Digest Of Important Judgements On Transfer Pricing, International Tax And Domestic Tax

(January to June 2016) **By Sunil Moti Lala, Advocate**

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I. Transfer Pricing

a. ***International transactions***

1. The Tribunal held that for the purpose of falling under the definition of international transaction, at least one of the parties had to be a non-resident and therefore the purchase of know-how by the assessee, a joint venture between an Indian company (Matrix) and a South African company (Aspen), from the Indian company (Matrix) pursuant to an tri-partite agreement between the three aforesaid companies could not be considered as a deemed international transaction since both transacting parties were residents in India and that the contention of the TPO that the transaction was a deemed international transaction on the basis that Aspen being a party to the agreement dictated the terms and conditions of the transaction, was invalid.
Astrix Laboratories Ltd v ACIT – (2016) 67 taxmann.com 28 (Hyd)

2. The Tribunal held that the impugned transaction i.e. the routing of an amount through the AE, which was immediately paid to a third party as an advance for purchase of film rights

did not fall within the purview of international transaction under section 92B since the transaction was not between two associated enterprises, but in fact between the assessee and a third party and that too for the acquisition of rights and not as a loan or source of finance. Further, it held that since the transaction did not give rise to any income / benefit to the assessee or the AE, the transfer pricing provisions were not applicable and therefore deleted the addition made by the TPO on account of notional interest on such advances.
KSS Ltd v DCIT – TS-651-ITAT-2015 (Mum) – TP

3. The Tribunal held that R&D Cess and tax paid on technical know-how royalty could not be treated as an international transaction and since royalty payment was at arm's length price, no disallowance could made by the TPO.
Johnson & Johnson Limited v Add CIT– TS-19-ITAT-2016 (Mum) – TP

4. The Tribunal held that in the absence of an agreement between the Indian entity and foreign AE whereby the Indian entity was obliged to incur AMP expenditure of a certain level for the foreign AE for the purpose of promoting the brand value of its products, no international transaction could be presumed and that mere presence of incidental benefit to the foreign AE would not imply that the AMP expenses incurred by the Indian entity were for promoting the brand of the foreign AE.
Essilor India Pvt Ltd v DCIT – (2016) 68 taxmann.com 311 (Bang – Trib)

5. The Court relying on its earlier decisions in CIT v EKL Appliances and Sony Ericsson Mobile Communications India Pvt Ltd v CIT, (wherein it was held that where form and substance of the transaction were the same but the arrangements when viewed in totality differed from those adopted by an independent enterprise behaving in a commercially rational manner), held that the TPO was correct in considering the assessee's transaction of import of raw materials from an intermediary as a deemed international transaction, where the assessee, as opposed to purchasing the components from the manufacturer (which was an AE), chose to import components from an intermediary (over whom the AE had significant influence) and such imports constituted over 85 percent of all raw materials imported.
Further, it held that even if TNMM was found acceptable as regards all other transactions, it was open to the TPO to segregate a portion and subject it to an entirely different method i.e. CUP if the assessee did not provide satisfactory replies to his queries.
Denso India Ltd v CIT – (2016) 95 CCH 0057 (Del)

6. The Tribunal held that amendment in definition of International transaction u/s 92B, to the extent it pertains to issuance of corporate guarantee being outside scope of 'international transaction', could not be said to be retrospective in effect and has to be necessarily treated as effective from at best the assessment year 2013-14. It further held that merely because Legislature described an amendment as 'clarificatory' in nature, a call will have to be taken by the judiciary whether it was indeed clarificatory or not.
Siro Clinpharm (P)Ltd & Anr v DCIT - [2016] 46 CCH 0485 Mum Trib

7. The Tribunal held that in the absence of an agreement between the assessee and its AEs for the sharing of AMP expenses, the TPO was incorrect in concluding that the AMP expenses incurred by the assessee were for the benefit of its AEs and accordingly the AMP expenses could not be treated as an international transaction. The Tribunal noted that the very nature of the business of the assessee was such that it had to incur huge expenses for establishing its product in the Indian markets and therefore held that the arguments of the TPO / AO that the AMP expenses were incurred primarily for the benefit of the AEs were without merit. Accordingly, it held that the TPO had wrongly applied the provisions of Chapter X to the AMP expenses of the assessee.
Loreal India Pvt Ltd v DCIT – (2016) 47 CCH 0015 (Mum-Trib)
Heinz India Pvt Ltd v Add CIT – TS-194-ITAT-2016 (Mum) - TP
Goodyear India Ltd v DCIT – TS-226-ITAT-2016 (Del) - TP

8. The Tribunal held that the interest free advances given by the assessee to its overseas subsidiary by incurring expenditure on behalf of the AEs without charging interest or without recovering the said amount, was to be considered as an international transaction under clause (c) of Explanation (i) to section 92B of the Act. The Tribunal further held if the assessee would not have entered into such type of transaction with unrelated parties, then the transaction between the related parties could not be considered at arms' length. Accordingly, the Tribunal directed the AO / TPO to compute interest on the said advance at the rate of LIBOR + 300 basis points.
Strides Shasun Ltd v ITO – TS-277-ITAT-2016 (Mum) - TP

9. The Tribunal held the assessment order passed was invalid since absent an international transaction with Associated Enterprise ("AE"), normal assessment was to have been completed without making reference to TPO. It rejected the stand of the Revenue that Cummins Turbo USA (majority importer of plates manufactured by assessee) , being able to regulate the price at which goods were sold by the assessee, was a deemed AE u/s 92A(2) of the Act,and held that the pricing between Cummins and the assessee was fixed as per mutual understanding between the two and in case Cummins found an alternate supplier who was offering competitive cost, the assessee was given 30 days' time to respond to the competitive threat failingwhich a mutually acceptable phase out would be negotiated between the parties and thus it could not be concluded that Cummins controlled the price at which goods were sold by the assessee. It further observed that there was no connection whatsoever by way of participation in management or control or capital by the entities or its subsidiaries (either directly or indirectly) and therefore both the enterprises had not fulfilled the conditions laid down in Sec 92A(1) and were not AEs.
JCIT v Suttati Enterprises(P)Ltd - TS-234-ITAT-2016(PUN)-TP

10. The Tribunal held that in the absence of any direct evidence of incurrence of AMP expenses by the assessee for the benefit of its AE or on behalf of its AE, the AMP expenses could not be treated as an international transaction under section 92B of the Act. It held that probable incidental benefit to the AE would not make the transaction an international transaction. Accordingly, it deleted the addition made by the TPO arrived at by benchmarking the AMP expenses of the assessee with the industry mean AMP expenses to total revenue.
Thomas Cook (India) Ltd v DCIT – TS-307-ITAT-2016 (Mum) - TP

11. The Tribunal, held that the royalty paid by the assessee to Jockey International Inc was not an international transaction and therefore could not be subjected the provisions of Chapter X since Jockey was not an AE of the assessee as per Section 92A of the Act. It held that the assessee was a mere licensee of the brand-name 'Jockey' and that there was no participation of JII in the management and capital of the assessee and therefore did not satisfy the conditions of Section 92A(1) of the Act. It further held that both sub-sections viz. 92A(1) and 92A(2) have to be fulfilled together. Accordingly, it deleted the TP addition made by the TPO on account of the royalty paid.
Page Industries Ltd v DCIT – TS-382-ITAT-2016 (Bang) - TP

b. ***Most Appropriate Method***

Comparable Uncontrolled Price Method

12. The Tribunal, relying on the decisions of the Tribunal in the cases of Sumitomo Corporation India Pvt Ltd and Marubeni India P Ltd held that the internal CUP method was the most appropriate method to benchmark the assessee's commission for provision of indenting services as opposed to the Profit Split Method sought to be applied by the TPO and that where there was no data to support the CUP method, the TNMM method was to be

applied. Considering the decisions of the Tribunal in the case of Sumitomo and Bayer Material Science wherein the ALP rate of indenting commission was taken at 2.26 percent and 5 percent, respectively, the Tribunal held that 3.36 percent (the average of the two) was to be considered as ALP.
Johnson Controls (India) Pvt Ltd v DCIT – TS-662-ITAT-2015 (Mum) - TP

13. The Tribunal held that where the arms' length price of the transactions undertaken by the assesse viz. import of agricultural produce from its AE was justified and accepted by the TPO under the CUP method on the basis of the meanof prices of pulses obtained from a website called agriwatch.com, the TPO, who noted that the method used by the assessee suggested a range of values on a particular date and felt that the website was a good indicator but not a perfect CUP, was incorrect in adopting the arithmetic mean of prices on a day to day basis as the final comparable value and comparing it with the import prices on each day and consequently making a transfer pricing adjustment. It held that where the TPO had himself accepted that generally the price charged by the AEs from the assessee was equal to or less than the ALP, then his act of making an ALP adjustment on the basis of daily arithmetic mean of the transaction values was not permissible under the scheme of the Act.
UE Trade Corporation India Pvt Ltd v ITO - TS-10-ITAT-2016 (Del) – TP

14. The Tribunal deleted the TP adjustment in respect of export of chemicals to AEs on the basis of the CUP method, observing that the assessee was bound to sell the chemicals to its AE at lower prices to recover its manufacturing costs since it was obsolete stock and there was no room for determination of prices based on free interplay of demand and supply.
N L C Nalco India Ltd. vs. DCI - TS-36-ITAT-2016(Kol)-TP

15. The Tribunal held that where assessee company having imported gold bars from its AE, converted same into jewellery and sold same back to AE, since assessee was a simple job worker, CUP was to be regarded as most appropriate method for determining ALP.
Kailash Jewels (P) Ltd vs ITO - [2016] 68 taxmann.com 303 (Delhi-Trib)

16. The Tribunal deleted interest adjustment on external commercial borrowings (ECBs) taken by assessee from overseas AE at 5% as the effective rate of interest paid by assessee on loans taken in India was 6.62% and held that when internal CUP with unrelated parties is availableit should be given precedence over external CUP (which was adopted by TPO).
Intergarden (India)(P)Ltd. vs ACIT - TS-114-ITAT-2016(Bang)-TP

17. The Tribunal held that where TPO proposed adjustment for royalty paid by assessee to its AE even where assessee justified (a) how technical know-how supplied by AE was crucial to running of assessee's business (b) the same to be at ALP as per TNMM, the addition made by the TPO by applying CUP was not justified since in the instant case, no comparable transaction had been brought on record by revenue.
Frigoglas India (P)Ltd. vs DCIT - [2016] 68 taxmann.com 370 (Delhi-Trib)

18. The Tribunal upheld TPO's application of CUP to benchmark assessee's import transaction following Serdia Pharmaceuticals ruling and also allowed 10% quality adjustment as the quality of asseessee's products (being manufactured in a German plant where quality control requirements are much more stringent than in India) were demonstrably superior to locally manufactured products in India. The Tribunal rejects Revenue's contention that weighted average rather than simple arithmetic mean should be used to compute ALP of import prices, and held that only domestic prices of the product should have been taken into account and not the export price while benchmarking the import transaction.
Merck Ltd. vs DCIT - TS-143-ITAT-2016(Mum)-TP

19. The Tribunal held that so far as CUP comparability was concerned, differences in the size, geographical location etc. could not be reason enough to discard the comparables, unless it was shown that such factors influenced conditions in the market in which respective parties to the transactions operated.
Further, it held that IBB was a generic chemical product and so far as prices of generic products were concerned, CUP on the basis of database built on inputs like customs data was reasonably acceptable.
SI Group India Ltd v DCIT -TS-150-ITAT-2016(Mum)-TP

20. The Tribunal held that the CUP method was the most appropriate method for determining the ALP of purchase and sale of goods and services since it seeks to compare the exact price charged or paid rather than the profit rate and held that TNMM sought to be applied by the assessee was affected by several factors which would significantly impact the determination of ALP. It further held that the TPO was incorrect in considering the transaction between the AE and a third party in Italy as an internal CUP due to the geographical differences prevalent. It held that the CIT(A) had deleted the addition made by the TPO based on the submission of the assessee without considering the conflicting stand adopted by the TPO and therefore remanded the matter to the file of the TPO.
DCIT v Rayban Sun Optics India Ltd – TS-170-ITAT-2016 (Del) – TP

21. The Tribunal held that the CUP method was the most appropriate method for benchmarking the international transactions of the assessee viz. export and import of agro commodities and upheld the use of third party quotations as an external CUP since the quotations furnished by the assessee were authentic and reliable.Accordingly, it dismissed the contention of the TPO, rejecting CUP on the ground that the data provided by the assessee did not provide support for functional comparability. Reference was also made to the BEPS Action Plans 8-10 in respect to use of Quoted Prices and their authenticity for comparability analysis under the CUP Method.
DCIT v Noble Resources & Trading India Pvt Ltd – TS-269-ITAT-2016 (Del) - TP

22. The Tribunal held that where the assessee had selected the CUP method as the most appropriate method for benchmarking the payment of consultancy fees to its AE, by using the service agreement between the AE and an independent Hungary company as comparable, the AO was not justified in rejecting the CUP method and the comparable without any reasoning and making an ad hoc disallowance of 25 percent of the said consultancy fee on the ground that no evidence had been submitted by the assessee.
ITO v Intertoll ICS India Pvt Ltd – (2016) 47 CCH 0132 (Mum-Trib)

23. The Tribunal held that the CUP method was the most appropriate method for determining the ALP of the assessee's international transactions viz. provision of man power / human resources to its AEs and rejected the assesee's application of TNMM. It noted that the assessee had charged both its AEs and Non-AEs for the man power supply on an hourly rate for the same functions and therefore held that the CUP method was most appropriate. However, it rejected the application of an average or weighted average rate as directed by the DRP. Accordingly, it remitted the matter to the file of the TPO.
Taksheel Solutions Ltd v ACIT – TS-352-ITAT-2016 (Hyd) - TP

24. The Tribunal upheld the use of the CUP method over TNMM for the purpose of benchmarking the assessee's international transaction viz. purchase of DAP fertilizers on consignment basis. It held that where the assessee submitted adequate and reliable information and comparable uncontrolled prices, such as the price list of 'Fertecon Price Service' which is a weekly trade journal widely used in the fertilizer industry, for the purposes of benchmarking the international transaction under CUP, the TPOs approach of adopting TNMM was erroneous. It further held that TNMM was not the most appropriate method since the sale price was regulated by the government as a result of which the net profit margin was not under the control of the assessee and that 40 to 45 percent of the receipts of the assessee were by way of subsidy and not from the sale of products.

Mosaic India Pvt Ltd v ACIT – TS-312-ITAT-2016 (Del) - TP

Cost- Plus Method

25. The Tribunal held that the assessee, engaged in the business of manufacture and sale of plastic ophthalmic lenses to its foreign AEs as well as other independent Indian companies, could not be considered as a contract manufacture of its AE since it was carrying out its own independent business activity as well and therefore, the plea of the assessee, relying on GE Medical Systems India Pvt Ltd v DCIT, that the Cost Plus method was the most appropriate method for contract manufacturers, was inapplicable. Accordingly, the TNMM method was used as the most appropriate method.
Further, the Tribunal held that where the cost components of the assessee were in variation with that of comparable companies, the Cost Plus method could not be regarded as the Most Appropriate Method.
Essilor Manufacturing India(P)Ltd. vs. DCIT - [2016] 67 taxmann.com 377 (Bangalore-Trib)

Profit Split Method

26. The Tribunal held that where in respect of revenue derived by assessee company from distribution of television channels and sale of advertisement time, Profit Split Method (PSM) was adopted on basis of detailed analysis and allocation of profits based on the role and functions of the entities vis-a-vis AEs and Non-AEs and the combined net profit had been arrived at by taking into account all transactions of the AE as well as the non-AE and factoring all costs and revenue, the DRP was not justified in concluding that profits from non AE would not be covered under PSM and same had to be determined separately at a higher rate.
Satellite Television Asian Region Ltd v DDIT - [2016] 66 taxmann.com 247 (Mumbai-Trib)

27. The Tribunal held that where RPM was suggested as most appropriate method of ALP computation by the assessee, it is imperative that the products sold by the tested Indian entity were subjected to a close comparison with those products sold by the comparable companies and that before rejecting RPM, the TPO should have made an analysis to determine whether the required data regarding the set of comparable companies dealing in similar products could be obtained from public data basis. Accordingly, the matter was remanded to the file of the AO / TPO.
Kohler India Corp (P)Ltd. vs. DCIT - [2016] 67 taxmann.com 200 (Bangalore-Trib)

Resale Price Method

28. The Tribunal held that the Resale Price Method was the Most Appropriate method for determining ALP with respect to the assessee's trading and distribution segment, i.e. goods imported from its AE for onward sale, and not TNMM as proposed by the assessee.
It further held that for the certain transactions wherein there was a value addition made to the imported spares by the assessee or where procurement of spares was done through job workers, the determination of Most Appropriate Method would require fresh adjudication and therefore, in respect of such cases, remanded the matter to the TPO.
It was further held that internal comparables were preferred as against external comparables.
Honda Motor India Pvt Ltd v ACIT – (2016) 66 taxmann.com 9 (Del)

29. The Tribunal held that where TPO rejected RPM as MAM for calculating ALP in respect of trading segment, however Commissioner (Appeals) dealt with issue and reproduced

relevant data of subsequent year wherein TPO himself had accepted RPM to be MAM for determining ALP for trading segment, findings of Commissioner (Appeals) had to be upheld.
DCIT v Delta Power Solution India (P)Ltd - [2016] 68 taxmann.com 247 (Delhi-Trib)

30. The Tribunal held that the TPO was incorrect in adopting the gross profit margin of the assessee's Group Company as the ALP for the international transactions entered into by the assessee viz. the import and distribution of Marlboro brand of cigarettes in India as well as export of tobacco leaves, since the Group as a whole (engaged in manufacturing, conducting R&D activities and owning trade marks) was functionally dissimilar to the assessee who was merely engaged in the distribution of these products. Accordingly, it held that the assessee, being a reseller / distributor had rightly benchmarked its transactions using the Resale Price Method.
DCIT v Phillip Morris Services India (SA) India Branch Office – TS-151-ITAT-2016 (Del) - TP

Transactional Net Margin Method

31. The Tribunal held that the TNMM method was the most appropriate method for benchmarking the international transactions of the assessee as opposed to the Cost Plus method applied by the assessee. In the given case, the TPO considered both TNMM and Cost Plus method, but for benchmarking under the Cost Plus Method he used an arbitrary margin of 35 percent and applied it on direct costs. The Tribunal held that there was inadequate discussions of how the 35 percent markup was arrived at and also noted that the markup was applied on direct costs, whereas it was to be applied on both direct and indirect costs. Noting that the TPO had accepted 11 comparable companies under TNMM method as well and the international transaction of the assessee was at arms length price considering these comparable companies, it held that the TNMM method was the most appropriate method.
ITO v Styx Back Office Services Pvt Ltd – (2016) 68 taxmann.com 62 (Del – Trib)

32. The Tribunal held that the selection of the most appropriate method was not an unfettered discretion of the assessee and is subject to adjudication at both the assessment as well as the appellate stage and that determination of the most appropriate method was based on the availability, coverage and reliability of data necessary for the application of the method and therefore where the assessee provided only one comparable under the internal TNMM whereas there was sufficient, relevant, reliable data for comparables under the external TNMM, the method chosen by the assessee viz. Internal TNMM was not the most appropriate method. Further it noted that the one comparable selected by the assessee under internal TNMM was an erstwhile AE of the assessee, which was now of independent status in legal terms as a result of group restructuring and therefore it did not satisfy the reliability test either.
Fortune Infotech Ltd v ACIT – (2016) 66 taxmann.com 92 (Ahd – Trib)

33. The Tribunal held that where the assessee company, engaged in the business of manufacture, assembly and sale of air-conditioning commercial refrigeration equipment, entered into various international transactions with its AE, and adopted an internal comparable of commercial refrigeration segment for justifying the PLI of transport refrigeration segment, TPO without carrying out detailed functional comparability of two segments, could not reject said internal comparable and, make addition to assessee's ALP on basis of profit margin earned by an external comparable.
Carrier Air conditioning & Refrigeration Ltd v Addl.CIT - [2016] 67 taxmann.com 72 (Delhi-Trib)

34. The Tribunal held that where assessee was unable to furnish reliable data either to adopt Cost Plus Method or to analyse data on basis of CUP method, TNMM would be most appropriate method to analyse assessee's transactions in order to arrive at ALP
Mercedes Benz Research & Development India (P)Ltd. vs. ACIT - [2016] 68 taxmann.com 230 (Bangalore-Trib)

35. The Tribunal held that in an indirect method like TNMM, a reasonable number of comparables are to be selected to ensure that results are truly representative of segment to which tested party belongs.
GE Healthcare Bio-Sciences Ltd v DDIT [2016] 68 taxmann.com 369 (Chennai-Trib)

36. The Tribunal upheld TPO's application of TNMM over CPM adopted by assessee during AY 2008-09, as the assessee (a subsidiary of French company) was not undertaking any contract manufacturing or job work activity but was carrying out independent activity of manufacturing ophthalmic lenses by using raw material purchased from AEs & other parties(relying on ITAT decision in GE Medical). It further held that in the absence of any contract between assessee & AEs regarding remuneration & mark up for value addition and there being variations of cost components in respect of manufacturing activity of assessee as well as comparables, CPM was not to be considered as MAM in the assessee's case.
Essilor Manufacturing India (P)Ltd. vs DCIT - TS-81-ITAT-2016(Bang)-TP

37. The Tribunal held that TNMM and not internal CUP was the MAM to benchmark the assessee's international transactions of providing portfolio management services, mutual fund services and investment advisory services, since the volume of non-AE transactions sought to be used as internal CUP by the Department was so minimal that the fee in percentage terms vis-à-vis Non-AE transactions would not be comparable to the fee in percentage terms for the AE transactions. It held that since the assets under management for AE transactions were around USD 135 million and that with the Non-AE fund was USD 2.55 million, mere comparison on the basis of fees in percentage terms was not appropriate.
ICICI Prudential Asset Management Co Ltd v ACIT – TS-148-ITAT-2016 (Mum) – TP

38. The Tribunal rejected TPO's selection of CUP as MAM for benchmarking assessee's export of Floxidin 10% (50ml) product over TNMM, which had been applied by assessee. It noted that TPO accepted TNMM as MAM in respect of 4 out of 5 products exported by assessee but applied CUP as MAM for export of Floxidin 10% (50ml) on the ground that the price charged by the assessee from its AEs was far less than the price charged from the third parties. It observed that that the volume of sale of the impugned product to AE in Thailand was almost 10 times to that of third party in Vietnam and though both countries were members of the Association of South East Asian Nations ('ASEAN') , it did not mean that the market conditions in both countries were similar. It opined that where substantial part (more than 80 percent) of the exports made to AEs were accepted by the TPO under TNMM and the assessee had provided due reasoning for the price difference in respect of one product, the TPO was wrong in adopting CUP method as the most appropriate method for benchmarking the remaining transaction.
Intervet India (P) Ltd vs DCIT - [TS-251-ITAT-2016(PUN)-TP]

39. The Tribunal noted that even though there was a loss incurred by the assessee on export of one product (PCMX) to its AE, as evident from Cost Accountant's Report, the assessee had not taken the same into consideration while working out its PLI (Operating Profit / Total Cost) of 7.96% and therefore the reliability of the segmental financials taken by the assessee to work out the OP/TC of its export with AEs was doubted. Accordingly, the Tribunal held that the OP/TC of the relevant transactions worked out by the assessee, could not be taken as basis for benchmarking the relevant transactions by adopting TNMM and it would be more appropriate to take the OP/TC at the entity level by taking into

consideration the entire set of transactions of the assessee. Thus, the Tribunal remitted the matter back to AO / TPO for fresh ALP-determination under TNMM. It held that by considering the entity level PLI, even the import transactions would be benchmarked and therefore no separate benchmarking would be required for the import transactions.
Reckitt Benckiser (India) Ltd v JCIT – TS-269-ITAT-2016 (Kol) - TP

Others

40. The Tribunal deleted the addition made by the TPO in respect of sharing of regional office expenses and for services received by the assessee from its AE since the TPO had neither disputed assessee's claim that TNMM was MAM nor disputed comparables chosen by assessee and made an ad-hoc addition of 20 percent of the cost sharing and the services received which was not based on a method recognized under the scheme of transfer pricing envisaged by the statute.
Det Norske Veritas v ADIT – (2016) 46 CCH 0542 – Mum Trib

41. The Tribunal deleted TP addition for assessee providing ship management services to parent company (AE) by holding that AO erred not only in resorting to an unscientific and unrecognized method for determining ALP(of computing revenue on the basis of minimum rate per crew member) but also in rejecting bonafide quotations as a valid input for ascertaining ALP; on the basis that no actual transactions had taken place. It held that the quotations could be a valid input under the residuary method set out in Rule 10AB read with Rule 10B(1),(particularly considering the limited scale of operations of assessee and smallness of amount involved); and that not only the actual price of transactions under comparable uncontrolled conditions but also hypothetical price which would have been charged under comparable uncontrolled conditions could be taken into account for computing the arm's length price.
Gulf Energy Maritime Services (P) Ltd - [TS-74-ITAT-2016(Mum)-TP

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

Investment Advisory Services

42. The Tribunal held that the assessee, rendering non-binding investment advisory services to its AE could not be compared to a company engaged in providing merchant banking and investment banking services.
TA Associates Advisory Pvt Ltd v DCIT – (2016) 66 taxmann.com 130 (Mum)

43. The Tribunal held that companies engaged in handling of IPOs, underwriting of issues, and carrying on the activity of directly or indirectly managing investments, mutual funds, venture capital funds, pension funds, provident funds etc could not be compared to the assessee who was engaged in providing investment advisory and support services to its AE.
Avenue Asia Advisors Pvt Ltd v DCIT – (2016) 66 taxmann.com 267 (Del)

44. The Tribunal held that a company which is functionally comparable to the assessee, could not be excluded as comparable merely for the reason of low turnover, especially where no turnover filter was applied. Further it held that the assessee, engaged in providing non-binding investment advisory services could not be compared to companies engaged in merchant banking activities.
Tamasek Holdings Advisors India Pvt Ltd v DCIT – (2016) 46 CCH 0175 (Mum – Trib)

45. The Court held that an investment advisor could not be compared to a merchant banker
CIT v General Atlantic (P)Ltd - [2016] 68 taxmann.com 88 (Bombay)

ITES Sector

46. The Tribunal, highlighting the importance of quantitative filters in the selection of comparables in the sector, adopted a minimum turnover filter of Rs. 100 crore, observing that selection of comparables had to be done on the basis of both quantitative and qualitative criteria and that size of companies and relative economies of scale under which they operate have a huge bearing while carrying out comparability analysis.
Further, it included a comparable originally rejected by the TPO on the non-satisfaction of the export to sales filter of 25 percent since the financials clearly demonstrated an export earning filter of 89 percent.
It further excluded Wipro and Infosys as comparable companies on qualitative filters such as presence of huge brand value, intangible R&D activities and the said companies being full-fledged risk bearing entities and held that a qualitative analysis assumes greater significane for selecting comparable companies as opposed to a high turnover filter.
Capgemini India Pvt Ltd v ITO – TS-640-ITAT-2015 (Mum) - TP

47. The Tribunal held that a super profit making company into diversified product development would not be functionally comparable with assessee, a software development service provider.
Hewlett-Packard India Software Opertion (P)Ltd v ACIT - [2016] 67 taxmann.com 371 (Bangalore-Trib)

48. The Tribunal held that in case of assessee company rendering software development services to its AE, company developing its own software products, company rendering KPO services and company owning significant intangibles and earning huge revenue from software products could not be accepted as valid comparables while determining ALP
Teleogic India (P) Ltd vs DCIT - [2016] 67 taxmann.com 159 (Bangalore-Trib)

49. The Tribunal held that a company operating in a different business strategy of acquiring companies for inorganic growth cannot be selected as valid comparable vis-à-vis a company providing ITES services
Amba Research (India) (P)Ltd v DCIT - [2016] 67 taxmann.com 342 (Bangalore-Trib)

50. The Tribunal held that company having revenue from software licensing could not be compared to a company providing software development services.
Hewlett Packard (India) Software Operation (P)Ltd v DCIT - [2016] 67 taxmann.com 309 (Bangalore-Trib)

51. The Tribunal held that a company could not be considered as comparable due to its huge brand value and substantial ownership of intangibles, with a company having ITES segment with much lesser revenue.
Momentive Performance Materials (India) Pvt Ltd v ACIT – (2016) 67 taxmann.com 327 (Bangalore –Trib)

52. The Tribunal held that in case of assessee company rendering IT enabled services (ITES) to its AE, company outsourcing major portion of its work and a company having substantial intangibles could not be accepted as comparables while determining ALP.
Telelogic India (P) Ltd v ACIT - [2016] 68 taxmann.com 165 (Bangalore-Trib)

53. The Tribunal held that in case of assessee company rendering software development services to its AE, a company engaged in research and development activities, a company which was huge in terms of nature of services, number of employees, ownership of branded products, etc and a company which included its revenue even from hardware segment in 'software devlopment' segment, could not be accepted as valid comparables while determining ALP.
It further held that in case of assessee company rendering IT enabled services (ITES) to its AE, a company rendering technical services such as software testing, verification and

validation of software item and a company rendering ITES services after outsourcing same to third parties, could not be considered as comparables while determining ALP.
Headstrong Services (India) (P) Ltd v DCIT - [2016] 68 taxmann.com 363 (Delhi-Trib)

54. The Tribunal held that companies engaged in activity of medical transcription and portfolio management and providing open and end-to-end web solutions and industry specialized services could not be selected as comparable in case of assessee engaged in software development.
AOL Online India (P) Ltd v DCIT - [2016] 68 taxmann.com 235 (Bangalore-Trib)

55. The Tribunal held that a company which owned significant intangible and had huge revenues from software products was not functionally comparable to a software development service provider. Further, it held that a company operating in different business strategy of acquiring companies for inorganic growth was incomparable to assessee rendering ITE services to its AE.
Logica (P) Ltd v DCIT - [2016] 68 taxmann.com 197 (Bangalore-Trib)

56. The Tribunal held that in case of assessee company rendering IT enabled services (ITES) to its AE, a company in whose case extraordinary event of amalgamation took place or a company rendering KPO services or a company which outsourced major portion of its business activity could not be accepted as comparables while determining ALP
Cummins Turbo Technologies Ltd v DDIT - [2016] 68 taxmann.com 273 (Pune-Trib)

57. The Tribunal held that company engaged in providing animation services for 2D and 3D animation cannot be compared with company providing software development and support service. Further, it held that where nine comparables remained after exclusions, comparable having RPT at 15 percent could also be excluded.
The Tribunal held that assessee can raise additional ground to seek exclusion of a comparable included in assessee's own TP study when he had not raised such ground before any of lower authorities.
Noveli Software Development (India)(P)Ltd v DCIT - [2016] 68 taxmann.com 201 (Bangalore-Trib)

58. The Tribunal held that Satyam Computer Services Ltd. was rightly excluded by Commissioner (Appeals) on basis of non-reliability of financial data. Further,The Tribunal held that the Commissioner (Appeals) had rightly excluded Infosys and Exensys, on the basis of functional dissimilarity and having extraordinary event during the year. Exensys was having extraordinary profits by way of amalgamation of companies during the year. Infosys was excluded having different functionality of products, having high turnover and brand name.
The Tribunal held that though a company was included by TPO and not objected to by assessee, CIT(A) had wrongly rejected the same on the reason of low profit margin. It further held that only continuous loss making companies were to be excluded from the comparability.
It also held that a product based company was not strictly comparable to a service company like assessee.
ACIT v McAfee Software (India)(P)Ltd - [2016] 68 taxmann.com 293 (Bangalore-Trib)

59. The Tribunal held that a specialised Embedded Software Development Service Provider cannot be compared with any other software development company. Further, it held that Infosys Ltd. cannot be considered as comparable to the assessee company which is a captive unit of its parent company in US and which assumed only limited risk, since Infosys Ltd. is a giant in the area of software development which assumed all risks leading to higher profit.

It also held that L&T Infotech could not be rejected as objected by the assessee company on the ground of high turnover and related party transaction, since the turnover filter was not a relevant criteria in the service industry.
Further, it held that the event of merger itself cannot be a fact for exclusion of a company from the list of comparables where it is not the case of the assessee-company that the amalgamating company is functionally dissimilar.
NTT Data Global Delivery Services Ltd v ACIT - [2016] 69 taxmann.com 7 (Bangalore-Trib)

60. The Tribunal held that the assessee, a captive service provider, engaged in providing software development and allied services to its AEs could not be compared to large companies having huge turnover, companies engaged in the development of software product, companies engaged in the development of niche products and development services, companies engaged in both software development and product development with no segmental break-up, companies rendering KPO services and companies carrying out substantial R&D activities which resulted in the creation of IPRs.
United Online Software Development (India) Pvt Ltd v ITO – (2016) 46 CCH 0509 (Hyd Trib)

61. The Tribunal held that the assessee, a captive service unit, engaged in providing research and development services relating to contract software development maintenance could not be compared with companies such as Infosys, having huge turnover, IP rights and brand value. Further, the Tribunal excluded TCS as a comparable on the ground that it was engaged in providing IT and Consultancy services as well as sale of equipment and software licenses without a segmental break-up along with the fact that it made an acquisition of another company during the year.
Sony Mobile Communications International AB v DDIT – (2016) 46 CCH 0550 (Del – Trib)

62. The Tribunal held that KPO company being quite different in business from the assessee company, which provided only IT enabled services to its AE (which falls in the realm of BPO services); such company could not be considered as comparable. It restored the matter back to the TPO/AO for re-determining the ALP of the international transaction.
Genpact Services LLC (India Branch) v ADIT - [2016] 46 CCH 0458 (Del Trib).

63. With regard to the assessee's software development segment, the Tribunal excluded 14 comparables on grounds of functional dissimilarity following co-ordinate bench rulings in Broadcom India, NXP Semiconductors India and Capgemini India; However, it refused to apply upper turnover filter of Rs 200cr to eliminate companies noting that assessee's turnover was Rs 50.20cr, therefore, excluded only Flextronics Software Solutions (having turnover Rs 848cr) and iGate Global Solutions (having turnover Rs 747cr) and retained Mindtree (having turnover Rs 590cr) and Sasken Technologies (having turnover Rs 343cr).
AOL Online India (P) Ltd v DCIT -TS-156-ITAT-2016(Bang)-TP

64. The Tribunal held that the assessee, engaged in the business of providing ITES to its AEs could not be compared with a).companies outsourcing a substantial portion of its work thereby having low employee cost, b).companies who had undergone mergers during the year c).companies operating different business strategies and d). KPO companies.
Cognizant Technology Services Pvt Ltd v DCIT – (2016) 67 taxmann.com 99 (Hyd)

65. The Tribunal held that companies engaged in software development and related support services could not be compared with companies having revenue from both software development and software products and companies engaged in providing 2D and 3D animation services. It further held that huge size of brand value and reputation of a company disqualifies it from being treated as comparable to the assessee, a small captive service provider. The Tribunal further held that where the assessee had not raised an

objection to the lower turnover filter, companies could not be eliminated on the basis of an upper turnover filter and that companies could not be rejected merely on the basis of turnover.

JDA Software India Pvt Ltd v ITO – (2016) 66 taxmann.com 327 (Hyd)
Parexel International (India) Pvt Ltd v ACIT – (2016) 66 taxmann.com 150 (Hyd)

66. The Tribunal held that the assessee, providing software development services could not be compared with companies a).engaged in sale and development of software b).having huge turnover in comparison to that of the assessee c).engaged in product development d).having minimal employee cost e).engaged in development of a niche product f).engaged in providing animation services or g).incurring selling and R&D expenses for sale / development of its products.

NTT Data India Enterprises Application Services Pvt Ltd v ACIT – (2016) 67 taxmann.com 88 (Hyd)

67. The Tribunal held that the assessee, rendering software development services to its AE, having a turnover below Rs.10 crore, could not be compared to the following:
- Companies having turnover in excess of Rs.200 crore, as per the decision of the Court in the case of CIT v Pentair Water India Pvt Ltd
- Companies having erratic margins and growth over the years and having a growth in revenue which was not supported by a corresponding growth in expenses.
- Companies engaged in the business of development of Software Products & Services and training.
- Companies having a related party transactions to sales percentage in excess of 15 percent.

Sysarris Software Pvt Ltd v DCIT – (2016) 67 taxmann.com 243 (Bang)

68. The Tribunal held that the assessee, providing IT Enabled services to its AEs was not comparable with companies having undergone substantial business restructuring resulting into extraordinary circumstances during the relevant financial year, companies engaged in providing KPO and LPO services, companies who have developed and own unique web based software by which it provides niche services to its customers, companies having huge brand value and intangibles and companies providing both BPO services and high end technology services not having segmental results.

Further, in relation to the software development services, the Tribunal held that the assessee could not be compared with companies developing their own software products, companies having undergone business restructuring, engaged in both, the sale of services and products but not having segmental break-up and companies failing the related party transactions filter.

Equant Solutions India Pvt Ltd v DCIT – (2016) 66 taxmann.com 192 (Del)

69. The Tribunal held that companies having a turnover in excess of Rs. 200 crore, companies having a software products and hybrid service business model and therefore functionally dissimilar, companies engaged in bi-informatics software products / services and development of bio-technology products, companies actively involved in R&D activities were not comparable to the assessee, engaged in software development services which included network management, technical documentation etc, having a turnover between Rs. 1 crore and Rs. 200 crore.

Further, it held that when TNMM is adopted as the most appropriate method, only net margin of the tested party was to be considered without looking into individual elements of cost since all elements of costs are aggregated irrespective of their classification and composition.

The Tribunal included a comparable wrongly excluded due to erroneous computation of export revenue.

ITO v Infinera India Ltd – (2016) 67 taxmann.com 8 (Bang)

70. The Tribunal held that the assessee, engaged in providing back office support services to its AE without any direct involvement in the conduct of its business, could not be compared with companies having undergone business restructuring / extraordinary financial events and companies providing both BPO services as well as Technical services having no segregation of revenues attributable to the two.
Further, the Tribunal, relying on the decision of the Delhi High Court in Chrys Capital Investment Advisors (India) Pvt Ltd, held that mere high / low turnover or low / high profitability could be no reason to eliminate an otherwise comparable company.
Ameriprise India Pvt Ltd v DCIT – (2016) 66 taxmann.com 246 (Del)

71. The Tribunal held that only those loss making companies incurring losses for three consecutive years and not those companies merely incurring losses only in the relevant year, were to be excluded as comparable while determining the ALP of the international transactions undertaken by the assessee, engaged in providing software development services.
Sungard Solutions (India) Pvt Ltd v ADIT – (2016) 68 taxmann.com 89 (Pune)

72. The Tribunal held that the assesssee, engaged in development of delivery of domain specific software to its AE could not be compared to companies engaged in development of both, software products and software.
Further, considering both conflicting views on the elimination of comparable companies based on turnover, the Tribunal, following favourable view in CIT v Pentair Water India Pvt Ltd, Bombay High Court, held that turnover is a relevant criteria for choosing comparable companies in determination of ALP and excluded companies on the basis of turnover and size.
Obopay Mobile Technology India Pvt Ltd v DCIT – (2016) 66 taxmann.com 119 (Bang)

73. The Tribunal held that the assessee, dealing in global IT solutions, application development and maintenance, application re-engineering and retesting and outsourced software development to its AE, was not comparable to companies engaged only in software services and companies engaged in the business of software products as well as end to end web solutions since they were functionally dissimilar.
Additionally, where a company had been rejected by the TPO on account of extraordinary events during the year, but the assessee submitted that the said company did not undergo a merger but the merger took place in one of the company's subsidiary companies, the company was to be included as comparable subject to verification of facts.
Kumaran Systems Pvt Ltd v DCIT – (2016) 66 taxmann.com 75 (Chennai – Trib)

74. The Tribunal, following the principle that were two views were available on the issue, the view favourable to the assessee was to be adopted, followed the decision of the Bombay High Court in the case of CIT v Pentair Water India Pvt Ltd and excluded companies based on the turnover filter. Further, it held that the assessee engaged in providing software development services was not functionally comparable with companies engaged in development of niche products. Additionally, companies not satisfying the related party transaction filter of 15 percent were excluded as comparable.
FCG Software Services (India) Pvt Ltd v ITO – TS-18-ITAT-2016 (Bang) - TP

75. The Tribunal held that the assessee, a wholly owned subsidiary of its USA based AE, engaged in providing IT and IT enabled services to its group could not be compared to a).companies not satisfying the service income filter of 75 percent, b).companies engaged in development of product and consultancy, c).companies having a huge brand value and reputation, d).companies specializing in embedded software development and e).companies having a huge turnover.
ADP Pvt Ltd v DCIT – TS-633-ITAT-2015 (Hyd) – TP
Avineon India P Ltd v DCIT – (2016) 46 CCH 0512 (Hyd)

76. The Tribunal held that 100 percent Government owned undertakings, rendering services primarily to the central / state governments could not be considered as comparable to the assessee, since it received preferential treatment in obtaining contracts from the Government, impacting profits and not indicative of a free market economy in which the assessee operated. Further it held that in the absence of segmental results, companies carrying on pre-project activities, procurement assistance, project management / planning, commissioning, inspection, construction and supervision were not comparable to the assessee, a captive service provider, engaged in providing engineering design and related services. It also held that companies undertaking substantial R&D activities (5.41 percent of turnover) were not comparable with the assessee who did not perform the said function.
Bechtel India Pvt Ltd v DCIT – TS-638-ITAT-2015 (Del) – TP

77. The Tribunal held that the assessee company rendering IT enabled servicesto its AE, could not be compared to companies using highly skilled work force for carrying out research and development activities, companies rendering web designing and software testing services and companies in whose case extraordinary event of amalgamation took place during the relevant year, while computing ALP.
ACIT v Tech Book Electronics Sercices (P)Ltd - [2016] 67 taxmann.com 169 (Delhi-Trib)

78. The Tribunal held that the assessee, a software development service provider could not be compared with a software product company. Further, it held that companies operating in the segment of software development services comprising of embedded product design services, industrial design and engineering services, visual computing labs and system integration services, having no break up of sub-services based on which the margin of only the software services activity could be computed, could not be considered as a comparable. Also, companies owning significant intangibles and huge revenues from software products could not be considered as comparable.
It observed that though TNMM obviates necessity for complete product identity or services identity between tested party and comparables and broad functional similarities would suffice, but where functional profile shows that dissimilarity, even within very same segment, is so significant so as to erode comparability, then there is a good case for exclusion.
Citrix R & D India (P)Ltd. vs DCIT - [2016] 68 taxmann.com 42 (Bangalore-Trib)

79. The Tribunal held that the assessee, engaged in the business of design and development of customized software applications could not be compared to companies having revenue from software development, hardware maintenance, information technology, consultancy in the absence of segmental information and companies engaged in software development services along with sale of software products without a break-up between the two.
Further, it held that where a comparable company earned income from a customer pursuant to an agreement entered into between such customer and the comparable company's parent company, which in the instant case was the AE of the assessee as well, the said transaction of receipt of income would be considered as a deemed international transaction under section 92B and the company could not be considered as comparable since it would no longer be an uncontrolled transaction.
Saxo India Pvt Ltd v ACIT – (2016) 67 taxmann.com 155 (Del – Trib)

80. The Tribunal held that the assessee, providing IT enabled analysis services to its AE was not comparable with companies who had undergone amalgamation during the relevant year.
It further held that where the segmental results of a comparable were available, it was incorrect to exclude a company only for a reason that it was into high end services.
Further, the Tribunal, relying on the decision of the Bombay High Court in the case of CIT v Pentair held that companies having huge turnover were to be excluded as comparable

companies and accordingly excluded companies having a turnover in excess of Rs. 200 crore.

Zyme Solutions Pvt Ltd v ITO – TS-65-ITAT-2016 (Bang) - TP

81. The Tribunal held that the assessee's software development services segment could not be compared to companies engaged in clinical research and manufacture of bio-products, companies into product development, companies having related party transactions to sales in excess of 15 percent, companies owning significant intangibles and having huge revenues from software products without a segmental break-up.
Further, the assessee's ITES segment could not be compared to companies providing complete business solutions, companies into product development, companies failing the Related Party transactions filter, companies engaged in producing design, drawing and structural engineering drawings, companies outsourcing its work to third parties and companies having huge brand values.
It further, held that high profit margin alone could not be the ground for inclusion or exclusion of a company and the inclusion or exclusion was warranted only if such high profit margin was due to some abnormal circumstances or event.
Ariba Technologies India Pvt Ltd v ITO – (2016) 67 taxmann.com 265 (Bangalore – Trib)

82. The Tribunal held that the assessee company rendering IT enabled services to its AE could not be compared to companies providing KPO services, engaged in research and development activities, owning intangibles and companies who have undergone extraordinary event of amalgamation during the relevant year. It further held that while determining ALP, turnover was a valid criteria that could be adopted for inclusion or exclusion of companies in comparability study of the assessee company.
DCIT v IGS Imaging Services (I) (P)Ltd. - [2016] 67 taxmann.com 148 (Bangalore-Trib)

83. The Tribunal, following the principle that were two views were available on the issue, the view favourable to the assessee was to be adopted, followed the decision of the Bombay High Court in the case of CIT v Pentair Water India Pvt Ltd and excluded companies based on the turnover filter i.e. turnover in excess of Rs. 200 crore. Further, it held that where a company was excluded on the ground of abnormal profits which arose due to an extra-ordinary event of amalgamation the said exclusion was warranted.
Further, the Tribunal excluded companies on the ground of drastic variation in profit margins, functional dissimilarity as they were engaged in software development / sale of software licenses, companies failing the Related Party transaction filter.
Sysarris Software Pvt Ltd v DCIT – TS-57 –ITAT-2016 (Bang) - TP

84. The Tribunal held that the assessee-company engaged in rendering software development services to its AE, could not be compared to companies developing their own software products and company owning significant intellectual property rights in form of patents which were used in rendering software development services.
Headstrong Services India Pvt Ltd v DCIT – (2016) 66 taxmann.com 185 (Delhi – Trib)

85. The Tribunal held that the assessee, a pure software development service provider, could not be compared to companies engaged in the business of software products, companies engaged in R&D activities resulting in creation of IPRs, companies engaged in embedded product development, companies developing software products as well as software development but having no segmental results, companies engaged in software design and development product services and companies engaged in 2D and 3D animation.
Further, it held that the acceptable RPT filter range was 5 percent to 25 percent and where there were a sufficient number of comparable companies, to obtain better comparison a filter of 15 percent as opposed to 25 percent was to be used.
LSI Technologies India Pvt Ltd v ITO – (2016) 47 CHH 0016 (Bang Trib)

86. The Tribunal held that the assessee engaged in the business of rendering data conversion services was not comparable to companies providing consulting services, developing software products, companies who have undergone an extra-ordinary event such as merger / demerger. Further, it held that loss making companies could not be compared with profit making companies and directed for the exclusion of such companies.
Lason India Pvt Ltd v JCIT – (2016) 47 CCH 0147 (Chen Trib)

87. The Tribunal held that the assessee, engaged in providing its AE with IT and IT Enabled services could not be compared to a company like Wipro Technology Ltd due to the existence of an extra-ordinary factor of acquisition of Citi Technologies Services Ltd as well as the fact that the said company was engaged in undertaking software development services for developing software application. It also held that the assessee could not be compared to Infosys Technologies Ltd due to its brand value, R&D expenses, offshore revenue etc. Further, companies engaged in software development as well as software products and marketing and not having segmental results for its software development work, could not be compared with the assessee.
FIL India Business Services Pvt Ltd v DCIT – TS-248-ITAT-2016 (Del) – TP
Pr CIT v Cash Edge India Pvt Ltd – TS-262-HC-2016 (Del) - TP

88. The Tribunal held that the assessee, engaged in providing software development services to its AE having a turnover of Rs. 22.71 crores could not be compared to companies having huge turnovers ranging from Rs.250 crores to Rs.13,000 crores as they were beyond the reasonable realm of comparability.
Further, it held that for determining the employee cost filter of comparable companies, the TPO was to consider contribution to PF & ESI, Gratuity and Ex gratia payments and where companies satisfied the impugned filter after considering the aforesaid items, it was to be considered as comparable.
DCIT v Sunquest Information Systems (India) Pvt Ltd – (2016) 47 CCH 0138 (Bang Trib)

89. The Tribunal held that the software segment of the assessee, engaged in providing support services to major Telecom and IT service providers, could not be compared to companies failing the employee cost to total cost filter of 25 percent, companies deriving revenue from both product and software services without segmental results, giant companies in terms of risk profile, scale and owning branded / proprietary products, companies developing software products in-house, companies developing hardware and software for embedded products and programs.
Nokia Siemens Networks India Pvt Ltd v ACIT – (2016) 47 CCH 0081 (Del- Trib)

90. The Tribunal remitted the benchmarking of the assessee's international transaction to the file of the TPO since the financials of the companies selected by the assessee were not available in the public domain at the time of the TP study but were now available. Accordingly, it directed the TPO to decide the matter afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.
The Tribunal further held that where the TPO had selected a comparable based on information received under section 133(6) of the Act without giving the assessee an opportunity of being heard, the issue was to be set aside to the file of the TPO for fresh adjudication after providing the assessee with such opportunity.
Microsoft India (R&D) Pvt Ltd v DCIT – (2016) 47 CCH 0316 (Del – Trib)

91. The Tribunal held that the assessee's software development services segment was not comparable to giant companies such as Infosys Technologies Ltd and Wipro Ltd in terms of risk profile, scale, nature of services, revenue, ownership of branded products and

provision of both onsite and offshore services and companies having revenue from software products and training as well.
Further, with respect to the ITES Segment of the assessee, it held that companies engaged in providing high end KPO services and companies having related party to sales in excess of 15 percent could not be compared to the assessee engaged in providing low end services.
The Tribunal further held that the assessee's marketing support segment could not be compared to companies imparting technical consultancy services and companies not having a separate marketing support segment.
Avaya India Pvt Ltd v DCIT – TS-377-ITAT-2016 (Del) - TP

Support Services

92. The Tribunal held that the assessee, engaged in providing IT Infrastructure support services and Financial and Accounting Support services in the capacity of a captive service provider could not be compared to a).companies in possession of intellectual property rights and having a huge brand, b).companies engaged in development of software products and also engaged in KPO, c).legal process outsourcing, d).data process outsourcing and e).high end software services and having undergone business restructuring during the year, f).companies engaged in health care outsourcing and software development services not having segmental information.
Bechtel India Pvt Ltd v DCIT – TS-638-ITAT-2015 (Del) – TP

93. The Tribunal held that the assessee, engaged in providing business support services in the nature of pre-sale / purchase and post-sale / purchase to its AEs, could not be compared to companies engaged in providing Project management consulting services, feasibility studies, micro enterprise development etc, companies providing advice on procurement and also carrying out procurement audits, Advisory-cum-consultants and companies engaged in project monitoring and quality assurance.
It also dismissed the contention of the assessee that companies engaged in information vending and companies having a different financial year ending were to be accepted as comparable.
Marubeni Itochu Steel India Pvt Ltd v DCIT – (2016) 67 taxmann.com 52 (Del – Trib)

94. The Tribunal held that The Tribunal held that where the assessee was primarily engaged in providing sales support and post-sales support services, and the TPO found that assessee's employees were highly qualified and technically competent while the employees of the comparable companies were low level skilled employees and accordingly excluded the said companies as comparable, the CIT(A) was incorrect in disregarding the comparability analysis of the TPO on the general broad sweeping reasoning that a certain leeway was to be given in choosing comparable companies. Accordingly, the matter was remanded to the file of the AO / TPO.
CIT v Comverse Network Systems India (P)Ltd - [2016] 67 taxmann.com 290 (Delhi-Trib)

95. The Tribunal held that the asessee-company rendering marketing support services to its AE in respect of sale of software products was not comparable to companies involved in providing engineering and consultancy services relating to hydroelectric projects and companies conducting clinical trials on food and drugs.
Microsoft Corporation India (P) Ltd v DCIT - [2016] 67 taxmann.com 94 (Delhi-Trib)

96. The Tribunal held that assessee, a BPO, could not be compared with a company that was into KPO services.
C3I Support Services (P)Ltd. v DCIT - [2016] 46 CCH 0423 (Hyd Trib)

97. The Tribunal rejected TPO's selection of high-end technical service providers as comparables for benchmarking marketing support services rendered by assessee. It also held that a company which was engaged in online portal activities and its major revenue was advertisement and subscriptions and could not be compared to assessee engaged in marketing support services.
Further, it rejected the assessee's ground for exclusion of comparable merely for the reason that the company was registered as 100% EOU, stating that registration as a 100% EOU only gives benefit with respect to direct and indirect taxation, and does not change the functional profile. It further held that even if it had impacted the prices charged by the comparable it was required to be shown as to what was its impact on the PLI of the comparable.
Rolls-Royce India (P) Ltd v DCIT - TS-180-ITAT-2016(DEL)-TP

98. The Tribunal upheld CIT(A)'s exclusion of Rolta India Ltd and KLG Systel Ltd as comparables on account of distinct nature of business, size and diversified products. It also noted that turnover of Rolta India was Rs. 599 crore or at best Rs. 347crore (as contended by Revenue) and turnover of KLG Systel was Rs 112.53cr, which was much higher than assessee's turnover of Rs. 13.31crore, and excludes these 2 companies applying turnover filter as well relying on Bombay HC ruling in Pentair Water India and Delhi HC ruling in Agnity India rulings.
ACIT vs. Dana India Technical Centre (P)Ltd - TS -140-ITAT-2016(PUN)-TP

99. The Tribunal held that companies engaged in engineering activities, testing services; micro enterprise development, skill development and project related services, tourism research studies, environment management, foreign exchange related service, travel agency services; business of container freight station could not be taken as comparable for the assessee engaged in providing marketing and other support services to its AE.
Roche Products (India)(P)Ltd v ACIT - TS-154-ITAT-2016(Mum)-TP

100. With regard to the assessee's call center service segment, the Tribunal excluded 12 comparables on grounds of functional dissimilarity following co-ordinate bench rulings in Stream International Services, Capital IQ Information, Avineon India and Zavata India; Also excluded 2 more comparables which failed TPO's employee cost filter; However, refused to accept assessee's contention to exclude Allsec Technologies Ltd, Apollo Healthstreet Ltd and I-Services India Pvt. Ltd as assessee had not made out a case for their exclusion.
Considering that the assessee was involved in Telecom and BPO services and its employee cost was very less compared to similar business, the Tribunal concluded that a company which failed the employee cost filter was to be rejected.
AOL Online India (P)Ltd v DCIT - TS-156-ITAT-2016(Bang)-TP

<u>Others</u>

101. The Tribunal held that where a company was correctly chosen as comparable based on its FAR analysis, it was necessary for the revenue to bring some cogent reason, argument or fact to justify that the comparable was to be excluded, other than the fact that the company was loss making.
DCIT v Nortel Networks India Pvt Ltd – (2016) 66 taxmann.com 177 (Del)

102. The Tribunal, relying on the earlier year's Tribunal orders in the case of the assessee, accepted the use of foreign comparable companies for carrying out FAR analysis and to benchmark the assessee's international transactions of providing automobile design services and engineering services to its Indian holding company, since the assessee was a Permanent establishment of a company incorporated in the UK.
Tata Motors European Technical Centre Plc v DCIT – TS-647-ITAT-2015 (Mum) – TP

103. The Tribunal citing Rule 10D which stresses the relevance of the FAR analysis, held that only those companies which were into the manufacture of bulk drugs i.e the same business of the assessee could be taken as comparable.
Astrix Laboratories Ltd v ACIT – TS-30-ITAT-2016 (Hyd) -TP

104. The Tribunal held that a company catering to needs of defence and armed forces and other organizations in field of space applications, night vision equipment, etc would not be functionally comparable to assessee engaged in the manufacturing of optical plastic lenses of human care.
Essilor Manufacturing India(P)Ltd. vs. DCIT - [2016] 67 taxmann.com 377 (Bangalore-Trib)

105. The Tribunal held that where Assessing Officer had excluded a company from comparable list on basis of information obtained under section 133(6) of the Act but did not make available said information to assessee, comparability was to be considered afresh.
The Tribunal held that where assessee had requested for inclusion of two companies as comparables, excluded by TPO in his TP analysis on ground that they had failed RPT filter, in view of fact that actual working of TPO was not verifiable, matter required re-adjudication.
Mercedes Benz Research & Development India (P) Ltd. v ACIT - [2016] 68 taxmann.com 230 (Bangalore-Trib)

106. The Tribunal held that when assessee had both related party transaction and non-related party transaction, in absence of similarly placed companies having similar functions, similar assets employed and similar risk undertaken, transaction of assessee with non-related party could be considered as best method to determine arm's length price.
Igarashi Motors India Ltd v DCIT - [2016] 68 taxmann.com 333 (Chennai-Trib)

107. The Court held that where a substantial part of revenue of a comparable company in execution of turnkey projects arose out of executing projects of public sector undertakings, it could not be considered to be comparable to assessee-company providing turnkey services to its AE as contracts between Public Sector undertakings were not driven by profit motive alone but other consideration also weigh in such as discharge of social obligations etc.
CIT v Thyssen Krupp Industries India (P)Ltd - [2016] 68 taxmann.com 248 (Bombay)

108. The Tribunal held that consistent abnormal profits earned by a Company intended to be taken as a comparable and several irregularities in financial statements of same, shall rightly disqualify such company as a comparable.
ACIT v Transcent MT Services (P)Ltd. & Anr - [2016] 46 CCH 0295 (Del Trib)

109. The Tribunal held that comparables which were available in public domain even after conduction of studies by assessee could be taken as comparables and considered for benchmarking.
Syngenta Biosciences (P)Ltd. v DCIT- [2016] 46 CCH 0507 (Mum Trib)

110. The Tribunal held that companies having turnover 20 times more than the assessee could not be accepted as a comparable.
DCIT v United State Pharmacopeia India (P)Ltd - [2016] 46 CCH 0447 (Hyd Trib)

111. The Tribunal rejected CIT(A)'s adoption of assessee's AE as tested party and selection of Indian company as comparable for foreign tested party, by holding that the entire exercise of determining the ALP by the CIT (Appeals) was contrary to the provisions of transfer pricing. It restored the issue to the file of AO / TPO for deciding the matter afresh by considering segment-wise data of the assessee & then comparing it with comparable

companies in light of various judicial precedents; and further directed adoption of 15% RPT filter as against 25% adopted by TPO.
Kshema Technologies Ltd v ACIT - TS-182-ITAT-2016(Bang)-TP

112. The Court held that even though the Tribunal had rejected three comparables on merits, the Court restored the issue to the file of the TPO as the same were never examined by him. However, the Court approved the Tribunal's order to the extent it held that merely because a comparable had been used in the subsequent AY for determining the ALP, it would not ispo facto apply to determine the ALP in the relevant AY as well.
Advance Power Display Systems Ltd v CIT - TS-670-HC-2015(BOM)-TP

113. The Tribunal held that where the TPO refused to consider the comparability of fresh comparable companies, the inclusion of one company sought by the assessee without considering other prospective comparable companies selected by the TPO would distort the overall comparability and therefore remitted the comparability of all the companies to the file of the TPO.
Federal Mogul Automotive Products (India) Ltd v DCIT – TS-235-ITAT-2016 (Del) - TP

114. The Tribunal held that where the current year data was not available for a company it could not be considered as comparable. Further, it held that where a company was functionally comparable it could not be excluded merely because it had negative net worth.
ACIT v Gillete Diversified Operations (P)Ltd - TS-218-ITAT-2016(DEL)-TP

115. The Tribunal held that the related party to sales filter of 15 percent was appropriate. Further, it held that the application of a turnover filter was important however applying a turnover filter of say Rs. 1 to 200 crores would give unrealistic results as an entity having a turnover of Rs. 1 crore could be compared to a company having a turnover of Rs. 200 crore but at the same time, as per the filter, a company having a turnover of Rs. 200 crore could not be compared to a company having a turnover of Rs.201 crore as it fell outside the filter. Therefore, it suggested the application of an appropriate multiple (for example, 10 times) for determining comparability based on turnover. Additionally, it held that companies having high profit margin or high loss could be rejected as comparable only if such high profit or high loss was a result of some abnormal event or circumstance and the mere fact of high profit or high loss was not sufficient to exclude companies as comparable.
ITO v Maxim India Integrated Circuit Design Pvt Ltd – TS-265-ITAT-2016 (Bang) - TP

116. The Tribunal upheld the directions of the DRP deleting the TP addition since the TPO selected two comparable companies but rejected 4 others which were also functionally comparable with the assessee. Further, it noted that during the DRP proceedings, the assessee submitted 6 comparable companies pursuant to which the DRP remanded the matter to the TPO for consideration of these new comparables and that the TPO failed to examine the said comparables on the ground that the assessee could not submit new comparables at the appellate stage. It held that where the TPOs order itself revealed that all 6 companies were in the same segment, the act of the TPO in picking up only two comparable companies was highly objectionable. With regard to the admission of additional evidence / new evidence, the Tribunal held that the DRP being an appellate authority had all the powers of the CIT(A) and therefore was empowered to admit such evidence.
DCIT v M/s Rolls Royce Marine India Pvt Ltd – TS-284-ITAT-2016 (Mum) - TP

117. The Tribunal held that a company having related party transactions to sales in excess of 25 percent (37.88 percent) could not be considered as comparable as it would constitute a controlled transaction.
ITO v NTT Data Global Delivery Services Ltd – (2016) 47 CCH 0071 (Del- Trib)

118. The Tribunal held that the assessee, engaged in distribution of channels was to be compared to companies engaged in the business of distribution and that the TPO was incorrect in choosing service companies as comparable. It further held that where data of distributors of channels was not available in the public domain, distributors of broadly comparable products and services should have been selected.
ACIT v Turner International India Pvt Ltd – TS-336-ITAT-2016 (Del) - TP

119. The Tribunal held that Hikal Ltd, having a crop protection segment was comparable to the Crop Protection Segment of the assessee and that the financial data of Hikal's crop protection segment was to be considered for comparison purposes as opposed to the entity level results taken by the TPO.
Further, in relation to the assessee's organic chemical segment, the Tribunal held that the TPO was incorrect in rejecting Sunshield Chemicals as a comparable on the ground that it was a persistent loss making company and sick company, since the impugned company ceased to be a potentially sick company and the annual reports for the two years prior to the relevant year reflected profits. Further, it held that companies not satisfying the R&D filter of 3 percent, applied by the TPO himself were to be excluded as comparable.
EI DuPont India Pvt Ltd v DCIT – TS-338-ITAT-2016 (Del) - TP

120. The Tribunal held that though the principle of res judicata does not apply to income-tax proceedings, the rule of consistency was still applicable and therefore the TPO should not have rejected comparables which were valid comparables in the previous year without assigning a valid reason for rejecting the earlier year's stand or without bringing on record the salient features of the year under consideration as compared to the facts of the earlier years..
Thomas Cook (India) Ltd v DCIT – TS-307-ITAT-2016 (Mum) - TP

121. The Tribunal held that the FAA was incorrect in considering NDTV and Cinevistaas as comparable to the assessee as they were pure content developers as compared to the assessee who was merely engaged in trading of content purchased / procured. It noted that the assessee was a mere trader and not a developer of content as supported by its P&L account which did not reflect any production or post production expenses as contained in the P&L accounts of NDTV and Cinevistaas. Accordingly, it deleted the addition made by the TPO arrived at by incorrectly considering the average margin of the two companies.
Star India Pvt Ltd v ACIT – TS-406-ITAT-2016 (Mum – TP)

122. The Tribunal held that merely because a comparable incurred loss during the year in normal course of business it could not be excluded as a comparable where it satisfied the functional comparability analysis.
Syngenta India Ltd v ACIT – TS-366-ITAT-2016 (Mum) - TP

d. ***Computation / Calculations / Adjustments***

123. The Tribunal held that for the purposes of making necessary adjustments as envisaged under Rule 10D, the relevant segments of the comparable companies were to be considered and only the segmental revenue and segmental costs were to be considered with allocation of common expenditure amongst the segments on a proportionate and reasonable basis.
Astrix Laboratories Ltd v ACIT – (2016) 67 taxmann.com 28 (Hyd)

124. The Tribunal held that as per the Rules, the net profit margin of controlled transactions had to be compared with the net profit margin of the uncontrolled transactions and not the respective gross profit margins as done by the TPO.
DCIT v Cummins India Ltd – (2016) 67 taxmann.com 341 (Pune)

125. The Tribunal held that gain on account of foreign exchange fluctuation was to be considered as operating revenue for the purpose of working the profit margins of comparable companies.
Obopay Mobile Technology India Pvt Ltd v DCIT – (2016) 66 taxmann.com 119 (Bang)

126. The Tribunal held that cost to cost receipt of reimbursement of expenses was to be evaluated independently and not added to the cost base and revenue in determining the ALP.
FCG Software Services (India) Pvt Ltd v ITO – TS-18-ITAT-2016 (Bang) - TP

127. The Tribunal held that where the assessee, who was entitled to charge its AE a mark-up of 5 percent on the actual costs incurred by it in providing research services, inadvertently failed to exclude the cost of bought out services and service tax from the cost on which mark-up was charged in accordance with the agreement, the TPO ought to have excluded the same. It noted that if the above figures were considered, there would be no scope for making adjustment under section 92 of the Act since the price would be at ALP and accordingly deleted the addition.***Unilever Industries Pvt ltd v JCIT – TS-2-ITAT-2016 (Mum) - TP***

128. The Tribunal held that loss arising out of foreign exchange fluctuations in relation to trading items was to be considered as an operating cost.
Ameriprise India Pvt Ltd v DCIT – (2016) 66 taxmann.com 246 (Del)

129. The Tribunal held that comparability was to be tested using the current years data of comparable companies and only when such data does not provide a true picture of uncontrolled comparable price, can multiple years data be considered.
Further, it held that the tolerance range of + / - 5 percent as per proviso to section 92C(2) was a consequential benefit and would be available only if the difference between mean margin and assessee's margin on international transactions price was within such range.
Essilor Manufacturing India(P)Ltd. vs. DCIT - [2016] 67 taxmann.com 377 (Bangalore-Trib)

130. The Tribunal held that as per the language used in section 92(1) and 92C(3)(a) of the Act, it is the actual income earned from an international transaction during the year that has to be taxed at ALP and therefore the actual income of the assessee from an international transaction could not be substituted with any hypothetical figure such as the projected profits for the subsequent years or by considering the profits of the earlier years.
Headstrong Services India Pvt Ltd v DCIT – (2016) 66 taxmann.com 185 (Delhi – Trib)

131. The Tribunal held that the net operating margin realized by the assessee from international transactions was to be compared to the net operating profit margin realized by the comparable companies using the same base i.e. the numerator and denominator used for computation should be common for the assessee as well as the comparable companies and therefore the operating profit to operating cost of the comparable companies could not be compared to the operating profit to value added expenses of the assessee.
DCIT v Agilent Technologies India Pvt Ltd – (2016) 67 taxmann.com 95 (Del – Trib)

132. The Court held that the TPO was unjustified in applying the base of capital employed under the TNMM method without segregating the capital employed in respect of AE and Non-AE transactions. Further, it held that where the assessee entered into both international as well as domestic transactions, the Tribunal was justified in restricting the adjustment only to international transactions.
CIT v Goldstar Jewellery Design Pvt Ltd – (2016) 67 taxmann.com 86 (Bom)

133. The Tribunal held that considering the complex structures involved in many intra AE transactions it could not be held that the ALP adjustments cannot result in a situation wherein the profits of the AE along with the ALP adjusments exceed the global profits of the group as a whole, since it would require interaction of a large number of tax jurisdictions with irreconcilable tax laws.
Fortune Infotech Ltd v ACIT – (2016) 66 taxmann.com 92 (Ahd – Trib)

134. The Tribunal held when rental income of the assessee was excluded from the total income for the calculation of PLI, corresponding rental expenditure was also required to be excluded.
Zyme Solutions Pvt Ltd v ITO – TS-65-ITAT-2016 (Bang) - TP

135. The Tribunal held that where the TPO was taking segmental results into consideration (results of the bulk drug manufacturing segment of comparable companies), he was to consider only the operating profit and operating cost of the said segment and therefore common expenditure relating to all segments could not be attributed to the bulk drugs segment alone.
Astrix Laboratories Ltd v ACIT – TS-30-ITAT-2016 (Hyd) –TP

136. The Tribunal held that an adjustment on account of variation of cost of raw materials could only be made if the variation was substantial enough to establish extraordinary circumstances and that for claiming such adjustment, the assessee was to show how the comparable companies were affected by similar variations, if any and that the products of the comparable companies were of inferior quality.
Further, it held that an adjustment could be given to a tested party for under-utilization of manufacturing capacities only if it was possible for the assessee to establish that the comparable companies had a utilization capacity above its own.
Momentive Performance Materials (India) Pvt Ltd v ACIT – (2016) 67 taxmann.com 327 (Bangalore –Trib)

137. The Tribunal held that where adjustments on account of under-utilization of capacity and difference in depreciation are factors which are likely to materially affect price or cost charged or paid, or profit arising from, such transactions in open market, Assessing Officer / TPO should allow adjustments on account of under-utilization of capacity and also difference in depreciation method adopted by assessee and comparable companies. Consequently, it further held that the issue of apportionment of unallocated expenses also needed to be allowed.
Srini Pharmaceuticals Ltd v ACIT - [2016] 68 taxmann.com 50 (Hyderabad-Trib)

138. The Tribunal held that while working out operating margin, amount of foreign exchange gain /loss is required to be considered as an item of operating revenue/cost, both in case of assessee as well as comparables.
Mercedes Benz Research & Development India (P) Ltd. v ACIT - [2016] 68 taxmann.com 230 (Bangalore-Trib)

139. The Tribunal held that where assessee company had not claimed provision of derivative losses in final computation of its income, same could not form part of operating expenses while computing its PLI. Also where assessee was engaged in both domestic and export sales in ready to serve food (RTS) segment, transfer pricing adjustment had to be made with respect to international transaction only and not on entire sales of RTS segment. Further, where assessee claimed that interest on finance cost being non-operating expense was to be excluded while calculating PLI of assessee company, in absence of information as to nature of interest paid on finance cost, claim of assessee was to be dismissed.
Further, it held that where TPO made addition to assessee's ALP in respect of ready to serve food sold to its AE without giving adjustment on account of difference in capacity

utilization between assessee and its comparatble, impugned addition deserved to be set aside.
Tasty Bite Eatables Ltd. v ACIT - [2016] 68 taxmann.com 272 (Pune-Trib)

140. The Tribunal held that it is not permissible to make transfer pricing adjustment by applying average operating profit margin of comparables on assessee's universal transactions entered into with both AEs and non AEs.
Headstrong Services (India)(P)Ltd v DCIT - [2016] 68 taxmann.com 363 (Delhi-Trib)

141. The Tribunal held that where assessee was remunerated with costs incurred with mark up at 8 percent for services rendered to its AE, TPO was not justified in changing base from 'costs' incurred to 'FOB' value of exports' and applying 6 percent mark-up.
Li & Fung (India) (P)Ltd v DCIT - [2016] 68 taxmann.com 58 (Delhi-Trib)

142. The Tribunal held that the segmental results of the business of the assessee, segregating transactions undertaken by it with its AEs and Non-AEs was to be admitted as additional evidence so as to determine the transfer pricing adjustment vis-à-vis AE related transactions and not on all transactions undertaken by the assessee. Since the segmental results were not analysed, the Tribunal admitted the same as additional evidence and remanded the matter to the file of the TPO.
RMSI (P) Ltd v ACIT - [2016] 46 CCH 0276 (Del Trib)

143. The Tribunal held that foreign exchange gain pertaining to marketing commission segment should be considered as operating income while computing margin of comparable companies.
GE Healthcare Bio-Sciences Ltd. vs DDIT - [2016] 68 taxmann.com 369 (Chennai-Trib)

144. The Tribunal accepted that depreciation expenditure of assessee was much higher than that of comparables, but after noting a direct but opposite relation between depreciation cost & maintenance cost of assessee directed AO/TPO to work out comparative analysis of depreciation cost in the ratio of turnover of assessee / comparables, and then to grant adjustment on account of differential ratio of depreciation cost including other incidental expenses on use of machinery/fixed assets in the margins of comparables.
Further, it rejected TPO's adoption of different PLI (operating profit to cost) in respect of reference segment for AY 2009-10 when operating profit to sales had been adopted as PLI for mass production segment and also for earlier AY.
Essilor Manufacturing India (P) Ltd. vs DCIT - TS-81-ITAT-2016(Bang)-TP

145. Reimbursement costs have to be excluded for profitability purposes while working out operating costs (as same do not involve any functions to be performed).
International Merchandising Corporation v DCIT - [2016] 68 taxmann.com 360 (Delhi-Trib)

146. The Tribunal held that once there was additional compensation that had been taken as item of operating revenue, then costs incurred in bearing such risks have to be naturally considered as operating cost.The Tribunal held that as operating profit was computed by considering items of operating costs alone, value of two items viz. purchase of capital asset and FTS which were capital in nature and capitalized in balance sheet, could not be included in base amount for applying operating profit margin rate of comparables for computing amount of transfer pricing adjustment.
Asahi Glass Ltd v DCIT - [2016] 46 CCH 0421 DelTrib

147. The Tribunal held that an adjustment should be allowed to the assessee of the difference in the risk borne by the assessee as well as the comparables. Noting that assessee had submitted a working for risk adjustment, without commenting on the correctness of the

computation, the Tribunal set aside this ground to the file of TPO for fresh consideration in accordance with law after granting proper opportunity to the assessee for supporting its claim.
Rolls-Royce India (P) Ltd. vs DCIT - TS-180-ITAT-2016(DEL)-TP

148. The Tribunal held that forex loss on account of late receipt of export proceeds of earlier AY were not relatable to export sales of the year under consideration and thus excluded the same while computing assessee's PLI. However, it clarified that forex loss relating to sales of current AY would need to be adopted for computing assessee's PLI, and accordingly directed the AO to re-compute assessee's PLI.
ACIT v Dana India Technical Centre (P)Ltd - TS -140-ITAT-2016(PUN)-TP

149. The Court upheld Tribunal's order considering foreign exchange gain/loss arising out of revenue transactions (i.e. ITES services) as an item of operating revenue/cost.
Pr CIT v Ameriprise India (P)Ltd -TS-174-HC-2016(DEL)-TP

150. The Tribunal held that where the assessee had outsourced some of its work to its subsidiaries and other independent units in relation to services to be provided by it to its other AEs, and these entities raised bills on the assessee for which the assessee made payments to them on its own account, the entire transaction could not be treated as a pass through cost as it was not a mere payment from the AE of the assessee to its subsidiaries, and therefore, the assessee was not correct in seeking its exclusion from income and expenditure while computing PLI.
Lason India Pvt Ltd v JCIT – (2016) 47 CCH 0147 (Chd Trib)

151. The Tribunal rejected the assessee's plea for considering payment of commission of Rs. 2 crore to Voltas Ltd. (third party) as a pass through cost as the said costs were directed towards rendering of marketing support services to its AE and were thus a value added cost and were part of assessee's operating cost for computing margin. It observed that the assessee received Rs. 4.24 cr as commission from AE as consideration for rendering marketing support services, of which a sum of Rs. 2cr was paid to Voltas Ltd. under a sub-contract service agreement and therefore the entire amount of Rs. 2 crore represented costs incurred by assessee in its role as principal for carrying out the market and support services and not as an agent of its foreign AE. Therefore, it held that this was not a sum recoverable per se from AE. It further held that if commission paid to Voltas Ltd. (which was exclusively for rendering marketing support services to AE) was treated as a pass through cost, then the payment to assessee's own employees and other expenses, which were also incurred in rendering services to AE, should also be treated as pass through cost, which was an 'absurd' proposition.
Kobelco Cranes India (P) Ltd. vs ITO - [TS-242-ITAT-2016(DEL)-TP]

152. The Tribunal accepted the assessee's plea for treatment of royalty income received from franchisee / JVs in India and reimbursed to its AE, for marketing and operational rights, as a pass-through cost, noting that there was no value-addition to the collection of royalty amount and reimbursement to AE and further that assessee had not commercially exploited the royalty / franchise fees as it was required to remit such funds within 5 days of end of each month.
Mc.Donald's India (P) Ltd vs DCIT - TS-236-ITAT-2016(DEL)-TP

153. The Tribunal held that interest income earned from Fixed Deposit Receipts was includible as operating income since the said interest arose out of advances received against exports which were immediately placed in FDRs with the bank for the purpose of taking letters of credit in favour of overseas sellers and therefore was an integral part of the assessee's business activity.

Further, it held that TP adjustments were to be restricted to the international transactions undertaken by the assessee with its AEs and therefore the TPO was incorrect in making an adjustment to the entire manufacturing segment of the assessee.
DCIT v Bunge India Pvt Ltd – TS-264-ITAT-2016 (Mum) - TP

154. The Tribunal held that where foreign exchange fluctuation was considered as operating in nature while computing the PLI of the assessee, it was to be considered on a similar footing while computing the PLI of comparable companies.
DCIT v Sunquest Information Systems (India) Pvt Ltd – (2016) 47 CCH 0138 (Bang Trib)

155. The Tribunal held that the entire exercise under Chapter X was confined to computing the total income of the assessee from international transactions with its AEs having regard to the arms' length price and therefore, the TPO was incorrect in making an adjustment at an entity level including transactions with unrelated entities.
Federal Mogul Automotive Products (India) Ltd v DCIT – TS-235-ITAT-2016 (Del) - TP

156. The Tribunal held that 'other sales income' and 'corporate support service income' was to be included while computing the PLI of the assessee. Further, it held that foreign exchange gains arising out of the sale of goods was to be included in the operating income of the assessee.
ACIT v Gillete Diversified Operations (P)Ltd - TS-218-ITAT-2016(DEL)-TP
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157. The Tribunal held that where the assessee, being newly incorporated was incurring losses as it was yet to break even, though TNMM was the most appropriate method, comparability with other companies under TNMM could only be done once the significant differences of operating cost between the comparables and assessee were adjusted since break-even of cost could only be reached after a sufficient period of operations by which time sufficient income could be generated to contribute towards fixed cost. Accordingly, it remitted the ALP determination to the file of the TPO.
MGE UPS System India Pvt Ltd v DCIT – TS-281-ITAT-2016 (Del) - TP

158. The Tribunal rejected the TP adjustment of Rs. 1.30 crores to the amount of book profits under minimum alternate tax (MAT) provisions and held that there was no provision under the law that permitted the AO to make an adjustment on account of transfer pricing addition to the amount of profit shown by the assessee in its profit and loss account, for the purpose of computing book profit u/s 115JB. It noted that section 115JB is a self-contained code which prescribes certain adjustments permissible to book profit, whereas TP adjustments are governed by altogether different sets of provisions contained in Chapter X and that such an approach was highly unfair and would result in undue and avoidable hardship to the tax payers.
Owens Corning (India) Pvt Ltd. v DCIT - TS-245-ITAT-2016(Mum)-TP
Owens Corning (India) Pvt Ltd v DCIT – TS-269-ITAT-2016 (Mum)

159. The Tribunal held that where the assessee computed depreciation under the straight line method as opposed to the comparable companies who used the written down value method, the assessee was eligible for an adjustment on account of the difference in the methods as depreciation charged by the assessee (29 percent) was substantially higher than the depreciation charged by comparable companies (15 percent).
AMD Far East Ltd v JDIT – TS-299-ITAT-2016 (Bang) - TP

160. The Tribunal held that where only one price had been determined under the most appropriate method, the question of providing the 5 percent (relevant for the year under consideration – AY 2004-05) benefit under the second proviso to Section 92C did not arise.
Philips Electronics v ACIT – TS-316-ITAT-2016 (Kol) - TP

161. The Tribunal held that where there was a difference in the depreciation of the assessee and the comparable companies due to the age of machinery, rate at which it was claimed and the method of claiming depreciation and details of capacity utilization and rate of depreciation of the comparable companies could not be ascertained, adopting Gross Profit / Sales as the PLI would eliminate such differences.
Kirloskar Toyota Textile Machinery Pvt Ltd v DCIT – TS-363-ITAT-2016 (Bang) - TP

162. The Tribunal held that where the sale price of the assessee's key product, constituting 35 percetntof the gross margin was substantially reduced by the assessee in the relevant year due to availability of similar cheap generic products, so as to defend its market share, a reasonable and suitable adjustment was to be made to the profit margin. Accordingly, it remitted the file to the AO to determine the impact of reduction of price of the assessee's key product.
Syngenta India Ltd v ACIT – TS-366-ITAT-2016 (Mum) - TP

163. The Tribunal held that as per Accounting Standard 5, bad debts could not be considered as extra-ordinary in nature and were to be considered as an operating expenses while computing the PLI.
Thomas Cook (India) Ltd v DCIT – TS-307-ITAT-2016 (Mum) - TP

164. The Tribunal held that where a company carries high trade receivables it would mean that it allows its customers a relatively longer period to pay its amount resulting in higher interest cost and lower profit and similarly companies carrying high payables enjoy the benefit of a relatively longer period for payment which reduces its costs and increases it profits. Accordingly, working capital adjustment ought to be granted to bring the case of the assessee at par with other functionally comparable companies.
Marubeni Itochu Steel India Pvt Ltd v DCIT – (2016) 67 taxmann.com 52 (Del – Trib)

e. ***Specific Transactions***

Advertisement, Marketing and Promotion

165. The Tribunal, noting that the decision of the Delhi High Court in the case of Sony Ericsson was not available to the TPO at the time of the relevant proceedings, remanded the matter back to the file of the TPO to re-compute the AMP addition in line with the ratio laid down in the aforesaid judgment. Further it held that the AO / TPO were to adopt the bundled approach in benchmarking AMP transactions and that where the comparable companies were adopted as a bundled transaction, it would be unfair to segregate AMP expenses since the comparable companies are accepted after comparing various functions performed by the tested party and the AMP expenses are duly accounted for in such comparability analysis.
India Medtronic Pvt Ltd v DCIT – TS-633-ITAT-2015 (Mum) - TP

166. The Court held that the TPO was incorrect in presuming the existence of an international transaction between the assessee and its AEs, on the basis that the assessee allegedly made a contribution towards AMP expenditure to its wholly owned Indian subsidiary on behalf of its AEs and the fact that the assessee had incurred a loss in the relevant segment and therefore concluding that it was not adequately compensated by the AEs for the creation of marketing intangibles. The Court held that there would be a need for a detailed examination of the operating agreement between the assessee, its Indian subsidiary and the AEs to ascertain if any part of the AMP expenses was for the purpose of creating marketing intangibles for the AE of the assessee and only after an international transaction

between the assessee and its AE in relation to AMP expenses was shown to exist, could the question of determining ALP of such international transactions arise.
Yum Restaurants (India) Pvt Ltd v ITO – TS-12-HC-2016 (Del) - TP

167. The Tribunal held that the TPO was incorrect in adopting the Bright Line Test for the purpose of determining the ALP of the AMP transactions as specifically held in the decision Sony Ericsson, Delhi High Court and accordingly remanded this limited issue to the file of the TPO.
Johnson & Johnson Limited v Add CIT– TS-19-ITAT-2016 (Mum) – TP

168. The Tribunal held that where the assessee, a market leader in the chocolate confectionary segment, had incurred marketing expenses for increasing awareness of its products in India leading to higher sales, the same could not be presumed to have an indirect benefit to the assessee's AE. Additionally, in the absence of an agreement between the assessee and the AE and where the TPO failed to prove that the assessee incurred marketing expenses on behalf of the AE, the provisions of Chapter X could not be applied to the AMP expenditure of the assessee. It held that a perceived / notional indirect benefit to the AE due to incurring of certain expenditure by an assessee in India was not covered under the TP provisions.
Mondelez India Foods Pvt ltd v Add CIT – (2016) 47 CCH 0098 (Mum- Trib)

Loan / Corporate Guarantee

169. The Tribunal held that where the assessee advanced a loan to its AE at LIBOR plus 247 basis points and Indian banks were charging LIBOR plus 250 basis points on similar loans, the addition made by the TPO / DRP was to be set aside, more so since the loans granted by the assessee were to subsidiaries under the same management and control which substantially reduced the risk factor.
UFO Movies India Ltd v ACIT – (2016) 66 taxmann.com 120 (Del)

170. The Tribunal held that where the assessee intended to provide guarantee to its AE by pledging shares held by it, for a loan taken by the AE from ICICI Bank, Singapore but the shares were not finally pledged due to refusal of permission by the RBI, the assessee had not furnished the impugned corporate guarantee and therefore no international transaction under section 92C of the Act took place and that the TPO was incorrect in making the addition on the misconception that the refusal of permission by the RBI was in relation to another loan and not the loan taken by the AE.
Adani Enterprises v ACIT – TS-1-ITAT-2016 (Ahd) - TP

171. The Tribunal held that the TPOs treatment of delay in realization of sales (beyond 30 days) to AE as a loan and charging interest thereon on the basis that the assessee had used borrowed funds to pass on the facility to its AE, was not justified since the assessee was a debt free company and there was nothing on record to show that the assessee was making interest payments to any lenders.
Bechtel India Pvt Ltd v DCIT – TS-638-ITAT-2015 (Del) – TP

172. The Tribunal held that where assessee had advanced loan to its 100 percent subsidiary of Poland in Polish Zloty, interest rate should be computed by adopting WIBOR + 1 percent
KPIT Cummins Infosystems Ltd v ITO - [2016] 68 taxmann.com 294 (Pune-Trib)

173. The Tribunal held that amendment made by Finance Act, 2012 in section 92B, atleast to the extent it dealt with question of issuance of corporate guarantees, is effective from 1.4.2012 and cannot have retrospective effect from 1.4.2002.
Rushabh Diamonds vs. ACIT - [2016] 68 taxmann.com 141 (Mumbai-Trib)

174. The Tribunal set aside TPO/DRPs order charging notional interest on interest free loan advanced to UK subsidiary (AE) by holding that if assessee had surplus interest free funds

after meeting all statutory obligations, including payment of income tax on the income, then assessee was open to invest the same in any manner as it liked. As details of loan borrowed and available surplus were not available in the present case, the Tribunal remitted the matter and directed verification of i) whether assessee had sufficient surplus funds for advancing the corporate loan to UK AE and ii) whether there was any nexus between borrowed funds and advance made by assessee to UK AE.
Sundaram Fasteners Ltd. vs DCIT - TS-121-ITAT-2016(CHNY)-TP

175. The Tribunal deleted adjustment on account of interest on delayed realization of debts from AEs by holding that Sec 92B amendment to the extent it pertains to delayed realization of debtors was prospective. It further held that since assessee had not charged interest on delay in realization of debts to non-AEs, no interest could be added / charged from the non AEs. Further, the Tribunal rejected re-characterization of transaction as unsecured loan by relying on Delhi HC decision in EKL Appliances, as form and substance of transaction had remained unchanged, and the assessee had behaved in a commercially rational manner by setting same terms for realization of export proceeds for AEs and non-AEs.
Hiraco Jewellry (India (P) Ltd v DCIT -TS-191-ITAT-2016(Mum)-TP
ACIT vs. Gitanjali Exports Corporation Ltd -TS-192-ITAT-2016(Mum)-TP

176. The Tribunal held that where the assessee received interest on advances given to its AE, the interest rates of the loanee country were to be considered for the purpose of benchmarking the interest and not the Bond rate of BB rated bonds in India.
Subex Ltd v DCIT – (2016) 68 taxmann.com 233 (Bangalore – Trib)

177. The Tribunal rejected (a) TPO/DRP's treatment of AE as the 'tested party' and adoption of USD Corporate Bond Rates for determining ALP of INR dominated CCD's borrowed by assessee from AE (b)TPO/DRP's 'blanket approach' in applying USD Corporate Bond Rates for interest benchmarking, on the ground that once the tested transaction is in INR denominated debt, then interest rate must necessarily be based on economic and market factors affecting Indian currency and data available for debt issuances in India or INR denominated rather than foreign currency rate or external data by relying on Delhi HC ruling in Cotton Naturals. The Tribunal accepted assessee's alternative approach of undertaking search for comparable debt issuances in BSE data as assessee had used data for the subsequent year and made minor tenor adjustment to factor the time period to arrive at mean margin and held that although a high degree of comparability was required under CUP, but in absence of such a comparable data, a minor adjustment could be made to eliminate the material effect of time difference for arriving at a CUP. The Tribunal deleted the addition by noting that the assessee had filed 2 comparables for the earlier year wherein for credit rating of AA Enterprises, the coupon rate of interest per annum was between 11% to 12% for a tenor of 60 months, and concluded that If for a credit rating company AA or AA(+) the interest rate is ranging between 11% to 12%, then in the case of the assessee which was admittedly BBB(-) credit rating company, 11.30% interest paid by the assessee to its AE was much within the arm's length rate.
India Debt Management (P)Ltd v DCIT -TS-141-ITAT-2016(MUM)TP

178. The Tribunal held that where the assessee granted loan to its AE at an interest rate amounting to LIBOR, out of the proceeds of FCCBs issued outside India and claimed that the said loan was given to its AE since money raised through FCCBs were not permitted to be brought into India unless actually deployed for capital expansions, the TPO was not justified in re-characterizing the transaction and questioning the commercial rationale of such transaction and making a TP addition by taking the ALP interest rate at LIBOR + 200 basis points. Further, relying on the decision in the case of the Tribunal in Cadila Healthcare Ltd, wherein notional interest adjustment was deleted on optionally convertible loans on the ground that no interest was chargeable unless the option of conversion vested in such loans was not exercised, the Tribunal deleted the addition made by the TPO.
Sun Pharmaceuticals Ind Ltd v ACIT – TS-247-ITAT-2016 (Ahd) -TP

179. The Tribunal held that provision of a guarantee by a parent to its subsidiary constituted a shareholder function and hence charging a guarantee fee was not warranted and further held that where the issuance of a corporate guarantee was without consideration there would be no impact on profits, incomes, losses and assets of an entity and therefore it would not constitute an international transactions liable to benchmarking under TP provisions. Accordingly, it deleted the TP adjustment of notional charges @ 6 percent on corporate guarantee issued by the assessee.
Further, it held that LIBOR + 200 basis points was to be used for the purpose of benchmarking loans granted by the assessee to its US based subsidiary and not the average yield on unrated bonds as used by the TPO.
Manugraph India Ltd. vs DCIT - TS-190-ITAT-2016(Mum)-TP

180. The Tribunal deleted the addition of interest @ 4.06 percent made by the TPO on receivables outstanding beyond a period of 2 months and held that putting a limit of two months of credit period was arbitrary considering that the RBI permitted realization of foreign receivables within a period of one year. It further noted that it was in the interest of the assessee to receive foreign exchange promptly, irrespective of whether the debtors were AEs or Non-AEs, so as to enable it to claim deduction under section 10A of the Act. The Tribunal observed that the assessee's invoices were outstanding for a period of 3 months which was a reasonable period and therefore held that no interest was to be charged on such receivables and also noted the assessee did not charge interest on outstanding receivables neither from its AEs nor its Non-AEs.
GSS Infotech Ltd v ACIT - TS-298-ITAT-2016 (Hyd) – TP

181. The Tribunal held that where the assessee borrowed funds in India on which it paid interest of Rs. 10.05 crores and advanced the same as interest free loans to its foreign AEs, it was an obvious means of shifting profits outside India and reducing tax liability in India by claiming the interest paid as a deduction and not earning any interest on the advances given. Accordingly, the tribunal held that the TPO had rightly determined the ALP on a notional basis by adopting LIBOR as the rate of interest.
Further, it held that where the assessee had given a corporate guarantee and letter of comfort without charging any fee, the same having no bearing on profits, income, loss or assets of the assessee and therefore was outside the scope of international transaction.
TVS Logistics Services Ltd v DCIT – TS-324-ITAT-2016 (Chny) - TP

182. The Tribunal held that where the assessee had advanced interest free loans to its AE without charging any interest, the same was liable for benchmarking under the Act irrespective of the fact that the advances were paid out of EEFC accounts which did not earn any interest in any case. It rejected the argument of the assessee that the advances did not require any benchmarking since they were in the nature of quasi capital and were granted with the main purpose of promoting exports of the AEs outside India. As regards the interest rate applicable the Tribunal held that the since the advances were made in foreign currency, the interest rate on loans and advances in respect of foreign currency and not the PLR of the State Bank of India, was to be considered as the ALP rate of interest.
Baba Global Ltd v DCIT – TS-346-ITAT-2016 (Del) -TP

183. The Tribunal held that the interest paid on External Commercial Borrowing taken by the assessee from its UK AE was to be benchmarked using the domestic PLR and not the GBP LIBOR as taken by the TPO since the ECBs were denominated in Indian currency. It noted that since the interest paid by the assessee was less than the PLR rate, the same was to be considered to be at ALP and therefore the addition made by the TPO was deleted.
BT (India) Pvt Ltd v DCIT – TS-353-ITAT-2016 (Del) - TP

184. The Tribunal held that the credit period on AE receivables was not an independent international transaction but part of the main international transaction of providing software development services and therefore no separate adjustment was warranted on account of the same. It held that for the purpose of determining the ALP of such international transactions, adjustments in the shape of working capital adjustments were to be considered. Accordingly, the Tribunal remitted the matter back to the file of the TPO to provide for adequate working capital adjustments in respect to the software development services.
Dell International Services India Pvt Ltd v JCIT – TS-358-ITAT-2016 (Bang) - TP

185. The Tribunal, relying on the order of the coordinate bench in the assessee's own case of the previous AY, held that the rate of 0.5 percent was to be taken as arms' length rate of guarantee commission fee on corporate guarantee provided by the assessee to its AE (for banking facilities availed by the AE from HSBC, Mauritius) as opposed to the rate of 3 percent arrived at by the TPO.
Thomas Cook (India) Ltd v DCIT – TS-307-ITAT-2016 (Mum) - TP

Royalty / Management fees

186. The Tribunal held that where the agreement dated July 1, 2008 provided for technical know-how payment on sale of traded finished goods, the disallowance of such royalty by the TPO on the ground that the assessee should not have borne the same, could be restricted only to payments up to June 30, 2008.
Further, in respect of technical know-how royalty on manufactured goods, it held that the TPO was not authorized to disallow such expenditure taking the royalty at 1 percent of net sales, where the agreement provided for such payment, merely on the basis of information on the website of the SIA.
It further held that service tax on brand usage royalty and technical know-how royalty could not be disallowed since the taxes were the liability of the assessee based on terms of the agreements and the fact that assessee was the receiver of services and therefore no disallowance could be made of such amounts.
Johnson & Johnson Limited v Add CIT– TS-19-ITAT-2016 (Mum) – TP

187. The Tribunal held that the TPO / CIT(A) was incorrect in determining the ALP of the intra-group service charge paid by the assessee to its AE at Nil on the ground that there was no evidence of benefit received by the assessee. It held that there was nothing in the order of the TPO indicative of the existence of any of the circumstances prescribed in clauses (a) to (d) of Section 92C(3) of the Act which necessitated the intervention of the AO / TPO for determination of ALP and that the TPO had no role to play in determining the reasonableness / benefit of a business expenditure. Accordingly, it deleted the addition made by the TPO.
N L C Nalco India Ltd. vs. DCI - TS-36-ITAT-2016(Kol)-TP

188. The Tribunal held that the RBI approval of royalty rates paid by the assessee to its AE implied that the payment were at ALP.
DCIT v AVT MC Cormick Ingredients Ltd – (2016) 67 taxmann.com 322 (Chennai – Trib)

189. The Tribunal held that ALP of international transaction of 'Payment of royalty' should be done separately on transaction by transaction approach by applying CUP method and restored the matter to the file of the AO/TPO.
JCB India Ltd v DCIT - [2016] 46 CCH 0366 (Del Trib)

190. The Tribunal held that where the assessee functioned in a competitive industry where technology was required to survive and grow and where continuous innovation was a pre-requisite and where the Revenue had accepted the payment of royalty to be necessary and at ALP in previous years, no TP adjustment could be made. However, the Tribunal also noted that payment of royalty, even if justified and considered at ALP, could be a relevant factor for determining compensation for carrying out distribution and marketing functions on behalf of its AE.
DCIT v Reebok India Co – (2016) 46 CCH 0484 (Del Trib)

191. The Tribunal restored the matter to the file of the TPO by holding that where TPO proposed adjustment for management fee paid by assessee to its AE without determining if Head Office of assessee had correctly allocated hours of service/cost of service rendered, action of TPO was not justified, more so since the same was claimed to be at ALP by the assessee as per the TNMM.
Frigoglas India (P)Ltd. vs DCIT - [2016] 68 taxmann.com 370 (Delhi-Trib)

192. The Tribunal held that where the assessee made a payment of royalty / technical collaboration fee to its AE @ 1.5 percent of domestic and export sales in lieu of which the AE provided the assessee with a host of services such as engineering services, purchasing services, brand development services, product development, footwear design and construction services, administration and accounting services, financial services etc, and the assessee had proved the receipt of services and the economic and commercial benefits derived therefrom and the actual application / use of such services by the assessee, the TPO was unjustified in determining the ALP at Nil. Further, it dismissed the contention of the Revenue that some of these activities were shareholders activities to monitor the assessee.
DCIT v Bata India Ltd – TS-149-ITAT-2016 (Kol) - TP

193. The Tribunal deleted-adjustment in respect of assessee's payment for technical know-how to AE which was at ALP as per TNMM adopted by the assessee. It held that merely because these services were too general, in the perception of the authorities below, or just because the assessee did not need these services from the outside agencies, could be reason enough to hold that the services were not rendered at all. It further held that benefit test does not have much relevance in ALP ascertainment.
Merck Ltd v DCIT - TS-143-ITAT-2016(Mum)-TP

194. The Tribunal accepted royalty payment @2 percent of net sales price of goods manufactured relying on a series of judicial precedents from the co-ordinate benches including Owens Corning Industries (India)Pvt Ltd ruling wherein it was held that even Reserve Bank of India's approval of royalty could be a reasonable CUP input for determining arm's length.
SI Group India Ltd v DCIT - TS-150-ITAT-2016(Mum)-TP

195. The Tribunal, relying on the order passed by the coordinate bench for the previous years, held that where the assessee had made royalty payment for usage of trademark 'Cadbury' at a rate lower than the rate paid by other group companies for the same trademark, the TPO was unjustified in making an adjustment to the royalty paid.
Mondelez India Foods Pvt ltd v Add CIT – (2016) 47 CCH 0098 (Mum- Trib)

196. The Tribunal held that the TPO was incorrect in determining the ALP of the intra-group consulting and administrative services availed by the assessee from its AE at Nil since the assessee had satisfied the 'need' test, 'evidence' or 'rendition' test and 'benefit' test envisaged in section 92(2) of the Act. It noted that the assessee had provided overwhelming evidence to prove that the services were actually rendered by the AE and that the assessee, running a vast business required the impugned consultancy and administrative services for its functioning. Further, it noted that there was no evidence

brought on record by the Revenue to show that the same services availed from the AE were also availed from independent parties and therefore it held that the services were not duplicative services. The Tribunal also held that where the services received by the assessee satisfied the need test, rendition test and benefit test, the services could not be said to be shareholder activities.
GE Money Financial Services Pvt Ltd v ACIT – TS -216-ITAT-2016 (Del)- TP

197. The Tribunal held that where the royalty paid by the assessee for the use of the trademark 'Goodyear' was directly linked to the revenue derived from the manufacture of tyres undertaken by the assessee and formed a part of its cost of sales, it was incorrect to segregate the royalty transaction for benchmarking purposes. Further, it held that the fact that no such payment was made by another AE was not relevant considering the business dynamics and commercial realties in both the companies.
Goodyear India Ltd v DCIT – TS-226-ITAT-2016 (Del) - TP

198. The Tribunal upheld the TPO's segregation of the payment of royalty and fees for technical services made by the assessee to its AE since such transactions were not closely linked to assessee's other international transactions. With regard to the assessee's contention that the TPO had not segregated payment of royalty and FTS for earlier AYs, it held that the fact that the TPO proceeded on a wrong premise in the preceding year without considering the international transactions of royalty and fees for technical services as separate from the others, could not give a license to the assessee to claim that the same wrong approach be repeated in the subsequent years as well. Further, it refused to accept payment of royalty and FTS at ALP simply on the ground that it was paid at maximum rate stipulated by RBI, and held that the rate of royalty approved by the RBI has a persuasive value in the process of determination of ALP of Royalty for a particular case and could not be considered as conclusive
Gruner India (P) Ltd v DCIT - TS-202-ITAT-2016(DEL)-TP

199. The Tribunal held that in the absence of any comparison of the international transaction undertaken by the tested party with a transaction carried out in a uncontrolled market, the TPO could not independently conclude that the volume and quality of management services availed by the assessee from its AE was disproportionate to the payment made by the assessee and therefore rejected the TPO's approach of estimating arm's length price of management service fee paid to AE at 25% of the amount actually paid, since estimation of the services rendered and costs for such services was outside the scope of transfer pricing adjustment. Since the TPO made the TP adjustment without identifying any uncontrolled transaction, the Tribunal upheld the order of the DRP upholding assessee's transfer pricing study and accordingly dismissed the Revenue's appeal.
DCIT v Flakt (India) Ltd – TS-319-ITAT-2016 (Chny) - TP

200. The Tribunal held that where the assessee could not prove that its AE, to whom it paid service charges for management and administrative services, had rendered the said services to the assessee the ALP of the services charges were rightly determined at Nil. Further, considering the functions performed by the AE, a shareholder of the Indian assessee, it held that the shareholders did not require any compensation for such services even as per the OECD guidelines.
Technical Stampings Automotive Ltd – TS-332-ITAT-2016 (Chny) - TP

201. The Tribunal held that though the ALP of support services rendered by an AE could not be determined at 'Nil' by questioning the necessity or benefits of expenditure incurred, such expenditure could only be allowed after conclusively proving that there was actual rendition of services by the AE. Therefore, where the assessee had filed certain additional evidences in support of rendition of services before the Tribunal for the first time and the CIT(A) had allowed such expenses without being able to examine such evidence, the matter was to be remanded back to the file of the AO / TPO. It dismissed the argument of

the assessee that the services were accepted to be at ALP in the previous years and held that the concept of res judicata was inapplicable to assessment proceedings.
3M India Ltd v ACIT – TS-293-ITAT-2016 (Bang) – TP

202. The Tribunal held that where the assessee had filed details of services availed from its AE i.e. information technology, finance, communication, human resources, client services etc, as well as the allocation of costs pertaining to these services (based on revenue), the TPO / DRP were not justified in determining the ALP of the payment made by the assessee to its AE at Nil on the ground that no documentary evidence was submitted by the assessee. It rejected the contenton of the Revenue that since these expenses were incurred for the benefit of the entire group, no charge of such expenditure was required. Further, it held that the TPO and DRP had exceeded their powers and proceeded to determine the allowability of the expense instead of deteteming the ALP of the expenses.
Nielsen (India) Pvt Ltd v ACIT – TS-347-ITAT-2016 (Mum) - TP

203. The Tribunal held that the TPO was incorrect in determining the ALP of administrative and business support services availed by the assessee from its AE at Nil under the CUP method with regard to the assessee's Inter Group Services Segment. It held that where the proportionate amount of the said expenses were accepted to be at ALP for the other Segments of the assessee, the TPO was not justified in rejecting the said expenses under the IGS Segment without adequate reasoning. It held that it was not the prerogative of tax authorities to ascertain the benefit received by the assessee from the availment of services and that the benefit received from a particular service was to be perceived from the point of view of a businessman and not from that of the tax authorities. It remitted the matter to the file of to the TPO to determine whether the services received by the assessee were duplicative of the functions performed in-house as well as to determine whether the services received by the assessee were shareholder services.
EI DuPont India Pvt Ltd v DCIT – TS-338-ITAT-2016 (Del) - TP

<u>Share Application money / Investment in share capital</u>

204. The Tribunal deleted the notional interest adjustment made by the TPO on advance share application money given the assessee to its AE by treating the aforesaid investment as a loan. Following the case of the Tribunal in the case Bharti Airtel, it held that the TPO had not brought on record anything to show that any unrelated share applicant was to be paid interest for the period between making the payment towards share application money and the allotment of shares and therefore the very foundation of the adjustment was devoid of legal merits.
Pan India Network Infravest Pvt Ltd v Add CIT – TS-653-ITAT-2015 (Mum) – TP

205. The Tribunal deleted the transfer pricing addition made on account of alleged excess consideration paid on investment in share capital of wholly owned subsidiary re-characterized as loan and notional interest added thereon on the ground that the transfer pricing provisions in Chapter X of the Act do not apply to international transactions on capital account, not resulting in any income. Further, it held that the re-characterization of equity share capital into loan was on the ground that the investment was made at a value in excess of the value of shares as per the Wealth Tax Valuation Rules was unwarranted since shares were not even covered under the definition of assets under the Wealth Tax Act. It also held that even if the re-characterization was permissible, the TPO was incorrect in making an addition of the equity share capital invested and the addition was to be restricted only to notional interest.
Addressing the contention of the Revenue that there was a possibility of potential income from the said transaction and therefore benchmarking was required, it held that potential income, to qualify as income subject to transfer pricing under the Act, should arise from the impugned international transaction which is before the TPO for consideration and not out of

a hypothetical transaction that may or may not take place in the future and since no income arose from the said transaction, no benchmarking was required.
Topsgrup Electronic Systems Ltd v ITO - [2016] 67 taxmann.com 310 (Mumbai –Trib)

206. The Tribunal deleted adjustment on account of notional interest on share application money paid to wholly owned subsidiary which was re-characterized by TPO as interest bearing loan and there being delay in allotment of shares. It held that, a delay in allotment of shares by the subsidiary company, as long as the subsidiary is a wholly owned subsidiary, did not prejudice the interests of the assessee. It further held that none of the conditions for re-characterization of transactions specified in Delhi HC's EKL Appliances ruling were satisfied.
The Tribunal affirmed DRP's deletion of notional interest adjustment on outstanding recoverable from subsidiary on account of pre-incorporation expenses incurred by assessee on behalf of subsidiary by holding that expenses were incurred for performing 'shareholder services', and thus no interest could accrue on the same.
Sterling Oil Resources (P)Ltd. vs ITO - TS-72-ITAT-2016 (Mum)-TP

207. The Tribunal held that where the assessee had advanced an interest free loan to its AE which was converted into share application money, such amount could not be considered as a loan and subjected to benchmarking as the TPO was not permitted to re-characterize the transaction.
Baba Global Ltd v DCIT – TS-346-ITAT-2016 (Del) -TP

Others

208. The Tribunal held as per Rule 10A(d), which provides that that all closely linked transactions with AEs have to be aggregated and clubbed together for transfer pricing, where extended period of credit granted to the AE for realization of sales proceeds was directly related to and arising out of the sale transaction, both the transactions were to be aggregated for determining ALP.
Yash Jewellery Pvt Ltd v DCIT – (2016) 66 taxmann.com 216 (Mum)

209. The Tribunal held that where the assessee purchased equipment from its AE, the ALP of which was supported under the CUP method by certificates issued by the AE stating that the equipment was supplied at cost along with Customs Valuation Reports proving that the value was truthfully declared, no addition could be made to the said transaction and since the equipment was purchased for pure non-commercial use, the market price could not be ascertained. Accordingly, the addition made by the TPO was set aside.
DCIT v C-Dot Alcatel Lucent Research Centre Pvt Ltd – (2016) 66 taxmann. Com 281 (Del)

210. The Tribunal held that where the assessee, who made a payment of commission to its AE had provided adequate justification towards the ALP of the said payment and the rate of commission paid to unrelated parties was in excess of the rate of commission paid by the assessee, the TPO was not warranted in making a TP adjustment on the ground that no services were rendered. It observed that the TPO is not empowered to test the genuineness of a transaction under Chapter X of the Act.
Pharmaceutical Industries Ltd v DCIT – (2016) 46 CCH 0169 (Ahd Trib)

211. The Tribunal deleted the TP adjustment on the sale of intellectual property rights by the assessee to its AE. It noted that the assessee had arrived at the sale consideration on the basis of independent valuation reports prepared by two valuers which was prepared on the basis of projected cash flows at the time of sale and the TPO had subsequently replacing the projected cash flows with the actual cash flows, at the time of assessment, to arrive at the TP adjustment. It held that the value at the time of making the business decision was important, and that when the values were replaced subsequently, it was not a valuation but

an evaluation. Observing that the Revenue was doubting the valuation only because the actual AE revenues were more favorable that the projected revenues it held that for valuation of an intangible asset, only the future projections alone can be adopted and such valuation cannot be reviewed with actuals after 3 or 4 years down the line.
DQ Entertainment (International) Ltd v ACIT – TS-367-ITAT-2016 (Hyd) - TP

212. The Tribunal held that the TPO was incorrect in taking the WDV of the machine as a comparable for determining the ALP of the second hand machine purchased by the assessee. It held that the WDV may be one of the factors to be taken into consideration while determining the value of second hand machinery and that the buyer would naturally look for the efficiency and life of machinery after purchase, but in view of the specific provisions of Rule 10B(1)(a) of the Rules, WDV could not be considered to be the ALP and that it was obligatory for the TPO to identify a comparable uncontrolled transaction to determine the ALP. Accordingly, it upheld the order of the DRP deleting the TP addition.
ACIT v Interpump Hydraulics India Pvt Ltd – TS-350-ITAT-2016 (Chny) - TP

f. ***Others***

213. The Tribunal held that where a number of individual transactions could not be considered as closely linked, they could not be aggregated and had to be benchmarked on a transaction to transaction basis.
ACIT v Tamil Nadu Petroproducts Ltd – (2016) 46 CCH 0068 (Chen)

214. The Court held that where in respect of marketing and administrative services provided to third party customers, the assessee adopted a revenue sharing model whereby it kept 75 percent of the revenue and paid 25 percent to its subsidiaries who provided support services for transactions where the customers directly contracted with either the assessee or its subsidiaries, the TPO was incorrect in determining the remuneration to subsidiaries at 15 percent, where the customers directly contracted with the assessee, since there was no difference in the functions performed by either the assessee or its subsidiaries as compared to cases where customers directly contracted with the subsidiaries.
CIT v ITC Infotech India Ltd – (2016) 66 taxmann.com 106 (Cal)

215. The Tribunal held where the revenue had not controverted that assessee had provided similar services in both the relevant and previous assessment year, the AO was incorrect in levying penalty under section 271AA of the Act on the basis that the assessee did not maintain records relating to international transactions as required under Rule 10D of the Rules and merely updated the margins of the comparable companies selected in the previous year, since comparable companies selected in the preceding year were relevant to transaction made during relevant assessment year and their updated margins would suffice for the purpose of comparability.
ACIT v Integrated Decisions & Systems(India)(P)Ltd - [2016] 68 taxmann.com 185 (Jaipur-Trib)

216. The Tribunal held that the TPO was incorrect in rejecting revised form 3CEB filed by the assessee after one year from the end of assessment year on the ground that the time limit for filing Form 3CEB was one year from theend of assessment year or before completion of assessment, whichever was earlier. It held that section 92CA(3) did not provide for a specific time limit for filing revised forms and the Form 3CEB, being a report of a Chartered Accountant on the international transactions and the benchmarking of the said transactions could not be ruled out and therefore in the interest of justice, remanded the matter to the AO to consider the revised form 3CEB.
Ashok Leyland Ltd v DCIT – (2016) 67 taxmann.com 48 (Chen – Trib)

217. The Tribunal held that penalty under section 271AA need not be imposed upon assessee when assessee had explained that delay in filing details of international transactions under

section 92D occurred on account of the fact that its auditor was busy in marriage of his son considering that there was no modification in the ALP adopted by the assessee.
Augustan Knitwear (P)Ltd. vs. ACIT – (2016) 67 taxmann.com 139 (Chen- Trib)

218. The Tribunal held that where revenue had not brought any evidence to show that price variation in export was on higher side and would impact Arm's Length Price, adjustment on account of price variation in export sales was to be deleted.
DCIT v AVT MC Cormick Ingredients Ltd - [2016] 67 taxmann.com 322 (Chennai-Trib)

219. The Court set aside the final assessment order passed under section 143(3) of the Act without passing a draft assessment order as mandated by Section 144C(1) of the Act which applied to the assessee. It observed that the DRP did not entertain the assessee's objections absent the draft assessment order and therefore the rights made available to the assessee under section 144C of the Act were rendered futile by directly passing final order under section 143(3) of the Act.
International Air Transport Association – TS-62-HC-2016 (Bom) - TP

220. The Tribunal confirmed imposition of penalty under section 271(1)(c) since the assessee failed to demonstrate due diligence and good faith while benchmarking its international transaction by adopting the Cost Plus method on an aggregate basis whereas it was well aware of the availability of a direct CUP for at least two transactions.
Genom Biotech Pvt Ltd v ITO – TS-66-ITAT-2016 (Mum) - TP

221. The Tribunal held that the issuance of a draft assessment order is a sine qua non before the AO can pass a regular assessment order under section 143(3) of the Act and since the AO passed the final assessment order without passing the draft assessment order, the same was liable to be set aside.
Jazzy Creations Pvt Ltd v ITO – TS-38-ITAT-2016 (Mum)- TP

222. The Court dismissed the writ petition filed by the petitioner against the DRP directions and the draft assessment order on the ground that the assessee had an efficacious alternate statutory remedy available.
Cairn India Ltd v DCIT – TS-58-HC-2016 (P&H) - TP

223. The Court held that where the Petitioner was not a foreign company and the TPO did not propose any variation to income returned by petitioner, neither of two conditions of section 144C of the Act were satisfied and therefore the petitioner was not an 'eligible assessee'. Consequently, the Assessing Officer was not competent to pass draft assessment order under section 144C(1) of the Act and therefore the said draft assessment order was quashed.
Honda Cars India Ltd v DCIT - [2016] 67 taxmann.com 29 (Delhi)

224. The Tribunal held that where due diligence had been exercised in good faith by assessee in selecting comparables and by applying TNMM or RPM assessee was fully within arm's length range, this was not a case of concealment or of filing of inaccurate particulars and hence penalty could not have been imposed simply because the assessee accepted transfer pricing addition arising out of the TPO rejecting / introducing some comparable and applying TNMM as the MAM
ACIT v Boston Scientific India (P)Ltd - [2016] 67 taxmann.com 288 (Delhi-Trib)

225. The Tribunal held that where Commissioner (Appeals) at time of working out adjustment on arm's length price did not give any opportunity to assessee while rejecting CUP method and taking TNMM as most appropriate method and also did not provide any reason for rejecting comparables selected by assessee, matter required readjudication
RS Components & Controls Ltd v DCIT - [2016] 68 taxmann.com 28(Delhi-Trib)

226. The Tribunal held that where asessee had to establish receipt of benefits on account of services rendered by its AEs and it submitted that it had evidence to show that there were considerable correspondences between AEs and itself, it was not open to TPO to consider that there was no benefit whatever received by assessee without verifying documentation submitted by assessee. It restored the matter to the file of the AO/TPO.
SKF Technologies (India)(P)Ltd v DCIT- [2016] 68 taxmann.com 318 (Bangalore-Trib)

227. The Tribunal held that where Vodafone Group Plc's indirect stakeholding in Indian company VIL was increased as a consequence of two transactions and those transactions had been interpreted by Assessing Officer to mean that assessee-company had exercised right of call options available with it and addition was made considering such transaction as an 'international transaction', in view of fact that assessee-company was not even a party to impugned two transactions and there was no such assignment or transfer of call options by assessee, stay on demand raised by Assessing Officer was to be granted. It further held that where TPO made addition to assessee's ALP in respect of rendering IT enabled services to its AEs, in view of fact that TPO had included/excluded certain concerns in final set of comparables which were contrary to ratio of certain decisions of Co-ordinate Benches of Tribunal, stay on recovery of outstanding demand was to be granted.
Vodafone India Services (P)Ltd v DCIT - [2016] 68 taxmann.com 130 (Mumbai-Trib)

228. The Court quashed the draft as well as final assessment orders passed by AO confirming TP adjustment for AY 2010-11 in respect of two ESPN entities (partnership firms established in Mauritius), not being 'eligible assessees' as defined u/s 144C by holding that this was an instance of blatant disregard by AO of the DRP's order holding that neither of them were 'eligible assessees' u/s 144(15)(b)(ii), as neither was a 'foreign company', and no variation or TP adjustment arose as a consequence of TPO's order. It observed that, even if no direction was issued by the DRP under Section 144C(5) of the Act, the fact that the DRP held that both the Petitioners were not 'eligible assessees' could not have been ignored by the AO sinceDRP is superior authority in relation to AO.
ESPN Star Sports Mauritius S.N.C. ET Compagnie vs The Union of India - TS-130-HC-2016(DEL)-TP

229. The Tribunal denied condonation of Revenue's 419 days delay in filing appeal against DRP order for AY 2009-10 noting that assessee's appeal against the same DRP order was already disposed of by Tribunal and Revenue had not even initiated process of filing appeal till the time hearings in assessee's appeal were concluded.
DCIT vs Aegis Ltd - TS-79-ITAT-2016(Mum)-TP

230. The Tribunal deleted penalty u/s 271(1)(c) levied in respect of TP addition on interest free loan provided by assessee to its wholly owned subsidiaries by holding that since the jurisdictional HC had admitted a substantial question of law in respect of the TP adjustment, it indicated that the issue was debatable and thus the assessee's contention that it acted on a bonafide belief could not be shot down simply because assessment/TP adjustment made by the TPO had been upheld by the Tribunal.
Perot Systems TSI (India)(P)Ltd v ACIT - TS-97-ITAT-2016(DEL)-TP

231. While TPO accepted TNMM for computing ALP, he calculated mark-up of 6% on total cost as against assessee's method of applying the mark-up on standard cost and consequently levied penalty u/s 271(1)(c) read with Exp-7 which was deleted by the Tribunal by holding that the addition determined by lower authorities was not on account of any inaccuracy, discrepancy or concealment found in the information and documents furnished by the assessee but due to the difference in pricing methodology adopted for determining expected profits from AE. It further, held that no penalty was levied in earlier AYs and that, it was not open for the Assessing Officer to hold an assessee guilty under section 271(1)(c) of the Act in one year and not in other preceding two years under identical circumstances.

Cherokee India (P) Ltd. vs DCIT - TS-107-ITAT-2016(Mum)-TP

232. The Tribunal held that provisions for comparability analysis in Advance Pricing Agreement (APA) have immense persuasive value and can be "rolled back" i.e. retrospectively applied for past years also even though in the APA signed by the assessee there were no "rollback provisions" –provided the international transactions in both the years (i.e. the year of APA and the past year) are the same and availability of data for the past year is also on similar lines as suggested in the APA.
Ranbaxy Laboratories Ltd v ACIT - [2016] 68 taxmann.com 322 (Delhi-Trib)

233. The Tribunal deleted penalty levied u/s 271G for non-furnishing of "TP study report" in time on the ground that TPO's order specifically mentioned that TP documentation containing fundamental & economic analysis prescribed under Rule 10D was submitted by assessee. It observed that based on such documentation TPO had accepted assessee's transactions at arm's length. Considering Revenue's failure to point out specifically which information had not been provided by assessee, and the fact that penalty had been levied for non-furnishing of 'TP Study Report' (which was not a specified document under Rule 10D) in time, though the information had been made available before passing of TPO's order, the Tribunal deleted the penalty.
Worlds Window Impex (India)(P)Ltd. v ACIT - TS-175-ITAT-2016(DEL)-TP

234. The Tribunal held that where assessee claimed that in TP study because of the then professional advice available, two segments of its activities were not analysed between transaction to AE and third parties (Non AE), and it sought permission to present additional evidence in from of segmental profit statement, entire transfer pricing proceedings were required to be looked into afresh and remanded the mater of the file of the lower authorities.
RMSI (P) Ltd v ACIT - [2016] 67 taxmann.com 325(Delhi- Tribunal)

235. The Tribunal held that where the AO passed the final assessment order without providing the assessee with the draft assessment order and therefore did not provide the assessee with an opportunity to file objections before the DRP, the provisions of section 144C of the Act were not complied with and therefore the final assessment order was bad in law and liable to be quashed.
ACIT v Getrag Hi Tech Gears Pvt Ltd – (2016) 46 CCH 0588 (Chd Trib)

236. The Tribunal deleted penalty imposed under section 271(1)(c) of the Act in relation to the TP addition proposed on payment for availing of certain services from AEs as the assessee had satisfied the conditions of good faith and due diligence as stipulated in Explanation 7 to section 271(1)(c) of the Act. Further, it held that the mere fact that the assessee did not file an appeal against the adjustment did not make penalty an automatic implication as penalty proceedings and assessment proceedings were two separate set of proceedings recognized under the Act.
Mitsui Prime Advanced Composites India Pvt Ltd v DCIT – TS-193-ITAT-2016 (Del) - TP

237. The Court held that it is imperative for the Income-tax Department to have a system in place to keep record of questions of law admitted and dismissed by the High Courts to avoid multiplicity / duplication of appeals on identical matters already disposed of, as in the instant case, the question raised by the Department, viz.whether transfer pricing adjustment consequent to arriving at Arms' Length Price(ALP) was required to be made only in respect of the international transactions or in respect of all the business transactions of the assessee i.e. at the entity level, had already been disposed of by the Court in favour of the assessee. It directed the Pr CIT to file an affidavit, indicating steps being taken to ensure that the Department was taking consistent views.
CIT v TCL India Holding Pvt Ltd – (2016) 96 CCH 0010 (Bom)

238. The Tribunal held as per Section 92CA of the Act, there is no requirement for the AO to furnish to the assessee, his reasons for rejecting the assessee's computation of ALP and therefore held that the assessee could not contend that the order of the AO / TPO was bad in law merely on the aforesaid ground considering that the assessee was afforded adequate opportunity of being heard before the adjustment was made.
Philips Electronics v ACIT – TS-316-ITAT-2016 (Kol) - TP

239. The Tribunal noted that for subsequent years, where the assessee had exercised the option to be covered under the Safe Harbour Rules, pursuant to which the TPO passed an order under Rule 10TE(6) considering the assessee to be a low-end / BPO service provider in respect of the same agreement prevalent for the relevant assessment year and held that the same agreement could not give rise to two different types of services (BPO and KPO services) merely on the basis of providing the services at different times and accordingly remitted the issue of characterization of the assessee as BPO or KPO service provider to the AO for fresh adjudication. It further held that the revenue could not take inconsistent stands, classifying the assessee as both a BPO and KPO in respect of services provided under the same agreement.
SNL Financial (India) Pvt Ltd v DCIT – TS-320-ITAT-2016 (Ahd) - TP

240. The Tribunal held that the TPO was not justified in determining the ALP of the purchase of trademark by the assessee from its AE at Nil on the ground that there was no need for the assessee to purchase such trademark. It held that the TPO had no role in examining the commercial rationale of decision to purchase a trademark and determine the ALP at Nil without conducting any analysis under the CUP method.
DCIT v FabIndia Overseas Pvt Ltd – TS-333-ITAT-2016 (Del) - TP

241. The Tribunal, following the Special bench decision in the case of Aztec Software & Technology Services, dismissed the appeal filed by the assessee and held that the TP provisions would be applicable irrespective of the fact that the assessee is a unit eligible to benefit under section 10A of the Act. It held that the lower judicial forums had to accept and follow the views expressed by the higher judicial forums.
Transcend MT Services Pvt Ltd v ACIT – TS-405-ITAT-2016 (Del) - TP

242. The Tribunal admitted additional evidence submitted by the assessee in the form of a sworn affidavit of the director of its AE corroborating the fact that the AE rendered intermediary services for sale of the assessees products to unrelated customers in Switzerland for which the assessee paid it a commission. It rejected Revenue's argument that the affidavit was to be sworn before the Indian Consular and held that the affidavit satisfied the requirements of the 12th Hague convention (arrived at between signatory states for abolishing the requirement of legalization for foreign public documents. Considering the fact that the said affidavit was not available with the assessee during assessment proceedings it admitted the same as additional evidence and remitted the matter to the file of the TPO who had determined the ALP of the commission paid at Nil on the ground that the assessee failed to substantiate rendering of services by its AE.
Kamla Dials and Devices Ltd v ACIT – TS-286-ITAT-2016 (Del) - TP

II. International Tax

a. Permanent Establishment

243. The Court held that even if a place of business falls squarely under Paragraph 1 of Article 5 and specifically listed in Paragraph 2 of the said Article, it would not constitute a PE if it fell

under any exclusionary clause of Artcile 5(3) of the DTAA. Further, it held that where the assessee, a UAE based company availed marking information services from a company in India, since the said company was not authorized to conclude contracts on behalf of the assessee, no dependent agent PE was constituted.
Additionally, the Court held that where the assessee company, in order to carry out its contract with ONGC for the fabrication and installation of petroleum products, opened a project office in Mumbai, the said project office would not constitute a fixed place PE since it was merely acting as a communication channel and therefore fell within the exclusionary clause (e) of Article 5 viz. auxiliary activities.
National Petroleum Construction Company v DIT – (2016) 66 taxmann.com 16 (Del)

244. The Tribunal held that where the assessee, Cochin International Airport, received services from UK and UAE based entities in running a duty free retail outlet at international terminals under an Exclusive Procurement Agreement, it was not liable to deduct tax at source on payments made to such entities as alleged by the AO on the ground that the UK / UAE companies had a business connection in India, since the agreement did not envisage exercise of absolute control over the business of duty free shops by the UK / UAE entities and that they did not have the right to determine retails prices at the ships. The Tribunal also noted that the title and risk to the merchandise was transferred outside India.
Cochin International Aiport Ltd v ITO – TS-73-ITAT-2016 (Cochin)

245. The Tribunal held that where the assessee, a Japanese company engaged in business of manufacturing consumer products, opened a liaison office in India, since power of attorney did not authorize employee of LO to do core business activity or to sign and execute contracts etc., on behalf of assessee, it could not be regarded as assessee's PE in India.
Kawasaki Heavy Industries Ltd. vs. ACIT - [2016] 67 taxmann.com 47 (Delhi-Trib)

246. The Tribunal held that that revenue earned by assessee (an Israel company) from contract with HPCL (an Indian petroleum company) for implementing automated systems was taxable in India, since the assessee's project office ('PO') incorporated in India to oversee implementation of project constituted assessee's dependent agent PE in India. It rejected the assessee's stand that contract can be split into supply of equipment which took place outside India and installation of systems at HPCL sites which was sub-contracted to another Indian company since the assessee supplied equipment to subcontractor, which in turn installed the same at the HPCL petrol pumps and that the assessee received the entire contract revenues from HPCL and compensated sub-contractor for the works carried out by it. Therefore it held that the contract was composite. It also rejected the contentions of the assessee viz (i) that PO did not constitute assessee's PE in India as it was merely coordinating the activities carried by sub-contractor (ii) the subcontractor did not constitute PE as it was an agent of independent status.
Orpak Systems Ltd. vs. ADIT - TS-94-ITAT-2016(Mum)

247. The Tribunal held that in order to determine as to whether assessee, a German company, rendering services in field of exploration, mining and extraction to Indian companies, had PE in India, it was continuous period of stay of its employees in India which had to be taken into consideration and not entire contract period.
Rheinbraun Engineering Und Wasser GmbH v DDIT - (2016) 68 Taxmann.com 34 (Mumbai- Trib.)

248. The Tribunal held that where assessee secured order on behalf of its Indian entity and outsourced work thereto, such entity constituted assessee's business connection in India. Also, where assessee received BPO services from its Indian entity, it did not constitute fixed place PE in India. Further, where Assessing Officer alleged that expatriate employees of assessee were providing services in India but could not render any evidence in this regard, it was held that there was no service PE in India.

DCIT v Vertex Customer Management Ltd - [2016] 67 taxmann.com 105 (Delhi-Tribunal)

249. The Tribunal held that where UK-based non-resident company received non-compete fee, a business receipt, the same could not be taxed in India in the absence of a PE.
Trans Global PLC vs DIT (IT) - [2016] 68 Taxmann.com 146.(Kolkata-Tribunal)

250. The Tribunal held that the assessee, a Singapore Company and wholly owned subsidiary of an Indian company, engaged in the business of operating ships in international traffic across Asia and the Middle East could not be considered to have effective management and control in India merely because it had opened a bank account in India, having one of its directors in India or holding of only one meeting during the year in India. Also, it held that the location of the parent company in India would not decide the residential status of the assessee. It dismissed the contention of the Revenue that the assessee was taxable under section 44B since the assessee did not own or charter or lease any vessel or ship for the year under consideration and therefore held that its income was to be taxed as business income and in the absence of PE in India no income was taxable in India.
Forbes Container Line Pte Ltd v ADIT – TS-126-ITAT-2016 (Mum)

251. The Tribunal held that where all the conditions of Article 5(2)(k) of the DTAA were satisfied i.e. (i) there was furnishing of services including managerial services (ii) such services were other than those taxable under Article 13, (iii) such services were rendered out of India (iv) such services were rendered by 'other personnel' and (v) such activities continued for a period of more than 90 days within 12 months, the assessee was said to have a Service PE in India.
JC Bamford Investments Ltd v DCIT(IT) – (2016) 46 CCH 0435 (Del Trib)

252. The Tribunal held that though service of installation is covered by the FTS clause as well as Installation PE clause of the India China treaty and though the installation contract (including period of after sales service) exceeded 183 days, the income from installation activity was neither taxable as FTS nor as business income since the specific installation PE clause in India China Treaty would override General FTS clause and the aforesaid threshold limit of 183 days would have to be applied to the actual period of installation (which was less than 183 days) and not the contractual period.
Gujarat Pipavav Port Ltd v ITO – (2016) 67 taxmann.com 370 (Mumbai – Tribunal)

253. The Court held that the assesee's liaison office and subsidiary company in India could not be considered as a Fixed Place PE since neither were their premises at the disposal of the assessee, nor did they act on behalf of the assessee in negotiating and concluding agreements. Further, the Court held that the Indian subsidiary company could not be treated as a Dependent Agent PE since it did not have the authority to conclude contracts on behalf of the assessee.
Additionally, the Court held that the Indian subsidiary could not be considered as an Installation PE or a Service PE since the subsidiary carried out the tasks of installation and testing on its own accord and not on behalf of the assessee and that there was no material to hold that it performed services on behalf of the assessee. Therefore, the Court held that the supply of equipment to a third party overseas was not taxable in the hands of the assessee.
Nortel Networks India International Inc v DIT – (2016) 96 CCH 0001 – (Delhi)

254. The Tribunal held that for the purpose of computing number of days stay for examining the threshold limit of 9 months under section 5(2)(i) of the India- Mauritius DTAA, each building site, construction, assembly project or supervisory activities was to be viewed independently on stand-alone basis and no aggregation was to be done. Accordingly, since the duration of the project did not exceed 9 months, the Tribunal held that there was no PE in India.

Further, with regard to the assessee's Liaison office premises, it held that the office maintained by the assessee was in the form of an auxiliary unit to provide back up support and other auxiliary services for the purpose of maintaining coordination and aid to the functioning of the project and therefore did not constitute a PE as the activities were preparatory or auxiliary in nature.
J Ray Mc Dermott Eastern Hemisphere Ltd – TS-250-ITAT-2016 (Mum)

255. The Court held that where the subsidiary company of the assessee was compensated at ALP for international transactions with the assessee (its AE), assuming that the subsidiary company was the PE of the assessee, no further profits could be attributed to the assessee's operations in India.
Without prejudice to the above, the Court held that the assessee's subsidiary in India did not constitute a fixed place PE since there was no evidence that the assessee had the right to use its premises or any fixed place at its disposal. The Court held that held that in the absence of any evidence that any of the assessee;s employees provided services in India, there could be no Service PE and merely because the assessee had the right to audit the Indian subsidiary, it could not be concluded that the employees of the assessee provided services in India. Further,it held that there was no allegation that the Indian subsidiary was authorized to conclude contracts on behalf of the Petitioner and therefore could not be considered as a Dependent Agent PE.
Adobe Systems Incorporated v ADIT – (2016) 96 CCH 0012 (Del)

256. The Tribunal applied the indirect method of attribution of profits as per Rule 10 of the Rules to attribute the profits of the assessee (a Chinese company) to its PE in India in respect of supply of telecom equipment and mobile handsets, since the assessee did not maintain any books of accounts relating to the PE in India. It held that for the purpose of attribution of profits to a PE, the most important aspect to be kept in mind is the level of the PE's participation in the economic life of the source country and the nexus between the source country and the PE's activities. Referring to the activities performed by the Indian PE, the Tribunal held that the level of operatins carried by the PE were considerable enough to conclude that almost the entire sales and after sales function were carried out by the PE in India and accordingly attributed 35 percent of the net global profits to the impugned PE. Further, it rejected the assessee's contention that no further attribution of profits could be made to the PE as the transactions were accepted to be at ALP by the TPO, since the post-sale activities carried out by the Indian entity surfaced only during survey carried out by the Department and were not subject matter of TP proceedings.
ZTE Corporation v ADIT – (2016) 70 taxmann.com 1 (Del – Trib)

b. Royalty / Fees for technical services

257. The Court held that software purchase payments by the assessee, in the capacity of a Value Added Reseller did not amount to royalty as payments made for purchase of a software as a product could not be considered to be for the use or the right to use the software. It held that it was necessary to make a distinction between cases where consideration as paid to acquire the right to use a patent or copyright and cases where payment was made to acquire patented or copyrighted products / material and where the payment was for copyrighted products / materials, the consideration was to be treated as a purchase of product. Accordingly, the disallowances made under section 40(a)(i) and 40(a)(ia) of the Act were deleted.
Pr CIT v M Tech India Pvt Ltd – (2016) 67 taxmann.com 245 (Del)

258. The AAR held that fees received by the UK based applicant on account of supply management services such as ensuring market competitive pricing from suppliers, maintaining contract supply agreement with suppliers after identifying products availability, competitive pricing, provided to its Indian Group company could not be treated as fees for

included servicesas the same did not impart any technical knowledge and expertise to its Indian Group company such that the Indian company could make use of it in the future, failing the condition of making available the technology as contained in Article 13 of the India UK DTAA. Further since managerial services were excluded from the ambit of Fees for technical services, the payment was not subject to tax.
Cummins Ltd In re – [2016] 65 taxmann.com 247 (AAR – New Delhi)

259. The Court held that agency commission paid by the assessee to non-resident agents for procuring orders for the assessee outside India, would not be taxable as fees for technical services under section 9(1)(vii) of the Act and therefore section 195 of the Act would not be applicable, since obligation to deduct tax at source under section 195 only arises if the payment is chargeable to tax in the hands of the non-resident recipient.
CIT v Farida Leather Company – (2016) 66 taxmann.com 321 (Mad)

260. The Tribunal held that consideration received by assessee for sale of software supplied as part of machine to end user was not royalty under article 12 of DTAA between India and Israel as there was no transfer of copyright or any rights therein nor was there any situation giving rise to any type of infringement of copyright by customers of assessee. It held that the amendment made in section 9(1)(vi) by way of insertion of an Explanation by Finance Act, 2012, for extending scope of term 'Royalty', could not be read into provisions of Article 12(3) of the Indo-Israel tax treaty as amendment made in provisions of Act cannot be automatically read into articles of treaty unless corresponding amendment is made in treaty as well.
Galatea Ltld v DCIT - [2016] 67 taxmann.com 190 (Mumbai-Trib)

261. The Court held that unless the DTAA was amended jointly by both parties to incorporate income from data transmission services as partaking of nature of royalty, Finance Act, 2012 which inserted Explanations 4,5 and 6 to section 9(1)(vi) by itself would not affect meaning of term 'royalties' as mentioned in article 12 of India – Thailand DTAA.
DIT v New Skies Satellite BV - [2016] 68 taxmann.com 8 (Delhi)

262. The Tribunal held that the payment made by the assessee to its overseas group company as reimbursement of expenses incurred by them for recruitment of employees on behalf of the assessee did not come within the purview of Article 12(4) of the India-USA DTAA as the payments were pure and simple reimbursement of recruitment expenses. Accordingly, the Tribunal deleted the disallowance made under section 40(a)(i) of the Act.
ACIT v Lehman Brothers & Advisors Pvt Ltd – (2016) 67 taxmann.com 225 (Mum-Trib)

263. The Tribunal held that where the assessee, a foreign company provided consultancy services for highway projects in India, it would not amount to technical service as it was related to construction activity, which was specifically excluded from the scope of fees for technical services under the Act and thus it would not be subjected to presumptive taxation under section 44D of the Act but would be taxed as regular business profit.
DDIT v MSV International Inc - [2016] 67 taxmann.com 156 (Delhi-Trib).

264. The Tribunal held that where the assessee, engaged in engineering and construction works, availed services of review and tracking of execution plans of the assessee and also obtained procedures from a foreign company which also undertook project budget and client satisfaction, the foreign company had made available its technical knowledge, expertise and know-how in execution of the contract with the assessee in India and hence the assessee was liable to deduct tax under section 195 of the Act on the said payment.
Forster Wheeler France SA v DDIT (IT) – (2016) 67 taxmann.com 120 (Chennai- Trib)

265. The Tribunal held that the assessee was not liable to deduct tax under section 195 of the Act on payments made towards security surveillance services paid to a non-resident since

the payment was towards maintenance of common security platform applicable to all Group companies which did not make available any technical knowledge, experience, skill and therefore did not fall under the definition of fees for included services under the India – China DTAA.
DCIT v Dominion Diamond (India) Pvt Ltd – TS-42-ITAT-2016 (Mum)

266. The Tribunal held that export commission payments to foreign brokers for rendering services abroad was not a sum chargeable to tax in hands of foreign brokers as contemplated under section 195 and was not a fee for technical / managerial service as defined in Explanation 2 to section 9(1) (viii) to bring it to tax under fiction created by deeming provisions of section 9.
ACIT v Pahilarai Jaikishin - [2016] 66 taxmann.com 30 (Mumbai-Trib)

267. The Court held that where an arranger of bank engaged in mobilizing deposits in India for Deposits Scheme, appointed non-resident sub-arrangers for mobilizing fund outside India, services rendered by non-resident sub-arrangers would not fall within category of managerial, technical or consultancy services; and therefore payments made by the assessee to such non-residents would not be liable to TDS and accordingly, the disallowance under section 40(a)(i) of the Act was deleted.
DIT (IT) vs. Credit Lyonnais - [2016] 67 taxmann.com 199(Bombay)

268. The Apex Court dismissed the assessee's SLP against the judgement of the Calcutta High Court wherein it was held that payment of consultancy fees to Singaporean company for forex derivative transaction services was taxable as 'Fees for technical services '('FTS') for AY 2008-09 considering the fact that the Singaporean company provided expert guidance and consultancy services and that the same did not constitute business profits, which was not taxable absent PE in India.
CIT vs. Andaman Sea Food (P) Ltd - [TS-30-SC-2016]

269. The Tribunal held that where assessee received reimbursement from its India entity for use of equipments situated outside India and it could not be established that same was on cost to cost basis, it was taxable in India as royalty.
DCIT v Vertex Customer Management Ltd - [2016] 67 taxmann.com 105 (Delhi-Tribunal)

270. The Tribunal held that where assessee was granted license by two foreign companies (licensors) based out of US and UK and licensors provided data relating to geophysical and geological information and they were not responsible for accuracy or usefulness of such data, since licensors had only made available data acquired by them but did not make available any technology available for use of such data by assessee, payments made by assessee to said licensors was not in nature of 'Royalty' as per respective DTAA.
GVK Oil & Gas Ltd v ADIT - [2016] 68 Taxmann.com 134(Hyderabad-Tribunal).

271. The Tribunal held that fee for included services (FIS) would not include amounts which are inextricably and essentially linked to start up services and sale of property.
Raytheon Ebasco Overseas Ltd v DCIT - [2016] 68 Taxmann.com 133(Mumbai-Tribunal)

272. The Tribunal held that revenue earned from 'software sale' by assessee an India branch of a UK company to Indian customers was in nature of business receipts and not royalty as same was consideration for sale of a copyrighted product and not for use of any copyright . All Intellectual property rights to products remained with UK company and assessee could not use it or pass it over to anyone except by way of sale of software products Further, 'royalty' definition under India-UK DTAA did not include consideration for use of computer software Furthermore, retrospective insertion of Explanation 4 to section 9(1)(vi) vide Finance Act, 2012 which included consideration for right to use a computer

software within ambit of 'royalty' also could not be read into DTAA as a country which was party to a treaty could not unilaterally alter its provisions. Also the Tribunal further held that receipts from annual maintenance contract having same character as that of original software would be covered under business profits under article 7. Also, where training to employees of end users of software sold by assessee for which consideration had been received was ancillary and subsidiary to sale of software; it was to be treated as business receipts under article 7 of DTAA between India and U.K.
Datamine International Ltd v ADIT - [2016] 68 Taxmann.com 97 (Delhi-Tribunal).

273. Where the assessee company was developing and exporting gas circuit breaker and vaccum circuit breaker for which design tests were conducted as per IEC Standards, and the assessee company had paid testing charges without TDS to foreign companies, the Tribunal held that the said payment was FTS liable for TDS and that though the products were sent out of India, source of income was created once export orders were concluded in India. It further held that in order to fall within second exception provided in section 9(1)(vii)(b), source of income, and not receipt should be situated outside India
DCI –Large Taxpayer Unit v Alstom T & D India Ltd - [2016] 68 Taxmann.com 336 (Chennai-Tribunal.)

274. The Tribunal held that sum received by the assessee, a UK based Company, for allowing Indian telecom operators to use its Virtual Voice Network (VVN), i.e., a facility used to connect the call to the end operators could not be treated as royalty or FTSin terms of Article 13 of India-UK DTAA since the payment was made to the assessee for using its services and not for the use of any scientific equipment or technology. Also payment for service could not be brought to tax as 'FTS' under Article 13 of India-UK DTAA as no technology was made available to the service recipient, since it was not able to apply that technology without recourse to the service provider.
Interroute Communications Ltd v DDIT - [2016] 68 Taxmann.com 160(Mumbai – Tribunal)

275. The Tribunal held that review of design does not amount to transfer of design and hence fees for the same cannot be taxed as FTS / FIS under the India US treaty.
Further, it held that where the service of installation was inextricably connected to sale of goods, the same could not be treated as FIS or FTS.
Gujarat Pipavav Port Ltd v ITO – (2016) 67 taxmann.com 370 (Mumbai – Tribunal)

276. The Tribunal held that payment of Inter-connect Usage Charges ('IUC') by Bharti Airtel ('assessee') to Foreign Telecom Operators ('FTO') in connection with its International Long Distance ('ILD') telecom service business was neither FTS nor royalty (including process royalty) u/s 9(1)(vi)/(vii) of the Act and therefore Section 195 of the Act was not applicable on the ground that for it to constitute technical services there should be an involvement/ presence of human element. It also observed that the 'inter connection facility' was a standard facility. Further, it rejected the Revenue's alternate stand that payment was in the nature of 'royalty' as it was made for 'use of process' since the assessee merely delivered the call that originates on its network to one of the inter connection locations of the FTO and FTO carries and terminates the call on its network and the assessee was nowhere concerned with the route, equipment, process or network elements used by the FTO. It clarified that the term "process" used under Explanation 2 to Sec 9(1)(vi) in the definition of 'royalty' does not imply any 'process' which is publicly available and not exclusively owned by grantor and that it implied an item of intellectual property and that the word "process" must also refer to a specie of intellectual property applying the rule of ejusdem generis or noscitur a sociis, the expression 'similar property' used at the end of the list further fortifies the stand that the terms 'patent, invention, model, design, secret formula or process or trade mark' are to be understood as belonging to the same class of properties viz. "intellectual property. It also clarified that the retrospective insertion of Explanations 5 & 6

to Sec 9(1)(vi) did not alter this position and moreover retrospective amendment in domestic legislation cannot affect royalty definition under DTAA which is very 'restrictive'.
Bharti Airtel Limited v ITO – (2016) 46 CCH 0304 (Del Trib)

277. The Tribunal held that the payment of professional fees made by the assessee to non-residents in the UK, USA, France and China did not constitute fees for technical services since it did not make available to the assessee, any technology by virtue of which it would be able to apply such technology without recourse to the service provider. Further, in dealing with the alternate contention of the assessee that the payments, being made to individuals, would be governed by Article 15 viz. Independent Personal Services and not FTS, the Tribunal agreed with the same and held that since none of the individuals were present in India for a period of 90 days or more the same would not be taxable under Article 15 of the respective DTAAs. Further, it held that the retrospective amendment to Section 9(1)(vii) inserted vide Finance Act, 2010, doing away with the requirement of services being rendered in India, would not be applicable to the assessee, since at the time of deduction of tax, the same was not applicable and therefore it deleted the disallowance made under section 40(a)(i) of the Act.
KPMG v ACIT – (2016) 46 CCH 0339 (Mumbai – Trib)

278. The Tribunal held that where assessee rendered composite service of managerial and technical nature to is Indian subsidiary and the CIT (A) taxed half of receipts therefrom without analyzing bills to segregate them, action of CIT(A) was not justified and restored the matter to the file of CIT (A).
ADIT v Lloyds Register U.K - [2016] 68 taxmann.com 309 (Mumbai- Tribunal)

279. The Tribunal held that payments made by assessee to non-residents for downloading of photographs for exclusive one time use for publication in assessee's magazine in India did not amount to Royalty under article 12 of DTAA between India and was not liable for tax deduction at source since admittedly a) photographs had been given to assessee for limited purpose of its one time use in magazine b) assessee could neither edit photograph nor could it make copies of photograph to be sold further or to be used elsewhere c) assessee was not permitted to make resale of these photographs to any other person for any other use.
DCIT v VJM Media (P.) Ltd - [2016] 68 taxmann.com 305 (Mumbai-Trib.)

280. The Tribunal held that the amount received by a UK Resident company from its Indian affiliate under a Management and Administration Services agreement for services such as business policy advice, market research, market analysis, evaluation of business opportunities etc constitutes royalty towards the supply of commercial information concerning commercial experience under the Act as well as the India-UK DTAA. It held that since some of the services under the said agreement were charged based on gross turnover, it indicated that the services were in relation to information, knowledge or expertise as well as experience already in existence and in possession of the assessee. In dealing with the contention of the assessee that the agreement was a composite agreement and some of the services were purely business / commercial practice, it held that since the assessee failed to provide a bifurcation of the same, then the other part of the services could also be given the tax treatment as given to one part of the services provided which constitutes the principle purpose of the contract.
TNT Express Worldwide UK Ltd v DDIT (IT)– TS-253-ITAT-2016 (Bang)

281. The Tribunal held that the definition of royalty under the DTAA and the Act was not paramateria since the Act defines royalty to include computer software which was not so in the relevant DTAAs. Further, it held that the difference between the term 'use of copyright in a software' and 'use of software' was to be appreciated and held that to constitute royalty under the DTAA the consideration paid should have been for the transfer of use of copyright in the work and not the use of the work itself. It held that the sale of a CD ROM /

diskette containing software was not a license but was a sale of product which was a copyrighted product. Further, it relied on the decision of the Apex Court in the case of Sedco Forex International Drill INC. & Others v. Commissioner of Income Tax & another wherein it was held that if an explanation added to a provision changed the law, then it could not to be presumed to be retrospective irrespective of the fact that the phrase used were 'it is declared' or 'for the removal of doubts', and held that payments made prior to Finance Act, 2012, to Hong-Kong entities for which there was no DTAA, would not be subject to deduction of tax, asExplanation 4 to Section 9(1)(vi) of the Act, though introduced as retrospective in nature with effect from 1.6.1976, had the effect of change in law and consequently was to be given prospective effect.
DDIT (IT) v Reliance Industries Ltd – (2016) 69 taxmann.com 311 (Mumbai- Trib)

282. The Tribunal held that the payment made by the assessee to a Korean non-resident company for testing and certification services was taxable as fees for technical services and therefore liable to withholding tax, by relying on the decision of the Court in the case of M/s Havells (India) Ltd wherein it was held that fees for testing and certification services was taxable in the hands of the non-resident company since the assessee (making the payment) in that case could not prove that the testing services availed were utilized in a business outside India as a result of which the source was to be considered to be in India.
Megawin Switchgear Pvt Ltd v ACIT – (2016) 47 CCH 0039 (Chen Trib)

283. The Tribunal held that payments made by the assessee for 3D Seismic Data Interpretation services were not FTS under Article 13 of India- UK DTAA as services did not "make available" technical expertise, skill or knowledge and hence not liable for withholding tax under section 195 of the Act. It observed that the assessee had provided the initial data and the non-resident was only required to provide the interpretation report of such data and therefore held that the AO erred in treating maps/designs given by the non-resident to the assessee as technical plan or design since the said maps/designs were nothing but a way to interpret the data and could not be equated to development and transfer of technical maps and designs as contemplated by the AO. Further, it held that the payment was made for providing analysis of data and the conclusion provided by the non-resident did not enable the assessee to apply such knowledge or undertake survey independently without any assistance.
Adani Welspun Exploration Ltd v ITO – TS-249-ITAT-2016 (Ahd)

284. The Court held that where the assessee had entered into a contract with IOCL for offshore construction work involving mobilization / demobilization and installation services, the Revenue was incorrect in separating the mobilization / demobilization services from the installation services since the payment made to the assessee was for the execution of a composite contract.
It held that since the equipment used by the assessee while providing services to IOCL were in the exclusive control of the assessee and IOCL did not have any dominion or control over the same, the payment received by the assessee could not be taxed as equipment royalty under Article 12(3) of the India-Singapore DTAA. Further, it rejected the contention of the Revenue that the installation services were incidental to mobilization / demobilization services and therefore taxable under Article 12(4)(a) of the DTAA and held that since the demobilization / mobilization services were not taxable under Article 12(3), the installation services even if considered ancillary, would not be taxable. Further, it held that the said services were neither taxable under the DTAA since they didn't make available any technology nor under the Act since it fell under the exclusionary clause to Explanation 9(1)(vii).
Technip Singapore Pte Ltd v DIT – TS-301-HC-2016 (Del)

285. The Tribunal held that where the assessee, engaged in the business of development of proprietary technology for automated evaluation of internal features of diamond, sold to its

customers machines used in the diamond industry along with operating application software which was an integral part of the machine, payments received for the same could not be treated as royalty since the software loaded on the hardware did not have any independent existence and could not be used independently. The software was supplied predominantly as a part of equipment and was an integral part thereof and therefore the transaction was to be treated as a sale and purchase of machine and not a sale and purchase of computer software. Since the payment was not taxable as FTS and the assessee did not have a PE in India, the receipts from sale of machinery could not be taxed in India.
Galatea Ltd v DCIT (IT) – (2016) 47 CCH 0325 (Mum – Trib)

c. Withholding tax

286. The Tribunal held that the assessee, a branch of a foreign bank was not liable to deduct tax at source on payment of interest to its head office since the payment was made by the non-resident to himself and accordingly deleted the disallowance made under section 40(a)(i) of the Act.
DBS Bank Ltd v DDIT (IT) – (2016) 66 taxmann.com 173 (Mum)

287. The Tribunal held that the assessee, an independent insurance broker was not required to deduct tax at source on payments made to non-resident re-insurers since it was an independent broker and not an agent and did not carry out any activity on behalf of anyone in India and did not have the authority to conclude contracts in India. It observed that neither did the non-resident reinsurers nor any independent insurance company have any control over the assessee and that section 9(1)(i) specifically excluded independent brokers from its ambit. Accordingly, it held that the assessee could not be treated as an assessee in default under section 201 / 201(1)(A) of the Act.
ADIT v AON Global Insurance Service Ltd – TS-756-ITAT-2015 (Mum)

288. The Tribunal held that the question of applying a rate of 20 percent and making consequent adjustment on payments made by the assessee to a non-resident, ignoring the provisions of the DTAA was a legal question which was beyond the scope of intimation under section 200A of the Act which provided for adjustments on account of arithmetical errors and therefore, the said intimation and adjustment was not justified.
Wipro Ltd v ITO – (2016) 46 CCH 0187 (Bang – Trib)

289. The Court held that both section 44B and 172 of the Act open with a non-obstante clause and that section 44B provides for the computation and section 172 provides for the recovery and collection of taxes. The provisions of section 172 of the Act clearly provide the mechanism for levy, assessment and recovery and therefore there is no warrant in applying the provision of section 195 to the assessee and accordingly there is no obligation to deduct tax at source on the resident / Indian company making payments to non-resident covered under section 172 of the Act. Thus, no disallowance can be made under section 40(a)(i) of the Act in such a case.
CIT v VS Dempo & Co Pvt Ltd – (2016) 66 taxmann.com 93 (Bom)

290. The Tribunal held that the second proviso to section 40(a)(ia) of the Act was retrospective in nature, being declaratory and curative in nature, seeking to eliminate unjust enrichment on part of the Government.
Dilip Kumar Roy v ITO – (2016) 68 taxmann.com 129 (Kolkata – Trib)

291. The Tribunal deleted Sec 40(a)(i) disallowance and held that the assessee was not liable to deduct TDS u/s 195 on payments made to non-resident during AY 2010-11 for training conducted outside India and dismissed the contention of the Revenue that the assessee was liable to deduct TDS applying explanation to Sec 9(1) inserted retrospectively by Finance Act 2010 which provides that even where the non-resident has not rendered

services in India, FTS shall be deemed to accrue or arise in India. It held that an assessee who has to make the payment cannot visualize or apprehend that in future a retrospective amendment would be brought whereby it would require withholding of tax and that that law cannot compel a person to do something which is impossible to perform (i.e lex non cogit ad impossiblia).
Holcim Services South Asia Ltd v DCIT - TS-80-ITAT-2016(Mum)

292. The Tribunal held that assessing Officer's order under section 195(2) determining the amount of TDS to be deducted from payment to non-resident is not an appealable order and CIT(Appeals) cannot entertain appeals against it and any order passed by CIT(A) by entertaining such appeal will be unsustainable for want of jurisdiction - Consequently, the Tribunal also cannot entertain any appeal against CIT(A)'s order on the matter
Bangalore International Airport Ltd v ITO - [2016] 68 taxmann.com 228 (Bangalore – tribunal)

293. The Court held that for AY 2001-02, prior to the insertion of section 40(a)(ia) of the Act, disallowance of payments to non-residents on account of non-deduction of tax at source was discriminatory, since payments to residents were not subject to such disallowance arising out of non-deduction of tax at source and consequently assessees would be eligible to benefit of Article 26(3) of the India-US DTAA i.e. Non-discrimination, and therefore it held that the administrative fee paid by the assessee to its US based holding company was allowable in spite of non-deduction of tax at source.
CIT v Herbalife International India Pvt Ltd – (2016) 96 CCH 0007 (Del)

294. The Tribunal held that where the assessee made payments in consideration for services rendered by non-residents, in view of the fact that no finding had been brought on record by the Revenue that non-residents had business connection in India, it could be concluded that no services were rendered by non-residents in India. Further, since no finding was made vis-à-vis the nature of the payments and no evidence was brought on record to show that the payments were in the nature of fees for technical services, the provisions of section 40(a)(i) of the Act would not be applicable since the receipts were not in the nature of income deemed to accrue or arise in India in the hands of the non-residents.
IDS Infotech Ltd v DCIT – (2016) 69 taxmann.com 393 (Chandigarh)

d. Capital Gains / Dividend Income

295. The Tribunal held that where the assessee transferred shares under a scheme of arrangement approved by the High Court, the scheme would not fall under the category of re-organization under Article 13(5) of the India – Netherlands DTAA, since the object of the scheme was not financial re-structuring but to enable the assessee to transfer its shareholding and pursuant to the scheme there was only a reduction in the share capital but the security holders continued to enjoy the same rights and interests, thereby not satisfying the definition of reorganization. Accordingly, it held that the gain received by the assessee was taxable in India.
Accordis Beheer BV v DIT – TS-10-ITAT-2016 (Mum)

296. The AAR held that settlement amount received for surrender of right to sue was not taxable since it was a capital receipt and could not be charged to capital gains as its cost of acquisition was not determinable. Further, the AAR held that the settlement amount was received as a result of surrender of claim against another company and its auditors and not in substitution of any business income and therefore the said amount could not be taxable in accordance with the principle of surrogatum, since it did not replace any business income.
Aberdeen Claims Administration Inc – (2016) 65 taxmann.com 246 (AAR- Del)
Lead Counsel of Qualified Settlement Fund – (2016) 65 taxmann.com 197 (AAR- Del)

297. The AAR held that where a Mauritius based company proposed to transfer shares held by it in an Indian company in favour of a company proposed to be incorporated in Singapore pursuant to a group reorganization initiated 20 years back, it could not be said to be a tax avoidance scheme merely because treaty benefits were available. It further observed that the Mauritius company had been operating for a period of 10 years and therefore could not be considered as a shell company. It held that the applicant was not liable to capital gains tax as per Article 13 of the DTAA, since Article 13(1) and 13(3) were not applicable and in the absence of a permanent establishment Article 13(2) of the DTAA was also not applicable.
In the absence of a PE in India, the MAT provisions did not apply to the applicant and neither did the transfer Pricing provisions apply as there was no income arising out of the said international transaction.
Dow Agro Sciences Agricultural Products Ltd In re – [2015] 65 taxmann.com 245 (AAR- New Delhi)

298. The Tribunal held that gains from alienation of shares of capital stock of the company the property of which consists directly or indirectly principally of immovable property situated in a contracting state may be taxed in that State and therefore, the assessee a resident of India, transferring shares of a Sri-Lankan company would be taxable in Sri Lanka itself. It held that the contention of the CIT in invoking 263 of the Act on the basis that the AO failed to examine the issue adequately and that the AO failed to compute long term capital gains and short term capital gains separately, was not consequential since the capital gains would be taxable only in Sri Lanka in any case.
Jay Agriculture & Horticulture Pvt Ltd v Pr CIT – (2016) 46 CCH 0118 (Ahd Trib)

299. The Tribunal held that for AY 2004-05, dividend received by the assessee from a Malaysian Bank would be governed by the old DTAA between India and Malaysia and therefore would not be liable to tax in India. Post AY 2004-05, the dividend income would be taxable in both states and subject to tax credit under section 91 of the Act.
DCIT v UCO Bank – (2016) 46 CCH 0313 (Kol Trib)

300. The Tribunal held that advance given by assessee, a non-resident company, to its wholly owned subsidiary is a property in the sense that it is an interest which a person can hold and enjoy, and since it is a property and is not covered by exclusion clauses set out in section 2(14), it is required to be treated as a 'capital asset' and if any loss arises on sale of the said asset, it would be treated as short term capital loss in the facts of the given case.
Siemens Nixdorf Informationssysteme GmbH v DDIT - [2016] 68 taxmann.com 113 (Mumbai –Tribunal)

301. The Tribunal held that where the assessee, a resident of India, received dividend from a company incorporated in Brazil, then as per Article 10 read as well as Article 23 of the India-Brazil DTAA, the dividend could have been taxed at a rate not exceeding 15 percent in Brazil as per the DTAA. However, since the Brazilian law declared the dividend income to be exempt from income-tax, as the assessee was a resident of India within the meaning of paragraph 3 of Article 23 of the DTAA (which provides that where a company which is a resident of a Contracting state derivces dividends which, in accordance with the provisions of paragraph 2 of Article 10 may be taxed in the other Contracting state, the first mentioned State shall exempt such dividends from tax), such dividends were exempt from tax in India.
ITO v Besco Engineering & Services Pvt Ltd – (2016) 47 CCH 0028 (Kol)

e. Article 8 / Section 44BB / 44D

302. The Tribunal quashed reassessment proceedings initiated by the Revenue seeking to tax technical and ground handling services rendered as fees for technical services under the

Act as they were allegedly effectively connected with the assessee's PE in India, following the order of the Tribunal in the assessee's own case for previous assessment years wherein it was held that ground handling and technical services performed by the assessee should be considered as a part of operation of aircraft in international traffic under Article 8 of the India-Netherlands DTAA, and therefore could not be treated as fees for technical services under the Act.

DCIT v KLM Royal Dutch Airlines – TS-25-ITAT-2016 (Del)

303. The Tribunal allowed the assessee's (resident of Indonesia) appeal challenging assessment under section 172 of the Act (which deals taxation of non-resident shipping companies) and held that income earned from slot chartering in certain vessels sailing from Port of Mundra was not taxable in India as per Article 8 of India-Indonesia DTAA. It held that the Revenue was incorrect in denying exemption under Article 8 of India-Indonesia DTAA on the ground that vessels in which the containers were transported were not owned/ chartered by the assessee, since as per Article 8(1) source jurisdiction (India in this case) had no right to tax income from operations of ships in international traffic or even any activity directly connected with such operations, whether carried on by the assessee on his own/ in collaboration with others and that there was no reference to ownership and charter of vessels in Article 8 of the DTAA. It relied on Bombay HC ruling in Balaji Shipping UK Ltd wherein it was held that "slot hire facility is an integral part of the contract of carriage of goods by sea" and thus is eligible for treaty protection against source taxation of such income.

K Cargo Global Agencies v ITO - TS-235-ITAT-2016(Ahd)

304. The AAR held that consideration received for on-board fabrication and installation of Floating Production Storage and Offloading facility under Change order was taxable in India under section 44BB of the Act despite working performed outside India as the change order was a mere extension of the Original Contract and therefore warranted similar tax treatment. Entire consideration received was taxable under section 44BB without splitting the same on the basis of travel of FPSO outside or in India as section 44BB did not provide for such splitting up.

Aker Contracting FP ASA – TS-773-AAR-2015

305. The Tribunal held that where profits and gains of the business carried on by the assessee were to be computed at 10 percent of gross receipts as per section 44BB of the Act, deeming the gross receipts to be the income of the assessee, it could not claim a deduction of fuel cost incurred in respect of construction of offshore facilities, even though the same would be allowable under the normal provisions of the Act, since its taxability was governed by the provisions of Section 44BB which do not provide for deduction of expenses incurred.

Fugro Rovtech Ltd v ADIT(IT) – (2016) 66 taxmann.com 19 (Mum)

306. The Tribunal held that where the assessee and a Russian company entered into an agreement for the construction of Nuclear power plant in India, whereby the Russian company was to assist in setting up the Nuclear Power Station, the payment made to the Russian company was taxable under section 44BBB of the Act and not taxable as fees for technical services since the Russian company not only provided necessary assistance but also was actively involved in the process of setting up the Power Station by providing end to end services and deputing personnel for the purpose of carrying on construction.

DDIT(IT) v Nuclear Power Corporation of India Ltd – (2016) 46 CCH 0111 (Mum Trib)

307. The Tribunal held that income received by a non-resident under a time charter agreement accrues and arises in India even when the vessel and crew are outside the territorial waters of India since the payments were intricately linked to the services/works rendered by the assessee and arose due to the execution of contract in India.

Further, it held that if a non-resident is engaged in the business of providing services or facilities in connection with the prospecting for extraction or production of mineral oil, then 10% of the aggregate of the amounts received/accrued will be deemed to be the profits and gains of such business chargeable to tax in terms of provisions of section 44BB of the Act even if it was in the nature of Royalty / FTS since specific services were contemplated only under section 44BB of the Act and, therefore that being special provision, the same will prevail over all other provisions dealing with royalty/FTS.
Siem Offshore Crewing v ADIT – (2016) 46 CCH 0277 (Del Trib)

308. The Court held that consideration received by foreign company for services rendered to Indian entities for activity of 2D/3D seismic survey carried on in connection with exploration of oil could not be construed as "fees for technical services" in terms of Explanation 2 to section 9(1)(vii) and the d the same was liable to tax in India under section 44BB only if non-resident had a PE in India in relevant assessment year.
PGS Exploration (Norway)AS v ADIT - [2016] 68 taxmann.com 143 (Delhi)

309. The AAR held that where the applicant provided coring service (which generally include the removal of sample formation material from a wellbore for further analysis of the said samples) sample analysis service to examine presence of petroleum in block for exploration, consideration received by applicant would be taxable under section 44BB and the provisions of sections 9(1) (vii), 44D and 44DA of the Act would not be applicable in view of the judgment of the Apex Court in Oil & Natural Gas Corpn. Ltd v CIT.
Corpro Systems Ltd., In re - [2016] 68 taxmann.com 330 (AAR-New DELHI).

f. Others

310. The Tribunal held that since the assessee, an employee of a US based company, was a non-resident providing services in the US and subject to tax in the USA he was exempt from tax in India as per Article 16 of the India-USA DTAA and merely because he was paid salary by the US company's Indian counterpart, which was later reimbursed by the US company, tax could not be levied on him in India.
Neeraj Badaya v ADIT(IT) – (2016) 46 CCH 0541 (Jaipur)

311. The Tribunal held that where the assessee society received dividend income from an Omani company, which was offered to tax in India, it would be liable to credit of tax paid under the India – Oman DTAA, in spite of the fact that the Omani tax laws exempts tax on such income, as the term 'tax payable' in Article 25(4) of the DTAA includes tax which would have been payable but not paid due to certain tax incentives under laws of the contracting State.
Krishak Bharati Cooperative Ltd v ACIT – (2016) 67 taxmann.com 138 (Del – Trib)

312. The Tribunal held that service tax did not have any element of income i.e. it was not in the nature of fee for technical services and therefore did not partake the character of income hence was not includible in the gross receipts offered for taxation.
DDIT v Egis Bceom Intl SA – (2016) 46 CCH 0098 (Del Trib)

313. The Court held that a notice issued under section 143(2) of the Act in a pre-printed format, failing to satisfy the mandate would not be a bar to the AAR application even if it was issued prior to the filing of the AAR application. Further, it held that the words 'already pending' in section 245R(2) of the Act covered situations wherein on the date of filing of the application before the AAR, the question raised therein was already subject matter of proceedings before the income tax authority and since the question before the AAR was not subject matter to the notice under section 143(2) of the Act, the AAR application could not be dismissed.

Hyosung Corporation v AAR – TS-77-HC-2016 (Del)

314. The Court held that when there was no failure on part of the assessee to disclose all material facts relating to income in question at the time of assessment and the AO concluded that the amount received by the assessee from its subsidiary under the software duplication and distribution license agreement was taxable as royalty, he could not subsequently initiate reassessment proceedings merely on the basis of change of opinion that the amount in question was to be taxed as business income.
Oracle Systems Corpn v DIT(IT) – (2016) 66 taxmann.com 286 (Del)

315. The Tribunal held that amount received by assesseee, a Singaporean company engaged in business of making / accepting / executing and discounting of financial instruments, from its Indian associated enterprises by discounting their Promissory Notes was assessable as discounting charge and not as interest under section 2(28A) of the Act / Article 11 of India-Singapore DTAA. The same was business income of assessee which could not be taxed in India in absence of its PE in India. It further held that this was a case where assessee had merely discounted the sale consideration receivable on sale of goods and not a case where any money had been borrowed or debt had been incurred.
Cargill financial Services Asia Pte. Ltd, In Liquidation v ADIT - [2016] 67 Taxmann.com 266 (Delhi-Tribunal)

316. The Tribunal held that as interest payment by Permanent establishment (Branch office) to its head office (a foreign company) was a payment by a foreign company's Indian PE to foreign company itself; it could not give rise to any income, in hands of foreign company.
BNP Paribas SA v. ADIT - [2016] 69 taxmann.com 6 (Mumbai -Tribunal.)

317. The Court dismissed the petition filed by the petitioner challenging validity of section 94A(1) of the Act, (incorporating special measures in respect of transactions with persons located in notified jurisdictional areas) Notification No 86 and press release dated November 1, 2013. It held that Section 94A of the Act, empowering the Central Government to declare any country or territory outside India as a notified jurisdiction was constitutionally valid. It held that the Indian Constitution followed the dualistic doctrine with respect to international law and that international treaties do not automatically form part of the international law unless incorporated into the legal system by a legislation made by parliament. The Court held that the challenge to the constitutional validity of section 94A(1) of the Act was meritless and in dealing with the contention of the Petitioner that section 90(1)(c) of the Act could not be diluted by section 94A(1) of the Act, it held that in the case of lack of effective exchange of information, section 90(1)(c) of the Act gets diluted by the contracting parties and not by section 94A(1) of the Act. It observed that there was sufficient justification for the insertion of Section 94A of the Act which sought to take action against non-cooperative jurisdictions. With regards to the validity of Notification No 86, which declared Cyprus as a notified jurisdiction under section 94A of the Act, it held that the contention of the tax payer that countries with whom agreements were entered into under section 90(1) could not be considered as notified jurisdictional areas was incorrect as the language used in section 94A was ‘any country or territory’ and therefore the Central government could notify any country irrespective of the existence of a treaty with the said country. Further, the Court held that the impugned Press release, which speaks about the liability to withhold tax at 30 percent to payments made to non-residents in Cyprus using the words ‘any sum’, ‘income’ and ‘amount’, was not a legal document and therefore the language used therein could not be tested on the strength of law lexicons as they were meant for the benefit of the common man and therefore dismissed the contention of the petitioner pointing out the discrepancies in the terms used therein and those used in section 94A.
T Rajkumar v Union of India – (2016) 68 taxmann.com 182 (Mad)

318. The Court held that the words 'already pending' in section 245R(2) of the Act relates to the date of filing of application before the AAR and therefore notices issued under section 143(2) of the Act subsequent to filing the AAR application would not bar the AAR proceedings. It held that only if the question raised in the AAR application was already subject matter of proceedings before the income-tax authorities, could the AAR could refuse to entertain the said application. Where the notice issued by the AO was in a standard format and not covering the specific issue which was subject matter of application before the AAR, there would be no bar on adjudicating such issues under section 245R of the Act.
LS Cable & System Ltd v CIT – (2016) 96 CCH 0011 (Del)
Hyosung Corporation v AAR – TS-274-HC-2016 (Del)

319. The Tribunal held that appeal filed by the assessee- deductee against a 195(2) order passed upon application made by the payer / deductor was not maintainable since as per section 246A an order under section 195(2) was not appealable before the CIT(A). It further held that the only remedy against a section 195(2) order was appeal under section 248 which was required to be filed by the deductor and not the deductee. It held that the order appealed against must be an order against an assessee determining its liability to be assessed under the Act and since, in the present case, the order under section 195(2) was against the deductor in whose case the assessment was concluded and not the assessee, the only course open to the assessee was to deny its liability to be assessed under the Act and claim a refund.
DCIT v Abu Dhabi Ship Building PJSC – TS-328-ITAT-2016 (Mum)

320. The Tribunal held that the salary received by the assessee, a non-resident individual, working as a marine engineer in foreign waters, was taxable in India since it was received in the assessee's NRE account in India. It rejected the contention of the assessee that the income was not taxable in India since it was received in foreign currency and held that Section 5(2)(a) provides for taxability of any income received or deemed to be received in India irrespective of the residential status of the recipient.
Tapas Kr Bandopadhyay – TS-310-ITAT-2016

III. Domestic Tax

a. *Income*

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

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

323. The Court held that the waiver by the lender of even the principal amount of loan constitutes a "benefit" arising from business and is assessable to tax as income under section 28(iv) of the Act. It held that gain on write off of a loan whether capital or revenue

in nature would be recorded in the P&L account and accordingly held that it would be taxable.
CIT v Ramaniyam Homes Pvt Ltd – (2016) 95 CCH 0147 (Chennai)

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

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

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

327. The Court held that where the assessee had disclosed interest income in its accounts on accrual basis for the purpose of quarterly results and subsequently reversed a portion of the interest income not received, thereby offering only that interest income received by it, the Revenue was incorrect in seeking to tax the entire interest income, since there was no suppression of income and all the income received by the assessee was duly offered to tax.
CIT v DLF Hilton Hotels – (2016) 69 taxmann.com 300 (Del)

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

329. The Tribunal held that interest received by the assessee on enhanced compensation for loss of physical abilities in a motor accident was not taxable under section 56(2)(viii) read with section 145A(b) of the Act since the award of compensation under motor accidents claims could not be regarded as income in the first place and therefore there was no question of taxing interest income incidental to it. The Tribunal further held that Section 56(2)(viii) of the Act was not a charging section and only provided taxation of interest income in the year of receipt as against the year of accrual and therefore where the interest was not in the nature of income in the first place, 56(2)(viii) was not applicable.
Urvi Chirag Sheth v ITO – TS-302-ITAT-2016 (Ahd)

330. The Court held that sales tax exemption benefit was to be treated as a capital receipt as it was meant for capital outlay for set up of units and expansion / diversification of existing units. Since the issue was squarely covered by decisions of the Court in the case of CIT v

Birla VXL Ltd and DCIT v Munjal Auto Industries, it held that no substantial question of law arose and dismissed the appeal of the Revenue.
CIT v Nirmal Ltd – (2016) 96 CCH 0036 (Guj)

b. ***Income from Salaries***

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

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

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

334. The Tribunal held that where Assessing Officer added notional interest on deposit made for rent-free accommodation in income of assessee-employee, in view of express words used in rule 3, as amended w. e. f. 01.04.2001. action of Assessing officer was not justified.

Vikas Chimakurty v DCIT - [2016] 70 Taxmann.com 96 (Mumbai –trib.)

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

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

d. ***Business Income***

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

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

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

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

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

341. The Court held that where no deduction / allowance was made in respect of loss, expense or liability during the assessment year or in previous assessment years, cessation of such liability could not be taxed under section 41(1) of the Act. Further, it held that since the loan written off was a capital transaction, section 41(1) of the Act would not apply.
Pr CIT v Tinna Finex Ltd - [2016] 95 CCH 0042 (Del)

342. The Court held that when assessee had made payment for purchase of a particular quantity of material and goods were lying in custody of assessee, though at various ports, same could validly be termed as stock in trade and loss due to fall in value of stocks represented by those purchases had to be allowed.

Pr. CIT v STCL Ltd - [2016] 68 taxmann.com 224 (Karnataka)

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

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

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

346. The Tribunal held that where the assessee, an investment company, invested in 26 percent of the shareholding of AT&T India with the balance held by AT&T Global, with a stipulation in the agreement that both, AT&T Global and the assessee had an exclusive irrevocable right to increase / decrease its shareholding in AT &T India by requiring the assessee / AT &T Global to sell / buy the shares held in AT & T India at an option price equivalent to the equity contribution plus return at 11 percent; the said investment being different from a normal shareholding, on account of the fact that the price of the shares held in AT&T India was to increase irrespective of the performance of the company and that the investments were restricted for transfer making it highly illiquid, the income on investments would be treated as business income in the relevant year as it accrued when the right to receive such income arose, irrespective of the fact that it was realized at a later date.
Mahindra Telecommunications Investment P Ltd v ITO – (2016) 69 taxmann.com 431 (Mum)

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

348. The Court held that Explanation 10 to sub-section (1) of s 43 came into effect only from 1.4.1999 that too prospectively and, therefore, had no application in impugned case, more so, when plant itself was set-up in AY 1993-94. It further held that subsidy received

against investment was made in backward area where industries were not present hence same was for promotion and that would not reduce value of assets.
Alpha Lab vs ITO - (2016) 96 CCH 0029 (Guj)

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

e. ***Deductions***

Section 32

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

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

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

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

354. The Court held that for the claim of depreciation to be allowed the conditions precedent were ownership of the asset and user for the purpose of business. Therefore, where the assets were not used by the assessee itself, but used for the purpose of business viz. business of leasing, the assessee could not be denied its claim of depreciation on assets leased out on a financial lease.
CIT v Apollo Finvest I Ltd – (2016) 95 CCH 0118 (Bombay)

355. The Tribunal held that admissibility of depreciation on trademark is not contingent upon its registration in name of assessee in as much as description of intangible asset in Part B of

depreciation schedule describes the same merely as 'know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature'.
Trio Elevators Company (India) Ltd v ACIT - [2016] 67 taxmann.com 348 (Ahmedabad - Trib)

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

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

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

359. The Tribunal held that the excess amount paid by the assessee over and above the value assigned to various assets of the division purchased which was towards 'customer relationship rights' could be classified as goodwill and therefore eligible for depreciation under section 32(1)(ii) of the Act. The Tribunal dismissed the assessee's alternative contention that the said customer relationship rights were in the nature of fee for non-compete rights, eligible for depreciation under section 32 of the Act, in spite of the fact that the seller of the division agreed not to engage in the business of the division transferred as there was no intention of the parties to pay consideration for such restrictive covenant and therefore, payment could not be treated as non-compete fees.
Incap Contract Manufacturing Services Pvt Ltd v DCIT – TS-262-ITAT-2016 (Bang)

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

Section 33AB

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

Section 36

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

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

364. The Court held that where the assessee, engaged in the business of manufacturing GI Castings, advanced certain amounts to its sister concern who was also engaged in the business of manufacturing castings out of its own loan funds, in the absence of any indication by the revenue authorities about the nature of businesses of the assessee and the sister concern, disallowance of interest on loan taken by the assessee on the ground that it was utilized for non-business purposes was not valid.
Industrial Feeders v ACIT – (2016) 68 taxmann.com 92 (Mad)

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

Section 31 / 37(1)

366. The Court held that where the assessee obtained a license for running a cinema hall from NDMC against a payment of license, enhanced by NDMC at the time of renewal, which was challenged by the assessee by way of a suit as a result of which NDMC was restrained from recovering the enhanced license fee till disposal of suit, the enhanced license fee and interest on arrears of license fee claimed by the assessee in accordance with the mercantile system of accounting was allowable as a deduction under section 37(1) of the Act.
Aggarwal and Modi Enterprises (Cinema Project) Co Pvt Ltd v CIT – (2016) 67 taxmann.com 63 (Del)

367. The Tribunal held that the AO was incorrect in disallowing foreign travel expenses on an ad hoc basis, presuming that they were incurred towards the Director's personal benefit, without bringing anything on record to prove the same. It held that disallowance of expenses based on surmises and presumptions was not possible.
ACIT v Farida Shoes Pvt Ltd – (2016) 46 CCH 0029 (Chen)

368. The Court held that where expenses were incurred by the assessee on lease of aircraft which satisfied the conditions precedent of section 37(1), the expenses could not be disallowed merely because they were claimed in the revised return.
CIT v Jet Airways (India) Ltd – (2016) 66 taxmann.com 166 (Bom)

369. The Court held that where the assessee had taken on lease a plot of land from Calcutta Port Trust (CPT) and it had encroached some of land belonging to CPT and on being asked, paid certain amount to CPT to compensate loss suffered by CPT, the said payment to CPT was an expenditure incurred wholly and exclusively for purposes of business.
Mundial Export Import Finance(P)Ltd v CIT - [2016] 67 taxmann.com 31 (Calcutta)

370. The Court held that where the assessee claimed a deduction of secret commission paid to employees of different companies who had given business to the assessee but failed to keep any books of accounts as to where and to whom such commission was paid, the Tribunal was justified in restricting the allowance of such commission at 1 percent of the sales.
Patel Brothers v DCIT – (2016) 67 taxmann.com 257 (Guj)

371. The Court held that where the assessee company launched a scheme in terms of which any person who bought a plot of land from the assessee was assured of return of entire land cost upon expiry of five years from the date of completion of sale and claimed deduction of the incentive amount payable as per bank guarantee issued to buyers of the plot and the assessee created a fixed deposit with the bank for the said purpose, since the liability arose on the date of contract and what was postponed was only the payment, the assessee could claim deduction of the entire expense in the year of making the fixed deposit.
Marco Marvel Projects Ltd v ACIT – (2016) 68 taxmann.com 300 (Madras)

372. The Court held that where a study undertaken by UK company was in connection with working of assessee's existing mines and optimization of assessee's existing product and it did not relate in any way to proposed new plants, same would be revenue expenditure. Additionally, it held that where the assessee employer was put under obligation to provide residence to employees and assessee employer leased out certain lands to Central Government which constructed houses and assessee had been treated as lessee, house rent paid by assessee would be revenue expenditure.
CIT v Manganese Ore India Ltd - [2016] 67 taxmann.com 268 (Bombay)

373. The Court held that non capital expenditure incurred after the expiry of life span of a machinery to the extent it was on account of current repairs was allowable u/s 31 and the balance to the extent it was not covered u/s 30-36 of the Act was allowable u/s 37 so long as the machinery was not replaced and the expenditure was only to preserve and maintain existing assets.
CIT vs. Neyveli Lignite Corporation Ltd - [2016] 95 CCH 122 (Chennai).

374. The Tribunal held that once the expenditure is found to be allowable as revenue expenditure as per provisions of the Act, the same is to be allowed as revenue expenditure under the Act while computing income chargeable to tax even if the taxpayer capitalizes such an expenditure in its books of account prepared as per the Companies Act.
Dewanchand Ramsaran Industries (P) Ltd. v ACIT - [2016] 68 taxmann.com 181 (Mumbai-Tribunal.)

375. The Tribunal held that as there was no evidence that travel by director's wife was wholly and exclusively for purposes of business, travelling expenses was not allowable.
Stock Traders (P) Ltd v ACIT - [2016] 68 taxmann.com 339 (Mumbai – Tribunal)

376. The Court held that where assessee, engaged in manufacture and production of aluminium and related products, had developed specific application software programme for geological data processing , mine field surveying, mine excavation planning , etc., which could not be used by others, expenditure incurred could be allowed as revenue expenditure.
Indian Aluminium Co. Ltd v CIT - [2016] 68 taxmann.com 205 (Calcutta)

377. The Tribunal held that where assessee created provision for lease transfer fee, levy of which was already subject matter of dispute in High Court, disallowance for said provision was justified.
Vasant J Khetani v JCIT- [2016] 67 taxmann.com 249 (Mumbai-Trib)

378. The Tribunal held that where fresh loans were only utilized for purpose of repaying old loans which in earlier assessment year had been held to have been utilized only for business purpose, interest on new loans should be allowed as deduction as used only for business purpose.
Senate v DCIT - [2016] 68 taxmann.com 223 (Bangalore-Trib)

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

380. The Tribunal held that expenditure incurred by assessee firm on repairs and painting of hoarding structures was to be allowed as business expenditure.
Asian Advertising v ITO - [2016] 68 taxmann.com 139 (Mumbai-Trib)

381. The Court allowed deduction to assessee (engaged in production of aluminium and related products) for expenditure incurred on software development on the ground that software developed by assessee was application software for efficiently carrying out mining activity, which unlike system software had to be constantly updated due to rapid advancements in technology and increasing complexity of the features.
Indian Aluminium Company Ltd v CIT - TS-185-HC-2016(CAL)

382. The Court held that the where the assessee had taken over Andhra Cements while it was subject to BIFR proceedings and cleared the dues of New Tobacco Company (a group concern of Andhra Cements) to assist Andhra Cements to acquire loans and improve its net worth, (which it was not able to do unless the aforesaid debts of New Tobacco Company were cleared), the amount paid by the assessee was not allowable as a business expenses as the assessee was not a guarantor of New Tobacco Company and therefore the settlement could not be treated as amount expended for its own business purposes. The Court further held that there was nothing on record to prove that Andhra Cements would not be able to receive additional funds and for arguments sake even if such situation were to be considered, the amount paid by the assessee would take the character of cost of acquisition of the shares in Andhra Cement Ltd.
CIT v Duncan Industries Ltd – (2016) 96 CCH 0022 (Kol)

383. The Court held that where the assessee had merged with another company viz. A&M Publications Ltd and had issued commercial papers and non-convertible debentures to purchase the stake held by one common shareholder in both these companies in the year prior to the relevant year and all the aforesaid re-structuring was also completed in the year prior to the relevant year, the AO was incorrect in disallowing the discount on commercial paper and interest on non-convertible debentures in the relevant year on the ground that the funds were used for acquisition of shares, since the re-structuring had already been completed and the funds available at the beginning of the relevant year were used

exclusively for business purposes. Accordingly, it allowed the said discount / interest as a deduction.
CIT v Amar Ujala Publication Ltd – (2016) 96 CCH 0005 (Del)

384. The Court held that where the assessee had reasonably established that the expenses incurred by it were for running its real estate business and that in the absence of such expenditure, the establishment could not be run, in the absence of any finding by the AO that the expenses were non-genuine and the fact that the books of accounts of the assessee had not been rejected, 50 percent of the expenses could not be disallowed on an arbitrary basis.
CIT v DLF Hilton Hotels – (2016) 69 taxmann.com 300 (Del)

385. The Tribunal held that foreign exchange fluctuation loss on outstanding foreign currency loan taken for acquiring asset within India had direct nexus to savings in interest costs without brining any new capital asset into existence and therefore was allowable under section 37(1) of the Act. It dismissed the contention of the Revenue that the said loss was notional in nature and held that loss recognized on account of foreign exchange fluctuation as per AS 11 was an accrued and subsisting liability and not merely a contingent or hypothetical liability. Relying on the decision of the Apex Court in the case of Tata Iron and Steel CO Ltd, it held that the cost of an asset and the cost or raising money for purchase of an asset were two independent transactions and that Section 43A of the Act would be applicable only if the assets were purchased from outside India.
Cooper Corporation Pvt Ltd v DCIT – TS-265-ITAT-2016 (Pun)

386. The Tribunal denied the assessee deduction of ESOP expenses incurred by it for buying back equity shares from its employees through its ESOP trust as there was no evidence that the shares were allotted to the employees in the first place. Accordingly, it doubted the buy-back of the shares and disallowed the expense claimed by the assessee.
Shriram Insight Share Brokers Ltd v DCIT – TS-264-ITAT-2016 (CHNY)

387. The Tribunal held that the expenditure incurred by the assessee from the capital grant received by the government could not be treated as revenue in nature as it was for the development of technologies or design for manufacture which amounted to a capital asset and therefore the claim of the assessee for deduction of these expenses was inadmissible. However, it held that the assessee's alternate claim of deduction under section 35(1)(iv) (towards capital expenditure on scientific research related to the business of the assessee) could not be denied merely because such claim was not made in the return of income and accordingly remitted this issue to the file of the AO.
Hindustan Aeronauticals Ltd v ACIT – TS-240-ITAT-2016 (Bang)

388. The Tribunal held that compounding fees paid by the assessee to the RBI for regularizing ECBs from unrecognized overseas lender was not hit by section 37(1) and therefore deductible since it was a compensatory payment and not by way of penalty levied under FEMA. It noted that the assessee had not committed any offence and the compounding fee was not paid for any contravention of law.
EON Hadaspar Infrastructure Pvt Ltd v ACIT – TS-268-ITAT-2016 (Pun)

389. The Tribunal held that interest paid on share application money received from shareholders pending allotment was allowable as revenue expenditure under section 37(1) of the Act since share application money could not be characterized and equated with share capital. It held in the case of share application money, the obligation to return the money is always implicit in the event of non-allotment of shares and therefore could not be termed as receipt towards share capital before its conversion.
SR Thorat Milk Products Pvt Ltd v ACIT – TS-304-ITAT-2016 (Pune)

390. The Court held that the assessee, engaged in the construction of a dams / canals, was entitled to claim deductions when the business was set up and not when it completed the entire project as contemplated by the Revenue. It held that the nature of the assesee's work contemplated different stages of completion and therefore it was incorrect for the Revenue to contend that the business was set up only once the entire construction was completed.
Sardar Sarovar Narmada Nigam Ltd v Add CIT – (2016) 96 CCH 0030 (Guj)

391. The Tribunal held that where assessee had paid commission to its agents out of which 3 had denied rendering service to the assessee, the commission paid to the remaining 12 agents could not be disallowed and the disallowance was sustainable only to the extent of commission claimed to have been paid to the said 3 agents.
Sarika Ranasaria v ACIT - (2016) 47 CCH 0202 (Hyd Trib_

392. The Tribunal allowed the assessee deduction of full amount of retention bonus as revenue expenditure since it was to ensure smooth functioning of the business to arrest the attrition rate prevalent in the software industry and accordingly enhance the profitability of the assessee company and would partake the character of salary.
SAIC India Pvt Ltd v DCIT – TS-349-ITAT-2016 (Del)

393. The Court held that deduction for stamp duty expenses incurred by the assessee in relation to contract executed with Maharashtra State Road Transport Corporation in the course of its business was to be allowed in its entirely and did not require to be spread over in view of the matching concept as contended by the Revenue. It distinguished the Revenue's reliance on the Apex Court decision of Madras Industrial Corporation as stamp duty paid was a statutory levy and not for business expediency. Relying on the Apex Court ruling in India Cements Ltd it held that if a statutory expense was required to be paid, it would be allowed as a deduction in the same year of payment.
Prithvi Associates v ACIT – TS-347-HC-2016 (Guj)

394. The Tribunal held that where the assessee, engaged in business of mining, following the mercantile system of accounting and had taken certain land on lease for a period of 20 years which was to be refilled and handed back to the farmers, she was eligible for deduction towards land reclamation and afforestation expenditure on accrual basis whether or not the said expenses were paid during the year.
Smt K Suryakumari Venu v ACIT – (2016) 70 taxmann.com 310 (Visakhapatnam – Trib)

395. The Tribunal held that the expenditure incurred by the assessee on corporate social responsibility such as construction of school building, temple, draining etc was to be allowed as expenditure under section 37(1) and could not be disallowed on the ground that it was voluntarily incurred by the assessee. It held that even if the expense was voluntarily incurred it could still be construed as wholly and exclusively for business purpose. Further, it held that Explanation 2 to section 37(1) providing that expenditure on corporate social responsibility would not be considered as for the purpose of business or profession was applicable only from April 1, 2015 and could not have retrospective application.
ACIT v Jindal Power Ltd – (2016) 70 taxmann.com 389 (Raipur- Trib)

396. The Tribunal held that expenditure incurred by assessee on club membership fees for employees was admissible business expenditure and disallowance made in that respect was deleted.
Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib

Section 40

397. The Court held that insertion of sub-clause (iib) of section 40(a) vide Finance Act, 2013 would be applicable with effect from April 1, 2014 and not with retrospective effect, since the provision does not provide for its retrospective applicability. Accordingly, the privilege fee paid by the assessee to the State Government during AYs 2004-05 to 2006-07 were not subject to section 40(a)(iib) of the Act.
Karnataka Stata Beverages Corpn Ltd v CIT – (2016) 67 taxmann.com 316 (Kar)

398. The Court upheld Sec.40(a)(ia) disallowance for TDS default on rent, professional charges and contractual payments to transporters made by assessee (a cooperative sugar factory) and set aside the Tribunal's order where it had relied on Allahabad HC ruling in Vector Shipping and remitted the matter back to examine whether any amounts were remaining payable at the year end. It further held that the Tribunal was not correct in interpreting the language of Sec.40(a)(ia) to mean that consequence of disallowance was attracted only in respect of amounts remaining payable at year end by relying on Calcutta HC ruling in Crescent Export Syndicate, Gujarat HC ruling in Sikandarkhan N. Tunvar and Kerala HC ruling in Thomas George Muthoot.
Ryatar Sahakari Sakkare Karkhane Niyamit vs ACIT - TS-132-HC-2016(KAR)

399. The Tribunal held that once assessee admittedly made payments of TDS in next financial year but before due date for filing return of income u/s 139(1), disallowance made u/s 40(a)(ia) was to be deleted.
Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib

Section 40A(2)(b) / 40A(3)

400. The Court held that where the assessee, engaged in the business of real estate and construction had made cash payments towards the purchase of land in the course of its business to sellers under registered deeds, the identities of whom were undisputed, since the sellers were villagers having no bank account, the same could not be disallowed under section 40A(3) of the Act since the cash payments were out of business compulsion and not optional.
ACIT v RP Real Estate Pvt Ltd – (2016) 95 CCH 0086 (Chattisgarh)

401. The Court held where interest @ 15% paid by assessee company to persons covered under section 40A(2)(b) was commensurate with interest rate prevailing in open market, said payment was to be allowed and could not be restricted to 12%.
Pr CIT v Cama Hotels Ltd - [2016] 68 taxmann.com 153 (Gujarat)

Section 43B

402. The Tribunal held that where assessee made payments of PF and ESI contributions before due date of filing return under section 139(1), Assessing Officer was not justified in disallowing the same by invoking provisions of section 43B merely because there was a small delay in the payment of the same under the relevant Acts.
DCIT v Xpro India Ltd - [2016] 68 taxmann.com 249 (Kolkata-Trib)

403. The Tribunal held that tax, duty, cess or fee payable under any law for time being in force referred to in section 43B did not cover VAT included in the purchase price of raw materials paid by the assessee, since the liability to pay VAT to the Government was on the seller and the buyer is not hit by section 43B of the Act.
ACIT v Plant Lipids Pvt Ltd – (2016) 67 taxmann.com 107 (Cochin)

Section 14A

404. The Tribunal held that where the AO had made disallowance under section 14A of the Act invoking Rule 8D without recording his satisfaction under Rule 8D(1), the impugned disallowance was not sustainable.
Damodar Valley Corporation v Add CIT – (2016) 66 taxmann.com 25 (Kol)

405. The Tribunal held that where the assessee was not into the business of investment and investment was made in subsidiary on account of business expediency, such investments were not to be reckoned for disallowance under section 14A of the Act and were to be excluded while computing the average value of investments under the provisions of Rule 8D.
Rane Holdings Ltd v ACIT – (2016) 46 CCH 0019 (Chen)

406. The Tribunal held that where the assessee invested funds in subsidiary companies on account of commercial expediency and not with the intention of earning exempt income, the provisions of section 14A of the Act would not be applicable.
DCIT v Helios & Matheson Information Technology Ltd – (2016) 46 CCH 0066 (Chen)

407. The Tribunal held that interest paid to partners on capital contribution is not a statutory allowance under section 40(b) but an expenditure under section 36(1)(iii) of the Act and hence liable for disallowance under section 14A of the Act if incurred in relation to exempt income as envisaged under section 14A of the Act.
ACIT v Pahilarai Jaikishin - [2016] 66 taxmann.com 30 (Mumbai-Trib)

408. The Court held that section 14A of the Act would not be applicable to investments held in stock in trade. Further, it held that where there was a binding decision of the High Court, the same continued to be binding on all authorities within the State till the said decision is stayed or set aside by the Apex Court or High Court which took different view on identical facts.
HDFC Bank Ltd v DCIT – (2016) 95 CCH 0061 (Bom)

409. The Tribunal held that the expression 'does not form part of total income' in section 14A of the Act envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income therefore, section 14A of the Act would not apply if no exempt income was received or was receivable during the relevant previous year.
Wind World Wind Farms (India) Ltd v DCIT – (2016) 46 CCH 0096 (Mumbai – Trib)

410. The Tribunal confirmed disallowance under section 14A of the Act with respect to indirect expenditure attributed for earning exempt dividend income on the ground that where there was substantial change and movement in the assessee's investment portfolio and a decision to make fresh investment was taken by top management, the assessee was not justified in taking a stand that no expenditure was incurred for earning exempt income.
Kodagu District Central Co-operative Bank Ltd v ACIT – TS-38-ITAT-2015 (Bang)

411. The Tribunal held that for the purpose of computing disallowance under section 14A, amount of net interest and not the gross interest is to be taken into consideration.
Aditya Medisales Ltd. vs Addl CIT - [2016] 67 taxmann.com 270 (Ahmedabad-Trib)

412. The Tribunal held that where exempt income was earned from securities which were held as a part of stock-in-trade, no disallowance under section 14A could have been made.
Canara Bank vs JCIT - [2016] 68 taxmann.com 128 (Bangalore-Trib)

413. The Tribunal held that the application of Rule 8D is not automatic and can be invoked only when no reasonable and proper parameters for making disallowance could be arrived at. It

deleted the disallowance made by the AO on account of the fact that the assessee had sufficient own funds
Allahabad Bank v ACIT – TS-314-ITAT-2016 (Kol)

414. The Tribunal held that when the assessee company had made disallowance u/s 14A read with Rule 8D(2)(iii) of Income Tax Rules, 1962 and CIT(A) had confirmed same amount in his appellate orders which led to double disallowance of the same amount, the addition was liable to be set aside.
Silvassa Estates (P) Ltd v ITO - (2016) 47 CCH 0212 (Mum Trib)

415. The Tribunal held that when CIT(A) had not given any proper basis for working out disallowance u/s 14A r.w. Rule 8D; specifically when disallowance was far in excess of exempt dividend income earned in year under consideration than matter needs to be decided afresh.
Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib

Section 10A / 10AA / 10B

416. The Tribunal held that processing data would amount to providing IT enabled services and therefore allowed the assessee exemption under section 10A of the Act. It noted that CBDT Circular dated September 26, 2000 classified back office operations and data processing as IT enabled services.
CRISIL Ltd v DCIT – TS-27-ITAT-2016 (Chny)

417. The Court held for the purpose of computing deduction under section 10A of the Act, expenses incurred in foreign currency for providing software development services outside India could not be excluded from the export turnover since it did not fall within the clause of providing technical service outside India in connection with the development or production of computer software, in spite of it being technical in nature, relying on the decisions of the Karnataka High Court in the cases of CIT v Mphasis Ltd and CIT v Motor Industries Co Ltd. Further, relying on the decision of the Karnataka High Court in the case of CIT v Tata Elxsi Ltd it held that exchange fluctuation loss was to be reduced from total turnover for the purpose of computation of deduction under section 10A of the Act.
CIT v Kshema Technologies Ltd – (2016) 66 taxmann.com 165 (Kar)

418. The Tribunal held that words 'pendant' and 'medallion' have same meaning and usage in common parlance and, therefore, merely because product manufactured by assessee was described as medallion, it could not be said that there was any violation of approval granted by Development Commissioner, Special Economic Zone for manufacturing gold pendants and the assessee could not be denied the benefit under section 10AA of the Act.
Jewels Magnum v ACIT - [2016] 68 taxmann.com 186 (Chennai-Trib)

419. The Court held that where Development Commissioner SEZ, Ministry of Commerce and Industry had granted approval to assessee as a 100 per cent EOU and not as a SEZ unit, claim under section 10B deserved to be allowed .
Zealous Web Technologies. Vs PCIT - [2016] 68 taxmann.com 379 (Gujarat)

420. The Tribunal held that profits derived from export of articles alone are to be considered for claiming deduction under section 10B and not miscellaneous receipts such as sale of scrap.
Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)

Chapter VIA

421. The Apex Court reversed the order of the Punjab and Haryana High Court and held that 90 percent of the net interest / rent included in the profits of the business of an assessee and not the gross interest / rent, was to be deducted in terms of Explanation (baa) to Section 80HHC of the Act.
Liberty Footwear Co v CIT – (2016) 67 taxmann.com 55 (SC)

422. The Apex Court held that sale proceeds generated from sale of scrap would not be included in total turnover for purpose of deduction under section 80HHC
Jagraon Exports v CIT - [2016] 67 taxmann.com 113 (SC)

423. The Court held that the method of determination of income received or brought into India in convertible foreign exchange for the purposes of deduction under section 80O of the Act adopted by the assessee – on the basis of average net profit for a period of 10 years was not valid as expenses keep fluctuating on a yearly basis.
Continental Carriers v CIT – (2016) 96 CCH 0137 (Delhi)

424. The Court held that once initial assessment year had been opted by assessee, which need not be the year in which the business/ manufacturing activity had commenced, he should be entitled to claim deduction u/s 80IA for ten consecutive years beginning from year in respect of which he had exercised such option, subject to fulfilment of conditions prescribed in the section.
CIT v G.R.T. Jewellwers (India) Pvt. Ltd - [2016] 95 CCH 72 (Madras)

425. The Apex Court held that where the assessee received transport subsidy, interest subsidy, power subsidy and insurance subsidy as a reimbursement of manufacturing costs incurred by the assessee, the same had a direct nexus with the profits of the assessee's business and therefore deduction of such subsidies was allowable under section 80IB and 80IC of the Act was allowable in respect of such subsidies.
CIT v Meghalaya Steels Ltd – (2016) 67 taxmann.com 158 (SC)

426. The Court held that where assessee dismantled old plant and used same at new industrial unit but old plant constituted less than 20 % of cost of new plant, deduction under section 80-I could not be denied.
Nalco Chemicals India Ltd v CIT- [2016] 68 taxmann.com 236 (Calcutta)

427. The Apex Court set aside the HC order and allowed Sec 80HHC deduction on service charges / incentive payments received by assessee (marine products exporter) from export houses for AY 1994-95 by relying on coordinate bench rulings in Baby Marine Exports and Dalbir Singh.
Southern Sea Foods v JCIT - TS-167-SC-2016

428. The Tribunal held that the rental income received by the assessee upon leasing out a portion of a building to Big Bazaar qualified for deduction under section 80IB(7A) of the Act (deduction available on profits and gains derived from the business of building, owning and operating a multiplex theatre) and could not be treated as income from house property as the assessee satisfied the conditions prescribed under the said section viz. it carried on the two activities of cinema theatre and commercial shops simultaneously and therefore could be considered as a multiplex. The Tribunal observed that the assessee had built and constructed an area as per the specifications of the lessee who was to occupy the same for commercial activities and therefore, the Revenue was incorrect in contending that the assessee failed to commercially exploit the said property.
Sameer Rajendra Shah – TS-266-ITAT-2016 (Pun)

429. The Court held that section 80IA(7) of the Act, which is made applicable to section 80IB vide sub-section (13) provides that for claiming the benefit under the said sections, an audit

report was to be filed during the course of assessment proceedings. The Court observed that the said compliance was a directory requirement and the assessee, who filed the audit report prior to the conclusion of the search proceedings could not be denied benefit under section 80IB merely because it did not file the same along with the its return of income. Further, the Court held that even if a deduction was disallowed under section 40A(3) of the Act, the assessee being an undertaking eligible to deduction under section 80IB would be entitled to the benefit of such amount disallowed.
Pr CIT v Surya Merchants Ltd – (2016) 96 CCH 0019 (All)

430. The Court upheld the order of the Tribunal wherein it was held that assessee was entitled to deduction under section 80IB (11A) only to the extent of 25 percent of eligible profits and not 100 percent as contended by the assessee. It held that 80IB(11A) introduced with effect from April 1, 2005 provided for a 100 percent deduction for the first 5 years from the initial AY i.e. the year in which the eligible business was commenced and at 25 percent thereafter and therefore it rejected the contention of the assessee that the AY in which the relevant provision became effective ought to be considered as the initial AY. Accordingly, since the assessee had commenced its business in AY 2002-03 and the AY under consideration was AY 2007-08 and AY 2008-09, the period of 5 years from year in which the business was commenced viz. the initial AY had already passed (5 years ended by AY 2006-07) and therefore the assessee was incorrect in claiming a 100 percent benefit under the said section.
Anand Food and Dairy Products v ITO – TS-317-HC-2016 (Guj)

431. The Court held that once the prescribed authority grants approval under Rule 18D(2) of the Rules, the AO could not ignore the approval granted and hold that the conditions are not fulfilled by the assessee and consequently deny the assessee deduction under section 80IB(8A) of the Act. It held that once an authority had been invested with statutory functions, the AO should not be allowed to overrule the decision of the said authority. However, it held that the AO was empowered to verify the claim of deduction and could deny deduction for income not arising out of the eligible business.
BA Research India Ltd – TS-337-HC-2016 (Guj)

432. The Court held that the assessee was not entitled to benefit under section 80IC of the Act (available on Eco-tourism) merely on the basis of a no objection certificate received from the Pollution Control Board as it was not a sole determinant as to whether the hotel was engaged in Eco tourism. The Court rejected the contention of the assessee that as per the office memorandum issued by the Ministry of Commerce and industry, deduction should be allowed to the assessee irrespective of geographical locations / restrictions and held that the use of the word 'Eco-tourism' was intended to encourage the setting up of hotels / spas close to nature in areas reflecting pristine beauty and since the assessee set up its hotel in a busy city like Dehradun and not in the hilly areas of Uttarakhand, the deduction under section 80IC was not to be granted.
CIT v Aanchal Hotels Pvt Ltd – TS-430-HC-2016 (Utt)

433. The Court held that the assessee was entitled to deduction u/s 80-IA (Deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development etc) without setting off losses/unabsorbed depreciation pertaining to windmill, which were set off in earlier year against other business income of assessee. Once losses and other deductions were set off against income of assessee in previous year, it should not be re-opened again, for purpose of computation of current year's income u/s 80-I and 80-IA.
CIT vs Bannari Amman Sugars Ltd - (2016) 96 CCH 0033 (Chennai)
CITvs Prem Textile International - (2016) 96 CCH 0028 (Chennai)

434. The Court held that the words 'development and construction' contained in section 80IB(10) of the Act was a twin requirement and was to be read in conjunction for the purpose of allowing deduction under section 80IB(10), applicable for projects whose development and construction is commenced on or after October 1, 1998. It held that the Tribunal was incorrect in denying the assessee benefit under section 80IB(10) on the ground that development activities begun prior to October 1, 1998 without appreciating that the section provided for commencement of both development and construction. Accordingly, since the actual date of commencement of construction was October 15, 1998, it held that the assessee could not be denied of benefit under section 80IB(10).
Ravi Appasamy v ACIT – TS-305-HC-2016 (Mad)

435. The Tribunal held that where money was deposited by Assessee in bank so as to earn interest and such interest income was attributable to carrying on business of banking; the same was liable to be deducted in terms of s 80P(1)
State Bank of India Supervising Official's Co.Operative Credit Society Ltd. v ITO - (2016) 47 CCH 0206 (Ahd-Trib)

436. The Tribunal held that the assessee- society shall be entitled for deduction u/s 80P(2)(a)(iii) in respect of income derived from marketing of toddy, that was produced by its members by tapping coconut trees grown by them.
Kannur Range Kallu & Anr. v ACIT - (2016) 47 CCH 0220 (Cochin Trib)

437. The Tribunal held that where the assessee did not have a separate marketing division and therefore there was no transfer of goods from a eligible manufacturing division to the non-eligible marketing division, the AO was incorrect in reducing the 80IC deduction of profits claimed by the assessee by 35 percent on the ground that 35 percent of the consideration received by the assessee on the sale of goods was attributable to its marketing activities. Further, it held that since the marketing costs debited to the P&L account were more than the gross profit no disallowance of deduction under section 80IC could be sustained.
DCIT v Astral Polytechnik Ltd – (2016) 47 CCH 0181 (Ahd Trib)

438. The Tribunal held that deduction under section 80IB (10) could be claimed even by those developers who did not own land as the provisions nowhere required that only those developers who themselves owned land could claim deduction under section 80IB(10).
ITO v Parashar Developers – (2016) 47 CCH 0327 (Ahd Trib)

439. The Tribunal held that Section 80A does not restrict the deduction u/s 80-1B to income to under head 'business or profession and hence assessee's claim for deduction u/s 80-IB(10) to extent of availability of gross total income was held to be allowable.
ACIT v Oberoi Realty Ltd - (2016) 47 CCH 0192 MumTrib

f. Income from Capital Gains

440. The Court held that where the assesee company gifted shares to its sister company, such company was exempt from capital gain as it was exempt under section 47(iii) of the Act. Further, it held that the proviso to section 48 which provides that the market value would be considered as full value of consideration was not applicable to the instant case as it applied only to gift of shares by a company to its employees.
Prakriya Pharmacem v ITO – (2016) 66 taxmann.com 149 (Guj)

441. The Tribunal held that the AO was incorrect in denying the assessee benefit under section 54 of the Act on the ground that he had violated the conditions contained therein by transferring the new house property to his daughter. Since the assessee had settled the property to his daughter without any consideration out of love and affection and therefore it was akin to a gift which was not considered as a transfer under section 47(iii) of the Act. It

clarified that to avail of the said exemption, the daughter was not to transfer the property by any means.
ITO v Abdul Hameed Khan Mohammed – TS-26-ITAT-2015 (Chen)

442. The Tribunal allowed the assessee exemption from long term capital gains tax under section 54F on sale of agricultural land subsequently converted into residential sites and rejected the contention of the revenue that the conversion of agricultural land into non-agricultural property demonstrated the assessee's intention to venture into commercial activity and therefore the gains were to be treated as business profits.
TD Satyan (HUF) v ITO – TS-31-ITAT-2015 (Bang)

443. The Court held that in computing net worth under section 50B of the Act where slump sale of an undertaking included an entire block of assets, the actual cost of assets should be reduced by depreciation actually allowed or allowable under the Act even if not claimed by the assessee.
CIT v Dharampal Satyapal – (2016) 95 CCH 0002 (Del)

444. The Court held that as per the proviso to section 54F of the Act, an assessee was not entitled to claim capital gains exemption if he owns more than one residential house on the date of transfer of the original asset and income from such residential property is chargeable to tax under the head house property. It held that merely because the assessee owned two properties – one residential and the other commercial, the income of which was taxable under the head house property, the exemption could not be denied since the assessee only one of the properties was a residential property.
CIT v I Ifthiqar Ashiq – (2016) 68 taxmann.com 25 (Madras)

445. The Court held that where the partners of a firm constituted a private limited company and transferred their rights in the firm to the company in lieu of the equity shares of the company, it did not amount to dissolution of the firm since the rights held by the partners continued to exist in the form of the equity shares held in the company and therefore the transfer did not amount to distribution or transfer of capital assets chargeable to capital gains.
Pipelines India v ACIT – (2016) 67 taxmann.com 112 (Madras)

446. The Tribunal held that the cost of shares allotted pursuant to corporatization of BSE would be calculated as per Section 50 of the Act and not as per Section 55(2)(ab) if depreciation was claimed on BSE membership. Further, indexation benefit on sale of such share would be available from the date of corporatization of BSE and not from the date of acquisition of original membership of BSE.
Twin Earth Securities (P)Ltd v ACIT- [2016] 66 taxmann.com 258 (Mumbai-Trib)

447. The Tribunal held that where shares were purchased by the assessee in the capacity of an investor and frequency of share transactions was very low, profit arising from sale of such shares was liable to be taxed under head 'Income from capital gains' and not 'Income from Business & Profession.
Anjana Devi Agarwal v ACIT - [2016] 67 taxmann.com 53 (Kolkata –Trib)

448. The Tribunal held that in case of sale of property acquired under gift or Will, if title of previous owner was itself defective or subject to some encumbrance, cost incurred on its removal or discharge would qualify for deduction under section 48(ii) of the Act. Further it held that where the assessee, having acquired a house property from his father under Will, sold same during relevant year, in view of fact that assessee was absolute owner of property at time of sale, certain payments such as professional fee, commission etc said to have been made as per Will could neither be considered as diversion of income by overriding title nor expenditure incurred wholly and exclusively in connection with transfer of property.

Kumar Rajaram vs ITO - [2016] 67 taxmann.com 110 (Chennai-Trib)

449. The Tribunal held that the receipt of one time premium on allotment of tenancy rights perpetually to tenants is chargeable to tax as capital gains under section 45 and not as income from house property as the property constituted a bundle of rights and transfer by way of allotment of perpetual tenancy with right of occupancy and enjoyment of property perpetually in favour of the tenant constituted a transfer of one of the rights associated with the property and therefore chargeable to 'Income from Capital Gains'.
Sujaysingh P. Bobade v ITO - [2016] 68 taxmann.com 161(Mumbai-Trib)

450. The Tribunal held that where the assessee, having sold residential property, paid entire sale consideration to one 'M' for purchase of another house property within time limit prescribed under section 54 of the Act, even though said transaction did not eventually materialize and 'M' had to refund amount paid by assessee, the assessee's claim for deduction under section 54 was to be allowed.
T.Shiva Kumar v ITO - [2016] 68 taxmann.com 43 (Bangalore-Trib)

451. The Court held that where the assessee undertook purchase and sale of shares, wherein the transactions were delivery based, the assessee declared the shares as investment for the past several years, surplus arising out of transfer has been treated as capital gains, the average holding period of the investments was more than 30 days and the assessee was not registered with any institution / body for the dealing in shares, the AO was incorrect in treating gains on sale of such shares as business income as opposed to short term capital gains.
CIT v SMAA Enterprise Pvt Ltd – (2016) 95 CCH 0124 (Jammu and Kashmir)

452. The Court held that amount realised by assessee from sale of a property received as alimony from her husband in terms of decree of divorce, was to be regarded as capital receipt not liable to tax.
Shrimati Roma Sengupta v CIT - [2016] 68 taxmann.com 177 (Calcutta)

453. The Tribunal held that where assessee invested sale consideration of immovable properties in construction of new residential house, exemption under section 54F could not be denied merely because construction was not completed as the intention of Legislature is to encourage investments in acquisition of a residential house and completion of construction or occupation is not requirement of law.
Vishal Dutt v ITO - [2016] 68 taxmann.com 337 (Mumbai-Trib)

454. The Tribunal held that the amount received by assessee on retirement as partner from firm, on account of the credit balance standing in the capital account and current account, and not for relinquishing or extinguishing his rights over any assets of firm, would not be chargeable under section 45(4) as capital gains.
Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)

455. The Tribunal held that where capital gain has arisen to a non-resident from transfer of shares in an Indian company, mandate of second proviso to section 48 becomes inapplicable and the case gets restricted to the first proviso to section 48 alone; since proviso below section 112(1)(c) provides that tax is payable in respect of income arising from transfer of a long term capital asset before giving effect to provisions of second proviso to section 48. Thus, in such circumstances, tax rate of 10 percent should be applied.
DDIT vs Mitsubishi Motors Corporation - [2016] 68 taxmann.com 386 (Delhi-Trib)

456. The Tribunal held that where assessee, sold its manufacturing unit, the transaction in question could not be regarded as slump sale since transferee had taken over all fixed

assets and specified current assets but did not take over loan and liabilities. It further held since settlement compensation received by assessee on non-performance of machinery purchased was not in nature of discount or subsidy or reimbursement, it could not be reduced from actual cost of machinery under section 43(1) for the purpose of re-computing depreciation.
DCIT v Xpro India Ltd - [2016] 68 taxmann.com 249 (Kolkata-Trib)

457. The Tribunal held that portfolio management service fee paid by the assessee to various portfolio managers could not be allowed as deduction u/s 48 while computing capital gain arising from sale of shares kept in portfolio management services accounts held with various funds since these fees have a major component towards advisory charges of experienced and qualified professionals acting as portfolio managers who render these specialized and skilled services on a continuous basis to investor client for fee and are not paid towards cost of acquisition of the capital assets or for improvement of the capital asset nor are these fees being expenditure incurred wholly and exclusively in connection with transfer of the capital asset.
Capt.AvinashChander Batra v DCIT - [2016] 68 taxmann.com 366 (Mumbai-Trib)

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

459. The Tribunal held that where State Government vide deed of assignment assigned a property to the assessee for construction of building and erection of machinery, but subsequently handed over management of said industrial estate to State Small Industries Development Corporation Ltd. who sold property in question to assessee in year 1994 by executing a sale deed for a consideration already paid by assessee in terms of deed of assignment, the Tribunal held that since the assessee obtained possession of land and paid entire purchase consideration in terms of deed of assignment much prior to 1.4.1981, it was entitled to consequent indexation benefit on the ground that the expression 'where capital asset became property of assessee before 1.4.1981 as used in section 55(2)(B)(i) of Act cannot be equated to legal ownership.
Stewarts & Lloyds of India Ltd v CIT - [2016] 67 taxmann.com 41 (Kolkata-Trib)

460. The Court held that only income actually received or accrued to the assessee on sale of shares was to be taxed and not the deferred contingent income. It held that where the agreement provided for a fixed amount of initial consideration as well as a deferred consideration to be received over a period of 4 years which was to be worked out based on profits made by the company whose shares were being transferred, the deferred income had not accrued in the year of transfer and therefore not taxable in the year of transfer.
CIT v Mrs. Hemal Raju Shete – (2016) 68 taxmann.com 319 (Bombay)

461. The Apex Court modified the Kerala HC order wherein it had ruled that for claiming Sec 54F exemption, the date relevant for investment in residential house is the due date for filing original return u/s 139(1) and not belated return u/s 139(4); and directed the AO to consider the matter de novo without being influenced by any observation made by the HC, in accordance with law.
Xavier J Pulikkal v DCIT - TS-45-SC-2015

462. The Tribunal denied the assessee capital gains exemption under section 54EC of the Act, which provides for exemption on investment in REC bonds, since the investment was made beyond the prescribed period of 6 months from the transfer of capital asset. It held that the period of 6 months was to be reckoned from the date of execution of sale deed and

not the date of receipt of consideration since the property stood transferred upon execution of the sale deed.
Harikrishna R v ITO – TS-136-ITAT-2016 (Bang)

463. The Apex Court dismissed assessee's SLP against Karnataka HC judgement wherein the HC had held that surrender of Floor Area Ratio ('FAR') relating to land in favour of developer for construction of flats amounts to transfer u/s 2(47) exigible to capital gains tax on the ground that a right to construct additional storeys on account of increase in available floor space index (FSI) is a capital asset and that surrender of FAR amounted to 'transfer' as assessee relinquished his rights over the FAR.
Dinesh Rankha vs CIT -TS-211-SC-2016

464. The Court held that where a part of the consideration arising out of transfer of an undertaking to which the assessee was entitled to, was with its consent, diverted to its shareholders, the assessee could not escape accounting for such consideration merely on the ground that it did not receive the same. The Court held that merely because the assessee had agreed for a part of the sale consideration to be directly received by its shareholders, it would not make the consideration unreal in its hands.
CIT v Salore International Ltd – (2016) 96 CCH 0009 (Del)

465. The Tribunal held that the assessee was not liable to capital gains tax under section 45(3) on the security deposit received by it pursuant to a joint venture agreement, since the assessee had not transferred the land to the AOP. Further, it noted that the security deposit was subsequently refunded by the assessee to the developer and therefore could not be taxed as income from capital gains.
Ashok Gordhandas Kirpalani v ITO –TS-313-ITAT-2016 (Pune)

466. The Tribunal held that profits earned on sale of shares in previous and subsequent assessment years had been considered by assessee and accepted by Revenue, as capital gains and hence could not be considered as business income of assessee in impugned case.
Dr.Jayakumar Chhaganlal Shah v DCIT - (2016) 47 CCH 0186 Ahd Trib

467. The Tribunal held that when the land sold by the assessee was within the Hyderabad Airport Development Authority, which was gram panchayat land, the character of land was agricultural land and not a Capital asset under section 2(14)(iii). Consequently, gain on sale of the same was not taxable.
ITO v Adela Krishna Reddy – (2016) 47 CCH 0326 (Hyd – Trib)

g. Income from Other Sources

468. The Tribunal held that where the assessee let out his building along with furniture and fixtures and electrical installations, the rental income earned therefrom, being composite and inseparable from each other would be tax under Income from Other Sources and not Income from House Property.
ACIT v Ajay Kalia – (2016) 66 taxmann.com 99 (Del)

469. The Tribunal held that where deemed income under section 68 of the Act was not chargeable under the first four heads of income, the same was assessable as income from other sources. It further held that the assessee was eligible to set off such income against business losses and noted that the amendment to section 115BBE denying such set off was brought about as an amendment to Finance Act, 2016 with prospective effect.
Satish Kumar Goyal v JCIT – TS-327-ITAT-2016 (Agr)

470. The Tribunal held that the receipt of bonus shares by the assessee could not be taxed under section 56(2)(vii)(c) of the Act, since the recipient of bonus shares could never be considered as receiving something without consideration or for a consideration less than the FMV of the property since a consideration would have flown out from the holder of the shares which would be reflected in the depression in the intrinsic value of shares held by him. Further, it noted that on receipt of the shares, the assesee's percentage in the total equity shares of the company remained constant.
DCIT v Rajan Pai – TS-299-ITAT-2016 (Bang)

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

Assessment

471. The Court held that the Settlement Commission does not have the power to direct a special audit under section 142(2A) of the Act in the course of assessment proceedings since the exclusive jurisdiction of the Settlement Commission to exercise powers and perform functions of an income-tax authority in terms of section 245F(2) was to be exercised and performed for the purpose of settlement of case under Chapter XIX-A and not for assessment under Chapter XIV. Since assessment of the type contemplated under section 143(3) of the Act was outside the purview of the settlement proceedings, a special audit under section 142(2A) which is in aid of assessment would also be beyond the scope of settlement proceedings.
Agson Global Ltd v Income-tax Settlement Commission – (2016) 65 taxmann.com 51 (Del)

472. The Tribunal held that where the AO passed an ex parte assessment order without giving a show cause notice as per law and without giving the assessee adequate opportunity for hearing and the CIT(A) neither accepted additional evidences, nor rejected the same and upheld the order of the AO, then in the interest of natural justice, the matter was to be remanded back to the file of the AO to decide the matter afresh after giving full opportunity to the assessee.
Ashok Kumar v ITO – (2016) 46 CCH 0097 (Del –Trib)

473. The Tribunal held that a notice served on old address could not be quashed if assessee had not intimated the new address to department. However, where Additional Commissioner of Income tax passed assessment order, but no order conferring concurrent jurisdiction to Addl.Commissioner of Income tax over cases of Income tax Officer was available, assessment being without jurisdiction was void ab initio.
Harvinder Singh Jaggi v ACIT - [2016] 67 taxmann.com 109 (Delhi-Trib)

474. The Tribunal held that when on an earlier occasion, it had asked the Assessing Officer to determine total income by re-deciding issues involved in additions, limitation for completion of assessment under section 153(2A) would apply and thus since the fresh assessment framed by the Assessing Officer was barred by limitation in terms of section 153(2A), the fresh assessment was declared as a nullity.
DCIT v Sanjay Jaiswal - [2016] 68 taxmann.com 310 (Kolkata-Trib)

475. The Tribunal held where assessee filed miscellaneous application seeking recall of an order on the ground that after conclusion of hearing on 16.10.2014, the Tribunal had pronounced its order dismissing revenue's appeal, and thus, order under challenge (wherein the matter was remanded) was inadvertently at variance with pronounced order the application so filed was liable to be dismissed by the Tribunal on the ground that there was no order dictated in open court dismissing revenue's appeal.
Vatika Ltd. vs DCIT - [2016] 68 taxmann.com 87 (Delhi-Trib)

476. The Court held that where notice issued in name of deceased assessee was served upon legal heir who, then, participated in proceedings, the said legal heir could not be deprived of right to challenge service of notice. It further held that since the notice was issued in name of deceased assessee, such proceedings was a nullity being initiated against a dead person.
CIT v M. Hemanathan – [2016] 68 taxmann.com 22 (Madras)

477. The Court upheld the order of the Tribunal wherein it held that an auditor nominated by the Commissioner could not be considered as an agent of the assessee and therefore quashed the AOs extension of time limit for furnishing audit report under section 142(2C) of the Act where the request for such audit was made by the nominated auditor for AY 2005-06 (prior to the amendment whereby the AO may suo motu grant extension for filing audit report). It held that the request for audit made by the nominated auditor could not be considered as a request made by the assessee and therefore the extension of time limit by the AO was invalid and the order issued under section 153A was time barred.
Pr CIT v Nilkanth Concast Pvt Ltd – TS-268-HC-2016 (Del)

478. The Tribunal dismissed the appeal of the assessee challenging the jurisdiction of the DCIT to assess its income on the basis of CBDT Instruction No 1 / 2011 (which precluded DCITs from assessing taxpayers with declared income of less than Rs.15 lakhs) and held that CBDT instructions did not override the provisions of the Act and since the assessee had not objected to such assessment before the DCIT itself it could not raise such objection at this stage.
Udbhav Constructions v DCIT – TS-273-ITAT-2016 (Bang)

479. The Court held that where the final order passed by the AO was dated the same date as notice under section 274 of the Act, but the date on the final order was hand-written as opposed to typed and was delivered to the old address of the assessee, whereas the draft AO order issued prior to the final order and all other notices were issued to the assessee's changed address and the department failed to prove even on preponderance of probabilities that the final order was passed on the date written by hand, then both the final order and penalty order were liable to be quashed.
ST Microelectronics Pvt Ltd v DCIT – (2016) 96 CCH 0021 (Del)

480. The Court dismissed the assessee's appeal and held that commission received by the assessee was taxable in spite of the fact that the payer had admitted unsubstantiated commission payments as its own income before the Settlement Commission. Noting that the assessee withdrew cash immediately after receipt of cheque from the payer for onward payments to third parties which was disallowed by the AO, it held that CBDT Circular dated December 20, 1971 which provided that once the same income was assessed as a protective measure in the hands of more than one assessee, the protective assessment needed to be cancelled after the relevant assessments were final, was not applicable to the assessee since the assessee indulged in accommodation entries for collateral purposes. Further, noting that the assessee had invoked secton 154 to claim non-taxability of the impugned commission income, the Court held that the claim of the assessee, being rejected by the AO was not a mistake apparent on record but was a mistake correctable on appeal.
D Srinivas Vyas v ITO – TS-306-HC-2016 (Mad)

Reassessments

481. The Court held that where the assessee furnished explanation on each and every seized document, pursuant to which the AO completed the original assessment, the reopening of assessment based on the observations of the first appellate authority in subsequent years that the AO should have worked out exact figure of bogus purchases on the basis of seized books, was invalid and liable to be quashed.

CIT v Hemkunt Timbers Ltd – (2016) 67 taxmann.com 231 (All)

482. The Court held that where the assessee disclosed all material facts relating to tax free dividend income at the time of the original assessment, initiation of reassessment proceedings merely on the basis of change of opinion that the assessee did not offer any expenditure for disallowance under section 14A of the Act was not valid.
Sun Pharmaceutical Industries Ltd v DCIT – (2016) 66 taxmann.com 168 (Del)

483. The Court held that reassessment proceedings could be initiated only by the AO who had passed the original assessment order [AO Ward 39(1)] and therefore reassessment proceedings initiated by another AO [AO Ward 39(2)] were not valid in law.
Dushyant Kumar Jain v DCIT – (2016) 66 taxmann.com 126 (Del)

484. The Court held where assessee received dividend from units of mutual funds which were held by it and declared as exempt under section 10(33) of the Act in its return and during the original 143(3) assessment proceedings and that the said income was not on account of transfer of units, the reopening of assessment considering the said income as income on account of transfer of units in light of the retrospective amendment made by Finance Act, 2001 denying exemption under section 10(33) of the Act in such cases, was invalid since there was no allegation that the assessee failed to disclose truly and fully any material fact necessary for assessment.
Nirmal Bang Securities Pvt Ltd v ACIT – (2016) 67 taxmann.com 57 (Bom)

485. The Court held that where the AO merely mentioned about the impugned transaction in his notice initiating reassessment and did not mention how he had arrived at a reason to believe that income had escaped assessment, such notice was invalid.
Prakiya Pharmacem v ITO – (2016) 66 taxmann.com 149 (Guj)

486. The Court held that where the AO issued a notice under section 148 of the Act to reopen assessment in respect of issue relating to transfer pricing but supplied the said reasons only when the period of limitation to pass reassessment order was going to expire under section 153(2) of the Act, the notice was invalid and liable to be quashed. It observed that the reason for delay relied on by the AO was that the issue was pending before the TPO and held that the TPOs reasons on merits much after the issue of reopening notice did not have any bearing on serving reasons to the assessee.
Further, since the AO failed to dispose of the objections raised by the assessee in contravention of the decision of the Apex Court in GKN Driveshafts India Ltd, the reassessment proceedings were to be set aside.
Bayer Material Science Pvt Ltd v DCIT – (2016) 66 taxmann.com 335 (Bom)

487. The Tribunal held that as per section 147 of the Act, the AO could make an addition of any other income found during the course of reassessment proceedings only if he made an addition to income based on the issue for which proceedings were reopened.
ITO v Amrut Metal Coats – (2016) 46 CCH 0072 Ahd

488. The Tribunal held that where the AO, after proper examination of facts and materials, passed the original assessment order, reopening of assessment on the very same set of facts and material would tantamount to a review of assessment on a mere change of opinion and therefore was invalid.
Tata Communications Ltd v Add CIT – (2016) 46 CCH 0077 (Mum)

489. The Court held that the Assessing Officer could reinitiate reassessment proceedings taking a view that the huge premium received by the assessee on account of share issue represented unexplained cash credits under section 68 of the Act having regard to the net worth of the assessee and considering that the assessee had declared nil income in its return. It held that since the assessee's return was processed under section 143(1), the

question of change of opinion does not arise and that the reasons for reopening of assessment were not perverse or untenable as to terminate the assessment on the ground that the AO could not be stated to have any reason to believe that income chargeable to tax had escaped assessment since the facts were prima facie glaring and that the assessee would only be able to establish identity, source and creditworthiness of the depositors during the reassessment scrutiny proceedings.
Olwin Tiles (India) Pvt Ltd v DCIT – (2016) 66 taxmann.com 8 (Guj)

490. The Court held that where the assessee was managing consumer loyalty programs for its partner whose customers would be entitled to loyalty points on purchase of certain goods or services and an audit objection was raised in respect of allowability of provision towards unredeemed loyalty points, same being addressed by Assessing Officer during the original assessment proceedings wherein the provision was claimed and allowed as a deduction, there would remain no basis for initiating reassessment.
Loyalty Solutions & Research (P)Ltd v DCIT - [2016] 67 taxmann.com 232 (Karnataka)

491. The Court held that notice issued under section 148 of the Act would be without jurisdiction for absence of reason to believe that income had escaped assessment even in case where assessment has been completed earlier by intimation under section 143(1) of the Act.
Khubchandanci Healthparks Pvt Ltd v ITO – (2016) 68 taxmann.com 91 (Bom)

492. The Court held that where during original assessment proceedings, even though the assessee disclosed the joint development agreement with developer and conversion of land held by it as investment into stock-in-trade but the AO did not invoke section 45(2) to tax consideration as capital gains, either because he overlooked the applicability of the provisions or he thought that the sale of stock-in trade didn't take place during the relevant year, the subsequent reopening for imposing capital gains tax was not proper since there was no non-disclosure of true and correct facts by the assessee and the AO did not invoke section 45(2).
CIT v Chaitanya Properties (P)Ltd - [2016] 67 taxmann.com 201 (Karnataka)

493. The Court held that the AO having completed assessment under section 143(3) of the Act, could not initiate reassessment proceedings merely on basis of direction issued by Commissioner that certain disallowance was to be made in terms of section 14A
Munjal Showa Ltd v DCIT – (2016) 67 taxmann.com 359(Delhi)

494. The Court held that where the department intended to proceed under section 147 of the Act against assessee when he was already dead, it could have been done so by issuing a notice to legal representative of assessee within period of limitation for issuance of notice. Therefore, where the notice was issued to the legal representative of the deceased assessee beyond the period of limitation, the reassessment proceedings were misconceived and liable to be quashed.
Vipin Walia vs ITO - [2016] 67 taxmann.com 56 (Delhi)

495. The Tribunal held that where at time of original assessment, assessee had disclosed all material facts relating to sale of property, and on being satisfied therewith Assessing Officer completed assessment under section 143(3) of the Act, reopening of assessment beyond period of four years on basis of valuation made by stamp duty authorities was unjustified in the absence of some tangible material' coming into possession of AO.
R.P.Suvarna vs ITO - [2016] 68 taxmann.com 14 (Mumbai-Trib)

496. The Court held that reasons recorded for reopening assessment should state that the Assessee had failed to disclose fully and truly all material facts necessary for his assessment in returns as originally filed and reasons recorded should provide live link to formation of belief that income had escaped assessment. Accordingly, where the reasons recorded by the AO were ambiguous and incapable of being understood since they were

totally incoherent and a plain reading of the reasons gives rise to a doubt that some lines were missing and also that the reasons were grammatically incorrect, the essential requirements of section 147 of the Act had not been fulfilled and therefore, the proceedings were to be quashed.
Sabharwal Properties Industries (P)Ltd.& Ors v ITO - [2016] 95 CCH 0046 (Del)

497. The Court held that where the search in case of a Delhi based CA firm revealed that actual management and control of assessee-companies, which were registered in Sikkim, was in Delhi and that none of these companies had in fact filed any returns under Income-tax Act, 1961 despite earning income in India, reopening of assessment under section 148 of the Act was justified. Further it held that since the management and control of assessees (Sikkim registered companies), was with a Delhi based CA firm, said CA firm would have implied authority to receive notices issued to assessees under section 148 of the Act.
CIT v Mansarovar Commercial P Ltd – (2016) 95 CCH 0047 (Delhi)

498. The Tribunal held that where the AO sought to re-open the assessment of the assessee on the basis of a report from the DIT (Investigation) which stated that the assessee received a cheque from a company used by entry providers to provide bogus entries, the reassessment was invalid since the AO had not applied his mind to come to an independent conclusion that he had reason to believe that the income escaped assessment during the year and that the reasons recorded by the AO were vague and not based on any tangible material.
ITO v Bajaj & Company Pvt Ltd – (2016) 46 CCH 0102 (Del)

499. The Court held that where the impugned notices under section 148 of the Act seeking to reopen assessment of assessee were issued to assessee after it had amalgamated with petitioner company and was no longer in existence, they were invalid and had to be set aside.
Rustagi Engineering Udyog (P) Ltd v DCIT - [2016] 67 taxmann.com 284 (Delhi)

500. The Court held that the AO was unjustified in re-opening assessment alleging that the assessee failed to prove the genuineness of the increase in opening capital and opening stock where the assessee had claimed the increase to be on account of a gift and each donor had offered an explanation along with sufficient documentary evidence.
Prahlad Bhattacharya v CIT – (2016) 95 CCH 0094 (Calcutta)

501. The Court held that in the absence of no new material, the reopening of assessment was to be considered as bad in law as the same would constitute an abuse of the process of law and since the matter on which the AO sought to re-open assessment was pending before the CIT(A) / ITAT for earlier years, the re-opening of assessment was invalid as provided in the Third proviso to section 147 of the Act, which states that the AO would not assess or re-assess income involving matters which were subject matter of any appeal, reference or revision and therefore the notices issued initiating the proceedings were quashed.
Alcatel Lucent France v ACIT – (2016) 95 CCH 0138 (Delhi)

502. The Court dismissed the writ petition filed by a non – resident assessee against notice for reopening of assessment u/s 148 of the Act since the Petitioner was not forthcoming to produce copies of bank statements from HSBC Bank, Geneva by holding that, in normal course of human conduct if person has nothing to hide and serious allegations/questions are being raised about his funds a person would make available documents that would put to rest all questions in mind of the Authorities and that since the assessee had not done so, she was not entitled to any relief.
Soignee R. Kohtari v DCIT - [2016] 95 CCH 107 (Bom)

503. The Court held that mere fact that Additional Commissioner did not record his satisfaction would not render invalid, sanction granted under section 151(2), when reasons on basis of which sanction was sought for could not be assailed.
Prem Chand Shaw (Jaiswal) v ACIT - [2016] 67 taxmann.com 339 (Calcutta)

504. The Court held that where loss attributable to Indian operations of assessee, a UK based company, operating BBC world channel had been accepted after examining relevant vouchers and statement of loss provided by assessee, reassessment could not be made merely because while assessing income in respect of business in question for other assessment years, Assessing officer had not relied on accounts produced by assessee and had estimated assessee's income on a presumptive basis.
BBC Worldwide Ltd v ADIT - [2016] 68 taxmann.com 219(Delhi)

505. The Court held that where shares of assessee foreign parent company had been transferred in India by its shareholders and not by assessee company itself, no income arose in hands of assessee company and consequently no income chargeable to tax in India had escaped assessment
Techpac Holdings Ltd v DCIT - [2016] 67 taxmann.com 280 (Mumbai)

506. The Tribunal held that where date of agreement entered into by assessee, a US company, with an Indian company for providing data transmission service was in knowledge of Assessing Officer who instead invoking section 44D assessed receipt as royalties under section 9(1)(vi) @ 15 per cent, reopening of assessment to tax said receipt @ 20 per cent under section 44D was not sustainable.
DDIT v Americom Asia Pacific LLC – [2016] 68 taxmann.com 51 (Delhi – Trib)

507. The Apex Court reversed the HC order and quashed reassessment under the erstwhile Interest Tax Act, 1974 absent assessment order passed during original proceedings by relying on the Apex Court ruling in Trustees of H.E.H. the Nizam's Supplemental Family Trust and holding that where there is no assessment order passed, there cannot be a notice for reassessment in as much as the question of reassessment arises only when there is an assessment in the first instance.
Standard Chartered Finance Ltd v CIT - TS-103-SC-2016

508. The Court held that where the assessee had artificially and with ulterior motive reduced income of property of its proprietorship concern by setting off loss accruing to its erstwhile firm, which was impermissible in terms of section 10(2A) of the Act, the AO was correct in initiating reassessment proceedings and even more so because the return was processed under section 143(1) of the Act as a result of which the AO did not have the occasion to form an opinion on whether there was any escapement of income to begin with.
Indu Lata Rangwala v DCIT – (2016) 96 CCH 0015 (Del)

509. The Tribunal held that where the assessee filed its revised return of income for AY 2001-02 and the AO issued a notice under section 148 of the Act within the timeline available for issuing notice under section 143(2) i.e. one year from the end of the AY in which the revised return was filed, the notice issued under section 148 was invalid since the AO could have issued notice under section 143(2) but sought to extend the period of limitation for completing assessment by the period provided under section 147 by issuing the impugned notice under section 148. It held that the provisions of section 143(2) and section 148 operated in two different spheres and could not be imported into the other in such manner.
Vardhman Holdings Ltd v ACIT – (2016) 69 taxmann.com 376 (Chandigarh)

510. The Court held that the notice issued under section 148 and consequent reassessment proceedings were liable to be quashed since the reasons recorded by the AO viz. that a portion of the consideration received from sale of shares was attributable to non-compete

fees taxable as business income as opposed to taxing it as income from capital gains were invalid since the said reasons were based on the evidences submitted by the assessee during original assessment and not any additional evidence which was not available during original assessment proceedings.
Priya Desh Gupta v DCIT – (2016) 96 CCH 0020 (Del HC)

511. The Apex court quashed the reassessment proceedings initiated by the Revenue seeking to tax enhanced rental income from premises let out by the assessee to the Government where such rental income was enhanced in 1994 with retrospective effect from 1987 on the ground that retrospectivity with regard to the right to receive rent with effect from an anterior date and that income could have said to have accrued or arisen only when the right to receive the amount was vested in the assessee.
PG & W Sawoo Pvt Ltd v ACIT – TS-251-SC-2016

512. The Court quashed reassessment proceedings initiated since the basis of reassessment viz. belief that the difference in purchase price and book value of shares (the shares were purchased at cost price which was below the book value) purchased by the assessee was taxable under section 28 (as a benefit or perquisite arising from business), was a mere change of opinion as the AO during original assessment proceedings had called for substantial information and satisfied himself at that time, without making any addition. Further, it held that it was difficult to accept that the acquisition of investments by the assessee would lead to income under section 28(iv) of the Act.
Unitech Holdings Ltd – TS-242-HC-2016 (Del)

513. The Court held that where the AO had called for details relating to share application money during original assessment proceedings and considering the responses filed by the assessee did not make an addition at that time, re-opening assessment on the same issue after a period of 4 years would amount to change of opinion. Further, since the reasons for reopening of assessment did not allege that failure to disclose fully and truly all material particulars, the issue of notice re-opening the assessment was void and liable to be quashed.
Allied Strips Ltd v ACIT – (2016) 96 CCH 0004 (Del)

514. The Tribunal held that initiation of two parallel proceedings on a similar subject matter could not sustained and therefore where the Revenue had initiated reassessment proceedings under section 147 as well as rectification proceedings under section 154 of the Act in respect of non-offering of receipts as income on which TDS credit was claimed, the reassessment proceedings and consequent order were to be set aside as they were initiated without concluding the earlier proceedings initiated under section 154 of the Act.
Sushil Kumar Jain v ACIT – TS-345-ITAT-2016 (Del)

515. The Tribunal held that it was not open to AO to decide objection to notice u/s 148 by composite assessment order, as AO was first required to decide objection of Assessee filed u/s 148 and serve copy of order on Assessee and give some reasonable time to assessee for challenging AOs order. It was further held that reopening based on certain documents found during the course of search at the premises of the company which purchased land from assessee as well, the statement of the Director of the said company which seemed to suggest that the purchase consideration received by the assessee was more than that declared by it, was not valid since assessee had not been given any opportunity to cross examine the Director and even more so since the CEO of the company had confirmed that the consideration of land as declared by the assessee was correct.
Vijaya Woven Sacks (P) Ltd. v ITO - (2016) 47 CCH 0207 (Bang Trib)

516. The Tribunal held that AO cannot initiate reassessment proceedings only on basis of audit objection when he himself was not convinced that the audit objection was correct.
ACIT v Transport Corporation of India Ltd - (2016) 47 CCH 0238 HydTrib

517. The Tribunal held that where there was clear opinion given by AO before Auditor that there was no new evidence that impugned provision was an unascertained liability; the proceedings u/s 147 were not valid as notice u/s 148 issued on account of change of opinion was not valid.
Nokia India (P)Ltd. v DCIT - (2016) 47 CCH 0176 DelTrib

Revision

518. The Tribunal held that jurisdiction under section 263 of the Act could not be exercised where the conditions prescribed in the said section, viz. that the order of the AO was erroneous and prejudicial to the interest of the revenue for failure on part of the AO to make proper enquiries before completion of assessment and that jurisdiction under section 263 could not have been exercised for the reason that the AO did not enquire as to whether the commercial area in the project exceeded the statutory limits laid down in section 80IB(10)(d) of the Act.
Shree Krishna Developers v ITO – (2016) 46 CCH 0045 (Kol)

519. The Tribunal held that the AO is expected to discuss each and every issue arising for consideration and record his own reasoning in the assessment order and since no such exercise was done by the AO, the CIT was correct in exercising power under section 263 of the Act.
ACIT v India Cements Ltd – (2016) 46 CCH 0005 (Chen)

520. The Court held that where the original assessment order had been revised under section 264 of the Act, and therefore no longer existed, the order passed by the Commissioner under section 263 revising the original assessment order was void ab initio.
CIT v New Mangalore Port Trust – (2016) 67 taxmann.com 229 (Kar)

521. The Court held that where the twin conditions of section 263 of the Act (i) order to be revised is erroneous and (ii) is prejudicial to the interest of the revenue were not satisfied, the Commissioner had no jurisdiction to invoke the provisions of section 263 of the Act on the ground that the AO failed to make a disallowance under section 40(a)(ia) of the Act since the assessee failed to deduct tax under section 194C, where in-fact, the assessee deducted tax under section 194H since section 194C of the act was inapplicable.
CIT v Hewelett Packard India Sales Pvt Ltd – (2016) 95 CCH 0060 (Karnataka)

522. The Court held that where Commissioner, Kolkata - II issued on assessee a notice under section 263 on 18-3-2013 proposing to revise assessment for year 2008-09 and thereafter he passed an order under section 263 on 26-3-2013, since case of assessee had already been transferred by said Commissioner by an order dated 3-9-2012 passed under section 127(2)(a) to Assessing Officer, Central Circle, Kolkata, Commissioner lost seisin / possession over the matter and became functus officio therefore, issuance of notice under section 263 and consequent order passed under section 263 were acts without jurisdiction.
Ramshila Enterprises (P) Ltd. v Pr CIT - [2016] 68 taxmann.com 270 (Calcutta)

523. The Court held that intimation under section 143(1) is regarded as an order for purposes of section 264 and application under section 264 is maintainable against intimation order passed under section 143(1). It further held that non-payment of prescribed fee prior to institution of application for revision under section 264 cannot be ground for rejection of such an application.
Vijay Gupta v CIT - [2016] 68 taxmann.com 131.

524. The Apex Court declined to hear the issue of revision power of CIT in the Revenues SLP as it was not going to affect tax liability of assessee.

CIT v Mitsui & Co. Ltd - [2016] 68 taxmann.com 45 (SC)

525. The Tribunal held that there is no prohibition under section 263 for Commissioner to act on basis of proposal by Assessing Officer if other conditions specified under said section are satisfied.
Stewarts & Lloyds of India Ltd v CIT - [2016] 67 taxmann.com 41 (Kolkata-Trib)

526. The Court held that CIT was not justified in invoking revisionary jurisdiction u/s 263 for AY 2007-08 on the alleged ground that no investigation was carried out by the AO to establish the genuineness/creditworthiness of actual subscribers to Foreign Currency Convertible Bonds issued by the assessee for raising funds in terms of Sec 68, when infact the AO not only made enquiries about aspects referred to by the CIT but was also satisfied with assessee's submissions in support of its stand. As regards CIT's ground that AO ignored CBDT instruction No. 3/2010(providing guidelines on tax implications Forward Foreign Exchange Contract) it noted that CBDT instruction was issued much after the assessment order and thus the Assessing Officer could not have imagined that such an instruction or Circular would be issued.
CIT vs Reliance Communication Ltd -TS-178-HC-2016(BOM)

527. The Apex Court held that what was contemplated under section 263 is that an opportunity of hearing was to be granted to the assessee and that it was nowhere mentioned that a specific show cause notice was to be served on the assessee and therefore a revisionary order of the CIT couldn't be set aside on the ground that an addition was made on the basis of issues not mentioned in the show cause notice so long as opportunity with respect to said issues was given by the CIT at the time of hearing.
CIT v Amitabh Bachchan – (2016) 69 taxmann.com 170 (SC)

528. The Court upheld the order issued under section 263 by the CIT, directing further investigation into share application money received by the assessee. It dismissed with the contentions of the assessee that the order under section 263 of the Act could only be passed if the order passed by the AO was erroneous and it was prejudicial to the interest of the revenue and since the share application money was not a taxable receipt during AY 2009-10 in the absence of section 56(2)(viib) unless brought within section 68 of the Act for which all documents and evidences were duly submitted, the order could not be passed. It held that the identity of the alleged share-holders were known but the transaction was not a genuine transaction and that the creditworthiness of the alleged shareholders was also not established because they did not have any money of their own and each one of them received funds from somebody and that somebody received from a third person. The Court held that Delhi HC ruling in CIT vs. Steller Investment Ltd. [TS-20-HC-1991(DEL)], relied on by the assessee, was not applicable to the facts and circumstances of this case since the question as to whether there had been a device adopted for money laundering was not considered by Delhi HC.
Rajmandir Estates Pvt Ltd v Pr CIT – (2016) 96 CCH 0014 (Cal)

529. The Tribunal held that where the assessee, private limited company during the course of search and seizure operation, made a disclosure of undisclosed income by writing off advance under section 41(1) and the AO assessed the same without initiating penalty proceedings under section 271AAA by exercising his jurisdiction, the CIT was not justified in revising the order of the AO on the ground that the penalty proceedings were not initiated. It further held that the CIT could not just substitute the authority of the AO with his opinion.
Enfield Gems & Jewellwery Ltd v CIT – (2016) 47 CCH 0324 (Kol Trib)

530. The Tribunal held that CIT does not have power u/s 263 to give its own opinion when there is no new material unearthed. Thus CIT was wrong in directing the examination of

taxability of deemed dividend u/s 2(22)(e), in proceedings u/s 153A while passing order under s 263 when the proceedings u/s 153A itself had not unearthed the impugned issue.
Mahesh Kumar Gupta v CIT - (2016) 47 CCH 0190 DelTrib

531. The Tribunal held that the CIT was not justified in passing order under section 263 of the Act revising the order of assessment on the ground that the relief under section 10A was wrongly granted without setting of brought forward loss and depreciation in light of the amendment to sub-section (6) by Finance Act, 2003 with retrospective effect April 1, 2001. It further held that section 10A in its present form is an exemption provision and therefore the deduction under section 10A of the Act has to be allowed from the total income of the assessee prior to set off of un-absorbed business loss.
Indus Business Systems ltd v ITO – (2016) 47 CCH 0240 (Hyd – Trib)

Search

532. The Tribunal held that where pursuant to search proceedings, notice under section 153A of the Act was issued, since the assessment in respect of some assessment years covered by said notice had already been completed and, moreover, no incriminating material was found during search, assessment for those assessment years could be made only as per original assessment under section 143(1) of 143(3) of the Act.
Om Shakthy Agencies (Madras)(P)Ltd v DCIT - [2016] 66 taxmann.com 287 (Chennai-Trib)

533. The Court held that the AO was unjustified in making an addition based on a document found on the computer of one of the employees of the assessee which provided a working of anticipated sales revenue, particularly when the assessee offered a plausible explanation for the document and that the person from whose computer the document was taken was not even cross examined to understand the authenticity of the document.
CIT v Vatika Landbase Pvt Ltd – (2016) 95 CCH 0052 (Del)

534. The Court held that in the absence of dispatch date made available to Court from records, to prove that order under section 153(A) read with section 143(3) of the Act was issued within prescribed period, order passed by AO was barred by limitation and thus justified to be set aside.
CIT v B J N Hotels Ltd - [2016] 95 CCH 0120 (Kar)

535. The Court dismissed the petitioner'sapplication seeking review of the original order passed by the Court in writ challenging the validity of search and seizure proceedings on the ground that the proceedings were conducted without authorization since the petitioners name was not mentioned in the warrant of authorization, since the search was carried out at petitioner's premises pursuant to the warrant of authorization issued in name of other co-owner.
Harbhajan Singh Chadha & Ors v DIT - TS-39-HC-2015(ALL)

536. The Court held that where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during course of enquiry, or during search or during post-search enquiry, section 153C would have no application. The detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of section 153C. Further, such incriminating material must relate to undisclosed income which would empower the AO to upset or disturb a concluded assessment of the other person. Otherwise, a concluded assessment would be disturbed without there being any basis for doing so which is impermissible in law.
CIT v IBC Knowledge Park (P) Ltd - [2016] 69 taxmann.com 108 (Karnataka)

537. The Tribunal held that where survey authority alleged excess stock by weighing stock on basis of cartons and not on basis of standard weights and the addition made was upheld by Commissioner (Appeals) observing that there was no evidence that assessee provided to survey team necessary facility of weighment by a standardized scale, action of commissioner (Appeals) was not justified as the surveying authority never required assessee to provide him with weighment facility.
Smt. Kailash Devi Prop v ITO - [2016] 68 taxmann.com 288 (Amritsar – Tribunal.)

538. The Tribunal held that merely because there is a reference to name of assessee in seized documents in the case of another person it does not mean that assessee is owner of those documents and that to invoke section 153C there should be something in satisfaction note recorded by Assessing Officer to indicate that the searched person had disclaimed those documents and documents did not belong to searched person but other third person.
Senate v DCIT - [2016] 68 taxmann.com 223 (Bangalore-Trib)

539. The Court held that proceedings under section 153A of the Act were not valid since no incriminating material was found qua the assessee in each of the years covered by the block assessment proceedings. It rejected the contention of the Revenue that existence of incriminating material in all years was not necessary and that it was sufficient if incriminating material was found for any of the years and held that ever year was a separate year and existence of incriminating material in one year could not be applied to another year.
Pr CIT v Lata Jain – TS-246-HC-2016 (Del)

540. The Court held that where the premises of the assessee was raided 11 years ago and its gold bars and Indian currency were seized by the Income-tax Department merely on the basis of a referral from the Enforcement Directorate and the Department had not provided any justification for the raid or seizure till date and there was nothing on record to show that any assessment or reassessment proceedings were initiated against the assessee, the warrant of authorization under section132A of the Act was to be quashed.
Gauri Shankar v DIT – (2016) 96 CCH 0006 (Del)

i. **Withholding tax**

541. The Court held that the assessee could not be denied registration of sale certificate on the ground of failure to deduct tax under section 194IA at the time of payment of sale consideration for the said property, since the entire sale consideration was paid in March 2012, prior to the insertion of section 194 IA and therefore Section 194IA was not applicable.
Shubhankar Estates Pvt Ltd – TS-767-HC-2015 (Kar)

542. The Court held that the assessee, a cooperative society engaged in the banking business was not liable to deduct tax at source under section 194A on interest paid to its members for AYs 2008-09 to 2014-15, acknowledging the difficulty in identifying cooperative societies that fall under the category of 'co-operative societies engaged in carrying on the business of banking' since the category was not defined under the Act. It held that prior to the amendment to section 194A(3)(v), the Act provided for a general exemption to all cooperative societies from deducting tax on interest payments to its members and that the Finance Act, 2015 amended with prospective effect, denying the said exemption to cooperative banks, would be applicable only from AY 2015-16 onward and thus allowed exemption on deduction of tax for prior assessment years.
The Coimbatore District Central Co-operative Bank Ltd v ITO – TS-757-HC-2015 (Mad)

543. The Tribunal held that section 206AA of the Act could not be applicable in respect of TDS on salary payments since TDS on salary could not be deducted by applying a flat rate of tax on gross payments considering section 192 of the Act provides that TDS would be deducted after allowing basic exemption limited and deduction for expenses. It also noted that the correct amount of TDS had been deducted and deposited with the Government.
Rashtriya Ispat Nigam Ltd v ACIT – (2016) 65 taxmann.com 292 (Vishakhapatnam)

544. The Tribunal held that payments made by the assessee to retainer doctors would be subject to withholding tax under section 194J of the Act and not under section 192 of the Act, as there was no master-servant relationship between the assessee and retainer doctors. It noted that with regard to employed doctors, there were conditions with regard to salary revision and retirement age which was not so with the retainer doctors and that retainer doctors were not entitled to LTC, PF and retirement benefits as opposed to salaried doctors. Further, the retainer doctors were not debarred from taking up any other work for remuneration as was the case with the employed doctors.
ACIT v Fortis Healthcare Ltd – (2016) 67 taxmann.com 106 (Chandigarh)

545. The Tribunal held that port charges paid to carrying and forwarding agents were not subject to withholding tax under section 194J of the Act, since C&F agents were nowhere remotely indicated in the explanation to section 194J of the Act and therefore, the assessee could not be treated as an assessee in default under section 201 / 201(1A) for non-deduction of tax.
DCIT v Gujarat Ambuja Exports Ltd – (2016) 46 CCH 0065 (Ahd)

546. The Tribunal held that where the contract for supply of material was distinct and separate, section 194C of the Act would not be applicable towards supply of equipment in light of Explanation to Section 194C which states that no TDS was to be deducted on the supply portion of a contract.
Maharashtra State Power Generation Co Ltd v ACIT – TS-30-ITAT-2015 (Nag)

547. The Court held that payment made to an Indian parent company by its Indian subsidiary company towards purchase of technical data could not be treated as fees for technical services under section 194J of the Act since no services were rendered by the parent company who received the technical data from a UK company and merely supplied the same to its subsidiary who compensated the parent company by reimbursing the cost of such data. Accordingly, it held that the assessee could not be treated as an assessee in default under section 201(1A) of the Act.
CIT (TDS) v Heramec Ltd – TS-750-HC-2015 (Tel & AP)

548. The Court held that the amendment to Section 201(3) vide Finance Act, 2014, increasing the limitation period under section 201 of the Act to 7 years was not retrospective in nature and therefore shall not apply retrospectively to orders which were time barred under the old time limit set by erstwhile section 201(3) of the Act.
Tata Teleservices v Union of India – (2016) 66 taxmann.com 157 (Guj)

549. The Court held that where the assessee made provision towards contingent payment of interest on belated payment to its suppliers but subsequently noticing that said interest would never be paid to suppliers, it made corresponding reversal entries in books of account, there would be no liability to deduct tax under section 194A on such amount as no income accrued to suppliers.
Karnataka Power Transmission Corpn.Ltd v DCIT - [2016] 67 taxmann.com 259 (Karnataka)

550. The Court held that no demand as envisaged by section 201(1) of the Act can be enforced against deductor if the deductee has made payment of tax on amounts on which tax was to be deducted at source, by deductor

Nai Rajdhani Path Pramandal v CIT - [2016] 67 taxmann.com 317 (Patna)

551. The Tribunal held that where the assessee builder entered into contract for development of SRA project (Slum Rehabilitation), since assessee had to pay certain compensation to slum developers due to its failure to provide alternative accommodation during period of construction, said payment not being in nature of 'rent', did not require deduction of tax at source under section 194-I.
Sahana Dwellers (P)Ltd v ITO - [2016] 67 taxmann.com 202 (Mumbai-Trib)

552. The Court held that where the contractual obligation to execute work for Government was that of assessee joint venture alone and not that of the constituent member and any action which Government could have taken for breach of terms and conditions of first contract was only against assessee and not its constituent sub-contractor and the sub-contractor executed work only in terms of second contract entered into between them and assessee, assessee would be entitled for refund of tax deducted at source from their bills by Government, especially where the sub-contractor had not made any claim for such refund.
IVRCL-KBL(JV) v ACIT - [2016] 95 CCH 0079 (Andhra Pradesh)

553. The Tribunal held that lower TDS under section 194C of the Act was applicable to payments towards use of containers which was incidental to transportation of cargo by sea route and not section 194I since it was to be considered as incidental to the whole process of transportation of goods between ship and shore and could not be considered as a standalone transaction in its own character.
ACIT v Pushpak Logistics Pvt Ltd – TS-53-ITAT-2016 (Rjt)

554. The Court upheld the assessee's claim for refund and interest u/s 244A of the Act on tax withheld in advance in anticipation that third instalment of technical know-how fee would have to be paid to non-resident German Company, which was subsequently waived. It dismissed the contention of the Revenue that the assessee would not constitute an 'assessee' as defined under section 2(7) of the Act and therefore not entitled to interest on refund on the ground that the assessee would have been regarded as assessee-in default u/s 201 r.w.s 2(7)(c) if it had failed to withhold TDS, since "assessee in default" also comes within the ambit of the term "assessee".
Sunflag Iron & Steel Co Ltd v. CBDT - TS-56-HC-2016(BOM)

555. The Court, relying on judgment of Gujarat Reclaim & Rubber products Ltd, held that before effecting deduction at source one of the aspects to be examined is whether such income is taxable in terms of the Income Tax Act. Since this aspect had not been considered by the Tribunal while concluding that the Appellant has committed a default in not deducting the tax at source on payments of commission made by the assessee to non-resident sales agents the matter was remanded back to the tribunal for fresh examination.
Sesa Resources Ltd v DCIT - [2016] 95 CCH 89 - (Bombay).

556. The Court held that where one time Non-refundable Upfront Charges paid by the assessee was not a) under the agreement of lease and (b) merely for the use of the land and the payment was made for a variety of purposes such as (i) becoming a co-developer (ii) developing a product Specific SEZ (iii) for putting up an industry in the land and both the lessor as well as the lessee intended to treat the lease virtually as a deemed sale, the upfront payment made by the assessee for the acquisition of leasehold rights over an immovable property for a long duration of time say 99 years could not be taken to constitute rental income in the hands of the lessor and hence the lessee was not obliged to deduct TDS u/s 194-I. Consequently, there was no question of levy of interest under Section 201(1A) of the Act.
Foxconn India Deceloper (P) Ltd v ITO - [2016] 95 CCH 100 (Madras)

557. The Tribunal held that LTC paid by assessee to employees involving foreign travel as well would not qualify for exemption under section 10(5) and, therefore, assessee would be liable for TDS on payment of such LTC.
State Bank of India vs. DCIT - [2016] 67 taxmann.com 81 (Lucknow - Trib)

558. The Court held that where the assessee had made a payment of interest as a penalty to its lender in accordance with the agreement entered into between the two and deducted tax at source on the same, where the funds were used for import of capital goods which was one of the purposes set out in section 10(15)(iv)(c) of the Act, the assessee was correct in contending that the interest fell under the exemption provided under section 10(15)(iv)(c) of the Act and therefore the refund of excess TDS on the interest paid was to be refunded and that the Revenue authorities were incorrect in denying refund on the ground that the interest was paid as a result of violation of the agreement since the penal interest was imposed as a part of the conditions of the agreement itself.
CEAT Ltd v CBDT – (2016) 95 CCH 0098 (Delhi)

559. The Apex court held that were assessee engaged in business of owning, operating, and managing hotels were paying tips to its employers without deducting tax at source, the assessee could not be treated as assessee in default since there was no vested right in the employee to claim any amount of tip from his employer tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, therefore, fall within Section 15(b) of the Act.
ITC Limited Gurgaon vs. CIT (TDS) - [2016] 95 CCH 139 (SC).

560. The Tribunal held that when co-ordinate benches of Tribunal decided that discount provided to distributors on sale of prepaid vouchers by assessee-telecom company was not commission and, thus, did not warrant deduction of TDS; disallowance for said expense for want of non-deduction of TDS was not justified.
Bharti Hexacom Ltd v ACIT - [2016] 68 taxmann.com 357 (Delhi-Trib.)

561. The Tribunal held that where assessee-company paid certain amount to a Switzerland based company, namely, 'P' as professional fees and claimed deduction of same, since there were no independent services rendered by 'P' and de facto services had been rendered by one 'S', who was a director in assessee-company as well as in 'P', wearing hat of 'P', impugned payment was not allowable expenditure under section 37(1).
Stock Traders (P) Ltd v ACIT - [2016] 68 taxmann.com 339 (Mumbai – Tribunal)

562. The Tribunal held that where assessee-logistic company did not deduct TDS on payment made to overseas organizations for availing their logistic services, since transaction was on principal to principal basis and merely word 'agency' was used in agreement did not mean that there existed relationship of agency TDS was thus not required to be deducted.
Balmer Lawrie & Co. Ltd v ITO (IT) - [2016] 68 taxmann.com 384 (Kolkata-Tribunal.)

563. The Court held that where assessee had deducted tax at source from salary paid overseas to its non-resident employees and had paid same to Government account, merely because tax was not paid within time-limit prescribed under section 200(1) of the Act, said payment could not be disallowed by invoking section 40(a)(iii) of the Act.
ANZ Grindlays Bank vs. DCIT - [2016] 67 taxmann .com 191(Delhi).

564. The Court held that Circular 5 of 2010 of CBDT clarifying that proviso to section 201(3) was meant to expand time limit for completing proceedings and passing order in relation to 'pending cases' cannot be interpreted, to enable department to initiate proceedings for declaring an assessee to be an assessee in default under section 201 for a period earlier than four years prior to 31-3-2011.
Vodafone Essar Mobile Services Ltd v Union of India - [2016] 67 taxmann.com 124 (Delhi)

565. The Apex court held that service made available by Bombay stock exchange [BSE Online Trading (BOLT) System] for which transaction charges are paid by members of BSE are common services that every member of stock exchange is necessarily required to avail of to carry out trading in securities in stock exchange. It held that such services did not amount to 'technical services' provided by stock exchange, not being services specifically sought for by user or consumer and therefore, no TDS was deductible under section 194J on payments made for such services.
CIT v Kotak Securities Ltd - [2016] 67 taxmann.com 356.(SC)

566. The Court held that payment made by assessee-company to its non-executive directors for giving suggestions for better performance of company, did not amount to 'commission or brokerages' requiring deduction of tax at source under section 194H and consequently the assessee could not be treated assessee in default.
DCIT (TDS) v Kirloskar Oil Engine Ltd - [2016] 68 taxmann.com 204(Pune –Tribunal)

567. The Tribunal held that where no provision mandated filing of separate appeals against order under section 201(1) for assessee-in-default and under section 201(1A) for interest, filing of one consolidated appeal was justified. It further heldthat where Assessing Officer initiated proceedings against assessee for default in deducting TDS under section 201 within four years from end of relevant financial year although he passed order after said period, proceedings were justified.
Further, it held that where a singer rendered live performance in assessee's hotel, deduction of TDS under section 194C and not 194J was justified since such singer had not been engaged in his professional capacity in production of a cinematograph film.
It also held that where a consultant rendered advisory and entertainment consultancy services for promotion of assessee's restaurant, TDS was to be deducted under section 194J and not 194C since payment for performance by the actual entertainers and their stay arrangements was the sole responsibility of the assessee hotel and the consultant had nothing to do with it as it was simply concerned with their fixed monthly fee, which was not dependent on the successful sourcing of a particular entertainment from worldwide resources.
The Tribunal held that where assessee collected tips from customers by charging it in their bills and gave the same to its employees, it formed part of their salary liable for deduction of TDS under section 192.
C.J.International Hotels Ltd v ACIT - [2016]68 taxmann.com 27 (Delhi-Trib)

568. The Court dismissed writ petitions filed by assessees (a five star hotel and Federation of Hotel & Restaurant Associations of India) seeking a declaration that TDS provision u/s 194I TDS does not apply to Hotel Industry with respect to hotel room charges pursuant to administrative Circular No. DEL/056/99 clarifying that the tour operators/travel agents were required to deduct TDS u/s 194I while making payments to hotels on behalf of foreign tourists, and rejected the assessees' stand that (i) room tariff payment cannot be termed as 'rent' as it was not under any 'lease/sub-lease/tenancy', and that it was a 'composite' payment and not merely for occupying room and (ii) a distinction was being sought to be drawn between Indian and foreign guests when the provision itself did not envisage it. The Court held that the word 'rent' u/s 194I has to be interpreted widely as is evident from the words "any other agreement or arrangement" used in the definition of rent in Explanation (i).
Apeejay Surrendera Park Hotels Ltd. & Anr, Federation of Hotel and Restaurant Associations of India & Or v Union of India -TS-153-HC-2016(DEL)

569. The Apex Court dismissed Revenue's appeal against Bombay HC order holding that payment for transmission/ wheeling charges neither qualify as rent (u/s 194I) nor as FTS (u/s 194J) and thus no TDS is required to be withheld. The Court held that the said payments were not in the nature of rent since they were not made only to utilize any

identified machinery or equipment. It further held that no 'service' was provided & wheeling charges merely represented charge for permitting use of the State Transmission Utility for distribution of electricity.
CIT (TDS) v Maharashtra State Electricity Distribution - TS-220-SC-2016

570. The Apex Court dismissed Revenue's SLP against Delhi HC order holding that payment towards "wheeling charges" was not taxable as FTS u/s 194J. The HC had accepted assessee's plea that payment was towards transportation of electricity and nothing more and thus, the process was automatic through network / equipment without any human intervention. Drawing analogy with distribution of water,the HC had further held that the equipment and pipes have to no doubt be maintained by technical staff but that does not mean that a person to whom the water is distributed through using the pipes and equipment is availing of any technical service as such.
CIT-TDS v Delhi Transco Ltd - TS-212-SC-2016

571. The Court held that payment of over Rs. 1400 crore by assessee (a JV company of TIDCO) to TIDCO (Tamil Nadu Industrial Development Corporation Limited) for executing 99 years land lease deed was not rent liable for TDS under Sec 194I since the amount was paid by assessee mainly for two things, namely (a) to be conferred with the benefit of being a JV Partner, and (b) to be conferred with the benefit of 99 years lease. It further held that as determination of amount paid preceded even the birth of JV company and creation of lease deed; the same would never form part of the rental income.
TRIL Inforpark Ltd v ITO -TS-209-HC-2016(MAD)

572. The Court, relying on the decision of the Apex Court in the case of CIT v Ghanshyam, held that interest under section 28 of the Land Acquisition Act is an accretion to compensation and formed part of compensation taxable under section 45(5) of the Act and does not fall within the ambit of interest envisaged under section 145A(b) of the Act (which provides interest received by an assessee on compensation or enhanced compensation shall be deemed to be income of the year in which it is received). Therefore, the said interest was not liable to TDS under section 194A of the Act.
Movaliya Bhikhubhai Balabhai v ITO – TS-248-HC-2016 (Guj)

573. The Tribunal held that payment made by the assessee, National Highway Authority of India to toll collection entities was subject to TDS under section 194C and not 194H since the contract was in the nature of contract for supply of labour for execution of work contract and could not be considered as a contract of agency representing commission income as defined under section 194H of the Act since there was no principal agency relationship. Further, it held that normally commission was paid in terms of value of transaction whereas in the instant case, consideration was paid in terms of remuneration payable to the personnel deployed plus service charge of 14 percent on the total remuneration.
DCIT v Project Director NHAI – TS-329-ITAT-2016 (Viz)

574. The Tribunal held that section 194J of the Act would not apply to payments in kind made by the assessee and therefore where the actors working in the assessee's film were gifted certain items, the assessee could not be considered as an 'assessee in default' under section 40(a)(ia) of the Act for non-deduction of tax at source. It held that the expression 'any sum' used ins ection 194J of the Act would only relate to payments made in money terms.
Red Chillies Entertainment Pvt Ltd v ACIT – TS-336-ITAT-2016 (Mum)

575. The Court held that the assessee was not liable to deduct taxes at source under section 192 of the Act on per diem allowance paid to employees for overseas business trips as the same was exempt under section 10(14) of the Act and dismissed the contention of the revenue that the since the allowance was paid without verification of expenses incurred by

the employee considered it could not be treated as reimbursement exempt under section 10(14) and that the payment was taxable as perquisites. It held that merely because the actual expenses were not verified, the character or nature of payment would not be changed to make it a perquisite under section 17(2) of the Act.
CIT (TDS) v Symphoy Marketing Solutions India Pvt Ltd – TS-312-HC-2016 (Kar)

j. **Others**

Appeals

576. The Tribunal held that where the appeal filed by the revenue against the order of the CIT(A) was dismissed by the Tribunal because of low tax effect, the cross objections filed by the assessee could not be dismissed merely because the appeal of the revenue was dismissed.
ACIT v Ajay Kalia – (2016) 66 taxmann.com 99 (Del)

577. The Apex Court directed the High Court to admit the appeal filed by the Revenue, rejected by the Court on the ground that the tax effect was less than Rs.10 lakhs, since the Court had admitted the Revenue's appeal for the subsequent year and the issue in both years were identical.
CIT v Bangalore Housing Dev & Investments – TS-26-SC-2016

578. The Apex Court held that the High Court was not permitted to make a fresh determination of facts found by the Tribunal. However, it noted that the High Court could take into account additional facts already on record but not taken note of by the Tribunal in arriving at its finding and also to construe certain facts to be of significance as against different views taken by the Tribunal.
Ganapathy & Co v CIT – (2016) 65 taxmann.co 194 (SC)

579. The Court held that where show-cause notice was issued under section 251(1)(a) of the Act intending to make addition to income of the firm as the maximum number of members in the firm exceeded the prescribed number of 20 and for addition of disallowed expenditure to taxable income, the writ petition filed would not have any merit as the petitioner could very well submit their explanations and contest the same on merits in accordance with law before the CIT(A).
Megatrends Inc v CIT – (2016) 67 taxmann.com 233 (Madras)

580. The Court held that remand is not power to be exercised in routine manner and should be used only when the facts warranted such course of action. Where materials were available on record (viz. the assessee had claimed provision of warranty as an expense during the relevant year which was allowed by the CIT(A) as a result of which the Revenue appealed to the High Court, wherein the Court remanded the matter to the Tribunal to determine whether the assesee's provision for warranty was based on past history or actual expenditure), the Tribunal ought to have arrived at a conclusion rather than further remanding the matter back to the AO that too after giving a positive finding that the method adopted by the assessee was on a scientific and reasonable basis. Thus where no proper reasoning had been given by Tribunal for exercising power of remand, such Order passed by ITAT was justified to be set aside.
Dell International Services India (P) Ltd v ACIT- [2016] 95 CCH 0119 (Kar)

581. The Court held that it is open for the Tribunal in application u/s 254(2) to not only rectify mistakes of fact apparent on face of record but also to examine if order sought to be rectified had apparent error of law
Promain Ltd CIT - [2016] 96 CCH 0039 (Del)

582. The Apex Court dismissed the Revenue's appeal in light of CBDT Circular No 21 / 2015 dated December 10, 2015 since the tax effect of the appeal was below Rs.25 lac at the time of filing appeal.
CIT v NSN Jewellers Pvt Ltd Ltd – (2016) 95 CCH 0081 (SC)

583. The Court held that where the petitioner responded to notices issued under section 142(1) / 143(2) of the Act issued by the AO pursuant to reopening of assessment, it means that he submitted to the AO's jurisdiction and therefore was estopped for filing a Writ Petition to challenge the same and the fact that the jurisdiction was challenged while participating in the proceedings was irrelevant.
Amaya Infrastructure Pvt Ltd v ITO – (2016) 95 CCH 0136 (Bom)

584. The Court held that if tax effect was found to be less than Rs.20 lacs, assessee's appeal would be liable to be dismissed, in view of provisions contained in section 268A of the Actand in the light of the Circular no.21 of 2015 dated 10th December, 2015. The matter was however, remanded back to the assessing officer for examining the tax effect, in the light of the said Circular.
CIT vs. Apeejay Medical Research & Welfare Association (P) Ltd - [2016] 95 CCH 80. (Calcutta)

585. The Court held that the decision to recall an appeal or to pursue it only for its dismissal as not pressed was the decision of the Department and was to be exercised after due application of mind. Accordingly, it held that an order was to be issued by the Central Board of Direct Taxes to the Principal Chief Commissioner of Income-tax to take up follow-up action by appropriate utilization of IT and quicker acces of information relating to pending appeals before the High Court and for the identification of cases where the monetary limit of Rs. 20 lacs (as per CBDT Instruction No 21 / 2015).
CIT v Smt Lakshmikutty Narayanan – (2016) 67 taxmann.com 369 (Kerala)

586. The Court held that explanation 1 to section 158BE(2) excludes period during which assessment proceedings were stayed, from the period of limitation to complete block assessment. Where stay of some other nature is granted other than the stay of the assessment proceedings i.e. stay of the special audit, but the effect of such stay is to prevent the AO from effectively passing the assessment order, even that kind of stay order may be treated as stay of the assessment proceedings because of the reason that such stay order becomes an obstacle for the AO to pass an assessment order thereby preventing the AO to proceed with the assessment proceedings and carry out appropriate assessment.
VLS Finance Ltd v CIT - [2016] 68 taxmann.com 368(SC)

587. The Court held that where the assessee had mentioned the name of the Director and affixed the signature of the Director to the application of condonation of delay, the Tribunal was incorrect in dismissing the same on the ground that the Director's name was not mentioned in the appeal memorandum. Accordingly, it condoned the delay of 201 days in filing appeal before the Tribunal.
Wayne Burt Petro Chemicals P Ltd v ITAT – TS-245-HC-2016 (Mad)

588. The Court held that when petitions filed against orders of assessment had been heard and orders were to be passed by CIT(A) within a period of eight weeks then no action for recovery or no other coercive action should be taken against Assessee.
Tamil Nadu State Marketing & Anr. vs ACIT - (2016) 96 CCH 0035 (Chennai)

589. The Tribunal restored back the matter for fresh consideration to the file of the lower authorities when assessee had furnished certain additional evidence to justify his claim of expenditure which were not submitted earlier before Departmental Authorities.
Roderick Sale v DCIT - (2016) 47 CCH 0177 MumTrib

Charitable Trusts / Exempt Income

590. The Tribunal held that the restriction imposed under the first proviso to section 2(15) of the Act viz. exemption under section 11 would be available to a charitable trust carrying on the activities in the nature or trade, commerce or business only if the receipts did not exceed Rs. 10 lakhs, was relevant only for the purpose of granting exemption udner section 11 and not for cancellation of registration under section 12AA(3). Therefore, it held that merely because the assessee receipts exceeded Rs.10 lakh, the DIT(E) was not justified in proceeding to cancel its registration, more so when the DIT(E) failed to establish that there was a change in the objects of the institution on the basis of which registration was granted or that the activities carried out were not in accordance with its stated objects.
Bombay Chamber of Commerce & Industry v ITO (Exemption) – (2016) 67 taxmann.com 153 (Mum)

591. The Tribunal held that excess of expenditure over income in one year could be set off against the income earned in the subsequent year by way of application of income under section 11 of the Act since the word 'applied' did not necessarily mean spent and that application of income for the purposes of section 11 takes place in the year in which income is adjusted to meet expenses and therefore even if expenses for charitable and religious purposes were incurred for an earlier year, they could be adjusted against income of the subsequent year.
ACIT v KJ Somiaya Trust – (2016) 68 taxmann.com 9 (Mum)

592. The Tribunal held that where the assessee received dividend income on account of investment in a Venture Capital Fund, which further invested in a company, which at the time of payment of dividend paid additional tax under section 115U of the Act, the said dividend income was exempt in the hands of the assessee under section 10(34) of the Act.
Further it held that venture capital funds / companies were given pass through status and therefore the assessee, who received interest income from a VCF, was entitled to deduct expenditure income incurred by the VCF as if it had been incurred by the assessee itself and that the net interest received was taxable as income from other sources.
Additionally, where the VCF had made a distribution out of its capital, the said amount received was not taxable.
Japan International Cooperation Agency v DDIT (IT) – (2016) 68 taxmann.com 98 (Del)

593. The Tribunal held that the AO was incorrect in assuming that the definition of 'corpus' for the purpose of investment in venture capital funds literally meant the actual contribution made by the investors where the SEBI (Alternative Investment Funds) Regulation, 2012 specifically providedt that corpus meant the amount committed by the investors and therefore incorrect in denying the assessee exemption under section 10(23FB) on the ground that the investment made by it was in excess of 25 percent of the corpus contribution.
DHFL Venture Capital Fund v ITO – (2016) 66 taxmann.com 35 (Mum)

594. The Apex Court held that where the assessee society filed an application under section 12A of the Act for grant of registration and same was not responded to within stipulated period of six months, application for registration was to be deemed to have been allowed.
CIT v Society for Promn.of Edn - [2016] 67 taxmann.com 264 (SC)

595. The Court held that Section 11(6) inserted by Finance (No.2) Act, 2014 denying depreciation while computing income of charitable trust, is prospective in nature and operates with effect from April 1, 2015.

DIT (Exemptions) v Al Ameen Charitable Fund Trust - [2016] 67 taxmann.com 160 (Karnataka)

596. The Court held that the assessee, a trust carrying out activities for the benefit of milk producer societies could not be denied registration under section 12A on the ground that since it provided benefit to a small section of society, it could not be considered to exist for the benefit of the general public. It held that an object beneficial to a section of public was an object of general public utility and to serve a charitable purpose, it was not necessary that the object should benefit the whole of mankind or all persons in a particular country or state.
Bangalore Urban & Rural District Co-operative Milk Producers Societies Members and Employees Welfare Trust v DIT – (2016) 95 CCH 0059 (Karnataka)

597. The Court allowed the assessee, a charitable trust, depreciation on assets purchased by it, in spite of the fact that the cost of acquisition was allowed as an application of income on the ground that while in the year of acquiring the capital asset, what is allowed as exemption is the income out of which such acquisition takes place and when depreciation deduction is allowed in the subsequent years, it is for the losses or expenses representing the wear and tear of such capital asset. Further, it held that the amendment to section 11(6) of the Act inserted vide Finance Act 2014 with effect from April 1, 2015 (which bars the allowability of depreciation where the acquisition of the asset has been claimed as an application of income in any previous year) was prospective in nature.
DIT v Al-Ameen Charitable Fund Trust – (2016) 95 CCH 0130 (Karnataka)

598. The Court held that a Private Limited company could be registered under section 25 of Companies Act, 1956 and therefore such company was eligible institution for exemption under section 10(22A)
CIT v Apeejay Medical Ltd - [2016] 68 taxmann.com 10 (Calcutta)

599. The Court held that where assessee had multiple objectives in impugned assessment year and did not exist solely for educational purpose, the assessee would not qualify for benefit under section 10(23C)(vi) of the Act.
B.S. Abdur Rahman Institute of science & Technology v CCIT - [2016] 95 CCH 74 (Madras).

600. The Court held that reimbursement of medical expenses incurred by the donors of the welfare fund for advancing medical facility to their employees, could not be treated as an act beneficial to the humanity at large, for obtaining benefit of exemption u/s 10(22A) of the Act and that existence of a hospital or other institution solely for philanthropic purposes, was mandated for purpose of qualifying exemption u/s 10(22A). It also held that exemption under section 10(22A) of the Act could not be granted to an institution, whose predominant objective in the relevant year was to earn profit and not to render any act of philanthropy.
CIT v Apeejay Medical Research & Welfare Association Pvt Ltd – (2016) 95 CCH 0083 (Calcutta)

601. The Court held that where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities(Letting out of auditorium). Test to determine as to what would be charitable purpose within meaning of Section 2(15), is to ascertain what the dominant object of the activity was. Since educational activity was dominant activity of Assessee-trust benefit of exemption u/s 11(4A) could not be denied.
DIT vLala Lajpatrai Memorial Trust - [2016] 95 CCH 131 (Bom)

602. The Court held that to claim exemption, funds received from the Government contemplated u/s 10(23C)(iiiab) of the Act must be direct grants/contributions from governmental sources and not merely fees collected under the statute. Since Entitlement

for exemption under Section 10(23C) (iiiab) is subject to two conditions viz (i) the educational institution or the university must be solely for the purpose of education and without any profit motive. (ii) it must be wholly or substantially financed by the government.
Visvesvaraya Technological University v ACIT - [2016] 95 CCH 135 (SC).

603. The Court held that where a political party is unable to maintain its accounts for any reason whatsoever, or satisfy pre-conditions set out in proviso to section 13A, exemption cannot be granted to it from payment of tax.
CIT v Janta Party - [2016] 68 taxmann.com 299(Delhi)

604. The Court held that where a political party failed to submit audited accounts within period stipulated by mandatory requirement of proviso to section 13A, it would not be entitled to tax exemption under section 13A.
CIT v Indian National Congress (I) All India Congress committee - [2016] 67 taxmann.com 323 (Delhi)

605. The Court held that contributions received by assessee (an association of air cargo agents) was not chargeable to tax merely because assessee invested surplus amount in mutual funds and rejected the Revenue's contention that investment in mutual funds not being assessee's object, the concept of mutuality was inapplicable and thus, contribution received from members was exigible to tax even though it was used to achieve assessee's objectives. It relied on coordinate bench ruling in Common Effluent Treatment Plant (Thane-Belapur) Association and distinguished Revenue's reliance on the Apex Court ruling in Bangalore Club by holding that in the said case, even though the Apex Court held that complete identity between contributors and participants was ruptured as soon as the excess fund were invested in bank fixed deposit, what was brought to tax was only interest on fixed deposit and not the entire contribution from members, and that in the assessee's case the income from mutual fund investment had already been offered to tax.
CIT v Air Cargo Agents Association of India - [2016] 68 taxmann.com 335 (Bombay).

606. The Tribunal held that insertion of proviso to section 12A(2) with effect from 1-10-2014 is retrospective in operation where registration is granted in subsequent year, benefit of same has to be applied in earlier assessment years for which assessment proceedings are pending before Assessing Officer. Also appeal before appellate authority should be deemed to be 'assessment proceedings pending before Assessing Officer' within meaning of that term as envisaged under proviso to section 12A(2). Therefore Sec. 11 relief cannot be denied to a trust if it had obtained registration during pendency of appeal before CIT(A).
SNDP Yogam v ADIT (Exemption) - [2016] 68 taxmann.com 152 (Cochin Trib.)

607. The Tribunal denied the assessee exemption under section 10(10B) of the Act which deals with exemption of compensation received by a workman under the Industrial Disputes Act at the time of retrenchment since the assessee's employment was terminated on account of cessation of temporary work which did not amount to retrenchment.
Ambika Jyoti Datta v ITO – TS-156-ITAT-2016 (JPR)

608. The Tribunal held that where assessee, a society registered under section 12A, was formed with main object of imparting education, since Assessing Officer neither doubted genuineness of activities carried on by assessee nor pointed out any violation of section 13(1)(d), assessee's claim for exemption of income under section 11 could not be rejected merely on the ground that assessee's activities were akin to any commercial activity since its receipts had increased over a period of time. It further held that when income is computed under section 11, provisions of sections 40(a)(ia) and 43B are not applicable.
ITO v Mother Theresa Educational Society - [2016] 68 taxmann.com 320 (Viskhapatnam-Trib)

609. The Tribunal upheld the order of the CIT cancelling the assessee trust's section 12A registration with retrospective effect by invoking powers under section 12AA(3) on the ground that he assessee's activities were not as per the object clause. It rejected the contention of the assessee that the power to cancel registration under section 12AA(3) of the Act only applied to trusts registered under section 12AA and not to trusts registered under section 12A (which was replaced by Section 12AA).
VIdyaranya Seva Sangha v CIT – TS-338-ITAT-2016 (Bang)

610. The Tribunal allowed Section 11 exemption on profits earned by the assessee from pharmacy business. It noted that the pharmacy business was an integral part of the hospital business and run by the hospital itself and not a private contractor and the pharmacy profits were expended on the object of the trust. It held that the Revenue was incorrect in denying exemption on the basis of non-fulfillment of conditions of Section 11(4A) (viz.(i) such business been incidental to the attainment of the objectives of the Trust and (ii) separate books of account are maintained by such trust or institution in respect of such business) since the conditions of maintenance of books of account in respect of the business activity of trading of medicines, which is an integral part of the hospital activities, is not the requirement of the law on the facts of this case.
Hiranandani Foundation – TS-350-ITAT-2016 (Mum)

611. The Court held that the Revenue did not have the jurisdiction to cancel registration under section 12AA(3) of the Act whenever the assessee's receipts from commercial activities exceeded Rs.25 lakhs and that registration could only be cancelled if there was a change in nature of activities of the institution or if the activities were not genuine.
Khar Gymkhana – TS-323-HC-2016 (Bom)

612. The Tribunal held that where objective of Trust was not to conduct money lending business, but to do relief to poor, benefit given to assessee in this regard was justified.
DCIT v Society for Rural Improvement - (2016) 47 CCH 0172 CochinTrib

613. The Tribunal held that the assessee, imparting education including pre-schooling education, could not be denied registration as a charitable institution on the ground that pre-schooling did not fall under the gamut of education as per Section 2(15) and that it was a commercial activity since it was charging a fee. The Tribunal held that pre-schooling was a mandatory prelude to school education and therefore was very much part of the term education. Further, it held that Section 11 and 12 did not stipulate that the charitable activity was not to be carried out for free and therefore the DIT was incorrect in denying registration on that ground.
ACIT v Jindal Power Ltd – (2016) 70 taxmann.com 389 (Raipur- Trib)

614. The Tribunal held that where the assessee held four conferences for the purpose of the promoting the automobile industry, without the prior object of earning income, merely because it generated some excess receipts over expenses, it could not be characterized as a business activity and therefore such activities would fall within the ambit of first proviso to section 2(15), eligible to benefit under section 11 and 12 of the Act.
Society of Indian Automobile Manufacturers v ITO - (2016) 47 CCH 0196 DelTrib

615. The Tribunal held that ICAI is an educational institute and its coaching activities fall within meaning of charitable purpose under section 2(15), hence entitled to exemption under section 11.
DDIT v Institute of Chartered Accountants of India - [2016] 70 Taxmann.com 54 (Delhi-Trib.)

Clubbing of income

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

Deemed Dividend

617. The Tribunal held that deemed dividend could only be assessed in the hands of the shareholder of the lender company and not in the hands of a person other than the shareholder and therefore the loan received by the assessee company could not be taxed as deemed dividend, merely because it had a common shareholder with the lender company, since it was not the shareholder of the lender company.
Mahavir Inductoment Pvt ltd v ACIT – (2016) 46 CCH 0007 (Ahd)

618. The Tribunal held provisions of TDS would not be applicable for dividend covered u/s/ 2(22)(d) and in case Assessee entered into deal that did not violate any provision applicable to a particular AY, deal could not be termed colourable device, if it resulted in non-payment or lesser payment of taxes in that year.
Goldman Sacs (India) Securities (P)Ltd. vs. ITO - [2016] 46 CCH 0112 (Mum Trib).

619. The Court held that where the assessee firm had received security deposit from a company in which assessee's partners were shareholders, such a security deposit could be taxed as deemed dividend in hands of its partners and not in hands of assessee.
CIT v Skyline Great Hills - [2016] 68 taxmann.com 188 (Bombay)

620. The Tribunal held that where the assesee firm was not the shareholder of its sister concern, advance tax paid by the sister concern in the name of the assessee could not be taxed as deemed dividend in the hands of the assessee.
Shiv Transport & Travels v ITO – (2016) 67 taxmann.com 108 (Kolkata – Trib)

621. The Court held that where the assessee company received certain advance from 'J' Ltd., even though assessee owned 95 percent shares in 'V' Ltd. which in turn owned 99 percent shares of 'J' Ltd, the assessee itself was not a shareholder in lender company and therefore the loan amount in question could not be added to assessee's income as deemed dividend under section 2(22)(e) of the Act
Pr CIT v Rajeev Chandrashekhar - [2016] 67 taxmann.com 358 (Karnataka)

Method of Accounting

622. The Court held that where the assessee did not produce supporting vouchers for expenses, details of purchases and stocks the AO was justified in adopting of an estimated net profit rate of 9 percent on gross receipts, since the AO was not able to verify various details such as wages, salaries, general expenses and other expenses.
SP Construction v ITO – (2016) 68 taxmann.com 334 (Punjab & Haryana)

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

Minimum Alternate Tax

624. The Tribunal held that section 115JB was not applicable to entities registered and recognized as companies under the Companies Act and therefore, since the assessee was a corporation established under the Damodar Valley Corporation Act, 1948, the provisions of section 115JB were not applicable.
Damodar Valley Corporation v Add CIT – (2016) 66 taxmann.com 25 (Kol)

625. The Court held that loss incurred by assessee-company on transfer of its investment division to another company was to be debited to its profit and loss account and said loss was not required to be added back while computing book profit under section 115JB
CIT v Binani Cement Ltd - [2016] 67 taxmann.com 281 (Calcutta)

626. The Tribunal held that where assessee relied on ITR-6 format to arrive at total liability as well as MAT credit calculations, Assessing Officer could not overlook the said format and proceed to calculate MAT credit u/s 115JB in the assessment u/s 143(1) without including surcharge and education cess while arriving at the amount of total tax payable under the normal provisions of the Act.
Virtusa (India)(P)Ltd v DCIT - [2016] 67 taxmann.com 65 (Hyderabad-Trib)

627. The Tribunal held that Section 115J does not empower Assessing Officer to embark upon a fresh enquiry in regard to entries made in books of account of company and thus, where assessee company received a certain sum on retirement as a partner from a firm and had taken it straight away to General Reserve account and not in Profit and Loss Account, there being no allegation that brought on loss account was not prepared in accordance with Part-II & III Schedule VI of Companies Act, Assessing Officer could not have considered and added back the said amount to determine book profit under section 115JB.
Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)

628. The Tribunal held that provisions of section 115JB are not applicable to banking company as the accounts are drawn in conformity with Banking Regulation Act, 1939, and no accounts are drawn up as per requirement of schedule VI of Companies Act, 1956.
Canara Bank v JCIT - [2016] 68 taxmann.com 128 (Bangalore-Trib)

629. The Tribunal allowed assessee's claim for reduction of accumulated unabsorbed depreciation of earlier years while computing book profit u/s 115JB and rejected Revenue's stand that debit balance in profit and loss account was to be taken at nil under Explanation 1 (iii) to Sec. 115JB (which restricts reduction from book profit to lower of debit balance in profit and loss account or unabsorbed depreciation) since the assessee, declared as "sick industrial unit" under the Sick Industrial Companies (Special Provisions) Act, 1985 ('SICA'), had transferred its credit balances in various accounts such as - security premium account, capital reduction account, etc. to 'rehabilitation scheme account' which was utilized to set off debit balance in P&L account. It held that considering that book profit u/s 115JB was required to computed as per Part-II and Part-III of the Schedule-VI of Companies Act the accounting treatment under Rehabilitation scheme was irrelevant for computing book profit and that *SICA had no overriding effect on the Companies Act*". Referring to provisions of Part II and III of Schedule VI and ICAI Guidance note, it further held that that restructuring credits mentioned above came from reserves or capital contribution of equity participants, etc. and did not have an element of 'income' in them and thus loss could not be set off against these items in the accounts prepared as per Part II and III of Schedule VI. Therefore the brought forward losses could not be considered as Nil.
Surat Textile Mills Ltd – TS-315-ITAT-2016 (Ahd)

630. The Court held that lease equalization charges were not to be added back while computing the book profit for the purposes of MAT under section 115JA of the Act since it was not in the nature of reserve and the MAT provisions do not provide for the adding back of such lease equalization charges.
Pr CIT v Sun Pharmaceutical Industries Ltd – TS-344-HC-2016 (Guj)

631. The Tribunal held that under the accounting terminologies provision for doubtful debts and writing off bad debts had a distinct meaning and a provision created was to take care of the dimunition in the value of Sundry Debtors and would not tantamount to a write off of bad debts and therefore confirmed the CIT(A)'s rectification order making an addition of provision for doubtful debts for the purpose of computing book profits under section 115JB pursuant to amendment to Explanation 1 to Secton 115JB vide Finance Act, 2009. It further held that the CIT(A) was justified in rectifying an order based on a subsequent amendment made with retrospective effect.
Reliance Industries Ltd v ACIT – TS-309-ITAT-2016 (Mum)

Penalty / Interest

632. The Apex Court held that it was necessary to establish that there was contumacious conduct on part of the assessee, for the levy of penalty under section 271C of the Act.
CIT v Bank of Nova Scotia – (2016) 283 CTR 0128 (SC)

633. The Tribunal held that where the satisfaction for initiation of penalty proceedings under section 271(1)(c) was not discernable from the assessment order and the show-cause notice under section 274 was also defective, penalty levied under section 271(1)(c) was liable to be quashed.
Uma Shankar Agarwal v DCIT – (2016) 46 CCH 0057 (Kol)

634. The Tribunal held that once substantial questions of law were admitted in the High Court, the same would indicate that the issue was debatable / arguable and therefore penalty under section 271(1)(c) was not leviable.
De Beers UK Ltd v ACIT(IT) – (2016) 46 CCH 0050 (Mum)

635. The Court held that where a notice was issued under section 274 of the Act proposing to levy penalty under section 271(1)(b), but the penalty order was passed under section 271(1)(c) of the Act, the said order was liable to be set aside as it was indication of the non-application of mind by the AO at the time of issuance of notice.
Further, it held that in terms of section 271(1B) of the Act, the direction to initiate penalty proceedings had to be clear and unambiguous and merely stating that penalty proceedings have been initiated did not satisfy the requirement of law.
Safina Hotels Pvt Ltd v CIT – (2016) 66 taxmann.com 334 (Kar)

636. The Tribunal quashed penalty proceedings initiated under section 271(1)(c) as the penalty show cause notice issued under section 274 of the Act failed to specify the default committed by the assessee as the AO did not delete the inappropriate words / parts as a result of which it was not clear as to whether the default committed by the assessee was for concealing particulars of income or for furnishing inaccurate particulars of income.
Sanghavi Savla Commodity Brokers Pvt Ltd v ACIT – TS-25-ITAT-2015 (Mum)

637. The Tribunal quashed the rectification order passed, reducing the claim of interest on refund on the basis that the assessee made a belated claim for exemption under section 10(23G) resulting in a delay, on the ground that delay in the proceedings resulting in refund and not delay in claim was crucial for denying interest under section 244A of the Act. The Tribunal acknowledged that exemption under section 10(23G) of the Act was dependent on the approval of the Central Government and therefore there could be many reasons

beyond the control of the assessee leading to such alleged delay. Further it noted that there was nothing on record to suggest that proceeding leading to the refund were delayed and that a reduction in interest under section 244A was to be decided by the CCIT / CIT which was not done in the present case.
DBS Bank Ltd v DDIT – TS-8-ITAT-2016 (Mum)

638. The Tribunal held that a levy under section 234E of the Act, which provided for payment of interest on late filing of TDS / TCS returns, could not be effected in the course of intimation under section 200A of the Act, prior to the amendment to section 200A vide Finance Act, 2015 as prior to the said amendment, there was no enabling provision for raising demand in respect of levy under section 234E of the Act and that an appeal could be filed against an intimation under section 200A of the Act as the intimation was deemed to be an order passed under the Act.
Perfect Cropscience Pvt Ltd v DCIT – (2016) 46 CCH 0003 (Ahd)
Dhanlaxmi Developers v DCIT – (2016) 46 CCH 0001 (Ahd)
Manu Hari Tobacco v DCIT – (2016) 46 CCH 0002 (Ahd)
Amco Construction Co v DCIT – (2016) 46 CCH 0016 (Ahd)

639. The Court held that where assessee received interest with amount of refund but did not include it in his profit and loss account under a bonafide belief that since matter was subjudice, it was not to be included in profit and loss account but disclosed same in notes to accounts it could not be said that assessee had furnished inaccurate particulars of income.
CITv Pilani Investment & Industries Corporation Ltd - [2016] 67 taxmann.com 60 (Calcutta)

640. The Court held that interest allowed to assessee under section 244A(1)(b) of the Act on refund of excess payment on self-assessment of tax could not be withdrawn under section 154 of the Act as Explanation to section 244A(1)(b) of the Act does not bar payment of interest upon refund of excess payment on self-assessment.
CIT v Birla Corporation Ltd - [2016] 66 taxmann.com 276 (Calcutta)

641. The Court held that where the assessee furnished evidences such as brokers note, copy of balance sheet, copy of DMAT account etc, by virtue of which one could prima facie conclude that the income was in the nature of capital gains exempt from tax under section 10(38) of the Act but the assessee had subsequently offered the same as a part of business income during survey proceedings, to buy peace, no penalty could be levied under section 271(1)(c) of the Act, since the income could have actually been regarded as income from capital gains and since the Revenue authorities accepted that the assessee had not concealed its income or filed inaccurate particulars attributable to capital gains in its original returns.
CIT v Hiralal Doshi - [2016] 95 CCH 0048 (Bom)

642. The Tribunal held penalty under section 271(1)(c) of the Act could not be levied on the assessee merely because it made an excess claim of depreciation on the basis of a newspaper article stating that the Finance Ministry decided to retain the special depreciation benefits for textile machinery installment under the Technology Upgradation Fund. Further, with regard to the classification of receipt of subsidy as capital or revenue, the Tribunal held that the same was a debatable issue and therefore penalty under section 271(1)(c) of the Act could not be levied.
ACIT v SPL Industries Ltd - [2016] 46 CCH 0085 (Del Trib)

643. The Court held that it is not sine qua non for an AO to mention/levy/charge interest under section 234B of the Act in assessment order before he raises demand for same in notice issued under section 156 of the Act.
ACIT v Norma Detergent P Ltd – (2016) 96 CCH 0143 (Gujarat)

644. The Tribunal held that where the assessee failed to offer any explanation or evidence in respect of capital introduced which it claimed to be a gift and merely submitted the affidavit of the donor and also failed to disclose interest income in its return which was offered as income only once detected by the department, penalty under section 271(1)(c) of the Act was correctly levied.
Narendra Kumar Singhal v ITO – (2016) 46 CCH 0131 (Agra – Trib)

645. The Court held that adverse inference against the assessee for failing to cross examine a witness in quantum proceedings would equally apply to penalty proceedings and there was no necessity to offer the assessee a further opportunity of cross examination. Accordingly, it held that initiation of penalty under section 271(1)(c) of the Act was completely justified.
Roger Enteprises (P)Ltd. V CIT - [2016] 67 taxmann.com 344 (Delhi)

646. The Tribunal held that where assessee's salary was understated in her return due to mistake of online tax return filing portal (TaxSpanner.com) and assessee could not verify contents of return due to her pregnancy and immense pressure in office, concealment penalty was not justified.
Mrs. Richa Dubey v ITO - [2016] 68 taxmann.com 268 (Mumbai – Tribunal)

647. The Tribunal held that where assessee had sufficiently proved that share application money was taken from a director to meet urgent and immediate requirement of business and there was a reasonable cause to take 'loan' or deposit otherwise than by account payee cheque or account payee bank draft, penalty under section 271D could not have been levied.
Valley Extraction (P) Ltd v JCIT - [2016] 68 taxmann.com 202.(Chandigarh)

648. The Apex Court held that where amount refundable to assessee was not immediately refunded but adjusted against demand for earlier assessment year, interest on said refund was to be allowed.
CIT v Jyotsna Holdings (P) Ltd - [2016] 68 taxann.com 26 (SC)

649. The Tribunal held that confirmation of demand raised under section 201, cannot be sole criteria for imposing penalty under section 271C since proceedings under section 271C and 201 are two separate proceedings. It further held that since the assessee being advised by a professional well acquainted with the provisions of Act had not deducted tax at source, no malafide intention could be imputed to assessee for failure to deduct tax and, accordingly, penalty imposed under section 271C was to be deleted.
Smt. Aishwarya Rai Bachchan v ACIT - [2016] 68 taxmann.com 324 (Mumbai-Trib)

650. The Court allowed assessee's writ and set aside Settlement Commission's order directing levy of interest u/s 234B by revoking its earlier order and reopening its concluded proceedings by invoking Sec 154. The Court relied on the Apex Court ruling in Brijlal wherein it was held that the Settlement Commission had no power to levy interest u/s 234B in respect of concluded proceedings by taking recourse to Sec 154.
Poddar Industrial Corporation vs Income Tax Settlement Commission -TS-169-HC-2016(CAL)

651. The Court held that once the regarding bogus purchases as well as the estimated addition made by the AO, which was the basis of initiating penalty, was set aside by the CIT(A), it could not be said that there was any concealment of facts or furnishing of inaccurate particulars by the assessee that warranted imposition of penalty under section 271(1)(c) of the Act.
Pr CIT v Fortune Technocomps Pvt Ltd – (2016) 96 CCH 0018 (Del)

652. The Tribunal held that where the assessee's return was originally processed under section 143(1) of the Act and later assessed under section 143(3) read with section 147 of the Act, for the purpose of section 234B of the Act, assessment under section 143(3) read with section 147 was to be regarded as 'Regular assessment' and therefore the date of completion of assessment under section 143(3) read with section 147 of the Act would be treated as the end point for charging interest under section 234B of the Act.
Nuts 'n' Spices v ACIT – (2016) 69 taxmann.com 310 (Chennai-Trib)

653. The Apex Court dismissed the SLP filed by the assesee and upheld the decision of the Court wherein penalty was imposed under section 271(1)(c) since the assessee claimed loss on sale of fixed assets as business loss in its original return of income and only filed a revised return disclosing the same as a capital loss when confronted by the AO. It held that the assessee's claim was totally baseless and ruled that penalty could not be deleted on the guise or pretence of an incorrect legal opinion when the claim was contrary to the basic and well known principles of accountancy.
NG Technologies v CIT – TS-255-SC-2016

654. The Court held that penalty under section 271C of the Act would be leviable on the assessee for delay in making payment of the tax deducted and that penalty was not to be waived under section 273B of the Act.
Classic Concepts Home India Pvt Ltd v CIT – (2015) 93 CCH 0442 (Ker)

655. The Court upheld the levy of penalty under section 271C for the assessee's failure to withholding tax under section 194A on interest paid to its sister concerns since the assessee failed to justify its failure to comply with section 194A and therefore was not eligible for the benefit of section 273B of the Act. It held that section 273B of the Act provides that penalty under section 271C of the Act may not be levied if the assessee could substantiate that there was reasonable cause for its failure to withhold TDS and the burden of establishing reasonable casue was on the assessee.
CIT v Muthoot Bankers – TS-326-HC-2016 (Ker)

656. The Court held that penalty under section 271(1)(c) of the Act was to be levied in the case of the assessee since the assessee had showed a non-existing liability as an existing liability in its balance sheet which formed part of the return filed by the assessee with the attempt to escape offering the cessation of liability as income under section 41(1) of the Act. It noted that in the quantum proceedings which were taken up to Supreme Court, one of the assessee's creditors denied existence of liability towards them and another was not found at the address given.
Palkhi Investments & Trading v ITO – TS-333-HC-2016 (Bom)

657. The Court held that where the assessee received a sum of Rs.2 lakh in cash from his son in view of urgent necessity, no penalty under section 271D of the Act could be levied by the AO on account of violation of the provisions of Section 269SS, since there was a reasonable cause for such failure and there was no evidence on record to indicate that the assessee had indulged in any tax planning or tax evasion and there was no evidence on record to show that the infraction of the provisions was with knowledge or in defiance of the provisions.
Dr Rajaram Lakhani – (2016) 96 CCH 0043 (Guj)

658. The Tribunal held that when penalty was levied on wrong claim of set off of earlier year's long term capital gains or short term capital gains, which was a genuine claim but claimed under wrong understanding that assessee had to claim these losses instead of the father of the assessee in whose hands assessee's income used to be clubbed prior to earlier assessment year 2003-04, penalty levied was not sustainable.
Ambika Chauhan v ITO – (2016) 47 CCH 0241 (Mum – Trib)

659. The Tribunal held that where the assessee had filed its return of income within the time limit stipulated under section 139(1), wherein he surrendered the undisclosed income discovered in search proceedings and attended the penalty proceedings wherein all details with regard to cash seized from his locker were given and the AO wrongly ignored all the explanations furnished, penalty under section 271AAA of the Act was wrongly imposed.
Vinod Chander Sinha v ACIT – (2016) 47 CCH 0217 (Del – Trib)

660. The Tribunal held that where on payments received by assessee, payer were required to deduct tax at source u/s 195 and as tax was 'deductible' u/s 195 there was no failure on part of assessee in payment of advance tax and therefore, assessee could not be saddled with burden of interest u/s 234B.
ADIT v Parpool Ltd (2016) 47 CCH 0183 DelTrib

Refund

661. The Court quashed CBDT Instruction No 1 / 2015 dated January 13, 2015 and held that the same could not to be relied upon by the AOs to deny refund to assessees in cases where notice of scrutiny was issued under section 143(2) of the Act. It noted that section 143(1D) of the Act, vide the language used therein viz. 'Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)', provided the AO with discretion to deny refund in cases where notice under section 143(2) of the Act were issued, whereas the CBDT Instruction curtailed such discretion. It observed that where the language used in the legislature conferred discretionary powers to the AO, it could not be contradicted by the CBDT Instruction and that as per section 119(2), CBDT directions / instructions should not be prejudicial to the interest of the assessee.
Tata Teleservices Ltd v CBDT – (2016) 96 CCH 0017 (Del)

Set-off

662. The Court held that where the assessee company was not regularly dealing with shares but indulged in purchase and sale of shares due to certain financial problems of its sister concern, there was no systematic or organized course of activity or regularity in transactions and the purchase being a one-time activity could not be considered as a speculative transaction. It held that where the purchase of shares could not come within the definition of business, it could not be contended that the assessee was carrying out a speculative business and therefore the AO ought to have allowed short term capital loss incurred by the assessee and set off of the same against other business income.
Rajapalayam Mills Ltd v DCIT – (2016) 68 taxmann.com 3 (Mad)

663. The Court held that deemed short term capital gains arising out of sale of depreciable assets that were held for a period to which long term capital gains could apply, the assessee was entitled to claim set off of the said gains against brought forward long-term capital losses and unabsorbed depreciation.
CIT v Parrys (Eastern) Pvt Ltd – (2016) 66 taxmann.com 330 (Bombay)

664. The Court held that where delay of a day in filing return was only due to technical snags of website of department on last date of filing return, such delay was to be condoned and claim of carry forward of losses could not be denied.
Regen Infrastructure & Services (P.) Ltd v CBDT - [2016] 68 taxmann.com 93 (Madras)

665. The Tribunal held that Section 80 requires that return be filed as per section 139(3) to carry forward losses within due date, as envisaged under section 139(1), but section 32(2) is not included within ambit of section 80 for carry forward losses. It accordingly allowed the set of and carry forward of unabsorbed depreciation against the profit and gains of business of

the succeeding year even though for the relevant year, assessee filed its return after the due date by holding that under section 32(2) a legal fiction has been created that unabsorbed depreciation of the earlier year shall form part of current year's disallowance and therefore it shall have to be dealt with accordingly subject to the provision of section 72(2) and 72(3).
ACIT v Anil Printers Ltd - [2016] 68 taxmann.com 365 (Mumbai-Trib)

666. The Tribunal held that while computing total taxable income of EOU, depreciation loss of non-eligible units could not be set off against income of eligible units involved in activity of export.
Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)

667. The Tribunal held that losses in Futures & Option derivative trading business could be set off against short term gains from sale of shares and other income earned by assessee except salary income by virtue of Section 71(2A) of the Act.
Deepak Sogani v DCIT - [2016] 68 taxmann.com 332(Mumbai-Trib)

668. The Tribunal allowed the assessee set off of loss arising from derivative transactions against profit on sale of property and held that the Revenue was incorrect in denying the set off on the ground that the loss arising out of derivative transactions was a tax avoidance scheme against all human probabilities, since there was no clinching evidence to arrive at such conclusion. Following the ruling of the Apex Court in McDowell & Co Ltd, it held that all tax planning was not illegal and that where transactions or arrangements were evidenced by a written agreement it was not possible to rewrite the arrangement without any incriminating adverse evidence.
ITO v PKS Holdings – TS-308-ITAT-2016 (Kol)

669. The Tribunal held that once net result of computation under any head of income, other than 'Capital gains', is a loss and assessee's income is assessable under head 'Capital gains', assessee shall be entitled to set off such loss against his income, under any other head including income assessable under 'Capital gains'.
Opus Reality Development Ltd v ACIT - (2016) 47 CCH 0204 (Del Trib)

Stay

670. The Tribunal, relying on the decision of the Delhi High Court in Pepsi Foods P Ltd v ACIT, held that where the delay in disposing of appeal was not attributanle to the assessee, the Tribunal had the power to grant extension of stay of recovery of outstanding demand beyond a period of 365 days.
SAP Labs India Pvt Ltd v Add CIT – (2016) 67 taxmann.com 78 (Bang)

671. The Court set aside the order of the Revenue, dismissing the assessee application of stay of demand since the order of the Revenue was bereft of any reason and failed to consider the assessee's prima facie case and that the assessee's plea of financial difficulty was not addressed in the order. Accordingly, the Court granted stay of Rs.190 crore demand raised by the AO until final disposal of the appeal by the CIT(A).
Geetanjali Trading & Investment Pvt Ltd v Pr CIT – TS-760-HC-2015 (Bom)

672. The Court held that when it has been proved that the AO refused to acknowledge the stay application submitted by the assessee, it would be in the interest of justice that the application for stay filed by the assessee be heard by another Officer different from the Assessing Officer.
Piramal fund Management Pvt. Ltd v DCIT & Ors - (2016) 95 CCH 88 (Bombay)

673. The Court granted interim stay till disposal preferred by assessee where assessee had paid 25% of demand, which was also admitted by Respondents.
Dr. Pratima Venkatachalam v CIT - [2016] 95 CCH 99 (Madras)

674. The Court held that where appeal was not disposed of within statutorily prescribed period of three hundred and sixty five days from date of grant of initial stay and such delay was not attributable to assessee, tribunal was justified in extending stay on tax demand.
ITO v Anil Girishbhai Darji - [2016] 68 taxmann.com 308 (Gujarat)

675. The Tribunal held that where demand was raised on account of transfer pricing adjustment disallowance of claim u/s 80-IA and disallowance of long term capital loss, in view of fact that tribunal had already granted stay with reference to similar demand raised for earlier assessment years and that huge sums of assessee stood locked up in disputed tax liability of earlier years, stay was to be granted.
Tata Communications Ltd v DCIT - [2016] 68 taxmann.com 316 (Mumbai – tribunal)

676. The Tribunal granted 100% stay of demand in view of CBDT Instruction No. 96 since the assessee, a non – resident received management fee from its Indian subsidiary but assessing officer made assessment at sum 10 times higher than returned income by assessing the 90% of the management fees as the assessee income when in fact the assessee had charged / earned only cost plus 10% mark up. .
Dimension Data Asia Pacific (Pte) Ltd v DCIT - [2016] 67 taxmann.com 326 (Mumbai - Trib)

677. The Court upheld the Tribunals power to grant stay beyond 365 days and held that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and the delay in disposal of the appeal was not attributable to the assessee in any manner, the interim protection could continue beyond 365 days in deserving cases and would not be contrary to section 254(2A) of the Act.
Pr CIT v Carrier Air Conditioning and Refrigeration Ltd – TS-284-HC-2016 (P&H)

678. The Tribunal granted the assessee stay beyond a period of 365 days considering the fact that barring two occasions, all other adjournments were taken by the Revenue on the ground of pendency of appeal and therefore the assessee did not contribute to delay in disposal of appeal. Furthermore, it noted that even if the assessee had not sought adjournment, the matter would not have been disposed of since the previous year's appeal was still pending. It held that where the Tribunal and the AO had granted stay previously, all the conditions for stay being satisfied, no new condition could be imposed for granting further stay.
Google India Pvt Ltd – TS-256-ITAT-2016 (Bang)

Tax Collected at Source

679. The Tribunal held that the sale of de-oiled cake and maize husk did not attract the provisions of section 206C of the Act as they were by products and could not be considered as 'scrap' and therefore there was no default on part of the assessee in collecting tax at source.
DCIT v Gujarat Ambuja Exports Ltd – (2016) 46 CCH 0065 (Ahd)

Unexplained expenses / income / investments

680. The Court held that where evidence of one of two witnesses was by itself sufficient to draw adverse inference against assessee that commission payments made by it were fictitious and the assessee declined to cross examine the said witness on ground that it had to be

preceded by cross examination of other witness, it must follow that assessee had accepted said witness and commission payments were rightly disallowed.
Roger Enteprises (P)Ltd. V CIT - [2016] 67 taxmann.com 344 (Delhi)

681. The Court held that no addition could be made under section 68 of the basis of loose papers found during search in assessee's case indicating assessee's transaction with a company when assessee not only clearly denied having any dealing with said company but also produced all necessary details for Assessing Officer to make necessary inquiries and also furnished a letter from director of that said company stating that it did not have any transaction with assessee.
Pr CIT v Delco India (P) Ltd - [2016] 67 taxmann.com 357 (Delhi)

682. The Court held that where the assessee had (i) made payment for purchase of property in cash without any explanation as to why such amounts were paid by cash (ii) the cash payments were not recorded in the books or record of the assessee (iii) the assessee had admitted in his statement under section 131 of the Act that the source of the cash payments was sale of unaccounted stock and then retracted the statement saying that the cash was received pursuant to loans from three unrelated companies for which no evidence / documentation was provided and (iv) the transactions were carried on outside the books of accounts, the addition made by the AO was to be upheld.
CIT v Harjeev Aggarwal – (2016) 95 CCH 0071 (Delhi)

683. The Tribunal held that where Assessing Officer added an amount in income as unexplained payment made by assessee on basis of a VCD found in famous 'Best Bakery case' without corroborating it with any other evidence, action of Assessing Officer was not justified.
Further, it held that where creditor stated that amount of loan given to assessee was out of savings of seven-eight years of agricultural income but did not produce proof of any agricultural activity, creditworthiness of such creditor was not established and the addition u/s 68 was justified.
Mahendrabhai B. Shrivastav v ITO - [2016] 68 taxmann.com 198 (Ahmedabad-Tribunal)

684. The Apex Court dismissed the assessee's SLP against Delhi HC ruling striking down the Tribunal order wherein the addition made as undisclosed income in the block assessment proceedings was deleted on the ground that bank account deposit became disclosed when Revenue became aware of the same and it ceased to be undisclosed income. HC had remanded matter back to Tribunal for examination of the case on merits and granted liberty to Tribunal to make additions by resorting to Sec.147 in case additions could be made in block assessment proceedings.
Shibu Soren vs CIT - TS-138-SC-2016

685. The Court held that the addition made by Revenue under section 69 of the Act by treating the difference in value of property purchased by the assessee as per the sale deed and the valuation as per the stamp duty authority (on which additional stamp duty was paid) as unexplained investments was not sustainable in light of the Delhi HC rulings in Sadhna Gupta and Puneet Sabharwal wherein it was held that District Valuation Officer's report cannot be a sole basis for assessment of income. It noted that that apart from valuation report by stamp duty authority, there was no independent or corroborative material for consideration paid or received in addition to that mentioned in the sale deed.
SS Jyothi Prakash v ACIT – TS-335-HC-2016 (Kar)

686. The Tribunal held that where the AO / CIT(A) used certain adverse material to make an addition under section 69B in the hands of the assessee without providing the assessee an opportunity to rebut / cross examine the same, the order passed could not be sustained as

the same violated the principles of natural justice. Accordingly, it remanded the matter to the file of the AO.
YS Vidya Reddy v DCIT – (2016) 47 CCH 0222 (Hyd Trib)

Miscellaneous

687. The Court held that where the assessee-companies were registered under Registration of Companies (Sikkim) Act, 1961 but their management and control was wholly with a Delhi based CA firm (wherein The CA firm determined who would be directors of said companies and further blank signed cheque books of assessees together with rubber seals, letter heads and other records were found during search at said CA firm), they would be considered as resident Indian companies under section 6(3)(ii) even prior to application of Income-tax Act, 1961 to Sikkim with effect from 1-4-1990.
CIT v Mansarovar Commercial P Ltd – (2016) 95 CCH 0047 (Delhi)

688. The Apex Court reversed the order of the Rajasthan High Court and disregarded the transfer of shareholding by the assessee company (formed by conversion of a partnership firm holding leasehold mining rights) to third company for consideration observing that though there was nothing wrong in two transactions when viewed separately, but the combined effect and real substance was that the firm holding lease hold rights had successfully transferred the said rights to a third party for consideration in the form of share price which is nothing but price for sale of mining lease which was not allowed without statutory consent as mining rights belong to the State and not to lessee. It held that the doctrine of lifting the veil could be invoked if the public interest so requires or if there was allegation of violation of law by using the device of a corporate entity. ***State of Rajasthan & Ors v Gotan Lime Stone Khanji Udyog (P) Ltd.& Anr - TS-61-SC-2016***

689. The Court held that where an AOP could not be taxed on capital gains income due to the fact that it neither filed its return nor was assessed for the purpose of taxation, the Department could not seek to tax a member of an AOP at a time when the AOP was dissolved and no longer in existence.
Pr CIT v Ind Sing Developers Pvt Ltd – (2016) 68 taxmann.com 359 (Karnataka)

690. The Tribunal held that securities transaction tax collected through a member could be made under a particular client code only which is provided by the members to the brokers and therefore if a member / broker does not collect STT through a client code or has not taken separate client codes in case of an FII then no liability could be fastened on the NSE under section 98 to 100 of the Act.
National Stock Exchange v Add CIT – (2016) 68 taxmann.com 256 (Mumbai – Trib)

691. The Court held that where in order passed under section 245D(2C) Settlement Commission had taken prima facie view that there was full and true disclosure and such view had not been shown to be perverse or arbitrary, High Court could not interfere with the impugned order in writ jurisdiction .
Pr CIT v Income tax Settlement Commission - [2016] 68 taxmann.com 281. (Bombay)

692. The Court held that where Assessing officer attached bank accounts of assessee and withdrew amount therefrom without disposing of stay application filed by assessee, action of assessing officer was not justified and directed the AO to refund back the amount to the assessee within a period of one week.
Khandelwal Laboratories (P) Ltd v DCIT - [2016] 68 taxmann.com 171(Bombay)

693. The Court allowed assessee's writ and quashed Revenue's adjustment u/s 245 of demand pertaining to AY 2008-09 against refund due for subject AY 2006-07, without affording an opportunity of being heard to assessee. The Court noted that although the refund voucher

used the word ‘adjustment to be made’, the refund issued was after the adjustment was made, and rejected Revenue’s stand that it was merely 'withholding' and not ‘adjusting’ part of refund for subject AY, pending ‘verification’ of demand for AY 2008-09. It relied on co-ordinate bench rulings in The Oriental Insurance Company Limited and Glaxo Smith Kline Asia (P) Ltd. to hold that prior to invoking the discretionary power u/s 245 of adjusting demand against refund due, a show cause notice must be issued to assessee;, and directed Revenue to forthwith issue the balance refund to the assessee which was unlawfully withheld.
Vijay Singh Kadam vs CCIT - TS-233-HC-2016(DEL)

694. The Tribunal held that deemed-gift income-addition under section 56(2)(viia) with respect to group company's shares taken-over by assessee (a closely held company) alleged to be at consideration below FMV was to be deleted as while calculating FMV, provisions of section 56(2)(viia) were not properly and correctly applied in assessee's case and the matter was remanded back for reconsideration.
Medplus Health Services (P.) Ltd v ITO - [2016] 68 taxmann.com 29 (Hyderabad-tribunal)

695. The Court allowed deduction u/s 80P to assessee registered as primary agricultural credit society under Kerala Cooperative Society Act, 1969 (‘KCS’) and rejected Revenue’s stand that assessee was a co-operative bank and not a ‘primary agricultural credit society’ and hence hit by embargo u/s 80P(4) (which excludes applicability of Sec 80P(2)(a)(i) to 'co-operative bank' other than ‘primary agricultural credit society’ or a primary co-operative agricultural and rural development bank). It held that the assessee was a “primary agricultural credit society” in terms of Sec 5(cciv) of Banking Regulation Act and also as per ‘KCS’ Act. The Court states that once assesse was held to be a primary agricultural credit society by the competent authority under the KCS Act, it had to necessarily be held that the principal object of such societies was to undertake agricultural credit activities.
Chirakkal Service Cooperative Bank Ltd v CIT - TS-183-HC-2016(KER)

696. The Court allowed assessee’s writ challenging order issued u/s 127(2) transferring its case from Guwahati to New Delhi for centralization of different assessees’ cases on the ground of absence of reason in the show cause notice, and remanded the matter to AO’s file for fresh adjudication. It accepted assessee’s contentions that if centralisation of cases was the objective of the impugned transfer it wasn’t shown that why cases couldn’t be clubbed at Guwahati and further acknowledged that transfer of case may cause inconvenience and monetary loss to the assessee. It further stated that quasi-judicial power u/s 127(2) must be exercised in public interest and by applying the ratio laid down by the Apex Court in Ajantha Industries, held that centralizing of the cases can be for a bonafide objective but the appropriate reason must be disclosed in the notice itself and the failure to do so would vitiate the notice and also the transfer order, consequent upon such inadequate notice.
Shri Mul Chand Malu vs UOI -TS-180-HC-2016(GAUH)

697. The Apex court held that where the assessee had made a number of requests from time to time for the adjustment of cash seized against its advance tax liability, and the department failed to do so, no interest under sections 234A, 234B or 234C of the Act could be charged since the assessee was entitled to adjust such seized cash.
CIT v Sunil Chandra Gupta – TS-244-SC-2016

698. The Tribunal though not agreeing with the view of the Co-ordinate bench wherein the assessee was allowed to net off interest paid to the Department against the interest received from the Department, followed the said order of the Tribunal. It ruled against referring the matter to a larger bench since it was not of wide import. Further, it expressed its reservations that the interest paid and interest received had no nexus and while interest payable on income tax was not deductible as an expense, interest received on refund was

taxable as income from other sources and netting off the two would result in the assessee not paying tax on interest income to that extent.
Lupin Ltd – TS-334-ITAT-2016 (Mum)

699. The Court dismissed the petitioners challenge to the constitutional validity of amendment to section 133(6) introduced by Finance Act, 1995 adding the words 'inquiry', thereby expanding the AO's power to call form information even in cases where no proceedings were pending. It held that the petitioners were incorrect in contending that the amendment led to the violation of 'right to privacy' as right to privacy could not be pleaded as a ground to invalidate a provision of the Act especially where the object of the provision was to get details of financial transactions which could be associated with black money.
Pattambi Service Co Operative Bank LTd – TS-348-HC-2016 (Ker)

700. The Court held that the appellant, official assignee who had brought to sale the assessee's share of the partnership firm and her properties since she was adjudged insolvent, did not have to approach the CDBT for waiver of interest under sections 234A / B / C when a petition for waiver was filed before the Insolvency Court. It held that the Insolvency Court was empowered to grant waiver under Section 7 of the Presidency Towns Insolvency Act, 1909. Further, it held that section 178 of the Income-tax Act, which deals with the obligation of an official liquidator to set apparat amounts payable to the Department, did not deal with the waiver of interest and therefore was not applicable to the instant case.
Official Assignee – TS-318-HC-2016 (Mad)