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

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

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

The Digest contains 900 important judgments which were pronounced by Courts and Tribunals in the period from January 2018 to March 2018.

Of these, there are 245 judgements on Transfer Pricing, 55 judgements on International Taxation and 600 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 March, 2018)

Transfer Pricing	***International Tax***	***Domestic Tax***
➢ ***International transaction / Specified Domestic Transaction*** *– Case 1 to 4*	➢ ***Permanent Establishment –*** *Case 246 to 255*	➢ ***Income –*** *Case 301 to 317*
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– *Restrict adjustment to AE transactions – Case 106 to 110*		– *Re-assessment – Case 559 to 621*
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– *Advertisement, Marketing and Promotion expenses – Case 118 to 123*		– *Appeals – Case 692 to 706*
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– *APA / MAP – Case 193 to 195*		– *Set off of losses– Case 804 to 811*
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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

b. ***Most Appropriate Method***

<u>*Comparable Uncontrolled Price Method*</u>

5. 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

6. 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

7. 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

Cost Plus Method

8. 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

Resale Price Method

9. 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

10. 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

11. 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

Transactional Net Margin Method

12. 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

13. 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

14. 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

15. 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

16. 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

17. 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

18. 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

<u>Any Other Method</u>

19. 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

<u>General</u>

20. 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***

<u>*ITES Sector / Software Development Services*</u>

21. 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

22. 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

23. 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

24. 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.

25. 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

26. 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

27. 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

28. 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

29. 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

30. 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

31. 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

32. 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

33. 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.

34. 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.

35. 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

36. 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

37. 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

38. 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

39. 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

40. 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

41. 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

42. 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

43. 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

44. 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

45. 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

46. 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

47. 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

48. 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

49. 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

50. 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

51. 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

52. 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

53. 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

54. 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

55. 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

56. 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

57. 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

Investment advisory services

58. 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

59. 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

60. 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

61. 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

62. 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

Manufacturing and contracting

63. 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

Support Services

64. 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

65. 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

66. 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

67. 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

68. 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

69. 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

Research and Development services

70. 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

Others

71. 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

72. 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

73. 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

74. 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

75. 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

General

76. 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

77. 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

78. 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

79. 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

80. 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

81. 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

82. 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

83. 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

84. 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

85. 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

86. 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

87. 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

88. 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

89. 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

90. 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

91. 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

92. 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

93. 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 27.03.2015

94. 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

95. 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

96. 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

d. ***Computation / Adjustments***

Capacity Utilization Adjustment

97. 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

Profit Level Indicator

98. 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

99. 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

100. 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

101. 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

102. 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

103. 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

104. 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

105. 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

Restrict adjustment to AE transactions

106. 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

107. 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

108. 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

109. 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

110. 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

Risk Adjustment

111. 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

Segments

112. 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

113. 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

Working capital adjustments

114. 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

115. 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

+ / - 5% adjustment

116. 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

117. 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

e. ***Specific Transactions***

Advertisement, Marketing and Promotion expenses

118. 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

119. 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

120. 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

121. 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

122. 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

123. 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

Loans / Receivables / Corporate Guarantee

124. 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

125. 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

126. 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

127. 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***

128. 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

129. 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

130. 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

131. 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

132. 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

133. 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

134. 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.

135. 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

136. 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

137. 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

138. 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

139. 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

140. 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. ·

141. 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

142. 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

143. 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

144. 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

145. 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

146. 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

Royalty / Management fees / Intra Group services / Reimbursements

147. 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 identifical 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

148. 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

149. 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

150. 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

151. 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

152. 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

153. 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

154. 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

155. 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

156. 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

157. 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

158. 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

159. 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

160. 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

161. 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

162. 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

163. 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

164. 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

165. 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

166. 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

Share transactions

167. 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

168. 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

169. 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

<u>Others</u>

170. 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

171. 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

172. 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

173. 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

174. 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

175. 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

176. 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

177. 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

f. ***Miscellaneous***

<u>Appeal</u>

178. 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

179. 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

180. 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

181. 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

182. 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

183. 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

184. 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

185. 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

186. 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

187. 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

188. 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

189. 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

190. 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

191. 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

192. 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

APA / MAP

193. 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

194. 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

195. 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

Assessment / Reassessment / Revision

196. 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

197. 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

198. 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

199. 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

200. 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

201. 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

202. 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

203. 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

204. 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

205. 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

206. 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

207. 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

208. 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

209. 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

210. 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

211. 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

212. 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

Penalty

213. 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

214. 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

215. 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

216. 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

217. 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

<u>Stay</u>

218. 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

219. 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

220. 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

221. 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

222. 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

223. 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

224. 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

225. 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

226. 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

227. 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

228. 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

229. 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

230. 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

231. 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.

232. 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.

233. 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

234. 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

235. 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

236. 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

237. 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

238. 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

239. 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

240. 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

241. 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

242. 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

243. 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

Others

244. 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

245. 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

II. International Tax

a. Permanent Establishment

246. 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

247. 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

248. 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

249. 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

250. 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

251. 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

252. 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

253. 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

254. 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

255. 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

b. Royalty / Fees for technical services

256. 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

257. 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

258. 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

259. 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

260. 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

261. 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

262. 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

263. 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

264. 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

265. 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

266. 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

267. 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

268. 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

269. 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

270. 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

271. 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

272. 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

273. 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

274. 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

275. 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

276. 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

277. 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

278. 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

279. 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

280. 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

c. Capital Gains

281. 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

282. 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

283. 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

d. Foreign Tax Credit

284. 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

285. 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

e. Withholding tax

286. 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

287. 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

288. 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

289. 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

290. 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

291. 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

292. 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

293. 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

294. 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

295. 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

296. 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

f. Others

297. 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

298. 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

299. 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

300. 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

III. Domestic Tax

a. ***Income***

301. 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

302. 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

303. 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

304. 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

305. 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

306. 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

307. 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

308. 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

309. 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

310. 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

311. 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

312. 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

313. 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

314. 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

315. 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

316. 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

317. 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

b. ***Income from Salary***

318. 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

c. ***Income from House Property***

319. 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

320. 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

321. 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

d. ***Business Income***

322. 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

323. 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

324. 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

325. 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

326. 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

327. 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

328. 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

329. 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

330. 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

331. 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

332. 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

333. 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

334. 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

335. 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

336. 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

337. 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

338. 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

339. 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

340. 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

341. 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

342. 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

343. 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

e. ***Deductions/ Disallowance***

Section 32 / 32A

344. 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

345. 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

346. 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

347. 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

348. 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

349. 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

350. 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

351. 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

352. 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

353. 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

354. 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

355. 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

356. 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

357. 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

358. 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

359. 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

Section 33AB

360. 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

361. 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

362. 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

363. 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

364. 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

Section 36

365. 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

366. 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

367. 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

368. 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

369. 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

370. 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

371. 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

372. 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

373. 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

374. 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

375. 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

<u>Section 37</u>

376. 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

377. 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

378. 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

379. 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

380. 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

381. 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

382. 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

383. 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

384. 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

385. 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

386. 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

387. 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 irrecoveribility 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

388. 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

389. The Tribunal upheld CIT(A)'s deletion of disallowance made u/s 37(1) of $1/4^{th}$ of repairing expenses on ad hoc basis on ground that no details in respect of same was furnished, noting that necessary details were duly filed by assessee at time of assessment proceedings but AO was not satisfied with same and holding that if AO was not satisfied with claim of assessee then he had to make disallowance after making specific reference to documents/vouchers produced on record whereas in the present case AO had made disallowance on ad hoc basis without pointing out any defect/error in evidence produced by assessee.
DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

390. 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

391. 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

392. 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

393. 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

394. 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

395. 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

396. 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

397. 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

398. 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

399. 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

400. 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

401. 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

402. 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

403. 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

404. 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

405. 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

406. 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

407. 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

408. 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

409. 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

410. 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

411. 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

412. 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

413. 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

414. 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

415. 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

416. 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

417. 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

418. 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

419. 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

420. 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

Section 40A

421. 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

422. 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

423. 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

424. 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

425. 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

Section 43

426. 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

427. 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

Section 43B

428. 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

429. 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

430. 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

431. 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

Section 14A

432. 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

433. 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

434. 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

435. 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

436. 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

437. 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

438. 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

439. 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

440. 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

441. 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

442. 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

443. 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

444. 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

445. 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

446. 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

447. 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

448. 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

449. 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

450. 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

451. 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

452. 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

Chapter VIA / 10A / 10B

453. 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

454. 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

455. 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

456. 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

457. 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

458. 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

459. 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

460. 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

461. 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

462. 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

463. 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

464. 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

465. 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

466. 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

467. 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

468. 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

469. 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

470. 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

471. 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

472. 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

473. 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

474. 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

475. 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

476. 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

477. 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

478. 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

479. 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

480. 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

481. 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

482. 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

483. 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

484. 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

485. 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

486. 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

487. 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

488. 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

f. ***Income from Capital Gains***

489. 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

490. 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

491. 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

492. 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

493. 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

494. 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

495. 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

496. 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

497. 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

498. 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

499. 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

500. 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

501. 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

502. 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

503. 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

504. 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

505. 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

506. 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

507. 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

508. 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

509. 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

510. 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

511. 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

512. 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

513. 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

514. 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 asesseee 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

515. 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

516. 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

517. 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

518. 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

519. 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

520. 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

521. 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

522. 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

523. 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

524. 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

525. 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

526. 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

g. ***Income from Other Sources***

527. 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

528. 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

529. 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

530. 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

531. 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

532. 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

533. 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

534. 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

535. 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

536. 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

537. 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

538. 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

539. 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

h. ***Assessment / Re-assessment / Revision / Search***

Assessment

540. 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

541. 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

542. 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

543. 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

544. 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

545. 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

546. 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

547. 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

548. 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

549. 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

550. 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

551. 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

552. 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

553. 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

554. 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

555. 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

556. 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

557. 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

558. 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

<u>*Reassessment*</u>

559. 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

560. 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

561. 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

562. 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

563. 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

564. 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

565. 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

566. 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

567. 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

568. 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

569. 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

570. 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

571. 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

572. 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

573. 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

574. 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

575. 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

576. 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

577. 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

578. 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

579. 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

580. 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

581. 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

582. 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

583. 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

584. 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

585. 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

586. 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

587. 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

588. 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

589. 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

590. 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

591. 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

592. 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

593. 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

594. 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

595. 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

596. 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

597. 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

598. 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

599. 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

600. 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

601. 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

602. 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

603. 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

604. 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

605. 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

606. 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

607. 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

608. 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

609. 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

610. 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

611. 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

612. 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

613. 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

614. 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

615. 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

616. 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

617. 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

618. 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

619. 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

620. 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

621. 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

Rectification

622. 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

623. 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

624. 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

625. 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

Revision

626. 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

627. 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

628. 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

629. 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

630. 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

631. 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

632. 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

633. 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

634. 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

635. 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

636. 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

637. 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

638. 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

639. 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

640. 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

641. 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

642. 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

643. 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

<u>*Search / Survey*</u>

644. 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

645. 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

646. 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

647. 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

648. 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

649. 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

650. 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

651. 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

652. 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

653. 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

654. 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

655. 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

656. 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

657. 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

658. 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

659. 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

660. 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

661. 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

662. 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

663. 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

664. 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

665. 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

666. 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

i. ***<u>Withholding tax</u>***

667. 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

668. 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

669. 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

670. 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

671. 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

672. 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

673. 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

674. 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

675. 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

676. 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

677. 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

678. 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

679. 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

680. 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

681. 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

682. 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

683. 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

684. 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

685. 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

686. 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

687. 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

688. 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

689. 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

690. 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 assese 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

691. 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

j. ***Others***

Appeals

692. 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

693. 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

694. 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

695. 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

696. 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

697. 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

698. 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

699. 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

700. 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

701. 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

702. 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

703. 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

704. 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

705. 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

706. 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

Deemed Dividend

707. 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

708. 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

709. 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

710. 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

711. 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

712. 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

713. 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

714. 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

Exempt Income / Income from Charitable Trust

715. 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

716. 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

717. 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

718. 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

719. 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

720. 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

721. 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

722. 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

723. 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

724. 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

725. 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

726. 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

727. 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

728. 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

729. 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

730. 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

731. 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

732. 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

733. 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

734. 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

735. 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

736. 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

737. 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

738. 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

739. 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

740. 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

741. 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

742. 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

743. 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

744. 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

745. 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

746. 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

747. 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

748. 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

749. 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

Interest

750. 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

751. 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

752. 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

753. 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

754. 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

755. 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

756. 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

757. 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

758. 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

<u>Penalty</u>

759. 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

760. 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

761. 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

762. 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

763. 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

764. 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

765. 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

766. 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

767. 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

768. 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

769. 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

770. 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

771. 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

772. 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

773. 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

774. 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

775. 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

776. 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

777. 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

778. 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

779. 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

780. 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

781. 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

782. 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

783. 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

784. 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

785. 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

786. 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

787. 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

788. 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

789. 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

790. 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

791. 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

792. 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

793. 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

794. 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

795. 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

796. 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

<u>Minimum Alternate Tax</u>

797. 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

798. 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

799. 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

800. 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

Refund

801. 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

802. 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

803. 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

804. 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

805. 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

806. 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

807. 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

808. 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

809. 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

810. 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

811. 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

Stay of demand

812. 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

813. 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

814. 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

815. 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

816. 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

817. 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

818. 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

819. 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

820. 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

821. 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

822. 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

823. 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

Unexplained income / expenses / investments

824. 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

825. 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

826. 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

827. 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

828. 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

829. 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

830. 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

831. 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

832. 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

833. 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

834. 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

835. 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

836. 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

837. 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

838. 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

839. 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

840. 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

841. 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

842. 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

843. 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

844. 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

845. 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

846. 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

847. 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

848. 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

849. 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

850. 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

851. 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

852. 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

853. 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

854. 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

855. 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

856. 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

857. 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

858. 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

859. 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

860. 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

861. 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

862. 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.

863. 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

864. 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

865. 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

866. 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

867. 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

868. 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

869. 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

870. 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

871. 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.

872. 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

873. 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

874. 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

Miscellaneous

875. 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

876. 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

877. 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

878. 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

879. 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

880. 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

881. 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

882. 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

883. 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

884. 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

885. 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

886. 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

887. 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

888. 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

889. 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

890. 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

891. 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

892. 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

893. 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

894. 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

895. 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

896. 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

897. 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

898. 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

899. 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

900. 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

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