as KPIT Cummins Infosytems Limited.) v DCIT [TS-522-ITAT-2018(PUN)-TP] ITA No.505/ Pun/2016 dated 04.06.2018

376. The Tribunal upheld the deletion of TP-adjustment in respect of guarantee fee received by assessee noting that the assessee applied CUP-method based on third party quotation (from HSBC India) to determine arm's length guarantee fee commission at 0.75% but the TPO determined guarantee fee ALP at 2.0833% based on the bank guarantee rate. Relying on the decision of the Bombay High Court in Everest Kento Cylinder [TS-200-HC-2015(BOM)-TP]it held that the considerations which applied for issuance of a corporate guarantee were distinct and separate from those in a case of bank guarantee and accordingly upheld the First Appellate Authority's deletion of the TP adjustment made.

ACIT vs. Wockhardt Ltd. - TS-39-ITAT-2018(Mum)-TP- I.T.A./4156/Mum/2012 & I.T.A./5557/Mum/2012 dated 05/01/2018

377. The Tribunal deleted the TP-adjustment in respect of corporate guarantee provided to 100% Mauritius subsidiary for which no consideration was charged accepting assessee's contention that corporate guarantee was provided as a matter of commercial prudence to protect the interest and fulfill the shareholder obligation as any financial incapacitation of the subsidiary would jeopardize the investment of the assessee. It rejected Revenue's contention that under Explanation to Sec 92B there was no requirement of international transaction of guarantee to have a bearing on profits, incomes, losses or assets of such enterprises and held that the explanation had to be read along with Section 92B(1) of the Act. It held that the provision of corporate guarantee neither fell under 'purchase, sale or lease of tangible or intangible property, provision of services or lending or borrowing of money' contained in Section 92B(1) and therefore was covered under 'any other transaction having bearing on profits, income, losses or assets' of an enterprise as contained in the impugned Section. Accordingly, notwithstanding that the Explanation to Section 92B did not specifically mandate such impact on profits / losses etc, it held that as per Section 92B the requirement would have to be fulfilled for the guarantee to be considered as an International transaction. Observing that no consideration was received by assessee for providing guarantee from its AE, the Tribunal concluded that when a parent company extends an assistance to the subsidiary, being associated enterprise, which does not cost anything to the parent company, and which does not have any bearing on its profits, income, losses or assets, it would be outside the ambit of international transaction under section 92B(1) of the Act. Accordingly, it deleted the TP-adjustment.

DCIT vs. EIH Ltd - TS-13-ITAT-2018(Kol)-TP - I.T.A No. 153/Kol/2016 dated 12.01.2018

378. The Tribunal rejected TPO/DRP's treatment of corporate guarantee as an international transaction for AY 2010-11 and accepted assessee's submission that Finance Act 2012 amendment [wherein a clarificatory amendment was inserted w.r.e.f. April 1, 2012 specifying that corporate guarantee will be included within the definition of international transaction] was applicable only prospectively from AY 2013-14 and therefore not applicable to subject AY. It relied on the decision of the co-ordinate bench in Reddy Laboratories wherein it was held that the Finance Act, 2012 amendment could not be applied

retrospectively as it would amount to retrospective levy of tax and would impose an impossible obligation on assessees. Accordingly, it deleted the ALP adjustment.
DCIT vs. Cyient Ltd (Formerly Infotech Enterprises Ltd) - TS-159-ITAT-2018(HYD)-TP] - ITA No. 474/Hyd/2015 dated 28/02/2018

379. The Tribunal dismissed assessee's appeal challenging TP-adjustments in respect of corporate guarantee, loan, outstanding receivables ex parte noting that none appeared on behalf of assessee despite notice being served on assessee. On examination of the impugned order of CIT(Appeals) and the order passed by the AO u/s. 143(3) r.w.s. 144C of the Act, it held that there was no infirmity therein.
Opto Circuits India Ltd. vs. DCIT - TS-89-ITAT-2018(Bang)-TP - IT(TP)A Nos.1315/Bang/2017 dated 31;01.2018.

380. The assessee provided corporate guarantee to its AE in Mauritius for which it did not charge any fee. The TPO determined the ALP at 2.75 percent based on rates for financial guarantee charged by various third-party banks which was reduced to 1.75% by the DRP. The Tribunal held that the benchmarking adopted by the TPO and DRP was unacceptable and relying on the decisions of the HC rulings of Everest Canto and Glenmark Pharmaceuticals, wherein it was held that corporate guarantees could not be compatred to bank guarantees, determined the ALP rate of guarantee fee on corporate guarantee provided by the assessee to its Mauritian AE at 0.5%.
Laqshya Media Pvt. Ltd v ACIT - TS-20-ITAT-2018(Bang)-TP - ITA Nos. 1774 /Mum/2016 dated January 2018

381. The Court admitted assessee's appeal on the substantial question of law i.e. whether corporate guarantee given by the assessee with respect to the loans given by the subsidiary would come under the purview of section 92 of the Act or not.
Minacs Pvt Ltd vs DCIT 8(1)- TS-302-HC-2018(BOM)-TP- ITA No 1132 of 2015 dated 25.04.2018

382. The Tribunal held that the DRP erred in determining the ALP of guarantee commission received by the assessee at 1.5% (TPO determined the commission @ 3%) and noted that the co-ordinate bench in the assessee's own case had sustained addition to the extent of 0.5% in the earlier and subsequent year. Accordingly, following the rule of consistency, ITAT directed the AO/TPO to restrict the addition towards guarantee commission by adopting the rate of 0.5%.
Nimbus Communications Ltd. vs. DCIT - TS-520-ITAT-2018(Mum)-TP - LT.A. No. 1988 / Mum / 2016 dated 21.05.2018

383. The Tribunal, relying on the order of the co-ordinate bench in the assessee's own case in the earlier year, deleted the TP-adjustment in respect of corporate guarantee provided to 100% Mauritius subsidiary for which no consideration was charged accepting assessee's contention that corporate guarantee was provided as a matter of commercial prudence to protect the interest and fulfill the shareholder obligation as any financial incapacitation of the subsidiary would jeopardize the investment of the assessee. It rejected Revenue's contention that under Explanation to Sec 92B there was no requirement of international transaction of guarantee to have a bearing on profits, incomes, losses or assets of such enterprises and held that the explanation had to be read along with Section 92B(1) of the Act. It held that the provision of corporate guarantee neither fell under 'purchase, sale or lease of tangible or intangible property, provision of services or lending or borrowing of money' contained in Section 92B(1) and therefore was covered under 'any other transaction having bearing on profits, income, losses or assets' of an enterprise as contained in the impugned Section. Accordingly, notwithstanding that the Explanation to Section 92B did not specifically mandate such impact on profits / losses etc, it held that as per Section 92B the requirement would have to be fulfilled for the guarantee to be considered as an International transaction. Observing that no consideration was received by assessee for providing guarantee from its AE, the Tribunal concluded that when a parent company extends an assistance to the subsidiary, being associated enterprise, which does not cost anything to the parent company, and which does not have any bearing on its profits, income, losses or assets, it would be outside the ambit of international transaction under section 92B(1) of the Act. Accordingly, it deleted the TP-adjustment.
DCIT vs. EIH Ltd - TS-426-ITAT-2018(Kol)-TP - ITA No.117/Kol/2017 dated 16-05-2018

384. The Tribunal restricted guarantee commission ALP at 0.5% of average amount of loan outstanding during the year in respect of corporate guarantee on overdraft facility given by assessee by following the co-ordinate bench ruling in assessee's own case for previous AY (wherein relying on various decision of the jurisdictional benches of the Tribunal it was held that ALP of the guarantee commission was to be considered as 0.5%) as against TPO's computation of guarantee fees @ 1.50%.
In respect of counter guarantee given by assessee for guarantee given by IDBI Bank on behalf of Taj TV (AE), the Tribunal accepted assessee's contention following Asian Paints ruling that non fund based facility could not be treated at par with fund based facility and directed AO to compute TP-adjustment in respect of counter guarantee at 0.2% of counter guarantee amount.
ACIT 16(1) vs Zee Entertainment Enterprises Ltd- TS-418-ITAT-2018(Mum)-TP- ITA No 1640/Mum/2016 dated 28.05.2018

385. The Tribunal restricted ALP of corporate guarantee provided by assessee to Singapore-AE at 0.5% p.a. and noted that while assessee did not benchmark the transaction on the premise that the underlying liability was contingent in nature and that the same was given for overall business consideration, TPO made an adjustment by determining ALP at 5% p.a. The Tribunal opined that corporate guarantee provided by the assessee brought certain benefits to its AE by way of credit facility and therefore, the same were required to be compensated by its AE. The Tribunal relied on Bombay HC ruling in Everest Kanto Cylinders wherein 0.5% commission rate was adopted, and thus directed addition @0.5% per annum.
Apar Industries vs DCIT CC 6(1)- TS-405-ITAT-2018(Mum)-TP- ITA No 956/Mum/2015 dated 04.05.2018

386. The Tribunal accepted assessee's contention that the corporate guarantee commission charged at 0.9% was at arm's length price and deleted the adjustment by holding that the corporate guarantee commission rates @ 0.25% to 0.53% have been accepted in various rulings of Courts/Tribunals such as Videocon Industries, Nimbus Communications and Glenmark Pharmaceuticals, as reasonable. Further, the Tribunal also opined that bank guarantee and corporate guarantee are at different footing due to factors such as terms,conditions and risk factors and hence the TPO was not justified in determining the ALP at commission rates charged by bank.
GVK Power & Infrastructure Ltd v ACIT [TS-385-ITAT-2018(VIZ)-TP] ITA No.530/Vizag/2017 dated 18.05.2018

387. The Tribunal deleted the TP-adjustment in respect of corporate guarantee given by assessee [engaged in the business of manufacturing yarn, marketing its products under the CLC brand name] on behalf of its AE for AYs 2008-09 to 2010-11. It relied on Bharti Airtel ruling wherein it was held that no TP-adjustment is to be made in case of there being no diversion of profits out of India. The Tribunal noted that the assessee had not incurred any cost in providing corporate guarantee and relied on various ITAT rulings in Micro Ink, Redington India and Videocon Industries wherein it was held that when an assessee extends assistance to the AE, without any cost to itself, it does not have any bearing on profits, income, losses or assets and therefore the same is outside the ambit of 'international transaction'. The Tribunal opined that since the flagship company of the assessee had accumulated brought forward losses to the tune of Rs. 290 crores and subsidiaries were also in heavy losses, it could not be said that there was any intention of diversion of profits out of India. Further, the Tribunal also relied on Vivimed Labs and Siro Clinpharm rulings wherein it was held that amendment to Sec 92B vide Finance Act 2012 is prospective in nature and is applicable only from AY 2013-14 onwards.
DCIT vs. Spentex Industries Ltd [TS-382-ITAT-2018(DEL)-TP] ITA Nos.4959,6234 and6244/Del/2014 dated 17.05.2018

388. The Tribunal directed adoption of 0.25%, based on free quote given by Royal Bank of Scotland (RBS), as ALP for provision of corporate guarantee by assessee on behalf of its AEs for AY 2012-13 since the free quote considered the credit rating of assessee and other financial data and the said guarantee was given to RBS itself for loan given to its AE. The Tribunal noted that assessee had adopted ALP of 0.2% based on average rate of free quotes obtained from RBS (0.25%) and Indusind Bank (0.15%) while DRP had adopted ALP at 1.5% based on interbank lending rate. The Tribunal held that the average rate

adopted by the assessee as ALP was not the right approach as averages do not give logical result.The Tribunal also observed that issuance of corporate guarantee is a non-fund based transaction, and hence opined that interbank lending rate adopted by DRP as a bench mark for determination the ALP of the charge for giving a corporate guarantee, is not appropriate, as these rates are for fund based transaction.

Britannia Industries Ltd vs. DCIT [TS-359-ITAT-2018(Kol)-TP] ITA No.745/Kol/2017 dated 18.05.2018

389. The Tribunal upheld the order of DRP determining the ALP of the guarantee fee at 2.28% as against guarantee fee determined by TPO at 3%. It noted that the DRP had observed as per the CRISIL data that the assessee could be rated as BBB and AE as B and its AE had a weaker financial standing. The DRP adopted the difference of 4.56% between interest rate for BBB (10.37% for 1-2 years) and B (14.93% for 1-2 years) and held that 50% benefit (2.28%) should have been received by assessee. Accordingly, it rejected the Revenue's contention that the rate of guarantee fee determined at 3% by TPO ought to be considered.

United Breweries (Holdings) Ltd [TS-746-ITAT-2018(Bang)-TP]- IT (TP) A No.561/Bang/2016 dated 15.06.2018

390. The Tribunal following the order of the co-ordinate bench in assessee's own case restricted the ALP of the guarantee commission at 0.5% of the average amount of the loan outstanding as against the TPO's determination at 1.5%.

Zee Entertainment Enterprises Limited [TS-448-ITAT-2018(Mum)-TP] ITA No.1475/Mum/2017 dated 08.06.2018

391. The Tribunal upheld CIT(A)'s order and held that corporate guarantee does not fall within the ambit of international transaction by relying on the decisions of the coordinate bench and therefore no adjustment on account of guarantee commission should be made. It rejected TPO's addition of guarantee fee at 2% of the guaranteed money.

Dishman Pharmaceuticals & Chemicals Ltd vs DCIT [TS-958-ITAT-2018(Ahd)-TP] ITA No.955/Ahd/2012 dated 20.06.2018

392. The Tribunal upheld CIT(A)'s deletion of TP-adjustment in respect of corporate guarantee given by assessee to AEs for AY 2012-13. Further, it noted that AO/TPO treated corporate guarantee as an international transaction and determined 2% per annum of the loan amount as guarantee ALP and observed that CIT(A) deleted the adjustment following co-ordinate bench ruling in assessee's own case for earlier years wherein it was held that corporate guarantee was not an international transaction u/s 92B and accordingly, any ALP adjustment cannot survive.

Dr. Reddy's laboratories v ACIT [TS-463-ITAT-2018 (Hyd)] ITA. No.1739/Hyd/2017 and ITA 1729/Hyd/2017 dated 13.06.2018

393. The Tribunal ruled on corporate guarantee, interest on AE-receivables and advances in respect of an assessee engaged in the business of software development & IT enabled services. The assessee had contended that since assessee as well as its AE had incurred losses, no ALP-adjustment could be made for its international transactions, and relied on Apollo Health Street ruling, APP Labs Technologies and Global Vantedge Pvt Ltd ruling. However, the Tribunal distinguished the contention and held that in the above cases there was no decision as to correctness of the order of the DRP, and therefore it could not be said to have been decided on merits of the issue.

Further, The Tribunal relying on Dr Reddy's Laboratories ruling accepted assessee's contentions that the corporate guarantee was not an international transaction during AY 2012-13 since amendment of Sec 92B of the IT Act came w.e.f. AY 2013-14.

Further, the Tribunal with specific direction remitted back to the file of AO/TPO the transaction of advances given to AE, as nature and purpose of advance were not clear. The Tribunal relied on GSS Infotech ruling and stated that no interest should be levied if advances were in the nature of trade advance. However, if advances were to be treated as a loan, the Tribunal directed adoption of LIBOR+2% interest as ALP.

Further, with regards to interest on outstanding receivables, the Tribunal following GSS Infotech and Bartronics rulings noted that the amount was received back within a period of 1 year from the date of advance to AE and thus no interest was chargeable on the receivables.
Cura Technologies Ltd vs DCIT Circle 1(2)- TS-412-ITAT-2018(HYD)-TP-ITA No 301/Hyd/2017 dated 11.05.2018

Royalty / Management fees / Intra Group services / Reimbursements

394. The Tribunal, following the order of the co-ordinate bench in the assessee's own case for earlier year deleted the TP-adjustment of Rs. 9.48 Cr on royalty payments made by the assessee. The assessee who was making royalty payment since period prior to acquisition of AE status by payee, benchmarked the royalty transaction under the external CUP method where it selected the royalty payment by Maruti Suzuki. The TPO considered the ALP of the transaction at Nil by rejecting the assessee's benchmarking and contended that since external CUP required strict standard of comparability and since Maruti was paying royalty for obtaining license for manufacturing a finished product i.e. Automobile whereas the assessee had obtained a license for manufacturing automobile lighting equipment and accessories, the two were not comparable. The TPO further alleged that the assessee had not provided any evidence to show how the rate of royalty was fixed and also did not provide a cost benefit analysis. Noting that the assessee was making royalty payment since periods prior to acquisition of AE status by payee, the Tribunal held that the benchmarking adopted by the assessee by considering the royalty paid by Maruti as comparable was rightly considered CUP. It further observed that the co-ordinate bench in assessee's own case in AY 2008-09 accepted assessee's royalty payment at 3-5% at ALP and jurisdictional HC had refused to admit Revenue's appeal against the said tribunal order. Considering that the facts of the case under consideration were identical to facts of earlier year, it deleted the adjustment.
Lumax Industries Ltd v JCIT - TS-1094-ITAT-2017(DEL)-TP - ITA No.6961/Del/2014 dated 05.12.2017

395. The Tribunal deleted TP-adjustment stemming from TPO's reduction of arm's length royalty rate from 3% to 2% of assessee's net sales and held that the TPO was unjustified in reducing the royalty rate from 3% to 2% without substantiating it with an appropriate alternate TP analysis. Noting that TPO did not examine alternative comparables to justify reduction in royalty rate after rejecting assessee's comparables on the ground that they were US based while assessee's AE was based out of UAE, it held that the TPO's approach was an arbitrary and unbridled exercise of power.
RAK Ceramics India Private Limited vs. DCIT - TS-1054-ITAT-2017(HYD)-TP - ITA No.193/Hyd/2017 dated 29.11.2017

396. Where the assessee benchmarked the payment of royalty to its associated enterprise under TNMM (margin of the assessee was higher than that of its comparable), the Tribunal, relying on the order of the High Court in the assessee's own case for earlier years, upheld CIT(A)'s deletion of TP-adjustment on account payment of royalty to AE and held that the TPO erred in determining the ALP of the said payment at Nil under the CUP method when there were no changes in the facts under review vis-à-vis the facts prevalent during the earlier years.
ACIT vs. Sakata Inx (India) Ltd - TS-71-ITAT-2018(JPR)-TP - ITA. No. 828/JP/2017 – dated 29/01/2018

397. The Apex Court dismissed Revenue's SLP challenging Delhi HC order confirming ITAT's deletion of TP adjustment on royalty payment to AE. The High Court had rejected Revenue's ground that ITAT erred in holding that assessee was justified in claiming royalty as expense since only the subsidiaries/enterprises in 10 countries of the 120 locations wherein AEs had presence in were required to make royalty payments and that the ITAT had erred in relying on Delhi HC's EKL Appliances ruling to arrive at the conclusion that TPO had erred in judging commercial and business expediency of expenditure while determining ALP for royalty at Nil.
CIT vs. Frigoglass India Pvt. Ltd vs. DCIT - TS-31-SC-2018-TP - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 41702/2017 dated 19-01-2018

398. The Tribunal confirmed CIT(A)'s order holding assessee's royalty payment (for granting license to use AE's technology & know-how for carrying on business of manufacturing of automotive components in India) at 3.15% of net sales to be at ALP and held that the TPO had erroneously held that royalty should be taken at Nil on the allegation that no economic benefit had been provided to the assessee as the assessee had incurred loss at entity level without carrying out any analysis. It held that such an observation or reasoning could not be upheld at all once there was a valid agreement for transfer of non-exclusive right for use of license to use technology including knowhow of AE from which assessee has earned substantial revenue receipts which evidenced that such a use of technology and knowhow was directly linked with manufacturing and resultantly sales. It further held that that incurring of loss could not be the parameter to hold that the technological knowhow or license was of no benefit hence there was no requirement to pay the royalty.

DCIT vs. Bestexx MM India Pvt. Ltd. - TS-113-ITAT-2018(DEL)-TP - I.T.A. No.544/DEL/2015 dated 15.02.2018

399. The Tribunal deleted the TP adjustment on the assessee's royalty payment to AE and rejected TPO/ DRP's contention that the assessee had not been able to prove any real tangible benefit that had passed to it by technology received from its AE. It noted that where the AE granted the assessee exclusive nontransferable and non-divisible license to use the technical information for manufacture and for marketing activities in India for which the assessee paid royalty it was not the prerogative of the TPO to decide if any tangible benefit had been transferred to the assessee. It held that the payment of royalty was a business decision of the assessee and that the TPO could not interfere with the decision making of the assessee.

India Yamaha Motor Private Ltd vs. ACIT - TS-126-ITAT-2018(DEL)-TP - ITA No.297/Del./2015 dated 12.02.2018

400. The Tribunal dismissed Revenue's appeal and upheld the deletion of TP adjustment on royalty payment to AE observing that the Tribunal in the earlier years had found royalty payment to be at ALP noting that it was approved by RBI/SIA.

Spicer India Private Limited (Formerly known as Spicer India Limited) vs. ACIT - TS-150-ITAT-2018(PUN)-TP - ITA No. 376/PUN/2016 dated 09.02.2018

401. The Tribunal upheld CIT(A)'s deletion of TP-adjustment on account of royalty payment by assessee (engaged in manufacturing of toughened glass, laminated glass and float glass) to AE accepting assessee's contentions that maintenance of quality and increase in sales were possible due to AEs licensed technology and that since it was a public limited company (with only 22.21% shareholding by its AE, Indian promoters holding 33.03% and the general public holding 44.76%), the AEs were not in a position to wield significant influence over assessee's business as its performance and commercial expediency were subject to intense scrutiny by shareholders. Further, relying on EKL Appliances ruling, it held that it was not open to the TPO to question the judgment of the assessee as to how it should conduct its business and regarding the necessity or otherwise of incurring the expenditure in the interest of its business. Thus, finding no infirmity in the CIT(A)'s order, it dismissed Revenue's appeal.

Asahi India Glass Limited vs. DCIT - TS-123-ITAT-2018(DEL)-TP - ITA No.1637/Del/2014 dated 26-02-2018

402. The Tribunal rejected TPO's ALP-determination for technology acquisition cost at Nil and remitted ALP-determination to AO/TPO. It observed that the assessee's (engaged in manufacturing of auto-components) royalty payment was for designs, engineering data, manufacturing and process data, lay-outs etc. for contract products, but it was required to pay acquisition cost separately for modifications or new design which was to be customized for a particular customer in India. Since no royalty payment was required to be made in case of such new product, it held that the TPO as well as the DRP erred in concluding that the payment of application cost was in addition to royalty and therefore held that the benchmarking was incorrectly done.

Separately, in respect of intra-group service fee, it rejected TPO's Nil ALP-determination on the ground that no services were received or there was duplication of services. On perusal of the emails submitted by assessee, it held that the assessee's transaction were genuine and clarified that the TPO's role was restricted to ALP-determination while allowability or otherwise of such payment was to be determined

by AO. Accordingly, it remitted the issue back to AO/TPO to follow ratio of Delhi HC ruling in Cushman & Wakefield case.

Denso India Limited vs. DCIT - TS-145-ITAT-2018(DEL)-TP - ITA No.1857/Del/2014 dated 07.03.2018

403. The Tribunal rejected assessee's aggregated approach for benchmarking royalty payment to UK based AE under TNMM and upheld external CUP as most appropriate method. Noting that royalty payment arose from a separate agreement and was payable irrespective of any services or goods received, it held that it was a separate transaction irrespective of the fact that the relevant payment was utilized for manufacture of final product. Further it held that the rates given by the RBI could not reckoned as an external CUP for the purpose of benchmarking. Accordingly, it remitted the matter to the TPO for fresh adjudication as he had incorrectly determined ALP of the Royalty at Nil contending that the assessee did not receive any benefit.

Johnson Matthey India Private Ltd vs. DCIT - TS-173-ITAT-2018(DEL)-TP] - ITA Nos.:-1817/Del 2014; 2493/Del/2014; & 3755/Del/2015 dated 16/03/2018

404. The Tribunal rejected TPO's Nil-ALP determination in respect of assessee's royalty payment to AEs for use of brand names 'Vodafone' and 'Essar' and remitted the ALP-determination to AO/TPO. It held that the assessee's royalty payment was a bona fide transaction as the assessee actually used the brand names 'Vodafone' & 'Essar' and held that the TPO erred in determining ALP at Nil merely because the assessee did not pay royalty in the past. It held that simply because no royalty was paid in the past could be no reason to treat the ALP of royalty at Nil in later years. However, the Tribunal rejected assessee's adoption of foreign comparable (royalty payment by Motorola Inc to Forward Industries Inc) for benchmarking royalty payment and held that the transaction between 2 foreign parties could not be considered for comparing international transaction with Indian assessee as tested party. Accordingly, it remitted the matter to the AO / TPO for fresh consideration.

DCIT vs. Vodafone Essar Digilink Ltd - TS-166-ITAT-2018(DEL)-TP - ITA No. 1950/Del/2014 dated 14.03.2018

405. The TPO determined the ALP of the royalty payment and management services at "Nil" on the ground that the assessee failed to explain the cost benefit analysis for such payments made to its AE. It was assessee's contention that the receipts from the assessee were considered to be at ALP by the tax authorities during the assessment of its AEs. The Tribunal remanded the matter back to the TPO noting that TPO needed to examine whether the payment is at ALP with the benefit received by the assessee and such an exercise had not been carried out and it rejected the assessee's contention by observing that provisions of sec 92CA(4) and sec 92(3) had to be interpreted harmoniously, in respect of the same transaction the Revenue could opt to determine total income on basis of ALP determination in accordance with s 92(1) in hands of one party of the said transaction where the tax base of the country would erode and the Revenue could desist from doing so in the hands of the other party, wherever there would be no tax base erosion.

Filtrex Technologies (P.) Ltd vs ACIT [TS-265-ITAT-2018(Bang)-TP] IT(TP)A No.469 of 2017 dated 11.04.2018

406. The Tribunal deleted the TP addition made on account of royalty by relying on the decision of the High Court in its own case TS-671-HC-2015(DEL)-TP wherein it was held that since TPO found that no adjustment was called for under the external TNMM method adopted by the assessee, no adjustment could have been made by separately benchmarking the transaction. It observed that the assessee received full technical assistance from its AE for which the royalty payment was made and therefore deleted the addition.

Lumax Industries Ltd v ACIT - TS-454-ITAT-2018(DEL)-TP - ITA No. 1441/DEL/2016 dated 04.05.2018

407. Regarding disallowance of royalty paid to AE @ 40% of the revenue from software trading, the Tribunal remitted the matter back for de-novo adjudication after considering assessee's submission that payment was made pursuant to a revenue sharing agreement and was nomenclatured as royalty. The Tribunal distinguished co-ordinate bench ruling in assessee's own case for previous AY wherein relief

was granted on benefit test and royalty benchmarking done based on CUP-method (which was undisputed in captioned years). The Tribunal thus directed TPO to benchmark the subject mentioned payment vis a vis the comparables afresh, in order to determine the ALP of the said international transaction

M/s. Labvantage Solutions Pvt Ltd vs ACIT Circle 2(1)- TS-405-ITAT-2018(Mum)-TP- ITA No 927 & 2400/Kol/2017 dated 11.05.2018

408. The Court set aside Tribunal order and remanded the matter back to the Tribunal for fresh consideration, wherein the Tribunal had confirmed royalty adjustment in case of assessee manufacturing magnetic based electronic coils, transformers and inductors. It accepted assessee's contention that the Tribunal had upheld royalty adjustment [although royalty payment formed part of operating cost under entity level TNMM] without discussing the applicability of Delhi HC ruling in Sony Ericsson Mobile or Tribunal ruling in Siemens VTO Automotive. In the said cases it was held that when royalty payment formed part of operating cost it need not be separately benchmarked. The Court held that the Tribunal erred in not following decisions of the co-ordinate bench of the same jurisdiction.

Kaypee Electronics vs DCIT Circle 4(1)(1)- TS-414-HC-2018(Kar)-TP-ITA No 65/2018 dated 29.05.2018

409. The Tribunal remitted the ALP determination of royalty paid back to AO/TPO. The Tribunal accepted the assessee's request to admit additional evidence in the form of Addendum to intangible and proprietary property and licensing agreement [which set out the understanding between the parties and the actual conduct of business] and opined that the Addendum to the agreement went to the very root of the matter and that it would suitably assist the lower authorities to reach a logical conclusion on the issue.

C.R.M. Services India Pvt. Ltd vs. DCIT [TS-343-ITAT-2018(DEL)-TP] ITA No.5930/Del/2012 and 1630/Del/2014 dated 14.05.2018

410. The Tribunal deleted the TP-adjustment on royalty and technical service fee made by the TPO determining ALP at Nil for AY 2013-14 and held that that TPO/DRP could not put themselves in the shoes of assessee to decide which expense should be incurred by assessee for its business. The Tribunal observed that both TPO and DRP had gone into the need for expenses incurred by assessee vis-à-vis benefit for which disallowance can be made under separate provisions of the Act. Further, the Tribunal refused to remit the matter to the AO by relying on the Gujarat HC ruling in Rajesh Babubhai Damania as it would amount to giving second innings to the AO when sufficient material was available before him on record which was impermissible. It rejected Revenue's contention that double deduction of royalty had been claimed and royalty was part of the cost of purchase of raw materials by observing that raw materials were purchased from one AE and royalty was paid to another AE. The Tribunal also observed that lower authorities erred in proceeding to make adjustment without discarding the benchmarking methodology followed by assessee i.e. TNMM in the instant case, by relying on Delhi HC ruling in Li & Fung case.

COIM India Pvt. Ltd v ACIT [TS-344-ITAT-2018(DEL)-TP] ITA No.7260/Del/2014 dated 07.05.2018

411. The Tribunal following the order of the coordinate bench in the assessee's own case for earlier year deleted the TP adjustment of Rs.172.08 crores in respect of payment of model fees and Rs.3.53 crores on royalty payments made by the assessee. The assessee had benchmarked the international transaction for payment of model fees and royalty under TNMM and concluded that since the operating profit ratio was higher than the average operating profit ratio of the comparables, the transaction was at arm's length. However, the TPO determined the ALP of the transaction to be "nil" on the ground that the assessee was partly responsible for the technology upgradation which happened in India and the assessee was paying both the model fees and royalty for same set of services. The TPO also held the ALP of the royalty transaction to be nil and further alleged that the assessee being a contract manufacturer, no royalty payment was to be made to the AEs. The aforesaid adjustment was confirmed by DRP. It noted that the co-ordinate bench in assessee's own case for AY 2006-07, 2007-08 and 2008-09 deleted the adjustment made by the Revenue and accepted the ALP determined by the assessee in respect of the transactions. It further observed that for the year under consideration, the payment of royalty was made by the assessee in respect of sales to independent enterprises.

Hero Moto Corp Ltd. v DCIT [T-801-ITAT-2018(Del)-TP] ITA No.1616/Del/2017 dated 13.06.2018

412. The Court remitted the issue of TP adjustment with respect to royalty payment back to the Tribunal for fresh adjudication, noting that the Tribunal's observation that benchmarking of royalty payment could not be done by using comparables with transactions entered into between two foreign parties was not premised on any reasons. The Court held that the Tribunal's above observation was unwarranted and should not be treated as conclusive

Vodafone Mobile Services Ltd [TS-419-HC-2018(DEL)-TP] ITA 660/2018 dated 01.06.2018

413. The Tribunal set aside the DRP order and remitted the issue vis-à-vis ALP adjustment of the royalty payment to its AE. The Tribunal noted that identical issue was remitted by ITAT to AO/TPO for fresh consideration for AY 2006-07 to AY 2009-10. Thus, following the said ruling, ITAT remitted the issue to AO/TPO and directed the assessee to file a fresh TP documentation and comparable companies so as to arrive at ALP.

DCIT vs JCB India Ltd [TS-199-ITAT-2015(DEL)-TP] ITA No.1119/Del/2015 dated 25.06.2018

414. The Tribunal restored the benchmarking of royalty, fees for technical services & design/drawing fee paid by assessee to its AE. It noted that TPO determined ALP of these transactions at Nil on the basis that no tangible benefit had been derived by the assessee. The Tribunal relied on co-ordinate bench ruling in assessee's own case for AY 2009-10 wherein the Tribunal had observed in the ruling that appeal preferred by the Revenue against the said issue for AYs 2002-03 and 2004-05 had been dismissed by the High Court. Further, it was also noted by the Tribunal that co-ordinate bench in assessee's own case had remitted the matter for fresh decision by following earlier year's orders since the AO did not have the benefit of the High Court order at the time when he passed the order.

Munjal Showa Ltd vs. DCIT Ltd [TS-729-ITAT-2018(DEL)-TP] ITA No.1579/Del/2015 dated 27.06.2018

415. The TPO had restricted the ALP of royalty payment by the assessee to its AE at 1% of net sales under CUP method, rejecting assessee's approach of aggregating the said payment under the manufacturing operations and applying TNMM. The Tribunal remitted the said issue of ALP determination for the year under appeal i.e. AY 2010-11 by relying on the Tribunals' order in assessee's own case for AY 2007-08, AY 2008-09 and AY 2009-10 wherein the Tribunal had rejected the assessee's aggregation approach holding that the royalty payment was a separate transaction which required to be benchmarked under CUP method and had remitted the matter back to the file of the AO/ TPO for de novo determination of ALP. Further, it was also noted that in one of the years, under the remand proceedings directed by the Tribunal, the TPO had held the royalty payment made by the assessee at 4% to be within the ALP computed at 4.10%.

Praxair India Private Limited V ACIT [TS-524-ITAT-2018(Bang)] IT(TP)A No.361/Bang/2015 and IT(TP)A No.409 /Bang/2015 dated 04.06.2018

416. The Tribunal deleted the TP adjustment towards payment of royalty on traded finished goods made by the assessee to Johnson & Johnson USA following the coordinate bench ruling in assessee's own case wherein the Tribunal had noted RBI approval was obtained and had observed that TPO could not sit in judgment on whether the royalty had to be paid or not and also found that there was no force in the findings of the TPO that royalty was deemed to be included in the brand royalty.

Further, the Tribunal also allowed the technical know-how royalty payment @ 2% / 4% as per the agreement as against the TPO's approach of restricting royalty @ 1% and followed the assessee's own order for the earlier year.

The Tribunal dismissed Revenue's appeal and relied on the co-ordinate bench ruling in assessee's own case to allow the tax and R&D cess paid on technical know-how royalty. The Tribunal in assessee's own case had noted that royalty payments were approved by RBI and further payments had been made in line with the agreement with Johnson and Johnson US and hence no question of disallowance of tax and R&D cess arose.

ACIT vs Johnson & Johnson Ltd [TS-537-ITAT-2018(Mum)-TP] ITA Nos.1776 & 1777/M/2017 and CO No.242/M/2017 dated 18.06.2018

417. The Tribunal, following the order of the co-ordinate bench in the assessee's own case for the earlier AY, deleted TP-adjustment on management support services received from AE and rejected TPO's ALP-determination at Nil observing that the assessee had actually received services and demonstrated benefit. It noted that the said services could not be categorized as stewardship services and that the Revenue had accepted similar claim of assessee for other AYs. Further, it rejected the TP-adjustment on international transaction relating to receipt of IT services made by the TPO by determining its ALP at Nil and noted that the DRP had deleted similar addition made in the earlier and subsequent years. Since the assessee had been claiming the IT expenses for the last several years and the same had not been denied, in view of the principle of consistency, it held that the TPO was unjustified in making TP addition.

DCIT vs. Philips India Ltd - TS-1088-ITAT-2017(Kol)-TP - ITA No.863 & 539/Kol/2016 dated 15-12-2017

418. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of TP-adjustment on account of disallowance of part of professional service fees paid by assessee to its AE. The service rendered by AE was to enable assessee's fulfilment of management services contract with an independent third party viz. Hazira LNG for plant construction. Accordingly, accepting the contention of the assessee that the services received by the assessee from its AE was independent of the income received by it from Hazira LNG, the Tribunal held that the TPO erred in concluding that the expenditure related to professional services received by the assessee from its AE was to be allowed only in the next AY since income from Hazira LNG was recognized in that year. It upheld the CIT(A)'s view that income receivable from Hazira LNG would not have altered assessee's liability in respect of its payment to AE and further held that the TPO exceeded his jurisdiction by taking over the role of the AO and disallowing an expenditure based on assessee's adoption of a project completion model for accounting. It held that the TPO was neither supposed to take decision about accounting policy to be followed by the assessee nor comment upon as how to compute income if an assessee follows a particular method of accounting.

DCIT vs Hazaria Cryogenic Engineering and Construction Management Pvt. Ltd - TS-4-ITAT-2018(Mum)-TP - /I.T.A./2124/Mum/2007 dated 03/01/2018

419. The Tribunal deleted TP-adjustment on payment of fees for advisory and other services rendered by AE observing that the analysis done by TPO as to nature of services and benefit to assessee was beyond the scope of TP provisions. It observed that the assessee had filed contemporaneous and highly-technical documentary evidences to demonstrate benefits of services such as support for new product, marketing material, training material and technical support, etc and held that once such a business decision had been taken and the payment had been backed by substantial evidence of services received by it from its associated enterprises, then the TPO could not question the same by commenting upon the nature of services provided. It held that the examination of qualification of AEs to provide services and costs incurred by AE was outside the domain of TPO and further observed that the AEs had provided similar services to other group entities and relevant details as to basis of charge, calculations along with proof that similar arrangements with other related entities which were certified. Accordingly, it accepted assessee's adoption of TNMM and consideration of AEs as tested-party and discarded the Nil ALP determination on the basis of examination of needs and benefits of services instead of benchmarking using uncontrolled transactions and held that such a metholodolgy under the garb of CUP was not permissible in law.

Emerson Climate Technologies (India) Limited. vs. DCIT - TS-1065-ITAT-2017(PUN)-TP - ITA No.2182/PUN/2013 dated 29.12.2017

420. Where the assessee incurred consultancy fee during the year (for setting up its manufacturing activity which it capitalized as well as other consultancy fee), vis-à-vis the consultancy fee capitalized, the Tribunal held that since the ALP-determination was neither directed by DRP nor carried out by AO/TPO, it could not enlarge the controversy by directing the authorities to determine the ALP of the amount to be capitalized. Vis-à-vis TP-adjustment on payment of balance consultancy fees to AE, it rejected assessee's approach of aggregating the transaction with manufacturing activity absent close connection between two transactions, further also noted that the assessee had not undertaken any manufacturing activity during the first year under consideration and thus, there was no reason for aggregation. However, noting that TPO determined ALP at Nil holding that no benefit was received by assessee

which was accordingly disallowed by AO, it held that the AO/TPO's action was contrary to ratio of Delhi HC ruling in Cushman & Wakefield India P Ltd and accordingly remitted the matter to AO/TPO to follow directions in Cushman & Wakefield ruling after giving reasonable opportunity of being heard to assessee.

Daikin Airconditioning India Pvt. Ltd. v DCIT - TS-176-ITAT-2018(DEL)-TP - ITA Nos.2536/Del/2014

421. The Tribunal deleted the TP adjustment in respect of management support services fees paid provided by the assessee following the coordinate bench decision of assessee's own case for earlier year wherein it was held that the TPO could not question the commercial expediency and how the assessee benefitted from such services relying on the on ratio laid down in the Delhi High Court ruling in Cushman and Wakefield. It had also observed that the DRP had treated the receipts from assessee as FTS in the hands of the AE which by itself means that services were being rendered and further, the TPO in the earlier years had made no such adjustment. Thus, it deleted the said adjustment made by the TPO on the basis that services rendered by AE to assessee amounted to shareholder activities.

Philips India Ltd. vs ACIT (2018) 52 CCH 0320 KolTrib ITA No.2498/Kol/2017 dated 04.04.2018

422. The Tribunal set aside the CIT(A)'s order upholding the TP addition of Rs 97 lakhs on payment of management fees. It upheld the TPO and CIT(A)'s segregated benchmarking of the of payment of management fees from the TNMM analysis but held that the CIT(A) erred in questioning the commercial expediency behind incurring the said expenditure as it was in excess of his powers while determining the ALP of the payment. Relying on the order of the Tribunal for the earlier years on the similar issue, it remanded the matter back to the TPO for a fresh examination in light of the substantiating evidence filed by the assessee proving the receipt of services.

DMG Mori Seiki India Machines And Services Pvt. Ltd vs DCIT - TS-535-ITAT-2018(Bang)-TP - IT(TP)A 1617/Bang/2012 dated 02-05-2018

423. The Tribunal deleted TP adjustment made on account of payment for management service cross charge made by assessee (an Indian branch office) to various group entities and laid down 4 aspects to be examined while benchmarking intra-group services – *"1. Whether the assessee received intra-group services? 2. What are the economic and commercial benefits derived by the recipient of intra-group services 3. In order to identify the charges relating to services, there should be a mechanism in place which can identity (i) the cost incurred by the AE in providing the intra-group services and (ii) the basis of allocation of cost to various AEs. 4. Whether a comparable independent enterprise would have paid for the services in comparable circumstances?".* Relying on Delhi HC ruling in EKL Appliances, it held that the lower authorities were not justified in examining commercial soundness of the decision and whether any profit had actually been realized pursuant to such payment. Further, it rejected Revenue's argument that assessee did not provide logical cost allocation basis for management support services and observed that the break-up of costs and evidence was duly submitted by the assessee and that the cost allocation of a senior personnel from the regional head office on the basis of time spent was logical and backed by email evidence.

A.T. Kearney Ltd vs A.D.I.T - TS-528-ITAT-2018(DEL)-TP - ITA No. 6249/DEL/2012 dated 21.05.2018

424. The Tribunal deleted the TP adjustment on management service fees paid by the assessee by relying on the coordinate bench decision of Siemens Aktiongessellschaft wherein it was held that benefit test could not be the basis to justify arm's length price. It rejected TPO's Nil determination of ALP of the said services by applying the benefit test by holding that the same was contrary to the provisions of Rule 10B where any of the methods had to be adopted for determining the ALP of the transaction.

US Technology Resources (P.) Ltd. vs Dy.CIT [2018] 97 taxmann.com 490 (Cochin-Trib) IT(TP) No.134 and 475 of 2016 dated 23.05.2018

425. The Tribunal deleted TP-adjustment in respect of management and professional consultancy services and SAP consultancy charges paid pursuant to remand back by Punjab & Haryana HC. It relied upon the co-ordinate bench ruling for AY 2008-09 wherein it was observed that assessee had achieved an increase in export turnover as well as gross margin and thus benefited from the services rendered by

AE. Further it noted that in the earlier year, the Tribunal had upheld assessee's TNMM as TPO failed to bring anything on record to substantiate ALP determination at Nil under CUP. Relying on Tribunal's order for AY 2008-09, it held that since the facts of the present case were identical TNMM was the most appropriate method and that the Assessing Officer/ TPO/DRP were not justified in making any adjustment in the ALP of the international transactions entered into by the assessee on account of professional consultancy, management fee for support service and SAP consultancy charges.

Knorr-Bremse India Pvt. Ltd v ACIT - TS-527-ITAT-2018(DEL)-TP - ITA No.5097/Del/2011 dated 31/05/2018

426. The TPO determined the ALP of the of management/business support services to be Nil by applying CUP on ground that these services did not result in any benefit to assessee and there was no evidence of receipt of these services. The CIT(A) granted relief to the extent of 70% of disallowance but sustained 30% adjustment on the ground that services included element of shareholder services and duplicative services. The Tribunal remanded the matter back to CIT(A) noting that CIT(A) had sustained the adjustment on estimated basis without considering the cost allocation methodology report and directed the CIT(A) to quantify the adjustment after examining the said report and assessee's explanations.

BSI Group India Pvt. Ltd. & ANR vs. ACIT (2018) 53 CCH 0091 DelTrib ITA No. 104/Del/2014 dated 31.05.2018

427. The Tribunal remitted the ALP determination of payment of management group cost back to AO/TPO for deciding afresh by applying the CUP method for AYs 2008-09,2009-10 and 2012-13. The Tribunal noted that the TPO rejected assessee's aggregation of sub-transactions of "management group cost" and "R&D assistance cost" as one international transaction of "cost sharing expenses" using TNMM, segregated the payment of "management group cost" and applied CUP as MAM and determined ALP as nil. The Tribunal rejected the TPO's Nil-ALP determination of management group cost on the ground of non-receipt of services/duplication of services and application of benefit test. The TPO had invoked the CUP method and conducted a "cost benefit analysis" test and eventually arrived at the conclusion that services received were duplicative in nature and in some cases, the assessee did not avail any services. The Tribunal took note of the assessee's submission of list of services received under the management cost services and certain other details of technical materials received from the AEs, and followed Knorr-Bremse High court ruling to hold that the assessee did receive some services and the applicability of `benefit test' could not be countenanced.

Further noting that (i) the coordinate bench in assessee's own case for AY 2011-12 had restored the matter back to TPO to examine whether the payment of "management group cost" was a case of cost sharing arrangement or intra-group services after perusal of various agreements and (ii) since the relevant agreements were the same in that year as well as the present year, the Tribunal restored the matter for present year also to the file of the AO.

Atotech India Pvt Ltd vs. ACIT [TS-340-ITAT-2018(DEL)-TP] ITA Nos.3419&6571/Del/2016 &1112/Del/2014 **dated 11.05.2018**

428. The Tribunal remitted the TP-adjustment on sales support services rendered by assessee to its AE for re-adjudication noting that the main dispute was around cost allocation between trading and sales support services and assessee had made several submissions which were not considered by lower authorities. It noted that the TPO had made adjustment on reimbursement of project expenses which consisted of travel expenses of engineers, salary, insurance, logistics for importing the material related to the project, etc., for want of documentation while DRP enhanced it holding it to be shareholder activity without giving any plausible reasoning in support of its claim that project expenditure was shareholder activity and would benefit only AE. It noted that the assessee had consistently submitted that expenditure was towards setting up of its Ranjangaon Project and accordingly held that the TPO ought to have determined ALP in light of provisions of Rule 10B. Further, it held that the Revenue could not sit into the armchair of businessman to adjudge necessity of expenditure unless it was shown that the expenditure was not at all required to be incurred for the benefit of the assessee and the assessee, in normal circumstances, would not be willing to pay the same to independent third parties. It also observed that the expenditure was capitalized and disclosed under 'work in progress' in the Balance Sheet and not debited to profit and loss account, thus held that approach of Revenue to add back

amount as income was clearly fallacious. Thus it set aside Nil ALP determination and restored the matter back to TPO for de novo consideration.

Jotun India P Ltd v ITO - TS-447-ITAT-2018(Mum)-TP - I.T.A. No.1126/Mum/2013 dated 04 /05/2018

429. The Tribunal relying on the order of the coordinate bench in assessee's own case rejected TPO's determination of ALP of the management fees at nil and quoted the observations of the bench wherein they had questioned the authority of the TPO to determine the necessity and expediency of the management fees. The TPO had to only ascertain the arm's length price. Further, the Tribunal also noted that the management fees was held to be in the nature of both capital and revenue expenditure and to be allocated in 60:40 ratio because the person to whom the fees were paid was involved in the day to day activities of the assessee and also assisted in the expansion and increase in the installed capacity.

Tudor India Private Limited (formerly known as Tudor India Limited) [TS-458-ITAT-2018(Ahd)-TP] ITA No.2585/Ahd/2014 dated 06.06.2018

430. The Tribunal deleted TP-adjustment on payment made for management and professional consultancy services by following the co-ordinate bench ruling for AY 2008-09 (which had been relied upon subsequently by AY 2007-08 to decide the issue in favour of the assessee),wherein it was observed that assessee had achieved an increase in export turnover as well as gross margin from 2007-2009 and thus benefited from the services rendered by AE . Noting that the AE had charged only the cost and other related expenses for the employee and not a markup which was paid to the employees who are third parties , it observed that transfer pricing provisions can be inferred only if there is a related party payment, but the expenses incurred were paid to the third party employees although those employees were the employees of the AE.It rejected TPO's Nil determination of ALP under CUP method as nothing was brought on record to substantiate that the AE provided similar services to independent enterprises in the assessee's market and accepted assessee's adoption of TNMM as the MAM . It dissented with coordinate bench decisions relied on by the Revenue namely Crane Software and Gemplus India Pvt. Ltd (wherein the TP adjustment on management charges had been made due to difference in factuals) as it was not the allegation of TPO that services were not rendered by the AE and Bombardier Transportation India Pvt. Ltd. as the assessee in the instant case had filed detailed evidence and explained specific services provided by the AEs

Knorr-Bremse India Pvt. Ltd v ACIT - TS-526-ITAT-2018(DEL)-TP - ITA No.5097/Del/2011 dated 28.06.2018

431. The Tribunal dismissed Revenue's appeal and confirmed the deletion of TP-adjustment on foreign component of seconded employees' salary disbursed by AE in Australia. The TPO had determined ALP of reimbursement to AE towards expat employees' salary at Nil while Indian component of the salary was allowed as deduction. The Tribunal noted that the TPO had accepted business support services income and project management fees earned by assessee through the employment of such expat employeesand therefore held that the action of the TPO in denying deduction of the foreign component of the salary was not justified when it accepted the salary paid to such employees in India moreso when the same set of expats engaged in providing business support services the income from which has been offered for tax and accepted by the TPO.

ACIT V Blue Scope Steel India (P) Ltd - [TS-143-ITAT-2018(DEL)-TP] - I.T.A .No. 5535/DEL/2012 dated 01.03.2018

432. The Court upheld the Tribunal's order deleting TPO's disallowance of overheads allocated by JV partners to assessee (an AOP with 5 members formed for executing contract for Delhi Metro Rail Corporation). As per the JV agreement, the members were permitted to allocate their head office (HO) expenses to the extent of 8.5% of turnover of the assessee in their profit sharing ratio, however TPO disallowed the same on the ground that other direct expenses of the JV partners were debited in assessee's books. The Court noted the Tribunal's observation that the TPO had failed to identify comparables to justify that overhead allocation in case of assessee was in excess of comparable transactions and that both the CIT(A) and ITAT took note of certificates from JVs' auditors confirming overhead charging rate and its apportionment to the assessee's operations and thus, rejected TPO's finding that assessee had not furnished details in support of its claim. Accordingly, the Court held that the issue urged by Revenue

was essentially of finding of facts, which were not shown to be perverse and accordingly held that no substantial question of law arose.
Pr. CIT vs. International Metro Civil Contractors - INCOME TAX APPEAL NO. 559 OF 2015 dated 07.03.2018

433. The Tribunal deleted the TP-adjustment (TPO determined ALP as Nil) on information technology (IT) services availed by assessee (engaged in manufacture and distribution of fluid power equipment) and held that the factum of availing services as well as basis of charge was proved by assessee based on a certificate received from AE which had also certified that similar charge was made to other group entities and other documents like debit notes, JV vouchers, etc. It rejected TPO's segregation of transaction of availing IT services from other international transactions and held that the IT services were related to the business of the assessee and therefore ought to be aggregated.
Eaton Fluid Power Limited vs. ACIT - TS-178-ITAT-2018(PUN)-TP - ITA No.45/PUN/2013 dated 12.03.2018

434. The Tribunal rejected TPO's Nil ALP-determination under CUP-method in respect of payment of license and management fees by assessee (JV engaged in manufacture of pharmaceutical formulations) to AE and upheld assessee's approach of benchmarking under the aggregation approach. It held that while the benefit test was a necessary part of determining ALP of any intra-group service, it cannot have qualifications such as "substantial", "direct" and "tangible" as these qualifications were not given u/s 92(2) and also observed that there were several non-monetary terms other than profitability required to be seen while judging the benefit test. Observing that the license was required for long term manufacturing of drugs and formulation with know-how of the AE, the Tribunal held that the TPO lost sight of various non-monetary benefits which in the absence of the payment for the use of license would not flow to the assessee. Since the assessee's comparability analysis by aggregation of transactions after adopting TNMM as MAM had not been examined by either of the authorities below who merely concentrated on the issue of aggregation/segregation of transactions, it remitted issue back to CIT(A).
DCIT vs. Adcock Ingram Ltd - TS-57-ITAT-2018(Bang)-TP - I.T(TP).A No.1039 & 1078/Bang/2015 dated 31.01.2018

435. The Tribunal remitted the TP-adjustment on payment for intra-group services to AE noting that the TPO after rejecting assessee's combined transaction approach of adoption of TNMM and applying CUP, had determined ALP of intra-group services at Nil without appreciating i) the assessee's arguments on appropriateness of combined benchmarking approach considering that 5 transactions benchmarked together were closely linked and inappropriate adoption of CUP ii) TPO's failure to consider voluminous documentation submitted by assessee and iii) TPO's incorrect approach in questioning commercial expediency of transaction. Considering the totality of the facts of the case, it held that the matter required fresh adjudication at the level of the Assessing Officer/TPO in the light of the various evidences produced before them and in the light of the decisions relied on by assessee.
Bright Point India Pvt. Ltd. v ACIT - [TS-1083-ITAT-2017(DEL)-TP - ITA No.123/Del/2017 dated 04-12-2017

436. In case of an assessee engaged in manufacturing and marketing of paints, speciality chemicals and starch, the Tribunal deleted TP Adjustment in respect of payments made for intra group services received from its AE. The Tribunal relied on assessee's earlier year's order which stated that services provided by AE in the arena of human resources, marketing support, and IT, were not in the nature of stewardship services and the assessee had proved the benefit received from such services. Further, the Tribunal also remitted issue of ALP determination to TPO, after noting that ALP determination activity was not carried out by TPO, as the TPO had cited assessee's failure to provide agreement as reason for non-determination of the ALP and the DRP regarded the transaction as stewardship services. Thus, the Tribunal directed TPO to pass speaking order after hearing the assessee.
DCIT Circle 10(1) vs Akzo Nobel India Ltd.-TS-342-ITAT-2018(KOL)-TP- ITA No 229/Kol/2015 dated 14.04.2018

437. The Tribunal remitted back issue of ALP determination of international transactions for assessee acting as a sourcing support service provider for it's group companies and relied on co-ordinate bench ruling in

assessee's own case for earlier AYs, which in turn had relied on Li & Fung HC-ruling, and had remitted the issue back to TPO considering that the assessee was not into buy and sell, but a facilitator/service provider and its compensation model would be cost plus remuneration and not a commission based remuneration. Thus, the Tribunal remitted the matter to the file of AO/TPO for a fresh examination on the lines of co-ordinate bench judgment to find out proper comparables and determine the ALP of the international transaction afresh.

GAP International Sourcing (I) Pvt Ltd vs DCIT Circle 10(1)- TS-481-ITAT-2018(Del)-TP- ITA No 6340/Del/2017 dated 11.04.2018

438. The Court upheld Tribunal's decision of deleting TP-adjustment in case of an assessee rendering support services by following co-ordinate bench ruling in 'Li and Fung India Pvt. Ltd. The Court rejected Revenue's submission that there were significant differences in assessee's international transactions as opposed to those carried out by Li and Fung India and stated that Tribunal's findings with respect to the functional similarity and identity between Li and Fung India and assessee were clear. The Court observed that like Li and Fung India the assessee did not assume any risk and were dependent entirely for reimbursement of its expenses by the AEs and were thus entitled to the annual and identical markup of 5% over the annual expenditure.

PCIT-4 vs GAP International Sourcing India P Ltd- TS-259-HC-2018(Del)-TP- ITA No 1033/2017 dated 10.04.2018

439. The Tribunal deleted the disallowance in respect of sales commission paid by assessee to its sister concern (AE), noting that similar commission was allowed in preceding AYs 2010-11 to 2012-13 and Revenue had not been able to bring any new fact, which had led to change the present stand for the purpose of disallowing sales commission.

Bonfigioli Transmissions Private Limited vs. DCIT - TS-388-ITAT-2018(CHNY)-TP - /I.T.A.No.2977/CHNY/2017 dated 14-05-2018

440. The Tribunal rejected Revenue's contention that rate of commission received by assessee ought to be 4% instead of 1% and deleted the TP adjustment made on commission. The Tribunal noted that Revenue had raised the issue for the first time in the AY 2013-14 and observed that the TPO has compared the rate of commission charged by the assessee with the rate of commission charged by the assessee to its other AEs which was clearly barred by the provisions of section 92F(ii) r.w.s. 92. Accordingly**,** it deleted the TP-adjustment on commission observing that ALP was to be determined based on price charged in uncontrolled transaction and accepted the benchmarking done by assessee as correct

COIM India Pvt. Ltd v ACIT [TS-344-ITAT-2018(DEL)-TP] ITA No.7260/Del/2014 dated 07.05.2018

441. The TPO disallowed the entire commission payment made by the assessee (engaed in manufacturing business) to its AE for AY 2008-09 by using the 'benefit test' and determined ALP at Nil on the basis that no services were received. The CIT(A) arbitrarily held that 75% commission should be allowed as a deduction. The Tribunal rejected TPO's use of 'benefit test' to determine Nil ALP, relying on Knorr Bremse HC ruling and held that in the instant case it was established beyond doubt that three employees were specifically deployed by the AE for the business operations of the assessee, which deciphered that the international transaction entered into by the assessee with its AE was genuine and bona fide. The Tribunal thus set aside the CIT(A)'s order and remitted the matter to the file of AO/ TPO for deciding the same in accordance with ratio laid down in Cushman & Wakefield jurisdictional HC ruling wherein it was held that the authority of the TPO was limited to conducting transfer pricing analysis for determining the ALP of an international transaction and not to decide if such service or benefit accrued to the assessee.

Further, the Tribunal also rejected the TPO's benchmarking of the payment of commission by applying the CUP method, noting that he had not brought on record even a single comparable to facilitate a comparison between the price for the services by the assessee vis-à-vis that paid by other comparable. It also rejected the assessee's benchmarking under PSM since the assessee was not able to substantiate the ALP under the said method.

DCIT (LTU) vs. Caparo Engineering India Pvt. Ltd [TS-325-ITAT-2018(DEL)-TP] ITA No.444/Del/2015 dated 02.05.2018

442. The Tribunal deleted the adjustment/ disallowance made by the TPO in respect of payment made by the assessee for intragroup services. It relied on the coordinate bench ruling in assessee's own case for earlier year wherein the TP adjustment in respect of intragroup services was deleted by holding that the assessee actually received the services and benefited from them. The Tribunal noted that TPO made the adjustment by observing that services rendered were of stewardship nature and were for maintenance of overall control of the group. However, in the assessee's own case, it was held by the Tribunal that that assessee had clearly demonstrated that services resulted in effective cost savings by way of an effective purchase function, technical assistance in relation to certain products provided by AE and other ancillary functions like IT management for which the assessee did not have requisite staff to perform functions. The Tribunal noted that there were no change of facts from the earlier year and the Revenue had not been able to bring anything on record to controvert it.
Chryso India Private Limited (formerly known as 'The structural Waterproofing Company Private Limited') v ACIT [TS-329-ITAT-2018(Kol)-TP] ITA No.112/Kol/2017 dated 04.05.2018

443. The Tribunal remitted the benchmarking of intra-group services to TPO. It relied upon the earlier year order wherein ITAT had observed that TPO is required to assess (a) need test, (b) benefit test, (c) rendition test, (d) duplication test and (e) shareholder activity test while determining ALP of intra-group services. The Tribunal in the assessee's earlier year had remanded the matter by holding that assessee had not produced proper evidence for substantiating actual rendering of various services and that determination of the same would be a year-specific exercise.
Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018

444. The Court kept open the substantial question of law raised in appeal against the order of the Tribunal i.e. whether addition u/s 40(a)(ia) can be made with respect to expenditure incurred for intragroup service, irrespective of any addition being made u/s 92CA [i.e. TP adjustment] with respect to the said expenditure. It was noted that the Tribunal had remanded back the issue to the file of the AO. The Court thus held that the issue would now depend on the AO's findings under the remand proceedings after considering the assessee's contention in this regard. Accordingly, the appeal was disposed of.
SKF Technologies India P Ltd v DCIT [TS-610-HC-2018(KAR)-TP] ITA No.83/2017 dated 19.06.2018

445. The Tribunal dismissed Revenue's appeal and upheld DRP's order deleting the TP adjustment in respect of intragroup services noting the fact that the DRP had recorded that the assessee had provided substantial evidence in form of e-mails, correspondence with the AE etc. so as reach a conclusion that the AE was rendering services which were beneficial for the assessee in conducting its business and though some benefits might have accrued to the overall group but the primary beneficiary was the assessee. It concluded that services were not in nature of stewardship activity. It observed that the Revenue could not point out any factual or legal error in the directions of the DRP and thus, upheld the DRP's order.
ACIT vs Humboldt Wedag India Pvt. Ltd- (2018) 53 CCH 0135 Del Trib ITA No.5097/Del/2011 dated 28.06.2018

446. The Tribunal following the order of the co-ordinate bench in assessee's own case for earlier year remitted the issue vis-à-vis charge of markup on reimbursements from AE for the limited purpose of verification whether the transactions were routed through books. The Tribunal observed that AE's employee was transferred to assessee's company payroll as a whole time director with responsibility for scientific business and infrastructure operations of certain sister concerns/ affiliates, accordingly, assessee recharged the apportioned salary and other direct expenses incurred to respective affiliates on a cost-to-cost basis. The Tribunal noted that TPO suggested that a markup of 10% should be charged which was upheld by CIT(A) and had also observed that the transaction was not routed through the books.
United States Pharmacopeia India Pvt Ltd [TS-451-ITAT-2018(HYD)-TP] ITA No. 1582/Hyd/2017 and CO. No.37/Hyd/2017 dated 01.06.2018

447. The Tribunal followed the order of the co-ordinate bench in assessee's AE and held that payments made to the AE were in nature of reimbursement without any mark-up and were duly supported by third-party invoices and hence the TPO could not make TP-adjustment on reimbursements by determining ALP at Nil It rejected the stand of the DRP that that reimbursement represented intra-group services.
Spencer Staurt (India) Private Limited vs ACIT [TS-751-ITAT-2018(Mum)-TP] ITA No.1832/Mum/2016 dated 06.06.2018

Share transactions

448. The Tribunal upheld the deletion of TP-adjustment in respect of buyback of shares by wholly owned subsidiary-AE from assessee at a lower rate (0.8 pound per share) than the per share investment (1 pound per share) made by assessee during the AE's incorporation. It held that the TPO erred in charging notional interest based on the assumption that it was a loan transaction in the garb of share investment and observed that buying back of shares at par or at higher or lower rate than the purchase price was common practice in the business world and hence it should be accepted until it was proved that such a transaction was not based on a scientific basis or was against the provisions of exchange manual/regulation. It upheld the order of the first appellate authority wherein it was observed that the TPO had not doubted the valuation of the transaction which was arrived at by professionals and accordingly held that the TPO was unjustified in imputing notional interest @ 5.07% p.a. for the 101 day-period between the date of investment and the date of buyback.
ACIT vs. Wockhardt Ltd. - TS-39-ITAT-2018(Mum)-TP - I.T.A./4156/Mum/2012 & I.T.A. 5557/Mum /2012 dated 05/01/2018

449. The Tribunal deleted TP-adjustment on assessee's sale of shares of group company (FAPL) to another AE based in Singapore and rejected price determined by DRP/TPO at Rs. 12,285.92 per share (using perpetual growth rate (PGR) of 7% which was based on a consultancy firm's Report predicting the long term nominal growth for Indian economy at 7.5%) as against Rs. 8,158 as adopted by assessee. Noting that the consultancy firm's Report relied on by Revenue was a generic report and not specific to business carried on by the assessee and that the Report did not relate to year under consideration it held that the basis adopted by the Revenue was unjustified. Further, it noted both TPO and DRP failed to address assessee's objection that CAGR of earning/free cash flow for FAPL was (-) 16% and similar companies had shown CAGR of (-) 8%, thus held that it was not reasonable to assume that such a company would suddenly grow at the estimated growth rate of the economy in perpetuity. It also observed that the assessee had produced 4 reports in support of its valuation and relying on the Bombay HC ruling in Titan Time Products Limited held that valuation reports of experts could not be rejected by the Revenue unless the assumption considered in the report were proved to be grossly erroneous or another expert opinion contradicting the earlier report was obtained. The Tribunal further observed that the subsequent buy back of FAPL shares from the Singapore entity at the same price was accepted to be at ALP by TPO and therefore held that there was no basis for not treating the original transaction to be at ALP. Accordingly, it held that the valuation of shares of FAPL was at Arm's length and deleted the TP adjustment.
First Advantage Quest Research Limited vs. DCIT - TS-5-ITAT-2018(Mum)-TP - I.T.A./1546/Mum/2017 dated 05/01/2018

450. The AAR upheld Revenue's contention and held that transaction of sale of shares in an Indian company by the Applicant to its Singapore based AE was required to be benchmarked as per the transfer pricing provisions contained in Chapter X of the Act. Relying on its decision in Castleton Investments Limited it held that as opposed to the provisions of Section 195 of the Act, the applicability of Section 92 does not depend on the chargeability under the Act i.e. there is no such requirement in section 92 that the transaction should result in income chargeable to tax under the Act.
AB Mauritius - TS-1099-AAR-2017-TP - A.A.R. No 1128 of 2011 dated 08.11.2017

451. The Tribunal deleted TP-addition on account of remittances made by assessee to its wholly owned subsidiary ('WOS' / 'AE') in Ivory Coast of South Africa towards share application money to the extent of shares allotted but however it sustained addition in respect of balance amount which was refunded by

the WOS adopting interest rate of 6 months LIBOR plus 150 basis points as the refunded amount represented an interest free loan.

DCIT v Taurian Iron & Steel Co.Pvt.Ltd. - TS-467-ITAT-2018(Mum)-TP I.T.A./1284/Mum/2015 dated 11/05/2018

452. The Tribunal deleted the TP-addition made on account of interest free advances granted by assessee to its AEs and subsequently converted into equity for AYs 2008-09 to 2011-12. The Tribunal noted that assessee had raised funds by way of zero coupon bonds only for investing in its subsidiaries as ultimately share were allotted. It relied on co-ordinate bench ruling in assessee's own case for AY 2012-13 and held that the transaction was not an international transaction. It observed that Explanation(1)(c) to sec 92B(1) was introduced vide Finance Act 2012 which clarified that capital financing also qualified as an "international transaction" retrospectively. The Tribunal stated that at the point of time when the transaction was entered into and equity shares were allotted, capital financing was outside the purview of international transaction. The Tribunal further added that as assessee did not incur any interest liability, there was no need for receiving any interest and the transaction had no 'bearing on the profits, income, losses or assets of such enterprises'. Accordingly, the said transaction was not an international transaction and hence liability could not be attached.

Bartronics India Ltd vs. DCIT [TS-322-ITAT-2018(HYD)-TP] ITA Nos.1732/Hyd/2012 and ITA Nos. 520,383 and 521/Hyd/2016

453. The Tribunal deleted the TP adjustment made in respect of payment for services under the cost contribution agreement and rejected the TPO/DRP's determination of nil ALP. The Tribunal observed that for previous AYs 2009-10 to 2011-12, TPO had consistently accepted assessee's TP-documentation without making any adjustments. It relied on Radhasoami Satsang SC ruling for the principle of consistency and opined that unless there was a change of facts or law, Revenue could not blow hot and cold at will. The Tribunal rejected the view of the TPO that assessee had not satisfied the benefit test and opined that the authority of the TPO would be to conduct a transfer pricing analysis to determine the arm's length price and not to determine whether there was a service or not from which the assessee benefits.

AT & S India (P) Ltd v/s. DCIT [TS-336-ITAT-2018(Kol)-TP] ITA No.77/Kol/2017 dated 11.05.2018

Others

454. The assessee, part of the Vodafone group, pursuant to a Framework Agreement held options to purchase 100 percent of the shares an Indian company viz. SMMS (which in turn indirectly held 3.15 percent in Vodafone India) from IDFC Investors for which it had paid a cost of Rs. 2 crore plus applicable interest @ 17.5 percent (which was a small fraction of the market value of the shares of Vodafone India i.e. the investee of SMMS). During the year under review, it terminated its option for which it paid IDFC Group a sum of Rs. 21.25 crore and disallowed the expenditure in its computation of income. The TPO sought to benchmark the transaction holding it to be a deemed international transaction and contended that instead of making a payment of Rs.21.25 crore, the assessee ought to have received a sum of Rs.1588.85 crore as the assessee had terminated extremely advantageous call options. The TPO noted that during the earlier assessment year, in another transaction IDFC had charged a sum of Rs.62.23 crore on relinquishment of right to purchase 0.1234 percent of Vodafone India and considering the assessee had relinquished the right to purchase 3.15 percent, arrived at a proportionate ALP of Rs. 1588.85 crore. The Tribunal held that it would be myopic to examine the termination of the Framework agreement without considering the Framework agreement and other connected arrangements / agreements. It noted that the assessee was granted the aforesaid option pursuant to an agreement wherein another company viz. HTIL had nominated SMMS to purchase the shares of two Indian companies for which SMMS was to be funded by the ultimate parent company of the Vodafone Group i.e. CGP Cayman Island by way of purchase of shares of SMMS by IDFC. The assessee entered into this agreement to ensure that the SMMS remained in control of the entire group (as it held shares in Vodafone India) by subscribing to options to purchase the shares of SMMS. Further, the Tribunal noted that the termination of options of the assessee was done so as to enable TTI another group company to obtain the shares in SMS. Further, it noted that the overseas Group companies were signatories to all the agreements. Accordingly, it concluded that the transaction

between the assessee and IDFC was in effect a deemed international transaction. The Tribunal dismissed the assessee's contention that absent explicit legal rights of the overseas AEs in the instant transaction, it could not be considered as a deemed international transaction and held that Section 92F(v) provided that irrespective of whether an arrangement, understanding or action in concert is intended to be enforceable by legal proceedings or not, it would be includible within the definition of "international transaction". Further, it held that the term acting in concert suggested two or more persons acting in co-ordination for a common goal and therefore held that the Foreign AEs were undisputedly acting in concert in the current transaction.

Further, it dismissed the contention of the assessee that TP would not apply considering that no income arose from the transaction as the entire expense was disallowed in the computation of income. It held that it was only when a transaction was inherently incapable of producing an income that the transfer pricing provisions would not apply and held that merely because an income is not reported or not taken into account in the computation of income of taxable income it would not get out of the ambit of international transaction. It noted that as per the option available to the assessee, the assessee was supposed to pay only 2 crore plus interest (amounting to Rs.4.13 crore) but the assessee had paid Rs. 21.25 crore which evidenced the fact that there were other commercial consideration in the transaction. Accordingly, it held that the instant transaction would lead to income from capital gains considering the amended definitions of Section 2(47) and 2(14). It held that options would clearly fall under the definition of capital asset / property and that the termination of options would fall under disposing / parting with an asset / interest in any asset as contained in Explanation 2 to Section 2(47). Upholding the ALP determination of the TPO it proceeded to determine the cost of acquisition of the shares and noted that over and above the Rs.21.25 crore paid in the instant transaction the assessee had also paid 62.24 crore towards assignment of right to purchase shares in Vodafone India in the earlier year. Further, it dismissed the contention of the assessee that the capital gains provisions would not apply as there was no consideration and held that under transfer pricing provisions, the capital gains were to be computed on the basis of the ALP consideration. Accordingly, it upheld the TP addition made.

Vodafone India Services P Ltd v DCIT – TS -37-ITAT-2018 (Ahd) – TP – ITA No 565 / Ahd / 2017 dated 23.01.2018

455. The Tribunal held that writing off of obsolete stock worth Rs. 6.48 crore by the assessee was an extraordinary event and not an international transaction whose fair market value had to be assessed under the TP-provisions. It noted that similar write-offs were made in earlier years which had not attracted TP-adjustments by TPO and that there were no new facts warranting addition in the current year. Further, examining the transaction against the distribution agreement between AE and assessee, it concluded that the AE was not involved in any manner in the writing off of the obsolete stock since the agreement was limited to replacement/guarantee for goods with manufacturing defects and not for those which were obsolete or out-of-fashion (like the written-off goods). Accordingly, it deleted the TP-adjustment.

Safilo India Private Limited vs. DCIT - TS-12-ITAT-2018(Mum)-TP - I.T.A./588/Mum/2015 dated 12.01.2018

456. The Tribunal remitted the benchmarking of assessee's international transaction relating to Forward Foreign Exchange Contract (FFEC) for fresh adjudication after considering additional evidences filed before CIT(A). It noted that the TPO held that the international transaction relating to FFEC's (entered into 2000 and cancelled in 2007) were not at ALP as assessee was unable to submit any data from its AE regarding CUP for the transaction. The CIT(A) did not accept the additional evidences filed by assessee (data of Bloomberg Future rate for five years) as the documents were not produced before AO/TPO and assessee had not filed any application under Rule 46A. The CIT(A) thus upheld the TP-adjustment. Further observing that the TPO accepted the five years data of Bloomberg and made no adjustment in the succeeding AY, the Tribunal held that the matter should be restored back to the file of TPO/AO for fresh adjudication to consider additional evidences filed by assessee before the CIT(A).

ACIT vs. Citibank Overseas Investment Corporation - TS-6-ITAT-2018(Mum)-TP - I.T.A./7032/Mum/2013 dated 05.01.2018

457. The Tribunal deleted TP-adjustment on account of interest paid by the assessee to its AE on Fully Compulsory Convertible Debentures (FCCDs) issued by assessee to its AEs. The TPO recharacterized

the FCCDs as foreign loan and benchmarked the interest paid on such FCCDs by adopting LIBOR as the ALP and accordingly made TP adjustment. The Tribunal relying on the coordinate bench's finding in Adama India Pvt Limited [TS-16-ITAT-2017(HYD)-TP], (wherein it was held that considering the fact that the policy of Govt. of India and the RBI indicate that the issuance of CCD was part of FDI being quasi-equity in nature), held that the TPO erred considering the same as a loan. As regards the benchmarking the interest paid on CCDs, the Tribunal noted that the CCD's were issued in Indian Rupees and therefore relying on the decision of Adama India (supra) held that the assessee was justified in benchmarking the interest based on the SBI PLR prevalent and accordingly held that the TPO erred in adopting LIBOR as ALP.

Hyderabad Infratech Private Electronics Limited v DCIT - TS-54-ITAT-2018(HYD)-TP - ITA No.1781/Hyd/2017 dated 25.01.2018

458. The Tribunal held that the TPO was unjustified in benchmarking the commission earned by the assesse from its AE on sale of machinery (5 percent) with the commission rate earned by it from its AEs from the sale of spares (18 percent). Following the order of the co-ordinate bench for the earlier year, it held that the benchmark adopted by the TPO was invalid being a controlled transaction in itself. Accordingly, it dismissed Revenue's appeal and deleted the adjustment.

DCIT vs. Bobst India Pvt. Ltd - TS-79-ITAT-2018(PUN)-TP - ITA No. 277/PUN/2016 dated 29.01.2018

459. The Tribunal upheld CIT(A)'s deletion of TP-adjustment on account of assessee's purchase of old / used machines along with its accessories from UK-AE. It noted that the assessee adopted FMV as certified by a Chartered Engineer as CUP for ascertaining ALP which was rejected by TPO who adopted a unique approach for benchmarking by considering life of the machinery given by Chartered Engineer at India along with year of manufacturing given by the Chartered Engineer at UK for working out the market value of the machinery during the transaction year. It upheld assessee's ALP determination stating that valuation by an independent qualified expert for determining the fair market price or the FMV of the machinery has to be treated as the arm's length price for the value of such products/services, which could be reckoned as the price paid by any independent party in the open market for such product/goods. Further, it held that for used machinery, ostensibly the purchase price of a new product could not be taken as CUP since the cost of used/old machinery depends upon number of various factors like usage maintenance, obsolescence etc. Accordingly, it held that the TPO failed to take note of such factors and also failed to carry out any independent exercise for the value of the machinery by any approved valuer /Chartered Engineer. Further, considering the fact that for AY 2008-09 TPO himself had accepted the same value as per the valuation report given by the Chartered Engineer for similar transaction, the Tribunal upheld the order of the CIT(A).

ACIT vs. Caparo Engineering India Pvt Ltd - TS-109-ITAT-2018(DEL)-TP - I.T.A. No.6838/DEL/2014 dated 22.02.2018

460. The Tribunal deleted the TP-adjustment on purchase of fixed assets from AE relying upon the co-ordiante bench ruling in assessee's own case for earlier years wherein the Tribunal held that since assessee was receiving compensation from AE on 'cost plus mark up' basis with depreciation as one of the cost components, transaction of fixed assets purchase was 'closely linked' with transaction of services to AE and no separate benchmarking was required. Further, it placed reliance on judicial precedents wherein it was held that since depreciation cost was also recovered from AE along with mark-up, the transaction was 'tax neutral' and therefore deleted the adjustment.

BT India P Ltd v DCIT - TS-130-ITAT-2018(DEL)-TP - I.T.A .No. 566/DEL/2015 dated 26.02.2018

461. The assessee had acquired trademark from its AE, the ALP of which was determined at Nil by the TPO on the ground that the acquisition of trademark was not expected to result in any benefit to the assessee. Noting that the assessee produced certain additional evidences before the DRP which was not admitted, and that the assessee was not given adequate opportunity of being heard, the Tribunal remitted the matter back to the AO / TPO for fresh examination after passing of a speaking order.

Magic Woods Exports Private Limited vs. DCIT - [TS-152-ITAT-2018(CHNY)-TP - .I.T.A. No. 871/Mds/2017 dated 06.02.2018

462. The Tribunal remitted issue of adjustment made in respect of sale of assessee's BPO business division by AE to an Indian domestic party noting non-adjudication of assessee's ground by DRP. The assessee's AE gave a contract (global agreement) to a third party towards business process outsourcing of its various products and, as part of the deal, agreed to hive off assessee's BPO division to the Indian AE of the said third party for certain consideration. Pursuant to the above contract, the assessee entered into an agreement with the Indian AE of the said third party, which provided that a part of the consideration for transfer of business division was to be received by the assessee's AE and balance by the assessee. TPO [despite non-reference of the said transaction by AO] made a TP-adjustment on sale of assessee's business division and on the same issue, AO passed an alternate order making addition of same amount u/s 50B by treating the transaction as a slump sale. DRP observed that the assessee did not have any say in the global agreement (pursuant to which the division was transfered) and thus held that practically it was a case of assessee's AE taking over the business division from assessee at the price received by the assessee and subsequently selling the same to the third party at the value of total consideration of transfer. Thus, it held the above transaction to be an international transaction and upheld the TP adjustment made by the TPO. DRP, however, did not adjudicate the issue of taxability u/s 50B.

The Tribunal noted assessee's acceptance that subsequent to IT Act amendment, TPO is empowered to go into the issue of the international transaction himself without the matter being referred by AO, however, observing that DRP had not adjudicated issue of Sec 50B addition despite AO making such addition in the draft order, ITAT refrained from adjudicating TP-adjustment issue relying on Madras HC ruling in Ramdas Pharmacy and directed DRP to complete its order by adjudicating upon the ground relating to the addition made by AO by treating the transaction as slump sale

Prudential Process Management Services India Pvt Ltd vs DCIT Range 10(3)- TS-285-ITAT-2018(MUM)-TP- ITA No 1274/Mum/2014 dated 13.04.2018

463. The Tribunal deleted TP-adjustment on transaction of purchase of DSP Software and IP rights from assessee's Malaysian AE. The TPO had relied on the statement of one of assessee's employees and held that entire software was developed in India and thus, determined ALP of the transaction at Nil. The Tribunal rejected TPO's stand of merely relying on employee's statement without following any of the prescribed methods of ALP-determination and further noted that Malaysian AE had compensated assessee for part of development work carried out by assessee which was found to be at ALP by TPOs in earlier years.

Further, regarding price paid for IP rights, the Tribunal relied upon Delhi HC decision in EKL Appliances and co-ordinate bench decision in IWM Constructions (P.) Ltd to hold that Revenue cannot question business decision of the assessee and decide ALP.

Separately, the Tribunal upheld DRP's direction to exclude depreciation from PLI while determining ALP of software development services to AEs by relying upon co-ordinate bench ruling in Market Tools Research Pvt. Ltd and Schefenacker Motherson Ltd and noted that depreciation claims for partnership firms and for companies were different.

DCIT Circle 8(1) vs M/s. Value Labs LLP-TS-409-ITAT-2018 (HYD) TP-ITA Nos. 305 & 405/HYD/15- dated 27.04.2018

464. The Tribunal deleted TP-adjustment in respect of provision of manning services by assessee [engaged in the business of sourcing, screening and selecting seafarers and also providing assistance in completing their free joining formalities, etc.] to its AE. The Tribunal observed that, co-ordinate bench in assessee's own case for previous AY had deleted similar TP-adjustment on the basis that after taking into consideration the amount of expenses reimbursed by the associated enterprise over and above the fixed rate of payment (which was not factored in the benchmarking analysis by the TPO), rate charged by assessee could be compared favourably with the rate adopted by TPO. Thus, there being no material difference in facts, it deleted the addition made on account of transfer pricing adjustment of manning services in the present year also.

Wilhemsen Ship Management India P Ltd. Vs ITO- TS-391-ITAT-2018(Mum)-TP-ITA no. 2404/Mum/2012 dated 27.04.2018

465. The Tribunal rejected TPO's re-characterization of assessee's distribution transaction as a service transaction requiring markup and after perusal of the agreement between assessee and its AE [for distribution of AE's product in India], the Tribunal held that the intention of the parties was clear that the assessee was a distributor of AE's products in India and was not required to make the payments to the AE till the assessee made profit from the transactions. The Tribunal followed the HC ruling in case of Sony Ericsson Mobile Communications and held that there was no difference between the form and substance of the transaction of distribution to recharacterize the transaction as a service agreement. And eventually remitted issue to AO/TPO to conduct fresh TP analysis by treating the assessee's transaction as a distribution agreement.

M/s. Comm Vault Systems (India) Pvt Ltd vs DCIT Circle 1(2)- TS-245-ITAT-2018(Hyd)-TP- ITA No. 343/Hyd/2016 dated 11.04.2018

466. The Tribunal deleted the TP-adjustment made in respect of BMW India's payments on account of market survey report to its AE, BMW AG, for AY 2007-08. BMW AG arranged for market survey report [conducted by third party] for BMW India and charged the costs incurred to BMW India without any margin/markup, however TPO proposed an adjustment holding that the said report was for the benefit of BMW group and not for the benefit of the assessee. The Tribunal referred to the OECD Guidelines, various debit notes and written confirmations from BMW AG and noted that the market survey report was a country specific report and was different from shareholders' activity. The Tribunal held that that the expenses incurred by BMW AG were for the benefit of BMW India only.

BMW India Pvt Ltd v/s. ACIT [TS-401-ITAT-2018(DEL)-TP] ITA No.6160/Del/2014 dated 14.05.2018

467. The Tribunal deleted interest adjustment on fully and Compulsory Convertible Debentures (FCCDs) issued by assesse [engaged in the business of manufacture and sale of electrical automobile components] pursuant to search proceedings absent incriminating material relating to FCCDs found during search. It noted that the assessee had filed original return of income on September 30, 2009 which was processed u/s 143(1) on September 05, 2010 and the time period to issue the notice u/s 143(2) of the Act had already expired before the search took place on October 29, 2013. Further, it observed that during the course of search, though no incriminating material was found relating to the FCCDs which were already shown by the assessee in its regular books of accounts, AO/TPO made the TP-addition on account of differential interest on FCCDs undertaken with assessee's AE stating that though assessment was not framed u/s 143(3), for the purpose of Sec 153A r.w.s. 153C, an intimation u/s 143(1) was also an order of assessment. The Tribunal held that no such adjustment could have been made to the income which was already assessed prior to the date of search and even on merits it held that the difference between assessee's interest rate (16%) and TPO's rate (12.25%) was less than 5% which was within the permissible tolerance range as per Sec 92C(2) second proviso and accordingly held that no addition on account of arm's length price could have been made by the AO/TPO.

Granite Gate Properties Pvt. Ltd vs. ACIT - TS-450-ITAT-2018(DEL)-TP - ITA No. 7022/Del/2017 dated 29.05.2018

f. ***Miscellaneous***

Appeal

468. Where the CIT(A) remanded the determination of ALP of the assessee's international transactions to the AO directing him to reconsider the issue, the Tribunal accepting Revenue's contention that CIT(A) had no jurisdiction to set aside the matter to the AO for reconsideration set aside the order of the CIT(A) and directed him to re-adjudicate the issues himself. It clarified that if the CIT(A) wanted comments from the AO he could call for a remand report but he had to adjudicate the issues himself.

ITO vs. Integral India Software Development Centre (P) Ltd - TS-52-ITAT-2018(Bang)-TP - IT(TP)A No.1350/Bang/2013 dated 19.01.2018

469. The Tribunal set aside the non-speaking CIT(A) order confirming TP-adjustment on provision of R&D services, observing that the CIT(A) order did not discuss facts of the case, arguments raised or contain

any findings. It held that the CIT(A) should have discussed validity of comparables rejected or introduced by TPO and thus directed the CIT(A) to pass a speaking and reasoned order dealing with all objections of the assessee and after giving opportunity of being heard to assessee. Accordingly, it disposed off the appeal.

Perstorp Chemicals India Pvt. Ltd. v ITO - TS-49-ITAT-2018(Mum)-TP - /I.T.A./4364/Mum/2012, dated 03.01.2018

470. Where the Tribunal had held that the expenditure incurred by the assessee constituted AMP expenditure which was taxable but had also relied on the decision of the Delhi High Court in Maruti Suzuki Ltd v CIT (2016) 381 ITR 117 (Del) wherein it was held that AMP expenditure did not constitute an international transaction for which the Revenue filed an application under Section 254 of the Act pending which it also filed an appeal before the Court, the Court held that the Revenue ought to have exhausted its remedy under Section 254 prior to approaching it. Accordingly, it disposed off the Revenue's appeal.

Pr CIT v Wrigley India Pvt Ltd - TS-25-HC-2018(DEL)-TP - ITA 21/2018, CM APPL.934/2018 dated 10.01.2018

471. The High Court dismissed the review petition filed by the assessee challenging the previous order of the Court contending that the contentions with respect to appropriateness of the TNMM rather than the CUP (Comparable Uncontrolled Price) was urged but not answered. The Court opined that the appellant/review petitioner's submissions with respect to the nature of the transaction and also the appropriateness of the TNMM as well as the feasibility of application of the TNMM method as the "most appropriate method" were not only considered but actually adverted to and therefore there was no scope for review.

Cargill Foods India Pvt Ltd vs. ACIT - TS-47-HC-2018(DEL)-TP - REVIEW PET.523/2017 IN ITA 938/2017 dated 19.01.2018

472. Where during the hearing on merits before the Tribunal, the assessee had contested that the TPO erred in making an upward adjustment by comparing the export sales made by the assessee to its AE with the export sales to its Non-AEs (which was also submitted by way of a synopsis note) the Tribunal dismissed the assessee's miscellaneous petition wherein the assessee contended that the Tribunal had failed to appreciate that the assessee did not have any export sales to Non-AEs and that the rest of its transactions were only with domestic parties as the submissions made during the hearing on merits clearly stated that the assessee had export sales with Non-AEs and therefore there was no mistake apparent from record. Vis-à-vis the assessee's contention that the ground raised before Tribunal for treatment of loss on cancellation of forward contract as extraordinary cost was not considered, it pointed out the clear finding in the original Tribunal order (that the forward contracts with AE itself were not proper and no copy of forward contract was made available before it) and accordingly dismissed the assessee's ground for rectification observing that there was no mistake apparent from record.

As regards the assessee's contention that the Tribunal erred in not considering its claim for working capital adjustment by holding that no such claim was raised before TPO/DRP, the Tribunal observed that the assessee failed to draw attention to the copy of submission before TPO/DRP which was submitted as part of paper book and therefore held that there was no mistake apparent from record.

Separately, it also rejected assessee's contentions that Forward Market Price should be considered as comparable (which was raised by way of an additional ground) and noted that the Tribunal in its original order had not even admitted the additional ground as the relevant records / details were not available on record and accordingly dismissed the assessee's petition.

Dhanya Agro Industrial Pvt. Ltd v DCIT - TS-1078-ITAT-2017(Bang)-TP - MP No. 233/Bang/2017 · dated 08.12.2017

473. The Court dismissed the assessee's review petition wherein the assessee contended that the Court's conclusion that no substantial question of law arose for its consideration was erroneous as the Court did not answer its argument on appropriateness of the TNMM. It opined that the petitioner's submissions with respect to the nature of the transaction and also the appropriateness of the TNMM as well as the feasibility of application of the TNMM method as the "most appropriate method" were not only considered but actually adverted to. Accordingly, it held that the main order of the Court dated 06.11.2017 did not call for review.

Cargill Foods India Pvt Ltd vs. ACIT - TS-47-HC-2018(DEL)-TP - REVIEW PET.523/2017 IN ITA 938/2017 dated 19.01.2018

474. The Apex Court dismissed Revenue's SLP against Delhi High Court order quashing Revenue's show cause notice issued to Li & Fung India (assessee) pursuant to remand by the Tribunal. Noting that the Tribunal had directed TPO to determine ALP afresh by considering 'total cost' and not FOB value of goods as cost base, the High Court held that the Revenue erred in issuing show cause notice proposing to reject 51 out of 53 comparable companies selected by assessee in the set-aside proceedings as the remand was on the basis of a specific finding and that there was no controversy about the comparables. Finding no reason to entertain Revenue's SLP, SC dismissed the same.
ACIT vs. Li and Fung India Pvt. Ltd. - TS-1-SC-2018-TP - PECIAL LEAVE PETITION (CIVIL) Diary No(s). 25825/2017 dated 05-01-2018

475. The Court dismissed Revenue's application for condonation of appeal filing delay and held that unavailability of staff due to demonetisation & file movement on account of transfers were not sufficient cause for a delay of 489 days in filing the appeal. It noted that the appeal was filed on September 19, 2017 while the ITAT order was passed on April 22, 2016 and demonetization occurred on November 8, 2016 and therefore termed Revenue's explanation as 'unconvincing'.
Pr. CIT vs. Vertex Customer Services India Pvt Ltd - TS-77-HC-2018(DEL)-TP - ITA 172/2018 dated 12.02.2018

476. The Tribunal dismissed Revenue's appeal filed against DRP's directions as non-maintainable and held that as per the provisions of section 253(1)(d), an order passed by the AO under subsection (3) of section 143 or section 147 or section 153A or section 153C pursuant to the directions of the DRP or an order passed under section 154 in respect of such order, was appealable before the Tribunal and not the directions of the DRP.
DCIT vs. Toyota Tsusho India Pvt Ltd - TS-86-ITAT-2018(Bang)-TP - IT(TP)A No.1201/Bang/2015 dated 31.01.2018

477. The Tribunal recalled its order in case of the assessee noting that by applying turnover filter alone, the Tribunal remitted 7 comparables in light of Chryscapital HC ruling and had ignored assessee's contention about consideration of other aspects such as functional dissimilarity, absence of segmental results etc. Accordingly, it noted that various aspects were inadvertently missed out in the impugned Tribunal order and therefore held that there was an apparent mistake. Further, it noted that the Tribunal had remitted comparability of Acropetal Technologies for application of employee cost filter (observing that it was not shown that the other comparable companies which were not excluded satisfied the employees cost filter) even though TPO had already applied employees cost filter as one of the filter across all comparable companies. In light of the aforesaid mistakes apparent from record it recalled the impugned order in entirety for fresh decision.
Cenduit India Services Pvt. Ltd vs. ITO - TS-119-ITAT-2018(Bang)-TP - M.P. No. 226/Bang/2017 dated 19.01.2018

478. The Court allowed the assessee to withdraw its appeal challenging the applicability of TNMM as most appropriate method for benchmarking its international transactions. The Tribunal had upheld TPO's application of TNMM over assessee's CUP-method after opining that CUP method could be applied as MAM only when there was no dis-similarity of the goods, articles or services. Since the matter was at the initial stage and was not admitted, it permitted the assessee to withdraw its appeal and clarified that the dismissal of this appeal on withdrawal for the impugned AU would not conclude the issue if sought to be raised in other assessment year.
Mercedes-Benz Research & Development India Pvt. Ltd vs. ACIT - TS-151-HC-2018(KAR)-TP - TS-151-HC-2018(KAR)-TP dated 08.03.2018

479. Where the assessee filed additional evidence before the CIT(A) which the CIT(A) refused to admit, the Tribunal relying on the co-ordinate bench ruling in the earlier years 2009-10 & 2010-11 remitted the matter back to CIT(A) for admitting additional evidence and deciding the matter afresh. Accordingly, it remitted the matter for subject years back to CIT(A) with similar direction.

DSV Air & Sea Private Limited vs. DCIT - [TS-153-ITAT-2018(PUN)-TP - सं./I.T.A. Nos. 4829 & 4830/Mum/ dated 07.03.2018

480. With regard to the issue as to whether the AMP expenditure incurred by the assessee amounted to an international transaction, the Tribunal had set aside the matter back to the file of the TPO to consider the issue de novo after considering all the relevant documents. On assessee's appeal to the High Court against the said Tribunal order, the Court held that it had no jurisdiction to interfere with the appeal as issue of AMP expenses had not yet culminated in a final order of the Tribunal
Johnson & Johnson (P.) Ltd. v. CIT – [2018] 93 taxmann.com 155 (Bombay) – IT Appeal No. 1453 of 2014 dated April 13, 2018

481. The Tribunal allowed Revenue's miscellaneous petition (MP) and held that the Tribunal's non-adjudication of ground no.7 of its appeal (regarding exclusion of E-Infochips Ltd from the list of comparables for software developer assessee) was a mistake apparent from the record. Therefore, it recalled its decision for the limited purpose of adjudicating ground 7 of the Revenue's appeal.
DCIT vs. Applied Material India P. Ltd - TS-1063-ITAT-2017(Bang)-TP - Miscellaneous Petition No.269/Bang/2017 dated 26.12.2017

482. The Court allowing the assessee's appeal modified the order of the Tribunal order restoring ALP-determination in respect of assessee's international transactions of marketing and support services to TPO/AO and instead remitted matter back to CIT(A). Noting that the comparable used in the present case for ALP determination was not a controlled transaction, the Court held that rather than the matter being examined afresh by the Assessing Officer it would be more appropriate that the matter be remanded to the CIT(A), who may, if necessary, call for a remand report.
The Bank of Tokyo - Mitsubishi UFJ Ltd vs. DCIT - TS-74-HC-2018(DEL)-TP - ITA 107/2018 dated 31.01.2018

483. The Tribunal allowed assessee's miscellaneous petition and deleted the direction given to TPO to bring in more comparables functionally similar to the assessee after applying 25% RPT filter observing that TPO had already applied 25% RPT filter. Further, it also accepted assessee's contention that Tribunal, in the original order, had wrongly excluded Mindtree Ltd as against Persistent Systems & Solutions Ltd and accordingly rectified the earlier order of the Tribunal.
ACI Worldwide Solutions P Ltd vs. DCIT - TS-203-ITAT-2018(Bang)-TP - Miscellaneous Petition No.220/Bang/2017 dated 09.02.2018

484. The Tribunal allowed assessee's miscellaneous petition as the Tribunal earlier had dismissed few grounds observing that the issue was not raised before lower authorities. However, as this observation was contrary to material on records, the Tribunal recalled this observation for limited purpose of re-adjudication.
M/s. Nuance Transcription Services India P Ltd. Vs DCIT Circle 5(1)(1)- TS-393-ITAT-2018(Bang)-TP- ITA no73/BANG/2018 dated 20.04.2018

485. The Tribunal dismissed the miscellaneous application of the assessee and stated that the Tribunal had not committed any error in remitting back one issue to the AO/TPO regarding turnover filter and another issue to the DRP regarding functionality, thus the claim of the assessee for erroneous Tribunal order was dismissed.
M/s. Systat Software Asia Pacific Ltd. Vs DCIT Circle 12(3) Banglore- TS-365-ITAT-2018(Bang)-TP- MP no 72/Bang/2018 dated 11.04.2018

486. The Tribunal dismissed miscellaneous petition filed by assessee against Tribunal order as the assessee had filed an appeal before Karnataka HC against Tribunal order (which was yet to be admitted). Further, the Revenue had also filed a cross appeal before HC which was pending admission.
The Tribunal held that judicial propriety does not permit the assessee to seek efficacious remedy simultaneously before two authorities and in particular where the issues are seized by a higher judicial

forum even if pending admission. It thus concluded that assessee's miscellaneous petition was liable to be rejected.

M/s. Cable & Wireless Network India P Ltd vs DCIT Circle 11(2)- TS -272-ITAT-2018(Bang)-TP-IT(TP) No. 1549/Bang/2014 dated 06.04.2018

487. The Tribunal dismissed assessee's miscellaneous petition against ITAT order for AY 2007-08 and 2008-09 setting aside TP-issue to AO/TPO in view of cryptic DRP order. It rejected assessee's contention that there was a mistake apparent from the record merely because the matter was restored to AO/TPO and not DRP relying on the decision of Tribunal in IBM India Pvt Ltd. v/s. Addl CIT wherein it was held that even if it is the finding of the Tribunal that the DRP's order is cryptic, it was not necessary that in all such cases, the matter had to be restored to DRP and not AO/TPO.

Further, the Tribunal allowed the assessee's miscellaneous petitions for AY 2009-10 and rectified the original/ earlier order to provide that the four comparables viz. Bodhtree Consulting Ltd, Tata Elxsi Ltd, Persistent Systems Ltd Infosys Ltd should be excluded while determining ALP of IT segment. The Tribunal noted that in the earlier order, after recording a finding that the above four comparables were excluded by it in case of Infinera India P Ltd (for its IT segment) and that the Revenue was not able to point out any difference in facts vis-à-vis the said case, the Tribunal had not given a final finding in respect of IT segment and had merely stated that it declines to interfere with the DRP order (whereas the DRP had decided the issue against the assessee). Thus, the Tribunal observed that there was a mistake apparent from the records in the earlier order for AY 2009-10.

Target Corporation India P Ltd v DCIT [TS-370-ITAT-2018(Bang)-TP] MP Nos. 314,315 and 317/Bang/2017 dated 06.05.2018

488. The Tribunal allowed the Revenue's miscellaneous petition against the its order since it had failed to render findings in respect of the (i) CIT(A)'s view which was challenged vis-à-vis size & turnover of a company being deciding factors for treating a company as comparable and thereby 8 comparables were excluded and (ii) CIT(A)'s rejection of diminishing revenue filter used by the TPO. Thus, the Tribunal's order was recalled to the extent of returning a finding with respect to the above two grounds.

DCIT vs. Century Link Technologies Pvt. Ltd (Formerly known as Qwest Telecom Software Service Pvt. Ltd) MP No.3/Bang/2018 dated 08.06.2018

489. The Tribunal rejected assessee's miscellaneous petition against the Tribunal's order rejecting the first miscellaneous petition. The Tribunal noted that in the first miscellaneous petition, assessee had contended that the Tribunal had not adjudicated upon the fact that CIT(A) erred in ignoring margin computation under internal TNMM as not reliable without considering that AO/TPO himself in assessment order had computed margins earned by assessee from transactions with AEs and non-AEs. However, the Tribunal had dismissed the miscellaneous petition on the ground that the Tribunal had adjudicated upon the issue collectively and had opined that comparison of internal TNMM was not possible as comparison was not of the same period in respect of AE and non-AE business. Accordingly, the Tribunal did not find a reason to interfere with the order of the Tribunal.

e4e Business Solutions India Pvt. Ltd vs. DCIT [TS-818-ITAT-2018 (Bang)] MP No.4/Bang/2018 dated 04.06.2018

490. The Tribunal allowed assessee's miscellaneous petition and recalled its order for the limited purpose of adjudicating the other comparables adopted by TPO/AO and the DRP since the observation of the Tribunal that the assessee only argued against the exclusion of one company was patently incorrect since the assessee had submitted a chart containing the arguments of all the comparable companies. Further, the Tribunal held that there was no apparent mistake on record in its order as regards the exclusion of Cybermate Infotek Ltd since no question arose of non consideration of decisions of High Court [PTC Software (I) (P) Ltd. and Rampgreen Solutions Pvt. Ltd.], when it had returned a finding that the assessee engaged in low end software development and the said comparable fell broadly in the same domain by relying on the aforesaid HC rulings.

Lionbridge Technologies Pvt Ltd vs ACIT [TS-619-ITAT-2018(Mum)-TP] MA No.75/Mum/2018 dated 15.06.2018

491. The Tribunal allowed assessee's miscellaneous petition and recalled its order in the case of the assessee qua the grounds not adjudicated upon by it. It noted that the Tribunal had not decided on the grounds vis-à-vis exclusion of Motilal Oswal Private Equity Advisors as a comparable and inclusion of ICRA Online Ltd. and IDC India Ltd. as comparables. Accordingly, grounds raised had been left out for determination and therefore held that there was an apparent mistake on record.
Blackstone Advisors India Private Limited vs DCIT [TS-745-ITAT-2018(Mum)-TP] MA No.130/Mum/2016 dated 08.06.2018

492. The Tribunal dismissed assessee's miscellaneous petition against its order as the assessee had raised general ground of cross objection with respect to exclusion of comparables and not a specific ground with respect to exclusion of 3 comparables viz. Sankya Infotech, Extensys Software Solutions and Thirdware Solutions. Thus, the question of the Tribunal returning a finding did not arise.
Netscout Systems Software India Pvt Ltd v DCIT [TS-726-ITAT-2018(Bang)-TP] MP No.132/Bang/2018 CO No.30/Bang/2012 in IT(TP)A No.1212/Bang/2011 dated 08.06.2018

493. The Tribunal allowed the assessee's miscellaneous petition and modified the order of the Tribunal directing the AO/TPO to allocate marketing & management fees in the ratio of turnover 'between AE and non-AE transactions' in place of ratio of turnover 'of other international transactions'.
Yokogawa India Ltd vs. ACIT [TS-724-ITAT-2018(Bang)-TP] Miscellaneous Petition No.329/Bang/2017 dated 08.06.2018

494. The Tribunal dismissed assessee's miscellaneous petition against its order wherein notional interest adjustment imputed on excess credit to the AE was upheld. Based on the factual findings of the TPO that the assessee charged interest from Non-AE, the Tribunal had confirmed the TP adjustment since the credit period for AEs and Non-AEs was different. However, it was the contention of the assessee that the TPO had recorded wrong findings and no interest was charged from AEs and non-AEs. Noting that this finding of TPO was not challenged before the appellate authorities, the Tribunal observed that its power was confined to the correct any mistakes which crept into its order and not the TPO's order. Further, it accepted the Revenue's counter argument that the Tribunal had considered the Bombay HC ruling of Indo American Jewellery Ltd and the Mumbai bench ruling in Evonik Degussa India which was the basis of passing the decision in assessee's own case vis-à-vis the assessee's stand that its own case was ignored. [In the assessee's own case for the earlier year, the Tribunal had restored the issue to the TPO to examine if there was any agreement for charging interest on late payment and in absence of such an agreement to delete the notional interest adjustment by relying on coordinate bench decision of Evonik Degussa India wherein it was held TP adjustment could not be made on notional basis unless there is real charging of income]
Ingersoll Rand (India) Ltd vs DCIT [TS-770-ITAT-2018(Bang)-TP] MP No.263 and 264/Bang/2017 dated 19.06.2018

495. The Apex Court dismissed Revenue's SLP against the High Court's order quashing AO's final assessment order passed in remand proceedings without passing draft order since it violated the provisions of section 144C(1). The High Court had relied on the HC rulings in Turner International and JCB India wherein it was categorically held that mandatory requirements u/s 144C (1) of the Act had to be met even where the TPO had passed the order in the second round on remand by the Tribunal. Further, it had also relied on the ruling of Citi Financial Consumer Finance India wherein it was held that failure to pass a draft assessment order u/s 144C(1) is not a curable defect as per Sec 292B.
Addl CIT vs Nokia India Pvt. Ltd. [TS-1027-SC-2018-TP] SLP No.7302/ 2018 dated 14.05.2018

496. The Court admitted assessee's appeal on the question a) *whether if an assessment proceeding is not pending before the AO, could the AO still make a reference make a reference under Section 92CA (1) of the Income Tax Act, 1961?*
Nokia Siemens Networks India Private Limited [TS-327-HC-2018(DEL)-TP] ITA 525/2018 dated 04.05.2018

497. The Tribunal set aside the non-speaking DRP order confirming the TPO's rejection of comparables as well as inclusion of new comparable observing that the TPO and DRP had failed to consider the

financial data of comparable even though it was available. It thus directed the DRP to pass a speaking and reasoned order after giving an opportunity to the assessee to furnish evidences, submission and to consider the cases relied upon by the assessee.
ExxonMobil Gas (India) Private Limited vs DCIT [TS-754-ITAT-2018(DEL)-TP] ITA No.2702/Del/2014 dated 26.06.2018

498. The Tribunal set aside the order of the AO incorporating the ex-parte directions of the DRP and directed the DRP to afford an opportunity of hearing to the assessee and consider its objections afresh. Further, it rejected the contention of the assessee that the directions of DRP to the extent they grant relief to the assessee should be sustained. The DRP had passed its ex-parte directions inter alia directing exclusion of 6 companies by applying Rs.1-200cr turnover filter. The Tribunal further clarified that DRP could re-examine applicability of all filters and was at a liberty to follow its earlier directions insofar as it related to the relief allowed to assessee in its ex parte directions
Jamcracker Software Technologies Pvt. Ltd vs. DCIT [TS-494-ITAT-2018(Bang)-TP] IT(TP)A No.257/Bang/2016 dated 01.06.2018

APA / MAP

499. The Tribunal dismissed assessee's TP-ground for AY 2009-10 relating to adjustment on royalty and franchise fee, as withdrawn, in view of resolution under MAP. However, vis-à-vis the disallowance of foreign exchange loss and R&D Cess on royalty payment, it remanded the issue back to AO/TPO to pass a speaking order in view of MAP resolution.
McDonald's India Pvt Ltd vs. ACIT - TS-103-ITAT-2018(DEL)-TP - ITA No.1426/Del/2014 - 30-01-2018

500. The Tribunal directed the TPO to apply profit margin adopted/agreed in MAP covering IT/ITeS with US-AE to benchmark similar transactions with non-US AE noting that under MAP margins of 15.7% and 14.68% were adopted to benchmark IT & ITeS respectively for transactions with US-AE. It held that it would be very difficult to accept either assessee's margin of 13 percent or the TPO's higher margin for the same nature of transactions. Accordingly, for the impugned year, it held that the margins for the Software Development Services (IT service) and ITeS segment were to be taken as per the margins accepted in MAP proceedings.
Fidelity Business Services India Pvt. Ltd. vs. DCIT - TS-107-ITAT-2018(DEL)-TP - ITA No. 5872/Del/2011 dated 13/02/2018

501. In view of resolution of TP issues by the assessee under APA and considering that the APA was concluded on February 23, 2018 and the subject AY was included in rollback period, the Tribunal allowed the assessee to withdraw grounds against TP-adjustment.
FactSet Systems India Private Limited vs. ACIT - TS-202-ITAT-2018(HYD)-TP - ITA No.213/Hyd/2015 dated 23.03.2018

502. The Tribunal dismissed the crossed appeals in light of resolution under APA after considering letter submitted by AO to CIT(DR) that relevant AY formed part of the rollback years for which APA was signed agreeing to operating margin of not less than 18% which assessee had already complied for the subject AY.
DCIT Circle 17(2) vs M/s. Wells Fargo India Solutions (P) Ltd-TS-251-ITAT-2018(Hyd)-TP- ITA No 111/Hyd/2016 dated 09.04.2018

503. Assessee company had entered into international transactions of providing Information Technology Enabled Services (ITES). 92.86 percent of the assessee's transactions were for USA and the remaining 7.14 percent constituted of non-USA transactions in the ITES segment. Simultaneously, the assessee had filed an application for MAP (Mutual Agreement Procedure) under Article 27 of India-USA DTAA with respect to Transfer Pricing Adjustments. MAP proceedings were concluded in respect of transaction of assessee at arm's length markup of 18.82 percent for 92.86 percent of USA transactions.

The Tribunal held that since no distinction had been made between 'USA' transactions and 'non-USA' transactions, therefore, the margin adopted for US transaction in MAP proceeding were to be adopted for non-US transactions also.

Amazon Development Centre (India) (P.) Ltd. v. ITO – [2018] 93 taxamnn.com 30 (Bangalore – Trib.) – IT (TP) Appeal Nos. 76, 78 and 1387 (BANG.) of 2014 dated April 27, 2018

504. Noting that the assessee had concluded a MAP with USA vis-à-vis its 'management charges' payment, the Tribunal allowed withdrawal of the ground of appeal against TPO's determination of ALP at NIL. ; On the dispute of Revenue characterizing assessee company's 'engineering and design' services as ITeS, the Tribunal rejected the ITeS classification and remanded the matter to the file of the TPO for fresh adjudication as the TPO's characterisation was not in tune with the functional analysis and there was no evidence to support the classification.

Flowserve India Controls Private Limited vs CIT - TS-476-ITAT-2018(Bang)-TP - I.T. (T.P) A. No.1277/Bang/2011 dated 02.05.2018.

505. The Tribunal dismissed assessee's appeal on certain TP-issues in view of resolution under Indo-Japan MAP for AY 2007-08.

ACIT vs. Marubeni India Pvt. Ltd - TS-445-ITAT-2018(DEL)-TP - ITA No. 3504/DEL/2014 dated 21.05.2018

506. The Tribunal dismissed assessee's appeal challenging TP-adjustment of Rs.3.82cr in view of resolution under APA for AY 2012-13. It considered the assessee's request for withdrawal of appeal in light of unilateral APA entered into with CBDT on October 25, 2017 for rollback period of AYs 2012-13 to 2015-16 in respect of international transactions with AE.

Microchip Technology (India) Pvt. Ltd vs. DCIT [TS-375-ITAT-2018(Bang)-TP] IT(TP)A No.36/Bang/2017 dated 02.05.2018

507. The Court dismissed Revenue's appeal for AY 2006-07 in view of TP-dispute settlement under MAP. The Court held that the appeal had become infructuous and dismissed it without going into merits.

Pr. CIT vs. SIEBEL SYSTEMS SOFTWARE (INDIA) P. LTD [TS-616-HC-2018(KAR)-TP] ITA No.136/2016 dated 21.06.2018

508. The Tribunal dismissed assessee's TP ground as withdrawn in in view of resolution under MAP.

McDonald's India Pvt Ltd v DCIT [TS-513-ITAT-2018(DEL)-TP] ITA Nos.1665 and 1769/Del/2015 692 and 296/Del/2016

509. The Tribunal allowed the assessee to withdraw grounds covered by APA since there was no change in the said AYs in nature of international transactions. It directed the Department to pass an order giving effect to APA u/s.92CD(5) for AY 2010-11 and 2011-12. Further, for AY 2008-09 and 2009-10, (years not covered by APA), it directed that the principles laid down in APA for benchmarking comparability analysis would have a guidance value.

Spencer Staurt (India) Private Limited vs ACIT [TS-751-ITAT-2018(Mum)-TP] ITA No.1832/Mum/2016 dated 06.06.2018

Assessment / Reassessment / Revision/Rectification

510. Noting that the DRP held that the assessee did not have a PE in India, the Apex Court set aside the order of the High Court dismissing assessee's writ petition and upholding reassessment proceedings based on material found during survey proceedings at Indian subsidiary, based on which AO believed that the assessee had an Indian PE.

LG Electronics Incorporation, South Korea vs. ADIT - TS-42-SC-2018-TP - CIVIL APPEAL NO(S).781 OF 2018 dated 16.01.2018

511. The Tribunal dismissed assessee's additional ground against AO's failure to refer ALP determination to TPO even though the value of international transactions (Rs. 10.42 Cr) for AY 2010-11 exceeded Rs. 5 crore and confirmed AO's jurisdiction to adjudicate on TP matters in assessee's case. It noted that the

though CBDT Instruction No. 3 of 2013 prescribed a monetary limit of Rs. 5 crore for making reference to the TPO, the said limit had been subsequently revised in the CBDT's Central Action Plan for FY 2006-07 wherein the threshold was increased to Rs. 15 Crores. Accordingly, it held that there was no requirement for making any reference to the TPO and further noted that the assessee had not raised similar contention in appeal for AY 2009-10 where the value of international transactions was Rs. 10.52 crore.

Schlumberger India Technology Centre Pvt. Ltd. (formerly known as Schlumberger Global Support Centre Pvt. Ltd.) vs. DCIT - TS-36-ITAT-2018(PUN)-TP - ITA No.640/PUN/2014 dated 10.01.2018

512. The Tribunal rejected assessee's contention that assessment order for AY 2004-05, passed on the amalgamated entity, was void ab initio. It noted that in the assessee's case, return was filed by amalgamating company and notice u/s 142(1) was also issued on amalgamating company prior to amalgamation and consequently the assessment proceedings initiation was valid. It rejected assessee's reliance on Delhi HC ruling in Spice Infotainment and Micra India on the ground that in those cases, notice was issued after the assessee therein ceased to exist. However as the assessment order was pssed on non-existent entity it directed the AO to issue fresh notice u/s 142(1) transposing amalgamated company as assessee.

Further, for the other AYs under review, it noted that AO had passed final assessment order consequent to ITAT's remand back and that DRP and CIT(A) dismissed assessee's appeal/objections as not maintainable. Relying on the Delhi HC in JCB India Ltd, it held that even in the case of a remand by the Tribunal, the AO was mandated to pass a draft assessment order and not the final assessment order. The Tribunal remanded the matter to the file of AO to pass draft assessment order.

Cyient Ltd (formerly Infotech Enterprises Ltd) Successor to Tele Atlas India Ltd vs. DCIT - TS-1106-ITAT-2017(HYD)-TP - ITA Nos.1052 to 1054/Hyd/2016 dated 29.12.2017

513. The Tribunal quashed the assessment order framed on non-existent amalgamating company noting that it had amalgamated with Genpact India pursuant to HC-order dated November 19, 2010 and this fact was brought to AO's notice vide letter dated January 24, 2011 & received on February 3, 2011. It observed that the TPO/AO/DRP passed orders in the name of the erstwhile entity (Genpact Infrastructure) without mentioning the transferee name which was not in existence when the TPO/AO/DRP passed their respective orders. Relying on the co-ordinate bench rulings in Maruti Suzuki India (subsequently upheld by jurisdictional HC) and Spice Enfotainment (SLP against which was recently dismissed by SC) wherein assessment framed on non-existent entity post amalgamation was quashed, it concluded the assessment framed was void ab initio and the same was rightly quashed by the ld. CIT(A).

Genpact Infrastructure (Bhopal) Pvt. Ltd., (now merged with Genpact India) vs. DCIT - TS-115-ITAT-2018(DEL)-TP - ITA No. 2025/Del/2014 dated 09.02.2018

514. The Tribunal quashed the assessment order making TP additions on a non-existent entity, by holding that the lower authorities had erred in completing the assessment on the pre merged entity even though the factum of merger was brought to the notice of the AO by assessee at several stages and the same was duly noted, as evident from correspondence between AO and the assessee. Thus, the Tribunal relying on the Delhi HC judgement in the case of Spice Infotainment confirmed that passing assessment order in case of non-existent entity was a jurisdictional defect and not a technical defect and accordingly quashed the said order.

IPSOS Research Pvt. Ltd Vs ACIT Circle 11(2)- TS-361-ITAT-2018(Mum)-TP- ITA No 1177/Mum/2015 dated 11.04.2018

515. The Tribunal quashed the assessment order passed in the name of erstwhile entity (Genpact Infrastructure (Bhopal) Pvt Ltd.) which was not in existence at the time of passing the order and had amalgamated with Genpact India following the coordinate bench decision of the assessee's own case for earlier year noting that assessment after the amalgamation could only be made on the amalgamated entity as a successor pursuant to provisions of sec 170(2).

Genpact Infrastructure (Bhopal) (P.) Ltd vs Dy.CIT** [2018] 93 taxmann.com 334 (Del-Trib) **ITA No.199/Del/2015 dated 27.04.2018

516. The Tribunal admitted the additional ground of the assessee to quash the assessment order and quashed the order proposing TP adjustment issued in the name of the non-existent entity viz. Akzo Nobel Chemicals India Ltd. which merged with Akzo Nobel India Limited as approved by Bombay High Court order dated May 11,2012. Relying on the ITAT order in assessee's own case for AY 2010-11, it held that where an entity merges with another entity then the assessment order passed against the non existent entity cannot stand.
Akzo Nobel India Limited (as successor of Akzo Nobel Chemicals (India) Limited) vs DCIT [TS-621-ITAT-2018(PUN)-TP] dated 05.06.2018

517. The Tribunal set aside the assessment and remitted the matter to the AO/TPO to verify whether the assessee had (i) informed the registrar of companies or similar authority in Cyprus about the applicability of the Income-tax Act, (ii) complied with the provisions of section 178 or section 176 of the Act and (iii) whether such proceedings were challenged by the assessee before AO on the ground that it was a wound up entity. It directed the AO to also check the locus standi of the party pursuing the proceedings and to decide objections regarding validity of making an assessment on non-existent entity, based on its observations. It rejected assessee's contention that assessment order passed on the wound up entity was null and void-ab-initio. It noted that the plea of validity of proceedings was raised at a later stage before the DRP and the assessee had complied with the assessment proceedings before the AO. The Tribunal followed the findings of Gujarat HC ruling in the case of Sumantbhai C. Munshaw wherein it was held that assessment order passed on a deceased person could not be nullified on the ground that the legal representative had allowed the assessment proceedings to continue and the plea for nullity of assessment was taken at a later stage. It rejected assessee's reliance on Delhi HC ruling in Spice Infotainment Ltd. and Skylight Hospitality LLP since it dealt with the aspect of succession of entity and not winding up.
Pesak Ventures Ltd. vs. DCIT [TS-765-ITAT-2018(Del)-TP] ITA No.1929/Del/2017 dated 19.06.2018

518. The Tribunal quashed final assessment order passed by the AO u/s 143(3) r.w.s 92CA without incorporating the DRP's directions observing that instead of passing the final assessment order u/s 143(3) r.w.s 144C in conformity with the DRP's directions u/s 144C(5), AO passed the final assessment order dated January 17, 2014 u/s 143(3) r.w.s 92CA of the Act by only incorporating TPO's proposals and not considering the DRP's mandatory directions. Considering that the AO clearly violated the binding provisions of Secs. 144C(10) and 144C(13) of the Act, the Tribunal quashed the order. Since the order had been quashed, it held that there was no requirement to adjudicate the other grounds raised by the assessee.
Software Paradigms Infotech Pvt. Ltd vs. ACIT - TS-7-ITAT-2018(Bang)-TP - IT(TP)A No.150/Bang/2014 dated 5-1-2018

519. The Tribunal admitted assessee's additional ground and held that the draft assessment order passed along with issue of a demand notice was a complete order which was not envisaged under Sec 143(3) r.w.s. 144C and therefore the said order was invalid. It held that as per the Act proposed additions are to be made in the Draft Assessment order and the assessee is to be issued a show cause notice providing it with the option to either accept the same or file objections before the DRP but no such procedure was followed in the instant case. Relying on the decision of the co-ordinate bench in Rehau Polymers (wherein identical facts were considered) and the High Court rulings in JCB India and Turner International wherein it was held that it is mandatory for AO to pass draft assessment order prior to issuing final assessment order, it held that the draft assessment order passed in the case was invalid in law and accordingly quashed the order.
Sandvik Asia Pvt. Ltd vs. DCIT - TS-148-ITAT-2018(PUN)-TP - ITA No.467/PUN/2015 dated 25.01.2018

520. The Tribunal, in second round of proceedings, dismissed assessee's appeal against AO's final assessment order (passed without a draft assessment order) as non-maintainable and held that the

appropriate remedy was either to file appeal before the or CIT(A) or approach the Hon'ble Court via writ. From the conjoint reading of Section 253(1)(d) and Section 246A (1)(a), the Tribunal observed that appeal before Tribunal would only lie against the assessment order passed in pursuance to DRP's directions It clarified that even if the final assessment order was passed in contravention of any statutory provision, the only course open for the assessee to seek for remedy was, firstly, either to file appeal before the appropriate forum/authority in terms of the provisions of law, i.e. before the CIT (A) or secondly, by exercising constitutional remedy before the Hon'ble High Court under extra ordinary jurisdiction, of course with the discretion of Hon'ble Court. Accordingly, it directed the assessee to approach the correct forum.

Tevapharm India Pvt. Ltd vs. ACIT - TS-93-ITAT-2018(DEL)-TP - ITA No.:- 741/Del/2018 dated 16/02/2018

521. The Tribunal admitted assessee's additional ground and held that draft assessment order passed along with issue of a demand notice was a complete order which was not envisaged under Sec 143(3) r.w.s. 144C and therefore invalid. It held that the requirement of the Act w.r.t draft assessment order are, that the proposed additions are to be made and show cause notice is to be issued to the assessee on which it can accept the same or file objections before the DRP. However, in the present case, Tribunal observed that the Assessing Officer in the draft assessment order assessed income in the hands of the assessee and itself crystallized the demand on income by issuing demand notice under section 156 of the Act and also initiated penalty u/s 271(1)(c).

The Tribunal relied on co-ordinate bench ruling in Rehau Polymers & Sandvik Asia (wherein identical facts were considered), HC rulings in JCB India and Turner International wherein it was held that it is mandatory for AO to pass draft assessment order prior to issuing final assessment order and thus held that the draft assessment order passed in the present case was invalid in law.

M/s. Eaton Industrial Systems P Ltd vs DCIT Circle-8 Pune- TS-274-ITAT-2018(PUN)-TP- ITA No. 536/Pun/2014 dated 12.04.2018

522. The Tribunal referring to the co-ordinate bench ruling in case of Capsugel Healthcare Ltd vs ACIT held that since the AO had failed to follow the mandate of the provisions of section 144C of the Act whereby the AO was required to pass a draft assessment order, it would result in nullification of the final assessment order passed u/s 143(3).

M/s. Jaipur Rugs Company (P) Ltd vs DCIT Circle-2 Jaipur – TS- 415- ITAT-2018(JPR)-TP- ITA no 46/JP/2017 & 1084/JP/2016 dated 24.04.2018

523. `The Court held that the final assessment order passed, without issuing draft order, and the subsequent corrigendum treating the earlier assessment order as draft order u/s 144C, was invalid. The Court observed that AO passed final assessment order along with demand notice u/s 156 and imposed penalty on assessee. Further, while issuing corrigendum, though AO changed the sections under which the order was passed, he had not withdrawn the penalty and demand notice. Thus, the Court relying upon Delhi HC ruling in JCB India Ltd, Turner International India Pvt Ltd and various other HC rulings held that the window dressing which had been attempted by the Revenue would not give life to an order passed without jurisdiction.

The Court further, differentiating irregularity from illegality, held that the Revenue's act of passing a final assessment order, in contravention of provisions of Sec 144C, cannot be corrected, and for Revenue taking support of provisions of Sec 292B, held that if the contention of the Revenue was accepted, then it would literally render all the provisions of the Income Tax Act subservient to Section 292B and allowing such a contention would be misreading the intention of the Parliament in enacting Section 292B and Section 144-C.

ACIT Media Circle II vs Vijay Televisions -TS-469-HC-2018(Mad)-TP- ITA No 1327 to 1329 of 2014 dated 23.04.2018

524. Where the AO issued demand notice u/s. 156 and as well as issue of notice u/s.274 r.w.s 271(1) (c) at the stage of making the draft assessment order, the Tribunal held that it was undisputed that such notices could only be issued at end of assessment proceedings and accepted the assessee's plea that the order passed was contrary to mandatory provisions of sec 144C and thus, the assessment order

passed was null and void-ab-inito not enforceable in law. It relied on the AP HC ruling of Zuari Cements Ltd. (SLP dismissed) wherein it was held that final assessment order passed contrary to provisions of s 144C was void-ab-initio.

Eaton Fluid Power Ltd. vs Dy.CIT [2018] 96 taxmann.com 512 (Pun-Trib) ITA No.535 of 2014 dated 25.04.2018

525. The AO had not passed a draft assessment order and instead passed a final assessment order. On the assessee pointing out that the said order was not a legally sustainable order since it had not complied with the mandatory provisions of sec 144C(1), the AO passed corrigendum order. The Tribunal held that the final assessment order could not be cured by any subsequent rectification proceedings or corrigendum and in such a situation all subsequent proceedings and final assessment order would be invalidated. Accordingly, the Tribunal quashed the final assessment order on the ground that mandatory procedure u/s.144C(1) was not followed.

Add CIT vs Oracle India (P.) Ltd.[2018] 93 taxmann.com 8(Del-Trib) ITA Nos.6288,6714 /Del/ 2013 dated 13.04.2018

526. The Tribunal, in second round of appeal, quashed the final assessment order passed by AO without passing draft assessment order.The Tribunal noted in the first round of appeal, assessee's claim for capacity underutilization adjustment was allowed but the matter was remitted back to AO/TPO to examine nature of unallocated costs, the quantum relating to capacity underutilization and re-compute ALP after allowing the adjustments. However, in set aside proceedings, TPO repeated his original order as confirmed by DRP in the original proceedings and AO passed the final assessment order making same amount as addition. The Tribunal observed that as per the provisions of the Act, AO is bound to issue draft assessment order so that assessee can raise objections before the DRP as per the provisions of section 144C of the Act. In the instant case, AO had violated the mandatory provisions of the Act by passing the Final Assessment Order. It relied on the Delhi HC ruling in JCB India and held that assessee's interests were prejudicially affected since AO had not passed a draft assessment order. It was further clarified that even for the remand proceedings, the AO is bound to follow the provisions of the Act and accordingly, the final assessment order passed by AO in violation of Sec 144C was bad in law.

Srini Pharmaceuticals Private Limited vs. DCIT [TS-530-ITAT-2018(HYD)-TP] ITA No.971/Hyd/2017 dated 20.06.2018

527. The Tribunal quashed assessment order proposing TP-adjustment issued in the name of the non-existent entity viz. Akzo Nobel Chemicals India Ltd which merged with AkzoNobel India Limited w.e.f. April 1,2011 as approved by Bombay HC order dated May 11, 2012. It noted that the AO and TPO were duly informed by assessee about the amalgamation and assessee had also pointed out that as per the scheme of amalgamation, the entire business had been transferred on a going concern basis to amalgamated company including income tax liabilities and obligations of assessee. It observed that the AO had raised specific query in this regard but had failed to take cognizance of the facts of present case and the submissions made during the course of assessment proceedings and TP proceedings and accordingly held that the assessment order in the name of non-existent entity was void.

Akzo Nobel Chemicals (India) Ltd. (merged with Akzo Nobel India Limited) v DCIT - TS-149-ITAT-2018(PUN)-TP - ITA No.1225/PUN/2015 dated 09.02.2018

528. The Apex Court dismissed Revenue's SLP against Delhi High Court's decision setting aside final assessment order passed without first issuing draft assessment order as mandated by Sec 144C. The High Court noted that in the second round of proceedings pursuant to remand by the Tribunal, the TPO undertook fresh benchmarking exercise and proposed an adjustment and subsequently, AO added TP-adjustment in the final assessment order issued along with notice of demand u/s 156 without issue of a draft assessment order and relying on the decision of Turner International India it set aside the final assessment order.

DCIT v Control Risks India P Ltd - TS-170-SC-2018-TP - SPECIAL LEAVE PETITION (CIVIL) Diary No. 7090/2018 dated 16-03-2018

529. The Tribunal allowed assessee's additional ground and quashed AO's reference to TPO. It held that as per CBDT Instruction 3/ 2003, the AO should have decided the issue of international transaction himself instead of referring the matter to TPO as the quantum of international transaction (Rs.2.15cr) was below monetary limit of Rs.5cr. Relying on the Andhra Pradesh High Court ruling in Nayana P Dedhia wherein after considering Circular 3/2003 it was held that the authorities responsible for administration of the Act should observe and follow any such orders, instructions and directions of the board. Holding that the Instruction 3/2003 was mandatory upon tax authorities and had binding force, the Tribunal opined that assessment had become time barred as the reference made to TPO itself was not sustainable and the Assessing Officer should have passed Assessment Order within the prescribed time provided under the statute. Accordingly, it held that the order was bad in law.

Calance Software Pvt. Ltd vs. DCIT TS-196-ITAT-2018(DEL)-TP - I.T.A .No. 4363/DEL/2010 (A.Y 2006-07) dated 23.03.2018

530. Where the assessee filed additional evidence before the DRP (which was not filed before TPO due to paucity of time) and the DRP denied to admit the evidence and simply confirmed the AO's order, the Tribunal, following the order of the co-ordinate bench in the earlier years remitted the matter to the AO / TPO to re adjudicate the matter in light of the additional evidence.

Wipro GE Healthcare Pvt. Ltd vs. DCIT - TS-204-ITAT-2018(Bang)-TP - IT(TP)A No.2525/Bang/2017 dated 23.03.2018

531. The Tribunal upheld CIT(A)'s order admitting additional evidence filed by assessee. It noted that, during the TP proceedings, assessee could not substantiate to the satisfaction of TPO that it was carrying on manufacturing activity in respect of goods being exported to its AE and resultantly, TPO rejected assessee's bifurcation of trading activity in domestic sales and export sales. However, before CIT(A), assessee had filed manufacturing process chart, cost sheet, sample copies of invoices and photographs of the manufacturing activity, etc. to show that it was involved in manufacturing activity for export of manufactured/finished goods which was admitted by CIT(A). The Tribunal held that the documents placed on record by the assessee as additional evidence were vital for proper adjudication of the issue as in the present case. It also noted that the additional evidence filed by assessee were referred to AO/TPO for examination and TPO, after examining the documents, agreed that manufacturing activity was being carried out by assessee. The Tribunal thus concluded that there was due compliance of principles of natural justice and dismissed Revenue's appeal filed against CIT(A)'s admission of additional evidence.

ACIT Circle -6 vs Stauff India Pvt. Ltd-TS- 439-ITAT-2018(PUN)-TP- ITA Nos. 669 & 670/PUN/2014 dated 26.04.2018

532. The Tribunal dismissed assessee's additional ground challenging AO's reference to TPO without giving assessee a hearing opportunity for AYs 2012-13 & 2013-14 absent assessee's objection regarding applicability of Chapter X provisions or that the transactions were not international transactions in the present case. The Tribunal referring to the Bombay High Court's Vodafone India ruling held that the prima facie view of the AO would be sufficient before referring the matter to the TPO for ALP determination. It noted that the assessee's case did not fall within the 3 situations enumerated under CBDT Instruction 15 of 2015 which mandates AO, as a jurisdictional requirement, to record his satisfaction that there was an income / potential income being affected on ALP-determination. However, it accepted assessee's adoption of TNMM (which was accepted by Revenue for the previous 3 years) over TPO's CUP-method for benchmarking the export of natural ingredient products to its AE absent cogent reasons given by TPO/DRP for departing from earlier years' approach. Observing that there was neither any change in facts nor in law nor TNMM was found to be totally wrong method, it held that there was no reason to deviate from the accepted practice. It observed that even with updated comparables margins, the assessee's PLI was higher than that of comparables and thus the transaction was at ALP.

Omni Active Health Technologies Ltd v DCIT – TS – 146- ITAT-2018 (Mum) – TP - ITA No 638 / 2017 dated 06.03.2018

533. The Court dismissed assessee's appeal against the Tribunal's decision to remand the matter to the TPO for fresh examination of applicability of TP Provisions to assessee's sale of local STPI unit to its domestic group company. The Court noted that the Tribunal in the miscellaneous application had

mentioned that the Global Transfer Agreement (GTA) was produced before the DRP but not considered and the same was not on record before AO/TPO. The Court opined that the Tribunal was correct in its action to restore the issue back to the DRP and concluded that the question proposed was subject matter of DRP's consideration and thus no question of law arose.

Thomson Reuters India Pvt Ltd vs ACIT 2(3)- TS-305-HC-2018(BOM)-TP- ITA No 1157 of 2015 dated 25.04.2018

534. Where the DRP rejected the assessee's objections on the basis that there was a one day delay in filing, the Tribunal noting that the assessee filed its objections on April 11, 2016 as the prior day viz. April 10, 2016 was a Sunday, held that it could not be said that the objections filed before DRP were late. Accordingly, it held that the objections should have been accepted and decided upon by DRP on merits and restored the matter back to DRP for deciding the case. It rejected Revenue's contention that matter was to be remanded to the AO & not DRP and held that the ground before it was whether or not the DRP was justified in rejecting the objections filed by the assessee. In any case it noted that the directions of the DRP were binding on the AO.

Karuturi Global Ltd vs. ACIT - TS-465-ITAT-2018(Bang)-TP - IT(TP)A No.760/Bang/2018 dated 31.05.2018

535. The Tribunal set aside the assessment order stating that the directions given by DRP-II had not been followed by the TPO. Further, the Tribunal noted that it would be reasonable to remand the matter to the AO/TPO with the direction to pass an order afresh in view of the directions of the DRP-II and objections raised by the assessee in application u/s 154 of the Act.

Quattro Business Support Service (P) Ltd vs ACIT Circle 20(2)- TS-392-ITAT-2018(DEL)-TP-ITA no 1905/Del/2015 dated 16.04.2018

536. The Court upheld Tribunal's order accepting DRP's modification in quantum of risk adjustment and noted that the Tribunal directed that the AO had to amend the draft assessment order after the DRP's adjustment. The Court stated that the DRP's mechanism is an administrative and corrective process entitling the assessee to insist upon a second look in regard to the issues decided in the TPO's report. Therefore, its decisions are binding and a part of the decision making process of the AO

Separately, considering some merits in Revenue's submissions the Court admitted legal question in respect of the exclusion by Tribunal of Infosys BPO as a comparable (to assessee engaged in providing data management services to its AE's customers).

Pr. CIT vs. Symphony Marketing Solutions India Pvt. Ltd (now Merged with Genpact India)- TS-268-HC-2018(DEL)-TP- ITA No 413/2018 dated 11.04.2018

537. A reference was made by the AO to the TPO u/s 92CA in regard to the international transaction of the assessee. The TPO recommended a transfer pricing adjustment of Rs. 2.57 crores and based on these recommendations, a draft assessment order was proposed by the AO on 29-12-2016. The assessee filed the objections before the DRP on 31-01-2017 which was rejected by the DRP on the ground that the assessee had made a delay of three days in filing the objections and the objections had to be filed within a period of 30 days from the passing of the draft assessment order. The Tribunal allowing the assessee's appeal, noted that the time limit for filing objections had expired on 28-01-2017 and in accordance to the date of filing objections, the assessment order should have been passed by 28-02-2017 but the same was passed only on 22-03-2017. Accordingly, the Court held that the assessment was done beyond the statutory time limit and was liable to be set aside.

Aalaya Jewel Industry (P.) Ltd. v. ACIT - [2018] 93 taxmann.com 23 (Chennai - Trib.) - IT APPEAL NOS. 970 AND 971 (MDS.) OF 2017 dated APRIL 5, 2018

538. The Court allowed Daimler India's writ and quashed re-assessment proceedings initiated after the expiry of 4 years from the end of the relevant AY 2009-10, observing that it was a 'clear case of change of opinion' as assessee made full & true disclosure at the time of the original assessment. The AO sought to reopen the assessment on the basis that assessee had not disclosed the material fact that they had not commenced business during the year. However, it observed that the assessee had made disclosure about its business activity in Form 3CEB which was duly taken into account by TPO who specifically

recorded in his order that commercial production proposed to start in year 2012. Regarding Revenue's contention that the AO would not look into Form 3CEB, it observed that there was sufficient indication to show that AO considered TPO's order and even assuming AO did not look into Form 3ECB, he was bound to look into the order passed by the TPO. Further, it rejected Revenue's contention that the assessee merely produced books of account before the AO and that there was no presumption that all the books were seen by the AO, and held that it was for the Assessing Officer to arrive at a conclusion based on the materials produced and it was not for the assessee to suggest as to what conclusion should be arrived as the assessee is not expected to submit a draft assessment order. It distinguished Revenue's reliance on the decision of the Apex Court in ALA Firm noting that ALA was rendered in the context of the pre-amended Act and that the decision of the Apex Court in Kelvinator of India rendered in the context of the 1961 would apply.

Daimler India Commercial Vehicles Private Limited vs. DCIT - TS-62-HC-2018(MAD)-TP - W.P.No.43435 of 201 dated 30.01.2015

539. The Apex Court allowed the assessee's appeal against the ruling of the Allahabad High Court and quashed the issuance of notice under Section 148 of the Act. The High Court dismissed assessee's writ and had upheld re-assessment based on material found during survey proceedings at the premises of the assessee's Indian subsidiary, based on which AO alleged the existence of Indian PE and had held that the examination of transactions by TPO during Indian subsidiary's TP assessment would not be a bar to initiate re-assessment. The Apex Court held that since the impugned notice for the reassessment was based only on the allegation that the assessee had PE in India, the notice could not be sustained once arm's length price procedure had been followed. It relied on co-ordinate bench ruling in E-Funds IT Solution Inc., wherein it was held that once arm's length principle has been satisfied, there could not be any further profit attributable to a person even if it had a PE in India.

HONDA MOTOR CO. LTD vs. ACIT - TS-174-SC-2018-TP - CIVIL APPEAL NO.(s). 2833 OF 2018 dated 14.03.2018

540. The Tribunal quashed re-opening of assessment u/s148 as there was absence of any reason to believe that the assessee's income had escaped assessment. The Tribunal noted that AO had reopened assessment based on material found during search operations at another party, the material found was in relation to receipt of preference share capital and premium from non-resident shareholder. The AO had contended that the non-resident shareholder qualified as AE and because Form 3CEB was not filed, it became a valid reason for reopening.

The Tribunal stated that merely issuing of shares on premium was no reason for reopening u/s 147 in the absence of any adverse material. Further, it relied on HC judgement in case of Vodafone India Services and noted that reasons recorded nowhere formed a prima facie opinion about escapement of income and thus mere suspicion of AO was no ground for reopening as per HC ruling in case of Nivi Trading

Jay Maa Durga Buildtech Pvt Ltd vs DCIT CC 7(3)- TS-308-ITAT-2018(MUM)-TP ITA No 2720/Mum/2017 dated 17.04.2018

541. The Tribunal quashed the re-assessment order passed u/s. 147 where reopening was done after four years on the basis that royalty payment should be treated as capital whereas the assessee had claimed it as revenue noting that the issue of royalty expenses had been examined in detail by the TPO in the original assessment proceeding and the assessee had explained the nature, purpose and even method of quantification of royalty expense and also submitted a copy of the agreement. Thus, the Tribunal held that material facts had been disclosed by the assessee which the Revenue had failed to take into consideration and further, observed that the reasons recorded did not indicate what material fact was not disclosed nor was there any whisper of such allegation in reasons recorded which is *sine qua non* for initiation of proceedings. Further, it also observed that the Tribunal had decided the treatment of royalty as revenue in favour of the assessee in the subsequent year and hence the re-assessment order could not be sustained. Thus, the Tribunal held that the re-assessment order passed u/s.147 was invalid.

Dy.CIT vs. DSM Sinochem Pharmaceuticals (P.) Ltd. [2018] 94 taxamnn.com 265 (Chandigarh-Trib) ITA No.1466(CHD) of 2017 and CO No.03 of 2018 dated 28.05.2018

542. The assessee filed return of income declaring taxable income to be nil since it had no permanent establishment in India. On the basis of the disclosure of the management service fees (received by the assessee) in Form 3CEB filed by its AE, AO opined that management fee fell within ambit of section 9(1)(vii) as well as Article 12 of India Sweden Tax Treaty and thus reopened the assessment to tax the amount as fees for technical services. The assessee pointed out that the details of receipt of fees was disclosed in the Form 3CED as well as notes to return/ computation filed by it along with the return of income. The Tribunal discussed plethora of judicial precedents including Apex Court decision in Rajesh Jhaveri Stock Broker (291 ITR 500), Jurisdictional High Court decision in Khubchandani Healthparks (384 ITR 322) and Delhi HC in Orient Craft Ltd (ITA No.555/2012) and held that for the AO to have reason to believe that income has escaped assessment, tangible material should be available with the AO to come to such a finding. Thus, the Tribunal held that reassessment proceedings were invalid in absence of such tangible material.

DY DIT v Sandvik AB [TS-460-ITAT-2018(Pun)-TP] ITA No.623/Pun/2014 dated 05.06.2018

543. The High Court quashed the issuance of notice u/s. 148 of the Act on the ground that the AO failed to mention in the reasons recorded that the income that escaped assessment exceeded Rs.1,00,000 and since the AO initiated the reassessment after expiry of period of four years and before six years. Because the requisite condition under section 149(1)(b) of the Act was not met, further proceedings would be nullified. For the subject year, the AO in the original assessment proceeding had made a reference to the TPO in respect of assessee's international transaction and TPO passed a detailed order under Section 92CA(3) of the Act accepting the arm's length price reported by the assessee in respect of its international transactions (i.e. purchase transactions from AEs) and concluded that no adjustment was required in respect of the same. The assessee filed a writ petition in the court challenging the re-opening of the assessment. The Revenue argued that the assessee did not report the said transaction in Form 3CEB [which according to the Revenue was a deemed international transaction as per section 92B(2)]. However, it was pointed out by the assessee that the amendment by Finance Act, 2012 in section 147 providing for deemed escapement of income on account of assessee's failure to report international transaction or file Form 3CEB, was not applicable to the relevant AY 2006-07.Under these circumstances, the Court opined that without adverting to the other issues argued, the notice was quashed on failure of the mandatory requirement of section 149(1)(b) of the Act not being met and consequentially, the order passed under Section 152 as well as the notice issued under Section 143(2) of the Act was also quashed.

NOVO NORDISK INDIA PRIVATE LIMITED v DCIT [TS-501-HC-2018(KAR)-TP] WP No.21206/2014 (T-IT)

544. The Tribunal held that the CIT was not justified in invoking jurisdiction u/s. 263 on the ground of non-filing of Form No.3CEB before AO and in directing the AO to examine other transactions where there was no reference to non-filing of Form 3CEB in his show cause notice. It noted that the CIT had not drawn any adverse inference on perusal of Form 3CEB, but merely surmised that there could be some more international transactions with AE and the report disclosing only one international transaction may not be correct. Accordingly, it held that jurisdiction under Section 263 could not be exercised on the basis of such vague reasons.

Pricewaterhouse Coopers LLP USA vs. CIT - TS-134-ITAT-2018(Kol)-TP - I.T.A No. 540/Kol/2015 dated 14.02.2018

545. The Tribunal dismissed assessee's appeal against CIT's revision order u/s 263 as infructuous, noting that pursuant to the direction of the CIT (i.e. Direction to AO to make a reference to TPO in order to carry out necessary enquiry and obtain data to make examination for ALP-determination in relation to the assessee's domestic transaction with Techni Bharati Ltd and Tantia Construction Ltd) the TPO had passed order holding that no TP adjustment was warranted. Therefore, noting that the assessee had no grievance against TPO's order, it dismissed the appeal as infructuous.

Tantia TBL Joint Venture vs. Pr. CIT - TS-139-ITAT-2018(Kol)-TP] - I.T.A No. 78/Kol/2017 dated 14-02-2018

546. The Tribunal quashed revision order u/s 263 wherein the Pr.CIT held that AO's order u/s 143(3) was erroneous and prejudicial to the interest of Revenue since the AO did not refer the international transactions to TPO. Relying on the decision of the Court in Delhi Airport Metro Express and in DG Housing Projects (wherein it was held that it is incumbent for the PCIT to make some minimum independent enquiry to reach the conclusion that AO's order was erroneous and prejudicial to Revenue's interest) it observed that the PCIT ignored submissions and contentions put forth by assessee that a reference in this case was non-mandatory as neither of the stipulated conditions laid out by Instruction No. 3 of 2016 were met. It dismissed the Revenue's argument that the mismatch between the remittance declared in Income Tax Return and that reported in Form 15CA (detected under CASS) justified the referral of the case to TPO since it involved international transactions and held that reporting under Form 15CA was not limited / was not particularly in respect of payment made to associated enterprise. Accordingly, it held that the AO was not bound to make a reference to the TPO.

Amira Pure Foods Pvt. Ltd. vs Pr.CIT - TS-1053-ITAT-2017(DEL)-TP - ITA No. 3205/DEL/2017 dated 29.11.2017

547. Where the rectification order u/s.154 enhancing income was passed by the TPO who made final adjustment with respect to provision of management support services, provision for technical services and purchase of parts without giving assessee an opportunity of being heard, the Tribunal quashed the said order and held that the rectification order was void-ab-initio and contrary to provision of sec 153(4). It relied on the Apex Court decision in Chockalingam and Meyyapan wherein it was held that principles of natural justice had to be followed by authorities.

ACIT vs Humboldt Wedag India Pvt. Ltd- (2018) 53 CCH 0135 Del Trib ITA No.5097/Del/2011 dated 28.06.2018

Penalty

548. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of Sec 271(1)(c) penalty noting that the AO had levied penalty based on TP-addition of Rs.4.55cr and the Tribunal in quantum proceedings had restored the matter back to AO/TPO, pursuant to which the AO passed a fresh assessment order making part addition of Rs.1.32cr. Accordingly, it held that the original assessment order would no longer survive in the eye of Law and consequently the penalty imposed in connection therewith by the A.O would also not survive. Further, it noted that the AO had also initiated fresh penalty proceedings and accordingly dismissed the Department's appeal as infructuous.

DCIT vs. Actis Advisers Pvt. Ltd - TS-3-ITAT-2018(DEL)-TP - ITA.No.4819/Del./2014 dated 05.01.2018

549. The Tribunal deleted penalty levied u/s 271(1)(b) for non-submission of information as required by TPO vide show cause notice dated December 4, 2012 noting that in response to letter dated December 26, 2012 giving final hearing opportunity, assessee submitted that it had not received the show cause notice dated December 4, 2012 and therefore no appearance could be marked. It accepted assessee's submission that a new receptionist had taken delivery of the said notice but failed to understand its importance and did not pass it on a concerned person dealing with income tax matters and held that there was considerable cogency in assessee's submissions and that the reason for non-compliance of the notice in dispute was genuine and justified.

MAHASHIAN DI HATTI (P) Ltd vs. ACIT - TS-80-ITAT-2018(DEL)-TP - I.T.A. No. 1491/DEL/2016 dated 01.02.2018

550. Where the assessee was unable to fully comply with the notice issued by the TPO (on 12.07.2011) but made a part compliance on 16.08.2011 and furnished the balance documentation on 14.10.2011, the Court dismissed Revenue's appeal and upheld CIT(A)'s order deleting penalty u/s 271G. Considering that the lower appellate authorities rendered concurrent findings and, moreover, the assessee had partly complied with the notice, it held that no substantial question of law arose from the Revenue's appeal.

Pr. CIT vs. MMTC Ltd - TS-76-HC-2018(DEL)-TP - ITA 164/2018 dated 12.02.2018

551. Where the AO levied penalty on the assessee on account of the TP adjustment (imputed mark-up of reimbursement of expenses), the Tribunal noted that the co-ordinate bench in the quantum hearing held that no mark-up on reimbursement of expenses incurred by assessee before incorporation of NDTV Network Plc, UK but upheld charge of mark-up on reimbursements after incorporation at the rate adopted by TPO. Accordingly, it restored the issue to the file of the AO to be decided afresh in accordance with law after considering the outcome of the order to be passed on the quantum additions in accordance with the directions given in aforesaid order.
New Delhi Television Ltd. vs. DCIT - TS-101-ITAT-2018(DEL)-TP

552. The Court dismissed Revenue's appeal against Tribunal order deleting penalty u/s 271(1)(c) in respect of TP-adjustment noting that the issue based on which TP adjustment was made was debatable and rejected Revenue's contention that the Tribunal ignored the mandate of Explanation 7 to section 271(1)(c) [which deems amount disallowed u/s 92C(4) to be income in respect of which particulars have been concealed or inaccurate particulars have been furnished]. Accordingly, it dismissed Revenue's appeal observing that no question of law arose for its consideration.
Pr. CIT vs. Global Vantedge Pvt Ltd - TS-177-HC-2018(DEL)-TP - ITA 316/2018 dated 19.03.2018
Pr. CIT vs. GLOBAL VANTEDGE Pvt Ltd - TS-193-HC-2018(DEL)-TP - ITA 332/2018 dated 20.03.2018

553. The Tribunal deleted penalty u/s 271(1)(c) in respect of TP addition on international transaction relying upon co-ordinate bench judgement in case of Jeetmal Choraria vs ACIT on the ground that the show cause notice for penalty did not specify the charge against the assessee as to whether it was for concealing particulars of Income or for furnishing of inaccurate particulars of income.
DCIT Central Circle 4(4) vs M/s Electrosteel Castings Ltd- TS-372-ITAT-2018(Kol)-TP- ITA No 406-410/Kol/2016 dated 18.04.2018

554. The Tribunal deleted the penalty u/s 271(1) (c.) and noted that the assessee had voluntarily surrendered the TP-adjustment on the ground that DRP had already accepted the operating margin of assessee. It further held that conducting of TP-analysis on the basis of comparables was based on objective material before assessee/ TPO/ DRP, the selection of comparables by the assessee and its further acceptance and rejection by TPO did not amount to concealment of facts. The Tribunal referred to various precedents including SC rulings in Sir Shadilal Sugar & General Mills Ltd and Suresh Chandra Mittal to hold that concealment penalty provisions were not attracted in case of voluntary surrender made in order to buy peace and avoid litigation. Finally, relying on SC ruling in Reliance Petro Products, it held that mere rejection of assessee's claim did not automatically attract penalty u/s 271(1) (c.)
Sequence Design (I) Pvt Ltd vs ITO Ward 8(1) – TS-282-ITAT-2018(DEL)-TP- ITA No 1756/Del/2016 dated 12.04.2018

555. The Tribunal upheld CIT(A)'s deletion of Sec 271AA penalty imposed by AO for failure to disclose international transaction pertaining to receipt of share capital from AE. The AO had imposed penalty on the basis that the transaction should have been disclosed in Form 3CEB as it was an international transaction post amendment to Sec 92B vide Finance Act 2012 with retrospective effect from April 1, 2002. The Tribunal noted that Form 3CEB was furnished on September 28, 2011 and held that issue of share capital as an international transaction as on the date of filing Form 3CEB for the above year was not required to be disclosed and the law had been amended with retrospective effect, which clearly showed that the issue had no clarity prior to amendment. Further, noting that Sec 271AA was also subject to provisions of Sec 273B, it concluded that there was a reasonable cause for not disclosing the above transaction as an international transaction in the above form and confirmed CIT(A)'s order deleting penalty.
ITO ward 18(2) vs Nihon Parkerizing (India) Pvt Ltd- TS-242-ITAT-2018(Del)-TP- ITA No 6409/Del/2015 dated 10.04.2018

556. The Tribunal upheld CIT(A)'s order confirming levy of penalty u/s 271AA and 271G for failure to maintain & furnish information/ documents u/s 92D by the assessee. It noted that on perusal of Form 3CEB, it was evident that data with respect to the comparability, whether external or internal, were not available

on record nor made available by assessee to TPO contrary to the provisions of Sec 92D(1) which mandates that an assessee who has entered into international transaction necessarily has to maintain information and documents prescribed in Rule 10D. In compliance with the said section, the assessee is additionally required to keep a record of the analysis performed to evaluate comparability of uncontrolled transactions with assessee's controlled international transactions. The assessee had also not been able to demonstrate "reasonable cause" which is an exception to the levy of the penalty under section 273B. Thus, the Tribunal concluded that levy of penalty by the lower authoritities was justified.
India Pistons Ltd vs. ACIT [TS-627-ITAT-2018(CHNY)-TP] ITA Nos.2207 and 2208/Chny/2017

557. The Tribunal set aside the order of CIT(A) and deleted the penalty levied under the provisions of section 271(1) of the Act. It held that both of the issues involved viz. use of multiple year data and assessee's claim that benefit under proviso to Sec 92C(2) is a standard deduction were highly debatable issues at the relevant time. Regarding the use of multiple year data by the assessee, the Tribunal held that the issue when the assessee was filing the return of income was highly contentious and law was yet evolving and hence the claim made by the assessee was a bonafide one. Further, reference was made to clarification given vide the Memorandum to the Finance Bill, 2012 that claim of 5% benefit was not a standard deduction and noted that different courts had taken a different views.
Giesecke and Devrient [I] Pvt Ltd vs DCIT [TS-479-ITAT-2018(DEL)-TP] ITA No.1458/Del/2017 dated 26.06.2018

Stay

558. The Court dismissed Revenue's appeal challenging Tribunal's power to grant stay of demand beyond 365 days. It rejected Revenue's contention that the extension of stay granted was beyond the statutory power of the Tribunal and held that as per the decision of the Court in Pepsi Foods Pvt. Ltd. v. Asstt. Commissioner of Income Tax (2015) 376 ITR 87 (Del.). where delay in disposing appeal was not attributable to the assessee, the Tribunal had power to grant extension of stay beyond 365 days in deserving cases. Noting that the Tribunal applied the said decision while extending stay of demand, it held that no question of law arose from the Department's appeal.
Pr CIT v Pepsi Foods Pvt Ltd - TS-53-HC-2018(DEL)-TP – ITA No 88 / 2018 dated 29.01.2018

559. The Tribunal noting that while computing the TP adjustment in the instant case, the TPO had made an adjustment on both AE and non-AE transactions, accepted assessee's contention that the TP adjustment was to be confined to AE transactions only and accordingly granted stay of demand arising for a period of 6 months or till the disposal of appeal, whichever is earlier, with a condition to pay Rs.10 lakhs on or before January 31, 2018. It noted that out of a total demand of 1.28 crore, the assessee had already paid 52.74 lakhs and therefore granted conditional stay to the assessee. It also directed the assessee not to take any undue adjournment without any justifiable reason and further cooperate in early disposal of the appeal.
IKA India P. Ltd vs. DCIT - TS-50-ITAT-2018(Bang)-TP - Stay petition No.1/Bang/2018 dated 19.01.2018

560. The Tribunal granted stay of outstanding demand of Rs.7cr to the assessee upto March 31, 2018, subject to payment of Rs. 1.5cr on before January 31, 2018 noting that the demand arose due to TP-adjustment made on consideration received for sale of shares in ForgePro to its AE and the consideration received by the assessee was determined to be at par with the FMV of shares which determined by experts in the field and that the valuation of the shares conducted by a field expert could not be disturbed by the TPO. It also noted that the TPO himself accepted that transaction took place in uncontrolled situation and accordingly held that there was strong prima facie case in assessee's favour. Since the assessee was running its business operation on overdraft facility and therefore, liquid position of the assessee did not permit the payment of disputed tax liability, it held that the demand ought to be stayed. It granted the assessee an out of turn hearing and clarified that the stay order would cease to operate, in case assessee-sought adjournment from hearing of the appeal any without any just and reasonable cause.
Wevin Pvt. Ltd v ITO - TS-26-ITAT-2018(Bang)-TP - S.P.No.297/Bang/2017 dated 01/01/2018

561. The Tribunal granted stay of outstanding demand of Rs.1.16 crore for a period of 3 months or till appeal disposal, whichever was earlier, subject to payment of Rs.50 lakhs on or before November 30, 2017. Noting that assessee had opening cash in hand of Rs. 502.79 lacs in November 2017, the Tribunal directed the assessee to make a part payment of the outstanding disputed demand. The Tribunal further clarified that the assessee should not seek any adjournment without justifiable reasons and if the assessee did so, the stay granted vide this order would get vacated automatically. It also preponed the hearing date from January 16, 2018 to December 12, 2017.

CAE India Pvt. Limited vs. ITO - TS-1075-ITAT-2017(Bang)-TP – SP No 218/Bang/2017 dated 10.11:2017

562. The Court disposed of the assessee's writ petition in respect of Tribunal's refusal to grant interim orders for suspending the tax demand arising due to TP adjustment in respect of AMP expenses for AY 2013-14. It noted assessee's reliance on Valvoline Cummins ruling to contend that AMP-expenses could not be characterized as an international transaction as well as Revenue's reliance on the decision of Luxottica India to state that AMP expenses could no longer be kept from ALP fixation and opined that the Tribunal's direction to pay 20% was entirely justified. It clarified that subject to petitioner's compliance, the interim order till date in respect of the tax demand would continue to bind the parties.

Pepsico India Holdings Pvt. Ltd vs. ACIT - [TS-1064-HC-2017(DEL)-TP - W .P.(C)11454/2017 dated W .P.(C)11454/2017

563. The Court dismissed Revenue's writ challenging the stay order of the Tribunal with 'exemplary' cost of Rs. 50,000 each, to be paid personally by 2 Principal CITs & an ACIT, for their irresponsible & unfair behaviour in filing a writ petition just for the sake of proving their 'fictional desires'. The Court observed that a total demand of Rs. 22.17 cr was raised on assessee-company pursuant to AMP adjustments made by DRP, against which assessee secured an interim stay order from ITAT, subject to further payment of Rs. 2 cr. (in addition to Rs.3.32 cr. already paid by it). It held that the entire demand raised by the authorities was prima facie not even sustainable considering that the controversy was apparently covered in assessee's favour by various Delhi High Court and Bengaluru ITAT rulings and that the grant of absolute stay would have been more appropriate in the circumstances. It observed that the approach of the tax department in filing Writ Petition seemed as an attempt to prove their superior wisdom over the wisdom of Tribunal and accordingly reprimanded the 'dogged approach & 'unholy desire' to multiply litigations in Constitutional Courts. It observed that the approach of the Revenue showed a lack of judicial discipline and hierarchical discipline.

Epson India Pvt. Ltd vs. ACIT - TS-14-HC-2018(KAR)-TP - WRIT PETITION No.12913/2017 (T-IT) dated 09.01.2018

564. The Tribunal granted stay of demand to the extent of 50% of outstanding demand while directing payment/adjustment of refunds for balance amount in respect of AY 2013-14 noting the assessee's argument that demand arose on account of TP-adjustment and that it had a strong prima facie case as the Revenue had wrongly rejected CUP method and considered comparables with substantial related party transactions. Observing that the assessee a refund of Rs. 18.50 lakhs and Rs 26.22 lakhs was due to the assessee for AY 2010-11 and 2015-16, adjustment of which would result in recovery of more than 50% of the demand, it directed the AO to verify the claim of the assessee of refunds and adjust the same against the outstanding demand. Further, it directed that if such adjustment was found to be less than 50% of the outstanding demand, the assessee was to deposit the amount to the extent of such shortfall by 15th January, 2018.

Atlas Healthcare Software (India) Ltd v ACIT - TS-1060-ITAT-2017(Kol)-TP - S.A. No. 134/Kol/2017 dated 22.12.2017

565. The Tribunal directed the lifting of attachment of bank account in case of assessee till the disposal of appeal noting that due to attachment of bank account assessee was not able to continue its operations and was experiencing severe cash crunch and liquidity position and was not able to make any further payment of tax. Perusing the copy of ITAT order for earler years, it observed that the issues involving T.P. adjustment, prima facie appeared to be covered in favour of the assessee and if the effect to the earlier order of the Tribunal in assessee's own case was given, then, no demand may arise at all.

Accordingly, it fixed the appeal hearing on January 15, 2018 as the case was claimed to be a covered matter.

Planet Online P Ltd v ACIT - TS-1059-ITAT-2017(HYD)-TP - S.A. No.167/Hyd/2017 dated 27.12.2017

566. The Tribunal granted stay of outstanding demand of Rs.225.92cr to Wipro GE Healthcare noting that the demand arose due to TP-adjustment in respect of royalty, distribution and trading, software and support services and other corporate tax additions. It observed that the TPO suggested TP-adjustment even on non-AE transactions and in respect of corporate tax additions which were restored back to AO for de-novo adjudication in earlier years. Clarifying that assessee should not seek adjournment from appeal hearing without just & reasonable cause, it directed the revenue authorities not to initiate coercive steps for collection of demand.

Wipro GE Healthcare Pvt. Ltd vs. DCIT - TS-1056-ITAT-2017(Bang)-TP - SP No.275/Bang/2017 dated 15/12/2017

567. The Tribunal granted stay of outstanding demand for AYs 2009-10, 2011-12 and 2013-14 to the assessee noting that the TP-adjustment arose due to TPO's selection of comparables. It noted that the assessee had already discharged 53% of the demand for AY 2009-10 and 45% of the demand for AY 2011-12 and accordingly stayed the balance demand. For AY 2013-14 noting that only 19% of the outstanding demand had been paid, it directed the assessee to pay an additional amount of Rs.2crore. Further, it granted the assessee an early hearing on February 5, 2018 and clarified that the stay order would cease to operate, in case the assessee sought an adjournment without any just and reasonable cause.

Finastra Software Solutions (India) Pvt. Ltd (formerly Misys Software Solutions India Pvt. Ltd.) vs. DCIT - TS-55-ITAT-2018(Bang)-TP dated Sty Petn.No.12/Bang/2018, Sty Petn.No.13/Bang/2018 & Sty Petn.No.14/Bang/2018 dated 18/01/2018

568. The Tribunal granted the assessee stay of outstanding demand noting that the demand arose inter alia due to TP-adjustments (on royalty, distribution & trading, software & support services), which was proposed on both AE as well as non-AE transactions (therefore impliedly accepting assessee's contention that it had a prima facie good case). It directed the assessee not to seek adjournment from appeal hearing without just and reasonable cause and clarified that the stay would be vacated if the assessee sought without just and reasonable cause.

Wipro GE Healthcare Pvt. Ltd vs. DCIT - TS-1104-ITAT-2017(Bang)-TP - SP No.275/Bang/2017 dated 15/12/2017

569. The Tribunal granted the assessee stay of outstanding demand of Rs.3.30cr noting that the demand arose due to TP-adjustment revolving around selection of comparables which were held to be incomparable in assessee's own case in preceding year. Further it also noted that the assessee had already discharged more than 50% of original demand, and accordingly, it held that it was a fit case for stay of demand. It noted that the appeal was already posted for hearing on March 15, 2018 and directed the assessee not to seek adjournment from hearing without any just and reasonable cause and co-operate for expeditious disposal of the appeal.

Marvell India Pvt. Ltd. vs. ACIT - TS-81-ITAT-2018(Bang)-TP - S.P.No.9/Bang/2018 dated 19/01/2018

570. The Tribunal granted the assesssee stay of outstanding demand for a period of 6 months or till appeal disposal, whichever was earlier, noting that the demand arose due to TP-adjustment on account of distribution fee paid to AE which was incorrectly benchmarked by TPO by using comparables of royalty payments and that there was a mistake in the workings made by TPO, which, if rectified, would reduce the demand substantially. Considering that the co-ordinate bench had stayed collection of similar outstanding demand for previous AY, the Tribunal held that the balance of convenience was in favour of granting full stay to the assessee. It granted the assessee an early hearing and directed it not to seek adjournment on that date without reasonable cause, failing which, the stay would be subject to review by the Bench hearing the appeal.

MSM Discovery Private Ltd. vs. DCIT - TS-73-ITAT-2018(Mum)-TP - S.A. No. 570/Mum/2017 dated t 12.01.2018

571. The Tribunal extended the stay of outstanding demand noting that the earlier stay was granted till December 31, 2017 and appeal was fixed for hearing on February 2, 2018. Considering that the assessee had fulfilled conditions mentioned in earlier stay order and delay in disposal of appeal was not attributable to assessee, it extended stay for a further period of 180 days or till appeal disposal, whichever was earlier and directed the assessee not to seek adjournment without justifiable reasons and clarified that if the assessee did so stay granted would be automatically vacated.
The Himalaya Drug Company vs. ACIT - TS-82-ITAT-2018(Bang)-TP - S.P. No.306/Bang/2017 dated 25.01.2018.

572. The Tribunal granted extension of stay of outstanding demand of Rs.1029.21cr to the assessee observing that there was no change in the circumstances of the case and the delay in disposal of appeal was not attributable to the assessee. Accordingly, it extended stay for a further period of 180 days (commencing from January 25, 2018) or till appeal was disposed. It directed the assessee not to seek adjournment without justifiable reasons and clarified that if assessee did so stay granted would be automatically vacated.
Infosys Ltd vs. ACIT - TS-90-ITAT-2018(Bang)-TP - S.P. No.303/Bang/2017 dated 25.01.2018.

573. The Tribunal granted stay of outstanding demand of Rs.1.23 crore subject to payment of Rs.40 lakhs. It noted that the demand arose inter alia due to TP-adjustment and out of total demand of Rs.1.64cr, assessee had already discharged Rs.41.02 lakhs and accordingly it opined that the ends of justice would be met, if the assessee was directed to further pay Rs.40 lakhs covering 50% of the disputed tax. It fixed the appeal hearing for March 6, 2018 and clarified that the stay was subject to condition that the assessee would not seek adjournment of the case from hearing without any reasonable and just cause.
Fiberlink Software Pvt. Ltd. vs. DCIT - TS-96-ITAT-2018(Bang)-TP - SP No.11/Bang/2018 dated 07/02/2018

574. The Tribunal granted extension of stay of demand for a period of 180 days or till appeal disposal, whichever is earlier, acknowledging that the delay in appeal disposal was not attributable to assessee and there was no change in circumstances from day of earlier stay. It directed the assessee not to seek adjournment from appeal hearing (fixed for February 27, 2018) without just and reasonable cause.
Epson India Pvt. Ltd. vs. DCIT - TS-94-ITAT-2018(Bang)-TP - Stay Petn. No.34/Bang/2018 dated 9/2/2018

575. The Tribunal granted stay of demand to the assessee till March 31, 2018 or till appeal disposal, whichever was earlier noting that the demand arose due to TP-adjustment made in respect of assessee's international transactions. Considering that the assessee had already discharged 50% of disputed tax, the Tribunal granted stay and clarified that the stay was subject to condition that the assessee shall not seek adjournment of the case from hearing without any just and reasonable cause.
Citrix R&D India Pvt. Ltd. vs. ACIT - TS-91-ITAT-2018(Bang)-TP - SP No.15/Bang/2018 dated 07/02/2018

576. The Tribunal relying on the decisions of the Delhi HC ruling in Pepsi Foods, Bombay HC ruling in Narang Overseas, co-ordinate bench ruling in SAP Labs extended stay of demand to the assessee noting that existence of all conditions for grant of stay has already been considered by the Tribunal at the time of granting original stay and no new condition could be imposed while extending the stay. It held that when the delay in disposal of appeal was not attributable to the assessee, stay had to be extended.
Manipal Global Education Services P. Ltd. vs. DCIT - TS-100-ITAT-2018(Bang)-TP - SP No.24/Bang/2018 dated 05/02/2018

577. The Tribunal granted stay of outstanding demand up to March 31, 2018, subject to payment of Rs.15 lakhs noting that the demand arose due to transfer pricing adjustment involving selection of comparables. Considering assessee's submission that it has a prima facie case on merits and Revenue

could not controvert the submissions, it opined that the ends of justice would be met if the assessee is directed to pay Rs.15 lakhs on or before 01/03/2018 and the balance was to be stayed.
Enchanting Travels Pvt. Ltd vs. ITO - TS-98-ITAT-2018(Bang)-TP - SP No.16/Bang/2018 dated 05/02/2018

578. The Tribunal granted extension of stay to the assessee considering that the appeals were already heard and orders were awaited.
Mercedes Benz Research & Development India Pvt. Ltd. vs. ACIT - TS-108-ITAT-2018(Bang)-TP - SP No.26, 27 & 28/Bang/2018 dated 05/02/2018

579. The Tribunal granted extension of stay of outstanding demand to the assessee noting that the stay was earlier granted till January 31, 2018 and there was no change in circumstances. Relying on HC rulings in Pepsi Foods and Narang Overseas wherein it was held that when the delay in disposal of appeal is not attributable to the assessee, stay had to be extended.
Vodafone Mobile Services Ltd. vs. DCIT - TS-114-ITAT-2018(Bang)-TP Stay Petn.Nos.18 & 19/Bang/2018 dated 05/02/2018

580. The Tribunal granted the assessee stay of outstanding demand for a period of 90 days subject to part payment of Rs.25 lakhs observing that the assessee had not been able to prove its financial difficulty.
Cook India Medical Devices Pvt Ltd vs. DCIT - TS-141-ITAT-2018(CHNY)-TP - Stay Petition No.30/Mds/2018 dated 02.02.2018

581. The Tribunal extended stay of outstanding demand till March 31, 2018 or appeal disposal whichever was earlier relying upon Bombay HC ruling in Narang Overseas Private Limited and Bengaluru ITAT ruling in SAP Labs India Pvt. Ltd wherein it was held that when the delay in appeal disposal was not attributable to assessee, stay was to be extended. It directed the assessee not to seek adjournment of the case from hearing without any reasonable and just cause.
The Himalaya Drug Company v DCIT - TS-142-ITAT-2018(Bang)-TP - Stay Petn.No.35/B/2018 dated 09/02/2018

582. The Tribunal granted stay of outstanding demand for a period of 6 months or till the date of passing of the order, whichever was earlier, subject to payment of 10% of outstanding demand noting that out of a total demand of Rs.1.96 crores (which arose due to TPO's treatment of AMP-expenditure as a separate international transaction), assessee had already paid a sum of Rs.1.36 crores.
Edwards Lifesciences (India) Private Limited - TS-165-ITAT-2018(Mum)-TP - SA No.82/Mum/2018 dated 20/02/2018

583. The Tribunal granted stay of demand to the assessee for a period of 6 months or till appeal disposal, whichever was earlier, noting that in the earlier round of proceedings, stay was granted by Tribunal subject to deposit of a certain amount and thereafter order on merits was passed by Tribunal remanding major issue of AMP-expenses back to TPO. Subsequently, the assessee approached High Court which sent the matter back to Tribunal for consideration and decision. Accordingly, the Tribunal observed that the assesse had come back to square one, being, the position when the stay was granted by the Tribunal in the first round subject to certain payments. Considering that the assessee had complied with the direction given by the Tribunal in the first round of proceedings for grant of stay, it granted stay to the assessee.
MSD Pharmaceuticals (P) Ltd. vs. DCIT - TS-198-ITAT-2018(DEL)-TP - S.A. No.135/Del/2018 - 06.03.2018

584. The Tribunal granted stay of recovery of demand for180 days to the assessee against the demand raised due to TP adjustment, taking into consideration the fact that prima facie the matter appeared to be in favour of assessee and the refunds due to the assessee for subsequent previous assessment years were pending with the department.
M/s eBizNET Solution Pvt. Ltd vs ACIT Circle 17(1) Hyerabad- TS-403-ITAT-2018(HYD)-TP- SA no 38/HYD/2018 dated 23.04.2018

585. The Tribunal granted extension of stay of demand relying on Pepsi Foods (P) Ltd vs ACIT Delhi HC, Narang Overseas Pvt Ltd vs ITAT and co-ordinate bench ruling in case of M/s. SAP Labs India Pvt Ltd and stated that when the delay in dispos**al** of appeal was not attributable to the assessee, the stay had to be extended.

Finastra Software Solutions (India) P Ltd. Vs ACIT Circle 4(1)(2) Banglore- TS-368-ITAT-2018(Bang)-TP- SP Nos. 128&129/Bang/2018 dated 18.04.2018

586. The Tribunal granted further extension of stay of demand relying on Delhi HC ruling in case of Pepsi Foods, Bombay HC ruling of Narang Overseas and co-ordinate bench ruling in case of SAP Labs India and stated that stay should be extended when delay in disposing the appeal was not attributable to the assessee.

M/s. Epson India Pvt Ltd vs ACIT Circle 2(1)(2)-TS-314-ITAT-2018(Bang)-TP- SP no 115/Bang/2018 dated 18.04.2018

587. The Tribunal granted stay of outstanding demand to the assessee till 31.05.18 or disposal of matter, whichever being earlier, Tribunal noted that the appeal was heard before by the bench, thus granting of stay is considerable.

M/s. Manipal Global Education Services P Ltd vs DCIT CC 2(2) Bengaluru- TS-291-ITAT-2018(Bang)-TP- SP No. 120/Bang/2018

588. The Tribunal granted partial stay to assessee in respect of demand raised on account of adjustment made vis-a vis advertisement, marketing and promotion (AMP) expenses. The Tribunal noted that 10% of the substantive demand raised for one of the AY was already paid and, opined that assessee had made a prima facie case by stating that if directions in Tribunal's Special Bench ruling in LG Electronics case were followed, no further collection of tax would arise. Further**,** for other AY's concerned Tribunal granted stay of demand for a period of 180 days or till the disposal of the appeal whichever is earlier, subject to payment of 5% of demand within 30 days of receipt of the order.

Further, the Tribunal condemned Revenue's action of stalling hearing on main appeal by seeking adjournments and further, expressed displeasure over AO's act of requesting refund adjustment permission while keeping DR completely in the dark, and resulting in waste of precious time of the **C**ourt. The Tribunal directed Registry to send a copy of the order to the concerned Pr. CCIT, to take necessary action against the contradicting conduct of its Revenue Officers.

M/s. GlaxoSmithKline Consumer Healthcare Ltd vs ACIT Circle 4(1)- TS-235-ITAT-2018(Chandi)-TP- SA No 4/Chd/2017, 2 & 3/Chd/2018 dated 02.04.2018

589. The Court dismissed Revenue's appeal against Tribunal's order after following co-ordinate bench judgement in assessee's own case for previous AY, wherein the Court had upheld Tribunal's power to grant stay beyond 365 days after relying on SC ruling in Kumar Cotton Mills Pvt. Ltd. and coordinate bench ruling in Voice Telesystem Ltd. rendered in the context of similar Sec. 35C(2A) under the Central Excise Act, which had ruled that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and the delay in disposal of the appeal is not attributable to the assessee in any manner, the interim protection can continue beyond 365 days in deserving cases.

PCIT vs Carrier Air Conditioning & Refrigeration Ltd- TS-227-HC-2018(P&H)-TP- ITA No 4/2018 dated 04.04.2018

PCIT vs BMW India Pvt Ltd- TS-226-HC-2018(P&H)-TP ITA 11/2018 dated 04.04.2018

590. The Court dismissed Revenue's writ petition against the Single Bench's order (imposed costs of Rs.50,000 on Revenue) dismissing its writ petition filed against Tribunal's order granting stay to assessee in respect of demand raised on account of TP adjustment made on advertisement, marketing

and promotion (AMP) expenses noting that the ITAT-order appeared to be fair, reasonable and not prejudicial to Revenue, particularly when the appeal filed by assessee was set down for final hearing. The Tribunal had observed that the said issue was a debatable issue and had directed the assessee to make a payment of 2 crores over and above the 15% of the demand already paid for the stay to be granted. The Court waived the costs imposed by the single bench but observed that the Department had been filing such petitions without any reason.

CIT vs. Epson India Pvt Ltd [TS-296-HC-2018(KAR)-TP] Writ Appeal No.770 of 2018 dated 24.04.2018

591. The Tribunal granted stay on recovery of outstanding demand for a period of 6 months or till disposal of appeal whichever is earlier subject to payment of Rs.8 crores noting that demand arose due to TP adjustment and corporate tax issues. In respect of TP adjustment, it observed that assessee had invoked MAP mechanism, application of which was pending disposal, and assessee had submitted bank guarantee pursuant to CBDT Circular in respect of demand attributable to TP-additions. It fixed the hearing of the appeal and directed the assessee not to seek an adjournment without just and reasonable causes.

Novozymes South Asia Pvt. Ltd. vs. Jt.CIT [TS-289-ITAT-2018(Bang)-TP] SP Nos.116 to 118/Bang/2018 dated 13.04.2018

592. The Tribunal granted stay of outstanding demand of Rs.2.10cr to Mobily Infotech India for a period of six months or till appeal disposal, whichever is earlier, subject to payment of Rs.15 lakhs on or before May 31, 2018 for AY 2012-13. The Tribunal noted that demand inter alia arose due to TP-adjustment on account of assessee's international transactions with AE and assessee challenged determination of ALP on the ground that comparables chosen by the TPO were not proper and that turnover filter was not properly applied.

Mobily Infotech India Pvt. Ltd vs. DCIT [TS-380-ITAT-2018(Bang)-TP] SP No. 145/Bang/2018 dated 18.05.2018

593. The Tribunal granted extension of the stay of outstanding demand to the assessee till 31.08.2018 or appeal disposal whichever was earlier. The extension of stay was granted relying on the HC Rulings in Pepsi Foods and Narang Overseas wherein it was held that if delay in disposal of appeal was not attributable to the assessee and there was no changed circumstances from the day of earlier stay, the stay should be extended. Further, it directed the assessee not to seek adjournment without just and reasonable cause and its failure to adhere to the aforesaid condition would result in automatic vacation of stay extension granted.

NXP Semiconductors India Pvt. Ltd. vs. DCIT [TS-529-ITAT-2018(Bang)-TP] S.P. Nos. 167&168/Bang/2018 (In IT (TP) A Nos.306/Bang/2016 and 692/Bang/2017 dated 18.06.2018

594. The Tribunal granted further extension of stay of outstanding demand from 31.05.2018 for a period of six months or disposal of appeal whichever was earlier since the delay in appeal disposal was not attributable to assessee.

Manipal Global Education Services P Ltd vs. DCIT [TS-725-ITAT-2018(Bang)-TP] SA No. 181/Bang/2018 in IT(TP) A No.236/Bang/2015 dated 26.06.2018

595. The Tribunal granted extension of stay of demand to the assessee subject to further payment of Rs. 50 lakhs on or before July 15, 2018 relying on Delhi HC ruling in Pepsi Foods P Ltd. and Bombay HC ruling in Narang Overseas Private Ltd wherein it was held that extension of stay should be granted if delay in disposal of appeal was not attributed to the assessee and there was no changed circumstance from earlier stay order. It directed that the assessee should not seek adjournment without just and reasonable cause, otherwise stay would stand vacated.

Inteva Product India Automotive Pvt Ltd [TS-869-ITAT-2018(Bang)-TP] SP No.180/Bang/2018 dated 22.06.2018

596. The Tribunal granted extension of stay on recovery of outstanding demand of Rs.5.91cr to the assessee till September 30, 2018 or appeal disposal, whichever is earlier, subject to payment of Rs.50 lakhs on or before July 15, 2018. The Tribunal clarified that the assessee should not seek any adjournment without

justifiable reasons and if the assessee did so, the stay granted vide the order would get vacated automatically.

M/s Adamas Buiders Pvt Ltd vs ACIT [TS-952-ITAT-2018(Bang)-TP] SP No.184/Bang/2018 dated 22.06.2018

Others

597. Relying on the decision of the co-ordinate bench in the assessee's own case (TS-822-ITAT-2017(DEL)-TP) for the earlier year, the Tribunal rejected the assessee's contention that provisions of Sec 92 should not have been invoked for making TP-addition as assessee's income had to be computed under section 44 of the Act as it was engaged in general insurance business and held that the provisions in Section 44 of the Act do not substitute the provisions contained under Section 92 which deal with the determination of ALP arising out of an international transaction. Regarding Revenue's appeal against CIT(A) order deleting transfer pricing addition, following the earlier year's decision it remitted the ALP computation to the AO/TPO noting that the co-ordinate bench had set aside the CIT(A)'s order observing that the CIT(A) failed to appreciate that the impugned international transaction was more in the nature of a short-term assignment of employees and not receipt of consultancy services as claimed by assessee. It further noted that the Tribunal in the earlier year had observed that the CIT(A)'s deletion of TP-addition was in complete disregard of TPO's elaborate findings for rejecting assessee's adoption of CUP-method as the consulting firms whose rates were cited in the TP study report were only quotations and not actual rates. However, it also rejected TPO's approach of computing ALP under TNMM by considering cost of seconding an employee to assessee in another year to compute daily charge-out rates. Accordingly, it held that the matter required fresh consideration.

ACIT vs. Max New York Life Insurance Company Ltd - TS-822-ITAT-2017(DEL)-TP - ITA No.1768/Del/2011 dated 17.10.2017

598. The Tribunal held that assessee was entitled to deduction under Section 10A of the Act on additional income offered on account of suo-moto TP-adjustment. The TPO/ CIT(A) disallowed the deduction u/s 10A as assessee failed to bring into country the export proceeds in foreign exchange as contemplated in Explanation 2 to Sec 10A in respect of such additional income offered. The Tribunal held that the additional income was artificial/ notional income computed u/s 92(1) and it was neither export turnover nor total turnover but in fact profits of business u/s 10A(4), and therefore held that in the absence of it being offered as export turnover or total turnover, there could not be any condition for getting foreign exchange to India. Further noting that additional income was offered to tax as business profits, it held that the suo moto adjustment would form part of profits of business and thus would have to be taken into consideration while computing the deduction under section 10A(4) of the Act. The Tribunal relied on the on Bangalore Tribunal ruling in iGate Global Solutions allowing Sec 10A deduction in respect of suo-moto TP-adjustment (subsequently confirmed by Karnataka HC) and held that the Mumbai Tribunal ruling in Deloitte Consulting India taking a contrary view would not stand in view of ratio laid down by Karnataka High Court. It clarified that in the absence of any contrary decision of the jurisdictional High Court, the decision of the non-jurisdictional high court would prevail. Further, it held that the proviso to Sec 92C(4) [which inter alia provides that no deduction u/s 10A shall be allowed in respect of such amount of income, by which the total income of assessee had been enhanced after computation of ALP of international transactions] would not apply to suo moto adjustments.

Approva Systems Pvt. Ltd - TS-167-ITAT-2018(PUN)-TP - ITA No.1051/PUN/2015 dated 12.03.2018

599. The point of dispute before the Tribunal was on the issue of Profits attributable to PE. The Tribunal ruled that no further income could be attributable to assessee's Permanent Establishment in India as it was proved that transactions between assessee and its AE were at Arm's length price. The Tribunal relied on co-ordinate bench decision in assessee's own case which had in turn relied on SC decision in case of CIT vs E-funds I.T Solutions Inc, where the assessee's contention that income was not chargeable in India as they had paid arm's length remuneration/ commission to its agent in India had been accepted.

ADIT (IT) 2(2) vs M/s Zee TV USA Inc- TS-311-ITAT-2018(Mum)-TP-ITA No 5608/MUM/2008 dated 23.04.2018

600. The Tribunal laid down law on applicability of TP-provisions to admitted bogus/sham transaction revolving around assessee's purchase of drilling Rig from AE on hire purchase basis and its further sale back to the AE. The Tribunal noted that, u/s 92 if an international transaction is proved to be not genuine, the transfer pricing provisions are not triggered and held that only a declared and accepted genuine international transaction can be subjected to the TP regulations.

Further, regarding TP-adjustment under Payment of instalments of principal under hire purchase agreement, the Tribunal considered assessee's claim that since no deduction was claimed by assessee in the tax computation in respect of the principal amount, no addition could have been made by taking Nil-ALP of the transaction.

Further, the Tribunal deleted TP-adjustment on repossession of Rig by its AE (i.e. sale back by assessee, represented by the amount covered under 'Deletion' column in the Schedule of Fixed Assets of the assessee]. It stated that Revenue's Nil-ALP determination on this transaction would have the effect of the assessee claiming higher depreciation and putting the assessee in a more advantageous position as against the non-application of the transfer pricing provisions. Consequently, it held that that the transfer pricing provisions need not be given effect to as per the mandate of sub-section (3) of section 92.

M/s. Mitchell Drilling India Pvt Ltd vs DCIT Circle 6(1)- TS-252-ITAT-2018(Del)-TP- ITA No 5921/Del/2010 dated 11.04.2018

601. The Tribunal dismissed the Department's appeal and upheld CIT(A)'s order allowing Sec 10A deduction on voluntary TP-adjustment made by assessee. It noted that the assessee did not have any business other than the unit which was eligible for Sec 10A. The voluntary TP adjustment was made through Form 3CEB in respect of international transaction involving export of engineering design services and assessee excluded the voluntary TP-adjustment from export turnover in line with computation mechanism prescribed in Sec 10A.

Tribunal relied on coordinate bench ruling in the case of iGate Global Solutions wherein it was held that assessee was eligible for Sec 10A deduction in respect of income declared in the return of income on the basis of computation of ALP. In the present case, noting that assessee had disclosed income based on computed ALP, the Tribunal opined that, there was no enhancement of income due to determination of arm's length price, by the TPO. Hence, it held, that assessee was entitled to deduction under section 10A in respect of income based on computation of arm's length price.

ACIT Circle 12(1) vs M/s. GS Engineering & Construction P Ltd- TS-278-ITAT-2018 (Del)-TP- ITA No. 3956/Del/2014 dated 05.04.2018

602. The Tribunal upheld CIT(A)'s deletion of Rs.2.88cr addition made by AO by invoking Sec 10A(7) r.w.s. 80IA(10) in case of assessee (engaged in the business of design engineering services) noting that though TPO accepted the margin shown by assessee at 29.14% to be at ALP, the AO held that ordinary profit earned by assessee was actually 12.55% (as against 29.14% declared in TP-report) pursuant to which he disallowed alleged excess profit on the surmise that assessee had earned higher margins than the mean margins earned by comparables selected by assessee. Relying on the decision of the co-ordinate bench in Honeywell Automation India ruling [TS-82-ITAT-2015(PUN)] wherein in an identical situation it was held that that fact that assessee had higher operating margins as compared to the comparables chosen in its TP study was not a valid ground to invoke Sec 10A(7) r.w.s. 80IA(10), it dismissed Revenue's appeal.

ACIT vs. Faurecia Interior Systems India Pvt. Ltd - TS-386-ITAT-2018(PUN)-TP - ITA No.1722 /PUN/2015 dated 24.05.2018

603. The Tribunal remitted the matter back to DRP since it rejected the admission of additional evidences filed by assessee to support its contention that its foreign AE could be selected as tested party for benchmarking raw material import transaction for AY 2008-09. The DRP had declined to admit the additional evidence filed on August 22,2012 and cited non-availability of adequate time to verify the additional evidence as the case would be time-barred on September 30, 2012. However, DRP had called for remand report from AO which was received on September 17, 2012. Upon perusal of the provisions of Sec 144C and DRP Rules, the Tribunal held that the proceedings before DRP are

continuation of the proceedings before AO and further held that DRP had powers to admit, consider and adjudicate on the additional evidence. Thus, the Tribunal set aside the DRP order and remitted issue of determination of ALP of import transactions to DRP after considering the additional evidence.
Bekaert Industries Pvt Ltd vs. ACIT [TS-349-ITAT-2018(PUN)-TP] ITA No.2376/Pun/2012 dated 14.05.2018

604. The Tribunal upheld CIT(A)'s order deleting the disallowance of depreciation since the disallowance related to the adjustment made by the TPO which had been deleted by the Tribunal in the prior year. In the previous year, the AO had referred the issue relating to the valuation of Intellectual Property Rights to the TPO who lowered its value on account of difference between book value and revised value which reduced the claim of depreciation. It was pointed out by the assessee that the Tribunal confirmed the CIT(A)'s order setting aside the IPR adjustment and deleted the disallowance of depreciation.
ACIT vs Gharda Chemicals Ltd [TS-771-ITAT-2018(Mum)-TP] ITA No.1181/Mum/2017 dated 21.06.2018

605. The Court dismissed Revenue's appeal and upheld Tribunal's order wherein TPO's enhancement to ALP on account of location advantage was rejected since assessee and the comparables were situated in India.
CIT vs Watson Pharma Pvt Ltd [TS-480-HC-2018(BOM)-TP] ITA 124 of 2014 dated 25.06.2018

II. International Tax

a. Permanent Establishment

606. The Applicant was providing 4C-3D seismic data acquisition and processing services to ONCG and other customers in India in relation to the exploration of oil and gas. The AAR, relying on the decision of Oil & Natural Gas Corporation Ltd. vs CIT [2015] 376 ITR 306 (SC) held that the income received could not be taxed as Fees for technical services. Further, since ONGC did not use or obtain the right to use the vessels/equipment of the Applicant, it held that the income could not be taxed as Royalty either. However, relying on the decision of the Apex Court in Formula One World Championships Limited (2017) 80 taxman.com 347, it held that the vessels used by the Applicant constituted a Fixed Place PE under Article 5 of the India-UAE DTAA as it satisfied the conditions as laid down by the Apex Court i.e. i) permanence of duration to the extent that was required by the business, and not meaning forever ii) there was a fixed place which were the vessels in the High Seas in a definite and composite geographical area, and from which its business of survey in connection with exploration was carried out; and iii) this place was at the disposal of the Applicant. It rejected the contention of the Applicant that no PE would be constituted as it would be governed under Article 5(2)(i) which required a presence in India of more than 9 months whereas it was in India for only 113 days and held that the services envisaged under Article 5(2)(i) included services such as of supervision, managerial, consultancy, or general nature which were not the services being provided by the Applicant.
SEABIRD EXPLORATION FZ LLC IN RE - (2018) 101 CCH 0119 IAAR - A.A.R. No 1295 of 2012 dated Mar 28, 2018

607. The assessee, a Korean company, had received consideration under an agreement with an Indian company to supply power equipment from outside India and claimed that since it did not undertake any activity in India and, no part of sales consideration was taxable in India. The AO, however, held that the assessee company had a business connection as well as a PE in India under Article 5 of India-Korea DTAA in form of the liaison office and attributed 50% of the amount received to the assessee's PE in India. It was noted that for the preceding year, on the basis of order passed by the High Court, the AO had attributed 25% of the receipts to PE in India, whereas for the subsequent years he had attributed 15% of the receipts to PE in India. The Tribunal thus restored the issue to the file of the AO with a direction to pass a speaking order in the light of the decisions for preceding as well as subsequent years.

Hyosung Corporation v ACIT - [2018] 94 taxmann.com 363 (Delhi - Trib.) - IT APPEAL NO. 6960 (DELHI) OF 2014 dated April 24, 2018

608. The Applicant was an International Association and did not have a motive to earn profits (as per Articles of Association). The AAR held that if the activities of the Liaison Office ('LO') proposed to be established in India are based on the principle of mutuality, then any incidental surplus arising to the LO should not be liable to tax in India under the provisions of the Income-tax Act, 1961 ('Act') or the India-Belgium DTAA. As regards the Revenues contention that, such LO constitutes a Permanent Establishment (PE) in India, AAR held that once the principles of mutuality are satisfied by an entity, it cannot be said that such an entity is carrying on any 'business' and where there is no 'business', a PE cannot be constituted.
International Zinc Association in Re – [2018] 102 CCH 0018 (Advance Rulings) – AAR No 1319 of 2012 dated May 24, 2018

609. The Applicant, a resident of Luxemburg, entered into a Centralized Services Agreement (CSA) with an Indian company owning a hotel, for providing certain Global Reservation Services (GRS) and other services. The Applicant filed an application before the AAR to ascertain as to whether the payment received by it from the Indian company under the aforesaid agreement was to taxed as FTS or royalty u/s 9(1)(vi) / 9(1)(vii) r.w. Article 12 of India-Luxembourg DTAA. AAR noted that in addition to the CSA, the Applicant had also entered into other agreements with the Indian company to provide further services in relation to hotel management and held that as per the terms of all the agreements, it could be said that the Hotel was at complete disposal of the Applicant, right from the stage of its construction to all the important functions in relation to its operation and management. Thus, AAR held that the Indian hotel constituted fixed place PE of the Applicant with respect to various income sources. Therefore, the AAR held that payments received by the Applicant for provision of global reservation services would be chargeable to tax in India as business income u/s 9(1)(i) r.w. Articles 5 and 7 of the India-Luxembourg DTAA and such income was attributable to the Applicant's fixed place PE in India, i.e. the Indian hotel.
FRS Hotel Group (LUX) S.A.R.L. in Re – [2018] 102 CCH 0017 (AAR) – AAR No 1010 of 2010 dated May 24, 2018

610. The assessee company, a tax resident of South Korea, was engaged in the business of heavy engineering. The assessee was awarded a project by the ONGC for the purpose of surveys, engineering, commissioning, etc. of entire facilities and as per the terms of the contract, the assessee had to perform certain activities within India and outside India. At the instance of ONGC, the assessee opened a project office in Mumbai which the AO treated as a fixed place PE and attributed an adhoc 25 percent of gross Revenues received by assessee under project to alleged PE. On appeal, the Tribunal held that since Revenue could not bring any evidence on record to show that the alleged PE of assessee had any role to play in respect of offshore supplies made, no income from such offshore supplies could be attributed to the alleged PE. Accordingly, the Tribunal deleted the addition.
Samsung Heavy Industries Co. Ltd. v. DCIT (International Taxation) – [2018] 93 taxmann.com 224 (Delhi – Trib.) – IT Appeal No. 872 (Delhi) of 2017 dated April 25, 2018

611. The assessee, a Spanish company engaged in providing services of consultancy in project, engineering and electrical contract and supplies, carried out its projects in India through its PE, a Project Office (PO). The AO disallowed the deduction claimed by the assessee's PE with respect to 'Exchange Fluctuation Loss' suffered on account of advance received from Head Office in foreign currency for carrying out projects in India on the alleged ground that the amount received by the PO was not a loan but a capital contribution. CIT(A) upheld the AO's order. The Tribunal allowed the assessee's claim, noting that the amount received by the PE was loan and not capital remittance. It held that since loan was utilized in day-to-day operations, for project execution and to obtain material as per terms of contract, said remittance did not bring any capital asset into existence and thus the foreign exchange fluctuation loss on account of differential value in INR was allowable as deduction u/s 37(1).
Cobra Instalaciones Y Servicios SA v DCIT - [2018] 96 taxmann.com 80 (Delhi - Trib.) – ITA No. 2391 (DELHI) of 2018 dated June 28, 2018

612. The assessee, a company incorporated in Japan, was engaged in business of chemicals, dyestuffs, plastics, electronic materials, cosmetics, etc. and had made sales to Indian customers directly as well as through independent agents appointed in India. It had also set-up a Liaison Office (LO) in India after obtaining a specific approval of RBI, as per which the LO's activities were confined to liaison and representative activities and it was not permitted to carry out any business/commercial activities in India. The AO opined that activities of LO involved identifying, negotiating and concluding business contracts in India for and on behalf of its parent office and, therefore, LO was to be considered as the assessee's PE in India as per Article 5 of India-Japan DTAA and consequently estimated the profit at 10% of the total turnover from India by invoking Rule 10. CIT(A) upheld the AO's order. It was noted that the co-ordinate bench in assessee's own case relating to succeeding assessment year had held that there was no evidence that could lead to the conclusion that LO was executing agreements independently with customers. The co-ordinate bench had held that the LO was providing auxiliary or support services and proverbial mind and management was located in Japan and, accordingly, neither there was a business connection in India nor LO constituted assessee's PE in India. The Tribunal followed the co-ordinate bench decision, noting that there was no change in circumstances and allowed the assessee's appeal.

Nagase & Company Ltd. v DDIT(IT) - [2018] 96 taxmann.com 504 (Mumbai - Trib.) – ITA Nos. 134 & 412 of 2009 & Others dated April 27, 2018

613. The Tribunal allowed assessee's appeal and rejected the AO's attribution of 50% profits made by Corning SAS in France (Head Office), from direct sales made in India, to its Indian Branch office (BO). It was noted that the BO was remunerated with 3% commission on direct sales made by it to customers in India and in all other AYs (preceding as well as succeeding), the AO had accepted 3% commission without attributing any additional profits to BO. Further, noting that no substantial functions were performed and no risks was undertaken or assets were employed by BO in India in relation to the direct sales made by Corning SAS France in India, the Tribunal held that no profit in addition to the 3% commission income earned could be attributed.

Corning SAS- India Branch Office v. DIT(IT) – [TS-286-ITAT-2018(DEL)] – ITA Nos. 4678 & 4795/Del/2010 dated May 30, 2018

614. The Applicant, a Singapore based company and a leading global payment solution provider, used to charge banks [with whom it entered into Master License Agreements] processing fees relating to authorization, clearing and settlement of transactions. The Applicant provided the banks with a MasterCard Interface Processor (MIPs) that connected to the Mastercard Network and other processing centres. The MIPs were owned by the Indian subsidiary of the Applicant. The Applicant sought a ruling from AAR on the following issues i) Whether the digital equipment (MIP) created a PE (ii) Whether the MasterCard Network created a fixed place PE in India (iii) Whether agency relationship is created through Bank of India and its premises would constitute a fixed place PE (iv) Whether Applicant's subsidiary (MISPL) created a fixed place PE (v) Whether there was creation of a PE through the Applicant's visiting employees (vi) Whether there was a dependent agent PE created through MISPL

On the first issue, the AAR accepted Revenue's stand that even an automatic equipment can create a PE and did not have to be fixed to the ground to constitute a fixed place PE. It held that since significant functions were performed by MIPs in facilitating authorization process and the MIPs were at the disposal of the Applicant, the MIPs constituted PE on account of the test of disposal and permanence being satisfied.

In case of the second issue, it noted that apart from MIP, transmission towers, leased lines, fiber optic cable, nodes and internet (owned by third party service provider) and application software which constituted the Mastercard Network were located in India as well as outside India. It also noted that the task performed by the MasterCard Network were significant activities in the context of overall functions of transaction processing rendered to third party and not preparatory or auxiliary. Further, noting that the Applicant owned part of the Network, the AAR held that the Network also constituted PE.

With respect to issue (iii), noting that the settlement activities happened through Bank of India who carried out the functions under the instructions of the Applicant, it accepted revenue's contention that the Bank of India premises where settlement activities happened through employees created a fixed place PE.

The AAR noted that MCI (of which Applicant was a wholly owned indirect subsidiary) had a liaison office ('LO') in India and for which the Applicant had disclosed income from transaction processing service rendered in India at full 100% attribution of global net profit rate. The Applicant had shut down LO and transferred the work and employees to MISPL. AAR held that once the Applicant in the case of LO had legally accepted a PE on account of 100% attribution of profit to India, now MISPL also created a PE of the Applicant.

The AAR, while examining whether the work carried out by the Applicant's employees visiting India was a part of transaction processing services, concluded that the work was an integral part of the Applicant's profession to provide new avenues of services to clients. Thus, it held that the employees visting India were providing services to clients, and if they exceeded the threshold of 90 days in a year, a service PE could be created.

The AAR noted that the agreement concluded by the Applicant were routed through MISPL who brought the proposal though it was finalized by the Applicant. The above action of MISPL satisfied the requirement of securing order under Article 5(8) of DTAA and thus, MISPL constituted a dependent PE agent.

MasterCard Asia Pacific Pte. Ltd. In.re [TS-452-AAR-2018-TP] AAR No.1573 of 2014 dated 06.07.2018

615. The Assessee, a Korean company engaged in manufacturing and sales of various categories of televisions, home appliances, telecommunication terminals, semi-conductors as well as other state of art IT products for global markets, had a wholly owned subsidiary in India i.e. SIEL to whom it seconded its employees. The Tribunal observed that the expatriate employees were only discharging duties of subsidiary company towards holding company (and did not carry out any activities on behalf of its subsidiary) and whatever benefits that were derived by Indian subsidiary by such communication were offered to tax in India. Absent any provision for Service PE under the India-South Korea DTAA, the Tribunal held that the employees of the assessee did not constitute a fixed place PE in India as no business was carried on by the assessee through the expatriated employees nor did the assessee derive any income by them though activities of these employees. Accordingly, it held that no income was taxable in India.

Samsung Electronics Co. Ltd v DCIT - [2018] 92 taxmann.com 171 (Delhi - Trib.) - IT APPEAL NOS. 65 TO 70 (DELHI) OF 2013 dated MARCH 22, 2018

616. The AO had brought to tax in India the income earned by the assessee, a Singapore based company, from supply of hardware, by considering the Indian company forming part of the same group and the Indian liaison office of the group parent company (based in Canada) to be the assessee's PE in India as per Article 5 of the India-Singapore DTAA. The Indian company provided market support and licensing services to the assessee. However, the AO opined that the Indian company and the liaison office were actually involved in negotiation and conclusion of contracts on behalf of the assessee in India. Noting that there was no material on record which even remotely suggested that the liaison office had acted on behalf of the assessee or was negotiating and concluding agreements on its behalf, the Tribunal held that the liaison office could not be considered as a fixed place of business of assessee. With respect to the Indian company (being the subsidiary of the Canada based group parent company), it held that a subsidiary company was an independent tax entity and its income is chargeable to tax in the state where it is resident. The Tribunal thus held that since the Indian company performed the tasks contracted to it, on its own behalf, the income from such activities as well as any function performed by the expatriate employees of group companies seconded to the Indian company would be subject to tax in hands of the Indian company and the same could not be considered as income of the assessee.

ADIT v Nortel Networks Singapore (P.) Ltd. - [2018] 93 taxmann.com 401 (Delhi - Trib.) - IT APPEAL NOS. 2757 AND 2760 (DELHI) OF 2009 & 2172 TO 2176 (DELHI) OF 2011 dated April 24, 2018

NORTEL NETWORKS SINGAPORE PTE. LTD. vs. DDIT (IT) (DELHI TRIBUNAL) (ITA Nos. 5482, 3240, 3241/Del/2012 & 553/Del/2015, 5505/Del/2012) dated May 28, 2018 (53 CCH 0083)

617. The assessee, a Japanese company, was engaged in development, manufacture, assembly and supply of air-conditioning and refrigeration equipments. It sold the equipments to its Indian Subsidiary (DAIPL) and further DAIPL sold to customers in India. In addition, assessee also claimed to have made direct

sales to third parties in India. AO stated that DAIPL was simultaneously undertaking marketing activities for assessee. Also, the communication in form of email demonstrated that DAIPL negotiated and finalized deals with Indian customers and conveyed it to the assessee. Further, assessee failed to provide any evidence as to how customers in India were directly approaching assessee in Japan to discuss & finalize the prices and requirements and therefore AO held that DAIPL carried out marketing activities for the assessee and was a Dependent Agent Permanent Establishment of assessee in terms of paragraph 7(a) and 7(c) of Article 5 of DTAA between India and Japan (which provides for instances of deemed PE) The Tribunal upheld AO's order and further held that since DAIPL was a PE in India, 30% of the net profit relatable to sales in India would be attributable to the marketing activities carried out in India by DAIPL.

Daikin Industries Ltd. vs ACIT [2018] 94 taxmann.com 299 (Delhi- Trib.) – ITA NO 1623 OF 2015 dated 28.05.2018

618. The assessee, a US based company, had entered into a Master Franchise Agreement (MFA) with a company in India which in turn had entered into a Sub-Franchise Agreement (SFA). It offered income from franchise fee and consultancy services provided to M/s J for store opening to tax at the rate of 10% being royalty as per India-USA DTAA. The AO held that M/s J constituted the assessee's dependent agency / Permanent Establishment in India as per Article 5 of India-USA DTAA and thus taxed the total income of the assessee as business income @ 40% (after allowing a deduction of 5% from total income). The DRP held that M/s J did not constitute a PE or DAPE or agency PE of the assessee. On perusal of the Master Franchise Agreement (MFA) between the assessee and M/s J and Sub-Franchise Agreement (SFA) between M/s J and the sub-franchisees, the Tribunal observed that the profit/ loss from the business belonged to M/s J or sub-franchise and that the assessee was only entitled royalty and store opening fees. It further observed that M/s J did not carry on any activity on behalf of the assessee and the restrictions provided in MFA and SFA were only to safeguard the brand value and to ensure the correct receipt of royalty income. Thus, the Tribunal held that since the assessee did not have any physical control on business of franchise and sub-franchise and none of conditions prescribed under Article 5 of India-USA DTAA were attracted, the DRP's order was to be upheld. Accordingly, the Revenue's appeal was dismissed.

DCIT (IT) vs. DOMINOS PIZZA INTERNATIONLA FRANCHISING INC. (BOMBAY TRIBUNAL) (ITA No. 1447/Mum/2016) dated May 18, 2018 (53 CCH 0054)

619. Where the assessee, a Singapore based company, had licensed its wholly owned subsidiary viz. ADSIL as its national marketing company in India (ADSIL marketed the assessee's Computerized Reservation System in India) and ADSIL was an agency PE of the assessee, the Tribunal relying on the decision of the co-ordinate bench (wherein the Tribunal relying on the decision of the Delhi High Court in Galileo International Inc and CBDT Circular No. 23, dated July 23, 1969) held that only 15 percent of the gross receipts of ADSIL was taxable and that the AO was unjustified in attributing the entire gross receipts as the income attributable to the PE. Noting that the assessee was paying a commission of 25 percent of gross receipts as commission to ADSIL, it held that after deduction of the said commission, there would be no income attributable to the PE and therefore observed that the assessee would not be liable to tax. Further, refusing the assessee's request to furnish additional evidence with respect to reimbursement received, it dismissed the contention of the assessee that the CIT(A) had erred in treating the reimbursement received by it from ADSIL as business profits and held that the assessee was granted abundant opportunity to substantiate the nature of reimbursements before the AO which it failed to comply with. Accordingly, it held that the said reimbursements would be taxable as business income. However, it allowed the assessee to set off the commission payment to ADSIL against this income as well.

Sabre Asia Pacific Pte Ltd (Earlier Known as Abacus International Pte Ltd.) vs. DCIT - TS-112-ITAT-2018(Mum)-TP - I.T.A. No. 486/Mum/2016 dated 16.02.2018

620. Though the agent of the assessee provided similar services to principals other than the assessee and the income from assessee constituted only 7.87% of its total income, the AO held that the assessee had a DAPE (Dependent Agent Permanent Establishment) and accordingly taxed income of the assessee earned from transportation of containerised cargo in terms of Article 5 r.w. Article 7 of the India-Netherland DTAA. Following the Tribunal's order for earlier year in the assessee's own case wherein it had held that the said agent was an independent agent, and hence, did not constitute assessee's

DAPE, the Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made by the AO who had considered the assessee's agent to be DAPE.
DCIT v Hoyer Global Transport B.V. – ITA No. 1543 /Mum/ 2016 dated 24.01.2018

621. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order holding that the assessee did not have PE in India and allowed the assessee's cross objection wherein the assessee had contended that even if it was held that it had a PE in India, since it had paid remuneration/ commission to its agents in India at ALP, no adjustment was to be made in the hands of the assessee. It noted that similar issue had been decided in favour of the assessee in earlier year by the Tribunal in the assessee's own case following the decision in the case of CIT v E-funds I.T. Solutions Inc [Civil Appeal No. 6082 of 2015 (SC)] wherein it was held that where transactions between the AEs were at ALP, no further profits could be attributed even if there existed a PE in India. It further noted that for the year under consideration also, the TPO had in the case of assessee's AE-agent, accepted that the transactions between the said AE-agent and the assessee were at ALP and, accordingly, made no adjustment.
ADIT (IT) v Zee TV USA Inc – ITA No. 5603/Mum./2008 & CO. No. 47/Mum/2010 dated 25.01.2018

622. The Revenue had brought to tax the income earned by the assessee, a Finland based company, from offshore supply of telecom equipment manufactured in Finland in pursuance of supply contract with Indian customers, by considering the Indian subsidiary of the assessee, which took marketing and installation activities with the assessee's customers on principal to principal basis, to be the assessee's PE in India. The Tribunal held that since there was no physical space made available which can be said to be at the disposal of the assessee for the assessee's own business of supply and sale of equipments, the Indian subsidiary could not be considered to be the assessee's PE in India in view of Article 5 of the India-Finland DTAA. It was further held that the Indian subsidiary also did not provide any business connection to the assessee as required by the provisions of section 9(l)(i) since the title of the goods supplied by the assessee were transferred outside India and the payments were also received by the assessee outside India. It concluded thus that the said income could not be brought to tax in India.
Nokia Networks OY v JCIT - [2018] 94 taxmann.com 111 (Delhi - Trib.) (SB) - IT APPEAL NOS. 1963 & 1964 (DELHI) OF 2001 dated June 5, 2018

623. The assessee (Saudi Arabian Oil Co.),a largest crude oil exporter, established a subsidiary in India (Aramco India-separate legal entity established under Companies Act) to carry out Business/Marketing Support Activities. However, the Revenue contended that Aramco India was a PE of the assessee applicant who was liable to tax in India in respect of its business profits. The AAR decided in favour of the assessee and held that Aramco India could not be said to be a PE of the Applicant as Aramco was carrying its own business in India providing assistance to the applicant and was accordingly duly remunerated. Also, the functions carried out in the premises by Aramco India was not to do business for the Applicant and it merely provided support services to the Applicant.
Saudi Arabian Oil Company, In re vs. [2018] 94 taxmann.com 194 (AAR – NewDelhi) / [2018]405 ITR 83 (AAR – NewDelhi) / [2018] 303 CTR 225 (AAR – NewDelhi) – AAR NO. 25 OF 2016 dated 31.05.2018

624. The Tribunal allowed assessee's cross objection and dismissed Revenue's appeal against CIT(A)'s order wherein CIT(A) had held that the assessee did not have PE in India and accordingly its business activities were not taxable in India. In cross objection, assessee contended that that even if it was held that assessee had PE in India, its income was not taxable in India as it had paid arm's length remuneration/ commission to its agent (also its AE) in India which was taxed in India and, therefore, no further adjustment was to be made in hands of assessee. The Tribunal noted that in TP assessment of assessee's AE, the TPO had accepted the transaction between the assessee and its AE to be at arms' length and no adjustment was made. Further, it relied on CIT v. E-funds I.T. Solutions Inc. [2017] 399 ITR 34 (SC) wherein it was held that since the transactions between non-resident assessee and its Indian AE were at ALP, no further profits could be attributed even if there existed a PE in India.
ADIT(IT) v Zee TV USA Inc. - [2018] 96 taxmann.com 509 (Mumbai - Trib.) – ITA No. 5608 (MUM.) OF 2008 dated April 23, 2018

625. The assessee was awarded contract by ONGC for supply, installation, testing and commissioning of Vessel and Air Traffic Management System (VATMS) along with provision of maintenance services. During the year, the assessee only provided Annual Maintenance Contract (AMC) services in relation to VATMS to ONGC. The AO brought to tax AMC fee received as business profits attributable to Installation PE in terms of Article 5(3) of India-Netherlands DTAA. The Tribunal held that since the VATMS equipment was already handed over to customer in year 2007 and no installation activity was carried out in India during subject year i.e. AY 2011-12, it could not be held that the assessee had 'Installation PE' in India in subject year. It held that AMC services provided post completion of installation activities at site of customer, could not lead to carrying out installation activities for purpose of constitution of 'Installation PE' in India. The Tribunal also held that the presence of Indian contractor to which assessee had sub-contracted whole AMC work on principal-to-principal basis, could not create any virtual presence of assessee in India, since the entire onshore maintenance contract was performed by the independent local contractor in India and the existence of PE needs to be determined based on the activities of the foreign enterprise. It thus held that the AMC fees received could not be brought to tax in India as business income in the absence of a PE.

HITT HOLLAND INSITUTE OF TRAFFIC TECHNOLOGY B.V. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONA TAXATION) - (2018) 52 CCH 0280 KolTrib - ITA No. 390/Kol/2015 dated Apr 4, 2018

626. The AAR ruled that the non-compete fees received by the applicant foreign company from an Indian Company, as a part of consideration for transfer of shares held in another Indian Company was income from "Profits and gains of business or profession" u/s 28(va). However, it further ruled that in absence of any Permanent Establishment (PE) of the applicant-company in India, by virtue of Article 7 of India-UK DTAA, the said fees was not chargeable to tax in India.

HM Publishers Holdings Ltd., In re - [2018] 94 taxmann.com 193 (AAR - New Delhi) - A.A.R. NO. 1238 OF 2012 dated Jun 6, 2018

627. Assessee, a foreign company having Liaison Office in India, was a wholly-owned subsidiary of one Company-Metro AG, Germany and was engaged in business of procuring various goods and materials from various countries including India and selling to its Distribution Companies who further sold goods to retail customers. A survey was carried out in the premises of assessee's LO and on the basis of documents seized, AO opined that assessee had business connection in India and therefore income arising through such connection (directly/indirectly) was taxable in India. The assessee, on filing the appeal, contended that operations of assessee in India were confined to purchase of goods in India for the purpose of export and thus no income would arise in India as per Exp.1(b) to S.9(1)(i) (which provides the instances of having business connection in India).However,as the AO made addition to assessee's income without carrying out any factual analysis, the addition was set aside by the Tribunal and the matter was remanded back to decide whether or not the assessee would fall under Exp.1(b) to S.9(1)(i).

Parpool Ltd v Asst DCIT [2018] 94 taxmann.com 353 (Delhi – Trib.) – ITA NO 4911 OF 2010; 1472 & 1473 OF 2015 dated 31.05.2018

628. Where the transactions between the assessee and its Indian subsidiary were at ALP under TP proceedings, the Apex Court held that even if the subsidiary constituted a PE, no further profits could be attributed. Accordingly, it reversed the order of the High Court and held that the reassessment proceedings initiated by the AO was therefore invalid.

HONDA MOTOR CO.LTD, JAPAN vs. ASSTT.DIRECTOR OF INCOME-TAX, NOIDA & ORS. - (2018) 101 CCH 0169 ISCC - Special Leave to Appeal (C) No(s). 25363/2014 dated Mar 14, 2018

629. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) deleted disallowance u/s 40(a)(i) and held that TDS u/s. 195 was not applicable on payments made by assessee-company to a US based concern for provision of support services, rendered from outside India under a service agreement as the said services were not attributable to the US entity's PE in India (which was constituted vis-à-vis different set of services). It noted that the service agreement between the assessee and US co. envisaged providing of various services to assessee in the form of information support system, marketing and new business development, new product development, actuarial services, accounting support services,

internal audit services, etc which were rendered in the US and relying on the decision of the Bombay High Court in WNS North America (ITA No. 1269 of 2013) held that activities carried on in the US could not be attributed to the US entity's PE in India. Accordingly, it dismissed Revenue's appeal.
DCIT vs Transamerica Direct Marketing Consultants Pvt. Ltd - TS-190-ITAT-2018(Mum) - ITA NO. 1978/MUM/2015 dated 19/03/2018

630. Where, as per MAP settlement arrived at for earlier years, the income derived from borrowed service charges was held not to be taxable as Fees for technical services / royalty, the Tribunal held that the AO erred in taxing the same as FTS for the year under review. Further, considering that the assessee did not have a PE in India, it held that the said income would not be taxable in India.
MCKINSEY & COMPANY INC. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONL TAXATION) & ORS - (2018) 52 CCH 0182 MumTrib - ITA Nos. 1748/Mum/2016 dated Mar 14, 2018

b. Royalty

631. The Court dismissed Revenue's appeal against the Tribunal's order for AY 2007-08 wherein the Tribunal had held that reimbursement of lease line charges did not qualify as 'royalty' under Article 12(3)(b) of the India-UK DTAA and India-US DTAA and such amount received as reimbursement was not also not liable to be taxed as business profit under Article 7 r.w. Article 5 of the India-UK DTAA and India-US DTAA, noting that the issue stood concluded in favour of the assessee in view of the Court's dismissal of revenue's appeal for AY 2004-05 on similar issue.
CIT (IT) v WNS Global Services (Uk) Ltd & ANR.– ITA No. 890 & 891 of 2015 (Bom) dated 07.02.2018

632. The Tribunal allowed assessee's appeal filed against DRP's order confirming AO's action in taxing the revenue received by the assessee, a US company, on account of sale of off the shelf software as 'royalty' u/s 9(1)(vi) as well as under Article 12 of the India-US DTAA. It noted that on identical facts the Tribunal had decided in favour of the assessee in earlier years following the decision in the case of DIT v Infrasoft Ltd (2014) 220 Taxman 273 (Del HC) wherein it was held that right to use a copyrighted article or product with the owner retaining his copyright was not the same thing as transferring or assigning rights in relation to the copyright and that the enjoyment of some or all the rights which the copyright owner had, was necessary to invoke the royalty definition under Article 12 of the India-US DTAA. It also noted that the authorities below had not been able to establish that the sale of software was merely a right to use copyright article or product with the owner retaining its copyright and that the DRP had held that the assessee did not have a PE in India.
Landmark Graphics Corporation v ADIT – ITA No. 5285 /Del/ 2010 dated 18.01.2018

633. Where assessee, a non-resident company, supplied 'Off the shelf'/Shrink Wrapped' software to an Indian company for purpose of billing its customers, in view of fact that assessee exclusively owned all Intellectual Property Right (IPR) in software and it had merely granted a copyrighted article to Reliance (Indian customer) and not 'copyright' in article and that the software was a standard product already developed and made available to other customers, Tribunal held that the payment received by assessee was not liable to tax in India as royalty u/s 9(1)(vi) and article 12 of India-Ireland DTAA and since the assessee does not have PE in India, the said amounts are not liable to tax in India.
Intec Billing Ireland v ADIT (IT) – (2018) 90 taxmann.com 94 (Mum) – ITA No. 1535 (Mum) of 2014 dated 08.01.2018

634. Where the assessee, a US based company, entered into an agreement with another US company in terms of which it acquired patent and technical information which was used by the Indian holding company for the purpose of manufacture of two products, the Tribunal held that in view of fact that assessee company got said products manufactured from its holding company in India which were subsequently sold in USA, it was a case where there was clear business connection with India and, thus, royalty paid by assessee to said US based company was taxable in India under section 9(1)(vi).
Dorf Ketal Chemicals LLC v DCIT - [2018] 92 taxmann.com 222 (Mumbai - Trib.) - IT APPEAL NO. 4819 (MUM.) OF 2013 dated MARCH 22, 2018

635. The Tribunal held that where the assessee obtained license only for the usage of software for a limited period and did not have right to change or modify software, payment made for obtaining license to use software could not be held to be royalty coming within ambit of DTAA or fees for technical services under section 9(1)(vii).
Nissan Motor India (P.) Ltd v DCIT - [2018] 92 taxmann.com 127 (Chennai - Trib.) - IT APPEAL NO. 1854 (CHNY) OF 2017 dated MARCH 21, 2018

636. The Tribunal held that the payment made by the assessee to a UK based non-resident on account of transponder charges would not fall in nature of 'royalty' under the India-UK DTAA as the payment was made only for use of facility and it was not an equipment and did not amount to use of any copyright effecting work, secret formula, process etc or any other term described. It held that the payment of transponder charges could not be treated as a consideration for 'use' or 'right to use' any copyright of various terms used in in the DTAA viz. like copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting or in any manner related to any patent or trademark, design, secret formula or process. It was also not use or right to use any industrial, commercial, or scientific equipment and therefore held that the assessee was not liable to deduct tax under Section 195 of the Act.
UNITED HOME ENTERTAINMENT PRIVATE LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) & ANR. - (2018) 52 CCH 0098 MumTrib - ITA No. 1289/MUM/2016 dated Feb 9, 2018

637. The Tribunal held that the payment of lease line charges made by the assessee to its US parent was not royalty under the India-USA DTAA and accordingly deleted Section 40(a)(i) disallowance for non-deduction of TDS u/s. 195 on the said payment. The US parent had entered into an agreement with third party service provider for providing of bandwidth services, and the parent company in turn, provided bandwidth services to its subsidiaries against reimbursement of lease line charges. Considering the extensive evidence filed by assessee which substantiated the privity of contract was between third party service provider and US parent, who in turn had received bandwidth and passed on the services to various entities of group on cost to cost basis, the Tribunal dismissed Revenue's contention that the assessee routed payments to third party service provider through its AE to avoid TDS obligations. Moreover, it held that the 'royalty' definition under the DTAA did not cover any such services, and relying on the decision of the Delhi High Court in New Skies Satellite BV & Ors it held that the amended royalty definition under the Act could not be extended to DTAA. Furthermore, it noted that the TPO had accepted assessee's international transaction of reimbursement of leaseline expenses to be at arm's length and did not propose any adjustment and therefore held that once the nature of expenses had been so accepted by the TPO, the Assessing Officer could not sit in judgment of the TPO order since under the provisions of the Act, the order passed by the TPO is binding upon the AO.
T-3 Energy Services - TS-97-ITAT-2018(PUN)-TP - ITA No.826/PUN/2015 dated 02.02.2018

638. Where assessee, engaged in business of providing telecommunication services, entered into various agreements with non-resident-vendors for supply of software and made payments for same, the Tribunal held that consideration paid by assessee to suppliers for acquiring copy of software was actually made for 'copyrighted article' and not for 'use of copyright or transfer of right to use of copyright and hence, payments made by assessee to vendors of software could not be taxed as royalty. In this regard, it noted that (i) the said agreements stipulated that assessee would be using software for 'operation of its wireless network only' and it was prevented from utilizing software for commercial use (ii) the copyrights in software was not transferred to customers, (iii) the access to 'source codes' in software was not granted to assessee and (iv) there was restriction on copying software.
DDIT v Reliance Communication Ltd – (2018) 90 taxmann.com 358 (Mum) – ITA Nos. 837 of 2007, 3431 to 3437 & 3440 to 3444 (Mum.) of 2008 & others dated 02.02.2018

639. The Tribunal remanded the matter to AO for requisite verification in a case where assessee-company had made remittances to companies in USA/UK for purchase of software for resale without deducting TDS and as per AO the said payments were in nature of Royalty within meaning of section 9(1)(vi) but it was not clear whether the remittances were relatable to mere receiving software products from

suppliers and passing it on to customers, or whether there was exploitation of software products obtained for commercial benefits of assessee.

India Soft Technologies (P.) Ltd v DDIT(IT) – (2018) 90 taxmann.com 188 (Pune) – ITA Nos. 1709 to 1712 (Pun.) of 2013 dated 24.01.2018

640. The Tribunal held that the amount remitted by assessee, carrying on business of broadcasting of news channel, to a US company as per a contract with the US company, for using latter's satellite (transponder capacity) was not royalty and it was not taxable in India under provisions of article 12 of India-USA DTAA but the said amount would constitute business profits of the US company. It was noted that the activities and services were carried out through transponder located in space and these were not carried out or performed in Indian territories, and assessee was not having any control over transponders, it only had a right to use a certain capacity which was available within overall capacity of transponder. Further, since the US company didn't have a PE in India, the said sum was not chargeable to tax in India and consequently, not liable for TDS u/s 195.

Independent News Service (P.) Ltd. v ITO – (2018) 90 taxmann.com 163 (Del Trib) – ITA Nos. 1868, 1870 to 1882 of 2016 & ORS dated 25.01.2018

641. Noting that the Tribunal in assessee's own case relating to earlier assessment years held that the assessee was not liable to deduct tax at source while making payment for transfer of usage rights of software and availing other services such as maintenance of software training etc., the Tribunal deleted the disallowance made u/s 40(a)(i) in respect of overseas payment for purchase of software without deducting tax at source.

Capgemini Technology Services India Ltd. v DCIT – (2018) 90 taxmann.com 191 (Pune Trib) – ITA Nos. 216 and 360 (Pune) of 2015 dated 25.01.2018

642. The Assessee, a Singapore based company, supplied software and hardware to a resident company and the hardware and software which were sold by the assessee were interdependent in the sense that the hardware was useless without this particular software and the software could not be used in any hardware other than the one for which it was permitted to be used. Following the decision in the case of the assessee's group company i.e., Nortel Networks India International Inc v. ADIT [ITA Nos. 3313 to 3315/Del/2012] decided in favour of assessee on identical issue, the Tribunal held that the embedded software was not royalty and the receipts on account of sale of embedded software could not be separately brought to tax. In the case of assessee's group company, the Court had relied on the decision in the case of CIT v ZTE Corpn. [2017] 392 ITR 80 (Del HC) wherein it was held that since the supply of software embedded in equipment enabled use of hardware sold, it resulted in a case of sale of copyrighted article and, thus, payment made towards supply of sothware was not taxable in India as royalty.

ADIT v Nortel Networks Singapore (P.) Ltd. - [2018] 93 taxmann.com 401 (Delhi - Trib.) - IT APPEAL NOS. 2757 AND 2760 (DELHI) OF 2009 & 2172 TO 2176 (DELHI) OF 2011 dated April 24, 2018

NORTEL NETWORKS SINGAPORE PTE. LTD. vs. DDIT (IT) (DELHI TRIBUNAL) (ITA Nos. 5482, 3240, 3241/Del/2012 & 553/Del/2015, 5505/Del/2012) dated May 28, 2018 (53 CCH 0083)

643. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the taxation of royalty income earned by the assessee, a US based company, by giving license to its key patents to non-resident original equipment manufacturers (OEMs), where the OEMs sold products to wireless carriers worldwide including India and the Indian carriers sold such products in India. The AO taxed said royalty income u/s 9(1)(vi)(c) and Article 12 of the India-USA DTAA on the ground that the OEMs carried on business in India and used assessee's patents for making or earning income from a source in India. Section 9(1)(vi)(c) provides that royalty paid by a non-resident (OEMS, in the present case) to another non-resident (the assessee) will be taxable, it the same is paid in respect of any right, property or information used or services utilized for earning any income from any source in India. The Tribunal held that since the agreement with OEM was for use of 'intellectual property' for purpose of manufacture of equipments outside India, which were not India specific, it could not be said that OEMs used the assessee's patent for carrying on business in India. Further, it held that the sale of handsets to Indian carriers, without any operations being carried out in India, would amount to business with India

and not “business in India”. Accordingly, it held that the said royalty income could not be brought to tax u/s 9(1)(vi)(c) and as the income was not chargeable to tax in India as per the Act, there was no need to consider the provision of Article 12(7) of India-USA DTAA.

The AO had also taxed the amount received by the assessee on account of certain license to an Indian company to use copyrighted software for licencee’s own business (including permission to make one copy for backup purposes) as royalty u/s 9(1)(vi)(c). Noting that there was no transfer of any right in respect of copyright by the assessee and it was a case of mere transfer of a copyrighted article, the Tribunal held that the said payment was for copyrighted article and represented purchase price of an article and could not be considered as royalty either under the Act or under the DTAA.

Qualcomm Incorporated v DDIT - [2018] 93 taxmann.com 80 (Delhi - Trib.) - IT APPEAL NOS. 5353 (DELHI) OF 2012, 1241 & 7064 (DELHI) OF 2014 6132 (DELHI) OF 2015 & 189 (DELHI) OF 2016 dated April 16, 2018

644. The assessee made payment to GIL, a resident of Ireland, in respect of the purchase of advertisement space for resale to the advertisers in India under the AdWords program without withholding TDS as it was a mere non-exclusive distributor/ reseller of advertisement space to the advertisers in India and such payment to GIL on distribution of ad space in India was not in relation to any 'transfer of any right' or 'right to use' any Intangible Property (IP). The AO held that such payment made by the assessee to GIL was royalty u/s 9(1)(vi) and since no taxes were withheld, the assessee was held to be assessee in default u/s 201(1). CIT(A) upheld the AO’s order. The Tribunal observed that though ownership of these IPs were with GIL, the assessee was provided licence to use confidential information, technical know-how, trade mark, brand features, derivative works, etc. It held that the payment to GIL for use of IPs to provide better service was certainly in the nature of payment of royalty and was chargeable to tax u/s 9(1)(vi) and under Article 12 of the India-Ireland treaty. Thus, the Tribunal held that the assessee was rightly in default u/s 201(1).

However, the CIT(A) had held that since GIL was beneficial owner of the royalty receipts, the royalty would be taxed at 10% only as per India-Ireland DTAA., whereas in this regard, the AO had held that the royalty revenue collected was to be shared amongst various parent holdings of GIL and the assessee had not filed the relevant agreement between the different layers of holdings involved under the AdWord Program. Thus, was regard the rate of taxation, the Tribunal restored the matter to the file of the AO as it was not clear whether GIL had full control over receipt received under AdWord Program or GIL was merely acting as a conduit of its parent holdings.

Google India Private Limited & Ors. vs. JDIT (IT). – [2018] 53 CCH 0027 (Bangalore ITAT) – IT(TP)A No.374/Bang/2013, 881/Bang/2016, IT(IT)A No.2845/Bang/2017, 949/Bang/2017, 950/Bang/2017, 68/Bang/2015, 387/Bang/2017, 559/Bang/2016, 69/Bang/2014, 1295/Bang/2014, 466/Bang/2013, 191/Bang/2014, 205/Bang/2015, 1299/Bang/2015, 1190/Bang/2014 dated May 11, 2018

645. The Assessee, engaged in business of development and distribution of software products in UK, sold software products in India, either through its distributors or directly to customers. The Tribunal held that receipts from offshore sale of software would not be taxable as business income under Article 7 of the tax treaty in absence of a PE in India. Further, the Tribunal held that such receipts could not be construed as royalty under Article 12 of the India-UK tax treaty as the Assessee was only selling copy righted article and there was no payment for use of copy right or acquiring the right to use the copy right. While doing so, the Tribunal relied on the judgement of the Delhi High Court in Infra Soft Pvt. Ltd (96 DTR 0113) and M Tech India P Ltd (132 DTR 0057). Relying on the ruling of Delhi High Court in New Skies Satellite (133 DTR 0185) Tribunal also noted that any amendment in the Act could not be read into the treaty.

DCIT (IT) & Ors. vs. Micro Focus Ltd. & Anr. – [2018] 53 CCH 0062 (Delhi ITAT) – ITAs No 3312, 3313, 2376 & 2377 of 2016 and 177 of 2017 dated May 17, 2018

646. The assessee company was engaged as accredited domain name registrar. The assessee’s income was mainly from the domain registration fees which was claimed to be not taxable in India. However, the AO assesseed the same as royalty u/s 9(1)(vi) which was confirmed by the DRP. On further appeal, the Tribunal held that the rendering of services for domain registration is rendering of services in connection with the use of an intangible property which is similar to trademark and, therefore, charges received by the assessee for said services is royalty within the meaning of section 9(1)(vi).

Godaddy.com LLC v. ACIT – [2018] 92 taxmann.com 241 (Delhi – Trib.) – IT Appeal No. 1878 (Delhi) of 2017 dated April 3, 2018

647. The assessee, a Thailand based company, was engaged in business of providing digital broadcast services through its transponders (through satellite) to its customers both in India as well as non-residents. The AO held that the income received by assessee was chargeable to tax in India as royalty u/s 9(1)(vi) as well as under article 12 of DTAA between India and Thailand. It was noted that the co-ordinate bench in assessee's own case in earlier assessment year had held that amendment made by Finance Act, 2012 [i.e. retrospective insertion of Explanation 5 & 6 under section 9(1)(vi) to bring within the purview of royalty income from data transmission services], would not affect Article 12 of DTAA and, therefore, income earned by assessee could not be held as 'royalty' chargeable to tax in India. The Tribunal followed the co-ordinate bench decision, noting that there was no change in circumstances, and allowed the assessee's appeal holding that income received by the assessee was not a royalty as per Article 12 of India-Thailand DTAA and therefore, the same was not chargeable to tax
Thaicom Public Co. Ltd. v DCIT(IT) - [2018] 96 taxmann.com 577 (Delhi - Trib.) - ITA Nos. 1062 AND 1063 (DELHI) OF 2015 dated April 26, 2018

648. The Applicant, a U.S. Entity, provided content delivery solutions through Akamai EdgePlatform to its customers through sophisticated technology which operated on an automatic and continuous basis. AAR held that since the solutions provided by the Applicant were neither specialized, nor exclusive to individual customer requirements, the payment received for such solutions should not fall within the scope of 'FTS' under Explanation 2 to Section 9(1)(vii) or Article 12 of the India-US tax treaty as it was a standard facility and did not make available any technological knowledge, skill, etc. to the customers.
In respect of sale of solutions to Akamai India and onward sale of the same to Indian customers, AAR held that the receipt of payment for such sale would not constitute 'royalty' under Explanation 2 to Section 9(1)(vii) or Article 12(3) of the India-US tax treaty as it did not involve right to use the Akamai EdgePlatform or transfer of any rights in relation to the same. Further, AAR held that the Applicant did not have a PE in India.
Akamai Technologies Inc. In Re – [2018] 102 CCH 0010 (AAR) – AAR No 1107 of 2011 dated May 21, 2018

c. Fees for technical services

649. The Tribunal held that the payment made by the assessee to foreign companies situated in Netherlands and Sri Lanka for audit, knowledge about tax law applicable (VAT Laws) in that country etc was not taxable as i) it could not be considered as royalty or FTS under the India-Netherlands DTAA as the non-resident entity merely provided the assessee with information and also had not made available technical knowledge/experience/skill etc. to the assessee ii) it was not taxable under Article 14 of the India-Sri Lanka DTAA (there being no FTS clause) since the Article provided that the profits on account of professional services would only be taxable in the country of receipt.
ACIT v Deloitte Haskins & Sells - [2018] 92 taxmann.com 279 (Mumbai - Trib.) - IT APPEAL NOS. 4844, 5095 & 6786 (MUM.) 2011 dated MARCH 23, 2018

650. The assessee, a foreign company incorporated in USA and also tax resident of USA, received corporate IT charges under the agreement entered into with Indian group entity CPIL for providing IT related services. It claimed that such charges were mere reimbursement of cost, thus, not taxable either under domestic law or under DTAA. The AO held the said charges received to be income in nature of Royalty/Fee for Included Services under relevant articles of India-USA DTAA. Noting that the CIT(A) in the subsequent AYs i.e. AY 2009-10 to AY 2014-15 had decided the identical issue in favour of assessee and the revenue's had not filed an appeal against the said decision of CIT(A), the Tribunal rejected the revenue's appeal against the DRP's direction accepting the assessee's contention, relying on the Apex Court decision in the case of Radhasoami Satsang v CIT (1992) 193 ITR 321 (SC) wherein it was held that once the parties have allowed the position to sustain by not challenging the order, it was not appropriate to allow the position to be changed in subsequent years.

CARGILL INCORPORATED v ADD.CIT (IT) – (2018) 52 CCH 49 (Del Trib) – ITA Nos. 491/Del/2012, 492/Del/2012, 5647/Del/2011, 446/Del/2012, 447/Del/2012, 5503/Del/2010, 5648/Del/2011 dated 19.01.2018

651. The Applicant [a leading global payment solution provider] used to charge banks [with whom it entered into Master License Agreements] processing fees relating to authorization, clearing and settlement of transactions. The Applicant also received assessment fees for building and maintaining a processing network. Additionally it received miscellaneous revenue for the provision of services which were ancillary to the transaction processing activities. The Applicant provided the banks with a MasterCard Interface Processor (MIPs) that connected to the Mastercard Network and other processing centres. The applicant sought a ruling on the issues (i) Whether transaction processing fee, assessment fees and transaction related miscellaneous fees amounted to royalty (ii) Whether use of MIP equipment amounted to royalty (iii) Whether the use of software amounted to royalty (iv) Whether the fees paid by the final consumer who was using the card amounted to FTS.

The AAR noted that bank issued their own card and used the logo owned by MasterCard. It examined the agreement between the Applicant and banks and concluded that the dominant purpose was to license the trademark/mark. It also observed that the Applicant made the payment of royalty to MCI US (who was the owner of the IPs) for further sublicensing the IPs. Thus, the AAR held that the payment received by the Applicant represented consideration for use of IPs in India, and hence to be classified as Royalty.

The AAR also held that MIPs are equipments whose use constituted royalty. Further, noting that the use of software inside MIP and cards in the application software were essential parts of the transaction without which transaction would not be completed, it held that the use of software was subject to royalty.

However, the AAR held that the relation between the final consumer and the Applicant was of use of a standard facility and hence transaction processing service rendered by the Applicant could not be taxed under the article of FTS in India-Singapore DTAA.

MasterCard Asia Pacific Pte. Ltd. In.re [TS-452-AAR-2018-TP] AAR No.1573 of 2014 dated 06.07.2018

652. The Assessee-company, a tax resident of Netherland, was engaged in conducting training programs and providing access to various computer systems, viz. Centralized Reservation System ('CRS'), Property Management Systems and Other Systems to Marriott chain of hotels over the world. AO observed that assessee was in receipt of consideration for services rendered to their Hotels in India (Indian Hotels) as per Training and Computer Systems Agreements for conducting training programs of their employees and also other services. AO characterized aforesaid receipts as royalty and FTS, brought same to tax in hands of assesse. CIT(A) concluded that the consideration received by assessee were taxable as FTS. Assessee contented that consideration received for services rendered by it to Indian Hotels were in nature of reimbursement of expenses incurred by it and as there was no mark up or profit made by rendering the said services, there was no income liable to taxed in India. The Tribunal rejected assessee's claim since the assessee had failed to substantiate the same on the basis of any clinching evidence. It held that neither the training services rendered by the assessee to the Indian Hotels could be held to be technical services, nor the same could have been characterised as "ancillary and subsidiary" services as per Article 12(5)(a) and, hence, the consideration received by the assessee for rendering the training services could not be held as FTS. It further held that the access to CRS, Property Management System and Other Systems provided to Indian Hotels were common facilities and were not tailor made services to suit the specific requirements, hence, could not be construed as technical services to be taxed as FTS.

RENAISSANCE SERVICES BV vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0149 (Mum Trib) - ITA No. 7159/Mum/2012 dated Jun 8, 2018

653. Where assessee, a Singapore based company, claimed to have provided administrative support services to an Indian entity but the nature of services rendered was not clear from the documents and evidence submitted by it before the lower authorities, the Tribunal remanded the matter back to AO to decide whether the services involved in the agreement satisfied the 'make Available' criteria or not and, consequently whether the said services constitutes FTS under the India-Singapore DTAA.

CEVA Asia Pacific Holdings Company Pte Ltd. v DDIT – (2018) 89 taxmann.com 410 (Del Trib) – ITA No. 1503 (Delhi) of 2014 dated 08.01.2018

654. Where the assessee made a payment for acquisition of Designs and Drawings for purpose of completing operating and maintaining the plant imported from the non-resident, the Tribunal held that the said payment could not be considered as FTS as the payments were not merely inextricably linked with the plant but without such payments the plant would not have been installed and commissioned. It held that the payments towards Designs and Drawings would in fact constitute part of the cost of acquisition of the plant.
TATA STEEL LIMITED vs. INCOME TAX OFFICER (INTERNATIONAL TAXATON) - (2018) 52 CCH 0174 MumTrib - ITA No. 1086/Mum/2017 dated Mar 1, 2018

655. The Tribunal held that testing fees paid by assessee (an Indian company) to Netherlands company was not taxable as FTS under India-Netherlands DTAA since the knowledge of testing was not made available to the assessee and therefore held that the assessee was not required to deduct TDS u/s. 195. Accordingly, it deleted the disallowance made by the AO under Section 40(a)(i) of the Act.
Areva T & D India Limited (Now Alstom India T & D India Ltd) [TS-149-ITAT-2018(CHNY)] - /ITA No.2079/Chny/2014 dated 23.03.2018

656. The assessee, a manufacturer of motor cars in India exported the motor cars to other countries through its sister concerns who acted as the dealer of the assessee-company. It also provided warranty to the end customers who purchased the car. The assessee's sister companies maintained the cars sold by the assessee according to the terms of the warranty promised by the assessee-company, towards which it incurred expenditure. As per the contractual obligation, the assessee company reimbursed such expenses to its dealer - sister companies. The Tribunal observed that the reimbursements received by the sister concerns from the assessee were for the purpose of earning income from source outside India (export sales) and therefore held that by virtue of section 9(1)(vii)(b), the reimbursement payment by the assessee company to its sister concerns was to be excluded from the deeming provision of section 9(1) viz. income accruing or arising in India. Hence, it held that the assessee company would not be liable to deduct tax under section.195.
Nissan Motor India (P.) Ltd v DCIT - [2018] 92 taxmann.com 127 (Chennai - Trib.) - IT APPEAL NO. 1854 (CHNY) OF 2017 dated MARCH 21, 2018

657. The Tribunal held that the business development fees paid by assessee-company to its wholly owned subsidiary in Singapore for marketing, business development services and customer co-ordination support services was not taxable as FTS under the Act and India-Singapore DTAA. Referring to the agreement entered into by the assessee with its subsidiary , it observed that the services rendered did not follow a common set of methods but were rendered using various tactics and negotiation strategies which were personal in nature, did not involve any use of technical skills and also did not involve rendering advice and therefore it held that the services could not be categorized as 'managerial', 'technical' or 'consultancy' in nature. Further, it held that the services did not constitute FTS under the DTAA as the requirement of Article 12 of India-Singapore DTAA -i.e. making available of services in the nature of managerial, technical or consultancy was not satisfied. It held that for a service to be made available, the service recipient should be able to make use of the knowledge, by itself in its business for its benefit and without the recourse to the service provider in future, which was not so in the instant case.
Fractal Analytics Pvt.Ltd. v DCIT - TS-107-ITAT-2018(Mum) - ITA No. 3511/Mum/2015 dated 01.3.2018

658. Where the assessee, Indian branch of a non-resident company, had made payment to its HO towards allocation of expenses incurred by HO and there was nothing on record to prove that HO had made available technical knowledge to the assessee by performing activities specifically for assessee, Tribunal held it was pure and simple allocation of expenses among various group entities and the said expenditure could not be treated as FTS as per article 13(4) of the India-France DTAA.
Credit Agricole Corporate & Investment Bank v DDIT – (2018) 168 ITD 553 (Mum) – ITA Nos. 6682 & 6706 of 2012 dated 05.01.2018

659. The Tribunal held the FTS received by assesse, a UAE based company, from its Indian AE for providing management and technical consultancy services were in nature of business receipts but not taxable in the present cases as (i) assesse had submitted that the India-UAE DTAA does not have any specific clause on taxability of fees for technical services and, hence, the said receipt was business income; (ii) the employees of assessee had worked for less than 9 months, the assessee had no PE in India and consequently the said business income was not taxable in India.
Booz & Company (ME) FZ-LLC v DDIT – (2018] 90 taxmann.com 49 (Mum) – ITA No. 4063 (Mum.) of 2015 dated 19.01.2018

660. The assessee-company had paid sales commission to two non-residents agent for booking export order from foreign buyers and the process of procurement of order included display or demonstration of goods of assessee to foreign buyers who would place the order for purchase of those goods, and non-resident agents would forward those purchase orders to assessee. The Tribunal held that above process could not be termed as managerial service so as to qualify as 'fee for technical services' (FTS) as defined in Explanation 2 below section 9(1)(vii). However, with respect to assessee's contention that that no part of services was rendered in India and thus the said payment was not taxable in India, it held that in view of Explanation inserted below section 9(2) by Finance Act, 2010, even if services are rendered outside India, same may fall under FTS so as to be deemed to accrue or arise in India. The Tribunal also accepted assessee's contention that as per DTAA with the relevant countries (Canada & UK), which override the Act, the service provided by the non-resident agents did not fall within the term FTS as defined in the DTAAs since the AO had not been able to establish that the services of procuring orders had made available any technical knowledge, experience, skill know-how etc. to the assessee.
Further, it held that since the AO had neither established that the non-resident had business connection in India as per section 9(1)(i) nor that it had any PE in India in terms of DTAA with relevant countries, the income of the non-residents were not taxable as business income in India.
ACIT v Evergreen International Ltd. – (2018) 91 taxmann.com 111 (Del Trib) – ITA No. 177 (delhi) of 2015 dated 07.02.2018

661. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) on account of payment of global support service fees to a company in Singapore without deducting TDS thereon, where the AO opined that the said payment was in nature of FTS as defined in Explanation 2 to section 9(1)(vii), holding that the payment made by the assessee could not be considered as FTS as defined under article 12(4)(b) of the India-Singapore DTAA and for this reason there was no need to examine taxability of the same u/s 9(1)(vii). While holding that the said payment doesn't fall within the definition of FTS under the DTAA, the Tribunal noted that as per terms of agreement, the Singapore company had to provide management consulting, functional advice, administrative, technical, professional and other support services to assessee and there was nothing in agreement to conclude that in course of such provision of service, the said company had made available any technical knowledge, experience, skill, know-how, or process which enabled assessee to apply technology contained therein on its own.
ExxonMobil Company India (P.) Ltd. v ACIT – (2018) 92 taxmann.com 5 (Mum) – ITA No. 6708 (mum.) of 2011 dated 21.02.2018

662. Replying on the AAR ruling in the case of Cushman & Wakefield (S) Pte. Ltd., In re. (2008) 305 ITR 208 (AAR) and the decision in the case of CLSA Ltd. v. ITO(IT) (2013) 56 SOT 254 (Mum), the Tribunal held that the referral fee received by the Dubai branch of the assessee-swiss company from an Indian company for referring an Indian resident client was in nature of 'commission' to be taxed as 'business income' and not as 'fees for technical services'. In the above referred ruling, the AAR considered the provisions of the Act as well as the Indo-Singapore DTAA whereas in the above referred Tribunal decision, referral fees was held not to be in the nature of 'fees for technical services' within the meaning of section 9(1)(vii). The Tribunal, in the present case, further held since the assessee's branch did not have a PE in India and the assessee's PE in India had no role to play in the performance of the referral activity in question, the impugned fee could not be considered to be attributable to assessee's PE in India and, thus, the same would not be liable to tax in India as per article 7 of the Indo-Swiss DTAA.
DCIT v Credit Suisse AG – (2018) 90 taxmann.com 181 (Mum) – ITA Nos. 1247 (Mum) of 2016 and 7357 (Mum) of 2017 Cross objection no. 278 (Mum) of 2017 dated 09.02.2018

663. Where assessee had purchased certain plant and machinery from a foreign company located in Saudi Arabia and had entered into a contract with another foreign company in UAE for installation and commissioning of said machinery outside India, the Tribunal held that it could not be construed to be a technical service within meaning of section 9(1)(vii) and, thus, payment made in respect of same was not liable to tax in India. Consequently, it did not require any deduction of tax u/s 195.
Shivsu Canadian Clear Waters Ltd. v DCIT – (2018) 90 taxmann.com 352 (Chen Trib) - ITA No. 2347 (Mds.) of 2017 dated 25.01.2018

664. The Tribunal held that the amount received by the assessee-company, a UK based company, for inspection and testing services rendered to Indian customers in respect of imported/exported cargo and certification in relation to quality and price could not be taxed in India in accordance with Article 13(4)(c) of the India-UK DTAA dealing with Fees for Technical Services (FTS) since it was not making available any technical knowledge, experience, skill, know-how or processes to recipient of service. It was noted that there was no dispute between the parties that the sum so received was chargeable to tax according to the provisions of domestic tax laws. However, it was held that though all the services provided by the assessee were in the nature of technical analysis, unless the service recipient was able to perform those services independently without the help of the service provider, it could not be said that services had been made available by the service provider to the service recipient, as per article 13(4)(c) of the said DTAA. Accordingly, noting that the Revenue had not brought on any material to show that subsequently the recipient of those services had performed these services on their own without the help of the assessee or any other similar service provider, the said amount received by the assessee was not chargeable to tax in India.
Inspectorate International Ltd. v ACIT - [2018] 95 taxmann.com 229 (Delhi - Trib.) - IT APPEAL NOS. 4938 (DELHI) OF 2016 & 6365 (DELHI) OF 2017 dated June 18, 2018

665. The assessee, a Netherland based company, engaged in business of executive search service as well as providing technology, software and related support services to its group companies, had entered into a Licence agreement (LA) with its Indian subsidiary whereby it granted license to the Indian subsidiary to use trade-name, trademark, and rights to use software owned by it against license fee which was offered to tax as royalty. It had also entered into a service agreement (SA) whereby, both the Indian subsidiary and the assessee had agreed to provide, on a principal-to-principal basis, support and services to each other in relation to executive search assignments against executive search service fee (ESF). The AO held that terms and conditions in SA were part and parcel of LA and that same were ancillary and subsidiary to application or enjoyment of right/property/information for which royalty was received by the assessee and thus, ESF was taxable as FTS under Article 12 of the India-Netherland DTAA. Noting that the license fees and search fees were governed by separate and distinct agreements entered into by the assessee and the Indian subsidiary, the Tribunal held that they would constitute different sources of the assessee's income and thus the ESF were independent services, not provided for purpose of enjoyment/application of right, property, etc. It, thus, held that ESF was not taxable as FTS under Article 12(5)(a) of the India-Netherland DTAA. Further, in relation to SA, the assessee had also received payments from the Indian subsidiary towards reimbursement of expenses towards travel and stay, video conferencing charges, insurance, and other miscellaneous expenses, which was also taxes as FTS by the AO. Noting that the reimbursement of expenses were supported by third-party invoices and services provided by assessee were purely passed on as reimbursement of actual cost without any markup, the Tribunal held that the reimbursement of expenses did not constitute FTS as per Article 12 of the said DTAA.
Spencer Stuart International BV v ACIT - [2018] 94 taxmann.com 380 (Mumbai - Trib.) - IT APPEAL NO. 1696 (MUM.) OF 2015 dated June 1, 2018

666. The Tribunal had allowed the assessee's claim for Nil withholding/ non-taxability in respect of payment made by it to a German company for services rendered by the personnel of the German company solely relying on an AAR ruling in the case of Tekniskil (Sendirian) Berhard v. CIT [(1996) 222 ITR 551 (AAR)] wherein it was held that the FTS arising out of supply of skilled labour were not liable to tax in India in terms of Article 7 as 'business profits' on the ground that the assessee did not have a Permanent Establishment (PE) in India in terms of Article 5 of the India-Malaysia DTAA. However, noting that the relevant India-Malaysia DTAA as applicable for the aforesaid ruling did not have the FTS

clause, the Court remanded the matter back to the Tribunal to examine whether the aforesaid payments amounted to FTS under Article VIIIA of India-Germany DTAA.
DIT (IT) v Modiluft Ltd – (2018) 93 taxmann.com 180 (Del) – ITA Nos. 772 of 2004 & 15 of 2005 and others dated May 8, 2018

667. The Tribunal allowed the assessee's appeal against the AO's order wherein the AO had held the amount received by the assessee from Airport Authority of India (AAI) towards installation, commissioning and testing charges was towards training and taxable as FTS as per Article 12(5) of the India - Netherlands DTAA. It was noted that the said amount was received by the assessee in furtherance of the contract entered with the AAI earlier for supply of equipments (as additional resources for urgent requirement) and the main contract value received from such contract was examined in past and accepted to be towards installation. It was also noted that the assessee had entered into a separate contract for training service in past and the bifurcation of consideration received towards installation and training was accepted by the **R**evenue. The Tribunal thus held that it would be inappropriate to question the contract in this year after the completion of the contract, especially in view of the fact that the AO had not adduced any reasoning to construe the said receipt as attributed towards training. It thus held that the additional amount received from AAI towards installation, commissioning and testing charges was not taxable as FTS within the meaning of Article 12(5) of the India - Netherlands DTAA as the same was not received towards training as assumed by the AO. Further, the Tribunal held that income in respect of such services could not be taxed even as business income, in the absence of a Permanent Establishment (PE) of the assessee in India as per Article 7 of the India-Netherlands DTAA.
HITT HOLLAND INSITUTE OF TRAFFIC TECHNOLOGY B.V. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONA TAXATION) - (2018) 52 CCH 0280 KolTrib - ITA No. 390/Kol/2015 dated Apr 4, 2018

668. The Tribunal held that where assessee engaged in business of export of special pipes, made payments to foreign party towards supervision of installation of pipes and fittings, since same was in respect of assembly of project, said payments would squarely fall within sweep of exceptions carved out in Explanation 2 to section 9(1)(vii) and thus could not be taxed as FTS.
Chemical Process Piping (P.) Ltd.v R.M. Madhavi - [2018] 94 taxmann.com 116 (Mumbai - Trib.) - IT APPEAL NOS. 1036 & 1037 (MUM.) OF 2016dated 02.05.2018

669. The Applicant, a French limited liability company, would be earning front-end fee, commitment fee, cancellation fee, amendment fee and monitoring fee from Indian customers under a financing arrangement. As regards the 'front-end fee' payable for appraisal of loan, AAR held that since the debt claim would not be in existence when such fees are payable, it cannot be construed as interest under Article 12 or FTS under Article 13 of the India-France tax treaty. AAR also held that 'front-end fee' other than appraisal fee was taxable as interest under Article 12 as it was in relation to a debt claim. Further, AAR held that commitment fee, cancellation fee, amendment fee and monitoring fee are directly related to a debt claim as they were charged after disbursement of loan and hence were chargeable as interest under Article 12 of the India-France tax treaty.
Societe De Promotion Et De Participation Pour La Cooperation Economique In Re – [2018] 102 CCH 0011 (AAR) – AAR No 1105 of 2011 dated May 21, 2018

670. Following the ruling of the co-ordinate bench in the assessee's own case for other years (i.e. AY 2007-08 in ITA No 222/Coch/2013 and AY 2008-09 to AY 2013-14 in ITA No 99-104 of 2017), the Tribunal held that payment made by the Assessee for management service in AY 2011-12 and AY 2012-13 could be considered as FTS as per Article 12(4)(b) of the India-US tax treaty as in addition to providing the input, service and advice, the US company also provided training to the employees of the Assessee, thereby making available expertise and technical knowledge.
US Technology Resources Private Limited vs. DCIT – [2018] 53 CCH 0071 (Coch ITAT) – IT(TP) Appeal No. 475/Coch/2016, 134/Coch/2016 (SA No. 08/Coch/2018) dated May 23, 2018

671. The Assessee had entered into a contract with a USA based non-resident company for carrying out certification work with respect to certain oil fields and the consideration received by the non-resident company was claimed to be not taxable in India in view of provisions of India-USA DTAA. The AO,

however, brought the said consideration to tax as fees for technical services u/s 9(1)(vii) r.w.s 115A. the Tribunal allowed the assessee's appeal following the co-ordinate bench decision in assessee's own case wherein it was held that the said consideration could not be construed as fees for included services under India-USA DTAA as no technical knowledge, skill, know how etc. was made available to the assessee. Further, the co-ordinate bench had held that since the non-resident company did not have any PE in India the same could not be taxed as business profits in India as per Article 7 of the India-USA DTAA.

ONGC LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0272 DelTrib - ITA No. 1330/DEL/2016 & 1332/DEL/2016 dated June 29, 2018

672. The Tribunal upheld the CIT(A)'s order holding that the professional fees received by the assessee, an NRI residing in UK, from Indian companies was taxable as FTS under Explanation 2 to section 9(1)(vii), noting that though the assessee had offered to tax the said income on net basis (i.e. after reducing expenses) in his return of income, the recitals in the TDS certificate had categorized the receipts as fee for professional and technical services and the assessee had not brought any evidence to prove the nature of services or actual rendering of services. It also rejected the assessee's claim that he had mistakenly offered the receipts to tax and that these were commercial receipts for services rendered outside India, not taxable in India absent PE, noting that amounts were credited to assessee's NRO savings account in India.

Shri Sanjiv Ghai v Dy.DIT - [TS-338-ITAT-2018(DEL)] - I.T.A. Nos.5681 to 5686 & 5864 to 5868/Del/2014 dated 27.06.2018

673. The assessee's group company (Granite USA) had seconded employees to assessee in India who were rendering services in the nature of erection, installation, commissioning, warranty administration, operation maintenance, inspection, renovation and modernization of power plant. The salaries and other allowances were paid overseas by the group company Granite USA for sake of administrative convenience which were reimbursed by the assessee. The assessee had deducted tax at source u/s.192. The assessee had also reimbursed travel and conveyance expenses to its group company and its various branch office. The AO was of the view that services rendered by the seconded employees satisfied the make available clause as provided under the DTAA between India and USA and held that it was in the nature of "FTS" and disallowed the amount under the provisions of s 40(a)(i) on account of non-deduction of TDS u/s.195. The AO also disallowed the travel and conveyance expenses under the provisions of s 40(a)(i) on account of non-deduction of TDS u/s.195. The DRP concurred with the view of the AO. It was assessee's contention that the salaries were being reimbursed on cost to cost basis and further, the services were provided by seconded employees on regular basis and there was no imparting of technical knowledge hence it did not fall within the purview of fees for technical services under the DTAA. The assessee also contended vis-a-vis travel and conveyance expenses that payments were in nature of reimbursement on cost to cost basis and the amounts were not chargeable to tax in India and hence did not warrant disallowance u/s.195. The Tribunal remanded the issue following the coordinate bench decision of the assessee for its earlier year wherein the AO was directed to verify the factuals after affording the assessee an opportunity to furnish requisite details that would have a bearing on disallowance u/s.40(a)(i) of the Act.

Granite Services International India Private Limited vs DCIT [TS-628-ITAT-2018(DEL)-TP] ITA No.740/Del/2014 dated 19.06.2018

d. Capital Gains

674. AAR ruled that the benefit of proviso to section 112 (1) of taxation at lower rate of 10% cannot be denied to foreign companies with respect to long-term capital gains arising on sale of listed equity shares of an Indian company following the decision in the case of Cairn UK Holdings Ltd. v. DIT (2014) 220 Taxman 230 (Del HC)

Finnish Fund for Industrial Cooperation Ltd., In re vs. – (2018) 91 taxmann.com 133 (AAR) – AAR no. 1375 of 2012 dated 28.02.2018

675. AAR ruled that the benefit of proviso to section 112 (1) of taxation at lower rate of 10% could not be denied to foreign companies with respect to long-term capital gains arising on sale of listed equity

shares of an Indian company following the decision in the case of Cairn UK Holdings Ltd. v. DIT (2014) 220 Taxman 230 (Del HC) and several other AAR rulings. Further, it allowed assessee's claim for deduction of expenses incurred towards fees for computerization of share certificates in order to transfer them to escrow account considering them to be incurred in connection with transfer of shares as per provisions of section 48.

Honda Motor Co. Ltd., In Re – (2018) 253 Taxman 402 (AAR) – A.A.R. No 1200 of 2011 dated 07.02.2018

676. The assessee-individual had purchased a residential flat from two non-residents (vendors) under a sale deed which had been executed in favour of the assessee by the GPA holder of the vendors (who was an Indian resident) and since, the assessee had made the payment of sales consideration to the said GPA holder, he had not deducted TDS u/s 195 on such payment. The AO treated the assessee as "assesssee in default" u/s 201(1) and levied interest u/s 201(1A) on the TDS amount determined by considering provisions of section 50C while computing LTCG. The Tribunal held that at best, the GPA holder could be considered as only a conduit between the assessee and the owners of the property and therefore, in the true sense, the assessee had made the payment to the non-residents only. However, in the present case, since the assessee had subsequently paid tax u/s 195 on LTCG arising in the hands of the vendors on transfer of the said flat, it was held that the assessee could not be treated as an "assessee in default" u/s 201(1), but was only liable for interest u/s 201(1A) till the date of payment of taxes by him. Further, the Tribunal rejected AO's action in invoking provision of section 50C to compute the LTCG, holding that it was not dealing with the liability of the vendors to pay the taxes, but with the liability of the assessee to deduct taxes at sources and as far as the liability of the assessee was concerned, TDS would only be on the actual consideration credited or paid by the assessee, whichever is earlier.

BHAGWANDAS NAGLA v ITO(IT) – (2018) 52 CCH 61 (Hyd Trib) – ITA No. 143/Hyd/2017 dated 25.01.2018

e. Foreign Tax Credit

677. The Tribunal, relying on its order in the assessee's own case for the prior year held that foreign tax credit ('FTC') claimed by assessee (an Indian company engaged in software development) in respect of taxes withheld in Singapore and Indonesia on receipt from software license sale and annual maintenance contract (AMC) was to be granted to the extent of corresponding 'income' that had suffered tax in India and not by taking into consideration gross receipts. The Tribunal, noting the language in the DTAAs and the UN and OECD Conventions, held that the expression used in the FTC Articles was 'income', which essentially implied 'income' embedded in the gross receipt, and not the 'gross receipt' itself. It held that, in principle the assessee's argument that 'gross receipts' were to be considered for computing FTC could not be accepted. However, since the facts of the case of the assessee were unique i.e. vis-à-vis software license sale / income (i.e.its main business was carried on in India and only some isolated transactions leading to the impugned income had taken place in Singapore and Indonesia which did not require any activity on the part of the assessee and therefore had no associated costs i.e. in the nature of passive earnings) it held that no part of the costs incurred in India was to be allocated to earnings from Singapore and Indonesia. Further, as regards the income from AMC, the Tribunal held that the assessee had allocated the costs corresponding to this income on a proportionate basis and since no defects were pointed out by the Revenue it rejected the AO's approach of allocating costs in proportion of turnover. It also held that the actual tax attributable to such income was to be determined by apportioning the actual tax paid under MAT provisions in the same ratio that the doubly taxed profit bore to the overall profits. Accordingly, the appeal of the assessee was partly allowed.

ELITECORE TECHNOLOGIES PRIVATE LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0275 AhdTrib - ITA No. 3546/Ahd/2015 dated Mar 20, 2018

678. The Apex Court granted SLP against the decision of Delhi High Court wherein it was held that where assessee-society received dividend income from an Omani company on which it was not liable to pay any tax in Oman by virtue of exemption granted as per Omani tax laws, purpose of exemption being to promote economic development, assessee-society was entitled for getting credit for deemed dividend

tax payable in Oman by virtue of provisions of DTAA read with section 90 together with clarifications issued by Sultanate of Oman.

Pr.CIT v Krishak Bharti Cooperative Ltd.-10 – (2018) 253 Taxman 242 (SC) – SLP (Civil) Diary No. 41708 of 2017 dated 19.01.2018

f. Withholding tax

679. The assessee entered into a contractual relationship with the Federation of International Hockey ('FIH') for organising the Men's Hockey World Cup as per which FIH was to act as the facilitator. The assessee made a reimbursement to FIH on account of pay-outs made by FIH on the assessee's behalf on which no TDS was deducted. The AO was of the opinion that the reimbursements included commission paid by the assessee and therefore the assessee ought to have deducted TDS and accordingly disallowed the payments invoking Section 40a(ia) of the Act. The Court upheld the findings of the Tribunal and CIT(A) that the payments were mere reimbursements having no income element and accordingly no tax was to be deducted and further noting that the lower authorities had observed that the assessee had no privity of contract with the service provider, dismissed the Revenue's appeal observing that no substantial question of law arose therefrom.

PR CIT v Organizing Committee Hero Honda FIH World Cup – TS-165-HC-2018 (Del) - ITA No 353 / 2018

680. Tribunal remanded the matter back to AO where he had made a disallowance u/s 40(a)(i) for non-deduction of TDS u/s 195 on various payments made by asssessee without appreciating in proper perspective various documents with detailed factual and legal submissions field before AO along with supporting evidences including unit wise details of various expenditure incurred in foreign currency with detailed write up about each expenditure, submission with regard to non-applicability of TDS under domestic law as well as DTAA of respective countries for each of aforesaid expenditure, certificate of tax residency of parties to whom payments were made and declaration from them that no PE existed for them in India and copies of agreements entered into with those parties, copy of advertisements, copy of invoice, subscription renewal forms

DCIT v EIH Ltd. – (2018) 89 taxmann.com 417 (Kol) – ITA Nos. 110 and 153 (kol.) of 2016 dated 12.01.2018

681. Where the the AO had made disallowance u/s 40(a)(ia) on account of non-deduction of TDS u/s 195 while making payment for commission to non-reisdent receipts in four countries and the CIT(A) had deleted the said disallowance holding that the it was not necessary to deduct TDS since the said receipt were exempt in the hands of the recipients, noting that neither the AO nor the CIT(A) had examined the nature of services against which the commission had been paid and the assesse was not able to explain the nature of services before the Tribunal, the Tribunal remanded the matter to the file of AO to examine the nature of services rendered by the overseas parties and the relevant provisions of DTAA with respective countries.

ITO v Shamnrock Pharmachemi Pvt. Ltd - ITA No. 2279/Mum/2016 dated 16.03.2018

682. Where the assessee had made payments on account of reimbursement of expenses as well as fess for technical services to non-residents and did not deduct tax on the reimbursements (while it deducted tax on the FTS paid), the Tribunal noting that the assessee had produced supporting back to back evidence to substantiate that the payments were pure reimbursements, held that no tax was to be deducted at source as there was no income element in the said payment. Accordingly, it held that the assessee could not be classified as an assessee in default under Section 201 of the Act.

Hospira Healthcare India P Ltd v DCIT – (2018) 92 taxmann.com 225 (Chennai – Trib) – ITA NO 1916 / Chny / 2017 dated March 15, 2018

683. The Court partly allowed assessee's (a non-resident company) writ challenging constitutional validity of Sec. 206AA (as it existed prior to the amendment in 2016 and which prescribed higher withholding rate of 20% if payee failed to furnish PAN). The assessee challenged applicability of higher TDS rate of 20% u/s 206AA in respect of payments in the nature of 'fees for technical services' which attracted lower TDS rate of 10% under the India-Singapore treaty. The Court acknowledged that the law before

2016 amendment, went beyond the provisions of DTAA which in most cases mandated a 10% cap on the rate of tax applicable to the state parties but held that the issue urged was largely academic on account of corrective amendment made by the Parliament. However, it held that Section 206AA (as it existed) was to be read down to mean that where the deductee i.e. the overseas resident business concern conducts its operation from a territory, whose Government has entered into a DTAA with India, the rate of taxation would be as dictated by the provisions of the treaty.
Danisco India Pvt Ltd [TS-63-HC-2018(DEL)] - W.P.(C) 5908/2015 dated 05.02.2018

684. Where assessee made payments to non-residents for technical services after deducting tax @ 20%, whereas AO contended that TDS should be deducted @25% u/s 115A; observing that the non-resident did not have PAN and the rate provided under India-France DTAA for FTS was lower than rates provided u/s 115A, Tribunal held that TDS was to be deducted at a lower rate as provided under DTAA and not as provided u/s 115A and it remanded the matter to AO to verify whether the non-residents were entitled for benefits under DTAA.
ITO v Atos Worldwide India (P.) Ltd. – (2018) 90 taxmann.com 306 (Mum) – ITA No. 6424 (mum.) of 2016 dated 29.01.2018

685. Where the assessee had not deducted TDS u/s 195 @ 20% in view of provisions of section 206AA on amount remitted to non-residents not having PAN and it claimed before the Tribunal that it deducted TDA @ 10% in accordance with the respective DTAA provision, the Tribunal followed the decision in the case of Nagarjuna Fertilisers & Chemicals Ltd. v ITO (2001) 119 Taxman 37 (Hyd Trib) wherein it was held that the treaty provisions which are beneficial to the non-residents would prevail over the provisions of section 206AA. However, since the AO had not examined the nature of payments as to whether they were covered by the respective DTAA provisions or not, it remanded the matter to the AO for verifying the same and further directed the AO to not treat the assessee as an "assessee in default" u/s 201(1) and not to charge interest u/s 201(1A) if the payments are covered by the DTAA provisions.
Dr. Reddy's Laboratories Ltd. v ADIT – ITA No. 827 & 828/ Hyd/ 2015 dated 28.02.2018

686. The assessee company had made payment for consultancy services to a non-resident company (Chinese) and deducted TDS @10% as per the India-China DTAA. However, the CPC-TDS computed TDS @ 20% as per S.206AA (applicable in a case when PAN is not furnished by the deductee) and raised a tax demand on the assessee alongwith interest on account of TDS deducted short by 10%, while passing order u/s 201(1). The CIT(A) deleted the said tax demand and interest thereon. The Tribunal upheld the CIT(A)'s order and followed GE India Technology Centre Pvt. Ltd. vs. CIT wherein it was held that section 90(2) provides that DTAAs shall override domestic law in cases where the provisions of DTAAs are more beneficial to the assessee. Thus, the Tribunal held that the demand raised by the AO on the differential tax rate was to be deleted on the ground that since the assessee had taken benefit of DTAA, the provision of domestic law (S.206AA in the instant case) could not be invoked by the AO and accordingly dismissed the Revenue's appeal.
ITO v Sichuan Fortune Projects Management Ltd. (2018) 52 CCH 0289 AhdTrib - ITA Nos. 3554, 3555 & 3556/Ahd/2016 dated 09.04.2018

687. The Tribunal held that Section 206AA does not override the provisions of section 90(2) and in cases of payments made to non-residents, the assessee had correctly applied the rate of tax prescribed under DTAAs and not as per section 206AA because provisions of DTAAs were more beneficial.
Emmsons International Ltd. v. DCIT – [2018] 93 taxmann.com 487 (Delhi – Trib.) – IT Appeal Nos. 5124 to 5127 (DELHI) of 2015 dated April 2, 2018

688. The Tribunal deleted the disallowance made by the AO u/s 40(a)(ia) on account of non-deduction of TDS u/s 195 while making payment to a Singapore based company for purchase of drawings for a project being undertaken by the assessee (engaged in development of residential housing project), rejecting the Revenue's contention that the said payment qualified as "fees for technical services" as defined under Article 12 of India-Singapore DTAA. It noted that as per the agreement entered into with the Singapore company, it appeared to be a case of outright purchase of drawings and designs by the assessee and that no facts were brought on record by the Revenue to show that as a consequence of supply of project specific designs, there was transfer of any technology so as to qualify as "fees for

technical services" under the said Article. With respect to another payment for purchase of drawing from an individual who was a UAE resident, the Tribunal held that as per Article 14 of India-UAE DTAA, right to tax the income from professional activities by the resident of Dubai (UAE) vested only with UAE and not India and thus, there was no occasion to deduct TDS u/s 195 on such payment.
ITO v Bengal NRI Complex Ltd – ITA No. 1290 & 1088/Kol/ 2014 dated 16.03.2018

689. The Tribunal dismissed the assessee's appeal filed against CIT(A)'s order confirming AO's action in treating the assessee to be "assessee in default" u/s 201(1) on account of non-deduction of TDS u/s 195 while making payment to non-resident for purchase of shrink wrap cassettes/CDs. It followed the Tribunal's order in assessee's own case for earlier years on identical facts wherein the Tribunal had, in turn, followed the High Court's order (subject to the outcome of the SLP pending before the Apex Court) in assessee's own case holding that the said payment made were in nature of royalty.
IBM India Private Limited v DCIT – ITA Nos. 47 & 48/Bang/ 2017 dated 19.01.2018

690. Assessee-company had paid interest on foreign currency loan called External Commercial Borrowings (ECB) lent by a group of financial institutions arranged by the arranger, i.e., ICICI Bank Ltd., offshore branch, Singapore (Singapore branch) without deducting TDS u/s 195. It contented that the said payment was covered by section 194A(3)(iii) of the Act since the payment was made to Singapore branch (being a resident) which is part of ICICI Bank to which Banking Regulation Act, 1949 applies. AO, however, considered the Singapore branch to be an arranger cum facility agent which arranged ECB and the group of financier based in Singapore or UK (i.e. non-residents) to be the main lenders. He accordingly, invoked section 195 of the Act and held assesse to be in default for short deduction of tax and interest u/s. 201(1)/201(1A). Noting that the agreement between the assessee and the bank stated that ICICI Bank Ltd was acting as an arranger cum facility agent and the Singapore branch was original lender whereas the letter written by the Singapore branch stated that the Singapore branch was an arranger and facility agent and the group of financial institutions assembled by the arranger was the lender of the loan, Tribunal held that the facts were contradictory to each other as per the assessee's own record. It, thus, remanded the matter to the file of AO for re-examination in light of the assessee's claim that the Singapore branch was the main lender.
BAJAJ ECO TEC PRODUCTS LIMITED vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 53 CCH 129 (MumTrib) - ITA Nos. 4609, 4610 & 4611/Mum/2016 dated Jun 8, 2018

691. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) with respect to interest payment made by the assesse, branch of a foreign bank, to its Head Office in Singapore without deducting TDS u/s 195, following the assessee's own case in earlier year wherein relying on the decision in the case of Sumitomo Mitsui Banking Corporation v/s DCIT [(2012) 19 taxmann.com 364 (SB) (Mum.)] it was held that since under the domestic law the interest paid by the Indian branch to the head office was not allowable as deduction as this was payment to self, the same also could not taxed in the hands of the bank in the domestic law and there was no express provisions in the relevant tax treaty which was contrary to the domestic law. Therefore, interest payment was not taxable in the hands of the bank and thus there was no question of deducting any tax at source.
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. DBS BANK LIMITED & ORS - (2018) 53 CCH 0167 (Mum Trib) - ITA No. 6865/Mum./2012, 6037/Mum./2014, 4949/Mum./2014, 6038/Mum./2014, 4948/Mum./2014 (C.O. no.8/Mum./2014) dated June 15, 2018

692. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had upheld the order passed u/s 201(1)/ 201(1A) to hold assessee to be assesse-in-default for non-deduction of TDS u/s 195 on payment made to a Netherland based company for acquisition of computer hardware, software and related support services for installation and maintenance. It noted that software had been sold to the assessee as shrink-wrapped software, which was commercially off the shelf software sold in retail. It thus held that in view of the binding precedent of the Jurisdictional High Court in the case of DIT v. Infrasoft Ltd. [2014] 220 Taxman 273 (Del), the sale of the hardware along with the software embedded therein was not taxable in the hands of the non-resident recipient in absence of any Permanent Establishment of the said non-resident in India. With respect to the services of installation and other support services, the Tribunal accepted assessee's contention that since the said services

had not made available any technology or know-how to the assesse, the payment made for such services did not qualify for FTS under the relevant DTAA.

Ciena India (P.) Ltd. v ITO - [2018] 96 taxmann.com 17 (Delhi - Trib.) - IT APPEAL NOS. 959 & 984 (DELHI) OF 2011 dated June 29, 2018

693. The assessee had made payment to a US entity for services rendered by the personnels of the US entity for installation and commissioning of certain equipment purchased by the assessee, without deducting TDS u/s 195 and claiming benefit of India-US tax treaty. Noting that the assessee had furnished only Form W9 (which is given under US Internal Revenue Code for providing the correct TIN to the person who is required to file an information return with the IRS) for establishing treaty entitlements, the Tribunal held that Form W9 was wholly irrelevant in respect of tax withholdings outside the United States and that the same was merely a declaration by the US based entity, and it could not be treated as a certification by any authority. However, noting that the assessee was not given sufficient time to furnish the relevant evidence for establishing the treaty entitlements of the US entity, the Tribunal remanded the matter to the file of the CIT(A) for fresh adjudication *inter alia* for giving the assessee a fresh opportunity of furnishing the said evidences not limited to, but including, the tax residency certificate.

Skaps Industries India (P.) Ltd. v ITO - [2018] 94 taxmann.com 448 (Ahmedabad - Trib.) - IT APPEAL NOS. 478 AND 479 (AHD.) OF 2018 dated June 21, 2018

694. The Tribunal upheld the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made to a UK based foreign company for consultancy services rendered by the said company, rejecting the AO's contention that the said payment was taxable as FTS under article 13 of the Indo UK DTAA. It noted that the services were simply in nature of consultancy services which did not make available any technical, skill or know how and from perusal of the consultancy agreement also no provision for transfer of technology could be found. The Tribunal thus held that unless there is a transfer of technology in sense that recipient of service is enabled to provide same service on his own, without recourse to original service provider, 'make available' clause was not satisfied and, accordingly, the consideration for such services could not be taxed under Article 13 (4) of Indo UK DTAA. Further, with respect to payments made to two persons in Egypt and Philippines which were on account of salaries, it was held that since, in terms of the provisions of the respective tax treaty, these payments did not have any tax liability in India, there was no question of any tax withholdings.

DCIT v Bio Tech Vision Care (P.) Ltd. - [2018] 93 taxmann.com 20 (Ahmedabad - Trib.) - IT APPEAL NOS. 1388, 2766 & 3154 (AHD.) OF 2014 dated April 18, 2018

695. The Tribunal cancelled the order passed by the AO u/s 201(1)/ 201(1A) wherein the AO had treated the assessee to be in default for non-deduction of TDS on payment of license fees for use of computer software in view of the insertion of Explanation 4 to section 9(1)(vi) vide the Finance Act, 2012 with retrospective effect from 01.06.1976 (which clarifies that right to use of computer software including license is 'royalty'). The Tribunal held that since the assessee had not explained the terms of agreement with different entities from whom the software was purchased, it could not be found that whether the same was for the right to use of copyrighted article or the right to use copyright. However, it held that liability could not be fastened on the assessee to deduct tax at source on the basis of subsequent amendments made in the Act in relation to payments made to Non-resident, on a date prior to the date of amendment, though retrospectively applied. The Tribunal further held that in any case the asssessee could not be held liable for deduction of tax in view of the definition of 'royalty' under the DTAA with the respective countries, since the same was not amended and the DTAA provisions being beneficial would override the Act.

TATA TECHNOLOGIES LIMITED vs. DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 193 TTJ 0833 (Pune) - ITA NO. 1433/PUN/2014 dated Apr 5, 2018

696. The AO treated the assessee as an assessee-in-default u/s 201(1) on account of non-deduction of TDS u/s 195 while making payment to (i) non-resident on account of marketing support charges (ii) to non-resident law firm towards legal charges for representing assessee-company in suit filed by another company and (iii) non-resident company based in USA which was claimed by the assessee to be reimbursement of expenses being salary cost and overhead of employee seconded by the USA

company to the assessee. With respect to payment of marketing support charges, the Tribunal accepted assessee's contention that the assessee could not be called upon to comply with provisions not in force at relevant time when payment was made [i.e. Expl to section 9(1)(vii) (on the basis of which it was held by the AO that the said payment was chargeable to tax in India and thus liable for TDS)] but introduced later by retrospective amendment. However, with respect to payment of marketing support charges and legal charges, the Tribunal noted that there was no finding in order of lower authorities as to whether the service was rendered in India or utilized in India and thus it restored the matter to file of AO to examine the same. With respect to the payment to USA company, the assessee claimed that that same did not include any element of profit so as to create a liability deduct TDS u/s 195 and the same was only a reimbursement. But since assessee had not substantiated the veracity of such claim by producing agreement entered into with the USA company, the Tribunal remitted this issue also to the file of AO for fresh consideration.

IBS Software Services Private Ltd. & Anr v DCIT (International Taxation) &Anr. (2018) 52 CCH 0317 CochinTrib - (2018) 52 CCH 0317 CochinTrib dated 12.04.2018

697. The AO made disallowance u/s 40(a)(i) for the assessee's failure to deduct tax at source while making payment of FTS to a foreign company. The assessee relied on the CBDT Circular No. 3/2015, dated 12.02.2015 which provides that in cases where TDS is not deducted u/s 195, the AO shall determine the appropriate portion of the sum chargeable to tax, as mentioned in section 195(1), in order to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default u/s 201, to contend that for the purpose of section 40(a)(i) also, only appropriate portion of such sum which is chargeable to tax under the Act shall be disallowed. The Tribunal, however, did not accept assessee's said contention holding that since disallowance u/s 40(a)(i) in case of the assessee was in context of amount paid by it towards FTS and not towards 'other sum' chargeable under Act, the said CBDT circular was not of any assistance to it.

Chemical Process Piping (P.) Ltd.vR.M. Madhavi - [2018] 94 taxmann.com 116 (Mumbai - Trib.) - IT APPEAL NOS. 1036 & 1037 (MUM.) OF 2016dated 02.05.2018

698. The wholly owned US subsidiary of Indian Assessee and other companies incorporated in USA provided marketing and sales support services to the Indian Assessee, Tribunal held that payments made for such services would not fall under the ambit of FTS under Article 12 of the India-US tax treaty and hence the same would not be taxable in India as the services were rendered outside India. Thus, the Tribunal held that the Assessee was not liable to deduct TDS u/s. 195 on payment of fees for such services to US entities (including Assessee's wholly owned US subsidiary) for securing orders and soliciting business from foreign customers. Rejecting Revenue's contention that the US entities could not claim treaty benefits as the assessee had not proved that conditions prescribed in Article 24(1) were satisfied, Tribunal noted that 70% of the payment was made to Assessee's wholly owned US subsidiary, wherein Assessee (Indian tax resident) itself directly owned 100% of its issued equity capital, the conditions prescribed in Article 24(1) were duly fulfilled [Article 24(1) provides that in order to avail the benefit of tax treaty, more than 50% of the number of shares of a company (US entities, in the present case) should be owned directly or indirectly by one or more individuals who are resident either in India or USA.]

Onprocess Technology India Pvt. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0074 (Kolkata ITAT) – ITA No. 1047/Kol/2016, 1241/Kol/2016 dated May 24, 2018

699. Following the ruling of the co-ordinate bench in the assessee's own case for earlier year (i.e. AY 2007-08 in ITA No 6708/Mum/2011), Tribunal held that payment of global support service fees made by the Assessee in AY 2008-09 could not be considered as Fees for Technical Services ('FTS') as per Article 12(4)(b) of the India- Singapore tax treaty as the twin test of rendering services and making technical knowledge available at the same time was not satisfied. Accordingly, Tribunal held that disallowance under section 40(a)(i) could not be made in the hands of the assessee while making such payment.

Exxon Mobil Company India Pvt. Ltd. vs. ACIT – [2018] 53 CCH 0072 (Mum ITAT) – ITA No 3601/Mum/2014 dated May 23, 2018

700. The assessee was engaged in the business of dredging and marine engineering services and had made payments to foreign companies without deducting tax. The DCIT contended that the assessee should

have deducted tax @ 40% and held the assessee liable u/s 201(1). The assessee filed a writ petition before the High Court against the order of the DCIT. The Court directed the assessee to treat the order as show cause notice and submit the preliminary objections to the impugned order. The Court further laid down that the principles of Natural Justice was not followed by the Revenue and the assessee was to be given sufficient time to file their objections. Accordingly, the matter was remanded to the DCIT to pass fresh orders.

International Seaport Dredging (P.) Ltd. v. DCIT – [2018] 93 taxmann.com 488 (Madras) – W.P. Nos. 10319 & 10320 of 2018 dated April 25, 2018

701. The assessee filed its return and declared total income at nil and book profit of Rs. 2,94,58,68,507/- for taxability u/s 115JB of the Act. During scrutiny assessment, the AO noted that the assessee had made payments to Flour Transworld Services Inc. and Furgo Survey Ltd. and treated the said payments as fee for technical services (FTS) and disallowed the deduction u/s 40(a)(i). The CIT (A) deleted the disallowance in respect of payment made to Flour Transworld Services Inc. but upheld the disallowance in respect of Furgo Survey Ltd. The Department appealed before the Tribunal and challenged the deletion by the CIT (A) in respect of Flour Transworld Services Inc. The Tribunal laid down that the India-US treaty provided for a restrictive meaning of FTS in as much as only those technical services which were ancillary to the application of right or which 'make available' technical knowledge or skill were taxable. The Tribunal further noted that the assessee had made payments to the company for rendering services in connection with review of alternative vaporization process for LNG terminal and to recommend a suitable process to assessee and subsequently held that the services involved deployment of personnel having requisite experience and skill to perform the services and it would not be possible that the assessee would carry out such services in future on its own without the resources of the service provider. Accordingly, the Tribunal dismissed the appeal of the Department on the ground that the nature of services rendered did not indicate making available of technical knowledge or skill and the payment made did not qualify for FTS as per the provisions of India-US DTAA.

ACIT v. Petronet LNG Ltd. - [2018] 92 taxmann.com 407 (Delhi - Trib.) - IT APPEAL NO. 865 (DELHI) OF 2011 dated APRIL 6, 2018

702. The Court set aside the Tribunal's order wherein the Tribunal had held that order u/s 195(2) determining amount of TDS to be deducted by an assessee is not an appealable order before CIT (A) since the same does not fall in the category of appealable orders under section 246 & 246A. The Court held that the Tribunal's order suffered from infirmity and was per incuriam as the Tribunal did not consider the provisions of section 248 which allow a payer who denies his liability to deduct tax u/s 195 to file an appeal before the CIT(A). Thus, it remanded the matter back to the Tribunal for deciding the appeal afresh in accordance with law, considering the provisions of section 248.

Bangalore International Airport Ltd. v ITO (IT) - [2018] 96 taxmann.com 86 (Karnataka) – ITA No. 401 & 429-431 of 2016 dated June 21, 2018

703. The assessee-company had a branch in UK and was doing business abroad under brand name of 'Cyber Jimmies' in UK. During relevant year, assessee paid advertisement expenditure to foreign magazines and publishing houses for advertisements of its brand and certain amount to foreign consultant for rendering services in UK in connection with registration of trade mark of 'Cyber Jimmies' in UK. Since assessee did not deduct tax at source while making said payments, AO disallowed same u/s 40(a)(i). The Tribunal noted that the recepients were foreign residents having no PE in India and services were also rendered by them outside India to the UK branch of the assessee, thus amount paid to them was not liable to tax in India. It held that there was no requirement of deducting tax at source from aforesaid payments and that impugned disallowance was to be deleted.

Cebon Apparel (P.) Ltd. v DCIT – [2018] 98 taxmann.com 253 (Mumbai - Trib.) – ITA No. 1651 (MUM.) OF 2016 dated May 29, 2018

704. The Tribunal upheld the CIT(A)'s order deleting the disallowance made by the AO u/s 40(a)(i) on account of non-deduction of tax while making payment of consultancy and legal service charges to non-resident payee, noting that the assessee had not claimed deduction with respect to the said expenditure since the entire expenditure was capitalised as it pertained to power plants which were in pre-commencement stage. It relied on the decision in the case of Sonic Biochem Extractions P.Ltd. Vs. ITO

[35 taxmann.com 463] wherein it was held that section 40(a) is applicable only if the assessee claims deduction of expenditure mentioned in the section.

DCIT & Anr. v ADANI POWER LTD. & ANR. - (2018) 53 CCH 0259 HydTrib - ITA No. 1663/Ahd/2014, 1686/Ahd/2014 With CO No.252/Ahd/2014 dated June 28, 2018

705. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO u/s 40(a)(i) on payment made to a Swedish entity without deducting tax at source, holding that though the said payment was in nature of fees for technical services, in view of the Most Favoured Nation (MFN) clause in the India-Sweden DTAA, the said payment was taxable in India only if it fell within the narrower definition of fees for technical / included services provided in the India-Portugal DTAA. CIT(A) had held that the impugned payment did not fall within the definition of fees for included services as per the India-Portugal DTAA and further the same could not be taxed as business income also in absence of PE in India. The Revenue contended that the benefit of India-Portugal DTAA could not be extended to the assessee in absence of any separate notification issued by Government of India. The Tribunal held that the protocol to the India-Sweden DTAA makes it clear that the MFN clause "shall apply" in India-Sweden DTAA and the issuance of a notification has nowhere been stipulated as a condition precedent therein. Further, it held that section 90(1) is very clear that only a DTAA would be notified and not the application of such a 'MFN' clause.

INCOME TAX OFFICER vs. M.S.K. TRAVESL & TOURS LTD. - (2018) 53 CCH 0214 KolTrib - ITA No. 284/Kol//2015 dated June 22, 2018

706. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) on account of payment of professional charges and towards reimbursement of administrative charges and reimbursement of insurance and foreign travel expenses to a person who was responsible for procurement, chemical development and technological upgradation etc. With respect to professional charges, the Tribunal held that the same was not taxable since the non-resident payee did not have any PE or any business connection in India and the revenue had failed to bring any evidence to prove it was not so. With respect to the reimbursements, it held that these were simply reimbursement of administrative expenses incurred by the concerned person outside India and did not involve any element of income and thus TDS was not required to be deducted.

DISHMAN PHARMACEUTICALS & CHEMICALS LTD. & ORS. v DCIT(OSD) & ORS. - (2018) 53 CCH 0065 AhdTrib - ITA No. 692/Ahd/2011, 2447/Ahd/2011, 2957/Ahd/2013, 3086/Ahd/2013, 817/Ahd/2011, 773/Ahd/2011 (CO No.89/Ahd/2011) dated May 23, 2018

707. The Tribunal deleted the disallowed made u/s 40(a)(i) with respect to commission paid to non-residents for services of mobilizing deposits, etc. without deducting TDS u/s 195, holding that commission earned by the non-residents for rendering services abroad could not be construed as income accrued or arisen in India since they non-residents did not have any business operations in India

State Bank Of India v ACIT – (2018) 91 taxmann.com 312 (Mum) – ITA Nos. 4598 and 4736 (Mum.) of 2010 dated 31.01.2018

708. The Tribunal set aside the CIT(A)'s order confirming the disallowance made u/s 40(a)(ia) on account of non-deduction of TDS on commission payments made to foreign agents in Hong Kong (with which India doesn't have a DTAA) with respect to export made to parties referred by them, noting that the payment was not received by the foreign agents in India and services rendered by them in their respective countries and thus, the income could not be said to have accrued or arisen in India as per section 5(2). Further, it held that neither the income could be deemed to have accrued or arisen in India in view of provision of section 9(1)(i) nor it is not the case of revenue that payment was made by assessee on account of technical services rendered by the foreign agents and, thus, assessee was not liable to deduct TDS u/s 195.

Bengal Tea & Fabrics Ltd. v DCIT – (2018) 91 taxmann.com 38 (Kol Trib) – ITA No. 1667 (kol.) of 2016 dated 28.02.2018

709. The assessee company, engaged in exporting cotton yarn, paid commission to foreign agents for booking the export orders abroad without deducting TDS u/s 195. On claiming deduction on the said payment, the AO disallowed the same u/s 40(a)(i)by stating that the commission fell within the purview of S.9(1)(i)

and S.9(1)(vii) r w S.195.The CIT(A) deleted the disallowance after taking note of the fact that the Tribunal in the assessee's own case for earlier assessment year had deleted similar disallowance made by the AO under section 40(a)(i).On appeal by Revenue, the Tribunal upheld the CIT(A)'s order noting that neither the foreign agent had business connection in India and nor the brokerage/commission paid by assessee could be treated as fees for technical services.

ITO v Indo Industries Ltd. [2018] 94 taxmann.com 117 (Calcutta) ITA NO 4642 OF 2016 dated 11.05.2018

710. The assessee was engaged in the business of trading fabrics and manufacturing and trading ready made garments and had paid commission on export sales to its two agents appointed in UAE during the relevant year. The AO rejecting the assessee's explanation that the provisions of section 195 were not applicable in the instant case. On appeal, it was noted by the Tribunal that all the activities of the agents were performed overseas and in addition to that the Revenue had failed to establish that the foreign agents had any office or any business operation in India. In view of these facts, the appeal of the Revenue was dismissed and it was held that the commission income could not be said to accrue or arise in India in terms of Section 9(1)(i).

ACIT v. Vipin Kumar Gupta – [2018] 93 taxmann.com 399 (Delhi- Trib.) – IT Appeal No. 4923 (DELHI) of 2014 dated April 25, 2018

711. The assessee made commission payment to various agents based in foreign countries on account of export made to parties referred by them, which were disallowed by the AO on the ground that no TDS was deducted u/s 195 on such payment. The Tribunal held that since the payment for commission was not received by foreign agents in India, the same was not taxable u/s 5(2)(a) and further since the same was on account of services rendered by them in their respective countries, it did not accrue or arise in India. It observed that it was not the case of Revenue that payment was made by assessee on account of technical services rendered by the foreign agents. The Tribunal thus held that since none of the conditions mentioned in section 9, viz. business connection in India, property in India, asset or source in India or transfer of capital asset situated in India, were fulfilled in the present case, no income could be deemed to have accrued or arisen in India. Therefore, it held that since the income was not chargeable to tax in India, there could be no liability to deduct TDS u/s 195.

DCIT v Gujarat Microwax (P.) Ltd - [2018] 96 taxmann.com 644 (Ahmedabad - Trib.) – ITA No. 2503 (AHD.) of 2016 dated May 24, 2018

712. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) by the AO on account of export commission and other related charges paid to non-resident/ foreign agents, relying on various judicial precedents wherein it has been held that commission payment made to non-resident agent for services rendered by them outside India are not chargeable to tax in India and thus not liable to TDS u/s 195.

DEPUTY COMMISSIONER OF INCOME TAX vs. STERLING ORNAMENT (P) LTD. - (2018) 53 CCH 0252 (Del Trib) - I.T.A. No. 4395/DEL/2014 dated June 27, 2018

713. The Court deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made to a non-resident agent under Agency Agreement for services rendered by him as the broker of the assessee, an Indian company, wherein such services also included procuring orders upon market survey with regard to demand for the products of the assessee in the foreign country. The AO had held the said payment to be in nature of Fees for Technical Services (FTS) as per section 9(1)(vii) attracting TDS provisions u/s 195. The Court held that the service of market survey only to ascertain demand for product in market was incidental to function of commission agent of procuring orders and was, in any case, not managerial, technical or consultancy service so as to be charged to tax in India as FTS. Further, there was no finding that the agent had any place of business in India. It thus held that since TDS was not required to be deducted u/s 195, there could not be any disallowance u/s 40(a)(i).

Evolv Clothing Co. (P.) Ltd. v ACIT - [2018] 94 taxmann.com 449 (Madras) - TAX CASE (APPEAL) NO. 572 OF 2013 dated June 14, 2018

714. The Tribunal had deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made by the assessee to its foreign agents for rendering sales and marketing services abroad. It noted that since the foreign agents had rendered their services abroad and they did not have a fixed

base in India, the said payment was not taxable in India and thus, there was no requirement to deduct TDS u/s 195. The Revenue filed appeal against the Tribunal's order placing reliance on Explanation 2 to section 195(1) which provides that obligation to comply with section 195(1) would extend to any person, irrespective of the fact if the non-resident person has a residence or place of business or business connection in India or any other presence in any manner whatsoever in India. The Court held that once the conclusion is arrived that such payment did not entail tax liability of the payee under the Act, as held by the Supreme Court in the case of GE India Technology Centre (P.) Ltd. v. CIT [2010] 327 ITR 456 (SC), section 195(1) would not apply. Thus, noting that the Revenue did not seriously contend that the said payment was taxable in India, it dismissed the Revenue's appeal.
Pr.CIT v Nova Technocast (P.) Ltd - [2018] 94 taxmann.com 322 (Gujarat) - R/TAX APPEAL NO. 290 OF 2018 dated April 9, 2018

715. The assessee paid commission to a non-resident for procuring export sale order without deducting tax at source u/s 195 and thus, the AO disallowed the expenditure u/s 40(a)(i) holding that the commission payable was deemed to accrue or arise in India and accordingly taxable u/s 5(2)(b) r.w.s 9(1)(i) [being income accruing or arising through business connection in India]. The CIT(A) upheld AO's order. The Tribunal held that deeming fiction u/s 9(1)(i) could not be invoked in the present case since no part of the operations of the recipient's business, as commission agent, was carried out in India and thus the said commission was not taxable under the Act. Hence, following the Apex Court ruling in the case of GE India Technology Centre Pvt Ltd Vs CIT wherein it was held that payer was bound to withhold tax from the foreign remittance only if the sum paid was assessable to tax in India, it held that the assessee was not required to deduct TDS from the aforesaid payment towards commission, since the same was not taxable under the Act as well as the relevant tax treaty.
Ferromatic Milacron India Pvt. Ltd. v DCIT (2018) 52 CCH 0553 AhdTrib - ITA Nos. 2451 & 2616/Ahd/2015 dated 19.04.2018

716. The Tribunal upheld the CIT(A)'s order deleting disallowance made by the AO u/s 40(a)(i) on account of payment of commission to non-resident / foreign commission agent for rendering service outside India without deducting TDS u/s 195, holding that in absence of PE or business connection in India, the said payment could not be deemed to accrue or arise in India.
ASSISTANT COMMISSIONER OF INCOME TAX vs. MANUFAX INDIA S.B. - (2018) 52 CCH 0348 AgraTrib - ITA Nos. 434 & 446/Agra/2015 dated Apr 11, 2018

717. The assessee paid Foreign commission (to Agents rendering services outside India for promotion of sales) and did not deduct tax at source u/s 195 as no part of income arose in India. The AO disallowed the commission paid u/s 40(a)(i) holding that the TDS was supposed to deducted u/s 195. The CIT(A) deleted the disallowance made by the AO. The Tribunal followed (1) GE India Technology Centre (P) Ltd vs. CIT wherein it was held that TDS was to be deducted only if income was chargeable to tax in India in the hands of non-resident recipient, (2) CIT vs. R.D. Aggarwal & Co. & Anr. wherein it was held that where assessee's non-resident Agent did not have PE in India, the Commission to agents could not arise in India and (3) CIT v. Toshuku Ltd wherein it was held that commission earned by non-residents for services rendered outside India could not be deemed to be income, which had accrued or arisen in India in terms of section 9(1)(i). It thus held that the Commission Agent had no 'business connection' in India and upheld the CIT(A)'s order of deleting the disallowance.
Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

718. The assessee had made payments for marketing activities carried out in Bangladesh to a non-resident without deducting tax at source. The AO disallowed the amount under provisions of s 40(a)(i) on the ground that payments made to non-resident who have their business in India for rendering management, consulting and technical services is taxable in India as per sec 5(2) r.w.s 9(1)(vii) (c) of the Act. The AO also noted that a copy of the agreement between the assessee and the non-resident was not furnished by the assessee. It was the assessee's contention that such disallowance could not sustain in view of the services being rendered in Bangladesh and in absence of business connection of payee in India, no income accrued or arose in India. Noting that the assessee had furnished a copy of the agreement with the non-resident to the DRP as additional evidence, the Tribunal restored the issue of disallowance u/s.40(a)(i) following the coordinate bench decision of the assessee for its earlier year

wherein the issue was restored on account of no supportings before the AO (whether services were rendered in Bangladesh and not in India) and it was observed that a disallowance could not be made on mere presumption that payments made were in nature of Royalty/FTS and accordingly, claim had to be verified by the AO.

Philip Morris Services India S.A v DDIT [TS-488-ITAT-2018(DEL)-TP] ITA No.827/Del/2014 dated 21.06.2018

g. Shipping business

719. The AO taxed the amounts received by the assessee (a Danish company, resident of Denmark) on account of reimbursement of cost of IT system support services incurred by it for effective conduct of its day-to-day shipping operations business (and charged to the group entities / agents based on their usage) as fees for technical services under the India-Denmark DTAA and the receipts on account of inland haulage charges as profits of shipping business u/s 44B, rejecting the assessee's contention that both these receipts formed part of the shipping business of the assessee which were not taxable in India in view of the provisions of Article 9 of the India-Denmark DTAA (which provides that profits derived from the operation of ships in international traffic shall be taxable only in the country in which the place of effective management of the entity is situated). The DRP directed the AO to accept assessee's above contentions, following the Tribunal's order in the assessee's own case for earlier year. The Tribunal also dismissed Revenue's appeal against the said directions of DRP, following the High Court as well as the Tribunal's order in the assessee's own case for earlier year wherein it was held that the said receipts were part of assessee's shipping business and could not be captured under any other provisions of the Act except under the DTAA and as per Article 9 of the India-Denmark DTAA, the said receipts were not taxable in India.

DCIT v A.P.Moller Maersk A/S – ITA No. 1743/Mum./2016 dated 23.01.2018

720. The AO taxed the amounts received by the assesse-company, resident of France, on account of inland haulage charges and service tax on the same as profits of shipping business u/s 44B, rejecting the assessee's contention that both these receipts formed part of the shipping business of the assessee which were not taxable in India in view of the provisions of Article 9 of the India-France DTAA (which provides that profits derived from the operation of ships in international traffic shall be taxable only in the country in which the place of effective management of the entity is situated). Noting that on identical issue, the it had decided in favour of assesse in assessee's own case for earlier year, the Tribunal held that Inland Haulage charges and service tax thereon being part of the income derived from the operation of shipping in international traffic was exempt under Article 9 of the India-France DTAA and hence, not taxable in India. Accordingly, it allowed assessee's appeal and deleted the addition.

DELMAS S.A.S. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0142 MumTrib - ITA No. 2187/Pn./2017 dated Jun 13, 2018

721. Assessee, a shipping company incorporated at Mauritius, had claimed its entire income not to be taxable in India in view of provisions of Article 8 of the India-Mauritius DTAA *inter alia* dealing with profits from the operation of ships in international traffic, supporting its claim by furnishing TRC issued by the Mauritian tax authorities. AO denied the said relief to the assessee holding that the effective management of the assessee was situated at a place which was other than India and Mauritius and further held that the assessee's income was chargeable to tax in India opining that the assessee had a PE in India in form of an exclusive agent (FCIPL). The Tribunal rejected the view taken by the AO noting that the activities of assessee's sole agent in India (FCIPL) were not devoted exclusively on behalf of assessee as it also did work on behalf of other principals and earned a substantial part of its income from them and, thus, held that FCIPL was not an exclusive agent of assessee so as to come under purview of definition of dependent agent as defined in Article 5(5) of India-Mauritius DTAA. Accordingly, it was held that the assessee did not have any PE in India and was not taxable as per article 7 of India-Mauritius DTAA. However, with respect to the assessee's contention with regards to effective place of management being in Mauritius, the Tribunal held that it was not necessary that effective management had to be only between two contracting states and, based on facts in the present case, the same was neither in Mauritius nor in India. Further, relying on the views of Klaus Vogel, it held

that if the effective management of an enterprise was not in one of the contracting state, but was situated in the third state, the benefit of Article 8 of DTAA, could not be extended.
ADIT v Bay Lines (Mauritius) – (2018) 91 taxmann.com 110 (Mum) – ITA No. 1181 (Mum) of 2002 & others CO No. 32 (Mum) of 2010 & others dated 20.02.2018

722. The Tribunal upheld the CIT(A)'s order deleting the disallowance made by AO u/s 40(a)(ia) on account of payments made to foreign shipping lines without deduction of tax at source, in view of the provisions of section 172 applicable in case of Foreign Shipping Companies notwithstanding anything contained in other provisions and therefore, held that the provisions of section 194C and 195 relating to tax deduction at source were not applicable in such cases. It held that the issue was was squarely covered by CBDT Circular No. 723 dated 19.09.1995 stating that where payments were made to shipping agents of non-resident shipping owners shipped at port in India, agents step into shoes of principal and accordingly provision of section 172 should apply and not provisions of Section 194 and 195.
DCIT v ASSOCIATED PIGMENTS LTD. – (2018) 52 CCH 4 (Kol Trib) – ITA No. 2042/Kol/2014 dated 03.01.2018

h. Section 44BB

723. Assessee, a non-resident company, was taxed u/s 44BB(1) @ 10% with respect to its revenue earned on account of charter hire of Deepwater Drilling Unit considering reimbursement receipts (on account of material recharge and fuel reimbursement as well as service tax reimbursement) as part of revenues taxable u/s 44BB. With respect to reimbursements other than service tax reimbursement, the Tribunal held that section 44BB refers to total payment to assessee or payable to assessee or deemed to be received by assessee and, thus, noting that it was not in dispute that amount was received by the assessee, it held that the AO was justified in including the said amount which was received while determining revenue under provisions of section 44BB. However, with respect to inclusion of receipts on account of reimbursements of service tax, the Tribunal held that the service tax was not an amount paid or payable, or received or deemed to be received by the assessee for services rendered by it and the assessee was only collecting service tax for passing it on to the Govt. Thus, it held that the service tax collected by the assessee does not have any element of income and therefore cannot form part of the gross receipts for the purposes of computing the 'presumptive income' of the assessee u/s 44BB.
TRANSOCEAN OFFSHORE DEEPWATER DRILLING INC. v ADD.CIT (IT) – (2018) 52 CCH 69 (Del Trib) – ITA No. 2072/DEL/2016 dated 30.01.2018

724. The Tribunal held that sections 44BB, 44DA and 115A rw Section 9(1)(vii) relating to royalty/FTS operate in different fields and accordingly held that where the assessee was imparting geophysical and geological services for prospecting for mineral oils, the same being services in relation to exploration of mineral oil then, the royalties/FTS would be taxable under section 44BB as section 44BB was a specific provision in relation to specific services and therefore would prevail over the other provisions dealing with royalties/FTS services. Accordingly, it held that the AO was not justified in taxing the receipts as a simple royalty or FTS under section 9(1)(vi)/(vii) read with section 115A.
DDIT v RPS Energy Pty Ltd.* - [2018] 92 taxmann.com 77 (Delhi - Trib.) - IT APPEAL NO. 45 (DELHI) OF 2015 dated MARCH 16, 2018

725. The Assessee had entered into a contract with a UAE based non-resident company for executing certain work in connection with oil fields located in Bay of Bengal and the consideration received under the said contract was not offered to tax since the entire work was executed outside India. The AO, however, brought the aforesaid receipts to tax in India u/s (9)(1)(i) holding the same to be income accruing or arising in India on the ground that the situs of the contract was in India. CIT(A) accepted the assessee's contention that the non-resident company did not carry out any business operation in India and did not have any PE in India as per India-UAE DTAA, however, he brought to tax the impugned receipts u/s 44BB on the ground that the assessee itself (as an alternative plea) had opted to be governed by the said provision. The Tribunal held that merely because the assessee had taken an alternative plea without prejudice to the main contention, the same cannot be held against the assessee as there is no estoppel in law. It followed the decision of CIT v Enron Espat Services Inv. [327 ITR 626] wherein it was

held that if the receipt by a non-resident was exempt from tax under the relevant DTAA, the said amount could not be brought to tax u/s 44BB and thus allowed the assessee's appeal.
ONGC LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0272 DelTrib - ITA No. 1330/DEL/2016 & 1332/DEL/2016 dated June 29, 2018

726. Where assessee, foreign company, had entered into contracts with (ONGC) for giving on hire their rigs for carrying out oil exploration activities in India, mobilisation fee received by assessee was to be included for computation of deemed profits and gains of business, chargeable to tax under section 44BB; Review petition against said decision was dismissed by the Apex Court.
Sedco Forex International INC v CIT [2018] 94 taxmann.com 119 (SC) – CIVIL APPEAL NO. 4906 OF 2010 dated 10.05.2018

727. The Assessee-company, incorporated in France, was engaged in executing contracts with an Indian company for offshore drilling operations relating to mineral oil in India and computed its income as per the provision of section 44BB(1), thereby applying a deemed net profit rate of 10% of gross revenues. The assessee claimed that reimbursement of communication immersat charges and reimbursement of cost of equipment lost in oil wells as well as reimbursement of service tax should not be included in the gross receipts as they were in nature of reimbursement. The Tribunal dismissed assessee's appeal with regards to reimbursement of communication immersat charges and reimbursement of cost of equipment lost in oil wells, following the co-ordinate bench decision in the assessee's own case for an earlier year, wherein it was held that the said reimbursement receipts formed part of gross receipts for the purpose of section 44BB. However, it accepted the assessee's claim with respect to reimbursement of service tax, following Jurisdictional High Court decision of DIT v. Mitchell Drilling International (P.) Ltd. [2016] 380 ITR 130 (Del) and held that service tax being a statutory liability could not form part of the gross receipt for the purpose of deemed profit u/s 44BB.
The Tribunal also dismissed assessee's claim that the interest received on income tax refund was covered by Article 12 of India-France DTAA which provides that interest will be taxable in resident State, following the High Court decision in the assessee's own case wherein it was held that since assessee had PE in India and was subjected to tax in India, the interest on refund of income tax was not covered by Article 12 of the said DTAA.
Pride Foramer SAS v JCIT - [2018] 97 taxmann.com 648 (Delhi - Trib.) - ITA No. 702 (DELHI) OF 2015 dated April 23, 2018

728. The assessee company was engaged in providing services and facilities in connection with exploration and production of mineral oils and received revenue against work executed for different companies. The assessee offered to tax entire revenue u/s 44BB, thereby applying a deemed net profit rate of 10% of gross revenues. The AO however taxed the income received from Production Sharing Contract (PSC) partners engaged in oil exploration u/s 44BB but the receipts from the non-PSC partners (such receipt were on account of equipment rental) as FTS /royalty taxable @25% of the profit u/s 44DA. The Tribunal held that receipt from non-PSC partners was also taxable u/s 44BB in view of the Apex Court ruling in ONGC vs. CIT [376 ITR 306 (SC)] wherein it was held that where the pith and substance of each of the contracts/agreements is inextricably connected with prospecting, extraction or production of mineral oil and where the dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils, though there may be certain ancillary works contemplated there under, the payments received under the said contracts would be more appropriately assessable under the provisions of section 44BB and not section 44D. Further, the Tribunal held that reimbursements received on account of sertive tax/ VAT were not to be included in gross receipt while computing tax payable u/s 44BB, relying on the decision of DIT v. Mitchell Drilling International (P.) Ltd. [2016] 380 ITR 130 (Del).
DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. B.J. SERVICES COMPANY MIDDLE EAST LTD. - (2018) 52 CCH 0371 DelTrib - ITA No. 6167/Del/2014 dated April 20, 2018

i. Others

729. The Tribunal deleted addition with respect to consultancy income received by assessee (RNOR) for services rendered outside India to a company (in Dubai in which assessee was a Director) and held that the income accrued to the assessee at a point of time (i.e. AY 2009-10) when he was a non-resident & since assessee already recognized the income at the point of accrual in an earlier year, it could not once again be considered as income at the point of receipt. Further it held that though assessee was paid by the company during the relevant AY i.e. after April 1, 2009 the confirmation from the company clearly indicated that services rendered were for the period November 2008 to March 2009 and accordingly held that as per Section 5(1) and 5(2) receipt in a later year, of an income which accrued or arose in an earlier year, would not render such amount taxable in the year of receipt.
Mr. J. Muthukumar [TS-93-ITAT-2018(CHNY)] - I.T.A.No.2203/CHNY/201 dated 13-02-2018

730. Where the applicant-employer, engaged in business of software development and IT Enabled Services, had sent two of its employees-assignees on deputation to US and Germany and the applicant had filed the application with AAR seeking ruling on issue of taxability in India of salary of its employees sent abroad for rendering services to foreign company and the applicant-employer's liability to deduct TDS on thereon, the AAR ruled that the income earned by assignees/employees from services rendered in USA / Germany respectively would be chargeable to tax in USA / Germany only and not in India for period of their deputation and since there was no obligation on employee to pay tax on income from salaries, there would not be any liability to deduct tax u/s 192 by applicant- employer. Further, with respect to the applicant-employer's query as to whether the applicant could give the said employees credit of taxes paid in US/ Germany on their return to India, it was ruled that the employees were covered by provisions contained in Articles 25 of India-USA DTAA and Article 23 of India-Germany DTAA and, thus, were entitled to credit for foreign taxes deducted. Accordingly, while deducting TDS u/s 192, the employer could give credit for taxes deducted during their deputation outside India in view of provisions of section 192(2).
HEWLETT PACKARD INDIA SOFTWARE OPERAN PRIVATE LIMITED IN RE – (2018) 401 ITR 0339 (AAR) – A.A.R. No 1217 of 2011 dated 29.01.2018

731. The assesee, a foreign company incorporated in Cyprus, was wound up on 24-5-2013, whereas assessment had been completed on 30-1-2017. The assessee claimed before the DRP for the first time that assessment was illegal and void since it was completed on a non-existent entity, the Tribunal held that as per section 176, in case of discontinuance of the business, the assessee was required to inform the AO and also in case of the liquidation, the liquidator of the company was required to give notice to the AO, informing him about such discontinuance/ liquidation. It was noted that though the assessee had submitted that the AO was informed about the dissolution of the company but the assessee could establish that it had provided the information as per the requirements of the Act. The Tribunal, thus, set aside the assessment order passed and restored the matter to the file of the AO/ TPO to verify whether the assessee complied with various provisions of the Act relating to responsibility of company- in-liquidation or discontinuity of business.
Pesak Ventures Ltd. v DCIT(IT) - [2018] 95 taxmann.com 113 (Delhi - Trib.) - IT APPEAL NO. 1929 (DELHI) OF 2017 dated June 19, 2018

732. Relying on the decision in the case of DIT vs GE Packaged Power Inc. (2015) 56 taxmann.com 190 (Del HC) and CIT vs ZTE Corporation (2017) 392 ITR 80 (Del HC), the Tribunal held that interest u/s 234B could not be levied for non-payment of advance tax in the case of the assessee, a foreign company, since the income of foreign company was to be governed by provisions of section 195 wherein any payment made to foreign enterprise would be subjected to full deduction of tax at source. However, it upheld levy of interest u/s 234D holding that charging of interest u/s 234D was consequential in nature and remanded the matter to the file of the AO for verifying the actual refund figure granted to assessee earlier for computing the interest u/s 234D.
HITT HOLLAND INSITUTE OF TRAFFIC TECHNOLOGY B.V. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONA TAXATION) - (2018) 52 CCH 0280 KolTrib - ITA No. 390/Kol/2015 dated Apr 4, 2018

733. The Tribunal held that where assessee, a non-resident, earned interest income on FCCBs issued by an Indian company abroad, in view of fact that entire proceeds of FCCBs had been utilised by Indian

company in said country for repayment of an acquisition facility, interest income in question was not liable to tax in India as per exception carved out in section 9(1)(v)(b).

The Tribunal held that where assessee, a non-resident, received interest on fully convertible debentures issued by an Indian company, said interest income would be liable to tax at rate of 10 per cent in terms of Article 11 of India-Cyprus DTAA.

The Tribunal held that where assessee, a non-resident, received consultancy fee from an Indian company, same was liable to be taxed at rate of 10 per cent in terms of article 12 of India-Cyprus DTAA as against 42.23% as per the provisions of the act.

Clearwater Capital Partners (Cyprus) Ltd. v DCIT (Internation Taxation) [2018] 94 taxmann.com 118 (Mumbai – Trib.) – ITA NOS. 843 AND 1025 OF 2016 dated 02.05.2018

734. Where the assessee, a UK based company having its Branch Office in India, claimed deduction u/s 44C on a/c of "Head Office Expenditure" which the AO had disallowed as the same was not debited in the Profit and Loss A/c of the assesse, the Court allowed the said claim holding that it was irrelevant if the same was not debited in P&L A/C if the transaction was genuine, undisputed and not questioned.

Ernst & Young c ACIT [2018] 94 taxmann.com 227 (Delhi-Trib.) – ITA NOS. 6561-6562 OF 2016 dated 31.05.2018

735. The Assessee, a tax resident of Singapore, claimed that the short-term capital gain derived by it from Indian securities was as not taxable in India under Article 13(4) of the India-Singapore DTAA. The AO, however, rejected such claim referring to Article 24 of the said DTAA which provides that the exemption available under the said DTAA with respect to income from any source in a Contracting State (India) will be limited only to the extent such income is repatriated to the Other Contracting State (Singapore), if such income is taxable in the Other Contracting State (Singapore) by reference to the amount which is remitted to or received in that Other Contracting State (Singapore) and not the full amount. The DRP held that the entire income received by the assessee from all sources was taxable in Singapore irrespective of the fact whether it was received in Singapore or not and allowed the assessee's claim. The Tribunal held that Article 13(4) is not an exemption provision but it speaks of taxability of particular income in a particular State by virtue of residence of assessee and provisions of Article 24 (which is applicable to exempt income) does not have much relevance insofar as it relates to applicability of article 13(4) to income derived from capital gain. Thus, it dismissed the Revenue's appeal.

DCIT v D. B. International (Asia) Ltd - [2018] 96 taxmann.com 75 (Mumbai - Trib.) – ITA No. 992 (MUM.) OF 2015 dated June 20, 2018

III. Domestic Tax

a. ***Income***

736. Where the assessee bank considered income by way of interest pertaining to doubtful loans as income only when it was realized, the Tribunal relying on the decision of the co-ordinate bench in DCIT vs The Washim Urban Co.Op. Bank Ltd. in ITA No.233/NAG/2013 and CBDT Circular No. F. 201/21/84 ITA-II, dt. 9th Oct., 1984 held that the AO was not justified in assessing the said interest as the income of the assessee. It held that the assessee's treatment was in accordance with the aforesaid CBDT Circular which was binding on the AO and therefore held that the addition made by the AO was without any basis.

THE CHIKHALI URBAN CO.OP. BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0238 NagTrib - ITA No. 251/NAG/2015 dated Mar 6, 2018

737. The Court ruled that interest income from bank deposits accrued but not due and credited to assessee's account by bank but accrued by the assessee in its balance sheet was taxable and could not be termed as hypothetical income. It further held that the period of deposit being the option of the depositor, the receipt stood deferred at the behest of the assessee. Assessee's contention that u/s 194A, it was the obligation of the banker to pay tax on the interest due was rejected by HC holding that the Bank's liability to deduct tax at source arose only when it paid the interest.

Pr.CIT v Plantation Corporation of Kerala Ltd - TS-611-HC-2017(KER) - ITA.No. 121 of 2016 dated 20.12.2017

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

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

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

741. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO towards interest accrued on FDRs credited to Infrastructure Development Fund Account maintained by the assessee-authority, established under provisions of the Uttar Pradesh Planning and Development Act, 1973, relying on the Tribunal's order in the assessee's own case for earlier year wherein it was observed that the interest receipts are at the disposal only in accordance with Government directions on disposal of the funds relating to infrastructure development and these earnings only add up to the corpus. It was also noted that Saharanpur Development Authority and assessee were statutory authorities which were established under provisions of the Uttar Pradesh Planning Development Act, 1973, governed by same rules of Government of U.P. and the Delhi High Court in the case of Saharanpur Development Authority vs. CIT [ITA No. 132/Del/2009] had observed that interest earned by investing the surplus fund in banks belonged to state administration and not to the assessee and the same could not be included in the income of the assessee.
ACIT & ANR. vs. FIROZABAD SHIKOHABAD DEVELOPMENT AUTHORITY & ANR. – (2018) 52 CCH 84 (Agra Trib) – ITA Nos. 270/Agra/2016, 170/Agra/2015 dated 25.01.2018

742. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO to assessee's income on account of Staff welfare fund being 9% of service charges earned by assessee, following the Tribunal's order for earlier year in assessee's on case wherein it was held that the contribution towards staff welfare fund was based on resolution of board of directors of assessee held on 05.12.1979 and by virtue of that resolution there was diversion of income by over riding title at source on service charges received by assessee.
ITO v WEST BENGAL TOURISM DEVELOPMENT CORPORATION LTD. – (2018) 61 ITR (Trib) 0728 (Kol Trib) – ITA Nos.1538 to 1540/Kol/2014 dated 03.01.2018

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

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

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

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

747. Where as per law the assessee was expected to collect sales tax at rate of 2% but the assessee, due to confusion, collected 4% and surcharge at 5% thereon, which it deposited with the Sales tax department, the Tribunal held that the AO was unjustified in taxing the excess collection as the assessee's trading receipt and held that if the assessee collected sales tax and failed to deposit same, then the same was to be treated as part of trading receipt but since what was collected by assessee was already deposited with Sales Tax Department and there was confusion regarding sales tax rate, the amount was not taxable.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. TAJ MADRAS FLIGHT KITCHEN PVT. LTD. & ANR. - (2018) 52 CCH 0226 ChenTrib - ITA Nos. 1568 & 1569/Chny/2014, 1705/Chny/2014 dated Mar 22, 2018

748. Where the assessee received refund of interest on excess tax and interest paid in earlier years, the Tribunal held that the said receipts could not be considered as the income of the assessee more so when the assessee had not claimed any deduction on account of the same.
AIRPORTS AUTHORITY OF INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - ITA No. 4821/DEL/2014 - (2018) 52 CCH 0128 DelTrib dated Feb 23, 2018

749. The Court held the non-compete fees received by assessee-individual (Chairman & MD of a pharma company) from other pharma companies during AYs 1998-99 and 1999-00 to be a non-taxable capital receipt, holding that the knowledge and technical know-how are intellectual properties and when an individual is deprived of using such property in future, the same amounts to capital loss and the income

derived would, thus, constitute capital receipt and also noting that the Tribunal had held the non-compete fees received by the pharma company in which the assessee was the Chairman to be capital receipt. It rejected the Tribunal's view that the assessee had transferred all the technical know-how to the said company and thus had not suffered any capital loss as he had no capital available when non-compete agreements were entered into, in absence of any specific material showing the same and thus, held that it would be highly presumptuous for the Tribunal to hold that the appellant had no right to use the technology.

V.C. Nannapaneni v CIT [TS-88-HC-2018(AP)] – I.T.T.A. Nos.159 and 160 of 2005 dated 05.01.2018

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

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

751. The Tribunal accepted assessee's contention of treating the capital gains on sale of non-agricultural land as long-term capital gains where the assesssee had entered into an agreement to sale (for purchasing the land) on 11.04.2007 but due to provisions of section 42 of the Rajasthan Tenancy Act, 1955 prohibiting sale of agricultural land by a member of scheduled caste in favour of non-member (the assessee), the sale deed could be executed in favour of the assessee only on 13.04.2010, after conversion of the said agricultural land into non-agricultural land during FY 2009-10. The AO had treated the said gains as short-term capital gains considering the date of sale deed as the date of acquisition instead of date of agreement to sale. The Tribunal noted that the assessee had paid part consideration at the time of entering into the agreement of sale and the possession of the land was also handed over at the same time, thus making the land available for enjoyment of the assessee and the sale deed only ratifed the transaction of transfer entered into vide the agreement.

Rajasthan Agencies Pvt. Ltd v ITO [TS-59-ITAT-2018(JPR)]– 680& 681/JP/2017 dated 25.01.2018

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

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

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

GEMOLOGICAL INSTITUTE INTERNATIONAL INC. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0183 (Mum Trib) - ITA No. 6556/Mum./2017 dated June 20, 2018

754. The Tribunal dismissed revenue's appeal against the CIT(A)'s order deleting the addition on account of retention money, being 10% of total contract value, withheld by one of the customer in lieu of satisfactory execution of contract by the assessee. It relied on the decision in the case of CIT v. Associated Cables (P.) Ltd. (2006) 286 ITR 596 (Bom) wherein it was held that the amount retained by the buyers, as per contract, and paid to the assessee on satisfactory completion of contract did not accrue / could not be considered as income in the year in which the amount was retained. With respect to Revenue's contention that the assessee had accounted for the retention money in its books of account, it was held that a mere book keeping entry could not be income unless income had actually resulted and if income did not result at all, there could not be a tax, even though in book keeping an entry was made about a hypothetical income.

DCIT v Commtel Networks (P.) Ltd. - [2018] 95 taxmann.com 50 (Mumbai - Trib.) - IT APPEAL NOS. 4340, 4872 AND 4873 (MUM.) OF 2015 dated June 19, 2018

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

CIT v Keventer Agro Ltd - [2018] 95 taxmann.com 154 (Calcutta) - ITAT NOS. 175 & 176 OF 2014, GA NOS. 3609 & 3610 OF 2014 dated June 19, 2018

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

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

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

Mahaveer Kumar Jain v CIT - [2018] 92 taxmann.com 340 (SC) - CIVIL APPEAL NO. 4166 OF 2006 dated April 19, 2018

758. The Tribunal upheld the CIT(A)'s order accepting the assessee's claim that the entertainment tax subsidy granted by the U.P. State Govt. by way of exemption for 5 years was in nature of capital receipt not chargeable to tax. It relied on the decision of the Apex Court in the case of CIT vs. M/s. Chaphalkar Brothers [Civil Appeal Nos.6513 - 6514 of 2012 (SC)] wherein it was held that though the subsidy was in the form of an entertainment duty via sale of tickets for a limited period but since its utilization was predetermined and granted with an assurance to cover up the cost of construction, the subsidy was an incentive to supplement the construction expenditure of new set up of multiplexes and thus in the nature of a capital receipt. It was noted that in the present case also, the scheme was for promotion of construction of multiplexes for a period of 5 years and the overall quantum of subsidy was limited to the

cost of construction. The scheme in the present case also provided that if the cost was recovered prior to 5 years, for rest of the period, the entertainment tax would be leviable.

DEPUTY COMMISSIONER OF INCOME TAX vs. SHIPRA HOTELS LTD. - (2018) 52 CCH 0288 DelTrib - ITA No. 3095, 3096 & 3094/Del./2014 dated April 2, 2018

759. The Court dismissed Revenue's appeal against the Tribunal's order remanding the matter to the file of the AO for fresh consideration on the issue of receipt of commission, where the revenue contended that the amount of personal expenses paid to the assessee by its HUF should be taxed in the hands of the assessee u/s 2(24)(iv) as the said amount was paid out of franchisee commission received by the said HUF from the company in which the assessee was a director. It was noted that in case of another related assessee involving identical issue, the Tribunal had remanded the matter to the file of the AO to determine the entity to which the payment of commission was made, holding that the franchise commission paid by a company to the franchiser owned by HUF of the assessee, who were director of the said company, could not be brought to tax u/s 2(24)(iv) merely because such franchises met personal expenses of the assessee-directors. The Revenue's appeal against the said Tribunal order was dismissed by the Court [CIT v. C.S. Srivatsan (2013) 30 taxmann.com 423 (Mad)].

COMMISSIONER OF INCOME TAX vs. C.S. SESHADRI - (2018) 404 ITR 0191 (Mad) - T.C. (Appeal).No.884 of 2008 dated April 4, 2018

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

Sanghi Industries Ltd & Anr v ACIT & Anr (2018) 52 CCH 0351 HydTrib - ITA No. 979/Hyd/17 dated 20.04.2018

761. The assessee availed sales tax incentives under Package Scheme of Incentives, 1993 of Government of Maharashtra for setting up of industrial unit. Assessee was continuously claiming this incentive as capital and AO in earlier years treated same as revenue. For the relevant AY under consideration as well, the AO treated the incentive to be revenue in nature. However, the CIT(A) held it to be a capital receipt not chargeable to tax at the hands of assessee. The Tribunal on following the decision of High Court in Reliance Industries Ltd. held that incentive received under Package Scheme of Incentives of Govt. of Maharashtra was capital receipt and not chargeable to tax thereby dismissing revenue's ground of appeal.

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

762. The Apex Court dismissed Department's SLP against the Court order holding that interest on non-performing assets is not taxable on accrual basis looking to guidelines of Reserve Bank of India.

CIT v Jamnagar District Co-Operative Bank Ltd. [2018] 94 taxmann.com 300 (SC) – SLP (CIVIL) DIARY NO. 12840 OF 2018 dated 07.05.2018

763. The Court upheld that Tribunal's order wherein it was held subsidy allowed by State Government on account of power consumption which was available only to new units and units which had undergone an expansion, was to be regarded as capital subsidy not liable to tax.

PCIT v Shyam Steel Industries Ltd. [2018] 93 taxmann.com 495 (Calcutta) – ITA NO. 37 OF 2018 dated 07.05.2018

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

PCIT v State Fisheries Development Corporation Ltd [2018] 94 taxmann.com 466 (Calcutta) – ITAT NO. 19 OF 2017 dated 14.05.2018

765. The common rationale that is followed is that if any surplus money that is lying idle and has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income earned is merely incidental and not the prime purpose of the act which has resulted in the accrual of the additional income then the same is not liable to be assesseed and can be claimed as deduction. The Apex Court applying the above mentioned rationale held that the interest income from the share application money was not taxable income and was inextricably linked with requirement of company to raise share capital and was therefore liable to be set off against public issue expenses.

CIT v. Shree Rama Muti Tech Ltd. - [2018] 92 taxmann.com 363 (SC) – Civil Appeal Nos. 6391 & 8336 of 2013 dated April 24, 2018

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

DCIT v. T. Jayachandran – [2018] 92 taxmann.com 385 (SC) – Civil Appeal Nos. 4341 to 4345 & 4346 to 4357 of 2018 dated April 24, 2018

b. ***Income from Salary***

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

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

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

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

c. ***Income from House Property***

771. The Tribunal held that the benefit provided in Section 23(1)(c) [i.e. where a property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof was less than the ALV under Section 23(1)(a) then the assessee was to be taxed only on the rent received / receivable], would

apply to properties which are ready to let notwithstanding the fact that the properties have not been actually let out in the past. Noting that the property of the assessee was vacant during the entire year but were in the ready to let condition, it held that the AO was incorrect in denying the benefit under Section 23(1)(c) and in taxing the income as per ALV under Section 23(1)(a) of the Act.

ITO v Metaoxide (P.) Ltd - [2018] 92 taxmann.com 302 (Mumbai - Trib.) - IT APPEAL NOS. 4428 & 5771 TO 5775 (MUM.) OF 2016 dated MARCH 28, 2018

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

- contributions received by it from tenants towards sinking fund could not be assessed as rental income of assessee
- interest paid on loan borrowed from its holding company for acquiring of property was to be allowed as deduction u/s 24(b)
- in view of fact that actual rent received or receivable by assessee in respect of let out property was in excess of sum for which property might reasonably be expected to have been let out from year to year and the ALV had been determined u/s 23(1)(b), no addition in respect of notional interest on interest free refundable deposits received from its tenants was called for

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

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

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

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

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

775. The Tribunal allowed assessee's claim for deduction u/s 24(b) of the entire interest paid on amounts borrowed and utilized for construction of land and building, which was disallowed by the AO to the extent of 50% on the ground that there was no bifurcation of funds used for land and building and other assets used for business activities. It was noted that the land and buildings were constructed as the assets of school and the amount invested in the school land and building was far higher than the amounts borrowed. Further, the assessee had given complete details before the CIT(A) to show how much own funds were available to the assessee and how much amounts had been borrowed from the Bank and other institutions.

VIDYA EDUCATION INVESTMENT PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0211 (Del Trib) - ITA.No.6177/Del./2014 dated June 22, 2018

776. For AY 2003-04 to AY 2008-09, the AO had rejected assessee's claim that the rent received on sub-letting the property and service charges for rendering certain services relating to such letting out should be assessed as income from business. He instead assessed the same as income from house property, thereby not allowing deduction for business expenditure. The CIT(A) confirmed the AO's order. Tribunal upheld the decision of the authorities below to assess the rental income as income from house property. As regards the service charges, the Tribunal directed that the same should be assessed as income from other sources and the expenditure incurred by the assessee should be allowed as per the provisions of section 57. Subsequently, under the order passed by the AO, giving effect to the above order of the Tribunal, he held that the assessee's claim for depreciation and other expenses like corporate expenses, etc. were inadmissible as per section 57 as the said expenses had no direct nexus with earning of service charges. The CIT(A) upheld the said order passed by the AO to give effect to the Tribunal's directions. Further, before the CIT(A), the assessee had also submitted that the Tribunal in the assessee's own case for AY 2009-10 had reversed its order for AY 2003-04 to AY 2008-09 (referred above), allowing the assessee's appeal. However, the CIT(A) refused to follow the Tribunal's order for AY 2009-10 in view of the Tribunal's binding order for AY 2003-04 to AY 2008-09. On further appeal, the Tribunal held the CIT(A) was correct in following the said binding order. Further, with respect to the assessee's contention that the AO had not followed the Tribunal's directions correctly, it held that the AO and the CIT(A) had correctly followed the Tribunal's earlier order, giving detailed findings. [It is to be noted that in the present case, the Tribunal had rejected the assessee's adjournment petition and decided the matter ex-parte.]

PROLIFIC VENTURES PRIVATE LIMITED vs. INCOME TAX OFFICER - (2018) 52 CCH 0267 MumTrib - ITA Nos. 38 to 43/Mum/2018 dated April 2, 2018

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

Vegesna Ananthakoti Raju v DCIT (International Transactions) (2018) 52 CCH 0279 VishakapatnamTrib - ITA No. 528/Vizag/2017 dated 04.04.2018

778. SLP was granted by the Apex Court against High Court ruling that where flats constructed by assessee were held as stock-in-trade and same were not at all let out for any previous years, there would be no question of availing vacancy allowance under section 23(1)(c); and assessee would be liable to pay tax on ALV of said flats under section 23(1)(a).

Ansal Housing & Construction Ltd. v ACIT [2018] 95 taxmann.com 17 (SC) – SLP (C) NOS. 11016 AND 11017 OF 2018 dated 04.05.2018

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

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

780. The assessee let out amenities like flooring, Generator, Electrical Cabling, Plumbing, Sprinklers, Hydrants, Signage, Anchor space etc. along with its properties and treated income from the same, i.e. rent as 'Income from House Property'. The AO held that income from letting out amenities was taxable as 'Income from Business or Profession'. While allowing the assessee's appeal, Tribunal relied on the co-ordinate bench ruling in the assessee's own case for earlier years wherein it was held that amenities were part and parcel of the rent agreement and that the amount received was rent and should be taxable as 'Income from House Property'. While doing so, Tribunal also relied on the ruling of the

jurisdictional High Court in the case of J.K. Investors (Bombay Ltd.) ITA No. 1089 to 2011 and Bhaktavar Construction Pvt. Ltd. (162 ITR 452) wherein it was held that amenities agreement cannot operate in isolation of the rent agreement.

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

d. ***Business Income***

781. The assessee earned a total sum of Rs. 4.30 crore including Rs. 2.36 crore from rental income / fee for craft stalls installed in a tourism festival called 'Dilli Haat' which it offered to tax under the head Profits and Gains from Business. The Assessing Officer held that the entire rental income constituted 'income from house property' observing that the assessee constructed certain permanent structures as well as temporary constructions which it rented to several organizations. The Tribunal noted that out of the total sum of Rs. 2.36 crore the assessee only disputed the amount of Rs. 1.82 crore earned on account of license fee for use of craft stalls for a period of 15 days and conceded to the balance. Vis-à-vis the receipt of Rs. 1.82 crore, the Tribunal observed that the stalls were set up with main object to promote tourism and to attract tourists and the rent was charged for each craft stall for use of designated area in Dilli Haat. Considering that the stalls were set up in light of overall object of promoting tourism the income from such craft stalls could not be considered as anything other than business income.

DELHI TOURISM AND TRANSPORT DEVELOPMENT CORPORATION LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0258 DelTrib - ITA No. 3457/Del/2007, 1505/Del/2009

782. The Tribunal held that non-compete fees received by the assessee as the then senior partner of a CA firm from PwC for foregoing his partnership interest in the said firm and relinquishing his right to practice as a Chartered Accountant and Financial Consultant in India for a period of 5 year was non-taxable capital receipt as section 28(va) clearly provides that the same would be applicable in a case where any sum was received or receivable under an agreement for not carrying out any activity in relation to any 'business' and not 'profession' and such intentional absence of the term 'profession' reveals the clear legislative intention. It further held that the insertion of the term 'or profession' in the said section vide the Finance Act, 2016 is prospective in nature and was not applicable to year under consideration.

Shri Ashok M. Wadhwa v. ACIT - TS-610-ITAT-2017(Mum) - ITA No. 1871 & 2576/Mum/2012 dated 20.12.2017

783. Where assessee was following Percentage Completion Method, the Tribunal accepted AO's stand of recognizing revenues in respect of advance received by assessee (engaged in residential township development) from the customers to the extent of stage of completion, noting that in terms of the plot buyer agreement, significant risk relating to the real estate was transferred by assessee to the buyer. It held that revenue accrued when plot buyer agreement was entered into and not only when the sale deed was registered. However, referring to ICAI Guidance on recognizing revenues from real estate transactions, it rejected AO's action of recognizing entire sale consideration in case of sale deeds executed instead of proportionate revenues.

Vastukar Township Pvt Ltd v DCIT - TS-617-ITAT-2017(JPR) - ITA No. 105,106, 119, 120 & 172/JP/2017 dated 22.12.2017

784. The Apex Court dismissed revenue's appeal against the High Court decision wherein the High Court, noting that the assessee-NBFC did not receive any interest on Inter Corporate Deposits categorized as NPA since many years and even the recovery of principal amount was doubtful, had held that interest income thereupon did not accrue in terms of the RBI Prudential Norms. Addressing revenue's argument that the Supreme Court in the case of Southern Technology had held that RBI Act does not override the provisions of Income-tax Act, The Court had clarified that the Supreme Court's observation was in context of allowability of deduction for NPA provision u/s 36(1)(vii), however in respect of income recognition, Supreme Court had held that income is to be recognized in terms of RBI Prudential Norms even though the same deviated from mercantile system of accounting and/or section 145.

Vasisth Chay Vyapar Ltd - TS-619-SC-2017 - Civil Appeal No. 5811 of 2012 (SC) dated 13.12.2017

785. The Tribunal approved assessee's action of aggregating both the policyholders' and shareholders ' account while determining the income from life insurance business for applying the provisions of section 44 r.w. First Schedule after noting that a life insurer is not permitted to carry on any business other than that of life insurance and that investments made out of shareholder funds is an integral and inextricable part of the life insurance business and not an independent business. In this regard, Tribunal followed Mumbai Tribunal ruling in ICICI Prudential Insurance Co. Ltd. which is approved by Bombay HC. Tribunal deleted additions made in respect of the amount declared and allocated as bonus for participating policy holders and amounts appropriated as Funds for Future Appropriation observing that both the amounts were with respect to ascertained liabilities as against Revenue's stand of including the same in actuarial surplus.

Max New York Life Insurance Company Limited v DCIT - TS-3-ITAT-2018(DEL) - ITA No.142/Del/2017 & CO No. 123/Del/2017 dated 05.01.2018

786. Where assessee, who was director of a company, alongwith his wife, purchased certain immovable properties from the company at a value lower than the market value determined for stamp duty purposes, Tribunal rejected the Revenue's contention that benefit derived from above activity was an adventure in nature of trade/business taxable under the head profit and gain of business or profession as per section 28(iv), since the assessee had shown the properties as investments in his books and the revenue itself had accepted it to be investment activity.

Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018

787. Tribunal held that authorities below were justified in making addition to assessee's income as perquisite u/s 28(iv) on account of a watch worth Rs. 40 lakhs received as gift from company for which she had undertaken advertisements and promotional activities on remuneration basis.

Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 144 (Mum) – ITA Nos. 2524 and 2769 (Mum) of 2015 dated 16.01.2018

788. Where assessee, a film actress, had done promotional activity on being brand ambassador of NDTV Toyota Greenathon campaign and, accordingly, had promoted brand Toyota, Tribunal held that the receipt of Toyota car as gift in this connection had rightly been added in her hands as perquisites u/s 28(iv)

Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 1 (Mum) – ITA Nos. 2771 (Mum) of 2015 dated 16.01.2018

789. Where the assessee company, engaged in deriving rental income from letting out of warehouse, treated rental income received as business receipts but the AO completed assessment u/s 143(3) treating rental income received from letting out of warehouse as Income from House Property, the Tribunal relying on its earlier years order in the case of the assessee held that warehouses constructed by assessee were commercial assets and income that arose from leasing out commercial property constituted business income. It noted that the warehouses constructed were as per international standards and therefore held that the services offered by the assessee could not be regarded as routine services to be rendered by any ordinary property owner as part of lease and therefore held that the rentals constituted business income of the assessee.

INCOME TAX OFFICER vs. ANJANEYA INFRASTRUCTURE PROJECT PVT. LTD. - (2018) 52 CCH 0220 BangTrib - ITA No. 2509/Bang/2017 dated Mar 23, 2018

790. The Tribunal upheld the action of AO in rejecting the books of accounts of the assessee-firm and estimating net profit at rate higher than the rate of net profit declared by assessee in her return of income on the ground that the assessee had declared net profit at rate which was far less in comparison to profit rates achieved in earlier years and there were various discrepancies found and also noting that the assessee had failed to show any justification for payment of additional rent during relevant year. It further held that since the assessee had also failed to demonstrate as to what services had been rendered by her husband or daughter to whom salaries had been paid, the said salaries claimed by assessee towards husband and daughter were disallowed.

Smt. Kantaben Ramjibhai Chaudhari v ITO – (2018) 91 taxmann.com 179 (Ahmedabad Trib) – ITA No. 1 (Ahd.) of 2016 dated 16.02.2018

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

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

793. Where AO added amount due to a group concern to the assessee's income as per section 41(1), taking a view that since the group concern had ceased its business operations, the assessee would not pay the dues, the Tribunal deleted that addition in view of fact that entire balance outstanding was reflected as receivable in books of the group concern, which was also assessed by very same AO and, thus, there could not be any cessation of liability on part of the assessee.
Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

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

795. Where assessee billed the license fees receivable for the calendar year in January but accounted its income to the extent it was attributable for period January to March in year and offered the balance to tax in subsequent assessment year, the Court held that since obligation in respect of license fees billed for entire calendar year was yet to be discharged at end of previous year, the same would be due only in the next previous year related to the next assessment year. Accordingly, it rejected AO's contention that as assessee was following mercantile system of accounting, it should have accounted entire income billed for tax in relevant assessment year.
Pr.CIT v C.U. Inspections India (P.) Ltd. – (2018) 91 taxmann.com 344 (Bom) – ITA No. 620,622 & 711 of 2015 dated 22.01.2018

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

the professional contracts carried on by assessee were 'contract for service' and not 'contract of service', accordingly the said receipts were business receipts and appropriate expenditure were to be allowed.

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

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

Pr.CIT v SATYA SHEEL KHOSLA - (2018) 101 CCH 22 (Del HC) - ITA 289/2016 dated 29.01.2018

798. The Tribunal deleted the addition made u/s 41(1) with respect to outstanding payment of commission payable to an agent with whom the assesse had entered into MOU for procuring business from overseas, where according to the AO the said liability ceased to exist as assessee could not submit any proof of creditor agent making any request to assessee for clearance of outstanding payment. It noted that MOU entered into between assessee and its agent was before the Revenue and it had not brought on record any evidence to prove that said MOU was not genuine or no commission was payable to the said agent for business generated by him in favour of assessee in earlier years and that the Revenue had also allowed this commission payable in earlier years as an expense.

Pyramid Consulting Engineers (P.) Ltd. v DCIT – (2018) 90 taxmann.com 411 (Mum) – ITA No. 1972/Mum of 2016 dated 23.01.2018

799. The assessee purchased and sold shares of Rs. 22.03 crores and Rs. 24.12 crores respectively and declared the income arising from sale of shares as short-term capital gain. The Tribunal upheld the AO's finding that since the assessee had regularly dealt in purchase and sale of share which indicated period of holding to be very short (assessee had made purchase of shares 57 times and sale of shares 59 times and there were several instances when assessee had purchased shares and sold them either same day or after a few days), the income arising therefrom was to be considered as business income. Observing that the Tribunal had duly considered volume of holding, duration of holding, and income derived as dividend to investment made. The Court upheld the order of the Tribunal and held that it had rightly held that income arising from sales of shares was assessable as business income.

Rakesh Kumar Gupta v CIT - [2018] 92 taxmann.com 101 (Delhi) - IT APPEAL NO. 86 OF 2018 dated MARCH 15, 2018

800. Where the assessee was providing warehousing services along with other facilities such as security service and other services to keep goods safe and under hygienic conditions, the Tribunal held that the said activity systematically undertaken by assessee was in nature of business and the AO was not justified in taxing the income as rental income under the head income from house property merely because the payer deducted tax under Section 194-I of the Act.

DCIT v Tewari Warehousing Co - [2018] 92 taxmann.com 168 (Kolkata - Trib.) - IT APPEAL NO. 1316 (KOL.) OF 2016 dated MARCH 16, 2018

801. Where the assessee claimed carry forward of business loss in respect of expenditure on school fares of director's children, rent paid for director's residence and commission paid to broker for rental premises, which was disallowed on ground that no business was set up in previous year relevant to subject assessment year, the Court upheld the order of the Tribunal wherein it was held that since the assessee failed to produce necessary evidence in support of its claim that business was set up and it was ready to commence, expenditure incurred by assessee prior to setting up of business could not be allowed.

ALD Automotive (P.) Ltd. v DCIT - [2018] 91 taxmann.com 475 (Bombay) - [2018] 91 taxmann.com 475 (Bombay) - IT APPEAL NO. 1149 OF 2015 dated MARCH 5, 2018

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

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

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

805. The Apex Court held that the waiver of loan taken for acquiring capital assets could neither be taxed as perquisite u/s 28(iv) nor as remission of liability u/s 41(1) by holding that –

- for invoking provisions of section 28(iv), benefit received has to be in some form other than in shape of money and since the waiver amount represented cash/money, the said section was not applicable
- for application of section 41(1), it is sine qua non that there should be an allowance or deduction claimed by assessee in respect of loss, expenditure or trading liability incurred, however, assessee had not claimed deduction u/s 36(1)(iii) for interest on loan and loan was obtained for acquiring capital assets, hence, the waiver was on account of liability other than trading liability and, thus, provisions of section 41(1) were also not applicable

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

806. Assessee was awarded a contract with HPCL for transportation of HPCL's petroleum product. On execution of contract, HPCL made payment to assessee firm after deducting Tax at Source. The assessee firm failed to show receipts out of contract in its account contending that the owner of the truck was one Mr. Lal and the entire income was transferred to Mr. Lal. However, the AO made addition under undisclosed profits and the CIT (A) and the Tribunal upheld AO's order. The Court, concurring with the lower authorities, held that as per s.198 all sums deducted in accordance with Chapter XVII for purpose of computing income of assessee shall be deemed to be income received and TDS by HPCL would be treated as payment of tax on behalf of assessee from whose income deduction was made. Also, as assessee had availed the benefit of deduction, the contract was between HPCL and the assessee and the entire payments were made in favour of the assessee, the addition was justified.

Lal Prasad & Sons v CIT (2018) 101 CCH 0262 Pat HC - Miscellaneous Appeal No. 678 of 2010 dated 23.04.18

807. The assessee was engaged in the business of real estate and entered into a consortium agreement with one JMA company to purchase a land and would resell it to other buyer. The JMA company defaulted in its commitment within prescribed and extended time limit thereby leading to the arbitration proceeding and as settlement of dispute, the assessee was awarded huge compensation/damage. The AO as well as CIT(A) regarded this amount as revenue in nature holding that the land for which the compensation/damage was received was a part of stock-in-trade. The Tribunal dissented with AO and CIT(A) and followed CIT v Bombay Burmah Trading Corpn (SC) wherein it was held that 'if there was any capital asset, and if there was any payment made for the acquisition of that capital asset, such payment would amount to a capital payment in the hands of the payee. Secondly, if any payment was made for sterilization of the very source of profit-making apparatus of the assessee, or a capital asset, then that would also amount to a capital receipt in the hands of the recipient.' Therefore, the Court held that the amount received as compensation for immobilisation, sterilization, destruction or loss, total or partial of a capital asset would be capital receipt and dismissed revenue's appeal.
PCIT v Aeren R Infrstructure Ltd. (2018) 101 CCH 0189 DelHC(2018) 404 ITR 0318 (Delhi) - ITA 235/2017, ITA 236/2017 dated 25.04.18

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

809. The Tribunal held that where assessee, carrying on trading activities in stock and commodities, held derivatives as stock-in-trade, its claim for loss at end of year on mark to market basis could not be disallowed on the ground that same was contingent in nature.
Edel Commodities Ltd. v DCIT [2018] 92 taxmann.com 133 (Mumbai – Trib.) – ITA NOS 3426 AND 3576 (MUM.)OF 2016 dated 06.04.2018

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

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

812. The assessee was engaged in the execution of civil / electrical and air conditioning contracts for defense establishments. During the course of search proceedings on the assessee's premises, certain evidences were found indicating inflation of expenditure, suppression of income and bogus sub-contract payments. The assessee had accepted the same for completion of assessment by reasonable estimation of income. Accordingly, the AO completed assessment by estimating income at 12% of gross contract receipts as net income, clear of depreciation and all other expenses. The CIT(A) directed the AO to estimate income at 12.5% of gross contract receipts and to grant deduction in respect of depreciation out of gross income so arrived at. Tribunal observed that jurisdictional Tribunal as well as Coordinate Benches held that estimation of income in case of civil contracts @ 8% to 12.5% was reasonable and thereby upheld the order of the CIT(A). Accordingly, the Assessee's appeal was dismissed.

SVC PROJECTS PVT. LTD. & ANR. vs. ACIT & ANR. (VISHAKAPATNAM TRIBUNAL) (ITA No. 169-175/Viz/2013, 183-189/Viz/2013) dated May 23, 2018 (53 CCH 0075)

813. Where the Assessee was engaged in the business of Rice Shelling, the AO rejected the books of accounts and made an addition by adopting GP ratio of 15% for manufacturing goods and 3% for trading goods. While doing so, the AO did not categorically state the basis for arriving at the GP ratios. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Apex Court in Kachwala Gems Vs. JCIT (288 ITR 10)* wherein it was held that estimation of GP should be honest and fair and should not be arbitrary, though it contained certain degree of guess work. Thus, keeping in view the profits declared by the Assessee and estimation done by the AO and keeping in view the history and earlier profits declared by the Assessee, the Tribunal estimated the GP at 2% for trading goods and 12% for manufacturing goods. Thus, the Assessee's appeals were allowed.

KRISHNA GRAM UDYOG SAMITI & ANR. vs. DCIT & ANR. (CHANDIGARH TRIBUNAL) (ITA Nos. 287, 288, 1438 to 1442/Chd/2017, 1327 TO 1333/Chd/2017) dated May 25, 2018 (53 CCH 0134)

814. AO made addition in respect of cash found at residence and hospital chamber of assessee during course of search proceedings as the assessee could not prove genuineness of source of cash. CIT(A) deleted the addition and held that cash found during search and seizure operations was part of amount of professional receipt and the same was accounted by the assessee. Tribunal held since the CIT(A) gave categorical finding that cash found during course of search was already disclosed in return of income, no separate addition could be made. Thus, Revenue's appeal was dismissed.

ACIT vs. K. RADHA KRISHNA (VISHAKAPATNAM TRIBUNAL) (ITA No. 65/Vizag/2014) dated May 18, 2018 (53 CCH 0058)

815. The AO disallowed prior period expenses holding that since assessee was following mercantile system of accounting, it should not be allowed to claim prior period expenses on actual basis. The CIT(A) upheld the order of the AO observing that the assessee did not file any explanations or evidence to substantiate that the prior period expenditure claimed was crystallized during the current year. The Tribunal relied on the assessee's own case for earlier years wherein it was held that the concept of claiming expenses as prior period expenses on basis that they have been actually incurred in impugned Assessment Year and was in accordance with concept of mercantile system of accounting. Thus, Assessee's ground was allowed.

ORISSA MINING CORPORATION LTD. & ANR. vs. JCIT & ANR. (CUTTACK TRIBUNAL) (ITA Nos. 69 & 183/CTK/2014, 70 & 257/CTK/2014) dated May 17, 2018 (53 CCH 0188)

e. ***Deductions/ Disallowance***

Section 32

816. The Tribunal held that cutting of the coil to the required size as per the specification of the customer did not amount to manufacturing activity and therefore held that the assessee was not entitled additional depreciation u/s 32(1)(iia) on new machinery purchases for this purpose.

DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. JSW STEEL PROCESSING CENTRES LTD. & ANR - (2018) 52 CCH 0167 BangTrib - ITA No. 1978/Bang/2017, 2001/Bang/2017 dated Mar 7, 2018

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

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

819. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for carry forward and set-off of unabsorbed depreciation pertaining to AY 1996-97 to AY 2001-02 against the income for the current year i.e. AY 2011-12, where the assessee had contended that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which the benefit could not be claimed. It held that the issue stood covered by the Tribunal's order in assessee's own case for AY 2009-10 decided in assessee's favour placing reliance on the decision in the case of General Motors India P. Ltd. Vs. DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001, which was further fortified by CBDT circular No.14 of 2001, noting that the revenue could not place on record any contrary judgment to controvert the same.
ACIT & ORS v INDUSIND MEDIA & COMMUNICATION LTD. & ANR. – (2018) 52 CCH 46 (Mum) – ITA No. 772/Mum/2016, 1167/Mum/2016 dated 17.01.2018

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

821. Where the assessee, engaged in the business of providing film projection services to the theatres, claimed depreciation on film projector at a higher rate treating it as 'computer', the Tribunal held that though some elements of computer functions were necessarily involved, the projector could not be said to be a machine whose principal output/object/function was achieved only through computer function and, accordingly, upheld the order of CIT(A) considering the film projector as plant & machinery entitled for depreciation @15% and not a computer entitled for depreciation @60%.
Cinetech Entertainment India (P.) Ltd. v ITO – (2018) 169 ITD 218 (Mum) – ITA No. 4971 (Mum.) of 2017 dated 05.02.2018

822. The Tribunal held that the deduction with respect to motor car expenses and depreciation on motor car was allowable where the the assessee has used motor car for the purpose of business even though the car was in the name of director. However, since the assessee failed to furnish log book to prove the use of vehicle for the purpose of business, the matter was remanded to AO for verification

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

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

824. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee-charitable trust, running a hospital, deduction claimed (under the nomenclature 'additional depreciation') with respect to write-off of the written down value of hospital equipments in the books of accounts which the assessee could neither sell as scrap nor it could use them, relying on the ratio laid down in the case of Institute of Banking Personnel Selection (IBPS) v. CIT (2003) 264 ITR 110 (Bom) wherein it was held that the income of Trust has to be computed on commercial principles, rejecting the revenue's argument that there is no provision in the Act to allow such additional depreciation. It held that the CIT(A) as well as the Tribunal had after placing reliance upon Institute of Personnel Banking Selection (IBPS) (supra) had implicitly upheld the application of the principle laid down in section 32(1)(iii) which provides that where a plant and machinery is discarded/destroyed in previous year, the amount of money received on sale as such or as scrap or any insurance amount received to extent it falls short of written down value is allowable as depreciation, provided same is written off in books of account. With respect to Revenue's objection against the nomenclature 'additional depreciation', the Court held that nomenclature cannot decide a claim. Further, it held that in any case, the impugned amount could also be allowed as an expenses u/s 37 as it was an expenditure incurred wholly and exclusively for carrying out its activity as a hospital (on application of commercial principles).
CIT(E) v Bhatia General Hospital – (2018) 91 taxmann.com 361 (Bom) – ITA No. 846 of 2015 dated 26.02.2018

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

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

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

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

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

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

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

832. The assessee made payment to P of non-compete fees as per the non-competition agreement and claimed depreciation by treating the same as intangible asset. The AO disallowed the claim on the ground that though non-compete fee was a capital expenditure, it neither facilitated conduct of business nor fell within the ambit of any of intangible assets or business. The CIT(A) deleted the disallowance relying on various decisions including CIT v. Ingersoll Rand International Ind. Ltd. [227 Taxman 176 (Kar)] wherein it was held that non-compete fee was an intangible asset entitled for depreciation. The

Tribunal held the non-compete fee paid by the assessee to be a capital expenditure in nature of an intangible right with respect to which depreciable is allowable u/s 32(1)(ii). Accordingly, it dismissed Revenue's appeal.

Ferromatic Milacron India Pvt. Ltd. v DCIT (2018) 52 CCH 0553 AhdTrib - ITA Nos. 2451 & 2616/Ahd/2015 dated 19.04.2018

833. The Tribunal allowed assessee's claim for depreciation on helicopter @ 40% which was restricted by the AO to 15%. The AO held that even though helicopter is an aircraft, it is not specifically mentioned in Appendix I of the IT Rules, 1962 under the head III 'Plant and Machinery' at clause 3(i) providing for depreciation @ 40% for 'Aeroplane - Aero engine' and was thus eligible for depreciation @ 15% as allowable to Plant in general as defined in section 43(3). The Tribunal relied to the decision of CIT Vs. Kirloskar Oil Engines (230 ITR 88) (Bom) wherein it was held that "aircraft" inter alia includes helicopters and thus held that the assessee was entitled for depreciation @ 40% on the written down value of its helicopters.

RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015 dated Apr 10, 2018

834. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for additional depreciation on electrical installation consisting of electrical wires, switches, plugs, cables, MCB box and electrical items, holding that they cannot function independently and rather are part of 'Plant & Machinery', relying on the coordinate bench decision in the assessee's own case wherein the said issue was decided in favour of the assessee.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. 20 MICRONS LTD. & ANR. - (2018) 52 CCH 0443 AhdTrib - ITA No. 1046/Ahd/2014, 1216/Ahd/2014 dated Apr 11, 2018

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

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

836. The Court dismissed Revenue's appeal against the Tribunal's order upholding CIT(A)'s order allowing the assessee's claim for additional depreciation with respect to machineries used by the assessee in the activity of crimping of yarn. The Revenue contended that the said activity was an intermediate process of treating yarn and did not fall within the purview of manufacturing activity. The Court followed the decision in the case of CIT v. Emptee Poly Yarn (P.) Ltd. [2008] 305 ITR 309 (Bom.) wherein in the context of deduction u/s 80IA, it was held that the activity of texturizing and twisting of yarn amounted to manufacturing of article or thing distinct from the original and thus the said activity was a manufacturing activity.

CIT v Shri Mahavir Crimpers - [2018] 95 taxmann.com 323 (Gujarat) - R/TAX APPEAL NO. 547 OF 2018 dated June 13, 2018

837. The assessee claimed depreciation on 'Electrical fittings' @ 15% applicable to 'Plant & Machinery'. The AO rejected the said claim and observed that the correct rate of depreciation was 10% as it fell under classification of "furniture & fittings". CIT(A) upheld AO's order. The Tribunal upheld the orders of CIT(A) and AO noting that the assessee had not shown before the lower authorities how the rate of 15% could be applied and how electrical fittings would fall in the classification of 'Plant and Machineries' to qualify as deduction at the higher rate of depreciation. Accordingly, it dismissed the assessee's ground of appeal.

Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

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

839. Where the assessee withheld TDS in respect of management and license fees @ 20% instead of 20.6% (TDS 20% plus Surcharge 3% on TDS) and the CIT(A) confirmed the action of the AO in making disallowance under Section 40(a)(ia) of a proportionate sum to the extent of such short deduction, Tribunal relied on the decision of the Kolkata Tribunal in SK Tekriwal (48 SOT 515) (affirmed by Kolkata High Court) and held that disallowance under Section 40(a)(ia) cannot be made for short deduction of taxes.
Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018

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

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

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

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

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

Section 32A

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

Section 33AB

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

Section 35

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

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

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

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

850. The Petitioner trust had taken approval from National Committee in order to get maximum donations for purpose of constructing a new hospital, whereby donors would be qualified to claim deduction under section 35AC. In the meantime, sub-section (7) was inserted in section 35AC with effect from 1-4-2017 providing that no deduction under said section would be allowed in respect of any assessment year commencing on or after 1-4-2018. As a result of the amendment, no donors were coming forward to donate amount which was required for construction of specified hospital and therefore the Petitioner filed a petition challenging vires of section 35AC(7) contending that said amendment would have an adverse effect on projects pending as on 1-4-2017. Before the Apex Court, the Petitioner undertook to pay the amount of tax which the donors would be entitled for exemption along with applicable interest, if the petition filed by it failed. In light of the undertaking, the Apex Court observed that the donors who wanted to donate some money to the petitioner for construction of the specified hospital by the petitioner may claim exemption under Section 35AC of the Income Tax Act. It listed the matter for final disposal in April.
Prashanti Medical Services & Research Foundation v UOI - [2018] 92 taxmann.com 71 (SC) - SPECIAL LEAVE TO APPEAL (C) NOS. 34287/2017† dated MARCH 9, 2018

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

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

853. The Tribunal held that if recognition to facility given by prescribed authority which is mandate of section 35(2AB) is maintained, assesse has to be accorded deduction under section 35(2AB) and non-receipt

of Form No. 3CM is at best a procedural lapse and is not fatal for denial of claim of deduction under section 35(2AB).
Minilec India (P.) Ltd. ACIT [2018] 93 taxmann.com 213 (Pune – Trib.) – IT APPEAL NO. 690 (PUN.) OF 2015 dated 09.04.2018

Section 35AB

854. The assessee had entered into an agreement with Oldham Batteries Ltd., UK to receive outside India a license to transfer and import information, know-how and drawings as required for the manufacture of miners caplamp batteries and stationery batteries for which a lump sum consideration was paid in three equal instalments and the permission was only to use the know-how and information without the transfer of ownership. The claim of the assessee for deduction u/s 37(1) was denied by the AO on the ground that the assessee's case was covered by Section 35AB and consequently he allowed deduction at the rate of 1/6th of the amount and the balance amount was to be deducted in equal instalments for each of the five immediately succeeding previous years in terms of section 35AB. The appeal of the assessee was dismissed by the Tribunal on the ground that the assessee had acquired ownership rights in the technical know-how included in the agreement and was entitled to deduction u/s 35AB as against 37(1). The Court dismissed the appeal and stated that the payments made in instalments for using technical know-how does not cease to be a lump sum payment. The court further held that the obtaining of technical know-how under license amounted to acquiring the know-how as the words 'on ownership basis' was completely absent u/s 35AB(1) and accordingly decided in favour of the Revenue.
Standard Batteries Ltd. v. CIT - [2018] 93 taxmann.com 293 (Bombay) - IT REFERENCE NO. 13 OF 2001 dated APRIL 27, 2018

Section 35AD

855. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing deduction claimed u/s 35AD by the assessee for AY 2012-13, notwithstanding the fact that the assessee had applied for categorization as three star hotel before the Ministry of Tourism under the aegis of Government of India on 7-6-2013 and such classification as a three star hotel, was awarded by a letter dated 24-9-2013 for the period of 11-9-2013 to 10-9-2018. It held that there no time limit of obtaining star certificate is prescribed in section 35AD and the only requirement was to build an operation of two or more star hotel classified by the Central Government.
ACIT v River View Hotels - [2018] 94 taxmann.com 433 (Ahmedabad - Trib.) - IT APPEAL NO. 1799 (AHD.) OF 2016 dated June 26, 2018

Section 35B

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

Section 36

857. Where the assessee claimed deduction on account of reversal of NPA interest credited to its P&L account (as the amount it was supposed to receive from the Government was no longer receivable), the Tribunal held that the AO was not justified in denying the assessee deduction of the same on the basis that the same amount had been claimed as deduction in the subsequent year without appreciating that though the assessee had claimed the deduction in the subsequent year, it reversed its claim by making

an addition in its computation of income as it realized that it had claimed the impugned deduction during the year under review.

BULDHANA DISTRICT CENTRAL COOP. BANK LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0237 NagTrib - ITA No. 127 & 128/NAG/2015 dated Mar 6, 2018

858. The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction of interest paid on advances received from 2 entities which was disallowed by the AO on the ground that the said advances were not received for the purpose of business. The Tribunal had held that the said advances were received for the purpose of business noting that the assessee was engaged in the business of acquiring satellite and overseas rights of films and CDs and the advances were received for acquiring satellite and overseas business. The Court held that the finding of the Tribunal was essentially a find of fact and the same had not been shown to be perverse and/ or arbitrary in any manner.

CIT v Lotus Investments Ltd. – ITA No. 1554 of 2007 (Bom) dated 22.01.2018

859. Court declined to give relief to assessee with respect to disallowance made by AO towards interest on investment expenditure u/s 36(1)(iii) where assessee forayed into a new business and it was found by AO that assessee-company's balance sheet as on 31-3-2006 showed borrowed funds at much higher amount as compared to the assessee's own funds, excluding statutory reserves and thus concluded that assessee had borrowed funds for starting new line of business. Court held that since, assessee could not demonstrate to AO's satisfaction that it actually invested its own funds to start new business impugned disallowance made by AO was justified.

Muthoot Finance Ltd. v JCIT – (2018) 90 taxmann.com 69 (Ker) – ITA No. 27 of 2015 (Ker) dated 11.01.2018

860. The Tribunal upheld the proportionate disallowance made by the AO with respect to assesse's claim for deduction u/s 36(1)(iii) where the assessee had given advances to unrelated parties during course of business and contended that it had not charged interest on advance given to seven parties as they were not traceable or in financial difficulties but could not furnish a single evidence in support of its contention / claim.

Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018

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

Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018

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

ITO v COUNT TRADE LINK PVT. LTD. – (2018) 52 CCH 15 (Del Trib) – ITA No. 5830/Del./2010 dated 04.01.2018

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

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

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

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

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

868. The Tribunal deleted the proportionate interest disallowance made by the AO u/s 36(1)(iii) on account of investment made by the assessee in a company (i.e. engaged in power generation) during the year,

noting that the assesse-company, engaged in production of various steel items, was in continuous need of uninterrupted power supply and in view of the said investment it was entitled to obtain 35KWH power supply. The Tribunal held that the said investment was beneficial for the business interest of the assessee and thus did not warrant disallowance u/s 36(1)(iii).

DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. MAHINDRA CIE AOTOMOTIVE LIMITED & ANR. - (2018) 52 CCH 0300 MumTrib - ITA No. 6659/Mum/2014 (Cross Objection No. 96/Mum/2016) dated Apr 11, 2018

869. The Tribunal allowed the assessee's claim for deduction u/s 36(1)(iii) w.r.t. interest paid on amount borrowed for investment in two 100% subsidiary company which were in same line of business, noting that it was not shown that investment was made only for the purpose of earning dividend. It relied on the decision in the case of CIT Vs. Phil Creation [(2011) 202 Taxman 368 (Bom)] wherein it was held that as the investment was made by the assesse-company out of bank overdraft in the shares of its subsidiary company to have control over that company being an integral part of its business, interest paid by the assessee attributable to said borrowings was allowable as deduction u/s 36(1)(iii)

DEPUTY COMMISSIONER OF INCOME TAX vs. T.G. LEISURE & RESORTS PVT. LTD. - (2018) 53 CCH 0239 (Del Trib) - I. T. A. Nos. 3844 & 6138 & 3863 & 5777 (Del) of 2014 dated June 25, 2018

870. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(viia) with respect to provision of bad and doubtful debts on the basis of advances given by the rural branches, which was disallowed by the AO without giving any concrete reason but only stating that the definition of rural branches is not to be restricted to a village only where the branch is situated rather, it is "region" for which the branch has been set up by the parental Bank. For the purpose of section 36(1)(viia), "rural branch" means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. The Tribunal followed the decision in the assessee's own case for another year wherein it was noted that the relevant figures of last preceding census obtained from Website of Census of India and produced by the assessee were rejected by the AO, holding the assessee to be negligent for not providing letter from Tehsildar, or from other Government Agencies or the copy of Census Report, whereas even before the Tribunal, the figures produced by the assessee were not shown to be wrong or false. In that case, noting that the CIT(A) had verified the chart of aggregate average advances by the assessee's rural branches, on a test-check basis with the primary records of the assessee bank, the Tribunal had upheld the CIT(A)'s order allowing the assessee' claim in full.

DEPUTY COMMISSIONER OF INCOME TAX vs. KSHETRIYA KISAN GRAMIN BANK - (2018) 53 CCH 0278 AgraTrib - ITA No. 382/Agra/2017 dated June 01, 2018

871. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(iii) with respect to interest on borrowings made for installation of captive power plant. The assessee, which was engaged in the business of manufacturing and selling of pharmaceuticals products, had installed new captive power plant for generation of electricity for purpose of its on-going and existing pharmaceutical business. The AO had disallowed the claim for deduction u/s 36(1)(iii) stating that the assessee had wrongly claimed deduction of interest concerning power project which was different from its main stream of business of pharmaceutical products and that the expenditure was pre-operative in nature pertaining to assets before it being put to use. Noting that the power plant was installed for captive power consumption in the larger context of the business necessity to cut down the costs of power consumption of its existing and on-going pharmaceutical business, the Tribunal held that the interest incurred on power plant incidental to pharma unit was allowable deduction on revenue account.

DCIT v Core Health Care Ltd - [2018] 95 taxmann.com 172 (Ahmedabad - Trib.) - IT APPEAL NOS. 1733 TO 1737 (AHD.) OF 2014 dated June 20, 2018

872. The Court dismissed Revenue's appeal against the orders of Tribunal upholding the order of CIT(A) allowing the assessee's claim for deduction u/s 36(1)(iii) with respect to interest paid on funds borrowed for setting up a joint venture company for production of milk, where the assessee was engaged in business of manufacture and sale of fruit juice and like products. It was held that since concurrent

findings was rendered by the CIT(A) and the Tribunal and the nature of the investment made by the assessee with the borrowed funds appeared to be in the line of its business, the issue did not call for any reconsideration.

CIT v Keventer Agro Ltd - [2018] 95 taxmann.com 154 (Calcutta) - ITAT NOS. 175 & 176 OF 2014, GA NOS. 3609 & 3610 OF 2014 dated June 19, 2018

873. The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(ii) with respect to commission paid by the assessee-company to its Managing Director (MD) who also held majority shareholding of 75% of the total shares. The commission was disallowed by the AO pointing out the exception carved in the said section i.e. any sum paid to an employee as bonus or commission for services rendered is allowable deduction, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission. It held that the said rider or the exception carved out in section 36(1)(ii) would apply only to an employee who was also a shareholder in the company. Though the MD was a major shareholder of the assessee-company, but was not its employee and thus the allowability of the commission paid to him as sales agent would not be hit by the provisions of section 36(1)(ii).

Nat Steel Equipment (P.) Ltd. v DCIT - [2018] 95 taxmann.com 159 (Mumbai - Trib.) - IT APPEAL NOS. 4011, 4681, 5070 & 5270 (MUM.) OF 2013 dated June 13, 2018

874. The Court dismissed Revenue's appeal against the Tribunal's order holding that for the purpose of section 36(1)(viia) r.w. Rule 6ABA of the Income Tax Rules, 1962, the aggregate monthly average advances made by the rural branch of the assessee, a Schedule Bank, is to be computed by taking the amount of advances by each rural branch of such Bank as outstanding at the end of the last day of each month comprised in the previous year and aggregating the same separately, unlike the CIT(A)'s interpretation of considering the loans and advances made during the year only.

Pr.CIT v Uttarbanga Kshetriya Gramin Bank - [2018] 94 taxmann.com 90 (Calcutta) - ITAT NO. 76 OF 2016 dated May 7, 2018

875. During the course of assessment proceedings, AO observed that assessee had claimed bad debt and debited same in profit & loss account and had claimed write-off on the ground that the same were in relation to trade debtors which had been claimed as bad. The AO held that assessee must prove that the debt had actually became bad and disallowed the claim on failure of assessee to prove. However, the CIT(A) deleted the disallowance holding that write-off of bad debts in books of account was sufficient for claiming deduction under amended provisions of Section 36(1)(vii) and assessee was not further required to prove that debt had become bad. The Tribunal concurred with the CIT(A) and dismissed revenue's ground of appeal.

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

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

Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

877. The assessee company had given advance for purchase of business premise in Bharat Diamond Bourse and other immovable properties. The AO held that these advances were for fixed assets and they had

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

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

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

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

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

882. The assessee(banking company) had added back the amout of amortization and depreciation in the SLR investments debited to the P&L A/c while computing the profit from which deduction at the rate of 20%

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

883. The assessee incurred huge expenses for repair and maintenance of leased property in which cement bags, sand, labour charges, etc were consumed for construction of building structure. The AO disallowed such expenses as the assessee was only required to keep the leased premises clean and water proof and maintain it in good condition. CIT(A) allowed the claim of the assessee on the basis of additional evidences in the form of social audit report and considering that the property leased was more than 30 years old which required huge maintenance to keep it in working condition. However, since the CIT(A) neither conducted any independent enquiry, nor called for remand report from AO, the Tribunal remanded the matter to the CIT(A) for fresh determination of case as the appellate order lacked quasi-judicial investigation and analysis.
DCIT vs. Amar Brother Global Pvt. Ltd. – [2018] 53 CCH 0088 (Lucknow ITAT) – ITA No. 236/LKW/2017 dated May 2, 2018

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

Section 37

885. Where the assessee, a reseller of software developed by its overseas AE, paid its AE 45 percent of the value of sales of the software sold to independent domestic parties as a license fee, the Tribunal relying on its earlier years order in the case of the assessee, held that the AO was unjustified in charaterising the payment as a capital payment for acquisition of intangible asset and denying the assessee a deduction under Section 37. It held that the payment could be considered as cost of goods transferred by the AE to the assessee and therefore would necessarily be a revenue expenditure.
AIRCOM INTERNATIONAL (INDIA) PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0311 DelTrib - ITA No. 6617/Del/2013 dated Mar 28, 2018

886. The Court dismissed the appeal filed by the Revenue against the Tribunal's order allowing expenditure incurred by the assessee (following completed contract method of accounting) in earlier years during the progress of contract with respect to the contract which was completed in the relevant assessment year and with respect to which income was offered to tax after deduction of expenditure incurred over entire period of the contract. It rejected Revenue's contention that since the assessee was following the mercantile system of accounting, prior years expenditure could not be allowed as deduction.
Pr.CIT v NathpaJhakri Joint Venture – (2018) 92 taxmann.com 303 (Bom) – ITA No. 808 of 2015 dated 12.02.2018

887. Where the assessee, earlier engaged in the business of manufacturing tiles, had received only rental income from letting out three properties during relevant year which it had treated as business income and the AO opined that rental income was assessable under head 'Income from house property', the

Tribunal held that since main activity of assessee was letting out properties and the rental income was derived without carrying on any other business activity, the said rental income had to be assessed under head 'Income from business or profession'. Further, since the rental income earned by assessee was assessed as 'business income' and the assessee had furnished evidences for payment of remuneration for services rendered by directors to company, it allowed deduction u/s 37(1) with respect to remuneration paid to directors for rendering services in order to earn the said rental income.
Bharat Tiles & Marble (P.) Ltd. v DCIT – (2018) 92 taxmann.com 7 (Mum) – ITA No. 438 (Mum.) of 2015 dated 14.02.2018

888. As against the revenue's contention of treating the annual franchise fee paid to BCCI-IPL for Season 1 as capital expenditure, Tribunal allowed deduction of the same as revenue expenditure under section 37(1) after observing that as per the Franchise agreement the payment of the franchise fee for a year vested assessee with a right to participate in the tournament for that year without guarantee that in the future years it would be eligible to participate in the tournament and thus such recurring annual payment neither vested of any right of participation in the subsequent years, nor lead to creation/ownership of an asset or generation of a benefit of an enduring nature in the hands of the assessee. Tribunal, however, after noting that as per the Franchise agreement, the franchise fee was to be paid on the date on which the first match of the league was played, disallowed the deduction of annual franchise fee for Season 2 charged to the financial of relevant previous year on the ground that the same was to crystallize into an expenditure only on such payment date. Tribunal allowed deduction of amount paid to Police Welfare Fund as per the directions of Cricket Association with respect to security during matches. Tribunal also deleted the disallowance with respect to amount paid for coaching services and other adhoc disallowances.
Knight Riders Sports Private Limited v ACIT - TS-609-ITAT-2017(Mum) – ITA No. 1307/Mum/2013 dated 29.12.2017

889. Where the commission paid by assessee to various agents in order to secure orders from other countries and to ensure that payments were received in a timely manner, the Court held that commission paid to those agents could reasonably be linked with assessee's business, that the expenses could not be disallowed based on the AO's personal understanding of how business ought to have been conducted.
Pr.CIT v Mohan Export India (P.) Ltd. - (2018) 90 taxmann.com 168 (Delhi HC) – ITA No. 640 of 2017 dated 04.01.2018

890. Tribunal allowed deduction u/s 37(1) of royalty paid by the assessee, partnership firm of advocates, to its founder partner for use of brand name, logo or trademark owned by him, irrespective of the Revenue's contention that there was no provision in partnership deed for payment of royalty to founder partner. Tribunal had noted that from partnership deed that name, logo or trademark of firm and other intellectual property rights exclusively belonged to founder partner and that there was a 'Name Licence' agreement in terms of which payment had to be made even to legal heirs of founder partner after his death.
ARA Law v ACIT – (2018) 90 taxmann.com 395 (Mum) – ITA No. 1889 (Mum) of 2017 dated 05.01.2018

891. Tribunal quashed the CIT's order passed u/s 263 wherein the CIT had disallowed the advertisement and publicity expenditure incurred by the assessee, a pharmaceutical company, by invoking the Expln. to section 37(1) and considering the said expenditure to be incurred for a purpose which is prohibited by law being the Medical Council regulation. Tribunal noted that the Medical Council regulation which limits/curbs/prohibits incurring any development or sales promotion expenses is applicable to medical practitioners, not to Pharma or allied health care companies and that the CBDT Circular No. 5/2012, dated 1-8-2012 under which CBDT had stated that the said regulation is applicable to pharmaceutical company cannot impose a burden on the assessee by enlarging the scope of a different regulation issued under a different Act and in any case cannot be reckoned retrospectively (year under appeal being AY 2011-12). Tribunal also noted that the expenditure was incurred for conferences and seminars of doctors organized with the main object to update them about latest developments in medical research and create awareness about new research, which was beneficial to doctors in treating patients as well as to pharmaceutical companies in promoting sale and brand

Solvay Pharma India Ltd. v Pr.CIT - (2018) 169 ITD 13 (Mum) - ITA No. 3585 (Mum) of 2016 dated 11.01.2018

892. Court allowed assessee-bank's claim for deduction u/s 37(1) on account of provision for interest on overdue deposits stating that the liability was ascertained and not unascertained. It held that since assessee was aware of its liability and was able to crystallize it and set it out expeditiously in its returns, possibility of likelihood of depositor renewing overdue deposits or for that matter, payment being made later, would in no way, deflect from the reality that assessee was able to identify its liability when it filed its returns.
Oriental Bank of Commerce v ACIT – (2018) 401 ITR 65 (Del HC) – ITA No. 57 of 2018; CM Appl. 1856 of 2018 dated 17.01.2018

893. The Court rejected assessee's claim for deduction u/s 37(1) for certain sum expended towards housing scheme for poor, holding that philanthropic act of building houses for poor and needy, at time of company's centenary celebrations, did not reveal any commercial expediency or a business requirement.
CIT v Malayala Manorama Co. Ltd. – (2018) 91 taxmann.com 14 (Ker) – ITA No. 1596 of 2009 dated 01.02.2018

894. The Tribunal held that the cost incurred by assessee for repairs of goods returned by its customers on account of low quality was directly connected with business activities of assessee, eligible to be allowed u/s 37(1) and the same could not be disallowed merely because assessee had not produced details of sales which were returned back to it by its customers.
EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018

895. Tribunal allowed assessee-bank's claim for deduction u/s 37(1) for amortisation of premium paid for purchase of securities following the Tribunal's order in the assessee's own case for earlier year.
Allahabad Bank v DCIT – (2018) 169 ITD 189 (Kol Trib) – ITA Nos. 127 of 2011 & 649 (Kol.) of 2013 dated 07.02.2018

896. Where the assessee was to receive reimbursement of certain sales promotion expenses incurred by it in respect of its branded products as per a JV Agreement entered in year 2002 with another company but the said company subsequently refused to reimburse the same and the AO disallowed the assessee's claim for deduction u/s 37(1) with respect to write off of the said reimbursement amount holding that expenses in question were in nature of prior period expenses which could not be allowed as deduction against income of relevant assessment year, the Tribunal allowed the said deduction observing that the expenses were incurred for business purposes only and irrecoverability of same leading to loss got crystallised only in relevant year pursuant to refusal by the said company.
Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

897. The Tribunal allowed deduction u/s 37(1) with respect to ex-gratia /anugrah rashi payments made by assessee (mining corporation), pursuant to a Govt. order, to labourers who were not employed by assessee but were employed by the truck owners entering mining area for excavation and loading of sand in trucks, noting that the ex-gratia payment even though not directly linked to revenue earned by company was very much directly linked with the royalty paid by truck owners to the assessee-corporation, which was calculated on basis of sand excavated from mines.
M.P. State Mining Corpn. Ltd. v ACIT– (2018) 91 taxmann.com 430 (Indore Trib) – ITA Nos. 592 of 2013, 371 of 2014 & 20 of 2015 dated 09.02.2018

898. The Tribunal upheld CIT(A)'s deletion of disallowance made u/s 37(1) of 1/4th of repairing expenses on ad hoc basis on ground that no details in respect of same was furnished, noting that necessary details were duly filed by assessee at time of assessment proceedings but AO was not satisfied with same and holding that if AO was not satisfied with claim of assessee then he had to make disallowance after making specific reference to documents/vouchers produced on record whereas in the present case AO

had made disallowance on ad hoc basis without pointing out any defect/error in evidence produced by assessee.

DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

899. Where the Court held that the amount received by the assessee from one 'G' as an advance was not towards procurement of license as claimed by the assessee but deemed dividend attracting provisions of section 2(22)(e), the Court upheld the disallowance made by AO of the deduction claimed with respect to guarantee commission paid to a third entity for guarantee given by that entity to 'G' for the alleged advance received by assessee on the ground that it was intended for purposes other than of business.

CIT v Prasidh Leasing Ltd. – (2018) 90 taxmann.com 385 (Del HC) – ITA No. 637 of 2004 dated 20.02.2018

900. The Tribunal allowed assessee's claim for deduction u/s 37(1) with respect to provision made for ULC charges [i.e. charges under the Urban Land (Ceiling and Regulation) Act, 1976] payable to State Govt since the liability had arisen because of order passed by Additional Collector in financial year relevant to the assessment year under consideration, irrespective of the fact that the assessee had disputed the said liability before High Court. It held that as soon as competent authority passed an order for payment of ULC charges, said liability could not be considered as contingent liability as same had been ascertained and crystallised. Further, the Tribunal held that since the assessee was following percentage completion method for recognition of revenue for a project and such project had been completed during relevant year, the provision made for ULC charges in its books was in accordance with law.

Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018

901. The Tribunal, in the interest of justice & fair play, restricted the disallowance made by AO with respect to expenses claimed to be incurred by assesseee to maintain the status of the company active under the head 'business expenditure' to the extent of 10% of such expenses where the assessee had not shown any income from the business activity during the year but had offered to tax rental income derived under head 'Income from house property' and the assessee had not brought any material on record suggesting that the expenses claimed under the head of business were incurred exclusively for business purpose and no part of it was incurred in connection with the rental income.

Mangilall Estates (P.) Ltd. v DCIT – (2018) 91 taxmann.com 266 (Kolkata Trib) – ITA No. 156 (kol.) of 2015 dated 21.02.2018

902. Where assessee-company had entered into an agreement to take over business of a proprietory concern and in terms of the agreement only a license to use copyright was granted to assessee, the Court held that since the assessee had not acquired copyright itself, the license fee paid by assessee was allowed to be deducted as revenue expenditure.

Pr.CIT v Mobisoft Tele Solutions (P.) Ltd. – (2018) 90 taxmann.com 383 (P&H) – ITA No. 434 of 2015 dated 22.02.2018

903. The Tribunal deleted the disallowance made by AO u/s 37(1) with respect to advertisement expenditure merely for reason that advertisement hoardings were put up in Surat and Thane where assessee was not having any of its business outlets. The Tribunal held that the assessee had incurred expenditure on advertisement for promoting its business which was in principle allowable and the AO had not disputed genuineness of expenditure.

Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018

904. The Tribunal allowed the appeal of assessee, a pharmaceutical company eligible for deduction u/s 80-IB(4), against the disallowance of Sales Promotion expenses made by the AO on the ground that the CBDT Circular dated 01.08.2012 states that the said expenses (which represent gift or freebies to doctors & medical professional)s were prohibited by the Notification issued by Medical Council of India

(MCI) and thus, not eligible for deduction u/s 37(1) being expense prohibited by law, relying on the decision in the case of DCIT v PHL Pharma Pvt. Ltd. (49 CCH 124) and Solvay Pharma India Ltd. v CIT [ITA No.3585/ Mum/2016] wherein it held that the circular issued by the CBDT enlarging the scope of disallowance to the pharmaceutical companies was without any enabling notification or circular of the MCI and, thus, the pharmaceutical company like the assessee were outside the scope of the circulars by the MCI or the CBDT.

EMCURE PHARMACEUTICALS LTD. v DCIT – (2018) 62 ITR (Trib) 0744 (Pune) – ITA No.1532/PUN/2015 dated 29.01.2018

905. The Tribunal partly deleted the disallowance made by the AO and sustained by the CIT(A) w.r.t. payment of service charges made by the assessee for service rendered by the supplier of goods in relation to purchase of spilt palm kernel fatty acid, due to lack of conclusive evidence to prove that such service was necessary and was actually provided to the assessee. Noting that the services providers had to undertake varied activities as per the service contracts, the confirmation was received from such service providers, the purchases (with respect to which such services were provided) had been accepted as genuine and that such charges were paid by other manufacturers also, it held that the AO and the CIT(A) did not comment on the documentary evidences produced by the assessee and that the AO could not step into the shoes of the businessman to decide whether such expenditure was for the purpose of business or not. The Tribunal, however, upheld the disallowance of the payments made to the intermediaries (not being the supplier) for the same service which were to be provided by the service provider (supplier), holding that in case of direct supply of goods, the payment of service charges to other parties acting as intermediaries was not in the business interest of the assessee.

Hindustan Unilever Ltd. v DCIT – ITA No. 4179/Mum./2013 dated 26.02.2018

906. The Court dismissed the Revenue's appeal field against the Tribunal's order deleting the disallowance made by AO on account of foreign exchange loss claimed u/s 37(1), noting that in past years, in prior and subsequent years, assessee had accorded similar treatment for foreign exchange gains and paid required tax. It held that having regard to consistent approach adopted by assessee, conclusion arrived at by the Tribunal being a concurrent finding with the CIT(A), could not be said to involve any substantial question of law.

PR.CIT v SAMWON PRECISION MOULD MFG. INDIA PVT. LTD. – (2018) 401 ITR 486 (Del HC) – ITA 72/2018 dated 23.01.2018

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

VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018

908. The Tribunal deleted the disallowance made by the AO on account of interest paid to supplier who supplied stores to assessee's tea garden for delay in making payment for supplies made since it pertained to the earlier year, noting that it was the assessee's claim that liability to pay interest itself accrued only pursuant to bill raised by supplier and since the bill was received from supplier after the date of annual general meeting, the same could not have been anticipated by the assessee in order to make a provision for interest on accrual basis in earlier year. It further held that there was no loss that could be attributed to exchequer because of this claim of expenditure by assessee as business expediency of said expenditure and its genuineness had not been doubted by revenue at any point of time.

RYDAK SYNDICATE LTD. v DCIT – (2018) 52 CCH 18 (Kol Trib) – ITA Nos. 301-302 & 304-305/Kol/2016 dated 05.01.2018

909. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by AO of commission expenses debited in P&L a/c on the ground that genuineness of commission paid/reimbursement of expenses was not proved beyond doubt that same were incurred wholly and exclusively for business purpose by noting that the services were rendered for assessee's business by commission agents and the assessee had discharged its onus by filing all possible details including confirmations and TDS and successfully established that genuine expenditure was expended for business purposes. It further held that the AO could not gather positive evidence for department and took decision based on presumptions and not on facts on record and it was not the case of the AO that commission was paid to bogus parties which came back indirectly to assessee through cash.
ACIT v KIWIFX SOLUTIONS – (2018) 52 CCH 32 (Ahd Trib) – ITA No. 1536/Ahd/2013 dated 12.01.2018

910. The Tribunal upheld the CIT(A)'s order allowing the assessee's claim for deduction of commission payable to Managing Director for the earlier year, disallowed by the AO on the ground that since the assessee was following mercantile system of accounting, the said expense pertaining to earlier year was not to be allowed against the income of current year. The Tribunal held that since the commission was payable on the profits and the profits for the earlier year was determined only in the year under consideration after finalizing the account, the allowability on account of commission was crystallized in the year under consideration and thus, the CIT(A) was fully justified in allowing the same.
DCIT v ASSOCIATED PIGMENTS LTD. – (2018) 52 CCH 4 (Kol Trib) – ITA No. 2042/Kol/2014 dated 03.01.2018

911. Where the assessee made payment for compensation for land under the head "social facilities expenses" and the AO disallowed the same on the ground that the amount paid related to acquisition of their land, the Tribunal upheld the order of the CIT(A) deleting the addition and observing that amount was incurred in compliance to Orissa Resettlement & Rehabilitation Policy, 2006' and same had been paid for one-time payment in lieu of employment and training for self-employment and therefore held that the same had been paid for the purpose of business operation.
DCIT v MAHANADI COALFIELDS LTD. & ANR. 2018) 52 CCH 0204 CuttackTrib - ITA No.421/CTK/2013 dated Mar 20, 2018

912. Noting that the assessee's group concern bid and won a contract which it transferred to the assessee and also provided the assessee assistance in the execution of the contract, the Tribunal allowed the assessee's claim of commission paid to the group concern as a valid deduction and held that the AO and CIT(A) erred in denying the said payment as a deduction on the basis that the assessee allegedly failed to provide evidence that the payment was towards its business.
DRISHTI MARINE SOLUTIONS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0195 MumTrib- ITA No. 2803/Mum/2014 dated Mar 20, 2018

913. The Tribunal held that the expenditure incurred by the assessee on Employee Stock Option Plans (ESOP) provided to its employees were to be allowed as deduction under Section 37(1). It dismissed the AO's contention that ESOP expenses were nothing but notional loss and under mercantile system of accounting, notional loss could not be allowed as deduction and held that the Legislature itself contemplated discount on premium under ESOP as benefit provided by employer to its employees during course of service and therefore held that the same was allowable deduction in computing income under head 'Profit and gains of business or profession". It noted that the liability to pay discounted premium was incurred during vesting period and amount of such deduction was to be found out as per terms of ESOP scheme by considering period and percentage of vesting during such period and accordingly set aside the order of the lower authorities.
OXIGEN SERVICES (I) PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0190 DelTrib - ITA No. 3318 to 3320/DEL/2016 dated Mar 16, 2018

914. The Tribunal allowed the assessee deduction u/s. 37 for penalty paid by the assessee to Slum Rehabilitation Authority (SRA) observing that the penalty was paid for regularization of certain construction work within the permissible byelaws of concerned authority and not for infringement or violation of any law. It noted that during the year the assessee had commenced certain construction work before obtaining commencement certificate due to reasons beyond its control as there was an ambiguity in demarcation of the Coastal Regulation Zone, which was later clarified by the Maharashtra Coastal Zone Management Authority from the National Institute of Oceanography and after due survey and demarcation, assessee was granted commencement certificate on payment of necessary fees and accordingly observed that the violation was not an offence under the Act.
Lokhandwala Shelters (I) Pvt Ltd - TS-119-ITAT-2018(Mum) - I.T.A No.5000/Mum/2015 dated 09-03-2018

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

916. The Court allowed deduction u/s 37(1) of lease rent paid for a shed where the shed was originally taken on lease by assessee for a business venture but the same could not start due to delay in getting electric connection and subsequently part of the said shed was leased to another person. It held that merely because there was some difficulty faced by the assessee in commencing the use of the premises it did not follow that the expenses claimed were not for the purpose of the assessee's business.
Pr.CIT v SRBS Entertainment - (2018) 90 taxmann.com 410 (P&H) – ITA No. 280 of 2016 (O & M) dated 18.01.2018

917. The Tribunal held that expenditure incurred by assessee in the form of ROC fee at time of increase of authorised share capital being in nature of capital expenditure, could not be allowed as deduction u/s 37(1). Further, the Tribunal upheld the denial of deduction u/s 37(1) on account of foreign travel expenditure incurred by executive manager of company, noting that assessee was not having any business outside India neither, assessee was exporting any goods or articles nor importing and, thus, in absence of specific purpose of foreign trip of executive manager, expenditure incurred on said trip could not be considered as an expenditure incurred wholly and exclusively for business of assessee.
ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018

918. Where the AO rejected assessee's claim for deduction of administrative expenses on ground that it had discontinued its business operations, the Tribunal held that so long as assessee was in operation and its name was not struck off from register of Registrar of Companies, it had to maintain its status as a company and for said purpose it was necessary to maintain clerical staff and secretary or accountant and incur incidental expenses. It, therefore, held that the AO was not justified in rejecting assessee's claim for deduction of administrative and office expenses.
Sai Fragrance & Flavours (P.) Ltd. v ACIT – (2018) 90 taxmann.com 307 (Mum) – ITA Nos. 7012 (Mum.) of 2011 & 6085 (Mum.) of 2013 dated 31.01.2018

919. Where the assessee made payment on account of royalty for use of brand name, the Court noting that only license to use copyright was granted to assessee company and that the assessee company had not acquired copyright, held that license fee paid was revenue expenditure. It held that the assessee did not own any copyright and was only granted license to use the same.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. MOBISOFT TELE SOLUTIONS (P) LTD. - 2018) 101 CCH 0157 PHHC - I.T.A. No. 434 of 2015 (O&M) dated Feb 22, 2018

920. Where the assessee paid marketing and distribution expenses to HDFC AMC, 5 percent of which was disallowed by the AO on the premise that the payment was designed in such a way that it would lead to losses in the assessee's hand, the Tribunal held that since the AO did not otherwise doubt the genuineness of the transaction, no ad hoc disallowance could be made. Further, it noted that both the assessee and the payee were corporate assessee's and therefore there was no motive for evasion of taxes.

INCOME TAX OFFICER & ANR. vs. HDFC TRUSTEE COMPANY LTD. & ANR. - (2018) 52 CCH 0113 MumTrib - ITA Nos. 5669 & 5670/Mum/2015, 5444/Mum/2015 dated Feb 21, 2018

921. The Tribunal held that prior to the insertion of explanation to Section 37(1) w.e.f 1.04.2015, claim of deduction on account of CSR expenses was not allowable as a deduction under Section 37(1) as it could not be considered to bring direct business benefit to the assessee. It held that the concept of Corporate social responsibility provision had been brought in Companies Act 2013 and consequential amendment was brought to Income Tax Act u/s 37(1) by way of insertion of explanation w.e.f. 01.04.2015 and therefore prior to the said provisions deduction in respect of expenditure incurred under Corporate Social Responsibility was not allowable unless and until expenditure was incurred wholly and exclusively for purpose of business of assessee.

RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORP. LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0130 JaipurTrib - ITA No. 311/JP/2014 dated Feb 23, 2018

922. The Tribunal held that the assessee was not justified in claiming expenses towards earning referral commission income noting that the income was derived from mere reference which did not involve any provision of service or value addition and therefore, in the absence of any further substantiation, it held that the assessee was not justified in claiming expenses towards earning of such income.

RAGA MOTORS PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0103 AsrTrib - ITA No. 11/(Asr)/2017 dated Feb 16, 2018

923. Where the assessee advanced the sum in question to two companies through banking channel in its ordinary course of business in lieu of charging interest and on non-recovery thereof for almost three years wrote them off as sundry balances and claimed the same as revenue loss, the Tribunal held that such claim was to be allowed as a deduction under Section 37(1) of the Act.

GENERAL CAPITAL AND HOLDING COMPANY PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0097 AhdTrib - ITA No. 538/Ahd/2016 dated Feb 12, 2018

924. The assessee, a private limited company, engaged in business of trading in stainless steel and allied products claimed expense for celebrating French National Day under the head of advertisement expenses. The AO observing that the assessee had no export business to France, disallowed its claim on the ground that it had not been incurred in connection its business activity. The Tribunal held that the reason given by AO that no business activity was carried on by assessee with France was not tenable in view of fact that allowability of expenditure did not depend upon outcome of expenditure. It observed that the expenditure was incurred and claimed by assessee under head "advertisement" which was not disputed by Revenue and therefore held that any expenses incurred by way of advertisement must be considered from point of view of assessee and not from any other angle. Accordingly, it held that once it was found that expenditure was incurred by assessee for publicity or advertisement, it was not for department to consider whether commercial expediency justified expenditure. Therefore, it allowed the claim of deduction under Section 37(1) of the Act.

MKJ TRADEX LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0119 KolTrib - ITA No. 1044/Kol/2016 dated Feb 14, 2018

925. The Court held that the amount of Rs. 5 lakhs paid to National Stock Exchange (NSE) by the assessee-company(engaged in share trading, merchant banking) was 'capital' in nature' as it represented procurement of a permanent right in the form of a license to carry on trade which enabled assessee to do business in future. The assessee had paid the aforementioned amount to NSE as a non-adjustable deposit for acquisition of membership and treated the same as revenue expenditure but the AO held

that the payment was non-recurring in nature giving rise to an enduring benefit and therefore would qualify as capital expenditure. Relying on the SC ruling in Techno Shares and Stocks Limited wherein it was held that membership card enabled an assessee to trade as a stock-broker and hence, such a membership was a business or a commercial right in the nature of license u/s 32(1)(ii), it held that there could not be any doubt that one-time and lump-sum payment made to acquire membership right by a company or person engaged in business of trading in stocks, brings into existence an asset or an advantage of enduring nature and therefore held that the payment was capital in nature.
Abhipra Capital Ltd [TS-80-HC-2018(DEL)] - ITA 676/2005 - 15th February, 2018

926. The Tribunal allowed the assessee deduction u/s. 37(1) for advertisement expenditure incurred for brand building of "Jansons" and held that it was revenue in nature. It rejected Revenue's stand that expenditure for building brand name would definitely increase the value of brand and thus, being an intangible asset, was capital in nature and remarked that even though there was incidental increase in brand value by way of advertisement, the real benefit was only to carry out the business in an effective and profitable manner. Following the decision of the Apex Court ruling in Empire Jute Co. Ltd, it held that a mere incidental benefit or enduring benefit or commercial advantage could not result in disallowing the claim of the assessee. It concluded that the impugned expenditure incurred by the assessee was in the course of earning of profit without touching the capital asset and accordingly allowed the assessee's claim.
Jansons Industries Ltd. vs. ACIT - TS-79-ITAT-2018(CHNY) - ITA Nos.613, 614 & 615/Mds/2017 dated 08.02.2018

927. The Tribunal allowed the assessee-travel company's claim for deduction u/s 37(1) towards non-compete fees paid to the director /employee of another travel company for not doing similar business for 5 years and towards license fees for use of its brand name for 5.5 years under an agreement entred into with the said travel company. With respect to non-compete fees payment, the Tribunal held that since the payment was made for elimination of competition for short period and neither the assessee had derived any enduring benefit nor any new asset was added, the payment of non-compete fee was in the nature of restricting the director/ employee in exercising their skill and experience in the similar field, and thus, could not be treated as capital expenditure. With respect to license fees payment, the Tribunal held that the said expenditure incurred by the assessee for use of the brand name to leverage and expand business activities in Middle East market to be a revenue expenditure, inter alia relying on the Apex Court decision in the case of CIT vs. IAEC (Pumps) Ltd. [232 ITR 316 (SC)] wherein it was held that the license fee paid for use of patent and design was on revenue account.
DCIT v SOTC Travel Services Pvt. Ltd. [TS-143-ITAT-2018(Mum)] – ITA No. 1924 & 2075 /Mum/2007 dated 19.01.2018

928. The Tribunal allowed the claim of the assessee-NBFC for deduction towards service tax payment relatable to exempted services in absence of input tax credit availability as per the Service tax Rules. It rejected the Revenue's stand that since assessee followed 'Exclusive method' for accounting of Service tax i.e. it did not route the collection and remittance of Service tax through the P & L A/c., the claim could not be allowed and accepted the assessee's contention that the method of accounting for service tax liability, i.e., exclusive method or inclusive method did not have revenue implications and noted that the service tax paid by assessee was otherwise eligible for deduction.
DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018

929. The assessee co-operative society was engaged in business of procurement of milk, processing it to prepare its products and sale thereof. The AO disallowed amount being contribution made to 'Sparsh Trust' Pashudhan Kalyan and Utpadakta Sanvardhan Sansthan, trust constituted by assessee to run programme and for providing services to farmers who were selling milk to primary societies from whom assessee procured milk. The Court upheld the Tribunal's deletion of disallowance paid as contribution to the Trusts and held that the same were in the nature of business expenditure. It held that any contribution made by assessee to public welfare fund which was directly connected or related with carrying on of assessee's business or which resulted in benefit to assessee's business had to be regarded as allowable deduction u/s 37(1). Accordingly, it dismissed Revenue's appeal.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. JAIPUR ZILA DUGADH UTPADAK SAHAKARI SANGH LTD. - (2018) 101 CCH 0062 RajHC - D.B. Income Tax Appeal No. 9/2018 dated Feb 5, 2018

930. The Tribunal dismissed the department's appeal filed against the CIT(A)'s order deleting the disallowance made by the AO with respect to one time "Conversion Charges" paid by assesse to Municipal Corporation for conversion of use of premises from "Industrial Activities" to "Commercial Activity" which was treated by AO to be capital in nature on the ground that such expense would confer enduring benefit to the assesse. It relied on the so-ordinate bench decision in the case of DCIT vs. Haldiram Products Pvt. Ltd. [ITA No. 5158/Del/12] on identical issue wherein also the assessee had paid charges to Munical Corporation for conversion of its outlet from industrial unit to commercial unit outlet in order to save its business and it was held that when the expenditure have been incurred by the assessee at the stage of setting of his business, the same was necessarily capital expenditure, however since the said expenditure had been incurred by making payment to the Municipal Corporation, it could not be of any enduring benefit to the assessee rather it was for regularization of his existing business.
DCIT v ORIENT FASHION EXPORTS INDIA PVT. LTD. - (2018) 53 CCH 154 (Del Trib) - ITA No. 3813 /Del/2015 dated Jun 14, 2018

931. The Tribunal dismissed assessee's appeal field against the CIT(A)'s order upholding the disallowance made by the AO by treating the amount paid by the assesse towards part expenses and as part damages for non-performance of contract / MOU (which the assesse had entered into with another entity for purpose of creation of joint venture for putting up constructions on properties owned by assesse) as capital expenditure not allowable as deduction. It was held that since the MOU had been entered into by assessee for the purpose of creation of joint venture vehicle for putting up constructions on properties to be taken on lease from assesee, it was a new business line and thus the amount payable by assessee on account of violation of conditions of MOU (which also led to cancellation of the same) was nothing, but loss of capital and not revenue expenditure.
EXPRESS NEWSPAPERS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0144 (Chen Trib) - ITA NO. 1417/CHNY/2017 dated Jun 12, 2018

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

933. AO treated the expenditure shown by the assessee, a registered share broker, in the Error & Omission account of the P&L A/c (being the loss borne by the assesse on account of settlement with one of its client, whose outstanding trades were squared off by the assesse as the client had not provided the requisite margin to the assessee) as speculative loss and disallowed the said loss to the extent it was not set off against the speculative income offered to tax by the assessee. On appeal, CIT(A) upheld the AO's order and held that the said loss was not revenue in nature. Tribunal allowed assessee's appeal holding that the assesse had agreed to bear the loss to settle the matter and maintain trade relationships. It was noted that the trade with the said client were resumed from the month in which the settlement was made and that in the immediately next year the assesse had earned brokerage of an amount more than the loss borne by the assesse from the said client. Thus, the Tribunal held that the said loss was a business loss and commercial expediency of making the settlement with the client and agreeing to bear the said loss was very well established on records.

ARIHANT FINCAP LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0271 (Indore Trib) - ITA No. 415/Ind/2016 dated Jun 29, 2018

934. The AO had disallowed the assessee's claim for deduction u/s 37(1) with respect to expenses claimed against the professional income earned by the assessee company (engaged in the business of equity research, investment advisory services and running portfolio management services) by allocating the entire expenses between the professional income and capital gains earned by the assesse. The Tribunal had allowed the assessee's appeal against such disallowance noting that the Revenue had consistently over the years i.e. for the 10 years prior to years under appeal and for 4 subsequent years, accepted the principle that all expenses incurred were attributable entirely to earning professional income and the Revenue was not able to point out any distinguishing features, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. The Court upheld the Tribunal's order following the Apex Court decision in the case of Bharat Sanchar Nigam Ltd. Vs. Union of India [282 ITR 273 (SC)] wherein it was held that where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. QUEST INVESTMNET ADVISORS PVT. LTD - (2018) 102 CCH 0111 (MumHC) - ITA No. 280 OF 2016 dated Jun 28, 2018

935. The Tribunal allowed the assessee's claim for deduction u/s 37(1) with respect certain expenses written off by the assesse (involved in the business of establishing, running and managing hospitals) which were in the nature of preoperational and infrastructural expense, incurred for expansion of an existing hospital with respect to which it had entered into a collaboration with another company, rejecting Revenue's contention that the said expenses were capital in nature. It held that carrying out expansion of existing hospital property of the trust for the purpose of running and operating of the same on a revenue share basis was part of the routine business activity of the assesse. The Tribunal thus held that the expenditure incurred was on account of the project which was finally abandoned without acquiring any new asset for enduring benefit and, therefore, the entire claim was allowable as revenue expenditure. However, noting that the CIT(A) had spread over the entire claim for 5 years and allowed 1/5th of the claim in the impugned assessment year and these findings were not challenged by the assesse, it confirmed the CIT(A)'s order.
MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018

936. The Tribunal allowed the assessee's appeal against the disallowance made by the AO on account of deduction claimed by the assesse with respect to provision for increase in price of material supplied by the vendors (which were purchased with express understanding that rates would be revised, if there was substantial increase/decrease in cost of materials, at agreed interval). It held that it was common trade practice for payment of arrears in event of substantial increase/ decrease in cost, in order to maintain continuous supply of raw materials without being affected by market fluctuations, especially in light of volume of purchases made by the assesse and in absence of such understanding/ contract with vendors, the assessee would not be able to operate and continue manufacturing operations without disruption. It noted that the same process was followed when there was reduction in cost elements of component prices. The Tribunal held that such price revisions, being an accrued liability at time of purchase of raw materials, were recorded in books of accounts by assesse and at year end, the assesse estimated additional liability on account of price revision under negotiation and made upward/downward provision, as the case may be, until end of relevant year.
HERO MOTO CORP LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0200 (Del Trib) - ITA No. 6990/DEL/2017 dated Jun 20, 2018

937. The Tribunal accepted assessee's claim that notional foreign exchange gain resulting to the assesse-company on conversion of Foreign Currency Convertible Bonds (FCCBs) issued by it into shares was not exigible to tax since the b**o**nds were issued for acquiring capital assets, noting that the AO had not allowed the assesse's claim for deduction of foreign exchange loss on loan borrowed for acquisition of

assets in the next year. It held that there could not be one method if the fluctuations resulted in reduction of liability and a different treatment if the fluctuations result in a higher liability and that the treatment in terms of taxation has to be uniform at all times. The Tribunal also allowed the assesse claim for deduction on account of provision made for premium payable on redemption of FCCBs, relying on the decision in the case of Madras Industrial Investment Corporation Ltd vs. CIT [225 ITR 802 (SC)] wherein it was held that discount given on issue of debentures is an allowable expenditure.

GATI LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0209 HydTrib - ITA No. 1467 & 1670/Hyd/2017 dated Jun 20, 2018

938. Where the Assessee paid penalty to the Stock Exchange for procedural defaults such a delay in submission of return, etc., the AO made addition on account of payment of such penalty. The CIT(A) deleted the addition made by the AO. The Tribunal relied on the ruling of the Bombay HC in the case of CIT vs The Stock & Bond Trading Company (ITA No 4117 of 2010) and held that payment of penalty to the Stock Exchange is a regular business expenditure and since the assessee committed no offence prohibited by law as per the provisions of Section 37 of the Act, the penalty had been rightly deleted by the CIT(A). Thus, the Tribunal ruled in favour of the assessee

ACIT & ANR. vs. ARIHANT CAPITAL MARKETS LTD. & ANR. (INDORE TRIBUNAL) (ITA No. 370/Ind/2017 (C.O. No. 17/Ind/2018)) dated May 31, 2018 (53 CCH 0100)

939. The Tribunal allowed assessee's claim of deduction w.r.t. expenses incurred for running school situated on land purchased by assessee company and in which the children of the assessee's employees studied. The same was disallowed by the AO on the ground that the same related to welfare/charity purposes. It held that the school running expenses included care and concern for society at large, particularly for people of locality where business was located. Thus, the said expenses were integrally related to business activities of assesse and had been incurred wholly and exclusively for purpose of business. It also noted that the AO had not disputed genuineness of expenses nor it was case of AO that expenses used by assessee were for its personal purposes.

DLF HOME DEVELOPERS LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0182 (Del Trib) - ITA No. 2209/Del/2016, 2567/Del/2016 dated Jun 19, 2018

940. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 37(1) with respect to certain amount paid to National Pharmaceuticals Pricing Authority (NPPA) being the excess price charged by the assessee on sale of certain medicine/ drug, which was disallowed by the AO considering the same to attract Explanation 1 to section 37(1) i.e. dealing with payment for any purpose which an offence or prohibited by law. The Tribunal relied on its decision in the assessee's own case for an earlier year, wherein after perusal of the relevant provisions of The Essential Commodities Act, 1955, it was held that there are separate provisions for penalty and interest and the amount paid by the assesssee to the NPPA was the refund of excess price and, hence, there was no violation and infringement of any law or Government's order.

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

941. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee' claim for deduction u/s 37(1) with respect to payment made by the assesse, branch of a foreign bank, to Clearing Corporation of India on account of short position on security deal, which was disallowed by the AO considering the same to be in nature of penalty and thus attracting Explanation 1 to section 37. Noting that the assessee was required to maintain certain limit with CCIL, however, due to shortage in that limit the said payment to made to CCIL, it held that the same appeared to be compensatory in nature. Further, the Tribunal also held that the CIT(A) had rightly observed that the AO had not established on record that the payment was on account of an offence or was prohibited by law.

The Tribunal also dismissed the revenue's appeal against the CIT(A)'s order allowing deduction claim by the assesse on account of revaluation of forward contract, being stock-in-trade for the assesse, following the order in assessee's own case for an earlier year wherein the issue was decided in favour of the assesse following the decision in the case of CIT. Vs. Woodward Governor India Private Limited (312 ITR 224) wherein it was held that adjustment on account of foreign exchange fluctuation could be

made on each balance-sheet date in respect of any forward foreign exchange contract pending actual payment and any loss arising there from had to be allowed as an item of expenditure u/s 37(1).
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. DBS BANK LIMITED & ORS - (2018) 53 CCH 0167 (Mum Trib) - ITA No. 6865/Mum./2012, 6037/Mum./2014, 4949/Mum./2014, 6038/Mum./2014, 4948/Mum./2014 (C.O. no.8/Mum./2014) dated June 15, 2018

942. The Tribunal dismissed the revenue's appeal against the CIT(A)'s order allowing deduction u/s 37(1) with respect expenses incurred by the assesse, running hotel business, for repair and renovation of hotel rooms, which was disallowed by the AO treating the said expense to be capital expenditure considering the fact that the assessee in earlier year had not incurred repair and renovation expense more than 30% of such expenditure. It was noted that the expenses were incurred on rented premises and no new fixed asset came into existence. The Tribunal relied on the decision in the case of New Shorrock Spinning & Manufacturing Co. Ltd. [30 ITR 338 (Bom)] wherein it was held that, "*The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of 'repairs' because it only by reason of this definition of repairs that the expenditure is a revenue expenditure.*"
ASSISTANT COMMISSIONER OF INCOME TAX vs. PEERLESS HOTELS LTD. - (2018) 53 CCH 0161 KolTrib - ITA No.1869/Kol/2016 dated June 14, 2018

943. The Assessee had entered into a trademark and license agreement with its holding company the consideration for which (i) one time initial consolidated fees and (ii) annual recurring license fee payable on basis of net annual turnover. Both the aforesaid payments were disallowed by the AO. The Tribunal rejected the assessee's claim for deduction u/s 37(1) with respect to one time initial consolidated fees paid for use of the trademark in the business, holding the said payment to be in nature of capital expenditure. It was noted that by acquiring the said business right/ license, the assessee could incidentally boost its revenue and that the same had an enduring benefit which would be applicable till the assessee ceased to be subsidiary of its holding company. The Tribunal, however, accepted the assessee's alternative claim for depreciation u/s 32(1)(ii) for such capital expenditure. With respect to annual recurring license fees, it was noted that the said fees was payable on the basis of certain percentage on the net annual turnover and the AO had allowed the same in later two assessment years. Accordingly, the Tribunal held the annual recurring fees to be revenue expenditure allowable u/s 37(1).
GMR Airport Developers Ltd. v ITO - [2018] 95 taxmann.com 283 (Hyderabad - Trib.) - IT APPEAL NO. 806 (HYD.) OF 2017 dated June 29, 2018

944. The Court admitted the appeal filed by the Revenue against the Tribunal's order on the question, "Whether the Appellate Tribunal has erred in law and on facts of the case in restricting the addition to 25% of the value of alleged purchases after categorically finding it to be bogus?"
CIT v Aashadeep Industries - [2018] 95 taxmann.com 135 (Gujarat) - R/TAX APPEAL NOS. 606 TO 611 & 618 TO 620 OF 2018 dated June 18, 2018

945. The Court allowed the assessee's claim for deduction u/s 37(1) with respect to expenditure incurred for implementation of project of setting up Chemical Benefication Plant for production of high quality sintered magnesia, which was one of products of the assessee, where the State Government had ordered closure of the said project. It was held that since the project undertaken by the assessee was in same line of business already being carried on by the assessee and no new business was set up, and there was no creation of new asset of enduring nature. It thus held that the impugned expenditure was to be allowed as revenue expenditure.
Tamilnadu Magnesite Ltd. v ACIT - [2018] 95 taxmann.com 239 (Madras) - T.C. (APPEAL) NOS. 907 & 908 OF 2007 dated June 5, 2018

946. The Court upheld the Tribunal's order rejecting the assessee's claim for deduction u/s 37(1) with respect to amount paid by the assesseee-lawyer for settlement of dues of a company in which he was the Managing Director (MD) and for which he stood personal guarantor in his capacity as MD on the

company's inability to repay substantial advances to financial institutions / banks. It rejected the assessee's argument that if the above amount, which was claimed by him as litigation expenses, was not paid then it would have been impossible for him to carry on his profession as an advocate and therefore, the amount was wholly and exclusively laid out for business. The Court held that the assessee's liability had occurred in his capacity as the guarantor and entrepreneur (i.e. MD) and the same could not be allowed as business expenditure in relation to income generated through legal profession.

SATINDER KAPUR v ACIT - [TS-295-HC-2018(DEL)] - ITA 656/2018 & CM APPL 23524/2018 dated May 30, 2018

947. The Court allowed the assessee's appeal for deduction u/s 37(1) with respect to amount paid by the assessee-company (a television broadcasting co.) as non-compete fees to one of its directors for not competing with the assessee's business for 5 years, rejecting the revenue's plea that the said payment was a capital expenditure. It held that the assessee had not acquired any new business, profit making apparatus had remained the same, the assets used to run the business remained the same and there was no new business or no new source of income, which accrued to the assessee on account of the said payment. With respect to Revenue's contention that the assessee itself had amortised the payment and treated it as capital expenditure in the books, the Court held that the entries in the books were not relevant and, moreover the assessee had treated it as 'deferred revenue expenditure'.

M/s.Asianet Communications Ltd. v CIT - [TS-429-HC-2018(MAD)] - Tax Case (Appeal) No.174 of 2005 dated June 26, 2018

948. The Court dismissed assessee's appeal against the Tribunal's order rejecting the assessee's claim for deduction of expenditure incurred on acquisition of distribution rights of three films, noting that since there was no exhibition of the films on commercial basis, there was no amount realised on exhibition of films and as per Rule 9B(5) which is a non-obstante clause, the said deduction was not allowable under Rule 9 unless the distributor credited in the P&L A/c the amounts realised on exhibition of film on commercial basis. [Rule 9B provides for manner in which the deduction in respect of the cost of acquisition of a feature film is to be allowed while computing the profits and gains of the business of distribution of feature films.]

Malayala Manorama Co Ltd v ACIT [TS-362-HC-2018(KER)] - ITA.No. 80 of 2010 dated June 26, 2018

949. The assessee, part of Renault group, was engaged in rendering engineering and design and sourcing support services & logistic services to Renault SAS, France (RSAS) as per the agreement between them. The AO disallowed assessee's claim for deduction of promotional expenditure which represented expenses incurred in relation to participation in Auto Expo 2010 for promotion of Renault cars. The Tribunal, however, allowed the said claim noting that parties had mutually agreed to include additional services within scope of service agreement and the activities of participating in exhibitions and trade fairs at request of RSAS was specifically covered in the scope of services vide an amendment to the service agreement. It was also noted that expenditure incurred by company towards the exhibitions and trade fairs were invoiced and compensated by RSAS at cost plus a mark-up and the said mark-up was also accepted by the TPO without any adjustment.

RENAULT INDIA PRIVATE LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0321 ChenTrib - ITA NO. 2814/CHNY/2016 dated April 2, 2018

950. The Tribunal dismissed Revenue's appeal against the order of CIT(A) allowing assessee's claim for deduction of expenses incurred towards club subscription fee/ renewal of club membership fees on the ground that the same were revenue expenditure and not capital expenditure since no capital assets came into existence out of the said expenditure. It held that the main purpose for incurring the said expenses which were in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc was to induce its officers to attend such places for maintaining and making contacts for benefit of business and even if some personal advantage was obtained by officers, it would be in nature of maintaining good relations with officers and in nature of staff welfare expenses. The Tribunal thus held that the expenses were incurred wholly and exclusively for purpose of business.

Further, the Tribunal upheld the CIT(A)'s order allowing the assessee's claim for deduction with respect to provision made for Performance Related Pay (PRP) to executives, shown under the head

"Employees Benefit Expense", being amount payable based on the performance of the assessee-company in a particular year. The AO had disallowed the said expense considering the same to be unascertained liability and thus not been incurred during the relevant previous year. The Tribunal noted that the PRP was quantified by the assessee (a Govt. Co.) in pursuance to the formula provided by the Department of Public Enterprise, Govt. of India and the same was allowed on year to year basis. It thus held that the said provision was not an unascertained liability rather the said liability had crystallised during the relevant previous year only. It relied on the Apex Court decision in the case of Bharat Earth Movers vs. CIT (2000) 245 ITR 428 (SC) wherein it was held that if a business liability arises in an accounting year, the deduction for the same should be allowed although the said liability may have to be quantified and discharged at a future date.

ASSISTANT COMMISSIONER OF INCOME TAX vs. HINDUSTAN COPPER LTD. - (2018) 52 CCH 0475 KolTrib - ITA No. 1616/Kol/2016 dated April 4, 2018

951. The AO disallowed the assessee's claim of business expenditure on CSR activity stating that such expenses should be incurred from surplus profit after tax and it need not claim these expenses in books of account as expenditure for determining taxable profit. However, the CIT(A) deleted the disallowance after following CIT & Anr. Vs. Infosys Technologies Ltd wherein court allowed expenditure incurred on account of CSR by installing traffic signal near establishment to ease traffic congestion u/s 37(1) by holding that such expenses could be held to be expended wholly and exclusively for purpose of business u/s 37(1). Thus, the Tribunal, on concurring with CIT(A), held that CSR expenditure is an allowable expenditure u/s 37(1).

The AO had also made addition to assessee's income of expenses on account of sales-tax claim off u/s 37(1) opining that transfer of goods by assessee from UP to Haryana was in violation of Sales-tax Act [It is to be noted that Explanation 1 to section 37(1) provides that deduction shall not be allowed for any expenditure incurred for any purpose which is an office or prohibited by law]. The CIT(A) deleted the addition following the decision rendered by the Sales-tax Tribunal as well as Hon'ble Allahabad High Court in assessee's own case holding that the said transfer of goods from UP to Haryana was in the nature of central sale thus liable to Central Tax Act and was not a penalty for violation of sales tax act as held by the AO. The Tribunal held that there was no illegality or perversity in the CIT(A)'s order and thus dismissed the revenue's appeal.

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

952. The AO disallowed the business expenditure pertaining to the professional charges paid for feasibility study. Aggrieved, the assessee filed an appeal. The Tribunal held that the said issue was decided before in the favour of assessee wherein it was held that expenditure on feasibility study pertained to expansion of business by way of acquisition and thus was allowable as revenue expenditure. It was also observed that no new asset had come into existence.Thus, the Tribunal allowed assessee's appeal thereby allowing the claim of expenditure.

Minda Industries Ltd & Anr v DCIT & Anr (2018) 52 CCH 0404 DelTrib - ITA No. 4297/Del /2015, 4298/Del /2015, 4299/Del /2015, 4300/Del /2015, 4455/Del /2015, 4456/Del /2015 dated 27.04.18

953. The Tribunal allowed the assessee's claim for deduction with respect to write off of stores and spares imported earlier but lying in godown of port authority as the assessee was not able to clear them from the port authorities on account of financial stringency prevailing during that period. The AO disallowed the said claim noting that the said stores and spares were simply dumped in the port and no part of the same was installed or utilised for the purpose of the business activity. The Tribunal observed that the said imported materials as lying under the custody of Port Authorities were considered as permanently impaired in terms of Accounting Standard 28, because market/realizable value of all such materials were completely eroded and the material was surrendered to the Port Authorities. Further, it relied on the decision in the case of Zenith Steel Pipes Ltd. vs. CIT (1990) 186 ITR 594 (Bom.) wherein it was held that write off of stores & spares imported earlier but lying in the godown of a port authority was a loss incidental to the business.

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

954. During the assessment proceedings, the assessee claimed reduction of Rs.29,42,23,853 from its returned income on account of reversal of provision for foreign exchange loss which was disallowed in the preceding year i.e. AY 2009-10. The AO did not allow the same observing that the such a reduction would reduce the returned income. The CIT(A) allowed the assessee's claim appreciating the facts of the case. However, noting that the in the assessment order of the preceding year, the disallowance was only Rs.21,46,28,951/-, the Tribunal held that there was some discrepancy in the claim made and the amount disallowed in the preceding year and accordingly, it remitted the issue to the file of AO for examining the issue with reference to the books of account.
ACIT v Kiran Gems Pvt. Ltd. (2018) 52 CCH 0586 MumTrib - I.T.A. No.1108/Mum/2016 dated 09.04.2018

955. The assessee, engaged in business of cultivation and manufacturing tea, filed it returns claiming deduction of expenditure incurred for acquiring Pollution Control Certificate valid for 3 years. The AO rejected the claim of deduction holding that the certificate being valid for 3 years, it was to be regarded as capital expenditure having enduring benefits and thus disallowed the claim. The CIT(A) confirmed the said disallowance. On further appeal, the Tribunal allowed the assessee's claim holding that even though expenditure in question incurred by assessee for getting pollution control certificate for three years had enduring benefit, same by its very nature was revenue, and thus allowable as deduction.
Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018

956. The Tribunal held that where there was no authorization in trust deed to pay remuneration by assessee trust to its employees, remuneration paid by assessee trust to its employees was to be disallowed. Further, the Tribunal partially upheld the disallowance of several expenditure claimed by assessee on grounds that payments for such expenses were supported by self made vouchers only. It held that since in a normal trade practice, it was not possible to prove 100 percent bills and eceipts from recepients and there was every chance of making payments by way of self made vouchers. However, as there was every chance of inflating expenditure by way of self made vouchers, the Tribunal upheld the disallowance only to the extent 20 percent of the total amount towards self made vouchers.
Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018

957. The Court held that where under a licence agreement between assessee and HRL, assessee was granted exclusive right to use trademark 'Hilton' for 10 years against running royalty on sale as well as one time royalty of Rs. 1 crore, since mark 'Hilton' did not belong to assessee and benefit of use of trade mark had inured to licensor, payment of Rs. 1 crore ought to be treated as revenue expenditure.
Hilton Roulunds Ltd. v Cit [2018] 92 taxmann.com 268 (Delhi) – ITA NO 325 OF 2005 dated 20.04.2018

958. The Court held that where assessee incurred expenditure on product development and claimed deduction for same under section 37(1), in view of fact that expenditure so incurred did not involve development of a new product or even a new technique or technology to manufacture existing product more efficiently rather it was aimed at improving quality of existing product of assessee, assessee's claim for deduction was to be allowed.
CIT v Arvind Products Ltd. [2018] 93 taxmann.com 454 (Gujarat) – TAX APPEAL NO. 1389 OF 2007 dated 02.05.2018

959. Where revenue challenged order passed by Tribunal allowing assessee's claim of sales commission paid to 'M', an agent in Iraq, on ground that his name figured in Volker Commission Report and payment of commission was not authorised by U.N., the Court held that since question as to whether particular person was or was not an agent and as to whether he was paid commission was a pure question of fact, impugned order passed by Tribunal did not require any interference.Further, held that even though computer software is treated as a capital asset and is amendable to depreciation, yet consultancy charges on account of drawings and designs prepared by a particular agency in respect of computer software cannot be treated as capital expense
PCIT v TIL Ltd. [2018] 93 taxmann.com 394 (Calcutta) – ITA NO 504 OF 2007 dated 03.05.2018

960. The Tribunal held that professional fees paid to retired employees of assessee who were expert in this field fell under business within section 37(1) Further, it held that foreign tour expenses allowable where due to foreign tours of manager export and import increased.
DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018

961. The assessee, a manufacturer of air conditioner (AC), had been making provision for five years warranty provided with respect to certain models of the AC sold by it and the computation of the said provision was based on the number of units sold and per unit rate of provision. It was noted that the assessee had been following consistent method in creating such warranty provision in other assessment years as well and no disallowance was made at revenue's behest. The Tribunal thus held that the assessee's claim of warranty provision being computed on scientific basis, was to be accepted. Further, the Tribunal held that where stores and spares expenses pertained to normal repairs and maintenance of manufacturing facility and salary, wages and staff welfare were related to normal business expenditure, no ad hoc disallowance could be made.
Hitachi Home & Life Solutions (I) Ltd. v ACIT (OSD) - [2018] 93 taxmann.com 282 (Ahmedabad - Trib.) - IT APPEAL NOS. 2303, 2304, 2420 AND 2421 (AHD.) OF 2015 dated 18.04.2018

962. The Court held thatprovision made for increase in wages on basis of Wage Board Award which became enforceable on date of publication of award on 20-7-1983 could not be accepted as a liability having accrued within previous year ended 30-6-1983, though assessee agreed before Arbitrators that award shall come into operation from an earlier date.The Court held thatunder mercantile system of accounting, liability to pay commission to agents arises in previous year in which agent secured order and not when supplies were effected by assessee. The Court held that where assessee claimed deduction towards payment of insurance premium but did not even pay first instalment, of insurance premium, before 30-6-1983, last date of relevant previous year, said deduction could not be allowed to assessee during relevant year.
CIT v KCP Ltd. - [2018] 94 taxmann.com 46 (Andhra Pradesh) - REFERRED CASE NO. 71 OF 1993 dated 01.05.2018

963. The AO had disallowed the assessee's claim for deduction u/s 37(1) on account of payment of salary to a sweeper for cleaning and maintaining the premises of a Hall, on the ground that the said hall was in the name of the founder of the assessee-company and the hall was not owned by the assessee-company itself. The assessee contended that the claim was to be allowed as keeping the hall clean, enhanced the assessee-company's goodwill. The Court, however, sustained the said the AO's disallowance relying on a binding precedent in the assessee's own case [Malayala Monorama Co. Ltd. v. CIT (2006) 284 ITR 69 (Ker.)] for another assessment year involving similar claim.
CIT v Malayala Manorama Co. Ltd [2018] 95 taxmann.com 136 (Kerala) – ITA NO 26 OF 2010 dated 29.05.2018

964. The assessee-company had several units engaged in different business and stated that its income/expenses were not furnished on unit-wise basis since all the units together carried on business. In the AY under consideration, assessee incurred expenses on restructuring its business & claimed deduction regarding the said expenditure as revenue expenditure. The Tribunal allowed assessee's claim, after considering the facts and relying on a Punjab & Haryana High Court decision (details of which were not given by the Tribunal in its own judgement).The Court held that since the issue whether the restructuring of expenses could, in the circumstances, be treated as a revenue expenditure/capital expenditure was a question of 'fact' and the Tribunal had taken relevant facts into considerations and noticed the law applicable, the impugned order did not call for any reconsideration. Accordingly, it dismissed the revenue's appeal.
PCIT v Akzo Noble India Ltd. [2018] 94 taxmann.com 38 (Calcutta) – ITAT NO. 414 OF 2016 dated 15.05.2018

965. Where the Assessee company shut down its Aurangabad unit and paid retrenchment compensation to its employees on account of closure of the factory, Tribunal upheld the order of the CIT(A) by holding that

retrenchment compensation paid by assessee on account of closure of its unit was allowable as business expenditure under Section 37 and that provisions of Section 35DDA applied by the AO were not applicable as the assessee has not paid any service compensation under any scheme of voluntary retirement.

ACIT vs Lumax Automotive Systems Ltd. – [2018] 53 CCH 0071 (Coch ITAT) – IT(TP) Appeal No. 475/Coch/2016, 134/Coch/2016 (SA No. 08/Coch/2018) dated May 23, 2018

966. The assessee, engaged in the business of constructing, operating and running bus shelter, provided bank guarantee as performance security for construction of such shelters. However, the same was encashed due to non-performance and the assessee incurred certain expenditure for restraining such encashment. The assessee also incurred certain expenditure on account of liability towards cancellation of contracts and claimed the same as revenue expenditure. The AO disallowed such expenditure by holding that the same was not recurring and hence should be treated as capital in nature. Relying on the ruling of the Gujarat High Court in Neo Constructo construction Ltd (218 taxman 24), the Tribunal held that such encashment of bank guarantee which was furnished as a performance guarantee due to non-fulfilment of contract by the assessee could be said to be compensatory in nature and same was allowable as business expenditure under Section 37(1) of the Act.

Green Delhi BQS Limited vs. ACIT – [2018] 53 CCH 0008 (Delhi ITAT) – ITA No 6375/Mum/2016, 6274/Mum/2016 dated May 7, 2018

967. Where the assessee claimed certain expenses like, conveyance, travelling, foreign travelling, telephone and electricity etc. as business expenses, the AO disallowed such expenses considering the same as excessive. Tribunal upheld the order of the CIT(A) and held that since the AO disallowed such expenses on ad-hoc basis without pointing out any defects in the books of account or vouchers of those expenses, the disallowance was deleted.

ACIT vs. vs. Modi Rubber Limited – [2018] 53 CCH 0044 (Del Tribunal) – ITA No 1952 of 2014 dated May 15, 2018

968. Where the assessee followed mercantile system of accounting, the AO disallowed prior period expenses claimed by the assessee on actual basis. CIT(A) upheld the order of the AO. The Tribunal held that since the said claim of expenditure was revenue in nature and crystallized during the impugned year itself, the same could not be disallowed. Following the ruling of the co-ordinate bench in the assessee's own case for earlier years, the Tribunal restored the matter to the file of the AO to examine the genuineness and crystallisation of the expenses in the impugned year.

Orissa Mining Corporation Ltd. & Anr. vs. JCIT – [2018] 53 CCH 0188 (Cuttack ITAT) – ITA Nos. 69 & 183/CTK/2014, 70 & 257/CTK/2014 dated May 17, 2018

969. Where the assessee company paid commission in respect of personal guarantee given by its directors as collateral security for securing bank loan, the AO disallowed such guarantee commission. The CIT(A) deleted the disallowance and the Tribunal upheld the deletion of the said disallowance. The Tribunal observed that the directors provided personal guarantee by undertaking risk and the same was beyond scope of their services as employees of assessee-company. The Tribunal held that since it was established that the transactions were real and commission was paid to the Directors for providing personal guarantee, the assessee had the right to decide the guarantee commission to be given to the directors as part of business expediency and in the normal course of business and that the AO should not step into the assessee's shoes and dictate how business had to be carried out.

DCIT vs. U.P. Asbestos Ltd. – [2018] 53 CCH 0180 (Lucknow ITAT) – ITA No 378 & 379/LKW/2016 dated May 18, 2018

970. Where the assessee company had claimed deduction on account of the premium paid towards keyman insurance policies that were in the name of the two directors of the company and the same was disallowed on ground that policies were infact life insurance policies, the Tribunal held that the same was allowable u/s 37(1) since according to the terms and conditions of the policy, the assured sum would return to the assessee company on the death of the policy holders.

Arcadia Share and Stock Brokers (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 188 (Mumbai – Trib.) – IT Appeal Nos. 5854 & 5855 (MUM.) of 2016 dated April 25, 2018

971. The Court upheld the order of the Tribunal allowing software expenses incurred by assessee to upgrade computer software which brought greater efficiency in functioning of assessee's business as Revenue in nature considering that in view of fast changing technology, software had to be regularly updated so as to keep pace with the changing technology. Further, the Court upheld the order of the Tribunal allowing expenditure incurred by assessee in respect of health and safety measures for benefit of its employees to foster a safe working environment as Revenue expenditure. It held that the test of one-time payment was not the sole test to determine the nature of expenditure. Further, the test of enduring benefit in this case would not apply for the reason that the expenses assisted in providing a hassle free environment for smooth running of business. The expense did not add to or expand the profit making apparatus of the assessee.

PCIT v. Holcim Services (South Asia) Ltd. – [2018] 93 taxmann.com 270 (Bombay) – IT Appeal No. 73 of 2016 dated April 25, 2018

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

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

973. The assessee company was established in the year 1970 and at the time of inception one 'K' had joined as a General Manager who was later promoted to the post of Managing Director. On the death of 'K', the board of the assessee company decided to meet all the educational expenses of the children of Mr. K and also passed a resolution to pay a minimum pension to his widow on account of his services to the company. Assessee company made the said payments and claimed it as business expenditure which was denied by the AO and the CIT (A). On Department's appeal to the High Court, the Court held that the claim by the assessee that the said payments were in the nature of business expenditure was to be accepted since the assessee company had passed a resolution granting monetary benefit to the legal heir of a former employee and such resolution was sufficient even if the company did not have a pension scheme.

CIT v. India Motor Parts & Accessories Ltd. – [2018] 92 taxmann.com 409 (Madras) – T.C. (Appeal) No. 880 of 2008 dated April 4, 2018

974. The Court held that the payment made for acquiring membership in a social club could not be allowed as a business expenditure, more so, when there was no evidence to prove that membership of social club was acquired for entertaining customers of the assessee.

L. Jairam Parwani v. DCIT – [2018] 93 taxmann.com 291 (Madras) – T.C. (A) Nos. 857 & 858 of 2008 dated April 9, 2018

975. An Appeal was filed before the Court by the assessee against the order of the Tribunal for disallowing the expenditure incurred in connection with the share issue by the assessee without considering the nature of expenditure. The Court upholding the decision of the Tribunal held that the expenditure incurred by assessee in connection with share issue was capital in nature as the assessee had not furnished the breakup details of such expenditure before the Court or the Tribunal.

Sterling Holiday Financial Services Ltd. v. ACIT - [2018] 93 taxmann.com 60 (Madras) - TAX CASE (APPEAL) NO. 564 OF 2008 dated APRIL 3, 2018

976. The assessee during the relevant year made payments to the cane growers in excess of price fixed by the Government subsequent to which the assessee's claim for deduction of excess payment was rejected by the AO on the ground that it was in the nature of an advance recoverable under the terms of the agreement. The CIT (A) reversed the decision of the AO and held that the payment to the cane growers in excess of the administered price was eligible to be treated as an allowable expenditure exclusively and necessarily incurred for the purpose of business which was further confirmed by the Tribunal. The High Court dismissing the appeal of the Revenue held that the assessee could not avoid excess payment in view of business expediency as the entire business of the assessee was dependent on the supply of the sugarcane and the mere use of the word 'advance' in letter of Sugarcane Growers Association, would not change the character of payment especially when the amount paid was an ascertained liability and the assessee was following the mercantile system of Accounting.
CIT v. Aruna Sunrise Hotels Ltd. – [2018] 93 taxmann.com 361 (Madras) – T.C. (Appeal) No. 271 of 2005 dated April 10, 2018

977. The assessee engaged in the business of wholesale trade acquired goods from various people and sold the same to retail sellers who subsequently sold the goods on 'Flipkart.com'. The goods sold to the retailers by the assessee was at a price less than the cost price and the AO was of the view that the action of the assessee was not a normal business activity thereby calling upon calling upon the assessee to explain the purpose of selling the goods at a price less than the cost. The plea of the assessee was that the sale at a discounted price was to increase the volume of sales but the same was not accepted by the AO who opined that the strategy of selling goods at a lower price was done to establish goodwill and reap the benefits in the later years. In view of the same, the AO regarded the predatory pricing as capital expenditure and disallowed the deduction. The Tribunal reversing the decision of the AO and the CIT (A) held that the taxing authorities could not take into account the market price of the goods to ascertain profit from the transaction in cases where the trader transfers his goods at a price less than the market price, if the transaction was a bona fide one. The Tribunal further held that the assessee had not incurred any expenditure to acquire marketing intangibles or for creation of goodwill thereby setting aside the order passed by the AO.
Flipkart India (P.) Ltd. v. ACIT - [2018] 92 taxmann.com 387 (Bangalore - Trib.) - IT APPEAL NOS. 202 & 693 (BANG.) OF 2018 dated APRIL 25, 2018

978. The assessee bank incurred expenditure towards acquiring various categories of software and claimed deduction u/s 37(1) on the ground that the expenditure was revenue in nature. The AO denied the deduction claimed by the assessee on the ground that the expenditure was capital in nature as it conferred enduring right upon the assessee. The order of the AO was affirmed by the CIT (A) and the Tribunal. The assessee preferred an appeal before the High Court. The Court noted that the nature of articles acquired were licenses to use software and the same could not confer an enduring right on assessee. The Court held that the objective of the assessee was not to carry on software business, rather to use it as a tool to maximize the performance and to streamline the efficiency. Accordingly, the claim of the assessee for deduction of software expenses u/s 37(1) was allowed.
Oriental Bank of Commerce v. ACIT - [2018] 93 taxmann.com 432 (Delhi) - IT APPEAL NOS. 414, 415 OF 2017, 56 & 129 OF 2018 dated APRIL 17, 2018

979. The AO had made the disallowance of expenditure incurred on Intragroup services on the ground that the same were not wholly and exclusively incurred for the purpose of business.The Tribunal deleted the disallowance of expenditure incurred for intragroup services u/s.37(1) made on protective basis noting that on perusing the assessment orders for earlier years and subsequent years, though TP addition for Intragroup services had been made, there was no disallowance made u/s.37(1) on protective basis or otherwise and hence the addition could not be sustained in view of principles of consistency.
Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018

980. The Tribunal dismissed assessee's appeal and upheld the DRP's treatment of foreign exchange loss incurred in respect of advances received as capital as there was no material or evidence placed before it to demonstrate whether advances were in nature of revenue.It also noted that though the DRP had agreed in principle that if the losses pertained to trading item, revenue account or trading account or

circulating capital of business would be revenue in nature in light of the Apex Court ruling in CIT v Woodword Governor India Pvt. Ltd but the DRP treated the same on capital account and disallowed the amount in the absence of details.

EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP)A No.1394/Bang/2012,ITA No.1332/Bang/2010 and IT(TP) A No.163/Bang/2012 dated 28.06.2018

981. The Tribunal relied on the co-ordinate bench ruling of the assessee in earlier year and allowed the assessee's claim of provision for warranty which was certified by the actuary. It relied on the ratio laid down in Apex Court ruling in Rotork Controls Ltd. wherein it was held that warranty services are normal business expenditure and not contingent liability if the provision for the same could be measured by using substantial degree of estimation.

Toshiba India Private Limited vs ACIT [TS-609-ITAT-2018(DEL)-TP] ITA No. 1438/Del/2018 dated 18.06.2018

982. The AO had disallowed the research and development expenditure on the ground that it was capital in nature. However, as the assessee's contention was that it had rendered research and development services against which it had earned revenue income, the Tribunal restored the issue to the AO to examine the same afresh.

Bloom Energy India Pvt. Ltd v DCIT [TS-626-ITAT-2018(CHNY)-TP] ITA No.2857/Chny/2017 dated 20.06.2018

983. With regards to disallowance of commission expenses, the Tribunal remanded the matter back to the file of the AO to examine the details/ correspondence/ agreements regarding fixation of commission as in the present case, it could not be established that the rate of commission was as per the contract. While doing so, Tribunal held that if the payment of commission was done without reference to any document relating to consent of parties, it could not be considered as genuine.

Daga Global Chemicals P. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0007 (Mumbai ITAT) – ITA No. 5296 & 5889/Mum/2017 dated May 2, 2018

Section 40

984. The Tribunal deleted the disallowance made u/s 40(b) by the AO with respect to remuneration paid to partners, noting that the remuneration was paid as per the partnership deed and the remuneration received had already been subject to tax in the individual hands of the partners. It relied on the decision in the case of ACIT Vs. Associated Engineers & Allied Products [ITA No.680/JP/2014] wherein it was held that since the remuneration paid as per section 40(b) was taxable in the hands of the partners, if the same was disallowed in the hands of assessee-firm then it would be result in double taxation.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. CLASSIC SUPPER CONSTRUCTION & ANR. - (2018) 52 CCH 0483 CuttackTrib - ITA NO. 57/CTK/2015, 180/CTK/2017 dated Apr 11, 2018

Section 40A

985. Where the assessee made provision of gratuity, the payment of which was not made before the close of the year, the Tribunal deleted the disallowance made by the AO under Section 40A(7) and upheld the order of the CIT(A) wherein the CIT(A) held that since the provision made by the assessee was an approved gratuity fund no disallowance under Section 40A(7) could be made. Further, the CIT(A) also held that that since the payment was made before the due date for filing return of income, no disallowance under Section 43B could be made.

DELHI TOURISM AND TRANSPORT DEVELOPMENT CORPORATION LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0258 DelTrib - ITA No. 3457/Del/2007, 1505/Del/2009

986. Tribunal deleted addition made u/s 40A(3) of cash payments made by assessee to its group concerns for repayment of debt and not for any expenditure incurred and which had not been debited in P&L,

observing that the provision of said section is applicable only when an expenditure has been incurred and claimed by way of debiting to P&L account.
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

987. The Tribunal held that the AO was justified in invoking Section 40A(2) vis-à-vis the purchase of land (forming part of its stock in trade) by the assessee partnership firm from its partners and dismissed the contention of the assessee that the provisions of Section 45(3) of the Act (which states that the amount credited in the books of partner transferring capital asset to the firm would be the full value of consideration of the property) would apply. It held that Section 45(3) would apply only in the hands of the partners and would not apply to the case of the assessee firm. It further held that the asset was converted into a trading asset by the firm and therefore held that Section 45(3) would not override Section 40A(2). However, it noted that the AO had taken the value of property pursuant to inquiries from the Sub-register's office to determine the FMV of the property without appreciating the assessee's submission that the said value did not take into account various other considerations such as geographical location and other locational advantages. Accordingly, it remitted the matter to the file of the AO to re-determine the fair market value adopted by him.
ACIT v Karuna Estates & Developers - [2018] 92 taxmann.com 282 (Visakhapatnam - Trib.) - IT APPEAL NOS. 282, 367, 368 (VIZ) OF 2012 dated MARCH 23, 2018

988. The Tribunal deleted the disallowance made u/s 40A(2)(a) on account of trade discount allowed by assessee to its related parties where no such discount was offered to other parties, as the trade discount is not a payment and therefore, does not fall in the ambit of said section. Tribunal held that there was no actual out go from the assessee as discount was allowed on sale made and in absence of any prohibitory provisions u/s 40A(2)(a) or u/s 37, same could not be disallowed.
ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018

989. Where the assessee paid rent on machineries to its HUF and the AO disallowed the same under Section 40A(2) alleging that the rent paid was excessive, the Tribunal held that since the AO neither placed anything on record material showing fair market value of goods nor did he conduct any inquiry or verification into reasonableness of expenditure with reference to fair market charges payable under similar conditions, in light of the decisions in the case of ACIT vs. Bombay Real Estate Development Company (P) Ltd.', 64 DTR 137 and 'Jagdamba Rollers Flour Mill Ltd. Vs. ACIT', 117 ITD 260, (Nagpur) (TM), it held that no disallowance u/s 40A(2) could be made. It held that unless the payment was found to be excessive or unreasonable having regard to market value of goods, services or facilities for which payment was made and that in absence of inquiry by AO, as contemplated by provisions of section 40A(2)(a), no disallowance could be made.
ANURAG AGARWAL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0332 AgraTrib - ITA No. 497/Agra/2015 dated Mar 28, 2018

990. The AO disallowed the expense claimed by the assessee on directors' remuneration / salary paid to four lady directors out of total eight directors u/s 40A(2) considering the same to be bogus expenditure and rejected assessee's explanation that four male directors remained involved in supervising production, marketing, etc. in the production units and the four female directors were engaged for adequate surveillance and supervising of official works including for duly timely compliance with statutory obligations in running the business. CIT(A) upheld order of AO. The Tribunal directed the AO to allow 30% of remuneration given to these lady directors, noting that even if lady directors were not involved in pure managerial or supervising work of assessee company, the AO as well as the CIT(A) indirectly accepted that to certain extent women directors are rendering services to benefit of assessee company.
BETTERMAN ENGINEERS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0115 (Kol Trib) - ITA No. 2001/Kol/2014 dated Jun 6, 2018

991. The assessee had raised sale invoice in favour of 'C' for goods sold by assessee to the said concern and instead of making payments to assessee against the said invoice, 'C' made payments through banking channel to 'F' on behalf of assesse (i.e. to assessee's creditor). The assessee adjusted the said

payments made by it's debtor ('C') directly to its creditor ('F') through journal voucher adjustments in its books of account. The AO made addition u/s 40A(3) considering the said payments made to party ('F') from whom purchases were made by the assessee to be otherwise than through account payee cheque or account payee bank draft and thus in violation of the said section. The Tribunal held that the said payment made directly by assessee's debtor to assessee's creditor through approved banking mode as prescribed in section 40A(3) in settlement of inter-se transaction between debtor and creditor would not trigger provisions of the said section and hence deleted the addition. It noted that the cardinal rational and objective of the said provisions was to plug evasion of taxes so as to ensure that unaccounted money of the tax-payer does not get recycled in the form of cash payments towards ghost expenditures or ghost payees which are out of ambit of tax net.

LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0248 (MumTrib) - ITA No. 5998/Mum/2014 dated June 27, 2018

992. The Tribunal deleted the addition made by the AO u/s 40A(2) on account of fess (being 0.5% of the total turnover) paid by the assesse-company to its holding company for various services rendered as per the service agreement entered between both the companies. The AO opined that the assesse-company was unduly benefitting holding company and diverting legitimate profit of company through colourable device termed as service agreement. The Tribunal, however, observed that the AO had not brought any comparable case to demonstrate that payment made by assessee was in excessive and hence held that without bringing any cogent material on record to demonstrate that payment made by assessee was excessive no disallowance could be made since the provisions of section 40A(2) were not automatic and could be called into play only if AO established that expenditure incurred was in excess of fair market value.

MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018

993. The Tribunal deleted the addition made by the AO u/s 40A(2) on an ad hoc basis viz. 30 per cent of the payments made to the related parties with respect to commission / legal and professional charges, noting that the said disallowance was made without placing on record any material which could prove that payments were excessive or unreasonable, having regard to fair market value of the services for which same were made or keeping in view legitimate needs of business of assessee or benefit derived by or accruing to assessee therefrom. It thus held that in the absence of satisfaction of the basic condition for invoking of section 40A(2)(a), the said disallowance could not be sustained.

Nat Steel Equipment (P.) Ltd. v DCIT - [2018] 95 taxmann.com 159 (Mumbai - Trib.) - IT APPEAL NOS. 4011, 4681, 5070 & 5270 (MUM.) OF 2013 dated June 13, 2018

994. The AO held that commission paid by assessee company to its director was excessive or unreasonable. The CIT(A) held that before invoking the provisions of S.40A(2) the AO was required to consider the fair market value of the services rendered, the benefit accrued to the assessee and the legitimate needs of business of the assessee from the standpoint of a prudent businessman. He found that the AO could not have decided what the assessee should do and pay. Disallowance could be made under section 40A(2) only when warranted and when the conditions of the said section were satisfied.The CIT(A) noted that the director was assessed to tax in the highest tax bracket and therefore, there was no loss of revenue with regard to the expenditure incurred on account of profit commission paid by the assessee.Accordingly, the CIT(A) deleted the disallowance for profit commission. The Tribunal also concurred with the finding of the CIT(A). Based on such findings, the Court held that since this was a subjective decision having regard to facts of case, there was no substantial question of law involved in appeal.

PCIT v Madras Engineering Industries (P.) Ltd. [2018] 94 taxmann.com 93 (Madras)– T.C.A NOS. 129 TO 131 OF 2018 dated 10.04.2018

995. The Tribunal held that where assessee trust had not claimed capital expenditure incurred for purchase of land, section 40A(3) could not be invoked to disallow cash payments made by assessee for said purchase of land.

Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018

996. The assessee who was engaged in running a clinic paid 84 percent of the total professional receipt to four doctors who were also the promoter directors and the remaining percentage was paid to seven doctors. Noting that 84 percent of the receipts were paid to 4 doctors whereas only the balance of 16 percent was paid to 7 doctors, the AO concluded that the payments made to the 4 doctors, who were incidentally promoters, was unreasonable and accordingly disallowed 15 percent of said payments under section 40A(2) on the grounds that such payments were excessive and unreasonable. The Tribunal deleting the disallowance made by the AO held that payment of higher salaries to doctors who were reputed professionals in their fields could not be regarded as excessive and unreasonable. The Tribunal further stated that there was an inherent fallacy in the approach of the AO as the remuneration depends on the market worth and the determination of the market worth was uninfluenced by what other professionals in that area earn.
ITO v. Hemato Oncology Clinic (Ahmedabad) (P.) Ltd. – [2018] 93 taxmann.com 272 (Ahmedabad – Trib.) – IT Appeal No. 3411 (AHD.) of 2015 dated April 24, 2018

997. The Court upheld the order of the CIT(A) / Tribunal wherein it was held that where assessee inflated purchase expenditure by raising bogus claim of cash purchases exceeding Rs. 20,000, profit element embedded therein should be brought to tax and entires amount was not to be disallowed u/s 40A(3).
PCIT v Juned B. Memom [2018] 95 taxmann.com 20 (Gujrat) – R/TAX APPEAL NO. 379 OF 2018 dated 25.04.2018

998. The assessee firm purchased certain plots of land from various persons & the payment was made partly in cash. The AO disallowed the amount pertaining to payment by cash by invoking S.40A(3) of the Act. The CIT(A) upheld the said order. The assessee claimed that the part payment was made in cash since the sellers being new to assessee, refused to accept payment through banks and due to mode of payment it could have lost the land. The assessee had even submitted copies of sale deed & other vital details for proving genuineness of the transaction. Thus, based on the above facts and further noting that the cash payments were made from disclosed sources (amount withdrawn from bank), the Tribunal held that since even the business expediency was met, no disallowance was called for.
A Daga Royal Arts v ITO [2018]94 taxmann.com 401 (Jaipur – Trib.)- ITA NO. 1065 OF 2016 dated 15.05.2018

999. The assessee made a total payment of Rs.1.08 Cr in cash as Truck Loading Charges. The AO opined that though the transaction was genuine, since the payment was made to a single person in violation of S.40A(3) ,he disallowed the said amount. The CIT(A) confirmed the disallowance. On appeal, the Tribunal deleted the said disallowance by giving benefit of clause (g) of Rule 6DD[exemption to S.40A(3) applicable in a case where the payment is made to a person in village/town, who on date of payment, was not served by bank].However, the Court held that as no evidence was produced by the assessee to the AO or the CIT(A), the Tribunal erred in presuming that the all the payment and the truck loading was made in the village which was not served by the bank and thus remanded the matter back to the CIT(A) for fresh disposal.
CIT V Lal Traders & Agencies (P.) Ltd. [2018] 93 taxmann.com 491 (Calcutta) – ITA NO 45 OF 2018 dated 11.05.2018

Section 41(1)

1000. The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the addition made by the AO u/s 41(1) opining that the liability towards sundry creditors had ceased. The Tribunal noted that the opening balances of the liabilities were already admitted in the immediately preceding assessment years. It was further noted that the assesse had gone into BIFR and it had filed the claim (a list of sundry creditors and other liabilities) before the BIFR. It was thus held that it is only a matter of timing that as the issue is pending before BIFR, the creditors remained suspended but there

had been no notice which could have extinguished the existing right except to the extent that they become part of the sanctioned scheme.

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

1001. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 41(1) with respect to difference in the sales tax liability resulting from prepayment of the said liability at discounted rate under a deferral sales tax scheme, relying on the decisions in the case of CIT vs. Sulzer India Ltd. [2014] 369 ITR 717(Bom) wherein it was held that where the assessee had made premature payment of deferral sales tax at net present value against the total liability and credited the balance to its capital reserve account, the said credited amount was a capital receipt and could not be a remission or cessation of trading liability u/s 41(1). Further reliance was placed by the Tribunal on CIT vs. Balkrishna Industries Ltd. (2017) 88 taxmann.com 273 (SC) wherein it was held that the premature payment of sales tax liability under Sales Tax Deferral Scheme of 1983 would not amount to remission or cessation of assessee's liability.

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

1002. The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the addition made by the AO u/s 41(1) with respect to sundry creditors outstanding for 6 to 20 years on the ground that where the assessee had not written back these amounts as income in its books of account such outstanding liabilities could not be regarded as income u/s 41(1). The Tribunal held that merely because liabilities were shown in books of account by the assessee as outstanding and not written back, would not, tie down the Revenue to hold such liabilities to be subsisting liability. Further, it also observed that –

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

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

1003. The Tribunal held that where assessee had not written back sundry creditors in his profit and loss account and had shown balance outstanding towards those creditors even in next assessment year, it could not be said that there was any cessation of liability under section 41(1).

Jashojit Mukherjee v ACIT [2018] 93 taxmann.com 366 (Kolkata – Trib.) – ITA NO. 403 OF 2017 dated 04.05.2018

1004. The assessee had availed the benefit of sales tax deferral scheme and the deferred tax payable was converted into interest free loan. The assessee made pre-payment of the said loan at its net present value and the excess of outstanding liability over net present value was written back as not being payable anymore by the assessee and was treated as a capital receipt. However the AO made the addition of the said excess amount considering the same to be remission of liability u/s.41(1). Relying on the ratio laid down in Bombay HC decision of Sulzer India, the Tribunal upheld the CIT(A)'s order deleting the addition made by the AO and held that the write back of the said excess amount had resulted in a capital receipt which could not be added u/s.41(1).

ACIT vs Johnson & Johnson Ltd [TS-537-ITAT-2018(Mum)-TP] ITA Nos.1776 & 1777/M/2017 and CO No.242/M/2017 dated 18.06.2018

Section 43

1005. The Court held that (i) while computing written down value (WDV) u/s 43(6) for claiming depreciation, depreciation allowed under State Enactment (Kerala Agricultural Income-tax Act, 1991) could not be reduced (ii) since as per Rule 7A only 35% of assessee's income from manufacture of rubber was deemed to be taxable, only 35% of the cost of total assets was to be taken as WDV.
Rehabilitation Plantations Ltd. v CIT – (2018) 90 taxmann.com 420 (Ker) – ITA No. 29 of 2008 dated 29.01.2018

1006. In a case where transactions of currency derivatives were conducted by assessee through a recognised stock broker, on a recognised Stock Exchange and they were duly supported by time stamped contract notes, Tribunal held that the same could not be held as 'speculative transaction' as defined in section 43(5) and, therefore, loss on such derivative transactions should be allowed to be set off against other business income.
Nand Nandan Agrawal v DCIT – (2018) 169 ITD 161 (Agra Trib) – ITA Nos. 349 & 350 (Agra) of 2016 dated 18.01.2018

1007. The Court dismissed the revenue's appeal filed against the Tribunal's order allowing the assessee's claim for loss arising on account of damages paid by the assessee for not honouring its commitment to take delivery against some purchase orders placed with foreign sellers consequent to decline in the price of the goods, which was disallowed by the AO considering the said loss to be speculative loss. It held that even if a party in breach accepts the claim for damages that the other party to the contract may put forward, what actually happens is the disposal of a dispute and not any settlement of the kind that is envisaged by the word "settled" used in section 43(5).
CIT v Ambo Agro Products (P.) Ltd - [2018] 95 taxmann.com 345 (Calcutta) - GA NO. 542 OF 2015, ITAT NO. 37 OF 2015 dated June 20, 2018

1008. The assessee had claimed deduction on account of purchase of 'assets' for its in-house R&D facility. The said expenditure was disallowed on ground that expenditure resulted in acquisition of rights in or arising out of scientific research such as patents and it would come under an exclusion under section 43(4)(ii). The Tribunal held that if interpretation sought to be urged by revenue was to be accepted, then benefit sought to be conferred by provisions of section 35(1)(iv) would virtually be denied in all cases by invoking exclusion clause in section 43(4)(ii) and, therefore, AO should allow deduction claimed by assessee under section 35(1)(iv). Objective behind exclusion clause in section 43(4)(ii) appear to be that expenditure on scientific research should be incurred on research actually carried out by assessee in-house and assessee should not spend money in acquiring rights in or arising out of scientific research carried on by some other person.
Tata Hitachi Construction Machinery Company Ltd. v DCIT [2018] 93 taxmann.com 339 (Bangalore – Trib.) – ITA NO. 877 OF 2014 dated 20.04.2018

Section 43A

1009. The Court upheld the order of the Tribunal wherein it was held that where assessee constructed a residential house and rental income earned therefrom was offered to tax as income from house property and not as business income and the assessee had not claimed any deduction or depreciation on account of lift, provisions of section 43A would not apply to apparent gain made by assessee as a consequence of foreign exchange fluctuation in respect of lift imported from abroad.
CIT v Bengal Intelligent Parks (P.) Ltd. [2018] 94 taxmann.com 399 (Calcutta) – ITAT NO. 290 OF 2016 dated 10.05.2018

Section 43B

1010. The Tribunal, relying on the decision of the Court in CIT vs Vijayshree Ltd., GA No.2607 of 2011, held that employees contribution deposited beyond the due date prescribed under the relevant law governing contribution to provident fund would be allowable as a deduction under Section 43B of the Act as long as it is paid before the due date of filing return of income.
ASSISTANT COMMISSIONER OF INCOME TAX vs. GILLANDERS ARBUTHNOT & CO. LTD. - (2018) 52 CCH 0155 KolTrib - ITA No. 2090/Kol/2016 dated Mar 1, 2018

1011. The Tribunal upheld the CIT(A)'s deletion of disallowance made u/s 43B where the assessee had not deposited employees' contribution towards provident fund on due date as prescribed under relevant statute, but had deposited same before due date of filing of return.
DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

1012. The AO had disallowed the deduction of provision created towards leave encashment by assessee in view of the provisions of section 43B(f), rejecting assessee's contention that provision for leave encashment was not a statutory liability and hence it was not liable to be disallowed u/s 43B, placing reliance on the decision of the Supreme Court to stay the operation of the decision in the case of Exide Industries Ltd. v. Union of India (2007) 164 Taxman 9 (Cal) wherein it was held that provisions of section 43B(f) is unconstitutional. The Tribunal upheld the disallowance further noting that the Supreme Court while deciding to stay the operation of the said decision had also held that the assessee should pay tax on disallowance of provision for leave encashment as if section 43B(f) is on statute book.
Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018

1013. The Tribunal confirmed disallowance under Section 43B on account of service tax received from the service recipients, but not deposited within the return filing due-date [as contemplated u/s. 43B(a)] and rejected assessee's stand that since it had not debited the expenditure as service tax to the profit and loss account, no disallowance could be made. Noting that it was liable to pay service tax as the liability had arisen under the Point of Taxation Rules, it held that the assessee was legally obliged to declare its turnover inclusive of service tax received (which was not done by assessee) and held that the assessee could not be exonerated from its liability by saying that he accounted for the service tax received separately. It observed that the assessee did not produce any invoice before it despite the fact that the issue of invoice was mandatory under service tax rules.
Hemkunt Infratech (P) Ltd. - TS-181-ITAT-2018(DEL) - ITA No. 6683/Del./2017 dated 23.03.2018

1014. The Court dismissed Revenue's appeal filed against the Tribunal's order deleting the disallowance made u/s 36(i)(va) r.w.s. 2(24)(x) of the Act on account of Employees' Contributions to ESIC paid by the assessee-company beyond the due dates under the ESIC Act, noting that the said issue had already been decided in favour of the assessee in the case of CIT v Ghatge Patil Transports Ltd. 368 ITR 749 (Bom) wherein it was held that as per section 43B the assesse would be eligible for the said deduction if the payment was made before the due of filing of return u/s 139(1).
PRINCIPAL COMMISSIONER OF INCOME TAX vs. STARFLEX SEALING INDIA PVT. LTD. - (2018) 102 CCH 0158 (Mum HC) – ITA No. 130 & 151 of 2016 dated June 27, 2018

1015. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the disallowance made u/s 36(i)(va) r.w.s. 2(24)(x) of the Act on account of depositing employees' contributions towards Provident Fund and ESIC beyond the due dates under the Provident Fund Act and the ESIC Act but before filing of return of income, following the Jurisdictional High Court decision in the case of CIT v M/s Hemla Embroidery Mills (P) Ltd [ITA no. 16 of 2009 (P&H)] wherein it was held that as per section 43B, the assessee was entitled to deduction in respect of employer and employee's contribution to ESI and Provident Fund when the same had been deposited prior to the due date of filing of the return u/s 139(1).
ASSISTANT COMMISSIONER OF INCOME TAX vs. KHYBER INDUSTRIES PVT. LTD. - (2018) 53 CCH 0266 (Asr Trib) - ITA No.395(Asr)/2017 dated June 21, 2018

1016. The Tribunal upheld CIT(A)'s order allowing the assessee's claim for deduction with respect to delayed payment of employees' contribution to ESI and PF u/s 43B, relying on the Jurisdictional High Court decision in the case of CIT v. Magus Customers Dialog P. Ltd (2015) 57 taxmann.com 94 (Kar) and not considering the decision of Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation (2014) 41 taxmann.com 100 (Guj) [wherein the issue was decided against the assesse]. In the former decision, it was held that the word "contribution" used in clause(b) of section 43B meant the contribution of the employer and the employee and that being so, if the contribution was made on or

before the due date for furnishing the return of income u/s 139(1), the employer was entitled for deduction.
DEPUTY COMMISSIONER OF INCOME TAX vs. ALLEGIS SERVICES INDIA LTD. - (2018) 53 CCH 0143 (Mum Trib) - ITA No. 325/Bang/2018 dated June 13, 2018

1017. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the disallowance made by the AO u/s 43B with respect to unpaid service tax amount. It was noted that the amount of service tax collected by the assessee-builder from the customers on sale of flats under construction was not paid to Government account for reason that levy of service tax on builders was challenged before High Court and High Court had granted interim stay from collection of tax till the matter was decided. It was also noted that the assessee had treated the service tax collected from customers as current liability without claiming it as expenditure during relevant assessment year and the same was paid in subsequent financial year as soon as the High Court had passed decision on the same.
Wadhwa Residency (P.) Ltd. v ACIT - [2018] 95 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NO. 5413 (MUM.) OF 2015 dated Jun 20, 2018

1018. The assessee entered into an agreement with its subsidiary to transfer its packaging division and claimed that the liability towards gratuity and leave wages of employees pertaining to the said division was also transferred and was no longer assessee's liability. Accordingly, the assessee claimed that the said liability was to be considered as paid/discharged for the purpose of Section 43B.The AO however disallowed the assessee's said claim. The Tribunal held that the basic question of treatment given by transferee in its books of account was not considered by both lower authorities and also since there was nothing on record to show as to what was decided by the buyer and seller on the question of gratuity and leave wages, it needed further verification and thus the matter was remanded back to AO for fresh adjudication.
Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.) ITA NO 2913 OF 2015 dated 16.05.2018

1019. The Tribunal deleted the disallowance u/s. 43B or 2(24)(x) r.w.s. 36(1)(v)(a) since the contribution to employee's PF was deposited before the due date of filing of return of income.
Granite Services International India Private Limited vs DCIT [TS-628-ITAT-2018(DEL)-TP]

Section 44C

1020. Following the Tribunal's decision in the assessee's own case on identical issue for earlier years, the Tribunal allowed the assessee's appeal against the disallowance of management charges paid by the assesse, an Indian branch of a UK based company, to its head office under a management services agreement, where the AO had treated the management charges as Head Office expenses and had restricted the claim of the assessee to 5% of the total adjusted income in terms of section 44C of the Act and the CIT(A) had restricted the said disallowance to 50% of the amount paid. In the earlier year, it had deleted the disallowance on account of the management charges holding that the said charges paid to did not come within the purview of section 44C of the Act.
LLOYDs REGISTER QUALITY ASSURANCE LTD. & ORS. v DCIT - (2018) 53 CCH 156 (Mum) - ITA No. 2856/Mum/2015, 2857/Mum/2015, 3920/Mum/2015 dated Jun 15, 2018

Section 14A

1021. The Tribunal held that where the assessee's share capital along with reserve and surplus was many times higher than the amount invested in shares etc. yielding exempt income, no disallowance could be sustained under Rule 8D(2)(ii).
Vis-à-vis the disallowance made by the AO under Rule 8D(2)(iii), the Tribunal, relying on the decision of the Court in ACB India Ltd. vs. ACIT (2015) 374 ITR 108 (Del) held that only the average of those investments which yielded exempt income were to be taken into consideration and not the average of all investments. Accordingly, it directed the AO to carry out the computation of disallowance under 8D(2)(iii) as per its findings. Further, it held that if the disallowance under clause (iii) of Rule 8D(2)

exceeded the amount of exempt income, then, the disallowance was to be restricted to such income alone.

DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. DLF COMMERCIAL DEVELOPERS LTD. & ANR. - (2018) 52 CCH 0148 DelTrib - ITA No. 1388/Del/2013 dated Mar 1, 2018

1022. Where the CIT(A) after directing the AO to exclude the strategic investments from the average value of investments while determining disallowance of administrative expenses u/s 14A r.w. Rule 8D(2)(iii), had held that such exclusion would be restricted only to the old investments made in the group companies and not incremental amount invested during the year, the Tribunal held that once the CIT(A) had found that the investments made in the group companies were in the nature of strategic investments then no differentiation could be made between the old investments and the incremental increase made during the year and that there was no rationale behind the CIT(A)'s such differential approach. Accordingly, it directed the AO to verify if the investments claimed by the assessee were strategic investment and if so, to exclude the same from the average value of investment for computing disallowance u/s 14A r.w. rule 8D.

M. Pallonji & Co. Pvt. Ltd v ACIT – ITA No. 3739, 3523, 3524, 3740, 3741 & 3525/Mum./2015 dated 28.02.2018

1023. The Tribunal restored the matter to the file of the AO for de novo determination in a case where the assessee claimed that section 14A was not applicable as it didn't receive any exempt income during the relevant assessment year but it was not discernible from orders of the Revenue as to quantum of exempt income earned by assessee and there was no evidence on record that assessee had not received any exempt dividend income during relevant previous year.

Pyramid Consulting Engineers (P.) Ltd. v DCIT – (2018) 90 taxmann.com 411 (Mum) – ITA No. 1972/Mum of 2016 dated 23.01.2018

1024. Where there was no exempt income, Tribunal deleted disallowance of expenses incurred in relation to exempt income u/s 14A r.w. Rule 8D(2)(ii) and 8D(2)(iii) relying on Delhi HC rulings in the case of CIT vs Cheminvest Ltd [(2015) 317 ITR 86 (Del HC)] and CIT vs Deloitte Enterprises [ITA No.110 of 2009 (Del HC)]

DCIT v Amartara Pvt Ltd - TS-612-ITAT-2017(Mum) - ITA Nos. 6050 & 6114/Mum/2016 dated 29.12.2017

1025. Tribunal deleted the disallowance u/s 14A w.r.t. interest expense, noting that assessee had furnished details that its own funds were sufficient to cover investments yielding exempt income and the borrowings of assessee were utilised for other business requirements and not for making said investments.

Bennett Colman & Co. Ltd. vs. ACIT – (2018) 168 ITD 631 (Mum) – ITA Nos. 3298 & 3537 (Mum.) of 012 dated 08.01.2018

1026. The Apex Court held that dominant purpose for which investment into shares is made by assessee may not be relevant as section 14A applies irrespective of whether shares are held to gain control or as stock-in-trade. It held that where shares are held as stock-in-trade, certain dividend income exempt u/s 10(34) is earned incidentally, in such cases, section 14A would be applicable based on the theory of apportionment of expenditure between taxable and non-taxable income as held in CIT v. Walfort Share & Stock Brokers P Ltd. (2010) 326 ITR 1 (SC) and, therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares would have to be apportioned. This, however, is not in the cases where the profits are naturally treated as 'income' under the head 'profits and gains from business and profession'. The Apex Court further held that having regard to the language of section 14A(2) r.w. Rule 8D, before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, *suo moto* disallowance u/s 14A was not correct. It also held that the Rule 8D is prospective in nature and could not have been made applicable in respect of AY prior to 2007 when this rule was inserted.

Maxopp Investment Ltd. v CIT – (2018) 91 taxmann.com 154 (SC) – Civil Appeal Nos. 104-109 of 2015 & Ors dated 12.02.2018

1027. Noting that the AO had not disturbed assessee's declaration that total administrative expenses incurred by assessee for all its activities was Rs. 30 lakhs, the Court held that under no circumstances an AO could not attribute administrative expenses for earning tax free income in excess of total administrative expenditure incurred by assessee and, hence, there was no question of disallowing administrative expenses to tune of Rs. 60 lakhs u/s 14A r.w. Rule 8D(2)(iii). Accordingly, it dismissed the revenue's appeal filed against Tribunal's order wherein the Tribunal had deleted the disallowance u/s 14A r.w. Rule 8D(2)(iii) made by the AO over and above the suo-moto disallowance of Rs. 10 lakhs made by the assessee.
Pr.CIT v Adani Agro (P.) Ltd. – (2018) 253 Taxman 507 (Guj) – Tax Appeal No. 963 of 2017 dated 05.02.2018

1028. Assessee didn't make disallowance u/s 14A of the amount reported in the Tax Audit Report [which included direct as well as indirect expenses disallowable u/r 8D(2)(i) & 8D(2)(iii) respectively], contending that the investment were mainly in shares of unlisted joint venture entities, whose capital gain, when divested would be fully taxable under the head 'Capital Gains' and that the investments made in joint ventures were strategic in nature and had to be excluded while arriving at the disallowance u/s 14A. But the AO disallowed the said amount while computing income under normal provisions as well as u/s 115JB. The Tribunal held that following the catena of judgment in assessee's favour, the adjustment of disallowance u/s 14A was not required to be made in Book Profits for the purpose of section 115JB. With respect to disallowance under normal provisions, the Tribunal held that it was an uncontroverted fact that the gains from sale of investments were taxable under the head 'Capital Gains'. But noting that the assessee had failed to refute findings of Tax Auditor and could not demonstrate that it did not incur any direct expenditure to make investments, it remanded the matter to the AO to re-appreciate the factual matrix along with a direction to the assessee to justify his stand.
ACIT & ORS v INDUSIND MEDIA & COMMUNICATION LTD. & ANR. – (2018) 52 CCH 46 (Mum) – ITA No. 772/Mum/2016, 1167/Mum/2016 dated 17.01.2018

1029. The Tribunal partly allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the entire disallowance made u/s 14A r.w. Rule 8D relying on the decision in the case of CIT v Hero Cycle Limited (2010) 323 ITR 518 (P&H). With respect to disallowance u/s 14A r.w.r. 8D(2)(ii), it held that the same should not be made in the case of the assessee under consideration since the assessee had its own funds to invest in shares and securities and some of the investments were made in subsidiary companies for strategies purpose. With respect to disallowance u/s 14A r.w. Rule 8D(2)(iii), the Tribunal held that it was not total investment at beginning of year and at end of year, which had to be considered but it was average of value of investments which had given rise to income which did not form part of total income was to be considered, accordingly, it directed the AO to compute disallowance after taking into consideration investment which had given rise to exempt income.
ITO v BONANZA TRADING COMPANY PVT. LTD. – (2018) 52 CCH 29 (Kol Trib) – ITA No. 172, 173 & 174/Kol/2016 dated 10.01.2018

1030. The Tribunal deleted the disallowance made by AO u/s 14A a) noting that the assessee had incurred only an expenditure of Rs.6,230/- during year, being payment of audit fees etc., which was shown as loss and b) as there was no exempt income earned by assessee. Reliance was placed on the decisions in the case of Cheminvest Ltd. v CIT (2015) 378 ITR 33 (Del) and CIT v Holcim India P. Ltd. (2014) 90 CCH 81 (Del HC).
ITO v MOONROCK HOSPITALITY P. LTD. – (2018) 61 ITR (Trib) 0667 (Del Trib) – ITA No.6385/Del/2016 & CO No.32/Del/2017 dated 03.01.2018

1031. The Tribunal allowed the assesee's appeal against the CIT(A)'s order confirming the disallowance made by the AO under rule 8D(2)(iii) with respect to indirect expenditure at the rate of 0. 5% of the average value of investment where the assessee had made a suo moto disallowance of Rs.99,218/- u/s 14A, holding that the provisions of section 14A r. w. r. 8D were introduced to discourage the assessees from claiming double deductions i.e. claiming expenditure against exempt income, but, the first step is incurring of expenses. Noting that the AO had neither given any details of expenses incurred by the assessee for earning exempt income nor any reason as to why the calculation made by the assessee was not acceptable, it held that no automatic disallowance could be made u/s 14A. Further, with respect

to the assessee's claim about stock-in-trade, relying on the decision in the case of India Advantage Securities Ltd. (380 ITR 471), it held that the assessee was offering income from business of share trading so all the expenses related to the business had to allowed.
SIDDHESH CAPITAL MARKET SERVICES & ANR. v DCIT – (2018) 52 CCH 3 (Mum) – ITA No. 6532/Mum/2012, 2489/Mum/2015 dated 01.01.2018

1032. The Tribunal held that since the assessee had not earned any dividend or other exempt income during the year, no disallowance u/s 14A was called for
ACIT v Shyam Indus Power Solutions (P.) Ltd. – (2018) 90 taxmann.com 424 (Del) – ITA Nos. 3223 & 3224 of 2016 CO Nos. 249 & 250 (Delhi) of 2016 dated 29.01.2018

1033. The Apex Court held that rule 8D is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09, observing that (i) the Explanatory memorandum issued with the Finance Bill, 2006 and the CBDT Circular dated 28-12-2006 clearly indicates that department understood that sub-section (2) & (3) of section 14A were to be implemented w.e.f. AY 2007-08 (ii) Rule 8D has again been amended by the Income-tax (Fourteenth Amendment) Rules, 2016 w.e.f. 2-6-2016, by which sub-rule (2) has been substituted by a new provision and by interpreting the rule 8D retrospective, there will be a conflict in applicability such Amendment Rules which clearly indicates that the Rule has a prospective operation and (iii) the subordinate legislation ordinarily is not retrospective unless there is clear indication to the same and there is no indication in rule 8D to the effect that rule 8D intended to apply retrospectively.
CIT v Essar Teleholdings Ltd. – (2018) 90 taxmann.com 2 (SC) – Civil Appeal No. 2165 of 2012 dated 31.01.2018

1034. The Tribunal deleted the disallowance made u/s 14A r.w. Rule 8D by the AO over and above the suo-moto disallowance made by the assessee, noting that the exempt income earned was lower than the suo-motu disallowance made by the assessee, following the co-ordinate bench ruling in case of assessee's sister concern.
DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018

1035. The AO made disallowance under Section 14A read with Rule 8D on the investment made by the assessee in a partnership firm. The Tribunal noting the assessee's contention that the firm in which investment was made belonged to the assessee itself and that no exempt income was earned during the year under review, remitted the matter to the file of the AO since the partnership deed which required to be examined for verifying as to whether the investment was for business purpose or for earning exempt income had not been produced before it or the lower authorities.
MAIDEEN PITCHAI RAWTHER PEER MOHAMMED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0329 ChenTrib - ITA No.2307/Chny/2017 dated Feb 16, 2018

1036. The Tribunal, following the decision of the High Court in Cheminvest 378 ITR 33 (Del) held that where no dividend income was earned, no disallowance under Section 14A could be made.
DEPUTY COMMISSIONER OF INCOME TAX vs. JUMBO TECHNO SERVICES PVT. LTD - (2018) 52 CCH 0143 DelTrib - ITA No. 6545/Del./2013 dated Feb 16, 2018

1037. The asssessee claimed that no expenses had been earned towards earning exempt income, but had in any case offered a suo-moto disallowance in its COI. However, the AO rejected the assessee's contention / suo moto claim and made addition under Section 8D(ii). The Tribunal upheld the order of the CIT(A) wherein the CIT(A) relying on the case of the High Court in Commissioner of Income Tax v/s Reliance Utilities and Power Ltd., (2009) 313 ITR 340 (Bom) held that if there were interest-free funds available to assessee sufficient to meet its investments and at same time assessee had raised a loan it could be presumed that investments were from interest free funds available and accordingly no disallowance could be made under Section 14(A) rw Rule 8D(2)(ii).
Further, the Tribunal held that for the purpose of computing disallowance under Rule 8D(2)(iii), it held that only those investments yielding exempt income were to be included in the formula provided under Rule 8D.

ASSISTANT COMMISSIONER OF INCOME TAX vs. L & T INFRASTRUCTURE FINANCE CO. LTD. - (2018) 52 CCH 0099 MumTrib - ITA Nos. 4331/Mum/2015 dated Feb 14, 2018

1038. Where the assessee earned exempt dividend income and offered a suo-moto amount u/s 14A towards management fees, custody fees, audit fees and portfolio management fees and the AO invoked provisions of section 14A and computed disallowance in terms of Rule 8D, the Tribunal upheld CIT(A)'s deletion of disallowance and held that sub-section (2) of section 14A clearly stipulated that AO should determine amount of expenditure incurred in relation to exempt income as per Rule 8D if he having regard to accounts of assessee was not satisfied with correctness of claim made by assessee and since the AO had nowhere recorded any satisfaction about incorrect claim having been lodged by assessee with reference to its accounts and there was no discussion whatsoever about examination of assessee's claim about actual incurring of expenses in relation to exempt income, no addition could be made under Section 14A.
INCOME TAX OFFICER & ANR. vs. INDICA INDUSTRIES PVT. LTD. & ANR. - (2018) 52 CCH 0133 DelTrib - ITA No. 1764/Del/2016, 3836/Del/2015, 1509/Del/2016 dated Feb 28, 2018

1039. Where the assessee earned exempt dividend income during the year and offered suo-moto disallowance @ 5 percent on the average value of investments yielding the dividend income, the Tribunal held that the AO was unjustified in re-working the disallowance under Section 14A read with Rule 8D(iii) by including all the investments of the assessee without appreciating that the rest of the investments did not yield any exempt income.
APOLLO INTERNATIONAL LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0203 DelTrib - ITA No. 6834/Del./2015 dated Mar 9, 2018

1040. The Tribunal, relying on the decision of the High Court in Cheminvest Ltd., Vs CIT reported in 378 ITR 33 held that where the assessee had not earned any exempt income during the year under review, no disallowance under Section 14A of the Act could be made.
SURYAJYOTI INFOTECH LIMITED & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0191 HydTrib - ITA No. 1241/Hyd/2015, 1278/Hyd/2015 dated Mar 16, 2018

1041. Where the assessee earned exempt income during the year under review, considering that its interest free funds were in excess of the investments yielding exempt income and the interest expense incurred by it was paid subsequent to the investments, the Tribunal held no disallowance under Section 14A read with Rule 8D(ii) could be made. Accordingly, it dismissed Revenue's appeal.
DEPUTY COMMISSIONER OF INCOME TAX vs. DEVARSONS INDUSTRIES PVT. LTD. - (2018) 52 CCH 0269 AhdTrib - ITA No. 1130/Ahd/2015 dated Mar 28, 2018

1042. Relying on the Co-ordinate Bench decision in the case of Mylan Laboratories Ltd [ITA Nos. 362/Hyd/2017 & 452/Hyd/2017], the Tribunal held that it is established principle that the disallowance u/s 14A should not exceed the income earned and claimed as exemption. It, accordingly, directed the AO to restrict the disallowance to the amount of dividend earned.
G2 CORPORATE SERVICES LLP vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0130 HydTrib - ITA No. 832/Hyd/16, 833/Hyd/16 dated Jun 8, 2018

1043. The Tribunal deleted the disallowance made u/s 14A r.w. Rule 8D(2)(ii) by the AO with respect to investment made during the year, noting that the investment was only in the shape of Share Application Money pending Allotment of actual shares and these investments per-se were unable to earn any exempt dividend income. It also restricted the disallowance made u/s 14A r.w. Rule 8D(2)(iii) to the amount of exempt income earned, relying inter alia on Cheminvest Ltd. v. CIT [2015] 378 ITR 33 (Del).
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. MAHINDRA CIE AOTOMOTIVE LIMITED & ANR. - (2018) 52 CCH 0300 MumTrib - ITA No. 6659/Mum/2014 (Cross Objection No. 96/Mum/2016) dated Apr 11, 2018

1044. Where the assessee made investment in group concern, the AO made disallowance under Section 14A read with Rule 8D and held that expenditure was incurred by assessee for earning exempt income. CIT(A) allowed the assessee's appeal by following the Tribunal order in the assessee's own case for

AY 2006-07 and AY 2008-09. Tribunal held that, where primary object of investment was for holding controlling stake in group concerns and not for earning an income out of that investment then provisions of section 14A could not be invoked. The Tribunal directed the AO to recompute disallowance. Thus, the appeals of the Revenue were dismissed.

ACIT & ANR. vs. SELVEL ADVERTISING PVT. LTD. & ANR. (KOLKATA TRIBUNAL) (IT A No.2196 -2197/Kol/2016 (C.O.No.97/Kol/2016) dated May 4, 2018 (53 CCH 0020)

1045. The Tribunal upheld the CIT(A)'s order to the extent that it deleted the disallowance made u/s 14A r.w. Rule 8D(2)(ii) with regard to interest expenses, in a case where the own funds of the assesse (NBFC) exceeded the amount of investment and also the interest income for the year under consideration exceeded the interest expenses. With respect to the disallowance made u/s 14A r.w. Rule 8D(2)(iii), it restricted the disallowance to the tune of dividend income.

INCOME TAX OFFICER vs. NIRMA CREDIT & CAPITAL PVT. LTD. - (2018) 53 CCH 0147 (Ahd Trib) - ITA No. 2830/Ahd/2016 dated Jun 8, 2018

1046. The Tribunal deleted the disallowance made u/s 14A by the AO over and above the suo moto expenses disallowed by the assesse, holding that –

- since the assessee had sufficient interest free own funds (more than the value of investment made), no disallowance could be made under Rule 8D(2)(ii) as assessee had not incurred any expenses on account of payment of interest
- the AO as well as Ld. CIT(A) had not recorded their dissatisfaction that the computation of expenses disallowed by the assessee were not correct nor had pointed out any specific computation defects and thus, Rule 8D(2)(iii) also could not be invoked on account of administrative expenses in absence of recording of specific dissatisfaction with the claim of the assessee.

DLF HOME DEVELOPERS LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0182 (Del Trib) - ITA No. 2209/Del/2016, 2567/Del/2016 dated Jun 19, 2018

1047. In a case where the Tribunal upheld the CIT(A)'s order wherein the CIT(A) had restricted the disallowance made by the AO to the extent of expenditure of interest incurred by the assessee under Rule 8D(2)(ii) of the Rules, the Court dismissed the Revenue's appeal noting that the controversy was no longer res Integra and the Division Bench of the Court in two matters had already decided in favour of the assessee that the disallowance under Rule 8D of the Rules r/w section 14A of the Act could not exceed the expenditure directly relatable to earn the exempted income in the form of 'Dividend' as computed in accordance with Rule-8D of the Rules. The said decisions referred by the Court were (i) CIT Anr. v. Microlabs Ltd. (2016) 383 ITR 490 (Kar) wherein it was held that since the interest free funds were was much more than investments made by the assessee which could yield tax free income, no disallowance of interest expenditure u/s 14A could be made and (ii) M/s.Prergathi Krishna Gramin Bank vs. JCIT [ITA Nos. 100001 & 100002/2018 (Kar)] wherein it was held that where the assessee did not incur any such expenditure during the year in question to earn Dividends, the burden was upon the AO to compute the interest on such borrowed funds which were dedicatedly used for investment in securities to earn such exempted Dividend income.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. ADVAITH MOTORS PVT. LTD. - (2018) 102 CCH 0081 (Kar HC) - ITA No. 342/2016 dated Jun 12, 2018

1048. Where major investments were made in the earlier years from own funds and no borrowed funds were utilized in making such investments, the CIT(A) deleted the disallowance made by the AO under Section 14A of the Act read with Rule 8D of the Rules relying on the ruling of Reliance Utilities And Power Ltd. (2009) 366 ITR 505. The Tribunal upheld the order of the CIT(A) in favour of the Assessee and held that since interest-free funds were sufficient to meet the investments, no presumption could be drawn in the absence of definite material brought on record to show that the interest-bearing funds were utilized for investments earning exempt income.

ACIT & ANR. vs. ARIHANT CAPITAL MARKETS LTD. & ANR. (INDORE TRIBUNAL) (ITA No. 370/Ind/2017 (C.O. No. 17/Ind/2018)) dated May 31, 2018 (53 CCH 0100)

1049. Where the Assessee earned exempt dividend income, the AO made disallowance under Section 14A of the Act read with Rule 8D of the Rules as he was of the opinion that huge investments could not be

made without the help of financial advisors and directors and therefore administrative expenditure was incurred by the Assessee. Further, the AO also made an addition in respect of disallowance made under Section 14A of the Act while computing book profits under Section 115JB of the Act. CIT(A) upheld the order of the AO. Relying on the *assessee's own case before the Mumbai Tribunal in ITA No. 2474/Mum/2013 (AY 2007-08) dated 06.08.2014*, the Tribunal restricted the disallowance to 5% of the exempt income earned. In respect of the computing book profits under Section 115JB of the Act, the Tribunal relied on the order of the *Special Bench of the Delhi Tribunal in ACIT vs. Vireet Investments (P.) Ltd. (58 ITR (AT) 313)* and held that no disallowance under Section 14A of the Act read with Rule 8D of the Rules could be made while computing book profit under section 115JB of the Act. Thus, the Assessee's appeal was partly allowed.
ZEE ENTERTAINMENT ENTERPRISES LIMITED vs. ACIT (Mumbai TRIBUNAL) (ITA No. 6969/ Mum/ 2016) dated May 31, 2018 (53 CCH 0204)

1050. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the disallowance made by the AO u/s 14A r.w. Rule 8D in relation to interest expenditure on account of investment in a partnership firm which yielded income exempt u/s 10(2A). It noted that the AO had in cryptic manner only stated that he was not satisfied with the assessee's claim that no expenditure was incurred to earn exempt income. The Tribunal thus held that the AO had failed to record a satisfaction having regard to the accounts of the assessee that the assessee has incurred particular expense in relation to earning exempt income. Further, it also accepted assessee's alternative claim that since the assessee had higher amount of interest free funds than that amount invested in the partnership firm, it was to be presumed that the investment was made out of interest free funds available with assessee and, thus, held that the disallowance u/s 14A r.w. Rule 8D was incorrect.
Wadhwa Residency (P.) Ltd. v ACIT - [2018] 95 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NO. 5413 (MUM.) OF 2015 dated Jun 20, 2018

1051. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order excluding the investment made by the assessee in an Oman company for the purposes of computing disallowance u/s 14A r.w. Rule 8D. It noted that the dividend received by the assessee from the said company was chargeable to tax in India under the head 'Income from other sources' and formed part of total income, and, thereafter, a rebate of tax had been allowed to the assessee from the total taxes in terms of section 90(2) r.w. Article 25 of the Indo-Oman DTAA. Further, noting that in preceding year also, the AO had been directed to exclude the said investment while computing average value of investment under Rule 8D(2)(iii), it was held that there was no infirmity in the observations of the CIT(A).
ACIT v Indian Farmers Fertiliser Cooperative Ltd - [2018] 95 taxmann.com 114 (Delhi - Trib.) - IT APPEAL NO. 5157 (DELHI) OF 2015 dated June 07, 2018

1052. The Tribunal held that in absence of any exempt income received during relevant previous year, no disallowance u/s 14A could be made.
Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018

1053. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order restricting the disallowance made by the AO u/s 14A r.w. 8D to the extent of exempt dividend income, holding that the said provisions could not be interpreted so as to mean that entire tax exempt income was to be disallowed and thus the AO was not justified in making excessive disallowance.
TIDEL PARK LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0428 ChenTrib - ITA Nos. 1700 & 1701/Chny/2017, 1808 & 1809/Chny/2017 dated Apr 4, 2018

1054. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO u/s 14A r.w. 8D, noting that the assessee's investments were confined to strategic investments in its subsidiaries only and it had not earned any tax free income during the year, relying on the decision in the case of Amjay Medi.Max (India) Pvt. Ltd. vs. DCIT [ITA No.1950/Ahd/2012].
DEPUTY COMMISSIONER OF INCOME TAX vs. ASMAN INVESTMNETS LTD. - (2018) 52 CCH 0445 AhdTrib - ITA No. 3139/Ahd/2015 dated Apr 4, 2018

1055. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order restricting the disallowance made by the AO u/s 14A r.w. 8D(2)(iii) to Rs.23,81,828 as against the AO's disallowance of Rs.53,27,283/-, relying on the co-ordinate bench decision in the case of REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404/144 ITD 141 (Kol.) which was also affirmed by the Hon'ble Calcutta High Court [vide order dated 09.04.2014 in GA No. 3581 of 2013], wherein it was held that the disallowance as per Rule 8D shall be made by taking into consideration only those shares, which have yielded dividend income in the year under consideration.
ASSISTANT COMMISSIONER OF INCOME TAX vs. HINDUSTAN COPPER LTD - (2018) 52 CCH 0475 KolTrib - ITA No. 1616/Kol/2016 dated Apr 4, 2018

1056. The assessee filed the returns and suo moto made disallowance u/s 14A of the expenses incurred for earning exempt income. The AO, without recording dis-satisfaction and pointing out any defect in the calculation of the assessee, proceeded to invoke s.14(A) r.w Rule 8D and calculated the disallowance mechanically which was not permissible. The Tribunal held that further disallowance, by invoking Sub sections (2) & (3) of S.14A r.w Rule 8D mechanically was not sustainable because the said section was to be invoked only if the AO was dissatisfied with the claim of assessee. Further, on following the decision of CIT vs. Holcim India Pvt. Ltd. - (2014) 90 CCH 081-DEL-HC, it held that the disallowance u/s 14A could not exceed the total amount of exempted income. Accordingly, the disallowance made by the AO was deleted.
DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018

1057. The assessee, during relevant AY under consideration, earned no dividend income. Despite of the said fact, the AO proceeded to disallow u/s 14A thereby making addition in the income. The CIT(A) deleted the said disallowance u/s 14A on the ground that assessee had not earned any dividend income during year under consideration The Tribunal dismissed the department's appeal and thereby upheld the order of CIT(A).
Minda Industries Ltd & Anr v DCIT & Anr (2018) 52 CCH 0404 DelTrib - ITA No. 4297/Del /2015, 4298/Del /2015, 4299/Del /2015, 4300/Del /2015, 4455/Del /2015, 4456/Del /2015 dated 27.04.18

1058. The assessee, a fashion designer & trader in garments, had taken substantial term loans from a Bank, for acquiring shares of a company engaged in fashion apparels. The assessee contended that the investment was made as a business strategy for the purpose of furthering business as it could facilitate trade through the outlets of the said invested company. The AO disallowed the interest paid on the loans u/s 14A holding that the assessee had earned dividend income on investment in the said company. The CIT(A) upheld AO's order. Before the Tribunal, the Revenue took support of the case decided by Apex Court in M/s. Maxopp Investments Ltd (Civil Appeal No.104 to 109 of 2015) dated 12.02.2018 wherein it was held that deduction of that expenditure which had been incurred by assessee in relation to income which did not form part of total income under Act was not to be allowed and reason why an assessee invested in equity shares of a company was irrelevant for application of section 14A. However, the assessee pointed out from the same judgement that it was clearly mentioned that the AO had to record a satisfaction that the claim of the assessee on expenditure relatable to exempt income was incorrect, before proceeding with a disallowance u/s.14A. The Tribunal held that since the said Apex Court judgement was not available with the AO or CIT(A) while passing orders, the question regarding disallowance u/s.14A of the Act required to be re-visited and thus set aside the orders of the authorities and remitted back the matter to the file of AO for fresh adjudication.
Madan Ventures v ITO (2018) 52 CCH 0295 ChenTrib - ITA Nos. 2131 & 2698/CHNY/2017 dated 09/04.2018

1059. For AY 2002-03, the assessee-company did not disallow any amount u/s 14A as expenditure incurred for earning dividend income of Rs Rs. 7,09,093/- claimed as exempt u/s 10(33). However, the AO worked out Proportionate disallowance Rs. 1,59,845/- on account of the said expenditure. The CIT(A) confirmed the disallowance made by the AO. The Tribunal observed that the entire expense incurred by assessee on salaries, wages and staff welfare was taken into account by AO while computing proportionate disallowance u/s 14A and also some of said expense incurred by assessee such as garden maintenance etc. were not related to earning of dividend income. It held that the disallowance

made by AO on proportionate basis was excessive and unreasonable and thus restricted said disallowance to 5% of dividend income earned by assessee.
Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018

1060. The Tribunal deleted the disallowance made u/s 14A r.w Rule 8D(2)(ii) [pertaining to interest expense] noting that after netting off interest received by assessee with interest paid and reducing the interest paid to SBI for loan borrowed and used only for purpose of business, there was no positive figure of interest payment. It was also noted that the assessee had sufficient own fund for investments earning exempt dividend income.
Rawalwasia & Sons Exim Ltd. v ITO (2018) 52 CCH 0297 KolTrib - ITA No. 273/Kol/2016 dated 06.04.2018

1061. The Tribunal rejected the assessee's argument that strategic investments made in domestic companies should be excluding while determining the amount to be disallowed u/s 14A r.w. Rule 8D(2), following the Apex Court decision in the case of Maxopp Investments Ltd vs. CIT (2018) 91 taxman.com 154 (SC) wherein it was held that u/s 14A, dominant purpose for which investment in shares is made by assessee is not relevant. With respect to the assessee's claim of excluding the interest not attributable to earning exempt income while computing disallowable u/r 8D, the Tribunal observed that the financial statements did not have bifurcations of interest in P & L A/c and it was very difficult to bifurcate interest expenditure that was attributable to earning of exempt income. It thus remitted the matter back to the file of AO directing the assessee to file all relevant details in order to establish its claim regarding interest expenditure not to be attributable for purposes of earning dividend income.
Indian Farmers Fertiliser Cooperative Ltd. v ACIT (2018) 52 CCH 0282 DelTrib - ITA No. 2394/Del/2013 dated 05.04.2018

1062. The Tribunal upheld the disallowance u/s 14A on the ground that assessee firm had negative net worth during relevant year and entire investment was financed by borrowed capital and, administrative expenditure was incurred by assessee. It further held that Section 14A would apply even if no dividend was earned by assessee from investments in shares.
Lally Motors India (P.) Ltd. v PCIT [2018] 93 taxmann.com 39 (Amritsar – Trib.) – ITA NOS. 218 (ASR.) OF 2017 dated 12.04.2018

1063. The Tribunal held that where assessee had sufficient interest free own funds to cover investments in shares, mutual funds, etc. that generated exempt dividend, no disallowance under section 14 read with rule 8D(2)(ii) was called for.
Tata Hitachi Construction Machinery Company Ltd. v DCIT [2018] 93 taxmann.com 339 (Bangalore – Trib.) – ITA NO. 977 OF 2014 dated 20.04.2018

1064. The Tribunal held that where AO did not record any satisfaction as to why suomoto disallowance made by assessee under section 14A which was worked out by assessee having regards to its accounts was not a correct working of expenditure in relation to an exempt income having regards to account of assessee, disallowance made by assessee was to be accepted.
ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018

1065. The assessee-bank claimed that it had not incurred any expenditure for earning the dividend income of Rs.1.80Cr, which was exempt. The AO, however, computed Rs.2.48Cr as the amount of disallowance u/s 14A r.w rule 8D on account ofexpenditureincurred for earning exempt income. The Tribunal concurred with the AO's finding, without considering the assessee claim's that no expenditure had been incurred and also the alternative claim that the amount of disallowance by way of expenditure on exempt income could not exceed the amount of total exempted income.The Court held that disallowing the expenditure for earning exempt income in excess to actual amount of exempt income was absurd and hypothetical. Thereby, setting aside the finding of all the three lower authorities, it remanded the matter back to the AO for re-computing the disallowance of expenditure u/s14A.

Pragathi Krishna Gramin Bank v JCIT [2018] 95 taxmann.com 41– ITA NO100001 & 100002 OF 2018 dated 28.05.2018

1066. The Tribunal remanded the matter back to the AO for fresh adjudication w.r.t. disallowance u/s 14A, noting that the AO, without bringing basic fact as to the amount of expenditure actually incurred for the exempt income, calculated the expenditure mechanically with the method prescribed in Rule 8D(ii) and made the disallowance accordingly.
Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.)- ITA NO 2913 OF 2015 dated 16.05.2018

1067. Where the assessee earned exempt interest income during AY 2004-05, the AO made disallowance of expenditure under Section 14A. Tribunal upheld the order of the CIT(A) deleting such disallowance by relying on the ruling of the co-ordinate bench in Power Grid Corporation of India Ltd (ITA No. 488/Del/2009 dated 30.10.2011) wherein it was held that since the AO had not identified any administrative expenses incurred by the assessee for earning exempt interest income, the disallowance by the AO u/s 14A based on estimation could not be sustained.
DCIT vs. NTPC Ltd. – [2018] 53 CCH 0101 (Delhi ITAT) – ITA No 15/Del/2009 dated May 4, 2018

1068. The assessment was completed u/s 143(3) for three assessment years i.e. 2004-05, 2005-06, 2006-07 but the same were reopened in terms of section 147 on the ground that the proportionate interest u/s 14A computed under Rule 8D amounting to Rs. 4,16,01,299/- was to be disallowed as Rule 8D was applicable retrospectively but the same had escaped assessment. The CIT (A) allowed the appeal of the assessee and held that the application of Sec. 14A was misdirected as there was no dividend income earned by the assessee which was further affirmed by the Tribunal. The Court applied the proposition laid down in CIT v. Essar Teleholdings Ltd. [2015] 228 Taxman 309 (Mag.) and held that Rule 8D was prospective in operation and could not be applied to any assessment operation prior to 2008-09 and accordingly dismissed the appeal of the Revenue.
PCIT v. Jammu Central Coop. Bank Ltd. - [2018] 93 taxmann.com 184 (Jammu & Kashmir) – IT Appeal Nos. 4, 14 & 13 of 2016 dated April 18, 2018

1069. The Tribunal deleted the disallowance of interest made by invoking section 14A of the Act on failure of the AO to determine nexus between investments and funds. The assessee's contention was that on perusal of financial statements it was evident that reserves and surplus were more than investments, hence there was no question of borrowing funds to make the investments. The Tribunal relied on the HC decision of HT Media and Reliance Utilities wherein it was held that if assessee's own funds exceed investment, a presumption arises that such investments are made from own funds and not borrowed funds unless revenue establishes the contrary.
Munjal Showa Ltd vs. DCIT Ltd [TS-729-ITAT-2018(DEL)-TP] ITA No.1579/Del/2015 dated 27.06.2018

1070. The Tribunal held that in absence of exempt income from investments, provisions of section 14A could not be invoked and thus no disallowance under the said section would survive.
McDonald's India Pvt Ltd v DCIT [TS-513-ITAT-2018(DEL)-TP] ITA Nos.1665 and 1769/Del/2015 692 and 296/Del/2016

1071. The Tribunal remanded the issue with respect to disallowance u/s. 14A of the Act to the AO in light of the DRP not adjudicating on a specific objection raised by the assessee that no dividend/ exempt income was earned from investments and further that it had not incurred any direct or indirect expenditure. The DRP had deleted the disallowance u/s.14A on the basis that the investments made by the assessee were strategic investments driven by commercial expediency and hence beyond the scope of s 14A. The Tribunal accepted the stand of the Revenue that in light of the Apex Court decision of Maxoop Investment, the plea that disallowance u/s. 14A would not be applicable to strategic investment could no longer be accepted. The Tribunal observed that the assessee had raised a specific ground before the DRP that in view of no exempt income being earned qua strategic investment, disallowance u/s. 14A could not be invoked. The Tribunal opined that the decision of the ACIT v/s. Vireet Investment Pvt. Ltd. (2017) taxmann.com 415 Del Tribunal (SB) [wherein it was held that only the

investments which yielded exempt income were to be considered for computing average value of investment] could be relied upon for the argument of the assessee during the course of the remand proceedings before the AO.
ACIT vs Praxair India Private Limited [TS-524-ITAT-2018(Bang)] IT(TP)A No.409 /Bang/2015 dated 04.06.2018

1072. The Tribunal allowed the assessee's appeal and held that in absence of AO recording satisfaction under the provisions of section 14(2), section 14A could not be invoked in view of the ratio laid down by the Apex Court in the ruling of Maxoop Investment Ltd. and Godrej. Thus, it deleted the disallowance u/s.14A.
The Tribunal relied upon the co-ordinate bench ruling in assessee's own case for AY 2010-11 and held that though disallowance u/s.14A was deleted for the subject year, in any case while determining the book profits under Section 115JB of the Act, disallowance if any made under section 14A of the Act could not be added to the book profits in the hands of the assessee.
KPIT Technologies Ltd (earlier known as KPIT Cummins Infosytems Limited.) v DCIT [TS-522-ITAT-2018(PUN)-TP] ITA No.505/ Pun/2016 dated 04.06.2018

Section 10A/ 10B

1073. In the case of the assessee-company which had been claiming deduction u/s 10B/ 10A with respect to its SEZ unit till AY 2011-12 (being the last year for claiming the said deduction on account of sunset clause) and u/s 10AA from AY 2011-12 (being the year from which the EOU Unit was set-up) and the AO had disallowed the assessee's claim for deduction u/s 10AA for the present year i.e. AY 2013-14 on the ground that there is some kind of splitting up or reconstruction of the old business in terms of section 10AA(4)(ii), the Tribunal held that once the claim of deduction u/s 10AA has been accepted in the first year of the operations and also in the second year, then in the third year the same could be withdrawn by examining the factors which were required to be seen in the first year of the claim. Accordingly, on this ground alone, the AO could not deny the claim of deduction u/s 10AA in the impugned year. Further, on merits also it held that the assessee was entitled for claim of deduction u/s 10AA after noting that there was no iota of any material to show that additions to fixed assets had been by way of transfer from EOU units and that it was not a case where old employees of EOU unit had been entirely shifted to SEZ unit (which seemed to be allegation of the AO).
MACQUARIE GLOBAL SERVICES PVT. LTD. v DCIT – (2018) 62 ITR (Trib) 666 (Del Trib) – ITA No. 6794/Del/2017 dated 23.01.2018

1074. Where the AO disallowed the assessee-company's claim u/s 10A with respect to internet charges opining that internet charges might be attributable to delivery of article/thing outside India, disallowable as communication charges in view of Clause (iv) of Explanation 2 to section 10A, the Tribunal relying on the decision in the case of Patni Telecom Solutions (P) Ltd., v ITO [35 taxmann.com 87 (HYD)] held that internet expenses could not be treated as 'communication charges' under Clause-4 of Explanation-2 to Section 10A. However, since the assessee had failed to furnish amount of internet charges or any expenditure under this head, the Tribuanl relying on the decision in the case of CIT v Gem Plus Jewellery India Ltd., [330 ITR 175 (Bom)] and ITO Vs. Sak Soft Ltd. [313 ITR (AT) 353 (Chen)] held that the communication charges etc., attributable to delivery of computer software outside India which were to be reduced from export turnover should be reduced from total turnover as well, while computing deduction u/s 10A and accordingly, directed the AO to exclude same amount from Total Turnover as well and re-workout disallowance u/s 10A.
GVK BIOSCIENCES PVT. LTD. & ANR. v DCIT – (2018) 52 CCH 25 (Hyd Trib) – ITA Nos. 705 to 707 & 738 to 740/Hyd/15 dated 10.01.2018

1075. The Tribunal set aside the order of CIT(A) & AO and directed direct the AO to grant deduction u/s 10B to the assessee, 100% EOU, which was denied by the AO *inter alia* on the ground that the assessee undertaking was formed as result of reconstruction of an existing undertaking and transfer of previously used plant and machinery since the assessee had commenced its business by purchasing machinery and also taking some machinery on lease from another company 'USI'. It held that the assessee was able to satisfy conditions of section 10B, noting that —

- the assessee had filed site plan to show that it was independent unit different from USI and nature of business of assessee and USI were totally different
- the assessee had produced sufficient evidence to support its claim that assessee undertaking was not formed as result of reconstruction of existing undertaking
- the assessee also proved that assessee undertaking was not formed as result of transfer of previously used plant and machinery since very negligible amount was spent for repair on plant & machinery and USI had purchased new machinery for leasing them to the assessee

Further, the Tribunal held that the lease of plant and machinery could not be considered as transfer of capital assets and that merely because leased plant and machinery were kept by USI sometime before lease, would not prove that they were used by USI and accordingly, the claim of assessee was denied merely on presumptions.
INDIAN ARMOUR SYSTEMS PVT. LTD. & ANR. v ITO – (2018) 52 CCH 86 (Del Trib) – ITA Nos. 808/Del/2014, 5647/Del/2014 dated 29.01.2018

1076. The Court upheld the Tribunal's order wherein it had concurred with the findings of fact recorded by the CIT(A) and allowed the assessee's claim for deduction u/s 10A proportionately with respect to the sales realised within the time stipulated in the Act, where the AO had disallowed the entire deduction claimed by the assessee *inter alia* on the ground that the assessee had failed to submit the auditor's certificate required for claiming deduction as per section 10A(5) as well as certificate regarding establishment in SEZ from competent authorities and that there were certain discrepancies in the sales invoices raised against the Bank Realisation Certificates (BRCs). It was noted that before the CIT(A), assessee had submitted that it could not produce the necessary evidence in support of its claim on account of the ill-health of two of its main persons and, accordingly, had produced few of the BRCs and Form No.56F, being the certificate by CA for claiming deduction u/s 10A before the CIT(A).
Pr.CIT v SAHJANAND LASER TECHNOLOGY LTD. - (2018) 401 ITR 0487 (Guj) - TAX APPEAL NO. 1025 of 2017 dated 29.01.2018

1077. The Court held that the process of garbling to make pepper edible does not give rise to a different commodity distinct from raw pepper purchased so as to call such process to be 'manufacture' and thus, assessee, an exporter, engaged in procurement and export of pepper, was not entitled to claim deduction u/s 10B as 100% EOU.
Nishant Export v ACIT – (2018) 91 taxmann.com 100 (Ker) - ITA Nos. 13 & 499 of 2009 dated 25.01.2018

1078. Where the assessee had only one undertaking (STPI Unit) engaged in business of export of software and it earned interest income from fixed deposits with Banks made out of export realization and advances received in normal course of its business, the Tribunal relying on the decision of Hewlett Packard Global Soft Ltd. (2017) 87 taxman.com 182 (Kar) (FA) held that all profits and gains of 100% EOU including incidental income by way of interest on bank deposits would be entitled to 100% deduction / exemption u/s.10A / 10B.
TOSHIBA SOFTWARE (INDIA) PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0170 BangTrib - ITA No. 1717/Bang/2017 dated Mar 2, 2018

1079. The assessee had 31 independent software development units or undertakings set up at distinct locations. In its original return, it claimed deduction under section 10A only in respect of 13 units but in revised return number of units eligible for benefits under section 10A was increased from 13 to 31 and separate Form 56F was filed for each of these 31 units. The High Court, observing that no material was produced to establish that assessee had the 31 units of the assessee were distinct undertakings, disallowed its claim. The Apex Court admitted the assessee's SLP against the order of the High Court.
HCL Technologies Ltd. v ACIT - [2018] 91 taxmann.com 460 (SC) - SLP (C) NOS. 18864-18865 OF 2016 dated MARCH 13, 2018

1080. The Court allowed Revenue's appeal and denied under Section 10B benefit to assessee engaged in manufacture of handicrafts. It accepted Revenue's stand that since assessee commenced business long ago in 1950, the vital requirement of Sec. 10B of allowing deduction for 10 years period from the

date of commencing production, was not met and rejected assessee's stand that irrespective of the fact that the production was commenced much earlier, it must be treated as entitled to the benefit u/s. 10B with reference to the date on which it became a 100% EOU (i.e. in June, 2007). It held that merely getting the status of a 100% EOU would not result in a change in the date of beginning of production by the said unit.

M/s Windlass Steel Craft. - TS-108-HC-2018(UTT) - Income Tax Appeal No. 2 of 2016 dated 22nd February, 2018

1081. Where the AO disallowed the assessee's claim of deduction under Section 10B but the CIT(A) allowed the assessee' alternate claim of deduction under Section 10A and directed the AO to grant assessee deduction, the Tribunal, noting that the assessee had not given any submission or documents or any revised computation of income claiming alternate deduction u/s 10A in support of its claim that why deduction if not allowed u/s 10B might be given u/s 10A, held that the CIT(A) wrongly allowed alternate claim of deduction u/s 10A by totally ignoring intention of legislature to create different sections i.e. 10A and 10B for claim of different deductions and further ignoring fact that conditions for claim of deduction under these two sections were distinguishable. It held that the CIT(A) failed to provide any justification for allowing the claim and had ignored objections raised by AO in the remand report which was contrary to provisions of law. Accordingly, it set aside the order of the CIT(A) and remanded the matter to the AO for fresh adjudication on claim under Section 10A and directed the assessee to furnish relevant documents and details.

INCOME TAX OFFICER & ANR. vs. VIKAS SETHI & ANR. - (2018) 52 CCH 0078 DelTrib - ITA Nos. 6410/DEL/2015 dated Feb 5, 2018

1082. The Tribunal held that the claim of deduction under 10A should be allowed from year of commencement of manufacture and not from year of incorporation. It held that the benefit of deduction was available from profits and gains derived by undertaking from export of articles or things or computer software for period of ten consecutive assessment years beginning with assessment year relevant to previous year in which undertaking began to manufacture or produce such articles or things or computer software and not from the date of incorporation. Accordingly, it allowed assessee'c claim.

ASPIRE SYSTEMS (I) P. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0327 ChenTrib - I.T.A. No. 2758/Mds/2016 dated Feb 1, 2018

1083. While computing deduction u/s.10A of the Act, the AO had deducted the telecommunication and insurance expenses only from export turnover and not from the total turnover.The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order accepting deduction of telecommunication and insurance expenses from export turnover and total turnover in respect of deduction u/s. 10A in view of the jurisdictional HC decision of Tata Elxsi which was approved by the Apex Court in the case of CIT v HCL Technologies Ltd. (404 ITR 719).

ACIT vs EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP) A No.163/Bang/2012 dated 28.06.2018

1084. The assessee's claim for exemption u/s 10B was disallowed by the AO on the ground that the assessee had inflated the profit of the unit eligible for exemption, being an EOU unit. The CIT(A) gave partial relief to the assessee after examining individual heads of expenses where the AO had found inflation. The Tribunal in further appeal by the assessee, deleted the entire disallowance, inter alia, observing that the assessee had maintained separate books of accounts for both the units, i.e. eligible and ineligible, and that in the earlier years, the accounting method adopted by the assessee was not disturbed by the AO. The Tribunal further held that the AO ought to have pointed out a particular expenditure incurred for earning income in the EOU and that he could not have artificially apportioned the expenditure merely on the basis of production of the stakes. The Court dismissed the Revenue's appeal, holding that the entire issue was factual in nature and hence, no question of law arose.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. SYNPOL PRODUCTS PVT LTD - (2018) 102 CCH 0097 (Guj HC) - R/TAX APPEAL NO. 526 & 527 of 2018 dated June 11, 2018

1085. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for exemption u/s 10B which was disallowed by the AO on the ground that various activities (such as

ironing, packing, affixing barcode labels, emblem graphics, affixing stickers, putting silica gel pouch inside packets, putting heat treated emblem on some of garments) carried out by the assessee did not amount to manufacture or production of any article or thing in course of its business of export of garments. It held that the definition of the term 'manufacture' given in clause 9.32 of rules and regulations relating to EOU framed by the Government of India were in favour of the assessee. It also noted the Tribunal's finding that the assessee performed some functions on the garments received by it though all functions were not performed on all the garments and that the expenses incurred on account of the functions performed by the assessee were reflected in the books of account which were verified by the AO. The Court thus held that the findings on facts by the Tribunal could not be termed perverse and the functions undertaken by the assessee fell within the meaning of the term 'manufacture'.
Pr.CIT v A. P. Export - [2018] 95 taxmann.com 169 (Calcutta) - ITAT NO. 156 OF 2015 , GA NO. 3673 OF 2015 dated June 27, 2018

1086. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for deduction u/s 10B which was disallowed by the AO on ground that the aseessee-company, a 100% Export Oriented Unit (EOU), was not entitled to the said deduction in respect of 'Deemed Export' of goods made by it through third party. It was noted that the Revenue was unable to establish that both the assessee and entity through whom such export was made by the assessee had claimed any double or repetitive benefit u/s 10B for same transaction of export. The Court relied on the decision in the case of Tata Elxsi Ltd. v. Asstt. CIT [2015] 127 DTR 327 (Kar.) wherein it was held that the exports made through a third party or another units located in India within Software Technology Park (STP) only, which as per the Exim Policy were treated 'deemed export', were entitled to the benefit of deduction u/s 10A (which contains similar provisions as section 10B).
Pr.CIT v International Stones India (P.) Ltd. - [2018] 95 taxmann.com 287 (Karnataka) - IT APPEAL NOS. 258 OF 2010 AND 561 TO 564 OF 2016 dated June 12, 2018

1087. The assessee was engaged in the business of mining and export of iron ore. It outsourced the work of processing of iron ore to another company which operated plant and machinery installed in the EOU and non-EOU, both belonging to the assessee. The assessee claimed deduction u/s 10B on the profits derived from the production of iron ore which was disallowed by the AO on the grounds that the production of iron ore was outsourced by the EOU to non-EOU. The Tribunal allowing the assessee's appeal held that the customs bonding was not a condition precedent for granting exemption u/s 10B and further concluded by stating that mere processing of the iron ore in a plant and machinery located outside customs bonded area would not disentitle the assessee from deduction u/s 10B where the iron ore was excavated from the mining area belonging to an EOU. The High Court upheld the order of the Tribunal and dismissed the appeal of the Revenue and stated that no substantial question of law arose from the Tribunal's order.
PCIT v. Lakshminarayana Mining Co. – [2018] 93 taxmann.com 142 (Karnataka) – IT Appeal Nos. 715, 714 & 716 of 2017 dated April 6, 2018

Chapter VIA

1088. The Tribunal held that the assessee, a credit cooperative society authorized by the registrar of cooperative societies to accept deposits and lend money to its members and whose main object was to provide credit facility to members, was entitled to deduction u/s 80(P)(2)(a) on interest income earned from fixed deposits with nationalized banks maintained to ensure liquidity and provide ready availability of funds for repayment of deposits on redemption/maturity.
BALIRAJA GRAMIN BIGARSHETI vs. INCOME TAX OFFICER - (2018) 52 CCH 0247 PuneTrib - ITA Nos. 50 & 51/PUN/2017 dated Mar 26, 2018

1089. The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction u/s 80-IB(10) which was disallowed by the AO on the ground that the assessee could not produce the completion certificate for the project completed within a period of 4 years (i.e. 05.03.2008) from the date of commencement certificate (i.e. 05.03.2004). The Tribunal had allowed the assessee's appeal following the decision in the case of ITO v Sai Krupa Developers [ITA No. 3661/Mum/2011] wherein it was held that prior to 31.03.2005, there was no requirement of obtaining any completion certificate. Noting that the Revenue's appeal against the said decision in the case of Sai Krupa

Developers (supra) was also dismissed by the Court [ITA No. 1540 of 2012 (Bom)], the Court dismissed the present appeal too, holding that deduction u/s 80-IB(10) could not be denied to project approved prior to 31.03.2005 for failure to file completion certificate.
Pr.CIT v Krish Enterprises – ITA No. 1146 of 2015 (Bom) dated 05.03.2018

1090. Tribunal rejected assessee's claim of deduction u/s 80IA on sales tax subsidy received from State Govt. as an incentive for electricity generation through windmill upholding revenue's contention that there was no first-degree nexus between sales tax incentive and manufacturing activity of eligible unit. Tribunal also rejects assessee's alternative submission to treat the incentive as non-taxable capital receipt and reliance placed on various cases in this regard *inter alia* including CIT v Meghalaya Steels Ltd. [(2016) 383 ITR 217 (SC)], CIT v Chaphalkar Brothers [(2013) 351 ITR 309 (Bom)] and Garden Silk Mills v CIT & another [(2017) 394 ITR 192 (Guj)]. Tribunal instead relied on the co-ordinate bench ruling in the case of Patankar Wind Farm Pvt. Ltd. v DCIT [ITA Nos. 2225 & 2226/PN/2013].
DCIT/ ACIT v Indo Enterprises Pvt. Ltd - TS-616-ITAT-2017(PUN) - ITA No. 1362/PUN/2011 & 2389/PUN/2012 dated 22.12.2017

1091. Tribunal allowed deduction u/s 80P(2)(a)(i) to an employee credit co-operative society (engaged in providing credit facilities to employees of a nationalized bank) on interest income earned from fixed deposits, noting that the assessee was statutorily required to deposit 25% of its profits in reserve funds, which in turn, have to be parked in fixed deposits with co-operative bank or scheduled banking company as per the regulations of Maharashtra State Co-operative Societies Act. It distinguished the decision in the case of Totgar's Co-operative Sale Society Ltd. v ITO [(2010) 322 ITR 283 (SC)] and State Bank of India v CIT [(2016) 72 taxmann.com 64 (Guj)] by stating that those cases dealt with interest income from surplus funds whereas in the present case the deposits were mandated by statute. Tribunal, thus, also held that the assessee was not entitled to the said deduction with respect to interest income from savings account.
Maharashtra Bank Employees Co-op. Credit Society Ltd - TS-618-ITAT-2017(PUN) - ITA Nos.454 to 456/PUN/2015, CO Nos.16 & 17/PUN/2017 dated 22.12.2017

1092. In the case of Regional Rural Bank (RRB), the assessee, Tribunal allowed the claim of deduction u/s 80P(2)(a)(i) which was rejected by the AO on the ground that the assessee was not a copoperative society as it was not registered under Cooperative Societies Act, 1912 and that after insertion of section 80P(4) deeming status of Cooperative Society to RRB stood dissolved. Tribunal accepted assessee's submission that it was a cooperative society as per the provisions of section 22 r.w. section 32 of the Regional Rural Bank Act, 1976 which have overriding effect over the provisions of the Act, and not the provisions relied by AO.
Baroda Uttar Pradesh Gramin Bank v DCIT – (2018) 91 taxmann.com 182 (All Trib) – ITA Nos. 403, 404 & 405 (Alld.) of 2014 dated 08.01.2018

1093. The Court held that while determining the profits derived from export, for an assessee doing both export and domestic business, the proportion, which the export turnover bears to the total turnover, has to be applied to the business profits to elicit the exact amount eligible for exemption u/s 80HHC, wherein such business profits include those derived in the domestic market as well as that of high sea sales, the turnover of which has to be included in the total turnover. Thus, even in a case where the assessee suffered loss in export business but earned profit in domestic business, the turnover of export business is to be included in the total turnover and deduction u/s 80HHC is to be allowed applying the ratio of export turnover to total turnover to the business profits derived from domestic as well as export business.
CIT v Jameela, J.S. Cashew Exporters – (2018) 401 ITR 391 (Ker) – ITA Nos. 55 of 2007 & 89 of 2008 dated 10.01.2018

1094. The Tribunal allowed deduction u/s 80-IA to the assessee-firm, engaged in generation of power by setting up windmills, with respect to two windmills set up in earlier years and generating profits without setting of loss incurred in three windmills set up during the year by considering each windmill as a separate unit eligible for deduction, noting that in terms of provisions of sub-section (5) of section 80-IA, the deduction had to be given unit-wise without considering profit or loss of other eligible units.

Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018

1095. Where assessee didn't claim deduction u/s 80-IC while filing return u/s 139(1) (original return on or before due date) but claimed the same vide the revised return u/s 139(5) and the AO disallowed the same while passing assessment order u/s 143(3) r.w.s. 147 in view of provisions of section 80AC, the Tribunal held that the provisions of section 80AC do not lay down condition that deduction u/s 80-IC must be claimed in return of income filed u/s 139(1) and even otherwise since the assessee had filed revised return u/s 139(5) within stipulated time along with audit report and certificate in Form No. 10CCB, there was sufficient compliance for claiming deduction u/s 80-IC r.w.s. 80AC. Thus, it allowed the assessee's claim for the said deduction.
ACIT v Monarch Innovative Technologies (P.) Ltd. – (2018) 91 taxmann.com 267 (Mum) – ITA No. 4815 (mum.) of 2016 dated 12.02.2018

1096. The Court allowed the claim of assessee (engaged in business of electricity distribution) for deduction u/s 80-IA with respect to the following income/ receipts, considering them to be related to business activities:-

- rebate from power generators granted from time to time as determined by the State Govt. having regard to the cost of collection of the electricity tax incurred by licensee/ assessee
- penalty recovered by assessee in terms of contract due to delay caused by supplier/contractors in execution of work contract
- income derived from deposit parked in bank for opening of LC to Power Grid Corporation Ltd. for business purpose

It denied deduction u/s 80-IA with respect to the following income/ receipts, considering them not to be related to business activities:-

- difference between WDV and books value of released assets, being not derived by an industrial undertaking
- rental income being independent income having no direct nexus towards reimbursement of manufacturing expenses
- commission received by assessee for electricity duty collected from consumers of electricity

Further, since the assessee had not placed any material on record towards amounts recovered from employees on account of certain expenses incurred by assessee, the Court upheld disallowance by lower authority of claim for deduction u/s while computing deduction u/s 80-IA.
Hubli Electricity Supply Co. v DCIT – (2018) 92 taxmann.com 31 (Kar) – ITA Nos. 100025-100028 of 2017 dated 09.02.2018

1097. Assessee filed writ petition challenging the constitutional validity of the retrospective amendment to sections 28 and 80HHC and the validity of CBDT Circular dated 17.1.2006 (which provides clarification with respect to retrospective applicability of the said amendment). The Court allowed the petition by relying on the judgement pronounced after admission of appeal by the Apex Court in the case of CIT vs. Avani Exports (2015) 58 taxmann.com 100 (SC) wherein the retrospectivity ascribed to the amendments was held to be unconstitutional.
SARITA HANDA v UNION OF INDIA AND OTHERS – (2018) 400 ITR 0567 (Del HC) – W.P.(C) 3768, 3772/2006 & W.P.(C) 10783/2009 dated 10.01.2018

1098. The Tribunal upheld the CIT(A)'s order allowing deduction u/s 80-IA to the assessee with respect to amount generated by displaying advertisement on foot over bridge and toilet blocks developed by assessee for various municipalities/corporations, rejecting Revenue's contentions that foot over bridges could not be considered as development of road for the purpose of allowing deduction u/s 80IA and income from displaying of advertisement boards on toilet blocks and foot bridges could not be regarded as source of first degree so as to allow deduction under the said section, following the Tribunal's order in assessee's own case for earlier year. The CIT(A) had held that since the Central / Local Authority /

other statutory body, did not have the funds to compensate the assessee for costs it incurred for developing infrastructure facility, the assessee was given license to collect advertisement revenue by display of advertisement panels.
DCIT v VANTAGE ADVERTISING PVT. LTD. – (2018) 52 CCH 8 (Kol Trib) – ITA No. 2616/Kol/2013 dated 03.01.2018

1099. The assessee's claim for deduction u/s 80 IA(4F) r.w.s. 80 IA(5) and section 80IB(10) in respect of four projects was disallowed by the AO on the ground that development and construction work was commenced prior to 1.10.1998. The Tribunal had allowed the said deduction holding that, as in all projects work orders were issued subsequent to 1.10.1998, there was no reason to assume that development and construction of projects started prior to 1.10.1998. The Court held that even if either development or construction starts before the specified date, benefit under provisions would not be admissible and the assessee had undertaken levelling work so as to develop land to facilitate construction of building over it and, thus, development and construction of housing project had commenced with such levelling of earth. It noted that evidence proved that foundation laying ceremony of projects might have been performed on 30.9.1998 and actual construction might have started later on but levelling of earth in project started much earlier. Thus, it was held that, with levelling of earth, development and construction of project had commenced prior to 01.10.1998 and the assessee was not eligible for deduction u/s 80IA(4F) r.w.s. 80IA(5) and 80IB(10).
CIT & ORS v SHIPRA ESTATE LTD. & ORS. – (2018) 162 DTR 0332 (All) – ITA No. 284 of 2010, 270 of 2010, 274 of 2010 dated 02.01.2018

1100. The Court upheld Tribunal's order allowing deduction u/s 80IC to the assessee undertaking job work by providing labour employment and factory space for the purpose of manufacture of medicines by various manufacturers. The Tribunal, considering the decision in the case of CIT v. Impel Forge and Forge Allied Industries Limited [(2010) 326 ITR 27 (P&H)] and CIT vs. Sadhu Forging Ltd. [(2011) 336 ITR 444 (Del HC)], held that for claiming deduction under the aforesaid provisions, the assessee was at liberty to manufacture for itself or for others and the same did not make any difference.
CIT & Anr v AISHWARYA HEALTH CARE & ANR. - (2018) 401 ITR 0398 (Patna) - Miscellaneous Appeal No. 674 & 675 of 2014 dated 29.01.2018

1101. The Tribunal held that deduction u/s 80-IB(10) could not be disallowed for entire housing project where the assessee had violated conditions of section 80-IB(10)(f) by allocating three flats to a single person and, the assessee-developer was entitled to deduction proportionately in respect of flats which fulfilled all conditions of section 80-IB(10). It held that reading the provisions of section 80-IB(10) as a whole and the legislative intent/object behind introducing such provision into the statute reveal that it is a beneficial provision introduced by the legislature to deal with the housing problem and, thus, such provision has to be construed liberally.
Om Swami Smaran Developers (P.) Ltd. v ITO – (2018) 90 taxmann.com 267 (Mum) – ITA No. 6355 (Mum.) of 2014 dated 31.01.2018

1102. The Court upheld the Tribunal order allowing assesse, a cooperative credit society engaged in providing credit facilities to its members, deduction u/s 80P(2)(a)(i) on the ground that since the assesse was not a bank but a cooperative credit society, section 80P(4) disentitling certain co-operative bank for deduction u/s 80P are not applicable.
Pr.CIT v Ekta Co-op Credit Society Ltd. – (2018) 91 taxmann.com 42 (Guj) - Tax Appeal No. 859 of 2017 dated 23.01.2018

1103. Where the assessee had not retained any amount due to its members and invested its surplus funds in deposits with different banks, the Tribunal held that interest earned thereon could not be treated as Income from other sources and assessee would be entitled for deduction u/s. 80P(2)(a) (1).
INCOME TAX OFFICER vs. KOLKATA RESERVE BANK EMPLOYEES CO-OP. CREDIT SOCIETY LTD. - (2018) 52 CCH 0172 KolTrib - ITA No. 2253/Kol/2016 dated Mar 1, 2018

1104. The assessee a co-operative society engaged in providing credit facilities to its members claimed deduction u/s. 80P(2)(a)(i) in respect of interest derived from investment of surplus funds in short-term

deposits which was denied by the AO who taxed it as income from other sources u/s. 56 as it was not arising in course of providing credit facilities to members of society. The Tribunal noted that there were two views on this issue i.e. i) that of the Apex Court in decision Totgar's Cooperative Sale Society Limited wherein it was held that such income was taxable as 'income from other sources' where the amount invested by assessee was its liability payable to its members and ii) of Tumkur Merchants Souharda Credit Cooperative Limited which distinguished Totgar's decision and held that where the source of investment was the assessee's surplus funds not immediately required for the business, interest thereon would be eligible for deduction under section 80P(2)(a)(i). Since there was no information that money invested in bank was out of money payable to members or out of surplus fund retained by assessee, it restored back the matter to the file of AO to determine the same and decide accordingly.

INCOME TAX OFFICER vs. BOKARO STEEL EMPLOYEE'S (CALCUTTA) CO-OPERATIVE CREDIT SOCIETY LTD. - (2018) 52 CCH 0200 KolTrib - ITA No. 1314/Kol/2015 dated Mar 21, 2018

1105. In the case of a co-operative society registered under Kerala Co-operative Societies Act, 1969, the Tribunal dismissed the Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 80P holding that all the conditions for becoming primary co-operative bank was complied with in case of the assessee, hence, it would fall within provisions of section 80P(4) which excludes any co-operative bank (other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank) from claiming the said deduction. It held that the assessee was registered and classified as Primary Agricultural Credit Society by the Competent Authority under Kerala Co-operative Societies Act and thus, entitled to the benefit of deduction u/s 80P(2). It noted that the Explanation to section 80P(4) stated that 'Primary Agricultural Credit Society' and 'Co-operative Bank' would have same meaning as provided in Part V of Banking Regulation Act, 1949 and the Reserve Bank of India, which was competent authority as per the Banking Regulation Act, treated the assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within ambit of Banking Regulation Act. Further, with respect to the reliance placed by the AO on the decision in the case of Citizens Co-operative Society Limited v ACIT (2017) 397 ITR 1 (SC) wherein the Apex Court had disallowed deduction u/s 80P to an assessee engaged in activity of granting loans to general public as well the member, the Tribunal held that the aforesaid case was distinguishable as in the present case, the assessee had not taken any deposits from the non-members or the public.

ITO & ORS. v EDANADKANNUR SCB LTD. & ORS. – (2018) 52 CCH 28 (Cochin Trib) – ITA Nos. 431 to 433/Coch/2017, 567/Coch/2017, 561/Coch/2017, 525 to 527/Coch/2017, 560/Coch/2017, 410/Coch/2017, 411/Coch/2017, 412/Coch/2017, 413/Coch/2017, 566/Coch/2017, 426 to 428/Coch/2017, 429 & 430/Coch/2017 dated 10.01.2018

1106. The Court reversed Tribunal's order and denied the assessee benefit under Section 80HHC on commission deducted by foreign agent from export proceeds and not brought to India in convertible foreign exchange. It noted that the assessee had included commission on sales (paid to an agency outside India) in its export turnover, but such commission was deducted in the sale invoice itself and only the balance consideration was brought into India as convertible foreign exchange and dismissed the Tribunal's finding that there was a live connection between the commission and export sale and that there was no difference in either paying commission directly in foreign exchange to the foreign agency or in bringing it back into the country and then paying it in foreign exchange. It held that since the condition under Section 80HHC(2)(a) of bringing in the sales proceeds in India in convertible foreign exchange was not met, the Court denied benefit on the commission portion of sales consideration not brought into India.

Parry Agro Industries Ltd - TS-155-HC-2018(KER) - ITA.No. 1053 of 2009 dated 14.03.2018

1107. The Tribunal held that in terms of section 80-IE(7), 'initial assessment year' would be the year in which substantial expansion was completed by assessee which would enable it to generate revenues and claim deduction thereon and that there was no time limit prescribed in section 80-IE as to when substantial expansion should be completed by assessee. Accordingly, it held that the CIT(A) was not justified in denying deduction on the ground that once substantial expansion was undertaken it had to be completed within same financial year in order to claim deduction under section 80-IE. Accordingly, it allowed the assessee's claim of deduction under Section 80-IE.

Jay Shree Industries Ltd. v JCIT - [2018] 92 taxmann.com 304 (Kolkata - Trib.) - IT APPEAL NO. 359 (KOL.) OF 2014 dated MARCH 16, 2018

1108. Tribunal held that where the assessee was awarded a contract to construct Road by NHAI and it was to procure raw material, make arrangements for power, water, plant machinery etc., and conduct all other activities needed for construction, assessee was a developer and not a mere works contractor and, accordingly, was eligible for deduction under section 80-IA.
ACIT v Ho Hup Simplex JV - [2018] 92 taxmann.com 106 (Kolkata - Trib.) - IT APPEAL NO. 692 (KOL.) OF 2016 dated MARCH 21, 2018

1109. The Apex Court dismissed Revenue's SLP against Delhi HC judgement allowing Sec. 80HHE deduction to New Delhi Television Ltd. ('NDTV', assessee) wherein the High Court held that television news software exported by assessee outside India was 'customized electronic data' [as defined in clause (b) to Sec. 80HHE Explanation]. The Court held that since the expression 'any customized electronic data' was preceded by the disjunctive 'or' it clearly indicated that any customized electronic data would also be considered to be 'computer software' under the inclusive part of the definition and therefore held that the assessee was entitled to claim deduction under Section 80HHE.
CIT v M/S NEW DELHI TELEVISION LTD - TS-151-SC-2018 - SPECIAL LEAVE PETITION (CIVIL) Diary No. 7356/2018 dated 28-03-2018

1110. The Tribunal held that investment in building, furniture, fixture in case of a hotel would qualify to be treated as investment in plant and machinery for purpose of section 80-IC. It relied on the decision of the Apex Court in CIT v. Karnataka Power Corporation' [2000] 112 Taxman 629/[2001] 247 ITR 268 wherein it was held that the question of whether a building could be treated as plant was a question of fact and where it was found as a fact that a building had been so planned and constructed as to serve as assessee's special technical requirements, it would qualify to be treated as a plant for the purpose of investment allowance. Accordingly, it held that the restrictive meaning to the word plant given by the lower authorities was incorrect and accordingly allowed the assessee benefit under Section 80IC.
Sirmour Hotels (P.) Ltd. v DCIT - [2018] 91 taxmann.com 450 (Chandigarh - Trib.) - IT APPEAL NOS. 374 TO 376 (CHD.) OF 2017 dated MARCH 19, 2018

1111. The assessee claimed deduction u/s 80IC in respect of Unit-III Kotdwar which was denied by the AO who held that the eligible unit was formed after splitting up existing unit at Noida and hence no deduction could be granted. The Tribunal upheld the order of the CIT(A) and held that since there was no splitting up of existing unit inasmuch as there was no finding by AO that any machinery earlier used in Noida unit was transferred to Kotdwar-III unit and since the assessee started supplying its products to H and other customers from new undertaking at Kotdwar-III unit which were earlier manufactured at Noida unit, the AO was not justified in disallowing the claim of deduction under Section 80IC of the Act. Further, it noted that other than purchase of raw material from its Noida Unit, there was no reference to any interconnectivity between Kotdwar-III unit and Noida Unit and further observed that it was not case of AO that raw material purchased by assessee from Noida unit was not at arm's length price. Accordingly, it upheld the CIT(A)'s order and dismissed Revenues' appeal.
INCOME TAX OFFICER & ANR. vs. INDICA INDUSTRIES PVT. LTD. & ANR. - (2018) 52 CCH 0133 DelTrib - ITA No. 1764/Del/2016, 3836/Del/2015, 1509/Del/2016 dated Feb 28, 2018

1112. The Tribunal held that where the assessee had actually transferred money to donee trust through banking channel and its books recognized said amount on asset side till the relevant previous year wherein it decided to forgo its loan right by way of donating amount in question to donee in lieu of corresponding acceptance receipt, then deduction u/s.80G claimed by it could not be disallowed merely on the ground that the payment was not made during the year under review.
GENERAL CAPITAL AND HOLDING COMPANY PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0097 AhdTrib - ITA No. 538/Ahd/2016 dated Feb 12, 2018

1113. The Tribunal allowed the assessee deduction u/s. 80IC and held that that since the assessee claimed Sec.80IC deduction in duly filed revised return u/s 139(5) and filed tax audit report along with prescribed Form no. 10CCB there was a sufficient compliance for claiming deduction. It rejected Revenue's re-

opening of the concluded assessment on the ground that Sec.80IC deduction could be claimed only by filing return within the due date provided u/s 139(1) and observed that Sec. 80AC only contemplated that for allowing deduction u/s 80IC, the assessee was required to file return of income u/s 139(1), and it did not lay down condition that deduction u/s 80IC was to be claimed in the return of income filed u/s 139(1). Moreover, noting that AO [while framing assessment u/s. 143(3)] had duly deliberated on Sec. 80IC deduction claim made by assessee in the revised return of income, the Tribunal held that it was a clear case of 'change of opinion' and quashed re-assessment.

Monarch Innovative Tech [TS-67-ITAT-2018(Mum)] - /I.T.A. No.4815/Mum/2016 dated 12-02-2018

1114. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assesee's claim for deduction u/s 80-IB(4) in respect of profits from Unit II of the assesse, where the AO had opined that Unit II is nothing but an extension of Unit I, formed by splitting up of an already existing business and thus in violation of conditions specified u/s 80IB(4) for claiming the deduction for profit derived from unit II, mainly on the premises that both units were functioning from same premise and also both units were having common registration number of all the authorities. It was noted that the above issue was already considered by the co-ordinate bench in the assessee's own case for earlier year wherein after apprising relevant facts, it was concluded that the assessee had maintained separate books of account for both the units and Unit II set up by making investment in new plant & machinery was eligible for deduction u/s 80-IB(4).

ASSISTANT COMMISSIONER OF INCOME TAX vs. DIAMOND TOOL INDUSTRIES - (2018) 53 CCH 0160 (Mum Trib) - ITA No.6936 to 6938, 6940 & 6941/M/2016 dated Jun 13, 2018

1115. The Court allowed assessee's claim for deduction u/s 80IB with respect to its business of manufacturing Ayurvedic drugs, which was disallowed by the lower authorities on the ground that the assessee was not engaged in any manufacturing activity and instead, it was only doing trading of mushroom powders in capsules. The Court held that when new distinct commodity commercially accepted as such comes into existence as result of processing, that commodity could be said to have been manufactured and in the present case, the end product was not the same product which was fed into machines at first instance. Noting that the bulk form of the drug (which was imported from a foreign company) could not be nakedly consumed without putting them in an enclosure such as gelatine capsule, it held that what was done by the assessee was manufacture since the product which emerged after process of manufacture was commercially distinct commodity, could be of consumption as such containing requisite amount of ingredients in appropriate percentage, preserved in proper form as contained in license issued under authorized enactments as well as technical logo shared by foreign company.

DXN HERBAL MANUFACTURING (INDIA) PVT. LTD. vs. INCOME TAX OFFICER - (2018) 102 CCH 0167 (Chen HC) - T.C.(A) Nos. 341 & 342 of 2007 dated June 21, 2018

1116. In the case of co-operative societies registered under Kerala Co-operative Societies Act, 1969, the Tribunal dismissed Revenue's appeal against the CIT(A)s' order allowing the assessees' claim for deduction u/s 80P which was denied by the AO on the ground that the assessees were doing the business of banking, and therefore, in view of insertion of provisions of section 80P(4) [disentitling certain co-operative bank for deduction u/s 80P], the assessees were not entitled to deduction u/s 80P(2)(a)(i). The Tribunal followed the decision in case of ITO v. The Chengala Service Co-operative Bank Limited [ITA No.434/Coch/2017 & Ors.] on identical issue wherein it was held that the AO was not competent to resolve / decide the issue as to whether the assessee was a 'Primary Agricultural Credit Society' or a 'Co-operative bank' and the Reserve Bank of India, which was competent authority as per the Banking Regulation Act, treated the assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within ambit of Banking Regulation Act.

ITO & ORS. vs. KARANNUR SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0184 (Cochin Trib) - ITA No. 519-521, 534-536, 558, 559 & 568-570/Coch/2017 dated June 20, 2018;

ITO & ORS. vs. OLAVANNA SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0197 (Cochin Trib) – ITA No.469-472, 477-479, 482, 517, 518, 530-533, 480, 481, 602, 603, 483, 485 & 490-493/ Coch/ 2017 dated June 20, 2018

INCOME TAX OFFICER & ANR. vs. IRUMBUZHI SERVICE CO-OPERATIVE BANK LIMITED & ANR. - (2018) 53 CCH 0169 (Cochin Trib) - ITA No.424, 425, 452 & 453/Coch/2017 dated June 14, 2018

ITO v vs. TANALUR SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0146 (Cochin Trib) – ITA No. 391-393 & 401-405/Coch/2017 dated June 12, 2018

1117. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 80IB(10) towards profit derived from development of housing project which was disallowed by the AO observing that the assessee had not fulfilled conditions laid down in clause (a) to section 80IB(10). However, the CIT(A) noted that the project was part of slum redevelopment and same was approved by Slum Rehabilitation Project (SRA) and as per proviso to section 80IB(10), if housing project was approved by SRA, then clause (a) and clause (b) should not apply to such housing project. [Clause (a) provides for the time limits within which the project should be completed and clause (b) provides the that project should be on a plot of land which has minimum area of one acre]
INCOME TAX OFFICER vs. OMEGA INVESTMENT & PROPERTIES LTD. - (2018) 53 CCH 0198 (Mum Trib) - ITA Nos. 869 & 870/Mum/2016 dated June 20, 2018

1118. The assessee, a primary agricultural credit society registered under Kerala Co-operative Societies Act, 1969, had claimed deduction u/s 80P which was denied by the AO on the ground that it was doing the business of banking, and therefore, in view of insertion of provisions of section 80P(4) [disentitling certain co-operative bank for deduction u/s 80P], the assessee was not entitled to deduction u/s 80P(2)(a)(i). The CIT(A), upholding the AO's order, had further held that interest received on investments from sub-treasuries and Trivandrum District Co-operative Banks were income from other source, thus, not eligible for deduction u/s 80P. The Tribunal allowed the assessee's claim, holding that a Primary Agricultural Credit Society do not have license from Reserve Bank of India to carry on the business of banking and thus is not a cooperative bank, hit by the provisions of section 80P(4). Further, relying on the decision in the case of Kizhathadiyoor Service Cooperative Bank [ITA No. 525/Coch/2014], it also held that the assessee was entitled to the benefit of deduction u/s 80P(2) of the income-tax Act, with regard to interest received on deposits made by the assessee with sub treasury and Trivandrum District Co-operative Bank.
CHIRAYINKIZHU SERVICE CO-OPERATIVE BANK LIMITED vs. INCOME TAX OFFICER - (2018) 53 CCH 0175 (Cochin Trib) - ITA No. 159/Coch/2018 (SA No. 16/Coch/2018) dated June 19, 2018

1119. The Tribunal allowed the assessee's claim for deduction u/s 80IA from the profits of the eligible business to the extent the same was enhanced on account of disallowances, following the CBDT Circular No. 37/2016 which provides that where the disallowances made u/s 32, 40(a)(ia), 40A{3), 43B, etc. and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, results in enhancement of the profits of the eligible business, the deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.
VODAFONE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0377 MumTrib - ITA No. 4749/Mum/2016 dated Apr 6, 2018

1120. Where the assessee received DEPB benefit, the AO held that they were export incentives and not derived from Industrial undertakings and consequently not eligible for deduction u/s 80IB. CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of Liberty India Ltd (207 CTR 243) (P&H HC), wherein it was held that though object behind DEPB etc. was to neutralize incidence of customs duty payment on import content of export product DEPB credit/duty drawback receipt did not come within first degree source as said incentives flow from Incentive Schemes enacted by Government and hence such incentives were not profits derived from eligible business under Section 80-IB of the Act. Tribunal held that since AS-2 and ICAI Guidance Note specify that duty drawback, DEPB benefits, rebates etc. cannot be credited against cost of manufacture of goods, the DEPB benefit received could not be eligible for deduction under Section 80IB of the Act. Thus, the Assessee's appeal was dismissed
VARDHMAN TESTILS LTD. & ORS. vs. DCIT & ORS. (CHANDIGARH TRIBUNAL) (ITA No. 681/Chd/2007, 475, 530, 938 & 981/Chd/2008, 528 & 575/Chd/2009) dated May 4, 2018 (53 CCH 0103)

1121. The assessee, an agricultural Service Society, engaged in accepting deposits and providing credit facilities to its members, claimed deduction u/s 80P(2)(a)(i) in respect of income earned on FDRs kept with bank. The AO held that interest income earned from investment of surplus funds in Banks and government securities could not be attributable to activity carried out by society and hence was not entitled for deduction under Section 80P(2)(a)(i). CIT(A) upheld order of the AO. Tribunal held that where FDR'S in banks were made from operational funds of cooperative society while carrying out its

activity of providing credit to its members, interest earned thereon being incidental to carrying out said activity, was attributable to said activity and hence entitled to deduction under Section 80P(2)(a)(i). However, the Tribunal restored the matter to the file of the AO for limited purpose of examining activities carried out by assessee society and whether deposits made by it in banks were done during course of carrying out its stated activities and thereafter decide the issue in accordance with law. Thus, the Assessee's appeal was allowed.

THE TIARA CO-OPERATIVE AGRICULTURAL SERVICE SOCIETY LIMITED vs. ITO (CHANDIGARH TRIBUNAL) (ITA Nos. 905 to 908/Chd/2017) dated May 1, 2018 (53 CCH 0109)

1122. Where the assesse had claimed deduction u/s 37 for amount paid to trust for the purpose of air conditioning of hall not owned by the assessee (but was in the name of the asssessee's founder) and on rejection of the said claim by the AO, alternatively, claimed deduction u/s 80G, the Court held that the AO could entertain the said alternative claim of the assesse though no revised return was filed for the same. However, on merits, noting that the trust had no control over the funds and acted merely as an agent of the assessee in carrying out the air-conditioning of the hall, the Court held that the activity was not applied for charitable purpose as per section 80G(2)(a)(iv) r.w.s. 80G(5). Further, observing that earlier claim was made of business expenditure which was later altered to one of a donation to the trust, it held that the purpose of the activity for which the fund is applied does not change with the change of the provision under which the claim for deduction is raised. It thus denied deduction u/s 80G.

CIT v Malayala Manorama Co Ltd [TS-375-HC-2018(KER)] - ITA.No. 96 of 2010 dated May 30, 2018

1123. The assessee was engaged in the business of manufacture and sale of carpets to IKEA Trading (India) Ltd. as supporting manufacture and had claimed deduction u/s 80HHC which was denied by the AO on the ground that the assessee was receiving export incentives in the form of Duty Draw Back (DDB) and Duty Entitlement Pass Book (DEPB). The CIT (A) allowed the assessee's appeal holding that it was entitled to the deduction of export incentives u/s 80HHC at par with the exporter. The appeal of the Revenue was dismissed by the Tribunal and the High Court, thus an appeal was filed before the Supreme Court where the question for consideration was whether the assessee was entitled for deduction at par with the exporter who also received export incentives in the form of DDB and DEPB. The Apex Court referring the matter to a larger bench stated that the precedents, i.e. CIT v. Baby Marine Exports [2007] 290 ITR 323/160 Taxman 160 (SC) and CIT v. Sushil Kumar Gupta [2012] 25 taxmann.com 368/210 taxmann.com 257 (SC), referred to were not identical and could not be accepted as Explanation (baa) of section 80HHC specifically reduces deduction of 90 per cent of the amount referable to in section 28 (iiia) to (iiie). In the light of substantial question of law, the matter was sent for re-consideration to a larger bench.

CIT v. Carpet India - [2018] 93 taxmann.com 434 (SC) - CIVIL APPEAL NOS. 4590 TO 4599 & 4601 TO 4603 OF 2018 dated APRIL 27, 2018

1124. Where the assessee co-operative society was engaged in tapping of toddy and vending it through licensed shops, the AO denied the assessee's claim for deduction u/s 80P(2)(iii) opining that toddy being an intoxicating liquor, extraction and sale were regulated by State Government under provisions of Abkari Act and, thus, income generated from such vending under license could not be covered under the said section. As section 80P(2)(iii) allows deduction to a co-operative society of the profit derived by it from the marketing of agricultural produce grown by its members, the Court allowed the assessee's claim holding that regulatory regime under Abkari Act would not be a relevant factor in deciding as to whether assessee-society would be entitled to exemption as available u/s 80P and even otherwise, since tapping of toddy was a traditional agricultural enterprise within the State, the State also encouraged it, as distinguished from foreign liquor trade.

Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. v CIT - [2018] 95 taxmann.com 299 (Kerala) - IT APPEAL NO. 273 OF 2015 AND 139, 140, 142, 143, 151, 153, 154 & 156 OF 2016 dated June 20, 2018

1125. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for deduction u/s 80-IB(10) which was disallowed by the AO on ground that the said claim was in contravention of clause (f) of section 80-IB(10) by selling two adjacent flats in its housing project on 14-1-2008 and 16-7-2008 to two members of same family, being husband and wife. It was noted that the

amendment brought on 1-4-2010 vide clause (f) to section 80-IB(10) barring such sale to related persons is prospective in nature.
CIT v Elegant Estates - [2018] 95 taxmann.com 157 (Madras) - T.C.A. NOS. 179 & 180 OF 2018 dated June 19, 2018

1126. Assessee was a government company engaged in the business of handling and transportation of containerized cargo whose operating activities were mainly carried out at its Inland Container Depots (ICDs). The assessee claimed deduction under Section 80-IA in respect of profit earned from the ICDs which was denied by the AO/CIT (A)/Tribunal. The Apex Court affirming the decision of the High Court decided in favour of the assessee and held that ICDs are Inland Ports subject to provisions of Section 80-IA and that deduction can be claimed for income earned out of these depots. It held that though 'inland ports' are not defined anywhere but the notification issued by the CBEC holds that the ICDs can be termed as Inland Ports.
CIT v. Container Corporation of India – [2018] 93 taxamnn.com 31 (SC) – Civil Appeal No. 8900 of 2012 dated April 24, 2018

1127. Certain payments were made by the assessee to a newspaper being run by a political party for insertion of some advertisements and the same was claimed as deduction u/s 80GGC. The AO disallowed the said claim on the ground that the payment had been made to a newspaper and not to a political party or electoral trust. The CIT (A) reversed the decision of the AO and allowed the claim of the assessee observing that the receipt issued by the newspaper had acknowledged donation received by Rashtrawadi Congress Party and therefore the payments fell under the purview of Section 80GGC. On further appeal, the Tribunal found that none of the receipts mentioned that the amount was received as a donation and accordingly the Tribunal remanded the matter back for verification. The Tribunal further held that where the assessee had failed to demonstrate that payments had been made for seeking legal opinion in connection with his business, the expenditure could not be allowed merely for the reason that payments had been made through cheques and TDS had been deducted on such payments.
DCIT v. Smt. Anjali Hardikar – [2018] 92 taxmann.com 430 (Pune – Trib,) – IT Appeal No. 173 (PUN.) of 2016 dated April 6, 2018

1128. The assessee company claimed to be engaged in power generation and claimed deduction under section 80-IA. The AO denied the deduction on the ground that the assessee was not engaged in the generation or distribution of power but it was merely engaged in the maintenance of the power plant owned by SPCL. On appeal, the High Court held that as per section 2(28) of Electricity Act, 2003 'generating company' meant any company which owns or operates a generating station and as per the terms of the contract between the assessee and SPCL, the assessee was not the owner of the power plant but did only maintenance work for which it was paid a fee. Thus, it upheld the denial of deduction under Section 80-IA.
Covanta Samalpatti Operating (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 38 (Madras) – Tax Case (Appeal) No. 860 of 2008 dated April 4, 2018

1129. The Apex Court dismissed the assessee's appeal against the High Court's order rejecting the assessee's claim for deduction u/s 80-O with respect to gross foreign exchange received from a foreign company for rendering specialized industrial and commercial knowledge (relating to the Indian automobile industry) to the said foreign company under a contract whereby the said company had agreed to pay remuneration being certain percent of the contractual amount between the foreign company and its Indian customers on sale of its products so developed. The Apex Court held that there was no material on record to prove that a) the sales effected by the foreign company to its customers in India were in respect of the product developed with the assistance of the assessee's information b) how the service charges payable to the assessee were computed. It thus held that the services rendered to the foreign company were not technical services within the meaning of section 80-O, since the assessee had failed to prove the same and he had also not produced the relevant documents to prove the basis for the said payment to him.
B.L. Passi v CIT - [2018] 92 taxmann.com 341 (SC) - CIVIL APPEAL NO. 3892 OF 2007 dated April 24, 2018

1130. The assessee was engaged in the business of construction/development of Infrastructure facilities such as roads and providing necessary and crucial components of the Railway System. The claim of the assessee for deduction under section 80-IA(4) in respect of infrastructure project was rejected by the AO on the ground that the assessee was a contractor and not a developer. The decision of the AO was upheld by the CIT (A). The Tribunal held that the distinction between developer and contractor was no longer relevant in the context of changed law that was explained by the Mumbai High Court in the case of CIT v. ABG Heavy Industries [2010] 322 ITR 323 (Bom.). The Tribunal applied the proposition of law in the said case in favour of the assessee and allowed the claim u/s 80-IA(4). It held that in view of provisions of Section 80-IA(4), the term 'contractor' is not essentially contradictory to the term 'developer' and thus by entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to one being a developer.
Bhinmal Contractors Property and Land Developers (P.) Ltd. v. ACIT – [2018] 93 taxamnn.com 296 (Mumbai – Trib.) – IT Appeal Nos. 7207 of 2012, 7082, 7083 (MUM.) of 2013 & 1420 (MUM.) of 2014 dated April 26, 2018

1131. The Court allowed assessee's claim for deduction u/s 80HHC which was denied by the AO in view of the retrospective amendment to section 80HHC(3) [which provides for insertion of new pre-conditions retrospectively in 3rd and 4th proviso to section 80HHC(3) for being eligible to claim the said deduction]. It noted that the said amendment was nullified by the Gujarat High Court and the Apex Court had refused to interfere with the same. It held that once a statutory provision, original or amended, is declared ultra vires the Constitution, the legal fiction i.e. the nullified provision is said to have never existed, comes into play.
N.SHEELA v ACIT & Anr. - [TS-409-HC-2018(KER)] - W.P (C) No.21301 of 2018 dated June 27, 2018

1132. The Tribunal restored the matter to the file of the AO with respect to the assessee's claim for deduction u/s 80IC which was denied by the AO opining that there was no manufacturing activity done by the assessee-company so as to be eligible for the said deduction. The Tribunal observed that in the earlier years, the CIT(A) had allowed the deduction u/s 80IC and the Revenue's appeal against the CIT(A)'s order was dismissed by the Tribunal, thereby indicating that the assessee-company was doing manufacturing activity. However, for the year under consideration, the AO relied on a report given by the Inspector after survey on the premises of the assessee stating that there were no sign of manufacturing activity and all the machinery were found fully detached from electric supply and the said report was not confronted to the assessee.
ARON HURLEY KCONCEPTS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 64 ITR (Trib) 0722 (Delhi) - ITA Nos. 844 & 845/Del./2017 dated April 3, 2018

1133. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 80IA with respect to rental income from modules/built up space of Industrial park, noting that in the assessee's own case for an earlier year, following the decision in the case of CIT v. Elnet Technologies Ltd [T.C.A. Nos. 391 & 392 of 2007 (Mad)], the coordinate bench had held that the lease rent income from modules/built up space of the Industrial Park was assessable under the head 'income from business' and thus such income was eligible for deduction u/s 80IA.
TIDEL PARK LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0428 ChenTrib - ITA Nos. 1700 & 1701/Chny/2017, 1808 & 1809/Chny/2017 dated Apr 4, 2018

1134. The assessee made a claim for treating interest subsidy as a capital receipt for the first time before the CIT(A) which was rejected as it was neither made in the return of income, nor was it consistent with the assessee's own stand of interest subsidy being a revenue receipt being eligible for deduction under Section 80IB of the Act. Tribunal relied on the ruling of *Shree Balaji Alloys v. CIT* [2011] 333 ITR 335 (J&K High Court), and admitting the assessee's additional ground, directed the AO to treat the same as a capital receipt.
KASHMIT TUBES vs. DCIT (AMRITSAR TRIBUNAL) (ITA Nos. 198 & 199/(Asr)/2014) dated May 31, 2018 (53 CCH 0133)

1135. The assessee bank invested amounts in NON-SLR accounts i.e. investment in Bonds & Debentures and claimed deduction of interest earned thereon under Section 80P of the Act. The AO disallowed

such interest under Section 80P(2)(a)(i) of the Act. CIT(A) deleted such disallowance relying on the ruling of the Supreme Court in Bihar State Co-operative Bank ltd. v CIT (39 ITR 114). Relying on the ruling of the Allahabad High Court in the case of CIT vs. Muzaffarnagar Kshetriya Gramin Bank Ltd. (256 CTR (All.) 322), the Tribunal upheld the order of the CIT(A) and the Revenue's appeal was dismissed.

DCIT & ANR. vs. RANCHI KSHETRIYA GRAMIN BANK & ANR. (RANCHI TRIBUNAL) (ITA Nos. 191 & 192/Ran/2016 (CO. Nos. 11 & 12/Ran/2017)) dated May 31, 2018 (53 CCH 0203)

1136. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing deduction u/s 80P(2)(a)(i) with respect to interest income earned from Co-operative Banks by the assessee, a co-operative society providing credit facilities to its member, noting that the investments made by the assessee with Co-operative Banks were compulsory because of dictate of Maharashtra Co-operative Societies Act, which mandates all Credit Co-operative Societies operating in State of Maharashtra to deposit about 20% to 30% of its funds with Co-operative Banks/ Nationalized Banks. Section 80P(2)(a)(i) allows deduction to a co-operative society with respect to its business income attributable *inter alia* to its activity of providing credit facilities to its members.

INCOME TAX OFFICER & ANR. vs. KESHAVSMURTI NAGARI & ANR. - (2018) 52 CCH 0476 PuneTrib - ITA No. 936/PUN/2015 (CO NO.30/PUN/2017) dated Apr 4, 2018

1137. Assessee, engaged in business of running Container yard, Container Freight Station (CFS), Bonded Warehouse etc stated in its audit report that assessee's inland container depot was "inland port" and was one of the infrastructure facility for purpose of S.80IA and thus claimed that it was eligible for tax holiday u/s 80IA (4)(i). The AO rejected assessee's claim whereas the CIT (A) held that CFS ran by assessee was eligible for deduction u/s 80IA as infrastructure facility. The Tribunal upheld CIT (A)'s order. The Court concurring with CIT (A) and Tribunal's order, relying on M/s. All Cargo Global Logistics Ltd. vs. DCIT and Continental Warehousing Corporation (Nhava Sheva) Vs. ACIT wherein it was held that considering the facilities extended for loading, unloading, storage and warehousing of the goods, CFS is an infrastructure facility within the precints of the port. Thus, it dismissed the Revenue's appeal.

PCIT v JWC Logistics Park Pvt. Ltd. (2018) 404 ITR 0310 (Bom) - INCOME TAX APPEAL NO. 613 & 618 OF 2015 dated 11.04.18

1138. The assessee's business of manufacturing and export was eligible for deduction u/s 80HHC.The AO while computing profits from business for purpose of said deduction, excluded profit from machining charges on the ground that assessee was engaged in machining work, undertaking it as a job work (earning income by way of manufacturing products for other manufacturer/individuals using its own plant and machinery) and treated it to be income from other sources. However, the CIT(A) and Tribunal favoured the assessee holding that the assessee was not undertaking any exclusive business activity of doing machining jobs and included the said profit in the total income from eligible business activity. The Court concurred with the appellate authorities and held that the activity of machining done by the assessee, was when the machinery, which was used for manufacturing activities for export, was lying idle and thus, the assessee had used plant and machinery to get income which was to be considered as business only. Thus, it dismissed the Revenue's appeal.

CIT v Rambal Ltd. (2018) 404 ITR 0307 (Mad) - T.C.(Appeal) No.284 of 2007 dated 10.04.2018

1139. Assessee, engaged in the business of manufacturing and sale of cement, rayon, fire bricks, cast iron pipes, tyres and tubes & various forms of chemicals, engaged 2 power plants for its cement units and the electricity generated was transferred only to the assessee's manufacturing unit. For Computing eligible deduction u/s 80IA in respect of captive power plants, assessee ascertained the selling price of power by State Electricity Board(SEB) which the other manufacturing units procured from SEB of respective states. AO rejected this claim of assessee determined lower profit on the basis that adoption of sale price by SEB to its customer could not be regarded as open market rate of electricity because the sale price(adopted by assessee) was higher than the price at which SEB was purchasing power from generating companies. (For explanation- AO treating assessee's cement units as third party i.e assessee deemed to be selling power to SEB first). CIT(A) held that, for ascertaining selling price, it should be weighted average of annual consumption of electricity sourced from SEBs but however that such rate be reduced by amount of electricity duty and cess charged by SEB. However, on conjoint reading of provisions of Electricity Act,2003, Karnataka Electricity Regulatory Commission's open

access Regulation notified in 2004 and order of KER, it was clear that there was no statutory bar on Captive Power Plants to sell electricity to any 3rd party& that too at rate mutually agreed by and between the parties. The Tribunal followed Tamil Nadu Petro Products Ltd. vs ACIT(SC) and also DCIT vs Birla Corporation Ltd wherein it was held that price charged by SEB was good indication of market value stating that assessee did not commit any error for adopting such price for working out amount eligible for deduction u/s 80IA. Thus, the Tribunal held that the very foundation on which AO held that assessee had no option but to sell electricity to SEB alone was factually wrong & misplaced and therefore legally untenable in changed factual scenario, thereby dismissing the revenue's appeal.
Kesoram Industries Limited & Ors v ACIT & Ors (2018) 52 CCH 0398 KolTrib - ITA No. 773/Kol/2013, 1037/Kol/2012, 1722/Kol/2012, 1188/Kol/2016, 1995/Kol/2013, 505/Kol/2017, 505/Kol/201 dated 26.04.18

1140. Assessee was primary agricultural credit society, registered under the Kerala Co-operative Societies Act, 1969. For the AY under consideration, assessee filed its returns declaring the income to be 'nil' after claiming exemption u/s 80P(2)(Exemptions to various societies). AO rejected the said claim of assessee holding that the assessee was doing business of banking and it was not entitled to deduction u/s 80P(2) in view of insertion of section 80P(4)(exclusion of application S.80P(2) to co-operative banks). The CIT(A) deleted the said disallowance. The Tribunal followed Chirakkal Service Co-operative Bank Limited & Ors(HC) wherein it was decided that when a primary agricultural credit Society was registered as such under the Kerala Co-operative Societies Act, 1969, such society was entitled to benefit of deduction u/s 80P(2). Thus, the Tribunal held that since there was certificate issued by Registrar of Cooperative Societies, stating that assessee was primary agricultural credit society, assessee was entitled to deduction u/s 80P(2) thereby dismissing the revenue's appeal.
ITO & Anr v Athirampuzha Regional Service Cooperative Bank Ltd. & Anr. (2018) 52 CCH 0323 CochinTrib - ITA No. 1/Coch/2017 dated 17.04.2018

1141. The assessee had claimed deduction u/s 80IB(10) in respect of profits derived from development of residential building. During the course of assessment proceedings for subsequent AY, the AO found from the Auditor's report that one construction project of assessee was approved by SRA on 7.10.2002 and the commencement certificate was received on 31.3.2003. However, the final approval for amended plan was granted by SRA on 04.06.2004 and as on 31.03.2009 only 67% of the project was completed. The AO opined from the given facts, that the assessee did not satisfy the conditions necessary for deduction u/s 80IB(10) i.e the project should be approved by local authority after 01.04.2004 and thus reopened the assessment for the year under consideration and disallowed the said deduction. The CIT(A) allowed the deduction.The Tribunal rejected the assessee's contention that the deduction was to be allowed as the final approval was granted on 04.06.2004 holding that since the initial approval and grant of CC was before 01.04.2004, the assessee did not satisfy the required conditions for deduction u/s 80IB(10) and thus disallowed the deduction.
ITO v Omega Investment & Properties Ltd. (2018) 52 CCH 0294 MumTrib - ITA No. 868/Mum/2016 dated 09.04.2018

1142. The assessees were Primary Agricultural Credit Societies (PACS) engaged in providing credit facilities and claimed deduction u/s 80P. The AO denied the said claim on the ground that assessees were having only negligible portion as disbursement of agricultural loans and they were doing business of banking and therefore in view of insertion of provisions of section 80P(4)[which disentitles a co-operative bank other than a PACS or a Primary Co-operative Agricultural and rural development bank for claiming said deduction], assessees were not entitled to deduction. The CIT(A), on allowing assessee's appeal held that the assessees were entitled to benefit of deduction u/s 80P(2). The Tribunal observed that the issue as to whether the assessee were 'PACS' or 'Co-operative Bank' was to be determined as per the Banking Regulation Act,which specifically provided that the determination thereof by the Reserve Bank would be final. Thus, noting that the RBI had given letters to the societies similar to assessee stating that they were Primary Agricultural Credit Societies and therefore in terms of section 3 of Banking Regulation Act were not entitled for banking license, the Tribunal held that the AO was not competent and did not possess jurisdiction to resolve issue as to whether assessee was 'PACS' or 'Co-operative bank'. Accordingly, it upheld the CIT(A)'s order allowing deduction to the assessee and dismissed the Revenue's appeal.

ITO & Ors v Chengala Service Co-Op Bank Ltd. & Ors (2018) 52 CCH 0281 CochinTrib - ITA No.434/Coch/2017 dated 05.04.2018

1143. The Court held that where assessee-company was not an owner of power generation plant but it did only maintenance work of power plant for which it was given a fee, assessee could not be considered as power generating company and could not be allowed deduction under section 80-IA
Covanta Samalpatti Operating (P.) Ltd. v ACIT [2018] 93 taxmann.com 38 (Madras) – TAX CASE (APPEAL) NO. 860 OF 2008 dated 04.04.2018

1144. The AO opined that interest income by the assessee-credit society was not earned from the activity of providing banking facilities to its members and was outside the purview of 'Principle of Mutuality'. He thus rejected assessee's claim for deduction u/s 40P(2)(d). The CIT(A) was of the view that the interest income earned by the assessee from investment made with a scheduled bank or a cooperative bank for a time period could not be said to be for the purpose of the co-operative housing society of the assessee and hence, would not be eligible for claim of deduction under section 80(P)(2)(d). He thus sustained the disallowance made by AO. The Tribunal held that a co-operative bank continues to be a co-operative society registered under Co-operative Societies,1912 or under any other law for time being in force in any State for registeration of co-operative societies, and, therefore, interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under section 80P(2)(d).
Kaliandas UdyogBhavan Premises Co-op Society Ltd. v ITO [2018] 4 taxmann.com 15 (Mumbai – Trib.) – ITA NO. 6547 OF 2017 dated 25.04.2018

1145. The Apex Court upheld the order of the High Court wherein it was held that definition of 'total turnover' given under section 80HHC and 80HHE cannot be adopted for purpose of section 10A. Explanations to sections 80HHC and 80HHE which defines total turnover clearly states that the same is for purposes of this section only.Thus, technical meaning of total turnover which does not envisage reduction of any expenses from total amount, is to be taken into consideration for computing deduction under 10A and when meaning is clear, there is no necessity of importing meaning of total turnover from other provisions. It further held that when object of formula in section 10A for computation of deduction is to arrive at profit from export business, expenses excluded from export turnover have to be excluded from total turnover also, otherwise, any other interpretation makes formula unworkable and absurd and hence, such deduction shall be allowed from total turnover in same proportion as well.
CIT v HCL Technologies Ltd. [2018] 93 taxmann.com 33 (SC) – CIVIL APPEAL NOS. 8489-8490 OF 2013 dated 24.04.2018

1146. The Court upheld the Tribunal's order wherein it was held that where assessee entered into an agreement for road development project with Gujarat State Road Development Corporation ('GSRDC'), in view of fact that GSRDC was a Government agency as defined under section 2(e) of Gujarat Infrastructure Development Act, 1999 and, moreover, it was totally controlled by State Government, claim for deduction under sec. 80-IA could not be rejected on ground that assessee failed to fulfill conditions of clause (b) of sec. 80-IA (4).(which requires the assessee to have entered into agreement with the Cent. Govt, State Govt, local authority or any other statutory authority to claim the deduction.
CIT v Ranjit Projects (P.) Ltd. [2018] 94 taxmann.com 320 (Gujarat) – R/TAX APPEAL NOS. 426,427 433 OF 2018 dated 02.05.2018

1147. The Apex Court dismissed Department's SLP against order of the Court wherein it was held thatwhere assessee-company had developed a road construction project and after completion transferred it for purpose of maintenance and operation to third party and received a payment for same, profit element would be relatable to infrastructure development activity of assessee and would qualify for deduction under section 80-IA.
PCIT v NilaBauart Engineering Ltd. [2018] 95 taxmann.com 45 (SC) – SLP (CIVIL) DIARY NOS. 13945 OF 2018 dated 11.05.2018

1148. The Apex Court dismissed Department's SLP against order of the Court wherein it was held that:

- if rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax u/s 28, and if any quantum of rent or interest of assessee is allowable as an expense in accordance with sections 30 to 44D and is not to be included in profit of business of assessee as computed

under head 'Profits and gains of business or profession', ninety per cent of such quantum of receipt of rent or interest will not be deducted under clause (a) of Explanation (baa) to section 80HHC.

- expenses provision written back will not form a part of income since it was written off deposit which was kept in separate account and is not an income eligible for section 80-IA deduction.
- an assessee is entitled to deduction u/s 80-IA in respect of interest on deposits and that deduction u/s 80-IA is allowable in respect of compensation received on machinery breakdown and miscellaneous income being incidental to profits and gains derived from eligible business u/s 80-IA.
- interest earned on short-term deposits of money kept apart for purpose of business has to be treated as income earned on business and cannot be treated as income from other sources and was eligible for section 80-IA deduction

CIT v Chambal Fertilizers & Chemicals Ltd. [2018] 95 taxmann.com 314 (SC) – SLP (CIVIL) DIARY NO. 13731 OF 2018 dated 01.05.2018

1149. The Court held that where assessee failed to file return within period prescribed under section 139(1), its claim for deduction under section 80-IB could not be allowed even though return had been filed at a belated stage in term of section 139(4)
Suolificio Linea Italia (India) (P.) Ltd. v JCIT [2018] 93 taxmann.com 462 (Calcutta) – ITAT NO. 385 OF 2016 dated 04.05.2018

1150. The Apex Court dismissed Department's SLP against order of the High Court wherein it was held that approval under section 80G(5)(vi) could not be denied on ground that educational activity was not included in objects of assessee-trust created for up-keep and maintenance of museum
CIT v Maharaja Sawai Man Singh [2018] 94 taxmann.com 477 (SC) – SLP (CIVIL) DIARY NO. 13974 OF 2018 dated 04.05.2018

1151. The Apex Court dismissed the Department's SLP against order of the High Court wherein it was held that in terms of proviso to section 80-IA(8), AO has to explain clearly why he is rejecting profit shown by assessee from audited accounts of assessee.
PCIT v Harpreet Kaur [2018] 94 taxmann.com 247 (SC) – SLP (C) DIARY NOS. 13931 AND 13681 OF 2018 dated 04.05.2018

1152. The assessee, engaged in manufacturing polythene, claimed deduction u/s 80IA for 2 years (1998-99 & 1999-2000)and u/s 80IB for 6 years(AY 2000-01 to 2005-06). The assessee completed substantial expansion by investing in new plant & machinery of value more than 50% of value of plant and machinery already installed as on 1-4-2005 to manufacturing unit situated in Himachal Pradesh and thereafter claimed deduction u/s 80IC for next 2 years (AY 2006-07 & 2007-08). However, when the assessee claimed deduction u/s 80IC for AY 2008-09 & 2009-10, the AO disallowed the claim stating that it was the 11th and 12th year of deduction and as per Section 80IC(6) total deduction u/s 80IC and 80IB could not exceed 10 years. The Tribunal and the High Court upheld AO's order. However, the Apex Court held that as per Section 80IC(6) the deduction could not exceed 10 years only if manufacturing unit was claiming deduction under second proviso to S.80IB(4) i.e units located in North-Eastern state and since the assessee's manufacturing unit was located in Himachal Pradesh, the claim of deduction was to be allowed considering the year when the substantial expansion was completed to be the initial AY.
Mahabir Industries v PCIT [2018] 94 taxmann.com 260 (SC) / [2018] 302 CTR 449 (SC) – CIVIL APPLICATION NO 4765 – 4766 OF 2018 dated 18.05.2018

1153. The Apex Court dismissed the SLP filed by assessee against the High Court order wherein it was held that the interest earned on FD kept as security was not eligible for deduction u/s 80IC since it had nothing to do with the eligible business undertaking engaged in manufacturing and sale of electric meter.
Conventional Fastners v CIT [2018] 94 taxmann.com 80 (SC) – SLP (C) NO. 12610 OF 2018 dated 16.05.2018

1154. The assessee, a co-operative society, filed NIL income after claiming deduction under Section 80P. The AO denied benefit under Section 80P as it was noticed that there were two categories of Members - Ordinary Members and Nominal Members. AO held that transactions with non-Members, being third parties, was not entitled for deduction either under Section 80P of the Act or under concept of mutuality.

CIT(A) upheld the order of the AO. The Tribunal allowed the deduction claimed under Section 80P and held that there was no distinction between ordinary members and nominal members and the nominal members cannot be treated as 'non-members'. Thus, assessee's appeal was allowed.
SAI DATTA MUTUAL AIDED CO-OPERATIVE CREDIT SOCIETY vs. ACIT (HYDERABAD TRIBUNAL) (ITA No. 888/HYD/2016) dated May 18, 2018 (53 CCH 0052)

1155. The Assessee filed an application for grant of approval under Section 80G(5). The CIT(E) denied such approval holding that approximately 50% of donations was from trustees themselves and the assessee did not qualify for charitable acts. Tribunal allowed assessee's appeal on the ground that once registration under Section 12AA was in existence, approval under Section 80G of the Act could not be denied unless there was violation of rules specified in that behalf. The Court observed that the CIT(E) had acted on mere suspicion and conjectures to deny approval to assessee-society and that purchase of land and building by itself would not be sufficient to conclude that assessee was involved in non-charitable activities. Thus, the Court dismissed Revenue's appeal and granted approval to the assessee company under Section 80G(5)(vi) of the Act.
CIT vs. VINOD KUMAR SOMANI CHARITABLE TRUST (HIGH COURT OF PUNJAB AND HARYANA) (ITA No. 47 of 2018) dated May 15, 2018 (102 CCH 0123)

1156. The Court dismissed Revenues appeal and held that for the purpose of complying with the condition that the housing development project should be commenced on or after 01.10.1998 so as to be eligible to claim deduction u/s 80IB(10), the date of commencement of a project has to be linked with actual date of construction and that mere securing of approval does not lead to any step towards development. It held that rather the foundation for various steps may ultimately lead to obtain finances and starting construction activity and thus the actual date of construction is determinative.
PCIT vs. PADMINI INFRASTRUCTURE (P) LTD. (HIGH COURT OF DELHI) (ITA 586/2018) dated May 15, 2018 (102 CCH 0128)

f. ***Income from Capital Gains***

1157. Where the assessee purchased vacant land in his own name, upon which he constructed residential property in which both he and his wife resided, the Tribunal held that the assessee was not correct in contending that the long term capital gains arising on sale of the said property was to be split between the assessee and his wife and held that since the assessee was the sole owner of the property and the sale deed also stated so, the assessee was to be taxed on the full long term capital gains in his own name.
RAGHURAM P NAMBYAR & ANR. vs. ASSISTNAT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0158 BangTrib - ITA No. 2007/Bang/2016, 12/Bang/2014 dated Mar 2, 2018

1158. Where the assessee had transferred his share in land which was used for agricultural purposes and claimed benefit of deduction under Section 54B of the Act, the Tribunal held that the AO was not justified in denying the assessee benefit of the said deduction on the mere ground that the assessee had applied for permission to convert its land from agricultural land to non-agricultural (which was granted) without appreciating that the land was actually used for agricultural purposes. It held that notwithstanding the permission to use the land for non-agricultural purposes, what had to be considered was the actual use of the land. Accordingly, it held that the assessee was eligible for deduction under Section 54B of the Act.
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. BAJAJ SATYANARAYAN GIRDHARILAL & ORS. - (2018) 52 CCH 0312 PuneTrib - ITA No. 171/PUN/2012, 172/PUN/2012, 173/PUN/2012 dated Mar 28, 2018

1159. Where the assessee had exercised its 'right to nominate' another group concern for transfer of its unexercised call options right, the Tribunal held that since the right to nomination came to an end, in terms of Explanation 2 to section 2(47), the same was covered by definition of 'transfer' and, consequently, said transfer of capital assets was liable to be taxed as capital gain.
Vodafone India Services (P.) Ltd. v DCIT – (2018) 89 taxmann.com 299 (Ahd) – ITA No. 565 (Ahd.) of 2017 dated 23.01.2018

1160. Where the assessee inherited a capital asset/property (acquired by his father in 1945) by virtue of a will on death of his father in 2004, the Court held that the cost for which assessee's father acquired the said property was the deemed cost of acquisition and since the property was acquired in 1945, the indexed cost of acquisition was required to be computed by considering cost of acquisition (i.e. fair market value) as on 1-4-1981 and using the Cost Inflation Index for year beginning on 1-4-1981 and not the Cost Inflation Index for the year in which the assessee had inherited the property (i.e. 2003-04).
Pr.CIT v Prakash Krishnalal Bhagwati – (2018) 91 taxmann.com 291 (Guj) – Tax Appeal No. 1031 of 2017 dated 22.01.2018

1161. Where assessee (a partner in LLP) computed capital gains on land transferred by it to the LLP as capital contribution, taking the amount recorded in the books of the LLP as full value of consideration u/s 45(3), Tribunal rejected the invocation of deeming provisions of section 50C for substituting the sales consideration by the stamp duty value ruling that though section45(3) is not a specific provision overriding the other provisions of the Act and that importing a deeming fiction provided in section 50C could not be extended to another deeming fiction created by the statute by way of section 45(3) to deal with special cases of transfer between partnership firm and partner. Tribunal also rejected revenue's reliance on the ruling in the case of Carlton Hotel Pvt Ltd v ACIT [(2009) 122 TTJ 515 (Luck)] wherein it was held that provisions of section 50C overrides the provisions of section 45(3) by holding that the findings in the said ruling was given under different facts and that the Lucknow Bench had simply observed that the provisions of section 50C overrides the provisions of section 45(3) but had not given a categorical finding.
DCIT v Amartara Pvt Ltd - TS-612-ITAT-2017(Mum) – ITA Nos. 6050 & 6114/Mum/2016 dated 29.12.2017

1162. Where assessee entered into a development agreement with a builder for development of land taken on perpetual sub-lease and sold certain units so developed, the Court held that since the major portion of developed building was to remain with assessee after construction, mere sale of one unit therefrom per se or merely because for a particular unit, an intervening transaction of sale was aborted for pursuit of higher profit by itself would not confer on transaction character of business venture. It was accordingly held that the income earned by assessee from sale of developed units was to be taxed as capital gain.
CIT v. Surjeet Kaur - (2018) 91 taxmann.com 121 (Cal) - ITA No. 383 of 2008 dated 05.01.2018

1163. Where there was an agreement to sell a property between the assessee-HUF and purchaser in September, 1966, whereby, the purchaser agreed to purchase property for certain value and paid certain amount as earnest money, but due to litigation in Civil Court, the sale deed was executed later on 29-11-2010, Tribunal held that the sale deed of September 1966 was to be considered for calculating long-term capital gains and the provisions of section 50C which were not applicable in that year could not be invoked against assessee
Hari Mohan Das Tandon (HUF) v Pr.CIT – (2018) 91 taxmann.com 199 (All Trib) – ITA No. 44 (Alld) of 2016 dated 08.01.2018

1164. Tribunal held that transfer of business division on a going concern basis to subsidiary against shares and debentures is not a 'slump sale' but an 'exchange' and, thus, provisions of section 50B are not applicable. Further, Tribunal held that since the compensation (sale consideration) was not allocable item-wise and it was also not possible to attribute the cost of acquisition to individual assets in the undertaking, it was not possible to compute capital gains and, therefore, the amount of capital gains was not taxable u/s 45.
Bennett Colman & Co. Ltd. vs. ACIT – (2018) 168 ITD 631 (Mum) – ITA Nos. 3298 & 3537 (Mum.) of 012 dated 08.01.2018

1165. Tribunal held that the assessee was eligible to claim deduction u/s 54F with respect to the entire sale consideration received on sale of equity shares if it was utilised for constructing a new residential house within three years period, irrespective of the fact that the assessee had not deposited unutilized portion of sale consideration in a capital gain account scheme in year of transfer before due date of filing of return u/s 139(1).

Smt. M.K. Vithya v ITO – (2018) 91 taxmann.com 102 (Chen) – ITA No. 2739 (Mds) of 2017 dated 09.01.2018

1166. Where assessee-company, engaged in real estate development, under a shareholders agreement with a financial partner gave possession of a land to a SPV, as part of an arrangement to develop integrated township, Tribunal held that since all transactions embodied in shareholders agreement were unregistered agreements, provisions of section 2(47)(v) would not be applicable and accordingly no liability of tax could be fastened on assessee merely on basis that possession of land having been handed over by assesse.
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

1167. The assessee, vide a Power of Attorney (POA) dated 14-3-1993, had given only access of a property to developer to do certain jobs on their behalf but the said POA did not disclose that possession had been given to developer in pursuance thereto. Subsequently, a written agreement dated 30-4-2001 was entered into for transfer of the said property to the said developer which in clear terms recorded that the assessees were owner and in possession of property. The assessee claimed that no transfer was effected in AY 2002-03 but same was effected in AY 1993-94 when the said POA was executed in favour of the developer. Noting the above facts, the Court held that the transfer within meaning of section 2(47)(v) of the said property had taken place only in AY 2002-03 vide the agreement dated 30-4-2001 i.e. when actual possession was given to the developer and accordingly, it upheld the Tribunal's order confirming the AO's action of taxing the gains arising on transfer of the said property in AY 2002-03.
Dr. Joao Souza Proenca v ITO – (2018) 401 ITR 105 (Bom) – ITA No. 5 & 6 of 2012 dated 17.01.2018

1168. The Tribunal held that the proceeds from sale of plots of land were to be taxed as capital gain and not as business income considering the sale to be adventure in nature of trade in view of the following facts:

- assessee had purchased agricultural land in 1960 and with passage of time and rapid urbanization, said land, being in residential area, became non-agricultural land
- as smaller sized plots were required by end-users in this area, assessee divided said land in small sized plots to get market price
- sale consideration was not ploughed back in land investments

ACIT v Narendra J. Bhimani – (2018) 90 taxmann.com 329 (Rajkot Trib) – ITA No. 411 (Rjt.) of 2012 CO No. 18 (Rjt.) of 2012 dated 31.01.2018

1169. The Tribunal held assesse-company was not to be eligible for deduction u/s 54G on sale of its factory building as the same was not situated in notified urban area as stipulated under the said section.
DCIT v Geneva Industries Ltd. – (2018) 90 taxmann.com 406 (Bang) – ITA No. 1560 & 1628 (Bang) of 2013 dated 19.01.2018

1170. In a case where purchase of new property was not concluded or agreement of the same was not certain to be honoured on the date of filing of return, irrespective of the fact that (i) the assessee had paid a sum of Rs.1 crore to the vendor for purchase of the said property and (ii) transaction had not gone through because the vendor intended to cheat him and the assessee had issued a legal notice to the vendor and also filed a civil suit before the Civil Court at Hyderabad for specific performance of the agreement, the Tribunal held that the assessee could not have claimed to have purchased residential property within one year before or within two years after sale of original asset or to have constructed property within three years after sale of property for purposes of claiming deduction u/s. 54F(4).
Mahesh Malneedi v ITO – (2018) 169 ITD 154 (Hyd Trib) - ITA No. 1021 (Hyd.) of 2017 dated 25.01.2018

1171. The Court dismissed Revenue's appeal against the Tribunal's order upholding the deletion made by CIT(A) of the amount of long-term capital gains on sale of shares of company added by AO considering

the share transaction as non-genuine transaction. It was noted that the assessee had sold shares through a SEBI registered Stock Broker, the payment for sale of shares was received through banking channels and all the documentary evidences in favour of the assessee were rejected by the AO merely on basis of some casual replies given by assessee to AO. It was also noted that the dividend received with regard to holding of the said shares was disclosed by assessee in his return of income and exemption was claimed accordingly. Thus, it held that the addition was made without any logical basis.
PR.CIT v PREM PAL GANDHI – (2018) 401 ITR 253 (P&H) – ITA-95-2017 (O&M) dated 18.01.2018

1172. The Tribunal held that sub-section (2) of section 54 which requires the assessee to deposit the unutilised amount in capital gain account scheme before filing of Income-tax return, regulates procedure for substantive rights of exemption provisions u/s 54 and this enabling section cannot abridge or modify substantive rights given vide sub-section (1) of section 54 as otherwise, the real purpose of substantive provision, i.e., sub-section (1), will get defeated. Thus, where the assessee had not deposited the unutilised amount in capital gain account scheme before filing of Income-tax return as required by section 54(2) but at time of assessment proceedings proved that he had already invested capital gains on purchase/construction of new residential house, the Tribunal held that the benefit under substantive provisions of section 54(1) could not be denied to assessee and any different or otherwise strict construction of sub-section (2) would defeat the very purpose and object of exemption provisions of section 54.
Mrs. Seema Sabharwal v ITO – (2018) 169 ITD 319 (Chandigarh Trib) – ITA No. 272 (Chd.) of 2017 dated 05.02.2018

1173. Where the assessee had utilised entire capital gain by way of making payment to developer of new flat but neither the possession of the flat was given nor the flat was completed, the Tribunal held that the assessee's claim for exemption u/s 54 could not be denied since section 54(2) does not provide that in case assessee cannot get possession of property, he would not be entitled for exemption u/s 54. It held that the requirement of section 54 is that the capital gain is utilised or appropriated as specified in section 54(2) and the assessee had complied with the conditions stipulated in section 54(2).
ACIT v M. Raghuraman – (2018) 169 ITD 315 (Chen) – ITA No. 1990 (Mds.) of 2017 dated 08.02.2018

1174. Where assessee, after receiving Rs.78 lakhs on sale of his old property, invested in another property by entering into two separate contracts on same date, one for Rs.60 lakhs for purchase of house property and remaining Rs.18 lakhs for purchase of furniture and fixtures in said property so as to claim deduction u/s 54 and the AO disallowed assessee's claim for deduction to the extent of Rs.18 lakhs on the ground that expenses incurred on buying furniture could not be said to be expenses incurred for making house habitable, the Tribunal held that the cost of residential house is entire cost of house, and it could not be open to AO to treat only cost of civil construction as cost of house and segregate cost of other things as not eligible for deduction u/s 54. It held that even if assessee were to buy house, without furniture, consideration would have been same, therefore two agreements could not be considered in isolation and therefore, assessee's claim of deduction u/s 54 for investing capital gains in residential house along with furniture and fixtures during relevant year was to be allowed in entirety.
Rajat B Mehta v ITO – (2018) 62 ITR(T) 334 (Ahmedabad - Trib) – ITA No. 19 (Ahd.) of 2016 dated 09.02.2018

1175. Where the assessee's claim for deduction u/s 54F on account of purchase of a residential flat in Dubai out of proceeds of sale of long-term capital asset being 50% share in a private limited company in India was rejected by the AO since the new property purchased was situated outside India, the Tribunal allowed the assessee's claim for the said deduction, noting that prior to amendment in section 54F by the Finance Act, 2014 w.e.f. 1-4-2014, there was no restriction upon taxpayer to make investments outside India in purchasing residential house property and since the residential property was purchased by assessee in year 2011-12, the deduction u/s 54F was to be allowed. Further, it also admitted the assessee's claim for converting the aforesaid gains offered to tax as short-term capital gain while filing return of income into long-term capital gain wherein the said claim was made for first time before CIT(A) without filing a revised return and remanded the matter to AO for examining the said claim on merits.

Ashok Keshavlal Tejuja v ACIT – (2018) 91 taxmann.com 28 (Mum) – ITA No. 3429 (mum.) of 2016 dated 15.02.2018

1176. Where the assessee-company had offered a land, which was held by it as capital asset and converted the same into stock-in-trade in year 2000, as security for amounts advanced by another company to the sister concern of assessee-company under a Memorandum of Association entered into with the said company and the said company sold the said land belonging to assessee to one, RSPL for repayment of loan borrowed by its sister concern, the AO held that there was transfer of property between assessee and RSPL and computed long-term capital gains in the hands of assessee. Relying on the decision in case of the said sister concern of assessee of CIT v. Essorpe Holding (P.) Ltd. (2017) 249 Taxman 222 (Mad) having similar facts, the Court held that the AO should apply provisions of section 45(2) and compute capital gains upto date of conversion into stock-in-trade, and thereafter on actual sale of land, i.e., difference between value of sale and stock-in-trade, was to be considered as 'business income'.
Pr.CIT v Essorpe Mills Ltd. – (2018) 92 taxmann.com 100 (Mad) – T.C.A. No. 841 of 2017 dated 20.02.2018

1177. Where the assessee had transferred its immovable property vide an agreement dated 22.03.1992, receiving an advance for the same, but the sale deed was not executed in the name of transferee due to some problem related to the title of the property and it was only vide the sale deed dated 02.07.2011 that the impugned property was transferred, the Tribunal held that since the transfer of property was completed in terms of section 2(47)(v) r.w.s. 53A of Transfer of Property Act by giving possession of property on date of sale agreement, the capital gains would be subjected to tax in year of transfer of property i.e. financial year 1991-92 and not in the year of its registration i.e. financial year 2011-12. It thus held that capital gains arising out of sale of immovable property would be taxable in year in which sale transactions were entered into by assessee, even if transfer of immovable property was not effective or competent for want of registration under general law.
Mangilall Estates (P.) Ltd. v DCIT – (2018) 91 taxmann.com 266 (Kolkata Trib) – ITA No. 156 (kol.) of 2015 dated 21.02.2018

1178. The Tribunal rejected the assessee's contention that plots of land sold by it were agricultural land, noting that –

- though the assessee had inherited agricultural land from his father he had sold the land pieces after plotting smaller residential plots
- from size of plots also it was evident that these were residential plots and not agricultural plots of land
- there was no evidence on record to suggest that at time of sale, agriculture activities were being carried on said pieces of land
- Stamp duty authorities had also recognized plotting as residential plots which was very much evident from registered sale deeds and stamp duty paid on such sale of residential plots

Further, noting that it was not a case that the buyers had acquired agriculture plots and subsequently changed it to residential use but a case where the assessee himself had developed residential plots and then sold it to individual buyers, the Tribunal held that by such plotting of land, the assessee had converted the agriculture land held as capital asset into stock-in-trade of assessee's business and, thus, it remanded the matter to AO to determine capital gains in accordance with section 45(2) as well as business income on sale of such plots.
Mahaveer Yadav v ITO – (2018) 91 taxmann.com 476 (Jaipur Trib) – ITA No. 209 (JP.) of 2017 dated 27.02.2018

1179. The Tribunal directed the AO to assess the gains arising on sale of the plot which had devolved on the assessee after death of his father as a consequence of automatic dissolution of partnership firm in which his father was a partner under the head 'capital gain' and not as business income, noting that four plots of land had devolved on assessee and capital gain arising from sale of other three plots had been duly accepted by the AO in earlier year and there was nothing to suggest that the assessee had

undertaken any business activity vis-à-vis plot of land devolved on him so as to construe profit on its sale as 'business income'. It, was, thus held that there was no justification to treat plot of land in question as 'stock-in-trade' and the gains arising from sale of the said land was taxable as capital gains.
Balkrishna P. Wadhwan v DCIT – (2018) 91 taxmann.com 432 (Mum) – ITA No. 5414 (Mum.) of 2015 dated 28.02.2018

1180. Where the AO had passed the reassessment order making additions to assessee's income on account of capital gain arising on transfer of land after finding that the assessee had entered into a development agreement in respect of its land for construction of residential house and the assessee had contended that possession of the impugned land was not transferred to developer and same was continuously enjoyed by assessee, the Tribunal held that the assessee had handed over possession to developer, attracting provisions of section 2(47)(v) r.w. section 53 of the Transfer of Property Act, 1882 and the capital gains on transfer of the impugned land was taxable in the year in which the agreement was entered into, noting that as per the said agreement, the assessee had permitted the developer to enter into premises of its land and do all necessary things for construction of apartments.
K. Vijaya Lakshmi v ACIT – (2018) 91 taxmann.com 253 (Hyderabad Trib) – ITA Nos. 1561 (hyd.) of 2016 and 372 (hyd.) of 2017 dated 28.02.2018

1181. Where the AO had passed the reassessment order making additions to assessee's income on account of capital gain arising on transfer of land after finding that the assessee had entered into a development agreement in respect of its land for construction of residential house and the assessee had contended that possession of the impugned land was not transferred to developer and same was continuously enjoyed by assessee, the Tribunal held that the assessee had handed over possession to developer, attracting provisions of section 2(47)(v) r.w. section 53 of the Transfer of Property Act, 1882 and the capital gains on transfer of the impugned land was taxable in the year in which the agreement was entered into, noting that as per the said agreement, the assessee had permitted the developer to enter into premises of its land and do all necessary things for construction of apartments. Further, it held that section 45(5A) being substantive provision and inserted vide the Finance Act, 2017, w.e.f. 1-4-2018, could not be applied to development agreement entered into during the year 2008-09, in which section 2(47)(v) was attracted.
Adinarayana Reddy Kummeta v ACIT – (2018) 91 taxmann.com 360 (Hyderabad Trib) – ITA Nos. 1712, 1714 (Hyd) of 2016, 458 and 459 (Hyd) of 2017 dated 28.02.2018

1182. Where the assessee had claimed long-term capital loss on account of sale of equity shares held in its 100% second step down subsidiary company and the AO, noting that that there was a huge price variance between the quoted price in NSE and the off-market selling price shown by the assessee, had added amount of difference in selling price of shares to assessee's income under the head 'long term capital gain' and subsequently, before the Tribunal the asessee contended that the transfer itself was not a 'transfer' in view of provisions of section 47(iv), the Tribunal accepted the assessee's contention relying on the decision in the case of Petrosil Oil Co. Ltd. v. CIT (1999) 236 ITR 220 (Bom) wherein it was held that a second step down 100% subsidiary company is also regarded as subsidiary under the Companies Act, 1956 and transfer of capital asset to such a subsidiary company could not be regarded as 'transfer' in view of provisions of section 47(iv).
Emami Infrastructure Ltd. v ITO – (2018) 91 taxmann.com 62 (Kolkata Trib) – ITA No. 880 (Kol.) of 2014 dated 28.02.2018

1183. Where a group consisting of assessee and three other family members had entered into development agreement on 05-03-1995 under which they were entitled to receive 51 flats in total out of flats constructed by Developer against the surrender of their share in land (which were also subsequently sold) and the AO computed capital gains arising on sale of land in the current AY i.e. AY 2003-04 when the developer had finally handed over the completed project, relying on the decision in the case of Dr. Maya Shenoy v ACIT (2009) 124 TTJ 692 (Hyd Trib) and Potla Nageswara Rao v DCIT (2014) 365 ITR 0249 (AP), the Tribunal held that the transfer of land in consideration of flats constituted one transaction giving rise to capital gains and sale of flats by assessee constituted another transaction giving rise to capital gains and when the transfer was complete, automatically, consideration mentioned in agreement for sale had to be taken into consideration for purpose of assessment of income for assessment year

when agreement was entered into and possession was given. Accordingly, it held that the action of AO in working out long term capital gains arising in AY 1995-96 in the impugned AY i.e. AY 2003-04 could not be upheld. Further, with respect to the assessee's claim for deduction u/s 54F on sale of all the flats received under the development agreement and subsequent investment in a residential house, the Tribunal held that all the apartments/ flats received in the development agreement would become one house technically, even though they were of independent units. However, since this aspect had not been considered by the AO or the CIT(A) in the correct perspective, the matter was remanded to AO for re-examination keeping in mind the date of sale of various apartments and the claim u/s 54F/54.
DR. SUDHIR NAIK & ORS. v ITO – (2018) 52 CCH 70 (Hyd Trib) – ITA No. 1463/Hyd/16 to 1470/Hyd/16 dated 31.01.2018

1184. The Tribunal dismissed assessee's appeal against the CIT(A)'s order upholding the AO's action in restricting the assessee's claim for deduction u/s 54 in respect of one flat and disallowed assessee's claim of deduction in respect of another flat at a different location, rejecting the assessee's contention that the purchase of two flats in different localities was on account of family compulsions which were only bald assertions, not supported by any cogent evidence. With respect to purchase of one the residential house, the assesssee claimed that it consisted of two flats combined to make it one residential unit. In the regard, the Tribunal accepted assessee's contention, however, remanded the matter to AO to verify whether the two flats had been joined together or not to make it a single unit.
ABHIJIT ASHOK BHALERAO & ORS. v ACIT – (2018) 52 CCH 66 (Pune) – ITA Nos. 146-148/Pune/ 2015 dated 29.01.2018

1185. The Apex Court allowed the SLP against High Court ruling wherein it was held that upon takeover of its proprietary concern by a company the assessee would not be entitled to claim capital gains exemption benefit under section 47(xiv)(c) as sub-clause (c) condition of receiving consideration only by way of share allotment was not met**.**
K. V. Mohammed Zakir v CIT - [2018] 92 taxmann.com 110 (SC) - SPECIAL LEAVE PETITION (CIVIL) DIARY NOS. 36602 OF 2017 dated MARCH 5, 2018

1186. Where assessee's claim for deduction of long-term capital loss on issue of shares was rejected on ground that sale consideration had been grossly understated and that the assessee had not been able to prove that the sale consideration at which the shares were sold were the market value, the Tribunal held that since no enquiries whatsoever were conducted in hands of purchaser of shares, impugned disallowance made on basis of suspicion and conjectures was to be deleted.
Electrocast Sales India Ltd. v DCIT - [2018] 92 taxmann.com 85 (Kolkata - Trib.) - IT APPEAL NO. 2145 (KOL.) OF 2014 dated MARCH 9, 2018

1187. The Tribunal held that the basement having an independent entry-gate, staircase, living room, bedroom, dining room, washbasin, toilet, kitchen and mini-drawing room was a part and parcel of residential house and therefore held that the assessee was entitled to claim exemption under Section 54 of the Act by investing the capital gain realized by it.
ACIT v Shri Shrey Sharma Guleri Prime Channel Software Communications (P.) Ltd - [2018] 92 taxmann.com 43 (Mumbai - Trib.) - IT APPEAL NO. 6147 (MUM.) OF 2016 dated MARCH 22, 2018

1188. Relying on the communication dated 21st February, 2006 of the CBDT to the Chairman of the Insurance Regulatory and Developing Authority and the decision of the Apex Court in General Insurance Corpn. of India v. CIT [1999] 240 ITR 139/106 Taxman 389, the Court held that that the exemption available to any other assessee under clause 10(38) relating to long term capital, would also be available to a person carrying on non-life Insurance business. Accordingly, it dismissed the Department's appeal.
PrCIT v New India Assurance Co. Ltd - [2018] 91 taxmann.com 433 (Bombay) - IT APPEAL NO. 1025 OF 2015 dated MARCH 5, 2018

1189. The assessee had transferred its land, purchased in 2003, to a developer for joint development of the land and claimed that the gains arising out of development agreement being LTCG was exempt under Section 54F as the assessee was receiving residential flats as consideration. The AO denied the

benefit under Section 54F and held that the gains were STCG as the assessee purchased the property in 2006 as against 2003. The Tribunal accepted the assessee's contention that the land was purchased by it in 2003 itself and it was only to obtain approval from the authorities (which was obtained in 2006) that there was a revised agreement dated 2006. Accordingly, it held that the AO was not justified in treating the gains as STCG. However, noting that the assessee's claim of exemption under Section 54F had not been examined, it remitted the issue back to the AO to decide the claim.
DODDAPANENI ATCHAIAH TENALI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0132 HydTrib - ITA No. 1553/Hyd/2016 dated Feb 28, 2018

1190. Where the assessee firm had purchased land in Kurla (Kurla Land) in the earlier years and during the year under review, the assessee admitted a new partner and subsequently 3 other partners retired, the Tribunal held that the AO was not justified in invoking the provisions of Section 45(4) in the hands of the assessee alleging that by way of admission and subsequent retirement of partners, the assessee had distributed the assets of the firm. The Tribunal held that admission of a new partner to the existing partnership-firm did not result in distribution of assets and that even upon the retirement of the other partners there was no redistribution of assets of the firm. It held that during the continuation of the partnership, partners do not have separate right over the assets of the firm and accordingly held that since the firm was not dissolved there was no case of there being any sort of distribution of assets to the partners.
INCOME TAX OFFICER vs. FINE DEVELOPERS DHEERAJ APARTMENT - (2018) 52 CCH 0134 MumTrib - ITA No. 5038/Mum/2012 dated Feb 28, 2018

1191. The Court upheld the applicability of Section 50C on sale of rights in immovable property and dismissed assessee's contention that since the actual owner of the land was the State of Rajashtan 50C would not apply to it considering that the assessee was granted lease rights in the property for perpetuity. Further, it dismissed the contention of the assessee that occupancy rights are not in the nature of capital assets and held that considering the assessee was granted lease rights for perpetuity, there was transfer of immovable property in light of the decision of the Apex Court in R.K. Palshikar (HUF) v. Commissioner of Income Tax, AIR 1988 SC 1305 (wherein it was held that premium paid for acquisition of the leasehold interests for a period of 99 years amounted to a transfer of capital assets). Accordingly, it dismissed assessee's appeal.
RAJESH GUPTA HUF vs. PRINCIPAL COMMISSIONER OF INCOME TAX & ANR. - (2018) 101 CCH 0196 DelHC - ITA 246/2018 & CM APPL. 7363-7364/2018 dated Feb 26, 2018

1192. The assessee declared receipt of 30% of consideration received in respect of sale of property as Long Term Capital Gains claiming that the property devolved on him in view of Memorandum of Family Arrangement cum compromised deed dated 03-06-2004 to the extent of 30%. According to the AO, since no cost was incurred by the assessee to acquire the asset and the mode of acquisition was other than that mentioned in section 49 of the Act, the cost of the previous owner could not be allowed as cost in the hands of the assessee and hence, he treated the entire share of Rs. 3.15 crore as long term capital gain. Moreso, the AO doubted the genuineness of the Memorandum alleging that there was no real dispute. The Tribunal, on examination of the facts, held that the family arrangement cum compromise deed was documented by way of Memorandum in writing which was registered in the presence of witnesses. It observed that the arrangement cum compromise clearly stated about the dispute and held that as per settled law when parties entered into family arrangement, validity of the family arrangement was not to be judged with reference to whether the parties should raised dispute or rights or claimed rights or a certain properties had in law any such right or not. Accordingly, it upheld the genuineness of the arrangement and the assessee's claim of LTCG and consequent exemption under Section 54.
KUNAL R. GUPTA vs. INCOME TAX OFFICER - (2018) 52 CCH 0245 MumTrib - ITA No. 5768/Mum/2017 dated Feb 28, 2018

1193. The assessee was engaged in the business of investment and securities and had at the relevant time maintained a distinct portfolio in respect of stock in trade and investment. For the particular year, the assessee acquired shares in certain companies that underwent amalgamation. Those companies, which had investment portfolio containing shares of the companies in which the assessee had holdings, were treated as stock in trade. The assessee shifted some of the shares to its investment account and

later sold them during the Assessment Year and offered the gains on these shares as capital gains. The AO disregarded the assessee's claim and taxed all gains as business income. Noting that the assessee had distinct portfolio of shares and mutual funds under the head investments and some shares as stock in trade, the High Court upheld the Tribunal's order accepting assessee's claim.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. PAVITRA COMMERCIAL LTD. - (2018) 101 CCH 0038 DelHC - ITA 146/2018 & CM APPL. 5059/2018 dated Feb 9, 2018

1194. The Tribunal rejected assessee's contention of considering date of agreement (as against the date of registration) for the purpose of calculating holding period of property transferred under Joint Development Agreement (JDA). It observed that the assessee transferred property under JDA on June 14, 2007 which was acquired by way of an agreement to sale on June 28, 2000 but noted that the sale deed was registered/executed on December 5, 2005. It accepted assessee's contention that upon entering into agreement of sale, the seller relinquishes certain rights in favor of the buyer but held that the crucial factors to be considered is whether the buyer had taken possession of the property and paid consideration agreed. Noting that the assesse had never produced agreement to sale before the AO and that out of total consideration of Rs. 12 Lakhs, only Rs. 1 Lakhs had been paid and that there was no covenant in the agreement to sale that possession could be transferred in favour of assesse, it held that the date of agreement could not be taken as the date of transfer as the assessee had not acquired any interest in the said property from the date of agreement of sale. Hence, it held that the date of registration ought to have been considered as the date of transfer and accordingly held that the capital gains would be treated as "short term capital gains", not eligible for exemption u/s 54F.
M.C.Sathyanarayana Gowda - TS-109-ITAT-2018(Bang) - ITA No.1057 /Bang/2016 dated 26/02/2018

1195. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO to the capital gains offered to tax by the assesse on sale of land where the AO had adopted the valuation done by District valuation officer (DVO) as on 01/04/1981 to arrive at the Cost of Acquisition of the property. The valuation of property done by DVO was much less than that shown by assesse which was based on the report of registered valuer. AO had made reference to the DVO u/s 55A(b)(ii). It was noted that as per section 55A(a), prior to 01/07/2012, AO could refer valuation of capital assets to a Valuation Officer in only case where value claimed by assessee based on registered valuation report was less than its fair market value, which eveidently was not applicable in the present case. Further, to make reference to DVO u/s 55A(b)(ii), AO had to record a finding that section 55A(a) was not applicable. In absence of such finding and placing reliance on the decision in the case of Royal Calcutta Turf Club v DCIT [ITA No.231/Kol/2013] wherein it was held that section 55A(b) can be invoked only in cases when the value of the asset claimed by the assessee is not supported by an estimate made by a registered valuer, the Tribunal held that the AO should not have invoked the provision of section 55A(b)(ii).
ITO v PIONEER IRON & STEEL CORPORATION (P) LTD. - (2018) 53 CCH 0148 (KolTrib) - ITA No. 203/Kol/2016 dated Jun 13, 2018

1196. The Tribunal dismissed assessee's appeal against the initiation of reassessment proceeding u/s 148 r.w.s. 147 where the notice u/s 148 was issued on the basis of information received that the assessee-company had received share application money from shell companies / unaccounted sources. The Tribunal rejected the assessee's argument that it had disclosed truly and fully all material facts required, noting that reassessment was initiated within 4 years from the end of the relevant assessment year and thus the proviso to section 147 was not applicable. It also held that since the return was only processed u/s 143(1), it was not a case of change of opinion, as held by the Apex Court in the case of Rajesh Jhaveri Stockbrokers Ltd. [291 ITR 500 (SC)].
RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015 dated Apr 10, 2018

1197. The assessee offered to tax LTCG of Rs.10 crores u/s 50B, claiming the same to be on account of transfer of hospital business, by way of slump sale, wherein the networth of the said business was negative Rs.66.36 crores. The AO computed the sales consideration as Rs.66.46 crores (i.e. 66.36 + 10). Before the Tribunal, the assessee raised an additional ground claiming that since lands and

buildings of the hospital were not transferred under the Business Transfer Agreement, it was not a case of slump sale. The Tribunal accepted assessee's claim that the hospital business transferred by it under the Business Transfer Agreement was not a slump sale as defined u/s 2(42C) for the purpose of section 50B rather a composite sale of assets. It held that wherever any left-out asset is insignificant to the assessee's business and the entire business has been sold as a going concern, it would be a slump sale but wherever any significant asset without which business of the assessee could not be continued is not sold, sale of entire business leaving that asset would not be a slump sale. Accordingly, noting that in the present case, the lands and buildings of the hospital was a significant asset, without which it was not possible to run the hospital business, it held that capital gains could not be computed u/s 50B. Further, noting that the assessee had already offered to tax the sale consideration received from the aforesaid composite sale as LTCG, the Tribunal thus deleted the addition made by the AO.

MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018

1198. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order treating the income derived by the assessee from investments in securities availing Portfolio Management Service (PMS) to be Capital Gains and not business income, noting that the assessee had been consistently employing services of PMS for augmenting value of securities and relying on the decision in the case of Shri Apoorva Patni Vs. Addl.CIT [ITA No.239/PN/2011] wherein it was held that when the income is earned by the assessee out of investments in securities using specialized professional services of PMS, such income became taxable under the head 'Capital Gains' and the same should not be construed as 'Business Income'.

INCOME DTAX OFFICER vs. ROOPA JAYANT GUPTA - (2018) 53 CCH 0233 Pune - ITA Nos. 1296 to 1300/PUN/2017 dated June 20, 2018

1199. The assessees sold tenancy rights acquired by them from their father under inheritance and claimed the benefit of indexation on the cost of acquisition being the fair market value (FMV) of the said rights as on 1st April, 1981. The AO denied the said benefit by considering the Cost of acquisition to be Nil as per section 55(2)(a). CIT(A) upheld the AO's order. The Tribunal held that the cost of acquisition of the tenancy rights (which were acquired prior to 1st April, 1981) could not substituted with the FMV as on 1st April, 1981 as provided u/s 55(2)(b), since as per section 55(2)(a) the cost of acquisition of tenancy rights was to be taken as the actual purchase price paid (if any) or otherwise as Nil. Thus, it restored the case to the file of AO for the limited purposes of determining the cost of acquisition of the tenancy to the previous owners (i.e. their father) from whom the assessees had acquired rights in the tenancy by inheritance, in terms of Section 55(3). The Court held that section 55(2)(a) deals with capital assets inter alia being in nature of tenancy rights whereas section 55(2)(b) is a residuary clause dealing with the cost of acquisition of the capital assets which are not covered by section 55(2)(a) and thus section 55(2)(b) would have no application in the present case involving tenancy rights. Thus, it dismissed the assessee's appeal against the Tribunal's order. However, noting of the assessee's submission that cost to the previous owner was not ascertainable and thus in terms of section 55(3), FMV on the date on which the capital asset become the property of the previous owner was to be considered as cost, the Court held that the assessees' could challenge the orders of the AO passed pursuant to the remand.

DHARMAKUMAR C. KAPADIA & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 102 CCH 0104 (Mum HC) – ITA No. 239 of 2016, 241 of 2016 dated June 18, 2018

1200. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had upheld the AO's order taxing the amount received by the assessee on issue of its own shares to its Singapore-based holding company as short-term capital gains. The Tribunal held that the endeavor of the departmental officers to tax the transaction in question as capital gains was not supported by the any legal base as there was no transfer of capital asset to invoke the provisions of section 45. It was noted that as per the balance sheet of the assesse, it had only sold some vehicles during the year and no other asset was sold. With respect to the CIT(A)'s observation that the assessee had transferred the Interest/(stake) in itself outside India to it holding company, the Tribunal held that the concept of 'creating of interest in any assets in any manner' and transferring 'interest/stake' was not part of the word 'transfer' for the year under consideration and nor it was applicable to that year, noting that

Explanation 2 to section 2(47), whereby the concept of 'creating of interest in any assets in any manner', relied upon by the CIT(A), was introduced in the year 2013 (whereas the year involved was AY 2011-12). Further, with respect to Explanation 5 of the section 9, it held that the assesse was not covered by the said Explanation since it was not a non-resident.
SUPERMAX PERSONAL CARE PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0096 (Mum Trib) - ITA 6107/Mum/2016 dated June 1, 2018

1201. The Court upheld the Tribunal's order rejecting assessee's claim for deduction u/s 54B on account of utilization of the amount representing capital gain arising from sale of agricultural land for purchase of another agricultural land. It was noted that as per the provisions of section 54B, the assessee or the assessee's parents had to use the land for agricultural purposes for a minimum period of two years, whereas the assessee had not used the land for agricultural purposes for a minimum period of two years before its sale. The non-usage of land for agricultural purposes was evident from the facts that the asseessee had incurred expenses only for improving the land rather than for its cultivation and the assessee, in his submissions had stated that the land was purchased for the purpose of making a farm house and guest house for him and his family.
Gopal S. Pandit v CIT - [2018] 95 taxmann.com 246 (Karnataka) - IT APPEAL NO. 34 OF 2017 dated June 25, 2018

1202. The Tribunal set aside the CIT(A)'s order wherein the CIT(A) had upheld the AO's order denying deduction claimed u/s 54 against the long-term capital gains which was offered to tax by the assessee in the revised return filed after issuance of notice u/s 143(2). It was noted that the AO had accepted the long-term capital gains offered to tax in the revised return but had not accepted the assessee's impugned claim u/s 54 against the said gains. The Tribunal held that the assessee can file a revised return of income even in course of the assessment proceedings, provided the time limit prescribed u/s 139(5) is available and restored the issue to the file of the AO for examining and allowing assessee's claim of deduction, subject to fulfilment of conditions of section 54.
Mahesh H. Hinduja v ITO - [2018] 95 taxmann.com 168 (Mumbai - Trib.) - IT APPEAL NO. 176 (MUM.) of 2017 dated June 20, 2018

1203. The Tribunal allowed the assessee's appeal and directed the AO to allow the assessee's claim made u/s 54EC on account of investment in NHAI Bonds, which was rejected by the AO on the ground that the same did not appear in income-tax return filed by the assessee. It was noted that since XML file containing computation of income (from computerized return filing software uploaded on e-filing portal of income-tax department) showed that the assessee had claimed deduction on account of investment in NHAI Bonds u/s 54EC but due to software generated error**,** this claim remained to be considered in e-processing of return.
Rajesh Hasmukhlal Shah v ITO - [2018] 95 taxmann.com 84 (Surat-Trib.) - IT APPEAL NO. 517 (AHD.) OF 2015/SRT dated June 7, 2018

1204. The Tribunal accepted assessee's claim that the income arising on sale of investment in shares was chargeable to tax as capital gains and not business income, noting that the shares were shown as investment in books of account also and in past, such income was accepted as capital gain and it was only during the relevant year the AO had not accepted the same. It held that it was not open to the AO to take a different view in respect of relevant assessment year without showing reasons for doing same. The Tribunal held that when assessee makes investment and chooses to rely on same and obtain a higher price out of it than what it originally acquired, enhanced price received is a realization of investment and, hence, same is to be treated as capital gain.
Second Leasing (P.) Ltd v ACIT - [2018] 95 taxmann.com 133 (Delhi - Trib.) - IT APPEAL NO. 1565 (DELHI) OF 2011 dated June 4, 2018

1205. Where the assessee claimed deduction under Section 54 for investment in a new house property and the AO disallowed the assesseee's claim of deduction since the assessee had not invested capital gain in purchase of new house property within prescribed time which is a requisite condition for deduction under Section 54F, the Tribunal held that since the deduction was claimed under Section 54 and not under Section 54F, the conditions and restrictions imposed under Section 54F were not applicable upon the assessee. Accordingly, the matter was remitted to Assessing Officer for de novo adjudication.

Gayatri Prasoon Pandey v. ACIT – [2018] 93 taxmann.com 191 (Mumbai – Trib.) – IT Appeal No. 2940 (MUM.) of 2016 dated April 25, 2018

1206. Assessee had entered into an agreement with a construction company for development of a piece of land owned by him and as per agreement, the assessee was to receive 37.5 percent of built up area in form of 6 flats. The AO restricted assessee's claim of deduction under Section 54F to only one flat in view of the amendment to section 54F. The Tribunal held that the amendment to Section 54F (whereby the expression 'a residential house' was amended to 'one residential house') was not retrospective in nature and would be applied prospectively and that in furtherance to the various judicial pronouncements on identical facts, the assessee was entitled to deduction under Section 54F in respect of all 6 flats.
T.A.V. Gupta v. ITO – [2018] 93 taxmann.com 249 (Bangalore – Trib.) – IT Appeal No. 209 (BANG.) of 2018 dated April 25, 2018

1207. The assessee transferred its trade mark, goodwill, technical knowhow and franchise rights under different agreements in favour of another company where the trademark was valued at nearly twenty times value of goodwill. The AO opined that the assessee had undervalued goodwill as transfer of trademark was not taxable and thus he made addition u/s 45 by substituting the value of goodwill by a sum arrived at by him by taking book mean of transferred value of trademark and goodwill and projecting resultant figure as a consideration for transfer of goodwill. The Court upheld the order of the Tribunal and CIT(A) deleting the said addition, noting the CIT(A)'s finding that the under the transfer of trademark the assessee had not transferred merely an emblem or figure, but also reputation of its products, leaving very little by way of goodwill. It also held that if the assessee's valuation for goodwill was not backed by any material or data on the record, the substitution adopted by the AO suffered from greater vice and that there was no basis for the AO to believe that the trademark and goodwill must value at the same level.
CIT v Bisleri International (P.) Ltd - [2018] 94 taxmann.com 259 (Gujarat) - R/TAX APPEAL NO. 1530 OF 2007 dated May 7, 2018

1208. The assessee sold two parcels of land and filed its returns declaring Short Term Capital Gains. In Scrutiny assessment, the AO observed that while computing STCG, assessee had claimed cost of improvement of the land (Land filling & Construction of Compound Wall) as a part of acquisition of the land. The bills produced towards expenses were supported by corroborate evidence by the assessee. Thus, the AO issued summons u/s 131 to the three parties whom the assessee had made payments for the said expenditure. First party (for land filling) appeared and made assertion contradicting the claim of assessee and other 2 parties (for construction of compound wall) did not appear. The AO disallowed the claim of expenditure and enhanced the amount of STCG. The CIT(A) concurred with AO with regards to the expense of land filling disallowing the expenditure but granted relief in respect of the two parties for the reason that despite seeking remand report on issue, AO had failed to bring any adverse material on record. The assessee had also demanded a copy of statement as well as cross-examination of witness which was brushed aside. Thus, the Tribunal held that AO as well as CIT(A) had failed in discharging obligation cast upon them as quasi-judicial authority in this regard and their actions suffered from serious irregularities while drawing conclusion adverse to assessee. It thereby remanded back the matter for fresh adjudication to the AO.
Harjivanbhai C Patel & Anr v DCIT & Anr (2018) 52 CCH 0447 AhdTrib - ITA No. 2384/Ahd/2016, 2460/Ahd/2016 dated 27.04.18

1209. The Tribunal upheld the valuation adopted by the assessee with respect to a property sold during the year, for arriving at the cost of acquisition being the fair market value of the said property as on 01/04/1981, rejecting the value adopted by the AO based on the Sub-Registrar Office's (SRO) register. It was noted that the value adopted by the assessee was based on an approved Valuer's report (wherein the valuer had also determined cost of built up area by giving reasons) and also supported by the value at which the State Govt had purchased property in 1980 in near vicinity. Further, the AO had merely rejected the contention of the assessee without any material to the contrary. The Tribunal also observed that as per section 50C also, if any question is raised against the stamp authority valuation, reference is to be made to the DVO and thus the AO's mere reliance upon the SRO's report was not in

accordance with law. Thus, noting that the assessee had not only mentioned about the comparable case but also furnished approved Valuer's report, who was a technical expert, the Tribunal upheld the valuation adopted by the assessee's.

The assessee had also claimed exemption u/s 54 but AO denied the claim on the ground that the purchase of a residential property was done in Feb 2010 whereas the sale of original property owned by assessee was made in Oct 2011 and thus in order to claim exemption u/s 54 assessee should either purchase property within period of one year or two years after which transfer took place or constructed property within period of three years after due date. Thus, assessee ought to have purchased a new property after October 2010 whereas property was purchased in February 2010 as per sale deed and second contention of construction did not apply to assessee who purchased a property as Sale deed clearly showed that property was an outright purchase of residential house, therefore it could not be said that assessee constructed residential house. Further, assessee had failed to claim exemption in original assessment as well as revised assessment. Therefore, the Tribunal dismissed assessee's ground for claiming exemption u/s 54.

Ghansham Lekhraj Rupani v ITO (2018) 52 CCH 0395 HydTrib - ITA No. 1669/Hyd/2016 dated 18.04.2018

1210. During assessment, the AO noted that the assessee along with his two brothers (also party to the appeal) had sold leasehold rights of limestone & Marble mines to a company 'J'.He held the said transaction to fall within the meaning of 'transfer' u/s 2(47) and accordingly made addition of 1/3rd of the consideration received in the hands of each assessee (being their individual share in the said right). On appeal, the CIT(A) held only one of the brothers to be the legal owner of the mining rights. Further, it held that since only the sale deed was executed but possession was not given, there was no transfer u/s 2(47).The CIT(A) thus deleted the addition made by the AO. On revenue's appeal, Tribunal held that it was a case of transfer of mining rights under lease which were agreed to be transferred for a consideration to J company. It rejected the assessee's contention that the said right were not yet transferred as the said transfer was subject to renewal of lease. The Tribunal held that though the mining rights per se were not transferred however, by virtue of agreement, the assessee transferred and surrendered his rights in said asset as on date of agreement and was bound to transfer leaseholds rights in favour of J company only whenever same were renewed by Government, thus relinquishing his right. However, the Tribunal upheld the CIT(A)'s finding that only one of the brother was the owner of the mining rights and thus the amount received for execution of the said agreement was liable to be assessed as capital gain in the hands of the said brother (owner of mining lease).Further, the Tribunal rejected the AO's stand that since the assesses had acquired the said rights as inherited property as per section 49(1)(i)(iii)(a) and the cost of previous owner was Nil, the cost of acquisition in the hands of the assesses will be Nil. It held that it was clear from provisions of section 55(2)(a)(b) r.w.s. section 55(3) that in case, assessee had exercised his option that cost of acquisition of capital asset should be fair market value as on 01.04.1981 then, cost of acquisition of capital asset of previous owner became irrelevant for purpose of computing capital gain and accordingly, directed the AO to compute capital gain after allowing cost of acquisition being fair market value as on 01.04.1981.

ITO & Ors v Vijay Mangal & Ors. (2018) 52 CCH 0373 JaipurTrib - ITA No. 276/JP/2017dated 18.04.2018

1211. The assessee sold her bungalow and purchased 4 flats from the consideration received and claimed exemption u/s 54F.It was undisputed that the 4 flats were small units combined into 1 residential unit. The AO held that only one flat could be purchased against long term capital gain but however, took cognizance of fact that as per society bills two flats were considered as single unit, therefore, concluded that two residential units were purchased by assessee, and as such allowed exemption in respect of investment made in respect of only one residential unit. The CIT(A) held that it was conceded factual position that assessee had merged four flats into one residential unit, therefore, claim of exemption u/s 54 was rightly raised by her and to be allowed completely. The Tribunal followed CIT-12 vs. Raman Kumar Suri wherein it was concluded that where assessee had acquired one residential house consisting of two flats, it could not be said that assessee had purchased two residential houses. Thus, the Tribunal held that where acquisition of two flats had been done independently by assessee, but however, said flats were constructed in such way that adjacent units or flats could be combined into one, and eventually had been merged into single unit and were used for purpose of residence by assessee, the claim of exemption u/s 54 could not be denied and dismissed revenue's appeal.

ITO (International Taxation) v Kavita Gupta (2018) 52 CCH 0308 MumTrib - ITA No. 6884/MUM/2014 dated 11.04.2018

1212. The assessee sold certain parcels of land situated on National Highway and offered Long Term Capital Gain to tax.The assessee presented report of Government Approved Valuer which suggested that fair market value of land as on 1-4-1981 was Rs. 120 per sq. meter. AO did not accept said valuation and on basis of sale of land in a nearby village in year 1981, AO assessed fair market value of land as on 1-4-1981 at Rs. 10 per sq. meter. Thus, certain addition was made to capital gain liable to tax.The Tribunal noted that assessee's land was situated on National Highway and thus it had greater potential and market value. Moreover, there was no data available on situation of land, sale of which was referred to by AO.The Tribunal thus deleted addition made by AO. The Court held that while adopting valuation of immovable properties situational advantages and disadvantages are important factors. It further held that finding recorded by Tribunal being a finding of fact, no substantial question of law arose therefrom.
CIT v Charusheela M Bhatia [2018] 94 taxmann.com 397 (Gujarat) – R/TAX APPEAL NO. 354 OF 2018 dated 17.04.2018

1213. The Court held that actual sale consideration could not have been substituted by fair market value of capital asset for taxing capital gains arising out of sale of shares by assessee an individual to its related entity. Section 52 which allowed such substitution under certain circumstances was omitted from 1-4-1988 and thus was not applicable to relevant assessment years.
Arjun Malhotra v CIT [2018] 92 taxmann.com 338 (Delhi) – ITA NOS. 405 , 406 OF 2005 dated 20.04.2018

1214. The Court held that where assessee earned long term capital gain from sale of property, in view of fact that assessee had to pay certain liquidated damages in term of earlier agreement to sell which did not materialise, it could be concluded that there was a close nexus and connect between payment of liquidated damages and transfer of property resulting in income by way of capital gains, and, thus amount so paid was eligible for deduction under sec. 48(i)
Kaushalya Devi v CIT [2018] 92 taxmann.com 335 (Delhi) – ITA NO 600 OF 2004 dated 20.04.2018

1215. Transfer of immovable property takes place on execution of sale deed and, therefore, to hold that upon mere execution of agreement to sell, immovable property gets transferred to purchaser, even within extended definition of section 2(47), would be incorrect.
Further, benefit of deduction under section 54F in case of construction of residential house, is available only when construction is completed within a period of three years after date of transfer of long-term capital asset and, therefore, where construction took place prior to date of transfer, conditions of section 54F were not fulfilled and, consequently, assessee's claim for deduction was to be rejected. However, with respect to transfer of one of the flats, as the construction was carried out subsequent to the transfer, exemption u/s 54F could not be denies in respect of transfer of the said flat.
Ushaben Jayantilal Sodhan v ITO [2018] 93 taxmann.com 453 (Gujarat) – R/TAX APPEAL NO. 393 OF 2014 dated 01.05.2018

1216. The Apex Court dismissed the Department's SLP against order of the Court wherein it was held that where assessee had purchased shares with clear intention of being an investor and held shares by way of investment, gain arising out of transfer of shares should be treated as capital gains and not business income
PCIT v Bhanuprasad D. Trivedi [2018] 94 taxmann.com 114 (SC) – SLP (CIVIL) DIARY NO. 11011 OF 2018 dated 04.05.2018

1217. The Tribunal held that where AO having invoked provisions of section 50C, made certain addition to assessee's income, in view of fact that even after applying provisions of section 50C, difference in capital gain declared by assessee and figure adopted by AO did not even exceed 10 per cent of stamp duty valuation, impugned addition deserved to be set aside
Surendra S. Gupta v ACIT [2018] 93 taxmann.com 456 (Mumbai – Trib.) – ITA NO 4791 OF 2014 dated 09.05.2018

1218. Assessee, engaged in business of real estate, received certain amount by granting easement rights to 'R'. The assessee contended that granting of easement rights did not result in transfer as envisaged in S.2(47) and thus capital gains arising therefrom were not taxable and further contended that since the entire consideration amount wasn't received & the amount received was shown under the head- current liability, the same was not liable to tax. AO rejected both the contentions and bought to tax the amount received during the relevant AY. CIT(A) opined that the grant of easement right resulted in transfer and capital gains arising therefrom were taxable on accrual basis irrespective of actual receipt of consideration. The Tribunal upheld the order of CIT(A).

Oikos Apartments (P.) Ltd v ITO [2018] 95 taxmann.com 44 (Bengaluru – Trib) – ITA NO 1384 OF 2017 dated 31.05.2018

1219. The assessee, one of the two partners of the partnership firm, took over the business as sole proprietor and acquired the capital assets in May 2003 on account of death of other partner on refusal of deceased's legal heir to continue the business. In July 2004, assessee sold the capital asset which was acquired by the firm in the year 1984 and made an investment in REC bonds by treating the asset as Long Term Capital Gain thus claiming deduction u/s 54EC by claiming that the acquisition date would be the date on which the said asset was acquired by the firm in which the assessee at the relevant time was a partner. However, since u/S.45(4)(inserted vide Finance Act,1987), distribution of assets on dissolution of a firm was to be construed as a 'transfer', the Tribunal held the capital asset acquired by the assessee as Short Term Capital Gain and denied exemption u/s 54EC. However, the Tribunal accepted the assessee's contention that the capital gain in the hands of the assessee would be to the extent of difference between the sale consideration of the property in July 2004 and the Fair Market Value of the same in May 2003 leading to the directing the AO to recompute the Capital Gain in the hands of assessee accordingly.

Amar Kanayalal Nagpal v ITO [2018] 94 taxmann.com 51 (Mumbai-Trib) – ITA NO 1744 OF 2012 dated 30.05.2018

1220. The assessee sold property and utilized the consideration received in constructing another residential property. In the relevant AY of transaction, the assessee neither admitted capital gains arising therefrom nor claimed deduction u/s 54F.In the course of scrutiny assessment, the AO noticed the said transaction and issued a show-cause notice. In response to the said notice, the assessee furnished all information called for and stated that he was entitled for exemption u/s 54F since the consideration was used for construction of residential property. The AO accepted the income declared by the assessee but the Commissioner passed a revisional order disallowing the claim of deduction on the ground that the assessee failed to declare capital gain and claim exemption in the return of income. However, on assessee's appeal, the Tribunal held that since there was no dispute about the utilization of sale proceeds for constructing residential property,the assessee's claim for deduction was to be allowed.

Manohar Reddy Basani v ITO [2018] 94 taxxman.com 321 (Hyderabad – Trib.) – ITA NO 1307 OF 2017 dated 30.05.2018

1221. The assessee earned capital gain on sale of shares kept under Portfolio Management Scheme and claimed the deduction of fees of PMS. The AO disallowed the same by holding that fees for PMS could not be treated as transfer or cost of acquisition/improvement u/s 48 of the Act. Both, the CIT(A) and Tribunal upheld the said disallowance.

Mateen Pyarali Dholkia v DCIT [2018] 94 taxxman.com 294 (Mumbai – Trib.) – ITA NO 6950 OF 2016 dated 30.05.2018

1222. The assessee entered into an agreement with the developer to construct a building on the land owned by the assessee, which it had converted into stock-in-trade in an earlier AY (prior to entering into the agreement). Only physical possession of the said land was handed over to developer at time of execution of the agreement. In the previous year relevant to AY 2009-10 (i.e the impugned year), the assessee received certain amount as advance as an safeguard of interest, which was equivalent to his share out of amount collected by developers from prospective buyers. The AO added the said amount to assessee's total income. However, the Tribunal held that the business profits arising to the assessee would be taxable only in the year when the land is sold/handed over by the developers to the buyers of the flat since that would be the proper period of having right to collect the said amount. Accordingly, it directed the AO to delete the addition during the relevant AY. Further, noting that the developer had

recognized completion and sale of the developed portion in subsequent AY 2011-12, it held that the business profits arising to the assessee also would be taxable in the said year.
The AO had also made addition to the assessee's income being capital gains arising on conversion of capital asset (land) into stock in trade as per section 45(2). In this regard also, the Tribunal held that the capital gain arising out of the said conversion was taxable only in the subsequent year when the business profit was taxable in the hands of assessee i.e. AY 2011-12. Further, it held that the said capital gains was to be computed considering the fair market value of the land on the date of conversion as the sale consideration and not on the basis of existing market value.
ITO v Vilas BabanraoHukari (HUF) [2018] 93 taxmann.com 465 (Pune-Trib.) – ITA NO.1640 & 1640 OF 2014 dated 25.05.2018

1223. The assessee-mill sold the land (including part of the land bearing staff quarters) to a developer and the dispute arose whether the gains from sale from such land would be LTCG or STCG. The AO computed the gains as STCG since the assessee claimed depreciation on the staff quarters. However, it was evident from the development agreement that the consideration to be given by the developer was for the 'land' and not for the staff quarter and thus,theassessee bifurcated the builtup land (staff quarter) and the remaining landthereby offering to tax the gains from portion of land bearing staff quarter as STCG and from sale of remaining portion of land as LTCG which was allowed by the CIT(A).The Tribunal concurred with CIT(A) However,as neither the relevant documents nor the sale agreement was filed, the exact extent of land sold and its value could not be asserted which obviated the conclusive finding on the assessee'sclaim and thus for the said purpose/issue, the matter was remanded back to the AO.
CIT v Seth Industries (P.) Ltd. [2018] 94 taxmann.com 318 (Mumbai – Trib.)- ITA NO 4094 OF 2013 & 2279 OF 2015 dated 18.05.2018

1224. The assessee enterted into an agreement with its subsidiary to transfer its packaging division to its subsidiary against the issue of its own shares. The Revenue contended that the said transaction was "slump sale" u/s 2(42C) and therefore it was taxable as per provisions of S.50B. However, the Tribunal rejected the Revenue's contention and held that since the transfer of undertaking was not for money but for equity shares, the said transaction was to be treated as "exchange" and not sale, and, therefore Section 2(42C) was not applicable.
Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.) – ITA NO 2913 OF 2015 dated 16.05.2018

1225. The assessee had written-off of its investment in its wholly owned Chinese subsidiary as there were persistent losses and the net worth of the company had eroded. The AO held that the claim of capital loss was not allowable as the same did not arise due to transfer of asset, thereby it did not arise as per the computation specified in Section 48. The Tribunal set aside the order of the CIT(A) and restored the matter to the file of the AO by holding that since the investment in the subsidiary company was capital in nature, there is no provision in Act regarding carry forward of loss in capital field, which is not arising out of transfer of capital asset.
Daga Global Chemicals P. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0007 (Mumbai ITAT) – ITA No. 5296 & 5889/Mum/2017 dated May 2, 2018

1226. The assessee entered into an agreement with a builder for construction and sale of dwelling units and also executed irrevocable general power of attorney on the same day. The AO held that on a conjoint reading of both the documents, assessee had delivered physical possession of land to builder on such day and that there was transfer of capital asset as defined under Section 2(47) of the Act, resulting in long-term capital gains in the hands of the assessee.
Relying on the ruling of Supreme court in CS Atwal vs CIT (2017-TIOL-374-SC-IT order dated 4.10.2017), the Tribunal held that since the agreement was not registered, there was no contract in eye of law in force under Section 53A of the Transfer of Property Act, and consequently the same would not amount to transfer within meaning of section 2(47)(v) and thereby capital gains could not be chargeable in hands of assessee during year under consideration.
Abhaya Prasad Panda & Anr. vs. ITO – [2018] 53 CCH 0011 (Cuttack ITAT) – ITA 250/CTK/2015, 214/CTK/2015 dated May 7, 2018

1227. The assessee, engaged in the activity of purchase and sale of shares, had offered income from sale of certain shares under the head 'capital gains' as the same were declared as investments in the books of the assessee. Considering the substantial nature of transactions and the magnitude of purchase and sale of shares, the AO held that income from such activity should be taxed under the head 'business and profession'. Considering the remand report and the submissions filed, the CIT(A) upheld the order of the AO. The Tribunal observed that except stating that the assessee had large number of transactions, no evidence was brought on record by the AO to substantiate that the subject income is a 'business income'. Accordingly, relying on the ruling of the Gujarat High Court in Ramniwas Ramjivan Kasat (82 taxmann.com 458) and noting that in earlier assessment year, the income was assessed as capital gains in assessee's own case, the Tribunal set aside the order of the CIT(A) and AO and held that though the rule of res judicata does not apply to Income-tax proceedings, the rule of consistency is applicable and thereby the income from sale of shares was taxable as capital gains.
ITO vs. Pedarla Srinivasa Murthy – [2018] 53 CCH 0016 (Vishakhapatnam ITAT) – ITA No. 123&124/Vizag/2016 dated May 9, 2018

1228. The assessee company gifted huge volume equity shares in a public company, without any consideration, to its sister concern by passing a board resolution and a special resolution in the extra ordinary General meeting. The AO held that the said transaction would not fall under the purview of Section 47(iii) as transfer of asset under a gift or will or an irrevocable trust is not possible by an artificial person. Further, since the assessee could neither establish the genuineness of the transaction, nor prove the commercial expediency and business prudence, AO held that the said transfer of shares was to evade taxes and hence held that the transaction was taxable under Section 45 and computed value of shares transferred by taking the market value of each share. The CIT(A) upheld the order of the AO. The Tribunal held that since assessee did not demonstrate, by way of documentary evidence or in any manner, to prove genuineness and validity of transaction, assessee was directed to provide all relevant information / details to assist the AO. Thus, the matter was set aside to the file of the AO to make proper enquiry with respect to reality, genuineness and validity of alleged transaction.
Gagan Infraenergy Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0080 (Delhi Tribunal) – ITA No. 1031/Del/2018 (Stay Application No.193/Del/18) dated May 15, 2018

1229. The assessee claimed gains on sale of agricultural land as exempt as it was not an asset under section 2(14)(iii) of the Act. The AO held that since land was purchased alongwith constructed house, it was a sale of land alongwith sale of house property and hence taxed it as capital gains after providing indexation to cost. The CIT(A) deleted the addition and held that since the land was not used for commercial purposes, the gains arising from sale of such agricultural land was exempt under Section 10. Relying on the ruling of the jurisdictional High Court in Hindustan Industrial Resources Ltd., the Tribunal held that since the land in question was agricultural land at time of purchase and also at time of sale, the said land was treated as agricultural land and no capital gain was chargeable on sale of such agricultural land.
ITO & Anr. vs. Gomantak Exims Ltd. & Anr. – [2018] 53 CCH 0106 (Delhi Tribunal) – ITA No. 2708/DEL/2012 (CO No. 435/DEL/2012) dated May 15, 2018

1230. Where the Assessee sold house property during the year and computed capital gains based on the sales consideration, the AO made addition to the income of the assessee under Section 50C of the Act on account of difference in the valuation of property done by the DVO and the sale consideration. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Patna High Court in the case of Bimla Singh vs. CIT (308 ITR 71)* wherein it was held that in valuation of house property bonafide difference was bound to occur. Thus, the Tribunal deleted the addition made and held that the difference between investment on house property and valuer's report was too meager and could be ignored. Thus, the assessee's appeal was allowed.
AMAN JOLLY vs. ITO (DELHI TRIBUNAL) (I.T.A.No. 935/DEL/2018) dated May 14, 2018 (53 CCH 0382)

1231. Where the Assessee did not disclose sale and purchase of agricultural land in its original return of income, the AO added capital gain on sale of agricultural land but did not grant any benefit under Section 54B of the Act for purchase of agricultural land as the same was not based on original return of income but raised in revised return of income. CIT(A) upheld the order of the AO. The Tribunal held that

since the assessee had duly submitted documents regarding purchase of agricultural land and same were already on record before AO, the claim exemption of exemption under Section 54B should be granted to the assessee as the AO did not find any fault in purchase documents. Thus, Tribunal set aside order passed by CIT(A).

SANJAY SHANKARRAO JADHAO vs. JCIT (NAGPUR TRIBUNAL) (ITA No.66/Nag./2017) dated May 8, 2018 (53 CCH 0153)

1232. Where the assessee converted agricultural land into residential plot before selling it, AO held gains arising from such sale was liable to be taxed in hands of assessee as *'long term capital gains'*. CIT(A) held that the same was adventure in nature of trade and the income arising thereon was liable to be taxed as *'business income'*. Tribunal held that the assessee had sold 'residential plot' on his agricultural land after developing roads etc. and since the same was an act of business and adventure in nature of trade, income was to be taxed as per provisions of section 45(2). Thus, Tribunal held that capital gains should be calculated as on date of conversion of agricultural land to 'stock in trade' and thereafter only profit and gain of business should be computed on sale. Considering totality of facts and circumstances, the Tribunal restored the matter to the AO.

SURAJ MAL vs. ITO (JAIPUR TRIBUNAL) (ITA No. 659/JP/2017) dated May 1, 2018 (53 CCH 0079)

1233. The Assessee reinvested the capital gains earned on sale of house property in purchasing / constructing three residential houses. The AO held that the Assessee would be entitled to exemption under Section 54 of the Act in respect of only one house property. The CIT(A) granted exemption under Section 54 of the Act to assessee in respect of reinvestment made in all three houses. The Tribunal upheld the order of the CIT(A) and dismissed the Revenue's appeal for the following reasons:

i. Assessee had purchased three adjacent plots of land and made construction by inter connecting buildings using steel bridges to allow movement within houses
ii. Modified occupancy certificate was issued to the assessee by considering entire building as a combined single building
iii. Section 54 was amended with effect from AY 2015-16 wherein exemption under Section 54 of the Act would have to be restricted to reinvestment in one residential house. The said amendment could not be retrospectively applied.

ACIT & ANR. vs. RESHMI P. LOYALKA & ANR. (KOLKATA TRIBUNAL) dated May 23, 2018 (53 CCH 0063)

1234. The AO reopened the assessment as he was of the view that capital gains arose during year under consideration as assessee entered into a development agreement along with seven other parties. The Assessee filed a return of income declaring NIL income in response to notice issued under Section 148 of the Act. AO taxed the capital gains arising on the said development agreement and made certain other additions also. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Bombay High Court in the case of M/s. Chaturbhuj Dwaraakdas Kapadia Vs. CIT [260 ITR 491]* and held that since there was no transfer of complete control over property, even in so called development agreement, the capital gains tax was bad in law. Accordingly, the Assessee's appeal was allowed.

KHAMBHAMPATI JAYALAKSHMI & ORS. vs. ITO & ORS. (HYDERABAD TRIBUNAL) (ITA No. 1587, 1588, 1598, 1599, 1600 & 1679/Hyd/16) dated May 23, 2018 (53 CCH 0073)

1235. The assessee filed his return for a specified year which was picked up for scrutiny assessment in response to which the assessee gave detailed information in relation to the purchase and sale of flats which had resulted into capital gain, which it claimed to be exempt u/s 54F of the Act. The AO completed the assessment as per section 143(3) but later reopened the assessment on the ground that the deduction u/s 54F was incorrectly claimed. The Tribunal set aside the reassessment proceeding and held that the assessee had furnished all the details in relation to capital gains during the regular assessment to which the AO had applied his mind and the reassessment proceeding was merely a case of change of opinion of the AO. The Tribunal further held that the AO could not reopen assessment after the expiry of four years from the end of the relevant assessment year merely on the basis of certain objections that were raised by the audit party. The High Court affirmed the decision of the Tribunal.

CIT v. Shankardas B. Pahajani – [2018] 93 taxmann.com 248 (Bombay) – IT Appeal No. 1432 of 2007 dated April 24, 2018

1236. The Court held that the amount received by the retiring partner on retirement from firm on account of goodwill will not be subjected to tax as capital gains in his hands in light of the decision of the Court in CIT v. Riyaz A. Sheikh [2014] 41 taxmann.com 455/221 Taxman 118 (Mag.) wherein it was held that as per Section 45(4) income arising on account of distribution of assets upon dissolution of a firm was taxable in the hands of the firm.
PCIT v. R.F. Nangrani HUF – [2018] 93 taxamann.com 302 (Bombay) – IT Appeal No. 33 of 2016 dated April 18, 2018

1237. The assessee sold his residential units during the relevant year and claimed exemption u/s 54 in respect of a new residential flat which it purchased and obtained possession within the time prescribed u/s 54. The AO denied the exemption claim of the assessee u/s 54 on the ground that the assessee had availed house building loan and invested only part of capital gain in new residential unit. The Tribunal allowed the claim of the assessee and held that availing of house building loan from bank for purchasing a new residential unit could not act as a disqualification for claim of exemption u/s 54 when primary conditions imposed in section 54 were satisfied.
Amit Parekh v. ITO – [2018] 92 taxmann.com 295 (Kolkata – Trib.) – IT Appeal No. 41 (Kol.) of 2016 dated April 4, 2018

g. ***Income from Other Sources***

1238. Where the assessee had acquired shares of one, TEPL which were valued the shares as per rule 11UA of the Income-tax Rules, 1962, i.e., on basis of book value of assets of TEPL and not as per market value of assets, the Tribunal held that the AO was unjustified in making an addition under Section 56(2)(viia) by substituting the valuation adopted by the assessee with the market value and alleging that the difference was the income of the assessee. The Tribunal held that under the provision of rule 11UA there was no reference to the fair market value of the land as taken by the Assessing Officer and accordingly deleted the addition made.
Minda S M Technocast (P.) Ltd. v Add CIT - [2018] 92 taxmann.com 29 (Delhi - Trib.) - IT APPEAL NO. 6964 (DELHI) OF 2017 dated MARCH 7, 2018

1239. Where the assessee-company was not engaged in carrying on any business activity of acquisition of shares but in making long-term investments and the dividend income earned on such investment was taxable under head 'Income from other sources', the Tribunal held that any expenditure incurred to earn dividend income including finance charges was to be allowed u/s 57(iii). However, since, the assessee had failed to furnish any details in respect of investments which earned income and investments which did not earn dividend income for year under consideration, the Tribunal upheld the CIT(A)'s order directing the AO to allow finance charges on proportionate basis in respect of investments which earned dividend income after verifying facts.
Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018

1240. Tribunal rejected the stand of assessee-HUF that the shares received by it as gift from Karta's mother (not being a member) were not covered by the provisions of section 56(2)(vii) as it would qualify as gift from 'relative', noting that the proviso to section 56(2)(vii) provides separate definition of 'relatives' in case of individual and HUF and thus the 'relatives' mentioned with respect to an individual cannot be considered when the recipient of the property is an HUF, irrespective of the fact that all the members of the HUF are individuals related to the donor.
Subodh Gupta (HUF) v Pr.CIT - TS-10-ITAT-2018(DEL) - ITA No. 3571/Del/2017 dated 05.01.2018

1241. The Pr.CIT, while passing order u/s 263 brought to tax the unquoted equity shares received as gift u/s 56(2)(vii) adopting the price at which the said shares were subsequently sold by the assesse to a third party for valuing the same, placing reliance on the definition of 'fair market value' ('FMV') as provided u/s 2(22B). The Tribunal rejected revenue's adoption FMV as provided u/s 2(22B), holding that the valuation was to be done as per the specific Rule 11UA(1)(c)(b) applicable for determining FMV of unquoted equity shares for the purposes of section 56.

Subodh Gupta (HUF) v Pr.CIT - TS-10-ITAT-2018(DEL) - ITA No. 3571/Del/2017 dated 05.01.2018

1242. Tribunal upheld AO's action of denying exemption to the assessee, a mutual benefit company, with respect to its interest income derived from Fixed Deposit Receipts and Savings Bank Account and taxing the same as Income from Other Sources. It rejected assessee's contention of allowing proportionate expenditure applying the methodology laid down u/s 14A r.w. Rule 8D, observing that this may not give appropriate amount/ correct expenditure. However, noting that interest income formed major part of the income of the assessee, Tribunal directed AO to consider 10% of the receipts being taxed as an 'expenditure laid out wholly and necessarily for earning the interest income' taking support from the provisions of section 80HHC and work out the taxable income.
Hyderabad Mutual Benefit Society v ITO - TS-607-ITAT-2017(HYD) - ITA No. 692 & 693 of 2017 (HYD) dated 29.12.2017

1243. Where assessee, who was director of a company, alongwith his wife, purchased certain immovable properties from the company at a value lower than the market value determined for stamp duty purposes, Tribunal rejected revenue's contention that the difference between the stamp duty valuation and actual sale value can be added u/s 56(2)(vii)(b) as the amendment empowering AO to assess such difference as income in case of sale of property for a consideration less than stamp duty value of property was incorporated into statute by Finance Act, 2013 with effect from 1-4-2014 and, hence, not applicable for AY 2011-12 and 2012-13 being the years under appeal.
Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018

1244. Tribunal deleted the addition made u/s 56(2)(vii)(b) by the AO adopting the FMV (Rs.26.69 per share) computed as per the Net Asset Value (NAV) method with respect to shares issued by the assessee-company, where the assesse-company had issued the shares at a price which was within the FMV (Rs.54.98 per share) computed as per the Discounted Cash Flow (DCF) method. , rejecting the adoption of Net Asset Value (NAV) method . It held that DCF method is one of prescribed method and that the AO had not found any serious defect in facts and details used in determining fair market value under the said method.
ACIT v Safe Decore (P.) Ltd. – (2018) 90 taxmann.com 161 (Jaipur Trib) – ITA No. 716 (JP) of 2017 C.O. No. 36 (JP.) of 2017 dated 12.01.2018

1245. The assessee had sold its immovable property and furniture and fixtures and plant and machinery separately. The immovable property, on which there was a building, was sold for redevelopment as a result of which building was not subject matter of sale as building now did not exist and no consideration was received for the building. The AO opined that the assesse had sold assets on slump sale basis attracting provisions of section 50B. Noting the above facts, the Court upheld the CIT(A)'s order holding that there was no slump sale and directed AO to allow relief considering the amount of long term capital gains computed by assessee without invoking the computation methodology stipulated in section 50B.
Pr.CIT v Linde India Ltd. – (2018) 90 taxmann.com 412 (Calcutta) – GA No. 1113 of 2016 ITAT No. 166 of 2016 dated 15.01.2018

1246. Where the assessee which had discontinued its business operations and offered to tax interest income earned from inter corporate deposits in its return as 'income from business', the Tribunal upheld the AO's view that interest income was to be taxed as 'income from other sources' in view of fact that since all along assessee had treated interest income under head 'Income from other sources' and without any change in material facts, same could not be brought under head 'income from business' in assessment years in question. Further, it held that in view of fact that as per memorandum of association main object of assessee-company was to manufacture fregnance and flavours, there was no justification for treating interest income under head 'income from business'.
Sai Fragrance & Flavours (P.) Ltd. v ACIT – (2018) 90 taxmann.com 307 (Mum) – ITA Nos. 7012 (Mum.) of 2011 & 6085 (Mum.) of 2013 dated 31.01.2018

1247. The Tribunal denied deduction u/s 57(iii) to the assessee, a members club, of expenses incurred for upkeep of the club and other facilities including the depreciation charged on various assets against the

interest income received from FDRs kept in bank which represented the membership fees received by the assessee from its members and taxable u/s 56 as 'income from other services'. It held that the eligibility for deduction u/s 57(iii) arises only if expenditure has been laid out wholly and exclusively for purpose of earning income which was chargeable under the head 'income from other sources' and since assessee failed to establish nexus between expenditure incurred under various heads including depreciation and had also failed to justify apportionment of expenditure to earning of interest income, its claim was rightly rejected by the lower authorities below.
Poona Club Ltd. v ACIT – (2018) 90 taxmann.com 422 (Pune) – ITA Nos. 1068 & 1069 (Pune) of 2014 dated 23.01.2018

1248. Where assessee vide a license agreement had acquired right to use a shop in a shopping Plaza and earned income in form of sub-license fee which was offered to tax under the head 'income from house property' after claiming statutory deduction in view of various provisions as enshrined u/s 22 to 27, the Court held that for income to be charged under head "income from house property", assessee must be owner of property and since, in the present case, conditions of clause (iiib) to section 27, including provisions of section 269UA(f) referred in the said clause (iiib) were not satisfied, the assessee could not be held to be the owner as defined in section 27. Further, noting that it was not the case of the assessee that the said income was chargeable to tax under head salary, profits and gains of business or profession or capital gains, it held that the said income had to be assessed under residuary head "income from other sources"
RAM KRISHAN ASSOCIATES & ORS. v CIT & ORS – (2018) 101 CCH 52 (Del HC) – ITA Nos. 731/2005, 732/2005 & 735/2005 dated 31.01.2018

1249. The Tribunal dismissed Revenue's appeal, and held that the amount of Rs. 1 Cr received as a gift by individual-assessee in contemplation of death of a person (with whom assessee was closely associated with) was exempt u/s. 56(2)(v)(d) proviso as the conditions set out in Sec.191 of Indian Succession Act (so as to constitute a valid gift in contemplation of death) were fully satisfied. The AO denied assessee's claim of exemption u/s. 56(2)(v)(d) proviso on the ground that FDRs and cheques amounting to Rs 1 Cr. were received by assessee from sister of the deceased and hence could not be said to have been received in contemplation of death. The Tribunal noted that before her death, the deceased expressed her will to give gift to the assessee and accordingly handed over cheques and FDRs to her sister, shortly after which she died and further observed that the sister of the deceased not only endorsed the existence of oral will/wish of her elder sister but also ensured that her sister's will was fulfilled by facilitating encashment of FDRs to the assessee by way of filing an affidavit to that effect which clearly stated that the amount of Rs.1 crore has been given to assessee in accordance with the last wish of her sister (deceased). Accordingly, the Tribunal dismissed the AO's denial of exemption.
Vijayraj Uttamchand Mundada [TS-146-ITAT-2018(PUN)] - ITA No.592/PUN/2014 dated 01-03-2018

1250. Where the assessee received interest from Goshree Island Development Authority on cancellation of auction plots under direction of Supreme Court, the Tribunal held that since interest was emanating from amount paid by assessee pursuant to auction and not directly from its business activities, it could not be considered as business income of assessee and the said interest was to be taxed as 'Income from other sources'.
Dewa Projects (P.) Ltd v ACIT - [2018] 92 taxmann.com 235 (Cochin - Trib.) - IT APPEAL NOS. 150, 151 & 219 (COCH.) OF 2014 dated MARCH 19, 2018

1251. The assessee, during year under consideration, made offer to existing shareholders for buy back of 25% of its existing share capital. The AO assessed the difference between book value of shares and purchase price (buy back price) of shares as income of assessee u/s 56(2)(viia) noting that one of the directors from whom shares had been bought back had reinvested amount in the assesse-company in form of loan and thus opining that the entire exercise of buy back was carried out to reduce liability of company by purchasing shares below fair market value. The Tribunal held that combined reading of provisions of section 56(2)(viia) and memorandum explaining provisions would show that provisions of section 56(2)(viia) would be applicable only in cases where receipt of shares become property in hands of the recipient and shares would become property of the recipient only if it was "shares of any other company". It held that since the assessee had purchased its own shares under buyback scheme and

the same had been extinguished by reducing capital, the tests of "shares of any other company" and "becoming property" had failed and, hence, the tax authorities were not justified in invoking provisions of s. 56(2)(viia) for buyback of own shares. Thus, it directed the AO to delete addition made u/s 56(2)(viia).
VORA FINANCIAL SERVICES P. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0289 (Mum) - ITA No. 532/Mum/2018 dated June 29, 2018

1252. The Court upheld the Tribunal's order confirming addition u/s 68 on account of certain amount claimed by the assesse to be gift received from father-in-law. Rejecting assessee's reliance placed on the decision of co-ordinate bench in the assesse own case for an earlier year wherein the Court had decided in favour of the assesse w.r.t. gift received from Maternal Aunt, the Court held that it could not have been simply said that what applied to a gift from the aunt would have equally applied to a gift from the father-in-law, irrespective of the circumstances, suspicious or otherwise, surrounding the gift. It also rejected the assessee's contention that genuineness of gift could not be questioned when the identity of the donor is established, payment is through banking channels and a letter of confirmation is also available, by holding that these three facts could establish the truth of the transaction, but not genuineness. It noted that the lower authorities had suspected that that undisclosed income earned by the assessee could have been used for round tripping and routed through father-in-law to bring it back as gift. The Court also rejected submission that round tripping was not possible as he had no source of income, observing that the assessee was a director of real-estate company. Acccordingly, the Court dismissed the asssessee's appeal in this regard and decided in favour of Revenue.
Pendurthi Chandrasekhar v DCIT - [TS-411-HC-2018(AP)] - I.T.T.A.No.703 / 2016 (Telangana & AP) dated April 26, 2018

1253. The Apex Court dismissed the SLP filed by the Revenue and upheld the High Court's order wherein it was held that taxability of interest income earned by assessee on deposit of advances received from REC for Rajiv Gandhi Gramin Vidyutikaran Yojna (RGGVY), would depend upon subsequent use of said income, noting that a 'MOU' was signed between the REC and the assessee whereby inter alia it was agreed that interest earned on deposits would be used as part of cost of projects and no other purpose.
Pr.CIT v NTPC Electrical Supply Co. Ltd. - [2018] 93 taxmann.com 430 (SC) - SPECIAL LEAVE PETITION (CIVIL) (DIARY) NO. (S)11488 OF 2018 dated April 23, 2018

1254. Where the Assessee claimed interest charged by bank on housing loan as deduction under Section 57 of the Act against interest income earned from various parties to whom the advances were given, the AO disallowed such interest claimed under Section 57 of the Act. The CIT(A) upheld the order of the AO. The Tribunal held that the assessee demonstrated that she had earned substantial interest income out of advances given from amount so borrowed from bank. Tribunal held that since there was no finding by the AO or the CIT(A) that interest earned were not out of interest bearing funds taken from bank, the matter was restored back to the file of the AO to decide the matter afresh. Thus, the Assessee's appeals were allowed for statistical purposes.
ANURADHA AGARWAL & ORS. vs. ITO & ORS. (JODHPUR TRIBUNAL) (ITA No. 498 to 500 of 2017)) dated May 25, 2018 (53 CCH 0132)

1255. The Tribunal upheld the CIT(A)'s order rejecting the assessee's claim for deduction of certain expenses u/s 57 from "Income from Other Sources' for want of documentary evidence to show that the said expenses were incurred wholly and exclusively for purpose of earning income declared under head income from other sources. It was noted that the assessse had not furnished any independent evidence the regard to the receipt of the commission income, other income and share of profit itself and thus the same was not subjected to verification. Similarly, documentary evidences of various expenses claimed such as depreciation on fixed assets, legal fee, interest expense, etc. were also not produced nor their co-relation with the aforesaid income was established.
ITO & Ors v Vijay Mangal & Ors. (2018) 52 CCH 0373 JaipurTrib - ITA No. 276/JP/2017dated 18.04.2018

1256. The Tribunal held that the provisions of section 56(2)(vii)(b) are applicable to only those transactions which are entered into after 1-10-2009.
ShailendraKamalkishoreJaiswal v ACIT [2018] 94 taxmann.com 39 (Nagpur – Trib.) – ITA NO. 18 OF 2015 dated 11.05.2018

1257. The Tribunal disallowed the claim of deduction u/s 57 of the assessee for PMS charges, salaries, professional charges against the dividend/interest income. The Tribunal referring to sec 57 noted that, the case of the assessee's claim was outside the ambit of section 57(i), Further with respect to section 57(iii) the Tribunal stated that the assessee failed to establish that the above expenditure was wholly and exclusively for the purpose of earning interest/dividend. The Tribunal also rejected the assessee's alternative plea that even if expenses were not allowable u/s. 57, the same should be allowed against income from capital gain in the present year or future years by stating that the claim of expenses in present case was not for those expenses which were incurred on account of transfer of asset or cost of acquisition / improvement of asset as contemplated u/s. 48 of the Act.
Sh. M.J. Aravind vs JCIT (2)(3) Bangalore – TS-226-ITAT-2018(Bang)- ITA No. 1991/Bang/2016

1258. The assessee allotted equity shares considering the provisions of Section 56(2)(viib) read with Rule 11UA after obtaining valuation report from a merchant banker wherein fair market value of shares was computed on the basis of Discounted Cash Flow. The AO rejected the valuation report and made an addition under Section 56(2)(viib). The Tribunal observed that the AO should have made a reference to the Valuation Officer on rejecting the valuation report provide by the assessee. However, as the assessee failed to provide any evidence to substantiate the basis of projections in the valuation report, the Tribunal upheld the order of the AO and CIT(A) and held that rejection of assessee's valuation report was justified and in absence of the such evidences, referring the matter to the Valuation Officer did not also serve any purpose.
AGRO PORTFOLIO PRIVATE LTD. vs. ITO – [2018] 53 CCH 0043 (Del ITAT) – ITA No. 2189/Del/2018 dated May 16, 2018

h. ***Assessment / Re-assessment / Revision / Search***

Assessment

1259. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) held that the AO was not justified in rejecting the books of accounts of the assessee on the ground that the electricity consumption of the assessee vis-à-vis other companies was higher and that if the DEPB benefit of the assessee was excluded it would lead to a fall in the net profit ratio of the assessee and held i) since the assessee's yield of fish (business of the assessee) was at par with the industry average there was no occasion for doubting the books of the assessee and that ii) since the assessee carried out processing activities along with preservation its electricity consumption could not be compared with the electricity consumption of companies only carrying out preservation. Accordingly, observing that the accounts of the assessee were duly audited and no specific defects were pointed out by the AO, the Tribunal held that the AO was not justified in rejecting the books of accounts of the assessee and making addition on account of estimated profits.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. GRACY KUTHUMKAL THOMAS & ANR. - (2018) 52 CCH 0152 RajkotTrib - ITA No. 37/RJT/2013 dated Mar 1, 2018

1260. The assessee's case was selected for scrutiny and examination of certain capital gain offered to tax and the during the assessment proceedings, assessee claimed the said gains to be exempt from tax, in view of fact that in light of section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the amount of compensation received on acquisition of land was held to be exempt from tax. The AO rejected assessee's claim for exemption only on technical plea that assessee had not filed a revised return as the time available for revising the return had expired. The Assessee filed a writ petition in Court which was accepted by the Court and the assessment order was quashed to the extent it assessed the assessee to capital gains resulting from the said acquisition of land. While deciding as above, the Court also distinguished the decision in case of Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC)] by holding that the question that arose in Goetze (India) Ltd. was whether an assessee could make a claim for deduction other than by filing a revised return; whereas the question in the case on hand was whether the AO is precluded from considering an objection as to his authority to make an assessment u/s 143 merely for the reason that the petitioner has included in his return an amount which is exempted from payment of tax and that he could not file a revised return to rectify the said mistake in the return.

Raghavan Nair v ACIT - (2018) 89 taxmann.com 212 (Ker) - W.P. (C) no. 26004 of 2017 dated 04.01.2018

1261. Where assessee, a State Govt. Undertaking which was subjected to audit at hands of CAG as well as independent CA, had produced these two audit reports for the relevant years before the DCIT, the Court set aside the order for 'special audit' passed u/s 142(2-A) by DCIT mechanically without due application of mind and without giving a reasonable opportunity of hearing to assessee. It was noted by the Court that the impugned order did not disclose discussion on objections of assessee for there being no justification for special audit and that in case of one of the years, the DCIT did not even wait for objections to be placed on record and before they were furnished, he had already passed the impugned order. However, the Court gave one more opportunity to DCIT to reconsider the matter in the light of the Court's order, considering the objections and written submissions filed by the assessee in the correct perspective and pass fresh orders.
Karnataka Industrial Area Development Board v. ACIT - (2018) 401 ITR 74 (Kar) - Writ Petition No. 25223 of 2016 & 1863 of 2017 dated 02.01.2018

1262. The assessee had requested for transfer of tax files from the jurisdictional office of the erstwhile company (which got merged vide the High Court order made during the course of assessment proceedings into the assessee-company) to the assessee-company's jurisdictional officer. However, the AO had framed the assessment in the name of the non-existing erstwhile company. Since the assessee had taken an additional/ fresh ground objecting to such framing of assessment, the Tribunal remitted the matter to the DRP for examination of this issue, pursuant to which the DRP directed the AO to frame the assessment in the name of the assessee-company. Assessee filed another appeal against the order passed by the AO in the name of the assessee-company, following DRP's direction. The Tribunal held the assessment to be nullity relying on the decision in the case of Spice Entertainment Ltd. v. CIT (2012) 247 CTR 500 (Delhi) wherein it was held that, if the assessment is concluded in favour of a non-existing entity, then notwithstanding section 292B (which *inter alia* deems an assessment to be not invalid merely by reason of any mistake, defect or omission in such assessment), the position does not improve. The Court upheld the Tribunal's (second) order, holding that the DRP was not directed to require the AO to "better" the original incurable illegality.
Pr.CIT v Nokia Solutions & Network India (P.) Ltd. – (2018) 253 Taxman 409 (Del HC) – ITA No. 135 of 2018 dated 06.02.2018

1263. The Court dismissed the petition filed by the assessee against the order passed u/s 142(2A) by the assessing authority for directing Special Audit, noting that it was recorded that to understand the complex treatment of multiplicity of agreements entered into by the Petitioner for different projects, the Special Audit was directed and that no inference could be drawn that there was breach of principles of natural justice or arbitrariness in the impugned order. It held that the Court could not go into sufficiency of reasons assigned by assessing authority for directing Special Audit and only where there were no reasons assigned or objections of assessee were not considered that the requirement of section 142(2A) could be said to have not been complied by authority.
Habitat Shelters (P.) Ltd. v Pr.CIT – (2018) 91 taxmann.com 271 (Kar) – Writ Petition no. 2009 of 2018 (T - Res) dated 12.02.2018

1264. The Court set aside CCIT's order rejecting assessee-HUF's application for condonation of delay of two months in filing return on account of mismatch in TDS actually deducted requiring corrections in TDS certificates which took considerable time, noting that the application of Karta of assessee-HUF filed in his individual capacity under identical circumstances for condonation of delay was accepted by revenue
Sahebsingh Bindrasingh Senagar (HUF) v CCIT – (2018) 91 taxmann.com 362 (Guj) – Special Civil Application No. 21411 of 2017 dated 21.02.2018

1265. Where the assessee had filed return through electronic mode but could not furnish ITR-V form within 30 days from the date of filing of return since there was no provision under electronic mode to attach ITR-V form or even send any scanned form and the Revenue treating the return as 'Nil' made assessment u/s 143(3) and initiated penalty proceedings, the Court dismissed the Revenue's appeal against the Tribunal's order wherein the Tribunal had accepted the assessee's argument that in the absence of a

notice u/s 143(2) within the time stipulated, scrutiny assessment u/s 143(3) could not have been completed. It noted that the CBDT had later extended period for furnishing the ITR-V within which the assessee had availed of filing of ITR-V forms through post and that the con-joint reading of CBDT Circular No.3 of 2009 and Circular dated 01.09.2010 made it clear the CBDT itself was alive to the difficulties faced in the event of assessee choosing to file electronic mode without digital signatures.
PR.CIT v NATIONAL INFORMATICS CENTRE SERVICES INC – (2018) 400 ITR 387 (Del HC) – ITA 897/2016 dated 04.01.2018

1266. Where the assessee contended that in spite of filing overwhelming documents and making various grounds in response to showcause, AO had passed the assessment order in haste in arbitrary manner, only to meet the time limit for passing the assessment order, without even looking to documents and other materials submitted, and thus in violation to principles of natural justice, the Court held that it is a cardinal principle of law that if relevant materials and objections are produced before a quasi-judicial authority, the quasi-judicial authority is duty bound, under law to advert to consider the same, discuss them and then reject it by recording reasons. It held that in the present case, since the said principle had not been followed, it was an order based on the ipse dixit of the AO without adverting to consider the relevant materials produced before him and the objections raised by the Petitioners and thus the order had been passed in violation of the principles of natural justice. The Court quashed the assessment orders and directed the AO to decide the issue in accordance with law considering this order and the relevant documents to be filed by the assessee.
DHANANJAY KUMAR SINGH v ACIT & ORS – (2018) 402 ITR 91 (Patna) – Civil Writ Jurisdiction Case No.1391, 1527, 1520, 1402, 1415, 1518, 1522, 1428, 1429, 1539, 1451 & 1400 of 2018 dated 25.01.2018

1267. In a case where the AO added the difference between the closing stock shown in the books of accounts and the stock statement submitted to bank for availing cash credit facility against hypothecation of stock as undisclosed income of the assessee, the Court dismissed the Revenue's appeal against the Tribunal's order deleting the said addition, holding that since the CIT(A) and the Tribunal had recorded concurrent finding of fact that there was no difference in quantity of stock as reflected in books of account and in statement submitted to bank, it was not possible to state that conclusion arrived at by Tribunal suffered from any legal infirmity. While deciding the case, the Tribunal had noted that it was common practice to give inflated valuation to bank to avail cash credit facilities which were invariably given on hypothecation of stock and the price as shown in books of account was in terms of cost price whereas in the statement submitted to bank the same was at market price and hence, there was a difference. Further, there was nothing on record to show that bank officials had physically verified stock as on 31.3.2010.
PR.CIT v GLADDER CERAMICS LTD. – (2018) 401 ITR 205 (Guj) – TAX APPEAL NO. 1032 of 2017 dated 16.01.2018

1268. Where the AO made an ad hoc addition of 2 percent of raw materials consumed on the ground that the consumption of raw materials of the assessee had gone up by 25 percent but the production of finished goods only went up by 10 percent, the Tribunal set aside the order of the AO and held that the AO had failed to appreciate that the value of closing stock of finished goods and WIP had also increased by 29%. Further, it held that since the books of accounts of the assessee had not been rejected the AO was not justified in making addition on an estimated basis. Accordingly, it remitted the matter to the file of the AO for de novo adjudication.
VESUVIUS INDIA LTD. & ANR. vs. ADDITIONAL COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0326 KolTrib - ITA No. 544/Kol/2010, 518/Kol/2010 dated Mar 7, 2018

1269. The Assessing Officer noticed from the information submitted by the assessee (details of sales of flats), as well as from the information obtained by him from the website www.magicbricks.com that there was a huge variation in sale prices of the flats constructed by the assessee within the wing and also within the floor of the residential project constructed by assessee and accordingly rejected the books of accounts of the assessee and made an addition on account of unaccounted sales price in the hands of the assessee. The Tribunal noted that the AO had not asked for variation in sale prices with regard to any particular flat though the assessee requested that the explanation could be furnished once it was

known in respect to which particular flat the information was to be submitted. The AO had merely proceeded on the basis of the general allegation. It held that the AO was completely unjustified in relying on the data contained on www.magicbricks.com as the disclaimer of the website clearly mentioned that the data contained therein was not actual transaction based. It noted the findings of the CIT(A) i.e. many flats were sold in "Shell condition" and only some flats were sold post completion and accordingly held that the AO had proceeded on mere guesswork. Accordingly, it held that the rejection of the assessee's books of accounts was not valid. However, it accepted the contention of the Revenue and directed the assessee to file the agreements for sale of flats with the AO for verification as to how many of the flats were sold on Shell basis.

ASSISTANT COMMISSIONER OF INCOME TAX vs. SAI SHIRDI CONSTRUCTIONS - (2018) 52 CCH 0262 MumTrib - ITA No. 5135/MUM/2015 dated (2018) 52 CCH 0262 MumTrib

1270. The Tribunal held that where the AO rejected the books of accounts of the assessee and made an addition on account of suppressed sales, which was not challenged by the assessee, the AO could not proceed to make disallowances under Section 68 and Section 40A(3) of the Act based on the rejected books of accounts.

DEEPAK MITTAL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0273 DelTrib - ITA No. 4709/Del./2017 dated Mar 23, 2018

1271. The Tribunal held that the assessment order passed in the case of the assessee making additions on account of unexplained cash credits pursuant to revision proceedings under Section 263 of the Act was bad in law as it was passed in the name of the amalgamating company which was no longer in existence as it had been amalgamated pursuant to the order of the Delhi High Court permitting the amalgamation. It held that once a company was amalgamated it would cease to be a person under Section 2(31) of the Act and therefore the assessment order passed on such person was a nullity. Accordingly, it directed the AO to pass a fresh assessment order in the name of the amalgamated company.

BASUNDHARA GOODS P. LTD. vs. INCOME TAX OFFICER - 2018) 52 CCH 0313 KolTrib - ITA No. 674/Kol/2016 dated Mar 23, 2018

1272. The assessee filed its return of income with ITO at New Delhi having jurisdiction over case of assessee. Thereafter, ITO, Faridabad issued notice under section 143(2) on 23-10-2007 but since it did not have jurisdiction over case of assessee, ITO at Delhi issued notice under section 143(2) on 28-7-2008 and completed assessment under section 143(3) wherein addition was made under section 68. The Tribunal held that since the notice under section 143(2) by the officer having jurisdiction over the assessee was beyond period prescribed under law i.e. one year of filing of return, the assessment order was null and void. Accordingly, it dismissed Revenue's appeal.

ITO v NVS Builders (P.) Ltd - [2018] 91 taxmann.com 462 (Delhi - Trib.) - IT APPEAL NO. 3729 (DELHI) OF 2012 dated MARCH 8, 2018

1273. The assessee had shown net profit ratio at 0.96 per cent during the year under review. The AO noted that such net profit ratio was very low as net profit ratio of assessee was 5.26 per cent and 1.86 per cent in two immediately preceeding assessment years and accordingly determined income by adopting net profit ratio of 5 per cent. The Tribunal, considering factors such as past tax history of said two assessment years, huge job work receipts in earlier assessment years, which substantially reduced during relevant assessment year, fixed net profit ratio of 2.5 per cent of turnover. The Court upheld the order of the Tribunal and dismissed the Revenue's appeal.

Principal Commissioner of Income-tax v Praveen Kumar Jain - [2018] 92 taxmann.com 26 (Madhya Pradesh) - IT APPEAL NO. 220 OF 2017 dated MARCH 5, 2018

1274. The Court held that debatable issues could not be adjusted by way of intimation u/s.143(1)(a) as it would lead to arbitrary and unreasonable intimations being issued leading to chaos. Accordingly, it held that the AO was not justified in disallowing the assessee's claim of deduction on account of provision for bad debts in the intimation under Section 143(1)(a) without providing the assessee an opportunity of being heard.

BAJAJ AUTO FINANCE LTD. vs. COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0072 MumHC - INCOME TAX REFERENCE NO. 25 OF 2000 dated Feb 23, 2018

1275. The assessee was non-Government company engaged in business of share trading and returned Nil income. Since there was repeated non-compliance from side of assessee and non-production of books of accounts for his verification, AO presumed that books of accounts were not complete and unrealizable, therefore, rejected book results by invoking provisions of section 145 (3) and determined total income of assessee at certain amount by making disallowance. On appeal, the CIT(A) reversed the order of the AO. The Tribunal upheld the order of the AO and held that in the absence of production of relevant details, CIT (A) was not justified in allowing appeal filed by assessee challenging rejection of books of account and deleting various additions made by AO. Accordingly, it reversed the CIT(A)'s order and restored the AO's order.
ASSISTANT COMMISSIONER OF INCOME TAX vs. ORIGIN EXPRESS (I) NORTH PVT. LTD. - (2018) 52 CCH 0175 DelTrib - ITA No. 734/DEL/2014 dated Feb 21, 2018

1276. The Apex Court reversed the High Court order quashing notice issued u/s 143(2) which was served on assessee after 12 months from the end of the month in which return was filed. The assessee filed return of income on October 17, 2005 for AY 2005-06, and AO issued the notice u/s 143(2) on October 16, 2006 which was dispatched on October 18, 2006 and served on assessee on November 2, 2006. The Apex Court noted that Post Office attempted to serve the notice on assessee twice which could not be done since he was not available, further notice was also served on authorized representative of the assessee on October 19, 2006. Thus, the Apex Court held that the non-availability of the assessee to receive the notice sent by registered post as many as on two occasions and service of notice on October 19, 2006 on the authorized representative of the assessee whom the assessee now disowns, was sufficient to draw an inference of deemed service of notice on the assessee and sufficient compliance of the requirement of Sec. 143(2).
Dharam Narain [TS-76-SC-2018] - CIVIL APPEAL NO(S). 2262 OF 2018 dated FEBRUARY 19, 2018

1277. The Tribunal held that the income of the AOP could not be taxed in the hands of the assessee(one of the members of AOP) merely due to non-filing of PAN card and IT return of AOP. It noted that the AOP was in existence as per deed executed and that though the return of the AOP was not made available during the assessment, that could not be ground to disregard its existence. Regarding AO's objection that the bank account of the AOP did not have all names of the AOP-members, it held that even if no bank account was maintained by the AOP but the AOP was in existence and the income was earned by the AOP, then such income had to be taxed in the hands of the AOP only. Further, it held that if the return was not filed by AOP, action could at best be taken against AOP and income could not be taxed in the hands of the individual members.
ITO v Shri B.V. Ashok Kumar - TS-134-ITAT-2018(Bang) - ITA No. 291/Bana/2017 dated 23.02.2018

1278. Opining that the asseessee had offered low profits to tax and noting that the assesse had shown huge quantity of stock as closing and opening stock without owning any godown (which the assesse claimed to have been taken on rent but he didn't furnish any details with respect to rent paid and no expense was debited under the head Godown Rent), the AO rejected the books of account of the assessee u/s 145. AO estimated the net profit of the assessee @ 3% of the gross turnover of the assesse. On appeal, CIT(A) confirmed the addition. The Tribunal noted that the AO had not given any reasons for rejection of books of account. It directed the AO to consider the past history and recompute the addition after applying the net profit @ 1.75%.
DELIP KUMAR JAIN vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0124 (Indore Trib) - ITA Nos. 529 & 530/Ind/2015 dated June 8, 2018

1279. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had considered the Short Term Capital Gain on sale of shares and Long Term Capital Gain on sale of unlisted shares in company earned by the assesse to be 'business income'. It was submitted by assessee that the shares were shown as investments in the Balance sheet (not as stock in trade) and that in earlier years also the profit on sale of investment had been taxed as Capital Gains only and the

same had been accepted by the department. The Tribunal held that the income was to be assessed under head 'capital gains' only since the assessee had given detailed explanation both on facts and on law and also on consistent treatment by department in earlier years. Further, it held that the e Board Circular [F.No. 225/12/2016/ITA.II,] dt. 02-05-2016 had settled the issue that the income arising from transfer of unlisted shares should be considered under head 'capital gains' only and even for Short Term Capital Gain on sale of listed shares, the parameters did indicate that assessee was only investing and not trading.
G2 CORPORATE SERVICES LLP vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0130 HydTrib - ITA No. 832/Hyd/16, 833/Hyd/16 dated Jun 8, 2018

1280. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO by rejecting assessee's books of account and estimating profits @8% of the total turnover. It was noted that the books of accounts were duly audited and supported with the documentary evidence and the AO had not pointed out any defect in the books of accounts maintained by the assessee except routine/minor observations. It was thus held that the books of accounts could not be rejected u/s 145(3) and there was no reason to estimate the profit after rejecting the books of account. The Tribunal further held that even if it was assumed that the books of accounts were correctly rejected u/s 145(3) then also the profit could not be estimated @ 8 % of the gross receipts in the given facts & circumstances since the AO had not brought on record any comparable cases to the business of the assesse wherein the profit @ 8% of the gross receipts had been declared.
INCOME TAX OFFICER vs. VIRGIN LOGISTICS - (2018) 53 CCH 0199 (Rajkot Trib) - ITA No. 384/Rjt/2015 dated Jun 20, 2018

1281. The Court dismissed assessee's appeal field against the Tribunal's order upholding the additions made by the AO based on the balance sheet submitted by the assessee to bank for availing credit facilities which was also supported by a certificate issued by the Chartered Accountants in Form 3CB under rule 6G(1)(b) of the Income-tax Rules, 1962, rejecting the assessee claim for determining his income based on a balance sheet prepared subsequently by another firm of chartered accountants. It held that the balance sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, cannot be tailor-made to suit a particular purpose or window dressed to make it attractive for bankers to rely thereupon and all gloss and sheen removed thereafter when it was time to pay tax. It thus held that it was open to the AO and income tax authorities to pin assessee down on basis of the assessee's representation contained in earlier balance sheet to avail bank loan and make additions.
Binod Kumar Agarwala v CIT - [2018] 94 taxmann.com 422 (Calcutta) - ITAT NO. 22 OF 2015, GA NO. 436 OF 2015 dated June 21, 2018

1282. The Tribunal accepted assessee's contention that since the notice u/s 153C and 143(2) as well as assessment order passed pursuant to such notices were in the name of the non-existing entity (being the amalgamating company) and the amalgamation was approved by the High Court long before the issue of the said notices, the said assessment order was not valid. It relied on the decision in the case of CIT v. Intel Technology India (P.) Ltd. [2016] 380 ITR 272 (Kar) wherein it was held that framing an assessment against a non-existing entity is not a procedural irregularity, but a jurisdictional defect which goes to the root of the matter, invalidating the assessment proceedings initiated against a non-existing company even after amalgamation with the successor company.
BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERS dated April 10, 2018

1283. The Apex Court stayed the High Court's order confirming initiation of special audit u/s 142(2A) where the order for special audit was claimed by the Revenue to have been passed on 30.03.2013 (though the same was served on the assessee on 03.04.2013), noting that the assessee's contention that the date in the receipt register vide which proposal for special audit was forwarded to DCST was afterward tempered with a change to 30.03.2013 from 31.03.2013.
Nokia India (P.) Ltd. v ACIT - [2018] 93 taxmann.com 450 (SC) - SPECIAL CIVIL APPEAL (C) (NOS). 8384 OF 2018 dated April 9, 2018

1284. The Tribunal accepted the assessee's contention that for making assessment u/s 143(3), issuance of notice u/s 143(2) within statutory time limit was mandatory requirement and could not be considered as a procedural irregularity or a curable defect, relying on the decision in the case of ACIT v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)]. However, it remitted the matter to the CIT(A) to verify whether the notice u/s 143(2) was issued to the assessee within the time prescribed as per the Act **(**since there was no reference of any date in the assessment order**)** so as to ascertain on which date such notices were issued and served on the assessee.
HATCH ASSOCIATES INDIA PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0277 DelTrib - ITA No. 4862/M/2011 & 6832/Del/2011 dated April 2, 2018

1285. The assessee, by way of writ petition challenged the assessment order u/s 143(3) and consequential notices of demand on the ground that there was non-compliance of Principles of Natural Justice by not giving an opportunity to the assessee to cross-examine the witness. The Court held that the DCIT was at liberty to re-frame assessment, after complying with principles of natural justice, by supplying copy of statements of witnesses as well as investigation report, to assessees and providing opportunity of cross-examination to the assessee before completing the fresh assessment.
Vishal Agarwal v DCIT (2018) 101 CCH 0212 Kar - WP No. 3801/2018 c/w W.P.Nos.5073/2018HC dated 24-04-18

1286. The assessee company received certain amount on allotment of shares of Face Value of Rs.100 each at a premium of Rs.291 per share.AO opined that the Fair Market value of the said share could only be Rs.100 and thus the share premium received by assessee was liable to be assessed as 'Income from Other Sources' u/s 56(2)(viib) (provides that where a company receives consideration for issue of shares exceeding the face value of such shares, that exceeded value is liable to be assessed as income from other sources). The assessee filed a writ petition against the AO's order making the above addition, on the ground that since the assessee's case was picked-up for scrutiny for verification of the limited issue, i.e. "Whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax", the AO had exceeded his jurisdiction while making the impugned addition. The Court, however, held that the later part of the abovementioned issue (whether the share application money had been correctly offered for tax) was an issue to be examined with reference to section 56(2)(viib) and if it was found that the share premium had not been correctly offered for tax as provided therein, the assessee had to be assessed in accordance with the said provision. Further, it held that the assessment by the AO could not be regarded without jurisdiction in the matter of passing the impugned order merely for the reason that the said funds were assessed as provided for under the said section (i.e. on merits). Thus, the Court dismissed the assessee's petition.
Sunrise Academy of Medical Specialities (India) P Ltd v ITO [2018] 94 taxmann.com 181 (Kerala) – W.P (C) NO. 3485 OF 2018 dated 22.05.2018

1287. The assessee, through its AR, attended before the AO in the course of assessment proceedings but did not mention the fact of its merger with another company. As the assessment was completed in the name of a non-est entity, the assessee claimed that the same was null and void. The CIT(A) held that the assessee could not now claim that notice was invalid as it was issued in the name of a non-est entity as it was covered by the provisions of section 292BB. On appeal, the Tribunal relied on the ruling of the Co-ordinate Bench in M/s Images Credit and Portfolio [P] Ltd (ITA Nos. 5301 to 5306, 5418/DEL/2013) and held that assessment framed in the name of a non-existing entity was null and void.
Rudraksha Agencies Company Ltd. vs. DCIT – (2018) 53 CCH 0085 (Delhi ITAT) – ITA No. 670/DEL/2018 dated May 2, 2018

1288. In the case of the assessees who were liquor contractors, the AO rejected the books of accounts as sales were unsupported by day-to-day sales and shop-wise stock registers. On the basis of information collected from the excise department, the AO estimated the sales turnover as against the sales

declared by the assessee and added the differential amount as suppressed sales. The Tribunal upheld the order of the CIT(A) and relying on the ruling of the jurisdictional High Court in Balchand Ajit Kumar (263 ITR 610) & Manmohan Sadani (304 ITR 52) held that if the books of account are rejected, entire sales cannot be charged to tax as income, but only the reasonable profit margin on such sales is taxable as income.

SHIVHARE ASSOCIATES & ORS. vs. JCIT – [2018] 53 CCH 0047 (Agra ITAT) – ITA NO. 47/AGR/2015, 48/AGR/2015, 71/AGR/2015, 72/AGR/2015 dated May 16, 2018

1289. The AO rejected the books of accounts having observed that the form of reporting of the advertisement payments in the profit and loss account was not proper and hence, made disallowance of such payments. The Tribunal observed that while doing so, the AO neither pointed out any specific defect in maintenance of books of accounts by the assessee nor identified the accounting standards to be followed by the assessee. Having observed that the assessee followed the same method of accounting in the earlier years, the Tribunal set aside the order of the AO and directed the AO to accept the books of accounts of the assessee.

Google India Private Limited & Ors. vs. JDIT (IT). – [2018] 53 CCH 0027 (Bangalore ITAT) – IT(TP)A No.374/Bang/2013, 881/Bang/2016, IT(IT)A No.2845/Bang/2017, 949/Bang/2017, 950/Bang/2017, 68/Bang/2015, 387/Bang/2017, 559/Bang/2016, 69/Bang/2014, 1295/Bang/2014, 466/Bang/2013, 191/Bang/2014, 205/Bang/2015, 1299/Bang/2015, 1190/Bang/2014 dated May 11, 2018

1290. The Tribunal held that the assessment order passed by the AO in the name of an amalgamating company which was non-existent was invalid.

Genpact Infrastructure (Bhopal) (P.) Ltd. v. DCIT – [2018] 93 taxmann.com 334 (Delhi – Trib.) – IT Appeal No. 199 (DELHI) 2015 dated April 27, 2018

1291. Where the orders under Section 144 were passed by the AO within the specified time (30.12.2016) but was dispatched after the expiry of such time (07.01.2017), the assessee contended that such orders of assessment passed by the AO were barred by limitation. Relying on the ruling of Kolkata High Court in Binani Industries ltd. (59 taxmann.com 389), the CIT(A) upheld the orders in absence of any material to show that the AO re-visited such orders after the expiry of the time limit. The Tribunal held that to become a valid order of assessment, its communication must commence within period of limitation as prescribed by law though communication might end after prescribed period of limitation. Accordingly, the Tribunal set aside the assessment orders as they were time barred as the orders were dispatched after the expiry of the time limit prescribed under the Act.

Nidan Infront of DIG Officer vs. ACIT – [2018] 53 CCH 0046 (Cuttack ITAT) – ITA Nos. 32 to 37/CTK/2018 S.P.Nos.14 to 20/CTK/2018 dated May 16, 2018

1292. As the assessee, being a company had not filed its return of income voluntarily before due date under Section 139 of the Act, the AO issued notice under Section 142(1) of the Act. However, since assessee did not attend proceedings or filed an application for adjournment, penalty proceedings were issued under Section 271F of the Act. AO made addition under Section 69C in respect of certain expenditure as no documentary evidences were produced by assessee in support of any of its expenses, payments/ cash received. CIT(A) upheld the order of the AO. On appeal before the Tribunal, the assessee challenged validity of assessment order passed in absence of notice under Section 143(2) of the Act. Tribunal held that the assessee cannot take pretext of 143(2) notice being not issued by AO since notice issued by the AO [though not mentioned to be issued u/s 143(2)] had all the ingredient of notice u/s 143(2) and made it amply clear that assessment proceedings was initiated in case of assessee for relevant assessment year. Thus, Assessee's appeal was dismissed.

U-LIKE PROMOTERS (P) LTD. & ANR. vs. DCIT & ANR. (DELHI TRIBUNAL) (ITA No. 327/Del/2012, 590/Del/2012) dated May 21, 2018 (53 CCH 0061)

1293. Where the Assessee filed return of income in response to notice under Section 142(1) of the Act, the assessment was completed without service of notice under Section 143(2) after filing of return of income or during the course of entire assessment proceeding. CIT(A) upheld the order of the AO. Tribunal relied on the ruling of the *Gwalior Tribunal in the case of Umesh Agarwal Vs ACIT 1, Gwalior (ITA No. 261-266/IT/09-10/Gwl vide order dated 10.05.2011)* wherein assessment order passed under Section 153A by the AO was cancelled in absence of any notice being issued/served under Section 143(2) as the same was held as a non-curable defect. Thus, the Tribunal remitted the matter to the CIT(A), to decide the case afresh in accordance with law after affording due and adequate opportunity of hearing to the Assessee.
POONAM SHIVHARAE vs. ACIT (AGRA TRIBUNAL) (ITA No. 146/Agra/2016) dated May 1, 2018 (53 CCH 0078)

1294. The AO made an addition under Section 69 of the Act in respect of allegedly unrecorded amount deposited in bank account in relation to sale of immovable property. After considering the submissions of assessee and the findings of AO, the CIT(A) dismissed the Assessee's appeal. Before the Tribunal, the Assessee reiterated that profits from sale of immoveable property were offered to tax and the said fact was submitted before the AO and the CIT(A). Thus, the Tribunal remitted the matter back to the file of the CIT(A) and held that if the assessee filed written submissions mentioning that he had offered profit for taxation, then the matter needed verification at end of the CIT(A).
NAVITA SABLOK & ANR. vs. ITO & ANR. (RANCHI TRIBUNAL) (ITA No. 166 & 167/Ran/2016) dated May 30, 2018 (53 CCH 0172)

1295. Assessment in case of the assessee was made u/s 143(3) by AO against which the assessee filed an appeal before the CIT (A) along with a stay application which was granted to the assessee on the condition that the assessee would pay 10 percent of the demand. The assessee challenged the said condition in the stay order and filed a writ petition before the High Court contending that the return filed by the assessee had been taken for scrutiny maliciously with a view to fasten liability on the assessee for having filed a complaint against an officer of the department. The Court dismissing the petition of the assessee held that several case files were selected for scrutiny with the aid of computers and moreover, in terms of the order, the assessee was asked to pay a meagre portion of the demand which was justified.
St. Joseph's Granites v. ACIT – [2018] 92 taxmann.com 372 (Kerala) – W.P. (C) No. 9173 of 2018 dated April 4, 2018

1296. The return filed by the assessee was wrongly declared by the Department as invalid u/s 139(9) on the ground that the aggregate of the shares filed by the assessee exceeded 100%. The department further advised the assessee to file a fresh return and an application u/s 119(2)(b) to the Pr. Commissioner to condone delay in filing the return. However, the application was rejected by the Pr. Commissioner without providing an opportunity for hearing. The Court was of the view that it was obligatory on part of the Department to scrutinize whether the return filed was within time and in the instant case the Court directed the ITO to scrutinize the return even though the time had lapsed and also pass an order for refund if the assessee was entitled to it.
Shubharam Complex v. ITO – [2018] 93 taxmann.com 290 (Karnataka) – Writ Petition No. 27383 of 2016 dated April 10, 2018

<u>*Reassessment*</u>

1297. The Tribunal held that the order of the AO passed during reassessment proceedings without disposing off the objections filed by the assessee was in violation of the law laid down by the Apex Court in GKN Driveshafts (259 ITR 19 – SC) and therefore the said order was bad in law and liable to be quashed. It refused to restore the matter to the AO to redo the procedure as per law and held by doing so it would enable assessing officers to get away with passing order that were without jurisdiction.
ABHISHEK SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0251 AgraTrib - ITA No. 64/Agra/2016 dated Mar 21, 2018

1298. In the original assessment, the AO had disallowed only Rs.242 crores from the Misc. Expenses claimed of Rs.339.96 crores even after noting that the entire Misc. Expenses was not routed through the P&L

A/c. The assessment was sought to be reopened on the ground that the said expense allowed of Rs.97.74 crores were not routed through the P&L A/c and hence, the same was not allowable. The CIT(A) held the reassessment proceedings to be invalid since the reasons recorded for reopening dealt with the very same issue which were subject matter of consideration during the original assessment. The Tribunal upheld the CIT(A)'s order. The Court dismissed Revenue's appeal filed against the said Tribunal's order, holding that the AO had applied his mind during the original assessee over the issue forming the basis of reopening and thus, reopening based on mere change of opinion was not sustainable.
Pr.CIT v ICICI Bank Ltd – ITA No. 1113 of 2015 (Bom) dated 07.03.2018

1299. The assessment was sought to be reopened on the ground that the assessees-FIIs (claiming to be exempt from tax in view of Article 14 of India-Denmark DTAA) which were registered as 'Fund' with SEBI and had taken PAN in the status of 'AOP (Trust)' may not be eligible for exemption for India-Denmark DTAA benefit since the 'possibility' of an AOP not being a taxable unit under the tax law of Denmark could not be ruled out (which was a pre-requisite for claiming the said benefit). The Court dismissed the Revenue's appeal filed against the Tribunal's order quashing the reassessment proceedings u/s 147 on the ground that the reopening notice issued did not indicate any reason to believe that income chargeable to tax had escaped assessment since the reasons proceeded merely on presumption and surmises without any tangible material. It also rejected the revenue's proposition that the use of word 'possibility' was a mistake which would not invalidate the impugned notice and that the reasons could be changed to that extent, holding that the reasons which form the basis of reopening must be strictly read and it is not open to either to improve upon or change the reasons recorded.
CIT v Investeringsforeningen BankInvest I – ITA No. 838, 839 & 1009 of 2015 (Bom) dated 16.01.2018

1300. The Court granted interim relief by staying the reassessment proceedings and admitted the writ petition filed by assessee objecting to the initiation of reassessment proceedings observing 'prima-facie' non-application of mind by JCIT while sanctioning the reopening on the basis of application made by the AO wherein the provisions referred to for reopening, i.e. section 147(b), is the one which is no longer in the statute. It rejected department's stand that the AO inadvertently mentioned 147(b) instead of section 147 and that the defect was curable u/s. 292B holding that the issue involved was not with regard to the mistake/ error committed by AO while taking sanction from JCIT but whether there was due application of mind by JCIT while giving the necessary sanction for issuing the impugned notice.
Kalpana Shantilal Haria v ACIT - TS-608-HC-2017(BOM) - WRIT PETITION (L) NO. 3063 OF 2017 dated 22.12.2017

1301. Where AO had accepted the claim of assesse for exemption u/s 10(1) with respect to the entire income from sale of raw coffee subjected to pulping and drying (instead of taxing 25% as per Rule 7B) and it was noted that the assessee's such claim was accepted for several years and there were hundreds of other coffee growers whose income were also exempted, the Court held that reopening notice issued only against assessee during the relevant assessment year being mere change of opinion was unjustified
P. Chidambaram v. ACIT - (2018) 90 taxmann.com 166 (Mad) - Writ Petition No. 29413 to 29416 of 2017 & 31685 to 31688 of 2017 dated 02.01.2018

1302. Where AO had allowed deduction u/s 80-IA(4) after discussing all the relevant contracts and after excluding income from works like which did not fall within definition of 'developing, operation and maintaining any infrastructure facility', the Court held that the reassessment notice issued after four years from the end of the relevant assessment year, without satisfying the twin conditions for invoking the jurisdiction u/s 147/148 viz. (i) failure on the part of the petitioner-assessee to truly and fully disclose the relevant facts, and (ii) that the original AO did not consider or apply his mind to the allowability of deduction u/s 80-IA(4) on the facts and evidence placed before him while passing the assessment order, was unjustified.
Kotarki Constructions (P.) Ltd. v. ACIT - (2018) 89 taxmann.com 265 (Kar) - Writ Petition No. 61671 of 2016 dated 02.01.2018

1303. The Court held that since section 151(1) requires CCIT or CIT to be satisfied on reasons recorded by AO for issuance of a reassessment notice after expiry of 4 years from end of relevant assessment year, where original assessment was made u/s 143(3), issuance of notice u/s 148 without such sanction is unjustified.
Maruti Clean Coal & Power Ltd. v ACIT - (2018) 400 ITR 397 (Chhattisgarh) - Writ Petition (T) No. 346 of 2017 dated 03.01.2018

1304. Tribunal quashed the additions/disallowances made by the AO in course of proceedings u/s 153A, , in view of fact that said additions/disallowances had been made without reference to any specific incriminating material/evidence found as a result of search and seizure and were based on re-appreciation of facts unconnected to search.
Priya Holding (P.) Ltd. v ACIT - (2018) 90 taxmann.com 408 (Ahd) – ITA Nos. 366 to 370 (Ahd) of 2012 dated 05.01.2018

1305. Court upheld the Tribunal's order dismissing the assessee's cross appeal filed against assessment reopening without adjudicating the same, after dismissing the revenue's appeal on merits of the case, as such adjudication would only be of academic interest. However, the Court gave assessee the liberty to challenge validity of reassessment order in event revenue filed an appeal challenging Tribunal's order on merit.
Vishwa Bharati Education Society v DCIT – (2018) 91 taxmann.com 34 (Kar) – ITA No. 100020 of 2017 dated 08.01.2018

1306. The Court held that a complaint or information from a third party before AO, when it is 'definite' information and not mere gossip or guess or rumour, can certainly be a ground for issue of notice u/s 147/148 albeit AO must form an honest belief upon some material, and basis, which supports such belief. However, in the present case, since the AO had merely observed and recorded that the objections raised by the assessee were untenable and wrong, without elucidating and dealing with contentions and issues raised in the objections letter, the Court held that the AO had not applied his mind to the assertions and contentions raised by the assessee and remanded the matter back to AO to pass a fresh order.
Scan Holding (P.) Ltd. v. ACIT – (2018) 90 taxmann.com 396 (Del HC) - W.P.(C) No. 9800 of 2015 dated 08.01.2018

1307. Noting that the AO initiated reassessment proceedings on account of incorrect valuation of closing stock, incorrect allowance of depreciation, disallowances under Section 40(a) and 43B which were all reflected in the tax audit report filed with the AO during original assessment proceedings, the Tribunal held that notwithstanding the fact that the reassessment proceedings were initiated within a period of 4 years, the proceedings were invalid as they were initiated on the basis of the same set of information and facts available during the original assessment proceedings. It held that merely because the AO did not express any opinion vis-à-vis the aforesaid issues during original assessment proceedings it would not validate reassessment proceedings as there was no fresh tangible material.
MAHANADI COALFIELDS LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0189 CuttackTrib - ITA No. 300/CTK/2014, 329/CTK/2014 dated Mar 19, 2018

1308. The AO during original assessment proceedings made disallowance of 20 percent of expenditure under Section 40A(3), which was deleted by the CIT(A). Subsequently, the AO initiated reassessment proceedings pursuant to inquiries made by him through which he concluded that the dealers were non-existent. The CIT(A) once again set aside the AO's order which was upheld by the Tribunal. The Court, noting that the assessee had not brought anything on record to prove that the dealers actually existed and that they were genuine dealers held that the AO was justified in initiating reassessment proceedings and upheld the order of the AO.
COMMISSIONER OF INCOME TAX vs. PARRISONS ROLLER FLOUR MILLS PVT. LTD. - (2018) 101 CCH 0104 KerHC - ITA No. 377 of 2009 dated Mar 15, 2018

1309. Where the issue of sale of shares held in Goa Carbon Ltd was adequately examined and subjected to inquiry during original assessment proceedings, the Court held that the AO was not justified in initiating reassessment proceedings on the basis that Form 29B had not been filed, after 4 years from the end of the relevant assessment year where there was no failure to fully and truly disclose material facts on the part of the assessee. It held that the primary facts were duly disclosed by the assessee during original assessment proceedings and it was not for the assessee to tell the AO what inferences of facts were to be drawn from those facts. Accordingly, it quashed the notice issued under Section 148 as well as the order disposing of objections.

DEMPO BROTHERS PRIVATE LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0107 MumHC - WRIT PETITION NO. 1060 OF 2017 dated Mar 6, 2018

1310. The Division bench of the Court referred the matter to a larger bench on whether the interpretation of section 147 r.w. Explanation (3) thereto, as given by the co-ordinate bench in Ranbaxy Laboratories Ltd. v CIT (2011) 336 ITR 136 (Del HC), following the decision in the case of CIT v Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom), holding that if reassessment proceedings do not culminate in an order that adds the amounts relatable to the reassessment notice, and rather adds amounts on other issues, the reassessment orders would be invalid. It opined that any explanation only clarifies the provision and cannot go beyond or against the main provisions of the Act and thus the emphasis placed in Jet Airways's case on "and also" undermines the essential objective of Section 147 and unduly restricts and narrows it. The Division bench also opined that the view of the Karnataka High Court in the case of N. Govind Raju v ITO (2015) 377 ITR 243 (Kar) was a more accurate one wherein it was held that if notice u/s 148 was found to be valid, then addition could be made on all grounds or issues (with regard to 'any other income' also) that may come to notice of the AO subsequently during course of proceedings u/s 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive.

Pr.CIT v Jakhotia Plastics Pvt Ltd [TS-40-HC-2018(DEL)] – ITA No. 727, 728 & 925/2017 & CM APPL. 31671/2017 dated 22.01.2018

1311. The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had quashed re-assessement proceedings u/s 147 initiated after the scrutiny assessment and it was noted that the AO had not received any objective material warranting reopening of a concluded scrutiny assessment and that the re-assessment was based upon the observations of the audit report which had scrutinized the return for the concerned year on standalone basis.

DCIT v ALcatel Lucent India Ltd [TS-13-SC-2018] – SLP (CIVIL) Diary No(s). 33126/2017 dated 08.01.2018

1312. The Tribunal held that the AO was unjustified in reopening assessment under Section 148 of the Act in the case of the assessee (whose return was processed under Section 143(1) based on information in the report of the investigation wing wherein it was stated that the assessee had obtained profit on account of share transactions which were mere accommodation entries, without appreciating that the assessee had not undertaken any sale transactions during the year under review. Further noting that the reasons mentioned that the assessee sold shares via one broker but the assessment order stated that the shares were sold via another broker, the Tribunal held that the AO had failed to apply his mind to the reasons and had merely relied on the report of the investigation wing without establishing any link between the assessee and the alleged income escaping assessment. Accordingly, it quashed the order passed under Section 147 of the Act.

LEELA BHANJI GADA & ANR. vs. INCOME TAX OFFICER & ANR - (2018) 52 CCH 0163 - ITA No. 2801/Mum/2014, 2798/Mum/2014 dated Mar 9, 2018

1313. Where the assessee had filed its return during original assessment proceedings and claimed a deduction under Section 10A of the Act (supported by Form 56F wherein the entire working of deduction was provided) and the AO post examining the claim of 10A deduction allowed the same, the Tribunal held that the AO was not justified in re-opening assessment beyond a period of 4 years from the end of the assessment year to deny the entire 10A deduction on the allegation that freight and insurance charges of a sum of Rs.2.51 crore were not deducted from export turnover leading to losses in the other business activities. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) held

that the reassessment proceedings were bad in law as i) the AO did not specify the failure on the part of the assessee to disclose fully and truly all material facts relevant for assessment ii) reassessment was initiated on the basis of information forming part of the original assessment records iii) the issue of claim under Section 10A was completely examined during original assessment proceedings iv) the AO erred even on the merits of the case as the assessee had duly proved that the freight and insurance expenses did not pertain to the export sales under Section 10A. The Tribunal noted that the AO had reopened assessment merely on the basis of the objections of the audit party without any application of mind and accordingly dismissed the Revenue's appeal.
ASSISTANT COMMISSIONER OF INCOME TAX vs. SAMSUNG INDIA ELECTRONICS PVT. LTD. - (2018) 52 CCH 0184 DelTrib - ITA No. 386/DEL/2015 dated Mar 15, 2018

1314. The AO initiated reassessment proceedings u/s 147/148 after recording reasons on basis of information received from Investigation Wing of Department on basis of search and seizure operation and made addition of share capital under Section 68 of the Act alleging that the assessee had issued share capital as a camouflage to introduce its own fund through entry operator. The Tribunal on perusal of the reasons held that the AO had blindly followed the information received from the Investigation Wing and had failed to bring anything to link the reasons to the assessee. It held that basis of belief should be discernible from material on record which was available with AO when he recorded reasons, absent which the reassessment proceedings were bad in law. Further, it noted that the Commissioner had simply affixed "approved" at bottom of note sheet prepared by ITO and held that if the Commissioner had read report carefully he could not have come to conclusion that this was fit case for issuing notice u/s 148. Noting that the Commissioner had nowhere recorded satisfaction note, it held that the sanction granted was mechanical and contrary to Section 151 of the Act. Accordingly, it quashed the entire proceeding.
TARA ALLOYS LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0159 DelTrib - ITA No. 2421/Del/2017 dated Mar 1, 2018

1315. Where pursuant to information received from the Add CIT i.e. the assessee had provided a loan to a co-operative society on which it earned interest of Rs. 10 crore and the Tribunal in the case of the society had held that the interest was taxable in the hands of the assessee, the Tribunal upheld the reassessment proceedings initiated by the AO and held that the information constituted new tangible material which justified initiation of reassessment proceedings.
DEPUTY COMMISSIONER OF INCOME TAX (LTU) & ANR. vs. RURAL ELECTRIFICATION CORPN LTD. & ANR. - (2018) 52 CCH 0248 DelTrib - ITA No. 3009 to 3011/Del/2014 dated Mar 26, 2018

1316. The Apex Court dismissed Revenue's SLP against the decision of the Gujarat HC quashing re-assessment on the ground that the reason stated for re-opening was subject matter of appeal before lower authorities. The High Court noted that assessee's appeal was pending before ITAT with respect to its claim that receipts from premature transfer of leasehold rights in land was a capital receipt, however, the AO had issued Sec. 148 notice taking stand that alleged receipt was income from other sources. The Court clarified that when the impugned issue was the subject matter of appeal, the principle of merger would apply and also noted that there could not be two separate considerations to the same subject matter relatable to the income, one by the appellate authority or forum and another by the AO in fresh re-assessment.
Radhaswami Salt Works vs ITO - TS-144-SC-2018 - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 42502/2017 dated 16-03-2018

1317. Where interest income from bank deposits was disclosed by assessee in profit and loss account but it was not disclosed in return, by virtue of Explanation 1 to section 147, the Court held that this resulted in non-disclosure of material facts and therefore held that the AO was justified in initiating reassessment proceedings to tax the impugned interest income.
CIT v Tata Ceramics Ltd - [2018] 92 taxmann.com 124 (Kerala) - IT APPEAL NO. 1375 OF 2009 - MARCH 8, 2018

1318. The Tribunal held that reopening of assessment on the basis of report received from the DVO was sustainable where the AO during original assessment proceedings sought to examine the investment

made by the assessee in hotel building and referred the matter to the DVO but however could not make the addition as the report of the DVO was received after the statutory limit for completion of assessment under Section 143(3).
ACIT v Mashal Hotels Pvt Ltd – (2018) 52 CCH 0131 (Indore Trib)- ITA NO 618 / Ind / 2015 – dated Feb 28, 2018

1319. The Court upheld the initiation of reassessment proceedings for AY 1987-88 and 1988-99 to deny the assessee claim of deduction 80HHC (earlier allowed during original assessment) noting that the CIT(A) for the earlier years denied the assessee deduction on the ground that the assessee had not provided a certificate from the export house / trading house to substantiate its claim. The Court held that the order of the CIT(A) constituted information and could not be classified as a change of opinion. Accordingly, it dismissed assessee's appeal.
BABY MARINE EXPORT vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0114 KerHC - ITA Nos. 12 of 2009 & 30 of 2009 dated Feb 20, 2018

1320. The Tribunal deleted the addition made by the AO in reassessment proceedings on account of prior period expenses and claim of receivables noting that there was no tangible material outside the record which was the basis of reassessment proceedings. Further it held that there could be no reason to believe that income had escaped assessment, as the assessee had not claimed the impugned amount as a deduction in the first place (which was noted in the original assessment proceedings).
ASSISTANT COMMISSIONER OF INCOME TAX vs. SAMSUNG INDIA ELECTRONICS PVT. LTD. - (2018) 52 CCH 0160 DelTrib - ITA No. 4181/Del/2011 dated Feb 23, 2018

1321. The Tribunal held that reopening of completed assessments based on judgments delivered subsequently after completion of assessments was invalid as assessee could not be held guilty of not disclosing all material facts truly and fully necessary for making assessment.
KALYANCHAND MANAKCHAND LALWANI (HUF) & ORS. vs. INCOME TAX OFFICER & ORS. - (2018) 52 CCH 0162 PuneTrib - ITA NO. 1891/PUN/2014, 1892/PUN/2014, 1893/PUN/2014 dated Feb 23, 2018

1322. Where the AO initiated reassessment proceedings based on information received from the office of the Addl CIT Range-1 New Delhi (which was based on the statement of one PK Jindal) that the persons from whom the assessee received share application money were bogus entities, the Tribunal noting that the AO had ignored the evidences provided by the assessee and had merely based his opinion on the statement of PK Jindal without any independent application of mind held that the reassessment proceedings were not valid in law. Further, it also held that the sanction obtained from the Add CIT were at best a mere mechanical sanction as there was no evidence that the Add CIT had gone through any evidence to establish that the assessee's income had escaped assessment. It held that merely writing "Yes I am satisfied" was not requisite sanction under Section 151 of the Act. Accordingly, it quashed the entire proceedings.
INCOME TAX OFFICER & ANR. vs. VIRAT CREDIT & HOLDINGS PVT. LTD. & ANR. - (2018) 52 CCH 0161 DelTrib - ITA No. 89/Del./2012 (CO No.57/Del/2012) dated Feb 9, 2018

1323. The Court held that absent sanction from the CCIT under Section 151(1), the initiation of reassessment proceedings after a period of 4 years from the end of the relevant assessment year was invalid. It held that obtaining a sanction under Section 151(1) was a pre-requisite for initiating reassessment proceedings and accordingly held that the Tribunal was justified in quashing the re-assessment order. Accordingly, it dismissed Revenue's appeal.
CIT v Gee Kay Finance & Leasing Co Ltd – (2018) 101 CCH 0034 Del HC – ITA 935 / 2009 dated Feb 8, 2018

1324. The assessee claimed deduction being the expenditure incurred by way of interest, advertisement, business promotion, printing and stationery, share application forms, traveling and other expenses which was allowed during original assessment proceedings. The AO based on audit objections re-opened assessment u/s.147 after a period of 4 years proposing to revise assessment order passed earlier under Section 143(3) on ground that income of assessee escaped assessment disallowing

expenditure that was earlier allowed. The Court observed that the materials / facts relevant were admittedly and already available in concerned original assessment proceedings and there were no new facts and therefore held that the reassessment was on a mere change of opinion by blindly following the audit objections. Therefore, it held that AO was unjustified in reopening assessment and accordingly set aside the order.

KUMARS METALLURGICALCORPORATION LTD. vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0071 APHC - ITTA No. 158 of 2005 dated Feb 9, 2018

1325. The Court dismissed the assessee's writ petition [filed by Sky Light Hospitality LLP converted into LLP from Pvt. Ltd. Co.], challenging the re-assessment notice issued in the name of erstwhile Pvt. Ltd. Co wherein the Petitioner contended that despite the Pvt. Ltd. Co. ceasing to exist in May 2016, the notice under Section 148 was addressed in its name in March 2017 and hence the notice issued to a dead juristic person ought to be treated as invalid and void. The Court referred to the reasons recorded by AO based on the Tax Evasion Report forwarded by the Investigation wing (in respect of the purchase of land transaction and collaboration agreement entered into with DLF) and held that the "reasons to believe" established a live link and connect with the inference drawn that income had escaped assessment in the hands of the assessee. On the issue of validity of notice issued in the name of the company, it noted that conversion of the private limited company into a LLP was noticed and mentioned in the tax evasion report, reasons to believe recorded by AO, approval obtained from Pr. CIT and order u/s. 127, however, the only mistake was made in addressing the notice and accordingly held that the same was as an 'error' and a 'technical lapse' which could be cured u/s. 292B.

Sky Light Hospitality LLP vs ACIT - [TS-57-HC-2018(DEL) - W.P.(C) 10870/2017 and CMNo. 44503/2017 dated FEBRUARY 02, 2018

1326. Where during the original assessment proceedings the AO had partly accepted assessee's claim of deduction under Section 80-IA of the Act but the AO subsequently issued notice under Section 148 of the Act on the ground that the assessee had not prepared a separate P&L and balance sheet of its undertaking, the Court noting that the assessee's claim for deduction u/s 80-IA was examined by AO minutely during scrutiny assessment proceedings and that the AO had given detailed reasons for reducing the claim and accepting rest of claim, held that any attempt now on part of AO to modify this position would be based on change of opinion. Accordingly, it set aside the notice issued under Section 148 of the Act.

AJANTA PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX AND ANOTHER - (2018) 101 CCH 0123 GujHC - SPECIAL CIVIL APPLICATION NO. 15865 of 2016 dated Feb 5, 2018

1327. The Court upheld initiation of reassessment proceedings in a case where income chargeable to tax for relevant year which had escaped assessment was more than one lakh in view of the provisions of section 149(1)(b), according to which proceedings could be taken for six years as against four years limitation as provided under section 149(1)(a), if income chargeable to tax which had escaped assessment amounted to or was likely to amount to one lakh rupees or more.

DR. A. V. Sreekumar v CIT – (2018) 90 taxmann.com 355 (Ker) - ITA No. 186 of 2013 dated 24.01.2018

1328. The reassessment notice issued u/s 148 in the case of the assessee, engaged in business of development of housing projects, whose claim for deduction u/s 80-IB for AY 2010-11 was allowed by the AO during scrutiny assessment after making due enquiries on ground that the claim of assessee for deduction was rejected in AY 2013-14 as it sold two separate residential units to a husband and wife, in contravention of section 80-IB(10)(f)(i). The Court set aside the notice issued u/s 148 as there was absence of allegation of allotment of residential units in breach of conditions as prescribed in section 80-IB for assessment year under consideration i.e. AY 2010-11.

Royal Infrastructure v DCIT – (2018) 91 taxmann.com 309 (Guj) – Special Civil Application No. 23178 of 2017 dated 21.02.2018

1329. The Court quashed the reassessment notice issued u/s 148 in the name of deceased father of the assessee-son (being the legal representative), relying on the decision in the case of Rasid Lala v ITO (2017) 77 taxmann.com 39 (Guj) wherein it was held that notice was required to be issued in name of

heir of deceased assessee in a case where the reassessment proceedings were initiated against dead person after a long delay, even if section 159 was attracted. In the present case also, the authorities were very well aware that the current assessee was heir and legal representative of deceased assessee, though more than four years had lapsed after the death of the assessee, the impugned notice was issued in name of deceased. As regards section 292BB deeming notices issued under the Act to be valid where an assessee had appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it was held that nothing contained in the said section should apply in the present case since the assessee had raised the objection before completion of such assessment or reassessment.

JAYDEEPKUMAR DHIRAJLAL THAKKAR v ITO – (2018) 401 ITR 0302 (Guj) – SPECIAL CIVIL APPLICATION NO. 17186 of 2017 dated 22.01.2018

1330. The Court dismissed Assessee's writ petition filed against the notice issued u/s 148 for initiation of reassessment proceeding holding that income of assessee had escaped assessment since deduction granted u/s 10B for AY 2005-06 was proposed to be disallowed in view of non-compliance with section 10B(3) providing for bringing the foreign export receipts into Country, within six months from close of previous year. The Court held that the reassessment proposed, within six year period was perfectly in order, if said amounts have not already been disallowed in original assessment order itself.

SUNTEC BUSINESS SOLUTIONS PVT. LTD. v UNION OF INDIA AND OTHERS – (2018) 401 ITR 0101 (Ker) – WA No. 1094 of 2013 dated 09.01.2018

1331. Where pursuant to survey, incriminating documents showing receipt of unaccounted cash and professional income by assessee were found and impounded and after accepting to have received the same, assessee had included the income in return filed by him in response to reassessment notice and the same was accepted by AO during assessment proceedings, the Court set aside the notice issued u/s 148 for reopening assessment which was issued on the ground that the figures of unaccounted cash amounts in the entries in impounded material were recorded after dropping one zero and that, accordingly, assessee had not disclosed true particulars of his unaccounted income even in said return. The Court held that there was no new information or material which did not form part of original assessment proceedings and, thus, AO could not issue fresh reassessment notice, that too, beyond a period of four years.

Jalil Abdulbhai Shaikh v DCIT – (2018) 254 Taxman 26 (Guj) – Special Civil Application Nos. 16898 & 19899 of 2017 dated 06.02.2018

1332. Where assessee, a partnership firm made payment of certain sum as pension to retiring partners as per partnership deed and the same was allowed in original assessment, the Court held that initiation of reassessment proceedings to disallow said payment opining that since a partner was not an employee of firm, not entitled to pension after retirement and thus, capital in nature, beyond the period of four years from the end of relevant assessment year, was unjustified. It held that all these details were on record before AO, when original assessment proceedings were being made and there was nothing outside of record which could have thrown any light on nature of payment and its deductibility and thus, there was no failure on part of assessee.

Deloitte Haskins & Sells v DCIT – (2018) 253 Taxman 490 (Guj) – Special Civil Application Nos. 22407 & 22408 of 2017 dated 06.02.2018

1333. The assessee's return of income was accepted by revenue authorities u/s 143(1) without scrutiny and subsequently, based on information received, the AO reopened the assessment on the ground that the assessee had booked contrived losses to extent of Rs.16.51 lakhs through NMCE platform operated by certain person. Taking note of the assessee's submission that he had never claimed loss of Rs. 16.51 lakhs and that the said figure appearing in his balance sheet was on credit side and, in fact, had received said sum of Rs. 16.51 lakhs and not suffered such an alleged loss, the Court set aside the reassessment notice issued u/s 148 holding that since there was nothing on record showing that said sum of Rs.16.51 lakhs was a loss claimed by assessee, the reason recorded by AO for reopening assessment was palpably incorrect.

Narendrakumar Mansukhbhai Patel v ITO – (2018) 92 taxmann.com 259 (Guj) - Special Civil Application nos. 16788 to 16790 of 2017 dated 07.02.2018

1334. Where AO had reopened assessment proceedings on the ground that certain amount deposited in bank account by the assessee could not be verified as the assessee had not filed the return of income (since the return was not reflected in IT System of department), taking note of the fact that assessee had filed return manually which had been duly acknowledged and in said return assessee had furnished proper details in respect of contractual receipts deposited in bank account, the Tribunal quashed the impugned reassessment proceedings.
Narain Dutt Sharma v ITO – (2018) 91 taxmann.com 463 (Jaipur Trib) – ITA No. 203 (JP.) of 2017 dated 07.02.2018

1335. Where the assessee had purchased certain shares at Rs. 10 per share, the value of which were less than Rs. 5 per share as per rule 11UA and there was a complete disclosure of all facts during regular assessment proceedings, the Court held that reassessment notice issued u/s 148 for valuing these shares at Rs. 35 as per valuation by Government valuer was without jurisdiction since the impugned notice indicated a change of opinion, as this very issue namely - valuation of share was a subject matter of consideration during the regular assessment proceedings and further, the Explanation to section 56(2)(vii) states that the fair market value is to be determined in accordance with the Income-tax Rules i.e. Rule 11UA. Accordingly, it admitted the assessee's petition and granted interim relief by staying the reassessment proceedings.
Shahrukh Khan v DCIT – (2018) 253 Taxman 487 (Bom) – Writ Petition No. 58 of 2018 dated 08.02.2018

1336. The Apex Court dismissed the SLP filed by assessee against the High Court's order wherein the High Court had held that merely because reasons recorded by AO proceeded on same basis on which the AO had initially desired to make additions but which failed on account of setting aside order of assessment [since the assessment was carried out without issuing notice u/s 143(2)], it would not preclude AO from carrying out exercise of reopening of assessment.
Krishna Developers & Co. v DCIT – (2018) 91 taxmann.com 306 (SC) – Petition(s) Special Leave to Appeal (C) No. 23760 of 2017 dated 08.02.2018

1337. The Apex Court dismissed the SLP filed against the High Court wherein the High Court had quashed the re-opening notice issued u/s 148 in absence of any tangible material available to prima facie show that the assessee had received any money in cash on account of sale consideration of land over and above the consideration mentioned in the sale deed other than one 'Sauda Chitthi' seized from third party wherein neither the assessee (seller) nor the purchaser was signatory and which was not acted upon.
ITO v Chintan Jadavbhai Patel – (2018) 91 taxmann.com 426 (SC) – SLP (Civil) Diary No. 1464 of 2018 dated 09.02.2018

1338. Where the AO initiated the reassessment proceedings on the reasoning that he had received information from Investigation Wing of department that the assessee had received certain amount by way of loan from a company working as an entry operator and it was noted that the reasons recorded did not proceed only on the information supplied by the Investigating Wing but the AO had applied his mind and formed his belief that the income chargeable to tax had escaped assessment, the Court dismissed the assessee's petition filed against the notice issued u/s 148 holding that there was sufficient material before AO to form a belief that income of assessee had escaped assessment and also in view of the fact that the said belief was formed based on the above referred information received after original assessment was over.
Jayant Security & Finance Ltd. v ACIT – (2018) 91 taxmann.com 181 (Guj) – Special Civil Application No. 18921 of 2017 dated 12.02.2018

1339. The assessee-company had transferred certain shares of huge market value to its subsidiary company without consideration and this transaction was scrutinized during original assessment and no additions were made by AO. The AO issued notice u/s 148 to initiate reassessment proceedings on the ground that even though capital gain could not be charged, assessee had to pay dividend distribution tax on transferred shares, as such transfer amounted to payment of dividend as per section 2(22)(a). The

Court set aside the notice issued u/s 148, holding that once (after scrutinizing the transaction with respect to the issue whether such transaction would invite capital gain tax) the AO had not expressed that assessee had to pay dividend distribution tax in original order of assessment, he could not have a second inning to examine same transaction from a different angle by resorting to reopening of assessment.

Demuric Holdings (P.) Ltd. v ACIT – (2018) 91 taxmann.com 270 (Guj) – Special Civil Application No. 22517 of 2017 dated 14.02.2018

1340. Where the return of income filed by the assesse-trust was accepted u/s 143(1) and reassessment notice u/s 148 was issued on ground that assessee-trust had deposited cash in a bank account and that no return of income was filed by assessee for relevant assessment year, the Court set aside the impugned notice noting that the AO in reasons recorded, proceeded on erroneous footing that the assessee had not filed return at all but the assessee did file return of income for year under consideration which was duly acknowledged by department. Further, it had noted that the AO only contended that cash deposits could only be verified through reassessment and he did not even contend that said cash deposits were not duly reflected in return filed, but that he wished to verify validity of such deposits. Thus, it held that reopening of assessee was not permissible for mere verification or for a fishing inquiry.

Sunrise Education Trust v ITO – (2018) 92 taxmann.com 74 (Guj) – Special Civil Application No. 16726 of 2017 dated 19.02.2018

1341. The Court set aside the notice issued u/s 148 and annulled the assessment order passed u/s 143(3) r.w.s. 147 on ground of merger of order, in a case where the assessee's claim for deduction u/s 80-IA which was rejected by the AO under scrutiny assessment was allowed by the CIT(A) in entirety and the assessment was reopened on the grounds viz. firstly, post monitoring expenses under heading "Long term provisions" was not actual expenses but merely a provision and not an allowable expenditure u/s 37(1); secondly, cell utilization expenses claimed as deduction was contingent expenditure which might be or might not be incurred in future and hence, not allowable u/s 37(1); thirdly, amount debited on account of land utilization was a sort of depreciation on land which was not allowable. It held that the initial assessment order of AO had merged with order of CIT(A) and thereafter it could not be open for AO to reopen the same claim for possible disallowance of part thereof.

Gujarat Enviro Protection & Infrastructure Ltd. v DCIT– (2018) 91 taxmann.com 436 (Guj) – Special Civil Application no. 16165 of 2017 dated 19.02.2018

1342. The Court quashed the notice issued u/s 148 in a case where the assessee's claim for deduction u/s 80-IA which was rejected by the AO under scrutiny assessment was allowed by the CIT(A) in entirety and the assessment was reopened, after four years from the end of the relevant assessment year, on the ground that amount on which assessee had claimed deduction included interest income assessable under head 'Income from other sources' and same was not derived from infrastructure development activity of assessee, thus, could not be considered for deduction u/s 80-IA. It noted that during the scrutiny assessment, the AO had examined the assessee's claim of deduction u/s 80-IA as well as the assessee's treatment to interest income and assessee's reply to the AO showed that out of the total interest income, the assessee had attributed a sum of certain amount as business income and, thus, it held that there was no failure on the part of the assessee to disclose fully and truly all relevant facts. Further, it held that once AO had rejected claim of deduction u/s 80-IA(4) in its entirety and, in appeal, the CIT(A) had allowed the said claim, it would thereafter be not open for AO to reassess this very claim for possible disallowance of part thereof on some additional ground due to merger of order. The Tribunal, however, rejected the assessee's contention of possible change of opinion holding that since the AO had rejected entire claim, he had no occasion to thereafter comment on a part of such claim relatable to the assessee's interest income.

Gujarat Enviro Protection & Infrastructure Ltd. v DCIT– (2018) 91 taxmann.com 186 (Guj) – Special Civil Application no. 16163 of 2017 dated 19.02.2018

1343. The Court dismissed the petition filed by the assessee against initiation of reassessment proceedings by the AO after recording the reasons for reopening to be receipt of information from Investigation Wing of department that assessee had received certain amount by way of share capital and share premium

from several shell companies which were working as an accommodation entry providers. It noted that there was material on record suggesting that AO had received entirely new set of documents and materials for his consideration in form of report received from investigation wing and such materials did not form part of original assessment proceedings. The Court held that since Assessing Officer had sufficient material at his command to form a reasonable belief that income chargeable to tax had escaped assessment, merely because these transactions were scrutinised by the AO during original assessment would not preclude him from reopening assessment.
Aradhna Estate (P.) Ltd. v DCIT– (2018) 254 Taxman 1 (Guj) – Special Civil Application no. 21999 of 2017 dated 20.02.2018

1344. The Tribunal allowed assessee's appeal and held the assessment order passed u/s 143(3) r.w.s. 147 to be invalid on the ground that the reopening was barred by the limitation provided in the first proviso to section 147, in a case where the AO had reopened the assessment after expiry of four years from end of relevant year to disallow u/s 40(a)(ia) in respect of failure of assessee to deduct tax at source from payment of channel rent and it was noted that the reasons recorded by the AO didn't point out to any failure on the part of the assessee as contemplated in the first proviso to section 147 (i.e. either to file return or to disclose fully and truly all material facts necessary for his assessment).
Dipak Kumar Dasbhowmik v ITO – (2018) 92 taxmann.com 75 (Kolkata Trib) – ITA No. 2384 (Kol) of 2017 dated 23.02.2018

1345. The Court dismissed the Petition filed by the assessee against the initiation of reassessment proceedings u/s 148 in case where the assessment was reopened based on a report of Auditor resulting from a special audit directed by the Forward Market Commission, received after completion of assessment, wherein it was observed that claims made by assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to a charitable trust u/s 80G were *prima facie* bogus as assessee could not substantiate their genuineness by providing relevant documents and evidences, holding that the special audit report was a fresh tangible material which formed basis of AO's reasonable belief that income chargeable to tax had escaped assessment.
Multi Commodity Exchange of India Ltd. v DCIT– (2018) 91 taxmann.com 265 (Bom) – Writ Petition no. 2739 of 2017 dated 23.02.2018

1346. The Court upheld the Tribunal's order quashing the reassessment proceedings initiated u/s 148 in a case where the assessment was reopened on the basis of audit part objection against the deduction allowed u/s 80-IB in respect of duty drawback incentive and it was noted that the reasons recorded by the AO to reopen assessment were identical to the audit objections. It held that there was no material on record to even remotely suggest that the AO had any independent application of mind (without being influenced by audit report).
CIT v Rajan N. Aswani – (2018) 91 taxmann.com 313 (Bom) – ITA No. 606 of 2015 dated 24.02.2018

1347. Where the AO had not furnished the reasons recorded for reopening the assessment to the assessee after the same being sought by the assesssee, the Court set aside the reassessment order passed u/s 143(3) r.w.s. 147 and directed the AO to consider the assessee's request for furnishing the reasons recorded for reopening the assessment within a period of 15 days from the date of receipt of a copy of the Court's order and the assessee to file her objections/reply within 30 days after furnishing of such reasons for reopening so as to enable the AO to consider the same and redo the assessment as expeditiously as possible.
Manjula Athur v ITO – (2018) 91 taxmann.com 438 (Mad) – W.P. No. 33318 of 2017 W.M.P. Nos. 36760 of 2017 & 2328 of 2018 dated 27.02.2018

1348. Where assessee submitted that the gratuity expenses had been claimed and allowed to it with respect to the scheme which was approved by CIT way back in year 1976 and after that LIC undertook responsibility to manage same and on said basis it had been raising claim year after year right since its inception without any issue being raised by AO in this regard in the past years, the Court set aside the notice issued u/s 148 to initiate reassessment proceedings on ground that the said deduction was wrongly claimed as the gratuity scheme was not approved as per requirements of section 36(1)(v). It

held that merely because assessee did not provide an additional declaration in its return that the scheme was approved and was unable to produce a copy of order approved by CIT, it could not be categorized as failure on part of assessee to disclose truly and fully all material facts so as to validate the issuance of impugned notice beyond a period of four years from the end of the relevant assessment year, irrespective of the fact that the AO during the original assessment has not pointedly examined this aspect, nor raised any queries for being satisfied about this claim of deduction.
Valsad District Central Co-Op. Bank Ltd. v ACIT – (2018) 92 taxmann.com 280 (Guj) – Special Civil Application No. 20801 of 2017 dated 05.02.2018

1349. The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that the assessment made u/s 143(3) r.w.s. 147 could not be sustained, where the AO had reopened the assessment on the ground that since bogus purchases were found during search proceedings in the case of assessee for subsequent years, a similar discrepancy in respect of the purchases of the assessee could be inferred for the year under consideration. It held that in absence of any failure on part of assessee to disclose fully and truly all material facts necessary for its assessment, the concluded assessment of assessee could not be reopened after lapse of period of 4 years from end of relevant assessment year and mere drawing of inferences by the AO for year under consideration, on basis of facts pertaining to subsequent years, could not form basis for reopening assessment.
DCIT & ORS. v WIND WORLD (INDIA) LIMITED – (2018) 52 CCH 50 (Mum) – ITA No. 5714/Mum/2015 dated 17.01.2018

1350. The Tribunal allowed assessee's appeal against the reopening of assessment and held the same to be bad in law noting that the reasons for reopening were not communicated to the assessee violating the directions of the Apex Court in the case of GKN Drive Shaft [259 ITR 19] (SC)
N. SRINIVAS v JCIT – (2018) 52 CCH 34 (Hyd Trib) – ITA No. 1400/HYD/2012 dated 12.01.2018

1351. The AO initiated reassessment proceeding u/s 147 on the reason that certain investment was made out of undisclosed income of assessee, which escaped assessment. However, the addition was made on issue of capital gain arising on transfer of property and the CIT(A) while deciding the matter against assessee relied on the decision in the case of Sri N Govindaraju vs. ITO (2015) 377 ITR 243 (Kar.) wherein it was held that if notice u/s 148 was found to be valid, then addition could be made on all grounds or issues (with regard to 'any other income' also) that may come to notice of the AO subsequently during course of proceedings u/s 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive. The CIT(A) rejected the reliance placed by the assessee on the decisions in the case of Ranbaxy Laboratories v CIT (2011) 336 ITR 136 (Del HC) and CIT v Jet Airways India Ltd. (2011) 331 ITR 236 (Bom) on the ground that the decision of Sri N Govindaraju (supra) was rendered later than Ranbaxy Laboratories (supra) and Jet Airways India Ltd. (supra). The Tribunal held that the reasoning adopted by CIT(A) was not in accordance with law. Noting that neither of the above decisions were rendered by the jurisdictional High Court, it held that where two non-jurisdictional High Court's decisions are opposed to each other, one in favour of assessee is required to be followed by the Tribunal and, thus, it set aside and cancelled the reassessment order.
MEENA KUNDRA v ITO – (2018) 52 CCH 38 (Agra Trib) – ITA No. 67/AGR/2017 dated 11.01.2018

1352. The AO had received information from Addl. DIT (Inv) stating that that the assessee had received bogus entry in form of gift from one D and addition was also made on account of bogus gift but the AO had initiated re-assessment proceedings u/s 147 r.w.s. 148 on the basis of reasons to believe escapement of income being bogus purchase/sale of shares. The Tribunal held that the reasons recorded were vague and farfetched which showed that the AO had no specific information. Noting that the assessee had not entered into any transaction of purchase/sale of shares and no new adverse information was brought on record which could suggest any justification for satisfaction to initiate proceedings u/s 147/148, in spite of specific request of assessee, it held that the AO had not discharged his onus to prove that income had escaped assessment, rendering initiation of reassessment proceedings void. It thus held that initiation of reassessment proceedings was bad in law.
PRIYANK MITTAL v ITO – (2018) 52 CCH 45 (Agra Trib) – ITA No. 268/Agra/2016 dated 08.01.2018

1353. The Tribunal allowed the cross objection raised by the assessee against the CIT(A)'s order holding that non-issue of notice u/s 143(2) by itself could vitiate reassessment proceedings initiated by the AO and it held in the absence of any notice issued u/s 143(2) after receipt of fresh return submitted by the assessee in response to notice u/s 148, the reassessment order passed was bad, void ab initio. In view of above decision, the appeal filed by the Revenue was held to be infructuous.
ACIT & ANR. v DIMENSION PROMOTERS PVT. LTD. & ANR. – (2018) 52 CCH 1 (Del Trib) – ITA No. 1105/Del./2011 (C.O. No. 326/Del./2011) dated 02.01.2018

1354. The Tribunal set aside the reassessment proceedings flowing from invalid initiation in the case where the assessee-company's income was assessed during the assessment accepting taxability of operational revenue u/s 44BB @ 10% and the assessment was sought to be reopened u/s 148 on the ground that assessee's income was from 'Fees for technical services', taxable @ 20% u/s 44DA r.w.s. 115A. It held that it was clear case of change of opinion which could not justify initiation of reassessment, noting that –

- the services provided by assessee were found to be covered by provisions of section 44BB
- all necessary details about taxability of assessee's income u/s 44BB were available before AO at time of original assessment
- original assessment was made by the AO with full knowledge of nature of work carried out by assessee
- no fresh material came into existence igniting the AO to initiate reassessment

Further, the Tribunal noted that the provisions of section 44DA were inserted from AY 2011-12 and relied on the jurisdictional High Court in the case of B.J. Services Company Middle East Ltd. & Ors. Vs. DDI(IT) (2011) 339 ITR 169 (Uttarakhand) wherein the said section was held to be prospective and under similar circumstances initiation of reassessment were also held to be invalid.
IPR INTERNATIONAL LTD. v ADIT (IT) – (2018) 52 CCH 87 (Del Trib) – ITA No. 4408/Del/2011 dated 23.01.2018

1355. Where in case of the assessee-charitable trust (engaged in livestock development), the AO had raised a specific issue with regard to assessee-trust's activity and verified whether its income was covered by term 'charitable purpose' as appearing in section 2(15), the Court admitted the assessee-trust's petition holding that the notice issued u/s 148 on belief that income chargeable to tax had escaped assessment in respect of certain amounts received from State Govt. on the ground that the assessee-trust's activity would not be covered within definition of charitable purpose u/s 2(15), was prima facie a case of change of opinion. Accordingly, it also granted interim stay.
J.K. Trust Bombay v DCIT – (2018) 91 taxmann.com 269 (Bom) - Writ Petition Nos. 2469 & 2472 of 2017 dated 25.01.2018

1356. The AO after due application of mind had allowed assessee to carry forward deficit of earlier year at the time of scrutiny assessment. Subsequently, only on the basis of an audit objection, for making disallowance of adjustment of carry forward deficit on the ground that income of the trust was not computed as business income which is a pre-requisite for allowing carry forward and set off of losses of earlier years against income of current year, the AO reopened the assessment by issuing notice u/s 148. The Court held that the notice was based on a mere change of opinion and, thus, not sustainable. Further, with respect to assesses's contention that the AO had not considered the objections filed by it against the reopening, it held that, in view of decision of GKN Driveshafts (India) Ltd. v. ITO (2002) 125 Taxman 963 (SC), the AO is bound to decide on the objections raised by assessee against reasons recorded for reopening of assessment where such objections were filed prior to framing of assessment order, irrespective of the fact that the objections were submitted belatedly, almost after 100 days after receipt of reasons recorded. Consequently, the Court quashed the notice issued u/s 148 as well as the reassessment order passed u/s 143(3) r.w.s. 147.
Bharatmaiya Memorial Foundation v DCIT – (2018) 91 taxmann.com 25 (Guj) - Special Civil Application No. 20513 of 2017 dated 25.01.2018

1357. The Court quashed the notice u/s 148 for reopening assessment issued after expiry of four years from the end of relevant assessment year, noting that there was no failure on part of assessee as to full and true disclosure at time of assessment and that reassessment proceedings could not be initiated on the basis of a mere change of opinion, wherein during the course of scrutiny assessment, AO had allowed assessee's claim for deduction u/s 80-IB(8A) after a detailed analysis in relation to the activities carried out by the assessee and the reopening was sought on the ground that income of assessee was not eligible for claim of deduction u/s 80-IB(8A) since assessee was providing professional services of research to its clients, which did not lead to any technology development.
Lambda Therapeutic Research Ltd. v ACIT – (2018) 90 taxmann.com 308 (Guj) – Special Civil Application no. 16338 of 2017 dated 29.01.2018

1358. In the case of the assessee-firm which was converted into a private limited company where notice u/s 148 was issued to tax the income upto the date of succession in the hands of the firm, the Court quashed the notice on the ground that it was issued based on change of opinion. It Court noted that the AO during scrutiny assessment had accepted the return of income declaring nil income upon being convinced by explanation given by assessee that the profit earned till conversion was transferred to successor company and company also paid tax on same.
Giriraj Steel v DCIT – (2018) 91 taxmann.com 342 (Guj) – Special Civil Application no. 18138 of 2017 dated 31.01.2018

1359. The Court quashed the reassessment proceedings initiated by issue of notice u/s 148 noting that there was no fresh material available with AO for reopening and, thus, in absence of any tangible fresh material, reopening of an assessment after four years cannot be done. During the original scrutiny assessment, the AO had allowed assessee's claim for depreciation u/s 32 with respect to vendor and dealer network and goodwill acquired under a business purchase. However, on basis of an audit objection raised by audit party, AO called for an explanation on the said claim for depreciation and initiated reassessment proceedings. It was further noted that based on the information obtained by the assessee under RTI, it was clear that on objection being raised by audit party (CAG), the AO stood by his decision of allowing the said claim.
Mobis India Ltd. v DCIT – (2018) 90 taxmann.com 389 (Mad) - Writ Petition no. 11371 of 2016 WMP no. 9819 of 2016 dated 24.01.2018

1360. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order quashing re-assessment order passed by the AO u/s 147 r.w.s. 143(3) where the assessment was reopened after 4 years from the ended of the relevant assessment year on the ground that income chargeable to tax had been escaped assessment in view of wrong claim made u/s 80IB (4) of the Act and the CIT(A) had held that there was no allegation that the assessee had failed to disclose fully and truly all material facts necessary for assessment (which is prerequisite for reopening after 4 years from the end of the relevant assessment year). Further, the AO had reopened the assessment on mere change of opinion without there being any new material which suggests escapement of income.
ASSISTANT COMMISSIONER OF INCOME TAX vs. DIAMOND TOOL INDUSTRIES - (2018) 53 CCH 0160 (Mum Trib) - ITA No.6936 to 6938, 6940 & 6941/M/2016 dated Jun 13, 2018

1361. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the initiation of reassessment proceeding u/s 147 which was reopened solely on the basis of basis of information received by the AO from Investigation Wing, noting that the Pr.CIT had given the approval for initiating the said proceedings without applying his mind in a slip-shod manner by only writing the word "approved". Therefore, it quashed the reassessment proceedings u/s 147 initiated by issuing the notice u/s 148 on the basis of mechanical approval by the Pr. CIT without recording satisfaction on objective material.
GORIKA INVESTMENT AND EXPORT (P) LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0168 (Del Trib) - ITA No. 3396/Del/2018 dated Jun 13, 2018

1362. The Tribunal accepted the assessee's appeal against the CIT(A)'s order upholding the reassessment proceedings u/s 147 by considering the assessee to be the agent of the non-resident to whom he had made payment towards purchase of property without deducting TDS u/s 195. It was noted that the

notice u/s 148 was issued on 24.03.2014 whereas as per section 149(3) time limit for issue of notice u/s. 148 in case of agent of non-resident was two years from end of relevant assessment year, which had expired on 31.03.2010 and the amendment made to section 149(3) to provide for six years instead of two years was only effective from 01.04.2012. Thus, it held that the reassessment proceedings initiated by the AO was barred by limitation and accordingly, quashed the notice issued u/s 148 and held the consequent assessment proceedings to be void ab initio.

V. PRATIM ARAO & ORS. vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) & ORS. - (2018) 53 CCH 0114 VishakapatnamTrib - ITA No. 69/Viz/2018, 70/Viz/2018, 71/Viz/2018, 72/Viz/2018, 73/Viz/2018, 74/Viz/2018 dated Jun 6, 2018

1363. The Court upheld the Tribunal's order holding the re-opening of assessment u/s 147 r.w. 148 to be bad in law as it was based on change in opinion of the AO, noting that the assessment was sought to be reopened for disallowing deduction u/s 80-IC on 'other income' whereas the claim of section 80-IC deduction was the subject matter of enquiry by AO in the regular assessment proceedings. It held that the AO was conscious of the claim of deduction made by the assessee u/s 80IC which led to the enquiry and it was for the AO to decide the extent and nature of enquiry in respect of claim u/s 80IC. It further held that when the AO had taken a conscious decision of making enquiry u/s 80IC then it was not open to him to turn around and claim that certain aspects of the claim u/s 80IC were not considered by him. It also rejected the reliance placed by the Revenue on the decision in the case of Export Credit Guarantee Corporation of India Ltd. v. ACIT (2013) 350 ITR 651 (Bom) wherein the re-opening was held to be valid since no query had been raised during the regular assessment by the AO, thus indicating non-application of mind. It held that in the present case, the reasons for re-opening were not premised on non-application of mind by the AO to the claim for deduction u/s 80IC, but it proceeded to exclude 'other income' from the claim on account of omission by the AO during the regular assessment proceedings.

Pr.CIT v Century Textiles and Industries Ltd [TS-178-HC-2018(BOM)] – ITA No. 1367 of 2015 dated April 4, 2018

1364. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order quashing the reassessment proceedings in a case where the AO had reopened the assesseement u/s 147 r.w.s. 148 on the reasons that a complaint was received from the PMO which alleged that the assesse had much more income that the income declared to the income-tax department and also stated the minimum charges for decoration and arrangement for marriages and other parties per day was Rs.6 lakhs, whereas it was noted by the Tribunal that the assessee was in catering business (i.e. not decoration, etc.). It held that the nature of the complaint was known and the AO had reopened the assesse without verifying the information received. The Tribunal held that the information received by the AO could raise suspicion against the assessee but without any basis and without any tangible material, reason to suspect could not become the reason to believe that income had escaped assessment.

INCOME TAX OFFICER & ANR. vs. S.K. CATERERS PVT. LTD. & ANR - (2018) 53 CCH 0350 (Del Trib) - ITA No. 1647/DEL/2015 (CO No. 302/DEL/2015) dated June 27, 2018

1365. The Court allowed assessee's petition against the initiation of reassessment proceeding by issue notice u/s 148 to disallow assessee's claim for deduction on account of certain amounts debited to the P & L A/c which were not so disallowed during the regular assessment. It was noted that the assessment was sought to be reopened after a period of four years from the end of relevant assessment year. The Court held that for the assessment to be reopened after four years, the jurisdictional requirement of showing that there had been a failure on the part of the assessee to disclose the material facts had to be fulfilled and where such requirement was not present, it was open to the assessee to challenge the action of reopening by invoking Article 226 of the Constitution of India. It held that in the present case the assesse had produced all the necessary documents before the AO and the fresh exercise was only a change of opinion. Thus, the AO had no jurisdiction to proceed u/s 147 r.w.s. 148.

GOA STATE COOP. BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR - (2018) 102 CCH 0165 (Mum HC) - WRIT PETITION NO. 33 OF 2018 dated June 27, 2018

1366. The Court upheld the Tribunal's order quashing the entire reassessment proceeding where it was noticed that no notice u/s 143(2) was issued by the AO before undertaking the reassessment. The

Court relied on the Apex Court decision in the case of ACIT v. Hotel Blue Moon [321 ITR 362 (SC)] wherein it was held that omission on the part of the AO to issue notice u/s 143(2) within the time allowed to do so, for the purpose of completing an assessment, was not a procedural irregularity and the same was not curable and, therefore, the requirement of notice u/s 143(2) could not be dispensed with. It also held that section 292BB also does not dispense with the issuance of any notice that is mandated to be issued under the Act, but merely cures the defect of service of such notice if an objection in such regard is not taken before the completion of the assessment or reassessment.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. OBEROI HOTELS PVT. LTD. - (2018) 102 CCH 0108 (Kol HC) - ITAT No.152 of 2015 & GA No. 3671 of 2015 dated June 22, 2018

1367. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order quashing the assessment order passed pursuant to reassessment notice issued u/s 148 since the said notice was issued during the pendency of scrutiny assessment proceedings, relying on the decision in the case of Trustees of H.E.H the Nizam's Supplement Family Trust Vs. CIT [242 ITR 381 (SC)] wherein it was held that unless the return of income already filed is disposed of, notice for reassessment under section 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.
ASSISTANT COMMISSIONER OF INCOME TAX vs. KAKADE INFRASTRUCTURE PVT. LTD. - (2018) 53 CCH 0206 (Pune Trib) - ITA No. 854/PUN/2015 dated June 20, 2018

1368. The Tribunal held the notice u/s 148 and all the proceedings pursuant thereto to be null and void ab initio noting that the AO had not recorded anywhere in the reasons for reopening assessment, after four years from the end of the relevant assessment year, suggesting/ showing that the income chargeable to tax which had escaped assessment was Rs.1 lakh or more. It relied on the decision in the case of Mahesh Kumar Gupta Vs. CIT [363 ITR 300 (All)] wherein it was held that since the assessment had been reopened after four years from the end of the relevant assessment year, the sanctioning authority should have been made aware of the fact that the case been dealt with involved income chargeable to tax which had escaped assessment was Rs.1 lakh or more and that it had exercised power of extended period of limitation u/s 149(1)(b).
USHA AGARWAL vs. INCOME TAX OFFICER - (2018) 53 CCH 0318 (Agra Trib) - ITA No. 167/Agra/2018 dated June 19, 2018

1369. The Court granted interim stay to the reassessment proceedings initiated by issue notice u/s 148, holding that prima facie the said notice was issued without jurisdiction since the reasons in support of the same indicated change of opinion. The assessment was sought to be r-teeopened to disallow the assessee's claim for deduction with respect to provision made for diminution on account of restructured Advances in accordance with the RBI guidelines. It was noted that the assessee had claimed the said deduction in the computation of income and the notes annexed thereto made a reference to the fact of such provision made in accordance with RBI guidelines. Further, it was noted that the assessment order passed by the AO during regular assessment mentioned about examining the computation of income and certain disallowances were also made but there was no disallowance on account of the said provision. The Court held that it must necessarily be inferred that the AO had applied his mind at the time of passing an assessment order to this particular claim made in the basic document viz. computation of the income by not disallowing it in proceedings u/s 143(3) as he was satisfied with the basis of the claim as indicated in that very document and, therefore, where he accepted the claim made, the occasion to ask questions on it would not arise nor did it have to be indicated in the order passed in the regular assessment proceedings. It was thus, held that issuing the impugned notices on the above ground, prima-facie, amounted to change of opinion.
STATE BANK OF INDIA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0087 MumHC- WRIT PETITION NO. 271 OF 2018 ALONGWITH WRIT PETITION NO. 278 OF 2018 dated June 20, 2018

1370. The Tribunal set aside the notice issued u/s 148 and held the reassessment order passed pursuant to such notice to be unsustainable on account due to non-service of valid notice. The AO had claimed to have served to the deceased-assessee notice u/s 148 as well as 142(1) through affixture at his last known address and notice u/s 142(1) to the legal heir (after knowing about the assessee's demise)

again through affixture and receiving no response, framed the assessment u/s 144. The Tribunal held that there were many doubts with regard to genuineness of service of notice on deceased assessee because if notice had been served then certainly the notice server would had used his due and reasonable diligence for not finding deceased assesse. Further, it was held that the AO never tried to serve legal heir in ordinary way, however made attempt only through substituted service which also created lots of doubts about service and validity of notices which was not a mere procedural requirement but was mandatory. The Tribunal thus held that no notice was properly served either u/s 148 or 142(1) upon deceased assessee or his sole legal heir.
SHRIDHAR BEDI THROUGH LEGAL HEIR vs. INCOME TAX OFFICER - (2018) 53 CCH 0171 (Asr Trib) - ITA No. 02(Asr)/2017 dated June 20, 2018

1371. The Tribunal quashed the notice issued u/s 148 for initiating reassessment proceedings where the assessment was reopened solely on the basis of basis of information received by the AO from Investigation Wing and the Pr. CIT had given approval mechanically in a slip-shod manner without recording satisfaction on the objective material. It was noted that the Pr.CIT gave the approval by writing the word "approved", without mentioning how and in what manner he was satisfied. It thus held that it could not be said that the Pr. CIT had applied his mind while giving the approval for reopening the assessment. The Tribunal relied on the decision in the case of Pr. CIT v N. C. Cables Ltd. [ITA No. 335/2015 (Del HC)] wherein it was held that the competent authority, authorizing the reassessment notice, has to apply his mind and form an opinion and mere appending of the expression 'approved' says nothing.
GORIKA INVESTMENT AND EXPORT (P) LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0168 (Del Trib) - ITA No. 3396/Del/2018 dated June 13, 2018

1372. The assessee company, engaged in business of manufacturing of overhead transmission lines, cables and conductors was served a notice u/s 148 based on audit objection. AO observed that assessee had not complied with provisions of section 145A of Act and had failed to include excise duty while valuing closing stock at end of year. The CIT(A) upheld the order of the AO. Tribunal observed that as per the audit certificate providing details of valuation of closing stock of the assessee, such value was derived after adding excise duty to basic price of goods and further adding other charges. Further, the Tribunal opined that the AO had merely made guess work on such audit objection and thereby made addition without bringing any material on record to prove that opening and closing stock valued by assessee company did not contain element of excise duty and taxes. Thus, the Revenue's appeal was dismissed.
ACIT vs. NARMADA TRANSMISSION PVT. LTD. (INDORE TRIBUNAL) (ITA No. 215/Ind/2015) dated May 31, 2018 (53 CCH 0202)

1373. Where re-assessment notice was issued in the name of erstwhile company despite the company having ceased to exist as it had been converted into LLP, the Court held that the same would not invalidate the re-assessment proceedings as wrong name mentioned in the said notice was merely a clerical error which could be corrected u/s 292B.
Sky Light Hospitality LLP v. ACIT – [2018] 92 taxmann.com 93 (SC) – Special Leave to Appeal (C) No. 7409 of 2018 dated April 6, 2018

1374. The Court kept the reassessment proceedings in abeyance noting that the AO had committed lapses in not observing the directives issued by the Supreme Court in GKN Driveshafts (India) v ITO and Ors. (2003) 259 ITR 59 (SC) by not passing a speaking order. It was noted that the assesse had raised an objection that it was not permissible to take the sworn statement in action u/s 133A as it does not have evidentiary value and the same was supported by various decisions referred by the assesse during the hearing. The Court directed that the AO to consider the objections filed by the assessee, refer to the decisions relied on by the assessee and pass a speaking order on merits and in accordance with law.
K. VELAYUTHAM vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0095 ChenHC - W.P.Nos.33917 to 33920 of 2017 & 37620 to 37623 of 2017 dated June 13, 2018

1375. The Tribunal allowed assessee's appeal against reassessment proceedings initiated by issuing notice u/s 148 and completed u/s 144, holding the reasons recorded for reopening the said assessment to be null and void. The assessment was reopened by the AO noting that the assesse had made certain

deposits in the bank account but was not filing return of income. The Tribunal relied on the decisions in the case of Sunil Kumar Saraswat vs. ITO [ITA No.109/Agra/2017] and Saraf Gramodyog Sansthan vs. ITO [108 ITD 115 (Agra)] wherein it was held that the mere fact that the deposits had been made in the bank account did not indicate that these deposits constituted income which had escaped assessment. With respect to the reliance place by the Department on the decision in the case of M/s Ginni Filaments Ltd. Vs. CIT [Writ Tax No. 1402/2004 (All)] to contend that adequacy of material before the AO at the time of recording of the reasons cannot be gone into by the Court, the Tribunal held that in that case it was also held that there must be a nexus between the material and the belief of escapement of income and in absence of necessary inquiry by the AO in the light of the information received, the said nexus/ link was missing in the present case.
SATYADEV SINGH vs. INCOME TAX OFFICER - (2018) 53 CCH 0107 (Agra Trib) - ITA No. 243/Agra/2017 dated June 04, 2018

1376. Where Joint Commissioner informed the AO that assets on which depreciation was allowed were very old and therefore, their value was nil, reassessment on the basis of said information was unjustified since no basis of giving nil value had been placed on record.
CIT v. S & S Power Switchgear Ltd. – [2018] 92 taxmann.com 429 (Madras) – Tax Case (Appeal) Nos. 849 & 850 of 2008 dated April 3, 2018

1377. The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had upheld the reassessment proceedings initiated by issuing notice u/s 148. The reassessment was sought to be reopened on the ground that information was received from Investigating Wing, based on which the AO was of the view that the source of certain amount invested by the assesse was not disclosed before the department. The Tribunal held that the link between information available with the AO and formation of belief by the AO was missing since from the reasons it was evident that there was no independent application of mind by the AO to material forming basis of reasons recorded. It noted that the AO, in reasons, had just stated information received and his conclusion about alleged escapement of income and as to what the AO did with information made available to him was not discernible from reasons. Further, noting that the material referred to in the reasons on the basis of which the AO had stated to have formed his belief was only supplied to assessee in remand proceedings, where too, objections of assessee were not met, it held that this was in direct contravention of the principles of natural justice.
DEEPRAJ HOSPITAL PVT. LTD. & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 53 CCH 0093 AgraTrib - ITA No. 40 & 41/Agra/2017 dated June 01, 2018

1378. The Court allowed the writ petition filed by the assessee challenging the notice issued u/s 148 on the ground that the proceedings initiated were contrary to the statutory requirements as envisaged u/s 149(1)(b) which contemplates reopening in a case where the escaped assessment amount is or is likely to be Rs.1 lakh or more, if the time limit has elapsed 4 years but not more than 6 years. Noting that the reasons assigned by the AO for initiating reassessment proceedings did not specify that the escaped assessment amounted to or was likely to amount to Rs. 1 lakh or more, it held that it was mandatory for the AO to specify the same in his reasons recorded, to bring the case within the ambit of section 149(1)(b) as it was based on the reasons assigned by the AO, that the CIT / Sanctioning Authority on application of mind could take a decision whether it was a fit case for issuance of notice u/s 148. The Court, thus, quashed the notice issued u/s 148.
Novo Nordisk India (P.) Ltd. v DCIT - [2018] 95 taxmann.com 225 (Karnataka) - WRIT PETITION NO. 21206 OF 2014 (T-IT) dated June 25, 2018

1379. The Court dismissed Revenue's appeal against the Tribunal's and CIT(A)'s order holding the reassessment proceedings to be invalid which were initiated on the ground of non-genuineness of cash received as gifts by the assessee from NRI. It was noted that the AO had carried out detailed enquiry in respect of the said gift while framing block assessment pursuant to search operations in the case of the assessee and had held majority of the amount of gift to be genuine and rest as non-genuine. The Court held that once gifts were assessed in block assessment proceedings, the same could not be subject matter of assessment in regular assessment. It further held that it was not open for the AO to examine the question of genuineness of the gifts in regular assessment for which he had resorted to reopening of assessments u/s 147 r.w.s. 148.

CIT v Mukesh M Sheth - [2018] 95 taxmann.com 128 (Gujarat) - R/TAX APPEAL NOS. 1537, 1696 OF 2007 AND 543 & 544 OF 2008 dated June 13, 2018

1380. The Court granted interim stay restraining the Revenue from acting further upon the notice issued u/s 148 for initiating re-assessment proceedings after four years from the end of the relevant assessment year, on the ground that information was received from Deputy Director (INV) stating that the assessee had a bank account which it had failed to disclose during assessment proceedings. Noting that during course of assessment proceedings, the assessee had submitted details of its bank accounts (which included the said bank account) and that the said bank account was also reflected in its balance sheet which was a subject matter of consideration during assessment proceedings, the Court held that in absence of any failure on part of the assessee to disclose the facts fully and truly, the AO could not exercise jurisdiction u/s 147 r.w.s. 148.
Akshar Developers v ACIT - [2018] 95 taxmann.com 104 (Bombay) - WRIT PETITION NO. 11441 OF 2017 dated June 7, 2018

1381. The assesseee, whose husband died on 26/01/2010, received notice u/s 148 on 30/03/2017 to re-open the assessment in the case of her husband. Upon informing the Revenue about her husband's death, the assessee was asked to submit all the documents pertaining to her husband's assessment. The Court allowed the writ petition filed by the assessee against the said notice holding that notice issued in name of dead person was not enforceable in law and thus the same could not be enforced against the assessee. Further, with respect to Revenue's contention that it was not informed about the said death, it was held that there is no statutory obligation on part of legal representative of deceased to immediately intimate death of assessee or take steps to cancel PAN registration and the provisions of section 159 dealing with the liability of the legal representative could be invoked only if the proceedings had already been initiated when the assessee was alive.
Alamelu Veerappan v ITO - [2018] 95 taxmann.com 155 (Madras) - WRIT PETITION NO. 30060 OF 2017; WMP NO. 32631 OF 2017 dated June 7, 2018

1382. The Court dismissed the writ petition filed by the assesseee against the re-opening notice issued u/s 148 by the ITO, Noida, where after three months from the date of receipt of the said notice, the assessee had raised an objection stating that the assessee was regularly filing returns with ITO, Delhi and, accordingly, the said notice issued by ITO, Noida was illegal and without territorial jurisdicition. It held that the assessee could not call in question jurisdiction of the ITO, Noida after expiry of one month from date of a service of reassessment notice upon him in view of the provisions of section 124(3) which states that no person can call in question jurisdiction of an AO in case of non-compliance and/or after the period stipulated in clauses (a) and (b).
Abhishek Jain v ITO - [2018] 94 taxmann.com 355 (Delhi) - WRIT PETITION (CIVIL) NO. 11844 OF 2016 dated June 1, 2018

1383. The Court allowed the writ petition filed by the assesseee against the re-opening notice issued u/s 148 by the AO, after four years from the end of the relevant assessment year. The said notice was issued mainly on ground that the assessee had shown profit from partnership firm 'S' of Rs. 7.65 crores, whereas 'S' had declared profit of Rs. 32.00 crores, according to which the assessee's share would come to Rs. 6.40 crores and thus the excess of Rs. 1.25 crores was required to be added as income u/s 68. It was noted from records that during assessment proceedings, the assessee had pointed out that the amount in question was received from two separate firms and the assessee had also produced returns of said two firms which showed matching figures. Another ground for issuance of the said notice was disallowance u/s 14A, with respect to which the Court held that since the reopening was sought to be made beyond the period of four years and there was no element of failure of the assessee in disclosing full facts, reopening was not permissible on such ground also.
Alpeshkumar Dahyabhai Patel v ITO - [2018] 95 taxmann.com 48 (Gujarat) - R/SPECIAL CIVIL APPLICATION NO. 17700 OF 2017 dated April 10, 2018

1384. The Apex Court dismissed the SLP filed by the assessee against the High Court order wherein it was held that where pursuant to survey, assessee-company had voluntarily disclosed certain amount as its undisclosed income towards allotment of shares to several companies but director of assessee-

company failed to give details of investors of companies and investment made by them, reassessment was justified

Laxmiraj Distributors (P.) Ltd. v Pr.CIT - [2018] 95 taxmann.com 109 (SC) – SLP (CIVIL) (DIARY) NO. 1757 OF 2018 dated April 20, 2018

1385. The Apex Court dismissed the SLP filed by the Revenue against the High Court order setting aside the reassessment notice issued u/s 148, holding that since the question as to how and to what extent deduction should be allowed u/s 10A was well considered in original assessment proceedings itself, initiation of re-assessment proceedings u/s 147, merely because of fact that now the AO was of view that the said deduction was allowed in excess, was based on nothing but a change of opinion. It also held that before interfering with proposed re-opening of assessment on the ground that same was based only on a change of opinion, the Court ought to verify whether the AO in the assessment earlier made had either expressly or by necessary implication expressed an opinion on a matter which was basis of alleged escapement of income. Further, it held that if assessment order was non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on questions that were raised in the proposed re-assessment proceedings. But every attempt to bring to tax income that has escaped assessment, could not be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in re-assessment proceedings.

ITO v TechSpan India (P.) Ltd - [2018] 92 taxmann.com 361 (SC) - CIVIL APPEAL NO. 2732 OF 2007 dated April 24, 2018

1386. In the assessment order passed u/s 143 (3), the AO accepted assessee's contention that the business of assessee-company, carrying on activity of mushroom farming was an agricultural activity. However,the AO issued notice u/s 148 for reassessment for the reason that there was escapement of income referring to the CBDT Circular dated 14-06-1979 [which holds the assessee liable to tax by providing that mushroom farming was not exempt u/s 10(1)]. The CIT(A) upheld AO's order. The assessee contended both in reply to reasons as well as in the said petition that the circular was not binding on the assessee as it had lost its efficiency and was substituted by another circular dated 27.03.2009 [which widens the scope of agricultural income] The Court held that the AO lacked jurisdiction for reopening of assessment on the grounds that (1) the CBDT circular, though binding on revenue was not a tangible material to be regarded as reason to reopen assessment (2) Assuming that the CBDT Circular dated 14-06-1979 was a tangible material, the assessee had rightly stated that the said Circular was inefficient and thus not relevant. Thus, the Court quashed the notice issued u/s 148.

Zuari Foods and Farms Pvt. Ltd. v ACIT (2018) 101 CCH 0292 MumHC - WRIT PETITION NO. 1001 of 2017 dated 11.04.18

1387. Where the AO initiated reassessment proceeding in the case of the assessee on the ground that its shares were purchased by fictitious companies, in view of the fact that the assessee had produced voluminous documents from public offices which maintained records of those companies as well as assessment orders passed in case of said companies, the High Court quashed the reassessment proceeding on the ground that the assessee had proved the genuineness of the share transactions. The Apex Court did not find any ground to interfere with the order of the High Court and thereby dismissed the Revenue's appeal.

PCIT v. Paradise Inland Shipping (P.) Ltd. – [2018] 93 taxamnn.com 84 (SC) – Special Leave Petition (Civil) Diary No (s). 12644 of 2018 dated April 23, 2018

1388. The assessee was engaged in trading in shares through his broker and claimed a trading loss of a certain amount during the relevant assessment year. In a survey conducted by the PDIT u/s 133-A at the premises of twelve brokers, it was found that Client Code modification (CCM) was used as a tool for tax evasion and the broker of the assessee was one of them. The AO, on the basis of the above information, issued a notice under Section 148 to the assessee after obtaining necessary satisfaction of the Principal Commissioner. In response to the notice, the assessee filed a writ petition contending that the notice was issued by the AO merely upon borrowed satisfaction without application of mind. The Court dismissed the assessee's petition held that there were several details pertaining to alleged sham transactions between the assessee and his broker which showed that within a period of nine months,

there were 74 modifications and it was necessary to ascertain whether these were inadvertent errors or were deliberate adjustments from broker's other clients. Based on such facts, initiation of impugned reassessment proceedings under Section 148 by the AO against the assessee was justified.
Rakesh Gupta v. CIT – [2018] 93 taxmann.com 271 (Punjab & Haryana) – CWP No. 27068 of 2016 dated April 27, 2018

1389. The assessee was a company engaged in Investment and trading in shares and debentures. The assessee filed its return declaring a loss which was processed u/s 143(1). The assessment was subsequently reopened by the AO by issuing a notice under Section 148 on the basis of an intimation received from DDIT (Inv.) about Mahasagar Securities Pvt Ltd. entering into suspicious transaction. The High Court dismissed the appeal of the Revenue and held that the re-opening notice had to be issued by the AO on his own satisfaction and not on borrowed satisfaction and stated that the action of the AO was clearly in breach of settled position of law. The Court further held that the intimation received from DDIT (Inv.) only mentioned that Mahasagar Securities Pvt Ltd. was engaged in suspicious transaction but contained no further indication as to how the assessee was linked to the activities of Mahasagar Securities Pvt Ltd. Accordingly, the reassessment order was set aside and the appeal was dismissed.
PCIT v. Shodiman Investments (P.) Ltd. – [2018] 93 taxamnn.com 153 (Bombay) – IT Appeal No. 1297 of 2015 dated April 16, 2018

1390. The AO made addition in assessee's income u/s 68(Unexplained Cash Credit) for AY 2012-13 stating that the assessee failed to produce corroborative evidence for introduction of capital amount and to co-relate trail of funds. The CIT(A) allowed assessee's appeal holding that the Capital was introduced in FY 2009-10 and 2010-11 and that the AO could only take cognizance of matter by way of initiating suitable proceedings. Thus, the ITO issued notice u/s 148 to the assessee for reopening the assessment and passed order holding that the income had escaped assessment. The assessee challenged the reassessment on the ground that proper reasons were not given. However, the Court observed that since the ITO had made it clear that that assessee did not file its returns of income for AY 2010-11 and 2011-12 and therefore, there was no opportunity to verify transactions claimed to have been made in those years. Further, the assessee was not maintaining any bank account and failed to furnish any other proof to establish link between capital introduced and its withdrawals for purpose of investments. Thus, the Court held that the reasons stated in notice issued u/s 148 were valid and the reopening of assessment was justified.
Alfa Investments v ITO (2018) 167 DTR 0095 (Mad) - W.A.Nos. 1438 and 1439 of 2017 and CMP Nos. 19350 and 19351 of 2017 dated 10.04.18

1391. AO got information that assessee had deposited an amount in saving bank account during FY 2007-08 & thus wrote a letter to assessee requesting him to explain source of cash deposits in bank account. According to AO, this letter was not replied with, hence assessment was reopened and notice u/s 148 was issued. AO passed exparte assessment u/s 144 r.w.s. 147 and recorded a finding that amounts were deposited in Bank on various dates and made addition with aid of section 68 on account of unexplained cash credit in hands of M who was deceased. CIT(A) upheld order of AO. The assessee contended that M had passed away which the AO had the knowledge of and despite that the AO didn't try to locate his legal heirs and issue notice to them. The Tribunal held that 'assessee' means a person by whom a tax is payable under this act & included every person who was deemed to be the assessee. However, in this case the notice was issued to a deceased who ceased to be called as an 'individual'. Thus, the Tribunal observed that the issuance of valid notice was the very foundation of validity of reassessment which was deviated in this case and quashed the reassessment proceeding.
Ishwarbhai Maganbhai Desai (2018) 52 CCH 0374 AhdTrib - ITA No. 90/Ahd/2017 dated 23.04.18

1392. Assessee was an individual and its assessment was completed u/s 143(3) for AY 2007-08 after making an addition towards long term capital gains and after allowing deduction u/s 54 EC towards investments in REC bonds. AO observed that the flat was sold within three years of acquisition and thus the exemption u/s 54EC was not allowable as gain on transfer of asset was STCG. AO was of opinion that income had escaped assessment and issued notice u/s 148 for reopening of assessment on 17.7.2013 i/e 4 years from the end of the relevant AY. CIT(A) confirmed order of AO. However the Tribunal followed CIT Vs Arvind Remedies Ltd and held that AO failed to record anywhere his satisfaction/ belief

that income chargeable to tax had escaped assessment on account of failure of assessee to disclose truly and fully all material facts necessary for assessment. On contrary, it was AO who had failed to consider materials placed before him at time of regular assessment and thus the re-assessment was set aside.

Late Kolisetty Nagesware v ITO (2018) 52 CCH 0417 HydTrib - ITA No. 1220/Hyd/2017 dated 20.04.2018

1393. After the original assessment u/s 143(3) was completed, the AO had reopened the assessment u/s 147/ 148 on subsequently finding that the assessee had set off excess application of income brought forward from previous AY against the current year's receipts/ income. It was noted that the claim of set off was available on record before the AO when fresh assessment u/s 143(3) was made. Accordingly, relying on the decision in the case of TANMAC India v. DCIT [Tax Case (Appeal) No.1426 of 2007 (Mad)] the Tribunal held that since the entire material was available before the AO during the original assessment, in absence of any new material, the AO could not reopen assessment u/s 147. Thus, it held that the consequential order passed by the AO could not stand.

DCIT & Anr v The Willingdon Charitable Trust & Anr (2018) 52 CCH 0349 ChenTrib - TA Nos. 2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018

1394. The AO initiated reassessment proceedings u/s 147 on the ground of income escaping assessment. The assessee made a specific written request to the AO to supply reasons for believing that the income had escaped assessment but the AO failed to furnish the same. The AO made certain addition u/s 56(2)(vii). On appeal, the CIT(A) did not adjudicate the ground of non-supply of reason raised by the assessee but decided the issue on merits in favour of the assessee. In response to the Revenue's appeal, the assessee filed cross-objection challenging the non-supply of reasons recorded by AO. The Tribunal followed GKN Driveshafts (Supra) wherein it was held that AO was bound to furnish reasons within reasonable time and on receipt thereof, noticee was entitled to file objections to issuance of notice and also AO was bound to dispose of same by passing speaking order. The Tribunal held that non-supply of reasons to assessee was in direct violation of 'GKN Driveshafts', debarring the assessee from exercising his legal right to file objections against issuance of reassessment notice and since reasons recorded by AO to form belief of escapement of income were not communicated to assessee despite specific written request, proceedings initiated u/s 147 culminating in assessment order were illegal.

ITO & Anr v Rishi Godani & Anr (2018) 52 CCH 0335 AgraTrib - ITA No. 493/Agra/2015 dated 16.04.2018

1395. The assessee had sold a property and offered to tax Long Term Capital Gain thereon. The AO however reopened assessment u/s 147 r/w s.143(3) and adopted the valuation as per the stamp valuation authority for the said property as on the date of sale, thereby making addition. CIT(A) upheld AO's order. However, the Tribunal observed that reopening had been made to meet objections raised by audit party and it was also not disputed that assessment was reopened after four years from end of relevant assessment year and no approval u/s 151 was placed on record. Thus, the Tribunal held that since assessee had placed before AO all relevant material during original assessment proceedings, and under these undisputed facts, action of AO was contrary to settled law, which demonstrated that AO had not applied his mind independently, assessment order was to be quashed being contrary to law.

Rama Goyal v ITO (2018) 52 CCH 0522 JaipurTrib - (2018) 52 CCH 0522 JaipurTrib dated 12.04.2018

1396. The AO issued reopening notice u/s 148 on receipt of information from Investigation Wing that certain persons called 'beneficiaries' had resorted to money laundering by giving unaccounted cash to entry operators and in turn taking from them cheques/DDs in garb of share application money or sale proceeds of non-existent goods thereby ploughing back to undeclared cash into accounts or business. The AO passed the reassessment order inter alia making addition on account of share application money received. The CIT(A) upheld AO's order. The Tribunal observed that the Investigation Wing had not analyzed transaction of accommodation entries prior to AY 2005-06 whereas present case pertained to AY 2004-05 and even the order of AO did not reveal that he had undertaken any such exercise before recording of reasons. Further, reasons recorded did not specify other party who either

received or provided accommodation entries and they also did not establish involvement of assessee in information unearthed by Income-tax Department in respect of huge money laundering mechanism. Thus, the Tribunal held that re-opening was bad in law as the satisfaction of AO was not based on any sound reasoning and thus the order passed by the AO was not legal or binding.
Meta Plast Engineering Pvt. Ltd. v ITO (2018) 52 CCH 0353 DelTrib - ITA No. 5780/Del/2014 dated 06.04.2018

1397. The Tribunal dismissed assessee's appeal against the initiation of reassessment proceedings by the AO where the reopening notice was issued based on receipt of information from DGIT (Investigation) stating that the assessee had obtained accommodation entries of bogus purchase bills from one company. It was noted that on receipt of the information, the AO had analyzed the same and after matching the same from the website of Sales Tax Department came to conclusion that the certain purchases made by the assessee were non-genuine. The Tribunal held the AO had reasons to believe for income escaping assessment (which was a condition precedent for reopening assessment) since the AO received tangible material from appropriate authority and had applied its mind on information received.In the reassessment order passed by the AO, he had also made addition u/s 68 on account of receipt of share application money/ share capital/ share premium. In this regard, it was noted that that no tangible material / information was available with the AO qua this item either at the time of initiation of proceedings or during reassessment proceedings suggesting factum of escapement of income. Thus, Tribunal accepted assessee's contention that the AO could not make fishing and roving enquiries to unearth new grounds of addition which wasn't the subject matter for initiating reassessment proceedings. It deleted the said addition, holding that the AO could not assume jurisdiction with respect to independent and unconnected items without any tangible material or information suggesting escapement of income which was the basic requirement of section 147.
Juliet Industries Limited & Anr v ITO & Anr (2018) 52 CCH 0278 MumTrib - ITA No. 5452/Mum/2016, 5975/Mum/2016 dated 04.04.2018

1398. The Court held that where during scrutiny assessment AO carried out minute possible detailed inquiry with respect to cash purchases of raw cotton from individual farmers and assessee had produced every person who AO required for purpose of ascertaining factum of sale, reopening of assessment after four years for further inquiry was justified.
Jaydeep Cotton Fibres (P.) Ltd. v ACIT [2018] 95 taxmann.com 227 (Gujarat) – SPECIAL CIVIL APPLICATION NO.20187 OF 2017 dated 09.04.18

1399. AO issued a notice under section 148 seeking to reopen assessment.Reason recorded for reopening assessment was that a search was carried out in case of 'V' Group engaged in transactions of purchase and sale of land and in course of search proceedings, certain documents were seized showing that the assessee had purchased four parcels of land from 'V' Group for which assessee had paid a part of purchase consideration in cash which was not recorded in her books of account. Assessee's objections to initiation of reassessment proceedings were rejected. Since the assessee failed to rebut material brought on record by AO such as cash vouchers, summary of sale deed etc. and, moreover, original return filed by her was accepted without scrutiny,a case for reopening of assessment was clearly made out and therefore, the Court dismissed the petition filed by assessee.
KiranRavjibhaiVasani v ACIT [2018] 94 taxmann.com 354 (Gujarat) – R/SPECIAL CIVIL APPLICATION NOS. 16385 OF 2017 dated 02.04.2018

1400. Where reassessment notice under section 148(1) was issued against assessee after expiry of period of limitation at old address of assessee which was already changed by assessee before date of issuance of said reassessment notice in official record by updating PAN data base, the Court held that there was no service of reassessment notice upon assessee and thus quashed the reassessment proceedings.
Ardent Steel Ltd. v ACIT p2018] 94 taxmann.com 95 (Chhattisgarh) – WP (T) NO. 168 OF 2016 dated 04.05.2018

1401. Where the original assessment was completed u/s 143(1) and the reassessment proceesings were initiated on basis of information received from Investigation wing that assessee had received certain

amount from shell companies working as an accommodation entry provider, the Court held that reassessment could not be held unjustified.
Amit polyprints (P.) Ltd. v DCIT [2018] 94 taxmann.com 393 (Gujarat) – SPECIAL CIVIL APPLICATION NOS. 22489 AND 22514 OF 2017 dated 07.05.2018

1402. The Court held that where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment along with reasons recorded by AO for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified
BaldevbhaiBhikhabhai Patel v DCIT [2018] 94 taxmann.com 428 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 21092 OF 2017 dated 09.05.2018

1403. The Court held that where the AO accepted loss declared by assessee on sale of immovable property in which she was one of co-owners, he could not reopen assessment subsequently on ground that in case of another co-sharer of same property, AO had disputed value and referred question to DVO and, on basis of valuation so presented, he had computed certain capital gain.
KalpanaChimanlal Shah v ITO [2018] 94 taxmann.com 252 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 5670 OF 2018 dated 09.05.2018

1404. The assessee was issued notice u/s 148 r.w S.147 by registered post and through inspector of Department. The assessee did not file the return in response to the said notice albeit their director "R" appeared before the AO and upon R's request, reasons recorded for issue of notice and a copy of notice u/s148 was furnished to R. Further, best judgement assessment was completed where additions were made and CIT(A) confirmed the said addition. In the appellate proceeding, the assessee for the first time raised a plea of improper service u/s 282(2) stating that the notice was served by the inspector to the security guard at the factory premises of the assessee and the Tribunal accepted the assessee's plea and quashed the assessment. However, the Court dissented with the Tribunal's view on the reasons that (i) The notice was served by Registered Post as well, which is the prescribed mode of service (ii) S.282(2) is to ensure compliance of principles of natural justice and not for finding fault and held that it was clear that the of notice was served by making the assessee aware of the initiation of proceedings and thus the notice u/s 148 r.w S.147 was valid. However, for the purpose for adjudicating the matter on merits, the Court remanded the matter back to the Tribunal.
CIT v Sudev Industries Ltd. [2018] 94 taxmann.com 373 (Delhi) – ITA NO 805 OF 2005 dated 31.05.2018

1405. The AO made addition on account of two out of four reasons recorded in the notice as reasons for re-opening assessment u/s 148 r.w s.147and no addition was made with respect to the other two reasons which were initially(originally) stated in the said notice. The assessee, relying on Travancore Cements Ltd. v. Asstt. CIT [2006] 4 KLT 344, contended that only if all recorded reasons end in assessment of escaped income, there can be assessment made on issues of escapement detected during course of re-opening. However,the Court, relied on the decision in the case of CIT v. Jet Airways (I) Ltd. [2010] 331 ITR 236 (Bom.) wherein it was held that the decision of Travancore was rendered prior to the insertion of Explanation 3 (which provides that the AO can assess or re-assess the assessee' s income on any issues other than those forming part of reasons for reopening). It held that the present case was not the one wherein addition was made on the issues not originally recorded u/s 148(2) and two of the reasons recorded did conclude in assessment of escaped income. Accordingly, it decided the above issue in favour of the Revenue. However, noting that the AO had only made certain changes in the apportionment of sales of the various business units of the assessee while re-computing the deduction allowable u/s 80IA, during the reassessment proceedings and the said issue on merits was decided in favour of the assessee by the Court in the assessee's own case for another assessment year, it held the reassessment proceedings to be incomplete since it was based on mere change of opinion against the binding precedent of other AY.
CIT v MalayalaManorama Co. Ltd [2018] 95 taxmann.com 136 (Kerala) – ITA NO 26 OF 2010 dated 29.05.2018

1406. In the Original Assessment, the assessee (tea trader) incurred loss which was allowed by the AO and the relevant facts and materials were disclosed fully. The AO reopened the assessment after 4 years stating that as the assessee sold tea which was grown in its own plantation, it would be Agricultural Income and would be liable to be excluded from the loss. As the reassessment was initiatied without detection of new facts and only for the application of Rule 8 (which provides that 40% of the income derived from sale of tea grown and manufactured in India is deemed to be income liable to tax), the Court held that the reassessment was invalid as reassessment proceeding u/s 147 could be permitted after 4 years only on failure on part of the assessee, to disclose materials facts and there was no such failure in the instant case.
CIT v Parry Agro Industries Ltd. [2018] 95 taxmann.com 100 (Kerala) – ITA NO. 1123 OF 2009 dated 23.05.2018

1407. The AO, noticing that the income chargeable to tax had escaped assessment, initiated reassessment u/s 147 to which the assessee raised objection. Without disposing the objection, the AO proceeded to pass the reassessment order. Aggrieved, the assessee had challenged the reassessment order before the High Court on the ground that AO failed to observe the directions to be followed & violated the law declared by the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 wherein it was held that the AO should pass a speaking order taking into account the assessee's objections against the re-opening. The High Court had however held that the non-compliance of procedure indicated by the SC would not render the reassessment order void but such a violation was a procedural irregularity which could be cured by remitting matter to the authority. Accordingly, the matter was remitted back to lower authority. The SLP filed by the assessee against the said High Court's order was dismissed by the SC.
Home Finders Housing Ltd. v ITO [2018] 94 taxmann.com 84 (SC) – SPECIAL LEAVE TO APPEAL (CIVIL) NO 12721 OF 2018 dated 18.05.2018

1408. The AO had not furnished a copy of "reasons to believe" for reopening assessment after issuing notice u/s 147/148, even after the assessee had requested the AO twice for the same. The reassessment proceeded and the AO made several additions which included additions made on grounds other than those included in the "reasons to believe" u/s 147/148. Aggrieved, the assessee relied on Ranbaxy Laboratories Ltd. v. CIT which enunciated the rule that if reassessment proceedings did not culminate in an order making additions of the amounts relatable to the reassessment notice, and rather additions are made of amounts on other issues, the reassessment order would be invalid. The Revenue on the other hand relied on N. Govinda Raju v. ITO wherein it was held that the AO can even assess income with respect to "any other income" which comes to his notice subsequently during course of proceedings. The High Court, in the present case, held that despite there being a failure on part of AO on not adhering to assessee's request to furnish the copy of "reasons to believe", it could not per se invalidate the assessment proceedings. However, it further held that since different views were taken by High Courts in the above two cases, it was appropriate to refer the case to the larger Bench for reason that there was some doubt as to inaccuracy of interpretation of section 147 r.w.Expln.3. The SLP filed by the assessee against High Court's order referring the matter to the larger bench was dismissed by the SC.
Jakhotia Plastics (P.) Ltd v PCIT [2018] 94 taxmann.com 96 (SC)SPECIAL LEAVE TO APPEAL (CIVIL) NO 12622 OF 2018 dated 18.05.2018

1409. The Apex Court dismissed the SLP filed against the order of High Court wherein it was held that the notice for reassessment for AY 2006-07 issued by the AO based on the assessment order passed for AY2005-06 despite being aware of the order of CIT(A) setting aside the assessment order (before issuing such notice), was invalid since, in such circumstance, the AO could not have any reason to believe that income chargeable to tax had escaped assessment relying to the order of AY 2005-06.
DCIT v Atomstroyexport [2018] 95 taxmann.com 260 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 19055 OF 2017 dated 17.05.2018

1410. The AO had found one sauda chitthi (signed by assessee) during search that purportedly disclosed that one land was sold at a higher price for which the sale deed was executed at a lower consideration and the balance amount was received by the assessee in cash. Thus, the AO issued reassessment notice to add the balance amount to the assessee's income. However, noting that the assessee wasn't the owner of the land and the sale deed was executed by original owners, the High Court held that there was no tangible material available on record to form a reasonable belief that the amount was received by assessee in cash and accordingly had set aside the reassessment notice. The Department's SLP filed against the said order of the High Court was dismissed by the SC.
DCIT v Alpesh Gokulbhai Kotadia [2018] 95 taxmann.com 108 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 13051 OF 2018 dated 16.05.2018
DCIT v VinodbhaiShamjiRavani [2018] 94 taxmann.com 246 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 13518 OF 2018 dated 16.05.2018

1411. The assessee, engaged in Computer Training and Software Development, made project exports to certain parties and claimed exemption u/s 10A (being in free-trade zone) on the profit. The said claim, which was supported by the Auditor's certificate and report, was duly accepted as per intimation issued u/s 143(1). However, the AO issued a notice to assessee u/s 148 based on the statement made by the Auditor that till date of signing of Report, certain amount against the projects exports remained unrealized. During the course of proceeding, the assessee filed supplementary Auditor's report claiming the profit from software export at the reduced figure due to sales return against project export (thus, claiming the unrealized amount to be the sales return).The AO without accepting the claim of sales return took the net profit at the original figure but reduced exemption under section 10A by the amount in question. On appeal, the CIT(A) directed the AO to reconsider and compute the net profit. The order of the CIT(A) was upheld by the Tribunal. The Court held that the AO's approach of reducing exemption of profit u/s 10A by detaching it from the reduction in sales figure on account of sales return, could not be done in isolation. Further, it relied on the CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) and CIT v. Sun Engineering Works (P.) Ltd. [1992] 198 ITR 297 (SC) wherein it had been held that the AO can reassess but cannot review and held that since the exercise that resulted in the intimation issued u/s 143(1) was done on the basis of material and evidence then available, it could not be said that the assessee's income had escaped assessment to tax. Accordingly, it dismissed the revenue's appeal.
CIT v L. C. C Infotech Ltd.[2018] 94 taxmann.com 117(Calcutta)- ITA NO 16 OF 2017 dated 11.05.2018

1412. The AO reopened the assessment as the assessee had not furnished source of investment towards purchase of property. The assessee objected that though the said property was purchased in his name, but the same was purchased in the capacity of trustee / agent. The AO disposed-off the objections after due consideration and held that since no documentary evidences were submitted, the said investment made by assessee had escaped assessment. On writ petition, the Court held that initiation of reassessment by issue of notice under Section 148 of the Act was justified where AO was of the view that assessee's income has escaped assessment.
Chandra Mohan Tiwari vs. ITO – [2018] 102 CCH 0001 (Allahabad High Court) – Writ Tax No. 572 of 2018 dated May 2, 2018

1413. The AO reopened the assessment only on the basis of information (copy of lease deed) received from the Investigation Wing. The Court quashed the reassessment proceedings as such information was already available on record with the AO during the assessment proceedings under Section 143(3) and that the 'reasons to believe' did not establish any live nexus that income had escaped assessment. Accordingly, the Court held that AO could not re-examine the issue already examined in assessment under Section 143(3) of the Act.
Meadow Infradevelopers Private Limited vs. ITO – [2018] 102 CCH 0003 (Delhi High Court) – W.P.(C) 11554/2017 dated May 1, 2018

1414. Pursuant to information received from the Value Added Tax Department that assessee was one of the beneficiaries in hawala transactions, the AO reopened the assessment proceedings for the year under review on the ground that information regarding purchases made by the assessee from such Hawala

dealers 'needed deep verification'. The Court quashed the reassessment proceedings and held that reopening of assessment would not be permitted for a fishing or a roving inquiry.
PCIT vs. Manzil Dineshkumar Shah – [2018] 102 CCH 0008 (Gujarat High Court) – TAX APPEAL NO. 451, 457,458 of 2018 dated May 7, 2018

1415. Pursuant to information received from the Investigation Wing that assessee was one of the beneficiaries in bogus Long Term/Short Term Capital Gain and bogus gifts etc. (Hawala Entries) the AO reopened the assessment proceedings. The Tribunal quashed such proceedings and held that as there was no independent application of mind by AO to tangible material which forms basis of reasons and the reasons fail to demonstrate link between tangible material and formation of reasons to believe escapement of income, such reasons recorded by AO for reassessment were to be considered as unsustainable.
Manoj Kumar Jain vs. ITO – [2018] 53 CCH 0009 (Agra ITAT) – ITA No 277/Agr/2017 dated May 4, 2018

1416. Pursuant to information received from the Investigation Wing, that assessee has received bogus share capital from paper entities, the AO reopened the assessment proceedings and made addition under Section 68. The Tribunal upheld the CIT(A) order deleting the said addition, on the following grounds:

i. There was no specific evidence which could constitute tangible or relevant material to issue notice under Section 148

ii. Notice under Section 148 was issued by the AO mechanically

iii. AO did not apply his mind or make any independent enquiry on the documentary evidences received so as to give rise to a bonafide belief that income of assessee had escaped assessment

iv. No enquiries were confronted to the assessee despite specific request

v. Bank statement of the assessee duly established that the transaction was through banking channel and the said fact was neither denied nor disputed

ACIT vs. Madhusudan Packaging Pvt. Ltd. – [2018] 53 CCH 0021 (Delhi ITAT) – ITA No 4930 of 2017 dated May 9, 2018

1417. The AO issued notice under Section 148 of the Act for reassessment holding that income of assessee had escaped assessment. The CIT(A) upheld order of AO. Tribunal held that since this was a second reopening of assessment beyond period of four years from end of the Assessment Year and since the AO did not allege that assessee had failed to disclose fully and truly material facts necessary for completion of assessment, re-opening of assessment was bad in law as it did not fulfill requirement of the Proviso to Section 147 of the Act and also, no tangible material came to possession of the AO. Thus, re-assessment proceedings were quashed and the Assessee's appeal was allowed.
CYGNUS INVESTMENTS & FINANCE PVT. LTD. vs. ACIT (KOLKATA TRIBUNAL) (ITA No. 117/Kol/2018) dated May 18, 2018 (53 CCH 0053)

1418. Based on search and seizure operations conducted on the assessee, the AO issued a notice under Section 148 of the Act to the assessee after four years from the end of the Assessment Year. CIT(A) held that reopening of assessment was bad in law. Tribunal held that since the AO did not allege that there was failure on part of assessee to truly and fully disclose all material facts which were necessary for assessment, re-opening of assessment was bad in law as the mandatory requirements of the proviso to Section 147 were not fulfilled. Thus, reassessment proceedings were quashed and the Revenue's appeal was dismissed.
ACIT vs. ADHUNIK CEMENT LTD. (KOLKATA TRIBUNAL) (ITA No. 1375/Kol/2017) dated May 18, 2018 (53 CCH 0179)

1419. Assessee individual, filed his return of income declaring income from commission and salary. Assessment was completed under Section 143(3) r.w.s. 153C of the Act. Subsequently, assessment was re-opened under Section 147 of the Act after expiry of four years from the end of the relevant assessment year and the AO made addition under Section 68 of the Act in respect of cash credit. CIT(A) upheld the order of the AO. The Tribunal held that since the notice under section 148 was

served after the expiry of four years from the end of the relevant assessment year, the AO should have obtained the prior approval of CIT. In absence of such approval, Tribunal held that the notice was invalid and all subsequent actions thereto were also void and that violation of mandatory provision provided under statute could not be validated by resorting to 292B or 292BB. Thus, re-assessment proceedings were quashed and the Assessee's appeal was allowed.
ASHOK BALDEVBHAI PATEL vs. ACIT (BOMBAY TRIBUNAL) (ITA No. 787/Mum/2014) dated May 8, 2018 (53 CCH 0150)

1420. The AO reopened the assessment and made an addition under Section 68 of the Act. The CIT(A) upheld the order of the AO. The Tribunal observed that as per *Notification No. 9579 dated August 5th,1994*, only the AO in Dehradun had jurisdiction for assessment under the Act in the case of the Assessee and accordingly, notice issued under Section 148 by the AO in Mumbai for reopening the assessment was not valid and hence the consequent re-assessment was void-ab-initio and was liable to be quashed. Thus, the Assessee's appeals were allowed.
MYUNG HWAN LEE vs. ADIT (IT) (DELHI TRIBUNAL) (ITA No.2100/Del./2016 & 2101/Del./2016) dated May 25, 2018 (53 CCH 0082)

1421. The assessee filed his return of income pursuant of issuance of notice u/s 148 declaring agricultural income and prior to that no return of income was filed. The AO re-opened the assessment in view of the information available that the assessee had earned capital gains on sale of land and had unexplained deposits in assessee's bank account maintained with PNB which had escaped taxation. The AO made addition in respect of the same and completed assessment under Section 147 of the Act. The CIT(A) upheld the order of the AO. With respect to sale of land, the Tribunal held that there was lack of nexus between the material and formation of prima-facie belief that income had escaped taxation for the impugned AY, as the AO had not examined the sale deed (being the relevant material) which showed that the capital gains was earned in the subsequent year and not in the present year. It thus held that re-assessment proceedings could not have been initiated against the assessee on this reason / ground. However, the Tribunal upheld the reassessment on the second ground i.e. unexplained deposit in bank account, in view of non-filing of return of income by the assessee.
JAGDISH NARAYAN SHARMA & ORS. vs. ITO & ORS. (JAIPUR TRIBUNAL) (ITA No. 751/JP/2015, 752/JP/2015, 753/JP/2015) dated May 25, 2018 (65 ITR (Trib) 0194)

1422. The assessee filed his return of income which was processed under Section 143(1) of the Act. Thereafter, the AO re-opened the assessment in view of the information available that the *assessee had purchased farm house land for which excess money, over and above amount mentioned in registered deed, was paid by purchasers.* The AO made addition in respect of the same and completed assessment under Section 147 of the Act. The CIT(A) upheld the order of the AO. The Tribunal quashed such re-assessment proceedings for the following reasons

i. AO mechanically issued notice under Section 148 of the Act on basis of information allegedly received by him from DCIT
ii. Approval granted by competent authority was mechanical approval
iii. There was no allegation in reasons recorded that there was failure on part of assessee to disclose fully and truly all material facts necessary for assessment under Section 147
iv. Notice under Section 148 of the Act was issued after four years from end of assessment year in case where assessment had been framed
v. Reasons recorded did not constitute valid reason to believe for initiating proceedings under Section 147 of the Act

SUNIL AGARWAL vs. ITO (DELHI TRIBUNAL) (ITA No. 988/Del/2018) dated May 24, 2018 (53 CCH 0090)

1423. Relying on the assessee's own case before the Delhi Tribunal in ITA No. 2676/Del/2010, dated August 8, 2013, the Tribunal held that as per statutory scheme and provisions, during pendency of proceedings under Section 153A of the Act, the AO was not empowered to issue notice under Section 147/ 148 of the Act and hence the notice initiating re-assessment being illegal, the re-assessment proceedings could not be sustained. Accordingly, the Assessee's appeal was allowed.
VIPUL MOTORS PVT. LTD. vs. ACIT (DELHI TRIBUNAL) (ITA No. 5217-18/Del/2013) dated May 23, 2018 (53 CCH 0076)

1424. The assessee company was engaged in the business of running hospital at Pune. During the course of assessment proceedings, the AO made ad-hoc disallowance under Section 14A of the Act and thereby computed / assessed loss of the Assessee. Thereafter, the AO reopened the assessment and made certain disallowances. The CIT(A) upheld the order of the AO. The Tribunal observed that the AO failed to provide copies of the reasons recorded to the assessee despite written requests and that there was no tangible material to support reasons relied on by AO in re-assessment proceedings. Accordingly, the Tribunal directed the CIT(A) to pass a speaking order stating the grounds supporting the validation of the re-assessment proceedings. Accordingly, the Assessee's appeal was allowed for statistical purposes.
ADITYA BIRLA HEALTH SERVICES LTD. vs. DCIT (PUNE TRIBUNAL) (ITA No.248/PUN/2015) dated May 23, 2018 (53 CCH 0077)

1425. The assessee, a Real Estate Promoter, filed his return of income as nil for the relevant assessment year which was passed by the AO u/s 143(3). The AO invoked section 147 and issued a notice u/s 148 to the assessee. Pursuant to the request made by the assessee, the AO furnished the reasons for invoking Section 147 and ultimately passed the reassessment order but failed to dispose off the objections of the assessee that were submitted on receipt of the reasons furnished by the AO for invoking Section 147. The assessee challenged the order before the High Court on the ground that by not passing a specific order after receiving objections, the AO violated the law laid down by the SC in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 and resultantly the order was bad in law. The issue, whether the non-compliance of a procedural provision would ipso facto make the assessment order bad in law, was answered by the HC in the negative and subsequently held that such a violation in the matter of procedure was only an irregularity which could be cured by remitting the matter to the authority and accordingly decided the matter in favour of the Revenue.
Home Finders Housing Ltd. v. ITO – [2018] 93 taxmann.com 371 (Madras) – W.A. No. 463 of 2017 dated April 25, 2018

1426. Where the assessment u/s 143(3) was completed by taking cost of construction of building on the basis of expert approved valuer, the Court held that reopening of assessment after about seven years on the basis of report of departmental valuer would amount to change in opinion and accordingly decided in favour of the assessee by holding that the report of the Departmental valuer was inconclusive and could, at best, be treated as an opinion.
CIT v. P. Nithilan – [2018] 93 taxmann.com 435 (Madras) – Tax Case (Appeal) No. 834 of 2008 dated April 4, 2018

1427. The assessee filed its return for the relevant year claiming deduction u/s 80M and the assessment was completed u/s 143(3). The AO reopened the assessment after four years on the ground that the assessee had failed to reduce expenditure incurred in earning dividend income to the extent of 5 percent of gross dividend income which resulted in excess claim of deduction. The Court noted that the issue raised by the AO was a factual issue which was subject matter of consideration while passing order u/s 143(3). The Court further noted that there was a true and full disclosure by the assessee during the regular assessment proceeding and held that it was a case of change of opinion and accordingly allowed the petition of the assessee.
ITC Classic Finance Co. v. V. Nagaprasad – [2018] 93 taxmann.com 393 (Bombay) – W.P. No. 2029 of 2000 dated April 10, 2018

1428. The assessee had filed the return for the relevant assessment year and the assessment order was passed u/s 143(3). The AO, after a period of four years initiated reassessment proceedings on the ground that the assessee had received External Development Charges (EDC) from land developers which was not offered for tax by the assessee but was instead shown as liability in the balance sheet under the head 'other liabilities'. A petition was filed by the assessee challenging the validity of the reassessment proceedings. The Court dismissed the petition and stated that the issue relating to the taxability of EDC was not considered by the AO at the time of assessment and there was no disclosure of any material relating to EDC mentioned by the assessee during assessment. Accordingly, the Court

upheld the validity of the reassessment proceedings and stated that the reopening of the assessment was not based on change of opinion.
Greater Mohali Area Development Authority v. DCIT - [2018] 93 taxmann.com 441 (Punjab & Haryana) - CWP NO. 26125 OF 2017 (O&M) dated APRIL 27, 2018

1429. The assessee, a family trust, declared nil income for the relevant assessment year. The assessment was completed u/s 143(3) but was subsequently reopened u/s 147 by the AO. During reassessment, the assessee-trust was assesseed in status of AOP and at a total income of Rs. 67,14,805/- was computed at the maximum marginal rate by the AO who further held that the trust property belonged to the trust and not to the beneficiaries and though the shares of the beneficiaries were definite in the trust, they were not the co-owners of the trust property. The CIT (A) confirmed the action of the AO in taxing the rental income in the hands of the assessee-trust and subsequently, an appeal was preferred by the assessee before the Tribunal. The Tribunal held that the share of income from the trust which devolved on the beneficiary had to be treated as the income of the beneficiary. The Tribunal further held that the tax on share of each beneficiary was to be separately calculated as if it formed part of the beneficiary's income and the tax payable by the trust was the sum total of tax calculated on the share of each beneficiary. Accordingly, the reassessment order was set aside and the appeal of the assessee was allowed.
Abad Trust v. ADIT - [2018] 93 taxmann.com 214 (Cochin - Trib.) - IT APPEAL NO. 193 (COCH.) OF 2016 dated APRIL 19, 2018

Rectification

1430. The assessee filed a Nil return under Section 139 of the Act claiming carry forward of losses based on which it claimed a refund which was granted to it. The AO then passed a rectification order under Section 154 of the Act denying the assessee its claim of TDS which was annulled by the CIT(A) pursuant to which the AO initiated reassessment proceedings and estimated the net profit from the assessee's project at the rate of 5.5.% of the cost of project incurred during and also made certain other disallowances on account of computer expenses, the disallowance under section 40A(3) of the Act, Transfer Pricing Adjustment and addition of Interest income. The addition made pursuant to reassessment proceedings was deleted by the CIT(A) and also the Tribunal. Subsequently, the AO invoked Section 154 to disallow the assessee's claim of carry forward of losses. The Tribunal held that once it had settled the issue upholding the decision of CIT(A), nothing remained for rectification under section 154 of the Act for the Assessing Officer and accordingly held that the AO was not justified in invoking Section 154 to deny the assessee's claim of carry forward of losses.
ACIT v INTERNATIONAL METRO CIVIL CONTRACTORS - (2018) 52 CCH 0138 MumTrib - ITA No. 3935/Mum/2016 dated Feb 28, 2018

1431. The Court set aside the Tribunal order cancelling the AO's order passed u/s 154 wherein the AO had charged interest u/s 220(2) and 245D(6A) which he had omitted to charge in the assessment order and the Tribunal had considered such rectification order to be an order of review, holding that the legal contours of an error apparent on the face of the record could not be exactly identified and the element of indefiniteness was inherent in its very nature and must be left to be determined judicially on the facts of each case.
CIT v YOUNUS KUNJU, YOUNUS CASHEW INDUSTRIES – (2018) 402 ITR 0095 (Ker) – ITA.No. 64 of 2015 dated 11.01.2018

1432. Where the assessee was not granted exemption under section 10(10C) and her rectification application was rejected without granting her any personal hearing, the Court held that the order of the AO rejecting the application being in violation of principles of natural justice, was to be set aside. Accordingly, it directed the Assessing Officer to dispose of the rectification applications, as expeditiously as possible in accordance with law (within four weeks from the date of the order).
Mrs. Mugdha Shirish Agarkar v Pr CCIT - [2018] 91 taxmann.com 459 (Bombay) - WRIT PETITION NO. 12515 OF 2017 dated MARCH 1, 2018

1433. The Tribunal held that where assessee filed rectification application on ground that Tribunal had not adjudicated certain grounds which were specifically mentioned, in view of fact that all grounds pertained to order passed under section 263 by Commissioner and those grounds were not only taken into body of order but at same time an elaborate judgment had been passed regarding same, assessee's application deserved to be rejected.
U.P. Forest Corporation v DCIT [2018] 93 taxmann.com 437 (Lucknow – Trib.) – M.A. NOS 58 AND 59 OF 2016 dated 02.05.2018

1434. The assessee claimed deduction on expenses incurred for the granite business where infact no such business actually commenced and expense was actually incurred on Market Survey conducted abroad (European Countries). The said expense was allowed. Subsequently, the AO passed rectification order u/s 154 of the IT Act disallowing the said deduction .The Tribunal held that it was a debatable issue and an examination of records and evidence would be required before passing the rectification order. However, since the assessee itself admitted about the non-commencement of granite business and expenditure on market survey conducted abroad, the Court held that it was no longer a debatable issue and held that the AO was justified in passing the rectification order.
CIT v Parry Agro Industries Ltd. [2018] 94 taxmann.com 462 (Kerala) – ITA NO1595 OF 2009 dated 23.05.2018

1435. Where the assessee, a non-resident Indian citizen, e-filed his return of income under Section 139(1), the same was processed under Section 143(1) and a demand was raised. The assessee filed application under Section 154 with the AO requesting for re-calculation of his income, claiming that income earned was not taxable in India since he was a non-resident. AO rejected such application as changing the income figure could not be considered as mistake apparent on record under the provisions of Section 154 and also observed that the assessed income could not be less than returned income. The Tribunal held that if it is established that the assessee's income was not subject to tax in India, the same was to be considered as mistake apparent on record as per Section 154 and the assessee had right to modify it by filing an application for rectification of such mistake. Thus, the Tribunal restored the matter to the file of the AO and directed the assessee to substantiate its stay in India for claim of exemption.
Manoj Kumar Nayak vs. JCIT – [2018] 53 CCH 0059 (Cuttack ITAT) – ITA No 389/CTK/2014 dated May 17, 2018

Revision

1436. Where the CIT invoked revision proceedings in the case of the assessee noting that the assessee had claimed an expense of Rs.3.50 crore on account of 'land premium' which the CIT opined was wrongly allowed as a revenue expenditure, the Tribunal, noting that neither any enquiry had been made on the impugned issue nor was there any finding in the assessment order, held that the CIT was justified in invoking revision proceedings under Section 263 of the Act.
CUTTACK DEVELOPMENT AUTHORITY vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0151 CuttackTrib - ITA No. 361/CTK/2014 dated Mar 5, 2018

1437. The Court dismissed Revenue's appeal against the Tribunal's order holding that the provisions of section 263 could not be invoked by the CIT since the twin conditions viz. the AO's order is erroneous as well as prejudicial were not satisfied. The CIT had opined that the AO's order was erroneous since the AO had allowed assessee's to carry forward and set-off unabsorbed depreciation pertaining to AY 1974-75 to AY 1996-97 against the income for AY 2007-08. On merits, the Court held that the issue had become academic since the Court had in the case of CIT v Hindustan Unilever Ltd (2017) 394 ITR 73 (Bom) approved the decision of General Motors India P. Ltd. v DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001 (also since the Tribunal had decided in favour of the assessee following the said decision of the Gujarat High Court). The Court further noted that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which the benefit could not be claimed prior to amendment.

Pr.CIT v Hindustan Antibiotics Ltd – ITA No. 1042 of 2015 (Bom) dated 20.02.2018

1438. Where assessee itself had accepted before CIT that it had not maintained separate books of account in respect of research and development facility even though it was required to maintain same as per provisions of Act for claiming deduction u/s 35(1), the Tribunal upheld CIT's revision order passed u/s 263 setting aside the AO's order wherein the assessee's claim for the said deduction was wrongly allowed.
Nivo Controls (P.) Ltd. v CIT – (2018) 90 taxmann.com 271 (Mum) – ITA No. 3533 (mum.) of 2014 dated 31.01.2018

1439. Where the AO passed the assessment order considering the revised computation (and not revised return) filed by the assessee offering Nil income to tax as against Rs.8.32 crores offered in the original return filed, Tribunal held that since the assessment order itself was null and void based on non-est revised return, the CIT could not exercise jurisdiction u/s 263
Hari Mohan Das Tandon (HUF) v Pr.CIT – (2018) 91 taxmann.com 199 (All Trib) – ITA No. 44 (Alld) of 2016 dated 08.01.2018

1440. Where the assessee, a US LLP, rendering consultancy and technical services had filed its return of income claiming certain sum received for services rendered outside India as not chargeable to tax in India as per Article 15 of India-USA DTAA and the AO, after making due enquiries with regard to non-taxability of receipts by assessee for services rendered outside India and applicability of article 15 of India-USA DTAA, had accepted the total income of assessee as declared in return of income, the Tribunal quashed the revisional order passed u/s 263 by the CIT on ground that there was complete lack of enquiry/verification by AO during scrutiny proceedings. It held that the CIT sought to substitute his view with that of the AO since it is evident that the AO made due enquiries before completing the assessment and, thus, the AO's order cannot be termed as erroneous for lack of proper enquiry before concluding the assessment.
Pricewaterhouse Coopers LLP USA v ACIT – (2018) 91 taxmann.com 444 (Kolkata Trib) – ITA No. 540 (kol.) of 2015 dated 14.02.2018

1441. Where the assessment order revealed the AO had picked up the figures of 'Book Profits' u/s 115JB as per 'Return of Income' without applying any mind thereupon and adopted the same as such without any *iota* of discussion in the quantum assessment order, the Tribunal held that *prima facie*, this was a case of 'no inquiry' by AO and not the case of 'inadequate inquiry' or 'Lack of Inquiry' or 'adoption of one of the possible views' and therefore as per the statutory provisions as contained in section 263 including Explanation 2 the order of AO was deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. However, on merits, it held that since the employee benefit cost, i.e., Fringe Benefit Tax, was not part of income-tax, the same was not required to be added back while arriving at Book Profits u/s 115JB. Thus, the Tribunal held that since one of the prime condition viz. prejudicial to interest of revenue to invoke the revisional jurisdiction u/s 263 had remained unfulfilled, the order passed u/s 263 by the CIT could not be sustained in law and accordingly was set aside.
Rashtriya Chemicals & Fertilizers Ltd. v CIT – (2018) 91 taxmann.com 104 (Mum) – ITA No. 3625 (Mum.) of 2017 dated 14.02.2018

1442. The assessee had made a revision application u/s 264 against the AO's order passed u/s 144 (since the assessee had not complied with the notice issued u/s 148) bringing to tax the long-term capital gains on the sale of agricultural lands, just before the expiry of period available for making such application (i.e. one year from the date of passing of the AO's order) instead of filing an appeal against the AO's order. The said application was rejected by the Pr.CIT on the ground that the assessee could not produce adequate documentary evidences to support its contentions (that they were entitled to only 1/3rd share in the property and that also that the sale consideration was utilised for purchase of agricultural land, entitling deduction u/s 54B). On writ been filed against the Pr.CIT's order rejecting the application, the Court at the outset held that the Pr.CIT had rightly rejected the assessee's prayer. In the writ, the assesse also contended that they being illiterate agriculturists could not avail the regular remedy of appeal and later on, preferred the said petition u/s 264 which ought to have been allowed in the facts and circumstances of the case. The Court held that the remedy by way of revision u/s 264

could not be treated as a regular remedy bypassing regular remedy of appeals against impugned assessment orders and one could not be allowed to avail said revisional remedy in a routine manner bypassing requirement of payment of tax and allowing regular appellate authorities to apply their minds to relevant facts and evidence on record. It held that the fact that the assessee preferred the revision petitions u/s 264 just before the expiry of one year of passing of AO's order reflects that they were very conscious and aware of the legal provision and deliberately avoided the availing of the regular remedy by way of an appeal and at the nick time of the expiry of the time period, preferred the present revision petition u/s 264, which for good reasons, came to be dismissed by the Pr.CIT.
Nataraju (HUF) v Pr.CIT – (2018) 91 taxmann.com 467 (Kar) – Writ Petition Nos. 54836-54837 of 2017 (T-IT) dated 20.02.2018

1443. The Court upheld the CIT's order u/s 263 in case of the assessee, developer of SEZ, where the deduction claimed u/s 80-IAB on income from sale of bare shell building in SEZ to its co-developer was allowed by AO during assessment and the CIT had passed the revision order u/s 263 on the ground that sale of building to co-developer neither being an activity of development of SEZ nor operation and maintenance of SEZ was not eligible for deduction u/s 80IA, noting that the AO had not made a detailed analysis of factual narration before granting deduction u/s 80-IAB with respect to transactions and documents, having regard to provisions of SEZ Act and purpose for which SEZs were set-up.
CIT v DLF Commercial Developers Ltd. – (2018) 92 taxmann.com 10 (Del HC) – ITA Nos. 507 of 2014 and 563 of 2015 and 610 of 2017 C.M. Appl. 28227 of 2017 dated 22.02.2018

1444. The Tribunal dismissed the assessee's appeal against the CIT's revision order passed u/s 263 setting aside the AO's order on the ground that the AO had not made any proper verification and enquiries of documents seized during search, therefore, said assessment order was deemed to be erroneous and insofar as prejudicial to interest of Revenue rather he had disallowed assessee's claim for deduction of expenditure on account of business activity noticing that the assessee was not engaged in any business activity nor it had started any business project/work. It held that though the assessment was reopened u/s 148 on allegation of accommodation entry taken from S group, however AO had not made any enquiry regarding accommodation entry pertaining to the assessee specifically which was found during course of search and that once adequate or proper enquiry was not done, then in terms of Explanation 2 inserted in section 263, the assessement order was deemed to be erroneous in so far as it was prejudicial to interest of Revenue.
SURYA FINANCIAL SERVICES LTD. v PR.CIT – (2018) 52 CCH 22 (Del Trib) – ITA No. 2915/DEL/2017 dated 08.01.2018

1445. The Tribunal allowed the assessee's appeal against the CIT's order passed u/s 263 on the ground that the AO had not properly verified workings for disallowance u/s 14A r.w. Rule 8D as total interest paid by assessee on borrowed funds should have been considered by the AO while working out disallowance made u/r 8D(2)(ii), noting that the AO on due satisfaction of replies given, proceeded not to make any disallowance of interest as diverted for non-business purposes u/s 36(1)(iii)—Assessee gave entire details of interest payment on borrowed funds and its specific utilization before the AO itself and AO took conscious decision on the same and did not disallow any interest u/s 36(1)(iii). Accordingly since the AO had made elaborate enquiry about aspect of 14A and took possible view on same while discussing it elaborately in assessment order, it held that the entire revisionary jurisdiction exercised by CIT u/s 263 was not sustainable.
KISHAN GOPAL MOHTA & ANR. v JCIT & ANR– (2018) 52 CCH 6 (Kol Trib) – ITA No. 310/Kol/2015, 634 & 635/Kol/2016 dated 03.01.2018

1446. CIT passed revisional order u/s 263 taking a view that while completing assessment, AO had only verified identity of share applicant, being a Swiss entity holding 74% equity in the assessee-company but he had failed to verify the genuineness of transactions and creditworthiness of Swiss entity. Noting that (i) AO had made enquiry by seeking information from Switzerland Tax Authorities through proper channel of FT TR division of CBDT, for exchange of information so as to verify identity, source of funds and creditworthiness of Swiss company and its promoters, (ii) such an information was made available by Swiss Authorities from financial statements of Swiss entity and (iii) further the assessee had explained source from where the Swiss entity had made investment, the Tribunal held that the

transactions in question could not be regarded as bogus or sham transactions u/s 68 and, accordingly, it set aside the impugned revisional order.

Bycell Telecommunications India (P.) Ltd. v Pr.CIT – (2018) 90 taxmann.com 268 (Del Trib) - ITA Nos. 2819 to 2823 (Delhi) of 2017 dated 24.01.2018

1447. Where the assessing officer during original assessment proceedings examined the issue pertaining to issue of share capital under Section 68 and no addition was made, the Tribunal held that the Pr CIT was not justified in stating that the issue was not enquired into by the AO and that the order of the AO was erroneous and prejudicial to the interest of the revenue.

Vis-à-vis the second issue raised by the Pr CIT i.e. notional loss wrongly allowed by the AO during assessment proceedings, the Tribunal noted that the loss occurring was arising out of the valuation of the assessee's stock in trade at cost or net realizable value whichever was less and that the Pr CIT had incorrectly classified it as notional loss. Accordingly, it held that the revision proceedings were without jurisdiction and bad in law.

RBS CREDIT & FINANCIAL DEVELOPMENT PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0165 KolTrib - ITA No. 1156/Kol/2017 dated Mar 9, 2018

1448. The assessee debited an amount towards provision for doubtful debts which was not added back for the purpose of computation of total income under regular provisions and also for the purpose of computation of book profit under section 115JB which was accepted by the AO. The CIT observed that the provision made during the year was not debited to provision for doubtful debts account and consequently, the provision for doubtful debts was not obliterated. According to the Commissioner, it was only for disclosure purpose that the amount was shown as reduction from the trade receivables in the balance sheet and therefore he initiated proceedings under Section 263 of the Act. On perusal of the assessment order passed by the AO, the Tribunal held that there was no application of mind on his part and that he simply accepted the impugned claim of the assessee without any application of mind or enquiry on this issue. It held that based on the evidence available on record it was not enough to hold that this claim of the assessee was objectively examined or considered by the Assessing Officer. Accordingly, it held that the order of the AO was erroneous. Vis-à-vis assessee's contention that the AO had taken a possible view and therefore the order was not prejudicial, the Tribunal held that mere failure on the part of the Assessing Officer to make the necessary inquiries or to examine the claim made by the assessee in accordance with law, renders the resultant order erroneous and prejudicial to the interest of the revenue and nothing more was required to be established in such a case. It held that if the AO passed an order mechanically without making the requisite inquiries or examining the claim of the assessee in accordance with law, such an order will clearly be erroneous in law as it would not be based on objective consideration of the relevant materials. It therefore held that the failure on the part of the Assessing Officer in not making the inquiries or not examining the claim of the assessee in accordance with law that per se renders the resultant order erroneous and prejudicial to the interest of the revenue.

Cochin International Airport Ltd v ACIT - [2018] 92 taxmann.com 277 (Cochin - Trib.) - IT APPEAL NO. 501 (COCH.) OF 2016 dated MARCH 15, 2018

1449. Where the assessee sold agricultural land during the year under review and claimed that the consequent gains on sale were not taxable as agricultural land did not constitute a capital asset, which was accepted by the AO during original assessment proceedings, the Tribunal held that the CIT was not justified in invoking revision proceedings under Section 263 on the contention that other than the Tehlsidar's certificate, the assessee had not provided any further substantiation with regard to the land being agricultural in nature. It held that when the claim of the assessee was accepted in assessment order after due consideration of the facts, it could not be said that the assessment order was erroneous as assessment was passed after application of mind. Further, it held that when assessment order is passed u/s 143(3) of the Act, there is presumption that assessment order has been passed after application of mind and accordingly held that if an Assessing Officer takes one of the two possible views, assessment order could not be treated as erroneous. Accordingly, it quashed the order of the CIT passed under Section 263 of the Act.

SANGEETA JAIN vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0101 DelTrib - ITA No. 3888/DEL/2017 dated Feb 15, 2018

1450. The Tribunal quashed the revision order passed by the Pr CIT under Section 263 and held that the order of the AO allowing the assessee's claim of taxing interest derived by it under Rule 8 of the Income-tax Rules, 1962 (where interest income was composite with the agricultural operation) was valid. It held that the Pr CIT had alleged that the interest income had no connection with the agricultural operations of the assessee without pointing out any defects in the assessee's submission before it wherein the assessee had adequately proved that the interest derived by it was directly linked with its agricultural operations. Accordingly, it held that the assessee's claim was correctly allowed by the AO.
Darjeeling Organic Tea Estates v DCIT – (2018) 52 CCH 0136 KolTrib – ITA No 964 / Kol / 2017

1451. Notice u/s 263 was issued by the CIT contending that the amount reflected in assessee's books as provisional for warranty/promise obligation was erroneously allowed by the AO without enquiry as to whether such deduction was calculated on basis of scientific method. The CIT held that AO had not looked into these expenses and verified their genuineness and thus assessment was erroneous and had caused prejudice to interests of revenue and accordingly proceeded to pass order under Section 263 requiring the AO to re-examine matter afresh. Before the Tribunal, the assessee contended that the CIT relied on certain documentation including the statement of a certain person (Mr. X) and that the CIT ought to have provided it with the opportunity to rebut the same. The Tribunal held that while the CIT was free to exercise his jurisdiction on consideration of all relevant facts, full opportunity to controvert same and to explain circumstances surrounding such facts as might be considered relevant by assessee must be afforded to him by CIT prior to finalization of decision. It noted that the addition was based on a certain X's statement which was not provided to assessee. Accordingly, it directed the CIT to provide a copy of the statement and any other material that he chooses to rely upon to the assessee and after hearing the objections of the assessee, proceed to make the final order.
HUMBOLDT WEDAG INDIA PRIVATE LIMITED vs. COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0091 DelHC - ITA 242/2018 dated Feb 26, 2018

1452. The Tribunal quashed CIT's order u/s. 263 denying deduction u/s 80IA(4) to assessee (a partnership firm having 3 corporate entities as its partners) and rejected Revenue's stand that deduction u/s 80IA(4) was available only to a company or a consortium of companies and since the assessee was a partnership firm, it was not eligible for impugned deduction. Referring to the provisions of Sec. 80IA(4)(i)(a), it observed that that the section was applicable to an enterprise being a company registered in India or a consortium of companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act and held that the word "consortium" had not defined in the Income Tax Act, hence relying on the definition of the word in the Merriam Webster dictionary, it held that a consortium would be defined to mean "an agreement, combination, or group (as of companies) formed to undertake an enterprise beyond the resources of any one member". Further, it relied on the decision of Madhya Pradesh HC ruling in Org Informatics wherein it was observed that a consortium is akin to a partnership where each partner is liable for action of other partners. Since there was nothing brought on record by the Revenue to demonstrate that the view taken by the AO was an impermissible view or was contrary to law or was upon erroneous application of legal principles it held that invocation of Section 263 of the Act was invalid.
Rohan & Rajdeep Infrastructure - TS-118-ITAT-2018(PUN) - ITA No.633/PUN/2017 dated 23.02.2018

1453. The assessee's original assessment was completed u/s 143(3) wherein the AO accepted income declared by the assessee by allowing deduction on account reserve debited in profit and loss account as per the requirements of statutory requirements of the Rajasthan Cooperative Societies Act, 2001. The Pr CIT invoked proceedings under Section 263 of the Act on the ground that the amount was to be disallowed under Section 40A(9) as there was no actual payment was made. The Tribunal observed that the AO merely reproduced accounting entries by way of transfer to general reserve and education reserve as reflected in profit/loss appropriation account which could not be read and understood to mean that AO examined allowability of these reserve transfers for tax purposes. It held that In absence of any specific query by AO and in absence of any specific finding in assessment order, it could not be said that the AO formed an opinion in the first place. It held that there was no due and proper application of mind by AO and it was a clear case of non-examination and non-application of mind by

AO and therefore it held that the order of AO was clearly erroneous to this extent. Accordingly, it upheld the revision proceedings.

BIJAYLLNAGAR KRAYA VIKRYA vs. INCOME TAX OFFICER - (2018) 52 CCH 0076 JaipurTrib - ITA No. 330/JP/2016 dated Feb 5, 2018

1454. The Tribunal allowed the assessee's appeal and set aside the Pr.CIT's revision order passed u/s 263 where the revision proceedings were initiated to disallow 25% of the royalty expense claimed by the assessee treating the same as capital expenditure on the only reasoning that in its sister concern's case also technical know-how, as well as running royalty had been disallowed and when the matter travelled upto the High Court, the Court answered the question in favour of the Revenue and the Supreme Court had also dismissed the appeal against the said High Court order. In the present case, the Tribunal held that the said Supreme Court decision did not support the Revenue as in that case the issue was decided in favour of Revenue because the assessee in that case (i.e. asseessee's sister concern) was not at all in existence at the time when the Joint Venture Agreement was entered into to set the sister concern (a JV company) and the royalty was agreed to be paid as per the said agreement, whereas the assesse in present case was in existence since the year 2000 and was paying royalty since past 11 years. It thus held that considering the facts of the case in hand, the PCIT had erred in assuming jurisdiction u/s 263 by considering the facts of the case of the sister concern without appreciating the facts of the case in hand in true perspective.

HONDA MOTORCYCLE AND SCOOTERS INDIA PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0241 (Del Trib) - ITA No. 2330/DEL/2018 dated June 26, 2018

1455. The Assessee's daughter being the only partner of a partnership firm other than the assesse, released her share in the firm to the exclusive share of the assessee which resulted in dissolution of partnership firm and conversion of the partnership firm into a proprietorship firm. Subsequently, the assessee sold all the assets of the firm and offered inter alia the consideration received for land, goodwill and trademark for taxation as long term capital gains, however, he claimed exemption u/s 54EA on account of investment in UTI. The AO allowed the said claim of exemption. The CIT sought to revise the AO's order u/s 263 to disallow the said claim on the ground that the assesse got the exclusive possession of the properties only on dissolution of the firm and since the sale had been made within 36 months of such dissolution, it resulted in short term capital gains, not eligible for exemption u/s 54EA. The Tribunal held that CIT's order u/s 263 was not sustainable on the reasoning that the AO had considered the question of long term capital gains and allowed it. The Court held that it could not be said that on dissolution the assessee had merely taken away a pre-existing right in assets of firm rather there was a transfer on release of share of other partner and rights over that property accrued to assessee, only on such release being effected by other partner. It held that the assessee was entitled to exemption u/s 54EA to the extent of his share which he received exclusively on dissolution being relatable to pre-existing right he had, as one of partners. With respect to the remaining share in which other partner had a pre-existing right and which was released in favour of the assessee, the Court held that the right over it could be claimed only from date of release and since the subsequent sale fell within 36 month period, necessarily assets were to be assessed as short term capital gains to that extent. Therefore, the revenue's appeal was partly allowed.

COMMISSIONER OF INCOME TAX vs. DR. P.N. BHASKARAN - (2018) 102 CCH 0083 KerHC - ITA No. 1622 of 2009 dated June 12, 2018

1456. A reassessment order was passed in the case of the asssessee, after a scrutiny assessment, to disallow deduction claimed with respect to interest paid on loan from bank (not utilized for business purpose). Subsequently, notice was issued u/s 263 by the CIT to disallow interest on loan, administrative, selling and distribution expenses and bad debts written off, etc. The assessee filed a writ petition against the said notice. The Court rejected the assessee's claim that the revision proceedings amounted to change of opinion since the same issue was dealt with in reassessment proceedings, noting that the issue in the reassessment proceedings was only with regard to disallowance of interest paid by the assessee whereas notice u/s 263 was not restricted to the disallowance of interest on loan alone but with other aspects also such as claims of the assessee regarding administrative, selling and distribution expenses and bad debts written off, etc. However, the Court accepted the assessee's contention that since notice u/s 263 raised issues, which were not subject matter of re-assessment

proceedings, then two year period contemplated u/s 263(2) would begin to run from date of original assessment and not from date of re-assessment. Section 263(2) provides that no order shall be made under the said section after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Thus, it held that the impugned notice was issued without jurisdiction and accordingly set aside the same.

Indira Industries v Pr.CIT - [2018] 95 taxmann.com 103 (Madras) - W.A. NO. 1091 & 1092 OF 2017; C.M.P. NO. 15223 & 15224 OF 2017 dated June 14, 2018

1457. The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revision order passed by the CIT u/s 263 wherein the revision proceedings were initiated on the ground that the AO had not carried out proper inquiries with respect to two issues viz. introduction of certain sum in the capital account of the assessee and receipt of certain amount by way of loan from the assessee's brother. It was noted that during the block assessment proceedings, the AO had not made any addition in respect of the above amounts considering the assessee's explanations that he, being a NRI for over two years, had made foreign remittances over a period of time and that his brother, who was running a successful business of trading, was man of standing and means. It was held that the AO having carried out such detailed inquiries, it was not open for the CIT to thereafter reopen the issues on mere apprehension and surmises.

CIT v Kamal Galani - [2018] 95 taxmann.com 261 (Gujarat) - R/TAX APPEAL NO. 1376 OF 2007 dated June 11, 2018

1458. The assessee-LLP was successor-in-interest of original assessee-company. The CIT passed an order u/s 263 in the case of the original assessee-company for the assessment year when the company was in existence without issuing any show cause notice under the said section. The assessee contended that no opportunity was offered to it prior to the order being passed by the CIT. The Court held that even though a previous notice u/s 263 was not a *sine qua non* for the jurisdiction to be exercised thereunder by the CIT, the provision mandates an opportunity of hearing to be afforded to the assessee. Thus, noting that the Tribunal had not addressed this aspect of the matter, it directed the Tribunal to satisfy itself as to whether the assessee herein as the successor-in-interest of the erstwhile company had notice of the hearing u/s 263. It also held that if there was sufficient material that the original assessee and the assessee-LLP carried on business at the same premises and notice was served at such premises, the assessee could not feign ignorance by merely stating that the notice was erroneously addressed to a defunct entity.

Brolly Dealcom LLP v Pr.CIT - [2018] 93 taxmann.com 448 (Calcutta) - IT APPEAL NO. 25 OF 2018 dated May 7, 2018

1459. The assessee had entered into agreement to sell land to 'M' for a sale consideration of Rs.38.74 lakhs and had received Rs. 1 lakh at time of execution of the said agreement. Subsequently, the assessee executed a sale deed in which land in question was sold to one 'G' Ltd. for a sale consideration of Rs. 4.43 crores and in the said sale deed, the assessee was seller, 'G' Ltd. was buyer and 'M' was confirming party. The sale deed showed that the assessee received balance sale consideration of Rs.37.74 lakhs (out of original consideration of Rs.38.74 lakhs), whereas the remaining amount of Rs. 4.04 crores was received by 'M'. The assessee thus considered sale consideration to be Rs. 38.74 lakhs and computed capital gains accordingly. The same was accepted by the AO. The CIT passed a revisional order u/s 263 holding that the sale consideration ought to be considered was Rs. 4.43 crores. The Tribunal, however, set aside revisional order. The Court held that since the assessee never received anything beyond the consideration originally agreed in the agreement to sale, the question of charging capital gain from the assessee on a sum larger than the said consideration could not arise. Accordingly, the Revenue's appeal was dismissed.

Pr.CIT v Lalitaben Govindbhai Patel - [2018] 94 taxmann.com 396 (Gujarat) - R/TAX APPEAL NO. 329 OF 2018 dated April 11, 2018

1460. The Tribunal allowed the assessee's appeal and set aside the revision order passed by the CIT u/s 263, where the CIT had held the AO's order passed u/s 143(3) to be erroneous as far as prejudicial to the interest of revenue on the ground that the AO had made the assessment considering the revised return filed by the assessee without examining the relevant details as to why the income was reduced in the

revised return as compared to the original return of income. It was noted that the revised return of income was necessitated on account of reconciliation exercise carried out consequent to migration from use of one accounting software package to another, resulting into an adjustment to the originally returned income. Further, the said revised return also contained a explaining the rationale for the said adjustment. It relied on the decision of the co-ordinate Bench in the case of Gaurav Mathrawala vs CIT [ITA No. 2378/Mum/2015] wherein it was held that a specific finding by the CIT as to how the claim of the assessee was wrong on the basis of facts and material on record was required before the assessment order could be set-aside for redoing of the assessment and thus held that CIT was wrong in considering the assessment order as erroneous for merely requiring the AO to verify the situation and to amend the originally assessed income depending upon the outcome of the verification exercise.
BOMBAY STOCK EXCHANGE LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0469 MumTrib - ITA NO. 3502/MUM/2016 dated April 3, 2018

1461. The Tribunal dismissed the assessee's appeal against the CIT's revisional order passed under section 263, wherein the CIT had held the AO's order to be erroneous and prejudicial to interest of revenue on the ground that the AO had not made proportionate disallowance out of indirect expenses claimed in Profit and loss account which were not loaded on to work in progress. The Tribunal observed that during the course of assessment proceedings, the AO had not made any enquiry about valuation of closing stock and had merely asked what was basis of valuation of closing stock. It held that there was subtle distinction between basis of valuation of closing stock and items, which had gone into valuation of closing stock. It thus held that the AO had not applied mind to determine cost of work in progress and the assessee's case fell under category of lack of inquiry and not a case of inadequate Inquiry.
RED ICE PRODUCTIONS PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0268 (Del Trib) - ITA No. 5351/Del/2016 dated Apr 3, 2018

1462. The Tribunal quashed CIT's revisional order passed under section 263 wherein the CIT had held the AO's order to be erroneous and prejudicial to interest of revenue on the ground that the AO had not enquired into the aspect of applicability of section 2(22)(e), during the course of assessment proceedings, with respect to loan received from a related party, SVPL. It was noted that during assessment, the AO had inquired into facts that SVPL was a related party and that it had given loans to the assessee and thus it could not be said that there was no enquiries or verification made by the AO on this issue of loan, though the AO had not recorded that he had examined the transaction from the angle of section 2(22)(e). Further, it held that inadequate enquiries could not be a basis for invoking powers u/s 263. On merits also, it held that section 2(22)(e) was not attracted in the facts of the present case since SVPL (the lending company) was an NBFC and interest was charged on the said loan received.
CASTRON TEHNOLOGIES LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0427 KolTrib - ITA No. 945/Kol/2017 dated Apr 4, 2018

1463. While computing the amount eligible for deduction u/s 80HHC, the AO didn't exclude the amount allowed as deduction u/s 80IB. The CIT was of the opinion that the provisions of section 80HHC(4B) mandated exclusion of deduction allowed u/s 80IB while quantifying the deduction u/s 80 HHC. Thus, he passed revisional order u/s 263 holding that the assessment order passed by the AO was prejudicial to the interest of Revenue and the Tribunal confirmed the said order without considering the grounds challenging the assumption of jurisdiction to pass the said revision order. Aggrieved, the assessee filed the present appeal before the High Court wherein it was observed that in CIT vs. Max India Ltd. it was pointed out that phrase "prejudicial to interest of Revenue" u/s 263 had to be in conjunction with expression "erroneous" order passed by AO and further, pointed out that where two views were possible and ITO had taken one view with which CIT disagreed, it could not be treated as erroneous order prejudicial to interest of Revenue, unless view taken by income tax officer was unsustainable in law. In the present case also, the Court noted that there were two conflicting decisions on the issue under consideration and the said issue was also pending before the SC for adjudication. Thus, the Court held that the CIT could not have invoked power u/s 263, as ITO had adopted one of two views possible.
Agasthiya Granite P Ltd v ACIT (2018) 403 ITR 0279 (Mad) - T.C.(Appeal) No.450 of 2007 dated 16.04.18

1464. The assessee, an individual, was engaged in providing various services including strategic Management services as well as legal services for the recovery of assets and debts. For the relevant year, he had claimed deduction with respect to certain legal and finance expense incurred in connection with a litigation pending in the court involving ownership of an immovable property wherein the assessee was representing one of the party. As per the agreement with the said party, the assessee was to bear the said expense and was entitled to receive a percent of the value in the property as profit. The assessee's return was selected for scrutiny and assessment was framed u/s 143(3) by the AO wherein the AO had accepted the declared income. However, the CIT u/s 263 held the AO's order to be erroneous in so far as prejudicial to interest of the Revenue, inter alia on the ground that the aforesaid expenditure incurred by the assessee was capital in nature as it was related to immovable properties, assuming that the assessee was interested in buying the property in future, and therefore not eligible for deduction. The Tribunal held that as there was no allegation in the order of the CIT u/s 263 that the expenditure was not in connection with the business of the assessee. It held that no capital asset resulted after incurring the said expenses and thus, the expenditure was revenue expenditure eligible for deduction u/s 37(1). The Tribunal also observed that the assessment order was passed after conducting necessary enquiries and considering submission filed by assessee and mere non-discussion of issues could not render order erroneous or prejudicial to the interest of revenue on account of non-verification of issues. Accordingly, the Tribunal quashed the order passed by CIT u/s 263.

Hartaj Sewa Singh v DCIT (2018) 52 CCH 0412 KolTrib - ITA No. 1011/Kol/2017 dated 27.04.18

1465. The AO had passed assessment order u/s 143(3) and made GP addition based on estimates by considering GP rate of 5% as against 4.66% offered by assessee. The Pr.CIT issued notice for revision of assessment u/s 263 holding that the AO failed to verify/enquire into facts and thus, the assessment order passed by the AO was prejudicial to the interest of the revenue. The Tribunal observed that the AO had passed order after conducting detailed enquiries on all issues and further, even during revision proceedings, the assessee had submitted necessary details such as copy of accounts from creditors containing their names, address, PAN etc, calculation sheet of capital gains etc regarding the same issues dealt during assessment proceedings. The Tribunal relied on the decision in the case of DIT Vs. Jyoti Foundation (357 ITR 388) wherein it was held that in case the Revisionary Authority is of the view that there is inadequate enquiry then the Revisionary Authority must make enquiry and show that the assessment order is erroneous. It thus held that since the Pr.CIT did not make any enquiry and had also failed to address replies of assessee even after extracting them in order, the Pr CIT had passed bald order without bringing out any error whatsoever let alone error which could be said to be prejudicial to interests of revenue. Accordingly, it quashed the revision order passed by the CIT thereby allowing assessee's appeal.

Abhimanyu Gupta v PCIT (2018) 52 CCH 0581 ChdTrib - ITA No. 771/Chd/2017 dated 09.04.2018

1466. After the completion of original assessment u/s 143(3), the CIT found that assessee company had claimed loss incurred on account of "cross currency swap"/ interest rate swap and provision for Non-performing assets (NPA) which were not allowable expenditure. Accordingly CIT passed order u/s 263 holding that original assessment order was erroneous and prejudicial to interest of revenue because the said deductions were wrongly allowed and the AO had not examined issues properly. With respect to provision for NPA, the Tribunal observed that out of total provision, certain amount was suo moto added back in computation of income and further sum was disallowed by AO in original assessment order. The balance amount represented actual write off and thus there was no error or prejudice to the interest of Revenue. With respect to the interest rate swap, the Tribunal observed that it was actual loss and only net loss after setting of gain of interest rate swap was claimed as deduction. Further, noting that both these issues were duly examined by AO vide Questionnaire to which replies were furnished, the Tribunal held that the finding of CIT that issues were not examined properly was not correct and since CIT failed to point out definite and specific error in original assessment order, it held that the revision order was bad in law and void-ab-initio. Accordingly, the assessee's appeal was allowed.

Ge Capital Services India v ACIT (2018) 52 CCH 0372 DelTrib - ITA. NO. 2697/DEL/2007 & 231/DEL/2012 dated 23.04.2018

1467. Where Commissioner issued a notice under section 263 taking a view that when AO had found purchases to be bogus, there was no question of limiting addition on basis of GP Ratio the Court quashed the said notice in view of fact that a) AO did not hold that relevant purchases were bogus and b) moreover, assessment order had been merged with order passed by Commissioner(Appeal) who had deleted the addition.
Haryana Paper Distributors (P.) Ltd. v PCIT [2018] 95 taxmann.com 152 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 2818 OF 2018 dated 16.04.2018

1468. The assessee was engaged in business of purchasing agricultural land and converting the same for non-agricultural purpose and selling it. It claimed the following expenses viz "Labour Charges", "Expense of Commission" and "Work in Progress". The assessee furnished the details of expenses along with the names and addresses of the parties to whom the payment for expenses was made along with their PAN details. Some part of expense was disallowed by AO and CIT(A) also upheld the order. However, CIT (Administration) by virtue of s.263 of the Act passed a revisional order for disallowing the whole expense on the grounds such as discrepancies in certain facts and need for verification. Aggrieved by the revisional order, assessee filed appeal on the ground that the said order u/s 263 was without of jurisdiction since there was merger of assessment order with the order of the CIT(A). Also, if CIT wasn't satisfied with the order, it could have re-opened the assessment or appealed to the Tribunal. The Tribunal set aside the revisional order and the Court upheld the Tribunal's order thereby dismissing the Revenue's appeal.
Principal Commissioner of ITO v H. Nagaraja [2018] 94 taxmann.com 464 (Karnataka) – ITA NOS 604-605 OF 2017 dated 29.05.2018

1469. The Tribunal quashed revision order under Section 263 wherein the Pr.CIT held that AO's order u/s 153A r.w.s. 143(3), was erroneous and prejudicial to the interest of Revenue since the AO allowed claim of assessee for deduction u/s 80IA by solely relying on claim made by assessee without enquiry. Tribunal held that no addition or disallowance could be made in the order under Section 153A r.w.s. 143(3) without any incriminating material found during course of search under Section 132 of the Act. Also, relying on the ruling of Madras High Court in M/s Tamilnadu Petro Products Ltd. Vs ACIT (338 ITR 643), the Tribunal concluded that deduction under Section 80IA(4) could not be denied even if infrastructural facility was for captive use.
Rashmi Metaliks Ltd. vs. DCIT – [2018] 53 CCH 0005 (Kol ITAT) – ITA No 813 to 816/Kol/2017 dated May 2, 2018

1470. The assessees sold jewellery to a company, which was received by them during the course of their marriage from the respective parents and relatives. The AO made addition in respect of such jewellery thereby rejecting the explanation offered by the assessees. The assessees also filed revised return disclosing all the jewellery and offered the same for taxation, before initiation of penalty proceedings under Section 271(1)(c). The said returns were accepted by the AO and no additions were made. Accordingly, the AO dropped the penalty proceedings. The CIT exercised powers under Section 263 and held that voluntary offer of income by the assessees by way of revised return does not absolve the assessees from penalty under Section 271(1)(c). Relying on the ruling of the Supreme Court in Suresh Chandra Mittal (251 ITR 9), the Tribunal set aside the order of the CIT and upheld the action of the AO in dropping the penalty proceedings as the Department did not discharge its burden of proving that income was concealed.
S. Ashok Kumar & Ors. vs. ACIT – [2018] 53 CCH 0128 (Chennai ITAT) – ITA Nos. 2450/2451/2452/2387/2388/2389/2391/2392/2393/2395/2396/2397/2399/2400/ 2401 of 2016 dated May 17, 2018

1471. Although incriminating documents were found and seized during search and seizure operations, AO accepted assessee's explanation and did not make any addition to the total income of the assessee. However, CIT concluded that since it was a case of further enquiry which AO had failed to make, the assessment order passed by the AO was erroneous and prejudicial to interest of Revenue. Thus, CIT set aside the assessment order. The CIT(A) upheld the AO's order passed pursuant to the CIT's direction u/s 263. Appeal filed by the assessee against the said CIT(A)'s order as well as the revision order were heard together by the Tribunal. On merit, the Tribunal decided the issue in favour of the

assessee, noting that there was no evidence on record to show that the assessee had paid on money for purchase of certain land. With respect to revision order, the Tribunal held that since additions made by lower authorities were set aside on merits, no revision order could be passed against assessee under Section 263 of the Act. Thus, assessee's ground was allowed.
AMARJEET DHALL & ORS. vs. CIT & ORS. (CHANDIGARH TRIBUNAL) (ITA No. 366/CHD/2012, 148/CHD/2014, 263/CHD/2012, 369/CHD/2014, 459/CHD/2014) dated May 21, 2018 (53 CCH 0186)

1472. The CIT passed revision order u/s 263 directing the AO to redo assessment noting that there were certain discrepancies with respect to the vehicle numbers provided during the assessment proceedings by the assessee, a transport contractor, which were used for transport, rejecting the assessee's submission that the same was on account of a typographical error made by the accountant making the data entry. During the remand proceedings before the AO, the assessee also submitted a list of the correct vehicle numbers and submitted that a perusal of the correct numbers and the recorded numbers demonstrates that there was single number variation, which could occur if numbers were not fed correctly in to the computer, which resulted in the error. The AO, however, did not consider the assessee's submission / explanation and passed the revised assessment order holding that the asssessee had inflated expenditure incurred towards transport charges by producing fake and fabricated vouchers and receipts. The Tribunal relied on the ruling of *ACIT vs. ITW India (P) Ltd [40 SOT 348 (Hyd)],* wherein it was held that the assessee can substantiate its claim of a particular expenditure even in a case which was remanded to file of AO by CIT while exercising revisionary powers u/s 263 for fresh adjudication on merit. The Tribunal held that AO should not have refused to examine the explanation given by assessee and should have conducted an enquiry into evidence given by assessee to verify whether claim made that typographical and data entry errors of vehicle numbers had crept in was correct or not. However, noting that the assessee had not properly supported his case by producing necessary evidence in support of the expenditure claimed, it directed the AO to assess the income @ 5% of gross receipts, relying on the decision in the case of Sri Venkata Balaji Transport vs. ACIT [ITA No.1236/Hyd/2015] and DCIT vs. M/s. Sri Sai Ram Transport [ITA No. 102/Hyd/2013].
MODIYAM VENKATARAVINDRA REDDY vs. ITO (HYDERABAD TRIBUNAL) (ITA No. 952/Hyd/2016) dated May 8, 2018 (53 CCH 0152)

1473. The Tribunal dismissed assessee's appeal against the PCIT's revision order passed u/s 263 setting aside the AO's order on the ground that the AO had not made any proper enquiry to find out income generated by assessee from business operations. It was noted by the PCIT that the assessee had not disclosed the entire unaccounted cash found during the search operations at the premises of the partners of the assessee-firm. It was noted that the partner had accepted that the cash found during search was in respect of the unaccounted income generated outside the books of account and the AO had not made proper inquiry with respect to any accounted income as per books of accounts from the assessee's business operations. It thus held that the PCIT had rightly exercised his jurisdiction u/s 263.
SURABI BULLION vs. DCIT (CHENNAI TRIBUNAL) (ITA No. 2489/Chny/2016, 2569/Chny/2017) dated May 3, 2018 (53 CCH 0141)

<u>*Search / Survey*</u>

1474. Where the AO sought to deny a percentage of expenses incurred by the assessee charitable trust, pursuant to search proceedings carried on in the premises of the assessee on the ground that the assessee was also carrying on business activities, the expenses pertaining to which were not allowable as deduction, the Tribunal noting that the AO in his assessment order nowhere referred to any document, information arising out of the search held that there was no incriminating material recovered from the search proceedings which formed the basis of the disallowance of expenses. Relying on the decision of
CIT vs. Kabul Chawla reported in 380 ITR 573(Delhi), it held that in the absence of incriminating material no addition could be made under Section 153A and accordingly deleted the disallowance.
SOCIETY FOR EDUCATIONAL EXCELLENCE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0197 DelTrib – ITA No. 6957, 6960 and 3606/Del/2017 dated Mar 19, 2018

1475. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had quashed the proceedings initiated against the assessee u/s 153C since the AO of assessee

had not proved that the documents seized during search of third party belonged to assessee and not to the searched person and the satisfaction notes recorded by AO of assessee and AO of searched person were identically worded and no reason was recorded as to how the satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of searched person.
ITO v Canyon Financial Services Ltd. – (2018) 91 taxmann.com 252 (SC) – SLP (Civil) Diary No. 2726 of 2018 dated 19.02.2018

1476. The Tribunal held that the AO could not assume valid jurisdiction for assessment by issuing notice u/s 153A, where no search had been conducted at place of business of assesse but at a place which neither belonged to assessee-firm nor was the assessee-firm carrying on any business therefrom and, consequently, assessment made in consequence of such notice is invalid and void ab initio.
Regency Mahavir Properties v ACIT - (2018) 169 ITD 35 (Mum) – ITA No. 682 & 683 of 2016 dated 04.01.2018

1477. The Court dismissed the Department's SLP filed against the High Court ruling whereby the proceedings initiated u/s 153C were quashed noting that the assessee's AO had not proved that the documents seized from premises of third party belonged to assessee and not to the searched person and that the satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of the searched person.
ITO v Canyon Financial Services Ltd. – (2018) 90 taxmann.com 169 (SC) – SLP (Civil) Diary Nos. 41879 of 2017 dated 11.01.2018

1478. Where addition was made by AO u/s 69 on the basis of incriminating material found and the statement of assessee's mother during search proceedings and the assessee's mother had retracted the statement subsequently, Tribunal set aside the CIT(A)'s order wherein CIT(A) had held that AO made addition u/s 69 without any evidence and addition cannot be made solely on the basis of loose papers. Tribunal held that it was only with reference to the search and seizure material that assessee's mother had given a specific amount to various heads wherein the undisclosed income had been utilized, which was separately accepted by assessee also and hence it cannot be said that the addition is not based upon any incriminating material found or searched. Tribunal had also noted that the retraction was by the mother of the assessee and that there was no retraction whatsoever by the assessee.
Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 144 (Mum) – ITA Nos. 2524 and 2769 (Mum) of 2015 dated 16.01.2018

1479. The Court held that the notice issued under section 133(6) for furnishing requisite information against the deceased would have to be complied with by the legal representative or persons who inherited estate of deceased persons and they could not deny to furnish such information. It was noted that when information was called from noticee fact of death of noticee was not in knowledge of concerned AO.
Mrs. S. Savithri v. ITO - (2018) 400 ITR 513 (Kar) – Writ Petition No. 22020 of 2017 dated 02.01.2018

1480. With regards to the assessment proceedings u/s 153A r.w.s. 143, the Court rejected the assessee's contention that the said proceedings were non-est as the documents relied on to make additions, being not one seized in search conducted but received before search by Department through a Tax Evasion Petition allegedly filed by one of brokers involved in transaction. It noted that it was pursuant to search and enquiry conducted thereafter that it was revealed that (i) assessee had rental income from a flat purchased at Bangalore which had been sold, (ii) assessee had suppressed account maintained by assessee in which there was unaccounted consideration from purchaser also was unearthed and (iii) exact amount of income escaped from assessment was supported by ample evidence.
DR. A. V. Sreekumar v CIT – (2018) 90 taxmann.com 355 (Ker) - ITA No. 186 of 2013 dated 24.01.2018

1481. The Tribunal upheld the CIT(A)'s order deleting the addition made the AO of additional income solely based on the disclosure made by the assessee-firm's partner in the statement recorded during survey action u/s 133A (which was subsequently retracted) where the AO contended that there were defects in maintenance of books of accounts and the assessee had not co-operated with the Revenue during

assessment proceedings and many evidences as were sought by the AO were not furnished, holding that admission or confession was not conclusive evidence as to the truth of matter, it was only piece of evidence relevancy of which was required to be judged basing on material evidence and circumstances in which it was made. Noting that the AO had referred to minor discrepancies in books of accounts and bills which were not entered in books of accounts, it held that minor discrepancies in absence of other tangible incriminating material against the assessee did not warrant any addition. It further held that the Revenue had failed to even cross examine partner of assessee post retraction of his statement wherein the assessee had alleged that the Revenue had obtained forced confession from assessee to surrender income.

ACIT v ORIENTAL DCORATORS – (2018) 52 CCH 14 (Mum) – ITA No. 820/Mum/2015 dated 05.01.2018

1482. The AO had initiated assessment proceedings u/s 153A pursuant to search action u/s 132 at assessee's premises and on the basis of material seized in search action on a group. The AO observed that the assessee had invested amount in certain project which, similar to the case of another investor and made an addition to assessee's income. The Tribunal relied on the decision in the case of Kabul Chawla 380 ITR 573 (Del HC) where it was held that in case of completed assessments, no addition could be made without any incriminating material found in search action and also held that during search action at premises of assessee, no incriminating material was found. It held that no assessment proceedings were pending in instant assessment year as on date of search. Relying on the decision in the case of Pr.CIT v Subhash Khattar [ITA No. 60/2017 (Del HC)], the Tribunal held that no addition could had been made in absence of any incriminating material found from premises of assesseea and the addition on merit also deserved to be deleted.

ASHA RANI LAKHOTIA v ACIT – (2018) 52 CCH 40 (Del Trib) – ITA No. 424/Del/2015 dated 16.01.2018

1483. The Tribunal held the block assessment to be illegal on the ground that no valid authorization or search u/s 132(1) was made in name of assessee and at premises of assessee. Since the warrant of authorisation and panchnama was made in the name of "M/s. Verma Transport Company" instead of "M/s. Verma Roadways", the Court held that the Tribunal had not examined sufficiency of material on which authorization u/s 132(1) was issued by the competent authority but had examined identity of person in respect of whom the authorization was issued and search and seizure operations were carried on. It held that the use of wrong name was more in the nature of clerical mistake than mistake of identity since the search and seizure actually was conducted at the premises of assessee and whatever was seized included money and document belonged to the assessee and further the assessee had at no point of time, before ACIT/AA raised any such dispute that authorization as well as panchnama prepared by search and seizure team relate to another person. Thus, it held that the search and seizure operations must be held to have been conducted against the assessee and, therefore, on the basis of material collected in search and seizure operations, the ACIT/AA was justified in proceeding to make assessment under Section 158BC.

VERMA ROADWAYS & ANR. v ACIT – (2018) 101 CCH 15 (All HC) – TAX APPEAL NO. 3 of 2000, 4 of 2000 dated 11.01.2018

1484. The Tribunal quashed the assessment framed u/s 143(3) r.w.s. 153A, pursuant to search, noting that nothing was brought on record by the Revenue in support of its contention that during course of search some incriminating material was found which required adjudication in assessment proceedings and thus, holding that in absence of incriminating material found during course of search, the regular assessment concluded could not be reopened and reframed u/s 143(3) r.w.s. 153A.

VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018

1485. Where the reasons assigned by the AO in the satisfaction note for issuing notice u/s 153C was agreement for sale between UTI and the assessee-company for purchase of office space in property which was taken in schedule of fixed assets in balance sheet of the assessee and the AO did not make any addition on account of such purchase of property treating it as undisclosed income but determined annual letting value with respect to such property, the Tribunal held that the reasons recorded by AO in

satisfaction note were factually incorrect or without sustenance because property in question purchased was already disclosed in regular books of accounts it was clearly beyond scope of proceedings u/s 153C because annual letting value was determined in assessment year without reference to any incriminating material found during course of search and accordingly dismissed the revenue's appeal against the CIT(A)'s order wherein the CIT(A) had held that the addition had been made without reference to any material, found during the course of search, therefore, it was clearly beyond the scope of the proceedings u/s 153C.
ACIT v NAHID FINLEASE PVT. LTD. – (2018) 52 CCH 51 (Del Trib) – ITA No. 4822 to 4824/Del/2014 dated 22.01.2018

1486. Where the AO made an addition on account of unexplained share capital for the impugned AYs i.e. AY 2006-07 and 2007-08, based on subsequent information received in connection with the documents seized during search proceedings, the Tribunal held that the documents in itself did not constitute incriminating material as the addition was made on the basis of subsequent information. Accordingly found during search, no addition could be made. Accordingly, relying on the decision of CIT vs. Kabul Chawla reported in 380 ITR 573(Delhi), it held that in the absence of incriminating material no addition could be made under Section 153A.
ASIAN COLOUR COATED ISPAT LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0187 DelTrib - ITA No. 2838/DEL/2015, 2839/DEL/2015 dated Mar 19, 2018

1487. The Tribunal held that the AO and CIT(A) were unjustified in concluding that the assessee had undisclosed and unexplained interest income on the basis of a single paged document seized during search proceedings as the impugned document i) was not even in the handwriting of the assessee ii) neither did it mention the name of the assessee nor contained the signature of the assessee and iii) the document did not even indicate whether the assessee had an investment, loan or deposit. It held that in the absence of further inquiry, no addition could be made on bald allegations.
NEERAJ GOEL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0271 DelTrib - ITA No. 5951/Del./2017 dated Mar 21, 2018

1488. Where the AO made an addition in the hands of the assessee pursuant to search conducted at the premises of the assessee, which included the assessee's brother's premises, based on documents seized from the assessee's brother, the Court dismissed the assessee's contention that the addition was invalid as no separate notice under Section 153C had been issued to the assessee and observed that i) the warrant was issued in the name of the assessee as well as his brother ii) the panchnama was signed by both the assessee and the brother iii) the statements of the assessee as well as his brother were recorded on the same date iv) the assessee and his brother were involved in a common business. Accordingly, it held that there was no requirement for issue of separate notice under Section 153C of the Act. Further, it dismissed the assessee's contention that he was not given the opportunity to rebut AO's allegations and observed that his statement along with his brother's statement and all other relevant documentation were duly made available to him to enable him to make submissions before the AO. Accordingly, it upheld the addition made by the AO.
VINOD KUMAR GUPTA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0083 DelHC - ITA 1003/2017, C.M. APPL.41767-41768/2017 & 3505/2018 dated Mar 12, 2018

1489. Where the AO, pursuant to search in the premises of the Mukesh Gupta group of companies seized books of accounts pertaining to the assessee and proceeded to issue notice under Section 153C to the assessee, the Tribunal held that in the absence of a satisfaction note by the AO to state that the books of accounts seized during search of the Mukesh Gupta group constituted incriminating material in the case of the assessee, the issue of notice under Section 153C of the Act was without jursidction. It held that even CBDT vide its Circular No.24/2015 has provided that even if the Assessing Officer of the searched person and the other person is the one and the same, then also the Assessing Officer has to record his satisfaction in the case of the other person i.e., other than the searched person. Accordingly, it quashed the order passed by the AO.
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. GUPTA DOMESTIC FUELS (NAGPUR) LTD. & ORS. - (2018) 52 CCH 0236 NagTrib - ITA Nos. 195/Nag/2014 to 200/Nag/2014 dated Mar 6, 2018

1490. The Tribunal deleted the addition made by the AO pursuant to seizure of unexplained jewellery found at the premises of the assessee. It held that as per the CBDT instruction No 1961 dated 11.05.1994, considering that the assessee's family consisted of 5 members, the permitted levels of jewellery was 1450 gms whereas the amount of jewellery found at the premises was only 847 gms. Accordingly, it held that the jewellery possessed by the assessee was reasonable and therefore deleted the addition made by the AO.
RITU BAJAJ vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0166 DelTrib - ITA No. 4101/DEL/2017 dated Mar 9, 2018

1491. The AO, pursuant to initiation of search proceedings, made an addition under section 68 on account of unexplained share capital which was deleted by the CIT(A) on the merits of the case. The Tribunal, noting that no assessment was pending for the year under review and that the AO made addition based on the book entries which were already disclosed by the assessee, admitted the assessee's petition under Rule 27 and held that in the absence of incriminating material no addition could be made under Section 153A of the Act.
ASSISTANT COMMISSIONER OF INCOME TAX vs. RAVNET SOLUTIONS PVT. LTD. - (2018) 52 CCH 0223 DelTrib - ITA No. 6589, 6590, 6591 & 6592/Del./2013 dated Mar 16, 2018

1492. Where, pursuant to search proceedings, the AO made addition under Section 68 in the hands of the assessee (on account of unsecured loan received by the assessee) based on the statements of two persons recorded under Section 131 wherein they stated that the company providing loan was an accommodation entry provider, the Tribunal deleted the addition made by the AO observing that the statements of those two persons were recorded after completion of search and were not material found during course of search. Accordingly, it held that the statements did not constitute incriminating material found during the search proceedings and deleted the addition.
E-CITY PROJECTS LUCKNOW PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0266 CuttackTrib - IT(SS)A NO. 02/CTK/2018 dated Feb 28, 2018

1493. Where search and seizure operations u/s. 132 was conducted in case of one of partner in assessee firm from where certain documents were seized and proceedings u/s. 153C was initiated against assessee, the Tribunal relying on the decision of the Apex Court in CIT Vs. Calcutta Knitwears, [2014] 362 ITR 673 (SC) [wherein it was held that recording of satisfaction was sine qua non for taking action against person u/s.158BD i.e. a person in whose case search was not conducted] noted that in the assessee's case both the satisfactions which were required to be recorded by AO as per provisions of Section 153C, one in capacity as AO of searched person and other in capacity of AO of assessee (other person) were missing in the instant case. Accordingly, it held that initiation of proceedings u/s.153C was bad in law and without jurisdiction, and the orders passed by AO u/s.153C r.w.s. 143(3) years under consideration were liable to be cancelled.
JOYRAM ENTERPRISE vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0225 GauTrib - ITA No. 260 to 266/GAU/2017 dated Feb 22, 2018

1494. Where pursuant to survey conducted in the business premises of assessee, assessee was queried on discrepancy of cash and the assessee submitted a reconciliation statement of stock along with original records before AO but the AO made addition on unexplained stock on basis of statement of one director wherein he allegedly admitted to pay tax thereon on unexplained stock, the Tribunal observing that in fact i) the director made no statement admitting to pay tax thereon on unexplained stock ii) that there was no difference between quantitative details in stock register and physical stock taken iii) the assessee offered proper explanation to alleged stock verification iv) the valuation in books of accounts of assessee was on basis of historical costs, the Tribunal deleted the addition on account of unexplained stock.
STEEL CITY FOOD PRODUCTS PVT. LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR - (2018) 52 CCH 0141 RanchiTrib dated Feb 28, 2018

1495. Where the AO made an addition in the hands of the assessee under Section 153A of the Act contending that the assessee ought to have declared net profits at 12 percent as opposed to 3.3

percent, the Tribunal held that the addition was unsustainable as there was no reference to incriminating material found during search in the order of the AO, absent which the addition was unsustainable. It held that the addition was based on mere suspicion and surmises.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. DINGLE BUILDCONS PVT. LTD. & ANR. - (2018) 52 CCH 0073 DelTrib - ITA Nos. 4666 & 4667/DEL/2016 dated Feb 1, 2018

1496. The Tribunal held that despite there being incriminating material in possession of Revenue which might implicate assessee (Information was received in form of document collected by Government of India as part of tax information exchange treaty as per which certain persons in India held bank accounts with a bank in Switzerland), but same could not be used within scope of Section 153A when nothing had been found from search, especially when assessee too had denied any such involvement and there was no material gathered during search to rebut such denial by assessee. Accordingly, it held that the addition made by the AO i.e. amount in the said bank account as well as interest on such deposits was to be deleted.
ANURAG DALMIA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0106 DelTrib - ITAs. No. 5395 & 5396/DEL/2017 dated Feb 15, 2018

1497. Based on the admission of an ex-partner of the assesse-firm with respect to payment of certain unaccounted money for purchase of sand ghat, the assessee's case was reopened wherein initially the assessee's partner had disclosed certain amount as additional income, however, filed the return of income of firm without offering such additional income. AO made addition based on the statement of the ex-partner, which was not accepted by other partners. CIT(A) deleted addition on account of undisclosed investment. It was noted that the examination of books of account had shown that amount was paid for acquisition of sand ghat. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order, holding that de hors any corroborative material, statements of ex-partner who was no longer partner in firm for last many years could not be said to be conclusive evidence of firm having made payment through undisclosed means for acquisition of sand ghat. It also upheld the reliance placed by the CIT(A) on the CBDT Circular No. 286/2003/IT dated 10.03.2003 which states that efforts should be made by revenue official**s** to obtain credible evidence and obtaining admission de hors evidence should be avoided.
INCOME TAX OFFICER vs. PROGRESSIVE CARRIERS - (2018) 53 CCH 0137 (Nag Trib) - ITA No. 222/Nag./2015 dated Jun 11, 2018

1498. During search and seizure operation, it was found that the assessee was engaged in providing accommodation entries for issuing bogus bills. The addition made by the AO considering commission rate @ 2% charged by the assessee for such entries was upheld by the CIT(A). The Tribunal dismissed the assesse's appeal against the CIT(A)'s order, noting that the seized documents indicating that the assessee had minimum commission rates of 1.50% and maximum rate of 3.85%. It also rejected the assessee's claim for deduction on account of expenditure against the said addition, holding that neither the assessee had shown any proof of such expenditure nor were the same found during the search proceedings.
VAIBHAV JAIN vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0310 DelTrib - ITA No. 3770 to 3775/Del/2014 dated Apr 12, 2018

1499. The Apex court accepted the application seeking for exemption from filing certified copy of the order of the High Court, wherein the High Court upheld order of Tribunal deleting addition made on account of unaccounted sundry creditors (purchases) and unexplained share of money thereby limiting scope of Assessment u/s 153A on basis of incriminating material discovered in search only.
CIT vs. SKS ISPAT AND POWER LIMITED (SUPREME COURT OF INDIA) (SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 15366/2018) dated May 18, 2018 (102 CCH 0065 ISCC)

1500. On the basis of a document seized during search, seizure and survey operations carried out on the premises of the Assessees, the AO issued notice under Section 148 in respect of land purchased by the Assessee alongwith 11 other buyers and made an addition under Section 69 of the Act. The CIT(A) upheld the order of the AO. The Tribunal observed that there was no evidence or material available in the seized document, as per the order of the AO or the CIT(A)'s order to show that the Assessees had paid the consideration over and above the consideration registered in the purchase document. Further,

since the Revenue failed to prove that excess consideration had passed on in the said transaction, Tribunal deleted the addition made under Section 69 of the Act as unexplained investment. Thus, the Assessee's appeal was allowed.

SATHI SURYANARAYANA REDDY & ORS. vs. DCIT & ORS. (VISHAKAPATNAM TRIBUNAL) (ITA No. 178 to 189 of 2017) dated May 30, 2018 (53 CCH 0173)

1501. The Assessee admitted unrecorded transactions relating to his real estate business and also offered additional income on being summoned under Section 131 of the Act post survey enquiries under Section 133A of the Act. Basis the same, the AO made an addition under Section 68 of the Act. The CIT(A) confirmed the order of the AO. However, the Tribunal observed that the addition was made merely on the basis of loose sheet entries and a power of attorney in the Assessee's name which did not co-relate with any investment made by him from undisclosed sources. Further, the Tribunal observed that such documents did not bear acknowledgement in any form or signature by/of the Assessee. Accordingly, the Tribunal held that in the absence of any corroborative evidences, the Assessee could not be subject to any addition under Section 68 of the Act only on the basis of admission/confession. Thus, the Assessee's appeals were allowed.

DIDAR SINGH vs. DCIT (AMRITSAR TRIBUNAL) (ITA No. 542(Asr)/2016) dated May 29, 2018 (53 CCH 0116)

1502. The assessee was providing lockers without verification of KYC details, various lockers were given on rent to Hawala operators involved in illegal transfer of cash. Based on the cash found and seized documents, the AO made addition of undisclosed income. CIT(A) upheld order of the AO. Tribunal held that it was not necessary that details of undisclosed income of each day of financial year was unearthed; rather details of certain part of the year which were detected could be extrapolated for the entire year. Thus, Tribunal held that since assessee could not substantiate his income from business and since details of unaccounted income were unearthed in a diary found during search, fair estimation of undisclosed income based on entries found on seized documents was justified. Thus, the assessee's appeal was dismissed.

KALURAM MALI vs. DCIT (BOMBAY TRIBUNAL) (ITA No. 392/Mum/2018) dated May 1, 2018 (53 CCH 0089)

1503. Survey operations were conducted on the assessee and bogus billing racket was found which was admitted by the Assessee. AO rejected the books of accounts under Section 145(3) of the Act as the assessee did not give any satisfactory explanation and also made addition to returned income which included the amounts surrendered by the assessee during assessment proceedings. The CIT(A) upheld order of the AO. Tribunal observed that assessee had offered explanation and also produced documentation during the course of assessment proceedings. Tribunal held that although AO rejected the books of accounts but accepted amount as surrendered by the assessee during course of survey, there was contradiction in statement of assessee and findings of AO and hence the matter required reconsideration by the AO. Accordingly, the ITAT restored the matter to the file of the AO fresh determination.

VICHITRA PRESTRESSED CONCRETE UDYOG PVT. LTD. & ANR. vs. DCIT & ANR. (DELHI TRIBUNAL) (ITA No. 73, 74, & 75, /Del./2015, 71/Del./2015) dated May 18, 2018 (53 CCH 0057)

1504. The Tribunal allowed assessee's appeal against the CIT(A)'s upholding the AO's order passed u/s 153A wherein the AO had made addition u/s 68 by treating share capital and share premium as unexplained cash credit based on statement recorded of an associate of the assessee group. It accepted the assessee's contention that no incriminating material was found in respect of the addition made and the statements recorded u/s 132(4) did not constitute as incriminating material. It was further observed that the statement of associate of group company was non descriptive and vague and subject to cross checking of fact to be explained after access to books of accounts. Thus, the Tribunal held that since no incriminating material was found/seized during the course of search, the addition made by AO and upheld by the CIT(A) in the proceedings conducted u/s 153A were void ab-initio and liable to be deleted.

MOON BEVERAGES LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0120 (Del Trib) - ITA No. 7374/Del/2017, 7567/Del/2017 dated Jun 7, 2018

1505. The Tribunal allowed assessee's appeal against the CIT(A)'s upholding the AO's order disallowing the assessee's claim for deduction u/s 40(b) with respect to remuneration to partners against the additional income offered to tax by the assessee on account of discrepancies found in stock of gold and silver during survey action u/s 133A. The Tribunal relied on decision in the case of M/s. Surekh Jewellers Vs. DCIT [ITA No.18/PN/2016], wherein it was held that the additional income disclosed by the assessee in the survey action u/s 133A partakes the character of business and therefore, the assessee was entitled to the benefits of excess remuneration qua the additional income as per the provisions of section 40(b) of the Act. Thus, following the said decision, the Tribunal held that in the instant case, the excess stock linked additional income partook not only the character of business profit but the same was also eligible for quantifying the remuneration u/s 40(b) of the Act.
SILVER PLACE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0300 (Pune Trib) - ITA No. 893/PUN/2016 dated June 29, 2018

1506. During the course of survey proceedings, the assessee, engaged in the business of manufacturing Coils/Strips and Generation of Power, revealed that a maximum loss of 5.6% was incurred in the manufacturing process. The AO treated the excess loss claimed by the assessee above 5.6% as suppressed / undisclosed sales, thereby also rejecting the books of accounts of the Assessee. The CIT(A) deleted the addition made by the AO as the addition was solely made on the basis of the statement recorded during the survey proceedings and that the AO has not brought any other evidence suggesting that the assessee had suppressed the production leading to suppressed sale. The Tribunal observed that CBDT discouraged officers to make any addition merely on the basis of the statements recorded, without bringing any tangible material for such addition. The Tribunal upheld the order of the CIT(A) wherein the addition made by the AO was deleted in absence of any evidence for the same.
DCIT vs. REAL STRIPS LTD. (AHMEDABAD TRIBUNAL) (ITA No. 2255/Ahd/2016) dated May 31, 2018 (53 CCH 0094)

1507. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made u/s 68 in the course of assessment proceedings u/s 153A r.w.s. 153C on the basis of certain document found in search operation in the premises of another person. Noting that all the documents had already been brought on record by the assessee during assessment proceedings in the completed assessment, the Tribunal held that the CIT(A) had rightly deleted the addition and thus the addition made by the AO u/s 153C was outside the scope of proceedings. It held that even on merits, when the assessee had brought on record complete identity with PAN, confirmation, bank statements, memorandum and article of association and audited financials of the company from which the amount was received by the assesse to substantiate the genuineness of the transactions, the AO could not make addition on the basis of surmises that funds received by the assessee from the said company were in fact has been received from some other person.
INCOME TAX OFFICER vs. NAHID FINLEASE PVT. LTD - (2018) 53 CCH 0228 (Del Trib) - ITA No.6246/Del./2014 dated June 22, 2018

1508. The Tribunal dismissed assessee's appeal filed against the CIT(A)'s order upholding the AO's order rejecting the assessee's books of account during the course of assessment proceedings after search and seizure operation conducted upon the assesse. Noting that the assessee had failed to explain the huge variation in the stock pointed out at the time of the search vis-a-vis its books of account, it held that the AO had successfully demonstrated that the rejection of books of account was justified and warranted, in the peculiar facts and circumstances of the present case.
BHAWANI INDUSTRIES LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0207 (Chd Trib) - ITA No. 74/CHD/2017 dated June 20, 2018

1509. Where 25% of cash deposited in the assessee's bank account (which was discovered in course of survey operation u/s 133A) was considered to be the unaccounted income of the assesse and the lower authorities had given a finding that the business in which the appellant was engaged involved mostly cash and credit card payments, the Court dismissed the assessee's appeal against the said findings, holding that these were factual issues and thus no substantial question of law arose.
PINAKI RANJAN DAS vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0107 (Kol HC) - GA NO. 115 OF 2017 WITH ITAT NO.15 OF 2017 dated June 20, 2018

1510. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO applying higher Gross Profit (GP) rate as compared to the GP rate declared towards profits in respect of trading in bullion carried on by assesse, relying on the decision given by the Tribunal in the case of the Father- in-law of the assesse [ITA No. 4241-4243/Del/2014]. In that, on identical facts, the issue was decided in favour of the assessee, noting that the AO had accepted the opening stock, purchases, closing stock and cash deposits in bank accounts which were recorded by the assessee in his books of accounts maintained in regular course of business and sale was duly declared by assessee in his VAT returns filed and that no inflated sale was pointed out by the AO. In that case, it was thus held that the ad-hoc addition made by the AO, by applying the GP rate was not justified, particularly when no comparable case was brought on record wherein such a profit was earned.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. SUMEDHA PATHAK & ANR. - (2018) 53 CCH 0104 (Del Trib) - ITA No. 6082/Del/2014 (CROSS OBJECTION NO. 207/Del/2015) dated June 04, 2018

1511. The Tribunal quashed the assessment order passed u/s 153A pursuant to search proceedings, noting that there was no reference to seized materials whatsoever based on which additions/disallowances were made in the said order and that the assessments for all the three years involved were unabated assessments as there was no pending proceedings and time limit for issue of notice u/s 143(2) for all such years had expired. It relied on the decision in the case of CIT Vs. Gurinder Singh Bawa [386 ITR 483 (Bom)] wherein it was held that once an assessment was not pending but had attained finality for particular year, it could not be subject to proceedings u/s 153A, if no incriminating materials were found in course of search.
ABHISHEK ENTERPRISES vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0217 MumTrib - ITA Nos. 1008, 1009 & 1010/MUM/2016 dated June 04, 2018

1512. The Court upheld the Tribunal's order rejecting the assessee's appeal against the order passed by the AO u/s 153A, after taking the prior approval of the JCIT as per section 153D, wherein the assessee challenged the validity of the said order on the ground that the JCIT did not give any notice and opportunity of hearing to the assessee before granting approval to the draft assessment order of the AO. The assessee relied on the clause 9 of Manual of Office Procedure, Volume-II [Technical], February, 2003 issued by the Directorate of Income Tax on behalf of Central Board of Direct Taxes (CBDT) which lays down the guidelines for giving such an opportunity of being heard to the assessee by the Supervisory Officer to the proposed block assessment. The Court held that the internal guidelines issued by the CBDT, bereft of the statutory provisions in section 153D could not bind the approving authority, namely, the JCIT to comply with the principles of natural justice. It further held that the AO undoubtedly had given adequate and reasonable opportunity of hearing to the assessee, considering all objections on merits, and the assessee was also not able to point out any prejudice caused to him on account of approving authority not giving him an opportunity of hearing
Gopal S. Pandit v CIT - [2018] 95 taxmann.com 246 (Karnataka) - IT APPEAL NO. 34 OF 2017 dated June 25, 2018

1513. With respect to the assessment year under consideration [i.e. AY 2004-05], the assessee filed his return of income after the due date u/s 139(1) [i.e. 31/10/2004] but within the time permitted by notice issued u/s 153A(1)(a) pursuant to search proceedings initiated [on 02/09/2004] after the end of the relevant previous year [i.e. FY 2003-04]. The carry forward of loss claimed by the assessee under the said return was denied on the ground that such a claim was contrary to the provisions of section 139(3) which requires the return to be filed on or before the due date stated in section 139(1) for carrying forward such losses. The Court held that as per section 153A(1), upon initiation of search proceedings, it was not necessary for the assessee to file his regular return by the due date mentioned in section 139(1) as the obligation to file the return remained suspended till such time that a notice was issued to him u/s 153A(1)(a). It further held that where the assessee had filed the return within reasonable time permitted by such notice, such return would then be deemed to have been filed within time permitted u/s 139(1) for benefit u/s 139(3) to be availed of by the assessee.
Shrikant Mohta v CIT - [2018] 95 taxmann.com 224 (Calcutta) - ITAT NOS. 19 & 20 OF 2015, GA NOS. 246 & 247 OF 2015 dated June 25, 2018

1514. Where the Revenue submitted before the Court that while quashing the proceedings initiated u/s 153C, the Tribunal had proceeded on the erroneous finding that no satisfaction was recorded by the AO of the searched person where the satisfaction was in fact recorded by the AO, the Court relegated the Revenue to file a rectification application before the Tribunal pointing out to the Tribunal what was stated in the appeal to the Court with supporting material and directed the Tribunal to decide the same in accordance with law and on its own merits.
Pr.CIT v Mehul Lavjibhai Mehta - [2018] 95 taxmann.com 321 (Gujarat) - R/TAX APPEAL NOS. 208 TO 211 OF 2018 dated June 18, 2018

1515. The Court dismissed Revenue's appeal against the Tribunal's upholding the CIT(A)'s order deleting the addition made u/s 69A on account of seizure of jewellery found in possession of the assessee, who was a salesman working with 'P' Jewellers, At the time of seizure, the assessee had recorded statement u/s 132 admitting that the said jewellery belonged to him. However, subsequently during block assessment proceedings, he brought on record various documents to establish that jewellery seized from him actually belonged to his employer i.e. 'P' Jewellers. The Court held that there was no requirement in law that evidence in support of its case must be produced by the assessee only at time when seizure was made and not during assessment proceedings and thus the impugned addition was rightly deleted by the authorities below.
CIT v Rakesh Ramani - [2018] 94 taxmann.com 461 (Bombay) - IT APPEAL NO. 1435 OF 2007 dated June 4, 2018

1516. The CIT passed a revisional order u/s 263 setting aside the order passed by the AO u/s 153A r.w.s. 143(3) (which was passed after obtaining the approval of the JCIT as per section 153D). The order passed by the AO making certain additions pursuant to the said revisional order was set aside by the CIT(A) on the ground that no fresh approval had been taken by the AO u/s 153D. The Tribunal allowed the revenue's appeal and matter was restored to the CIT(A) for deciding case on merits irrespective of fact that there was no fresh approval u/s 153D before passing the impugned assessment order. On assessee's appeal, the Court upheld the Tribunal's order holding that section 153D is only applicable for passing an assessment order or re-assessment order and there is no requirement u/s 153D for prior approval for complying with remand directions.
Osho Forge Ltd. v CIT - [2018] 93 taxmann.com 369 (Punjab & Haryana) - IT APPEAL NO. 430 OF 2017(O&M) dated April 27, 2018

1517. The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made by the AO on account of the difference between the amount disclosed towards jewellery and cash by the assessee and other family members in the statement recorded u/s 132(4) during the course of search operation and the amount shown in the returns filed by all the family members, holding that the AO could not have made entire addition in hands of the assessee when disclosure statement u/s 132(4) was made for and on behalf of all family members. It was noted that no addition was made in the hands of the other family members.
Pr.CIT v Pradip Jayantilal Karia - [2018] 94 taxmann.com 323 (Gujarat) - R/TAX APPEAL NO. 286 OF 2018 dated April 4, 2018

1518. The Tribunal cancelled the assessment order passed u/s 153A r.w.s. 143(3) pursuant to search operation, noting that the addition made u/s 68 on account of unexplained cash credit was not based on any incriminating material found during search. It relied on the decision in the case of CIT v. IBC Knowledge Park (P.) Ltd. [2016] 385 ITR 346 (Kar) wherein it was held that the fact that search had been conducted would not justify issuance of notice u/s 153A and it is only during a valid search when certain incriminating materials are detected, the said notice could be issued.
BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERS dated April 10, 2018

1519. The Apex Court held that although section 158BD does not speak of 'recording of reasons' as postulated in section 148, but since proceedings u/s 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the AO in arriving at a conclusion

and must contain reasons which should be the basis of initiating the proceedings u/s 158BD. Thus, noting that notice u/s 158BC was issued on the same date to the searched person and also the person other than the searched person (to whom the undisclosed income belonged), it held that the notice u/s 158BC issued to the other person was not valid as no reasonable or prudent man could have come to the satisfaction that the undisclosed income belonged to the other person unless the seized books of accounts etc were verified. The Court held that in such case, the AO was empowered to issue a second notice u/s 158BD to the other person.

Tapan Kumar Dutta v CIT - [2018] 92 taxmann.com 367 (SC) - CIVIL APPEAL NO. 2014 OF 2007 dated April 24, 2018

1520. Upon survey conducted in the business premises of the assessee, certain shortage of stock was found and the assessee had accepted the value representing deficit stock to be arising from sales outside the books. Accordingly, at the time of filing of return for the year under consideration, he filed the return declaring income inter alia including the entire amount representing the said deficit. However, subsequently, he revised the said return offering only 5% of the value of shortage of stock found at the time of survey as his income. The AO held that the revised return filed by the assessee was an afterthought and assessed the income admitted in the original return. The CIT(A) upheld the AO's order. The Tribunal noted that it was clear from the survey findings that the assessee had not maintained books of accounts for his purchases as well as sales and the assessee by a sworn statement had accepted the value representing deficit stock as his income. Further, it noted that original return filed was supported by a tax audit report, whereas the revised return was not supported by any tax audit report and the assessee had not pointed out any specific defects or omissions in the original return. Thus, the Tribunal held that the admission made by the assessee in the original return and the addition made by the AO on such admission had to be sustained. Accordingly, it dismissed the assessee's appeal.

N. RAGOTHAMAN & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0473 ChenTrib - ITA Nos. 216 to 220/Chny/2017, 112/Chny/2017 dated April 3, 2018

1521. The Tribunal allowed assessee's appeal and set aside the assessment order passed by the AO u/s 153C wherein the AO had made addition on account of unsecured loans received by the assessee in cash from various persons alleging that the assessee could not furnish any explanation with regard to source and nature of credits of such receipt **(**which were found during the survey carried out in case of group of the assessee**)**. The assessee submitted that the unsecured loans were recorded in the books of accounts and the same could not amount to incriminating material on the basis of which an addition could be made u/s 153C. The Tribunal accepted the assessee's plea relying on the coordinate bench decision in the case of L. Suryakantham Vs. ACIT [ITA Nos.300 to 305/Vizag/2012] wherein it was held that the AO had no jurisdiction to make additions u/s 153A, for the assessments which are not pending as on the date of search and also the time limit for issue of notice u/s 143(2) of the Act has expired, in absence of any incriminating material found during the course of search.

LALITHA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0472 VishakapatnamTrib - ITA Nos. 111 & 112/Vizag/2017 dated April 4, 2018

1522. The assessee was engaged in the business of manufacturing tread rubber as well as the business of money lending. The assessee filed its returns declaring certain amount being as agricultural income for AY 2004-05 in the year 2010. The AO carried out search u/s 132 and survey u/s 133A and found incriminating material and thereafter the AO issued notice u/s 153A (after search, AO can frame assessment for 6 preceding years). The AO treated a certain amount as non agricultural income from the agricultural income declared by the assessee in its returns thereby making addition in the assessee's total income. The CIT(A) confirmed the addition. The Tribunal, on concurring with the lower authorities stated that the onus was on the assessee to prove that the income was actually earned from agriculture and not from other sources and since in this case the assessee failed to provide evidence with reference to earning of agricultural income and corresponding expenditure incurred with reference to agricultural operations, the Tribunal held that AO had made a reasonable estimate on basis of material seized and dismissed assessee's appeal.

K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18

1523. The AO conducted search and seizure operation u/s 132 and issued notice u/s 153A pursuant to which the assessee filed its returns. The AO observed that the assessee had claimed deduction of huge 'Advertisement Expenses' paid to two parties. Notices issued u/s 133(6) to both the parties remained uncomplied with and thus he made addition in respect of 'Advertisement expenses'.The CIT(A) deleted the addition. The Tribunal upheld CIT(A)'s order noting that the AO had made addition without conducting any further inquiry or ascertaining genuineness of these transactions and the inference was based simply on non-compliance by these two parties, whose complete particulars were with him.It held that in case of non-compliance, AO ought to have deputed Inspector or got enquiry conducted by any other means before jumping to conclusion of non-genuineness of transactions. Further, the Tribunal held that no addition could be made u/s 14A in respect of completed assessments as on date of search if no incriminating material was found. However, since the assessee could not produce copy of computation of income or its original assessment order, which was stated to have been passed u/s 143(3) to demonstrate that no such disallowance was earlier made either by assessee or the AO and return was actually filed u/s 139 under consideration,it remitted the matter to file of AO for examining the same.
ACIT & Anr v Devyani International Ltd. & Anr (2018) 52 CCH 0380 DelTrib - ITA Nos. 857 to 859 & 861/Del/2015 (CO Nos. 291 & 292/Del/2015) dated 23.04.2018

1524. The Court held that where in course of search carried out at premises of a third person, a hard disk was seized on basis of same proceedings under section 153C were initiated against assessee, since AO of searched person failed to record a specific satisfaction as to how said hard disk belonged to assessee, impugned proceedings under section 153C were unjustified.
PCIT v N.S. Software (Firm) [2018] 93 taxmann.com 21 (Delhi) – ITA NO. 791 OF 2017 dated 18.04.2018

1525. The Court held that where in case of assessee engaged in business of real estate development, a search was conducted and certain documents were seized, addition could not be made in respect of those deals which fell through and documents themselves suggested that profits were shown on projected basis. Further, the Court held that where on basis of documents seized during search, AO made addition of premium in respect of commercial area which remained unsold in a mall, in view of fact that said shops did not command prime location and they were allotted to family members without charging any premium, impugned addition was to be deleted.
PCIT v KamleshPrahladbhaiModi [2018] 94 taxmann.com 356 (Gujrat) – R/TAX APPEAL NOS. 331 TO 337 OF 2018 dated 18.04.2018

1526. During search proceedings, one of the directors of assessee company surrendered a certain sum (on account of unexplained cash receipts, unexplained work in progress as well as the share capital and share premium received) as undisclosed income only for the AY in question. AO regarded this statement of director as an incriminating material qua each of preceding assessment years and made addition thereto for each of the six assessment years preceding year of search u/s 153A. The High Court held that the assumption of jurisdiction u/s 153A and consequent addition on said basis was not justified. The Department's SLP filed against the said order of the High Court was admitted by the Supreme Court.
PCIT v Best Infrastructure (India)(P.) Ltd [2018] 94 taxmann.com 115 (SC) SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 14821 OF 2018 dated 14.05.2018

1527. Where survey (under Section 133A) conducted at the premises of a connected person was consequential to the search (under Section 132) conducted at the premises of the assessee, Court upheld the action of the AO in making Block Assessment under Section 158BB and held that any material or evidence found / collected in such survey would fall under words 'and such other materials or information as were available with AO and relatable to such evidence' occurring in section 158BB.
CIT vs. Ajit Kumar – [2018] 102 CCH 0002 (Supreme Court) – Civil Appeal No. 10164 of 2010, 10917 OF 2013, 4449 OF 2015, 5255 OF 2015, 10165 OF 2010 dated May 2, 2018

1528. The assessee individual, a medical practitioner, agreed to surrender certain sum during the course of survey under Section 133A and the same formed part of income declared in his return. The AO made

an addition on account of cash surrendered at time of survey. The CIT(A) upheld the addition as there was is difference in the name of the patients and some of the amounts. The Tribunal observed that for the assessee, it was normal that a patient was accompanied by relatives and hence the difference in name per se could not be a ground to reject assessee's explanation. The Tribunal held that since the amount found during course of survey was included by assessee in his return of income, the addition of such amount made by the AO was deleted.
Dr. Anoop Kumar Gupta vs. ACIT – [2018] 53 CCH 0040 (Delhi ITAT) – ITA No 3648/DEL/20146 dated May 16, 2018

1529. The assessee, running a kirana shop at a small place, was not required to maintain books of accounts as per Section 44AA r.w.s. 44AF of the Act. Although the assessee surrendered certain sum on account of excess stock, loose papers etc. during the course of survey, the statement was retracted by the assessee later. The AO made additions on the basis of the statements recorded during the course of survey. The Tribunal directed the AO and held that AO should have considered facts in right perspective before making additions solely on basis of statement of the assessee recorded during course of survey.
Ashok Vani vs. ITO – [2018] 53 CCH 0048 (Indore Tribunal) – ITA No 303 of 2017 dated May 18, 2018

i. ***Withholding tax***

1530. The Tribunal held that the discount i.e. difference between MRP and the selling price, allowed by the assessee (engaged in the business of providing telecommunication services) to its distributors against advance payment made by the distributor was in the nature of commission and accordingly held that the assessee was liable to deduct taxes under section 194H of the Act. Accordingly, it held that the assessee was an assessee in default under Section 201 of the Act.
TATA TELESERVICES LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0186 DelTrib - ITA Nos. 3328 to 3332/Del./2015 dated Mar 15, 2018

1531. The Tribunal upheld the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia) by the AO on account of short deduction of tax at source, following the Tribunal's decision in the assessee's own case for earlier year wherein the Tribunal had followed the decision in the case of S.K. Tekriwal [361 ITR 432 (Cal)] and Prayas Engineering Ltd. [Tax Appeal No. 1237/2014 (Guj)] wherein it was held that no disallowance can be made u/s 40(a)(ia) if there is any shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under various TDS provisions since the said section refer only to the duty to deduct tax and pay to the Govt. account.
DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018

1532. The Tribunal remanded the matter to AO where the AO had held that assessee (which was a Co-operative society was formed for welfare of LIC employees) was involved in banking business and tax had to be deducted at source on interest paid on time deposits of its members. Tribunal noted that the AO had not considered assessee's own case for previous assessment year which was decided in favour of assessee by Tribunal and also that he had not gone through the cited decision of jurisdictional High Court in the case of Coimbatore District Central Co-operative Bank Ltd. v. ITO (2016) 382 ITR 266 (Mad).
LIC Employees Co-operative Bank Ltd. v ACIT – (2018) 91 taxmann.com 183 (Mad) – W.P. No. 812 of 2018, WMP No. 979 of 2018 dated 18.01.2018

1533. Though the assessee had made provision for audit fees and claimed the same as deduction, it contended that the provisions of section 194J would not apply to audit fees, as question of payment to auditor would arise only after signing of accounts which took place after year end. Noting the provisions of section 194J, requiring deduction of tax at source either at time of credit of expenditure to account of payee or at time of payment whichever is earlier, the Tribunal held that since assessee had made provision for audit fees to account of payee, provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance u/s 40(a)(ia)

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

1534. Where the AO opined that the expenses claimed by assessee under the head 'trade discount and cash discount' which were given by it to its customers/ dealers on account of bulk quantity of goods purchased by them were nothing but commission expenses liable for deduction of TDS u/s 194H, the Tribunal held that since the assessee supplied goods to its dealers on principal-to-principal basis and there was no relationship between assessee and its customers as of principal and agents, the discount offered could not be termed as commission u/s 194H.
EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018

1535. Where the assessee had made payment to a company for managerial and technical services rendered on cost to cost basis without deducting TDS u/s 194J, the Court held that section 194J was not attracted since no income was reflected in Balance Sheet and Profit & Loss Account of the Recipient company towards payment made by the assessee and it was reimbursement of expenses incurred on cost to cost basis by assessee. Thus, it held that if no income was attributable to the payee, there was no liability to deduct TDS in the hands of the tax deductor, as TDS is only an alternative method of collection of taxes.
CIT v Kalyani Steels Ltd. – (2018) 91 taxmann.com 359 (Kar) – ITA No. 260 of 2013 dated 12.02.2018

1536. The Court dismissed the revenue's appeal against the Tribunal's order deleting disallowance made u/s 40(a)(ia) on ground that TDS was not deducted on hired vehicles, holding that hiring of vehicles does not fall within ambit of section 194C and it was only with effect from 1-6-2007 that TDS for hiring of vehicles was to be deducted u/s 194-I, whereas the year under consideration was AY 2007-08
CIT v Pioneer Peresonalised Holidays (P.) Ltd. – (2018) 92 taxmann.com 107 (Ker) – ITA Nos. 138 & 176 of 2013 dated 26.02.2018

1537. The Court dismissed revenue's appeal against the Tribunal's decision with respect to the certain issues relating to TDS wherein the Tribunal had held that –

- Placement fees/carriage fees paid by assessee-entertainment/TV company to cable operators and MSO/DTH operators were payment for work contract so as to be covered u/s 194C and not u/s 194J as fees for technical services
- Tax is not to be deducted u/s 194H on reimbursement of commission expenses, which was paid by another company on behalf of assessee
- Commission paid to non-executives/independent directors could not be treated as salary and, thus, there would be no occasion to deduct tax u/s 192

However, it admitted the revenue's appeal with respect to the certain other TDS issues wherein –

- the Tribunal had held payments made by assessee entertainment/TV company to production house for programme software purchase, equipment hire charge and other production related expenses excluding dubbing and processing charges were payments for works contract u/s 194C and the Revenue contended same to be fees for technical service u/s 194J
- assessee had deducted tax u/s 194C on payments to event managers and the Revenue contended that as per CBDT's Notification No. 188 of 2008, sport related event managers would be liable u/s 194J

CIT, TDS v Zee Entertainment Enterprises Ltd. – (2018) 92 taxmann.com 30 (Bom) – ITA Nos. 1107, 1117, 1174 of 2015 & 126 of 2016 dated 28.02.2018

1538. Where an Indian company had sent its employee on an expatriate assignment to an US company and the during relevant period, the employee was on payroll of the US company and had received salary and certain allowances in USA for meeting his cost of housing, transportation etc. and had also received a part of salary, based on a monthly basis, and certain bonus in India to meet certain

obligations in India such as housing loans repayments etc., AAR ruled that the salary paid by the Indian company to the said employee could not be considered as chargeable to tax in India, since the employee was a non-resident in India during the relevant period rendering services in USA and, thus, the salary would accrue to him in USA. It further ruled that as per terms of Article 16 of India-USA DTAA, income earned by the employee from services rendered in USA would be chargeable to tax in USA, and not in India. With respect to the taxation in the hands of the said employee after his return to India, AAR ruled that once the employee became resident on return to India and the nature of payments made to him by applicant-employer was in nature of salaries, provisions of TDS u/s 192(2) would apply. However, the Applicant could give credit to the employee for taxes deducted during his deputation outside India in view of article 25 of India-USA DTAA.

Texas Instruments (India) (P.) Ltd., In re vs – (2018) 301 CTR 1 (AAR) – A.A.R. No. 1299 of 2012 dated 29.01.2018

1539. The Tribunal dismissed the assessee's appeal for AY 2009-10 against the CIT(A)'s order upholding the AO's order with respect to disallowance u/s 40(a)(ia) on the ground of delay in payments of TDS, noting that the assessee itself had submitted before the CIT(A) that it had claimed these expenses on which income-tax was deducted at source which was paid late beyond period prescribed u/s 40(a)(ia), in subsequent year i.e. AY 2010-11 and thus, claim of expenses could be allowed in A.Y 2010-11 after verification by the AO.

PEARL FREIGHT SERVICES PVT. LTD. v ACIT – (2018) 52 CCH 2 (Mum) – ITA No. 4014/Mum/2014 dated 02.01.2018

1540. The Tribunal deleted the addition made by the AO in the case of the assessee, a civil contractor firm which worked for various government departments, on the ground the assessee had not disclosed tax receipts from two government divisions in its profit and loss account, rejecting assessee's explanation that the two works were sub-let to sub-contractor and entire amount was passed on to sub-contractor on 'no profit and no loss' basis. It held that when the AO did not dispute assessee having passed on amount to sub-contractor and that the assessee did not receive any amount, the addition was unsustainable. Further, with respect to Revenue's argument that no TDS had been deducted by the assessee on payment made to the sub-contractor, the Tribunal held that there is no violation of the provisions of section 40(a)(ia) where the assessee had merely passed on the amount to the sub-contractor and TDS had been deducted by govt. department while making payment to the assessee.

SAI CONSTRUCTION v ITO – (2018) 52 CCH 48 (Agra Trib) – ITA No. 54/Agra/2017 dated 08.01.2018

1541. The Tribunal held that second proviso to section 40(a)(ia) inserted by Finance Act, 2012 to provide that when recipient of interest had included interest amount in their return of income and offered the same to tax then no disallowance was called for u/s 40(a)(ia) is effective retrospectively as it was inserted to remove hardship faced by assessee. However, the matter in the present case was remanded back to the AO for limited purpose to verify fact that as to whether interest income had been included in the return of income by the recipients and offered to tax.

ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018

1542. Where the certificate issued for deduction of tax at lower rate u/s 197 was cancelled on the ground that at the time of issuance, aspect of rule 28AA (providing for procedure to be followed for issue of certificate for deduction at lower rates) was not considered in context of pending demands and that financial condition of Petitioner was such that any future tax payable may not be recoverable from Petitioner, the Court quashed the order cancelling the certificate granted on the ground that the impugned order did not indicate any material to show any change in circumstances which would warrant cancellation of certificate and further it did not deal with Petitioner's contention that entire demand could be adjusted against refundable deposit arising consequent to order of Tribunal in its favour. Petitioner had also submitted that the accumulated losses were so huge that there was no likelihood of any tax becoming payable in the subject assessment year and that the huge financial loss was one of considerations which weighed with the Revenue while granting certificate u/s 197.

Tata Teleservices (Maharashtra) Ltd. v DCIT – (2018) 90 taxmann.com 1 (Bom) – Writ Petition No. 2701 of 2017 dated 25.01.2018

1543. The Court upheld Tribunal's order deleting the disallowance made u/s 40(a)(ia) on account of channel placement fees paid to cable operations by the assessee during AY 2009-10 on which tax was deducted @ 2% u/s 194C and the Revenue contended that tax was to be deducted @ 10% u/s 194J in view of the amended 'royalty' definition vide the Finance Act, 2012 by virtue of retrospective insertion of Explanation 6 to section 9(1)(vi). It held that a party cannot be called upon to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. Further, noting that the meaning of royalty for the purposes of section 40(a)(i) was that as provided in Explanation 2 to Section 9(1)(vi) and not Explanation 6 to Section 9(1)(vi), it held that no disallowance could be made u/s 40(a)(ia) since the channel placement fee was not royalty in terms of Explanation 2 to Section 9(1)(vi).
CIT v NGC Networks (India) Pvt. Ltd [TS-41-HC-2018(BOM)] – ITA No. 397 of 2015 dated 29.01.2018

1544. The Tribunal held that the AO failing to appreciate that the distributor of the assessee was not its agent, erroneously invoked the provisions of Section 194H to contend that the assessee ought to have deducted tax on the discount extended to the distributors on its pre-paid sim cards. Further, it noted that no payment had been made by the assessee and the discount was a mere arrangement. Accordingly, it held that the assessee was not liable to deduct TDS under Section 194H of the Act and therefore held that the assessee could not be considered as an assessee in default under Section 201 of the Act.
VODAFONE DIGILINK LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0261 JaipurTrib - ITA No. 67/JP/2015 dated Mar 8, 2018

1545. Where the Assessing officer passed order under Section 201 of the Act in the case of the assessee after a period of 2 years from the end of the financial year in which the assessee filed its TDS statements, the Tribunal upheld the assessee's contention that the order was time barred in light of the provisions of Section 201(3) [as amended by Finance Act 2012] wherein it was provided that no order under Section 201(1) would be passed at any time after the expiry of two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed. Relying on the decisions of the Courts in CIT v. Vatika Township (P.) Ltd. [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249 (SC), Tata Teleservices v. Union of India [2016] 385 ITR 497/238 Taxman 331/66 taxmann.com 157 (Guj.), Troikaa Pharmaceuticals Ltd. v. Union of India [2016] 68 taxmann.com 229 (Guj.) etc, it dismissed the Revenue's contention that the amendment to Section 201(3) in Finance Act 2014 (which extended the time limit to a period of 7 years) was retrospective and held that there was no mention that the amendment was to be applied retrospectively. Further, it noted that the legislature while amending the impugned section in 2014 stated that the same would be applicable w.e.f. 1/10/2014. Considering the order under Section 201(1) of the Act was passed beyond the two year time limit as provided in the pre-amended section, it held that the order was time barred and therefore was null and void.
Sodexo SVC India (P.) Ltd. v DCIT - [2018] 92 taxmann.com 260 (Mumbai - Trib.) - IT APPEAL NO. 980 (MUM.) OF 2018 dated MARCH 28, 2018
Vodafone Cellular Ltd v DCIT – (2018) 91 taxmann.com 466 (Pune – Trib) – ITA NO 1961 / Pune / 2013 dated March 12, 2018

1546. The assessee possessed manufacturing facility along with license of manufacturing of beer but did not own any brand of its own and since the beer manufactured by it was sold on brand name, it made a payment of royalty to its parent company. Noting that the assessee deducted TDS u/s @2% u/s 194C on payments made to parent company, whereas the brand fee was in nature of royalty for use of brand name liable to tax withholding u/s 194J, the AO treated assessee as assessee-in-default in respect of short deduction of tax at source and raised demand, pursuant to which penalty was imposed u/s 271C for short deduction of tax at source. The Tribunal dismissed the contention of the assessee that it had reasonable cause as it believed the payment to be in the nature of contract and held that the agreement clearly indicated that payment was brand fee and that the assessee had not entered in any contract for rendering services but manufactured goods on its own in brand name of parent company. Accordingly,

it held that the argument of assessee that short deduction did not cause loss to revenue was not reasonable explanation and accordingly upheld the levy of penalty.
UNITED BREWERIES LTD. vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0177 VishakapatnamTrib - ITA No. 454-456/Viz/2017 dated Mar 14, 2018

1547. The Tribunal held that no TDS under Section 194J of the Act was to be deducted on transmission / wheeling charges paid by the assessee. It held that Section 194J would apply only when technology or technical knowledge, experiences/skills of person was made available to others which could be further used by him for its own purpose and not where by using technical systems, services were rendered to other, which was not so in the case of the assessee. Further, relying on the decision of Hon'ble Delhi High Court in the case of CIT vs. Bharati Cellular Limited [175 Taxmann 573 (Del)] affirmed by the Hon'ble Supreme Court in 193 Taxman 97(SC), it held that technical services for the purpose of section 194J would mean those technical services which involve human interface/element. Since the Department failed to prove that the services received by the assessee involved human interface, it held that the payment would not be subjected to Section 194J. Accordingly, it deleted the disallowance made under Section 40(a)(i) of the Act.
NOIDA POWER COMPANY LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0196 DelTrib - ITA No. 4878/DEL/2016 dated Mar 19, 2018

1548. The Court held that where the assessee-company engaged in refining crude oil, storing and selling of petroleum products, entered into an agreement with a carrier for providing trucks for transportation of products so manufactured, it being a case of 'works contract', the assessee was required to deduct tax at source under section 194C while making payment of transporting charges and not under section 194-I as contended by the AO. Accordingly, it dismissed Revenue's appeal.
CIT (TD) v Indian Oil Corporation Ltd - [2018] 92 taxmann.com 281 (Uttarakhand) - IT APPEAL NOS. 37 & 38 OF 2014 dated MARCH 6, 2018

1549. The Tribunal held that installation of set-top box by installation services providers amounted to works contract for which no technical expertise was required. Accordingly, it held that the assessee was not liable to deduct tax under Section 194J and had rightly deducted TDS under section 194C. Accordingly, it held that the AO had incorrectly held the assessee to be an assessee in default under Section 201 of the Act.
Further, it held that trade discount granted to principal distributor for distribution/sale of set-top boxes (STB), sale of recharge vouchers, prepaid vouchers etc could not be considered as commission and, hence was not liable for deduction of tax at source under provisions of section 194H
JCIT v Bharat Business Channels Ltd - [2018] 92 taxmann.com 216 (Mumbai - Trib.) - IT APPEAL NOS. 7047, 7048, 7200 & 7201 (MUM.) OF 2012 dated MARCH 20, 2018

1550. Where assessee paid lease rent to Kerala State Co-operative Hospital Complex without deducting tax at source, in view of fact that said resident receiver filed its return belatedly and did not pay tax on rent received, the Court held that the assessee could not be absolved from consequences flowing from sections 201(1) and 40(a)(ia).
Academy of Medical Sciences v CIT - [2018] 91 taxmann.com 293 (Kerala) - IT APPEAL NOS. 232 TO 236 OF 2014 AND 152 OF 2015 dated MARCH 7, 2018

1551. The Court upheld the order of the CIT(A) and Tribunal wherein it was held that where the assessee was reimbursing payments to another company viz. HSL absent any income element no TDS the AO was incorrect in classifying the assessee as an assessee in default on account of non-deduction of TDS under Section 194-J.
COMMISSIONER OF INCOME TAX & ANR. vs. KALYANI STEELS LTD. – (2018) 101 CCH 0181 KarHC - ITA No. 260/2013 c/w ITA No. 289/2014, 263/2013, 265/2013, 2008/2014 & 262/2013 dated Feb 12, 2018

1552. Where the assessee deducted tax under Section 194C of the Act on payments made for the purpose of marine geotechnical investigation for rock excavation but the AO alleged that the assessee ought to have deducted tax under Section 194J, the Tribunal directed the AO to verify the tender / contracts

under which the payment was made and held that i) if the payment was made for construction of retaining wall against the Mithi river, Section 194C would apply and ii) if the payments were made for rock excavation, Section 194J would apply.
Mumbai Metropolitan Region Development Authority v ACIT – (2018) 52 CCH 0082 MumTrib – ITA No 5186 / Mum / 2016 dated Feb 7, 2018

1553. Where the assessee merely purchased residential sites from the developer/contractors for the allotment to its residents, the Tribunal held that the AO erred in invoking Section 194C alleging that the work carried out by developer/contractor on behalf of assesse was in nature of works contract. It held that the assessee was not required to deduct tax at source towards payment of advance sale consideration as it was for seller of sites to pay capital gains depending upon tax payable by him.
INCOME TAX OFFICER vs. REMCO (BHEL) HOUSE BUILDING CO-OPERATIVE SOCIETY LTD. - (2018) 52 CCH 0074 BangTrib - ITA Nos. 1372 to 1377/Bang/2017 dated Feb 2, 2018

1554. The Court held that the AO was not justified in disallowing the discount granted by the assessee to advertisement agencies by erroneously characterizing it as commission under Section 194-H. It held that the AO had not made any enquiries and had made a general allegation that the discount was in the nature of commission, ignoring the books of accounts and credit notes issued by the assessee and therefore held that his basis was unjustified. Further, it held that the discount to advertisement agencies sprung from a relationship on principal to principal basis and therefore did not constitute commission under Section 194H.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHAILENDRA GARG - (2018) 101 CCH 0061 RajHC - D.B. Income Tax Appeal No. 6/2018 dated Feb 15, 2018

1555. The Tribunal held the assessee not to be an assesse-in-default u/s 201(1) with respect to payment made to Gujarat Enviro Protection and Infrastructure Limited (GEPIL) without deducting TDS u/s 194C, following the Tribunal's order in the assessee's own case for an earlier year wherein it was noted that the assessee had acted only as a custodian for disbursement of funds for earmarked purposes, i.e. as nodal agency of Government for smooth implementation of the Municipal Solid Waste Management in designated areas and though funds continued to remain with the assessee, ownership or utilization did not vest in it. Thus, it was held that with respect to the funds disbursed to GEPIL, there could not be any obligation to deduct TDS as the payment was effectively made by Government to GEPIL through the assesse. Accordingly, the assessee's appeal was allowed.
ASANSOL DURGAPUR DEVELOPMENT AUTHORITY vs. ITO (TDS) - (2018) 53 CCH 0314 (Kol Trib) - I.T.A No. 1494, 2185, 1452& 1453 & 1439 & 1440, 2155/Kol/2016 dated June 29, 2018

1556. The Tribunal held that the assessee-telecom operator was not liable to deduct TDS u/s 194J with respect to payment of roaming charges to other telecom operator (for service provided by them to the subscribers of assessee's network), holding that roaming services were in the nature of use of standard facilities, which do not require any human interface, and did not involve rendering of managerial, technical or consultancy services and thus, the said services could not be construed as 'fees for technical series' as defined u/s 194J. Further, following the coordinate bench decision in the assessee's own case for another year, the Tribunal held that the provisions of section 194H were not applicable with respect to discount offered to pre-paid distributors since the arrangement between the appellant and its prepaid distributors was on a 'principal to principal basis' and the assessee neither booked nor paid any commission to its prepaid distributors.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. VODAFONE WEST LTD. & ANR. - (2018) 52 CCH 0304 AhdTrib - ITA Nos. 1317 & 1318/AHD/2016 (Cross Objection No.89/AHD/2016) dated Apr 4, 2018

1557. The AO made disallowance u/s 40(a)(ia) with respect to payments made to the transporters without deducting TDS u/s 194C. Section 194C(6) *inter alia* provides that TDS is not to be deducted from any payment made to a contractor during the course of business of plying, hiring or leasing goods carriages who furnish a declaration stating that he owns 10 or less than 10 goods carriages and aslso furnishes his PAN. Section 194C(7) further provides that the person making such payment shall furnish particulars of persons referred in section 194C(6) to the prescribed authority. In the instant case, it was noted that though all the transporters had furnished their PAN and the same were also furnished in the

TDS return, the AO made the aforesaid disallowance opining that the provisions of Section 194C(6)/ 194C(7) had not been complied with. The Tribunal dismissed revenue's appeal against the CIT(A)'s order deleting the said disallowance, following the decision in the case of Le Modulor Pvt. Ltd. [ITA No.693/Ahd/2016] wherein it was held that section 194C(6) and 194C(7) are independent of each other and cannot be read together to attract disallowance u/s. 40(a)(ia) r.w.s. 194C of the Act

ASSISTANT COMMISSIONER OF INCOME TAX vs. EAGLE STEEL INDUSTRIES PVT. LTD. - (2018) 53 CCH 0265 (Ahd Trib) - I.T.A. No.431 & 432/Ahd/2018 dated June 28, 2018

1558. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had disallowed the assesses' claim for deduction for certain payment made to custom house agent for reimbursement of custom duty paid by it on behalf of the assesse, without deducting TDS. The Tribunal held that payment of custom duty to Government on import of goods even if paid through agent by way of reimbursement could not warrant deduction of income-tax at source within provisions of Act. It was also noted that the agent had raised separate invoices for its service charges and the assesse had claimed that it had deducted TDS on all such service charges paid to the agent.

LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0248 (MumTrib) - ITA No. 5998/Mum/2014 dated June 27, 2018

1559. The Court dismissed Revenue's SLP filed against the High Court's decision allowing the assessee's writ to quash section 201(1)/(1A) proceeding for AY 2001-02, which were initiated by the Revenue consequent to the adverse High Court ruling rendered in 2010 with respect to another assessee, relying on the proviso to sub-section(3) of Sec 201 inserted vide the Finance Act, 2009 w.e.f. April 1, 2010 (stipulating that order u/s 201 for FY commencing on or before April 1, 2007 may be passed at any time on or before March 31, 2011). High Court had accepted assessee's stand that proviso to Sec 201(3) has to be read consistently with the law laid down by NHK Japan ruling (laying down four years limitation period for initiation of Sec 201 proceedings) and should not permit Department to initiate Sec 201 proceedings after a period more than four years prior to March 31, 2011. Further, with respect to reliance placed by the Revenue on the extended time-limit available u/s 153(3)(ii) [for giving effect to findings/ directions issued by Court], the High Court had held that the extended time-limit u/s 153(3)(ii) could be applied only to the assessee in whose case such order was made by the Court.

ACIT v Tata Teleservices Ltd [TS-154-SC-2018] - Special Leave to Appeal (C) NO. 3766/ 2017 dated April 2, 2018

1560. The Tribunal allowed asseessee's appeal filed against the CIT(A)'s order wherein the CIT(A) had confirmed the AO's action in disallowing the assesse claim for deduction of discounting charges paid due to non-deduction of TDS u/s 194A requiring TDS deduction on interest payments. Referring to the definition of the term 'interest' as given u/s 2(28A), the Tribunal held that discounting charges are outside the purview of interest expenses and, therefore, the question of making any disallowance on account of non-deduction of TDS on such discounting charges did not arise. It also relied on the decision in the case of PCIT vs. M. Sons Gems N. Jewellery Pvt. Ltd. [69 Taxmann.com 373 (Del HC)] wherein it was held that TDS was not to be deducted u/s 194A on payment of "factoring/discounting charges".

DEPUTY COMMISSIONER OF INCOME TAX vs. STERLING ORNAMENT (P) LTD. - (2018) 53 CCH 0252 (Del Trib) - I.T.A. No. 4395/DEL/2014 dated June 27, 2018

1561. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for depreciation on computers and softwares acquired from foreign vendors and capitalized by the assesse disallowed by the AO u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made for such acquisition. The Tribunal followed the decision in the case of Kawasaki Microelectronics Inc - India Branch V. DDIT(IT) [IT(IT)A No.1512/Bang/2010] wherein it was held that once the amount paid for software was capitalized (forming part of the block of asset) and not claimed as expenditure, depreciation on the same could not be disallowed even if TDS was not deducted while making the said payment.

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

1562. The Tribunal allowed Revenue's appeal and reversed the CIT(A)'s order to the extent the CIT(A) had deleted the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS while making payment for purchase of software (considering the same as royalty payment). For the said disallowance, the AO had placed reliance on the decision in the case of CIT vs. Samsung Electronic Company Ltd (2012) 345 ITR 494 (Kar) [dated 15/10/2011] wherein it was held that the consideration paid for purchase of software is 'royalty'. The CIT(A) agreed with the decision of the AO to the extent that the consideration paid for purchase of software is in the form of royalty and therefore non-deduction of tax at source attracted the provisions of Section 40(a)(i), relying on the aforesaid decision. However, it granted relief to the assesse on the ground of impossibility of performance, accepting the assessee's contention that the aforesaid decision was rendered on 15.10.2011 i.e. after the end of the relevant previous year and thus it was not possible for the assessee to deduct the tax at the time of making the payment. The Tribunal held that since the assessee even in the subsequent years had not deducted TDS otherwise it would have produced record for deduction of tax in subsequent years and since the assessee was continuing its business in subsequent year and TDS could be deducted in subsequent year, the conclusion recorded by the CIT(A) was wrong as there was no impossibility of performance. Further, it held that the Courts only interpret the law and do not lay down a new law and thus it was not impossible for the assessee to deduct TDS at the time of making the payment (as the law interpreted by the High Court in the aforesaid case was holding the field at the relevant time)

DEPUTY COMMISSIONER OF INCOME TAX vs. ALLEGIS SERVICES INDIA LTD. - (2018) 53 CCH 0143 (Mum Trib) - ITA No. 325/Bang/2018 dated June 13, 2018

1563. The Court dismissed Revenue's appeal against the Tribunal's order deleting the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS u/s 194C in respect of packaging materials purchased and u/s 194H in respect of target incentives given to the distributors. The Tribunal had held that section 194C was not attracted in the present case since a "work" does not include supply of a product according to a customer's requirements / specification by using materials purchased from a person other than the customers and consequently there was no application of provisions of section 40(a)(ia). With respect to target incentives, the Tribunal held that the only relationship between the appellant and the dealers and distributors was of seller and buyer and all the transactions took place on a principal to principal basis and hence the payment of target incentives made by the appellant company through credit notes could not be termed as 'commission or brokerage' as stipulated in section 194H. The Court held that the reasoning given by the Tribunal was based on factual analysis of the transactions and there was no perversity in such analysis.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHALIMAR CHEMICAL WORKS LTD. - (2018) 102 CCH 0153 KolHC - ITAT No. 18 of 2017 With GA No. 181 of 2017 dated June 12, 2018

1564. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO for non-deduction of TDS u/s 194A in respect of interest payment on time deposits during the AY 2012-13. It was noted that in the case of CIT v. Bijapur District Central [(2018) 93 taxmann.com 211 (Kar)] and Sri Basaveswara Sahakari Bank Ltd [(2016) 74 taxman.com 21 (Kar)] it was held that the provisions of the section 194A(3)(v) which had been amended to expressly provide that the exemption provided from TDS from payment of interest to members by a co- operative society under section 194A(3)(v) shall not apply to the payment of interest on time deposits by the co-operative banks to its members was effective from the prospective date of 1st June, 2015 and, thus, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015.

ASSISTANT COMMISSIONER OF INCOME TAX vs. BELLARY DIST. CO-OPERATIVE CENTRAL BANK LTD. - (2018) 53 CCH 0290 BangTrib - ITA No. 2016/Bang/2016 dated June 1, 2018

1565. The assessee functioning under the Ministry of Information and Broadcasting was engaged in the running of the TV Channel 'Doordarshan' and had been regularly telecasting advertisements of several consumer companies. It had entered into an agreement with several advertising agencies to enable them to do business of telecasting advertisements of several consumer products on its channel which contained the mode and time within which agency would make payment to assessee and assessee would pay 15 percent by way of commission to the agencies. The AO during assessment proceedings held that the provision of Section 194H would be applicable to the assessee as the payment made to

the agencies were made in the nature of 'commission' and further the provision of section 201(1) would also be applicable as the assessee had failed to deduct tax at source from the amount paid to various agencies. The Supreme Court held that once the provisions of Section 194H were held to be applicable to the transactions in question, it was obligatory on part of the assessee to have deducted the tax and the non-compliance of the same attracted the rigour of section 201(1) which provides for consequence of failure to deduct the tax as provided u/s 194H. The Apex Court dismissed the appeal of the assessee and held that Section 194H would be applicable because payment made by the assessee to the agencies were to secure more business and in the nature of commission.
Director, Prasar Bharati v. CIT – [2018] 92 taxmann.com 11 (SC) – Civil Appeal Nos. 3496-3497 of 2018 dated April 3, 2018

1566. The Tribunal held that the assessee, a statutory corporation, was liable to deduct TDS u/s 192 from payment made to its retired employees towards unutilized leave period since the employees of the assessee-corporation, could not be regarded as State or Central Government employees so as to to be entitled to exemption u/s 10(10AA)(i). However, since the assessee was under bona fide belief that its employees were entitled to the said exemption and the Revenue had accepted in the past the manner in which TDS was deducted by the assessee, it held that the assessee had discharged its obligation u/s 192 and, hence, proceedings u/s 201(1) and 201(1A) were quashed.
KPTCL v ITO(OSD)(TDS) - [2018] 93 taxmann.com 89 (Bangalore - Trib.) - IT APPEAL NOS. 2223 TO 2300 (BANG.) OF 2017 dated May 2, 2018

1567. Assessee was engaged in the manufacture and export of casting material. The AO disallowed the export commission paid by the assessee on the ground that the tax deducted at source on said charges had not been deposited with the Government before the end of the relevant financial year even though the same was deposited after five months from the end of the relevant financial year. The Apex Court decided in favour of the assessee and held that the amendment made by the Finance Act, 2010 to the provisions of section 40(a)(ia) was curative in nature and should be given retrospective operation on the ground that the amended provisions should be interpreted liberally so that an assessee should not suffer unintended and deleterious consequences beyond what the object and the purpose of the provision mandates.
CIT v. Calcutta Export Company – [2018] 93 taxmann.com 51 – Civil Appeal Nos. 4339-4340 of 2018 dated April 24, 2018

1568. Airline operators collected passenger service fees (PSF) from passengers at the time of booking of tickets, on behalf of the assessee-airport. While paying the same to the assessee, the Airlines operators retained certain percent of invoice value on account of cash discount or collection charges. The Tribunal held that the said collection charges or cash discount retained by the airline operators assumed the character of commission paid by principal to its agents and thus, the assessee being the principal was required to deduct TDS u/s 194H on such payments to airlines operators.
Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018

1569. The Court allowed the assessee's appeal and held that the assessee could not be said to be a defaulter u/s 201(1) for non-deduction of TDS on payment made to an education society for making good the deficit in tuition fees of employees' children since the said payment did not amount to perquisite u/s 17 for the relevant AYs i.e. AY 2000-01 and 2001-02 as the Rule 3(e) prior to amendment in 2001 provided only for valuation of perquisites/ benefit resulting from provision of 'free' educational facility and the word 'concessional' was inserted by the amendment in 2001 only for subsequent period.
GUJARAT CO.OPERATIVE MILK MARKETING FEDERATION LTD - TS-246-HC-2018(GUJ) - R/TAX APPEAL No. 894 & 895 of 2007 dated May 9, 2018

1570. The Assessee, a registered co-operative housing society and also a listed scheduled bank, paid interest to its members and non-members without withholding TDS under Section 194A of the Act. The AO made an addition under Section 40(a)(ia) of the Act in respect of such interest payments. The CIT(A) deleted the disallowance as it was observed that the assessee was not a co-operative society but a co-operative bank. Tribunal observed that since the assessee was a co-operative bank, carrying on

banking business with approval of RBI, the assessee was not liable to withhold TDS under Section 194A of the Act on interest paid to its own members. However, in respect of interest payment to non-members, the Tribunal held that the assessee was liable to withhold / deduct TDS under Section 194A of the Act. Thus, the Revenue's appeal was partly allowed.

ACIT vs. KODUNGALLUR TOWN CO-OPERATIVE BANK LTD. (CHENNAI TRIBUNAL) (ITA Nos. 527-529 & 526/Coch/2015) dated May 31, 2018 (53 CCH 0105)

1571. The Assessee, a cellular service provider, issued its recharge vouchers/ starters packets to its distributors at discounted rates without withholding TDS thereon. The AO held that the discount offered was to be construed as commission and TDS should have been deducted thereon. Accordingly, the AO treated the assessee to be in default under Section 201(1)/201(1A) of the Act. The CIT(A) upheld the order of the AO. On appeal, the Tribunal relied on the ruling of *Bharati Cellular Ltd. V. ACIT (2013) 354 ITR 507 (Cal.)(HC)* and held that the AO should have examined whether distributors offered such commission to tax in their return and that the AO could resort to collection mechanism of section 201 of the Act only in cases of failure to pay taxes on part of the deductees. Thus, the Tribunal partly allowed the assessee's appeal and directed the AO to verify payment of taxes by distributors of assessee.

IDEA CELLULAR LTD. & ORS. vs. ACIT & ORS. (KOLKATA TRIBUNAL) (ITA No. 1204 &1302/ Kol/ 2016, 2490/Kol/2016 & 22/Kol/201)7dated May 31, 2018 (53 CCH 0158)

1572. The Tribunal held that as per CBDT circular 715 dated 8-8-1999, a contract for putting up a hoarding was in the nature of advertising contract and provisions of section 194C would be applicable. However, if a person had taken a particular space on rent and thereafter sub-lets the same, fully or in parts, then such payments would be liable for tax deduction at source u/s 194-I and not u/s 194C. Accordingly, the matter was remanded to the AO.

Accord Advertising (P.) Ltd. v. ITO – [2018] 93 taxmann.com 398 (Mumbai – Trib.) – IT Appeal Nos. 3528 to 3530 (MUM.) of 2014 dated April 13, 2018

1573. The Assessee, a cellular service provider, did not withhold TDS on commissions paid to agents on prepaid SIM cards and recharge coupons which were sold through agents. AO held that TDS should have been deducted under Section 194H of the Act and hence the assessee was treated to be in default under Section 201(1) of the Act. The CIT(A) upheld the order of the AO. On appeal, the assessee challenged the order of the AO and the CIT(A) as they were issued in the wrong name, despite intimation of the Assessee company's merger and change in name thereon to the AO and the CIT(A). Relying on the ruling of the Supreme Court in *Skylight Hospitality LLP Vs ACIT in (SLP (L) No. 7409/2018 dated 06.04.2018),* the Tribunal held that wrong name stated in the notice/ order was merely a clerical error which could be corrected u/s 292B of the IT Act. On merits, the Tribunal followed the Assessee's own case of the jurisdictional High Court which was decided in favour of the Revenue. Accordingly, the Assessee's appeals were dismissed.

VODAFONE MOBILE SERVICES LTD. vs. ACIT (HYD TRIBUNAL) (ITA Nos. 40 & 41/Hyd/2018) dated May 30, 2018 (53 CCH 0136)

1574. The Tribunal remitted the matter back to the AO to verify the truthfulness of contentions of the assessee and genuineness of additional evidences, in a case where the AO had disallowed certain expenses u/s 40(a)(ia) on account of non-deduction of TDS on payments towards labour/ contract charges and lack of supporting evidences. For the first time, before the Tribunal, the assessee had submitted large number of evidences to contend that he had not entered into any contract/sub-contract and consequentially no TDS was required to be deducted. The Tribunal admitted the additional evidences in interest of justice, noting that the assessee was prevented to produce these evidences due to medical emergencies.

SHRINIWAS SHRITEJU SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0260 MumTrib - ITA No. 2058/Mum/2014 dated April 2, 2018

1575. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO with respect to professional charges paid by the assessee to 80-90 professionals on different dates, without deducting TDS. The AO had alleged that the said payments were made entirely in cash and on the same date, thus exceeding the prescribed limit for attracting the TDS on payment made to professionals. It was noted that the AO's finding that all professional charges were made in cash was factually wrong as

payments were made to various temporary professional staff by cheque. It was thus held that the AO's findings were merely based on doubts, surmises and conjectures without bringing any concrete material against the assessee and the professional charges was incurred wholly and exclusively for purpose of business of assessee (being provision of IT/ BPO services).

ASSISTANT COMMISSIONER OF INCOME TAX vs. SHRUTI NANDA - (2018) 65 ITR (Trib) 0189 (Delhi) - ITA.No.5914/Del./2014 dated April 3, 2018

1576. The assessee (a Govt. company, engaged in transmission of electricity) sought a ruling from the AAR on the question as to whether it was liable to deduct TDS u/s 194C or 194J on payment of transmission and wheeling charges to RVPN under transmission service agreement (for maintaining transmission lines) and on payment made to State Load Dispatch Centre (SLDC) for SLDC charges. The AAR held that from perusal of the duties and obligations of RVPN viz-a-viz the applicant, it could be seen that it was not a mere case of RVPN maintaining its system with the help of its professional and technical personnel but also a case of such personnel ensuring regular and consistent transmission of electrical energy at the grid voltage at the distribution point of the applicant. It, accordingly, held that the consideration paid towards transmission charges partook the character of fees for technical services and thus the applicant was obliged to withhold tax thereon u/s 194J. As far as SLDC charges were concerned, it held that the SLDC were constituted for the purpose of exercising the powers and discharging the functions under Part V of the Electricity Act, which deals with the Transmission of electricity and considering the nature of its obligations and the role it performed, it appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the state as a whole. The AAR thus held that TDS was not required to be deducted u/s 194J or 194C on payment of SLDC charges.

AJMER VIDYUT VITRAN NIGAM LIMITED, IN RE - (2013) 353 ITR 0640 - AAR No. 1012 of 2010 dated April 27, 2018

1577. The assessee, engaged in the business of providing providing basic & mobile telecommunication service and internet service, filed its returns declaring loss for the relevant AY under consideration. The AO re-opened assessment as the AO found that assessee had not deducted tax at source on alleged commission paid to distributors on sale of prepaid sim cards and recharge coupon vouchers. The AO rejected assessee's claim that the relation between assessee & distributors was on principal-to-principal basis and held that the discount on MRP by assessee to distributors was in nature of commission as per S.194H(on which tax was not deducted at source) and thus made disallowance u/s 40(i)(ia). The CIT(A) deleted the disallowance. The Tribunal upheld CIT(A)'s order and accepted assessee's contention that the relation between assessee & distributors was on principal-to-principal basis and further held that the distributors could not be treated as agents of assessee and thus the said sale to the distributors was outside the ambit of S.194H

ACIT & Ors v Tata Teleservices (M) Ltd. & Ors (2018) 52 CCH 0397 MumTrib - ITA No.T 5031/Mum./2016, 5032/Mum./2016, 5033/Mum./2016 dated 27.04.18

1578. The Tribunal upheld the CIT(A)'s order confirming the AO's order passed u/s 201(1)/ 201(1A) holding the assessee to be in default for non-deduction of TDS u/ 192 while making payment of Leave Travel Concession (LTC) to its employees, noting that the travel destinations were outside India and the provisions of section 10(5) exempting the LTC from tax was introduced to motivate employees and encourage tourism 'in India'. Accordingly, the assessee's appeal against the CIT(A)'s order was dismissed.

State Bank of India & Ors v ACIT & Ors (2018) 52 CCH 0298 BangTrib dated 06.04.2018

1579. The CIT passed revision order u/s 263 on finding that the assessee had made two payments towards computerizing records but failed to deduct tax at source u/s 194C and thus directed the AO to examine the said issue. The AO passed order u/s 143(3) r.w.s 263 and made addition in assessee's income u/s 40(a)(ia). The CIT(A) deleted the addition made by the AO, following Merilyn Shipping and Transports v. Addl. CIT (2012) 136 ITD 23 (Visag)(SB) wherein it was held that section 40(a)(ia) is applicable only to expenditure which is payable as on 31st March of every year and cannot be invoked to disallow the amounts which have already been paid during the previous year, without deducting tax at source. The Tribunal reversed the CIT(A)'s order noting that the Apex Court in the case of Palam Gas Service. V

CIT [2017] 81 taxmann.com 43 (SC) has held that the word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid.

ACIT v Guntur Co-operative Central Bank (2018) 52 CCH 0551 VishakapatnamTrib - I.T.A.No.75/Vizag/2016 & C.O. No.36/Vizag/2016 dated 06.04.2018

1580. The Tribunal held that credit for tax deducted at source has to be given in assessment year in which income has actually been assessed/offered to tax and not in year of deduction itself.

Surendra S. Gupta v ACIT [2018] 93 taxmann.com 456 (Mumbai – Trib.) – ITA NO 4791 OF 2014 dated 09.05.2018

1581. The Tribunal held that where assessee had claimed an expenditure towards labour& fabrication charges paid by it and furnished requisite evidences to prove that payee had duly considered such charges paid by assessee in its return of income, no disallowance under section 40(a)(ia) could be inflicted in respect of such charges in hands of assessee payer.

Jashojit Mukherjee v ACIT [2018] 93 taxmann.com 366 (Kolkata – Trib.) – ITA NO. 403 OF 2017 dated 04.05.2018

1582. The assessee-company, had entered into an agreement with one pharmaceuticals company (PC) according to which the PC would manufacture the pharmaceutical products in the brand name "Sorbiline" by using materials from its own source and sell the same to the assessee on "principal to principal" basis. The deduction claimed for payment made to the PC was disallowed by the AO for non-deduction of TDS u/s 194C. However, the said deduction was allowed by the CIT(A) holding that section 194C was not applicable in the instant case, since clause (e) of Explanation (iv) of section 194C itself excludes manufacture/supply of product to a customer by using material purchased from person other than such customer from the ambit of the said section. Thus,the Tribunal upheld the order of CIT(A) giving concurrent finding as above.

DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018

1583. The Tribunal held that no disallowance could be made u/s 40(a)(ia), where the assessee-bankhad paid interest to depositors who deposited Form 15G/15H without deducting TDS even though the assesseehad failed to submit the said Forms before the prescribed authoritysince the requirement of filing of Forms 15G and 15H with prescribed authority viz., Commissioner is only procedural, relying on the decision in the case of CIT v Sri Marikamba Transport Co [2015] 379 ITR 129 (Karnataka) wherein it was held that non-filing of Form No. 15-I/J (required for non-deduction of TDS u/s 194C while making payments to sub-contractors) is only a technical defect and provisions of section 40(a)(ia) were not attracted.Further, the Tribunal held that interest paid by bank on deposits held by its customer, though may not strictly fall within ambit of section 36(1)(iii), yet thesame wouldfall within ambit of section 37(1) and, thus, in case of payment of interest without deducting tax at source, provisions of section 40(a)(ia) would apply

JCIT v vs. Karnataka VikasGrameena Bank - [2018] 93 taxmann.com 256 (Bangalore - Trib.) - IT APPEAL NOS. 673 & 674 (BANG.) OF 2014 dated 25.04.2018

1584. The assessee was a research institute in dairy development, established as society under Societies Registration Act,1860.The assessee was providing rent-free accommodation to its employees and failed to deduct tax at source u/s201(1)for the perquisite value of rent-free accommodation. The Commissioner (TDS) issued a show cause notice as to why the assessee shouldn't be treated as assessee-in-default u/s 201(1) for not deducting tax at source. The assessee contended that the employees of the said society, for the purpose of evaluating perquisites of rent free accommodation, were to be treated as the employees of the Central Govt. and thus clause (i) of Sub Rule 1 of Rule 3 was applicable. The Tribunal held that the employees of assessee-society were not to be treated as employees of Central Govt making clause(ii) of Sub Rule 1 of Rule 3 (employees other than Central Government) applicable to the assessee thereby making the assessee-society liable to deduct tax at source.

National Dairy Research Institute v ACIT [2018] 94 taxmann.com 19 (Bengaluru – Trib.) – ITA NOS 1759 TO 1761 OF 2017 dated 31.05.2018

1585. The assessee- broker had paid borrowing fee to NSCCL (SEBI approved intermediary), for opting in Securities Lending Scheme, 1997 formulated by SEBI. It was noted that SEBI was just an intermediary between lenders and borrowers and the borrowing fee wasn't their income but it was beneficial to the lenders. Since the entire transaction was strictly to be carried out through NSCCL, assessee-broker obviously was not aware of the identity of the lender and thus Tribunal held that the assessee could not be fastened with liability of TDS u/s 194A (TDS on interest other than on securities) and the provisions became unworkable on the ground that assessee had no contact with the lender and they were completely unknown to each other. Further, as there was no enquiry (regarding the said transaction and acquaintance of the lenders and borrowers) held by AO nor the CIT(A), the matter was remanded back and to be restored for fresh adjudication by AO.
JM Financial Services v DCIT [2018] 95 taxmann.com 129 (Mumbai – Trib.) – ITA NO. 3041 OF 2016 dated 23.05.2018

1586. The Apex Court dismissed the Department's SLP filed against the order of the High Court wherein the High Court had deleted the disallowance made u/s 40(a)(ia) with respect to freight payment made directly by the company(from whom the assessee-contractor received transportation charges) to the assessee's sub-contractor without deducting TDS. The HC noted that since the freight payment wasn't made by the assessee and also, there was a direct agreement between the company and the sub-contractor the assessee had no role/liability.
CIT v Daulat Enterprises [2018] 94 taxmann.com 262 (SC) – SLP (C) DIARY NOS 15537 & 15542 OF 2018 dated 17.05.2018

1587. Where the assessee withheld TDS in respect of management and license fees @ 20% instead of 20.6% (TDS 20% plus Surcharge 3% on TDS) and the CIT(A) confirmed the action of the AO in making disallowance under Section 40(a)(ia) of a proportionate sum to the extent of such short deduction, Tribunal relied on the decision of the Kolkata Tribunal in SK Tekriwal (48 SOT 515) (affirmed by Kolkata High Court) and held that disallowance under Section 40(a)(ia) cannot be made for short deduction of taxes.
Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018

1588. The assessee society entered into agreements with developers / contractors for identifying suitable lands and forming residential layout for allotment of residential sites to its members and did not withhold TDS on the payments made to them. The AO held that since the said agreements were in the nature of works contracts, the provisions of Section 194C were applicable and thereby held that assessee to be assessee in default under Section 201(1) for failure to withhold TDS. The CIT(A) observed that the scope of the agreements had to be treated as whole and not in piece meal manner and thus allowed the assessee's appeal by holding that the provisions of Section 194C were not applicable on payments made to developers / contractors, as the payments are made for purchase of land and the same could not constitute works contract merely because the developers were required to lay out roads and undertake other activities before delivery of completed sites. Relying on the ruling of the jurisdictional High Court in Karnataka State Judicial Department Employees House Building Co-operative Society Ltd (ITA No. 1275 of 2006), Tribunal held that since assessee was only a purchaser, the provisions of Section 194C were not applicable and that the assessee was not required to withhold TDS.
ITO(TDS) vs. Bangalore City KSRTC Employees Housing Co-operative Society Ltd. – [2018] 53 CCH 0102 (Bangalore ITAT) – ITA No 6 to 17/Bang/2017 dated May 4, 2018

1589. Where assessee engaged third-party contractors to carry out non-technical work and made payments after deducting TDS under Section 194C of the Act, the AO held that assessee was liable to withheld TDS under Section 194J and not under Section 194C. Accordingly, the AO made disallowance under Section 40(a)(ia), which was deleted by the CIT(A). The Tribunal held that since payments made to semi-skilled personnel did not involve any technical or professional knowledge on their part, the same was liable to TDS under Section194C and not under Section 194J. Accordingly, it dismissed the Revenue's appeal.
ACIT vs. WTI Advance Technology Ltd. – [2018] 53 CCH 0029 (Mum ITAT) – ITA No 1656/Mum/2016 dated May 11, 2018

1590. Where the assessee incurred interest expenditure and after adjusting the same against interest income, claimed the balance amount against directors' remuneration, CIT(A) upheld the AOs order wherein it was held that since assessee did not withheld TDS under Section 194A while making payment of said interest, the same would be disallowed under Section 40(a)(ia). Setting aside the order of the CIT(A), Tribunal held that since the since provisions of Section 40(a)(ia) could be invoked only while computing income under the head 'business and profession', no disallowance could be made in the hands of the assessee under Section 40(a)(ia) since the interest expenditure was claimed by him under the head 'income from other sources'.
[Section 58(1A) is amended to cover such disallowance on account of provisions of Section 40(a)(ia) wef. 01-04-2018]
Rajesh Pagaria vs. ITO – [2018] 53 CCH 0028 (Kolkata ITAT) – ITA No 464 of 2014 dated May 11, 2018

1591. The assessee, a member of a co-operative society, did not withhold TDS while making payment of monthly maintenance charges levied by such society. The AO held that such payments were under an implied contract and since no taxes were withheld under Section 194C or 194I, disallowance under Section 40(a)(ia) was made in respect of such monthly maintenance charges paid. The CIT(A) held that the provisions of Section 194C were not applicable as no contract existed between the assessee and the society. The CIT(A) further held that the provisions of Section 194I were also not applicable as the maintenance charges was merely a reimbursement to the society for expenses incurred on behalf of its members. The Tribunal confirmed the order of the CIT(A) and upheld the deletion of such disallowance.
ACIT vs. vs. Modi Rubber Limited – [2018] 53 CCH 0044 (Del Tribunal) – ITA No 1952 of 2014 dated May 15, 2018

1592. The assessee paid last mile charges for use or hire of optical fibres to provide connectivity at customers' premises through which the assesse carried its own Bandwidth / Internet bandwidth. Where such fibres were hired on requirement basis and were returned once the services discontinued, the AO held that the assessee was liable to withhold TDS under Section 194J. The CIT(A) held that payment of such last mile charges was analogous to payment of rent and hence the assessee was liable to withhold TDS under Section 194I. Relying on the ruling of the co-ordinate bench in Standard Chartered Bank (ITA 3824/Mum/2006), the Tribunal held that the impugned payments were not in the nature of royalty since the charges were paid in lieu of availing standard facilities, without any control on corresponding hardware. Thus, the order of the CIT(A) was upheld.
ITO & Anr. vs. RCIL (Eastern Region) Railtel Corporation of India & Anr. – [2018] 53 CCH 0045 (Kolkata ITAT) – ITA No 700-701,734-735/Kol/2016 dated May 17, 2018

j. ***Others***

Appeals / Rectification Application

1593. Where the CIT(A) deleted the addition made by the AO under Section 68 by admitting the additional evidence filed by the assessee which substantiated the identity, capacity and genuineness of the share allottees to whom the assessee had issued share capital, the Tribunal held that since the AO was not given the opportunity of examining the additional evidence, the mandate of Rule 46A was violated. Accordingly, it set aside the case to the file of the AO to consider the additional evidences filed.
COMMISSIONER OF INCOME TAX & ANR. vs. DIAMOND HUT INDIA PVT. LTD. & ANR. - (2018) 52 CCH 0263 DelTrib - ITA No. 3428 & 3425/Del/2013, 3427/Del/2013 dated Mar 5, 2018

1594. The assessee filed the writ petition against the reference made by the AO to the District Valuation Officer (DVO) u/s 50C wherein the AO had sought valuation of land belonging to a company while considering the assessee's claim for loss on account of sale of equity shares of the said company. It was noted that before filing the petition, the AO had passed the assessment order accepting assessee's claim of loss but subject to receiving the valuation report from the DVO. The assessee had filed an appeal before the CIT(A) against the said assessment order but had not raised a grievance with regard to the impugned reference. The Court held that since the assessee had availed of a remedy of an appeal under the Act, the present petition could not be entertained. However, further noting that the

assessee had not raised the impugned grievance before the CIT(A) on a bonafide belief that the since the assessment order had accepted the loss claimed, an appeal would not lie, it granted assessee the liberty to file the additional ground before the CIT(A) with respect to the aforesaid issue.
Praham India LLP v ITO – Writ Petition No. 682 of 2017 (Bom) dated 05.01.2018

1595. The Tribunal confirmed the CIT(A)'s order deleting the addition made by the AO on account of difference in the amount of incentive remuneration as appearing in the return filed (shown at a lower amount) and the amount reflected in Form 26AS considering the reconciliation statement submitted by the assessee, rejecting Revenue's contention that the relief had been granted by CIT(A) in exercise of power u/s 251 on basis of additional evidence in form of reconciliation statement which were in contravention of provisions of Rule 46A, in view of fact that reconciliation statement had been duly filed before AO in course of assessment proceeding and he did not find any defect in same. Accordingly, it concluded that no additional evidence had been submitted by assessee at time of appellate proceedings as alleged by Revenue
DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

1596. With respect to the revenue's argument that the assessee had claimed deduction u/s 80P for the first time before the CIT(A), placing reliance on various decisions, Tribunal held that it is well settled law that the Appellate Authorities have power to consider the claim not made in a return.
Baroda Uttar Pradesh Gramin Bank v DCIT – (2018) 91 taxmann.com 182 (All Trib) – ITA Nos. 403, 404 & 405 (Alld.) of 2014 dated 08.01.2018

1597. The Court upheld the Tribunal's order in denying condonation for delay of over four years in filing cross-objection by the assessee to challenge the disallowance u/s 14A by claiming the investment in subsidiary was made for business purpose and not for investment purposes, in an appeal filed by revenue with the Tribunal against limited relief granted by CIT(A), stating the cross-objections so raised meant that assessee was seeking to rake up stale issues in respect of which tax liability had become final.
Jubilant Securities (P.) Ltd. v DCIT – (2018) 400 ITR 527 (Del HC) – ITA Nos. 1000, 1001 &1014 of 2017, and C.M. No. 41761, 41761 & 41800 of 2017 dated 10.01.2018

1598. Where the AO had disallowed commission paid by assessee-company to agent-firms on the ground that parties related to director of assessee-company were partner in such firms and hence such commission was paid only to avoid tax and the Tribunal deleted such disallowance noting that assessee had been paying commission to the agents regularly year after year and in some of the years it was not doubted by the Revenue and was accepted and also the receipt of payment of commission was duly reflected in the books of account of the agents and offered to tax, which was also accepted by the Revenue, the Court held that the Tribunal's order could not be treated as perverse.
CIT v Hind Nihon Proteins (P.) Ltd. – (2018) 91 taxmann.com 43 (Del HC) – ITA Nos. 574, 655 & 684 of 2005 dated 10.01.2018

1599. Where the assessee had filed a revision application with the CIT u/s 264 with respect to the penalty order passed u/s 271(1)(c) by the AO for concealment of income after filing an appeal before the CIT(A) against the said penalty order and CIT had accepted the assessee's revision application, the Court upheld the Tribunal order setting aside the CIT(A)'s order wherein CIT(A) had decided appeal on merits and dismissed the same even after the said acceptance of revision application by CIT and after the assessee conveying his wish to withdraw appeal. It held that once the penalty order was set aside by revisional authority, it was thereafter not open for CIT(A) to still examine merits of such an order and declare his legal opinion on same.
Nitin Babubhai Rohit v Dharmendra Vishnubhai Patel – (2018) 91 taxmann.com 196 (Guj) – Special civil application no. 22959 of 2017 dated 05.02.2018

1600. Where assessee's appeal against the AO's order denying deduction u/s 80P(2)(a) was pending before CIT(A) and the AO had also not passed any order with respect to the application filed by the assessee before AO for not treating it as assessee-in-default u/s 220(6), the Court dismissed the writ filed by the

assessee seeking a direction to CIT(A) to decide pending appeal expeditiously, considering the writ to be premature in nature. It directed assessee to appear before both concerned authorities, namely, CIT(A) and AO and pursue for disposal of its appeal as well as application filed u/s 220(6) in accordance with law.

Primary Agriculture Credit Co-operative Society Ltd. v CIT(A) – (2018) 92 taxmann.com 263 (Kar) – writ petition no. 5647 of 2018 (T-IT) dated 06.02.2018

1601. Where the assessee erroneously made certain disallowance in its return on account of non-deduction of tax at source and same was not contested before CIT(A), the Tribunal held that there was no estoppel against the statute and it was open for assessee to challenge said disallowances before the Tribunal for first time. Accordingly, it remanded the said issue to file of AO for adjudication on merits.

Allahabad Bank v DCIT – (2018) 169 ITD 189 (Kol Trib) – ITA Nos. 127 of 2011 & 649 (Kol.) of 2013 dated 07.02.2018

1602. Where assessee had filed the Miscellaneous Application (MA) on 17-03-2017 with respect to the order of the Tribunal passed on 06-04-2016 and it was noted that as per the provision of section 254(2) as amended by the Finance Act, 2016 w.e.f. 01.06.2016 an application for rectification of apparent errors in the order of the Tribunal had to be filed within six months from the end of the month in which the order was passed whereas prior to the aforesaid amendment, such an application could be filed at any time within four years from the date of the order, the Tribunal held that the MA though filed after 1-6-2016 would continue to be governed by the law of limitation laid down u/s 254(2) on the date when the order against which application was sought to be filed was passed and not as per the amended law and, thus, the MA had to be construed as one filed within the period of limitation.

Gifford & Partners Ltd. v ADIT – (2018) 169 ITD 224 (Kol) - M.A. Nos. 39 & 40 (Kol.) of 2017, ITA Nos. 2082 (Kol.) of 2010 and 1489 (Kol.) of 2011 dated 02.02.2018

1603. The Court dismissed the Department's notice of motions praying for condonation of delay of 318 days in filing appeal against the order of the Tribunal. The reason cited by the Department was that the impugned order dated 15-4-2016 was received by the Principal Commissioner on 5-7-2016. Thereafter, on 11-7-2016 it was forwarded to the Commissioner (Exemptions) who transferred the papers to the office of the Deputy Commissioner (Exemptions) who on 21-9-2016 the Deputy Commissioner prepared his report which was approved by Joint Commissioner. Thereafter, the report was sent on 29-9-2016 to the Commissioner (Exemptions) and on receipt of the above reports, he forwarded it to the Chief Commissioner, New Delhi for approval which approval from the Commissioner, Delhi was received by on 29-5-2017. Thereafter, this appeal was filed on 20-7-2017] was not sufficient / satisfactory. The Court held that if the reasons of the Department were to be accepted it would tantamount to accepting the proposition that work takes time and, therefore, the period of limitation imposed by the State should not be applied in case of revenue's appeal where the tax effect involved is substantial, which was contrary to the law. Further, it dismissed the contention of the Department since none appeared for the Assessee, the assessee had no objection against the application for condonation of delay and held that merely because the assessee does not appear, it cannot follow that the revenue is bestowed with a right to the delay being condoned. Accordingly, it dismissed the notice of motions filed by the Department.

CIT(E) v Lata Mangeshkar Medical Foundation - [2018] 92 taxmann.com 80 (Bombay) - NOTICE OF MOTION NOS. 1779 AND 1783 OF 2017 dated MARCH 18, 2018

1604. The Tribunal held that the CIT(A) erred in allowing assessee's additional ground of deduction of manpower and service expenses by admitting additional evidence (bills etc) without obtaining a remand report from the AO. It held that the CIT(A) acted in violation of Rule 46A of the Income-tax Rules and accordingly directed the CIT(A) to decide the ground afresh after affording an opportunity of hearing to the AO.

DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. JSW STEEL PROCESSING CENTRES LTD. & ANR. - (2018) 52 CCH 0167 BangTrib - ITA No. 1978/Bang/2017, 2001/Bang/2017 dated Mar 7, 2018

1605. Where the AO disallowed assessee's claim for deduction on account of loss on account of foreign exchange forward contracts as the assessee had not proved that the forward contract pertained to its exports but the CIT(A) on examining additional evidence filed by the assessee allowed the claim (which was upheld by the Tribunal), the Court held that the Revenue was not justified in contending that the CIT(A) had erred in admitting the additional evidence and held that as per Rule 46A(4), the CIT(A) had the independent power and jurisdiction to call for production of any document to enable him to dispose of the appeal. Further, it noted that the Revenue had merely raised technical objections and did not raise any objections on the merits of the case. Accordingly, it dismissed the Revenue's appeal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. L.G.W. LIMITED - (2018) 101 CCH 0063 KolHC - GA NO. 2274 OF 2016 WITH ITAT NO. 311 OF 2016 dated Feb 13, 2018

1606. Where the issues for appeal before the Court were framed on 26th September 2016 (KR Shriram J) and the plaintiffs were to file their list of witnesses, Evidence Affidavit and compilation by 24th October 2016 but failed to do so and applied for time to comply with these directions (for which matter was kept on November 2016) and had not done so till 2018, the Court computed the period of delay from November 2016 to the date of hearing at 450 days and directed the plaintiff to pay costs of Rs. 1000 per day i.e. Rs.4,50,000- noting that till date no application for condonation of delay had been granted. It held that the contention of the plaintiff i.e. it was a trust was not a consideration in the instant case.
RAM NAGAR TRUST & ANR. vs. MEHTAB L SHEIKH & ORS. - (2018) 101 CCH 0074 MumHC - CIVIL JURISDICTION SUIT NO. 2012 OF 2009 dated Feb 27, 2018

1607. The AO noted that the assessee did not file complete details and addresses regards amounts received from various parties and family and accordingly made an addition in the hands of the assessee., which was upheld by the CIT(A). The assessee filed an appeal before the Tribunal after a delay of 1403 days. The Tribunal noted that in any case the assessee had no material evidence with him to explain unexplained income and that the appeal was filed by it only when the penalty appeals were dismissed by CIT(A). Accordingly, it dismissed the application for condonation of delay and dismissed assesssee's appeal.
SHAMBHU DAYAL SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0075 DelTrib - ITA Nos. 211, 212, 213/Del./2015 dated Feb 2, 2018

1608. The Tribunal upheld the CIT(A)'s order allowing the asssesse's claim to carry forward the short term capital loss which was not claimed by him in the return of income but was claimed during the assessment proceeding before the AO, which was not allowed by the AO since no revised return had been filed by the assesse, though it had file revised computation. It held that even if the AO could not have considered the claim of assessee but there was no bar on the powers of the appellate authority to consider the claim of assessee as per law and the powers of the CIT(A) are co-terminus powers to that of the AO. It held that the assessee was, therefore, not legally barred from making such claim and the CIT(A) had correctly directed the AO to consider the claim of assessee for carry forward of short term capital loss.
DEPUTY COMMISSIONER OF INCOME TAX vs. JUGAL KISHORE ARORA - (2018) 53 CCH 0190 DelTrib - ITA.No.157/Del./2015 dated June 21, 2018

1609. The Court dismissed Revenue's appeal against the Tribunal's order refusing to entertain the appeal relying on the circular of the CBDT restraining the Department from filing appeals where the tax effect is less than Rs.2 lakhs. The issue involved was as to whether $1/6^{th}$ amount paid by the assessee for know-how for the purpose of setting up of modern plant was allowable u/s 35AB when the assesseee had not commenced business in the relevant assessment year. Before the Court, the Revenue placed reliance on the decision of the Division Bench dated 31.10.2017 in ITA 70/2014 wherein the Court had directed another appeal to be considered on merits despite the CBDT directions on monetary limit. Noting that the tax effect, in the subject year and the succeeding years was NIL for reason of the assessee having continuosly suffered loss in all the years, it was held that there could be no cascading effect atleast in the case of the assessee. Therefore, the revenue's appeal were rejected answering the question against the Revenue.
CIT v TATA CERAMICS LTD. - (2018) 102 CCH 0094 KerHC - ITA.No. 1377 of 2009 dated June 08, 2018

1610. The Court dismissed the appeals of the Revenue as 'withdrawn' in accordance with the CBDT Circular No.21/2015 dated December 10, 2015 as the tax effect in the appeals taken together was lesser than Rs. 20,00,000. The Court held that since the Revenue failed to place any material to prove that the appeals had any cascading effect or 'Tax Effect' beyond Rs. 20,00,000, the Revenue's appeals were dismissed.

CIT vs. COMMISSIONER, BELGAUM URBAN DEVELOPMENT AUTHORITY (BUDA) (KARNATAKA HIGH COURT) (ITA No. 243, 244, 246, 247 & 249 of 2006) dated May 29, 2018 (102 CCH 0093)

1611. The assessee's claim for benefit of sections 11 to 13 was denied by the AO while passing assessment order u/s 143(2). The CIT(A) however directed the AO to grant the said benefit. While passing the order to give effect to the CIT(A)'s order, the AO didn't take into account all expenses incurred by assessee to earn gross income which resulted in a surplus taxable income even after application of section 11. On appeal, the CIT(A) set aside the said order of the AO on ground that the AO passed order without giving a hearing to the assessee and figures taken to determine exempted income had to be reworked. The Tribunal set aside order of the CIT(A) holding that appeal from order giving effect to order of CIT(A) had raised issues which were not subject matter of appeal filed in first round, i.e., from order of the AO passed u/s 143(3) to the CIT(A). The Court allowed assessee's appeal holding that the order of the AO had not appropriately dealt with the directions of the CIT(A) and the same was on account of incorrect application of section 11, inter-alia, taking incorrect figures to give effect to the said directions. Further, it held that the purpose and object of the orders passed under the Act was to ensure that the Act is properly implemented and the assessee was not burdened with tax which under the law, it was not obliged to pay. Thus, the Court held that the aforesaid finding of the Tribunal was incorrect and, according, it allowed the assessee's appeal.

Cotton Textiles Exports Promotion Council v ITO(E) - [2018] 95 taxmann.com 296 (Bombay) - IT APPEAL NO. 292 OF 2002 dated June 27, 2018

1612. The Tribunal set aside the CIT(A)'s order wherein the CIT(A) had not admitted the additional evidence, in form of a registered valuer's report on valuation of the assessee's own shares issued by its, on the ground that it had no relevance to the issue involved in the appeal of the assessee. It was noted that the AO had brought to tax u/s 56(2)(viib), the amount representing the difference between the fair market value of the shares as per Rule 11UA(1)(b) and the value amount actually received on such issue of shares, without giving the assessee an opportunity to exercise its option given as per Explanation (a)(ii) to section 56(2)(viib) to substantiate the higher value at which the shares were issued. The Tribunal held that the said additional evidence was very much relevant to decide the issue relating to the addition made u/s 56(2)(viib) and thus the matter was restored to the file of the AO with a direction to decide the issue afresh on merits after considering the said valuation report.

ASG Leather (P.) Ltd. v ITO - [2018] 95 taxmann.com 151 (Kolkata - Trib.) - IT APPEAL NO. 2562 (KOL.) OF 2017 dated June 20, 2018

1613. The Court dismissed Revenue's appeal against the Tribunal's order wherein the Tribunal had held that the direction given by the CIT(A) to the AO to reopen the matter to ascertain whether further income had escaped tax in the course of hearing for appeal filed by the assessee against the penalty order passed by the AO u/s 271(1)(c), was unwarranted. It was noted that Explanation to section 251 provides that in disposing of an appeal, the CIT(A) can consider and decide "any matter arising out of proceedings in which the order appealed against was passed", notwithstanding that such matter was not raised before the CIT(A) by the appellant. The Court held that it is evident from section 251(1) that since an appeal against an order of assessment is covered by clause (a) thereof and an appeal against an order imposing a penalty is covered by clause (b) thereof, independent appeals arise out of orders of assessment and orders imposing any penalty. It thus held that in the appeal arising out of the order imposing the penalty, the matter pertaining to some other income escaping assessment did not fall within the purview of the expression "any matter arising out of proceedings in which the order appealed against was passed".

Pr.CIT v KPC Medical College & Hospital - [2018] 95 taxmann.com 322 (Calcutta) - ITAT NO.165 OF 2015, GA NO. 3718 OF 2015 dated June 19, 2018

1614. The assessee had filed appeal before the CIT(A) against the AO's disallowance of deduction claimed u/s 54F against the long-term capital gains arising on sale of development rights in a land. The CIT(A) instead, without issuing any show-cause notice to the assessee, held that the income on sale of development rights was to be treated as adventure in nature of trade/business income which resulted in enhancement of Assessment. The Tribunal held that in view of no opportunity or any show-cause notice of enhancement been given to the assessee, as required u/s 251(2), the order of CIT(A) suffered from infirmity and the same could not be sustained. Further, noting that the CIT(A) had held the assessee to be otherwise eligible for claim u/s 54F and that the Revenue had not filed an appeal against the CIT(A)'s order, the Tribunal directed the AO to allow the assessee's claim u/s 54F.
Naresh Sunderlal Chug v ITO - [2018] 93 taxmann.com 485 (Pune - Trib.) - IT APPEAL NO. 765 (PUNE) OF 2014 dated April 12, 2018

1615. The Apex Court dismissed Revenue's appeal against the High Court's order wherein the High Court had held that the limitation period of 120 days mentioned in section 260A(2)(a) for filing an appeal before the High Court against the Tribunal order is to be reckoned from the date of receipt of Tribunal's order by any CIT including the CIT (Judicial) and the same was not limited only to the concerned CIT having jurisdiction over assessee receiving a certified copy of the Tribunal order.
CIT v ODEON BUILDERS PVT. LTD [TS-225-SC-2018] - ITA 52, 755 & 756 /2015, CM APPL 23522/2015 dated March 24, 2017

1616. Where the Tribunal remanded the matter to AO for fresh calculation, the Court laid down that the Tribunal does not have the power to enhance assessment and take back the benefits that had been granted by the AO. The Court relied on the decision of the Apex Court in the case of MCORP Global (P.) Ltd. v. CIT [2009] 178 Taxman 347/309 ITR 434 and held that the direction of the Tribunal to AO to determine depreciation or business loss of each year and carry forward lower of the two adjustments u/s 115JA would result in enhancement of assessment and accordingly allowed the appeal of the assessee.
Sanmar Speciality Chemicals Ltd. v. ITO – [2018] 93 taxmann.com 330 (Madras) – T.C. (Appeal) No. 885 of 2008 dated April 4, 2018

1617. In a writ petition filed against an ex-parte Tribunal order dismissing the appeal for default, the Court remanded the matter to the Tribunal and held that the Tribunal has to dispose of an appeal on merits irrespective of whether appellant appears or not, in view of Rule 24 and 25.
N. S. Mohan v ITAT [2018]94 taxxman.com 92 (Madras) – W.P NO. 8126 OF 2018 dated 16.04.2018

1618. The Court held that where assessee filed instant petition challenging validity of Tribunal's order under section 254(2), in view of fact that Tribunal had accepted additional evidence without complying with provisions of rule 29 of ITAT Procedure Rules, impugned order passed by Tribunal became defective and, thus, same was to be set aside.The Court accordingly directed the Tribunal to deal with the assessee's application on merits and pass appropriate order in accordance with law.
Dr. Prannoy Roy v SCIT [2018] 93 taxmann.com 328 (Delhi) – CM APPLICATION NOS. 18248 TO 18251 OF 2018 dated 04.05.2018

1619. Assessee had filed application for stay of outstanding demand, originally before Surat bench which was rejected considering that relevant appeals were pending before Ahmedabad bench and subsequently, assessee moved stay application before Ahmedabad bench. However, at time of hearing, AO having jurisdiction to assess income of assessee was located at New Delhi at relevant time, which falls in jurisdiction of Delhi benches. The Tribunal thus held that jurisdiction for hearing of there applications, and hearing of related appeals, vested in Delhi benches of Tribunal. However, in view of rule 4(1) of the Incomw-Tax Appellate Tribunal Rules, 1963, it held that it was for the President of Tribunal to take a final call on issue and hence, registry was to be directed to place matter before President for final decision on transfer of assessee's case to Delhi benches.
Vedanta Ltd v Asst. Director of Income-Tax [2018] 93 taxmann.com 203 (Ahmedabad – Trib.) – S.A. NOS. 41 TO 45 OF 2018 dated 11.05.2018

1620. During the assessment, AO made addition of unexplained cash credits and also imposed penalty u/s 271(1)(c) at 100% of the Tax sought to be evaded which came to Rs.13,00,990. The Tribunal, held that the penalty could be imposed in proportion to the profit of the business which the assessee might not have offered to tax. Without saying so effectively, the Tribunal considered 10% of the total deposits as the assessee's profit from the business and that is how reduced the penalty to about 1/10th of the originally imposed.Revenue has filed this petition for two reasons. Firstly, according to the counsel for the petitioner, the Tribunal has exceeded his jurisdiction as under section 271(1)(c), the discretion to impose penalty ranges between equivalent to amount of tax sought to be evaded to three times that much. The Tribunal imposed penalty which was 10% of the tax sought to be evaded which was wholly impermissible. The other reason for the Revenue to file this writ petition was that as per CBDT circular dated 10-12-2015, no appeal would be filed before the High Court if the tax effect is less than Rs. 20 lacs. The Court held that it may be possible for the Revenue to argue that the monetary limits set out by CBDT are for filing appeals before various foras including the High Court and the Supreme Court but these limitations could not be applied to a writ petition that may be filed by the Revenue. Under the circumstances, it held that they were not inclined to entertain this petition. However, before closing, it held that when the proceedings of assessment in which the additions in the hands of the assessee were made, the Tribunal could not have ignored such final conclusions by simply adopting the different mode or yardstick to judge the amount of tax sought to be evaded by the assessee.
PCIT v DevendraJasraj Kothari [2018] 94 taxmann.com 291 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 7872 OF 2018 dated 11.05.2018

1621. The question before the Court was as to whether the appeal in question should be heard on merits in view of the fact that by reason of the assessee's death, there was abatement of the said appeal and the Revenue had filed the application for setting aside of the abatement after a delay of 3345 days. The Revenue contended that it was only when notice issued to assessee from Court could not be served, death of the assessee was brought to notice of CIT and immediately thereafter, the said application was filed. However, noting that for executing the Tribunal's order, the Tax Recovery Officer had written a letter wherein demand was raised from the assessee's wife showing the assessee as deceased, the Court held that it could be concluded that department was aware of death of assessee long before and there was no explanation for gross delay caused. Accordingly, the appeal filed by the Revenue was dismissed as abated.
CIT v V.M.Varghese [2018] 94 taxmann.com 319 (Kerala) – ITA NO 1429 OF 2009 dated 23.05.2018

1622. The assessee filed an appeal before the Commissioner against the order of the AO dated 14-02-16 in manual form. The Commissioner opined that the appeal was to be filed only in electronic form and since it was filed manually, the appeal was not maintainable. The Tribunal on an appeal held that the CBDT circular which mandated the e-filing of the appeal was not applicable to orders passed prior to 1-03-2016 and since the AO had passed the order on 14-02-2016, the Commissioner was directed to admit the appeal of the assessee and pass an order on the merits of the case.
Ashraf Aziz Kasmani v. ITO – [2018] 92 taxmann.com 283 (Mumbai – Trib.) – IT Appeal No. 235 (MUM.) of 2018 dated April 2, 2018

1623. The Tribunal had dismissed the assesse's appeal for non-prosecution (ex-parte) instead of disposing of the same on merits. The rectification application filed by the assessee u/s 254(2) with the Tribunal was also dismissed by the Tribunal on account of delay in filing the said application being the prescribed the time-limit of 4 years. On appeal against the Tribunal's order rejecting the rectification application, the Court held that the assessee had to follow the mandated time-limit prescribed to approach the Tribunal for rectification. However, it held that the Tribunal had exceeded its jurisdiction by dismissing the assesse's appeal on account of non-prosecution and not on the merits of the case since Rule 24 and 25 of the Tribunal Rules mandated the Tribunal to decide the appeal on merit even in case of ex-parte hearing. Thus, noting that the proviso to the said Rules do not stipulate any period of limitation within which the aggrieved party can approach the Tribunal, the Court held that it was open to the appellant to approach the Tribunal with a suitable application for restoration of the appeals and, accordingly, directed the Tribunal to consider the appeal on merits and in accordance with law after hearing both the parties.

Om Prakash Sangwan v ITO [2018] 94 taxmann.com 394 (Delhi) ITA NOS 625 & 626 OF 2018 dated 22.05.2018

1624. Where the CIT(A) dismissed the assessee's appeal on the ground that appeal filed in paper form was not valid, the Tribunal held that since e-filing of appeal was only a technical consideration and that eventually the appeal, although in paper form, was already on record, the CIT(A) should not have dismissed the appeal solely on ground that assessee had not filed the appeal electronically. Accordingly, it remitted the matter back to the file of the CIT(A) to decide the appeal on merits.
All India Federation of Tax Practitioners vs. ITO – [2018] 53 CCH 0087 (Mumbai ITAT) – ITA No 7134/Mum/2017 dated May 4, 2018

1625. Where the CIT(A) deleted addition on account of incentives paid by assessee to various State Electricity Boards (SEBs) under the terms of one-time settlement scheme, the Tribunal relied on the ruling of the Jurisdictional High Court in the case of Rural Electrification Corp. Ltd and held that, since the Committee on Disputes (COD), had not permitted the CBDT to pursue such issues, the said appeals were to be disposed and the Revenue would be entitled to ask for revival of the appeals if they succeed in the appeal before the Supreme Court in the other pending matters.
DCIT vs. NTPC Ltd. – [2018] 53 CCH 0101 (Delhi ITAT) – ITA No 15/Del/2009 dated May 4, 2018

1626. Where the order of the Tribunal was passed after 90 days of completion of hearing without recording any reason for the delay, Tribunal relied on the ruling of the Bombay High Court in Shivsagar Veg. Restaurant (317 ITR 433) and the Mumbai Tribunal in G. Shoe Exports v. ACIT (89 taxmann.com 308) and held that, in view of Rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963 r.w.s 254(2) of the Act, unexplained delay in pronouncement of order was not curable and even administrative clearance could not cure the same. Accordingly, accepting the assessee's request, the Tribunal held that such order was to be recalled and heard afresh as there was mistake apparent from record.
CROMPTION GREAVES LIMITED vs. CIT – [2018] 53 CCH 0039 (Mumbai ITAT) – MA No. 151/Mum/2016 Arising out of ITA No. 1994/Mum/2013 dated May 11, 2018

1627. Where the Revenue filed appeal against order of CIT(A), the assessee pleaded that the Revenue's appeal was not maintainable as the tax effect in the said appeals was less than monetary limit as prescribed in Circular No. 21/2015 dated 10 December 2015. The Tribunal held that since the Circulars were binding on the Revenue, appeals filed by the Revenue on 30 May 2014 were dismissed.
DCIT vs. Chemical & Metallurgical Design Co. Ltd. & Arn. – [2018] 53 CCH 0035 (Kolkata ITAT) – IT (SS) A. Nos. 94 & 95/Kol/2014, 1090-1092/Kol/2014 dated May 15, 2018

1628. Where the Department filed an appeal before the Court within 120 days of receipt of the Tribunal order, the Court allowed the appeal for admission hearing and held that the time limit for filing an appeal before the Court commenced from the date of receipt of the Tribunal order by the officer entitled to file the appeal. The fact that the officer was aware of the Tribunal order as it was party to various collateral proceedings was not relevant, unless there was actual receipt of the Tribunal order.
DIT(IT) vs. Hyundai Heavy Industries Co. Ltd. – [2018] 102 CCH 0012 (Uttarakhand High Court) – ITA No 30 of 2011 dated May 17, 2018

1629. The Department filed an appeal against a Tribunal order dispatched on 09.09.2009 stating that since copy of impugned order was received in office of Department only on 16.3.2011 the appeal was filed within time, the assessee argued that the appeal filed by Department was not maintainable as it was barred by limitation. The Court observed that the order was communicated and received by the office of the Director only on 16.3.2011, pursuant to which the appeal was filed within the statutory time limit prescribed. The Court held that knowledge of such order could not be attributed to Department earlier than 16.3.2011, by virtue of it being party to various proceedings or even proceedings under Section 263 unless there was actual receipt of the order. Thus, it held the Revenue's appeal to be in time and listed the matter for hearing on admission.
DIT (IT) vs. HYUNDAI HEAVY INDUSTRIES CO. LTD. (HIGH COURT OF UTTARAKHAND) (ITA No. 30 of 2011 With Delay Condonation Application No. 3188 of 2018) dated May 17, 2018 (102 CCH 0012)

1630. The assessee filed his return of income which was enhanced by the AO by passing an order u/s 143(3) resulting in a demand of Rs. 1.39 lakhs. The assessee filed his declaration under the Samadhan Scheme, which was notified as a part of the Finance Act, 1998 during the pendency of the appeal before the Tribunal, seeking to settle its dispute and computed the amount payable to arrive at the settlement of the dispute at Rs. 38,703 determined on the basis of tax unpaid on the date of declaration. The Designated authority rejecting the computation done by the assessee, arrived at an amount of Rs. 1.66 lakhs for settlement of the tax dispute on the basis of tax unpaid on the date of deduction. A petition was filed by the assessee against the computation done by the Designated Authority as it resulted in a figure higher than what the assessee was required to pay under the Samadhan Scheme. The Court restored the matter to the Designated Authority to determine the disputed income on the basis of taxes unpaid as provided u/s 87(e) and (f) of the Samadhan Scheme which required the disputed income to be arrived at on the basis of tax unpaid on the date of filing declaration under the Samadhan scheme and not on the basis of taxes already paid by the assesseee.
Nimesh Indravadan Shah v. H.C. Parekh - [2018] 93 taxmann.com 186 (Bombay) - WRIT PETITION NO. 722 OF 1999 dated APRIL 4, 2018

1631. The Tribunal in its original order, relying on the order of the assessee's sister concern for earlier years, allowed the assessee's appeal and held that the rent received by it from its sister concern was taxable as income from other sources and not income from house property. On Revenue's application under Section 254, the Tribunal recalled its earlier order on the issue on taxability of rent received by the assessee from its sister concern on the ground the order relied upon did not consider the claim of the Revenue that rent/ compensation was chargeable to tax under the head 'income from the house property' while holding it to the taxable as 'income from other sources'. The Court admitted the assessee's Writ Petition and held that the order of the Tribunal recalling its earlier order was without jurisdiction as it amounted to review of its own order. It observed that the Tribunal had relied on the earlier year's orders in the case of the assessee's sister concern wherein the issue was duly considered and accordingly held that the Tribunal exceeded its jurisdiction in admitting the Revenue's application under Section 254 of the Act. More so, it held that the issue was a debatable issue and was outside the scope of rectification. Accordingly, it set aside the impugned order of the Tribunal.
PROCTER & GAMBLE HOME PRODUCTS PVT. LTD. vs. INCOME TAX APPELLATE TRIBUNAL & ORS. - (2018) 101 CCH 0102 MumHC - WRIT PETITION NO. 2738 OF 2017 dated Mar 9, 2018

1632. The assessee sought rectification of Tribunal's order on ground that while applying net rate of 10 per cent on gross receipt, Tribunal failed to take into consideration binding order passed by co-ordinate Bench of Tribunal of effect that net profit rate of 5 per cent was a reasonable rate. The Court held that in view of fact that Tribunal had passed impugned order on basis of order passed by co-ordinate Bench in another case relied upon by revenue, judicial discretion exercised by Tribunal could not be construed to be an error on face of record which could be rectified by resorting to section 254(2)
Ajay Kapoor v CIT [2018] 93 taxmann.com 433 (Jammu & Kashmir)- ITA NO 05 OF 2017 dated 18.04.2018

Deemed Dividend

1633. Where assessee director of a company received an advance from said company for blocking deal of sale and purchase on behalf of company, the Tribunal held that sum advanced to assessee was for business purposes, and same could not be taxed in assessee's hands as deemed dividend under section 2(22)(e).
Dinesh Pandey v DCIT - [2018] 92 taxmann.com 125 (Delhi - Trib.) - IT APPEAL NO. 3562 (DELHI) OF 2017 dated MARCH 9, 2018

1634. Where amounts were being received by assessee, a publishing company, from its subsidiary company engaged in distributing assessee's publications in Gulf region, only as part of regular business transactions and which were being accounted properly, the Court held that such payments could not be treated as loan or advances, so as to make disputed amounts a deemed dividend, as defined u/s 2(22)(e)

CIT v. Malayala Manorama Co. Ltd. - (2018) 253 Taxman 292 (Ker) – ITA Nos. 167 of 2008 & 1686, 1693 of 2009 dated 03.01.2018

1635. The Tribunal deleted the addition made by CIT(A) u/s 2(22)(e) considering the amounts received from various group companies as deemed dividend. It noted that assessees along with its group companies was in the process of execution of various real estate projects and that all the group companies maintained current account with each other and transferred the money as and when needed to each other. Thus, it held that the transaction between group concerns were current and inter banking accounts containing both types of entries i.e. giving and taking amount and, hence, held that the same could not be considered as loans and advances as contemplated u/s 2(22)(e).
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

1636. The Tribunal held that where the assessee holding 48.46 percent of shares in N Ltd had received a repayment of sum given to N Ltd in the earlier years on which no addition was made, the AO was not justified in treating a similar amount received in the impugned year as deemed dividend under Section 2(22)(e) of the Act. Accordingly, it deleted the addition made.
Nanak Ram Jaisinghani v ITO - [2018] 92 taxmann.com 86 (Delhi - Trib.) - IT APPEAL NO. 6729 (DELHI) OF 2014 dated MARCH 7, 2018

1637. The assessee- partnership firm consisting of three partners, namely, 'N', 'S' and 'J' Ltd. having a profit sharing ratio of 35%, 15% and 50% respectively, had taken a loan from 'J' ltd. (wherein the assessee-firm had subscribed to the equity capital in the name of two of its partners, namely, 'N' and 'S' totalling 48.19% of the total shareholding). Thus, 'N' and 'S' were shareholders on the company's register as members of the company. They held the aforesaid shares for and on behalf of the firm, which happened to be the beneficial shareholder. The question arose as to whether for section 2(22)(e) got attracted in as much as a loan had been made to a shareholder being a person who is the beneficial owner of shares holding not less than 10% of the voting power in the assessee-company, and whether the loan was made to any concern in which such shareholder was a partner and in which he had a substantial interest (which is defined as being an interest of 20% or more of the share of the profits of the firm). The Apex Court held that for the purpose of attracting provisions of section 2(22)(e), after the amendment made in in 1987, it was not necessary for a beneficial owner to also be the registered owner. However, since the assessee placed reliance on the decision in the case of CIT v. Ankitech (P.) Ltd. (2012) 340 ITR 14 (Del HC) wherein it was held that the expression "shareholder" would continue to mean a registered shareholder even after the amendment and the same was affirmed by the Apex Court in the case of CIT v. Madhur Housing & Development Co. [Civil Appeal No. 3961 of 2013], the Apex Court placed the matter before the Chief Justice of India in order to constitute an appropriate Bench of three learned Judges in order to have a relook at the entire question.
National Travel Services v CIT – (2018) 401 ITR 154 (SC) – Civil Appeal Nos. 2068 to 2071 of 2012 & 837 of 2018 dated 18.01.2018

1638. Where the assessee-firm upon receipt of advance from group concern contended that it being a partnership firm could not be a registered shareholder in the group companies and thus could not attract provisions of section 2(22)(e), the Tribunal held that section 2(22)(e) gets attracted not only in case of registered shareholder but also in case of concern in which such shareholder is a member or partner having substantial interest. However, the Tribunal accepted that the assessee's contention that all advances received from group companies cannot be treated as deemed dividend within the meaning of section 2(22)(e) and that the initial onus is on the AO to demonstrate that excess payments received by assessee over and above the value of transaction of purchase and sale from group concerns constituted non-trade advances and not on account of current account to record business transactions between or among group concerns. It further held that the current year business profits could not be considered as part of accumulated profits for purpose of section 2(22). The matter was remanded to AO to decide the issue de novo in the light of above observations.
Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018

1639. Where AO during assessment proceedings had examined the issue of deemed dividend in respect of loans taken from sister concern and after a detailed discussion added a certain sum as deemed dividend u/s 2(22)(e), Court held that the initiation of reassessment, after a period of four years, on the ground that while making addition u/s 2(22)(e), AO had considered only credit balance in account, not all transactions of loan/advance, is completely without jurisdiction. Court held that the reasons recorded sought to take a different view (i.e. change of opinion) on same material on which original assessment order was passed.
B.M. Associates v ACIT – (2018) 90 taxmann.com 162 (Bom) – Writ Petition No. 2976 of 1999 dated 18.01.2018

1640. The assessee received an advance of Rs 20 Cr from Ginza Industries Ltd. ('Ginza') (in which it held more than 10 percent of its share capital) towards procurement of import License worth Rs.50 Cr. approx., which the AO taxed as deemed dividend. The Court noted that the assessee utilized advances for purchasing shares, giving loans which showed that it was assured of advance being for its own purpose and that no import license was procured and no actual imports were done by Ginza which had no intention or relevant knowledge or expertise to deal in such premium markets. Accordingly, it held that the appellate authorities had erred in ignoring the AO's detailed investigation and had erroneously classified the advances as business advances and accordingly taxed the advance as deemed dividend in the hands of the assessee.
Prasidh Leasing Ltd. - TS-90-HC-2018(DEL) - ITA 637/2004 dated 20.02.2018

1641. The Court dismissed assessee's appeal against the Tribunal's order confirming the addition u/s 2(22)(e) on account of loan received by the assessee from a closely held company in which she was a shareholder, noting that though the assessee contended that she did not have 10% shareholding in the said company so as to be covered u/s 2(22)(e), the AO had found that the annual returns filed before Registrar of Companies (RoC), indicated the assessee had more than 10% shareholding. It was also noticed that though the company had filed a revised annual return with the RoC indicating the transfer of shares held by her, such revised return was filed only after she received notice u/s 148 for initiating reassessment proceedings to tax the said loan amount as deemed dividend u/s 2(22)(e) and thus was an afterthought to wriggle out of the liability. The Court held that all the documents produced by the assessee to claim that she did not have 10% shareholding were cooked up and since all the authorities below had concurred on the facts, no question arose from the Tribunal's order.
Lailabi Khalid v CIT - [2018] 95 taxmann.com 298 (Kerala) - IT APPEAL NO. 179 TO 181 & 197 OF 2013 dated June 11, 2018

1642. The Apex Court stayed the operation of the High Court's order wherein the High Court had upheld deemed dividend taxability on the advances received by the assessee-company from another company (in which it had more than 10% shareholding), rejecting the assesse's contention that the advance was received as 'advance in the course of business'. The High Court had noted that the AO had carried out extensive and painstaking enquiry which indicated that the assessee had utilized the advances for purchasing shares and giving loans and, thus, it was concluded that the advance was used by the assessee for its own purpose.
M/S NEGOLICE INDIA LTD v CIT - [TS-280-SC-2018] - Petition(s) for Special Leave to Appeal (C) No(s). 10006/2018 dated May 04, 2018

1643. The Tribunal held that where the assessee-company was not the shareholder of lender-company, then notwithstanding the fact that both companies had common shareholder having substantial interest in both companies, taxability of deemed dividend in terms of provisions of section 2(22)(e) would not arise in hands of recipient-company (assessee) which was not registered shareholders of lender company.
INCOME TAX OFFICER & ORS. vs. PRIMA TRANSFORMER PVT. LTD. & ORS. - (2018) 52 CCH 0305 AhdTrib - ITA No(s) 573-580/Ahd/2016 dated April 02, 2018

1644. The assessee was an individual who held certain shares in the company 'B'(shares without voting rights). The said company gave loan to another company 'M' in which also the assesee held shares (15% noncumulative preference shares & shares through partnership firm but without voting rights).The AO treated the loan amount as deemed dividend in the hands of the assessee u/s 2(22)(e). However,

the assessee contended that the said provisionswere applicable only if the assessee held 10% of the voting right in the payer company and held 20% of the beneficiary owners right in the receiving company. In this case, as the assessee did not hold requisite no. of shares to attract the provision of S.2(22)(e),the CIT(A) accthe Tribunal dismissed the appeal filed by the revenue.
ACIT v K.P. Singh [2018] 95 taxmann.com 263 (Delhi-Trib) – ITA NO 5472 OF 2014 dated 31.05.2018

1645. The assessee received certain amount of money under transactions recorded in mutual or current account with a company in which she owned 25.24% equity. The AO treated the same as deemed dividend under Section 2(22)(e). The Court upheld the order of the Tribunal wherein it was held that if any sum was received by the assessee which formed part of running current account giving rise to mutual obligations, the same could not be treated in the character of loan or advance out of accumulated profit. Thus, the Court held that the provisions of Section 2(22)(e) were not applicable to the sum received by the assessee.
CIT vs. Gayatri Chakraborty – [2018] 102 CCH 0053 (Kol High Court) – ITA No 160 of 2016 dated May 3, 2018

1646. Where the assessee received certain amount from a Company in the nature of loans and advances, CIT(A) upheld the AOs order wherein it was held that such amount was in the nature of deemed dividend as per Section 2(22)(e). Before the Tribunal, it was contended that the assessee's account with such Company was in in the nature of current account and not loans and advances. Relying on the decision of the co-ordinate bench in Smt. Gayatri Chakraborty (ITA No. 151/Kol/2013 dated 30.10.2015), the Tribunal held that provisions of Section 2(22)(e) are not applicable if the relevant transactions are in nature of current account transactions. However, it held that since the nomenclature by assessee alone could not determine exact nature of the relevant transactions, the matter was remanded to the AO for verification.
Rajesh Pagaria vs. ITO – [2018] 53 CCH 0028 (Kolkata ITAT) – ITA No 464 of 2014 dated May 11, 2018

Exempt Income / Charitable Trust

1647. The Court admitted the Department's writ against the order of the Single Judge directing the AO to grant the assessee educational institution exemption under Section 10(23C)(vi) of the Act and held that the said exemption would be granted to educational institutions who existed solely for the purpose of education. Noting that the objects of the assesse also included eradication of untouchability, dealing with environmental pollution, plantation, AIDS Education, achievement of communal harmony, over all local development, promotion of fruit bearing trees and plantation in the hill areas, it held that the order of the Single Judge was incorrect. Accordingly, it directed the Department to take a decision afresh after considering the decisions of the Apex Court in American Hotel & Lodging Association Educational Institute v. CBDT reported in (2008) 10 SCC 509 and Queen's Educational Society vs. Commissioner of Income Tax reported in (2015) 8 SCC 47.
CHIEF COMMISSIONER OF INCOME TAX vs. J.B. MEMORIAL MANAS ACADEMY MANAGEMNET SOCIETY - (2018) 101 CCH 0111 UAHC - CLMA DELAY CONDONATION APPLICATION NO. 991 OF 2018 IN SPECIAL APPEAL No. 64 of 2018 dated Mar 19, 2018

1648. Where assessee had claimed exemption u/s 10(38) in respect of LTCG on purchase and sale of units (arising on account of its investment in) a Venture Capital Fund (VCF) contending that transactions giving rise to LTCG had suffered STT and AO denied such exemption on the ground that STT liability was borne by concerned Venture Capital Fund and not by assessee, the Tribunal held that section 115U(1) clearly indicates that income accruing or arising or received by any person out of investments made by him in a VCF has to be treated on par with investments directly made by such Venture capital undertaking and once the deeming provision comes into play, it has to be given full effect. Further, with respect to Revenue's contention that compliance with SEBI (VCF) Regulations, 1996 had not been established, the Tribunal held that Form No. 64 specified in Rule 12C which is to be furnished by the VCF was filed by the assessee and the said Form by necessary implication meant that the VCF had

complied with the conditions set out in Explanation (1) to section 10(23FB) and the AO had not found anything wrong in the said Form.
Gopal Srinivasan v DCIT – (2018) 91 taxmann.com 33 (Chen) – ITA Nos. 948 and 1423 (Mds) of 2016 dated 11.01.2018

1649. The Tribunal quashed CIT's order for revision u/s 263 observing that (i) the CIT had not pointed out in the impugned order as to what was the kind of enquiry that AO ought to have made but failed to make and that (ii) there were two views possible on the issue as to whether the assessee-partners would be entitled to exemption u/s 10(2A) on the share of profits credited in the partner's capital account or the share of total income of the firm declared in the firm's return of income (where both are not same).
Shri Vinod Agarwal & other v Pr.CIT - TS-17-ITAT-2018(Kol) - I.T.A No. 1895 to 1898/Kol/2017 dated 03.01.2018

1650. The Court allowed the exemption claim u/s 10(23C) of the assessee-society which was running two educational institutions as the aggregate annual receipts for each institution did not exceed Rs. 1 crore cap 'individually' and clarified that if it had been the intention of the legislature to have limited the scope of the provision, it could easily have said that, if the aggregate annual receipts of any person from all institution(s) do not exceed Rs. 1 crore, instead of saying that the aggregate annual receipts of the 'educational institution' (and not the person) do not exceed Rs.1 crore.
Vivekanand Society of Education and Research - TS-620-HC-2017(J & K) - ITA No. 23/2014; MP No. 01/2016 dated 29.12.2017

1651. Where Revenue denied exemption u/s 11 to assessee-town development authority based on dismissal of SLP by the Supreme Court filed against the ruling of a non-jurisdictional High Court which had denied such exemption to another such authority, Tribunal held that summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble SC under Article 141 of the Constitution and, thus, it was bound to follow decision of jurisdictional High Court allowing the exemption to the assessee in it own case. Further, noting that the issue before the non-jurisdictional High Court was about cancellation of registration u/s 12AA(3) and not denial of exemption u/s 11 as in the case under consideration and that assessee was allowed exemption u/s 11 consistently in the past, Tribunal upheld assessee's exemption claim
Moradabad Development Authority v ACIT - TS-9-ITAT-2018(DEL) - ITA Nos.4631 & 4632/Del/2017 dated 04.01.2018

1652. The Tribunal allowed exemption to assessee-employee u/s 10(10B) in principle considering the ex-gratia compensation received from the employer as 'retrenchment compensation', where the employee had invoked provisions of Industrial Disputes Act 1947 against his employer for his inter-city transfer, and after losing the case before the Industrial Tribunal, the employer agreed to an 'out-of-court' settlement under which employee received such 'ex-gratia' amount. It rejected revenue's claim that the amount was a mere 'ex-gratia' and ruled that amount was in the nature of compensation under the Industrial Disputes Act, 1947 as the employee's termination falls within the definition of 'retrenchment' under Industrial Disputes Act.
Vishnu Mohan T Nair v ITO - TS-4-ITAT-2018(Ahd) - ITA No. 1472/Ahd/2014 dated 02.01.2018

1653. The Court dismissed the Revenue's appeal against the Tribunal's order wherein relying on the Apex Court decision in the case of CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392 (SC), Tribunal had held that grant received by assessee from State Govt. in shape of allotment of land for purpose of generating employment for over 3000 people was to be regarded as capital receipt and, thus, same could not be brought to tax. It also considered the decision in the case of CIT v. Chaphalkar Bros Pune (2017) 400 ITR 279 (SC) wherein the Apex Court had approved the decision of J&K High Court in Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (SC). [The year under consideration was AY 2009-10 i.e. prior to amendment of definition of 'income' vide the Finance Act, 2015 w.e.f. 01.04.2016 *inter alia* to grant received from Central & State Govt.]
Pr.CIT v Capgemini India (P.) Ltd. – (2018) 90 taxmann.com 409 (Bom) – ITA No. 721 of 2015 dated 15.01.2018

1654. The Court dismissed the writ filed by assessee-trust, running various educational institutions and also registered u/s 12AA, against the order passed by Director General (Inv.) withdrawing exemption/ approval granted to assessee-trust under section 10(23C)(vi), noting that it had collected huge amount of capitation fee from students for admission to medical colleges under innocuous name of 'anonymous donations', huge payments of honorarium and lease rent to the trustees and amounts were transferred to trustees for building their personal assets.
Navodaya Education Trust v Union of India – (2018) 253 Taxman 412 (Kar) – Writ Petition Nos. 3468 to 3472 of 2018 (T-IT) dated 05.02.2018

1655. The Court allowed exemption u/s 10(46) in respect of grants received from government, lease, rent and fees, etc. by the assessee-authority, engaged in undertaking works relating to housing schemes and land development schemes along with various municipal functions like roads, water supply, street lighting, etc., noting that the income received by assessee was intrinsically, immediately and fundamentally connected and formed part of its role, functions and duties and the funds received by assessee were to be used for planned development and municipal services which were for general public good. It further held that the expression 'any commercial activity' used in sub-clause (b) of section 10(46) to exclude certain authorities from eligibility of exemption, would not include within its ambit and scope any activity for which fee, service charges or consideration was charged and paid, if the same was intrinsically associated, connected and had immediate nexus with object of regulating and administering activity for benefit of general public.
Greater Noida Industrial Development Authority v Union of India – (2018) 91 taxmann.com 352 (Del HC) – Writ Petition (Civil) No. 732 of 2017 dated 26.02.2018

1656. Where assessee, a Wakf duly registered with State Wakf Board, had applied for registration u/s 12AA producing certain documents along with application for registration including an order passed by State Wakf Board recognising assessee trust as registered under said Board, the Court held that the assessee application could not be rejected only because the assessee could not provide a registered trust deed, noting that the order of State Wakf Board provided full details of objects and functions of assessee-wakf including manner of appointment of Mutawalli, etc. and accordingly, the fact of existence of assessee-trust was established by the said order. It held that where a religious trust is not created under an instrument, factum of existence of trust could also be established by producing documents evidencing creation of trust.
Pr.CIT(Exempt) v Dawoodi Bohra Masjid – (2018) 402 ITR 29 (Guj) – Tax appeal no. 852 of 2017 dated 06.02.2018

1657. Where the CIT cancelled the registration of assessee-trust u/s 12AA(3) (i) only on the basis of information received from Investigation Wing that assessee-trust was receiving bogus donation from various parties and (ii) where there was no other material with CIT to assume that assessee had indulged in such activity and also (iii) where the said information was not even supplied to assessee, Tribunal held that the cancellation of registration in the matter was merely on presumption. Accordingly, it set aside the cancellation order and restored the registration u/s 12AA
Bioved Research Society v CIT – (2018) 91 taxmann.com 268 (All Trib) – ITA No. 109 (Alld.) of 2017 dated 08.01.2018

1658. Where the assessee, a body corporate, was formed under U.P. Urban Planning and Development Act, 1973, to promote and secure development of local area and for said purpose it had power to acquire, hold, manage and dispose of land, to execute works in connection with supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities, the Tribunal held that it could be concluded that assessee had been created with object of general public utility which was a charitable object within meaning of section 2(15) and, thus, its application seeking registration u/s 12AA was to be allowed.
Firozabad Shikohabad Development Authority v CIT – (2018) 169 ITD 202 (Agra Trib) – ITA No. 55 (Agra) of 2015 dated 07.02.2018

1659. Where assessee-trust was formed for complying Corporate Social Responsibility (CSR) requirement under Companies Act and its objects were eradicating hunger and poverty, promotion of education etc.

and other activities as prescribed by Govt., the Tribunal directed the CIT(Exemption) to grant registration u/s 12AA and approval u/s 80G(5)(vi) to the assessee, noting that CIT(Exemption) had not doubted genuineness of activities of assessee-trust nor doubted its charitable object, but had denied registration/ approval on other reasons such as the trust was created for the purpose of carrying out CSR activities, no activities in sync with the requirement of the Companies Act had taken place in the trust so far, activities so far further showed that the trust had relinquished its function as the primary implementation agency by the transferring its funds to other society, social enterprises cannot be a direct recipients of money from corporate, etc. It held that the CIT was empowered to satisfy himself only about two factors, i.e., the objects of the trust and the genuineness of the activities of the trust and such powers do not extend to the eligibility of the trust for exemption u/s 11 r.w.s. 13 which falls in the domain of the AO. It further held that the issue that CSR expenditure is allowable expenditure u/s 37(1) or not, is relevant only for taxability of company incurring such expenditure and was not relevant for granting the said registration.

Nanak Chand Jain Charitable Trust v CIT(Exempt) – (2018) 169 ITD 534 (Delhi Trib) – ITA Nos. 6527 & 6528 (Delhi) of 2016 dated 09.02.2018

1660. Where the assessee was engaged in preparing and supplying mid-day-meals to students at primary schools in various villages, against a contract awarded by State Govt and the assessee received food preparation and distribution charges, on per child, per month basis from State Govt, the Court upheld the Tribunal's order allowing registration u/s 12AA to the assessee, holding that since assessee was engaged in an activity that was inseparably linked to and performed in continuation of charitable scheme of Government. Noting that total excess of income over expenditure was Rs.2,432/- only and that the assessee appeared to have acted merely as an agent of the State, it held that merely because some money had been paid to it to defray expenses met to perform task of cooking and supplying meals, restriction created by first proviso to section 2(15) did not operate and, thus, activity carried out by assessee would fall within ambit of general public utility.

CIT v Shri Balaji Samaj Vikas Samiti – (2018) 91 taxmann.com 26 (All) – ITA No. 49 (All) of 2014 dated 09.02.2018

1661. The Tribunal directed the DIT(E) to grant registration u/s 12AA to the assessee, a private university engaged in imparting education, which the DIT(E) had rejected on the reasons that the assessee was fully controlled by a Sponsoring Body trust and was not independent and that there were intermingling of the funds, as some of it was received by the assessee and the rest by the sponsoring body trust. With respect to the independence of the assessee, it held that the objects of the university are to impart education and whether such education is being imparted in a controlled manner, financially or administratively, those objects would not change and, hence this aspect was not relevant to test genuineness of objects of the university. Further, with respect the observation of the DIT(E) that funds had been paid to sponsored body trust or by the sponsored body trust to university, the Tribunal held that even if the assessee had taken funds from sponsored body trust it would not affect its objects and if it had extended some undue benefits to sponsored body trust then safeguards were already provided u/s 13.

Indus University v ACIT – (2018) 91 taxmann.com 41 (Ahmedabad Trib) – ITA No. 2934 (Ahd.) of 2014 dated 20.02.2018

1662. Where the assessee, educational society, had filed application to seek approval u/s 10(23C)(vi) for AY 2015-16 beyond the time limit prescribed in the Act i.e. six months from end of previous year, the Tribunal held that it could not be taken that the CIT(E) had condoned the delay in filing the application for AY 2015-16 since there is no provision in the Act which empowers the CIT(E) to condone the delay. However, since the CIT(E) had disposed of the application on 17.11.2016 which was after 30.09.2016 thus, preventing the assessee from making fresh application for AY 2016-17 within prescribed time of 30.09.2016, the Tribunal held that the very same application should be deemed as application for AY 2016-17. Further, with respect to the CIT(E)'s other reason for rejection of approval i.e. objects in Memorandum of Association showed that the society was not existing solely for educational purposes, the Tribunal relied on the decision in the case of Yuvodaya Charitable Trust v CIT(E) [ITA No.389/CTK/2016] wherein it was held that even though objects of society contained other objects which constituted purpose other than educational purpose but as there was no dispute to fact that

society carried on object of conducting school only, it could not be denied exemption u/s 10(23C)(iiiad). Accordingly, it directed the CIT(E) to grant approval to assessee society u/s 10(23C)(vi) for AY 2015-16.
VINERINI SISTERS EDUCATIONAL SOCIETY v CIT – (2018) 52 CCH 228 (Cuttack Trib) – ITA No. 52/CTK/2017 dated 23.01.2018

1663. The CIT(A) had denied exemption/benefit of section 11 to the assessee on the ground that there was a separate provision under the Act i.e. 10(23C)(iv), (v) and (vi) under which the assessee could have claimed the exemption and since assessee had not availed the exemption u/s 10(23C), it was debarred from claiming exemption u/s 11. The Tribunal held that there was no bar or disharmony between the said sections and exemption u/s 11 could not be denied even when there is a specific provision u/s 10(23C). It further held that once all requisite conditions for exemption u/s 11 had been met and even if conditions u/s 10(23C) had not been complied with, then there should be no bar to seek exemption u/s 11. Further, the Tribunal held that the fees charged by assessee from its students, not being capitation fee at all, which had been applied for its dominant purpose/object of carrying out educational activity was neither for profiteering nor for carrying any activity beyond its dominant object and had to be seen as an application of income for charitable purpose.
Adarsh Public School v JCIT – (2018) 90 taxmann.com 356 (Del Trib) – ITA No. 3782 (Delhi) of 2017 dated 31.01.2018

1664. In case of a trust registered u/s 12AA and engaged in imparting education and educational activities, the Court dismissed the appeal filed by Revenue against Tribunal's order allowing assessee's claim of depreciation, rejecting Revenue's contention that claiming both depreciation as well as application of income with respect to purchase of capital tantamounted to double deduction.
CIT(E) v SHYAM LAL PANWAR ANANDI DEVI MEMORIAL CHARITABLE TRUST – (2018) 400 ITR 0393 (Raj) – D.B. Income Tax Appeal No. 337, 344, 388, 339 / 2017 dated 02.01.2018

1665. The Court disposed of the writ petition filed by the assessee against the reassessment notice issued u/s 148, holding the petition to premature in the sense that the petitioner had not sought for the reasons for reopening of the assessment. It directed the AO and assessee to follow the guidelines prescribed in the case of GKN Driveshafts (India) Ltd v ITO (2003) 259 ITR 19 (SC) laying the procedure to be adopted adopt on being served with a notice u/s 148.
ANNAMALAI UNIVERSITY v ITO – (2018) 401 ITR 0080 (Mad) – W.P.Nos.11735 to 11740 of 2006 and WPMP Nos.13352 to 13357 of 2006 dated 02.01.2018

1666. The Tribunal held that the AO was unjustified in denying the assessee (charitable society registered u/s 12AA with object to open school, colleges, orphanage and destitute home) exemption under Section 11 on the alleged ground that it had applied its income to particular community as it allegedly operated under the motive to evangelize. The Tribunal upheld the order of the CIT(A) and held that imparting religious education along with recognized education was a part of Indian heritage and any society/trust could not be barred from claiming exemption u/s 11 merely because of fact that it is imparting Theological courses to its students. Further, it observed that there was no evidence on record to prove that the assessee had had converted Indians into Christianity. Accordingly, it dismissed the Revenue's appeal.
INCOME TAX OFFICER vs. BHARAT SUSAMCHAR SAMITI - (2018) 52 CCH 0198 DelTrib - ITA No. 235/Del./2015, 236/Del./2015 dated Mar 16, 2018

1667. The Tribunal, relying on the decision of the Hon'ble Supreme Court in case of CIT Vs. Rajasthan and Gujarati Charitable Foundation in Civil Appeal NO. 7186/2014 dated 13.12.2017 wherein it has been held that up to the assessment year 2015-16 the assessee was entitled to claim the cost of acquisition of fixed assets as application of income and further deprecation thereon in subsequent years, directed the AO to delete the disallowance of depreciation claimed by the assessee charitable trust.
SOCIETY FOR EDUCATIONAL EXCELLENCE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0197 DelTrib – ITA No. 6957, 6960 and 3606/Del/2017 dated Mar 19, 2018

1668. The Tribunal held that the CIT(E) erred in denying the assessee registration under section 12AA of the Act merely because the trust deed was not registered under Indian Registration Act. It held that that as

per the Act and Rules it was not mandatory for a trust to be registered under the Indian Registration Act for it to be eligible for registration under Section 12AA of the Act. Noting that the CIT (E) had not examined objects of trust, it held that the CIT(E) had not carried out duty enjoined upon him with regard to grant of registration u/s12AA and accordingly restored the matter to file of CIT (E) to adjudicate on assessee's application for registration de novo.
NURTURE-A DEVELOPMENT INITIATIVE vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0217 PatTrib - ITA No. 102/Pat./2016 dated Mar 16, 2018

1669. The Tribunal held that when the CIT granted registration u/s 12AA after examining genuineness of activities of Trust, it was not proper for CIT to reject application of trust for benefit of exemption u/s 80G(5) by holding that activities of trust were not genuine.
DR. GYANENDRA GOEL FOUNDATION vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0284 AgraTrib - ITA No. 173/AGR/2017 dated Mar 8, 2018

1670. The Tribunal held that under section 12AA, the Commissioner is entitled to see as to whether the objects of the trust are charitable in nature, and also to see whether the activities are genuine or not and the scope of such enquiry does not extend beyond that point. It held that the registration granted by the Commissioner would not extend any exemption to an institution under section 11 though such registration is mandatory for claiming exemption under section 11 and that exemption under section 11 can be availed of by institutions which are genuinely engaged in 'charitable activities'. However as the benefit of section 11 is subject to application of income for charitable activities the Assessing Officer is well entitled to see whether such application had been done and the other conditions of section 11 have been complied. The Assessing Officer has to see whether exemption under section 11 is barred by application of section 13. Therefore, it held that the Commissioner was not justified in denying registration to the assessee Trust on the ground that the assessee also earned profits for augmenting its business which was not as per Section 11 read with Section 2(15) of the Act.
BSA College v CIT(E) - [2018] 92 taxmann.com 39 (Agra - Trib.) - IT APPEAL NO. 408 (AGRA) OF 2017 – dated MARCH 13, 2018

1671. The Commissioner rejected assessee's application under section 12AA mainly on ground that it was charging hefty fee from students. In view of fact that though hefty fees were being charged by assessee-society at same time, it was also providing free education to needy students and free medical aid to needy patients, the Court held that the aforesaid fact could not change its nature from charitable society to profit making society. Accordingly, the impugned order passed by Commissioner was set aside.
B.B. Educational Society v CIT - [2018] 92 taxmann.com 300 (Delhi - Trib.) - IT APPEAL NO. 4994 (DELHI) OF 2014 dated MARCH 16, 2018

1672. Where in the case of assessee-society engaged in imparting education, application for exemption under section 10(23C)(vi) was allowed by the order of the Single Bench without considering Revenue's objection that assessee had disproportionate fee structure which was devised to earn maximum money for purpose of expansion of institution which did not fall within ambit of charitable activity, the Court held that the impugned order was to be set aside and, matter was to be remanded back for disposal afresh.
Chief Commissioner of Income-tax v J.B. Memorial Manas Academy Management Society - [2018] 92 taxmann.com 305 (Uttarakhand) - SPECIAL APPEAL NO. 64 OF 2018 dated MARCH 19, 2018

1673. The Court held that the exemption under section 10(34) was available only for amount, which had suffered tax under section 115-O and, since, in case of deemed dividend under Section 2(22)(e) (which was not covered under 115-O for AY 2005-06), there was no payment of additional tax under section 115-O, same was not exempted.
Dr. T.J. Jaikish P.V.S. Hospitals (P.) Ltd. v CIT - [2018] 92 taxmann.com 351 (Kerala) - IT APPEAL NO. 191 OF 2013 dated MARCH 8, 2018

1674. Where the assessee claimed exemption under section 11 in respect of surplus earned by it by organising exhibition, which was a well-organized and regular activity incidental to assessee's business

but assessee had not maintained separate books of account in respect of the said activity, as mandated under section 11(4A), the Court held that the exemption under section 11 could not be granted.
Indian Machine Tools & Manufacturers Association v DIT(E) - [2018] 91 taxmann.com 465 (Bombay) - IT REFERENCE NO. 104 OF 2000 dated MARCH 9, 2018

1675. The Tribunal held that receipt of subscriptions from members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating dominant object of assessee-trust, viz., providing knowledge, information, awareness, demonstrations, etc., to members of Fragrance and Flavours industry and thus it fell within realm of section 2(15) and the assessee was eligible to claim exemption under Section 11 of the Act.
Fragrance & Flavours Association of India v DDIT(E) - [2018] 92 taxmann.com 325 (Mumbai - Trib.) - IT APPEAL NO. 6545 (MUM.) OF 2016 dated MARCH 22, 2018

1676. The Tribunal held that registration granted to a trust or institution u/s 12A could not be cancelled where the activities of trust or institution were genuine and were carried out in accordance with objects of trust or institution. Accordingly, it held that the CIT was not justified in revoking the registration on the ground that there was an addition in the objects of the trust without communication to the Department when the additions made (i.e. establishment of diagnostic center) was in line with the original objects of the trust i.e. relief to the poor. Accordingly, it set aside the order of the CIT.
PARAMOUNT CHARITY TRUST vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0272 AhdTrib - ITA No. 3119/Ahd/2014 dated Feb 27, 2018

1677. The Tribunal held that the assessee could not be denied deduction on account of depreciation even though the purchase of capital assets was allowed as an application of funds earlier year. It held that the amendment denying such depreciation was applicable with prospective effect from 01.04.2015. Accordingly, it dismissed Revenue's appeal.
INCOME TAX OFFICER vs. SURYA BUX PAL CHARITABLE TRUST - (2018) 52 CCH 0117 LucknowTrib - ITA No. 193/Lkw/2016 dated Feb 23, 2018

1678. The assessee trust was registered u/s.12AA and engaged in field of educational activities and claimed deprecation and also claimed capital expenditure as application towards objects of Trust. The AO held that since assessee claimed capital expenses as application towards objects of Trust, claim of depreciation would amount to double deduction and accordingly disallowed the claim of depreciation made by assessee. The Tribunal upheld the order of the CIT(A) deleting disallowance made by AO and held that the Bombay High Court, in case of CIT vs. Institute of Banking Personnel Selection [264 ITR 110 (Bom)], held that normal depreciation could be considered as legitimate deduction in computing real income of assessee on general principles or U/s.11(1)(a).
DEPUTY COMMISSIONER OF INCOME TAX vs. AMC MEDICAL EDUCATION TRUST - (2018) 52 CCH 0080 AhdTrib - ITA No. 3089/AHD/2015 dated Feb 2, 2018

1679. The Tribunal upheld CIT(Exemption)'s order and rejected the assessee's application for grant of approval for exemption u/s 10(23C)(vi) observing that the assessee generated huge surplus running into hundreds of crores from year to year from funds parked in FDRs instead of being redeployed into education. On perusal of financial data for past years, it observed that as on March 31, 2017, out of the total funds available of Rs. 1486 cr., over Rs. 1100 cr. were lying in term deposits and savings account and accordingly noted that a major portion of the funds available were applied in current assets more specifically in the form of cash and FDRs and very little funds were utilized for investing in fixed assets for the purpose of imparting education. It further observed that the applicant was spending on an average only 60% of its receipt / income on its stated charitable activities of imparting education, instead of 85% prescribed by Sec. 10(23C)(vi) and also that the Auditor's report highlighted that grants were not utilized for the purpose for which they were received. Accordingly, it held that the parking funds in FDRs continuously for the last so many years showed that the assessee had neither any intention nor any vision or plan to spend the huge funds so generated and accumulated, for achieving the stated objects of imparting education and accordingly held that the assessee was rightfully denied approval under Section 10(23C).

I. K. Gujral Punjab Technical University - TS-102-ITAT-2018(CHANDI) - ITA No. 910/Chd/2017 dated 23.02.2018

1680. Where the assessee charitable trust had earned income of Rs 4.41 crore and applied 4.78 crore (leading to deficit of Rs.36.51 lakh) and claimed accumulation at 15 percent of gross receipts as per Section 11(1)(a) of the Act, which was denied by the AO as there was no income remaining after deducting the application of funds, the Tribunal held that as per the provisions of the Act, the 15 percent accumulation was to be claimed on the real income and not assessed income and since there was no express provision in the Act preventing the assessee from claiming the said benefit in cases where the assessee had in fact made losses, the AO could not deny the assessee the claim. Accordingly, it upheld the assessee's claim (for accumulation as well as carry forward and set off of the losses + accumulation).
LALJI VELJI CHARITABLE TRUST vs. INCOME TAX OFFICER (EXEMPTION) - (2018) 52 CCH 0330 MumTrib - ITA No. 5322, 5323/Mum/2016 dated Feb 28, 2018

1681. The Apex Court reversed the Madhya Pradesh HC ruling in case of State Government Undertaking (established for development of industrial growth centres/areas) and held that prior to 2004 amendment (enactment of Sec. 12AA(3) with prospective effect from October 1, 2004), the CIT had no power to cancel registration certificate granted u/s 12A for charitable purpose. It held that the functions exercisable by CIT u/s 12A are neither legislative nor executive, but are quasi-judicial in nature and held that the order u/s 12A could not be rescinded or modified applying provisions of Section 21 of General Clauses Act as order mentioned therein must be in the nature legislative or executive order. Moreover, it held that quasi-judicial orders could be varied or reviewed when obtained by fraud or when such power was conferred by the Act or Rules under which it was made and noting that the express power to cancel registration was granted to CIT only by way of enactment of Sec. 12AA(3) with prospective effect from October 1, 2004; held that the CIT was not empowered to cancel it in the instant case (in 2002).
Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. [TS-64-SC-2018] - CIVIL APPEAL No.6262 OF 2010 dated February 16, 2018

1682. The AO denied the assessee's claim for exemption u/s 11 on the ground that the assessee had not incurred any expenditure relating to charitable activity for the cause of education, medical aid or relief to poor and even not incurred any expenditure for the general public utility since the assesse only provided services towards water quality testing and had incurred expenditure with reference to the said services. The Tribunal held that the assessee's activity came within the purview of exceptions provided u/s 2(15)(i) for the reason that the assessee's activity of testing water quality monitored quality in reservoirs and slum areas and almost the entire fee charged for the same was spent towards testing activity. It held that the testing of water and thereby supplying good quality of water contributes to health of the people and to take care of health of the people was one of the objects of the assessee. Thus, the Tribunal held that the activity of the assessee was to be considered as advancing of general public utility eligible for exemption u/s 11 of the Act.
INSTITUTE OF HEALTH SYSTEMS vs. INCOME TAX OFFICER - (2018) 53 CCH 0262 (Hyd Trib) - ITA No. 1783/Hyd/2017 dated June 28, 2018

1683. The Tribunal deleted the addition made by the AO denying the assesse benefit of exemption u/s 11 where on the ground that the assesse-society had violated the provisions of section 13(1)(c) since the office bearers where related to each other and that the Executive President and the Director General were staying on the 4th and 5th floor of the building of the Institute/ society. The Tribunal followed its own decision in the assesse's own case for another year wherein it was held that as per section 13, the benefit u/s 11 could be denied if some advantage or benefit had been taken by the persons who were in the governance of the institution, however there is no condition specified, that the persons in governance should not be relatives. It was also held that the Executive President and the Director General were occupying the premises in the capacity as Executive President and the Director General and in terms of provisions of section 13(2)(c) salary allowance or otherwise could be paid to such person for services rendered by such person, wherein the only condition was that the amount so paid should not be in excess of what may have been reasonably paid for such services, which was not **so in** the present case.

TAX OFFICER vs. INSTITUTE OF MARKETING & MANAGEMENT - (2018) 53 CCH 0227 (Del Trib) - ITA No.:- 4444/Del/2015 dated June 28, 2018

1684. The assessee, an employee of ICICI Bank, claimed exemption u/s 10(10C) under the revised return filed after the original return was processed u/s 143(1) with respect to Early Retirement Optional Scheme opted by him. The AO rejected the said claim on the ground that the original return was already processed u/s 143(1) and that amount received under the said scheme was not eligible for exemption u/s 10(10C). On writ petition filed by the assessee, the Court noted that in various decisions dealing with the eligibility of employees of RBI and even ICICI Bank to claim exemption u/s 10(10C) have decided in favour of the asseessee. It held that the Circular No.14(XL35) of 1955, dated 11.04.1955 mandates that the tax payers have to be guided by the AO in the matter of claims and reliefs and, thus, when an assessee files a return and pays excess tax, it is incumbent on the officials of the Income Tax Department much less the Assessing Authority to inform the reliefs entitled to the assessees. It thus set aside the AO's order and directed the Revenue to refund the excess amount, which the assessee was entitled to, as per section 10(10C).
R. BANUMATHY vs. COMMISSIONER OF INCOME TAX & ANR. - (2018) 102 CCH 0156 ChenHC - W.P(MD) No. 10602 of 2011 dated June 05, 2018

1685. The AO brought to tax the income which was claimed to be exempt u/s 80G(5C) by the assessee-trust, registered u/s 12A and also approved u/s 80G(5), created for a specific object of providing relief to earthquake victims of Gujarat before 31-3-2004. The AO opined that the assessee had neither applied the sum before 31-3-2004 nor transferred same to Prime Minister's National Relief Fund, as required by section 80G(5C). The Tribunal granted benefit of the said exemption to the extent the assessee had spent on construction of a school but with respect to the remaining amount, which had not been actually spent, the said benefit was not granted. However, noting that though total sum was not applied for earthquake relief before 31-3-2004, but was transferred by the assessee to the Prime Minister's National Relief Fund on 31-12-2004, the Court held that the assessee had fulfilled terms of section 80G and thus, said sum was not taxable.
Amul Relief Trust v ADIT(E) - [2018] 95 taxmann.com 111 (Gujarat) - R/TAX APPEAL NO. 1391 OF 2007 dated June 12, 2018

1686. The Court dismissed Revenue's appeal against the Tribunal's order allowing exemption u/s 11 to the assessee -society, established with a view to undertake and promote activities connected with development of cattle and buffaloes covered by section 2(15), with respect to income earned by it from sale of semen, relying on the decision in the case of DIT(E) v. Sabarmati Ashram Gaushala Trust [2014] 362 ITR 539 (Guj) wherein it was held that merely because while carrying out activities for purpose of achieving objects of trust, certain incidental surpluses were generated, the same would not amount to activity in nature of trade, commerce or business.
Pr.CIT v Animal Breeding Research Organisation (India) - [2018] 95 taxmann.com 226 (Gujarat) - R/TAX APPEAL NO. 522 OF 2018 dated June 11, 2018

1687. The application filed by the assessee on 25-5-1999 requesting for grant of registration u/s 12A with effect from 1-4-1998 (alongwith the request for condonation of delay in filing of application for registration of less than 2 months) was not disposed by the CIT(E) for long. On being persuaded by the Revenue to file another application for registration, the assessee filed other applications on different dates which were rejected by the CIT on technical grounds despite the fact that at the relevant point of time, assessee was enjoying the recognition u/s 80G. Finally, the registration was granted only with effect from 1-4-2016 after making a detailed verification of the records and enquiry. Noting that the revenue could not answer the query as to why said application was not disposed off, the Tribunal held that the CIT(E) had failed to dispose of the application within the prescribed period of 6 months from end of month in which application was received, as per section 12AA(2) and accordingly, it set aside the CIT(E)'s order grant registration only with effect from 1-4-2016. Further, taking note of the assessee's request for condonation of delay in filing the said application, it directed the CIT(E) to grant registration with effect from 1-4-1998.
Visvesvaraya Technological University v CIT(E) - [2018] 94 taxmann.com 431 (Bangalore - Trib.) - IT APPEAL NO. 8 (BANG.) OF 2016 dated June 4, 2018

1688. The Tribunal upheld the CIT(A)'s order allowing the assessee's claim for exemption u/s 10(37) with respect to interest awarded to him u/s 28 of Land Acquisition Act, 1894, on enhanced compensation paid for compulsory acquisition of agricultural land. As per section 10(37), any income chargeable under the head "Capital gains" arising from the compensation / enhanced compensation received for compulsory acquisition of agricultural land is exempt from tax. The Tribunal followed the decision in the case of Movaliya Bhikhubhai Balabhai v. ITO [2016] 388 ITR 343 (Guj) wherein it was held that interest u/s 28 of the said Act, partook the character of compensation and it did not fall within the ambit of the expression "interest".
ITO v Basavaraj M Kudarikannur - [2018] 95 taxmann.com 106 (Bangalore - Trib.) - IT APPEAL NOS. 1747 AND 1750 (BANG.) OF 2017 dated June 1, 2018

1689. In the case of an assessee Trust, the CIT(A) allowed claim of assessee that deficiency in one year could be set off against excess application of earlier year. However, according to Revenue, excess application of income, in particular year could not be adjusted with deficiency in another year. The Tribunal concurred with the CIT(A)'s finding relying on Jurisdictional High Court decision of CIT v. Maharana of Mewar Charitable Foundation wherein it was held that assessee was entitled to set off excess application of earlier year against deficiency in next year. The Tribunal also concurred with the CIT(A)'s finding that though the assessee earned rental income, since it was utilised and applied for the object of the trust, the activity of letting out property was not a commercial activity. Thus, it dismissed Revenue's appeal against the said finding of the CIT(A). The Tribunal also dismissed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had brought to tax, as per section 11(3), the amount accumulated by the assessee-trust u/s 11(2) for specified purpose, noting that the same was not applied for such specified purpose and the application of income during the year was made from the income which was received as donation. The Tribunal held that since the income accumulated for specific purpose u/s 11(2) was not used for the purpose for which same was accumulated, the assessee was not eligible for exemption u/s 11 in respect of such accumulated income.
DCIT & Anr v The Willingdon Charitable Trust & Anr (2018) 52 CCH 0349 ChenTrib - TA Nos. 2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018

1690. The assessee (Charitable Trust registered u/s12AA qualifying for exemption) was a local authority engaged in the business of buying, developing and selling of lands, plots, flats and developed properties and also received rent from commercial properties and other places. The AO opined that nature of activities carried on by assessee were not covered by the definition of 'charitable purpose' u/s 2(15) as they were hit by the proviso to the said section which bars exemption claimed u/s 11 w.r.f activities in nature of trade, commerce or business. He thus treated entire surplus as income taxable for year, disallowing the said exemption. However, the CIT(A) deleted the addition holding that the proviso to S.2(15) was not applicable to assessee's case. On Revenue's appeal, the Tribunal held that the test for carrying on of any activity in nature of trade, commerce or business as mentioned in first proviso to Sec. 2(15) would be satisfied if profit making was not real object. Accordingly, noting that there was no material suggesting that assessee was conducting its affairs solely on commercial lines with a motive to earn profit and that no material was brought on record which suggested that the assessee deviated from its objects for which it had been constituted, the Tribunal held that proviso to s. 2(15) was not applicable to assesee's case and dismissed revenue's appeal.
DCIT v Raipur Development Authority (2018) 52 CCH 0529 RaipurTrib - ITA No. 212/RPR/2014 dated 16.04.2018

1691. The Apex Court dismissed the SLP filed by the Revenue on the substantial question of law as to whether any excess expenditure incurred by the trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking section 11.
COMMISSIONER OF INCOME TAX (EXEMPTION) vs. SUBROS EDUCATIONAL SOCIETY - (2018) 166 DTR 0257 (SC) - MISCELLANEOUS APPLICATION NO. 941/2018 IN CIVIL APPEAL NO(s). 5171/2016 dated Apr 16, 2018

1692. The assessee was registered under Society Act, 1860 and filed application for registration u/s.12AA. CIT rejected the same on ground that there were only very little activity carried out in previous year. Further, for holding some event, the assessee society looked for donors and thus the CIT assumed that there would be huge commercial consideration by way of advertisement, selling ticket, broadcasting rights over game thereby violating the ambit u/s 2(15) of 'charity'. However, the Tribunal followed CIT vs. Red Rose School wherein it was decided that with regard to genuineness of activities of trust, whose objects did not run contrary to public policy and were, in fact, related to charitable purposes, CIT was empowered to make enquiries as he thinks fit and in case activities were not genuine and they were not being carried out in accordance with objects of trust/society or institution, of course the registration could be refused. The Tribunal held that, CIT could not presume that the income derived by trust/institution were not used in proper manner without making any enquiry. Further, it was clarified by CBDT that if cut-off specified was exceeded acc to proviso to S.2(15), that amount would be out of scope of exemption and would be chargeable to tax but the exemption u/s 12AA could not be completely eroded and registration could not be refused and thus the Tribunal set aside the order of CIT.

Cuttack District Tennis Association v CIT (2018) 52 CCH 0314 CuttackTrib - ITA No. 454/CTK/ 2013 dated 12.04.2018

1693. The assessee-trust, registered u/s 12AA owning hospital including building and plant machinery, entered into MOU with company wherein the company was to manage/run the hospital on principle of revenue sharing formula, strictly for charitable objects/purpose of Trust. The AO, on considering arrangements outlined in MOU qua objects of assessee trust, considered the same as colorable device in nature and also invoked provision of section 13(1)(c) thereby withdrawing claim of exemption u/s.11. The CIT(A) allowed benefit of exemption claimed by assessee. The Tribunal observed the MOU had bound the company to follow the charitable objects of the trust. Further, various MOU clauses clearly mentioned endeavour to utilize poor and indigent patients funds for objects of scheme and also that the share of revenue received by trust for purpose of poor and indigent patients as well as other needy patients. Thus, the Tribunal held that the AO had not brought any solitary instance to demonstrate irregular diversion of trust funds or exploitation of property trust for benefit of trustees or company. With respect to the AO's contention that the certain amount paid by the assessee to an individual doctor, who also happened to be the ex-trustee and shareholder/ director was against the charitable purpose thus attracting provision of section 13(1)(c), the Tribunal held that consulting fees paid by assessee to Dr. was in normal course of medical professionals and there was no question of any benefit flowning directly or indirectly from Trust to doctor thereby upheld the CIT(A)'s order and dismissed Revenue's appeal.

ACIT & Anr. v Mallikarjun Health Care & Research Centre & Anr (2018) 52 CCH 0467 PuneTrib - ITA No. 117/PUN/2015, 1248/PUN/2015 dated 06.04..2018

1694. The assessee had filed application for grant of approval u/s 10(23C)(vi) within prescribed time limit w.e.f AY 2016-17. The CIT(E) granted approval w.e.f AY 2016-17 but later on shifted to AY 2017-18 on finding that the assessee had in the meanwhile filed its return of income for AY 2016-17 claiming exemption u/s. 10(23C)(vi) though it had still not been granted approval under said section. The Tribunal held that the assessee's act of filing return claiming exemption was justified as the grant of approval was delayed on the part of CIT(E),and moreover the assessee was granted approval thereafter. It held that there was no justifiable reason for shifting grant of approval to AY 2017-18 when otherwise assessee was eligible for approval from AY 2016-17. Thus, the Tribunal directed the CIT(E) to grant approval to assessee from AY 2016-17 onwards and allow the claim of exemption.

C.M. Public School v CIT(E) (2018) 52 CCH 0580 ChdTrib - ITA No.1540/Chd/2017 dated 06.04.2018

1695. The assessee-society(charitable trust), providing education by running a school, applied for registration u/s 12AA and its gross receipt being below Rs.100 lacs, claimed exemption on its' entire income u/s. 10(23C)(iiiad).The CIT(E) held that financial statements of assessee-society revealed it to have sources of income other than from school and it was also charging, apart from tuition fee, fees under various heads, viz. admission fee, registration fee, development fund, transport charges, etc. and indicated it to be for profit. Thus, the registration was denied on the ground that charge of hefty fees

undermined and violated very basis or notion of charity and regarded it to be a non-profit society. The Tribunal observed that the school was running on CBSE pattern and thus reasonableness was to be considered with reference to cost of providing education and maintaining quality. The Tribunal further noted that there was nothing to suggest of costs being inflated and surplus, by itself would not render society as not a non-profit society. However, noting that the CIT(E) did not comment adversely on the objects of the society as well as genuineness of its activities and also didn't express satisfaction, the Tribunal assumed it to be overlooked by the CIT(E) and held that the order was to be set aside and restored to the file of CIT(E) for fresh adjudication.
Swami Vivekanand Educational and Welfare Society v CIT (2018) 52 CCH 0418 AsrTrib - ITA No. 422/(Asr)/2017 dated 20.04.2018

1696. The assessee was a charitable trust registered u/s 12AA(3). A search and seizure was carried out at the registered office of the assessee and based on this operation, assessment proceedings were carried out u/s 153-A/143(3) for the relevant year. Further, the Commissioner issued a show cause notice for the cancellation of registration with retrospective effect on the ground that the assessee was not carrying out charitable activities. A writ petition was filed by the assessee challenging the retrospective effect of cancellation of registration. The Court dismissing the writ petition held that all pleas including the plea that the registration could not be cancelled with retrospective effect could be raised by the Petitioner before the Principal Commissioner, who shall necessarily consider all the relevant pleas and take a decision thereon after recording his satisfaction in terms of section 12AA(3) and there was no reason for the Court to believe that he wouldn't have done so.
Hind Charitable Trust v. PCIT - [2018] 93 taxmann.com 483 (Allahabad) - MISC. BENCH NO. 7201 OF 2018 dated APRIL 11, 2018

1697. The assessee was a registered society who had established 11 schools and had also permitted societies with similar object to open schools under the name of 'Delhi Public School'. The main objective of the assessee was to establish progressive schools without any distinction of caste or creed. The assesseee had been enjoying exemption in respect of its income u/s 10(22) since assessment year 1977-78 till assessment year 2007-08 but in view of change in law, section 10(22) was substituted by section 10(23C)(vi) and the assessee's application for exemption u/s 10(23C)(vi) for assessment year 2008-09 onwards was denied by the ADIT on the grounds that the franchisee fee received by assesseee from the satellite schools in lieu of its name, logo and motto amounted to a 'business activity' with a profit motive and no separate books of account had been maintained by assesseee. A writ petition challenging the decision of the ADIT was filed by the assessee wherein the Court noted that the assesseee had maintained accounts which had been audited in detail for the relevant years. The Court further observed that the surpluses accrued by assesseee society in form of franchisee fee from satellite schools were fedback into maintenance and management of assesseee schools which was in furtherance of charitable purposes and accordingly held that the assessee society qualified for exemption u/s 10(23C)(vi).
DIT v. Delhi Public School Society - [2018] 92 taxmann.com 132 (Delhi) - W.P. (C) NO. 5340 OF 2008 dated APRIL 3, 2018

1698. The Court held that provisions of section 12AA which provide that registration is mandatory to claim exemption would come into force with prospective effect from 1-4-1997.
PCIT v Poorna Prajana Vidya Peetha Prathisthana [2018] 94 taxmann.com 297 (Karnataka)- ITA NOS. 187 TO 190 AND 9 OF 2018 dated 05.04.2018.

1699. The Tribunal held that where assessee was engaged in microfinancing especially for poor women and collected interest at rate much higher than banks and NBFCs and levied penal interest even on poors, it was not entitled to benefit of section 11.
Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018

1700. The Court allowed the writ petition filed by the assessee, an employee of ICICI Bank, against the notice of demand issued by the income-tax department asking to pay tax payable with respect to a consolidated payment received by the assessee as per the Voluntary Retirement Scheme of the said

bank, claimed as exempt u/s 10(10C) by the assesssee. The department had opined that the said scheme was not in conformity with rule 2BA and thus the amount received under the said scheme was not eligible for exemption u/s 10(10C). The Court, however, held that the demand raised by the department was not sustainable, following the decision in the case of Chandra Ranganathan v. CIT [2010] 326 ITR 49 (SC) and CIT v. KoodathilKallyatanAmbujakshan [2009] 309 ITR 113 (Bom.) wherein it was held that the employees of RBI were eligible for exemption u/s 10(10C).
A. Kumarappan v CIT - [2018] 95 taxmann.com 194 (Madras) - W.P. (MD) NO. 8436 OF 2013, M.P. (MD) NO. 2 OF 2013 dated April26, 2018

1701. The Court allowed assessee's claim for exemption u/s 10(10C) for VRS payment received by the assessee, an employee of ICICI Bank. The assessee's claim was denied by the Income-tax authorities holding that the scheme was not in consonance with Rule 2BA. The Court relied on Bombay HC ruling in Koodathil Kallyatan Ambujakshan and SC ruling in Chandra Ranganathan & Ors wherein it was held that merely because the scheme may not expressly set out that the posts (of the retiring employee) will not be filled, it could not result in the scheme not being a scheme falling under s.10(10C) r/w r.2BA. The Court noted that Bombay HC had held that Rules being procedural in nature have to be read in harmonious construction with substantive provision. It further noted that pursuant to the Bombay HC ruling, the Income Tax Department had issued a circular stating that the retiring employees of RBI (having similar scheme) would be eligible for exemption u/s 10(10C). Thus on similar lines it allowed assessee's claim for exemption.
A.Thenappan vs ITO ward no 1(3) & ACIT Circle II Madurai – TS- 252-HC-2018 (Mad)- W.P (MD) No. 9001 of 2010 & MP (MD) No. 1 of 2010.

1702. The assessee, an educational institute filed an application for grant of approval u/s 10(23C) as (a) for the grant of approval under section 10(23C)(vi), the institution must exist 'solely' for educational purpose and not for profit which is clear from the plain reading of the section, (b)the objects in the MOA of the assessee not only included educational objects but also other non-educational objects. The Tribunal upheld the order of the CIT which rejected the application of the assessee.
Desales Educational Society v PCIT(Exemptions) [2018] 94 taxxman.com 206 (Vishakhapatnam – Trib) / [2018] 171 ITD 170 (Vishakhapatnam – Trib.) – ITA NO 389 OF 2016 dated 30.05.2018

1703. The assessee, a charitable trust entitled to exemption u/s 11 of the Act, received voluntary contributions (corpus donation) from the donors. The donors instructed that the interest would also form part of the corpus donation and thus the assessee claimed exemption u/s 11(1)(d) on the interest earned on the said corpus donation. The AO rejected assessee's claim for exemption. However, the Tribunal allowed the assessee's claim and the High Court concurred with the Tribunal's finding that the interest earned on voluntary contribution would also partake the character of voluntary contribution as the instructions issued by the donors were undisputed . The Department's SLP filed against the High Court's order was dismissed by the SC.
CIT(Exemption) v Mata Amrithanandamayi Math Amritapuri [2018]94 taxmann.com 82 (SC)SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 11590 OF 2018 dated 14.05.2018

1704. Consultancy fees were paid by the assessee trust to a Company whose two directors were also trustees of the assessee. The AO denied exemption claimed by the assessee trust under Section 11 of the Act by applying the provisions of Section 13(1)(c). The Tribunal observed that the AO had neither shown how the said Company satisfied the requirements of Explanation 3 to Section 13(1)(9), nor had he demonstrated that such payments were excessive viz-a-viz services rendered. Thus, distinguishing the ruling of the Kerala High Court in Agappa Child Centre vs. CIT (226 ITR 211), the Tribunal held that there was nothing to show that any of trustees had unduly benefited from payments made to such Company and hence exemption under Section 11 was held to be allowable.
DCIT vs. St. Xavier Educational & Charitable Trust – [2018] 53 CCH 0092 (Chennai ITAT) – ITA No 1192/CHNY/2017 dated May 3, 2018

1705. The assessee society was registered under section 12AA whose main object was to promote efficiency in the functioning of the Government in its various departments responsible for providing benefits/amenities to citizens. The assessee in addition to the statutory fee (fixed by the Government)

also charged service fee for acting as an interface between the concerned Department of the Government and the citizens through better coordination and induction of technology. The assessee claimed exemption u/s 11 which was denied by AO on the grounds that the assessee was hit by the provisions of section 2(15) and the nature and scope of assessee's activities fell within the ambit of 'business'. The Tribunal dismissed the appeal of the assessee and held that the service fee charged, in addition to the statutory fee, could be increased at any time by the assessee. This explained the ability of the assessee to produce profit from the services and therefore it was concluded that the assessee has undertaken business as per section 2(15).
Sukhmani Society for Citizen Services v. ACIT – [2018] 93 taxamnn.com 292 (Amritsar – Trib.) – IT Appeal Nos. 52 (ASR.) of 2014 & 594 (ASR.) of 2017 dated April 24, 2018

1706. Where the assessee, being a charitable trust, made certain payments without deducting TDS, the AO made a disallowance under Section 40(a)(ia) of the Act in respect of such expenditure. On appeal, relying on the rulings of the Bombay High court in Bombay Stock Exchange Ltd. (365 ITR 181) and other Tribunal rulings, CIT(A) observed that since disallowance under Section 40(a)(ia) could only be made in respect of a taxpayer whose income was assessable under Section 28, such provisions of section 40(a)(ia) were not applicable in case of the assessee trust as income and expenditure was computed in terms of section 11. The Tribunal upheld the speaking order passed by the CIT(A) and sustained relief granted to the assessee.
ITO vs. Army Wives Welfare Association – [2018] 53 CCH 0013 (Kol High Court) – ITA No 160 of 2016 dated May 3, 2018

1707. Where the assessee, being a charitable trust, advanced loans to another trust, CIT(A) upheld the action of the AO in denying benefit of exemption to the assessee under Section 11 by invoking provisions of Section 13(1)(d) on ground that there was violation of mode of investment in terms of Section 11(5) by advancing loan to another charitable trust. Relying on the rulings of the Bombay High Court in Sheth Mafatlal Gagalbhai Foundation Trust (249 ITR 533) and Delhi High Court in Agrim Charan Foundation (253 ITR 593), the Tribunal held that as per section 13(1)(d), only the income from such investment or deposit which had been made in violation of section 11(5) of the Act was liable to be taxed. Relying on the Ruling of the Gujarat High Court in Sarla Devi Sarabai Trust (40 Taxman 388), The Tribunal held that Sec.11(5) could not be applied to present facts as the money advanced was not an investment but a loan.
Puran Chand Dharmarh Trust vs. ITO – [2018] 53 CCH 0069 (Delhi ITAT) – ITA No 1994/Del/2011 dated May 4, 2018

Interest

1708. The Tribunal held that where refund on account of excess TDS and Advance Tax was less than 10 per cent of total tax determined on regular assessment, no interest under section 244A could have been granted on same in light of the proviso to section 244(1)(a).
Indian Aluminum Company Ltd. v DCIT - [2018] 92 taxmann.com 141 (Mumbai - Trib.) - IT APPEAL NO. 5326 (MUM.) OF 2015 dated MARCH 23, 2018

1709. The Court dismissed assessee's petition field against the CCIT's order rejecting assessee's application u/s 220(2A) for waiver of interest payable u/s 220(2) on account of delay in payment of tax for the block period 01.01.1985 to 24.0.1995, in regards to which the taxes were fully paid only in September 2016. It rejected assessee's contentions that it was a case of genuine hardship since the entire video cassette industry (to which the assessee-partnership firm belonged) was rendered non-functional in view of change in technology. Noting that the assessee's partners were in possession of sufficient funds to meet the obligation, it held that in view of section 188A which makes the partners jointly and severally liable for the tax payable by the firm under the Act, the assessee's submission that the assessee-firm's hardship should be seen on a standalone basis without considering the partner's financial position could not be accepted.
Video Master v CCIT – Writ Petition No. 2519 of 2017 (Bom) dated 16.03.2018

1710. The Apex Court dismissed Revenue's SLP against High Court judgement allowing interest u/s. 244A to assessee on refund arising on account of waiver of interest u/s 220(2) by CCIT. High Court had refused to restrict the scope of expression 'in any other case' as used in section 244A(1)(b) to the cases of refund of tax and penalty observing that the legislative intent was not to limit the expression 'any amount becomes due' occurring in section 244A(1) or the expression 'in any other case' occurring in section 244A(1)(b) only to cases of refund of tax and penalty. High Court had also clarified that payment of aforesaid interest could not be characterised as payment of 'interest on interest' (as contended by revenue).
Naresh Kumar Aggarwal - TS-18-SC-2018 - SLP (Civil) Diary No(s). 39917, 40007 & 40240/2017 dated 09.01.2018

1711. The Court granted waiver of interest u/s 234A, 234B and 234C in view of clause (e) of CBDT Circular No.400 laying guidelines for waiver of interest u/s 234A noting that assessee was under bonafide belief that it had no taxable income since assessee's main source of income was from property and owing to partition suit pending in relation to family dispute over the properties, assessee could not anticipate the accrual/receipt of property income. It rejected revenue's contention that clause (e), which allows waiver if "The return of income could not be filed by the assessee due to unavoidable circumstances and the return of income was filed voluntarily before detection by the Assessing Officer", was not applicable as the return was filed by assessee consequent upon a survey. It further held that a survey could not tantamount to detection by the AO as referred to in the said clause.
R.Mani v CCIT - TS-613-HC-2017(MAD) - W.P.No.21477 of 2004 dated 04.12.2017

1712. Court held that the assessee was not liable to pay interest levied u/s 234B and 234C where the assessee's liability to pay tax was fastened only due to the ruling of AAR which was pronounced after the due date of filing return and thus it could not pay any tax unless case was decided by AAR.
Van Oord ACZ v CCIT - (2018) 89 taxmann.com 342 (Mad) - W.P..No 14165 of 2009 M.P. No. 1 of 2009 dated 03.01.2018

1713. Where the assessee's application filed u/s 154 for rectification of order passed by AO for rejecting assessee's application for waiver of interest u/s 220(2A) was pending before the CCIT, noting that the assessee's contention that CCIT had passed the impugned order without considering the assessee's claim under the appeal that it was not liable to capital gains itself (CCIT had only noticed assessee's claim of quantification of capital gains) and that the CCIT in the impugned order had not stated any cogent reason for rejecting the request, the Court set aside the impugned order and remanded the matter to CCIT for fresh consideration.
Narayanan Chettiar Industries v. CCIT – (2018) 90 taxmann.com 269 (Mad) – Writ Petition No. 30776 of 2007 M.P. No. 1 of 2007 dated 03.01.2018

1714. Where AO computed 'assessed tax' for the purpose of sections 234B and 234C without considering available MAT credit, the Tribunal held that in view of Explanation 1(v) of sub-section (1) of section 234B, MAT credit had to be allowed from 'assessed tax' and, thereafter, interest under sections 234B and 234C could be computed only after such set off of MAT credit.
Ellenbarrie Industrial Gases Ltd. v ITO – (2018) 169 ITD 194 (Kol Trib) – ITA No. 1687 (Kol.) of 2016 dated 07.02.2018

1715. The AO had not levied interest u/s 234B(1) during the regular assessment, on account of TDS and sufficient taxes paid by the assessee as advance tax but levied interest u/s 234B(3) while passing the reassessment order u/s 147. The Tribunal held that interest u/s 234B(3) was consequential to levy of interest u/s 234B(1) and, thus, since there was no liability to pay interest u/s 234B(1), there would be no liability to pay interest u/s 234B(3). The Court rejected Tribunal's above view holding that under section 234B(3), the words "amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased" were not employed to make levy of interest u/s 234B(3) consequential to levy under sub-section (1) but only to specify the amount on which interest was to be levied. However, on peculiarity of facts viz. the advance tax paid by the assessee was in excess of 90% of tax dues for year determined under the second reassessment order (which attained finality) without considering the advance tax amount (along with TDS) refunded to the assessee

pursuant to appellate orders passed subsequent to original assessment, the Court held that there was no cause for imposition of interest liability u/s 234(1) or 234(3).
CIT v BABY MARINE EXPORTS – (2018) 163 DTR 0503 (Ker) – ITA.No. 94 of 2008 dated 11.01.2018

1716. The assessee had not filed return in response to notices issued u/s 142(1) on 26.8.2002, 9.9.2002, 17.10.2002 and 17.12.2002 but filed the same only on 13.1.2005 but filed application for rectification u/s 154 as well application for waiver of interest imposed u/s 234A, 234B & 234C. The Court held that it could not be said that return could not be filed due to unavoidable circumstances and the assessee's application for waiver of interest was rightly rejected by the competent authority since the assessee's case was not covered by any of the conditions prescribed in CBDT Circular dated 26.6.2006 (providing for the class of income or class of cases in which reduction or waiver of interest u/s 234A, 234B & 234C could be considered). Further, with respect to application made u/s 154, the Court held that there was no mistake apparent from record.
HARISH KUMAR GUPTA v CCIT– (2018) 163 DTR 0260 (Uttarakhand) – Writ Petition (M/S) No. 1658 of 2013 dated 10.01.2018

1717. The Court held thatinterest under section 158BFA(1) could not be levied from assessee for period of delay in filing return caused due to delay in obtaining copies of seized material from department, which was beyond control of assessee.
K. Balan v DCIT [2018] 93 taxmann.com 452 (Madras) – TAX CASE (APPEAL) NO. 764 OF 2007 dated 23.04.2018

1718. The AO found that there was late furnishing of TDS statement by assessee and that late filing fees were levied under Section 234E of the Act. The Assessee claimed that it had neither received any communication from the AO in respect of such fees levied under Section 234E, nor did such communication come to knowledge of Assessee prior to the notice of outstanding demand reference issued by AO. The CIT(A) dismissed the appeals of assessee by holding them to be time barred. The CIT(A) also held that demand raised under Section 234E of the Act was not appealable. Tribunal held that the orders levying fees under Section 234E of the Act were available online and were also served on the same email-id as used for filing the return of income. Accordingly, since no sufficient cause was explained for delay in filing appeals before CIT(A) and since the said orders were not appealable before CIT(A), appeals filed by the Assessee before the Tribunal were dismissed.
P3P VENTURES PVT. LTD. vs. DCIT, CPC (TDS) (DELHI TRIBUNAL) (ITA.Nos.7593 to 7600 of 2017) dated May 28, 2018 (53 CCH 0084)

1719. The Tribunal accepted assessee's claim that interest u/s 220(2) could not be charged on account of delay in adjustment of refund amount, since the delay in adjustment of refunds was not attributable to assessee at all rather it was on account of procedural problems faced by the department. However, it held that interest u/s 220(2) could be charged if the assesee was granted interest u/s 244A with respect to the said refund amount. Since it was not clear from the records as to whether the assessee was granted interest u/s 244A or not, the AO was directed to verify the same.
The Tribunal rejected the AO's computation of interest u/s 234B from the first day of the relevant AY to the end of the month date in which reassessment order was passed. The Tribunal held that in case of reassessment / recomputation, sub-section (3) of the said section is attracted and the interest was to be computed from the date on which determination of tax was made under section 143(1)(a). [It is to be noted that section 234B(3) has been amended vide the Finance Act, 2015 to provide that in case of reassessment/ recomputation, interest is to be computed from the first day of the relevant AY; however, the AY under appeal in the above case was 2008-09]
VODAFONE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0377 MumTrib - ITA No. 4749/Mum/2016 dated Apr 6, 2018

Penalty

1720. Where the order imposing penalty under Section 271(1)(b) was passed in March 2008 whereas the assessment orders forming the basis of initiation of penalty were passed in financial year ended March

2000 and March 2002 and the show-cause notice for levy of penalty had expired on March 2002 and March 2003, the Tribunal deleted the penalty levied observing that the penalty orders were time barred in view of the time limits provided in Section 271(1)(c) of the Act (which provides two time limits, firstly, expiry of the financial year in which the proceedings in the course of which action for the imposition of the penalty is initiated or completed; or secondly, six months from the end of the month in which action for imposition of penalty is initiated). Further, it noted that the quantum proceedings had been set aside for fresh adjudication and therefore held the penalty proceedings would not survive.
R. K. RANA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0259 PatTrib - ITA Nos. 178, 179 & 180/Pat/2017 dated Mar 9, 2018

1721. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied u/s 271(1)(c) on account of addition made with respect to accrued interest on certain loans / advances which was not accounted for by the assessee-NBFC following mercantile system of accounting, where the assessee specifically stated in it notes to account that on account of policy decision, it had not accounted for interest accrued as well as interest payable pertaining to loans / advances given/ received by the erstwhile entities which had merged with the assessee company. It held that the assessee had taken a bonafide policy decision of not accounting for interest receivable as well as payable with respect to which full disclosure was made and that non-acceptance of the claim could not by itself lead to penalty.
Pr.CIT v RPG Cellular Investments and Holdings Pvt. Ltd. – ITA No. 826 of 2015 (Bom) dated 23.01.2018

1722. In a case where during the course of assessment proceedings, the AO had recorded his satisfaction that the assessee had furnished inaccurate particulars of its income, but ultimately he levied penalty u/s 271(1)(c) on both the charges viz. furnishing inaccurate particulars of income and concealing the particulars thereof, the Tribunal deleted the said penalty levied, holding that the AO could not levy penalty on both the charges and the AO must be sure about the specific charge for which assessee is in default. It relied on the decision in the case of CIT v Samson Perinchery (2017) 392 ITR 4 (Bom) wherein it was held that the order imposing penalty had to be made only on the ground of which the penalty proceedings had been initiated, and it cannot be on a fresh ground of which the assessee had no notice.
Makcon v ITO – ITA No. 1940/Mum./2016 dated 28.02.2018

1723. Where AO passed penalty order u/s 221(1) on account of assessee's failure to pay self-assessment tax within stipulated period, in view of fact that amended section 140A(3) w.e.f. 01.04.1989 does not envisage any penalty for non-payment of self-assessment tax, the Tribunal deleted the penalty.
Heddle Knowledge (P.) Ltd. v ITO – (2018) 90 taxmann.com 376 (Mum) – ITA No. 7509 (Mum.) of 2011 dated 19.01.2018

1724. The Court set aside the order of CIT(A) and the order of Tribunal confirming CIT(A)'s order wherein CIT(A) had held that since there was no specific mention of proceedings taken under Explanation 1(B) to section 271(1) in the notice issued u/s 271 which was an imperative mandate, penalty order invoking the said Explanation passed by AO was to be set aside. It held that when a notice was issued under section 271, Explanation also being included under the said provision, assessee was sufficiently put to notice of entire provision as available u/s 271(1).
CIT v Smt. Vasantha Anirudhan – (2018) 401 ITR 279 (Ker) – ITA No. 78 of 2008 (Ker) dated 12.01.2018

1725. The Court accepted assessee's contention that it was incumbent upon the Revenue to complete penalty proceedings and pass order u/s 271(1)(c) within 6 months period from the date of receipt of CIT(A)'s order where the revenue had withdrawn the appeal filed against the CIT(A)'s order giving part relief to the assessee with respect to additions made by AO while computing the book profit and the AO had initiated penalty proceedings beyond six months of receipt of the CIT(A)'s order contending that the period of limitation u/s 275 should be reckoned from date on which order of Tribunal permitting withdrawal of appeal was received. In this regard, it was held that it was an adjudicatory 'order' which culminated in Proceeding that was to be deemed a terminus quo for completion of Penalty Proceeding.

Salora International Ltd. v CIT – (2018) 91 taxmann.com 287 (Del HC) – ITA No. 799 of 2005 dated 20.02.2018

1726. The Tribunal held that once the addition on which penalty had been levied is set aside to the AO for fresh consideration, it is as good as there is no addition for levy of penalty u/s 271(1)(c) and in such case, if at all penalty can be levied, the AO shall take up penalty proceedings after the receipt of order of the Tribunal and modifying the assessment as per directions of the Tribunal. Since, in the present case, the AO had finalized the penalty proceedings before waiting for outcome of the Tribunal's orders, it was held that the issue was to be re-examined by the AO in light of provisions of section 275(1A).
Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018

1727. The Court stayed the operation of the Tribunal's order confirming the penalty levied u/s 271(1)(c) after the assessee's claim of exemption u/s 10B on interest income in return of income was not accepted by revenue, noting that in the subsequent assessment years, the assessee had been granted benefit of deduction u/s 10B to extent of its interest income. It held that the controversy in respect of deduction of interest income u/s 10B stood resolved in favour of the assessee and at the very least, it could be a debatable issue.
Cybertech Systems & Software Ltd. v DCIT – (2018) 91 taxmann.com 407 (Bom) – ITA Nos. 578, 579 & 582 of 2016; Notice of Motion Nos. 166, 181 & 183 of 2018 dated 23.02.2018

1728. Where assessee had admitted an income out of speculative business from sale of commodities pursuant to search conducted in respect of a group in which assessee was one of the key persons and the penalty was levied u/s 271AAB on ground that the said income admitted by assessee found during search was not reflected in regular books of account, rejecting assessee's contention that since he was not engaged in business or profession, he was not required to maintain books of account as per section 44AA or section 44AA(2), the Tribunal held that since income under question was infact entered in 'other documents' maintained by assessee in normal course, which were retrieved during search, the amount offered by assessee did not fall in ken of 'undisclosed income' defined in section 271AAB and thus no penalty could be levied.
DCIT v Manish Agarwala – (2018) 92 taxmann.com 81 (Kolkata Trib) – ITA No. 1479 (Kol.) of 2015 dated 09.02.2018

1729. Where assessee had disclosed an income out of speculative business from sale of commodities pursuant to search conducted in respect of the group to which it belonged and the penalty was levied u/s 271AAB on ground that the said income had been found during search u/s 132 which was not reflected in regular books of account, rejecting assessee's contention that since it was for first time that it was doing unsystematic speculative activity which earned income brought to tax under head 'Income from other sources', it was not required to maintain books of account as stipulated in section 44AA or section 44AA(2)(ii), the Tribunal held that since the speculative transactions had been found to be recorded in 'other documents' which were retrieved from assessee's accountant's drawer and it was based on that the said income offered by assessee under the return of income filed was accepted by the AO as income under head 'Income from other sources', the amount offered by assessee could not be termed as 'undisclosed income' as defined in section 271AAB and thus no penalty could be levied.
DCIT v Subhas Chandra Agarwala & Sons (HUF) – (2018) 91 taxmann.com 442 (Kolkata Trib) – ITA No. 1470 (Kol.) of 2015 dated 19.02.2018

1730. The Tribunal deleted the late filing fees (of TDS return) charged u/s 234E by the AO where the assessee claimed that prior to amendment u/s 200A w.e.f. 01.06.2015, levy of fee u/s 234E during processing of TDS statement was not tenable, noting that the said amendment made vide the Finance Act, 2015 enabling the AO to make adjustments while levying fees u/s 234E had prospective effect since the amendment was procedural in nature and, thus, the AO while processing TDS statements/returns for period prior to 01.06.2015 was not empowered to charge fees u/s 234E.
DHARAM DEEP PUBLIC SCHOOL & ANR. v DCIT – (2018) 52 CCH 16 (Del Trib) – ITA Nos. 3112/Del/2016, 3113/Del/2016, 3114/Del/2016, 3115/Del/2016, 3116/Del/2016, 2317/Del/2016, 2318/Del/2016, 2319/Del/2016dated 05.01.2018

1731. The Tribunal deleted the penalty levied u/s 271(1)(c) for concealing particulars of income and furnishing of inaccurate particulars of income on account of addition made to the assessee's income in respect of bogus/unproved purchases admitted by the Director of asssessee-company during search operation on group companies, keeping in view peculiar facts of the case, smallness of amount vis-a-vis returned loss and bonafide explanation of assessee. Noting that the sole reliance of the Revenue was based on an incriminating statement recorded of third person who was never confronted to assessee nor said statement stood test of cross examination by assessee and there was no voluntary disclosure made by assessee company w.r.t. bogus purchases during course of search u/s 132(1), while the same was made by another Group concern, it held that the fact that the assessee had not chosen to further litigate the matter of quantum additions did not mean that penalty u/s 271(1)(c) was to be levied automatically and the penalty proceedings being altogether different proceedings, the Revenue had to show by positive material that the assessee furnished inaccurate particulars of income or concealed particulars of income.

BALAJI MOTION PICTURES LTD. v DCIT – (2018) 61 ITR (Trib) 0421 (Mum) – ITA No. 7643/Mum/2016 dated 03.01.2018

1732. The Tribunal deleted penalty levied u/s 271(1)(c) by the AO towards addition made on account of bogus purchase as

a) there was not even an allegation by the AO anywhere in the assessment order that the assessee had either concealed the particulars of income or furnish inaccurate particulars of income.

b) the AO had initiated penalty proceedings u/s 271(1)(c) issuing notice u/s 274 r.w.s. 271(1)(c) in a standard format without striking-off the inappropriate words so as to constitute his satisfaction as to whether the assessee had concealed the particulars of income or furnished inaccurate particulars thereof.

INDRANI SUNIL PILLAI v ACIT – (2018) 52 CCH 49 (Del Trib) – ITA Nos. 491/Del/2012, 492/Del/2012, 5647/Del/2011, 446/Del/2012, 447/Del/2012, 5503/Del/2010, 5648/Del/2011 dated 19.01.2018

1733. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty levied by the AO u/s 271(1)(c) where the penalty notice was issued without specifying charge for which penalty was initiated and as there was no striking off of limb in notice. It relied on the decision in the case of Meherjee Cassinath Holdings v. ACIT [ITA.No. 2555/Mum/2012] wherein it was held that the action of AO in non-striking off relevant clause in notice showed that charge being made against assessee was not firm and therefore, the proceedings suffered from non-compliance with principles of natural justice in as much as AO himself was not sure of the charge and the assessee was not made aware as to which of two limbs of section u/s 271(1)(c) he had to respond. Further, following the decision in the case of Orbit Enterprises v. ITO [60 ITR (T) 252] wherein similar view was taken, it held that the notice issued by the AO u/s. 274 r.w.s. 271(1)(c) was on account of non-application of mind and on this account itself, penalty imposed was liable to be deleted.

DCIT & ANR. v PENNZOIL QUAKER STATE INDIA LTD. & ANR – (2018) 52 CCH 42 (Mum) – ITA Nos. 7386/MUM/2014, 7503/MUM/2014 dated 12.01.2018

1734. The Tribunal cancelled the penalty levied for concealment vide order passed u/s 271(1)(c), following the decision in the case of Sachin Arora v ITO [I.T.A No. 118/Agra/2015] involving similar facts and circumstances wherein it was held that since the AO had stated in the assessment order that the penalty was initiated on the ground of 'a' particular charge (say, concealment of income), however immediately thereafter the AO had issued show cause notice u/s 274 r.w.s 271(1)(c) mentioning both charges (i.e. concealment of income or furnishing of any inaccurate particulars thereof), the penalty notice suffered from non-application of mind and, thus, the penalty order passed pursuant to such notice was void ab initio.

SUMAN GUPTA v ITO – (2018) 52 CCH 62 (Agra Trib) – ITA Nos. 484, 486 & 491/Agra/2015, 80 to 82, 85, 86, 142, 144, 149, 150, 172, 180, 254 & 256 /Agra/2016 & 53, 91 & 181 /Agra/2017 dated 10.01.2018

1735. The Tribunal while deleting the penalty levied u/s 271(1)(c) had recorded the findings (i) that one of the partner of assesse-firm, in his statement u/s 132(4) at the time of the search, had explained the entries recorded in seized material and stated that such entries pertained to 'on money' in its building project and (ii) that assessee had also quantified total amount of such 'on money' and during the course of recording of such statement, specific questions had not been asked to substantiate the manner in which the income was derived received. The Court after noting that the assessee had also paid taxes and interest on declared income before the passing of the assessment order, held that the conditions envisaged in clauses (i), (ii) & (iii) 271AAA(2) were fulfilled and, hence, the Tribunal had rightly deleted the penalty levied by AO u/s 271AAA for default of not substantiating manner in which undisclosed income was earned. It held that there is no prescription as to the point of time when the tax has to be paid *qua* the amount of income declared in the statement made u/s 132(4) and, thus, there would be sufficient compliance with the provision if tax is shown to have been paid before the assessment was completed.
Pr.CIT v Swapna Enterprise – (2018) 91 taxmann.com 12 (Guj) - Tax Appeal No. 826 of 2017 dated 22.01.2018

1736. The Tribunal deleted penalty levied u/s 271E (for violating conditions u/s 269T by repaying loan other than through banking channels) for conversion of loan into equity by assessee-company. It held that squaring-off loan by way of allotment of equity shares was a usual business practice and a part of routine corporate debt restructuring exercise and hence could not be held as violation of provisions of Sec. 269T. It dismissed Revenue's contention that the assessee utilized the amounts raised through share capital for making alternate investment and instead could have utilised the funds to repay the loan & avoid Sec. 269T violation and held that if the Revenue's stand was to be accepted it would only tantamount to stepping into the shoes of the businessman which was not warranted, more so in the penalty proceedings u/s 271E of the Act.
Arkit Vincom Pvt. Ltd. [TS-105-ITAT-2018(Kol)] - I.T.A No. 2397/Kol/2016 dated 07.03.2018

1737. Where assessee accepted deposits from staff members in cash in violation of provisions of section 269SS, the Court held that since assessee failed to discharge its burden in proving that there was a reasonable cause in accepting deposits from staff members other than by way of cheque or draft, penalty order passed under section 271D was to be confirmed.
CIT v AL-Ameen Educational Trust Kulapully P.O - [2018] 92 taxmann.com 128 (Kerala) - IT APPEAL NOS. 199 & 203 OF 2013 dated MARCH 13, 2018

1738. Where the assessee merely made a voluntary surrender by way of revised return pursuant to survey proceedings and did not offer any explanation as to the nature of income or its source, the Court held that in light of the decision in the Apex Court in MAK Data 358 ITR 593 (SC) such voluntary surrender of income after survey by filing a revised income would not save the assessee from levy of penalty for concealment of income in the original return if there was no explanation as to the nature of income or its source.
PrCIT v DR. VANDANA GUPTA - ITA 219/2017 dated 20.02.2018

1739. Where the AO levied penalty under section 271AAB on the basis that a loose sheet found during search conducted at the premises of the assessee indicated undisclosed income, the Tribunal held that since such loose sheet did not indicate any suppression of income but it was only projection of profit statement, impugned penalty under section 271AAB was unjustified.
ACIT v Marvel Associates - [2018] 92 taxmann.com 109 (Visakhapatnam - Trib.) - IT APPEAL NOS. 147 (VIZAG) OF 2017 dated MARCH 16, 2018

1740. Where the assessee had declared additional income pursuant to search proceedings but failed to provide the specified manner in which such income was earned, the Court held that the AO was justified in levying penalty under Section 271AAA of the Act.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. RITU SINGAL - (2018) 101 CCH 0077 DelHC - ITA 672/2016 dated Mar 12, 2018

1741. Where the AO sought to levy penalty under Section 271(1)(c) of the Act but did not specify the charge against the assessee in its notice under Section 274 of the Act i.e. **whether for concealment of particulars of income or for furnishing of inaccurate particulars**, the Tribunal held that no penalty could be levied.
OM LOGISTICS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0173 DelTrib - ITA No. 529/Del/2016 dated Mar 1, 2018

1742. The Tribunal, relying on the decision of the Court in CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 held that where the AO sought to levy penalty under Section 271(1)(c) of the Act but did not specify the charge against the assessee in its notice under Section 274 of the Act i.e. **whether for concealment of particulars of income or for furnishing of inaccurate particulars**, no penalty could be levied. More so, it noted that the Tribunal in quantum proceedings deleted the addition based on which the penalty was levied and accordingly held that the levy of penalty was invalid.
TRADELINK SECURITIES LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0176 KolTrib - ITA Nos. 914&915/Kol/2015 dated Mar 14, 2018

1743. Where the assessee claimed deduction of provision for leave encashment which was allowed during original assessment proceedings but subsequently disallowed during reassessment proceedings, the Tribunal upheld the order of the CIT(A) and held that no penalty could be levied under Section 271(1)(c) of the Act as the assessee had not furnished any inaccurate particulars. It held that mere making of a claim which was not sustainable in law would not amount to furnishing of inaccurate particulars.
DEPUTY COMMISSIONER OF INCOME TAX vs. RELIANCE PETROMARKETING LTD. - (2018) 52 CCH 0252 MumTrib ITA No. 5950/Mum/2016 – dated Mar 21, 2018

1744. Pursuant to notice under Section 148 the assessee filed return of income withdrawing its erroneous claim of setting off of long term capital gain from long term capital loss in respect of sale of equity share of D company to NSE which was 100% holding company of assessee company as a result of which the entire long term capital loss claimed by assessee in its original return could no longer be carried forward. The AO accordingly levied penalty under Section 271(1)(c) which was confirmed by the CIT(A). Noting that the withdrawal of claim of set off of long term capital gains were germane to the reassessment proceedings, and that the assessee on coming to know the error had suo-moto disallowed/withdrawn same without being confronted by Revenue, the Tribunal held that the assessee had demonstrated its bona-fide. Accordingly, the Tribunal deleted the penalty levied under Section 271(1)(c). It held that every legal claim which was filed and which was not allowed by Revenue did not automatically lead to levy of penalty u/s 271(1)(c) and further held that since the assessee voluntarily withdrew claim in return of income, no penalty was exigible u/s 271(1)(c).
NSE IT LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0235 MumTrib - ITA No. 5935/Mum/2014 dated Mar 28, 2018

1745. The assessee had claimed deduction under Section 35(1) of the Act on account of amount given to Indian Medical Scientific Research Foundation (IMSRF). Pursuant to the investigation conducted by the CBI wherein the CBI found the IMSRF to be bogus, the assessee informed the AO of the development and applied for withdrawal of claim of the deduction. However, the AO completed the assessment without disallowing the claim. Subsequently, the AO reopened the assessment and made disallowance of the said amount and sought to levy penalty under Section 271(1)(c). The Court noted that at the time of making the payment, the assessee had no idea about IMSRF being bogus and upon being informed, withdrew its claim before the AO and accordingly upheld the order of the CIT(A) and Tribunal deleting penalty as there was complete disclosure on the part of the assessee.
CIT v Man Industries Ltd – (2018) 101 CCH 188 Mum Trib – ITA No 898 of 2015 dated Feb 7, 2018

1746. Where the AO levied penalty under Section 271(1)(c) on the ground that the depreciation claimed by the assessee was not allowable absent physical verification of assets and the Tribunal, on the merits of the case allowed the assessee's claim of depreciation stating that once the assets formed part of a block of assets physical verification would not be required, the Tribunal upheld the order of the CIT(A) deleting penalty proceedings on the ground that the disallowance pertaining to which penalty was initiated had been deleted by the Tribunal.

ACIT v Ajmet Vidyut Vitaran Nigam Ltd – (2018) 52 CCH 0085 Jaipur Trib – ITA No 933 to 935 / Jp / 2017

1747. Pursuant to search proceedings conducted in the premises of the Shakumbri group of companies, the AO found certain loose papers and documents in the possession of the three directors of the company (one being the assessee) and held that the expenditure reflected therein was incurred by the directors and since no explanation was provided made proportionate addition in the case of each director. Accordingly, the AO levied penalty under Section 271(1)(C) of the Act. The Tribunal noted that penalty was levied merely on the basis of the documents which were undated and that the AO had not been able to rebut the explanation of the assessee that these expenses had been incurred by the company and not by him. Accordingly, in the absence of such rebuttal, no penalty could be levied under Section 271(1)(c).
Sunil Rastogi v ACIT – (2018) 52 CCH 112 Del Trib – ITA No 1921 / Del / 2016 dated Feb 7, 2018

1748. Where the assessee claimed deduction under Section 80IC of the Act on the manufacture of pharmaceutical products carried out at its Baddi Unit but the AO disallowed the same on the ground that the assessee had not even started production and levied penalty under Section 271(1)(c) for furnishing inaccurate particulars, the Tribunal noting assessee's contention that it was utilizing capacity of its other unit for getting its pharma products manufactured under its supervision and control on job charge basis wherein raw materials and packing material was also supplied by assessee, held that merely because the assessee made a claim of deduction which was not accepted by the AO, no penalty could be levied as the AO had not brought anything on record to prove that the claim was ex-facie wrong or made with the intent to defraud the Revenue. Accordingly, it upheld the order of the CIT(A) deleting penalty
ASSISTANT COMMISSIONER OF INCOME TAX vs. ANKUR DRUGS & PHARMA LTD. - (2018) 52 CCH 0124 MumTrib - ITA No. 7529/Mum/2011 dated Feb 27, 2018

1749. Where the AO levied penalty on both disallowance under Section 14A as well as adjustment on account of MAT, the Tribunal held that since the income of the assessee under the normal provisions of the Act was lower than the income as per MAT, no penalty could be levied on the disallowance made under Section 14A. Vis-à-vis the penalty under MAT, it noted that neither the AO nor the CIT(A) had provided the assessee to justify its claim (of reducing capital gains from the book profits for MAT) and therefore set aside the order to the AO to reconsider the issue after providing the assessee an opportunity of being heard.
INCOME TAX OFFICER vs. NCS INVESTMENTS PVT. LTD. - (2018) 52 CCH 0144 HydTrib - ITA No. 1654/HYD/2014 dated Feb 16, 2018

1750. The Tribunal held that penalty proceedings initiated u/s.271(1)(c) was void ab initio and liable to be quashed, if AO issued vague notice u/s. 274 r.w.s 271(1)(c) without striking off irrelevant portion of notice and also if AO had not made specific charge whether penalty proceeding was initiated for concealment of particulars of income or furnishing of inaccurate particulars of income. Accordingly, it held that the penalty proceeding initiated by AO were bad in law and liable to be quashed.
TATA COMMUNICATIONS TRANSFORMATION SERVICES LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0114 MumTrib - ITA No. 3108/M/2016 dated Feb 21, 2018

1751. Where the AO made an addition in the hands of the assessee pursuant to search proceedings which was based on material not found during the search proceedings i.e. inquiries during assessment **proceedings**, the Tribunal deleted penalty levied pursuant to such adjustment and held that the addition itself could not be sustained as it was not made on the basis of any incriminating material found during search.
GETAMBER ANAND vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0126 DelTrib - ITA No. 3127/Del/2016 dated Feb 27, 2018

1752. The Tribunal quashed imposition of penalty u/s 271(1)(c) on assessee-individual observing that the AO had imposed penalty alleging 'concealment of particulars of income', while CIT(A) had confirmed penalty on the ground of 'furnishing inaccurate particulars of income'. It held that the imposition of

penalty was solely dependent upon the 'satisfaction' of the AO [unless initiated by CIT(A)] and nothing else, and since the basis and foundation for imposition of penalty was altered by CIT(A), the penalty order passed by AO was liable to be struck down. It held that where the original basis of imposition of penalty was altered in a significant way by the first appellate authority, the very basis for sustaining the penalty was rendered non-existent and accordingly deleted the penalty levied.
Kantibhai Naranbhai Prajapati [TS-86-ITAT-2018(Ahd)] - /I.T.A. No.2880/Ahd/2014 dated 15/02/2018

1753. The Court admitted Revenue's appeal against the order of the Tribunal wherein the Tribunal deleted penalty levied u/s 271(1)(c) by AO on addition on account of undisclosed income on ground that in quantum proceedings addition was deleted. It held that since the questions on which quantum appeal was admitted by the Tribunal were not in respect of claim for deduction or pure interpretation of law or document which could lead to appeal on deletion of penalty not being entertained.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHREE GOPAL HOUSING & PLANTATION CORPORATION - (2018) 101 CCH 0042 MumHC - INCOME TAX APPEAL NO. 701 OF 2015 dated Feb 6, 2018

1754. The Tribunal cancelled the penalty levied u/s 271(1)(c) where the assessee had omitted to include capital gains arising on transfer of property while filing return of income and the assessee had paid tax on the same on the date on which the assessment order was passed u/s 143(3) r.w.s. 147, holding that the judicial pronouncements were absolutely clear that if the return of income had certain mistake, which was bona-fide and there was also no loss to the Revenue (as in the present case since the assessee paid the taxes on the date of assessment order itself), then in the absence of any material on record, it could not be concluded that the assessee had deliberately concealed the income or had furnished inaccurate particulars of income. Noting that there was nothing on record to show that there was any malafide intention on the part of the assessee to conceal the income or furnish inaccurate particulars of income, it deleted the penalty.
Pankaj Kumar Gupta v ITO – ITA No.486/LKW/2016 dated 16.01.2018

1755. The Tribunal quashed the penalty levied u/s 271D & 271E (for violating section 269SS / 269T conditions by accepting / repaying loan in cash) on individual-assessee on account of cash loan accepted / repaid from/to sister-in-law and nephew for more than Rs.20,000, relying on the co-ordinate bench ruling in the case of Sri Mansur Ali Laskar in ITA No.1094/Kol/2011 wherein the Tribunal had considered Niece, Uncle, Aunty, Wife of brother, Wife's Sister and Cousin sister as family members and noting that the said decision had also been approved by the High court in ITAT No.111 of 2012 GA No.1498 of 2012. The Tribunal also held that the transactions between these family members were neither loans nor deposit and purely a family system and purely a family requirement to help each other in the needy hours.
Jagmohan Sharma v JCIT [TS-22-ITAT-2018(Kol)] – ITA No. 552 & 553/Kol/2015 dated 10.01.2018

1756. The Court dismissed the Revenue's appeal against the Tribunal's order in the case of the assessee, a builder and developer, wherein the Tribunal, after referring to the clauses of the allotment letter as well as the possession letter, had held that the sale of flats took place only in subsequent AY when possession was given and not in the year under consideration when the allotment letter was issued and that the amount received in year under consideration was only in the nature of advances. It also noted that the Revenue did not highlight any circumstances to indicate that by bringing the said transactions to tax in the next AY instead of the current year, there was likely to be a loss to the Revenue.
CIT v Millennium Estates Private Ltd. [TS-186-HC-2018(BOM)] – ITA No. 853 of 2015 dated 30.01.2018

1757. The Tribunal deleted the late filing fees (of TDS return) charged u/s 234E by the AO through the order of intimation u/s 200A on assessee-individual during AY 2014-15, holding that the amendment u/s 200A w.e.f. 01.06.2015 made vide the Finance Act, 2015 enabling the AO to levy fees u/s 234E while making adjustments through intimation u/s 200A had prospective effect and it could not apply to the period prior to 01.06.2015. It relied on the decision in the case of CIT v Vatika Townships (P) Ltd. (2014) 271 CTR (SC) wherein it was observed that "if a legislation confers a benefit on some persons but without

inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect".
Nimaben Rameshbhai Thakkar v DCIT [TS-15-ITAT-2018(Ahd)] – ITA No. 3111/Ahd/2015 dated 04.01.2018

1758. The Tribunal remanded the matter to the file of CIT(A) where the CIT(A) had upheld the AO's order levying penalty u/s 271(1)(c) of the Act, noting the quantum order of CIT(A) also remanded to the file of the CIT(A) by the Tribunal. Accordingly, it directed the CIT(A) to adjudicate the issue of levy of the said penalty after considering the outcome of the **quantum** appeals.
HANS ISPAT LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0145 (Del Trib) - ITA No. 3849/Del/2015, 3850/Del/2015, 3851/Del/2015, 3852/Del/2015 dated Jun 13, 2018

1759. The Tribunal remanded the issue of levy of penalty u/s 234E on account of delay in filing TDS return back to the CIT(A) to decide the issue on merit, noting that the CIT(A) had dismissed the assessee's appeal on the ground that there was inordinate delay in filing of appeal without any sufficient cause. It also rejected Revenue's argument that the appeal was not maintainable even otherwise since the order levying penalty u/s 234E became an appealable order only after 01/06/2015 and the notice of demand was sent to the assessee on 30/05/2014 on email. The Tribunal noted that the Revenue could not produce any evidence to establish the above fact and the relevant date of notice of demand was 28/11/2016.
SUBHASH CHAND NAWAL (HUF) vs. INCOME TAX OFFICER - (2018) 52 CCH 0478 JaipurTrib - ITA No. 1037/JP/2017 dated Apr 10, 2018

1760. The Tribunal upheld the CIT(A)'s order deleting the penalty levied u/s 271(1)(c) by the AO on account of disallowance made with respect to (i) annual consideration paid to BCCI (ii) lodging, boarding and aircraft expenses, travelling expenses and vehicle hire charges and (iii) payment towards website charges. It was noted that (i) annual consideration was disallowed due to difference in interpretation of law (ii) expenses of lodging, boarding, etc. were disallowance on adhoc basis and (iii) the Tribunal in quantum had restored the matter with regard to disallowance of website charges after observing that the CIT(A) in assessee's own case for the subsequent assessment year had held that website generating charges were revenue expenditure.
KNIGHT RIDERS SPORTS PVT. LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0336 MumTrib - ITA No. 5587/Mum/2015, 5614/Mum/2015 dated Apr 16, 2018

1761. The Tribunal allowed the assessee's appeal against the CIT(A)'s order confirming the penalty levied u/s 272A(1)(c) on the ground that there was no co-operation from assessee on date of survey and even thereafter, neither did any responsible person appear, nor were books of account produced. It held that the levy of penalty u/s 272A(1) was not automatic and compulsory and the provisions of section 272A(1) and (2) [including clause (c) or (d) of sub-section (1)] were covered by provisions of 273B as per which, where assessee had proved that there was reasonable case for default, penalty was not leviable. It held that the assessee had reasonable cause for non-appearance before AO on certain dates of hearing and it could not be considered as case of non-compliance. Further, it was noted that as per section 274(1), no order imposing penalty could be passed by any Income Tax authority unless person on whom penalty was proposed to be imposed, was given an opportunity of being heard in matter by such authority.
P. MURALI MOHANA RAO vs. ADDITIONAL COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0112 (Hyd Trib) - ITA No. 1173/Hyd/2017 dated Jun 6, 2018

1762. As the assessee had failed to produce books of accounts and audit report u/s 44AB during the assessment proceedings, the AO initiated penalty proceedings u/s 271B. In response to the penalty notice, the assessee furnished the tax audit report. However, subsequent enquiries conducted by the AO revealed that the audit report was manipulated and fabricated and also the CA who had signed the audit report, in a sworn statement, stated that he had prepared tax audit report without examining the books of account. The AO thus levied penalty u/s 271B. The CIT(A) upheld the order of the AO. Before

the Tribunal, the assessee contended that the he didn't maintain books of accounts and thus there was no question of their examination or producing the same. The Tribunal rejected the assessee;s above contention noting that the assessee had admitted before the AO that books of account could not be produced on the pretext being misplaced. It further held that the P & L A/c filed with return indicated that the assessee was liable to get his books of account audited u/s 44AB and since the assessee had failed to get his accounts audited, he was liable to penalty u/s 271B. Thus, the assessee's appeal was dismissed

BRIJ GOPAL CHAUHAN vs. INCOME TAX OFFICER (DELHI TRIBUNAL) (ITA No. 2167/Del./2015) dated May 22, 2018 (53 CCH 0064)

1763. The AO made additions to the income of the assessee pursuant to search and seizure operations. Thereafter, the AO levied penalty on the assessee under Section 271(1)(c) of the Act. The CIT(A) upheld the order of the AO. The Tribunal held that imposition of penalty was not justified as the quantum appeal of the assessee was admitted by the High Court on the merits as well as on the legal issue. Further, the Tribunal quashed the penalty proceedings and held that levy of penalty under Section 271(1)(c) was not sustainable as the AO did not levy any specific charge on the additions made in the show cause notice as well as the assessment order (i.e. of concealment of income or furnishing of inaccurate particulars). Thus, the assessee's appeal was allowed.

HARSH INTERNATIONAL PVT. LTD. vs. DCIT (DELHI TRIBUNAL) (ITA No. 861 & 862/Del/2018) dated May 22, 2018 (53 CCH 0066)

1764. Where the AO made additions in respect of unexplained cash credits u/s 68, 69 and 69C, penalty proceedings under Section 271(1)(c) of the Act were initiated separately for concealment of particulars of income within Explanation-1 to section 271(1)(c). The CIT(A) upheld the order of the AO. Tribunal held that since the notice under Section 274 r.w.s. 271 of the Act was not specific about the charge against assessee (i.e. of concealment of income or furnishing of inaccurate particulars), penalty could not be imposed on assessee as the notices were not valid in law. Thereby, penalty levied by the AO was unsustainable on technical grounds and hence the Assessee's appeal was allowed.

SARLA DEVI AGARWAL vs. ITO (AGRA TRIBUNAL) (ITA No. 70/Agra/2017) dated May 18, 2018 (53 CCH 0056)

1765. The Tribunal allowed Revenue's appeal against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO after finding that the assessee had made a false claim of earning agricultural income which actually was business income. It noted that the assesse-company had purchased seeds from the farmers and claimed the said activity of procuring seeds as agriculture income by way of creating a chain of documents or papers of lease agreements etc and thus the explanations furnished by the assessee were not found to be bonafide. It held that it was not the simple case of disallowance of expenditure as in CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that merely because the assessee had claimed deduction which was not accepted by the Revenue, penalty u/s 271(1)(c) was not attracted. It held that the assessee had claimed its activity of purchase of the seeds from the farmers as agriculture income in a fraudulent manner to evade the taxes.

DEPUTY COMMISSIONER OF INCOME TAX & ORS. vs. PHI SEEDS PRIVATE LIMITED & ORS. - (2018) 53 CCH 0273 (Del Trib) - ITA No. 6622/Del/2013, 6645/Del/2013, 4366/Del/2015 dated June 29, 2018

1766. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO on account of certain additions made to the loss computed as per the normal provisions of the Act as well as per the MAT provisions. CIT(A) held that disclosures made by assessee and other disclosures in financial statements indicated that the assessee had neither concealed any particulars of its income/profit nor furnished any inaccurate particulars thereof and that for (deliberate) concealment of income, there should have been 'hiding of income or profit' or 'keeping of secret' some particulars that resulted in income or profit being concealed. It had thus held that merely because explanations or contention of assessee were not accepted, there was no conclusive ground for levy of penalty. The Tribunal held that the CIT(A)'s order was in conformity with the decision in the case of CIT vs. Nalwa Sons Investment ltd [Special Leave to Appeal (Civil) No(s).18564/2011] wherein it was

held that when tax payable on income computed under normal procedure was less than tax payable under deeming provisions of Section 115JB , then penalty u/s. 271(1)(c) could not be imposed with reference to additions /disallowances made under normal provisions.

DCIT & ANR. vs. USHA MARTIN LIMITED & ANR - (2018) 53 CCH 0260 (Ranchi Trib) - ITA Nos. 185 to 187/Ran/2016 (C.O. Nos.10 & 11/Ran/16) dated June 28, 2018

1767. The AO levied penalty u/s 271(1)(c) on account of certain cash deposits made by the assesee in his bank account on the ground that assessee could not substantiate the source of the same and had agreed to the addition of the same (though the assesse stated that cash deposits were with respect to sale/ purchase of agricultural produce and had produced some bills / vouchers of sale and purchase). It was noted that the said bills/ vouchers were not proven to be false and during the assessment, the assesse had also offered to produce concerned persons if some time was given to him. Noting the above facts and following the decision in the case of CIT Vs. M/s. Gem Granites (Karnataka) [ITA No.504/09 (Mad HC)] wherein it was held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, the Tribunal held that it was not a fit case for levy of penalty u/s 271(1)(c) and, accordingly, it directed the AO to cancel the penalty.

ARCHIT AGGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0264 (Del Trib) - ITA No.4441/Del/2015 dated June 28, 2018

1768. The AO levied penalty u/s 271(1)(c) on account of certain cash deposits made by the assesee in his bank account on the ground that assessee could not substantiate the source of the same and had agreed to the addition of the same, though the assesse stated that cash deposits were with respect to sale/ purchase of agricultural produce and had produced some bills / vouchers of sale and purchase. It was noted that the said bills/ vouchers were not proven to be false and during the assessment, the assesse had also offered to produced concerned persons if some time was given to him. Noting the above facts and following the decision in the case of CIT Vs. M/s. Gem Granites (Karnataka) [ITA No.504/09 (Mad HC)] wherein it was held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, the Tribunal held that it was not a fit case for levy of penalty u/s 271(1)(c) and, accordingly, it directed the AO to cancel the penalty.

ARCHIT AGGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0264 (Del Trib) - ITA No.4441/Del/2015 dated June 28, 2018

1769. The Tribunal deleted the penalty levied by the AO u/s 271(1)(b) for non-compliance of notice issued u/s 153A(1) for filing of return post search proceedings, noting that –

- no statutory notice u/s 274(1) was ever issued to assessee (to be heard before imposing penalty and thus, no mandatory reasonable opportunity of being heard was ever given to assessee before imposing penalty, which was very essential)
- necessary statutory satisfaction required u/s 271(1) that assessee had failed to comply with notices and AO was satisfied to initiate penalty proceedings had not been recorded anywhere
- entries in order sheets did not show issuance of any notice u/s 274 r/w s 271(1) or of recording of any such satisfaction.

ANIL KUMAR SETH vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0215 (Del Trib) - ITA Nos. 7516 to 7522/Del/2017 dated June 22, 2018

1770. The Tribunal dismissed the assesse's appeal against the penalty levied u/s 272A(2)(k) on account of substantial delay ranging for almost more than one year in filing quarterly TDS statements. It held that simply because the assessee had deposited amount to the Government account, it would not go to mitigate rigors of the assessee's failure to file TDS statements within stipulated time. Moreover, the assessee being a Government Organization was supposed to make strict compliance of law. The Tribunal held that though there was no loss to revenue due to delay in filing TDS statements, as requisite TDS was deposited to Govt. account in time, but such an inordinate delay might cause loss to the Revenue while processing refunds, if any, to deductees which fetches substantial amount of interest

to be paid by Government on such refunds, if paid with delay. Further, it held that the assessee's reason for delay i.e. change /lack of staff, was not found substantiated by any evidence on record and such a reason, did not constitute to be a reasonable cause to file TDS statements with such an inordinate delay.

DELHI DEVELOPMENT AUTHORITY COMMON WEALTH GAMES 2010 vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0225 DelTrib - ITA No. 3407/Del/2015 dated June 22, 2018

1771. The Tribunal deleted the penalty u/s 271(1)(c) which was levied by the AO in the course of reassessment proceedings alleging that the assesse had received accommodation entries in its bank account from various concerns, noting that the said reassessment proceedings itself were quashed by the Tribunal in quantum appeal.

INTIME CREDIT & HOLDING PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0192 DelTrib - I.T.A. No. 2944/DEL/2015 dated June 21, 2018

1772. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO on account of addition made **in** the assessment order passed u/s 144, noting that the CIT(A) had deleted the penalty on basis that entire addition had been deleted by him and, hence, there was no question of imposing penalty.

INCOME TAX OFFICER vs. YOGESH KATARIA - (2018) 53 CCH 0191 (Del Trib) - I.T.A. No. 3385/DEL/2015 dated June 21, 2018

1773. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty u/s 271(1)(c) after rejecting the claim of the assesse, Foreign Institutional Investor, for carrying forward the long term capital loss on purchase and sale of shares and setting off the same against the long term capital gains exempt u/s 10(38). It was noted that the assessee had disclosed in its return the said loss and further in the return, note was also given that it had reserved its right to carry forward the loss. Thus, the Court held that the assessee bonafidely believed that u/s 10(38), the loss is not required to be considered and only income is required to be considered relying on the phraseology of the said provision. The act of the assessee in giving the said note was not with some ulterior intention or concealment of income or giving inaccurate particulars.

DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. NOMURA INDIA INVESTMENT FUND MOTHER FUND - (2018) 404 ITR 0636 (Bom) – ITA No. 1848 of 2014 dated June 21, 2018

1774. The Tribunal quashed the penalty order u/s 271(1)(c) passed by the AO on account of various disallowances made in the assessment order, noting that in the notice issued u/s 274 r.w. 271(1)(c) itself the AO had not specified as to whether he was issuing notice to initiate the penalty proceedings either for "concealment of particulars of income" or "furnishing of inaccurate particulars of such income" rather he had incorporated both the limbs of section 271(1)(c). It held that even from the assessment order, it was prima facie not discernible as to which default has been committed by the assessee since the AO had merely recorded findings at the fag end of his order in mechanical manner that it was a fit case for imposition of penalty u/s 271(1)(c) on all the issue on which addition/disallowances had been made. The Tribunal thus held that from the from the above finding in the assessment order, the factum of non-application of mind on the part of the AO in issuing vague and ambiguous notice u/s 274 r.w.s. 271(1)(c) got further corroborated.

MODI RUBBER LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (2018) 53 CCH 0170 DelTrib - ITA No. 2559/Del./2018 (Stay No.353/Del/2018) dated June 14, 2018

1775. The Tribunal upheld the CIT(A)'s order deleting the penalty levied by the AO u/s 271(1)(c) on account of disallowance made u/s 40(a)(ia) for non-deduction of TDS and non-reconciliation of AIR mismatch, holding that that mere disallowance of certain expenses during assessment proceedings does not attract penalty provisions u/s 271(1)(c) if such disallowance is made for technical or venial breach of TDS provisions. It relied on the decision in the case of CIT vs L.G. Choudhari (2013) 33 taxmann.com 156 (Guj) wherein it was held that where the expenditure is disallowed due to failure to deduct TDS or late deposit of TDS, no penalty is leviable u/s 271(1)(c) on the ground that disallowance shall, at the most, be a technical default, there being nothing to indicate any concealment of income. It also relied on

the decision in the case of Satyajeet Movies Pvt Ltd vs ACIT [ITA No.6036/Mum/2011] wherein it was held that no penalty could be levied u/s 271(1)(c) for any addition made u/s 40(a)(ia) for failure to deduct TDS, once such payment has not been doubted.

ASSISTANT COMMISSIONER OF INCOME TAX vs. WIRE AND WIRELESS TISAI SATELLITE LTD. - (2018) 53 CCH 0166 MumTrib - I.T.A No.09/Mum/2016 dated June 13, 2018

1776. The Tribunal deleting the penalty levied by the AO u/s 271(1)(c) on account of the deduction claimed by the assessee with respect interest on delayed payment of TDS and donation, which the assessee had stated were claimed by mistakes and accordingly had surrender the same during the course of assessment proceeding. With respect to the AO's contention that the act of claiming expenditure which was not allowable under the provisions of the Act was an act of furnishing of inaccurate particulars of income and concealment and the CIT(A)'s observation that the explanation of the assessee regarding inadvertent error lacked bona fides, the Tribunal relied on the decision in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that in order to expose the assessee to the penalty unless the case was strictly covered by the provision, the penalty provision could not be invoked and by any stretch of imagination, making an incorrect claim in law could not tantamount to furnishing inaccurate particulars.

G.N. INFOMEDIA P. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0162 (Del Trib) - ITA No.5371/Del/2016 dated June 13, 2018

1777. Pursuant to search proceedings conducted u/s 132 in the case of the assesse on 30/10/2014, the assesse disclosed and surrendered certain income during the said proceedings as well as the return of income field on 30/09/2015. The AO levied penalty u/s 271AAB with reference to the surrendered income and the same was upheld by the CIT(A). The Tribunal deleted the said penalty relying on the decision in the case of Shri Ravi Mathur [ITA No. 969/JP/2017] wherein it was held that when the assessee was not required to maintain the books of account as per section 44AA and the alleged income was found recorded in the diary which was nothing but the other record maintained in the normal course as per clause (c) to Explanation to section 271AAB, the same would not fall in the definition of undisclosed income and once the said income was found as recorded in the other documents maintained in the normal course, then it could not be presumed that the assessee would not have disclosed the same in the return of income to be filed after about one year from the date of search.

ANUJ MATHUR vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0276 JaipurTrib - ITA No. 971/JP/2017 dated June 13, 2018

1778. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied by the AO u/s 271(1)(c) on account of disallowance of the assessee's claim for depreciation with asset purchased and given under 'sale and lease back' arrangement, where the Tribunal had deleted the said disallowance in quantum appeal and the appeal filed by the department against the Tribunal's order of quantum appeal was earlier admitted by the Court. The Court, in the present case, held that at the relevant time, when the assessee had made claim for depreciation, there was no statutory provision or decision contrary to stand taken by the assesse and the issue was debatable, thus the claim was bonafide. Noting that the Revenue has not been able to show even remotely that there was any concealment of income or filing of inaccurate particulars of income, it held that no penalty was imposable only for making a claim not acceptable to the Revenue. The Court relied on the decision in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that merely because the assessee's claim was not accepted or not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c).

COMMISSIONER OF INCOME TAX vs. L & T FINANCE LTD. - (2018) 102 CCH 0058 (Mum HC) - ITA No. 1363 OF 2015 WITH 1358 OF 2015 WITH 1359 OF 2015 dated June 04, 2018

1779. The Court dismissed Revenue's appeal against the Tribunal's and CIT(A)'s order deleting penalty levied by the AO u/s 271(1)(c) on account of additional income offered to tax by the assessee under the revised return filed after issuance of notice u/s 143(2) and on account of non-production of proof of remittance of TDS deducted on certain payment into Government account. It was noted that the additional income offered represented advance received by the assessee, a cine artist, in the relevant assessment year from various cinema producers towards work to be done by her and the same had

been shown in the balance sheet annexed to the original return and, thus, there was no intention on part of the assessee to conceal any amount. With regard to disallowance qua non-furnishing of chalans for deduction and remittances of TDS, on facts the CIT(A) & the Tribunal had held it was an advertent error on the part of the accountant.

CIT v Trisha Krishnan - [2018] 95 taxmann.com 105 (Madras) - TAX CASE (APPEAL) NO. 239 OF 2017 dated June 14, 2018

1780. The Tribunal dismissed assessee's appeal against the CIT(A)'s order confirming the penalty levied u/s 271D for violation of provisions of section 269SS by taking cash loans exceeding the limit specified in the said section. It noted that the assessee had failed to show that there was a reasonable cause for getting loans in violation of provisions of section 269SS as it could not show any urgent business necessity for accepting loans in cash and that it was not having sufficient funds in its possession to fulfill the said business necessity.

Deepak Sales & Properties (P.) Ltd. v ACIT - [2018] 95 taxmann.com 166 (Mumbai - Trib.) - IT APPEAL NO. 6304 (MUM.) OF 2012 dated June 13, 2018

1781. The AO during assessment found out that the assessee had accepted loans by way of cash which was in contravention to section 269SS and thus a penalty was imposed u/s 271D. The CIT (A) allowed the assessee's appeal by holding that the transaction was in the nature of trade transactions relating to the purchase of raw material which was later overturned by the Tribunal and the penalty order given by the AO was restored. The HC noted that the assessee had been given an opportunity to substantiate the genuineness of the parties and the claim that the transaction related to trade alone but the assessee failed to establish the same. It dismissed the appeal by observing that there was no distress situation for assessee so as to take loan in cash, since it was their own case that they had sufficient cash during the relevant period.

Five Star Marine Exports (P.) Ltd. v. DCIT – [2018] 92 taxmann.com 404 (Madras) – Tax Case (Appeal) No. 476 of 2008 dated April 3, 2018

1782. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied u/s 271(1)(c) on account of addition made by the AO adopting the stamp duty valuation of the immovable property sold by the assessee as the sale consideration instead of the actual sale consideration claimed to be received by the assessee. Noting that the application of section 50C(1) could not automatically give rise to penalty proceedings and that the assessee had initially disputed stamp valuation by pointing out inter alia that the property was facing certain restrictions from the forest department, and later on gave up challenge, the Court held that there was no reason to interfere with the judgement of the Tribunal wherein the Tribunal had held that merely because the assessee had agreed to addition on basis of valuation made by stamp valuation authority the same was not conclusive proof that sale consideration as per sale agreement was incorrect and wrong and the penalty could not be levied on basis of deeming provision.

Pr.CIT v Sun on Peak Hotel (P.) Ltd - [2018] 95 taxmann.com 320 (Gujarat) - R/TAX APPEAL NO. 556 OF 2018 dated June 12, 2018

1783. The Court dismissed the assessee's appeal against the Tribunal's and the CIT(A)'s order confirming the penalty levied u/s 271(1)(c) on account of additional income offered by the assessee under the revised return filed by it pursuant to survey proceedings conducted in the case of the assessee, wherein certain incriminating evidences regarding purchase were found. The Court held that the revised returns filed by the assessee, could not be termed to be voluntary, as it was done by the assessee after the revenue deducted non-disclosure, inflation of purchases and concealment of income during the survey proceedings. It also held that the burden was on the assessee to prove non-concealment against additional income disclosed in the revised return, wherein the instant case, no explanation was offered for not having disclosed income earlier in original return.

Khandelwal Steel & Tube Traders v ITO - [2018] 95 taxmann.com 15 (Madras) - T.C. (APPEAL) NOS. 186 AND 187 OF 2005, TC M.P. NOS. 164 AND 165 OF 2005, W.P. NOS. 43110 & 43111 OF 2016 dated June 4, 2018

1784. The Court deleted the penalty u/s 271(1)(c) which was levied on the assessee-firm on account of inaccuracy in the statement of income to the extent of Rs.91,000 for AY 1987-89, noting that it didn't appear that the assessee had any intention of evading tax as the aforesaid amount if shown as income would have still shown a loss return. Taking note of the assessee's contention that the aforementioned amount had been inadvertently not included in their income in tax return, the Court relied on the Apex Court ruling in the case of Price Waterhouse Coopers Pvt. Ltd. [2012] 348 ITR 306 (SC) wherein it was held that an inadvertent mistake in the calculation of income would not be construed as furnishing inaccurate particulars or concealment thereof.
B.M.BAGARIA & CO. v CIT [TS-341-HC-2018(CAL)] - ITR No.16 of 1998 dated June 6, 2018

1785. The Tribunal deleted the penalty levied u/s 271(1)(c) holding that the show cause notice issued u/s 274 by the AO was defective since it did not specify charge against the assessee as to whether it was for concealing particulars of income or furnishing inaccurate particulars of income, by striking out the inappropriate words.
PEDEN DOMA BHUTIA vs. INCOME TAX OFFICER - (2018) 52 CCH 0458 KolTrib - ITA No. 1659/Kol/2016 dated April 4, 2018

1786. The AO levied penalty for delay in filing the TDS return u/s 272(2)(K)/274. The relevant AY under consideration was the first year of filing e-TDS statement. The CIT(A) upheld the penalty for Quarter no III by stating that the Section 273B (which provides that penalty is not to be imposed where the default is on account of reasonable cause) did not cover the said section under which penalty was levied. However, the CIT(A) had deleted the penalty for Quarter no IV by relying on provisions of S.273B. The Tribunal followed Nav Maharashtra Vidyalaya Vs. Addl. CIT (TDS) Range wherein it was held that since this was the first year of requirement of furnishing e-TDS Statement & there were complications because of system failure (admittedly amended 18 times by Department), delay to furnish e-TDS Statement could not be attributed to the assessee. Onus was on the authorities to provide of easy-compliance to newly introduced provisions. The Tribunal observed that e-TDS could not be filed without depositing tax at source to credit of Central Govt. In this case, the assessee had deposited tax at source duly on time but hadn't filed the e-TDS statement due to technical problems and thus the Tribunal held that there was no default on assessee's part as the assessee had reasonable cause to delay in furnishing the e-TDS Statement.
Director VJNT OBC & SBC Walfare v ACIT (2018) 52 CCH 0403 PuneTrib - ITA NO. 906/PUN/2016 dated 27.04.18

1787. The assessee had claimed deduction u/s 80IB but however it was rejected by the AO on the ground that assessee did not comply with conditions precedent for availing of benefit of section 80IB and added the amount to the income of assessee. Thereafter, AO levied penalty u/s 271(1)(c) for concealment of income and CIT(A) confirmed the said penalty. The Tribunal observed that the penalty was levied by the AO on ground that assessee had concealed its particulars of income in respect of specified income whereas assessee had disclosed entire income and simultaneously claimed deduction of that income u/s 80IB(10). Thus the Tribunal held that merely making of claim of deduction which was found to be not allowable did not invite penalty u/s 271(1)(c) and in absence of details of any income where particulars were found to be concealed by assessee, penalty imposed on assessee was untenable thereby deleting the said penalty.
Maruti Estates (India) Pvt. Ltd v ACIT (2018) 52 CCH 0337 CuttackTrib - ITA No. 321/CTK/2017 dated 17.04.2018

1788. The AO had made certain addition to the assessee's income which was confirmed by the Tribunal. The AO had levied penalty u/s 271(1)(c) on account of such addition and the said penalty was also sustained by the CIT(A). Before the Tribunal, the assessee challenged the penalty order contending it to be barred by limitation. The assessee claimed that though the quantum Tribunal order was received by the concerned Pr.CIT having consideration over assessee on 21st May,2015 but the same was received by the CIT(Judicial) on 9th April 2015 and according to S.275(1)(a) the order of penalty should've been passed within a period of six months from the end of the month in which the order of the Tribunal was received by the CIT(Judicial) i.e. on or before 31st October, 2015. However, the penalty order was passed on 27th November 2015. The Tribunal accepted the assessee's contention relying on

the Jurisdictional HC decision in the case of PCIT Vs. Kamaljeet Khosla [ITA. No. 822/2017 (Delhi)] wherein it was held that the limitation period for passing penalty order is to be reckoned from the date of receipt of the Tribunal order by any CIT and not necessarily the 'concerned' CIT. It thus quashed the penalty order as the same was barred by limitation.
Indian Sugar Exi Corporation Ltd. v DCIT (2018) 52 CCH 0446 DelTrib - IT Appeal No. 3860/Del/2017 dated 16.04.2018

1789. The assessee had filed its returns declaring total loss. In scrutiny assessment, the AO observed that the assessee had received capital subsidy from different banks towards assistance for purchase of plant & machinery which was not reduced from the cost of the fixed assets, but instead reflected in liability side of the balance sheet.Accordingly, he added back to the returned income, excessive depreciation claimed by assessee by not reducing the cost of asset. He held that the assessee filed inaccurate particulars and sought to evade tax by claiming excess depreciation and thus levied penalty u/s 271(1)(c). The CIT(A) deleted the penalty holding that the assessee had reflected subsidfy on credit side of balance sheet as 'Capital reserve' as the assessee envisaged the likelihood of reimbursement of the subsidy under the TUFS scheme for failure on its part in payment of instalment and interest. The Tribunal held that though treatment given by assessee to capital subsidy received under TUFS scheme did not find favour with the AO, complete details of capital subsidy and computation of deprecation on fixed assets was furnished by assessee as part of enclosures forming part of its return of income and thus no penalty u/s 271(1)(c) was liable to be imposed on the assessee. Accordingly, it dismissed Revenue's appeal.
DCIT v Federal Brands Ltd. (2018) 52 CCH 0287 MumTrib - ITA No. 741/MUM/2016 dated 06.04.2018

1790. The Tribunal deleted the penalty levied u/s 271(1)(c) by the AO on account of disallowance of various deductions claimed by the assessee viz. deduction u/s80HHC, weighted deduction u/s 35(2AB), Transfer Pricing addition and loss due to foreign exchange fluctuation relying on the Apex Court decision in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., wherein it was held that merely because the assessee's claim for expenditure was not accepted or was not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c).
DCIT & Anr v Cadila Pharmacueticals Ltd. & Anr (2018) 52 CCH 0319 AhdTrib - ITA No. 852/Ahd/2015, 651/Ahd/2015 dated 04.04.2018

1791. The Court upheld the order of the Tribunal confirming thepenalty levied u/s 271(1)(c) for filing inaccurate particulars of income whereassessee claimed depreciation on non-existent assets (arising out of non-genuine sale and lease back transaction.)
Sundaram Finance Ltd. v ACIT [2018] 93 taxmann.com 250 (Madras) – T.C.(APPEAL) NOS. 876 & 877 of 2008 dated 23.04.2018

1792. The assessee, an individual, had filed return of income without disclosing long term capital gain on sale of agricultural land under the belief that he was eligible for deduction u/s 54B on the entire amount of gains as he invested entire gains in agricultural land within 2 years of sale. However, during assessment, the AO made addition on account of the said gain to the extent the same was not invested before filing of return of income and levied penalty u/s 271(1)(c) thereon. The Tribunal deleted the penalty u/s 271(1)(c) as the assessee was under bonafide belief that since investment was made in new agriculture land, no capital gain liability would arise. The Tribunal further held that though assessee had not challenged the capital gain addition, but he had substantiated his explanation with the help of details of payments, copies of sale deed as well as receipts of payments executed by vendors. It held that the assessee could easily harbor a belief that there was no long term tax liability upon him even though that belief did not meet AO's approval.
Sh Nitinkumar Desai vs ACIT, Patan Circle TS- 267- ITAT-2018 (Ahd)-ITA No- 2065/AHD/2017 dated 13.04.2018

1793. The search and seizure took place at the assessee's business premises. Upon finding certain seized documents and discrepancies in the stock, the Managing Director was asked to explain the same, who declared certain amount as undisclosed income merely to buy peace of mind and avoid litigation. The

AO levied penalty u/s 271AAA which was deleted by CIT(A) in view of the provision of S.271AAA(2) which provides that penalty in not leviable on undisclosed income if in the course of search, the assessee admits the income, substantiate manner of deriving the same and pays tax with interest. However, the Tribunal held that since the assessee had failed to specify/substantiate the manner as to how the undisclosed income was derived, the assessee could not avail the benefit of S.271AAA(2) and hence the penalty order passed by AO was restored.

ACIT v SSA International Ltd. [2018] 94 taxmann.com 17 (Delhi-Trib) – ITA NO 5051 OF 2013 dated 30.05.2018

1794. The assessee, a film actor was gifted a villa in Dubai. He disclosed notional income of the villa at Rs.14 Lakhs but the same was not offered to tax in India as the assessee was under the bonafide view that the income was not taxable in India under Article 6 of Ind-UAE Tax Treaty (which provides that income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.) However, the AO assessed the said sum of Rs.14 lakhs by way of "Income from House Property" averring that it was taxable by the virtue of Notification No. 90 and 91 issued by the CBDT [which clarifies about the import of the term "may" in Article 6(1) in Ind-UAE DTAA]. During the assessment proceedings, the AO also rejected the assessee's claim for benefit of indexation while computing LTCG on sale of non-convertible debentures on the ground that it was a structural product liable to be taxed as per the proviso to section 112 without claiming indexation benefit. The assessee paid tax on the gain computed without claiming benefit of indexation and did not file an appeal with respect to the same. As regard the addition with respect to income from house property, the same was upheld by the CIT(A) and the Tribunal. The AO levied penalty u/s 271(1)(c) on account of both the additions holding that the assessee furnished inaccurate particulars of income or concealed the actual income. The CIT(A) deleted the said penalty holding that there was no deliberate intention to evade tax by the assessee. On appeal filed by the Revenue before the Tribunal, the assessee also contended that the AO, at the outset, had no jurisdiction to levy penalty as AO had failed to strike off the irrelevant default in the show-cause notice i.e whether assessee furnished inaccurate particulars of income or concealed the actual income and thus the assessee had remained divested of any opportunity of putting forth its case before AO. However, the assessee's contention didn't sustain because the Tribunal held that although S.254 r.w Rule 11 of the ITAT Rules provides that the Tribunal has discretion to allow any party to raise a new point/contention without any new facts required to be brought on record but it is only after giving the other side an opportunity to address the newly raised point and the assessee in the present case had raised objection for the first time during the course of hearing that too orally and without putting the other party to notice in advance. The Tribunal also rejected the reliance placed by the assessee on Section 253 r.w Rule 27 of the ITAT Rules to contend that the assessee can support the order appealed against any grounds decided against it,without filing any cross appeal or cross-objection, noting that in the present case, the assessee's contention that AO exceeded its jurisdiction was not a ground even in the order of the CIT(A) and therefore the question of supporting the order appealed against the assessee did not arise.

However, on merits of penalty, the Tribunal confirmed the deletion of the penalty holding that the addition of house property income was a debatable issue, not justifying levy of penalty and the differential tax treatment given to the capital gain by the AO by denying indexation benefit would also not be a ground for penalty u/s 271(1)(c).

DCIT v Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai – Trib.) – ITA NO. 5767 OF 2014 dated 21.05.2018

1795. Based on the opinion of advocate of Supreme Court, the Assessee revalued its shops and claimed extra depreciation on the same. By taking a conservative view with an object to end litigation and buy peace, the assessee withdrew such claim during the course of assessment proceedings (since the time for filing revised return of income had expired) and also paid taxes on the additional income offered. The AO accepted such withdrawal of claim in the order under Section 143(3) but initiated penalty proceedings under Section 271(1)(c) for furnishing of inaccurate particulars of income. Tthe Tribunal deleted the penalty levied by the AO (reconfirmed by the CIT(A)), by holding that since the assessee offered bonafide and plausible explanations, mere making of a claim which did not found favour with the Revenue would not automatically lead to levy of penalty under Section 271(1)(c).

Waman Hari Peths Sons Private Ltd. vs. DCIT – [2018] 53 CCH 0024 (Mumbai ITAT) – ITA No 2730 of 2016 dated May 10, 2018

1796. The assessee filed revised return to claim deduction under Section 80IC in respect of interest accrued on FDRs, by producing certificate in Form 10CCB. The AO denied the claim since interest income was not generated by the business, eligible for deduction under Section 80IC. Thereafter, the AO levied penalty under Section 271(1)(c) for such disallowance made in assessment order. The Court upheld the order of the CIT(A) and ITAT setting aside such order imposing penalty by holding that mere making of claim which was found to be not sustainable in law would not amount to furnishing inadequate particulars.
PCIT vs. Mahima Udyog – [2018] 102 CCH 0013 (Uttarakhand High Court) – ITA No 13 of 2018 dated May 9, 2018

1797. In respect of loan taken from various NBFCs, the assessee did not withhold TDS while making payment of interest on such loans. The AO observed that even though the assessee was to repay to the NBFCs in EMIs, constituting of principal amount and interest component, the exact amount was known and hence the AO treated the assessee as a defaulter u/s 201(1) and 201(1A) and simultaneously initiated penalty proceedings under Section 271C of the Act. Though the assessee furnished copies of Form 26A from the NBFCs, to show that the interest income was offered to tax in their returns of income, the AO observed that proceedings under Section 201 are different from the proceedings under Section 271C of the Act. The Tribunal deleted the penalty noting that the assessee's failure to withhold TDS was based on a bonafide belief that since the NBFCs had collected post-dated cheque from it, comprising of the principal and interest component, which could be encashed directly from its bank account, there could have been no occasion to deduct TDS. Further, even the auditor, under the above bonafide belief, had certified in his tax audit report that wherever the tax ought to have been deducted at source, the assessee had complied with the statutory obligations.
SIBY MINING AND INFRASTRUCTURE PVT. LTD. vs. JCIT – [2018] 53 CCH 0140 (Hyderabad ITAT) – ITA. Nos. 28 to 34/Hyd/2018 (S.A. Nos. 13 to 19 / Hyd / 2018) dated May 11, 2018

1798. The AO made additions to the income of the assessee on protective basis pursuant to search and seizure operations. The Tribunal confirmed the same as substantive additions. Thereafter, the AO initiated penalty proceedings without making specific satisfaction as to whether the assessee was guilty of concealing the particulars of income or furnishing inaccurate particulars of income. The Tribunal quashed the penalty proceedings and held that levy of penalty under Section 271(1)(c) was not sustainable as the AO was not sure about the specific charge on the assessee for which penalty was levied.
GAURAV SHARMA vs. ACIT – [2018] 53 CCH 0041 (Indore ITAT) – ITA Nos. 136 to 141/Ind/2017 dated May 16, 2018

1799. The assessee purchased FDRs in his name out of the loan given to him by charitable and religious organization, wherein he was a General Secretary. The AO held that since such receipt by the assessee was in cash and was beyond limits laid down under Section 269SS, penalty was levied under Section 271D of the Act. CIT(A) upheld the order of the AO. The Tribunal deleted the penalty levied by holding that there was no loan or deposit, as the Tribunal primarily relied on entries in books of account wherein only two cash payments were made under the imprest account. The Court held that since the Tribunal did not consider the specific aspects referred to in order to levy penalty under Section 271D of the Act and also failed to consider the observations of the CIT(A), the matter was remitted back to the Tribunal for fresh determination.
CIT vs. PAWAN KUMAT JAIN (DELHI HIGH COURT) (ITA 640/2005) dated May 24, 2018 (102 CCH 7)

1800. The AO made additions in respect of expenditure incurred on account of increasing authorized capital and also denied deduction u/s 10B w.r.t. interest income, sale of scrap and other Misc. business receipts. Consequent to which, penalty proceedings under Section 271(1)(c) of the Act were initiated separately for concealment of particulars of income. The AO levied penalty for furnishing of inaccurate particulars of income. The CIT(A) partially allowed the appeal of the Assessee. The Tribunal observed

that since the AO initiated penalty proceedings on one limb and levied penalty on another limb of section 271(1)(c) of the Act, he did not have clarity of thought and suffered from ambiguity in his mind with regard to applicable limb of section 271(1)(c) to facts of case. Thereby, penalty levied by the AO was unsustainable on technical grounds and hence the Assessee's appeal was allowed.
DCIT & ORS. vs. ENDRESS + HAUSER FLOWTEH INDIA PVT. LTD. & ORS. (PUNE TRIBUNAL) (ITA No. 949, 995& 996/PUN/2016 (C.O.No.09/PUN/2018)) dated May 23, 2018 (53 CCH 0067)

1801. Where the assessee in course of search had admitted undisclosed income and the manner in which such income had been derived, the Court held that in such cases the provisions of Section 271AAB would automatically be attracted. (Section 271AAB provides for penalty where the search has been initiated u/s 132 at a rate of 10 percent of the undisclosed income of the specified previous year)
Sandeep Chandak v. PCIT – [2018] 93 taxmann.com 406 (SC) – Special Leave to Appeal (C) Nos. 7085-7087 of 2018 dated April 23, 2018

Method of Accounting

1802. The AO made addition to the income of the assessee noting that the assesse had not included freight amount in the valuation of closing stock (thus resulting in lower income), as per regularly and consistently followed method of valuation of stock accepted by the Revenue in past. The DRP also upheld the AO's order. The Tribunal allowed the assessee's appeal and deleted the addition, noting that the closing stock of particular year was opening stock of subsequent year and it was not case of revenue that method of valuation of closing stock was materially affecting accounts and profits disclosed by the assesse. It held that materiality is a concept which is well recognized both in accountancy and law and the Accounting standards notified by the CBDT u/s 145(2) mandates that the concept of materiality be taken into consideration when finalizing the accounts of an assessee.
HERO MOTO CORP LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0200 (Del Trib) - ITA No. 6990/DEL/2017 dated Jun 20, 2018

1803. Taking note of the huge outstanding dues to the assessee from a debtor with no signs of either payment or improvement in financial position of the said debtor, the assessee took a decision to recognize revenue from the said debtor on cash basis. Such a change in method of accounting was not accepted by the AO. Noting that the assesee had furnished detailed explanations for conversion of revenue recognition, the Tribunal held that the assessee company had satisfactorily explained circumstances under which it was forced to change mode of revenue recognition from mercantile system of accounting to cash basis and there was no loss to revenue due to such change, thus, the assessee was allowed to make the said change.
Delhi International Airport (P.) Ltd. v DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018

1804. The Court set aside the Tribunal's order for AY 1990-91 wherein the Tribunal had rejected the assessee's method of valuing the closing stock of shares and securities in the income tax return at lower of market value or cost as against the valuation on cost basis in books of account. The Court noted that during relevant AY, the assessee-bank had invested a proportion of its investment in shares and securities of public limited companies under RBI directions and had treated such investment as stock in trade. It relied on the decision of United Commercial Bank v CIT (1999) 8 SCC 338 wherein the Apex Court had stressed on the determination of real income rather than theoretical principles of accountancy, for the purposes of arriving at taxable income and thus held that the assessee could value the securities and shares at cost or market price to show real income.***United Bank of India v CIT - [TS-355-HC-2018(CAL)] - ITR No.19 of 1999 & ITR No. 7 of 2000 dated June 27, 2018***

1805. The AO made addition to assessee's total income u/s 145A on account of difference in valuation of closing stock of finished goods lying in the godown as per the books of account and as determined by the AO, increasing the said valuation by the amount liability toward excise duty on such goods.. The CIT(A) deleted the said addition after following CIT vs. Loknete Balasaheb Desai SSK Ltd wherein it was held that in respect of excisable goods manufactured and lying in stock, excise duty liability would get crystallized on date of clearance of goods and not on date of manufacture. Thus, the Tribunal, on

concurring with the decision of CIT(A) held that Central excise duty on stock lying in goddown was not to be incurred unless stock was removed, thus, in this case,no question of excise duty liability arose.
DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018

1806. The Tribunal held that where valuation of closing stock of assessee according to LIFO method which was consistently followed by the assessee since its inception was accepted by revenue in earlier assessment years, same could not be rejected in year under consideration on the ground that valuation of inventories should be done on basis of First In First Out (FIFO) method or weighted average method and not on LIFO method as FIFO assumption approximated more closely to reality and LIFO adopted by assessee was not giving true profit of year.
***RoopshreeJewellers (P.) Ltd. v ITO [2018] 93 taxmann.com 159 (Kolkata – Trib.) – ITA NOS. 442 & 828 (KOL.)* OF 2015 dated 17.04.2018**

1807. The Court upheld the Tribunal's order wherein it was held that where assessee, engaged in construction business, was following project completion method, its income could be brought to tax only in year when sale deeds of units sold were registered even though sale consideration might have been received earlier from buyer.
CIT v Happy Home Corporation [2018] 94 taxmann.com 292 (Gujarat) – R/TAX APPEAL NO. 465 OF 2018 dated 09.05.2018

1808. The assessee, owning the registered trademark 'Vibes', received Rs.22Lfor giving the trademark on franchise basis under the Infrastructure & facility management agreement which was entered for the period of 5 years. One of the agreement-clause enumerated that assessee would terminate agreement on breach of any term without refunding the consideration received. However, since the agreement was for 5 years, the assessee relied on the AS-9 by issued by the ICAI pertaining to revenue recognition & apportioned Rs.1,91,666 as income for AY under consideration treating the remaining amount as goodwill in liability side of balance sheet. The AO also relied on the AS-9 & observing that the assessee shifted entire risk to other person & also the consideration received was non-refundable, he taxed the differential amount shown as liability as income for the AY under consideration. The CIT(A) upheld AO's order. On further appeal, the Tribunal observed that according to agreement, the assessee had to participate in management of business and certain other responsibilities. Thus, relying on Special Bench decision of Chennai Bench in ACIT v. Mahindra Holidays and Resorts India Ltd. [2010] 39 SOT 438 (Chennai) (SB) which upheld the principle of deferment of revenue recognition it directed the AO to delete the said addition.
Alankar Slimming & Cosmetic Clinic (P.) Ltd v ITO [2018] 94 taxmann.com 11 (Kolkata -Trib.) – ITA NO. 1374 OF 2016 dated 15.05.2018

1809. Where the assessee recognized revenue based on project completion method, the AO changed the said method to percentage of completion method and thereby made an addition of 10% of the advance received from customers. In view of the Accounting Standard (AS) 7 and AS 9 and relying on the ruling of the Supreme court in Bilahari Investment (P) Ltd. (299 ITR 1), Realest Builders & Services Ltd (307 ITR 202) and the co-ordinate bench in Awadesh Builders (37 SOT 122) & Haware Construct ions Pvt. Ltd. (ITA 5601/Mum/2009), the CIT(A) deleted the said addition and held that the accounting policies consistently followed by the assessee should be adopted. The Tribunal upheld the CIT(A)'s order and held that when the assessee was following project completion method, the AO could not, at its discretion, change said method to percentage completion method.
ITO vs. BELLOR HOMES AND REALTORS PVT. LTD. – [2018] 53 CCH 0037 (Mumbai ITAT) – ITA No 4445 of 2016 dated May 15, 2018

1810. The assessee, an Association of Person (AOP), was following mercantile system of accounting. AO made an addition and held that the assessee should have recognized interest on NPA on accrual basis as per provisions of Act as it was following the mercantile system of accounting. CIT(A) upheld the order of the AO. Tribunal held that while determining tax liability of an assessee, two factors would come into play—Firstly, recognition of income in terms of recognized accounting principles and

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

1811. The Tribunal directed the AO to delete the addition for decrease in gross profit rate for the subject year since the AO had examined the bills/ invoices of expenditure with help of the books of accounts and could not allege suspicious decline in gross profit and further, the books of accounts had also not been rejected by the AO by invoking section 145(3).
Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018

Minimum Alternate Tax

1812. The assessee claimed a tariff adjustment in respect of electricity bills, in respect of which application was pending before CERC for revision in tariff rates. The AO held that assessee's application was pending before CERC and, therefore, it was not an ascertained liability and accordingly added back the amount of provision to book profit under section 115JB. The Court held that although the liability towards power tariff would be quantified and discharged to adjust it at a future date, the liability was capable of being estimated with reasonable certainty and since the assessee estimated the liability after taking all relevant factors into consideration, it held that the addition on account of tariff adjustment was to be deleted as it was not a contingent liability.
PrCIT v NHPC Ltd. [2018] 92 taxmann.com 130 (Punjab & Haryana) - IT APPEAL NO. 356 OF 2015 (O & M) dated MARCH 21, 2018

1813. Where the assessee had claimed deduction on account of bad debts written off through provision for doubtful debts under clause (i) of Explanation 1 to section 115JB without providing details in support of his claim to the AO and the CIT(A) had deleted the addition made by AO in this regard after the assessee submitted the relevant documents before it, the Tribunal remanded the matter back to AO for re-examination, noting that necessary details of provision created by assessee in earlier years for bad debts were not supplied by assessee to AO at time of assessment proceedings and CIT(A) had admitted fresh evidences in contravention of the provisions of rule 47A.
EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018

1814. The Court allowed deduction towards lease equalization charges debited by the assessee in its profit and loss account while computing book profits for the purpose of MAT u/s 115JB noting that the method employed by the assessee over the full term of the lease period would result in the lease equalization amount being reduced to a naught, as the debit and credits in the profit and loss account would square off with each other and such method of accounting which follows some established principles, one of which includes offering only revenue income for tax, could not be faulted, rather represented a true and fair view of the accounts, which is a statutory requirement u/s 211(2) of the Companies Act.
CIT v MGF India Ltd – (2018) 91 taxmann.com 405 (Del HC) – ITA Nos. 378 of 2004 and 76 of 2007 dated 21.02.2018

1815. The assessee had debited certain amount as 'diminution in value of investment' to the P&L A/c, being the amount resulting on account of the accounting principle laid down in AS 13 requiring the assessee to value the current investments at the lower of cost and fair value. The AO added the said amount while computing book profits u/s 115JB considering the amount to be Provision for diminution in value of current investment. Noting that the assessee had credited the difference between the sale price and fair value as on 31.03.2008 to P & L A/c and not the difference between sale price and its cost, the Tribunal held that such accounting treatment was impossible where the provision was made instead of write off. It held that the said amount was not a provision for diminution in value of investment but the actual charged for the loss in the diminution in value of investment, not warranting an increase in the book profits computed u/s 115JB. Further, it relied on the decision in the case of CIT v Vodafone Essar

Gujarat Ltd. [Tax Appeal No.749 of 2012 (Guj)] wherein the above issue had been discussed in detail and, accordingly, dismissed the Revenue's appeal.
ACIT v Reliance Welfare Association Circle – (2018) 52 CCH 35 (Mum) – ITA No. 976/M/2012 dated 15.01.2018

1816. The Tribunal accepted assessee's contention that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the net profit u/s 115JB of the Act, relying on the Special Bench decision in the case of ACIT v Vireet Investment Pvt. Ltd. [82 taxmann.com 415 (Del Trib)] wherein it was held that "*the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D*". However, relying on the decision in the case of CIT v Jayshree Tea Industries Ltd. [ITAT No.47 of 2014 (Cal)] wherein it was held that since the assessee had not claimed the amount of expenditure relatable to exempted income to be Nil, the amount of the said expenditure was to be computed by applying clause (f) of Explanation 1 u/s 115JB without resorting to section 14A, the Tribunal directed the AO to work out the disallowances in terms of the clause (f) to Explanation 1 of section 115JB independently after considering the expenses debited in the profit & loss account as mandated under the provisions of law.
INCOME TAX OFFICER vs. NIRMA CREDIT & CAPITAL PVT. LTD. - (2018) 53 CCH 0147 (Ahd Trib) - ITA No. 2830/Ahd/2016 dated Jun 8, 2018

1817. The AO disallowed assessee's claim for provision for bad and doubtful debts, while determining the book profits for the purpose of MAT liability, considering the same to be unascertained liability as per clause (c) of the Explanation 1 to section 115JB. The Tribunal held that provision made for doubtful debts, being unascertained liability, deserved to be added to book profit. However, noting that the amount claimed was actually part of the ascertained liability, i.e. bad and doubtful debts written off, which was only adjusted in the provision account separately maintained by the assessee, it held that since the aforesaid clause (c) speaks of making additions to book profit only in event where provision made for meeting unascertained liability, the disallowance made by the AO was to be deleted.
Southern Power Distribution Company of AP Ltd. v DCIT - [2018] 93 taxmann.com 451 (Hyderabad - Trib.) (TM) - IT APPEAL NOS. 1460 & 1533 (HYD.) OF 2013 dated April 27, 2018

1818. The Court held that interest under sections 234B and 234C cannot be charged when total income is assessed to tax under section 115J.
TamilnaduMagnesite Ltd. v DCIT [2018] 94 taxmann.com 245 (Madras)- M.P. NO. 1 of 2008 dated 09.04.2018

1819. Where assessee had charged depreciation for wind mills at 80 per cent but AO restricted claim of depreciation on windmills to 5.28 per cent as per Schedule XIV of Companies Act, 1956 while computing MAT liability u/s 115JB, the Tribunal held that since nothing was brought on record to show how and on what basis, higher rate of depreciation was arrived at by assessee, lower authorities were justified in holding that assessee had no reason to provide depreciation at higher rate.
Indus Finance Corpn Ltd. v DCIT [2018] 93 taxmann.com 215 (Chennai – Trib.) – ITA NO. 1348 OF 2017 dated 03.05.2018

1820. The Court held that an assessee's case would fall within the ambit of clause (c) of section 115JA(1) only if amount is set aside as provision. The Court further held that the provision is made for meeting a liability and the provisions should be for other than ascertained liabilities i.e. for an unascertained liability.
L.R.N. Finance Ltd. v. ACIT – [2018] 93 taxmann.com 106 (Madras) – T.C. (Appeal) No. 916 of 2008 dated April 9, 2018

1821. The assessee earned gains on sale of agricultural land and the AO did not make any addition to the book profit while calculating MAT under Section 115JB. However, (on appeal being filed by the assessee on other issues) the CIT(A) directed the AO to include income earned from sale of agricultural land in book profits and determine tax payable under Section 115JB. The Tribunal allowed the assessee's appeal against the said direction of CIT(A). It held that since the income from sale of

agricultural land was exempt from tax, the said exempt income could not be added to the books profit while calculating the MAT under Section 115JB.
ITO & Anr. vs. Gomantak Exims Ltd. & Anr. – [2018] 53 CCH 0106 (Delhi Tribunal) – ITA No. 2708/DEL/2012 (CO No. 435/DEL/2012) dated May 15, 2018

Refund

1822. The Apex Court dismissed Revenue's SLP against High Court's ruling wherein the High Court held that where co-operative bank made deposits in government securities and earned interest, on basis of principle of presumption that government departments had deposited TDS on interest, bank's claim for refund of TDS was to be allowed.
CBDT v Meghalaya Co. Operative Apex Bank Ltd - [2018] 92 taxmann.com 374 (SC) - SPECIAL LEAVE PETITION (CIVIL) (DIARY) NO. 1948 OF 2018 dated MARCH 19, 2018

1823. Where the assessee made payment of royalty to a non-resident French company and deducted tax @ 20 percent under Section 206AA but subsequently realized that as per the India-France DTAA tax was to be deducted @ 10 percent, consequent to which the assessee filed application for refund before the CBDT, the Court held that the CBDT was unjustified in refusing to grant the assessee refund on the ground that the application was belated by 9 months. The Court noted that the excess deduction of TDS was on account of a bonda-fide mistake and condoned the delay in filing application. Accordingly, it directed the CBDT to consider the plea of refund on merits.
MULTIBASE INDIA LTD. vs. INCOME TAX OFFICER & ORS. - (2018) 101 CCH 0179 GujHC - SPECIAL CIVIL APPLICATION NO. 22195 of 2017 dated Feb 15, 2018

1824. Where certain amount of refund receivable by the assessee had been unblocked but the payment had not been made, the Court held that it was the responsibility of Revenue to ensure that unblocked amount was paid and credited to account of assessee and that the interest was to be paid till amount was refunded and not up to date of unblocking.
Vodafone Mobile Services Ltd. v ACIT - (2018) 253 Taxman 168 (Delhi HC) - W.P. (C) Nos. 9126 & 9127 of 2017 dated 04.01.2018

Set off and carry forward

1825. The assessing officer while passing the assessment order disallowed the set off of loss on account of long term capital loss suffered by assessee on sale of shares against the profit of long term capital gain earned on sale of immovable asset contending that the transaction was designed to avoid tax. The Tribunal noted that the assessee sold shares held by it for a period of 15 years at market value (supported by a valuation report) and that the AO had not doubted the genuineness of the transaction. Accordingly, it held that merely because the assessee had claimed set-off of capital loss against the capital gain earned during the same period, the transaction could not be said to be a colourable device or method adopted by assessee to avoid the tax.
Mrs. Madhu Sarda v ITO - ITA No. 7410//Mum/2012 dated 09.03.2018

1826. The AO denied the set off of brought forward house property losses against the current year's house property income in view of provisions of section 79 since the during the current year more than 51% of the shareholding pattern of the assessee-company had changed. The assessee submitted that the two persons who held the shares of the assessee-company on the last day of the previous year when the loss was incurred continued to remain the beneficial owner of the same and exercised the voting powers through two companies, the Tribunal accepted assessee's contention and held that as per section 79 test to be satisfied is not whether 51 % shares should be held by same persons on last day of previous year in which loss is incurred and on last day of previous year in which loss so incurred was to be set off but the test is whether 51 % of 'voting power' is beneficially held by same persons on aforesaid two days. Thus, it held that the ownership of shares with same person was not contemplated for denying set off of loss.
Wadhwa & Associates Realtors (P.) Ltd. v ACIT – (2018) 92 taxmann.com 37 (Mum) – ITA No. 967 (mum.) of 2016 dated 14.02.2018

1827. The Tribunal rejected assessee-company's plea to grant relief against AO's action in denying set off of carry forward of losses for AY 2007-08 to 2010-11 against the income of AY 2012-13 in view of provisions of section 79, noting that the assessee-company's shares which were initially held by two persons both holding 50% shares each were transferred to a listed company in which public were substantially interested to the extent of 25.64% of shareholding in AY 2010-11 and further a fresh allotment of shares was made to the said listed company during the previous year relevant to the AY 2011-12 so as to increase its shareholding to 62.28%. It rejected the assessee's contention that since it had become a subsidiary of the listed company HDFC and thus, a company in which the public were substantially interest, the provisions of section 79 were not applicable to it, holding that though the listed company held more than 51% shares but it did not hold same for entire year and, thus, the conditions for becoming a public company in which public were substantially interested as stipulated in section 2(18)(b)(B)(c) were not met. The Tribunal, however, allowed the set off or carry forward of losses arising in AY 2011-12 for the AY 2012-13 since there was no change in shareholding pattern in AY 2012-13. Further, it held that section 79 does not speak about carry forward and set off of unabsorbed depreciation and bar created by provisions of said section would not be applicable so far as carry forward and set off of unabsorbed depreciation was concerned.
DCIT v Credila Financial Services (P.) Ltd. – (2018) 192 TTJ 511 (Mum) – ITA No. 1491 (mum.) of 2016 co no. 305 (Mum) of 2017 dated 16.02.2018

1828. Where the assessee had suffered loss in trading of derivatives carried through Multi Commodity Stock Exchange, the Court held that the derivative transactions being separate from trading in shares, provisions of Explanation to section 73 (which deem the business of certain specified companies consisting of purchase and sale of such shares to be speculative business for the purpose of section 73 dealing with set off & carry forward of loss from speculative business) will not be applicable to such transactions and hence, the loss incurred by assessee in derivative transactions through recognised stock exchange will have to be set off against other business income as per provisions of Act. It further held that since the transaction carried out by assessee was a non-speculative transaction, section 43(5) was not attracted.
CIT v Sri Vasavi Gold & Bullion (P.) Ltd. – (2018) 92 taxmann.com 290 (Mad) – T.C.A. No. 853 of 2017 dated 20.02.2018

1829. Where the assessee was carrying on business of trading in commodity derivatives on various exchanges like NSE, BSE, MCX, ICEX etc. and the AO, applying the provisions of sections 43(5)(d), bifurcated the earnings from trading for the recognized stock exchanges and non-recognized stock exchanges and treated the loss booked from trading in derivatives from unrecognized exchange as speculative loss not allowed to be set off against business profit from trading in derivatives on recognised exchanges, the Tribunal held that for the relevant assessment year i.e. AY 2012-13 commodity derivative transactions were speculative transactions since clause (d) of section 43(5) only excluded transactions in respect of the trading in derivatives referred to in section 2(ac) of Securities Control (Regulation) Act, 1956 from the definition of 'speculative business' and commodity derivative trading is not covered by the said Act and further the clause (e) of section 43(5) excluding commodity derivative transaction from the said definition was inserted by the Finance Act, 2013 to be effective from 01.04.2014. Accordingly, it held that assessee's business being only and only derivatives trading in commodity, the loss incurred or profit earned should be speculative loss/profit irrespective of whether the transactions were carried on recognised or unrecognised exchanges and, hence, should be allowed to set off against each other.
Kunal G. Kataria v ACIT – (2018) 91 taxmann.com 345 (Mum) – ITA No. 5179 (mum.) of 2016 dated 23.02.2018

1830. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee to set-off business loss against the income voluntarily disclosed pursuant to search operation and taxable as income from other sources where the AO contended that the loss incurred by assessee was speculative loss in view of Explanation to section 73 (which deems certain companies to be carrying on speculation business to extent to which business consists of purchase and sale of such shares) and thus not allowable to be set-off against income from other sources. The Court noted that the CIT(A) and the

Tribunal had concurrently found the assessee to be excepted out of the application of the said Explanation (since the assessee's main income after considering the income disclosed voluntarily was 'Income from other sources', that being one of the condition for exception). It thus held that the loss incurred by assessee would be business loss entitled to be set off same against its income from other sources u/s 71.

PR.CIT v JANKI TEXTILE & INDUSTRIES LIMITED – (2018) 101 CCH 11 (Kol HC) – G.A No. 755 of 2016 ITAT No. 131 of 2016 dated 17.01.2018

1831. The Tribunal held that where there has been amalgamation of a company owning an industrial undertaking with another company then, in view of provisions of section 72A, notwithstanding anything contained in any other provisions of Act, accumulated loss and unabsorbed depreciation of amalgamating company shall be deemed to be loss of amalgamated company for previous year in which amalgamation was affected, irrespective of the fact that BIFR order (in pursuance of which amalgamation was effected) did not direct any such relief.

Hindustan Engineering & Industries Ltd. v DCIT – (2018) 90 taxmann.com 230 (Kol Trib) - ITA Nos. 146 to 152 (Kol) of 2017 dated 24.01.2018

1832. The Tribunal held that as per Section 32(2) unabsorbed depreciation of earlier years was to be treated as the depreciation of the current year and thus it would partake the nature of current year's business loss and therefore as per Section 71(1) read with section 71(2A) since current years business loss could be set off against any income except the income under the head salary, it dismissed Revenue's contention and held that brought forward depreciation could be set off against income from other sources of the current year.

Nanak Ram Jaisinghani v ITO - [2018] 92 taxmann.com 86 (Delhi - Trib.) - IT APPEAL NO. 6729 (DELHI) OF 2014 dated MARCH 7, 2018

1833. Since the assesse had filed belated return u/s 139, its claim for carry forward of business loss was not allowed during the original assessment completed as per section 80. Assessee's said claim was not allowed also while completing the assessment u/s 153A (as well rectification order passed u/s 154 relating thereto) during which, the assesse had filed the same return which it had filed u/s 139. On appeal against the assessment order passed u/s 153A r.w. 154, the assessee contended that return under section 153A is deemed to be return under section 139(1) and as such provisions of section 80 do not apply. Tribunal accepted the assessee's contention holding that when the AO had accepted the return filed by the assessee u/s 153A, no occasion arose to refer to the previous return filed u/s 139 and for all purposes of the Act, the return that has to be looked at is the one filed u/s 153A. Relying on the decision in the case of Sanjay Nandlal Vyas v ITO [ITA No. 771 to 774/PN/2010] wherein it was held that the return of income filed in response to the notice u/s 153A on the basis of which assessment had been framed had replaced the original return for determining the net income in the assessment u/s 153A and the return u/s 153A was to be considered for allowability of carry forward of loss rather than the original return u/s 139 and thus the restrictive provisions of section 80 were not applicable. Thus, it held that the assessee was eligible for carry forward of business loss.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. SPLENDOR LANDBASE LIMITED & ANR. - (2018) 53 CCH 0118 (Del Trib) - ITA NO. 2461/DEL/2016 (C.O. NO. 215/DEL/2016) dated Jun 6, 2018

1834. The Court set aside the Tribunal's order wherein the Tribunal had directed the AO to allow the assessee's claim for set off of speculation loss arising on purchase and sale of shares. The AO as well as the CIT(A) disbelieved the assessee's claim that dealing in shares resulted in speculation loss of Rs.84.74 crores noting that the assesse didn't respond to a number of notices issued by the AO and subsequently when it responded, it submitted a a rectified set of profit and loss accounts together with an auditor's certificate which showed speculation loss of Rs. 84.74 crores as against the income from share dealing of Rs.50.28 crores. Noting the above findings of the AO and the CIT(A), the Court held that the Tribunal's order was exceptionable in the perfunctory manner in which a matter of some importance was dealt with. However, it also held that the CIT(A)'s order would also not be given effect to, subject to deposit of Rs.25 lakhs by the assessee, and on such deposit being made by the

assessee, the AO would look into the matter afresh including any explanation that the assessee may have to furnish.

COMMISSIONER OF INCOME TAX vs. DOE JONES INVESTMENT AND CONSULTANTS (PVT.) LTD. - (2018) 99 CCH 0405 (Kol HC) - ITAT No. 4 of 2015 & GA No. 526 of 2015 dated Jun 19, 2018

1835. The assessee set off brought forward losses from earlier year against the additional income disclosed by the assesse in its revised return pursuant to a survey conducted wherein certain incrimination papers indicating cash receipts and cash payments were found and impounded. The AO denied the assessee's claim for such set off treating the additional income as unexplained money, taxable as "income from other sources" and not as "eligible business income". The CIT(A) upheld the AO's order. The Tribunal reversed the CIT(A)'s order and held that the entries available on impounded material suggested business nexus of additional income and thus the income in question was derived from business activities of assessee although they were outside books of account of the assesse. It held that there was no law to automatically tax each and every 'unaccounted income' disclosed during search / survey actions as 'income from other sources'. Therefore, it held that the income was to be treated as the 'business income' of the assessee and consequently, the benefit of set off/carry forward was granted to the assessee

CONSTRUCTION PORTAL PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0312 PuneTrib - ITA Nos. 1607 & 1608/PUN/2014 dated Jun 06, 2018

1836. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO wherein the AO had treated the derivative losses arising on future & options trading to be speculative loss u/s 73. The Tribunal took the view favourable to the assessee, noting that though the Delhi High Court had taken a different view on this matter, the Calcutta High Court in the case of Asian Financial Services Ltd. v. CIT [2016] 240 Taxman 192 (Cal.) has held that loss incurred on account of derivatives would be deemed business loss under proviso to section 43(5) and not speculation loss and, accordingly Explanation to section 73 could not be applied.

ITO v Upkar Retail (P.) Ltd. - [2018] 94 taxmann.com 450 (Ahmedabad - Trib.) - IT APPEAL NO. 2237 (AHD.) OF 2014 dated June 18, 2018

1837. The Court dismissed Revenue's appeal against the Tribunal's order remanding the matter to the file of the AO for examining the assessee's explanation, on how was the brought forward loss and unabsorbed depreciation directly relatable to units transferred by the assessee-demerged company to the resulting company under the scheme of demerger approved by the High Court, on merits. The AO had rejected the benefit of provisions of section 72A(4)(a), which provides that in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall be allowed to be carried forward and set off in the hands of the resulting company, where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, on the ground that assessee had not maintained separate accounts. The Court held that the Tribunal had rightly concluded that statutory provisions did not command that in order to avail benefit of section 72A(4)(a) separate books of account were to be maintained.

Pr.CIT v Adani Retail Ltd - [2018] 95 taxmann.com 153 (Gujarat) - R/TAX APPEAL NO. 521 OF 2018 dated June 11, 2018

1838. The Tribunal held that there is no bar in adjustment of unabsorbed business losses from speculation profit of current year, provided speculation losses earlier years has been first adjusted from speculation profit.

Edel Commodities Ltd. v DCIT [2018] 92 taxmann.com 133 (Mumbai – Trib) – ITA Nos. 3426 AND 3576 (MUM.) OF 2016 dated 06.04.2018.

1839. The Tribunal held that where holding company of assessee transferred its entire shareholding in assessee company to another subsidiary company, in view of fact that in such a case beneficial ownership of assessee-company continued to vest in its ultimate holding company, provisions of sec. 79 placing restrictions in respect of carry forward and set off of losses incurred in previous years against profits of subsequent years would not apply to assessee's case.

CLP Power India (P.) Ltd. v DCIT [2018] 93 taxmann.com 326 (Ahmedabad – Trib.) – ITA NO 1123 OF 2016 dated 23.04.2018

Settlement Commisssion

1840. The Court upheld the rejection of settlement application filed by assesse before the Settlement Commissioner noting (i) that the Settlement Commission had rejected the application on ground that the assesse had failed to make full and true disclosure including the disclosure of manner of earning undisclosed income admitted during search proceedings and (ii) that the Settlement Commission had observed that entries appearing in documents seized during search did not match with assessee's explanations and the deficiencies pointed could not be clarified by assessee. The Court held that the first and foremost condition for an assessee to fulfil before Settlement Commission is to satisfy Commission that his disclosure was full and true and if this basic ingredient is not satisfied, Commission can reject application at very threshold. It further held that the Court cannot dictate procedure that Settlement Commission has to follow at stage of section 245D(1) unless there is a palpable error or violation of any procedures under Act
Anbuchezhian v IncomeTax Settlement Commission – (2018) 253 Taxman 253 (Mad) – Writ Petition No. 666 of 2018 WMP Nos. 836 to 838 of 2018 dated 19.01.2018

1841. The Apex Court granted SLP against the High Court's ruling that application made to Settlement Commission would be maintainable as long as the order of assessment was not passed and the date of dispatch or service of order on assessee would not be material for such purpose.
Shalibhadra Developers v Secretary, Income-tax Settlement Commission – (2018) 91 taxmann.com 272 (SC) – SLP (C) No. 15267 of 2017 dated 23.02.2018

1842. After accepting the assessee's application u/s 245, the Settlement Commission had passed a final order u/s 245D(4) rejecting the application as not maintainable as there was no full and true disclosure. In such case. When the assessee challenged the Settlement Commission's initial order accepting the application in the present writ and the final order was challenged in a separate writ petition, the Court held in view of fact that final order of Settlement Commission rejecting application of assessee was challenged by way of separate proceedings, examining questions raised in the instant appeal would be an exercise in futility and directed all contentions of the assessee, as raised in instant appeal, to be raised in the said writ petition.
Pr.CIT v Boyance Infrastructure (P.) Ltd. – (2018) 91 taxmann.com 437 (Kar) – Writ Petition Nos. 47042-47045 of 2015 & 240-243 of 2016 (T-IT) dated 20.02.2018

1843. The Settlement Commission rejected the application for settlement filed by the assessee on the ground that the assesse-petitioner had made false claim with respect to refund receivable which came to the light from the supplementary report filed by the Pr.CIT with the Commission (which stated the said refund was already received by the assesse and the assesse submitted that it was a inadvertent and technical mistake). On a writ petition filed by the assessee against the said rejection, the Court held that the assesse-petitioner should be permitted to proceed further and for which purpose the petitioner should be given an opportunity to pay the tax since the Commission had not conducted any enquiry to satisfy itself that the stand taken by the PCIT by way of a supplementary report could be a valid ground to come to a conclusion that the assessee had made a false claim on the refund due. It held that holding the assessee to have misrepresented facts without an enquiry into the matter, in the light of the stand taken by the assessee pleading inadvertence and bona fide mistake, was a flaw in the decision making process.
DR. PRATHAP CHANDRA REDDY vs. INCOME TAX SETTLEMENT COMMISSION - (2018) 102 CCH 0113 (Chen HC) - W.P. No. 5333 of 2018 & W.M.P. Nos. 6553 & 6554 of 2018 dated June 19, 2018

1844. The Court allowed the writ petition filed by the assessee against the Settlement Commission's order passed u/s 245(D)(4) rejecting the application for settlement filed by the assessee on the ground that there was failure to make a full and true disclosure of its income on the part of the assessee. Noting that failure to disclose was alleged essentially on account of Retention money, Purchase of steel, Sub-

contracting and Sales Commissions whereas the assessee had made a full and complete disclosure of primary facts on all the aforesaid heads, it held that prima facie the basis of rejection was contrary to law laid down by the Court. It relied on the decision in the case of Pr. CIT v. Income-Tax Settlement Commission, [2017] 79 taxmann.com 186 (Bom) wherein it was held that to establish that there was failure to make a full and true disclosure of income as required u/s 254(C)(1), it would be necessary for the Revenue to prove that there was a non-disclosure of primary facts and not mere non-acceptance of certain claims made before the Commission.
Shreem Engineering Industries v Income Tax Settlement Commission - [2018] 95 taxmann.com 190 (Bombay) - WRIT PETITION NOS. 13194 TO 13197 OF 2017 dated June 21, 2018

1845. The assessee filed an application before the Settlement Commission subsequent to an order passed by the AO u/s 158BC. The assessee also filed a special civil application challenging validity of section 245HA containing provisions of abatement of proceedings before the Commission. In the meantime, this issue had reached the Supreme Court in another case in which also, vires of very same section was challenged. However, the petitioner in that case before Supreme Court withdrew its application. In such background, the Commission was of opinion that abatement provisions contained in section 245HA would apply to the assessee and passed an order declaring the proceedings before it to have abated as proceedings could not be completed on the specified date. On writ filed by the assessee, the Court held that the disposal of proceedings before the Supreme Court without expression of opinion on merits, could not be allowed to extinguish the assessee's right to challenge vires of section 245HA. It held that even otherwise, since proceedings were not delayed due to reasons attributable to the assessee, the impugned order of declaration of abatement of proceedings was to be set aside.
M. Kantilal & Co. v Income Tax Settlement Commission - [2018] 94 taxmann.com 293 (Gujarat) - R/SPECIAL CIVIL APPLICATION NO. 20442 OF 2017 dated April 18, 2018

1846. Assessee filed an application for settlement of its proceedings contending that till then, reassessment proceedings were pending. Department took a stand that application for settlement was not maintainable as AO had already passed orders of reassessment against assessee on the date of filing the application. Assessee contended that though the reassessment orders passed against assessee were given to dispatch a day before making the application, the same were received by assessee later. The Settlement Commission accepted the application. In a writ petition filed by revenue, the Court held that in view of decision in case of Shailbhadra Developers v Secretary [2017] 245 Taxman 160 (Guj.) for purpose of maintainability of a settlement application, a case would be pending only as long as order of assessment is not passed and date of dispatch or service of order on assessee would not be material for such purposes. Thus, it held that the settlement commission was unjustified in accepting application of assessee.
PCIT v Vallabh Pesticides Ltd.[2018] 94 taxmann.com 434 (Gujarat) [2018] 94 taxmann.com 434 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 5940 OF 2018 dated 16.04.2018

Stay of demand

1847. The Tribunal granted conditional stay of demand to the assessee subject to payment of Rs. 15 Cr. & payment of income-tax refund of Rs. 28 Cr. (due in the name of amalgamating company, as and when received by the assessee). It noted that vis-à-vis AY 2011-12, the issue in respect of deduction u/s 10A was covered in its favour by co-ordinate bench order in assessee's own case and that the large part of the addition for AYs 2012-13 & 2013-14 was on account of dispute on the selection of comparables. It took note of the assessee's submission that various courts held that huge turnover comparables cannot be considered comparable with small turnover company and accordingly held that the assessee had a prima facie case in its favour.
Thomson Reuters International Services Private Limited - TS-121-ITAT-2018(Mum) - S.A. No. 521/Mum/2017, /S.A. No. 561/Mum/2017 and /S.A. No. 562/Mum/2017 dated 13.03.2018

1848. In a case where the appeal was pending before the CIT(A) and on an application made by the assessee for staying the demand, the AO mechanically referring to CBDT instruction No. 1914 dt. 21st March, 1996 directed the assessee to deposit 20% of the demand amount, the Court held that the assessing authority had to examine the applicability of the said instructions in as much as whether the

assessment was "unreasonably highpitched" or whether "any genuine hardship would be caused to the assessee" due to payment of 20% of the disputed demand. Further, noting that the order passed by the AO was a non-speaking order and without application of mind, it held that the AO was not justified in directing the assessee to deposit 20% of the demand amount mechanically referring to the said instruction. Accordingly, it quashed the impugned order passed by the AO and remanded the matter to him to reconsider the application for stay in accordance with law in an expedite manner.
CHARISHMA HOTELS (P) LTD. vs. INCOME TAX OFFICER – Writ Petn. Nos. 12789 to 12790 of 2018 (Kar) dated 27.03.2018

1849. Where the AO as well as the Pr.CIT had rejected the application for stay of demand filed by the assessee u/s 220(6) without considering the decision in the case of KEC International Ltd v B.R.Balakrishnan & Other 251 ITR 158 (Bom) and UTI Mutual Fund v ITO [WP(L) No. 606 of 2012 (Bom)] which laid down the manner in which stay application u/s 220(6) had to be disposed by the authorities under the Act, the Court set aside the order of the AO as well as the Pr.CIT rejecting the said application and directed the AO to decide on the application afresh in view of the aforesaid decisions as well as the decision in the case of MMRDA v DCIT [W.P.(L) No. 2348 of 2014 (Bom)].
Niranjan B. Bhadang v ACIT – Writ Petition No. 706 of 2018 (Bom) dated 15.03.2018

1850. While disposing off an application for stay of disputed demand of Rs.47.05 crores, the Tribunal directed assessee to pay Rs. 5 Cr on or before 31.01.2018 and retain balance of another Rs.10 Cr (~20%) as balance in its bank account while granting stay for 3 months for balance amount and observed that-

- there was no 'prima facie' case in favour of the assessee as the issue involved in appeal was covered against the assessee by earlier year order in assessee's own case
- much importance could not be given to the rectification application filed by assessee (which according to assessee would reduce the total demand to Rs.34.66 Cr) as such application was filed just a day prior to filing stay application and therefore, could not be considered by AO
- assessee did not demonstrate any 'financial hardship'

Vodafone mobile services limited - TS-16-ITAT-2018(Bang) - S.P. No.300/Bang/2017; IT(IT)A No.2818/Bang/2017 dated 05.01.2018

1851. The Court granted ad-interim stay on demand and directed revenue to restrain from taking any coercive steps to recover outstanding demands, in a case where assessee's appeal was pending for disposal by CIT(A) and assessee had deposited 38% of outstanding demand. It also held that the mere having of funds i.e. no financial hardship would not itself justify deposit where a prima facie case was made out
Vodafone India Ltd. v. CIT - (2018) 400 ITR 516 (Bom) - Writ Petition (L) no. 18 of 2018 dated 04.01.2018

1852. The Court dismissed the petition filed by assessee against the Tribunal's order rejecting assessee's claim for stay of demand noting that the Tribunal had rejected stay after considering well settled parameters such as existence of a prima facie case, balance of convenience and irreparable injury caused to assessee, and thus, the impugned order did not require any interference.
United Spirits Ltd v DCIT – (2018) 90 taxmann.com 86 (Kar) – W.P. No. 57883 of 2017 dated 09.01.2018

1853. The AO had treated the loss incurred in the business as capital expenditure on the ground that the loss in the form of discounts offered to customers was intended to build-up brand value/monopoly or primacy in the online market, resulting in addition of Rs.1322 crores which was partially reduced by CIT(A). During the hearing for grant of stay before the Tribunal, the assessee had not advanced any arguments as to how there is patent error in the methodology adopted by the TPO for the purpose of arriving at the value of intangibles nor was there any argument rebutting the case of the TPO that the loss incurred by the assessee-company in the form of discounts offered was nothing but intangibles, the Tribunal held that no case was made out by the assessee-company that there was a strong prima facie case in its favour on merits. As regards financial hardship, the Tribunal noted that though the assessee-company was incurring losses but it had sufficient liquidity to pay the disputed tax liability on account of receipt of huge share capital and huge share premium and thus, no case was made out in favour of the assessee-company on account of financial hardship too. Further, as regards balance of convenience

also, it held that the assessee-company had failed to make out any case in its favour. Accordingly, it directed the assessee to pay 50% of the demand in question and furnish bank guarantee for balance demand for a period of 6 months.
Flipcart India (P.) Ltd. v ACIT – (2018) 169 ITD 211 (Bang) – Stay petition No. 25 (bang.) of 2018 ITA No. 202 (bang.) of 2018 dated 06.02.2018

1854. Where the Tribunal had granted stay of demand of Rs. 109.52 crores during pendency of appeal subject to deposit of 50% of demand in question and furnishing of bank guarantee for the balance amount, the Court grant further relief to the assessee by directing it to deposit a sum of Rs. 10 crores against impugned demand during pendency of appeal and undertake not to seek any adjournment of hearing of the said appeal in view of the fact that appeal itself was coming up for final hearing shortly after pre-ponement of hearing date and that a sum of Rs. 25.66 crores had already been paid by the assessee-company.
Flipkart India (P.) Ltd. v Union of India – (2018) 90 taxmann.com 381 (Kar) – Writ Petition No. 6533 of 2018 (T-IT) dated 15.02.2018

1855. Where the assessee, subsequent to filing an appeal before the CIT(A), filed an application for stay of demand before the AO who directed the assessee to pay 20 percent of the demand, pursuant to which the assessee filed an application before the Commissioner for stay of full demand and the Commissioner, rejecting the application directed the assessee to pay 50 percent of the demand, Court held that the power of suo motu enhancement of the payment which had been ordered by the Assessing Officer was not available to the Commissioner in terms of the CBIT Circular dated 29-2-2016. It held that as per the Circular, the Commissioner could only enhance the amount to be deposited on a reference by the Assessing Officer to the Administrative Principal Commissioner that the party should be asked to deposit in excess of 20 per cent of the demand for stay of the balance demand. It noted that the demand had arisen as the AO sought to change the method of valuation of shares adopted by the assessee from DCF to NAV which was contrary to Rule 11UA which afforded the assessee an opportunity to choose either method. Accordingly, it held that there would be a stay of the assessment order to the extent of the demand raised for a period of 4 weeks. Further, it held that in case, the assessee filed a stay application to the Commissioner (Appeals) within a period of 4 weeks, the demand of Rs. 62.38 crores arising consequent to the impugned order would be stayed till the stay application was disposed of.
Vodafone M-Pesa Ltd v Pr CIT - [2018] 92 taxmann.com 73 (Bombay) - WRIT PETITION NO. 654 OF 2018 dated MARCH 1, 2018

1856. The Court held that once hearing on appeal was concluded by the CIT(A), then stay application would become infructuous as appeal itself would stand disposed of by an appropriate order of Commissioner (Appeals). It held that the approach of the CIT(A) in taking up the stay application of the assessee after hearing the appeal on merits was only done so as to collect some revenue before 31-3- 2018. Accordingly, it set aside the order of the CIT(A) passed in pursuance to the assessee's stay application, directing the assessee to pay a sum of Rs. 15.16 crore out of total demand of Rs. 122.04 crore.
Saibaba Sansthan Trust (Shirdi) v UOI - [2018] 92 taxmann.com 299 (Bombay) - WRIT PETITION NO. 939 OF 2018 dated MARCH 27, 2018

1857. Where, pursuant to orders of writ court, the assessee company had deposited 30 per cent of demand of tax in default and had furnished bank guarantee to extent of 45 per cent, and appeal on merits was pending before Tribunal, the Court held that since the interest of revenue stood adequately safeguarded, there was no justification for increasing demand to 55 per cent of dues.
CIT v Google India (P.) Ltd. - [2018] 92 taxmann.com 38 (Karnataka) - WRIT PETITION NO. 5193 OF 2017 (T-IT) dated MARCH 7, 2018

1858. The Division Bench of the Karnataka HC dismissed the assessee writ appeal and refused to interfere with the Single Judge order directing additional payment /furnishing of bank guarantee in respect of outstanding demand for AYs 2009-10 to 2012-13. It noted that the Tribunal, relying on HC order for AY 2013-14, had directed further payment of Rs.175 Cr and maintenance of balance in bank account of amount equivalent to 20% of disputed demand but the Single Judge (pursuant to Writ filed by the

assessee), modifying the Tribunal order, directed assessee to (i) furnish bank guarantee for 25% of demand for AY 2009-10 and 2010-11 and for 45% of demand for AY 2012-13, (ii) pay 20% of tax demand and furnish bank guarantee to cover 25% of tax demand for AY 2011-12. It dismissed assessee's argument that since Tribunal in the first instance, had granted stay with proper application of mind, it was not open to the Single Judge to impose additional conditions. Noting that stay order u/s 254(2) was a discretionary order, it held that both the Hon'ble Single Judge's order as well as consequent Tribunal order could not be classified as those which any reasonable person cannot pass.
GOOGLE INDIA PRIVATE LIMITED [TS-55-HC-2018(KAR)] - WRIT APPEALS No.50-52/2018

1859. The Court dismissed the assessee's writ petition filed against the Tribunal's order imposing the condition of making payment of 20% of demand amount for the grant of stay on the remaining demand. It held that since two views were possible in the matter [involving disallowance u/s 40(a)(iib)], the Tribunal was right in imposing the said condition. However, having regard to the financial hardship pleaded by the assessee, the Court enlarged the time fixed for payment of 20% of the amount for a further period of six weeks.
Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. v ACIT - [2018] 94 taxmann.com 91 (Kerala) - W.P. (C) NO. 10173 OF 2018 dated April 13, 2018

1860. The demand of tax was made to the assessee for AY 2012-13 and 2015-16 by the AO. The Stay petition for AY 2012-13 by assessee was pending before the CIT(A). The Court disposing this petition for AY 2015-16, directed the assessee to file an appeal before the CIT(A) for AY 2015 -16 and thereby directed the CIT(A) to take up pending stay petition and the to-be filed petition by assessee and pass orders on merits and in accordance with law. Further, it directed that the impugned order passed by AO should be kept in abeyance and should abide by the order passed by the CIT(A).
G.R.D. Trust v DCIT (2018) 255 TAXMAN 0121 (Madras) - W.P.No.5587 of 2018 & W.M.P.No.6917 of 2018 dated 10.04.2018

1861. The assessee challenged the order passed by the AO u/s 220(6) that rejected the assessee's application for stay of penalty imposed by the AO itself u/s 271(1)(c) till the disposal of appeal filed by assessee before the CIT(A). Also, the AO u/s 156 demanded the payment within 7 days (normal period being 30 days, the AO having discretion to reduce the period) without stating the reasons of reducing the period to make the payment. However, the AO, by his order u/s 220(6) had stated that the stay application would be considered only after assessee paid 20% of the penalty imposed and further, attached assessee's bank A/C by exercising powers u/s 226 of the Act. Assessee being aggrieved by the attachment of its bank a/c filed the said writ petition. The Court quashed the order passed by the AO u/s 220(6) and thereby directed the AO to communicate the reasons for reducing the period to 7 days u/s 156 and to pass a fresh order in accordance with law on assessee's stay application after hearing the assessee.Thus, the Court accepted the assessee's plea and directed the AO to withdraw attachment of assessee's bank a/c for the reasons that it would be impossible for the assessee to carry its business.
White Pay LLP v ITO (2018) 101 CCH 0325 MumHC - WRIT PETITION NO. 966 OF 2018 dated 02.04.18

1862. The Court held that mere pendency of an appeal before the CIT(A) was no ground to state that there should be stay on recovery of tax demanded as a) the Assessee had miserably failed to substantiate their contention that they were unable to mobilize funds to comply with direction of Assistant Commissioner to deposit 20 per cent of tax demanded b) they had brought out as to how they had made out a prima facie case for grant of an unconditional stay. However, as the assessee- company had established Eye Hospitals in various parts of country and there were several persons employed with them and there were several senior citizen, who required care and attention, assessee-company was directed by the Court to pay 5 per cent of tax demanded during the pendency of the appeal before CIT(A).
Vasan Health Care (P.) Ltd. v ACIT [2018] 93 taxmann.com 439 (Madras) – WP NOS 6040 TO 5052 OF 2018 dated 28.04.2018

1863. The Court held that the power of stay confers on appellate authority cannot be equated to power granted to AO u/s 220(6) and the AO should first consider assessee's request for stay of demand as referred to in guidelines issued by CBDT.
Cavinkare (P.) Ltd. v. CIT – [2018] 93 taxmann.com 14 (Madras) – W.P. No. 3338 of 2018 dated April 4, 2018

1864. The assessee filed its return claiming deduction u/s 80-IC which was rejected by the AO on the basis of an information received from Central excise department that the process adopted by the assessee did not amount to 'manufacture'. The assessee filed an appeal against the order of the AO before the Tribunal and subsequently filed an application for stay of recovery of outstanding demand during the pendency of the appeal which was rejected by the Tribunal on the ground that the assessee was unable to show strong prima facie case in its favour. On appeal, the Court noted that AO had no independent material in his hands while rejecting the assessee's claim and also, the Tribunal should have done a thorough exercise as to whether the AO was justified in denying the entire deduction claimed by the assessee. After perusing the materials placed on record, the Court allowed the application of the assessee seeking stay of demand during pendency of appeal on the ground that thirty percent of the tax demand was already deposited by the assessee and the same was sufficient to safeguard the interests of the Revenue.
Turbo Energy (P.) Ltd. v. Assistant Registrar, ITAT – [2018] 93 taxmann.com 62 (Madras) – Writ Petition Nos. 6648 to 6650 of 2018 dated April 6, 2018

Recovery

1865. The Court dismissed the assessee's writ petition against the Tax Recovery Officer's (TRO) order raising demand against the assesse who had purchased lease rights from a company on November 17, 2006 whose property was attached by the TRO on March 31, 2004. It rejected assessee's contention that since the sale was not made by the Tax Authorities within 3 years of the date of attachment (i.e upto March 31, 2007) as per Rule 68B of Second Schedule to the Act, attachment stood vacated and the sale deed executed in favour of assessee could not be termed as void. It held that the attachment was enforceable on that day when the sale was executed. Further, the Court also noted that TRO had an option to appoint a person as Receiver instead of directing of sale of property and the Receiver was already appointed by Bombay HC, thus there was no occasion for TRO to proceed with the sale. It accordingly held that the sale transaction executed in favour of the assessee by defaulter purchaser was void and the demand raised on assessee to pay the dues of defaulting company was wholly justified.
Premier Texto Trade Pvt Ltd v Tax Recovery Officer [TS-194-HC-2018(RAJ)] - S.B. Civil Writs No. 8308 & 4369/2010 dated April 12, 2018

1866. Certain amount of cash, jewellery, fixed deposit and National Savings Certificates (NCSs) were seized during the search and seizure proceedings conducted at the residential premises of the assesse and his spouse. The AO also passed penalty order u/s 271(1)(c) by raising demand of amount for various years from 2005-2006 to 2011-2012. When the assesse requested to release cash and other assets seized, he was informed that entire cash was adjusted against outstanding demand. The assessee file a writ petition with the high Court against such refusal to release cash and other assets. The Court held that since entire cash amount seized was adjusted against various demands raised during assessment proceedings and even details of such adjustment had been provided to the assessee, there was no question of return and/or release of cash seized. With respect to release of fixed deposit/ NCSs and jewellery, the Court held that after adjusting the amount outstanding in case of the assessee's spouse, the balance fixed deposit receipts / NSCs and jewellery seized as per the seizure panchnama should be returned to the assesses at the earliest, wihtin two weeks.
SANDEEP RAGHUNATH GUPTA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0117 (Guj HC) - R/SPECIAL CIVIL APPLICATION NO. 2017 of 2018 With R/SPECIAL CIVIL APPLICATION NO. 2022 of 2018 dated June 25, 2018

1867. The assessee company was liable to pay income tax for period 1995-96 to 2002-03 but was declared to be wound up. The assessee company owned two immoveable properties and by two registered sale

deeds, it sold property to the Petitioner. Prior to the execution of such sale deed, the assessee-company had made an application with the AO to issue certificate under Section 230A [an erstwhile provision mandating a certificate from the AO stating that all the liability under the Act have either been discharged or satisfactory provisions have been made for the same, before registering any document for transfer of property], which was rejected by the AO as there were demands for income-tax arrears from the assessee. However, after the said section itself was repealed, the said sale deeds were executed. Noting the above, the ACIT passed an order u/s 281 declaring that sale of two immoveable properties to as void, since the sales consideration was far below the market value of property and thus indicating that the sale was done with view to defraud the Revenue. An order was also passed for attachment of property. The Petitioner filed the present writ petition against the said order passed u/s 281 and the order of attachment. The Court dismissed the petitioner's argument that the Tax Recovery Officer, like any other creditor has to go to the Civil Court seeking a judicial declaration to give effect to the statutory declaration u/s 281, holding that the Revenue cannot be equated with a mere creditor and tax due to the state is crown debt. It observed that the Petitioner had taken chance by going ahead with the purchase even after knowing about non-payment of tax arrears by the assessee and rejection of application for a Certificate u/s 230A. It thus declined to set aside the order of attachment and the order u/s 281 declaring the sale to be void.

ACIT vs. PRUDENTIAL CONSTRUCTION CO. LTD. (HIGH COURT OF ANDHRA PRADESH) (Writ Petition No. 11629 of 2007) dated May 2, 2018 (102 CCH 0052)

1868. The assessee filed a petition before the Court challenging the notice issued under section 226(3) addressed to the assessee's banker for recovery of tax demand. The assessee contended that the Revenue was not authorized to issue the said notice before the expiry of time limit to file an appeal before Tribunal against the order passed by the CIT (A). The Court in view of the facts held that the Revenue cannot direct the assessee to remit entire tax well before the expiry of limitation period for filing an appeal. Therefore, the interim protection was to be granted to the assessee till the assessee approached the Tribunal subject to the condition that the assessee would pay 20 percent of the disputed tax demand. Accordingly, the matter was remanded by the Court to the Tribunal.

S.P. Mani & Mohan Dairy v. ACIT – [2018] 93 taxmann.com 11 (Madras) – W.P. No. 8113 of 2018 dated April 6, 2018

1869. The Court quashed the order passed u/s 179 to recover the demand outstanding in the case of a company in which the assesse was a director noting that when the notice was issued to initiate the said recovery proceedings, the assesse was in Jail and the said notice should have been served on him through Superintendent of Jail, which course was not adopted by the Tax Authority. It thus held that order u/s 179 could not have been passed without affording concerned parties an opportunity of hearing and hence not in compliance with the principles of natural justice. The Court directed the Tax Authority to pass fresh order u/s 179 after affording the petitioner an opportunity of hearing. Further, with respect to the order passed u/s 230 holding that the assesse could not leave the territory of India by land, sea or air unless he furnished a Tax Clearance Certificate to the effect that satisfactory arrangements had been made by him for payment of his tax dues, it was held that after considering the fresh order to be passed u/s 179 as directed, a fresh order u/s 230 should also be passed either confirming or varying the earlier one.

MAILAKKATTU VARGHESE UTHUP vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0085 (Ker HC) - W.P.(C).No. 10675 of 2018-H dated June 11, 2018

1870. Where the AO passed an order u/s 220(6) directing the assessee to deposit 50 percent of the tax demand without considering the assessee's stay application pending disposal by CIT (A), the Court set aside the order of the AO as it was arbitrarily directed upon the assessee to deposit 50 percent of the tax demand.

Sushil Bhatia (HUF) v. ACIT - [2018] 94 taxmann.com 30 (Bombay) - WRIT PETITION NO. 804 OF 2018 dated APRIL 19, 2018

1871. The assessee was engaged in the provision of the Managing Consultancy Services. The ITO passed an order u/s 143(3) and made an addition u/s 69 against the return filed by the assessee on the ground that the assessee was unable to explain the source of funds in respect of the investment that the he had made. An appeal was filed by the assessee before the CIT (A) on the same day. The assessee

also filed a stay application before the ITO requesting to stay the demand until the disposal of appeal. The ITO directed the assessee to pay 50 percent of the tax demand subject to which the recovery of the balance demand would be stayed. The assessee paid 20 percent of the tax demand and approached the PCIT to stay the recovery of the balance demand until the disposal of the appeal but the PCIT confirmed the order of the ITO to pay 50 percent of the tax demand. The assessee filed an application before the CIT (A) for stay of recovery of the balance demand until the disposal of the appeal and at the same time a communication was issued by the ITO to the CIT (A) to proceed with the recovery notwithstanding the pendency of the stay application before the CIT (A). Further, the CIT (A) passed an order and held that the CIT (A) had no jurisdiction to pass order on the stay application as the issue was already decided by the PCIT. Pursuant to which, the ITO issued a garnishee notice directing the bank to make payment towards the demand of tax from the account of the assessee. A writ petition was filed challenging the said order. The Court noted that the PCIT had confirmed the order of the ITO demanding 50 percent of the taxable amount without assigning any reasons and the same was liable to be set aside on the basis of the well settled principle that any order passed without assigning reasons was invalid in the eyes of the law. Accordingly, the order passed by the CIT (A), stating that the matter was already decided by the PCIT, and the garnishee notice were held invalid and the appeal of the assessee was allowed.

Fincare Business Services Ltd. v. ITO - [2018] 92 taxmann.com 355 (Karnataka) - WRIT PETITION NO. 13913 OF 2018 (T-IT) dated APRIL 4, 2018

1872. The assessee was a former director of Shravan Developers Pvt Ltd. and had resigned in the year 2013 following which the company became a delinquent private limited company owing to failure to pay taxes for AY 2011-12. The assessee received a show cause notice u/s 179(1) seeking to recover the taxes dues of Rs. 4.69 crores of the delinquent Private Ltd. Company as its director. In response, the assessee sought details of the notices issued on the company but without responding to the assessee, an order u/s 179(1) making a demand of Rs. 4.69 crores. The assessee filed a writ petition and contended that the order was without jurisdiction for the reason that section 179(1) could be invoked only when the taxes due to the company could not be recovered from it. The Court held that the efforts made and the failure to recover taxes from the company in a notice u/s 179(1) was sine qua non but the show cause notice issued by the AO did not indicate any particulars of the failed efforts to recover taxes from the company and accordingly the order was quashed.

Mehul Jadavji Shah v. DCIT - [2018] 92 taxmann.com 401 (Bombay) - WRIT PETITION NO. 291 OF 2018 dated APRIL 5, 2018

1873. The Court allowed the writ petition filed by the assesse against the AO's order directing the assessee to pay 20% of the tax demand as per the CBDT Office Memorandum dated 31.07.2017, for being entitled for stay of the demand of the remaining tax till the disposal of the appeal before the CIT(A), noting that the AO had not dealt with the assessee's specific plea that their income of the relevant year was 1/4th of tax assessed and the plea about the financial position and the prejudice that was caused on account of the high pitched assessment. Referring to the said Memorandum, it held that the CBDT had not completely ousted the jurisdiction of the officer, while examining a prayer for stay of the demand of tax pending appeal and the AO could not have passed the impugned order without taking note of the assessee's case and without considering as to whether the assessee had made out a prima facie case for grant of interim relief. Accordingly, the matter was remanded back to AO for fresh consideration.

Samms Juke Box v ACIT - [2018] 95 taxmann.com 247 (Madras) - WRIT PETITION NO. 3735 OF 2018; W.M.P. NO. 4550 OF 2018 dated June 28, 2018

1874. The Court quashed the order of attachment passed in the name of the assessee's deceased son with respect to a property which the assessee had settled in favour of her son in 2011. It accepted the assessee's claim that the settlement was a conditional settlement, subject to the life interest reserved by the assessee-petitioner, and thus she was entitled to be in possession and enjoyment of the property and only after her life time, the settlement would take effect. The Court held that as on date, the petitioner-assessee being the absolute owner of the property was entitled to be in possession and enjoyment and, thus, the question of attaching the said property could not arise, more particularly, by issuing an order of attachment in the name of a deceased person.

S Rathinam v The Tax Recovery Officer - [TS-357-HC-2018(MAD)] - W.P.No.4585 of 2018 and W.M.P.Nos.5637 & 5638 of 2018 dated June 22, 2018

1875. The Court held that tax Recovery Officer can not declare a transaction of transfer as void under section 281 and if revenue wants to have transaction nullified under section 281, it must go to civil court to seek declaration to that effect.
Agasthiya Holdings (P.) Ltd. v CIT [2018] 93 taxmann.com 81 (Madras) – C.M.P. (MD) NOS. 7953 & 8250 OF 2017 dated 13.04.2018

1876. The AO wrongly and illegally recovered certain amounts from the assessee, ignoring the submissions made by assessee (delivered manually and also through e-mail) for objecting against adjustment of refund for earlier AY against demand for current AY and despite the Stay order of Tribunal against recovery of demand. On filing the miscellaneous application, the Tribunal observed that coercive recovery effected by authorities was violative of the principles of judicial discipline and natural justice. Accepting the apology of the AO and the Addl CIT, the Tribunal disposed-off the assessee's application as the amount recovered illegally was refunded to the assessee and that the assessee was no more aggrieved.
Greater Mohali Area Development Authority vs. DCIT – [2018] 53 CCH 0110 (Chandigarh ITAT) – M.A. No. 70/Chd/2018 in Stay Application No. 18/Chd/2017 (in ITA No. 1560/Chd/2017) dated May 9, 2018

1877. A notice was issued to the assessee u/s 156 for payment of advance tax u/s 210(3) which stated that if the assessee was to pay the amount less than what had been asked to pay then the assessee would be required to send to the AO the reason for low estimate under Form 28A. The assessee on receipt of the notice paid an advance tax of Rs. 30 lakhs (as against the demand of Rs. 1, 26, 41,650/-) but failed to file Form 28A as given in the notice. Thus, the AO issued impugned notice u/s 226(3) proposing to attach the assessee's bank account and recovering the entire amount of tax. The assessee filed a writ petition against the order of the AO wherein the Court stated that the assessee had to be partly blamed for not filing Form 28A, however, the form was filed subsequently by the assessee and the same was to be considered by the Revenue. Thus, the notice issued u/s 226(3) could not be given effect to and the matter stood remanded.
Swami Arvind v. ACIT – [2018] 92 taxmann.com 327 (Madras) – Writ Petition No. 7709 of 2018 dated April 3, 2018

1878. The Court held that no coercive step should be taken for recovery of outstanding tax demand till the expiry of period of limitation for filing an appeal against the order passed by the Commissioner.
Kalaignar TV (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 190 (Madras) – W.P. Nos. 7819 & 7820 of 2018 dated April 4, 2018

1879. Where during the pendency of appeal before the High Court, a notice of attachment of assessee's bank account was issued in view of the fact that the assessee had already paid a part of the tax demand, it was held by the Court that in the interest of justice, recovery proceedings were to be stayed subject to payment of a further of Rs. 5 lakh by assessee.
V. Sabitamani v. ACIT – [2018] 93 taxmann.com 280 (Madras) – W.P. No. 7957 of 2018 dated April 16, 2018

Unexplained income / expenses / investments

1880. The AO made an addition in the hands of the assessee, AOP on the ground that it had not substantiated the identify of the party which provided it an advance. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) observing that the party who provided the assessee with the advance was a member of the AOP, directed the AO to examine the source of funds in the hands of that said party. Accordingly, it upheld the deletion of the addition made by the AO.
DEPUTY COMMISSIONER OF INCOME TAX vs. SUDHIR KR. SINGH - (2018) 52 CCH 0291 PatTrib - ITA No. 35/Pat/2015 dated Mar 7, 2018

1881. The CIT(A) noting that the assessee had received an amount as security premium and had taken unsecured loan prior to the commencement of its business held that the credits could not be treated as income of the assessee as it's business had not commenced in the first place. Accordingly, the Tribunal held that the receipts were capital receipts not subject to tax.
INCOME TAX OFFICER vs. WAII INFRA PRIVATE LIMITED - (2018) 52 CCH 0224 GauTrib - ITA No. 126/GAU/2017 dated Mar 8, 2018

1882. The Court set aside the Tribunal's order reversing the CIT(A)'s order wherein the CIT(A) had allowed assessee's appeal against the addition made by the AO u/s 68 disbelieving the genuineness of the capital gains arising on purchase and sale of shares of a company. The Court held that the Tribunal had not considered all relevant and other material evidence existing on record such as contract notes/bills receipt, payments made through banking channel and copies of passbook of its demat account in support of assessee's claim of long term capital gain to be genuine and correct and that Tribunal had only based its decision solely on the fact that the purchase transaction was recorded late in the demat passbook. Accordingly, it remitted the matter to Tribunal for reconsidering the issue of genuineness of the transaction of purchase of shares.
AMITA BANSAL v CIT - (2018) 400 ITR 324 (All) – ITA No. 326 of 2010 dated 30.03.2018

1883. The Court dismissed Revenue's appeal filed against the Tribunal's order deleting the addition made u/s 68 by the AO's on account of share subscription money received by the assessee-company from its shareholder. The Revenue contended that the nature, source and genuineness of the funds invested by the shareholders not established by the assessee. The Court noted that the proviso to section 68, requiring an assessee to explain the source of funds in respect of amounts credited in the books of a company in which the public are not substantially interested was introduced in the Act vide the Finance Act, 2012 w.e.f. 01.04.2013 whereas the relevant AY was 2008-09 and thus, the said proviso had no application. The Court relied on its decision in the case of CIT v Gagandeep Infrastructure Pvt. Ltd. [ITA No. 1613 of 2014 (Bom)] wherein it was held that the said proviso was neither introduced with retrospective effect nor did it indicate that it was introduced for removal of doubts.
Pr.CIT v SDB Estate Pvt. Ltd. – ITA No. 1356 of 2015 (Bom) dated 27.03.2018

1884. The Tribunal deleted the addition made u/s 68 with respect to unexplained cash credit holding that the assessee at assessment stage had produced sufficient evidences before AO so as to discharge its initial onus to prove identity of shareholders from whom the assessee had received share application money, their creditworthiness and genuineness of transactions, where it was noted that (i) to prove identity and creditworthiness of applicants and genuineness of transactions, assessee furnished copies of their certificates of incorporation, copy of ITR, bank statements, balance sheet and payment details (ii) assessee produced all replies filed by these investors in response to inquiry notice issued to them u/s 133(6) before AO in which these investors had confirmed making investments in assessee company and (iii) assessee's request to issue summons against said investors u/s 131 for their production at assessment stage was not considered by AO.
Prinku landfin (P.) Ltd. v ITO – (2018) 91 taxmann.com 120 (Delhi Trib) – ITA Nos. 6004 (delhi) of 2013 dated 02.02.2018

1885. The Tribunal held that addition u/s 69 could not be made on basis of documents being found from premises of third party where neither name of assessee was mentioned nor any document was found evidencing fact that assessee had paid any cash as on-money to said party for purchase of any property
Regency Mahavir Properties v ACIT - (2018) 169 ITD 35 (Mum) – ITA No. 682 & 683 of 2016 dated 04.01.2018

1886. Based on the fresh evidence produced by assessee and admitted by CIT(A), showing that (i) amount deposited in savings bank account (with respect to which assessee had failed to explain source during assessment) actually came from sale of agricultural land, (ii) that population of village where land was situated, was less than 10,000 people and (iii) that land was being used for growing of crops, CIT(A) had deleted the addition made u/s 68 after the AO could not rebut such evidences in remand

proceedings. The Tribunal dismissed the frivolous appeal filed by revenue against such CIT(A)'s order noting that the revenue authorities had accepted additional evidence brought on record by assessee.
ITO v Kulwinder Singh – (2018) 91 taxmann.com 177 (Chandigarh Trib.) – ITA No. 1193 (Chd.) of 2017 dated 12.01.2018

1887. The Tribunal deleted that addition made by AO u/s 69C on the basis of papers seized during the course of search at business premises of assessee as per which certain amounts for purchase of land from various sellers had been paid in cash and had not been recorded in books of account, noting that the assessee had not purchased any land from persons mentioned in papers. Tribunal held that neither AO had made any independent inquiry from such persons nor had he brought any adverse material on record or given a finding with cogent evidence contrary to that of the assessee.
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

1888. The Tribunal rejected assessee's appeal against addition made by AO as undisclosed income u/s 69A on basis of loose papers seized in respect of cash rental receipt where assessee claimed that she had already offered such cash rental receipts in return filed in response to notice u/s 153A and had asked the AO to telescope the same against other incomes disclosed. Tribunal noted that AO had clearly given a finding that income which the assessee wanted to be telescoped related to separate piece of loose paper and they had nothing to do with seized paper with reference to which this addition had been made. Tribunal further held that merely making such a statement would not support the case of the assessee when incriminating material had been found.
Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 1 (Mum) – ITA Nos. 2771 (Mum) of 2015 dated 16.01.2018

1889. Where assessee, in who cases search was conducted, had entered into an agreement with a company for a professional consideration of US $ 2,40,000 and the copy of ledger and bank statement showed receipts of only US $1,85,930 and subsequently, assessee explained that US $ 54,070 consisted of $ 4070 as tax and $ 50,000 was inadvertently included in list of receipts from unidentified parties, noting that the noting in the copy of loose sheets supported assessee's claim and that it was not case of Revenue that difference in amount which had been explained to be included in head of unidentified parties was any different amount, Tribunal held that assessee's explanation deserved to be accepted. Further, where the assessee submitted that she was not paid full but only half of the amount agreed from a party for participation in an international event without producing any evidence or any letter whereby she had demanded balance amount to be paid, Tribunal held that the impugned addition made u/s 69A was to be confirmed.
DCIT v Ms. Priyanka Chopra – (2018) 89 taxmann.com 297 (Mum) – ITA No. 2523 (Mum) of 2015 dated 16.01.2018

1890. Where assessee as well as her mother gave statements accepting investment of Rs.10 lakhs out of books in purchase of property to clear encumbrances, Tribunal held that the additions so made by AO u/s 68 based upon incriminating material found during search in case of assessee were to be upheld.
Ms. Priyanka Chopra v DCIT – (2018) 89 taxmann.com 288 (Mum) – ITA No. 2770 (Mum.) of 2015 dated 16.01.2018

1891. Based on the fresh evidence in form of copy of sale agreement of land produced by assessee and admitted by CIT(A) for sale of a piece of agricultural land with respect to which assessee had failed to submit any evidence before AO, CIT(A) had deleted the addition made u/s 69A after the AO accepted that the fresh evidence pertained to advance for sale of specific property in remand proceedings. Tribunal dismissed the frivolous appeal filed by Revenue against such CIT(A)'s order noting that evidence relied upon by assessee had not been rebutted by Revenue authorities and, thus, the occasion to file an appeal against consequential relief did not arise.
ITO v Jagdev Singh - (2018) 91 taxmann.com 24 (Chandigarh) – ITA No. 424 of 2017 dated 04.01.2018

1892. The Court dismissed assessee's appeal against the Tribunal's order wherein the Tribunal had upheld the addition made by AO u/s 68 on account of certain sum received as loan from two companies found to be shell entities by AO, in view of the fact that the bank statement of lender companies revealed high transactions during day and a consistently minimal balance at end of working day and the day assessee was given loan there were credit entries of almost similar amounts, and balance after these transactions was a small amount and the assessee had failed to produce these lenders for verification. It held that the Tribunal had given elaborate reasons to come to conclusion that entire loan transaction was not genuine.
Pavankumar M. Sanghvi v ITO – (2018) 301 CTR 265 (Guj) – Tax Appeal No. 1037 of 2017 dated 12.02.2018

1893. Where the assessee-company had only submitted a copy of acknowledgment of filing return of income of the NRI from whom share application money was received, wherein she had shown a meager income as compared to the money advanced by way of share application and the assessee had neither submitted copies of her capital a/c, balance sheet, bank statement, etc. nor filed any details/evidence as to her activities in Dubai and her source of income in Dubai to substantiate her financial capacity and her permanent address of residence/office of NRI in Dubai, the Tribunal upheld the addition made by AO u/s 68 holding that the assessee had not discharged onus of proving creditworthiness. The Tribunal didn't give credence to a CA certificate submitted by assessee showing the NRI's net worth since in the said certificate the net worth was allegedly based on information available though the said information had not at all been specified and also because Dubai/UAE had no financial regulatory network.
ITO v Spartacus Farms (P.) Ltd. – (2018) 91 taxmann.com 15 (Mum) – ITA No. 3073 (mum.) of 2014 dated 13.02.2018

1894. The AO, on the basis of AIR database of Revenue, had added certain undisclosed income (on which TDS was deducted u/s 194H) to the assessee' income u/s 69. The assessee contended that no income was earned by it and merely because the income was reflected in AIR database, the same could not be added to the income. The CIT(A) directed the AO to verify contentions of assessee as to factual aspect of matter and grant relief on merits. The Tribunal rejected assessee's contention that issuance of the said direction by the CIT(A) was prejudicial to interest of assessee, holding that no prejudice was caused to assessee in undergoing such verifications process more so when said income was reflected in AIR database of Revenue pertaining to assessee.
DCIT v Credila Financial Services (P.) Ltd. – (2018) 192 TTJ 511 (Mum) – ITA No. 1491 (mum.) of 2016 co no. 305 (Mum) of 2017 dated 16.02.2018

1895. Where the assessee had received certain amount as gift from his maternal aunt and the AO had made addition u/s 68 on the ground that the assessee could not show on what 'occasion' such gift was received, noting that the donor had given a confirmation letter clearly stating therein that she gave the said gift out of her natural love and affection towards her nephew and further, in view of section 56(2)(v) which provides that no occasion needs to be proved for accepting a gift from a relative, the Court held that the gift received by the assessee from his relative i.e. maternal aunt, could not be added as unexplained credit u/s 68. With respect to the loan received by assessee from a friend in U.K whose identity and capacity to lend were established, it was held that addition of loan amount to assessee's income as unexplained cash credit u/s 68 was not justified. Similarly, where the copy of bank account statement of one 'JV' from who certain amount of loan was received showed that the said sum was withdrawn from his account and transferred to assessee's account, also establishing the identity of JV and the said sum was repaid by bank transfer, the Court held that the addition of said loan to assessee's income as unexplained cash credit u/s 68 was not justified. Further, where the assessee had received loan from his wife which were out of gift received by her from her father and the assessee's father-in-law had given confirmation letter that he had given amount towards gift to her daughter out of love and affection, it was held that AO could not have raised doubt about capacity of assessee's wife to lend money and, thus, no addition could be made u/s 68 as unexplained cash credit.
Pendurthi Chandrasekhar v DCIT – (2018) 91 taxmann.com 229 (AP&T) – ITA Nos. 701 & 702 of 2016 dated 23.02.2018

1896. The Tribunal deleted addition made u/s 69A with respect to foreign currency found during search with respect to which the assessee had claimed that foreign currency was savings out of foreign tours to various countries after noting that the assessee was regularly travelling abroad to the countries where these currencies were used, that the assessee had purchased reasonable quantities of these foreign currencies for his use and the quantities of these currencies found in possession of the assessee were of small amounts. However, the Tribunal upheld the addition made u/s 69A with respect to foreign currency found during search with respect to which the assessee had claimed he had received it as gifts from donors, noting that the source of earning of donors and their bank statements was not available, there were no contemporaneous evidence in support of these gifts and amount being huge, explanation offered by assessee about gifts was unacceptable.
Samir S. Sheth v ACIT – (2018) 92 taxmann.com 275 (Ahmedabad Trib) – ITA No. 1310 (Ahd.) of 2009 dated 27.02.2018

1897. The Tribunal upheld the addition made by AO u/s 69 on account of some loose papers/documents seized during search proceedings which indicated investments of huge amount made by assesse, even though the assessee's MD had denied making such investments as he could not explain nature of transactions found in said documents to satisfaction of AO. It held that since assessee merely denied said investments without tendering any credible explanation, assesse didn't discharge the initial burden of proof to show that investments transactions in loose sheets were not in nature of income.
DCIT v Geneva Industries Ltd. – (2018) 90 taxmann.com 406 (Bang) – ITA No. 1560 & 1628 (Bang) of 2013 dated 19.01.2018

1898. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 during assessment proceedings initiated pursuant to search conducted at assessess's premises on account of share application money received from some parties, noting that no adverse material was found during course of search to prove that share application money received by assessee was bogus or was an arranged affair of assessee. The AO had not brought any evidence on record that investments made by investor companies actually emanated from coffers of the assessee-company so as to enable it to be treated as undisclosed income of assessee. Further, it held that the AO could not ask assessee to prove source of source and thus the assessee had discharged initial onus to prove identity of investor companies, their creditworthiness and genuineness of transaction.
ACIT & ORS. v GARUDA IMAGING & DIAGNOSTICS PVT. LTD. & ORS. – (2018) 191 TTJ 0765 (Del Trib) – ITA Nos. 449, 450 & 451/Del./2016, 446 & 447/Del./2016, 449 & 447/Del./2016 (C.O.No.163, 164 & 165/Del./2016, 121 & 122/Del./2016) dated 05.01.2018

1899. AO not being satisfied with materials furnished by the assessee with respect to certain amounts received as share application money from a company, held that assessee did not discharge onus/burden of proving genuineness of identity of applicant, genuineness of transactions or creditworthiness of investor and made addition u/s 68. CIT(A) set aside the addition and the Tribunal confirmed the CIT(A)'s order. The Court dismissed Revenue's appeal against the Tribunal's order noting the existence of company as income tax assessee and that it had furnished audited accounts and bank details was not in dispute, irrespective of the fact of lone circumstance of Director of the said company disowning the document per se. It held that if the AO were to conduct his task diligently, AO ought to have at least sought material by way of bank statements etc. to discern whether in fact amounts were infused into shareholder's account in cash at any point of time or that amount were such as to be beyond the means of share applicant and in absence of any such enquiry, the findings that assessee had not discharged onus placed upon it by law was unreasonable.
PR.CIT v ORIENTAL INTERNATIONAL CO. PVT. LTD. – (2018) 101 CCH 4 (Del HC) – ITA 9/2018 dated 08.01.2018

1900. In the case of two assessees, one (MM) being the purchaser of the property i.e. agricultural land and other (MS) being seller of the said property, which were heard together, MS and MM claimed that the cash recovered by police from MS was received by him from MM on account of sale of his agricultural land to MM. Finding that there was a difference in value mentioned in sale deeds and cash recovered and not being satisfied by MM's explanation about the source of cash, the AO assessed the cash over and above the amount mentioned in the sale deeds as unaccounted income u/s 69 in hands of MM. In

case of MS, the AO treated the value mentioned in the sales deed as sales consideration towards transfer of property and considered the remaining amount of cash recovered as unexplained cash u/s 69A. Noting that except his own statement, MM had failed to produce any other plausible evidence to rebut circumstantial evidences on file that MM had paid amount over and above sale consideration mentioned in registered deed, the Tribunal upheld the addition made in the case of MM. In the case of MS, the Tribunal held that the consideration in question could not be said to be amount received towards sale consideration of land, rather, the same constituted extra money paid as consideration for execution of registered deed of sale of land and not for sale of land itself, taxable as income from other sources since the amount received over and above sale consideration mentioned in registered document, partakes character of taxable gift.

ACIT & ORS. v MOHINDER SINGH & ORS. – (2018) 52 CCH 55 (Chd Trib) – ITA No. 665/Chd/2016, 666/Chd/2016, 474/Chd/2017 dated 18.01.2018

1901. Pursuant to search operations conducted u/s 132/133A in case of the assessee, the AO issued notice u/s 153A and noting that in the relevant year, the assessee-company had received share capital and share premium from a Mauritian company, called for assessee's explanation to verify the genuineness of the transaction and also to verify the identity and creditworthiness of the said company. The AO had also received information through FT & TR Division stating that the said investor company had shown income of only 3 US $ and accordingly, he added the amount of share capital and share premium received as unexplained cash credit u/s 68. The CIT(A) deleted addition noting that on date of search original assessment was completed and subsequently no incriminating material was found during course of search against assessee so as to prove that assessee had received any bogus share capital/share premium so as to warrant addition u/s 68 and the AO had not made any enquiry on documentary evidence filed by the assessee which included the details of its turnover, net profit, net worth and dividend declared by the said company which in total were sufficient reasons for foreign investor to make investment in the assessee-company. The Tribunal upheld the CIT(A)'s order and held that the assessee had discharged its initial onus to prove the identity of the investor company, its creditworthiness and genuineness of the transaction, noting that the reply received from Mauritius Revenue Authorities proved identity of investor, its creditworthiness and genuineness of transaction and that it was not reported if any, cash was found deposited in account of investor before making investment in assessee company and the fact that not only in AY under appeal but in earlier years also, the said company had made investment in assessee-company through banking channel supported by documentary evidence.

ACIT & ORS v SPECTRUM COAL & POWER LIMITED & ORS. – (2018) 52 CCH 72 (Del Trib) – ITA Nos. 6103-6104, 5585-5587 & 3221-3222/Del./2016 (Cross Objection Nos. 15-16, 210 & 1/Del./2017 & 247-248 & 355/Del./2016) dated 17.01.2018

1902. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the addition made by the AO as unexplained investment on account of investment made by assessee along with other family members in a company promoted by them from amounts received on sale of gold and borrowings, noting that –

- no enquiry was conducted in assessee's case and those enquiries conducted in some of other promoters cases could not be relied upon, in absence of cross-examination
- Observations of the CIT(A) did not state that sources were totally bogus and since no enquiries worth were made, the CIT(A)'s order could not be relied on for denying genuineness of credits
- affidavits from the creditors in support of borrowals furnished were not disproved

N. SRINIVAS v JCIT – (2018) 52 CCH 34 (Hyd Trib) – ITA No. 1400/HYD/2012 dated 12.01.2018

1903. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 as unexplained cash credit on the ground that the assessee had not proved the creditworthiness of the Investor Company, noting that the assessee-company had produced sufficient documentary evidence before the AO to prove the ingredients of section 68, however, the AO had failed to conduct any enquiry and scrutiny of documents at assessment stage and merely suspected transaction between the Investor Company and the assessee-company because Investor Company

was from Kolkata. It held that the assessee-company had discharged its initial onus to prove identity of the Investor Company, its creditworthiness and genuineness of transaction.
ACIT & ANR. vs. TRN ENERGY PVT. LTD. & ANR. – (2018) 52 CCH 23 (Del Trib) – ITA No. 453/Del./2016 (C.O.No.96/Del./2016) dated 01.01.2018

1904. The Tribunal sustained disallowance made by AO u/s 69C for want of confirmation letters and difference in balances of sundry creditors and sundry debtors to the extent of 20% of the amount noting that assessee had proved majority of expenses and furnished primary details for all expenditure but there was failure on part of assessee to reconcile difference and obtain confirmation letters from certain parties since they had closed business or were not traceable.
Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018

1905. The Tribunal deleted addition made u/s 68 by the AO on the basis of investigation/enquiry conducted by Investigation Wing in case of some companies whose business activities were suspicious and which were indulging in entry operation, wherefrom it was revealed that assessee had received money through those companies. AO had noted that the assessee-company had received unsecured loan and share application money from these companies but failed to submit documentary evidences in respect of share allotment made to these companies and opined that these transactions were sham. Tribunal, however, noted that assessee had furnished names and addresses of share applicants, their PAN and confirmation with their bank account and Income-tax returns and that the AO had not at all carried out any investigation to show that those companies did not exist but were paper company or they were not having worth of investing and transaction lacked genuineness. It further noted that the investigation wing report was not shown to assessee and held that the assessee had discharged initial onus cast upon him u/s 68.
ACIT v Shyam Indus Power Solutions (P.) Ltd. – (2018) 90 taxmann.com 424 (Del) – ITA Nos. 3223 & 3224 of 2016 CO Nos. 249 & 250 (Delhi) of 2016 dated 29.01.2018

1906. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 on account of fresh share capital received along with share premium from a company. The AO had opined that the said company was not having sufficient sources of income. The Tribunal noted that from the bank account it was evident that the amount was transferred from such account on various dates and that the assessee had filed copy of return of income and confirmation of the said company for having paid money for share capital and share premium. It held that nothing adverse was brought on record by the AO, which could prove that money received from the said company was not its own money rather an accommodation entry and that the documentary evidences filed by the assessee before the AO satisfactorily established that the said company had applied for share capital and share premium out of its own money which was realized from sale of its investments reflected in balance sheet.
DCIT v DRS ROOF-TECH & INFRASTRUCTURAL PVT. LTD. – (2018) 52 CCH 7 (Del Trib) – ITA No. 4355/DEL/2012 dated 04.01.2018

1907. The Tribunal held that if the balance sheets and other details of the investor companies as submitted by assessee did not show that companies had made investment in assessee company, then the share capital issued by assesse was to be considered as unexplained and addition u/s.68 was required to made.
COMMISSIONER OF INCOME TAX & ANR. vs. DIAMOND HUT INDIA PVT. LTD. & ANR. - (2018) 52 CCH 0263 DelTrib - ITA No. 3428 & 3425/Del/2013, 3427/Del/2013 dated Mar 5, 2018

1908. Where the assessee failed to explain the source of the funds which he used to granted an advance to a film producer in India (which was repaid during the year), the Tribunal held that the AO was justified in making an addition in the hands of the assessee. It dismissed the assessee's submission that he had received the funds from a US based company and noted that the AO on inquiry with the US tax authorities had found out that the said company had stopped operations. Accordingly, it held that the explanation provided by the assessee was not sufficient.

SYED SERWAT SEVY ALI vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 52 CCH 0211 MumTrib - ITA No. 1638/Mum/2015 dated Mar 9, 2018

1909. The Court confirmed the order of the AO making addition on account of peak cash credit in the hands of the assessee noting that a sum of Rs. 33 lakh had been deposited in the bank account of the assessee and his minor sons which the assessee claimed as receipt of advance towards sale of property (total consideration of 45 lakh). The Court upheld the order of the Tribunal and noted that i) the assessee had failed to provide the agreements to sell to the AO and only did so belatedly before the CIT(A) ii) it seemed unbelievable that the purchaser of the property would pay 75 percent of the consideration wholly in cash iii) the cash advance was not deposited in the assessee's bank account on a single date but was deposited on different dates and iv) the buyers had declared income of Rs.1.48 lakh, 1.54 lakh and 0.69 lakh respectively and therefore the financial capacity of the buyers had not been established. Accordingly, it dismissed assessee's appeal and upheld the addition stating that the agreement to sell and the receipt of Rs. 33 lakh was sham and make belief.
KRISHAN KUMAR SETHI PROPRIETER vs. COMMISSIONER OF INCOME TAX & ANR. - (2018) 101 CCH 0109 DelHC - ITA 101/2017 dated Mar 14, 2018

1910. Where the assessee received a sum as advance against the sale of its property from U and the assessee filed a confirmation from U along with its bank statement, acknowledgment of filing ITR and balance sheet, and the fact that the assessee was owner of the property was undisputed, the Tribunal upheld the CIT(A)'s order and held that the AO was unjustified in making an addition under Section 68 merely because the agreement to sell was made on plain paper as against stamp paper. It held that the evidences filed by the assessee evidenced the creditworthiness and genuineness of U and also noted that the entire transaction was duly recorded in the books of accounts.
INCOME TAX OFFICER vs. NECLEUS STTL PRIVATE LIMITED - (2018) 52 CCH 0221 DelTrib - ITA No. 369/Del./2015 dated Mar 23, 2018

1911. Pursuant to search conducted in the premises of the assessee, the assessee's explanation was that the gold jewellery was gifted to his family members on various occasions and family get-together, such as marriages, birthdays etc for which he produced photographs taken on family occasions. The AO however rejected the explanations and made an addition on account of unexplained investments alleging that the gold, silver and jewellery found at his premises was excessive. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) deleted the addition observing that the assessee's submission was reasonable considering the societal pattern in India and also that the jewellery was claimed to be belonging to other family members of the assessee who were also Income Tax Assessees. The CIT(A) estimated that out of the total jewellery, 30 percent could be reasonably attributed to the assessee (amounting to Rs.39 lakh) and accordingly held that considering the assessee's returned income in his individual capacity from AY 2005-06 to AY 2011-12 aggregated to a little under Rs 4 crores, the assessee could reasonably explain the source of his individual investment. Accordingly, the Tribunal dismissed Revenue's appeal.
ASSISTANT COMMISSIONER OF INCOME TAX vs. KANDULA VISVESWARA RAO - 2018) 52 CCH 0240 HydTrib - ITA No. 55/Hyd/2016 dated Mar 28, 2018

1912. The Tribunal held that the AO was not justified in making an addition on account of bogus purchases based on the statement of one Rajendra Jain wherein he stated that the one of the entities from whom the assessee had purchased diamonds was engaged in the business of providing accommodation entries noting that i) the statement of Rajendra Jain was subsequently retracted ii) the assessee maintained regular books of accounts including day to day stock register iii) the assessee proved the quantity and quality details of stock from which purchase, consumption and sale of stock by way of bills containing the name, address as well as sales tax numbers together with PAN and ledger accounts of those parties from whom goods were purchased and iv) the assessee had furnished a summary of diamonds movement indicating quantity and value in opening balance, purchases, sales and closing balance and v) the AO accepted the fact that purchases of diamonds indeed had been made by assessee, Noting that the payments were made through banking channels in the subsequent year, the Tribunal held that the AO erred in alleging that the assessee had received the cash back in lieu of account payee cheques (to make purchases in the grey market) in the year under review and held that

since the payment was made by the assessee in the next year even assuming the AO's allegation that the supplier was an accommodation entry provider was correct, no cash could would be received by the assessee during the year under review and therefore the allegation that the assessee purchased the diamonds in the grey market was unsustainable. Accordingly, the addition was deleted.
M.B. JEWELLERS & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0234 KolTrib - ITA No. 1/Kol/2017 dated Mar 28, 2018

1913. Where the assessee did not earn any business income as a result of which no books of accounts were maintained by it, the Tribunal held that no addition under Section 68 of the Act could be made on the basis of the assessee's pass book as the pass book could not be considered as its books of accounts.
NANOOMAL GUPTA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0249 AgraTrib - ITA Nos. 275 to 278/Agra/2013 dated Mar 26, 2018

1914. Where pursuant to information received from the Director General regarding beneficiaries in hawala transaction as detected under statement during investigation by the Sales tax department , the AO reopened the assessment proceedings for the year under review and made addition in the hands of the assessee on the ground that the assessee failed to produce original bills or copies of purchases made from alleged parties for verification, transport and octroi receipts and the CIT(A) reduced the addition to 25 percent of the value of purchases noting that this was not a case of bogus purchases but that of inflated purchases , the Tribunal held that since the assessee was not given an opportunity to cross examine the person whose statement was relied on for the purpose of reopening the assessment despite of its request, no addition on account of bogus purchases could be made.
ANITA SANJAY AGRAWAL & ORS. vs. INCOME TAX OFFICER & ORS. - (2018) 52 CCH 0257 PuneTrib ITA Nos. 2622 to 2624/PUN/2016 dated Mar 28, 2018

1915. The Tribunal held where the assessee submitted various documentary evidences to prove genuineness of transaction of sale and purchase of shares which included copy of purchase bill, copy of share transfer form in favour of assessee, the AO was unjustified in ignoring the same and alleging that the sale of shares undertaken by the assessee on which it claimed exemption under Section 10(38) was a sham transaction and making consequent addition under Section 68 merely on the basis of report of the Investigation Wing. The Tribunal held that though the AO had given the entire modus operandi of bogus LTCG scheme he failed to bring any material on record to prove that the assessee was directly involved in such scheme. Accordingly, it deleted the addition made under Section 68 of the Act.
MEENU GOEL vs. INCOME TAX OFFICER - (2018) 52 CCH 0232 DelTrib - ITA No. 6235/Del/2017 dated Mar 19, 2018

1916. The assessee was engaged in trading of plots, agricultural land and minor development work. During the year its authorized capital of assessee company had increased pursuant to allotment of shares of Rs.10 face value at a premium of Rs. 90 per share to the five companies, for which the assessee filed confirmation from parties along with their memorandum of articles, permanent account number and ciopy of their bank statements as evidence. AO found that bank statement submitted by assessee was totally different from bank account statement submitted by banker of share subscribers and therefore made addition u/s 68 holding that assessee failed to prove creditworthiness of depositors as well as genuineness of transaction. The Tribunal observed that the bank accounts submitted by assessee along with confirmation of depositor were forged and not correct statements and dismissing the claim of assessee that it was not required to prove source of credit and noted that the bank accounts of depositor companies clearly showed that cash was deposited of huge amounts subsequent to which it issued cheques. Further, it noted that the investment shown in balance sheet of the depositor companies did not tally with the balance sheet of the assessee. Accordingly, it confirmed the addition.
SHAAN CONSTRUCTION PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0243 DelTrib - ITA No. 4520/Del/2009 and 613/Del/2013 dated Mar 28, 2018

1917. The assessee withdrew certain amount of cash from her bank account to buy property for which earnest money in cash was to be paid. As the deal could not be fructified, a part of such amount was re-deposited in same bank account after more than 7 months. The AO, treated the same as unexplained cash credit and addition was made under section 68. The Court held that since the explanation given

by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible, the impugned additions under section 68 were to be deleted.
Jaya Aggarwal v ITO - [2018] 92 taxmann.com 108 (Delhi) - IT APPEAL NO. 315 OF 2005 dated MARCH 13, 2018

1918. The Tribunal held that the share premium received by the assessee was to be taxed as undisclosed income under Section 68 considering that (a) the directors were allotted shares at par while others are allotted at premium, (b) the high premium was not justified by a valuation report, (c) the high premium was not supported by the financials, (d) based on financials the value of shares was less and no genuine investor would invest at the premium.
M/s. Cornerstone Property Investments Pvt. Ltd v ITO - I.T. A. No.665/Bang/2017 dated 09.02.2018.

1919. Where in order to prove genuineness of share transactions, assessee submitted confirmation, bank statements, copies of returns, PAN of share applicants, the Tribunal held that the assessee had discharged the primary onus cast upon it by section 68 and thereupon it was incumbent upon AO to carry out investigation for falsifying evidence submitted by assessee and, since, he failed to do so, impugned addition made under section 68 was to be set aside.
Deem Roll Tech Ltd. v DCIT - [2018] 92 taxmann.com 72 (Ahmedabad - Trib.) - IT APPEAL NO. 3619 (AHD.) OF 2015 dated MARCH 1, 2018

1920. The Tribunal held that the AO was not justified in making addition under Section 68 merely on the ground that 4 of the 19 parties to whom the assessee had issued shares had not responded to the AO's notice under Section 133(6) of the Act. It held that no adverse inference could be drawn against the assessee merely because the replies had not been received by the AO more so when the assessee had furnished name, address, PAN, etc supporting evidences in respect of each of the shareholder which included confirmation, copies of bank statements of each of the shareholder, copy of share application form, copy of income tax return, copy of audited balance sheet and profit and loss account.
UMBRELLA PROJECTS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0154 DelTrib - ITA No. 5955/DEL/2014 dated Feb 23, 2018

1921. The Tribunal held that the AO was not justified in making addition under Section 68 of the Act on the ground that assessee failed to produce attendance of the directors of companies who subscribed to the share capital of the assessee and that the income of the companies who invested in the company was meagre. The Tribunal held that income of the concern could not be the basis to disbelieve the creditworthiness of the concern if it had sufficient capital and free reserves and also noted that the assessee had provided the affidavits of the directors of the companies confirming the investment in the assessee. It noted that the assessee had duly filed the Form 2, board resolutions, certificate of incorporation, MOA, PAN Card, bank statements and ITR copies of the all the investee companies and accordingly held that it had discharged its duty. Accordingly, it deleted the addition made under Section 68 of the Act.
ZION PROMOTERS & DEVELOPERS PVT. LTD. vs. ADDITIONAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0137 DelTrib - ITA No. 679/Del/2015 dated Feb 28, 2018

1922. The assessee company was engaged in business of manufacturing, trading and exporting pharmaceutical items and had received share application money during the year under review. The AO noting that the assessee received share application money from 3 parties but the cheque deposits in Bank of Baroda were made by single person held that the assessee failed to discharge genuineness of transactions and creditworthiness of parties and accordingly treated the amount received as undisclosed income and same was brought to tax u/s 68. The Tribunal upheld the order of the CIT(A) deleting addition and held that since the i) share applicants had paid share application money to assessee through bank accounts also disclosed investments in their financial statements for relevant financial year ii) the assessee had furnished necessary evidence to prove identity of share applicants and their PAN details to AO, and the AO had brought noting on record to refute the same, the department could not make addition in the hands of the assessee and was free to proceed to reopen the individual assessments in hands of the investors, if permissible in law.

DEPUTY COMMISSIONER OF INCOME TAX vs. ALCON BIOSCIENCES PVT. LTD. - (2018) 52 CCH 0231 MumTrib - ITA No. 1946/Mum/2016 dated Feb 28, 2018

1923. Where the assessee failed to offer any explanation vis-à-vis the source of investment made by him in agricultural land and had failed to respond to the notices issued by the AO under Section 143(2) and 142(1) of the Act, the Tribunal upheld the order of the AO making addition on account of unexplained investments in the hands of the assessee pursuant to search proceedings. It observed that the balance sheet submitted by the assessee did not disclose any investment in agricultural land and that the contention of the assessee that the source of the funds was the sale proceeds arising out of sale of land by its HUF was unsubstantiated.
Sekhar Reddy v ACIT – (2018) 52 CCH 0140 Hyd Trib – ITA No 1392 / Hyd / 16 – dated Feb 28, 2018

1924. Where, over and above the fact that the assessee furnished copy of Income-tax Returns, balance-sheet, profit and loss account as well as bank statement of lender, apart from copy of annual return filed by lender with Registrar of Companies etc, the assessee paid interest on the loan and had in fact repaid the loan, the Tribunal held that the AO was not justified in treating the loan as an unexplained cash credit in the hands of the assessee merely because the lender was not produced before the AO. Accordingly, it dismissed Revenue's appeal.
DEPUTY COMMISSIONER OF INCOME TAX vs. JBR NIRMAN PVT. LTD. - (2018) 52 CCH 0274 AhdTrib - ITA No. 2694/Ahd/2014 dated Feb 28, 2018

1925. The Tribunal observed that i) the bank statement of the lender had a meagre balance of Rs.7,000 to Rs.8,000 rupees and only when the lender lent money to the assessee of Rs 10 – 15 lakh was there a corresponding credit of the same amount in the bank statement ii) the lender had a turnover of Rs.122.92 crores but had no closing stock, and declared a profit of only 0.09% on the turnover leading to a tax payment of Rs.1,96,138 iii) the lender made purchases of Rs.123.04 crores but all that the lender spent on salaries was Rs.2,26,000, office expenses of Rs.8,560, office rent of Rs.27,600 and printing and stationary of Rs.8,560. iv) the lender conducted its business without a rupee spent of telephones and accordingly held that the addition made in the hands of the assessee under Section 68 was justified as the lenders were not genuine.
PAVANKUMAR M. SANGHVI vs. INCOME TAX OFFICER - (2018) 101 CCH 0156 GujHC - TAX APPEAL NO. 1037 of 2017 dated Feb 12, 2018

1926. The assessee a public limited company reported receipt of sum as share premium and call in arrears pertaining to offering in public issue made by assessee in 1994-95. The AO for the impugned year AY 2005-06 made an addition under Section 68 on the ground that the assessee failed to explain mode of receipts of money received as share premium and calls in arrears and also failed to furnish address of all such persons, despite sufficient time and several opportunities provided. The Court upheld the order of the CIT(A) and Tribunal wherein it was held that the assessee being public limited company could not be expected to keep track of its individual shareholders and their details. It noted that the assessee had more than 50,000 shareholders and its shares were quoted at Bombay and Delhi Stock Exchanges and that its trading results had been accepted year after year and accordingly held that, there was no reason to suspect that assessee was having funds outside account books. Moreso it held that no addition had been made in the earlier years and accordingly dismissed Revenue's appeal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. RATHI ISPAT PVT. LTD. - (2018) 101 CCH 0039 DelHC - ITA 151/2018 dated Feb 9, 2018

1927. The Tribunal upheld Revenue's plea that the assessee (a private limited company & engaged in real estate business) received high share premium as a conduit to route the funds involved as a 'layering' process and held that the share-premium of Rs.49.5cr was taxable u/s 68 as unexplained cash credit considering the facts that i) there was no proper valuation report to justify high premium ii) the financials were relatively weak compared to high valuation iii) issue of shares to directors was at par and therefore in light of the discrepancies / abnormal features held that the share issue was "made up" to camouflage the real purpose/intention of routing money.

Cornerstone Property Investments Pvt. Ltd. - TS-97-ITAT-2018(Bang) - I.T. A. No.665/Bang/2017 dated : 09.02.2018.

1928. Where the AO made an addition on account of bogus purchases in the hands of the assessee and made addition at the entire value of purchases [which was reduced to 12.50 percent by the CIT(A)], the Tribunal noted that Assessee was neither able to produce any of parties nor was able to provide evidence as to the transportation of goods but also noted that the sales were not disputed. Accordingly, it upheld the order of the CIT(A).
RAMNIKLAL BROTHERS vs. INCOME TAX OFFICER - (2018) 52 CCH 0083 MumTrib -ITA No. 3155/Mum/2017 dated Feb 6, 2018

1929. Where the AO added as income the entire turnover determined by excise authorities as assessee's sales after excluding turnover already shown in books of account and the CIT(A) directed the AO to estimate income at 6.2% being the average profit on gross turnovers of the impugned years, noting that the assessee had no objection for adopting the excise turnovers in income-tax proceeding, the Tribunal directed the AO to adopt same profit ratio as offered by assessee on disclosed turnovers to undisclosed turnover as well, in each of assessment years. It deleted the addition made in respect of unaccounted purchases, since the Central Excise Authorities quantified turnover based on various inputs like fund flow into various bank accounts etc, once turnover was brought to tax, any unaccounted purchases pertaining to that turnover would get adjusted in same and, thus, there was no need to separately bring to tax unaccounted purchases.
ALLADI DRILLING EQUIPMENTS PVT. LTD. & ANR. v DCIT – (2018) 52 CCH 31 (Hyd Trib) – ITA Nos. 881 to 884/Hyd/16 & 913 to 916/Hyd/16 dated 12.01.2018

1930. The Tribunal remanded the issue of taxability of bogus accommodation entries with respect to the sum involved in assessee-company's bank account opened and operated by assessee's ex-director (Mr. Pradeep Jindal, who was the director till September, 2000), to the file of AO for AYs 2000-01, 2001-02 and 2002-03 noting that the AO made addition in the hands of the assessee based on the information from investigation wing and statement of Mr. Jindal (admitting that he was involved in providing accommodation entries). It took note of modus operandi and observed that all the transactions carried out by Mr Pradeep Jindal from the account of the assessee company or from the other companies named in the statement were all bogus transactions which had not at all been recorded in the books of accounts. It further noted that the AO had merely made the addition without identifying the real beneficiaries of the accommodation entries and that the banking transactions were carried out without proper KYC norms. The Tribunal held that unless the assessee came out with the clean hands before the Ld. assessing officer it could not escape the taxation of the whole amount and accordingly remitted matter back to AO and directed AO to make complete examination of the bank accounts and identify the beneficiaries with the discretion to also take into consideration the applicability of Prohibition of Benami Property Transaction Act, 1988 on such transactions and make necessary efforts to penalise the entry operator, the beneficiaries and the bankers, if found guilty.
View Judgement
Precision Agencies Pvt. Ltd [TS-94-ITAT-2018(DEL)] - ITA No. 1814/Del/2013 dated 05/02/2018

1931. The Tribunal upheld the CIT(A)'s order deleting the addition made u/s 68 of unexplained cash credit by the AO on protective basis on account of share application money received from two shell companies, noting that investigations had revealed the names of persons who were 100% shareholders of two companies which had introduced share application money in the assessee-company and the Apex Court in the case of CIT v. Lovely Exports P. Ltd. [2009] 319 ITR (St.) 5 (SC) has held that if share application money was received by assessee company from alleged bogus shareholders, whose names were given to the AO, then Department was free to proceed to re-open their individual assessments in accordance with law.
RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015 dated Apr 10, 2018

1932. The Tribunal upheld the CIT(A)'s order deleting the addition made on account of unsecured loan / cash credit with respect to which the assessee had not proved the genuineness of liability, noting that the assessment was completed by the AO u/s 144 by estimating net profit @ 12% [reduced by the CIT(A) to 8%]. It relied on the decision in the case of CIT Vs. G.K.Contractor [ITA No.13 of 2009 (Raj)] wherein it was held that even if assessee had failed to discharge his onus of proof in explaining cash credits shown in books of account, the AO having estimated higher profit rate on total contract receipts after rejection of books of account, no separate additions could be made on account of unexplained cash credit u/s 68.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. CLASSIC SUPPER CONSTRUCTION & ANR. - (2018) 52 CCH 0483 CuttackTrib - ITA NO. 57/CTK/2015, 180/CTK/2017 dated Apr 11, 2018

1933. Based on admission of 'one' person during the search operation that the group from which the assessee purchased goods was issuing bogus bills, the AO made addition in the assessee's case on account of the alleged bogus purchase. The Tribunal deleted the said addition noting that (i) the three suppliers from whom purchases were made had not only appeared before the AO but also filed an affidavit confirming the sales made by them (ii) they had filed book entries, bills, bank statements in support of their claim of genuine sales (iii) the assesse had made only export sales and there was no doubt about genuineness of such sales.
SHANTIVIJAY JEWELS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0354 MumTrib - ITA No. 1045/Mum/2016 dated Apr 13, 2018

1934. The assessee received discounted value of advance lease rental from MGPL for leasing of gas cylinders. The AO doubted the entire transaction and treated such sum as income of the assessee from undisclosed sources and made addition under Section 68 of the Act. CIT(A) upheld order of AO. The Tribunal deleted the addition made by AO and held that in context of cash credit in books of accounts, it was primarily liability of assessee to establish identity, genuineness of transaction and credit worthiness of donor. And that the Assessee was not required to establish source of source. However, the Court observed that MGPL virtually paid 80% of cost of equipment for taking it on rent. Since neither the assessee nor MGPL provided full details of payments made to assessee and that MGPL avoided producing its books of account citing reason of their incompletion, the Court held that the assessee could not prove the genuineness of the transaction. Thus, the revenue's appeal was allowed.
CIT vs. LABH LEASE & FINANCE LTD. (HIGH COURT OF GUJARAT) (R/TAX APPEAL No. 1242 of 2007) dated May 10, 2018 (102 CCH 0090)

1935. The Tribunal deleted the addition made by the AO u/s 68 treating the amount received on sale of shares of a company 'U' listed on recognized stock exchange (the price of which had increased 3100% in 24 months) to be unaccounted income. It held that the addition was made merely on suspicion and in a routine and mechanical manner. It noted that the AO had referred to a company 'S' as being the manipulated company, whereas the assesse had sold shares of 'U' company. Further, the AO had made general statements about various enquiry been carried out by the Directors of Income-tax which had resulted in unearthing of a huge syndicate of entry operators, share brokers and money lenders involved in providing of bogus accommodation entries. Noting that neither any report nor any evidence collected by DIT had been brought on record, it held that the evidence collected from third parties could not be used against the assessee without giving a copy of same to assessee and thereafter giving him an opportunity to rebut same. Thus, the Tribunal allowed the assessee's appeal holding that the assessee's submissions were backed by evidence whereas the revenue had not based its finding on any evidence.
PRAKASH CHAND BHUTORIA vs. INCOME TAX OFFICER - (2018) 53 CCH 0275 (Kol Trib) - ITA No. 2394/Kol/2017 dated June 27, 2018

1936. The Court dismissed assessee's appeal against the AO's order making addition u/s 68 on account of share application money received by the assesse-company from an HUF and another company, noting that the assesse could not establish the identity of the both the entities. It was noted that apart from the fact that the two alleged share applicants did not show up before the AO and the documents pertaining to the share applicants which were produced by the assessee did not demonstrate that such alleged applicants had invested in the share capital of the assessee, in the case of the HUF when some additional documents or information were sought, the stock excuse was that the relevant person was

"out of station". Further, with respect to the investor company, the AO made enquiries and discovered that the registered address of the said company was in a residential complex and none of the neighborhood knew about such company. The Court held that upon the identity of the person who has put in the money being established by the assessee, the onus is on the Revenue to discredit the explanation offered in terms of section 68, however, in the present case, the identities of the alleged share applicants could not be established. It thus held that since the AO had found on facts that there was no plausible explanation justifying the cash credits and the Tribunal accepted the same, no substantial question of law was raised.

J. J. DEVELOPMENT PVT. LTD. vs. COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0120 (Kol HC) - ITAT No. 329 of 2016 & GA No. 2631 of 2016 WITH GA No. 1308 of 2018 dated June 27, 2018

1937. The Tribunal allowed the assessee's appeal and deleted the addition made by the AO u/s 68 on account of share application money received by the assesse-company from another company, where the assesse had submitted all the relevant documents but the assesse could not produce the director of the investor company. It held that once all important and crucial documents were filed by the assessee to prove its case qua share capital received u/s 68, then simply harping on non-production of director in person before the AO could not be justified ground to draw adverse inference without adequate discharge of secondary burden lying on AO u/s 68. The Tribunal held that even if there was any doubt regarding the creditworthiness of the share applicants, then the AO should have made enquiries from the AO of the share subscribers as held by Hon'ble High Court in CIT vs Dataware Private Limited [ITAT No. 263 of 2011 (Cal HC)], in absence of which no adverse view could have been drawn. It held that the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus had shifted to the AO to disprove the documents furnished by assessee and the same could not be brushed aside by the AO to draw the adverse view.

MOTI ADHESIVES PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0249 DelTrib - ITA No. 3133/Del/2018 dated June 25, 2018

1938. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 on the alleged ground that the assesse had obtained accommodation entries in form of unsecured loans from entities. It was held that the AO had made addition only based on presumption and the statement of one of the concerned party which was also retracted later, noting that he did not make any efforts to conduct independent enquiries with the lender companies. It noted that nothing was placed on record to suggest that the information furnished by the assessee [in the form of copy of affidavit, establishing identify of the lender, copy of the ledger giving details of loans confirmation taken and also repayment in subsequent years, copy of bank statement highlighting the natures of loan taken and repayment in subsequent years to establish the genuineness of the transactions and copy of ITR -V filed establishing creditworthiness of the lender] were non-genuine. Further, it noted that the interest was paid through banking channel by the assessee on such loans and no cash was found even during the survey. It thus held that the assessee had discharged its onus as provided u/s 68.

ASSISTANT COMMISSIONER OF INCOME TAX vs. SHREEDHAM BUILDERS - (2018) 53 CCH 0212 MumTrib - ITA No. 5589/Mum/2017 dated June 22, 2018

1939. The AO made addition u/s 68 of cash deposited in the assessee's bank account, which the assessee claimed were on account of travel cheques and gift from father, but the AO didn't accept the said explanation. The Tribunal noted that generally after lapse of time, the details of traveler cheques are not available with the assessee but the assessee was not given credit also with respect to the amount withdrawn from his NRE A/c, which was evidenced by Bank entries. The amount gifted by his father was also withdrawn from his bank account and the father had given confirmation for such gift. It held that just because the confirmation was not dated, it could not be rejected. Further, it was noted that when the matter was remanded to AO by the CIT(A), the AO didn't make any enquiries and without rejecting the evidences filed by the assesse, simply disbelieved them. Noting that the assessee was a**n** NRI having substantial withdrawals from US and was also globe trotter being a senior employee, the Tribunal held that the explanation given by the assessee could not be simply rejected when he stated that he had encashed traveler cheques and deposited cash in bank account. It thus held that the amounts were explained and hence addition was not warranted.

VENU MYNENI vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 53 CCH 0216 (Hyd Trib) - ITA No. 2094/HYD/2017 dated June 22, 2018

1940. The Tribunal deleted the addition made by the AO considering the purchases made by the assesse from one party to be bogus purchases (since the said party was involved in providing fake bills), following the Tribunal decision in assessee's own case for an earlier year wherein it was noted that –

- the assessee-company had discharged its onus by providing all relevant evidences in supporting of said purchases
- the books of accounts of the assessee were duly audited
- the assessee also maintained Stock Register which was evident from Tax Audit Report
- the sales shown by the assessee of very same goods that has been found to be bogus and disallowed by the AO, had been accepted as correct

ALLOY STEEL EMPORIUM PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0205 KolTrib - I.T.A. No. 286/Kol/2017 dated June 20, 2018

1941. The Court dismissed **R**evenue's appeal against the Tribunal's order allowing the assessee's claim for speculation loss arising from off market commodity transactions, where the said transaction were considered to be bogus by the AO on the ground that the broker through whom the transaction were undertaken was expelled by the commodity exchange for issuing forged and fraudulent contract notes and the commodity exchange had informed that the transactions were not done in the name of the assessee. The Tribunal had held that there was no law to inform the exchange about the off market transactions and the fact that the broker was expelled could not be criteria to hold transaction as bogus. Further, the Tribunal had also held that all transactions through broker were duly recorded in books of the assessee as well as the broker and thus the transactions of commodity exchanged had not only been explained but also substantiated from confirmation of party duly supported with books of accounts and bank transactions. Noting that the no material had been shown which negated the Tribunal's above findings, the Court held there was **no** scope of **any** interference with the order of the Tribunal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. BLB CABLES AND CONDUCTORS PVT. LTD. - (2018) 102 CCH 0106 KolHC - ITAT No. 78 of 2017 GA No. 747 of 2017 dated June 19, 2018

1942. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO with respect to unaccounted production and sale, noting that no evidence of purchases and sales outside the books of accounts were brought before the authorities below. The Tribunal followed its earlier order in the assessee's own case wherein it was held that production loss depends on number of factors and in absence of any comparable to show that loss shown by the assessee was excessive, the appeal was decided in favour of the assesse.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (Mum Trib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June 18, 2018

1943. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 on account of share subscription money received by the assesse-company, noting that PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on the AO's record whereas the department was unable to bring any material to show that share application was in nature of accommodation entries. It held that the material with respect to the conditions as required u/s. 68 i.e. identity, creditworthiness and genuineness of transaction were placed before the AO and onus had shifted to the AO to disprove materials placed before him and the addition made by the AO, without doing so, was based on conjectures and surmises, hence, could not be justified.
INCOME TAX OFFICER vs. WIZ-TECH SOLUTIONSL PVT. LTD. - (2018) 53 CCH 0155 KolTrib - ITA No. 1162/Kol/2015 dated June 14, 2018

1944. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO u/s 68 on account of consideration received on sale of shares to seven companies with respect to which deduction u/s 54F was claimed. The AO had held that the parties to whom shares had been sold were not having income to explain purchases of shares by them but the AO had not investigated

genuineness of shares transfer due to paucity of time. The CIT(A) had deleted the addition noting that the assessee had discharged the onus of proving identity of parties to whom the shares were sold and the purchase of shares had been confirmed by all seven parties. The CIT(A) held that once the sale consideration was taxed u/s 45 (since it formed part of gross income), the same could not be taxed again u/s 68 and that addition u/s 68 was not called for since it was case where one asset got replaced by another asset and not of cash credit. It noted that the shares sold by the assesse were received by her as gift from her husband and the same was not doubted by the AO. Thus, the CIT(A) had assessed the income derived from transfer of shares in accordance of the provisions of section 64(1)(iv) and not section 68.

INCOME TAX OFFICER & ANR. vs. SHIKHA KHANDEWWAL & ANR. - (2018) 53 CCH 0159 DelTrib - ITA No. 3513/Del/2014 (CROSS OBJECTION NO. 234/Del/2017) dated June 4, 2018

1945. The AO made additions to the income of the (two) non-resident assessees, American citizens, for AYs 2003-04, 2004-05 & 2006-07 to 2008-09 with respect to deposits made to the HSBC Bank Account opened with the Geneva (Switzerland) Branch in Joint Name of the (two) assessees and sister of one of the asssessee. The CIT(A) had deleted the said addition on the premise that it was a foreign bank account of a non-resident and the deposits therein could not be added in the hands of the assessee individual. The Tribunal allowed the Revenue's appeal noting that –

- though the assessee had given up Indian citizenship in 2002 and accepted the citizenship of US, he had given his invalid Indian Passport to open the said bank account in 2002
- the assessee had not given any cogent response to the AO's query as to whether the assesse**e**s had disclosed these bank accounts to the US authorities
- other than for two remittances made, the assessees had not provided any details of the source of the amount credited to the said account

However, the Tribunal remitted the matter to the file of the AO to make further investigation into the source of the deposits in the bank accounts. Further, noting that addition of the same amount had been made in the hands of both the assessees (though the account was held in three joint names), it also directed the AO to apportion the amounts in the name of the account holders.

DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) vs. RAHUL RAJNIKANT PARIKH & ANR. - (2018) 53 CCH 0342 (Mum Trib) - I.T.A. No. 5889, 5568, 5890, 5891, 5892, 5893, 5567, 5569, 5570, 5897, 5572/Mum/ 2016 dated June 1, 2018

1946. The Court dismissed assessee's appeal filed against the Tribunal's order confirming the addition made by the AO as cash credit u/s 68 on account of certain deposits received in the bank account of the assessee, where the assessee had claimed that the said amount represented unsecured loans/ gifts received from various parties. It was noted that the Tribunal had recoded the finding that the assessee had not been able to prove that the source of the gifts were from agricultural income and past savings of the donors as the assessee had neither produced any bank statement (rather it was claimed that the donors were not maintaining any bank account) nor any bills, receipts, etc for sale of agricultural produce. The Court held that though all the concerned persons had given confirmations about giving the alleged gifts/ unsecured loans, the confirmations were required to be decided and/or considered along with the capacity / financial capacity of the concerned persons and that mere confirmation alone was not sufficient.

Sitaram Ramchanddas Patel v ITO - [2018] 95 taxmann.com 290 (Gujarat) - R/TAX APPEAL NO. 641 of 2018 dated June 26, 2018

1947. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made u/s 68 on account of money deposited in the foreign bank account [with HSBC Bank, Geneva, Switzerland] of the non-resident assessee, which was claimed by the AO to be sourced from India based on information received from the office of DIT (Inv.). It noted that the assessee had retired from a partnership firm in India in 1978 and became non-resident in 1979 and that he did not have any business operations in India. Further, noting the CIT(A)'s observation that a circumstantial evidence whenever used had to be conclusive in nature and the circumstantial evidences relied on by the AO nowhere led to the conclusion that the amounts in the alleged foreign bank account were sourced from India, the Tribunal held that there was no income which had deemed to accrue or arise to assessee in India and bank deposits of assessee in foreign country could not be taxed in India.

DCIT v Dipendu Bapalal Shah - [2018] 95 taxmann.com 171 (Mumbai - Trib.) - IT APPEAL NOS. 4751 & 4752 (MUM.) OF 2016 dated June 19, 2018

1948. The AO made addition of undisclosed income u/s 68 on the basis of certain material seized and impounded during the survey proceedings carried out at the business premises of the assessee and statement of directors of the assessee-company, which the AO opined to have revealed certain cash transactions with respect to sale of land. The Tribunal deleted the said addition *inter alia* noting that the directors had retracted their statements during the assessment proceedings. Further, noting that neither any agreement to sell was executed nor did the assessee have the absolute right to sell the said property as the same was in litigation, the Tribunal held that it was unlikely that an unknown person would give sizable cash to assessee even before agreement to sell was executed. The Court thus held that since the Tribunal, based on appreciation of evidence, had concluded that the Revenue had failed to bring on record sufficient evidence to show that cash was received by the assessee, no question of law arose.
Pr.CIT v Texraj Realty (P.) Ltd. - [2018] 95 taxmann.com 102 (Gujarat) - R/TAX APPEAL NO. 612 OF 2018 dated June 12, 2018

1949. The Tribunal deleted the addition made u/s 69 by the AO on basis of loose papers seized in course of search in respect of unexplained payments for purchase of flat, noting that the said papers only reflected a proposal to buy a flat which was later on cancelled. It further deleted the addition made u/s 69C in respect of certain cash payments not reflected in books of account, holding that since the said payments had been offered for tax as undisclosed income in return of income filed by the assessee's mother, it would amount to double taxation. The Tribunal also deleted the addition u/s 69A which was made by the AO based only on the statement of the assessee's secretary, that the assessee had charged certain amount for performing in weddings which was not accounted for in books of account. It was held that there was no evidence on record showing attendance of said marriage functions by the assessee and a mere statement by the secretary could not be said to be a conclusive proof of undisclosed income earned.
Ms. Priyanka Chopra v DCIT - [2018] 94 taxmann.com 122 (Mumbai - Trib.) - IT APPEAL NOS. 4565, 4569, 4601 (MUM.) OF 2015 dated June 1, 2018

1950. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO as unexplained cash credits u/s 68 on protective basis in respect of share application money received by the assessee-company from two companies whose 100% shareholding was ultimately held by two individuals, noting that an addition was made u/s 69 on substantive basis in the hands of the those two individuals in respect of their investment in the said two companies. It relied on the decision of the Hon'ble Apex Court in the case of CIT v. Lovely Exports (P.) Ltd. [2018] 216 CTR 195 (SC) wherein, while dismissing the SLP filed by the revenue, it was held that, "*if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to re-open their individual assessments in accordance with law*".
BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERS dated April 10, 2018

1951. Assessee had shown in cash flow statement receipt of DD Rs.13.65 lakhs for which assessee had not shown identity of person from whom it had been received and could not prove identity of creditors/genuineness of transactions and thus the AO treated the same as unexplained credit and made addition. CIT(A) upheld AO's order. The Tribunal observed that assessee was operating bank account in name of his employees which was admitted by assessee in his sworn statement recorded u/s. 132(4) which itself was an evidence. The assessee though agreed to treat account as suppressed receipts, only plea was that GP rate was to be considered on peak credit to estimate income. However the Tribunal held that whenever any unexplained deposits was found in name of assessee, then it was duty of assessee to explain source of same for which the assessee was not able to lead any evidence and thus whole deposit was to be considered as income of assessee since expenditure relating to receipts had already been taken care of by expenditure claimed in assessee's regular books of accounts.
K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18

1952. The AO made addition to assessee's income u/s 68 (Unexplained cash credit) opining that the alleged loan transaction from one LFPL was not genuine and stating that the assessee failed to prove the creditworthiness / source of the fund. CIT (A) upheld AO's order. The Tribunal observed that the issue pertained to AY 2010-11 whereas the amendment to S.68 (w.r to source of funds) introduced by Finance Act,2012 was applicable from AY 2013-14 i.e. not in the instant case(relying CIT v Gagandeep Infrastructure Pvt Ltd). Further, it held that assessee showed the necessary details to prove the genuineness and creditworthiness & thus the revenue's contention of assessee to explain the source of funds stood dismissed. Further, relying on Lovely Exports (supra) which provided that the Revenue, if aggrieved must proceed against the creditor/shareholder according to law, the Tribunal held that the AO was not entitled to invoke S.68 and accordingly deleted the addition u/s 68. The Court concurred with Tribunal's order and dismissed the Revenue's appeal.
PCIT v Veedhata Tower Pvt. Ltd (2018) 302 CTR 0490 (Bom) - INCOME TAX APPEAL NO. 819 OF 2015 dated 17.04.18

1953. The assessee was engaged in business of manufacturing of commercial/ blasting explosives etc. In the AY under consideration, the assessee manufactured explosives and sold to its customers. The AO observed that average value of opening and closing stock was higher than sale price shown by assessee and difference of amount was treated by AO as under reporting of sales which was added to total income of assessee. CIT(A) deleted addition made by AO. The Tribunal upheld CIT(A)'s order on the following grounds : (1) The valuation of closing & opening stock could not be basis of making addition in hands of assessee on account of suppression of sales in view of fact these were two different accounting principles & couldn't be compared (2)The books of a/c were duly audited without defects in the audit report and Sales was made mainly to big institutional houses, public sector under takings through tender system thus in such scenario there remained no scope for manipulating sale price. (3)Assessee had declared value of opening and closing stock of goods after including element of Excise duty whereas sale price was net of excise duty, therefore both stock and sale price could not be compared for purpose of determining suppressed sale.
DCIT & Anr vs Indian Explosives Ltd. & Anr (2018) 52 CCH 0416 KolTrib - ITA No. 58/Kol/2014 (C.O. No. 22/Kol/2015) dated 27.04.2018

1954. The assessee had purchased a land to set up factory and office building. AO found that land was purchased at rate of Rs.1550 per sq meter and total cost came to Rs.41,34,051 while as per cash flow statement cost of land was shown at Rs.12,63,773 and thus added difference of two to total income by treating it as undisclosed investment in land. CIT(A) upheld order of AO. The Tribunal observed that there was reference of statement of one K.C Thomas in assessment order and adopted value of property at Rs.1550 per sq meter on basis of statement of K C Thomas in whose favour power of attorney was obtained. Further, land was purchased in AY under consideration from 16 different owners and enquiry was not made with these persons regarding extra payment. Thus the Tribunal remitted the issue to the AO with a direction to the AO to furnish a copy of the statement of Shri K.C. Thomas and also to enquire with the respective seller and decide with fresh consideration. Thus the ground of appeal was allowed for statistical purpose.
K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18

1955. The AO added certain amount to the total income of the assessee on the ground that, on perusal of AIR data there was discrepancy in income in AS-26. The AO required assessee to submit explanation as to why the alleged transactions were not appearing in Books of Accounts. The assessee claimed that at the first place, there were no such transactions and thus the same did not appear in Books of Accounts. However, AO rejected the claim and CIT(A) confirmed the addition. The Tribunal followed M/s. A.F. Ferguson & Co. v. JCIT and held that AO failed to make any enquiries with parties when assessee was denying any transactions with them and when assessee was denying any transactions with parties, onus was on AO to verify transactions with parties and to establish that assessee indeed entered into any transactions with said parties and had received income from them and since no such enquiries or effort was made by AO to find out whether assessee entered into such transaction with parties, the Tribunal deleted the addition.

ACIT v Zee Media Corporation Ltd. & Anr (2018) 52 CCH 0322 MumTrib - ITA NO. 2166/MUM/2016, 2695/MUM/2016 dated 16.04.2018

1956. The assessee, an individual was engaged in business of manufacturing and trading of ornaments and jewellery. On search and seizure, it was found that assessee had entered into one transaction of purchase of diamond from N and thus AO reopened assessment regarding the said transaction as bogus purchase on the basis that payment against diamonds purchased by assessee from N was made after period of 21 days and it was hard to believe that seller from Surat would give credit of 21 days to unknown buyer in Kolkata. The AO added the amount of payment to the total income of assessee and CIT(A) confirmed the addition. However, during the course of assessment proceedings, the assessee had explained that the purchase vide bill was genuine and payment was settled by cheque transaction and also the quantity of diamond purchased not only was entered in the stock register but also corresponding sale of the same was duly recorded. To support the explanation, relevant documentary evidence were also filed before the AO. The Tribunal held that the evidence was brushed aside by lower authorities only on the ground that there was some delay in payment and also that no enquiries were made by lower authorities to verify the claim which was supported by documentary evidence by assessee and thus, deleted the addition made by AO and CIT(A).
Gautam Kumar Pincha v ITO (2018) 52 CCH 0301 KolTrib - ITA No. 2302/Kol/2017 dated 11.04.2018

1957. The assessee, engaged in manufacturing and export of stainless steels etc, incurred business expenditure by way of Polishing Charges. The AO asked the assessee to furnish complete details along with confirmation of persons who had done polishing work to which the assessee submitted names of all 18 parties/persons along with their addresses, PAN and amount paid along with quantitative details of polishing. Thereafter, AO issued notice u/s 133(6) to the said parties [power to call for information from other persons] and since some letters returned unserved and some of the parties' reply was not received, the AO disallowed 50% of total polishing charges. The CIT(A) confirmed AO's order. The Tribunal dissented with the lower authorities and held that merely because the parties failed to respond to notices u/s 133(6) it could not be used against assessee to disallow those expenses, when the PAN of those persons were provided and also assessee had deducted tax at source on those payments. However, noting that on identical issue the Tribunal in earlier year had upheld the disallowance upto 15%, it held that some disallowance was to be made based on the history in earlier year and facts of present year. Accordingly, the Tribunal directed the AO to limit the disallowance only to the extent of 5% of total expenses.
Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

1958. The assessee was earning rental income by way of cold storage of products in its premises. On survey, the AO found boxes of apples in the assessee's business premises and held that the assessee failed to provide the details of parties to whom the apple boxes belonged and thus, made addition to the total income of undisclosed income treating the boxes to be the stock-in-trade lying in the premises. The CIT(A) deleted the addition. The assessee contended that its business was just to store the products given by the owners of the products and collect rent from them for storing and if assessee demanded details like addresses, PAN etc information for mere storage, the assessee would've lost business to some other cold storage. The Tribunal held that since assessee was only interested in rent received from persons who delivered goods for storage and then took these back on payment of rent as per gate pass, it could not be said that the products were stock of assessee and that there was any scope of undisclosed source of income. Thus, it upheld CIT(A)'s order deleting the addition.
ITO v C.C. Cold Storage (2018) 52 CCH 0545 ChdTrib - ITA No. 1137/Chd/2016 dated 09.04.2018

1959. The AO held that the share application money received by assessee company from company G was unexplained and sham in as much as the said company was not in de-factor existence and thus added same u/s 68. CIT(A) deleted the addition of share application/premium made by the AO noting that it was assessee's group company (having common director) who had made impugned investment. CIT(DR) concurred with the AO holding that the investor company had adopted cash deposit root to reinvest same in assessee's stake holding (i.e infusing cash into the accounts and within a short while

withdrawing the same to pay for the shares). The Tribunal held that the Revenue had failed to bring on record any such cogent material indicating G to have first deposited cash sums followed by its reinvestment in assessee's share holding and also any material to indicate any misappreciation of evidence by the CIT(A).It held that since the assessee had produced its common director before AO with all necessary details viz certificate of incorporation, return of income, computation, tax audit report, audited account, bank statement, etc and also was able to prove all three components of identity, genuineness and creditworthiness of impugned share application/premium amount to have come from its group company G,the same could not be added to assesse's income as 'Unexplained cash credits' u/s 68. Accordingly, the Tribunal dismissed the Revenue's appeal.
DCIT v Gyscoal Alloys Ltd. (2018) 52 CCH 0307 AhdTrib - ITA No. 102/Ahd/2014 dated 06.04.2018

1960. The Court upheld the order of the Tribunal deleting additions on account of suppressed sales which were made a) solely based on information received by AO from Central Excise Department b)without bringing any independent material on record to justify the same.
PCIT v Vrundavan Ceramics (P.) Ltd. [2018] 95 taxmann.com 13 (Gujrat) – R/TAX APPEAL NOS. 78, 79, 82, 83 TO 91, 94 & 95 OF 2016 dated 25.04.2018

1961. The Court reversed the order of the Tribunal and confirmed the addition made u/s 68 r. w S.158BB where in course of block assessment proceedings, AO made addition to assessee's undisclosed income in respect of gift, in view of fact that assessee did not even know donor personally and, moreover, he himself in presence of his Chartered Accountant had made a statement under sec. 132(4) admitting that said gift was bogus.
CIT v M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi) – ITA NOS. 169 OF 2005 dated 23.04.2018

1962. The Apex Court dismissed the Department's SLP against order of the Court wherein it was held that where AO had made addition to income of assessee by way of unexplained cash credit only on presumption that loan was not found to be reflected in balance sheet of donor, since assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified.
PCIT v Bhanuprasad D. Trivedi [2018] 94 taxmann.com 114 (SC) – SLP (CIVIL) DIARY NO. 11011 OF 2018 dated 04.05.2018

1963. The Apex Court dismissed Department's SLP against order of the Court wherein it was held thatwhere purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, AO was not justified in treating said purchases as bogus under section 69C.
PCIT v Tejua Rohitkumar Kapadia [2018] 94 taxmann.com 325 (SC) – SLP (CIVIL) DIARY NO. 12670 OF 2018 dated 04.05.2018

1964. During search at assessee's residential premises, Jewellery of 2531.5 gms was found. AO had given assessee benefit of 950 gms. on account of wife and two children and balance was added as unexplained investment under section 69A. The Tribunal held that since assessee belonged to a wealthy family and jewellery was received on occasions from relatives, excess jewellery was very much reasonable and, thus, no addition under section 69A was called for.
Vibhu Aggarwal v DCIT [2018] 93 taxmann.com 275 (Delhi – Trib.) – ITA NO. 1540 OF 2015 dated 04.05.2018

1965. The Tribunal held that where on transfer of an employee to assessee company from its group company, transferor company had transferred a cheque in respect of amount payable to said employee on account of gratuity and leave encashment and claimed same as an expenditure but assessee did not pay said amount due to employee even on his retirement but showed it as 'current liability' payable in its balance sheet, addition under section 68 of such amount to assessee's income on mere suspicion that assessee might also claim it as an expense in future was unjustified.
ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018

1966. The Court held that where AO made addition under section 68 in respect of increase in share capital of assessee-company, in view of fact that addresses of most of purported shareholders were identical and they could not be traced out despite notice issued under section 131, Tribunal was justified in confirming impugned addition.
DRB Exports (P.) Ltd v CIT [2018] 93 taxmann.com 490 (Calcutta) – ITAT NO 218 OF 2016 dated 07.05.2018

1967. The Apex Court dismissed the SLP filed against the High Court's order wherein the High Court had deleted the addition made u/s 68 on account of receipt of share application money where then the assessee had expressed its inability to produce all persons/share applicants for examination but the share applicants were identifiable persons having capacity and creditworthiness of making share application.
CIT v Jalan Hard Coke Ltd.[2018] 95 taxmann.com 331 (SC) – SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 16078 OF 2018 dated 15.05.2018

1968. During search proceedings, 'T', accommodation entry provider submitted that he received cash from assessee & in return gave entry of share capital in form of cheque and thus, the AO concluded that the share premium and share application money was unexplained credit u/s 68. However, it was found that T's statement was recorded behind assessee's back without giving assessee an opportunity to cross-examine. Further, assessee had also furnished the declaration of director of share applicant company, share application form, certificate of incorporation from Registrar of Companies as well as income-tax return of share applicant-company and AO did not make any verification about the said documents. Thus, the High Court had held that the addition u/s 68 was uncalled for. The Department's SLP filed against the High Court's order was admitted by the Supreme Court.
PCIT v Best Infrastructure (India) (P.) Ltd [2018] 94 taxmann.com 115 (SC) – SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 14821 OF 2018 dated 14.05.2018

1969. The assessee company allotted equity shares of face value of Rs. 10 each at premium of Rs. 10 each. The AO made an addition under Section 68 as the premium charged was in excess of the intrinsic valuation of shares and since the assessee could not offer satisfactory explanation. Relying on the ruling of the jurisdictional High Court in Vodafone India Services Pvt. Ltd. (368 ITR 01) and the ruling of the coordinate bench in Green Infra Ltd. (ITA No. 7762/Mum/2012 dated 23.08.2013) and the CBDT Instruction No. 2/2015 dtd. 29.01.2015, the CIT(A) held that share premium could not be treated as income of the assessee. The Tribunal upheld deletion made by the CIT(A) and held that the since the AO had made disallowance by relying on the of facts which were not supported by incriminating material / evidences on record, disallowance under Section 68 could not be made
DCIT vs. Finproject India Private Ltd – [2018] 53 CCH 0001 (Mum ITAT) – ITA No 4860/Mum/2016 dated May 2, 2018

1970. Where the assessee issued share capital during the year under review, but the shareholders were not traceable and the assessee could not produce them before the AO or the CIT(A), Tribunal upheld the order of the AO and the CIT(A) and held that addition under Section 69 of the Act was sustainable as the assessee was not able to prove genuineness of transactions and the creditworthiness of the investing companies. While doing so, Tribunal observed that merely submitting the copies of return of allotment in form no 2 filed with MCA or the resolutions passed by the assessee / investing companies have CIN was not sufficient as these are merely ministerial / administrative functions which needs to be done in any case by all the companies allotting shares.
ITO vs. Krishnav Construction P. Ltd. – [2018] 53 CCH 0004 (Kol ITAT) – ITA No 1942/Kol/2016 dated May 4, 2018

1971. Where the assessee could not could the produce the party who had deposited cash in his bank account, the AO treated such amount as unexplained cash credit under Section 68 of the Act by holding that the assessee could not prove the genuineness of transaction and creditworthiness of the party. The

Tribunal deleted the said addition made by the AO and confirmed by CIT(A) by holding that assessee had discharged his onus by producing evidences (i.e. name, address, PAN, bank account, accounts statements, Income Tax Returns, affidavits and confirmations regarding / from the creditor) and that the assessee could not be faulted for non-appearance of its creditors as it was well within the AOs powers to ensure their presence.

B. R. Oil Industries vs. DCIT – [2018] 53 CCH 0030 (Agra ITAT) – ITA No 171 of 2016 dated May 10, 2018

1972. The assessee had raised share capital during the year from six shareholders, out of whom three were the 'original shareholders' of the company. The AO observed that the onus to prove the identity, genuineness and creditworthiness of the three 'new shareholders' was on the assessee and since he failed to do so, the AO treated the said amount received from the new shareholders as unexplained cash credit under Section 68. The Tribunal upheld the order of the CIT(A) wherein it was held that since the new shareholders, who contributed to 89% of the total share capital of the company, were not traceable, the sanctity of their confirmations, documents filed by the assessee was lost. The Tribunal also held that merely saying that return of allotment in Form no 2 was filed with the MCA or that resolutions were passed by the assessee or these companies have CIN, was not sufficient as these were merely ministerial/administrative functions.

PRATIK SYNTEX PRIVATE LTD. vs. INCOME TAX OFFICER – [2018] 53 CCH 0042 (Mumbai ITAT) – ITA Nos. 6690/Mum/2016 dated May 11, 2018

Miscellaneous

1973. Where the assessee faced a delay of 37 days in filing of its return of income owing to the fact that its erstwhile auditors refused to complete the audit due to a qualification vis-à-vis the valuation in a business transfer, which was communicated to the assessee on the last date of filing of return, pursuant to which the assessee obtained an NOC and got its accounts audited by another auditor, the Court held that the CBDT was unjustified in refusing to condone the delay (application for which was made under Section 119 of the Act). The Court held that the assessee had satisfactorily explained reasons for the delay in filing of its return and that the CBDT was incorrect in refusing to condone the delay on the ground that the assessee failed to prove that the delay was caused due to the professional misconduct of the auditor. Accordingly, the Court set aside the order refusing to condone delay issued by the CBDT.

REGEN POWERTECH PRIVATE LTD. vs. CENTRAL BOARD OF DIRECT TAXES - (2018) 101 CCH 0117 ChenHC W.P. No. 24273 of 2016 dated Mar 28, 2018

1974. Where e-returns filed by assessees were forwarded by CPC to AO for processing, but were not processed within the time-frame prescribed u/s. 143(1) second proviso as proper ITBA software was not available, the Court, referring to Centralized Processing of Return Scheme, 2011 and the relevant CBDT notifications of January, 2012, held that there was no provision in both the notifications which laid down that after the returns were sent to AO, if he found that the returns could not be processed on ITBA or any other software, the same could not be processed manually. The Court directed expeditious processing of assessees' returns for AYs 2014-15 to 2016-17 within 2 weeks' time and issue of refunds (if any) within 3 weeks' time. It directed Govt/CBDT to issue necessary directions to IT Department permitting manual processing in such cases within one month of the judgment. The Court expressed surprise regarding absence of order of priority laid down by any authority which would bind the AO for processing of returns and held that there could not be a pick and choose policy. It directed CBDT to formulate a 'rational' policy for processing of returns without any arbitrariness within 2 months

Tata Projects Limited - TS-1-HC-2018(BOM) - WRIT PETITION NOs. 782 & 2051 of 2017; WRIT PETITION (L) NO. 2498 of 2017 dated 21.11.2017, 22.11.2017 & 23.11.2017

1975. The Court held that AO can exercise jurisdiction u/s 179(1) for recovery from directors of a private company only when it fails to recover its dues from such company and that such jurisdictional requirement cannot be said to be satisfied by a mere statement in the order that recovery proceedings had been conducted against the defaulting company. It was held that since the show cause notice issued u/s 179(1) did not indicate or give any particulars in respect of steps taken by department to

recover tax dues from defaulting private company, the impugned order passed u/s 179(1) was to be set aside.

Madhavi Kerkar v ACIT - (2018) 253 Taxman 288 (Bom) - Writ Petition No. 567 of 2016 dated 05.01.2018

1976. The Tribunal rejected revenue's request for constitution of special bench with respect to issue of software taxation involving assessee group's various companies wherein Tribunal in its original order had held that receipts from sale of software are not taxable as 'royalty' on the ground that –

- Firstly, a reference to constitute a Special Bench must flow from the members and not from the parties to the case
- Furthermore, such a reference can be made by the members when they do not agree with the view taken by the earlier order of the Tribunal

DDIT v Reliance Communication Ltd - TS-2-ITAT-2018(Mum) - ITA No.4672/Mum/2007 and other appeals dated 03.01.2018

1977. The Court dismissed writ petition of the assessee filed for grant of stay as the assessee and Tax Recovery Officer (TRO) willfully disobeyed the instructions of the Court. The Court in its earlier order had refused to grant ad-interim stay to the Tribunal's order requiring the assessee to pay certain amount to revenue for keeping the remaining demand in abeyance. However, assessee-society's President wrote a letter to the bank stating that the High Court, through 'oral' directions, had instructed the tax department to not withdraw the funds received by the assessee in its bank account. TRO also wrote to bank stating the High Court through 'oral' directions, had instructed the department to allow assessee to withdraw funds; whereas no such directions/ instructions were given by the Court. The Court directed initiation of civil as well as criminal contempt against the assessee-society's President and TRO and appreciated Senior counsel J. D. Mistry's conduct, who withdrew himself as petitioner's counsel, acted as an officer of Court and brought to the notice of the Court the facts of the case.

Sinhgad Technical Education Society v DCIT - TS-6-HC-2018(BOM) - WRIT PETITION NO. 13099 OF 2017 dated 05.01.2018

1978. The Court dismissed Revenue's writ filed against the grant of stay by Tribunal on payment of certain of amount, with exemplary cost of Rs. 50,000 each, to be paid personally by 2 Pr.CITs & an ACIT, for their irresponsible and unfair behaviour in filing the writ petition just for the sake of proving their 'fictional desires'. It held that the entire demand raised was prima facie not even sustainable as the controversy was apparently covered in assessee's favour by non-jurisdictional High Court and jurisdictional Tribunal bench decisions.

ACIT v Epson India Pvt Ltd - TS-19-HC-2018(KAR) - Writ Petition No.12913/2017 (T-IT) dated 09.01.2018

1979. Where in course of investigation on FIR of an individual, police recovered certain amount in cash and applications filed by department in session court for interim release and possession of currency seized by police were dismissed, on such dismissal being challenged by the department before the High Court on ground that it was entitled to the possession of money as the same was unaccounted money of individual under provisions of Act, the Court held that department was entitled to retain cash till final conclusion of proceedings under Act.

Vipul Chavda v State of Gujarat - (2018) 253 Taxman 263 (Guj) – Special Criminal Application possession of muddamal No. 10055 of 2017 dated 18.01.2018

1980. The assessee, non-resident Indian, filed a Petition before the CBDT for condonation of delay of 1232 days in filing of return of income on the ground that the delay occurred as there was severe financial crises in the USA and also that she had been injured in an accident (for which she filed a medical report). The CBDT rejected the petitioner vide order under Section 119(2)(b) of the Act wherein it dimissed the assessee's explanation and held that since the assessee had a professional advisor, she should have filed the returns on time. The Court in Writ Proceedings held that the explanation offered by the assessee was acceptable and genuine and accordingly remanded the matter to the CBDT directing it to condone the delay in filing of return.

Smt. Dr. Sudha Krishnaswamy v Chief, Commissioner of Income-tax, (Intl. Taxation - [2018] 92 taxmann.com 306 (Karnataka) - WRIT PETITION NOS. 15891-15893 OF 2016 dated MARCH 27, 2018

1981. Where there was no material to establish that assessee, a Non-Executive Director of the company, was in-charge of day-to-day affairs, management, and administration of his company, the Court held that the AO could not have named him as Principal Officer and prosecute him under section 276B for TDS default committed by his company.
Kalanithi Maran v UOI - [2018] 92 taxmann.com 308 (Madras) W.P. NO. 34010 OF 2014 dated MARCH 28, 2018

1982. The assessee filed an application before President of Tribunal for constitution of Special Bench as well as transfer of its matter from Bangalore to another bench for disposal of its appeal. The President rejected both the applications and directed the Touring Bench in Bangalore to dispose of assessee's appeal pursuant to which the assessee filed a writ petition wherein the Single Judge passed an order directing Tribunal to decide assessee's appeal in expeditious manner by stating that "a direction is issued to the Appellate Tribunal, Bengaluru Bench to hear and dispose of the appeals by its Members in an expeditious manner, on or before 16/04/2018". In appeal, the Court dismissed the assessee's contention raised in petition against the order of the Single Judge that the Single Judge had practically confined the matter to be heard only by the Members of the Bengaluru Bench of the Tribunal and had therefore wrongfully assumed the powers of the President of the Tribunal. It noted that the learned Single Judge passed the order impugned only after taking note of the fact that the President had rejected the prayer of the appellant for transfer of the appeals outside Bengaluru and therefore dismissed the assessee's contention.
Google India (P.) Ltd. v DCIT (IT) - [2018] 91 taxmann.com 21 (Karnataka) - WRIT APPEAL NOS. 828-829 OF 2018 (T-IT) dated MARCH 1, 2018

1983. The Court dismissed the assessee's writ petition and confirmed Revenue's initiation of Special Audit u/s 142(2A) rejecting assessee's contention that assessment proceedings for AY 2009-10 had been abated and time barred due to non-communication of order requisitioning special audit before March 31, 2013. It noted that the AO had issued a show-cause notice for special audit on March 21, 2013 and passed order requiring special audit on March 30, 2013 and dismissed assessee's contention that since it had received the order only after March 31, 2013 (i.e. last date for completion of assessment) the assessment was time barred and held that the order u/s 142(2A) would stand communicated when it was sent out (i.e. before March 31, 2013) as it went out of AO's control and there was no chance to change his mind or modify order. Accordingly, it held that the period of exclusion for limitation to pass assessment order in terms Explanation 1 to Sec. 153, would commence from the date on which AO directed assessee to get his accounts audited u/s 142(2A) and not the date on which assessee received the order, and since the order of special audit was despatched before March 31, 2013, it held that the assessment was not time barred.
Nokia India (P.) Ltd v Add CIT - [2018] 92 taxmann.com 76 (Delhi) - WRIT PETITION (CIVIL) NO. 2974 OF 2013 dated MARCH 6, 2018

1984. The assessee-company deducted an amount as TDS but failed to credit same in account of Central Government. However, later on, assessee credited amount of TDS with interest. The Commissioner issued sanction order to prosecute assessee for offence committed under section 276B, pursuant to which the assessee filed a writ petition against sanction order. The Court noted that on criminal complaint being preferred, the Additional Chief Metropolitan Magistrate had already taken cognizance of issue of non-depositing of TDS by assessee and issued summons to assessee for appearance and to face trial and in view of the fact that trial had already been initiated against assessee in criminal court, it held that it would not be fair or proper for it to decide question of validity of sanction order on merits as it would amount to a pre trial adjudication and held that the questions and issues relating to issue of sanction order could be raised and decided during trial. Accordingly, it dismissed assessee's writ.
Indo Arya Central Transport Ltd v CIT (TDS) - [2018] 92 taxmann.com 129 (Delhi) - WRIT PETITION (CIVIL) NO. 3964 OF 2017 dated MARCH 12, 2018

1985. The Court refused to lift attachment on immovable property purchased by Petitioner from a tax defaulter, noting that demand notice under Rule 2 of second schedule (as mandated u/s. 281) was served upon tax defaulter prior to the execution of the sale transaction. It held that the moment such a notice was served by virtue of Rule 16(1) of the second schedule, the defaulter became incompetent to deal with the property and therefore as per Section 11 of the Contract Act 1872, he could not have passed any valid or legal title to the purchaser (Petitioner). It rejected the Petitioner's stand that the defaulter vendor ceased to have any interest in the property on the date when attachment was made, and held that as per Rule 11(3)(a) (pertaining to immovable property), the date of attachment was not relevant. However, it quashed TRO's order to the extent it declared the transaction as null and void and held that only a civil court could declare a transaction as null and void.
D.S.Senthilvel vs Tax Recovery Officer - TS-166-HC-2018(MAD) - W.P (MD) Nos.2932 to 2939 of 2018 dated 07.03.2018

1986. Where assessee filed its return after five months, and nearly after a period of four years filed an application before CBDT to condone delay in filing return, for sole reason of illness of auditor, the Court held that since the details of illness and any respective proof, namely, doctor's prescription, was not given, delay could not be condoned.
B.U. Bhandari Nandgude Patil Associates v CBDT - [2018] 91 taxmann.com 241 (Delhi) - WRIT PETITION (CIVIL) NO. 6537 OF 2017 dated MARCH 12, 2018

1987. The Court dismissed the assessee's Petition praying for condonation of delay in making payment of the third installment of undisclosed income under the Income Declaration Scheme Rules, 2016 and held that the reasons given by the Petitioner i.e. that she was 70 years of age and suffering from ill health which had become a hurdle in her day-to-day work and that she had forgotten to pay the third installment was unbelievable and a lame excuse. It observed that such declarations were unique and made after due deliberation and thought and further observed that the amount payable towards the third installment was substantial and therefore concluded that it was clear that the Pfetitioner was unable to pay the amount, and thereafter pleaded and attributed it to loss of memory. It held that the time period fixed was mandatory and had to be adhered to and accordingly dismissed the petition challenging the order of the CBDT denying it condonation of delay.
MEENA RASTOGI vs. CENTRAL BOARD OF DIRECT TAXES & ANR. - (2018) 101 CCH 0168 DelHC - W.P.(C) 1219/2018, CM Nos.5050-5051/2018 dated Feb 9, 2018

1988. The Court set-aside Central Information Commission's ('CIC') order directing the CBDT to supply the information pertaining to the net wealth of certain MLAs and MPs under the Right to Information Act, 2005 ('RTI'). It noted that the respondent (an individual) had alleged that the net wealth of certain MLAs and MPs had increased five-fold and CBDT had denied the information on the ground that the affidavits submitted by MPs and MLAs disclosing their assets were forwarded to DG (Investigation) for verification, and pending such 'investigation', the information (including DG's responses) was exempt from disclosure u/s. 8(1)(h) of the RTI Act. At the outset, the Court rejected CBDT's stand on Sec. 8(1)(h) exemption and held that verification from records could not be termed as an 'investigation' and that regular assessment proceedings could not be considered as part of 'process of investigation'. However, it held that the DGIT (Investigations) was listed as excluded offices from RTI applicability (under the Second Schedule as contemplated u/s. 24 of the RTI Act) and accordingly concluded that the CBDT was right in denying information.
Satya Narain Shukla -TS-98-HC-2018(DEL) - W.P.(C) 5547/2017 & CM No. 23333/2017 dated 19.02.2018

1989. The Apex Court refused to interfere with the order of the Bombay HC directing initiation of civil and criminal contempt proceedings against the President of Sinhgad Technical Education Society (assessee) as also against the Tax Recovery Officer ('TRO') for misrepresenting the order of the Court and for wilful disobedience of Court's order. It noted that subsequent to HC's refusal to grant relief against Tribunal's order to deposit Rs.18 cr., President Mr. Navale had filed communications before the Bank officials & TRO, claiming that the Court, through 'oral' directions, had allowed assessee to withdraw funds received by it in its bank account (post this communication the assessee withdrew Rs. 9 cr from bank account received from Social Welfare Department). Similar misrepresentation was also

made by TRO to the assessee's bank. Noting the undisputed and agreed position between the parties that no such 'oral' instructions were given by the Court, the Court had held that the conduct of Mr. Navale and TRO amounted to wilful disobedience of the Court's order. Accordingly, the Apex Court refused to interfere with the order of the Court but also stated that the Petitioner had the remedy of approaching the High Court to tender an unqualified apology and also to make the offer of payment/deposit as was made before it. It held that the High Court was free to pass such order as it may be consider appropriate.

Sinhgad Technical Education Society [TS-53-SC-2018] - PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 3703/2018 dated 09-02-2018

1990. The Apex Court dismissed Revenue's SLP filed against the High Court's order allowing credit of advance tax paid and TDS paid against the tax payable under the Income Declaration Scheme, 2016 (IDS) where the assessee had not filed return u/s 139 from AY 2010-11 onwards owing to non-audit of accounts, however had paid advance tax for past 5 years, credit for which had been claimed along with TDS while making declaration under IDS.

Kumudam Publications [TS-46-SC-2018] – SLP (CIVIL) Diary No(s). 33000/2017 dated 29.01.2018

1991. The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had quashed the block assessment for the block period 1989-90 to 1999-2000, holding the notice issued u/s 158BC by the AO, Nagpur to be without jurisdiction. The CIT, Raipur (pursuant to search operations carried out) had transferred the assessee's case u/s. 127 from Rajnandgaon to Nagpur in July, 1999 which was set-aside by the MP High Court, however, the CIT had passed fresh order of transfer u/s. 127 (similar to earlier order) in 2000 pursuant to MP High Court directions and the Revenue contended that by virtue of subsequent order of 2000, the earlier order of 1999 passed u/s 127 stood revived and consequently the AO, Nagpur would retrospectively enjoy the status of the AO even on the date when notice was issued. The High Court had held that transfer of proceedings u/s 127 could not be retrospective so as to confer jurisdiction on a person who does not have it.

CIT v Lalit Kumar Bardia [TS-11-SC-2018] – SLP (CIVIL) Diary No(s). 40053/2017 dated 09.01.2018

1992. The Apex Court set aside the order of High Court quashing the notice issued u/s 143(2) and held that since it was due to the non-availability of assessee to receive the impugned scrutiny notice sent by registered post as many as on two occasions that the notice was served on the authorized representative of the assessee whom the assessee had disowned, it was sufficient to draw an inference of deemed service of notice on assessee and there was sufficient compliance of requirement of section 143(2).

ITO v Dharam Narain – (2018) 301 CTR 41 (SC) – Civil Appeal No.(S) 2262 of 2018 dated 19.02.2018

1993. The Mining department had failed to collect TCS from payment of various settlements of Sand Ghats, including the payments made by asssessee, and the assessee was called upon by the ITO as per section 226(3) to deposit the sum being income-tax liability of Mining department followed by arbitrarily deduction of the said amount from bank account of assessee by the Income-tax authorities. The Court held that section 226(3)(x) does not confer arbitrary power to Income-tax department to recover amount of tax liability of mining department from the innocent assessee after surrender of settlement and such an action was most unreasonable, in view of the fact that (i) no action was taken by Income-tax department against Mining department for failure to deposit TCS u/s 276B and 276BB (ii) Income-tax department had not carried out any factual enquiry to examine whether there was any liability to be paid by assessee in connection with settlement of Sand Ghat (iii) settlement surrendered by assessee was accepted by Govt. and after such surrender, order u/s 226 was passed. The Court, accordingly, directed the Income-tax Department to forthwith return the said amount with interest.

Sainik Food (P.) Ltd. v Pr.CIT – (2018) 92 taxmann.com 9 (Patna) – Civil Writ Jurisdiction case no. 16778 of 2017 dated 08.02.2018

1994. Where the assessee who had filed declaration of undisclosed income under Income Declaration Scheme, 2016 had paid only 50% of total tax, surcharge and penalty in two instalments and had filed an application to Chairman, CBDT seeking extension of time for making payment of third instalment on

the reasoning that he was involved in office work and marketing activities and forgot to pay third instalment, the Court held that the order passed by Chairman, CBDT rejecting the prayer for extension, did not require invoking of writ jurisdiction since assessee had not made out an extraordinary cause for grant of further time, even if it is assumed that time stipulated under Scheme could be extended by Board u/s 119(2).

Siddharth Rastogi v Central Board of Direct Taxes – (2018) 402 ITR 17 (Del HC) – W.P. (C) No. 1069 & 1070 of 2018 CM Nos. 4455 to 4458 of 2018 dated 05.02.2018

1995. The Court held that where the Petitioner had voluntarily agreed for compounding of offence and had undertaken to pay to the department compounding charges and to withdraw his appeal as per the Guidelines on Compounding of Offences, 2014, issued by the CBDT, he was bound by the same and that merely because, due to delay attributable purely to Petitioner, amount of compounding charges turned out to be much higher than principal and interest, the compounding charges would not per se be rendered illegal or arbitrary. It held that compounding fee is in nature of a payment made to avoid punishment for a criminal offence and the same could not be merely compared with principal and interest charged but had to be adjudged from point of view of long duration during which there was wilful non-payment of taxes. It further held that Explanation to section 279 vests CBDT with powers to issue circulars, orders, instructions or directions for proper composition of offences and CBDT Guidelines on Compounding of Offences, 2014, issued under such power were exhaustive in nature and did not reflect any exercise of power which was arbitrary or illegal

Vikram Singh vs. Union of India – (2018) 401 ITR 307 (Del HC) - W.P.(C) No. 6268 of 2017 dated 23.01.2018

1996. Where the assessee had filed compounding application u/s 279(2) with respect to prosecution proceedings initiated against it for failure to remit TDS and the said application was rejected for non-payment of compounding fees as the assessee had disputed its quantum, the Court rejected the assessee-petitioner's contention that when there was a genuine dispute about the quantum of compounding fee payable by them, it was not open for Pr. CCIT to reject the application for compounding, without first resolving the dispute. It rejected the assessee's plea that reduced compounding fee @ 3% was applicable in view of the revised CBDT guidelines of December 2014, since the revised guidelines were applicable only to compounding applications filed after January 1, 2015 and the guidelines that were in existence at the time of filing of the compounding application in August, 2014 (which prescribed for higher compounding fees @ 5%) were applicable in the present case. The Court, however, permited the assessee to pay the balance compounding fees within 4 weeks and get the offence compounded.

Sagar Asia Pvt. Ltd v Pr.CIT [TS-372-HC-2018(AP)] - Writ Petition No.14702 of 2018 dated May 01, 2018

1997. The petition filed by the assesse before the Sessions Court was for grant of anticipatory bail in view of show cause notice received as per Rule 73 of the Second Schedule to the Act was rejected by the Sessions Judge. The assessee approached the High Court to seek protection from arrest under section 438 of Cr.P.C. The Court held that the assessee's petition seeking the said protection was not maintainable. It held that section 438 of Cr.P.C. is a device to secure the liberty of a person who is apprehending his arrest in a non-bailable offence and the 'reason to believe' that a person is likely to be arrested for a non-bailable offence is a sine qua non for invoking the jurisdiction u/s 438 of Cr.P.C. It was noted that the notice was issued under Rule 73 of the Second Schedule of the Act for the recovery of the tax dues determined u/s 222 of the Act, i.e. in course of recovery proceedings. It held that the assessee's apprehension that on issuance of the said notice, he had a reason to believe that he would be arrested and detained in prison was wholly misconceived and misplaced, since the Rule 73 specifically provides that no order for the arrest and detention in a civil prison of a defaulter could be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause as to why he should not be committed to civil prison. It held that the assessee was not accused of committing any non-bailable offence so as to invoke the jurisdiction of the Sessions Court or High Court under section 438 of Cr.P.C.

M A Zahid v Assistant Commissioner of Income Tax (OSD) - [2018] 95 taxmann.com 71 (Karnataka) - CRIMINAL PETITION L NO. 3668 OF 2018 dated June 26, 2018

1998. The Court dismissed the writ petition filed by the Petitioner who had purchased an immovable property from the assessee against the AO's order declaring the sale of the said property by the assessee to the petitioner to be void in terms of section 281, since the said sale was below market price and there was outstanding demand of tax arrears payable by the assessee. The petitioner had also challenged the Tax Recovery Officer's order for attachment under rule 48 of Second Schedule to Act. It was noted that prior to the said sale/ purchase, the AO had rejected the assessee's application for certificate under section 230A on the ground that there was a demand for income tax arrears due from company. However, subsequently section 230A itself was repealed. It was held that the clause (i) of section 281(1) which inter alia provides that the transfer shall not be void if it is made without notice of any tax or other sum payable by the assessee under the Act was not applicable since, in instant case, on account of refusal of the AO, to issue a certificate u/s 230A, petitioner became aware of arrears of tax and other sums payable by the assessee. The Court also rejected the petitioner's plea that if the Department found that a property of assessee had been transferred with intention to defraud revenue, it would have to file a suit under rule 11(6), to have transfer declared void under section 281, holding that if a transfer had been made by a defaulter in contravention of rule 11(6), it was automatically void.
Shriya Bhupal v ACIT - [2018] 95 taxmann.com 230 (Andhra Pradesh) - WRIT PETITION NO. 11629 OF 2007 dated May 2, 2018

1999. The Court dismissed the writ petition filed by the assessee requesting the Court to issue a writ of prohibition, preventing the Authorities from initiating prosecution against the assessee under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on apprehension of the assessee that prosecution will be initiated, as section 48 of the said Act permits the Authority to grant sanction to prosecute without even waiting for the assessment to be completed. Further, it also rejected the plea of the assessee that since 9 months had elapsed since the assessee had given all the relevant details, a direction be issued to the DDIT(Investigation) to pass an order forthwith u/s 10(3). The Court held that under normal circumstances, the Statutory Authorities could be directed to perform their functions expeditiously when no time lines are fixed under the relevant statute, and if there was slackness, the Court would fix a peremptory time limit. However, such power could not be exercised in the instant case, since time limit for the same is fixed u/s 11(1).
Srinidhi Karti Chidambaram v Pr.CIT - [2018] 92 taxmann.com 392 (Madras) - WRIT PETITION NOS. 8832 TO 8835, 8840 & 8841 OF 2018, W.M.P. NOS. 10701, 10702 & 10706 OF 2018 dated April 12, 2018

2000. The Court dismissed the petition filed by the Union of India's (UOI) for permanent injunction against the Vodafone Group and restraining them from pursuing arbitrations under India UK bilateral Investment Promotion Agreement (BIPA) since the arbitration proceeding under India Netherland BIPA initiated in 2012 were pending. However, it provided liberty to UOI to raise the issue of abuse of process before Arbitration Tribunal constituted under India-United Kingdom BIPA. The Court observed that it can grant injunction only if there are very compelling circumstances, where the Court has been approached in good faith and there is no alternative efficacious remedy available. Further, noting the UOI's contention that Vodafone's claim under India Netherlands BIPA was without jurisdiction, the Court held that invocation of another treaty could not be regarded as an abuse per se. It also directs that the Arbitration Tribunal while deciding the issue will take into account the Vodafone's undertaking to the Court that if the UOI gives its consent, it would agree to consolidation of the two BIPA arbitration proceedings before the India-United Kingdom BIPA Tribunal.
UOI v Vodafone Group Plc United Kingdom & Anr [TS-230-HC-2018(DEL)] - CS(OS) 383/2017 & I.A.No.9460/2017 dated May 7, 2018

is recommended that professional advice be taken based on the specific facts and circumstances. The Digest does not substitute the need to refer to the original pronouncements. This is not a Spam mail. In case this mail doesn't concern you, please unsubscribe from mailing list by writing to us at office@smltaxchamber.com.