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

(Pronounced in October 2016)

By Sunil Moti Lala, Advocate

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I. Transfer Pricing

a. ***International transactions / Associated Enterprise***

International transactions

1. The Tribunal held that where the transactions between the assessee and its AE fell within the ambit of the definition of international transaction as provided under section 92B of the Act, then the mere fact that the transactions with the associated enterprise were in relation to projects carried out in India as a result of which the AE was a tax resident of India,would not justify the plea of the assessee that the international transactions ought not to be covered by the transfer pricing provisions since there was no profit shifting / base erosion.
United Engineers (Malasia) Berhad Quorum [TS-827-ITAT-2016 (Bang- TP] (IT(TP)A.1204 & 1205IBang/2012)

Associated Enterprise

2. The Tribunal held that assessee and a Singapore company having a common director were not associated enterprises as the parameters laid down under section 92A(1) and (2) were not satisfied. It held that for enterprises to be associated as per Section 92A, at least one of the 13 conditions prescribed in sub section (2) as per clause (a) to (m) had to be satisfied and that where the common director did not exercise any control over the AE, the mere fact that the assessee and its AE had one common director alone did not establish the AE relationship.
Obulapuram Mining Co Pvt Ltd [TS-847-ITAT-2016(Bang)-TP] (IT (TP) A No.182 (Bang) 2014)

b. ***Most Appropriate Method***

Transactional Net Margin Method

3. The Tribunal held where there was insufficient reliable data for the application of CUP, Resale Price Method and Profit Split Method for the purpose ascertaining direct and indirect cost of production of services, the TPO was justified in adopting the TNMM as the most appropriate method.
iSoft Health Services (I) P Ltd [TS-819-ITAT-2016 (Bang)-TP]

4. The Court held that where transfer pricing officer accepted TNMM applied by the assessee, as the most appropriate method in respect of all the international transactions including payment of royalty, but however disputed the application of TNMM as the most appropriate method for the payment of technical assistance fee and applied CUP on the said transaction, it was not open to the TPO to subject only one element, i.e payment of technical assistance fee, to an entirely different method. **MagnetiMarelli Powertrain India Pvt. Ltd. vs. DCIT (2016) 97 CCH 0037 (Del HC) (ITA 350/2014)**

5. The Tribunal set aside the CIT(A)'s order deleting transfer pricing adjustment on commission income of 10 percent on sales earned by the assessee, made by the TPO by rejecting the Profit Split Method adopted by assessee for benchmarking commission income from its associated enterprise. It disagreed with the CIT(A)'s finding that the TPO had not mentioned conditions prescribed under section 92C(3) triggering transfer pricing provisions and noted that the TPO had stated that comparison of commission under PSM was not proper where the assessee had incurred considerable loss in the commission business (which was ascertained based on the segmental results). It further held that the action of the TPO adopting TNMM and selecting 7 comparable companies was without conducting FAR analysis was flawed and therefore remitted the matter to the file of the TPO to re-determine arm's length price after providing assessee opportunity of being heard.
Bio Rad Laboratories (India) Pvt Ltd. [TS-829-ITAT-2016 (Del)-TP] (ITA No.3284/Del/2010)

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

ITES Sector / Software Development Services

6. The Court dismissed revenue's appeal against Tribunal's order directing exclusion of certain comparables following different financial period and held that it was clear and self evident from the provisions of Rule 10B(4) that the data to be used for comparability analysis should be contemporaneous with the time when international transactions are entered into.
Further, it upheld the Tribunal's exclusion of a comparable on ground of functional dissimilarity coupled with the fact that its related party transactions exceeded 25% filter. Further it held that companies engaged in Engineering and Technical Services could not be compared to the assessee who was engaged in providing routine customer support services.
PTC Software (I) Pvt Ltd [TS-835-HC-2016 (Bom)-TP] (INCOME TAX APPEAL NO.337 OF 2014)

7. The Court upheld the Tribunal's order of excluding comparable which was following different financial period from that of assessee on the ground that no such liberty is granted in terms of Rule 10B(4). It further upheld Tribunal's determination of related party transaction percentage by restricting the denominator to only total sales and not total sales plus total expenses on the ground that related party transactions have to be considered in the context of total transactions and not by a conversion formula. It further confirmed Tribunal's rejection of comparable providing knowledge process outsourcing service on the ground that it requires superior level of man power and human resources as compared to the assessee engaged in BPO service.
PTC Software (I) Pvt Ltd [TS-788-HC-2016 (Bom)-TP]

8. The Tribunal reversed CIT(A)'s order directing combined benchmarking of off-shore software development and on-site software consultancy services provided by assessee to its AEs and held that even in a case where one company itself provides both the said services, the same have to be considered separately while benchmarking the international transactions and fact that the assessee was reimbursed at cost plus 7.5% for off-site services and 15.04% for on-site services itself established that the two services were different from functional and risk perspective. Accordingly, it remitted the issue to the AO with the direction to benchmark the international transactions of provision of software development services i.e. off-site services independent of on-site services.
SAS Research & Development (India) Pvt Ltd [TS-859-ITAT-2016(PUN)-TP] (ITA No.810/PN/2013)

9. The Tribunal held that the assessee, engaged in providing software development services could not be compared to a company engaged in both IT and IT Enabled services in the absence of a segmental break-up of income. It further directed exclusion of companies having undergone extra-ordinary events during the year and companies engaged in providing software consultancy services as they were not functionally similar to the assessee.
Labvantage Solution Pvt Ltd [TS-836-ITAT-2016 (Kol)-TP] (I.T.A No. 1051/Kol/2015)

Investment Advisory Services

10. The Tribunal rejected the separate benchmarking of portfolio management services and held that the same were part and parcel of the non-binding investment advisory services provided by the assessee to its AEs and therefore deleted the addition made on account of performance fee received by the assessee. Further, it held that even if the portfolio management services were to be benchmarked separately, the benchmarking could only be done by carrying out comparability analysis with uncontrolled transactions which was not done in the present case as the TPO had merely taken an ad hoc rate of 0.25 percent as the ALP. Further, the Tribunal noted that the assessee had entered into an APA with the CBDT for future years, where a margin of cost plus 21 percent had been accepted to be at ALP and since the margin of the assessee was cost plus 20

percent for the current year, it was to be accepted as it was at the same range as accepted in the APA.
3i India Private Limited [TS-799-ITAT-2016 (Mum)-TP] (ITA No. 581/Mum/2015)

Others

11. The Tribunal held that 0% related party filter was not practically possible and noted that in light of the view taken by Tribunals, in the normal course 15% was the tolerance range of related party transaction which could be relaxed to a maximum of 25%. Noting that neither the assessee nor the transfer pricing officer had applied related party filter, it remitted the matter to the TPO directing him to verify the RPT of comparable companies by applying a suitable RPT filter not exceeding 25 percent.
United Engineers (Malasia) Berhad Quorum [TS-827-ITAT-2016 (Bang- TP]

12. The Tribunal held that turnover filter could not be applied after applying the qualitative filter, as a tool for cherry picking at later stage of assessment, but was to be applied at the time of the search process.
Star Limited [TS-773-ITAT-2016 (Mum)-TP] (ITA No.7680/Mum/2012)

13. The Court dismissed appeal of revenue against Tribunal's exclusion of comparables for lack of segmental data and held that mere availability of proportion of the turnover allocable for software product sales per se could not lead to an assumption that segmental data was available to determine the profitability of the concerned comparable.
Saxo India Pvt Ltd [TS-790-HC-2016 (Del)-TP] (ITA 682/2016)

14. The Court held that where the Revenue failed to urge the plea that a company was not functionally comparable to the assessee before the CIT(A) or the Tribunal, the same could not be urged before the Hon'ble High Court at a later stage.
PCIT v Nortel Network India Pvt Ltd – TS-770-HC-2016 (Del) – TP

d. ***Specific Transactions***

Advertisement, Marketing and Promotion expenses

15. The Apex Court directed issue of notice and condoned delay in filing of petition in case of revenue's special leave petition against Delhi High Court judgment deleting marketing intangibles adjustment wherein the Court held that in the absence of tangible material put forth by revenue to demonstrate existence of an international transaction involving AMP expense, the question of determining arm's length price did not arise.
Whirpool of India Ltd [TS -784-SC-2016-TP] (CC Nos. 17151/2016)

Loans / Receivables / Corporate Guarantee

16. The Tribunal held that corporate guarantee furnished by assessee to bank for extending loan to subsidiary company is shareholder function not warranting any transfer pricing adjustment on the ground that assessee's expectation from provision of loan and guarantee was not that of a lender or guarantor to earn a market rate of interest or guarantee fee but that of shareholder to protect its investment interest and that transaction of internal loan funding and corporate guarantee were international transactions under section 92B requiring determination of arm's length price.
Tega Industries Ltd [TS-780-ITAT-2016 (Kol)-TP] (ITA No.1912/Kol/2012)

17. The Tribunal upheld the guarantee fee charged by the assessee at 1 percent to be at ALP in respect of the corporate guarantee given by the assessee to its AE. It held that the TPO was incorrect in benchmarking corporate guarantee fee on the basis of difference between credit rating of assessee and associated enterprise and held that the considerations for raising of bonds in Indian market were distinct and incomparable with providing a corporate guarantee to a bank

abroad in respect of loan taken by an AE and therefore the credit rating used for benchmarking the corporate guarantee was without any basis.
Grindwell Norton ltd [TS-793-ITAT-2016 (Mum) – TP] (ITA NO. 523/MUM/2014)

18. Where the assessee had provided its AEs an interest free loan and worked out an interest rate of LIBOR + 100 basis points as ALP pursuant to which it suomotu offered interest income to tax, the Tribunal held that the TPO was not justified in downgrading the credit ratings of the AEs relying on S&P's corporate ratings and arriving at an ALP of LIBOR + 300 basis points as the TPO relied on only 4 out of the 7 ratios relevant to determining the credit rating of the company and that the method adopted by him was unscientific. In light of the evidences submitted by the assessee providing for a different credit rating of its AEs based on a scientific approach, the Tribunal remitted the matter to the file of the TPO to determine the correct ALP of the loan.
Tega Industries Ltd [TS-780-ITAT-2016 (Kol)-TP] (ITA No.1912/Kol/2012)

Royalty / Management fees / Intra Group services / Reimbursements

19. The Tribunal, following the decision of the Court in the case of SGS India, accepted the 3% royalty payment made by assessee to its associated enterprise on grant of license and right to use trademarks at 3 percent of turnover, considering the assessee had received Government approval for royalty rate at 8 percent on exports and 5 percent on domestic sales.
A W Faber Castell (India) Pvt Ltd [TS-798-ITAT-2016 (Mum)-TP] (IT(TP)A No.1018/M/2016)

20. The Tribunal held that where the assessee had paid its AE royalty of 40 percent on its local sales pursuant to which the AE had granted the assessee with a license which was used by the assessee to derive substantial revenues from third parties, it held that the TPO was incorrect in determining the ALP of such payment at Nil as the assessee had not only established the benefit arising out of payment of such royalty but had also duly benchmarked the transaction vis-à-vis uncontrolled parties wherein royalty was paid at 43.75 percent of turnover.
Labvantage Solution Pvt Ltd [TS-836-ITAT-2016 (Kol)-TP] (I.T.A No. 1051/Kol/2015)

21. The Tribunal deleted transfer pricing adjustment in respect of reimbursement of salary & travelling expenses of an employee seconded in the capacity of Managing Director by the associated enterprise to the assessee noting that the assessee was the economic employer of MD and that there was adequate proof of the work performed by the MD and quantum of salary paid viz. sample emails, minutes of meeting and nature of services provided, and therefore it could not be held that no activities had been carried out by MD for the assessee in India. It rejected transfer pricing officer's determination of arm's length price at Nil and held that if a person to whom salary has been paid was not an equity shareholder in either of the associate entities, he did not qualify to be a related party and therefore the payment of salary to an independent person could not be subject matter of benchmarking. It further noted that the Revenue had accepted that the reimbursement was a pure cost to cost transaction without any markup and that the only contention of the Revenue was the legitimacy of the expenditure which was a commercial decision of the assessee and not within the powers of the TPO.
Royal Canin India Private Limited [TS-801-ITAT-2016 (Mum)-TP] (IT(TP)A No 784/Mum/2016)

22. Where the assessee had provided various evidences to corroborate the receipt of intra-group services such as financial, administrative, technical and commercial services from its AE along with the allocation of the costs, the Tribunal held that the TPO was incorrect in determining the ALP at Nil as the assessee had provided adequate documentation. It held that the Revenue was incorrect in disregarding the actual transaction between the parties as the economic substance did not differ from its form.
SKF India Limited [TS-810-ITAT-2016 (Mum)-TP] (ITA No. : 1420/Mum/2016)

23. The Tribunal held that if the intra-group services were inextricably linked with the manufacturing segment, the aggregated margin earned on the overall assets as well as the manufacturing operations would take care of the payment made for intragroup services but also noted that the onus would be on the assessee to demonstrate whether the associate enterprises treated the international transactions as a single transaction or the same was aggregated. Accordingly, it remitted the matter to the file of the TPO to determine whether the intra-group services were

inextricably linked with the manufacturing and overall business carried out by the assessee and that if it was found that all the transactions were to be aggregated, then no separate benchmarking would be required.
SKF India Limited [TS-810-ITAT-2016 (Mum)-TP]

Others

24. Where the assessee, a full-fledged risk bearing entrepreneur, had purchased, at cost, certain promotional items from its AE, which were provided to its customers in India and had been procured mainly for boosting its sales in India and developing the market for Pet Products, the risks and rewards of which were exclusively borne by the assessee, the Tribunal held that the Revenue was incorrect in contending that the assessee had purchased the same for the brand promotion of its AE. It noted that the assessee had purchased items worth Rs.1.12 crores on a sale of Rs.44 crore which was a cost to cost reimbursement and which was reasonable and could not be considered as excessive and therefore it held that no adjustment was to be made.
Royal Canin India Private Limited [TS-801-ITAT-2016 (Mum)-TP] (IT(TP)A No. : 784/Mum/2016)

e. ***Miscellaneous***

Assessment/Reassessment

25. The Tribunal quashed reassessment proceedings and deleted TP addition on the ground that the reference to transfer pricing officer was made prior to initiation of reassessment proceedings when no assessment proceedings were pending and held that such reference was illegal and could not be construed as information having a live link to the formation of belief that income had escaped assessment under section 147.
Labvantage Solution Pvt Ltd [TS-836-ITAT-2016 (Kol)-TP] (I.T.A No. 1051/Kol/2015)

26. Where the quantum of international transactions undertaken by the assessee during the year under review was Rs. 7.78 crore, the Tribunal held that reference made by assessing officer to transfer pricing officer was invalid as it was contrary to CBDT Circular which provided that no reference could be made to the transfer pricing officer for determining arm's length price if quantum of international transactions was less than Rs. 15 crores. It further held that CBDT being administrative body to administer the direct tax laws, instruction issued by it is binding on all the lower authorities.
Sensiple Software Solution Pvt Ltd [TS-824-ITAT-2016 (CHNY)-TP] (ITA No.556/Mds/2015)

27. The Tribunal rejected assessee's contention that draft assessment order was passed without regard to the internal instruction issued by the Department that no transfer pricing adjustment is to be made in a routine manner when the quantum of international transactions with associated enterprises is less than Rs. 15 crores and held that where international transactions were referred to transfer pricing officer with prior permission of CIT, then nothing in section 92A prohibited making of such reference and the instruction was only an internal matter of guidance to officers and there was no statutory prohibition to the making of such reference or the passing of a transfer pricing order based on such reference.
iSoft Health Services (I) P Ltd [TS-819-ITAT-2016 (Bang)-TP] (IT(TP)A.1256IBangI20 12)

28. The Tribunal admitted additional evidence filed by assessee in the form of Advance Pricing Agreement wherein it was accepted that the assessee was a contract manufacturer only post financial year 2010-11 and remitted the matter to the file of the TPO who had treated the assessee as a contract manufacturer for years prior to FY 2010-11. It noted that the nature of business would have considerable bearing on determination of arm's length price and since the same could not have been furnished before lower authorities, the additional evidence was to be admitted.
Lotus Footwear Enterprises Ltd [TS-804-ITAT-2016 (Chny)- TP] (I.T.A.Nos.779/Mds/2014, 801/Mds/2015 & 810/Mds/2016)

29. The Court dismissed the assessee's petition challenging the reference made by the AO to TPO on the ground that it was in contravention of the CBDT Instruction No 3/2016 and noted that as per law it was necessary for the AO to decide the objections, if any, to the applicability of Chapter X before referring the transactions to the TPO as also before determining the ALP of international transactions himself and that in the instant case, the AOs satisfaction recorded contained sufficient reasons and that the AO had clearly indicated the relationship between the Petitioner and the other parties and made a comparative chart pursuant to which he alleged that the sales were under invoiced. It held that the course of action adopted by the AO was sufficient to refer the matter to the TPO and therefore the Petitioner was incorrect in challenging the reference.
As regards the service of order, the Court held that the contention of the assessee that the reference was void ab initio on account of non-service of the satisfaction note prior to making reference to TPO was misplaced as the failure to supply the satisfaction note prior to reference was a mere irregularity and did not prejudice the Petitioner in any manner whatsoever.
Shri Vishnu Eatables (India) Limited [TS-795-HC-2016 (P&H)-TP] (Civil Writ Petition No. 13613 of 2016 (O&M))

30. Where the assessee had merged with another entity w.e.f from April 1, 2012 and the AO / DRP had passed orders dated December 24, 2014 against the non-existent entity, pursuant to which the assessee filed appeals in the name of the non-existent entity, which was later substituted, the Tribunal dismissed the appeal filed by the assessee and held that when an appeal was filed in the name of a non-existent company, there could not be any substitution during the pendency of the proceedings. It held that the appellate proceedings initiated by a non-existent company before the Tribunal could not survive at all and therefore there was no question of substitution of any existent company in the place of a non-existent company.
Zenta Knowledge Services (P) Limited [TS-787-ITAT-2016 (Chny)-TP] (ITA No.882/Mds/2015)

Stay of demand

31. The Tribunal, relying on its earlier orders, rejected assessee's petitions seeking stay against demand on the ground that demand arose due to transfer pricing adjustment which is factual matter and therefore the same could not be a fit case for granting stay. Further, with regard to the contention of the assessee that it was facing coercive action for recovery of amount and there had been a delay in hearing due to non-functioning of the bench, it held that since the assessee did not bring on record any material to show that any imminent coercive action was taken by the Revenue, there was no change in facts vis-à-vis facts prevalent at the time of rejection of stay vide earlier orders of the Tribunal and accordingly dismissed the petition.
KaypeeElectroncis& Associates Pvt Ltd [TS-828-ITAT- 2016 (Bang)-TP] (IT (TP) A Nos. 132 & 159/Bang/2016)

Others

32. The Tribunal held that in case where assessee had suo moto disallowed franchise fees paid to associated enterprise on account of non-deduction of TDS under section 40(a)(i), the TPO was incorrect in making a TP addition on the same as it would amount to a double addition. Further noting that the TPO proceeded to decide the issue on merits and contended that the assessee should be precluded from claiming such expenditure in future, it held that such an approach by the TPO was incorrect as he could not pass an advance ruling for subsequent years.
Royal Canin India Private Limited [TS-801-ITAT-2016 (Mum)-TP] (IT(TP)A No. : 784/Mum/2016)

33. The Apex Court heard special leave petition filed by revenue against Delhi High Court decision in Cargill Foods India Limited wherein High Court had accepted commodity exchange quotations as valid CUP for benchmarking assessee's international transaction of import of Soyabean and sunflower oils and directed the revenue to get instructions as to whether CUP Method had been accepted by transfer pricing officer in subsequent assessment year's by accepting quotation for benchmarking international transaction, posting the SLP admission hearing after 4 weeks.
Cargill Foods India Ltd [TS-866-SC-2016-TP] (CC No(s). 19007/2016)

II. International Tax

a. Royalty / Fees for technical services

34. The Tribunal held that revenue earned by assessee, a resident of Finland from management support and other services rendered to its Indian group concern were not taxable as fees for technical services under the provisions of Article 13 of India-Finland DTAA on the ground that such servicesdid not make available technology or technical knowhow to the recipient to function on its own without the dependence of the assessee.
OutotecOyj [TS-569-ITAT-2016 (Kol)](I.T.A Nos. 558/Kol/2014 & I.T.A Nos. 462/Kol/2015)

35. The Tribunal held that amount received by assessee of Rs. 23.77 cr (out of total receipts of Rs. 33 crore), a UK based event management company pursuant to contract with BCCI for providing assistance in organizing Indian Premier League (IPL) cricket tournament was taxable as fees for technical services under Article 13 of India-UK DTAA on the ground that assessee had made available the procedures, agreements for organizing IPL by virtue of which BCCI would be able to carry on the IPL events subsequently.
International Management Group (UK) Ltd. [TS-545-ITAT-2016 (Del)] (ITA No.1613/Del/2015)

36. The Tribunal held that payment made by assessee to its Malaysian subsidiary for carrying out clinical trial and R&D pursuant to Product Development agreement with Cipla constituted fees for technical service under Article 13 of India-Malaysia DTAA and TDS was required to be deducted under section 195 since the services provided by the Malaysian subsidiary were of technical nature and the DTAA between India and Malaysia did not contain the make available clause.
Stempeutics Research Pvt. Ltd. [TS-560-ITAT-2016(Bang)] (I.T.(I.T) A. No.1450/Bang/2013 & 1196/Bang/2014)

b. Withholding tax

37. The Tribunal upheld CIT(A)'s order deleting disallowance made by the AO under section 40(a)(ia) of the Act on account of non-deduction of tax on selling expenses paid to non-residents since the payments made to the said non-resident parties were for the purpose of marketing and consultancy services rendered outside India and the said payments were not exigible to tax deduction at source u/s 195 of the Act as there was no income accruing or arising in India in the hands of the said non-resident parties in view of Section 9(1)(vii) of the Act read with Section 90(2) and the treaty provisions as per the India-USA DTAA..
ITO vs. Annik Technology Systems P.Ltd. (2016) 48 CCH 0132 (Delhi Trib.) (ITA No. 4763/DEL/2012)

38. The Tribunal held that provisions of section 195 of the Act do not apply to transaction between one non-resident to another non-resident. Further, it held that if the non-resident assessee is not liable to pay advance tax then there is no question to levy interest under sections 234B and 234C of the Act.
Star Limited [TS-773-ITAT-2016 (Mum)- TP]

39. Where the assessee had duly deducted tax at source during the relevant year on the payments for which disallowance under section 40(a)(i) was made on account of non-deduction of tax in the prior year, the Tribunal allowed assessee's claim of reversal of disallowance made in light of proviso to Section 40(a)(i) of the Act.
Star Limited [TS-773-ITAT-2016 (Mum)- TP]

III. Domestic Tax

a. ***Income from House Property***

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

b. ***Business Income***

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

c. ***Deductions***

Section 32

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

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

44. Where the assessee had acquired a brand from its associate and claimed depreciation on the said brand subsequent to which it amalgamated with the said associate company, the Tribunal held that the Revenue was not justified in denying depreciation on the brand on the ground that there was no requirement for assessee to purchase the brand separately as the associate company itself was amalgamated with assessee and claim of depreciation was a colourable device. It noted that the brand was acquired by assessee prior to amalgamation, the payment for which was through banking channel and accordingly held that the assessee was eligible for depreciation as claimed.
Emerald Jewel Industry India Ltd [TS-573-ITAT-2016(CHNY)] (ITA No.1811/Mds/2015)

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

Section 36

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

Section 37

47. The Tribunal allowed the assessee, a partnership firm, deduction under section 37 for license fee paid by it to Remfry& Sagar Consultants Pvt. Ltd (RSCPL) for use of goodwill of Dr. V. Sagar and dismissed the contention of the Revenue that the transaction was a sham transaction adopted to transfer profits of the assessee law firm to the children / family members of Dr. V. Sagar who held majority shares in RSCPL. It noted that the assessee was formed to continue the practice of Dr.V Sagar and in order to institutionalize the goodwill in the firm built over 175 years, the same was gifted to RSCPL, pursuant to which the assessee paid a license fee to RSCPL to use the said goodwill. It held that Dr. V. Sagar had arranged his affairs in such a way that the goodwill earned by him over the years was enjoyed by his legal heirs and such a well-considered and thought out arrangement could not be said to be a colourful device. It further rejected revenue's contention that goodwill was attached to the persona of Dr. V. Sagar and in view of Advocates Act, goodwill in profession could not be sold to a company which did not have a right to carry on practice and clarified that it had no power or authority to adjudicate on whether the gift of goodwill by Dr.V.Sagar of his profession of law to a company was in violation of the Advocates Act, 1961 or the Bar Council Rules.
Remfry& Sagar [TS-563-ITAT-2016(DEL)] (I.T.A .No.-1561/Del/2011)

48. The Tribunal held that where the assessee paid commission fees to foreign agents and failed to produce evidence of services rendered by commission agent or how the agents helped the assessee to procure orders, disallowance of commission was justified. It observed that the invoices, evidence of payment and agreement with agent (which did not contain any date, complete name of signatory, and was not registered) did not demonstrate how the expenditure was incurred for the purpose of the assessee's business.
However, in respect of commission payments to Indian parties, it upheld CIT(A)'s order allowing the commission on the ground that the books of accounts of assessee were audited, the assessee had provided PAN of agents, tax was deducted on the said payments and the fact of receipt of service from the said agents was also undisputed.
ACIT vs. Desai Fruits & Vegetables Pvt. Ltd. (2016) 48 CCH 0126 (Ahd Trib.) (ITA No. 1707/Ahd/2012)

49. The Court by following the decision in CIT v Modi Xerox (2012) 344 ITR 407 (All), upheld the order of the Tribunal wherein it was held that lease rental paid by assessee for use of machinery was to be allowed as deduction where such asset was used for the business of the assessee and rejected the contention of the Revenue that the payments were financial arrangements which were given the colour of sale and lease back.
CIT vs. Mansurpur Sugar Mills Ltd. (2016) 97 CCH 0209 (All HC) (ITA No. 390 of 2006)

50. The Court held that whether an assessee was entitled to particular deduction or not would depend on the related provision of law and not on the existence or absence of entries in the books of account (relying on the decision of Kedarnath Jute Manufacturing Co.Ltd. v. CIT (SC)). It further held that the contributions made by the assessee to the molasses reserve fund were made under the Molasses Control (Regulation of Fund For Erection of Storage Facilities) Order, 1976 and, therefore, such amount being a statutory charge, was allowable as a deduction.
CIT vs. Mansurpur Sugar Mills Ltd. (2016) 97 CCH 0209 (All HC) (ITA No. 390 of 2006)

Section 35

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

Section 40A(2)

52. The Court upheld the view of Tribunal wherein it was held that it was for the businessmen to decide what expenses are essential in the conduct of their business and the AO could not enter into the shoes of a businessman and decide what expenses he should or should not incur for the purpose of business. Further, where the AO had not brought any material on record to prove how the management services charges incurred by assessee were excessive or unreasonable, disallowance under section 40A(2) was unjustified.
CIT vs. Mansurpur Sugar Mills Ltd. (2016) 97 CCH 0209 (All HC) (ITA No. 390 of 2006)

Section 43B

53. The Tribunal held that employee's as well as employer's contribution to provident fund were allowable as deduction under section 36(1) (va) provided the assessee makes the payment before due date of filing of return of income.
Teck Bond Laboratories Pvt. Ltd.vs.DCIT(2016) 48 CCH 0105 (HydTrib) (ITA No. 1558/Hyd/2014)

Section 14A

54. The Tribunal held that under section 14A r.w.r 8D(2)(iii) disallowance has to be computed only on the average value of investment giving rise to exempt income and as growth fund do not yield exempt income, they were to be excluded from the average value of investment for computing disallowance under rule 8D(2)(iii).
Pinebridge Investment Asset Management Company India Pvt. Ltd. [TS-566-ITAT-2016(Mum)] (ITA no.1568/Mum./2014)

Chapter VIA

55. Where the assessee had claimed deduction under section 80IB (10) and disallowance was made on the ground that open space attached to penthouse, could not be included in term 'balcony' , the Court held that builtup area would include inner measurements of a residential unit on the floor level added by thickness of a wall as also projections and balconies but would exclude the common areas shared with other residential units. The moment a certain area is not shared but is exclusively assigned for the use of a particular residential unit holder, would not mean that such area would automatically be included in the builtup area. It also held that in order to be part of the builtup area, the same must be part of the inner measurements of a residential unit or projection or balcony and the open terrace space on the top floor of a building would not satisfy this description and will also not be covered in the expression balcony.
CIT vs. Amaltas Associates (2016) 97 CCH 0018 (Guj HC) (TAX APPEAL NO. 1372 of 2011)

d. **Income from Capital Gains**

56. The Tribunal held that section 45(3) would only apply in respect of capital asset transferred by partners to the firm as their capital contribution and would not apply to cases where partners of a

firm introduced land into the partnership business as a current asset which was accounted for as a current asset and not a capital asset by the firm as well.
ITO v. Orchid GrihaNirman (P.) Ltd. [2016] 74 taxmann.com 187 (Kolkata - Trib.) (IT APPEAL NO. 2269 (KOL.) OF 2013)

57. The Tribunal held that receipt of money by assessee, a land owner, under land development agreement with a developer, for making all procedural compliances in respect of its land declared as 'slum area' did not result into transfer under section 2(47)(v) as the possession of the land was to be given to developer only upon fulfillment of certain conditions i.e. sanctioning of scheme by Slum Rehabilitation Authority and obtaining the 'letter of intent' and other requisite permissions from the Competent Authorities since the important condition of transfer u/s 2(47)(v) was not fulfilled viz, neither possession was parted with nor agreement was registered,.
Jawaharlal L. Agicha [TS-551-ITAT-2016(Mum)] (ITA NO.1844/Mum/2012)

58. The Tribunal held that while computing capital gains on sale of inherited property indexation would be allowed from the year in which the property was purchased by the previous owner and not from the year in which property was inherited by assessee as on the conjoint reading of section 2(42A), 47(iii), 49(1)(ii)(iii) and 55(2)(b)(ii), no transfer of a capital asset is considered to take place on inheritance and succession and since for applying other provisions relating to computation of capital gains, period of holding and cost incurred by the previous owner is to be considered, then it would be improper to apply only the cost inflation index, applicable to the year of inheritance.
Sudip Roy [TS-572-ITAT-2016(Kol)] (ITA No.2864/Kol/2013)

59. The Court held that where the assessee was unable to utilize the capital gains arising on transfer of land in construction of a residential house within the prescribed period of 3 years as per section 54F and a condonation application was made to CBDT under section 119 for extension of time as construction could not be completed on account of interim prohibitory orders of Court, the delay could not be condoned on the ground that conditions under section 54F were not complied on account of circumstances beyond the control of the assessee and the powers of the Board under section 119(2)(c) could be invoked by assessee only till the time deduction could be claimed under section 54F and not till perpetuity.
Shivinder Singh Brar, Karta HUF [TS-544-HC-2016 (P&H)] (C. W. P. No. 12979 of 2015)

60. The Tribunal held that stamp duty valuation as on date of agreement was to be considered and not as the date of execution of the sale deed in light of the amendment introduced to section 50C with retrospective effect and deleted addition under section 50C. It held that once it was undisputed that a statutory amendment is being made to remove an undue hardship to the assessee such an amendment had to be treated as curative and hence retrospective in nature.
Dharamshibhai Sonani [TS-549-ITAT-2016 (Ahmd)] (I.T.A. No.1237/Ahd/2013)

61. The Apex Court held where a partnership firm was dissolved and assets of the firm were sold on a going concern basis to another AOP and the assessee partner received his share on sale of firm, the assessee was liable for capital gains tax. It rejected assessee's contention that it has to be treated as slump sale under section 50B and in absence of provisions relating to mode of computation at the relevant time, no capital gains tax was payable since there was a specific and separate valuation for land as well as building and also machinery. It further held that business income would be assessed in the hands of AOP who took over the firm and not in the hands of the assessee.
VatsalaShenoy [TS-562-SC-2016] (Civil Appeal No 1234 of 2012)

62. The Court held that capital contribution in the form of immovable properties, stocks, shares by assessee company to partnership firm was not a taxable transfer for years prior to assessment year 1988-89 and was not used as a device to convert an asset into money for evading capital gains tax since the partnership firm was engaged in the business of dealing in immovable properties and securities.
Jamnalal Sons Ltd. [TS-547-HC-2016 (Bom)] (Income Tax Reference No of 225 of 1999)

63. The Tribunal held that short term capital loss arising from STT paid transactions could be set off against the capital gain arising from non STT transactions and that merely because the two set of transactions were liable for different rate of tax, it would not be said that income from these transactions did not arise from similar computation as computation in both the cases were made under the same provisions.
Neelima Maheshwari vs. JCIT (2016) 48 CCH 0123 (Jaip Trib) (ITA No. 473/JP/2015)

64. The Tribunal held that where assessee is not able to invest capital gains in purchasing residential house or in constructing house within the period stipulated in section 54F(1), the amount should be deposited in the capital gains account duly notified by Central Government in order to avail the benefit of section 54F.
Sanjay K.Rana vs. ITO (2016) 48 CCH 0129 (AhdTrib) (ITA No. 996/Ahd/2014)

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

Assessment

65. The Tribunal held that assessment would be **invalid** if notice is not issued under section 143(2) was issued even if **the** assessee participates in proceedings **notwithstanding the provision of section 292BB**.
Travancore Diagnostics (P.) Ltd. v. ACIT ([2016] 74 taxmann.com 239 (Kerala)) (IT APPEAL NOS. 221 AND 228 OF 2015)

66. The Court allowed the asssessee's writ challenging CIT's order dismissing assessee's application u/s 119(2)(b) seeking refund of advance tax paid for AYs 2004-05 and 2005-06 on ground of delay, noting that the assessee was suffering from huge loss for a considerable period of time and was not in a position to engage a proper accountant for preparing accounts and thus there was genuine hardship, warranting condonation of delay. Referring to Sec 119(2)(b), the Court held that the CIT has powers to condone delay on account of genuine hardship and there was sufficient cause for delay condonation in the instant case. It further held that if the amount claimed was not refunded, the assessee's losses would be much more than what was computed presently and therefore directed the Revenue to process refund.
Beta Cashews and Allied Products Pvt. Ltd. [TS-577-HC-2016(KER)] (WP(C).No. 18010 of 2012 (A))

67. The Court held that as long as the certificate of VDIS is in force, the income which is subject matter of the certificate cannot be taxed not only in the hands of declarant but also in the hands of other person and once VDIS was accepted as correct and genuine, the income could not have been added once again in the hands of the assessee.
CIT vs. Rajeev Gupta (2016) 97 CCH 0034 (All HC) (ITA No. 375 of 2006)

68. Where the assessee was under severe financial crisis and had to close down his business, cancel his registration under Kerala VAT Act and was involved in cases for dishonor of cheques as a result of which he could not file its return on time, the Court condoned delay in filing of return where the assessee made application to the Commissioner to condone the delay in accepting the returns under Section 119 (2) (b), within six years.
M. Rajan vs. Principal CIT (2016) 97 CCH 0033 (Ker HC) (WP (C) No. 14424 of 2016)

69. The Apex Court held that transfer of case made by CIT under section 127 from Income-tax Officer (Tamil Nadu) to ACIT (Kerala) as not justified and authorized under section 127(2)(a) of the Act on the ground that for complying with the provision of section 127(2)(a) the assessing officer from whom the case is to be transferred to another assessing officer to whom the case is transferred are not subordinate to the same DGIT/CCIT/CIT and there should be agreement between the two DGIT/CCIT/CITs to whom such assessing officers are subordinate where as the counter affidavit filed by the Revenue did not disclose whether such agreement was reached. It further held that absence of disagreement could not tantamount to agreement as visualized under Section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners of Income Tax which was conspicuously absent.

Noorul Islam Educational Trust [TS-575-SC-2016] (SLP No. 13968/2015)

70. The Court quashed order passed by Income-tax Settlement Commission rejecting assessee's application for withdrawal of settlement-application in view of certificate issued under Kar Vivad Samadhan Scheme, 1998 (KVSS) where Settlement Commission rejected assessee's request for withdrawal on the ground that application once made cannot be withdrawn **since the** assessee's declaration was accepted and assessee had paid tax arrears and order was not passed by Settlement Commission.
HasmukhlalThakordasDalwala [TS-555-HC-2016 (Guj)] (Special Civil Application No. 3759 of 2010 with 7784 of 2010)

71. The Court allowed assessee's writ, challenging letter issued by Revenue expressing its helplessness to process the e-return of income under section 143(1), in view of technical glitch encountered. It noted that as per section 143(1) of the Act, the AO was required to process the return by sending an intimation to the assessee which was not done in the instant case due failure in technology employed by the Department. It held that the use of technology was to assist the Department in functioning and not cause inconvenience to a large number of taxpayers and accordingly directed the CCIT to resolve the issue or come up with an alternative so that the return can be processed by the AO under section 143(1).
Shapoorji Pallonji and Co. Pvt. Ltd. [TS-570-HC-2016(BOM)] (W.P. No 2424 of 2016 with 2425 of 2016)

72. Where conviction order was passed by Criminal Court against the assessee and assessee was penalised and prosecuted by the Department for belated filing of the returns which resulted in a conviction by imposing rigorous imprisonment for 6 months and assessee's representation to the Honourable Finance Minister requesting for exercising his powers and compounding the assessee's case was rejected, on the ground that it was not a deserving case, the Court directed CCIT to consider compounding application of assessee, on the ground that the Petitioner was a senior citizen and had paid entire tax and the order of conviction passed against the petitioner had been suspended by the Sessions Court.
R. Inbavalli [TS-564-HC-2016(MAD)] (W.P. (C) 3665/2015)

73. Where gross profit of assessee was reduced substantially as compared to the preceding year on account of wrong estimates of closing stock which resulted in overstatement of the same in the preceding year as compared to current year, the Tribunal held that as the assessee could have rectified such mistake in preceding Financial Year by revising its return, correcting financial statement and getting it duly certified by auditors which it did not do, the revenue was justified in rejecting the assessee's books of accounts and making addition on estimate basis.
Sabhaya Corporation vs. Deputy Commissioner Of Income Tax(2016) 48 CCH 0110 (AhdTrib) (ITA No. 706/Ahd/2014)

74. **F**or the purpose of deciding maintainability of settlement application vis-à-vis pendency of a case, the Court held that a case would be pending only as long as the order of assessment is not passed, once the assessment is made by the assessing officer by passing the assessment order, the case can no longer be stated to be pending and the application for settlement would be maintainable only if filed before the said date, **the** date of dispatch or service of order on the assessee would not be material for such purpose.
Shalibhadra Developers v. Secretary [2016] 74 taxmann.com 152 (Gujarat) (Special Civil Application No.7256 & 7412 OF 2016)

Reassessment

75. The Court held that non-supply of reasons recorded for reopening the assessment by the assessing officer renders the reassessment order bad **in law**.
CIT vs. IDBI Ltd (Bombay High Court)

76. The Court held that reasons recorded by the AO **must be** based on some material which ha**s** a bearing or nexus with escapement of income, else the notice would be without jurisdiction. **F**urther where the AO had incorrectly classified the assessee as a supplier of the equipment when in fact

the assessee **had only** insured the equipment, **the Court** held that the notice for reopening assessment on the ground that the assessee had not offered income from sale of equipment was without any legal basis or justification.
DIT (IT) V Doosan Heavy Industries & Construction Co – [TS- 567-HC-2016 (BOM)] (ITA NO 670 OF 2014)

77. The Tribunal held that the basic requirement **for re-opening of assessments was** that **the** assessing officer must apply his mind to the materials **on record** in order to **formulate** reasons to believe that the income of the assessee **had** escaped assessment in case **and** where no proper satisfaction was recorded by assessing officer and notice under section 148 was issued on the basis of information received from DIT(inv.) Wing that assessee had taken accommodation entry, **re-opening of assessment was bad in law.**
Sonia Chowdhry vs. Income Tax Officer (2016) 48 CCH 0115 (DelTrib) ITA Nos. 2036 & 2037/Del/2010

78. Where, based on the statement of assessee recorded under section 131 by DDIT (Investiagation) during proceedings of his HUF, the AO reopened assessment of assessee alleging that value of land was unexplained investment by assessee who had already shown the said land in the revised computation of HUF and taxes were paid by HUF, the Tribunal held that at the time AO recorded reasons for reopening of assessment he was not in possession any material in the individual case of assesssee and once the same had been considered in hands of HUF, it could not be considered in the hands of assessee again and therefore quashed the reassessment order.
Karshanbhai Dahyabhai Kakadia vs. Income Tax Officer (2016) 48 CCH 0116 (AhdTrib) (ITA No. 2011 and 2012/Ahd/2013)

79. The Tribunal held that where assessing officer at the point of time when he recorded reasons was not having the material available to apply his mind and form a belief that income has escaped assessment the re-assessment proceedings were bad in law and liable to be quashed.
Sanjay Gupta vs. ITO (2016) 48 CCH 0124 (Del Trib) (ITA No. 3566/Del/2016)

Revision

80. The Court held that in order to maintain an order under Section 263 of the Income-tax Act, the Commissioner must examine the assessment records and should give an opportunity of hearing to assessee and then only he could pass an order. Failure to comply with the conditions as mentioned in Section 263 of the Act would render the very notice bad as well as the subsequent order bad in law.
CIT vs. Sahara India Mutual Benefit Col Ltd. (2016) 97 CCH 0035 (All HC) (ITA Defective No.112 of 2000)

Search

81. Where during the search and seizure proceedings of assessee's husband, search of a bank locker was conducted and assessee's jewellery was seized and even after various representations made by the assessee for the release of the jewellery, the AO retained the same on the argument that the same would be detained till the assessee's husband's tax demand was satisfied, the Court held that refusal of the revenue to release the jewellery seized even after request by assessee constituted deprivation of property without lawful authority and was contrary to Article 300-A of Constitution of India. Accordingly, it issued directions for the release of the jewellery.
Sushila Devi vs. CIT (2016) 97 CCH 0032 (Del HC) (W.P. (C) 7620/2011)

82. The Court held that action of the Revenue in issuing notice under section 158BC despite the appraisal report clearly stating that no incriminating material was found was highly deplorable as it amounted to harassment of the taxpayer and that the Officers could not act on their whim and fancy. It held that the Dept should adopt a Standard Operating Procedure to provide adequate safeguards before issuing notices under Chapter XVIB of the Act and directed the Chief CIT to pay costs to the assessee.
Dr. Gautam Sen vs. CCIT (Bombay High Court) (W.P. No. 1344 of 2000)

83. Where during search and seizure, assets of assessee were seized, but, the block assessment had been set aside, the Court held that the attitude of revenue in not returning seized assets despite assessee having succeeded in appeal was clearly arbitrary and showed an attitude of causing undue harassment to the assessee. It held that interest of public revenue did not authorize Revenue Authorities to work without any authority and create or cause all kinds of harassment to innocent people on the pretext of statutory authority.
Shreemati Devi vs. CIT (Allahabad High Court) (Writ Tax No. - 805 of 2013)

f. **Withholding tax**

84. Even though the basis for incurring expenditure on commission was proved and payment was made through banking channels on which TDS was also deducted, the Tribunal disallowed commission paid by assessee to an individual for procuring business for assessee on the ground that it failed to prove genuineness of existence of the party.
Transport Corporation of India Ltd. [TS-542-ITAT-2016 (HYD)] (ITA No. 117/Hyd/2016)

85. The Tribunal upheld disallowance for TDS default under section 40(a)(ia) and held that payment made to each lorry owner /driver in excess of Rs. 50,000 for transporting iron-ore was subject to TDS under section 194C. It rejected assessee's contention that the payment against each bill/GR to each truck has to be considered as a separate contract and therefore no TDS was applicable on individual payment for each GR less than Rs. 50,000 on the ground that nature of hiring of transporters/contractors was on a permanent and continuous basis throughout the year and not on a task-basis and held that even though payment had been split by separate invoices **as** the basis of payment was per M.T. of iron ore and therefore per trip per truck became irrelevant for the purpose of payment and accordingly payment had to be aggregated for the purpose of section 194C(3) of the Act.
Sri Shivamurthy [TS-565-ITAT-2016(Bang)] (I.T.A. No.553/Bang/2014)

g. **Others**

Appeals

86. Where the assessee did not press a ground of appeal before the Tribunal on the ground that it was advised that there were prior Tribunal orders directly against it but filed a miscellaneous application before the Tribunal to re-hear the matter on merits, consequent to a favourable High Court order, which was rejected on the ground that there was no mistake apparent from record, the Court held that though there was no mistake on the part of Tribunal, considering the incorrect advice received by the assessee and apparent fact that the Tribunal was not aware of the High Court order which otherwise would have been brought to the notice of the assessee, the Tribunal was to reconsider the application under section 254.
Binaguri Tea Company Pvt. Ltd. vs. Deputy Commissioner Of Income Tax (2016) 97 CCH 0015 (Kol HC) (G.A.No.2250 of 2016 & ITAT No.304 of 2016)

Deemed Dividend

87. The Court held that where the assessee received advances from a company engaged in the business of investment and finance, the advances were given in the ordinary course of business and therefore would fall within the exception clause (ii) of section 2(22)(e) of the Act and could not be considered as deemed dividend**.**
CIT vs. Goel Investment Ltd. (2016) 97 CCH 0036 (All HC) (ITA No. 419 of 2006)

88. The Tribunal held that the AO was justified in making addition of deemed dividend under section 2(22)(e) where the assessee failed to substantiate his claim that he was no longer holding more than 10 percent of the shareholding of company on account of transfer of the said shares, since neither was the transfer of shares and consequent long term capital gains reflected in his return of income nor was there any other evidence to substantiate his claim.

M. Khalid vs.Assistant Commissioner Of Income Tax (2016) 48 CCH 0134 (Cochin Trib) (ITA Nos. 346-351/Coch/2016)

Income from Charitable Trust

89. The Tribunal held that the DIT(E) was not justified in cancelling registration of the assessee, a society registered for charitable purpose, with the object of promoting cricket for men, on the ground that the assessee derived income from various commercial sources and therefore lost its character as the charitable society as per first proviso to section 2(15) and also that it had conducted cricket match for women which was against the objects of the trust. It held that even if the assessee did carry on commercial activities for advancement of any other object of general public utility and its turnover was less than prescribed limit, it did not lose its charitable nature as per first proviso to section 2(15). It noted that to claim exemption under section 11, assessee had to be carrying on charitable activities and had to prove that it applied its income for charitable purposes and there was no limitation that assessee should not make any profit out of its activities. Even if it was held that conducting matches for women was against the object of trust only the exemption could be denied in respect of such income but registration could not be cancelled.
Hyderabad Cricket Association vs. Commissioner Of Income Tax(2016) 48 CCH 0119 (HydTrib) (ITA No. 649/Hyd/2015)

90. The Tribunal held that first proviso to Sec 12A(2) inserted vide Finance Act, 2014 (which provides for roll-back of registration for earlier years) as retrospective and remedial in nature and allowed assessee-trust exemption under section 11 for years prior to grant of registration under section 12A.
Shushrutha Educational Trust [TS-561-ITAT-2016(Bang)] (ITA NosA18 to 421IBang/2012)

Interest / Penalty

91. The Court dismissed the writ filed by the Petitioner and upheld the order of the Chief Commissioner denying interest on income-tax refund under section 244A for the period of delay which occurred in curing defects in the Petitioner's TDS certificates. It held that while the obligation to provide TDS certificates was on the deductor, if there was any defect in the certificate which was not cured by the payee viz. Petitioner before filing of the return, the delay would be considered to be caused by the Petitioner. It clarified that refunds would only be due upon finalization of returns and not when the amount of tax had been deposited.
State Bank of Travancore [TS-546-HC-2016(KER)] (WP(C).No. 19283 of 2007 (U))

92. The Court held that assessing officer cannot rely on Instruction No. 1/2015 (which prohibited refund in cases where scrutiny notice under section 143(2) had been issued) to withhold refunds as the same had been stuck down in the Delhi High Court's decision in Tata Teleservices and the same is binding on all assessing officers across country. It further held that in case where the assessing officer did not process the return filed by assesssee and issue refund to him, **the** action of officer was in complete variance with the higher echelons of administration of the tax administration which is meant to be a assessee friendly regime. It noted that the Citizen's Charter issued by the Income Tax Department in its vision statement states that the it aspires to issue refunds along with interest under Section 143(1) of the Act within 6 months from date of electronically filing the returns and therefore the AO was violating this charter. It also held that The powers of a Court under Article 226 of the Constitution of India were not only limited to prerogative writs but also to issue any direction or order for doing justice and accordingly directed the AO to consider and process the petitioners return and dispose it off expeditiously.
Group M.Media India Pvt. Ltd. vs. UOI & ORS. (2016) 97 CCH 0027 (Mum Trib) (W.P. No. 2067 of 2016)

93. The Tribunal held that penalty cannot be imposed if the assessing officer does not specify whether the penalty is for concealment of income or for furnishing inaccurate particulars and **further**, penalty cannot be imposed in respect of income surrendered by the assessee if assessing officer does not link the income to incriminating documents.

M. G. Contractors Pvt. Ltd vs. DCIT (ITAT Delhi)

94. The Tribunal deleted penalty levied under section 272A(2)(k) of the Act for belated filing of TDS returns by granting immunity under section 273B of the Act as the assessee was able to establish reasonable cause for such delay in filing the return. It noted that the impugned assessment year was the first assessment year in which e-filing of TDS returns was introduced as a result of which there were certain technical glitches in its operation which led to practical difficulty in filing such returns. Accordingly, it held that the assessee had reasonable cause for such delay.
Nav Maharashtra Vidyalaya [TS-571-ITAT-2016(PUN)] (ITA NO. 832/PN/2016)

95. Where the assessee, a sales tax practioner failed to disclose income unearthed pursuant to a search followed by reassessment proceedings, the Court dismissed appeal of assessee and upheld levy of penalty under section 271(1)(c) for concealment of income. It held that penalty under section 271(1)(c) was neither criminal nor quasi-criminal but a civil liability and therefore is a strict liability for which it was not essential to prove mens rea was. It clarified that question of concealment of income or furnishing inaccurate particulars was a question of fact for which Tribunal is final authority and accordingly, the appeal was dismissed.
S L Shiva Raj [TS-554-HC-2016 (AP)] (I.T.T.A.No.134 OF 2016)

96. The Tribunal held that where assessee had claimed incorrect set-off of unabsorbed depreciation inadvertently and which was corrected by filing revised return of income voluntarily by assessee during assessment proceedings, case of assessee was not fit for levy of penalty.
Deepi Rupindersingh Arora vs. Assistant Commissioner Of Income Tax (2016) 48 CCH 0131 (MumTrib) (ITA NO. 1073/Mum/2015)

97. The Tribunal held that return filed in response to notice under section 153A was to be considered as return furnished under section 139(1) and therefore, if any undisclosed income as admitted by assessee in statement recorded under section 132(4) during the course of search operation, was offered in said return and due taxes were paid which were also accepted by assessing officer, then no penalty could be imposed under section 271(1)(c).
Ramesh D Shah vs. ACIT (2016) 48 CCH 0118 (Mum Trib) (ITA No. 5719/MUM/2012)

98. The Tribunal held that where the assessments ha**d** been completed under section 143(3) r.w.s 153A of the Act, the initial non-compliance with the notice issued under section 142(1) of the Act c**ould** be understood to **have been** made-up subsequently and therefore, levy of penalty under section 271(1)(b) of the Act **was** not justified.
Magnum Infraprojects Pvt. Ltd. vs. ACIT (2016) 48 CCH 0137 (Mum Trib) (ITA No. 5642/MUM/2014, 5648/MUM/2014)

99. The Tribunal upheld levy of penalty under section 271(1)(c) on assessee, a Mauritian Bank for furnishing inaccurate particulars of income by claiming capital expenditure (towards acquisition of fixed asset) as a deduction in addition to depreciation claim on the same and rejected assessee's contention that in view of Article 7(3) of Indo-Mauritius DTAA, all expenses (whether revenue or capital) incurred for the purpose of business of its branches in Mumbai (i.e. PE in India) were deductible. It also held that assessee's claim **fell** under the category of fanciful claims under the garb of interpretation and mere disclosure in notes to return of income **could not** be a ground for deletion of penalty.
State Bank of Mauritius [TS-556-ITAT-2016(Mum)] (I.T.A./3139/Mum/2008)

100. The Court held that where the Department had accepted the assessee's ill health as reasonable cause for not filing its return in response to notice under section 153A, such cause can also be construed as a reasonable cause, while considering as to whether penalty has to be levied under section 271F which provides for penalty for failure to furnish the return of income. Accordingly, it set aside the penalty levied under Section 271F of the Act.
S.Jayanthi Shri vs.Assistant Commissioner Of Income Tax &Anr.(2016) 94 CCH 0023 (Chen HC) (WP No. 23794 of 2016 & WMP No. 20394 of 2016)

<u>Refund</u>

101. The Court directed **the** revenue to examine and pass refund claims despite notices issued under section 143(2)/142(1) and rejected **the** Revenue's stand that in view of section 237, the right to claim refund in the circumstances where assessments are completed or pending can be restricted by provision of section 143(1D) and clarified that even if such provision does not exist, **even** then the assessee would still have a right to claim excess amount in law unrestricted in any manner with respect to procedural formalities dictated by the Act.
Indus Towers Limited [TS-568-HC-2016 (Del)] (W.P. (C) 3665/2015)

Stay of demand

102. The Court directed the revenue to adjust the refund against tax demand to the extent of amount required for granting stay and not against the total tax demand where assessee was granted stay till appeal disposal on deposit of 15% of the total tax demand. It further rejected revenue's stand that Assessing Officer was entitled to adjust any refunds arising to the assessee against the total demand relying on the office memorandum dated February 29, 2016 which states that refunds can be adjusted to the extent of the amount required for granting stay.
Jindal Steel and Power Ltd. [TS-540-HC-2016 (P&H)] (Civil Writ Petition No. 13146 of 2016)

Unexplained income / expenses / investments

103. The Tribunal held that assessing officer **could not** treat purchases as bogus (accommodation entries) merely on the basis of information received from the sales-tax department without conducting independent inquires especially when the assessee has discharged its primary onus of showing books of account, payment by way of account payee cheque and producing bills for purchase of goods.
DCIT vs. Shivshankar R. Sharma (ITAT Mumbai)

104. The Tribunal held that share premium could not be brought to tax invoking the provisions of section 68, where the assessee had issued shares at substantial premium and the genuineness, credit worthiness and amount of share capital was not in dispute and only the amount of share premium was doubted.
Hario Concast & Steel Pvt. Ltd. vs. ITO (2016) 48 CCH 0109 (HydTrib) (ITA No. 1775/HYD/2014)

Miscellaneous

105. The Apex Court held that receipt on account of interest on debentures, upfront fees and interest on deposits given to other corporations by assessee-company **was** not chargeable to tax under erstwhile Interest Tax Act, 1974 on the ground that investment in debenture could never be equated with the 'advancement of loans made in India' as envisaged in the definition of interest under Interest Tax Act.
Gujarat Industrial Investment Corp. [TS- 541-SC-2016]