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

(Pronounced in September 2016)

By Sunil Moti Lala, Advocate

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I. Transfer Pricing

a. ***International transactions / Specified Domestic Transactions / Associated Enterprise***

1. The Tribunal held that transaction between head office in India and branch office in Canada cannot be subject to ALP determination so as to make TP addition and any under or over invoicing between head office and branch office is always income-tax neutral because on aggregation of accounts, income of head office will set-off with equal amount of expense of branch office, leaving thereby no separately identifiable income on account of this transaction. However, in reverse situation, a transaction between a foreign enterprise and its Indian branch, would be considered as international transaction as Indian branch of foreign enterprise is an 'enterprise' under section 92F.
Aithent Technologies Pvt Ltd--TS-752-ITAT-2016(DEL)-TP- ITA No.6446/Del/2012

b. ***Most Appropriate Method***

Cost Plus method

2. The Tribunal rejected TPO/DRP's application of cost plus method for benchmarking assessee's export transactions and held that products exported by assessee and also sold in the domestic market cannot be functionally compared in view of the variations in the specifications, difference in climatic conditions, marketing efforts involved by assessee. It observed that sale in the export market must be compared with the exports by similarly placed companies in an uncontrolled transaction.
Orbinox India Pvt Ltd - TS-732-ITAT-2016(CHNY)-TP-ITA No.454/Mds/2015

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

ITES Sector / Software Development Services

3. The Tribunal held that where the TPO had applied a lower turnover filter, eliminating companies having turnover less than Rs.1 crore, logically he should have fixed an upper turnover filter for rejecting companies having very high turnover as well. Relying on the decision of the Bombay High Court in Pentair Water India, it held companies having more than 20 times the turnover of the assessee from software development services, could not be treated as comparable.
UCB India Pvt Ltd v ACIT – TS-605-ITAT-2016 (Mum) – TP - I.T.A./1218/Mum/2014

4. The Tribunal held that companies engaged in development of products & sale of products, companies deriving revenue from software services as well as software products without having segmental data could not be considered as comparable to the assessee who was engaged in providing information technology and software support services to its AE.
UCB India Pvt Ltd v ACIT – TS-605-ITAT-2016 (Mum) – TP- I.T.A./1218/Mum/2014

5. The Tribunal in case of assessee engaged in software development and support services, rejected assessee's contention of use of contemporarious data and multiple year data on the ground that in a number of cases by Cordinate Benches it is held that only the data pertaining to relevant financial year has to be considered and stated that a company cannot be selected as comparable in absence of availability of segmental information if the comparables are engaged in providing diversified services and income from software development cannot be equated with income from services as software development may include sale of products. Relying on the decision of Co-ordinate bench in case of Sony India Pvt Ltd. directed assessing officer to treat the provisions for bad and doubtful debts of the comparable companies as part of their operating expenses.
Sum Total Systems India Private Limited vs. DCIT (2016) 48 CCH 0082 (Hyd Trib)-ITA No.255/Hyd/2015

6. 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, a company rendering KPO service, company with brand and ownership of intangibles cannot be considered as comparable to the assesseee company.
United Health Group Information Services--TS-731-ITAT-2016(DEL)-TP-ITA No. 1038/Del/2015

7. The Tribunal dismissed the assessee's miscellaneous application seeking exclusion of Avani Cincom Technologies Ltd on the ground of functionality (as it was also dealing in software products) against its previous order wherein Avani Cincom Technologies Ltd was held to be comparable to the assessee, engaged in software development, as there was nothing on record to show that this company earned revenue from software products. **The Tribunal further noted** that the assessee **merely** placed reliance on the commentary reported in the annual report and not on the actual information and financial details reported in the annual report.
Ariba Technologies India Pvt Ltd v ITO – TS-714-ITAT-2016 (Bang) – TP - I.T. (T.P) A. Nos.441 & 442/Bang/2012

Consultancy services

8. The Tribunal in case of assessee engaged in providing consultancy services, forensic crisis and security related services held that transfer pricing officer had flawed in characterising assessee as engaged in providing investment and other financial advisory when the officer himself had addressed assessee's profile as consulting business intelligence services. It observed that instead of specifically addressing assessee's employee profile, the officer proceeded on a general discussion so as to justify the conclusion drawn regarding characterization and that by no stretch of imagination the assessee could be compared with companies who were trading in shares and investments.
Control Risks India Pvt Ltd - TS-769-ITAT-2016(DEL)-TP-I.T.A .No.-979/Del/2015

Others

9. The Tribunal held that for the benchmarking of purchase of raw material and exports to AE, a comparable having a turnover of Rs.1745 crore could not be compared to the assessee having a turnover of Rs. 86 crore and held that the turnover filter was to be applied at 5 times the turnover of the assesse.
Luwa India Pvt Ltd v ACIT – TS-687-ITAT-2016 (Bang) – TP - I.T.(T.P) A. No.568/Bang/2012 & C.O. No.31/Bang/2015

10. The Tribunal rejected assessee's contention of exclusion of company where the comparable company had super normal profit and brand value on the ground that merely because company has higher profits it cannot be excluded as comparable and it was not demonstrated that whether such brand value has any impact on the pricing or profitability of the company.
United Health Group Information Services--TS-731-ITAT-2016(DEL)-TP-ITA No. 1038/Del/2015

11. The Tribunal held that companies in whose case extraordinary event of amalgamation took place, companies having segmental revenue lower than the filter applied by the TPO, companies with huge turnover and brand value cannot be considered as comparable. Also, where a comparable has been excluded in the earlier assessment year and if there are no change in activities, the comparable should be excluded.
Excellence Data Research Pvt.Ltd. & ANR. Vs. ACIT & ANR. (2016) 48 CCH 0051 (Hyd Trib)-ITA No.310/Hyd/2015

12. The Tribunal held that where a particular company has been held to be not comparable in the case of another company, then such former company shall not cease to be the comparable to the assessee company on the ground that comparability of each company needs to be ascertained only after matching the functional profile and other relevant reasons.

13. The Court held that where the Revenue failed to urge before the CIT(A) or the Tribunal the plea that Himachal Futuristic Communication Ltd ('HFCL') was not comparable to the assessee since the FAR analysis of the said comparable had not been conducted, the same could not be considered as a substantial question of law. Accordingly, it upheld the decision of the Tribunal wherein the Tribunal had included the said company as comparable dismissing the contention of the Revenue that the said company was loss making on the ground that the Revenue had not controverted the CIT(A)'s finding that HFCL was functionally comparable.
Nortel Network India Pvt Ltd - TS-770-HC-2016(DEL)-TP-ITA 548/2016

14. Where the assessee sought to include / exclude certain comparable companies, mere reliance on decisions of the Tribunal without bringing out the similarity in facts / functional profile based on which the decisions were rendered vis-à-vis the said comparable companies would not suffice. The Tribunal remanded back the case to the file of assessing officer so that proper analysis on FAR basis could be presented by assessee
ECI Telecom India Private Limited vs. ACIT (2016) 48 CCH 0050 (Mumbai Trib)-ITA No. 7552/Mum/2012

15. The Tribunal held that merely because a company follows different accounting year, it cannot be excluded. However, onus would be on the party which presses for its inclusion to provide reconciliation of the profitability in an authentic and reliable manner.
United Health Group Information Services--TS-731-ITAT-2016(DEL)-TP-ITA No. 1038/Del/2015

16. The Court quashed the Tribunal's order and held that the Tribunal had no jurisdiction to render decision relating to adoption of international database for identifying comparables in international market while restoring TP adjustment for fresh adjudication by TPO as this was not subject matter of appeal. The Court directed the Tribunal to decide the appeal afresh and clarified that all contentions of both parties were left open.
Pentair Water India Private Limited -TS-762-HC-2016(BOM)-TP-TAX APPEAL NO. 65 OF 2016

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

Profit Level Indicator

17. The Court held that for the purpose of computing the PLI of the assessee's transactions with its AEs viz. providing buying services to its AE, the total cost incurred by the assessee was to be taken as the denominator and not the FOB value of the goods sourced through the assessee as the FOB value would enhance the assessee's cost base by the cost of manufacture and export of goods by the third party vendor.
Pr CIT v Li & Fung India Pvt Ltd – TS-686-HC-2016 (Del) – TP -ITA 674/2016

18. The Tribunal upheld the order of TPO/DRP and stated that depreciation is one of the elements of operating cost which needs to be considered in it and it cannot be excluded from the operating margin ratio as it had a material impact on the profitability of the assessee.
India Japan Lighting Limited-TS-741-ITAT-2016(CHNY)-TP-ITA No.245/Mds/2013

19. The Tribunal held that foreign exchange losses incurred by the assessee was to be considered as operating in nature relying on the decision of the Coordinate Bench wherein it was held that foreign exchange losses formed part of operating margins since AS 11 stipulates that foreign exchange loss / gains of any nature relating to any item whatsoever was required to be charged off to the P&L,
Excellence Data Research Pvt.Ltd. & ANR. Vs. ACIT & ANR. (2016) 48 CCH 0051 (Hyd Trib)-ITA No.310/Hyd/2015

Adjustment for Credit period

20. The Tribunal held that where the assessee enjoyed a longer credit period than the period printed in the invoice on its import transactions from its AE as a result of which the AE charged a higher price, it was appropriate to consider the extra credit period enjoyed by the assessee so as to determine ALP.
Salcomp Manufacturing India Pvt Ltd - TS-716-ITAT-2016(CHNY)-TP-I.T.A.No.2201/Mds./2012

Others

21. The Tribunal held that for the purpose of determining ALP, only transactions / turnover of assessee arising out of transactions with its AEs was to be considered and not the transactions undertaken by the assessee on an entity level. Accordingly, it set aside the matter to the file of the AO.
Excellence Data Research Pvt.Ltd. & ANR. Vs. ACIT & ANR. (2016) 48 CCH 0051 (Hyd Trib)-ITA No.310/Hyd/2015

22. The Tribunal held that where assessee engaged in business of system integration and business process outsourcing, allocated actual expenses to each segment to which they were directly related and indirect cost on the basis of head count (except cost of space, which was allocated on basis of number of desk and vacant seats were allocated to IT segment), the method of allocation was appropriate as neither the CIT(A) nor assessing officer commented over the rationality of the allocation keys and this method was appropriate for the reason that BPO segment was in start-up stage. It further observed that even if business support cost was allocated based on revenue, then also, profit level indicator would have been higher as compared to comparables.
Xansa India Ltd - TS-774-ITAT-2016(DEL)-TP-ITA No.2283/Del/2011

e. ***Specific Transactions***

Advertisement, Marketing and Promotion expenses

23. The Court dismissed the appeal filed by the Revenue against the order of the Tribunal wherein the Tribunal had set aside the order of the lower authorities making AMP adjustments by adopting the bright line test in light of the decision of the **Jurisdictional** Court in the case of Sony Ericsson Mobile which held that the bright line test was inapplicable.
Pr CIT v Toshiba India Pvt Ltd – TS-700-HC-2016 (Del) – TP-ITA 418/2016, CM APPL.25577/2016
Pr CIT v Bose Corporation India Pvt Ltd – TS-702-HC-2016 (Del) –TP-ITA 462/2016, C.M. APPL.26603/2016

24. The Tribunal held that where the identical issues (AMP expenses and Intra-group services) were already adjudicated by Jurisdictional High Court in assessee's own case which were in favour of assessee, recharacterisation on the basis of it not being for commercial expediency when it is fully disclosed in the TP study report is clearly beyond powers of transfer pricing officer, revenue had not been able to prove existence of international transaction involving AMP expenses.
Bausch & Lomb India Pvt.Ltd vs. DCIT (2016) 48 CCH 0069 (Del Trib)-ITA No. 6778/Del/2015

Sale of shares

25. The Tribunal held that where the assessee sold 9 percent of the shares held in an Indian company to its Mauritius subsidy during AY 2013-14, at Rs.10.32 per which was based on the valuation arrived at during AY 2007-08, the valuation adopted for AY 2007-08 could not be relied on to justify the price at which the share was sold in the previous year relevant to AY 2013-14 and that the TPO was justified in computing the value per share as per the Discounted Cash Flow Method as on AY 2013-14, accounting for the time gap, fluctuation in the market rate and the value of capital assets of the company. Accordingly, it upheld the addition made

by the TPO by adopting the value per share at Rs. 36.31 as against the value relied on by the assessee, viz. Rs.10.32.
Visteon Asia Holdings Inc v DCIT – TS-669-ITAT-2016 (Chny) - TP - ITA No. 723/Mds/2016

Share application money

26. The Tribunal sustained transfer pricing adjustment in respect of amount refunded by wholly owned subsidiary to assessee towards share application money to the extent of shares not allotted by adopting interest rate of 6 months LIBOR plus 150 basis points and deleted adjustment made on the amount to the extent shares allotted. It observed that the advancing of amount by the assessee company and refund of the amount by its wholly owned subsidiary after enjoying the said amounts, has the colour and character of loan transaction. It rejected assessee's challenge that section 144C being a substantive provision will apply prospectively from assessment year 2010-11 by observing that said provisions are applicable to cases where assessing officer on or after 1.10.2009 proposes variation to assessee's income in consequence of TPO's order and as regards time limits for framing of assessment where provisions of section 144C applies, it concludes that section 153C shall not put any fetters to the framing of any such assessment and time limit as provided in section 144C will apply.
Taurian Iron & Steel Co Pvt Ltd - TS-768-ITAT-2016(Mum)-TP-ITA No.5920/Mum/2012

Loans / Receivables / Corporate Guarantee

27. The Tribunal held that where the assessee had not charged interest on outstanding receivables from both its AEs and its Non-AEs, the TPO was not justified in making an adjustment by leving notional interest on the AE outstanding receivables.
Excellence Data Research Pvt.Ltd. & ANR. Vs. ACIT & ANR. (2016) 48 CCH 0051 (Hyd Trib)-ITA No.310/Hyd/2015

28. The Tribunal held that where assessee company had advanced interest free loans to subsidiaries, the ALP needs to be determined applying the international market condition since the money was lent and utilized outside India and relying on the ruling of PMP Auto Components (P) Ltd, it directed transfer pricing officer to determine ALP by applying LIBOR + 200 points.
Transport Corporation of India Ltd. - TS-764-ITAT-2016 (HYD)-TP-ITA No. 117/Hyd/2016

29. The Tribunal held that where the assessee had provided its AE with a loan in foreign currency, the interest charged to its AE was to be benchmarked with respect to the LIBOR and not the implicit interest rate on India's External Debt applied by the AO and since assessee charged interest of LIBOR + 2%, no further adjustment was required.
Salcomp Manufacturing India Pvt Ltd - TS-716-ITAT-2016(CHNY)-TP-I.T.A.No.2201/Mds./2012

Royalty / Management fees / Intra Group services

30. The Tribunal allowed assessee's miscellaneous petition against its previous decision wherein TP adjustment with respect royalty payment was originally confirmed as the assessee had not justified its claim that the royalty payment made by it was below the industry average rate of royalty. It accepted the copy of industrial average rate available in Wikipedia as per which the average rate of royalty for automotive industry was 4.7 percent which was higher than the 3.6 percent paid by the assessee and directed transfer pricing officer to verify assessee's claim.
Hyundai Motor India Ltd-TS-717-ITAT-2016 (CHNY)-TP- I.T.A.No.2353/Mds/2012

31. The Tribunal rejected the TPO's determination of the ALP for royalty payment to AE at Nil by applying the benefit test and held that the TPO was not justified to adopt such approach in determining the ALP of royalty payment when the assessee had produced the agreement between the assessee and AE under which license was granted to the assessee. It held that the TPO's jurisdiction was to determine the ALP by testing the same with uncontrolled comparable prices and not to examine the allowability of the claim by applying the benefit test or conditions provided under section 37(1) of the Act.

Luwa India Pvt Ltd v ACIT – TS-687-ITAT-2016 (Bang) – TP - I.T.(T.P) A. No.568/Bang/2012 & C.O. No.31/Bang/2015

f. ***Others***

Assessment

32. The Court held that for the purpose of determining the period of 9 months from the date on which the draft assessment order was forwarded to the assessee, under section 144C(12) of the Act (which provides the time limit within which the DRP was to pass its directions), the term forward contained therein had to be understood to mean actual service and therefore where the draft assessment order was passed on March 26, 2014 but served on the assessee 5 months later due to the change in jurisdiction, the DRP could not refuse to pass directions stating that the time limit of 9 months under section 144C(12) expired on December 31, 2014 whereas objections were filed in January 2015.
Rain Cements Ltd v DCIT – TS-483-HC-2016 (AP)- ITA No. 723/Mds/2016

33. The Tribunal held that where the assessee himself has computed ALP and has disclosed the income, it is not case of enhancement of income, deduction under section 10A would be allowed on voluntary TP adjustment by assessee. Also, internet connection charges shall be excluded from both export and total turnover.
Sum Total Systems India Private Limited vs. DCIT (2016) 48 CCH 0082 (Hyd Trib)-ITA No.255/Hyd/2015

Penalty

34. The Court deleted the penalty imposed by the AO in respect of the transfer pricing addition made noting that some of the comparable companies selected by the assessee were rejected by the TPO during the year under review whereas the same had been accepted in the prior year and therefore the assessee could not have visualized that out of the 12 comparables selected by it, 9 would have been rejected resulting in a radical change in margin computation. It further held that in the absence of any overt act which disclosed conscious and material suppression, invocation of Explanation 7 **to Section 271(1)(c)** in a blanket manner would be injurious to the assessee and contrary to the intent of the statute.
Pr CIT v Verizon India Pvt Ltd – TS-698-HC-2016 (Del) –TP - -ITA 460/2016, C.M. APPL.26591/2016

35. The Tribunal held that where the assessee as well as the TPO had adopted the CUP method to benchmark the export transaction and a TP addition was made observing that the assessee sold cold flu tablets to its AE at 1.807 dollars per unit whereas the same was sold to non-related parties at 1.95 dollars per unit, levy of penalty under Explanation 7 to section 271(1)(c) was justified since the assessee being full aware of the factual discrepancy in the rates charged to AEs vis-à-vis Non-AEs chose not to revise its income and challenged the same in assessment proceedings, but did not prefer any quantum appeal due to the smallness of the amount. It held that Explanation 7 to Section 271(1)(c) of the Act (which provides that where an assessee has entered an international transaction as defined under section 92B of the Act, if any amount had been added or disallowed in computing the total income under section 92C(4), such addition or disallowance would be deemed to represent income in respect of which particulars were concealed or inaccurate particulars had been furnished) would be applicable in the instant case since the assessee failed to compute the ALP in the manner prescribed.
Clestra Life Sciences P Ltd v ITO – TS-676-ITAT-2016 (Mum) - TP - ITA No. 6962/Mum/2014

Miscellaneous

36. The Court allowed the assessee's appeal challenging the order of the Tribunal wherein the Tribunal held that a foreign AE could not be considered as a tested party as it lacked statutory sanction since there was nothing in section 92B of the Act prohibiting such consideration. Accordingly, since the Tribunal had remitted the issue of consideration of most appropriate

method and appropriate comparables, the Court held that it would be appropriate for the TPO to consider the question of adopting a foreign AE as a tested party as well.
GE Money Financial Services Pvt Ltd v Pr CIT – TS-697-HC-2016 (Del) – TP - ITA 662/2016, CM Nos. 31740-31741/2016

37. The Court rejected the assessee's petition seeking extension of stay of outstanding demand noting that no one had appeared on behalf of the assessee when the matter was called out for hearing in the previous month. It dismissed the stay application on the ground that the assessee was not interested in the stay application.
IBM India Pvt Ltd v ACIT – TS-690-ITAT-2016 (Bang) – TP - IT(TP)A No.773(BNG.)/2016

II. International Tax

a. Permanent Establishment

38. The AAR held that the entire contract revenue arising to the Applicant, a Singaporean company from L&T towards supply of goods and rendition of services was taxable in India as it was attributable to its PE in India and rejected the contention of the Applicant that the contract was bifurcated into two parts viz. (i) offshore supply of goods and (ii) provision of services since there was no division on the basis of supply and services and the payment was not separately linked with services and supply but was made on the basis of stages of completion of the contract irrespective of goods and materials brought in the premise and that the intention of the applicant was that the property in the goods will pass only when the installation and erection of entire works was completed.
MERO Asia Pacific Pte Ltd – TS-489-AAR-2016 - A.A.R. No 981 of 2010

b. Royalty / Fees for technical services

39. The AAR held that program fees received by the Applicant, Regents of the University of California from its Indian counterpart for holding management programs for training senior executives was not taxable under the India-US DTAA since the applicant's activity was in the nature of educational activities and could not come within the ambit of fees for includes services or royalty under Article 12(5) of the India-US DTAA which excludes amount paid for teaching in or by educational institutions.
The Regents of University of California – TS- 490-AAR-2016 - A.A.R. No 1656 of 2014

40. The AAR held that the service fee payable by the Applicant to its Russian subsidiary for providing product promotion services was not FTS under the Act or under Article 12 of the India-Russia DTAA since the services rendered could not be considered as consultancy services as they merely entailed preparation of reports by the Russian subsidiary which were statistical in nature. Further, it dismissed the alternate contention of the Revenue that the same could be taxed as managerial services since the job of the medical representatives of the Russian subsidiary was to merely meet doctors and pharmacies which could not said to be managing the affairs of the Applicant.
Dr Reddy's Laboratories Ltd – TS-487-AAR-2016 - A.A.R. No 1572 of 2014

41. The AAR held that administrative support services provided by a third party service provider to the Applicant in connection with the Applicant's contract with Indian Oil Corporation were not taxable as fees for technical services since it was in the nature of managerial services which did not make available any technical skill information or knowledge to the Applicant.
Foster Wheeler GB Ltd – TS-491-AAR-2016 - A.A.R. No 1003 of 2010

42. The Tribunal held that payment of legal fees by the assessee to UK firm for educating its officials regarding various legal/regulatory requirements for setting up of a bank branch outside India falls within the exceptions under section 9(1)(vi)/(vii) as the payment was made to carry on business outside India and create a new source of income outside India and hence, not taxable as royalty/fees for technical service under the Act. It further held that under India-UK

DTAA, as per Article 15 (Independent Professional Services) being more specific than Article 13 (Royalty/ Fees for Technical Service) the fees were not taxable, since no employee of the UK firm was present in India for more than 90 days.
Kotak Mahindra Bank Limited - TS-528-ITAT-2016 (Mumbai Trib)- ITA No. 3901/Mum/2013

c. Income from Capital gains

43. The AAR held that as per Article 13(4) of the India-Mauritius DTAA, the assessee, Mahindra-BT, Mauritius, was not liable to tax in India in respect of the transfer of shares in Tech Mahindra Ltd ('TML') to AT&T International USA ('AT&T'). It rejected the Revenue's contention that the applicant was incorporated without any economic substance and that its sole purpose was to hold shares to facilitate a tax neutral share transfer noting that there was a commercial option agreement between TML and AT&T, whereby AT&T was to be offered an opportunity to hold shares in TML only once AT&T had provided TNML was a certain level of business and that there was nothing wrong if the Applicant held the shares in TML and transferred them to AT&T subsequent to the fulfillment of conditions prescribed in the Options Agreement. It further rejected the stand of the Revenue that the control and management of the Applicant was situated in India under section 6(3) of the Act since the condition of control and management being wholly situated in India was not satisfied as various important decisions on financial matters were taken by the Applicant's Board of Directors in Mauritius.
Mahindra-BT Investment – TS-479-AAR-2016 - A.A.R. No 991of2010

d. Withholding tax

44. The Tribunal held that the assessee was not liable to withhold tax under section 195 of the Act on payment towards ground rent, advertisement and exhibition expenses to non-resident entities not having PE in India, since the payments were in the nature of business receipts which would be taxable only if the payee had a PE in India.
ITO v Brahmos Aerospace Pvt Ltd – TS-524-ITAT-2016 (Del) - ITA No. 966/Del/2015

e. Others

45. The Court allowed the Petitioner's writ and quashed the AAR order rejecting the Petitioner's application for advance ruling under Section 245R on the ground that since a notice under section 143(2) was issued in case of the Petitioner the matter was pending adjudication before AO thereby attracting bar on approaching the AAR, since the notice under section 143(2) was issued in general terms and it did not address itself to any specific question.
Sage Publications Ltd v DCIT – TS- 480-HC-2016 (Del) - W.P.(C) 5870/2016

III. Domestic Tax

a. ***Income***

46. The Apex Court held that where the assessee had developed a complex for benefit of its shareholders for which it received a deposit towards its construction the same was not taxable as business income as it was in the nature of capital receipt.
GS Homes and Hotels P Ltd v DCIT – TS-513-SC-2016- SLP(C) Nos.7857-7858 OF 2012

47. The Tribunal held that compensation for breach of promise to provide land to the assessee was not compensation for loss of profits but is for injury caused to the profit making apparatus. Such compensation is a capital receipt not chargeable to tax.
Aerens Developers and Engineers Ltd vs. ACIT (Delhi Trib)- ITA No. 5054/Del/2011

b. ***Income from House Property***

48. The Tribunal held that Section 23(1)(c) of the Act, (which provides that where property or any part of property is let out and is vacant during the whole or any part of the previous year and

due to such vacancy the actual rent received was less than the municipal rent, the annual value was to be treated as the amount received), could not apply to the assessee as the assessee did not let out any property for any part of the year. It dismissed the contention of the assessee that the property was intended to be let out and that Section 23(1)(c) would also consider situations where the property was intended to be let out and held that the provisions of the section were to be construed literally and intention to let out could not be imported to the meaning of let out under the provision.
Sharan Hospitality Pvt Ltd – TS-511-ITAT-2016 (Mum)- I.T.A. No. 6717/Mum/2012

49. The Tribunal held that where the assessee was only the licensee of the premises owned by a licensor and the agreement entered into between the assessee and the licensor did not create interest in the property owned by the licensor and the assessee sub-licensed the property to various parties, the income derived therefrom would not be taxed under section 22 read with Section 27 since the assessee did not have exclusive possession of the property and the same was held to be taxable as income from business.
Bombay Plaza P Ltd v ACIT – (2016) 73 taxmann.com 91 (Kol Trib) – ITA No 1641 & 1203 (Kol) 2014 - ITA No 1641 & 1203 (Kol) 2014

50. The Court held that maintenance charges and taxes paid by the sub-sub-licensee directly to the builder forms part of the sub-licencee assessee's rent for computing annual letting value under section 23 and observed that the term 'rent' is wide enough to to include any amount which is paid in consideration of the property let. It further held that where the agreement provides that the owner shall pay the amounts for the common facilities, maintenance charges, it should be presumed that the same is factored into the rent and same should not be added to the rent. However, if they are stipulated to be payable by licensee it must form part of rent for computing annual letting value.
Sunil Kumar Gupta-TS-539-HC-2016 (P&H)-ITA No.369/2015

c. ***Business Income***

51. Where the assessee, vide an assignment agreement acquired the sales tax deferral liability of the assignee and accounted for the same at NPV and debited the difference in NPV at the end of the relevant previous year vis-à-vis the NPV determined in the year before that, as finance charges in its P&L account, the same was to be allowed as a deduction since it represented incremental increase in the liability with the efflux of time.
Knox Investments P Ltd v ITO – (2016) 73 taxmann.com 1 (Pune – Trib) – ITA No 1372 / Pune / 2014

52. The Tribunal held that where the assessee, a retail trader, has undisclosed turnover by way of cash deposits in the bank account and is not required to maintain books of accounts as per provisions of section 44AF, the income of the assessee may be computed on estimated basis.
Chittar Singh Gurjar vs. ITO (2016) 48 CCH 0083 (Jaipur Trib)-ITA No.594/JP/2016

53. The Tribunal held that income from operations of malls is taxable as business income and it cannot be categorized as income from house property on the ground that assessee company was incorporated with the object of construction and maintaining shopping malls.
City Centre Mall Nashik Pvt. Ltd. & ANR. Vs. ACIT & ANR. (2016) 48 CCH 0070 (Mumbai Trib)- ITA No.1783/Mum/2015

d. ***Deductions***

Section 32

54. The Tribunal allowed depreciation on discarded assets viz furniture & fixtures, office equipment and computer items which were used by the assessee for its data processing business which was stopped in the prior AYs, which formed part of the block of assets even though they were not used during the relevant AY was they were in 'ready to use' state. It held that such passive use was also entitled for depreciation.
Galileo India Pvt Ltd – TS-522-ITAT-2016 (Del) - ITA No. 88/Del./2014

55. The Court rejected the assessee's claim for higher depreciation on machines classified as computer machineries by the assessee since based on their functionality the same was in the nature of plant and machinery since it merely helped in typesetting and faster printing of newspaper and automated stacking of newspaper and therefore could not be classified as a computer. Accordingly, it held that depreciation was to be claimed at 15 percent and not 60 percent as claimed by the assesseee
Dinamalar v ITO – TS-492-HC-2016 (Mad) - T.C.A.No.624 of 2016

56. The Tribunal held that assessee transporting goods of other persons and deriving hire charges would be entitled to claim higher rate of depreciation of 30% on vehicles used by it for transportation on the ground that such vehicles are to be considered as being given on hire for transportation of goods of other persons.
DCIT vs. Suthanther Assumtha (2016) 48 CCH 0049 (Chennai Trib)-ITA No.203/Mds/2016

Section 35D

57. The Apex Court held that when the deduction is allowed in the first two years out of period of 10 years under section 35D for share issue expenses it could not be denied in the subsequent period and reliance cannot be placed on the ruling of Brooke Bond India Ltd (SC) since the said ruling was rendered when section 35D was not in statute book.
Shasun Chemicals and Drugs Ltd.-TS-529-SC-2016- SLP(C)No. 31962 of 2011

Section 36

58. The Tribunal held that the assessee bank, engaged in providing long term finance for industrial or agricultural development or for development of infrastructure facility to which Banking Regulation Act, 1949, applied, could not be regarded as a financial corporation, hence was not eligible entity under section 36(1)(viii) and consequently could not claim deduction under the said section.
State Bank of India v CIT – (2016) 73 taxmann.com 154 (Mum Trib) – ITA No 3145 Mum of 2009

59. The Apex Court held that bonus paid to employees is allowable expense under section 36(1)(ii) and section 40A(9) and that section 43B does not cover / apply to such bonus payments.
Shasun Chemicals and Drugs Ltd.-TS-529-SC-2016- SLP(C)No. 31962 of 2011

Section 37

60. The Court held that the reimbursement of retrenchment compensation by the assessee to its subsidiary in respect of employees of units transferred by the assessee to the subsidiary was allowable as deduction under section 37(1) of the Act. It noted that the transfer of units was meant to reorganize assessee's manufacturing activities under a separate corporate entity and also that the said transfer was done in light of the labour troubles faced by the assessee. It dismissed the contention of the Revenue that the reimbursement could not be considered as incurred for the assessee's own business and held that the assessee was able to carry on its business more efficiently post transfer and also that the fact that somebody other than the assessee was also benefited by the expenditure could not come in the way of such expenditure being allowed by way of deduction under section 37(1) of the Act.
Wallace Flour Mills Co Ltd – TS-506-HC-2016 (Bom) - Income Tax Reference No.104 Of 1999

61. Where the assessee had issued additional shares to the Indian public for reducing the percentage of foreign shareholding in compliance with the directions of the Government to avoid discontinuation of its expansion plan and incurred expenses in relation to such issue of additional shares, the same was capital in nature and was not allowable as deduction under section 37(1) of the Act.
Hindustan Lever Ltd v CIT – TS-516-HC-2016 (Bom)- Income Tax Reference No. 185 OF 1999

62. The Tribunal held that expenses incurred by the assessee on renovation and restoration led to enduring benefit as it led to improvements in its trading operations which would bring enduring benefit to the assessee for a long period of time and therefore was capital in nature despite the fact that the assessee was not the owner of the premises wherein the renovations were carried out. It held that other expenses incurred by the assessee such as breaking old plaster, carting away, plastering POP etc was revenue in nature and could be claimed under section 30 of the Act.
Aries Exports Pvt Ltd v DCIT – (2016) 48 CCH 0025 (Mum Trib) – ITA No 5841 / Mum / 2012

63. The Tribunal held that expenses incurred by the assessee a pharmaceutical company, on overseas tours of doctors and their spouses was not an allowable expenditure as overseas trip was directed towards leisure and entertainment rather than being directed towards seminar and knowledge enhancement as no details of seminar were brought on record by assessee. Accordingly, it held that the said expenses could not be considered to have been incurred wholly and exclusively for the purpose of the business and that the same were incurred to create good relations with doctors in lieu of expected favours from them for recommending the pharmaceutical products of the assessee company to patients.
ACIT v. Liva Healthcare Ltd. - (2016) 73 taxmann.com 171 (Mumbai-Trib.)- IT APPEAL NOS. 904 & 945 (MUM.) OF 2013

64. The Tribunal held that expenditure incurred by a director in engaging lawyers to defend himself against cases filed for violation of the law by the Company of which he was a director was not personal expenditure but is allowable as business expenditure.
Nimesh N.Kampani vs. ACIT (Mumbai-Trib)- I.T.A. No. 3316/Mum/2013

65. The Tribunal held that foreign exchange fluctuation loss arising consequent to restatement of current liabilities as per the year end rates in accordance with Accounting Standard-11 (AS-11) is allowable as a deduction.
Silicon Graphics Systems (India) Pvt.Ltd vs. DCIT (Delhi Trib)- ITA No. 2976/Del./2013

Section 40A

66. The Tribunal confirmed CIT(A)'s deletion of section 40A(2) disallowance in respect of liasoning charges paid for procuring diesel as assessing officer had not recorded any findings to hold such expenditure as excessive or unreasonable.
Xansa India Ltd - TS-774-ITAT-2016(DEL)-TP-ITA No.2283/Del/2011

Section 14A

67. The Tribunal held that there could be no disallowance of expenses under section 14A of the Act where the assesse had not earned any tax free income during the relevant year.
Raniganj Cooperative Bank Ltd v DCIT – (2016) 73 taxmann.com 90 (Kol Trib) – ITA no 1983 and 1984 (Kol) of 2014

68. The Tribunal deleted the disallowance made under Section 14A of the Act absent recording of satisfaction by AO for disregarding the sup-moto disallowance offered by the assessee by relying on the decision of the jurisdictional High Court in Maxopp Investment.
Galileo India Pvt Ltd – TS-522-ITAT-2016 (Del) - ITA No. 88/Del./2014

69. The Tribunal held that interest on partner's capital would not be liable for disallowance under section 14A of the Act since the same was in the nature of a deduction under section 40(b) and not an expenditure as envisaged under Section 14A of the Act.
Quality Industries -TS-533-ITAT-2016 (Pune Trib)- ITA No.2000/PN/2014

70. The Tribunal held that disallowance as per rule 8D(2)(iii) read with section 14A could not be made straight away without having regard to accounts of the assesseee for the purpose of determining the direct and indirect expenses. Accordingly, it remitted the matter to the file of the AO to determine the disallowance after considering the claim of the assessee that the

interest expenses were incurred for business purposes and that no administrative expenses were incurred in relation to exempt income.
Lee & Muirhead Pvt.Ltd. vs. DCIT (2016) 48 CCH 0041 (Mumbai Trib)-ITA No.1231/Mum/2014

Chapter VIA / 10AA

71. The Court held that filing of an audit report issued by the chartered accountant was a mandatory requirement to claim deduction under section 80HHC (available on export profits) and noted that since the assessee did not file such audit report along with its return of income, it was not eligible for deduction and that the Tribunal was incorrect in allowing the impugned deduction merely on the basis of the computation of income. It rejected the contention of the assessee that where the audit report was not annexed to the return of income, the AO was under a legal obligation to issue notice under section 139(5) to make good the deficiency and since no notice was served, the disallowance of deduction was in violation of the principles of natural justice.
CIT v Kamaljeet Singh Aluwalia – TS-512-HC-2016 (Raj) - Income Tax Appeal No.62/2000

72. The Court held that deduction under section 80IB(10) was to be allowed to the assessee, a builder / developer in respect of real estate developments which were complete on a stand-alone basis even though the same formed part of a house project comprising of other housing schemes which were not eligible for deduction and rejected the contention of the Revenue that the said deduction was available only if the project as a whole was compliant with section 80IB(10), since the housing schemes in respect of which deductions were claimed by the assessee were built on clearly demarcated plots of land which were separated from other projects and therefore constituted standalone complete housing projects.
Pr CIT v Omaxe Buildhome Pvt Ltd – TS-495-HC-2016 (Del) - ITA 327/ 328 / 329 2016,

73. The Tribunal held that where the assessee was given possession of the land by co-operative society for construction of housing units and was allowed to enroll prospective buyers, collect sale consideration for land as well as super structure, design and develop property, arrange finance and the assessee had complied with all the conditions laid down under section 80IB(10), the deduction could not be denied on the basis that title of the land had not passed on to assessee and that the permission from local authority had been obtained in the name of original owners.
ITO vs. Shivam Builders (2016) 48 CCH 0086 (Ahmedabad Trib)-ITA No.34/Ahd/2011

74. The Court held that an assessee must fulfill each of the conditions stipulated in Section 80-IB in each of the years in which the deduction thereunder is sought and the Assessing Officer would be entitled to ascertain in each of the assessment years whether the conditions of Section 80-IB remained fulfilled. If assessee is found to have fulfilled all the conditions in the initial assessment year and has on account thereof been granted the deduction thereunder, an Assessing Officer would be entitled to ascertain whether in subsequent assessment year the conditions remain fulfilled and if not, deduction can be denied.
CIT vs.Micro Instruments Company (P&H)-ITA No. 958 of 2008 (O&M)

75. The Tribunal held that interest and dividend earned by a co-operative society on investments with other co-operative societies is eligible for deduction under section 80P. The question whether the co-operative society is engaged in the business of banking for providing credit facilities to its members and the head under which the income is assessable is not material.
Lands End Co-operative Housing Society Ltd vs.ITO (Mumbai Trib)- /I.T.A. No. 3566/Mum/2014

76. The Apex Court set aside the order of the Andhra Pradesh High Court wherein the Court did not opine on whether the trading activity carried on by the assessee's SEZ unit constituted a 'service; for the purpose of deduction under section 10AA by stating that the issue was a question of fact which was dealt with by the Tribunal by considering the trading activity as a service. The Apex Court held that the issue was actually a question of law and accordingly remanded the matter back to the High Court.

CIT v Bommidala Enterprises Pvt Ltd – TS-501-SC-2016- SLP (C) No. 13081 of 2014

77. The Tribunal allowed deduction under section 10AA to the assessee, a software company, on income generated by its SEZ units from export of data processing services to a Netherlands based company maintaining and operating Computer Reservation System facility for airlines. Noting that the assessee prepared and transmitted locally generated travel related data to accredited travel agents in India through its processing, it rejected the contention of the Revenue that the assessee was merely acting as a distributor for the Netherlands based company and was not doing any data processing work from its SEZ.
DCIT v Inter Globe Technology Quotient Pvt Ltd – TS-503-ITAT-2016 (Del)

e. **Income from Capital Gains**

78. The Tribunal held that a call option simplicitor in shares was not a capital asset because without exercising the option, no actual asset was created. However, where a call option was for an incredibly large period of 150 years and the shareholder executed an irrevocable power of attorney in favour of the buyer of the option and authorized him to exercise all the rights of shareholders and undertook not to transfer the shares except to the option buyer, the option right was to be reckoned as a transfer / alienation of a valuable right which would be a class of asset distinct from the shares.
Praful Chandaria v Add DIT – (2016) 73 taxmann.com 14 (Mum Trib) – ITA Nos 4313/ Mum / 2011 & 4717 / Mum / 2013

79. The Tribunal held that where the assessee had parted with the full sale consideration and had negotiated an agreement wherein it was granted an allotment letter and the ability to have every other person excluded from dealing with the property and had also proceeded with the work of fit outs of the building, it could be said that the assesee had acquired the property for the purpose of section 50(1)(iii) and that the distinction between possession and occupation was not relevant for the purpose of acquisition contemplated under section 50(1)(iii) of the Act.
Indogem v ITO – (2016) 72 taxmann.com 315 (Mum Trib) – ITA No 3442 (Mum) of 2016

80. The Apex Court upheld Bombay High Court judgement wherein by relying on the judgement of Ace Builders P.Ltd, it was held that exemption under section 54E is available in respect of capital gains arising on transfer of depreciable asset held for more than 36 months on the ground that fiction created by the legislature has to be confined to the purpose for which its is created and that section 50 has limited application only in the context of mode of computation of capital gains contained in section 48 and 49.
V.S.Dempo Company Ltd. -TS-532-SC-2016-ITA No. 989 OF 2015

81. The Court denied to the assessee exemption claimed under section 54F by holding that failure to deposit the amount of consideration not utilized towards the purchase of new flat in the specified bank account before the due date of filing return of Income u/s 139(1) is fatal to the claim for exemption. The fact that the entire amount had been paid to the developer/builder before the last date to file the ROI is irrelevant.
Humayun Suleman Merchant vs. CCIT (Bombay)-ITA No. 545 OF 2002

82. The Tribunal held that merely because assessee was co-owner of the property it did not mean that the capital gains are partly assessable in her hands if the facts showed that the other co-owner bought the property from his own funds and had showed it as his sole property in the balance sheet.
ITO vs. Dr.Vandana Bhulchandani (Mumbai-Trib)- ITA No. 978/Mum/2013

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

Assessment

83. The Court dismissed the Petitioners writ challenging the order of the AAR wherein the AAR disposed of the Petitioner's application on the ground that it had become infructuous in view of the completion of assessment proceedings. It held that where the Petitioner had consciously

participated in the assessment proceedings thereby accepting the jurisdiction of the AO it could not simultaneously pursue proceedings before the AAR.
Eplanet Ventures Mauritius Ltd v DIT– TS-510-HC-2016 (Kar) - WRIT PETITION No.55093/2015(T-IT)

84. The Court upheld the order passed by the Settlement Commission after giving due opportunities to the assessee after considering the CITs report made under Rule 9 and dismissed the contention of the Revenue that since the Commission added Rs.110 crore in addition to the income disclosed by the assessee, the assessee had not made full and true disclosure of its income to warrant the jurisdiction of the Settlement Commission. It noted that the Commission had wide powers to consider the income disclosed, add additional income after due investigation and also to add any income was found to be valid as per Report under Rule 9 submitted by the Department and finally settle the tax payable by the assessee**.**
CIT v Income Tax Settlement Commission – TS-486-HC-2016 (Ori) - W.P.(C) No.1199 of 2015

85. The Court held that while an assessment cannot be made on the basis of a statement recorded u/s 133A, if the maker of the statement has re-affirmed the statement and nothing has been produced to show that the contents of the statement are incorrect, the assessment is valid.
Kottakkal Wood Complex vs.DCIT (Kerala)- ITA.No. 27 of 2013

Reassessments

86. The Tribunal held that where the reasons recorded by the AO for reopening of assessment merely contained the modus operandi of the alleged entry operator and there was nothing to create or provide nexus to believe that he assessee had introduced its own unaccounted income in the form of share capital, the initiation of reassessment proceedings was bad in law. It further held that the reasons were recorded in a mechanical and casual manner by considering irrelevant and incorrect facts.
Touch Wood Projects Pvt Ltd v ITO – (2016) 48 CCH 0009 Del Trib – ITA No 6319 / Del / 2012

87. Where the assessee transferred technology to its subsidiaries based in BVI, a tax haven, which was further transferred by the BVI entities to the assessee's US based subsidiary under a technology transfer agreement and it was subsequently discovered that the BVI entities did not have any R&D capabilities (since their financials did not reflect any fixed assets), the Court held that the AO was justified in initiating reassessment proceedings as the reasons recorded by the AO was prima facie based on tangible material which demonstrated how technology developed by the assessee was routed through its BVI subsidiary. It also noted that the assessee did not disclose true and full facts as it did not reveal whether the BVI entities had any R&D facilities and therefore the reassessment proceedings initiated after a period of 4 years were justified.
Sun Pharmaceutical Industries Ltd v ACIT – TS-517-HC-2016 (Guj)-)-ITA No. 768 of 2015

88. The Tribunal held that where the AO had initiated reassessment proceedings merely on the basis of information received by him from the Directorate of Income Tax (Investigation) and the reasons recorded were vague and not based on any tangible material and were recorded mechanically without any independent application of mind on part of the AO, the issuance of notice of reassessment was liable to be quashed.
RK Garg Developers Pvt Ltd v ITO – (2016) 47 CCH 0729 (Del Trib) – ITA No 6558 / Del / 2014

Revision

89. The Tribunal held that the power of suo motu revision under section 263(1) was in the nature of supervisory jurisdiction and could only be exercised if the circumstances specified therein existed viz. order was erroneous and by virtue of being erroneous was prejudicial to the interest of the revenue. It further held that where the issue based on which the Commissioner invoked such power viz. whether the assessee was correct in not offering service tax as its income by not crediting the same to P&L account, had been examined by the AO who did not make any

addition on account of the same, there were two views possible and therefore the order of the AO could not be treated as erroneous.
A Menarini India Pvt Ltd v Pr CIT – (2016) 47 CCH 0726 (Ahd Trib) - ITA No. 1461/Ahd/2015

90. The Tribunal held that where assessee had claimed depreciation @ 80% on windmill and civil foundation work and electrical items which were part and parcel of windmill and that same was also accepted by assessing officer in consonance with the order of ITAT for earlier assessment year, CIT was not justified in holding that the assessment order was erroneous and prejudicial to the interest of revenue.
Mehru Electricals & Mechanical Engineers Pvt. Ltd. vs. Principal CIT (2016) 48 CCH 0080 (Jaipur Trib)-ITA No.519/JP/16

91. The Tribunal held that where the assessing officer after not being satisfied with explanation of assessee had taxed entire receipt credited in the bank account, the assessment order could not be said to be erroneous and prejudicial to the interest of the revenue.
Sunil Kumar Girdhar vs. Principal CIT (2016) 48 CCH 0088 (Jaipur Trib)-ITA No.513/JP/2016

Search

92. Where the Deputy Director of Income Tax (Investigation)-I, Bhopal filed a complaint before the Chief Judicial Magistrate at Bhopal against the appellant alleging commission of offences under sections 109, 191, 193, 196, 200, 420, 120B and 34 of IPC for giving false statement to the Income Tax Officers while their statements were recorded on oath under Section 131 of the Income Tax Act in pursuance to a search proceeding conducted in their respective premises, the Apex Court held that such complaint was invalid since the Deputy Director of Income Tax (Investigation) has no competency to file a complaint against the contempt of the lawful authority of Income Tax Officers under Section 195 of the Cr PC which stipulates that the complaint for prosecution for contempt of lawful authority of the public servants, among other things, has to be filed by either the court /public servant concerned or by the officer duly authorised in writing by that court in that behalf or by the court to which that court is administratively subordinate and since the DDIT(IT) was not authorized the same was inadmissible.
Babita Lila v Union of India – (2016) 73 taxmann.com 32 (SC) – Criminal Appeal No 824 of 2016

g. **Withholding tax**

93. The Court held that the assessee was in default under section 201(1) / (1A) for not deducting TDS on payment of uniform allowance to its employees since the dress code at work place of the assessee did not qualify as uniform and therefore the exemption under section 10(14)(i) with respect uniform allowance was not applicable. It held that if the assessee's interpretation of uniform was to be accepted, any dress worn by employees in any office would qualify as uniform and therefore upheld the order of the ITAT treating the assessee as assessee in default.
Oil and Natural Gas Corporation Ltd v ACIT – TS-525-HC-2016 (Guj)- Tax Appeal No. 368 of 2016 to 371 of 2016

94. Where the assessee , an exporter of goods, had incurred transport charges in relation to purchase referred to as carriage inward and carriage outwards without deducting TDS, the Tribunal held that payment could not be disallowed under section 40(a)(ia) of the Act as under section 194C of the Act, a payer availing carriage services would be exempt from TDS provided the payee furnishes its PAN to the payer. It dismissed the contention of the Revenue that Section 194C(6) would not apply to payments made by a person who himself is not a transporter to another sub-contractor and held that the benefit shall be available to all payers by virtue of 194C(6), in relation to all Goods Transport Charges irrespective of the fact, whether it was under a Contract or a Sub-contract noting that the distinction between contractor and sub-

contractor had been done away with by virtue of clause (iii) of Explanation 194C(7) wherein the term contract included sub-contract.
Soma Rani Ghosh v DCIT – TS-497-ITAT-2016 (Kol) - I.T.A. No. 1420 /KOL/ 2015

95. The Tribunal held that no disallowance of expenditure can be made on account of non-deduction of TDS on such expense where the assessment was made computing income based on the estimated net profit rate on the ground that estimation of net profit would take care of every addition related to business income.
Rakesh Construction Co vs. ACIT (2016) 48 CCH 0081 (Jaipur Trib)-ITA No.274/JP/14

h. **Others**

Appeals

96. Where the assessee was going to disclose income under the Income Declaration Scheme 2016 (which provides the tax payers an opportunity to declare undisclosed income and pay tax on such undisclosed income) for AYs 2009-10 to 2011-12, the Tribunal allowed the assessee application for withdrawal of the appeals filed for the relevant years.
Praveen Kumar Mittal v ITO – TS-477-ITAT-2016 (Del) - ITA No. 5540 – 5541 and 5542/Del/2015

97. The Tribunal allowed the assessee's rectification petition against the earlier order issued by it wherein it had deleted the demand under section 68 of the Act and held that the attachment of property by the Revenue was not warranted, without specifically directing the Revenue to lift the attachment and rectified the said order to the effect of giving a specific direction for such lifting of attachment since the Revenue had deliberately failed to lift the attachment of property on the ground that the Tribunal had not provided for such direction explicitly and that the case had not reached finality before the Apex Court.
Shangkalpam Industries Pvt Ltd v ITO – TS-502-ITAT-2016 (Chny) - I.T.A.No.1613/Mds/2013

98. The Court set aside the order of the Tribunal departing from the earlier order of the coordinate bench in the assessee's own case since the Tribunal failed to provide reasons for ignoring the coordinate bench decision. It held that in case a subsequent bench of the Tribunal did not agree with the reasons indicated in a binding decision of a coordinate bench, then for reason to be recorded, it must request the President of the Tribunal to constitute a larger bench to decide the difference of view on the issue.
Hatkesh Cooperative Housing Society Ltd v ACIT – TS-485-HC-2016 (Bom)-ITA No.424/Mum/2011

Charitable Trusts / Exempt Income

99. The Tribunal held that as per Section 12AA of the Act, for the purpose of granting registration as a charitable institution, the DIT(Exemptions) was to grant registration once he was satisfied about the genuineness of activities of the trust and about the objects of the trust and was not empowered to deny exemption by contending that the activities of the trust were in the nature of business activities as per proviso to Section 2(15) of the Act. Further, the Tribunal noted that merely because the assessee was receiving service charges from various organizations for conducting training programmes, the activities of the trust could not partake the character of business. As regards the genuineness, the Tribunal observed that the assessee had received service charges from well reputed companies and therefore the genuineness of its activities could not be doubted.
Institute of Road Safety & Fleet Management Society v DIT – (2016) 48 CCH 0003 (Del Trib) – ITA No 596 / Del / 2014

Penalty / Interest

100. The Tribunal held that where the assessee purchase land and made payments to its consolidator for which it had submitted adequate details / particulars along with copies of Tribunal decisions in the case of its group concerns wherein it was held that the provisions of section 194C / H were not applicable to such payments, the CIT(A) was incorrect in treating the payments as bogus and imposing penalty under section 271(1)(c) of the Act since there was no furnishing of inaccurate particulars or deliberate attempt to conceal income.
ITO v Philia Estate Developers Pvt Ltd – (2016) 48 CCH 0013 Del Trib – ITA No 2123 / Del / 2014
ITO v Philana Builders & Developers Pvt Ltd – (2016) 48 CCH 0021 Del Trib – ITA No 2122 / Del / 2014
ITO v Penteha Builders & Developers Pvt Ltd – (2016) 47 CCH 0769 Del Trib – ITAT No 2124 / Del / 2014

101. Where the assessee filed return of income but failed to disclose income from short term capital gains and filed details of the same post enquiry by the AO and had failed to substantiate its claim of cost of purchase and improvement the levy of penalty under section 271(1)(c) of the Act was valid.
Nandubhai Nathabai Patel v ITO – (2016) 48 CCH 0104 Ahd Trib – ITA No 3033 / Ahd / 2013

102. The Tribunal held that where the assessee without any malafide intent, failed to furnish Annual Information Return under section 285BA, but, filed it subsequently on receipt of notice, penalty under section 271FA could not be levied since the breach was only technical and had flown from a bona fide ignorance of the assessee.
Durgapur Steel Peoples Cooperative Bank Limited vs. Director of Income Tax (2016) 48 CCH 0072 (Kolkata Trib)-ITA Nos.1322 & 1323/Kol/2013

103. The Tribunal held that penalty for delay in furnishing tax audit report should not be imposed if there is no mala fide reason for the delay. Dispute with auditor is a reasonable cause u/s 273B for the delay in furnishing the tax audit report.
Gemorium vs.ITO (Jaipur Trib)- ITA No. 514/JP/2014

104. The Tribunal held that where interest under section 234A and 234C were not originally levied in an order under section 143(3), levy of interest in consequential order giving effect to the order of ITAT was not warranted.
ITO & ANR. Vs. Rao Subba Rao & Anr. (2016) 48 CCH 0073 (Hyderabad Trib)-ITA No.759/Hyd/2015

105. The Court held that section 200A of the Act, enabling Assessing Officer to determine fee under section 234E (for late filing of TDS return) brought about with effect from 1-6-2015 was prospective in nature, hence, no computation of fee for demand or intimation for fee under section 234E could be made for TDS deducted for respective assessment years prior to 1-6-2015. It held that the Parliament intended to insert the provisions of section 234E providing for fee and simultaneously the utility of such fee was for conferring the privilege to the defaulter-deductor to come out from the rigors of penal provisions of section 271H. If section 234E providing for fee was brought on the statute book, keeping in view the aforesaid purpose and the intention, then the mechanism provided for computation of fee and failure for payment of fee under section 200A which had been brought about with effect from 1-6-2015 could not be said to be only a regulatory mode or a regulatory mechanism but it could rather be termed as conferring substantive power upon the authority. Thus, amendment made under section 200A with effect from 1-6-2015 was held to be having prospective effect, hence, no computation of fee for demand or intimation for fee under section 234E could be made for assessment years prior to 1-6-2015.
Sri. Fatheraj Singhvi and others - TS-514-HC-2016 (KAR) - *ITA No. 1461/Ahd/2015*
Gajanan Constructions and others -TS-530-ITAT-2016 (PUN)
Little Servants of Divine Providence Providence Charitable Trust vs. ITO (Cochin Trib)- ITA No 258/Coch/2016

106. The Court rejected the assessee's contention that if the return of income is treated as invalid under section 139(9), the tax and interest payable in the return becomes nugatory and the advance tax paid would be refundable to him and held that upon filing return under section 139, assessee admits the liability to pay tax under the Act and invalidation of return would not make such admitted liability refundable. It upheld the recovery proceedings under section 226(3) initiated by revenue.
Shakti Bhog Foods Limited - TS-534-HC-2016 (DEL)- W.P. (C) 2569/2015

107. The Court rejected grant of interest on income-tax refund claimed by assessee even though income-tax refund was allowed on the ground that assessee had filed belated return and delay in grant of refund was on account of reasons attributable to assessee. It rejected assessee's stand that once delay in filing return was condoned, it becomes valid return and therefore grant of interest under section 244A would be consequential and stated that delay had been condoned only for the purpose of accepting the return, but it cannot be stated that the delay was not attributable to the assessee.
Pala Marketing Co-op Society Ltd - TS-531-HC-2016 (KER)- WP(C).No. 17664 of 2013 (G)

Unexplained Investment / Income / Expenses

108. The Tribunal held that where the AO conducted a survey on March 6, 2009 and made an addition on account of undisclosed investments since an amount towards advance for property had not been recorded therein, but assessee had recorded the said amount as advance for property in its balance sheet ended March 31, 2009 no addition under section 69 of the Act could be made since the assessee was not obligated to complete entries until March 6, 2009 when the books of accounts were to be closed on March 31, 2009. Therefore since the investment was duly recorded in the balance sheet the addition could not be made.
Sanjay R Shah v ITO – (2016) 48 CCH 0004 Ahd Trib – ITA No 492 / Ahd / 2016

109. The Tribunal held that where the identity of the shareholders wasn't in question and the credit worthiness was also proved since the shareholders had liquidated its investment in shares of another company to acquire shares of the assessee company, no addition under section 68 of the Act could be made.
Anshika Investments Pvt Ltd v CIT – (2016) 48 CCH 0005 Del Trib – ITA No 2262 / Del / 2013, 3440 / Del / 2013, 2263 / Del / 2013, 6968 / Del / 2014, 6969 / Del / 2014, 3438 / Del / 2013

110. The Tribunal held that no addition under section 68 could be made where the assessee filed adequate evidence substantiating the credit in its books of accounts (on account of receipt of Rs. 60 lakhs from Cubic Commercial against the booking of property) which was not examined or dealt with by the AO who proceeded to make an the addition merely on the basis of a statement recorded of a third party, which was not even furnished to the assessee. It noted that no enquiry or verification was ever done by the AO and therefore the addition could not be sustained.
ITO v Moksha Securities P Ltd – (2016) 48 CCH 001 (Del Trib) – ITA No 6251 / Del / 2015

111. The Tribunal held that where the assessee furnished details such as the income-tax returns, bill wise details of payments, addresses and PAN copies of the commission agents to which it had made payment of commission during the relevant AY viz. AY 2010-11, the AO was incorrect in disregarding all the aforesaid evidences and in concluding that the payment of commission was non genuine merely on the basis of the date on appointment letters entered into with the commission agents viz. April, 2010, which could have been on account of a typographical error. It held that where the assessee had discharged the onus which lay on it to prove that the commission was paid to the commission agents, the AO ought to have considered the same before fastening liability on the assessee based on the date of appointment letters as his action was not in consonance with the discharge of its quasi-judicial function.
Sytans & Colloids v DCIT – (2016) 47 CCH 0730 (Lucknow Trib) – MA No 110 / LKW/ 2015

Miscellaneous

112. The Tribunal held that marginal fall in the GP Ratio compared to preceding years and non-incurring of expenditure such as travelling, telephone, salary etc were not relevant reasons for rejecting books of account under section 145 of the Act and therefore the AO was not justified in making an addition by taking the higher GP rates.
ITO v Ramdulari Sidhkishor Agarwal – (2016) 48 CCH 0014 Ahd Trib – ITA No 1440 / Ahd / 2012

113. The Court allowed the assessee's writ petition and set aside the CCITs order rejecting the Petitioners compounding application for offence committed under section 276B of the Act on the ground of the conviction of the Trial Court approximately 15 years prior. It held that where the Sessions Court had granted approval to the Revenue for considering the assessee's application for compounding, the Revenue could examine the matter afresh without being influenced by the conviction.
VA Haseeb and Co v CCIT – TS-515-HC-2016 (Mad) - Writ Petition No.32731 of 2015

114. The Court upheld the special audit under section 142(2A) of the Act in case of the assessee and rejected the submission of the assessee that special audit was merely a ploy to extend time to complete assessment which would have otherwise become time barred, by noting that nothing in the Act which prohibits the AO from ordering / directing special audit where the accounts of the assessee were complicated and there was a doubt to the correctness of the accounts due to multiplicity of transactions or volume of transactions or specialized nature of accounts. Noting that the conditions were complied with in the case of the assessee, the Court upheld the special audit.
Sharad Kantilal Shah – TS-523-HC-2016 (Bom)- W.P. No.1134/2016

115. The Tribunal held that where assessee engaged in the business of diamonds export, entered into manufacturing by setting up its own factory, paid substantially higher wages and job work charges as against the preceding year and was not able to provide justification for the same, gross profit ratio @ 7% estimated by CIT(A) as against 6.93% was quite justified and fair keeping in view of factual matrix.
Kumudchandra D.Mehta vs. ACIT (2016) 48 CCH 0026 (Mumbai Trib)-ITA No.1207/Mum/2012