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

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

By Dr. Sunil Moti Lala, Advocate
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The Digest contains 4000 important judgments which were pronounced by Courts and Tribunals in the period from January 2018 to December 2018.

Of these, there are 1150 judgements on Transfer Pricing, 200 judgements on International Taxation and 2650 judgements on Domestic Taxation.

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

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

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

(Pronounced in January to December 2018)

Transfer Pricing	*InternationalTax*	*DomesticTax*
➢ ***International transaction/ SpecifiedDomestic Transaction*** *– Case 1 to 12*	➢ ***Permanent Establishment –*** *Case1151to1186*	➢***Income–*** *Case1351to1406*
➢ ***Most AppropriateMethod***	➢ ***Royalty–*** *Case 1187 to 1213*	➢***Income from Salary –*** *Case 1407 to 1414*
– *Comparable Uncontrolled Price Method–Case13 to 32*	➢ ***Fees for technical services –*** *Case 1214 to 1247*	➢***IncomefromHouseProperty –Case1415to1438***
– *CostPlus Method–Case33 to 37*	➢ ***CapitalGains–*** *Case1248to1250*	➢***Business Income –*** *Case 1439to1497*
– *ResalePrice Method– Case38 to 52*	➢ ***Interst Income –*** *Case 1251 to 1252*	➢***Deductions/Disallowances***
– *Transactional Net MarginMethod– Case 53 to 93*	➢ ***Foreign Tax Credit –*** *Case 1253 to1255*	– *Section 30– Case 1498*
– *Profit Split Method- Case 94 to 95*	➢ ***Withholdingtax–****Case1256 to1326*	– *Section 32– Case1499 to 1568*
– *Any Other Method- Case96*	➢ ***Shipping business****– Case 1327 to 1330*	– *Section32A –Case1569*
– *General - Case97*	➢ ***Section 44BB****– Case 1331 to 1336*	– *Section 33AB –Case1570*
➢***Comparability– Inter andIntraIndustry***	➢ ***Others***	– *Section 35 –Case1571 to 1583*
– *ITES Sector / SoftwareDevelopment Services – Case 98 to 291*	– *Interest under section 234B/ 234C / 234D – Case 1251 to 1252*	– *Section 35A –Case1584*
– *InvestmentAdvisoryServices –Case292to 315*	– *Miscellaneous – Case 1340 to 1350*	– *Section 35AB –Case1585 to 1588*
– *Manufacturing andcontracting –Case316 to 319*		– *Section 35AD– Case1589to1590*
– *SupportServices-Case320 to362*		– *Section 35B–Case1591*
– *Research andDevelopmentServices-Case363 to 365*		– *Section35D–Case1592 to 1595*
– *Others–Case366 to412*		– *Section36-Case1596 to1657*
– *General – Case 413 to 461*		– *Section37-Case1658 to 1891*
➢***Computation/Adjustments***		– *Section 40-Case1892 to 1910*
– *Capacity UtilizationAdjustment – Case 462 to 472*		– *Section 40A-Case1911 to 1950*

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– *Stay–Case1090 to1136*		➢***Withholding Tax -*** *Case 2973 to3091*
– *Others –Case1137 to1150*		➢***Others***
		– *Appeals /Rectification applications – Case 3092 to 3183*
		– *Deemed Dividend–Case3184to3205*
		– *Exempt Income–Case3206 to3230*
		– *Charitable Trust–Case3231to3355*
		– *Interest – Case 3356 to 3379*
		– *Penalty–Case3380to3526*
		– *Method of Accounting – Case 3527to 3557*
		– *Minimum Alternate Tax–Case3558to3585*
		– *Refund–Case3586to 3590*
		– *Set off and carry forward of losses–Case3591to 3621*
		– *Settlement Commission – Case 3622 to 3633*
		– *Stay of demand – Case 3634 to 3664*
		– *Recovery – Case 3665 to 3688*
		– *Prosecution – Case 3689 to 3703*
		– *Penny Stocks / Bogus Capital gains – Case 3704 to 3726*
		– *Unexplained income / expenses / investments – Case 3727 to 3953*
		– *Miscellaneous – Case 3954 to 4000*

I. Transfer Pricing

a. International Transactions / Specified Domestic Transactions

1. Following the coordinate bench decision in assessee's own case for earlier year, the Tribunal held the assessee and Kaybee Exim Pte Limited, Singapore fell under the meaning of AEs as per the provisions of section 92A since Mr. Govind Karunakaran who was a Director and 99.9% shareholder of the assessee company was also a Director and Chief Operating Officer of Kaybee Exim Pte Limited, Singapore and, therefore, the condition of one enterprise participating directly or indirectly or through one or more intermediaries in its management or control or capital as prescribed under clause (a) & (b) of sub section (1) of section 92A were satisfied. Considering that the assessee had not brought any change in facts from the preceding year, the Tribunal dismissed assessee's appeal challenging the AO's treatment of KEPTL, Singapore as an AE of assessee on account of common director.
Kaybee Private Limited vs ITO [TS-898-ITAT-2018(Mum)-TP] ITA No.2166 and 2167/Mum/2015 dated 08.08.2018

2. The TPO had made the disallowance of foreign travel expenses incurred to the extent of Rs.24.66 lakhs since he was of the view that expenses were incurred for the benefit of AE and treated it as an international transaction accordingly, made the adjustment. The DRP accepted assessee's contention that expenses of Rs 24.66 lakh were incurred on foreign travel of employees and could not be considered as expenses incurred for benefit of AE and accordingly could not be considered as international transaction. Further, the DRP sustained addition to the extent of Rs 8.49 lakhs on account of details being furnished only to the extent of Rs 16.16 lakhs. The Tribunal deleted the disallowance of Rs 8.49 lakhs towards foreign travel expenses incurred for employees' visit to places of AE noting that assessee furnished two sets of statements, one containing full details of travel expenses (which was furnished before the TPO) and another one containing details of Rs 8.49 lakhs (which was furnished before the TPO) and opined that addition of Rs 8.49 lakhs could not be sustained since full details had been furnished by the assessee before the TPO and the expenses were incurred for the purpose of business.
Essar Power Limited vs ACIT [TS-1100-ITAT-2018(Mum)-TP]ITA No.1332/Mum/2017 dated 19.09.2018

3. The Tribunal remitted assessee's claim of expenditure with respect to payment of remuneration of directors (which fell under the erstwhile specified domestic transactions provisions under clause (i) of Sec. 92BA) back to the file of AO for AY 2014-15 noting that the issue was squarely covered by co-ordinate bench ruling in assessee's own case for earlier year wherein similar issue was remitted with a direction to the AO to adjudicate the issue of claim of expenditure in accordance with law after affording opportunity of being heard to the assessee after holding that directors remuneration transaction no longer fell within the definition of specified domestic transactions after omission of Clause (i) of Sec. 92BA(i) by the Finance Act, 2017 (which would be deemed to be omitted since inception) and hence the proceedings initiatied or action taken under clause (i) become otiose.
Texport Overseas Private Limited vs Dy.CIT (TS-996-ITAT-2018(Bang)-TP) IT(TP)A No.2213/Bang/2018 dated 12.09.2018

4. The assessee-company derived income from business of providing advisory and consulting services to companies engaged in business of general insurance and life assurance. It entered into an agreement with Amway (AE), and availed data processing services.However, AO made a disallowance under section 40A(2)(b) of said data processing charges paid to Amway on ground that the payments made by assessee to were excessive and unreasonable as regards the legitimate needs of business or benefits derived by it. The Tribunal deleted the said adjustment relying on coordinate bench ruling in assessee's own case for earlier year wherein it was held that a) the adhoc disallowance made by the A.O was arbitrary and without any basis. The A.O. had not given a finding as to what as per him, was the fair market value b) Amway had duly disclosed the amount received from the assessee company on account of data processing charges and paid tax thereon c) assessee had chosen to use transfer

pricing provisions to demonstrate its claim that the expenditure in question was at arm's length and that the same was not excessive or unreasonable and when the transfer pricing reports submitted by the assessee were not rejected, it could be concluded that the assessee had discharged the burden of proof.

Amserve Consultants Ltd vs ADIT [TS-1167-ITAT-2018(DEL)-TP] ITA No.3062/Del/2015 dated 29.10.2018

5. The assessee had entered into the following transaction a) purchase of loans of HDFC Ltd of more than 5000 crores b) payment to HBL Global for rendering of services c) payment of interest to HDB Welfare Trust (Trust created by assessee for its employees. The AO was of the view that the transactions fell within the ambit of specified domestic transactions and made a reference to TPO.The Court held that for transactions to fall within meaning of a Specified Domestic Transaction, assessee has to have a transaction (not being an international transaction) with a person as listed in sub-clauses (i) to (vi) of section 40A(2)(b). The Court examined the transactions and held that purchase of loans from HDFC Ltd did not fall within the ambit of SDT for the reason that HDFC Ltd did not have a substantial interest in assessee, as HDFC Ltd. admittedly held 16.39 per cent of shareholding in assessee, and was thus not a person as contemplated under section 40A(2)(b)(iv) for present transaction to fall within meaning of SDT as set out in section 92BA(i) .Further it could not be said that HDFC Ltd. indirectly had 20 per cent of voting power in assessee even though HDFC Investments which was a wholly owned subsidiary of HDFC Ltd. and had approximately 6 per cent shareholding of assessee as such clubbing of shareholding, in law, is clearly impermissible because a shareholder of a company can never have any beneficial interest in the assets of that company. This would be contrary to all canons of Company Law. It is well settled that a shareholder of a company can never be construed either the legal or beneficial owner of the properties and assets of the company in which it holds the shares. Thus, the Court opined that HDFC Ltd. did not have a substantial interest in assessee as required and stipulated in Explanation (a) to section 40A(2)(b). In the case where it received services from HBL Global, the Court opined that merely because assessee held 29 per cent shareholding of ADFC which in turn held 98.4 per cent of shares of HBL Global, it did not have beneficial ownership and voting rights of more than 20 per cent of HBL Global as assessee being a shareholder of ADFC did not have any interest (beneficial or otherwise) in properties/assets of ADFC and that being case, even this transaction was not entered into with a person as mentioned in section 40A(2)(b). In case of welfare trust, since trust had been set up exclusively for welfare of its employees and there was no question of assessee being entitled to 20 per cent of profits of such trust, this transaction clearly would not fall within meaning of section 40A(2)(b) to be a SDT as understood and covered by section 92BA(i). Thus, it held that AO was clearly in error in concluding that transactions undertaken by assessee were specified domestic transactions which required to be disclosed in Form 3CEB and thus AO could not have referred the transactions to TPO for determining the ALP. It allowed the assessee's petition by holding that said order and said reference were without jurisdiction.

HDFC Bank Ltd vs ACIT [TS-1299-HC-2018(Bom)-TP] Writ Petition No.462 of 2017 dated 20.12.2018

6. The Tribunal restored the issue of determination of Carpro Netherlands as an AE of the tested party i.e. assessee to the CIT(A) noting that the CIT(A) had not passed a speaking order in accordance with the principles laid down u/s.250(6). The CIT(A) had held that Carpro Netherlands was an AE of the assessee as per sec 92A(2)(g) since it provided its platform for the provision of software services and thus, he opined that the assessee was dependent on the knowhow of the aforesaid entity and could not provide its services without it. The Tribunal considered the assessee's contention that it was a general industry practice to share the platforms on which software was to be developed with parties who had been appointed to develop software and further, the business of assessee was not wholly dependent upon the knowhow of Carpro Netherlands and apart from export of software services (which constituted only 20% of revenue), it was providing software development services as well as trading of software licenses in local market.The assessee relied on the coordinate bench decision of Page Industries wherein it was held that assessee and foreign company were not AEs due to absence of defacto control in the business inspite of the assessee being a licensor of the brand name of the foreign company for exclusive manufacturer and marketing of goods. The Tribunal directed the CIT(A) to adjudicate the issue after considering the ratio of the aforesaid decision.

Magic Software Enterprises India Pvt Ltd vs ITO [TS-747-ITAT-2018(PUN)-TP] CO No.98/Pun/2014 dated 18.07.2018

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

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

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

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

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

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

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

b. Most Appropriate Method

Comparable Uncontrolled Price Method

13. The assessee was engaged in the business of providing assistance in sourcing and procurement of yard textile etc. from sources within India and outside India to its AE i.e. KB Exim Pte. Ltd. (KEPTL) in Singapore and was charging a brokerage for the same. The AO determined the ALP of brokerage rate for yarn products at 2% by taking a comparable instance of assessee's own international transaction with another AE. It was assessee's contention that brokerage rate ought to be adopted between 0.5% to 0.75% in view of comparable instances. The Tribunal restored the matter to re-compute the ALP afresh noting that the AO had not adopted the method under section 92C(1) of the Act as he considered related party transaction as a base for benchmarking of brokerage rate for yarn product and further directed the assessee to furnish documentary evidence to substantiate its contention.
Kaybee Private Limited vs ITO [TS-898-ITAT-2018(Mum)-TP] ITA No.2166 and 2167/Mum/2015 dated 08.08.2018

14. The Tribunaldismissed Department's appeal and upheld the CIT(A)'s order wherein CUP was accepted to be the MAM and assessee was taken as the tested party following the decision of coordinate bench in assessee's own case wherein it was held that the assessee [engaged in procuring medicines and disposables from suppliers] and not the AE should be the tested party. The Tribunal in the earlier year had rejected the contention of the TPO that AE should bethe tested party since the AE was sourcing materials from the Indian manufacturers much before the setting up of the assessee companyhence had intangibles in form of supplier list and bore all types of risksand thus, it was the more complex entity.
ACIT vs Missionpharma Logistics Pvt Ltd [TS-872-ITAT-2018(Ahd)-TP] ITA No.1352/Ahd/2015 dated 02.08.2018

15. The Tribunal held that CUP was the MAM to benchmark the transaction of sale of printed circuit boards (PCBs) by assessee to its AE in Austria [for further sale in Europe as distributor] as against TNMM adopted by the TPO at entity level; and deleted the TP adjustment following the coordinate bench ruling in assessee's own case for earlier year wherein adoption of entity level TNMM was rejected in respect

of the export transaction since the Revenue was not able to demonstrate or bring any cogent evidence or material as to how CUP method was not applicable and that TNMM was the more appropriate method. The Tribunal further held that assessee was to be taken as the tested party and not its AE as testing had to be done in order to examine if the Indian entity was offering its profits to lawful taxation in India and thus keeping the AE as tested party would defeat the purpose of TP regulations.

AT&S India Private Limitedvs DCIT [TS-1179-ITAT-2018(KOl)-TP] ITA No.69/Kol/2018 dated 10.10.2018

16. The Tribunal held that DRP erred in applying CUP for indenting segment of assessee and comparing the commission earned fromAE and non-AE segments; noting that CUP required a high degree of similarity and there were various dissimilarities in transaction with AE and non-AE such as volume of transactions, contractual terms, geographical location and markets which affected the pricing. It held that TNMM was the MAM in view of the fact that TPO had accepted it from AY(s) 2003-04 to 2006-07 (noting that OP/TC was taken and not the berry ratio which assessee had adopted) and b) from AY 2011-12 to 2018-19 under MAP, TNNM had been agreed to be MAM as there was no change in FAR analysis and assessee was a low risk service provider. Further, it observed that berry ratio (profit/value added expenditure) was to be taken as base for computing PLI as the assessee was acting as an indenting agent/ service provider incurring mainly operating expenses and thus, the operating expenses represented the functions performed and risks undertaken by assessee. It remanded the matter back to the file of TPO to examine and benchmark the transaction by adopting TNMM as the MAM by taking berry ratio as PLI.

Sumitomo Corporation India Pvt Limitedvs ACIT[TS-1204-ITAT-2018(Del)-TP] ITA No.5095/Del/2011, 5850/Del/2012, 328 and 6646/Del/2014 and 1321/Del/2016 dated 22.10.2018

17. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s orderdeleting the addition made to the ALP by TPO by applying CUP (as against TNMM applied by assessee) on account of export by assessee (manufacturer of spices) to its AE by following the coordinate bench decision in assessee's own case for earlier year. In the earlier year the Tribunal restored the issue back to TPO on ground that TPO had not selected comparables which were selling similar type of spices in public domain and had computed ALP on erroneous basis by computing the average rate of carton by dividing the total value of invoice with total number of cartons ignoring that the said cartons did not have same/comparable items. The said average was then compared with the average computed for the bills raised on uncontrolled party during the same period and then the difference therein was multiplied with the number of cartons to arrive at the amount of addition. In the remand proceedings, the TPO had accepted TNMM as the MAM and deleted the addition.

Asst CITvs Manashin Di Hatta Ltd. [TS-1403-ITAT-2018(Del)-TP] (ITA No.1799/Del/2015 dated 29.10.2018

18. The Tribunal held that CUP was not the MAM and TNMM applied by assessee was the MAM for export of finished product in case of assessee (engaged in the business of manufacturing of aromatic ingredients, natural and synthetic perfumery, flavoring and derivatives) noting that price at which finished products were sold to AE were not comparable to non-AEs owing to difference in volume of transaction (quantity sold to non-AE much lower than AE's), geography, functions performed and risks assumed. Further, it observed that as per Rule 10B(3) (uncontrolled transaction not to be comparable unless differences between transaction are eliminated so like comparison can be made), the TPO was unable to quantify the differences. It relied on coordinate bench decision in Amphenol Interconnect India Pvt Ltd. (which was subsequently upheld by Bombay HC) wherein it was held that CUP would not be the MAM in case of geographical differences, volume differences, timing differences, risk differences and functional differences and accepted assessee's stand of applying TNMM.

Firmenich Aromatics Product ion (India) Pvt.Ltd. vs ITO [TS-1214-ITAT-2018(MUM)-TP] (ITA No.7145/Mum/2017) dated 13.11.2018

19. The Court upheld Tribunal's order wherein it rejected the TPO's imputation of markup of 3% on cost since it was without any basis against the assessee's claim of 10% in respect of its fees for IT services. The Revenue also admitted that nowhere on record were there any specific comparables before the TPO to justify the estimation adopted by the TPO.

Pr.CIT vs Sabic Innovative Plastic India Pvt. Ltd. [TS-1089-HC-2018 (Guj)] ITA No.248&231 of 2018 dated 31.07.2018

20. The Tribunal dismissed assessee's appeal against the DRP's denial of 3% adjustment which was made by the assessee [engaged in export of sea food] to the sale price in each sale made to its AE so as to bring it at ALP under CUP method. Such rates were compared to the rates published by the Marine products Export Development ["MPEDA"] weekly data. The Tribunal rejected the assessee's contention that the adjustment ought to be provided on account of difference in glaze content in sea food i.e. assessee's sea food glaze (25%) while MPEDA's sea food glaze (20%) which resulted in a difference in price. It observed that assessee failed to bring on record any evidence to show that assessee's products were having glaze of 25% so that the MPEDA price could not be compared with it.

Torry Harris Sea Foods Pvt Ltd vs ACIT [TS-508-ITAT-2018(COCH)-TP] IT(TP)A No.447/Coch/2016 dated 05.07.2018

21. The Tribunal rejected TPO's selection of TNMM as the MAM and accepted the CUP method applied by assessee for benchmarking its import transactions in manufacturing segment by following the coordinate bench decision in assessee's own case for AY 2006-07 wherein CUP method was accepted on basis of consistency as even in subsequent years, the TPO had applied the CUP method. The coordinate bench in assessee's own case for AY 2010-11 had directed the AO/TPO to follow DRP's directions which was to adopt the internal CUP in view of product category being identifiable. It also noted that the findings of the DRP in the subject year appeared to be on wrong appreciation of facts since it had stated that the assessee had applied weighted average rate of purchase of products from AE's itself as internal CUP and thus, concluded that assessee had benchmarked under internal CUP on basis of controlled transactions which was incorrect whereas the TPO in his order had clearly stated that the assessee had adopted weighted average price of unrelated vendors as an internal CUP.

Lenovo (India) Private Ltd vs Dy.CIT [TS-802-ITAT-2018(Bang)-TP] IT(TP)A No.74/Bang/2014 dated 06.07.2018

22. The Tribunal remitted the ALP-determination in respect of assessee's import of goods from AE back to CIT(A). It noted that the TPO/CIT(A) made a TP-addition on imports considering variation in import price for the same unit of good from AE at €204.64 in October 2001 and €75 in February 2002 by discarding the market quote furnished by assessee which supported its contention that there was a drastic fall in the product prices. Relying on the decision of Adani Wilmar [TS-114-HC-2014(GUJ)-TP], wherein the Court held that authentic and reliable market quotes on price publication were relevant while determining the ALP employing the CUP method, the Tribunal directed the CIT(A) to examine the evidence produced by the assessee and verify its authenticity and reliability instead of rejecting it at the threshold level.

DCIT vs. Alcatel India Ltd. - TS-1085-ITAT-2017(DEL)-TP - ITA No. 339/Del/2012 dated 06/12/2017

23. The Tribunal deleted the TP adjustment on call centre services provided by assessee to its US-based AE noting that the assessee's transactions were at ALP under internal CUP, internal TNMM as well as external TNMM. Vis-à-vis internal CUP, it noted that the average hourly rate earned from AE in USA (Rs. 274.39 per hour) was higher than rate earned from Non AEs in UK (Rs. 108.82 per hour) and dismissed the contention of the Revenue that the internal CUP was not an appropriate method considering different pricing mechanism for AE and Non AEs. As regards the TPO's contention i.e. that there was a difference in risk profile between AE and Non-AE transactions for which no accurate adjustment could be made, it held that even if the adjustment was made, it would further reduce the average hourly rate charged from the Non-AEs which was lower than the average hourly rate charged from AE in any case. The Tribunal also adjudicated on the appropriateness of internal TNMM and observed that the services provided to AE and non-AEs were identical and that the functions performed, assets used and risks assumed (FAR) in AE as well as non AE business were also similar and therefore held that even internal TNMM could be considered as most appropriate method as per which the operating margin for the AE transactions (74.92%) was higher than non-AE transactions (30.90%).

Vis-à-vis External TNMM, it rejected the Revenue's argument for the exclusion of All sec and CG VAK and held that i) All Sec was wrongly excluded on account of non-satisfaction of the export filter of 75 percent whereas its export sales to total sales was 74.45% and ii) CG Vak though functionally

comparable was wrongly excluded merely because its segmental turnover was less than 1 crore. Accordingly, it noted that once these two companies were included as comparable, even under External TNMM, the assessee's international transactions would be at ALP.

Effective Teleservices Pvt Ltd vs. ACIT - TS-75-ITAT-2018(Ahd)-TP - ITA. No: 2411/AHD/2014 dated 16 -01-2018

24. The Court admitted the assessee's appeal on the following questions of law – "1. Did the ITAT fall into error in reversing the CIT (A)'s decision on the appropriateness/maintainability of CUP as the most appropriate for determining the ALP in the circumstances of the case? 2. Did the ITAT fall into error in its treatment of the foreign exchange fluctuation as far as the ALP determination was concerned?"

Ecocat India Pvt. Ltd vs. Pr. CIT - TS-111-HC-2018(DEL)-TP - ITA 152/2018 dated 09.02.2018

25. The Tribunal restricted TP-adjustment in respect of assessee's s sale of finished goods to AEs in Thailand & Hong Kong. The Tribunal noted that while had assessee applied TNMM, TPO/CIT(A) rejected the same and proceeded to apply CUP-method for benchmarking the transaction. However, the Tribunal considered assessee's submission that CUP rates for Hong Kong only should be compared to work out the said disallowance as against average rates of various countries taken by TPO. The Tribunal thus restricted the TP adjustment and clarified that the above approach shall remain valid only for this impugned AY and would not be applicable in any other AY.

Lupin Ltd vs ACIT (LTU)-TS-398-ITAT-2018(Mum)-TP-ITA No. 7488/Mum/2013 dated 27.04.2018

26. The Tribunal rejected Revenue's contention relating to rejection of books of accounts maintained by the assessee by relying on assessee's own order passed by the Co-ordinate bench for the earlier year as well as the HC order upholding the same on further appeal by the department. In the earlier year, it was held that since the assessee had followed the recognized accounting standard issued by ICAI and no major defects had been found by the AO in the assessee's books, the AO could not reject the said books.

Further, the Tribunal held that the transaction of executing the onshore part of a project by the Indian PE of the Chinese entity (where the project was awarded by Indian companies to the HO of Chinese entity) between the Indian PE of Chinese entity and its HO in China was an international transaction and subject to transfer pricing provisions. The Tribunal further upheld the CIT(A)'s order, relating to rejection of TNMM (applied by TPO) and accepting of CUP method for benchmarking the said transaction consequent to which there would be no adjustment. Further, the Tribunal also held that there was no difference in the functions performed, asset employed, risk undertaken, price charged in comparable uncontrolled transactions and the entire profit of the foreign entity was charged to taxation through its PE in India and thus there was no shifting base of profits.

ADIT (Intl Tax)-II vs Shandong Tijun Electronic Power Eng. Co Ltd – TS-353-ITAT-2018(Ahd)-TP-ITA No 2926/Ahd/2014 dated 13.04.2018

27. Assessee was engaged in the business of leasing and hiring heavy cranes and had purchased nine cranes from it AE during the relevant year. The assessee got these cranes valued from custom authorities and chartered engineers and accordingly benchmarked the said international transactions. The method adopted by assessee for benchmarking the international transactions was rejected by the TPO who applied the CUP Method. The TPO took the written down value of the cranes in books of AE as ALP which resulted into certain adjustments to assessee's ALP. The DRP held that the written down value of cranes in books of AE could not be considered as ALP as it was not derived from transactions between enterprises other than associated enterprises and accordingly the TPO was directed by the DRP to accept the valuation report of the assessee and delete the additions made on account of ALP of cranes. The Tribunal on appeal did not find any illegal infirmity in the order of the DRP and upheld the same.

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

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

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

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

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

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

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

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

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

32. The Tribunal remitted the ALP determination in respect of assessee's guarantee commission received back to AO/TPO since the TPO had used the CUP data obtained by issuing notice u/s. 133(6) of the Act without providing an opportunity to the assessee with it. The Tribunal observed that no one should be condemned unheard and restored the issue so that the TPO could confront the CUP data to the assessee. Further, the Tribunal directed the AO/TPO to keep in mind the directions of the DRP in the subsequent assessment years wherein it was held that no addition could have been made on account of receipt of guarantee commission and for which the department had not preferred an appeal.

The Bank of Tokyo-Mitsubishi UFJ Ltd. vs. DCIT [TS-824-ITAT-2018(DEL)-TP] ITA No.7212/Del/2017 dated 11.06.2018

Cost Plus Method

33. The assessee (engaged in developing customized commercial application software) adopted CPM to benchmark its sale and purchase of services with its AE. The TPO was of the view that question of applicability of CPM did not arise as assessee itself had taken PBIT/Sales as profit indicator which was PLI used in TNMM. Thus, TPO rejected CPM and used TNMM. The TPO made certain addition on basis of mean margin of comparables selected by him. The Tribunal deleted the addition noting that assessee had fulfilled all conditions of CPM except using a terminology by mistake as PBIT instead of GP. Moreover, CPM was the MAM for sale of services by manufacturer or service provider. It was also undisputed that difference between two ratios GP to Sales and PBIT to sales was only 0.67% and thus, if tolerance band of 5% was taken, no adjustment would sustain.

RS Software (India) Ltd vs ACIT [2018] 100 taxmann.com 165(Kol Trib) ITA No.741 of 2017 dated 25.10.2018

34. The TPO had applied CPM as MAM and made a TP adjustment since the gross profits earned on exports 23.22% were far lesser than the profit of 50.65% earned by the domestic consumer division. The Tribunal accepted the assessee's TNMM as the MAM over TPO's CPM for exports to AE noting that under CPM ,the functions performed, assets employed and risks undertaken in export and domestic segments were not the same and suitable adjustments could not be made. It observed that the TPO had disregarded the mandate of Rule 10B(1)(c) when adjusted profit markup under CPM had to be determined by adjusting the GP margin for functional and other differences between export and domestic segment. The Tribunal accepted assessee's contention that CPM was not the MAM as it had incurred huge expenditure on discount, marketing, advertising and selling expenditure etc. in the domestic segment which resulted in selling price and gross profit of domestic segment being higher and there were transactional and functional difference between domestic and export sales. It relied on the coordinate bench decision of Alfalevel to reject CPM wherein it was held that in view of the fact that there were various differences in export segment and domestic segment, such as market fluctuations, geographic differences, volume difference, credit risk, RPT, etc., the TPO was not justified in adopting CPM as the MAM as suitable adjustments were not possible. Accordingly, the Tribunal deleted the TP adjustment since under TNMM the net margin of exports to AE was higher than net margin of personal consumer division of assessee demonstrating that it was at ALP.

The Himalaya Drug Company vs Dy.CIT [TS-614-ITAT-2018(Bang)-TP] IT (TP) A No.807/Bang/0216 dated 04.07.2018

35. The Tribunal following the coordinate bench decision of the assessee for earlier year (subsequently upheld by the High Court) accepted the assessee's application of TNMM over the TPO's CPM for benchmarking assessee's domestic ticketing, tour and package business (direct customer) and ticketing and tour packaging services (where it was acting as a subagent for its AE). The assessee had entered into customer and data handling management with its AE where it would act as an agent for the customers of the AE for ticketing and tour and packaging business. The Tribunal in the earlier year order noted that the lower authorities failed to appreciate the value of functions and risks assumed in relation to the international transaction carried out by the assessee vis-à-vis customer handling and data management with its AE, since it was acting as a routine back office service for its AE without being assigned any risk or carrying out any entrepreneurial functions and accordingly, accepted the approach of the assessee adopting TNMM as the MAM by finding comparables engaged in similar business.

MakeMy Trip (India) Pvt Ltd vs DCIT [TS-882-ITAT-2018(DEL)-TP] ITA No.6055/Del/2010 dated 30.07.2018

36. The Tribunal rejected TPO's selection of external TNMM as the most appropriate method (MAM) for benchmarking of assessee's (engaged in the business of processing blended tea) international transaction of sale of tea to AE and directed the TPO to adopt internal Cost Plus Method (CPM) as adopted by the assessee. It noted that the assessee had adopted internal CPM for export of tea and export of PP Bags and PP Geo frabric but the TPO adopted entity level TNMM and using external comparables proposed an adjustment of Rs. 7.54 Cr despite the fact that the TPO had accepted assessee's CPM as MAM for earlier years. Noting that the nature of international transactions, functions performed and risks assumed by the parties and method adopted were similar to those adopted by the assessee in the earlier years, it held that there was no reason for the TPO to take a

different stand in the year under consideration. Accordingly, it remanded the matter back to the file of the AO.

Madhu Jayanti International Ltd vs. DCIT - S-1069-ITAT-2017(Kol)-TP - I.T.A No. 214/Kol/2016 – dated 01.12.2017

37. The assessee had exported spools to its AE wherein cost plus 10% of product cost was charged. However, TPO was of the view that 10% of indirect cost also needed to be charged and hence made an addition. The Tribunal relied on co-ordinate bench ruling in assessee's own case in earlier year wherein it was held that there was nothing on record to suggest that any indirect expenses were considered for determining the ALP of export of spools and the TPO had made no such adjustment for AY 2004-05. Accordingly, the Tribunal deleted the adjustment made on account of indirect costs while computing ALP of the export transaction.

Bekaert Industries Pvt Ltd vs. ACIT [TS-349-ITAT-2018(PUN)-TP] ITA No.2376/Pun/2012 dated 14.05.2018

Resale Price Method

38. The TPO rejected RPM applied by the assessee (trader of switch, isolation amplifier and level switch) on its import transaction of switch, isolation amplifier and level switches to determine ALP of the transactionobserving that there would be distortion in GP margin in case of functions performed by comparables (in case of distributors) like advertising, marketing, distributing and guaranteeing the goods, financing the stock and warranty risk, and alsoas the gross profit margin could not be calculated as the costs incurred by comparables were not in public domain. The DRP upheld the TPO's order rejecting RPM and adopting TNMM noting that gross profit margins would be affected by considerations like accounting policies of assessee and comparable companies, presence of brand value and contractual terms regarding payments etc. and further, noted that the assessee after importing goods was performing functions like assembling and packing which partake value addition. The Tribunal allowed the assessee's appeal and accepted RPM as the MAMas the assessee was not undertaking any value additionsince expenses incurred on packing material could not create any value additionthus, the finding of DRPthat assessee was not a simple reseller (as it assembled and did packing) was incorrectand RPM had consistently been adopted in the previous years. It relied on the coordinate bench decision in Citizen Watches wherein it was held that there was no value addition for expenses incurred on packing of goods.

Pepperl & Fuchs (India) Pvt Ltd vs Dy.CIT [TS-1134-ITAT-2018(Bang)-TP] IT(TP)A No.227/Bang/2014 dated 14.09.2018

39. The assessee (engaged in supplying cranes and mechanical equipment) in its TP-study, had specifically stated thatTNMMand not RPM was MAM and that assessee should be selected as the tested party since its functions were the least complex. However, during proceedings before DRP,assessee stated that RPM should be selected as MAM since assessee's functions were that of a mere dealer of goods (which even the TPO had stated) but also stated that foreign AE (though it was a manufacturing entity) should be selected as the tested party on the ground that the AE had least complex functions.The TPO applied TNMM as MAM and considered assessee as a tested party. The DRP rejected RPM as the MAM on the ground that there was qualitative addition and that assessee performed function of market research, customer mining, order program from customers, requirement analysis, quality checks, apart from bearing marketing, price, credit, bad debt, warranty, forex, inventory and manpower risk. The Tribunal concurred with the DRP's view and opined that with such a complicated profile, RPM could not be the MAM. It upheld the application of TNMM as MAM. Further, noting that AE was a leading manufacturer and supplier of wide range of lifting and transport systems and had a notable presence and leadership in international markets, it rejected contention of assessee that AE should be the tested party since the assessee was performing only distribution and marketing function of the assessee, and concluded that assessee was the party which had the least complex functions.

Jaso India Private Limited vs Dy.CIT [TS-1065-ITAT-2018(Kol)-TP] ITA No.507/Kol/2017 dated 28.09.2018

40. The Tribunal accepted the TPO's application of RPM as the MAM noting that assessee purchased products from its AE's and these products were resold without any further value addition and further, assessee had categorized itself to be low risk bearing entity. However, it held that TPO/DRP erred in not carrying out a fresh search of comparables with similar functions as assessee to determine the ALP of the transaction by using RPM as MAM. Thus, it restored the issue to AO/TPO with direction to adopt RPM as MAM and admit additional evidence regarding fresh comparables for determining the ALP. The TPO was of the view that RPM would be the MAM to benchmark the import of automotive components for trading as against the TNMM method applied by the assessee after doing FAR analysis observing that assessee was a minimal risk distributor who did not bear any inventory risk, promotion of product, market risks etc.

Mitsubishi Electric Automotive [I] Pvt Ltd vs Dy.CIT [TS-1147-ITAT-2018(DEL)-TP] ITA No.312/Del/2015 dated 29.10.2018

41. The Tribunal rejected TPO's adoption of RPM method as MAM for trading segment of assessee noting that RPM would not be appropriate as assessee purchased goods from its AE and also resold them to another AE. The Tribunal opined that the method was nothing but a backward calculation from resale price to obtain the purchase value in an independent scenario which was the reason why it would be applicable only when resale wasmade to an unrelated party, because if the resale price per-se was tainted then it would be impossible to compute ALP inrespect of purchase of property. It remanded the benchmarking of trading segment to TPO to analyze whether TNMM (as applied by assessee) ought to be adopted (as done in the earlier years), and to carry out fresh search of comparables.

Kehin India Manufacturing Pvt Ltd vs DCIT [TS-1220-ITAT-2018(DEL)-TP] ITA No.312/Del/2015 dated 05.10.2018

42. The Tribunal held that RPM (as against TNMM adopted by TPO) was to be adopted for assessee's distribution activity following the coordinate bench ruling in assessee's own case for earlier year wherein it was held that RPM was the most appropriate method as there was no value addition in case of assessee's import of finished goods transaction from its AE which were resold to non-AEs.

Fresenius Kabi India Private Limited vs ACIT [TS-1212-ITAT-2018(PUN)-TP] (ITA No.2572/PUN/2016) dated 02.11.2018

43. The Tribunal held that assessee had rightly applied RPM which was the MAM (as against TNMM confirmed by lower authorities) noting that assessee was a routine distributor engaged in trading of lighting products to the independent customers without any value addition to the products purchased from its AEs. Further, the TPO/AO had accepted RPM method applied by assessee in earlier years and there was no change in facts and circumstances in subject year. Thus, applying rules of consistency, the Tribunal directed TPO/AO to adopt RPM method for computing PLI in case of lighting division.

GE India Industrial Private Limited vs ACIT [TS-1315-ITAT-2018(DEL)-TP] ITA No.2781/Ahd/2012 dated 04.12.2018

44. The Tribunal followed the coordinate bench decision in assessee's own case for earlier year to apply RPM to benchmark the import of seeds transaction from its AE for purpose of resale by assessee (as in against TNMM adopted by TPO). The Tribunal in the earlier year had relied on coordinate bench decision assessee's own case for earlier year (wherein AO's order was set aside to pass directions in conformity with DRP accepting RPM) holding that principle of consistency was to be followed. It was assessee's contention that RPM was the MAM when a trader purchases from an AE and resells to an independent enterprise without adding substantially to the value of the product; or does not contribute substantially to the creation or maintenance of intangible property associated with the product.

Seminis Vegetable Seeds(India) Pvt Ltd vs Dy.CIT [TS-1381-ITAT-2018(Mum)-TP] ITA No.4202/Mum/2014 dated 18.12.2018

45. Relying on the Bombay HC ruling in L'Oreal India Pvt. Ltd, the Tribunal accepted assessee's resale price method (RPM) as the most appropriate method (MAM) over TPO's TNMM for transaction of purchase of finished watches/clocks for resale noting that TPO's conclusion that loss incurred by assessee was indicative of carrying out value-added functions was not borne out by the facts on record. The Tribunal

further held that expenses in assessee's profit and loss account did not establish value-added functions. It also observed that packing expenses did not create any value for product.
Dy.CIT vs Citizen Watches (India) Pvt Ltd [TS-963-ITAT-2018(Bang)-TP] IT(TP)A No.26/Bang/2014 dated 06.07.2018

46. The Court dismissed Revenue's appeal against the Tribunal's order wherein it was held that RPM was the most appropriate method for assessee's import and resale of equipments by relying on the coordinate bench ruling of L'oreal wherein RPM was held to be MAM in case of reselling products without any value addition. The Court dismissed the appeal opining that no substantial question of law arose in the present case since the Revenue failed to establish perversity in the findings of the Tribunal.
CIT Bangalore vs Tetronix India Pvt Ltd [TS-694-HC-2018(KAR)-TP] ITA No.118/2013 dated 11.07.2018

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

48. The Tribunal upheld DRP's selection of RPM as MAM for assessee's export of iron ore to AEs and dismissed the TPO's application of CUP method as faulty. The DRP had held that that the TIPS database (used as CUP by the TPO) was unreliable tool to determine ALP of assessee's transaction noting that it provided prices of iron ore exported from Vishakhpatanm port as per iron content which did not match the iron content in the assessee's transaction (50.60 percent). It upheld the DRP's observation that the difference in iron content would directly impact the market value and therefore held that the CUP method could not be adopted. Accordingly, it upheld the DRP's direction to consider the mean GP-rate realised in the exports to non-AEs to benchmark the AE-transactions.
ACIT vs. Billion Wealth Minerals Pvt. Ltd. - TS-43-ITAT-2018(Mum)-TP - /I.T.A./1818/Mum/2015 dated 19.01.2018

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

50. The TPO rejected RPM and adopted TNMM as MAM which was upheld by the DRP by observing that the assessee was not a simple distributor since the assessee had incurred substantial advertising,

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

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

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

Transactional Net Margin Method

53. The CIT(A) deleted the TP adjustment made in respect of the export transaction of diamond cutting tools noting that after allocating expenses on actual basis, the average margin of assessee (9.53%) vis-à-vis comparables (9.22%) was within the range of +/-5%. Further, he restricted the TP adjustment for import of raw material from its AE noting that TPO had segregated purchases i.e. import of raw materials on basis of turnover instead of actual consumption (for which assessee had submitted cost sheet). The Tribunal restored the matter to CIT(A) for fresh adjudication and directed it to confront the material to AO/TPO (calling for remand report) noting that CIT(A) had granted relief on basis of certain cost sheets and computations which were not produced before it or not examined by AO/TPO.
DCIT vs. W Diamant India Ltd [TS-998-ITAT-2018(DEL)-TP] ITA No.5993/Del/2014 dated 21.08.2018

54. The Tribunal directed the TPO to adopt Internal TNMM based on man hour rates as the MAM for determining the ALP of specialized engineering services provided by the assessee to its AE by following the coordinate bench decision in assessee's own case for earlier year. In the earlier year, the Tribunal accepted assessee's plea that hourly rates charged by it in providing specialized services to its AEs can be the basis for verifying its stand as to whether the services provided by the assessee to its AEs were at ALP.
Magna Steyr India Private Limited vs ACIT[TS-881-ITAT-2018(PUN)-TP] ITA No.517/Pun/2015 dated 08.08.2018

55. The assessee was an Indo-Russian JV company which merely facilitated after sales product and support services rendered by the Russian AE to Ministry of defence by co-ordinating between the Ministry and theRussian AE. The Russian company raised bill on the assessee-companyfor the product supplied

and services rendered, which in turn, would raise bill on the Ministry of Defence by adding its profit. In its T.P study, the assessee did not furnish any comparable due to peculiar nature of the "After sales services" provided by the assessee-company. At the instance of the TPO, the assessee furnished certain comparable companies. Noting that the after sales service involved supply of materials as well as providing services, the TPO segregated the services rendered into two segments, viz. 'Trading segment' for supply of materials and 'Services segment' for services actually rendered, to determine the ALP of transaction, based on the comparables given by the assessee.The same was upheld by the DRP. The Tribunal considered the assessee's submission that provision of after sales support services involved supply of materials as well as providing services i.e. composite services and thus TPO was wrong in determining ALP separately for products and services. Further, noting that this aspect, which went to the root of the issue, had not been considered by the TPO, it remanded the matter back to the AO/TPO to examine the assessee's contention of aggregation of the transactions for determination of ALP.

Rosoboronservice India Ltd vs. DCIT [TS-810-ITAT-2018(Mum)-TP] ITA No.7418/Mum/2017 dated 01.08.2018

56. The assessee adopted RPM as the MAM for ALP determination of its transaction of purchase of water heaters(trading segment) and CPM for transaction of purchase of raw materials(manufacturing segment) from its AE. The TPO applied TNMM as against RPM applied by assessee as the functions performed by the assessee before reselling the products of its AE and costs for performing such functions were not available. Further, in the case of transaction of purchase of raw materials, TPO observed that theassessee had not shown how its gross profit was computed. The DRP set aside the TPO's order and accepted RPM and CPM as MAM for its manufacturing and trading segment respectively observing that TNMM being applied resulted in abnormal gross profit margins in assessee's trading segment (60.08%) and manufacturing segment (83.61%) as against gross margin stated in TP documentation (11.38% and 25.53%) and the adjustment made by the TPO was more than theinternational transaction entered into in the segments. The Tribunal held that the TPO's reason for rejecting CPM for the manufacturing segment couldnotbe sustained on account of assessee having submitted cost of sales and other indirect costs before the TPO. However, the Tribunal also held that RPM ought to be adopted followingits ruling in the assessee's own case for earlier year wherein it was held that RPM was the MAM for trading segment of assesseeasthe assessee sold the water heater imported from its AE in India without making any value addition. It set aside DRP's order and remanded the determination of ALP on basis of TP study (i.e. methods applied by the assessee) to TPO/AO noting that DRP fell into error while accepting the price of international transactions was at ALP on the basis that the profit margins of the assessee would be abnormal if the TPO's method was to be accepted and did not determine ALP in a manner mandated by the Act and Rules.

ACIT vs AO Smith India Water Products Pvt Ltd [TS-1175-ITAT-2018(Bang)-TP] IT(TP)A No.216/Bang/2016 dated 12.09.2018

57. The TPO segregated the transaction of payment of license fee and management fee made by assesseeand benchmarked them separately by adopting CUP as MAM. He determined the ALP of license fees and management fees to be nil and made a TP adjustment. The action of TPO was upheld by CIT(A). The Tribunal set aside CIT(A)'s order not accepting aggregation of payment of license fee and management fees made by assessee and it held that they were closely linked with the transaction relating to manufacture and export of drug formulations by assessee following the coordinate bench ruling in assessee's own case for earlier year wherein it had relied on Sony Ericsson Mobile Communication India (P) Ltd (wherein it was held that that aggregation of transactions was permissible considering the legislative intent manifested by way of Rule 10A(d) read with Rule 10B of the Rules, and the position clearly emerged that in appropriate circumstances where closely linked transactions exist, the same should be treated as one composite transaction and a common transfer pricing analysis be performed for such transactions by adopting the MAM.) It remanded back the comparability analysis in the TP study carried out by the assessee by aggregation of transactions adopting TNMM as the MAM noting that determination of ALP at entity level had not been examined by either of the authorities below who merely concentrated on the issue of aggregation/segregation of transactions.

Adcock Ingram Ltd. vs Dy. CIT [2018] 97 taxmann.com 668 (Bangalore - Trib.) IT (T.P.) APPEAL NO. 2728 (BANG.) OF 2017 dated 14.09.2018

58. The TPO treated the services provided by assessee to be IT and ITES services (as against the assessee's claim of rendering management consultancy services to its AE) and adopted TNMM as against RPM applied by the assessee. The DRP upheld TPO's order observing choice of comparables in TP study report showed profile of such entities to be IT and ITES and in absence of clear depiction of functions performed as per the TP study report, the assessee's contention that it was rendering management consultancy services could not be accepted. Before the Tribunal, the assessee also sought admission of additional evidence in form of segmental profits and contended that the adjustment should be restricted to only value of international transaction and accordingly the TPO had erred in taking entity level margin. The Tribunal admitted the additional evidence [relying on Bombay HC rulings in the case of Tara Jewels Export Pvt. Ltd. and Alstom Projects (I) Ltd. and Delhi HC ruling in case of Kaihin Peanalfa wherein it has been held that only international transactions with AE are to be considered in TPO's proceedings and not the entire corresponding figures at entity level] and remanded the matter back for afresh adjudication. Further, it held that assessee's assertions that it was providing tax regulatory services and consultancy services appeared to be prima facie correct. However, in view of the fact that the entire issue of correctness of TP adjustment had been remanded back to the AO/ TPO, the Tribunal remanded this issue also back to the AO/ TPO.

PriceWaterhouse Coopers. vs ACIT TS-1247-ITAT-[2018] ITA No.483/Kol/2017 dated 12.09.2018

59. The TPO applied TNMM method as against CPM method applied by the assessee who was engaged in the business of sale of packages for leisure travel where two or more components of travel such as flights, hotels, car rentals, transfer and ground handling services were bundled together for sale to customers and Air Charter business.The Tribunal rejected the TPO's adoption of TNMM over CPM noting that Revenue had accepted CPM in earlier years and in the instant case, the business model of the assessee was the same vis-à-vis previous years hence CPM ought to be applied by applying the rules of consistency.

Greaves Travel India Pvt Ltd vs ACIT [TS-1145-ITAT-2018(DEL)-TP] ITA No.6722/Del/2015 dated 24.10.2018

60. The TPO was of the view that CPM was the MAM (as against TNMM applied by assessee) for determining the ALP of sale of manufactured products to AE in case of assessee engaged in business of manufacturing of glass mosaic.The Tribunal remitted the matter to TPO for determining ALP by applying TNMM following the coordinate bench decision in assessee's own case wherein it was held that DRP erred in applying CPM on basis that there was imperfect data.It noted that if at all there was a residuary method or default method which could be applied under such conditions, it was TNMM. It observed that for TNMM, it was only broad similarity in the product and economic similarity in the conditions which was needed (as there was difference between the product that the assessee is manufacturing vis-a-vis the products being manufactured by the comparables adopted). Further, TNMM would also be more appropriate for use in certain situations where there were data limitations on gross margins (difference in treatment of costs as cost of goods sold or operating expense) as net profit margins are analyzed.

Gemstone Glass Pvt Ltd vs DCIT [TS-1221-ITAT-2018(Ahd)-TP] ITA (TP) No.3533 /Ahd/2015 dated 23.10.2018

61. The TPO had rejected use of foreign AE as a tested party and taken assessee as the tested party for benchmarking the transaction of supplying CD's to its AE which used to be resold and distributed further by its AE's.The Tribunal following the decision of coordinate bench in assessee's own case for earlier year directed the assessee to submit financials of the foreign AE which it wanted to take as a tested party and also directed the TPO to verify whether the foreign AE could be considered as the least complex and for which comparables were easily available in public domain.

Moserbaer India Ltd vs ACIT [TS-1139-ITAT-2018(DEL)-TP] ITA No.6042/Del/2012 and 2395/Del/2014 dated 03.10.2018

62. The assessee was engaged in manufacture and sale of cars (Mercedes Benz) in the Indian market and wasalso importing cars in form of Completely built units (CBU) , importing raw materials and importing spares from its AEs. The assessee had adopted combined transaction approach and applied TNMM in

order to benchmark its international transactions. However, the TPO did not accept the approach adopted by assessee using TNMM. The TPO benchmarked the international transaction related to import of CBUs by using RPM and compared the gross margin earned from transaction of import of spares with import of CBUs and thus, made an upward adjustment which was confirmed by CIT(A) noting that DRP in previous year had made a similar addition and no new facts had emerged. It was assessee's contention before the Tribunal that a) aggregation approach had to be applied for manufacturing activities, import of spares and import of CBUs b) under RPM, gross margin earned hadbeen compared with another uncontrolled transaction of assessee. The Tribunal held that TPO erred in segregating the transaction as import of CBUs and spares were closely linked with the manufacturing activities noting that the assessee was only manufacturing C and E class brands in India and in order to widen its customer base was importing CBUs from AEs while the spares were being imported for the manufactured cars and CBUs in order to fulfill warranty commitments of passenger cars. Further, it also held that TPO erred in applying RPM method and comparing the margin earned by assessee on import of CBUs with import of spares observing that controlled transaction had to be comparedwith uncontrolled transactions as held incoordinate bench ruling in assessee's own case. The ALP had to be determined without being influenced by AE. It remitted the issue of determination of ALP of transactions to TPO and directed them to look into the comparability aspect of margins of assessee with mean margin of comparables after aggregating the transactions and applying TNMM.

Mercedes-Benz India Pvt Ltd (formerly known as Daimler Chrysler India Pvt. Ltd.)vs ACIT [TS-1164-ITAT-2018(PUN)-TP] ITA No.1083/Pun/2013 dated 25.10.2018

63. The Tribunal directed the TPO to adopt Internal TNMM for determining the ALP of engineering design services to its AE following the coordinate bench ruling in assessee's own case for earlier year (noting that there was no change in facts) wherein Internal TNMM based on man hour rates as the MAM for determining the ALP of specialized engineering services provided by the assessee to its AE. It accepted the assessee's plea that hourly rates charged by it in providing specialized services to its AEs can be the basis for verifying its stand as to whether the services provided by the assessee to its AEs were at ALP. It rejected the Revenue's contention that domestic segment (costs having transactions with AE) was itself tainted for its controlled transactions and could not be compared to export transactions (whose costs also had AE transactions). It further relied upon the coordinate bench decision of DCIT v/s. ManTrucks Pvt. Ltd. [ITA No.547/Pun/2014] wherein it was held that even if costs were identical for providing services to AE, Non-AE's or domestic parties, the margins earned from domestic parties could be compared to benchmark ALP of international transaction.

Magna Steyr India Pvt Ltd vs ACIT[TS-1154-ITAT-2018(PUN)-TP] ITA No.468 /Pun/2016 dated 12.10.2018

64. The Tribunal dismissed Revenue's appeal and held that internal TNMM was the MAM for assessee's manufacturing segment following the coordinate bench in assessee's own case for earlier year wherein it was observed that assessee had explained that it had bifurcated the manufacturing segment on product basis into AE (vane/pistons, pumps, power units, cylinders control valves etc. manufacturing of which required raw materials imported from AE) and non-AE segment (gear pumps and cylinders) which was fair and apt and emphasis of TNMM was on functional similarity and not product similarity.

Dy.CIT vs Eaton Power Fluid Pvt Ltd vs ACIT[TS-1217-ITAT-2018(PUN)-TP] ITA No.493 /Pun/2015 dated 15.10.2018

65. The Tribunal upheld DRP's adoption of TNMM for benchmarking the international transactions (relating to purchase of raw materials, components and spare parts) of assessee (engaged in manufacture of earth moving and construction equipment) on basis that facts and circumstances remained unchanged vis-à-vis previous years wherein the same method was adopted by the assessee and accepted by the TPO.

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.) vs ACIT [TS-1196-ITAT-2018(DEL)-TP] (ITA No.930/Del/2013) dated 02.11.2018

66. The TPO had wrongly understood that assessee (engaged in manufacturing and trading of light commercial air conditioning system) had selected RPM (as opposed to "other method prescribed" by taking GP/Sales) and arbitrarily rejected the PLI i.e. GP/Sales adopted for the manufacturing segment

and instead applied net profit margin under TNMM. The Tribunal noted that in subsequent year, the TPO in the manufacturing segment had accepted the same PLI i.e. G.P to Sales ratio thus, in the very first year when manufacturing activity started, selection of most appropriate method should not have been arbitrarily interfered with. It further noted assessee's concession that if adjustments as permissible under TNMM (i.e. capacity utilization) were to be considered, there would not be much impact in the subject year, and hence the issue of selection of most appropriate method may be left open for adjudication in some other year. Thus, the Tribunal held that in view of the relief maintainable to the assessee even in the method selected by the TPO the issue of most appropriate method in terms of the concession of the assessee would become academic and left open for adjudication.

Carrier Midea India P. Ltd vs Dy.CIT [TS-1256-ITAT-2018(DEL)-TP] (ITA No.7675/Del/2017) dated 22.11.2018

67. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order accepting internal TNMM for benchmarking sale of polyester film products to AE's to USA and UK by relying on coordinate bench decision in assessee's own case for earlier year wherein it had restored the matter to apply TNMM as MAM for determining ALP (as both parties agreed to it) and carry out fresh comparability analysis. The Tribunal in earlier year upheld CIT(A)'s rejection of TPO's application of CUP vis-à-vis prices charged to non-AEs in African countries, Middle East, Russia and other countries as it had failed to take into account the geographical, economical market differences where the A.E and non-A.E. agents were carrying out their business activities.

Dy.CIT vs Garware Polyester Ltd. [TS-1402-ITAT-2018(Mum)-TP] ITA No.6537/Mum/2016 & 5083/Mum/2015dated 27.12.2018

68. The Tribunal held that the TPO erred in segregating assessee's transaction of trading with AE and commission income from AE (which were aggregated by the assessee) and benchmarking the said transactions separately by relying on the coordinate bench decision of the assessee's own case. The TPO had rejected the assessee's application of TNMM on entity level and adopted CUP for benchmarking the commission income. It noted that the Tribunal in assessee's own case for earlier year had held that the TPO had discarded the economic analysis of assessee by segregating the two activities and erred in rejecting TNMM as the MAM for benchmarking international transaction. It was observed in the earlier year that there was no change in FAR analysis and business model of the assessee and it was identical to the previous years wherein TNMM was consistently applied and segregation solely on basis of income without reference to either GP or sales was the most unreliable and that the adoption of TNMM at entity level was safe and plausible.

Viavi Solutions India P Ltd (Formerly known as JDSU India P.Ltd.) [TS-884-ITAT-2018(DEL)-TP] ITA No.1483/Del/2016, ITA No.1478/Del/2016 and ITA No.231/Del/2017 dated 11.07.2018

69. The Court dismissed Revenue's appeal and upheld the Tribunal's order accepting TNMM as MAM for exporter assessee and held that since the assessee was an exporter of goods the TPO had wrongly used Resale Method (RM), which was only to be applied to importers. Accordingly, it held that TNMM method was rightly used for exporters and therefore, the resultant concession granted to the assessee on this count was correct.

Pr CIT v Rahman Exports Pvt. Ltd - TS-23-HC-2018(ALL)-TP dated INCOME TAX APPEAL No. - 7 of 2017 dated 11.01.2018

70. The Tribunal upheld the application of TNMM as MAM for benchmarking the export of finished goods by the assessee to AE and deleted the TP-adjustment computed by the TPO adopting the CUP method by benchmarking the transactions with transactions with the Non-AEs. It held that the CUP method was inappropriate owing to i) difference in the volume of goods, and ii) geographical differences and noted that the Tribunal in the assessee's own case for AY 2002-03 had rejected CUP Method for the identical issue wherein products were supplied to AEs and non-AEs in different countries.

Intervet India Private Limited vs. DCIT - TS-1087-ITAT-2017(PUN)-TP - ITA No.721/PUN/2014 dated 21.12.2017

71. The Tribunal dismissed Revenue's appeals seeking the use of external controlled comparables in the same sector such as JP Morgan Chase and Bank of America under the Profit Split Method, over

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

Barclays Bank PLC vs. ADIT - TS-11-ITAT-2018(Mum)-TP - /I.T.A./178/Mum/2011 dated 12.01.2018

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

Srini Pharmaceuticals Ltd vs. DCIT - TS-60-ITAT-2018(HYD)-TP - ITA No. 102/Hyd/2015 dated 19-01-2018

73. The Court admitted assessee's appeal on the following question of law "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in upholding the rejection of segmental Transactional Net Margin Method and adopting the comparable Uncontrolled Price method for determining any adjustment under Chapter X in respect of the purchase of raw materials and sale of finished goods made by the Appellant?"

Henkel Adhesives Technologies India Pvt Ltd vs. DCIT - TS-106-HC-2018(BOM)-TP - INCOME TAX APPEAL NO. 817 OF 2015 dated 20.02.2018

74. In a departmental appeal, The Tribunal set aside the order of the CIT(A) deleting the TP-adjustment as the impugned order was cryptic, non-speaking and stereotyped. The TPO had proposed adjustment on export of cables to AE by using internal TNMM based on margin earned on domestic sale which was deleted by the CIT(A) who observed that the export transaction could not be compared with domestic transaction in view of different economic conditions in different geographic markets. The Tribunal held that under TNMM, a preference was to be given to an internal comparable and that the CIT(A) ought to have carried out FAR analysis for the international transaction and internal comparable transaction

(domestic sales) and then made adjustment for differences such as geographical location, etc. Accordingly, it remanded the matter to the file of the CIT(A) to re-adjudicate the issue.

DCIT V Lapp India P. Ltd - TS-129-ITAT-2018(Bang)-TP - LT(TP).A No.114/Bang/2014 dated 17.01.2018

DCIT vs. Lapp India P Ltd - TS-128-ITAT-2018(Bang)-TP - I.T(TP) .. ANos.1017 & 1018/Bang/2014

75. The Court dismissed Revenue's appeal and held that the Tribunal was justified in holding TNMM as MAM for benchmarking exports to AEs. It noted that the TPO made adjustment on approx. 5% of total exports by applying CUP-method on the basis that there were similarities between goods sold to AE and third parties but the Tribunal, considering the customization of finished goods and the geographical, volume, timing, risk and functional differences, came to a conclusion that CUP method could not be MAM and upheld the assessee's stand that TNMM was MAM. It dismissed Revenue's contention that Tribunal had adopted TNMM as MAM without considering FAR-analysis as 'unjustified' noting that Tribunal had done the necessary FAR analysis and therefore opined that the view taken by the Tribunal on the facts before it, was a possible view on the application of appropriate tests.

Amphenol Interconnect India P. Ltd - TS-205-HC-2018(BOM)-TP] INCOME TAX APPEAL NO. 1131 OF 2015 dated 7th MARCH, 2018

76. The Court admitted assessee's appeal on the following substantial question of law i.e. whether the Tribunal was justified in rejecting the principle of aggregation of closely linked transactions using the Transactional Net Margin Method.

JCB India Ltd vs DCIT Circle 13(1)- TS-301-HC-2018(DEL)-TP-ITA No 525/2017 dated 18.04.2018

77. The Tribunal ruled on selection of Internal TNMM Most Appropriate Method (MAM) and use of internal comparables for benchmarking export and import transactions of assessee engaged in manufacture of heavy commercial vehicles. In respect of assessee's export of trucks to developing countries (like South Africa, Ethiopia and Indonesia) through its German AE, it was observed that billings were raised on German AE, but trucks were not routed through Germany and were directly sent to developing countries due to stricter emission norms in Germany. The Tribunal discarding TPO/DRP's approach of rejecting internal comparables (sale of similar products in India) opined that geographical differences would not be relevant where the products were exported to markets similar to Indian markets, where emission norms were less stringent as compared to Germany.

DCIT Circle-9 vs Man Trucks India Pvt Ltd- TS-228-ITAT-2018(PUN)-TP- ITA No 547/PUN/2014 dated 03.04.2018

78. The Tribunal, in the department's appeal, upheld the DRP's aggregation of assessee's distribution & commission segments and application of entity level TNMM for benchmarking analysis following approach adopted by DRP in assessee's own case in preceding AYs and noted that though, the TPO had segregated the financials into 2 segments viz. distribution and commission and applied TNMM and CUP-method to benchmark distribution and commission segments respectively, the Tribunal upheld assessee's reliance on DRP orders for previous years after noting similarity of the international transactions to be benchmarked, assessee's business model over the past few years and absence of any compelling reasons submitted by Revenue for discarding earlier years' approach (of aggregating the two aforesaid two transactions). It rejected TPO's view that higher appellate authorities had not decided the issue at all and therefore there was no question of accepting assessee's stand to apply aggregation approach accepted in earlier years

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

79. The Court rejected admission of question of law raised by assessee involving rejection of CUP method by Revenue as the most appropriate method (MAM) for the transaction of sale of railway wagons to AE based on the sale price charged by the AE from the ultimate third-party buyer and noted that Revenue rejected CUP method having regard to the fact that it unduly restricted the choices of the Revenue and TNMM was considered to be a more appropriate method where greater choice was available. The Court thus concluded that appropriateness of the MAM per se does not give rise to a question of law

since it involves analysis of facts done first by the Revenue authorities and settled by the Tribunal and held that unless the facts show glaring distortion in the adoption of one or the other method, a question of law cannot be said to arise.

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

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

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

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

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

81. The Tribunal relying on its order of earlier years allowed assessee's selection of foreign AE as a tested party and noted that TNMM was rightfully followed as the most appropriate method for benchmarking transactions of payment of fees for advisory and other services to its AE. In the earlier year, the Tribunal had accepted the assessee's stand of selecting the foreign AE as the tested party, noting that (i) the AE was rendering service to various other entities also (ii) the AE was following a scientific method of allocating cost and charging the same with markup to all the entities at same level and (iii) the relevant details to compute the cost allocation on account of services had been certified and filed before the AO. The Tribunal sent back the matter to AO for limited purpose of verification of assessee's claim that margin was within 5% range of average comparables margin.

Emerson Climate Technologies (India) Pvt Ltd vs DCIT Circle 1(2)- TS-362-ITAT-2018(PUN)-TP-ITA no's 359 & 2847/PUN/2016 dated 25.04.2018

82. Where the assessee was engaged in distribution of books, software, electronic products and reprinting of books, publications, noting that the reprinting of books required deployment of assets, employees and involved risk in publishing and selling, the Tribunal held that TPO was correct in adopting TNMM as

opposed to RPM as RPM could not be adopted where there was value addition and application of technology. Therefore, it upheld the order of the TPO.

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

83. The Tribunal restored the benchmarking of assessee manufacturer's international transactions for AY 2010-11, noting that the TPO rejected assessee's entity level TNMM and adopted internal TNMM for benchmarking and proposed a TP-adjustment and that the co-ordinate bench in assessee's own case in subsequent AY 2011-12 on similar facts had restored matter back to AO for fresh examination as the DRP had failed to adjudicate the issue.

ASB International Pvt. Ltd vs. ACIT - TS-422-ITAT-2018(Mum)-TP - ITA No.1068/Mum/2015 dated 29/05/2018

84. Relying on the co-ordinate bench ruling in assessee's own case for the assessment year 2011-12 and 2012-13, the Tribunal restored the matter to the file of the AO/TPO to benchmark the assessee's provision of software development services by adopting internal TNMM (adopted by the assessee) as internal TNMM was to be preferred over external TNMM adopted by the TPO.

Brillio Technologies Pvt. Ltd. vs. DCIT - TS-427-ITAT-2018(Bang)-TP - IT(TP)A No.1897/Bang/2017 dated 31/05/2018

85. The Tribunal upheld assessee's [manufacturer of bulk drugs, chemicals and intermediates] application of TNMM over TPO's adoption of CUP-method as the Most appropriate method for benchmarking international transactions of product sales and receipts for contract research services. It noted that while TPO had stated that CUP-method was better than TNMM, he did not mention how TNMM was not applicable on the given set of facts. Further, it held that the DR could not improve the case of the TPO at this level. It also observed that the co-ordinate bench in assessee's own case for AY 2002-03 had upheld assessee's adoption of TNMM as MAM and therefore held that there was no justification for deviating from order of the ITAT passed in similar facts of the same assessee.

DCIT vs. Dishman Pharmaceuticals & Chemicals Ltd - TS-440-ITAT-2018(Ahd)-TP – ITA No 692/Ahd/2011 dated 23 /05/2018

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

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

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

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

88. The Tribunal upheld the application of TNMM as MAM for benchmarking the sale of products by the assessee to AE and deleted the TP adjustment computed by the TPO adopting the CUP method by benchmarking the transactions with the Non-AEs. It relied on the findings of coordinate bench in the earlier year in assessee's own case wherein CUP method was rejected in light of the geographical factors and difference in the quantity of the products sold.
Dishman Pharmaceuticals & Chemicals Ltd vs DCIT [TS-958-ITAT-2018(Ahd)-TP] ITA No.955/Ahd/2012 dated 20.06.2018

89. The assessee had benchmarked sale of goods to its AE's in Bangladesh, Dubai and the United Kingdom (AE) using TNMM which was rejected by TPO who applied CUP. The CIT(A) accepted TNMM adopted by the assessee. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s application of the TNMM as the MAM as against the CUP applied by the TPO. It observed that the TPO/AO had not made any adjustments owing to the differences in market and economic conditions of countries in which products were sold to independent third parties. Further, TPO had failed to take into account the profile of consumers, preference amongst consumers, purchasing power, etc. Thus, It opined that selective application of CUP Method by TPO was ad hoc, and without any cogent basis, hence the entire approach followed by the TPO in rejecting TNMM was unjustified.
DCIT/ACIT vs. Emami Limited [TS-468-ITAT-2018(Kol)-TP] ITA Nos. 1065 and 1066/Kol/2017 dated 15.06.2018

90. The Tribunal directed the TPO to adopt Internal TNMM based on man hour rates as the MAM for determining the ALP of specialized engineering services provided by the assessee to its AE. The Tribunal accepted the assessee's plea that hourly rates charged by it in providing specialized services to its AEs can be the basis for verifying its stand as to whether the services provided by the assessee to its AEs were at ALP. It further relied upon the coordinate bench decision of DCIT v/s. ManTrucks Pvt. Ltd. [ITA No.547/Pun/2014] wherein it was held that even if costs were identical for providing services to AE, Non-AE's or domestic parties, the margins earned from domestic parties could be compared to benchmark ALP of international transaction and accordingly, it rejected the Revenue's contention that since the cost incurred for transaction with AEs as well as domestic transactions were same, the domestic transactions were controlled and thus tainted.
Magna Steyr India Pvt Ltd [TS-625-ITAT-2018(PUN)-TP] ITA No.314/Pun/2014 dated 05.06.2018

91. The Tribunal relying upon the ITAT order in assessee's own case for the prior year upheld the approach of assessee aggregaring all transactions in the manufacturing segment and adoption of TNMM to benchmark the transaction as compared to CPM applied by the TPO as the MAM. Further, in line with the earlier year, the Tribunal also directed the AO to verify assessee's claim by applying single year data and accordingly, compute the TP-adjustment, if any.
Sandvik Asia Pvt. Ltd (formerly known as Sandvik Asia Ltd) vs. DCIT [TS 444 ITAT 2018] ITA No.1459/Pun/2010 dated 06.06.2018

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

93. The Tribunal upheld the CIT(A)'s adoption of TNMM as MAM over RPM applied by the TPO.since the assessee had incurred huge selling, marketing and advertising and promotion in respect of the import of goods for the subject year. The Tribunal relied upon the co-ordinate bench ruling in assessee's own case for earlier year wherein the reason assigned by the TPO for rejecting RPM was accepted i.e. that the business model of the assessee could not be compared with comparable companies on account of

the selling, marketing and advertising and promotion expenses incurred and hence concluded that TNMM would be the MAM.

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

Profit Split Method

94. The assessee had sold the IP rights of Jungle Book Animation series to its AE based on average of values adopted by two independent valuers. The TPO was of the view that even though the legal ownership had been transferred to the AE, but the economic ownership still was with the assessee. The TPO adopted PSM as the instant case was of two AEs contributing their respective intangibles to develop a new product or process and earn income therefrom. He assigned a profit share of 80% on IP contribution to assessee after concluding that assessee had as many as 8 directors with a trained and skilled combined work force of 3000+, as compared to its AE in Ireland which had no other set up other than the presence of 2 directors. He concluded that it was only due to the identity and standing of assessee in Global arena, the persons in Ireland got hired. The Tribunal following the order of coordinate bench in assessee's own case for earlier year deleted the TP adjustment arising on account of sale of Intellectual property (Jungle Book) under profit split method by TPO. Noting that the Tribunal in earlier year had observed that the assessee (engaged in the business of providing animation production services for Television and Film Production Companies) had sold "IP" (Jungle Book) to its "AE" at development stage and hence any revenue generated by the AE at a later stage could not be attributed to the assessee since there was no international transaction after outright sale of IP to its AE.

DQ Entertainment (International) Ltd vs. ACIT[TS-879-ITAT-2018(HYD)-TP] ITA No.1890/Hyd/2017 dated 17.08.2018

95. The TPO had rejected the assessee's TP study on the ground that there was no separate FAR analysis of the transactions performed with the AEs and had recharacterized the activity/functions performed by the assessee company as a KPO instead of "IT services" classified by the assessee company. The assessee had argued that principle of consistency would be applicable and even for the previous years i.e. from AYs 2009-10 to 2011-12, the assessee had been accepted as an IT service provider. The Tribunal opined that the TPO was justified in rejecting the TP analysis undertaken by the assessee since it was not made based on each of the functions performed with the AEs. The Tribunal thus remanded the entire TP issue to the file of AO/TPO with a direction to afford a reasonable opportunity to the assessee to furnish a TP study report covering the functions performed, risks analysed and assets employed in respect of the international transactions with AEs.

The Tribunal however also directed the AO/TPO to aggregate the functions having a direct nexus with AdWords distribution programme having regard to the TP study and to benchmark such aggregated transactions by adopting profit split method, relying on the decisions of Orange Business Services and Global one India wherein it was held that Profit split method was the most appropriate method for cases involving multiple interrelated international transactions which could not be evaluated separately.

Google India Private Limited v. Jt.DIT(IT) & others [TS-335-ITAT-2018(Bang)-TP] - IT(IT)A No.69 & 1190/Bang/2014, 374/Bang/2013, 387, 949 & 950/Bang/2017, 68/Bang/2015 & 559/Bang/2016 dated 11.05.2018

Any other Method

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

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

General

97. The Tribunal, relying upon ITAT order in assessee's own case for the prior AY remitted the entire TP-issue in case of assessee engaged in import/export and trading of various agricultural/food products. It noted that the TP-adjustments were made in respect of 3 types of transactions viz. a) merchanting transactions b) purchase of fertilizers and c)sale of rice which were benchmarked by the assessee under TNMM for the merchanting transactions and CUP for the others. The TPO rejected the methods selected by the assessee and adopted RPM for the merchanting activities, TNMM for the purchase of fertilisers and TNMM for the sale of rice [which was charged to RPM by the CIT(A)]. Since the issue had not been dealt with properly by the lower authorities so as to reach a logical and reasonable conclusion it directed the AO/TPO to adjudicate the issue de novo.

Cargill India P Ltd v DCIT - TS-92-ITAT-2018(DEL)-TP - ITA No. 2988/Del/2011 dated 09.01.2018

c. Comparability– Inter and Intra Industry

ITES Sector / Software Development Services

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

- Accentia Technologies Ltd. as it was engaged in providing diversified services like software development and IT Enabled Services and that its services and solutions was focused on healthcare receivables cycle and no separate segmental information was available. Further, the Revenue could not point out any change in the functional profile of the company vis-à-vis preceding year where the company was excluded in assessee's own case
- Eclerx Services Ltd. as the company was a KPO providing data analytics and data process solutions which could not be compared to the ITES segment of the assessee. Further, the Revenue could not point out any change in the functional profile of the company vis-à-vis preceding year where the company was excluded in assessee's own case.
- Genesys International Corporation Ltd as the company operated as a high end KPO service provider. Further, the Revenue could not point out any change in the functional profile of the company vis-à-vis preceding year where the company was excluded in assessee's own case
- TCS E serve Ltd. as it was engaged in diversified services including ITeS and certain other technical services involving software testing, verification and validation of software at the time of implementation, data center management activities etc. and no separate segmental information pertaining to ITes and technical services was available. Another aspect was the brand value for which it relied on the coordinate bench ruling in the case of BC Management Services.
- TCS E-Serve International Limited it was engaged in diversified services including ITeS and technical services like software testing, verification, data processing services and validation of software at the time of implementation and data center management activities and no separate segmental information pertaining to ITes and technical services was available. [The Tribunal followed the coordinate bench decision of Vertex Customer Services India Pvt.Ltd.]

OSC Services Pvt. Ltd Vs. DCIT [TS-1005-ITAT-2018(DEL)-TP] ITA No.1846/Del/2015 dated 14.08.2018

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

- E-Clerx Services Ltd as it was a high end KPO Company which provided data analytics, business knowledge process outsourcing company, re-engineering and automation services and the coordinate bench in assessee's own case had held the company to be a non-comparable with assessee following Delhi HC ruling in Rampgreen Solutions P Ltd.
- Vishal Information Technologies Ltd. as it had a different business model all together i.e. outsourcing model as against the assessee which carried out its work through its own resources as it reflected huge difference in employee cost ratio to turnover. [The Tribunal relied on Delhi HC ruling in Rampgreen Solutions P Ltd.

Further,

- The Tribunal included ICRA Online Ltd (even though categorized as KPO) as it was functionally similar to assessee in the field of financial and economic analysis. Noting that the Tribunal in the earlier year had held assessee's back office, call centre operations to be ITES, it observed that assessee's functions of preparing of financial reports from a raw data and preparation of balance sheet and profit and loss account and data analytics were high end ITES. It also noted that there is actually a thin line of demarcation between BPO and KPO. Further, it also observed that the assessee had included the comparable in TP study report and had not disputed it before the AO.
- It also included Allsec Technologies Ltd. noting that the main contention of TPO for excluding the company was diminishing revenue for last three years which would not hold good as operating revenue for AY 2008-09 had increased from previous year. Further, it rejected Revenue's contention that the comparable did not satisfy export filter of 75% of revenue applied by the TPO noting that the export turnover to total turnover of the comparable was 74.45% (difference was only 0.5%) It observed that there was no rule or mechanism for putting specific ceiling of limit in a particular filter.
- It included R system International Ltd. as data for quarterly results was available and directed TPO to consider quarterly results to work out profit margin. thus, ground of different financial year could not be a reason for exclusion.
- It included CG VAK Software and Export Ltd. following the ratio laid down in Delhi HC ruling in Chryscapital Investment Advisors India (P.) Ltd. (wherein it was held that if company is functionally comparable, it could not be rejected on basis the turnover.) noting that low turnover could not be ground for exclusion.
- It restored the comparability of Cepha Imaging Ltd. to examine aspect of export turnover noting that TPO had rejected it for not meeting export turnover however from the financials, its entire turnover was from export.
- It remitted back the comparability of Fortune Infotech Ltd. and Microland Ltd. noting that assessee had taken the ground before DRP which was not discussed by it.

American Express (India) (P.) Ltd. vs ACIT [2018] 97 taxmann.com 180 (Delhi - Trib.) IT APPEAL NOS. 1973 & 2577 (DELHI) OF 2014 dated 03.08.2018

100. The Tribunal held that the assessee engaged in provision of ITeS services to its AE could not be compared to:

- Infosys BPO Ltd. as it had a high brand value and had undergone an extraordinary event during the year impacting profitability etc.

Further, it remanded the issue of comparability of the following comparables:

- Universal Print Systems Ltd by relying on the decision of CGI Information Systems wherein comparability of this company was remanded for analysis at segmental level.
- BNR Udyog Ltd. noting that benchmarking of BNR was done taking medical transcription segment and issue of RPT on entity level exceeding 25% was not raised before AO/DRP. It directed the AO/TPO to verify how much RPT pertains to the medical transcription segment by relying on the decision of Indegene Pvt.Ltd. wherein comparability had been remanded back on similar facts.
- TCS E-serve Ltd. as the assessee had not brought out as to which of the services out of KPO services would come under technical services in case of TCS and further, the TPO had held that all services rendered by assessee were BPO services without any proper analysis.
- Excel Infoways Ltd. for examination and verification of the assessee's contentions on the issue of abnormality of profits and of failing of the employees cost filter of 25% at segmental level.

Further,it remitted the comparability of Accentia Technologies Ltd. and Jindal Intellicom Ltd. sought to be included by the assessee on the ground that they had been selected by the TPO and assessee however the DRP had suo moto rejected the comparable inspite of no objections being raised by the assessee.

Mobily Infotech India Pvt. Ltd. vs. DCIT TS-1059-ITAT-2018(Bang)-TP] IT(TP)A No.2055/Bang/2016 dated 08.08.2018

101. The Tribunal remanded the comparability of the comparables in case of assessee engaged in ITES to the TPO for fresh adjudication after taking into account the functional profile of the assessee, comparable concern and taking into account the decision of the Tribunal in the case of sister concern i.e. Evalueserve SEZ (Gurgoan) P. Ltd. It observedthat for AY 2010-11, the assessee had not argued comparables but only submitted chart according to the decision given by the Tribunal in case of the

sister concern and also failed to demonstrate the functional profiles of the assessee and the sister concerns are similar.

Evalueserve.Com Pvt. Ltd vs. ACIT [TS-817-ITAT-2018(DEL)-TP] ITA Nos.6310 and 1466/Del/2015 dated 03.08.2018

102. The Tribunal accepted assessee's plea for exclusion of Bodhtree Consulting Ltd and Kals Information Systems Ltd as comparables for its software development services segmentby following the coordinate bench decision of JohnDeere India wherein it was held that the said concerns were not functionally comparable since they were also engaged in the sale of software products apart from software services for which separate segmental information was not available. Further, Bodhtree Consulting Ltd. also had abnormal fluctuating profit margins which was another reason for exclusion.

Nihilent Limited, (Formerly Nihilent Technologies Limited) vs ACIT [TS-1001-ITAT-2018(PUN)-TP] ITA No.304/Pun/2014 dated 31.08.2018

103. The TPO had included/excluded certain comparables in case of assessee's software development services and accordingly, made a TP adjustment. The assessee and Revenue had come up in appeal against the CIT(A)'s order which gave certain directions. The Tribunal remitted the benchmarking of software development services to the file of TPO(to select comparables and determine the ALP afresh) in light of the audited segmental accounts of the company submitted as additional evidenceby assesseewhich demonstratedthatthe company within the overall segment of software development had two divisionssoftware development services and software product. The Revenue did not object to the same. Further,it directed that the assessee had liberty to file any fresh evidence/material before the TPO/AO in such fresh proceedings, if required.

Infrasoft Technologies Limited vs DCIT [TS-1013-ITAT-2018(DEL)-TP] ITA No.1987 and 2236/Del/2014 dated 29.08.2018

104. The Tribunal following the decision of coordinate bench in assessee's own case upheld by the Court restored the ALP determination for benchmarking of assessee's software design and development services and set aside the action of TPO rejecting the internal TNMM adopted by the assessee. The Court had upheld the findings of the Tribunal wherein observing that the assessee was providing services to AE as well as Non-AE, it was held that the assessee's transactions with Non-AE can be used for benchmarking the AEtransactions. The issue had been restored back by the Tribunal who directed the TPO for making an internal comparison of the net margin earned by assessee from its international transactions with AE and profit earned by the assessee from foreign transaction with unrelated parties.

BIRLASOFT (INDIA) LTD vs ACIT [TS-811-ITAT-2018(DEL)-TP] ITA Nos.1028 and 7180/Del/2017 dated

105. The Tribunal remanded the comparability of the following comparables in case of an assessee engaged in the provision of software development services to its AE:

- Spry Resources (India) Pvt. Ltd to verify if it passed the filter of employee's cost to salesof 50% as bench marked by TPO.
- Lucid Software Limited to verify if it passed the filter of employee's cost to salesof 50% as bench marked by TPO.
- PreludeSys (India) Ltd. to verify as to whether the said company failed the RPT filter adopted by TPO.
- ASM Technologies Ltd. to verify as to whether the said comparable failed the RPT filter adopted by the TPO.
- E-InfoChips Ltd. to verify as to whether the said company failed the RPT filter as well as employee's cost filter adopted by the TPO.Also, it had undergone amalgamation which was not addressed by TPO/DRP.

Further, the Tribunal accepted theassessee's plea for exclusion of Infosys Consulting (India) Ltd. as the turnover of the said company vis-à-vis the assessee was disproportionate and the said company failed the employee's cost filter adopted by the TPO.

Orga Systems India Pvt. Ltd. vs DCIT [TS-924-ITAT-2018(KOL)-TP] ITA No.2152 /Kol/2016 dated 21.08.2018

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

- Genesys International Corpn Ltd. as it rendered mapping and geospatial services and there was no basis for TPO to conclude that company was into software development services
- Infosys Ltd. as it was a giant risk-taking company and engaged in development and sale of software products and also owned intangible assets [It relied on coordinate bench ruling of CGI Information Systems and Management Consultants Pvt Ltd.]
- Larsen and Toubro Infotech Ltd. as it was a software product company and segmental information on Software development services was not available. [It relied on coordinate bench ruling in CGI Information Systems and Management Consultants Pvt Ltd.]
- Persistent Systems Ltd. as it was a software product company and segmental information on Software development services was not available. [It relied on coordinate bench ruling in CGI Information Systems and Management Consultants Pvt Ltd.]

MICROSEMI STORAGE SOLUTIONS INDIA PVT. LTD. vs ACIT [2018] 53 CCH 0496 (Mum- Trib.) IT (TP)A No.2103/Bang/2016 dated 24.08.2018

107. The Court upheld the Tribunal's order wherein it was held that on the basis of examination of agreements entered into between the assessee and McKinsey USA, the assessee was providing high end services in terms of research and intelligence segment where assessee's services included knowledge management systems and infrastructure issues which would encompass infrastructure support, application support, application operations group and survey development centre which were knowledge based and hence the assessee ought to be categorized as a KPO. Relying on the ratio laid down by the HC ruling in case of Rampgreen Solutions India Pvt Ltd., the Courtobserved that since the services rendered by the assessee were specialized and required specific skill based analysis and research that was beyond the rudimentary nature of services rendered by a BPO, the services provided by the assessee were more akin to KPO.

McKinsey Knowledge Centre India Pvt. Ltd vs Pr.CIT [TS-812-HC-2018(DEL)-TP] ITA 461/2017 dated 09.08.2018

108. The Court upheld exclusion of i) Mercury Outsourcing Management byTribunal applying the turnover filter and rejected the assessee's reliance on case laws observing that analysis of the comparables may be in a different context and the same need not adopted in all cases and the inclusion/exclusion of comparables is a decision to be taken by the Tribunal which is a final fact finding authority ii) Maple E-Solutions on the ground that finding of the Tribunal that alleged fraud by the director in the earlier year does not make the financial statements non-reliable was not perverse by relying on its decision in Softbrands iii) Genesys International Corporation as it failed RPT filter of 25% and the finding of the Tribunal that when the receipt from the Related Party are falling under the definition of international transactions then the same will be treated as part of the RPT was not perverse.

Acusis Software India Pvt Ltd vs ITO [TS-973-HC-2018(KAR)-TP] ITA No.223/2017 dated 14.08.2018

109. The Tribunal held that the assessee engaged in rendering data processing and data entry services to its AE could not be compared to:

- e4e Healthcare as it provided high end services to its clients in the field of healthcare business and was also also engaged in receivables cycle management and further developing software for the healthcare industry which was functionally dissimilar to the assessee.
- Fortune Infotec as it was engaged in rendering BPO and KPO services and also providing services like document management, insurance claim processing, cheque processing and taxation which was functionally dissimilar to the assessee. Furtherit relied on the coordinate bench decision of Equant Solutions India (P) Ltd wherein the said company was held to be not comparable with a company providing ITES services and having no intangibles of its own on account of developing and owning unique web based software since it was providing niche services
- I-Gate Global as it was providing customized global solutions and shared corporate services and was also engaged in CIS & BPO services for the insurance, financial services, telecom, life sciences and offshoring services of the entire benefits administration lifecycle which made it functionally dissimilar to the asssessee. Further, the said comparable was excluded by following the coordinate

bench decisions of Ameriprise India (P) Ltd vs DCIT and Techbooks International (P) Ltd vs DCIT on ground of extraordinary event of amalgamation for AY 2010-11.

- Jindal Intellicom Ltd as the financials covered a period of 15 months as against 12 months of the assessee and the Revenue could not point out that financials for the 12 months period were available in case of the company
- Omega Heathcare as the company was engaged in services like medical coding, medical billing, providing facilities, rehabilitation centres and acute care facilities and was functionally dissimilar to the assessee.
- TCS E-Serve International Limited as it provided ITes or BPO services to the banking and financial industrial services industry & Travel, Tourism and Hospitality services in different geographic segments unlike the assessee who was only providing data processing and data entry services. Further, relied on the coordinate bench decision of Bechtel India where the said company was excluded on account of payment being made for use of Tata brand which had increased its operating profit.
- TCS E-Serve Ltd as the said company was making payments for use of Tata brand which had increased its operating profit by relying on the coordinate bench decision of Bechtel India
- Accentia Technologies Ltd as it was functionally dissimilar by following the coordinate bench decision of the assessee in its own case for earlier year having regard to the principle of consistency since the functional profile of the assessee and the company remaining unchanged
- Cosmic Global Ltd. as it was functionally dissimilar by following the coordinate bench decision of the assessee in its own case for earlier year having regard to the principle of consistency since the functional profile of the assessee and the company remaining unchanged
- Infosys BPO Limited as it was functionally dissimilar by following the coordinate bench decision of the assessee in its own case for earlier year having regard to the principle of consistency since the functional profile of the assessee and the company remained unchanged
- Microgenetic Systems Limited as it was engaged in activity of medical prescription, which could not be considered to be a low end BPO as the activity involved a process of knowledge and hence functionally dissimilar to the assessee by following the coordinate bench decision in the assessee own case for earlier year

Further, the Tribunal remanded the comparability of the companies viz. BSI Financial Services (as no reason was assigned for the exclusion of the comparable) and Suntech Web Services P. Ltd noting that on perusal of the annual reports no mention of services had been made from which income was generated and hence exclusion on ground of functional dissimilarity was incorrect.

OKS Span Tech Pvt Ltd vs DCIT [TS-972-ITAT-2018(DEL)-TP] ITA No.1551/Del/2015 dated 23.08.2018

110. The Tribunal dismissed the Revenue's appeal and upheld the CIT(A)'s order that the assessee engaged in providing ITES and BPO services to its AE could not be compared to Mold Tek Technologies Ltd. as the company was providing CAD support, product development and software customization which are high-end technical services while the assessee was a routine low end service provider by following the decision of Special Bench in the case of Maersk and HC ruling in the case of Rampgreen Solutions (P.) Ltd. Further, the company in one of its segments had 100% tax exemption while the assessee company paid tax and the cost of sales was low vis-à-vis assessee.

ACIT vs. WNS Business Consulting Services Pvt Ltd [TS-956-ITAT-2018(DEL)-TP] ITA No.919/Del/2013 dated 14.08.2018

111. The Tribunal following the decision of coordinate bench in the case of TE Connectivity (where the assessee was also providing software development services and for the same assessment year) excluded Bodhtree Consulting as it was a software product company and therefore functionally dissimilar to the assessee. Further, it restored the comparables to CIT(A) to be decided afresh which were excluded applying the turnover filter in light of the HC ruling of Chryscapital Investment Advisors(India) (P.) Ltd. (wherein it was held that turnover could not be basis for exclusion of the comparables when the functionality was similar)and directed the CIT(A) to decide other aspects of the matter such as functional comparability.

ACIT vs Telsima Communications Pvt Ltd [TS-954-ITAT-2018(Bang)-TP] IT(TP)A No.1112/Bang/2014 dated 03.08.2018

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

- TCS E-Serve International Ltd as the company provided high-end technology services and owned substantial intangibles in the form of software licenses, no separate segmental information was available and noted that the company would also benefit from Tata brand. [It relied on the coordinate bench decision in the case of Omniglobe Information Technologies Pvt. to exclude the company.]
- TCS E-Serve Ltd as the company was in business of providing technology service such as software testing, verification and validation. It had also developed a transport management software therefore it was functionally dissimilar to the assessee/ company provided high-end technology services and owned substantial intangibles and noted that the company would also benefit from Tata brand. [It relied on the coordinate bench decision in the case of Omniglobe Information Technologies Pvt. to exclude the company.]
- Infosys BPO Ltd. as the Infosys brandwould result in higher operating profits of the company and wasengaged in high end integrated services which made it functionally dissimilar to the assessee. [It relied on the coordinate bench decision in the case of Omniglobe Information Technologies Pvt. to exclude the company.]
- Accentia Technologies Ltd. as the company was engaged in diversified activities such as Knowledge Process outsourcing (KPO), Legal process outsourcing (LPO), Data process Outsourcing (DTO), high end software services and no separate segmental information was available and further, the company had undergone restructuring during the year. [It relied on the coordinate bench decision in the case of Bechtel India. to exclude the company.]
- e4e Healthcare Business Services Ltd. as the company provided health care outsourcing services and in addition it also rendered software development services and no separate segmental information was available. [It relied on the coordinate bench decision in the case of Bechtel India. to exclude the company.]
- Eclerx Services Ltd as the company provided high value financial services in respect of consultancy business and solution testing besides the web content management merchandising execution, web analytics which made it functionally dissimilar and ithad no separate segmental information. [It relied on the HC ruling in the case of B C Management Services P Ltd.to exclude the company.]
- ICRA Techno Analytics Ltd. as the company was engaged in providing software development and consultancy and engineering services/web development services which made it functionally dissimilar and it had no separate segmental information. [It relied on the HC ruling in the case of B C Management Services P Ltd.to exclude the company.]

Further, it remanded the comparability of Acropetal Technologies Ltd. to the TPO relying on the coordinate bench decision in the case of Cadence Design wherein AO was directed verify whether assesseepassed the "employee cost percentage to the total cost" filterof 25% and then decide the matter in afresh.

Torus Business Solutions Pvt Ltd vs DCIT [TS-929-ITAT-2018(DEL)-TP] ITA No.1974/Del/2015 dated 10.08.2018

113. Relying on the coordinate bench ruling of Commscope Networks India Pvt Ltd, the Tribunal held that assessee engaged in software development services to its AE could not be compared to

- ICRA Techno Analytics Ltd. as the RPT filter exceeded 15%
- Acropetal Technologies Ltd. (Seg) as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd on the ground that it did not satisfy the filter of IT revenue of 75% applied by the TPO himself.
- e – Zest Solutions Ltd. as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd since it was engaged in KPO services and was functional dissimilar.
- Infosys Ltd. as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd due to its huge brand value, intangibles and huge turnover.
- Larsen & Toubro Infotech Ltd. as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd since it exceeded 15% RPT filter.
- Persistent Systems & Solutions Ltd. as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd. on the ground that it was functionally incomparable being engaged in diversified activities including licensing of products, royalty on sale of products as well as income from maintenance contract.

- Persistent Systems Ltd. as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd. on the ground that it was functionally incomparable being engaged in diversified activities including licensing of products, royalty on sale of products as well as income from maintenance contract
- Sasken Communication Technologies Ltd. as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd. in absence of segmental details.
- Tata Elxsi Ltd as it was excluded by coordinate bench ruling of Applied Materials India Pvt Ltd on the ground that the company did not qualify the export earning filter of 75% applied by TPO himself.
- E-Infochip Ltd as it was excluded by coordinate bench ruling of Saxo India Pvt Ltd on the ground of absence of segmental details

It allowed Revenue's appeal partly and directed for inclusion of Evoke Technology Pvt Ltd, RS Software Ltd and Mindtree Ltd. as the assessee did not contest the inclusion. Further, it upheld DRP's order which directed for exclusion of Intertec Communication Technologies Ltd. noting that DRP had followed the coordinate bench ruling in case of Navisite India Pvt Ltd. and Del HC ruling in Rampgreen Solutions India Pvt Ltd. and the assessee could could not point out any difference in facts. It rejected assessee's plea for inclusion of MYM Technologies Ltd noting that the data for current financial year was not available and the Annual report submitted by the assessee did not contain audited P&L and balance sheet for 12 months. It also upheld DRP's order with respect to exclusion of FCS software on basis of absence of segmental information pertaining to software development, employee cost filter, onsite revenue filter etc. and rejected assessee's reliance on the coordinate bench ruling of Marvell India Pvt Ltd. wherein the said comparable was excluded for reason of high working capital adjustment and there was no discussion about the reasons for exclusion which the DRP had dealt with like absence of segmental information, employee cost filter and onsite revenue filter (in addition to high working capital).

ACIT vs AT & T Global Business Services India Pvt Ltd [TS-1092-ITAT-2018(Bang)-TP] IT(TP)A No.171/Bang/2016 dated 31.08.2018

AT & T Global Business Services India Pvt Ltd vs ACIT [TS-1092-ITAT-2018(Bang)-TP] IT(TP)A No.190/Bang/2016 dated 31.08.2018

114. The Tribunal pursuant to the recall of the its order vis-à-vis adjudication of comparable relying on the decision of Hewlett Packard India Software Operation directed for exclusion of Accel Transmatics. It held that the said company was engaged in business of application of products in the health care, education segment, had also ventured into areas of animation and gaming software and was therefore functionally different from assessee which was engaged in providing software development services to its AE.

Broadcom India Private Ltd vs. DCIT [TS-887-ITAT-2018(Bang)-TP] ITA No.1514/Bang/2010 dated 03

115. The Tribunal relying on the coordinate bench decision of CGI Information Systems and Management Consultants Pvt Ltd. held that the assessee engaged in the provision of software development services could not be compared to:

- Genesys International Corpn. Ltd as it was rendering Geospatial based services and hadpresence of intangible assets which was indicative of the fact that the company was not in software development services.
- Infosys Ltd. as it was engaged in the development and sale of software product and had intangible assets.
- L& T Infotech Ltd. as it was also a software product company and segmental information vis-à-vis software development services was not available.
- Persistent Systems Ltd. as it was a software product company and segmental information on software development services was not available.

Microsemi Storage Solutions India Pvt Ltd vs ACIT [TS-927-ITAT-2018(Bang)-TP] IT(TP) A No.2103/Bang/2016 dated 24.08.2018

116. The Tribunal held that assessee engaged in providing consultancy services to its AE could not be compared to:

- Coral Hubs Ltd. as it outsourced majority of its activities [It relied on the HC decision of PTC Software.]

- E-Clerx as it wasengaged in diversified activities like data analytics, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management, revenue management and also offered financial services such as real-time capital markets, middle and back-office support, portfolio risk management services and various critical data management services. [It relied on the coordinate bench decision of Fractal Analytics.]
- Accentia Technologies Ltd. as it developed its software and rendered medical transcription services and had undergone an extraordinary event of merger. [It relied on the HC decision of PTC Software.]
- Cosmic Global Ltd. as it was outsourcing its services to vendors. [It relied on the HC decision of PTC Software.]
- Excel Infoway Ltd. as it had super normal profit for the subject year and the employee cost could not computed properly on account of the entire cost being allocated to the BPO segment though its 49% of its revenues were from the infra segment. [It relied on the coordinate bench decision of Baxter India.]

Swiss Re- services India Pvt Ltd vs DCIT [TS-1120-ITAT-2018(Mum)-TP] ITA No.1493/Mum/2014 dated 31.08.2018

117. The Tribunal relying on the coordinate bench decision of Electronics for Imaging India in case of a software service development provider (for the same AY namely AY 2011-12) accepted assessee's plea for exclusion of (i) Acropetal Technologies (ii) E-Zest Solutions Ltd. (iii)E-Infochips Ltd (iv) ICRA Techno Analytics Ltd and (iv) Persistent Systems and Solutions Ltd. as they were in the business of developing software products and could not be compared to assessee engaged in software development services.

ACIT vs Yokogawa Technologies India Pvt Ltd [TS-1046-ITAT-2018(DEL)-TP] IT(TP)A No.466/Bang/2016 dated 8.08.2018

118. The Tribunal allowed the Revenue's plea for inclusion of Allsec Technologies as a comparable in case of assessee engaged in ITES segment as the assessee did not object to the same being included. It was pointed out by Revenue that the basis for rejection of the comparable by CIT(A) was that it was a loss-making company; however, CIT(A) failed to appreciate the fact that the comparable's connectivity and data base expenses (being extraordinary in nature) were factored in while computing the margin.

Dy.CIT vs JDA Software Private Limited (formerly i2 Technologies India Private Limited) [TS-1102-ITAT-2018(Bang)-TP] IT (TP)A No.1239/Bang/2013 dated 28.09.2018

119. The Tribunal remitted the comparability of Informed Technologies Ltd. noting that the assessee's (engaged in IT services) plea for exclusion of the company on account of the it not qualifying the filter of operating income exceeding 70% of revenue was not raised before the TPO and DRP. It directed the TPO to re-examine the comparability after giving an opportunity to the assessee to raise all contentions before the TPO and place necessary evidence before it.

Navigant BPM (India) Private Limited (Formerly known as M/s.RevenueMed India (P) Ltd) vs ACIT [TS-1143-ITAT-2018(COCH)-TP] IT(TP)A No.146/Coch/2015 dated 07.09.2018

120. The Tribunal upheld DRP's order excluding iGATE Global Solutions Ltd. as a comparable in case of assessee engaged in ITES as it was earning revenue from providing IT Services and IT enabled services and there was no segmental information.

Dy.CIT vs Goldman Sach Services [TS-1239-ITAT-2018(Bang)-TP] IT (TP) A NO. 581(BANG.) OF 2016 dated 12.09.2018

121. The Tribunal excluded Cosmic Global Solution as a comparable for assessee engaged in providing back office support services on the ground that its employee cost to sales was low (21%) which showed it was outsourcing its operations whereas the assessee's employee cost to sales was high (55%) which showed it had inhouse operations. It relied on coordinate bench decision of Xchanging Technology

wherein the said comparable was excluded on account of different business model (outsourcing its operations). Thus, the Tribunal remitted the ALP-determination of the international transaction for fresh determination to AO/TPO after excluding the said comparable.

Integreon (India) Private Ltd vs ITO [TS-1122-ITAT-2018(DEL)-TP] ITA No.2059/Del/2014 dated 14.09.2018

122. The Tribunal held that an assessee engaged in provision of ITES and financial support service to its AE could not be compared to:

- Cosmic Global Ltd. as income from medical transcription segment which was similar to assessee's business was barely 1% of its total revenue and the major part of its income was from translation charges the business which was dissimilar to that of assessee.
- Eclerx Services Ltd. as it was engaged in providing data analytics and customized process solutions and had undergone demerger for the subject year(extraordinary event).
- Genesys International Corpn. Ltd. as it was engaged in rendering geospatial services catering to the needs of consumer mapping, navigation and internet portals.
- Vishal Information Technology as it was mainly engaged in e-publishing business apart from document scanning work (similar to assessee's business) and there were no separate segmental results available for document scanning.
- Accentia Technology as there was a merger of an entity by way of amalgamation and its asset base had increased substantially.
- Infosys BPO Ltd as it had acquired McCamish Systems Ltd. being an extraordinary event Further, it remanded the comparability of Acropetal Technologies which was contested by assessee on ground that it was not provided an opportunity to rebut the data collected u/s.133(6) by the TPO in light of Delhi HC judgment in Cashedge India Pvt Ltd wherein the TPO order was set aside for affording an opportunity to assessee to cross examine the data collected and used by the TPO.

GE India Business Private Ltd vs ACIT [TS-1190-ITAT-2018(DEL)-TP] ITA No.6008/Del/2012 dated 25.09.2018

123. The Tribunal held that an assessee engaged in provision of data processing and back office support services to its AE could not be compared to:

- Apex Knowledge Solution Pvt Ltd. as it was primarily a software development company andfurther even where the TPOhad rejected companies selected by assessee on the ground that they were engaged in software development activities.
- Asit C. Mehta Financial Services Ltd. (formerly known as Nuclues Netsoft and GIS (I) Ltd.) as it was engaged in providing ITES and software development services and no separate segmental data was available.
- Cosmic Global Ltd.as it outsourced part of the business activities to others, whereas the assessee had carriedout the entire activities itself.
- Goldstone Infotech Ltd. as its export turnover was less than 25% of sales and hence did not satisfy the filter applied by TPO.
- Maple E-solutions Ltd. as the financial results of a company were not reliable due to fraud committed by thedirectors.
- Datamatics Financial Services Ltd. as it had significant related party transactions greater than RPT filter of 25%
- MCS Ltd as it was engaged in handling public issue and acting as Registrar and Share Transfer agent and the activities were restricted to domestic segment unlike the assessee who was providing services to international customers.
- Tata Share Registry Ltd. as the activities were limited to domestic segment unlike the assessee who was providing services to international customersand the business model and field of operation of assessee were different.

Further, it restored the comparability of CS Software Enterprises Ltd. in view of the coordinate bench ruling in DBOI Global Services wherein the Tribunal had observed that it appeared that the said company

was engaged into ITeS/BPO service, however restored the comparability to TPO to examine FAR analysis to conclude whether comparable to assessee engaged in ITES. It rejected Ask Me Info Hubs on the ground that its export turnover was less than 25% of total sales and did not satisfy the filter applied by TPO.

Deutsche Networking Services Private Ltd. Vs. The Dy.CIT [TS-1177-ITAT-2018(MUM)-TP] ITA No.8972/Mum/2010 dated 14.09.2018

124. The Tribunal remitted the matter of functional comparability of Acropetal Technologies noting that though the assessee had characterized itself as a software development company however it was recharacterized by the AO as an engineering design service provider which was not contested by the assessee. However, the assessee had not filed TP documentation as an engineering design service provider which had to be done.Thus, it remitted back the matter for the TPO(who had rejected assessee's comparables for software development segment and selected the aforesaid comparable for engineering design service provider) to re-examine the comparability after considering the TP documentation (to be filed by assessee as an engineering design company) noting that assessee relying on coordinate bench decision in Bloom Energy had rightly contended that comparable should be excludedfor the subject year on the ground of high operating profit margin(61.11%).

GE Power Conversion India Private Limited, (Successor to GE Power Conversion Technology Pvt Ltd) [TS-1117-ITAT-2018(CHNY)-TP]

125. The Tribunal held that assessee engaged in software development, competency centre and IT support services (clubbed and aggregated by TPO) could not be compared to:

- Cat Technologies Ltd. as it was rendering other services in the nature of advisory and consulting besides launching the job portal, namely, Logtalent.com. apart from software development and IT support services and there was no information on the mode of earning revenues from such activities. The Tribunal noted that the company derived Rs.8.49cr out of software development and consulting services but no segmental data was available and from the Accounting Policies and Notes on Account it was evident that the company's exclusive business was medical transcription and training software development and consulting services which was treated as the only reportable segment. [It relied on the coordinate bench ruling of SunLife India Service centre ruling wherein the comparable was excluded in case of an assessee engaged in software development and maintenance support services as it was running both software development and maintenance support services with IT support services low or high end whether onsite or offsite.]
- Infosys Technologies Ltd as it was a giant company operating on full-fledged risk leading to maximum profit, had huge revenue and expending its turnover on R&D having huge intangibles vis-à-vis taxpayer which was a captive service provider operating on a minimum risk and only having turnover of RS.109 crores as against turnover of Infosys of Rs.15648 crores. [It relied on coordinate bench decision in assessee's own case for earlier year since no change in facts was pointed out by the Revenue.]
- Tata Elxsi as it was not a mere software developer and was involved in products and Innovative functions like visual computing labs with the track record of making India's first full length animated film.
- Thirdware Solutions Ltd. as the company derived revenue from various services, sale of licences, export from SEZ unit, revenue from subscription etc. and the company engaged in diversified business including software products and further, no segmental information was available.

Siemens Industry Software (I) P Ltd vs DCIT [TS-1045-ITAT-2018(DEL)-TP] ITA No.1307/Del/2014 dated 14.09.2018

126. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order excluding Indusind Information Technology Ltd as a comparable for assessee engaged in providing BPO services to its AE following the coordinate bench decision in assessee's own case for preceeding year wherein the said comparable was excluded on the ground that it was a software development company whereas the assessee was a BPO company. Further, the software development company had a completely different functional profile as compared to a company engaged in BPO Services and the risk undertaken and the assets employed by a software development company could not be compared to a BPO company.

ACIT vs Acclaris Business Solutions (P) Ltd [TS-1056-ITAT-2018(Kol)-TP] ITA No.1457/Kol/2017 dated 14.09.2018

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

- iGate GlobalSolutions, Flextronics Ltd. (Seg.), L & T Infotech Ltd, Satyam Computers Ltd,., Infosys Technologies Limited as these companies had a turnover exceeding 200 crores whereas the assessee's turnover was merely 24 crores. [It relied on the coordinate bench ruling in Dell International which inturn had relied on coordinate bench decision in Genisys International.]
- Tata Elxsi as it was engaged in development of niche product and development services, which was entirely different from the assessee company and no segmental information available. [It relied on the coordinate bench ruling in assessee's own case since there was no change in factual matrix.]
- Bodhtree Consulting Ltd. as it was engaged in product development, software development and ITES and segmental details were not available which was not controverted by Revenue.
- Geometric Software Solutions Co. Ltd. as it was engaged in developing and licensing of products and product life cycle management services which were not similar to the functions of the assessee.

Further,

- It remanded the comparability of Exensys Software Solutions Ltd. and Thirdware Solutions Ltd to the CIT(A) as the CIT(A) had excluded on basis of abnormal profits without any discussion and the comparability of the companies had also not been discussed.
- It excluded Quintegra Solutions Ltd. as no evidence had been brought on record that the financial results could be extrapolated. It distinguished coordinate bench ruling of Exevo India Pvt. Ltd. relied on by assessee (wherein it was held if a company was functionally similar, it could not be excluded on basis that data for entire financial year was not available, if data could be reasonable extrapolated with available data on record) noting that data had to be on record for reasonable extrapolation which was not the case of said comparable.
- It included VJIL Consulting as it was predominantly an exporter of software development services which was even the finding of CIT(A). [It relied on coordinate bench ruling in Qualcomm.]
- It includedAkshay Software Technologies Ltd. as it was engaged in provision of software development servicesby relying on coordinate bench ruling in Qualcomm India (P.) Ltd.which was not controverted by Revenue.

DY.CIT vs ABB Global Industries & Services P Ltd [TS-1051-ITAT-2018(Bang)-TP] IT(TP)A No.620/Bang/2013 dated 07.09.2018

128. The Tribunal held that assessee engaged in export of software development to its AEs could not be compared to:

- Bodhtree Consulting Ltd as it was engaged in software development and product as well as ITES services and segmental details were not available.
- Kals Information System as it was a software product company. [It relied on ratio laid down in Bombay HC ruling of PTC Software Pvt Ltd.]
- Compucom Software Ltd. as it was engaged in ITES sector and also software development services and segmental details were not available.
- TVS Infotech Ltd. as it was a persistent loss-making company. (assessee had not furnished details of margins of earlier year and later years)

Further,

- It included Quintegra Solutions Ltd. noting that Tribunal in preceding year had remitted the comparability of the said company and in the remand proceedings, the TPO had found it functionally comparable to the assessee.
- It accepted assessee's plea for inclusion of ICRA TechnoAnalytics on basis that reimbursements from AE's should not be included while computing RPT percentage and thus, it would pass the RPT filter of 25%.

Starent Networks (India) Private Ltd. vs JCIT [TS-1205-ITAT-2018(Pune)-TP] ITA No.585/Pune/2014 dated 26.09.2018

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

- Bodhtree Consulting Ltd. as it was in the business of software product and was engaged in providing open and end to end web solutions software consultancy and design and development of software using latest technology [It relied on coordinate bench ruling of Infinera India]

- Tata Elxsi Ltd. as it operated in the segments of software development services which comprised of embedded product design services, industrial design and engineering services and visual computing labs and system integration services segment that made it functionally different from assessee [It relied on coordinate bench ruling of Infinera India]
- Infosys Ltd. as it was a giant company in the area of development of software and it assumed all risks leading to higher profits [It relied on coordinate bench ruling of Infinera India]
- L&T Infotech Ltd. as it was a global IT service and solutions provider. [It relied on coordinate bench ruling of Cisco]
- Persistent System Ltd. as it was in product designing services and into software product development. [It relied on coordinate bench ruling of Infinera India]
- Sasken Communciation Technologies Ltd. as it was engaged in sale of software products and had intangible assets. [It relied on coordinate bench ruling in Novell Software development]

Further,

- It remanded the comparability of Kals Information Systemanddirected the TPO to call for information u/s.133(6) whether it was engaged in software product development as Revenue pointed out to the Tribunal that TPO's order stated that company had not carried out research and development for instant year and the company only rendered training services and had no software products.
- It also remanded the comparability of CG-VAK Software and Exports Ltd. to consider employee cost vis-à-vis total turnover by taking correct employee cost

LSI India Research and Development Pvt Ltd vs ITO [TS-1224-ITAT-2018(Bang)-TP] IT(TP)A Nos 44 and 45/Bang/2014 dated 07.09.2018

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

- Acropetal Technologies Ltd. as there was no breakup of its employee cost and export sales due to absence of segmental information and thus, it was not possible to ascertain if it passed export earnings and/or employee cost filters [It was Revenue's contention that DRP had arbitrarily applied the onsite revenue filter to exclude the comparable and it was immaterial if they generate revenue from onshore or offshore services when they are functionally similar. The Tribunal upheld DRP's order noting that it had relied on coordinate bench ruling in CGI Information System Ltd and cited other reasons (i.e. absence of segmental information containing breakup of employee cost and export sales) in addition to onsite filter]
- L&T Infotech Ltd. as it was a software product company having significant intangibles.[It was Revenue's contention that DRP had arbitrarily applied the onsite revenue filter to exclude the

comparable and it was immaterial if they generate revenue from onshore or offshore services when they are functionally similar. The Tribunal upheld DRP's order noting that it had relied on coordinate bench ruling in CGI Information System Ltd and cited other reasons (i.e. showing revenue from three segments i.e. financial services, manufacturing and telecom without any segmental breakup) in addition to onsite filter]

- E-Infochips Ltd. as it had diversified services with no segmental information and its income from software development services was less than 75% of its operating revenue.[It was Revenue's contention that DRP had arbitrarily applied the onsite revenue filter to exclude the comparable and it was immaterial if they generate revenue from onshore or offshore services when they are functionally similar. The Tribunal upheld DRP's order noting that it had relied on coordinate bench ruling in CGI Information System Ltd and cited other reasons (i.e. fluctuating revenue, failed service filter, lack of segmental information) in addition to onsite filter]

Further, it included RS Software noting that assessee and TPO had selected it as a comparable whichwas excluded by DRP on its own by applying onsite filter and further, both assessee and Revenue wanted it to be included.

Dy.CIT vs Goldman Sach Services [TS-1239-ITAT-2018(Bang)-TP] IT (TP) A NO. 581(BANG.) OF 2016 dated 12.09.2018

131. The Court dismissed Revenue's appeal against Tribunal's order wherein relying on the co-ordinate bench ruling in the assessee's own case involving identical grounds held that the comparables selected by the TPO were not comparable at all with the assessee since the said comparables were engaged in ITeS as against software design and development services rendered by the assessee. The Court relying on division benchdecision in the case of Pr.CIT v. Barclays Technology Centre India Private Ltd noted that Revenue routinely brings such factual matters before the Court knowing fully well that exclusion and inclusion of certain comparables to determine ALP would not necessarily give rise to purely legal question or substantial question of law. It held that findings of the Tribunal could not be termed as perverse or vitiated by error of law apparent on the face of record and the issue involved was factual.

Pr CIT vs TIBCO Software (India) Pvt Ltd - TS-1077-HC-2018(BOM) - ITA No.522 of 2016 dated 24.09.2018

132. The Tribunal held that the assessee was a contract research and development software service provider and not a routine low-end software service provider as contended by it. It was assessee's contention that it was involved only in coding and testing which were a part of the phase development of products done by its AE located in USA and its role was limited. The Tribunal on perusing the Parent Subsidiary agreement (PSA) concluded that clauses of the PSA provided for the assessee to undertake research and development and actual creation of intellectual property in India patented in the USA (which were around 113 patents), Thus it was substantiated that the assessee was involved in research and development work. Further, it noted that the assessee was satisifying the CBDT guidelines for a contract R&D service provider for the following reasons (i) Microsoft, USA was performing most of the economically significant functions involved in research or product development cycle, while the assessee as an Indian Development Centre carried out the work assigned to it by the foreign principal (ii) Microsoft, USA was remunerating the assessee with cost plus 15% for the work carried out by it and was also providing its intangibles in the shape of Process tools (customised software, readymade templates and guidelines, etc.) to the assessee for doing the work (iii)The assessee was working under the direct supervision of Microsoft, USA, which was actually controlling or supervising research or product development through its strategic decisions and also monitoring activities on regular basis. (iv) The assessee in India did not assume or had no economically significant realized risks. (v) The assessee had no ownership right (legal or economic) on the outcome of the research which vested with Microsoft, USA, and that this wasevident from the contract as well as from the conduct of the parties. Thus, the Tribunal termed the assessee as a contract research and development service provider.

The Tribunal held that the assessee who was providing contract research and development software development services could not be compared to:

- E-Infochips Bangalore Limited as it had revenues from software services and IT enabled services in a common pool, and no separate segmental information apart from revenues from software services and ITES services was availablewhereas the assessee had only revenue from software development services.
- Infosys Technology Ltd. as its total profit included profit from software development services as well as software products and there was no separate profit available of the software development services.

  Persistent Systems Ltd. as it was engaged in rendering software development services as well as sale of software products and no seperate segmental information was available.
- Wipro Technology Services Ltd as it was earlier part of Citi Group and subsequently, it was acquired by Wipro and the arrangement of earning revenue from Master services agreement with Citigroup Inc. for the delivery of technology infrastructure services was actually a prior arrangement between assessee's AE (Wipro Ltd) and third party (Citigroup Inc.) and hence in light of the transaction ceased to be a comparable uncontrolled transaction.
- Akshay Software Ltd. as it was engaged in rendering software development services as well as sale of software products and no seperate segmental information was available.
- Blue Star Infotech Ltd. as apart from being a product company and dealing in hardware also, it was also not providing any research and development services.
- Caliber Point Business Solutions Ltd as it was not rendering any research and development software services and was providing only BPO services whereas the assessee was rendering only software development services.
- Cat Technologies Ltd. as it was engaged in rendering software development services as well as ITES and no seperate segmental information was available.
- CG-VAK Software & Exports Ltd as it was a persistent loss-making company and assessee failed to prove it was rendering any software development under the relevant segment.
- Evoke Technologies Pvt. Ltd. as it was not providing research and development software services

  LGS Global Ltd as it was not rendering any research and development services and was a simple software service provider.
- Maveric Systems Ltd. as research and development activity done by this company was meant for its own use and it had not earned any revenue from rendering R&D services.
- RS Software as income from the relevant segment of 'Software development & Customization services' taken by the assessee for the purposes of comparison included sale of products not only of its own but also those of third parties.
- Silverline Technologies Ltd. as it also hadincome from software products and was not engaged in rendering research and development software services,

  Further, it included Mindtree Ltd. (IT Service Segment) in the list of comparable as it fulfilled the parameters, namely, rendering of research and development software services and also Product engineering services to its customers leading to the creation of patents. It directed the TPO to examine

  the PLI of this company from the IT services and Product engineering services and then treat the same

  as comparable with the segment of the assessee under consideration for the purposes of benchmarking

Microsoft India (R&D) Pvt. Ltd vs DCIT [TS-1015-ITAT-2018(DEL)-TP] ITA No.1479/Del/2016 dated 14.09.2018

133. The Tribunal dismissed Revenue's order and upheld the DRP's order excluding Accentia Technology as a comparable for assessee engaged in rendering backoffice support services to its AE noting that DRP had given a detailed finding with respect to exclusion and Revenue was not able to point out any infirmity in the directions of DRP and any judicial precedent wherein Accentia Technology was retained as a comparable. The DRP had excluded it on the ground that it was engaged in diversified activities in the nature of medical transcription services, medical billing, practice management consulting services, medical coding, claims processing and software development including SAAS and implementation

services and segmental information was not available and further, it had undergone acquisition during the year.

ITO vs Actis Global Services Pvt Ltd [TS-1150-ITAT-2018(DEL)-TP] ITA No.6710/Del/2015 dated 30.10.2018

134. The Tribunal held that assessee engaged in providing BPO/data processing and ITES to its AE could not be compared to:

- iGate Solutions Ltd as the RPT filter was more than 25% and the TPOhimself had rejected companies with RPT filter of more than 25%. Further, it had undergone restructuring by way of amalgamation which would have financial impact on its results.

Further

- It remanded the comparability of Capgemini Business Services (India) Pvt. Ltd with direction to TPO to verify if the company had segmental information observing that KPO was an extension of BPO.
- It upheld the action of AO/TPO to include E4E Healthcare pursuant to remand proceedings by DRP noting that it had satisfied the employee cost filter

Omniglobe Information Technologies (India) Pvt Ltd vs Addl CIT [TS-1146-ITAT-2018(DEL)-TP] ITA 6980/Del/2017 dated 15.10.2018

135. The Tribunal held that assessee engaged in providing medical transcription services to its AE could be compared to:

- UltraMarine and Pigments Ltd observing that assessee before the CIT(A) had stated that the company's RPT filter exceeded 25%, but the CIT(A) had found that its RPT filter was 10%. It rejected assessee's reliance on the website extract which showed the comparable was carrying out R&D and project implementation (to hold that it was functionally not comparable to the assessee) since the year to which it pertained to was not known.Further, the assessee was not able to demonstrate the reason forwhich TPO had excluded itin the subsequent year.
- Fortune Infotech Ltd.as it was carrying on business of medical transcription. Merely because it was doing business through different tools simply could not make it non comparable. It noted that for the subject year, the company had developed webbased software and therefore, it was apparent that it did not carry its business with different tools.
- Tricom Ltd.as the functions performed were similar to the assessee. Itrejected assessee's contention that merely because the company was undertaking R&D it was not comparable. Further, itrejected the contention of assessee that company had abnormal growth as it was not backed up by the profitability statement.
- AceSoftware as it was functionally comparable and the Tribunal noted that the TPO had erred in rejecting it on basis of single transaction with Apex Data Services (since it was with a related party) without reliable data.
- Tulisian Technologies as the Revenue could not point any infirmity in CIT(A)'s order wherein it had stated that it would be unjust to exclude it on the ground that turnover (94Lakhs) was marginally less than 1 crore
- Mapro Industries as it was functionally similar.Itrejected Revenue's plea for its exclusion on account of non-utilization of assets noting that non utilization of the assets or under utilization thereof may be internal inefficiency built in of the comparable company however, when it was functionally comparable it could not be rejected.

Further, it excluded

- Vishal Information Technologies as it was outsourcing majority of its operations and hence had a different business model
- Wipro BPO Solutions Ltd as its turnover was 30 times that of the assessee

ITO vs Transcend M T Services Pvt Ltd (Formerly Heartland Bangalore Transcription and Services Pvt. Ltd merged with Heartland Informati [TS-1168-ITAT-2018(DEL)-TP] ITA No.2372/Del/2011 dated 05.10.2018

Transcend M T Services Pvt Ltd vs ITO (Formerly Heartland Bangalore Transcription and Services Pvt. Ltd merged with Heartland Informati [TS-1168-ITAT-2018(DEL)-TP] CO No. 214/Del/2011 dated 05.10.2018

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

- Infosys BPO Ltd. as the export turnover was approx. Rs.1356 crores whereas assessee's export turnover was only Rs.14.5 crores thus, there was undisputedly a wide gap in size and turnover
- Hartron Communication as it had diversified activities and had achieved extraordinary profits during AY 2013-14.
- Cenlub Industries, Demba Valva and SE Electricals Ltd. as TPO had selected the said companies as comparables observing that under TNMM only broad functional comparability is required inspite of giving a clear cut finding they were functionally dissimilar.

Further,

- It remitted Caliber Point Business Solution to the file of the TPO observing that the manner in which profits were extrapolated were not placed before it. It accepted assessee's contention that the comparable could not be excluded on merely a different financial year.
- It remitted the comparability of MPS Ltd. as TPO had not examined the issue with respect to its inclusion. It directed the TPO to pass an appropriate order in accordance with merit after examining the objections raised by the assessee.

Cameron Manufacturing India Pvt Ltd. vs DCIT[TS-1254-ITAT-2018(CHNY)-TP] ITA No.336/Chny/2018 dated 16.10.2018

137. The Tribunal held that assessee engaged in providing the business of financial data processing and analysis could not be compared to:

- Eclerx Services Ltd. as it provided services through two business units i.e. Financial Services and Sales & Marketing Services. It also observed that the assessee company was providing services to the comparable. Under the Financial Service Segment, it. provided professional services including consulting, business analysis and solution testing. Further, under Sales & Marketing Services, it provided web content management and merchandising execution, web analytics, social media moderation and analytics.

Further,

- It remanded the comparability of Omega Healthcare Management Services Ltd, Zavata India Ltd., Rsystem (different financial year ending) to the TPO as they had been rejected on account of the financials not being available which did not seem to be a proper reason since the the database was available in public domain. Italso noted that the quarterly financials of RSystems was available

Markit India Services Pvt Ltd vs DCIT [TS-1160-ITAT-2018(DEL)-TP] ITA No.84/Del/2016 dated 29.10.2018

138. Relying on the coordinate bench ruling in E4E business solutions, the Tribunal held that assessee engaged in providing ITES to its AE could not be compared to a) Vishal Information Technologies and and b) Accurate Data Converts Ltd. as the employee cost was less than 25% of operating revenue in case of the said comparables and did not satisfy the employee cost filter applied by TPO.

Mphasis Ltd vs ACIT [TS-1197-ITAT-2018(Bang)-TP]IT(TP)A No.14/Bang/2012 dated 05.10.2018

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

- Infosys Ltd. as it was excluded in assessee's own case for earlier year (by relying on Delhi HC in Agnity India) on basis that it was a giant company in terms of risk profile, scale, nature of services, revenue ownership of branded/proprietary products, on site and offshore services, etc.
- Wipro Technology Services Ltd. as it earned majority of revenue from Citigroup Inc and was earlier part of Citi Group and subsequently, it was acquired by Wipro and the arrangement of earning revenue from Master services agreement with Citigroup Inc. for the delivery of technology infrastructure services was actually a prior arrangement between assessee's AE (Wipro Ltd) and third party (Citigroup Inc.) and hence the transaction ceased to be a comparable uncontrolled transaction. [It relied on coordinate bench ruling in Microsoft India]

Global Logic India Ltd.vs Dy.CIT [TS-1249-ITAT-2018(DEL)-TP] ITA No.1690/Del/2016 dated 30.10.2018

140. The Tribunal restored the determination of ALP of ITES segment of assessee noting that assessee had raised objections before the TPO and DRP vis-à-vis comparables (ICRA Online Ltd., Acropetal Technologies, Accentia Technologies Ltd, Jeevan Scientific Technology Ltd.) on segmental account

details being absent, presence of intangibles and failure to satisfy certain filters which was disposed off by DRP confirming TPO's order without passing a speaking order. Thus, it restored the matter with directions to the assessee to raise contention vis-à-vis comparables to be excluded before the TPO.
Navigant BPM (India) Pvt Ltd.vs ACIT [TS-1223-ITAT-2018(COCH)-TP] IT(TP)A No.57 /Coch /2016 dated 23.10.2018

141. The Tribunal upheld DRP's order excluding Acropetal Technologies Ltd. in case of assessee engaged in ITES segment noting that TPO had considered the engineering design service segment (functions performedwere Architectural, Structural, Electrical, Plumbing, Steel Detailing,External Utilities, Design Engineering) of said comparable, which was functionally dissimilar to the ITES segment of assessee (functions performed were back office services relating to finance and human resource functions). It relied on coordinate bench ruling in Novo Nordisk (I) P Ltd. wherein Acropetal Technologies Ltd. was excluded as it was providing high end engineering services which could not be compared to ITES segment of assessee.
ACIT vs. Flextronics Technologies (India) Pvt Ltd. [TS-1208-ITAT-2018(Bang)-TP] IT(TP)A No.576 /Bang /2016 dated 31.10.2018

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

- Bodhtree Consulting Ltd. as it was engaged in sale of software product apart from providing software services and segmental information was unavailable.
- Kals Information Systems Ltd. as it was engaged in developing software products, development of software services and in running a training center for software professional on online projects unlike assessee which was engaged only in providing software services.

Further, it included SIP Technologies and Exports Ltd by relying on coordinate bench decision in John Deere India Pvt Ltd. for same assessment year wherein it was held that the comparable had profit in one out of the three year and thus, could not be **considered to be** a persistent loss-making company. Accordingly, the Tribunal held that the said comparable could not be excluded on ground of persistent loss-making concern when it was **otherwise** functionally comparable.
SAS Research and Development (India) Pvt Ltd. vs.Jt.CIT [TS-1276-ITAT-2018(Pun)-TP] ITA No.1539 /Pun /2014 dated 24.10.2018

143. The Court allowed Revenue's appeal against ITAT's order deleting TP adjustment in case of assessee providing call centre services to its AE wherein it was noted that the transaction was at ALP under internal CUP as the average hourly rate received from AE in USA was higher than that of the Non-AEs in UK
CIT vs.EFFECTIVE TELESERVICES PVT LTD [TS-1081-HC 2018(Guj)-TP] ITA No.893 of 2018 dated 01.10.2018

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

- Bodhtree Consulting Ltd as it was in the business of software product and was engaged in providing open and end to end web solutions software consultancy and design and development of software using latest technology.
- Persistent System Limited as it was in product designing services and into software product development
- Tata Elxsi Ltd as it operated in the segments of software development services which comprised of embedded product design services, industrial design and engineering services and visual computing labs and system integration services segment. There were no sub-services break up/information provided in the annual report or the databases based on which the margin from software services activity only could be computed. Also, the company had in its response to the notice u/s 133(6) stated that it could not be considered as comparable to any other software service company because of its complex nature
- L&T Infotech Ltd as it had a turnover exceeding 1000 crores and it had multifaceted activities.
- Sasken Communication Technologies Ltd. as it earned revenue from software services, software products and other services for which it had no segmental information available.

Further

- It remanded the comparability of Kals Information System Ltd to DRP for deciding the issue of inclusion or exclusion (as assessee had not raised the issue of exclusion before DRP) and directed it to consider coordinate bench rulings of TE Connectivity (wherein said comparable was excluded for being a product company) and contrary decision of AOL India P Ltd (wherein it was held that said comparable was not developing products as it did not have any such revenue and held it was functionally similar to software development companies).

Coreone Technologies India P Ltd vs Dy.CIT [TS-1292-ITAT-2018(Bang)-TP] (IT(TP)A No.263/Bang/2014) dated 26.10.2018

145. Relying on coordinate bench decision of CGI Systems and Management Consultants (P) Ltd (which was for same AY i.e. AY 2012-13)., the Tribunal held that assessee engaged in providing software development services to its AE could not be compared to:

Genesys International Ltd as it was engaged in mapping and geospatial services (which clearly showed that it was not into software development and there was no basis for TPO to conclude that it was a software development company)

- Infosys Technologies Limited as it was a giant risk-taking company and engaged in development and sale of software products and also owned intangible assets.
- L&T Infotech Ltd as it was a software product company and segmental information pertaining to software development services was not available.
- Persistent Systems Ltd as it was a software product company and segmental information pertaining to software development services was not available

Huawei Technologies India P Ltd vs JCIT [TS-1318-ITAT-2018(Bang)-TP] (IT(TP)A 1939/Bang/2017)) dated 31.10.2018

146. The Tribunal accepted assessee's plea for inclusion of CG-VAK Software and Export Ltd. noting that it was not a persistent loss-making concern as it showed profitability for FY 2008-09, FY 2010-11 and FY 2012-13 when foreign exchange gains were included as part of operating profits. It remitted the matter to AO to verify whether after the above direction, whether addition to ALP in case of assessee's software development segment would survive or would be modified.

Gateway Technolabs Pvt Ltd vs Dy.CIT [TS-1293-ITAT-2018(Ahd)-TP] (ITA No.677/Ahd /2017) dated 22.10.2018

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

- Persistent Systems Ltd as it was excluded by coordinate bench in assessee's own case for earlier year (subsequently affirmed by HC) for being engaged in diversified activities like licensing of products, royalty on sale of products as well as income from maintenance contract and further, there was no segmental information for services and product.
- Persistent System and Solution Ltd as it was excluded by coordinate bench in assessee's own case for earlier year (subsequently affirmed by HC) on ground that it had sale of products and there was no segmental bifurcation between software development services and products.
- Sasken Communication and Technologies Limited as it was excluded by coordinate bench in assessee's own case for earlier year (subsequently affirmed by HC)for earning revenue from three segments (software services, software products and other services) for which there were no segmental bifurcation.
- Evoke Technologies as expenses had increased by 1118% vis-à-vis preceding year which clearly indicated low margin due to peculiar economic circumstance.
- Mindtree as DRP had given a categorical finding that due to extraordinary event of merger in investment and product development business, margin had declined. Further, the company had also incurred substantial revenue from onsite services which could not be compared with company engaged in offshore software development.
- Acropetal Technologies Ltd as it was predominantly engaged in onsite software development whereas assessee was engaged in software development in India. It also failed software development services filter greater than 75% of operating revenues and failed employee cost filter of 25% applied by TPO.

- L&T Infotech Ltd as it incurred expenses in foreign currency and had onsite revenue of 50%, revenue from operations were from three segments (financial management, manufacturing and telecom). Further, it was excluded by coordinate bench ruling in assessee's own case for earlier year on basis of size, scale, products, intangible etc.
- E-Infochip Ltd as DRP had given a finding (which the Revenue was not able to controvert) that it earned revenue from software development, IT Enabled services and products for which there was no segment bifurcation, abnormal trend in profit and also it failed the filter of software development services greater than 75% of total operating revenue.
- ICRA Techno Analysis Ltd as revenue from software development, consultancy, licensing, sublicensing, annual maintenance charges for software support, web development were reported in single segment. Further it failed the RPT filter of 15% and was also functionally dissimilar (consultancy, webhosting etc)
- E-Zest Solutions as it was engaged in product engineering and software development and demonstrated abnormal trend in profit.
- Infosys Ltd as it had been rejected by coordinate bench ruling in assessee's own case for earlier year on ground that it had brand value as well as intangible assets. It was also engaged in diversified services including design as well as technical consultancy, consulting, re-engineering, maintenance, systems integration as well as products for banking industry
- Tata Elxsi as it had been rejected by coordinate bench ruling in assessee's own case for earlier year on ground that it was engaged in diversified activities under software development segment (product design services, innovation design, engineering services and visual computing etc.)

Further

- It included RS Software (India) as it accepted assessee's contention that it had passed filters applied by TPO and also was considered as comparable in assessee's own case for earlier year (functionally similar)

Asst CITvs Arcot R&D Software Pvt Ltd [TS-1331-ITAT-2018(Bang)-TP] (IT(TP)A No.437/Bang/2016 and CO No.14/Bang/2017) dated 15.10.2018

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

- Kals Information Systems Ltd as it was developing software products and not purely a software development service provider
- Accel Transmatic Ltd as it was engaged in services in form of ACCEL IT and ACCEL animation services for 2D and 3D animation and thus functionally different.
- Tata Elxsi as it was engaged in development of niche products and services provided were different from assessee
- Bodhtree Consulting as it had a consistent change in profit margins due to variation in revenue recognition method (revenue was recognized based on software developed and billed to clients, there was a possibility of expense in relation to revenue was booked in earlier year.)
- Lucid Software as its segmental details with respect to software design and software products were not available

Further, it accepted assessee's contention to reject entity level margin of MegaSoft (on account of the company having software product segment) and compute margins only for software service segment.

Asst CITvs Electronics for Imaging India Pvt Ltd [TS-1323-ITAT-2018(Bang)-TP] (IT(TP)A No.1725/Bang/2017 dated 31.10.2018

149. The Tribunal restored the TP study conducted by TPO in respect of software distribution segment to be re-examined and directed the TPO to consider issue afresh after giving an opportunity to assessee in light of the claim by assessee that the DRP had made a factually incorrect observation that assessee had not filed annual reports of comparables selected by assessee and TPO during its proceedings. It was assessee's contention that TPO had not applied his mind and selected comparables which were functionally dissimilar (engaged in manufacture of raw material and chemical and trading of commodities.)

Asst CITvs Arcot R&D Software Pvt Ltd [TS-1331-ITAT-2018(Bang)-TP] (IT(TP)A No.437/Bang/2016 and CO No.14/Bang/2017) dated 15.10.2018

150. The Tribunal upheld DRP's order excluding MindTree Ltd, Infosys Technology Ltd, L&T Infotech Ltd., Persistent Systems Ltd. and Sasken Communication Tech Ltd.in case of assessee's software development segment on basis of higherturnover. It also held that Maveric Systems Ltd., Evoke Technologies Ltd and Silverline Technologies Ltd. were to be included by relying on ratio laid down in coordinate bench decision in Dar Al-Handasah Consultants India Pvt Ltd wherein it was held that comparables which were found to be functionally comparable though selected by assessee during TP proceedings, needed to be considered in case they fulfill all the other filters, by the TPO.

ACITvs MSC Software Corporation of India Pvt Ltd [TS-1370-ITAT-2018(PUN)-TP] (ITA No.577/Pun/2015) dated 24.10.2018

151. The Tribunal held that assessee engaged in providing BPO/data processing and ITES to its AE could not be compared to:

- Infosys BPO Ltd as it had high brand value and assessee was providing routine BPO services (not high end BPO or KPO services) and further, coordinate bench in assessee's own case had held it was not a good comparable as it had goodwill and high turnover, incurred marketing and selling expenses as well as provisions for bad and doubtful debts which indicated that Infosys had taken marketing risk, therefore, FAR undertaken was different from the assessee..

Further

- It remanded the comparability of Acropetal Technologies Ltd. as it was remitted by the coordinate bench in preceding year with direction to TPO to verify the segmental analysis (It was remitted by the coordinate bench with a direction to verify segmental analysis as it was assessee's contention that said comparable's healthcare segment provided niche IT solutions/ software development services (software expenses to total operating expenses were 65%) which could not be compared to low end ITES and further, segmental verification would be needed as software expenses were allocated on basis of allocation and not actual.)
- It remanded the comparability of RSystem International Ltd. with direction to AO to verify if the company was a persistent loss-making concern and was incurring losses consistently for three years continuously. It observed that said company could not be excluded due to different financial year when data was available in public domain for extrapolation.
- It directed the AO to include Caliber Point Solution Ltd. as a comparable inspite of different accounting period (financial year ending being December instead of March) in view of RSystems being accepted as a comparable in preceding years inspite of different accounting year

Maersk Global Service Centre India Pvt. Ltd. vs ACIT [TS-1280-ITAT-2018(MUM)-TP] ITA 653/Mum/2017 dated 20.11.2018

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

- Kals Information System as it was engaged in the business of developing and selling software products.
- Bodhtree Consulting Ltd. as it was involved in providing open and end-to-end web solutions, software consultancy, design and development of solutions. Further, it had fluctuation margins over the years.
- FCS Software Solution Ltd. as operating margins of said concern did not reflect consistent trend over the years and the current year's margins i.e. for assessment year 2008-09 in comparison to earlier years were quite abnormal.
- E-Zest Solutions Ltd as it was engaged in e-business consultancy services consisting of web strategy services, ITES services and technology consultancy services including portal development services which were KPO services.
- E-Infochips Ltd. as it was engaged in software development and ITES for which segmental data was not available.

Further,

- It included SIP Technologies Ltd. as it was not a persistent loss-making concern in light of coordinate bench ruling of John Deere for AY 2009-10 wherein it was held that the said comparable had made profit in one out of three years and hence could not be a lossmaking concern.

Renishaw Metrology Systems Pvt. Ltd. vs Dy.CIT [TS-1282-ITAT-2018(PUN)-TP] ITA No.271/PUN/2013 dated 16.11.2018

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

- Persistent Systems Ltd as it was engaged in both software products, services and technology innovation and segmental details were not available, whereas the assessee was into software development. It further observed that the said company had high intangibles.
- L&T Infotech Ltd. as the revenue from IT services of said company for AY 2013-14 was Rs. 3613 Crs and it had huge intangibles and further, relied on Del HC ruling in Saxo India (P.) Ltd. wherein it was held that segmental information for said comparable was not available (break-up between product and software development services not provided.)

Further,

- It remanded the comparability of Infobeans Technologies Ltd. observing that as per the company's financials, the export of goods and services was calculated under FOB basis. However, except for the said reporting in financials, there was no material to demonstrate that the company was carrying on business of sale of software and that it was functionally different from the assessee company.

EPAM Systems India Pvt Ltd vs ACIT [TS-1311-ITAT-2018(Hyd)-TP] ITA No.2122/Hyd/2017 dated 20.11.2018

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

- Comp-U-Learn Tech India Ltd. as it had revenue from ITES and software and there was no segmental bifurcation. Further, it was also seen that said comparable was into research & development to enhance the quality of its products whereas the assessee was a routine software provider.
- E-Infochips Bangalore Ltd. as it had revenue from ITES and software for which segmental details were not available.
- Persistent Ltd. as it was engaged in sale of software product, owned significant intangibles and segmental data for services and products was not available.
- Sasken Communication Technologies Ltd. as it earned revenue from three segments and segmental data was absent.
- Kals Information Systems Ltd. as it had revenue from developing software products and was not purely a software development service provider.
- Tata Elxsi Ltd. as it was predominantly into product design services, Innovation Design Engineering and visual computing labs division which are specialized services under software development which are complex in nature and further no breakup based on which margin from software services could be computed.
- Satyam Computers Services Ltd. as it was being investigated by various authorities and courts

Further,

- It included CG-VAK Software Software and Exports Ltd (which was rejected by TPO for failing to satify the employee cost filter) noting that TPO ignored contribution to PF & ESI, Gratuity and Ex Gratia payments and arrived at the employee cost.

Ivy Comptech Pvt Ltd vs Dy.CIT [TS-1316-ITAT-2018(Hyd)-TP] ITA No.334 /Hyd/2015 dated 29.11.2018

155. By relying on coordinate bench decision of Hyundai Motors India Engg. P Ltd.,the Tribunal held that assessee engaged in providing ITES to its AE could not be compared to a) TCS E-serve International Ltd. as it had acquired Citi group India based captive BPO arm which was exceptional event affecting the financials b) Accentia Technologies Ltd as it was into diversified KPO, owned goodwill/IPRs and had undergone an extra-ordinary event which would have an effect on profit margins of said company.

Ivy Comptech Pvt Ltd vs Dy.CIT [TS-1316-ITAT-2018(Hyd)-TP] ITA No.334 /Hyd/2015 dated 29.11.2018

156. The Apex Court dismissed Revenue's SLP against HC order upholding application of RPT filter of 25% (It had opined that such related party transactions in excess of a certain threshold may result in a profit-making capacity that presented a distorted picture) and it had also upheld ITAT's exclusion of Wipro Ltd for comparability analysis owing to significant brand presence in the market inspite of similar

functionality. The Apex Court opined that no ground for interference was made out in exercise of its jurisdiction under Article 136 of the Constitution of India.

Pr.CIT vs Oracle (OFSS) BPO Service Pvt Ltd [TS-1248-SC-2018-TP] SPECIAL LEAVE PETITION (CIVIL) Diary No(s).32469/2018 dated 30.11.2018

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

- Infosys BPO Ltd as it had a brand value along with high turnover (It relied on coordinate bench in assessee's own case for earlier year)
- Jeevan Scientific Technology Ltd. as its BPO segment had foreign exchange earnings which was absent in case of assessee and further, there was huge fluctuation in its BPO segment.

Further,

- It included ICRA Online Ltd. noting that its RPT filter was less than 25% after excluding reimbursement transactions and thus did not fail the RPT filter of 25%.

ITO vs Knoah Solutions Pvt Ltd. [TS-1263-ITAT -2018 (Hyd)-TP] ITA No.584/Hyd/2016 dated 30.11.2018

158. The Tribunal upheld DRP's order to exclude Infosys Technologies Ltd and L&T Infotech Ltd as they were having super profit and very high turnover by relying on coordinate bench of Wissen Infotech Pvt Ltd wherein the companies had been excluded for the same reason in case of assessee engaged in providing software development services to its AE. Further, vis-à-vis assessee's ITES segment, it also upheld DRP's order with respect to exclusion of a) Infosys BPO as it had the benefit of market value and brand value b) Eclerx Services Ltd as KPO services are distinct from BPO services. c) TCS e-serve Ltd as it was engaged in diversified activities.

Dy.CIT vs Ivy.Comptech Ltd [TS-1316-ITAT -2018 (Hyd)-TP] ITA No.222/Hyd/2015 dated 29.11.2018

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

- AvaniCimcom Technologies Ltd as it had revenue from software products and segmental details were not available.
- Celestial Labs Ltd. as it was engaged in clinical research and manufacture of bio products and other products which were functionally different from assessee.
- Flextronics SoftwareSystems Ltd as it had a different financial year ending.
- Infosys Ltd as it owned intangibles and had huge revenue from software products and the breakup of revenue from software services and software products was not available
- Ishir Infotech Ltd as it was outsourcing its work
- Lucid Software Ltd. as it was into development of software whereas assessee was providing software development services.
- Wipro Ltd as it owned intangibles and company owning intangibles could not be compared to a low risk captive service provider who does not own any such intangible.
- KalsInformation Systems Ltd as it was developing software products and not purely or mainly software development service provider.
- Tata Elxsi Ltd as the segment 'software development services' related to design services and are not similar to software development services performed by the assessee.

Further,

- It included Megasoft and directed TPO to rework its segmental results after considering only the software development services.

NI Systems India Pvt. Ltd vs DCIT. [TS-1270-ITAT -2018 (Bang)-TP] IT(TP)A No.1355/Bang/2011 dated 07.11.2018

160. The Tribunal held that assessee engaged in providing ITES (data management services, data collection, organization, validation, analysis and filtering of accounts) to its AE could be compared to:

- Accentia Technologies Ltd as it had undergone extraordinary activity of amalgamation during year 2008-09 which had no impact on financials of AY 2010-11 and the merger in its case was with a business similar to it (that of healthcare receivable management and had same income streams of Medical Transcriptions and Coding alongwith Bills and Calculations Systems).

- R Systems International Ltd as results could be reasonable extrapolated (in presence of reliable and authentic data submitted by assessee for three months).
- E4E Healthcare as assessee had relied upon judicial precedents for its exclusion without submitting financials and also not contested the said comparable before TPO and DRP. It noted that the judicial precedent of excluding the one company against the other cannot be judged as such without comparing functions of that comparable company with the assessee company.
- TCS E-serve Ltd. as it had diversified services like software testing verification and validation software for which segmental analysis was not available, high turnover and brand value.
- TCS E-serve International Ltd. as it was engaged in technical services of software testing, high turnover and brand value.
- Infosys BPO as it provided Business process management services (business not carried out by assessee), prepared segments on basis of customers related to particular industry and not according to functions brand value, huge goodwill, had huge intangibles and higher risk.

VAILDOR CAPITAL INDIA PVT LTD vs ITO [TS-1329-ITAT-2018(DEL)-TP] (ITA No.1961/Del/2015) dated 22.11.2018

161. The Tribunal held that assessee engaged in providing ITES to its AE could not be compared to:
TCS E-serve Ltd. as it was a KPO whereas assessee was a low end BPO
Further,

- It remanded the comparability of Universal Print Systems Ltd.(seg)(BPO) noting that said company had 4 segments viz., Repro, Label Printing, Offset Printing and Pre-press BPO. Whether the other segments supplemented the functions performed by BPO segment had to be seen and if it did reasonable accurate adjustments had to be made in terms of Rule 10B(3) (segmental adjustment) for comparing with the assessee. It afforded assessee an opportunity of being heard with respect to functional comparability.
- It included BNR Udyog Ltd as it passed RPT filter and income from providing ITES being more than 75% at segmental level.
- It included Excel Infoways Ltd as it earned revenue from BPO segment which clearly demonstrated it was engaged in ITES segment.

Zyme Solutions Pvt Ltd vs Asst CIT [TS-1272-ITAT-2018(Bang)-TP] (IT(TP)A No.1661/Bang/2016) dated 16.11.2018

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

- Accentia Technologies as it was engaged in KPO services in health care sector. Further, it owned various software products and segmental financials to work out the profitability of ITES segment and software segment were also not available
- Acropetal Technologies Ltd. as it was engaged in KPO services in health care segment
- E-Clerx Services Ltd. as it was providing high end KPO services
- ICRA Techno Analytics Ltd. as it was providing software development and high-end analytic services
- Infosys BPO Ltd as it was providing business process management services and operating as a full-fledged risk-bearing entrepreneur and **had** high turnover, huge brand value and considerable R&D activities
- TCS E-Serve Ltd. as it was providing high end KPO services and was also exploiting brand TATA

Timex Group India Limited vs DCIT [TS-1366-ITAT-2018-(Del)-TP] ITA No.845 /Del/2016 dated 20.12.2018

163. The Tribunal restored the benchmarking of ITES segment to TPO/AO directing it to examine contentions of assessee to arrive at a proper finding and directed assessee to file relevant documents. The assessee had contested inclusion of 4 of the comparables, namely, Maple e-Solution Ltd, Goldstone Infratech Ltd., Datamatics Financial Services Ltd. and Apex knowledge Solutions Pvt Ltd. It was also assessee's contention that suitable adjustment ought to be provided vis-à-vis comparable for substantial difference of working capital adjustments, however TPO had not provided basis for same in his order.

Monsanto Holdings P. Ltd vs Addl. CIT [TS-1365-ITAT-2018(Mum)-TP] ITA No.8081/Mum /2010 dated 14.12.2018

164. Relying on coordinate bench decision in AT&T Global Business Services India P Ltd, the Tribunal held that assessee engaged in provision of software development services to its AE could not be compared to:

- Acropetal Technologies Ltd. as it failed the filter of 75% of Revenue from software development services applied by TPO. [It relied on coordinate bench decision of Commscope Networks India Pvt Ltd.]
- E-InfochipsLtd as it was engaged in diversified activities like software development services, ITES and sale of products and segmental information was not available.
- Infosys Ltd as it had huge brand, huge intangibles and high turnover
- Persistent Systems Ltd as as it was engaged in diversified activities including licensing of products, earned royalty on sale of products as well as income from maintenance contract and segmental information was not available
- Sasken Communication Technologies Ltd as it earned revenue from software product, software services and other services and segmental margins were not available in absence of segmental data.
- Tata Elxsi Ltd as it was engaged in development of niche products and development services which was entirely different from the assessee company.

Salesforce.com India P. Ltd vs DCIT [TS-1325-ITAT-2018-(Bang)-TP] IT(TP)A No.697/Bang/2016 dated 21.12.2018

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

- Infosys Ltd. as it was a giant risk-taking company and engaged in development and sale of software products and also owned intangible assets and therefore not comparable with a software development service provider
- L&T Infotech Ltd as it was also a software product company and segmental information on software development services was not available.
- Persistent Systems Ltd as it was also a software product company and segmental information on software development services was not available.
- Genesys International Corporation Ltd. as it rendered mapping and geospatial services which was under GIS based services segment (which was only segment as per reports) and there was no basis for TPO to conclude that it was predominantly software development services. Further, presence of intangible assets was indicative of the fact that company was not into software development services business.

Evolving Systems Network India Pvt. Ltd vs ITO [TS-1361-ITAT-2018-(Bang)-TP] IT(TP)A No.216/Bang/2017 dated 21.12.2018

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

- E-Infochip Ltd. as it earned revenue from software development, hardware maintenance, information technology consultancy, information technology services and sale of products. Thus, it did not satisfy the functionality test to initiate the process of comparability
- Wipro Technology Ltd as it earned its revenue from Citigroup Inc which was a related party transaction. Wipro (its parent company) had acquired company known as 'Citi Technology Services Ltd. which was carrying out the software development and maintenance services for Citi Group Inc and thereafter Wipro had entered into an agreement with aforesaid company for delivery of same set of services. Wipro Technology services Ltd was providing services to Citi Group out of India as a part of said agreement and thereby it fell within the deeming ambit of section 92B (2), whereby it had to be treated as deemed AE as the service agreement earlier entered was between the related party and same terms and agreement was continuing, hence had to be reckoned in the category of related party transactions (Clause (2) of section 92B provides that, if a transaction entered into by an enterprise with a person other than AE, shall for the purpose of sub-section (1), be deemed to be an international transaction entered into between two AE, if there exists a prior agreement in relation to the relevant transaction between the other person and the AE, then the terms of the relevant transaction in substance remains the same when it was a related party transaction)

Further, it included R System on ground that it could not be rejected on ground of different financial year if results of company could be reasonably extrapolated.

Navisite India Pvt Ltd vs ITO [TS-1367-ITAT-2018-(Del)-TP] ITA No.1054 /Del/2016 dated 17.12.2018

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

- Avani Cimcon Technologies Ltd as it was engaged in both software development services as well as product development and segmental details were not available
- Bodhtree Consulting Ltd as it failed the RPT transactions for subject year as its RPT filter exceeded threshold of 25%
- E-Zest Solutions Ltd as it was into product development and also provided high end technical services in the category of KPO services
- Helios and Matheson Technology Ltd as it was involved in development of software products.
- Kals Info System Ltd as it was engaged in development of software products
- Lucid Software Ltd as it was into software product development
- Persistent System Ltd as it was engaged in product development and product design services and segmental details were not available
- Sasken Communication Ltd as it was engaged in licensing of products / technology which demonstrated that the company was engaged in development of products also and also there was an amalgamation / merger in the company which might have impacted the profitability
- Tata Elxsi Ltd as it was engaged in diversified activities including development of niche product and development services.
- Thirdware Solutions Ltd as it was involved in development of products and trading in software licenses
- Ishir Infotech as it was outsourcing most of its operations and the employee cost of the company was 3.96% of the operating revenue.

Further, the Tribunal remanded the comparability of

- MegaSoft and directed AO /TPO to include the company only if segmental details of software development segment were available
- Rsystem for TPO to ascertain if segmental details of software development segment were available and if so, to extrapolate the financial data for 9 months (i.e. March to December) to the subsequent three months (from December to March).
- LGS Global for TPO to ascertain if segmental details of software development were available as it was engaged in development of software products also
- Accel Transmatic Ltd for TPO to ascertain if segmental details of software development were available as it was engaged in development of software products also
- PSI Data Systems Ltd. for TPO to ascertain if related party transaction of the company as a percentage of sales worked out to 22.42% and if so, it could not be rejected as a comparable as it would satisfy TPO's filter of 25%

Infor Global Solutions India (P.) Ltd. vs. Dy.CIT [2019] 102 taxmann.com 58 (Mumbai - Trib.) IT APPEAL NO. 520 (MUM.) OF 2012 dated 04.12.2018

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

- Birla Soft Ltd as its RPT transactions constituted 80% of its sales thus, it did not satisfy the filter applied by TPO of RPT of 25%
- Wipro Ltd as it was engaged in provision of IT services including BPO and IT products, has significant brand presence and owned intangibles
- L&T Infotech Ltd. as it earned revenue from three segments namely, service cluster, industrial cluster and telecom cluster and its unallocable expenses were not allocated between the segments in absence of availability of nature of expenses and proper allocation keys, and thus correct operating margin could not be ascertained
- Tata Technologies Ltd as RPT transactions came to about 87% of sales thus, it did not satisfy the filter applied by TPO of RPT of 25%

Pitney Bowes Software India Pvt Ltd vs Addl CIT [TS-1313-ITAT-2018-(Del)-TP] ITA No.5052 /Del/2018 dated 17.12.2018

169. The Tribunal while adjudicating on recalled order (arising from miscellaneous petition) in case of assessee engaged in software development directed TPO/AO to consider Megasoft Ltd. as a comparable after taking only the relevant segment by relying on ratio laid down in case of coordinate bench decision of Core Objects India (P) Ltd wherein Megasoft was held to be a good comparable in case of software development after considering only software development segment.

Infinera India Pvt Ltd vs ITO [TS-1313-ITAT-2018-(Del)-TP] ITA No.5052 /Del/2018 dated 17.12.2018

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

- Accentia Technologies Ltd as it was providing KPO services in medical transcription segment
- E-clerx Limited as it was engaged in providing data analytics, data processing services, pricing analytics, bundling optimization, content operation, sales and marketing support, product data management and revenue management and offered financial services such as real-time capital markets, middle and back office support, portfolio risk management. It was providing KPO services
- Infosys BPO Ltd as it had a high turnover and high brand value
- Fortune Infotech Ltd. as it developed its own software for performing specialized services in medical transcription due to which it had derived substantial benefit/advantage as compared to company engaged in routine ITES services

Further, it included TCS E-serve Ltd and TCS E-Serve International Ltd noting that activities of both the companies were similar to assesssee's activities (ITES) and the technical servicesof software testing, verification and validation the software were carried out at the time of implementation of software only and were in the nature of back-office support. Further, in case of TCS E-Serve International Ltd, the Tribunal observed that the expenditure corresponding to contribution of "Tata" brand by companies was a very small part of total operational expenses by company.

Avaya India Pvt Ltd vs ACIT [TS-1290-ITAT-2018-(Del)-TP] ITA No.1904 /Del/2015 dated 03.12.2018

171. Relying on coordinate bench decision in assessee's own case for earlier year, the Tribunal held that assessee engaged in provision of ITES to its AE could not be compared to:

- E-clerx Services Pvt Limited as it was engaged in providing data analytics, operations, management, audits and reconciliation, metrics management and reporting services and was a KPO [The coordinate bench decision in assessee's own case for earlier year had relied on coordinate bench decision of Maersk]
- Moldtek Technologies was a provider of engineering and design services with specialization in civil, structural and mechanical engineering services and providing high-end services to its clients involving higher special knowledge and domain expertise in the field and the same could not be taken as comparable to the assessee company which is mainly involved in providing low-end services. [The coordinate bench decision in assessee's own case for earlier year had relied on coordinate bench decision of Maersk]
- Accentia Technologies Ltd. as it had undergone amalgamation/merger which was an extraordinary event impacting profitability and further, segmental data was not available.

Stream International Services Pvt Ltd vs ACIT [TS-1378-ITAT-2018-(Mum)-TP] ITA No.6869 /Mum/2012 dated 13.12.2018

172. The Tribunal remanded back the inclusion/exclusion of comparables to DRP with respect to ITES/ Software development services noting that DRP had not given a reasoned and cogent finding while allowing/disallowing the plea of assessee with respect to comparables. It restored back the entire matter to the file of DRP to pass a reasoned speaking order and to afford assessee an opportunity of hearing before passing a detailed order. It directed DRP to consider the Delhi HC's decision in ChryscapitalInvestment Advisors (India) (P) Ltd wherein it was held that high turnover or low turnover do not affect the comparability of the company while adjudicating the grounds.

ITO vs Dell International Services India P Ltd [TS-1291-ITAT-2018-(Bangalore)-TP] IT(TP)A No.340/Bang/2015 dated 13.12.2018

173. The Tribunal held that assessee engaged in provision of ITES to its AE could not be compared to TCS E-Serve Ltd noting that TPO in previous year had excluded it as a comparable and TPO in succeeding year had relied on Bombay HC decision in Pentair Water India Ltd wherein it was held that while making the selection of comparables, turnover filter had to be basis of selection to exclude the said comparable. It disregarded Revenue's reliance on Delhi HC judgment in case of Chryscapital Investment Advisors (India) Ltd. wherein it was held that a comparable having huge profit or a huge turnover ipso facto does not lead to its exclusion noting that Revenue could not produce any contrary decision of jurisdictional High Court nor any decision of Apex Court was cited which had taken a view in favour of Revenue.

Integreon Managed Solutions (India) Pvt. Ltd vs ACIT [TS-1385-ITAT-2018-(Mum)-TP] ITA No.6927/Mum/2016 dated 14.12.2018

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

- Infinite Data Systems Private Ltd. as it derived its revenue from technical support and infrastructure management services and was also rendering technical consultation, design & development of software, maintenance system integration, implementation, testing & infrastructure, management services and its segmental information was not available and its profitability increased by 1496% as compared to the preceding year
- Infosys Ltd. as it was incurring huge expenditure of its total revenue on its R&D activities leading to creation of intangible property, brand, it assumed entrepreneurial risk and also dealt in software products. It relied on Delhi HC decision in Agnity India Technologies Pvt Ltd. wherein said comparable was excluded on ground that Revenue was not able to controvert Tribunal's findings that it operated as full-fledged entrepreneur had huge turnover, engaged in diversified activities (consulting application design, reengineering and maintenance system integration, package evaluation and implementation and process management) and half of its services rendered were onsite.
- Persistent Systems Ltd as it was involved in software development, software products and marketing and its segmental data was not available. [It relied on Delhi HC in Cashedge India Pvt Ltd.]
- Sonata Software Ltd as it was primarily engaged in development of software product and it also provided IT solutions, IT consulting, and also provided both onsite as well as offshore services in the area of RP customization conversion and migration projects, data warehousing, Business Intelligence, Web Development, Infrastructure Management amongst others and further it did not satisfy TPO's filter of RPT to sales of 25% (as its RPT to sales was 53.83%).
- Tata Elxsi as it was functioning into specialized domain of software products / services (software development and services is broken up into three distinct business groups viz. Productive Design Services (PDS) innovation, design, Engineering and visual computing labs). [It relied on coordinate bench decision in case of NEC Technologies India Ltd. (formerly known as NecHcl Systems technologies Ltd)
- Zylog Systems Ltd. as it had undergone business restructuring due to acquisition which was an extraordinary event and had significant intangibles and was also carrying out research and development activities creating significant intangibles. [It relied on coordinate bench decision in Equant Solutions India Pvt. Ltd.]
- Thirdware Solution Ltd. as it earned income from development and sale of software products, services and subscription and sale of license and segmental information was not available. [It relied on coordinate bench decision in Open Solutions Software Services Pvt Ltd.]

Lime Labs (India) Pvt. Ltd vs ITO [TS-1307-ITAT-2018-(Del)-TP] ITA No.1703/Del/2015 dated 12.12.2018

175. The Tribunal rejected the ground in miscellaneous petition that CyberMateInfoteck Ltd. (CIL) was to be excluded in view of jurisdictional HC decision in case of PTC Software Pvt Ltd. wherein it had held that the software services and software products were not identical activities and therefore, the two separate companies or entities providing respective services would not give rise to comparable instances and further, in assessee's own case for earlier year, the Tribunal had taken a favourable view. On appeal from the said Order rejecting the assessee's rectification application in part, the Court directed Tribunal

to undertake a fresh and detailed inquiry as to the permissibility of comparing the instances of CIL with that of the petitioner/assessee with special focus on the aforesaid decision noting that Tribunal is even otherwise hearing the tax appeal and Tribunal in earlier AY had dealt with same issue differently.
Lionbridge Technologies Pvt Ltd vs UOI [TS-1294-HC -2018-(Bom)-TP] WP No.2906 of 2018 dated 13.12.2018

176. The Tribunal held that assessee engaged in provision of software development services to its AE could be compared to:

- ICRA Techno Analytics Ltd, Persistent System and Solution Ltd and Think Soft Global Services Ltd. as RPT transactions were below threshold of 15%. [It relied on coordinate bench decision of Autodesk India Pvt Ltd. wherein it was held that depending on availability of comparables RPT of 25% or RPT of 15% have to be taken, considering there is no dearth in comparables in software development services, RPT of upto 15% was taken.]

Further, it remanded comparability of Kals Information Systems Ltd. directing TPO to exercise his power u/s.133(6) to find whether company was a product company and that no segmental information was available noting that assessee's contention for exclusion on ground that it was a software product company evident from snapshot of website of company that it was a customized product manufacturing company and had significant inventory.
Sunquest Information Systems (India) Pvt Ltd vs Dy.CIT[TS-1390-ITAT -2018-(Bom)-TP] IT(TP)A No.552/Bang/2015 dated 21.12.2018

177. The Tribunal held that assessee engagedin the business of research and development for the design and development of semi-conductor IC (software segment) to its AE could not be compared to:

- SIP Technology and Exports Ltd. as there was no comparable data for AY 2005-06 on account of it closing its books on September 2004 and no information was filed about yearend closing of results on 31.03.2005 [it relied on coordinate bench decision of PTC Software Ltd. wherein it was held that only data pertaining to financial year to be considered for comparability purposes.]
- VMF Soft Tech Ltd. as no segmental breakup was available between software services and infrastructure support services and no information about the nature of business was also available from annual reports regarding the type of products/services
- Helios and Matheson Information Technology Ltd. as assessee had 100% RPT.
- Geometric Software Solutions Ltd as it was engaged in developing and licensing of products and product life cycle management services
- ICSA Ltd. as it had a different business model of outsourcing its services whereas assessee had adopted an in-house business model of providing services \
- Further,
- It restored the comparabilityof Compucom Software Ltd. directing TPO to conduct a segmental analysis as it had operations in software and software products and if it was found that segmental data was not available, to eliminate the comparable
- It restored the issue of computation of margin of Visual Soft Technologies Ltd to determine proper OP/TC and adopt the same as proper margin in arriving at ALP
- It included Saksoft Ltd. rejecting assessee's contention for excluding on basis of its RPT exceeding 25% (74.16%) on ground that assessee was a 100% subsidiary like the aforesaid comparable and assessee's entire revenue was generated from its AE. Further, the TPO had not applied RPT filter to any of its comparables.

Conexant Systems Pvt Ltd vs Dy. CIT [TS-1396-ITAT -2018-(Bom)-TP] ITA 1694/Hyd/2016 dated 26.12.2018

178. The Tribunal held that the assessee engaged in the provision of ITES to its AE could not be compared to:
Accentia Technologies Ltd. as it had acquired stake in companies viz. Geo-Soft Technologies (Private) Ltd and Indium Technologies India Pvt Ltd. Further, its business model was different vis-à-vis assessee since it incurred 68% of operating expenses towards overseas business expenses as against nil in case of assessee.
Bodhtree Consulting Ltd. as it was into software development and data cleansing segment.

E-Clerx Ltd. as it was providing high level services involving specialized knowledge and it was a KPO. [relied on the Del HC decision of Rampgreen Solutions India Pvt. Ltd.]

Informed Technologies India Ltd as it was operating as knowledge based back office processing centre and consisted of providing financial database and backoffice activity for research and advisory division reports. Also as per the TP study report, its focus was on niche market segment of financial content and outsourcing services.

Infosys BPO Ltd as it had huge turnover, owned IPR and brand value on products and provided services to vast clientele.

Moldtek Technologies Ltd. as it was involved in providing structural engineering services and also had undergone merger. Further, there was a huge change in business module due to revision of accounts post amalgamation. [It relied on coordinate bench decision of Tribunal in case of Cienna India Pvt Ltd and Petro Araldite wherein it was held that a company could not be considered as comparables in case of its financial results distorted due to merger.]

Wipro as it owned IPR, incurred expenses on research and development, risk profile and nature of services whereas the assessee was a captive service provider with minimal risks and no intangibles. [It relied on the coordinate bench decision of ICC India Pvt Ltd which in turn relied on the decision of Caliberated Healthcare Systems]

Asit C Mehta as it derived income from various activities like brokerage, arbitrage and trading in securities. Its business involved immense knowledge and experience for advising its client towards investment in stock.

Vishal Information Technology Ltd. as it was a KPO.[relied on Delhi HC decision of Rampgreen Solutions India Pvt Ltd.]

Maple E-solutions Ltd and Triton Corporation Ltd. as the directors of the companies were involved in frauds and money laundering.

Further, it restored the functional comparability of HCL Comnet Systems and Services Ltd as it had a separate segment for ITes and also directed the TPO to consider forex fluctuation while computing PLI margin. It restored Flextronics Software for recomputation of PLI margin since forex fluctuation at entity level was considered.

NTT Data Global Delivery Services Ltd. vs ITO [TS-953-ITAT-2018-(Del)-TP] ITA No.5339/Del/2011 dated 12.07.2018

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

- Accentia Technologies Ltd. as it had acquired stake in companies viz. Geo-Soft Technologies (Private) Ltd and Indium Technologies India Pvt Ltd and was also engaged in diversified activities like healthcare management receivables, medical transcription, software development and film production and there was no segmental information available
- Vishal Information Technologies Ltd. as it was considered as a KPO service provider in the Del HC decision of Rampgreen Solutions Pvt. Ltd.
- Eclerx Services Ltd as the company was engaged in providing high level services involving specialized knowledge and domain expertise and is a KPO service provider. [It relied on the Special bench decision of iQor India Services (P.) Ltd]
- Genesis International Corporation Ltd as the company provided cadastral mapping, navigation maps, 3-D mapping, photogrammetry /remote sensing services, power etc., which were highly skilled and knowledge-based services. Further, it disregarded the reliance placed by the TPO on CBDT Circular no.890(E) which listed 15 products or services under the umbrella of IT enabled services by following the decision of coordinate bench decision of Macquaireb Global Services Pvt Ltd wherein it was held that Genesis International Corporation Ltd. (even though covered under the list of ITES falling under the head geographic information system services) could not be compared to assessee which was engaged in providing backoffice operations and call centre services (which was also covered under the list of ITES) as 15 products or services under overall umbrella of ITES of the CBDT Circular were entirely diverse in nature due to different proportion of skills and extent of capital employed required for such services.
- HCL Comnet Systems and Services Ltd. (Seg.) as the company incurred significant R&D expenses and also developed several tools as reported in the annual report. It also had a high RPT of 23 per cent as against the 15 per cent threshold applied by the TPO. The company also owned sufficient

intangible assets in the form of computer software and there was inconsistency in the information between the annual report and the data obtained under 133(6) as a different financial year has been adopted. Also, the company earned from sale of networking equipment and software. [It relied on the Delhi HC decision of Rampgreen Solutions Pvt. Ltd.]

- Infosys BPO Ltd. as the company had huge turnovers, owned IPR and brand value on products.
- Acropetal Technologies Ltd,(segment) as the company was engaged in the development of computer software involved in engineering design services and also had products, which were high end functionally dissimilar. [It relied on the coordinate bench decision of Capital IQ Information Systems (India) (P.) Ltd.]

Cengage Learning India P Ltd vs Dy.CIT [TS-828-ITAT-2018(DEL)-TP] ITA No.6484/Del/2012 dated 19.07.2018

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

- Accentia Technologies Ltd. as it was engaged in development of software products for healthcare. Further, it was engaged in diersified activities like KPO,LPO, Data processing, LPO high end software services and segmental details were not available.
- TCS E-Serve Ltd as it had made payment for use of TATA brand and use of such brand increased its operating profits.
- Informed Technologies India Ltd. as it was a KPO and analysed data on financial fundamentals serving the needs of financial content sector in USA

Further, the Tribunal included R Systems International Ltd. as a comparable directing the assessee to furnish its quarterly report to extrapolate the financials

INDUCTIS INDIA PVT. LTD. vs. Dy CIT (2018) 53 CCH 0329 DelTrib ITA No. 1438/Del/2016 dated 13.07.2018

181. The Tribunal adjudicated on the functional profile of the company and held that the DRP had mis-read itself in determining assessee as a high end service provider, whereas assessee was only providing ordinary technical support which was categorized as ITeS BPO services provider in earlier years. Thus, it held that the assessee should be treated as a BPO providing ordinary support services to its AE.

Further, it held that assessee engaged in the provision of ITES services to its AE could not be compared to:

TCS EServe Ltd as it was engaged in diversified business like providing IT Consulting, KPO services etc and it was deriving benefit of huge brand value of TATA resulting in high margins and high turnover. [It relied on the coordinate bench decisions of BC Management Services (P.) Ltd., S&P Capital IQ (India) Pvt. Ltd, Infor (India) (P.) Ltd., Baxter India Pvt. Ltd]

Infosys BPO Ltd. as it was providing diversified services including high end KPO and LPO, product based solutions and BPO services and therefore, was functionally incomparable and had acquired another company during the year which impacted its profitability. [It relied on various rulings including assessee's own case for earlier year, Agnity India Technologies (Delhi HC), Monster.com and Aginity India Technologies (Del Trib)]

Eclerx Services Ltd as it was a high end KPO and the only reason for inclusion of the company for the subject year was recategorization of assessee as KPO and once it had held that the assessee was only a ordinary BPO, this company had to be excluded.

Accentia Technologies Ltd. as it was functionally not comparable in light of the coordinate bench decisions of the assessee's own case for earlier years.

C3i Support Services Private Limited vs Dy.CIT [TS-797-ITAT-2018(HYD)-TP] ITA No.503/Hyd/2017 dated 25.07.2018

182. The Tribunal restored the issue with respect to determination of the functional profile of the company (engaged in the business of software design and development of services in respect of layout of chips) to the TPO with a direction to examine and decide the issue afresh. The TPO had examined the agreement with its AE and held that the assessee was a KPO service provider and the DRP had concurred with the view of the TPO and held that the assessee was a KPO as it was involved in

services related to IC designing with help of large specialized workforce. The Tribunal noted that a) the coordinate bench in assesse's own case wherein co-ordinate bench had examined same agreement with AE (as referred to by TPO in subject AY) and found that assessee was providing software development services and b) that even in subsequent years on the same facts, the TPO had characterized the assessee as software development service provider. Thus, the Tribunal remanded the matter back and directed the TPO to consider the above observations and provide the assessee with an opportunity of being heard.

Open Silicon Research Pvt Ltd vs. Dy.CIT [TS-799-ITAT-2018(Bang)-TP] IT(TP)A No.244/Bang/2016 dated 06.07.2018

183. The Tribunal upheld the DRP's order with respect to exclusion of the following comparables in case of assessee engaged in the provision of ITes to its AE:

Infosys BPO as it was into high end services and had a turnover of Rs 1130 Cr which was more than 10 times assessee's turnover of Rs. 66.44 Cr. Further, it had a huge brand value which would impact its profitability for the relevant year. [It relied on Del HC ruling in Agnity India Technologies Pvt Ltd.]

TCS-E-Serve Ltd as it had a huge brand value which affected its profitability and had a turnover of Rs 1405 Cr which was more than 10 times assessee's turnover.

e-Clerx Services Ltd as the company was a KPO service provider. [It relied on HC ruling in Rampgreen Solutions (P) Ltd.]

ACIT vs DST Worldwide Services India Pvt Ltd [TS-813-ITAT-2018(HYD)-TP] ITA No.291/Hyd/2015 dated 18.07.2018

184. The Court upheld inclusion of i) ICRA Online Ltd by the ITAT order and dismissed assessee's appeal. It rejected the assessee's contention that the comparable was a KPO whereas the assessee was a low end BPO service provider providing voice call services noting that the KPO-definition as per Rule 10TA(g) indicated that it was a specie of genus BPO and both being ITES services provided by the software industry to their clients, the area of KPO may fall in the areas of operation and the exclusion as specified in Rule 10TA(g) was only for Research and Development Services whether or not in the nature of contract. Further, if the concerned KPO falls within the genus category of BPO then assessee could persuade the authorities to compare only segmental account available in public domain. It also observed that the Tribunal had clearly noted that the comparable and assessee were engaged in different streams of operation and included the company since the Tribunal had observed that the assessee was engaged in analysis of results, testing for which it had to use market intelligence, maintain e-tools, reporting analytics and thus, it had held that once level of knowledge that was being used for outsourcing was at a reasonable comparable pedestal, the type of service industry to which companies cater need not fit in the mould of comparables while adopting TNMM.

Further, the Court also held that no substantial question of law arose with regard to remand by the Tribunal of comparability of Jeevan Scentific Technologies. The assessee contended that the TPO had reinstated its prior order and not taken into consideration the segmental revenue (i.e.71.219L) of BPO operations as opposed to the total revenue considered which would result in failing the turnover yardstick of less than one crore applied by the TPO. With respect to the above, a miscellaneous petition had been filed with the Tribunal which was rejected and the Court observed that no appeal from such order was raised by the assessee and the aforesaid order passed was not part of the records.

Swiss Re global Business Solutions India Pvt Ltd vs ACIT [formerly known as Swiss Re Shared services (India) Pvt Ltd] [TS-766-HC-2018(KAR)-TP] ITA No.616/2016 dated 16.07.2018

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

Persistent Systems Ltd. as it was engaged in diversified activities and and earning revenue from various activities including licencing of products, royalty on sale of products as well as income from maintenance contract, and segmental data not available. [It relied on the coordinate bench decision of Applied Materials]

Sasken Communication Technologies Ltd as there was no break-up of operating costs and net operating revenues of the two segments viz. software services and software products. [It relied on the coordinate bench decision of Applied Materials which in turn relied on the Delhi HC ruling of Saxo]

Further, the Tribunal included R S Software (India) Ltd as comparable as the assessee contended that the DRP had wrongly excluded it after applying onsite filter and the Revenue also agreed with the inclusion of the said comparable. The Tribunal also included Mindtree and Evoke Technologies observing that the profile of these companies were functionally comparable with the assessee and it also qualified the tests applied by TPO and upheld the DRP's finding.

Cypress Semiconductor Technology India P. Ltd. vs. DCIT [TS-1060-ITAT-2018(Bang)-TP] IT(TP) A No.356/Bang/2016 dated 31.07.2018

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

- Persistent Systems Ltd. as it was dealing in software products and earned income from sale of both software products as well as services for which segmental details were not available
- Sasken Communication Technologies Ltd. as revenue generated from software products was high and though there was a break-up of revenue from software services and software products the operating cost and net operating revenues from 2 segments was not separately given.
- Zylog systems Ltd as it was into research and development activities and owned significant intangibles
- Wipro Technology Services Ltd. as it earned majority of revenue from Citigroup Inc and was earlier part of Citi Group and subsequently, it was acquired by Wipro and the arrangement of earning revenue from Master services agreement with Citigroup Inc. for the delivery of technology infrastructure services was actually a prior arrangement between assessee's AE (Wipro Ltd) and third party (Citigroup Inc.) and hence the transaction ceased to be a comparable uncontrolled transaction.
- E-Info Chips Ltd. as there was no segmental information available in respect of sale of products and revenue from software development segment.

Further, the Tribunal dismissed Revenue's appeal for exclusion of Calibre Point Business Solutions (absence of segmental details) as it was pointed out by assessee that segmental information for software development services was considered by the TPO while giving effect to DRP's directions.

NEC Technologies INDIA PVT. LTD. vs. Dy CIT (2018) 53 CCH 0344 DelTrib ITA No. 6283/Del/2015 dated 11.07.2018
Dy.CIT vs NEC Techologies India Pvt Ltd (2018) 53 CCH 0344 DelTrib ITA No. 312/Del/2016 dated 11.07.2018

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

- AcropetalTechnologiesLtd as it was a software product company. Further, its revenue from software development service was less than 75%of total revenue. [It relied on the coordinate bench decisions of Electronic Imaging India and Microsoft Research].
- E-Infochips Ltd as it was a software development , software product and ITeS company and segmental data was not available. [It relied on the coordinate bench decision of Electronic Imaging India].
- ICRA TechnoAnalytics Ltd. as the company was not functionally comparable as it was engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain of business analysis and business process outsourcing. [It relied on the coordinate bench decision of Electronic Imaging India]
- PersistentSystems Ltd. as it developed software products. [It relied on the coordinate bench decision of Electronic Imaging India]

MetricStream Infotech (India) Pvt Ltd vs ACIT[TS-749-ITAT-2018(Bang)-TP] IT(TP)A No.493/Bang/2016 dated 20.07.2018

188. The Tribunal held that assessee engaged in software development services could not be compared to:
Kals Information Systems Ltd. as it was a software product company.

- FCS Software Solutions Ltd. even though the company was engaged in provision of ITes services and as segmental information was not available.

- LGS Global as it failed the export filter applied by the TPO since its overall exports was only 14% of the total turnover.

Further, it remanded the comparability of E-Infochip to the file of CIT(A) on the ground that CIT(A) had not passed a speaking order.

ITO vs. Magic Software Enterprises India Pvt Ltd [TS-747-ITAT-2018(PUN)-TP] ITA No.1802/Pun/2013 dated 18.07.2013

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

- Acropetal Technologies Ltd. (Seg) as the company had substantial on–site development activities The Tribunal noted that out of Rs.36.4 crores relating to employee cost and on-site development expenditure , 31.45 crore was towards on-site development expenditure in addition to which the company had also reported expenditure in foreign currency amounting to Rs.32.38 crores and thus, the onsite expenses worked out to more than 73% of total expenditure. If the proportionate revenue from on–site development was taken, it worked out to more than 60% of the export revenue which failed the filter applied by the TPO. Further, it also observed that the TPO was not justified in applying selective approach since in the case of RS Software where there was no breakup of on-site and off shore revenue, the TPO had relied upon the foreign currency expenditure of the company to assume that company had similar proportion of on-site revenue which exceeded the filter of 60% of export revenue applied by Revenue. [It relied on co-ordinate bench decisions in IBM India Pvt. Ltd. and Ness Technologies which excluded Acropetal Technologies Ltd. as a comparable since it had substantial on–site expenses.]
- Kals Information System Ltd. as it was also involved in development and sale of product and absence of segmental details.
- Thirdware Solutions Ltd. as it was involved in sale of products. [It relied on the coordinate bench decision in assessee's own case for earlier year.]
- E-Zest Solutions Ltd as the company was rendering product developmentservices and high end technicalservices which came under the category of Knowledge Process Outsourcing (KPO) services. [It relied on the coordinate bench decision in the case of **Invensys Development Centre**.]

Accenture Services Pvt Ltd vs ACIT [TS-737-ITAT-2018(Mum)-TP] IT(TP)A No.7686/Mum/2012 dated 20.07.2018

190. The Tribunal held that assessee engaged in provision of ITES or BPO services to its AE could not be compared to:

- Genesys International Corporation Ltd. as it was engaged in engineering design services (CAD/CAM) and Geographic Information System (GIS) which are in the nature of KPO services.[It relied on coordinate bench decision in assessee's own case for earlier year.]
- Nucleus Netsoft & GIS India Ltd. (SEG) as it was engaged in KPO services.[It relied on coordinate bench decision in assessee's own case for earlier year.]
- E-Clerx Services Ltd. as it was engaged in providing KPO services in data analytics and data process solutions and further that the TPO had himself excluded this company for AY 2009-10. [It relied on the decisions of Delhi HC in Rampgreen Solutions and jurisdictional HC in PTC Software.]
- CrossDomain Solutions as it was providing diversified activities like providing KPO services related to software development and maintenance services, software testing services etc. and had segmental data was not available. [It relied on the decision of jurisdictional HC in Aptara Technology India Pvt Ltd.]
- Accentia Technologies Ltd as it had undergone merger for the year which impacted the profitability and the Tribunal also noted that if a particular comparable selected by assessee could not be accepted due to merger, for the same reason, the company selected by the Transfer Pricing Officer also could not be accepted as a comparable.
- Allsec Technologies Ltd. as it had undergone merger and in absence of authentic and reliable data to assess the impact of merger on the profitability of this company, the company could not be considered as a comparable.

Accenture Services Pvt Ltd vs ACIT [TS-737-ITAT-2018(Mum)-TP] IT(TP)A No.7686/Mum/2012 dated 20.07.2018

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

- Infosys Limited as the company was functionally dissimilar, had brand value and substantial intangible assets. [It relied on the coordinate bench decision in assessee's own case for earlier year.]
- Persistent Systems Ltd as it earned royalties from licensing and sale of products. Further segmental information was not available. It also had significant portion of its revenue from export of software services and products. [It relied on the coordinate bench decision in assessee's own case for earlier year.]
- Wipro Technology Services Ltd as the company was earlier part of Citi Group and subsequently, it was acquired by Wipro and the arrangement of earning revenue from Master services agreement with Citigroup Inc. for the delivery of technology infrastructure services was actually a prior arrangement between assessee's AE (Wipro Ltd) and third party (Citigroup Inc.) and hence in light of the transaction ceased to be a comparable uncontrolled transaction. [It relied on the coordinate bench decision of Saxo India Pvt Ltd.]
- Tata Elxsi Ltd. as its software development services performed were akin to research and development services. Its software development services included but were not limited to product &innovation design, engineering and visual computing labs and it also performed R&D activities towards software and electronic system development for industries such as wireless multimedia and broadcasting.

Pyramid IT Consulting P Ltd [TS-618-ITAT-2018(DEL)-TP] vs ACIT ITA No.7083/Del/2014 dated 11.07.2018

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

- Acropetal Technologies Ltd. (Seg) as the company failed 2 of the filters applied by the TPO viz. employee cost filter of greater than 25% (as Acropetal's employee cost was only 7.48%) and onsite development less than 60% (as onsite development revenue was as high as 73%). Further, it was engaged in diversified activities like education services, healthcare services, hospital administration management etc. and was also in the business of sale of products. [It relied on the coordinate bench decision of Ness Technologies.]
- Avani Cincom as it was into production of products such as DExchange, lTrak, Law firm Solution, hotel and restaurant booking engines etc and no revenue bifurcation between Software development services and products was given. [It relied on the coordinate bench decision of Infor (Bangalore)]
- Bodhtree Consulting Ltd. as it was engaged in providing Data management and Data warehousing services (which were classified as lTES). Further, segmental data was not available and during the subject year, it had undergone restructuring activity by hiving off its e-paper business. [It relied on the coordinate bench decision of Mindteck (India) Ltd.]
- Celestial Labs Ltd. as the employee cost of Celestial Labs was only 21.56% and hence it failed the employee cost filter of 25% applied by the TPO himself. On perusal of annual report, it was observed that the entire income of this company was from sale of products and this company had incurred substantial expenditure on product development of drug molecule. The Tribunal also noted that the company was engaged in software development services as well as ITES services which were considered the only segment as per AS-17. [It relied on the coordinate bench decision of Ness Technologies.]
- E-Infochips Ltd. as it was engaged in the development and maintenance of computer software and also manufacturing EVM and VDB Electronic Board (Hardware Division) and the company earned income from software services and products and further, there was no segmental bifurcation between software services and products.
- E- Zest Solutions Ltd. as it was engaged in KPO services, helpdesk services, infrastructure management, Vendor Management services, etc. The Tribunal also noted that this company had inventories and that no segmental data was available pertaining to the software development activity due to which the margins could not be drawn up. [It relied on the coordinate bench decision of lnfor (Banglore).]
- Igate Global Solutions Ltd. as its turnover was Rs.781 crores vis-à-vis assessee's turnover (Rs.13.5 crores) and its scale of operations were entirely different. Further, the company was engaged in

application development, Application management, Business Process Management etc. and provides Business Intelligence and Data Warehousing Solutions which made it functionally dissimilar. [It relied on coordinate bench decision of assessee's own case for earlier year.]

- Infosys Ltd. as its turnover was 1160 times that of assessee's turnover (Rs.13.5cr). Its service offerings include custom application development, maintenance and production support, package enabled consulting and implementation, technology consulting and other solutions etc. to clients across multiple industry verticals including banking and capital markets, communications, energy, manufacturing and retail which made it functionally not comparable to the assessee.
- Kals Information Systems Ltd. as it was also a software product company (On account of holding high percentage of inventories) and revenue from products and services were reported under the segment of Application software as a single business segment and bifurcation between products and services was not available in order to consider this company for comparison.[It relied on the coordinate bench decision of Infor(Bangalore).]
- Persistent Systems Ltd. as the company had four types of business segments, namely ISV5, Telecom, Enterprises and VLSI and others and was also engaged in the sale of products and segmental information was not available. [It relied on coordinate bench decision of assessee's own case for earlier year.]
- Quintegra Solutions Ltd.as this company was engaged in product engineering and extensive R&D and its goodwill constituted approximately 78% of its total assets as against assessee who did not have any goodwill / intangible assets. [It relied on the coordinate bench decision of 24/7 Customer.Com Pvt. Ltd.]
- Tata Elxsi Ltd. as the company was predominantly engaged in product designing services and not purely software development services. The details in the Annual Report showed that the segment "software development services" related to design services which were not similar to software development services. .[It relied on the coordinate bench decision of Infor(Bangalore).]
- Thirdware Solutions Ltd.as the company was also engaged in trading of software and licenses and had not disclosed any segmental information in the annual report. .[It relied on the coordinate bench decision of Infor(Bangalore).]
- Wipro Ltd. as the company had a high turnover, brand value and was engaged in IT Services, acquisitions, IWO services, etc. and segmental data for the above services was not available. .[It relied on the coordinate bench decision of Infor(Bangalore).]

Further, the Tribunal remitted Softsol India Ltd. for considering the correct operating margin since the TPO made an arithmetical error in computing the operating margin of this company and considered a figure of 42.33% in place of 15%. The Tribunal directed the Revenue to take 15% operating margin in the case of this company while working out the OP margin.

Dialogic Networks (India) Pvt Ltd vs ACIT [TS-807-ITAT-2018(Mum)-TP] ITA No.7280/Mum/2012 dated 27.07.2018

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

- Accentia Technologies Ltd. as it had undergone reconstruction during the relevant year, that it acquired 2 entities which had an impact on the profits of the company. It operated as a single segment of Healthcare receivables management and had its own line of products which made it functionally not comparable to the assessee. [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd, Symphony Marketing Solutions India Pvt Ltd. and Capital IQ Information Systems Pvt Ltd.]
- Acropetal Technologies Ltd. as the services provided showed that it was a high end KPO services provider. [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd and Symphony Marketing Solutions India Pvt Ltd.]
- Coral Hubs Ltd. (Earlier known as Vishal Technologies Ltd) as it had incurred negligible employee cost of 2.92% of operating revenue, signifying that it was engaged in outsourcing of services unlike the assessee providing services himself. . [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd. and Symphony Marketing Solutions India Pvt Ltd.]
- Crossdomain Solutions Ltd. as it was engaged in KPO services in insurance, Healthcare, HR & accounting and also offered Business Excellence, Market Research & Data Analytics and IT Services. [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd. and Symphony Marketing Solutions India Pvt Ltd.]

- Datamatics Financial Services Ltd. as it was engaged in diversified activities providing registrar & transfer agency services and also offered issue management services and ITeS and there was no segmental information. [It relied on the decision of H**SBC Electronic Data Processing Ltd**]
- Eclerx Services Ltd. as it was a leading third party data analytics KPO in Financial Services and Retail and Manufacturing and hence, functionally not comparable. . [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd. Lionbridge Technologies and and Symphony Marketing Solutions India Pvt Ltd.]
- Genesys International Corporation Ltd as it was engaged in rendering geospatial services and catered to the needs of consumer mapping, navigation, internet portals etc. providing geographical information service Photogrammetry, Remote Sensing, and other related services and hence functionally not comparable.
- HCL Comnet Systems& Services Ltd as the scale of operation (i.e. turnover of Rs 495 cr) was very different from the assessee (turnover of 1.43 cr).
- Infosys BPO Ltd as the company had high turnover of Rs.825 crores and acquired entities ai.e. ILFS Holding B.V, Netherlands and had 11 delivery centers across in India and overseas. . [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd. and Symphony Marketing Solutions India Pvt Ltd.]
- Mold-Tek Technologies Ltd. as the company had undergone restructuring for the subject year and the company's IT division specialized in providing structural engineering and design services for construction of buildings.
- Wipro Ltd as it did not have a BPO segment on a standalone level and hence, it could not be considered as a comparable to the IT support services rendered by the assessee. The comparable had undergone restructuring and its turnover was Rs.1,781.9 Crores as against that of the assessee. i.e. 1.43 crores. [It relied on the coordinate bench decisions of Flextronics Technologies (India) Pvt Ltd. and Symphony Marketing Solutions India Pvt Ltd.]

Dialogic Networks (India) Pvt Ltd vs ACIT [TS-807-ITAT-2018(Mum)-TP] ITA No.7280/Mum/2012 dated 27.07.2018

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

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

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

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

- Accentia Technologies Limited as it had undergone extra ordinary events on account of amalgamation and also was engaged in providing the entire gamut of services under healthcare receivables cycle management viz., medical transcription, medical coding and billing and receivables management services and did not have adequate segmental results.
- Cosmic Global Limited as the company had a different business model as it had outsourced significant work to outside ventures and as such, its employee cost was less than 21.30%
- Fortune Infotech Limited as the company was into web application development including mobile applications, e-Commerce applications and SEO services, developing CMS based website using Drupal, Joomla, WordPress, e-Commerce Magento etc., offering onsite and offsite services to various clients and also into web designing services whereas the assessee was into providing routine ITES to its AE.
- Igate Global Ltd as the company was engaged into providing IT and ITES whereas no segmental information was available in its annual report company and it had also undergone restructuring by way of amalgamation.

- Infosys BPO Limited as it was engaged in different and diversifying services like customer service outsourcing, finance and accounting, knowledge services, human resource outsourcing, legal process outsourcing, sales and fulfillment, sourcing and procurement outsourcing, banking and capital outsourcing, media outsourcing, energy outsourcing, retail, etc. as against assessee which was into routine ITES. Moreover, it noted that the said company had i) huge turnover of Rs.1126.63 crores ii) goodwill of Rs.19.30 crores as per annual report iii) incurred selling and marketing expenses to the tune of 6.96% to enhance its business and iv) had an exceptional year of operation due to acquisition of McCamish Systems LLC to provide end to end services.
- TCS e-Serve International Limited and TCS e-Serve Limited as their operations broadly comprised of transaction processing and technical services and therefore was not comparable to the activities of the assessee
- Satyam BPO Limited as the creditability of a company due to the scam was at stake and therefore could not be considered as a reliable comparable
- Vis-à-vis R Systems it accepted the assessee's plea that a comparable could not be rejected merely on account of different financial year where the company was functionally comparable and the results for the relevant year could be reconciled and remitted the comparability of the said company back to the file of the TPO directing the assessee to provide reconciliation of the profitability with authentic and reliable data

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

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

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

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

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

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

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

- Accentia Technologies Ltd & E4e-health Solutions Ltd as it was engaged in providing high-end KPO services
- Cosmic Global Limited as it was engaged in translation and prescription of data which was entirely different from the functions performed by the assessee and also since it was operating a different business model as it was outsourcing its activities.

- Vishal Information Technologies Limited as it was functionally incomparable to concern providing BPO services since it was outsourcing its work.
- Cross Domain Solutions Ltd & E-clerx Services Ltd as they were engaged in KPO services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Eclerx Services Ltd as it was a KPO and mainly engaged in providing high-end services involving specialized knowledge and domain expertise in the field of retail, manufacturing and financial

services (including consulting, process outsourcing, process re-engineering and automation services)

- TCS e-serve Ltd as it was engaged in transaction processing and technology services and separate segmental details were not available.

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

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

Pr.CIT vs. Evalueserve SEZ (Gurgaon) Pvt. Ltd - TS-125-HC-2018(DEL)-TP - ITA 241/2018 dated 26.02.2018

203. The Court upheld the order of the Tribunal wherein the Tribunal:

Excluded Infosys BPO as comparable on the ground of its huge brand value

Included R Systems International following the order of the Court in Mckinsey Knowledge Centre wherein it was held that if from the available data on record, the results for financial year could be reasonably extrapolated then the comparable could not be excluded.

However, it admitted 2 questions of law regarding comparability of Surya Pharmaceutical Ltd. and Excel Infosys with the assessee engaged in providing ITES.

Pr. CIT vs. Baxter India Pvt Ltd - TS-135-HC-2018(DEL)-TP - ITA 260/2018 dated 27.02.2018

204. The Tribunal held that the assessee providing business support services & ITeS to AE could not be compared to:

- Infosys BPO Limited as it was a giant company with turnover of INR1,312 crores as against the assessee's turnover of only INR 11.47 crores.
- TCS E-Serve Limited as it had significantly high turnover of INR1,578 crores as against the assessee's turnover of only INR 11.47 crores
- Informed Technologies India Limited as it had granted interest free loan of INR74.56 lakhs to related party which was irrecoverable which had a direct impact on its profitability.

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

205. The Tribunal held that for benchmarking IT enabled services Excel Infoways Ltd was to be excluded as a comparable, as the said company was in the process of shutting down its BPO business for the year under consideration. As regards another comparable namely Universal Print Systems, the Tribunal, relying on the judgement in case of Goldman Sachs directed the TPO to verify employee cost to sales ratio of one comparable company and to exclude the same if the said ratio was less than 25%.

Emerson Climate Technologies (India) Pvt Ltd vs DCIT Circle 1(2)- TS-362-ITAT-2018(PUN)-TP-ITA no's 359 & 2847/PUN/2016 dated 25.04.2018

206. The Tribunal held that assessee providing IT enabled services in the nature of research and analyst services to its AE could not be compared to:

- Infosys BPO Limited considering the huge turnover or giantness of the company (by relying on the precedent judgment namely CIT vs Pentair Water India Pvt Ltd [TS-763-ITAT-2016(PAN)-TP] and New River Software Services Pvt. Ltd Delhi HC)
- Accentia Technologies Ltd due to occurrence of an extraordinary event of amalgamation in the said case.

Further, the Tribunal remanded the following comparable to the file of the TPO

- E4e health care services Pvt Ltd as the annual accounts were not available in public domain. (The Tribunal directed the TPO/AO to provide the copy of financial statements and then decide on the issue of retaining or excluding it as a comparable.)

- Datamatics Financial Services, Optimus Global Services & Sparsh BPO Services as objections raised by the assessee (i.e. negative net worth and export sales filter) were factual in nature, thus required verification.

Further**,** TCS e serve International Ltd was included as a comparable and the Tribunal held that it was functionally comparable to assessee by relying on Cadence Designs System vs DCIT.

M/s. Smart Cube India Pvt Ltd vs ITO ward 24(1) Delhi-TS-379-ITAT-2018(DEL)-TP- ITA No. 1103/Del/2015 dated 27.04.2018

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Kals Information Solutions Ltd as it was engaged in software services as well as software product.

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

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

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

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

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

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

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

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

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

Further, it rejected assessee's plea with regard to the exclusion of BNR Udyog Ltd noting that on consideration of segmental data of ITES, it passed the RPT filter and 100% of the revenue was from providing ITES (medical transcription) and thus, the company satisfied the filters. The Tribunal accepted the assessee's plea for inclusion of (i) Informed Technologies Limited (ii) Jindal Intellicom Ltd. since they had been consistently considered as a comparable in the previous years. The Tribunal

remanded the comparability of Universal Print systems Ltd on the ground that TPO and DRP had not dealt with various objections of the assessee on its functional comparability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Flextronics Software Systems Ltd as the company was engaged in the business of both software products and services and no break-up was available.

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

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

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

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

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

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

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

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

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

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

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

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

- Aditya Birla Minacs Ltd and Maple Esolutions Ltd. as they were included in TP study

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

230. The Tribunal held that the assessee engaged in rendering ITES services to its AE could not be compared to Genesys International Corporation Ltd as the company was engaged in diversified business operations providing high-end and complex services such as GIS consulting, 3D mapping, navigation

maps, Lidar, photogrammetry etc. as against assessee's rendering of mere back office ITeS. It also held that comparability failed on account of the company being full-fledged risk taking entity vis-à-vis assessee's limited risk profile and had significant intangible whereas the assessee did not own any intangibles.

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

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

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

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

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

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

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

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

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

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

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

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

235. Where the assessee was a software development service provider in the gaming sector and could not be compared with the general software development providers due to its unique utilization of technical manpower as selected by the TPO, the Tribunal held that since the activities carried on by the assessee were not properly appreciated by the TPO, the entire matter was to be remitted for fresh benchmarking.
Gameloft Software Pvt Ltd v ACIT - TS-16-ITAT-2018(HYD)-TP - ITA No.598/Hyd/2016

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

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

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

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

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

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

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

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

  Vis-à-vis I-Gate Global Solutions, the Court held that having regard to the submissions made and the material on record, especially the Tribunal’s observations that I-Gate’s functioning was similar to that of the assessee, it admitted the Revenue’s appeal against the Tribunal’s exclusion of the said

company as comparable on the ground that it underwent significant change in its profitability in view of the amalgamation undergone.

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

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

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

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

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

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

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

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

242. The Apex Court admitted Revenue's SLP against the order of the Delhi High Court wherein the High Court dismissed the Revenue's appeal and upheld the Tribunal's exclusion of 3 comparables while benchmarking the ITeS transactions of the assessee. The High Court confirmed exclusion of a). Coral Hub Ltd (which had different business model as services were outsourced) b) e-Clerx Services (on account on functional dissimilarity), observing that the issue was covered against the Revenue by the judgment in Rampgreen Solutions Pvt. Ltd. V. Commissioner of Income Tax" and c) Infosys observing that the issue of exclusion of Infosys as a comparable stood covered against the Revenue by way of the decision of the Court in CIT v. Agnity India Technologies Pvt. Ltd.

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

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

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

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

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

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

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

- KALS Information Systems Ltd as it was developing software products and not purely or mainly software development service provider.

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

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

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

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

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

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

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

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

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

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

- ICRA Techno Analytics Ltd as it was engaged in diversified activities of software development and consultancy, engineering services, web development & hosting and substantially diversified itself into domain of business analysis and business process outsourcing, which was functionally not comparable to the assessee
- Persistent Systems Ltd as the company was engaged in diversified activities and earned revenue from various activities including licencing of products, royalty on sale of products as well as income from maintenance contract, etc. the same could not be considered as functionally comparable with the assessee.

- Persistent Systems & Solutions Ltd as this company was earning revenue from software products and services and segmental data was not available
- Infosys Ltdas it had brand value and intangible assets and thus could not be compared with an ordinary entity providing captive services
- Kals Information Systems Ltd as the inventory in the books of accounts of this company showed that it was in the software product business and hence, it could not be compared with a pure software development service provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

- Persistent Systems Ltd as it was earning revenue from various activities including licensing of products, and segmental data was unavailable.
- L & T Infotech Ltd as it had Revenues reported from software development services and products and segmental information was unavailable.

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

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

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

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

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

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

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

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

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

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

256. The Tribunal held that the assessee engaged in providing software development services to its AEs could not be compared to L&T Infotech as the TPO failed not allocate 'Unallocable expenses' to L&T Infotech's Industrial cluster segment which was considered for benchmarking without which the correct amount of operating profits could not be ascertained. Noting that neither the nature of common unallocated expenses was known nor the information concerning the appropriate allocation keys was available in the present case, the Tribunal held that the inclusion of Larsen & Toubro Infotech Ltd. (Seg.) in the list of comparables would vitiate the comparability. Accordingly, it directed its exclusion.
Pitney Bowes Software India Pvt. Ltd vs. ACIT - TS-163-ITAT-2018(DEL)-TP - ITA No.7034/Del/2017 dated 13.03.2018

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

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

It rejected DRP's stand of not considering assessee's contention to include 4 other comparables for which it had filed additional documentary evidence and held that the proceedings before the DRP was a continuation of the assessment proceedings and the purpose of providing the proceedings before the DRP was to ensure due and fair adjudication of the ALP by comparing the operating profit / operating cost of the assessee with that of the functionally comparable companies. Accordingly, it remitted the 4 comparables to the file of the TPO for fresh consideration.
WM Global Technology Services (India) P. Ltd vs. ACIT - TS-144-ITAT-2018(Bang)-TP - I.T(TP).A No.1963/Bang/2017 dated 28.02.2018

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

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

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

259. The Tribunal dismissed the Revenue's appeal and held that the assessee engaged in providing software development services could not be compared to Infosys Technologies Ltd as it had huge turnover and brand value.
Tieto IT Services India Pvt Ltd vs. DCIT - TS-155-ITAT-2018(PUN)-TP - ITA No.242/PUN/2015 dated : 07.03.2018

260. In the case of an assessee engaged in IT services, the Court dismissed Revenue's appeal and upheld the Tribunal's decision of exclusion of 4 comparables company namely Coral Hub, Datamatics Financial (BPO Division), Geneysis International and Mold Tek on the ground of functional dissimilarity between assessee and comparables.
PCIT-6 Vs MPS Ltd-TS-306-HC-2018(DEL)-TP ITA No 255/2018 dated 18.04.2018

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

- Aricent Technologies (holding) Ltd. as no separate segment result for software services were available.
- CAT Technologies Ltd.as the company had revenue earnings from consulting services along with software development.
- KPIT Cummins Infosystems Ltd.- as related party transactions were 98.87%,

- Tech Mahindra Ltd as the RPT was greater than 25%, being a filter deployed by the TPO.
- Thirdware Solutions Ltd as the revenue stream of the company consisted of sale of license and revenue from subscription along with software and export services.

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

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

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

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

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

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

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

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

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

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

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

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

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

- Bodhtree Consulting Limited as it was functionally different, and it also failed to qualify turnover filter
- John Deere India P Ltd due to absence of segmental result

- E-zest Solutions Ltd as KPO services of company were not functionally comparable to software development services of assessee
- Helios & Matheson Info Technology Ltd.
- KALS Systems as it was engaged in development of software and other activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Acropetal Technologies Limited as the segmental information containing break-up of its export sales and employee cost was not available and, thus, it was not possible to ascertain if it passed export earnings and/or employee costs filters.

- L & T Infotech Ltd. as the company was developing its own software products and had huge marketing intangibles.
- E-Infochips Ltd. as it failed to satisfy software service income filter at 75 per cent.

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

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

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

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

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

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

  Further,
- it remitted the comparability of CG-VAK Software and Exports Ltd. and directed the AO to verify the employee cost filter after considering the cost of services under the expenditure head and accept it as comparable if it passes the employee cost filter.
- With respect to R Systems International Ltd. (having a different financial year from the assessee), it directed the TPO to consider the quarterly financial statements for FY 2010-11 for the purpose of inclusion observing that the coordinate bench decision for assessee's own case had considered it to be functionally comparable.
- It directed the TPO to verify the export sales of Thinksoft Global Ltd. vis-a-vis the total operating revenue from the annual report and to include it in the list of comparables if it passed the export earnings filter.

- It also remanded the comparability of Cat Technologies Ltd. to the file of the TPO to reach a fresh conclusion on the aspect of whether it passes the RPT filter or not.
- It remitted the comparability of LGS Global Ltd. to the TPO to verify whether classification of expenses under the head "purchase and personnel cost" were mainly on account of employee cost since the assessee had pointed out that there were no tangibles or inventory in the books of accounts and directed the TPO to verify again if employee cost filter is satisfied.
- It included Goldstone Technologies Ltd. noting that the DRP in assessee's own case had held it to be a comparable and Revenue was not able to point out any change in business model of the assessee for the subject year.

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

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

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

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

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

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

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

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

- Bodhtree Consulting Ltd it was engaged in product engineering and engineering services while the assessee was engaged in software development.
- E-Zest Solutions Ltd as it rendered product development and technology services, which fell under the category of KPO services which could not be compared to the assessee engaged in providing software development services
- Helios & Matheson Information Tech, relying on the decision John Deere India Pvt. Ltd. [TS-553-ITAT-2015(PUN)-TP], wherein it was held that the company was functionally dissimilar.
- Kals Information System as the company was engaged in development and sale of software products and was not comparable to software development services provided by the assessee.
- Goldstone Technologies Ltd as it was engaged in activities related to Media & IP TV and further carried inventory of set top boxes and movie rights in its Balance Sheet for the previous year rendering it functionally dissimilar to the assessee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Coral Hub Ltd as it adopted a different business model (outsourcing) and therefore was functionally dissimilar to the assessee
- Chakkilam Infotech Limited as the company did not satisfy the 75 percent export turnover filter
- ICRA Techno Analytics Limited as the financials of the said company and segmental data of the engineering design segment were not available
- ISmart International limited as the financials of the said company were not available in public domain.
- Valuemart Info Technologies Limited as the company was engaged in consultancy and software development which fell within the ambit of KPO Services and could not be compared to the services rendered by the assessee.

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

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

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

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

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

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

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

- E-Zest Solutions Ltd as the company was into software products development services and providing high end technical services which fell under the ambit of KPO services.
- Persistent Systems Ltd as the company was engaged in both software products and services and the segmental data was not available.

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

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

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

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

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

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

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

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

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

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

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

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

283. The Tribunal accepted the assessee's contention and excluded E-infochip Ltd. as a comparable relying on the decisions of Philips India and Ness Technologies where the said comparable was excluded in case of assessee's engaged in like activities of provision of software development and technical support services as E-Infochip was engaged in manufacturing and trading of printed electronic circuit boards and had income from software development, hardware maintenance, information technology consultancy and information technology services and selling software product and no separate segmental information was available and was also held to be an undertaking engaged in ITES.
Redknee (India) Technologies Private Limited vs. DCIT ITA No.486/Pun/2016 dated 29.06.2018

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

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

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

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

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

Further, the Tribunal rejected assessee's plea for exclusion of E-Clerx Services Ltd. on the ground that it was a KPO and provided data analytics, operations management and process improvement and thus functionally different. It observed that since the assessee had been categorized as a KPO in its own case for the earlier year, E-Clerx could not be excluded on the basis of functional dissimilarity.
Avineon India Pvt Ltd vs Dy.CIT [TS-893-ITAT-2018(HYD)-TP] ITA No.82/Hyd/2017 dated 27.06.2018

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

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

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

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

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

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

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

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

- Persistent System and Solutions Ltd. as it was a product development company with diversified services and separate segmental information was not available.
- Sankhya Infotech Limited as it was engaged in diversified services, which included the provision of customized products and services for training purposes. It also owned a research and development center.
- E-Zest Solutions Ltd. as it was engaged in diversified services such as product engineering, outsourced product development, enterprise application development, IT services, industries solutions and technical expertise, without any segmental information. Its high end services were classified as KPO.
- Infosys Ltd as it was not functionally comparable, had hugh scale of operations, high brand value, R&D with significant revenue and capital expenditure which created significant intangibles.
- Wipro Ltd. as it was engaged in the development of a product, namely FLOW which was used in the retail sector and was a result of significant R&D activities
- Sasken Communication Technologies as it was functionally different

- Zylog Systems Limited as the company had earned income from both, software development services and products but no separate segmental information was available

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

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

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

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

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

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

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

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

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

Investment advisory services

292. The Tribunal upheld the CIT(A)'s order excluding Motilal Oswal Investment Advisors Pvt. Ltd. as a comparable for assessee engaged in the rendering of investment sub-advisory services to its AE by noting that TPO after selection of the company as a comparable had observed that the company wasengaged in diversified activities including merchant banking / investment banking concerning private placement of equity, debt and convertible instrument, mergers and acquisitions, advisory and re–structuring advisory and implementation, services like private wealth management, asset management and commodities with no segmental details. Further, in response to a letter from the assessee, the CEO of Motilal Oswal had stated that the company wasin merchant banking and investment banking and was not engaged in providing investment research and advisory services. Thus, it concluded that the comparable was functionally different from the assessee and the Revenue had failed to bring anything on record to controvert it.

ACIT vs Sandstone Capital Advisors Pvt Ltd ITA No.7067/Mum/2016 dated 31.08.2018

293. The Tribunal held that assessee engaged in providing investment advisory services to its AE could not be compared to:

- Ladderup Corporate Advisory as it was engaged in merchant banking which was distinct from investment advisory services. [It relied on the coordinate bench decision of Temasek Holdings Advisors (India) Pvt. Ltd.]

Further, it accepted assessee's plea for inclusion of Informed Technologies Ltd. noting that coordinate bench in Temasek Holdings had considered the functional profile of said comparable and held it to be comparable to assessee engaged in providing investment advisory services and further, the TPO himself had accepted it to be a good comparable.

Goldman Sachs Asset Management (India) Pvt. Ltd vs ACIT [TS-1103-ITAT-2018(Mum)-TP] ITA No.1427/M/2017 dated 31.08.2018

294. The Court dismissed Revenue's appeal and upheld Tribunal's order wherein Motilal Oswal Investment Advisors ("MOIL") was excluded as a comparable for assessee engaged in rendering non-binding investment advisory services relying on its decision in case of Carlyle India Pvt. Ltd wherein it was held that MOIL was declaring a solitary stream of operating income under the head "advisory fee" but engaged in diversified activities without segmental information in respect of each of them. It held that that the factual finding of the Tribunal was not perverse and it was in full agreement with respect to the Tribunal's findings that MOIL was engaged in diversified activities and no segmental information was available in respect of the activites and thus, no substantial question of law arose.

Pr.CIT vs NVP Venture Capital India Pvt. Ltd [TS-1016-HC-2018(BOM)-TP] (IT No. 406 of 2016)(Bom) dated 18.09.2018

295. The Tribunal held that assessee engaged in provision of investment advisory services to its AE could not be compared to Motilal Oswal Private Equity Advisors Pvt. Limited. as it was undertaking portfolio management work on behalf of its clients by actually investing funds of the clients in the equity market whereas assessee was only rendering investment advisory services. It noted that there was difference in functions and risks of both the companies. Further, it also observed that business income of comparable was only from investment management. It relied on coordinate bench ruling in case of Temasek Holding Advisors India Pvt. Ltd. wherein it was held that aforesaid comparable should be excluded as the functional analysis of the aforesaid comparable substantially differed from the functions carried out by the assessee of undertaking investment advisory.

Further, it included IDC (India) Ltd and ICRA Online Ltd. relying on coordinate bench ruling in Temasek Holdings Advsiors (I) P Ltd. wherein it was held that M/s IDC (India) Limited and ICRA Online Ltd. were considered to be good comparables as they were engaged in investment advisory.

Blackstone Advisors (India) P. Limited vs ACIT [TS-1211-ITAT-2018(Mum)-TP] ITA No.1581/Mum/2014 dated 26.09.2018

296. The Court dismissed Revenue's appeal and upheld ITAT's order excluding Motilal Oswal Investment Advisors Pvt Ltd ["MOIL"] as comparable in case of assessee engaged in providing investment advisory services to AE, by relying on HC ruling of NVP Venture wherein it held that Tribunal's findings that MOIL was declaring a solitary stream of operating income under the head "advisory fee" but engaged in diversified activities without segmental information in respect of each of them and thus could not be compared with a non-binding investment advisory company were not perverse. Further, the Court observed that the findings of Tribunal had not been shown to be perverse nor vitiated by error of law apparent on face of the record.

Pr.CIT vs. Arisaig Partner India Pvt Ltd [TS-1115-HC-2018(BOM)-TP]] ITA No.609 of 2016 dated 10.10.2018

297. The Tribunal held that assessee engaged in rendering non-binding investment advisory services to its AE could not be compared to:

- Motilal Oswal Investment Advisors Pvt. Ltd as it was engaged in diversified activities and segmental bifurcation was not available and it was also registered as a merchant banker.

- Ladderup Corporate Advisory Pvt. Ltd as it was registered as a Category–1 merchant banking company with SEBI and was engaged in Merchant Banking service from July 2010

Further, it included

- It included ICRA Management Consulting Services Ltd. as it was engaged in providing consultancy services in area of strategy, risk management, process consulting transaction advisory, policy and development consultantancy.
- IDC(India) as its profitability, operational efficiencies, future outlook, etc. were similar to that of the functions and activities performed by the investment advisory service providers.

Carlyle India Advisors Pvt Ltd vs ACIT [TS-1285-ITAT-2018(Mum)-TP] IT(TP)A No.2410/Mum/2017 dated 20.11.2018

ACIT vs Carlyle India Advisors Pvt Ltd [TS-1285-ITAT-2018(Mum)-TP] IT(TP)A No.2506/Mum/2017 dated 20.11.2018

298. For AY 2011-12, the Tribunal held that assessee engaged in rendering non-binding investment advisory services to its AE could be compared to:

- ICRA Management Consulting Services Ltd. as it was engaged in providing consultancy services in area of strategy, risk management, process consulting transaction advisory, policy and development consultantancy. (Relied on coordinate bench decision in General Atlantic Pvt Ltd for same AY and coordinate bench ruling in assessee's own case for earlier year)

- IDC(India) Ltd as it was found to be functionally similar to companies engaged in investment advisory services(Relied on coordinate bench decision in General Atlantic Pvt Ltd for same AY and coordinate bench ruling in assessee's own case for earlier year wherein it was held that said comparable was in the business of marketing research and management consultancy which were similar to the activities carried out by assessee).

Further, it excluded

- Ladderup Corporate Advisory Pvt. Ltd as it was registered as a Category–1 merchant banking company with SEBI and was engaged in Merchant Banking service from July 2010.
- Motilal Oswal Private Equity Advisors Pvt Ltd. as it had four different business verticals, such as, financial advisory, investment advisory, management and facilitation services and identifying investment opportunities with no segmental data available. It relied on coordinate bench ruling in Temasek Holding Advisors India Pvt Ltd wherein it was held said company could not be compared due to difference in functional profile while considering the comparability vis-à-vis investment advisory services provider.
- Motilal Oswal Investment Advisors Pvt. Ltd as it was engaged in the business of investment banking, merchant banking, merger and acquisition, private equity syndication, etc., which was no way similar to the assessee's activities.

Blackstone Advisors India Pvt. Ltd vs ACIT [TS-1298-ITAT-2018(Mum)-TP] ITA No.1370/Mum/2016 dated 30.11.2018

ACIT vs Blackstone Advisors India Pvt. Ltd [TS-1298-ITAT-2018(Mum)-TP] ITA No.928 /Mum/2016 dated 30.11.2018

299. For AY 2011-12, the Tribunal held that assessee engaged in rendering non-binding investment advisory services to its AE could be compared to:

- Cyber Media Research Ltd. (formerly IDC(India) Ltd) relying on coordinate bench ruling in General Atlantic Pvt Ltd for same AY. It also relied on other coordinate bench rulings in AGM Advisors and Goldman Sachs wherein it was held that said comparable was in the business of marketing research and management consultancy which were similar to the activities carried out by assessee.

Further**,** it excluded

- Ladderup Corporate Advisory Pvt. Ltd as it was registered as a Category–1 merchant banking company with SEBI and was engaged in Merchant Banking service from July 2010.
- Motilal Oswal Private Equity Advisors Pvt Ltd. as it had four different business verticals, such as, financial advisory, investment advisory, management and facilitation services and identifying investment opportunities with no segmental data available. It relied on coordinate bench ruling in Temasek Holding Advisors India Pvt Ltd wherein it was held said company could not be compared

due to difference in functional profile while considering the comparability vis-à-vis investment advisory services provider.

- Motilal Oswal Investment Advisors Pvt. Ltd as it was engaged in the business of investment banking, merchant banking, merger and acquisition, private equity syndication, etc., which was no way similar to the assessee's activities.

New Silk Route Advisors Pvt. Ltd vs ACIT [TS-1304-ITAT-2018(Mum)-TP] IT(TP)A No.1148/Mum/2016 dated 30.11.2018

ACIT vs New Silk Route Advisors Pvt. Ltd [TS-1304-ITAT-2018(Mum)-TP] IT(TP)A No.2092/Mum/2016 dated 30.11.2018

300. For AY 2011-12, the Tribunal held that assessee engaged in rendering non-binding investment advisory services to its AE could not be compared to

- Ladderup Corporate Advisory Pvt. Ltd as it was engaged in the merchant banking/investment banking and other similar activities, which could not be compared to investment advisory services [It relied on coordinate bench in Temasek Advsiors wherein the said comparable was excluded for being engaged in merchant banking]
- ICRA Online Ltd as it was operating in KPO and ITES, further activities performed under outsourced services were in nature of maintenance and management of data.
- Integrated Capital Services Ltd. as it was providing advisory and consulting services in area of mergers, acquisition and reconstruction, and activities were in nature of investment banking

Further, it included

- ICRA Management Consulting Services Ltd. as it was engaged in providing consultancy services in area of strategy, risk management, process consulting transaction advisory, policy and development consultantancy.(It relied on coordinate bench decision in General Atlantic Private Ltd which in turn had relied on AGM India Advisors Pvt Ltd wherein it was held it was functionally similar and observations of TPO were rejected that there was a difference in skill set of employees and value addition to functions as it was based on wrong appreciation of facts)

SBI Macquarie Infrastructure Management Pvt Ltd vs DCIT [TS-1304-ITAT-2018(Mum)-TP] IT(TP)A No.1148/Mum/2016 dated 30.11.2018

301. The Tribunal held that assessee engaged in provision of non-binding investment advisory services to its AE could be compared to ICRA Management Consulting Services Ltd relying on by coordinate bench decision in Temasek and others wherein it was held that it was offering consultation services in the area of strategy, risk management, operations, improvement, regulatory economics and translations advisory and entire revenue was generated from consultation fee and thus was providing consultation to various types of industries through investment advisory. Also, in assessee's own case in earlier year wherein the Tribunal had clearly stated that the said comparable was functionally comparable and rejected TPO's reasons for exclusion on basis of being a loss-making company and significant RPT for being factually incorrect. (It was not a loss-making company and had RPT of 14%).

TPG Capital India Private Limited vsDy.CIT (As a successor to TPG Growth Advisors (India) Private Limited) [TS-1321-ITAT-2018(Mum)-TP] ITA No.5411/Mum/2016 dated 07.12.2016

302. The Tribunal allowed Revenue's appeal and set aside DRP's cryptic order excluding 2 companies (Motilal Oswal Investment Advisors P Ltd and IM Capital) as comparable for assessee providing investment advisory services for AY 2011-12 noting that DRP excluded these companies (registered with SEBI as Merchant Banking companies) merely on the ground that TPO had rejected Birla Capital Financial Services Ltd which was also a merchant banking company as comparable. It opined that the order of the DRP was very cryptic and they had not considered the various issues raised by the TPO. Thus, Tribunal remanded the issue to the file of the DRP with a direction to pass a speaking order on the issue of selection of the above two comparables as per fact and law.

ACIT vs Wolfensohn India Advisors Pvt Ltd [TS-1281-ITAT-2018(DEL)-TP] ITA No.705 /Del /2016 dated 06.12.2016

303. The Tribunal for AY 2011-12 held that assessee engaged in provision of non-binding investment advisory services to its AE could not be compared to:

- Ladderup Corp. Advisory Pvt. Ltd. as it was a category-I merchant banker registered with SEBI and was functionally dissimilar. [It relied on the decision of General Atlantic (Pvt.) Ltd. in view of factual findings being the same for AY 2011-12.]
- Primary Real Estate Advisors Pvt. Ltd as it was engaged in real estate investment and was servicing landowners, overseas and domestic developers and hence the functional profile was different vis-à-vis assessee.

Further, the Tribunal included Cyber Media Research Ltd. (formerly known as IDC (India) Ltd) as a comparable and rejected the reliance placed by Revenue on the case of Teva Pharma (P.) Ltd wherein the comparable was excluded in case of assessee engaged in like activities since it was for the assessment year AY 2007-08. Further the Tribunal also dissented with the case of Actis Advisors (P.) Ltd relied on the by the Revenue noting it was on the wrong footing since the functional profile was obtained from the website link of its holding company which was discussed in the case of TPG Capital India (P.) Ltd. (The TPO had rejected the above comparable on the ground that it was engaged in market research and survey services not comparable to the assessee.)
Mount Kellett Capital Management India Pvt. Ltd. vs Dy.CIT [TS-967-ITAT-2018(Mum)-TP] IT (TP)A No.1552/Mum/2016 dated 27.07.2018

304. The Tribunal held that the assessee engaged in providing non-binding investment advisory services could not be compared to ICRA Online which was engaged in providing e.knowledge Process Outsourcing and information Services and Technology Solutions which was functionally different as compared to the activities of the assessee.
Sparkles Dhandho Advisors Pvt. Ltd v ITO - TS-18-ITAT-2018(Mum)-TP - I.T.A./1047/Mum/2015 dated :03/01/2018

305. The Tribunal held that the assessee engaged in providing non-binding investment advisory services ('IAS') to AE could not be compared with Ladderup Corporate Advisory as the said comparable was engaged in providing merchant banking services which was functionally dissimilar.
Following its order in the case of the assessee for the earlier assessment year, it held that ICRA Management Consulting and Informed Technologies were to be considered as comparable.
Vis-à-vis CRISIL and ICRA Techno Analytics, it remanded the matter to the file of AO/TPO considering that that no reasonable opportunity of being heard had been afforded to the assessee by DRP on these companies and also observed that i) CRISIL ought to be excluded if found to have RPT of more than 25% and ii) ICRA Techno Analytics ought to be excluded if verified to be a software development service provider.
Temasek Holdings Advisors India Private Limited v ITO - TS-17-ITAT-2018(Mum)-TP - ITA No. 1429/Mum/2017 dated 03.01.2018

306. The Tribunal held that the assessee engaged in providing non-binding investment advisory services to its AE could not be compared with:
- Ladderup Corporate Advisory Pvt. Ltd. as the company was registered with SEBI for engaging in merchant banking services which was also duly substantiated by the website of the company as well as its Annual Reports
- ICRA online Ltd as the assessee failed to bring anything on record to prove that the company was comparable to the assessee other than the contention that the Revenue had accepted it to be comparable in the subsequent year.

Further, it held that ICRA Management Consulting Ltd and IDC Ltd were to be included as comparables as they were carrying out investment advisory services similar to that of the assessee.
SUN-Ares India Real Estate Private Ltd (formerly known as SUN AREA Real Estate Pvt. Ltd) vs. DCIT - TS-84-ITAT-2018(Mum)-TP - /I.T.A. No.621/Mum/2016 dated 09 /02/2018

307. The Tribunal held that the assessee engaged in providing non-binding investment advisory services to its AE could not be compared with
- Ladderup Corporate Advisory Pvt. Ltd. as the company was engaged in providing merchant banking services.

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

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

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

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

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

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

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

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

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

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

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

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

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

- Milestone Capital Advisors Private Ltd as the company was more into asset management rather than investment advisory

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Manufacturing and contracting

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

Dragger-Frost Tools Ltd as the company was wrongly excluded by the TPO on the ground that the company stopped operations during the year under review, which was not the case.

Hittco Tools Pvt. Ltd.as the TPO wrongly excluded the company as comparable as it was a consistent loss maker whereas the company was consistently making profits in the subsequent years

Rajasthan Udyog and Tools Ltd as the company was wrongly excluded on the ground of persistent losses whereas it had earned profits in the earlier years.

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

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

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

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

The Tribunal also held that ALP-adjustment should be restricted to transactions with AEs only and cannot be made at entity level, relying on Bombay HC ruling in case of Thyssen Krupp Industries India P. Ltd. It further accepted the additional ground raised by assessee and directed the Revenue to consider foreign exchange fluctuations as part of operating income by relying on Pune ITAT ruling in case of Approva Systems (P.) Ltd

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

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

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

319. The Tribunal noted the proposition laid down in the Delhi High Court decision in Rampgreen Solutions wherein it was held that though product comparability can be of broad level under TNMM, the nature of

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

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

Support Services

320. The Tribunal held that an assessee engaged in the business of providing financial accounting supporting services to its AE could not be compared to:

- Accentia Technologies Limited as it owned significant amount of brand, IPR and goodwill while the assessee on the other hand, was a simply captive service provider, which provided services related to accounts payable management, payroll, processing invoice processing and handling of related queries and hence not functionally comparable
- Eclerx Services Limited as the company was a KPO engaged in providing data analytics, data solutions services etc. and relying on Delhi HC in the case of Rampgreen Solutions held that it would be flawed to benchmark IT enabled service provider using KPO companies. Noting that the DRP had wrongly categorized the assessee as a KPO, whowas a captive service provider and hence the said company was not comparable.
- TCS E-Serve Limited as this company was engaged in diversified activities customer service, transaction processes, collections, risk management, and analytics which made it functionally different. It also relied on the findings of the coordinate bench decision for assessee's own case in earlier year while excluding the company that use of TATA and TCS brand had substantially increased the operating profits.

Bechtel India Pvt Ltd vs DCIT [TS-1026-ITAT-2018(DEL)-TP] ITA No.6779/Del/2015 dated 20.08.2018

321. The Tribunal held that an assessee engaged in the business of providing IT Infrastructure supporting services to its AE could not be compared to:

- Infosys Limited as it had a high turnover, incurred significant expenditure on R&D, advertisement and marketing resulting in non-routine marketing intangibles, ownership of brands and diversified product portfolio.
- Wipro Technology Services Ltd as its sale transactions was with Citicorp Banking from which shares were purchased by the holding company viz. Wipro Ltd hence its RPT filter exceeded 25% by relying on the decision of coordinate bench in the case of Saxo India Pvt Ltd.
- Acropetal Technologies Limited as its employee cost filter (being 15.3%) failed the 25% filter applied by the TPO.
- Sankya Infotech Ltd as company was engaged in the e- learning activities and training solutions and also in the development of simulation and virtual training products which made it functionally dissimilar to the activities performed by the assessee under IT Infrastructure support services.
- Sasken Communication Technologies Limited as the company was not considered a good comparable IT Infra Support Services segment in light of the coordinate bench decisions in the cases of Saxo India Pvt. Ltd, ION Trading India Pvt. Ltd., Tibco Software etc. wherein it was held that the company was engaged in rendering testing, satellite communication services, and production of software products, had significant involvement in R&D and had a high proportion of marketing and advertising expenses.

Bechtel India Pvt Ltd vs DCIT [TS-1026-ITAT-2018(DEL)-TP] ITA No.6779/Del/2015 dated 20.08.2018

322. The Tribunal remanded the comparability of Just Dial Ltd. to DRP for benchmarking the sales support transaction of the assessee with its AE on the ground that financials for the subject year were not available in public domain to indicate that it was functionally dissimilar when proceedings before the DRP were completed. Therefore, it remanded the comparability of the said company and directed the DRP to consider exclusion of Just Dial Ltd from the list of comparable companies based on the Financials.
Microsemi Storage Solutions India Pvt Ltd vs ACIT [TS-927-ITAT-2018(Bang)-TP] IT(TP) A No.2103/Bang/2016 dated 24.08.2018

323. The Tribunal restored the comparability of Just Dial Ltd to DRP for an assessee engaged in providing sales support services to its AE noting that financials for subject year were available in public domain which was not the case when proceedings were completed before DRP and TPO (relied on financials for AY 2013-14). It was pointed out by the asseessee that financials showed that the comparable was functionally different.
MICROSEMI STORAGE SOLUTIONS INDIA PVT. LTD. vs ACIT [2018] 53 CCH 0496 (Mum- Trib.) IT (TP)A No.2103/Bang/2016 dated 24.08.2018

324. The Court dismissed Revenue's appeal and upheld the Tribunal's order excluding Media Research Users Council (MRUC) as a comparable to assesseeengaged in marketing support services noting that Tribunal had excluded MRUC from the list of comparables on grounds of functional dissimilarity as no risk was assumed by MURC being a non-profit organization, failure to meet turnover filter, and difference in risk profile, etc. It observed that MRUC was outsourcing most of its activities to a third party research agency unlike the assessee and also the element of quid pro quo or payment of consideration commensurate with the service given was absent in MRUC's case as major source of its income was in form of membership fees and subscription fee for Indian Readership Survey (IRS) and Indian Outdoor Survey (IOS) reports which were prepared for its members; Thus, it held that since the working pattern and model adopted by MRUC was unlike a commercial organization and completely different, the Tribunal was justified in exluding MRUC from list of comparables.
Pr.CIT vs Belkin India Private Ltd [TS-1098-HC-2018(DEL)-TP] ITA No.966/2018 dated 04.09.2018

325. The Tribunal held that assessee providing marketing support services to its AE could not be compared to:

- Aptico Limited as it prepared project feasibility reports, carried out market / other surveys, arranged seminars and trainings and also provided energy related services, skill development etc. which were functionally dissimilar to business profile of assessee under MSS segment.
- Choksi Laboratories Ltd as the company was engaged in in clinical research, assaying and hall marking and instrument calibration and validation having assets of high value required for chemical testing whereas the assessee was a routine service provider.
- Rites as the ratio of consultancy fee to the total income came to 45.15% and, therefore, failed the filter of more than 75% of revenue adopted by the TPO.
- Wapcos Ltd. as it was engaged in diversified activities like pre-feasibility studies, feasibility studies, simulation studies, diagnostics studies, socio economic studies, master plans and regional development plans, field investigations, details engineering including design, detailed specifications, tendering process, contract and construction management, commissioning and testing, operation and maintenance, quality assurance and management, software development and human resource development whereas the assessee was a routine service provider.

Further, it restored the inclusion/exclusion of Best Mulyankan Consultants Ltd and directed the TPO to verify if it had a RPT filter of 27.30% of the total revenue, which would exceed the 25% RPT filter applied by TPO and if so, to exclude the same.
Lufthansa Technik Services India Pvt Ltd vs Dy.CIT [TS-1133-ITAT-2018(DEL)-TP] ITA No.5451/Del/2012 dated 15.10.2018

326. Relying on the coordinate bench ruling in Philip Morris Services Ltd. (Revenue could not distinguish findings given related to comparables), the Tribunal held that assessee providing marketing support services to its AE could not be compared to:

- Aptico Limited as it was providing diversified services like Project report preparation, Technical and economic studies, feasibility studies, Micro enterprise development, Skill development, Project management consulting, Industrial clusterdevelopment, Environmental management consulting, Energy management consulting, Market and social research and Asset reconstruction management services and segmental details were not available.
- Global Procurement Consultants Ltd. as it was providing services aimed at providing advice onprocurement and also carrying out procurement audit whereas the activities of assessee were strictly confined to marketing support.
- TSR Darashaw Ltd. as it was undertaking registrar and share transfer activities, recorded management activity and trust fund activity which was functionally dissimilar to the assessee's marketing support services rendered by the assessee to its AE.
- Quippo Valuers as it was providing mainly asset management services (It was engaged in sale of construction andearthmoving equipments through auctions and provision of valuation services in respect of assets).

GECAS Services India Pvt Ltd vs ITO [TS-1187-ITAT-2018(DEL)-TP] CO No.217/Del/2015 dated 18.10.2018

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

- Asian Business Exhibition and Conference Ltd. as it was deriving income from conducting exhibitions, road shows, conferences, customer events and not from marketing support services.
- HCCA Business Services P Ltd. as its functions were not similar to the assessee. [It relied on coordinate bench ruling in Alcolab which inturn relied on Electronics for Imaging India wherein it was held that payroll processing was a main part of company's operations and thus, DRP's order thatits functions weredifferent from marketing support activities was upheld.]

Intuit India Software Solutions P Ltd vs Dy.CIT [TS-1201-ITAT-2018(Bang)-TP] ITA No.2090/Bang/2017 dated 18.10.2018

328. The Tribunal held that assessee engaged in rendering business support services to its AE could not be compared to:

- Certification Engineers International Ltd. as it was engaged in certification, re-certification, safety audit and HSB management systems for offshore and onshore oil and gas facilities. It also supplied manpower to its holding companies which made it functionally incomparable.
- Engineers India as it was engaged in high end diversified activities i.e. in providing engineering procurement, construction, lumpsum turnkey projects and total solutions consultancy,high end and full-fledged engineering and related technical services for petroleumrefineries, pipelines and other industrial projects.
- NTPC Electric Supply Co Ltd as it was engaged in electrification services (87% of its operating revenues) and had undertaken several activities for the generation of power during the year.
- Kitco Ltd as it was engaged in providing technical services including services like asset valuation, energy audits, revival studies and was a multi-functional, multi-disciplinary organization offering wide range of services to the industrial and infrastructure.
- Rites Ltd. as it was providing project management consultancy services in diversified fields like rail infrastructure, building and airport transportation and economics, technical services, transport infrastructure, urban infrastructure, quality assurance and training.

Further, the Tribunal observed that the said comparables were government companies whose business models were different and hence was also a ground for exclusion.

Boeing International Corporation India P Ltd vs DCIT [TS-1253-ITAT-2018(Del)-TP] ITA No.1127 /Del/2015 dated 30.10.2018

329. The Tribunal held that assessee engaged in rendering support services to its AE in network division could not be compared to:

- Aptico Ltd. as it was a government undertaking and engaged in turnkey implementation, preparation of reports and into core activities and also provided high end technical consultancy which made it functionally different. Further, segmental details were not available and it failed TPO's export filter of greater than 25% of total income.
- IDC(India) Ltd. as it was a research company, primarily dealing in research and survey services and product and a high-end service provider rendering varied services in the nature of data measurement products, subscription services, industry research, IT executive program, Custom Solutions and events which made it functionally different.
- Rites (seg)as it was providing comprehensive engineering and project management services such as pre-project planning involving project identification, feasibility studies and project appraisal. It was a full risk bearing company and thus, could not be compared to a service provider like assessee.
- WPCOS Ltd. (seg) as it was into provision of engineering consultancy services and turnkey projects and had diverse business activities. Further, it had grants by government and the same were treated as fee from other services. Thus, the company was functionally different.

Nokia Siemens Networks Pvt Ltd vs ACIT [TS-1203-ITAT-2018(Del)-TP] ITA No.332 /Del/2013 dated 01.10.2018

330. The Tribunal held that assessee engaged in marketing support services and business support services could not be compared to:

- Times Innovation Media Ltd as it was solely engaged in organizing and executing events which was different from the functions performed by assessee.
- Agrima Consultants International Ltd. as it was engaged in providing financial consultancy.

Eaton Technologies Pvt Ltd vs ACIT [TS-1297-ITAT-2018(Pun)-TP] (ITA No.1650/Pun /2013) dated 31.10.2018

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

- Bharat Earth Movers Ltd as it did not pass the turnover filter on account of high turnover (more than 7.5 times the turnover of assessee company)
- Telco Construction Equipment Company as it had intangible in form of know-how which was an added advantage as the assessee company did not possess any intangible. Further, the turnover was also substantially higher (more than 12 times the turnover of assessee company).

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.) vs ACIT [TS-1196-ITAT-2018(DEL)-TP] (ITA No.930/Del/2013) dated 02.11.2018

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

- Global Procurement Consult Ltd. as it was engaged in providing full-fledged procurement and financial management support services and further was rejected as a comparable by DRP in AY 2011-12
- Kellick Agencies and Marketing Ltd as it failed to satisfy TPO's revenue filter of 75% (Its revenue came upto 27.7% only).
- TSR Darashaw Ltd as it was engaged in providing share registry, record management, fund management and payroll processing services.
- MCS Ltd and Times Innovation Ltd as they failed to satisfy TPO's employee cost filter of less than 25%

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.) vs ACIT [TS-1225-ITAT-2018(DEL)-TP] (ITA No.1882/Del/2014) dated 14.11.2018

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

- Asian Business Exhibition and conference Ltd. as it was primarily and fundamentally engaged in event management.

Further,

- It remanded ICC International Agencies Ltd. (segmental) back to file of TPO for fresh decision to examine complete facts in this regard as it was a new ground raised by assessee

Citrix Systems India Pvt Ltd vs Dy.CIT [TS-1368-ITAT-2018(Bang)-TP] IT(TP)A No.318/Bang/2016 dated 31.12.2018

334. The Tribunal held that assessee engaged in provision of management support services to its AE could not be compared to:

- TSR Darashaw Ltd as it was engaged in the activity of record management, handling payroll etc which were more in the nature of back-office support services
- HCCA Business Services Pvt Ltd as it was engaged in payroll processing (activities which were similar to the comparable TSR Darashaw Ltd excluded by Tribunal).

Avaya India Pvt Ltd vs ACIT [TS-1290-ITAT-2018-(Del)-TP] ITA No.1904 /Del/2015 dated 03.12.2018

335. The Court dismissed Revenue's appeal and upheld ITAT's order excluding five comparables namely, Aptico Ltd., Cameo Corporate Services, Global Procurement Consultants, Killik Agencies and Marketing Ltd. TSR Darashaw in case of assessee engaged in marketing support services to its AE noting that the reasoning given by Tribunal was factual and disclosed the functional and other reasons to elucidate, dissimilarities between the five entities and the assessee. ITAT had excluded a) Aptico as it was a government enterprise not comparable with a private service provider b) Cameo Corporate Services as functional profile was similar to TSR Darashaw (which was a comparable excluded on grounds of functional dissimilarity) c) Global Procurement Consultants Ltd as its business model was different since it was established by the government to serve the purpose of professional procurement and management services needs and also to provide combined management services required by the government departments d) Killik Agencies and Marketing Ltd. as it acted as an agent for various foreign companies for sale of dredgers, Dredging Equipments, steerbableRuddar propulsion, maritime and aviation lighting, acoustic communication equipmentsand also exported micro switches, engineering items, acoustic items and headsets, etc) TSR Darashaw Ltd as it undertook the registrar and transfer agent activity functions for equity and preference shares, venture instruments and bonds, commercial paper and private placements and undertook storage, retention and tribal of physical and/or electronic records and handled activities handled by Payroll and retirement "funds".

CIT-International Taxation-2 vs PHILIP MORRIS SERVICES INDIA SA [TS-1377-HC -2018-(Del)-TP] INCOME TAX APPEAL No. 1468/2018 dated 18.12.2018

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

- Aptico Ltd as it was engaged in highly technical services which included Asset Reconstruction and Management Services, Projects Related services, Micro Enterprise Development, Infrastructure, Planning and Development etc.
- Choksi Laboratories Ltd. as it was a Commercial Testing House engaged in testing of various products including chemicals and also offers consultancy services in the field of pollution control as an allied activity
- WAPCOS Ltd. as it was engaged in high-end consultancy and works on engineering projects and was also a government company.
- IDC Ltd. as it was engaged in the business of rendering market research and management consulting services in the field of IT, telecommunications and consumer technology.
- Rediff.com as revenues comprised of revenues from online advertising and fee-based services and no segmental bifurcation was available in the financials.

Beam Global Spirits & Wine (India) Pvt. Ltd. vs CIT [TS-1305-ITAT-2018-(Del)-TP] ITA No.252/Del/2013 dated 11.12.2018

337. The Tribunal following the order of the coordinate bench in assessee's own case for AY 2008-09 restored the matter to TPO for carrying out search and selection of comparables having functions

similar to the assessee's segment of sales support services noting that it was factually similar to the earlier year where the assessee and TPO had chosen comparables which were functionally different from the functions of the assessee.

Comverse Network Systems [India] Pvt Ltd. vs. ACIT [TS-1012-ITAT-2018(Del)-TP] ITA No.6704/Del/2015 and ITA No.7328/Del/2017 dated 31.07.2018

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

- Techprocess Solutions Ltd. as it developed various online platforms for financial services distributors and earned a significant percent of its revenue from transaction processing fees, software development &maintenance services, which were incomparable to the assessee. Further, the company owned unique capabilities and proprietary tools, had 27.38% of its asset in the form of software and was engaged in software services, document management and transaction processing services, which could not be compared to those of the assessee, which was engaged in routine marketing support services.
- Vapi Waste & Effluent Mgmt Co. Ltd as it was a non-profit making entity engaged in treatment of polluted water, industrial effluents and deposition and treatment of solid wastage of the member units. Further, the majority of its capital was contributed by its members and government and hence the price could not be treated as independent and uncontrolled.[It relied on the coordinate bench decision of Actis Advisers India Pvt. Ltd affirmed by Del HC wherein it was held that the comparable was functionally different from the assessee who was a routine market support distributor).
- Choksi Laboratory Ltd. as the company provided laboratory services and was engaged in business of testing, analysis and research services. Further, it expended significant amount on glassware and laboratory consumables and had a high fixed asset ratio.

Intercontinental Hotels Group [India] Pvt Ltd [TS-894-ITAT-2018(DEL)-TP] ITA No.5809/Del/2014 and ITA No.5479/Del/2014 dated 27.07.2018

339. The Tribunal held that the assessee engaged in provision of business/technical support services to its AE could not be compared to:

- Engineering India, Rites Ltd and HSCC (India) as the companies was a government based company having limited risk factor since the customers were mainly of Government and therefore had different functional profile as compared to assessee. Further, from the annual report of Engineering India, Rites Ltd and HSCC (India), it was evident that the OP/OC margin of this company was higher as compared to assessee.
- IBI Chematur as it was engaged in diversified activities like providing basic and detailed engineering services in the field of petrochemicals, fine chemicals, cosmetics, pharmaceuticals, industrial explosives and waste acid recovery and there were no segmental details available. It undertook significant R&D efforts. It had high related party transactions.
- TCE Consultancy Engineering Ltd as the company was functionally different since it offered multidisciplinary services relating to project engineering, industry of power plants, water supply, waste water projects and segmental information was not available.

Parsons Brinchkerhoff India Pvt Ltd [TS-886-ITAT-2018(DEL)-TP] ITA No.1037/Del/2015 dated 31.07.2018

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

- Apitco Ltd as it was engaged in diversified activities in the nature of project report preparation, technical and economic studies, feasibility studies, microenterprise and skill development etc. and there was no segmental information available. It noted that apart from the market and social research activity, none of the other activities appeared to be functionally comparable to the assessee. The Tribunal relied on the Delhi HC ruling in Rampgreen Solution India Pvt. Ltd. to reject the Revenue's contention that there was no requirement to have identical services under TNMM.
- Global Procurement Consultants Limited as the company focused on procurement and provided related technical assistance, transparency, efficiency and effectiveness of procurement, procurement audits and implementation services to various sectors including power, water resources, transportation, etc. thus, the services provided by the company were different from the

services rendered by the assessee, which were confined to market support. [A similar view was taken by the coordinate bench assessee's own case for earlier year.]

- TSR Darashaw Limited as there was a huge functional disparity between the companies noting that the company undertook registrar and transfer agent functions for equity and preference shares, debenture instruments and bonds commercial paper and private placements. As part of its records management activity, the company storage, retention & retrieval of physical and/or electronic records and under the payroll and trust fund activity, it handled payroll and retirement funds, including interface with the government organizations. [A similar view was taken by the coordinate bench assessee's own case for earlier year.]
- Quippo Valuers as the company was engaged in asset management services, including a sale of construction and earthmoving equipment, execution of live auctions for financial institutions, valuation of assets and hence was functionally different.

Philip Morris Services India S A vs ACIT (Now known as Philip Morris Services India SARL) [TS-806-ITAT-2018(DEL)-TP] ITA No.1408/Del/2015 dated 19.07.2018

341. The Tribunal remitted the issue of determining the ALP of business support services of the assessee to its AE with direction of selecting comparables afresh on account of TP analysis carried out by the TPO based on wrong FAR of the assessee and comparables and further, the TPO had assumed wrong functions (marketing support services) were performed by the assessee. It also observed that TPO had himself accepted comparables challenged by assessee in present appeal in subsequent AYs and assessee's business model had not undergone any change. Thus, the Tribunal remitted the issue back by applying the principle of consistency and co-ordinate bench ruling in Adidas Technical Services.

Wolters Kluwer (India) Pvt Ltd vs DCIT [TS-521-ITAT-2018(DEL)-TP] ITA No.1700/Del/2015 dated 06.07.2018

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

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

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

343. The Tribunal excluded 8 of the TPO's comparables on the ground of non-satisfaction of the 25% export-filter, functional dissimilarity, extraordinary events like amalgamation impacting profitability, non-availability of segmental results, unreliable financial data etc and observed that the TPO had adopted faulty search process wherein only 'ITeS' companies and not those from the fields of 'Back-Office Support Services' and 'Software Development Services' were analyzed for potential comparables. It dismissed the Revenue's contention to remand the matter to the TPO noting the discrepancies between TPO's order (finalizing 13 comparables) vis-a-vis the show cause notice issued to assessee (wherein 17 comparables were selected) and accordingly held that if the Revenue's contention of remanding the matter was to be accepted it would tantamount to allowing the TPO premium on his carelessness and callousness of the and would encourage unnecessary litigation.

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

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

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

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

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

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

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

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

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

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

347. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order rejecting TPO's re-characterization of assessee as 'trader' instead of business support services provider. Relying on the decision of the High Court in Li & Fung, it observed that in view of the undisputed fact that AEs of the taxpayer was into trading activities of various product and the assessee was merely rendering business support services to these AEs in the form of facilitation services to source goods from India, the activities carried out by the assessee could not be classified as trading activities. It further noted that the assessee did not bear any risk in the nature of credit risk, price risk, inventory risk, storage and handling risk etc and accordingly held that the TPO erred in his recharacterization. Considering that

assessee had not developed any intangibles or accorded location savings to AE and had earned net operating profit margin on cost of 129.34% against that of its comparables i.e. 14.05%, it held that the assessee was adequately compensated.

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

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

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

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

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

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

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

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

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

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

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

351. The Tribunal held that assessee providing marketing support services to its AE could not be compared to Empire Industries Ltd as its major chunk of revenue was from trading activity whereas the assessee **was** predominantly a service providing entity.

ACIT 14(2)(1) vs Hitachi Data Systems India Pvt Ltd- TS-420-ITAT-2018(Mum)-TP-ITA No 1012/Mum/2016 dated 04.05.2018

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

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

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

353. The Tribunal deleted the TP adjustment and the rejected the TPO's approach of discarding 2 comparables selected by assessee for benchmarking technical support services to BMWAG [a German entity] on the basis that they were not from Germany but from USA and Japan respectively. The Tribunal relied upon the decision of Bharati Airtel and held that difference in geographical location of market is not sufficient reason to reject a comparable until it can be substantiated that the same resulted in different market conditions. The Tribunal accepted assessee's contention that pricing /cost structures and market dynamics of developed countries like Germany, USA Japan were similar and the service providers from developed countries like USA and Japan have similar economic environment as Germany.

BMW India Pvt Ltd v/s. ACIT [TS-401-ITAT-2018(DEL)-TP] ITA No.6160/Del/2014 dated 14.05.2018

354. The Tribunal held that assessee engaged in providing sourcing support services to AE for AY 2013-14 could not be compared to Axis Integrated Systems. The Tribunal noted that assessee was a routine captive sourcing service provider while Axis Integrated Systems was engaged in the business of issuing digital certification, however, TPO/DRP included it as a comparable after holding there was a broad similarity in the functionality as both the companies were providing business support services. The Tribunal observed that TPO/DRP had not elaborated as to how it had reached the conclusion that there was a broad functional similarity between assessee and Axis Integrated Systems. The Tribunal relied on Rampgreen Solutions HC ruling and co-ordinate bench ruling in Avenue Asia Advisors and held that DRP as well as the TPO had overlooked the essential requirement that even under TNMM the standard for selection of the comparable transactions could not be diluted. Thus, it dissented with the findings of the lower authorities that a captive sourcing service provider like the assessee could be considered functionally similar to a company providing liaisoning services like Axis Integrated Systems Ltd and directed exclusion **of the said company**.

Li & Fung (India) Pvt. Ltd vs. ACIT [TS-352-ITAT-2018(DEL)-TP] ITA No.7549/Del/2017 dated 14.05.2018

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

- Priya International Ltd. - as the said entity's business model of earning commission on sales was different from assessee's business model of getting remunerated at Cost plus basis. It was observed that Priya International Ltd. (Seg.) had a huge amount of unallocated expenses which was ignored by the TPO in computing the segmental margin of this company.
- Hightemp Techmat Pvt. Ltd.as the said entity was mainly into Processing business which was different from assessee's business.
- ICRA Management Consulting Services- as the company apart from the corporate advisory practices, had established two specialized divisions, viz., Information technology and Research activities
- IDC (India) Ltd.- as the comparable was a research company, primarily dealing in research and survey services and products, and it was also engaged in selling products
- IL & FS Ecosmart Ltd.- as the company was engaged in four business lines, namely, Waste management; Resource conservation; Information systems; and Consulting & advisory services and there was ostensible differences in activities carried out by this company
- Inmacs Management Services Ltd.- as the true nature of services was not discernible even from its Annual report.

- RITES Ltd.- as the said entity had diverse nature of services and segmental details were not available.
- Shree Raj Travels and Tours Ltd- as the said entity's business model of earning commission on sales was different from assessee's business model of getting remunerated at Cost plus basis irrespective of actual sales.
- Spencer's Travel Services- as the company was engaged in making sales which was not similar to the assessee company
- Choksi Lab Ltd.- as it was engaged in providing testing services unlike assessee company engaged in marketing support services.
- WAPCOS Ltd- as it was engaged in infrastructure development projects
- Interads Ltd.- as the company was earning income from participation fee, onsite service fee and other miscellaneous receipts and thus the nature of services rendered by this company were nowhere close to that of the assesee.
- PL Worldways Ltd- as the company was earning income on commission basis which was distinct from the cost-plus model followed by the assessee.

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

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

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

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

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

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

- HSCC India Ltd as it was not clear whether the company being a government company had received any grants or subsidies. Further, it also directed the TPO to keep in mind that the said company was rejected as a comparable in the assessee's own case for the previous year.
- Mahindra Consulting Engineers Limited to verify the functional profile and clearance of RPT filter.
- Mitcon Consultancy Engineering Services Ltd to verify the RPT filter and segmental information to decide comparaibility..
- Mahindra Engineering Services as the RPT of the company was 58.63 observing that it had been retained as a comparable in the assessee's own case for the last two years.
- EDCA Engineering to decide on the functional comparability

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

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

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

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

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

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

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

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

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

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

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

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

Research & Development Services

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

Chocsi Laboratories as the said company performed diverse activities and did not have segmental results

TCG Lifesciences Ltd & Transgene Bioteck Ltd as the said companies, engaged in the pharmaceutical industry were functionally dissimilar to the assessee engaged in the automobile industry. Further, it noted that the companies owned intangible assets and undertook high risks and therefore held that they could not be adopted as comparable.

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

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

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

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

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

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

Others

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

- Kitco Limited as it was a 100% Government owned undertaking rendering services primarily to Central/State Government undertaking and PSUs and derived benefit out of this relationship. Its profit margins could not be said to be indicative of a free market economy since profit motive was not a relevant consideration in case of government undertakings and hence the company wouldn't be a good comparable. [It relied on the coordinate bench decision in assessee's own case for earlier year which had in turn relied on decision in case of Thyssenkrupp Industries]
- TCE Consulting Engineers Ltd as the as the company was engaged in pre-project activities, procurement assistance, project management, commissioning and coordination, inspection, construction and supervision which was functionally different from the assessee and in absence of segmental data, profitability of engineering design segment could not be known. [[It relied on the coordinate bench decision of the assessee's own case for earlier year]
- Certification Engineering International Ltd as it was functionally dissimilar, distinct in the geographical market in the light of foreign exchange fluctuation risk in addition to high RPT undertaken by the company. [It relied on the coordinate bench decision of the assessee's own case for earlier year]

- Global Procurement Consultants Ltd as the company undertook valuation, consultancy and financial advisory assignments not linked with services provided by the assessee to its AE
- IBI Chematuru Engineering and Consultancy Ltd. as the company was engaged in diversified activities like project planning, management services, procurement assistance, project management, commissioning and coordination, inspection, construction and supervision etc. and had no separate segment information. Further, the company also undertook substantial R&D activities which was not a function performed by the assessee. [It relied on the coordinate bench decision of the assessee's own case for earlier year]
- Mitcon Consultancy and Engineering Services as the company was engaged in diversified activites like providing technical consultancy, rendering vocational trainings, IT trainings and laboratory services, executing environment monitoring assignments, etc which was not functionally comparable to the assessee.
- REC Power Distribution Company Ltd. as the company was a wholly owned subsidiary of of REC Ltd which is a government company and hence could not be comparable in light of the findings given by the co-ordinate bench in the case of Thyssenkrupp Industries.
- RITES Limited as it was functionally not comparable since it was engaged in activities like engineering consultancy, traffic studies, and export of locomotives and maintenance of the locomotives, construction and project management for railway track, electrification together with traffic and software consultancy assignments. [It relied on the coordinate bench decision of the assessee's own case for earlier year]
- Usha Hydro Dynamics Ltd as the services offered by the company were different from the assessee since it was engaged in the business of cleaning of various machines and equipment for various industries and was also doing trading business.
- UB Engineering Ltd as the company was engaged in mechanical erection/engineering procurement and construction [EPC] and EPC Electrical and therefore was functionally dissimilar to the assessee.
- The Tribunal relying on the coordinate bench decision in assessee's own case for earlier year included Accuspeed Engineering Services India Ltd as a comparable since it provided consultancy services in engineering solutions and services covering designs, detailed engineering, project construction and management which was functionally similar to the assessee

Bechtel India Pvt Ltd vs DCIT [TS-1026-ITAT-2018(DEL)-TP] ITA No.6779/Del/2015 dated 20.08.2018

367. Relying on the coordinate bench decision in assessee's own case for earlier year, the Tribunal held that assessee engaged in providing tour services to AE could not be compared to Cox & Kings Limited as it was involved in different activities besides tour operation and had its own brand value. Therefore, it could not be held to be a good comparable for determination of the ALP for the international transactions. [The coordinate bench decision in assessee's own case for earlier year had in turn relied on HC decision of Oracle (OFSS) BPO Services wherein said comparable was excluded on the ground that thesaid company's brand plays its own role in price or cost determination].

Enchanting Travels Pvt Ltd vs ITO [TS-1123-ITAT-2018(Bang)-TP] IT(TP)A No.444/Bang/2017 dated 14.09.2018

368. The Tribunal dismissed Revenue's appeal and held that assessee engaged in manufacture and export of silk fabric could be compared to:

- Zenith Exports Ltd as it was engaged in manufacture and trading of silk fabrics and its segmental results were available and rejected Revenue's contention of high turnover and assets since in AY 2010-11 TPO himself had selected the comparable with similar turnover and comparable assets.
- Eastern Silk Ind. Ltd as its RPT filter of 16.25% was within the tolerance range of 15%-25% as considered by coordinate bench decisions and also the TPO had accepted this comparable in subsequent year even though the comparable had a higher RPT.

Further, it excluded Silktex Ltd. from the list of comparables included by the TPO and confirmed by the CIT(A) since its asset base was a mere 23.47 crores as against the tested party's asset base of 64.21 crores.

DCIT vs JJ Exporters Ltd. [TS-1047-ITAT-2018(Kol)-TP] ITA No.1371/Kol /2017 and CO No.71/Kol/2018 and ITA No.1372/Kol/2017 and and CO No.72/Kol/2018 dated 19.09.2018

369. The Tribunal held that assessee engaged in manufacturing of laboratory and processing equipments could be compared to Shree Pacetronix, Hindustan Syringes and Medical Devices Limited, Centennial Surgical Suture Limited, Allengers Medical Systems Limited Ganson Ltd. and Span Diagnostic Ltd as it was acceptable to broaden the scope of the comparability analysis to include transactions involving products that are different, but functionally similar and rejected assessee's contention that they should be excluded on the basis of product differences.

IKA India Pvt Ltd vs DCIT [TS-1049-ITAT-2018(Bang)-TP] IT(TP)A No.2192/Bang/2017 dated 17.09.2018

370. The Tribunal remitted the TP adjustment made in case of an assessee engaged in the provision of engineering design services to its AE noting that CIT(A) had passed a cryptic order and not considered the grounds of rejection by TPO. He had simply stated that FAR analysis of comparables was same as that of assessee vis-à-vis selections and in case of rejection of comparables given a reason that profit and loss statement were not available, thus ignoring the aspect pointed out by Revenue that PLI of such comparables was calculated which would not have been possible in the absence of financial statements. It also noted that CIT(A) in his order had observed that TPO did not provide an opportunity to the assessee to have the audited financial statements along with the FAR analysis of the comparables selected by him and there was thus violation of principles of natural justice by the TPO. He should have remanded the matter back to TPO for providing an opportunity to the assessee to have the audited financial statements along with the FARanalysis of the said comparables, in view of alleged violation of principles of natural justice. He ignored the portion of TPO's order which clearly stated that financial statements were available in public domain and the same were not asked for by the assessee specifically. Thus, the Tribunal set aside CIT(A)'s order and remitted the matter back to CIT(A) for deciding the same afresh after obtaining a remand report from AO/TPO.

Dy.CIT vs Steel Plus Ltd. (2018) 54 CCH 0036 KolTrib ITA Nos. 1320 & 1321/Kol/2017 dated 12.09.2018

371. The Tribunal held that the assessee engaged in trading in cash counting machines could be compared to:

- CCS Infotech Ltd as it was in similar line of business and was accepted by the TPO as a comparable for earlier years. The Tribunal noted that the business profile of the comparable and the assessee had not changed over the years.
- ACI Infocom Ltd as it was in similar line of business and was accepted by the TPO as a comparable for earlier years. The Tribunal noted that the business profile of the comparable and the assessee had not changed over the years.
- Compuage Inforcom Ltd. as it was accepted by the TPO as a comparable for earlier year since its business profile was similar to assessee and the DRP had directed for its inclusion for AY 2009-10 but failed to include it in the subsequent year AY 2010-11 without any justifiable reason.
- Priya Limited as it was accepted by the TPO as a comparable for earlier year since its business profile was similar to assessee and the DRP had directed for its inclusion for AY 2009-10 but failed to include it in the subsequent year AY 2010-11 without any justifiable reason.
- Iris Computers Ltd as it was in similar line of business and was accepted by the TPO as a comparable for earlier years. The Tribunal noted that the business profile of the comparable and the assessee had not changed over the years.
- CMS Computers Ltd as it was in similar line of business and was accepted by the TPO as a comparable for earlier years. The Tribunal noted that the business profile of the comparable and the assessee had not changed over the years.

De La Rue Cash Processing Solutions India Pvt Ltd vs ACIT [TS-1121-ITAT-2018(DEL)-TP] ITA Nos.1113/Del/2014 and ITA No.1606/Del/2015 dated 28.08.2018

372. The assessee was engaged in the manufacture of headliners, door panels, parcel trays, etc (covered in auto ancillary segment). for its AE. The TPO rejected three of the eleven comparables selected by assessee. The Tribunal held that a) K.R. Rubberite Ltd b) Lifelong India Ltd. which were engaged in production/manufacture of autoparts were comparable to assessee as the auto parts were covered in auto ancillary units. Further, it rejected Bright Autoplast Ltd.as its RPT was very high and hence did not

satisfy the RPT filter applied by TPO. It directed TPO to recompute mean margin of comparables and determine the ALP, if any.

Grupo Antolin India Pvt. Ltd (Erstwhile known as Grupo Antolin Pune Pvt. Ltd vs Dy.CIT) [TS-1128-ITAT-2018(PUN)-TP] ITA No.299/Pun/2013 dated 17.10.2018

373. The assessee was engaged in the business of distribution of subscription rights of satellite channels. The Tribunal following the coordinate bench decision of assessee's own case for earlier year included 4 comparables namely, Softcell Technologies Ltd., Sonata Information Technologies Ltd., Empower Indsutries India Ltd. (In the earlier year's decision, the Tribunal noted that the said comparables were accepted by assessee) and Trijal Industries (The Tribunal in the earlier year noted that software distribution company were held to be a good comparable to distribution companies in case of coordinate bench ruling in case of NGC India Pvt Ltd and also was accepted as a valid comparable by TPO in AY 2013-14.) as there was no change in material facts from previous year.

DCIT vs Turner International Pvt Ltd. [TS-1238-ITAT-2018(DEL)-TP] ITA No.1149/Del/2015 and CO No.43/Del/2018 dated 08.10.2018

374. The Tribunal remanded the entire matter to CIT(A) to decide afresh noting that CIT(A) had passed a cryptic order on the issue raised by the assessee that TPO had erred by not restricting the TP adjustment to AE transaction only,although it was observed by CIT(A) that assessee had two manufacturing units in two buildings (one in respect of goods manufactured and exported to AE and one for non-AE). Observing that the CIT(A)'s order had not given a finding when the assessee had specifically taken a ground before CIT (A) that the AE segment under the manufacturing activities was concerned, its transactions were at arm's length even if the comparables adopted by the TPO were to be considered, it restored the appeal to CIT(A) directing that he should decide all the aspects of the matter afresh by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides.

Sartorius Stedim India Pvt Ltd. vs Dy.CIT [TS-1218-ITAT-2018(DEL)-TP] ITA No.2084/Bang/2017 dated 12.10.2018

375. The Tribunal held that assessee engaged in provision of engineering design to its AE could not be compared toAcropetal Technologies as the margin for subject year (57.66%) was abnormal when compared to margins in preceding and succeeding financial years.

Cameron Manufacturing India Pvt Ltd. vs DCIT [TS-1254-ITAT-2018(CHNY)-TP] ITA No.336/Chny/2018 dated 16.10.2018

376. The Tribunal held that assessee engaged in providing engineering design services to its AE could be compared to:

- Mahindra Consulting Ltd as it was providing services in civil and structural similar to the assessee.
- STUP Consultants Private Limited as it was providing consultancy services in civil engineering similar to the assessee.
- KITCO and MM Dastur Ltd. for the same reasons as inclusion of Mahindra Consulting Ltd. and STUP Consultants Private Limited as the function profiles of said comparables was similar to assessee

Further

- It remanded the comparability of Alphageo India Ltd. in line with earlier coordinate bench decision in assessee's own case with direction to TPO to give an opportunity to the assessee to substantiate that said comparable was engaged in providing other engineering services and assets employed were comparatively higher than assessee company
- It remanded the comparability of Semat Ltd. with a direction to TPO to call for the Annual report for the subject year and to decide the comparability afresh.

- It remanded the comparability of Consultant Engineers Services (India) Pvt Ltd and Development Consultants Private Limited with direction to TPO to call for annual reports of the companies for subject year and decide the issue in accordance with DRP's directions for subsequent year (accepted as good comparables).
- It excluded Kirloskar Consultants Ltd. as it had undergone financial restructuring which was an extraordinary event

Eigen Technical Services Pvt Ltd vs Dy.CIT [TS-1286-ITAT-2018(DEL)-TP] (ITA No.806/Del/2013) dated 22.10.2018

377. The Tribunal restored the issue of determination of ALP in case of assessee engaged in leasing and sub-leasing of vessel from AE and to its AE noting that none of the companies selected by TPO were engaged in the same activity as the assessee. It directed the TPO/AO to select the correct comparables functionally, asset wise to arrive at PLI to benchmark and determine ALP. Further, it rejected assessee's plea that adjustment for government policies should be granted while determining ALP noting that assessee intended to buy the vessel from AE however RBI had not granted permission for ECB Borrowing due to which it had leased the vessel from AE and the assessee failed to explain the reasons as to why it had leased the vessels from AE at a higher rate.

Lewek Altair Shipping Pvt Ltd. vs ACIT [TS-1114-ITAT-2018(Viz)-TP] ITA No.93/Viz/2017 and ITA No.559/Viz/2017 dated 10.10.2018

378. The Tribunal restored the comparability of Supraj Engineering Ltd (manufacturing brake lining for four wheelers and two wheelers) in case of assessee engaged in the business of manufacturing brake lining to automobile industry, more particularly, 4-wheeler noting that assessee's ask for exclusion was on basis that there were no segmental details in respect of manufacture for 4 wheelers and 2 wheelers however Revenue could obtain the segmental details. It directed TPO to issue necessary notice under Section 133(6) to find whether segmental details were available and thereafter decide issue afresh in law.

Infac India Pvt Ltd vs Dy.CIT [TS-1369-ITAT-2018(Chny)-TP] (IT(TP)A No.27 /Chny /2018 dated 05.10.2018

379. The Tribunal held that assessee engaged in provision of designing services to its AE could not be compared to:

- Archohm Consults Pvt Ltd. as it was providing architect services whereas assessee was engaged in designing, development of new product and computer aided designing.
- Zipper Trading Enterprises as it was into trading and received commission from acting as an agent from trading.

Further, it included

- Neilsoft Ltd as it was engaged in software engineering services which were similar to assessee's designing services.
- Tata Elxsi's software development and services segment (which included product design services, innovative design engineering and visual computing) as nature of services provided were similar to assessee.
- Software development and services segment of Varna Industries as its segment was similar to the services provided by the assessee

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.) vs ACIT [TS-1225-ITAT-2018(DEL)-TP] (ITA No.1882/Del/2014) dated 14.11.2018

380. The Tribunal held that assessee engaged in manufacturing products assembled in manufacture of air conditioners for its AE could not be compared to:

- Rexnord Electronics. as it was a turnkey provider for industrial refrigeration where its compressors manufactured and packaged condensers were used in food and chemical industries and as per financials on record, the company had undertaken several research developmental activities.

- Frick India Ltd. as it was into manufacturing fans, motors, blades and accessories.

Further,

- It included Blue Star Limited subject to TPO being able to compute the profit margin from assembly of airconditioners otherwise on failure of TPO to do so, the comparable was directed to be excluded.

Carrier Midea India P. Ltd vs Dy.CIT [TS-1256-ITAT-2018(DEL)-TP] (ITA No.7675/Del/2017) dated 22.11.2018

381. In case of assessee engaged in manufacture of autoparts, the Tribunal remanded comparability of a) Munjal Showa Ltd. so as to enable assessee to submit financials which were not submitted before the TPO. (The assessee was contesting its exclusion on basis high turnover and that it was engaged in manufacture of different products) b) Bosch Chasis Systems India Ltd directing the TPO to call for comparable's data to verify if results could be reasonable excluded (It relied on Del HC decision of Mckinsey Knowledge Centre wherein it was stated that a comparable having different financial year could not be excluded if its results could be reasonably extrapolated.)

Nissin Brake India Pvt Ltd vs DCIT [TS-1252-ITAT-2018(DEL)-TP] ITA No.6366/Del/2017 dated 16.11.2018

382. The Tribunal held that assessee engaged in provision of medical transcription services to its AE could not be compared to:

- Accentia Technologies Ltd as it earned revenue from three sources (medical transcription, coding and software development) and there were no segmental details available and it had been categorized under a single segment namely healthcare receivables management. Further, the company had undergone an extraordinary event of merger
- Cat Technologies Ltd as it had revenue from three sources (namely, medical transcription; software development and consultancy services; and training income) however there was no segmental details available and further, majority of its revenue was from software development

DCIT vs Transcend India Pvt. Ltd [TS-1319-ITAT-2018(DEL)-TP] ITA No.2754/Del/2015 and CO No.446/Del/2015 dated 10.12.2018

383. The Tribunal held that assessee engaged in provision of business facilitation services (consulting services) to its AE could be compared to a) Cyber Media Research Ltd. and b) ICRA Online Ltd. as it was accepted by TPO in the last two preceding years then there was no premises to reject the comparables when TPO/DRP had not brought out that that the functional profile of either of the aforementioned comparables or that of the assessee had witnessed a change during the subject year as against the preceding year. It opined that in the absence of any change in the circumstances a company which has been accepted as a good comparable by the Revenue in the earlier years cannot be whimsically rejected in a subsequent year by relying on Bombay HC judgment in Aptara Technology Ltd. wherein it was held that in the absence of Revenue being able to establish any difference in the facts from that existing in the earlier AY to that existing in the subject AY, there was no reason to exclude the comparable.

Basell Polyolefins India Pvt. Ltd vs ACIT[TS-1388-ITAT-2018(MUM)-TP] ITA No. 2659/Mum/2016 dated 19.12.2018

384. The Tribunal remitted a) Cosmic Global Ltd and b) Calibre Point Business Solutions Limited (not part of assessee'sTP study as financials were not available in public domain and submitted during scrutiny proceedings) in case of assessee engaged in providing engineering design services to its AE to verify assessee's contention that they were functionally comparable and if they satisfied the filters applied by TPO. Further, it directed to determine whether after inclusion of comparables, the margin of assessee vis-à-vis comparables would be within +/-5%.

Carraro Technologies India Pvt. Ltd. vs Dy.CIT[TS-1386-ITAT-2018(PUN)-TP] ITA No. 1281/Pun/2015 dated 05.12.2018

385. The Tribunal remitted the issue of adjustment made to ALP of international transactions for denovo adjudication by the TPO accepting assessee's contention for set aside on ground that the comparables were not considered by TPO/DRP. It directed assessee to submit necessary documentation in support of its contention and to adduce fresh evidences.

Foster Wheeler Bengal Pvt. Ltd. vs ACIT[TS-1269-ITAT-2018(Kol)-TP] ITA No. 41/Kol/2017 dated 07.12.2018

386. The Tribunal held that assessee engaged in the provision of vessel related services could not be compared to:

- Aegis Logistic Ltd. as the functional profile vis-à-vis assessee was different on account of it providing liquid logistics outside port area, to the destination through pipelines. Further, the DRP had directed the TPO to retain the said comparable only if segmental data was available.
- Malabar Coast Services Pvt. Ltd. as the turnover of Rs.1.96 crores vis-à-vis assessee company of 275 crores could not be comparable. Further, the Tribunal noted that the comparable had a high margin of 42.33% as compared to its holding company also which was an anomaly and should have been investigated by the TPO before its inclusion.[It relied on the decision of Bom HC in Pentair Water India Pvt. Ltd for excluding on basis of turnover.]

Bothra Shipping Services (Currently known as Bothra Shipping services Pvt) vs ACIT [TS-814-ITAT-2018(Kol)-TP] ITA No.188/Kol/2017 dated 31.07.2018

387. The Tribunal held that assessee engaged in the manufacture of jewellery could not be compared to Gitanjali Export Corporation Pvt Ltd as it was into polished diamond export and the content of gold in the jewellery exported by the company was negligible i.e.1.10% as against assessee's average gold content of 40%. Thus, could not be compared owing to product dissimilarity.

DCIT vs Uni Design Jewellery Pvt Ltd [TS-769-ITAT-2018(Mum)-TP] ITA No.4341/Mum/2016 dated 02.07.2018

388. The Tribunal restored the issue of benchmarking the transport segment of the assessee by comparing the non-AE refrigeration segment of the assessee as an internal comparable in light of the Calcutta HC decision of Trimline Vyapaar Ltd. wherein it was held that additional evidence could not be permitted to be adduced without giving an opportunity to the AO. The TPO had rejected the refrigeration segment as an internal comparable since the nature of work carried out was different. The TPO adopted external comparables and proposed a TP adjustment. The Tribunal noted that the coordinate bench decision in assessee's own case had restored the issue to TPO to examine the functional profile of the relevant two segments with a direction to obtain the opinion of technical expert on functions performed by the assessee under the two segments to find out the similarily/dissimilarity.In the remand proceedings, the TPO had relied on the valuation officer's report to hold that functions were not similar of the two segments however it was noted by the Tribunal that there was no detailed discussion on functions, assets and risks in the two segments of the assessee. Thus, the Tribunal restored the issue to the TPO/AO to examine the technical expert opinion submitted by the assessee as additional evidence and report of the valuation officer to adduce if the functions performed by the assessee under two segments were similar considering that the facts of each year need to be separately examined.

Carrier Air-conditioning & Refrigeration Ltd vs. ACIT [TS-798-ITAT-2018(DEL)-TP] ITA No.1126/Del/2014, ITA No.728/Del/2015, ITA No.2140/Del/2016 and ITA No.7312/Del/2014 dated 13.07.2018

389. The Tribunal held that the assessee engaged in manufacture and export of frequency control products (FCP) could not be compared to:

- Bharat Electronics Ltd as it was a manufacturer of equipment whereas the assessee was only a manufacturer of components used in making equipment.
- Bharath Heavy Electricals Ltd. as it was engaged in diverse activities of manufacture of power station equipment and was also involved in erection and commission, engineering and consulting services
- MIC Electronics Ltd as it was manufacturer of equipment such as LED display systems, LED lighting products, solar grid etc. whereas assessee was only manufacturer of components used in making equipment.

DCIT vs. Centum Rakon India Pvt. Ltd [TS-750-ITAT-2018(Bang)-TP] IT(TP) A No.472/Bang/2016 dated 20.07.2018

390. The Tribunal held that the assessee engaged in provision of staffing services to its AE could be compared to HCCA Business Services Pvt Ltd as the company was engaged in human resource services and based on its agreements with its customers it provided staffing services.
Further, the Tribunal remitted Ma Foi Management Consultants Ltd to analyse if financial results could be extrapolated owing to different financial year endings between the comparable and assessee. It also remitted the comparability of Nirbhay Management Services Pvt Ltd to the file of the TPO for analyzing the functional profile with direction to the assessee to provide all relevant information and material required for verification on account of the company being introduced during course of proceedings before DRP and TPO not being given reasonable opportunity to verify the functional profile of the company.
Pyramid IT Consulting P Ltd [TS-618-ITAT-2018(DEL)-TP] vs ACIT ITA No.7083/Del/2014 dated 11.07.2018

391. The Tribunal admitted the assessee's additional ground with respect to TP study report not being rejected by the TPO and hence improper on the part of the Revenue to proceed with their own determination of ALP, but rejected assessees contention that since TPO categorically accepted assessee's TP Study, his order modifying economic analysis of international transaction was unsustainable. The assessee had relied on the Del HC ruling in the case of Li and Fung and coordinate bench decision in COIM wherein it was held that without first discarding the methodology of the assessee the TPO cannot proceed to make any alterations The Tribunal noted that vis-a-vis benchmarking of IT enabled services and software development services, though TPO had accepted assessee's TNMM for both the segments, he had rejected the economic analysis of the software development segment, filters applied by the assessee and assessee's use of multiple year data. Accordingly, the TPO had directed the assessee to carry out fresh search and had modified qualitative as well as quantitative filters giving reasons. Thus, it observed that the TPO's order clearly and unambiguously demonstrated that the TPO had objected to the TP Study and overruled the objections of the assessee on various aspects of the TP study. Further it noted that the TPO had stated that assessee was not a mere contract software developer but involved in coding and testing of particular items. Thus, it rejected assessee's additional ground, but also clarified that its observations were only restricted to the context of whether the TPO had accepted assessee's TP Study and not on whether the TPO's approach was correct, accordingly scheduled the hearing of the appeal to hear parties on merits.
Microsoft India (R&D) P. Ltd vs Dy.CIT [TS-753-ITAT-2018(DEL)-TP] ITA No.1479/Del/2016 dated 23.07.2018

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

- Balmer Lawrie & Co. Ltd. as company earned revenue from sale of Manufactured goods, Trading goods, Turnkey projects and Services and that the Logistics Segment of the company could not be accurately compared as there were unallocable costs which were wrongly apportioned to the segment based on gross revenue as there were many other considerations such as cost of capital and labour which were to be factored.
- ABC India Limited as the company had 2 streams of income, namely, Transport division and Petrol pump division which could not be compared to the assessee's activities
- S.E.R. Industries Ltd and Delhi-Assam Roadways Corporation Ltd as the companies were not providing any ancillary services, such as, storage and warehousing and custom clearance & documentation etc which were being provided by the assessee
- Transport Corporation of India Ltd. as computation of the profit margin of the Transportation Division of this company by allocating common unallocated expenses in the proportion of revenue was not accurate as held above in the case of Balmer Lawrie.

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

- Premier Road Carriers Ltd as the basis of exclusion adopted by the TPO i.e. it had a high ratio of lease rent to sales of 79.01% was not justified as the assessee itself had a similar ratio of 66.56%
- Roadways India Ltd. as the TPO was incorrect in excluding it merely based on low profits without disputing the functional similarity of the company

- Skypack Service Specialists Ltd as the company was wrongly excluded on the ground of persistent losses wheras it had suffered losses only for the year under review and the immediately preceding year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

401. The assessee was a wholly owned subsidiary of Oriflame Investments Ltd., Mauritius and was engaged in the distribution and sale of cosmetic products manufactured by AE primarily through direct selling channel. During the TP proceedings, the TPO included a comparable viz Modi Care Ltd which apart from cosmetics was also engaged in the marketing of other products. The assessee challenged the inclusion before the Tribunal on the ground that dissimilarity with respect to products sold and the proportion borne by each of the products on turnover would impact profitability of the comparable entity.

Although the Tribunal accepted the plea of functional dissimilarity, yet it did not pass an order for exclusion of the comparable and remanded back the matter to the TPO. The Court on further appeal, remanded the matter back to the Tribunal with a direction for disposal of the case on merits and directed the order of the Tribunal, to remand the matter to the TPO, to be set aside.

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

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

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

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

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

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

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

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

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

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

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

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

- Om Logistics Ltd as it was was engaged in providing air cargo, train Cargo services factory relocation, home shifting/office relocation services which by no stretch of imagination could be compared to courier business of assessee.

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

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

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

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

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

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

408. The Tribunal dismissed the assessee's appeal for exclusion of Advanced Micronic Devices as it was also engaged in trading of health-care products like the assessee and only the relevant segmental details were considered. Further, the Tribunal remanded the comparability of RFL Ltd. to the AO/TPO to bring on record sources of information since the TPO was silent on this aspect and also remitted the calculation of margin as it was engaged in diversified activities and segmental information was not available.

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

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

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

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

410. The Tribunal rejected the contention of the assessee for inclusion of Neelkanth Rock Minerals as comparable on the ground that it was functionally dissimilar since it had activities of granite quarrying and processing whereas the assessee was not into mining but only processing. Further, the Tribunal also rejected the contention of the assessee for inclusion of Vajra Granites Ltd. as comparable on the ground that it was functionally dissimilar since unlike the assessee it had quarry land on which the company had claimed depreciation also on the basis of depletion of mineral resources.
Indigra Exports Pvt Ltd v DCIT [TS-509-ITAT-2018(Bang)-TP] IT (TP)A No.488/Bang/2016 dated 22.06.2018

411. The Tribunal remitted the issue of determining the ALP to AO/TPO and directed them to include two comparables viz. Haldiram Bhujiawala and Capital Foods for benchmarking assessee's sale of Ready-to-Serve products to AE. It observed that the comparables had been accepted by the assessee in subsequent assessment year and relied on the ruling of Bobst India where the TPO was directed to include a company in the list of comparables as the said company was found to be comparable entity in the subsequent assessment year.
Tasty Bite Eatables Limited vs DCIT [TS-730-ITAT-2018(PUN)-TP] ITA No.337/Pun/2014 dated 11.06.2018

412. The Tribunal observed that the TPO excluded the three comparables viz. Akasaka Electronics Ltd, DR Electricals & Switchgears Pvt. Ltd. and JK Switchgears& Cable Pvt. Ltd by merely stating that they did not meet the criteria of one or more filters with respect to the assessee engaged in manufacturing of medium voltage switchgear components, ring main unit components, etc. Further, the DRP had confirmed the TPO's order of exclusion without any findings. The TPO/DRP had failed to consider the submissions of the assessee vis-à-vis the comparables satisfying all the filters. Thus, the Tribunal directed the DRP/TPO to give clear finding on their inclusion/exclusion after considering all details and evidence available and remanded the matter.
Efacec Switchgear India Pvt Ltd vs DCIT [TS-830-ITAT-2018(DEL) TP] ITA No.7817/Del/2014 dated 13.06.2018

General

413. The Tribunal upheld the DRP's order excluding companies with turnover of less than 200 crores and exceeding 2000 crores relying on the coordinate bench decision in Genisys Integrating Systems wherein a guideline in the matter of turnover was suggested that companies having turnoverless than 200 crores are small companies, companies with turnover between 200 to 2000 crores are medium companies and companies exceeding turnover of 2000 crores are large companies and hence taxpayer being a medium company, small and large companies had to be excluded as comparables.
Thomson Reuters International Service Pvt Ltd vs DCIT [TS-1090-ITAT-2018(MUM)-TP] ITA No. dated 03.08.2018

414. The Tribunal remitted the matter, with respect to determination of ALP for benchmarking of the debt collection services & telemarketing rendered by assessee on the basis of adopting the foreign AE as the tested party, for fresh determination at the assessment stage. Noting that the TPO and CIT(A) had not assigned any reason for rejecting the foreign AE as a tested party, considered the submissions of the assessee that the tested party has to be the least complex entity which was the case as the foreignAE owned insignificant infrastructure whereas operating assets were mostly owned by the assessee and the risk of performance of services and risk of quality and timeliness of services werealso with the assessee and further the assessee was involved in the actual business of debt collection. It notedpeculiar business model and functional relationship between the assessee and AEandrestored the matter to the AO/TPO.
Global Vantedge Pvt Ltd vs. ACIT [TS-895-ITAT-2018(DEL)-TP] ITA Nos.2093 and 2386/Del/2014 dated 23.08.2018

415. The Tribunal set aside the TPO's order and remitted the issue of comparables, computation of margins for them and ALP-determination back to the file of AO/TPO in case of an assessee engaged in providing content design and development support services for online courseware to AE in USA. It was assessee's contention that the TPO had erred in computing the margin of comparables namely Sasken Communications Technologies Ltd) and Sonata Software Ltd. The Tribunal set aside all comparables finally selected by TPO/AO in terms of FAR analysis of assessee. It directed the AO to decide the comparability of comparables on the basis of functions performed by these companies, risks assumed and assets owned by the comparables vis-a-vis that of assessee and also to verify the computation of margins.

Element K India Pvt Ltd vs ITO [TS-1119-ITAT-2018(DEL)-TP] ITA No.1153/Del/2014 dated 06.09.2018

416. The assessee a resident of UK entered into an agreement with its parent company (Tata Motors Ltd.) for rendering of design, engineering, testing, validation services etc. for which it sent its employees to India (constituted a service PE). The assessee had selected UK companies as comparables as it (foreign tested party) was incurring operating costs in UK, and had employees based in UK. The DRP upheld TPO's rejection of foreign comparables selected by assessee.The assessee had challenged the rejection of foreign companies selected as comparables by the assessee for benchmarking the international transactions with its Associated Enterprises (AE) which was decided in its favour by the coordinate bench decision of preceeding years wherein foreign comparables were selected. The Tribunal noted that the issue had been raised before DRP who had not adjudicated on it since on the basis of its directions no TP-adjustment had survived. It observed that the issue was a merely academic one and there was no need to delve into it but kept it open for decision if need be in future in light of the favourable coordinate bench ruling in its own case.

Tata Motors European Technical Centre Plc vs DCIT [TS-1022-ITAT-2018(Mum)-TP] ITA No.850/Mum/2017 dated 12.09.2018

417. Following the coordinate bench decision in assessee's own case for earlier year, the Tribunal held that forassessee engaged in sale of IC Engines, spares, components, manufacturing and procurement activities should be aggregated under TNMM since they are inextricably linked together and the TPO erred in segregating the transactions. Further, it also held that margins of assessee were to be compared with average margins of external comparable companies in view of Tribunal's order in the assessee's own case for earlier year wherein it was held that while applying TNMM on aggregate basis, since various transactions were interlinked, comparison had to be made with uncontrolled transactions.

Cummins India Limited vs Dy.CIT [TS-1099-ITAT-2018(PUN)-TP] ITA No.556/Pun/2015 dated 25.09.2018

418. The Tribunal remitted the issue of comparability of companies in case of assessee engaged in software development to DRP in view of DRP passing a cryptic and non-speaking order noting that it had not dealt with any of the objections filed by assessee vis-à-vis exclusion of comparables (export filter, employee cost filter etc.) and had only observed that the TPO had given reasons for rejecting the comparables.

Sun Tec Business Solutions (P) Ltd vs Dy.CIT [TS-1206-ITAT-2018(Coch)-TP] ITA No.113/Coch/2016 and 509/Coch/2016 dated 12.09.2018

419. The assessee-company sold liquor under two segments viz. (i) 'Bottled in India Scotch' ("BIIS") segment – under which, it processed compound alcholic preparation imported from its AE into scotch/whiskey and then sold it in India and (ii) India Made Foreign Liquor ("IMFL") segment (pertaining to domestic business) – under which it sold the liquor manufactured from raw materials by it in India. The TPO clubbed BIIS and IMFL segment for benchmarking of the import transaction from its AE and made a TP adjustment by considering companies mainly into manufacturing of IMFL as comparable under TNMM. The Tribunal held that segmental approach adopted by assessee by segregating BIIS and IMFL business for purpose of computing ALP was justified. It held that only because the assessee, in its financials, had not shown the aforesaid two segments separately for purpose of reporting as per AS-17 (segmental reporting), it could not be concluded that transactions / segments were interlinked or connected. It followed the coordinate bench ruling in assessee's own case for an earlier year wherein

assessee's segregation approach was upheld noting that IMFL and BIIS segment were distinct because of functional and product differences. The Tribunal also held that the TPO had not carried out comparability analysis properly and, accordingly, set aside the issue to TPO to determine comparables which were exclusively in manufacturing/processing of BIIS product only (as comparable companies selected by TPO were mainly into manufacturing of IMFL).

Beam Global Spirits and Wines (P) Ltd vs Dy.CIT [2018] 99 taxmann.com 128 (Delhi - Trib.) IT APPEAL NO. 3530 (DELHI) OF 2010 dated 12.09.2018

420. The Tribunal dismissed assessee's plea for inclusion of comparable companies on the basis of additional filter of export sales less than 75% of the total income noting that assessee had failed to rebut the DRP's finding that more than 86% of the operating revenue was earned by assessee out of export sales and thus, opined that the lower authorities had rightly applied an appropriate filter for comparability analysis.

Omniglobe Information Technologies (India) Pvt Ltd vs Addl CIT [TS-1146-ITAT-2018(DEL)-TP] ITA 6980/Del/2017 dated 15.10.2018

421. The Tribunal restored the entire TP matter to DRP directing it to apply onsite filter for all the comparables (and then to decide objections on functional similarity/dissimilarity) noting that DRP had applied onsite filter to only three out of thirteen comparables and the aforesaid filter was not applied by TPO. It followed the coordinate bench ruling in Broadcom Communication Technologies (P.) Ltd. wherein the DRP had applied onsite filter to only one comparable and the Tribunal had restored back with directions to DRP that for comparables passing the onsite filter, DRP should examine the applicability of all other relevant filters also and decide about inclusion/exclusion of comparables after providing adequate opportunity to the assessee to be heard.

ACIT vs IMS Health Technology Solutions Pvt Ltd. [TS-1199-ITAT-2018(Bang)-TP] IT(TP)A 577/Bang/2016 dated 12.10.2018

422. The Tribunal restored the matter back to TPO for examination noting that turnover was not relevant criteria if companies were otherwise functionally comparable in case of power control division of assessee. The assessee had relied on Delhi HC decision of Chryscapital Investment Advisors (India) P Ltd. wherein it was held that high turnover does not ipso facto lead to the exclusion of comparables and TPO had to satisfied that such differences do not materially affect price or cost and an attempt would have to be made to eliminate such differences.

GE India Industrial Private Limited vs ACIT [TS-1315-ITAT-2018(DEL)-TP] ITA No.2781/Ahd/2012 dated 04.12.2018

423. The Tribunal held that AO erred in holding that there was no logic in bifurcating trading and manufacturing activity and considering the operations of assessee in entirety following the coordinate bench in assessee's own case for earlier year wherein it had accepted that assessee was engaged in export of finished goods apart from trading of components. It remitted the matter back to AO/TPO to benchmark two activities separately and apply TNMM, accordingly,determine ALP under umbrella of manufacturing and trading activities.

Dy. CITvsStauff India Pvt Ltd. [TS-1362-ITAT-2018(PUN)-TP] ITA No.1579/PUN/2014 dated 18.12.2018

424. The Tribunal accepted assessee's application of 50% manufacturing/trading income filter as against TPO's 75% service income filter since the filter was in fact broader one leading to the broader set of potential comparables noting that the TPO in the subsequent year accepted the assessee's 50% manufacturing/trading income filter.

Wolters Kluwer (India) Pvt Ltd vs DCIT [TS-521-ITAT-2018(DEL)-TP] ITA No.1700/Del/2015 dated 06.07.2018

425. The Apex Court dismissed Revenue's SLP challenging HC's rejection of 100% government owned undertakings as comparables for assessee providing emergency assistance and support services to its AE. The High Court had affirmed the Tribunal's order and concurred with the Tribunal's view in Thyssenkrupp Industries (subsequently affirmed by Bombay HC) with respect to public sector

undertakings not being comparable and opined that view taken by the ITAT in the present case, was consistent with the view expressed by the Mumbai Bench of the ITAT which had been affirmed by the Bombay High Court, and was a plausible view.
Pr.CIT vs International SOS Service India P Ltd [TS-493-SC-2018-TP] SLP 18255/2018 dated 03.07.2018

426. The Tribunal remitted issue of determination of functional profile of assessee (engaged in the business of integration of hardware and software in the simulation and services) back to TPO . It noted that the assessee contended that its functions were divided into various departments such as marketing department, technical department, quality department, pricing department and finance, human resource and administration and therefore considered itself to be in the field of project management while TPO considered assessee to be engaged in software development services since the assessee undertook independent verification and validation of software including design, coding and testing in various programming languages. As both assessee & Revenue agreed that these aspects in assessee's TP study were not examined by TPO/DRP while adjudicating the main issue with regard to functional profile of the assessee, the Tribunal opined the matter ought to go back to the TPO to first re-examine the issue with regard to functional profile of the assessee and thereafter adopt the comparables of same profile.
CAE India Pvt. Ltd vs. ITO - TS-1096-ITAT-2017(Bang)-TP – IT(TP) A No 762 / Bang / 2017 dated 22.12.2017

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

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

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

430. The assessee was engaged in business of electronic manufacturing service provider and assembling electronic components in printed circuit board for mobile chargers. While proposing TP-adjustment, TPO made certain adjustment to PLI of comparables observing that assessee's capacity utilization was higher than comparables while ratio of depreciation to operating income was higher for comparables companies as against that of assessee. The Tribunal accepted the contention of the assessee that it's capacity utilization was in fact lower than average capacity utilization of the comparables and that the cause of higher employment cost of the comparable companies could not be attributable to their level of capacity utilization as incorrectly done by the TPO. Therefore, it noted that the higher employee cost of the comparables indicated use of skilled labour which was not required in the work done by the assessee. Accordingly, considering the above findings, it held that the comparable companies adopted by the assessee company and the Revenue could not be strictly viewed as comparable companies as

the functional analysis with respect to employee cost had not been carried out. Accordingly, it remitted the matter to the file of TPO for fresh adjudication.
Flextronics Technologies (India) Pvt. Ltd. V ACIT - TS-1090-ITAT-2017(CHNY)-TP - I.T.A.No.1195/Mds/2016 dated 04.12.2017

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

432. The Tribunal remitted the functional comparability of 7 companies back to the DRP observing that the DRP passed a cryptic order without deciding on the issue of functional comparability of the individual companies and merely mentioned that assessee's arguments were dealt with by the TPO. It directed the DRP to pass a reasoned and speaking order on comparability of individual companies. Regarding the treatment of foreign exchange gains/loss while computing the margin of companies, the Tribunal noted that the DRP had not applied its mind while rendering its decision rejecting the assessee's claim, even though arguments were raised before it and accordingly restored the issue to the file of the DRP for examination and adjudication by passing a reasoned and speaking order.
Telsima Communications Pvt. Ltd. vs. DCIT - TS-1084-ITAT-2017(Bang)-TP - IT(TP)A No.1178/Bang/2010 dated 17.11.2017

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

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

435. The Court upheld ITAT's application of 25% RPT filter for comparability analysis and held that the RPT filter is relevant and fits in with the overall scheme of a transfer pricing study. It held that if a particular entity predominantly had transactions with its AE in excess of a certain threshold percentage its profit making capacity may result in a distorted picture and therefore the RPT filter was necessary. Further, it

upheld the exclusion of Wipro Ltd owing to its significant brand presence in the market, opining that brand value of an entity has a significant role in its ability to garner profits and negotiate contracts despite the fact that the companies are otherwise similar in terms of services or products they offer. Accordingly, it dismissed Revenue's appeal.

Pr. CIT vs. Oracle (OFSS) BPO Services Pvt. Ltd. - TS-67-HC-2018(DEL)-TP - ITA 124/2018 dated 05.02.201

436. The Court admitted Revenue's appeal challenging the exclusion of E-Infochips as comparable on ground of unavailability of segmental data by framing the following question of law as "*Is the impugned order in error of law in so far as it excludes M/s. E-Infochips Limited from the list of comparables on the ground of unavailability of segmental data, in thecircumstances of the case?"*

Pr.CIT vs. Sapient Consulting Pvt. Ltd - TS-124-HC-2018(DEL)-TP - ITA 261/2018 dated 27.02.2018

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

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

438. The Tribunal held that Government undertakings/companies are not suitable comparables for benchmarking of assessee rendering network support services and accordingly directed the AO to verify all the Government undertakings either benefitting from preferential treatment from Government in getting contracts etc. or those that are not driven by profit motive alone and to exclude from the list of comparables.

AT & T Communication Services India Private Limited vs. ACIT - TS-127-ITAT-2018(DEL)-TP - ITA No.1016/Del./2015 dated 15.02.2018

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

Pr. CIT vs. E.I. Dupont India Pvt Ltd - TS-138-HC-2018(DEL)-TP - ITA 25/2017 dated 13.02.2018

440. Where the assessee sought the exclusion of 5 of its own comparables, the Tribunal observing that nothing precluded the assessee from doing so and that prima facie there was a case in favour of the assessee on facts and in law, remitted the matter to the file of the TPO observing that the matter would require input from the TPO.

Vis-à-vis assessee's claim for economic adjustments (capacity utilisation adjustment, working capital adjustment, custom duty adjustment and cash PLI adjustment), noting that the similar issues were remanded by the Tribunal for the earlier year in assessee's own case with a direction to note that such adjustments were allowed in subsequent AYs but were not considered by the DRP/TPO/AO for the impugned AY, it remanded the issue to the file of AO/TPO for fresh adjudication.

NORD Drive systems Private Limited vs. ACIT - TS-140-ITAT-2018(PUN)-TP dated ITA No.509/PUN/2015 dated 07.02.2018

441. Noting that while selecting comparables the TPO failed to apply the filters uniformly to all the comparables the Tribunal remitted the issue back to the TPO to re-examine the comparables of the assessee as well as those of the TPO by applying the same filters uniformly.

Swiss Re Global Business Solutions India Private Ltd vs. DCIT - TS-161-ITAT-2018(Bang)-TP - IT(TP)A No.2028/Bang/2017dated 28.02.2018

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

443. The Court remitted the issue of comparability of Keynote Corporate Service Ltd and Motilal Oswal Investment Advisors Pvt. Ltd vis-à-vis the assessee engaged in investment advisory service back to the file of the Tribunal. As regards Keynote Corporate Service Ltd, it accepted Revenue's contention that abnormal profits could not be a ground for exclusion of an otherwise functionally comparable company in view of co-ordinate bench ruling in assessee's own case (for earlier years i.e. AY 2006-07). However, it also noted assessee's argument that after High Court ruling (wherein the HC remitted the comparability of Keynote back to the DRP), the Tribunal had held Keynote Corporate Services as functionally incomparable to assessee in the earlier year. Accordingly, it remitted the matter back to Tribunal to consider the findings of the Tribunal in the earlier year and to record its appropriate findings year-wise on the issue of functional similarity. With respect to Motilal Oswal Investment Advisors Pvt. Ltd, the Court noted that the Tribunal had adopted RPT filter only in the case of this company and held that adopting one procedure for only one entity and adopting another for all other entities or comparables would lead to a distorted picture. Accordingly, it remitted the matter to the Tribunal for consistent application of the filter.
Chryscapital Investment Advisors (India) Pvt Ltd vs DCIT - TS-173-HC-2015(DEL)-TP - ITA 417/2014 dated 27.03.2018

444. The Court held that the mere fact that an entity makes high/extremely high profits/losses does not, ipso facto, lead to its exclusion from the list of comparables for the purposes of determination of ALP. It held that that mere huge profit or huge turnover of a company which otherwise conforms to all stipulations in Rule 10B, ipso facto does not lead to its exclusion. It held that the TPO should first ensure that such differences do not materially affect the price or cost, and then attempt to 'adjust' or 'eliminate the material effects'. Further, it rejected assessee's contention for relying on previous years' data and held that while there could be a wide fluctuation in the profit margins of comparables from year-to-year, this by itself does not justify the need to take into account previous years' profit margins and held that Rule 10B(3) would account for such volatility. It dismissed assessee's reliance on OECD Guidelines, firstly, observing that since India is not an OECD member, the Guidelines would only have persuasive status without legal sanction. Further, it acknowledged that in the present case, both OECD Guidelines and Income-tax Rules were in consonance since both did not prescribe automatic exclusion of entities with extreme financial results, and provide for consideration of multiple year data only for the purposes of factoring in material changes in, inter alia, economic conditions, third party variables, etc. Further, remits comparability of 3 high-profit companies to DRP, with the direction to first conduct fresh enquiry regarding functional similarity and then to carry out analysis under Rule 10B(3) for these companies to determine if there were material differences on account of exceptionally high profits, capable of elimination and only if such differences could not be eliminated, would the company be excluded.
Chryscapital Investment Advisors (India) Pvt Ltd vs DCIT - TS-173-HC-2015(DEL)-TP ITA 417/2014 dated 27.03.2018

445. The Court dismissed Revenue's appeal and upheld Tribunal's deletion of TP-adjustment. It observed that the Tribunal deleted the adjustment on the ground that the TPO had wrongly compared transaction of export of components with net margin of domestic sales of finished goods which was unjustified considering the difference in the nature of customers in the domestic and export market and the fact that the exports were of parts whereas the domestic sales were of finished goods. Noting that both the CIT(A) and the Tribunal, on facts, had held that the comparable adopted by the TPO was incorrect, it held that since the finding of fact was not shown to be perverse the question raised by the Revenue did not give rise to any substantial question of law.
CIT vs. Keihin Fie Pvt. Ltd - TS-189-HC-2018(BOM)-TP - INCOME TAX APPEAL NO. 1176 OF 201 dated 21.03.2018

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

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

447. The Tribunal in this case sent back the matter to TPO for reapplication of TP analysis as the assessee had not used data for relevant FY for benchmarking its various international transactions. Further the TPO had also made adjustments to non AE transactions.

Makino India Pvt. Ltd. Vs ACIT Circle 4(1)(2) Bangalore- TS -416-ITAT-2018(Bang) TP- IT(TP) No 3/Bang/2012 dated 20.04.2018

448. The Tribunal remitted TP adjustments on various international transactions of assessee such as receipt of licensing revenue, corporate guarantee, payment for media rights and signage fees. With respect to international license revenue receivable by the assessee from its AE, the Tribunal also noted that the assesse had not applied RPT filter for comparables selection and remitted the issue for fresh consideration with a direction to assessee to furnish fresh set of comparable after applying RPT filter. With respect to transaction of purchase of signage and media advertisement rights, it accepted assessee's request for remand back for selection of fresh set of comparables.

Nimbus Communications Ltd. vs. DCIT - TS-520-ITAT-2018(Mum)-TP - LT.A. No. 1988 / Mum / 2016 dated 21.05.2018

449. The Tribunal held that the assessee engaged in the business of market development, dissemination of product information, research and development activities and providing onsite and back office support services could not be compared with Neeman Medical International Asia Ltd as the company was a consistent loss making company.

Further, it accepted assessee's contention that Pfizer was to be included as a comparable observing that the said company had adequate segmental results and was accepted as a comparable by the DRP in the assessee's own case for the preceding years.

ExxonMobil Company India Private Limited vs. CIT - TS-390-ITAT-2018(Mum)-TP - /I.T.A./3601/Mum/2014 dated 23/05/2018

450. The Tribunal upheld the CIT(A)'s order accepting separate benchmarking of assessee's transactions under Business model 1 - receipt of marketing & support services from AE (choosing foreign AE as tested party) and Business model 2 - assessee's rendering of ITeS to AE (choosing assessee as tested party). It noted that under Business model 1, risks and rewards were with the assessee and AEs [which were remunerated on cost plus basis] were insulated from the risks borne by assessee as an entrepreneur and therefore uphe**l**d CIT(A)'s view that AE was rightly chosen as the tested party being the least complex entity. Vis-à-vis Business model 2, it noted that major risks were borne by WNS UK, which functioned as an entrepreneur and therefore held that the assessee (which was only a captive

service provider bearing limited risks) was rightly chosen as the tested party. Observing that the transactions undertaken by assessee were not interlinked as various transactions formed part of different business models adopted by assessee, the Tribunal held that the TPO's approach of aggregating these international transactions and benchmarking the assessee at an entity level was not appropriate since the far profile of the **Indian** assessee was different in both the transactions.
ITO vs. WNS Global Services Pvt. Ltd - TS-474-ITAT-2018(Mum)-TP – ITA No 2318 / Mum / 2009 dated 04.05.2018

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

452. Where the TPO had excluded India Japan Lighting Ltd [introduced by TPO himself] as a comparable though assessee had not requested for its exclusion and also rejected assessee's contention for inclusion of 6 more comparables having FAR similar to India Japan Lighting Ltd, on perusal of the TPO/DRP's order, the Tribunal observed that the assessee's plea for including 6 new comparables was rejected in a summary manner without giving a proper reasoning and therefore held that the comparables had not been properly analysed by the Ld. TPO in light of the submissions of the assessee which had been simply disregarded without any reasoning. Accordingly, it restored the entire issue of the selection of the comparables to the file of the TPO for making a fresh comparability analysis after duly considering the evidences and submissions of the assessee.
Denso India Limited vs. ACIT - TS-456-ITAT-2018(DEL)-TP - ITA No. 4788/Del/2010 dated 31.05.2018

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

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

455. In the case of an assessee engaged in manufacturing of optical and magnetic storage media, the Tribunal directed the AO to re-examine issue of selection of assessee's foreign AE [GDM Dubai] as tested party for AY 2005-06 and 2006-07 in the event the assessee was able to provide complete financials of GDM Dubai along with complete financials of relevant comparables required to benchmark the international transaction. The Tribunal also directed the TPO to verify if the AE was the least complex entity requiring minimum adjustment and for which comparables are available in public domain. It rejected assessee's submission regarding its inability to obtain the required financials of tested party. The Tribunal opined that in case the assessee was not able to provide the financials of its AE as mentioned, it shall be treated as tested party and TPO shall consider the other argument advanced by assessee that it cannot be expected to earn profit more than the combined profit of assessee and AE which was accepted by the Tribunal for earlier year.

Moser Baer India Ltd. vs. DCIT [TS-334-ITAT-2018(DEL)-TP] ITA Nos.883,894/Del/2008 and 988, 1139 and 4484/Del/2013 dated 01.05.2018

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

457. The Tribunal relying on the Bombay HC ruling in Pentair Water India held that turnover filter is an important filter to select comparables for assessee engaged in the manufacture of bulk drugs. Further, observed that though there were conflicting judgments on the aspect of application of turnover filter, the Revenue failed to bring to its attention any judgment of jurisdictional HC which prohibited application of turnover filter. The Tribunal affirmed the turnover filter criteria applied by the CIT(A) which held that since the assessee has a turnover of 15.84 crores, turnover of companies exceeding Rs.30 crores could not be considered to be comparable. On the basis of filter set by the CIT(A), the Tribunal included Welcure Drugs which was bulk manufacturer of drugs as a comparable and deleted the adjustment since no adjustment would be required as per the provisions of section 92(3) of the Act after the inclusion.
Schutz Dishman Biotech P Ltd [TS-472-ITAT-2018(Ahd)-TP] ITA No.1229/Ahd/2012 and 954/Ahd/2012 dated 05 June 2018

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

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

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

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

d. Computation / Adjustments

Capacity Utilization Adjustment

462. The Tribunal granted the adjustment for capacity under-utilization directing the TPO to obtain necessary information for the comparables noting that the Indian TP guidelines, OECD guidelines and the US transfer pricing guidelines clearly provided that in case of material difference between the controlled and uncontrolled transaction, adjustments must be made if ithe effect of such differences on prices or profits could be ascertained with sufficient accuracy to improve the reliability of the results. It relied on the coordinate bench decisions in Mando India Steering Systems Pvt Ltd (adjustment made on account of underutilization of production capacity in the initial years by making allowance for the higher overhead expenditure during the initial period of production) , Panasonic AVC Network India (which discussed that capacity utilization should be granted subject to being reasonable since lower capacity utilization results in higher per unit costs, which, in turn, results in lower profits), Biesse Manufacturing Company Ltd. (adjustment for underutilization of capacity was granted following coordinate bench decision of PetroAraldite), GE Intelligent Platform Pvt Ltd. (If the underutilization is more than average underutilization of the industry then necessary adjustment was required to be made to the margin of computing ALP), Genisys Integrating system (assessee was given adjustment for underutilization of infrastructure). It was assessee's contention that subject year was just the third year of commercial operation of the assessee during which the installed capacity was under-utlized to a significant extent. The TPO and CIT(A) rejected the plea of the assessee to provide an adjustment for idle capacity which was granted by the Tribunal.
IKA India Pvt Ltd vs DCIT [TS-1049-ITAT-2018(Bang)-TP] IT(TP)A No.2192/Bang/2017 dated 17.09.2018

463. The Tribunal restored the issue of capacity utilization to be granted in case of manufacturing activity of assessee directing the TPO to give necessary relief in accordance with law noting that in the peculiar case like that of the assessee, the manufacturing costs would necessarily have certain fixed overheads and these costs would be met only when manufacturing activity reached a certain level. The assessee had demonstrated the claim of underutilization of capacity through a chart (not available before lower authorities) and also substantiated that after certain threshold, assessee had broken even and reached a profit.
Carrier Midea India P. Ltd vs Dy.CIT [TS-1256-ITAT-2018(DEL)-TP] (ITA No.7675/Del/2017) dated 22.11.2018

464. The Tribunal restored the issue of capacity utilization to be granted noting that DRP had stated that complete data for claiming capacity utilization adjustment by assessee (engaged in manufacture of auto components) was not on record. It directed the assessee to provide complete data to substantiate its claim and TPO to afford a reasonable opportunity to the assessee to do so.It noted the assessee's contention that assessee was operating at a different capacity (started commercial production in October 2008) vis-à-vis its comparables who were in existence for last 17 to 51 years. Further, assessee had also pointed out that coordinate bench in assessee's own case for earlier year had allowed assessee's claim of capacity utilization and there was no change in business model vis-à-vis previous year.
Nissin Brake India Pvt Ltd vs DCIT [TS-1252-ITAT-2018(DEL)-TP] (ITA No.6366/Del/2017) dated 16.11.2018

465. The assessee had incurred a loss of 3.93% at net level and reason for same was low capacity utilization (assessee had built one of the biggest plants in India for manufacturing earth moving machinery but was unable to use it fully) and high establishment cost of the assessee company vis-à-vis the comparable company.The Tribunal restored the issue of capacity utilization directing TPO to call for information from comparables u/s.133(6) for correct determination of ALP relying on coordinate bench decision of IKA India Ltd. wherein the TPO was directed to collect information u/s.133(6) by holding that benefit of underutilization of capacity could not be denied to the assessee only for the reason that the data about comparable companies was not available.Further, it directed TPO to compute appropriate adjustment after carrying out the exercise of examining the capacity utilization of the assessee

company and to ensure that the capacity utilization of the assessee company i.e. the tested party and that of the comparables was on the same parameters.

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.)vs ACIT [TS-1233-ITAT-2018(DEL)-TP] ITA No.5828/Del/2011 dated 02.11.2018

466. The Tribunal directed the AO to make suitable adjustment to assessee's employee cost in case of underutilization of employees and thereafter re-compute operating margin of comparables while benchmarking assessee's provision of software development services to AE noting that DRP had retained 3 comparables whose average ratio of employee cost to sales was 58% as against assessee's ratio of 76%. It observed that the difference was not negligible to be ignored and accordingly, the difference which was likely to affect the comparability analysis had to be taken note of and suitable adjustment had to be made to bring the comparables on par with the assessee for comparing their operating margin.

Planet Online Private Limited vs ACIT [TS-739-ITAT-2018(HYD)-TP] ITA No.279/Hyd/2016 dated 18.07.2018

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

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

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

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

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

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

470. The Tribunal remitted the issue of grant of adjustment for unutilized capacity cost to AO for AY 2007-08, in respect of assessee's international transactions relating to manufacture of crop protection products for verification of material facts relevant to tested party i.e. assessee as well as to the comparables . The Tribunal had noted that the coordinate bench in assessee's own case for the previous year had remitted the issue of capacity under-utilization adjustment to the TPO while determining ALP of purchase of raw material from AE under TNMM. Further, on Revenue's appeal against the Tribunal's order for previous year, the Court had upheld the remand but kept the question open to be decided on merits whether the adjustment of unutilized capacity cost could be worked out by excluding the unused capacity cost and whether such unutilized capacity cost should be excluded/included in the case of comparables also.
DCIT vs. E.I. Dupont India Private Ltd [TS-354-ITAT-2018(DEL)-TP] ITA Nos.5043&4774/Del/2014 dated 10.05.2018

471. The Court dismissed Revenue's appeal and upheld the Tribunal's order as regards the inclusion of comparable Thirumalai Chemicals Ltd. was concerned. Noting that the Tribunal on facts had held that the assessee and the said company dealt in specialty chemicals and that the capacity utilization of assessee (working at 46% of capacility utilization) and said comparable (working at 50% of capacity utilization) was approximately the same due to an economic downturn, the Court held that on facts the view taken by the Tribunal was a reasonable view.
Pr. CIT vs. Petro Araldite Pvt. Ltd [TS-446-HC-2018 (Bom)] ITA No.368 of 2015 dated 06.06.2018

472. The Court dismissed Revenue's appeal and upheld Tribunal's invocation of Rule 10B(1)(e) (iii) for allowing capacity utilization adjustment to the assessee who was engaged in the business of manufacturing and dealing in basic liquid and solid resins including formulations. The Court noted that the Tribunal had upheld assessee's capacity utilization claim after illustrating how higher capacity utilization would lead to higher profitability as fixed costs would be spread over a larger number of units manufactured and considering that capacity utilization materially affected the profit margin, upheld thus the invocation of rule is valid.
Further, the Court also stated that it was a self-evident position that all aspects/differences between the international transactions and the comparable uncontrolled transactions materially affecting the net profit margin have to be taken into account so as to have the fair comparison while determining the ALP.
The Court also upheld the Tribunal order restricting TP-adjustment only to assessee's international transaction, relying on various precedents including co-ordinate bench ruling in assessee's own case.
CIT -8 vs Petro Araldite P Ltd.- TS-317-HC-2018(BOM)-TP- ITA No 1540 of 2014 dated 26.04.2018

Profit Level Indicator

473. Noting that the TPO himself had taken donation and provision for bad debts to be non-operating while calculating the PLI of comaparables, the Tribunal held that in case of computing assessee's PLI the TPO had erred in treating the donation and provision for bad debts to be operating when he could not show interlinkof the same with day to day operations of the assessee.
Evalueserve.Com Pvt. Ltd vs. ACIT [TS-817-ITAT-2018(DEL)-TP] ITA Nos.6310 and 1466/Del/2015 dated 03.08.2018

474. The Tribunal restored the issue of treating miscellaneous income as operating or non-operating in case of comparables to the TPO after considering the assessee's submission that in the absence of details and nature of 'miscellaneous income' received by comparables, it could not be taken to be an operating item and TPO had erred in its treatment as operating item.
Evalueserve.Com Pvt. Ltd vs. ACIT [TS-817-ITAT-2018(DEL)-TP] ITA Nos.6310 and 1466/Del/2015 dated 03.08.2018

475. Relying on the coordinate bench ruling in the case of Emerson Process Management (India) (P.) Ltd wherein it was held that liquidated damages paid on delay in completion of order by assessee company are contingent in nature and not a regular feature of the business hence could not be treated as operating while computing operating profit margin , the Tribunal held that liquidated damages are not direct cost for computing profit margin of assessee.

Rosoboronservice India Ltd vs. DCIT[TS-810-ITAT-2018(Mum)-TP] ITA No.7418/Mum/2017 dated 01.08.2018

476. The assessee had computed the ALP manufacturing/processing transactions by applying CPM Method and trading segments by applying RPM method. However, the TPO adopted OP/OC as PLI (as against assessee's method of OP/OR as PLI) and ignored adjustments for startup phase and abnormal expenses. The Tribunal restored the issue vis-à-vis assessee's claim for adjustment of abnormal items to be considered for examination by the AO on meritsnoting that provisions of Rule 10B(1)(b) (relating to RPM) as well as Rule 10B(1)(c) (relating to CPM) speak about adjustment to be made to account for functional and other differences in international transaction which include abnormal items and in so far as assessee's claim with respect to startup phase adjustment was concerned, it held that the assessee had failed to substantiate the adjustment with any credible material.
Hoya Lense India Pvt Ltd vs DCIT [TS-883-ITAT-2018(Mum)-TP] ITA No.127/Mum/2018 dated 08.08.2018

477. The Tribunal dismissed Revenue's appeal and upheld the DRP's order noting that fixed assets written off is not a normal expenditure and moreover it could not be equated with depreciation and thus, the DRP rightly held that it should be treated as non-operating and excluded itwhile calculating the profit margin.
Swiss Re- services India Pvt Ltd vs DCIT [TS-1120-ITAT-2018(Mum)-TP] ITA No.1493/Mum/2014 dated 31.08.2018

478. The Tribunal upheld the DRP's order treating forex loss as operating noting that the assessee had taken an inconsistent view in treating the forex gains/loss as non-operating for the subject year when previously it had treated the forex gains/loss for earlier years as operating.
De La Rue Cash Processing Solutions India Pvt Ltd vs ACIT [TS-1121-ITAT-2018(DEL)-TP] ITA Nos.1113/Del/2014 and ITA No.1606/Del/2015 dated 28.09.2018

479. The Tribunal held that provisions written back should be treated as operating in nature for computation of operating profit margin in view of them being treated as operating when they were written off in earlier years.
De La Rue Cash Processing Solutions India Pvt Ltd vs ACIT [TS-1121-ITAT-2018(DEL)-TP] ITA Nos.1113/Del/2014 and ITA No.1606/Del/2015 dated 28.09.2018

480. The Tribunal directed the TPO to treat both income from management support service and corresponding expenses as non-operating in nature noting that the TPO had erred by blowing hot and cold in the same breath by the treating the income from management support services as non-operating and on the other hand, expenses allocated to the said services as operating.
De La Rue Cash Processing Solutions India Pvt Ltd vs ACIT [TS-1121-ITAT-2018(DEL)-TP] ITA Nos.1113/Del/2014 and ITA No.1606/Del/2015 dated 28.09.2018

481. The Tribunal dismissed Revenue's appeal and upheld DRP's order accepting treatment of forex fluctuation as operating by relying on the Delhi HC decision in Ameriprise India wherein it was held that foreign exchange loss which arose as a consequence of trading items would be operating.
ACIT vs Yokogawa Technologies India Pvt Ltd [TS-1046-ITAT-2018(DEL)-TP] IT(TP)A No.466/Bang/2016 dated 8.08.2018

482. The assessee had applied RPM in respect of its purchase of bakery shortening transaction which the TPO rejected and adopted TNMM to determine the ALP of the transaction and on comparing the margin of the assessee with the comparables made an adjustment. It was assessee's contention that import expenses incurred for customs duty paid for opening stock and purchases during the year had been taken for calculating the margin by the TPO and if apportioned only to the purchases during the year, the operating margin from purchases of AE would be 1.64%. The Tribunal restored the matter to TPO for verification if import expenses attributable to opening stock had been included noting that if the claim of assessee was valid, then no adjustment for ALP would be called for as the margin was within +/-5% of comparables (mean margin of comparables was 4.75%).
ACIT vs Vijay Solvex Ltd. [TS-1088-ITAT-2018(JPR)-TP] CO No.12/JP/2014 dated 24.08.2018

483. The Tribunal remitted the matter back to the TPO to consider the assessee's claim of premium on forward exchange contract on account of proximity with export turnover to be a part of operating margins noting that the DRP had not adjudicated on the specific plea of the assessee. It directed the assessee to place necessary evidence before the TPO to claim that premium on forward exchange contract was earned in the normal course of the business to hedge against fluctuations in foreign currency exchange rate and gains from such contract.

Navigant BPM (India) Private Limited (Formerly known as M/s. RevenueMed India (P) Ltd) vs ACIT [TS-1143-ITAT-2018(COCH)-TP] IT(TP)A No.146/Coch/2015 dated 07.09.2018

484. The Tribunal held that forex fluctuation arising out of revenue transactions should be treated as operating income/cost of the assessee as well as comparables relying on the Special Bench decision in Prakash Shah wherein it was held that gain due to fluctuations in the foreign exchange rate emanating from export was its integral part and could not be differentiated from the export proceeds simply on the ground that the foreign currency rate had increased subsequent to sale but prior to realization, hence should be treated as operating income/cost.

Siemens Industry Software (I) P Ltd vs DCIT [TS-1045-ITAT-2018(DEL)-TP] ITA No.1307/Del/2014 dated 14.09.2018

485. The Tribunal accepted the plea of assessee to treat foreign exchange gains/losses connected to the business of assessee as operating and further distinguished the decisions cited by Revenue that foreign exchange gains/losses not relating to turnover of relevant AY should be excluded from computing profit margin(Revenue's stand was that TPO should examine if foreign exchange gain/losses pertain to subject year) by observing that earlier decisions (SAP Labs and E-Triology) rendered on the subject do not lay down any such condition, thus the later decisions relied on by Revenue (Commscope, Akamai Technologies) would be per incuriam .

Further, it also held that write back of liabilities no longer required should be treated as operating on basis that they were related to operating expenses in the year when it was expected to be incurred. It relied on coordinate bench rulings of Sony India (P) Ltd., Logica Pvt. Ltd. and CGI Information Systems and Management Consultants Pvt Ltd.

LSI India Research and Development Pvt Ltd vs ITO [TS-1224-ITAT-2018(Bang)-TP] IT(TP)A Nos 44 and 45/Bang/2014 dated 07.09.2018

486. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order accepting assessee's (manufacture of silk fabric and engaged in trading of yarn) PLI as OP/ Sales as against the PLI considered by the TPO as OP/OC noting that OP/OC may not reflect true results.

It also held that TPO erred in excluding directly related amounts to sales such as export incentives and foreign exchange fluctuations and since they formed a part of operating revenue, they should be included while calculating PLI.

DCIT vs JJ Exporters Ltd. [TS-1047-ITAT-2018(Kol)-TP] ITA No.1371/Kol /2017 and CO No.71/Kol/2018 and ITA No.1372/Kol/2017 and and CO No.72/Kol/2018 dated 19.09.2018

487. The Tribunal remitted the matter back to the TPO to consider the assessee's claim that the TPO erred in treating the penalty charges paid to RBI and loss on sale of assets as part of operating cost. The Revenue also did not raise any objections hence the Tribunal remitted the matter back with direction to the TPO to verify and grant relief.

Element K India Pvt Ltd vs ITO [TS-1119-ITAT-2018(DEL)-TP] ITA No.1153/Del/2014 dated 06.09.2018

488. The assessee had restructured its business and closed down the installation and assembly segment. The TPO excluded the profit from sale of assets from the operating profits while computing the margin of the assessee. It was assessee's contention before the CIT(A) that six months operation of the assessee in installation and erection activity should be compared and bench marked and also that the assessee was incurring fixed costs which were not recovered through business activity, thus, excess costs towards unutilized capacity ought to be excluded from operating cost. The Tribunal dismissed the Revenue's appeal and upheld the CIT(A)'s order accepting assessee's contention that 6 months

operation of the assessee in installation and erection activity upto the sale of business segment should be compared and bench marked and excess fixed costs needed to be excluded from operating expenses noting that on sale of segment in the middle of the year, the assessee was incurring unutilised capacity in the form of fixed costs which were no longer recoverable through normal business activity.

ADIT vs ERICSSON Telephone Corporation India AB [India Branch] [TS-1106-ITAT-2018(DEL)-TP] ITA No.2018/Del/2012 dated 28.09.2018

489. The Tribunal dismissed the Revenue's appeal and upheld CIT(A)'s order directing the TPO to adopt the operating margin of Goldstone Technologies as 7.33% computed by treating bad debt written off as operating. It relied on the coordinate bench decision of Techbooks International Pvt. Ltd. wherein it was held that bad debts written off are in the realm of operations of the assessee's business and directed the TPO to treat provision for bad debts / bad debts as an item of operating expense of the assessee.

Dy.CIT vs JDA Software Private Limited (formerly i2 Technologies India Private Limited) [TS-1102-ITAT-2018(Bang)-TP] IT (TP)A No.1239/Bang/2013 dated 28.09.2018

490. The Tribunal held that export incentives were to be treated as operating income noting the decision of Bombay High Court in Welspun Zucchi Textiles Ltd. wherein it was held that that DEPB benefit arising to the assessee therein was operating revenue includable in arriving at operating profit and observed that the coordinate bench ruling in Carraro India had relied on the proposition in said HC ruling to hold that export incentives are to be considered as operating income of assessee

Cummins India Limited vs Dy.CIT [TS-1099-ITAT-2018(PUN)-TP] ITA No.556/Pun/2015 dated 25.09.2018

491. The TPO and CIT(A) had treated provision for bad and doubtful debts as operating expenses. The Tribunal accepted assessee's contention that provision for debts could not be treated as operating as they were connected to the sales made in the previous year by HSG (company which was acquired by assessee) relying on the coordinate bench ruling in Marble India Pvt Ltd. wherein it was held that provision for doubtful debt respect to sale of the earlier year had to be ignored for determining correct ALP. (which if reduced from the profit of the subsequent year, the numerator would be reduced but the denominator would not be reduced because corresponding sale stood considered in earlier year, which could not be considered in the subsequent year.)

Philips Medical Systems Private Limited vs ITO (now merged with Philips Electronics India Limited [TS-1165-ITAT-2018(Kol)-TP] ITA No.3412/Mum/2008 dated 26.09.2018

492. The Tribunal remitted the matter back to the AO/TPO to consider the foreign exchange gain as operating income of the assessee and held that AO erred in not following the directions of DRP to treat the foreign exchange gains as operating income since they were connected with services rendered to its AE.

Omniglobe Information Technologies (India) Pvt Ltd vs Addl CIT [TS-1146-ITAT-2018(DEL)-TP] ITA 6980/Del/2017 dated 15.10.2018

493. The Tribunal dismissed Revenue's appeal against DRP's order wherein the DRP had directed that for the purpose of computing PLI of OP/TC, the denominator had to be total costs incurred by assessee and not the FOB value of goods sourced through the assessee noting that HC had ruled in favour of the assessee on the issue holding that the Act did not authorize broadening of the cost base in such circumstances.

ACIT vs Li & Fung India Pvt Ltd [TS-1163-ITAT-2018(DEL)-TP] ITA No.2480/Del/2015 dated 31.10.2018

494. The TPO rejected the working of PLI of the assessee (in manufacturing segment) as the assessee had reduced abnormal cost on account of wastage which were extraordinary in nature (a unit in Chennai was set up which produced wastage in the initial months). The Tribunal accepted assessee's plea for exclusion of extraordinary costs while computing PLI of assessee by relying on coordinate bench ruling in Hov Services Ltd. wherein the Tribunal while determining PLI of tested party had laid down the proposition that extraordinary expense incurred by assessee such as expenses on account of GDR issue, buy back of shares, restructuring options like ESOP, etc. were to be granted adjustment while

determining arm's length price..A similar ratio was also laid down by the coordinate bench ruling inPangea3 and Legal Database Systems (P.) Ltd. wherein due toa material difference which arose in case of assessee vis-à-vis comparables due to abnormal feature (abnormal loss on cancellation of contratcs), it was held thata suitable adjustment had to be made to factor in material difference in PLI and thus, abnormal loss shouldbe excluded from operating costs.

Grupo Antolin India Pvt. Ltd (Erstwhile known as Grupo Antolin Pune Pvt. Ltd vs Dy.CIT) [TS-1128-ITAT-2018(PUN)-TP] ITA No.299/Pun/2013 dated 17.10.2018

495. The Tribunal directed the TPO to treat foreign exchange gain as operating in nature while computing assessee's PLI relying on Delhi HC rulings of Fiserve and Agilis Information Technologies International [I] Pvt Ltd. wherein it was held that the Safe Harbour notification was prospective in nature thus, foreign exchange gain would be treated as operating for the year when the notification was not applicable.

Global Logic India Ltd.vs Dy.CIT [TS-1249-ITAT-2018(DEL)-TP] ITA No.1690/Del/2016 dated 30.10.2018

496. The DRP had not adjudicated on the assessee's plea that premium on forward exchange contract should be treated as operating. The Tribunal restored the issue with same directions which were given in coordinate bench decision in assessee's own case for earlier year wherein the DRP had not given directions with respect to the said plea of assessee and the Tribunal had relied on coordinate bench decision in Ambattur Clothing Ltd. (wherein it was held that premium on forward exchange contract having nexus with export turnover should be treated as operating) to restore the issue to TPO to afford assessee an opportunity to place necessary evidence to substantiate its claim that premium on forward exchange contract was earned in the normal course of the business.

Navigant BPM (India) Pvt Ltd.vs ACIT [TS-1223-ITAT-2018(COCH)-TP] IT(TP)A No.57 /Coch /2016 dated 23.10.2018

497. The Tribunal directed AO to exclude foreign exchange loss or gain from operating income relying on the ratio laid down in coordinate bench decision in Hanil Tube India Pvt Ltd wherein it was held that loss incurred by the assessee in foreign exchange fluctuation due to international transaction did not give any extra benefit to the AE who supplied the material. The loss arose due to exchange difference between the foreign currency and Indian currency and thus, had to be excluded from operating income while computing PLI.

Infac India Pvt Ltd vs Dy.CIT [TS-1369-ITAT-2018(Chny)-TP] (IT(TP)A No.27 /Chny /2018 dated 05.10.2018

498. The Tribunal held that the payment of customs duty, freight, insurance, etc. we're not payment to AE and thus, such payment was to be excluded from the value of international transactions while making adjustment on account of ALP. It noted that the same view was taken in assessee's own case for AY 2006-07 by the DRP.

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.) vs ACIT [TS-1196-ITAT-2018(DEL)-TP] (ITA No.930/Del/2013) dated 02.11.2018

499. The Tribunal rejected assessee's contention to treat forex loss as non-operating relying on Delhi High Court decision of Cashedge wherein it was held that for relevant AY, the Safe Harbour Rules would not be applicable (where forex fluctuation gains/losses are to be treated as non-operating) and thus, the stand of the coordinate bench decision(s) wherein it has been held that forex fluctuation losses/gains arising out of nexus with business should be treated as operating would prevail.

The Tribunal rejected assessee's contention that customs duty adjustment would have to be made to gross profit margin on account of assessee paying a higher customs duty (100% of its purchases) than comparables (only on 2% of its purchases) observing that if assessee has made costly purchases, it would naturally earn more revenue from the sales. It stated that no adjustment to gross profit could be permitted as the figure of gross profit, took into account not only the higher debit side of cost of purchases but also the higher credit side of the revenue earned from sales.

Fresenius Kabi India Private Limited vs ACIT [TS-1212-ITAT-2018(PUN)-TP] (ITA No.2572/PUN/2016) dated 02.11.2018

500. The Tribunal held that foreign exchange gains should be treated as part of operating income of assessee noting that foreign exchange gain arose on account of export of services relying on ratio laid down in Delhi HC in Rampgreen Solutions Pvt Ltd wherein it was held that foreign exchange fluctuation ought to be treated as operating if it had nexus with business. It also observed that safe harbor rules (where foreign exchange gains/ were treated as non-operating) were like presumptive taxation and had been made applicable from 18 September 2013 and therefore not applicable for th subject year

VAILDOR CAPITAL INDIA PVT LTD vs ITO [TS-1329-ITAT-2018(DEL)-TP] (ITA No.1961/Del/2015) dated 22.11.2018

501. The Tribunal set aside CIT(A)'s order and remitted the issue of computation of PLI for benchmarking marketing cost paid by assessee to its AE back to TPO/AO for AYs 2003-04 and 2004-05. It directed the TPO to follow guidelines provided by co-ordinate bench in assessee's case for AY 2003-04 wherein it had rejected TPO's computation of PLI using operating profit / marketing cost, noting that since ALP to be determined was that of the marketing cost paid by the assessee marketing cost, or, for that matter cost itself, could not be considered as the denominator, and accordingly, restored the matter to AO consider to examine assessee's claim of adopting PLI of operating profit / operating revenue.

First Source Solutions Ltd. vs DCIT [TS-1265-ITAT-2018(Mum)-TP] (ITA No.3095/M/2014 and 3096/M/2014) dated 12.11.2018

502. The assessee filed a miscellaneous petition against Tribunal's order in view of the fact that it had stated that assessee had placed reliance on coordinate bench decision in Kenexa Technologies wherein the issue of treatment of provision for bad and doubtful debt was not discussed. The Tribunal rectified the impugned order noting though there was no dispute that provision for bad and doubtful debts are operating expenditure due to the said order, but the order had not examined the aspect whether the provision for bad and doubtful debts or excess provision written back was in respect of turnover of the same year or of an earlier year and provision for bad and doubtful debts could not be considered for TP analysis as it was not shown that such provision were for the current year's turnover.

Marvell India Pvt Ltd vs Asst CIT [TS-1358-ITAT-2018(Bang)-TP]. MP No.338/Bang/2018 (ITA No.2173/Bang/2017) dated 27.11.2018

503. The Tribunal rejected the claim of assessee to exclude customs duty while computing the margin of transportation divison of assessee vis-à-vis comparable (as total cost of goods sold of signaling segment included 64% of import cost, but in the comparables, the average import over total cost of goods sold was only 14%) noting that DRP had rightly concluded that there was no peculiar circumstance in case of assessee to warrant adjustment as import of inputs was not a compulsion in its case. Therefore, there was no need of even neutralizing the impact of custom duty paid. DRP had distinguished the coordinate bench decision of Skoda relied on by assessee to ask for adjustment of customs duty noting that the Tribunal has not suggested that the custom duty should be excluded from the purchase price. Rather, the Tribunal held that the TPO should find out the means of neutralizing the impact of high Custom duty rate in the case of Skoda where it was a compulsion to import car parts as vehicle manufacturers did not have sufficient facilities to indigenize the components.

GE India Industrial Private Limited vs ACIT [TS-1315-ITAT-2018(DEL)-TP] ITA No.2781/Ahd/2012 dated 04.12.2018

504. The Tribunal restored the recomputation of correct margin of assessee to the TPO in light of the fact that the TPO had not considered forex loss as operating despite the directions of the DRP.

NTT Data Global Delivery Services Ltd. vs ITO [TS-953-ITAT-2018-(Del)-TP] ITA No.5339/Del/2011 dated 12.07.2018

505. The DRP had directed the TPO to treat foreign exchange fluctuation as operating while recomputing the margin of comparables which it failed to do so. The Tribunal held that foreign exchange fluctuation had to be treated as operating income by relying on Delhi HC decision of Fiserve India Ltd. and further, it noted that DRP in the subsequent year had decided the issue in favour of the assessee.

NEC Technologies INDIA PVT. LTD. vs. Dy CIT (2018) 53 CCH 0344 DelTrib ITA No. 6283/Del/2015 dated 11.07.2018

506. The Tribunal restored the computation of correct margin of assessee to the AO to verify the claim of the assessee that the AO had committed an error in computation of PLI at 0.2% as against 3.88% as per assessee's working.

Bothra Shipping Services (Currently known as Bothra Shipping services Pvt) vs ACIT [TS-814-ITAT-2018(Kol)-TP] ITA No.188/Kol/2017 dated 31.07.2018

507. The Tribunal accepted Revenue's contention that depreciation could not form part of operating costs as there was a substantial variation in the manner of charging depreciation between assessee and comparables by relying on the co-ordinate bench rulings in Honeywell Technology Solutions Lab (which in turn followed 24/7 Customer.com ruling) and BA Continuum India ruling wherein it was held that if there were differences in the method of charging depreciation between the Tested party and the comparable companies, then there would be impact on the operating profits and thus, PLI was to be computed without considering depreciation as part of the operating cost. Thus, the Tribunal set aside the DRP's order and directed the AO/TPO to consider the determination of PLI by considering the ratio of the aforesaid decisions.

DCIT vs. Centum Rakon India Pvt. Ltd [TS-750-ITAT-2018(Bang)-TP] IT(TP) A No.472/Bang/2016 dated 20.07.2018

508. The Apex Court admitted Revenue's SLP against Delhi HC order treating foreign exchange fluctuation as operating for assessee while working out TP-adjustment. The High Court had dismissed Revenue's appeal noting that the Tribunal after considering that the assessee in its distribution segment imported its finished goods from AEs was exposed to high economic foreign exchange risk and due to a sharp depreciation of the Indian Rupee against the Euro by about 16% in a short span of 6 months, i.e. from February, 2008 to July, 2008, had treated foreign exchange fluctuation as operating. The Court opined that the view taken by the Tribunal was a plausible one and did not call for any interference.

Pr.CIT vs SCHNEIDER ELECTRIC INDIA PVT LTD [TS-505-SC-2018-TP] SLP 19004/2018 dated 03.07.2018

509. The Tribunal relying on the decisions of the Apex Court in Woodward Governor and Ameriprise India rejected the Revenue's treatment of foreign exchange fluctuation income/loss as non-operating cost while computing assessee & comparables margin.

ST Microelectronics Pvt. Ltd vs. Addl. CIT - TS-48-ITAT-2018(DEL)-TP - ITA No. 4396/Del/2017 dated ITA No. 4396/Del/2017

510. The Court upheld the Tribunal's consideration of forex gain/ losses as operating for assessee & comparables while determining ALP for AY 2010-11 and its rejection of the applicability of Safe Harbour Rules for subject AY 2010-11 (which provided that forex gain/ losses was to be treated as non-operating in nature).

Pr. CIT vs. Rolls Royce India Pvt. Ltd - TS-1066-HC-2017(DEL)-TP - ITA 419/2016 dated 23.10.2017

511. The Tribunal held that foreign exchange gains were to be considered as operating income as it pertained to debtors and thus were revenue items. It rejected Revenue's reliance on Safe Harbour Rules in this respect, observing that Safe Harbour Rules are applicable only to the assessees who have opted for them.

Effective Teleservices Pvt Ltd vs. ACIT - TS-75-ITAT-2018(Ahd)-TP - ITA. No: 2411/AHD/2014 dated 16 -01-2018

512. The Tribunal set aside TPO's order and directed him to consider forex fluctuation gains as operating income for the purpose of PLI computation for AY 2012-13 since the forex fluctuation gains were earned in normal course of business and derived on account of trade sales made during the year. It rejected Revenue's reliance on Safe Harbour Rules (Rule 10TA) and relying on the decision of the Delhi HC ruling in BC Management Services held that Safe Harbour Rules came into force in 2013 and therefore could not apply to AY 2011-12.

Digital Group Infotech Pvt. Ltd. vs. DCIT - TS-185-ITAT-2018(PUN)-TP - ITA No.475/PUN/2017 dated 28.02.2018

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

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

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

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

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

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

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

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

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

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

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

524. The Tribunal held that while determining the PLI of comparables, cash profits i.e. profits prior to depreciation should be taken by relying on the coordinate bench decision in ICON Clinical Research wherein it was held that profit before depreciation should be considered while computing PLI on account of higher rate of depreciation charged by the company vis-à-vis comparables which followed Companies Act. It accepted assessee's contention that cash profits should be adopted for computing PLI of comparables as the method of depreciation adopted by various comparables was variable.
Bonfigioli Transmissions Private Limited vs. DCIT [TS-388-ITAT-2018(CHNY)-TP] ITA No.2977/Chny/2017 dated 14.05.2018

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

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

527. The Tribunal accepted assessee's plea for inclusion of Rs. 37.49cr representing write back in connection with revenue items as part of operating profit for AY 2007-08 but treated write back in connection with purchase of capital goods made in earlier years as non-operating income. It dismissed the TPO's contention that the write back amount of Rs.37.84cr was non-operating income as it was a mere book entry and not connected with assessee's business operations. Relying on the co-ordinate bench ruling in Sony India and Gillete Diversified Operations (which were both accepted by Revenue absent appeal on this ground before HC) it held that if the reversal of provision / write back was on account of revenue in nature, it was to be included as part of operating income and if the liabilities originally created were on account of capital items then their write back could not be considered to be a normal instance of business and hence to be excluded as operating income. Considering the assessee's argument that if such write back amount was included as operating income, the operating margin would be 42.94% as

against 14.36% of comparables requiring no TP-adjustment, it remitted the matter back to TPO for the limited purpose of verifying this contention.

Suessen Asia Private Limited (merged with Rieter India Private Limited) vs. ACIT - TS-1055-ITAT-2017(PUN)-TP - ITA No.1629/PUN/2011 dated 20.10.2017

528. The Tribunal rejected assessee's plea of considering provisions written back as operating income, noting that no specific ground had been raised in respect of the issue. However, the Tribunal stated that the issue of write back related to business taken over by the assessee and therefore any profit arising out of business taken by the assessee constituted capital receipt and cannot form part of the operating income for calculating operating margin of the assessee

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

529. The Tribunal upheld TPO/DRP's consideration of provision for doubtful debts as non-operating item while computing profit margins of comparable and stated that provision for doubtful debts cannot be considered for reduction from the profit as it impacts the profit percentage (which is worked out by dividing such profit of the tested party/comparable by its turnover) since only the numerator would be reduced & not the denominator i.e. turnover would not be reduced because turnover is considered in earlier year and not in the present year and thus opined that provision for doubtful debts has to be ignored and added back in the profit of the tested party or of the comparable

Separately, it remitted comparability of 4 companies namely Persistent Systems Ltd, L&T Infotech Ltd, Tech Mahindra Ltd CG- VAK Software & Exports which were excluded by applying 10 times turnover range back to AO/TPO to be decided considering Chryscapital HC ruling (wherein it was held that huge profit or huge turnover ipso facto did not lead to the exclusion of a comparable and the TPO, first, should be satisfied that such differences did not materially affect the price or cost and if it did, an attempt should be made for making reasonable adjustment to eliminate the material effect of such differences.)

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

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

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

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

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

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

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

533. The Court dismissed Revenue's appeal and upheld the Tribunal's order accepting assessee's treatment of deferred revenue expenditure (written off over a period of five years) incurred before the start of commercial production as non-operating noting that the Tribunal had rightly observed that deferred revenue expenditure was not in the nature of research and development and not recovered from AE

after examining the the agreement with its AE where research and development cost could only be reimbursed by the AE. The Tribunal had also observed that the assessee had suo-moto disallowed the deferred revenue expenditure and it relied on the coordinate bench ruling in Pole to Win wherein it had been held that expenses disallowed while computing taxable income are excluded from operating margin. Thus, the Court rejected the plea of Revenue to treat the deferred revenue expenditure as operating.

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

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

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

535. The Tribunal dismissed the assessee's contention that outsourcing cost incurred by it was non-operating in nature and held that the outsourcing cost was directly related to the software development and services. Noting that the assessee had merely developed a part of the software through outsourcing instead of in-house development and the outsourced work was incorporated in the work of the assessee in the final software prior to providing the same to the AE it held that the TPO had correctly considered the outsourcing cost as operating expense of the assessee

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

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

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

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

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

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

538. In case of an assessee engaged in providing to its AE engineering and design services including offshore construction and drilling in oil and gas sector, the Tribunal deleted TP-adjustment and noted that for working out assessee's PLI, using TNMM, the TPO had allocated operating cost considering man hours committed for AE (81,962 hrs) instead of man-hours actually utilized for AE (8,695 hrs) and accordingly,

arrived at TP adjustment. The Tribunal accepted assessee's contention that man-hours actually utilized should be considered as allocation key and not man-hours committed to AE and held that different yardsticks cannot be adopted for cost allocation to AE and non-AE segment. The Tribunal observed that man-hours actually utilized for AE was only 2% of total man-hours utilized and thus, applying the same for cost allocation purpose, concluded that the assessee's transaction would be at ALP.

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

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

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

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

540. The Tribunal remitted the matter back to the Assessing Officer to consider the assessee's claim of adopting the PLI of net margin/operating revenue. The assessee engaged in the business of supporting services had used the services of its AE vis-à-vis marketing support services. The TPO had rejected the assessee's method of computing PLI i.e. operating profit/ total cost and was of the view that in case of operating profit of marketing support service, the PLI should be net margin divided by marketing cost. The Tribunal rejected the contention of the TPO on the ground that in the instant case the ALP of the marketing costs had to be determined and hence could not be considered as a denominator.

First Source Solutions Ltd v/s. ACIT [TS-423-ITAT-2018 (Mum)] ITA No.3094/Mum/2014 dated 01.06.2018

541. The Tribunal dismissed Revenue's appeal and upheld the DRP's order of adjustment to PLI of comparables on account of higher cost of import duty on materials noting that co-ordinate bench in assessee's own case in earlier years had remitted the issue in light of the coordinate bench decision of Skoda auto India to examine the claim of the assessee vis-à-vis higher import cost incurred by it compared to the comparables and eliminate the difference which was materially likely to affect the profit in open market in terms of Rule 10B(3).

DCIT v Terex India Pvt. Ltd [as successor of Demag Cranes and Components (India) Pvt. Ltd] [TS-477-ITAT-2018(PUN)-TP] ITA No.552 & 583/Pun/2016 dated 06.06.2018

542. The Tribunal upheld CIT(A)'s allowance of adjustment of expenses on recall of products for AY 2005-06 which failed quality check conducted by AE, accepting that it was extraordinary event leading to abnormal cost. It further observed that TPO had allowed adjustment for expenses incurred by customer and reimbursed by assessee, however CIT(A) had rightly enhanced adjustment to cover expenses relating to goods recalled and lying in factory.

However, the Tribunal reversed the CIT(A)'s direction to grant adjustment of Rs. 10.73 Cr towards higher cost incurred on material procured from AE which was supplied to customer at lesser price. It held that merely because the assessee had imported a new product from its sister concern for onward supply and subsequently, the prices stabilized, it did not make the cost as extraordinary. Further, it held that it was on account of increase in the cost of production which is in the normal course of business.

Further it remanded back the issue of adjustment on account of valuation of the inventory of 'Unicorn' products (where realizable value was less than the cost) allowed by CIT(A) while noting that risk of diminution in value of inventory was inherent in business. The Tribunal held that any claim to treat expenditure as extra-ordinary and not arising in normal course of business needs to be demonstrated with strict evidence.

Munjal Showa Ltd [TS-345-ITAT-2018(DEL)-TP] ITA No.3296/Del/2013 dated 14.05.2018

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

Restrict adjustment to AE transactions

544. The Tribunal upheld CIT(A)'s order wherein it was held that TP adjustment should be restricted to sales with AE and not to total sales with AEs and non-AEs. It relied on ratio laid down in Bombay HC ruling in CIT vs Alstom Projects India Ltd. wherein it was held that TP adjustment was done under Chapter X of the Act and mandate of Chapter X was only to re-determine consideration received or given to arrive at income arising from international transactions with AE's.
JCIT. vs IBM Business Consulting Service Pvt Ltd [2018] 53 CCH 0431 (Kol- Trib.) ITA No.1068/Kol/dated 01.08.2018

545. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order accepting transaction margin only and rejecting entity level margin relying on coordinate bench ruling in assessee's own case for earlier year wherein it was held that it was clear from the statutory provisions especially Rule 10B(e) (i) to (iii) that it is only the international transaction that had to be compared with uncontrolled transaction and not the transaction undertaken by the entity as a whole. It relied on coordinate bench decision in UCB India (P) Ltd. V. ACIT (2009) 121 ITD 131wherien it has been held that sec, 92C read with Rule 10B(l) (e) deals with TNMM and it refers to only net profit margin realized by an enterprise from an international transaction or a class of such transactions but not operating margins of enterprises as whole and noted the same view was taken in various coordinate bench decisions.
DCIT vs JJ Exporters Ltd. [TS-1047-ITAT-2018(Kol)-TP] ITA No.1371 /Kol /2017 and ITA No.1372/Kol/2017 dated 19.09.2018

546. The Tribunal dismissed Revenue's appeal and upheld DRP's order accepting adjustment should be restricted only to AE sales and not to be done at AE level noting that DRP had accepted the same in preceding year and there was no change in facts in subject year. Further, it relied on Bombay HC ruling in case of Alstom Projects India Ltd. wherein it was held that proportionate adjustments were to be made only in respect of the international transactions with Associated Enterprises.
DCIT vs Magna Steyr India Pvt Ltd. [TS-1154-ITAT-2018(PUN)-TP] ITA No.352/Pun/2016 dated 12.10.2018

547. The Apex Court dismissed Revenue's SLP against High Court's order wherein it was held that while determining ALP of international transactions, benchmarking had to be done only on AE transactions and not for entire turnover.
CIT vs Hindustan Unilever Ltd [2018] 99 taxmann.com 135 (SC) SLP 2238 of 2017 dated 29.10.2018

548. The Tribunal directed AO to restrict ALP adjustment to transactions of assessee with its AE as against the adjustment made with respect to total transactions of assessee including AE and non-AE relying on ratio laid down in Bombay HC in Alstom Projects India Ltd. wherein it was held that TP adjustment was permissible only on transaction with associate enterprise and not on entire turnover.
Infac India Pvt Ltd vs Dy.CIT [TS-1369-ITAT-2018(Chny)-TP] (IT(TP)A No.27 /Chny /2018 dated 05.10.2018

549. The Tribunal held there was no infirmity in the CIT(A)'s stand where it restricted the adjustment computed at entity level to the extent of international transactions with AEs vis-à-vis total turnover of the assessee ***ASSISTANT COMMISSIONER OF INCOME TAX vs. Sodexo Food Solutions India Pvt Ltd (2018) 54 CCH 0056 Mum Trib ITA No. 5781/Mum/2016 and ITA 5707/Mum/2016 dated 03.10.2018***

550. The Tribunal restored the matter back to TPO for examination (to consider assessee's written submissions and case laws relied on) noting that assessee had submitted workings for proportional adjustments on ground that import of raw materials from AE was a miniscule portion that is only around 9.72% to total material costs and thus, the TP adjustment was to be restricted only to proportionate purchases from AE and relied on a catena of case laws (including Del HC of KeihenPalfa, Alstom Projects Ltd in Bombay HC) wherein it was held that adjustment should be restricted only to the extent of international transaction with AEs.
GE India Industrial Private Limited vs ACIT [TS-1315-ITAT-2018(DEL)-TP] ITA No.2781/Ahd/2012 dated 04.12.2018

551. Relying on the Bom HC decision of Ratilal Becharlal & Sons and Delhi HC decision of Keihin Panalfa, the Tribunal opined that the issue of restricting the adjustment, if any, to the international transactions undertaken with AEs only and not with the third party, was covered in favour the assessee and thus remanded back the issue to be decided afresh by the CIT(A) after considering the ratio of the aforesaid decisions.
Magic Software Enterprises India Pvt Ltd vs ITO [TS-747-ITAT-2018(PUN)-TP] CO No.98/Pun/2014 dated 18.07.2018

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

553. The Tribunal remitted the computation of TP-adjustment on representation services rendered by the assessee to its AE to the file of the TPO for fresh consideration noting that while computing the TP adjustment, the TPO had included the non-AE transactions as well. Observing that the TPO failed to take into consideration the segmental results of the assessee, the Tribunal directed the TPO to examine the same and compute ALP accordingly.
Messe Dusseldorf India Pvt Ltd vs. DCIT - TS-33-ITAT-2018(DEL)-TP - ITA No.5059/Del./2010 dated 04.01.2018

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

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

556. Where the TPO made a TP-adjustment by considering total costs incurred by assessee in respect of transactions with AEs and non-AEs, the Tribunal held that under TNMM it was not permissible to make

transfer pricing adjustment by applying the average operating profit margin of the comparables, on the assessee's universal transactions entered into with both the AEs and non-AEs. It held that the entire exercise under Chapter-X of the Act is confined to computing total income of the assessee from international transactions having regard to the arm's length price and there was no scope for computing income from non-international transactions also having regard to the ALP. Accordingly, it remitted the matter back to AO/TPO for deciding the issue afresh;
Syniverse Technologies Services (India) Pvt. Ltd. vs. ACIT - TS-169-ITAT-2018(DEL)-TP - ITA No.500/Del/2018 dated 13.03.2018

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

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

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

560. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s order accepting that the adjustment should be made vis-à-vis AE transaction only. It relied on the Bom HC ruling of Tara Jewel Exports Ltd., ThyssenKrup and Goldstar Jewellery Design
SAP Labs India Pvt Ltd vs Addl CIT [TS-298-ITAT-2018(Bang)-TP] CO No.41 (Bang) of 2016 dated 06.04.2018

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

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

Risk Adjustment

563. The Tribunal directed the AO/TPO to provide for economic adjustments on account of difference in risk profile between the assessee and the comparables by relying on ITAT order for assessee's own case for earlier year noting that the assessee was a captive service provider who was remunerated on cost plus model and hence insulated from business risk while the comparables operated as entrepreneurs and were subjected to risks associated with conducting a business.
Bechtel India Pvt Ltd vs DCIT [TS-1026-ITAT-2018(DEL)-TP] ITA No.6779/Del/2015 dated 20.08.2018

564. The Tribunal allowed Revenue's appeal and set aside DRP's order allowing standard deductionof1% in view of risk by relying on the coordinate bench decision of Actis Global Services (P) Ltd wherein it was held that the assessee should demonstrate the nature of risk and as to how the risk had affected the margin. It directed the TPO to reexamine the adjustment on account of risk afresh after giving assessee

an opportunity to furnish necessary details of the nature of risk and the impact on profit margins and quantification of adjustment towards risk.

ACIT vs Yokogawa Technologies India Pvt Ltd [TS-1046-ITAT-2018(DEL)-TP] IT(TP)A No.466/Bang/2016 dated 8.08.2018

565. The Tribunal allowed assessee's claim for risk adjustmentof 13.89% on operating marginof comparables following the coordinate bench ruling in assessee's own case for earlier year wherein it was noted that DRP had rejected the claim on basis that assessee had not quantified the adjustment and it was held that the aforesaid reason could not be a ground for rejection of risk adjustment by relying on coordinate bench ruling in Hyundai Rotem Company vs. ACIT where similarly risk adjustment could not be quantified, and the bench had directed the AO to recompute risk adjustment in line with coordinate bench decision in Sony India Pvt Ltd. (wherein it had allowed 20% risk adjustment considering the fact that it may not be possible to quantify risk adjustments)

St Ericsson India Pvt Ltd. vs Dy.CIT (2018) 54 CCH 0042 DelTrib ITA No.4434/Del/2018 dated 26.09.2018

566. The Tribunal restored issue of risk adjustment to file of DRP for fresh decision by way of reasoned and speaking order noting that DRP without any discussion had allowed 1% of risk adjustment to the average margin by merely following coordinate bench decisions in case of Intellinet Technologies India Pvt. Ltd and Hello Soft Pvt Ltd (wherein it was held that Where if marketing and technical risk attached to comparables were not similar to that of assessee who was having a single customer, risk adjustment had to be given to net margin of comparables for determining ALP) and stated that 1% adjustment to the average margin was to be allowed towards risk differential because the facts of the present case were same as in those two cases without any discussion. Thus, the Tribunal restored the matter to DRP in view of its cryptic order.

ACIT vs Momentive Performance Materials (India) Pvt Ltd [TS-24-ITAT-2018-(Bang)-TP] IT(TP)A No.385/Bang/2016 dated 08.12.2018

567. The Court dismissed assessee's appeal and upheld the Tribunal's order denying 1% of risk adjustment to assessee relying on Zyme Solutions ruling wherein it was held that that when the assessee has not given any details and computation for risk adjustment then the claim of the assessee was purely hypothetical in nature. The Court opined that no substantial question of law arose in the present case as the Tribunal had given sufficient reasons for not allowing any risk adjustment following its earlier view in the case of Zyme Solutions.

SOLIDCORE TECHSOFT SYSTEMS (INDIA) PVT LTD vs ITO (NOW MERGED WITH McAfee SOFTWARE INIDA PVT. LTD.) [TS-722-HC-2018(KAR)-TP] ITA No.848/2017 dated 04.07.2018

568. The Tribunal admitted Revenue's appeal by refusing to accept DRP's 1% risk adjustment to the average margin by arbitrarily relying on Intelligent and Hello Soft rulings to account for the risk differential between assessee and comparable companies. Noting that the risk adjustment workings were not provided by assessee before DRP and DRP's order was also cryptic, it restored matter to file of DRP for fresh decision by way of a speaking and reasoned order.

ACIT v Momentive Performance Materials (India) Pvt. Ltd - TS-24-ITAT-2018(Bang)-TP - IT(TP)A No. 385/Bang/2016 dated 08.12.2017

569. The Tribunal held that though OECD guidelines allows a risk adjustment wherever necessary, it does not say that any such adjustment was to be given merely based on estimates. It distinguished the ruling of the Bangalore ITAT ruling in Philips Software Centre which had allowed a flat risk adjustment of 5.25% and noted that the order had been stayed by HC and also distinguished Delhi Tribunal's decision in Sony India ruling which had also allowed a flat 20% as a fair and reasonable risk adjustment and opined that the essential requirement for allowing a risk adjustment was that the assessee should quantify the risk adjustment in its TP documentation based on a clear and logical workings, considering the risk profile of tested party and comparables companies and not based on surmises. Further, it held that just because the assessee was serving a single customer would not mean that it was bearing market risk different from any other competitor and therefore denied the assessee's claim of 5% risk adjustment.

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

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

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

Segments

572. The Tribunal relying on the coordinate bench decision in assessee's own case for earlier year rejected Revenue's approach of applying TNMM atentity level and TPO's rejection of segmental results on the basis that transaction with non-AE were miniscule. The earlier year's order had relied on the Special Bench decision in LG Electronics wherein it was held that computation of ALP at entity level was inappropriate when Section 92C unequivocally provides that the ALP in relation to 'an' international transaction shall be determined by any of the prescribed methods andRule 10B(1)(e) also talks of the net profit margin realized by the enterprise from 'an' international transaction. The earlier year's order with regard to the second issue on rejection of segment results had examined decisions and taken a view that segmental results need not be audited and the TPO erred in disregarding the results citing transaction with non-AE were miniscule. It had remitted the matter back to decide afresh after considering segmental result of the taxpayer for TP analysis and held that TP adjustment at entity level was not sustainable. Accordingly, for the year under appeal, it directed TPO to decide issue afresh after considering decision of coordinate bench in earlier year.
CSR Technology (India) Pvt Ltd vs ACIT [TS-1138-ITAT-2018(DEL)-TP] ITA No.6805/Del/2015 dated 22.10.2018

573. The Tribunal upheld the CIT(A) order deleting TP-adjustment (made in the manufacturing segment of the assessee) on royalty paid by assessee to AE. It held that the TPO was unjustified in rejecting assessee's segmental profitability working (wherein royalty was allocated to the manufacturing as well as trading segments) and in allocating the entire royalty to the manufacturing segment considering that the royalty agreement provided that the assessee had to pay royalty on goods manufactured as well as traded. Further, the TPO had also included the entire depreciation in the financials towards the manufacturing segment of the assessee which was rightly corrected by the CIT(A) who noted that the amortization of goodwill and other intangibles on acquisition of unit from Hindustan Lever Ltd was to be treated as extra-ordinary item and that the balance depreciation had to be allocated to all segments. It also noted that as even if the TPO's faulty re-casted segments were considered, the margin of the assessee was still higher than the margin of the 5 comparable companies and accordingly, it held that there was no fault in the order of the CIT(A).
ACIT v Diversity India P Ltd (Formerly known as Johnson Diversity India P Ltd) - TS-85-ITAT-2018(Mum)-TP - I.T.A./305/Mum/2012 dated 03/01/2018

574. The Tribunal upheld assessee's contention that while determining ALP of software development services rendered to AE, the segmental result of AE-transactions was to be compared and not entity -level results. It noted that the assessee (engaged in telecom software development for domestic and European market) was incorporated to provide services to third parties, however, due to surplus workforce and other resources availability, it started rendering services to AE and revenue from AE was 43% of total revenue. Further, it observed that for the purpose of arriving at the segmental profits, it

observed that assessee had applied scientific method of allocating expenses based on man-hours spent and the same method was applied in APA signed by assessee in other years. It accepted assessee's contention that if segmental profitability was compared, assessee's PLI would be within 5% range of comparables' margin and accordingly held that no TP-adjustment would be required.
Tieto IT Services India Pvt Ltd vs. DCIT - TS-155-ITAT-2018(PUN)-TP - ITA No.242/PUN/2015 dated : 07.03.2018

575. The Tribunal remitted assessee's international transaction of provision of BPO services back to the AO/TPO for verification after considering segmental results. The Tribunal noted that TPO had rejected the segmental results for want of adequate details and justification for allocation of common expenditure and thereafter accepted assessee's plea that segmental results were available on record and allocation of common expenditure details were also submitted. Thus, the Tribunal remitted the file back for re-adjudication.
Your Lifestyle Pvt Ltd vs DCIT 14(3)(1)- TS-288-ITAT-2018(Mum)-TP- ITA No 314/Mum/2016 dated 13.04.2018

Working capital adjustments

576. The Tribunal confirmed CIT(A)'s order granting working capital adjustment to assessee based on OECD formula and by taking 10.25% as the Prime Lending Rate (PLR). It rejected Revenue's contention that assessee was ineligible for any adjustments, observing that under Rule 10(3) it is the duty of the AO/TPO/DRP to minimize/eliminate the difference which is likely to materially affect the price. It relied on the rulings in the case of Mentor Graphics, and Sony India to reiterate the settled proposition that working capital adjustment is an adjustment that is required to be made in TNMM, thus dismissing the Revenue's appeal.
DCIT vs Imsofer Manufacturing India Pvt Ltd [TS-970-ITAT-2018(DEL)-TP] ITA No.5155 and 5158/Del/2015 dated 14.08.2018

577. The Tribunal held that in absence of any legal infirmity pointed out in direction of CIT(A) by Revenue, the CIT(A) was justified in allowing assessee's claim of working capital adjustment and directing TPO to grant working capital adjustment based on OECD formula and by taking 10.25 percent as Prime Lending Rate (PLR)
Dy.CIT. vs Imsofer Manufacturing India (P.) Ltd [2018] 97 taxmann.com 110 (Delhi - Trib.) IT APPEAL NO. 5155 and 5158(Delhi) OF 2015 dated 14.08.2018

578. By relying on the coordinate bench decisions in Philips India Ltd., Acusis Software India Pvt Ltd etc the assessee contented that CIT(A) erred in not granting mandatory working capital adjustment. which would bring the arithmetic mean of comparable entities to 9.32% as against 12.25%. The CIT(A) while denying the working capital adjustment had observed that the issue of working capital was introduced by the assessee as an afterthought and assessee by its own admission employed a very meager working capital, and the same would not weigh for consideration of comparables. The Tribunal restored the issue of working capital adjustment back to TPO to be considered or granted as per law by following the DRP directions for AY 2014-15 wherein the DRP had allowed the working capital adjustment vis-à-vis comparable companies and directed the AO to apply SBI's PLR and the coordinate bench decisions relied on by assessee.
Lexmark International (India) Pvt Ltd vs DY.CIT (TS-1086-ITAT-2018(Kol)-TP) ITA No.268/Kol/2017 dated 28.09.2018

579. The Tribunal directed the TPO/AO to consider the claim of assessee and allow adjustment to profit margins towards working capital adjustment and distinguished the decisions relied on by CIT(A) noting that in all those cases, the data was not available however in the instant case, the assessee had submitted workings. The CIT(A)had rejected the claim of the assessee for the reason the assessee had to demonstrate the impact on profit margins by reason of a particular level of working capital requirement in the case of the assessee and that of comparable companies by relying on the coordinate bench rulings in Mobis India and SAM Deutz Fahr India Pvt Ltd. It was assessee's plea that there was significant difference in working capital between the assessee and comparable companies and relied on

the coordinate bench decisions of Demag Crane and components (India) Pvt Ltd., Capgemini India Pvt Ltd. in support of its contention that working capital adjustment was warranted.

IKA India Pvt Ltd vs DCIT [TS-1049-ITAT-2018(Bang)-TP] IT(TP)A No.2192/Bang/2017 dated 17.09.2018

580. The Tribunal directed the TPO to consider working capital adjustment relying on coordinate bench ruling in Zafin Softwares wherein it was held that without comparing the working capital employed by comparable companies and assessee, there could not be any TP adjustment. Thus, the TPO was directed to consider working capital adjustment while computing ALP of international transaction.

Sun Tec Business Solutions (P) Ltd vs Dy.CIT [TS-1206-ITAT-2018(Coch)-TP] ITA No.113/Coch/2016 and 509/Coch/2016 dated 12.09.2018

581. The Tribunal upheld the TPO's negative working capital adjustment relying on the coordinate bench decision in Tecnotree Convergence Pvt Ltd. wherein it was held that working capital adjustment ought to be made on ground that it affects pricing of any goods or services and working capital adjustment made for time value of money lost on basis the credit time provided to the customers was incorrect because comparison is made of operating profit marhin (PBIT) and therefore interest cost had no relevance.

Coreone Technologies India P Ltd vs Dy.CIT [TS-1292-ITAT-2018(Bang)-TP] (IT(TP)A No.263/Bang/2014) dated 26.10.2018

582. The Tribunal held that CIT(A) (who used the power of enhancement to deny working capital adjustment) was not justified in denying adjustment on account of working capital adjustment relying on coordinate bench decision of Evalueserve.com wherein it was held that adjustment had to be based on opening and closing working capital deployed and insisting on daily balances of working capital adjustment requirements to compute adjustment was not proper and it was impossible to carry out such an exercise. Further, it also observed that there was no merit in objection of CIT(A) regarding absence of cost of working capital funds, when OECD guideline clearly advocate adopting rate(s) of interest applicable to a commercial enterprise operating in the same market as tested party. It noted that no defect had been pointed out by CIT(A) in the working submitted by assessee and if for reasons given by CIT(A), adjustment was not granted, transaction would not be comparable in terms of Rule 10B(3) (which allowed accurate adjustment to be made to eliminate material differences between transaction), and thus TP exercise would fail. It allowed working capital adjustment made by assessee observing that in keeping with OECD guidelines, comparison should be made of comparable companies on broad basis.

Huawei Technologies India P Ltd vs JCIT [TS-1318-ITAT-2018(Bang)-TP] (IT(TP)A 1939/Bang/2017)) dated 31.10.2018

583. The Tribunal upheld DRP's order deleting negative working capital adjustment noting that assessee did not bear any working capital risk as it was fully funded by its AEs. It relied on coordinate bench decision of Capco IT Services India Pvt Ltd. wherein it was held that that there was no need for making any negative working capital adjustment when the assessee did not carry any working capital risk and in fact the TPO should have done necessary working capital adjustment to the profits of the selected comparables so as to make them comparable to the assessee.

Dy.CIT vs Ivy. Comptech Ltd [TS-1316-ITAT -2018 (Hyd)-TP] ITA No.222/Hyd/2015 dated 29.11.2018

584. The Tribunal deleted the negative working capital adjustment made by TPO relying on coordinate bench decision in NTT Data Enterprise Application Services (P) Ltd wherein it was held that where assessee did not pay interest on working capital loans and did not bear any working capital risk, revenue authorities were not justified in making negative working capital adjustment in course of transfer pricing proceedings

Zyme Solutions Pvt Ltd vs Asst CIT [TS-1272-ITAT-2018(Bang)-TP] (IT(TP)A No.1661/Bang/2016) dated 16.11.2018

585. The Tribunal restored the issue of working capital adjustment for fresh decision after providing reasonable opportunity to assessee of being heard noting that assessee had not submitted information pertaining to trade creditors, trade debtors, unbilled revenue and advance from customers before it or the lower authorities and thus, it could not decide on the allowability of working capital adjustment. It restored it back in the interest of justice.

NI Systems India Pvt. Ltd vs DCIT. [TS-1270-ITAT -2018 (Bang)-TP] IT(TP)A No.1355/Bang/2011 dated 07.11.2018

586. The Tribunal directed the TPO to grant assessee the working capital adjustment on actual basis if the assessee had given the detailed working to the lower authorities. However, if no such working was given by the assessee to the lower authorities then the assessee would not be entitled to such claim. The TPO had worked out working capital adjustment on hypothetical figure of 1.63% instead of on actual basis.

Salesforce.com India P. Ltd vs DCIT [TS-1325-ITAT-2018-(Bang)-TP] IT(TP)A No.697/Bang/2016 dated 21.12.2018

587. The Tribunal restored the isse for computing working capital adjustment by considering provisions written back as operating without applying safe harbor rules. It relied on the coordinate bench decision of Rolls Royce India wherein it was held that rules were effective from 18.09.2013. It also observed that the TPO after directions by DRP had not granted working capital adjustment by not considering the written back amount as operating items.

The Tribunal also set aside the issue in respect of working capital adjustment in case of Telecommunication Consultants India Ltd.

BT (India) Pvt. Ltd. vs ACIT [TS-1010-ITAT-2018 (DEL)] ITA No.442/Del/2016 and ITA No.302/Del/2017 dated 19.07.2018

588. The Tribunal held that the working capital adjustment should be provided while comparing the margins of the tested party with the comparables relying on the coordinate bench decision of assessee's own case for earlier year wherein the DRP's order was upheld that working capital adjustment should be provided in view of the impact of trade receivables, payables and inventories on interest cost .

Viavi Solutions India P Ltd (Formerly known as JDSU India P.Ltd.) [TS-884-ITAT-2018(DEL)-TP] ITA No.1483/Del/2016, ITA No.1478/Del/2016 and ITA No.231/Del/2017 dated 11.07.2018

589. The Tribunal directed the working capital adjustment to be allowed at 2.54% as against TPO's restriction of such adjustment to 1.63%, following the co-ordinate bench decision in Zyme Solutions wherein the TPO had similarly unreasonably restricted the said adjustment and the Tribunal had directed the TPO to compute adjustment based on actual figures from the final list of comparables without such restriction.

MetricStream Infotech (India) Pvt Ltd vs ACIT[TS-749-ITAT-2018(Bang)-TP] IT(TP)A No.493/Bang/2016 dated 20.07.2018

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

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

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

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

592. The Tribunal relying on Demag Cranes & Components allowed assessee's claim for working capital adjustment.
Further, the Tribunal allowed admission of additional evidence filed by assessee with respect to its transactions relating to cost allocation and cost recharges from its AE and remitted back the computation of ALP to the file to AO/TPO for fresh adjudication considering the additional evidences filed.
Lear Automotive India P Ltd. Vs DCIT Circle- 9 Pune – TS-355-ITAT-2018(PUN)-TP- ITA No 515/Pun/2014 dated 26.04.2018

593. The Tribunal granted working capital adjustment to assessee engaged in IT enabled services to its AE, by holding that working capital difference could materially affect the amount of net profit margin in the open market and hence was allowable as adjustments
Stefanini India Pvt Ltd vs ITO Ward 3(4)- TS-338-ITAT-2018(DEL)-TP- ITA No 5479/Del/2016 dated 25.04.2018

594. The Tribunal upheld the DRP's order directing the TPO to give working capital adjustment while working out the average margin of comparables noting that the direction of DRP was justified view of the impact of trade receivables, trade payables and inventory on interest cost.
Dy.CIT vs JDSU Indian (P.) Ltd. [2018] 93 taxmann.com 295(Delhi-Trib) ITA No.1120 of 2015 dated 02.04.2018

595. The Tribunal remitted the issue of risk adjustment to AO/TPO for fresh consideration since in the subsequent year in AY 2011-12 in assessee's own case, the same was allowed by the Tribunal.
Rolls Royce India Pvt. Ltd vs. DCIT [TS-367-ITAT-2018(DEL)-TP] ITA No.1042/Del/2014 dated 02.05.2018

596. The Tribunal dismissed Revenue's appeal against DRP order allowing working capital adjustment in respect of assessee's international transactions for AY 2011-12. The Tribunal noted that DRP had considered various judicial decisions while allowing working capital adjustment and Revenue did not bring on record any contrary decision to rebut it. The Tribunal observed TPO had actually allowed working capital adjustment after considering assessee's detailed computation of margin of comparables.
DCIT vs. Kyocera Asia Pacific India Pvt. Ltd [TS-376-ITAT-2018(DEL)-TP] ITA No.1029/Del/2016 dated 17.05.2018

597. The Tribunal relied on co-ordinate bench ruling in Capgemini India Private Limited and held that working capital adjustment should be granted to account for differences in working capital employed by the assessee and the comparable companies. The Tribunal accepted the assessee's contention that in case of companies additionally identified by TPO, the TPO had wrongly considered the unadjusted margins.
Aramex India Pvt. Ltd vs. DCIT [TS-351-ITAT-2018(Mum)-TP] ITA No.6749/Mum/2017 dated 18.05.2018

598. The Tribunal upheld the CIT(A) and the AO's order rejecting/denying the assessee's claim for working capital adjustment since the assessee had not furnished sufficient data for proving the said claim. It noted that the assessee had not taken the actual rate of interest paid on the loans by itself or the comparables but considered the prime lending rate @18.5% and there was no data pointing out whether the actual rate of interest paid was @18.5% or if there was any deviation. The Tribunal thus opined that the claim of working capital adjustment at 3.18% was based on mere estimate.
Infac India Pvt Limited (TS-387-ITAT-2018(CHNY)-TP) - I.T.A. No.3195/CHNY/2017 dated 03-05-2018

599. The filed a Miscellaneous petition for rectification of the Tribunal's mistake in not adjudicating the ground raised by the assessee against the TPO's action of unreasonably restricting the working capital

adjustment to 1.63%, whereas the TPO had himself worked out the same at 2.72% (before such unreasonable restriction). The Tribunal allowed the assessee's petition and directed the TPO to allow adjustment of 2.72%, following the decision in the case of Zyme Solutions Pvt. Ltd. v ITO [M.P. No.36/Bang/16 in TP(TP) No.465/Bang/2015] wherein the TPO had similarly restricted the said adjustment on identical reasoning and the Tribunal had directed the TPO to compute adjustment based on actual figures from the final list of comparables without such restriction.

Obopay Mobile Technology India Pvt. Ltd v DCIT [TS-525-ITAT-2018(Bang)] IT(TP)A No.238/Bang/2016 dated 04.06.2018

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

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

601. The Tribunal directed the AO to compute working capital adjustment only on the opening & closing balance of working capital employed at the beginning and end of the year by relying on the co-ordinate bench ruling in assessee's own case in AY 2009-10.

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

+ / - 5% adjustment

602. Noting the assessee's contention that the price of exported items charged to its AE would be at ALP if an adjustment of commission expenses was granted in the price from unrelated parties and the assessee was granted the +/- 5 percent adjustment, the Tribunal remitted the matter to the file of the TPO for fresh adjudication as the supporting details for adjustment in commission were not provided by the assessee.

DCIT v JSL Ltd. - [TS-1079-ITAT-2017(DEL)-TP] - ITA No.4111/Del/2013 dated 03-11-2017

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

DCIT vs. Exedy India Ltd. (Formerly known as Ceekay Daikin Limited) - TS-160-ITAT-2018(Mum)-TP - ITA no.7220/Mum./2016 dated 21.02.2018

604. The assessee was engaged in in foreign inward money transfers, buying and selling of foreign currencies and traveller's cheques, air ticketing, corporate agency for insurance and provision of other exchange house services. With respect to the assessee's international transaction of selling foreign currency to its AE, the TPO applied RBI reference rate as the ALP and computed the TP

adjustment without giving the 5% tolerance benefit under proviso to Sec 92C(2) on the ground that the said benefit was not available when the ALP is determined based on only one price/ rate. DRP upheld the TPO's order. The Tribunal set aside the TPO/ DRP's order denying 5% tolerance benefit under proviso to Sec 92C(2) relying on the co-ordinate bench ruling in assessee's own case for an earlier year wherein it was held that the assessee was justified in claiming benefit under proviso to Sec 92C(2) as the RBI reference rate itself was derived as an average of several rates. It also noted that the DRP had confirmed the TP-addition primarily on the ground that the Revenue had appealed before HC against Tribunal orders of earlier years. Thus, the Tribunal held that till the time the co-ordinate bench order was not reversed it would hold good for the present case and accordingly it set aside the TPO/DRP's order

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

Others

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

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

e. Specific Transactions

Advertisement, Marketing and Promotion expenses

606. The Tribunal deleted the AMP adjustment made by the TPO solely on the basis of bright line testing(BLT) by relying on the HC rulings in Bacardi India and Sony Ericsson case wherein BLT was negatived. Noting that the Revenue authorities in subsequent assessment years had not considered AMP expenses to be an international transaction where there were no change in facts and the assessee had been able to demonstrate that part of the AMP expenses were for distribution and the balance were not even incurred on behalf of its AE for brand building, it rejected the AMP adjustment made by the TPO/DRP on alleged engagement by assessee (engaged in importing/ distribution of wines and spirits) in brand promotion on behalf of AE. Further, it was also observed that the TPO's allegation vis-à-vis excess AMP expenditure was without any basis as similar companies dealing with alcohol had incurred such equivalent percentage of expenses which aspect the TPO had not delved into. It rejected the Revenue's contention to remit the matter back to the TPO observing that a remand to the assessment stage cannot be a matter of routine and it has to be so done only when there is anything in the facts and circumstances to so warrant or justify.

Moet Hennessy India Pvt Ltd vs ACIT [TS-923-ITAT-2018(DEL)-TP] ITA No.1906/Del/2014 dated 23.08.2018

607. The Tribunal restored the AMP adjustment made by the TPO observing that there was no mention of any specific agreement which clearly proved it was an international transaction. It directed the TPO to

verify the samein light of the agreements signed by the assessee with its AEs. It was the assessee's [distributor of Cannon] contention that the AMP expenses were incurred locally for domestic independent third parties and could not be categorized as an international transaction and the burden of proving an arrangement was on the Revenue which it failed to demonstrate. Further, The Tribunal following the coordinate bench decision of the assessee's own case for earlier year directed the TPO to exclude exclude sales trade discount, commission and other sales related expenditure and subsidy from the ambit of AMP expenditure since they were not the nature of brand promotion and were to push sales in the Indian market.

Cannon India Pvt Ltd vs DCIT [TS-870-ITAT-2018(DEL)-TP] ITA No.1405 and 2275/Del/2015 dated 21.08.2018

608. The assessee was party to a Share Purchase Agreement (SPA) signed by existing shareholders of a Mauritius based company, EMSHL for transfer of a portion of shareholding of that company to Kuki Investments Ltd.(Kuki) represented by husband of the assessee ('RK') and under same SPA, Kuki was also to subscribe to additional shares to be issued by company EMSHL. The assessee was neither a buyer nor a seller of shares of EMSHL in SPA. However, under SPA assessee provided brand ambassadorship services to Jaipur IPL Cricket Private Limited (JICPL), an Indian Company that was a 100 per cent subsidiary of EMSHL, in relation to promotional activities of cricket team without any charge. The AO in the assessment order treated the assessee and EMSHL as AEs and held that services rendered by assessee to JICPL under SPA involving shareholders of EMSHL constituted an international transaction and computed the ALP adjustment towards the brand ambassadorship services based on another contemporaneous brand ambassadorship agreement of the assessee with Hindustan Unilever Limited (HUL). The CIT(A) held that the assessee and Kuki were AEs in view of section 92A(1) and further applied section 92B(2) to hold that there was a deemed 'international transaction' between assessee and JICPL due to the share purchase agreement and confirmed the adjustment. The Tribunal deleted the TP adjustment made by the AO towards the brand ambassadorship services observing that (i) section 92A(2)(J) deems the two enterprises to be AE's if one of the enterprise is controlled by an individual and the other enterprise is controlled by such an individual or his relatives and the Revenue had failed to bring any argument on record with respect to the second limb as to how RK or his relative controlled the other enterprise, the CIT(A) had wrongly presumed that assessee's Profession (not a person u/s. 2(31) and separate from her) was the other 'enterprise' and RK's relative, i.e. assessee, controlled that other 'enterprise', i.e. her 'profession'. (ii) section 92B(2) cannot be applied to hold that transaction between assessee and JICPL was an 'International transaction' as neither any of the parties to the SPA were an AE of the assessee nor JICPL entered into a prior agreement with the AE of the assessee and as such the prerequisite of a prior agreement between a non-AE with the AE of an assessee were not fulfilled (iii) Section 92 was not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. Accordingly, since no income had accrued to or received by the assessee under section 5, no notional income could be brought to tax under section 92.

Shilpa Shetty vs ACIT [TS-885-ITAT-2018(Mum)-TP]ITA No.2445/Mum/2014 dated 21.08.2018

609. The Tribunal restored the issue of TP adjustment on AMP expenses incurred by assessee [distributor of Canon products imported from its AEs] to verify if the AMP expenses constitute an international transaction as there was no mention of specific agreements to the effect of the AMP being an international transaction. It directed the TPO to verify the issue in light of agreements signed by the assessee with its AE. It was assessee's contention that existence of an international transaction could not be a matter for inference or surmise and the onus to prove the existence of an agreement/arrangement prior to incurring of the AMP expenses was on the Revenue.

CAMPM OMDOA PVT. LTS & ORS vs Dy.CIT [2018] 53 taxmann.com 110 (Delhi - Trib.) IT APPEAL No. 5155 and 5158(Delhi) OF 2015 dated 14.08.2018

610. The TPO was of the view that the assessee had incurred certain AMP expenditure in the consumer segment which had benefited the overseas AE in building its brand and determined the ALP of AMP expenditure by applying Brightline testing following the SB decision of LG Electronics. The Tribunal deleted the AMP adjustment made by the TPO noting that in assessee's own case for assessment year 2011–12, the DRP had held that AMP expenditure did not fall within the definition of section 92 B of the

Act and after verifying the terms of agreement had categorically observed that the agreement does not reveal any arrangement between the assessee and its AE for incurring of AMP expenditure. It further applied the ratio laid down in Del HC ruling in Maruti Suzuki wherein it was held that in absence of arrangement or agreement, AMP expenss incurred could not be categorized as an international transaction and method of applying BLT was not provided in statute.

Johnson And Johnson Pvt. Ltd. vs ACIT [TS-1028-ITAT-2018(Mum)-TP] ITA No.6142/Mum/2017 dated 19.09.2018

611. The Tribunal deleted the AMP adjustment made by the TPO in case ofthe assessee [engaged in manufacturing and sale of confectionary products] following the coordinate bench ruling in assessee's own case wherein the HC ruling of Maruti Suzuki and Sony Erricson had been relied on to hold that AMP expenses incurred by the assessee could not be treated and categorized as an international transaction under section 92B of the Act. It noted that there was no change in facts and circumstances from the preceeding year. It was assessee's contention that it, being a licensed manufacturer for its domestic segment for which AMP expenses were incurred, the benefit from these expenses accrued solely to it and any benefit arising to the AE was purely indirect and incidental.

Wrigley India Pvt Ltd vs DCIT [TS-1064-ITAT-2018(DEL)-TP] ITA NO.656/Del/2016 dated 25.09.2018

612. The Court dismissed the Revenue's appeal and upheld the Tribunal's order accepting CIT(A)'s deletion of the AMP adjustment noting that co-ordinate bench in Sony Ericsson Mobile Communication had disapproved bright line test ("BLT Test") applied by TPO while making AMP adjustment and to treat the advertising marketing and promotion as a function performed by the assessee, who was engaged in marketing and distribution.

Pr.CIT vs MARY KAY COSMETIC PVT LTD [TS-1063-HC-2018(DEL)-TP] ITA 1010/2018 dated 18.09.2018

613. The Tribunal by relying on Delhi HC ruling in Sony Ericson Mobile Communication, Maruti Suzuki India Ltd. and Whirlpool India Ltd.dismissed Revenue's appeal and upheld DRP's order deleting AMP adjustmenton the basis that there existed no agreement or understanding or arrangement between the assessee and the AE for sharing of AMP expenses and the TPO has not shown anything except BLT to benchmark the alleged excess AMP expenses.

The DRP had remanded the AMP adjustment to be decided afresh by the TPO in light of the Delhi High Court ruling of Sony Ericson Mobile Communication. The TPO in the remand report had also examined the issue of royalty, intra group services and other international transaction and suggested an alternative disallowance of Rs.31,48,74,320/- for royalty and Rs.18.44 crores for intra group services towards availing market support services. The DRP, on fresh information received by the TPO, benchmarked the royalty payment at 3% of sales by applying internal CUP and proceeded to make the adjustment. In so far as intra group services were concerned, DRP made a TP adjustment on intragroup services accepting TPO's view that assessee had failed to demonstrate that services were received by the assessee or that it benefitted from such services as claimed. The Tribunal rejected assessee's contention when DRP was silent on the issue, the TPO did not have jurisdiction to suggest alternative disallowances and examine issues not mentioned. However, the Tribunal restored the issue of royalty and intragroup services on the ground that proper opportunity was not given to the assessee to make the submissions on the alternative disallowances.

Loreal India Private Ltd vs Dy.CIT [TS-1061-ITAT-2018(Mum)-TP] ITA No.963/Mum/2016 and CO No.139/Mum/2016 dated 11.09.2018

Dy.CIT vs Loreal India Private Ltd [TS-1061-ITAT-2018(Mum)-TP] ITA No.1264/Mum/2016 dated 11.09.2018

614. The Tribunal deleted the TP adjustment on AMP adjustment incurred by assessee(engaged in sales and distribution of headphones, microphones, headsets), noting it was not possible that TPO was not aware of the BLT testing being discarded in view of the Delhi HC ruling of Sony Ericson Mobile Communication India Pvt Ltd but he made the adjustment on basis of BLT. It observed that the focus of AMP spend was to sell product by highlighting its features to potential customers on one to one basis, commonly through direct mail, e-mail and online marketing, thus the AMP expenses were not

incurred with a view to benefit the AEs but only to increase assessee's own sales.It rejected Revenue's plea to remand back the matter observing that a remand could not be a matter of routine. It had to be so done only when the facts and circumstances so warrant or justify.

Sennheiser Electronics India Ltd vs ACIT [TS-1018-ITAT-2018(DEL)-TP] ITA No.7574/Del/2017 dated 19.09.2018

615. The Tribunal restored the TP adjustment towards AMP expenses incurred by assessee noting that the assessee had filed belated submissions dated 09.12.2014 and though the TPO's order was dated 09.01.2015, the said submissons found no mentionin the order and TPO had not considered and acted upon the same. It observed that the primary role of the Tribunal was of an adjudicator and not of an investigator, thus the matter was restored to AO/TPO to enable them to consider the material and carry out any required investigation.

Stanley Black and Decker India Pvt Ltd vs ACIT [TS-1019-ITAT-2018(Bang)-TP] IT(TP)A No.675/Bang/2016 dated 07.09.2018

616. The TPO had applied BLT for computing ALP of AMP expenses and made a TP adjustment on assessee (engaged in business of sales and distribution of headphones, microphones, receivers, monitoring systems, tour guide systems and aviation headsets). which was upheld by DRP. The Tribunal deleted the AMP adjustment made noting that TPO had segregated AMP expenses as separate international transaction requiring independent benchmarking which lead to unusual results following the HC ruling in case of Sony Ericsson Mobile Communication India [P] Ltd. (wherein it held that once the AO/TPO accepted and adopted TNMM but chose to treat a particular expenditure like AMP as a separate international transaction without bifurcation/segregation, it would lead to unusual and incongruous results as AMP expenses was the cost or expenses and was not diverse.) It rejected Revenue's stand to remit the matter observing that TPO was aware of the aforesaid HC ruling wherein BLT had been discarded in view of the discussions in its order.

SENNHEISER ELECTRONICS INDIA PVT. LTD vs ACIT (2018) 54 CCH 0219 DelTrib ITA No.7574/Del/2017 dated 19.09.2018

617. The TPO was of the view that the entire amount of AMP expenses was to be considered as expenditure for creation of marketing intangibles for its AE, which should have been compensated by the AE to the assessee and determined the ALP of AMP expenses by imputing a markup of 5% to the AMP expenses incurred by assessee (who was engaged in both manufacturing and distribution of pharmaceutical formulations). The DRP confirmed the TPO's treatment of AMP transaction as an international transaction and upheld the action of TPO in determining the ALP of AMP expenses. The Tribunal rejected Revenue's argument that the Delhi HC decision of Maruti Suziki would not be applicable in view of assessee being only a distributor noting that assessee was both a manufacturer and distributor asevident from its financials (in terms of consumption of raw materials, inventories and products manufactured by outsourcing) and accepted assessee's contention that AMP expenses could not be treated as international transaction relying on the coordinate bench decision of Philips India Ltd. wherein it was held that where the assessee was a manufacturer cum distributor ratio laid down in Del HC decision of Maruti Suzuki would be applicable and AMP transaction could not be treated as an international transaction. It also observed that entire AMP expenditure has been incurred and paid only to third parties and not to AEs and also the expenditures incurred were purely related to products of the assesee and not for any brand.

Organon (India) Pvt Ltd vs DCIT [TS-1141-ITAT-2018(Kol)-TP] ITA Nos.633 and 2459/Kol/2017 dated 24.10.2018

618. The TPO was of the view that the entire amount of AMP expenses was to be considered as expenditure for creation of marketing intangibles for its AE, which should have been compensated by the AE to the assessee and determined the ALP of AMP expenses by imputing a markup of 5% to the AMP expenses incurred by assessee (who was engaged in both manufacturing and distribution of pharmaceutical formulations). The DRP confirmed the TPO's treatment of AMP transaction as an international transaction and upheld the action of TPO in determining the ALP of AMP expenses. The Tribunal rejected Revenue's argument that the Delhi HC decision of Maruti Suziki would not be applicable in view of assessee being only a distributor noting that assessee was both a manufacturer and distributor

asevident from its financials (in terms of consumption of raw materials, inventories and products manufactured by outsourcing) and accepted assessee's contention that AMP expenses could not be treated as international transaction relying on the coordinate bench decision of Philips India Ltd. wherein it was held that where the assessee was a manufacturer cum distributor ratio laid down in Del HC decision of Maruti Suzuki would be applicable and AMP transaction could not be treated as an international transaction. It also observed that entire AMP expenditure has been incurred and paid only to third parties and not to AEs and also the expenditures incurred were purely related to products of the assesee and not for any brand.

Organon (India) Pvt Ltd vs DCIT [TS-1141-ITAT-2018(Kol)-TP] ITA Nos.633 and 2459/Kol/2017 dated 24.10.2018

619. The Tribunal deleted the TP adjustment on AMP expenses made by TPO in case of assessee (engaged in the business of manufacturing and sale of malted food and drinks as well as chocolates) relying on coordinate bench decision in assessee's own case for earlier year wherein it was held that the disputed transaction was not an international transaction in absence of an agreement entered into between assessee and its AE for sharing/ reimbursement of AMP expenses. It observed that assesseehad incurred the AMP expenditure for creating product awareness and to recall the value of existing products and that it had a local marketing strategy of making advertisement/slogans in local language. Further, nothing was brought on record by TPO to prove that the assessee was directly or indirectly promoting the global brand rather than promoting its own products.

Mondelez India Foods Pvt. Ltd. vs Addl.CIT [TS-1288-ITAT-2018(Mum)-TP] ITA No.1512/Mum/2013 dated 28.11.2018

620. The TPO was of the view assessee (leading marketer, distributor and producer of quality branded automotive and industrial products and services) had incurred huge non-routine expenditure to promote brand of AE to develop marketing intangibles for the AE. The TPO benchmarked AMP expenses using BLT and made an addition. The Tribunal noted that issue was covered in favour by HC in assessee's own case wherein it was held that ITAT was not justified in remanding the AMP expenses when Revenue was unable to demonstrate that there existed an international transaction between assessee and AE. Thus, it opined that AMP adjustment made was to be deleted in view of no change in business model of assessee following the HC decision in assessee's own case however, it held that it could not ignore the submission of the Revenue that the HC decisions of assessee, and Sony Ericsson (which had been relied on by HC decision of assessee on not treating AMP expenses as an international transaction in absence of agreement and issue of applicability of BLT) were pending before Apex Court and the decision of Hon'ble Apex Court would be binding upon all the authorities. It restored the issue back to AO holding that AO could pass order afresh if the above decisions of HC were reversed by Apex Court.

Valvoline Cummins Pvt Ltd vs DCIT [TS-1236-ITAT-2018(DEL)-TP] ITA No.527/Del./2016 dated 26.11.2018

621. The assessee-company was manufacturing motorcycle and it had entered into technical collaboration agreement with its AE (Suzuki Japan) which was owning significant intangibles like patents, trademarks, manufacturing know-how. Suzuki Japan also granted right to use its trademarks and brand to assessee TPO noted that assessee had expended huge amount in excess of bright line limit in order to promote brand/trade name of its AE which was required to be compensated by AE and made TP adjustment by applying BLT. The Tribunal noted that there was not an iota of material to affect that assessee had incurred huge AMP/sales expenses to extent of 10.26 per cent and no cogent material was there to treat incurring of AMP expenses as international transaction more particularly when basis for treating AMP expenses as international transaction, i.e., BLT, was not a legally sustainable method. Thus, it opined that since AMP expenses incurred by assessee were not for benefit of AE but only to enhance sales of assessee, adjustment made by TPO on this account was not sustainable in eyes of law but restored the matter back to AO as further issue of applicability of Bright line test (Sony Ericsson case) was pending before Apex Court holding that AO could pass order afresh if the above decisions of HC were reversed by Apex Court.

Suzuki Motorcycles (I) (P.) Ltd.vsDy.CIT [TS-1237-ITAT-2018(DEL)-TP] ITA No.476/Del./2015 dated 26.11.2018

622. The assessee-company was into manufacturing, selling and distribution of home appliances. The TPO noted that assessee had expended huge amount in excess of bright line limit in order to promote brand/trade name of its AE which was required to be compensated by AE and accordingly made TP adjustment by applying BLT. The Tribunal relied on Delhi HC in Sony Ericsson India Pvt Ltd wherein it had categorically held that BLT was not an appropriate yardstick for determining the existence of an international transaction for calculating the ALP of such transaction and thus, it opined that the said order of TPO/DRP was not correct. It also noted that High Court in assessee's own case had held that the Revenue had been unable to demonstrate by some tangible material that there was an international transaction involving AMP expenses between assessee and AE. Though it opined the TP adjustment was not sustainable, in view of the HC decision of Sony Ericsson, Bausch and Lomb Eye Care and Honda Siel pending before the Apex Court, it restored the matter to AO directing it to pass an order afresh if the said decisions of HC were reversed by Apex Court.

Whirlpool of India Ltd.vsDy.CIT [TS-1240-ITAT-2018(DEL)-TP] ITA No.1254/Del./2014 dated 26.11.2018

623. Where assessee's (engaged in sale of high quality information and education books and music and video products of Reader's digest brand) business model was only a mail order marketing use as promotion for products sales and there was no advertisement in media nor were the products available in shop, the Tribunal remanded the TP adjustment made on AMP expenses incurred by assessee noting that Revenue had failed to bring on record as to how the advertising and marketing promotion activities were an international transaction for carrying out brand building of AE. It also held that components of AMP expenses being postal expenses i.e.billing expenses, premium, sweeptakes, judging, paper and printing of brochures and also postage were different from advertising expenses and said expenses could not in any circumstances be categorized for creation of making intangible for AE as these expenses were incurred by the assessee wholly and exclusively on account of its own business and any benefit to the AE was only incidental. It remitted the matter as done in earlier assessment years and directed assessee to be given opportunity of hearing by following principles of natural justice.

Readers Digest Book and Home Entertainment India (P) Ltd vs DCIT [TS-1360-ITAT-2018-(Del)-TP] ITA No.1080/Del/2016 dated 20.12.2018

624. The Assessee was engaged in manufacturing and sale of watches and is also into distribution of watches imported from its AE. The Tribunal noted that TPO had applied BLT in case of assessee and imputed AMP adjustment on ground that it had allegedly incurred AMP expenses on behalf of its AE for developing marketing intangible for AE and building brand for its AE. It opined that Revenue had failed to discharge the onus of proving an international transaction as held by Delhi HC in Maruti Suzuki. It also noted that Delhi HC in Sony Ericcson and Maruti Suzuki had held that BLT was not a valid basis for determining the existence of international transaction. Thus, it held that TP adjustment was not sustainable but remanded the matter back to AO on account of the aforesaid decisions of Delhi HC pending before the Apex Court (with the direction to it to decide afresh in accordance with order of Apex Court)

Timex Group India Limited vs DCIT [TS-1366-ITAT-2018-(Del)-TP] ITA No.845 /Del/2016 dated 20.12.2018

625. The Tribunal, pursuant to the remand proceedings of HC [where it had discarded BLT method applied by assessee (distributor of Sony products) and directed Tribunal that when figures and calculations as per TNMM or RPM method adopted and applied showed that net/gross margins are accepted (which include AMP expenses), the appeal of assessee is to be allowed] held that AMP expenditure was not incurred for the AE, though assessee did exploit intangibles created by its AE in India for which no royalty payment was made. It could not be denied that brand name Sony was a global brand across globe and it could not be said that Sony brand had become popular as a result of efforts of assessee company. Merely because there was an incidental benefit to AE, it could not be said that AMP expenses were for promoting the brand. Further, it observed that operating margins of assessee were higher than that of comparables, thus it could be concluded that assessee had been suitably remunerated and no further adjustment was required to benchmark AMP expenses.

Sony India Pvt Limited vs Addl.CIT [TS-1371-ITAT-2018-(Del)-TP] ITA No.4978/Del/2011 dated 21.12.2018

626. The TPO had made TP adjustment on AMP expenses incurred by assessee (manufacturer of consumable products) by applying CUP (incurred AMP to sales 16.04% as compared to external comparable where AMP to sales of 3.87% had been incurred) on ground that AMP expenses over and above normal AMP expenses incurred by comparable companies was towards brand building. He also imputed a markup of 15% on AMP spend on account of trained manpower, staff salaries, office expenses, travelling etc. and indirect expenses. TPO proposed an adjustment on account of difference in the ALP of AMP incurred by assessee and the subsidy received from AE. The DRP confirmed TPO's order but varied the markup from 15% to 9%. The Tribunal in the first round had remanded the matter back to TPO in view of Delhi HC decision in case of Sony Ericsson Mobile Communications (wherein BLT method had been discarded and the Tribunal was directed that when figures and calculations as per TNMM or RPM method adopted and applied showed that net/gross margins are accepted (which include AMP expenses), no TP adjustment on AMP expenses would sustain). On appeal to HC against the Tribunal's order, it restored the matter back to Tribunal noting that such directions by Tribunal could not be sustained when it had not examined if there was an international transaction between assessee and its AE. The Tribunal in the second round of proceedings accepted asseessee's contention that issue to be adjudicated on factual matrix (assessee did not want to get into discussion on whether incurring of AMP expenses was an international transaction) and held that direct marketing and sales related expenses or discounts/concessions would not form part of AMP expenses(not related to brand building exercise) and that no TP adjustment would survive as grant received by assessee exceeded the ALP of AMP expenses(with markup of 9%).

Haier Appliances India Limited vsDy.CIT [TS-1296-ITAT-2018-(Del)-TP] ITA No.1515 /Del/2014 dated 03.12.2018

627. The Tribunal restored the AMP issue to the TPO to decide whether the AMP transaction was an international transaction and to further determine the ALP of the transaction noting that the TPO had not brought anything on record to demonstrate existence of international transaction whereby assessee [exclusive distributor of products like cartridges, scanners, projectors, spares and other consumables] was obliged to incur AMP expenses for purpose of promoting brand, intangibles of its AE and the assessee had also not submitted FAR analysis of AMP functions in its TP study. It also observed that assessee was an exclusive distributor for its AE and was also earning income in the form of commission by arranging direct customers for its AE.

Epson India Pvt Ltd vs ACIT [TS-768-ITAT-2018(Bang)-TP] IT(TP)A No.293 and 2479/Bang/2017 dated 27.07.2018

628. The Tribunal restored the AMP issue following the coordinate bench decision of the assessee for earlier year wherein it had relied on the Special bench decision of LG Electronics to remit the matter back for adjudication for determining the cost/value of international transaction and determine the ALP of the transaction in light of certain guidelines in the Special Bench order.

LG Electronics India (P) Ltd vs ACIT [TS-738-ITAT-2018(DEL)-TP] ITA Nos.3612 and 3613/Del/2017 dated 18.07.2018

629. The Tribunal in second round of proceedings pursuant to remand by the High Court deleted the AMP adjustment for assessee (engaged in distribution of mobile handsets in India) noting that the TPO had merely presumed that extraordinary expenses in excess of normal routine expenditure were AMP expenses incurred for brand building of its AE. It referred to the OECD guidelines wherein it was clearly mentioned that it is sufficient to compensate distributors with a service fee and not provide it with a return on marketing intangibles. It also observed that the assessee had to advertise aggressively since it was the first year of business in India, and hence such expenditure could not be considered as expenditure for brand building absent any added value to Sony Ericsson brand owned by AE, at most it could be considered as having been incurred for 'brand maintenance' and also clarified that the business promotion expenses incurred by the assessee were towards its promotion. It also rejected the contention that the amount of Rs. 73.83 crores received by the assessee by way of credit notes represents the excess price charged by AE which had been credited to the assessee and observed that

the business model of the assessee with its AE was structured in such a manner that AE ensured that assessee achieved an arm's length return on sales.

Soni Mobile Communications [India] Pvt. Ltd vs Addl CIT [TS-741-ITAT-2018(DEL)-TP] ITA No.6410/Del/2012 dated 26.07.2018

630. The TPO held that through advertisement expenses incurred, the assessee had increased brand awareness and brand value of the product which benefitted its AE and hence a markup had to be charged on the advertisement expenses reimbursed by assessee from its AE for the assessee's efforts. The Tribunal following the coordinate bench decision in assessee's own case for earlier year deleted the markup. In the earlier year, the Tribunal had noted that there was a memorandum(for promoting sales and enhancing the image of brand) in terms of which the assessee and AE shared expenses incurred towards advertisement which provided for major portion of advertisement expenses incurred towards Indian model being borne by assessee while major portion of other advertisment expenses was reimbursed by AE. It observed that there was no service element involved since the assessee had not provided any services to its AE which was evident from the expenses reimbursed (professional charges, magazine press and sales promotion expenses) for Indian brand ambassadors that the third parties were providing services to assessee. Thus, it opined that no services were being provided by the assessee and further, the AE was reimbursing the assessee for any indirect benefit. Accordingly, it deleted the markup.

Dy.CIT vs Citizen Watches (India) Pvt Ltd [TS-963-ITAT-2018(Bang)-TP] IT(TP)A No.26/Bang/2014 dated 06.07.2018

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

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

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

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

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

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

is not an international transaction as this issue was not raised in first round of proceedings and Tribunal had not restored the entire AMP issue to be decided de novo.

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

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

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

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

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

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

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

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

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

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

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

639. The Tribunal remitted back to AO/TPO AMP-adjustment in respect of assessee engaged in the business relating to import, manufacture, sale and export of all kind of high end crystal components for jewellery, fashion accessories and home decoration after following co-ordinate bench ruling in assessee's own case for previous AY wherein AMP-issue was remitted for determining existence of international

transaction following HC decisions in various cases including Sony Ericson, Rayban Sun Optics & Toshiba India.

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

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

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

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

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

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

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

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

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

644. The Tribunal deleted the AMP-adjustment for assessee [engaged in manufacturing and marketing of diversified pharmaceutical products] in absence of any agreement obliging assessee to undertake brand building on AE's behalf for AYs 2005-06 & 2007-08. The TPO proposed AMP-adjustment and noted that sales on which royalty was being paid by assessee had recorded a faster growth and AMP expenses [which were the driving force for enhancing business] were to be shared by overseas AE in proportion to benefit accruing to it. It rejected revenue's only argument that brand value of assessee group as a whole had reflected healthy growth during the period 2000-2006. The Tribunal observed that there was no evidence to demonstrate the co-relation between the growth and quantum of AMP-expenditure, and hence the addition on basis of mere surmises could not be sustained. It distinguished Sony Ericsson ruling as it was rendered in the context of distributor of products manufactured by foreign

AE and further relied on Bombay HC ruling in Johnson & Johnson and various Delhi HC rulings including Maruti Suzuki & Bausch & Lomb and deleted the AMP adjustment.
ACIT vs. Colgate Palmolive (India) Limited [TS-319-ITAT-2018(Mum)-TP] ITA No.6073/Mum/2014 &CO No.243/Mum/2014 dated 04.05.2018

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

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

Loans / Receivables / Corporate Guarantee

647. Relying on the decision of HC in Kusum Healthcare, the Tribunal directed the AO/TPO to examine if there is a pattern that can be discerned in the payment of outstanding receivables which reflects thatthe transaction is intended to benefit the AE in any manner. The High Court had held that interest on delay in payment of outstanding receivables from AEs needs to be charged on case to case basis after evaluation. Further, the Tribunal in line with the HC ruling also directed the AO/TPO to verify if the impact of receivables had already been factored in the working capital adjustment since any further adjustment on basis of outstanding receivables would not be warranted. Noting that the CIT(A) did not have the benefit of the HC ruling while passing the impugned order the Tribunalremitted the TP adjustment on account of notional interest on delayed payment of outstanding receivables to the AO/TPO with the said directions.
Gillette Diversified Pvt Ltd vs ACIT [TS-1007-ITAT-2018(DEL)-TP] ITA Nos.5736,5675 to 5677/Del/2015 dated 23.08.2018

648. The assessee had advanced loan in foreign denominated currency to its subsidiary in Russia and applied CUP to benchmark its transaction and charged 5% interest on the loan. The TPO determined the ALP of interest on the aforesaid transaction to be 19% and accordingly made an upward adjustment. The CIT(A) deleted the adjustment after considering the decisions cited by assessee noting that for a foreign currency loan the rate of interest was to be adopted on LIBOR and at most LIBOR plus 2% (accordingly arrived at a rate of 2.89% considering LIBOR rate of 0.89%) and held that the interest rate of 5% was at ALP. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order following the coordinate bench ruling in assessee's own case for earlier year wherein it was held that LIBOR rate had to be considered while determining the ALP of the transaction. Wherever the transaction of loan between the associated enterprises was in foreign currency then the transaction would have to be looked upon by applying the commercial principles in regard to international transaction. Therefore, the domestic prime lending rate would have no applicability and the international rate LIBOR would come into play.
ACIT vs MK Shah Exports Ltd [TS-1191-ITAT-2018(Kol)-TP] ITA No.977 and 978/Kol/2018 dated 17.08.2018

649. The Tribunal deleted TP adjustment on account of interest payment made by the AEs to the assessee towards the dollar denominated loan extended to them. It rejected the TPO/DRP's imputation of interest at SBI rate +150 bps and accepted the assessee's stand of charging interest at 6% on the loan advanced to be at ALP by following the coordinate bench decision in assessee's own case for earlier year wherein it was held that for one of the concerns in Bangladesh, interest at 6% was accepted to be at ALP and the TPO could not take an inconsistent view in case of two other concerns and state that

ALP should be determined on the basis of interest rate expected by an Indian lender from bank or from any mutual fund etc. when assessee was the tested party in case of all three concerns and hence deleted the TP adjustment made by the TPO.
House of Pearl Fashions Limited vs DCIT [TS-820-ITAT-2018(DEL)-TP] ITA No.744/Del/2015 dated 06.08.2018

650. The Court upheld Tribunal's order vis-à-vis TP adjustment on account of outstanding receivables relying on coordinate bench decisionsin Ameriprise and BT e-serve wherein it was heldthat after the amendment by Finance Act 2012in Explanation to s 92B inserted with retrospective effect from 01.04.2002, once any debt transaction arising during course of business has been considered an international transaction,any corresponding non-charging of interest payment/ under charging of interest on excess period of credit allowed to AE amounts to an international transaction and hence ALP of said interest transaction needs to be determined.
McKinsey Knowledge Centre India Pvt. Ltd vs Pr.CIT [TS-812-HC-2018(DEL)-TP] ITA 461/2017 dated 09.08.2018

651. The Tribunal directed deletion of interest imputed by the TPO on delayed payments received from AEs by following the decision of coordinate bench in assessee's own case for earlier year wherein it was held that assessee was a debt free company and it was not justifiable to presume that the borrowed funds are utilized to pass on the facility to its AE.
Bechtel India Pvt Ltd vs DCIT [TS-1026-ITAT-2018(DEL)-TP] ITA No.6779/Del/2015 dated 20.08.2018

652. The Tribunal deleted the interest imputed by the TPO on delay in realization of sale proceeds from AE following the coordinate bench decision of the assessee for earlier year which in turn had relied on MicroInk ruling wherein it washeld that operating profit under TNMM factors in the interest adjustment on delay in receivables and hence any further adjustment of interest on excess credit allowed on sales to AE would not be needed. It accepted assessee's contention that no separate adjustment was needed since TNMM factored the interest cost for recovery of sale proceeds from debtors and thus. deleted the adjustment made by the TPO to determine ALP.
Bisazza India Pvt Ltd vs DCIT [TS-1095-ITAT-2018(Ahd)-TP] ITA No.2350/Ahd/2017 dated 08.08.2018

653. The Tribunal upheld CIT(A)'s order deleting the notional interest on delay in receivables computed by TPO using PLR rate noting that once the TPO had accepted TNMM as the MAM then delay in realization of debt and consequential income arising therefrom had been factored in while computing the margin in respect of sale made to AE. It observed that since the realization from the AE was in foreign currency, interest should be computed in LIBOR and not PLR as done by the TPO and even if the interest on delay of trade debts was given effect, the margin of the assessee would still be arm's length.
ACIT vs Vijay Solvex Ltd. [TS-1088-ITAT-2018(JPR)-TP] CO No.12/JP/2014 dated 24.08.2018

654. The Tribunal relying on the decision of the coordinate bench in the assessee's own case for earlier year deleted the TP adjustment on account of corporate guarantee. The Tribunal in the assessee's own case had approved the ALP of the corporate guarantee charged by the assessee at 1% by relying on various decisions of coordinate bench as against the addition of 3.35% made by the TPO on the basis of differential ability of the assessee and AE to raise bonds in the market. The Tribunal followed the same parity of reasoning applied by the HC decision of Everest Kanto Cylinder where it was held that consideration for bank guarantee and corporate guarantee are distinct and separate andobserved that the consideration for raising of bonds in Indian market are distinct and incomparable with the instance of providing guarantee to a bank in Nepal. While approving the guarantee fee charged at 1%, it noted that the assessee's AE had adequate debt equity ratio to obtain loan from the bank and also the corporate guarantee advanced by the assessee was only to the extent of 35% of sanctioned loan hence was not critical for obtaining the loan.
Grindwell Norton Ltd vs DCIT [TS-1004-ITAT-2018(Mum)-TP] ITA No.3589/M/2016 dated 30.08.2018

655. The assessee had advanced loans out of its internal accruals to its subsidiary company in Singapore. The TPO was of the view that interest charged at 4.5% was not at ALP and thus determined the ALP at the PLR rate prevailing in the financial year i.e. 14.45%. The CIT(A) deleted) deleted the addition holding that on the loan granted by the assessee to its AE located at abroad, LIBOR rate of interest was applicable for determining the arm length price. The Tribunal dismissed Revenue's appeal noting that a similar addition was deleted in earlier year wherein it was held that on outbound loans, the LIBOR rate ought to be adopted and in the instant case, the assessee had charged interest at a rate higher than LIBOR.

Dy.CIT vs CCL Products (India) Pvt Ltd [TS-1171-ITAT-2018(VIZ)-TP] ITA No.191/Viz/2018 dated 28.09.2018

656. The TPO treated the money advanced by the assessee to its branches to be in nature of loans and imputed interest of 5% on it. The Tribunal rejected assessee's contention that advances given to the branches were outside the purview of TP Regulations and further, TPO had computed interest on basis that assessee had charged the same rate on loan advanced to AE in Germany (which was not an internal comparable uncontrolled transaction). The Tribunal relied on coordinate benchruling in assessee's own case for earlier year wherein it was held that advance given by the assessee to its AEs in UK and USA came within the ambit of international transaction as per the amendment made in provisions of sec 92B of the Act which would be applicable restrospectively. Further, it rejected assessee's plea of LIBOR to be charged on loan relying on coordinate benchruling in assessee's own case wherein it was held that 5% of interest rate was correctly applied.

Sun Tec Business Solutions (P) Ltd vs Dy.CIT [TS-1206-ITAT-2018(Coch)-TP] ITA No.113/Coch/2016 and 509/Coch/2016 dated 12.09.2018

657. The TPO made addition of guarantee charges @1.3% on the corporate guarantee given to its AE for which it had not charged any fees. The CIT(A) deleted the additionby holding that corporate guarantee given on behalf of its 100% subsidiary AE would not constitute an international transaction within the meaning of section 92B of the Act and accordingly no adjustment was warranted relying on the coordinate ruling in case of Batronics India Ltd. The Tribunal dismissed Revenue's appeal and accepted assessee's contention that where the assessee had not incurred any corporate guarantee charges on behalf of its AE it would not constitute international transaction within the meaning of sec 92B of the Act. It relied on coordinate bench rulings in case of EIH Ltd., Dr.Reddy Laboratories Ltd., Batronics wherein it was held that corporate guarantee was not an international transaction where the assessee had not incurred any expenditure for corporate guarantee and the guarantee was given to protect the interest of shareholders and for securing the credit facilities to its 100% subsidiaries.

Dy.CIT vs CCL Products (India) Pvt Ltd [TS-1171-ITAT-2018(VIZ)-TP] ITA No.191/Viz/2018 dated 28.09.2018

658. The TPO arrived at arm's length interest rate of 20.15%, by applying CUP method and benchmarking the same against local interest rates in respect of loan denominated in foreign currency advanced by the assessee company to its AE and made an adjustment. The CIT(A) relying on coordinate bench decision in Kohinoor foods ltd. held that that international transactions involving cross- border country loans to AE could be bench marked against LIBORand interest rate of Libor+2% could be charged to arrive at ALP. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s order noting that CIT(A) had followed the propositions of law laid down by different benches of the Tribunal (including the jurisdictional bench decision in EIH Ltd.) on the issue.

Dy.CIT vs Manaksia Limited [TS-1101-ITAT-2018(Kol)-TP] ITA No.980/Kol/2017 dated 28.09.2018

659. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s order deleting the TP adjustment on corporate guarantee provided on loans availed by AE on account of TP provisions not being applicable to such transaction prior to the amendment brought in by way of an explanation to Section 92B of the Act, by Finance Act, 2012.It relied on the coordinate bench decision in EIH Ltd. wherein it was held that provision of corporate guarantee was covered under 'any other transaction having bearing on profits, income, losses or assets' of an enterprise as contained in s 92B and held that as per aforesaid section the requirement would have to fulfilled for guarantee to be considered as an international transaction

and the Explanation introduced by Finance Act 2012 could be made applicable only from AY 2013-14 since the rules were only notified on 10.06.2013 and hence the assessee could not be expected to report the transaction as an international transaction in its transfer pricing study and the audit report thereon.

Dy.CIT vs Manaksia Limited [TS-1101-ITAT-2018(Kol)-TP] ITA No.980/Kol/2017 dated 28.09.2018

660. The assessee had advanced loan to its AE and charged an interest rate at 3.3%. The TPO determined the interest rate to be L+600 bps and accordingly made an addition. The DRP restricted the interest rate to L+400bps. The Tribunal restored the issue of benchmarking of aforesaid transaction in view of assessee submitting additional evidence and revised workings that a credit spread of 217bps over and above the Libor rate needed to be considered and it was assessee's plea that then the interest charged would be at ALP.

The assessee had not charged any corporate guarantee fee from its AE since it considered to be in nature of shareholder services warranting no charge. The TPO determined the fee to be charged at 3% which was upheld by DRP. The Tribunal restored the issue of benchmarking of guarantee fee transaction in view of assessee submitting additional evidence that credit rating of AE and itself was same thus no benefit in terms of interest saved could have passed on to its AE and thus, guarantee was only for providing implicit support warranting no charge.

Apeejay Shipping Limited vs DCIT [TS-1058-ITAT-2018(Kol)-TP] ITA No.119/Kol/2017 and ITA No.2238/Kol/2017 dated 12.09.2018

661. The TPO charged a guarantee commission of 2.25% while determining the ALP of the transaction of corporate guarantee provided by the assessee to its AE as against Nil charged by the assessee. The CIT(A) relying on Bombay High Court decision of Everest Kanto restricted the guarantee commission at 0.5% and held that corporate guarantee transaction falls within the ambit of international transaction u/s.92B of the Act. The Tribunal dismissed Revenue's appeal and confirmed the CIT(A)'s order since it was in consonance with the view expressed by the Hon'ble Jurisdictional High Court (supra) and by different Benches of the Tribunal including Mumbai Benches.

Dy.CIT vs Rolta India Ltd [TS-1021-ITAT-2018(Mum)-TP] ITA No.882/Mum/2017 dated 07.09.2018

662. The Tribunal deleted the TP adjustment on interest paid by the assessee to its AEs on the Fully and Compulsory Convertible Debentures (FCCDs) issued by it by following the coordinate bench decision of earlier year wherein it was held that that FCCDs being hybrid instruments i.e. a mix of debt and equity, carried a higher risk and hence could not be compared with a plain vanilla loan or bond and the interest rate ofPLR of SBI plus 300 basis points adoptedby the assessee was in accordance with FEMA regulations and further, the variance in the rate of interest as per TPO/AO to be adjusted and added was 3.75% which was within the permissible range of 5% as permitted by second proviso to Section 92C(2) of the Act.

Granite Gate Properties Pvt Ltd vs ACIT [TS-1025-ITAT-2018(DEL)-TP] ITA No.7025/Del/2017 dated 14.09.2018

663. The Tribunal deleted the TP-adjustment on corporate guarantee fees following the coordinate bench decision inassessee's own case for earlier year wherein a similar adjustment was deleted considering thatobjective behind providing corporate guarantee was not to earn fee, but to protect its interest by fulfilling shareholder's obligation. It also noted that there was no guarantee fee charged by assessee from its subsidiary, thus held that issuance of Corporate Guarantee by the assessee to its subsidiary company did not fall under the ambit of International transaction u/s 92B.

Further, the Tribunal remitted the issue of determination of ALP of interest on loan to AE to the AO/ TPO, relying upon earlier year order in assessee's own case noting that the LIBOR and basis points should be the criteria for meeting the cost of interest on the international transaction in respect of interest to be charged on the loan advanced to AEas against domestic PLR and credit spread considered by TPO. For this purpose, the credit rating of the assessee as well as the credit rating of the AE should be taken into account.

EIH Limited vs DCIT [TS-1020-ITAT-2018(Kol)-TP] ITA No.2225/Kol/2017 dated 14.09.2018

664. The Court dismissed Revenue's appeal and upheld the Tribunal's order directing the TPO/AO to adopt 0.5% as the ALP of the guarantee commission charged as against the TPO's rate of 3.25% as the ALP noting that the issue of guarantee commission was squarely covered by the decision of Bombay High Court in the case of Everest Kento Cylinder Ltd wherein the Court had upheld the Tribunal's order restricting the ALP for guarantee commission to 0.5% as against the rate of 3% adopted by the TPO by considering the rates for bank guarantee. In the said case, the Court had held that the consideration which applied for issuance of corporate guarantees were separate and distinct from the bank guarantees. Further, it held that the comparison could not sustain since it was not between like transactions but were between guarantees issued by commercial bank on one hand as against the corporate guarantee issued by the holding company for the benefit of its AE.

With respect to another transaction, being certain amount advanced by the assessee to its subsidiary (AE) in form of share application money, the TPO recharacterized the same as loan advanced to its AE. With respect to TP adjustment of interest, it noted that the only reason for recharacterizing the share application money as loan was delay in receipt of share certificates from the AE and accordingly, the Tribunal remanded back the issue to AO so that the assessee could furnish the said certificate.The Court noted that the Tribunal had not answered the question clearly in favour of the assessee and the Tribunal had held that subject to verification of the share capital by the AO, the share application money could not be treated as loan amount because of mere delay in issuance of shares by the subsidiary in the name of assessee and thus dismissed Revenue's appeal holding no substantial question of law arose.

Pr.CIT vs Couceutrix Services India Pvt. Ltd. [TS-960-HC-2018(BOM)-TP] (ITA No.303 of 2016) (Bom) dated 04.09.2018

665. The Tribunal upheld CIT(A)'s order deleting TP adjustment on account of interest charged on foreign denominated loan advanced by assessee to its subsidiary in Russia following the coordinate bench decision in assessee's own case for earlier year wherein it was held that interest should be charged at LIBOR and not domestic PLR in respect of transaction of loan in foreign currency with its AE and accordingly, the interest charged by assessee at 8% (which was more than the Libor rate or even more than a markup of 2% on Libor) was held to be at ALP. Thus, it dismissed Revenue's appeal.

ACIT vs MK Shah Exports Ltd [TS-1232-ITAT-2018(Kol)-TP] ITA No.1974/Kol/2017 dated 16.10.2018

666. The Tribunal dismissed Revenue's appeal and upheld DRP's order deleting TP-adjustment on interest on foreign currency denominated loan advanced to AE relying on Delhi HC ruling in Cotton Naturals wherein it was held that when a loan was given or taken in foreign currency loan, then same had to be benchmarked with reference to the market determined interest rate applicable to the currency loan which had to be repaid. The Tribunal noted that assessee had advanced loan to AE in foreign currency at EURIBOR plus 0.25% which was benchmarked by applying CUP method, the ALP of said transaction was determined at EURIBOR Plus 0.12%, however TPO treated the loan as rupee loan since the loan amount was advanced out of account maintained in India and determined the ALP at SBI PLR plus 7.50%. It upheld DRP's view that there was no rational basis for AO to treating the foreign currency loan to be given in INR.

DCIT vs Siegwerk India Pvt. Ltd [TS-1118-ITAT-2018(Del)-TP] ITA No.6702/Del/2015 dated 08.10.2018

667. The assessee had granted foreign currency loan to its foreign AE and received interest (EURIBOR+200 bps) equivalent to 6.41%.TPO benchmarked the aforesaid transaction at 17.26% by applying the yield rate on corporate bonds. The DRP directed the TPO to apply PLR prescribed by RBI at 13.25% to benchmark the transaction. The Tribunal deleted the adjustment made noting that interest rate in respect of loan advanced to foreign AE should be computed based on interest rate applicable to currency in which loan had to be repaid by relying on the ratio laid down in Delhi HC ruling in Cotton Naturals and thus, the interest rate charged by assessee was appropriate and further, the interest rate was accepted at ALP by TPO in previous year.

Moserbaer India Ltd vs ACIT [TS-1139-ITAT-2018(DEL)-TP] ITA No.6042/Del/2012 and 2395/Del/2014 dated 03.10.2018

668. The assessee had given foreign currency denominated loans to its AE in USD and Euro currency and was of the view that no benchmarking exercise under TP provisions had to be undertaken as it was in nature of trade advances,however the TPO determined the ALP of interest rate at 20%/22% in respect of the aforesaid loans by pricing at the cost of funds in the hands of the assessee at 14.5% and made an appropriate adjustment for the credit risk being borne by the assessee, having regard to the borrower's independent credit rating at 550 bps and 750 bps. Noting that substantial portion of own surplus funds had been deployed for loans, the CIT(A) held that TPO's calculation of cost of funds was not sustainable and opined that TPO's methodology adopted was not in conformity with the methods prescribed in Rule 10B and relied on various decisions to conclude that the settled view was that the foreign currency denominated loans advanced to AEs should be benchmarked against the relevant currency denominated

LIBOR rate. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s findings noting that a catena of case laws has already concluded that foreign currency denominated loans have to benchmarked at LIBOR.

DCIT vs Rohit Ferro Tech Ltd. [TS-1399-ITAT-2018(Kol)-TP] (ITA Nos.262 and 263 /Kol /2018 dated 12.10.2018

669. The Tribunal deleted TP-adjustment on outstanding AE-receivables noting that the TPO had charged interest @ 14.45% p.a. on the receivables received beyond the credit period allowed observing that with the retrospective introduction of explanation to Section 92B, receivables formed a part of international transaction. It also noted assessee's submission that the outstanding receivables were consequent to the international transactions of provision of software development services and not in the nature of any advance/loans and the working capital adjustment had duly considered the impact of such receivables. It relied on Delhi HC ruling in the case of Kusum Healthcare Pvt Ltd wherein after noting that the assessee therein had already factored the impact of receivables on the working capital and thereby on its pricing/profitability vis-à-vis that of its comparables, the HC had held that any further adjustment only on the basis of the outstanding receivables would distort the picture. Following the ratio in the aforesaid HC decision, the Tribunal directed the AO to delete interest charged on the outstanding receivables.

Dhanush Infotech Pvt Ltd vs ACIT [TS-1193-ITAT-2018(HYD)-TP] ITA No.2082/Hyd/2017 dated 17.10.2018

670. The Apex Court dismissed Revenue's SLP against the order of High Court wherein it was held that assessee would be entitiled to the benefit of Libor rate existing at that time (ie 0.79%) when assessee had advanced interest free loan in foreign currency to foreign owned subsidiary and addition of 2 per cent interest in income was required to be quashed and set aside.

CIT vs Vaibhav Gems Ltd [TS-1079-SC-2018-TP] SLP (Civil) Diary No(s).30849/2018 dated 01.10.2018

671. The Tribunal deleted the TP adjustment on account of notional interest charged on excess delay beyond the credit facility extended to AE in realization of sale invoices relying on coordinate bench ruling in case of Bisazza India (P.) Ltd. wherein it was held that if the ALP of transaction is benchmarked on basis of TNMM, an adjustment for interest on excess credit allowed on sales to AEs will distort the picture as TNMM analysis by taking operating profit figure already incorporates the financial impact of excess credit period, which would be adjusted again separately as well.

Gemstone Glass Pvt Ltd vs DCIT [TS-1221-ITAT-2018(Ahd)-TP] ITA (TP) No.3533 /Ahd/2015 dated 23.10.2018

672. The TPO recharacterized the redeemable preference shares as loan and made an ALP addition to interest on redeemable preference shares (RPS). In the first round of proceedings, the Tribunal had restored the issue to AO to decide afresh in conformity with view of higher appellate authority for preceding year however on appeal by the assessee, the Court directed the Tribunal to decide the issue on merits and not wait for the decision for preceding year. The Tribunal, in the second round of proceedings, examining the transaction whether preference shares could be characterized as loans and held that actual transaction as undertaken should be seen and relied on Delhi HC ruling in EKL Appliances wherein the action of TPO was judged by relying on OECD guidelines which stated that

barring exceptional cases, tax administration could not disregard the actual transaction or substitute other transactions for them and the examination of a controlled transaction should ordinarily be based on the transaction as it had been actually undertaken and structured by the associated enterprises. Relying on Globe United Engineering and Foundry HC ruling (wherein it was held that preference shares were really apart of the company's share capital and not loans) and Apex Court ruling in Sahara India (wherein it was held that Optionally Fully Convertible Debentures were 'securities' under the Companies Act and therefore neither 'loans' or 'deposits'), the Tribunal noted that redeemable preference shares could not be characterized as loans and therefore, conclusion of the TPO/AO that the assessee had given loans/advances to its AE under the disguise of redeemable preference shares does not hold good. Accordingly, the Tribunal held that TPO/AO grossly erred in making notional addition being Arm's Length interest on RPS and deleted the adjustment.

Cairn India Ltd vs ACIT [TS-1151-ITAT-2018(DEL)-TP] ITA No.1459/Del/2016 and ITA No.263/Del/2016 dated 24.10.2018

673. The CIT(A) had deleted the addition made by AO in respect of the corporate guarantee issued by assessee to its wholly owned foreign subsidiary towards the bank loan availed by holding that corporate guarantee transaction did not amount to an international transaction and the instant case was guarantee provided to infuse third party funds as a shareholder service meriting no monetary considerationby relying on ratio laid down in case of Bharti Airtel Ltd vs Addl CIT wherein it was held that the corporate guarantee provided by the assessee, which did not involve cost to the Taxpayer, did not have a bearing on profits, incomes, losses or assets of the Taxpayer and hence the transaction did not fall within the ambit of the amended definition of "international transaction" and coordinate bench decision in Tega Industries wherein it was held that no TP adjustment on account of corporate guarantee could be made where it was a case of shareholder activity. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order.

DCIT vs Rohit Ferro Tech Ltd. [TS-1399-ITAT-2018(Kol)-TP] (ITA Nos.262 and 263 /Kol /2018 dated 12.10.2018

674. The TPO rejected assessee's claim that the interest rate of 3.24% charged on loan advanced to AE in USA was at ALP vis-à-vis LIBOR, and made TP adjustment by considering the annual average yield for BB rated bonds for 5 years or more term at 13.46%. The Tribunal restored the said TP adjustment made while benchmarking the interest transaction arising out of loan advanced by assessee to its subsidiary in USA with a direction to assessee to submit TP-study on the said loan noting that no material was brought on record indicating the terms of loan i.e. tenure of loan, security offered,terms of repayment of loan, currency in which loan is to be repaid etc. and RBI policy governing advancing of loans by Indian holding company to its foreign subsidiary companies credit rating etc. determination of credit rating of the lender and borrower,identification of comparable, third party loan agreements. It observed that domestic PLR lending or yield rate on corporate bonds in India would have no applicability and LIBOR rate should be taken as bench mark for international transactions relying on Bombay High Court judgment in case of Tata Auto Comp Systems Ltd. (wherein it was held that that ALP in case of loans advanced to AE would be determined on the basis of rate of interest being charged in the country where loan was received and consumed).

Sasken Technologies Ltd. vs Dy.CIT [TS-1284-ITAT-2018(Bang)-TP] IT(TP)A No.627/Bang/2016 dated 16.11.2018

675. The Court dismissed Revenue's appeal and upheld Tribunal's order a) restricting rate of interest at Libor+2%on foreign currency loan given by assessee to its AE (as against TPO's imputation of 17.26%) and b) restricting rate of commission at 0.5% on corporate guarantee given by assessee to its AE (as against 6% charged by TPO) noting that Tribunal had followed coordinate bench decision in Everest Kanto(subsequently affirmed by HC) wherein it was held that a) LIBOR was an internationally recognized rate for benchmarking foreign denominated loans and also held that b) corporate guarantee was distinct from bank guarantee and thus, TPO's adoption of 3% using external comparable (bank) could not be sustained, thus no substantial question of law arose.

Pr.CIT vs Manugraph India Ltd [TS-1382-HC-2018(BOM)-TP] ITA No.454 of 2016 dated 19.11.2018

676. The Tribunal remitted the benchmarking of ALP of interest on loans advanced by assessee to its AE directing TPO to verify as to the currency in which loan was granted and the currency in which it was to be repaid (so that same could be benchmarked at LIBOR if assessee had advanced loan in terms of USD). It rejected assessee's contention that ALP of interest on outstanding loans was to be NIL in view of loan becoming a non performing asset and assessee not recovering any interest therefrom thus notional income could not be offered to tax by observing that as loan as the transaction is an international transaction within framework of law, the computation of income therefrom had to be on basis of ALP.

Laqshya Media Limited [earlier known as Lakqshya Media Pvt Ltd] vs ACIT [TS-1261-ITAT-2018(Mum)-TP] IT(TP)A No.1984/Mum/2017 dated 14.11.2018

677. The assessee borrowed monies from bank and advanced the same to its AE for setting up of manufacturing facility charging the same rate of interest (Libor+250 bps) as the bank. The TPO concluded that the transaction was not at ALP by observing that assessee was to be compensated for additional risk borne (loan was advanced to third party and thus interest should be charged at cost plus markup) and accordingly determined the interest rate at 5.82%. The DRP confirmed the action of TPO noting that loan obtained from bank was secured while loan advanced to AE was unsecured and since assessee was risk bearing, it should have been compensated for additional risk borne. The Tribunal held that interest charged by assessee was at ALP since it had used CUP method by charging LIBOR+250 bps and relied on coordinate bench decision in Everest Kanto (wherein it was held that LIBOR is apt rate to be charged for loans denominated in foreign currency) to delete the interest adjustment made by TPO.

Aries Agro Limited vs Dy.CIT [TS-1326-ITAT-2018(Mum)-TP] ITA No.1452 /Mum/2017 dated 28.11.2018

678. The assessee had furnished corporate guarantee in respect of loan taken by AE without charging any fee for the same. TPO determined the interest rate of 1.84% by considering the difference between the yield rates of corporate bonds applicable to BBB+(AE's credit rating) and AA+ (assessee's credit rating) The TPO was of the view that that corporate guarantee fee at 50 per cent of 1.84 per cent of loan i.e.0.92% was to be charged by assessee and accordingly made an addition. The Tribunal remitted the TP adjustment on corporate guarantee fee made by noting that as regards corporate guarantee fee, terms and conditions on which loan was given, risk undertaken, relationship between bank and client, economic and business interest etc. were some of major factors which are required to be taken into consideration to arrive at appropriate rate of said fee and as neither assessee nor TPO analyzed transactions in terms of aforesaid factors, impugned addition was to be set aside and, matter was to be remanded back for disposal afresh.

Sasken Technologies Ltd. vs Dy.CIT [TS-1284-ITAT-2018(Bang)-TP] IT(TP)A No.627/Bang/2016 dated 16.11.2018

679. The Tribunal restricted the rate of TP adjustment on corporate guarantee given by assessee on behalf of its step down subsidiary to a bank at 0.5% as opposed to 2.25% charged by TPO by following the coordinate bench decision in assessee's own case for earlier year wherein adjustment to the extent of 0.5% was sustained in view of Bombay HC decision in case of Everest Kanto Cylinders Ltd. wherein the Court had upheld the Tribunal's order restricting the ALP for guarantee commission to 0.5% as against the rate of 3% adopted by the TPO by considering the rates for bank guarantee observing that bank guarantees are distinct from corporate guarantee.

Laqshya Media Limited [earlier known as Lakqshya Media Pvt Ltd] vs ACIT [TS-1261-ITAT-2018(Mum)-TP] IT(TP)A No.1984/Mum/2017 dated 14.11.2018

680. The assessee issued corporate guarantee to the lenders on behalf of its AE acting as distributor of stainless steel manufactured by it. For AY 2007-08 it had received a commission at 1.5% of loan availed by AE (in conformity with rates quoted by Indusind Bank and ING Vysa Bank). TPO had benchmarked it after obtaining quotations from banks at 2.68% and for AY 2008-09 further added 2% as markup because of security and margin adjustment. The Tribunal deleted the said adjustments relying on HC decision in Everest Kanto Cylinders wherein the commission was restricted to 0.5% by

holding that considerations which applied for issuance of a corporate guarantee were distinct and separate from that of bank guarantee.
Jindal Steel Limited vs ACIT [TS-1231-ITAT-2018(Mum)-TP] ITA No.4249/Del/2013 and ITA No.4110/Del/2013 dated 19.11.2018

681. The Tribunal relying on Delhi HC decision in case of Kusum Healthcare Pvt Ltd held that no separate adjustment of interest on receivables was required to be made as it was subsumed in working capital adjustment.
EPAM Systems India Pvt Ltd vs ACIT [TS-1311-ITAT-2018(Hyd)-TP] ITA No.2122/Hyd/2017 dated 20.11.2018

682. The Tribunal deleted the addition on interest on receivables (transaction of sale of network products) where invoicing was beyond 90 days period relying on coordinate bench ruling in case of MicroInk wherein it was held that interest was already factored in operating income in case of TNMM and once the operating profit had been accepted as reasonable, there could not be any occasion to be make adjustment for notional interest on delayed realization of debtors. Also, it observed that assessee was not charging any interest from non-AEs for delay in realization beyond 90 days period which could be taken as a valid CUP input and thus, adjustment would not survive.
Sophos Technologies Private Limited (Formerly known as Cyberoam Technologies Pvt Ltd) vs Dy.CIT [TS-1213-ITAT-2018(Ahd)-TP] ITA No.1565 /Ahd/2017 dated 16.11.2018

683. The Tribunal held that benchmarking of interest transaction of loan advanced by assessee to its AE given in USD should be on Libor plus 200 bps only and rejected TPO's benchmarking at 14.45% (i.e. as per SBI PLR). It directed TPO to compute interest for a period of 139 days and on day wise outstanding basis (assessee had given short term advances for an overall period of 139 days without charging any interest which were paid back by its AE in instalments) by adopting Libor +200 bps.
BS Ltd vs AsstCIT [TS-1330-ITAT-2018(HYD)-TP] ITA No.2187/Hyd/2017 dated 29.11.2018

684. The assessee charged interest at 6% on loan advanced to its AE which was denominated in USD currency. The TPO was of the view that the CUP method was to be applied and the arm's length interest rate was to be computed as a combination of the cost of funds in the hands of the assessee and a credit spread for taking the risk of advancing loan to the AE and thus, concluded that Libor +760bps was an apt rate. He adopted Libor rate of 510 bps and accordingly made an adjustment considering interest rate at 12.70%. The CIT(A) deleted the adjustment and directed the TPO to adopt Libor rate for AY 2009-10 at 113 bps(by relying on various decisions inter-alia HC decision in Cotton Naturals wherein it was held that the foreign currency denominated loans advanced to AEs should be benchmarked against the relevant currency denominated LIBOR rate, which is the present case is US LIBOR. It also noted that even according to TPO's methodology that the interest rate would be 8.74% [113bps +760bps], and the actual interest charged was within +/-5% range would be at ALP. The Tribunal rejected Revenue's contention that CIT(A) should have remanded back the case for adjudicating on LIBOR rates of all three years and affirmed CIT(A)'s decision noting that there were no specific particulars challenging correctness of CIT(A)'s finding on LIBOR rate.
DCIT vs Britannia Industries Ltd [TS-1279-ITAT-2018(HYD)-TP] ITA No.1390-1392/Kol/2017 dated 22.11.2018

685. The assessee had benchmarked interest on foreign currency denominated loans advanced to its 100% subsidiary (outside India) at Libor+200% applying CUP. The TPO had adopted Libor+400 bps on basis information available in public domain on websites of Indian banks. Further, the TPO made an adjustment of 300 bps on interest charged by assessee on loan advanced to its foreign subsidiary on account of transaction cost of hedging cost, lack of security and single customer risk on interest rate. The Tribunal adopted the rate charged by assessee noting that commercial expediency and related benefits of close connection would not be factored in by lending rates shown by bank. The Tribunal deleted the transaction cost of 300 bps imputed by TPO by relying on Delhi HC in Cotton Naturals (wherein it was held that transaction cost of hedging is normally borne by the borrower and it is not relevant when loan had to be repaid in foreign currency) and coordinate bench decision of Bharti Airtel (wherein it was held that when assessee had advanced monies to its subsidiaries which are under its

control it substantially reduced the risk rather than increasing it thus there is no rationale for adjustment on account of higher risks.)

JSL vs ACIT [TS-1231-ITAT-2018(Del)-TP] ITA No.4249/Del/2013 and ITA No.6337/Del/2012 dated 19.11.2018

686. The Tribunal upheld CIT(A)'s order deleting TP adjustment on corporate guarantee by treating corporate guarantee not to be in nature of international transaction noting that coordinate bench in EIH Ltd. held that the Explanation in sec 92B inserted by Finanace Act 2012 (covered corporate guarantee) applies from financial year 2012-13 only without having any retrospective effect.

DCIT vs Britannia Industries Ltd [TS-1279-ITAT-2018(HYD)-TP] ITA No.1390-1392/Kol/2017 dated 22.11.2018

687. The Tribunal following the coordinate bench decision in assessee's own case for earlier year remitted the issue of benchmarking of corporate guarantee provided by assessee on behalf of its AE in Singapore. The Tribunal in the earlier year had remitted the issue to TPO to determine the actual exposure of contingent liability for this AY and apply the rate of 0.53% as per the ratio of coordinate bench decision of Glenmark Pharmaceutical (wherein distinction was made between bank guarantee and corporate guarantee) on the actual contingent liability. However, the Tribunal in subject year accepted assessee's contention that benchmarking was to be based on bank rates and when banks in Singapore were charging 0.15% on guarantee, the same was to be adopted to benchmark.

BS Ltd vs AsstCIT [TS-1330-ITAT-2018(HYD)-TP] ITA No.2187/Hyd/2017 dated 29.11.2018

688. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order deleting TP adjustment on corporate guarantee (where there was no commission charged by parent company to its subsidiary) relying on coordinate bench in assessee's own case for earlier year wherein it was held that corporate guarantee prior to amendment brought about by Explanation was not an international transaction. It had relied on the coordinate bench decision in EIH Ltd. wherein it was held that provision of corporate guarantee was covered under 'any other transaction having bearing on profits, income, losses or assets' of an enterprise as contained in s 92B and held that as per aforesaid section the requirement would have to be fulfilled for guarantee to be considered as an international transaction and the Explanation introduced by Finance Act 2012 could be made applicable only from AY 2013-14 since the rules were only notified on 10.06.2013 and hence the assessee could not be expected to report the transaction as an international transaction in its transfer pricing study and the audit report thereon.

Dy.CIT vs Manaksia Limited [TS-1277-ITAT-2018(Kol)-TP] ITA No.208-209 /Kol/201 dated30.11.2018

689. The TPO treated outstanding receivables as a loan and adopted 13.46% as the rate of interest. The Tribunal remitted the TP adjustment to be worked out by AO at 6 months Libor+400 bps (as submitted by assessee adjustment could not exceed the rate adopted by TPO in previous year). It distinguished the coordinate bench ruling in case of Bechtel (relied upon by assessee) wherein interest was not imputed as company was a debt free company and presumption arose that assessee was not using any interest bearing borrowed funds by observing that even in a case where the assessee was not using any interest bearing borrowed fund, if the actual credit period allowed was more than the agreed credit period then it had to be accepted that earlier price charged as per the agreement was less than the actual prices which was to be charged and in such situation, TP adjustment was to be called for.

Naunce Transcription Services India Pvt Ltd vs DCIT [TS-1353-ITAT-2018(Bang)-TP] IT(TP)A No.307 /Bang/2016 dated 07.11.2018

690. The Tribunal deleted the notional interest imputed on receivables noting that the margin of assessee was within+/-5% tolerance range of margin of comparables and was held to be at ALP, there was no need to make a separate addition for interest additionally. Interest had already been considered in the margins.

Pitney Bowes Software India Pvt Ltd vs Addl CIT [TS-1313-ITAT-2018-(Del)-TP] ITA No.5052/Del/2018 dated 17.12.2018

691. The Tribunal deleted the TP adjustment on interest on outstanding receivables for provision of ITES services by assessee (treated as an unsecured loan) to its AE by relying on coordinate bench decision of Evonik Degussa India Pvt Ltd. wherein the similar adjustment was deleted on basis that assessee did not have any external borrowings and even if payment was made beyond normal credit period to assessee, there would be no interest cost to assessee and moreover, TP adjustment could not be made on hypothetical and notional basis until there was some under charging of real income noting that even in assessee's case there was no interest liability or any external borrowings and agreement did not provide for any charging of interest for delayed payment by the AEs. It also observed that it was not possible for the assessee to include inter-company receivable in the international transactions in the TP study report as the amendment including "such receivables" in 'international transaction' made by Finance Act, 2012 with retrospective effect was made subsequent to the AY in question. (AY 2010-11).
Metlife Global Operations Support Center Private Ltd vs ITO [TS-1309-ITAT-2018(DEL)-TP] ITA No.826/Del/2015 dated 20.12.2018

692. The assessee provided corporate guarantee to a foreign bank ("ABN Ambro") for providing loan to its AE in foreign currency for which it charged nil commission from its AE. TPO determined ALP of the said transaction at 4.75% by addition of markup of 200bps on rate of 2.75% charged by SBI and accordingly, made an addition which was restricted to 0.5% by CIT(A) holding that approach of TPO was not reasonable as bank guarantee and corporate guarantee are distinct and different. Further, the CIT(A) arrived at the rate of 0.5% assuming that had the AE availed loan without corporate guarantee it would have paid an additional interest rate of 1% (interest saving) which had to be split between assessee and AE equally. The Revenue filed an appeal to the Tribunal.The Tribunal directed AO to re-compute ALP for corporate guarantee fee @1% by relying on coordinate bench decision in assessee's own case for earlier year wherein the Tribunal did not fully agree with the findings of the CIT(A) in this regard that the benefit of interest saving of 1% should be shared between the AE and the assessee equally as no cogent reasoning has been given for the same and adopted a corporate guarantee rate of 1%.
ASSISTANT COMMISSIONER OF INCOME TAX vs. FRESENIUS KABI ONCOLOGY LTD. (2019) 54 CCH 0440 DelTrib/)(TS-1443-ITAT-2018(DEL)-TP) ITA No. 3013/Del/2015, 6264/Del/2015 dated 31.12.2018

693. Assessee had charged a rate of interest of 7% on the foreign loan provided to its AE and determined it to be at ALP on basis of CUP on the ground that the loan was taken from HDFC bank it would have charged an interest rate at 6.5% and TPO made an addition by computing interest at 14% [i.e. domestic PLR] , CIT(A) deleted the addition holding that Libor+1.5% was to be charged for a foreign currency loan which was less than 7% charged by the assessee. However, CIT(A) did not consider the DRP's direction for immediately preceding year where Libor+300bps (inclusive of risk adjustment) was charged against which assessee had not raised an appeal. The Tribunal remanded the matter to CIT(A) to decide afresh after considering the aforesaid direction of DRP and giving assessee a proper opportunity to be heard.
ASSISTANT COMMISSIONER OF INCOME TAX vs. FRESENIUS KABI ONCOLOGY LTD. (2019) 54 CCH 0440 DelTrib/)(TS-1443-ITAT-2018(DEL)-TP ITA No. 3013/Del/2015, 6264/Del/2015 dated 31.12.2018

694. Where TPO made addition of notional interest to ALP in respect of delay in realization of payment from AE, the Tribunal deleted the addition in view of fact that in terms of agreement there was no condition to charge any interest for delayed payment by AEs. Moreover, case of assessee pertained to AY 2010-12 during which inter-company receivables were not included in category of international transactions.
METLIFE GLOBAL OPERATIONS SUPPORT CENTER (P.) Ltdvs. ITO(2019) 101 taxmann.com 249 (Del Trib) ITA No. 826 (delhi) of 2016 dated 20.12.2018

695. The TPO benchmarked the interest rate based on SBI PLR for delay in receivables beyond period stipulated in service agreement by treating it as an unsecured loan to the AEs in case of assessee (engaged in providing IT enabled network management, technical support and other back-office support services to its group company). The DRP upheld TPO's action for taking SBI PLR but directed to add 300 bps to the same and further directed 60 days to be reasonable period beyond which interest

was to be charged on said receivables. The Tribunal noted that margin of assessee (16.19%) was higher than comparables (15.72%) which more than compensated for excess credit period extended to AEs and relied on ratio laid down in coordinate bench in Kusum Healthcare Pvt Ltd. (subsequently affirmed by HC) wherein it was held that assessee having already factored in the impact of the receivables on the working capital and thereby on its pricing/profitability vis-a-vis that of its comparables, any further adjustment only on the basis of the outstanding receivables would have distorted the picture and re-characterized the transaction. Thus, the Tribunal deleted the TP adjustment on interest on receivables.

Orange Business Services India Solutions Pvt Ltd vs Dy. CIT [TS-1384-ITAT-2018-(Del)-TP] ITA No.6751/Del/2018 dated 31.12.2018

696. The TPO treated the outstanding receivables from AE's for provision of software development services (for a period of more than 3 months) as loan and computed notional interest at 11.25% (being SBI PLR) applying CUP. The DRP directed the TPO to verify whether the AE was recovering interest from third parties for late recovery and if this was found to exist the interest on extended credit period could be reasonable, on contrary facts its adjustment could not sustain. The Tribunal deleted the TP adjustment on interest on receivables accepting assessee's plea that giving a credit period could not be considered as a separate international transaction and was in fact an integral part of transaction of rendering of software development services by the assessee to its AE and had to be considered as part of the international transaction of Software Development Services. Further, it relied on coordinate bench decision in case of Avnet India Pvt. Ltd. wherein it was held that there could be no separate determination of ALP of international transaction of realization of sale proceeds with extended credit period as it was only incidental to transaction of sale and not an international transaction.

Sunquest Information Systems (India) Pvt Ltd vs Dy.CIT[TS-1390-ITAT -2018-(Bom)-TP] IT(TP)A No.552/Bang/2015 dated 21.12.2018

697. The assessee provided USD loans to its AEs, (i) ILFS Maritime Offshore PTE Limited; and (ii) IL&FS International PTE Limited at an interest rate of USD LIBOR plus 5.5%. Further, loan was given by assessee in Euros to its AE, Elsamex at Euribor+1.75%. The assessee had applied external CUP and interest rates derived from the Reuters Loan Connector, Bloomberg and claimed the interest rate charged to be within the permissible range. The TPO applied CUP and used the annualized average yield of bonds to determine ALP at 15.41%. The CIT(A) upheld the TPO's order. The Tribunal set aside CIT(A)'s order and held that assessee had rightly benchmarked the transaction as per LIBOR and EURIBOR and same could not have been determined as per the domestic rate by relying on Delhi HC decision in Cotton Naturals (I) Pvt Ltd. wherein it was held that interest rate applicable should be that of the currency concerned in which the loan has to be repaid and had disagreed with the view that the interest rates were to be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party.

IL&FS Transportation Networks Ltd vs Addl.CIT [TS-1383-ITAT-2018(Mum)-TP] ITA No.2393/Mum/2015 dated 19.12.2018

698. The Apex Court dismissed Revenue's appeal against HC order wherein Tribunal's order deleting TP adjustment on guarantee fee had been upheld. The Tribunal had rejected benchmarking of 3% of guarantee fee on basis of commission rates charged by bank noting that commercial considerations for corporate guarantee and bank guarantee were distinct and different since in Bank Guarantee, the customer could recover the default amount from bank and bank in turn could recover the same from customer. As against this, in corporate guarantee, failure to honor the guarantee would attract corporate laws but it was not as foolproof as bank guarantee. It had relied on coordinate bench decision of Everest Kanto (subsequently affirmed by HC) in which rate of 0.5% was considered to be at ALP. Thus, the HC had affirmed the Tribunal's order noting that no distinction in facts and/or law had been brought on record warranting a different view from what was held in the jurisdictional HC in case of Everest Kento Cylinders Ltd.

CIT (LTU) vs GLENMARK PHARMACEUTICALSvsAddl CIT [TS-1268-SC- 2018--TP] Civil Appeal No(s).12632/2017 dated 11.12.2018

699. The Court dismissed Revenue's appeal against Tribunal's order deleting TP adjustment made by TPO to the extent of 3% of the amount of guarantee givenby the assessee on behalf of its AE by relying on coordinate bench decision in assessee's own case wherein it was held that ALP of corporate guarantee could not be determined on basis of bank guarantee by relying on coordinate bench of Everest Kanto Cylinders noting that the issue was decided by High Court in assessee's own case wherein it was held that no substantial question of law arose as no distinction in facts and/or law had been brought on record warranting a different view from what was held in the jurisdictional HC in case of Everest Kento Cylinders Ltd.

CIT vs Glenmark Pharmaceuticals Ltd[TS-1391-HC-2018(BOM)-TP] (IT) No.834 of 2016 dated 10.12.2018

700. The assessee had benchmarked the commission rate for corporate guarantee given on behalf of its AE at 0.5% by applying CUP. The TPO accepted CUP but determined the ALP at 3% (commission charged by banks for giving corporate guarantee). The Tribunal deleted the said adjustment relying on Bombay HC decision of Everest Kanto Cylinder Ltd. wherein the commission was restricted at 0.5% by holding that commercial consideration for corporate guarantee and bank guarantee are distinct and different.

UTV Software Communications Ltd.vsAsst.CIT [TS-1295-ITAT-2018--TP] ITA No.1258/Mum/2018 dated 11.12.2018

701. Where the assessee had charged guarantee commission at 0.38% of the outstanding guaranteed amount and the TPO/AO assessed commission at 3% in place of 0.38% which adjustment was deleted by CIT(A), the Tribunal allowed Revenue's appeal and benchmarked the aforesaid transaction at 1% by relying on coordinate bench decision in assessee's own case for earlier year wherein it was held that that the Tribunal in various cases had accepted guarantee commission chargeable between 0.5% to 1%, thus, transaction ought to be benchmarked by taking rate of 1% of outstanding guarantee amount.

DCIT vs National Engineering Industries Ltd.[TS-1401-ITAT-2018--TP] ITA No.1791/Kol /2017 dated 28.12.2018

702. The Tribunal restricted addition of guarantee fee to 0.9% (normally charged by an Indian bank) for issuance of SBLC relying on coordinate bench in assessee's own case for earlier year wherein it had adopted internal CUP and benchmarked at 0.9% noting that the Indian bank had charged the assessee at the same rate. It rejected the assessee's reliance on various coordinate bench decision for adopting guarantee fee ALP in the range of 0.25% - 0.5% observing that the said rate was in the case of benchmarking corporate guarantee transaction.

Technocraft Industries (I) Ltd vs Dy.CIT [TS-1397-ITAT-2018(Mum)-TP] ITA No.7565/Mum/2014 dated 27.12.2018

703. Where the assessee had charged interest rate at 8% in respect of loans provided to its AE in China, for the said transaction, TPO worked out interest at 11.5% and made an upward adjustment to the interest charged, the Tribunal directed AO to restrict the addition on account of interest as per rates applicable to currency in which loan was to be repaid to the assessee i.e. Libor relying on coordinate bench decision in assessee's own case for earlier year which in turn relied on Delhi High Court decision in Cotton Naturals wherein it was held that the ALP on loan advanced to its AE should be computed based on market determined interest rate applicable to currency in which loan is required to be repaid.

Technocraft Industries (I) Ltd vs Dy.CIT [TS-1397-ITAT-2018(Mum)-TP] ITA No.7565/Mum/2014 dated 27.12.2018

704. The Tribunal restored the issue to TPO in respect of interest on outstanding receivables in conformity with the coordinate bench decision in case of Orange business Solutions wherein similar issue was restored after relying on the decision of Delhi High Court in Kusum Healthcare wherein it was held that several factors are to be considered before holding that interest on receivable is an international transaction and the same also requires assessment of working capital of assessee. The TPO had imputed interest of L+300 points for delay of receivables beyond 30 days from its AE however it was noted by the Tribunal that there was no specific period mentioned for payments to be received from AEs.

BT (India) Pvt. Ltd. vs ACIT [TS-1010-ITAT-2018 (DEL)] ITA No.442/Del/2016 and ITA No.302/Del/2017 dated 19.07.2018

705. The Court dismissed Revenue's appeal and upheld the order of the Tribunal which accepted the assessee's contention that notional interest should be charged on the delay in recovery of export receivables and expenses by assessee[engaged in the business of providing EPC in field of petrochemicals to its AE] in terms of LIBOR as against TPO's method of charging at PLR rate. It noted the Tribunal's finding of facts (i) no interest was charged by assessee from its AEs as well as non-AEs for delayed payment of export receivables beyond a period of 60 days (ii) assessee's operating margin in respect of AE transactions was higher than margin earned on non-AE transactions. It observed that it was only the notional interest which was being computed as in fact no interest was charged by the respondent for delayed payments universally i.e. from AEs and non-AEs. Further, it also observed that in cases where any business enterprise is required to pay interest on delayed payment, it would examine the cost of interest and if the same is higher than the amount of interest payable on funds obtained locally, it would take a loan from local sources and pay the amounts payable for exports and expenses within time. Thus, the Court held that order of the Tribunal computing interest at LIBOR rates as prevailing in country where the loan is received/ consumed by the AE was in line with the decision of Bombay HC in Tata Autocomp and could not be faulted with

Tecnimont Pvt. Ltd. vs Dy.CIT [TS-880-HC-2018(BOM)-TP] ITA No.56 of 2016 dated 03.07.2018

706. The Tribunal directed adoption of internal CUP and charging of 0.9% as ALP for benchmarking the guarantee transaction for issuance of standby letter of credit noting that the Indian bank had charged the assessee at the same rate. It rejected the assessee's reliance on various coordinate bench decision for adopting guarantee fee ALP in the range of 0.25% - 0.5% observing that the said rate was in the case of benchmarking corporate guarantee transactions.
Technocraft Industries (I) Ltd vs Dy.CIT [TS-827-ITAT-2018(Mum)-TP] ITA No.6686/Mum/2014 dated 31.07.2018

707. The Tribunal relying on the decision of Delhi High Court in the case of Cotton Naturals held that the ALP on loan advanced to its AE should be computed based on market determined interest rate applicable to currency in which loan is required to be repaid.
Technocraft Industries (I) Ltd vs Dy.CIT [TS-827-ITAT-2018(Mum)-TP] ITA No.6686/Mum/2014 dated 31.07.2018

708. The Tribunal restored the TP-adjustment on interest on Compulsory Convertible Debentures (CCDs) borrowed by assessee. The TPO considered CCDs as loan and benchmarked the interest at LIBOR+200bps and accordingly made the said adjustment which was confirmed by the DRP in light of its findings that interest received is in foreign currency and debt to be repaid in foreign currency.It was the assessee's contention that weighted average rate of SBI PLR ought to be applied and the assessee's rate of interest would be at ALP resulting in deletion of TP adjustment. In support of the above contention, the assessee submitted a copy of the debenture certificate dated 27.03.2014 showing that amount was in Indian currency for each of the debenture and relied upon the coordinate bench decision of ADAMA India wherein assessee's payment of interest @ 12% on CCDs was held at ALP based on weighted average rate of SBI-PLR at 12.26%. Observing that assessee produced debenture certificate issued on March 27, 2014, the Tribunal noted that debenture issued on 27.03.2014 was not relevant for deciding the issue in present year and particularly when the finding given by DRP was that the amounts was received in foreign currency and was to be repaid in foreign currency. Thus, the Tribunal restored the matter to the file of DRP in light of the Tribunal order placed before the bench and to consider any other judgments available with them while deciding the issue afresh.
ADAMAS Builders Pvt Ltd vs. Dy. CIT [TS-795-ITAT-2018(Bang)-TP] IT(TP)A No.2477/Bang/2017 dated 20.07.2018

709. The Tribunal deleted the interest on the outstanding receivables from AE noting that the assessee had granted a 180 days credit period to the AE in line with the RBI guidelines and the one-month credit period limit by the DRP was arbitrary and without any basis. Relying on the Del HC decision of Kusum Healthcare, it held that if impact of outstanding receivables was already factored in the working capital adjustment then no further adjustment could be made. Thus, it held that the since the assessee's grant of 6-month period was reasonable no interest could be levied and accordingly, deleted the interest adjustment.

C3i Support Services Private Limited vs Dy.CIT [TS-797-ITAT-2018(HYD)-TP] ITA No.503/Hyd/2017 dated 25.07.2018

710. The TPO computed interest on outstanding receivables (SBI PLR +200 bps) pending from AE for beyond 90 days. It was assessee's contention there was no change in functional profile of the company from preceding year where the Tribunal in its own case had deleted similar adjustment made by noting that assessee was a debt free company, there was no question of charging any interest on receivables by recharacterizing the transaction as loan from its AE and as such, no adjustment on account of ALP on receivables could be made. The Tribunal noted that even for the subject year, it was a debt free company however it restored the matter to decide in conformity with coordinate bench ruling in Orange Business Services India Solutions Pvt Ltd. wherein it was observed that when there was a delay in collection of receivables, TPO had to analyze the statistics to discern a pattern which would indicate that vis-a-vis the receivables for the supplies made to an AE, the arrangement reflected an international transaction intended to benefit the AE. Further, the coordinate bench ruling relied on Delhi HC ruling in Kusum Healthcare wherein it was held that there are several factors which would have to be investigated which need to be considered before holding that every receivable is an international transaction and its impact on working capital has to be studied.

INDUCTIS INDIA PVT. LTD. vs. Dy CIT (2018) 53 CCH 0329 DelTrib ITA No. 1438/Del/2016 dated 13.07.2018

711. The Tribunal restored the issue of interest on outstanding receivables relying on the decision of Del HC in Avenue Asia Advisors Pvt Ltd. which followed the decision of Del HC in the case of Kusum Healthcare wherein it was held that a pattern has to be discerned after examining whether the transaction is an international transaction and and its impact on working capital and accordingly, the Court directed the TPO to investigate whether delay in collection of receivable beyond a stipulated period was due to any other factors and whether it was as an international transaction intended to benefit the AE and what impact it would have on the working capital.

Carrier Air-conditioning & Refrigeration Ltd vs. ACIT [TS-798-ITAT-2018(DEL)-TP] ITA No.1126/Del/2014, ITA No.728/Del/2015, ITA No.2140/Del/2016 and ITA No.7312/Del/2014 dated 13.07.2018

712. The Tribunal directed the AO/TPO to compute the ALP of the loan transaction by applying LIBOR rate relying on the ratio laid down in the rulings of Rain Commodities, Cotton Natural (I) Pvt Ltd. and Vaibhav Gems Ltd. wherein it was held that if the transaction is in foreign currency, domestic prime lending rate would not be applicable and international rate being LIBOR should be taken to benchmark the international transaction. The DRP had applied interest rate at 12.13% as against the SBI PLR at 14.75% applied by the TPO.

Nagarjuna Fertilizers and Chemicals Ltd vs ACIT [TS-734-ITAT-2018(HYD)-TP] ITA Nos.93 and 2021/Hyd/2017 dated Nil.07.2018

713. The Tribunal restricted the TP adjustment in respect of guarantee fee to 0.5% relying on various coordinate bench decisions as against 1% charged by the CIT(A) as ALP of the corporate guarantee provided by the assessee on behalf of its AE. The CIT(A) had reduced the 3% on the loan availed by the AE's determined by the TPO as ALP of the transaction to 1% since it was excessive. The TPO had arrived at the said rate by addition of 0.6% on account of risks to the rate of 2.4% charged by the bank on loans exceeding Rs.10 crores.

Piramal Enterprises Ltd vs Addl. CIT [TS-808-ITAT-2018(Mum)-TP] ITA No.5471/Mum/2017 and ITA No.5583/Mum/2017 dated 30.07.2018

714. The Tribunal, in the second round of proceedings, restored the ALP determination on interest free loans advanced by assessee to its AE noting that in the first round of proceedings the Tribunal had directed the TPO to apply CUP-method as MAM by taking into account prices at which similar transactions happened with unrelated parties. However, in the remand proceedings, the TPO adopted the average anuual yield rate of BB rated bonds which was Libor+500 bps. The Tribunal observed that the action of the TPO was in contravention of mandate given by the Tribunal and accordingly remitted the matter back to TPO for deciding the issue afresh strictly in accordance with directions given by the Tribunal in first round.

Aithent Technologies Pvt Ltd vs DCIT[TS-731-ITAT-2018(DEL)-TP] ITA No.1564/Del/2015 dated 23.07.2018

715. The Court dismissed Revenue's appeal against the Tribuna's order benchmarking the interest free loan advanced by the assessee to its AE at Mauritius at LIBOR + 200 bps relying on the coordinate bench decision of Aurinpro Solutions wherein it was held that where cost of funds for the AE's to whom loan had been advanced is to be measured by the rate of interest in foreign country in which the AE is located. It observed that Revenue had submitted that its appeal against the Aurinpro Solutions was dismissed by the Court and no distinguishing feature from the above ruling was pointed out and thus, dismissed the Revenue's appeal

Pr.CIT vs S B & T International Ltd [TS-506-HC-2018(BOM)-TP] ITA 66 of 2016 dated 03.07.2018

716. The Tribunal remitted the issue of TP-adjustment on corporate guarantee given by assessee to its AE back to the DRP to pass a speaking order after considering the assessee's objections, noting that (i) the DRP had not given any reason for accepting the TPO's benchmarking of commission rate @ 4.61% to 4.76% and (ii) various coordinate bench decisions have accepted guarantee commission to be benchmarked at 0.5%.

Punjab Chemicals & Crop Protection Ltd vs. Addl.CIT [TS-965-ITAT-2018(CHANDI)-TP] ITA No.60/Chd/2013 and ITA No.100/Chd/2014 dated 23.07.2018

717. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of Rs. 14.91 crore TP-addition on account of discounted interest rate charged on AE-loan, noting that CIT(A) order on the same issue for prior AY had not been challenged on this issue by the Revenue authorities. It relied on the Apex Court decision in Radhasoami Satsang [(1992) 193 ITR 321 (SC)] and held that once the Revenue authorities accepted the stand of the CIT(A) on an issue and allow it to reach finality in one assessment year, it could not be open to them to challenge the same in the subsequent assessment year.

Separately, it deleted the TP-adjustment in respect of corporate guarantee provided by assessee on behalf of its AEs by rejecting the 0.75% guarantee fee confirmed by CIT(A). Following the decision of the coordinate bench in assessee's own case for AY 2008-09 which in turn relied on the decision Micro Ink ruling (wherein it was held that issuance of corporate guarantees was in the nature of 'shareholder activities' / 'quasi-capital' and thus could not be included within the ambit of 'provision for services' under the definition of 'international transaction' u/s 92B), it held that the provision of corporate guarantee without any charge of commission would not constitute an international transaction.

Suzlon Energy Limited vs. DCIT - TS-1089-ITAT-2017(Ahd)-TP - ITA No.2074 & 2179/Ahd/2013 dated 22.12.2017

718. The Tribunal allowed assessee's appeal against DRP/TPO's imputing of notional interest on outstanding receivable from AEs noting that the assessee had huge outstanding balances exceeding 6 months in respect of AE-debtors. Relying on the decision of AMD India Private Ltd [TS-840-ITAT-2017(Bang)-TP], it held that the extra credit allowed was to be considered as an independent international transaction and the same was to be compared with the internal CUP being average cost of the total funds available to the assessee. Since no specific period of credit was agreed upon in the case of the assessee it restored the matter to the file of TPO to ascertain the agreed credit period and benchmark the transaction accordingly.

Ingersoll Rand (India) Ltd. vs. DCIT - TS-1061-ITAT-2017(Bang)-TP – ITA ***251/Bang/2014 dated 10.11.2017***

719. Where the assessee had outstanding receivables from its AEs, the Tribunal, relying on its decision in the assessee's own case for earlier years (ITA No.1338/PN/2010), held that the TPO was incorrect in imputing notional interest @ LIBOR + 300 basis points + 200 basis points [as guarantee commission] and directed the AO / TPO to re-compute the adjustment on account of interest on outstanding receivables from AEs on the basis of LIBOR plus 300 basis points only on those receivables which were outstanding for a credit period exceeding 25 days after allowing the assessee the benefit of interest received by it, if any.

Capgemini Technology Services India Limited, (in the matter of iGate Computer Systems Limited) vs. DCIT - TS-58-ITAT-2018(PUN)-TP - ITA No. 360/PUN/2015 dated 25.01.2018

720. Relying on the decision of the co-ordinate bench in the assessee's own case for the earlier year - [TS-129-ITAT-2015(DEL)-TP] (which was subsequently upheld by jurisdictional HC - [TS-412-HC-2017(DEL)-TP]), the Tribunal held that interest adjustment on the outstanding receivables was not warranted if the working capital adjustment took into account the outstanding receivables. Accordingly, it remitted the issue back to TPO for verification of whether while making the working capital adjustment the outstanding receivables were taken into account or not.

Kusum Healthcare Pvt. Ltd vs. DCIT - TS-65-ITAT-2018(DEL)-TP - ITA No.-1440/Del/2016

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

Motherson Sumi Infotech & Designs Limited v DCIT - TS-131-ITAT-2018(DEL)-TP - ITA.No.6331/Del./2016 dated 26.02.2018

722. The Tribunal deleted the TP -adjustment towards interest on outstanding AE receivables The TPO had re-characterized outstanding AE-receivable as loan and imputed notional interest at SBI base rate plus 300 points i.e. at 12.87%. The Tribunal relying on the order of the Delhi High Court in Kusum Healthcare held that every AE-receivable could not be characterized as international transaction and such characterization was permissible only where the TPO undertook proper inquiry by analysing the statistics over a period of time to discern a pattern which would indicate that there existed an international transaction intended to benefit the AE. Relying on the aforesaid decision, it held that since the assessee had already factored in the impact of receivables on working capital and thereby on its pricing/profitability vis-a-vis that of comparables, adjustment only on the basis of outstanding receivables was impermissible.

Terradata India Pvt. Ltd v ACIT - TS-133-ITAT-2018(DEL)-TP - ITA.No.7885/Del./2017 dated 21.02.2018

723. The Tribunal relying on co-ordinate bench ruling in Kadimi Tool Manufacturing Co (subsequently confirmed by HC & SC) deleted the TP-adjustment in respect of outstanding AE-receivables observing that the taxpayer was a debt free company and therefore there was no question of charging any interest on receivables by recharacterizing the transaction as loan from its AE and as such, no adjustment on account of arm's length interest on receivables could be made.

Inductis (India) Private Ltd. vs. ITO - TS-154-ITAT-2018(DEL)-TP - ITA No.2075/Del./2015 dated 06.03.2018

724. The Tribunal held that interest on delayed outstanding receivables amounts to an international transaction for subject AY i.e. AY 2013-14 in light of Finance Act 2012 amendment, and held that once any debt arising during the course of business had been ordained by the legislature as an international transaction, if there was any delay in the realization of debts arising during the course of business, it

would be liable to be visited with the TP adjustment on account of interest income short charged or uncharged. However, it remitted the issue back to TPO to verify assessee's claim that in none of the cases, assessee realized invoices beyond 30 days and then decide the issue afresh.

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

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

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

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

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

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

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

728. The Tribunal deleted the TP-adjustment made by TPO/CIT(A) in respect of outstanding AE-receivables noting that the AO invoked Explanation (1)(c) to Sec 92B inserted by Finance Act, 2012 w.e.f. April 1, 2002 in order to determine interest-ALP to be charged by assessee from its AE on extending credit facility/delay in realization of debit balances outstanding in AEs account by considering it as an international transaction and relying the co-ordinate bench ruling in KGK Enterprises held that Explanation (1)(c) to Sec 92B could not have retrospective effect from April 1, 2002. It held that assuming the transaction was an international transaction, it had to be treated as one from AY 2013-14 whereas taxpayer was before the Tribunal for AY 2009-10. On merits, noting that the Agreement with AE allowed a grace period of 180 days for making the payment of the cost plus mark up it held that when the business agreement was categoric enough to grant the grace period of 180 days to make the payment and all the payments have been made within six months, no adjustment on account of interest on receivables could be made. Further, relying on Kusum Health Care HC ruling it held that when undisputedly the profit margin of the taxpayer has been held to be at arm's length, there was no need to make separate addition.

Globerian India Pvt. Ltd vs. DCIT - TS-200-ITAT-2018(DEL)-TP - ITA No.1170/Del./2016 dated 20.03.2018

729. Noting the assessee's contention that no separate adjustment was required to be made on account of receivables as it was subsumed in the working capital adjustment made by the TPO and following the

decision of the Tribunal in the assessee's own case for preceding AYs, the Tribunal remitted the TP adjustment on account of interest on receivables to the file of the TPO absent in-depth analysis of receivables. It directed the TPO to recalculate interest in conformity with Kusum Healthcare HC ruling [wherein HC had stated that the impact of working capital of the assessee was to be studied] and noted though the TPO had allowed working capital adjustment to the assessee, it was not clear as to what point of time whether the receivables, inventory and payables were computed on the basis of the yearly average, as required.

D.E. Shaw India Advisory Services Private Ltd vs. ACIT - TS-72-ITAT-2018(DEL)-TP - ITA No.6735/Del/2017 dated 18.01.2018

730. Where the assessee, a Singapore based company, had provided interest free loans to its Indian AE and the TPO imputed interest @ 10.50 percent based on the PLR, the Tribunal rejected assessee's contention that since the interest free loan was given by it to strengthen the Indian AE which in turn would improve its own business, no TP adjustment was required. However, it held that the TPO was unjustified in applying the PLR and held that the adjustment ought to have been computed based on LIBOR. Relying on the decisions of the Bombay High Court and the co-ordinate bench it held that LIBOR + 200 basis points was to be used to benchmark the transaction.

Sabre Asia Pacific Pte Ltd (Earlier Known as Abacus International Pte Ltd.) vs. DCIT - TS-112-ITAT-2018(Mum)-TP - I.T.A. No. 486/Mum/2016 dated 16.02.2018

731. Relying on the co-ordinate bench ruling in the assessee's own case, the Tribunal deleted the TP-adjustment relating to the interest on assessee's foreign currency loan to AE and held that when a loan was advanced to foreign subsidiary in foreign currency, LIBOR and not the domestic prime lending rate was to be used to benchmark the international transaction. It noted that the earlier year's orders were upheld by the High Court and that the DRP in assessee's subsequent year proceedings directed the deletion of the TP-adjustment on interest while in the preceding AY, the TPO himself chose not to propose any such adjustment. Accordingly, it deleted the TP adjustment in the impugned year.

Cotton Natural (I) Pvt. Ltd vs. DCIT - TS-1068-ITAT-2017(DEL)-TP - ITA No.6910/Del/2014 dated 04-12-2017

732. Noting that as per Section 10A(3) of the Act (which was applicable to the assessee) foreign exchange receivables (whether from AEs or Non-AEs) were to be realized within 6 months from the end of the financial year, the Tribunal held that the TPO was unjustified in imputing notional interest on AE receivables outstanding for a period 3 month as the 6 month period as provided in Section 10A was a reasonable period to be allowed to debtors. Accordingly, it directed the TPO to charge interest of LIBOR + 200 basis points only on those receivables outstanding for a period of more than 6 months.

GSS Infotech Ltd. vs. DCIT - TS-1086-ITAT-2017(HYD)-TP - ITA No. 267/Hyd/2014 & 329/Hyd/2016 & ITA No. 602/Hyd/2017 dated 30-11-2017

733. Where the assessee had provided an interest free loan to its parent company AE against which the AE issued shares to the assessee after a period of 3 years, the Tribunal held that the case of the assessee could not be considered as an investment in share capital and therefore distinguished its reliance on the decision of Prithvi Information Solutions Ltd., ITA No. 472/Hyd/2014. However, it remitted the matter to the file of the TPO to determine when the AE had decided to issue shares against the interest free loan and held that if the decision to do so was made in the impugned AY, then the decision of Prithvi Information would apply and the interest free loan would take the nature of investment in share capital on which no notional interest could be computed but if the decision to issue shares was taken subsequently, the TPO was justified in imputing interest @ LIBOR + 3 percent as the transaction could not be considered as investment in equity share capital.

GSS Infotech Ltd. vs. DCIT - TS-1086-ITAT-2017(HYD)-TP - ITA No. 267/Hyd/2014 & 329/Hyd/2016 & ITA No. 602/Hyd/2017 dated 30-11-2017

734. The Tribunal deleted TP-addition in respect of interest on delayed AE-receivables for assessee (engaged in the business of manufacturing of studded gold jewellery) noting that the assessee did not charge any interest on delay in receiving the payment from AE (where average delay was about 290 days) as well as non-AEs (where average delay was about 340 days). Relying on the assessee's own

case in the prior assessment year, it held that the TPO was not justified in making adjustment by applying interest @ 10.68% as there was uniformity in the act of the assessee in not charging interest from both AE and Non-AE debtors for delayed realization of export proceeds.

Dania Oro Jewellery Pvt. Ltd vs. ITO - TS-27-ITAT-2018(Mum)-TP - I.T.A./7635/Mum/2014 dated 03/01/2018

735. The Tribunal in the cross appeals for AY 2007-08 and AY 2008-09 deleted TP adjustment towards notional interest on shareholder's deposits by following the Tribunal's decision in assessee's own case for AY 2012-13. It was noted that the outstanding technical know-how fee receivable from the JV entity for period 1981 to 1995 was treated by the JV partners (one of them being the assessee) as shareholder deposits and RBI had permitted assessee to obtain the repayment by 2015. In AY 2012-13, the Tribunal had held that the said deposit could not be considered as international transaction as there was no inflow or outflow of funds during the subject year. In AY 2012-13, the Tribunal had also observed that the standard of arms length is inherent in the provision of the foreign exchange laws of India, under which the permission was obtained by the assessee.

The tribunal further deleted TP adjustment towards interest on outstanding AE- receivables relying on the assessee's previous order wherein it was held that outstanding debit balances could not be considered as international transaction. Further, it also confirmed the CIT(A) order and noted that extending Corporate Guarantee solely is not an international transaction u/s 92B.

M/s Bombay Dyeing & Mfg Co Ltd vs ACIT 2(1) – TS-364-ITAT-2018(Mum)-TP- ITA No 588/Mum/12 dated 02.04.2018

736. The assessee had advanced loan in Australian dollars to its AE in Australia and benchmarked the transaction by adopting CUP method and took ALP rate of interest at 8.91% as was prevailing in Australia. The AO was of the view that 10% interest rate would be a reasonable rate and accordingly, made an adjustment.The Tribunal deleted the TP adjustment on interest on loan advanced by the assessee to its AE noting that the rate adopted by the assessee was at ALP since the assessee had adopted interest rate which an Australian company borrowing from Australian bank would have paid. It relied on the ratio laid down in the Delhi HC ruling of Cotton Natural wherein it was held that ALP on loan advanced to its AE should be computed based on market determined interest rate applicable to currency in which loan is required to be repaid.

Dy.CIT vs Russell Credit Ltd. (2018)52 CCH 0315 KolTrib ITA No.629/Kol/2013 and ITA No.674/Kol/2013 dated 11.04.2018

737. The Tribunal confirmed CIT(A)'s order upholding interest adjustment on advances given by assessee to its AE. The assessee tried to justify non-collection of interest from its AE by submitting that it did not pay commission to its AE on the sale procured by it. The Tribunal observed that assessee had neither brought any material on record to substantiate its claim that AE did some marketing efforts on behalf of the assessee nor any correspondence, to demonstrate that both the parties were waiving their right to collect interest/commission in view of cross services. Further, the Tribunal accepted Revenue's contention that loan and agency were 2 different transactions and opined that alleged marketing efforts could not be linked to the advance given by the assessee interest free and accordingly upheld CIT(A)'s TP Adjustment.

M/s Virgo Engineering Ltd vs ACIT 10(3) Mumbai- TS-303-ITAT-2018(Mum)-TP- ITA No 685/Mum/2014 dated 20.04.2018

738. The Tribunal deleted secondary adjustment towards notional interest computed on amount of TP-adjustment on international transaction of sale of business to AE.

The Tribunal noted that such additional consideration was not received by assessee from its AE and the TPO treated the same as interest free advances to AE and charged interest at 12%. The Tribunal followed its earlier year's order in assessee's own case wherein similar secondary adjustment was deleted and held that, as per the requirement of law, there is nothing further provided to impute any secondary adjustment and the charging interest over and above the amount of adjustment, was not found to be in accordance with the provisions of law.

ACIT 15(2)(2) vs Prudential Process Management Services India Pvt Ltd- TS-804-ITAT-2018(Mum)-TP- ITA No 5526/Mum/2015 dated 13.04.2018

739. The Tribunal remanded the matter back to the Assessing officer and decided the matter in line with assessee's own case before Tribunal for previous A.Y. The tribunal noted that if the loans were advanced to the Associated Enterprise on the basis of LIBOR/WIBOR + then the said transaction would be at arm's length price, if not the TPO could recompute the arm's length price of the transaction
KPIT Technologies Ltd vs ACIT Circle -14 Pune- TS-408-ITAT-2018(PUN)-TP- ITA no 594/PN/2015 dated 12.04.2018

740. The Tribunal accepted assessee's plea for considering Euro PLR as benchmarking rates as against Indian PLR for interest free loan given to step down subsidiary. The Tribunal noted that since the interest free loan**s** were given in Euro Currency, the ALP should be adopted at the rate on the basis of prime lending rate prevalent in Europe.
Synchron Research Services Pvt Ltd vs ACIT Circle 4(1)(2)- TS-363-ITAT-2018(Ahd)-TP- ITA No 899/Ahd/2014 & 418/Ahd/2015 dated 18.04.2018

741. The assessee was providing intragroup services relating to external commercial borrowings made by third parties from assessee's AE. The AE earned interest income and commission fees in respect of the said borrowings/loans which was added by the TPO in the hands of the assessee. The Tribunal relying on its order of the earlier year, directed TPO to restrict TP-adjustment on services rendered by Indian Branch of assessee bank to AE at 20% of agency/commission fee and directed deletion of adjustment towards interest as the assessee had a limited role in sanctioning of loan to Indian customers and the loan was granted by AE who had borne risk as well as reward from such activity.
Further, the Tribunal confirmed CIT(A)'s order deleting TP-adjustment on interest received/paid on money market deposits given to AE/accepted from AE by assessee, observing that the TPO had ignored similar transactions wherein the assessee had earned excess interest from AE or paid lesser interest to AE as compared to benchmarkand therefore held that all such closely linked transactions were required to be aggregated to determine TP-adjustment. Thus, relying on co-ordinate bench ruling in Audco India Ltd. and Essar steel ruling, it held that the Tribunals were consistently taking the view that arm's length price should be determined after aggregation and there was no scope for adjustment without aggregation.
Barclays Bank PLC vs ADIT (Intl Tax)-3 -TS-360-ITAT-2018(Mum)-TP- ITA No 2242/Mum/2015 dated 13.04.2018

742. Where the TPO made an adjustment on account of interest (@ 14.45 percent) on receivables outstanding for a period of more than 2 months (the normal credit period of 30 days and a grace period of 30 days) , the Tribunal relying on the decision of the co-ordinate bench in GSS Infotech Limited held that there was no basis for adopting only two months as credit period where the RBI itself allows a year for realization of foreign receivables. It noted that whether it was AE or non-AE receivables, it would be in the interest of business that assessee receives the foreign exchange early so that it can claim deduction u/s. 10A. Accordingly, it held that imposing a limit of two months of credit period was arbitrary and therefore deleted the addition.
United States Pharmacopeia India Pvt Ltd vs DCIT - TS-536-ITAT-2018(HYD)-TP - ITA No. 1927/Hyd/2017 dated 11/05/2018

743. The Court upheld Tribunal's rejection of TPO's re-characterization of assessee's notional interest transaction on delayed realization of trade debts from AE noting that the Tribunal had relied on EKL Appliances Delhi HC-ruling wherein HC had slated the only 2 possible situations where re-characterization of a transition is possible- (i) when the economic substance of a transaction differs

from its form and (ii) when the form and substance of the transaction are the same but arrangements made in relation to the transaction, differ from those which would have been in uncontrolled transaction and had categorically held that none of these conditions were satisfied in the present case. Further it noted that the assessee had not charged interest on the delayed realization of debts in non-AE cases as well and therefore held that there could not be any occasion to make ALP adjustment for notional interest on delay in realization of trade debts from AEs. Accordingly it held that the finding given by the Tribunal was based on the facts of the case and therefore no question of law emerged.

Pr. CIT vs. Sharda Spuntex Pvt. Ltd - TS-436-HC-2018(RAJ)-TP - D.B. Income Tax Appeal No. 56 / 2017 dated 11/05/2018

744. The Tribunal considered the outstanding amount of travelling & accommodation expenses incurred by assessee on behalf of AE as an international transaction noting that the expenses were incurred on behalf of and for the benefit of the AEs. It held that the expenses so incurred by the assessee on behalf of its AE, if outstanding, would come within the meaning / explanation of international transaction in section 92B of the Act and rejected assessee's plea of granting 6 months period for recovery of cost incurred from AE. It observed that a prudent businessman would always recover the outstanding amounts at the earliest point of time and therefore held that a period of 60 days (as against DRP's 15 days) was a reasonable period within which the expenses ought to have been recovered from AE. Regarding rate of interest, it rejected assessee's plea to adopt LIBOR since expenditure was incurred in Indian currency and not in dollars and held that SBI-PLR rates alone was to be adopted as the ALP interest rate (without any spread). Noting that the weighted average interest of SBI-PLR on FDs had been calculated at 8.15%, it held that 8.15% was to be adopted while calculating ALP interest on the amounts outstanding from the assessee's AEs.

Allianz Cornhill Information Services Private Limited vs. DCIT - TS-433-ITAT-2018(COCH)-TP IT(TP)A No.489/Coch/2016 dated 30.05.2018

745. The Tribunal relied on the decision of coordinate bench in assessee's own case for AY 2007-08 and restored the TP-adjustment in respect of software developer assessee's outstanding receivables from AE for AY 2010-11. The Tribunal relied on the assessee's own case for AY 2007-08, wherein ALP-determination of similar outstanding receivables was restored back to AO/TPO. The AO/TPO was directed to re-do the exercise of determination of ALP after considering the credit period allowed to AE on realization of sale proceeds along with the main international transaction in respect of sale to AE. It further held that working capital adjustment appropriately takes into account the outstanding receivable, and concluded that any further adjustment on the pretext of outstanding receivables was not warranted.

Information System Resource Centre Pvt Ltd. (Now amalgamated with Larsen & Toubro Infotech Ltd) vs. ACIT[TS-384-ITAT-2018(Mum)-TP] - I.T.A. No. 3712/Mum/2016 dated 22.05.2018

746. The Tribunal deleted the notional interest adjustment made on delay in collection of receivables received by assessee from its AE. The Tribunal accepted assessee's contentions that the notional interest did not accrue or arise in the year under consideration since the invoices were raised on March 31, 2013 and credit period allowed was of 60 days. The Tribunal observed that the assessee was following mercantile system of accounting and interest accrues only when the debt falls due and the same remained unpaid. Since the debt did not fall due for the year under consideration, there was no question of interest accruing or being crystallized. The Tribunal also relied on the Motherson Sumi Infotech ruling and held that the assessee had not indulged in providing any undue credit to its AE. Further, the Delhi HC decision of B.C. Management Services(P) Ltd. was also relied on to hold that notional income on account of delayed payment made by the AO could not be treated as part of income and made subject matter of adjustments.

GVK Power & Infrastructure Ltd v ACIT [TS-385-ITAT-2018(VIZ)-TP] ITA No.530/Vizag/2017 dated 18.05.2018

747. The assessee had charged interest at 8% on loans given to some AEs and the TPO had taken a view that interest should have been charged at uniform rate of 8% to all AEs. Further, the TPO held that assessee should have charged certain fees from AE for meeting its administrative expenses and estimated the same at 0.5% of the average amount of loan given to its AE's and thus proposed TP-

adjustments on the above grounds of interest and fees. The CIT(A) upheld the adjustment made towards interest and deleted the adjustment towards administrative expense.

The Tribunal followed co-ordinate bench ruling in assessee's own case for previous AY which had held that LIBOR+300bps should be considered as interest ALP and directed the Assessing Officer to compute TP adjustment by adopting LIBOR rate plus 300 bps as ALP rate of interest. Further, regarding TP-adjustment on administrative charges, the Tribunal, in line with Circular No. 21/2015 dated 10.12.2015 issued by CBDT stated that admittedly, tax effect involved on the above said issue was less than Rs.10 lakhs and hence the Revenue was precluded from pursuing this appeal.

ACIT CC-43 vs Roha Dyechem Ltd- TS-417-ITAT-2018(Mum)-TP- ITA No 1334/Mum/2014 dated 30.05.2018

748. The Tribunal allowed assessee's appeal and deleted the TP adjustment towards interest on loans given to its AE for infrastructure facilities. Noting that the TPO had made an addition on the ground that one of the AE's was charged interest at Euribor+ 3.75% from a bank, it observed that the assessee was the tested party and not the AE. The addition made by the TPO could not be sustained since the assessee was able to demonstrate that the interest charged was at market rate and the assessee was not charging interest at a higher rate than Libor+1% to any of the other parties.

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

749. The Tribunal relying on the decision of the coordinate bench in Pregasystems Worldwide India Ltd (ITA Nos.1758 and 1936/Hyd/2014) held that notional interest on outstanding receivables is not chargeable to tax under the provisions of transfer pricing and accordingly no TP adjustments ought to be made and further, relied on the HC ruling of Kusum Healthcare and decision of coordinate bench in EPAM Systems India to hold that since the working capital adjustment was considered by the A.O, interest on receivables had been considered.

Hexagon Capability Center India Private Limited [TS-449-ITAT-2018(HYD)-TP] ITA No.258/ Hyd/2016 dated 08.06.2018

750. The Tribunal held that advancing interest-free loans to subsidiary companies constituted international transaction on plain reading of of sub-clause (c) of clause (i) of Explanation to section 92B relating to capital financing. It was the contention of the assessee that the interest free loan advanced to its AE later converted into equity was not an international transaction. The Tribunal rejected the recharacterization of transaction by assessee and called it a colourable device. Further, the Tribunal relied on the co-ordinate bench ruling in CIT vs Tech Mahindra Limited and held that rate of interest prevailing in the country where loans were received by the AE should be applied.

EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP)A No.1394/Bang/2012, ITA No.1332/Bang/ 2010 and IT(TP) A No.163/Bang/2012 dated 28.06.2018

751. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s deletion of interest adjustment. The Tribunal noted that assessee had granted loan to its AE namely, Emami International FZE of USD 45 million and charged interest @8% p.a. However, the TPO had computed ALP of such loan at 11% p.a. [5% (cost of funds) + 600bps (risk premium)] and made an upward adjustment of Rs. 48.94 lakhs. The Tribunal opined that the risk premium of 600 bps taken by the TPO was excessive. It noted that suitable risk premium would work out to be lower than 300 bps considering the facts of the case and credit rating of the assessee. In view of the aforesaid findings, it appreciated the CIT(A)'s view that even following the methodology proposed by the TPO viz., cost of funds plus risk premium, the ALP of the loan would work out to 8%. Thus, the Tribunal held that the TPO/Assessing Officer had grossly erred in applying notional interest @11% (i.e. cost of procurement of funds by assesse @5% + 600 basis points) whereas the cost of procurement of similar funds from third part was LIBOR + 600 basis points, which worked out to 7.20%.(that is, prevailing USD LIBOR rate, which was 1.2% plus 600bps). Hence it confirmed CIT(A)'s order that the interest rate of 8% charged by the assessee from its AE was at arm's length. Further, it also observed that the Revenue had accepted the interest of 8% charged on the same loan to be at arm's length in the earlier as well as succeeding transfer pricing assessments and following the priniciple of consistency, the same would prevail.

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

752. The Tribunal remanded the matter to the file of the AO/TPO to compute the adjustment in respect of the interest due on loans advanced by the assessee to its AE's for AY 2011-12 following its earlier year order. AO had applied BPLR rates whereas the DRP applied the benchmark of LIBOR + 5%. The co-ordinate bench in assessee's own case in earlier year had directed AO to verify whether the loans were advanced to associated enterprises on LIBOR+ or WIBOR+ rates, as the case may be, and if so, to consider the said transaction to be at arm's length price. If the loan was not advanced at the said rates, the TPO was directed to re-compute the arm's length price of the international transactions.

KPIT Technologies Ltd (earlier known as KPIT Cummins Infosytems Limited.) v DCIT [TS-522-ITAT-2018(PUN)-TP] ITA No.505/ Pun/2016 dated 04.06.2018

753. The Tribunal upheld the deletion of TP-adjustment in respect of guarantee fee received by assessee noting that the assessee applied CUP-method based on third party quotation (from HSBC India) to determine arm's length guarantee fee commission at 0.75% but the TPO determined guarantee fee ALP at 2.0833% based on the bank guarantee rate. Relying on the decision of the Bombay High Court in Everest Kento Cylinder [TS-200-HC-2015(BOM)-TP]it held that the considerations which applied for issuance of a corporate guarantee were distinct and separate from those in a case of bank guarantee and accordingly upheld the First Appellate Authority's deletion of the TP adjustment made.

ACIT vs. Wockhardt Ltd. - TS-39-ITAT-2018(Mum)-TP- I.T.A./4156/Mum/2012 & I.T.A./5557/Mum/2012 dated 05/01/2018

754. The Tribunal deleted the TP-adjustment in respect of corporate guarantee provided to 100% Mauritius subsidiary for which no consideration was charged accepting assessee's contention that corporate guarantee was provided as a matter of commercial prudence to protect the interest and fulfill the shareholder obligation as any financial incapacitation of the subsidiary would jeopardize the investment of the assessee. It rejected Revenue's contention that under Explanation to Sec 92B there was no requirement of international transaction of guarantee to have a bearing on profits, incomes, losses or assets of such enterprises and held that the explanation had to be read along with Section 92B(1) of the Act. It held that the provision of corporate guarantee neither fell under 'purchase, sale or lease of tangible or intangible property, provision of services or lending or borrowing of money' contained in Section 92B(1) and therefore was covered under 'any other transaction having bearing on profits, income, losses or assets' of an enterprise as contained in the impugned Section. Accordingly, notwithstanding that the Explanation to Section 92B did not specifically mandate such impact on profits / losses etc, it held that as per Section 92B the requirement would have to be fulfilled for the guarantee to be considered as an International transaction. Observing that no consideration was received by assessee for providing guarantee from its AE, the Tribunal concluded that when a parent company extends an assistance to the subsidiary, being associated enterprise, which does not cost anything to the parent company, and which does not have any bearing on its profits, income, losses or assets, it would be outside the ambit of international transaction under section 92B(1) of the Act. Accordingly, it deleted the TP-adjustment.

DCIT vs. EIH Ltd - TS-13-ITAT-2018(Kol)-TP - I.T.A No. 153/Kol/2016 dated 12.01.2018

755. The Tribunal rejected TPO/DRP's treatment of corporate guarantee as an international transaction for AY 2010-11 and accepted assessee's submission that Finance Act 2012 amendment [wherein a clarificatory amendment was inserted w.r.e.f. April 1, 2012 specifying that corporate guarantee will be included within the definition of international transaction] was applicable only prospectively from AY 2013-14 and therefore not applicable to subject AY. It relied on the decision of the co-ordinate bench in Reddy Laboratories wherein it was held that the Finance Act, 2012 amendment could not be applied retrospectively as it would amount to retrospective levy of tax and would impose an impossible obligation on assessees. Accordingly, it deleted the ALP adjustment.

DCIT vs. Cyient Ltd (Formerly Infotech Enterprises Ltd) - TS-159-ITAT-2018(HYD)-TP] - ITA No. 474/Hyd/2015 dated 28/02/2018

756. The Tribunal dismissed assessee's appeal challenging TP-adjustments in respect of corporate guarantee, loan, outstanding receivables ex parte noting that none appeared on behalf of assessee

despite notice being served on assessee. On examination of the impugned order of CIT(Appeals) and the order passed by the AO u/s. 143(3) r.w.s. 144C of the Act, it held that there was no infirmity therein.
Opto Circuits India Ltd. vs. DCIT - TS-89-ITAT-2018(Bang)-TP - IT(TP)A Nos.1315/Bang/2017 dated 31;01.2018.

757. The assessee provided corporate guarantee to its AE in Mauritius for which it did not charge any fee. The TPO determined the ALP at 2.75 percent based on rates for financial guarantee charged by various third-party banks which was reduced to 1.75% by the DRP. The Tribunal held that the benchmarking adopted by the TPO and DRP was unacceptable and relying on the decisions of the HC rulings of Everest Canto and Glenmark Pharmaceuticals, wherein it was held that corporate guarantees could not be compatred to bank guarantees, determined the ALP rate of guarantee fee on corporate guarantee provided by the assessee to its Mauritian AE at 0.5%.
Laqshya Media Pvt. Ltd v ACIT - TS-20-ITAT-2018(Bang)-TP - ITA Nos. 1774 /Mum/2016 dated January 2018

758. The Court admitted assessee's appeal on the substantial question of law i.e. whether corporate guarantee given by the assessee with respect to the loans given by the subsidiary would come under the purview of section 92 of the Act or not.
Minacs Pvt Ltd vs DCIT 8(1)- TS-302-HC-2018(BOM)-TP- ITA No 1132 of 2015 dated 25.04.2018

759. The Tribunal held that the DRP erred in determining the ALP of guarantee commission received by the assessee at 1.5% (TPO determined the commission @ 3%) and noted that the co-ordinate bench in the assessee's own case had sustained addition to the extent of 0.5% in the earlier and subsequent year. Accordingly, following the rule of consistency, ITAT directed the AO/TPO to restrict the addition towards guarantee commission by adopting the rate of 0.5%.
Nimbus Communications Ltd. vs. DCIT - TS-520-ITAT-2018(Mum)-TP - LT.A. No. 1988 / Mum / 2016 dated 21.05.2018

760. The Tribunal, relying on the order of the co-ordinate bench in the assessee's own case in the earlier year, deleted the TP-adjustment in respect of corporate guarantee provided to 100% Mauritius subsidiary for which no consideration was charged accepting assessee's contention that corporate guarantee was provided as a matter of commercial prudence to protect the interest and fulfill the shareholder obligation as any financial incapacitation of the subsidiary would jeopardize the investment of the assessee. It rejected Revenue's contention that under Explanation to Sec 92B there was no requirement of international transaction of guarantee to have a bearing on profits, incomes, losses or assets of such enterprises and held that the explanation had to be read along with Section 92B(1) of the Act. It held that the provision of corporate guarantee neither fell under 'purchase, sale or lease of tangible or intangible property, provision of services or lending or borrowing of money' contained in Section 92B(1) and therefore was covered under 'any other transaction having bearing on profits, income, losses or assets' of an enterprise as contained in the impugned Section. Accordingly, notwithstanding that the Explanation to Section 92B did not specifically mandate such impact on profits / losses etc, it held that as per Section 92B the requirement would have to be fulfilled for the guarantee to be considered as an International transaction. Observing that no consideration was received by assessee for providing guarantee from its AE, the Tribunal concluded that when a parent company extends an assistance to the subsidiary, being associated enterprise, which does not cost anything to the parent company, and which does not have any bearing on its profits, income, losses or assets, it would be outside the ambit of international transaction under section 92B(1) of the Act. Accordingly, it deleted the TP-adjustment.
DCIT vs. EIH Ltd - TS-426-ITAT-2018(Kol)-TP - ITA No.117/Kol/2017 dated 16-05-2018

761. The Tribunal restricted guarantee commission ALP at 0.5% of average amount of loan outstandingduring the year in respect of corporate guarantee on overdraft facility given by assessee by following the co-ordinate bench ruling in assessee's own case for previous AY (wherein relying on various decision of the jurisdictional benches of the Tribunal it was held that ALP of the guarantee commission was to be considered as 0.5%) as against TPO's computation of guarantee fees @ 1.50%.

In respect of counter guarantee given by assessee for guarantee given by IDBI Bank on behalf of Taj TV (AE), the Tribunal accepted assessee's contention following Asian Paints ruling that non fund based facility could not be treated at par with fund based facility and directed AO to compute TP-adjustment in respect of counter guarantee at 0.2% of counter guarantee amount.

ACIT 16(1) vs Zee Entertainment Enterprises Ltd- TS-418-ITAT-2018(Mum)-TP- ITA No 1640/Mum/2016 dated 28.05.2018

762. The Tribunal restricted ALP of corporate guarantee provided by assessee to Singapore-AE at 0.5% p.a. and noted that while assessee did not benchmark the transaction on the premise that the underlying liability was contingent in nature and that the same was given for overall business consideration, TPO made an adjustment by determining ALP at 5% p.a. The Tribunal opined that corporate guarantee provided by the assessee brought certain benefits to its AE by way of credit facility and therefore, the same were required to be compensated by its AE. The Tribunal relied on Bombay HC ruling in Everest Kanto Cylinders wherein 0.5% commission rate was adopted, and thus directed addition @0.5% per annum.

Apar Industries vs DCIT CC 6(1)- TS-405-ITAT-2018(Mum)-TP- ITA No 956/Mum/2015 dated 04.05.2018

763. The Tribunal accepted assessee's contention that the corporate guarantee commission charged at 0.9% was at arm's length price and deleted the adjustment by holding that the corporate guarantee commission rates @ 0.25% to 0.53% have been accepted in various rulings of Courts/Tribunals such as Videocon Industries, Nimbus Communications and Glenmark Pharmaceuticals, as reasonable. Further, the Tribunal also opined that bank guarantee and corporate guarantee are at different footing due to factors such as terms,conditions and risk factors and hence the TPO was not justified in determining the ALP at commission rates charged by bank.

GVK Power & Infrastructure Ltd v ACIT [TS-385-ITAT-2018(VIZ)-TP] ITA No.530/Vizag/2017 dated 18.05.2018

764. The Tribunal deleted the TP-adjustment in respect of corporate guarantee given by assessee [engaged in the business of manufacturing yarn, marketing its products under the CLC brand name] on behalf of its AE for AYs 2008-09 to 2010-11. It relied on Bharti Airtel ruling wherein it was held that no TP-adjustment is to be made in case of there being no diversion of profits out of India. The Tribunal noted that the assessee had not incurred any cost in providing corporate guarantee and relied on various ITAT rulings in Micro Ink, Redington India and Videocon Industries wherein it was held that when an assessee extends assistance to the AE, without any cost to itself, it does not have any bearing on profits, income, losses or assets and therefore the same is outside the ambit of 'international transaction'. The Tribunal opined that since the flagship company of the assessee had accumulated brought forward losses to the tune of Rs. 290 crores and subsidiaries were also in heavy losses, it could not be said that there was any intention of diversion of profits out of India. Further, the Tribunal also relied on Vivimed Labs and Siro Clinpharm rulings wherein it was held that amendment to Sec 92B vide Finance Act 2012 is prospective in nature and is applicable only from AY 2013-14 onwards.

DCIT vs. Spentex Industries Ltd [TS-382-ITAT-2018(DEL)-TP] ITA Nos.4959,6234 and6244/Del/2014 dated 17.05.2018

765. The Tribunal directed adoption of 0.25%, based on free quote given by Royal Bank of Scotland (RBS), as ALP for provision of corporate guarantee by assessee on behalf of its AEs for AY 2012-13 since the free quote considered the credit rating of assessee and other financial data and the said guarantee was given to RBS itself for loan given to its AE. The Tribunal noted that assessee had adopted ALP of 0.2% based on average rate of free quotes obtained from RBS (0.25%) and Indusind Bank (0.15%) while DRP had adopted ALP at 1.5% based on interbank lending rate. The Tribunal held that the average rate adopted by the assessee as ALP was not the right approach as averages do not give logical result.The Tribunal also observed that issuance of corporate guarantee is a non-fund based transaction, and hence opined that interbank lending rate adopted by DRP as a bench mark for determination the ALP of the charge for giving a corporate guarantee, is not appropriate, as these rates are for fund based transaction.

Britannia Industries Ltd vs. DCIT [TS-359-ITAT-2018(Kol)-TP] ITA No.745/Kol/2017 dated 18.05.2018

766. The Tribunal upheld the order of DRP determining the ALP of the guarantee fee at 2.28% as against guarantee fee determined by TPO at 3%. It noted that the DRP had observed as per the CRISIL data that the assessee could be rated as BBB and AE as B and its AE had a weaker financial standing. The DRP adopted the difference of 4.56% between interest rate for BBB (10.37% for 1-2 years) and B (14.93% for 1-2 years) and held that 50% benefit (2.28%) should have been received by assessee. Accordingly, it rejected the Revenue's contention that the rate of guarantee fee determined at 3% by TPO ought to be considered.

United Breweries (Holdings) Ltd [TS-746-ITAT-2018(Bang)-TP]- IT (TP) A No.561/Bang/2016 dated 15.06.2018

767. The Tribunal following the order of the co-ordinate bench in assessee's own case restricted the ALP of the guarantee commission at 0.5% of the average amount of the loan outstanding as against the TPO's determination at 1.5%.

Zee Entertainment Enterprises Limited [TS-448-ITAT-2018(Mum)-TP] ITA No.1475/Mum/2017 dated 08.06.2018

768. The Tribunal upheld CIT(A)'s order and held that corporate guarantee does not fall within the ambit of international transaction by relying on the decisions of the coordinate bench and therefore no adjustment on account of guarantee commission should be made. It rejected TPO's addition of guarantee fee at 2% of the guaranteed money.

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

769. The Tribunal upheld CIT(A)'s deletion of TP-adjustment in respect of corporate guarantee given by assessee to AEs for AY 2012-13. Further, it noted that AO/TPO treated corporate guarantee as an international transaction and determined 2% per annum of the loan amount as guarantee ALP and observed that CIT(A) deleted the adjustment following co-ordinate bench ruling in assessee's own case for earlier years wherein it was held that corporate guarantee was not an international transaction u/s 92B and accordingly, any ALP adjustment cannot survive.

Dr. Reddy's laboratories v ACIT [TS-463-ITAT-2018 (Hyd)] ITA. No.1739/Hyd/2017 and ITA 1729/Hyd/2017 dated 13.06.2018

770. The Tribunal ruled on corporate guarantee, interest on AE-receivables and advances in respect of an assessee engaged in the business of software development & IT enabled services. The assessee had contended that since assessee as well as its AE had incurred losses, no ALP-adjustment could be made for its international transactions, and relied on Apollo Health Street ruling, APP Labs Technologies and Global Vantedge Pvt Ltd ruling. However, the Tribunal distinguished the contention and held that in the above cases there was no decision as to correctness of the order of the DRP, and therefore it could not be said to have been decided on merits of the issue.

Further, The Tribunal relying on Dr Reddy's Laboratories ruling accepted assessee's contentions that the corporate guarantee was not an international transaction during AY 2012-13 since amendment of Sec 92B of the IT Act came w.e.f. AY 2013-14.

Further, the Tribunal with specific direction remitted back to the file of AO/TPO the transaction of advances given to AE, as nature and purpose of advance were not clear. The Tribunal relied on GSS Infotech ruling and stated that no interest should be levied if advances were in the nature of trade advance. However, if advances were to be treated as a loan, the Tribunal directed adoption of LIBOR+2% interest as ALP.

Further, with regards to interest on outstanding receivables, the Tribunal following GSS Infotech and Bartronics rulings noted that the amount was received back within a period of 1 year from the date of advance to AE and thus no interest was chargeable on the receivables.

Cura Technologies Ltd vs DCIT Circle 1(2)- TS-412-ITAT-2018(HYD)-TP-ITA No 301/Hyd/2017 dated 11.05.2018

Royalty / Management fees / Intra Group services / Reimbursements

771. The Tribunal rejected the TPO's Nil determination of management fees noting that the Tribunal in the assessee's own case for earlier year had held that the TPO's nil determination was not under any legally permissible method of ascertaining ALP and the TPO had erroneously determined that the services did not have an intrinsic value without any cogent method and stated that the assessee could have performed them on its own inspite of clear documentation records maintained by the assessee. The Tribunal in the earlier year had restored the matter back to CIT(A) for correctness of ALP at entity level by aggregating the transactions including the management costs and adopting TNMM which had not been examined by the CIT(A). Thus, in line with the earlier year **the Tribunal**restored the matter back to DRP (since the assessee had approached the DRP) with similar directions.
Adcock Ingram Limited vs DCIT [TS-999-ITAT-2018(Bang)-TP] IT(TP)A No.125/Bang/2017 dated 03.08.2018

772. The Tribunal had remanded back the ALP determination of royalty to TPO noting that in the earlier year, the Tribunal held that entire exercise of assigning separate consideration for royalty was academic as trading and manufacturing segments were to combined (since activities were interlinked and not distinct), and the adjustment on royalty stood merged with TP adjustment made to manufacturing segment by adopting TNMM. The Tribunal observed that in the subject year, while computing PLI of manufacturing segment (PLI of segments was calculated separately), the TPO had taken royalty as part of cost and hence contradicted itself (Nil determination of royalty). The Tribunal considered the argument of Revenue, that ALP of the royalty payments though not 'nil' had a value which required to be properly fixed, a fresh look by the TPO/AO was required. It directed the AO/TPO to see whether in a case where there is no ALP adjustment required for manufacturing/trading segment or combining both of them, a separate consideration of 'Royalty' for ALP adjustments was required and if so, what could be the ALP assigned for it and the result thereof. The Court dismissed assessee's appeal against the Tribunal order which had remanded back the matter to the TPO to assign separate consideration for ALP adjustment of royalty instead of the ALP determination of combining the manufacturing and trading segment by following the coordinate bench decision in the assessee's own case for earlier year. The assessee argued that the entire exercise of restoring the matter was an academic one as the findings of the Tribunal of the earlier year had been upheld by the Court. Noting that the exercise of TP Analysis on combined transaction approach needs to be undertaken, the Court held that the Tribunal was justified in remanding the case back to the AO/TPO for determining the ALP of the royalty payments made.
Toyota Kirloskar Motor (P.) Ltd. vs CIT and ACIT TS-1002-HC-2018(KAR)-TP) ITA No.58/2017 dated 06.08.2018

773. The assessee-company was engaged in manufacturing of high-quality automotive glass for Indian automobile industry. It made royalty payment to its AE since it took advantage of AE's reputation to sell its products outside India. The TPO determined the ALP of royalty payment to be NIL on the ground that assessee was a mere contract manufacturer for its AE. The CIT(A) rejected TPO's nil determination noting that there were negligible purchases/sales to AE vis-à-vis total turnover. The Tribunal dismissed Revenue's appeal noting that inference of TPO was dehors the facts and thus, rejected TPO's NIL determination of royalty.
ACIT. vs Asahi India Glass Ltd. [2018] 97 taxmann.com 106 (Delhi - Trib.) IT APPEAL NO. 1582 OF 2015 dated 03.08.2018

774. The TPO had determined the ALP of the management fees at "NIL" since the assessee had failed to demonstrate the need for services and benefits received.The Tribunal restored the TP adjustment on account of management services fees admitting the additional evidence by following the coordinate bench decision of the assessee in its earlier year wherein the Tribunal had admitted the additional evidence filed by the assessee and remitted the issue back to the file of AO to consider the documents submitted to substantiate the benefits derived by its AE.
Haworth (India) Private Limited vs DCIT [TS-975-ITAT-2018(PUN)-TP] ITA No.109/Pun/2016 dated 21.08.2018

775. The Tribunal restored the TP adjustment in respect ofpayment made by assessee to its AE business support services to the AO/TPO for ALP determination noting that prima facie the transaction did not appear to be bogus atleast to the extent of the evidence submitted by the assessee. It rejected the approach of TPO applying CUP as the MAM and determining the ALP of the transaction of eleven segments under business support services to be nil on the ground that there were no services received or duplicate services were received. Further, the TPO proposed adjustment of IT services segment (the twelfth segment) under the business support services stating that not more than 5 persons at Rs.80,000/- per month were required for rendering such services. It observed that the TPO had not brought any single comparable case while applying CUP and action of TPO/AO was contrary to the ratio laid down in the decision of Cushman and Wakefield since the TPO had invoked the benefit test which was not within its domain.It was responsible for only determining the ALP adjustment and further, the AO mechanically made the addition proposed by the TPO without examining the deductibility of the expense under section 37 of the Act.

Exxon Mobil Lubricants Pvt Ltd vs. ACIT [TS-974-ITAT-2018(DEL)-TP] ITA No.1153/Del/2015 dated 21.08.2018

776. The Tribunal passed an ex-parte order upholding the CIT(A)'s order confirming the TP adjustment on professional services availed by the assessee and accepting the TPO's nil determination of the ALP on the ground that the CIT(A) had passed a detailed order while adjudicating the issue.

Faurecia Automotive Seating India Pvt Ltd vs ACIT [TS-928-ITAT-2018(Bang)-TP] IT(TP) A No.812/Bang/2017 dated 21.08.2018

777. The Tribunal upheld CIT(A)'s order deleting TP adjustment on account of royalty payment made by the assessee to its AE for technical knowhow and personnel training of employees by its AE and rejected TPO's nil determination. It noted that that it was not for the TPO to determine the commercial expediency of availing technical knowhow andhis domain was restricted to determining the ALP. Also in absence of the method applied by the TPO which was later during the course of hearing claimedto be CUP (as no other company would pay for the services)the stand of the TPOwas rejected on the ground that it was not legally sustainable relying on the decision in AWB India Pvt. Ltd. It also observed that the CIT(A) had passed a well-reasoned order wherein the TP adjustment on royalty payment was deleted since the Appellant benefitted through the technical know-how and processes which included all information and knowledge possessed in relation to passenger handling ,cargo handling ,dangerous goods handling and operation and ramp equipment which was critical for the smooth functioning of the business and hence the TPO's allegation that no independent company would pay for such services couldnotbe sustained.

DCIT vs. Globe Ground India Pvt. Ltd [TS-896-ITAT-2018(DEL)-TP] ITA No.2785 /Del/2014 dated 23.08.2018

778. The TPO applied CUP method and determined the value of the receipt of management services at NIL observing that the services did not result into any benefit to the assessee and there was no evidence of receipt of the services. The CIT(A) followed his order of the earlier year restricted the disallowance to 30% noting that 20% of Management Services were in the nature of share-holder services and 10% of it was in the nature of duplication of services/ incidental services. The Tribunal restored the issue following the coordinate bench ruling in its own case for earlier year noting that facts and circumstances were identical. The Tribunal had restored it in the earlier year noting that CIT(A) had sustained the adjustment on estimated basis without considering the cost allocation methodology report and directed the CIT(A) to quantify the adjustment after examining the said report and assessee's explanations

BSI Group India Pvt. Ltd. & ANR vs. ITO TS-1195-ITAT-2018(Kol)-TP] DelTrib ITA No. 152/Del/2015 dated 20.08.2018

779. The TPO made an upward adjustment on account of payment of royalty made by assessee to its associate concerns noting that the assessee was making a payment at the rate of3.75% to the AE as against the royalty at the rate of 3% by other group entities. The CIT(A) deleted the addition stating that an identical issue with respect to payment of royalty was decided in favour of the assessee by the CIT(A)in the earlier year. The Tribunal dismissed Revenue's appeal following the coordinate bench ruling in assessee's own case for earlier year wherein it was held that CIT(A) had rightly noted that

effective rate of royalty had to be considered and if the amount of royalty paid by the assessee was considered with ex-factory sale value, deducting various expenses, such as dealer commission, special commission, warranty etc., the effective rate worked out to 2.3% on sale, as against 3% paid by the other group entities. It observed that the Revenue could not controvert the finding of fact given by CIT(A).

DCIT vs Hitachi Home & Life Solutions (India) Ltd [TS-1176-ITAT-2018(Ahd)-TP] ITA No.2119/Ahd/2011 dated 29.08.2018

780. The TPO rejected the aggregation of business support services and technical supportservices and benchmarked the transactions at Nil observing that assessee had not furnished contemporaneous documentary evidences to support that services had been received by it and relied on OECD guidelines to state that essential information should be available with respect to receipt of intra group services, the economic and commercial benefits derived by the recipient and the cost identification of those services on basis of which it could be determined whether an independent enterprise would have paid for such services. The sum and substance of the observation was that the assessee was not able to prove the need for such services andthat assessee hadinfact received such services. The Tribunal relying on the ratio laid down in Del HC in Cushman and Wakefield rejected the NIL determination done bythe TPO and held that the TPO should have verified and examined the aspect of benefit and need on the basis of commercial wisdom of the assessee while benchmarking the international transaction and noted that aggregation approach adopted by the assessee had been accepted in subsequent years. It observed that the assessee had submitted documentary evidences ie. copies of invoices pertaining to these two services and certain email communications and also submitted a chart demonstrating need for the services and also the benefit translated therefrom. Thus, it restored the matter back to TPO for determination of ALP of business support and technical supportservices.

The TPO while adopting the transaction by transaction approach also restricted the payment of royalty on comparison with comparables and made an upward adjustment. The Tribunal remitted the issue back to the AO and directed the assessee to show how payment of royalty was inextricably linked with the manufacturing activities and why it ought to be aggregated and benchmarked together with other international transactions under TNMM. Further, it also observed that the TPO had considered the comparable without showing that whether in case of the comparables there was any payment of royalty and what was the basis as the assessee had contested that out of the six comparables, three comparables were not paying royalty.

Borgwarner Emissions Systems India Pvt Ltd vs ACIT [TS-1029-ITAT-2018(DEL)-TP] ITA No.6840/Del/2017 dated 04.09.2018

781. The Tribunal deleted the TP adjustment made on royalty payment made by assessee (engaged in manufacture of explosives) to its AE for use of trademark for sale made to third parties by following the coordinate bench decision in assessee's own case for earlier year wherein a similar adjustment made was deleted noting that two tests of benefits and commercial expediency could not be invoked by the TPO as per the settled legal position in Del HC ruling of EKL Appliances wherein it was held that the TPO could not sit in judgement on a taxpayers business expediency so as to conclude its ALP of international transactions as unreasonable and that it was wholly irrelevant that there are no corresponding benefit since the real question in transfer pricing regime is as to what would be the price to be paid by an independent enterprise vis-à-vis the one shown by the concerned tax payer. Furtherit also observed that one of the other reasons by TPO for adopting nil price for royalty payment was that the assessee had not made aforesaid payment for use of trademark in the past and TPO had admittedly applied CUP thus, it held that TPO erred in treating assesee itself having paid Nil amount in the past to the AE, as a valid comparable (transaction not an uncontrolled one).

Indian Explosives Private Ltd vs Dy.CIT [TS-1055-ITAT-2018(Kol)-TP] ITA No.1957/Kol/2017 dated 07.09.2018

782. For AY 2010-11andAY 2011-12 the Tribunal restored the TP adjustment made vis-à-vis payment made for intragroup services to the TPO for factual verification of the unilateral APA placed on record. It noted that the assessee had placed APA for five years commencing from 15.04.2015 and ending on 31.03.2020 and also application form "Rollback on APA" of same international transactions for a period of 4 years from 01.04.2011 to 31.03.2015 on record.

Linde India Ltd (formerly BOC India Ltd) vs DCIT, JCIT [TS-1053-ITAT-2018(Kol)-TP] ITA No.543/Kol/2015, ITA No.381/Kol/2017, ITA No.224/Kol/2016 dated 19.09.2018, DCIT vs Linde India Ltd (formerly BOC India Ltd) [TS-1053-ITAT-2018(Kol)-TP] ITA No.105/Kol/2016 dated 19.09.2018

783. For AY 2012-13, the TPO was of the view that the assessee had failed to demonstrate that the payment made towards corporate service charges had resulted in any tangible benefit to the assessee and accordingly he applied CUP to determine the ALP of servicesat Rs.51,00,000 on man hour rate basis. The DRP upheld the TPO's order relying on its own order for AY 2011-12. The Tribunal remitted the determination of ALP of corporate service charges noting that the Tribunal in assessee's own case for AY 2011-12 had remanded the issue to DRP in view of the earlier year's decision wherein DRP(for AY 2009-10) had not passed a speaking order/ given reasoned finding while upholding TPO's order.Further,for AY 2009-10, the DRPhad not mentioned regarding the document submitted by assessee as additional evidence while it did point out about failure of assessee to submit single evidence to prove it had received services from its AE in lieu of which payment was made.

Huntsman International (India) P. Limited vs ACIT [TS-1215-ITAT-2018(Mum)-TP] ITA No.1099/Mum/2017 dated 12.09.2018

784. The assessee-company, engaged in the business of manufacturing and supply of wind turbine generators, made a payment of royalty to its AE in Cyprusand the TPO made an adjustment with respect to itby relying on FEMA provisions (8% on export sales). The DRP following its own decision in previous years adjudicated the issue against the assessee and disregarded the coordinate bench decision in assessee's own casewherein the issue had been restored back and in the remand proceedings, the TPO while giving effect to Tribunal's order recalculated the royalty adjustment and further revised it by accepting assessee's claim for downward adjustment. Subsequently, the DRP filed a suo moto application for rectification of its own order/ direction for assessment year 2013-14 to state that the facts for the earlier years were different and passed a rectification without disposing off the application for rectification of the said order filed by assessee contending that the same had to be rectified considering the Tribunal's order for assessment year 2011-12. The assessee filed a writ petition against the rectification order passed by DRP since it had not disposed the application filedby the assessee. The Court held that in, all fairness, the DRP ought to have considered the assesssee's application alongwith its suo moto application for rectification and it was not proper to pass an order on the application filed by one party alone leaving the other application either unheard or not disposed of and accordingly set aside DRP order.

Regen Powertech Private Limited v. DRP & Anr. [TS-1076-HC-2018(MAD)-TP] - TS-1076-HC-2018(MAD) - W.P.No.27334 of 2017; W.M.P.No.29226 of 2017 dated 24.09.2018

785. The assessee was providing business support services toother companiesincluding sales support, marketing, advertisement and IT supportto its group company. The AO noting that that the group company was running its operations with no employees and the income received by the assessee from group company had not been correctly recorded invoked provisions of section 145 and held that assessee should have earned markup of 15% (reduced to 12.82% by DRP) on cost and accordingly proposed an adjustment. The Tribunal restored the adjustment in respect of service fee received by assessee (shown under 'other income') from domestic related party enterprises noting that if the agreement between two resident companies did not provide for any such markup on the total cost then such addition could not be sustained. However, it observed that it was not possible to decipher whether DRP considered assessee's submission that AO did not give it any opportunity to explain the said transaction or whether DRP considered assessee's objection whether AO could make such adjustment to the domestic transaction between two parties. Further, noting that details of 'other income' were not provided nor was it shown what were the relevant documents by which assessee had shown such income & estimation thereof, it set aside the issue to be examined by AO afresh in the interest of justice

Verizon India Pvt Ltd vs ACIT [TS-1084-ITAT-2018(DEL)-TP] ITA No.6053/Del/2012 dated 10.09.2018

786. The assessee-company engaged in the manufacture of passanger cars had paid royalty (for payment of know how tradename and trademark) to its AE viz. SMC Japan. The TPO noted that that assessee had paid a substantial amount of royalty and at the same time it had also incurred substantial expenditure for research and development and marketing/brand promotion. In view of assessee not bifurcating the payment of royalty for use of brand name and technology, he allocated the royalty paid by the assessee in the ratio of R&D and AMP expenses incurred by the associated enterprise and held that 48% was towards the use of Suzuki logo. He determined the ALP of royalty payment made towards the use of brand to be nil on the ground that the royalty for Suzuki brand was paid to SMC, Japan, when assessee itself was promoting the brand of Suzuki which was a lesser known brand. That since the Suzuki brand was undoubtedly lesser known brand in India and had piggybacked the brand name Maruti which was an established brand in India there was no case for the assessee to have paid any brand royalty to SMC Japan. The Tribunal deleted the TP adjustment on royalty payment by following the coordinate bench ruling in assessee's own case for earlier year wherein it a) accepted assessee's contention that the decision to use Suzuki name/brand was taken by the assessee in order to advance its own commercial interest and Suzuki brand is an international renowned global brand. b) if expenditure had been incurred wholly and exclusively for the purpose of business of the assessee whether or not such expenditure actually benefits the assessee was an irrelevant consideration for the purpose of determination of ALP. Thus, there was no merit in TPO's allegation that payment made for such use was unwarranted

Maruti Suzuki Ltd vs Addl.CIT [TS-1180-ITAT-2018(DEL)-TP] ITA No.467 /Del/2014 dated 17.10.2018

787. The Tribunal restored the issue of ALP adjustment pertaining to the assessee's international transactions of sale/resale of manufactured goods in export, payments of sales margins, services rendered etc. to itsAE to TPO noting that coordinate bench in assessee's own case for AYs 2011 to 2013 admitted additional evidence furnished by assessee in support of the revised transaction-by-transaction approach and directed TPO to consider these while determining arm's length nature of the transactions. Though the assessee sought to distinguish the coordinate bench ruling in assessee's own case for earlier year stating that additional evidence had been submitted which was not the case in the instant year, the Tribunal rejected the reasoning of assessee and opined that consequential adjudication would indeed have an impact in the impugned assessment year as well, thus adopted judicial consistency to restore the impugned ALP adjustment issue back to the TPO for his simultaneous adjudication with the preceding assessment years.

Epcos India Pvt Ltd vs Dy.CIT [TS-1158-ITAT-2018(Kol)-TP] ITA No.2528/Kol/2017 dated 28.10.2018

788. The TPO had clubbed the management service fee (which was separately benchmarked by assessee by applying TNMM as MAM) with other transactions under TNMM undertaken by assessee in manufacturing segment. The Tribunal held that TPO erred in clubbing the transaction pertaining to management service fee. It followed the coordinate bench decision in assessee's own case for earlier year wherein it was held that management service fee could be considered as a separate transaction as it had been accepted by DRP in subsequent years and also on remand by DRP, the TPO had not offered any adverse comments with respect to economic analysis carried out by assessee for said transaction.

Landis +Gyr Ltd vs DCIT [TS-1222-ITAT-2018(Kol)-TP] ITA No.524/Kol/2017 dated 17.10.2018

789. The TPO determined the ALP ofroyalty and technical knowhow fees paid by assessee as NIL on the basis that the assessee was a contract manufacturer and had no exclusive right to sell without the permission of its AE under the agreement.The Tribunal restored the ALP determination of royalty and technical knowhow fees by following the coordinate bench decision inassessee'scase for earlier year wherein it accepted assessee's contention that it was a licensed manufacturer noting that basic premise on which disallowances of royalty and technical knowhow expenses were made would fail and also the TPO had not adopted any method to determine thesaid payment to be NIL. It considered the assessee's submission that the main reason for restriction imposed by AE was with the objective of ensuring smooth business operations, it was not getting a fixed amount of profit and it had exported

goods to even non-AE's and thus it was a licensed manufacturer.Accordingly, it remitted the matter back for fresh examination.

Sulzer Management AG (AE of assessee) had entered into a contract with Microsoft and allocated charges to group entities. The DRPupheld the TPO's order determining the ALP of the annual charges towards Microsoft licencing fee as Nil on account of the fact that assessee had not received any benefit/service for the payment made to M/s Sulzer Management AG. The Tribunal restored the matter back to TPO following the coordinate bench decision of assessee for earlier year wherein the issue had been restored back noting that TPO had not benchmarked the transaction under any of the prescribed methods.

The DRP upheld the TPO's order disallowing the management fees observing that assessee had failed to prove the receipt of any service from AE commensurate with the cost allocation and also stated that the assessee should have separately benchmarked the transaction. The Tribunal restored the matter back to the TPO for examining the evidence which proved the receipt of services and to consider the explanation of assessee and also opined that the assessee was justified in aggregating the transactions in light of services being inextricably linked to manufacturing costs.
Sulzer Pumps India Pvt Ltd vs Dy.CIT [TS-1157-ITAT-2018(Mum)-TP] ITA No.1453/Mum/2014 dated 31.10.2018

790. The TPO determined the ALP of the localization expenses paid to AE (for support services provided to assessee for localization of imported products having regard to customer's requirements) to be NIL by applying CUP and TPO was of the view that assessee had already entered into royalty agreement with AE and was paying royalty, therefore, there was no need to pay such localisation expenses and such expenses amounted to duplication of expenditure. The Tribunal set aside the TP adjustment made on localization expenses by relying on the ratio laid down in Delhi HC ruling of Cushman and Wakefield and rejected the benefit test applied by TPO noting that it was a settled legal position that a businessman has prerogative to organise his affairs in the manner best suited to its functioning, commercial or business expediency and Revenue could not step into their shoes.It directed TPO to determine ALP of transaction unconnected with fact of any benefit accrued to assessee.
Mitsubishi Electric Automotive [I] Pvt Ltd vs Dy.CIT [TS-1147-ITAT-2018(DEL)-TP] ITA No.312/Del/2015 dated 29.10.2018

791. The TPO charged a markup of 10% on cost recovered from the AE by the assessee as he was of the view that marketing and promotion expenses incurred carried a service element and assessee had rendered services to its AE. The CIT(A) confirmed the action of TPO observing that it was clear from the facts that the assessee initially actedas an agent of the AEs through which the services rendered by the third parties were delivered the AEs. It was assessee's contention that the amount represented reimbursement ofactual expenditure and also the method adopted for computing ALP was not as per provisions of the Act. The Tribunal directed deletion of markup and held that the TPO had not determined the ALP of transaction by any of the prescribed method u/s. 92 by relying on the Bombay HC decision in Kodak India.
Wartsila India Limited vs ACIT [TS-1166-ITAT-2018(Mum)-TP] ITA No.5002/Mum/2013 dated 04.10.2018

792. The Tribunal remitted the determination of ALP of intragroup service payment made by assessee (manufacturer of air filteration) and it rejected TPO's Nil ALP-determination of intra-group service payment made to AE noting that TPO in earlier years and subsequent year(s) had accepted the said payment to be at ALP (thus principle of consistency ought to be followed) and the assessee had continued making payment under the agreement entered into in 2004 (hence there was no change in business model). The Tribunal took cognizance of the evidence submitted by the assessee that administrative coordination services and market research were provided by AE from which it derived substantial benefit and held that assessee was able to substantiate benefits derived from rendering of services by the AE. It observed that TPO could not sit on the armchair of a businessman to decide as to what services were beneficial in view of TPO; stating that services appeared to be very generic in nature and were in the nature of shareholder services. The TPO's reasoning that payment of intra-

group services was increasing every year and thus, there was shifting of profit would also not hold good when turnover had increased five times and further, TPO had accepted services to be at ALP in subsequent years.

Donaldson India Filter Systems Private Limited vs DCIT [TS-1113-ITAT-2018(Del)-TP] ITA No.3218/Del/2015 dated 03.10.2018

793. The TPO separately benchmarked royalty transaction (which was aggregated with manufacturing activity) and applied CUP as the MAM as against TNMM applied by assessee. Therate of royalty paid by assessee (5% on value addition) was compared to 3% royalty payment made by Maruti Udyog Ltd. to Suzuki Motors Corporation (which was a controlled transaction) and an upward adjustment was made. The CIT(A) deleted the addition observing that TP adjustment determined by benchmarking controlled transaction with another controlled transaction could not be at ALP. The Tribunal dismissed Revenue's appeal and following the coordinate bench ruling in assessee's own case held that royalty had to be aggregated with manufacturing activities since it was linked with production and sales activity in absence of production of sales and sale of products, there would be no question of payment of royalty. Further, upheld CIT(A)'s order as regards the non-applicability of comparing with a controlled transaction under CUP.

ACIT vs Mercedes-Benz India Pvt Ltd (formerly known as Daimler Chrysler India Pvt. Ltd.) [TS-1164-ITAT-2018(PUN)-TP] ITA NO.1110/Pun/2013 dated 25.10.2018

794. The assessee was engaged in the manufacture of headliners, door panels, parcel trays, etc. and also had technical centre for providing design and drawing services. The assessee in its TPSR had applied TNMM and computed its PLI after excluding abnormal cost for wastage and worked out PLI at 7.31%. The TPO had recomputed the assessee's margin at -11.56%by including abnormal costs and compared it with mean margin of comparables at 6.39%.TPO noted that majority transaction in manufacturing segment was only of advisory services and other transaction were on capital account and held the advisory services (for which payments were made to AE) had not resulted in any benefit to the assessee. Accordingly, the TPO determined the ALP of the same to be NIL and disallowed the entire payment / expenditure. The DRP upheld TPO's order observing that the TPO had clearly demonstrated that the assessee had not received any benefit through advisory services as it had earned negative margin of (-) 11.56% of manufacturing segment, whereas comparables had earned 6.39% positive margins. The Tribunal noted that a) TPO had failed to come to a finding in this regard as to whether advisory services had been availed by the assessee or not but had gone to take the value of same at Nil b) TPO could not determine ALP to be nil without going into merits of rendition of services c)There was no merit in the stand of TPO thatas unadjusted margin was -11.56%, the advisory services were not at ALP when after allowing the adjustment for extraordinary cost the assessee's margin stood at 7.13%. Thus, the Tribunal deleted the adjustment.

Grupo Antolin India Pvt. Ltd (Erstwhile known as Grupo Antolin Pune Pvt. Ltd vs Dy.CIT) [TS-1128-ITAT-2018(PUN)-TP] ITA No.299/Pun/2013 dated 17.10.2018

795. The Tribunal deleted the TP adjustment on payment of IT services and technical support services by assessee to its AE following the coordinate bench ruling in assessee's own case for earlier year wherein similar adjustment was deleted in view of principle of consistency noting that TPO in respect of international transactions involving payments made by the assessee under theCost Contribution Agreement (CCA) for receiving purchase services, orderhandling services and sales services for last three assessment years had not made similar adjustments and the TPO erred in making the adjustment for subject year despite there being no change in facts. Further, TPO had not applied any of the prescribed method under sec 92 to arrive at the aforesaid adjustment and thus, the adjustment could not besustained.

AT&S India Private Limited vs DCIT [TS-1179-ITAT-2018(KOl)-TP] ITA No.69/Kol/2018 dated 10.10.2018

796. The Tribunal rejected TPO's NIL determination of intra group services in case of assessee who had entered into an agreement with its AE for operational services, marketing services and administrative services. The TPO had characterized the aforesaid services as stewardship services while arriving at the ALP to be NIL. The Tribunal held that such services were not stewardship noting that the TPO had

not categorized such services to be stewardship in preceding years and sought to determine the ALP of these services. Further, it observed that the assessee was entirely dependent on the services (including IT services) which were essential for the running of its business. The DRP had given a finding that services had benefitted the assessee however it had confirmed TPO's NIL determination wrongly on the basis that proportion of benefit could not be allocated between assessee and AE. It accepted assessee's contention that the TPO had not used any of the prescribed methods u/s.92C(3) to determine the ALP of transaction. Accordingly, it restored the matter to TPO to determine the ALP of the intragroup services.

Sika India Private Limitedvs DCIT [TS-1178-ITAT-2018(KOl)-TP] ITA No.393/Kol/2014 dated 10.10.2018

797. The assessee is one of the leading developers and suppliers of dentification and decorative solutions for businesses and consumers worldwide and had three business segments namely, (i) Pressure Sensitive Materials [PSM] (ii) Retail Branding and Information Solutions [RBIS] and (iii) other Speciality Converting Businesses. The assessee had benchmarked the intragroup services availed from its AE with other transactions of purchase, sale of raw materials and purchase, sale of finished goods with its AE. The TPO was of the view that transaction relating to the receipt of intra-group services in the two business segments, namely, PSM and RBIS were not at ALP. In reply to the SCN issued by the TPO to furnish details regarding the intragroup services, the assessee submitted the specified services received under each of the segments i.e. PSM (Marketing support services, Operations, Logistics and Technical Service, Labor Law and Employee Relations, Finance, Accounting, Administration and MIS Services, Corporate Support Centre [CSC), ITSSC) and RBIS (Ticketing HUB, GVP Services, VIPFS Services and CSC services). The TPO took a view that assessee had also not been able to demonstrate that any tangible gains were achieved from said services. However, he accepted the ALP ascertained by the assessee with regard to two intra-group services received by the assessee i.e., ticketing hub and VIPFS but determined the ALP of balance intragroup services to be NIL by applying CUP. The Tribunal deleted the said adjustment noting that issue had been decided in favour of assessee by coordinate bench decision in assessee's own case wherein it was held that all services received by the assessee were part of composite contract/agreements which could not be unbundled and concluded by holding that the agreement is an intrinsic one and it was wrong to split the same and hold that the same services are at Arm's Length and some services are not. Further, it also observed that there was no merit in TPO/DRP rejecting the evidence in form of e-mails/correspondences filed by assessee for receipt of services stating that it was too general. The TPO could not question the commercial prudence while determining the ALP of transaction. Accordingly, it deleted the adjustment.

Avery Dennison [India] Pvt Ltd vs ACIT [TS-1219-ITAT-2018(Del)-TP] ITA No.504/Del/2018 dated 29.10.2018

798. The assessee (engaged in the business of manufacturing and trading of construction and industrial chemicals and adhesives) made payment of royalty for exclusive rights for manufacturing, making available present and future knowhow necessary for manufacture and for exclusive rights to use the trade mark, in relation to the products of Sika Group of Companies. It had aggregated the payment of royalty with other transactions and applied TNMM. The TPO was of the view that it was a separate transaction and had to benchmarked separately and applied CUP. However, the DRP held that ALP determination made by the assessee aggregating with the other transactions stands. The Tribunal followed the coordinate bench decision in assessee's own case for earlier year wherein it was held that TNMM at entity level is not the MAM as all the international transactions are not of the same category or nature.

DCIT v Sika India Private Limited [TS-1178-ITAT-2018(KOl)-TP] ITA No.393 & 402/Kol/2014 dated 10.10.2018

799. The assessee had entered into a shared service agreement with its AE and in terms of the agreement, it received corporate support services from AE. It benchmarked the aforesaid transaction by aggregating with manufacturing and trading segment and applied TNMM. The TPO determined the ALP of the aforesaid services to be nil by applying the benefit test. Tribunal deleted the TP adjustment on corporate support services received by assessee from its AE following the coordinate bench decision in assessee's own case for earlier year wherein TPO's nil determination of services was

rejected by holding that TPO could not sit in the judgement of business module of assessee and its intention to avail or not avail any services. The role of TPO was to determine ALP of international transactions undertaken by assessee. Further, the IT enabled corporate support services related to the business carried out by the assessee and had to be aggregated with other transactions being intrinsically linked to other transactions undertaken by assessee.

Eaton Fluid Power Limitedvs DCIT [TS-1217-ITAT-2018(Pun)-TP] ITA No.506/Pun/2015 and ITA No.476/Pun/2016 dated 15.10.2018

800. The assessee along with HCL Technologies Ltd (HCL) had bid for a project to be undertaken by National Insurance Company Ltd. (NICL) for which it had incurred costs in terms of manpower, expertise and costs. A tripartite agreement was entered into between the parties. With respect to the execution of the project, the assessee had purchased software from its foreign parent company for Rs.3.2 crores which was sold by it at the same price to HCL. The AO made an addition of 10% as markup on sale of software which was confirmed by CIT(A) observing that the assessee had failed to provide details to substantiate that it was directed by the foreign parent company to simply deliver the software to HCL Technology on cost-to-cost basis and it was acting on behalf of the AE (parent company). The Tribunal restored the issue to TPO directing the assessee to demonstrate and prove its activities were governed by doctrine of commercial expediency and there was no shifting of income outside Indian tax jurisdiction. It rejected the assessee's stand that Revenue could not interfere in the manner in which the assessee was conducting its business noting that the foreign company was not a party to the agreement entered into and further, the ultimate user of software was NICL. After analyzing the factual background, it opined that there was a possibility of shifting of income outside Indian tax jurisdiction since the assessee had incurred costs in Indian tax jurisdiction while bidding for RFP and the revenue was being booked on cost to cost basis. Thus, a doubt arose that profits were being shifted to foreign jurisdiction and it directed Revenue to examine the true colours of transaction entered into by assessee. In this context, it directed Revenue to analyze the costs booked by assessee while bidding for RFP vis-a-vis costs which were booked by it for other contracts/tender and manner in which revenue was recognized from these contracts to ensure there was no costs being loaded in India and income shifted outside Indian tax jurisdiction.

eBaotech India Pvt. Ltd. vs DCIT [TS-1125-ITAT-2018 (Mum)-TP] ITA No.549/Mum/2016 dated 22.10.2018

801. The Tribunal deleted the TP adjustment madewith respect to payment to AE for intra-group services on account of Oracle base provided by Eaton UK which was used by assessee (engaged in engineering design and software development, back office support and business development services to its AEs) under APSSC segment for providing back office services to group entities. Noting that both the TPO and CIT(A) had not disturbed the benchmarking of international transactions of APSSC segment (where the oracle implementation charges were included as part of operating costs), however the lower authorities had made TP adjustment in respect of payment made to AE for Oracle implementation charges on account of assessee failing to establish services had been received from its AE. It opined that once the margins have been accepted, then cost incurred could not be disturbed and further, observed that the transaction was closely and intrinsically linked to the business operations carried on by the assessee, then the same could not be segregated and ALP of said transaction could not be determined to be Nil. It also relied on coordinate bench decision in case of assessee's group concern i.e.Eaton Industries Manufacturing GmbH wherein it deleted the disallowance of cost incurred on receipt of support services from its AE by holding that assessee had placed on record the evidence of support services being received from the AEs which were in the nature of back office accounting services and IT support services that enabledit to run its business.

Eaton Technologies Pvt Ltd vs ACIT [TS-1297-ITAT-2018(Pun)-TP] (ITA No.1650/Pun /2013) dated 31.10.2018

802. The Tribunal restored TP adjustment on account of payment of management fee and communication fees (in pursuance of cost allocation agreement with its AEs) by following coordinate bench decision in assessee's own case for earlier year(s) wherein it was noted that TPO/DRP had failed to note assessee's contention that these costs had been recovered on markup from AE's and there was no merit in adopting the same at "Nil". The TPO had determined the ALP of said fees at NIL on ground that

the assessee had not furnished evidence to prove services and benefit derived from such services with supporting evidences.

MSC Software Corporation of India Pvt Ltd vs Asst.CIT [TS-1370-ITAT-2018(Pun)-TP] (ITA No.592 /Pune /2018 dated 24.10.2018

803. Where the TPO denied the royalty payment made on trademark on basis that as per the terms of earlier agreement approved by the Government, the assessee could pay royalty for technical knowhow at the maximum rate of 2% of net sales, whereas, the assessee had paid royalty both for technical knowhow (1.25%) and trademark (1%) aggregating to 2.25% of net sales, the Tribunal deleted the TP adjustment on royalty payment made on trademark by assessee to its AE by relying on coordinate bench decision in assessee's own case for earlier year wherein it was held that royalty for trademark at 1% of sales was allowable and the assessee was in fact paying a lesser amount for its brand Cadbury vis-à-vis other group companies in other parts of the world. Further, the Tribunal had also observed that payment of royalty for trademark at 1% over and above the royalty at 1.25% for technical knowhow was approved by RBI.

Mondelez India Foods Pvt. Ltd. vs Addl.CIT [TS-1288-ITAT-2018(Mum)-TP] ITA No.1512/Mum/2013 dated 28.11.2018

804. The assessee had entered into an agreement for trademark license agreement relating to HALLS with its AE to whom it used to make a payment of royalty at 2.7% of sales. The TPO was of the view that in the instant case there was no transfer of technology or knowhow and payment of royalty was being made for only use of trademark thus, under automatic route royalty is payable to the extent of 1% of the domestic net sales and 2% of the export net sales whereas in case of manufacturing i.e in case of manufacturing / technology royalty, the upper limit was fixed at 5% of domestic net sales and 8% of export net sales and accordingly he allowed payment of royalty for trademark at 1% and made an adjustment. The Tribunal deleted the TP adjustment made on royalty noting that on reading of the original and amended agreement it becomes clear the assessee shall manufacture licensed product using any technology of the AE provided to the assessee in accordance with the specifications and instructions. Further, it observed that it could not be said that assessee was manufacturing "HALLS" brand product without obtaining the required technical knowhow. Accordingly, it held that the payment of royalty was made at ALP

Mondelez India Foods Pvt. Ltd. vs Addl.CIT [TS-1288-ITAT-2018(Mum)-TP] ITA No.1512/Mum/2013 dated 28.11.2018

805. The TPO rejected use of TNMM as MAM to benchmark royalty paid (at 3% of value added) and product development fee to its AE for grant to use trademarks and to manufacture product under Intellectual copyright (IPR), applied CUP to determine ALP at nil on ground that no independent entity under such circumstances would pay any such royalty. The Tribunal restored the issue of TP adjustment on royalty noting that year after year, TPO had accepted TNMM applied by assessee but abruptly in the subject year applied CUP without assigning any reason. It noted that royalty and product development fee was intrinsically connected to production and sales and thus, could only be decided under TNMM. It relied on ratio laid down in Delhi HC in EKL Appliances wherein it was held that TPO could not sit in the armchair of businessman and applying benefit test was impermissible. Further, it also noted that the assessee had also brought supplementary analysis on record that the royalty charged between third party licensor and licensee generated an average royalty of 7.20% of the sales which had to be examined in detail.

Nissan Brake India Pvt Ltd. vs DCIT [TS-1252-ITAT-2018(Del)-TP] ITA No.6366/Del/2017 dated 16.11.2018

806. The Tribunal restored the TP adjustment on services availed by assessee from its AE i.e. CSAPL noting that TPO could not determine the ALP of said services as NIL by applying benefit test if in the subsequent AY the TPO himself had allowed a part of service charges paid by assessee to CSAPL and accepted the fact that assessee had availed services under the agreement, thus there was no reason to dispute assessee's claim of availing services. Further, it also noted that additional evidence in form of affidavit was submitted by assessee during the course of hearing that services were availed at cost plus markup which was not available before the TPO. Thus, it restored the issue to allow an opportunity

to the AO to consider additional evidence and decide the issue. It opined that evidences brought on record deserved to be examined on merit before deciding the issue.

Mondelez India Foods Pvt. Ltd. vs Addl.CIT [TS-1288-ITAT-2018(Mum)-TP] ITA No.1512/Mum/2013 dated 28.11.2018

807. The Tribunal remitted the intra-group services (administrative and managerial services) availed by assessee from its AE noting that facts of subject AY were similar to the assessment years covered in the APA. It directed the AO/TPO to examine the facts closely and relevant terms of agreement between CBDT and assessee and also to conclude on the argument of the assessee vis-à-vis issue of applicability of APA to the assessee's case for the year under consideration in principle.

Honeywell Automation India Ltd. vs ACIT [TS-1207-ITAT-2018(PUN)-TP] (ITA No.359/PUN/2013) dated 02.11.2018

808. The assessee made payment of Rs.11,50,31,934 to its AE for availing Software Services which was claimed to be at ALP (as the AE has allocated the cost of the ERP software to all group companies in 40 countries as per the cost allocation mechanism provided in the agreement).The TPO relied on previous year's order for AY 2012-13 and addition of Rs.9,88,26,934 was made by computing ALP of the said transaction at Rs.1,62,05,000 by stating that the employees had rendered service of 2 man hours per days, he arrived at 730 man hours for the year (2 x 365 days) and estimated the ALP of service availed by applying a man hour rate of Rs.8,500 per hour to the said man days, which the TPO claimed to be as CUP. The DRP upheld the estimation made by the TPO as reasonable. The Tribunal deleted the TP adjustment made on payment for availing information services following the coordinate bench ruling in assessee's own case for earlier year wherein the similar adjustment was deleted noting that though the TPO had stated he had applied CUP for determining ALP, no comparable instance was brought on record and his estimation of charge on services was without any supporting evidence. Thus, it concluded that the TPO had not adopted any of the method u/s.92C r.w R 10B.Further, noting the cost was allocated to 40 group companies across globe who were using the software and related services, the Tribunal held that there was no reason for not accepting the payment made to the AE to be at arm's length in the absence of any contrary evidence brought on record.

Firmenich Aromatics Production (India) Pvt. Ltd. vs ITO [TS-1214-ITAT-2018(MUM)-TP] (ITA No.7145/Mum/2017) dated 13.11.2018

809. The Tribunal deleted TP adjustment made on corporate management services availed by assessee from its AE noting that assesseehad furnished detailed description of intra group services rendered by the AE, copy of ledger account of corporate management charges, month-wise chart of corporate management charges and allocation chart. It further relied on Delhi High Court in case of EKL Appliances wherein it was held that TPO could not judge on the commercial expediency of the transaction, his role was limited to determining the ALP of the transaction to delete the said adjustment.

Terex Equipment Pvt Ltd (Formerly known as Terex Vectra Equipment Pvt. Ltd.) vs ACIT [TS-1225-ITAT-2018(DEL)-TP] (ITA No.1882/Del/2014) dated 14.11.2018

810. The Tribunal restored the issue of TP adjustment made on management and business support services received by the assessee and directed TPO to determine if services were availed or not during subject year i.e. AY 2013-14 noting that TPO had not made any such addition in AY 2014-15 on reference being made to it u/s.92C. It further discarded the argument of assessee that payments in connection with said services written back in AY 2013-14 and AY 2014-15 were offered to tax u/s. 41(1) in AY 2015-16 and thus, addition ought to be deleted by stating that it would have no relevance.

Carrier Midea India P. Ltd vs Dy.CIT [TS-1256-ITAT-2018(DEL)-TP] (ITA No.7675/Del/2017) dated 22.11.2018

811. The assessee had paid cost allocation charges of Rs.34.63 crores pertaining to intra group services received from its AEs. During assessment proceedings, based on request of TPO details about nature of services provided by AE, cost allocation methodology adopted as well as evidence of receipt of services by assessee were submitted to TPO .However, TPO rejected ALP of cost allocated to assessee by stating that assessee failed to produce supporting documents/evidence to substantiate that services were rendered by AE and charge reflected value/benefit of service received .Further, TPO

applied CUP method to benchmark said transaction and made addition of Rs.33.36 crores. He determined the ALP of Rs.1,27,50,000 by considering the total amount of man hours of services rendered by AE at 1500 hrs and applying man hour rate of Rs.8500 per hour. The Tribunal deleted the adjustment noting that that necessary evidence had been brought on record by assessee which had not been examined by authorities .It was found assessee's allocation of expenses was based upon a global agreement between AEs in this regard and various allocation keys, i.e., asset, revenue, number of employee, depending upon nature had been used and methodology adopted had mandate of guidelines of OECD. Further, allocation was supported by a CPA certificate which had been duly authenticated. Thus, the action of lower authorities below in rejecting CPA certificate was not sustainable and DRP's order was set aside.

Jabil Circuit India Pvt Ltd vs Asst.CIT [TS-1274-ITAT-2018(MUM)-TP] (ITA No.2200/Mum/2017 and 867/Mum/2018) dated 19.11.2018

812. The Tribunal dismissed Revenue's appeal as withdrawn subject to verification of fact whether amount paid for availing management services was Rs.8,22,38,141/- or Rs.8,22,46,172/- (mentioned in a certain para of TPO order) noting that APA covered the subject year stating that if the payment for provision of management services made to AE did not exceed Rs.8,22,38,141/- , it was to be at ALP.

ACIT vs Gia India Laboratory Pvt Ltd [TS-1245-ITAT-2018(MUM)-TP] (IT(TP)A No.) dated 19.11.2018

813. The Tribunal deleted the TP adjustment on royalty paid by assessee (engaged in business of manufacture and sale of propeller shafts and light axles in the automotive industry segment) for use of licensed technology in the manufacture pursuant to renewal of licensing agreement by following coordinate bench decision in assessee's own case for earlier year wherein a similar adjustment was deleted relying on ratio laid down by Bombay HC in SGS India Pvt Ltd and Dow Agrosciences India Pvt Ltd wherein it was held that where the Royalties were paid in terms of approval granted by SIA / RBI, then the same were to be considered at arm's length rate. In the instant case, royalty paid was approved by Secretariat of Industrial Approval (SIA), Ministry of Industry, Government of India and RBI. Further, the Tribunal in the earlier year also held that it was beyond the scope of TPO while benchmarking the transaction to hold that assessee had not derived any benefit.

Spicer India Pvt Ltd vs Asst CIT [TS-1278-ITAT-2018-(Pune)-TP] ITA No.2498/Pun/2016 dated 11.12.2018

814. TPO determined the ALP of management service unit charges paid by assessee to its AE to "NIL" on ground that services were duplicative in nature and assessee had already paid for support services and there was no need for management support services. The Tribunal rejected TPO's nil determination noting that assessee brought on record agreement entered into with AE which clearly indicated that payment of aforesaid services was distinct and huge sales volume could not be achieved without the aid of support staff provided by AE. Accordingly, it deleted the TP adjustment on management service charges.

B.G. India Energy Solutions (P.) Ltd vs. Dy.CIT (2019) 101 taxmann.com 360 (Del Trib))/(TS-1443-ITAT-2018(DEL)-TP ITA No. 1980(delhi) of 2015 dated 31.12.2018

815. The Tribunal deleted the TP adjustment on reimbursement made by assessee of salaries of employees of AE by (provided various types of consultancy services and assistance to entities in India in connection with development, operation and management of wholesale business, retail business and related operations) by following coordinate bench decision in assessee's own case in its earlier year wherein it was held that TPO had erred in concluding that no independent person would have made separate payment for similar kind of services as it was not his prerogative to see whether assessee benefits or not. It was wisdom of the assessee to hire employees of its AE having significant expertise in commencement and implementation of operation in retail and cash and credit stores and it was also not necessary for AO to see whether any legitimate expenditure had been incurred by assessee out of necessity. The Tribunal had set aside the matter to TPO to decide issue afresh after analyzing the assessee's submission that the salary earned by expats had been offered to tax in India and that there was no loss to Revenue on account of tax neutral transaction and proposed adjustment would lead to double taxation i.e. to be taxed in the hands of expat employees and additionally in the hands of

assessee bearing the cost of salary merely owing to reimbursement by the AE. While giving effect to the order of Tribunal, the TPO had deleted the TP adjustment in light of the aforesaid observations.
WM India Technical and Consulting Pvt Ltd vs DY. CIT [TS-1289-ITAT-2018-(Del)-TP] ITA No.755/Del/2016 dated 17.12.2018

816. Where TPO had determined the ALP of administrative and regional support services received by assessee from its AE to be nil by applying CUP on ground that no uncontrolled enterprise would have made payment for services, the Tribunal restored the issue of TP adjustment on administrative and regional support services (including liaison and support services, legal, finance, human resource, IT and reasonable support services) from its AE following the coordinate bench decision in assessee's own case for AY 2009-10 (agreement had been entered into from AY 2009-10) wherein the issue was remitted back for detailed verification of facts as it was Revenue's contention that assessee had not conducted FAR analysis with respect to intragroup services and failed to justify functions performed by AE for payments made and further, directed TPO to follow the reasoned conclusion in Delhi HC in Cushman and Wakefield wherein it was held that TPO could not judge the commercial expediency of transaction and his role was restricted to that of determining the ALP of said transaction.
Avaya India Pvt Ltd vs ACIT [TS-1290-ITAT-2018-(Del)-TP] ITA No.1904 /Del/2015 dated 03.12.2018

817. The Tribunal restored the issue of benchmarking management support services to the TPO to consider the detailed submissions made by the assessee vis-à-vis technical services utilized by it from the AEs which were not appreciated by the lower authorities. The TPO determined the ALP of the said services to be NIL by applying CUP and observing that assessee had not been able to demonstrate tangible benefit derived from such services.
Comverse Network Systems [India] Pvt Ltd. vs. ACIT [TS-1012-ITAT-2018(Del)-TP] ITA No.6704/Del/2015 and ITA No.7328/Del/2017 dated 31.07.2018

818. The Tribunal deleted disallowance of royalty noting that on examination of agreement, royalty of 0.5% of turnover of manufactured and traded had to be paid in addition to reimbursement of expenses.The AO had erred in disallowing the royalty amount by holding that AE had charged more to assessee towards expenses reimbursement than what was contemplated in the agreement. The Tribunal observed that such payments were towards royalty which was in compliance with the terms of the agreement and not excess reimbursements.
Piramal Enterprises Ltd vs Addl. CIT [TS-808-ITAT-2018(Mum)-TP] ITA No.5471/Mum/2017 and ITA No.5583/Mum/2017 dated 30.07.2018

819. The Tribunal deleted the TP adjustment on royalty payment at 10% of sales made by the assessee[manufacturer of fragrances] for availing technical knowhow from its AE to be utilized in manufacturer of fragrances noting that the TPO did not have power under the statute to determine the ALP of international transaction on estimate basis by weighing in the business expediency factor and had to adopt a method to determine the ALP of transaction. Further, the DRP had concurred with the TPO's view without examining it in the proper perspective. It also observed that as regards the TPO's alternative benchmarking of the transaction by applying external CUP and determining the ALP of the transaction at 1% of the net sales, the assessee had replied in the showcause notice that the comparables could not be taken in view of different geographical location and all the agreements considered were with respect to asset purchase which was not controverted by the TPO. It also noted that TPO had accepted the payment of royalty from AY 2006-07 onwards and in the subsequent years for AY 2010-11 and 2011-12 also.
Firmenich Aromatics India P Ltd vs Dy.CIT [TS-758-ITAT-2018(Mum)-TP] ITA No.2590/Mum/2017 dated 23.07.2018

820. The Tribunal upheld CIT(A)'s order restricting the royalty payment at 4.05% of sales made by the assessee for technical knowhow as against the TPO's determination of royalty at 4.5% following the decision of coordinate bench of the assessee's own case for the earlier year wherein it was held that the DRP had rightly considered three companies as comparable whose average rate of royalty came upto 4.5% and was discounted with 10% for fixed term license and the resultant rate of 4.05% was the

ALP of the transaction. It also noted that the Revenue had not brought anything on record contrary to the decision of the earlier year.

LG Electronics India (P) Ltd vs ACIT [TS-738-ITAT-2018(DEL)-TP] ITA Nos.3612 and 3613/Del/2017 dated 18.07.2018

821. The Tribunal upheld CIT(A)'s order confirming TP adjustment in respect of payment of export commission by assessee to its AE for promoting CTVs abroad, following co-ordinate bench ruling in assessee's own case in AY 2007-08 wherein it was held that commission could not be accepted as a genuine business expenditure as provision of services by LG Electronics Korea could not be demonstrated by the assessee.

LG Electronics India (P) Ltd vs ACIT [TS-738-ITAT-2018(DEL)-TP] ITA Nos.3612 and 3613/Del/2017 dated 18.07.2018

822. The Tribunal deleted the TP adjustment on payment of royalty by the assessee to its AE following the coordinate bench decision in assessee's case for earlier year wherein relying on the decision of EKL Appliances, it was held that it was not open to the TPO to question the commercial expediency/ judgement of the assessee as to how it should conduct its business and further, rejected the TPO's nil determination of ALP arrived at by applying CUP.

Indian Explosives P Ltd vs Dy.CIT [TS-735-ITAT-2018(Kol)-TP] ITA No.2336/Kol/2016 dated 13.07.2018

823. The Apex Court dismissed Revenue's SLP against Rajasthan HC judgment confirming deletion of TP adjustment of Rs. 1.03 Cr on payment of royalty relying on HC ruling in assessee's own case for earlier year. The Tribunal had rejected TPO's CUP and upheld TNMM applied by the assessee held the assessee's margin of 5.18% to be at ALP.

CIT vs SAKATA INX INDIA LIMITED [TS-504-SC-2018-TP] SLP 18868/2018 dated 02.07.2018

824. The assessee made payment to its AE for availing Software Services which was claimed to be at ALP (as the AE has allocated the cost of the ERP software to all group companies in 40 countries as per the cost allocation mechanism provided in the agreement). Though the TPO agreed that AE had provided software services, in absence of specific details towards services rendered to the assessee, he quantified the value of the services rendered by the AE on basis of man hour estimate. Accordingly, stating that the employees had rendered service of 2-man hours per days, he arrived at 730-man hours for the year (2 x 365 days) and estimated the ALP of service availed by applying a man hour rate of Rs.8,500 per hour to the said man days, which the TPO claimed to be as CUP. The DRP upheld the estimation made by the TPO as reasonable. The Tribunal deleted the TP adjustment made on payment for availing information services noting that though the TPO had stated he had applied CUP for determining ALP, no comparable instance was brought on record and his estimation of charge on services was without any supporting evidence. Thus, the TPO had not adopted any of the method u/s.92C r.w R 10B. It also observed that documentary evidence in form of copy of the agreement, invoices raised, certificate from independent Chartered Accountant Firm, KPMG, details of users were also furnished before the TPO and thus, the TPO's allegation that documents were not furnished could not be sustained and the determination of ALP was on adhoc basis. It noted that TPO had given contradictory findings wherein on one hand he had agreed that the AE had provided software and certain services and on the other hand he observed that assessee had failed all the three tests inter alia including whether services have been provided so as to ultimately disbelieve the quantum of payment. Further, noting the cost was allocated to 40 group companies across globe who were using the software and related services, the Tribunal held that there was no reason for not accepting the payment made to the AE to be at arm's length in the absence of any contrary evidence brought on record and by simply applying the benefit test.

Firmenich Aromatics India P Ltd vs Dy.CIT [TS-758-ITAT-2018(Mum)-TP] ITA No.2590/Mum/2017 dated 23.07.2018

825. The Tribunal deleted the TP adjustment in respect of provision of support services and market information provided by the assessee to its AE by following the coordinate bench decision in assessee's own case for earlier year wherein it was held that under the provisions of s 92C of the Act,

adhoc disallowance being 0.5% of the turnover could not be made and one of the prescribed methods had to be adopted for making the adjustment. [The assessee's own case for earlier year had relied on the Bom HC judgement of Kodak India Pvt. Ltd.]

Safilo India Pvt Ltd vs DCIT [TS-756-ITAT-2018(Mum)-TP] ITA No.7561/Mum/2016 dated 05.07.2018

826. The assessee had sold software to its AE and the sale consideration, which was based on the valuation report of an independent valuer, was claimed to be at ALP. While determining the value / ALP, the Valuer had made his projections on basis of estimated life period of 8, 10 and 15 years under three different scenarios (RFR method, Historical cost and weighted average method). The TPO rejected the valuation report of the independent valuer and thereafter computed the ALP of sale consideration by taking the average of three values worked out by the valuer using three different methods (Relief from royalty, Historical cost and Weighted Average) for estimated life of the asset as 8 years. The DRP upheld the TPO's order and held that the TPO had adopted the right method considering the valuer's projections based on the estimated life of the asset which was expected to be atleast 8 years. The Tribunal restored the transaction of sale of software noting that from the facts of the case, the Revenue and assessee had not adopted any of the methods prescribed U/s.92C(i) of the Act for determining the ALP. It accepted Revenue's contention that there were various other comparables available to compare with the transaction made by the assessee and hence the provisions of Section 92C(i) of the Act could be complied with.

Siemens Limited (Successor in interest to Siemens Building Technologies Pvt. Ltd.,) vs DCIT [TS-755-ITAT-2018(CHNY)-TP] ITA No.796/Chny/2016 dated 17.07.2018

827. The TPO made an adjustment to the reimbursements received by assessee for payments made by it on behalf of its AE opining that the reimbursements being international transaction in terms of section 92B were closely linked to assessee's main transactions of providing ITeS to its AE and by making payments on behalf of its AE, the assessee had performed a service to the AE by using its financial and other services. The DRP held that reimbursements were received as part of the core transaction and, thus, upheld the mark-up / adjustment. The Tribunal restored the issue to the AO/TPO to verify if reimbursements were on actuals (after allowing the assessee to file requisite bills raised on AE along with vouchers/bills) and also directed the AO/TPO to not make any adjustment if it was so.

INDUCTIS INDIA PVT. LTD. vs. Dy CIT (2018) 53 CCH 0329 DelTrib ITA No. 1438/Del/2016 dated 13.07.2018

828. The Tribunal deleted the TP adjustment of markup on cost reimbursement received from the AE following the coordinate bench decision of the assessee's own case for AY 2005-06 wherein it was held that the transaction of cost recharge for supply of telecom equipment is a mere pass through cost reimbursed to the assessee by AE and could not entail markup. It also noted that the Revenue failed to bring any change in FAR analysis and functions performed by the assessee in subject year and hence there was no difference in factual circumstances from the earlier year.

Ericsson India Pvt Ltd vs DCIT [TS-752-ITAT-2018(DEL)-TP] ITA No.3891/Del/2010 dated 12.07.2018

829. The Tribunal restored the TP adjustment on price charged to AE towards services rendered under Intellectual property service agreement by the assessee noting that content development or animation and website services were within the ambit of ITES and accordingly directed the TPO to benchmark the transaction by aggregating with other ITES transactions and determine the ALP by applying the average margin of the comparables selected under the ITES segment. The TPO had benchmarked the aforesaid service separately and the DRP had also failed to rectify the error committed by the TPO.

Accenture Services Pvt Ltd vs ACIT [TS-737-ITAT-2018(Mum)-TP] IT(TP)A No.7686/Mum/2012 dated 20.07.2018

830. The TPO had considered professional charges paid to Motilal Oswal for advisory and professional charges for acquiring an AE which was subsequently recovered from the AE itself as marketing support services by the assessee to the AE and charged a markup of 15% (i.e. charged @ 12.5% for lending

rate and 2.5% entrepreneurial efforts). The DRP deleted the addition of 2.5% made on account of entrepreneurial efforts. The assessee argued that the expenses were charged on actual basis and no income could arise from these transactions as it was not in the line of providing acquisition services. The Tribunal restored the TP adjustment of markup on reimbursement received from its AE to DRP to obtain the required details of acquisition by the assessee and verify the details of expenditure incurred by assessee.

Punjab Chemicals & Crop Protection Ltd vs. Addl.CIT [TS-965-ITAT-2018(CHANDI)-TP] ITA No.60/Chd/2013 and ITA No.100/Chd/2014 dated 23.07.2018

831. The TPO had imputed markup of 5% on the support services expenses and the DRP concurred with the view of the TPO that the assessee rendered services to its AE and held that the markup was inevitable. The Tribunal deleted the TP adjustment of markup on support services provided for employees deputed to AE noting that recovery of expenses from AE such as travel and telephone expenses were third party costs and therefore, no markup was needed as per TP provisions and further, with respect to salary cost for employees and adhoc support staff, there was a markup of more than 5% charged by assessee.

CPS Cash Processing Solutions Private Ltd vs DCIT [TS-511-ITAT-2018(DEL)-TP] ITA No.5017/Del/2012 and ITA No.2671/Del/2013 dated 03.07.2018

832. The assessee, resident of Singapore, deputed one of its Director/employee to India to an associate concern (MSAS) engaged in providing information technology enabled services and software development to overseas Morgan Stanley entities. The assessee, as per the terms of contract, agreed to continue paying salary of the employee in Singapore and cross charged the same to MSAS, the said salary was offered to tax in India by the employee. The AO held that the amount received by the assessee was to be treated as FTS and charged a markup of 23.3 per cent on the reimbursement received by the assessee. The CIT(A) confirmed the action of the AO by treating the reimbursement and mark up there on as FTS. Noting that there was a contractual agreement between MSAS and assessee, which clearly provided that salary was being paid by assessee on behalf of MSAS and the same was recharged by assessee to MSAS, the Tribunal held that the amount received/receivable by assessee (being in the nature of reimbursement of salary deputed to deputed employee) could not be brought within the definition of FTS as defined in explanation to section 9(1)(vii). Explanation 2 clearly excludes consideration which would be income of the recipient chargeable under the head “salaries”. It relied on coordinate bench ruling in case of Mark and Spencer India (P) Ltd wherein it was held that expatriation of employee under secondment agreement without transfer of technology would not fall under the term 'make available' and would not be taxable under the treaty. Thus, it held that the payment in question being reimbursement of salary was not fee for technical services in the light of relevant provisions of the Act and India-Singapore DTAA. Further, there was no dispute that the assessee has made payment towards the reimbursement of salary expenditure, which clearly showed that there was no element of profit in the said payment and also the salary was subject to tax in India Accordingly, it held that the reimbursement of salary received by could not be taxed in the hands of assessee and consequently the TP adjustment with respect to markup of reimbursement of salary received could not be sustained.

Morgan Stanley Asia (Singapore) Pte. Vs DDIT [TS-623-ITAT-2018(Mum)-TP] ITA No.8595/Mum/2010 and ITA No.4365/Mum/2012 dated 06.07.2018

833. The Tribunal, following the order of the co-ordinate bench in the assessee's own case for earlier year deleted the TP-adjustment of Rs. 9.48 Cr on royalty payments made by the assessee. The assessee who was making royalty payment since period prior to acquisition of AE status by payee, benchmarked the royalty transaction under the external CUP method where it selected the royalty payment by Maruti Suzuki. The TPO considered the ALP of the transaction at Nil by rejecting the assessee’s benchmarking and contended that since external CUP required strict standard of comparability and since Maruti was paying royalty for obtaining license for manufacturing a finished product i.e. Automobile whereas the assessee had obtained a license for manufacturing automobile lighting equipment and accessories, the two were not comparable. The TPO further alleged that the assessee had not provided any evidence to show how the rate of royalty was fixed and also did not provide a cost benefit analysis. Noting that the assessee was making royalty payment since periods prior to

acquisition of AE status by payee, the Tribunal held that the benchmarking adopted by the assessee by considering the royalty paid by Maruti as comparable was rightly considered CUP. It further observed that the co-ordinate bench in assessee's own case in AY 2008-09 accepted assessee's royalty payment at 3-5% at ALP and jurisdictional HC had refused to admit Revenue's appeal against the said tribunal order. Considering that the facts of the case under consideration were identifical to facts of earlier year, it deleted the adjustment.

Lumax Industries Ltd v JCIT - TS-1094-ITAT-2017(DEL)-TP - ITA No.6961/Del/2014 dated 05.12.2017

834. The Tribunal deleted TP-adjustment stemming from TPO's reduction of arm's length royalty rate from 3% to 2% of assessee's net sales and held that the TPO was unjustified in reducing the royalty rate from 3% to 2% without substantiating it with an appropriate alternate TP analysis. Noting that TPO did not examine alternative comparables to justify reduction in royalty rate after rejecting assessee's comparables on the ground that they were US based while assessee's AE was based out of UAE, it held that the TPO's approach was an arbitrary and unbridled exercise of power.

RAK Ceramics India Private Limited vs. DCIT - TS-1054-ITAT-2017(HYD)-TP - ITA No.193/Hyd/2017 dated 29.11.2017

835. Where the assessee benchmarked the payment of royalty to its associated enterprise under TNMM (margin of the assessee was higher than that of its comparable), the Tribunal, relying on the order of the High Court in the assessee's own case for earlier years, upheld CIT(A)'s deletion of TP-adjustment on account payment of royalty to AE and held that the TPO erred in determining the ALP of the said payment at Nil under the CUP method when there were no changes in the facts under review vis-à-vis the facts prevalent during the earlier years.

ACIT vs. Sakata Inx (India) Ltd - TS-71-ITAT-2018(JPR)-TP - ITA. No. 828/JP/2017 – dated 29/01/2018

836. The Apex Court dismissed Revenue's SLP challenging Delhi HC order confirming ITAT's deletion of TP adjustment on royalty payment to AE. The High Court had rejected Revenue's ground that ITAT erred in holding that assessee was justified in claiming royalty as expense since only the subsidiaries/enterprises in 10 countries of the 120 locations wherein AEs had presence in were required to make royalty payments and that the ITAT had erred in relying on Delhi HC's EKL Appliances ruling to arrive at the conclusion that TPO had erred in judging commercial and business expediency of expenditure while determining ALP for royalty at Nil.

CIT vs. Frigoglass India Pvt. Ltd vs. DCIT - TS-31-SC-2018-TP - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 41702/2017 dated 19-01-2018

837. The Tribunal confirmed CIT(A)'s order holding assessee's royalty payment (for granting license to use AE's technology & know-how for carrying on business of manufacturing of automotive components in India) at 3.15% of net sales to be at ALP and held that the TPO had erroneously held that royalty should be taken at Nil on the allegation that no economic benefit had been provided to the assessee as the assessee had incurred loss at entity level without carrying out any analysis. It held that such an observation or reasoning could not be upheld at all once there was a valid agreement for transfer of non-exclusive right for use of license to use technology including knowhow of AE from which assessee has earned substantial revenue receipts which evidenced that such a use of technology and knowhow was directly linked with manufacturing and resultantly sales. It further held that that incurring of loss could not be the parameter to hold that the technological knowhow or license was of no benefit hence there was no requirement to pay the royalty.

DCIT vs. Bestexx MM India Pvt. Ltd. - TS-113-ITAT-2018(DEL)-TP - I.T.A. No.544/DEL/2015 dated 15.02.2018

838. The Tribunal deleted the TP adjustment on the assessee's royalty payment to AE and rejected TPO/ DRP's contention that the assessee had not been able to prove any real tangible benefit that had passed to it by technology received from its AE. It noted that where the AE granted the assessee exclusive nontransferable and non-divisible license to use the technical information for manufacture and for marketing activities in India for which the assessee paid royalty it was not the prerogative of the

TPO to decide if any tangible benefit had been transferred to the assessee. It held that the payment of royalty was a business decision of the assessee and that the TPO could not interfere with the decision making of the assessee.

India Yamaha Motor Private Ltd vs. ACIT - TS-126-ITAT-2018(DEL)-TP - ITA No.297/Del./2015 dated 12.02.2018

839. The Tribunal dismissed Revenue's appeal and upheld the deletion of TP adjustment on royalty payment to AE observing that the Tribunal in the earlier years had found royalty payment to be at ALP noting that it was approved by RBI/SIA.

Spicer India Private Limited (Formerly known as Spicer India Limited) vs. ACIT - TS-150-ITAT-2018(PUN)-TP - ITA No. 376/PUN/2016 dated 09.02.2018

840. The Tribunal upheld CIT(A)'s deletion of TP-adjustment on account of royalty payment by assessee (engaged in manufacturing of toughened glass, laminated glass and float glass) to AE accepting assessee's contentions that maintenance of quality and increase in sales were possible due to AEs licensed technology and that since it was a public limited company (with only 22.21% shareholding by its AE, Indian promoters holding 33.03% and the general public holding 44.76%), the AEs were not in a position to wield significant influence over assessee's business as its performance and commercial expediency were subject to intense scrutiny by shareholders. Further, relying on EKL Appliances ruling, it held that it was not open to the TPO to question the judgment of the assessee as to how it should conduct its business and regarding the necessity or otherwise of incurring the expenditure in the interest of its business. Thus, finding no infirmity in the CIT(A)'s order, it dismissed Revenue's appeal.

Asahi India Glass Limited vs. DCIT - TS-123-ITAT-2018(DEL)-TP - ITA No.1637/Del/2014 dated 26-02-2018

841. The Tribunal rejected TPO's ALP-determination for technology acquisition cost at Nil and remitted ALP-determination to AO/TPO. It observed that the assessee's (engaged in manufacturing of auto-components) royalty payment was for designs, engineering data, manufacturing and process data, lay-outs etc. for contract products, but it was required to pay acquisition cost separately for modifications or new design which was to be customized for a particular customer in India. Since no royalty payment was required to be made in case of such new product, it held that the TPO as well as the DRP erred in concluding that the payment of application cost was in addition to royalty and therefore held that the benchmarking was incorrectly done.

Separately, in respect of intra-group service fee, it rejected TPO's Nil ALP-determination on the ground that no services were received or there was duplication of services. On perusal of the emails submitted by assessee, it held that the assessee's transaction were genuine and clarified that the TPO's role was restricted to ALP-determination while allowability or otherwise of such payment was to be determined by AO. Accordingly, it remitted the issue back to AO/TPO to follow ratio of Delhi HC ruling in Cushman & Wakefield case.

Denso India Limited vs. DCIT - TS-145-ITAT-2018(DEL)-TP - ITA No.1857/Del/2014 dated 07.03.2018

842. The Tribunal rejected assessee's aggregated approach for benchmarking royalty payment to UK based AE under TNMM and upheld external CUP as most appropriate method. Noting that royalty payment arose from a separate agreement and was payable irrespective of any services or goods received, it held that it was a separate transaction irrespective of the fact that the relevant payment was utilized for manufacture of final product. Further it held that the rates given by the RBI could not reckoned as an external CUP for the purpose of benchmarking. Accordingly, it remitted the matter to the TPO for fresh adjudication as he had incorrectly determined ALP of the Royalty at Nil contending that the assessee did not receive any benefit.

Johnson Matthey India Private Ltd vs. DCIT - TS-173-ITAT-2018(DEL)-TP] - ITA Nos.:-1817/Del 2014; 2493/Del/2014; & 3755/Del/2015 dated 16/03/2018

843. The Tribunal rejected TPO's Nil-ALP determination in respect of assessee's royalty payment to AEs for use of brand names 'Vodafone' and 'Essar' and remitted the ALP-determination to AO/TPO. It held that the assessee's royalty payment was a bona fide transaction as the assessee actually used the brand names 'Vodafone' & 'Essar' and held that the TPO erred in determining ALP at Nil merely

because the assessee did not pay royalty in the past. It held that simply because no royalty was paid in the past could be no reason to treat the ALP of royalty at Nil in later years. However, the Tribunal rejected assessee's adoption of foreign comparable (royalty payment by Motorola Inc to Forward Industries Inc) for benchmarking royalty payment and held that the transaction between 2 foreign parties could not be considered for comparing international transaction with Indian assessee as tested party. Accordingly, it remitted the matter to the AO / TPO for fresh consideration.

DCIT vs. Vodafone Essar Digilink Ltd - TS-166-ITAT-2018(DEL)-TP - ITA No. 1950/Del/2014 dated 14.03.2018

844. The TPO determined the ALP of the royalty payment and management services at "Nil" on the ground that the assessee failed to explain the cost benefit analysis for such payments made to its AE. It was assessee's contention that the receipts from the assessee were considered to be at ALP by the tax authorities during the assessment of its AEs. The Tribunal remanded the matter back to the TPO noting that TPO needed to examine whether the payment is at ALP with the benefit received by the assessee and such an exercise had not been carried out and it rejected the assessee's contention by observing that provisions of sec 92CA(4) and sec 92(3) had to be interpreted harmoniously, in respect of the same transaction the Revenue could opt to determine total income on basis of ALP determination in accordance with s 92(1) in hands of one party of the said transaction where the tax base of the country would erode and the Revenue could desist from doing so in the hands of the other party, wherever there would be no tax base erosion.

Filtrex Technologies (P.) Ltd vs ACIT [TS-265-ITAT-2018(Bang)-TP] IT(TP)A No.469 of 2017 dated 11.04.2018

845. The Tribunal deleted the TP addition made on account of royalty by relying on the decision of the High Court in its own case TS-671-HC-2015(DEL)-TP wherein it was held that since TPO found that no adjustment was called for under the external TNMM method adopted by the assessee, no adjustment could have been made by separately benchmarking the transaction. It observed that the assessee received full technical assistance from its AE for which the royalty payment was made and therefore deleted the addition.

Lumax Industries Ltd v ACIT - TS-454-ITAT-2018(DEL)-TP - ITA No. 1441/DEL/2016 dated 04.05.2018

846. Regarding disallowance of royalty paid to AE @ 40% of the revenue from software trading, the Tribunal remitted the matter back for de-novo adjudication after considering assessee's submission that payment was made pursuant to a revenue sharing agreement and was nomenclatured as royalty. The Tribunal distinguished co-ordinate bench ruling in assessee's own case for previous AY wherein relief was granted on benefit test and royalty benchmarking done based on CUP-method (which was undisputed in captioned years). The Tribunal thus directed TPO to benchmark the subject mentioned payment vis a vis the comparables afresh, in order to determine the ALP of the said international transaction

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

847. The Court set aside Tribunal order and remanded the matter back to the Tribunal for fresh consideration, wherein the Tribunal had confirmed royalty adjustment in case of assessee manufacturing magnetic based electronic coils, transformers and inductors. It accepted assessee's contention that the Tribunal had upheld royalty adjustment [although royalty payment formed part of operating cost under entity level TNMM] without discussing the applicability of Delhi HC ruling in Sony Ericsson Mobile or Tribunal ruling in Siemens VTO Automotive. In the said cases it was held that when royalty payment formed part of operating cost it need not be separately benchmarked. The Court held that the Tribunal erred in not following decisions of the co-ordinate bench of the same jurisdiction.

Kaypee Electronics vs DCIT Circle 4(1)(1)- TS-414-HC-2018(Kar)-TP-ITA No 65/2018 dated 29.05.2018

848. The Tribunal remitted the ALP determination of royalty paid back to AO/TPO. The Tribunal accepted the assessee's request to admit additional evidence in the form of Addendum to intangible and

proprietary property and licensing agreement [which set out the understanding between the parties and the actual conduct of business] and opined that the Addendum to the agreement went to the very root of the matter and that it would suitably assist the lower authorities to reach a logical conclusion on the issue.

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

849. The Tribunal deleted the TP-adjustment on royalty and technical service fee made by the TPO determining ALP at Nil for AY 2013-14 and held that that TPO/DRP could not put themselves in the shoes of assessee to decide which expense should be incurred by assessee for its business. The Tribunal observed that both TPO and DRP had gone into the need for expenses incurred by assessee vis-à-vis benefit for which disallowance can be made under separate provisions of the Act. Further, the Tribunal refused to remit the matter to the AO by relying on the Gujarat HC ruling in Rajesh Babubhai Damania as it would amount to giving second innings to the AO when sufficient material was available before him on record which was impermissible. It rejected Revenue's contention that double deduction of royalty had been claimed and royalty was part of the cost of purchase of raw materials by observing that raw materials were purchased from one AE and royalty was paid to another AE. The Tribunal also observed that lower authorities erred in proceeding to make adjustment without discarding the benchmarking methodology followed by assessee i.e. TNMM in the instant case, by relying on Delhi HC ruling in Li & Fung case.

COIM India Pvt. Ltd v ACIT [TS-344-ITAT-2018(DEL)-TP] ITA No.7260/Del/2014 dated 07.05.2018

850. The Tribunal following the order of the coordinate bench in the assessee's own case for earlier year deleted the TP adjustment of Rs.172.08 crores in respect of payment of model fees and Rs.3.53 crores on royalty payments made by the assessee. The assessee had benchmarked the international transaction for payment of model fees and royalty under TNMM and concluded that since the operating profit ratio was higher than the average operating profit ratio of the comparables, the transaction was at arm's length. However, the TPO determined the ALP of the transaction to be "nil" on the ground that the assessee was partly responsible for the technology upgradation which happened in India and the assessee was paying both the model fees and royalty for same set of services. The TPO also held the ALP of the royalty transaction to be nil and further alleged that the assessee being a contract manufacturer, no royalty payment was to be made to the AEs. The aforesaid adjustment was confirmed by DRP. It noted that the co-ordinate bench in assessee's own case for AY 2006-07, 2007-08 and 2008-09 deleted the adjustment made by the Revenue and accepted the ALP determined by the assessee in respect of the transactions. It further observed that for the year under consideration, the payment of royalty was made by the assessee in respect of sales to independent enterprises.

Hero Moto Corp Ltd. v DCIT [T-801-ITAT-2018(Del)-TP] ITA No.1616/Del/2017 dated 13.06.2018

851. The Court remitted the issue of TP adjustment with respect to royalty payment back to the Tribunal for fresh adjudication, noting that the Tribunal's observation that benchmarking of royalty payment could not be done by using comparables with transactions entered into between two foreign parties was not premised on any reasons. The Court held that the Tribunal's above observation was unwarranted and should not be treated as conclusive

Vodafone Mobile Services Ltd [TS-419-HC-2018(DEL)-TP] ITA 660/2018 dated 01.06.2018

852. The Tribunal set aside the DRP order and remitted the issue vis-à-vis ALP adjustment of the royalty payment to its AE. The Tribunal noted that identical issue was remitted by ITAT to AO/TPO for fresh consideration for AY 2006-07 to AY 2009-10. Thus, following the said ruling, ITAT remitted the issue to AO/TPO and directed the assessee to file a fresh TP documentation and comparable companies so as to arrive at ALP.

DCIT vs JCB India Ltd [TS-199-ITAT-2015(DEL)-TP] ITA No.1119/Del/2015 dated 25.06.2018

853. The Tribunal restored the benchmarking of royalty, fees for technical services & design/drawing fee paid by assessee to its AE. It noted that TPO determined ALP of these transactions at Nil on the basis that no tangible benefit had been derived by the assessee. The Tribunal relied on co-ordinate bench

ruling in assessee's own case for AY 2009-10 wherein the Tribunal had observed in the ruling that appeal preferred by the Revenue against the said issue for AYs 2002-03 and 2004-05 had been dismissed by the High Court. Further, it was also noted by the Tribunal that co-ordinate bench in assessee's own case had remitted the matter for fresh decision by following earlier year's orders since the AO did not have the benefit of the High Court order at the time when he passed the order.

Munjal Showa Ltd vs. DCIT Ltd [TS-729-ITAT-2018(DEL)-TP] ITA No.1579/Del/2015 dated 27.06.2018

854. The TPO had restricted the ALP of royalty payment by the assessee to its AE at 1% of net sales under CUP method, rejecting assessee's approach of aggregating the said payment under the manufacturing operations and applying TNMM. The Tribunal remitted the said issue of ALP determination for the year under appeal i.e. AY 2010-11 by relying on the Tribunals' order in assessee's own case for AY 2007-08, AY 2008-09 and AY 2009-10 wherein the Tribunal had rejected the assessee's aggregation approach holding that the royalty payment was a separate transaction which required to be benchmarked under CUP method and had remitted the matter back to the file of the AO/ TPO for de novo determination of ALP. Further, it was also noted that in one of the years, under the remand proceedings directed by the Tribunal, the TPO had held the royalty payment made by the assessee at 4% to be within the ALP computed at 4.10%.

Praxair India Private Limited V ACIT [TS-524-ITAT-2018(Bang)] IT(TP)A No.361/Bang/2015 and IT(TP)A No.409 /Bang/2015 dated 04.06.2018

855. The Tribunal deleted the TP adjustment towards payment of royalty on traded finished goods made by the assessee to Johnson & Johnson USA following the coordinate bench ruling in assessee's own case wherein the Tribunal had noted RBI approval was obtained and had observed that TPO could not sit in judgment on whether the royalty had to be paid or not and also found that there was no force in the findings of the TPO that royalty was deemed to be included in the brand royalty.

Further, the Tribunal also allowed the technical know-how royalty payment @ 2% / 4% as per the agreement as against the TPO's approach of restricting royalty @ 1% and followed the assessee's own order for the earlier year.

The Tribunal dismissed Revenue's appeal and relied on the co-ordinate bench ruling in assessee's own case to allow the tax and R&D cess paid on technical know-how royalty. The Tribunal in assessee's own case had noted that royalty payments were approved by RBI and further payments had been made in line with the agreement with Johnson and Johnson US and hence no question of disallowance of tax and R&D cess arose.

ACIT vs Johnson & Johnson Ltd [TS-537-ITAT-2018(Mum)-TP] ITA Nos.1776 & 1777/M/2017 and CO No.242/M/2017 dated 18.06.2018

856. The Tribunal, following the order of the co-ordinate bench in the assessee's own case for the earlier AY, deleted TP-adjustment on management support services received from AE and rejected TPO's ALP-determination at Nil observing that the assessee had actually received services and demonstrated benefit. It noted that the said services could not be categorized as stewardship services and that the Revenue had accepted similar claim of assessee for other AYs. Further, it rejected the TP-adjustment on international transaction relating to receipt of IT services made by the TPO by determining its ALP at Nil and noted that the DRP had deleted similar addition made in the earlier and subsequent years. Since the assessee had been claiming the IT expenses for the last several years and the same had not been denied, in view of the principle of consistency, it held that the TPO was unjustified in making TP addition.

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

857. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of TP-adjustment on account of disallowance of part of professional service fees paid by assessee to its AE. The service rendered by AE was to enable assessee's fulfilment of management services contract with an independent third party viz. Hazira LNG for plant construction. Accordingly, accepting the contention of the assessee that the services received by the assessee from its AE was independent of the income received by it from Hazira LNG, the Tribunal held that the TPO erred in concluding that the expenditure related to

professional services received by the assessee from its AE was to be allowed only in the next AY since income from Hazira LNG was recognized in that year. It upheld the CIT(A)'s view that income receivable from Hazira LNG would not have altered assessee's liability in respect of its payment to AE and further held that the TPO exceeded his jurisdiction by taking over the role of the AO and disallowing an expenditure based on assessee's adoption of a project completion model for accounting. It held that the TPO was neither supposed to take decision about accounting policy to be followed by the assessee nor comment upon as how to compute income if an assessee follows a particular method of accounting.

DCIT vs Hazaria Cryogenic Engineering and Construction Management Pvt. Ltd - TS-4-ITAT-2018(Mum)-TP - /I.T.A./2124/Mum/2007 dated 03/01/2018

858. The Tribunal deleted TP-adjustment on payment of fees for advisory and other services rendered by AE observing that the analysis done by TPO as to nature of services and benefit to assessee was beyond the scope of TP provisions. It observed that the assessee had filed contemporaneous and highly-technical documentary evidences to demonstrate benefits of services such as support for new product, marketing material, training material and technical support, etc and held that once such a business decision had been taken and the payment had been backed by substantial evidence of services received by it from its associated enterprises, then the TPO could not question the same by commenting upon the nature of services provided. It held that the examination of qualification of AEs to provide services and costs incurred by AE was outside the domain of TPO and further observed that the AEs had provided similar services to other group entities and relevant details as to basis of charge, calculations along with proof that similar arrangements with other related entities which were certified. Accordingly, it accepted assessee's adoption of TNMM and consideration of AEs as tested-party and discarded the Nil ALP determination on the basis of examination of needs and benefits of services instead of benchmarking using uncontrolled transactions and held that such a metholodolgy under the garb of CUP was not permissible in law.

Emerson Climate Technologies (India) Limited. vs. DCIT - TS-1065-ITAT-2017(PUN)-TP - ITA No.2182/PUN/2013 dated 29.12.2017

859. Where the assessee incurred consultancy fee during the year (for setting up its manufacturing activity which it capitalized as well as other consultancy fee), vis-à-vis the consultancy fee capitalized, the Tribunal held that since the ALP-determination was neither directed by DRP nor carried out by AO/TPO, it could not enlarge the controversy by directing the authorities to determine the ALP of the amount to be capitalized. Vis-à-vis TP-adjustment on payment of balance consultancy fees to AE, it rejected assessee's approach of aggregating the transaction with manufacturing activity absent close connection between two transactions, further also noted that the assessee had not undertaken any manufacturing activity during the first year under consideration and thus, there was no reason for aggregation. However, noting that TPO determined ALP at Nil holding that no benefit was received by assessee which was accordingly disallowed by AO, it held that the AO/TPO's action was contrary to ratio of Delhi HC ruling in Cushman & Wakefield India P Ltd and accordingly remitted the matter to AO/TPO to follow directions in Cushman & Wakefield ruling after giving reasonable opportunity of being heard to assessee.

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

860. The Tribunal deleted the TP adjustment in respect of management support services fees paid provided by the assessee following the coordinate bench decision of assessee's own case for earlier year wherein it was held that the TPO could not question the commercial expediency and how the assessee benefitted from such services relying on the on ratio laid down in the Delhi High Court ruling in Cushman and Wakefield. It had also observed that the DRP had treated the receipts from assessee as FTS in the hands of the AE which by itself means that services were being rendered and further, the TPO in the earlier years had made no such adjustment. Thus, it deleted the said adjustment made by the TPO on the basis that services rendered by AE to assessee amounted to shareholder activities.

Philips India Ltd. vs ACIT (2018) 52 CCH 0320 KolTrib ITA No.2498/Kol/2017 dated 04.04.2018

861. The Tribunal set aside the CIT(A)'s order upholding the TP addition of Rs 97 lakhs on payment of management fees. It upheld the TPO and CIT(A)'s segregated benchmarking of the of payment of management fees from the TNMM analysis but held that the CIT(A) erred in questioning the commercial expediency behind incurring the said expenditure as it was in excess of his powers while determining the ALP of the payment. Relying on the order of the Tribunal for the earlier years on the similar issue, it remanded the matter back to the TPO for a fresh examination in light of the substantiating evidence filed by the assessee proving the receipt of services.
DMG Mori Seiki India Machines And Services Pvt. Ltd vs DCIT - TS-535-ITAT-2018(Bang)-TP - IT(TP)A 1617/Bang/2012 dated 02-05-2018

862. The Tribunal deleted TP adjustment made on account of payment for management service cross charge made by assessee (an Indian branch office) to various group entities and laid down 4 aspects to be examined while benchmarking intra-group services – *"1. Whether the assessee received intra-group services? 2. What are the economic and commercial benefits derived by the recipient of intra-group services 3. In order to identify the charges relating to services, there should be a mechanism in place which can identity (i) the cost incurred by the AE in providing the intra-group services and (ii) the basis of allocation of cost to various AEs. 4. Whether a comparable independent enterprise would have paid for the services in comparable circumstances?".* Relying on Delhi HC ruling in EKL Appliances, it held that the lower authorities were not justified in examining commercial soundness of the decision and whether any profit had actually been realized pursuant to such payment. Further, it rejected Revenue's argument that assessee did not provide logical cost allocation basis for management support services and observed that the break-up of costs and evidence was duly submitted by the assessee and that the cost allocation of a senior personnel from the regional head office on the basis of time spent was logical and backed by email evidence.
A.T. Kearney Ltd vs A.D.I.T - TS-528-ITAT-2018(DEL)-TP - ITA No. 6249/DEL/2012 dated 21.05.2018

863. The Tribunal deleted the TP adjustment on management service fees paid by the assessee by relying on the coordinate bench decision of Siemens Aktiongessellschaft wherein it was held that benefit test could not be the basis to justify arm's length price. It rejected TPO's Nil determination of ALP of the said services by applying the benefit test by holding that the same was contrary to the provisions of Rule 10B where any of the methods had to be adopted for determining the ALP of the transaction.
US Technology Resources (P.) Ltd. vs Dy.CIT [2018] 97 taxmann.com 490 (Cochin-Trib) IT(TP) No.134 and 475 of 2016 dated 23.05.2018

864. The Tribunal deleted TP-adjustment in respect of management and professional consultancy services and SAP consultancy charges paid pursuant to remand back by Punjab & Haryana HC. It relied upon the co-ordinate bench ruling for AY 2008-09 wherein it was observed that assessee had achieved an increase in export turnover as well as gross margin and thus benefited from the services rendered by AE. Further it noted that in the earlier year, the Tribunal had upheld assessee's TNMM as TPO failed to bring anything on record to substantiate ALP determination at Nil under CUP. Relying on Tribunal's order for AY 2008-09, it held that since the facts of the present case were identical TNMM was the most appropriate method and that the Assessing Officer/ TPO/DRP were not justified in making any adjustment in the ALP of the international transactions entered into by the assessee on account of professional consultancy, management fee for support service and SAP consultancy charges.
Knorr-Bremse India Pvt. Ltd v ACIT - TS-527-ITAT-2018(DEL)-TP - ITA No.5097/Del/2011 dated 31/05/2018

865. The TPO determined the ALP of the of management/business support services to be Nil by applying CUP on ground that these services did not result in any benefit to assessee and there was no evidence of receipt of these services. The CIT(A) granted relief to the extent of 70% of disallowance but sustained 30% adjustment on the ground that services included element of shareholder services and duplicative services. The Tribunal remanded the matter back to CIT(A) noting that CIT(A) had sustained the adjustment on estimated basis without considering the cost allocation methodology report and directed the CIT(A) to quantify the adjustment after examining the said report and assessee's explanations.

BSI Group India Pvt. Ltd. & ANR vs. ACIT (2018) 53 CCH 0091 DelTrib ITA No. 104/Del/2014 dated 31.05.2018

866. The Tribunal remitted the ALP determination of payment of management group cost back to AO/TPO for deciding afresh by applying the CUP method for AYs 2008-09,2009-10 and 2012-13. The Tribunal noted that the TPO rejected assessee's aggregation of sub-transactions of "management group cost" and "R&D assistance cost" as one international transaction of "cost sharing expenses" using TNMM, segregated the payment of "management group cost" and applied CUP as MAM and determined ALP as nil. The Tribunal rejected the TPO's Nil-ALP determination of management group cost on the ground of non-receipt of services/duplication of services and application of benefit test. The TPO had invoked the CUP method and conducted a "cost benefit analysis" test and eventually arrived at the conclusion that services received were duplicative in nature and in some cases, the assessee did not avail any services. The Tribunal took note of the assessee's submission of list of services received under the management cost services and certain other details of technical materials received from the AEs, and followed Knorr-Bremse High court ruling to hold that the assessee did receive some services and the applicability of `benefit test' could not be countenanced.

Further noting that (i) the coordinate bench in assessee's own case for AY 2011-12 had restored the matter back to TPO to examine whether the payment of "management group cost" was a case of cost sharing arrangement or intra-group services after perusal of various agreements and (ii) since the relevant agreements were the same in that year as well as the present year, the Tribunal restored the matter for present year also to the file of the AO.

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

867. The Tribunal remitted the TP-adjustment on sales support services rendered by assessee to its AE for re-adjudication noting that the main dispute was around cost allocation between trading and sales support services and assessee had made several submissions which were not considered by lower authorities. It noted that the TPO had made adjustment on reimbursement of project expenses which consisted of travel expenses of engineers, salary, insurance, logistics for importing the material related to the project, etc., for want of documentation while DRP enhanced it holding it to be shareholder activity without giving any plausible reasoning in support of its claim that project expenditure was shareholder activity and would benefit only AE. It noted that the assessee had consistently submitted that expenditure was towards setting up of its Ranjangaon Project and accordingly held that the TPO ought to have determined ALP in light of provisions of Rule 10B. Further, it held that the Revenue could not sit into the armchair of businessman to adjudge necessity of expenditure unless it was shown that the expenditure was not at all required to be incurred for the benefit of the assessee and the assessee, in normal circumstances, would not be willing to pay the same to independent third parties. It also observed that the expenditure was capitalized and disclosed under 'work in progress' in the Balance Sheet and not debited to profit and loss account, thus held that approach of Revenue to add back amount as income was clearly fallacious. Thus it set aside Nil ALP determination and restored the matter back to TPO for de novo consideration.

Jotun India P Ltd v ITO - TS-447-ITAT-2018(Mum)-TP - I.T.A. No.1126/Mum/2013 dated 04 /05/2018

868. The Tribunal relying on the order of the coordinate bench in assessee's own case rejected TPO's determination of ALP of the management fees at nil and quoted the observations of the bench wherein they had questioned the authority of the TPO to determine the necessity and expediency of the management fees. The TPO had to only ascertain the arm's length price. Further, the Tribunal also noted that the management fees was held to be in the nature of both capital and revenue expenditure and to be allocated in 60:40 ratio because the person to whom the fees were paid was involved in the day to day activities of the assessee and also assisted in the expansion and increase in the installed capacity.

Tudor India Private Limited (formerly known as Tudor India Limited) [TS-458-ITAT-2018(Ahd)-TP] ITA No.2585/Ahd/2014 dated 06.06.2018

869. The Tribunal deleted TP-adjustment on payment made for management and professional consultancy services by following the co-ordinate bench ruling for AY 2008-09 (which had been relied upon

subsequently by AY 2007-08 to decide the issue in favour of the assessee),wherein it was observed that assessee had achieved an increase in export turnover as well as gross margin from 2007-2009 and thus benefited from the services rendered by AE . Noting that the AE had charged only the cost and other related expenses for the employee and not a markup which was paid to the employees who are third parties , it observed that transfer pricing provisions can be inferred only if there is a related party payment, but the expenses incurred were paid to the third party employees although those employees were the employees of the AE.It rejected TPO's Nil determination of ALP under CUP method as nothing was brought on record to substantiate that the AE provided similar services to independent enterprises in the assessee's market and accepted assessee's adoption of TNMM as the MAM . It dissented with coordinate bench decisions relied on by the Revenue namely Crane Software and Gemplus India Pvt. Ltd (wherein the TP adjustment on management charges had been made due to difference in factuals) as it was not the allegation of TPO that services were not rendered by the AE and Bombardier Transportation India Pvt. Ltd. as the assessee in the instant case had filed detailed evidence and explained specific services provided by the AEs

Knorr-Bremse India Pvt. Ltd v ACIT - TS-526-ITAT-2018(DEL)-TP - ITA No.5097/Del/2011 dated 28.06.2018

870. The Tribunal dismissed Revenue's appeal and confirmed the deletion of TP-adjustment on foreign component of seconded employees' salary disbursed by AE in Australia. The TPO had determined ALP of reimbursement to AE towards expat employees' salary at Nil while Indian component of the salary was allowed as deduction. The Tribunal noted that the TPO had accepted business support services income and project management fees earned by assessee through the employment of such expat employeesand therefore held that the action of the TPO in denying deduction of the foreign component of the salary was not justified when it accepted the salary paid to such employees in India moreso when the same set of expats engaged in providing business support services the income from which has been offered for tax and accepted by the TPO.

ACIT V Blue Scope Steel India (P) Ltd - [TS-143-ITAT-2018(DEL)-TP] - I.T.A .No. 5535/DEL/2012 dated 01.03.2018

871. The Court upheld the Tribunal's order deleting TPO's disallowance of overheads allocated by JV partners to assessee (an AOP with 5 members formed for executing contract for Delhi Metro Rail Corporation). As per the JV agreement, the members were permitted to allocate their head office (HO) expenses to the extent of 8.5% of turnover of the assessee in their profit sharing ratio, however TPO disallowed the same on the ground that other direct expenses of the JV partners were debited in assessee's books. The Court noted the Tribunal's observation that the TPO had failed to identify comparables to justify that overhead allocation in case of assessee was in excess of comparable transactions and that both the CIT(A) and ITAT took note of certificates from JVs' auditors confirming overhead charging rate and its apportionment to the assessee's operations and thus, rejected TPO's finding that assessee had not furnished details in support of its claim. Accordingly, the Court held that the issue urged by Revenue was essentially of finding of facts, which were not shown to be perverse and accordingly held that no substantial question of law arose.

Pr. CIT vs. International Metro Civil Contractors - INCOME TAX APPEAL NO. 559 OF 2015 dated 07.03.2018

872. The Tribunal deleted the TP-adjustment (TPO determined ALP as Nil) on information technology (IT) services availed by assessee (engaged in manufacture and distribution of fluid power equipment) and held that the factum of availing services as well as basis of charge was proved by assessee based on a certificate received from AE which had also certified that similar charge was made to other group entities and other documents like debit notes, JV vouchers, etc. It rejected TPO's segregation of transaction of availing IT services from other international transactions and held that the IT services were related to the business of the assessee and therefore ought to be aggregated.

Eaton Fluid Power Limited vs. ACIT - TS-178-ITAT-2018(PUN)-TP - ITA No.45/PUN/2013 dated 12.03.2018

873. The Tribunal rejected TPO's Nil ALP-determination under CUP-method in respect of payment of license and management fees by assessee (JV engaged in manufacture of pharmaceutical formulations) to AE

and upheld assessee's approach of benchmarking under the aggregation approach. It held that while the benefit test was a necessary part of determining ALP of any intra-group service, it cannot have qualifications such as "substantial", "direct" and "tangible" as these qualifications were not given u/s 92(2) and also observed that there were several non-monetary terms other than profitability required to be seen while judging the benefit test. Observing that the license was required for long term manufacturing of drugs and formulation with know-how of the AE, the Tribunal held that the TPO lost sight of various non-monetary benefits which in the absence of the payment for the use of license would not flow to the assessee. Since the assessee's comparability analysis by aggregation of transactions after adopting TNMM as MAM had not been examined by either of the authorities below who merely concentrated on the issue of aggregation/segregation of transactions, it remitted issue back to CIT(A).

DCIT vs. Adcock Ingram Ltd - TS-57-ITAT-2018(Bang)-TP - I.T(TP).A No.1039 & 1078/Bang/2015 dated 31.01.2018

874. The Tribunal remitted the TP-adjustment on payment for intra-group services to AE noting that the TPO after rejecting assessee's combined transaction approach of adoption of TNMM and applying CUP, had determined ALP of intra-group services at Nil without appreciating i) the assessee's arguments on appropriateness of combined benchmarking approach considering that 5 transactions benchmarked together were closely linked and inappropriate adoption of CUP ii) TPO's failure to consider voluminous documentation submitted by assessee and iii) TPO's incorrect approach in questioning commercial expediency of transaction. Considering the totality of the facts of the case, it held that the matter required fresh adjudication at the level of the Assessing Officer/TPO in the light of the various evidences produced before them and in the light of the decisions relied on by assessee.

Bright Point India Pvt. Ltd. v ACIT - [TS-1083-ITAT-2017(DEL)-TP - ITA No.123/Del/2017 dated 04-12-2017

875. In case of an assessee engaged in manufacturing and marketing of paints, speciality chemicals and starch, the Tribunal deleted TP Adjustment in respect of payments made for intra group services received from its AE. The Tribunal relied on assessee's earlier year's order which stated that services provided by AE in the arena of human resources, marketing support, and IT, were not in the nature of stewardship services and the assessee had proved the benefit received from such services. Further, the Tribunal also remitted issue of ALP determination to TPO, after noting that ALP determination activity was not carried out by TPO, as the TPO had cited assessee's failure to provide agreement as reason for non-determination of the ALP and the DRP regarded the transaction as stewardship services. Thus, the Tribunal directed TPO to pass speaking order after hearing the assessee.

DCIT Circle 10(1) vs Akzo Nobel India Ltd.-TS-342-ITAT-2018(KOL)-TP- ITA No 229/Kol/2015 dated 14.04.2018

876. The Tribunal remitted back issue of ALP determination of international transactions for assessee acting as a sourcing support service provider for it's group companies and relied on co-ordinate bench ruling in assessee's own case for earlier AYs, which in turn had relied on Li & Fung HC-ruling, and had remitted the issue back to TPO considering that the assessee was not into buy and sell, but a facilitator/service provider and its compensation model would be cost plus remuneration and not a commission based remuneration. Thus, the Tribunal remitted the matter to the file of AO/TPO for a fresh examination on the lines of co-ordinate bench judgment to find out proper comparables and determine the ALP of the international transaction afresh.

GAP International Sourcing (I) Pvt Ltd vs DCIT Circle 10(1)- TS-481-ITAT-2018(Del)-TP- ITA No 6340/Del/2017 dated 11.04.2018

877. The Court upheld Tribunal's decision of deleting TP-adjustment in case of an assessee rendering support services by following co-ordinate bench ruling in 'Li and Fung India Pvt. Ltd. The Court rejected Revenue's submission that there were significant differences in assessee's international transactions as opposed to those carried out by Li and Fung India and stated that Tribunal's findings with respect to the functional similarity and identity between Li and Fung India and assessee were clear. The Court

observed that like Li and Fung India the assessee did not assume any risk and were dependent entirely for reimbursement of its expenses by the AEs and were thus entitled to the annual and identical markup of 5% over the annual expenditure.

PCIT-4 vs GAP International Sourcing India P Ltd- TS-259-HC-2018(Del)-TP- ITA No 1033/2017 dated 10.04.2018

878. The Tribunal deleted the disallowance in respect of sales commission paid by assessee to its sister concern (AE), noting that similar commission was allowed in preceding AYs 2010-11 to 2012-13 and Revenue had not been able to bring any new fact, which had led to change the present stand for the purpose of disallowing sales commission.

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

879. The Tribunal rejected Revenue's contention that rate of commission received by assessee ought to be 4% instead of 1% and deleted the TP adjustment made on commission. The Tribunal noted that Revenue had raised the issue for the first time in the AY 2013-14 and observed that the TPO has compared the rate of commission charged by the assessee with the rate of commission charged by the assessee to its other AEs which was clearly barred by the provisions of section 92F(ii) r.w.s. 92. Accordingly**,** it deleted the TP-adjustment on commission observing that ALP was to be determined based on price charged in uncontrolled transaction and accepted the benchmarking done by assessee as correct

COIM India Pvt. Ltd v ACIT [TS-344-ITAT-2018(DEL)-TP] ITA No.7260/Del/2014 dated 07.05.2018

880. The TPO disallowed the entire commission payment made by the assessee (engaed in manufacturing business) to its AE for AY 2008-09 by using the 'benefit test' and determined ALP at Nil on the basis that no services were received. The CIT(A) arbitrarily held that 75% commission should be allowed as a deduction. The Tribunal rejected TPO's use of 'benefit test' to determine Nil ALP, relying on Knorr Bremse HC ruling and held that in the instant case it was established beyond doubt that three employees were specifically deployed by the AE for the business operations of the assessee, which deciphered that the international transaction entered into by the assessee with its AE was genuine and bona fide. The Tribunal thus set aside the CIT(A)'s order and remitted the matter to the file of AO/ TPO for deciding the same in accordance with ratio laid down in Cushman & Wakefield jurisdictional HC ruling wherein it was held that the authority of the TPO was limited to conducting transfer pricing analysis for determining the ALP of an international transaction and not to decide if such service or benefit accrued to the assessee.

Further, the Tribunal also rejected the TPO's benchmarking of the payment of commission by applying the CUP method, noting that he had not brought on record even a single comparable to facilitate a comparison between the price for the services by the assessee vis-à-vis that paid by other comparable. It also rejected the assessee's benchmarking under PSM since the assessee was not able to substantiate the ALP under the said method.

DCIT (LTU) vs. Caparo Engineering India Pvt. Ltd [TS-325-ITAT-2018(DEL)-TP] ITA No.444/Del/2015 dated 02.05.2018

881. The Tribunal deleted the adjustment/ disallowance made by the TPO in respect of payment made by the assessee for intragroup services. It relied on the coordinate bench ruling in assessee's own case for earlier year wherein the TP adjustment in respect of intragroup services was deleted by holding that the assessee actually received the services and benefited from them. The Tribunal noted that TPO made the adjustment by observing that services rendered were of stewardship nature and were for maintenance of overall control of the group. However, in the assessee's own case, it was held by the Tribunal that that assessee had clearly demonstrated that services resulted in effective cost savings by way of an effective purchase function, technical assistance in relation to certain products provided by AE and other ancillary functions like IT management for which the assessee did not have requisite staff to perform functions. The Tribunal noted that there were no change of facts from the earlier year and the Revenue had not been able to bring anything on record to controvert it.

Chryso India Private Limited (formerly known as 'The structural Waterproofing Company Private Limited') v ACIT [TS-329-ITAT-2018(Kol)-TP] ITA No.112/Kol/2017 dated 04.05.2018

882. The Tribunal remitted the benchmarking of intra-group services to TPO. It relied upon the earlier year order wherein ITAT had observed that TPO is required to assess (a) need test, (b) benefit test, (c) rendition test, (d) duplication test and (e) shareholder activity test while determining ALP of intra-group services. The Tribunal in the assessee's earlier year had remanded the matter by holding that assessee had not produced proper evidence for substantiating actual rendering of various services and that determination of the same would be a year-specific exercise.
Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018

883. The Court kept open the substantial question of law raised in appeal against the order of the Tribunal i.e. whether addition u/s 40(a)(ia) can be made with respect to expenditure incurred for intragroup service, irrespective of any addition being made u/s 92CA [i.e. TP adjustment] with respect to the said expenditure. It was noted that the Tribunal had remanded back the issue to the file of the AO. The Court thus held that the issue would now depend on the AO's findings under the remand proceedings after considering the assessee's contention in this regard. Accordingly, the appeal was disposed of.
SKF Technologies India P Ltd v DCIT [TS-610-HC-2018(KAR)-TP] ITA No.83/2017 dated 19.06.2018

884. The Tribunal dismissed Revenue's appeal and upheld DRP's order deleting the TP adjustment in respect of intragroup services noting the fact that the DRP had recorded that the assessee had provided substantial evidence in form of e-mails, correspondence with the AE etc. so as reach a conclusion that the AE was rendering services which were beneficial for the assessee in conducting its business and though some benefits might have accrued to the overall group but the primary beneficiary was the assessee. It concluded that services were not in nature of stewardship activity. It observed that the Revenue could not point out any factual or legal error in the directions of the DRP and thus, upheld the DRP's order.
ACIT vs Humboldt Wedag India Pvt. Ltd- (2018) 53 CCH 0135 Del Trib ITA No.5097/Del/2011 dated 28.06.2018

885. The Tribunal following the order of the co-ordinate bench in assessee's own case for earlier year remitted the issue vis-à-vis charge of markup on reimbursements from AE for the limited purpose of verification whether the transactions were routed through books. The Tribunal observed that AE's employee was transferred to assessee's company payroll as a whole time director with responsibility for scientific business and infrastructure operations of certain sister concerns/ affiliates, accordingly, assessee recharged the apportioned salary and other direct expenses incurred to respective affiliates on a cost-to-cost basis. The Tribunal noted that TPO suggested that a markup of 10% should be charged which was upheld by CIT(A) and had also observed that the transaction was not routed through the books.
United States Pharmacopeia India Pvt Ltd [TS-451-ITAT-2018(HYD)-TP] ITA No. 1582/Hyd/2017 and CO. No.37/Hyd/2017 dated 01.06.2018

886. The Tribunal followed the order of the co-ordinate bench in assessee's AE and held that payments made to the AE were in nature of reimbursement without any mark-up and were duly supported by third-party invoices and hence the TPO could not make TP-adjustment on reimbursements by determining ALP at Nil It rejected the stand of the DRP that that reimbursement represented intra-group services.
Spencer Staurt (India) Private Limited vs ACIT [TS-751-ITAT-2018(Mum)-TP] ITA No.1832/Mum/2016 dated 06.06.2018

Share transactions

887. The assessee-company had entered into a 'Stock Purchase Agreement' with Japanese company and, under this agreement, assessee was to sell shares of its subsidiary on basis of its 'Net Asset Value', i.e. NAV,Rs.224 per share.However, sale finally took place at US $ 35,08,000, and value of shares worked out to be Rs. 206.88 per share as against the said NAV value of Rs. 224 per share. The TPO adopted

the NAV price (Rs.224 per share) and concluded that ALP for transfer of shares was US $ 37,98,298.50, transaction value and proceeded to compute capital gains accordingly. The Tribunal held that it was not open to the TPO to go beyond role of determining the ALP and intrude in the exclusive domain of the Assessing Officer to determine the income taxable in the hands of the assessee. The Tribunal also dealt with aspect of which method was to be adopted for determining the ALP of shares sold by referring to the residuary clause of sec 92C (any other method prescribed by the Board which took into account the price charged for similar transaction between non-AE). It held that guidance for determining ALP of the sale of unquoted shares could be taken from the decision of Apex Court in Kusumben D Mahadevia wherein it was held that in case of private company which was not winding up, the profit earning method could be applied for arriving at valuation of shares. In the present case, the company in which shares were transferred was not in the winding up nor was there any reasonable prospect of its going into liquidation. In these circumstances, the adoption of Net Asset Value or book value was not really warranted. Given the fact that it was treated as a going concern, the valuation on the basis of future earnings was quite justified.The Tribunal held that since TPO had not examined that aspect of matter at all and simply proceeded on basis of net asset value, it would be fit and proper to remit matter back to TPO.

Topcon Singapore Positioning Pte Ltd vs DCIT [TS-897-ITAT-2018(DEL)-TP] ITA Nos.2 and 5030/Del/2017 dated 23.08.2018

888. The Tribunal dismissed Revenue's appeal and upheld DRP's order accepting that no interest was needed to be charged on share application money pending with its foreign subsidiaries. It held that since the transaction of share application payment did not have direct bearing on the profits, income, losses or assets of the enterprise, the same did not fall within the purview of 'international transaction' u/s. 92B by relying on co-ordinate bench ruling in Bharti Airtel wherein it was held that no ALP adjustment could be made on issuance of corporate guarantee involving no costs to the assessee which did not fall within the ambit of international transaction on account of not having any direct bearing on the profits, income, losses or assets of the enterprise.

ACIT vs Moserbaer India Ltd [TS-1139-ITAT-2018(DEL)-TP] ITA No.1200/Del/2014 dated 03.10.2018

889. The TPO was of the view that assessee was showing higher profit margins in case of its homegrown segment (leasing income) as against its domestic segment on account of not allocating the expenses. The TPO rejected the TP study of the assessee and proceeded to reallocate expenses between homebase segment and other segments by holding that assessee had failed to allocate some of the expenses. He determined the ALP of assets purchased (in the nature of spare parts, air craft components, etc., from its AE and the aircrafts purchased which were leased to independent parties) at Rs.20,11,52,152/- (as against the purchase of fixed assets of Rs.98,35,34,236/-) and reduced depreciation of Rs.3,71,63,149/- corresponding to reduction in fixed assets of Rs.78,23,82,084/- in case of the leasing business segment (homebase segment) of assessee. The Tribunal deleted the adjustment made noting that TPO proceeded on the false premise that the assessee has not allocated any expenditure on the homebase segment and thus the findings were erroneous. It was clear that the assessee had allocated routine expenses the details whereof were available with the lower authorities and moreover, the TPO could not question the audited accounts regularly maintained in the course of business unless there were compelling reasons that it was unreliable. Further, the lease price of asset was commensurate with the purchase price of asset clearly shown from the lease agreement.Accordingly, deleted the TP adjustment made.

Lufthansa Technik Services India Pvt Ltd vs Dy.CIT [TS-1133-ITAT-2018(DEL)-TP] ITA No.5451/Del/2012 dated 15.10.2018

890. It was assessee's contention that TPO erred in making a separate adjustment for marketing and allied charges (which formed a part of operating expenses for sale of software to AE for which TNMM was applied), ignoring that once TNMM was applied, for an item of expense forming part of operating expenses no separate adjustment was called for. Further, the assessee also contended that TPO erred in applying separate methods i.e. CUP and TNMM for two transactions of import of raw materials from AE and export of finished product to AE when they were closely interlinked and interdependent.The

Tribunal restored the entire issue to the file of TPO noting that DRP/TPO had not given any finding on the objections raised by assessee which were supported by various coordinate bench ruling.
Subex Ltd. vs Dy.CIT [TS-1200-ITAT-2018(Bang)-TP] IT(TP)A No.190/Bang/2018 dated 05.10.2018

891. The Tribunal restored the issue of depreciation claimed by assessee u/s.32 on trademark noting that disallowance of depreciation was not sustainable when coordinate bench decision in assessee's own case for earlier year had held that the TPO was not to decide the business expediency of any intangible assets purchased by the assessee by sitting on the armchair of a businessman thus, rejected TPO's nil determination of trademark observing that under the guise of analyzing the transaction in CUP method, TPO had not brought any comparable instance. Accordingly, restored the determination of ALP of purchase of trademark to file of TPO. Thus, the Tribunal restored the issue of claim of depreciation on trademark.
Fabindia Overseas Pvt Ltd. vs DCIT [TS-1116-ITAT-2018(Del)-TP] ITA No.5316/Del/2015 dated 08.10.2018

892. The Tribunal upheld the deletion of TP-adjustment in respect of buyback of shares by wholly owned subsidiary-AE from assessee at a lower rate (0.8 pound per share) than the per share investment (1 pound per share) made by assessee during the AE's incorporation. It held that the TPO erred in charging notional interest based on the assumption that it was a loan transaction in the garb of share investment and observed that buying back of shares at par or at higher or lower rate than the purchase price was common practice in the business world and hence it should be accepted until it was proved that such a transaction was not based on a scientific basis or was against the provisions of exchange manual/regulation. It upheld the order of the first appellate authority wherein it was observed that the TPO had not doubted the valuation of the transaction which was arrived at by professionals and accordingly held that the TPO was unjustified in imputing notional interest @ 5.07% p.a. for the 101 day-period between the date of investment and the date of buyback.
ACIT vs. Wockhardt Ltd. - TS-39-ITAT-2018(Mum)-TP - I.T.A./4156/Mum/2012 & I.T.A. 5557/Mum /2012 dated 05/01/2018

893. The Tribunal deleted TP-adjustment on assessee's sale of shares of group company (FAPL) to another AE based in Singapore and rejected price determined by DRP/TPO at Rs. 12,285.92 per share (using perpetual growth rate (PGR) of 7% which was based on a consultancy firm's Report predicting the long term nominal growth for Indian economy at 7.5%) as against Rs. 8,158 as adopted by assessee. Noting that the consultancy firm's Report relied on by Revenue was a generic report and not specific to business carried on by the assessee and that the Report did not relate to year under consideration it held that the basis adopted by the Revenue was unjustified. Further, it noted both TPO and DRP failed to address assessee's objection that CAGR of earning/free cash flow for FAPL was (-) 16% and similar companies had shown CAGR of (-) 8%, thus held that it was not reasonable to assume that such a company would suddenly grow at the estimated growth rate of the economy in perpetuity. It also observed that the assessee had produced 4 reports in support of its valuation and relying on the Bombay HC ruling in Titan Time Products Limited held that valuation reports of experts could not be rejected by the Revenue unless the assumption considered in the report were proved to be grossly erroneous or another expert opinion contradicting the earlier report was obtained. The Tribunal further observed that the subsequent buy back of FAPL shares from the Singapore entity at the same price was accepted to be at ALP by TPO and therefore held that there was no basis for not treating the original transaction to be at ALP. Accordingly, it held that the valuation of shares of FAPL was at Arm's length and deleted the TP adjustment.
First Advantage Quest Research Limited vs. DCIT - TS-5-ITAT-2018(Mum)-TP - I.T.A./1546/Mum/2017 dated 05/01/2018

894. The AAR upheld Revenue's contention and held that transaction of sale of shares in an Indian company by the Applicant to its Singapore based AE was required to be benchmarked as per the transfer pricing provisions contained in Chapter X of the Act. Relying on its decision in Castleton Investments Limited it held that as opposed to the provisions of Section 195 of the Act, the applicability of Section 92 does not depend on the chargeability under the Act i.e. there is no such requirement in section 92 that the transaction should result in income chargeable to tax under the Act.

AB Mauritius - TS-1099-AAR-2017-TP - A.A.R. No 1128 of 2011 dated 08.11.2017

895. The Tribunal deleted TP-addition on account of remittances made by assessee to its wholly owned subsidiary ('WOS' / 'AE') in Ivory Coast of South Africa towards share application money to the extent of shares allotted but however it sustained addition in respect of balance amount which was refunded by the WOS adopting interest rate of 6 months LIBOR plus 150 basis points as the refunded amount represented an interest free loan.
DCIT v Taurian Iron & Steel Co.Pvt.Ltd. - TS-467-ITAT-2018(Mum)-TP I.T.A./1284/Mum/2015 dated 11/05/2018

896. The Tribunal deleted the TP-addition made on account of interest free advances granted by assessee to its AEs and subsequently converted into equity for AYs 2008-09 to 2011-12. The Tribunal noted that assessee had raised funds by way of zero coupon bonds only for investing in its subsidiaries as ultimately share were allotted. It relied on co-ordinate bench ruling in assessee's own case for AY 2012-13 and held that the transaction was not an international transaction. It observed that Explanation(1)(c) to sec 92B(1) was introduced vide Finance Act 2012 which clarified that capital financing also qualified as an "international transaction" retrospectively. The Tribunal stated that at the point of time when the transaction was entered into and equity shares were allotted, capital financing was outside the purview of international transaction. The Tribunal further added that as assessee did not incur any interest liability, there was no need for receiving any interest and the transaction had no 'bearing on the profits, income, losses or assets of such enterprises'. Accordingly, the said transaction was not an international transaction and hence liability could not be attached.
Bartronics India Ltd vs. DCIT [TS-322-ITAT-2018(HYD)-TP] ITA Nos.1732/Hyd/2012 and ITA Nos. 520,383 and 521/Hyd/2016

897. The Tribunal deleted the TP adjustment made in respect of payment for services under the cost contribution agreement and rejected the TPO/DRP's determination of nil ALP. The Tribunal observed that for previous AYs 2009-10 to 2011-12, TPO had consistently accepted assessee's TP-documentation without making any adjustments. It relied on Radhasoami Satsang SC ruling for the principle of consistency and opined that unless there was a change of facts or law, Revenue could not blow hot and cold at will. The Tribunal rejected the view of the TPO that assessee had not satisfied the benefit test and opined that the authority of the TPO would be to conduct a transfer pricing analysis to determine the arm's length price and not to determine whether there was a service or not from which the assessee benefits.
AT & S India (P) Ltd v/s. DCIT [TS-336-ITAT-2018(Kol)-TP] ITA No.77/Kol/2017 dated 11.05.2018

Others

898. The Tribunal held that losses incurred by assessee on derivative contract entered with a third party (ICICI Bank Mumbai) to cover forex fluctuation with respect to interest payments made to the foreign bank on loan borrowed for purpose of further advancing to AE, was not an international transaction between assessee and AE as the said loss was incurred under a contract between assessee and third party and thereby, not liable to TP adjustment.
Aries Agro Limited vs Dy.CIT [TS-1326-ITAT-2018(Mum)-TP] ITA No.1452 /Mum/2017 dated 28.11.2018

899. The Tribunal deleted the TP adjustment of notional interest made on recharacterizing share application money as loan noting that no income had accrued from share application money and thus, said transaction could not be subject to transfer pricing provisions. It relied on HC decision in Shell India Markets India Pvt Ltd. wherein after noting that the amounts received on issue of shares was a capital account transaction not separately brought within the definition of 'income' as per the provisions of section 2(24) as well as sections 4 & 5 of the Act, it was held that provisions of Chapter X of Act would only be applicable only if there was income chargeable to tax under normal provisions of the Act and it did not operate by itself as a charging section. It observed that the AE could not convert the share application money into share capital by issuing shares to the assessee as the permission from the free trade zone authorities with whom the AE was registered was pending and this was the only sole reason for delay in issuing the shares in favour of the assessee.

Aries Agro Limited vs Dy.CIT [TS-1326-ITAT-2018(Mum)-TP] ITA No.1452 /Mum/2017 dated 28.11.2018

900. The assessee had released money in favour of the AE with a specific purpose of acquisition of distributorship of the films from Citi Gate (with whom AE had entered into a contract with) and CitiGate refunded the same to assessee through AE once the deal failed to materialize. The Court dismissed Revenue's appeal on treating it as an international transaction noting that the instant case was a simple one where the money was routed through the AE by the assessee for the purpose of acquisition of distributorship. This was not a case of either financing or lending or advancing of any moneys as per Explanation to s 92B. The aforesaid transaction did not result into diversion of income of the assessee to its AE and thus, it opined that Tribunal committed no error.

Pr. CIT-3 vs KSS Limited [TS-1379-HC -2018(BOM)-TP] IT No.476 of 2016 dated 26.11.2018

901. The assessee had raised funds from its AE in Cyprus and issued two series of CCDs (0% interest and 14% interest). The TPO was of the view that CCDs were equity in nature and the amount of Rs.23,51,564/- was held to be not in the nature of interest, therefore the ALP of the interest on CCDs was held to be NIL and consequently the entire amount of interest was treated as an adjustment. The CIT(A) upheld the contention of assessee that they are debt however directed TPO to adopt LIBOR rate for payment of interest instead of interest at 14%. The Tribunal opined that CIT(A) ought to have first examined the currency in which the borrowings had been denominated, by examining the agreement entered into by the assessee and the AE and then decided the issue. It relied on the coordinate bench decision in Adama India (P.) Ltd. wherein it was held that since the CCDs were issued in Indian Rupeers, the TPO wrongly treated it as loan by taking it as ECB and in such a case, there was no justification in considering the LIBOR as benchmark rate and set aside the addition. Accordingly, it remitted the matter back to CIT(A) for fresh adjudication after considering the facts of the case and affording the assessee a reasonable opportunity of being heard.

S.L. Plotted Development Projects Pvt Ltd vs Dy.CIT [TS-1376-ITAT -2018(Bang)-TP] IT(TP)A No.1497/Bang/2014 dated 05.11.2018

902. The assessee with support of its AEs undertook customized software solution to several clients across globe and there were two revenue sharing models (Model-1 was when the agreement was executed between the assessee and the overseas customers and assessee retained 75% of the revenue and paid 25% of the revenue to its subsidiaries while Model-2 was when AE's raised invoice on the customer and assessee would raise a back to back invoice for 75% of revenue on AE's) The TPO made adjustments in relation to payments on account of accounting management fee charged by assessee to its subsidiaries in case of Model-1 (TPO fixed remuneration sharing model of 15 per cent in cases where customers entered into contracts directly with assessee). The Tribunal upheld CIT(A)'s deleting the TP adjustment made following the coordinate bench decision in assessee's own case (affirmed by HC) noting that subsidiaries companies were engaged in marketing of IT service capabilities of assessee in their respective countries to win contract for providing IT services. It was also undisputed that once customer was won, subsidiaries downloaded non-administrative services to assessee, Thus, in view of services rendered by AEs in respect of contracts entered into by assessee with independent customers, payment of fee equal to 25 per cent of revenue derived under contract to those AEs was justified.

ITO vs ITC Infotech India Ltd [TS-1314-ITAT-2018-(Kol)-TP] ITA No.550/Kol/2014 dated 05.12.2018

903. The assessee benchmarked the transaction of purchase of fixed asset by aggregating it with transactions pertaining to provisions of software development, ITes and Management support services and applied TNMM as MAM. The TPO rejected benchmarking methodology followed by the assessee and considered the transaction of purchase of fixed asset as separate transaction and determined ALP of aforesaid transaction to be nil. It was assessee's contention that that depreciation charged on the purchase of the fixed asset is subsumed in the cost base of the assessee and cost pertaining to aforesaid segments had been charged with markup to the AEs (markup had been offered to tax) and further, the transaction of purchase of fixed asset was a tax neutral exercise because if the amount of depreciation is taken at nil then amount of income to the extent would also be at nil. It relied on coordinate bench decision in BC Management services which in turn relied on coordinate bench decision in Ciena India (P) Ltd wherein it was held that in case of purchase of fixed assets from AE, it is amount of depreciation on such purchase to be considered for making the addition and where depreciation allowance on fixed assets was also compensated with markup as in aforesaid

circumstances, both transaction had to be seen jointly and therefore, no further addition could be made on account of TP adjustment due to one sided consideration of depreciation at NIL. Accordingly, the Tribunal deleted adjustment.

Avaya India Pvt Ltd vs ACIT [TS-1290-ITAT-2018-(Del)-TP] ITA No.1904 /Del/2015 dated 03.12.2018

904. The assessee, part of the Vodafone group, pursuant to a Framework Agreement held options to purchase 100 percent of the shares an Indian company viz. SMMS (which in turn indirectly held 3.15 percent in Vodafone India) from IDFC Investors for which it had paid a cost of Rs. 2 crore plus applicable interest @ 17.5 percent (which was a small fraction of the market value of the shares of Vodafone India i.e. the investee of SMMS). During the year under review, it terminated its option for which it paid IDFC Group a sum of Rs. 21.25 crore and disallowed the expenditure in its computation of income. The TPO sought to benchmark the transaction holding it to be a deemed international transaction and contended that instead of making a payment of Rs.21.25 crore, the assessee ought to have received a sum of Rs.1588.85 crore as the assessee had terminated extremely advantageous call options. The TPO noted that during the earlier assessment year, in another transaction IDFC had charged a sum of Rs.62.23 crore on relinquishment of right to purchase 0.1234 percent of Vodafone India and considering the assessee had relinquished the right to purchase 3.15 percent, arrived at a proportionate ALP of Rs. 1588.85 crore. The Tribunal held that it would be myopic to examine the termination of the Framework agreement without considering the Framework agreement and other connected arrangements / agreements. It noted that the assessee was granted the aforesaid option pursuant to an agreement wherein another company viz. HTIL had nominated SMMS to purchase the shares of two Indian companies for which SMMS was to be funded by the ultimate parent company of the Vodafone Group i.e. CGP Cayman Island by way of purchase of shares of SMMS by IDFC. The assessee entered into this agreement to ensure that the SMMS remained in control of the entire group (as it held shares in Vodafone India) by subscribing to options to purchase the shares of SMMS. Further, the Tribunal noted that the termination of options of the assessee was done so as to enable TTI another group company to obtain the shares in SMS. Further, it noted that the overseas Group companies were signatories to all the agreements. Accordingly, it concluded that the transaction between the assessee and IDFC was in effect a deemed international transaction. The Tribunal dismissed the assessee's contention that absent explicit legal rights of the overseas AEs in the instant transaction, it could not be considered as a deemed international transaction and held that Section 92F(v) provided that irrespective of whether an arrangement, understanding or action in concert is intended to be enforceable by legal proceedings or not, it would be includible within the definition of "international transaction". Further, it held that the term acting in concert suggested two or more persons acting in co-ordination for a common goal and therefore held that the Foreign AEs were undisputedly acting in concert in the current transaction.

Further, it dismissed the contention of the assessee that TP would not apply considering that no income arose from the transaction as the entire expense was disallowed in the computation of income. It held that it was only when a transaction was inherently incapable of producing an income that the transfer pricing provisions would not apply and held that merely because an income is not reported or not taken into account in the computation of income of taxable income it would not get out of the ambit of international transaction. It noted that as per the option available to the assessee, the assessee was supposed to pay only 2 crore plus interest (amounting to Rs.4.13 crore) but the assessee had paid Rs. 21.25 crore which evidenced the fact that there were other commercial consideration in the transaction. Accordingly, it held that the instant transaction would lead to income from capital gains considering the amended definitions of Section 2(47) and 2(14). It held that options would clearly fall under the definition of capital asset / property and that the termination of options would fall under disposing / parting with an asset / interest in any asset as contained in Explanation 2 to Section 2(47). Upholding the ALP determination of the TPO it proceeded to determine the cost of acquisition of the shares and noted that over and above the Rs.21.25 crore paid in the instant transaction the assessee had also paid 62.24 crore towards assignment of right to purchase shares in Vodafone India in the earlier year. Further, it dismissed the contention of the assessee that the capital gains provisions would not apply as there was no consideration and held that under transfer pricing provisions, the capital gains were to be computed on the basis of the ALP consideration. Accordingly, it upheld the TP addition made.

Vodafone India Services P Ltd v DCIT – TS -37-ITAT-2018 (Ahd) – TP – ITA No 565 / Ahd / 2017 dated 23.01.2018

905. The Tribunal held that writing off of obsolete stock worth Rs. 6.48 crore by the assessee was an extraordinary event and not an international transaction whose fair market value had to be assessed under the TP-provisions. It noted that similar write-offs were made in earlier years which had not attracted TP-adjustments by TPO and that there were no new facts warranting addition in the current year. Further, examining the transaction against the distribution agreement between AE and assessee, it concluded that the AE was not involved in any manner in the writing off of the obsolete stock since the agreement was limited to replacement/guarantee for goods with manufacturing defects and not for those which were obsolete or out-of-fashion (like the written-off goods). Accordingly, it deleted the TP-adjustment.

Safilo India Private Limited vs. DCIT - TS-12-ITAT-2018(Mum)-TP - I.T.A./588/Mum/2015 dated 12.01.2018

906. The Tribunal remitted the benchmarking of assessee's international transaction relating to Forward Foreign Exchange Contract (FFEC) for fresh adjudication after considering additional evidences filed before CIT(A). It noted that the TPO held that the international transaction relating to FFEC's (entered into 2000 and cancelled in 2007) were not at ALP as assessee was unable to submit any data from its AE regarding CUP for the transaction. The CIT(A) did not accept the additional evidences filed by assessee (data of Bloomberg Future rate for five years) as the documents were not produced before AO/TPO and assessee had not filed any application under Rule 46A. The CIT(A) thus upheld the TP-adjustment. Further observing that the TPO accepted the five years data of Bloomberg and made no adjustment in the succeeding AY, the Tribunal held that the matter should be restored back to the file of TPO/AO for fresh adjudication to consider additional evidences filed by assessee before the CIT(A).

ACIT vs. Citibank Overseas Investment Corporation - TS-6-ITAT-2018(Mum)-TP - I.T.A./7032/Mum/2013 dated 05.01.2018

907. The Tribunal deleted TP-adjustment on account of interest paid by the assessee to its AE on Fully Compulsory Convertible Debentures (FCCDs) issued by assessee to its AEs. The TPO recharacterized the FCCDs as foreign loan and benchmarked the interest paid on such FCCDs by adopting LIBOR as the ALP and accordingly made TP adjustment. The Tribunal relying on the coordinate bench's finding in Adama India Pvt Limited [TS-16-ITAT-2017(HYD)-TP], (wherein it was held that considering the fact that the policy of Govt. of India and the RBI indicate that the issuance of CCD was part of FDI being quasi-equity in nature), held that the TPO erred considering the same as a loan. As regards the benchmarking the interest paid on CCDs, the Tribunal noted that the CCD's were issued in Indian Rupees and therefore relying on the decision of Adama India (supra) held that the assessee was justified in benchmarking the interest based on the SBI PLR prevalent and accordingly held that the TPO erred in adopting LIBOR as ALP.

Hyderabad Infratech Private Electronics Limited v DCIT - TS-54-ITAT-2018(HYD)-TP - ITA No.1781/Hyd/2017 dated 25.01.2018

908. The Tribunal held that the TPO was unjustified in benchmarking the commission earned by the assesse from its AE on sale of machinery (5 percent) with the commission rate earned by it from its AEs from the sale of spares (18 percent). Following the order of the co-ordinate bench for the earlier year, it held that the benchmark adopted by the TPO was invalid being a controlled transaction in itself. Accordingly, it dismissed Revenue's appeal and deleted the adjustment.

DCIT vs. Bobst India Pvt. Ltd - TS-79-ITAT-2018(PUN)-TP - ITA No. 277/PUN/2016 dated 29.01.2018

909. The Tribunal upheld CIT(A)'s deletion of TP-adjustment on account of assessee's purchase of old / used machines along with its accessories from UK-AE. It noted that the assessee adopted FMV as certified by a Chartered Engineer as CUP for ascertaining ALP which was rejected by TPO who adopted a unique approach for benchmarking by considering life of the machinery given by Chartered Engineer at India along with year of manufacturing given by the Chartered Engineer at UK for working out the market value of the machinery during the transaction year. It upheld assessee's ALP determination stating that valuation by an independent qualified expert for determining the fair market price or the FMV of the machinery has to be treated as the arm's length price for the value of such products/services, which could be reckoned as the price paid by any independent party in the open market for such product/goods. Further, it held that for used machinery, ostensibly the purchase price of a new product could not be taken as CUP since the cost of used/old machinery depends upon

number of various factors like usage maintenance, obsolescence etc. Accordingly, it held that the TPO failed to take note of such factors and also failed to carry out any independent exercise for the value of the machinery by any approved valuer /Chartered Engineer. Further, considering the fact that for AY 2008-09 TPO himself had accepted the same value as per the valuation report given by the Chartered Engineer for similar transaction, the Tribunal upheld the order of the CIT(A).

ACIT vs. Caparo Engineering India Pvt Ltd - TS-109-ITAT-2018(DEL)-TP - I.T.A. No.6838/DEL/2014 dated 22.02.2018

910. The Tribunal deleted the TP-adjustment on purchase of fixed assets from AE relying upon the co-ordiante bench ruling in assessee's own case for earlier years wherein the Tribunal held that since assessee was receiving compensation from AE on 'cost plus mark up' basis with depreciation as one of the cost components, transaction of fixed assets purchase was 'closely linked' with transaction of services to AE and no separate benchmarking was required. Further, it placed reliance on judicial precedents wherein it was held that since depreciation cost was also recovered from AE along with mark-up, the transaction was 'tax neutral' and therefore deleted the adjustment.

BT India P Ltd v DCIT - TS-130-ITAT-2018(DEL)-TP - I.T.A .No. 566/DEL/2015 dated 26.02.2018

911. The assessee had acquired trademark from its AE, the ALP of which was determined at Nil by the TPO on the ground that the acquisition of trademark was not expected to result in any benefit to the assessee. Noting that the assessee produced certain additional evidences before the DRP which was not admitted, and that the assessee was not given adequate opportunity of being heard, the Tribunal remitted the matter back to the AO / TPO for fresh examination after passing of a speaking order.

Magic Woods Exports Private Limited vs. DCIT - [TS-152-ITAT-2018(CHNY)-TP - .I.T.A. No. 871/Mds/2017 dated 06.02.2018

912. The Tribunal remitted issue of adjustment made in respect of sale of assessee's BPO business division by AE to an Indian domestic party noting non-adjudication of assessee's ground by DRP. The assessee's AE gave a contract (global agreement) to a third party towards business process outsourcing of its various products and, as part of the deal, agreed to hive off assessee's BPO division to the Indian AE of the said third party for certain consideration. Pursuant to the above contract, the assessee entered into an agreement with the Indian AE of the said third party, which provided that a part of the consideration for transfer of business division was to be received by the assessee's AE and balance by the assessee. TPO [despite non-reference of the said transaction by AO] made a TP-adjustment on sale of assessee's business division and on the same issue, AO passed an alternate order making addition of same amount u/s 50B by treating the transaction as a slump sale. DRP observed that the assessee did not have any say in the global agreement (pursuant to which the division was transfered) and thus held that practically it was a case of assessee's AE taking over the business division from assessee at the price received by the assessee and subsequently selling the same to the third party at the value of total consideration of transfer. Thus, it held the above transaction to be an international transaction and upheld the TP adjustment made by the TPO. DRP, however, did not adjudicate the issue of taxability u/s 50B.

The Tribunal noted assessee's acceptance that subsequent to IT Act amendment, TPO is empowered to go into the issue of the international transaction himself without the matter being referred by AO, however, observing that DRP had not adjudicated issue of Sec 50B addition despite AO making such addition in the draft order, ITAT refrained from adjudicating TP-adjustment issue relying on Madras HC ruling in Ramdas Pharmacy and directed DRP to complete its order by adjudicating upon the ground relating to the addition made by AO by treating the transaction as slump sale

Prudential Process Management Services India Pvt Ltd vs DCIT Range 10(3)- TS-285-ITAT-2018(MUM)-TP- ITA No 1274/Mum/2014 dated 13.04.2018

913. The Tribunal deleted TP-adjustment on transaction of purchase of DSP Software and IP rights from assessee's Malaysian AE. The TPO had relied on the statement of one of assessee's employees and held that entire software was developed in India and thus, determined ALP of the transaction at Nil. The Tribunal rejected TPO's stand of merely relying on employee's statement without following any of the prescribed methods of ALP-determination and further noted that Malaysian AE had compensated assessee for part of development work carried out by assessee which was found to be at ALP by TPOs in earlier years.

Further, regarding price paid for IP rights, the Tribunal relied upon Delhi HC decision in EKL Appliances and co-ordinate bench decision in IWM Constructions (P.) Ltd to hold that Revenue cannot question business decision of the assessee and decide ALP.

Separately, the Tribunal upheld DRP's direction to exclude depreciation from PLI while determining ALP of software development services to AEs by relying upon co-ordinate bench ruling in Market Tools Research Pvt. Ltd and Schefenacker Motherson Ltd and noted that depreciation claims for partnership firms and for companies were different.

DCIT Circle 8(1) vs M/s. Value Labs LLP-TS-409-ITAT-2018 (HYD) TP-ITA Nos. 305 & 405/HYD/15- dated 27.04.2018

914. The Tribunal deleted TP-adjustment in respect of provision of manning services by assessee [engaged in the business of sourcing, screening and selecting seafarers and also providing assistance in completing their free joining formalities, etc.] to its AE. The Tribunal observed that, co-ordinate bench in assessee's own case for previous AY had deleted similar TP-adjustment on the basis that after taking into consideration the amount of expenses reimbursed by the associated enterprise over and above the fixed rate of payment (which was not factored in the benchmarking analysis by the TPO), rate charged by assessee could be compared favourably with the rate adopted by TPO. Thus, there being no material difference in facts, it deleted the addition made on account of transfer pricing adjustment of manning services in the present year also.

Wilhemsen Ship Management India P Ltd. Vs ITO- TS-391-ITAT-2018(Mum)-TP-ITA no. 2404/Mum/2012 dated 27.04.2018

915. The Tribunal rejected TPO's re-characterization of assessee's distribution transaction as a service transaction requiring markup and after perusal of the agreement between assessee and its AE [for distribution of AE's product in India], the Tribunal held that the intention of the parties was clear that the assessee was a distributor of AE's products in India and was not required to make the payments to the AE till the assessee made profit from the transactions. The Tribunal followed the HC ruling in case of Sony Ericsson Mobile Communications and held that there was no difference between the form and substance of the transaction of distribution to recharacterize the transaction as a service agreement. And eventually remitted issue to AO/TPO to conduct fresh TP analysis by treating the assessee's transaction as a distribution agreement.

M/s. Comm Vault Systems (India) Pvt Ltd vs DCIT Circle 1(2)- TS-245-ITAT-2018(Hyd)-TP- ITA No. 343/Hyd/2016 dated 11.04.2018

916. The Tribunal deleted the TP-adjustment made in respect of BMW India's payments on account of market survey report to its AE, BMW AG, for AY 2007-08. BMW AG arranged for market survey report [conducted by third party] for BMW India and charged the costs incurred to BMW India without any margin/markup, however TPO proposed an adjustment holding that the said report was for the benefit of BMW group and not for the benefit of the assessee. The Tribunal referred to the OECD Guidelines, various debit notes and written confirmations from BMW AG and noted that the market survey report was a country specific report and was different from shareholders' activity. The Tribunal held that that the expenses incurred by BMW AG were for the benefit of BMW India only.

BMW India Pvt Ltd v/s. ACIT [TS-401-ITAT-2018(DEL)-TP] ITA No.6160/Del/2014 dated 14.05.2018

917. The Tribunal deleted interest adjustment on fully and Compulsory Convertible Debentures (FCCDs) issued by assesse [engaged in the business of manufacture and sale of electrical automobile components] pursuant to search proceedings absent incriminating material relating to FCCDs found during search. It noted that the assessee had filed original return of income on September 30, 2009 which was processed u/s 143(1) on September 05, 2010 and the time period to issue the notice u/s 143(2) of the Act had already expired before the search took place on October 29, 2013. Further, it observed that during the course of search, though no incriminating material was found relating to the FCCDs which were already shown by the assessee in its regular books of accounts, AO/TPO made the TP-addition on account of differential interest on FCCDs undertaken with assessee's AE stating that though assessment was not framed u/s 143(3), for the purpose of Sec 153A r.w.s. 153C, an intimation u/s 143(1) was also an order of assessment. The Tribunal held that no such adjustment could have been made to the income which was already assessed prior to the date of search and even on merits it

held that the difference between assessee's interest rate (16%) and TPO's rate (12.25%) was less than 5% which was within the permissible tolerance range as per Sec 92C(2) second proviso and accordingly held that no addition on account of arm's length price could have been made by the AO/TPO.

Granite Gate Properties Pvt. Ltd vs. ACIT - TS-450-ITAT-2018(DEL)-TP - ITA No. 7022/Del/2017 dated 29.05.2018

f. Miscellaneous

Appeal

918. The Tribunal dismissed Revenue's miscellaneous petition against the Tribunal order wherein the assessment order was held to be null and void-ab-initio as it was passed on an amalgamated entity and the AO had been informed about the change in name. The Revenue had relied on a subsequent Tribunal order in assessee's case where the assessment order was not set aside since the AO was not informed about the factum of amalgamation to contend that there was an error apparent on record. Noting that subsequent order based on erroneous application of facts could not give rise to a mistake apparent in the Tribunal's order, as in the instant order the Tribunal had adjudicated that the AO was informed about the factum of amalgamation.

Dy.CIT vs GE Medical Systems (India) Pvt Ltd (since merged with Wipro GE Healthcare Pvt. Ltd.) [TS-1030-ITAT-2018(Bang)-TP] MP No.285/Bang/2017 dated 17.08.2018

919. The Court dismissed assessee's appeal as withdrawn noting that assessee had filed a memo seeking withdrawal of appeal which was not objected to by Revenue.

Hewlett Packard (India) Software Operation Pvt. Ltd vs ACIT & CIT [TS-1009-HC-2018(KAR)-TP] ITA No.410/2016 dated 01.08.2018

920. The Tribunal dismissed the assessee's appeal as withdrawn in light of the TPO passing a rectification order deleting the TP adjustment as the ALP of the international transaction was within 5% tolerance range.

Futures First Info Services Pvt Ltd vs ACIT [TS-959-ITAT-2018(DEL)-TP] ITA No.6083/Del/2015 dated 16.08.2018

921. The Tribunal dismissed assessee's miscellaneous petition against the Tribunal order and held that CG Vak Software and Product Ltd. was rightly included as a comparable noting that the Tribunal for the subject year had given a finding that it was not a product company and accordingly, conclusion of TPO in the preceding year that it is a product company was irrelevant on basis of which the assessee was urging the mistake on record. In case of inclusion of Persistent System Ltd., the assessee was contending that the Tribunal had erroneously not considered the comparable to be a product company a fact evident from the perusal of the financials. It noted that the profit and loss account have no income from software products and the case laws relied on by the assessee were for a different assessment year. As regards the contention of the assessee. that rendering of software testing services being part of software development services for inclusion of Cigniti Technologies Ltd as a comparable, it held that the assessee under the garb of Miscellaneous petition was seeking a review of the order of the Tribunal which is not permissible u/s.254(2) of the Act.

Advice America Software Development Center Pvt. Ltd., vs ITO [TS-969-ITAT-2018(Bang)-TP] MP.No.171/Bang/2018 dated 24.08.2018

922. The CIT(A) had directed the AO to verify value of percentage of RPT transactions and exclude comparables with RPT transactions exceeding 35% RPT in case of an assessee engaged in software development services. The Tribunal dismissed Revenue's appeal and held that the order of CIT(A)

directing the AO to verify certain factual aspects and recompute the disallowance which resulted in the deletion of TP adjustment by AO giving effect to the appeal order did not suffer from any infirmity. It rejected Revenue's contention that the CIT(A)'s order was contrary to provisions of section 251(a) and observed that the CIT(A) was not prohibited in directing the AO to verify certain factual aspects.

As regards, assessee's appeal the Tribunal dismissed the assessee's appeal challenging the TP adjustment made by the AO noting that total TP-adjustment was deleted by AO after verification on direction of the CIT(A) and thus, the ground ceased to survive.

Motorola India Pvt Ltd vs ACIT [TS-1130-ITAT-2018(DEL)-TP] ITA No.2941/Del/2011 &b45811/Del/2011 dated 24.08.2018

923. The Tribunal had remitted the issues back to the Dispute Resolution Panel to pass a speaking order. Consequently, the Dispute Resolution Panel issued fresh directions and the AO through the impugned proceedings passed order giving effect to the DRP directions. The assessee filed a writ of prohibition, prohibiting the AO from passing order fresh assessment order, as the time period fixed for passing an assessment order under section 144C(13) had already elapsed. It was Revenue's contention that the Tribunal had not set aside the original order of assessment dated 21.01.2016 and on the other hand, it had only remitted the issues back to the DRP for passing a speaking order on the disputed issues and therefore, the original assessment order stood as it was and therefore in view of the subsequent order passed by the Dispute Resolution Panel on 28-12-2017, giving certain directions, the AO was justified in passing the present impugned order giving effect to directions of DRP. The Court observed that the Tribunal's order could be interpreted in both ways as stated supra, with regard to status of the order of assessment dated 21-01-2016. The Court while granting the assessee statutory right to appeal from the order giving effect to the DRP directions to the Tribunal , opined that it was for the assessee to approach the Tribunal once again, by challenging the present impugned order, by raising all the contentions, so that the Tribunal would be in a position to clarify the effect of the earlier order passed, while considering the appeal to be filed against the present impugned order and any such clarification by the Tribunal, with regard to the status of the assessment order dated 21-01-2016, would certainly have a bearing on further proceedings including the present impugned order.

CET Power Solutions India Pvt Ltd vs Dy.CIT [TS-1083-HC-2018(MAD)-TP] WP Nos.4695 and 4696 of 2018 dated 11.09.2018

924. The assessee (engaged in software development services) was providing onsite software services to its overseas customers through its branch in UK and had an AE to perform distribution activities for the said services (identifying customers, establishing contacts, soliciting enquiries, customer relationship in UK). The TPO recharacterized the AE as a marketing support services provider and proceeded to select comparables and accordingly, made an upward adjustment to the ALP of payment made by assessee to its AE. The Tribunal deleted the adjustment noting that AE was functioning as a distributor. Further, a performance guarantee was given by assessee to a customer of its AE. The AO had adopted 2% of gross sales (rate on basis the financial guarantee given by various institutions) as ALP for guarantee fee since the performance risk was borne by the assessee. The Tribunal deleted the adjustment relying on MicroInk noting that guarantee transaction would not amount to an international transaction where no consideration was charged by holding company to its subsidiary company (no bearing on income, losses of profit and loss account) and further, the amendment brought about by insertion of explanation to sec 92B was not retrospective hence would not be applicable to the year under appeal.The Court admitted Revenue's appeal against the Tribunal's order deleting TP-adjustment on international transactions relating to distribution of software services, provision of performance guarantee, provision of information technology enabled services and human resource management services. The Court also admitted the question of law as to whether guarantee would amount to an international transaction u/s 92B.

Pr.CIT vs MASTEK LIMITED [TS-1091-HC-2018(GUJ)-TP] TAX Appeal No.1182 of 2018 dated 25.09.2018

925. The Tribunal allowed the assessee to withdraw appeal in light of the fact that TPO had deleted TP-addition pursuant to disposal of assessee's rectification application noting that the that assessee filed a rectification application u/s 154 submitting that it was entitled to +/- 5% benefit as per Sec 92C(2) proviso and thereafter, TPO passed an order deleting the TP-addition after giving such benefit. It accepted assessee's plea for withdrawal of appeal since it was infructuous.

Accretive Health Services Private Limited vs DCIT [TS-1052-ITAT-2018(DEL)-TP] ITA No.1014/Del/2016 dated 17.09.2018

926. The Apex Court dismissed Revenue's SLP challenging High Court order which confirmed deletion of penalty-imposed u/s 271G r.w.s 274. The Court had rejected Revenue's plea that assessee had deliberately avoided the production of TP documentation as required u/s 92D and relied on co-ordinate bench ruling in assessee's own case which had in turn relied on Bumi Highway HC ruling on identical issue wherein Sec 271G penalty order was held to be invalid as the assessee had complied with the TPO's requirement of specific documents and details.
CIT vs Gillette India Ltd [TS-1155-SC-2018-TP] SLP No.11616/2018 dated 05.10.2018

927. The Tribunal allowed assessee's miscellaneous petition and recalled its order to the extent it did not adjudicate on the ground raised by the assessee with respect to grant of working capital.

It directed the AO/TPO to include Cat Technologies Ltd as a comparable since it passed the export turnover filter of 75% of total filter on perusing the financials on standalone basis whereas the Tribunal, while adjudicating the issue had included the said comparable considering the financials on consolidated basis in its order. It remitted the issue of R Systems and Caliber Point Business Solutions Ltd. to TPO to consider the extrapolated results which were on record noting that the Tribunal in its order had not taken note of it.
Mercedes-Benz Research & Development India Pvt Ltd vs Dy.CIT [TS-1144-ITAT-2018(Bang)-TP] MP No.139/Bang/2018 dated 03.10.2018

928. The Tribunal allowed assessee's miscellaneous petition and recalled its order noting that there was a reasonable cause for non-appearance of assessee's counsel on the date fixed. It directed the registry to fix the hearing of appeal on 16.01.2019.
Faurecia Automotive seating India Pvt Ltd vs ACIT [TS-1161-ITAT-2018(Bang)-TP] MP No.310/B/2018 dated 12.10.2018

929. The Tribunal admitted assessee's application under Rule 27 of ITAT Rules, 1963 which provides that 'Respondent may support order on grounds decided against him' accepting assessee's contention that though the TP adjustment was deleted however CIT(A) had not passed a speaking order and the grounds were disposed summarily without any reason (not in manner under statute) of adjudication. It adjudicated on one of the grounds in the application by holding that the AO had erred by not making a reference to the TPO in accordance with CBDT Instruction No.03/2003, thus the assessment order was to be quashed (It relied on Bombay HC decision of SG Asia Holdings (India) P. Ltd wherein HC had upheld Tribunal's order that TP adjustment was bad in law on reference not being made by AO to TPO.) However, it dismissed the said issue of passing a speaking order as academic on account of TP adjustment not surviving. Further, it dismissed Revenue's appeal as issues had become academic.
ITO vs Magic Software Enterprises India Pvt Ltd[TS-1320-ITAT-2018(Pun)-TP] ITA No.1834/Pun/2014 dated 10.10.2018

930. The Pr. Commissioner took a view that issues before Assessing Officer required reference to TPO, which AO failed to do so and relying upon Circular No.3/2016 passed a revisional order setting aside assessment order. The Tribunal upheld the order passed by Pr.CIT u/s.263 and rejected assessee's contention that assessee's case fell under Para 3.3 of the above Circular which mentioned that the cases which are selected for scrutiny on non-transfer pricing risk parameters but also have international transaction or specified domestic transactions shall be referred to the TPO only in certain circumstances. Noting that assessee's case was selected for scrutiny on transfer pricing risk parameters as well as non-transfer pricing risk parameters and hence assessee's case fell under para 3.2 which made the reference to TPO by AO mandatory in cases which are selected for scrutiny on the basis of transfer pricing risk parameters and non-transfer pricing risk parameters. The AO having failed to do so came under the jurisdiction of Pr.CIT as AO's order was erroneous and affected the interest of Revenue prejudicially. Thus, the Tribunal held that Pr.CIT had not erred in exercising his jurisdiction and accordingly, dismissed assessee's appeal.
Varian Medical Systems International India Pvt Ltd vs Pr-CIT [TS-1261-ITAT-2018 (Mum)] ITA No.3070/Mum/2018 dated 22.11.2018

931. The Tribunal partly upheld the order passed by Pr.CIT u/s.263 noting CIT had rightly observed that assessee had clubbed guarantee fee and risk management fee with interest charged on loan advanced to subsidiary and adopted CUP and that he had not erred in holding that it was beyond the purview of AO to examine the said transaction and it ought to have referred the matter to TPO which it failed to do so thus assessement order passed u/s.143(3) was erroneous as it was prejudicial to Revenue. The Tribunal opined that CIT was within the realm of its jurisdiction to rightly set aside the matter to file of AO with a direction to re-do the assessment by making reference to TPO and frame assessment after taking cognizance of his report. However, the Tribunal vacated directions of CIT to the extent he had called upon the A.O to examine the claim of the assessee that the loans of Rs. 11.3 crores were advanced to domestic parties and were not in the nature of specified domestic transactions as defined in Sec. 92BA of the Act noting that complete details of advances aggregating were before him, and therefore he could have made necessary verification. Thus, the above inquiry by the Pr. CIT was in nature of fishing and roving inquiry.

General Computer Services International vs Pr-CIT [TS-1364-ITAT-2018 (Mum)] ITA No.2615/Mum/2018 dated 28.11.2018

932. The assessee had made royalty payment to its AE under technology license agreement being 5% of net assessable value of units sold. The Tribunal in the first round of proceedings had remanded the ALP determination of royalty directing the TPO to examine the contentions of the assessee regarding comparability of internal CUP agreement between assessee and the Isuzu Motors Ltd, Japan ("Isuzu") already on record noting that lower authorities had not dealt with the objections of assessee to the use of external agreements to benchmark the aforesaid transaction. The TPO in the second round of proceedings had made reference to the assessee's submissions before lower authorities; however, did not verify the external and internal agreements or contentions raised by assessee. The Tribunal in the second round had upheld the adjustment in relation to royalty payment on sole premise that assessee had not made any submissions on the use of external CUP in both the rounds of proceedings. Thereafter, the Tribunal allowed assessee's miscellaneous petition and recalled Tribunal's order to rehear the issue of royalty adjustment accepting assessee's contention that Tribunal had clearly erred in observing that nothing was brought on record in remand proceedings to show that external CUP agreements used by TPO to benchmark royalty payments were not comparable.

General Motors India Pvt Ltd vs Asst CIT[TS-1357-ITAT-2018-(Ahd)-TP] MANo.65/Ahd/2017 dated 31.12.2018

933. The assessee was a partnership firm established under the laws of Mauritius.The AO had made a reference u/s.92CA(1) to TPO who proposed nil adjustment. The AO vide his draft assessment order held the income of the assessee taxable under section 9(1) consequent to his finding that the assessee has a PE in India. The DRP held that the assessee was not an 'eligible assessee' in accordance with section 144C(15)(b) as neither the TPO proposed any variation in the returned income nor the assessee was a foreign company. Thus, the DRP declined to issue any direction in this case and dismissed the proceedings in limine. The Tribunal dismissed Revenue's appeal against DRP's directions relying on coordinate bench decision in sister concern of assessee Ess Advertising (Mauritius SNC Et. Compagnie (earlier known as ESPN Star Sports Mauritius SNC Et. Compagnie) wherein the Tribunal quashed the draft assessment order and consequently the final assessment order passed in pursuance to DRP's directions relying on the High Court ruling in ESPN Star Sports Mauritius SNC ET Compagnie wherein it was held that draft assessment order and final assessment orders were invalid in view of the fact that the TPO had not proposed any variation in the income arising from the international transactions and further, the entity was not a foreign company thus, the assessee was not an eligible entity and the AO instead of passing an order u/s. 143(3), had wrongly passed the draft assessment order u/s.144C(1).

Asst. CITvs ESPN Star Sports Mauritus SNC Et. Compagnie [TS-1273-ITAT-2018-(Del)-TP] ITA No.1741/Del/2015 dated 04.12.2018

934. The Tribunal dismissed Revenue's appeal holding that action of AO in passing a draft assessment order was not in accordance with law as neither a TP adjustment had been made in the case of the assessee (who was a foreign partnership firm), nor assessee was a foreign company, thus the assessee was not an "eligible assessee" under sec 144C(15)(b) as none of the two conditions were satisfied in case of assessee. It did not find any fault with the directions of DRP dismissing the proceedings in limine holding that the assessee was not an "eligible assessee" in accordance with section144C(15)(b) of the Act

ACIT vs ESS Distribution (Mauritius)SNC et. Compagnie [TS-1275-ITAT-2018-(Del)-TP] ITA No.1742/Del/2015 dated 06.12.2018

935. The Tribunal dismissed assessee's miscellaneous petition against its order (wherein the issue of application of filters to all comparables was restored to AO/TPO while selecting the comparables) noting that all necessary aspects and arguments advanced during the course of hearing has been taken into consideration. It rejected assessee's contention that the direction should be restricted to applicability of only one filter ITeS viz. income less than 75% of total operating income uniformly for all comparables since this was argued by the assessee.
Swiss Re global Business Solutions India Pvt Ltd vs. Dy.CIT [TS-826-ITAT-2018(Bang)-TP] MP No.161/Bang/2018 dated 27.07.2018

936. The Tribunal dismissed Revenue's appeal filed against the assessment order noting that the said order was already set aside in its entirety by the co-ordinate bench while adjudicating the assessee's appeal against the said order on the ground that though the AO had framed the assessment order in the name of the merged company, he had mentioned the PAN of the erstwhile (non-existing) company. The co-ordinate bench had directed the AO to pass an appropriate order in the name of merged company against its PAN No. after affording an opportunity of being heard to the assessee.
ACIT vs Wipro GE Healthcare Pvt Ltd (For the merged GE Medical System (India) Pvt. Ltd.,) [TS-796-ITAT-2018(Bang)-TP] IT(TP)A No.467/Bang/2016 dated 27.07.2018

937. The Tribunal recalled its order in case of assessee noting that the assessee argued for the exclusion of Persistent Systems Ltd. as a comparable as it could be inferred from the order of the Tribunal that it had included only two comparables viz. Mindtree and RS Software (India) Ltd. thus excluded Persistent Systems Ltd. However, there was no discussion in respect of the exclusion. In light of the aforesaid mistake apparent on record, it recalled the impugned order for deciding assessee's claim for exclusion of Persistent Systems Ltd.
Citrix R&D India Pvt Ltd vs ACIT [TS-825-ITAT-2018(Bang)-TP] MP No.164/Bang/2018 dated 20.07.2018

938. The Court dismissed the assessee's writ petition against the alleged error apparent in TPO order (giving effect to the Tribunal order) wherein the average rate of royalty was fixed at 3.67% after verifying the records and books of accounts submitted by the assessee as against the direction of the Tribunal to verify assessee's claim that its royalty rate (3.6%) was less than the rate prevalent in the industry for relevant AY (4.7%). It noted that there was no error on the part of the TPO in reconsidering the entire books of accounts submitted by the Petitioner for the purpose of assessing the average rate of royalty payment in the industry, and the assessee had an alternative efficacious remedy of approaching the DRP and subsequently the Tribunal and thus, dismissed the writ petition since there was no violation of principles of natural justice or error apparent on record.
Hyundai Motor India Limited vs. DCIT and DCIT (LTU) [TS-748-HC-2018(MAD)-TP] WP No.22508 of 2017 and W.M.P No.38346 of 2017 dated 16.07.2018

939. The Court dismissed assessee's appeal noting that if there was any factual error in the Tribunal's order on account of the wrong mention of the arguments, the assessee was at a liberty to file a miscellaneous application for seeking for correction of the order. It directed the Tribunal to consider the said application to be filed by the assessee.
Curam Software International P Ltd vs ITO [TS-549-HC-2018(KAR)-TP] ITA No.775/2017 dated 02.07.2018

940. The Apex Court dismissed Revenue's appeal against the High Court's order affirming the Tribunal's order on comparable selection wherein the High Court had noted that the ITAT order gave detailed reasons in support of its conclusion on comparables, further the memorandum of appeal filed by Revenue and a question of law raised for its consideration did not mention a specific plea that the ITAT order was perverse.
Pr.CIT vs SOJITZ INDIA PVT LTD [TS-728-SC-2018-TP] SLP No.17882/2018 dated 19.07.2018

941. The Court dismissed Revenue's appeal against the Tribunal's order (passed in miscellaneous petition filed by assessee against its original order) noting that Revenue had not brought on record perversity in

the findings of the Tribunal. The Tribunal in its order had directed the TPO to consider assessee's contention and case laws cited to treat foreign exchange gains/loss as operating noting that the issue had been remanded back in the original order. Further, it remitted the selection of CPM/CUP as against TNMM adopted by TPO since the Tribunal in its original order had not given any findings/ directions about the applicability of CUP.

CIT, ITO vs Mercedes-Benz Research & Development India Pvt. Ltd [TS-712-HC-2018(KAR)-TP] ITA No.230/2013 dated 10.07.2018

942. The Tribunal dismissed Revenue's appeal with respect to the issue that fresh facts were brought before the CIT(A) without giving an opportunity to AO/TPO noting that as per grounds of appeal filed by Revenue, there was no mention about any particular fact which was not before the TPO, further segmental accounts of corporate entity were analyzed which were available in public domain for selection or rejection of comparables and therefore, there was no possibility of fresh facts being considered by CIT(A).

DCIT vs Uni Design Jewellery Pvt Ltd [TS-769-ITAT-2018(Mum)-TP] ITA No.4341/Mum/2016 dated 02.07.2018

943. The Court set aside the Tribunal order refusing to condone delay in filing of appeal on account of the assessee not receiving the CIT(A) order noting that the Tribunal was not justified in placing a negative burden on the assessee to establish the 'non-service' of CIT(A) order and it was for the Revenue to establish the service of the order on the assessee. The Tribunal had dismissed the assessee's appeal observing that assessee had not proved non-service of CIT(A) order. It was the assessee's contention that it was made aware of the CIT(A) order when lower authorities sought to give effect to it and when it sought to get information about service of relevant order from post office, after almost one year of dispatch, they expressed their inability citing non-availability of old records. The Court held that without the proof of service of CIT(A)'s order placed before it, Tribunal could not draw inference of service of order on assessee and accordingly, remitted the matter back to be decided on merits.

Molex India Tooling India P Ltd vs CIT, ACIT [TS-608-HC-2018(KAR)-TP] ITA No.197/2017 dated 02.07.2018

944. Where the CIT(A) remanded the determination of ALP of the assessee's international transactions to the AO directing him to reconsider the issue, the Tribunal accepting Revenue's contention that CIT(A) had no jurisdiction to set aside the matter to the AO for reconsideration set aside the order of the CIT(A) and directed him to re-adjudicate the issues himself. It clarified that if the CIT(A) wanted comments from the AO he could call for a remand report but he had to adjudicate the issues himself.

ITO vs. Integral India Software Development Centre (P) Ltd - TS-52-ITAT-2018(Bang)-TP - IT(TP)A No.1350/Bang/2013 dated 19.01.2018

945. The Tribunal set aside the non-speaking CIT(A) order confirming TP-adjustment on provision of R&D services, observing that the CIT(A) order did not discuss facts of the case, arguments raised or contain any findings. It held that the CIT(A) should have discussed validity of comparables rejected or introduced by TPO and thus directed the CIT(A) to pass a speaking and reasoned order dealing with all objections of the assessee and after giving opportunity of being heard to assessee. Accordingly, it disposed off the appeal.

Perstorp Chemicals India Pvt. Ltd. v ITO - TS-49-ITAT-2018(Mum)-TP - /I.T.A./4364/Mum/2012, dated 03.01.2018

946. Where the Tribunal had held that the expenditure incurred by the assessee constituted AMP expenditure which was taxable but had also relied on the decision of the Delhi High Court in Maruti Suzuki Ltd v CIT (2016) 381 ITR 117 (Del) wherein it was held that AMP expenditure did not constitute an international transaction for which the Revenue filed an application under Section 254 of the Act pending which it also filed an appeal before the Court, the Court held that the Revenue ought to have exhausted its remedy under Section 254 prior to approaching it. Accordingly, it disposed off the Revenue's appeal.

Pr CIT v Wrigley India Pvt Ltd - TS-25-HC-2018(DEL)-TP - ITA 21/2018, CM APPL.934/2018 dated 10.01.2018

947. The High Court dismissed the review petition filed by the assessee challenging the previous order of the Court contending that the contentions with respect to appropriateness of the TNMM rather than the CUP (Comparable Uncontrolled Price) was urged but not answered. The Court opined that the appellant/review petitioner's submissions with respect to the nature of the transaction and also the appropriateness of the TNMM as well as the feasibility of application of the TNMM method as the "most appropriate method" were not only considered but actually adverted to and therefore there was no scope for review.

Cargill Foods India Pvt Ltd vs. ACIT - TS-47-HC-2018(DEL)-TP - REVIEW PET.523/2017 IN ITA 938/2017 dated 19.01.2018

948. Where during the hearing on merits before the Tribunal, the assessee had contested that the TPO erred in making an upward adjustment by comparing the export sales made by the assessee to its AE with the export sales to its Non-AEs (which was also submitted by way of a synopsis note) the Tribunal dismissed the assessee's miscellaneous petition wherein the assessee contended that the Tribunal had failed to appreciate that the assessee did not have any export sales to Non-AEs and that the rest of its transactions were only with domestic parties as the submissions made during the hearing on merits clearly stated that the assessee had export sales with Non-AEs and therefore there was no mistake apparent from record. Vis-à-vis the assessee's contention that the ground raised before Tribunal for treatment of loss on cancellation of forward contract as extraordinary cost was not considered, it pointed out the clear finding in the original Tribunal order (that the forward contracts with AE itself were not proper and no copy of forward contract was made available before it) and accordingly dismissed the assessee's ground for rectification observing that there was no mistake apparent from record.

As regards the assessee's contention that the Tribunal erred in not considering its claim for working capital adjustment by holding that no such claim was raised before TPO/DRP, the Tribunal observed that the assessee failed to draw attention to the copy of submission before TPO/DRP which was submitted as part of paper book and therefore held that there was no mistake apparent from record.

Separately, it also rejected assessee's contentions that Forward Market Price should be considered as comparable (which was raised by way of an additional ground) and noted that the Tribunal in its original order had not even admitted the additional ground as the relevant records / details were not available on record and accordingly dismissed the assessee's petition.

Dhanya Agro Industrial Pvt. Ltd v DCIT - TS-1078-ITAT-2017(Bang)-TP - MP No. 233/Bang/2017 · dated 08.12.2017

949. The Court dismissed the assessee's review petition wherein the assessee contended that the Court's conclusion that no substantial question of law arose for its consideration was erroneous as the Court did not answer its argument on appropriateness of the TNMM. It opined that the petitioner's submissions with respect to the nature of the transaction and also the appropriateness of the TNMM as well as the feasibility of application of the TNMM method as the "most appropriate method" were not only considered but actually adverted to. Accordingly, it held that the main order of the Court dated 06.11.2017 did not call for review.

Cargill Foods India Pvt Ltd vs. ACIT - TS-47-HC-2018(DEL)-TP - REVIEW PET.523/2017 IN ITA 938/2017 dated 19.01.2018

950. The Apex Court dismissed Revenue's SLP against Delhi High Court order quashing Revenue's show cause notice issued to Li & Fung India (assessee) pursuant to remand by the Tribunal. Noting that the Tribunal had directed TPO to determine ALP afresh by considering 'total cost' and not FOB value of goods as cost base, the High Court held that the Revenue erred in issuing show cause notice proposing to reject 51 out of 53 comparable companies selected by assessee in the set-aside proceedings as the remand was on the basis of a specific finding and that there was no controversy about the comparables. Finding no reason to entertain Revenue's SLP, SC dismissed the same.

ACIT vs. Li and Fung India Pvt. Ltd. - TS-1-SC-2018-TP - PECIAL LEAVE PETITION (CIVIL) Diary No(s). 25825/2017 dated 05-01-2018

951. The Court dismissed Revenue's application for condonation of appeal filing delay and held that unavailability of staff due to demonetisation & file movement on account of transfers were not sufficient cause for a delay of 489 days in filing the appeal. It noted that the appeal was filed on September 19,

2017 while the ITAT order was passed on April 22, 2016 and demonetization occurred on November 8, 2016 and therefore termed Revenue's explanation as 'unconvincing'.

Pr. CIT vs. Vertex Customer Services India Pvt Ltd - TS-77-HC-2018(DEL)-TP - ITA 172/2018dated 12.02.2018

952. The Tribunal dismissed Revenue's appeal filed against DRP's directions as non-maintainable and held that as per the provisions of section 253(1)(d), an order passed by the AO under subsection (3) of section 143 or section 147 or section 153A or section 153C pursuant to the directions of the DRP or an order passed under section 154 in respect of such order, was appealable before the Tribunal and not the directions of the DRP.

DCIT vs. Toyota Tsusho India Pvt Ltd - TS-86-ITAT-2018(Bang)-TP - IT(TP)A No.1201/Bang/2015 dated 31.01.2018

953. The Tribunal recalled its order in case of the assessee noting that by applying turnover filter alone, the Tribunal remitted 7 comparables in light of Chryscapital HC ruling and had ignored assessee's contention about consideration of other aspects such as functional dissimilarity, absence of segmental results etc. Accordingly, it noted that various aspects were inadvertently missed out in the impugned Tribunal order and therefore held that there was an apparent mistake. Further, it noted that the Tribunal had remitted comparability of Acropetal Technologies for application of employee cost filter (observing that it was not shown that the other comparable companies which were not excluded satisfied the employees cost filter) even though TPO had already applied employees cost filter as one of the filter across all comparable companies. In light of the aforesaid mistakes apparent from record it recalled the impugned order in entirety for fresh decision.

Cenduit India Services Pvt. Ltd vs. ITO - TS-119-ITAT-2018(Bang)-TP - M.P. No. 226/Bang/2017 dated 19.01.2018

954. The Court allowed the assessee to withdraw its appeal challenging the applicability of TNMM as most appropriate method for benchmarking its international transactions. The Tribunal had upheld TPO's application of TNMM over assessee's CUP-method after opining that CUP method could be applied as MAM only when there was no dis-similarity of the goods, articles or services. Since the matter was at the initial stage and was not admitted, it permitted the assessee to withdraw its appeal and clarified that the dismissal of this appeal on withdrawal for the impugned AU would not conclude the issue if sought to be raised in other assessment year.

Mercedes-Benz Research & Development India Pvt. Ltd vs. ACIT - TS-151-HC-2018(KAR)-TP - TS-151-HC-2018(KAR)-TP dated 08.03.2018

955. Where the assessee filed additional evidence before the CIT(A) which the CIT(A) refused to admit, the Tribunal relying on the co-ordinate bench ruling in the earlier years 2009-10 & 2010-11 remitted the matter back to CIT(A) for admitting additional evidence and deciding the matter afresh. Accordingly, it remitted the matter for subject years back to CIT(A) with similar direction.

DSV Air & Sea Private Limited vs. DCIT - [TS-153-ITAT-2018(PUN)-TP - सं./I.T.A. Nos. 4829 & 4830/Mum/ dated 07.03.2018

956. With regard to the issue as to whether the AMP expenditure incurred by the assessee amounted to an international transaction, the Tribunal had set aside the matter back to the file of the TPO to consider the issue de novo after considering all the relevant documents. On assessee's appeal to the High Court against the said Tribunal order, the Court held that it had no jurisdiction to interfere with the appeal as issue of AMP expenses had not yet culminated in a final order of the Tribunal

Johnson & Johnson (P.) Ltd. v. CIT – [2018] 93 taxmann.com 155 (Bombay) – IT Appeal No. 1453 of 2014 dated April 13, 2018

957. The Tribunal allowed Revenue's miscellaneous petition (MP) and held that the Tribunal's non-adjudication of ground no.7 of its appeal (regarding exclusion of E-Infochips Ltd from the list of comparables for software developer assessee) was a mistake apparent from the record. Therefore, it recalled its decision for the limited purpose of adjudicating ground 7 of the Revenue's appeal.

DCIT vs. Applied Material India P. Ltd - TS-1063-ITAT-2017(Bang)-TP - Miscellaneous Petition No.269/Bang/2017 dated 26.12.2017

958. The Court allowing the assessee's appeal modified the order of the Tribunal order restoring ALP-determination in respect of assessee's international transactions of marketing and support services to TPO/AO and instead remitted matter back to CIT(A). Noting that the comparable used in the present case for ALP determination was not a controlled transaction, the Court held that rather than the matter being examined afresh by the Assessing Officer it would be more appropriate that the matter be remanded to the CIT(A), who may, if necessary, call for a remand report.
The Bank of Tokyo - Mitsubishi UFJ Ltd vs. DCIT - TS-74-HC-2018(DEL)-TP - ITA 107/2018 dated 31.01.2018

959. The Tribunal allowed assessee's miscellaneous petition and deleted the direction given to TPO to bring in more comparables functionally similar to the assessee after applying 25% RPT filter observing that TPO had already applied 25% RPT filter. Further, it also accepted assessee's contention that Tribunal, in the original order, had wrongly excluded Mindtree Ltd as against Persistent Systems & Solutions Ltd and accordingly rectified the earlier order of the Tribunal.
ACI Worldwide Solutions P Ltd vs. DCIT - TS-203-ITAT-2018(Bang)-TP - Miscellaneous Petition No.220/Bang/2017 dated 09.02.2018

960. The Tribunal allowed assessee's miscellaneous petition as the Tribunal earlier had dismissed few grounds observing that the issue was not raised before lower authorities. However, as this observation was contrary to material on records, the Tribunal recalled this observation for limited purpose of re-adjudication.
M/s. Nuance Transcription Services India P Ltd. Vs DCIT Circle 5(1)(1)- TS-393-ITAT-2018(Bang)-TP- ITA no73/BANG/2018 dated 20.04.2018

961. The Tribunal dismissed the miscellaneous application of the assessee and stated that the Tribunal had not committed any error in remitting back one issue to the AO/TPO regarding turnover filter and another issue to the DRP regarding functionality, thus the claim of the assessee for erroneous Tribunal order was dismissed.
M/s. Systat Software Asia Pacific Ltd. Vs DCIT Circle 12(3) Banglore- TS-365-ITAT-2018(Bang)-TP- MP no 72/Bang/2018 dated 11.04.2018

962. The Tribunal dismissed miscellaneous petition filed by assessee against Tribunal order as the assessee had filed an appeal before Karnataka HC against Tribunal order (which was yet to be admitted). Further, the Revenue had also filed a cross appeal before HC which was pending admission. The Tribunal held that judicial propriety does not permit the assessee to seek efficacious remedy simultaneously before two authorities and in particular where the issues are seized by a higher judicial forum even if pending admission. It thus concluded that assessee's miscellaneous petition was liable to be rejected.
M/s. Cable & Wireless Network India P Ltd vs DCIT Circle 11(2)- TS -272-ITAT-2018(Bang)-TP-IT(TP) No. 1549/Bang/2014 dated 06.04.2018

963. The Tribunal dismissed assessee's miscellaneous petition against ITAT order for AY 2007-08 and 2008-09 setting aside TP-issue to AO/TPO in view of cryptic DRP order. It rejected assessee's contention that there was a mistake apparent from the record merely because the matter was restored to AO/TPO and not DRP relying on the decision of Tribunal in IBM India Pvt Ltd. v/s. Addl CIT wherein it was held that even if it is the finding of the Tribunal that the DRP's order is cryptic, it was not necessary that in all such cases, the matter had to be restored to DRP and not AO/TPO.
Further, the Tribunal allowed the assessee's miscellaneous petitions for AY 2009-10 and rectified the original/ earlier order to provide that the four comparables viz. Bodhtree Consulting Ltd, Tata Elxsi Ltd, Persistent Systems Ltd Infosys Ltd should be excluded while determining ALP of IT segment. The Tribunal noted that in the earlier order, after recording a finding that the above four comparables were excluded by it in case of Infinera India P Ltd (for its IT segment) and that the Revenue was not able to point out any difference in facts vis-à-vis the said case, the Tribunal had not given a final finding in respect of IT segment and had merely stated that it declines to interfere with the DRP order (whereas

the DRP had decided the issue against the assessee). Thus, the Tribunal observed that there was a mistake apparent from the records in the earlier order for AY 2009-10.
Target Corporation India P Ltd v DCIT [TS-370-ITAT-2018(Bang)-TP] MP Nos. 314,315 and 317/Bang/2017 dated 06.05.2018

964. The Tribunal allowed the Revenue's miscellaneous petition against the its order since it had failed to render findings in respect of the (i) CIT(A)'s view which was challenged vis-à-vis size & turnover of a company being deciding factors for treating a company as comparable and thereby 8 comparables were excluded and (ii) CIT(A)'s rejection of diminishing revenue filter used by the TPO. Thus, the Tribunal's order was recalled to the extent of returning a finding with respect to the above two grounds.
DCIT vs. Century Link Technologies Pvt. Ltd (Formerly known as Qwest Telecom Software Service Pvt. Ltd) MP No.3/Bang/2018 dated 08.06.2018

965. The Tribunal rejected assessee's miscellaneous petition against the Tribunal's order rejecting the first miscellaneous petition. The Tribunal noted that in the first miscellaneous petition, assessee had contended that the Tribunal had not adjudicated upon the fact that CIT(A) erred in ignoring margin computation under internal TNMM as not reliable without considering that AO/TPO himself in assessment order had computed margins earned by assessee from transactions with AEs and non-AEs. However, the Tribunal had dismissed the miscellaneous petition on the ground that the Tribunal had adjudicated upon the issue collectively and had opined that comparison of internal TNMM was not possible as comparison was not of the same period in respect of AE and non-AE business. Accordingly, the Tribunal did not find a reason to interfere with the order of the Tribunal.
e4e Business Solutions India Pvt. Ltd vs. DCIT [TS-818-ITAT-2018 (Bang)] MP No.4/Bang/2018 dated 04.06.2018

966. The Tribunal allowed assessee's miscellaneous petition and recalled its order for the limited purpose of adjudicating the other comparables adopted by TPO/AO and the DRP since the observation of the Tribunal that the assessee only argued against the exclusion of one company was patently incorrect since the assessee had submitted a chart containing the arguments of all the comparable companies. Further, the Tribunal held that there was no apparent mistake on record in its order as regards the exclusion of Cybermate Infotek Ltd since no question arose of non consideration of decisions of High Court [PTC Software (I) (P) Ltd. and Rampgreen Solutions Pvt. Ltd.], when it had returned a finding that the assessee engaged in low end software development and the said comparable fell broadly in the same domain by relying on the aforesaid HC rulings.
Lionbridge Technologies Pvt Ltd vs ACIT [TS-619-ITAT-2018(Mum)-TP] MA No.75/Mum/2018 dated 15.06.2018

967. The Tribunal allowed assessee's miscellaneous petition and recalled its order in the case of the assessee qua the grounds not adjudicated upon by it. It noted that the Tribunal had not decided on the grounds vis-à-vis exclusion of Motilal Oswal Private Equity Advisors as a comparable and inclusion of ICRA Online Ltd. and IDC India Ltd. as comparables. Accordingly, grounds raised had been left out for determination and therefore held that there was an apparent mistake on record.
Blackstone Advisors India Private Limited vs DCIT [TS-745-ITAT-2018(Mum)-TP] MA No.130/Mum/2016 dated 08.06.2018

968. The Tribunal dismissed assessee's miscellaneous petition against its order as the assessee had raised general ground of cross objection with respect to exclusion of comparables and not a specific ground with respect to exclusion of 3 comparables viz. Sankya Infotech, Extensys Software Solutions and Thirdware Solutions. Thus, the question of the Tribunal returning a finding did not arise.
Netscout Systems Software India Pvt Ltd v DCIT [TS-726-ITAT-2018(Bang)-TP] MP No.132/Bang/2018 CO No.30/Bang/2012 in IT(TP)A No.1212/Bang/2011 dated 08.06.2018

969. The Tribunal allowed the assessee's miscellaneous petition and modified the order of the Tribunal directing the AO/TPO to allocate marketing & management fees in the ratio of turnover 'between AE and non-AE transactions' in place of ratio of turnover 'of other international transactions'.
Yokogawa India Ltd vs. ACIT [TS-724-ITAT-2018(Bang)-TP] Miscellaneous Petition No.329/Bang/2017 dated 08.06.2018

970. The Tribunal dismissed assessee's miscellaneous petition against its order wherein notional interest adjustment imputed on excess credit to the AE was upheld. Based on the factual findings of the TPO that the assessee charged interest from Non-AE, the Tribunal had confirmed the TP adjustment since the credit period for AEs and Non-AEs was different. However, it was the contention of the assessee that the TPO had recorded wrong findings and no interest was charged from AEs and non-AEs. Noting that this finding of TPO was not challenged before the appellate authorities, the Tribunal observed that its power was confined to the correct any mistakes which crept into its order and not the TPO's order. Further, it accepted the Revenue's counter argument that the Tribunal had considered the Bombay HC ruling of Indo American Jewellery Ltd and the Mumbai bench ruling in Evonik Degussa India which was the basis of passing the decision in assessee's own case vis-à-vis the assessee's stand that its own case was ignored. [In the assessee's own case for the earlier year, the Tribunal had restored the issue to the TPO to examine if there was any agreement for charging interest on late payment and in absence of such an agreement to delete the notional interest adjustment by relying on coordinate bench decision of Evonik Degussa India wherein it was held TP adjustment could not be made on notional basis unless there is real charging of income]

Ingersoll Rand (India) Ltd vs DCIT [TS-770-ITAT-2018(Bang)-TP] MP No.263 and 264/Bang/2017 dated 19.06.2018

971. The Apex Court dismissed Revenue's SLP against the High Court's order quashing AO's final assessment order passed in remand proceedings without passing draft order since it violated the provisions of section 144C(1). The High Court had relied on the HC rulings in Turner International and JCB India wherein it was categorically held that mandatory requirements u/s 144C (1) of the Act had to be met even where the TPO had passed the order in the second round on remand by the Tribunal. Further, it had also relied on the ruling of Citi Financial Consumer Finance India wherein it was held that failure to pass a draft assessment order u/s 144C(1) is not a curable defect as per Sec 292B.

Addl CIT vs Nokia India Pvt. Ltd. [TS-1027-SC-2018-TP] SLP No.7302/ 2018 dated 14.05.2018

972. The Court admitted assessee's appeal on the question a) *whether if an assessment proceeding is not pending before the AO, could the AO still make a reference make a reference under Section 92CA (1) of the Income Tax Act, 1961?*

Nokia Siemens Networks India Private Limited [TS-327-HC-2018(DEL)-TP] ITA 525/2018 dated

04.05.2018

973. The Tribunal set aside the non-speaking DRP order confirming the TPO's rejection of comparables as well as inclusion of new comparable observing that the TPO and DRP had failed to consider the financial data of comparable even though it was available. It thus directed the DRP to pass a speaking and reasoned order after giving an opportunity to the assessee to furnish evidences, submission and to consider the cases relied upon by the assessee.

ExxonMobil Gas (India) Private Limited vs DCIT [TS-754-ITAT-2018(DEL)-TP] ITA No.2702/Del/2014 dated 26.06.2018

974. The Tribunal set aside the order of the AO incorporating the ex-parte directions of the DRP and directed the DRP to afford an opportunity of hearing to the assessee and consider its objections afresh. Further, it rejected the contention of the assessee that the directions of DRP to the extent they grant relief to the assessee should be sustained. The DRP had passed its ex-parte directions inter alia directing exclusion of 6 companies by applying Rs.1-200cr turnover filter. The Tribunal further clarified that DRP could re-examine applicability of all filters and was at a liberty to follow its earlier directions insofar as it related to the relief allowed to assessee in its ex parte directions

Jamcracker Software Technologies Pvt. Ltd vs. DCIT [TS-494-ITAT-2018(Bang)-TP] IT(TP)A No.257/Bang/2016 dated 01.06.2018

APA / MAP

975. The Tribunal dismissed the assessee's TP grounds for the subject year as withdrawn, in view of resolution under APA. Noting that it had entered into an APA with CBDT on July 25, 2018 applicable to 5 consecutive AYs (AY 2015-16 to AY 2019-20) and 4 consecutive rollback years (AY 2011-12 to AY

2014-15) and it heldthat as per Rule 10RA(4), the appeal, if pending for any rollback year on the issue which is subject matter of APA, shall be withdrawn to the extent of the issues covered by the agreement.
Daikin Air-Conditioning India Pvt Ltd vs DCIT [TS-819-ITAT-2018(DEL)-TP] ITA No.161/Del/2016 dated 06.08.2018

976. The Tribunal dismissed Revenue's appeal against the rejection of comparables (Motilal Oswal Investment Advisors Ltd & New berry Advisors Ltd) for assessee providing investment advisory services, as infructuous in view of resolution under APA for AY 2011-12 noting that assessee entered into an APA with CBDT on August 29,2016 covering the subject AY pursuant to which assessee filed a modified tax return paying taxes as per the APA and such modified return was also processed where no further addition was made to assessee's income.
DCIT vs India Capital Research & Advisor Pvt. Ltd [TS-1024-ITAT-2018(Mum)-TP] ITA No.1817/Mum/2016 dated 05.09.2018

977. The Tribunal dismissed Revenue's appeal against the DRP's order deleting the TP-adjustment made on protective basis amounting to Rs.93.81cr for AY 2011-12 noting that the dispute was resolved under MAP with United Kingdom dated January 29, 2019 wherein it was held that protective adjustment made by the TPO would be withdrawn in toto ie, there would not be any adjustment in A.Y 2011-12 on protective basis. Further, it observed that subsequently AO modified the order framed u/s 143(3) r.w.s. 144C to give effect to the resolution agreed under MAP (order dated 27.04.2018), thereby determining total assessed income after MAP at NIL. Accordingly, Revenue's appeal was dismissed as infructuous
Dy.CIT vs BT Global Communications India Pvt Ltd [TS-1149-ITAT-2018(DEL)-TP] ITA No.506/Del/2016 dated 31.10.2018

978. The Tribunal dismissed assessee's TP grounds relating to provision of software development and support services and interest imputed on overdue receivables as withdrawn in view of assessee's submission that issues were covered by the APA and that as per Rule 10RA(4) of the Income-tax Rules, the appeal, if pending on the issue which was subject matter of APA, was liable to be withdrawn prior to furnishing the mandatory modified return (Rule 10A(2)) to give effect to rollback provision
Mentor Graphics (India) Pvt. Ltd. vs DCIT [TS-1234-ITAT-2018(Del)-TP] ITA No.399/Del/ 2016 dated 06.11.2018

979. The Tribunal dismissed Revenue's appeal vis-à-vis rejection of comparables in case of assesee engaged in software development services as withdrawn in view of APA signed by assessee on selection of comparables.
ACIT vs Fair Issac IndiaSoftware Pvt. Ltd. [TS-1387-ITAT-2018(Bang)-TP] IT(TP)A No.1503/Bang/ 2015 dated 29.11.2018

980. Where assessee had availed shared services (including management services) from its AE, the Tribunal noting that issue had been resolved by MAP for AY(s) 2007-08 to 2010-11 by treating 75% of costs allocated at ALP and disallowing 25% of management fees paid , it remitted the issue to the file of the TPO for verification of the matter in the manner as narrated by the terms of the MAP and to pass an order in accordance with law.
ACIT vs Quintiles Data Processing Centre (India) Pvt Ltd. [TS-1306-ITAT-2018-(Ahd)-TP] ITA No.1036/Ahd/2014 dated 03.12.2018

981. The Tribunal following the coordinate bench case in assessee's own case for AY 2006-07 restored the TP adjustment noting that in the earlier year also, the prices were fixed under MAP in respect of US AEs and the Tribunal in earlier year had restored back the matter to the file of AO/TPO with the direction that that it was open to TPO to examine the validity of the proposition that price adopted under MAP mechanism for US can be adopted in respect of other countries also where MAP was not resorted to.***JCIT vs Dell International Services India (P) Ltd [2018] 96 taxmann.com 618 (Bangalore - Trib.) IT (TP) APPEAL NOS. 53 & 86 (BANG.) OF 2014 dated 13.07.2018***

982. The Tribunal dismissed assessee's TP-ground for AY 2009-10 relating to adjustment on royalty and franchise fee, as withdrawn, in view of resolution under MAP. However, vis-à-vis the disallowance of

foreign exchange loss and R&D Cess on royalty payment, it remanded the issue back to AO/TPO to pass a speaking order in view of MAP resolution.
McDonald's India Pvt Ltd vs. ACIT - TS-103-ITAT-2018(DEL)-TP - ITA No.1426/Del/2014 - 30-01-2018

983. The Tribunal directed the TPO to apply profit margin adopted/agreed in MAP covering IT/ITeS with US-AE to benchmark similar transactions with non-US AE noting that under MAP margins of 15.7% and 14.68% were adopted to benchmark IT & ITeS respectively for transactions with US-AE. It held that it would be very difficult to accept either assessee's margin of 13 percent or the TPO's higher margin for the same nature of transactions. Accordingly, for the impugned year, it held that the margins for the Software Development Services (IT service) and ITeS segment were to be taken as per the margins accepted in MAP proceedings.
Fidelity Business Services India Pvt. Ltd. vs. DCIT - TS-107-ITAT-2018(DEL)-TP - ITA No. 5872/Del/2011 dated 13/02/2018

984. In view of resolution of TP issues by the assessee under APA and considering that the APA was concluded on February 23, 2018 and the subject AY was included in rollback period, the Tribunal allowed the assessee to withdraw grounds against TP-adjustment.
FactSet Systems India Private Limited vs. ACIT - TS-202-ITAT-2018(HYD)-TP - ITA No.213/Hyd/2015 dated 23.03.2018

985. The Tribunal dismissed the crossed appeals in light of resolution under APA after considering letter submitted by AO to CIT(DR) that relevant AY formed part of the rollback years for which APA was signed agreeing to operating margin of not less than 18% which assessee had already complied for the subject AY.
DCIT Circle 17(2) vs M/s. Wells Fargo India Solutions (P) Ltd-TS-251-ITAT-2018(Hyd)-TP- ITA No 111/Hyd/2016 dated 09.04.2018

986. Assessee company had entered into international transactions of providing Information Technology Enabled Services (ITES). 92.86 percent of the assessee's transactions were for USA and the remaining 7.14 percent constituted of non-USA transactions in the ITES segment. Simultaneously, the assessee had filed an application for MAP (Mutual Agreement Procedure) under Article 27 of India-USA DTAA with respect to Transfer Pricing Adjustments. MAP proceedings were concluded in respect of transaction of assessee at arm's length markup of 18.82 percent for 92.86 percent of USA transactions. The Tribunal held that since no distinction had been made between 'USA' transactions and 'non-USA' transactions, therefore, the margin adopted for US transaction in MAP proceeding were to be adopted for non-US transactions also.
Amazon Development Centre (India) (P.) Ltd. v. ITO – [2018] 93 taxamnn.com 30 (Bangalore – Trib.) – IT (TP) Appeal Nos. 76, 78 and 1387 (BANG.) of 2014 dated April 27, 2018

987. Noting that the assessee had concluded a MAP with USA vis-à-vis its 'management charges' payment, the Tribunal allowed withdrawal of the ground of appeal against TPO's determination of ALP at NIL. ; On the dispute of Revenue characterizing assessee company's 'engineering and design' services as ITeS, the Tribunal rejected the ITeS classification and remanded the matter to the file of the TPO for fresh adjudication as the TPO's characterisation was not in tune with the functional analysis and there was no evidence to support the classification.
Flowserve India Controls Private Limited vs CIT - TS-476-ITAT-2018(Bang)-TP - I.T. (T.P) A. No.1277/Bang/2011 dated 02.05.2018.

988. The Tribunal dismissed assessee's appeal on certain TP-issues in view of resolution under Indo-Japan MAP for AY 2007-08.
ACIT vs. Marubeni India Pvt. Ltd - TS-445-ITAT-2018(DEL)-TP - ITA No. 3504/DEL/2014 dated 21.05.2018

989. The Tribunal dismissed assessee's appeal challenging TP-adjustment of Rs.3.82cr in view of resolution under APA for AY 2012-13. It considered the assessee's request for withdrawal of appeal in light of unilateral APA entered into with CBDT on October 25, 2017 for rollback period of AYs 2012-13 to 2015-16 in respect of international transactions with AE.
Microchip Technology (India) Pvt. Ltd vs. DCIT [TS-375-ITAT-2018(Bang)-TP] IT(TP)A No.36/Bang/2017 dated 02.05.2018

990. The Court dismissed Revenue's appeal for AY 2006-07 in view of TP-dispute settlement under MAP. The Court held that the appeal had become infructuous and dismissed it without going into merits.
Pr. CIT vs. SIEBEL SYSTEMS SOFTWARE (INDIA) P. LTD [TS-616-HC-2018(KAR)-TP] ITA No.136/2016 dated 21.06.2018

991. The Tribunal dismissed assessee's TP ground as withdrawn in in view of resolution under MAP.
McDonald's India Pvt Ltd v DCIT [TS-513-ITAT-2018(DEL)-TP] ITA Nos.1665 and 1769/Del/2015 692 and 296/Del/2016

992. `The Tribunal allowed the assessee to withdraw grounds covered by APA since there was no change in the said AYs in nature of international transactions. It directed the Department to pass an order giving effect to APA u/s.92CD(5) for AY 2010-11 and 2011-12. Further, for AY 2008-09 and 2009-10, (years not covered by APA), it directed that the principles laid down in APA for benchmarking comparability analysis would have a guidance value.
Spencer Staurt (India) Private Limited vs ACIT [TS-751-ITAT-2018(Mum)-TP] ITA No.1832/Mum/2016 dated 06.06.2018

Assessment / Reassessment / Revision/Rectification

993. The Tribunal had remitted the matter back to TPO on 15.04.2014, however the remand directions were modified by the Court which directed the Tribunal to examine the matter pursuant to which, the Tribunal again remitted the issue to TPO. This resulted in a fresh reference made by the AO to the TPO u/s 92AC (1) however consequent to the TPO order passed, a final assessment order dated 14.11.2017 was passed instead of a draft assessment order. The Court allowed assessee's writ petition and quashed the final assessment order relying on Delhi HC ruling of JCB India wherein it was held that order passed in remand proceedings without passing a draft assessment order (contrary to section 144C) is a nullity in law. The Court observed that HC in JCB India had not expressed anything further which implied that the Revenue's option to proceed afresh was still open (to complete assessment according to provisions of section 144C), It directed the AO to complete final assessment in accordance with provisions of section 144C and exclude the period for proceedings under Article 226 for reckoning period of limitation for passing a fresh assessment order.
Stryker (India) Pvt Ltd vs ACIT [TS-931-HC-2018(DEL)-TP] WP(C) No.11342/2017 and CM 46361/2017 dated 16.08.2018

994. The Court upheld Tribunal's order wherein the TP adjustments made by the AO were set aside on account of not complying with the mandatory CBDT Instruction 3/2003 of making reference to the TPO as the international transaction instant case exceeded Rs.5 crores. It observed that the finding of the Tribunal was not perverse in law and it was not a case of non-application of mind and therefore the view of the Tribunal could not be interfered with. It thus dismissed the Revenue's appeal.
Pr. CIT vs S.G. Asia Holdings (India) Ltd [TS-922-HC-2018(BOM)-TP] ITA No.281 of 2016 dated 27.08.2018

995. The Tribunal dismissed assessee's appeal challenging the validity of the Assessment order on the ground that AO could not have determined the ALP of the transaction without issuance of notice under

the proviso of section 92C(3) of the Act. Noting that the AO had showcaused in the notice u/s.142(1) of the Act as to why the ALP of the transaction should not be computed, it dissented with the case law relied on by the assessee [i.e. Delhi HC rulings in MoserBaer and Maruti Suzuki India Ltd.] observing that they were on different factual matrix as TPO had not served a mandatory notice u/s.92CA (as reference was made by AO to TPO for TP proceedings) served on assessee to produce any evidence to be relied on in support of his computation of ALP which was required by provisions of sec 92CA(2). It observed that AO in its notice u/s.142(1) had clearly showcaused the assessee as to why ALP should not be computed, assessee had failed to respond to notices issued by AO and consequently, penalty was levied u/s.271(b). Thus, it was evident that under the proviso to of section 92C(3), the AO had given sufficient notice to the assessee and the assessee in the instant case has not complied.

Kaybee Private Limited vs ITO [TS-898-ITAT-2018(Mum)-TP] ITA No.2166 and 2167/Mum/2015 dated 08.08.2018

996. The Tribunal remitted the matter back to DRP for de-nova consideration thereby providing one more opportunity to the assessee (engaged in business of manufacturing drugs and pharmaceuticals) in the interest of justice to present its case before the DRP, which had passed an ex-parte order, though the Tribunal was of the opinion that there was no merit in assessee's submission that the ex-parte order was passed by DRP as the counsel could not appear due to unavoidable circumstances. It directed the assessee to appear promptly and co-operate in the proceedings, failing which Revenue would be at liberty to pass appropriate orders.

MMC Healthcare Limited vs DCIT [TS-1136-ITAT-2018(CHNY)-TP] ITA No.2978/Chny/2018 dated 30.08.2018

997. The assessee was a non-resident entity partnership firm incorporated under the laws of Mauritius and was also a tax resident of Mauritius. The assessee's case was reopened u/s.147 and pursuant thereto, a draft assessment order u/s.144C(1) was passed wherein it was noted that there was no variation as a consequence of order passed by the TPO who did not draw any adverse inference in respect of the international transaction. The Tribunal admitted the additional ground raised by the assessee for quashing of the assessment order on the ground that assessee was not an eligible assesseee. It examined the provisions of s.144C(15)(b) where the term "eligible assessee" was defined to be a foreign company or any person in whose case there was variation arising consequent to order passed by the TPO in terms of section 92CA (3) and only thereafter, provision of section 144C would be applicable. The Tribunal quashed the draft assessment order and consequently the final assessment order passed in pursuance to DRP's directions relying on the High Court ruling in ESPN Star Sports Mauritius SNC ET Compagnie wherein it was held that draft assessment order and final assessment orders were invalid in view of the fact that the TPO had not proposed any variation in the income arising from the international transactions thus, the assessee was not an eligible entity and the AO instead of passing an order u/s. 143(3), had wrongly passed the draft assessment order u/s.144C(1) .

ESS Advertising (Mauritius) SNC et Compagnie (earlier known as ESPN Star Sports Mauritius S.N.C Et Compagnie) vs ADIT [TS-1135-ITAT-2018(DEL)-TP] ITA Nos.5131,5132/Del/2010, 5703/Del/2011 dated 20.08.2018

998. The Court allowed assessee's writ petition and set aside the DRP's cryptic order wherein the DRP without independent application of mind had only agreed with the findings and the reason cited by the TPO. It observed that in the absence of any such independent reasoning and finding, it should be construed that the DRP had not exercised its power and issued directions by following the mandatory requirements contemplated under Section 144C(6) and (7) which provide that DRP had to consider (i) draft order (ii) objections filed by assessee (iii) evidence furnished by assessee (iv) VO/TPO (v) records relating to draft order (vi) evidence collected by or cause to be collected by it (vii)) result of any enquiry made by, or caused to be made by it and further, it may conduct enquiry to be made by the Income-tax authorities. Thus, noting that DRP had failed to do such an exercise, Court held DRP's order as an order passed without application of mind and remitted the matter back to DRP for fresh consideration.

Renault Nissan Automotive India Private Ltd and Nissan Motor India Pvt Ltd vs DRP-2, Dy.CIT and JCIT [TS-1087-HC-2018(MAD)-TP] WP No.26814 and 26815 of 2017 dated 28.09.2018

999. The Tribunal quashed the assessment order for three years wherein ALP adjustment to assessee's software development services was made and held that issuance of section 143(2) notice by the competent AO is a mandatory condition before framing of a scrutiny assessment and non-compliance

thereof renders the entire consequential proceedings to be non-est in the eyes of law noting that regular assessment was framed by the AO in Kolkata while relevant assessment notices were issued by the AO in Chennai. The Tribunal examined the status report submitted by the Revenue from which itemerged that an order u/s.127(2) was passed by the AO transferring jurisdiction of the assessee from Mumbai to Kolkata while mentioning of the PAN lying with Kolkata. On checking of the database, it was found that the assessee had his address at Chennai with another PAN simultaneously with the present PAN (which was lying in Chennai Jurisdiction at that point of time and later transferred to Kolkata) and thereafter, the PAN in Chennai was deleted in de-duplication process and present PAN was retained. Notice u/s.143(2) was issued by the AO in Chennai and since the time period had elapsed, the AO in Kolkata issued subsequent notices u/s.142(1) and completed the assessment proceedings. The Tribunal quashed the assessment order since the AO in Chennai issuing the section 143(2) notice(s) did not have jurisdiction and the assessing authority in Kolkata did not issue such scrutiny notices.

Lexmark International (India) Pvt Ltd vs DY.CIT (TS-1086-ITAT-2018(Kol)-TP) ITA No.268/Kol/2017 dated 28.09.2018

1000. Where the reopening of the assessment was beyond 4 years for the reason that the assessee had exported iron ore to its AE in Hongkong at a lesser price which was further sold to China at higher price and thus, income had escaped assessment, the Tribunal quashed the assessment order and DRP's order (which had not examined the validity of reopening of assessment) and held that proceedings were null and void-ab-initio on the ground that there was no failure on the part of assessee to disclose material facts. The assessee had reported the international transaction in Form3CEB and TAR at the time of original assessment proceedings u/s.143(3) and hence the condition precedent of s.147 for reopening of assessment beyond 4 yearsi.e. failure on the part of assessee to disclose material facts was not satisfied. Thus, the Tribunal relying on the ratio laid down in Bombay High Court in Hindustan Unilever [wherein it was held that the AO must disclose in the reasons as to which fact or material was not disclosed by assessee truly and fully and the reasons must also provide link between conclusion and evidence] quashed the re-assessment order.

Devansh Exports vs ACIT (TS-968-ITAT-2018(Kol)-TP) ITA No.2177/Kol/2017 dated 05.09.2018

1001. The reopening of the assessment was due to the reason that the assessee had claimed and been allowed AMP expenses of Rs.23.31 croresand, the AO was of the view that expense was to be disallowed as it was incurred on behalf of its AE. The Tribunal noted that during the course of assessment proceedings, the assesse had submitted details pertaining to AMP expenses incurred and disclosed that the only international transaction entered into by it was in the form of financial support received from parent company towards advertisement and other sales promotion expenses amounting to Rs. 10,97,55,358/- along with a copy of form No. 3CEB. It observed that there was no new tangible material evidence which prompted the Assessing Officer to issue notice for reopening of the assessment and hence reassessment could notbe sustained in view of the Delhi HC ruling of Kelvinator. Further, it also observed that the AO was factually incorrect as AMP expenses were Rs.10.66 crores (which were never claimed by assessee) whereas its selling and distribution expenses were Rs.24.76 crores and accordingly quashed the reassessment order.

Yamaha Motor India Sales Pvt Ltd vs Dy.CIT [TS-1159-ITAT-2018(DEL)-TP] ITA No.1095/Del/2014 dated 22.10.2018

1002. The Tribunal admitted the additional ground and decided the issue in favour of the assessee by following the coordinate bench ruling in assessee's own case for earlier year wherein the assessment order was quashed on the ground of being time barred as reference to TPO was not legally sustainable and the AO erred in referring the determination of ALP of the international transaction to TPO since the quantum of international transaction was below 5 crores. The Tribunalreliedon the coordinate bench decision of Calence Software which recognized the binding force of CBDT Instruction No.3/2003 (if the value of international transaction is below 5 crores, then AO can determine the ALP of transaction) on authorities.

Bucher Hydraulics Private Limited vs Dy.CIT [TS-1173-ITAT-2018(DEL)-TP] ITA No.1650/Del/2015 dated 29.10.2018

1003. Where the AO had passed a final assessment order u/s. 143(3) r.w.s 144C without givingeffect to the directionsof DRP, the Tribunal relying on Software Paradigm Infotech (P.) Ltd. quashed the final assessment order wherein the assessment order was quashed and it was held that the conduct of the

AO/TPO in passing the impugned final order of assessment disregarding the binding directions of DRP was a clear violation of the express mandatory provisions of sec. 144C(10) and (13) of the Act. The Tribunal dissented with the judgment cited by Revenue in the case of H & M Hennes & Mauritz India (P) Ltd (where the matter was remanded back to AO to pass a final assessment order incorporating directions of DRP) observing that in the subject case, the assessee had prayed for setting aside the assessment order and thus it was a case of concession by assessee.

July Systems & Technologies vs Dy.CIT [TS-1189-ITAT-2018(Bang)-TP] IT(TP)A No.368/Bang/2016 and CO No.13/Bang/2017 dated 31.10.2018

1004. The CIT set aside the assessment order passed u/s. 143(3) on the ground that the original assessment order erroneous and prejudicial to Revenue as TP adjustment proposed by TPO was not incorporated CIT gave a direction to AO to conduct de-novo assessment. However, the AO passed the final assessment order without following the procedure laid down u/s.92CA.The Tribunal set aside the order and directed the AO to refer assessee' s case to TPO for computing ALP of transaction before passing the draft assessment order.

NT Back Office Services Pvt Ltd vs Pr.CIT [TS-1198-ITAT-2018(DEL)-TP] IT(TP)A No.368/Bang/2016 and CO No.13/Bang/2017 dated 11.10.2018

1005. Where the reassessment was opened on basis of information received from DIT(I) that assessee was exporting iron ore at a price less than prevailing market price in to its AE in China who further sold it at marker price, the Tribunal noted that it was not new information (price at which assessee exported iron ore) as this fact could be discerned from the original assessment order and further, the bench marking based on FOB rate at India with the market rate prevailing at China itself was per-se erroneous. The AO should have applied his mind independently and made enquiries about the FOB rate of iron ore as taken by similar companies in India under uncontrolled conditions in India in relation to exports made to unrelated third parties which would give some comparability to the export price of assessee. Thus, the Tribunal quashed the reassessment proceedings holding that AO was duty bound to make reasonable enquiry to collect material which would make him believe that there was in fact an escapement of income which requirement of law has not been fulfilled in the instant case by the AO

Devansh Exports vs ACIT (TS-1124-ITAT-2018(Kol)-TP) ITA No.2178/Kol/2017 dated 15.10.2018

1006. The ITAT had remitted the categorization of assessee as IT and ITES to TPO however the assessee had appealed before the High Court who remitted the matter back to Tribunal to decide the issue on merits. The TPO giving effect to the revised order of ITAT categorized IT and ITES segment of assessee separately and benchmarked them which resulted in ALP addition against which the assessee approached the DRP. However DRP refused to entertain the appeal stating that sec 144C(1) clearly specifies first instance and hence it meant that objections could be against only on variation of returned income and not recomputation of assessed income by AO. The Tribunal remitted the issue to DRP to consider the objections of the assessee relating to order of TPO giving effect to revised Tribunal's order and pass an order noting that the assessee could not be denied its rights to appeal before higher forum and the time frame for assessee to appeal as per section 144C commenced from the fresh order of the TPO irrespective of past events relating to the same assessment.

Broadridge Financial Solutions (India) Pvt. Ltd. vsDy.CIT [TS-1303-ITAT-2018(Hyd)-TP] ITA No.514 and 515 /Hyd/2017 dated 29.11.2018

1007. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order quashing the final assessment order passed by AO without passing the draft assessment order relying on ratio laid down in Bombay High Court in Dimension Data Asia Pacific Pte Ltd, Andrew Telecommunication (P) Ltd and International Air Transport Association wherein it was held that final assessment order being passed without passing a draft assessment order violated sec 144C(1) and thus, had to be quashed. It noted that the AO had clearly passed a final assessment order as it had issued demand notice along with assessment order.

ACIT vs East West Seeds Ltd [TS-1246-ITAT-2018(Pun)-TP] ITA No.2599 /Pun/2016 dated 14.11.2018

1008. The High Court dismissed Revenue's appeal against Tribunal's order wherein final assessment order was quashed for failing to follow the procedure prescribed under Section 144C of the Act by relying on ratio laid down in Delhi HC in JCB India wherein it was held that draft assessment order had to be

passed in accordance with procedure prescribed u/s.144C of the Act and not passing a draft assessment order would vitiate the proceedings. It rejected Revenue's contention that assessee had failed to file objections to the draft assessment order within limitation. Hence, the DRP had not decided any „objection" in the first round thus, in the second round pursuant to order of Tribunal remanding the matter the Assessing Officer was justified in passing the Assessment Order without passing a draft assessment order taking recourse to the procedure prescribed in Section 144C of the Act.

Pr.CIT vs NT Back Office Services Pvt Ltd. vs Dy.CIT [TS-1395-HC-2018(Del)-TP] ITA 1307/2018dated 26.11.2018

1009. The Tribunal quashed the final assessment order passed as it was not passed in conformity with DRP's direction within a period of one month from end of month in which directions are issued by DRP and was a verbatim repetition of the draft assessment order. It relied on coordinate bench decision of Software Paradigm wherein under similar factual matrix, the final assessment order was quashed by holding that it was contrary to provisions of s 144C(10) read with 144C(13) of the Act noting that it was a clear disregard of the binding direction of the higher authority i.e. DRP. It distinguished case law cited by Revenue of coordinate bench in case of H & M Hennes & Mauritz India (P) Ltd observing that in the said case the assessee had prayed for set aside of the assessment order and AO to pass order in accordance with DRP's directions.

Flextronics Technologies (India) Pvt Ltd. vs ACIT [TS-1324-ITAT-2018-(JPR)-TP] IT(TP)A No.832/Bang/2017 dated 31.12.2018

1010. The Tribunal set aside assessment order and restored the matter back to DRP for fresh decision after providing reasonable opportunity to both sides noting that DRP had passed an ex-parte order after assessee had not appeared for two hearings (20.10.2016 and 21.11.2016) which was a case of not providing sufficient opportunities and in the interest of justice, DRP should have provided more opportunities of being heard to the assessee.

WEG Industries (India) Pvt Ltd vs ITO [TS-1327-ITAT-2018-(Bang)-TP] IT(TP)A No.419/Bang/2017 dated 31.12.2018

1011. In case of writ petition filed by assessee on jurisdiction of TPO to examine specified domestic transaction where no reference had been made by AO u/s 92CA(1), the Court provided ad-interim relief by restricting the AO to pass an assessment order and stated that the issue would be examined once Revenue would file its reply. The Court rejected Revenue's contention that writ petition could not be entertained in view of statutory remedies available to assessee from AO's order however the Court opined that AO was bound to pass the order u/s. 92CA(4) in terms of report of TPO, and if TPO had no power to examine transaction then relegating assessee to statutory remedies was unjustified.

Times Global Broadcasting Company Ltd vs UOI &Ors [TS-1266-HC-2018-(Bom)-TP] Writ Petition No.3386 of 2018 dated 06.12.2018

1012. The Court dismissed Revenue's appeal on whether the principle of estoppel would be applicable for assessee who had appealed against the Final assessment order before the Tribunal. The AO, on remand, by Tribunal had referred matter to TPO and thereafter had passed a Final assessment order dated 12 March 2014 which was corrected by corrigendum dated 16 April 2014 to convert Final assessment order to Draft assessment order which was challenged before DRP and then a Final assessment order was passed pursuant to DRP's directions. The Tribunal held that subsequent passing of order was without jurisdiction as corrigendum dated 12 April 2014 was issued after the time to pass assessment orders had expired i.e.31 March 2014. The Court noted that it had held in its decision in International Air Transport Association that Draft Assessment Order was necessary in terms of Section 144 C(1) of the Act before the AO could proceed to pass a Final assessment order and in the absence thereof the order was without jurisdiction. It opined that there could be no estoppel on issue of law pertaining to jurisdiction and thus, dismissed Revenue's appeal.

Pr.CIT vs Lionbridge Technologies Ltd [TS-1267-HC-2018-(Bom)-TP] INCOME TAX APPEAL NO. 622 OF 2016 dated 03.12.2018

1013. The Tribunal quashed reassessment orders pursuant proceedings initiated u/s.148 on ground that income had escaped assessment with respect to existence of PE of assessee through its Indian subsidiary noting that assessee had filed a writ petition against initiation of reassessment proceedings

pursuant to notice u/s.148 which was rejected by Allahabad High Court however Apex Court allowed assessee's SLP against the HC order and held that said impugned notice could not sustain once ALP had been determined, as no further profit could be attributed to a person even if it had a PE in India. In view of the Apex Court quashing notice, the Tribunal held that reassessment proceedings pursuant to said notice and reassessment order passed by AO stood automatically cancelled.

Honda Motor Co Ltd vs DCIT[TS-1283-ITAT-2018-(Del)-TP] ITA Nos 6018& 6019/Del/2015 dated 13.12.2018

1014. Where AO had issued a notice u/s.148 on ground that income had escaped assessment for the reason that no reference was made to the TPO u/s92C and 92CA of the Act to the TPO for international transaction of corporate cost/management cost for AY 2011-12 while the TPO and DRP for AY 2010-11 had held that ALP of aforesaid cost to be NIL, the Court quashed the notice u/s.148 which was issued beyond 4 years on ground that assessee had disclosed his transaction of corporate cost to its AEs in Form 3CEB and thus had disclosed truly all material facts necessary for its assessment of income during assessment proceedings and it was clear from reasons recorded that it referred to the failure of the AO to observe procedure prescribed u/s.92C and 92CA. Thus, there was no failure on part of assessee to disclose material facts relevant for assessment. Accordingly, it quashed the notice u/s.148.

Tudor India Ltd.vs JCIT [TS-1427-HC-2018-(Guj)-TP] R/Special Civil Application No. 15142 of 2018 dated 11.12.2018

1015. The Tribunal remitted back the matter to the file of DRP with a direction to admit the Transfer pricing study report of the assessee and pass order after considering it. The DRP had rejected the transfer pricing study report not submitted before the TPO. Observing that the assessee was timebound to furnish the transfer pricing study report before the TPO in accordance with the provisions of Act and the Rule however since the said report had been submitted with the DRP subsequently, the Tribunal remitted the matter back.

MOS Metro India Pvt. Ltd. vs Dy.CIT [TS-1008-ITAT-2018-(Chny)-TP] ITA No.3029/Chny/2017 dated 31.07.2018

1016. The Tribunal remitted the TP-issues back to TPO for re-adjudication noting that assessee was unable to file copy of the Marketing Services Agreement between assessee and AE before TPO and subsequently, DRP had refused to entertain these documents. The Tribunal opined that the assessee had also suffered the consequence of not producing the documents before the TPO. Thus, in the interest of justice, ITAT restored the issue back to TPO for re-adjudication, and directed the assessee to produce all necessary documents to substantiate its case.

Harting (India) Pvt Ltd vs Dy.CIT [TS-518-ITAT-2018(CHNY)-TP] ITA No.762/Chny/2017 dated 02.07.2018

1017. The Tribunal held that the AO had no power to deviate from the Draft Assessment Order while passing the Final Assessment Order and thus could not make any addition/disallowance in Final Assessment order not proposed by the Draft Assessment order. The provisions of section 144C provide that on passing of the draft Assessment order, the assessee either accepts the variations or files its objections before the DRP and the AO can vary the final assessment order only in respect of any addition/disallowance as per the directions of DRP. Thus, the Tribunal deleted the disallowance u/s.80 IC made over and above the draft Assessment order by the Final assessment order where the assessee had not approached DRP. [It relied on the ratio laid down in the decisions of Gujarat HC for Woco Motherson Advance Rubber Technologies Ltd (Revenue's SLP subsequently dismissed by SC) and Madras HC in Sanmina SCI India Pvt. Ltd.]

Piramal Enterprises Ltd vs Addl. CIT [TS-808-ITAT-2018(Mum)-TP] ITA No.5471/Mum/2017 and ITA No.5583/Mum/2017 dated 30.07.2018

1018. The Court upheld the Single Bench's order wherein the writ petition filed by the assessee was dismissed and remitted the assessee to its alternative remedy of appeal before the CIT(A) noting that the DRP's rejection of the objections filed 1 day beyond the stipulated 30 day period was not a direction u/s. 144C(5) r.w.s 144C(6) of the Act and the consequent final assessment order passed u/s. 143(3) r.w.s. 144C(13) of the Act was not an order passed pursuant to DRP directions but an order of

assessment simplicitor u/s.143(3) and accordingly, rejected the assessee's plea that remedy of appeal should be to approach the Tribunal and not the CIT(A) .

Inno Estates Private Limited vs DRP-2 and ITO [TS-759-HC-2018(MAD)-TP] W.A. No.1001 of 2018 dated 26.07.2018

1019. The Court disposed of the writ petition and directed the TPO to keep the notice issued under provisions of s 92CA(2) in abeyance until the objections against the re-opening of the reassessment were disposed by the AO. The AO had reopened the assessment on the ground that ALP for services rendered by assessee were higher than the sale consideration received from its AE. It relied on GKN Driveshafts ruling, to opine that if AO had reason to believe that the income chargeable to tax had escaped assessment, AO was bound to dispose of assessee's objections in the manner known to law and only thereafter, could the AO choose to refer the matter to TPO, and the said procedure could have been adopted. Accordingly, the AO erred in straightway referring the matter to TPO without passing a speaking order disposing of objections and it directed the AO to pass a speaking order and TPO to keep the notice in abeyance.

Alden Prepress Services Private Limited vs Dy.CIT (TPO) and Dy.CIT (AO) [TS-721-HC-2018(MAD)-TP] WP No.13815 of 2011 dated 12.07.2018

1020. The Court dismissed Revenue's appeal and upheld the order of Tribunal wherein relying on AP High Court in Zuari Cements, the Tribunal had quashed the assessment order as it was passed contrary to mandatory provisions of sec 144C and a final assessment order passed without a draft assessment order was void-ab-initio. The Tribunal in the first round of proceedings had restored the matter back to TPO who had passed an order. Thereafter the AO proceeded to pass a final assessment order without passing a draft assessment order in remand proceedings. The Court relied on Delhi HC ruling of JCB India to hold that even in remand proceedings, the draft assessment order was necessary and thus, the Tribunal's view could not be faulted with.

Pr.CIT vs Andrew Telecommunication (P.) Ltd [2018] 96 taxmann.com 613 (Bombay) TAX APPEAL NO. 144 OF 2017 dated 16.07.2018

1021. The Tribunal quashed the assessment order framed on non-existent amalgamating company noting that the assessee had informed the TPO vis-à-vis amalgamation however the TPO had passed an order in the name of erstwhile entity (Vertex Consumer Services India Pvt. Ltd.). Subsequently, the DRP's order was in the name of new entity (Vertex Consumer Management India Pvt Ltd.) but the Final assessment order was also passed in the name of the erstwhile entity which was not in existence when the AO passed the order. Relying on the Del HC decision of Spice Entertainment (SLP against which was dismissed by SC) and Dimension Apparels (P.) Ltd. wherein assessment framed on non-existent entity post amalgamation was quashed, it concluded that the assessment framed was void ab initio.

Vertex Customer Management India Pvt Ltd vs DCIT [TS-516-ITAT-2018(DEL)-TP] ITA No.966/Del/2016 dated 06.07.2018

1022. The Tribunal allowed the assessee's additional ground and quashed the assessment order framed on non-existent merged company (Sony Ericsson Mobile Communications (India) Private Limited) noting that the fact of merger was intimated to the Department by the assessee, however Revenue still passed the final assessment order in the name of non-existent entity. Relying on the Del HC decision of Spice Entertainment (SLP against which was dismissed by SC) and Dimension Apparels (P.) Ltd. wherein assessment framed on non-existent entity post amalgamation was quashed, it concluded that the assessment framed was void ab initio.

Sony Mobile Communications India (P) Ltd. vs DCIT (now merged with Sony India Pvt. Ltd.) [TS-514-ITAT-2018(DEL)-TP] ITA No.554/Del/2015 and ITA No.836/Del/2014 dated 06.07.2018

1023. The Tribunal quashed the assessment framed in the name of non-existent amalgamating company (Akzo Nobel Car Refinishes India Pvt. Ltd) noting that erstwhile company (Akzo Nobel Car Refinishes India Pvt. Ltd) amalgamated with Akzo Nobel India and though this fact was brought to AO's knowledge vide letter dated June 11, 2012, the TPO passed the order on erstwhile company ignoring the aforesaid intimation furnished by the assessee before the AO. Further, the AO also framed the final assessment order in the name of the erstwhile company without any mention of the transferee entity

(Akzo Nobel India). It relied on co-ordinate bench decision in Genpact Infrastructure (Bhopal) Pvt. Ltd. (now merged with Genpact India) wherein it was held that assessment framed by AO on non-existent entity is “void ab initio”, and accordingly, quashed the assessment order.

Akzo Nobel India Ltd., (formerly known as Akzo Nobel Car Refinishes India Pvt. Ltd.) vs DCIT [TS-624-ITAT-2018(DEL)-TP] ITA No.2073/Del/2014 and ITA No.2468/Del/2015 dated 10.07.2018

1024. The Tribunal quashed the assessment order, passed in the name of non-existent entity, RelQ Software Pvt. even after it ceased to exist on its merger with "Hewlett Packard GlobalSoft Pvt. Ltd" noting that the Revenue authorities were repeatedly told about the merger of the erstwhile company with the assessee and it was a case of mere negligence on the part of the AO.It relied on Delhi HC decision in Maruti Suzuki India and a plethora of other cases wherein it was held that assessment framed in the name of non-existent entity was not sustainable in the eyes of law.

EIT Services India Pvt Ltd (former Hewlett Packard Global Soft Pvt Ltd (in the case of erstwhile M/s. RelQ Software Pvt Ltd)) vs ACIT [TS-966-ITAT-2018(Bang)-TP] IT(TP)A No.1088/Bang/2011 dated 27.07.2018

1025. The Tribunal relying on coordinate bench decision of Calance Software quashed the assessments and deleted the TP adjustment on the ground that the value of assessee's international transactions were below Rs. 5 Cr for both the years, and in view of the CBDT Instruction No. 3/2003 the AO should have determined the ALP of the international transactions and thus, the AO erred in making a reference to TPO. Accordingly, draft assessment orders passed after making TP-adjustment based on TPO's order, were beyond limitation period and thus, bad in law.

Bucher Hydraulics Pvt Ltd. vs ACIT [TS-512-ITAT-2018(DEL)-TP] ITA No.4237/Del/2011 and ITA No.5690/Del/2012 dated 06.07.2018

1026. The Tribunal dismissed assessee’s appeal vis-à-vis final assessment order being bad in law on the ground that it was not passed within one month from the end of the month in which the DRP directions were received following the coordinate bench decision in assessee’s own case in earlier year wherein it was held that final assessment order was not bad in law as limitation provisions were only procedural in nature and do not create any substantive right. Further, it was observed that on perusal of the entire provisions of section 144C, sub-section (13) of section 144C particularly, the AO had no discretion while passing the assessment order under sub-section (13) of sec.144C except to follow the directions of the Hon’ble DRP and the fate of such proceedings is already known to the assessee as he would be in receipt of the directions of the DRP. The Tribunal had also opined that the provisions of section 144C were materially different from section 153 which expressly prohibited passing of the order beyond period prescribed therein.

The Himalaya Drug Company vs Dy.CIT [TS-614-ITAT-2018(Bang)-TP] IT (TP) A No.807/Bang/0216 dated 04.07.2018

1027. The Court allowed assessee’s writ petition and set aside the final assessment order passed in defiance of provisions of section 144C of the Act without passing the draft assessment order as per the requirement of sec 144C(1) of the Act since the assessee being a foreign company was an eligible assessee as defined in section 144C(15) of the Act. It relied on the High Court decision of JCB India to reject Revenue’s contention that requirement of passing a draft Assessment order would extend only to first round of proceedings and not in respect of remand proceedings by the Tribunal. Accordingly, the Court quashed the assessment order being without jurisdiction on account of the non-compliance of mandatory procedure of passing a draft assessment order under Section 144C(1) of the Act.

Dimension Data Asia Pacific PTE Ltd vs Dy.CIT [TS-719-HC-2018(BOM)-TP] WP No.921 of 2018 dated 06.07.2018

1028. The Court dismissed assessee’s appeal against Tribunal’s order as withdrawn absent objections by Revenue for the same. The Tribunal had upheld revision u/s 263 as AO had erroneously allowed Sec. 10A deduction on transfer pricing addition, contrary to provisions of Sec. 92C(4).

MSourcE (India) Pvt Ltd vs CIT [TS-1003-HC-2018(KAR)-TP] ITA No.48/2015 dated 26.07.2018

1029. Noting that the DRP held that the assessee did not have a PE in India, the Apex Court set aside the order of the High Court dismissing assessee’s writ petition and upholding reassessment proceedings

based on material found during survey proceedings at Indian subsidiary, based on which AO believed that the assessee had an Indian PE.

LG Electronics Incorporation, South Korea vs. ADIT - TS-42-SC-2018-TP - CIVIL APPEAL NO(S).781 OF 2018 dated 16.01.2018

1030. The Tribunal dismissed assessee's additional ground against AO's failure to refer ALP determination to TPO even though the value of international transactions (Rs. 10.42 Cr) for AY 2010-11 exceeded Rs. 5 crore and confirmed AO's jurisdiction to adjudicate on TP matters in assessee's case. It noted that the though CBDT Instruction No. 3 of 2013 prescribed a monetary limit of Rs. 5 crore for making reference to the TPO, the said limit had been subsequently revised in the CBDT's Central Action Plan for FY 2006-07 wherein the threshold was increased to Rs. 15 Crores. Accordingly, it held that there was no requirement for making any reference to the TPO and further noted that the assessee had not raised similar contention in appeal for AY 2009-10 where the value of international transactions was Rs. 10.52 crore.

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

1031. The Tribunal rejected assessee's contention that assessment order for AY 2004-05, passed on the amalgamated entity, was void ab initio. It noted that in the assessee's case, return was filed by amalgamating company and notice u/s 142(1) was also issued on amalgamating company prior to amalgamation and consequently the assessment proceedings initiation was valid. It rejected assessee's reliance on Delhi HC ruling in Spice Infotainment and Micra India on the ground that in those cases, notice was issued after the assessee therein ceased to exist. However as the assessment order was pssed on non-existent entity it directed the AO to issue fresh notice u/s 142(1) transposing amalgamated company as assessee.

Further, for the other AYs under review, it noted that AO had passed final assessment order consequent to ITAT's remand back and that DRP and CIT(A) dismissed assessee's appeal/objections as not maintainable. Relying on the Delhi HC in JCB India Ltd, it held that even in the case of a remand by the Tribunal, the AO was mandated to pass a draft assessment order and not the final assessment order. The Tribunal remanded the matter to the file of AO to pass draft assessment order.

Cyient Ltd (formerly Infotech Enterprises Ltd) Successor to Tele Atlas India Ltd vs. DCIT - TS-1106-ITAT-2017(HYD)-TP - ITA Nos.1052 to 1054/Hyd/2016 dated 29.12.2017

1032. The Tribunal quashed the assessment order framed on non-existent amalgamating company noting that it had amalgamated with Genpact India pursuant to HC-order dated November 19, 2010 and this fact was brought to AO's notice vide letter dated January 24, 2011 & received on February 3, 2011. It observed that the TPO/AO/DRP passed orders in the name of the erstwhile entity (Genpact Infrastructure) without mentioning the transferee name which was not in existence when the TPO/AO/DRP passed their respective orders. Relying on the co-ordinate bench rulings in Maruti Suzuki India (subsequently upheld by jurisdictional HC) and Spice Enfotainment (SLP against which was recently dismissed by SC) wherein assessment framed on non-existent entity post amalgamation was quashed, it concluded the assessment framed was void ab initio and the same was rightly quashed by the ld. CIT(A).

Genpact Infrastructure (Bhopal) Pvt. Ltd., (now merged with Genpact India) vs. DCIT - TS-115-ITAT-2018(DEL)-TP - ITA No. 2025/Del/2014 dated 09.02.2018

1033. The Tribunal quashed the assessment order making TP additions on a non-existent entity, by holding that the lower authorities had erred in completing the assessment on the pre merged entity even though the factum of merger was brought to the notice of the AO by assessee at several stages and the same was duly noted, as evident from correspondence between AO and the assessee. Thus, the Tribunal relying on the Delhi HC judgement in the case of Spice Infotainment confirmed that passing assessment order in case of non-existent entity was a jurisdictional defect and not a technical defect and accordingly quashed the said order.

IPSOS Research Pvt. Ltd Vs ACIT Circle 11(2)- TS-361-ITAT-2018(Mum)-TP- ITA No 1177/Mum/2015 dated 11.04.2018

1034. The Tribunal quashed the assessment order passed in the name of erstwhile entity (Genpact Infrastructure (Bhopal) Pvt Ltd.) which was not in existence at the time of passing the order and had amalgamated with Genpact India following the coordinate bench decision of the assessee's own case for earlier year noting that assessment after the amalgamation could only be made on the amalgamated entity as a successor pursuant to provisions of sec 170(2).

Genpact Infrastructure (Bhopal) (P.) Ltd vs Dy.CIT** [2018] 93 taxmann.com 334 (Del-Trib) **ITA No.199/Del/2015 dated 27.04.2018

1035. The Tribunal admitted the additional ground of the assessee to quash the assessment order and quashed the order proposing TP adjustment issued in the name of the non-existent entity viz. Akzo Nobel Chemicals India Ltd. which merged with Akzo Nobel India Limited as approved by Bombay High Court order dated May 11,2012. Relying on the ITAT order in assessee's own case for AY 2010-11, it held that where an entity merges with another entity then the assessment order passed against the non existent entity cannot stand.

Akzo Nobel India Limited (as successor of Akzo Nobel Chemicals (India) Limited) vs DCIT [TS-621-ITAT-2018(PUN)-TP] dated 05.06.2018

1036. The Tribunal set aside the assessment and remitted the matter to the AO/TPO to verify whether the assessee had (i) informed the registrar of companies or similar authority in Cyprus about the applicability of the Income-tax Act, (ii) complied with the provisions of section 178 or section 176 of the Act and (iii) whether such proceedings were challenged by the assessee before AO on the ground that it was a wound up entity. It directed the AO to also check the locus standi of the party pursuing the proceedings and to decide objections regarding validity of making an assessment on non-existent entity, based on its observations. It rejected assessee's contention that assessment order passed on the wound up entity was null and void-ab-initio. It noted that the plea of validity of proceedings was raised at a later stage before the DRP and the assessee had complied with the assessment proceedings before the AO. The Tribunal followed the findings of Gujarat HC ruling in the case of Sumantbhai C. Munshaw wherein it was held that assessment order passed on a deceased person could not be nullified on the ground that the legal representative had allowed the assessment proceedings to continue and the plea for nullity of assessment was taken at a later stage. It rejected assessee's reliance on Delhi HC ruling in Spice Infotainment Ltd. and Skylight Hospitality LLP since it dealt with the aspect of succession of entity and not winding up.

Pesak Ventures Ltd. vs. DCIT [TS-765-ITAT-2018(Del)-TP] ITA No.1929/Del/2017 dated 19.06.2018

1037. The Tribunal quashed final assessment order passed by the AO u/s 143(3) r.w.s 92CA without incorporating the DRP's directions observing that instead of passing the final assessment order u/s 143(3) r.w.s 144C in conformity with the DRP's directions u/s 144C(5), AO passed the final assessment order dated January 17, 2014 u/s 143(3) r.w.s 92CA of the Act by only incorporating TPO's proposals and not considering the DRP's mandatory directions. Considering that the AO clearly violated the binding provisions of Secs. 144C(10) and 144C(13) of the Act, the Tribunal quashed the order. Since the order had been quashed, it held that there was no requirement to adjudicate the other grounds raised by the assessee.

Software Paradigms Infotech Pvt. Ltd vs. ACIT -TS-7-ITAT-2018(Bang)-TP - IT(TP)A No.150/Bang/2014 dated 5-1-2018

1038. The Tribunal admitted assessee's additional ground and held that the draft assessment order passed along with issue of a demand notice was a complete order which was not envisaged under Sec 143(3) r.w.s. 144C and therefore the said order was invalid. It held that as per the Act proposed additions are to be made in the Draft Assessment order and the assessee is to be issued a show cause notice providing it with the option to either accept the same or file objections before the DRP but no such procedure was followed in the instant case. Relying on the decision of the co-ordinate bench in Rehau Polymers (wherein identical facts were considered) and the High Court rulings in JCB India and Turner International wherein it was held that it is mandatory for AO to pass draft assessment order prior to issuing final assessment order, it held that the draft assessment order passed in the case was invalid in law and accordingly quashed the order.

Sandvik Asia Pvt. Ltd vs. DCIT - TS-148-ITAT-2018(PUN)-TP - ITA No.467/PUN/2015 dated 25.01.2018

1039. The Tribunal, in second round of proceedings, dismissed assessee's appeal against AO's final assessment order (passed without a draft assessment order) as non-maintainable and held that the appropriate remedy was either to file appeal before the or CIT(A) or approach the Hon'ble Court via writ. From the conjoint reading of Section 253(1)(d) and Section 246A (1)(a), the Tribunal observed that appeal before Tribunal would only lie against the assessment order passed in pursuance to DRP's directions It clarified that even if the final assessment order was passed in contravention of any statutory provision, the only course open for the assessee to seek for remedy was, firstly, either to file appeal before the appropriate forum/authority in terms of the provisions of law, i.e. before the CIT (A) or secondly, by exercising constitutional remedy before the Hon'ble High Court under extra ordinary jurisdiction, of course with the discretion of Hon'ble Court. Accordingly, it directed the assessee to approach the correct forum.

Tevapharm India Pvt. Ltd vs. ACIT - TS-93-ITAT-2018(DEL)-TP - ITA No.:- 741/Del/2018 dated 16/02/2018

1040. The Tribunal admitted assessee's additional ground and held that draft assessment order passed along with issue of a demand notice was a complete order which was not envisaged under Sec 143(3) r.w.s. 144C and therefore invalid. It held that the requirement of the Act w.r.t draft assessment order are, that the proposed additions are to be made and show cause notice is to be issued to the assessee on which it can accept the same or file objections before the DRP. However, in the present case, Tribunal observed that the Assessing Officer in the draft assessment order assessed income in the hands of the assessee and itself crystallized the demand on income by issuing demand notice under section 156 of the Act and also initiated penalty u/s 271(1)(c).

The Tribunal relied on co-ordinate bench ruling in Rehau Polymers & Sandvik Asia (wherein identical facts were considered), HC rulings in JCB India and Turner International wherein it was held that it is mandatory for AO to pass draft assessment order prior to issuing final assessment order and thus held that the draft assessment order passed in the present case was invalid in law.

M/s. Eaton Industrial Systems P Ltd vs DCIT Circle-8 Pune- TS-274-ITAT-2018(PUN)-TP- ITA No. 536/Pun/2014 dated 12.04.2018

1041. The Tribunal referring to the co-ordinate bench ruling in case of Capsugel Healthcare Ltd vs ACIT held that since the AO had failed to follow the mandate of the provisions of section 144C of the Act whereby the AO was required to pass a draft assessment order, it would result in nullification of the final assessment order passed u/s 143(3).

M/s. Jaipur Rugs Company (P) Ltd vs DCIT Circle-2 Jaipur – TS- 415- ITAT-2018(JPR)-TP- ITA no 46/JP/2017 & 1084/JP/2016 dated 24.04.2018

1042. The Court held that the final assessment order passed, without issuing draft order, and the subsequent corrigendum treating the earlier assessment order as draft order u/s 144C, was invalid. The Court observed that AO passed final assessment order along with demand notice u/s 156 and imposed penalty on assessee. Further, while issuing corrigendum, though AO changed the sections under which the order was passed, he had not withdrawn the penalty and demand notice. Thus, the Court relying upon Delhi HC ruling in JCB India Ltd, Turner International India Pvt Ltd and various other HC rulings held that the window dressing which had been attempted by the Revenue would not give life to an order passed without jurisdiction.

The Court further, differentiating irregularity from illegality, held that the Revenue's act of passing a final assessment order, in contravention of provisions of Sec 144C, cannot be corrected, and for Revenue taking support of provisions of Sec 292B, held that if the contention of the Revenue was accepted, then it would literally render all the provisions of the Income Tax Act subservient to Section 292B and allowing such a contention would be misreading the intention of the Parliament in enacting Section 292B and Section 144-C.

ACIT Media Circle II vs Vijay Televisions -TS-469-HC-2018(Mad)-TP- ITA No 1327 to 1329 of 2014 dated 23.04.2018

1043. Where the AO issued demand notice u/s. 156 and as well as issue of notice u/s.274 r.w.s 271(1) (c) at the stage of making the draft assessment order, the Tribunal held that it was undisputed that such notices could only be issued at end of assessment proceedings and accepted the assessee's plea that

the order passed was contrary to mandatory provisions of sec 144C and thus, the assessment order passed was null and void-ab-inito not enforceable in law. It relied on the AP HC ruling of Zuari Cements Ltd. (SLP dismissed) wherein it was held that final assessment order passed contrary to provisions of s 144C was void-ab-initio.

Eaton Fluid Power Ltd. vs Dy.CIT [2018] 96 taxmann.com 512 (Pun-Trib) ITA No.535 of 2014 dated 25.04.2018

1044. The AO had not passed a draft assessment order and instead passed a final assessment order. On the assessee pointing out that the said order was not a legally sustainable order since it had not complied with the mandatory provisions of sec 144C(1), the AO passed corrigendum order. The Tribunal held that the final assessment order could not be cured by any subsequent rectification proceedings or corrigendum and in such a situation all subsequent proceedings and final assessment order would be invalidated. Accordingly, the Tribunal quashed the final assessment order on the ground that mandatory procedure u/s.144C(1) was not followed.

Add CIT vs Oracle India (P.) Ltd.[2018] 93 taxmann.com 8(Del-Trib) ITA Nos.6288,6714 /Del/ 2013 dated 13.04.2018

1045. The Tribunal, in second round of appeal, quashed the final assessment order passed by AO without passing draft assessment order.The Tribunal noted in the first round of appeal, assessee's claim for capacity underutilization adjustment was allowed but the matter was remitted back to AO/TPO to examine nature of unallocated costs, the quantum relating to capacity underutilization and re-compute ALP after allowing the adjustments. However, in set aside proceedings, TPO repeated his original order as confirmed by DRP in the original proceedings and AO passed the final assessment order making same amount as addition. The Tribunal observed that as per the provisions of the Act, AO is bound to issue draft assessment order so that assessee can raise objections before the DRP as per the provisions of section 144C of the Act. In the instant case, AO had violated the mandatory provisions of the Act by passing the Final Assessment Order. It relied on the Delhi HC ruling in JCB India and held that assessee's interests were prejudicially affected since AO had not passed a draft assessment order. It was further clarified that even for the remand proceedings, the AO is bound to follow the provisions of the Act and accordingly, the final assessment order passed by AO in violation of Sec 144C was bad in law.

Srini Pharmaceuticals Private Limited vs. DCIT [TS-530-ITAT-2018(HYD)-TP] ITA No.971/Hyd/2017 dated 20.06.2018

1046. The Tribunal quashed assessment order proposing TP-adjustment issued in the name of the non-existent entity viz. Akzo Nobel Chemicals India Ltd which merged with AkzoNobel India Limited w.e.f. April 1,2011 as approved by Bombay HC order dated May 11, 2012. It noted that the AO and TPO were duly informed by assessee about the amalgamation and assessee had also pointed out that as per the scheme of amalgamation, the entire business had been transferred on a going concern basis to amalgamated company including income tax liabilities and obligations of assessee. It observed that the AO had raised specific query in this regard but had failed to take cognizance of the facts of present case and the submissions made during the course of assessment proceedings and TP proceedings and accordingly held that the assessment order in the name of non-existent entity was void.

Akzo Nobel Chemicals (India) Ltd. (merged with Akzo Nobel India Limited) v DCIT - TS-149-ITAT-2018(PUN)-TP - ITA No.1225/PUN/2015 dated 09.02.2018

1047. The Apex Court dismissed Revenue's SLP against Delhi High Court's decision setting aside final assessment order passed without first issuing draft assessment order as mandated by Sec 144C. The High Court noted that in the second round of proceedings pursuant to remand by the Tribunal, the TPO undertook fresh benchmarking exercise and proposed an adjustment and subsequently, AO added TP-adjustment in the final assessment order issued along with notice of demand u/s 156 without issue of a draft assessment order and relying on the decision of Turner International India it set aside the final assessment order.

DCIT v Control Risks India P Ltd - TS-170-SC-2018-TP - SPECIAL LEAVE PETITION (CIVIL) Diary No. 7090/2018 dated 16-03-2018

1048. The Tribunal allowed assessee's additional ground and quashed AO's reference to TPO. It held that as per CBDT Instruction 3/ 2003, the AO should have decided the issue of international transaction

himself instead of referring the matter to TPO as the quantum of international transaction (Rs.2.15cr) was below monetary limit of Rs.5cr. Relying on the Andhra Pradesh High Court ruling in Nayana P Dedhia wherein after considering Circular 3/2003 it was held that the authorities responsible for administration of the Act should observe and follow any such orders, instructions and directions of the board. Holding that the Instruction 3/2003 was mandatory upon tax authorities and had binding force, the Tribunal opined that assessment had become time barred as the reference made to TPO itself was not sustainable and the Assessing Officer should have passed Assessment Order within the prescribed time provided under the statute. Accordingly, it held that the order was bad in law.

Calance Software Pvt. Ltd vs. DCIT TS-196-ITAT-2018(DEL)-TP - I.T.A .No. 4363/DEL/2010 (A.Y 2006-07) dated 23.03.2018

1049. Where the assessee filed additional evidence before the DRP (which was not filed before TPO due to paucity of time) and the DRP denied to admit the evidence and simply confirmed the AO's order, the Tribunal, following the order of the co-ordinate bench in the earlier years remitted the matter to the AO / TPO to re adjudicate the matter in light of the additional evidence.

Wipro GE Healthcare Pvt. Ltd vs. DCIT - TS-204-ITAT-2018(Bang)-TP - IT(TP)A No.2525/Bang/2017 dated 23.03.2018

1050. The Tribunal upheld CIT(A)'s order admitting additional evidence filed by assessee. It noted that, during the TP proceedings, assessee could not substantiate to the satisfaction of TPO that it was carrying on manufacturing activity in respect of goods being exported to its AE and resultantly, TPO rejected assessee's bifurcation of trading activity in domestic sales and export sales. However, before CIT(A), assessee had filed manufacturing process chart, cost sheet, sample copies of invoices and photographs of the manufacturing activity, etc. to show that it was involved in manufacturing activity for export of manufactured/finished goods which was admitted by CIT(A). The Tribunal held that the documents placed on record by the assessee as additional evidence were vital for proper adjudication of the issue as in the present case. It also noted that the additional evidence filed by assessee were referred to AO/TPO for examination and TPO, after examining the documents, agreed that manufacturing activity was being carried out by assessee. The Tribunal thus concluded that there was due compliance of principles of natural justice and dismissed Revenue's appeal filed against CIT(A)'s admission of additional evidence.

ACIT Circle -6 vs Stauff India Pvt. Ltd-TS- 439-ITAT-2018(PUN)-TP- ITA Nos. 669 & 670/PUN/2014 dated 26.04.2018

1051. The Tribunal dismissed assessee's additional ground challenging AO's reference to TPO without giving assessee a hearing opportunity for AYs 2012-13 & 2013-14 absent assessee's objection regarding applicability of Chapter X provisions or that the transactions were not international transactions in the present case. The Tribunal referring to the Bombay High Court's Vodafone India ruling held that the prima facie view of the AO would be sufficient before referring the matter to the TPO for ALP determination. It noted that the assessee's case did not fall within the 3 situations enumerated under CBDT Instruction 15 of 2015 which mandates AO, as a jurisdictional requirement, to record his satisfaction that there was an income / potential income being affected on ALP-determination. However, it accepted assessee's adoption of TNMM (which was accepted by Revenue for the previous 3 years) over TPO's CUP-method for benchmarking the export of natural ingredient products to its AE absent cogent reasons given by TPO/DRP for departing from earlier years' approach. Observing that there was neither any change in facts nor in law nor TNMM was found to be totally wrong method, it held that there was no reason to deviate from the accepted practice. It observed that even with updated comparables margins, the assessee's PLI was higher than that of comparables and thus the transaction was at ALP.

Omni Active Health Technologies Ltd v DCIT – TS – 146- ITAT-2018 (Mum) – TP - ITA No 638 / 2017 dated 06.03.2018

1052. The Court dismissed assessee's appeal against the Tribunal's decision to remand the matter to the TPO for fresh examination of applicability of TP Provisions to assessee's sale of local STPI unit to its domestic group company. The Court noted that the Tribunal in the miscellaneous application had mentioned that the Global Transfer Agreement (GTA) was produced before the DRP but not considered and the same was not on record before AO/TPO. The Court opined that the Tribunal was correct in its action to restore the issue back to the DRP and concluded that the question proposed was subject matter of DRP's consideration and thus no question of law arose.

Thomson Reuters India Pvt Ltd vs ACIT 2(3)- TS-305-HC-2018(BOM)-TP- ITA No 1157 of 2015 dated 25.04.2018

1053. Where the DRP rejected the assessee's objections on the basis that there was a one day delay in filing, the Tribunal noting that the assessee filed its objections on April 11, 2016 as the prior day viz. April 10, 2016 was a Sunday, held that it could not be said that the objections filed before DRP were late. Accordingly, it held that the objections should have been accepted and decided upon by DRP on merits and restored the matter back to DRP for deciding the case. It rejected Revenue's contention that matter was to be remanded to the AO & not DRP and held that the ground before it was whether or not the DRP was justified in rejecting the objections filed by the assessee. In any case it noted that the directions of the DRP were binding on the AO.

Karuturi Global Ltd vs. ACIT - TS-465-ITAT-2018(Bang)-TP - IT(TP)A No.760/Bang/2018 dated 31.05.2018

1054. The Tribunal set aside the assessment order stating that the directions given by DRP-II had not been followed by the TPO. Further, the Tribunal noted that it would be reasonable to remand the matter to the AO/TPO with the direction to pass an order afresh in view of the directions of the DRP-II and objections raised by the assessee in application u/s 154 of the Act.

Quattro Business Support Service (P) Ltd vs ACIT Circle 20(2)- TS-392-ITAT-2018(DEL)-TP-ITA no 1905/Del/2015 dated 16.04.2018

1055. The Court upheld Tribunal's order accepting DRP's modification in quantum of risk adjustment and noted that the Tribunal directed that the AO had to amend the draft assessment order after the DRP's adjustment. The Court stated that the DRP's mechanism is an administrative and corrective process entitling the assessee to insist upon a second look in regard to the issues decided in the TPO's report. Therefore, its decisions are binding and a part of the decision making process of the AO

Separately, considering some merits in Revenue's submissions the Court admitted legal question in respect of the exclusion by Tribunal of Infosys BPO as a comparable (to assessee engaged in providing data management services to its AE's customers).

Pr. CIT vs. Symphony Marketing Solutions India Pvt. Ltd (now Merged with Genpact India)- TS-268-HC-2018(DEL)-TP- ITA No 413/2018 dated 11.04.2018

1056. A reference was made by the AO to the TPO u/s 92CA in regard to the international transaction of the assessee. The TPO recommended a transfer pricing adjustment of Rs. 2.57 crores and based on these recommendations, a draft assessment order was proposed by the AO on 29-12-2016. The assessee filed the objections before the DRP on 31-01-2017 which was rejected by the DRP on the ground that the assessee had made a delay of three days in filing the objections and the objections had to be filed within a period of 30 days from the passing of the draft assessment order. The Tribunal allowing the assessee's appeal, noted that the time limit for filing objections had expired on 28-01-2017 and in accordance to the date of filing objections, the assessment order should have been passed by 28-02-2017 but the same was passed only on 22-03-2017. Accordingly, the Court held that the assessment was done beyond the statutory time limit and was liable to be set aside.

Aalaya Jewel Industry (P.) Ltd. v. ACIT - [2018] 93 taxmann.com 23 (Chennai - Trib.) - IT APPEAL NOS. 970 AND 971 (MDS.) OF 2017 dated APRIL 5, 2018

1057. The Court allowed Daimler India's writ and quashed re-assessment proceedings initiated after the expiry of 4 years from the end of the relevant AY 2009-10, observing that it was a 'clear case of change of opinion' as assessee made full & true disclosure at the time of the original assessment. The AO sought to reopen the assessment on the basis that assessee had not disclosed the material fact that they had not commenced business during the year. However, it observed that the assessee had made disclosure about its business activity in Form 3CEB which was duly taken into account by TPO who specifically recorded in his order that commercial production proposed to start in year 2012. Regarding Revenue's contention that the AO would not look into Form 3CEB, it observed that there was sufficient indication to show that AO considered TPO's order and even assuming AO did not look into Form 3ECB, he was bound to look into the order passed by the TPO. Further, it rejected Revenue's contention that the assessee merely produced books of account before the AO and that there was no presumption that all the books were seen by the AO, and held that it was for the Assessing Officer to

arrive at a conclusion based on the materials produced and it was not for the assessee to suggest as to what conclusion should be arrived as the assessee is not expected to submit a draft assessment order. It distinguished Revenue's reliance on the decision of the Apex Court in ALA Firm noting that ALA was rendered in the context of the pre-amended Act and that the decision of the Apex Court in Kelvinator of India rendered in the context of the 1961 would apply.

Daimler India Commercial Vehicles Private Limited vs. DCIT - TS-62-HC-2018(MAD)-TP - W.P.No.43435 of 201 dated 30.01.2015

1058. The Apex Court allowed the assessee's appeal against the ruling of the Allahabad High Court and quashed the issuance of notice under Section 148 of the Act. The High Court dismissed assessee's writ and had upheld re-assessment based on material found during survey proceedings at the premises of the assessee's Indian subsidiary, based on which AO alleged the existence of Indian PE and had held that the examination of transactions by TPO during Indian subsidiary's TP assessment would not be a bar to initiate re-assessment. The Apex Court held that since the impugned notice for the reassessment was based only on the allegation that the assessee had PE in India, the notice could not be sustained once arm's length price procedure had been followed. It relied on co-ordinate bench ruling in E-Funds IT Solution Inc., wherein it was held that once arm's length principle has been satisfied, there could not be any further profit attributable to a person even if it had a PE in India.

HONDA MOTOR CO. LTD vs. ACIT - TS-174-SC-2018-TP - CIVIL APPEAL NO.(s). 2833 OF 2018 dated 14.03.2018

1059. The Tribunal quashed re-opening of assessment u/s148 as there was absence of any reason to believe that the assessee's income had escaped assessment. The Tribunal noted that AO had reopened assessment based on material found during search operations at another party, the material found was in relation to receipt of preference share capital and premium from non-resident shareholder. The AO had contended that the non-resident shareholder qualified as AE and because Form 3CEB was not filed, it became a valid reason for reopening.

The Tribunal stated that merely issuing of shares on premium was no reason for reopening u/s 147 in the absence of any adverse material. Further, it relied on HC judgement in case of Vodafone India Services and noted that reasons recorded nowhere formed a prima facie opinion about escapement of income and thus mere suspicion of AO was no ground for reopening as per HC ruling in case of Nivi Trading

Jay Maa Durga Buildtech Pvt Ltd vs DCIT CC 7(3)- TS-308-ITAT-2018(MUM)-TP ITA No 2720/Mum/2017 dated 17.04.2018

1060. The Tribunal quashed the re-assessment order passed u/s. 147 where reopening was done after four years on the basis that royalty payment should be treated as capital whereas the assessee had claimed it as revenue noting that the issue of royalty expenses had been examined in detail by the TPO in the original assessment proceeding and the assessee had explained the nature, purpose and even method of quantification of royalty expense and also submitted a copy of the agreement. Thus, the Tribunal held that material facts had been disclosed by the assessee which the Revenue had failed to take into consideration and further, observed that the reasons recorded did not indicate what material fact was not disclosed nor was there any whisper of such allegation in reasons recorded which is *sine qua non* for initiation of proceedings. Further, it also observed that the Tribunal had decided the treatment of royalty as revenue in favour of the assessee in the subsequent year and hence the re-assessment order could not be sustained. Thus, the Tribunal held that the re-assessment order passed u/s.147 was invalid.

Dy.CIT vs. DSM Sinochem Pharmaceuticals (P.) Ltd. [2018] 94 taxamnn.com 265 (Chandigarh-Trib) ITA No.1466(CHD) of 2017 and CO No.03 of 2018 dated 28.05.2018

1061. The assessee filed return of income declaring taxable income to be nil since it had no permanent establishment in India. On the basis of the disclosure of the management service fees (received by the assessee) in Form 3CEB filed by its AE, AO opined that management fee fell within ambit of section 9(1)(vii) as well as Article 12 of India Sweden Tax Treaty and thus reopened the assessment to tax the amount as fees for technical services. The assessee pointed out that the details of receipt of fees was disclosed in the Form 3CED as well as notes to return/ computation filed by it along with the return of income. The Tribunal discussed plethora of judicial precedents including Apex Court decision in Rajesh Jhaveri Stock Broker (291 ITR 500), Jurisdictional High Court decision in Khubchandani Healthparks

(384 ITR 322) and Delhi HC in Orient Craft Ltd (ITA No.555/2012) and held that for the AO to have reason to believe that income has escaped assessment, tangible material should be available with the AO to come to such a finding. Thus, the Tribunal held that reassessment proceedings were invalid in absence of such tangible material.

DY DIT v Sandvik AB [TS-460-ITAT-2018(Pun)-TP] ITA No.623/Pun/2014 dated 05.06.2018

1062. The High Court quashed the issuance of notice u/s. 148 of the Act on the ground that the AO failed to mention in the reasons recorded that the income that escaped assessment exceeded Rs.1,00,000 and since the AO initiated the reassessment after expiry of period of four years and before six years. Because the requisite condition under section 149(1)(b) of the Act was not met, further proceedings would be nullified. For the subject year, the AO in the original assessment proceeding had made a reference to the TPO in respect of assessee's international transaction and TPO passed a detailed order under Section 92CA(3) of the Act accepting the arm's length price reported by the assessee in respect of its international transactions (i.e. purchase transactions from AEs) and concluded that no adjustment was required in respect of the same. The assessee filed a writ petition in the court challenging the re-opening of the assessment. The Revenue argued that the assessee did not report the said transaction in Form 3CEB [which according to the Revenue was a deemed international transaction as per section 92B(2)]. However, it was pointed out by the assessee that the amendment by Finance Act, 2012 in section 147 providing for deemed escapement of income on account of assessee's failure to report international transaction or file Form 3CEB, was not applicable to the relevant AY 2006-07.Under these circumstances, the Court opined that without adverting to the other issues argued, the notice was quashed on failure of the mandatory requirement of section 149(1)(b) of the Act not being met and consequentially, the order passed under Section 152 as well as the notice issued under Section 143(2) of the Act was also quashed.

NOVO NORDISK INDIA PRIVATE LIMITED v DCIT [TS-501-HC-2018(KAR)-TP] WP No.21206/2014 (T-IT)

1063. The Tribunal held that the CIT was not justified in invoking jurisdiction u/s. 263 on the ground of non-filing of Form No.3CEB before AO and in directing the AO to examine other transactions where there was no reference to non-filing of Form 3CEB in his show cause notice. It noted that the CIT had not drawn any adverse inference on perusal of Form 3CEB, but merely surmised that there could be some more international transactions with AE and the report disclosing only one international transaction may not be correct. Accordingly, it held that jurisdiction under Section 263 could not be exercised on the basis of such vague reasons.

Pricewaterhouse Coopers LLP USA vs. CIT - TS-134-ITAT-2018(Kol)-TP - I.T.A No. 540/Kol/2015 dated 14.02.2018

1064. The Tribunal dismissed assessee's appeal against CIT's revision order u/s 263 as infructuous, noting that pursuant to the direction of the CIT (i.e. Direction to AO to make a reference to TPO in order to carry out necessary enquiry and obtain data to make examination for ALP-determination in relation to the assessee's domestic transaction with Techni Bharati Ltd and Tantia Construction Ltd) the TPO had passed order holding that no TP adjustment was warranted. Therefore, noting that the assessee had no grievance against TPO's order, it dismissed the appeal as infructuous.

Tantia TBL Joint Venture vs. Pr. CIT - TS-139-ITAT-2018(Kol)-TP] - I.T.A No. 78/Kol/2017 dated14-02-2018

1065. The Tribunal quashed revision order u/s 263 wherein the Pr.CIT held that AO's order u/s 143(3) was erroneous and prejudicial to the interest of Revenue since the AO did not refer the international transactions to TPO. Relying on the decision of the Court in Delhi Airport Metro Express and in DG Housing Projects (wherein it was held that it is incumbent for the PCIT to make some minimum independent enquiry to reach the conclusion that AO's order was erroneous and prejudicial to Revenue's interest) it observed that the PCIT ignored submissions and contentions put forth by assessee that a reference in this case was non-mandatory as neither of the stipulated conditions laid out by Instruction No. 3 of 2016 were met. It dismissed the Revenue's argument that the mismatch between the remittance declared in Income Tax Return and that reported in Form 15CA (detected under CASS) justified the referral of the case to TPO since it involved international transactions and held that reporting under Form 15CA was not limited / was not particularly in respect of payment made

to associated enterprise. Accordingly, it held that the AO was not bound to make a reference to the TPO.

Amira Pure Foods Pvt. Ltd. vs Pr.CIT - TS-1053-ITAT-2017(DEL)-TP - ITA No. 3205/DEL/2017 dated 29.11.2017

1066. Where the rectification order u/s.154 enhancing income was passed by the TPO who made final adjustment with respect to provision of management support services, provision for technical services and purchase of parts without giving assessee an opportunity of being heard, the Tribunal quashed the said order and held that the rectification order was void-ab-initio and contrary to provision of sec 153(4). It relied on the Apex Court decision in Chockalingam and Meyyapan wherein it was held that principles of natural justice had to be followed by authorities.

ACIT vs Humboldt Wedag India Pvt. Ltd- (2018) 53 CCH 0135 Del Trib ITA No.5097/Del/2011 dated 28.06.2018

Penalty

1067. The Court upheld the Tribunal Order deleting penalty levied u/s. 271(1)(c) for failure to consider internal comparable while applying CUP-method for ALP-determination. Noting that the Tribunal in quantum proceedings had rejected assessee's stand that the internal isolated/sole unrelated third-party transaction could not be taken as a comparable and should be excluded. However, in penalty proceedings, Tribunal held that assessee was able to discharge its onus in terms of Explanation 7 to Sec 271(1)(c) and show that its stand in not taking into consideration the internal transaction was in good faith and it had acted with due diligence. The Court noted that Tribunal's findings on the question of explanation, bona fides and due diligence were findings of fact after accepting assessee's justification for exclusion of internal comparable for 2 reasons - firstly, the transaction was of low value in comparison with transactions with AEs and secondly, it was a single transaction, whereas transactions with AE were continuous and based upon long-term business relationship. Thus, the Court dismissed the Revenue's appeal.

Pr CIT vs Sinosteel India Pvt Ltd [TS-833-HC-2018(DEL)-TP] ITA No.825/2018 dated 03.08.2018

1068. Where the assessee (engaged in trading of diamonds) failed to submit details called for by the TPO vis-à-vis segmental profitability separately from AE and non-AE segment, the TPO levied a penalty u/s. 271G of th Act which was deleted by the CIT(A) considering the nature of the diamond trade and the reasonable cause showed by the assessee. On appeal, the Tribunal dismissed Revenue's appeal relying on the coordinate bench decision in D. Navinchandra Exports where in an identical case Sec 271G penalty was deleted citing practical difficulty in information submission for diamond merchants. Noting that since the facts of the assessee's case were similar to the said decision, it thus upheld the CIT(A)'s order deleting the penalty.

ACIT vs Dilipkumar V Lakhi [TS-816-ITAT-2018(Mum)-TP] IT (TP) A No.2142/Mum/2017 dated 02.08.2018

1069. The Tribunal deleted the penalty u/s. 271(1)(c) noting that the TP adjustment on interest on loan in quantum proceedings was deleted (quantum addition had been deleted, penalty proceedings would not sustain) and though adjustment with respect to reimbursement of insurance expenses by AE was made, however the assessee had disclosed the amount of insurance expenses claimed by it ,thus, there was no concealment or furnishing of inaccurate particulars.

Dishman Pharmaceuticals & Chemicals Ltd vs ACIT [TS-1148-ITAT-2018(Ahd)-TP] ITA No.15/AHD/2014 dated 26.09.2018

1070. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s order deleting penalty u/s. 271(1)(c) noting that the Assessing Officer had not specified the charge for which penalty was being levied i.e. 'concealment of income' Or 'furnishing inaccurate particulars of income'. It also observed that apart from provisions of section 271(1)(c), Explanation 7 to section 271(1)(c) mandated that for levying penalty in respect of any addition or disallowance to international transactions, penalty can be levied for either of the two defaults i.e. 'concealment' or 'furnishing inaccurate particulars' of income thus, the AO's order suffered from incurable defect of ambiguity.

ITO vs Carraro Technologies India Pvt Ltd [TS-1097-ITAT-2018(PUN)-TP] ITA No.2776/Pun/2016 dated 07.09.2018

1071. The Tribunal restored the issue of penalty u/s 271(1)(c) on disallowance of enhancedAMP expenses to the file of the AO for both years noting that relevant issue in quantum appeal was remitted by ITAT to the files of AO/TPO relying on Special Bench ruling in assessee's own case for subsequent year. It noted assessee's contention to delete the penalty as the very basis for the quantum addition had been modified by the ITAT to keep in line with the order of ITAT Special Bench in assessee's own case for assessment year 2007-08 and the matter was restored. However, the Tribunal held that interest of justice would be served if if the penalties for both the years on the quantum enhancement pertaining to AMP expenses were also restored to the file of the AO/TPO.

LG Electronics India (P) Ltd vs CIT(A) [TS-1006-ITAT-2018(DEL)-TP] ITA No.7895-96/Del/2017 dated 07.09.2018

1072. The Tribunal deleted the penalty levied u/s. 271(1)(c) for concealment noting that the Tribunal in the quantum appeal had restored the ALP adjustment on technical support services provided by the assessee to AE and the order giving effect to Tribunal's findings had revealed that assessee's income had been assessed at Rs.(-) 1,21,79,918/-as against Rs.3,07,12,369/- originally assessed by AO. The Tribunal, in the quantum appeal, held that TPO had erred in rejecting the segmental approach of assessee on basis that business development expenses and other expenses (incurred by assessee as an entrepreneur for its business with non-AE) were not apportioned to its AE segment when TPO has clearly accepted the segmental approach in preceding year and subsequent year.

Stanley Consultant India Pvt Ltd vs DCIT [TS-1162-ITAT-2018(DEL)-TP] ITA No.4082/Del/2016 dated 07.09.2018

1073. The Court allowed the assessee's writ petition and set aside the TPO's order leving penalty u/s. 271G (for failure to furnish documents under s.92D) as it was wholly without jurisdiction since the event of default occurred in March 2014 which was before the amendment in sec 271G conferring jurisdiction on TPO (earlierAO had the power) to levy penalty u/s.271G. The assessee had not complied with the notice to produce some documents under section 92D(3) in support of its case and, for said purpose, a notice was issued on 18-2-2014,giving time up to 25-3-2014. A second notice was issued by TPO alleging default and proposing penalty under section 271G. The said notice was contested by the assessee and it eventually culminated in impugned order dated 22-6-2015 whereby TPO imposed penalty under section 271G. The assessee filed instant petition contending that since jurisdiction and authority to impose penalty under section 271G was with AO till 1-10-2014, impugned penalty order passed on basis of showcause notice issued prior to that date was invalid.

Ericsson India (P). Limited vs Add. CIT [2018] 98 taxmann.com 395 (Delhi) W.P. (C) NO. 7435 OF 2018 dated 25.09.2018

1074. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order deleting penalty levied u/s. 271(1)(c) noting that addition in quantum proceedings was sustained on account of choice of PLI (assessee had applied OP/CE which was rejected by TPO to apply OP/TC while the CIT(A) directed adoption OP/Total Sales which was remitted back by the Tribunal and TPO directed adoption of OP/Total sales in remand proceedings.) and use of only single year data (as against multiple year data used by the assessee) which were contentious and debatable issues. It observed that since TP issues were at nascent stage in AY 2003-04, use of multiple year data vs single year data was also a debatable issue. Thus, it dismissed Revenue's appeal.

ACIT vs Kyungshin Industrial Motherson Ltd [TS-1137-ITAT-2018(DEL)-TP] ITA No.3377/Del/2014 dated 17.10.2018

1075. Where the CIT(A) had given a categorical finding that quantum addition on enhancement of ALP for benchmarking of export transaction of assessee to its AE by TPO applying CUP had to be deleted, and accepted assessee's adoption of TNMM and its TP documentation and functional economic analysis and accordingly deleted the penalty levied u/s.271AA by AO for not maintaining documents as per clause(e) to clause (m) of sub-rule(1) of 10D A, the Tribunal dismissed Revenue's appeal and held the CIT(A) had rightly held that penalty did not survive .

Asst CITvs Manashin Di Hatta Ltd. [TS-1403-ITAT-2018(Del)-TP] (ITA No.5667/Del/2015 and ITA No.2374/Del/2016 dated 29.10.2018

1076. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of penalty u/s 271(1)(c) in respect of TP-adjustment in case of assessee (engaged in the business ofsoftware development) for AY 2007-

08 noting that co-ordinate bench in assessee's own case for same AY had deleted quantum addition. Further, it also dismissed Revenue's appeal against CIT(A)'s deletion of Sec 271(1)(c) penalty for AY 2008-09 noting that at the time of initiation of penalty proceedings, AO had not mentioned the limb (i.e. for furnishing inaccurate particulars or concealment of income) for which penalty proceedings were initiated while at the time of levy of penalty, AO had imposed penalty by stating that assessee concealed particulars of its income, which suggested the existence of ambiguity with reference to applicability of specific limb. It relied on the HC decision in Samson Perinchery wherein the penalty order was quashed on ground that AO failed to record valid and legally sustainable satisfaction (whether concealment or furnishing inaccurate particulars) in the assessment order while initiating the penalty proceedings.

ITO vs Magic Software Enterprises India Pvt. Ltd [TS-1271-ITAT-2018(Pun)-TP] ITA No.2447 and 2448 /Pun/2018 dated 15.11.2018

1077. The assessee company entered into international transaction of purchase, export of rough diamonds and polished diamonds with its AE and applied TNMM at entity level. The TPO after examining the details and documents available on record, had called upon the assessee to submit the segmental profitability for AE transactions and non-AE transactions. However, as the assessee had not maintained separate books of account for AE and non-AE segments, it expressed its inability to furnish the details in the manner the same were called for by the TPO. In the absence of the segmental breakup of the AE and non-AE transactions, the TPO concluded that it was prevented from benchmarking various transactions and imposed penalty under section 271G, @ 2 per cent of the aggregate value of the international transactions in the hands of the assessee. The CIT(A) deleted the said penalty on the ground that assessee could show reasonable cause on account of its nature of trade. The Tribunal upheld CIT(A)'s order and accepted his observations that as the assessee had purchased a mix of imported rough and polished diamonds from AEs and non-AEs, and had also sold/exported rough and polished diamonds to AEs as well as the non-AEs, the Profit & loss account of the assessee reflected a mixture of purchases and sales both from the AEs and the non-AEs. The view of the CIT(A) was to be agreed that when the rough/polished diamonds were traded on lot wise basis, it was difficult to identify and say whether a polished diamond came out of a particular lot of rough diamonds or the other and/or out of the polished diamonds purchased locally by the assessee. The export bills of the cut and polished diamonds exported to the AEs and the non-AEs revealed that the diamonds of varying size, quality, colour and carat weight were exported as was evident from the price per carat charged in each bill, and similar would have been the position in respect of cut and polished diamonds purchased and sold locally and/or purchased from abroad but sold locally. In the backdrop of the aforesaid peculiar nature of the trade of the assessee, it could safely or rather inescapably be concluded that it was extremely difficult to identify which rough diamond got converted into which polished diamond.

Dy.CIT vs Interjewel Pvt. Ltd [TS-1226-ITAT-2018(Mum)-TP] ITA No. 5628/Mum/2016 dated 01.11.2018

1078. The Tribunal deleted penalty u/s. 271(1) (c) levied for TP adjustment on interest on loans advanced to its AE noting that notice initiating penalty proceedings was uncertain as to whether the assesse had concealed his income or furnished inaccurate particulars of income. It accepted assessee's contention that that in the absence of any specific charge against the assessee in the penalty notice and subsequently in the penalty order where AO throughout the body of the order stated that it was a case of concealment and/or furnishing inaccurate particulars of income and provisions of explanation 7 to section 271(1)(c) are applicable, consequent penalty imposed by AO was illegal and bad in law. It noted that assessee had advanced interest free advances to its AEs to meet working capital requirements and had substantiated by detailed TP study on why it had charged "NIL" Interest.The TPO had applied domestic PLR of 14.88% which was restricted to Libor+200% by Tribunal and was further restricted to 0.79% by High Court. Thus, it was nothing but a case of difference of opinion and minor difference of less than 1% of ALP could not be the basis for levy of penalty.

Vaibhav Global Ltd. vs ACIT [TS-1322-ITAT-2018-(JPR)-TP] ITA No.730 and 731 /JP/2018 dated 19.12.2018

1079. Where AO levied penalty u/s 271G of the Act on the plea that assessee (engaged as a trader and manufacturer of diamonds) failed to furnish information or documents in respect of segmental account relating to transaction made with AEs and non-AEs for applying CUP to determine ALP of international transactions as required by TPO under Rule 10D(1) and Rule 10D(3), the Tribunal upheld CIT(A)'s

order deleting penalty u/s.271G wherein it had noted that it was difficult in diamond industry due to nature of business where invoicing was done for only diamonds for half carat or more and price was indicated separately, it was difficult to determine value of diamonds weighing less except a estimate and thus, applying internal CUP was not practical. In the preceding years, TNMM applied by assessee had been accepted and no adjustment had been made. Further, substantial compliance was made by the assessee who had furnished particulars on basis of which AO had arrived at determination of ALP of transaction and when there was no adjustment made in the ALP, penalty could not be sustained.

DCIT. vs Laxmi Diamond P. Ltd [TS-1363-ITAT-2018-(MUM)-TP] ITA No.2643 /Mum/2018 dated 27.12.2018

1080. The Tribunal dismissed Revenue's appeal against CIT(A)'s deletion of Sec 271(1)(c) penalty noting that the AO had levied penalty based on TP-addition of Rs.4.55cr and the Tribunal in quantum proceedings had restored the matter back to AO/TPO, pursuant to which the AO passed a fresh assessment order making part addition of Rs.1.32cr. Accordingly, it held that the original assessment order would no longer survive in the eye of Law and consequently the penalty imposed in connection therewith by the A.O would also not survive. Further, it noted that the AO had also initiated fresh penalty proceedings and accordingly dismissed the Department's appeal as infructuous.

DCIT vs. Actis Advisers Pvt. Ltd - TS-3-ITAT-2018(DEL)-TP - ITA.No.4819/Del./2014 dated 05.01.2018

1081. The Tribunal deleted penalty levied u/s 271(1)(b) for non-submission of information as required by TPO vide show cause notice dated December 4, 2012 noting that in response to letter dated December 26, 2012 giving final hearing opportunity, assessee submitted that it had not received the show cause notice dated December 4, 2012 and therefore no appearance could be marked. It accepted assessee's submission that a new receptionist had taken delivery of the said notice but failed to understand its importance and did not pass it on a concerned person dealing with income tax matters and held that there was considerable cogency in assessee's submissions and that the reason for non-compliance of the notice in dispute was genuine and justified.

MAHASHIAN DI HATTI (P) Ltd vs. ACIT - TS-80-ITAT-2018(DEL)-TP - I.T.A. No. 1491/DEL/2016 dated 01.02.2018

1082. Where the assessee was unable to fully comply with the notice issued by the TPO (on 12.07.2011) but made a part compliance on 16.08.2011 and furnished the balance documentation on 14.10.2011, the Court dismissed Revenue's appeal and upheld CIT(A)'s order deleting penalty u/s 271G. Considering that the lower appellate authorities rendered concurrent findings and, moreover, the assessee had partly complied with the notice, it held that no substantial question of law arose from the Revenue's appeal.

Pr. CIT vs. MMTC Ltd - TS-76-HC-2018(DEL)-TP - ITA 164/2018 dated 12.02.2018

1083. Where the AO levied penalty on the assessee on account of the TP adjustment (imputed mark-up of reimbursement of expenses), the Tribunal noted that the co-ordinate bench in the quantum hearing held that no mark-up on reimbursement of expenses incurred by assessee before incorporation of NDTV Network Plc, UK but upheld charge of mark-up on reimbursements after incorporation at the rate adopted by TPO. Accordingly, it restored the issue to the file of the AO to be decided afresh in accordance with law after considering the outcome of the order to be passed on the quantum additions in accordance with the directions given in aforesaid order.

New Delhi Television Ltd. vs. DCIT - TS-101-ITAT-2018(DEL)-TP

1084. The Court dismissed Revenue's appeal against Tribunal order deleting penalty u/s 271(1)(c) in respect of TP-adjustment noting that the issue based on which TP adjustment was made was debatable and rejected Revenue's contention that the Tribunal ignored the mandate of Explanation 7 to section 271(1)(c) [which deems amount disallowed u/s 92C(4) to be income in respect of which particulars have been concealed or inaccurate particulars have been furnished]. Accordingly, it dismissed Revenue's appeal observing that no question of law arose for its consideration.

Pr. CIT vs. Global Vantedge Pvt Ltd - TS-177-HC-2018(DEL)-TP - ITA 316/2018 dated 19.03.2018
Pr. CIT vs. GLOBAL VANTEDGE Pvt Ltd - TS-193-HC-2018(DEL)-TP - ITA 332/2018 dated 20.03.2018

1085. The Tribunal deleted penalty u/s 271(1)(c) in respect of TP addition on international transaction relying upon co-ordinate bench judgement in case of Jeetmal Choraria vs ACIT on the ground that the show cause notice for penalty did not specify the charge against the assessee as to whether it was for concealing particulars of Income or for furnishing of inaccurate particulars of income.

DCIT Central Circle 4(4) vs M/s Electrosteel Castings Ltd- TS-372-ITAT-2018(Kol)-TP- ITA No 406-410/Kol/2016 dated 18.04.2018

1086. The Tribunal deleted the penalty u/s 271(1) (c.) and noted that the assessee had voluntarily surrendered the TP-adjustment on the ground that DRP had already accepted the operating margin of assessee. It further held that conducting of TP-analysis on the basis of comparables was based on objective material before assessee/ TPO/ DRP, the selection of comparables by the assessee and its further acceptance and rejection by TPO did not amount to concealment of facts. The Tribunal referred to various precedents including SC rulings in Sir Shadilal Sugar & General Mills Ltd and Suresh Chandra Mittal to hold that concealment penalty provisions were not attracted in case of voluntary surrender made in order to buy peace and avoid litigation. Finally, relying on SC ruling in Reliance Petro Products, it held that mere rejection of assessee's claim did not automatically attract penalty u/s 271(1) (c.)

Sequence Design (I) Pvt Ltd vs ITO Ward 8(1) – TS-282-ITAT-2018(DEL)-TP- ITA No 1756/Del/2016 dated 12.04.2018

1087. The Tribunal upheld CIT(A)'s deletion of Sec 271AA penalty imposed by AO for failure to disclose international transaction pertaining to receipt of share capital from AE. The AO had imposed penalty on the basis that the transaction should have been disclosed in Form 3CEB as it was an international transaction post amendment to Sec 92B vide Finance Act 2012 with retrospective effect from April 1, 2002. The Tribunal noted that Form 3CEB was furnished on September 28, 2011 and held that issue of share capital as an international transaction as on the date of filing Form 3CEB for the above year was not required to be disclosed and the law had been amended with retrospective effect, which clearly showed that the issue had no clarity prior to amendment. Further, noting that Sec 271AA was also subject to provisions of Sec 273B, it concluded that there was a reasonable cause for not disclosing the above transaction as an international transaction in the above form and confirmed CIT(A)'s order deleting penalty.

ITO ward 18(2) vs Nihon Parkerizing (India) Pvt Ltd- TS-242-ITAT-2018(Del)-TP- ITA No 6409/Del/2015 dated 10.04.2018

1088. The Tribunal upheld CIT(A)'s order confirming levy of penalty u/s 271AA and 271G for failure to maintain & furnish information/ documents u/s 92D by the assessee. It noted that on perusal of Form 3CEB, it was evident that data with respect to the comparability, whether external or internal, were not available on record nor made available by assessee to TPO contrary to the provisions of Sec 92D(1) which mandates that an assessee who has entered into international transaction necessarily has to maintain information and documents prescribed in Rule 10D. In compliance with the said section, the assessee is additionally required to keep a record of the analysis performed to evaluate comparability of uncontrolled transactions with assessee's controlled international transactions. The assessee had also not been able to demonstrate "reasonable cause" which is an exception to the levy of the penalty under section 273B. Thus, the Tribunal concluded that levy of penalty by the lower authoritities was justified.

India Pistons Ltd vs. ACIT [TS-627-ITAT-2018(CHNY)-TP] ITA Nos.2207 and 2208/Chny/2017

1089. The Tribunal set aside the order of CIT(A) and deleted the penalty levied under the provisions of section 271(1) of the Act. It held that both of the issues involved viz. use of multiple year data and assessee's claim that benefit under proviso to Sec 92C(2) is a standard deduction were highly debatable issues at the relevant time. Regarding the use of multiple year data by the assessee, the Tribunal held that the issue when the assessee was filing the return of income was highly contentious and law was yet evolving and hence the claim made by the assessee was a bonafide one. Further, reference was made to clarification given vide the Memorandum to the Finance Bill, 2012 that claim of 5% benefit was not a standard deduction and noted that different courts had taken a different views.

Giesecke and Devrient [I] Pvt Ltd vs DCIT [TS-479-ITAT-2018(DEL)-TP] ITA No.1458/Del/2017 dated 26.06.2018

Stay

1090. The Tribunal granted extension of the stay of outstanding demand to the assessee subject to a payment of 25 Lakhs for a period of six months or appeal disposal whichever was earlier observing that the TP issue was covered in the assessee's favour by its own case. Further, it directed the assessee not to seek adjournment of case from hearing without just and reasonable cause and its failure to adhere to the any of the condition would result in automatic vacation of stay extension granted.
Alcatel Lucent India Ltd vs ACIT [TS-1017-ITAT-2018(DEL)-TP] SA 474/Del/2018 dated 21.08.2018

1091. The Tribunal granted the stay of outstanding demand to the assessee for 6 months or disposal of appeal, whichever is earlier. Noting that TP adjustment arose on account of benchmarking of assessee's software development services and the assessee had a prima facie case on merits granted the stay. It directed the assessee not to seek adjournment which would get automatically vacated if it does not satisfy the condition and fixed the hearing of the appeal on 18.10.2018
NXP India Pvt Ltd (Formerly known as Freescale Semiconductor India Pvt. Ltd.) vs ACIT [TS-891-ITAT-2018(DEL)-TP] SA No.548/Del/2018 dated 03.08.2018

1092. The Tribunal granted extension of stay of outstanding demand of Rs.33,82,76,230/- of 3 months from the date of the stay order or till disposal of appeal whichever is earlier subject to further payment of Rs.2 crores. Further, it directed the assessee not to seek adjournment of case from hearing without just and reasonable cause and failure of the condition would lead to automatic vacation of stay. It also noted that the assessee had not met the conditions as per the earlier stay order which fact was not brought to its notice when the extension for stay was earlier heard. It had directed the assessee vide its earlier stay order to make a payment of Rs.5 crores in addition to the adjustment of refunds of Rs.5.89 crores by the Department against which the assessee had made only a payment of Rs.3.5 crores and therefore, in its opinion the assessee did not deserve a lenient view. Further, it rejected the assessee's justification that it had paid lesser amount in view of refund determined by AO for another year which was agreed to be adjusted against the demand payable in light of Revenue's claim that the AO did not agree to any such thing. The Tribunal observed that neither the AO nor assessee can change the specific directions of Tribunal given in earlier stay order and if assessee wanted such change, it should have approached the bench for that purpose.
Subex Ltd vs Dy. CIT [TS-1011-ITAT-2018(Bang)-TP] SP No. 201/Bang/2018 dated 24.08.2018

1093. The Tribunal granted stay of outstanding demand of Rs.5,07,86,930/-to the assessee for a period of 6 months or till appeal disposal, whichever is earlier, subject to payment of Rs.50L by September 15, 2018. Noting that demand arose due to TP-adjustment in respect of assessee's provision of software development services and notional interest adjustment on outstanding AE-receivables which were not looked into by AO/TPO and accordingly, opined that the instant case was a fit case for granting stay since the assessee had prima facie case and fixed the hearing for the main appeal.
Pitney Bowes Software India Pvt. Ltd Vs. Addl. CIT(A) [TS-831-ITAT-2018(DEL)-TP] S. A NO. 532/Del/2018 dated 03.08.2018

1094. The Tribunal granted stay of demand to the assessee subject to partial payment of Rs.21 crores in 4 instalments as against total outstanding demand of Rs.183 crores noting that principal additions during these years pertained to AMP adjustment and disallowance of Sec. 40(a)(ia). It observed that though there were a number of judgments in favour of the assessee on AMP issue, a detailed hearing would be required to determine whether there existed international transaction and whether the AMP expenditure had resulted in tangible benefit to its AEs, further the DRP had deleted similar addition on AMP issue for AY 2011-12 and the Revenue was in appeal before the Tribunal. It also noted that there was no

financial hardship or urgent recovery proceedings initiated by AO for outstanding demand, thus, arrived at a figure Rs. 21 Cr payment after considering totality of circumstances and taking into account total outstanding demand other than interest. It directed assessee to file paper books / documents after supplying the same to the Revenue and take no further undue adjournment and clarified that in case any of the terms or conditions of stay were violated, the stay granted would be vacated, noting that appeal hearing were scheduled on 16.10.2018 for AY 2012-13 and on 25.09.2018 for AY 2013-14.
Acer India P Ltd vs Dy. CIT [TS-1057-ITAT-2018(Bang)-TP] SP No.215 and 216/Bang/2018 dated 11.09.2018

1095. The Tribunal granted extension of stay of outstanding demand to the assessee for a period of three months from the date of this order or till the disposal of this appeal whichever was earlier noting that Tribunal had earlier granted stay (dated 09.03.2018) for 6 months subject to assessee depositing Rs.35 lacs on or before 25.03.2018 and considered assessee's submission that complying with the conditions, payment was made on 22.03.2018 and that hearing of the concerned appeal was in progress, partly heard and fixed for further hearing on October 3, 2018. It further directed the assessee to not seek adjournment without reasonable cause, clarified that if so, it would result in automatic vacation of stay extension granted.
Essilor India Pvt Ltd vs DCIT [TS-1078-ITAT-2018(Bang)-TP] SP No.227/Bang/2018 dated 28.09.2018

1096. The Tribunal granted extension of stay of outstanding demand for AY 2011-12 and AY 2013-14 for a period of three months from the date of this order or till the disposal of this appeal whichever was earlieraccepting that delay was not attributable to assessee noting that appeal for subject year was heard and released(fixed for hearing) while appeal for AY 2013-14 was heard and order awaited. It considered assessee's submission that for AY 2011-12, amount of demand outstanding was same as in earlier petition dated 02.03.2018 and for AY 2013-14, directions given by co-ordinate bench in earlier stay petition dated 09.03.2018 had been complied with. It directed the assessee not to seek adjournment in course of hearing of the appeals without justifiable reasons and in case of assessee seeking an adjournment, the stay granted by the order would stand vacated automatically.
CGI Information Systems Consultants Pvt Ltd vs DCIT [TS-1194-ITAT-2018(Bang)-TP] SP Nos. 221 and 222/Bang/2018 dated 28.09.2018

1097. The Tribunal extended stay of outstanding demand to assessee for a period of 6 months or till disposal of appeal whichever was earlier noting that delay in appeal could not be attributed to the assessee. Itfollowed the Delhi HC decision in Pepsi Foods (P) Ltd and Bom HC in Narang Overseas Pvt Ltd. wherein it was held that if delay was not attributable to assessee, stay had to be extended. Further, it directed assessee not to seek adjournment without justifiable reasons.
Novozymes South Asea Private Ltd vs Dy.CIT [TS-1210-ITAT-2018(Bang)-TP] SA Nos.251 to 253/Bang/2018 dated 26.10.2018

1098. The AO had imposed a stay on penalty subject to deposit of 20% of penalty. The Court granted ad-interim relief and prevented Revenue from further recovery of penalty imposed u/s 271(1)(c) on the assessee until it heard Revenue in detail as to what should be the correct approach whether to stay the penalty fully or subject to conditions noting that HC had admitted the question of law against quantum addition and also prevented Revenue from recovering 80% tax arising out of such additions then a question arose as to whether the Revenue could proceed to recover the penalty, which was admittedly relatable to such additions.
Vodafone India Services Pvt Ltd vs UOI [TS-1174-HC -2018(Guj)-TP] R/Special Civil Application No.17033 of 2018 dated 01.11.2018

1099. The Tribunal extended stay of outstanding demand for AY 2007-08 and AY 2008-09 for 180 days from the date of the order or till disposal of appeals whichever was earlier noting that delay in disposal of the said appeals was not on account of any lapse on the part of the assessee, and as there was no change in the material facts and circumstances vis-à-vis the material facts and circumstances when the stay was originally granted in this case. In the assessee's case, a special bench was to be constituted on the question whether provisions of section 92 could be invoked in a situation in which income of assessee

was eligible for tax exemption or tax holiday vide Tribunal's order dated 20 June 2016 and the hearing was not fixed even thereafter. In view of the above, it also formulated guidelines for expeditious hearing of cases referred to Special Bench members and also with respect to Third member cases viz. a) Wherever Special Benches are constituted, the Special Benches shall, as far as possible, commence hearing within 120 days of the benches being constituted. In the cases in which the respective bench is not in a position to commence hearing of the matter within 120 days for any specific reason, e.g. directions of the Hon'ble Court above or blocking the hearing awaiting decision of a higher judicial forum, it shall record the reasons, in brief, for delay in commencement for hearing b) It is only in exceptional circumstances that the adjournment may be granted, at the instance of the either party, in Special Benches and Third Member cases. Even when adjournment is granted, it shall not be generally granted beyond 30 days.

Doshi Accounting Services Pvt Ltd vs Dy. CIT[TS-1312-ITAT-2018-(Ahd)-TP] SP Nos.68 and 69/Ahd/2018 ITA No.1285 /Ahd/2012 and 1822 /Ahd/2014 dated 26.12.2018

1100. The assessee filed a writ petition on ground that Tribunal while disposing off the stay application, had failed to look into the material placed before it and given a reason that assessee had not contended before the TPO that TP adjustment be restricted to international transaction of AE and further the assessee had not taken plea of financial hardship. It was assessee's contention that a) in its reply to SCN that assessee had taken a plea that TP adjustment should be restricted to proportion of AE transactions vis-à-vis total turnover b) assessee had furnished AE and non-AE segmental accounts c) finding by Tribunal that no financial hardship was pleaded was erroneous as assessee had specifically taken a plea before Tribunal. The Court allowed assessee's writ petition subject to deposit of 40% of demand noting that Tribunal had passed the order contrary to material on record and thus being a non-speaking, one stood vitiated by non-application of mind.

Rittal India Pvt Ltd. vs ACIT [TS-1425-HC-2018-(Kar)-TP] WP Nos.53218/2018 dated 12.12.2018

1101. The Tribunal deleted the penalty levied u/s 271(1)(c) on TP-adjustment in case of assessee providing IT/software development services to its AE noting that the manner in which arm's length price was determined and TP adjustment was made by the TPO, was unsustainable in law and consequently there could not be any question of furnishing of inaccurate particulars of income or any concealment of income. The TP-adjustment was made on account of under-utilization of capacity for assessee (a captive service provider) due to insufficient orders given by AE and the AO was of the view that AE should have compensated assessee for such under-utilization. The Tribunal observed that the TPO had not carried out any benchmarking exercise but had presumed that assessee would have earned margin of 24% if there was full utilization of capacity and the TPO's method of determining of arm's length price was unknown under the transfer pricing regulations either under the Income Tax Act or under the Rules. It also noted that TPO should have identified comparables in similar line and determined their capacity utilization for making suitable adjustment and further observed that the AO had granted Sec 10A benefit on TP-adjustment of around Rs.2.21 crores contrary to proviso of Sec 92CA(4) and income was nil so there was no question of any tax sought to be evaded to the extent of the amount of adjustment and accordingly, penalty could not be levied.

Royal & Sun Alliance IT Solutions (India) Pvt Ltd vs DCIT [TS-607-ITAT-2018(DEL)-TP] ITA No.5611/Del/2014 dated 10.07.2018

1102. The Court held that no substantial question of law arose against the Tribunal's order wherein it was challenged that the Tribunal extending stay exceeded period of 365 days (combined period of stay) was contrary to the second and third proviso of sec.254(2A). It relied on the judgment of Voice Telesystem (which had ruled on provision of sec 35(C2A) of the Excise Act,1944 parimateria to sec 254(2A) of the Income-tax Act) wherein it was held that interim protection could continue beyond 365 days in deserving cases where appeal could not be decided by the Tribunal due to pressure of pendency of cases and delay in disposal of the appeal was not attributable to the assessee.

Pr.CIT vs Comverse Network Systems India Pvt. Ltd. [TS-1085-HC -2018 (Pun &Haryana)] ITA-118-2018 dated 31.07.2018

1103. The Court dismissed Revenue's appeal challenging Tribunal's power to grant stay of demand beyond 365 days. It rejected Revenue's contention that the extension of stay granted was beyond the statutory

power of the Tribunal and held that as per the decision of the Court in Pepsi Foods Pvt. Ltd. v. Asstt. Commissioner of Income Tax(2015) 376 ITR 87 (Del.). where delay in disposing appeal was not attributable to the assessee, the Tribunal had power to grant extension of stay beyond 365 days in deserving cases. Noting that the Tribunal applied the said decision while extending stay of demand, it held that no question of law arose from the Department's appeal.
Pr CIT v Pepsi Foods Pvt Ltd - TS-53-HC-2018(DEL)-TP – ITA No 88 / 2018 dated 29.01.2018

1104. The Tribunal noting that while computing the TP adjustment in the instant case, the TPO had made an adjustment on both AE and non-AE transactions, accepted assessee's contention that the TP adjustment was to be confined to AE transactions only and accordingly granted stay of demand arising for a period of 6 months or till the disposal of appeal, whichever is earlier, with a condition to pay Rs.10 lakhs on or before January 31, 2018. It noted that out of a total demand of 1.28 crore, the assessee had already paid 52.74 lakhs and therefore granted conditional stay to the assessee. It also directed the assessee not to take any undue adjournment without any justifiable reason and further cooperate in early disposal of the appeal.
IKA India P. Ltd vs. DCIT - TS-50-ITAT-2018(Bang)-TP - Stay petition No.1/Bang/2018 dated 19.01.2018

1105. The Tribunal granted stay of outstanding demand of Rs.7cr to the assessee upto March 31, 2018, subject to payment of Rs. 1.5cr on before January 31, 2018 noting that the demand arose due to TP-adjustment made on consideration received for sale of shares in ForgePro to its AE and the consideration received by the assessee was determined to be at par with the FMV of shares which determined by experts in the field and that the valuation of the shares conducted by a field expert could not be disturbed by the TPO. It also noted that the TPO himself accepted that transaction took place in uncontrolled situation and accordingly held that there was strong prima facie case in assessee's favour. Since the assessee was running its business operation on overdraft facility and therefore, liquid position of the assessee did not permit the payment of disputed tax liability, it held that the demand ought to be stayed. It granted the assessee an out of turn hearing and clarified that the stay order would cease to operate, in case assessee-sought adjournment from hearing of the appeal any without any just and reasonable cause.
Wevin Pvt. Ltd v ITO - TS-26-ITAT-2018(Bang)-TP - S.P.No.297/Bang/2017 dated 01/01/2018

1106. The Tribunal granted stay of outstanding demand of Rs.1.16 crore for a period of 3 months or till appeal disposal, whichever was earlier, subject to payment of Rs.50 lakhs on or before November 30, 2017. Noting that assessee had opening cash in hand of Rs. 502.79 lacs in November 2017, the Tribunal directed the assessee to make a part payment of the outstanding disputed demand. The Tribunal further clarified that the assessee should not seek any adjournment without justifiable reasons and if the assessee did so, the stay granted vide this order would get vacated automatically. It also preponed the hearing date from January 16, 2018 to December 12, 2017.
CAE India Pvt. Limited vs. ITO - TS-1075-ITAT-2017(Bang)-TP – SP No 218/Bang/2017 dated 10.11:2017

1107. The Court disposed of the assessee's writ petition in respect of Tribunal's refusal to grant interim orders for suspending the tax demand arising due to TP adjustment in respect of AMP expenses for AY 2013-14. It noted assessee's reliance on Valvoline Cummins ruling to contend that AMP-expenses could not be characterized as an international transaction as well as Revenue's reliance on the decision of Luxottica India to state that AMP expenses could no longer be kept from ALP fixation and opined that the Tribunal's direction to pay 20% was entirely justified. It clarified that subject to petitioner's compliance, the interim order till date in respect of the tax demand would continue to bind the parties.
Pepsico India Holdings Pvt. Ltd vs. ACIT - [TS-1064-HC-2017(DEL)-TP - W .P.(C)11454/2017 dated W .P.(C)11454/2017

1108. The Court dismissed Revenue's writ challenging the stay order of the Tribunal with 'exemplary' cost of Rs. 50,000 each, to be paid personally by 2 Principal CITs & an ACIT, for their irresponsible & unfair behaviour in filing a writ petition just for the sake of proving their 'fictional desires'. The Court observed that a total demand of Rs. 22.17 cr was raised on assessee-company pursuant to AMP adjustments

made by DRP, against which assessee secured an interim stay order from ITAT, subject to further payment of Rs. 2 cr. (in addition to Rs.3.32 cr. already paid by it). It held that the entire demand raised by the authorities was prima facie not even sustainable considering that the controversy was apparently covered in assessee's favour by various Delhi High Court and Bengaluru ITAT rulings and that the grant of absolute stay would have been more appropriate in the circumstances. It observed that the approach of the tax department in filing Writ Petition seemed as an attempt to prove their superior wisdom over the wisdom of Tribunal and accordingly reprimanded the 'dogged approach & 'unholy desire' to multiply litigations in Constitutional Courts. It observed that the approach of the Revenue showed a lack of judicial discipline and hierarchical discipline.

Epson India Pvt. Ltd vs. ACIT - TS-14-HC-2018(KAR)-TP - WRIT PETITION No.12913/2017 (T-IT) dated 09.01.2018

1109. The Tribunal granted stay of demand to the extent of 50% of outstanding demand while directing payment/adjustment of refunds for balance amount in respect of AY 2013-14 noting the assessee's argument that demand arose on account of TP-adjustment and that it had a strong prima facie case as the Revenue had wrongly rejected CUP method and considered comparables with substantial related party transactions. Observing that the assessee a refund of Rs. 18.50 lakhs and Rs 26.22 lakhs was due to the assessee for AY 2010-11 and 2015-16, adjustment of which would result in recovery of more than 50% of the demand, it directed the AO to verify the claim of the assessee of refunds and adjust the same against the outstanding demand. Further, it directed that if such adjustment was found to be less than 50% of the outstanding demand, the assessee was to deposit the amount to the extent of such shortfall by 15th January, 2018.

Atlas Healthcare Software (India) Ltd v ACIT - TS-1060-ITAT-2017(Kol)-TP - S.A. No. 134/Kol/2017 dated 22.12.2017

1110. The Tribunal directed the lifting of attachment of bank account in case of assessee till the disposal of appeal noting that due to attachment of bank account assessee was not able to continue its operations and was experiencing severe cash crunch and liquidity position and was not able to make any further payment of tax. Perusing the copy of ITAT order for earler years, it observed that the issues involving T.P. adjustment, prima facie appeared to be covered in favour of the assessee and if the effect to the earlier order of the Tribunal in assessee's own case was given, then, no demand may arise at all. Accordingly, it fixed the appeal hearing on January 15, 2018 as the case was claimed to be a covered matter.

Planet Online P Ltd v ACIT - TS-1059-ITAT-2017(HYD)-TP - S.A. No.167/Hyd/2017 dated 27.12.2017

1111. The Tribunal granted stay of outstanding demand of Rs.225.92cr to Wipro GE Healthcare noting that the demand arose due to TP-adjustment in respect of royalty, distribution and trading, software and support services and other corporate tax additions. It observed that the TPO suggested TP-adjustment even on non-AE transactions and in respect of corporate tax additions which were restored back to AO for de-novo adjudication in earlier years. Clarifying that assessee should not seek adjournment from appeal hearing without just & reasonable cause, it directed the revenue authorities not to initiate coercive steps for collection of demand.

Wipro GE Healthcare Pvt. Ltd vs. DCIT - TS-1056-ITAT-2017(Bang)-TP - SP No.275/Bang/2017 dated 15/12/2017

1112. The Tribunal granted stay of outstanding demand for AYs 2009-10, 2011-12 and 2013-14 to the assessee noting that the TP-adjustment arose due to TPO's selection of comparables. It noted that the assessee had already discharged 53% of the demand for AY 2009-10 and 45% of the demand for AY 2011-12 and accordingly stayed the balance demand. For AY 2013-14 noting that only 19% of the outstanding demand had been paid, it directed the assessee to pay an additional amount of Rs.2crore. Further, it granted the assessee an early hearing on February 5, 2018 and clarified that the stay order would cease to operate, in case the assessee sought an adjournment without any just and reasonable cause.

Finastra Software Solutions (India) Pvt. Ltd (formerly Misys Software Solutions India Pvt. Ltd.) vs. DCIT - TS-55-ITAT-2018(Bang)-TP dated Sty Petn.No.12/Bang/2018, Sty Petn.No.13/Bang/2018 & Sty Petn.No.14/Bang/2018 dated 18/01/2018

1113. The Tribunal granted the assessee stay of outstanding demand noting that the demand arose inter alia due to TP-adjustments (on royalty, distribution & trading, software & support services), which was proposed on both AE as well as non-AE transactions (therefore impliedly accepting assessee's contention that it had a prima facie good case). It directed the assessee not to seek adjournment from appeal hearing without just and reasonable cause and clarified that the stay would be vacated if the assessee sought without just and reasonable cause.
Wipro GE Healthcare Pvt. Ltd vs. DCIT - TS-1104-ITAT-2017(Bang)-TP - SP No.275/Bang/2017 dated 15/12/2017

1114. The Tribunal granted the assesssee stay of outstanding demand for a period of 6 months or till appeal disposal, whichever was earlier, noting that the demand arose due to TP-adjustment on account of distribution fee paid to AE which was incorrectly benchmarked by TPO by using comparables of royalty payments and that there was a mistake in the workings made by TPO, which, if rectified, would reduce the demand substantially. Considering that the co-ordinate bench had stayed collection of similar outstanding demand for previous AY, the Tribunal held that the balance of convenience was in favour of granting full stay to the assessee. It granted the assessee an early hearing and directed it not to seek adjournment on that date without reasonable cause, failing which, the stay would be subject to review by the Bench hearing the appeal.
MSM Discovery Private Ltd. vs. DCIT - TS-73-ITAT-2018(Mum)-TP - S.A. No. 570/Mum/2017 dated t 12.01.2018

1115. The Tribunal granted stay of demand to the assessee till March 31, 2018 or till appeal disposal, whichever was earlier noting that the demand arose due to TP-adjustment made in respect of assessee's international transactions. Considering that the assessee had already discharged 50% of disputed tax, the Tribunal granted stay and clarified that the stay was subject to condition that the assessee shall not seek adjournment of the case from hearing without any just and reasonable cause.
Citrix R&D India Pvt. Ltd. vs. ACIT - TS-91-ITAT-2018(Bang)-TP - SP No.15/Bang/2018 dated 07/02/2018

1116. The Tribunal relying on the decisions of the Delhi HC ruling in Pepsi Foods, Bombay HC ruling in Narang Overseas, co-ordinate bench ruling in SAP Labs extended stay of demand to the assessee noting that existence of all conditions for grant of stay has already been considered by the Tribunal at the time of granting original stay and no new condition could be imposed while extending the stay. It held that when the delay in disposal of appeal was not attributable to the assessee, stay had to be extended.
Manipal Global Education Services P. Ltd. vs. DCIT - TS-100-ITAT-2018(Bang)-TP - SP No.24/Bang/2018 dated 05/02/2018

1117. The Tribunal granted stay of outstanding demand up to March 31, 2018, subject to payment of Rs.15 lakhs noting that the demand arose due to transfer pricing adjustment involving selection of comparables. Considering assessee's submission that it has a prima facie case on merits and Revenue could not controvert the submissions, it opined that the ends of justice would be met if the assessee is directed to pay Rs.15 lakhs on or before 01/03/2018 and the balance was to be stayed.
Enchanting Travels Pvt. Ltd vs. ITO - TS-98-ITAT-2018(Bang)-TP - SP No.16/Bang/2018 dated 05/02/2018

1118. The Tribunal granted extension of stay to the assessee considering that the appeals were already heard and orders were awaited.
Mercedes Benz Research & Development India Pvt. Ltd. vs. ACIT - TS-108-ITAT-2018(Bang)-TP - SP No.26, 27 & 28/Bang/2018 dated 05/02/2018

1119. The Tribunal granted extension of stay of outstanding demand to the assessee noting that the stay was earlier granted till January 31, 2018 and there was no change in circumstances. Relying on HC rulings

in Pepsi Foods and Narang Overseas wherein it was held that when the delay in disposal of appeal is not attributable to the assessee, stay had to be extended.
Vodafone Mobile Services Ltd. vs. DCIT - TS-114-ITAT-2018(Bang)-TP Stay Petn.Nos.18 & 19/Bang/2018 dated 05/02/2018

1120. The Tribunal granted the assessee stay of outstanding demand for a period of 90 days subject to part payment of Rs.25 lakhs observing that the assessee had not been able to prove its financial difficulty.
Cook India Medical Devices Pvt Ltd vs. DCIT - TS-141-ITAT-2018(CHNY)-TP - Stay Petition No.30/Mds/2018 dated 02.02.2018

1121. The Tribunal extended stay of outstanding demand till March 31, 2018 or appeal disposal whichever was earlier relying upon Bombay HC ruling in Narang Overseas Private Limited and Bengaluru ITAT ruling in SAP Labs India Pvt. Ltd wherein it was held that when the delay in appeal disposal was not attributable to assessee, stay was to be extended. It directed the assessee not to seek adjournment of the case from hearing without any reasonable and just cause.
The Himalaya Drug Company v DCIT - TS-142-ITAT-2018(Bang)-TP - Stay Petn.No.35/B/2018 dated 09/02/2018

1122. The Tribunal granted stay of outstanding demand for a period of 6 months or till the date of passing of the order, whichever was earlier, subject to payment of 10% of outstanding demand noting that out of a total demand of Rs.1.96 crores (which arose due to TPO's treatment of AMP-expenditure as a separate international transaction), assessee had already paid a sum of Rs.1.36 crores.
Edwards Lifesciences (India) Private Limited - TS-165-ITAT-2018(Mum)-TP - SA No.82/Mum/2018 dated 20/02/2018

1123. The Tribunal granted stay of demand to the assessee for a period of 6 months or till appeal disposal, whichever was earlier, noting that in the earlier round of proceedings, stay was granted by Tribunal subject to deposit of a certain amount and thereafter order on merits was passed by Tribunal remanding major issue of AMP-expenses back to TPO. Subsequently, the assessee approached High Court which sent the matter back to Tribunal for consideration and decision. Accordingly, the Tribunal observed that the assesse had come back to square one, being, the position when the stay was granted by the Tribunal in the first round subject to certain payments. Considering that the assessee had complied with the direction given by the Tribunal in the first round of proceedings for grant of stay, it granted stay to the assessee.
MSD Pharmaceuticals (P) Ltd. vs. DCIT - TS-198-ITAT-2018(DEL)-TP - S.A. No.135/Del/2018 - 06.03.2018

1124. The Tribunal granted stay of recovery of demand for180 days to the assessee against the demand raised due to TP adjustment, taking into consideration the fact that prima facie the matter appeared to be in favour of assessee and the refunds due to the assessee for subsequent previous assessment years were pending with the department.
M/s eBizNET Solution Pvt. Ltd vs ACIT Circle 17(1) Hyerabad- TS-403-ITAT-2018(HYD)-TP- SA no 38/HYD/2018 dated 23.04.2018

1125. The Tribunal granted extension of stay of demand relying on Pepsi Foods (P) Ltd vs ACIT Delhi HC, Narang Overseas Pvt Ltd vs ITAT and co-ordinate bench ruling in case of M/s. SAP Labs India Pvt Ltd and stated that when the delay in dispos**al** of appeal was not attributable to the assessee, the stay had to be extended.
Finastra Software Solutions (India) P Ltd. Vs ACIT Circle 4(1)(2) Banglore- TS-368-ITAT-2018(Bang)-TP- SP Nos. 128&129/Bang/2018 dated 18.04.2018

1126. The Tribunal granted further extension of stay of demand relying on Delhi HC ruling in case of Pepsi Foods, Bombay HC ruling of Narang Overseas and co-ordinate bench ruling in case of SAP Labs India and stated that stay should be extended when delay in disposing the appeal was not attributable to the assessee.

M/s. Epson India Pvt Ltd vs ACIT Circle 2(1)(2)-TS-314-ITAT-2018(Bang)-TP- SP no 115/Bang/2018 dated 18.04.2018

1127. The Tribunal granted stay of outstanding demand to the assessee till 31.05.18 or disposal of matter, whichever being earlier, Tribunal noted that the appeal was heard before by the bench, thus granting of stay is considerable.
M/s. Manipal Global Education Services P Ltd vs DCIT CC 2(2) Bengaluru- TS-291-ITAT-2018(Bang)-TP- SP No. 120/Bang/2018

1128. The Tribunal granted partial stay to assessee in respect of demand raised on account of adjustment made vis-a vis advertisement, marketing and promotion (AMP) expenses. The Tribunal noted that 10% of the substantive demand raised for one of the AY was already paid and, opined that assessee had made a prima facie case by stating that if directions in Tribunal's Special Bench ruling in LG Electronics case were followed, no further collection of tax would arise. Further**,** for other AY's concerned Tribunal granted stay of demand for a period of 180 days or till the disposal of the appeal whichever is earlier, subject to payment of 5% of demand within 30 days of receipt of the order.
Further, the Tribunal condemned Revenue's action of stalling hearing on main appeal by seeking adjournments and further, expressed displeasure over AO's act of requesting refund adjustment permission while keeping DR completely in the dark, and resulting in waste of precious time of the **C**ourt. The Tribunal directed Registry to send a copy of the order to the concerned Pr. CCIT, to take necessary action against the contradicting conduct of its Revenue Officers.
M/s. GlaxoSmithKline Consumer Healthcare Ltd vs ACIT Circle 4(1)- TS-235-ITAT-2018(Chandi)-TP- SA No 4/Chd/2017, 2 & 3/Chd/2018 dated 02.04.2018

1129. The Court dismissed Revenue's appeal against Tribunal's order after following co-ordinate bench judgement in assessee's own case for previous AY, wherein the Court had upheld Tribunal's power to grant stay beyond 365 days after relying on SC ruling in Kumar Cotton Mills Pvt. Ltd. and coordinate bench ruling in Voice Telesystem Ltd. rendered in the context of similar Sec. 35C(2A) under the Central Excise Act, which had ruled that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and the delay in disposal of the appeal is not attributable to the assessee in any manner, the interim protection can continue beyond 365 days in deserving cases.
PCIT vs Carrier Air Conditioning & Refrigeration Ltd- TS-227-HC-2018(P&H)-TP- ITA No 4/2018 dated 04.04.2018
PCIT vs BMW India Pvt Ltd- TS-226-HC-2018(P&H)-TP ITA 11/2018 dated 04.04.2018

1130. The Court dismissed Revenue's writ petition against the Single Bench's order (imposed costs of Rs.50,000 on Revenue) dismissing its writ petition filed against Tribunal's order granting stay to assessee in respect of demand raised on account of TP adjustment made on advertisement, marketing and promotion (AMP) expenses noting that the ITAT-order appeared to be fair, reasonable and not prejudicial to Revenue, particularly when the appeal filed by assessee was set down for final hearing. The Tribunal had observed that the said issue was a debatable issue and had directed the assessee to make a payment of 2 crores over and above the 15% of the demand already paid for the stay to be granted. The Court waived the costs imposed by the single bench but observed that the Department had been filing such petitions without any reason.
CIT vs. Epson India Pvt Ltd [TS-296-HC-2018(KAR)-TP] Writ Appeal No.770 of 2018 dated 24.04.2018

1131. The Tribunal granted stay on recovery of outstanding demand for a period of 6 months or till disposal of appeal whichever is earlier subject to payment of Rs.8 crores noting that demand arose due to TP adjustment and corporate tax issues. In respect of TP adjustment, it observed that assessee had

invoked MAP mechanism, application of which was pending disposal, and assessee had submitted bank guarantee pursuant to CBDT Circular in respect of demand attributable to TP-additions. It fixed the hearing of the appeal and directed the assessee not to seek an adjournment without just and reasonable causes.

Novozymes South Asia Pvt. Ltd. vs. Jt.CIT [TS-289-ITAT-2018(Bang)-TP] SP Nos.116 to 118/Bang/2018 dated 13.04.2018

1132. The Tribunal granted stay of outstanding demand of Rs.2.10cr to Mobily Infotech India for a period of six months or till appeal disposal, whichever is earlier, subject to payment of Rs.15 lakhs on or before May 31, 2018 for AY 2012-13. The Tribunal noted that demand inter alia arose due to TP-adjustment on account of assessee's international transactions with AE and assessee challenged determination of ALP on the ground that comparables chosen by the TPO were not proper and that turnover filter was not properly applied.

Mobily Infotech India Pvt. Ltd vs. DCIT [TS-380-ITAT-2018(Bang)-TP] SP No. 145/Bang/2018 dated 18.05.2018

1133. The Tribunal granted extension of the stay of outstanding demand to the assessee till 31.08.2018 or appeal disposal whichever was earlier. The extension of stay was granted relying on the HC Rulings in Pepsi Foods and Narang Overseas wherein it was held that if delay in disposal of appeal was not attributable to the assessee and there was no changed circumstances from the day of earlier stay, the stay should be extended. Further, it directed the assessee not to seek adjournment without just and reasonable cause and its failure to adhere to the aforesaid condition would result in automatic vacation of stay extension granted.

NXP Semiconductors India Pvt. Ltd. vs. DCIT [TS-529-ITAT-2018(Bang)-TP] S.P. Nos. 167&168/Bang/2018 (In IT (TP) A Nos.306/Bang/2016 and 692/Bang/2017 dated 18.06.2018

1134. The Tribunal granted further extension of stay of outstanding demand from 31.05.2018 for a period of six months or disposal of appeal whichever was earlier since the delay in appeal disposal was not attributable to assessee.

Manipal Global Education Services P Ltd vs. DCIT [TS-725-ITAT-2018(Bang)-TP] SA No. 181/Bang/2018 in IT(TP) A No.236/Bang/2015 dated 26.06.2018

1135. The Tribunal granted extension of stay of demand to the assessee subject to further payment of Rs. 50 lakhs on or before July 15, 2018 relying on Delhi HC ruling in Pepsi Foods P Ltd. and Bombay HC ruling in Narang Overseas Private Ltd wherein it was held that extension of stay should be granted if delay in disposal of appeal was not attributed to the assessee and there was no changed circumstance from earlier stay order. It directed that the assessee should not seek adjournment without just and reasonable cause, otherwise stay would stand vacated.

Inteva Product India Automotive Pvt Ltd [TS-869-ITAT-2018(Bang)-TP] SP No.180/Bang/2018 dated 22.06.2018

1136. The Tribunal granted extension of stay on recovery of outstanding demand of Rs.5.91cr to the assessee till September 30, 2018 or appeal disposal, whichever is earlier, subject to payment of Rs.50 lakhs on or before July 15, 2018. The Tribunal clarified that the assessee should not seek any adjournment without justifiable reasons and if the assessee did so, the stay granted vide the order would get vacated automatically.

M/s Adamas Buiders Pvt Ltd vs ACIT [TS-952-ITAT-2018(Bang)-TP] SP No.184/Bang/2018 dated 22.06.2018

Others

1137. The assessee had entered into international transactions for provision of engineering services with its AE. It had made a suo-moto TP adjustment to the value of international transactions of provision of engineering services and towards reimbursement of cost of assets and the same was included in the profit of the undertaking as well as the total turnover for purpose of sec 10A but had not included the same in export turnover as the proceeds were not in foreign currency. The AO denied the benefit of sec 10A on the ground that TP adjustment did not have a nexus with the main business of the undertaking

of assessee. The CIT(A) deleted the addition made by the AO. The Tribunal dismissed Revenue's appeal noting that the issue was covered in favour by the coordinate bench decision in assessee's own case relying wherein the claim for deduction u/s.10A of the Act in respect of suo-moto TP adjustment made by the assessee, was allowed relying on ruling of iGate Global Solutions Ltd. (subsequently affirmed by Karnataka HC) wherein it was held that the proviso to sec 92(4) of the Act would be applicable only on enhanced income on reading of the Memo Explaining the Provisions of Finance Bill, 2006 as well as from the literal meaning of the word 'enhanced' as it was clear that if income increased, as a result of computation of ALP by the TPO, then such increase was not to be considered for deduction under section 10A.. Thus, it accepted the assessee's contention that proviso to section 92C(4) was not applicable in its case as it had on its own determined its total income in the return of income havingregard to the arm's length price.

DCIT vs G S Engineering & Constructions India Pvt Ltd [TS-1169-ITAT-2018(DEL)-TP] ITA No.3980/Del/2015 dated 29.10.2018

1138. The Tribunal set aside CIT(A)'s order and held that assessee was entitled to deduction u/s.10B of the Act on additional income offered on account of suo-moto TP adjustment made on export of services relying on coordinate bench decision of I Gate Global Solutions Ltd. (subsequently affirmed by HC) wherein it was clarified that proviso to s 92C(4) (which inter alia provides that no deduction u/s.10A shall be allowed in respect of amount of income by which total income of assessee had been enhanced by TPO after computation of ALP of international transactions) would not apply to suo-moto adjustment and held that assessee was entitled to deduction under section 10A in respect of income declared in the return of income on the basis of computation of ALP asassessee himself had computed the ALP (voluntarily offered the additional income to tax) and it was not a case of enhancement of income due to determination of ALP by the TPO.

QX KPO Services Pvt Ltd vs ITO[TS-1300-ITAT-2018-(MUM)-TP] ITA No.2043 /Ahd/2014 dated 03.12.2018

1139. The Court directed Revenue to revoke provisional attachment order u/s. 281B and release refund of Rs. 655.67 cr. due to the assessee within a week's time of assessee furnishing a substituted bank guarantee securing such amount. Pursuant to attachment of refund amount u/s. 281B towards likely demands for AYs 2012-13 to 2014-15, assessee had volunteered to furnish a bank guarantee to cover the amount, but the same was not acted upon by the AO in view of the guarantees expiring in August 2018. The Court disposed off petition, ordering the release of refund to the assessee, conditional on assessee extending the validity of bank guarantees till March 31, 2019.In light of Revenue's apprehension over the impending merger between assessee and Idea Cellular likely to result in losses for the new entity, the Court directed that the bank guarantee should also clearly spell out that not only the assessee but also its successor would be bound to honour the instrument.

Vodafone Mobile Services Ltd. vs ACIT [TS-510-HC-2018(DEL)-TP] WP(C) 2732/2018 and CM Appl 11100/2018 dated 04.07.2018

1140. The assessee, engaged in providing software development services to its AE, claimed deduction u/s 10A. The TPO rejected the TP study and made a TP adjustment. The Tribunal decided the issue in favour of assessee after accepting the assessee's contention on various issues like use of earlier year data, allowability of 5% benefit as standard deduction, flat comparability adjustment towards risk and working capital, exclusion of companies with related party transactions and so on. In addition to the aforesaid issues, the Tribunal also accepted the assessee's contention that in view of the CBDT Circular 14/2001 (which is binding upon the TPO) since the TPO had failed to demonstrate that the assessee had manipulated prices to shift profits outside India, the TP provisions could not be applied in the assessee's case which was entitled to tax holiday benefit u/s 10A. On appeal by the Revenue, the Court accepted Revenue's contention that the aforesaid observation of the Tribunal with respect to applicability of TP provisions was contrary to proviso to section 92C(4). However, it opined that the said observation was "a mere obiter" which had not caused prejudice to the Revenue because as far as the computation of income was concerned, the AO had not given any benefit of section 10A with respect to the TP adjustment. Further, with respect to the other questions raised by the Revenue, the Court relied on the decision in case of Softbrands India P. Ltd and dismissed Revenue's appeal.

CIT, ACIT vs Philips Software Centre Pvt. Ltd [TS-701-HC-2018(KAR)-TP] ITA No.49/2009 dated 10.07.2018

1141. The Court dismissed Revenue's appeal against the Tribunal's order deleting deleting disallowance of Sec 10A deduction based on TPO's determination of ALP. The DRP had invoked provisions of Sec 10A(7) r.w.s 80IA(10) and held that assessee has shown more profits from AE transaction in order to claim higher Sec 10A benefit, based on ALP arrived by TPO. The Tribunal relied on co-ordinate bench ruling in Visual Graphics wherein it was held that AO has to independently come to the conclusion that assessee had entered into transactions with AE to claim higher Sec 10A deduction, but in the instant no such exercise was carried out by AO. The Court noted that no substantial question of law arose as the Revenue has not brought anything on record to controvert the findings of the Tribunal.
CIT, ACIT vs M PACT TECHNOLOGY SERVICES PVT LTD [TS-720-HC-2018(KAR)-TP] ITA No.228/2013 dated 11.07.2018

1142. Relying on the decision of the co-ordinate bench in the assessee's own case (TS-822-ITAT-2017(DEL)-TP) for the earlier year, the Tribunal rejected the assessee's contention that provisions of Sec 92 should not have been invoked for making TP-addition as assessee's income had to be computed under section 44 of the Act as it was engaged in general insurance business and held that the provisions in Section 44 of the Act do not substitute the provisions contained under Section 92 which deal with the determination of ALP arising out of an international transaction. Regarding Revenue's appeal against CIT(A) order deleting transfer pricing addition, following the earlier year's decision it remitted the ALP computation to the AO/TPO noting that the co-ordinate bench had set aside the CIT(A)'s order observing that the CIT(A) failed to appreciate that the impugned international transaction was more in the nature of a short-term assignment of employees and not receipt of consultancy services as claimed by assessee. It further noted that the Tribunal in the earlier year had observed that the CIT(A)'s deletion of TP-addition was in complete disregard of TPO's elaborate findings for rejecting assessee's adoption of CUP-method as the consulting firms whose rates were cited in the TP study report were only quotations and not actual rates. However, it also rejected TPO's approach of computing ALP under TNMM by considering cost of seconding an employee to assessee in another year to compute daily charge-out rates. Accordingly, it held that the matter required fresh consideration.
ACIT vs. Max New York Life Insurance Company Ltd - TS-822-ITAT-2017(DEL)-TP - ITA No.1768/Del/2011 dated 17.10.2017

1143. The Tribunal held that assessee was entitled to deduction under Section 10A of the Act on additional income offered on account of suo-moto TP-adjustment. The TPO/ CIT(A) disallowed the deduction u/s 10A as assessee failed to bring into country the export proceeds in foreign exchange as contemplated in Explanation 2 to Sec 10A in respect of such additional income offered. The Tribunal held that the additional income was artificial/ notional income computed u/s 92(1) and it was neither export turnover nor total turnover but in fact profits of business u/s 10A(4), and therefore held that in the absence of it being offered as export turnover or total turnover, there could not be any condition for getting foreign exchange to India. Further noting that additional income was offered to tax as business profits, it held that the suo moto adjustment would form part of profits of business and thus would have to be taken into consideration while computing the deduction under section 10A(4) of the Act. The Tribunal relied on the on Bangalore Tribunal ruling in iGate Global Solutions allowing Sec 10A deduction in respect of suo-moto TP-adjustment (subsequently confirmed by Karnataka HC) and held that the Mumbai Tribunal ruling in Deloitte Consulting India taking a contrary view would not stand in view of ratio laid down by Karnataka High Court. It clarified that in the absence of any contrary decision of the jurisdictional High Court, the decision of the non-jurisdictional high court would prevail. Further, it held that the proviso to Sec 92C(4) [which inter alia provides that no deduction u/s 10A shall be allowed in respect of such amount of income, by which the total income of assessee had been enhanced after computation of ALP of international transactions] would not apply to suo moto adjustments.
Approva Systems Pvt. Ltd - TS-167-ITAT-2018(PUN)-TP - ITA No.1051/PUN/2015 dated 12.03.2018

1144. The point of dispute before the Tribunal was on the issue of Profits attributable to PE. The Tribunal ruled that no further income could be attributable to assessee's Permanent Establishment in India as it was proved that transactions between assessee and its AE were at Arm's length price. The Tribunal relied on co-ordinate bench decision in assessee's own case which had in turn relied on SC decision in

case of CIT vs E-funds I.T Solutions Inc, where the assessee's contention that income was not chargeable in India as they had paid arm's length remuneration/ commission to its agent in India had been accepted.

ADIT (IT) 2(2) vs M/s Zee TV USA Inc- TS-311-ITAT-2018(Mum)-TP-ITA No 5608/MUM/2008 dated 23.04.2018

1145. The Tribunal laid down law on applicability of TP-provisions to admitted bogus/sham transaction revolving around assessee's purchase of drilling Rig from AE on hire purchase basis andits further sale back to the AE. The Tribunal noted that, u/s 92 if an international transaction is proved to be not genuine, the transfer pricing provisions are not triggered and held that only a declared and accepted genuine international transaction can be subjected to the TP regulations.

Further, regarding TP-adjustment under Payment of instalments of principal under hire purchase agreement, the Tribunal considered assessee's claim that since no deduction was claimed by assessee in the tax computation in respect of the principal amount, no addition could have been made by taking Nil-ALP of the transaction.

Further, the Tribunal deleted TP-adjustment on repossession of Rig by its AE (i.e. sale back by assessee, represented by the amount covered under 'Deletion' column in the Schedule of Fixed Assets of the assessee]. It stated that Revenue's Nil-ALP determination on this transaction would have the effect of the assessee claiming higher depreciation and putting the assessee in a more advantageous position as against the non-application of the transfer pricing provisions. Consequently, it held that that the transfer pricing provisions need not be given effect to as per the mandate of sub-section (3) of section 92.

M/s. Mitchell Drilling India Pvt Ltd vs DCIT Circle 6(1)- TS-252-ITAT-2018(Del)-TP- ITA No 5921/Del/2010 dated 11.04.2018

1146. The Tribunal dismissed the Department's appeal and upheld CIT(A)'s order allowing Sec 10A deduction on voluntary TP-adjustment made by assessee. It noted that the assessee did not have any business other than the unit which was eligible for Sec 10A. The voluntary TP adjustment was made through Form 3CEB in respect of international transaction involving export of engineering design services and assessee excluded the voluntary TP-adjustment from export turnover in line with computation mechanism prescribed in Sec 10A.

Tribunal relied on coordinate bench ruling in the case of iGate Global Solutions wherein it was held that assessee was eligible for Sec 10A deduction in respect of income declared in the return of income on the basis of computation of ALP. In the present case, noting that assessee had disclosed income based on computed ALP, the Tribunal opined that, there was no enhancement of income due to determination of arm's length price, by the TPO. Hence, it held, that assessee was entitled to deduction under section 10A in respect of income based on computation of arm's length price.

ACIT Circle 12(1) vs M/s. GS Engineering & Construction P Ltd- TS-278-ITAT-2018 (Del)-TP- ITA No. 3956/Del/2014 dated 05.04.2018

1147. The Tribunal upheld CIT(A)'s deletion of Rs.2.88cr addition made by AO by invoking Sec 10A(7) r.w.s. 80IA(10) in case of assessee (engaged in the business of design engineering services) noting that though TPO accepted the margin shown by assessee at 29.14% to be at ALP, the AO held that ordinary profit earned by assessee was actually 12.55% (as against 29.14% declared in TP-report) pursuant to which he disallowed alleged excess profit on the surmise that assessee had earned higher margins than the mean margins earned by comparables selected by assessee. Relying on the decision of the co-ordinate bench in Honeywell Automation India ruling [TS-82-ITAT-2015(PUN)] wherein in an identical situation it was held that that fact that assessee had higher operating margins as compared to the comparables chosen in its TP study was not a valid ground to invoke Sec 10A(7) r.w.s. 80IA(10), it dismissed Revenue's appeal.

ACIT vs. Faurecia Interior Systems India Pvt. Ltd - TS-386-ITAT-2018(PUN)-TP - ITA No.1722 /PUN/2015 dated 24.05.2018

1148. The Tribunal remitted the matter back to DRP since it rejected the admission of additional evidences filed by assessee to support its contention that its foreign AE could be selected as tested party for benchmarking raw material import transaction for AY 2008-09. The DRP had declined to admit the additional evidence filed on August 22,2012 and cited non-availability of adequate time to verify the additional evidence as the case would be time-barred on September 30, 2012. However, DRP had called for remand report from AO which was received on September 17, 2012. Upon perusal of the provisions of Sec 144C and DRP Rules, the Tribunal held that the proceedings before DRP are continuation of the proceedings before AO and further held that DRP had powers to admit, consider and adjudicate on the additional evidence. Thus, the Tribunal set aside the DRP order and remitted issue of determination of ALP of import transactions to DRP after considering the additional evidence.
Bekaert Industries Pvt Ltd vs. ACIT [TS-349-ITAT-2018(PUN)-TP] ITA No.2376/Pun/2012 dated 14.05.2018

1149. The Tribunal upheld CIT(A)'s order deleting the disallowance of depreciation since the disallowance related to the adjustment made by the TPO which had been deleted by the Tribunal in the prior year. In the previous year, the AO had referred the issue relating to the valuation of Intellectual Property Rights to the TPO who lowered its value on account of difference between book value and revised value which reduced the claim of depreciation. It was pointed out by the assessee that the Tribunal confirmed the CIT(A)'s order setting aside the IPR adjustment and deleted the disallowance of depreciation.
ACIT vs Gharda Chemicals Ltd [TS-771-ITAT-2018(Mum)-TP] ITA No.1181/Mum/2017 dated 21.06.2018

1150. The Court dismissed Revenue's appeal and upheld Tribunal's order wherein TPO's enhancement to ALP on account of location advantage was rejected since assessee and the comparables were situated in India.
CIT vs Watson Pharma Pvt Ltd [TS-480-HC-2018(BOM)-TP] ITA 124 of 2014 dated 25.06.2018

II. International Tax

a. Permanent Establishment

1151. The Court set aside the Tribunal's order wherein the Tribunal had restored the issue of existence of PE to the file of the AO for fresh consideration without considering the fact that the CIT(A) had noted all the relevant facts and submissions and, thus, everything was on record. It held that the Tribunal had failed to act as a final fact finding authority since it should have summoned all records and thereafter arrived at a categorical finding whether it was the CIT(A) or the AO who had erred. The AO had brought to tax in India, the fees and guarantee commission received by the assessee, a Netherland based company, from an Indian company (which was also a group company) considering the said Indian company as the assessee' PE. The CIT(A), however, had reversed the AO's order holding that that the assessee had no PE in India and thus the said receipt was not taxable in India. On further appeal by Revenue, the Tribunal restored the matter to the file of the AO to determine the issue afresh rejecting the assesee's contention that the CIT(A) had noted the facts and submissions and thus everything was on record. Accordingly, the Court restored the matter back to the Tribunal to consider afresh on merits.
Co-operative Centrale Reiffeisen Boerenleenbank B.A. vs Dy.DIT [2018] 97 taxmann.com 24 (Bombay) - ITA Nos.1198 of 2015 and 260 and 264 of 2016 (Bom) dated August 29, 2018

1152. The Apex Court dismissed Revenue's SLP filed against the High Court's order wherein it was held that since the period of supervision under contract between the assessee, a Japanese company, and Indian company did not exceed 180 days, it did not constitute a supervisory PE in terms of article 5(4) of India-Japan DTAA and, thus, the fees received for providing supervisory services was liable to be taxed as FTS at 20 per cent under article 12(2) of the said DTAA.

CIT v Sumitomo Corporation [2018] 96 taxmann.com 612 (SC) - SLP (C) APPEAL NO. 18509 OF 2016 dated August 6, 2018

1153. The assessee, a Singapore based company, rendered two type of services viz. rendering of management support services and technical services (in connection with setting up of internet data centres for BSNL) to its Indian subsidiary and received (i) Management Fee– for which it had deputed its employees in India for 2 days and (ii) Service Fee– for which it had deputed its employees for 171 days. The AO aggregated employees' stay on account of rendering of both the services and accordingly held service PE constitution since the cumulative period (i.e. 173 days) exceeded the threshold limit of 30 days as provide under Article 5(6) of the India-Singapore DTAA. Before Tribunal, the assessee offered to tax Service Fee as fee for technical services under section 9(1)(vii), taxable @ 10% under section 115A(1)(b). With respect to the Management Fee, the assessee offered to be governed by the DTAA provisions. Since the employees of the assessee had visited India for a period of only 2 days for management support services, the threshold of 30 days was not satisfied and accordingly there was no Service PE in India and thus Management Fee was not taxable in India. The Tribunal held that in case of multiple sources of income, an assessee is entitled to adopt the provisions of the Act for one source while applying the beneficial DTAA provisions for the other, relying on Bangalore ITAT ruling in IBM world Trade Corporation. Thus, it accepted the assessee's aforesaid claim of non-taxability with respect to Management Fee for AY 2012-13 in absence of Service PE. However, for AY 2013-14, since the period of employees' stay exceeded 30 days for management support services also, the Tribunal upheld Service PE and remanded the matter to AO to verify the assessee's profit attribution to the PE in India. However, it noted that the Fees received by the assessee would be taxable under the Act as FTS (fees for technical services) under section 9(1)(vii) r.w.s. 115A(1)(b) @ 10% and not as business income and thus held that the maximum possible taxability in the hands of the assessee could not exceed 10%.

Dimension Data Asia Pacific Pte. Ltd. v. DCIT [2018] 99 taxmann.com 270 (Mumbai - Trib.) - ITA Nos. 1635 AND 1636 (MUM.) OF 2017 dated OCTOBER 12, 2018

1154. The assessee was awarded contract by ONGC for supply, installation, testing and commissioning of Vessel and Air Traffic Management System (VATMS) along with provision of maintenance services. During AY 2012-13 & 2013-14, the assessee only provided Annual Maintenance Contract (AMC) services in relation to VATMS to ONGC. The AO brought to tax AMC fee received as business profits attributable to Installation PE in terms of Article 5(3) of India-Netherlands DTAA. The Tribunal reversed the AO's order, following co-ordinate bench decision in the asseseee's own case for AY 2011-12 wherien it was held that since the VATMS equipment was already handed over to customer in year 2007 and no installation activity was carried out in India after that, it could not be held that the assessee had 'Installation PE' in India in the subject year. The co-ordiante bench had also held that the presence of Indian contractor to which assessee had sub-contracted whole AMC work on principal-to-principal basis, could not create any virtual presence of assessee in India, since the entire onshore maintenance contract was performed by the independent local contractor in India and the existence of PE needs to be determined based on the activities of the foreign enterprise. It thus held that the AMC fees received could not be brought to tax in India as business income in the absence of a PE. The Tribunal also rejected Revenue's contention to tax the AMC receipts as FTS holding that the AMC services did not make available any technical know how or knowledge to the personnel of the customer as per Article 12(5) of the India- Netherlands DTAA.

With respect to the assessee's two other projects in India, the Tribunal held that the assessee constituted Installation PE in India since the assessee could not provide details with regard to the number of days of stay in India for executing the installation work. However, it accepted assessee's alternative contention that only the onshore provision of services and onshore supply of equipments at 10% on gross basis should be considered as profits attributable to the Installation PE in India as against the AO's approach of taking the total receipts (i.e both offshore and onshore activities) since the PE could not have been involved in activities not carried in India.

HITT HOLLAND INSTITUTE OF TRAFFIC TECHNOLOGY B.V. v DCIT (2018) 53 CCH 0371 KolTrib – ITA Nos. 290/Kol/2016 & 348/Kol/2017 dated July 20, 2018

1155. The Tribunal allowed assessee's appeal holding that the assessee-company (incorporated in Cyprus) did not constitue any 'installation PE' in India under clause 5(2)(g) of the India-Cyprus DTAA in

connection with the award of contract by another foreign entity (AMC SA, being the main contractor) for placement of rock in seabed for laying of gas pipelines and other work in oil and gas field developed at East Coast of India. It rejected Revenue's contention that assessee's activity went beyond 12 months threshold period prescribed for installation PE under clause 5(2)(g) of the said DTAA, noting that the AO and DRP had wrongly concluded that assessee was involved in multifarious functions by considering the scope of work to be carried by AMC SA (pursuant to contract with Reliance & Niko Resources) as the scope of work for assessee. Further, it also rejected Revenue's contention that one of assessee's employee visited India prior to awarding of contract to assessee and that his period of stay should be considered for computing the aforesaid threshold period, holding that auxiliary and preparatory activity, purely for tendering purpose before entering of the contract and without carrying out any activity of economic substance qua the project could not be considered for determining threshold period. Thus, the Tribunal held that since the period for determination of PE which was to be reckoned from commencement date as per contract till competition date as per competition certificate was around 9 months and further, all the payments relating to contract were received before such completion date, in absence of anything on record to suggest that any activity post completion was carried out beyond the period of 12 months, the assessee-company did not constitute an 'Installation PE' in India under clause 5(2)(g) of the India-Cyprus DTAA.

Bellsea Ltd v ADIT [TS-426-ITAT-2018(DEL)] - ITA No. 5759/Del/2011 dated July 6, 2018

1156. The Tribunal allowed the assessee's appeal against the AO's order (passed pursuant to DRP directions) and held that the amount received by the assessee, a Saudi company, from grouting activities in India were not taxable in India, in absence of a PE in India. The assessee, engaged in providing 'grouting and precast' solutions for subsea off-shore construction industry, contended that grouting activity was carried out in India for different unrelated third parties and grouting activity, being a construction activity, was not carried out in India for more than 9 months so as to constitue PE in India as per Article 5(2)(h) of India UAE-DTAA and thus, the business receipt from grouting activities were not chargeable to tax in India. The AO as well as DRP held that the assessee's equipment was in India for at least 264 days on which work for execution of construction was carried on and thus, it had equipment PE in India as per Article 5(1) of the said DTAA. The Tribunal held that since it is a settled legal principle that a general provision would not be applicable when specific provision is there, specific Article 5(2)(h) was applicable. It further held that the observation by AO/DRP that 'grouting was not a simple masonry work and involved complex aspects' did not take grouting out of construction activities because there is no bifurcation of simple and complex masonry/construction work under Article 5(2)(h) and any further classification (as done by revenue) would amount to rewriting DTAA.

ULO Systems LLC v ADIT (2019) 101 taxmann.com 490 (Del Trib) – ITA No.5968 of 2010 (Del Trib) dated December 21, 2018

1157. The Court dismissed the appeal filed by the assessee, an US entity, against Tribunal's order holding that the liason office of the assessee-group in India which carried out core marketing and sales activities and had prominent involvement in the contract finalization process, showed that the overseas entities of the group carried on business in India through such fixed place of business and thus had fixed place PE in India. It also noted that the India office was not only for data collection and information dissemination rather it discharged of vital responsibilities relating to finalization of commercial terms etc.The Court relied on the Apex Court decision in the case of Formula One World Championship v CIT (2017) 394 ITR 80 (SC) to hold that certain amount of space at the disposal of the enterprise which is used for business activities is sufficient to constitute a place of business and no formal legal right to use that place is required. Accordingly, it held that the assessee had fixed place PE in India located in the space which was taken on lease by another US based group entity for liasoning work.

The Court also upheld the Tribunal's view that the expat employees working at such fixed place constituted Dependent Agent PE in India for all the overseas entities of the GE Group. It rejected assessee contention that the expatriates and employees of Indian subsidiary of the assessee-group only participated in the negotiation for conclusion of contracts but never had the authority to finalize any contract on their own volition, noting that the technical officials having varying degree of authority involved themselves - along with local managerial, in contract negotiation, often into core or "key" areas, clearly showed that the assessee carried out business through the PE in India.

Further, the Court approved the lower authorities' approach of calculating of total profit from the sales made by GE overseas entities in Indiaat 10% of such sale. It also approved Tribunal's direction for considering 26% of total profit in India as attributable to the PE, noting that the extent of activities by the oversead group entities in making sales in India was roughly one fourth of the total marketing effort.
GE Energy Parts Inc. vs CIT (Intl Tax) [2019] 101 taxmann.com 142 (Del HC) – ITA No 621,627,628,629,671,674 & 675 of 2017 (Del HC) dated December 21, 2018

1158. The Tribunal upheld CIT(A)'s order holding that as per Article 7(3) of the India-Mauritius Treaty all expenses incurred for purpose of business of PE are to be allowed and there cannot be any restriction on allowability of such expenses by subjecting the same to any limitation of taxation laws of contracting State (India), unlike the India-USA DTAA or India-UAE DTAA which specifically provide that deduction of expenses incurred for the purpose of business of the PE would be in accordance with provisions subject to the limitation of the taxation laws of that State. Accordingly, it held that deduction claimed for expenses incurred for the purpose of business of the PE of a Mauritian resident-entity was to be allowed, irrespective of the fact that TDS u/s 195 was not deducted, since the said claim could not be made subjected to provision of section 40(a)(i) or any other provision of Income-tax Act.
DDIT v Unocol Bharat Ltd [2018] 99 taxmann.com 158 (Delhi - Trib.) – ITA No. 1388 (DELHI) OF 2012 dated October 5, 2018

1159. The assessee, a Mauritian company, was acting as a sub-contractor with HHI and VMGL for certain specialized job on ONGC Mumbai Uran terminal water projects. It had rendered services under two sub-contracts with HHI and VMGL in connection with prospecting for/or extraction or production of mineral oil in India. The assessee claimed that period of contracts in India being less than threshold limit of 9 months prescribed in article 5(2)(i) to constitute PE, income from such activities was chargeable to tax only in Mauritius and not in India. The Assessing Officer held that the assessee had a 'vessel' at its disposal which constituted a fixed place of business in India in view of article 5 (1) through which business of the assessee was carried on, and accordingly, it constituted its permanent establishment in India. The Tribunal held that duration of both sub-contracts in India was 201 days and 212 days respectively and thus, less than threshold limit of 9 months. Therefore, the assessee did not have permanent establishment as per article 5(2)(i).
GIL Mauritius Holding Ltd. v. Dy. DIT [2018] 99 taxmann.com 21(Delhi-Trib) ITA No. 2354 (DELHI) of 2012-dated October 22, 2018

1160. The Court upheld the invocation of CIT's revisionary jurisdiction u/s. 263 in case of assessee (a Singaporean co. engaged in rendering offshore geophysical services) for taxing the revenue received by the assessee from an Indian co. for providing seismic vessel in connection with oil exploration. During assessment, the AO had accepted the assessee's claim that since the duration of its contract with Indian Co. was only for 102 days, its income was not taxable in India since there was no PE in India as per Article 5(5) of India-Singapore DTAA (which provides 183 days threshold). The Court however accepted CIT's view that the seismic vessel itself constituted fixed place PE under Article 5(1) of DTAA and AO was wrong in accepting assessee's resort to Article 5(5) and that no effort was made by AO to study relevant provision of DTAA. Hence, it held that the CIT had rightly concluded that the AO'order was both erroneous and prejudicial to the interest of Revenue. Accordingly, assessee's writ against the show cause notice issued u/s 263 was dismissed.

NORDIC MARITIME PTE LIMITED vs COMMISSIONER OF INCOME TAX [TS-740-HC-2018(UTT)] – Writ Petition (M/S) No. 3708 of 2018 dated 11.12.2018

1161. The Tribunal allowed assessee's appeal and held that income earned by the assessee-company (non-resident incorporated in UK) from rendering telecommunication services to VSNL could not be taxed in India, in absense of a PE in India, rejecting Revenue's contention that the location of Space Segment Monitoring System (SSMS) equipment in India and the presence of the liaison office constituted a PE. With respect to SSMS equipment, it was noted that the same was not used for rendering services during the period under consideration. The Tribunal also rejected Revenue's contention liaison office constituted fixed place PE since final agreements were being entered into by the clients there, noting that RBI under FERA 1973 had granted permission to set-up a liaison office under which assessee was

strictly prohibited from undertaking any other activity of trading, commercial or industrial nature. It also noted that till now there was no infringement nor any other adverse view taken by the RBI qua the activities which were being carried out by the liaison office in India. It relied on the decision in the case of Mitsui & Co. Ltd. [2017] 84 taxmann.com 3 (Del HC) wherein it was held that if assessee was found adhering to the conditions imposed by the RBI for running of a liaison office, the onus was on Revenue to prove that the liaison office construed PE in India and noted that there was not even an iota of evidence referred to by the AO in this regard for the current and past AYs.
The Tribunal also rejected Revenue's contention that telecommunication services provided to VSNL should be taxed as Royalty under India-UK DTAA, following co-ordinate bench decision in assessee's own case for an earlier year wherein it was held that receipts for providing telecommunication services could not be treated as Royalty under India-UK DTAA.

Inmarsat Global Limited v ADIT & others [TS-736-ITAT-2018(Mum)] - ITA NO. 8544/MUM/2010, 7031/MUM/2011, 7538/MUM/2012, 2075/MUM/2014, 1674/MUM/2015 &1105/MUM/2016 dated 12.12.2018

1162. The Applicant was providing 4C-3D seismic data acquisition and processing services to ONCG and other customers in India in relation to the exploration of oil and gas. The AAR, relying on the decision of Oil & Natural Gas Corporation Ltd. vs CIT [2015] 376 ITR 306 (SC) held that the income received could not be taxed as Fees for technical services. Further, since ONGC did not use or obtain the right to use the vessels/equipment of the Applicant, it held that the income could not be taxed as Royalty either. However, relying on the decision of the Apex Court in Formula One World Championships Limited (2017) 80 taxman.com 347, it held that the vessels used by the Applicant constituted a Fixed Place PE under Article 5 of the India-UAE DTAA as it satisfied the conditions as laid down by the Apex Court i.e. i) permanence of duration to the extent that was required by the business, and not meaning forever ii) there was a fixed place which were the vessels in the High Seas in a definite and composite geographical area, and from which its business of survey in connection with exploration was carried out; and iii) this place was at the disposal of the Applicant. It rejected the contention of the Applicant that no PE would be constituted as it would be governed under Article 5(2)(i) which required a presence in India of more than 9 months whereas it was in India for only 113 days and held that the services envisaged under Article 5(2)(i) included services such as of supervision, managerial, consultancy, or general nature which were not the services being provided by the Applicant.
SEABIRD EXPLORATION FZ LLC IN RE - (2018) 101 CCH 0119 IAAR - A.A.R. No 1295 of 2012 dated Mar 28, 2018

1163. The assessee, a Korean company, had received consideration under an agreement with an Indian company to supply power equipment from outside India and claimed that since it did not undertake any activity in India and, no part of sales consideration was taxable in India. The AO, however, held that the assessee company had a business connection as well as a PE in India under Article 5 of India-Korea DTAA in form of the liaison office and attributed 50% of the amount received to the assessee's PE in India. It was noted that for the preceding year, on the basis of order passed by the High Court, the AO had attributed 25% of the receipts to PE in India, whereas for the subsequent years he had attributed 15% of the receipts to PE in India. The Tribunal thus restored the issue to the file of the AO with a direction to pass a speaking order in the light of the decisions for preceding as well as subsequent years.
Hyosung Corporation v ACIT - [2018] 94 taxmann.com 363 (Delhi - Trib.) - IT APPEAL NO. 6960 (DELHI) OF 2014 dated April24, 2018

1164. The Applicant was an International Association and did not have a motive to earn profits (as per Articles of Association). The AAR held that if the activities of the Liaison Office ('LO') proposed to be established in India are based on the principle of mutuality, then any incidental surplus arising to the LO should not be liable to tax in India under the provisions of the Income-tax Act, 1961 ('Act') or the India-Belgium DTAA. As regards the Revenues contention that, such LO constitutes a Permanent Establishment (PE) in India, AAR held that once the principles of mutuality are satisfied by an entity, it

cannot be said that such an entity is carrying on any 'business' and where there is no 'business', a PE cannot be constituted.
International Zinc Association in Re – [2018] 102 CCH 0018 (Advance Rulings) – AAR No 1319 of 2012 dated May 24, 2018

1165. The Applicant, a resident of Luxemburg, entered into a Centralized Services Agreement (CSA) with an Indian company owning a hotel, for providing certain Global Reservation Services (GRS) and other services. The Applicant filed an application before the AAR to ascertain as to whether the payment received by it from the Indian company under the aforesaid agreement was to taxed as FTS or royalty u/s 9(1)(vi) / 9(1)(vii) r.w. Article 12 of India-Luxembourg DTAA. AAR noted that in addition to the CSA, the Applicant had also entered into other agreements with the Indian company to provide further services in relation to hotel management and held that as per the terms of all the agreements, it could be said that the Hotel was at complete disposal of the Applicant, right from the stage of its construction to all the important functions in relation to its operation and management. Thus, AAR held that the Indian hotel constituted fixed place PE of the Applicant with respect to various income sources. Therefore, the AAR held that payments received by the Applicant for provision of global reservation services would be chargeable to tax in India as business income u/s 9(1)(i) r.w. Articles 5 and 7 of the India-Luxembourg DTAA and such income was attributable to the Applicant's fixed place PE in India, i.e. the Indian hotel.
FRS Hotel Group (LUX) S.A.R.L. in Re – [2018] 102 CCH 0017 (AAR) – AAR No 1010 of 2010 dated May 24, 2018

1166. The assessee company, a tax resident of South Korea, was engaged in the business of heavy engineering. The assessee was awarded a project by the ONGC for the purpose of surveys, engineering, commissioning, etc. of entire facilities and as per the terms of the contract, the assessee had to perform certain activities within India and outside India. At the instance of ONGC, the assessee opened a project office in Mumbai which the AO treated as a fixed place PE and attributed an adhoc 25 percent of gross Revenues received by assessee under project to alleged PE. On appeal, the Tribunal held that since Revenue could not bring any evidence on record to show that the alleged PE of assessee had any role to play in respect of offshore supplies made, no income from such offshore supplies could be attributed to the alleged PE. Accordingly, the Tribunal deleted the addition.
Samsung Heavy Industries Co. Ltd. v. DCIT (International Taxation) – [2018] 93 taxmann.com 224 (Delhi – Trib.) – IT Appeal No. 872 (Delhi) of 2017 dated April 25, 2018

1167. The assessee, a Spanish company engaged in providing services of consultancy in project, engineering and electrical contract and supplies, carried out its projects in India through its PE,a Project Office (PO).The AO disallowed the deduction claimed by the assessee's PE with respect to 'Exchange Fluctuation Loss' suffered on account of advance received from Head Office in foreign currency for carrying out projects in India on the alleged ground that the amount received by the PO was not a loan but a capital contribution. CIT(A) upheld the AO's order. The Tribunal allowed the assessee's claim, noting that the amount received by the PE was loanand not capital remittance. It held that since loan was utilized in day-to-day operations, for project execution and to obtain material as per terms of contract, said remittance did not bring any capital asset into existence and thus the foreign exchange fluctuation loss on account of differential value in INRwas allowable as deduction u/s 37(1).
Cobra Instalaciones Y Servicios SA v DCIT - [2018] 96 taxmann.com 80 (Delhi - Trib.) – ITA No. 2391 (DELHI) of 2018 dated June 28, 2018

1168. The assessee, a company incorporated in Japan, was engaged in business of chemicals, dyestuffs, plastics, electronic materials, cosmetics, etc. and had made sales to Indian customers directly as well as through independent agents appointed in India. It had also set-up a Liaison Office (LO) in India after obtaining a specific approval of RBI, as per which the LO's activities were confined to liaison and representative activities and it was not permitted to carry out any business/commercial activities in India.The AO opined that activities of LO involved identifying, negotiating and concluding business contracts in India for and on behalf of its parent office and, therefore, LO was to be considered as the assessee's PE in India as per Article 5 of India-Japan DTAA and consequently estimated the profit at 10% of the total turnover from India by invoking Rule 10. CIT(A) upheld the AO's order. It was noted

that the co-ordinate bench in assessee's own case relating to succeeding assessment year had held that there was no evidence that could lead to the conclusion that LO was executing agreements independently with customers. The co-ordinate bench had held that the LO was providing auxiliary or support services and proverbial mind and management was located in Japan and, accordingly, neither there was a business connection in India nor LO constituted assessee's PE in India.The Tribunal followed the co-ordinate bench decision, noting that there was no change in circumstances and allowed the assessee's appeal.

Nagase & Company Ltd. v DDIT(IT) - [2018] 96 taxmann.com 504 (Mumbai - Trib.) – ITA Nos. 134 & 412 of 2009 &Others dated April 27, 2018

1169. The Tribunal allowed assessee's appeal and rejected the AO's attribution of 50% profits made by Corning SAS in France (Head Office), from direct sales made in India, to its Indian Branch office (BO). It was noted that the BO was remunerated with 3% commission on direct sales made by it to customers in India and in all other AYs (preceding as well as succeeding), the AO had accepted 3% commission without attributing any additional profits to BO. Further, noting that no substantial functions were performed and no risks was undertaken or assets were employed by BO in India in relation to the direct sales made by Corning SAS France in India, the Tribunal held that no profit in addition to the 3% commission income earned could be attributed.

Corning SAS- India Branch Office v. DIT(IT) – [TS-286-ITAT-2018(DEL)] – ITA Nos. 4678&4795/Del/2010dated May30, 2018

1170. The Applicant, a Singapore based company and a leading global payment solution provider, used to charge banks [with whom it entered into Master License Agreements] processing fees relating to authorization, clearing and settlement of transactions. The Applicant provided the banks with a MasterCard Interface Processor (MIPs) that connected to the Mastercard Network and other processing centres. The MIPs were owned by the Indian subsidiary of the Applicant. The Applicant sought a ruling from AAR on the following issues i) Whether the digital equipment (MIP) created a PE (ii) Whether the MasterCard Network created a fixed place PE in India (iii) Whether agency relationship is created through Bank of India and its premises would constitute a fixed place PE (iv) Whether Applicant's subsidiary (MISPL) created a fixed place PE (v) Whether there was creation of a PE through the Applicant's visiting employees (vi) Whether there was a dependent agent PE created through MISPL

On the first issue, the AAR accepted Revenue's stand that even an automatic equipment can create a PE and did not have to be fixed to the ground to constitute a fixed place PE. It held that since significant functions were performed by MIPs in facilitating authorization process and the MIPs were at the disposal of the Applicant, the MIPs constituted PE on account of the test of disposal and permanence being satisfied.

In case of the second issue, it noted that apart from MIP, transmission towers, leased lines, fiber optic cable, nodes and internet (owned by third party service provider) and application software which constituted the Mastercard Network were located in India as well as outside India. It also noted that the task performed by the MasterCard Network were significant activities in the context of overall functions of transaction processing rendered to third party and not preparatory or auxiliary. Further, noting that the Applicant owned part of the Network, the AAR held that the Network also constituted PE.

With respect to issue (iii), noting that the settlement activities happened through Bank of India who carried out the functions under the instructions of the Applicant, it accepted revenue's contention that the Bank of India premises where settlement activities happened through employees created a fixed place PE.

The AAR noted that MCI (of which Applicant was a wholly owned indirect subsidiary) had a liaison office ('LO') in India and for which the Applicant had disclosed income from transaction processing service rendered in India at full 100% attribution of global net profit rate. The Applicant had shut down LO and transferred the work and employees to MISPL. AAR held that once the Applicant in the case of LO had legally accepted a PE on account of 100% attribution of profit to India, now MISPL also created a PE of the Applicant.

The AAR, while examining whether the work carried out by the Applicant's employees visiting India was a part of transaction processing services, concluded that the work was an integral part of the Applicant's profession to provide new avenues of services to clients. Thus, it held that the employees visting India

were providing services to clients, and if they exceeded the threshold of 90 days in a year, a service PE could be created.

The AAR noted that the agreement concluded by the Applicant were routed through MISPL who brought the proposal though it was finalized by the Applicant. The above action of MISPL satisfied the requirement of securing order under Article 5(8) of DTAA and thus, MISPL constituted a dependent PE agent.

MasterCard Asia Pacific Pte. Ltd. In.re [TS-452-AAR-2018-TP] AAR No.1573 of 2014 dated 06.07.2018

1171. The Assessee, a Korean company engaged in manufacturing and sales of various categories of televisions, home appliances, telecommunication terminals, semi-conductors as well as other state of art IT products for global markets, had a wholly owned subsidiary in India i.e. SIEL to whom it seconded its employees. The Tribunal observed that the expatriate employees were only discharging duties of subsidiary company towards holding company (and did not carry out any activities on behalf of its subsidiary) and whatever benefits that were derived by Indian subsidiary by such communication were offered to tax in India. Absent any provision for Service PE under the India-South Korea DTAA, the Tribunal held that the employees of the assessee did not constitute a fixed place PE in India as no business was carried on by the assessee through the expatriated employees nor did the assessee derive any income by them though activities of these employees. Accordingly, it held that no income was taxable in India.

Samsung Electronics Co. Ltd v DCIT - [2018] 92 taxmann.com 171 (Delhi - Trib.) - IT APPEAL NOS. 65 TO 70 (DELHI) OF 2013 dated MARCH 22, 2018

1172. The AO had brought to tax in India the income earned by the assessee, a Singapore based company, from supply of hardware, by considering the Indian company forming part of the same group and the Indian liaison office of the group parent company (based in Canada) to be the assessee's PE in India as per Article 5 of the India-Singapore DTAA. The Indian company provided market support and licensing services to the assessee. However, the AO opined that the Indian company and the liaison office were actually involved in negotiation and conclusion of contracts on behalf of the assessee in India. Noting that there was no material on record which even remotely suggested that the liaison office had acted on behalf of the assessee or was negotiating and concluding agreements on its behalf, the Tribunal held that the liaison office could not be considered as a fixed place of business of assessee. With respect to the Indian company (being the subsidiary of the Canada based group parent company), it held that a subsidiary company was an independent tax entity and its income is chargeable to tax in the state where it is resident. The Tribunal thus held that since the Indian company performed the tasks contracted to it, on its own behalf, the income from such activities as well as any function performed by the expatriate employees of group companies seconded to the Indian company would be subject to tax in hands of the Indian company and the same could not be considered as income of the assessee.

ADIT v Nortel Networks Singapore (P.) Ltd. - [2018] 93 taxmann.com 401 (Delhi - Trib.) - IT APPEAL NOS. 2757 AND 2760 (DELHI) OF 2009 & 2172 TO 2176 (DELHI) OF 2011 dated April24, 2018

NORTEL NETWORKS SINGAPORE PTE. LTD. vs. DDIT (IT) (DELHI TRIBUNAL) (ITA Nos. 5482, 3240, 3241/Del/2012 & 553/Del/2015, 5505/Del/2012) dated May 28, 2018 (53 CCH 0083)

1173. The assessee, a Japanese company, was engaged in development, manufacture, assembly and supply of air-conditioning and refrigeration equipments. It sold the equipments to its Indian Subsidiary (DAIPL) and further DAIPL sold to customers in India. In addition, assessee also claimed to have made direct sales to third parties in India. AO stated that DAIPL was simultaneously undertaking marketing activities for assessee. Also, the communication in form of email demonstrated that DAIPL negotiated and finalized deals with Indian customers and conveyed it to the assessee. Further, assessee failed to provide any evidence as to how customers in India were directly approaching assessee in Japan to discuss & finalize the prices and requirements and therefore AO held that DAIPL carried out marketing activities for the assessee and was a Dependent Agent Permanent Establishment of assessee in terms of paragraph 7(a) and 7(c) of Article 5 of DTAA between India and Japan (which provides for instances of deemed PE) The Tribunal upheld AO's order and further held that since DAIPL was a PE in India,

30% of the net profit relatable to sales in India would be attributable to the marketing activities carried out in India by DAIPL.

Daikin Industries Ltd. vs ACIT [2018] 94 taxmann.com 299 (Delhi- Trib.) – ITA NO 1623 OF 2015 dated 28.05.2018

1174. The assessee, a US based company, had entered into a Master Franchise Agreement (MFA) with a company in India which in turn had entered into a Sub-Franchise Agreement (SFA). It offered income from franchise fee and consultancy services provided to M/s J for store opening to tax at the rate of 10% being royalty as per India-USA DTAA. The AO held that M/s J constituted the assessee's dependent agency / Permanent Establishment in India as per Article 5 of India-USA DTAA and thus taxed the total income of the assessee as business income @ 40% (after allowing a deduction of 5% from total income). The DRP held that M/s J did not constitute a PE or DAPE or agency PE of the assessee. On perusal of the Master Franchise Agreement (MFA) between the assessee and M/s J and Sub-Franchise Agreement (SFA) between M/s J and the sub-franchisees, the Tribunal observed that the profit/ loss from the business belonged to M/s J or sub-franchise and that the assessee was only entitled royalty and store opening fees. It further observed that M/s J did not carry on any activity on behalf of the assessee and the restrictions provided in MFA and SFA were only to safeguard the brand value and to ensure the correct receipt of royalty income. Thus, the Tribunal held that since the assessee did not have any physical control on business of franchise and sub-franchise and none of conditions prescribed under Article 5 of India-USA DTAA were attracted, the DRP's order was to be upheld. Accordingly, the Revenue's appeal was dismissed.

DCIT (IT) vs. DOMINOS PIZZA INTERNATIONLA FRANCHISING INC. (BOMBAY TRIBUNAL) (ITA No. 1447/Mum/2016) dated May 18, 2018 (53 CCH 0054)

1175. Where the assessee, a Singapore based company, had licensed its wholly owned subsidiary viz. ADSIL as its national marketing company in India (ADSIL marketed the assessee's Computerized Reservation System in India) and ADSIL was an agency PE of the assessee, the Tribunal relying on the decision of the co-ordinate bench (wherein the Tribunal relying on the decision of the Delhi High Court in Galileo International Inc and CBDT Circular No. 23, dated July 23, 1969) held that only 15 percent of the gross receipts of ADSIL was taxable and that the AO was unjustified in attributing the entire gross receipts as the income attributable to the PE. Noting that the assessee was paying a commission of 25 percent of gross receipts as commission to ADSIL, it held that after deduction of the said commission, there would be no income attributable to the PE and therefore observed that the assessee would not be liable to tax. Further, refusing the assessee's request to furnish additional evidence with respect to reimbursement received, it dismissed the contention of the assessee that the CIT(A) had erred in treating the reimbursement received by it from ADSIL as business profits and held that the assessee was granted abundant opportunity to substantiate the nature of reimbursements before the AO which it failed to comply with. Accordingly, it held that the said reimbursements would be taxable as business income. However, it allowed the assessee to set off the commission payment to ADSIL against this income as well.

Sabre Asia Pacific Pte Ltd (Earlier Known as Abacus International Pte Ltd.) vs. DCIT - TS-112-ITAT-2018(Mum)-TP - I.T.A. No. 486/Mum/2016 dated 16.02.2018

1176. Though the agent of the assessee provided similar services to principals other than the assessee and the income from assessee constituted only 7.87% of its total income, the AO held that the assessee had a DAPE (Dependent Agent Permanent Establishment) and accordingly taxed income of the assessee earned from transportation of containerised cargo in terms of Article 5 r.w. Article 7 of the India-Netherland DTAA. Following the Tribunal's order for earlier year in the assessee's own case wherein it had held that the said agent was an independent agent, and hence, did not constitute assessee's DAPE, the Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made by the AO who had considered the assessee's agent to be DAPE.

DCIT v Hoyer Global Transport B.V. – ITA No. 1543 /Mum/ 2016 dated 24.01.2018

1177. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order holding that the assessee did not have PE in India and allowed the assessee's cross objection wherein the assessee had contended that even if it was held that it had a PE in India, since it had paid remuneration/ commission to its agents in India at ALP, no adjustment was to be made in the hands of the assessee. It noted that similar issue

had been decided in favour of the assessee in earlier year by the Tribunal in the assessee's own case following the decision in the case of CIT v E-funds I.T. Solutions Inc [Civil Appeal No. 6082 of 2015 (SC)] wherein it was held that where transactions between the AEs were at ALP, no further profits could be attributed even if there existed a PE in India. It further noted that for the year under consideration also, the TPO had in the case of assessee's AE-agent, accepted that the transactions between the said AE-agent and the assessee were at ALP and, accordingly, made no adjustment.
ADIT (IT) v Zee TV USA Inc – ITA No. 5603/Mum./2008 & CO. No. 47/Mum/2010 dated 25.01.2018

1178. The Revenue had brought to tax the income earned by the assessee, a Finland based company, from offshore supply of telecom equipment manufactured in Finland in pursuance of supply contract with Indian customers, by considering the Indian subsidiary of the assessee, which took marketing and installation activities with the assessee's customers on principal to principal basis, to be the assessee's PE in India. The Tribunal held that since there was no physical space made available which can be said to be at the disposal of the assessee for the assessee's own business of supply and sale of equipments, the Indian subsidiary could not be considered to be the assessee's PE in India in view of Article 5 of the India-Finland DTAA. It was further held that the Indian subsidiary also did not provide any business connection to the assessee as required by the provisions of section 9(l)(i) since the title of the goods supplied by the assessee were transferred outside India and the payments were also received by the assessee outside India. It concluded thus that the said income could not be brought to tax in India.
Nokia Networks OY v JCIT - [2018] 94 taxmann.com 111 (Delhi - Trib.) (SB) - IT APPEAL NOS. 1963 & 1964 (DELHI) OF 2001 dated June5, 2018

1179. The assessee (Saudi Arabian Oil Co.),a largest crude oil exporter, established a subsidiary in India (Aramco India-separate legal entity established under Companies Act) to carry out Business/Marketing Support Activities. However, the Revenue contended that Aramco India was a PE of the assessee applicant who was liable to tax in India in respect of its business profits. The AAR decided in favour of the assessee and held that Aramco India could not be said to be a PE of the Applicant as Aramco was carrying its own business in India providing assistance to the applicant and was accordingly duly remunerated. Also, the functions carried out in the premises by Aramco India was not to do business for the Applicant and it merely provided support services to the Applicant.
Saudi Arabian Oil Company, In re vs. [2018] 94 taxmann.com 194 (AAR – NewDelhi) / [2018]405 ITR 83 (AAR – NewDelhi) / [2018] 303 CTR 225 (AAR – NewDelhi) – AAR NO. 25 OF 2016 dated 31.05.2018

1180. The Tribunal allowed assessee's cross objection and dismissed Revenue's appeal against CIT(A)'s order wherein CIT(A) had held that the assessee did not have PE in India and accordingly its business activities were not taxable in India. In cross objection, assessee contended that that even if it was held that assessee had PE in India, its income was not taxable in India as it had paid arm's length remuneration/commission to its agent (also its AE) in India which was taxed in India and, therefore, no further adjustment was to be made in hands of assessee. The Tribunal noted that in TP assessment of assessee's AE, the TPO had accepted the transaction between the assessee and its AE to be at arms' length and no adjustment was made. Further, it relied on CIT v. E-funds I.T. Solutions Inc. [2017] 399 ITR 34 (SC) wherein it was held that since the transactions between non-resident assessee and its Indian AE were at ALP, no further profits could be attributed even if there existed a PE in India.
ADIT(IT) v Zee TV USA Inc. - [2018] 96 taxmann.com 509 (Mumbai - Trib.) – ITA No. 5608 (MUM.) OF 2008 dated April 23, 2018

1181. The assessee was awarded contract by ONGC for supply, installation, testing and commissioning of Vessel and Air Traffic Management System (VATMS) along with provision of maintenance services. During the year, the assessee only provided Annual Maintenance Contract (AMC) services in relation to VATMS to ONGC. The AO brought to tax AMC fee received as business profits attributable to Installation PE in terms of Article 5(3) of India-Netherlands DTAA. The Tribunal held that since the VATMS equipment was already handed over to customer in year 2007 and no installation activity was carried out in India during subject year i.e. AY 2011-12, it could not be held that the assessee had

'Installation PE' in India in subject year. It held that AMC services provided post completion of installation activities at site of customer, could not lead to carrying out installation activities for purpose of constitution of 'Installation PE' in India. The Tribunal also held that the presence of Indian contractor to which assessee had sub-contracted whole AMC work on principal-to-principal basis, could not create any virtual presence of assessee in India, since the entire onshore maintenance contract was performed by the independent local contractor in India and the existence of PE needs to be determined based on the activities of the foreign enterprise. It thus held that the AMC fees received could not be brought to tax in India as business income in the absence of a PE.

HITT HOLLAND INSITUTE OF TRAFFIC TECHNOLOGY B.V. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONA TAXATION) - (2018) 52 CCH 0280 KolTrib - ITA No. 390/Kol/2015 dated Apr 4, 2018

1182. The AAR ruled that the non-compete fees received by the applicant foreign company from an Indian Company, as a part of consideration for transfer of shares held in another Indian Company was income from "Profits and gains of business or profession" u/s 28(va). However,it further ruled that in absence of any Permanent Establishment (PE) of the applicant-company in India, by virtue of Article 7 of India-UK DTAA, the said fees was not chargeable to tax in India.

HM Publishers Holdings Ltd., In re - [2018] 94 taxmann.com 193 (AAR - New Delhi) - A.A.R. NO. 1238 OF 2012dated Jun 6, 2018

1183. Assessee, a foreign company having Liaison Office in India, was a wholly-owned subsidiary of one Company-Metro AG, Germany and was engaged in business of procuring various goods and materials from various countries including India and selling to its Distribution Companies who further sold goods to retail customers. A survey was carried out in the premises of assessee's LO and on the basis of documents seized, AO opined that assessee had business connection in India and therefore income arising through such connection (directly/indirectly) was taxable in India. The assessee, on filing the appeal, contended that operations of assessee in India were confined to purchase of goods in India for the purpose of export and thus no income would arise in India as per Exp.1(b) to S.9(1)(i) (which provides the instances of having business connection in India).However,as the AO made addition to assessee's income without carrying out any factual analysis, the addition was set aside by the Tribunal and the matter was remanded back to decide whether or not the assessee would fall under Exp.1(b) to S.9(1)(i).

Parpool Ltd v Asst DCIT [2018] 94 taxmann.com 353 (Delhi – Trib.) – ITA NO 4911 OF 2010; 1472 & 1473 OF 2015 dated 31.05.2018

1184. Where the transactions between the assessee and its Indian subsidiary were at ALP under TP proceedings, the Apex Court held that even if the subsidiary constituted a PE, no further profits could be attributed. Accordingly, it reversed the order of the High Court and held that the reassessment proceedings initiated by the AO was therefore invalid.

HONDA MOTOR CO.LTD, JAPAN vs. ASSTT.DIRECTOR OF INCOME-TAX, NOIDA & ORS. - (2018) 101 CCH 0169 ISCC - Special Leave to Appeal (C) No(s). 25363/2014 dated Mar 14, 2018

1185. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) deleted disallowance u/s 40(a)(i) and held that TDS u/s. 195 was not applicable on payments made by assessee-company to a US based concern for provision of support services, rendered from outside India under a service agreement as the said services were not attributable to the US entity's PE in India (which was constituted vis-à-vis different set of services). It noted that the service agreement between the assessee and US co. envisaged providing of various services to assessee in the form of information support system, marketing and new business development, new product development, actuarial services, accounting support services, internal audit services, etc which were rendered in the US and relying on the decision of the Bombay High Court in WNS North America (ITA No. 1269 of 2013) held that activities carried on in the US could not be attributed to the US entity's PE in India. Accordingly, it dismissed Revenue's appeal.

DCIT vs Transamerica Direct Marketing Consultants Pvt. Ltd - TS-190-ITAT-2018(Mum) - ITA NO. 1978/MUM/2015 dated 19/03/2018

1186. Where, as per MAP settlement arrived at for earlier years, the income derived from borrowed service charges was held not to be taxable as Fees for technical services / royalty, the Tribunal held that the

AO erred in taxing the same as FTS for the year under review. Further, considering that the assessee did not have a PE in India, it held that the said income would not be taxable in India.
MCKINSEY & COMPANY INC. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONL TAXATION) & ORS - (2018) 52 CCH 0182 MumTrib - ITA Nos. 1748/Mum/2016 dated Mar 14, 2018

b. Royalty

1187. The Tribunal held that the Service Tax and Research and Development Cess which was collected, paid and borne by the Indian Service recipients with respect to royalty income received by the non-resident assessee could not be added to the said royalty income which was offered to tax by the assessee. It was noted that though the assessee had shown gross amount of royalty income (including the tax and cess), the tax and cess amount were subsequently reduced from the income. Further, the Tribunal noted that (i) the liability for payment of said tax & cess was that of the Service Recipients (India entities) under reverse charge mechanism as per section 66A of the Finance Act, 1994 and section 3(2) of the Research and Development Cess Act, 1986 (which provide that in case of rendering of services by non-resident service providers, it is the service receiver which is made liable to pay the Service Tax / R&D cess on the consideration payable to the non-resident) (ii) the agreement between the assessee and the Indian entity also stated that the said tax / cess were to be borne by the Indian entities. Accordingly, the assessee's appeal was allowed.
The Proctor and Gamble Co. USA v DCIT (IT) [TS-759-ITAT-2018 (Mum)] – ITAT No. 6972 & 6973/MUM/2017 dated 28.11.2018

1188. The Tribunal held that since as per agreement entered into between assessee and its US based AE, the assessee had only been granted a non-exclusive and non-transferable license to use copyrighted article, i.e., 'Blaze advisor' software of its AE for its internal business purposes and the AE had retained with itself copyrights of the same, the amount received by the AE from assessee did not give rise to any royalty income within meaning of Article 12(3) of India-US DTAA.
Reliance General Insurance Co. Ltd. v ITO(IT) [2018] 97 taxmann.com 350 (Mumbai - Trib.) – ITA No. 8184 (MUM.) OF 2011 dated August 23, 2018

1189. The assessee, UK based company, was in business of providing electronic deal matching system which provided requisite information and data for matching request for purchase and sale of foreign exchange, thus, enabling authorised dealers in foreign exchange such as banks and other financial institutions, etc. to effect deals in spot foreign exchange with other foreign exchange dealers. The main server of assessee was located in Geneva and access to the assessee's portal was given only by use of computer system and copyrighted software system provided by assessee under license. The AO held that the subscription charges received by assessee from customers in India was in nature of royalty. The Tribunal upheld the AO's order, following the coordinate bench in assessee's own case for earlier assessment years wherein, dealing with similar issue, it was held that assessee's activities would amounted to imparting of information concerning technical, industrial, commercial or scientific equipment work and payment made in this respect constituted royalty.
DCIT v Reuters Transaction Services Ltd [2018] 96 taxmann.com 354 (Mumbai - Trib.) – ITA Nos. 1393 & 2219 (MUM.) OF 2016 dated August 3, 2018

1190. The assessee, a Belgian company engaged in business of production and sale of health and digital imaging solutions (MRI machines), earned receipts from sale of software licenses provided along with the equipment/ hardware sold in India to its India Group Company (AHIPL). The AO held that the consideration received from sale of software had to be treated as royalty as per sec 9(1)(vi) as well as under Article 12(3)(a) of the India-Belgium DTAA. The Tribunal followed the coordinate bench ruling in case of AHIPL wherein the Tribunal had quashed the order passed u/s 201 / 201(1A) holding that the

payment made by AHIPL to the assessee-company was not in nature of royalty since the dominant character and essence of the transaction was sale of machine by the assessee and the software, independently, had no value for the customer. In the case of AHIPL, the Tribunal had also relied on the coordinate bench ruling in HIIT Holland Institute of Traffic Technology BV vs DDIT wherein it was held that where software was embedded in equipment supplied for mere purpose of operating equipment, it was not a case of giving independent right to use software and hence the amount paid for supply of software was not taxable in India as royalty u/s 9(1)(vi). Accordingly, it allowed the assessee's appeal on this ground.

The Tribunal, however, remanded the issue of taxation of income earned from provision of information and communication service by treating it to be royalty for de-novo adjudication, noting that neither the AO nor the DRP had examined assessee's contention that the expanded definition of royalty after introduction of Explanation-4 to section 9(1)(vi) would not apply to assessee's case in absence of corresponding amendment in Article- 12(3)(a) of India Belgium DTAA

Agfa Healthcare N.V. vs Dy.CIT [2018] 97 taxmann.com 463 (Mumbai - Trib.)- ITA No.6740 of 2017 dated 31.08.2018

1191. The Tribunal dismissed the assessee's appeal and upheld the taxation of payment received for domain name registration as royalty as per section 9(1)(vi), following the Tribunal's order in the assesee's own case for the earlier year wherein it was held that rendering of services for domainregistration was rendering of services in connection with use of intangible property which was similar to trademark and accordingly, charges received by assessee for services rendered in respect of domain name was royalty within meaning of section 9(1)(vi) r.w. clause (iii) of Explanation 2 to section 9(1). It was also noted that the assessee was not a tax resident of USA and hence it had not claimed the benefit of the India-USA DTAA.

GODADDY.COM LLC v DCIT(IT) (2018) 53 CCH 0386 DelTrib– ITA No. 7123/DEL/2017dated July24, 2018

1192. The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had upheld the AO's order bringing to tax license fee received by the assessee, Candian company, in terms of 'Membership and Technology Transfer Agreement' from Indian company for acquisition of certain specified licences relating to Reservoirs Synch Technology as royalty. It was noted that the payment for membership by the Indian company was purely for non-exclusive and non-transferable licence to use technology only for its own internal business purpose and there was neither sale of copyright nor licence was given for copyright in any kind of software or technology.The Tribunal accepted the assessee's submission that what was given under the agreement was right to use copyrighted article and not the copyright, relying on the decision in the case of DIT v. Infrasoft Ltd. (2014) 20 Taxman 273(Del HC) wherein it was held that payment made for use of copyrighted article connot be considered as royalty under Article 12 of India-USA DTAA but as business income under Article 7. Accordingly, it held that the said payment could not be held to be reckoned as royalty under the India-Canada DTAA.

ONGC v DDIT [2019] 100 taxmann.com 265 (Del Trib) – ITA Nos. 3046 (DELHI) of 2010 & 3908 (DELHI) of 2011 &others dated November 19, 2018

1193. The assessee-company entered into a technical assistance agreement with a non-resident company in Austria for design of a new 75CC, 3-valve cylinder head for moped application. The Assessing Officer treated payment to Austrian company as royalty. The Court held that since engine has already been developed by the assessee and scope of technical services agreement was only to design a new 3-valve cylinder head with a specified combustion system for considerable improvement of fuel efficiency, performance and meeting Indian emission standards and, moreover, all products, design of engines and vehicles were supplied by the assessee, payment did not constitute royalty.

Director of International Taxation v. TVS Motors Co. Ltd. [2018] 99 taxmann.com 40/259 Taxman 140 (Mad.)-T.C. (A.) No. 878 of 2008javascript:void(0); ***dated October 24, 2018***

1194. The assessee, a Netherlands based company, (KPNEV) was engaged in business of lightning, consumer electronics, etc. It had entered into research and development agreement with its subsidiary

Indian company (PEIL) to provide research and development services which included results of test inspections and investigation of products and their constituent parts and it provided guidance for manufacturing process, working method and rendering of packing, handling, shipping services, etc. PEIL agreed to pay the assessee a remuneration to reimburse cost of research and development. The Tribunal held that since the assessee did not transfer right to use and by way of research and development, PEIL was entitled to enjoy only certain services such as product developments, maintenance of product quality, uniforms handling, packing, storage and marketing methods and, there was no transfer of copyright, there cannot be any occasion to hold amount received from PEIL as royalty. Further, transaction between assessee and PEIL was simply in nature of reimbursement of expenses incurred by the assessee, on behalf of PEIL and it was not an income for the assessee.
Koninklijke Philips Electronic N.V. V Dy. CIT [2018] 99 taxmann.com 23(Kol.-Trib.)- ITA Nos. 1889 (KOL.) of 2012 & 565 (KOL.) of 2014 & 381 (KOL) of 2015 October 25, 2018

1195. The Tribunal dismissed Revenue's appeal against DRP's order holding that fees received by the assessee, a Swedish company, from its Indian group company for system development and software maintenance services was not taxable in India since it netiher fell within the definition of royalty nor Fees for technical services (FTS) under the India-Sweden DTAA r.w.India-portugal DTAA. The DRP rejected Revenue's contention that the said fees were taxable as royalty, noting that the assessee had not received any payment for granting license to use any software application to the Indian company. With respect to FTS, it relied on the co-ordinate bench decision in the assessee's own case for an earlier year wherein it was held that since the fees received from IT support services rendered by the assessee to the Indian company, being in nature of system development services and maintenance of internally developed applications, did not make available technical knowledge, experience, skill, know how or processes it did not fall within the ambit of 'FTS' under the India-Sweden DTAA r.w. India-Portugal DTAA.
DDIT(IT) v Sandvik System Development AB - TS-618-ITAT-2018(PUN) - ITA No.497/PUN/2016 dated 12.10.2018

1196. The Court dismissed Revenue's appeal against the Tribunal's order for AY 2007-08 wherein the Tribunal had held that reimbursement of lease line charges did not qualify as 'royalty' under Article 12(3)(b) of the India-UK DTAA and India-US DTAA and such amount received as reimbursement was not also not liable to be taxed as business profit under Article 7 r.w. Article 5 of the India-UK DTAA and India-US DTAA, noting that the issue stood concluded in favour of the assessee in view of the Court's dismissal of revenue's appeal for AY 2004-05 on similar issue.
CIT (IT) v WNS Global Services (Uk) Ltd & ANR.– ITA No. 890 & 891 of 2015 (Bom) dated 07.02.2018

1197. The Tribunal allowed assessee's appeal filed against DRP's order confirming AO's action in taxing the revenue received by the assessee, a US company, on account of sale of off the shelf software as 'royalty' u/s 9(1)(vi) as well as under Article 12 of the India-US DTAA. It noted that on identical facts the Tribunal had decided in favour of the assessee in earlier years following the decision in the case of DIT v Infrasoft Ltd (2014) 220 Taxman 273 (Del HC) wherein it was held that right to use a copyrighted article or product with the owner retaining his copyright was not the same thing as transferring or assigning rights in relation to the copyright and that the enjoyment of some or all the rights which the copyright owner had, was necessary to invoke the royalty definition under Article 12 of the India-US DTAA. It also noted that the authorities below had not been able to establish that the sale of software was merely a right to use copyright article or product with the owner retaining its copyright and that the DRP had held that the assessee did not have a PE in India.
Landmark Graphics Corporation v ADIT – ITA No. 5285 /Del/ 2010 dated 18.01.2018

1198. Where assessee, a non-resident company, supplied 'Off the shelf'/Shrink Wrapped' software to an Indian company for purpose of billing its customers, in view of fact that assessee exclusively owned all Intellectual Property Right (IPR) in software and it had merely granted a copyrighted article to Reliance (Indian customer) and not 'copyright' in article and that the software was a standard product already developed and made available to other customers, Tribunal held that the payment received by

assessee was not liable to tax in India as royalty u/s 9(1)(vi) and article 12 of India-Ireland DTAA and since the assessee does not have PE in India, the said amounts are not liable to tax in India.
Intec Billing Ireland v ADIT (IT) – (2018) 90 taxmann.com 94 (Mum) – ITA No. 1535 (Mum) of 2014 dated 08.01.2018

1199. Where the assessee, a US based company, entered into an agreement with another US company in terms of which it acquired patent and technical information which was used by the Indian holding company for the purpose of manufacture of two products, the Tribunal held that in view of fact that assessee company got said products manufactured from its holding company in India which were subsequently sold in USA, it was a case where there was clear business connection with India and, thus, royalty paid by assessee to said US based company was taxable in India under section 9(1)(vi).
Dorf Ketal Chemicals LLC v DCIT - [2018] 92 taxmann.com 222 (Mumbai - Trib.) - IT APPEAL NO. 4819 (MUM.) OF 2013 dated MARCH 22, 2018

1200. The Tribunal held that where the assessee obtained license only for the usage of software for a limited period and did not have right to change or modify software, payment made for obtaining license to use software could not be held to be royalty coming within ambit of DTAA or fees for technical services under section 9(1)(vii).
Nissan Motor India (P.) Ltd v DCIT - [2018] 92 taxmann.com 127 (Chennai - Trib.) - IT APPEAL NO. 1854 (CHNY) OF 2017 dated MARCH 21, 2018

1201. The Tribunal held that the payment made by the assessee to a UK based non-resident on account of transponder charges would not fall in nature of 'royalty' under the India-UK DTAA as the payment was made only for use of facility and it was not an equipment and did not amount to use of any copyright effecting work, secret formula, process etc or any other term described. It held that the payment of transponder charges could not be treated as a consideration for 'use' or 'right to use' any copyright of various terms used in in the DTAA viz. like copyright of a literary, artistic, or scientific work, including cinematograph films or work on film, tape or other means of reproduction for use in connection with radio or television broadcasting or in any manner related to any patent or trademark, design, secret formula or process. It was also not use or right to use any industrial, commercial, or scientific equipment and therefore held that the assessee was not liable to deduct tax under Section 195 of the Act.
UNITED HOME ENTERTAINMENT PRIVATE LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) & ANR. - (2018) 52 CCH 0098 MumTrib - ITA No. 1289/MUM/2016 dated Feb 9, 2018

1202. The Tribunal held that the payment of lease line charges made by the assessee to its US parent was not royalty under the India-USA DTAA and accordingly deleted Section 40(a)(i) disallowance for non-deduction of TDS u/s. 195 on the said payment. The US parent had entered into an agreement with third party service provider for providing of bandwidth services, and the parent company in turn, provided bandwidth services to its subsidiaries against reimbursement of lease line charges. Considering the extensive evidence filed by assessee which substantiated the privity of contract was between third party service provider and US parent, who in turn had received bandwidth and passed on the services to various entities of group on cost to cost basis, the Tribunal dismissed Revenue's contention that the assessee routed payments to third party service provider through its AE to avoid TDS obligations. Moreover, it held that the 'royalty' definition under the DTAA did not cover any such services, and relying on the decision of the Delhi High Court in New Skies Satellite BV & Ors it held that the amended royalty definition under the Act could not be extended to DTAA. Furthermore, it noted that the TPO had accepted assessee's international transaction of reimbursement of leaseline expenses to be at arm's length and did not propose any adjustment and therefore held that once the nature of expenses had been so accepted by the TPO, the Assessing Officer could not sit in judgment of the TPO order since under the provisions of the Act, the order passed by the TPO is binding upon the AO.
T-3 Energy Services - TS-97-ITAT-2018(PUN)-TP - ITA No.826/PUN/2015 dated 02.02.2018

1203. Where assessee, engaged in business of providing telecommunication services, entered into various agreements with non-resident-vendors for supply of software and made payments for same, the Tribunal held that consideration paid by assessee to suppliers for acquiring copy of software was

actually made for 'copyrighted article' and not for 'use of copyright or transfer of right to use of copyright and hence, payments made by assessee to vendors of software could not be taxed as royalty. In this regard, it noted that (i) the said agreements stipulated that assessee would be using software for 'operation of its wireless network only' and it was prevented from utilizing software for commercial use (ii) the copyrights in software was not transferred to customers, (iii) the access to 'source codes' in software was not granted to assessee and (iv) there was restriction on copying software.
DDIT v Reliance Communication Ltd – (2018) 90 taxmann.com 358 (Mum) – ITA Nos. 837 of 2007, 3431 to 3437 & 3440 to 3444 (Mum.) of 2008 & others dated 02.02.2018

1204. The Tribunal remanded the matter to AO for requisite verification in a case where assessee-company had made remittances to companies in USA/UK for purchase of software for resale without deducting TDS and as per AO the said payments were in nature of Royalty within meaning of section 9(1)(vi) but it was not clear whether the remittances were relatable to mere receiving software products from suppliers and passing it on to customers, or whether there was exploitation of software products obtained for commercial benefits of assessee.
India Soft Technologies (P.) Ltd v DDIT(IT) – (2018) 90 taxmann.com 188 (Pune) – ITA Nos. 1709 to 1712 (Pun.) of 2013 dated 24.01.2018

1205. The Tribunal held that the amount remitted by assessee, carrying on business of broadcasting of news channel, to a US company as per a contract with the US company, for using latter's satellite (transponder capacity) was not royalty and it was not taxable in India under provisions of article 12 of India-USA DTAA but the said amount would constitute business profits of the US company. It was noted that the activities and services were carried out through transponder located in space and these were not carried out or performed in Indian territories, and assessee was not having any control over transponders, it only had a right to use a certain capacity which was available within overall capacity of transponder. Further, since the US company didn't have a PE in India, the said sum was not chargeable to tax in India and consequently, not liable for TDS u/s 195.
Independent News Service (P.) Ltd. v ITO – (2018) 90 taxmann.com 163 (Del Trib) – ITA Nos. 1868, 1870 to 1882 of 2016 & ORS dated 25.01.2018

1206. Noting that the Tribunal in assessee's own case relating to earlier assessment years held that the assessee was not liable to deduct tax at source while making payment for transfer of usage rights of software and availing other services such as maintenance of software training etc., the Tribunal deleted the disallowance made u/s 40(a)(i) in respect of overseas payment for purchase of software without deducting tax at source.
Capgemini Technology Services India Ltd. v DCIT – (2018) 90 taxmann.com 191 (Pune Trib) – ITA Nos. 216 and 360 (Pune) of 2015 dated 25.01.2018

1207. The Assessee, a Singapore based company, supplied software and hardware to a resident company and the hardware and software which were sold by the assessee were interdependent in the sense that the hardware was useless without this particular software and the software could not be used in any hardware other than the one for which it was permitted to be used. Following the decision in the case of the assessee's group company i.e., Nortel Networks India International Inc v. ADIT [ITA Nos. 3313 to 3315/Del/2012] decided in favour of assessee on identical issue, the Tribunal held that the embedded software was not royalty and the receipts on account of sale of embedded software could not be separately brought to tax. In the case of assessee's group company, the Court had relied on the decision in the case of CIT v ZTE Corpn. [2017] 392 ITR 80 (Del HC) wherein it was held that since the supply of software embedded in equipment enabled use of hardware sold, it resulted in a case of sale of copyrighted article and, thus, payment made towards supply of sothware was not taxable in India as royalty.
ADIT v Nortel Networks Singapore (P.) Ltd. - [2018] 93 taxmann.com 401 (Delhi - Trib.) - IT APPEAL NOS. 2757 AND 2760 (DELHI) OF 2009 & 2172 TO 2176 (DELHI) OF 2011 dated April24, 2018
NORTEL NETWORKS SINGAPORE PTE. LTD. vs. DDIT (IT) (DELHI TRIBUNAL) (ITA Nos. 5482, 3240, 3241/Del/2012 & 553/Del/2015, 5505/Del/2012) dated May 28, 2018 (53 CCH 0083)

1208. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the taxation of royalty income earned by the assessee, a US based company, by giving license to its key patents to non-resident original equipment manufacturers (OEMs), where the OEMs sold products to wireless carriers worldwide including India and the Indian carriers sold such products in India. The AO taxed said royalty income u/s 9(1)(vi)(c) and Article 12 of the India-USA DTAA on the ground that the OEMs carried on business in India and used assessee's patents for making or earning income from a source in India. Section 9(1)(vi)(c) provides that royalty paid by a non-resident (OEMS, in the present case) to another non-resident (the assessee) will be taxable, it the same is paid in respect of any right, property or information used or services utilized for earning any income from any source in India. The Tribunal held that since the agreement with OEM was for use of 'intellectual property' for purpose of manufacture of equipments outside India, which were not India specific, it could not be said that OEMs used the assessee's patent for carrying on business in India. Further, it held that the sale of handsets to Indian carriers, without any operations being carried out in India, would amount to business with India and not "business in India". Accordingly, it held that the said royalty income could not be brought to tax u/s 9(1)(vi)(c) and as the income was not chargeable to tax in India as per the Act, there was no need to consider the provision of Article 12(7) of India-USA DTAA.

The AO had also taxed the amount received by the assessee on account of certain license to an Indian company to use copyrighted software for licencee's own business (including permission to make one copy for backup purposes) as royalty u/s 9(1)(vi)(c). Noting that there was no transfer of any right in respect of copyright by the assessee and it was a case of mere transfer of a copyrighted article, the Tribunal held that the said payment was for copyrighted article and represented purchase price of an article and could not be considered as royalty either under the Act or under the DTAA.

Qualcomm Incorporated v DDIT - [2018] 93 taxmann.com 80 (Delhi - Trib.) - IT APPEAL NOS. 5353 (DELHI) OF 2012, 1241 & 7064 (DELHI) OF 2014 6132 (DELHI) OF 2015 & 189 (DELHI) OF 2016dated April16, 2018

1209. The assessee made payment to GIL, a resident of Ireland, in respect of the purchase of advertisement space for resale to the advertisers in India under the AdWords program without withholding TDS as it was a mere non-exclusive distributor/ reseller of advertisement space to the advertisers in India and such payment to GIL on distribution of ad space in India was not in relation to any 'transfer of any right' or 'right to use' any Intangible Property (IP). The AO held that such payment made by the assessee to GIL was royalty u/s 9(1)(vi) and since no taxes were withheld, the assessee was held to be assessee in default u/s 201(1). CIT(A) upheld the AO's order. The Tribunal observed that though ownership of these IPs were with GIL, the assessee was provided licence to use confidential information, technical know-how, trade mark, brand features, derivative works, etc. It held that the payment to GIL for use of IPs to provide better service was certainly in the nature of payment of royalty and was chargeable to tax u/s 9(1)(vi) and under Article 12 of the India-Ireland treaty. Thus, the Tribunal held that the assessee was rightly in default u/s 201(1).

However, the CIT(A) had held that since GIL was beneficial owner of the royalty receipts, the royalty would be taxed at 10% only as per India-Ireland DTAA., whereas in this regard, the AO had held that the royalty revenue collected was to be shared amongst various parent holdings of GILand the assessee had not filed the relevant agreement between the different layers of holdings involved under the AdWord Program. Thus, was regard the rate of taxation, the Tribunal restored the matter to the file of the AO as it was not clear whether GIL had full control over receipt received under AdWord Program or GIL was merely acting as a conduit of its parent holdings.

Google India Private Limited & Ors. vs. JDIT (IT). – [2018] 53 CCH 0027 (Bangalore ITAT) – IT(TP)A No.374/Bang/2013, 881/Bang/2016, IT(IT)A No.2845/Bang/2017, 949/Bang/2017, 950/Bang/2017, 68/Bang/2015, 387/Bang/2017, 559/Bang/2016, 69/Bang/2014, 1295/Bang/2014, 466/Bang/2013, 191/Bang/2014, 205/Bang/2015, 1299/Bang/2015, 1190/Bang/2014 dated May 11, 2018

1210. The Assessee, engaged in business of development and distribution of software products in UK, sold software products in India, either through its distributors or directly to customers. The Tribunal held that receipts from offshore sale of software would not be taxable as business income under Article 7 of the tax treaty in absence of a PE in India. Further, the Tribunal held that such receipts could not be construed as royalty under Article 12 of the India-UK tax treaty as the Assessee was only selling copy righted article and there was no payment for use of copy right or acquiring the right to use the copy

right. While doing so, the Tribunal relied on the judgement of the Delhi High Court in Infra Soft Pvt. Ltd (96 DTR 0113) and M Tech India P Ltd (132 DTR 0057). Relying on the ruling of Delhi High Court in New Skies Satellite (133 DTR 0185) Tribunal also noted that any amendment in the Act could not be read into the treaty.

DCIT (IT) & Ors. vs. Micro Focus Ltd. & Anr. – [2018] 53 CCH 0062 (Delhi ITAT) – ITAs No 3312, 3313, 2376 & 2377 of 2016 and 177 of 2017 dated May 17, 2018

1211. The assessee company was engaged as accredited domain name registrar. The assessee's income was mainly from the domain registration fees which was claimed to be not taxable in India. However, the AO assesseed the same as royalty u/s 9(1)(vi) which was confirmed by the DRP. On further appeal, the Tribunal held that the rendering of services for domain registration is rendering of services in connection with the use of an intangible property which is similar to trademark and, therefore, charges received by the assessee for said services is royalty within the meaning of section 9(1)(vi).

Godaddy.com LLC v. ACIT – [2018] 92 taxmann.com 241 (Delhi – Trib.) – IT Appeal No. 1878 (Delhi) of 2017 dated April 3, 2018

1212. The assessee, a Thailand based company, was engaged in business of providing digital broadcast services through its transponders (through satellite) to its customers both in India as well as non-residents. The AO held that the income received by assessee was chargeable to tax in India as royalty u/s 9(1)(vi) as well as under article 12 of DTAA between India and Thailand. It was noted that the co-ordinate bench in assessee's own case in earlier assessment year had held that amendment made by Finance Act, 2012 [i.e. retrospective insertion of Explanation 5 & 6 under section 9(1)(vi) to bring within the purview of royalty income from data transmission services], would not affect Article 12 of DTAA and, therefore, income earned by assessee could not be held as 'royalty' chargeable to tax in India.The Tribunal followed the co-ordinate bench decision, noting that there was no change in circumstances, and allowed the assessee's appeal holding that income received by the assessee was not a royalty as per Article 12 of India-Thailand DTAA and therefore, the same was not chargeable to tax

Thaicom Public Co. Ltd. v DCIT(IT) - [2018] 96 taxmann.com 577 (Delhi - Trib.) - ITA Nos. 1062 AND 1063 (DELHI) OF 2015 dated April 26, 2018

1213. The Applicant, a U.S. Entity, provided content delivery solutions through Akamai EdgePlatform to its customers through sophisticated technology which operated on an automatic and continuous basis. AAR held that since the solutions provided by the Applicant were neither specialized, nor exclusive to individual customer requirements, the payment received for such solutions should not fall within the scope of 'FTS' under Explanation 2 to Section 9(1)(vii) or Article 12 of the India-US tax treaty as it was a standard facility and did not make available any technological knowledge, skill, etc. to the customers.

In respect of sale of solutions to Akamai India and onward sale of the same to Indian customers, AAR held that the receipt of payment for such sale would not constitute 'royalty' under Explanation 2 to Section 9(1)(vii) or Article 12(3) of the India-US tax treaty as it did not involve right to use the Akamai EdgePlatform or transfer of any rights in relation to the same. Further, AAR held that the Applicant did not have a PE in India.

Akamai Technologies Inc. In Re – [2018] 102 CCH 0010 (AAR) – AAR No 1107 of 2011 dated May 21, 2018

c. Fees for technical services

1214. The assessee, an Australian company,had entered into an agreement with ONGC for offshore supply of products/equipment, repair activities, equipment rentals and project management services and claimed the revenue received on account of offshore supply and repair activities to be not taxable in India. As regards offshore supply of equipment, the Tribunal held that since property in goods were transferred by assessee to ONGC outside India and entire sale was executed outside India, revenue received by assessee therefrom could not be taxed in India. As regards repair work undertaken by assessee at its overseas workstations located outside India, it held that since it was in connection with supply of plant and machinery on hire (revenue from which was offered to tax u/s 44BB) to be used for extraction or production of mineral oils, the same would clearly fall within sweep of exclusion contemplated in

Explanation 2 to section 9(1)(vii) and thus could not be taxed as FTS in India.The Tribunal held that even otherwise, since rendering of repair work by assessee outside India would not enable ONGC personnel to make use of any technical knowledge, experience etc. in future, amount received by assessee could not be brought to tax as 'royalty' or FTS under Article 13 of India-Australia DTAA.
The Tribunal also rejected the AO's contention that the aggregate revenue of assessee from ONGC was taxable on net income basis u/s 44DA as royalty / FTS, holding that various activities undertaken by assessee under contract with ONGC were seperate, divisible and independent of each other and thus taxability of revenue from such activities was required to be undertaken separately.
DCIT v Cameron Australasia Pty. Ltd[2018] 96 taxmann.com 331 (Mumbai - Trib.) – ITA No. 3711 (MUM.) OF 2016; C.O. NO. 315 (MUM.) OF 2017 dated July 13, 2018

1215. The assessee,anLLP incorporated inUK, provided legal advisory services to its clients worldwide, including India and in its return of income, offered certain amount to tax as income attributable to work performed in India by its PE in India which was created on account of its personnel (employees and other executives) staying in India for more than 90 days.The AO, however, opined that entire receipts were in nature of FTS within meaning of Explanation 2 to section 9(1)(vii) as services were utilized in India and that the same was FTS as per Article 13(4) of the India-UK DTAA also.The Tribunal held that since the services rendered were purely of legal advisory nature, it could not be concluded that by way of rendition of those services, assessee 'made available' to its clients technical knowledge, skill experience, know-how or process, etc. Therefore, it held that the said income was not FTS as per Article 13 and, accordingly, it could not be brought to tax as FTS as per provisions of section 9 also in view of section 90(2).
Linklaters LLP v DCIT [2018] 97 taxmann.com 464 (Mumbai - Trib.) – ITA No. 1540 (MUM.) OF 2016 dated August 29, 2018

1216. The assessee-company, engaged in business of manufacturing of master batches and engineering plastic compounds, had made payment to an individual,being a German resident, for production process training and technical research agreement for development and production of new products and for supervision of erection and commissioning of certain machine. The AO brought to tax the said amount as FTS u/s section 9(1)(vii) as well as Article 12 of India-Germany DTAA. The Tribunal rejected the assessee's claim that the payment could not be considered as FTS under Article 12 since the German individual had not 'made available', noting that Article 12 of India-Germany DTAA does not have 'make Available' clause for FTS and further the said DTAA r.w. the Protocol also did not contain the 'Most Favoured Nation' clause, as claimed by the assessee. However, it held that the said payment was not covered by Article 12 but Article 14 which is more specific as it applies specifically to 'professional services' provided by the 'Individual resident'. Further, noting that the German individual neither had any fixed base in India nor had stayed for 120 days or more in India, the Tribunal held that the said income was chargeable to tax only in Germany by virtue of article 14 of India-Germany DTAA, though the same was chargeable to tax as FTS u/s 9(1)(vii). Similarly, with respect to payment made to an individual being a Swiss resident for services in the nature of 'Independent scientific services', it held that since the Swiss individual neither had any fixed base in India nor had stayed for 183 days or more in India, the said income was chargeable to tax only in Swiss Confederation by virtue of article 14 of India-Swiss DTAA
Poddar Pigments Ltd. v ACIT [2018] 97 taxmann.com 643 (Delhi - Trib.) – ITA Nos. 5383 TO 5386 (DELHI) OF 2014 dated August 23, 2018

1217. The assessee, a Japanese company, had deputed some of its employees to its Indian subsidiary and the salary of such employees were reimbursed by the Indian subsidiary.The assessee claimed that since it was only a case of reimbursement of expenses, amount was not taxable in India.The AO however held the same to be taxable in the hands of the assessee as FTS.The DRP relied on the decision of Centrica India Offshore (P.) Ltd. v. CIT [2014] 364 ITR 336 (Del HC) and held that the receipt was to be considered as FTS irrespective of the fact whether it was received with mark up or cost to cost basis. The Tribunal upheld the DRP's order noting that (i) the assessee could not file reconciliation with regard to receipt and the actual payment to the employees (ii) the employees deputed by assessee were high level technical executives and they were rendering highly technical services to Indian subsidiary and (iii) the seconded employees had to work as per the direction, control and supervision of the assessee. Further, it held that the AO had rightly observed that the technology

was made available to the Indian subsidiary, therefore, there was no need for the employees of the assessee to come again. Accordingly, it held that the receipts fell within the ambit of FTS as defined in Explanation 2 to section 9(1)(vii).
Panasonic Corporation v DCIT [2018] 99 taxmann.com 183 (Chennai - Trib.) – ITA No. 1483 (CHNY) OF 2017 dated August 2, 2018

1218. The Tribunal held that since the maintenance services of software and training services provided by the AE did not 'make available' any technology to assessee, the payment made for providing such services were not covered within meaning of 'fees of included services' as defined in India-USDTAA, but could be considered as business profits under Article 7 of the said DTAA. However, since the AE did not have PE in India, it held that the same could not be taxed in India as per Article 7 of the India-US DTAA also.
Reliance General Insurance Co. Ltd. v ITO(IT) [2018] 97 taxmann.com 350 (Mumbai - Trib.) – ITA No. 8184 (MUM.) OF 2011 dated August 23, 2018

1219. The Tribunal remanded the issue of taxability of gross fees earned by the Indian branch of the assessee, Sweden company, from contracts awarded by the Indian telecom companies for installing GSM mobile telephone network back to the file of the AO, noting that the AO had decided the issue simply on the basis of an AAR ruling in assessee's case which was given based on the provisions of the India-Sweden DTAA and the said DTAA had been substituted by a new DTAA, which was not considered by the AO. Based on the said ruling, the AO had held the gross receipts to be taxable as FTS @ 20% u/s 115A without allowing any deduction in view of section 44D, as against the assessee's claim of considering the gross receipts to be business income and allowing deduction of expenses as per Article 7 of the India-Sweden DTAA. It was noted that though the definition of FTS was same in the old as well the new DTAA, the Protocol appended to the new DTAA had the Most Favoured Nation(MFN) clause as per which the 'make available' clause in the India-Finland DTAA was to be imported in the India-Sweden DTAA.
Ericsson Telephone Corporation India AB (India Branch) v Dy.DIT – ITA No. 893 (DELHI) OF 2006dated July4, 2018

1220. The Tribunal held that the amount received by the assessee, UK company, from its Indian subsidiary for providing SAP/CAD software related support wasto be taxed as FTS as per Article 13(4)(a), since the same was ancillary and subsidiary to the enjoyment of the right / property for which royalty was received by assessee and hence 'make available' clause under Article 13(4)(c) was not applicable. It noted that in earlier years, assessee had entered into bilateral agreement under which it used to receive royalty from the Indian subsidiary for licensing the technology with an exclusive right to manufacture and market, however, during relevant AY, assessee entered into a Tripartite Agreement whereby the technology was sub-licensed by assessee to another group company, and the royalty paid by the Indian subsidiary was routed through the said group company.Accordingly, noting that the entire royalty amount was passed on to assessee through the other group company (after reducing 0.5%), the Tribunal held that the amount received for software related support was ancillary and subsidiary to the enjoyment of the right / property for which the said royalty was received by the assessee and thus was to taxed as FTS as per Article 13(4)(a).
J.C. Bamford Excavators Ltd v DDIT [TS-389-ITAT-2018(DEL)] – ITA No. 1540/DEL/2014dated July18, 2018

1221. The Tribunal held that the amount received by the assessee, Belgium company, from an Indian company for providing Information Technology Support Services was not chargeable to tax in India as FTS, in view of MFN clause in India-Belgium DTAA r.w. India-Portugal DTAA which provides for taxation of FTS only if make-available condition is satisfied. On perusal of the description and nature of the IT support services provided in the service agreement, the Tribunal noted that the assessee had rendered IT support services from outside India and no personnel of assessee visited India in connection with provision of such services. Further, it noted that the AO/ DRP had not specified how the IT support services "make-available" knowledge, experience etc. to the recipient. Thus, the Tribunal held that these services were merely in nature of routine IT support services and availing such services in no manner had given any benefit to the Indian company with technical knowledge, skill or expertise to be able to apply it in future to perform functions independent of the assessee-company. Therefore, the

amount received for IT support services was not in nature of FTS as it did not satisfy the 'make available' condition and accordingly the addition was deleted.
Soregam SA v DDIT [2019] 101 taxmann.com 94 (Delhi - Trib.)– ITA No. 123 (DELHI) OF 2015 dated November 30, 2018

1222. The Tribunal allowed the assessee's appeal and held that the amount received by assessee, a Singapore based entity, for rendering legal services in India was not 'fee for technical services' as per the India-Singapore DTAA and accordingly not chargeable to tax in India. It followed the co-ordiante bench decision for earlier year in assessee's own case wherein it was held that fees so received by assessee was not in nature of 'fees for technical services' under article 12 of India-Singapore DTAA. In the earlier year, the Tribunal had held that the said receipt would be chareable to tax in India as business receipt if a PE could be constituted based the period of stay of the assessee's personnel exceeding the threshold limit of 90 days in the relevant previous year.
Linklaters Singapore (Pte) Ltd v DCIT [2019] 101 taxmann.com 486 (Mum Trib.) – ITA No. 854 (MUM.) of 2017 dated December 26, 2018

1223. The Tribunal held that the payment made by the assessee to foreign companies situated in Netherlands and Sri Lanka for audit, knowledge about tax law applicable (VAT Laws) in that country etc was not taxable as i) it could not be considered as royalty or FTS under the India-Netherlands DTAA as the non-resident entity merely provided the assessee with information and also had not made available technical knowledge/experience/skill etc. to the assessee ii) it was not taxable under Article 14 of the India-Sri Lanka DTAA (there being no FTS clause) since the Article provided that the profits on account of professional services would only be taxable in the country of receipt.
ACIT v Deloitte Haskins & Sells - [2018] 92 taxmann.com 279 (Mumbai - Trib.) - IT APPEAL NOS. 4844, 5095 & 6786 (MUM.) 2011 dated MARCH 23, 2018

1224. The assessee, a foreign company incorporated in USA and also tax resident of USA, received corporate IT charges under the agreement entered into with Indian group entity CPIL for providing IT related services. It claimed that such charges were mere reimbursement of cost, thus, not taxable either under domestic law or under DTAA. The AO held the said charges received to be income in nature of Royalty/Fee for Included Services under relevant articles of India-USA DTAA. Noting that the CIT(A) in the subsequent AYs i.e. AY 2009-10 to AY 2014-15 had decided the identical issue in favour of assessee and the revenue's had not filed an appeal against the said decision of CIT(A), the Tribunal rejected the revenue's appeal against the DRP's direction accepting the assessee's contention, relying on the Apex Court decision in the case of Radhasoami Satsang v CIT (1992) 193 ITR 321 (SC) wherein it was held that once the parties have allowed the position to sustain by not challenging the order, it was not appropriate to allow the position to be changed in subsequent years.
CARGILL INCORPORATED v ADD.CIT (IT) – (2018) 52 CCH 49 (Del Trib) – ITA Nos. 491/Del/2012, 492/Del/2012, 5647/Del/2011, 446/Del/2012, 447/Del/2012, 5503/Del/2010, 5648/Del/2011 dated 19.01.2018

1225. The Applicant [a leading global payment solution provider] used to charge banks [with whom it entered into Master License Agreements] processing fees relating to authorization, clearing and settlement of transactions. The Applicant also received assessment fees for building and maintaining a processing network. Additionally, it received miscellaneous revenue for the provision of services which were ancillary to the transaction processing activities. The Applicant provided the banks with a MasterCard Interface Processor (MIPs) that connected to the Mastercard Network and other processing centres. The applicant sought a ruling on the issues (i) Whether transaction processing fee, assessment fees and transaction related miscellaneous fees amounted to royalty (ii) Whether use of MIP equipment amounted to royalty (iii) Whether the use of software amounted to royalty (iv) Whether the fees paid by the final consumer who was using the card amounted to FTS.
The AAR noted that bank issued their own card and used the logo owned by MasterCard. It examined the agreement between the Applicant and banks and concluded that the dominant purpose was to license the trademark/mark. It also observed that the Applicant made the payment of royalty to MCI US (who was the owner of the IPs) for further sublicensing the IPs. Thus, the AAR held that the payment received by the Applicant represented consideration for use of IPs in India, and hence to be classified as Royalty.

The AAR also held that MIPs are equipments whose use constituted royalty. Further, noting that the use of software inside MIP and cards in the application software were essential parts of the transaction without which transaction would not be completed, it held that the use of software was subject to royalty.

However, the AAR held that the relation between the final consumer and the Applicant was of use of a standard facility and hence transaction processing service rendered by the Applicant could not be taxed under the article of FTS in India-Singapore DTAA.

MasterCard Asia Pacific Pte. Ltd. In.re [TS-452-AAR-2018-TP] AAR No.1573 of 2014 dated 06.07.2018

1226. The Assessee-company, a tax resident of Netherland, was engaged in conducting training programs and providing access to various computer systems, viz. Centralized Reservation System ('CRS'), Property Management Systems and Other Systems to Marriott chain of hotels over the world. AO observed that assessee was in receipt of consideration for services rendered to their Hotels in India (Indian Hotels) as per Training and Computer Systems Agreements for conducting training programs of their employees and also other services. AO characterized aforesaid receipts as royalty and FTS, brought same to tax in hands of assesse. CIT(A) concluded that the consideration received by assessee were taxable as FTS. Assessee contented that consideration received for services rendered by it to Indian Hotels were in nature of reimbursement of expenses incurred by it and as there was no mark up or profit made by rendering the said services, there was no income liable to taxed in India. The Tribunal rejected assessee's claim since the assessee had failed to substantiate the same on the basis of any clinching evidence. It held that neither the training services rendered by the assessee to the Indian Hotels could be held to be technical services, nor the same could have been characterised as "ancillary and subsidiary" services as per Article 12(5)(a) and, hence, the consideration received by the assessee for rendering the training services could not be held as FTS. It further held that the access to CRS, Property Management System and Other Systems provided to Indian Hotels were common facilities and were not tailor made services to suit the specific requirements, hence, could not be construed as technical services to be taxed as FTS.

RENAISSANCE SERVICES BV vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0149 (Mum Trib) - ITA No. 7159/Mum/2012 dated Jun 8, 2018

1227. Where assessee, a Singapore based company, claimed to have provided administrative support services to an Indian entity but the nature of services rendered was not clear from the documents and evidence submitted by it before the lower authorities, the Tribunal remanded the matter back to AO to decide whether the services involved in the agreement satisfied the 'make Available' criteria or not and, consequently whether the said services constitutes FTS under the India-Singapore DTAA.

CEVA Asia Pacific Holdings Company Pte Ltd. v DDIT – (2018) 89 taxmann.com 410 (Del Trib) – ITA No. 1503 (Delhi) of 2014 dated 08.01.2018

1228. Where the assessee made a payment for acquisition of Designs and Drawings for purpose of completing operating and maintaining the plant imported from the non-resident, the Tribunal held that the said payment could not be considered as FTS as the payments were not merely inextricably linked with the plant but without such payments the plant would not have been installed and commissioned. It held that the payments towards Designs and Drawings would in fact constitute part of the cost of acquisition of the plant.

TATA STEEL LIMITED vs. INCOME TAX OFFICER (INTERNATIONAL TAXATON) - (2018) 52 CCH 0174 MumTrib - ITA No. 1086/Mum/2017 dated Mar 1, 2018

1229. The Tribunal held that testing fees paid by assessee (an Indian company) to Netherlands company was not taxable as FTS under India-Netherlands DTAA since the knowledge of testing was not made available to the assessee and therefore held that the assessee was not required to deduct TDS u/s. 195. Accordingly, it deleted the disallowance made by the AO under Section 40(a)(i) of the Act.

Areva T & D India Limited (Now Alstom India T & D India Ltd) [TS-149-ITAT-2018(CHNY)] - /ITA No.2079/Chny/2014 dated 23.03.2018

1230. The assessee, a manufacturer of motor cars in India exported the motor cars to other countries through its sister concerns who acted as the dealer of the assessee-company. It also provided warranty to the end customers who purchased the car. The assessee's sister companies maintained the cars sold by the assessee according to the terms of the warranty promised by the assessee-company, towards which it incurred expenditure. As per the contractual obligation, the assessee company reimbursed such expenses to its dealer - sister companies. The Tribunal observed that the reimbursements received by the sister concerns from the assessee were for the purpose of earning income from source outside India (export sales) and therefore held that by virtue of section 9(1)(vii)(b), the reimbursement payment by the assessee company to its sister concerns was to be excluded from the deeming provision of section 9(1) viz. income accruing or arising in India. Hence, it held that the assessee company would not be liable to deduct tax under section.195.
Nissan Motor India (P.) Ltd v DCIT - [2018] 92 taxmann.com 127 (Chennai - Trib.) - IT APPEAL NO. 1854 (CHNY) OF 2017 dated MARCH 21, 2018

1231. The Tribunal held that the business development fees paid by assessee-company to its wholly owned subsidiary in Singapore for marketing, business development services and customer co-ordination support services was not taxable as FTS under the Act and India-Singapore DTAA. Referring to the agreement entered into by the assessee with its subsidiary , it observed that the services rendered did not follow a common set of methods but were rendered using various tactics and negotiation strategies which were personal in nature, did not involve any use of technical skills and also did not involve rendering advice and therefore it held that the services could not be categorized as 'managerial', 'technical' or 'consultancy' in nature. Further, it held that the services did not constitute FTS under the DTAA as the requirement of Article 12 of India-Singapore DTAA -i.e. making available of services in the nature of managerial, technical or consultancy was not satisfied. It held that for a service to be made available, the service recipient should be able to make use of the knowledge, by itself in its business for its benefit and without the recourse to the service provider in future, which was not so in the instant case.
Fractal Analytics Pvt.Ltd. v DCIT - TS-107-ITAT-2018(Mum) - ITA No. 3511/Mum/2015 dated 01.3.2018

1232. Where the assessee, Indian branch of a non-resident company, had made payment to its HO towards allocation of expenses incurred by HO and there was nothing on record to prove that HO had made available technical knowledge to the assessee by performing activities specifically for assessee, Tribunal held it was pure and simple allocation of expenses among various group entities and the said expenditure could not be treated as FTS as per article 13(4) of the India-France DTAA.
Credit Agricole Corporate & Investment Bank v DDIT – (2018) 168 ITD 553 (Mum) – ITA Nos. 6682 & 6706 of 2012 dated 05.01.2018

1233. The Tribunal held the FTS received by assesse, a UAE based company, from its Indian AE for providing management and technical consultancy services were in nature of business receipts but not taxable in the present cases as (i) assesse had submitted that the India-UAE DTAA does not have any specific clause on taxability of fees for technical services and, hence, the said receipt was business income; (ii) the employees of assessee had worked for less than 9 months, the assessee had no PE in India and consequently the said business income was not taxable in India.
Booz & Company (ME) FZ-LLC v DDIT – (2018] 90 taxmann.com 49 (Mum) – ITA No. 4063 (Mum.) of 2015 dated 19.01.2018

1234. The assessee-company had paid sales commission to two non-residents agent for booking export order from foreign buyers and the process of procurement of order included display or demonstration of goods of assessee to foreign buyers who would place the order for purchase of those goods, and non-resident agents would forward those purchase orders to assessee. The Tribunal held that above process could not be termed as managerial service so as to qualify as 'fee for technical services' (FTS) as defined in Explanation 2 below section 9(1)(vii). However, with respect to assessee's contention that that no part of services was rendered in India and thus the said payment was not taxable in India, it held that in view of Explanation inserted below section 9(2) by Finance Act, 2010, even if services are rendered outside India, same may fall under FTS so as to be deemed to accrue or arise in India. The Tribunal also accepted assessee's contention that as per DTAA with the relevant countries (Canada &

UK), which override the Act, the service provided by the non-resident agents did not fall within the term FTS as defined in the DTAAs since the AO had not been able to establish that the services of procuring orders had made available any technical knowledge, experience, skill know-how etc. to the assessee. Further, it held that since the AO had neither established that the non-resident had business connection in India as per section 9(1)(i) nor that it had any PE in India in terms of DTAA with relevant countries, the income of the non-residents were not taxable as business income in India.
ACIT v Evergreen International Ltd. – (2018) 91 taxmann.com 111 (Del Trib) – ITA No. 177 (delhi) of 2015 dated 07.02.2018

1235. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) on account of payment of global support service fees to a company in Singapore without deducting TDS thereon, where the AO opined that the said payment was in nature of FTS as defined in Explanation 2 to section 9(1)(vii), holding that the payment made by the assessee could not be considered as FTS as defined under article 12(4)(b) of the India-Singapore DTAA and for this reason there was no need to examine taxability of the same u/s 9(1)(vii). While holding that the said payment doesn't fall within the definition of FTS under the DTAA, the Tribunal noted that as per terms of agreement, the Singapore company had to provide management consulting, functional advice, administrative, technical, professional and other support services to assessee and there was nothing in agreement to conclude that in course of such provision of service, the said company had made available any technical knowledge, experience, skill, know-how, or process which enabled assessee to apply technology contained therein on its own.
ExxonMobil Company India (P.) Ltd. v ACIT – (2018) 92 taxmann.com 5 (Mum) – ITA No. 6708 (mum.) of 2011 dated 21.02.2018

1236. Replying on the AAR ruling in the case of Cushman & Wakefield (S) Pte. Ltd., In re. (2008) 305 ITR 208 (AAR) and the decision in the case of CLSA Ltd. v. ITO(IT) (2013) 56 SOT 254 (Mum), the Tribunal held that the referral fee received by the Dubai branch of the assessee-swiss company from an Indian company for referring an Indian resident client was in nature of 'commission' to be taxed as 'business income' and not as 'fees for technical services'. In the above referred ruling, the AAR considered the provisions of the Act as well as the Indo-Singapore DTAA whereas in the above referred Tribunal decision, referral fees was held not to be in the nature of 'fees for technical services' within the meaning of section 9(1)(vii). The Tribunal, in the present case, further held since the assessee's branch did not have a PE in India and the assessee's PE in India had no role to play in the performance of the referral activity in question, the impugned fee could not be considered to be attributable to assessee's PE in India and, thus, the same would not be liable to tax in India as per article 7 of the Indo-Swiss DTAA.
DCIT v Credit Suisse AG – (2018) 90 taxmann.com 181 (Mum) – ITA Nos. 1247 (Mum) of 2016 and 7357 (Mum) of 2017 Cross objection no. 278 (Mum) of 2017 dated 09.02.2018

1237. Where assessee had purchased certain plant and machinery from a foreign company located in Saudi Arabia and had entered into a contract with another foreign company in UAE for installation and commissioning of said machinery outside India, the Tribunal held that it could not be construed to be a technical service within meaning of section 9(1)(vii) and, thus, payment made in respect of same was not liable to tax in India. Consequently, it did not require any deduction of tax u/s 195.
Shivsu Canadian Clear Waters Ltd. v DCIT – (2018) 90 taxmann.com 352 (Chen Trib) - ITA No. 2347 (Mds.) of 2017 dated 25.01.2018

1238. The Tribunal held that the amount received by the assessee-company, a UK based company, for inspection and testing services rendered to Indian customers in respect of imported/exported cargo and certification in relation to quality and price could not be taxed in India in accordance with Article 13(4)(c) of the India-UK DTAA dealing with Fees for Technical Services (FTS) since it was not making available any technical knowledge, experience, skill, know-how or processes to recipient of service. It was noted that there was no dispute between the parties that the sum so received was chargeable to tax according to the provisions of domestic tax laws. However, it was held that though all the services provided by the assessee were in the nature of technical analysis, unless the service recipient was able to perform those services independently without the help of the service provider, it could not be said that services had been made available by the service provider to the service recipient, as per article 13(4)(c) of the said DTAA. Accordingly, noting that the Revenue had not brought on any material to

show that subsequently the recipient of those services had performed these services on their own without the help of the assessee or any other similar service provider, the said amount received by the assessee was not chargeable to tax in India.
Inspectorate International Ltd. v ACIT - [2018] 95 taxmann.com 229 (Delhi - Trib.) - IT APPEAL NOS. 4938 (DELHI) OF 2016 & 6365 (DELHI) OF 2017 dated June18, 2018

1239. The assessee, a Netherland based company, engaged in business of executive search service as well as providing technology, software and related support services to its group companies, had entered into a Licence agreement (LA) with its Indian subsidiary whereby it granted license to the Indian subsidiary to use trade-name, trademark, and rights to use software owned by it against license fee which was offered to tax as royalty. It had also entered into a service agreement (SA) whereby, both the Indian subsidiary and the assessee had agreed to provide, on a principal-to-principal basis, support and services to each other in relation to executive search assignments against executive search service fee (ESF). The AO held that terms and conditions in SA were part and parcel of LA and that same were ancillary and subsidiary to application or enjoyment of right/property/information for which royalty was received by the assessee and thus, ESF was taxableas FTS under Article 12 of the India-Netherland DTAA. Noting that the license fees and search fees were governed by separate and distinct agreements entered into by the assessee and the Indian subsidiary, the Tribunal held that they would constitute different sources of the assessee's income and thus the ESF were independent services, not provided for purpose of enjoyment/application of right, property, etc. It, thus, held that ESF was not taxable as FTS under Article 12(5)(a) of the India-Netherland DTAA. Further, in relation to SA, the assessee had also received payments from the Indian subsidiary towards reimbursement of expenses towards travel and stay, video conferencing charges, insurance, and other miscellaneous expenses, which was also taxes as FTS by the AO. Noting that the reimbursement of expenses were supported by third-party invoices and services provided by assessee were purely passed on as reimbursement of actual cost without any markup,the Tribunal held that the reimbursement of expenses did not constitute FTS as per Article 12 of the said DTAA.
Spencer Stuart International BV v ACIT - [2018] 94 taxmann.com 380 (Mumbai - Trib.) - IT APPEAL NO. 1696 (MUM.) OF 2015dated June1, 2018

1240. The Tribunal had allowed the assessee's claim for Nil withholding/ non-taxability in respect of payment made by it to a German company for services rendered by the personnel of the German company solely relying on an AAR ruling in the case of Tekniskil (Sendirian) Berhard v. CIT [(1996) 222 ITR 551 (AAR)] wherein it was held that the FTS arising out of supply of skilled labour were not liable to tax in India in terms of Article 7 as 'business profits' on the ground that the assessee did not have a Permanent Establishment (PE) in India in terms of Article 5 of the India-Malaysia DTAA. However, noting that the relevant India-Malaysia DTAA as applicable for the aforesaid ruling did not have the FTS clause, the Court remanded the matter back to the Tribunal to examine whether the aforesaid payments amounted to FTS under Article VIIIA of India-Germany DTAA.
DIT (IT) v Modiluft Ltd – (2018) 93 taxmann.com 180 (Del) – ITA Nos. 772 of 2004 & 15 of 2005 and others dated May 8, 2018

1241. The Tribunal allowed the assessee's appeal against the AO's order wherein the AO had held the amount received by the assessee from Airport Authority of India (AAI) towards installation, commissioning and testing charges was towards training and taxable as FTS as per Article 12(5) of the India - Netherlands DTAA. It was noted that the said amount was received by the assessee in furtherance of the contract entered with the AAI earlier for supply of equipments (as additional resources for urgent requirement) and the main contract value received from such contract was examined in past and accepted to be towards installation. It was also noted that the assessee had entered into a separate contract for training service in past and the bifurcation of consideration received towards installation and training was accepted by the **R**evenue. The Tribunal thus held that it would be inappropriate to question the contract in this year after the completion of the contract, especially in view of the fact that the AO had not adduced any reasoning to construe the said receipt as attributed towards training. It thus held that the additional amount received from AAI towards installation, commissioning and testing charges was not taxable as FTS within the meaning of Article 12(5) of the India - Netherlands DTAA as the same was not received towards training as assumed by the AO. Further, the

Tribunal held that income in respect of such services could not be taxed even as business income, in the absence of a Permanent Establishment (PE) of the assessee in India as per Article 7 of the India-Netherlands DTAA.
HITT HOLLAND INSITUTE OF TRAFFIC TECHNOLOGY B.V. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONA TAXATION) - (2018) 52 CCH 0280 KolTrib - ITA No. 390/Kol/2015 dated Apr 4, 2018

1242. The Tribunal held that where assessee engaged in business of export of special pipes, made payments to foreign party towards supervision of installation of pipes and fittings, since same was in respect of assembly of project, said payments would squarely fall within sweep of exceptions carved out in Explanation 2 to section 9(1)(vii) and thus could not be taxed as FTS.
Chemical Process Piping (P.) Ltd.v R.M. Madhavi - [2018] 94 taxmann.com 116 (Mumbai - Trib.) - IT APPEAL NOS. 1036 & 1037 (MUM.) OF 2016dated 02.05.2018

1243. The Applicant, a French limited liability company, would be earning front-end fee, commitment fee, cancellation fee, amendment fee and monitoring fee from Indian customers under a financing arrangement. As regards the 'front-end fee' payable for appraisal of loan, AAR held that since the debt claim would not be in existence when such fees are payable, it cannot be construed as interest under Article 12 or FTS under Article 13 of the India-France tax treaty. AAR also held that 'front-end fee' other than appraisal fee was taxable as interest under Article 12 as it was in relation to a debt claim. Further, AAR held that commitment fee, cancellation fee, amendment fee and monitoring fee are directly related to a debt claim as they were charged after disbursement of loan and hence were chargeable as interest under Article 12 of the India-France tax treaty.
Societe De Promotion Et De Participation Pour La Cooperation Economique In Re – [2018] 102 CCH 0011 (AAR) – AAR No 1105 of 2011 dated May 21, 2018

1244. Following the ruling of the co-ordinate bench in the assessee's own case for other years (i.e. AY 2007-08 in ITA No 222/Coch/2013 and AY 2008-09 to AY 2013-14 in ITA No 99-104 of 2017), the Tribunal held that payment made by the Assessee for management service in AY 2011-12 and AY 2012-13 could be considered as FTS as per Article 12(4)(b) of the India-US tax treaty as in addition to providing the input, service and advice, the US company also provided training to the employees of the Assessee, thereby making available expertise and technical knowledge.
US Technology Resources Private Limited vs. DCIT – [2018] 53 CCH 0071 (Coch ITAT) – IT(TP) Appeal No. 475/Coch/2016, 134/Coch/2016 (SA No. 08/Coch/2018) dated May 23, 2018

1245. The Assessee had entered into a contract with a USA based non-resident company for carrying out certification work with respect to certain oil fields and the consideration received by the non-resident company was claimed to be not taxable in India in view of provisions of India-USA DTAA. The AO, however, brought the said consideration to tax as fees for technical services u/s 9(1)(vii) r.w.s 115A. the Tribunal allowed the assessee's appeal following the co-ordinate bench decision in assessee's own case wherein it was held that the said consideration could not be construed as fees for included services under India-USA DTAA as no technical knowledge, skill, know how etc. was made available to the assessee. Further, the co-ordinate bench had held that since the non-resident company did not have any PE in India the same could not be taxed as business profits in India as per Article 7 of the India-USA DTAA.
ONGC LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0272 DelTrib - ITA No. 1330/DEL/2016 & 1332/DEL/2016 dated June 29, 2018

1246. The Tribunal upheld the CIT(A)'s order holding that the professional fees received by the assessee, an NRI residing in UK, from Indian companies was taxable as FTS under Explanation 2 to section 9(1)(vii), noting that though the assessee had offered to tax the said income on net basis (i.e. after reducing expenses) in his return of income, the recitals in the TDS certificate had categorized the receipts as fee for professional and technical services and the assessee had not brought any evidence to prove the nature of services or actual rendering of services. It also rejected the assessee's claim that he had mistakenly offered the receipts to tax and that these were commercial receipts for services rendered

outside India, not taxable in India absent PE, noting that amounts were credited to assessee's NRO savings account in India.
Shri Sanjiv Ghai v Dy.DIT - [TS-338-ITAT-2018(DEL)] - I.T.A. Nos.5681 to 5686&5864 to 5868/Del/2014 dated 27.06.2018

1247. The assessee's group company (Granite USA) had seconded employees to assessee in India who were rendering services in the nature of erection, installation, commissioning, warranty administration, operation maintenance, inspection, renovation and modernization of power plant. The salaries and other allowances were paid overseas by the group company Granite USA for sake of administrative convenience which were reimbursed by the assessee. The assessee had deducted tax at source u/s.192. The assessee had also reimbursed travel and conveyance expenses to its group company and its various branch office. The AO was of the view that services rendered by the seconded employees satisfied the make available clause as provided under the DTAA between India and USA and held that it was in the nature of "FTS" and disallowed the amount under the provisions of s 40(a)(i) on account of non-deduction of TDS u/s.195. The AO also disallowed the travel and conveyance expenses under the provisions of s 40(a)(i) on account of non-deduction of TDS u/s.195. The DRP concurred with the view of the AO. It was assessee's contention that the salaries were being reimbursed on cost to cost basis and further, the services were provided by seconded employees on regular basis and there was no imparting of technical knowledge hence it did not fall within the purview of fees for technical services under the DTAA. The assessee also contended vis-a-vis travel and conveyance expenses that payments were in nature of reimbursement on cost to cost basis and the amounts were not chargeable to tax in India and hence did not warrant disallowance u/s.195. The Tribunal remanded the issue following the coordinate bench decision of the assessee for its earlier year wherein the AO was directed to verify the factuals after affording the assessee an opportunity to furnish requisite details that would have a bearing on disallowance u/s.40(a)(i) of the Act.
Granite Services International India Private Limited vs DCIT [TS-628-ITAT-2018(DEL)-TP] ITA No.740/Del/2014 dated 19.06.2018

d. Capital Gains

1248. AAR ruled that the benefit of proviso to section 112 (1) of taxation at lower rate of 10% cannot be denied to foreign companies with respect to long-term capital gains arising on sale of listed equity shares of an Indian company following the decision in the case of Cairn UK Holdings Ltd. v. DIT (2014) 220 Taxman 230 (Del HC)
Finnish Fund for Industrial Cooperation Ltd., In re vs. – (2018) 91 taxmann.com 133 (AAR) – AAR no. 1375 of 2012 dated 28.02.2018

1249. AAR ruled that the benefit of proviso to section 112 (1) of taxation at lower rate of 10% could not be denied to foreign companies with respect to long-term capital gains arising on sale of listed equity shares of an Indian company following the decision in the case of Cairn UK Holdings Ltd. v. DIT (2014) 220 Taxman 230 (Del HC) and several other AAR rulings. Further, it allowed assessee's claim for deduction of expenses incurred towards fees for computerization of share certificates in order to transfer them to escrow account considering them to be incurred in connection with transfer of shares as per provisions of section 48.
Honda Motor Co. Ltd., In Re – (2018) 253 Taxman 402 (AAR) – A.A.R. No 1200 of 2011 dated 07.02.2018

1250. The assessee-individual had purchased a residential flat from two non-residents (vendors) under a sale deed which had been executed in favour of the assessee by the GPA holder of the vendors (who was an Indian resident) and since, the assessee had made the payment of sales consideration to the said GPA holder, he had not deducted TDS u/s 195 on such payment. The AO treated the assessee as "assesssee in default" u/s 201(1) and levied interest u/s 201(1A) on the TDS amount determined by considering provisions of section 50C while computing LTCG. The Tribunal held that at best, the GPA holder could be considered as only a conduit between the assessee and the owners of the property and therefore, in the true sense, the assessee had made the payment to the non-residents only. However, in the present case, since the assessee had subsequently paid tax u/s 195 on LTCG arising in the

hands of the vendors on transfer of the said flat, it was held that the assessee could not be treated as an "assessee in default" u/s 201(1), but was only liable for interest u/s 201(1A) till the date of payment of taxes by him. Further, the Tribunal rejected AO's action in invoking provision of section 50C to compute the LTCG, holding that it was not dealing with the liability of the vendors to pay the taxes, but with the liability of the assessee to deduct taxes at sources and as far as the liability of the assessee was concerned, TDS would only be on the actual consideration credited or paid by the assessee, whichever is earlier.

BHAGWANDAS NAGLA v ITO(IT) – (2018) 52 CCH 61 (Hyd Trib) – ITA No.143/Hyd/2017 dated 25.01.2018

e. Interest Income

1251. The Tribunal allowed the assessee's appeal and held that tax residency certificate issued by the Mauritian authority was sufficient evidence to hold the assessee-bank to be 'beneficial owner' of the interest income received from investment in debt securities and consequently, in view of provisions of Article 11(3)(c) of the India-Mauritius DTAA, the said income was not taxable in India. Article 11(3)(c) provides that interest income arising in a contracting state shall be exempt from tax in that state provided it is derived and beneficially owned by any bank carrying on a bona fide banking business which is resident of the other contracting state. The Tribunal relied on the CBDT Circular No. 789, dated 13-4-2000 which provides that wherever a Certificate of Residency is issued by the Mauritian authority, such Certificate will constitute sufficient evidence for accepting the status of residence as well as the beneficial ownership for applying the provisions of the India-Mauritius Tax Treaty.It also clarified that though the said Circular was specifically in the context of incomes by way of dividend and capital gain on sale of shares, it would be equally applicable in the present case.

HSBC Bank (Mauritius) Ltd. v DCIT [2018] 96 taxmann.com 544 (Mumbai - Trib.) - ITA No. 1708 (MUM.) OF 2016 dated July 2, 2018

1252. The Tribunal allowed the assesssee's appeal and held the monthly assured return received by assessee-individual, UK resident, from builder in lieu of advance paid towards purchase consideration of commercial space in a proposed complex to be 'interest income' chargeable to tax at concessional rate of 15% as per Article 12 of India-UK DTAA, rejecting Revenue's stand that the same should be treated as return from investment and assessed as 'income from other sources' (not being interest income under Article 12). It noted that the property was not in existence at the time of making payment and therefore was not capable of yielding rent, lease money or capable of being commercially exploited and further, the terms of allotment letter evidenced that until the Conveyance deed was executed and registered, the builder would have full authority over the proposed unit and 95% advance by assessee would merely be a token payment with no lien or interest in the said unit.

The Tribunal, however, rejected the assessee's alternative that the assured return was only in the nature of capital receipt not liable for taxation, noting that even after payment of 95% of the price, the assessee did not get right or lien in the property and thus held that the aforesaid transaction was a financial transaction between the assessee and the builder.

Mohinder Singh Sanghera & Other v ADIT [TS-540-ITAT-2018(CHANDI)]- ITA No. 369 to 371&372 to 374/Chd/2016dated September 17, 2018

f. Foreign Tax Credit

1253. The Tribunal allowed the assessee's appeal against the CIT(A)'s and the AO's denial to grant credit of tax withheld by the US company on payment of interest to the assessee-Indian company, noting that as per Article 25 of the India-US DTAA, if resident of India derives income which may be taxed in US, then India had to allow deduction from tax on income of resident an amount equal to tax paid in US and as per Article 11 of the said DTAA, interest can also be taxed in source State in which it arises according to laws of source State. However, the matter was remanded for the limited purpose for production of TDS certificate or other similar document by the assessee-company.

Uniparts India Ltd. v CIT [2018] 96 taxmann.com 397 (Delhi - Trib.) - ITA Nos. 201 TO 205 (DELHI) of 2015 dated July 2, 2018

1254. The Tribunal, relying on its order in the assessee's own case for the prior year held that foreign tax credit ('FTC') claimed by assessee (an Indian company engaged in software development) in respect of taxes withheld in Singapore and Indonesia on receipt from software license sale and annual maintenance contract (AMC) was to be granted to the extent of corresponding 'income' that had suffered tax in India and not by taking into consideration gross receipts. The Tribunal, noting the language in the DTAAs and the UN and OECD Conventions, held that the expression used in the FTC Articles was 'income', which essentially implied 'income' embedded in the gross receipt, and not the 'gross receipt' itself. It held that, in principle the assessee's argument that 'gross receipts' were to be considered for computing FTC could not be accepted. However, since the facts of the case of the assessee were unique i.e. vis-à-vis software license sale / income (i.e.its main business was carried on in India and only some isolated transactions leading to the impugned income had taken place in Singapore and Indonesia which did not require any activity on the part of the assessee and therefore had no associated costs i.e. in the nature of passive earnings) it held that no part of the costs incurred in India was to be allocated to earnings from Singapore and Indonesia. Further, as regards the income from AMC, the Tribunal held that the assessee had allocated the costs corresponding to this income on a proportionate basis and since no defects were pointed out by the Revenue it rejected the AO's approach of allocating costs in proportion of turnover. It also held that the actual tax attributable to such income was to be determined by apportioning the actual tax paid under MAT provisions in the same ratio that the doubly taxed profit bore to the overall profits. Accordingly, the appeal of the assessee was partly allowed.
ELITECORE TECHNOLOGIES PRIVATE LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0275 AhdTrib - ITA No. 3546/Ahd/2015 dated Mar 20, 2018

1255. The Apex Court granted SLP against the decision of Delhi High Court wherein it was held that where assessee-society received dividend income from an Omani company on which it was not liable to pay any tax in Oman by virtue of exemption granted as per Omani tax laws, purpose of exemption being to promote economic development, assessee-society was entitled for getting credit for deemed dividend tax payable in Oman by virtue of provisions of DTAA read with section 90 together with clarifications issued by Sultanate of Oman.
Pr.CIT v Krishak Bharti Cooperative Ltd.-10 – (2018) 253 Taxman 242 (SC) – SLP (Civil) Diary No. 41708 of 2017 dated 19.01.2018

g. Withholding tax

1256. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's appeal filed u/s 248 seeking declaration that no tax was deductible u/s 195 in respect of payment made by the assessee-company to AACL(an Israel company) for managerial services, as the said services did not make available technical knowledge, experience, skill, know-how or processes and in terms of Most Favoured Nation clause contained in DTAA between India-Israel, the language of DTAA between India-Portugal would apply, which mandates the 'make available' condition. It held that the thrust of arrangement was essentially for supervisory and consultancy services, which inherently could not be said to be covered by 'make available clause' in tax treaties for simple reason that while these services, may require technical inputs, mere rendition of these services does not, by itself, result in transfer of technical knowledge, skills or experience.
DCIT v Sun Pharmaceutical Laboratories Ltd[2018] 96 taxmann.com 105 (Ahmedabad - Trib.) – ITA Nos. 1345 TO 1347 (AHD.) OF 2016 dated July 11, 2018

1257. The assessee was providing annual maintenance in respect of equipments manufactured and supplied by US AE andin case of critical/emergency of issues of customers, on-call advisory services were obtained remotely from US AE through call centres.The assessee paid to its AE for such technical on-call assistance support received. The AO disallowed the said payment u/s 40(a)(i) for non-deduction of

TDS u/s 195 opining the said payment to be in nature of FTS. The Tribunal noted that the services provided by US AE to assessee were in nature of assistance in trouble-shooting, isolating problem and diagnosing related trouble and repair services and the same were provided to the assessee's customers remotely and there was no provision of on-site support services.It held that as per the description of services rendered, the amount paid qualified as FTS as defined under Explanation 2 to section 9(i)(vii). However, it did not satisfy the 'make available' clause as per article 12(4) of India-US DTAA and, thus, provisions of section 195 were not applicable. Accordingly, it deleted the disallowance.
Ciena Communications India (P.) Ltd. v ACIT [2018] 98 taxmann.com 458 (Delhi - Trib.) – ITA Nos. 3561 TO 3563 (DELHI) OF 2018dated September 27, 2018

1258. Where the assessee had entered into an agreement with UK based university for providing certain technical services for which it had agreed to bear Indian taxes, the Court held that the assessee was required to gross-up amount of FTS paid to university as per section 195A, for purpose of deducting TDS. It held that even if the assessee opts to be governed by the provisions of the India-UK DTAA, in absence of tax computation mechanism in the said DTAA, income is to be computed as per the provisions of the Act considering the grossing up provision of section 195A and then the rate of tax as per the Act or the DTAA, whichever is more beneficial, would be applicable
TVS Motor Company Ltd. v ITO [2018] 96 taxmann.com 567 (Madras)– [T.C. (Appeal). Nos.1509 to 1513 of 2007 (Mad)] dated August 24, 2018

1259. The assessee, an Indian company, made payments to a US company for rendering management, financial, legal, public relations, treasury and risk management services which involved giving advices for making correct decision. Noting that the said payment was made without deducting TDS u/s 195, the AO made disallowance u/s 40(a)(i) opining that the same was in nature of FTS as per section 5(2) r.w.s 9(1)(vii). The Court held that the consideration paid to the USA Company did not fall under the purview of FTS as per Article 12 of the India-US DTAA since the US company only assisted the assessee in taking correct decisions by offering advise on factual basis (with respect to the problems arising at various points of time band) and there was no transfer of technical or other know-how to the assessee. Accordingly, it directed the AO to consider the claim of expenditure afresh without looking at the application of section 195(1).
US Technology Resources (Pvt) Ltd v CIT [2018] 97 taxmann.com 642 (Kerala) - ITA No.38 of 2014 & 19, 26 TO 30 OF 2018 (Mad) dated August 9, 2018

1260. The AO made a disallowance u/ 40(a)(i) with respect re-insurance premium paid by the assessee, an insurance company, to non-resident re-insurance company since the assessee failed to deduct TDS u/s 195 while making the said payment.The CIT(A) restricted the disallowance to 15% of amount paid without assigning any reason for the same. The assessee contended that since non-resident re-insurance company operated outside country, its income was not taxable in India, therefore, assessee was not liable to deduct TDS.The Tribunal rejected the assessee's above contention, noting that as section 2(9) of the Insurance Act, 1938,a foreign company engaged in re-insurance business was required to establish a branch in India, and unless a branch is established in India, the non-resident insurance company could not do any business in India. It thus held that the profit of non-resident re-insurance company was taxable in India and the assessee had to deduct tax at source. The Tribunal held that even otherwise, if assessee claimed that there was no person in India, and premium was paid directly to non-resident re-insurance company, then transaction of assessee was clearly in violation of provisions of section 2(9)(c) of Insurance Act, 1938, which would lead to disallowance of the entire amount paid in view of Explanation 1 to section 37(1). It thus allowed the revenue's appeal and held that the CIT(A) was not justified in restricting the disallowance to 15%.
DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

1261. The assessee-company, engaged in business of manufacturing, trading and marketing of footwear, paid commission to non-resident agents for procuring orders from parties situated outside India, without deducting TDS.The AO was of the opinion that the amount paid as commission was actually in the nature of fees for consultancy services and, therefore, in view of section 9(1)(vii)(c), the income of the agents accrued in India. He thus invoked section 40(a)(i) and disallowed the said amount. The CIT(A)

deleted the disallowance holding that services rendered by the agents were not in nature of consultancy services. The Tribunal upheld the CIT(A)'s order noting that there was no document on record to effect that non-resident rendered any technical, consultancy or management services and thus held that TDS was not required to be deducted from said payment.
DCIT v Taj International (P.) Ltd[2018] 96 taxmann.com 222 (Delhi - Trib.) - IT APPEAL NO. 6140 (DELHI) OF 2014dated July 20, 2018

1262. The Tribunal deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 while making payment to a Philippines based company for rendering game moderation services in respect of a game development by the assessee, holding that the said payment was not in nature of royalty as per Article 13 of India-Philippines DTAA but was in nature of FTS and since there was no Article in the said DTAA dealing with FTS, the said receipt could be brought to tax in India only as business income under Article 7 of the DTAA, if the Philippines based company had a PE in India. Accordingly, noting that the said company did not have any PE in India, it held that the payment in nature of FTS was not chargeable to tax in India. The Tribunal had held that the said payment could not be considered as 'royalty' since the lower authorities had already accepted it to be FTS and further the since assessee had not made the said payment for use of or right to use information concerning industrial, commercial or scientific expertise, as required under Article 13 of the DTAA.
Zynga Game Networks India (P.) Ltd. v ACIT [2018] 97 taxmann.com 44 (Bangalore - Trib.)– ITA No. 2139 (BANG.) OF 2017dated August3, 2018

1263. The Tribunal dismissed Revenue's appeal and upheld the CIT(A)'s order holding that assesseee was not liable to deduct TDS u/s 195 on payment of survey fees by the assessee-insurance company to non-resident surveyors for assessing loss / damage in transit of goods to foreign country. It noted that the surveyors had assessed damage of goods outside country that they had assessed damages as per their experience and knowledge but said knowledge was not made known to assessee and what was reported to assessee was only extent of damage so as to enable assessee to compensate loss to customers. Accordingly, the Tribunal held the said payments were not liable to tax in India and there was no requirement to deduct TDS thereon.
Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERSdated August6, 2018

1264. The Tribunal allowed assessee's appeal and deleted the disallowance made u/s 40(a)(i) with respect to various payments made by the assessee to its US AE on account of MIS Services, Cost Allocation, Corporate Allocation Charges and Legal Expenses, without deducting TDS u/s 195. It held that as per India-US DTAA, unless technical services, payment for which is sought to be taxed as fees for technical services, make available technical skill, knowledge and know-how, the same cannot be brought to tax and the fact that the services are customized and made to orderis wholly irrelevant to determine whether make available clause is satisfied. Thus, it held that said payment was not taxable in India in view of the India-US DTAA and accordingly, there was no liability to deduct TDS.
Seal For Life India (P.) Ltd. v DCIT [2018] 96 taxmann.com 645 (Ahmedabad - Trib.) – ITA No 1236 (AHD.) OF 2017dated August2, 2018

1265. The Tribunal deleted the disallowance made u/s 40(a)(i) with respect to payments made to foreign shipping/airline companies by the assessee-company, clearing and forwarding agent, noting that the non-resident companies had not rendered any services in India and did not have any PE in India. It thus held that the said payments made were not liable to tax in India under Act as well under relevant DTAA and accordingly, not liable for deduction of tax source.
KGL Network (P.) Ltd. v ACIT [2018] 97 taxmann.com 400 (Delhi - Trib.) – ITA No 301 (Delhi) OF 2018 dated July2, 2018

1266. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order holding that the assesee-company to be not an assessee-in-default since the search fees paid by the assessee-company to SSIBV, Netherland based entity, as per service agreement was not taxable in tax as Fees for technical services and thus not liable for deduction of tax at source. The AO noted that the assesee had also paid licensee fee to SSIBV under the licensee agreement and held that the service agreement flows out of the licensee agreement itself. He thus held that the search fees paid were ancillary and subsidiary to

enjoyment of right, property under the licence agreements and was taxable as fees for technical services as per Article 12(5)(a) of the India-Netherland DTAA. The Tribunal followed the decision given by the co-ordinate Tribunal bench in the case of SSIBV wherein it was held that the search fee could not be treated to be ancillary and subsidiary to licensee agreement and the service agreement was independent of the license agreement and thus service fee was not taxable as FTS. The co-ordiante bench had inter alia noted that since the search fees was to be determined on the basis of relative contribution of each party (i.e. assessee and SSIBV), in a given situation, SSIPL (assessee) could also receive search fees from the SSIBV, but the same was not true for licence fee as SSIBVwas not supposed to pay anything to SSIPL (assessee) as license fee.
ITO(IT) v SPENCER STUART (INDIA) PVT. LTD. (2018) 53 CCH 0390 MumTrib - ITA No. 217/Mum/2017, 220/Mum/2017, 221/Mum/2017 dated July 23, 2018

1267. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) on account of liasoning and other site charges paid to foreign service providers for rendering to the assessee-company at its project site in Saudi Arabia without deducting TDS u/s 195, noting that (i) the payments were made outside India for renderingservices to the project located outside India i.e. no part of services was either rendered or received in India and (ii) the foreign service providers did not have any PE in India. It thus held that the said payment were not chargeable to tax in India and accordingly, were not liable for TDS u/s 195.
LIBRA TECHCON LTD. & ANR. V DCIT (2018) 195 TTJ 0105 (Mumbai) (URO) – ITA No. 2475/Mum/2013, 4480/Mum/2013dated August24, 2018

1268. The Tribunal upheld held the AO's disallowance u/s 40(a)(i) for non-deduction of TDS while making payment of usance interest (on delayed payment for imports) by the assessee-company to its Singaporean Holding Co., relying on the High Court decision in the case of CIT v Vijay Ship Breaking Corporation [261 ITR 113 (Guj)] wherein it was held that usance interest was covered under the definition of interes u/s 2(28A) and thus liable for TDS u/s 195. It rejected assessee's contention that the said High Court order had mergered with the order of the Supreme Court wherein the High Court's order had been reversed, noting that the Supreme Court had given relief on a different reasoning (dealing with applicability of legislative amendment) and the Supreme Court had categorically stated that the issue raised by the appeallant was not adjudicated. The Tribunal held that the doctrine of merger does not have universal application and it depends upon the nature of jurisdiction exercised by the superior forum and thus, in present case, the doctrine of merger was not applicable. Accordingly, it held that the aforesaid High Court decision decided againt the assessee still hold the water.
ACIT v Overseas Trading and Shipping Co. Pvt. Ltd. [TS-596-ITAT-2018(Rjt)] – ITA No. 211/Rjt/2007dated September28, 2018

1269. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS on (i) payment to a Dubai based company for carrying out some software related work in Dubai and (ii) payment to a Austria based company for on-shore work in Iran, noting that both the companies had rendered entire services outside India i.e. in Dubai & Iran and both the companies did not have any PE or business connection in India. It thus held that the said payments were not chargeable to tax in India and accordingly, were not liable for TDS u/s 195.
ASHOK LEYLAND LTD. vs. DCIT - (2018) 54 CCH 0147 ChenTrib – ITA No. 835, 836 & 837/Chny/2018dated September19, 2018

1270. The Tribunal remanded the issue of deduction of TDS u/s 195 while paying payment of certain sum by the assessee, Indian company, to foreign group company towards reimbursement of common cost allocated to assessee as per cost sharing agreement, noting that the AO had not stated on what basis he considered the nature of payment to be made as fees for technical services. Before the Tribunal, the assessee had furnished a number of documentary evidences, to demonstrate that payment made to the foreign group company was actually relating to services rendered by different pool members on cost-to-cost basis without any markup. Accordingly, it directed Revenue to examine all necessary and relevant documents including cost sharing agreement, auditor's report as well as other additional evidences filed by assessee before deciding the nature of the payment.
BASF India Ltd. v DCIT [2019] 102 taxmann.com 133 (Mumbai - Trib.) – ITA Nos. 4754 & 4755 (MUM.) of 2015 dated December 14, 2018

1271. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) on account of non-deduction of TDS u/s 195 while making payment of commission to non-resident foreign agents who were carrying out activities outside India, noting that the non-resident agents did not have any PE in India and accordingly, no part of commission income of those agents could be said to have been accrued or arisen in India. It also held that the commission payments could not be regarded as fees for technical services as defined in Explanation 2 of section 9(1)(vii) as commission payment was not for rendering any managerial, technical or consultancy services.
DCIT v Mc Fills Enterprise (P.) Ltd[2019] 101 taxmann.com 212 (Ahd - Trib.) – ITA No. 3469 (Ahd.) of 2015 dated December 17, 2018

1272. The Tribunal allowed the assessee's appeal and deleted the disallowance made u/s 40(a)(i) on account of non-deduction of TDS u/s 195 while making payment to a French professional for providing advisory services by way of review strategies and M & A options.It rejected AO's contention that the amount paid was taxable in India as fee for technical services, holding that since professional services rendered did not 'make available' to assessee any technical experience, skill, know-how etc., the said amount was not taxable in India, considering the beneficial provisions of India-France DTAA read with India-UK DTAA (on account of most favoured nation clause forming part of Protocol to India-France DTAA).
Entertainment Network (India) Ltd.v JCIT [2019] 102 taxmann.com 49 (Mum Trib.) – ITA No. 643 (MUM.) of 2017 dated December 21, 2018

1273. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had upheld Tribunal's order holding that payments made by assessee-organisation to Federation of International Hockey for arranging for provisional services connected with event of Hockey World Cup (such as travel, hospitality and provision of food etc.), merely represented reimbursement of expenses not chargeable to tax in India and thus not liable for TDS u/s 195.
Pr.CIT v Organizing Committee Hero Honda FIH World CUP[2019] 100 taxmann.com 441 (SC) – SLP (Civil) Diary No. 37870 of 2018 dated November 12, 2018

1274. The Tribunal allowed the assessee's appeal and deleted the disallowance made u/s 40(a)(i) on account of non-deduction of TDS u/s 195 while making payment to a USA based company towards web hosting chargesin order to carry on its activity of distributorship of recharge pensof various DTH providers via online network. The AO had held that the web hosting charges paid for use of servers were for use of commercial equipments within meaning of section 9(1)(vi), read with Explanation 2 and Explanation 5 of the said clause, thereby, assuming character of royalty taxable in India. The Tribunal held that since assessee did not possess and did not have any control over server or server space being deployed by the USA company, while providing e-services as per agreement, there was no scope to construe that e-service / web-hosting charges paid to the said company could be described as royalty. Further, it rejected Revenue's contention that the said payment was royalty in view of Explanation 5 (stating that the fact whether possession or control was with the service recipient or not is not relevant for deciding if the consideration paid for service is royalty) which was inserted vide the Finance Act, 2012 retrospectively w.e.f. 01/04/1976, noting that the years under appeal were AY 2010-11 & AY 2011-12 and hence, the payment were made before such retrospective amendment was made. The Tribunal held that the law does not compel a person to do something which he cannot possibly perform and accordingly, the amendment with retrospective effect could not fasten the assessee with liability to withhold tax for the years which had already been closed prior to insertion of amendment. It also held that, in any case, the amendment in the Act could not be brought into the DTAA and as per India-USA DTAA, in view of the fact that the possession and control of the server/ server space was not with the assessee, the said charges were not in nature of royalty.
EPRSS Prepaid Recharge Services India (P.) Ltd. v ITO [2018] 100 taxmann.com 52 (Pune Trib) – ITA Nos. 828, 1204 (Pun) of 2016dated October 24, 2018

1275. The assessee-company was involved in development of infrastructure facilities for South Asian Federation Winter Games, 2009 (games) and entered into a consortium agreement with two foreign companies and one Indian company for rendering services with respect to construction of water storage and installation of ski lift and comprehensive maintenance for three years.The assessee made payment to foreign companies for supply of equipments. The AO held the assessee to be assessee-in-default u/s 201(1) for non-deduction of TDS u/s 195 on the said payment,considering the same to be taxable u/s

9(1)(vii) as fees for technical services. The CIT(A) held that the assessee had made payment for contract for work and since the payment was made to AOP (consortium), TDS was required to be deducted u/s 194C and not u/s 195. Revenue as well as assessee filed an appeal against the CIT(A)'s order. The Tribunal noted that consortium was formed with clear responsibilities been laid down for each party, wherein the foreign parties wereonly required to supply the equipments. It also noted that the payments had been made directly to those parties and naturally, each of them was individually charged to tax on their profits or losses. Further, noting that the title in goods had passed from foreign parties to assessee outside India at port of shipment, the Tribunal held that no income had accrued to those parties in India in terms of provisions of section 5 and section 9, and, consequently, provisions of section 195 as well as 194C did not apply to the said payments.

DCIT v Joint Secretary Organizing Committee for Winter Games, 2009[2018] 100 taxmann.com 67 (Del Trib) – ITA Nos. 626 & 627, 798 & 798 & 799 (Delhi) of 2013 & 1576 (Delhi) of 2015dated October 15, 2018

1276. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order holding that the assessee could not be considered to be assessee-in-default for non-deduction of TDS u/s 195 on reimbursements made to its Phillipines based group company for salary cost of the expatriate employees deputed to India since the said reimbursement / payment made was not chargeable to tax in India as per the India-Phillipines DTAA. It rejected AO's contention that the said payment was taxable in India as fees for technical as per the provisions of section 9(1)(vii) as well as the DTAA, noting that the India-Phillipines DTAA does not have any provision for taxation of fees for technical services. Accordingly, the Tribunal held that the said payment was business income of the Phillipines based group company as per Article 7 of the said DTAA and the same was not chargeable to tax in absence of PE in India.

DCIT v IBM India (P.) Ltd [2018] 100 taxmann.com 230 (Bangalore - Trib.)– ITA Nos. 1288, 1291, 1294, 1297, 1300, 1303 & 1306 (BANG.) OF 2017 dated November 16, 2018

1277. The Tribunal allowed assessee's appeal and deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made to a Swiss entity for testing services, holding that the said payment did not amount to fees for technical services as per the India-Swiss DTAA. It noted that as per protocol to the India-Swiss DTAA, beneficial provisions for taxation of fees for technical services in the DTAAs between India and other OECD member countries such as Canada could be imported into the India-Swiss DTAA. As per India-Canada DTAA, the said payment could be taxed as FTS only if it make available technical knowledge, skill, know-how, etc. Accordingly, noting that the said services were simply testing services which did not involve any transfer of technology, the Tribunal held that the payment for such services was not chargeable to tax in India and thus the assessee did not have any withholding tax liability.

Anjani Synthetics Ltd v DCIT [2019] 101 taxmann.com 136 (Ahd - Trib.)– ITA No. 3594 (Ahd.) of 2015dated December 5, 2018

1278. The Tribunal allowed assessee's appeal and deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on reimbursement made to a US based company, engaged in provision of manpower recruitment services, for salary and other cost paid to expatriates employees outside India for and on behalf of assessee. The AO opined that said amount constituted fees for included services (FIS)/fee for technical services in terms of India-US DTAA as well as u/s 9(1)(vii) and accordingly liable for TDS u/s 195. It was noted that the expatriate employees employees having different work profiles and job responsibilities were seconded by the US company to assessee in India, pursuant to secondment agreement, for facilitating assessee's business operations. The Tribunal held that so long as a payment to non-resident entity is in nature of payment consisting of income chargeable under head 'Salaries', assessee does not have any tax withholding applications u/s 195. Accordingly, after perusing the secondment agreement and Form 16, it concluded that the employees seconded to assessee-company were working as employees of assessee-company, their salary was subject to TDS u/s 192 and, therefore, provisions of section 195 were not applicable. It rejected the reliance placed by Revenue on the Jurisdictional High Court decision in the case of Centrica India Offshore (P.) Ltd. v. CIT [2014] 224 Taxman 122 (Del HC) by holding that in case of Centrica (supra), the secondment was established only to provide services to the overseas entity to ensure that the services to be rendered to the overseas entities by the Indian vendor were properly coordinated.

AT & T Communication Services (India) (P.) Ltd. v DCIT [2019] 101 taxmann.com 105 (Del - Trib.)– ITA No. 1653 (DELHI) OF 2016 & 354 (DELHI) OF 2017 dated October 31, 2018

1279. The Tribunal remanded the issue of non-deduction of TDS u/s 195 on payment made to various non-resident companies for Annual Maintenance Charges (AMC) back to the AO, noting that (i) while opining that the said payments were in nature of fee for technical services taxable in India, the revenue authorities did not go into question whether non-resident companies made available any technical knowledge to assessee through AMC and (ii) moreover, authorities below did not even test transactions with relevant articles in respective DTAAs, with regard to definition of 'fees for included services'. Similarly, it also remanded the issue of non-deduction of TDS u/s 195 on payment to a Singapore based company for acquiring licence for software, noting that while determining whether the said payment was in nature of royalty u/s 9(1)(vi) and under article 12(3) of India-Singapore DTAA, the AO had not examined the real nature of software, i.e. whether it was firmware or embedded software or standalone software, which was essestial to determine its taxability.
Cognizant Technology Solutions India (P.) Ltd. v ITO [2018] 100 taxmann.com 464 (Chen Trib) – ITA No. 689 (CHNY.) OF 2015 dated November 20, 2018

1280. The Court dismissed Revenue's appeal against Tribunal's order upholding CIT(A)'s order deleting the disallowance made u/s 40(a)(i) relating to payment to a Phillipines based company for providing technical service without deduction of TDS u/s 195. It was noted that the Tribunal as well as CIT(A) had given a concurrent finding that though the services were in nature of technical services but were covered by clause 9(1)(vii)(b) which states that FTS is not taxable in case where the services are utilized outside India in a business or profession carried outside India, or for purpose of earning any income outside India. It was noted that technical services provided by a non-resident were utilized for serving assessee's foreign clients i.e. source of income namely assessee's customers were foreign based companies. Accordingly, the Court held that the assessee was not required to deduct TDS on the said payments.
PR.CIT v MOTIF INDIA INFOTECH (P) LTD(2018) 409 ITR 0178 (Guj HC) – TAX APPEAL No. 1177 of 2018 dated October 16, 2018

1281. The Assessee-company made payments to non-resident agents for carrying out exports out of India. The non-resident agents did not have permanent establishment in India and their activities as commission agents were being carried out outside India. The Court held that, on facts, there was no liability on the assessee to deduct tax at source in respect of payment made to said non-resident agents merely because a portion of sale to overseas purchasers took place in India.
Principal CIT v. Ferromatic Milacron India (P.) Ltd. [2018] 99 taxmann.com 154 (Guj.)- R/Tax Appeal No. 1233 OF 2018 dated October 9, 2018

1282. The Court dismissed assessee's appeal and held that the assessee was required to gross-up the amount of fees for technical services paid to UK based university as per section 195A, for the purpose of deducting TDS at the rate mentioned in India-UK DTAA noting that the assessee had entered into agreement with University of Warwick,UK for providing certain technical services, taxes on which were borne by the assessee and the assessee had deducted TDS at 15% as per India-UK DTAA on actual payment made to the said university. Accordingly, it held that since the tax which had been borne by the assessee, being income of the University was covered by the words "gross amount", as mentioned in the Treaty, the Revenue was justified in grossing up by applying Section 195A (which provides that where the tax chargeable on any income liable for TDS is to be borne by the payer, then for the purposes of TDS, such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force, be equal to the net amount payable). The Court held that the treaty does not provide mechanism for computation of income, but only provides rate at which such income is taxable, thus the computation of income is required to be made by applying provisions of the Income-tax Act, 1961.
SUNDARAM CLAYTON LIMITED vs INCOME TAX OFFICER (IT) [TS-686-HC-2018(MAD)] Tax Case Appeal Nos. 1200 & 1201 of 2008 dated 22.10.2018

1283. The Tribunal allowed assessee's appeal against CIT(A)'s order where the CIT(A) had held that assessee to be assessee-in-default u/s 201(1)/ (1A) for non-deduction of TDS u/s 195 while making

payment of user charges to Intelsat Corporation, USA for the transponder facility to enable transmission of uplinked programs to be seen over the footprint of the satellite (mainly India) by treating them to be in the nature of royalty. The Tribunal relied on the decision in the case of Viacom 18 Media Pvt. Ltd vs ADIT (ITA No.s 599 to 614/Mum/2016) as well as DIT(IT) vs. Intelsat Corporation [ITA No.530 & 545/2012 (Del HC)] wherein it was held that similar payment made to Intelsat were not chargeable to tax in its hand in India.

ZEE ENTERTAINMENT ENTERPRISES LTD v INCOME TAX OFFICER [TS-674-ITAT-2018(MUM) - ITA Nos 4652/MUM/2016 dated 06.11.2018

1284. The Tribunal dismissed assessee's appeal against CIT(A)'s order holding assessee to be assessee-in-default u/s 201(1) for non-deduction of TDS u/s 195 while making payment to US company for purchase of license to use its copyrighted software by treating the said payment to be royalty as per section 9(1)(vi) and Article 12 of India-USA DTAA. It relied Jurisdictional HC ruling in Samsung Electronics [203 Taxman 477 (Kar HC)] which was squarely against the assessee. Infact, in that case, it was purchase of readymade off the shelf computer programme whereas in the present case, there was no purchase and only annual license was taken for use of software. The Tribunal rejected the assessee's contention for bonafide belief which was based on certain favourable Tribunal rulings, holding that where the assessee feels that whole or part of the sum to be paid by the him to a non-resident is not chargeable to tax in India in the hands of the recipient, the assessee should make application u/s 195(2) instead of deciding that no TDS is to be deducted.

Avesthagen Ltd v ITO [TS-486-ITAT-2018(Bang)] - ITA No.173/Bang/2016 dated 03.08.2018

1285. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting disallowance made by the AO u/s 40(a)(i) on account of short deduction of TDS while making payment of royalty & brand usage fees payment to a Japanese company, noting that the assessee had deducted TDS @ 20% of the gross amount, whereas the AO opined that the TDS should have been deducted @22.66% after including the surcharge and education cess. Referring to Article 2 of the India-Japan DTAA which provides that tax includes surcharge, it held that there was no obligation upon the assessee to deduct the TDS on the payment made to the Japanese company after including the surcharge over and above the tax rate as specified under the provision of DTAA with Japan. Further, the Tribunal held that the education cess partakes the character of surcharge and thus there was no need to include education cess also while deducted TDS.

ACIT v Panasonic Energy India Co. Ltd [TS-721-ITAT-2018(Ahd)] - I.T.A. No. 2882/Ahd/2016 dated 03.12.2018

1286. The Tribunal deleted the disallowance made u/s 40(a)(i) on account of payment made to a US company, without deducting TDS, as per an agreement entered into with the US company for the purpose of assessee's consultancy business, noting that the assessee had paid only an Affiliation fee which was a one-time payment not involving any transfer of technical knowledge or use of technical knowledge and thus could not be considered as 'royalty' either under the Act as well as under the India-US DTAA. It was noted that as per the agreement two types of payment were to be made viz. 'affiliation fee' and "Fees on consulting and reports" and,unlike the latter fee, affiliation fee was not the fee on consulting and reports. Further, since the US company did not have any PE in India, the Tribunal held that the payment did not attract any TDS provisions.

Customer Lab Solutions (P.) Ltd. v ITO [2018] 95 taxmann.com 280 (Hyderabad - Trib.)– ITA No. 438 (HYD.) OF 2017dated July4, 2018

1287. The assessee entered into a contractual relationship with the Federation of International Hockey ('FIH') for organising the Men's Hockey World Cup as per which FIH was to act as the facilitator. The assessee made a reimbursement to FIH on account of pay-outs made by FIH on the assessee's behalf on which no TDS was deducted. The AO was of the opinion that the reimbursements included commission paid by the assessee and therefore the assessee ought to have deducted TDS and accordingly disallowed the payments invoking Section 40a(ia) of the Act. The Court upheld the findings of the Tribunal and CIT(A) that the payments were mere reimbursements having no income element and accordingly no tax was to be deducted and further noting that the lower authorities had observed

that the assessee had no privity of contract with the service provider, dismissed the Revenue's appeal observing that no substantial question of law arose therefrom.
PR CIT v Organizing Committee Hero Honda FIH World Cup – TS-165-HC-2018 (Del) - ITA No 353 / 2018

1288. Tribunal remanded the matter back to AO where he had made a disallowance u/s 40(a)(i) for non-deduction of TDS u/s 195 on various payments made by asssessee without appreciating in proper perspective various documents with detailed factual and legal submissions field before AO along with supporting evidences including unit wise details of various expenditure incurred in foreign currency with detailed write up about each expenditure, submission with regard to non-applicability of TDS under domestic law as well as DTAA of respective countries for each of aforesaid expenditure, certificate of tax residency of parties to whom payments were made and declaration from them that no PE existed for them in India and copies of agreements entered into with those parties, copy of advertisements, copy of invoice, subscription renewal forms
DCIT v EIH Ltd. – (2018) 89 taxmann.com 417 (Kol) – ITA Nos. 110 and 153 (kol.) of 2016 dated 12.01.2018

1289. Where the the AO had made disallowance u/s 40(a)(ia) on account of non-deduction of TDS u/s 195 while making payment for commission to non-reisdent receipts in four countries and the CIT(A) had deleted the said disallowance holding that the it was not necessary to deduct TDS since the said receipt were exempt in the hands of the recipients, noting that neither the AO nor the CIT(A) had examined the nature of services against which the commission had been paid and the assesse was not able to explain the nature of services before the Tribunal, the Tribunal remanded the matter to the file of AO to examine the nature of services rendered by the overseas parties and the relevant provisions of DTAA with respective countries.
ITO v Shamnrock Pharmachemi Pvt. Ltd - ITA No. 2279/Mum/2016 dated 16.03.2018

1290. Where the assessee had made payments on account of reimbursement of expenses as well as fess for technical services to non-residents and did not deduct tax on the reimbursements (while it deducted tax on the FTS paid), the Tribunal noting that the assessee had produced supporting back to back evidence to substantiate that the payments were pure reimbursements, held that no tax was to be deducted at source as there was no income element in the said payment. Accordingly, it held that the assessee could not be classified as an assessee in default under Section 201 of the Act.
Hospira Healthcare India P Ltd v DCIT – (2018) 92 taxmann.com 225 (Chennai – Trib) – ITA NO 1916 / Chny / 2017 dated March 15, 2018

1291. The Court partly allowed assessee's (a non-resident company) writ challenging constitutional validity of Sec. 206AA (as it existed prior to the amendment in 2016 and which prescribed higher withholding rate of 20% if payee failed to furnish PAN). The assessee challenged applicability of higher TDS rate of 20% u/s 206AA in respect of payments in the nature of 'fees for technical services' which attracted lower TDS rate of 10% under the India-Singapore treaty. The Court acknowledged that the law before 2016 amendment, went beyond the provisions of DTAA which in most cases mandated a 10% cap on the rate of tax applicable to the state parties but held that the issue urged was largely academic on account of corrective amendment made by the Parliament. However, it held that Section 206AA (as it existed) was to be read down to mean that where the deductee i.e. the overseas resident business concern conducts its operation from a territory, whose Government has entered into a DTAA with India, the rate of taxation would be as dictated by the provisions of the treaty.
Danisco India Pvt Ltd [TS-63-HC-2018(DEL)] -W.P.(C) 5908/2015 dated 05.02.2018

1292. Where assessee made payments to non-residents for technical services after deducting tax @ 20%, whereas AO contended that TDS should be deducted @25% u/s 115A; observing that the non-resident did not have PAN and the rate provided under India-France DTAA for FTS was lower than rates provided u/s 115A, Tribunal held that TDS was to be deducted at a lower rate as provided under DTAA and not as provided u/s 115A and it remanded the matter to AO to verify whether the non-residents were entitled for benefits under DTAA.

ITO v Atos Worldwide India (P.) Ltd. – (2018) 90 taxmann.com 306 (Mum) – ITA No. 6424 (mum.) of 2016 dated 29.01.2018

1293. Where the assessee had not deducted TDS u/s 195 @ 20% in view of provisions of section 206AA on amount remitted to non-residents not having PAN and it claimed before the Tribunal that it deducted TDA @ 10% in accordance with the respective DTAA provision, the Tribunal followed the decision in the case of Nagarjuna Fertilisers & Chemicals Ltd. v ITO (2001) 119 Taxman 37 (Hyd Trib) wherein it was held that the treaty provisions which are beneficial to the non-residents would prevail over the provisions of section 206AA. However, since the AO had not examined the nature of payments as to whether they were covered by the respective DTAA provisions or not, it remanded the matter to the AO for verifying the same and further directed the AO to not treat the assessee as an "assessee in default" u/s 201(1) and not to charge interest u/s 201(1A) if the payments are covered by the DTAA provisions.
Dr. Reddy's Laboratories Ltd. v ADIT – ITA No. 827 & 828/ Hyd/ 2015 dated 28.02.2018

1294. The assessee company had made payment for consultancy services to a non-resident company (Chinese) and deducted TDS @10% as per the India-China DTAA. However, the CPC-TDS computed TDS @ 20% as per S.206AA (applicable in a case when PAN is not furnished by the deductee) and raised a tax demand on the assessee alongwith interest on account of TDS deducted short by 10%, while passing order u/s 201(1). The CIT(A) deleted the said tax demand and interest thereon. The Tribunal upheld the CIT(A)'s order and followed GE India Technology Centre Pvt. Ltd. vs. CIT wherein it was held that section 90(2) provides that DTAAs shall override domestic law in cases where the provisions of DTAAs are more beneficial to the assessee. Thus, the Tribunal held that the demand raised by the AO on the differential tax rate was to be deleted on the ground that since the assessee had taken benefit of DTAA, the provision of domestic law (S.206AA in the instant case) could not be invoked by the AO and accordingly dismissed the Revenue's appeal.
ITO v Sichuan Fortune Projects Management Ltd. (2018) 52 CCH 0289 AhdTrib - ITA Nos. 3554, 3555 & 3556/Ahd/2016 dated 09.04.2018

1295. The Tribunal held that Section 206AA does not override the provisions of section 90(2) and in cases of payments made to non-residents, the assessee had correctly applied the rate of tax prescribed under DTAAs and not as per section 206AA because provisions of DTAAs were more beneficial.
Emmsons International Ltd. v. DCIT – [2018] 93 taxmann.com 487 (Delhi – Trib.) – IT Appeal Nos. 5124 to 5127 (DELHI) of 2015 dated April 2, 2018

1296. The Tribunal deleted the disallowance made by the AO u/s 40(a)(ia) on account of non-deduction of TDS u/s 195 while making payment to a Singapore based company for purchase of drawings for a project being undertaken by the assessee (engaged in development of residential housing project), rejecting the Revenue's contention that the said payment qualified as "fees for technical services" as defined under Article 12 of India-Singapore DTAA. It noted that as per the agreement entered into with the Singapore company, it appeared to be a case of outright purchase of drawings and designs by the assessee and that no facts were brought on record by the Revenue to show that as a consequence of supply of project specific designs, there was transfer of any technology so as to qualify as "fees for technical services" under the said Article. With respect to another payment for purchase of drawing from an individual who was a UAE resident, the Tribunal held that as per Article 14 of India-UAE DTAA, right to tax the income from professional activities by the resident of Dubai (UAE) vested only with UAE and not India and thus, there was no occasion to deduct TDS u/s 195 on such payment.
ITO v Bengal NRI Complex Ltd – ITA No. 1290 & 1088/Kol/ 2014 dated 16.03.2018

1297. The Tribunal dismissed the assessee's appeal filed against CIT(A)'s order confirming AO's action in treating the assessee to be "assessee in default" u/s 201(1) on account of non-deduction of TDS u/s 195 while making payment to non-resident for purchase of shrink wrap cassettes/CDs. It followed the Tribunal's order in assessee's own case for earlier years on identical facts wherein the Tribunal had, in turn, followed the High Court's order (subject to the outcome of the SLP pending before the Apex Court) in assessee's own case holding that the said payment made were in nature of royalty.
IBM India Private Limited v DCIT – ITA Nos. 47 & 48/Bang/ 2017 dated 19.01.2018

1298. Assessee-company had paid interest on foreign currency loan called External Commercial Borrowings (ECB) lent by a group of financial institutions arranged by the arranger, i.e., ICICI Bank Ltd., offshore branch, Singapore (Singapore branch) without deducting TDS u/s 195. It contented that the said payment was covered by section 194A(3)(iii) of the Act since the payment was made to Singapore branch (being a resident) which is part of ICICI Bank to which Banking Regulation Act, 1949 applies. AO, however, considered the Singapore branch to be an arranger cum facility agent which arranged ECB and the group of financier based in Singapore or UK (i.e. non-residents) to be the main lenders. He accordingly, invoked section 195 of the Act and held assesse to be in default for short deduction of tax and interest u/s. 201(1)/201(1A). Noting that the agreement between the assessee and the bank stated that ICICI Bank Ltd was acting as an arranger cum facility agent and the Singapore branch was original lender whereas the letter written by the Singapore branch stated that the Singapore branch was an arranger and facility agent and the group of financial institutions assembled by the arranger was the lender of the loan, Tribunal held that the facts were contradictory to each other as per the assessee's own record. It, thus, remanded the matter to the file of AO for re-examination in light of the assessee's claim that the Singapore branch was the main lender.
BAJAJ ECO TEC PRODUCTS LIMITED vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 53 CCH 129 (MumTrib) - ITA Nos. 4609, 4610 & 4611/Mum/2016 dated Jun 8, 2018

1299. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) with respect to interest payment made by the assesse, branch of a foreign bank, to its Head Office in Singapore without deducting TDS u/s 195, following the assessee's own case in earlier year wherein relying on the decision in the case of Sumitomo Mitsui Banking Corporation v/s DCIT [(2012) 19 taxmann.com 364 (SB) (Mum.)] it was held that since under the domestic law the interest paid by the Indian branch to the head office was not allowable as deduction as this was payment to self, the same also could not taxed in the hands of the bank in the domestic law and there was no express provisions in the relevant tax treaty which was contrary to the domestic law. Therefore, interest payment was not taxable in the hands of the bank and thus there was no question of deducting any tax at source.
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. DBS BANK LIMITED & ORS - (2018) 53 CCH 0167 (MumTrib) - ITA No. 6865/Mum./2012, 6037/Mum./2014, 4949/Mum./2014, 6038/Mum./2014, 4948/Mum./2014 (C.O. no.8/Mum./2014)dated June15, 2018

1300. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had upheld the order passed u/s 201(1)/ 201(1A) to hold assessee to be assesse-in-default for non-deduction of TDS u/s 195 on payment made to a Netherland based company for acquisition of computer hardware, software and related support services for installation and maintenance. It noted that software had been sold to the assessee as shrink-wrapped software, which was commercially off the shelf software sold in retail. It thus held that in view of the binding precedent of the Jurisdictional High Court in the case of DIT v. Infrasoft Ltd. [2014] 220 Taxman 273 (Del), the sale of the hardware along with the software embedded therein was not taxable in the hands of the non-resident recipient in absence of any Permanent Establishment of the said non-resident in India. With respect to the services of installation and other support services, the Tribunal accepted assessee's contention that since the said services had not made available any technology or know-how to the assesse, the payment made for such services did not qualify for FTS under the relevant DTAA.
Ciena India (P.) Ltd. v ITO - [2018] 96 taxmann.com 17 (Delhi - Trib.) - IT APPEAL NOS. 959 & 984 (DELHI) OF 2011 dated June29, 2018

1301. The assessee had made payment to a US entity for services rendered by the personnels of the US entity for installation and commissioning of certain equipment purchased by the assessee, without deducting TDS u/s 195 and claiming benefit of India-US tax treaty. Noting that the assessee had furnished only Form W9 (which is given under US Internal Revenue Code for providing the correct TIN to the person who is required to file an information return with the IRS) for establishing treaty entitlements, the Tribunal held that Form W9 was wholly irrelevant in respect of tax withholdings outside the United States and that the same was merely a declaration by the US based entity, and it could not be treated as a certification by any authority. However, noting that the assessee was not given sufficient time to furnish the relevant evidence for establishing the treaty entitlements of the US entity, the Tribunal remanded the matter to the file of the CIT(A) for fresh adjudication *inter alia* for giving the

assessee a fresh opportunity of furnishing the said evidences not limited to, but including, the tax residency certificate.

Skaps Industries India (P.) Ltd. v ITO - [2018] 94 taxmann.com 448 (Ahmedabad - Trib.) - IT APPEAL NOS. 478 AND 479 (AHD.) OF 2018 dated June21, 2018

1302. The Tribunal upheld the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made to a UK based foreign company for consultancy services rendered by the said company, rejecting the AO's contention that the said payment was taxable as FTS under article 13 of the Indo UK DTAA. It noted that the services were simply in nature of consultancy services which did not make available any technical, skill or know how and from perusal of the consultancy agreement also no provision for transfer of technology could be found. The Tribunal thus held that unless there is a transfer of technology in sense that recipient of service is enabled to provide same service on his own, without recourse to original service provider, 'make available' clause was not satisfied and, accordingly, the consideration for such services could not be taxed under Article 13 (4) of Indo UK DTAA. Further, with respect to payments made to two persons in Egypt and Philippines which were on account of salaries, it was held that since, in terms of the provisions of the respective tax treaty, these payments did not have any tax liability in India, there was no question of any tax withholdings.

DCIT v Bio Tech Vision Care (P.) Ltd. - [2018] 93 taxmann.com 20 (Ahmedabad - Trib.) - IT APPEAL NOS. 1388, 2766 & 3154 (AHD.) OF 2014dated April18, 2018

1303. The Tribunal cancelled the order passed by the AO u/s 201(1)/ 201(1A) wherein the AO had treated the assessee to be in default for non-deduction of TDS on payment of license fees for use of computer software in view of the insertion of Explanation 4 to section 9(1)(vi) vide the Finance Act, 2012 with retrospective effect from 01.06.1976 (which clarifies that right to use of computer software including license is 'royalty'). The Tribunal held that since the assessee had not explained the terms of agreement with different entities from whom the software was purchased, it could not be found that whether the same was for the right to use of copyrighted article or the right to use copyright. However, it held that liability could not be fastened on the assessee to deduct tax at source on the basis of subsequent amendments made in the Act in relation to payments made to Non-resident, on a date prior to the date of amendment, though retrospectively applied. The Tribunal further held that in any case the asssessee could not be held liable for deduction of tax in view of the definition of 'royalty' under the DTAA with the respective countries, since the same was not amended and the DTAA provisions being beneficial would override the Act.

TATA TECHNOLOGIES LIMITED vs. DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 193 TTJ 0833 (Pune) - ITA NO. 1433/PUN/2014 dated Apr 5, 2018

1304. The AO treated the assessee as an assessee-in-default u/s 201(1) on account of non-deduction of TDS u/s 195 while making payment to (i) non-resident on account of marketing support charges (ii) to non-resident law firm towards legal charges for representing assessee-company in suit filed by another company and (iii) non-resident company based in USA which was claimed by the assessee to be reimbursement of expenses being salary cost and overhead of employee seconded by the USA company to the assessee. With respect to payment of marketing support charges, the Tribunal accepted assessee's contention that the assessee could not be called upon to comply with provisions not in force at relevant time when payment was made [i.e. Expl to section 9(1)(vii) (on the basis of which it was held by the AO that the said payment was chargeable to tax in India and thus liable for TDS)] but introduced later by retrospective amendment. However, with respect to payment of marketing support charges and legal charges, the Tribunal noted that there was no finding in order of lower authorities as to whether the service was rendered in India or utilized in India and thus it restored the matter to file of AO to examine the same. With respect to the payment to USA company, the assessee claimed that that same did not include any element of profit so as to create a liability deduct TDS u/s 195 and the same was only a reimbursement. But since assessee had not substantiated the veracity of such claim by producing agreement entered into with the USA company, the Tribunal remitted this issue also to the file of AO for fresh consideration.

IBS Software Services Private Ltd. & Anr v DCIT (International Taxation) &Anr. (2018) 52 CCH 0317 CochinTrib - (2018) 52 CCH 0317 CochinTrib dated 12.04.2018

1305. The AO made disallowance u/s 40(a)(i) for the assessee's failure to deduct tax at source while making payment of FTS to a foreign company.The assessee relied on the CBDT Circular No. 3/2015, dated 12.02.2015 which provides that in cases where TDS is not deducted u/s 195, the AO shall determine the appropriate portion of the sum chargeable to tax, as mentioned in section 195(1), in order to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default u/s 201, to contend that for the purpose of section 40(a)(i) also, only appropriate portion of such sum which is chargeable to tax under the Act shall be disallowed. The Tribunal, however, did not accept assessee's said contention holding that since disallowance u/s 40(a)(i) in case of the assessee was in context of amount paid by it towards FTS and not towards 'other sum' chargeable under Act, the said CBDT circular was not of any assistance to it.
Chemical Process Piping (P.) Ltd.vR.M. Madhavi - [2018] 94 taxmann.com 116 (Mumbai - Trib.) - IT APPEAL NOS. 1036 & 1037 (MUM.) OF 2016dated 02.05.2018

1306. The wholly owned US subsidiary of Indian Assessee and other companies incorporated in USA provided marketing and sales support services to the Indian Assessee, Tribunal held that payments made for such services would not fall under the ambit of FTS under Article 12 of the India-US tax treaty and hence the same would not be taxable in India as the services were rendered outside India. Thus, the Tribunal held that the Assessee was not liable to deduct TDS u/s. 195 on payment of fees for such services to US entities (including Assessee's wholly owned US subsidiary) for securing orders and soliciting business from foreign customers. Rejecting Revenue's contention that the US entities could not claim treaty benefits as the assessee had not proved that conditions prescribed in Article 24(1) were satisfied, Tribunal noted that 70% of the payment was made to Assessee's wholly owned US subsidiary, wherein Assessee (Indian tax resident) itself directly owned 100% of its issued equity capital, the conditions prescribed in Article 24(1) were duly fulfilled [Article 24(1) provides that in order to avail the benefit of tax treaty, more than 50% of the number of shares of a company (US entities, in the present case) should be owned directly or indirectly by one or more individuals who are resident either in India or USA.]
Onprocess Technology India Pvt. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0074 (Kolkata ITAT) – ITA No. 1047/Kol/2016, 1241/Kol/2016 dated May 24, 2018

1307. Following the ruling of the co-ordinate bench in the assessee's own case for earlier year (i.e. AY 2007-08 in ITA No 6708/Mum/2011), Tribunal held that payment of global support service fees made by the Assessee in AY 2008-09 could not be considered as Fees for Technical Services ('FTS') as per Article 12(4)(b) of the India- Singapore tax treaty as the twin test of rendering services and making technical knowledge available at the same time was not satisfied. Accordingly, Tribunal held that disallowance under section 40(a)(i) could not be made in the hands of the assessee while making such payment.
Exxon Mobil Company India Pvt. Ltd. vs. ACIT – [2018] 53 CCH 0072 (Mum ITAT) – ITA No 3601/Mum/2014 dated May 23, 2018

1308. The assessee was engaged in the business of dredging and marine engineering services and had made payments to foreign companies without deducting tax. The DCIT contended that the assessee should have deducted tax @ 40% and held the assessee liable u/s 201(1). The assessee filed a writ petition before the High Court against the order of the DCIT. The Court directed the assessee to treat the order as show cause notice and submit the preliminary objections to the impugned order. The Court further laid down that the principles of Natural Justice was not followed by the Revenue and the assessee was to be given sufficient time to file their objections. Accordingly, the matter was remanded to the DCIT to pass fresh orders.
International Seaport Dredging (P.) Ltd. v. DCIT – [2018] 93 taxmann.com 488 (Madras) – W.P. Nos. 10319 & 10320 of 2018 dated April 25, 2018

1309. The assessee filed its return and declared total income at nil and book profit of Rs. 2,94,58,68,507/- for taxability u/s 115JB of the Act. During scrutiny assessment, the AO noted that the assessee had made payments to Flour Transworld Services Inc. and Furgo Survey Ltd. and treated the said payments as fee for technical services (FTS) and disallowed the deduction u/s 40(a)(i). The CIT (A) deleted the disallowance in respect of payment made to Flour Transworld Services Inc. but upheld the disallowance in respect of Furgo Survey Ltd. The Department appealed before the Tribunal and challenged the

deletion by the CIT (A) in respect of Flour Transworld Services Inc. The Tribunal laid down that the India-US treaty provided for a restrictive meaning of FTS in as much as only those technical services which were ancillary to the application of right or which 'make available' technical knowledge or skill were taxable. The Tribunal further noted that the assessee had made payments to the company for rendering services in connection with review of alternative vaporization process for LNG terminal and to recommend a suitable process to assessee and subsequently held that the services involved deployment of personnel having requisite experience and skill to perform the services and it would not be possible that the assessee would carry out such services in future on its own without the resources of the service provider. Accordingly, the Tribunal dismissed the appeal of the Department on the ground that the nature of services rendered did not indicate making available of technical knowledge or skill and the payment made did not qualify for FTS as per the provisions of India-US DTAA.
ACIT v. Petronet LNG Ltd. - [2018] 92 taxmann.com 407 (Delhi - Trib.) - IT APPEAL NO. 865 (DELHI) OF 2011 dated APRIL 6, 2018

1310. The Court set aside the Tribunal's order wherein the Tribunal had held that order u/s 195(2) determining amount of TDS to be deducted by an assessee is not an appealable order before CIT (A) since the same does not fall in the category of appealable orders under section 246 & 246A. The Court held that the Tribunal's order suffered from infirmity and was per incuriam as the Tribunal did not consider the provisions of section 248 which allow a payer who denies his liability to deduct tax u/s 195 to file an appeal before the CIT(A). Thus, it remanded the matter back to the Tribunal for deciding the appeal afresh in accordance with law, considering the provisions of section 248.
Bangalore International Airport Ltd. v ITO (IT) - [2018] 96 taxmann.com 86 (Karnataka) – ITA No. 401 & 429-431 of 2016 dated June 21, 2018

1311. The assessee-company had a branch in UK and was doing business abroad under brand name of 'Cyber Jimmies' in UK. During relevant year, assessee paid advertisement expenditure to foreign magazines and publishing houses for advertisements of its brand and certain amount to foreign consultant for rendering services in UK in connection with registration of trade mark of 'Cyber Jimmies' in UK. Since assessee did not deduct tax at source while making said payments, AO disallowed same u/s 40(a)(i).The Tribunal noted that the recepients were foreign residents having no PE in India and services were also rendered by them outside India to the UK branch of the assessee, thus amount paid to them was not liable to tax in India. It held that there was no requirement of deducting tax at source from aforesaid payments and that impugned disallowance was to be deleted.
Cebon Apparel (P.) Ltd. v DCIT – [2018] 98 taxmann.com 253 (Mumbai - Trib.) – ITA No. 1651 (MUM.) OF 2016 dated May 29, 2018

1312. The Tribunal upheld the CIT(A)'s order deleting the disallowance made by the AO u/s 40(a)(i) on account of non-deduction of tax while making payment of consultancy and legal service charges to non-resident payee, noting that the assessee had not claimed deduction with respect to the said expenditure since the entire expenditure was capitalised as it pertained to power plants which were in pre-commencement stage.It relied on the decision in the case of Sonic Biochem Extractions P.Ltd. Vs. ITO[35 taxmann.com 463] wherein it was held that section 40(a) is applicable only if the assessee claims deduction of expenditure mentioned in the section.
DCIT & Anr. v ADANI POWER LTD. & ANR. - (2018) 53 CCH 0259 HydTrib - ITA No. 1663/Ahd/2014, 1686/Ahd/2014 With CO No.252/Ahd/2014 dated June 28, 2018

1313. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO u/s 40(a)(i) on payment made to a Swedish entity without deducting tax at source, holding that though the said payment was in nature of fees for technical services, in view of the Most Favoured Nation (MFN) clause in the India-Sweden DTAA, the said payment was taxable in India only if it fell within the narrower definition of fees for technical / included services provided in the India-Portugal DTAA. CIT(A) had held that the impugned payment did not fall within the definition of fees for included services as per the India-Portugal DTAA and further the same could not be taxed as business income also in absence of PE in India. The Revenue contended that the benefit of India-Portugal DTAA could not be extended to the assessee in absence of any separate notification issued by Government of India. The Tribunal held that the protocol to the India-Sweden DTAA makes it clear that the MFN clause "shall apply" in India-Sweden DTAA and the issuance of a notification has nowhere been stipulated as a

condition precedent therein. Further, it held that section 90(1) is very clear that only a DTAA would be notified and not the application of such a 'MFN' clause.
INCOME TAX OFFICER vs. M.S.K. TRAVESL & TOURS LTD. - (2018) 53 CCH 0214 KolTrib - ITA No. 284/Kol//2015dated June 22, 2018

1314. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) on account of payment of professional charges and towards reimbursement of administrative charges and reimbursement of insurance and foreign travel expenses to a person who was responsible for procurement, chemical development and technological upgradation etc. With respect to professional charges, the Tribunal held that the same was not taxable since the non-resident payeedid not have any PE or any business connectionin India and the revenue had failed to bring any evidence to prove it was not so. With respect to the reimbursements, it held that these were simply reimbursement of administrative expenses incurred by the concerned person outside India and did not involve any element of income and thus TDS was not required to be deducted.
DISHMAN PHARMACEUTICALS & CHEMICALS LTD. & ORS. v DCIT(OSD) & ORS. - (2018) 53 CCH 0065 AhdTrib - ITA No. 692/Ahd/2011, 2447/Ahd/2011, 2957/Ahd/2013, 3086/Ahd/2013, 817/Ahd/2011, 773/Ahd/2011 (CO No.89/Ahd/2011)dated May 23, 2018

1315. The Tribunal deleted the disallowed made u/s 40(a)(i) with respect to commission paid to non-residents for services of mobilizing deposits, etc. without deducting TDS u/s 195, holding that commission earned by the non-residents for rendering services abroad could not be construed as income accrued or arisen in India since they non-residents did not have any business operations in India
State Bank Of India v ACIT – (2018) 91 taxmann.com 312 (Mum) – ITA Nos. 4598 and 4736 (Mum.) of 2010 dated 31.01.2018

1316. The Tribunal set aside the CIT(A)'s order confirming the disallowance made u/s 40(a)(ia) on account of non-deduction of TDS on commission payments made to foreign agents in Hong Kong (with which India doesn't have a DTAA) with respect to export made to parties referred by them, noting that the payment was not received by the foreign agents in India and services rendered by them in their respective countries and thus, the income could not be said to have accrued or arisen in India as per section 5(2). Further, it held that neither the income could be deemed to have accrued or arisen in India in view of provision of section 9(1)(i) nor it is not the case of revenue that payment was made by assessee on account of technical services rendered by the foreign agents and, thus, assessee was not liable to deduct TDS u/s 195.
Bengal Tea & Fabrics Ltd. v DCIT – (2018) 91 taxmann.com 38 (Kol Trib) – ITA No. 1667 (kol.) of 2016 dated 28.02.2018

1317. The assessee company, engaged in exporting cotton yarn, paid commission to foreign agents for booking the export orders abroad without deducting TDS u/s 195. On claiming deduction on the said payment, the AO disallowed the same u/s 40(a)(i)by stating that the commission fell within the purview of S.9(1)(i) and S.9(1)(vii) r w S.195.The CIT(A) deleted the disallowance after taking note of the fact that the Tribunal in the assessee's own case for earlier assessment year had deleted similar disallowance made by the AO under section 40(a)(i).On appeal by Revenue, the Tribunal upheld the CIT(A)'s order noting thatneither the foreign agent had business connection in India and nor the brokerage/commission paid by assessee could be treated as fees for technical services.
ITO v Indo Industries Ltd. [2018] 94 taxmann.com 117 (Calcutta) ITA NO 4642 OF 2016 dated 11.05.2018

1318. The assessee was engaged in the business of trading fabrics and manufacturing and trading readymade garments and had paid commission on export sales to its two agents appointed in UAE during the relevant year. The AO rejecting the assessee's explanation that the provisions of section 195 were not applicable in the instant case. On appeal, it was noted by the Tribunal that all the activities of the agents were performed overseas and in addition to that the Revenue had failed to establish that the foreign agents had any office or any business operation in India. In view of these facts, the appeal of the Revenue was dismissed and it was held that the commission income could not be said to accrue or arise in India in terms of Section 9(1)(i).

ACIT v. Vipin Kumar Gupta – [2018] 93 taxmann.com 399 (Delhi- Trib.) – IT Appeal No. 4923 (DELHI) of 2014 dated April 25, 2018

1319. The assessee made commission payment to various agents based in foreign countries on account of export made to parties referred by them, which were disallowed by the AO on the ground that no TDS was deducted u/s 195 on such payment.The Tribunal held that since the payment for commission was not received by foreign agents in India, the same was not taxable u/s 5(2)(a) and further since the same was on account of services rendered by them in their respective countries, it did not accrue or arise in India. It observed that it was not the case of Revenue that payment was made by assessee on account of technical services rendered by the foreign agents. The Tribunal thus held that since none of the conditions mentioned in section 9, viz. business connection in India, property in India, asset or source in India or transfer of capital asset situated in India, were fulfilled in the present case, no income could be deemed to have accrued or arisen in India. Therefore, it held that since the income was not chargeable to tax in India, there could be no liability to deduct TDS u/s 195.
DCIT v Gujarat Microwax (P.) Ltd - [2018] 96 taxmann.com 644 (Ahmedabad - Trib.) – ITA No. 2503 (AHD.) of 2016 dated May 24, 2018

1320. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the disallowance made u/s 40(a)(i) by the AO on account of export commission and other related charges paid to non-resident/ foreign agents, relying on various judicial precedents wherein it has been held that commission payment made to non-resident agent for services rendered by them outside India are not chargeable to tax in India and thus not liable to TDS u/s 195.
DEPUTY COMMISSIONER OF INCOME TAX vs. STERLING ORNAMENT (P) LTD. - (2018) 53 CCH 0252 (DelTrib) - I.T.A. No. 4395/DEL/2014 dated June 27, 2018

1321. The Court deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made to a non-resident agent under Agency Agreement for services rendered by him as the broker of the assessee, an Indian company, wherein such services also included procuring orders upon market survey with regard to demand for the products of the assessee in the foreign country. The AO had held the said payment to be in nature of Fees for Technical Services (FTS) as per section 9(1)(vii) attracting TDS provisions u/s 195. The Court held that the service of market survey only to ascertain demand for product in market was incidental to function of commission agent of procuring orders and was, in any case, not managerial, technical or consultancy service so as to be charged to tax in India as FTS. Further, there was no finding that the agent had any place of business in India. It thus held that since TDS was not required to be deducted u/s 195, there could not be any disallowance u/s 40(a)(i).
Evolv Clothing Co. (P.) Ltd. v ACIT - [2018] 94 taxmann.com 449 (Madras) - TAX CASE (APPEAL) NO. 572 OF 2013dated June14, 2018

1322. The Tribunal had deleted the disallowance made u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made by the assessee to its foreign agents for rendering sales and marketing services abroad. It noted that since the foreign agents had rendered their services abroad and they did not have a fixed base in India, the said payment was not taxable in India and thus, there was no requirement to deduct TDS u/s 195. The Revenue filed appeal against the Tribunal's order placing reliance on Explanation 2 to section 195(1) which provides that obligation to comply with section 195(1) would extend to any person, irrespective of the fact if the non-resident person has a residence or place of business or business connection in India or any other presence in any manner whatsoever in India. The Court held that once the conclusion is arrived that such payment did not entail tax liability of the payee under the Act, as held by the Supreme Court in the case of GE India Technology Centre (P.) Ltd. v. CIT [2010] 327 ITR 456 (SC), section 195(1) would not apply. Thus, noting that the Revenue did not seriously contend that the said payment was taxable in India, it dismissed the Revenue's appeal.
Pr.CIT v Nova Technocast (P.) Ltd - [2018] 94 taxmann.com 322 (Gujarat) - R/TAX APPEAL NO. 290 OF 2018dated April9, 2018

1323. The assessee paid commission to a non-resident for procuring export sale order without deducting tax at source u/s 195 and thus, the AO disallowed the expenditure u/s 40(a)(i) holding that the commission payable was deemed to accrue or arise in India and accordingly taxable u/s 5(2)(b) r.w.s 9(1)(i) [being income accruing or arising through business connection in India]. The CIT(A) upheld AO's order. The

Tribunal held that deeming fiction u/s 9(1)(i) could not be invoked in the present case since no part of the operations of the recipient's business, as commission agent, was carried out in India and thus the said commission was not taxable under the Act. Hence, following the Apex Court ruling in the case of GE India Technology Centre Pvt Ltd Vs CIT wherein it was held that payer was bound to withhold tax from the foreign remittance only if the sum paid was assessable to tax in India, it held that the assessee was not required to deduct TDS from the aforesaid payment towards commission, since the same was not taxable under the Act as well as the relevant tax treaty.
Ferromatic Milacron India Pvt. Ltd. v DCIT (2018) 52 CCH 0553 AhdTrib - ITA Nos. 2451 & 2616/Ahd/2015 dated 19.04.2018

1324. The Tribunal upheld the CIT(A)'s order deleting disallowance made by the AO u/s 40(a)(i) on account of payment of commission to non-resident / foreign commission agent for rendering service outside India without deducting TDS u/s 195, holding that in absence of PE or business connection in India, the said payment could not be deemed to accrue or arise in India.
ASSISTANT COMMISSIONER OF INCOME TAX vs. MANUFAX INDIA S.B. - (2018) 52 CCH 0348 AgraTrib - ITA Nos. 434 & 446/Agra/2015 dated Apr 11, 2018

1325. The assessee paid Foreign commission (to Agents rendering services outside India for promotion of sales) and did not deduct tax at source u/s 195 as no part of income arose in India. The AO disallowed the commission paid u/s 40(a)(i) holding that the TDS was supposed to deducted u/s 195. The CIT(A) deleted the disallowance made by the AO. The Tribunal followed (1) GE India Technology Centre (P) Ltd vs. CIT wherein it was held that TDS was to be deducted only if income was chargeable to tax in India in the hands of non-resident recipient, (2) CIT vs. R.D. Aggarwal & Co. & Anr. wherein it was held that where assessee's non-resident Agent did not have PE in India, the Commission to agents could not arise in India and (3) CIT v. Toshuku Ltd wherein it was held that commission earned by non-residents for services rendered outside India could not be deemed to be income, which had accrued or arisen in India in terms of section 9(1)(i). It thus held that the Commission Agent had no 'business connection' in India and upheld the CIT(A)'s order of deleting the disallowance.
Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

1326. The assessee had made payments for marketing activities carried out in Bangladesh to a non-resident without deducting tax at source. The AO disallowed the amount under provisions of s 40(a)(i) on the ground that payments made to non-resident who have their business in India for rendering management, consulting and technical services is taxable in India as per sec 5(2) r.w.s 9(1)(vii) (c) of the Act. The AO also noted that a copy of the agreement between the assessee and the non-resident was not furnished by the assessee. It was the assessee's contention that such disallowance could not sustain in view of the services being rendered in Bangladesh and in absence of business connection of payee in India, no income accrued or arose in India. Noting that the assessee had furnished a copy of the agreement with the non-resident to the DRP as additional evidence, the Tribunal restored the issue of disallowance u/s.40(a)(i) following the coordinate bench decision of the assessee for its earlier year wherein the issue was restored on account of no supportings before the AO (whether services were rendered in Bangladesh and not in India) and it was observed that a disallowance could not be made on mere presumption that payments made were in nature of Royalty/FTS and accordingly, claim had to be verified by the AO.
Philip Morris Services India S.A v DDIT [TS-488-ITAT-2018(DEL)-TP] ITA No.827/Del/2014 dated 21.06.2018

h. ***Shipping business***

1327. The AO taxed the amounts received by the assessee (a Danish company, resident of Denmark) on account of reimbursement of cost of IT system support services incurred by it for effective conduct of its day-to-day shipping operations business (and charged to the group entities / agents based on their usage) as fees for technical services under the India-Denmark DTAA and the receipts on account of inland haulage charges as profits of shipping business u/s 44B, rejecting the assessee's contention that both these receipts formed part of the shipping business of the assessee which were not taxable in

India in view of the provisions of Article 9 of the India-Denmark DTAA (which provides that profits derived from the operation of ships in international traffic shall be taxable only in the country in which the place of effective management of the entity is situated). The DRP directed the AO to accept assessee's above contentions, following the Tribunal's order in the assessee's own case for earlier year. The Tribunal also dismissed Revenue's appeal against the said directions of DRP, following the High Court as well as the Tribunal's order in the assessee's own case for earlier year wherein it was held that the said receipts were part of assessee's shipping business and could not be captured under any other provisions of the Act except under the DTAA and as per Article 9 of the India-Denmark DTAA, the said receipts were not taxable in India.
DCIT v A.P.Moller Maersk A/S – ITA No. 1743/Mum./2016 dated 23.01.2018

1328. The AO taxed the amounts received by the assesse-company, resident of France, on account of inland haulage charges and service tax on the same as profits of shipping business u/s 44B, rejecting the assessee's contention that both these receipts formed part of the shipping business of the assessee which were not taxable in India in view of the provisions of Article 9 of the India-France DTAA (which provides that profits derived from the operation of ships in international traffic shall be taxable only in the country in which the place of effective management of the entity is situated). Noting that on identical issue, the it had decided in favour of assesse in assessee's own case for earlier year, the Tribunal held that Inland Haulage charges and service tax thereon being part of the income derived from the operation of shipping in international traffic was exempt under Article 9 of the India-France DTAA and hence, not taxable in India. Accordingly, it allowed assessee's appeal and deleted the addition.
DELMAS S.A.S. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0142 MumTrib - ITA No. 2187/Pn./2017 dated Jun 13, 2018

1329. Assessee, a shipping company incorporated at Mauritius, had claimed its entire income not to be taxable in India in view of provisions of Article 8 of the India-Mauritius DTAA *inter alia* dealing with profits from the operation of ships in international traffic, supporting its claim by furnishing TRC issued by the Mauritian tax authorities. AO denied the said relief to the assessee holding that the effective management of the assessee was situated at a place which was other than India and Mauritius and further held that the assessee's income was chargeable to tax in India opining that the assessee had a PE in India in form of an exclusive agent (FCIPL). The Tribunal rejected the view taken by the AO noting that the activities of assessee's sole agent in India (FCIPL) were not devoted exclusively on behalf of assessee as it also did work on behalf of other principals and earned a substantial part of its income from them and, thus, held that FCIPL was not an exclusive agent of assessee so as to come under purview of definition of dependent agent as defined in Article 5(5) of India-Mauritius DTAA. Accordingly, it was held that the assessee did not have any PE in India and was not taxable as per article 7 of India-Mauritius DTAA. However, with respect to the assessee's contention with regards to effective place of management being in Mauritius, the Tribunal held that it was not necessary that effective management had to be only between two contracting states and, based on facts in the present case, the same was neither in Mauritius nor in India. Further, relying on the views of Klaus Vogel, it held that if the effective management of an enterprise was not in one of the contracting state, but was situated in the third state, the benefit of Article 8 of DTAA, could not be extended.
ADIT v Bay Lines (Mauritius) – (2018) 91 taxmann.com 110 (Mum) – ITA No. 1181 (Mum) of 2002 & others CO No. 32 (Mum) of 2010 & others dated 20.02.2018

1330. The Tribunal upheld the CIT(A)'s order deleting the disallowance made by AO u/s 40(a)(ia) on account of payments made to foreign shipping lines without deduction of tax at source, in view of the provisions of section 172 applicable in case of Foreign Shipping Companies notwithstanding anything contained in other provisions and therefore, held that the provisions of section 194C and 195 relating to tax deduction at source were not applicable in such cases. It held that the issue was was squarely covered by CBDT Circular No. 723 dated 19.09.1995 stating that where payments were made to shipping agents of non-resident shipping owners shipped at port in India, agents step into shoes of principal and accordingly provision of section 172 should apply and not provisions of Section 194 and 195.
DCIT v ASSOCIATED PIGMENTS LTD. – (2018) 52 CCH 4 (Kol Trib) – ITA No.2042/Kol/2014 dated 03.01.2018

i. Section 44BB

1331. Assessee, a non-resident company, was taxed u/s 44BB(1) @ 10% with respect to its revenue earned on account of charter hire of Deepwater Drilling Unit considering reimbursement receipts (on account of material recharge and fuel reimbursement as well as service tax reimbursement) as part of revenues taxable u/s 44BB. With respect to reimbursements other than service tax reimbursement, the Tribunal held that section 44BB refers to total payment to assessee or payable to assessee or deemed to be received by assessee and, thus, noting that it was not in dispute that amount was received by the assessee, it held that the AO was justified in including the said amount which was received while determining revenue under provisions of section 44BB. However, with respect to inclusion of receipts on account of reimbursements of service tax, the Tribunal held that the service tax was not an amount paid or payable, or received or deemed to be received by the assessee for services rendered by it and the assessee was only collecting service tax for passing it on to the Govt. Thus, it held that the service tax collected by the assessee does not have any element of income and therefore cannot form part of the gross receipts for the purposes of computing the 'presumptive income' of the assessee u/s 44BB.
TRANSOCEAN OFFSHORE DEEPWATER DRILLING INC. v ADD.CIT (IT) – (2018) 52 CCH 69 (Del Trib) – ITA No. 2072/DEL/2016 dated 30.01.2018

1332. The Tribunal held that sections 44BB, 44DA and 115A rw Section 9(1)(vii) relating to royalty/FTS operate in different fields and accordingly held that where the assessee was imparting geophysical and geological services for prospecting for mineral oils, the same being services in relation to exploration of mineral oil then, the royalties/FTS would be taxable under section 44BB as section 44BB was a specific provision in relation to specific services and therefore would prevail over the other provisions dealing with royalties/FTS services. Accordingly, it held that the AO was not justified in taxing the receipts as a simple royalty or FTS under section 9(1)(vi)/(vii) read with section 115A.
DDIT v RPS Energy Pty Ltd.* - [2018] 92 taxmann.com 77 (Delhi - Trib.) - IT APPEAL NO. 45 (DELHI) OF 2015 dated MARCH 16, 2018

1333. The Assessee had entered into a contract with a UAE based non-resident company for executing certain work in connection with oil fields located in Bay of Bengal and the consideration received under the said contract was not offered to tax since the entire work was executed outside India. The AO, however, brought the aforesaid receipts to tax in India u/s (9)(1)(i) holding the same to be income accruing or arising in India on the ground that the situs of the contract was in India. CIT(A) accepted the assessee's contention that the non-resident company did not carry out any business operation in India and did not have any PE in India as per India-UAE DTAA, however, he brought to tax the impugned receipts u/s 44BB on the ground that the assessee itself (as an alternative plea) had opted to be governed by the said provision. The Tribunal held that merely because the assessee had taken an alternative plea without prejudice to the main contention, the same cannot be held against the assessee as there is no estoppel in law. It followed the decision of CIT v Enron Espat Services Inv. [327 ITR 626] wherein it was held that if the receipt by a non-resident was exempt from tax under the relevant DTAA, the said amount could not be brought to tax u/s 44BB and thus allowed the assessee's appeal.
ONGC LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0272 DelTrib - ITA No. 1330/DEL/2016 & 1332/DEL/2016 dated June 29, 2018

1334. Where assessee, foreign company, had entered into contracts with (ONGC) for giving on hire their rigs for carrying out oil exploration activities in India, mobilisation fee received by assessee was to be included for computation of deemed profits and gains of business, chargeable to tax under section 44BB; Review petition against said decision wasdismissed by the Apex Court.
Sedco Forex International INC v CIT [2018] 94 taxmann.com 119 (SC) – CIVIL APPEAL NO. 4906 OF 2010 dated 10.05.2018

1335. The Assessee-company, incorporated in France,was engaged in executing contracts with an Indian company for offshore drilling operations relating to mineral oil in India and computed its income as per the provision of section 44BB(1), thereby applying a deemed net profit rate of 10% of gross revenues. The assessee claimed that reimbursement of communication immersat charges and reimbursement of cost of equipment lost in oil wells as well as reimbursement of service tax should not be included in the gross receipts as they were in nature of reimbursement. The Tribunal dismissed assessee's appeal with

regards to reimbursement of communication immersat charges and reimbursement of cost of equipment lost in oil wells, following the co-ordinate bench decision in the assessee's own case for an earlier year, wherein it was held that the said reimbursement receipts formed part of gross receipts for the purpose of section 44BB. However, it accepted the assessee's claim with respect to reimbursement of service tax, following Jurisdictional High Court decision of DIT v. Mitchell Drilling International (P.) Ltd. [2016] 380 ITR 130 (Del) and held that service tax being a statutory liability could not form part of the gross receipt for the purpose of deemed profit u/s 44BB.

The Tribunal also dismissed assessee's claim that the interest received on income tax refund was covered by Article 12 of India-France DTAA which provides that interest will be taxable in resident State, following the High Court decision in the assessee's own case wherein it was held that since assessee hadPE in India and was subjected to tax in India, the interest on refund of income tax was not covered by Article 12 of the said DTAA.

Pride Foramer SAS v JCIT - [2018] 97 taxmann.com 648 (Delhi - Trib.) - ITA No. 702 (DELHI) OF 2015 dated April 23, 2018

1336. The assessee company was engaged in providing services and facilities in connection with exploration and production of mineral oils and received revenue against work executed for different companies. The assessee offered to tax entire revenue u/s 44BB, thereby applying a deemed net profit rate of 10% of gross revenues. The AO however taxed the income received from Production Sharing Contract (PSC) partners engaged in oil exploration u/s 44BB but the receipts from the non-PSC partners (such receipt were on account of equipment rental) as FTS /royalty taxable @25% of the profit u/s 44DA. The Tribunal held that receipt from non-PSC partners was also taxable u/s 44BB in view of the Apex Court ruling in ONGC vs. CIT [376 ITR 306(SC)] wherein it was held that where the pith and substance of each of the contracts/agreements is inextricably connected with prospecting, extraction or production of mineral oil and where the dominant purpose of each of such agreement is for prospecting, extraction or production of mineral oils, though there may be certain ancillary works contemplated there under, the payments received under the said contracts would be more appropriately assessable under the provisions of section 44BB and not section 44D. Further, the Tribunal held that reimbursements received on account of sertive tax/ VAT were not to be included in gross receipt while computing tax payable u/s 44BB, relying on the decision of DIT v. Mitchell Drilling International (P.) Ltd. [2016] 380 ITR 130 (Del).

DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. B.J. SERVICES COMPANY MIDDLE EAST LTD. - (2018) 52 CCH 0371 DelTrib - ITA No. 6167/Del/2014 dated April 20, 2018

j. Others

Interest under section 234B / 234C

1337. The Tribunal dismissed Revenue's appeal against the DRP's order directing the AO not to charge interest u/s 234B in the case of the assesee, a foreign company, since the the income of a foreign enterprise is governed by the provisions of section 195 wherein any payment made to foreign enterprise would be subjected to full deduction of tax at source and thus consequently there is no liability on the foreign enterprise to pay advance tax.

HITT HOLLAND INSTITUTE OF TRAFFIC TECHNOLOGY B.V. v DCIT (2018) 53 CCH 0371 KolTrib – ITA Nos. 290/Kol/2016 & 348/Kol/2017 dated July 20, 2018

1338. The Tribunal deleted the interest levied u/s 234B & 234C in the case of non-resident assessee holding that if payer while making payments to non-resident has defaulted in deducting tax at sourcefrom such payments, the Revenue is not remedy-less andcan take action against the payer u/s 201 and that the non-resident would not be liable to pay advance tax.

JAYANTHI BHARATH KUMAR v DCIT (2018) 53 CCH 0368 (VishakapatnamTrib) - ITA No. 272/Vizag/2017 dated July 13, 2018

1339. Relying on the decision in the case of DIT vs GE Packaged Power Inc. (2015) 56 taxmann.com 190 (Del HC) and CIT vs ZTE Corporation (2017) 392 ITR 80 (Del HC), the Tribunal held that interest u/s 234B could not be levied for non-payment of advance tax in the case of the assessee, a foreign

company, since the income of foreign company was to be governed by provisions of section 195 wherein any payment made to foreign enterprise would be subjected to full deduction of tax at source. However, it upheld levy of interest u/s 234D holding that charging of interest u/s 234D was consequential in nature and remanded the matter to the file of the AO for verifying the actual refund figure granted to assessee earlier for computing the interest u/s 234D.
HITT HOLLAND INSITUTE OF TRAFFIC TECHNOLOGY B.V. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONA TAXATION) - (2018) 52 CCH 0280 KolTrib - ITA No. 390/Kol/2015 dated Apr 4, 2018

Miscellaneous

1340. The Court quashed the show cause notice issued u/s 163(1) proposing to treat the assessee, an Indian company, as agent of a foreign company (which was earlier a shareholder in the assessee-company) in respect of tax liability arising on account of capital gain earned on transfer of shares of the assessee-company to another foreign company, in view of the fact that transfer took place outside India and the assessee had no role in such transfer.
WABCO India Ltd. Vs Dy.CIT (Int Taxation) Chennai [2018] 97 taxmann.com 620 (Madras) W.A. NO. 884 OF 2018 dated August 1, 2018

1341. The Tribunal allowed the USA based assessee-company's claim for interest u/s 244A on refund of TDS deducted by the Indian group company (also acting as representative assessee u/s 163) while making payment of royalty to the assessee-company. It rejected the reliance placed by the AO on CBDT Circular No.7/2007 dated 23.10.2007 stating that where refund of TDS is claimed by the person making payment u/s 195, no interest/s 244A is admissible on such refund, holding that the said circular is applicable where the refund is claimed by the deductor and in the present case, the claim was made by the deductee. However, noting that the assessee had not claimed the TDS refund in the return filed but during assessment proceeding, the Tribunal held that interest will be allowed only from the date of passing assessment order and not from the period when TDS was deducted since the delay upto the date of passing assessment order was attributable to the assessee.
Whirlpool of India Ltd (as agent of Whirlpool Corporation (USA)] v DCI [TS-590-ITAT-2018(DEL)] - - ITA No.6530/Del/2015 dated 10.10.2018

1342. The Court set aside Tribunal's order wherein the Tribunal had held that as per section 163, a representative assessee / agent is liable to tax in India on behalf of the non-resident assessee only with respect to its income which is 'deemed to have accrued in India' u/s 9 and not with respect to 'income accrued in India'. It held that section 160 makes it abundantly plain that a representative assessee would represent a non-resident assessee in respect of his income specified in section 9 and thus the representative assessee not only represents an income which has directly arisen or accrued in India but also that which has indirectly arisen or accrued in India, through a business connection. The Court held that only because of use of the short title to section 9, i.e. Income deemed to accrue or arise in India, does not absolve the representative assessee of the duty to account for any income which has directly arisen to the non-resident in India.
DIT(IT) v. Board of Control for Cricket in Sri Lanka - [2018] 97 taxmann.com 600 (Calcutta) - ITA Nos. 242 & 279 of 2008 dated September 25, 2018

1343. The Tribunal allowed the assessee's appeal against the CIT(A)'s order and directed to delete the addition made by taxing the salary income received by the assessee with respect to his employment in Korea, noting that the assessee had stayed outside India for more than 182 days and thus had become a non-resident. It held that when a citizen of India leaves India for employment abroad and stayed outside India for 182 days or more, then he becomes a non-resident and the income received from services rendered outside India could not accrue or arise or deemed to accrue or arise in India and could not be taxed in India notwithstanding the fact that the same is credited in the bank in India or TDS had been deducted on such income by the foreign employer.
AVDESH KUMAR vs. DCIT (2018) 172 ITD 0073 (Delhi-Trib) - ITA No. 747/Del/2018 dated July 30, 2018

1344. The Tribunal held that the education cess is only a surcharge (as clarified by the Finance Act) and surcharge is only a tax [as clarified by the Hon'ble Apex Court in case of K. Srinivasan (1972) 83 ITR 346 (SC)]and therefore, education cess or any other surcharge should not be added separately to tax rate as per DTAA. The Apex Court in the aforesaid case held that term 'income-tax' as employed in section 2 of the Finance Act includes surcharge and additional surcharge whenever provided.
Soregam SA v DDIT [2019] 101 taxmann.com 94 (Delhi - Trib.)– ITA No. 123 (DELHI) OF 2015 dated November 30, 2018

1345. The Tribunal deleted addition with respect to consultancy income received by assessee (RNOR) for services rendered outside India to a company (in Dubai in which assessee was a Director) and held that the income accrued to the assessee at a point of time (i.e. AY 2009-10) when he was a non-resident & since assessee already recognized the income at the point of accrual in an earlier year, it could not once again be considered as income at the point of receipt. Further it held that though assessee was paid by the company during the relevant AY i.e. after April 1, 2009 the confirmation from the company clearly indicated that services rendered were for the period November 2008 to March 2009 and accordingly held that as per Section 5(1) and 5(2) receipt in a later year, of an income which accrued or arose in an earlier year, would not render such amount taxable in the year of receipt.
Mr. J. Muthukumar [TS-93-ITAT-2018(CHNY)] - I.T.A.No.2203/CHNY/201 dated 13-02-2018

1346. Where the applicant-employer, engaged in business of software development and IT Enabled Services, had sent two of its employees-assignees on deputation to US and Germany and the applicant had filed the application with AAR seeking ruling on issue of taxability in India of salary of its employees sent abroad for rendering services to foreign company and the applicant-employer's liability to deduct TDS on thereon, the AAR ruled that the income earned by assignees/employees from services rendered in USA / Germany respectively would be chargeable to tax in USA / Germany only and not in India for period of their deputation and since there was no obligation on employee to pay tax on income from salaries, there would not be any liability to deduct tax u/s 192 by applicant- employer. Further, with respect to the applicant-employer's query as to whether the applicant could give the said employees credit of taxes paid in US/ Germany on their return to India, it was ruled that the employees were covered by provisions contained in Articles 25 of India-USA DTAA and Article 23 of India-Germany DTAA and, thus, were entitled to credit for foreign taxes deducted. Accordingly, while deducting TDS u/s 192, the employer could give credit for taxes deducted during their deputation outside India in view of provisions of section 192(2).
HEWLETT PACKARD INDIA SOFTWARE OPERAN PRIVATE LIMITED IN RE – (2018) 401 ITR 0339 (AAR) – A.A.R. No 1217 of 2011 dated 29.01.2018

1347. The assesee, a foreign company incorporated in Cyprus, was wound up on 24-5-2013, whereas assessment had been completed on 30-1-2017. The assessee claimed before the DRP for the first time that assessment was illegal and void since it was completed on a non-existent entity, the Tribunal held that as per section 176, in case of discontinuance of the business, the assessee was required to inform the AO and also in case of the liquidation, the liquidator of the company was required to give notice to the AO, informing him about such discontinuance/ liquidation. It was noted that though the assessee had submitted that the AO was informed about the dissolution of the company but the assessee could establish that it had provided the information as per the requirementsof the Act. The Tribunal, thus, set aside the assessment order passed and restored the matter to the file of the AO/ TPO to verify whether the assessee complied with various provisions of the Act relating to responsibility of company- in-liquidation or discontinuity of business.
Pesak Ventures Ltd. v DCIT(IT) - [2018] 95 taxmann.com 113 (Delhi - Trib.) - IT APPEAL NO. 1929 (DELHI) OF 2017dated June19, 2018

1348. The Tribunal held thatwhere assessee, a non-resident, earned interest income on FCCBs issued by an Indian company abroad, in view of fact that entire proceeds of FCCBs had been utilised by Indian company in said country for repayment of an acquisition facility, interest income in question was not liable to tax in India as per exception carved out in section 9(1)(v)(b).
The Tribunal held thatwhere assessee, a non-resident, received interest on fully convertible debentures issued by an Indian company, said interest income would be liable to tax at rate of 10 per cent in terms of Article 11 of India-Cyprus DTAA.

TheTribunal held that where assessee, a non-resident, received consultancy fee from an Indian company, same was liable to be taxed at rate of 10 per cent in terms of article 12 of India-Cyprus DTAA as against 42.23% as per the provisions of the act.
Clearwater Capital Partners (Cyprus) Ltd. v DCIT (Internation Taxation) [2018] 94 taxmann.com 118 (Mumbai – Trib.) – ITA NOS. 843 AND 1025 OF 2016 dated 02.05.2018

1349. Where the assessee, a UK based company having its Branch Office in India, claimed deduction u/s 44C on a/c of "Head Office Expenditure" which the AO had disallowed as the same was not debited in the Profit and Loss A/c of the assesse, the Court allowed the said claim holding that it was irrelevant if the same was not debited in P&L A/C if the transaction was genuine, undisputed and not questioned.
Ernst & Young c ACIT [2018] 94 taxmann.com 227 (Delhi-Trib.) – ITA NOS. 6561-6562 OF 2016 dated 31.05.2018

1350. The Assessee, a tax resident of Singapore, claimed that the short-term capital gain derived by it from Indian securities was as not taxable in India under Article 13(4) of the India-Singapore DTAA. The AO, however, rejected such claim referring to Article 24 of the said DTAA which provides that the exemption available under the said DTAA with respect to income from any source in a Contracting State (India) will be limited only to the extent such income is repatriated to the Other Contracting State (Singapore), if such income is taxable in the Other Contracting State (Singapore) by reference to the amount which is remitted to or received in that Other Contracting State (Singapore) and not the full amount. The DRPheld that the entire income received by the assessee from all sources was taxable in Singapore irrespective of the fact whether it was received in Singapore or not and allowed the assessee's claim. The Tribunal held that Article 13(4) is not an exemption provision but it speaks of taxability of particular income in a particular State by virtue of residence of assessee and provisions of Article 24 (which is applicable to exempt income) does not have much relevance insofar as it relates to applicability of article 13(4) to income derived from capital gain. Thus, it dismissed the Revenue's appeal.
DCIT v D. B. International (Asia) Ltd - [2018] 96 taxmann.com 75 (Mumbai - Trib.) – ITA No. 992 (MUM.) OF 2015 dated June 20, 2018

III. Domestic Tax

a. Income

1351. The assesee-society was entrusted with responsibility of collection of VAT and upon collection of same, a part of it was to be deposited immediately in Government Treasury, and remaining amount had to be transferred to State Government after meeting out expenditure incurred by society. The Court held that since assessee-society neither gained anything nor earned any profit and VAT amount recovered by assessee was an entrustment of statutory function of State and, thus, assessee neither created any source of income nor generated any profit and gain out of such source, said balance sum did not partake of character of 'real income' in hands of assessee.
Pr. CIT, Shimla v. H.P. Excise & Taxation Technical Service Agency - [2018]100 taxmann.com 290 (HP HC)- ITA Nos.85 to 87 & 91 to 93 of 2018- dated December 7, 2018.

1352. The Court held that compensation awarded under Motor Vehicles Act or Employees' Compensation Act in lieu of death of a person or bodily injury suffered in a vehicular accident, is a damage and not an income and cannot be treated as taxable income.
National Insurance Company Ltd. v. Indra Devi-[2018]100 taxmann.com 160 (HP HC)- CMPMO No.330 of 2018 -dated October 25, 2018.

1353. Where Tribunal held that amount received by assessee amounted to capital receipt and it did not come from assigning assessee's business right so as to treat same as business income, the Court held that no question of law arose out of order of Tribunal
SLP dismissed in CIT v. Om Metals Infraprojects Ltd. [2018] 99 taxmann.com 229/259 Taxman 354 (SC) SLP (CIVIL) Diary No. 24602 of 2018 dated October 5, 2018

1354. The Tribunal held that in order to derive true net profit in project completion method it is necessary to show estimated expenditures, like, Exp. on minor/miscellaneous work in its books of accounts.

Bengal Peerless Devt. Co. Ltd vs. Dy.CIT (2018) 54 CCH 0444 KolTrib- ITA No.2414/Kol/2017,2549/Kol/2017 dated 31.12.2018

1355. The assesee-company, engaged in construction and development business, received certain amount by way of interest from mobilization advances made by it to contractor for purpose of facilitating smooth commencement and completion of work of construction, said receipt wasadjusted against charges payable to contractor and, thus, resulted in reduction of cost of construction. It was held that in view of decision in the case of CIT V. Bokaro Steel Ltd. [1999] 102 Taxmann 94/236 ITR 315(SC), receipts being intrinsically connected with construction business of the assessee would be capital receipt and not income of the assessee from any independent source.

Roads & Bridges Development Corporation of Kerala Ltd. v. Asstt. CIT [2018] 96 taxmann. com 330/257 Taxmann 392(Ker.) -ITA No. 376 of 2010 dated July 6, 2018

1356. Where assessee-company entered into an agreement with Diageo India, whereby it agreed to manufacture and sell alcoholic products under control and supervision of Diageo India, in view of fact that assessee held Excise Licence in its name from state for manufacture and sale of liquor, where Diageo India had no privity or locus, distributable surplus paid to Diageo India did not amount to diversion of income at source by 'overriding title ' in favour of Diageo India. It was held that terms of agreement were intelligently derafted so as to give a make-believe impression that the assessee was a mere job worker doing bottling work only. However, on a closer and deeper scrutiny, it was nothing but a devious diversion, falling short of legal prerequisites for taking it out of ambit and charge of Income tax Act in hands of the assessee. Income was generated out of liquor business had to be first taxed in hands of Excise Licensee (i.e. assesee) and after payment of Income Tax, 'distribution of surplus' between both parties was their discretion.

Pr. CIT v. Chamundi Winery & Distillery [2018] 97 taxmann.com 568 (Kar)- ITA Nos. 458 of 2013, 467 of 2015, 155 of 2016 & 172, 173 of 2017 dated September 25, 2018

1357. The assessee-Airport received 'Passenger Service Fee' (PSF), comprised of two components,namely, security component and facilitation component. As per operational, management and development agreement between the assessee and the Airport Authority of India, the assessee had to deposit security component of PSF in escrow account, which was wholly reserved for security expenses of CISF and the assessee had no control over said deposits. Since the assessee did not disclose income on account of PSF, the Commissioneer initiated revision proceedings. The Tribunal held that the Mumbai Tribunal in Addl. CIT v. Mumbai International Airports (P.) Ltd. [2017] 88 taxmann.com 663 returned a finding that security component of PSF amount did not constitute income in hands of the assessee. However, Co-ordinate Bench of the Delhi Tribunal in the assessee's own case in Asstt. CIT v. Delhi International Airport (P.) Ltd. [2018] 89 taxmann.com 326 had remanded the issue back to the Assessing Officer. The question whether or not security component of PSF constituted income in hands of the assessee was not yet finally decided and, thus, it still remained a debatable issue. Thus, the Commissioner was not justified in invoking jurisdiction under section 263 for revision of said issue.

Delhi International Airport (P.) Ltd. v CIT [2018] 96 taxmann.com 229(Delhi -Trib.)- ITA No. 137 (DELHI) of 2012 [Assessment Year 2007-08] dated July 5, 2018

1358. During relevant year, the assesee-company was engaged in business of inter alia, clearing and forwarding agent. The assessee-company had done major work for and on behalf of 'S' Ltd. In said regard, the assessee made payments to foreign shipping/airline companies through their agents. The Tribunal held that it was noted from records that the non-resident companies had not rendered any services in India. It was also undisputed that non-resident companies did not have any PE in India. In aforesaid circumstances, payments made by the assessee to non-resident companies on behalf of 'S' Ltd. were not liable to tax in India under the Act as well under the relevant DTAA.

KGL Network (P.) Ltd. v. ACIT [2018] 97 taxman.com 400 (Delhi - Trib.) ITA No. 301 (DELHI) of 2018 [ASSESSMENT YEAR 2014-15] dated July 2, 2018

1359. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order treating security deposit received by the assessee-club from its members at the time of their enrollment as a club member to be capital receipt, as same was in nature of deposit (which was refundable on occurrence of the contingencies mentioned in the Rules, Regulations and Bye Laws)and not in nature of income as observed by AO.

Dy.CIT vs Gulmohar Green Golf and Country Club Ltd [2018] 53 CCH 0481 (Ahd- Trib) IT APPEAL NO. 51 (AHD.) OF 2017dated August 24 2018

1360. The Tribunal upheld CIT(A)'s order deleting the addition made on account of duty credit scrips received but not utilized by the assessee, as the same could not be taxed during the relevant year. It noted that the assessee had not imported any goods during the year under consideration and, accordingly, it followed the coordinate bench decision in assessee's own case wherein on identical facts and relying on the Apex Court decision in CIT vs Excel Industries Ltd., it was held that income from such duty credit scrips do not accrue until imports are made and raw materials are consumed by the assessee.

Asst.CIT vs JUBILANT ENPRO P. LTD. & ANR. [2018] 53 CCH 0446 (Del- Trib) ITA No. 3485/Del/2014 (Cross Objection No. 194/Del/2017) dated August 16 2018

1361. The Tribunal restricted the addition of suppressed sales to 2.54% of the said sales, accepting assessee's contention that only the income part of the sales was to be taxed and observing that GP as per audited accounts of assessee was 2.54%.

Bhambra Service Centre vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 and 13/CTK/2018 dated August 02 2018

1362. TheCourt held that the Tribunal did not commit any error in holding that the sales tax subsidy received by the assessee in the form of Sales Tax Exemption was a capital receipt and not a revenue receipt by applying the purpose test laid down in Apex Court decision in Ponni Sugars [2008] 306 ITR 392 (SC) wherein it was held that the character of the receipt in the hands of the assessee had to be determined with respect to the purpose for which the subsidy was given. It wasnoted that the assessee had received sales tax subsidy for capital invetsment to be made for employment generation.

CIT Ajmer vs Shri Cement Ltd- TS-243 HC-2018(Raj) - ITA No.204/2010 dated August 22 2018

1363. The Court dismissed assessee's appeal against Tribunal's order confirming taxation of capital gains arising on sale of a property in the hands of the assessee against the assessee's claim of taxing the same in the hands of HUF of which he was the Karta, noting that (i) sale deed was executed by assessee in his individual capacity and not as 'karta' of HUF (ii) in sale deed, PAN of assessee in his individual capacity had been given and not PAN of HUF (iii) in earlier years, property in question had not been shown as owned by HUF and (iv) sale consideration had also not been deposited in HUF's bank account.
Janak Kanakbhai Trivedi v ITO [2018] 96 taxmann.com 278 (Gujarat) - R/TAX APPEAL NO. 842 OF 2018 dated July 16, 2018

1364. The assessee- trust was governed by the Rules of a Scheme formulated by the Bank of India for providing financial assistance to its members, i.e., retired employees of bank, by reimbursing to them medical expenses incurred on their self and his/her dependent spouse. The AO observed that since assessee trust was not registered u/s 12A, donations towards corpus fund received by the assessee were liable to be included in its total income. The Tribunal however held that the corpus donations received by assessee-trust with specific directions by donors to be applied towards specific purpose for which respective fund was created would be treated as capital receipts and, therefore, the same could not be brought to tax, despite fact that assessee-trust was not registered u/s 12A.
Bank of India Retired Employees Medical Assistance Trust v ITO(E) [2018] 96 taxmann.com 277 (Mumbai - Trib.) – ITA No. 6469 (MUM.) OF 2016 dated July 11, 2018

1365. Where the assessee (employee of an Indian company) was sent on short term assignment to Switzerland and his residential status was Non-Resident on account of stay in Switzerland for 331 days during the relevant year, the Tribunal held that foreign assignment allowances received by the assessee could not form part of total income u/s 5(2) since the services of assessee were utilised outside India and both accrual and receipt of income happened outside India. It was noted that the Indian company had transfered funds from its Exchange Earners Foreign Currency (EEFC) Account from Deutsche Bank to the Nostro Account of Axis Bank for the purpose of loading/reloading the Axis Travel Currency Card (TCC), which was used by the assessee outside India, and thus, concluded that the first point of receipt for the assessee happened outside India.
DCIT v Sudipta Maity [2018] 96 taxmann.com 336 (Kolkata - Trib.) – ITA Nos. 416, 424 & 428 (KOL.) OF 2017 dated July 11, 2018

1366. The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed taxation of interest income received by the assessee from bank at a higher amount, being the amount appearing in Form 26AS on the basis of incorrect inputs given by the deductor-bank, as against the lower actual receipt. It noted that the assessee had produced reasonable evidence establishing the quantum of interest income in his hand and such evidence was not found fault with. The Tribunal thus held that the assessee had no control over such inputs which were clearly incorrect and accordingly deleted the addition of interest income over and above the actual receipt.
Seal For Life India (P.) Ltd. v DCIT [2018] 96 taxmann.com 645 (Ahmedabad - Trib.) – ITA No 1236 (AHD.) OF 2017 dated August 2, 2018

1367. The Tribunal followed the co-ordinate bench decision of earlier year in assessee's own case and remanded the issue of taxation of interest income received on Fixed deposits with banks back to the AO for fresh adjudication where the assessee, a non-profit making company, claimed that it was catering to the needs of its members only and, thus, in view of the principle of mutuality, the said income was not taxable in its hand. The Tribunal noted that the lower authorities had not adjudicated upon material aspects viz. (i) whether there was a complete identity between the contributors and the participants; and (ii) whether trading had taken place between persons who were associated together and who contributed to a common fund for the financing of some venture or object to the exclusion of any dealings or relations with any outside body.
POWERLOOM DEVELOPMENT & EXPORT PROMOTION COUNCIL v CIT(E) - (2018) 53 CCH 0392 MumTrib - ITA No. 1185/Mum/2017 dated July 20, 2018

1368. The Tribunal held that interest income from fixed deposits could be netted off against pre-operative expenses incurred by the assessee in connection with setting up of its project where the investment in

fixed deposits was made using the temporary surplus funds raised solely with the intention of utilizing them in setting up its project. Accordingly, it held that income derived during pre-commencement phase could not be regarded as revenue in nature so as to be taxed in the year of receipt / accrual but must be allowed to be netted off against expenses incurred during pre-commencement stage and only net expenditure, if any, should be considered to be pre-operative in nature requiring capitalization.
SHRISTI HOTEL PVT. LTD. vs. DCIT (2018) 53 CCH 0372 KolTrib - ITA No. 395/Kol/2018 dated July 18, 2018

1369. The Tribunal remitted the issue of taxation of gift received by the assessee from from the wife of elder brother of assessee's husband back to the CIT(A), noting that the CIT(A) had simply brushed aside documentary evidence filed by assessee with the observation that affidavit, confirmation and the cheque just explained receipt of amount by assessee but not genuineness of gift, without even discussing the contents of documentary evidence filed by the assessee as well as the statement of donor. It held that it was, thus, case of non reading and misreading of material documentary evidence brought on record by assessee before CIT(A).
PRIYA ARORA vs. ITO (2018) 53 CCH 0334 AgraTrib – ITA No. 347/Agra/2016 dated 13th July, 2018

1370. The Tribunal deleted the addition made by the AO and enhanced by the CIT(A) with respect to interest income earned by assesse-AOP from four banks, where the lower authotities had held that the said income would not fall within the ambit of Principle of Mutuality and would therefore be exigible to tax in hands of the assessee-AOP. It was noted that the Tribunal in the first ground of appeal had deleted the said addition and had restored only the issue of allowability of expenses to AO. Thus, the Tribunal (in second ground of appeal) held that AO and CIT(A) had failed to follow order of Tribunal and had exceeded their jurisdiction in making / enhancing addition. Accordingly, it deleted the entire addition made by the AO which was enhanced by CIT(A).
SWARN JAYANTI RAIL NAGAR FLAT OWNERS ASSOCIATION vs. ITO (2018) 53 CCH 0335 DelTrib – ITA No. 2705/Del./2018 dated 13th July, 2018

1371. The Court dismissed Revenue's appeal and upheld Tribunal's order holding that since the assessee (engaged in providing basic telecom services) was recognizing revenue on prepaid cards based on actual usage, it had rightly carried forward the unutilized outstanding amount on prepaid card at end of FY to next year and recognized as revenue receipt in the subsequent year. It rejected the AO's contention that income had accrued to assessee on the date of sale of prepaid card itself. It was noted that the appropriation of prepaid amount by the assessee was contingent upon the assessee performing its obligation and rendering services to the prepaid customers as per the terms. If the assessee had failed to perform the services as promised, it would be liable and under an obligation to refund advance payment and thus, the amount received on sale of prepaid cards to the extent of unutilized talk time did not accrue as income in the year of sale of prepaid card.

CIT & Ors. vs Shyam Telelink Ltd and Ors [2018] 103 CCH 0122 (Del-HC)- INCOME TAX APPEAL NO. 70/2013, 73/2013, 1069/2017 dated 15.11.2018

1372. The Tribunal allowed the appeal of assessee (engaged in the business of providing telecom services and operating only on the pre-paid business model) and directed the AO to delete the amount of unearned revenue representing subscription amount received from customers who had not utilized talk time on the prepaid card at the year end, subject to examining whether unearned revenue had been offered to tax in succeeding year. The AO had sought to tax the unearned revenue in the subject year opining that the revenue recognition under AS-9 was satisfied and no additional efforts were to be made by assessee to keep providing services for unused talk time. The Tribunal followed the ratio laid down in case of ACIT vs. Shyam Telelinks (2013) 151 TTJ 464 (Del) wherein on similar facts it was held that income could not have accrued in favour of the payer unless the assessee had fulfilled its obligation to provide talk time to the subscriber and the assessee had rightly offered the said income to tax in subsequent year.

Telenor(India) Communications Pvt Ltd. vs Asst CIT [2018] 54 CCH 0297 (Del- Trib.)- ITA No.7541/Del/2017 dated 26.11.2018

1373. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO to the assessee-company's business income with respect to advances received for rendering services in relation to real estate development to a builder, which were not offered to tax by following project completion method. It followed the decision of coordinate bench in assessee's own case for an earlier year wherein it was held that assessee was justified in not offering the said amount to tax when amount received by assessee during year was an advance and actual remuneration was to be quantified at completion of project. Further, in earlier year, since the Tribunal had observed that there was no discrepancy in the books of accounts of the builder and assessee as the said advance payments were not being claimed as expense by the builder, the Tribunal directed the AO to verify such fact for the subject year also before deleting the impugned addition.

ITO vs Trendsetter Construction Pvt Ltd.[2018] 54 CCH 0386 (Mum- Trib.)- I.T.A. No.2539/Mum/2017 dated 16.11.2018

1374. The Tribunal held that the amount received by the assessee as IPS incentive on setting up a new unit in Chakan was in the nature of capital receipt not liable to tax. Noting from the scheme that Industrial Promotion Subsidy (IPS) incentive measured as,lower of eligible fixed capital investment and taxes paid to the State Government within a period of 20 years, was granted to the assessee not for carrying on day-to-day business of the unit more profitably but to intensify and accelerate the process of dispersal of industries from developed areas and for development of under-developed regions of Maharashtra.

ASSISTANT COMMISSIONER OF INCOME TAX vs. MAHINDRA VEHICLES MANUFACTURES LTD [TS-702-ITAT-2018(MUM)]- ITA Nos.6919 & 6920 dated 28.11.2018

1375. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made towards income from sale of constructed building in hands of assessee-company, noting that (i) the assessee only acted as SPV (Special Purpose Vehicle) for construction with the funds provided by its Parent Co, (ii) the assessee itself neither had resources nor the manpower and expertise to carry out the construction activity (iii) income from the sale of said building had already been assessed and taxed in the hand of its Parent Co and therefore taxing the same again in the hand of the assessee would result into double taxation.
ITO v Kidderpore Holdings Limited [TS-539-ITAT-2018(MUM)] – ITA No.377/MUM/2016 dated 23.08.2018

1376. Where the assessee bank considered income by way of interest pertaining to doubtful loans as income only when it was realized, the Tribunal relying on the decision of the co-ordinate bench in DCIT vs The Washim Urban Co.Op. Bank Ltd. in ITA No.233/NAG/2013 and CBDT Circular No. F. 201/21/84 ITA-II, dt. 9th Oct., 1984 held that the AO was not justified in assessing the said interest as the income of the assessee. It held that the assessee's treatment was in accordance with the aforesaid CBDT Circular which was binding on the AO and therefore held that the addition made by the AO was without any basis.
THE CHIKHALI URBAN CO.OP. BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0238 NagTrib - ITA No. 251/NAG/2015 dated Mar 6, 2018

1377. The Court ruled that interest income from bank deposits accrued but not due and credited to assessee's account by bank but accrued by the assessee in its balance sheet was taxable and could not be termed as hypothetical income. It further held that the period of deposit being the option of the depositor, the receipt stood deferred at the behest of the assessee. Assessee's contention that u/s 194A, it was the

obligation of the banker to pay tax on the interest due was rejected by HC holding that the Bank's liability to deduct tax at source arose only when it paid the interest.
Pr.CIT v Plantation Corporation of Kerala Ltd - TS-611-HC-2017(KER) - ITA.No. 121 of 2016 dated 20.12.2017

1378. The assessee-company having set up manufacturing units in specified backward area was entitled to incentive in form of exemption from payment of excise duty and it claimed such incentive to have been granted for promotion of industries in backward areas and thus, not chargeable to tax being capital in nature, relying on the decision in the case of CIT v. Shree Balaji Alloys (2017) 80 taxmann.com 239 (SC). The AO did not accept with the contentions of the assessee and taxed the same as revenue receipt. Noting that the authorities below had not analysed terms and conditions of excise incentive scheme, the Tribunal remanded the matter to the AO with the direction to examine this issue afresh by duly considering the terms and conditions of the Excise incentive scheme and information and explanations that may be furnished by the assessee in this regard.
Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018

1379. Based on various decisions in favour of the assessee and also in view of settled law that there is need for upholding the favourable view if there exists divergent views on the issue, the Tribunal held that the corpus specific voluntary contributions being in nature of 'capital receipt', are outside scope of income u/s 2(24)(iia) and, thus, the same cannot be brought to tax even in case of trust not registered u/s 12A/12AA.
ITO(Exempt.) v Serum Institute of India Research Foundation – (2018) 90 taxmann.com 229 (Pune Trib) – ITA No. 621 (Pune) of 2016 dated 29.01.2018

1380. The Tribunal held that the foreign exchange gain arising on account of holding of Global Depository Receipt (GDR) proceeds which were utilised in India for business was capital in nature since money raised by GDR was against capital equity and, thus, not liable to tax, rejecting AO's contention that since the proceeds were utilised as circulating capital in normal course of banking business, the exchange gain thereon was revenue in nature.
State Bank Of India v ACIT – (2018) 91 taxmann.com 312 (Mum) – ITA Nos. 4598 and 4736 (Mum.) of 2010 dated 31.01.2018

1381. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO towards interest accrued on FDRs credited to Infrastructure Development Fund Account maintained by the assessee-authority, established under provisions of the Uttar Pradesh Planning and Development Act, 1973, relying on the Tribunal's order in the assessee's own case for earlier year wherein it was observed that the interest receipts are at the disposal only in accordance with Government directions on disposal of the funds relating to infrastructure development and these earnings only add up to the corpus. It was also noted that Saharanpur Development Authority and assessee were statutory authorities which were established under provisions of the Uttar Pradesh Planning Development Act, 1973, governed by same rules of Government of U.P. and the Delhi High Court in the case of Saharanpur Development Authority vs. CIT [ITA No. 132/Del/2009] had observed that interest earned by investing the surplus fund in banks belonged to state administration and not to the assessee and the same could not be included in the income of the assessee.
ACIT & ANR. vs. FIROZABAD SHIKOHABAD DEVELOPMENT AUTHORITY & ANR. – (2018) 52 CCH 84 (Agra Trib) – ITA Nos. 270/Agra/2016, 170/Agra/2015 dated 25.01.2018

1382. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO to assessee's income on account of Staff welfare fund being 9% of service charges earned by assessee, following the Tribunal's order for earlier year in assessee's on case wherein it was held that the contribution towards staff welfare fund was based on resolution of board of directors of assessee held on 05.12.1979 and by virtue of that resolution there was diversion of income by over riding title at source on service charges received by assessee.
ITO v WEST BENGAL TOURISM DEVELOPMENT CORPORATION LTD. – (2018) 61 ITR (Trib) 0728 (Kol Trib) – ITA Nos.1538 to 1540/Kol/2014 dated 03.01.2018

1383. Where the AO had made addition u/s 41(1) in case of old creditors i.e., where there was no transaction between the assessee and the creditors during the last three years or more opining that there had to be some time limit for the credit recorded to be carried forward, the Court upheld the Tribunal's order deleting the said addition and held that the assessee being a company whose accounts were audited as per the mandate of the Companies Act, had accepted and acknowledged its liability, in the accounts, on which the creditors could rely for their claim and even otherwise many of the creditors were paid, adjusted or eased in the subsequent years as accepted by the CIT(A) and the Tribunal.
CIT v BANARAS HOUSE LTD. – (2018) 402 ITR 88 (Del HC) – ITA 583/2005 dated 17.01.2018

1384. The Tribunal held that the interest awarded u/s 23(1A) and 23(2) r.w.s. 28 of Land Acquisition Act was in nature of solatium and an integral part of compensation and receipt of the same was a capital receipt whereas, interest awarded u/s 34 of the said Act was on account of delayed payment of compensation and was revenue receipt exigible to tax.
Dnyanoba Shajirao Jadhav v ITO – (2018) 90 taxmann.com 285 (Pune) – ITA No. 168 (Pune) of 2016 dated 29.01.2018

1385. Where assessee's father died intestate leaving behind certain ancestral properties which assessee inherited u/s 8 of the Hindu Succession Act and the assessee contended that the property actually belonged to the HUF and was held by him as Karta of the HUF, the Tribunal held that the said properties devolved on assessee in his individual capacity and not as Karta of HUF and accordingly income from these properties would be assessable in assessee's hands in his individual capacity.
Mahaveer Yadav v ITO – (2018) 91 taxmann.com 476 (Jaipur Trib) – ITA No. 209 (JP.) of 2017 dated 27.02.2018

1386. The assessee, a company owned by the State Government was handed over the land (which was in the ownership of the state government) for development, management and maintenance. It alloted the land to industrialists in consideration of land premium, advance rent and security deposit etc and the land premium was treated as a capital receipt by the assessee. The AO taxed the same as a revenue receipt. The Tribunal noting that i) the assessee had treated the amount as revenue in nature in the earlier years ii) the assessee was engaged in the business of industrial and infrastructure development upheld the order of the CIT(A) confirming the AOs treatment of land premium as a revenue receipt.
MADHYA PRADESH AUDYOGIK KENDRA VIKAS NIGAM (INDORE) LIMITED & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - ITA No. 347 to 351/Ind/2013, - 2018) 52 CCH 0212 IndoreTrib dated Mar 21, 2018

1387. Where as per law the assessee was expected to collect sales tax at rate of 2% but the assessee, due to confusion, collected 4% and surcharge at 5% thereon, which it deposited with the Sales tax department, the Tribunal held that the AO was unjustified in taxing the excess collection as the assessee's trading receipt and held that if the assessee collected sales tax and failed to deposit same, then the same was to be treated as part of trading receipt but since what was collected by assessee was already deposited with Sales Tax Department and there was confusion regarding sales tax rate, the amount was not taxable.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. TAJ MADRAS FLIGHT KITCHEN PVT. LTD. & ANR. - (2018) 52 CCH 0226 ChenTrib - ITA Nos. 1568 & 1569/Chny/2014, 1705/Chny/2014 dated Mar 22, 2018

1388. Where the assessee received refund of interest on excess tax and interest paid in earlier years, the Tribunal held that the said receipts could not be considered as the income of the assessee more so when the assessee had not claimed any deduction on account of the same.
AIRPORTS AUTHORITY OF INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - ITA No. 4821/DEL/2014 - (2018) 52 CCH 0128 DelTrib dated Feb 23, 2018

1389. The Court held the non-compete fees received by assessee-individual (Chairman & MD of a pharma company) from other pharma companies during AYs 1998-99 and 1999-00 to be a non-taxable capital receipt, holding that the knowledge and technical know-how are intellectual properties and when an

individual is deprived of using such property in future, the same amounts to capital loss and the income derived would, thus, constitute capital receipt and also noting that the Tribunal had held the non-compete fees received by the pharma company in which the assessee was the Chairman to be capital receipt. It rejected the Tribunal's view that the assessee had transferred all the technical know-how to the said company and thus had not suffered any capital loss as he had no capital available when non-compete agreements were entered into, in absence of any specific material showing the same and thus, held that it would be highly presumptuous for the Tribunal to hold that the appellant had no right to use the technology.

V.C. Nannapaneni v CIT [TS-88-HC-2018(AP)] – I.T.T.A. Nos.159 and 160 of 2005 dated 05.01.2018

1390. The AO taxed the interest accrued on the security deposit made by the assessee-landlord on behalf of its tenant with Mangalore Electric Supply Co. (MESCOM) in the hands of the assessee since the TDS deducted u/s 194A respect to the same was appearing in Form 26AS of the assessee, despite the fact that the interest accrued on the deposit was adjusted against the electricity dues paid by the tenant. The Tribunal dismissed the assessee's appeal noting that the assessee could not produce any evidence to show that the amount deposited by the assessee was recovered by the assessee from the tenant, in turn to prove that the interest also belonged to the tenant. It held that the person who had made the security deposit would only be entitled to not only the interest accrued on the security deposit but also refund of the security deposit and it was the inter se arrangement between the tenant and the owner as to how the benefit had been passed to the tenant by the assessee.

Tanglin Developments Ltd v DCIT [TS-78-ITAT-2018(Bang)] – I.T.A No.1701/Bang/2016 dated 25.01.2018

1391. The Tribunal accepted assessee's contention of treating the capital gains on sale of non-agricultural land as long-term capital gains where the assesssee had entered into an agreement to sale (for purchasing the land) on 11.04.2007 but due to provisions of section 42 of the Rajasthan Tenancy Act, 1955 prohibiting sale of agricultural land by a member of scheduled caste in favour of non-member (the assessee), the sale deed could be executed in favour of the assessee only on 13.04.2010, after conversion of the said agricultural land into non-agricultural land during FY 2009-10. The AO had treated the said gains as short-term capital gains considering the date of sale deed as the date of acquisition instead of date of agreement to sale. The Tribunal noted that the assessee had paid part consideration at the time of entering into the agreement of sale and the possession of the land was also handed over at the same time, thus making the land available for enjoyment of the assessee and the sale deed only ratifed the transaction of transfer entered into vide the agreement.

Rajasthan Agencies Pvt. Ltd v ITO [TS-59-ITAT-2018(JPR)]– 680& 681/JP/2017 dated 25.01.2018

1392. The Apex Court held that non-occupancy charges received by assessee-cooperative society from its members utilised for mutual benefits towards maintenance of premises, repairs, infrastructure and provision of common amenities, would be governed by doctrine of mutuality and, thus, same were not exigible to tax.

ITO v Venkatesh Premises Co-operative Society Ltd - [2018] 91 taxmann.com 137 (SC) - CIVIL APPEAL NOS. 2706 OF 2018 dated MARCH 12, 2018

1393. The Tribunal deleted the addition made by the AO considering the reimbursement of cost received by the assessee, an American Co., from an Indian Co. with which the assesse had entered into a training and technical service agreement to the assessee's income, following its decision given in the assessee's own case for an earlier year wherein it was held that the said agreement entered into by assessee envisaged that fee for technical services was different from expenses incurred on third party cost and since there was clear bifurcation in agreement between internal cost incurred by assessee and external cost borne or paid by assessee on behalf of the Indian company, the amount received towards reimbursement of cost could not be taxed at hands of the assesse. The Tribunal in the earlier year had followed the Apex Court decision in the case of DIT v/s A.P. Moller Maersk, 392 ITR 186 (SC) wherein it was held that once the character of the payment is found to be in the nature of reimbursement of the expenses, it cannot be income chargeable to tax

GEMOLOGICAL INSTITUTE INTERNATIONAL INC. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0183 (MumTrib) - ITA No. 6556/Mum./2017 dated June20, 2018

1394. The Tribunal dismissed revenue's appeal against the CIT(A)'s order deleting the addition on account of retention money, being 10% of total contract value, withheld by one of the customer in lieu of satisfactory execution of contract by the assessee. It relied on the decision in the case of CIT v. Associated Cables (P.) Ltd. (2006) 286 ITR 596 (Bom) wherein it was held that the amount retained by the buyers, as per contract, and paid to the assessee on satisfactory completion of contract did not accrue / could not be considered as income in the year in which the amount was retained. With respect to Revenue's contention that the assessee had accounted for the retention money in its books of account, it was held that a mere book keeping entry could not be income unless income had actually resulted and if income did not result at all, there could not be a tax, even though in book keeping an entry was made about a hypothetical income.
DCIT v Commtel Networks (P.) Ltd. - [2018] 95 taxmann.com 50 (Mumbai - Trib.) - IT APPEAL NOS. 4340, 4872 AND 4873 (MUM.) OF 2015 dated June19, 2018

1395. The Court dismissed revenue's appeal against Tribunal's order treating the power subsidy received by the assessee-company from State Government under Power Intensive Industries Scheme, 2005, for setting up a new industrial unit in backward area to be capital receipt, following the decision in the case of Pr. CIT v. Shyam Steel Industries Ltd. [2018] 93 taxmann.com 495 (Cal.) wherein it was held that it is the purpose of the grant under a scheme which is of paramount importance while assessing whether the money received thereunder ought to be treated as a revenue receipt or a capital receipt.
CIT v Keventer Agro Ltd - [2018] 95 taxmann.com 154 (Calcutta) - ITAT NOS. 175 & 176 OF 2014, GA NOS. 3609 & 3610 OF 2014 dated June 19, 2018

1396. The Assessee-airport became entitled to custom duty credit scrip under 'Served From India Scheme' (SFIS) of Foreign Trade Policy issued by Government of India, which were to be used for import of any capital goods. The AO held that duty credit should be recognized as other income and offered to tax in the assessment year in which the assessee became entitled to them. Noting that these scrips were valid for 2 years from date of issue and that the assessee had utilised duty credit scrips in different assessment years but complete SFIS scrips were not utilised due to expiry of the said scrips, the Tribunal held that it was not proper to tax accrual of duty credit scrips on mercantile basis as life of the scrips was only for 2 years. However, further noting that the CIT(A) had not properly adjudicated character of said receipts and year of taxability, it resorted the matter to the file of CIT(A) with a direction to readjudicate the issue afresh
Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April19, 2018

1397. The Apex Court allowed the assessee's appeal and held that once the assessee had paid income tax at source on winning from lotteries in State of Sikkim as per Sikkim State Income Tax Rules, 1948 applicable at relevant time in Sikkim, same income could not be taxable under the Act as two types of income-tax could not be applied on the same income. It also referred to the decision in the case of Laxmipat Singhania v. CIT [1969] 72 ITR 291 (SC) and Jain Brothers v. UOI [1970] 77 ITR 107 (SC) where it was held that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. However, noting that there was no specific provision in the Act for including the income earned from the Sikkim lottery ticket prior to 1-4-1990 and after 1975, the Apex Court held that the assessee could not be subjected to double taxation.
Mahaveer Kumar Jain v CIT - [2018] 92 taxmann.com 340 (SC) - CIVIL APPEAL NO. 4166 OF 2006 dated April 19, 2018

1398. The Tribunal upheld the CIT(A)'s order accepting the assessee's claim that the entertainment tax subsidy granted by the U.P. State Govt. by way of exemption for 5 years was in nature of capital receipt not chargeable to tax. It relied on the decision of the Apex Court in the case of CIT vs. M/s. Chaphalkar Brothers [Civil Appeal Nos.6513 - 6514 of 2012 (SC)] wherein it was held that though the subsidy was in the form of an entertainment duty via sale of tickets for a limited period but since its utilization was predetermined and granted with an assurance to cover up the cost of construction, the subsidy was an

incentive to supplement the construction expenditure of new set up of multiplexes and thus in the nature of a capital receipt. It was noted that in the present case also, the scheme was for promotion of construction of multiplexes for a period of 5 years and the overall quantum of subsidy was limited to the cost of construction. The scheme in the present case also provided that if the cost was recovered prior to 5 years, for rest of the period, the entertainment tax would be leviable.
DEPUTY COMMISSIONER OF INCOME TAX vs. SHIPRA HOTELS LTD. - (2018) 52 CCH 0288 DelTrib - ITA No. 3095, 3096 & 3094/Del./2014 dated April 2, 2018

1399. The Court dismissed Revenue's appeal against the Tribunal's order remanding the matter to the file of the AO for fresh consideration on the issue of receipt of commission, where the revenue contended that the amount of personal expenses paid to the assessee by its HUF should be taxed in the hands of the assessee u/s 2(24)(iv) as the said amount was paid out of franchisee commission received by the said HUF from the company in which the assessee was a director. It was noted that in case of another related assessee involving identical issue, the Tribunal had remanded the matter to the file of the AO to determine the entity to which the payment of commission was made, holding that the franchise commission paid by a company to the franchiser owned by HUF of the assessee, who were director of the said company, could not be brought to tax u/s 2(24)(iv) merely because such franchises met personal expenses of the assessee-directors. The Revenue's appeal against the said Tribunal order was dismissed by the Court [CIT v. C.S. Srivatsan (2013) 30 taxmann.com 423 (Mad)].
COMMISSIONER OF INCOME TAX vs. C.S. SESHADRI - (2018) 404 ITR 0191 (Mad) - T.C. (Appeal).No.884 of 2008dated April 4, 2018

1400. Assessee-company,engaged in business of manufacture of cement and chemicals ,filed return of income offering incomes under normal computation as well as u/s 115JB(book profit provision). AO completed assessment taxing sales tax incentive received as revenue receipt. The assessee contended that sales tax incentive/remission received by company was capital in nature as sales tax incentive was given by Government of Gujarat under new incentive policy for setting up industries to generate employment. CIT(A) accepted the assessee's contention that the incentive received was capital in nature, however he directed the AO to reduce sales tax subsidy from the cost of assets for purpose of depreciation. The assessee as well as the Revenue challenged the order of CIT(A) to exclude sales tax subsidy. The Tribunal held that subsidy granted by government for purpose of setting up/expansion of mills was capital receipt and such receipt was not to be added to book profit u/s 115JB as well as income computed under normal provisions. Further, following the Coordinate Bench decisions in the case of Bajaj Customer Care Ltd c ACIT [ITA No. 365/Hyd/2009] and ACIT v Shree Cement [ITA No. 614,615 & 635/JP/2010], it held that the subsidy amount could mot be adjusted/restricted from the cost of the depreciable assets.
Sanghi Industries Ltd & Anr v ACIT & Anr (2018) 52 CCH 0351 HydTrib - ITA No. 979/Hyd/17 dated 20.04.2018

1401. The assessee availed sales tax incentives under Package Scheme of Incentives, 1993 of Government of Maharashtra for setting up of industrial unit. Assessee was continuously claiming this incentive as capital and AO in earlier years treated same as revenue. For the relevant AY under consideration as well, the AO treated the incentive to be revenue in nature. However, the CIT(A) held it to be a capital receipt not chargeable to tax at the hands of assessee. The Tribunal on following the decision of High Court in Reliance Industries Ltd. held that incentive received under Package Scheme of Incentives of Govt. of Maharashtra was capital receipt and not chargeable to tax thereby dismissing revenue's ground of appeal.
ACIT & Anr v Ballarpur Industries Ltd & Anr (2018) 52 CCH 0340 NagTrib - ITA No. 91/Nag/2011, 92/Nag/2011 dated 16.04.2018

1402. The Apex Court dismissed Department's SLP against the Court order holding that interest on non-performing assets is not taxable on accrual basis looking to guidelines of Reserve Bank of India.
CIT v Jamnagar District Co-Operative Bank Ltd. [2018] 94 taxmann.com 300 (SC) – SLP (CIVIL) DIARY NO. 12840 OF 2018 dated 07.05.2018

1403. The Court upheld that Tribunal's order wherein it was heldsubsidy allowed by State Government on account of power consumption which was available only to new units and units which had undergone an expansion, was to be regarded as capital subsidy not liable to tax.
PCIT v Shyam Steel Industries Ltd. [2018] 93 taxmann.com 495 (Calcutta) – ITA NO. 37 OF 2018 dated 07.05.2018

1404. The assessee, a company wholly-owned by State Govt received an amount as grant-in-aid from the State Govt for payment of salary to its employees, Provident Fund dues and for the purpose of flood relief. The assessee claimed the said receipt to be a capital receipt. The AO disallowed the assessee's claim stating that the funds were applied to items which were revenue in nature & in past, such receipts were treated as revenue receipt. The CIT(A) upheld AO's order. However, the Tribunal observed that though the item heads beared the label of revenue receipt, it was apparent that the intention of the State was to keep the company, facing acute cash crunch, floating and to protect employment in public sector organization. It held that there was no separate business consideration on record of the State Govt & the assessee. Further, relying on the decision in the case of Siemens Public Communication Network (P.) Ltd.[2017] 390 ITR 1 (SC) wherein it was held that the voluntary payments made by the parent company to its loss making subsidiary could also be understood to be payments made in order to protect the capital investment of the assessee-company, the Tribunal in the present case held that the State Govt being 100% shareholder, its position was similar to that of a parent company making voluntary payments to its loss making undertaking. Thus, the Tribunal allowed assessee's claim by holding that the fund received by the assessee-company was to be treated at capital receipt.
PCIT v State Fisheries Development Corporation Ltd [2018] 94 taxmann.com 466 (Calcutta) – ITAT NO. 19 OF 2017 dated 14.05.2018

1405. The common rationale that is followed is that if any surplus money that is lying idle and has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income earned is merely incidental and not the prime purpose of the act which has resulted in the accrual of the additional income then the same is not liable to be assesseed and can be claimed as deduction. The Apex Court applying the above mentioned rationale held that the interest income from the share application money was not taxable income and was inextricably linked with requirement of company to raise share capital and was therefore liable to be set off against public issue expenses.
CIT v. Shree Rama Muti Tech Ltd. - [2018] 92 taxmann.com 363 (SC) – Civil Appeal Nos. 6391 & 8336 of 2013 dated April 24, 2018

1406. The assessee, a stock broker registered with the Madras Stock Exchange, acted as a broker to the Indian Bank in purchase of securities from different financial institutions. The assessee purchased securities of different PSUs at a rate quoted by the Indian Bank (12.75% interest as against 8% interest quoted by RBI) and sold the same to the Indian Railways Financial Corporation for which the assessee was paid a commission. The assessee declared his income at Rs. 4.85 crores which was denied by the AO who demanded a sum of Rs. 14.74 crores holding that the assessee had not acted as a broker in the transaction rather as an independent dealer and that there was no overriding title in favour of the PSUs with regard to the additional amount earned out of the securities and the case was of application of income after accrual. Criminal proceedings were also initiated against the assessee but the CBI Court acquitted the assessee and held that the relationship between the assessee and the Indian Bank was that of principal-agent and the assessee had acted in the capacity of a broker. The Tribunal denied the evidence produced in the criminal proceeding and held that the assessment and criminal proceeding were different in nature. However, the High Court relied on the evidence given in the criminal case and set aside the order of the Tribunal. The Apex Court held that the CBI Court's findings were based on material and evidence placed on record and there was no reason to reject the same. The Court further held that although the assessee's conduct was not as per the normal course of conduct but the findings of the CBI Court and the material and evidence placed on record suggested that the assessee had acted as a broker and not as an independent dealer. Accordingly, the appeal of the Revenue was dismissed.

DCIT v. T. Jayachandran – [2018] 92 taxmann.com 385 (SC) – Civil Appeal Nos. 4341 to 4345 & 4346 to 4357 of 2018 dated April 24, 2018

b. Income from Salary

1407. The Tribunal allowed the assesse's claim for relief u/s 89 with respect to arrearsof salary being arrears in lieu of employer's contribution to newly implemented 'Defined Contribution Scheme', which was rejected by the AO opining that the payment made by the employer was in nature of perquisites u/s 17(2) and could not qualify for relief u/s 89(1). The Tribunal held that as per section 17(1)(iv) salary includes perquisites and, since relief u/s 89 is available in respect of salary, as a natural corollary thereof, available qua perquisites also.
Rajesh Kumar v ACIT [2018] 97 taxmann.com 618 (Agra - Trib.) – ITA No. 198 (AGRA) OF 2018 dated July 16, 2018

1408. The Tribunal held that since the assessee was outside India for a period of more than 182 days, he became a non-resident and, therefore, salary income of assessee received outside India could not be held to be taxable merely because his foreign employer had deducted TDS on such income
Avdesh Kumar v DCIT - [2018] 96 taxmann.com 340 (Delhi - Trib.) – ITA No. 747 (DELHI) OF 2018 dated July 30, 2018

1409. The Tribunal dismissed assessee's appeal against CIT(A)'s order restricting assessee's claim for exemption u/s 10(13A) with respect to house rent allowance to Rs.16,250/- as against assessee's claim for Rs.1,07,084/-, noting that claim made by the assessee was in excess of the amount allowable as per the said section read with Rule 2A of the Income-tax Rules. It held that as per the said Rule, the amount allowable was Rs.16,250/- being the excess of 10% of the salary or the actual rent paid whichever is less. The salary of the assessee was undisputedly Rs. 9,08,341/- and 10% of the same comes to Rs. 90,834/-Thus the excess of Rs. 90,834/- of actual rent paid is an allowable deduction and hence the difference between actual rent paid of Rs. 1,07,084/- and Rs. 90,834/- is Rs. 16,250/-, being allowable for exemption
DEEPAK GUPTA vs. INCOME TAX OFFICER (2018) 54 CCH 0144 JaipurTrib - ITA No. 956/JP/2017 dated 04.09.2018

1410. The AO denied assessee's (a development officer with LIC) claim of 30% deduction of incentive bonus received from LIC on the ground that incentive bonus was part of salary and was to be assessed under the head "salary" and thus, no deduction could be claimed other than as per section 16. The Tribunal relied on the CBDT circular dated 19.12.1996 where it was explained that portion of the incentive bonus actually spent by the Development Officer for office duty would be exempt from tax if LIC made the payment against the expenses incurred by the Development Officer by way of reimbursement of expenses (i.e. effectively only the incentive bonus after deduction of expenses would appear in salary certificate). Further, noting that no details or supporting evidence had been furnished by the assessee before it to support its claim, it held that the assessee should have filed a certificate from LIC for determining expenses possibly to be incurred by him for the purpose of procuring LIC business and earning incentive bonus. No such certificate had been submitted nor any details filed to support its case. Accordingly, it remanded the matter issue back to the file of the AO to decide the claim of the assessee

Ranmalbhai R Rajatia vs ITO [2018] 54 CCH 0364 (Rajkot Trib)- ITA No. 726/RJT/2014 dated 01.11.2018

1411. The Tribunal deleted the addition made to assessee's income as perquisite u/s 17(2)(iii) on the reasoning that the assessee and his wife had purchased certain immovable properties from the company in which the assessee was a director at a value lower than the market value determined for stamp duty purposes, without making any enquiry or bringing material on record to demonstrate that stamp duty value was actual fair market value of property. It held that the deeming provision providing for adoption of stamp duty value as the deemed sale consideration is applicable under specific

circumstances and cannot be applied to other provisions of the Act. Further, Tribunal held that to treat any sum as a perquisite, it was incumbent on part of AO to establish that a benefit in nature of salary was given by an employer to an employee, including the existence of employer-employee relationship.
Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018

1412. The Court dismissed assessee's appeal against the Tribunal's order rejecting assessee's contention that the salary received by him, as Managing Director (MD) of a company, being in excess and contrary to the provisions of Companies Act, was subsequently revised downwards by the said company to comply with the said provisions and thus the excess amount received could not be taxed as his income. Noting that the salary already paid to the assessee was not recovered by the said company and it was allowed to remain with the assessee, it was held that even if amount was paid contrary to provisions of Companies Act, it had to be construed as income of the assessee.
Nate Nandha v ACIT - [2018] 95 taxmann.com 49 (Chennai - Trib.) - IT APPEAL NO. 278 (CHNY.) OF 2017dated June 8, 2018

1413. The Apex Court held that the amount received by the assessee-employee from his employer on account of redemption of Stock Appreciation Rights (SARs) prior to 1-4-2000 could not be brought to tax as perquisite u/s 17,holding that clause (iiia) inserted u/s 17(2) vide the Finance Act, 1999 to provide that the value of any specified security allotted or transferred, directly or indirectly, free of cost or at concessional rate, by the employer to his employee will be taxed as perquisite u/s 17 came into force only on 1-4-2000 and had no retrospective application. It also rejected Revenue's argument that the said amount was taxable u/s 28(iv) holding that the said section was applicable only to a case where there was any business or profession related transaction involved, which was not so in the instant case. The Apex Court thus dismissed Revenue's appeal against the High Court's order wherein the High Court had held that the amount received on redemption of SARs was capital gain but the same was not taxable in absence of any cost of acquisition.
ACIT vs. Bharat V. Patel - [2018] 92 taxmann.com 386 (SC) - CIVIL APPEAL NOS. 4380 & 4381 OF 2018dated April24, 2018

1414. The assessee's case was that the second respondent namely Management of Chemplast Sanmar Limited had started deducting tax on perquisites from salary of the employees in terms of amended Rule 3 of IT Rules, 1962 framed u/s 17(2) of the IT Act against which a writ petition was filed before the Court. The Court dismissed the writ with liberty to the petitioners to plead that there was no concession in the matter of accommodation provided by the employer and the case was not covered by section 17(2) for the period 2001-02 to 2008-09 and accordingly remanded the matter to held that the leave sought by the assessee, that there was no concession in terms of accommodation provided to employees and that the matter was not covered by section 17(2)(ii), was granted and accordingly the matter was remanded.
Mettur Chemicals & Plastics Workers Union v. UOI - [2018] 93 taxmann.com 459 (Madras) - W.P. NOS. 382 AND 383 OF 2006 dated APRIL 12, 2018

c. Income from House Property

1415. The Tribunal held that where AO sought to reopen assessment after expiry of four years from end of relevant year on ground that assessee owned two house properties and, thus, one of said house property was to be treated as deemed let out and annual lettable value of said house property was to be determined as provided under section 23(1), since all relevant facts were brought on record at time of assessment, in view of proviso to sec.147, impugned reassessment proceedings deserved to be set aside. The Tribunal held that where assessee declared annual lettable value (ALV) from house property having regard to municipal rentable value, in view of fact that municipal reteable value is a recognised basis of determination of ALV there was no justification for action of Assessing Officer in disregarding said municipal reteable value for determination of ALV and substitution thereof by some expected rent to be received by assessee.
Pankaj Wadhwa v. ITO, 1(3)(4) Mum- [2019] 101 taxmann.com 161 (Mum-Trib.) - ITA Nos. 5698(MUM) of 2016 & 5005, 5007(MUM) of 2017 -dated November 30, 2018

1416. The Tribunal held that where assessee indended to let out property and took appropriate efforts in letting property, however, due to fall in property prices failed to let out same year after year because of which property remained vacant, assessee was entitled to claim benefit under section 23(1)(c).
Ms.Priyananki v. Ass.CIT. - [2019]101 taxmann.com 45 (Delhi-Trib.) - ITA No. 6698(DELHI) of 2015 -dated December 13, 2018.

1417. The Tribunal held that income earned by assessee from letting out space on terrace for installation of mobile tower/antenna was taxable as 'income from house property' and not income from other sources and, therefore, deduction under section 24(a) was available in respect of it.
Kohinoor Industrial Premises Co-operative Society Ltd. v. ITO, Ward-31(2) (2), Mum-[2018]98 taxmann.com 365 (Mum– Trib.)- ITA No.670 (MUM) OF 2018- dated October 5, 2018.

1418. The Tribunal held that notional interest on interest free security deposit could not be added for arriving at annual letting value, not withstanding that amount of security deposit was equivalent to 3 years rent.
DCIT vs Moni Kumar Subba- (2018) 54 CCH 0083 DelTrib- ITA No 4038 and 3982/Del/2013 dated 12.10.2018

1419. The Tribunal held that Income earned by assessee from letting out space on terrace for installation of mobile tower/antenna is taxable as income from house property and, therefore deduction u/s 24(a) is also available.
Kohinoor Industrial Premises Co-op Society Ltd vs ITO- (2018) 54 CCH 0325 MumTrib- ITA No. 670/Mum/2018 dated 05.10.2018

1420. When property of assessee had remained let out for a period of 36 months, and thereafter could not be let out and had remained vacant during whole of year under consideration, but had never remained under self occupation of assessee, the Tribunal held that annual value of said property was rightly computed at nil by taking recourse to section 23(1)(c.) by assessee.It held that though term 'property is let' used in section 23(1)(c) is solely with intent to avoid misuse of determination of 'annual value' of self-occupied properties by assessee by taking recourse to section 23(1)(c), however, same cannot be stretched beyond that and, thus, 'annual value' of a property which is let, but thereafter remains vacant for whole year under consideration, subject to condition that same is not put under self-occupation of assessee and is held for purpose of letting out of same, would continue to be determined under section 23(1)(c).
Sonu Realtors (P) Ltd vs DCIT- (2018) 97 taxmann.com 534 (Mumbai- Trib)- ITA No 2892 of 2016 dated 19.09.2018

1421. The Asessee an industrial development corporation formed under Maharashtra Industrial Development Act, 1961 registered u/s 12AA was engaged in development of industrial assets by providing basic infrastructure facilities like land, roads, street lights, water supply, drainage etc and Industrial plots were allotted by assessee on receipt of lease premium, rent. The Assessee, filed its return claiming exemption under section 11. However, the AO rejected assessee's claim, holding that activities carried on by assessee were covered under proviso to section 2(15) i.e advancement of any other object of general public utility shall not be charitable purpose if it carries on any activity/ service in nature of trade, commerece or business. The Tribunal in the present case noted that from scheme of MIDC Act, the land owned by State Government was only placed at disposal of assessee for furtherance of objects of MIDC Act i.e. to promote, growth and development of industries in State of Maharashtra and there was no evidence on record that ownership of land under consideration had been transferred to assessee, thus the Tribunal held that on facts, assessee was not the owner of land and, thus, amount received by it in form of rent and lease premium was not liable to tax.
MIDC Udyog Sarathi vs DCIT (Exemption)- (2018) 99 taxmann.com 5 (Mum- Trib)- ITA No 4474 of 2017 dated 07.09.2018

1422. The Court held that once interest on interest free security deposits received by assessee from tenant was offered to tax as income from other sources, adding notional interest on interest free security deposit to determine 'Annual letting value' of property under section23(1)(b) would amount to double taxation and thus the same was not possible.

Pr. CIT v. Karia Can Co. Ltd.[2018] 96 taxmann.com 193/257 Taxmann 189(Bom.)- ITA Nos.1316, 1326 of 2015 & 8 of 2016 dated July 9, 2018

1423. The assessee owned two house properties, one in USA and other in Mumbai. He treated house in USA as self-occupied and offered income from house property in Mumbai as a deemed let-out based on its Municipal rateable value. Subsequently, assessee filed revised return of income and showed Mumbai property as self-occupied property and house in USA as deemed to be let-out property. The AO rejected such substitution of property and estimated annual letting value (ALV) of Mumbai flat and, accordingly, determined taxable income of assessee at certain amount. The CIT(A) instead of considering substitution of property for purpose of computing income from house property, held that USA property was occupied by daughter of assessee and, thus, could not be considered as self-occupied property and also confirmed action of AO. On cross appeals, the Tribunal held that once the CIT(A) arrived at a conclusion that USA property was not self-occupied, he should have considered it for deemed value of consideration for purpose of computing income from house property and thus, restored the issue to the file of AO to treat USA property as deemed let-out and determine ALV of the said property.

DCIT v Deepak Shashi Bhusan Roy - [2018] 96 taxmann.com 648 (Mumbai - Trib.) – ITA Nos. 3204 & 3316 (MUM.) of 2016 dated July 30, 2018

1424. The Tribunal allowed assessee's claim for deduction of municipality taxes paid by assessee-company during AY 2015-16 while calculating Annual Let Out Value (ALV) of property purchased in e-auction in July 2014 on 'As is where is' and 'As is what is' basis, though the liability related to the earlier year in which the assessee was not the owner of the property. It held that the assessee had purchased the property in e-auction 'As is where is' and 'As is what is' basis which meant that assessee purchased the property along with all liabilities attached to it and thus it was assessee's responsibility to discharge all liabilities attached to the property.

Technomark Television Network Pvt. Ltd. v ITO [TS-639-ITAT-2018(Bang)] - ITA No.2349/Bang/2018 dated 05.10.2018

1425. The Tribunal dismissed assessee's appeal against CIT(A)'s order holding that income from leasing of warehouse was assessable as income from house property and not business income. It held that merely because one of the main objects clause of MOA mentioned that assessee was engaged in the business of leasing of warehousing, it would not be a conclusive factor in determining nature of income.The Tribunal relied on the decision in case of Raj Dadarakar & Associates v ACIT 394 ITR 592 (SC) wherein it was held that there may be instances where a particular income may fall under more than one head but wherever such income is income from leasing out of premises and collecting rent, normally it is to be treated as income from house property, in case provisions of section 22 of the Act are satisfied with the primary ingredient that the assessee is the owner of the building or land appurtenant thereto. Also, earlier owner was receiving income from warehouse as rental income and after change of ownership, the nature of income remained the same.

New Horizon Logiware (P) Ltd v ITO-[TS-657-ITAT-2018(DEL)] – ITA Nos.474/Del/2018; dated 05.11.2018

1426. The Tribunal held that the income received by the assessee (a recognised IT park) from leasing the space as well as providing maintenance services (under two separate agreement) was taxable under the head business income only and not under house property income as contended by Revenue. It relied on the decision in the case of Velankani Information Systems (P) Ltd (2014) 265 CTR 250 (Kar HC) wherein also an IT park had rent out its premises through two separate agreements, it was held that income was assessable under the head income from business since the main intention was to exploit immovable property by way of complex commercial activities.

Ambattur Infra Developers v DCIT - I.T.A. Nos.195, 196, 377 & 376/CHNY/2016 dated 23.07.2018

1427. The Court dismissed Revenue's appeal and held that since the assessee was in the business of development of real estate projects and letting of property was not the business of the assessee i.e. main object was not acquiring and holding properties, rental income was assessable as income from house property. It followed the ratio in CIT v. Sane & Doshi Enterprises (2015) 377 ITR 165 (Bom HC) wherein the Court had held that the rental income received from unsold portion of the property constructed by real estate developer was assessable as income from house property.

CIT v. Gundecha Builders (2019) 102 taxmann.com 27(Bom HC) - IT APPEAL NO. 347 OF 2016 dated 31.07.2018

1428. The Tribunal held that the words 'property is let' does not mean 'property actually let out'. If property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out property and the same would fall within the purview of section 23 (1)(c) and be eligible for vacancy allowance. It held that a reasonable approach should be taken on the assesse's attempts to let out and infallible proof should not be demanded.

Sachin R. Tendulkar vs. DCIT - ITA No. 3755/Mum/2016 dated 23.08.2018

1429. The Tribunal held that the benefit provided in Section 23(1)(c) [i.e. where a property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof was less than the ALV under Section 23(1)(a) then the assessee was to be taxed only on the rent received / receivable], would apply to properties which are ready to let notwithstanding the fact that the properties have not been actually let out in the past. Noting that the property of the assessee was vacant during the entire year but were in the ready to let condition, it held that the AO was incorrect in denying the benefit under Section 23(1)(c) and in taxing the income as per ALV under Section 23(1)(a) of the Act.
ITO v Metaoxide (P.) Ltd - [2018] 92 taxmann.com 302 (Mumbai - Trib.) - IT APPEAL NOS. 4428 & 5771 TO 5775 (MUM.) OF 2016 dated MARCH 28, 2018

1430. In the case of assessee, engaged in business of buying of properties and leasing out same, and offering income from such leasing to under the head 'Income from House Property', the Tribunal held that –

- contributions received by it from tenants towards sinking fund could not be assessed as rental income of assessee
- interest paid on loan borrowed from its holding company for acquiring of property was to be allowed as deduction u/s 24(b)
- in view of fact that actual rent received or receivable by assessee in respect of let out property was in excess of sum for which property might reasonably be expected to have been let out from year to year and the ALV had been determined u/s 23(1)(b), no addition in respect of notional interest on interest free refundable deposits received from its tenants was called for

ITO v Altitus Management Advisors (P.) Ltd. – (2018) 91 taxmann.com 472 (Mum) – ITA No. 4259 (Mum.) of 2015 dated 28.02.2018

1431. The Tribunal confirmed AO's addition of notional interest on security deposit received under 'Leave and License Agreement' by the assessee observing that the security deposit in the instant case was to circumvent real rent. It noted that the Assessee (tenant, who had further sublicensed the property to third party) had offered leave and license fees of Rs. 4,80,000 to tax and that he also received interest free security deposit of Rs. 2.75 Crs from the licensee. It held that the security deposit of Rs.2.75 cr. was hugely disproportionate to the leave and license fees of Rs.4,80,000/- shown by the assessee, and

therefore on viewing the transaction as a whole, it held that the transaction in the instant case was a device to reduce the tax burden. Accordingly, it concluded that the 'Leave and License Fee' and 'Security Deposit' were interconnected and part of the same transaction. Accordingly, it held that the held that the notional interest @ 9% was appropriate (based on interest rate on term deposits offered by Public Sector Banks) and taxable.

Deena Asit Mehta [TS-60-ITAT-2018(Mum)] - ITA No. 3549/MUM/2016 dated 09/02/2018

1432. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 23 by computing notional annual letting value on unsold shops which were held as stock in trade by the assesse, relying on the decision in the case of M/s. Runwal Constructions v. ACIT [ITA.No. 5408 & 5409/Mum/2016] wherein it was held that since the unsold flats were treated as stock in trade in the books of account of the assessee and the flats sold by it were assessed under the head 'income from business', the AO was not correct in bringing to tax notional annual letting value in respect of those unsold flats u/s 23 as income from house property.

INCOME TAX OFFICER vs. ARIHANT ESTATES PVT. LTD. - (2018) 53 CCH 0321 MumTrib - ITA NO. 6037/MUM/2016 dated June 27, 2018

1433. The Tribunal allowed assessee's claim for deduction u/s 24(b) of the entire interest paid on amounts borrowed and utilized for construction of land and building, which was disallowed by the AO to the extent of 50% on the ground that there was no bifurcation of funds used for land and building and other assets used for business activities. It was noted that the land and buildings were constructed as the assets of school and the amount invested in the school land and building was far higher than the amounts borrowed. Further, the assessee had given complete details before the CIT(A) to show how much own funds were available to the assessee and how much amounts had been borrowed from the Bank and other institutions.

VIDYA EDUCATION INVESTMENT PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0211 (DelTrib)- ITA.No.6177/Del./2014dated June 22, 2018

1434. For AY 2003-04 to AY 2008-09, the AO had rejected assessee's claim that the rent received on sub-letting the property and service charges for rendering certain services relating to such letting out should be assessed as income from business. He instead assessed the same as income from house property, thereby not allowing deduction for business expenditure. The CIT(A) confirmed the AO's order. Tribunal upheld the decision of the authorities below to assess the rental income as income from house property. As regards the service charges, the Tribunal directed that the same should be assessed as income from other sources and the expenditure incurred by the assessee should be allowed as per the provisions of section 57. Subsequently, under the order passed by the AO, giving effect to the above order of the Tribunal, he held that the assessee's claim for depreciation and other expenses like corporate expenses, etc. were inadmissible as per section 57 as the said expenses had no direct nexus with earning of service charges. The CIT(A) upheld the said order passed by the AO to give effect to the Tribunal's directions. Further, before the CIT(A), the assessee had also submitted that the Tribunal in the assessee's own case for AY 2009-10 had reversed its order for AY 2003-04 to AY 2008-09 (referred above), allowing the assessee's appeal. However, the CIT(A) refused to follow the Tribunal's order for AY 2009-10 in view of the Tribunal's binding order for AY 2003-04 to AY 2008-09. On further appeal, the Tribunal held the CIT(A) was correct in following the said binding order. Further, with respect to the assessee's contention that the AO had not followed the Tribunal's directions correctly, it held that the AO and the CIT(A) had correctly followed the Tribunal's earlier order, giving detailed findings. [It is to be noted that in the present case, the Tribunal had rejected the assessee's adjournment petition and decided the matter ex-parte.]

PROLIFIC VENTURES PRIVATE LIMITED vs. INCOME TAX OFFICER - (2018) 52 CCH 0267 MumTrib - ITA Nos. 38 to 43/Mum/2018dated April2, 2018

1435. The Tribunal allowed assessee's appeal and deleted the addition made by the AO on account of income from house property owned by the assessee, with respect to which the assessee had admitted certain amount as its annual rental income and the said rental income was considered by the AO to be grossly low. The AO had adopted market rent to determine the annual let out value and assessed the same to tax. The Tribunal observed that the house property was part occupied by the assessee for his

personal propose when he visited India and as per the Act, annual value of property under self-occupation was Nil. Further, it accepted the assessee's argument that since he accessed pooja room and internal stairs when he was in self-occupation, there was violation of privacy to the tenants residing in other 50% of the house and thus no other tenant would come forward to take house at high rent. The Tribunal thus held that that fetching of Market Value was not justified and the rent admitted by the assessee was reasonable.
Vegesna Ananthakoti Raju v DCIT (International Transactions) (2018) 52 CCH 0279 VishakapatnamTrib - ITA No. 528/Vizag/2017 dated 04.04.2018

1436. SLP was granted by the Apex Court against High Court ruling that where flats constructed by assessee were held as stock-in-trade and same were not at all let out for any previous years, there would be no question of availing vacancy allowance under section 23(1)(c); and assessee would be liable to pay tax on ALV of said flats under section 23(1)(a).
Ansal Housing & Construction Ltd. v ACIT [2018] 95 taxmann.com 17 (SC) – SLP (C) NOS. 11016 AND 11017 OF 2018 dated 04.05.2018

1437. The Tribunal held that Municipal rateable value is an approved method for determination of ALV of property but if AO is convinced that municipal rateable value did not represent fair market value of rent, then he may resort to prevailing market rental value in locality
ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018

1438. The assessee let out amenities like flooring, Generator, Electrical Cabling, Plumbing, Sprinklers, Hydrants, Signage, Anchor space etc. along with its properties and treated income from the same, i.e. rent as 'Income from House Property'. The AO held that income from letting out amenities was taxable as 'Income from Business or Profession'. While allowing the assessee's appeal, Tribunal relied on the co-ordinate bench ruling in the assessee's own case for earlier years wherein it was held that amenities were part and parcel of the rent agreement and that the amount received was rent and should be taxable as 'Income from House Property'. While doing so, Tribunal also relied on the ruling of the jurisdictional High Court in the case of J.K. Investors (Bombay Ltd.) ITA No. 1089 to 2011 and Bhaktavar Construction Pvt. Ltd. (162 ITR 452) wherein it was held that amenities agreement cannot operate in isolation of the rent agreement.
ITO vs. Zears Developers P. Ltd. & Anr. – [2018] 53 CCH 0012 (Mum ITAT) – ITA No 6375/Mum/2016, 6274/Mum/2016 dated May 7, 2018

d. Business Income

1439. The High court upheld Tribunal's order holding that income earned by assessee from letting out various shops/stalls in shopping malls constructed by them was to be treated as business income and not as income from house property as the intention of assessee-company was to commercially exploit property by way of complex commercial activities and, it was not a case of letting out property simplicitor. The SLP filed against said decision was granted by the Apex Court.
Pr.CIT v. E City Real Estate (P.) Ltd. - [2018]100 taxmann.com 94(SC) – SLA (C) Nos.7913 of 2018- dated October, 31, 2018.

1440. The Tribunal held that where assessee purchased shares of a non-related company at a price less than fair value as it was a loss-making concern, no benefit arose to assessee which could be brought to tax under section 28(iv).
Asst. CIT, Circle-4, Nagpur v. Swiftsol (I) (P.) Ltd.- [2018] 95 taxmann.com 286 (Nagpur – Trib.) ITA Nos. 407 (NAG.) of 2016 & Others-dated July 2, 2018

1441. The assessee had entered into a celebrity engagement contract with CCIL. She received a sum of Rs.1.45 lakhs in lieu of settlement for breach of terms of contract. However, it was found only an amount of Rs.50 lakhs were due to the assessee under contractual terms. Accordingly, addition of Rs.95 lakhs was made in hands of the assessee. The Tribunal Held that it was found that additional amount of Rs.95 lakhs had been received by the assessee towards damages for being sexually

harassed by an employee of CCIL, for having disparaged here professional reputation by false allegations and for repudiatory breach of contract by CCIL. Such compensation could not be termed as any benefit, perquisites arising to the assessee out of exercise of profession, hence, it could not be construed to be assessee's income either under section 2(24) or under section 28 and hence not liable to tax.

Sushmita Sen v Asst. CIT [2018] 99 taxmann.com 252(Mum-Trib.)-ITA Nos. 4351 & 4352 (MUM.) of 2015 dated November 14, 2018

1442. AO noted that assessee earned STCG against sale of certain shares. Assessee submitted that shares were allotted in public issues and investments were out of own capital. AO found that assessee traded in 11 scrips/transactions out of which holding period of 10 transactions was less than five days. AO concluded that said income was assessable as business income. Head of income assumed importance in view of fact that STCG on sale of shares assessable under head capital gains attracted concessional rate of tax as against rate when same were treated as business income. CIT(A) stated that assessee was majorly engaged as a trader rather than an investor in shares since frequency of transactions was high and holding period of scrips was very less. AO was justified in treating said gains as business income. The Tribunal held that, holding period chart extracted by AO clearly revealed that assessee dealt in 11 scrips/transactions during relevant AY out of which holding period of 10 scrips/transactions were five or less than five days which indicated that investments were made by assessee as a trader only and primary objective of such investments was to earn gains in a business-like manner. Assessee's intention got manifested from fact that scrips were sold within a very short span of time so as to reap benefits of listing gains only. Assessee was engaged as share broker and as evident from MoA was dealing in shares was one of main objectives of assessee. Thus, it held that, CIT(A) had AO were justified in treating said gains as business income.

Nirpan Securities Pvt.Ltd. & ANR vs.Dy. CIT & ANR. -(2018) 54 CCH 0302 MumTrib-ITA No.2584/Mum/2016, 2585/Mum/2016-dated December 5, 2018

1443. AO found that assessee had made investment in shares of 'PPSL' at discounted rate during year under consideration. AO further noted that PPSL had issued shares to few other entities and individuals at higher rate during same period. AO was of opinion that assessee had enjoyed benefit within meaning of provision of section 28(iv) and made addition to income of assessee. CIT(A) deleted addition made by AO. The Tribunal held that, Revenue had not demonstrated what was business connection or business done between seller and purchaser of shares. No case had been made out that privilege or benefit or concession had been passed on by seller to buyer as part and parcel of business transaction. Mere purchase of shares by way of investment could not be considered as business of company though objects of company enable it to invest as well as deal in shares. There was no event which could be said to had resulted in accrual of income to assessee. Thus, on this factual matrix, mere purchase of shares, as investment, with lock in period of holding, for consideration which was less than market value, could not be brought to tax, as benefit or perquisite u/s. 28(iv). PPSL was continuously incurring losses and had huge accumulated losses which clearly indicated that price, at which it was purchased could not be said to be understated. Hence, there was no question of any kind of gain arising in purchase of these shares at stated price above. Investment could not be said to be benefit arising out of business of assessee. Assessee had clearly submitted that there was no business relationship as such between these parties. Assessee had simply purchased some shares of loss-making company at less than face value from third parties. Assessee had not sold those shares and obtained any benefit of any kind whatsoever. Hence, addition u/s. 28(iv) was not at all justified.

Asst. CIT & ORS. vs. Swiftsol (I) Pvt. Ltd. & ORS. - (2018) 53 CCH 0282 NagTrib-TANo.407/Nag/16-Dated Jul 2, 2018

1444. The Tribunal relying on its decision in Assessee's own case and held that any subsidy given to the assessee post accomplishment of the project or expansion there, without any obligation to utilize the subsidy only for repayment of term loans undertaken by the assessee for setting up new units/expansion of existing business, or to liquidate the cost incurred in creating the capital asset or its expansion, is only in the nature of the revenue receipt and is liable to brought to tax.

Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018

1445. In case of an assessee who was engaged in business of development of Bio Tech park, construction,easing and sale of commercial properties, earned income from sub-lease of property and where assessee's business for development of Bio tech park had already commenced, the Court upheld Tribunal's finding that the income from sub lease had to be assessed under income from Business and not under Income from other Sources.

PCIT vs International Biotech Park Ltd- (2018) 98 taxmann.com 218 (Bombay)- ITA No 370 of 2016 dated 24.09.2018

1446. The assessee, a NBFC was engaged in business of leasing, hire purchase and other financial activities had securitized certain amount as rent receivables and had adjusted a part of said amount against rent receivable in its books of account and balance amount was recognized as a profit on securitization of lease receivables. The assessee contented that this amount represented a notional gain and not real income, thus, no income tax could be levied on same. However, the AO treated such amount as an income of assessee on ground that assessee itself had credited this amount to its profit and loss account & took a view that the gain was related to business and arose in the normal course of business to the assessee. The Tribunal and CIT(A) upheld finding of AO on same grounds. The Court concluded that the finding given by the AO were purely based on factual aspects and no substantial question of law arose in the present appeal.

L&T Finance Ltd vs DCIT- (2018) 98 taxmann.com 91(Bombay)- ITA no 256 & 257 of 2016 dated 17.09.2018

1447. Assessee bank incorporated in Netherlands with limited liability and with branches in India was involved in accepting deposits, giving loans, discounting / collection of bills, issue of letters of credit, etc. The AO observed that assessee bank had not recognized interest income in respect of advances, which were overdue for more than 3 months, in profit and loss account in accordance with RBI guidelines applicable to banks. Thus, the AO proceeded to add interest income on NPA accounts on accrual basis and the same was upheld by DRP. The Tribunal relied on Southern Technologies, wherein it was held that interest income on NPA accounts should not be recognized on accrual basis which was in line with RBI prudential norms for income recognition and further when account becoming NPA was not disputed by Revenue, recognition of income was to be done only on receipt basis which was in consonance with real income theory. Thus, the Tribunal held that interest income on NPA accounts should not be assessed on mercantile basis and same was to be taxed only on receipt basis.

DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No 503,505/ Kol/ 2016 dated 05.09.2018

1448. The Court held that where an assessee a Government company, engaged in the business of industrial development, received land from State Government for development and further transferred said developed land to prospective industrialist on long term lease for consideration of payment of advance rent in form of land premium, such land premium being part and parcel of business receipt was taxable as revenue receipt u/s 28.

M.P Audyogik Kendra Vikas Nigam vs ACIT- (2018) 98 taxmann.com 191- ITA No 60 to 68 of 2018 dated 06.09.2018

1449. Assessee paid royalty amounting to Rs. 6,791,180,556/- to Suzuki Motor Corporation, Japan ('SMC') for use of licensed information for engineering, design and development, manufacture, testing, quality control, sale and after sales service of products and parts. Such payment was claimed as revenue expenditure. Though in original return, assessee had claimed running royalty as revenue expenditure and lump sum royalty as capital expenditure, lump sum royalty was claimed as a revenue expenditure through revised return of income. However, AO held that royalty paid by assessee was capital in nature and consequently, held that entire royalty was disallowable. DRP upheld decision of AO. The Tribunal relying on its decision in earlier year held, that amount of royalty considered by AO as capital expenditure should be allowed as a revenue expenditure, and at same time, depreciation allowed by AO on that amount should be taken back. In the earlier year it was held that after going through the relevant clauses of the Agreement, it was concluded that royalty paid by the assessee was for use of licensed information and no part of the same was towards its acquisition as an owner. Thus, it was

absolutely clear that the view canvassed by the AO in treating this amount as capital expenditure, was not sustainable.

Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018

1450. The Tribunal held that compensation received by assessee-company for not carrying on any activities in relation to its commodity trading business would be taxable u/s 28(va)(a), rejecting the assessee's contention that (i) since the said compensation was paid by BNP Paribas, a French Bank, (which had invested 27.18% in the assessee' parent company) for getting RBI clearance for further investment in the assessee's parent company (one of the condition being that neither the parent company nor its subsidiary carries on commodity trading business), it was not a non-compete fee and thus not taxable under the said section and (ii) it was a compensation received for loss of source of income/profit earning apparatus and therefore, a non-taxable capital receipt. The Tribunal held that the said section was not restricted, to bringing to tax only the non-compete fee but also any sum that was received or receivable in cash or kind for not carrying out any activity in relation to any business. Further, it was observed that a new company GCL was incorporated under same group by common promoters (not being a subsidiary of the assessee's parent company or the assessee) whereby assessee's commodity trading was transferred entirely along with its clientele and in eyes of clients, business was carried on in same name and, therefore, profit making apparatus of assessee-company/group company was not impaired by discontinuance of commodity trade business of assessee per se.

Geojit Investment Services Ltd.vs JCIT [2018] 96 taxmann.com 650 (Cochin - Trib.)- IT APPEAL NO. 5 (COCH.) OF 2017dated August 03 2018

1451. The Tribunal held that the profits from sale of land was a business income and could not be taxed as Short Term Capital Gain or Long Term Capital Gain, noting that it was a wellthought business project carried out by the assessee jointly with 17 other persons by way of taking theservices of Developer. Thus, it held that the intention of entering into an adventure of business was veryclear from the very first day of purchase of land and completed on selling the residential plots.

Anita Singh and ANR. Vs Asst.CIT [2018] 53 CCH 0479 ITA No.261/Ind/2016,474/Ind/2016 DATED AUGUST 28,2018

1452. The Tribunal deleted the addition made by the AO of notional interest on interest free advances advanced by the assessee to its sister concerns noting that assessee's own funds were in excess of interest free advances to sister concerns and relying on the ratio laid down in the case of CIT vs. Brindavan Beverages (P) Ltd. 393 ITR 261 (Kar) i.e. if the assessee had sufficient own funds covering interest free advances to sister concerns, a presumption would arise that own funds were utilized and hence, disallowance of interest expenditure could not justified.

Deccan Mining Syndicate Pvt Ltd. vs Dy. CIT [2018] 53 CCH 0466 (Bang Trib) ITA NO. 1261 (BANG) 2016 DATED AUGUST 21,2018

1453. The Court dismissed assessee's appeal against Tribunal's order upholding the AO treatment of taxing short term capital gains as well as speculation income shown by the assessee (housewife) on sale and purchase of shares as business income. The Tribunal had held that the assessee was selling shares with a profit motive after examining that in almost 80% of the transactions, the assessee had sold the shares within a period of one week from date of purchase and further, in the preceding year the assessee had offered the profit from sale and purchase of shares as business income.

Ramilaben D. Jain vs ACIT [2018] 97 taxmann.com 217 (Bom)- ITA NO. 325 OF 2016 dated August 20 2018

1454. The Tribunal set aside the addition made by the AO u/s 43CA by considering the difference between the stamp duty value of flats as on the date of registration of sale deed, i.e. 09/12/2013, and the sale consideration mentioned in the agreement to sell which was entered into by the assessee-builder on 09/04/2007. The AO had rejected the benefit of sub-section (3) of section 43CA (which provides that where the date of agreement fixing value of consideration for transfer of the assets and date of registration are not the same, the value as on the date of agreement would be considered, provided the amount of consideration or part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the assets) since the assessee had received the part consideration on date of agreement in cash. The Tribunal held that since section 43CA was inserted vide the Finance Act, 2013 w.e.f. 01/04/2014, the assessee could not have foreseen these provisions at the time of entering into the agreement to sell that it had to receive the consideration only by any mode other than cash. Accordingly, it remanded the matter to the CIT(A) to determine the valuation of the flats as on the date of agreement to sell i.e. 09/04/2007 in view of section 43CA(3).
Indexone Tradecone (P.) Ltd. v DCIT [2018] 97 taxmann.com 174 (Jaipur - Trib.) – ITA No. 470 (JP.) of 2018 dated July 16, 2018

1455. The Tribunal allowed the assessee's appeal and held that the rental receipts as well as maintenance charges received by the assessee by leasing out Information Technology parks to various parties / lessees was to be taxed as business income, where the AO had taxed the entire receipts as income from house property. It held that what is to be looked into is intention of parties while entering into lease and since the agreements entered by assessee with lessees were contemporaneous, it could be concluded that the object of lease was to allow enjoyment of entire property with all services related to its use as technology centers. Thus, the Tribunal held that income both from leasing space as well as providing maintenance services had to be considered only under head income from business.
AMBATTUR INFRA DEVELOPERS vs. DCIT - (2018) 66 ITR(Trib) 294 (Chennai) – ITA Nos 195 & 196/CHNY/2016, 376 & 377/CHNY/2016 dated July 23, 2018

1456. The Tribunal held thatrent received by the assessee, engaged in business of development of property, from tenants of a property, pending vacation of the said property was inextricably linked with the assessee's business and, hence could not be treated as income from house property. Further, noting that the sums paid by the assessee for vacating the said property were debited to the work-in-progress and the same was accepted by the AO, it held that the assessee was justified in crediting the rent received also to work-in-progress.
SUN ENTERPRISE vs ITO - (2018) 53 CCH 0353 MumTrib – ITA No. 4987/Mum/2014 dated 16th July, 2018

1457. The Tribunal rejected the AO's approach of computing capital gains on sale of two lands by the assesssee during AY 2012-13 and invoking provision of section 50C to adopt the stamp duty value as the sale consideration for the said lands, noting that the assessee was engaged in the business of purchase and sale of lands and section 50C was applicable only for capital assets and not for assets held as stock-in- trade. It also clarified that section 43CA was introduced in the Statute by Finance Act, 2013 w.e.f 01.04.2014 to adopt the stamp value in respect of assets other than capital assets and thereby, the same was applicable only from AY 2014-15 and not earlier.
AMAR DAS vs. ITO (2018) 53 CCH 0337 KolTrib – I.T.A No. 306/Kol/2017 dated 13th July, 2018

1458. The assessee, engaged in manufacture and sale of Indian Made Foreign Liquor (IMFL) without owning any popular brand, leased out part of its licensed manufacturing facility to JIL for commercial exploitation of its business assets. The assessee also entered into another agreement with JIL for providing various services required for packaging IMFL. The AO held that the receipts from JIL on account of leasing of factory, plant and machinery, part of licensed capacity, provision of packaging services, re-sale of raw and packaging material was assessable under income from other sources against business income as declared by assessee. The Tribunal held that since the nature of business never changed and the assessee derived income from manufacturing of liquor activity, income received from sub-leasing a part of licensed capacity alongwith part of manufacturing unit could not be considered as income from other sources. Similarly, it held that income received by assessee from packaging services was a business income. Further, the Tribunal held that since raw and packing material belonged to assessee and the same was part and parcel of business activity of assessee,

income received from resale of raw and packing material could not be considered as income from other sources but business income.

HYDERABAD DISTILLERIES & WINERIES PVT. LTD. vs. ACIT (2018) 53 CCH 0333 DelTrib – ITA No. 740/DEL/2012 dated 12th July, 2018

1459. The Tribunal allowed assessee's appeal and held that the interest income earned from fixed deposits made by the assessee-company (engaged in shipping business) for the purpose of obtaining Stand-By Letter of Credit (SBLC) for two group companies was taxable as business income as against the AO's contention of taxing the same as income from other source. It noted that the said group companies were floated for acquiring shipping assets and operating shipping business and the SBLC was obtained for acquiring a cruise. Thus, the Tribunal held that interest earned on fixed deposit had a direct nexus with business activity of assessee and such interest bore requisite characteristics of business income.

HighTech Marines Pvt Ltd. vs ITO [2018] 54 CCH 0233 (Del Trib) - ITA No.6924 /Del/2017 dated 14.11.2018

1460. The Tribunal allowed assesse's appeal and deleted the addition made by the AO on account of interest on advance made to a firm, noting that (i) it was demonstrated by the assessee that advance so made had become non-recoverable and accordingly, no interest had accrued to assessee (ii) assessee had nowhere claimed it as business advance, rather it was a simple loan on which assessee was earning interest and offering same for tax till some years back.

Sachidanand Madhukarrao Chitale vs Asst.CIT [2018] 54 CCH 0165 (IndoreTrib)ITA No. 15/Ind/2017 dated 02.11.2018

1461. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO with respect to the difference between (i) the amount received by the assessee (*inter alia* engaged in trading of lubricants) under Marketing Assistance Programme (MAP) from a lubricant manufacturing company for financial assistance and (ii) the amount therefrom passed on to its customers (sub-distributor). It was noted that the assessee had received the MAP amount with a condition that the same is passed on to the customers (sub-distributors) as incentives at the time of lifting / purchase of goods by them and accordindly, the differential amount (which was not paid during the relevant year) was to be passed on to the customers on their purchases in subsequent year. Further, noting that the assessee had neither shown such receipt as income nor claimed deduction of amount paid to the customers and such consistently followed method of accounting was accepted in the immediately 2 preceding years, the Tribunal held the CIT(A) had rightly decided in favour of the assessee.

ACIT v New Delhi Tyre House [TS-589-ITAT-2018(DEL)] - ITA No.3986/Del/2015 dated 04.10.2018

1462. The Court held that gain arising to the assessee on account of securitization of lease receivables and credited to the Profit & Loss Account is a taxable receipt in the year of securitisation as per T. V. Sunderam Iyengar 222 ITR 344 (SC). It held that the argument that the entry represents hypothetical income and not real income and that the amount is assessable in subsequent years on receivable basis is not correct. Further, the question of whether income can also be deferred to subsequent years under the "Matching concept" as per Taparia Tools 260 ITR 102 (Bom)/ 372 ITR 605 (SC) was left open by the Court.

L&T Finance Limited vs. DCIT (Bombay High Court) - INCOME TAX APPEAL (IT) NO. 256 OF 2016 dated 17.09.2018

1463. The assessee earned a total sum of Rs. 4.30 crore including Rs. 2.36 crore from rental income / fee for craft stalls installed in a tourism festival called 'Dilli Haat' which it offered to tax under the head Profits and Gains from Business. The Assessing Officer held that the entire rental income constituted 'income from house property' observing that the assessee constructed certain permanent structures as well as temporary constructions which it rented to several organizations. The Tribunal noted that out of the total

sum of Rs. 2.36 crore the assessee only disputed the amount of Rs. 1.82 crore earned on account of license fee for use of craft stalls for a period of 15 days and conceded to the balance. Vis-à-vis the receipt of Rs. 1.82 crore, the Tribunal observed that the stalls were set up with main object to promote tourism and to attract tourists and the rent was charged for each craft stall for use of designated area in Dilli Haat. Considering that the stalls were set up in light of overall object of promoting tourism the income from such craft stalls could not be considered as anything other than business income.
DELHI TOURISM AND TRANSPORT DEVELOPMENT CORPORATION LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0258 DelTrib - ITA No. 3457/Del/2007, 1505/Del/2009

1464. The Tribunal held that non-compete fees received by the assessee as the then senior partner of a CA firm from PwC for foregoing his partnership interest in the said firm and relinquishing his right to practice as a Chartered Accountant and Financial Consultant in India for a period of 5 year was non-taxable capital receipt as section 28(va) clearly provides that the same would be applicable in a case where any sum was received or receivable under an agreement for not carrying out any activity in relation to any 'business' and not 'profession' and such intentional absence of the term 'profession' reveals the clear legislative intention. It further held that the insertion of the term 'or profession' in the said section vide the Finance Act, 2016 is prospective in nature and was not applicable to year under consideration.
Shri Ashok M. Wadhwa v. ACIT - TS-610-ITAT-2017(Mum) - ITA No. 1871 & 2576/Mum/2012 dated 20.12.2017

1465. Where assessee was following Percentage Completion Method, the Tribunal accepted AO's stand of recognizing revenues in respect of advance received by assessee (engaged in residential township development) from the customers to the extent of stage of completion, noting that in terms of the plot buyer agreement, significant risk relating to the real estate was transferred by assessee to the buyer. It held that revenue accrued when plot buyer agreement was entered into and not only when the sale deed was registered. However, referring to ICAI Guidance on recognizing revenues from real estate transactions, it rejected AO's action of recognizing entire sale consideration in case of sale deeds executed instead of proportionate revenues.
Vastukar Township Pvt Ltd v DCIT - TS-617-ITAT-2017(JPR) - ITA No. 105,106, 119, 120 & 172/JP/2017 dated 22.12.2017

1466. The Apex Court dismissed revenue's appeal against the High Court decision wherein the High Court, noting that the assessee-NBFC did not receive any interest on Inter Corporate Deposits categorized as NPA since many years and even the recovery of principal amount was doubtful, had held that interest income thereupon did not accrue in terms of the RBI Prudential Norms. Addressing revenue's argument that the Supreme Court in the case of Southern Technology had held that RBI Act does not override the provisions of Income-tax Act, The Court had clarified that the Supreme Court's observation was in context of allowability of deduction for NPA provision u/s 36(1)(vii), however in respect of income recognition, Supreme Court had held that income is to be recognized in terms of RBI Prudential Norms even though the same deviated from mercantile system of accounting and/or section 145.
Vasisth Chay Vyapar Ltd - TS-619-SC-2017 - Civil Appeal No. 5811 of 2012 (SC) dated 13.12.2017

1467. The Tribunal approved assessee's action of aggregating both the policyholders' and shareholders ' account while determining the income from life insurance business for applying the provisions of section 44 r.w. First Schedule after noting that a life insurer is not permitted to carry on any business other than that of life insurance and that investments made out of shareholder funds is an integral and inextricable part of the life insurance business and not an independent business. In this regard, Tribunal followed Mumbai Tribunal ruling in ICICI Prudential Insurance Co. Ltd. which is approved by Bombay HC. Tribunal deleted additions made in respect of the amount declared and allocated as bonus for participating policy holders and amounts appropriated as Funds for Future Appropriation observing that both the amounts were with respect to ascertained liabilities as against Revenue's stand of including the same in actuarial surplus.
Max New York Life Insurance Company Limited v DCIT - TS-3-ITAT-2018(DEL) - ITA No.142/Del/2017 & CO No. 123/Del/2017 dated 05.01.2018

1468. Where assessee, who was director of a company, alongwith his wife, purchased certain immovable properties from the company at a value lower than the market value determined for stamp duty purposes, Tribunal rejected the Revenue's contention that benefit derived from above activity was an adventure in nature of trade/business taxable under the head profit and gain of business or profession as per section 28(iv), since the assessee had shown the properties as investments in his books and the revenue itself had accepted it to be investment activity.
Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018

1469. Tribunal held that authorities below were justified in making addition to assessee's income as perquisite u/s 28(iv) on account of a watch worth Rs. 40 lakhs received as gift from company for which she had undertaken advertisements and promotional activities on remuneration basis.
Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 144 (Mum) – ITA Nos. 2524 and 2769 (Mum) of 2015 dated 16.01.2018

1470. Where assessee, a film actress, had done promotional activity on being brand ambassador of NDTV Toyota Greenathon campaign and, accordingly, had promoted brand Toyota, Tribunal held that the receipt of Toyota car as gift in this connection had rightly been added in her hands as perquisites u/s 28(iv)
Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 1 (Mum) – ITA Nos. 2771 (Mum) of 2015 dated 16.01.2018

1471. Where the assessee company, engaged in deriving rental income from letting out of warehouse, treated rental income received as business receipts but the AO completed assessment u/s 143(3) treating rental income received from letting out of warehouse as Income from House Property, the Tribunal relying on its earlier years order in the case of the assessee held that warehouses constructed by assessee were commercial assets and income that arose from leasing out commercial property constituted business income. It noted that the warehouses constructed were as per international standards and therefore held that the services offered by the assessee could not be regarded as routine services to be rendered by any ordinary property owner as part of lease and therefore held that the rentals constituted business income of the assessee.
INCOME TAX OFFICER vs. ANJANEYA INFRASTRUCTURE PROJECT PVT. LTD. - (2018) 52 CCH 0220 BangTrib - ITA No. 2509/Bang/2017 dated Mar 23, 2018

1472. The Tribunal upheld the action of AO in rejecting the books of accounts of the assessee-firm and estimating net profit at rate higher than the rate of net profit declared by assessee in her return of income on the ground that the assessee had declared net profit at rate which was far less in comparison to profit rates achieved in earlier years and there were various discrepancies found and also noting that the assessee had failed to show any justification for payment of additional rent during relevant year. It further held that since the assessee had also failed to demonstrate as to what services had been rendered by her husband or daughter to whom salaries had been paid, the said salaries claimed by assessee towards husband and daughter were disallowed.
Smt. Kantaben Ramjibhai Chaudhari v ITO – (2018) 91 taxmann.com 179 (Ahmedabad Trib) – ITA No. 1 (Ahd.) of 2016 dated 16.02.2018

1473. The assessee- firm, engaged primarily in construction and development of properties, had claimed deduction of interest paid on borrowings for a project completed during the year and given on lease while computing Income from house property and also claimed / added the said interest expense to the WIP of the said project. Noting the accounting treatment laid down under AS 10 and AS 16 providing that companies must capitalize interest costs associated with acquiring or constructing an asset that requires a long period of time to get ready for its intended use and that borrowing costs that are directly attributable to acquisition, construction or production of a qualifying asset should be capitalized as part of cost of that asset, the Tribunal remanded the matter to AO to make a de novo order considering AS 10 and AS 16.
HGP Community (P.) Ltd. v ITO – (2018) 91 taxmann.com 464 (Mum) – ITA No. 5081 (mum.) of 2017 dated 26.02.2018

1474. Where AO made addition to the assessee's income valuing the closing stock of packing materials representing scrap based on the scrap sales made in subsequent years, the Tribunal deleted the addition observing that while valuing the scrap as above, the AO had ignored the principles of valuation of stock as enumerated in AS 2 issued by ICAI which is also mandated to be followed u/s. 145A i.e. valuing the stock at cost or net realizable value, whichever is lower.
Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

1475. Where AO added amount due to a group concern to the assessee's income as per section 41(1), taking a view that since the group concern had ceased its business operations, the assessee would not pay the dues, the Tribunal deleted that addition in view of fact that entire balance outstanding was reflected as receivable in books of the group concern, which was also assessed by very same AO and, thus, there could not be any cessation of liability on part of the assessee.
Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

1476. The Court deleted the addition made u/s 41(1) of excess provision of bad and doubtful debts written back in books of account of the assessee, noting that the revenue had not established that the said excess provision for bad and doubtful debts allowable u/s 36(1)(viia) was allowed as deduction in previous years. It held that the burden lay on revenue to prove that provision for bad and doubtful debts written back was allowed as deduction in earlier years.
CIT v Pragathi Gramina Bank – (2018) 91 taxmann.com 343 (Kar) – ITA No. 100028 of 2014 dated 09.02.2018

1477. Where assessee billed the license fees receivable for the calendar year in January but accounted its income to the extent it was attributable for period January to March in year and offered the balance to tax in subsequent assessment year, the Court held that since obligation in respect of license fees billed for entire calendar year was yet to be discharged at end of previous year, the same would be due only in the next previous year related to the next assessment year. Accordingly, it rejected AO's contention that as assessee was following mercantile system of accounting, it should have accounted entire income billed for tax in relevant assessment year.
Pr.CIT v C.U. Inspections India (P.) Ltd. – (2018) 91 taxmann.com 344 (Bom) – ITA No. 620,622 & 711 of 2015 dated 22.01.2018

1478. The Tribunal allowed appeal of assessee, working as contractor of electrical maintenance on board of different companies vessels, for treating the receipts from such companies as income from business or profession, where AO treated receipts as taxable income under head 'Salary' on the ground that the assessee had not maintained books of accounts as per provisions of section 44AA. It held that from entire agreement executed between contracting company and assessee, it was clearly evident that nature of work executed by assessee for Marine Companies was in nature of contract and there was no employer-employee or master-servant relationship and no permanent contract. The Tribunal held that the professional contracts carried on by assessee were 'contract for service' and not 'contract of service', accordingly the said receipts were business receipts and appropriate expenditure were to be allowed.
SURESH KUMAR HOODA v ITO – (2018) 52 CCH 26 (Del Trib) – ITA No. 3897/Del/2009 dated 08.01.2018

1479. The Court upheld the Tribunal's order holding the non-compete fees received by assessee from a company wherein the assessee was the Managing Director and an erstwhile JV partner as capital receipt stating that the view of the Tribunal was a plausible one. It rejected Revenue's contention that even before the amendment in section 28 vide the Finance Act 2017, non-compete fees received for not carrying out any activity in relation to profession was taxable as income. It referred to the decision of CIT v. Anjum G. Balakhia (2017) 393 ITR 320 (Guj) wherein the Court had noted the Apex Court ruling in the case of CIT v. Sapthagiri Distilleries Ltd. (2015) 53 taxmann.com 218 (SC) had held that

compensation received towards loss of source of income and non-competition fee could be treated only as capital receipts and not liable to tax.
Pr.CIT v SATYA SHEEL KHOSLA - (2018) 101 CCH 22 (Del HC) - ITA 289/2016 dated 29.01.2018

1480. The Tribunal deleted the addition made u/s 41(1) with respect to outstanding payment of commission payable to an agent with whom the assesse had entered into MOU for procuring business from overseas, where according to the AO the said liability ceased to exist as assessee could not submit any proof of creditor agent making any request to assessee for clearance of outstanding payment. It noted that MOU entered into between assessee and its agent was before the Revenue and it had not brought on record any evidence to prove that said MOU was not genuine or no commission was payable to the said agent for business generated by him in favour of assessee in earlier years and that the Revenue had also allowed this commission payable in earlier years as an expense.
Pyramid Consulting Engineers (P.) Ltd. v DCIT – (2018) 90 taxmann.com 411 (Mum) – ITA No. 1972/Mum of 2016 dated 23.01.2018

1481. The assessee purchased and sold shares of Rs. 22.03 crores and Rs. 24.12 crores respectively and declared the income arising from sale of shares as short-term capital gain. The Tribunal upheld the AO's finding that since the assessee had regularly dealt in purchase and sale of share which indicated period of holding to be very short (assessee had made purchase of shares 57 times and sale of shares 59 times and there were several instances when assessee had purchased shares and sold them either same day or after a few days), the income arising therefrom was to be considered as business income. Observing that the Tribunal had duly considered volume of holding, duration of holding, and income derived as dividend to investment made. The Court upheld the order of the Tribunal and held that it had rightly held that income arising from sales of shares was assessable as business income.
Rakesh Kumar Gupta v CIT - [2018] 92 taxmann.com 101 (Delhi) - IT APPEAL NO. 86 OF 2018 dated MARCH 15, 2018

1482. Where the assessee was providing warehousing services along with other facilities such as security service and other services to keep goods safe and under hygienic conditions, the Tribunal held that the said activity systematically undertaken by assessee was in nature of business and the AO was not justified in taxing the income as rental income under the head income from house property merely because the payer deducted tax under Section 194-I of the Act.
DCIT v Tewari Warehousing Co - [2018] 92 taxmann.com 168 (Kolkata - Trib.) - IT APPEAL NO. 1316 (KOL.) OF 2016 dated MARCH 16, 2018

1483. Where the assessee claimed carry forward of business loss in respect of expenditure on school fares of director's children, rent paid for director's residence and commission paid to broker for rental premises, which was disallowed on ground that no business was set up in previous year relevant to subject assessment year, the Court upheld the order of the Tribunal wherein it was held that since the assessee failed to produce necessary evidence in support of its claim that business was set up and it was ready to commence, expenditure incurred by assessee prior to setting up of business could not be allowed.
ALD Automotive (P.) Ltd. v DCIT - [2018] 91 taxmann.com 475 (Bombay) - [2018] 91 taxmann.com 475 (Bombay) - IT APPEAL NO. 1149 OF 2015 dated MARCH 5, 2018

1484. The Tribunal deleted notional income addition made u/s. 23 towards annual letting value of unsold flats of Runwal builders observing that the flats sold by assessee were assessed under the head 'income from business' and the unsold flats were treated as its stock-in-trade. Accordingly, it held that the AO was incorrect in taxing notional value of unsold flats under the head 'income from house property'.
Runwal Constructions - TS-124-ITAT-2018(Mum) - ITA No. 5408/Mum/2016 dated 22.02.2018

1485. The Court upheld the Tribunal's order wherein, following the decision of the Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd. [1999] 102 Taxman 94 (SC), the Tribunal had held that the interest income earned by assessee-company, engaged in construction activities, on bank deposits made out of share capital could not be taxed as 'Income from other sources' as the said interest income was earned

prior to commencement of operations of company during construction period and thus was on capital account. It was held that the interest income would go to reduce capital cost of project and was eligible for deduction against public issue expenses incurred by company.
Pr.CIT v Bank Note Paper Mill India (P.) Ltd. - [2018] 95 taxmann.com 158 (Karnataka) - IT APPEAL NO. 690 OF 2017 dated June21, 2018

1486. Assessee an individual was an interior decorator / contractor and also received remuneration from partnership firm during year under consideration. On perusal of balance sheet, AO treated the sundry creditors as deemed income under Section 41(1), being alleged cessation of liabilities as there was no movement in account of the said parties' account for more than two years. CIT(A) upheld the order of the AO. Tribunal observed that since assessee had shown same balances as outstanding sundry creditors even as on 31.3.2013 (i.e next assessment year), it was undisputed that assessee had not written back these creditors as liabilities no longer payable and hence the liabilities did not cease to exist. Accordingly, the Tribunal held that since there was no clear finding to prove that liabilities had ceased to exist during the relevant AY by the AO or the CIT(A), the provisions of section 41(1) could not be invoked as assessee did not obtain any benefit in respect of these trading liabilities. Accordingly, assessee's ground was allowed.
JASHOJIT MUKERJEE vs. ACIT (KOLKATA TRIBUNAL) (ITA No. 403/Kol/2017) dated May 4, 2018 (53 CCH 0014)

1487. The Apex Court held that the waiver of loan taken for acquiring capital assets could neither be taxed as perquisite u/s 28(iv) nor as remission of liability u/s 41(1) by holding that –

- for invoking provisions of section 28(iv), benefit received has to be in some form other than in shape of money and since the waiver amount represented cash/money, the said section was not applicable
- for application of section 41(1), it is sine qua non that there should be an allowance or deduction claimed by assessee in respect of loss, expenditure or trading liability incurred, however, assessee had not claimed deduction u/s 36(1)(iii) for interest on loan and loan was obtained for acquiring capital assets, hence, the waiver was on account of liability other than trading liability and, thus, provisions of section 41(1) were also not applicable

CIT v Mahindra And Mahindra Ltd - [2018] 93 taxmann.com 32 (SC) - CIVIL APPEAL NOS. 6949-6950 OF 2004 & OTHERS dated April24, 2018

1488. Assessee was awarded a contract with HPCL for transportation of HPCL's petroleum product. On execution of contract, HPCL made payment to assessee firm after deducting Tax at Source. The assessee firm failed to show receipts out of contract in its account contending that the owner of the truck was one Mr. Lal and the entire income was transferred to Mr. Lal. However, the AO made addition under undisclosed profits and the CIT (A) and the Tribunal upheld AO's order. The Court, concurring with the lower authorities, held that as per s.198 all sums deducted in accordance with Chapter XVII for purpose of computing income of assessee shall be deemed to be income received and TDS by HPCL would be treated as payment of tax on behalf of assessee from whose income deduction was made. Also, as assessee had availed the benefit of deduction, the contract was between HPCL and the assessee and the entire payments were made in favour of the assessee, the addition was justified.
Lal Prasad & Sons v CIT (2018) 101 CCH 0262 Pat HC - Miscellaneous Appeal No. 678 of 2010 dated 23.04.18

1489. The assessee was engaged in the business of real estate and entered into a consortium agreement with one JMA company to purchase a land and would resell it to other buyer. The JMA company defaulted in its commitment within prescribed and extended time limit thereby leading to the arbitration proceeding and as settlement of dispute, the assessee was awarded huge compensation/damage. The AO as well as CIT(A) regarded this amount as revenue in nature holding that the land for which the compensation/damage was received was a part of stock-in-trade. The Tribunal dissented with AO and CIT(A) and followed CIT v Bombay Burmah Trading Corpn (SC) wherein it was held that 'if there was any capital asset, and if there was any payment made for the acquisition of that capital asset, such payment would amount to a capital payment in the hands of the payee. Secondly, if any payment was made for sterilization of the very source of profit-making apparatus of the assessee, or a capital asset, then that would also amount to a capital receipt in the hands of the recipient.' Therefore, the Court held

that the amount received as compensation for immobilisation, sterilization, destruction or loss, total or partial of a capital asset would be capital receipt and dismissed revenue's appeal.
PCIT v Aeren R Infrstructure Ltd. (2018) 101 CCH 0189 DelHC(2018) 404 ITR 0318 (Delhi) - ITA 235/2017, ITA 236/2017 dated 25.04.18

1490. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO on account of overdue interest with respect to non-performing asset (NPA) which was not receivable, noting that the assessee-bank had followed the RBI's directions to first debit the said interest to individual debtor (correspondingly crediting P&L A/c) and then derecognize income (by debiting the P&L A/c). It followed the decision in the case of District Co-operative Central Bank, Eluru Vs. ITO wherein the addition on account of interest on NPA was deleted holding that such interest was to be recognized on actual receipt basis but not on accrual basis.
ACIT v Guntur Co-operative Central Bank (2018) 52 CCH 0551 VishakapatnamTrib - I.T.A.No.75/Vizag/2016 & C.O. No.36/Vizag/2016 dated 06.04.2018

1491. The Tribunal held that where assessee, carrying on trading activities in stock and commodities, held derivatives as stock-in-trade, its claim for loss at end of year on mark to market basis could not be disallowed on the ground that same was contingent in nature.
Edel Commodities Ltd. v DCIT [2018] 92 taxmann.com 133 (Mumbai – Trib.) – ITA NOS 3426 AND 3576 (MUM.)OF 2016 dated 06.04.2018

1492. Where a loan taken for expansion of business was to be repaid only upon receipt of approval from RBI, the AO made an addition under Section 28(iv) in AY 2010-11 as the same was not paid considering the RBI approval was pending. Relying on the ruling of the Supreme Court in Mahindra and Mahindra Ltd (Civil Appeal Nos 6949 - 6950/ 2004) dated 24/4/2018, the Tribunal held that since the AO could not show that the assessee had obtained any benefit arising out of business, by obtaining loan on interest, no addition could be made under Section 28(iv) of the Act.
Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018

1493. The assessee, engaged in the business of development and leasing of commercial properties including I.T. Parks, offices etc., received income from leasing such properties. The AO treated the same as Income from 'House Property' as against 'business income' offered by the assessee. Relying on the CBDT Circular No.16/2017 dated 25.04.2017 and the AO's orders in the assessee's case for preceding four assessment years, the Tribunal upheld the order of the CIT(A) and held that income from letting out of premises / developed space along with other amenities in industrial park / SEZ was to be charged under head profits and gains of business. As regards the deduction claimed on account of payment of salaries and Directors' remuneration, Tribunal held that such remuneration was paid for the services rendered by the Directors and if the AO wanted to disallow such remuneration considering that the same was unreasonable, he should have brought the facts and materials on record to establish the actual fair market value of the services rendered.
ACIT vs. Grew Industries Pvt. Ltd. – [2018] 53 CCH 0015 (Mumbai ITAT) – ITA No 5427 of 2016 dated May 9, 2018

1494. The assessee was engaged in the execution of civil / electrical and air conditioning contracts for defense establishments. During the course of search proceedings on the assessee's premises, certain evidences were found indicating inflation of expenditure, suppression of income and bogus sub-contract payments.The assessee had accepted the same for completion of assessment by reasonable estimation of income. Accordingly, the AO completed assessment by estimating income at 12% of gross contract receipts as net income, clear of depreciation and all other expenses. The CIT(A) directed the AO to estimate income at 12.5% of gross contract receipts and to grant deduction in respect of depreciation out of gross income so arrived at. Tribunal observed that jurisdictional Tribunal as well as Coordinate Benches held that estimation of income in case of civil contracts @ 8% to 12.5% was reasonable and thereby upheld the order of the CIT(A). Accordingly, the Assessee's appeal was dismissed.
SVC PROJECTS PVT. LTD. & ANR. vs. ACIT& ANR. (VISHAKAPATNAM TRIBUNAL) (ITA No. 169-175/Viz/2013, 183-189/Viz/2013) dated May 23, 2018(53 CCH 0075)

1495. Where the Assessee was engaged in the business of Rice Shelling, the AO rejected the books of accounts and made an addition by adopting GP ratio of 15% for manufacturing goods and 3% for trading goods. While doing so, the AO did not categorically state the basis for arriving at the GP ratios. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *ApexCourt inKachwala Gems Vs. JCIT (288 ITR 10)* wherein it was held that estimation of GP should be honest and fair and should not be arbitrary, though it contained certain degree of guess work. Thus, keeping in view the profits declared by the Assessee and estimation done by the AO and keeping in view the history and earlier profits declared by the Assessee, the Tribunal estimated the GP at 2% for trading goods and 12% for manufacturing goods. Thus, the Assessee's appeals were allowed.
KRISHNA GRAM UDYOG SAMITI & ANR. vs. DCIT& ANR. (CHANDIGARH TRIBUNAL) (ITA Nos. 287, 288, 1438 to 1442/Chd/2017, 1327 TO 1333/Chd/2017) dated May 25, 2018(53 CCH 0134)

1496. AO made addition in respect of cash found at residence and hospital chamber of assesseeduring course of search proceedings as the assessee could not prove genuineness of source of cash. CIT(A) deleted the addition and held that cash found during search and seizure operations was part of amount of professional receipt and the same was accounted by the assessee. Tribunal held since the CIT(A) gave categorical finding that cash found during course of search was already disclosed in return of income, no separate addition could be made. Thus, Revenue's appeal was dismissed.
ACIT vs. K. RADHA KRISHNA (VISHAKAPATNAM TRIBUNAL) (ITA No. 65/Vizag/2014) dated May 18, 2018 (53 CCH 0058)

1497. The AO disallowed prior period expenses holding that since assessee was following mercantile system of accounting, it should not be allowed to claim prior period expenses on actual basis. The CIT(A) upheld the order of the AO observing that the assessee did not file any explanations or evidence to substantiate that the prior period expenditure claimed was crystallized during the current year. The Tribunal relied on the assessee's own case for earlier years wherein it was held that the concept of claiming expenses as prior period expenses on basis that they have been actually incurred in impugned Assessment Year and was in accordance with concept of mercantile system of accounting. Thus, Assessee's ground was allowed.
ORISSA MINING CORPORATION LTD. & ANR. vs. JCIT & ANR. (CUTTACK TRIBUNAL) (ITA Nos. 69 & 183/CTK/2014, 70 & 257/CTK/2014) dated May 17, 2018 (53 CCH 0188)

e. Deductions/ Disallowance

Section 30

1498. The Court dismissed Revenue's appeal against Tribunal's order allowing assessee's claim for deduction u/s 30 of rent paid to D Ltd. wherein the Tribunal had given factual finding that the assessee was a tenant, paying rent and using the premises for the purpose of its business. The Court held that it was not its domain to exercise jurisdiction under section 260A to enquire into correctness of the Tribunal's fact finding and return a contrary finding that assessee was not a tenant, and was not using premises for business purposes.

CIT vs Everready Industries Ltd [2018] 98 taxmann.com 90 (Calcutta) ITA NO. 789 OF 2004 dated August 09 2018

Section 32

1499. Where High Court upheld order passed by Tribunal allowing assessee's claim of depreciation on public roads treating same as building, SLP filed against said order was to be dismissed.
Where High Court upheld Tribunal's view that optical fibres used exclusively for computer configuration were part of computer system and thus eligible for higher rate of depreciation, SLP filed against said order was to be dismissed.

Pr. CIT v. GVK Jaipur Expressway Ltd. – [2018] 100 taxmann.com 96(SC)-SLP (Civil) Diary No.32340/2018-dated October 5, 2018.

1500. The Apex Court held that where in terms of collaboration agreement entered into with HMCL Japan, lump sum payment as well as royalty paid by assessee to HMCL for giving licence and technical assistance in order to manufacture and sale of automobiles were regarded as capital expenditure, assessee would be entitle to claim depreciation thereon.
Honda Siel Cars India Ltd. v. CIT- [2019]101 taxmann.com 222 (SC)-CA No.4918 of 2017- dated November 14, 2018

1501. Assessee-company had claimed depreciation on a car purchased by it in name of its director. Assessing Officer being of view that assessee-company was not legal owner of vehicle, declined to allow claim of depreciation raised by assessee. It was noted that though car was registered in name of director of assessee-company, payment towards purchase consideration for car was made by assessee. Further, car was reflected as an asset in 'block of assets' of assessee, which duly established that assessee was de facto owner of motor car. On the aforesaid fact the Tribunal held that assessee was entitled to claim of depreciation on aforesaid car.
Parsoli Corporation Ltd. v. Asst. CIT, 4(2), Mumbai- [2019] 101 taxmann.com 121 (Mumbai - Trib.)-ITA No(s). 149 & 150 (MUM.) of 2016-dated November 16, 2018

1502. The court upheld the Tribunal order wherein it was held that where assessee made payment to its partner to ward-off competition, rights acquired by assessee under said agreement would not only give enduring benefit, but protected assessee's business against competition and fell under expression 'or any other business or commercial rights of similar nature' used in Explanation 3 to section 32 (1)(ii) and, thus, assessee was eligible for depreciation.
Pr. CIT v. Ferromatic Milacron India (P.) Ltd. [2018]99 taxmann.com 154 (Guj.)- R/Tax Appeal No. 1233 Of 2018 dated October 9, 2018

1503. The Court held that where the assessee-company had made payments to his partner to ward-off competition and to protect its existing business since said rights acquired by the assessee would not only give enduring benefit, but also protected assessee's business competition, it could be covered under expression 'or any other business or commercial rights of similar nature' used in Explanation 3 to section 32(1)(ii) and, thus, the assessee was eligible for depreciation.
Principal CIT v. Ferromatic Milacron India (P.) Ltd. [2018] 99 taxmann.com 154 (Guj.) Special Leave Petition (Civil) Diary No. 34548 of 2018 dated October 26, 2018

1504. Assessee company had developed Second Vivekananda Bridge under Build, Operate and Transfer (BOT) basis and it obtained from National Highways Authority of India (NHAI), License to collect Tollway Charges in relation to said Bridge. Assessee claimed depreciation in respect of license to collect Tollway Charges by treating it as Intangible Asset. AO held that assessee was not owner of Infrastructure facility also did not hold any rights in project except recovery of toll fee to recoup the expenditure incurred, it could not therefore be treated as owner of property, either wholly or partly, for purposes of allowability of depreciation u/s. 32(1)(ii). CIT(A) upheld order of AO. The Tribunal held that, in case of Techno Shares and Stocks Ltd. v/s CIT, Supreme Court held that as membership card allowed a member to participate in trading session on floor of exchange, such membership was business or commercial right, hence, similar to license or franchise, therefore, it was an intangible asset. By virtue of Concession Agreement (CA), assessee had acquired right to operate toll road / bridge and collect toll charges in lieu of investment made by it in implementing project. Therefore, right to operate toll road / bridge and collect toll charges was business or commercial right as envisaged u/s. 32(1)(ii) r/w Explanation 3(b) of said provisions. Expenditure incurred by assessee for construction of road under BOT contract by the Government of India had given rise to intangible asset as defined under Explanation 3(b) r/w section 32(1)(ii). Assessee was eligible to claim depreciation on such asset at specified rate.
Second Vivekanand Bridge Tollway Co.Pvt.Ltd. vs. Dy.CIT-(2018) 53 CCH 0352 KolTrib. -ITA No.19/Kol/2017-dated Jul 11, 2018

1505. Assessee company was engaged in business of manufacturing drugs and pharmaceuticals. It was noticed by AO that assessee had claimed depreciation on block of assets viz. computer and software. AO doubted claim of assessee and issued a show cause notice asking as to why depreciation on software. AO restricted claim of depreciation. CIT(A) set aside AO's order. The Tribunal held that, in case of ACIT Vs. Zydus Infrastructure P.Ltd., it was held that, licenced software were also subjected to depreciation. Tribunal also observed that even if depreciation was lowered, then there would not be any change in taxable income of assessee, as assessee company was unit eligible for deduction u/s 10A of Act, and therefore, in either way, entire exercise would be revenue neutral and adjudication becomes merely an academic. Accordingly, it dismissed Revenue's appeal.
Dy.CIT vs. Zydus Hospita Oncology P.Ltd.-(2018) 53 CCH 0306 Ahd.Trib -ITA No.81/Ahd/2016-dated Jul.9,2018

1506. Assessee filed return of income after claiming additional depreciation on mining equipment.AO disallowed assessee's claim on ground that extraction of mining was not manufacturing activity.CIT(A) allowed additional depreciation by holding that assessee had mines in States of Jharkhand & Orissa and equipment on which assessee claimed depreciation help in extraction process conducted during process of extraction of iron ore and manganese ore. The Tribunal noted that CIT(A) placed reliance in case of Integrated Coal Mining Ltd. of Co-ordinate Bench of ITAT wherein, it was held that where assessee acquired various types of equipments and machineries to facilitate extraction of ores from mines which helped in extraction process.Machineries were used in production purpose and were entitled for additional depreciation u/s 32(1)(iia).No infirmity was found in order of CIT(A) and Revenue's ground was dismissed.
Asst. CIT vs. ORISSA MANGANESE & MINERALS LTD. (2018) 54 CCH 0399 KolTrib- ITA Nos.2150 to 2154/KOL/2017 dated 20.12.2018

1507. The Tribunal held that roads constructed by the assessee in factory premises forms part of building and thus, are entitled to claim depreciation @10% on land and site development expenditure.

Asst. CITvs. ORISSA MANGANESE & MINERALS LTD. (2018) 54 CCH 0399 KolTrib- ITA Nos.2150 to 2154/KOL/2017 dated 20.12.2018

1508. AO disallowed additional depreciation on electrical installation in nature of air circulator installed in assessee's factory. CIT(A) upheld order of AO. The Tribunal held there was nothing on record to show that electrical installation on which additional depreciation was claimed by assessee was air circulator which could be construed as plant and machinery. Accordingly, lower authorities were justified in denying claim of additional depreciation on said item.

Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018

1509. The Tribunal held that since UPS is integral part of computer, therefore it is eligible for epreciation @60%.

Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018

1510. The Supreme Court dismissed Revenue's SLP, arising from High Court's order wherein it was held that depreciation u/s 32 in respect of machinery to be allowed to assessee even if the same was used only for trial production. The High Court had concluded that, once plant commenced operations and a reasonable quantity of product was produced, business was set up even if product was sub-standard

and not marketable. Mere breakdown of machinery or technical snags that might have developed after trial run which had interrupted continuation of further production for a period of time could not be a ground to deprive assessee the benefit of depreciation claimed. Thus, depreciation was to be allowed even if machinery was used for trial production.

PCIT vs Larsen & Toubro- (2018) 98 taxmann.com 368 (SC)- SLP 32252 of 2018 dated 24.09.2018.

1511. AO rejected additional claim made by assessee for claiming depreciation on goodwill arising on demerger of A Energy Ltd from A Gas Ltd. on ground that same was not claimed through revised return of income but claimed during course of assessment proceedings. CIT(A) upheld said order The Tribunal held that, additional claim of such nature could be raised before appellate authorities despite not having included same in return of income. As corollary, claim of assessee on account of depreciation on goodwill was required to be allowed in accordance with law in parity with conclusion drawn in favour of assessee relevant to AY 2009-10 wherein depreciation for subsequent years had been granted after computing notional depreciation for earlier year.

DCIT vs Adani Gas Ltd- (2018) 54 CCH 0090 Ahd Trib- ITA No 775/Ahd/2014,2346, 2797/Ahd/2015, 2775,2776/Ahd/2016 dated 17.10.2018

1512. The assessee claimed depreciation in relation to assets purchased for its cardiac center out of the grants received which were covered under exemption u/s 35AC. The AO denied assesse's claim on the grounds that on such mentioned grants, the assessee could claim exemption u/s 35AC and the allowance of depreciation would result in double deduction. The Court upholding Tribunal's order held that the assessee had incurred expenditure by way of payment directly on eligible project or a scheme and would enjoy exemption in terms of section 35AC and this exemption, would not cast any shadow on the assessee claiming any depreciation under section 32 on an asset which is owned wholly or partly by the assessee and are for the purpose of business or profession at the specified rates. As these conditions were satisfied in the instant case the Court held that assessee was entitled to depreciation on assets which were purchased out of exempted income u/s 35AC

CIT(Exemption) vs Charutar Arogya Mandal-(2018) 98 taxmann.com 446 (Guj)-T/Tax Appeal No 1091 of 2018 dated 11.09.2018

1513. The Court held that where an assessee, running a hospital, claimed higher rate of depreciation on certain equipments, since said equipments were in nature of life saving equipments, the claim for depreciation was to be allowed even though equipments in question were not specifically listed in list of Life Saving Medical Equipments under new Appendix-I of Income-tax Rules, 1962.The CIT(A) had concurred with AO's view and disallowed the claim pointing out that assessee was not correct in stretching the claim for any item which were not expressely stated in the definition of life saving equipments. The Court upholding Tribunal's order observed that the Tribunal had after examining nature of equipment, purchase of equipment, various write-up on equipments, bills, vouchers, etc., and after having been satisfied that they all formed part of life saving equipments, granted relief, thus the order passed required no interference.

CIT Corporate Circle vs Vasantha Subramaniam Hospitals- (2018) 98 taxmann.com 292 (Mad)- TC no 885 of 2016 dated 04.09.2018

1514. The Assessee claimed depreciation in respect of texturised unit wich was disallowed by AO on grounds that unit had not shown any activity during year under consideration and thus assessee failed to fulfil conditions laid down in section 32(1). The Tribunal allowed depreciation by relying on CIT vs Oswal

Agro Mills Ltd (2012) 341 ITR 467 (Del) and held that provisions of section 32(1) were very clear in as much as once an asset was put to use, then whether same had been used in year under consideration or not was irrelevant for purpose of claiming depreciation and the expression used "for purpose of business" included user of assets in earlier years.

Eskay Knit (I) Ltd vs ACIT- (2018) 54 CCH 0049 Mum Trib- ITA No 6816/Mum/2011 dated 28.09.2018

1515. The Assessee claimed depreciation on life saving eqipments @ 40%. AO granted depreciation at the rate of 15% which was confirmed by the CIT(A). The Tribunal observed that list of live saving medical eqipments has been given in this Appendix on which depreciation at the rate of 40% was permissible. It held that where rate of depreciation has been provided on specific machinery, it is not to be granted on each and every machinery installed at the hospital and that the CIT(A) had rightly rejected the stand of the assessee as the machinery on which depreciation had been claimed by the assessee at 40% was not provided in the Appendix. Therefore, the Tribunal upheld that the depreciation on such machinery @ 15% has rightly been upheld by the AO/CIT(A).

Ram Krup Medicare P Ltd vs ITO- (2018) 54 CCH 0046 Ahd Trib- ITA No 3461/Ahd/2014 dated 27.09.2018

1516. Assessee claimed deprecation on certain electrical installation at 15% which was restricted by AO to 10% and CIT(A) upheld the disallowance. The Tribunal held that depreciation had been restricted at the rate of 10% by AO because assessee failed to demonstrate that electrical panel installed by it was part of machinery and he considered electrical installation as independent asset than medical equipments. Thus, as CIT(A) had considered all these aspects in right perspective no interference was called on this issue.

Ram Krup Medicare P Ltd vs ITO- (2018) 54 CCH 0046 Ahd Trib- ITA No 3461/Ahd/2014 dated

27.09.2018

1517. Assessee, a private limited company engaged in manufacturing of synthetic yarn, claimed expenditure under the head Repairs & Maintenance. The AO during assessment considered such expenditure to be capital in nature and merely allowed depreciation. The CIT(A) sustained disallowance to the extent of Rs.30,00,000 on grounds that most of expenditure were of revenue in nature except one incurred towards repair of DG sets considering the quantum of amount. The Tribunal held that from details of expenditure filed by assessee it was evident that such expenditure could not be treated as capital expenditure and books of accounts were found to be audited and secondly the assessee company had suffered huge losses year after year hence, there could not be any motive to debit capital expenditure in profit and loss account. Further, it held that repairs of road inside factory after period of ten years could not be treated as capital expenditure and considering quantum of expenditure incurred towards repairs to DG sets, it might be partially capital in nature, hence in interest of justice, sum of Rs.30 lacs was treated as capital expenditure and the file was remitted back to the AO to recalculate depreciation.

Ritspin Synthetics vs ACIT- (2018) 54 CCH 0024 Indore Trib- ITA 01,89/2016 dated 19.09.2018

1518. Assessee company was engaged in business of publishing of newspapers and satellite television broadcasting and had claimed depreciation on opening WDV of film software library @ 25% stating that same was an intangible asset. The AO had disallowed part of the claim on ground that, since assessee

was in business of satellite television and film, software library formed an important apparatus of its business and was within definition of 'plant and machinery and accordingly allowed depreciation @ 15% which was further upheld by CIT(A). The Tribunal observed that in assessee's own case for AY 2007-08, it was held that intangible asset could also be treated as plant provided it became integral part of tools used by entity to carry on its business.The Tribunal further held that Films and TV programmes were essential for assessee company to carry on its business of telecasting of films and other programmes, but there was no caveat that assessee company had to telecast only these films and programmes and none other for assessee's business. Further, not only films and programmes in 'Film Software Library', but assessee might also telecast any other programmes or films on its channels. Thus, by purchasing library, assessee was gaining exclusive right over asset but this library could not be held as tool for carrying on of its business as assessee could carry on its business even without 'Film Software Library' Thus, it failed functional test adopted by AO and the Tribunal concluded that asset was 'Intangible Asset' eligible for depreciation at rate of 25%.

Ushodaya Enterprises P Ltd vs DCIT- (2018) 53 CCH 0534 Hyd Trib- ITA No 1733, 1597/H/14 & 1578,1672/H/13 dated 07.09.2018

1519. The Assessee company claimed depreciation on lease of milk canes. The AO disallowed the claim treating the entire transaction of purchase and lease of assets as bogus and non genuine, which was further upheld by CIT(A). The Tribunal on appeal held that the assessee had claimed depreciation on such asets, hence it was incumbent upon assessee to prove with plausible evidence that it owned certain assets which had been leased and fetching rent. Further, it was observed that enquiry made by Revenue revealed that entity, from where such assets were purchased were not having capacity to manufacture and hence entire claim was found to be bogus. It was further established by Revenue that purchase consideration was routed back, hence, entire claim proved to be colourable device, thus the Tribunal dismissed assessee's appeal and upheld the disallowance of depreciation.

Premium Capital Market & Invstment Ltd vs ACIT- (2018) 54 CCH 0039 Indore Trib- ITA No 356/2012 & 390/2012 dated 25.09.2018

1520. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that where assessee had purchased a boiler from a company and leased it to that very same company and claimed 100 per cent depreciation on boiler, since rental income from lease transaction was subjected to tax and even after claiming depreciation in one year, assessee was subjecting itself to tax on income arising from that very transaction, transaction could not be said as dubious and, thus said depreciation was to be allowed

Pr.CIT v. Bombay Burmah Trading Corpn. Ltd. [2018] 256 Taxman 393(SC) - Special Leave Petition (Civil) Diary Nos. 18622 of 2018 dated July 3, 2018

1521. The Court held that where assessee, engaged in business of leasing, had purchased trucksfrommanufacturers and further leased out those trucks, it was entitled to claim depreciation in respect of trucks so leased out. It further held that it was undisputed that the assessee was a leasing company and income derived from leasing of vehicles was assessed as its business incomer. Since, the assessee satisfied requirement of section 32 that vehicle must be used for purpose of business, its claim for depreciation was to be allowed.

CIT v. Shriram Chits & Investments (P.) Ltd [2018] 257 Taxmann 395(Mad.)- Tax Case (Appeal) Nos.

1079 to 1082 & 1209 to 1211 of 2007 dated July 4, 2018

1522. The Tribunal upheld CIT(A)'s order disallowing assesse's claim of depreciation on acquisition of commercial rights of 'P' bank which had amalgamated with it, noting that the CIT(A) had rightly followed the Apex Court judgement the case of CIT v. Smifs Securities Ltd. [2012] 348 ITR 302 (SC). It was observed that in the said case, the claim of depreciation was allowed on goodwill which was the amount paid in excess to the net asset acquired. Whereas, in the instant case, the assessee had not paid any consideration for acquisition of P Bank and had only taken over accumulated losses. Further, it was observed that the assessee had not shown any amount towards towards goodwill / commercial rights in the depreciation schedule and thus had not acquired any goodwill / commercial rights.

Kanaka Mahalakshmi Cooperative Bank Ltd.vs ACIT [2018] 97 taxmann.com 638 (Vishakhapatnam Trib)- IT APPEAL NO. 298/VIZ/2017 dated August 05 2018

1523. The assessee-company had taken over all assets and liabilities of a partnerhip firm alongwith goodwill of the firm. The assesse claimed depreciation on goodwill. The AO opined that since the firm was succeeded by the company with all the partners becoming the shareholders, there was no transfer of goodwill in real sense and thus disallowed the depreciation claim. The Special Bench was constituted for considering the question as to whether depreciation was allowed on goodwill acquired by the assessee, citing contrary sets of decisions viz., one set allowing depreciation on goodwill and the other not allowing it. The Special Bench held that in principle depreciation is available on genuine goodwill. However, it remanded the matter back to the Division Bench to consider the AO's contentions that there was no transfer of goodwill in real sense and further the valuation of goodwill done by the assessee was erroneous

CLC & Sons (P.) Ltd. v ACIT - [2018] 95 taxmann.com 219 (Delhi - Trib.) (SB) – ITA No. 1976 (Del.) of 2006 dated July 19, 2018

1524. The Court held that dumper and Volvo were eligible for higher depreciation of 30% (available with respect to motor buses, motor lorries and motor taxis used in a business of running them on hire) since (i) the expression used namely motor buses, motor lorries and motor taxies is having wide amplitude and the term motor lorries used therein, would take in its sweep the said vehicles and (ii) though the said vehicles were used by the assessee for its own mining business, the vehicles in question were used for hire purposes.

Pr.CIT v Amar Singh Bhandari [2018] 97 taxmann.com 569 (Rajasthan) - D.B. IT APPEAL NO. 110 OF 2018 dated July 19, 2018

1525. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim u/s 32 of depreciation on asset, which was disallowed by the AO on ground that the assessee was not using the assets for which depreciation was claimed as the factory was closed. It observed that the Tribunal had allowed the claim noting that the assessee was in business but could not run factory during the year under consideration because of stay order granted by Court and thus it could not be said that the assessee stopped /closed the business.

Pr.CIT v Babul Products (P.) Ltd [2018] 96 taxmann.com 82 (Gujarat) - R/TAX APPEAL NO. 734 OF 2018 dated July 17, 2018

1526. The Tribunal allowed the assessee's claim that Uninterrupted Power Supply (UPS) is eligible for depreciation of 60% as it is part of computer relying on the co-ordinate bench decisions in the case of Dy. CIT v. International Flowers & Fragrances (I) (P.) Ltd. [2014] 66 SOT 261 (Chen) and Sundaram Asset Management Co. Ltd. v. Dy. CIT [2013] 145 ITD 17 (Chen) wherein, while rejecting the revenue's claim that UPS formed part of general plant & machinery block eligible for 15% depreciation, it was held that UPS forms an integral part of computer and thus eligible for depreciation @ 60%.

Cholamandalam MS General Insurance Co. Ltd. v. DCIT - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

1527. The assessee had claimed depreciation on the assets taken over as part of the merger of a company BMIL with effect from 1-4-1996. It was noted by the AO that before merger, BMIL had not claimed

depreciation for AY 1995-96 & 1996-97, and thus the assessee had not made adjustment of the WDV for depreciation allowable for the said years. However, the AO notionally computed depreciation on the said assets for AY 1995-96 & 1996-97 and reduced it from the WDV for computing depreciation for the year under appeal i.e. AY 2008-09. The Tribunal held that as per the provisions of section 32 applicable to the relevant assessment year, the assessee was free to either claim or not claim depreciation as per its own option and it is only after introduction of Explanation 5 to section 32 by Finance Act, 2001, with effect from 1-4-2002, the computation of depreciation became mandatory whether or not the assessee claims it. Thus, it held that the AO was not justified in notionally reducing the depreciation and accordingly allowed the assessee's appeal.

Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018

1528. The AO disallowed the assessee's claim for depreciation on trademark purchased on the ground that the trademark was not used by the assessee as the assessee did not carry on any manufacturing activities rather only purchased finished products in bulk and sold them in the convenient packaging. The Court noted that the assessee sold the purchased products with acquired trademark and the trademark was advertised for sale promotions of assessee's products. It thus held that the assessee was entitled to claim depreciation on trademark acquired by it and fact that assessee was not engaged in manufacturing activity would not make any difference.

CIT v Sinochem India Co. (P.) Ltd. - [2018] 97 taxmann.com 51 (Delhi) - ITA No. 768 of 2018 dated July 25, 2018

1529. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing depreciation @ 60% on on UPS and computer peripherals, where the AO had allowed depreciation @15%, being the rate for plant & machinery, relying on the decisions in the case of CIT vs. BSES Yamuna Power Ltd. (2010) TIOL 636 and CIT vs. Orient Ceramics & Industries Ltd. (2011) 56 DTR 0397 wherein depreciation on computer accessories and UPS was allowed at higher rate of 60%.

DCIT v INTERNATIONAL TRACTORS LTD. & ORS. - (2018) 67 ITR (Trib) 0538 (Delhi) – ITA Nos 5756/Del/2013 & 6239/Del/2013 (C.O. No.130/Del/2014 & 173/Del/2014) dated July 23, 2018

1530. The Tribunal held that once the asset had been taken in the block of assets and if any sale consideration for the asset was realized or credited into the fixed asset account, it was to be reduced from the block of assets and it could not be treated as a profit on sale of asset until and unless whole of the block did not exhaust, irrespective of the fact that the assessee had not paid any amount for acquiring the said asset.

ACIT vs. ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD. (2018) 53 CCH 0327 DelTrib – ITA Nos. 5660 & 5661/Del/2015 dated 12th July, 2018

1531. Where the AO disallowed assessee's claim of depreciation on motor car on ground that the car was still registered in the name of the entity from whom the car was purchased, the Tribunal dismissed Revenue's appeal holding that once AO admitted purchase of car and allowed depreciation claimed during preceding AYs, he had no right to interfere with genuineness of transaction in subsequent (relevant) AYs.

ACIT vs Crayons Advertising Ltd. and ANR [2018] 54 CCH 0421 (Del- Trib.)- ITA No.4872/Del/2015 dated 27.11.2018

1532. The Tribunal dismissed the assessee's appeal and upheld CIT(A)'s order holding that the assessee-company was not eligible to claim additional depreciation u/s 32(1)(iia) since it was not engaged in business of 'manufacture or production of article or thing' but was engaged in business of construction and fabrication of factories and cement plants, even though in process of construction and fabrication, it manufactured certain articles which were used in erection of certain factories.

Ayoki Fabricon Pvt Ltd vs Dy.CIT [2018] 54 CCH 0257 (Pune Trib) - ITA No.1723/Pun/2014, 11/Pun/2015 and 1608/Pun/2015 dated 20.11.2018

1533. The Tribunal allowed the assessee's claim for depreciation on cranes and crawlers bought in immediately preceding year which was disallowed by the AO on account of assessee's failure to produce any evidence, holding that if assessee's claim for depreciation was allowed in earlier year then the said claim of depreciation could not be disallowed in the subject year.

IB Commercial Pvt Ltd vs Dy.CIT [2018] 54 CCH 0192 (Mum Trib) - ITA No.3268 /Mum/2016 dated 09.11.2018

1534. Where the only reason for disallowance of depreciation was that the cars were registered in the name of directors of the assessee company, the Tribunal allowed assessee's claim for depreciation on such cars noting that the assessee company was the owner for all practical purposes as funds on purchase of vehicles were provided by the assessee and were been shown as assets of the assessee company.

IB Commercial Pvt Ltd vs Dy.CIT [2018] 54 CCH 0192 (Mum- Trib.)- ITA No.3268 /Mum/2016 dated 09.11.2018

1535. The Court dismissed the appeal filed by Revenue and allowed 50% of the balance additional depreciation u/s 32(1)(iia) in the succeeding AY where the asset was purchased and put to use for less than 180 days during the preceeding AY. It relied on the decisions in the case of CIT & Anr v Rittal India Pvt. Ltd (380 ITR 423), CIT v Shri T. P. Textiles Pvt. Ltd (394 ITR 483) wherein it was held that amendment made vide insertion of third proviso to section 32(1)(iia) w.e.f. April 1, 2016 (which allows claim in succeeding year), being clarificatory in nature, would apply to pending cases.

Principal Commissioner of Income Tax v Godrej Industries Limited - ITA No 511 of 2016

-[TS-683-HC-2018(BOM)] – dated 24.11.2018

1536. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing depreciation @ 25% to assessee on 'License to collect Toll' by holding it to be an intangible asset u/s 32(1)(ii). It upheld CIT(A)'s finding that the right was bestowed only for a specified period by the Govt. of Maharashtra under BOT (Built-Operate-Transfer) scheme and also that the assessee had raised loans by assigning this 'right' and thereby it had commercial value.

ACIT v Ashoka DSC Katni By-Pass Road Pvt. Ltd [TS-715-ITAT-2018(PUN)] – ITA No.212/PUN/2017 dated 11.12.2018

1537. The Court dismissed Revenue's appeal against Tribunal's order holding that unabsorbed depreciation pertaining to AY 1997-98 to AY 2001-02 was allowable to be carried forward and adjusted after the lapse of eight assessment years in view of section 32(2) as amended by the Finance Act, 2001, relying on the decision in the case of CIT v. Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom HC) decided against the Revenue on identical issue. It was noted that SLP filed by the Revenue against the said decision was also dismissed by the Apex Court [CIT v. Hindustan Unilever Ltd (2018) 99 taxmann.com 135 (SC)].

Pr.CIT v Ceat Ltd – ITA No. 670 of 2016 (Bom HC) dated 27.11.2018

1538. The Tribunal allowed Revenue's appeal against CIT(A)'s order and disallowed assessee's claim for depreciation on non-compete fees paid for acquiring a running business, holding that the same did not result in an eligible intangible asset to qualify for depreciation u/s 32(1)(ii). It relied on the decision in the case of Sharp Business Systems wherein it was held that non-compete fee is not an eligible intangible asset since non-compete right is not right "in rem" as well as not transferable. The Tribunal rejected the

reliance placed on SC ruling in Smif Securities Ltd, holding that the issue therein was not with respect to non-compete fees but “goodwill” and “Stock Exchange Membership Card”.

DCIT v EAC Industrial Ingredients India P. Ltd [TS-31-ITAT-2018(DEL)] - ITA No. 1801/Del/2011 dated 28.12.2018

1539. The Court dismissed Revenue’s appeal against Tribunal’s order holding that the assessee was eligible to allow carry forward and set-off of unabsorbed depreciation of AY 1999-00 and AY 2000-01 against the profits of AY 2009-10, though as per the provisions of Section 32(2) as they stood prior to the amendment by Finance Act, 2001 w.e.f. 01.04.2002, such unabsorbed depreciation was eligible for carry forward and set-off against business profits only for a further period of eight years, relying on decision in the case of CIT v Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom HC) on identical question of law. It held that there was no conflict between CIT vs. Hindustan Unilever Ltd (supra) & Miltons Pvt. Ltd [ITA No. No. 2301 of 2013 (Bom HC)] / Confidence Petroleum India Ltd. [ITA No. 582 of 2014 (Bom HC)] because while the former was at the stage of final hearing, the latter were at the stage of admission (i.e. Revenue’s appeal on similar question of law was admitted) and thus, the request for reference to a Larger Bench was not acceptable. The Court also held that merely filing of an SLP against the order in case of CIT vs. Hindustan Unilever Ltd (supra) would not make it bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance.

PCIT vs. Associated Cables Pvt. Ltd (Bombay High Court) - INCOME TAX APPEAL NO. 293 OF 2016 dated 03.08.2018

1540. The Tribunal held that cutting of the coil to the required size as per the specification of the customer did not amount to manufacturing activity and therefore held that the assessee was not entitled additional depreciation u/s 32(1)(iia) on new machinery purchases for this purpose.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. JSW STEEL PROCESSING CENTRES LTD. & ANR - (2018) 52 CCH 0167 BangTrib - ITA No. 1978/Bang/2017, 2001/Bang/2017 dated Mar 7, 2018

1541. Noting that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which benefit could not be claimed, the Court held that once the unabsorbed depreciation from the assessment year 2001-02 and before got carried forward to the assessment year 2002-03 and became part thereof, it came to be governed by the amended provisions of section 32(2) and were available for carry forward and set off against the profits and gains of subsequent years, without any limit whatsoever.
Pr.CIT v British Motor Car Co. (1934) Ltd. – (2018) 400 ITR 569 (Del HC) – ITA No. 1031 of 2017 dated 09.01.2018

1542. Court allowed assessee’s claim for depreciation u/s 32 on amount paid to Tamil Nadu Electricity Board towards infrastructure development charges for establishing windmill since the said amount was spent on developing infrastructure of Wind Turbine Generators which is eligible for depreciation, rejecting AO’s treatment of the said amount as cost of developing land. The Court held that the excavation of land to install wind turbine generators did not amount to improving or developing land, rather it amounted to a preparatory step for erecting wind turbines and, therefore, land excavation must be taken as part of infrastructure development for establishing windmills eligible for depreciation u/s 32
Muthoot Finance Ltd. v JCIT – (2018) 90 taxmann.com 69 (Ker) – ITA No. 27 of 2015 (Ker) dated 11.01.2018

1543. The Tribunal dismissed Revenue’s appeal against the CIT(A)’s order allowing assessee’s claim for carry forward and set-off of unabsorbed depreciation pertaining to AY 1996-97 to AY 2001-02 against the income for the current year i.e. AY 2011-12, where the assessee had contended that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which the benefit could not be claimed. It held that the issue stood covered by the Tribunal’s order in assessee's own case for AY 2009-10 decided in assessee's favour placing reliance on the decision in the case of General Motors India P. Ltd. Vs. DCIT [354 ITR

244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001, which was further fortified by CBDT circular No.14 of 2001, noting that the revenue could not place on record any contrary judgment to controvert the same.
ACIT & ORS v INDUSIND MEDIA & COMMUNICATION LTD. & ANR. – (2018) 52 CCH 46 (Mum) – ITA No. 772/Mum/2016, 1167/Mum/2016 dated 17.01.2018

1544. The Court disallowed assessee's claim for depreciation u/s 32 for plant and machinery for AY 1992-93, noting that the actual business of assessee commenced only in April, 1992 and therefore, its plant and machinery was not put to use during assessment year under consideration.
CIT v Malayala Manorama Co. Ltd. – (2018) 91 taxmann.com 14 (Ker) – ITA No. 1596 of 2009 dated 01.02.2018

1545. Where the assessee, engaged in the business of providing film projection services to the theatres, claimed depreciation on film projector at a higher rate treating it as 'computer', the Tribunal held that though some elements of computer functions were necessarily involved, the projector could not be said to be a machine whose principal output/object/function was achieved only through computer function and, accordingly, upheld the order of CIT(A) considering the film projector as plant & machinery entitled for depreciation @15% and not a computer entitled for depreciation @60%.
Cinetech Entertainment India (P.) Ltd. v ITO – (2018) 169 ITD 218 (Mum) – ITA No. 4971 (Mum.) of 2017 dated 05.02.2018

1546. The Tribunal held that the deduction with respect to motor car expenses and depreciation on motor car was allowable where the the assessee has used motor car for the purpose of business even though the car was in the name of director. However, since the assessee failed to furnish log book to prove the use of vehicle for the purpose of business, the matter was remanded to AO for verification
Bharat Tiles & Marble (P.) Ltd. v DCIT – (2018) 92 taxmann.com 7 (Mum) – ITA No. 438 (Mum.) of 2015 dated 14.02.2018

1547. The AO disallowed assessee's claim for deduction of depreciation on windmills (pertaining to business eligible for deduction u/s 80-IA) against the gross total income (which included income from construction business) on the ground that the profit and gains of each business would be computed separately and deductions provided u/s 30 to 43D would be allowed before consolidating profit or loss of intra-sources of income. The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction, holding that even though income from each source of business had to be computed separately after allowing all expenses including depreciation, yet for purpose of determination of total income from business or profession, unabsorbed depreciation of one source of business could be set off against income of another source of business within same financial year.
Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018

1548. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee-charitable trust, running a hospital, deduction claimed (under the nomenclature 'additional depreciation') with respect to write-off of the written down value of hospital equipments in the books of accounts which the assessee could neither sell as scrap nor it could use them, relying on the ratio laid down in the case of Institute of Banking Personnel Selection (IBPS) v. CIT (2003) 264 ITR 110 (Bom) wherein it was held that the income of Trust has to be computed on commercial principles, rejecting the revenue's argument that there is no provision in the Act to allow such additional depreciation. It held that the CIT(A) as well as the Tribunal had after placing reliance upon Institute of Personnel Banking Selection (IBPS) (supra) had implicitly upheld the application of the principle laid down in section 32(1)(iii) which provides that where a plant and machinery is discarded/destroyed in previous year, the amount of money received on sale as such or as scrap or any insurance amount received to extent it falls short of written down value is allowable as depreciation, provided same is written off in books of account. With respect to Revenue's objection against the nomenclature 'additional depreciation', the Court held that nomenclature cannot decide a claim. Further, it held that in any case, the impugned amount could also

be allowed as an expenses u/s 37 as it was an expenditure incurred wholly and exclusively for carrying out its activity as a hospital (on application of commercial principles).
CIT(E) v Bhatia General Hospital – (2018) 91 taxmann.com 361 (Bom) – ITA No. 846 of 2015 dated 26.02.2018

1549. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for carry forward and set-off of unabsorbed depreciation pertaining to prior to 01.04.1997 against the income for AY 2004-05 to 2007-08, relying on the Tribunal's order in assessee's own case for AY 2008-09 decided in assessee's favour placing reliance on the decision in the case of General Motors India P. Ltd. Vs. DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001, which was further fortified by CBDT circular No.14 of 2001.
DCIT v PEERLESS HOSPITEX HOSPITAL & RESEARCH CENTRE LTD. – (2018) 52 CCH 33 (Kol Trib) – ITA Nos. 1263 to 1266/Kol/2015 dated 12.01.2018

1550. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing depreciation on unused machinery, noting that it was not case of the Revenue that the assessee ceased to carry on its business permanently but it was only case of temporary lull in business against which machineries were not put to use and the law laid down by several decisions clearly permited the allowance of depreciation when the machineries were kept for ready to use. It held that on introduction of concept of block assets the provisions of section 32 by the Tax Laws (Amendment) Act, 1986, which came into force w.e.f. 1-4-1980, the concept of usage of asset(s) for the purpose of claiming of depreciation had become redundant.
DCIT v PRS METALIKS LTD – (2018) 52 CCH 24 (Kol Trib) – ITA No. 450/Kol/2016 dated 10.01.2018

1551. The Tribunal held that the assessee was eligible to claim depreciation @ 60 percent on ATMs and other related accessories as it was a computer telecommunication device. Vis-à-vis UPS, the Tribunal noted that though UPS could independently function without assistance or integration with computer and was alternate mode of supply of power and did not depend on any assistance from computer, the computers could only work on power supply and when there was no power supply, it was connected to UPS so that it could work uninterruptedly and without losing unsaved data when power goes off. Accordingly, it held that UPS could be considered as computer if it was connected to ATM Machine or Computer and depreciation thereon was allowable at 60%. Accordingly, it directed the AO to verify if UPS were used for functioning of ATM and allow depreciation accordingly.
ADARSH COOPERATIVE URBAN BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - ITA No. 1336/Hyd/2015 - (2018) 52 CCH 0246 HydTrib dated ITA No. 1336/Hyd/2015

1552. The Tribunal dismissed the assessee's claim of depreciation on leasehold rights and relying on the co-ordinate bench decision in Dabur India ltd. vs ACIT, 159 TTJ 563 (Mumbai) held that tenancy rights could not be construed as intangible assets falling within meaning Explanation to section 32(1) and, therefore, there was no question of allowing depreciation on said rights**.**
MAHANADI COALFIELDS LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0204 CuttackTrib - ITA No.421/CTK/2013 dated Mar 20, 2018

1553. Where the assessee had claimed additional depreciation u/s 32(1)(iia) with respect to assets purchased and put to use in earlier years, Tribunal held that the said additional depreciation on cost of new plant and machinery was allowable only once in the year in which machinery or plant was acquired and installed and this view was also clear by the insertion of third proviso in section 32. As regards, the sales tax incentive under 'New Package Scheme of Incentive 1992' received by assessee which was considered as capital receipt by AO, Tribunal held that the same was not required to be reduced from cost of asset as per Explanation 10 to section 43(1) for purpose of computing depreciation.
Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018

1554. The Tribunal allowed depreciation u/s 32 with respect to assets of a sick company which was amalgamated with assessee-company by order of BIFR, irrespective of the fact that in pre-amalgamation assessment, depreciation had been denied to erstwhile sick company on account of non-user of assets. It held that the assets of sick-company after amalgamation became assets of assessee-company by operation of law and it fell into 'Block of assets' of assessee-company and, therefore though such assets, were non-functional, yet they could not be segregated and depreciation had to be allowed in respect of same

Hindustan Engineering & Industries Ltd. v DCIT – (2018) 90 taxmann.com 230 (Kol Trib) - ITA Nos. 146 to 152 (Kol) of 2017 dated 24.01.2018

1555. The Tribunal upheld the order of the CIT(A) passed in the second round of proceedings wherein the CIT(A) held that the payment of fee for acquiring management rights of a drill ship made by the assessee to its Singapore based group concern was a capital payment eligible for depreciation. It dismissed the Departments contention that the payment was not a genuine transaction and observed that in the first round of proceedings the Tribunal had considered the same allegation and accepted the transaction to be genuine and had remitted the matter to the CIT(A) to determine whether the transaction was a revenue or capital expenditure. Accordingly, it held that there was no merit in raising the same allegation once again.

ADDITIONAL DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. DOLPHIN DRILLING LTD. - (2018) 52 CCH 0193 DelTrib - ITA No. 197/Del/2013 dated Mar 20, 2018

1556. The assessee made payment to P of non-compete fees as per the non-competition agreement and claimed depreciation by treating the same as intangible asset. The AO disallowed the claim on the ground that though non-compete fee was a capital expenditure, it neither facilitated conduct of business nor fell within the ambit of any of intangible assets or business. The CIT(A) deleted the disallowance relying on various decisions including CIT v. Ingersoll Rand International Ind. Ltd. [227 Taxman 176 (Kar)] wherein it was held that non-compete fee was an intangible asset entitled for depreciation. The Tribunal held the non-compete fee paid by the assessee to be a capital expenditure in nature of an intangible right with respect to which depreciable is allowable u/s 32(1)(ii). Accordingly, it dismissed Revenue's appeal.

Ferromatic Milacron India Pvt. Ltd. v DCIT (2018) 52 CCH 0553 AhdTrib - ITA Nos. 2451 & 2616/Ahd/2015 dated 19.04.2018

1557. The Tribunal allowed assessee's claim for depreciation on helicopter @ 40% which was restricted by the AO to 15%. The AO held that even though helicopter is an aircraft, it is not specifically mentioned in Appendix I of the IT Rules, 1962 under the head III 'Plant and Machinery' at clause 3(i) providing for depreciation @ 40% for 'Aeroplane - Aero engine' and was thus eligible for depreciation @ 15% as allowable to Plant in general as defined in section 43(3). The Tribunal relied to the decision of CIT Vs. Kirloskar Oil Engines (230 ITR 88) (Bom) wherein it was held that "aircraft" inter alia includes helicopters and thus held that the assessee was entitled for depreciation @ 40% on the written down value of its helicopters.

RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015dated Apr 10, 2018

1558. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for additional depreciation on electrical installation consisting of electrical wires, switches, plugs, cables, MCB box and electrical items, holding that theycannot function independently and rather are part of 'Plant & Machinery', relying on the coordinate bench decision in the assessee's own case wherein the said issue was decided in favour of the assessee.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. 20 MICRONS LTD. & ANR. - (2018) 52 CCH 0443 AhdTrib - ITA No. 1046/Ahd/2014, 1216/Ahd/2014dated Apr 11, 2018

1559. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for depreciation on certain additional amount paid under Asset Purchase Agreement which inter alia contained clause that stated that the sellers would not engage in any activity which was in competition

with the assessee's business. The said amount paid was claimed by the assesse to be goodwill whereas the AO considered the same to be towards non-compete fees. The Tribunal relied on the decision in the case of CIT Vs. M/s. Ingersoll Rand International Ind. Ltd. [227 taxmann.com 176 (Kar)] wherein it was held that on payment of non-compete fees, payer acquired a bundle of rights and these rights are business rights, eligible for depreciation u/s 32.
DEPUTY COMMISSIONER OF INCOME TAX vs. SANGEETHA MOBILES PVT. LTD. - (2018) 53 CCH 0176 (BangTrib) - ITA No. 715/Bang/2017dated June 15, 2018

1560. The Court dismissed Revenue's appeal against the Tribunal's order upholding CIT(A)'s order allowing the assessee's claim for additional depreciation with respect to machineries used by the assessee in the activity of crimping of yarn. The Revenue contended that the said activity was an intermediate process of treating yarn and did not fall within the purview of manufacturing activity. The Court followed the decision in the case of CIT v. Emptee Poly Yarn (P.) Ltd. [2008] 305 ITR 309 (Bom.) wherein in the context of deduction u/s 80IA, it was held that the activity of texturizing and twisting of yarn amounted to manufacturing of article or thing distinct from the original and thus the said activity was a manufacturing activity.
CIT v Shri Mahavir Crimpers - [2018] 95 taxmann.com 323 (Gujarat) - R/TAX APPEAL NO. 547 OF 2018dated June 13, 2018

1561. The assessee claimed depreciation on 'Electrical fittings' @ 15% applicable to 'Plant & Machinery'. The AO rejected the said claim and observed that the correct rate of depreciation was 10% as it fell under classification of "furniture & fittings". CIT(A) upheld AO's order. The Tribunal upheld the orders of CIT(A) and AO noting that the assessee had not shown before the lower authorities how the rate of 15% could be applied and how electrical fittings would fall in the classification of 'Plant and Machineries' to qualify as deduction at the higher rate of depreciation. Accordingly, it dismissed the assessee's ground of appeal.
Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

1562. The Court upheld the Tribunal's order holding that where assessee was awarded contract for providing specialised equipments for mining and transportation of excavated minerals on hire, its claim for higher rate of depreciation in respect of those equipments was to be allowed.
PCIT v Durga Construction Co. [2018] 93 taxmann.com 436 (Gujarat) – TAX APPEAL NOS 414 AND 425 OF 2018 dated 01.05.2018

1563. Where the assessee withheld TDS in respect of management and license fees @ 20% instead of 20.6% (TDS 20% plus Surcharge 3% on TDS) and the CIT(A) confirmed the action of the AO in making disallowance under Section 40(a)(ia) of a proportionate sum to the extent of such short deduction, Tribunal relied on the decision of the Kolkata Tribunal in SK Tekriwal (48 SOT 515) (affirmed by Kolkata High Court) and held that disallowance under Section 40(a)(ia) cannot be made for short deduction of taxes.
Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018

1564. Where the CIT(A) directed the AO to estimate income at the rate of 12.5% and allow depreciation thereon, the Revenue argued that having estimated income, no expenditure was required to be allowed, relying on the ruling of the *Andhra Pradesh High Court in the case of Ramachandra Reddy, [2014] 50 taxmann.com 129*, the Tribunal held that depreciation and interest, which were otherwise deductible in the ordinary course of assessment, retain same legal character, even where profit of assessee was determined on percentage basis. Accordingly, Tribunal confirmed the ruling of the CIT(A) wherein the AO was directed to grant deduction for depreciation out of gross income estimated.
SVC PROJECTS PVT. LTD. & ANR. vs. ACIT& ANR. (VISHAKAPATNAM TRIBUNAL) (ITA No. 169-175/Viz/2013, 183-189/Viz/2013) dated May 23, 2018(53 CCH 0075)

1565. The assessee purchased two wind turbines in the current year but paid only part of the consideration during the year. The AO disallowed the claim of depreciation on the same by holding that no power was

generated during the year and that the assessee was not the owner of such turbines as full value of consideration was not paid. Setting aside the order of the AO and CIT(A), the Tribunal observed that the assessee had possession of the asset and the same was put to use in the year under consideration. Thus, Tribunal held that there was no such requirement under Section 32 that full consideration should have been paid for purpose of claiming depreciation and hence the assessee's claim was allowed.
Paradise Merchants Pvt. Ltd. vs. ITO – [2018] 53 CCH 0010 (Delhi Tribunal) – ITA No 4992/Del/2014 dated May 3, 2018

1566. TheAssessee was proprietor of several businesses and in case of one of its business concerns business activity was temporarily suspended. However opening and closing stock as well as debtors and creditors continued to be in business. The AO disallowed administrative expenditure and depreciation. The CIT(A) allowed administrative expenditure but disallowed depreciation expenses. On appeal filed against the CIT(A)'s order sustaining disallowance w.r.t. depreciation, the Tribunal held that when particular asset was added into particular block of assets irrespective of fact that individual item in said block remains, the unutilized depreciation in block of asset had to be granted. Thus, Tribunal set aside order passed by CIT(A) and allowed the assessee's appeal.
SANJAY SHANKARRAO JADHAO vs. JCIT (NAGPUR TRIBUNAL) (ITA No.66/Nag./2017) dated May 8, 2018 (53 CCH 0153)

1567. The claim of the assessee in regard to the depreciation on air pollution control equipment u/s 32 was remanded by the Court to the AO on the ground that the transaction done by assessee lacked bona fide as dates and events were not clear and the user of machinery between period 22-7-1994 and 22-9-1995 had not been verified by Assessing Officer.
Sterling Holiday Financial Services Ltd. v. ACIT - [2018] 93 taxmann.com 60 (Madras) - TAX CASE (APPEAL) NO. 564 OF 2008 dated APRIL 3, 2018

1568. The assessee filed its return claiming depreciation @ of 60 percent on printers which was denied by the AO on the ground that these printers were not normal printers but were high value printers used for printing banners and advertisements and could not perform any other function performed by a normal computer. The AO held that the depreciation rate for the same would be 25 percent. The CIT (A) allowed the appeal of the assessee based on the finding that the printer could not be used without the computer and was a part of the computer system which was further upheld by the Tribunal. The Court on appeal by the Revenue stated that the machines could be referred to as computer-printers as a lot of independent functions performed by the computers was done by these printers and could be regarded as an integral part of the computer system and thereby dismissed the appeal of the Revenue.
CIT v. Cactus Imaging India (P.) Ltd. - [2018] 93 taxmann.com 396 (Madras) - T.C. (APPEAL) NOS. 921 & 922 OF 2008 dated APRIL 16, 2018

Section 32A

1569. The AO had disallowed the assessee's claim for investment allowance u/s 32A in respect of weighing machines, electrical appliances and computers on the grounds that these items were not directly engaged in production and that blending of tea or coffee did not amount to manufacture or production of an article or thing. The Court allowed the assessee's said claim holding that blending of tea and coffee amounts to manufacture or production of an article or thing. It also held that as per provisions of section 32A weighing machines, electrical equipments and other machineries, though not directly used in the production/manufacture of the finished goods, were accessories which were integral to the business and without which it could not be possible **to achieve** effective production/manufacture of the final products.
Brooke Bond India Ltd. v CIT - [2018] 95 taxmann.com 189 (Calcutta) - IT REFERENCE NO. 8 OF 2000dated June 18, 2018

Section 33AB

1570. The Tribunal deleted deemed income addition under Sec.33AB(7) in the case of the assessee-company engaged in tea business and held that since the assessee had actually utilized the withdrawn amounts for intended purposes with a slight delay which got spread over next accounting year, the entire spirit of

the requirements of the section 33AB(7) of the Act had been fulfilled by the assessee and accordingly the AO was not justified in making the addition. It noted that the unutilized portion was duly utilized before filing return u/s 139(1) and therefore held that the unutilized portion had been duly utilized within a reasonable period after the end of the previous year.
Stewart Holl (India) Limited [TS-77-ITAT-2018(Kol)] - I.T.A No. 2331/Kol/2016 dated 19.02.2018

Section 35

1571. The Supreme Court dismissed Revenue's SLP in case of an assessee which had in house research and development centres and had claimed weighted deduction u/s 35(2AB) which was disallowed by the AO to the extent of 50%. The Tribunal had remanded the matter back to AO to verify the nature of expenditure being capital or revenue. The Apex court dismissed Revenue's petition relying on the High court order of the asseessee which had set aside Tribunal's order and had held that both revenue and capital expenditure were allowable as deduction in entirety u/s 35(2AB) and there was no cause of action to remand the matter back to the AO.

CIT vs Eicher Motors Ltd- (2018) 98 taxmann.com 412(SC)- SLP No 29548 of 2018 dated 20.09.2018

1572. The Tribunal held that where research institution was enjoying approval as per section 35(1)(ii) on date of receipt of donation, on retrospective cancellation of approval, donor's claim of deduction could not be denied. Since research institution was enjoying approval within meaning of section 35(1)(ii) as on date of receipt of donation from the assessee company, on retrospective cancellation of approval of concerned institution, weighted deduction claimed by the assessee in respect of donation could not be denied.

P.R. Rolling Mills (P.) Ltd v Dy. CIT [2018] 96 taxmann.com 185/171 ITD 683 (Jp.– Trib.) -ITA No. 529 (JP.) of 2018 [Assessment Year 2014-15] dated July 5, 2018

1573. The Tribunal held that assessee was not eligible to claim expenditure u/s 35DD (1/5th of cost of acquisition a cooperative bank which had amalgamated with it) in view of the fact that the assessee was a cooperative bank registered under the Cooperative Societies Act and not an Indian company registered under Companies Act, 1956, as required by the said section.

Kanaka Mahalakshmi Cooperative Bank Ltd.vs ACIT [2018] 97 taxmann.com 638 (Vishakhapatnam Trib)- IT APPEAL NO. 298/VIZ/2017 dated August 05 2018

1574. The Tribunal remitted the matter back to the AO for giving an opportunity to furnish approval from competent authority in Form No. 3CM which is mandatory for claiming 150% weighted deduction u/s 35(2AB), noting that though the R&D facility of the assessee was approved by the competent authority, i.e., Department of Scientific and Industrial Research (DSIR), the application made for seeking approval in Form No. 3CM was still pending.
Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018

1575. The Tribunal allowed assessee' appeal against CIT(A)'s order where though the CIT(A) had given a catergorical finding that the revenue expenditure claimed u/s 35(1)(iv) was incurred in connection with R&D work carried out by assessee (and not linked to its agricultural operations, as claimed by the AO), he apportioned the aforesaid expenditure on basis of turnover from commercial activity as well as from agricultural activity (in the ratio of 89:11). It was noted that (i) CIT(A) had completely ignored the fact that separate details were maintained by the assessee including quantitative details of goods produced

under both the activities and (ii) no major abnormality in the percentage of expenditure of the total agricultural proceeds was shown. Accordingly, the Tribunal allowed assessee's claim for deduction u/s 35(1)(iv).

Krishidhan Seeds Pvt Ltd v DCIT [2018] 54 CCH 0280 (Indore Trib) - ITA No.37/Ind/2013, 84/Ind/2013, 231/Ind/2013 and 315/Ind/2013 dated 30.11.2018

1576. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for weighted deduction of 175% u/s 35(1)(ii) for donation given to HHBHRF during AY 2013-14, rejecting AO's reliance placed on Notification No.79/2016 & 82/2016 retrospectively cancelling the registration / approval granted to HHBHRF for the purpose of said section. It held that since HHBHRF was enjoying the approval within the meaning of section 35(1)(ii) as on the date of receipt of donation, retrospective cancellation of such approval could not lead to denial of claim in respect of donation.

DCIT v Desmet Reagent Pvt. Ltd - TS-605-ITAT-2018(Kol) - ITA No. 15/Kol/2017 dated 10.10.2018

1577. The Tribunal held that the AO was not justified in denying the assessee weighted deduction under Section 35(1)(ii) for scientific research donation made by it on the grounds that the registration of the payee to whom donation was made was withdrawn. It held that the withdrawal of recognition u/s 35(1)(ii) in hands of payee organizations would not affect rights and interests of assessee for claim of weighted deduction u/s 35(1)(ii).
DEPUTY COMMISSIONER OF INCOME TAX vs. MACO CORPORATION (INDIA) PVT. LTD - (2018) 52 CCH 0227 KolTrib - ITA No. 16/Kol/2017 dated Mar 14, 2018

1578. The AO had restricted the assessee's claim for weighted deduction u/s 35(2AB) towards R & D expenditure incurred with respect to R&D facility approved by the Department of Scientific and Industrial Research (DSIR) to the amount mentioned in the report of DSIR. The assessee contended that there was no mention in section 35(2AB), as there was in section 35(2B), that the deduction to be allowed thereunder was to be restricted to the amount prescribed by the prescribed authority for exemption and, thus, for allowing exemption u/s 35(2AB), the AO could not depend or follow blindly the amount mentioned by the prescribed authority which was only in respect of approved facilities but had to apply his mind and come to a conclusion on the question of expenditure incurred on scientific research. Relying on the decision in the case of CIT v Biocon Limited (2015) 375 ITR 306 (Kar) wherein it was held that the assessee should develop facility by incurring expenditure for scientific research and would be entitled for weighted deduction u/s 35(2AB) in respect of all expenditure so incurred, the Tribunal remanded the matter to the AO since he had not rendered any finding with regard to expenses incurred and claimed by assessee for deduction u/s 35(2A) which were not allowed by him.
METAHELIX LIFE SCIENCES LIMITED v DCIT – (2018) 52 CCH 47 (Bang) – ITA Nos. 1260 & 1261/Bang/2017 dated 17.01.2018

1579. The Tribunal held that the assessee was entitled to deduction u/s. 35(2AB) on the R&D expenses incurred by it even though registration/recognition was accorded by DSIR in subsequent assessment year.
DEPUTY COMMISSIONER OF INCOME TAX vs. DEVARSONS INDUSTRIES PVT. LTD. - (2018) 52 CCH 0269 AhdTrib - ITA No. 1130/Ahd/2015 dated Mar 28, 2018

1580. The Petitioner trust had taken approval from National Committee in order to get maximum donations for purpose of constructing a new hospital, whereby donors would be qualified to claim deduction under section 35AC. In the meantime, sub-section (7) was inserted in section 35AC with effect from 1-4-2017 providing that no deduction under said section would be allowed in respect of any assessment year commencing on or after 1-4-2018. As a result of the amendment, no donors were coming forward to donate amount which was required for construction of specified hospital and therefore the Petitioner filed a petition challenging vires of section 35AC(7) contending that said amendment would have an adverse effect on projects pending as on 1-4-2017. Before the Apex Court, the Petitioner undertook to pay the amount of tax which the donors would be entitled for exemption along with applicable interest, if the petition filed by it failed. In light of the undertaking, the Apex Court observed that the donors who wanted to donate some money to the petitioner for construction of the specified hospital by the

petitioner may claim exemption under Section 35AC of the Income Tax Act. It listed the matter for final disposal in April.
Prashanti Medical Services & Research Foundation v UOI - [2018] 92 taxmann.com 71 (SC) - SPECIAL LEAVE TO APPEAL (C) NOS. 34287/2017† dated MARCH 9, 2018

1581. The Tribunal allowed assessee's claim for weighted deduction u/s 35(1)(ii) on account of donation made to a research society approved under the said section. The AO had denied the said deduction holding that donations were bogus in nature. The Tribunal held that though the survey proceedings conducted in the hands of certain donors had revealed that the donations were bogus in nature, no such finding was given in the hands of the assesse and thus the genuineness of payment of donations could not be doubted in the instant case, particularly in the absence of any material to support the view taken by the AO. Further, the Tribunal held that the reliance placed by the CIT(A) (to uphold the AO's order) on the fact that the registration granted to the said research society u/s 12AA was cancelled was unjustified since the registration granted u/s 12AA and the approval granted u/s 35(1)(ii) operate in different fields. Moreover, it held that even if the approval was cancelled subsequently with retrospective effect, various case laws lay down the ratio that the weighted deduction claimed by the assessee u/s 35(1)(ii) could not be denied, if there was valid and subsisting approval when the donation was given.
VORA FINANCIAL SERVICES P. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0289 (Mum) - ITA No. 532/Mum/2018 dated June 29, 2018

1582. The Court upheld the Tribunal's order allowing the assessee's claim for deduction u/s 35 with respect expenditure incurred of capital nature on scientific research, which was disallowed by the AO without obtaining report of the prescribed authority (which was a pre-requisite for such disallowance), though the AO had kept the actual demand in abeyance. It was noted from record that though over 10 years had passed since completion of assessment and filing of return, the said report of prescribed authority was not yet available and it was not even clear as to whether Revenue had sought any such report. It thus upheld the Tribunal deleting the demand raised on account of the said disallowance holding that uncertainty arising out of non-availability of report could not continue forever.
Pr.CIT v Investment & Precision Casting Ltd. - [2018] 94 taxmann.com 395 (Gujarat) - R/TAX APPEAL NOS. 168 & 169 OF 2018 dated April 23, 2018

1583. The Tribunal held that if recognition to facility given by prescribed authority which is mandate of section 35(2AB) is maintained, assesse has to be accorded deduction under section 35(2AB) and non-receipt of Form No. 3CM is at best a procedural lapse and is not fatal for denial of claim of deduction under section 35(2AB).
Minilec India (P.) Ltd. ACIT [2018] 93 taxmann.com 213 (Pune – Trib.) – IT APPEAL NO. 690 (PUN.) OF 2015 dated 09.04.2018

Section 35A

1584. The Tribunal allowed assessee's claim for deduction u/s 35A being $1/14^{th}$ of the amount paid towards purchase of trade mark, relying on the HC ruling for an earlier year in the case of the company (erstwhile company) which had originally purchased the said trademark and was subsequently merged with the assessee. The AO had disallowed the assessee's claim on the reasoning that section 35A provides for amortization for patents and copy rights only and not for trade mark. In the case of the erstwhile company, the Court had allowed the said company's claim for deduction u/s 35A holding that the patent right cannot be identified in a pharmaceutical field without its own name trademark, meaning thereby the trademark and patent right move together and if trademark is purchased, the patent right with respect to that particular trademark is also passed on to the buyer in the transactions in the pharmaceutical fields. The Court had also held that even if the assessee's claim of deduction u/s 35A was not allowable, still the deduction claimed had to be allowed u/s 37.
Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018

Section 35AB

1585. Assessee, was manufacture of turbochargers.AO curtailed claim of assessee for weighted deduction on R & D expenditure citing reason that DSIR approval was only for lower sum.CIT(A) upheld order of AO. The Tribunal held that, expenditure incurred for purpose of scientific research is required to be allowed as deduction u/s. 35(AB) subject to complying conditions laid down in Rule 6. Expenditure was incurred by assessee which was certified by tax audit report. There was no dispute regarding actual amount incurred by assessee. There was no dispute regarding genuineness of expenditure. Therefore, assessee was entitled for weighted average deduction on amount actually spent.

Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018

1586. The assessee-company discharged its liability towards MBAG, the supplier of technical knowhow for manufacture of passanger cars in India, by allotting its own shares to the supplier's group company (DBAG). The AO did not accept the said manner of payment and was of the view that the said allotment of shares did not amount to expenditure at all so as to become eligible for deduction u/s 35AB (allowing deduction of lumpsum payment for acquiring know-how). The Tribunal also rejected assessee's claim for deduction under the said section on the ground that a) the liability was not discharged by way of payment of actual money to MBAG b) shares were allotted to the supplier's group company, DBAG, and not to the supplier itself c) there was no facts / information to show whether there was any squaring off of liability between DBAG and MBAG.

Daimler Chrysler India (P.) Ltd. vs Dy. CIT [2018] 98 taxmann.com 53 (Pune - Trib.)- IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018

1587. The Tribunal allowed assessee's claim for deduction u/s 35AB for AY 1999-00 with respect to amount paid for acquiring marketing know-how amortised over 5 years, following Tribunal's order in the assessee's own case for AY 1998-99. In AY 1998-99, the Tribunal had allowed the assessee's claim for amortization relying on the decision in the case of CIT vs. Glenmark Pharmaceutical Ltd [2013] 30 taxmann.com 167 (Bom HC) wherein it was held that expenditure incurred for acquiring marketing know-how is revenue expenditure since it led to an improvement in assessee's existing business resulting in higer sales and profits. It was held that when the entire expenditure is allowable, the claim for amortization could not be denied.
Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018

1588. The assessee had entered into an agreement with Oldham Batteries Ltd., UK to receive outside India a license to transfer and import information, know-how and drawings as required for the manufacture of miners caplamp batteries and stationery batteries for which a lump sum consideration was paid in three equal instalments and the permission was only to use the know-how and information without the transfer of ownership. The claim of the assessee for deduction u/s 37(1) was denied by the AO on the ground that the assessee's case was covered by Section 35AB and consequently he allowed deduction at the rate of 1/6th of the amount and the balance amount was to be deducted in equal instalments for each of the five immediately succeeding previous years in terms of section 35AB. The appeal of the assessee was dismissed by the Tribunal on the ground that the assessee had acquired ownership rights in the technical know-how included in the agreement and was entitled to deduction u/s 35AB as against 37(1). The Court dismissed the appeal and stated that the payments made in instalments for using technical know-how does not cease to be a lump sum payment. The court further held that the obtaining of technical know-how under license amounted to acquiring the know-how as the words 'on ownership basis' was completely absent u/s 35AB(1) and accordingly decided in favour of the Revenue.
Standard Batteries Ltd. v. CIT - [2018] 93 taxmann.com 293 (Bombay) - IT REFERENCE NO. 13 OF 2001 dated APRIL 27, 2018

Section 35AD

1589. The Assessing Officer rejected assessee's claim for deduction under section 35AD(5)(aa) on ground that assessee had obtained classification as a three star category hotel only during next assessment year. In view of fact that revenue had not disputed operation of new hotel from relevant financial year and, moreover, assessee had filed application for classification of hotel in three-star category in assessment year in question itself, the Tribunal allowed the claim of the assessee which was upheld by the High Court.
CIT V. Ceebros Hotels (P.) Ltd.-[2019] 101 taxmann.com 173(Madras)-TCA No.773 of 2018dated November 13, 2018

1590. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing deduction claimed u/s 35AD by the assessee for AY 2012-13, notwithstanding the fact that the assessee had applied for categorization as three star hotel before the Ministry of Tourism under the aegis of Government of India on 7-6-2013 and such classification as a three star hotel, was awarded by a letter dated 24-9-2013 for the period of 11-9-2013 to 10-9-2018. It held that there no time limit of obtaining star certificate is prescribed in section 35AD and the only requirement was to build an operation of two or more star hotel classified by the Central Government.
ACIT v River View Hotels - [2018] 94 taxmann.com 433 (Ahmedabad - Trib.) - IT APPEAL NO. 1799 (AHD.) OF 2016 dated June26, 2018

Section 35B

1591. The Court held thatexpenditure incurred towards payment of commission for procuring orders cannot be equated to expenditure incurred for maintaining an agency outside India for promotion of sales and thus appointment of an agent and paying him commission only for procuring orders for theassessee to supply goods did not by itself fulfil requirements of section 35B(1)(b)(iv) which provides for weighted deduction of expenditure incurred wholly and exclusively on the maintenance outside India of a branch, office or agency for the promotion of the sale outside India of goods, services or facilities. It is to be noted that section 35B has ceased to apply with respect to the expenditure incurred after 1-3-1983
CIT v KCP Ltd. - [2018] 94 taxmann.com 46 (Andhra Pradesh) - REFERRED CASE NO. 71 OF 1993 dated 01.05.2018

Section 35D

1592. The Court held that Assessee bank extending financial services, would be entitled to amortisation of preliminary expenses in connection with issue of shares for public subscription.
Dhanalakshmi Bank Ltd. v.CIT, Cochin-[2019] 102 taxmann.com 442 (Kerala)-IT Appeal Nos. 456, 498, 635, 643, 651, 712, 717, 1108, 1318 & 1691 of 2009 & ORS.-dated December 11, 2018

1593. Assessee, engaged in business of running restaurants and related activities, had expanded its existing business by opening three more restaurants at different places. Assessee had treated pre-operative expenditure incurred in connection with establishment of restaurants such as salaries and wages, travelling expenses, restaurant rent, repairs and maintenance and like other general administrative expenses under head 'capital work-in-progress' in its books of account. But, when it came to computation of total income, impugned expenses were treated as revenue expenditure and claimed as such. Assessing Officer disallowed impugned expenses on ground that a particular expense could not have two treatments, i.e., as capital in books of account and as revenue for income tax purposes. Further, according to Assessing Officer, pre-operative expenses could be deducted as per provisions of section 35D(1)(ii). The Tribunal noted that assessee had commenced commercial operations of new units established during relevant previous year. Further, there was no dispute that expenditures claimed by assessee were revenue in nature. Furthermore, impugned expenditure was incurred wholly and exclusively in connection with expansion of existing business of assessee and not any separate distinct business - Whether expenditure was allowable as revenue expenditure irrespective of fact that assessee had given dual status to such expenditure in books of account.
Olive Bar & Kitchen (P.) Ltd. v. Dy. CIT, 13(1)(1), Mum. - [2019] 102 taxmann.com 98 (Mumbai - Trib.)-IT Appeal Nos. 5097, 5098, 5164 & 5165 (Mum.) of 2017 dated December 5, 2018.

1594. The Tribunal held if assessee is engaged in development of infrastructure facilities and maintains separate books of account for each project, then each project should be treated as undertaking within meaning of section 35D and, accordingly, share issue expenses incurred for raising additional capital for such projects would be eligible for deduction under the said section.
ACIT & ANR. vs. R.P.P. INFRA PROJETS LTD. & ANR. (2018) 53 CCH 0373 ChenTrib – ITA No. 2127/Chny/2016, 3161/Chny/2017 dated 17th July, 2018

1595. The Tribunal upheld the disallowance of deduction claimed u/s 35D for AY 2012-13, being 1/5th of the ROC fees paid by assessee-company in relation to increase in its authorised share capital during FY 2008-09. It relied on the decision in the case of Multimetals Ltd [188 ITR 151 (Raj HC)] wherein it was held that fees paid to ROC was a capital expenditure not covered u/s 35D(2)(c) unless the same was in connection with the issue for public subscription (as required by the said section).
PTC Energy Limited v DCIT [TS-734-ITAT-2018(DEL)] – ITA No. 6136/Del/2015 dated 11.12.2018

Section 36

1596. Where Tribunal rejected assessee's claim for deduction of interest on loan taken for acquiring control over two companies on ground that it would result in earning exempt dividend income, the Court held that impugned order passed by Tribunal based on imaginary income and expenditure of subsequent year, was not sustainable.
Vikram Somany v. CIT- [2019] 101 taxmann.com 88 (Cal)-ITA No.653 of 2018-dated November 28, 2018.

1597. The Tribunal held that where assessee acquired loan for reconstruction or renovation of its existing cold storage which was destroyed by fire, such reconstruction or renovation could not be considered as 'acquisitioof an asset', thus, interest paid on such loan could not be disallowed under section 36(1)(iii).
K.S. Cold Storage v. ACI, Circle-3(1), Dhule- [2019] 101 taxmann.com 120 (Pune-Trib)-ITA Nos.1448 & 1580(Pun) of 2014-dated November 28, 2018.

1598. The court held that where assessee filed a revision petition raising claim for deduction of employee's contribution to PF which was erroneously not claimed in return of income, in view of fact that all payments towards employee's contribution to PF had been made before due date of filling of return, Commissioner was not justified in refusing to entertain assessee's claim on merits.
Geekay Security Services (P.) Ltd. v. Dy.CIT, Circle-3(1)(2)-[2019]101 taxmann.com 192(Bom)-WP No.1984 of 2018-dated December 7, 2018.

1599. Since the provisions of section 36(1)(vii), it has two limbs, wherein the deduction can be computed either on the basis of 7.5 per cent of total income or 10 per cent of aggregate average advances made by rural branches. The Tribunal held that a co-operative bank is entitled to claim deduction of bad debts provided in first part of section 36(1) (viia)(a) being 7.5 per cent of total income even in absence of rural branches.
Bhagini Nivedita Sahakari Bank Ltd. v. Dy. CIT, Circle-1(1), Pune- [2018] 100 taxmann.com 375(Pune-Trib.) -ITA Nos.167(Pune) of 2015, 465 to 467 (Pun.) of 2016 & Others-dated November 30, 2018.

1600. Kerala State Electricity Board is not covered by section 36(1)(vii) and therefore, it is not entitled to deduction of any provision created for bad and doubtful debts, notwithstanding that such provision is created based on guidelines issued by RBI.
Asst.Com.IT, Circle-1(1), Trivendrum v. Kerala State Electricity Boar- [2018] 100 taxmann.com 132 (Cochin – Trib) – ITA Nos.29 & 30 (Coch)of 2018-dated November 1, 2018

1601. The Court held that payments of employer's contribution to provident fund and ESI made on or before due date for filing return of income under section 139(1), has to be allowed as deduction under section 43B while computing taxable income as so far as employee's contribution is concerned, assessee is

entitled to get deduction of amount as provided under section 36(1)(va) only if amounts so received from employee is credited in specified account within due date as provided under relevant statute.
Popular Vehicles & Services (P.) Ltd. v. CIT, Ernakulam- [2018] 96 taxmann.com 13 (Kerala) ITA No. 172 of 2016-dated July 2, 2018

1602. The Court held that write off of non-rural bad debts under sub-clause (vii) are independent of provision for rural bad debts made under sub-clause (viia) and thus, bad debts written off relating to non-rural branch of assessee bank would be allowable as deduction under section 36(1)(vii).
Dhanalakshmi Bank Ltd. v.CIT, Cochin-[2019] 102 taxmann.com 442 (Kerala)-IT Appeal Nos. 456, 498, 635, 643, 651, 712, 717, 1108, 1318 & 1691 of 2009 & ORS. -dated December 11, 2018

1603. The assessee was engaged in commodity trading business on NSEL platform. It had entered into several delivery-based contracts for buying and selling of various commodities on NSEL platform. On account of substantial fraud committed by management of NSEL, trading activity on NSEL platform was suspended. The assessee, thus, claimed to have written off certain amount receivable from its two brokers against unrealised contracts in commodities. The Assessing Officer declined claim of bad debts of such unrealised contracts taking view that it was premature. The Tribunal held that it was undisputed that debt had arisen in course of commodity trade and such debt or part thereof had been taken into account while computing chargeable income of the assessee. Moreover, amount outstanding from respective brokers had been shown to be duly written off in books of account. Since lower authorities had failed to examine such crucial aspect, impugned order was to be set aside and, matter was to be remanded back to consider the assessee's claim for bad debt afresh.
Omni Lens (P.) Ltd. v. Dy.CIT [2018]99 taxmann.com 333(Ahd. -Trib.)- ITA No. 2818 (AHD.) of 2017 dated October 16, 2018

1604. The Court held that if employees' Contribution received by assessee from employee is treated as income for purpose of Section 36(1) (va), then assessee could be entitled for deduction only if, said amount is credited by assessee to employees account on or before due date as provided under Explanation 1 to Section 36(1) (va).
Popular Vehicles & Services Pvt.Ltd. vs. CIT-(2018)102 CCH 0119 KerHC-ITA No.172 of 2016-dated Jul 2, 2018

1605. The Court held that proviso to s. 36(1)(vii) mandates that in case of a Bank to which clause (viia) applies, i.e., a provision was made for bad debts with respect to its rural branch advances, then amount of deduction granted u/s 36(1)(vii) should be limited to amount by which written off amounts exceeded credit balance in provision for bad and doubtful debts account.
South Indian Bank Ltd. vs. CIT (2018) 103 CCH 0353 KerHC-ITA Nos.264/2009 & 361/2009-dated December 4, 2018.

1606. During assessment proceeding, a amount paid by assessee as remuneration to its director namely, Mr. M was disallowed by AO by invoking provisions of s. 36(1)(ii). AO observed that no such payment was made in earlier years. AO found that during relevant AY, no remuneration was paid to other directors of assessee. Despite specific directions, assessee failed to place on record a copy of resolution which was passed at meeting of 'board of directors', resolving to pay remuneration to said director who was also a 99.9% shareholder of assessee. CIT(A) confirmed action of AO. Held, CIT(A) after deliberating at length on contentions advanced by assessee for vacating disallowance made by AO u/s 36(1)(ii) was however not persuaded to subscribe to same. CIT(A) observed that it was an admitted fact that Mr. M, director of assessee was 99.9% shareholder of same. It was observed by him that in present case, assessee failed to substantiate veracity of its claim by placing on record a copy of resolution that otherwise was passed at meeting of 'board of directors', resolving to pay remuneration to mentioned directors. The Tribunal held that Assessee had not only failed to place on record said documentary evidence substantiating its claim before AO during course of assessment proceedings, but had also not place on record same by way of an additional evidence before him. Sec. 36(1)(ii) was made available on statute by legislature with purpose to prevent evasion of tax by describing a payment to an employee as bonus or commission, when in fact ordinarily it should have reached shareholder as profit or dividend. It could safely be gathered that same contemplates a check on the dwindling of the profits of a

business by merely describing the payment as bonus or commission, if payment was in lieu of dividend or profit. Shri M, director of assessee was 99.9% shareholder and was thus in a position to take any decision regarding either payment of dividend or payment of remuneration. Assessee's claim that payment of remuneration to said director was for services rendered by him was found to be totally unsubstantiated. Assessee failed to place on record any material which would irrefutably prove that services that were rendered by director, in lieu of which said amount was paid to him. No such payment was made to said director in earlier years. Amount paid by assessee to Mr. M, director was rightly disallowed by AO u/s 36(1)(ii).
Mishka Gold Jewellery Ltd & ANR. Vs. Addl.CIT & ANR-(2018) 54 CCH 0311 MumTrib-ITA No(s).5972/Mum/2017, 5438/Mum/2017-Dated December 7, 2018.

1607. The Tribunal held that when assessee has explained the availabilities of interest free funds for the interest free advance to the group concern then no disallowance on account of interest was called for
ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT& ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018

1608. The Tribunal held that where sufficient own funds are available, it is to be presumed that the same have been utilized for investment hence, no disallowance of interest was warranted u/s 36(1)(iii).

RAJBIR SINGH WALIA vs. Dy. CIT. (2018) 54 CCH 0443 ChdTrib ITA No. 59/CHD/2015 & ITA No. 413/CHD/2018dated 17.12.2018

1609. The AO had recorded in its assessment order about this fact that employee contribution towards PF and ESI was deposited late with statutory authorities but admittedly the same was deposited prior to the due date of filing of return of income as prescribed u/s 139(1). The Tribunal held that as the said employee contribution of PF/ESI was deposited before the due date of filing of return of income u/s 139(1) the same was allowable.

SAYENDRA SINGH vs. Asst. CIT (2018) 54 CCH 0371 MumTribITA No. 4633/Mum/2018dated 14.12.2018

1610. The Tribunal held that in the absence of evidence to indicate that capital was borrowed for capital work in progress or any interest-bearing funds were utilized to create this capital work in progress, interest was not required to be capitalized as per the provisions of provisio to section 36(1)(iii) and the same was allowable as revenue expenditure.

DCIT vs Raajratna Metal Industries Ltd- (2018) 54 CCH 0062 AhdTrib- ITA No 793,767/Ahd/2016 dated 04.10.2018

1611. The Court upheld the Tribunal's deletion of disallowance of interest expense claimed u/s 36(1)(iii) by the assessee on account of loans taken from banks. The AO had disallowed the interest by noting that though the assessee had borrowed funds from bank and claimed deduction on interest paid, it had also advanced loan to its sister concern (a subsidiary) as interest free loan. The AO disallowed interest paid on grounds that advances to sister concern were out of borrowed funds and made additions accordingly. The CIT(A) deleted the said disallowance and observed that during year, assessee had huge amounts by way of sales, paid up share capital and reserves and accordingly concluded that assessee had furnished ample evidence to show that enough funds were available with assessee to give interest free loans to its subsidiary. Further, interest bearing loans taken by assessee were for

specific purposes and were duly represented by value of stock. Further the Tribunal had dismissed revenue's appeal agreeing with above said factual findings of CIT(A).

PCIT vs Basti Sugar Mills Co Ltd- (2018) 98 taxmann.com 401 (Delhi)- ITA no 205 of 2018 dated 28.09.2018.

1612. The Court upheld Tribunal's deletion of disallowance of interest expense under 36(1)(iii) claimed by the assessee on capital borrowed. The Court concluded that since interest was paid by assessee on loan used for acquiring of constructions assets that were used for earning taxable income, the claim for interest expenditure was justified.

PCIT vs International Biotech Park Ltd- (2018) 98 taxmann.com 218 (Bombay)- ITA No 370 of 2016 dated 24.09.2018

1613. Where investment in subsidiaries/joint venture companies was one of the main objects of assessee the Court held that if assessee holding company advanced borrowed money to subsidiary and same was used by subsidiary for some business purposes, assessee would ordinarily be entitled to deduction of interest on its borrowed loans.

PCIT vs DLF Hotel Holding Ltd- (2018) 103 CCH 0030 Del HC- ITA No 1012/2018 dated 28.09.2018

1614. The assessee, engaged in construction business, obtained a loan for purchase of plot of land for its project. The assessee claimed interest paid on loan taken for purchase of said land as revenue expenditure. However, the Assessing Officer held that the purchase of plot of land was capital nature and, hence, interest must also be capitalized. The Court held that since plot of land was purchased in course of business of the assesee, samd formed part of stock-in-trade of the assessee and, therefore interest paid on loan taken for purchase of said plot of land was to be allowed as revenue expenditure.

Jayantilal Investments v. Asstt CIT [2018] 96 taxmann.com 38/257 Taxmann 103 (Bom.)-ITA No. 519 of 2003 dated July 4, 2018

1615. The Court held that the failure of subscribers of chit fund to make payment of their instalments was to be allowed as 'bad debts', in view of decision in case of Sriram Chits & Investments (P.) Ltd v Union of India AIR 1993 SC 2063.

CIT v. Shriram Chits & Investments (P.) Ltd [2018] 96 taxmann.com 300/257 Taxman 395 (Mad.)-Tax Case (Appeal) Nos. 1079 to 1082 & 1209 to 1211 of 2007 dated July 4, 2018

1616. The Tribunal held that where assessee company made advances to its subsidiary companies out of borrowed funds who further gave said advances to SPVs of assessee who utilised it for carrying on business activity of construction and development of airports, since there was no business activity undertaken by assessee except for making investment and earning dividend, expenditure incurred under head finance charges was not allowable under section 36(1)(iii).

GVK Airport Developers Ltd. v. ITO [2018] 96 taxmann.com 236/172 ITD 109(Hyd. -Trib)- ITA No. 488 (HYD.) of 2017 [Assessment Year 2012-13] dated July 5, 2018

1617. The Tribunal held that claim disallowed u/s.36(1)(viii) could not be allowed under sec. 36(1)(viia) in absence of provision made for same in P-L account under head bad debt.

Jila Sahakari Kendriya Bank Maryadit vs Dy.CIT [2018] 97 taxmann.com 641 (Indore Trib)- IT APPEAL NO. 386 (Ind) of 2017 dated August 17 2018

1618. The Court allowed the assessee's claim of deduction u/s 36(1)(v) for contributions paid to the LIC as premium for the policy obtained for indemnification of the gratuity liability towards the employees, including for the period during which the employees were in employment of the Company taken over by the assessee. It held that the take over and the specific term fastening the liability to gratuity for even the past service on the assessee, made the assessee the employer for the past period also, at least with respect to the liability for payment of gratuity. The Court further held that such disallowance would otherwise be creating unnecessary impediment especially looking at the intention of the provision u/s 36(1)(v), which was that the employer should not have any control on the funds of the trust exclusively created for the employees.

Nortrans Marine Services (P.) Ltd.vs Asst. CIT [2018] 97 taxmann.com 212 (Kerala)- IT APPEAL NO. 27 of 2011 dated August 06 2018

1619. The Tribunal deleted the disallowance made u/s 36(1)(va) where assessee had not deposited employees' contribution towards provident fund on due date as prescribed under relevant statute but before the due date of filing of return of income. It relied on the ratio laid down Apex Court in Pr. CIT vs Rajasthan Beverage Corporation Ltd. (2017) 84 Taxman.Com 185 (SC) wherein it was held that amount claimed on payment of PF and ESI having been deposited on or before due date of filing of returns, could not be disallowed u/s 36(1)(va) or 43B.

Bhambra Service Centre. vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 and 13/CTK/2018 dated August 02 2018

1620. The Court held no substantial question of law arose from the Tribunal's order deleting the disallowance made u/s 36(1)(va) r.w.s. 2(24)(x) on account of payment of employees' contributions to ESIC beyond the due dates under ESIC Act as the issue stood concluded in favour of the assessee by Bombay High Court decision in CIT v. Ghatge Patil Transports Ltd. (2015) 368 ITR 749 (Bom) wherein it was held that as per section 43B the assesse would be eligible for the said deduction if the payment was made before the due of filing of return u/s 139(1).

Pr.CIT vs Starflex Sealing India Pvt Ltd. [2018] 102 CCH 0184 (MumHC)- INCOME TAX APPEAL NO. 130 OF 2016, 151 OF 2016, 293 OF 2016 dated August 02 2018

1621. The Tribunal upheld CIT(A)'s order deleting the disallowance of interest expenses claimed by assessee u/s 36(1)(iii) on account of interest free advances given to related parties u/s 40A(2)(b) and CIT(A) had deleted the said disallowance. The Tribunal held that CIT(A) had rightly relied on ratio laid down in the decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.) wherein it was held that if the interest free funds were available at the disposal of the assessee in excess of the interest free advances, presumption was required to be drawn in favour of the assessee that such interest free investments were out of interest free funds available at the disposal of the assessee.

Dy.CIT vs Gopal Glass Works Ltd [2018] 53 CCH 0467 (Ahd Trib)- ITA No.1492/Ahd/2016 dated August 21 2018

1622. The Tribunal allowed assessee's claim for deduction of interest paid on borrowed capital which was disallowed by the AO on the ground that the borrowed money was not utilized for business purposes.

Noting that the assessee had purchased agricultural land during the year and had immediately applied for conversion of such agricultural land into residential, it held that land was purchased for purpose of doing business of real estate by developing plots etc and further the process of conversion of land and then getting approval of site plan established that assessee had already set up its business during the relevant previous year. Accordingly, the Tribunal held that the interest paid on borrowed capital for acquiring land was allowable to assessee as business expenditure.

PRATIK GOYAL vs. ITO (2018) 53 CCH 0408 JaipurTrib - ITA No. 696/JP/2017 dated July 24, 2018

1623. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing partial relief to the assessee with respect to disallowance made by the AO u/s 36(1)(iii) of interest expenses incurred on account of borrowed funds. The CIT(A) had noted that the entire borrowed funds of Rs.4.30 crores were not diverted by the assessee for non-business purposes (as claimed by the AO) but only funds amounting to Rs.1.41 crores, appearing as the debit balance in the name of the assessee (in the books of assessse's proprietary concern), were diverted. Accordingly, the CIT(A) had upheld the disallowance of interest expense pertaining to the borrowed fund of Rs.1.41 crores only. The Tribunal held there was no infirmity in the CIT(A)'s findings.

DCIT v RAJENDRA BANSILAL RAISONI - (2018) 53 CCH 0606 PuneTrib – ITA Nos. 1264 & 954/PUN/2016 dated July 20, 2018

1624. The AO disallowed the assessee claim for deduction of interest expense u/s 36(1)(iii), noting that assessee on one hand was paying huge interest on loan and on other hand had made advances to subsidiary and fellow subsidiary without charging any interest. The Tribunal allowed the said deduction following the decision in the case of CIT vs. Tin Box Company (2003) 260 ITR 637 (Del) wherein it was held that when capital and interest free unsecured loan with assessee far exceeded interest free loan advanced to sister concern, disallowance of part of interest out of total interest paid by assessee to bank was not justified.

ACIT vs. ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD. (2018) 53 CCH 0327 DelTrib – ITA Nos. 5660 & 5661/Del/2015 dated 12th July, 2018

1625. The Tribunal allowed the assessee's appeal and deleted the disallowance made u/s 36(1)(iii) on account of interest paid on borrowed money where the assessee had given interest-free loans and advances to its associate concerns and the AO claimed that the interest expense could not be said to be for the purpose of business. It was noted that the advances related to regular transactions for purchase/sales/rent with associate concerns and balances were in normal course of business. Accordingly, the Tribunal held that the said advances were purely in regular course of business with an intent of maximization of profit as well as revenue and that the said advances were advanced for commercial expediency as the assessee had deep interest in its subsidiaries/ associate concerns.

Krishidhan Seeds Pvt Ltd vs Dy.CIT [2018] 54 CCH 0280 (Indore- Trib.)- ITA No.37/Ind/2013,84/Ind/2013,231/Ind/2013 and 315/Ind/2013 dated 30.11.2018

1626. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the disallowance made u/s 36(1)(iii) with respect to interest paid on loan taken from the bank for acquiring vehicles and business properties, noting that the AO had made the said disallowance on the ground that the assesse had given interest free advances to its relatives and friends whereas the said advances were made even prior to the assessee had taken the bank loan. It thus held that the AO had failed to establish nexus between the interest bearing and the interest free advances given by assessee to his relatives and friends.

Asst.CIT vs Rohit Kochar [2019] 54 CCH 0418 (Del- Trib.)- ITA No.3872/Del/2015 dated 28.11.2018

1627. Where the AO had disallowed interest on borrowed funds attributable to interest free advances given to associate concerns and the CIT(A) took note of exact period for which advance was lent and re-worked disallowance u/s 36(1)(iii) as against the AO's approach making disallowance by computing interest for entire 12 months, the Tribunal held that it did not see any infirmity in the approach of CIT(A).

Arvind Brands Ltd and Anr vs Dy.CIT [2018] 54 CCH 0184 (Ahd Trib)ITA No. 1509 & 1639/Ahd/2012 dated 02.11.2018

1628. The Tribunal deleted the disallowance made u/s 36(1)(iii) with respect to interest expense claimed while computing income earned from proprietary concern, which was made by the AO noting that the assessee had advance interest free loans and advances to certain parties. The Tribunal noted that the said loans and advances formed part of the assessee's personal balance sheet and thus held that no part of loan funds obtained in proprietary concern was used for making the above investments.
Viren Shah v ACIT – ITA No. 1162/Mum/2017 dated 12.09.2018

1629. The Tribunal allowed assessee's (engaged in the business of 'speciality eye care hospital') claim for deduction on account of interest expense on loan taken for acquiring a residential flat for use by its director (who was a doctor and CMD of assessee-company, having 99% share), holding that the loan was taken for business purpose. It was noted that the flat was near to the hospital which facilitate the treatment of eye patient at any time and thus even in the case of emergency the CMD could approach to the hospital promptly. The Tribunal also allowed the assessee's claim for depreciation on the said flat @ 5%.
Aditya Jyot Eye Hospital PVt. Ltd v ITO – (2018) 54 CCH 115 (Mum Trib) - I.T.A. No.5325/Mum/2015 dated 24.10.2018

1630. Where the assessee claimed deduction on account of reversal of NPA interest credited to its P&L account (as the amount it was supposed to receive from the Government was no longer receivable), the Tribunal held that the AO was not justified in denying the assessee deduction of the same on the basis that the same amount had been claimed as deduction in the subsequent year without appreciating that though the assessee had claimed the deduction in the subsequent year, it reversed its claim by making an addition in its computation of income as it realized that it had claimed the impugned deduction during the year under review.
BULDHANA DISTRICT CENTRAL COOP. BANK LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0237 NagTrib - ITA No. 127 & 128/NAG/2015 dated Mar 6, 2018

1631. The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction of interest paid on advances received from 2 entities which was disallowed by the AO on the ground that the said advances were not received for the purpose of business. The Tribunal had held that the said advances were received for the purpose of business noting that the assessee was engaged in the business of acquiring satellite and overseas rights of films and CDs and the advances were received for acquiring satellite and overseas business. The Court held that the finding of the Tribunal was essentially a find of fact and the same had not been shown to be perverse and/ or arbitrary in any manner.
CIT v Lotus Investments Ltd. – ITA No. 1554 of 2007 (Bom) dated 22.01.2018

1632. Court declined to give relief to assessee with respect to disallowance made by AO towards interest on investment expenditure u/s 36(1)(iii) where assessee forayed into a new business and it was found by AO that assessee-company's balance sheet as on 31-3-2006 showed borrowed funds at much higher amount as compared to the assessee's own funds, excluding statutory reserves and thus concluded that assessee had borrowed funds for starting new line of business. Court held that since, assessee could not demonstrate to AO's satisfaction that it actually invested its own funds to start new business impugned disallowance made by AO was justified.
Muthoot Finance Ltd. v JCIT – (2018) 90 taxmann.com 69 (Ker) – ITA No. 27 of 2015 (Ker) dated 11.01.2018

1633. The Tribunal upheld the proportionate disallowance made by the AO with respect to assesse's claim for deduction u/s 36(1)(iii) where the assessee had given advances to unrelated parties during course of business and contended that it had not charged interest on advance given to seven parties as they

were not traceable or in financial difficulties but could not furnish a single evidence in support of its contention / claim.
Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018

1634. The Tribunal disallowed the deduction claimed by the assessee u/s 36(1)(iii) with respect to expenditure incurred under the head finance charges which represented interest payment made on borrowed funds, noting that the assessee was engaged in activity of investment in shares of a group of companies for holding controlling interest which could not be considered as main business activity of the assessee in the nature of trade or commerce since such investment had been treated as long-term investment in its financial statements, the statutory auditors of the company had reported that the company was not engaged in carrying on any business or as part of its business activity of acquisition of shares except making long-term investments and the objects clause in Memorandum of Association did not encompass the activity of the acquisition of shares for controlling interest.
Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018

1635. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO u/s 36(1)(iii) on the ground that huge amounts were given as interest free advance to others for which no business prudence could be figured out and thus, the interest paid on cash credits was not wholly and exclusively for purpose of business, noting that the Tribunal had itself held the interest to be paid for business purposes in the appeal pertaining to subsequent year and in present year also, same advances were held to be for business purposes. As regards new advances, it held that these were small amounts and their aggregate amount was quite insignificant when compared with non-interest bearing funds available with assessee. Further, it relied on the decision of the Apex Court in the case of Hero Cycles (P) Ltd. v CIT wherein it was held that if non-interest bearing funds were more than non-interest bearing loans, no disallowance u/s 36(1)(iii) could be made.
ITO v COUNT TRADE LINK PVT. LTD. – (2018) 52 CCH 15 (Del Trib) – ITA No. 5830/Del./2010 dated 04.01.2018

1636. The Court upheld the Tribunal's deletion of disallowance of interest expense claimed by the assessee on account of loans taken from banking and other institutions, which the AO had disallowed observing that the assessee had given interest free advances to certain parties without accepting assessee's explanation that the said interest free advances were made during the course of business from the surplus funds in the form of share capital / reserve surplus. In this regard, it was noted that the assessee had considerable surplus funds in proportion to the secured loans and, thus, held that since the assessee had advanced interest-free loans out of its surplus funds, the question of disallowing the expenditure in respect of interest incurred on the borrowed funds did not arise, inasmuch as, no part of the borrowed funds had been advanced by the assessee to the concerned parties.
Pr.CIT v SAHJANAND LASER TECHNOLOGY LTD. - (2018) 401 ITR 0487 (Guj) - TAX APPEAL NO. 1025 of 2017 dated 29.01.2018

1637. Where the AO had disallowed the assessee's claim for bad debt u/s 36(1)(vii) on the ground that the assessee had not established that amount had gone bad inspite of all efforts taken by him, the Tribunal held that after the amendment in the said section and as per the CBDT Circular No.12/2016 dated 30.05.2016 it was not necessary for assessee to establish that debt had become irrecoverable and if the bad debt was shown irrecoverable in accounts of assessee, it fulfilled condition stipulated in section 36(2). Thus, noting that nothing was established by the Revenue that condition stipulated u/s 36(2) was not fulfilled, it directed the AO to allow claim of bad debt raised by the assessee.
VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018

1638. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO with respect to partial interest expenses claimed on borrowings noticing that the assessee had given certain short term loan & advance on which no interest was charged. It held that the assessee had demonstrated that is had used only interest bearing loan for the purpose of business i.e term loan

used for acquiring plant & machinery and working capital loan used for working capital, and the existence of own fund of the assessee was far better than the advances given by the assessee.
DCIT v PRS METALIKS LTD – (2018) 52 CCH 24 (Kol Trib) – ITA No. 450/Kol/2016 dated 10.01.2018

1639. Where the assessee had created provision for bad and doubtful debts in the books of account and claimed deduction u/s 36(1)(viia) based on Aggregate Rural Advances (AAA) computed as per Rule 6ABA and the AO was of view that it was only incremental advances that had to be considered for computing AAA, the Tribunal held that Rule 6ABA did not provide for only fresh advances made by each rural branch during each month alone had to be considered and it only prescribed that amount of advances made by rural branch and was outstanding at end of last day of each month should be aggregated. Thus, it directed the AO to rework the deduction u/s 36(1)(viia) accordingly.
VIJAYA BANK HEAD OFFICE & ORS. v JCIT – (2018) 52 CCH 19 (Bang) – ITA Nos. 915/Bang/2017, 845/Bang/2017, 1647/Bang/2016, 1651/Bang/2016, 1284/Bang/2016, 1252/Bang/2016 dated 05.01.2018

1640. The Tribunal held that where the assessee had paid interest on loan taken from SBI for which it had hypothecated its debtors and there was no other loan in its financial statements, considering there was a one to one correlation between the loan taken and the hypothecation of its debtors it was reasonable to accept the assessee's claim that the interest free loans given to its sister concerns were not out of any loan funds. It therefore held that the CIT(A) erred in remitting the issue of disallowance under Section 36(1)(iii) to the AO to conduct further enquiry and should have deleted the said disallowance.
SURYAJYOTI INFOTECH LIMITED & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0191 HydTrib - ITA No. 1241/Hyd/2015, 1278/Hyd/2015 dated Mar 16, 2018

1641. The Tribunal deleted the proportionate interest disallowance made by the AO u/s 36(1)(iii) on account of investment made by the assessee in a company (i.e. engaged in power generation) during the year, noting that the assesse-company, engaged in production of various steel items, was in continuous need of uninterrupted power supply and in view of the said investment it was entitled to obtain 35KWH power supply. The Tribunal held that the said investment was beneficial for the business interest of the assessee and thus did not warrant disallowance u/s 36(1)(iii).
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. MAHINDRA CIE AOTOMOTIVE LIMITED & ANR. - (2018) 52 CCH 0300 MumTrib - ITA No. 6659/Mum/2014 (Cross Objection No. 96/Mum/2016) dated Apr 11, 2018

1642. The Tribunal allowed the assessee's claim for deduction u/s 36(1)(iii) w.r.t. interest paid on amount borrowed for investment in two 100% subsidiary company which were in same line of business, noting that it was not shown that investment was made only for the purpose of earning dividend. It relied on the decision in the case of CIT Vs. Phil Creation [(2011) 202 Taxman 368 (Bom)] wherein it was held that as the investment was made by the assesse-company out of bank overdraft in the shares of its subsidiary company to have control over that company being an integral part of its business, interest paid by the assessee attributable to said borrowings was allowable as deduction u/s 36(1)(iii)
DEPUTY COMMISSIONER OF INCOME TAX vs. T.G. LEISURE & RESORTS PVT. LTD. - (2018) 53 CCH 0239 (DelTrib) - I. T. A. Nos. 3844 & 6138 & 3863 & 5777 (Del) of 2014 dated June 25, 2018

1643. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(viia) with respect to provision of bad and doubtful debtson the basis of advances given by the rural branches, which was disallowed by the AO without giving any concrete reason but only stating that the definition of rural branches is not to be restricted to a village only where the branch is situated rather, it is "region" for which the branch has been set up by the parental Bank. For the purpose of section 36(1)(viia), "rural branch" means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. The Tribunal followed the decision in the assessee's own case for another year wherein it was noted that the relevant figures of last preceding census obtained from Website of Census of India and produced by the assessee were rejected by the AO, holding the assessee to be negligent for not

providing letter from Tehsildar, or from other Government Agencies or the copy of Census Report, whereas even before the Tribunal, the figures produced by the assessee were not shown to be wrong or false. In that case, noting that the CIT(A) had verified the chart of aggregate average advances by the assessee's rural branches, on a test-check basis with the primary records of the assessee bank, the Tribunal had upheld the CIT(A)'s order allowing the assessee' claim in full.

DEPUTY COMMISSIONER OF INCOME TAX vs. KSHETRIYA KISAN GRAMIN BANK - (2018) 53 CCH 0278 AgraTrib - ITA No. 382/Agra/2017 dated June01, 2018

1644. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(iii) with respect to interest on borrowings made for installation of captive power plant. The assessee, which was engaged in the business of manufacturing and selling of pharmaceuticals products,had installed new captive power plant for generation of electricity for purpose of its on-going and existing pharmaceutical business. The AO had disallowed the claim for deduction u/s 36(1)(iii) stating that the assessee had wrongly claimed deduction of interest concerning power project which was different from its main stream of business of pharmaceutical products and that the expenditure was pre-operative in nature pertaining to assets before it being put to use. Noting that the power plant was installed for captive power consumption in the larger context of the business necessity to cut down the costs of power consumption of its existing and on-going pharmaceutical business, the Tribunal held that the interest incurred on power plant incidental to pharma unit was allowable deduction on revenue account.

DCIT v Core Health Care Ltd - [2018] 95 taxmann.com 172 (Ahmedabad - Trib.) - IT APPEAL NOS. 1733 TO 1737 (AHD.) OF 2014 dated June20, 2018

1645. The Court dismissed Revenue's appeal against the orders of Tribunal upholding the order of CIT(A) allowing the assessee's claim for deduction u/s 36(1)(iii) with respect to interest paid on funds borrowed for setting up a joint venture company for production of milk, where the assessee was engaged in business of manufacture and sale of fruit juice and like products. It was held that since concurrent findings was rendered by the CIT(A) and the Tribunal and the nature of the investment made by the assessee with the borrowed funds appeared to be in the line of its business, the issue did not call for any reconsideration.

CIT v Keventer Agro Ltd - [2018] 95 taxmann.com 154 (Calcutta) - ITAT NOS. 175 & 176 OF 2014, GA NOS. 3609 & 3610 OF 2014 dated June 19, 2018

1646. The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(ii) with respect to commission paid by the assessee-company to its Managing Director (MD) who also held majority shareholding of 75% of the total shares. The commission was disallowed by the AO pointing out the exception carved in the said section i.e. any sum paid to an employee as bonus or commission for services rendered is allowable deduction, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission. It held that the said rider or the exception carved out in section 36(1)(ii) would apply only to an employee who was also a shareholder in the company. Though the MD was a major shareholder of the assessee-company, but was not its employee and thus the allowability of the commission paid to him as sales agent would not be hit by the provisions of section 36(1)(ii).

Nat Steel Equipment (P.) Ltd. v DCIT - [2018] 95 taxmann.com 159 (Mumbai - Trib.) - IT APPEAL NOS. 4011, 4681, 5070 & 5270 (MUM.) OF 2013 dated June 13, 2018

1647. The Court dismissed Revenue's appeal against the Tribunal's order holding that for the purpose of section 36(1)(viia) r.w. Rule 6ABA of the Income Tax Rules, 1962, the aggregate monthly average advances made by the rural branch of the assessee, a Schedule Bank,is to be computed by taking the amount of advances by each rural branch of such Bank as outstanding at the end of the last day of each month comprised in the previous year and aggregating the same separately, unlike the CIT(A)'s interpretation of considering the loans and advances made during the year only.

Pr.CIT v Uttarbanga Kshetriya Gramin Bank - [2018] 94 taxmann.com 90 (Calcutta) - ITAT NO. 76 OF 2016 dated May7, 2018

1648. During the course of assessment proceedings, AO observed that assessee had claimed bad debt and debited same in profit & loss account and had claimed write-off on the ground that the same were in

relation to trade debtors which had been claimed as bad. The AO held that assessee must prove that the debt had actually became bad and disallowed the claim on failure of assessee to prove. However, the CIT(A) deleted the disallowance holding that write-off of bad debts in books of account was sufficient for claiming deduction under amended provisions of Section 36(1)(vii) and assessee was not further required to prove that debt had become bad. The Tribunal concurred with the CIT(A) and dismissed revenue's ground of appeal.
ACIT & Anr v Ballarpur Industries Ltd & Anr (2018) 52 CCH 0340 NagTrib - ITA No. 91/Nag/2011, 92/Nag/2011 dated 16.04.2018

1649. The AO had noted that assessee had given interest free loan to 7 different parties and could not justify business expediency of the same. The AO computed interest at the rate of 12% and disallowed the interest paid by the assessee to that extent. The CIT(A) upheld AO's order. The Tribunal noted that in assessee's own case for another year in 324 ITR 396, Delhi High Court had upheld interest disallowance for reason that assessee could not establish that there was any commercial expediency. However, in the present case, assessee had submitted copy of balance sheet showing that the partners current account balances (on which no interest had been paid) exceeded the amount of advance given interest free. Thus following the decision of Reliance Utilities Ltd. 313 ITR 340 (Bom) wherein it was held that if assessee had more interest free funds then advances given free of interest for that case presumption was available to assessee that amount was advanced out of non-interest bearing funds, the Tribunal held that disallowance out of interest expenditure was not sustainable. However, noting that there was also a statement that assessee had paid interest on Fixed capital of partners and this fact required to be verified, the Tribunal set aside the issue to the file of the AO for verification.
Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

1650. The assessee company had given advance for purchase of business premise in Bharat Diamond Bourse and other immovable properties. The AO held that these advances were for fixed assets and they had not been put to use during year, and thus worked out average investment on all these projects and disallowed interest u/s 36(1)(iii) attributable to these advances. The CIT(A) held that the loan funds were for specific purpose and there had been no dilution of same and thus deleted the disallowance made by the AO. The Tribunal observed that the investment was done out of mixed funds and assessee had own funds which covered more than investment made and followed Reliance Utilities & Power Ltd (313 ITR 340) wherein it was held that that if there were funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investments and thus upheld CIT(A)'s order thereby dismissing Revenue's appeal.
ACIT v Kiran Gems Pvt. Ltd. (2018) 52 CCH 0586 MumTrib - I.T.A. No.1108/Mum/2016 dated 09.04.2018

1651. During the course of assessment proceedings, the AO noticed that the assessee had collected Rs 9,03,378 on account of provident fund but same was deposited only to extent of Rs. 2,18,064 and thus the balance amount not deposited was disallowed. The CIT(A) confirmed the disallowance. The Tribunal observed that the amounts of provident fund advance given, provident fund realised and amounts settled had not been taken into consideration by the lower authorities. Further, taking note of the assessee's claim that the entire provident fund collected upto February, 2002 was fully paid by assessee and only provident fund collected during March was outstanding at the year end which was also paid in time, it restored the said issue to file of AO for deciding afresh after verifying the aforesaid claim of the assessee.
Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018

1652. The Tribunal allowed the assessee's claim for deduction of entire interest paid on loan availed from bank, which was disallowed by the AO u/s 36(1)(iii) in view of the fact that the assessee-company had given interest free loan to its director (also a major shareholder) and a sister concern. With respect to the loan given to the director, it was noted that while dealing with the issue of deemed dividend u/s 2(22)(e) in the case of the director on account the said loan, the Tribunal had deleted the addition made

holding that the funds were given to the director only to facilitate the company's business since the director had permitted his properties to be mortgaged to the bank for enabling the bank to grant credit facilities to the assessee company. Thus, in the present case also, the Tribunal held that the amount lent to the director was for the purpose of business and hence no proportionate disallowance of interest paid on borrowed capital could be made in respect of amounts advanced to him. With respect to the loan given to the sister concern, it was noted that in the preceding year interest was charged on the said loan and the same was offered to tax. However, during the current year, the sister concern was facing financial crunch and was in a bad position, thus the assessee-company had waived its right to charge interest. Further, it was noted that during the relevant year the assessee had recovered substantial portion of the loan amount and, as evident form the balance sheet, the assessee had sufficient own funds to given loan to the sister concern

Rawalwasia & Sons Exim Ltd. v ITO (2018) 52 CCH 0297 KolTrib - ITA No. 273/Kol/2016 dated 06.04.2018

1653. The Tribunal allowed Department appeal and held that Provision for standard assets is purely contingent and could not be included in provision for bad and doubtful debts, thus, same could not be allowed as deduction under section 36(1)(viia).

ACIT v Chaitanya Godavari Grameena Bank [2018] 93 taxmann.com 400 (Vishakhapatnam – Trib.) – ITA NOS 326-327 OF 2016 dated 04.05.2018

1654. The Tribunal held that interest on loan taken for renovation and modernisation of assessee's factory premises qualified to be allowed under section 36(1)(iii).

DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018

1655. The assessee(banking company) had added back the amout of amortization and depreciation in the SLR investments debited to the P&L A/c while computing the profit from which deduction at the rate of 20% u/s 36(1)(viii), was allowable inter alia to a banking company. The AO, however, computed the said deduction of 20% of profit after reducing the amount of amortization and depreciation added by the assessee to the profit. The Court held that the AO was correct in reducing the said amounts from the profit since section 36(1)(viii) does not envisage any such artificial raising of the 'profits', and the profits and gains of business, as simply computed as per the accounting practices followed by the assessee in normal course of business u/s 28 had to be the basis for computing the said 20% deduction. Accordingly, the assessee's appeal was dismissed.

Pragathi Krishna Gramin Bank v JCIT [2018] 95 taxmann.com 41– ITA No. 100001 & 100002 OF 2018 dated 28.05.2018

1656. The assessee incurred huge expenses for repair and maintenance of leased property in which cement bags, sand, labour charges, etc were consumed for construction of building structure. The AO disallowed such expenses as the assessee was only required to keep the leased premises clean and water proof and maintain it in good condition. CIT(A) allowed the claim of the assessee on the basis of additional evidences in the form of social audit report and considering that the property leased was more than 30 years old which required huge maintenance to keep it in working condition. However, since the CIT(A) neither conducted any independent enquiry, nor called for remand report from AO, the Tribunal remanded the matter to the CIT(A) for fresh determination of case as the appellate order lacked quasi-judicial investigation and analysis.

DCIT vs. Amar Brother Global Pvt. Ltd. – [2018] 53 CCH 0088 (Lucknow ITAT) – ITA No. 236/LKW/2017 dated May 2, 2018

1657. The assessee, engaged in business of real estate development, had paid interest on loans taken from banks for business purposes and had also given loans / advances to various parties for purchase of plots as well as share application money. Since the total advances given by assessee exceeded total amount outstanding against loan from various banks, CIT(A) confirmed the disallowance of interest expenditure made by the AO. The Tribunal held that interest expenditure incurred by assessee was an allowable deduction under Section 36(1)(iii) as the same was paid in respect of capital borrowed for

purposes of business or profession. It further held that since the advances was far less than the interest free funds available, no disallowance of interest could be made.
Gaursons Realty Pvt. Ltd. & ANR. vs. ACIT – [2018] 53 CCH 0023 (Delhi ITAT) – ITA No. 753/Del/2018 (SA No. 107/Del/2018) dated May 7, 2018

Section 37

1658. The assessee incurred loss on sale of units of mutual fund, which was disallowed by the A.O. as a capital loss. The Court held that in view of fact that said units were purchased and sold in same financial year and moreover, said loss had been debited to profit and loss account, assessee's claim for deduction in respect of same as business loss was to be allowed.
Calibre Financial Services Ltd. v. ITO, Company Ward-1(1), Chennai- [2018]100 taxmann.com 415 (Madras)-TCA Nos.1868 & 1869 of 2008- dated October 31, 2018

1659. The Tribunal held that where assessee-real estate developer engaged services of a company forpurpose of corporate brand identity exercise, logo design and collateral design, since said service was not attributable to any particular project, payment for said service to be allowed as revenue expenditure.
Indiabuild Villas Development (P.) Ltd. v. Dy. CIT, Circle 3(1)(1), (Bang)-ITA No.2242(Bang) of 2018-
dated October 3,2018

1660. The Court held that where asseessee, engaged in business of providing consultancy services in private placement of shares with Foreign Institutional Investors, claimed deduction of foreign travel expenses incurred on its representatives, in view of fact that expenditure was for expansion of existing business and not for setting up a new business, assessee's claim deserved to be allowed.
Pr.CIT-12 v. Business Match Serivces (I) (P.) Ltd.- [2018]100 taxmann.com 411(Bom)-ITA No.699 of 2016-dated November 27, 2018

1661. The Tribunal held that where assessee had engaged professionals for carrying out Liaoning work in relation to a particular project, these expenses had to be capitalised to concerned project.
Indiabuild Villas Development (P.) Ltd. v. Dy.CIT, Circle 3(1)(1), (Bang)-ITA No.2242(Bang) of 2018- dated October 3, 2018.

1662. The Tribunal held that where in terms of tripartite agreement entered into between assessee, a Russian company and Indian Air Force, assessee had to supply engines of aircrafts to Indian Air Force manufactured by Russian company, in view of fact that warranty in respect of engines so supplied was responsibility of assessee for a specified period, assessee's claim for deduction of warranty expenses was to be allowed.
Indo Russian Aviation Ltd. v Asst. CIT, Circle-1, Nashik- [2018] 100 taxmann.com 76(Pune – Trib.)-ITA No.171 (Pun) of 2015-dated October 17, 2018

1663. The Court held that where multi-State co-operative society was undertaking object of carrying out social development for village poor by way of undertaking projects in forestry development, developing water harvesting systems and main objective of assessee was to carry-out social development and welfare activities and assessee had incurred expenditure for rural development, generation of additional employment, women's empowerment and in development and construction of water reservoirs which was clearly incurred to carry out purpose and objectives for which co-operative society was established, said expenditure would qualify for deduction under section 37(1).
Pr.CIT, Delhi-10 v. Indian Farm Forestry Development – [2019] 101 taxmann.com 169(Delhi)-ITA Nos. 215 & 216 of 2017-dated October 31, 2018

1664. The assesee claimed deduction in respect of business promotion expenses which was disallowed in view of fact that assessee did not produce material and documents to show that said expenditure was incurred for business purpose. The Tribunal held that mere fact that payments were made through credit card would not be sufficient to prove their genuineness and, thus revenue authorities were

justified in making disallowance of 50 per cent of expenses claimed as deduction. The Court dismissed assessee's appeal and upheld the order of the Tribunal.
Sandeep Marwah v. Asst.CIT- [2019] 101 taxmann.com 123 (Delhi)-ITA Nos.1249 & 1250 of 2018-dated November 12, 2018

1665. The Court held that where Special Auditor as well as Commissioner (Appeals) and Tribunal concurrently found deputation and other costs as reasonable and necessary to run business, same was to be allowed.
Pr.CIT v. Tulip Hospitality Service Ltd.- [2019] 101 taxmann.com 213(Bom.)-ITA Nos.835 & 836 of 2016-dated December 17, 2018

1666. The Court dismissed Revenue's appeal against Tribunal's order for AY 2008-09 wherein though the Tribunal had reversed CIT(A)'s order allowing foreign travel expenses incurred by the assessee-company, the Tribunal had made a disallowance only of 20% of the said expense as against AO's approach of disallowing 100% for some expenses (where he opined the trip was personal) and 50% (where he opined trip was partly business and partly personal). It was noted that for AY 2009-10, the AO himself had disallowed 20% of entire foreign travel expenses and thus the very same procedure was adopted for AY 2008-09.
CIT v M.M.PUBLICATIONS LTD - ITA.No. 200 of 2014 (Ker HC) dated October 16, 2018

1667. The Court dismissed Revenue's appeal against Tribunal's order allowing deduction u/s 37(1) with respect to expenditure incurred for renovation of Finance Department of Government of Gujarat, which was disallowed by the AO holding that the same was not for the business purpose. It was noted that (i) the assessee was a 100% Govt. company working under supervision and control of Finance Department of Gujarat Govt. and (ii) the entire business of assessee, i.e. received from investment activity, was due to the Finance Department's directive to all State Govt. Coprporations to park their surplus funds with the assessee.
Pr.CIT v Gujarat State Financial Services Ltd - TAX APPEAL No. 1251 & 1254 of 2018 dated 15th October 2018

1668. The Court held that where special Auditor as well as Commissioner (Appeals) and Tribunal concurrently found hotel management and marketing fess as reasonable and necessary to run business, same was to be allowed.
Pr.CIT v. Tulip Hospitality Service Ltd. - [2019] 101 taxmann.com 213(Bom.)-ITA Nos.835 & 836 of 2016-dated December 17, 2018

1669. The Court held that where special Auditor as well as Commissioner (Appeals) and Tribunal concurrently found hotel management and marketing fess as reasonable and necessary to run business, same was to be allowed.
Pr.CIT v. Tulip Hospitality Service Ltd. - [2019] 101 taxmann.com 213(Bom.)-ITA Nos.835 & 836 of 2016-dated December 17, 2018

1670. Where revenue authorities rejected assessee's claim for deduction of educational expenses incurred on grandson of one of directors of company without taking into consideration plea that said grandson of director of assessee-company had contributed to functioning of assessee's business, impugned order was set aside by the Tribunal and, matter was remanded back for disposal afresh.
Bansal Alloys & Metals (P.) Ltd. v Asst.CIT, Circle-Mandi Gobindgarh- [2018] 100 taxmann.com 6 (Chandigarh-Trib)-ITA No.526(CHD.) of 2018 -dated October 3, 2018

1671. The Tribunal held that where assessee, an asset management company, upon its incorporation had taken various steps for commencing its business such as hiring of people, application to SEBI, organizing for space etc. same amounted to setting up of business, therefore, expenditure incurred by assessee were to be allowed.
Pinebridge India (P.) Ltd. v. Asst.CIT, Circle-6(1), Mumbai- [2018] 99 taxmann.com 58 (Mumbai – Trib) ITA No.2470(MUM) of 2011- dated October 10, 2018

1672. The Court held that where assessee had claimed sub-brokerage expenses and revenue claimed that there should be 20 per cent disallowance of these expenses on basis of similar disallowance made in a subsequent assessment year, in view of fact that volume of business in subsequent assessment year was not comparable to volume of business in assessment years, under consideration, and further, there was no dispute regarding genuineness of expenses, Tribunal was justified in restricting disallowance to 10 per cent.
Pr.CIT v. Paramount Financial Services- [2019] 101 taxmann.com 246 (Bom)-ITA Nos. 506 & 562 of 2016-dated December 17, 2018

1673. The Tribunal held that assessee had claimed several expenses on account of travelling conveyance and vehicle expenses, office and other expenses, printing and stationary expenses, etc., but had failed to maintain any log book/record which could rule out incurring of any part of aforementioned expenses for non-business purposes and, further, assessee had merely tried to support its claim of such cash expenses on basis of self made vouchers, Assessing Officer was justified in making disallowance of 10 per cent of aforesaid expenses
Parsoli Corporation Ltd. v. Asst. CIT, 4(2), Mumbai-[2019] 101 taxmann.com 121 (Mumbai-Trib.)-ITA No(s). 149 & 150 (MUM.) of 2016-dated November 16, 2018

1674. The Tribunal held that expenditure towards legal and professional fees incurred by assessee-company in respect of an ongoing suit against it in Securities Appellate Tribunal and High Court for purpose of exonerating itself from an infraction of law was allowable as deduction under section 37(1).
Parsoli Corporation Ltd. v. Asst. CIT, 4(2), Mumbai-[2019] 101 taxmann.com 121 (Mumbai – Trib.)-ITA No(s). 149 & 150 (MUM.) of 2016-dated November 16, 2018

1675. The Court held that re-insurance arrangement by assessee insurance company with a foreign reinsurance company was not prohibited and; therefore, reinsurance premium paid by assessee insurance company to non-resident reinsurance company was to be allowed under section 37(1).
Cholamandalam Ms General Insurance Co. Ltd. v. Dy. CIT, LTPU, -[2019] 102 taxmann.com 292 (Madras) Chennai -Tax Case Appeal Nos. 754, 834, 836, 837, 838, 840, 841, 845, 847, 851, 856, 862, 866, 868, 871, 903, 907, 910, 913 of 2018 dated December 12, 2018

1676. The Tribunal held that RoC fees paid for increase in authorised capital for issuance of bonus shares was revenue expenditure allowable under section 37(1).
Olive Bar & Kitchen (P.) Ltd. v. Dy. CIT, 13(1)(1), Mum. - [2019] 102 taxmann.com 98 (Mumbai - Trib.)-IT Appeal Nos. 5097, 5098, 5164 & 5165 (Mum.) of 2017 dated December 5, 2018.

1677. The Tribunal held that interest paid on delayed payment of TDS is allowable under section 37(1).
Mukand Ltd. v. ITO, 3(2)(2), Mumbai-[2019] 101 taxmann.com 214 (Mumbai - Trib.)-IT Appeal No. 679 (Mum.) of 2011- dated December 5, 2018

1678. Assessee actor advanced money to a production house run by his wife to produce films in which he acted as hero so as to boost his career. However, as films were not successful and his wife suffered loss and advances given by assessee could not be recovered. The Tribunal held that money advanced by assessee was in nature of business expediency and same was to be allowed as deduction either under section 37(1) or under section 28(i) as business loss.
Jackie Shroff v. Asst. CIT, Range-16(1), Mum. - [2019] 101 taxmann.com 455 (Mumbai - Trib.)-IT Appeal No. 4838 (Mum) of 2016 dated December 31, 2018.

1679. In course of assessment, the assessee claimed deduction of expenses towards bricks, machinery repair, cartage, labour expenses etc. The assessing Officer disallowed 10 per cent of said expenses on ground that insufficient evidence was adduced. The Tribunal set aside said ad hoc disallowance on two grounds, firstly, the assessee's books of account were not rejected and secondly, such expenses were allowed consistently in past in scrutiny assessments. The Court held that no substantial question of law arose out of impugned order.

SLP dismissed in Principal CIT v. R.G. Buildwell Engineers Ltd. [2018] 99 taxmann.com 284/259 Taxmann 370 (SC). SLP (CIVIL) Diary No. 34335 of 2018 dated October 1, 2018

1680. The Court upheld the Tribunal Order holding that where pursuant to agreement entered into with DTC for developing maintaining and operating of Bus-Q-Shelters, assessee furnished bank guarantee as performance security, in view of fact that due to assessee's failure to performs its part concessionaire agreement, DTC encashed bank guarantee, amount so paid was to be regarded as revenue in nature allowable under section 37(1).
Principal CIT v. Green Delhi BQS Ltd. [2018] 99 taxmann.com 38/259 taxmann 153 (Delhi)-ITA No. 1067 of 2018-October 5, 2018

1681. The Assessee—company entered into an agreement with another group company, SSRPL for transfer of development rights in a land owned by assessee for a consideration of certain amount. The assessee contended that right to carry out development work on this designated land was subject to various compliances, regulatory approvals, encumbrances etc. by local development authority. The assessee had received sanction from local development authority for construction of Floor Space Index (FSI) area of certain feet's. The assessee offered consideration received for such sanctioned FSI an income and, further, claimed certain amount as development expenses attributable to sanctioned FSI. The Assessing Officer disallowed same. The Tribunal held that it was noted that the assessee had maintained books of account on same accounting pattern in earlier years as well as and same was accepted by the development expenses on similar basis which was also allowed. No fault was found in accounting system followed by the assessee. Since assessee followed same accounting system in earlier and subsequent years and same was accepted, there was no reason for the Assessing Officer to deviate from same during relevant assessment year.
Saamag Developers (P.) Ltd. v. Asstt CIT [2018] 98 taxmann.com 467/173 ITD 350(Delhi-Trib) ITA Nos. 2053 to 2057(DELHI) of 2017- dated October 8, 2018

1682. Where assessee-company claimed expenditure towards payments made to cricket players under head 'advertisement and publicity' and assessing Officer after making enquiry and considering explanation furnished by assessee allowed such expenditure, the Tribunal held that the commissioner was unjustified in disallowing claim of assessee by invoking section 263 on ground that Assessing Officer had not made proper enquiries
Sanspareils Greenlands (P.) Ltd. v CIT [2018] 99 taxmann.com 222(Delhi – Trib)- ITA Nos. 3225 of (DELHI) 2013 & 695 (DELHI) of 2016 October 11, 2018

1683. AO completed assessment after making additions on account of contribution to State Renewal Fund. CIT(A) deleted addition made by AO. The Tribunal held that, Coordinate Bench in assessee's own case for AY 2011-12 held that State Renewal Fund was set up to provide safety to employees working under state owned entities in case of restructuring/wind-up/closure of undertaking. Based on study done by State Government, assessee was provided an amount for welfare and benefit of employees. CIT(A) had rightly deleted disallowance made by AO towards contribution to State Renewal Fund.
Dy.CIT & ANR. Vs. Rajasthan Renewable Energy Corpn Ltd. & ANR-(2018) 54 CCH 0368 JaipurTrib. - dated December 10, 2018

1684. During assessment proceeding, AO found that assessee had claimed deduction on account of business expenditure so incurred by it. Assessee submitted that it was established with main object to promote, undertake, carry on, acquire business of setting up/providing operating/running of call centres and infrastructure facilities or services. However, AO noted that assessee was not engaged in any business activity as no business was set up or commenced during AY in question. Further there were no fixed assets, no receipts and expenses relatable to main objects as per MoA. CIT(A) set aside such disallowance. The Tribunal upheld the order of CIT(A). The Court held that, disallowance of entire business expenditure was set aside by accepting assessee's contention that investments made were in terms of main objects of promoting, undertaking, carrying on, acquiring business specified in objects. Assessee undertook business by making investments in other corporate bodies, as stipulated in Memorandum. It was observed that assessee made investment in subsidiary companies carrying on business specified in its main objects. There was no legal or statutory requirement of direct and first-

hand business operations to be conducted by assessee itself and indulgence in business activities through subsidiaries who were in same line of business activities as stipulated in MoA.
Pr.CIT vs. Bharti Ventures Ltd. (2018) 103 CCH 0294 DelHC-ITA No.611/2018-dated December 13, 2018

1685. AO noted that assessee contributed a sum to State Energy Conservation Fund to be spent on conservation of energy as and when required. AO held that contribution so made was not wholly & exclusively for assessee business of generating renewable energy. AO completed assessment after making disallowance. CIT(A) deleted such disallowance. The Tribunal held that, Coordinate Bench in ITA No. 88/JP/2016 had held that amount paid towards energy conversation contribution fund was statutory liability as per provisions of Energy Conservation Act, 2001. Contribution to fund set up for products which was also assessee's business had direct nexus to the advancement of assessee's business. CIT(A) had rightly deleted such disallowance.
Dy. CIT & ANR. vs. Rajasthan Renewable Energy Corporation Ltd. & ANR. - (2018) 54 CCH 0368 JaipurTrib-ITA No. 772/JP/2018, 817/JP/2018-December 10, 2018

1686. AO noted that assessee contributed an amount to Government of Rajasthan towards construction of 'Rajasthan Bhawan' wherein, employees of Rajasthan Government and its companies could stay during their visit for government work in view of resolution passed by Board of Directors in its 65th Board meeting where it was decided to contribute an amount for construction of Rajasthan Bhawan. Assessee claimed same as expenditure u/s 37(1). AO completed assessment after making disallowance by holding that expenditure so incurred by way of contribution to Rajasthan Bhawan was not wholly and exclusively for assessee's business of generating renewable energy and it was a clear-cut case of application of income.CIT(A) granted partial relief to assessee. The Tribunal held that, assessee got rebate of 75% as well as right to use accommodation by its officers/employees visiting Mumbai. Accordingly, in view of fact that assessee had received benefit in shape of accommodation against said expenditure for construction of Rajasthan house, assessee's claim was an allowable expenditure u/s 37(1) and AO was directed to allow same.
Dy. CIT & ANR. vs. Rajasthan Renewable Energy Corporation Ltd. & ANR. - (2018) 54 CCH 0368 JaipurTrib-ITA No. 772/JP/2018, 817/JP/2018-December 10, 2018

1687. Assessee made provision for service tax on rent pertaining to Gurgaon premises and Bangalore premises. Landlord of Gurgaon premises raised a consolidated invoice for recovery of service tax during year 2012 and in respect of Bangalore premises amount had not been paid by assessee as same was not claimed by landlords. AO treated entire amount as an unascertained liability and disallowed it. AO made addition in respect of Provision for service tax on rent expenses. Held, liability to collect and deposit service tax on rent income was on landlord. Assessee had made payment as per invoice raised by landlord in Assessment Year under consideration for Gurgaon premises whereas insofar as Bangalore premises were concerned no payment was made as invoice was not released. The Tribunal directed the AO to verify if service tax liability towards Bangalore premises had been made by assessee as subsequently law was absolutely clear and burden was cast upon landlord to mandatorily collect service tax, to be deposited with Government. Accordingly, the matter was remitted.
Viavi Solutions India Pvt. Ltd. & Ors. vs. Dy. CIT & Ors. - (2018) 53 CCH 0319 DelTrib-ITA No. 1483/Del/2016, 1478/Del/2016, 231/Del/2017-Jul 11, 2018

1688. AO noted that assessee took lease hold land to operate its Plant and as per agreement, it made upfront payment. As per said agreement, assessee was liable to pay lease rent per month as license fee on yearly basis which would be adjusted/set off against upfront payment made by assessee. Assessee claimed a sum on yearly basis as amortization of upfront payment of license fee and same should be allowable revenue expenditure over lease period in respect of amortized portion of expenditure. AO found that similar expenditure was debited by assessee in AY 2009-10 was disallowed by his predecessor. Accordingly, such amount was required to be disallowed in year under consideration. CIT(A) deleted disallowance made by AO. The Tribunal held that, same sum of amortization of license fee was allowed by Revenue commencing from AY 1998-99 to 2008-09 without any dispute. Assessee had only debited in its P&L account a sum representing amortization of license fee over lease period. Assessee paid a sum as an upfront payment in AY 1998-99 as per agreement, which was sought to be

adjusted/set off with license fee payable by assessee year on year during tenure of lease. Effectively, assessee had claimed a sum as a deduction over lease period. Similar claim of deduction was allowed in all the scrutiny assessments up to AY 2008-09. There was no reason for Revenue to take a divergent stand during year under appeal. Revenue's ground was dismissed.
Asst. CIT & Anr. vs. Tata Steel Processing & Distribution Ltd. & Anr. - (2018) 54 CCH 0304 KolTrib- ITANo. 2237/Kol/2016 (C.O. No. 96/Kol/2016)- December 5, 2018

1689. Assessee was engaged in business of Trading and Servicing of Automatic Bank Note Sorting Machines. E-return of income was filed. As per purchase orders and agreements for sale of cash sorting and counting machines, assessee Company was under obligation to provide warranty on sale of machines which varied from one to three years. Assessee Company made provision for warranty. AO made disallowance of provisions for warranty expenses. CIT(A) partly allowed assessee's claim. The Tribunal held that, provisions for warranty was business necessity and such provision was allowable expense.Merely because assessee had returned back provisions in subsequent year could not be basis for disallowing assessee's claim in current year, particularly when assessee had given specific basis for making warranty provisions.
CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA No. 5017/ DEL/ 2012, 2671/DEL/2013-July 3, 2018

1690. Assessee Company had debited liquidated damages in its P&L A/c for delay in supply of machines to banks. AO disallowed liquidated damages on account of delay and supply of machines. CIT(A) upheld AO's order. The Tribunal held that, AO as well as CIT(A) had not taken correct cognizance as to liquidated damages incurred by company and accordingly deducted by customers from payment of sale proceeds was as per agreed terms and contract. All these factors had not been properly assessed by AO as well as CIT(A). These provisions were to be set off in next Assessment Year and same had to be verified at level of AO. Hence, AO was directed to verify all these documents along with claim of set off of this claim
CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA-No. 5017/ DEL/ 2012, 2671/DEL/2013 dated July 3, 2018

1691. Assessee company during year under consideration had written off custom duty. AO held that said payments were actually made in AYs concerned (i.e. AY 2006-07 & AY 2007-08) and had crystallized in concerned AYs itself. AO held that since expenditure pertaining to AY 2006-07 and AY 2007-08 had crystallized during AY's concerned, same were prior period expenditure and therefore could not be allowed as deduction in computing total income of subject year. AO made disallowance of Countervailing Duty. CIT(A) upheld order of AO. Held, Company had internal discussions/ deliberations and ultimately written off entire amount of countervailing duty reflected as asset in Balance Sheet to extent it was not eligible for credit against service tax liability. In this regard, the Company had consulted with Tax Consultant and confirmed its understanding that countervailing duty would be creditable only for that portion of countervailing duty paid on goods which were actually used to provide services and not on all goods imported and sold. Though countervailing duty paid in AY 2006-07 and 2007-08 was allowable deduction in respective assessment years, however, Company could not claim same in computing total income for AY 2006-07 and AY 2007-08 under erroneous misconception that same was creditable against other duties / taxes payable. Issue of countervailing duty was allowed by AO with proper direction of DRP. Therefore, there was no need to interfere with same. Assessee's ground was dismissed.
CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA-No. 5017/ DEL/2012, 2671/DEL/2013-dated July 3, 2018

1692. Assessee was industrial company engaged in manufacturing copper foils. Assessee incurred expenditure under head management training and development expenditure. Expenditure was incurred for higher education and training of son of one of directors of assessee company. In course of assessment, assessee explained that expenditure was incurred for purpose of assessee's business. AO disallowed amount incurred by assessee towards management training and development expenditure.CIT(A) set aside order of AO. Tribunal restored disallowance made by AO. The Court held that, assessee was company manufacturing copper foil. Son of one of directors was sent to USA for

completing course in Business Administration which was general in nature and had no direct nexus with business activities of assessee. Assessee did not place better particulars on record like, basic qualification of son of one of directors, subjects in which he did his administration course and nexus of his subjects with business activities of assessee. Though contract was placed on record whereby son of director had agreed to render his services after completing his education and training, but that itself was not sufficient to hold that Assessee proved nexus between expenditure and its business activities—Amount which was claimed by Assessee as deductible allowance was not incurred wholly and exclusively for purpose of business of Assessee. Assessee's appeal was dismissed.
Indian Galvanics Cyrium Foils Ltd. vs. Dy. CIT & ANR. -(2018) 102 CCH 0116 MumHC-ITA No.199 of2002-dated July 6, 2018

1693. The Court held that travelling expenditure incurred by Senior Executive of a Company including expenseof his wife in connection with medical treatment in foreign Country cannot be treated as business expenditure.
Harrisons Malayam Ltd. vs. CIT-(2018) 103 CCH 0228 KerHC-ITR No.1 of 2003-dated December 6, 2018

1694. The Tribunal held that the disallowance of a fraction of expenses, in the absence of irrefutable documentary evidence proving that they were not incurred wholly and exclusively for the purpose of the business of the assessee company is not sustainable.
Mishka Gold Jewellery Ltd & ANR. Vs. Addl.CIT & ANR-(2018) 54 CCH 0311 MumTrib-ITA No(s).5972/Mum/2017, 5438/Mum/2017-Dated December 7, 2018.

1695. AO noted that assessee had incurred traveling expenses in respect of travelling by its directors namely, Mr. M and Mr. N. AO directed assessee to submit corresponding bills/vouchers and nature of travelling expenses, which, assessee failed to comply with. AO completed assessment after making 50% disallowance of said expenses and made consequential additions. CIT(A) reduced disallowance to 25%.The Tribunal held that, disallowance of a fraction of expenses by AO and CIT(A) was made only on an estimate basis and not on basis of any concrete facts disproving authenticity of assessee's claim. CIT(A) adopted a liberal approach and in order to meet ends of justice had restricted disallowance to extent of 25% of total expenses. Lower authorities were fairly justified in disallowing a part of said expenses. However, at same time, it could not be said that disallowance of 25% of said expenses were highly exorbitant in backdrop of scale of business of assessee. Keeping in view substantial turnover of assessee for year under consideration, incurring of travelling expense could safely be held to be a miniscule amount. Thus, disallowance of travelling expense was restricted to 10% and thus, order of CIT(A) was modified. Assessee's ground was partly allowed.
Mishka Gold Jewellery Ltd & ANR. Vs. Addl.CIT & ANR-(2018) 54 CCH 0311 MumTrib-ITA No(s).5972/Mum/2017, 5438/Mum/2017-Dated December 7, 2018.

1696. Assessee had debited sum as insurance professional indemnity. Insurance taken was of nature of general insurance. Premium was paid annually. Expenditure incurred was wholly and exclusively for purposes of profession. AO noted that this expenditure could not be allowed u/s 37 of I.T. Act and disallowed insurance payment and made addition to Assessee's income. CIT(A) set aside AO's order.The Tribunal held that, in case of M/s. A.F. Ferguson Associates vs. ACIT in ITA, it was held that since firm was providing professional services and as such professional indemnity insurance premium thus was related to professional activity of partners of firm and was for indemnification of any loss arising out of any claim of damages or compensation payable by assessee firm or its partners in relation to professional services provided by them to their clients. Under such circumstances observation of lower authorities that said expenditure was in relation to personal expenditure was wrong and accordingly addition made under this head was set aside. Expenditure on professional indemnity insurance had been incurred wholly and exclusively for purpose of business and was admissible deduction.
Dy.CIT vs. Deloitte Haskins & Sells-(2018) 53 CCH 0331 KolTrib-ITA Nos. 587 & 588/Kol/2016-dated
July 11, 2018

1697. Assessee had incurred expenditure on account of software development expenditure. AO held that it had given benefit of enduring nature to assessee therefore same would be capital expenditure. CIT(A) upheld same. The Tribunal held that, expenditure of assessee was product development expenditure and not software development expenditure. Expenditure had been paid as professional fee towards development of new product in unit I related to equipment required by rigs in oil industry. It was not new line of business, but was merely expenditure in development of existing line of business. Assessee was engaged in business of manufacturing of machineries and equipments and development was for same product. Hence, such expenditure could not be held to be capital expenditure, but it was revenue expenditure.
Nov Sara India Pvt.Ltd. & ANR vs. Addl. CIT & ANR-(2018) 53 CCH 0330 DelTrib. -ITA No.6920(Del) of2014, 825(Del) of 2015-dated Jul 12, 2018.

1698. CIT(A) held that there being no change in rate of taxes, the amount incurred under the head Prior Period expenses has to be allowed in the AY under consideration as the said expenses were determined and crystallized during the AY under consideration. Accordingly, the disallowance made by the AO under the said head was deleted. The said expenses are allowed for the reason that these expenses were determined and crystallized only during the AY under consideration. Finding no infirmity in the order of CIT(A), the Tribunal dismissed Revenue's appeal.
Dy. CIT vs. U. P. Forest Corpn-(2018) 54 CCH 0369 LucknowTrib-ITA Nos. 352 to 356/Lkw/2017-DatedDec 13, 2018

1699. Assessee company was engaged in business of manufacturing and sale of Polymers and other Petrochemical Products. In Profit & Loss Account filed along with return, certain sum was debited by assessee on account of amortization of miscellaneous expenditure. In support of its claim for deduction, assessee explained that indirect expenditure was incurred by it before commencement of commercial production and same was written off over period of five years beginning from assessment year 2002-03. Assessee claimed that the expenditure so incurred was in nature of revenue and same was allowable as deduction being deferred revenue expenditure. AO disallowed deduction claimed by assessee on account of deferred revenue expenditure holding that there was no provision in the Act for allowing such deduction. CIT(A) upheld order of AO. The Tribunal held that, in assessee's own case for A.Y. 2005-06. The Tribunal held that assessee had incurred expenses prior to commencement of business and classified as deferred revenue expenditure. Assessee started claiming those expenses after commencement of business 1/5th over the period of 5 years. AO was not skeptical about genuineness of expenses incurred. Whole amount had been incurred in connection of business prior to commencement of commercial production. Any expense incurred in connection to business was an allowable expenditure. It held that all expenses incurred prior to commencement of production should be capitalized with fixed assets of assessee and deduction as well as depreciation should be allowed to assessee
Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR. - (2018) 53 CCH 0294 KolTrib-ITA No. 1533/Kol/ 2015,168/Kol/2016-Dated Jul 6, 2018

1700. Assessee claimed net freight expenses incurred in connection with domestic, export of goods and freight on stock transfer. Assessee also recovered part of freight charges from customers incurred in connection with sales. AO observed that expenses incurred on freight was more than recovery made by assessee from customers. AO disallowed claim of assessee for freight charges and added to income of assessee. CIT(A) deleted addition made by AO. The Tribunal held that, the Tribunal in assessee's own case for A.Y.2005-06 held that AO had not disputed quantum of expenses incurred by assessee on freight. Out of total disallowance made by AO towards freight expenses, certain sum was incurred on stock transfer by assessee from factory to depots. Question of disallowance of freight expenses in connection with stock transfer did not arise. Freight expense had direct connection with business of assessee. There was no doubt that assessee had made short recovery from customers but reasons for same were duly explained by assessee. Order of CIT(A) was sustained and Revenue's ground dismissed.
Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR. - (2018) 53 CCH 0294 KolTrib-ITA No. 1533/Kol/2015,168/Kol/2016-Dated Jul 6, 2018

1701. Payment on account of mesne profits which was settled during year with receipt of order from Appellate Court pertained to a period from from 10.08.1980 to 30.09.2001 was disallowed by AO who treated it as a prior period expenditure and also treated it as penal in nature, which was not allowable under Act.CIT(A) deleted alleged addition. The Tribunal noted that CIT(A) held that payment on account of mesne profits was arising out of contract of rent and was as such not in nature of penalty for infraction of any law and was thus an allowable expenditure u/s 37. It held that liability was crystallized during year as per order of Appellate Court and expenditure was rightly allowed by CIT(A) u/s 37 and thus there was no justification found to interfere with findings reached by CIT(A) on this score. Thus, Revenue's ground dismissed.

Asst. CIT & ANR. vs. INDIAN SUGAR EXIM CORPORATION LTD. & ANR. (2018) 54 CCH 0438 DelTrib- ITA No. 1420/Del/2015, 1449/Del/2015 dated 31.12.2018

1702. AO observed that assessee was incorporated on 12/6/2008 as a wholly owned subsidiary at Mauritius for development and construction of real estate projects in India.Assessee entered into a MoU with S for building a project. Assessee was developing master-planned corporate community called SCP which contained two identical commercial building of nine floors. AO held that assessee's only business was building of one park, and, therefore, all expenses direct or in direct should be accounted for as capital work in progress.AO completed assessment after disallowed an amount as revenue expenses u/s 37(1).CIT(A) held that stand of AO that in absence of any business income, project being incomplete, general expense were disallowable was contrary to well settled legal principles.It was setting up of business which was relevant for allowing expenses and not actual commencement of business.Assessee's business was to earn rental income from commercial mall and construction of mall was essential for that.Construction was in full swing which was evident by fact that capital work in progress.A marketing centre was set up to display projects completed by group outside India, to market its product though audio visual media and other such activities. The Tribunal held that once business was set up, expenditure was allowable as business expenditure.Assessee's business was set up and year under assessment falls in interval between setting up of business and commencement of business and AO's order disallowing expenditure claimed as revenue expenditure and capitalizing same to CWIP was not justified.Said expenditure was held to be allowable as business expenditure u/s 37 and accordingly, addition was deleted. It held that when an assessee whose business was to develop real estates, was in a position to perform certain acts towards acquisition of land, that would clearly show that it was ready to commence business and, as a corollary that it had already been set up.Actual acquisition of land was result of such efforts put in by assessee; once land was acquired assessee might be said to had actually commenced its business which was that of development of real estate.Actual acquisition of land might be a first step in commencement of business but s. 3 does not speak of commencement of business, it speaks only of setting up of business.There was no need to interfere with findings of CIT(A) and Revenue's appeal was dismissed

Dy.CIT vs. HMS Real Estate Pvt Ltd (2018) 54 CCH 0427 DelTrib- ITA No.3289/Del/2018 dated 27.12.2018

1703. Assessee had invested its funds in securities and treated same as its stock in trade. At year end, assessee valued securities at cost or market price whichever was less.Value of current investment as at the year-end was depreciated in AYs 2010-11 and 2011-12 respectively.Assessee created Provision for diminution in value of securities and claimed same as deduction.Assessee also sold investments and incurred loss in AYs 2010-11 & 2011-12 respectively and claimed same as its trading loss.AO held that assessee was classified as "loan company" by RBI and its object clause as per MoA was to carry on business of money lending, i.e., assessee's object was not to act as an investment company.AO stated that making investments was not assessee's activity and hence investments made by assessee could not be considered as trading assets, but should be considered as its capital asset.Provision for diminution in value of investments as at year end and also loss on sale of investments were on capital field. AO further observed that making investments in securities was not compulsory for assessee, as it was non-deposit taking company.As per provisions of RBI Act, assessee was not required to make any mandatory investments.Investments made by assessee could not be considered as part of its business

activities.Assessee had shown investment in securities under head “investments” and not as current assets.A group company named M/s. C treated securities was purchased by it as its investment.AO disallowed assessee’s claim by holding that deduction claimed towards “provision for diminution in value of securities” and “loss on sale of securities” were capital losses.CIT(A) confirmed AO’s action. The Tribunal held that assessee submitted that, as per provisions of s. 45I(c) of RBI Act, it was permitted to carry on trading business in securities.Assessee also pointed out that Circular relied upon by AO related to NBFC which accept deposits.Since assessee did not accept deposits, said Circular was not applicable to assessee.With regard to query raised by RBI by way of SCN, assessee submitted that fixed deposits held by assessee was not considered as financial instruments and hence RBI gave SCN.Subsequently, it withdrew fixed deposits and made investment in securities.Said modification done by assessee was accepted by RBI.With regard to observation of AO that assessee had shown investments as “Investments” in Balance Sheet, assessee submitted that it was constrained to prepare Balance Sheet as per format prescribed by RBI.Realised loss on sale of investments would constitute business loss only in hands of assessee.Provision for diminution in value of investments was allowable as deduction.AO was directed to allow deduction of same in both years

CREDIT SUISSE FINANCE (INDIA) PVT. LTD. & ANR. vs. Dy. CIT& ANR (2018) 54 CCH 0410 MumTrib ITA No. 1435/M/2016, 1436/M/2016, 1415 & 1416/M/2016 dated 21.12.2018

1704. The Tribunal held that conference expenses incurred by law firm for enhancing visibility and recognition of law firm being in violation of the rules of the Bar Council, cannot be allowed u/s 37.

LUTHRA & LUTHRA LAW OFFICES vs. Jt. CIT (2018) 54 CCH 0398 DelTrib- ITA No.802/Del/2015 dated 20.12.2018

1705. During assessment proceeding, AO observed that assessee debited travelling expenses, majority of which was on account of foreign travelling.AO noted that there was an increase in travelling expenses as compared to immediately preceding year despite decrease in gross receipts.Assessee submitted that firm provided services worldwide and for that purpose, it was needed to visit various places for client meetings, rendering services outside India, client development.AO held that personal element could not be ruled out in expenses.Assessee failed to establish that travelling expenses were incurred exclusively for purpose of business and accordingly he disallowed 10% of such expenses.CIT(A) held that trip to Beijing was not for official purposes but for personal purposes, and thus not allowable. The Tribunal held that counsel claimed that expenses were incurred for annual day event of firm, but no documentary evidence of any kind was produced which could establish that trip to Beijing was in relation to business activity of assessee.On perusal of bill of M/s T, it was evident that expenses were incurred in relation to extension of stay, cancellation of air ticket, bar party, photographers, smoothies ordered by Mrs G in hard rock.Thus, tour was for entertainment of Counsels and their family members and it had not served any business purpose of assessee firm.Assessee failed to establish that expenses were incurred wholly and exclusively for business purpose and thus same was not allowable u/s 37(1).

LUTHRA & LUTHRA LAW OFFICES vs. Jt. CIT (2018) 54 CCH 0398 DelTrib- ITA No.802/Del/2015 dated 20.12.2018

1706. During assessment proceeding, AO also made ad-hoc disallowance of a certain amount out of various expenses incurred towards miscellaneous expenses, repair and maintenance, stationery and printing, travelling, administrative expenses for want of necessary verification merely on basis that some of expenditure incurred in cash and vouchers were self prepared.CIT(A) granted relief to assessee. The Tribunal held that CIT(A) deleted disallowance by holding that books of accounts of assessee were audited and were duly produced before AO.Assessee’s books results were not rejected by AO.No major discrepancies were noticed.Disallowance was merely made on observation that some of expenditure

were incurred in cash and some vouchers were self made and surprisingly there was no specific observation by AO which could prove that assessee had claimed expenses with a motive to evade tax nor any observation was made by AO for challenging genuineness of particular expenditure.Merely making a ad-hoc disallowance and completely disregarding audited financial statements was certainly not justified on part of AO.No infirmity was found in finding of CIT(A) while deleting disallowance and Revenue's ground was dismissed.

Dy. CIT vs. BRILLIANT ESTATE PVT. LTD.(2018) 54 CCH 0345 IndoreTribITA No. 349/Ind/2017dated 13.12.2018

1707. Assessee had debited a sum towards sales promotion expenses in its warehousing business.AO noted that expenditure pertaining to purchase of Gold and Silver which were given to various customers for promoting its business.AO held that said sum incurred towards sales promotion as representing purchase of Gold and Silvers got nothing to do with warehousing activity of assessee accordingly, disallowed same.CIT(A) dismissed assessee's appeal. The Tribunal held that assessee had reflected interest income on fixed deposits and liabilities no longer required written back by way of credit to P&L account.No details were furnished to ascertain whether similar items of expenditure in form of purchase of Gold and Silver were incurred in past and whether same were allowed as revenue expenditure by Department for earlier AY.It was not in dispute that assessee had duly produced bills for incurrence of purchase of Gold and Silver.But assessee had not established nexus between incurrence of said expenditure vis-a-vis warehousing revenue derived by it.Hence, lower authorities were justified in disallowing claim towards sales promotion expenses.

GRAND WOOD WORK & SAW MILLS AND ANR. vs. ITO & ANR (2018) 54 CCH 0509 MumTrib ITA No. 380/Mum/2017 & ITA No.7556/Mum/2016 dated 19.12.2018

1708. During reassessment proceeding, AO noted that assessee had paid an amount to M/s E for using their brand name on oil-filters.Payment was also made to T and M&M for using their trademarks and names on oil-filters.Without any discussion on nature and character of royalty payments, AO held same to be as capital expenditure on which depreciation @25% should be allowed.Accordingly addition was made by AO.CIT(A) deleted such addition on ground that assessee had not acquired any exclusive rights to manufacture or sell products for which royalty was paid.Royalty was paid for use of trademarks and names belonging to a third party which had directly increased turnover, business and profits. The Tribunal confirmed findings of CIT(A). The Court held that Revenue cannot prefer an appeal in absence of any discussion and factual findings recorded by AO who had merely referred to case law. Accordingly, Revenue's ground was dismissed.

Pr. CIT vs. ELOFIC INDUATRIES LTD. (2018) 103 CCH 0322 DelHC ITA 1472/2018 dated 19.12.2018

1709. Assessee made expenditure on construction of external road to factory premises. Ownership of road remained with Government.Assessee claimed for deduction u/s 37(1).AO disallowed same.CIT(A) set aside AO's order. The Tribunal held that, external road to factory premises was constructed/repaired by Assessee for which ownership remains with government.CIT(A) distinguished Travencore Cochin chemical Ltd., 106 ITR case relying upon which AO made disallowance by stating that in this case issue was related to construction of new roads and not repairs of existing roads.CIT(A) further held that road were only being strengthened through RCC, observations of AO were not based on findings regarding ownership of road with assessee or whether new roads had been laid out from scratch Thus Revenue's ground was dismissed.

DCIT vs Ultra International Ltd – (2018) 54 CCH 0066 DelTrib- ITA No 2609/Del/2015 dated 04.10.2018

1710. During assessment proceedings, AO found that assessee had made a payment to its ultimate holdings company M/s J and claimed the same under head 'Employee Benefit Expenses'. Assessee submitted that M/s. J had formulated ESOP scheme for grant of stock option and in return granted stock option to assessee's employees. Assessee had paid/reimbursed differential amount of issue price vs. market price of said option shares to M/s. J. AO held that shares of parent holding company were been allotted to employees of assessee. Parent company also had an interest in retaining employees of its subsidiary and hence notional loss was related to parent company. Assessee's contribution to parent company in this regard was having no direct nexus with respect to ESOP expenses. CIT(A) rejected assessee's claim. The Tribunal held that, expenditure in question was wholly and exclusively for assessee's business purpose and the fact that the parent company was also benefited by reason of a motivated work force would be no ground to deny claim of the assessee for deduction, which otherwise satisfied all conditions referred to in s. 37(1). AO was directed to verify same and allow claim of the assessee keeping in view that deduction would be available to assessee only to extent of shares which were ultimately allotted by issuer to assessee's employees and no deduction would be available against cancelled/ un-allotted shares.

ACIT vs JM Financial Institution Securities Ltd- (2018) 54 CCH 0171 MumTrib- ITA No 6479, 6891/Mum/2016 dated 03.10.2018

1711. Assessee paid professional fees to some individual which was payable in 4 quarterly installments. That individual was owner director of entity which was taken over by assessee company and therefore, payment was necessary for continued patronage of earlier customer base and employees in transition period. AO reached conclusion that payment was more in nature of non-compete fees for agreeing not to compete in similar line of business and same was primarily related to acquisition process and hence, capital in nature. The Tribunal held that, payment made by assessee should breach threshold conditions of Sec 37(1) that expenditure was incurred wholly and exclusively for business purposes of assessee before becoming eligible to be claimed as deduction. Therefore, reversing stand of CIT(A), matter stood remitted back to file of AO for re-adjudication in light of acquisition agreement. It held that complete onus to demonstrate that impugned expenditure qualify for deduction as per law rest with assessee and that it was also pertinent to note terms of correspondence, provided for rendering of services for group of entities which were referred to as Combined Entities and services were not restricted exclusively to assessee only. But to the other entities which had separate legal existence. Therefore, if said expenditure was, at all, found admissible, deduction to assessee could be allowed only to extent of services being rendered by stated individual for benefit of assessee only and not for other entities.

ACIT vs Sodexo Food Solutions India Pvt Ltd – (2018) 54 CCH 0056 MumTrib- ITA No 5781,5707/Mum/2016 dated 03.10.2018

1712. The Tribunal held that expenses incurred on the occasion of any Pooja and festival are in the nature of business expenditure and thus, allowable as deduction.

DCIT vs Godawari Power & ISPAT Ltd- (2018) 54 CCH 0360 RaipurTrib- ITA No 365/RPR/2014 & C.O. No 12/RPR/2018 dated 01.10.2018

1713. The Tribunal held that when assessee was publicizing its product at the prominent places by maintaining them such as parks through CSR expenditure, which had direct impact on sale promotion had to be allowed. What was important for purpose of allowability of deduction u/s 37(1) was that

expenditure must be incurred for purpose of business. Words, “for purpose of business” should not be limited to meaning of “earning profit alone”. Certain expenditure might not reap profits immediately,but might be advantageous in long run, by creating goodwill and brand image. Explanation 2 which had been inserted in s. 37 by Finance (No. 2) Act, 2014 w.e.f. 1.04.2015 to provide that CSR expenses referred in s. 135 of Companies Act, 2013 should not be deemed to be incurred for purpose of business would not be applicable for the captioned AY (i.e AY 2009-10)

Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018

1714. AO made addition on account of construction of community centre. The Tribunal held that section 37 allowed certain expenditure i.e. any expenditure (not being expenditure of nature described in sections 30 to 36 and not being in nature of capital expenditure or personal expenses of assessee), laid out or expended wholly and exclusively for purposes of business or profession should be allowed as computing income chargeable under head Profits and gains of business or profession. Assessee was required to demonstrate that expenditure had been incurred exclusively for business of assessee. As no evidence in this regard was furnished by assessee corporation, therefore there was no infirmity in order of AO and Assessee’s ground was dismissed.

M.P Police Housing Corporation Ltd vs ACIT- (2018) 54 CCH 0076 IndoreTrib- ITA No 383/Ind/2013, ITA No 259& 260/Ind/2015, ITA No 269,449/Ind/2016 and ITA No 125/Ind/2017 dated 10.10.2018

1715. AO disallowed expenditure claimed by assessee towards Corporate Social Responsibility on ground that it was in the nature of donations and was not allowable as business expenditure u/s 37(1). CIT(A) upheld order of AO. The Tribunal held that direction of Tribunal in earlier AY’s holds good for relevant AY’s under consideration. AO was directed to recalculate expenses allowable under CSR after disallowing sum of capital expenses.

NMDC Ltd vs ACIT-(2018) 54 CCH 0094 HydTrib- ITA No 1823,1824/Hyd/2017 dated 17.10.2018

1716. The Tribunal allowed deduction u/s 37(1) with relation to temporary discontinuance of business for an assessee-society who was engaged in business of electricity distribution under license issued by State Government. The license granted to assessee had expired and the same was not renewed and was instead licensed to MSEDCL for distribution of electricity. The assessee was further ordered to hand over infrastructure and database of clientele etc. to MSEDCL. The assessee filed its return and claimed certain business expenditure as allowable however, AO contended that the business of assessee had closed due to non-renewal of license, thus, claim of deduction of expenditure was disallowed. However, the assessee contended that handing over business to MSEDCL by MERC was a temporary phenomenon and they would resume business soon after license was renewed. It was further noted that the assessee had submitted the assets to MSEDCL and were not given in sale or lease to MSEDCL. Further, the ongoing litigation for grant of license ever since 2011 till 2018 demonstrated assessee's strong intention to continue business and moreover, decision of assessee of giving VRS to 1522 employees was a prudent commercial decision and same could not be interpreted against assessee as lack of intention to resume business. Further, assessee had also opposed takeover bid of MERC for MSEDCL with or without consideration. Assessee did not resort to liquidation or insolvency. Assessee received compensation of Rs. 1 crore every month from MSEDCL and reported same to income tax office every year. Thus, on facts, it could be said that assessee had intention to resume its business, hence, expenditure claimed by assessee was allowable.

Mula Pravara Electric Co-opSociety vs DCIT- (2018) 98 taxmann.com 419 (Pune- Trib)- ITA no 1776 of 2018 dated 28.09.2018

1717. According to AO, the year under consideration being initial year of company's business, large sum of expenses incurred on advertisement and sales promotion should have been capitalized. AO relied on decision of Supreme Court in Madras Industrial Investment Corporation Limited, wherein at instance of assessee, benefit of spread of expenses over a number of years was allowed. CIT(A) also upheld disallowance. The assessee contented that In the Supreme Court decision in case of Madras Industrial Investment Corporation Ltd, the spread of the expenses over number of years was allowed at the instance of the assessee. But in the instant case no such claim was made by assessee and therefore ratio of the said decision could not be applied over the facts of the instant case. The Tribunal deleted the disallowance by relying upo its earlier year decision in assessee's case wherein the said disallowance was deleted.

Biotronik Medical Devices India Pvt Ltd vs ITO- (2018) 54 CCH 0201 DelTrib- ITA No 2427/Del/2015 dated 12.10.2018

1718. The AO during the course of assessment proceedings noted that assesse had claimed an amount as financial expense on account of interest on term loan for purchase of land and the same was disallowed by AO by treating it as capital in nature and the same view was upheld by the CIT(A).

The Tribunal observed that revenue had not disputed that for previous AYs, assessee's claim was accepted u/s 143(1) and therefore, the fact of showing land in question as stock in trade was not in dispute. Further, the Tribunal held that, even if there was no sale transaction after purchasing of land in question, but when the land was shown as stock-in-trade in books of account then, whenever assessee sold the land or any part of the land, same would be business income of assessee and expenditure which was incurred for taking loan for purchase of land could not be disallowed on the ground that after purchasing land, assessee had not carried out any business activity, thus financial expense was an allowable expenditure.

Model Properties P Ltd vs ACIT- (2018) 54 CCH 0140 Jaipur Trib- ITA Nos 957 & 958/JP/2015 dated 31.10.2018

1719. During scrutiny assessment, the assessee was asked to furnish nature of labour expenses and proof regarding same. However, in reply, the assessee submitted that payments were made to casual workers for works done by them on various days and the same was settled then and there. However, assessee failed to produce any documentary evidence to support its contentions. Thus, the AO held that labour charges were disallowed and added back to assessee's income which was later confirmed by the CIT(A). The Tribunal held that the assessee had not produced any details regarding the said labour charges expended by it, thus the AO had correctly disallowed said expenditure and added back to assessee's income.

Ilahia Trust vs ACIT (exemption)- (2018) 54 CCH 0131 Cochin Trib- ITA No 313/Coch/2018 dated 29.10.2018

1720. The Assessee was a director of a company and was provided a credit card to meet out company's expenses. The AO disallowed such expenses on ground that expenses were for his personal use and not for business purposes and the same was upheld by the CIT(A). The Tribunal held that it was incumbent upon assessee to prove nature of expenditure and purpose of expenditure and correlate with business of company and the ledger account belonging to company so submitted mentioned of cash credit which required verification by AO. Thus, the Tribunal remitted the issue back to AO for limited purpose to verify the link between the expenses and the business of the company where the assessee was the Director and further directed that in the event if the AO found that there is some relation with the business of the company and expenditure incurred by the assessee, the AO would allow such expenses and delete the addition to that extent.

Manish Kumar Lath vs CIT- (2018) 54 CCH 0129 Indore Trib- ITA No 616/Ind/2017 dated 26.10.2018

1721. The assessee company was a joint venture non-banking finance company engaged in issuance, sales and marketing of credit cards and the AO made disallowance on account of card acquisition expenses which was further upheld by the CIT(A). The Tribunal observed that disallowance of card acquisition expenses was squarely covered in favour of assessee in its own case by judgment of High Court for previous AY wherein the High Court held that assessee was entitled to treat the card acquisition expenses as revenue expenditure in view of section 37(1). As the Revenue could not point any difference in facts with the current year, the Tribunal directed to allow entire card acquisition expenses as revenue expenditure.

SBI cards payment services pvt ltd vs ACIT- (2018) 54 CCH 0109 Del Trib- ITA No 5879/Del/2013 dated 23.10.2018

1722. The assessee company was a joint venture non-banking finance company engaged in issuance, sales and marketing of credit cards and the AO made disallowance on account of advertisement expenses and the CIT(A) partly sustained disallowance. The Tribunal observed that while sustaining disallowance, the CIT(A) had noted that assessee was not in position to provide proper details and documents of various items which were distributed and noted that expenses shown under head 'Gifts and Others' were not fully supported by adequate documentary evidences and details. The Tribunal noted that the CIT(A) made ad hoc disallowance without pointing out any specific instance where vouchers were not available, and the AR had also drawn attention to various documentary evidences filed in support of these expenses as available on paper book filed by assesse.Thus,the Tribunal concuded that it would be in fitness of things that issue be re-examined by AO and be restored to file of AO to be adjudicated afresh after duly considering evidences which assessee sought to rely upon.

SBI cards payment services pvt ltd vs ACIT- (2018) 54 CCH 0109 Del Trib- ITA No 5879/Del/2013 dated 23.10.2018

1723. The Assessee was engaged in the development of computer software and providing technical support. During assessment, the assessee was asked to furnish complete details of travelling expenses claimed by it. The assessee contended that it had entered into business relationship with HCL Technologies which required software to be installed and training to be given and thus was required to incur travel expenditure for engineers. The AO was not satisfied with replies submitted by assessee and observed that part of travelling expenses included foreign travelling and further some expenses were also incurred for training of its staff and thus disallowed expenses to the tune of 50% and the same was upheld by the CIT(A). The Tribunal held that it was not the case of revenue that no expenses were incurred and assessee had claimed bogus or fraudulent expenses and further lower authorities could not point out any specific defect in expenditure claimed by assessee. The Tribunal noted that the assessee had discharged its burden by placing all material on record with respect to travelling expenses and revenue could not specifically point out which of those travel expenses were incurred for non-business or personal purposes of employees. Thus, the Tribunal concluded that nothing incriminating was there on record to validate disallowance of 50% of travel expenses and thus no addition was warranted towards disallowance of travelling expenses.

Ebaotech India P Ltd vs DCIT- (2018) 54 CCH 0222 MumTrib- ITA No 549/Mum/2016 dated 22.10.2018

1724. During assessment, the AO observed that assessee had debited salary expenses to tune of Rs. 1,23,52,891/- during year under consideration as against an amount of Rs. 54,16,001/- debited to salary expenses in immediately preceding year. As per AO, salary expenses were excessive and thus disallowed 20% of the claimed amount and the same was upheld by the CIT(A).The Tribunal observed that assessee had given complete details of its employees salary and bonuses paid to them and further in consecutive AY's salaries were paid which were infact higher than salaries paid in current year and

no additions were made by Revenue for those years. The Tribunal noted that Revenue had no right to stipulate manner in which assessee should conduct its business and genuineness of salary was not doubted by Revenue except that it was only considered excessive and the Revenue had not brought on record comparative analysis of other independent entities to bring on record cogent material to prove that salaries paid to those employees were excessive. Thus, the Tribunal concluded that no disallowance of 20% of salary expenses was warranted and Assessee's ground was allowed.

Ebaotech India P Ltd vs DCIT- (2018) 54 CCH 0222 MumTrib- ITA No 549/Mum/2016 dated 22.10.2018

1725. The Tribunal allowed assessee's claim for deduction u/s 37(1) for AY 2003-04 towards commission on sale and held that accounting entries could not be decisive factor when documents contrary to accounting entry were available on record. During the year assessee had claimed expenditure towards commission sale and had filed ledger showing the above amount, whereas certain amount of commission was labelled as OSL 2001-02 on various dates. Thus, the AO treated the same as prior period items and added back to the income. The assessee contended that all the commissions claimed pertained to year under consideration and it was wrongly classified as OSL 2001-02. In support of assessee's claim, it filed copies of confirmations issued by parties and thus the Tribunal held that the expenses claimed by the assessee pertained to year under consideration.

ACIT vs Overseas trading- (2018) 99 taxmann.com 136 (Rajkot-Trib)- ITA No 211 of 2017- dated 28.09.2018.

1726. The Tribunal also allowed assessee's claim for deduction u/s 37(1) towards sales promotion expenses in nature of gifts given to customers on Diwali. The AO had disallowed the same due to lack of documentary evidence, however the assessee before the CIT(A) submitted the requisite documents and were remanded back to the AO. However, the AO during the remand proceedings pointed out defects and disbelieved certain bills. The Tribunal noted that the assessee had provided the address of all parties with the relevant bills. However, the AO did not take confirmations from the parties and thus the AO failed to verify the veracity of expenditure claimed by the assessee and hence the expenditure was allowable.

ACIT vs Overseas trading- (2018) 99 taxmann.com 136 (Rajkot-Trib)- ITA No 211 of 2017- dated 28.09.2018.

1727. The Court upheld Tribunal's deletion of interest expense and held that money borrowed by assessee company and advanced to subsidiary for business purpose would qualify for deductions u/s 36(1)(iii). The Court following the Apex Court ruling in case of S.A. Builders noted that once it was established that there was a connection and nexus between interest claimed by assessee as expenditure and the business purpose of such borrowings, which need not necessarily be the business of assessee itself, the revenue could not assume role and occupy the chair of the businessman to decide reasonableness of expenditure .Hence money borrowed even when advanced to subsidiary for some business purpose would qualify for deduction.

PCIT vs Reebok India Company- (2018) 98 taxmann.com 413 (Delhi)- ITA No 1130 of 2017 dated 25.09.2018.

1728. The Court upheld Tribunal's order allowing repair and maintenance charges claimed by assessee as business expenditure. The assessee company was running a hotel and had claimed repair and maintenance charges paid to parties. The AO had allowed part claim of charges w.r.t to parties which

had appeared before AO and balance were disallowed to extent of 50% citing absence of documents. The CIT(A) observed that assessee had filed partywise details with names, PAN and copies of bill and confirmations, except one party, on which the CIT(A) made disalownace to the tune of 5%. The Tribunal held that the assessee had submitted all the requisite documents and CIT(A)'s disallowance of 5% was mere suspicion. The Court upheld the Tribunal's order and allowed complete claim of repair and maintenance expenditure u/s 37(1).

PCIT vs Rambagh Palace Hotels (P) Ltd- (2018) 98 taxmann.com 167 (Del)- ITA No 1014 of 2018 dated 17.09.2018

1729. The Tribunal allowed assessee's claim for deduction of expenditure u/s 37(1) with regards to interest paid on delayed remittances of service tax. It held that payment of interest was only compensatory in nature and would not be in nature of penalty which would be hit by Explanation to section 37(1). Thus, interest paid on delayed remittances of service tax was allowable as deduction under section 37(1).

Velankani Information Sysytems Ltd vs DCIT- (2018) 97 taxmann.com 599 (Bang- Trib)- ITA No 218 & 283 of 2017 dated 12.09.2018

1730. In the present case the assessee had incurred expenditure on account of sales incentive paid to several dealers for meeting sales target in period of 15 months i.e. from 1-4-2003 to 30-6-2004 and claimed the said expenditure during relevant assessment year (AY 2005-06) which was disallowed by Revenue on the ground that expenditure related to earlier assessment year, and hence could not be allowed in relevant assessment year. The Court noted that the assessee had taken period from 1-4-2003 to 30-6-2004 for purpose of computing and paying sales incentive to dealers and the same were payable only after and when dealers had met sales figures in this period. Further, the complete details on account of incentive etc. were furnished, thus the Court held that the expenditure claimed by assessee could not be disallowed on ground that expenditure was related to earlier assessment year.

PCIT vs Escorts Ltd- (2018) 98 taxmann.com 291(Del)- ITA No 961 of 2018 dated 04.09.2018

1731. Assessee was engaged in business of manufacturing, assembling and marketing of pumps and components and was issuing a warranty letter in terms of which it got an obligation to replace/repair products sold free of cost during warranty period. During the year assessee filed its return claiming deduction of provision for warranty. The AO rejected assessee's claim holding that it was a case of contingent liability which could not be allowed as business expenditure. The Tribunal upheld order passed by AO. The Court on appeal held that assessee worked out provision for warranty on past experience and not on ad hoc basis and it was also found that provision was based on turnover of last three yearsand it was based on provision for expenses on repairs during warranty period as contemplated in sale agreements. Thus, the Court concluded that order passed by Tribunal was to be set aside and, assessee's claim for deduction was to be allowed.

Grundfos Pumpas India Ltd vs DCIT- (2018) 98 taxmann.com 396 (Madras)- TC No 1003 of 2008 dated 03.09.2018

1732. Major part of assessee's turnover was from export of graphite which were transported through ships and took long time to reach to destination and therefore assessee used to carry out hedging transaction of foreign currency and claimed foreign exchange fluctuation expenditure which also included marked to market loss of notional nature by assessee. Both lower authorities allowed claim of foreign exchange fluctuation expenditure except for notional loss for reason that those contracts had not squared up at close of year and impugned amount was merely notional loss. The Tribunal held that the assessee was

entitled to claim notional loss arising on account of marked to market loss on valuation of pending forward contract for foreign exchange. It placed reliance on Societe Generale wherein it was held that where forward contract was entered into by the assessee to buy or sell the foreign currency at an agreed price and at a future date falling beyond the last date of the accounting period, the loss incurred by the assessee on account of revaluation of contract on the last date of the relevant accounting period was an allowable deduction.

***Heg* Ltd vs ACIT-(2018) 54 CCH 0050 Indore Trib- ITA No 583/Ind/2012 dated 28.09.2018**

1733. Assessee, a LIC agent had claimed certain sum on account of sales promotion expenses and the AO found certain infirmities in claim of assessee of having distributed silver coins amongst his clients and further noted that as per IRDS Rules, it was not permissible for any LIC agent to give any gift to the person who has taken a policy through them and thus expenditure claimed to be incurred by assessee on business promotion expenses was disallowed. The CIT(A) restricted disallowance made by AO and allowed partial relief to the assessee. The Tribunal noted that, as revealed from enquiry made by AO from VAT authority, supplier of above coins was involved in issuing fake bills and further the assessee could only submit a list of 90 policy holders as against 246 policy holders to whom silver coins were claimed to be given as part of business promotion. The Tribunal further noted that in spite of all these adverse findings, CIT(A) allowed partial claim of assessee and said relief was given by him under wrong impression that AO himself had allowed relief to assessee to that extent. Thus, the Tribunal held that assessee had already got reasonable relief from CIT(A) on this issue and there was no case for allowing any further relief to assessee and thus dismissed assesse's appeal.
Binod Kumar Kheria vs ACIT- (2018) 51 CCH 0001 Kol Trib- ITA No 532/Kol/2018 dated 05.09.2018

1734. The assessee bank claimed as expenditure payment made to its employees as expenditure under the head provision made for unfunded pension, the same was disallowed by AO and the DRP had upheld AO's order. The Tribunal observed that though assessee had nomenclatured subject mentioned payments as 'unfunded pension', it was effectively paid to employees of assessee bank and no contribution was made whatsoever to any funds.It was more of exgratia or extra payment of salary made to employees of bank based on some criterion, which had been duly subjected to deduction of tax at source.The Tribunal also observed from the approval letter of competent authority of assessee bank, that these payments were made only to meet increased cost of living of employees and hence it was effectively made as a welfare measure. Thus, the Tribunal held that provisions of section 40A(9) as heavily relied upon by Revenue was not at all applicable to facts of instant case and directed the AO to grant deduction of the above mentioned payments.
DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No 503,505/Kol/2016 dated 05.09.2018

1735. The Tribunal held that if assessee provides credit facilities to District Central Cooperative Banks which in turn provide funds to primary agriculture credit societies which is business structure of activities of assessee and its societies,then,sharing of salary of staff in manner as provided in Government instructions can be said to be well related to business of assessee and same is allowable as per provisions of section 37.
District Central Co-op Bank Ltd vs ACIT- (2018) 54 CCH 0040 Indore Trib- ITA 47/2014 dated 26.09.2018

1736. Assessee bank incorporated in Netherlands with branches in India was registered as scheduled bank in terms of Schedule II of Reserve Bank of India Act, 1934. The main activities of assessee in India comprised of accepting deposits, giving loans, discounting / collection of bills, issue of letters of credit/guarantees, executing forward transaction in foreign currencies for importers/exporters, money market lending/borrowings, investment in securities. The AO during assessment proceedings observed that assessee bank had not recognized interest income in respect of advances which were overdue for more than 3 months in profit and loss account in accordance with RBI guidelines applicable to banks

and made addition of interest income on NPA accounts on accrual basis and DRP confirmed the same.The Tribunal held that loan account becoming overdue and becoming sticky was never disputed and relied on Southern Technologies Ltd in context of allowability of deduction towards 'Provision for NPA', wherein it was stated that interest income on NPA accounts should not be recognized on accrual basis which was in line with RBI prudential norms for income recognition. Further, when account becoming NPA was not disputed by Revenue, recognition of income was to be done only on receipt basis which was in consonance with real income theory. Thus, the Tribunal held that interest income on NPA accounts should not be assessed on mercantile basis and same was to be taxed only on receipt basis.

Royal Bank of Scotland vs DCIT (Intl Tax)- (2018) 54 CCH 0012 Kol Trib- ITA No. 36 & 1885/Kol/2017 dated

1737. The AO partially disallowed provision of marketing services and the same was upheld by CIT(A). The Tribunal had observed that provision made by assessee-company for marketing expenses was allowed by AO to some extent and the point of dispute by the AO was that, the provision so made was excess as against the amount required by assesse to subsequently settle obligation and thus AO accordingly made disallowance to some extent on such excess provision.

The Tribunal noted that out of the total provision made by assessee for marketing expenses, certain sum was required to settle obligation and only balance amount, which was less than 10% of total provision made by assessee remained excess. Further, such excess provision was subsequently reversed by assessee and offered to tax. Thus, the Tribunal held Provision for marketing expenses was rightly recognized and made by assessee being its liability for expenses of its business and disallowance made by AO and confirmed by CIT(A) merely on basis that such provision was found to be finally excessive were not sustainable.

DCIT vs Reckitt Benckiser (India) Ltd- (2018) 54 CCH 0033 Kol Trib- ITA No 2113,2150, 2114, 2151, /Kol/2013, 760 & 762/Kol/2014 dated 14.09.2018

1738. Assessee was a company engaged in activity of civil construction, purchase and sale of immoveable property. The AO during assessment proceedings observed that assessee had claimed expenditure as compensation given to Mr. D as award given in lieu of settlement deed between them. The AO issued notice u/s. 131(1) to Mr. D, who gave statement in return accepting that he had been paid certain amount for various works done by him for 5 years. The AO further raised doubt on genuineness of documents as they were not executed on legal paper and held that there was no business expediency to pay compensation nor any perpetual damage or loss were caused to Mr. D and disallowed expenditure claimed under head compensation for land.The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order by observing that , there was plot of agriculture land owned by assessee, who contacted with Mr. D for further work to be undertaken as per letter of remembrance. Further, due to slump in real estate market upcoming project was stopped and Mr. D demanded for compensation of certain amount which was finally settled. The Tribunal observed that the above proved that aforesaid expenditure was incurred on ground of commercial expediency and payment of compensation made by assessee to Mr. D was for business and it could not be categorized as colourable transaction. The Tribunal concluded that the payment had been made within four corners of law and could not be said to be an after thought planning and thus an allowable expenditure.

ACIT vs MDK Realty – (2018) 54 CCH 0013 Indore Trib- ITA No 384/Ind/2017 dated 12.09.2018

1739. In case of an assessee company engaged in manufacture of footwear, the AO during assessment proceedings examined legal and professional fees paid and it was found that assessee paid sum of Rs. 1660000 as architect fees for construction of building and held that it was part of total capital cost. Thus, architect fees were treated as capital expenditure and addition of same amount was made which was further upheld by CIT(A). The Tribunal on appeal held that they did not find any infirmity in order of CIT (A) who held that legal and professional expenditure incurred by assessee were incurred in relation to construction of building and was capital expenditure, which was not used for purpose of business during year under consideration. Further, the assessee during appellate proceedings claimed depreciation on above amount therefore it was apparent that expenditure incurred by assessee in form of legal and professional fees paid to an architect was for purpose of construction of building and was capital in nature.

ACIT vs Lakhani India Ltd. – (2018) 53 CCH 0535 Del Trib- ITA No 3984, 3736/Del/2014 dated 10.09.2018

1740. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that construction made on a leased-out property cannot be treated as capital expenditure in hands of lessee.
Dy. CIT v. Indus Motors Co. (P.) Ltd. [2018] 257 Taxman 559 (SC)/ [2018] 257 Taxman 259 (SC) - Special Leave Petition (Civil) Diary No. 22636 of 2018 dated July 23, 2018

1741. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that expenses incurred by assessee on showroom/service stations which were written off/discarded since business had not commenced could not be treated as capital loss. It further held that if business was commenced, expenses would have to be treated as revenue expenditure; merely because assessee could not commence business it could not be treated as capital loss.
Dy. CIT v. Indus Motors Co. (P.) Ltd. [2018] 257 Taxman 559 (SC)/ [2018] 257 Taxman 259 (SC) - Special Leave Petition (Civil) Diary No. 22636 of 2018 dated July 23, 2018

1742. The assessee-company incurred certain expenses on education of one its director's son, namely, HK. The assessee submitted that an agreement was executed between company and HK whereby HK had committed to serve the assessee for ten years after completing course in 'Business Administration' from USA. Said expenditure, however was disallowed by the Assessing Officer. The Court held that it was noted that the assessee had not been able to bring on record anything like, basic qualification of HK; subjects in which he did his administration course and how such subject had nexus to business activities of the assesee. Since amount which was claimed by the assessee as deductible allowance was not incurred wholly and exclusively for purpose of business of the assessee, same could not be allowed as business expenditure.
Indian Galvanics Cyrium Foils Ltd. v. Dy. CIT [2018] 95 taxmann.com 259/257 Taxman 32 (Bom.) - IT Appeal No. 199 of 2002 dated July 6, 2018

1743. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that expenditure incurred for refurbishing, repairing and making improvements of a leasehold building for purpose of carrying on day-to-day business is revenue expenditure.
Dy. CIT v. Indus Motors Co. (P.) Ltd. [2018] 257 Taxman 559 (SC)/ [2018] 257 Taxman 259 (SC) - Special Leave Petition (Civil) Diary No. 22636 of 2018 dated July 23, 2018

1744. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that expenditure on mere improvisation in process and technology in some areas supplemental to existing business, there being no new or fresh ventures, is revenue in nature and whereunder an agreement, the assessee company had obtained a technology which would enable the assessee to update and improve its current process of manufacturing laminates, payment made towards acquisition of said technology was to be allowed as revenue expenditure.
Pr.CIT v. Bombay Burmah Trading Corpn. Ltd. [2018] 95 taxmann.com 141/256 Taxman 393 (SC). Special Leave Petition (Civil) Diary Nos. 18622 of 2018 dated July 3, 2018

1745. The assessee filed its return of income and assessment was completed under section 143(3). Later on, reassessment notice was issued against the assessee on ground that it had debited prior period depreciation to profit and loss account during relevant assessment year and that expenditure in respect of pre-payment of premium on term loan being expenditure directly in relation to capital base of company was to be disallowed. The Court held that since in assessment order passed, there was neither any discussion nor opinion formed with respect to any of aforesaid issues on which a reassessment was attempted, it could not be said that there was change of opinion in initiating the reassessment proceedings. Thus, the initiation of impugned reassessment proceedings was justified.
Innovative Food Ltd. v. Union of India [2018] 96 taxmann.com 250 (Ker.) -W.A. No. 936 of 2013 WPC No. 5061 of 2013 dated July 6, 2018

1746. Where assessee indulged in bogus purchases by way of accomodation entries which lead to short payment of output tax to MVAT Authorities and paid additional tax and interest u/s 30(2) and 30(4) of the MVAT Act, 2002 to end litigation, the Tribunal allowed assessee's claim for deduction with respect to the aforesaid interest paid u/s 30(2) as it was compensatory in nature being interest levied for delay in payment of additional tax. However, it rejected the claim for deduction of interest u/s 30(4) as it was penalty paid for concealment or incorrect filing of particulars in the return of VAT originally filed and Explanation 1 to section 37 denies deduction of any expenditure incurred for the purpose which is an offence or prohibited by law.

ACIT vs Gini and Jony Ltd. [2018] 97 taxmann.com 401 (Mum Trib)- IT APPEAL NO. 1892 and 1893 of 2017 dated August 21 2018

1747. The Apex Court granted SLP to the Revenue against HC's ruling where the AO had disallowed the commission paid to agents on ground that genuiness could not be proved by showing rendering of services by agents and the High Court had held that since agents had made themselves liable to recover price of goods sold by them, commission payment made to the agents was to be allowed as business expenditure.

CIT vs Landis + GYR Ltd. [2018] 97 taxmann.com 140 (SC)- SPECIAL LEAVE TO APPEAL (C) NO. 9946 OF 2017 dated August 24 2018

1748. The Tribunal allowed the assessee-company's claim for deduction u/s 37(1) for entire amount paid to SRSR as service charges for various services rendered which was partly disallowed by the AO opining the same to be excessive merely in view of the fact that the directors of assessee were related to the directors of SRSR. The Tribunal held that it was undisputed that the amount was paid for the purpose of business since the AO himself had allowed the amount partly and further since the provisions of section 37(1) does not have any restriction to allow the amount partly, the said amount had to be allowed in entirety. [Provisions of section 40A(2) could not be invoked in absence of common directors between the asssessee-company and SRSR]

Fincity Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 616 (Hyd Trib)- IT APPEAL NOS. 591 & 732 HYD. OF 2006, 616 HYD. OF 2008 AND 119 (HYD.) OF 2010 dated August 03 2018

Veeyes Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 545 (Hyd- Trib)IT APPEAL NO. 588 (HYD.) OF 2006 dated August 03 2018

Elem Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 272 (Hyderabad - Trib.) IT APPEAL NOS. 589, 731 (HYD.) OF 2006, 617 (HYD.) OF 2008, 121 (HYD.) OF 2010 dated August 03 2018

1749. The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction of provision made for medical benefit of its employees post retirement, treating the said liability as accrued and to be discharged in future. It held that Tribunal's finding was based on standard accounting principles and consequential application of law laid down by Supreme Court in Bharat Earth Movers v. CIT [2000] 245 ITR 428 (SC) wherein it was held that if a business liability arises in an accounting year, the deduction for the same should be allowed although the said liability may have to be quantified and discharged at a future date, hence the same did not warrant any interference.

CIT vs Everready Industries Ltd [2018] 98 taxmann.com 90 (Calcutta) - IT APPEAL NO. 789 OF 2004 dated August 09 2018

1750. The Tribunal held that the travelling expenses incurred for expatriate experts, who came for a contract period of 2 to 3 years and returned thereafter, was business expenditure and not capital expenditure since no enduring benefit had accrued to assessee in capital field and neither there was creation of any

capital asset nor it affected fixed capital of assessee. Thus, it held that the said expenses could not be disallowed as capital expenditure.

Daimler Chrysler India (P.) Ltd. v. Dy.CIT [2018] 98 taxmann.com 53 (Pune - Trib.) - IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018

1751. The assessee imported machinery required for setting up of manufacturing activity (for manufacture of vehicles). However, due to uncertainty of demand in market for said car, part machinery which was remained to be installed was discarded and the project was aborted. The assessee wrote off the cost of the said machinery which was forming part of capital work-in-progress and claimed deduction (as business loss) thereon. The AO rejected the contention of the assessee and was of the view that the write off should be considered as capital loss u/s. 45 of the Act eligible to be carried forward for set off in future. The Tribunal remanded the matter in absence of details of said expenditure not being before it, holding that it was relevant to know what were details of break-up of expenditure on one side and genuineness of same on other and since neither AO nor CIT(A) had examined the angle of claim of assessee, AO was directed to examine same.

Daimler Chrysler India (P.) Ltd.vs Dy. CIT [2018] 98 taxmann.com 53 (Pune - Trib.)- IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018

1752. The Tribunal held that (i) membership fees paid to 'Senior Officials Club' in regard to sports and recreation facilities availed by German expatiate employees working for the assessee was expenditure incurred for staff welfare and, thus, allowable (ii) expense for membership of Chambers with a hotel in order to avail facilities of hotel for business assistance and meetings was incurred for purpose of business and, hence, allowable (iii) annual subscription to Golf Course being clearly personal expenses of employees and having no connection with business of assessee was to be disallowed.

Daimler Chrysler India (P.) Ltd.vs Dy. CIT [2018] 98 taxmann.com 53 (Pune - Trib.)- IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018

1753. The Tribunal upheld the CIT(A)'s order restricting the amount of allowable provision for warranty (created by adopting certain percentage of sales) at 2.14 per cent of sale as adopted in earlier years, noting that (i) the year-end provision was getting accumulated disproportionate to increase in turnover, (ii) there was nothing to show that there was any system of re-assessment or evaluation of provision for warranty at the year end or any reversal of pro rata based on actual expenditure incurred in respect of period for which warranty had expired (iii) there was huge difference in the amount of provision made and actual utilization (iv) the assessee did not furnish working of the provision to demonstrate that the amount of provision worked out was in accordance with the global policy and the same was in line with decision of Apex Court in case of Rotork Controls India (P.) Ltd. v. CIT [2009] 314 ITR 62 (SC). It held that since the assessee used to derive advantage by deferring its income to extent of excess warranty provision to subsequent years, such excess provision could not be allowed as a deduction.
Apple India (P.) Ltd. v. Dy.CIT [2018] 97 taxmann.com 576(Bengaluru Trib) - ITA NOS. 422 AND 423/BANG/2018 DATED AUGUST 2, 2018

1754. The Tribunal allowed assessee's claim for deduction of value of investment made in subsidiaries written-off on account of non-realisation of value. It held that the said investments were stock in trade since they were made in consonance with main objects stated in memorandum of association of the assessee-company i.e. to promote electronic industry, though they were shown as investment in balance sheet. It also held that objects of the assessee-company also included financing and financing could be by way of lending to parties by way of loans or by way of investing in shares of those companies.

West Bengal Electronics Industry Development Corp. Ltd vs Dy.CIT &Anr [2018] 53 CCH 0475 (Kol TRib) - ITA NOS. 1981 /KOL /2013 DATED AUGUST 24, 2018

1755. The Tribunal upheld CIT(A)'s order deleting the disallowance made of the AO on account of nursery expenditure incurred by the assessee-company, engaged in growing, manufacturing and selling tea, in relation to initial budding of tea. The AO had held the said expense to be capital expenditure opining that it gave enduring advantage to the assessee for number of years. The CIT(A) noted that the same was for the cost of maintainence and upkeep of immature plants used for replanting and accordingly, he followed the decision in the case of CIT vs.Tasati Tea Ltd (2003) 263 ITR 388 (Cal) wherein similar expenditure was held to be revenue in nature on ground that the maintenance of an area already under cultivation could not be treated to be an expansion of the plantation nor could it be treated as an investment or expansion adding to the capital already invested.

ACIT vs. GOODRICK GROUP LTD. [2018] 53 CCH 455 (Kol Trib) - ITA No.2086-2088/Kol/ 2016 dated August 17 2018

1756. Where the AO had disallowed the payment made by the assessee-employer towards insurance premium for family members of the employees, the Tribunal struck down the action of AO holding that insurance premiums of the employees' family members had been paid in terms of employment Rules framed by the assessee and, therefore, it could not be said that the said expenditure were not incurred wholly and exclusively for the purpose of business. Thus, it allowed assessee's claim of deduction u/s 37(1).

Loesche India Pvt. Ltd. v. Add.CIT [2018] 53 CCH 0441 (DelTrib) -ITA Nos. 295/Del/2016 dated August 13 2018

1757. The Tribunal held that the expenditure incurred on refurbishing and renovation of space in premisesbelonging to various entities, to whom the assesee-company provided catering / canteen services, was neither capital expenditure as claimed by the AO nor deferred expenditure as claimed by the assessee. It held that the expenditure incurred by assessee primarily pertained to civil structure needed to facilitate carrying out of catering / canteen services at the leased premises and the same formed part and parcel of assessee's business and that no new asset on capital account came into existence and there was no enlargement of profit making apparatus. The Tribunal also rejected assessee's treatment of deferred expenditure noting that there was no concept of deferred revenue expenditure under the statute and therefore, once the expense was found to be revenue in nature and the genuineness of the same was not doubted, it was to be allowed in the year of incurrence thereof.

SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. vs. DCIT & ORS [2018] 53 CCH 0432 (MumTrib) - ITA Nos. 304 & 305/Mum/2014 dated August 08 2018

1758. Where the assessee had committed an irregularity while dealing in foreign earnings or expenditure outgoes and such an action of assessee was compounded by payment of a fine as per Rules and Regulations provided in the RBI Circular, the Tribunal allowed assessee's claim of deduction u/s 37 with respect to the amount paid for compounding offences. The Tribunal held that it was not a case where the assessee committed an offence or the amount had been paid for purpose, which was prohibited in law, hence the provisions of Explanation to section 37(1) of the Act were not attracted.

SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. vs. DCIT & ORS [2018] 53 CCH 0432 (MumTrib) - ITA Nos. 304 & 305/Mum/2014 dated August 08 2018

1759. The assessee (engaged in the business of manufacture of PVC and caustic soda and also in business of shipping) intended to start a textile project which was abandoned subsequently. It claimed expenditure incurred in connection with the project as revenue which was rejected by the AO. The

Tribunal affirmed the disallowance made by the AO on the ground that assessee, incurred expenditure for a new project that was a different line of business, and pre-operative expenditure incurred on said business was to be treated as a capital expenditure and not a revenue expenditure. The Court allowed assessee's appeal and held that since the new project was managed from common funds, control over all business units was in hands of assessee and there was unity of control, it could not be said that pre-operative expenditure incurred by assessee was on a new line of business and, thus, same was to be allowed as revenue expenditure.

Chemplast Sanmar Ltd. vs ACIT [2018] 97 taxmann.com 347 (Madras.) - TAX CASE (APPEAL) NO. 859 OF 2008 dated August 07 2018

1760. The assessee, engaged in insurance business, claimed deduction with respect to provision made for insurance claims incurred but not reported and for claims incurred but not enough reported. The Revenue contended that assessee created provision in anticipation of settlement of claims that were not ascertained and thus deduction for the same was not allowable. The Tribunal held that the compensation for making insurance claim arises on the date of loss or damage occurred to the insured property. But, the actual liability to make the payment arises on the date on which the loss or damage was assessed and the amount was determined. Thus, noting that in instant case amount of compensation payable to insured person was not determined during year, it held that the same could not be allowed merely because incident happened during year.
DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

1761. The assessee-company was engaged in the business of imports & re-sale of medical electronics equipment and providing after sales & warranty services for the same. It supplied certain products free of cost to Government hospitals and other hospitals in pursuance of purchase order placed by such hospitals and claimed same as deduction under head 'sales promotion expenses'. The AO was of view that goods supplied to doctors and other professional association free of cost were prohibited in terms of CBDT Circular No. 5/2012 dated 1-8-2012 [which provides that expenses claimed by pharmaceutical and allied health sector Industries with respect to freebies given to medical practitioners and their professional associations were in violation of the regulations issued by Medical Council of India and thus not allowable u/s 37(1)] and thus, disallowed the said expenses claimed. The CIT(A) reversed the AO's order by observing that the assessee was not a pharmaceutical company and thus the said Circular was not applicable. The Tribunal dismissed Revenue's appeal holding that the CBDT circular no. 5/2012 dated 1-8-2012 is prospective in nature and, thus, could not be applicable to case of assessee for AY 2012-13.
DCIT v Esaote India (NS) Ltd. - [2018] 96 taxmann.com 624 (Ahmedabad - Trib.) – ITA No. 55 (AHD.) OF 2016 dated July 31, 2018

1762. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had allowed the assessee's claim for deduction of donation made to various institutions to support their educational and social activities, which was claimed by the assessee as publicity expenses. The High Court had rejected Revenue's contention that the assessee had not produced any evidence to show the expenses were incurred for business purpose, holding that since the payment was made by Account payee cheque and the audit report had confirmed it, there was no question of verifying documents.
Pr.CIT v Lord Chloro Alkali Ltd - [2018] 97 taxmann.com 514 (SC) - SLP (Civil) Diary No.(S). 24997 OF 2018 dated July 30, 2018

1763. The Court upheld Tribunal's order holding that the expenditure incurred towards purchase of software used in the assessee's business of banking was allowable u/s 37(1) as revenue expenditure, relying on the Apex Court ruling of Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC) wherein it was held that not every advantage of enduring nature is capital in nature and if advantage consists merely in facilitating assessee's trading operations or enabling management and conduct of assessee's business to be carried on more efficiently or more profitably while leaving fixed capital untouched, expenditure would be on revenue account, even though advantage may endure for an indefinite future. The Court also

accepted the assessee's submission that in view of the advanced technology software become obsolete within short intervals and thus, held that the expenditure incurred by assessee towards software expenses was to be treated as a revenue expenditure and not as capital expenditure.
CIT v Lakshmi Vilas Bank Ltd - [2018] 97 taxmann.com 105 (Madras) - TAX CASE (APPEAL) NOS. 210 AND 211 OF 2018; C.M.P. NOS. 3371 AND 3372 OF 2018 dated July 24, 2018

1764. The assessee was engaged in the business of providing various expert advisory and other security related services across the globe. It claimed as revenue expenditure the amount paid to its associate company (G4S) for providing various expert advisory and other security related services and knowhow including use of trademarks as evidenced by agreement. The AO disallowed the assessee's claim treated the amounts paid to G4S as amounts paid for usage of trade name, thus as capital expenditure. The CIT(A) held that the expenditure could neither be considered as revenue or capital as assessee had failed to explain as to how the technical knowhow, operational process, finance manuals and, risk management which had been acquired from G4S, had been used in its business. The Tribunal held that as the assessee had failed to explain how the agreement entered into by it with G4S had facilitated its business, the expenses could not be allowed as business expenditure not being expended wholly and exclusively for business purposes. The Court concurred with the findings of lower authorities and held that mere entering into an agreement without being actually put to use cannot lead to the conclusion that the payment made under the Agreement was for knowledge to be used in its business. Thus, it dismissed the assessee's appeal.
Monitron Security (P.) Ltd. v CIT [2018] 96 taxmann.com 276 (Bombay) – ITA Nos. 72 AND 76 OF 2016 dated July 24, 2018

1765. The Apex Court granted SLP to the Revenue against the High Court order wherein the High Court had held that (i) expenditure incurred for refurbishing, repairing and making improvements of a leasehold building for purpose of carrying on day-to-day business was revenue expenditure (ii) construction made on a leased out property could not be treated as capital expenditure in hands of lessee (iii) expenses incurred by assessee on showroom/service stations which were written off/discarded since business had not commenced could not be treated as capital loss.
DCIT v Indus Motor Co. (P.) Ltd [2018] 96 taxmann.com 494 (SC) - SLP (CIVIL) DIARY NO.(S) 22636 OF 2018 dated July 23, 2018

1766. The assessee-company was a sub-lessee of a business premises, which was further sub-let to 'S'. Subsequently, the assessee decided to use said premises for its own business purpose and filed a suit for eviction of 'S'. During pendency of said proceedings parties arrived at settlement in terms of which assessee agreed to pay certain lump sum amount to 'S' in order to obtain vacant and peaceful possession of property. In course of assessment, the assessee claimed deduction of payment made to 'S' as business expenditure. The Revenue authorities rejected assessee's claim taking a view that payment in question was capital expenditure. Tribunal confirmed order passed by authorities. The Court held that it was just not established how the business of the assessee was perceived to grow out of the property acquired by them by negotiating the eviction of the said occupants, in fact, through the negotiation the assessee had acquired some kind of enduring right of possession over the occupied area of premises surrendered to them by occupant which had the incidents of permanence. Thus, it held that the Revenue had rightly concluded that the expenditure was capital in nature and accordingly it dismissed the assessee's appeal.
United Spirits Ltd. v CIT [2018] 96 taxmann.com 259 (Calcutta) - IT APPEAL NO. 12 OF 2006 dated July 20, 2018

1767. The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction of business promotion expenses which were disllaowed by the AO on the ground that the same were incurred in cash or through credit card of directors and the element of personal expenses could not be ruled. It was noted that assessee had filed entire details of expenses along with relevant vouchers and audited books of accounts and had also informed mode and manner of payment of such expenses. Thus, the Tribunal held that without pointing out any specific defect in nature of expenses or specifying that such expenses were either for non-business purpose or for personal use, no adhoc disallowance could be made or sustained.

ACIT v MEROFORM INDIA PVT. LTD. & ANR. (2018) 66 ITR (Trib) 0306 (Delhi) - ITA Nos. 4630 – 4635 & 4494/Del/2014 dated July 31, 2018

1768. The Tribunal allowed Revenue's appeal against the CIT(A)'s order restricting the disallowance to 15% of re-insurance premium paid to non-resident re-insurance companies. Noting that section 2C r.w.s. 2(9)(c) of Insurance Act, 1938, prohibited any person from doing insurance or re-insurance business in India otherwise permitted under Insurance Act, 1938, it held that there was a clear prohibition for payment of re-insurance premium to non-resident re-insurance companies. The Tribunal, thus held that re-insurance arrangement of assessee-company was in violation and contrary to provisions of section 2(9) of Insurance Act and, thus, entire re-insurance premium had to be disallowed under Explanation 1 to section 37.
Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERS dated August 6, 2018

1769. The Tribunal deleted the ad-hoc disallowance which was made by the AO out of travel & conveyance expenses claimed by the assessee-company on the ground that the expenses were personal in nature. It followed the decision in the case of Sayaji Iron & Engg. Co. v. CIT [2002] 253 ITR 749 (Guj.) wherein it was held that expenditure incurred by the assessee-company on maintenance of vehicles which were available to the directors for their personal use would fall within the meaning of "remuneration" as defined in the Explanation to section 198 of the Companies Act and even if there was any personal use by the directors, the same was as per the terms and conditions of service and in so far as the assessee-company was concerned it was a business expenditure and not disallowable as such.
Seal For Life India (P.) Ltd. v DCIT [2018] 96 taxmann.com 645 (Ahmedabad - Trib.) – ITA No 1236 (AHD.) OF 2017 dated August 2, 2018

1770. The Court dismissed assessee's appeal against the Tribunal's order disallowing assessee(agent)'s claim for deduction of high commission paid to its sub-agent, noting Tribunal's finding that there was no evidence to show that the sub-agent had the experts, who had helped the assessee (who was agent of a Korean company wherein the assessee provided services of coordination and follow up in connection with supply of transformer by the Korean company to an Indian company) in the bidding process or had interacted with the Indian company and that no letter or communication from the Korean company or the Indian company to the sub-agent was filed. The Court held that it could not be said that Tribunal's conclusion was not based no evidence or was rationally not possible or entirely unreasonable.
ALPASSO INDUSTRIES PVT. LTD. vs. ITO - (2019) 410 ITR 0212 (Delhi) – ITA No 395/2018 dated July 23, 2018

1771. The Tribunal held the royalty payment to be revenue expenditure and not capital expenditure following the co-ordinate bench decision for earlier year in the assessee's own case on identical issue wherein it was held that the factors which pointed towards revenue expenditure (viz. the license was given on non-transferable basis; there was a confidentiality clause prohibiting the assessee from divulging the relevant information during continuation of the agreement or any time thereafter; on the termination of the agreement, respective rights or obligations under the agreement shall cease; and there was no power with the assessee to sub-license) predominantly overshadowed the factors which pointed against revenue expenditure (viz. license was exclusively granted to the assessee and the license was not for a limited period but perpetual). The co-ordiante bench had thus concluded that it was a case of royalty payment in lieu of the 'use of' license devoid of conferring any ownership rights.
LG ELECTRONICS INDIA (P) LTD. vs. ACIT (2018) 53 CCH 0375 DelTrib – ITA Nos. 3612 & 3613/Del/2017 dated 18th July, 2018

1772. Where AO disallowed 20% of business promotion expenses on ground that part of the said expenses were personal in nature which was restricted to 5% by CIT(A), the Tribunal allowed Revenue's appeal directing AO to disallow 10% of business promotion expenses claimed by assessee, noting that there was a steep increase in the current year's business promotion expenses to the tune of 67.52% whereas increase in the gross receipt during the year under assessment was merely 25.97% and, thus, it opined that that personal element in the business promotion expenses to the extent of 10% of the total expenses could not be ruled out.

Asst.CIT vs Rohit Kochar [2019] 54 CCH 0418 (Del- Trib.)- ITA No.3872/Del/2015 dated 28.11.2018

1773. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction of premium payable on redemption of FCCB Bonds on pro rata basis spread over the terms of the bond relying on ratio laid down in Apex Court decision in case of Madras Industrial Investment Corpn Ltd vs CIT 225 ITR 802 SC wherein it was held that discount on issue of debentures had to be spread over the period of debentures. The Apex Court had held that although the assessee had incurred the liability to pay the discount in the year of issue of debentures, there was a continuing benefit to the business of the company over the entire period.

Asst CIT vs Kanoria Chemicals and Industries Ltd. [2018] 54 CCH 0266 (Kol- Trib.)- ITA No.1880,2086 /Kol/2014 dated 16.11.2018

1774. The Tribunal dismissed assessee's appeal and confirmed the disallowance of travelling expenses pertaining to the wife of director fo assessee-company, following coordinate bench ruling in assessee's own case for an earlier year wherein it was held that as no evidence was furnished to demonstrate and establish that travel by Director's wife was "wholly and exclusively" for the purposes of business of the assessee and, accordingly, the same had to be disallowed.

Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTribITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018

1775. The Tribunal dismissed assessee's appeal and confirmed the disallowance made by the AO with respect to strategies consultancy fees paid by assessee to a company 'PAG', following the coordinate bench ruling in assessee's own case for an earlier year wherein a similar disallowance was upheld noting that majority of shareholding of PAG was held by SKP who was also a director and shareholder in assessee's company and there was nothing on record to show that consultancy or advisory work was done by other than SKP. It was noted that though SKP travelled in the capacity of the director of assessee-company to attend business meetings, yet he claimed that he actually met the potential business partner in a different capacity, i.e. as a representative of PAG, and assessee was claiming a deduction for fees paid to PAG in respect of the same. Further, the Tribunal had held that merely because an income was taxed in hands of PAG, it could not mean that it was a deductible expenditure in hands of person making payment i.e. assessee-company.

Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTribITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018

1776. The Tribunal dismissed asseseee's appeal and upheld CIT(A)'s order confirming the disallowance of business promotion expenses and office expenses to the extent of 10%, noting that there was no denial of the fact that the assessee had failed to produce complete details and evidence to substantiate the claim of expenditure as some of the vouchers were self-made.

Fortune Infonet vs ITO [2018] 54 CCH 0256 (Jaip -Trib)-ITA No.866/JP/2018 dated 20.11.2018

1777. Where the AO had made an ad hoc disallowance of travelling expenditure for want of complete details of bills and vouchers and also since some of the vouchers were self-made, the Tribunal held that the AO could not make ad hoc disallowance in absence of any specific defect in assessee's claim, except the self-made vouchers for petty expenses. It noted that the AO had accepted the fact that the self-made vouchers were produced by the assessee in respect of the petty expenses only and therefore, major expenditure were supported by the assessee with proper vouchers. Further, the Tribunal noted

that the AO had neither conducted proper enquiry nor had given a finding that the assessee's claim was excessive or bogus. Accordingly, it allowed assessee's appeal.

Fortune Infonet vs ITO [2018] 54 CCH 0256 (Jai -Trib)-ITA No.866/JP/2018 dated 20.11.2018

1778. The AO disallowed advertisement and publicity expenses incurred by the assessee (engaged in the business of distributing the heart therapy products and related medical equipments manufactured by its group companies) by referring to the CBDT Circular and Medical Council Regulation (which did not allow accepting gifts, travel facilities, hospitality, cash or monetary grants by doctors from pharmaceutical and allied health sector companies) and considering the said expenditure to be incurred for a purpose prohibited by law i.e. the Medical Council Regulation. The Tribunal deleted the disallowance holding that expenses incurred by assessee on doctors attending the medical conferences as faculties were not in violation of provisions of any statute as same were in day to day course of its business and were not prohibited by MCI guidelines. It held that the aforesaid expenses were incurred during the conferences and in relation to sponsorship of conferences and were not incurred for doctors nor did they provide any benefit to doctors. Accordingly, the Tribunal allowed assessee's appeal.

Edward Life Science (India) Pvt Ltd. vs Dy.CIT [2018] 54 CCH 0243 (Mum- Trib.)- ITA No.1553 /Mum/2016 dated 20.11.2018

1779. The Tribunal allowed the assessee's claim for deduction of expenses against the income income from fixed deposits earned (being the only income) which was disallowed by the AO on the ground that fixed deposit was for the purpose of obtaining Stand-By letter of Credit (SBLC) for group concerns and not for the business activity of assessee. The Tribunal noted that the assessee-company had restricted its business by floating the two subsidiaries/group companies which had used the fixed deposits for obtaining SBLC and thus held that expenditure incurred against interest on deposits was in course / furtherance of business activity of the assessee. It held that promoting business of subsidiaries/group companies in itself is business activity.

HighTechMarines Pvt Ltd. vs ITO [2018] 54 CCH 0233 (Del Trib)- ITA No.6924 /Del/2017 dated 14.11.2018

1780. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction of provision made for retrospective reduction in price charged for set top boxes sold by the assessee during the relevant year i.e. AY 2007-08, noting that the aforeisad reduction was a result of reduction in duties announced by Union Budget w.e.f. March 1, 2007 and though the exact price reduction happended post 31st March, 2007 (but before finalization of accounts), the same was in principle agreed before 31st March, 2007. It relied on AS-4 dealing with 'Contingencies & Events occurring after Balance Sheet date' and mercantile system of accounting and held that costs directly associated with the revenue recognised durng the relevant period have to be considered, irrespective of whether money is paid or not. Accordingly, the Tribunal held that since the provision was bsed on actual quantification of amount of liability rather than based on some estimate basis or contingent value, the said provision for reduction in price was allowable.

ACIT v Thomson Holdings India Ltd - TS-545-ITAT-2018(DEL) - ITA No.841 & 1093/DEL/2013 dated 07.09.2018

1781. The Tribunal allowed assessee's claim for deduction of premium payable under the hedging contract entered with two foreign banks to hedge against the foreign currency fluctuation in Japanese Yen for 5 years on pro rata basis (as the asssessee had taken a loan in Japanese Yen from its foreign group

company which was repayable after 5 years). It was noted that the assessee had amortised the premium payable amount over the life of contract i.e. 5 years. The Tribunal relied on the Apex Court decision in the case of Taparia Tools Ltd. vs. JCIT (2015) 372 ITR 605 (SC) wherein it was held that the ordinary rule is that revenue expenditure is to be allowed in a particular year only, unless the assessee himself spreads such expenditure over a period of ensuing years to satisfy the principles of matching concept. Further, it was noted that the AO had allowed the deduction for the amortised amount in earlier 3 years.

SC Johnson Products Pvt. Ltd v DCIT - TS-584-ITAT-2018(DEL) - ITA Nos.3340 & 3341/Del/2015 dated 10.10.2018

1782. The Tribunal allowed assessee's (a PSU engaged in mining) claim for deduction u/s 37(1) with respect to penalty / compensation paid towards encroachment of the mining area beyond the sanctioned leased area, holding that payment not punitive in nature. Based on the report of the Special Committee (on illegal mining activities), the Tribunal opined that there would have been marginal illegalities committed by the assessee and the compensation / penalty was only to compensate the Government for the loss of revenue from such mining or marginal illegalities and not as a penalty. It also held that the payment was made by assessee for resuming the mining activity, and not for any violation of law.

NMDC Limited v ACIT [TS-609-ITAT-2018(HYD)] - ITA No. 1785, 1786, 1823 & 1824/Hyd/2017 dated 17.10.2018

1783. The Tribunal allowed Revenue's appeal against CIT(A)'s order and disallowed assessee's (part of GMR group co) claim for deduction u/s 37(1) with respect to payment made for sponsoring the Delhi Daredevils team for IPL season-4, rejecting assessee's stand that it had derived benefit of advertisement by way of displaying GMR logo on Delhi Dare Devils outfit. It was noted that the logo common for GMR group was displayed on jersey and nothing was brought on record to show that assessee's name was displayed on the jersey. Further, noting that assessee was engaged in the business of civil and highway construction, the Tribunal held assessee had failed to demonstrate as to how the above expenditure had resulted in getting more projects in infrastructure industry and further how it was related to the business of assessee.

ACIT v GMR Projects Pvt. Ltd. [TS-609-ITAT-2018(HYD)] - ITA No.2216/Bang/2016 dated 26.10.2018

1784. The Tribunal dismissed assessee's appeal against CIT(A)'s order disallowing deduction u/s 37(1) with respect to advertisement/marketing expenses incurred by assessee (Director of Cinema-Autography), noting that though the genuineness of the expenses was not doubted, as per the agreement between the assessee and the film producer, the assessee had to produce the film and ultimately hand it over to the producer, thereby the marketing expenses for the purpose of exhibition of the film were the functions of the producer and not the assessee-director.

Shri M. Perarasu v ACIT [TS-745-ITAT-2018(CHNY)] - ITA No.1215/Chny/2015 dated 19.12.2018

1785. The Court held that one time consultancy fees paid by assessee (Investment advisory Company) to Mauritian affiliate for "Fund Raising" assistance provided to overseas funds who where clients of the assessee was deductible u/s 37. It was noted that the assessee had entered into agreement with its Mauritian affiliate for providing help in raising funds and due to efforts of Mauritian affiliate assessee received more advisory fees as the total investment in India by the overseas funds increased substantially. Accordingly, revenue's appeal was dismissed.

PRINCIPAL COMMISSIONER OF INCOME TAX v LOK ADVISORY SERVICES PVT. LTD.[TS-774-HC-2018 (DEL)]- ITA No. 1094/2018 dated 12.12.2018

1786. The Tribunal allowed assessee's claim for deduction for bad debts written off with respect to the amount receivable from Company K noting that (i) the assessee had entered into distribution agreement with Company K whereby it collected pay channel revenues on behalf of the assessee company,(ii) assessee booked the entire amount for which bill/invoice was raised as its income/revenue (iii) however, since certain billed amount were not recoverable from the Cable TV Operators, it was written off as bad debts by assessee in its books of account. It relied on SC ruling in TRF Ltd v CIT (323 ITR 397) wherein it has been held that it is not necessary for the assessee to establish the debt to have become irrecoverable but it is enough if the bad debts is written off as irrecoverable in the books of the assessee.
M/S SUN TV NETWORK LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX – [TS-687-ITAT-2018(CHNY)] - ITA No. 889,994/CHNY/2018 dated 12.11.2018

1787. The Tribunal dimissed Revenue's appeal against CIT(A)'s order allowing deduction of expenditure incurred towards purchase of music rights, rejecting AO's action of treating it as copyright in the nature of capital asset. It noted that the assessee had made a single lump-sum payment and the expenditure had short shelf-life and would generate insignificant revenue streams in the future period. The Tribunal relied on co-ordinate bench ruling in ACIT v. Sun TV Network Ltd (I.T.A Nos 1515 to 1520/MDS/2013) wherein expenses for cost of movie & serial rights, programme production expenses were held to be revenue in nature and thus allowable.
ASSISTANT COMMISSIONER OF INCOME TAX v SPI MUSIC PVT. LTD [TS-685-ITAT-2018(CHNY)] - ITA No. 1883,1884,1885,1886/CHNY/2018 dated 20.11.2018

1788. The Tribunal held that advertisement expenses incurred by the assessee cannot be disallowed merely because the parent company of the assessee derives certain benefit out of it indirectly, when there is necessary evidence to prove that the same has been incurred wholly and exclusively for the purpose of business of the assessee. In this regard, it was also noted that the parent company had reimbursed the advertisement expenses attributable to it and only net amount claimed for deduction. However, noting that the AO had given a finding that the assessee had failed to file evidence to justify such expenditure, the matter was set aside to the file of AO to consider assessee's explanation and evidences.
Abbott India Ltd v ACIT – ITA No.6606,5625,7824,5099,5922,3362,6192,6150,8130,4367,5154,5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018

1789. The Tribunal allowed assessee's appeal against CIT(A)'s order and held that the assessee (a film actor by profession) was eligible for deduction of expenditure incurred (depreciation, insurance expenses) with respect to speed boat owned by him, rejecting Revenue's contention that the entire speed boat expenses were personal in nature. It noted that the assessee had suo-moto disallowed 25% of the expenditure on estimated basis to account for personal element / usage. The Tribunal also noted that assessee was utilizing the speed boat for commuting from his house in Mumbai to his farm house in Alibaug, where professional activities such as reading, evaluating stories and scripts, acting practice, speech improvements, story sessions etc. were being carried out. Accordingly, it equated the speed boat with a business asset, being utilized by assessee for commutation for professional work and allowed the expenditure thereto like any other travelling mode such as motor-car, etc.
Akshaye Khanna v ACIT [TS-707-ITAT-2018(Mum)] - ITA No.5276/Mum/2017 dated 05.12.2018

1790. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing deduction of expenses incurred towards training of man power in BPO-cum-Call Centre activities (being the first year of operation), though they were accounted as deferred revenue expenses as per Company Law. It rejected AO's contention that the expenses were capital in nature, noting that the expenses were mainly incurred for salary, food, transportation, internet charges, etc. and thus revenue in nature. Further, it held that nature of expenses would not change just because assessee had categorized the same in a particular way and accordingly, the said revenue expenses were allowable in the year in which they were incurred.

ACIT v Citation Infowares Limited [TS-712-ITAT-2018(Kol)] - ITA No.2004/Kol/2017 dated 07.12.2018

1791. Where the assessee, a reseller of software developed by its overseas AE, paid its AE 45 percent of the value of sales of the software sold to independent domestic parties as a license fee, the Tribunal relying on its earlier years order in the case of the assessee, held that the AO was unjustified in charaterising the payment as a capital payment for acquisition of intangible asset and denying the assessee a deduction under Section 37. It held that the payment could be considered as cost of goods transferred by the AE to the assessee and therefore would necessarily be a revenue expenditure.
AIRCOM INTERNATIONAL (INDIA) PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0311 DelTrib - ITA No. 6617/Del/2013 dated Mar 28, 2018

1792. The Court dismissed the appeal filed by the Revenue against the Tribunal's order allowing expenditure incurred by the assessee (following completed contract method of accounting) in earlier years during the progress of contract with respect to the contract which was completed in the relevant assessment year and with respect to which income was offered to tax after deduction of expenditure incurred over entire period of the contract. It rejected Revenue's contention that since the assessee was following the mercantile system of accounting, prior years expenditure could not be allowed as deduction.
Pr.CIT v NathpaJhakri Joint Venture – (2018) 92 taxmann.com 303 (Bom) – ITA No. 808 of 2015 dated 12.02.2018

1793. Where the assessee, earlier engaged in the business of manufacturing tiles, had received only rental income from letting out three properties during relevant year which it had treated as business income and the AO opined that rental income was assessable under head 'Income from house property', the Tribunal held that since main activity of assessee was letting out properties and the rental income was derived without carrying on any other business activity, the said rental income had to be assessed under head 'Income from business or profession'. Further, since the rental income earned by assessee was assessed as 'business income' and the assessee had furnished evidences for payment of remuneration for services rendered by directors to company, it allowed deduction u/s 37(1) with respect to remuneration paid to directors for rendering services in order to earn the said rental income.
Bharat Tiles & Marble (P.) Ltd. v DCIT – (2018) 92 taxmann.com 7 (Mum) – ITA No. 438 (Mum.) of 2015 dated 14.02.2018

1794. As against the revenue's contention of treating the annual franchise fee paid to BCCI-IPL for Season 1 as capital expenditure, Tribunal allowed deduction of the same as revenue expenditure under section 37(1) after observing that as per the Franchise agreement the payment of the franchise fee for a year vested assessee with a right to participate in the tournament for that year without guarantee that in the future years it would be eligible to participate in the tournament and thus such recurring annual payment neither vested of any right of participation in the subsequent years, nor lead to creation/ownership of an asset or generation of a benefit of an enduring nature in the hands of the assessee. Tribunal, however, after noting that as per the Franchise agreement, the franchise fee was to be paid on the date on which the first match of the league was played, disallowed the deduction of annual franchise fee for Season 2 charged to the financial of relevant previous year on the ground that the same was to crystallize into an expenditure only on such payment date. Tribunal allowed deduction of amount paid to Police Welfare Fund as per the directions of Cricket Association with respect to security during matches. Tribunal also deleted the disallowance with respect to amount paid for coaching services and other adhoc disallowances.
Knight Riders Sports Private Limited v ACIT - TS-609-ITAT-2017(Mum) – ITA No. 1307/Mum/2013 dated 29.12.2017

1795. Where the commission paid by assessee to various agents in order to secure orders from other countries and to ensure that payments were received in a timely manner, the Court held that commission paid to those agents could reasonably be linked with assessee's business, that the expenses could not be disallowed based on the AO's personal understanding of how business ought to have been conducted.

Pr.CIT v Mohan Export India (P.) Ltd. - (2018) 90 taxmann.com 168 (Delhi HC) – ITA No. 640 of 2017 dated 04.01.2018

1796. Tribunal allowed deduction u/s 37(1) of royalty paid by the assessee, partnership firm of advocates, to its founder partner for use of brand name, logo or trademark owned by him, irrespective of the Revenue's contention that there was no provision in partnership deed for payment of royalty to founder partner. Tribunal had noted that from partnership deed that name, logo or trademark of firm and other intellectual property rights exclusively belonged to founder partner and that there was a 'Name Licence' agreement in terms of which payment had to be made even to legal heirs of founder partner after his death.
ARA Law v ACIT – (2018) 90 taxmann.com 395 (Mum) – ITA No. 1889 (Mum) of 2017 dated 05.01.2018

1797. Tribunal quashed the CIT's order passed u/s 263 wherein the CIT had disallowed the advertisement and publicity expenditure incurred by the assessee, a pharmaceutical company, by invoking the Expln. to section 37(1) and considering the said expenditure to be incurred for a purpose which is prohibited by law being the Medical Council regulation. Tribunal noted that the Medical Council regulation which limits/curbs/prohibits incurring any development or sales promotion expenses is applicable to medical practitioners, not to Pharma or allied health care companies and that the CBDT Circular No. 5/2012, dated 1-8-2012 under which CBDT had stated that the said regulation is applicable to pharmaceutical company cannot impose a burden on the assessee by enlarging the scope of a different regulation issued under a different Act and in any case cannot be reckoned retrospectively (year under appeal being AY 2011-12). Tribunal also noted that the expenditure was incurred for conferences and seminars of doctors organized with the main object to update them about latest developments in medical research and create awareness about new research, which was beneficial to doctors in treating patients as well as to pharmaceutical companies in promoting sale and brand
Solvay Pharma India Ltd. v Pr.CIT - (2018) 169 ITD 13 (Mum) - ITA No. 3585 (Mum) of 2016 dated 11.01.2018

1798. Court allowed assessee-bank's claim for deduction u/s 37(1) on account of provision for interest on overdue deposits stating that the liability was ascertained and not unascertained. It held that since assessee was aware of its liability and was able to crystallize it and set it out expeditiously in its returns, possibility of likelihood of depositor renewing overdue deposits or for that matter, payment being made later, would in no way, deflect from the reality that assessee was able to identify its liability when it filed its returns.
Oriental Bank of Commerce v ACIT – (2018) 401 ITR 65 (Del HC) – ITA No. 57 of 2018; CM Appl. 1856 of 2018 dated 17.01.2018

1799. The Court rejected assessee's claim for deduction u/s 37(1) for certain sum expended towards housing scheme for poor, holding that philanthropic act of building houses for poor and needy, at time of company's centenary celebrations, did not reveal any commercial expediency or a business requirement.
CIT v Malayala Manorama Co. Ltd. – (2018) 91 taxmann.com 14 (Ker) – ITA No. 1596 of 2009 dated 01.02.2018

1800. The Tribunal held that the cost incurred by assessee for repairs of goods returned by its customers on account of low quality was directly connected with business activities of assessee, eligible to be allowed u/s 37(1) and the same could not be disallowed merely because assessee had not produced details of sales which were returned back to it by its customers.
EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018

1801. Tribunal allowed assessee-bank's claim for deduction u/s 37(1) for amortisation of premium paid for purchase of securities following the Tribunal's order in the assessee's own case for earlier year.
Allahabad Bank v DCIT – (2018) 169 ITD 189 (Kol Trib) – ITA Nos. 127 of 2011 & 649 (Kol.) of 2013 dated 07.02.2018

1802. Where the assessee was to receive reimbursement of certain sales promotion expenses incurred by it in respect of its branded products as per a JV Agreement entered in year 2002 with another company but the said company subsequently refused to reimburse the same and the AO disallowed the assessee's claim for deduction u/s 37(1) with respect to write off of the said reimbursement amount holding that expenses in question were in nature of prior period expenses which could not be allowed as deduction against income of relevant assessment year, the Tribunal allowed the said deduction observing that the expenses were incurred for business purposes only and irrecoverability of same leading to loss got crystallised only in relevant year pursuant to refusal by the said company.
Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

1803. The Tribunal allowed deduction u/s 37(1) with respect to ex-gratia /anugrah rashi payments made by assessee (mining corporation), pursuant to a Govt. order, to labourers who were not employed by assessee but were employed by the truck owners entering mining area for excavation and loading of sand in trucks, noting that the ex-gratia payment even though not directly linked to revenue earned by company was very much directly linked with the royalty paid by truck owners to the assessee-corporation, which was calculated on basis of sand excavated from mines.
M.P. State Mining Corpn. Ltd. v ACIT– (2018) 91 taxmann.com 430 (Indore Trib) – ITA Nos. 592 of 2013, 371 of 2014 & 20 of 2015 dated 09.02.2018

1804. The Tribunal upheld CIT(A)'s deletion of disallowance made u/s 37(1) of 1/4th of repairing expenses on ad hoc basis on ground that no details in respect of same was furnished, noting that necessary details were duly filed by assessee at time of assessment proceedings but AO was not satisfied with same and holding that if AO was not satisfied with claim of assessee then he had to make disallowance after making specific reference to documents/vouchers produced on record whereas in the present case AO had made disallowance on ad hoc basis without pointing out any defect/error in evidence produced by assessee.
DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

1805. Where the Court held that the amount received by the assessee from one 'G' as an advance was not towards procurement of license as claimed by the assessee but deemed dividend attracting provisions of section 2(22)(e), the Court upheld the disallowance made by AO of the deduction claimed with respect to guarantee commission paid to a third entity for guarantee given by that entity to 'G' for the alleged advance received by assessee on the ground that it was intended for purposes other than of business.
CIT v Prasidh Leasing Ltd. – (2018) 90 taxmann.com 385 (Del HC) – ITA No. 637 of 2004 dated 20.02.2018

1806. The Tribunal allowed assessee's claim for deduction u/s 37(1) with respect to provision made for ULC charges [i.e. charges under the Urban Land (Ceiling and Regulation) Act, 1976] payable to State Govt since the liability had arisen because of order passed by Additional Collector in financial year relevant to the assessment year under consideration, irrespective of the fact that the assessee had disputed the said liability before High Court. It held that as soon as competent authority passed an order for payment of ULC charges, said liability could not be considered as contingent liability as same had been ascertained and crystallised. Further, the Tribunal held that since the assessee was following percentage completion method for recognition of revenue for a project and such project had been completed during relevant year, the provision made for ULC charges in its books was in accordance with law.
Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018

1807. The Tribunal, in the interest of justice & fair play, restricted the disallowance made by AO with respect to expenses claimed to be incurred by assesseee to maintain the status of the company active under the head 'business expenditure' to the extent of 10% of such expenses where the assessee had not

shown any income from the business activity during the year but had offered to tax rental income derived under head 'Income from house property' and the assessee had not brought any material on record suggesting that the expenses claimed under the head of business were incurred exclusively for business purpose and no part of it was incurred in connection with the rental income.
Mangilall Estates (P.) Ltd. v DCIT – (2018) 91 taxmann.com 266 (Kolkata Trib) – ITA No. 156 (kol.) of 2015 dated 21.02.2018

1808. Where assessee-company had entered into an agreement to take over business of a proprietory concern and in terms of the agreement only a license to use copyright was granted to assessee, the Court held that since the assessee had not acquired copyright itself, the license fee paid by assessee was allowed to be deducted as revenue expenditure.
Pr.CIT v Mobisoft Tele Solutions (P.) Ltd. – (2018) 90 taxmann.com 383 (P&H) – ITA No. 434 of 2015 dated 22.02.2018

1809. The Tribunal deleted the disallowance made by AO u/s 37(1) with respect to advertisement expenditure merely for reason that advertisement hoardings were put up in Surat and Thane where assessee was not having any of its business outlets. The Tribunal held that the assessee had incurred expenditure on advertisement for promoting its business which was in principle allowable and the AO had not disputed genuineness of expenditure.
Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018

1810. The Tribunal allowed the appeal of assessee, a pharmaceutical company eligible for deduction u/s 80-IB(4), against the disallowance of Sales Promotion expenses made by the AO on the ground that the CBDT Circular dated 01.08.2012 states that the said expenses (which represent gift or freebies to doctors & medical professional)s were prohibited by the Notification issued by Medical Council of India (MCI) and thus, not eligible for deduction u/s 37(1) being expense prohibited by law, relying on the decision in the case of DCIT v PHL Pharma Pvt. Ltd. (49 CCH 124) and Solvay Pharma India Ltd. v CIT [ITA No.3585/ Mum/2016] wherein it held that the circular issued by the CBDT enlarging the scope of disallowance to the pharmaceutical companies was without any enabling notification or circular of the MCI and, thus, the pharmaceutical company like the assessee were outside the scope of the circulars by the MCI or the CBDT.
EMCURE PHARMACEUTICALS LTD. v DCIT – (2018) 62 ITR (Trib) 0744 (Pune) – ITA No.1532/PUN/2015 dated 29.01.2018

1811. The Tribunal partly deleted the disallowance made by the AO and sustained by the CIT(A) w.r.t. payment of service charges made by the assessee for service rendered by the supplier of goods in relation to purchase of spilt palm kernel fatty acid, due to lack of conclusive evidence to prove that such service was necessary and was actually provided to the assessee. Noting that the services providers had to undertake varied activities as per the service contracts, the confirmation was received from such service providers, the purchases (with respect to which such services were provided) had been accepted as genuine and that such charges were paid by other manufacturers also, it held that the AO and the CIT(A) did not comment on the documentary evidences produced by the assessee and that the AO could not step into the shoes of the businessman to decide whether such expenditure was for the purpose of business or not. The Tribunal, however, upheld the disallowance of the payments made to the intermediaries (not being the supplier) for the same service which were to be provided by the service provider (supplier), holding that in case of direct supply of goods, the payment of service charges to other parties acting as intermediaries was not in the business interest of the assessee.
Hindustan Unilever Ltd. v DCIT – ITA No. 4179/Mum./2013 dated 26.02.2018

1812. The Court dismissed the Revenue's appeal field against the Tribunal's order deleting the disallowance made by AO on account of foreign exchange loss claimed u/s 37(1), noting that in past years, in prior and subsequent years, assessee had accorded similar treatment for foreign exchange gains and paid required tax. It held that having regard to consistent approach adopted by assessee, conclusion arrived at by the Tribunal being a concurrent finding with the CIT(A), could not be said to involve any substantial question of law.

PR.CIT v SAMWON PRECISION MOULD MFG. INDIA PVT. LTD. – (2018) 401 ITR 486 (Del HC) – ITA 72/2018 dated 23.01.2018

1813. Where the assessee's claim for business promotion expenses incurred on Doctors who attended Seminars and Conferences u/s 37(1) was disallowed by the AO since the assessee could not furnish details of Doctor-wise expenditure and confirmation letter from Doctor and on basis of the CBDT Circular dated 01.08.2012 which stated that the said expenses were prohibited by the Notification issued by MCI and thus, not eligible for deduction u/s 37(1) being expense prohibited by law clarified, the Tribunal held that the expenditure incurred upon Doctors to attend Seminars and Conferences may be business expenditure of assessee before 01.08.2012 (i.e. date of CBDT Circular), but the same could not be allowed after 01.08.2012 as it was prohibited by Notification issued by MCI. Accordingly, noting that the AO had simply disallowed entire expenditure having invoked Circular issued by CBDT, it held that the expenditure incurred till 01.08.2012 should be allowed as expenditure towards business the nature of expenditure incurred thereafter on Doctors to be examined by AO.
VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018

1814. The Tribunal deleted the disallowance made by the AO on account of interest paid to supplier who supplied stores to assessee's tea garden for delay in making payment for supplies made since it pertained to the earlier year, noting that it was the assessee's claim that liability to pay interest itself accrued only pursuant to bill raised by supplier and since the bill was received from supplier after the date of annual general meeting, the same could not have been anticipated by the assessee in order to make a provision for interest on accrual basis in earlier year. It further held that there was no loss that could be attributed to exchequer because of this claim of expenditure by assessee as business expediency of said expenditure and its genuineness had not been doubted by revenue at any point of time.
RYDAK SYNDICATE LTD. v DCIT – (2018) 52 CCH 18 (Kol Trib) – ITA Nos. 301-302 & 304-305/Kol/2016 dated 05.01.2018

1815. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by AO of commission expenses debited in P&L a/c on the ground that genuineness of commission paid/reimbursement of expenses was not proved beyond doubt that same were incurred wholly and exclusively for business purpose by noting that the services were rendered for assessee's business by commission agents and the assessee had discharged its onus by filing all possible details including confirmations and TDS and successfully established that genuine expenditure was expended for business purposes. It further held that the AO could not gather positive evidence for department and took decision based on presumptions and not on facts on record and it was not the case of the AO that commission was paid to bogus parties which came back indirectly to assessee through cash.
ACIT v KIWIFX SOLUTIONS – (2018) 52 CCH 32 (Ahd Trib) – ITA No. 1536/Ahd/2013 dated 12.01.2018

1816. The Tribunal upheld the CIT(A)'s order allowing the assessee's claim for deduction of commission payable to Managing Director for the earlier year, disallowed by the AO on the ground that since the assessee was following mercantile system of accounting, the said expense pertaining to earlier year was not to be allowed against the income of current year. The Tribunal held that since the commission was payable on the profits and the profits for the earlier year was determined only in the year under consideration after finalizing the account, the allowability on account of commission was crystallized in the year under consideration and thus, the CIT(A) was fully justified in allowing the same.
DCIT v ASSOCIATED PIGMENTS LTD. – (2018) 52 CCH 4 (Kol Trib) – ITA No.2042/Kol/2014 dated 03.01.2018

1817. Where the assessee made payment for compensation for land under the head "social facilities expenses" and the AO disallowed the same on the ground that the amount paid related to acquisition of their land, the Tribunal upheld the order of the CIT(A) deleting the addition and observing that amount was incurred in compliance to Orissa Resettlement & Rehabilitation Policy, 2006' and same had been

paid for one-time payment in lieu of employment and training for self-employment and therefore held that the same had been paid for the purpose of business operation.
DCIT v MAHANADI COALFIELDS LTD. & ANR. 2018) 52 CCH 0204 CuttackTrib - ITA No.421/CTK/2013 dated Mar 20, 2018

1818. Noting that the assessee's group concern bid and won a contract which it transferred to the assessee and also provided the assessee assistance in the execution of the contract, the Tribunal allowed the assessee's claim of commission paid to the group concern as a valid deduction and held that the AO and CIT(A) erred in denying the said payment as a deduction on the basis that the assessee allegedly failed to provide evidence that the payment was towards its business.
DRISHTI MARINE SOLUTIONS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0195 MumTrib- ITA No. 2803/Mum/2014 dated Mar 20, 2018

1819. The Tribunal held that the expenditure incurred by the assessee on Employee Stock Option Plans (ESOP) provided to its employees were to be allowed as deduction under Section 37(1). It dismissed the AO's contention that ESOP expenses were nothing but notional loss and under mercantile system of accounting, notional loss could not be allowed as deduction and held that the Legislature itself contemplated discount on premium under ESOP as benefit provided by employer to its employees during course of service and therefore held that the same was allowable deduction in computing income under head 'Profit and gains of business or profession". It noted that the liability to pay discounted premium was incurred during vesting period and amount of such deduction was to be found out as per terms of ESOP scheme by considering period and percentage of vesting during such period and accordingly set aside the order of the lower authorities.
OXIGEN SERVICES (I) PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0190 DelTrib - ITA No. 3318 to 3320/DEL/2016 dated Mar 16, 2018

1820. The Tribunal allowed the assessee deduction u/s. 37 for penalty paid by the assessee to Slum Rehabilitation Authority (SRA) observing that the penalty was paid for regularization of certain construction work within the permissible byelaws of concerned authority and not for infringement or violation of any law. It noted that during the year the assessee had commenced certain construction work before obtaining commencement certificate due to reasons beyond its control as there was an ambiguity in demarcation of the Coastal Regulation Zone, which was later clarified by the Maharashtra Coastal Zone Management Authority from the National Institute of Oceanography and after due survey and demarcation, assessee was granted commencement certificate on payment of necessary fees and accordingly observed that the violation was not an offence under the Act.
Lokhandwala Shelters (I) Pvt Ltd - TS-119-ITAT-2018(Mum) - I.T.A No.5000/Mum/2015 dated 09-03-2018

1821. The Court remanded the matter back to the AO for deciding as to whether there was actual irrecoverability of advances which the assessee chose to write off in its account and claimed the same as business loss since the AO had not analysed the nature of the claim himself on the basis of materials on record for determining the character of claim for deduction and merely confined his scrutiny on the accounts submitted by the assessee, where the Tribunal had allowed the assessee's claim noting that the assessee-company after review of the books of accounts and after due diligence and discussion with the statutory auditors had come to the conclusion that detailed reconciliation and accounting adjustments of these advances was no longer possible due to lack of information.
Pr.CIT v Linde India Ltd. – (2018) 90 taxmann.com 412 (Calcutta) – GA No. 1113 of 2016 ITAT No. 166 of 2016 dated 15.01.2018

1822. The Court allowed deduction u/s 37(1) of lease rent paid for a shed where the shed was originally taken on lease by assessee for a business venture but the same could not start due to delay in getting electric connection and subsequently part of the said shed was leased to another person. It held that merely because there was some difficulty faced by the assessee in commencing the use of the premises it did not follow that the expenses claimed were not for the purpose of the assessee's business.
Pr.CIT v SRBS Entertainment - (2018) 90 taxmann.com 410 (P&H) – ITA No. 280 of 2016 (O & M) dated 18.01.2018

1823. The Tribunal held that expenditure incurred by assessee in the form of ROC fee at time of increase of authorised share capital being in nature of capital expenditure, could not be allowed as deduction u/s 37(1). Further, the Tribunal upheld the denial of deduction u/s 37(1) on account of foreign travel expenditure incurred by executive manager of company, noting that assessee was not having any business outside India neither, assessee was exporting any goods or articles nor importing and, thus, in absence of specific purpose of foreign trip of executive manager, expenditure incurred on said trip could not be considered as an expenditure incurred wholly and exclusively for business of assessee.
ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018

1824. Where the AO rejected assessee's claim for deduction of administrative expenses on ground that it had discontinued its business operations, the Tribunal held that so long as assessee was in operation and its name was not struck off from register of Registrar of Companies, it had to maintain its status as a company and for said purpose it was necessary to maintain clerical staff and secretary or accountant and incur incidental expenses. It, therefore, held that the AO was not justified in rejecting assessee's claim for deduction of administrative and office expenses.
Sai Fragrance & Flavours (P.) Ltd. v ACIT – (2018) 90 taxmann.com 307 (Mum) – ITA Nos. 7012 (Mum.) of 2011 & 6085 (Mum.) of 2013 dated 31.01.2018

1825. Where the assessee made payment on account of royalty for use of brand name, the Court noting that only license to use copyright was granted to assessee company and that the assessee company had not acquired copyright, held that license fee paid was revenue expenditure. It held that the assessee did not own any copyright and was only granted license to use the same.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. MOBISOFT TELE SOLUTIONS (P) LTD. - 2018) 101 CCH 0157 PHHC - I.T.A. No. 434 of 2015 (O&M) dated Feb 22, 2018

1826. Where the assessee paid marketing and distribution expenses to HDFC AMC, 5 percent of which was disallowed by the AO on the premise that the payment was designed in such a way that it would lead to losses in the assessee's hand, the Tribunal held that since the AO did not otherwise doubt the genuineness of the transaction, no ad hoc disallowance could be made. Further, it noted that both the assessee and the payee were corporate assessee's and therefore there was no motive for evasion of taxes.
INCOME TAX OFFICER & ANR. vs. HDFC TRUSTEE COMPANY LTD. & ANR. - (2018) 52 CCH 0113 MumTrib - ITA Nos. 5669 & 5670/Mum/2015, 5444/Mum/2015 dated Feb 21, 2018

1827. The Tribunal held that prior to the insertion of explanation to Section 37(1) w.e.f 1.04.2015, claim of deduction on account of CSR expenses was not allowable as a deduction under Section 37(1) as it could not be considered to bring direct business benefit to the assessee. It held that the concept of Corporate social responsibility provision had been brought in Companies Act 2013 and consequential amendment was brought to Income Tax Act u/s 37(1) by way of insertion of explanation w.e.f. 01.04.2015 and therefore prior to the said provisions deduction in respect of expenditure incurred under Corporate Social Responsibility was not allowable unless and until expenditure was incurred wholly and exclusively for purpose of business of assessee.
RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORP. LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0130 JaipurTrib - ITA No. 311/JP/2014 dated Feb 23, 2018

1828. The Tribunal held that the assessee was not justified in claiming expenses towards earning referral commission income noting that the income was derived from mere reference which did not involve any provision of service or value addition and therefore, in the absence of any further substantiation, it held that the assessee was not justified in claiming expenses towards earning of such income.
RAGA MOTORS PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0103 AsrTrib - ITA No. 11/(Asr)/2017 dated Feb 16, 2018

1829. Where the assessee advanced the sum in question to two companies through banking channel in its ordinary course of business in lieu of charging interest and on non-recovery thereof for almost three years wrote them off as sundry balances and claimed the same as revenue loss, the Tribunal held that such claim was to be allowed as a deduction under Section 37(1) of the Act.
GENERAL CAPITAL AND HOLDING COMPANY PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0097 AhdTrib - ITA No. 538/Ahd/2016 dated Feb 12, 2018

1830. The assessee, a private limited company, engaged in business of trading in stainless steel and allied products claimed expense for celebrating French National Day under the head of advertisement expenses. The AO observing that the assessee had no export business to France, disallowed its claim on the ground that it had not been incurred in connection its business activity. The Tribunal held that the reason given by AO that no business activity was carried on by assessee with France was not tenable in view of fact that allowability of expenditure did not depend upon outcome of expenditure. It observed that the expenditure was incurred and claimed by assessee under head "advertisement" which was not disputed by Revenue and therefore held that any expenses incurred by way of advertisement must be considered from point of view of assessee and not from any other angle. Accordingly, it held that once it was found that expenditure was incurred by assessee for publicity or advertisement, it was not for department to consider whether commercial expediency justified expenditure. Therefore, it allowed the claim of deduction under Section 37(1) of the Act.
MKJ TRADEX LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0119 KolTrib - ITA No. 1044/Kol/2016 dated Feb 14, 2018

1831. The Court held that the amount of Rs. 5 lakhs paid to National Stock Exchange (NSE) by the assessee-company(engaged in share trading, merchant banking) was 'capital' in nature' as it represented procurement of a permanent right in the form of a license to carry on trade which enabled assessee to do business in future. The assessee had paid the aforementioned amount to NSE as a non-adjustable deposit for acquisition of membership and treated the same as revenue expenditure but the AO held that the payment was non-recurring in nature giving rise to an enduring benefit and therefore would qualify as capital expenditure. Relying on the SC ruling in Techno Shares and Stocks Limited wherein it was held that membership card enabled an assessee to trade as a stock-broker and hence, such a membership was a business or a commercial right in the nature of license u/s 32(1)(ii), it held that there could not be any doubt that one-time and lump-sum payment made to acquire membership right by a company or person engaged in business of trading in stocks, brings into existence an asset or an advantage of enduring nature and therefore held that the payment was capital in nature.
Abhipra Capital Ltd [TS-80-HC-2018(DEL)] - ITA 676/2005 - 15th February, 2018

1832. The Tribunal allowed the assessee deduction u/s. 37(1) for advertisement expenditure incurred for brand building of "Jansons" and held that it was revenue in nature. It rejected Revenue's stand that expenditure for building brand name would definitely increase the value of brand and thus, being an intangible asset, was capital in nature and remarked that even though there was incidental increase in brand value by way of advertisement, the real benefit was only to carry out the business in an effective and profitable manner. Following the decision of the Apex Court ruling in Empire Jute Co. Ltd, it held that a mere incidental benefit or enduring benefit or commercial advantage could not result in disallowing the claim of the assessee. It concluded that the impugned expenditure incurred by the assessee was in the course of earning of profit without touching the capital asset and accordingly allowed the assessee's claim.
Jansons Industries Ltd. vs. ACIT - TS-79-ITAT-2018(CHNY) - ITA Nos.613, 614 & 615/Mds/2017 dated 08.02.2018

1833. The Tribunal allowed the assessee-travel company's claim for deduction u/s 37(1) towards non-compete fees paid to the director /employee of another travel company for not doing similar business for 5 years and towards license fees for use of its brand name for 5.5 years under an agreement entred into with the said travel company. With respect to non-compete fees payment, the Tribunal held that since the payment was made for elimination of competition for short period and neither the assessee had derived any enduring benefit nor any new asset was added, the payment of non-compete fee was in the nature of restricting the director/ employee in exercising their skill and experience in the similar

field, and thus, could not be treated as capital expenditure. With respect to license fees payment, the Tribunal held that the said expenditure incurred by the assessee for use of the brand name to leverage and expand business activities in Middle East market to be a revenue expenditure, inter alia relying on the Apex Court decision in the case of CIT vs. IAEC (Pumps) Ltd. [232 ITR 316 (SC)] wherein it was held that the license fee paid for use of patent and design was on revenue account.
DCIT v SOTC Travel Services Pvt. Ltd. [TS-143-ITAT-2018(Mum)] – ITA No. 1924 & 2075 /Mum/2007 dated 19.01.2018

1834. The Tribunal allowed the claim of the assessee-NBFC for deduction towards service tax payment relatable to exempted services in absence of input tax credit availability as per the Service tax Rules. It rejected the Revenue's stand that since assessee followed 'Exclusive method' for accounting of Service tax i.e. it did not route the collection and remittance of Service tax through the P & L A/c., the claim could not be allowed and accepted the assessee's contention that the method of accounting for service tax liability, i.e., exclusive method or inclusive method did not have revenue implications and noted that the service tax paid by assessee was otherwise eligible for deduction.
DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018

1835. The assessee co-operative society was engaged in business of procurement of milk, processing it to prepare its products and sale thereof. The AO disallowed amount being contribution made to 'Sparsh Trust' Pashudhan Kalyan and Utpadakta Sanvardhan Sansthan, trust constituted by assessee to run programme and for providing services to farmers who were selling milk to primary societies from whom assessee procured milk. The Court upheld the Tribunal's deletion of disallowance paid as contribution to the Trusts and held that the same were in the nature of business expenditure. It held that any contribution made by assessee to public welfare fund which was directly connected or related with carrying on of assessee's business or which resulted in benefit to assessee's business had to be regarded as allowable deduction u/s 37(1). Accordingly, it dismissed Revenue's appeal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. JAIPUR ZILA DUGADH UTPADAK SAHAKARI SANGH LTD. - (2018) 101 CCH 0062 RajHC - D.B. Income Tax Appeal No. 9/2018 dated Feb 5, 2018

1836. The Tribunal dismissed the department's appeal filed against the CIT(A)'s order deleting the disallowance made by the AO with respect to one time "Conversion Charges" paid by assesse to Municipal Corporation for conversion of use of premises from "Industrial Activities" to "Commercial Activity" which was treated by AO to be capital in nature on the ground that such expense would confer enduring benefit to the assesse. It relied on the so-ordinate bench decision in the case of DCIT vs. Haldiram Products Pvt. Ltd. [ITA No. 5158/Del/12] on identical issue wherein also the assessee had paid charges to Munical Corporation for conversion of its outlet from industrial unit to commercial unit outlet in order to save its business and it was held that when the expenditure have been incurred by the assessee at the stage of setting of his business, the same was necessarily capital expenditure, however since the said expenditure had been incurred by making payment to the Municipal Corporation, it could not be of any enduring benefit to the assessee rather it was for regularization of his existing business.
DCIT v ORIENT FASHION EXPORTS INDIA PVT. LTD. -(2018) 53 CCH 154 (DelTrib) - ITA No. 3813 /Del/2015 dated Jun 14, 2018

1837. The Tribunal dismissed assessee's appeal field against theCIT(A)'s order upholding the disallowance made by the AO by treating the amount paid by the assesse towards part expenses and as part damages for non-performance of contract / MOU(which the assesse had entered into with another entity for purpose of creation of joint venture for putting up constructions on properties owned by assesse) as capital expenditure not allowable as deduction. It was held that since the MOU had been entered into by assessee for the purpose of creation of joint venture vehicle for putting up constructions on properties to be taken on lease from assesee, it was a new business line and thus the amount payable by assessee on account of violation of conditions of MOU (which also led to cancellation of the same) was nothing, but loss of capital and not revenue expenditure.

EXPRESS NEWSPAPERS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0144 (ChenTrib) - ITA NO. 1417/CHNY/2017 dated Jun 12, 2018

1838. The Tribunal rejected the ground raised by Revenue against the CIT(A)'s deletion of the additions towards diminution in value of investment held as stock-in-trade (its closing stock) which as per the method of accounting followed by the assesse was valued at cost or market value whichever was less and whatever loss was incurred on account of diminution in value of investment was charged off to the profit and loss account as a loss, noting that the issue had been decided in favour of assesse in the case of CIT vs. Bank of Baroda [2003] 262 ITR 334 (Bom) wherein it was held that where the bank valued its investments at cost or market value whichever is less and the difference arising as a result of the valuation has to be allowed to the assessee as a loss. Further, the Revenue hadnot brought on record any contrary decision to support its argument.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. CENTRAL BANK OF INDIA & ANR. - (2018) 53 CCH 0157 MumTrib - ITA No. 1891/Mum/2011 & 3958/Mum/2014, 1431/Mum/2011 & 3757/Mum/2014 (CO. No. 200/Mum/2013) dated Jun 8, 2018

1839. AO treated the expenditure shown by the assessee, a registered share broker, in the Error & Omission account of the P&L A/c (being the loss borne by the assesse on account of settlement with one of its client, whose outstanding trades were squared off by the assesse as the client had not provided the requisite margin to the assessee) as speculative loss and disallowed the said loss to the extent it was not set off against the speculative income offered to tax by the assessee. On appeal, CIT(A) upheld the AO's order and held that the said loss was not revenue in nature. Tribunal allowed assessee's appeal holding that the assesse had agreed to bear the loss to settle the matter and maintain trade relationships. It was noted that the trade with the said client were resumed from the month in which the settlement was made and that in the immediately next year the assesse had earned brokerage of an amount more than the loss borne by the assesse from the said client. Thus, the Tribunal held that the said loss was a business loss and commercial expediency of making the settlement with the client and agreeing to bear the said loss was very well established on records.
ARIHANT FINCAP LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0271 (IndoreTrib) - ITA No. 415/Ind/2016 dated Jun 29, 2018

1840. The AO had disallowed the assessee's claim for deduction u/s 37(1) with respect to expenses claimed against the professional income earned by the assessee company (engaged in the business of equity research, investment advisory services and running portfolio management services) by allocating the entire expenses between the professional income and capital gains earned by the assesse. The Tribunal had allowed the assessee's appeal against such disallowance noting that the Revenue had consistently over the years i.e. for the 10 years prior to years under appeal and for 4 subsequent years, accepted the principle that all expenses incurred were attributable entirely to earning professional income and the Revenue was not able to point out any distinguishing features, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. The Court upheld the Tribunal's order following the Apex Court decision in the case of Bharat Sanchar Nigam Ltd. Vs. Union of India [282 ITR 273 (SC)] wherein it was held that where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. QUEST INVESTMNET ADVISORS PVT. LTD - (2018) 102 CCH 0111 (MumHC) - ITA No. 280 OF 2016 dated Jun 28, 2018

1841. The Tribunal allowed the assessee's claim for deduction u/s 37(1) with respect certain expenses written off by the assesse(involved in the business of establishing, running and managing hospitals) which were in the nature of preoperational and infrastructural expense, incurred for expansion of an existing hospital with respect to which it had entered into a collaboration with another company, rejecting Revenue's contention that the said expenses were capital in nature. It held that carrying out expansion of existing hospital property of the trust for the purpose of running and operating of the same on a revenue share basis was part of the routine business activity of the assesse. The Tribunal thus held that the expenditure incurred was on account of the project which was finally abandoned without acquiring any new asset for enduring benefit and, therefore, the entire claim was allowable as revenue

expenditure. However, noting that the CIT(A) had spread over the entire claim for 5 years and allowed 1/5th of the claim in the impugned assessment year and these findings were not challenged by the assesse, it confirmed the CIT(A)'s order.

MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018

1842. The Tribunal allowed the assessee's appeal against the disallowance made by the AO on account of deduction claimed by the assesse with respect to provision for increase in price of material supplied by the vendors (which were purchased with express understanding that rates would be revised, if there was substantial increase/decrease in cost of materials, at agreed interval). It held that it was common trade practice for payment of arrears in event of substantial increase/ decrease in cost, in order to maintain continuous supply of raw materials without being affected by market fluctuations, especially in light of volume of purchases made by the assesse and in absence of such understanding/ contract with vendors, the assessee would not be able to operate and continue manufacturing operations without disruption. It noted that the same process was followed when there was reduction in cost elements of component prices. The Tribunal held that such price revisions, being an accrued liability at time of purchase of raw materials, were recorded in books of accounts by assesse and at year end, the assesse estimated additional liability on account of price revision under negotiation and made upward/downward provision, as the case may be, until end of relevant year.

HERO MOTO CORP LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0200 (DelTrib) - ITA No. 6990/DEL/2017 dated Jun 20, 2018

1843. The Tribunal accepted assessee's claim that notional foreign exchange gain resulting to the assesse-company on conversion of Foreign Currency Convertible Bonds (FCCBs) issued by it into shares was not exigible to tax since the b**o**nds were issued for acquiring capital assets, noting that the AO had not allowed the assesse's claim for deduction of foreign exchange loss on loan borrowed for acquisition of assets in the next year. It held that there could not be one method if the fluctuations resulted in reduction of liability and a different treatment if the fluctuations result in a higher liability and that the treatment in terms of taxation has to be uniform at all times. The Tribunal also allowed the assesse claim for deduction on account of provision made for premium payable on redemption of FCCBs, relying on the decision in the case of Madras Industrial Investment Corporation Ltd vs. CIT [225 ITR 802(SC)] wherein it was held that discount given on issue of debentures is an allowable expenditure.

GATI LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX -(2018) 53 CCH 0209 HydTrib - ITA No. 1467 & 1670/Hyd/2017 dated Jun 20, 2018

1844. Where the Assessee paid penalty to the Stock Exchange for procedural defaults such a delay in submission of return, etc., the AO made addition on account of payment of such penalty. The CIT(A) deleted the addition made by the AO. The Tribunal relied on the ruling of theBombay HC in the case of CIT vs The Stock & Bond Trading Company (ITA No 4117 of 2010) and held that payment of penalty to the Stock Exchange is a regular business expenditure and since the assessee committed no offence prohibited by law as per the provisions of Section 37 of the Act, the penalty had been rightly deleted by the CIT(A). Thus, the Tribunal ruled in favour of the assessee

ACIT& ANR. vs. ARIHANT CAPITAL MARKETS LTD. & ANR. (INDORE TRIBUNAL) (ITA No. 370/Ind/2017 (C.O. No. 17/Ind/2018)) dated May 31, 2018(53 CCH 0100)

1845. The Tribunal allowed assessee's claim of deduction w.r.t. expenses incurred for running school situated on land purchased by assessee company and in which the children of the assessee's employees studied. The same was disallowed by the AO on the ground that the same related to welfare/charity purposes. It held that the school running expenses included care and concern for society at large, particularly for people of locality where business was located. Thus, the said expenses were integrally related to business activities of assesse and had been incurred wholly and exclusively for purpose of business. It also noted that the AO had not disputed genuineness of expenses nor it was case of AO that expenses used by assessee were for its personal purposes.

DLF HOME DEVELOPERS LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0182 (DelTrib) - ITA No. 2209/Del/2016, 2567/Del/2016 dated Jun 19, 2018

1846. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 37(1) with respect to certain amount paid to National Pharmaceuticals Pricing Authority (NPPA) being the excess price charged by the assessee on sale of certain medicine/ drug, which was disallowed by the AO considering the same to attract Explanation 1 to section 37(1) i.e. dealing with payment for any purpose which an offence or prohibited by law. The Tribunal relied on its decision in the assessee's own case for an earlier year, wherein after perusal of the relevant provisions of The Essential Commodities Act, 1955, it was held that there are separate provisions for penalty and interest and the amount paid by the assesssee to the NPPA was the refund of excess price and, hence, there was no violation and infringement of any law or Government's order.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (MumTrib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June18, 2018

1847. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee' claim for deduction u/s 37(1) with respect to payment made by the assesse, branch of a foreign bank, to Clearing Corporation of India on account of short position on security deal, which was disallowed by the AO considering the same to be in nature of penalty and thus attracting Explanation 1 to section 37. Noting that the assessee was required to maintain certain limit with CCIL, however, due to shortage in that limit the said payment to made to CCIL, it held that the same appeared to be compensatory in nature. Further, the Tribunal also held that the CIT(A) had rightly observed that the AO had not established on record that the payment was on account of an offence or was prohibited by law.
The Tribunal also dismissed the revenue's appeal against the CIT(A)'s order allowing deduction claim by the assesse on account of revaluation of forward contract, being stock-in-trade for the assesse, following the order in assessee's own case for an earlier year wherein the issue was decided in favour of the assesse following the decision in the case of CIT. Vs. Woodward Governor India Private Limited (312 ITR 224) wherein it was held that adjustment on account of foreign exchange fluctuation could be made on each balance-sheet date in respect of any forward foreign exchange contract pending actual payment and any loss arising there from had to be allowed as an item of expenditure u/s 37(1).
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. DBS BANK LIMITED & ORS - (2018) 53 CCH 0167 (MumTrib) - ITA No. 6865/Mum./2012, 6037/Mum./2014, 4949/Mum./2014, 6038/Mum./2014, 4948/Mum./2014 (C.O. no.8/Mum./2014)dated June15, 2018

1848. The Tribunal dismissed the revenue's appeal against the CIT(A)'s order allowing deduction u/s 37(1) with respect expenses incurred by the assesse, running hotel business, for repair and renovation of hotel rooms, which was disallowed by the AO treating the said expense to be capital expenditure considering the fact that the assessee in earlier year had not incurred repair and renovation expense more than 30% of such expenditure. It was noted that the expenses were incurred on rented premises and no new fixed asset came into existence. The Tribunal relied on the decision in the case of New Shorrock Spinning & Manufacturing Co. Ltd. [30 ITR 338 (Bom)] wherein it was held that, "*The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of 'repairs' because it only by reason of this definition of repairs that the expenditure is a revenue expenditure.*"
ASSISTANT COMMISSIONER OF INCOME TAX vs. PEERLESS HOTELS LTD. - (2018) 53 CCH 0161 KolTrib - ITA No.1869/Kol/2016 dated June14, 2018

1849. The Assessee had entered into a trademark and license agreement with its holding company the consideration for which (i) one time initial consolidated fees and (ii) annual recurring license fee payable on basis of net annual turnover. Both the aforesaid payments were disallowed by the AO. The Tribunal rejected the assessee's claim for deduction u/s 37(1) with respect to one time initial consolidated fees paid for use of the trademark in the business, holding the said payment to be in nature of capital expenditure. It was noted that by acquiring the said business right/ license,the assessee could incidentally boost its revenue and that the same had an enduring benefit which would be applicable till the assessee ceased to be subsidiary of its holding company. The Tribunal, however, accepted the

assessee's alternative claim for depreciation u/s 32(1)(ii) for such capital expenditure. With respect to annual recurring license fees, it was noted that the said fees was payable on the basis of certain percentage on the net annual turnover and the AO had allowed the same in later two assessment years. Accordingly, the Tribunal held the annual recurring fees to be revenue expenditure allowable u/s 37(1).

GMR Airport Developers Ltd. v ITO - [2018] 95 taxmann.com 283 (Hyderabad - Trib.) - IT APPEAL NO. 806 (HYD.) OF 2017 dated June29, 2018

1850. The Court admitted the appeal filed by the Revenue against the Tribunal's order on the question, "Whether the Appellate Tribunal has erred in law and on facts of the case in restricting the addition to 25% of the value of alleged purchases after categorically finding it to be bogus?"

CIT v Aashadeep Industries - [2018] 95 taxmann.com 135 (Gujarat) - R/TAX APPEAL NOS. 606 TO 611 & 618 TO 620 OF 2018 dated June18, 2018

1851. The Court allowed the assessee's claim for deduction u/s 37(1) with respect to expenditure incurred for implementation of project of setting up Chemical Benefication Plant for production of high quality sintered magnesia, which was one of products of the assessee, where the State Government had ordered closure of the said project. It was held that since the project undertaken by the assessee was in same line of business already being carried on by the assessee and no new business was set up, and there was no creation of new asset of enduring nature. It thus held that the impugned expenditure was to be allowed as revenue expenditure.

Tamilnadu Magnesite Ltd. v ACIT - [2018] 95 taxmann.com 239 (Madras) - T.C. (APPEAL) NOS. 907 & 908 OF 2007 dated June5, 2018

1852. The Court upheld the Tribunal's order rejecting the assessee's claim for deduction u/s 37(1) with respect to amount paid by the assesseee-lawyer for settlement of dues of a company in which he was the Managing Director (MD) and for which he stood personal guarantor in his capacity as MD on the company's inability to repay substantial advances to financial institutions / banks. It rejected the assessee's argument that if the above amount, which was claimed by him as litigation expenses, was not paid then it would have been impossible for him to carry on his profession as an advocate and therefore, the amount was wholly and exclusively laid out for business. The Court held that the assessee's liability had occurred in his capacity as the guarantor and entrepreneur (i.e. MD) and the same could not be allowed as business expenditure in relation to income generated through legal profession.

SATINDER KAPUR v ACIT - [TS-295-HC-2018(DEL)] - ITA 656/2018 & CM APPL 23524/2018 dated May30, 2018

1853. The Court allowed the assessee's appeal for deduction u/s 37(1) with respect to amount paid by the assessee-company (a television broadcasting co.) as non-compete fees to one of its directors for not competing with the assessee's business for 5 years, rejecting the revenue's plea that the saidpayment was a capital expenditure. It held that the assessee had not acquired any new business, profit making apparatus had remained the same, the assets used to run the business remained the same and there was no new business or no new source of income, which accrued to the assessee on account of the said payment. With respect to Revenue's contention that the assessee itself had amortised the payment and treated it as capital expenditure in the books, the Court held that the entries in the books were not relevant and, moreover the assessee had treated it as 'deferred revenue expenditure'.

M/s.Asianet Communications Ltd. v CIT - [TS-429-HC-2018(MAD)] - Tax Case (Appeal) No.174 of 2005 dated June26, 2018

1854. The Court dismissed assessee's appeal against the Tribunal's order rejecting the assessee's claim for deduction of expenditure incurred on acquisition of distribution rights of three films, noting that since there was no exhibition of the films on commercial basis, there was no amount realised on exhibition of films and as per Rule 9B(5) which is a non-obstante clause, the said deduction was not allowable under Rule 9 unless the distributor credited in the P&L A/c the amounts realised on exhibition of film on commercial basis. [Rule 9B provides for manner in which the deduction in respect of the cost of

acquisition of a feature film is to be allowed while computing the profits and gains of the business of distribution of feature films.]

Malayala Manorama Co Ltd v ACIT [TS-362-HC-2018(KER)] - ITA.No. 80 of 2010 dated June 26, 2018

1855. The assessee, part of Renault group, was engaged in rendering engineering and design and sourcing support services & logistic services to Renault SAS, France (RSAS) as per the agreement between them. The AO disallowed assessee's claim for deduction of promotional expenditure which represented expenses incurred in relation to participation in Auto Expo 2010 for promotion of Renault cars. The Tribunal, however, allowed the said claim noting that parties had mutually agreed to include additional services within scope of service agreement and the activities of participating in exhibitions and trade fairs at request of RSAS was specifically covered inthe scope of services vide an amendment to the service agreement. It was also noted that expenditure incurred by company towards the exhibitions and trade fairs were invoiced and compensated by RSAS at cost plus a mark-up and the said mark-up was also accepted by the TPO without any adjustment.

RENAULT INDIA PRIVATE LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0321 ChenTrib - ITA NO. 2814/CHNY/2016 dated April 2, 2018

1856. The Tribunal dismissed Revenue's appeal against the order of CIT(A) allowing assessee's claim for deduction of expenses incurred towards club subscription fee/ renewal of club membership fees on the ground that the same were revenue expenditure and not capital expenditure since no capital assets came into existence out of the said expenditure. It held that the main purpose for incurring the said expenses which were in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc was to induce its officers to attend such places for maintaining and making contacts for benefit of business and even if some personal advantage was obtained by officers, it would be in nature of maintaining good relations with officers and in nature of staff welfare expenses. The Tribunal thus held that the expenses were incurred wholly and exclusively for purpose of business.

Further, the Tribunal upheld the CIT(A)'s order allowing the assessee's claim for deduction with respect to provision made for Performance Related Pay (PRP) to executives, shown under the head "Employees Benefit Expense", being amount payable based on the performance of the assessee-company in a particular year. The AO had disallowed the said expense considering the same to be unascertained liability and thus not been incurred during the relevant previous year. The Tribunal noted that the PRP was quantified by the assessee (a Govt. Co.) in pursuance to the formula provided by the Department of Public Enterprise, Govt. of India and the same was allowed on year to year basis. It thus held that the said provision was not an unascertained liability rather the said liability had crystallised during the relevant previous year only. It relied on the Apex Court decision in the case of Bharat Earth Movers vs. CIT (2000) 245 ITR 428 (SC) wherein it was held that if a business liability arises in an accounting year, the deduction for the same should be allowed although the said liability may have to be quantified and discharged at a future date.

ASSISTANT COMMISSIONER OF INCOME TAX vs. HINDUSTAN COPPER LTD. - (2018) 52 CCH 0475 KolTrib - ITA No. 1616/Kol/2016 dated April 4, 2018

1857. The AO disallowed the assessee's claim of business expenditure on CSR activity stating that such expenses should be incurred from surplus profit after tax and it need not claim these expenses in books of account as expenditure for determining taxable profit. However, the CIT(A) deleted the disallowance after following CIT & Anr. Vs. Infosys Technologies Ltd wherein court allowed expenditure incurred on account of CSR by installing traffic signal near establishment to ease traffic congestion u/s 37(1) by holding that such expenses could be held to be expended wholly and exclusively for purpose of business u/s 37(1). Thus, the Tribunal, on concurring with CIT(A), held that CSR expenditure is an allowable expenditure u/s 37(1).

The AO had also made addition to assessee's income of expenses on account of sales-tax claim off u/s 37(1) opining that transfer of goods by assessee from UP to Haryana was in violation of Sales-tax Act [It is to be noted that Explanation 1 to section 37(1) provides that deduction shall not be allowed for any expenditure incurred for any purpose which is an office or prohibited by law]. The CIT(A) deleted the addition following the decision rendered by the Sales-tax Tribunal as well as Hon'ble Allahabad High Court in assessee's own case holding that the said transfer of goods from UP to Haryana was in the nature of central sale thus liable to Central Tax Act and was not a penalty for violation of sales tax act

as held by the AO. The Tribunal held that there was no illegality or perversity in the CIT(A)'s order and thus dismissed the revenue's appeal.
DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018

1858. The AO disallowed the business expenditure pertaining to the professional charges paid for feasibility study. Aggrieved, the assessee filed an appeal. The Tribunal held that the said issue was decided before in the favour of assessee wherein it was held that expenditure on feasibility study pertained to expansion of business by way of acquisition and thus was allowable as revenue expenditure. It was also observed that no new asset had come into existence.Thus, the Tribunal allowed assessee's appeal thereby allowing the claim of expenditure.
Minda Industries Ltd & Anr v DCIT & Anr (2018) 52 CCH 0404 DelTrib - ITA No. 4297/Del /2015, 4298/Del /2015, 4299/Del /2015, 4300/Del /2015, 4455/Del /2015, 4456/Del /2015 dated 27.04.18

1859. The Tribunal allowed the assessee's claim for deduction with respect to write off of stores and spares imported earlier but lying in godown of port authority as the assessee was not able to clear them from the port authorities on account of financial stringency prevailing during that period. The AO disallowed the said claim noting that the said stores and spares were simply dumped in the port and no part of the same was installed or utilised for the purpose of the business activity. The Tribunal observed that the said imported materials as lying under the custody of Port Authorities were considered as permanently impaired in terms of Accounting Standard 28, because market/realizable value of all such materials were completely eroded and the material was surrendered to the Port Authorities. Further, it relied on the decision in the case of Zenith Steel Pipes Ltd. vs. CIT (1990) 186 ITR 594 (Bom.) wherein it was held that write off of stores & spares imported earlier but lying in the godown of a port authority was a loss incidental to the business.
ACIT & Anr v Ballarpur Industries Ltd & Anr (2018) 52 CCH 0340 NagTrib - ITA No. 91/Nag/2011, 92/Nag/2011 dated 16.04.2018

1860. During the assessment proceedings, the assessee claimed reduction of Rs.29,42,23,853 from its returned income on account of reversal of provision for foreign exchange loss which was disallowed in the preceding year i.e. AY 2009-10. The AO did not allow the same observing that the such a reduction would reduce the returned income. The CIT(A) allowed the assessee's claim appreciating the facts of the case. However, noting that the in the assessment order of the preceding year, the disallowance was only Rs.21,46,28,951/-, the Tribunal held that there was some discrepancy in the claim made and the amount disallowed in the preceding year and accordingly, it remitted the issue to the file of AO for examining the issue with reference to the books of account.
ACIT v Kiran Gems Pvt. Ltd. (2018) 52 CCH 0586 MumTrib - I.T.A. No.1108/Mum/2016 dated 09.04.2018

1861. The assessee, engaged in business of cultivation and manufacturing tea, filed it returns claiming deduction of expenditure incurred for acquiring Pollution Control Certificate valid for 3 years. The AO rejected the claim of deduction holding that the certificate being valid for 3 years, it was to be regarded as capital expenditure having enduring benefits and thus disallowed the claim. The CIT(A) confirmed the said disallowance. On further appeal, the Tribunal allowed the assessee's claim holding that even though expenditure in question incurred by assessee for getting pollution control certificate for three years had enduring benefit, same by its very nature was revenue, and thus allowable as deduction.
Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018

1862. The Tribunal held that where there was no authorization in trust deed to pay remuneration by assessee trust to its employees, remuneration paid by assessee trust to its employees was to be disallowed. Further, the Tribunal partially upheld the disallowance of several expenditure claimed by assessee on grounds that payments for such expenses were supported by self made vouchers only. It held that since in a normal trade practice, it was not possible to prove 100 percent bills and eceipts from recepients and there was every chance of making payments by way of self made vouchers. However, as there was every chance of inflating expenditure by way of self made vouchers, the Tribunal upheld the disallowance only to the extent 20 percent of the total amount towards self made vouchers.

Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018

1863. The Court held that where under a licence agreement between assessee and HRL, assessee was granted exclusive right to use trademark 'Hilton' for 10 years against running royalty on sale as well as one time royalty of Rs. 1 crore, since mark 'Hilton' did not belong to assessee and benefit of use of trade mark had inured to licensor, payment of Rs. 1 crore ought to be treated as revenue expenditure.
Hilton Roulunds Ltd. v Cit [2018] 92 taxmann.com 268 (Delhi) – ITA NO 325 OF 2005 dated 20.04.2018

1864. The Court held that where assessee incurred expenditure on product development and claimed deduction for same under section 37(1), in view of fact that expenditure so incurred did not involve development of a new product or even a new technique or technology to manufacture existing product more efficiently rather it was aimed at improving quality of existing product of assessee, assessee's claim for deduction was to be allowed.
CIT v Arvind Products Ltd. [2018] 93 taxmann.com 454 (Gujarat) – TAX APPEAL NO. 1389 OF 2007 dated 02.05.2018

1865. Where revenue challenged order passed by Tribunal allowing assessee's claim of sales commission paid to 'M', an agent in Iraq, on ground that his name figured in Volker Commission Report and payment of commission was not authorised by U.N., the Court held that since question as to whether particular person was or was not an agent and as to whether he was paid commission was a pure question of fact, impugned order passed by Tribunal did not require any interference.Further, held that even though computer software is treated as a capital asset and is amendable to depreciation, yet consultancy charges on account of drawings and designs prepared by a particular agency in respect of computer software cannot be treated as capital expense
PCIT v TIL Ltd. [2018] 93 taxmann.com 394 (Calcutta) – ITA NO 504 OF 2007 dated 03.05.2018

1866. The Tribunal held that professional fees paid to retired employees of assessee who were expert in this field fell under business within section 37(1) Further, it held that foreign tour expenses allowable where due to foreign tours of manager export and import increased.
DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018

1867. The assessee, a manufacturer of air conditioner (AC), had been making provision for five years warranty provided with respect to certain models of the AC sold by it and the computation of the said provision was based on the number of units sold and per unit rate of provision. It was noted that the assessee had been following consistent method in creating such warranty provision in other assessment years as well and no disallowance was made at revenue's behest. The Tribunal thus held that the assessee's claim of warranty provision being computed on scientific basis, was to be accepted. Further, the Tribunal held that where stores and spares expenses pertained to normal repairs and maintenance of manufacturing facility and salary, wages and staff welfare were related to normal business expenditure, no ad hoc disallowance could be made.
Hitachi Home & Life Solutions (I) Ltd. v ACIT (OSD) - [2018] 93 taxmann.com 282 (Ahmedabad - Trib.) - IT APPEAL NOS. 2303, 2304, 2420 AND 2421 (AHD.) OF 2015 dated 18.04.2018

1868. The Court held thatprovision made for increase in wages on basis of Wage Board Award which became enforceable on date of publication of award on 20-7-1983 could not be accepted as a liability having accrued within previous year ended 30-6-1983, though assessee agreed before Arbitrators that award shall come into operation from an earlier date.The Court held thatunder mercantile system of accounting, liability to pay commission to agents arises in previous year in which agent secured order and not when supplies were effected by assessee. The Court held thatwhere assessee claimed deduction towards payment of insurance premium but did not even pay first instalment, of insurance premium, before 30-6-1983, last date of relevant previous year, said deduction could not be allowed to assessee during relevant year.

CIT v KCP Ltd. - [2018] 94 taxmann.com 46 (Andhra Pradesh) - REFERRED CASE NO. 71 OF 1993 dated 01.05.2018

1869. The AO had disallowed the assessee's claim for deduction u/s 37(1) on account of payment of salary to a sweeper for cleaning and maintaining the premises of a Hall, on the ground that the said hall was in the name of the founder of the assessee-company and the hall was not owned by the assessee-company itself. The assessee contended that the claim was to be allowed as keeping the hall clean, enhanced the assessee-company's goodwill. The Court, however, sustained the said the AO's disallowance relying on a binding precedent in the assessee's own case [Malayala Monorama Co. Ltd. v. CIT (2006) 284 ITR 69 (Ker.)] for another assessment year involving similar claim.
CIT v Malayala Manorama Co. Ltd [2018] 95 taxmann.com 136 (Kerala) – ITA NO 26 OF 2010 dated 29.05.2018

1870. The assessee-company had several units engaged in different business and stated that its income/expenses were not furnished on unit-wise basis since all the units together carried on business. In the AY under consideration, assessee incurred expenses on restructuring its business & claimed deduction regarding the said expenditure as revenue expenditure. The Tribunal allowed assessee's claim, after considering the facts and relying on a Punjab & Haryana High Court decision (details of which were not given by the Tribunal in its own judgement).The Court held that since the issue whether the restructuring of expenses could, in the circumstances, be treated as a revenue expenditure/capital expenditure was a question of 'fact' and the Tribunal had taken relevant facts into considerations and noticed the law applicable, the impugned order did not call for any reconsideration. Accordingly, it dismissed the revenue's appeal.
PCIT v Akzo Noble India Ltd. [2018] 94 taxmann.com 38 (Calcutta) – ITAT NO. 414 OF 2016 dated 15.05.2018

1871. Where the Assessee company shut down its Aurangabad unit and paid retrenchment compensation to its employees on account of closure of the factory, Tribunal upheld the order of the CIT(A) by holding that retrenchment compensation paid by assessee on account of closure of its unit was allowable as business expenditure under Section 37 and that provisions of Section 35DDA applied by the AO were not applicable as the assessee has not paid any service compensation under any scheme of voluntary retirement.
ACIT vs Lumax Automotive Systems Ltd. – [2018] 53 CCH 0071 (Coch ITAT) – IT(TP) Appeal No. 475/Coch/2016, 134/Coch/2016 (SA No. 08/Coch/2018) dated May 23, 2018

1872. The assessee, engaged in the business of constructing, operating and running bus shelter, provided bank guarantee as performance security for construction of such shelters. However, the same was encashed due to non-performance and the assessee incurred certain expenditure for restraining such encashment. The assessee also incurred certain expenditure on account of liability towards cancellation of contracts and claimed the same as revenue expenditure. The AO disallowed such expenditure by holding that the same was not recurring and hence should be treated as capital in nature. Relying on the ruling of the Gujarat High Court in Neo Constructo construction Ltd (218 taxman 24), the Tribunal held that such encashment of bank guarantee which was furnished as a performance guarantee due to non-fulfilment of contract by the assessee could be said to be compensatory in nature and same was allowable as business expenditure under Section 37(1) of the Act.
Green Delhi BQS Limited vs. ACIT – [2018] 53 CCH 0008 (Delhi ITAT) – ITA No 6375/Mum/2016, 6274/Mum/2016 dated May 7, 2018

1873. Where the assessee claimed certain expenses like, conveyance, travelling, foreign travelling, telephone and electricity etc. as business expenses, the AO disallowed such expenses considering the same as excessive. Tribunal upheld the order of the CIT(A) and held that since the AO disallowed such expenses on ad-hoc basis without pointing out any defects in the books of account or vouchers of those expenses, the disallowance was deleted.
ACIT vs. vs. Modi Rubber Limited – [2018] 53 CCH 0044 (Del Tribunal) – ITA No 1952 of 2014 dated May 15, 2018

1874. Where the assessee followed mercantile system of accounting, the AO disallowed prior period expenses claimed by the assessee on actual basis. CIT(A) upheld the order of the AO. The Tribunal held that since the said claim of expenditure was revenue in nature and crystallized during the impugned year itself, the same could not be disallowed. Following the ruling of the co-ordinate bench in the assessee's own case for earlier years, the Tribunal restored the matter to the file of the AO to examine the genuineness and crystallisation of the expenses in the impugned year.
Orissa Mining Corporation Ltd. & Anr. vs. JCIT – [2018] 53 CCH 0188 (Cuttack ITAT) – ITA Nos. 69 & 183/CTK/2014, 70 & 257/CTK/2014 dated May 17, 2018

1875. Where the assessee company paid commission in respect of personal guarantee given by its directors as collateral security for securing bank loan, the AO disallowed such guarantee commission. The CIT(A) deleted the disallowance and the Tribunal upheld the deletion of the said disallowance. The Tribunal observed that the directors provided personal guarantee by undertaking risk and the same was beyond scope of their services as employees of assessee-company. The Tribunal held that since it was established that the transactions were real and commission was paid to the Directors for providing personal guarantee, the assessee had the right to decide the guarantee commission to be given to the directors as part of business expediency and in the normal course of business and that the AO should not step into the assessee's shoes and dictate how business had to be carried out.
DCIT vs. U.P. Asbestos Ltd. – [2018] 53 CCH 0180 (Lucknow ITAT) – ITA No 378 & 379/LKW/2016 dated May 18, 2018

1876. Where the assessee company had claimed deduction on account of the premium paid towards keyman insurance policies that were in the name of the two directors of the company and the same was disallowed on ground that policies were infact life insurance policies, the Tribunal held that the same was allowable u/s 37(1) since according to the terms and conditions of the policy, the assured sum would return to the assessee company on the death of the policy holders.
Arcadia Share and Stock Brokers (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 188 (Mumbai – Trib.) – IT Appeal Nos. 5854 & 5855 (MUM.) of 2016 dated April 25, 2018

1877. The Court upheld the order of the Tribunal allowing software expenses incurred by assessee to upgrade computer software which brought greater efficiency in functioning of assessee's business as Revenue in nature considering that in view of fast changing technology, software had to be regularly updated so as to keep pace with the changing technology. Further, the Court upheld the order of the Tribunal allowing expenditure incurred by assessee in respect of health and safety measures for benefit of its employees to foster a safe working environment as Revenue expenditure. It held that the test of one-time payment was not the sole test to determine the nature of expenditure. Further, the test of enduring benefit in this case would not apply for the reason that the expenses assisted in providing a hassle free environment for smooth running of business. The expense did not add to or expand the profit making apparatus of the assessee.
PCIT v. Holcim Services (South Asia) Ltd. – [2018] 93 taxmann.com 270 (Bombay) – IT Appeal No. 73 of 2016 dated April 25, 2018

1878. The assessee declared a loss of Rs. 70.24 lakhs and claimed a deduction of Rs. 1.65 crores as lease equalization charges. The assessee relied on the Guidance Note issued by the ICAI for claiming deduction on account of lease equalization charges from lease rental income. The AO disallowed the deduction claimed and added the same to the income of the assessee which was further upheld by the CIT (A). The Tribunal allowed the deduction of lease equalization charges which was further upheld by the High Court. The Apex Court on an appeal by the Revenue decided in favour of the assessee and held that the IT Act was silent on such deduction and therefore the assessee had to take recourse of the method given under the Guidance note prescribed by the ICAI to show the fair and real income which is liable to be taxed under the IT Act. The Court further held that the rule of interpretation makes it clear that when an internal aid is not available for the proper interpretation of the statute, the Court can take help of an external aid and the meaning could be taken as prevalent in common parlance.
CIT v. Virtual Soft Systems Ltd. – [2018] 92 taxmann.com 370 (SC) – Civil Appeal Nos. 4358 to 4376 of 2018 dated April 24, 2018

1879. The assessee company was established in the year 1970 and at the time of inception one 'K' had joined as a General Manager who was later promoted to the post of Managing Director. On the death of 'K', the board of the assessee company decided to meet all the educational expenses of the children of Mr. K and also passed a resolution to pay a minimum pension to his widow on account of his services to the company. Assessee company made the said payments and claimed it as business expenditure which was denied by the AO and the CIT (A). On Department's appeal to the High Court, the Court held that the claim by the assessee that the said payments were in the nature of business expenditure was to be accepted since the assessee company had passed a resolution granting monetary benefit to the legal heir of a former employee and such resolution was sufficient even if the company did not have a pension scheme.
CIT v. India Motor Parts & Accessories Ltd. – [2018] 92 taxmann.com 409 (Madras) – T.C. (Appeal) No. 880 of 2008 dated April 4, 2018

1880. The Court held that the payment made for acquiring membership in a social club could not be allowed as a business expenditure, more so, when there was no evidence to prove that membership of social club was acquired for entertaining customers of the assessee.
L. Jairam Parwani v. DCIT – [2018] 93 taxmann.com 291 (Madras) – T.C. (A) Nos. 857 & 858 of 2008 dated April 9, 2018

1881. An Appeal was filed before the Court by the assessee against the order of the Tribunal for disallowing the expenditure incurred in connection with the share issue by the assessee without considering the nature of expenditure. The Court upholding the decision of the Tribunal held that the expenditure incurred by assessee in connection with share issue was capital in nature as the assessee had not furnished the breakup details of such expenditure before the Court or the Tribunal.
Sterling Holiday Financial Services Ltd. v. ACIT - [2018] 93 taxmann.com 60 (Madras) - TAX CASE (APPEAL) NO. 564 OF 2008 dated APRIL 3, 2018

1882. The assessee during the relevant year made payments to the cane growers in excess of price fixed by the Government subsequent to which the assessee's claim for deduction of excess payment was rejected by the AO on the ground that it was in the nature of an advance recoverable under the terms of the agreement. The CIT (A) reversed the decision of the AO and held that the payment to the cane growers in excess of the administered price was eligible to be treated as an allowable expenditure exclusively and necessarily incurred for the purpose of business which was further confirmed by the Tribunal. The High Court dismissing the appeal of the Revenue held that the assessee could not avoid excess payment in view of business expediency as the entire business of the assessee was dependent on the supply of the sugarcane and the mere use of the word 'advance' in letter of Sugarcane Growers Association, would not change the character of payment especially when the amount paid was an ascertained liability and the assessee was following the mercantile system of Accounting.
CIT v. Aruna Sunrise Hotels Ltd. – [2018] 93 taxmann.com 361 (Madras) – T.C. (Appeal) No. 271 of 2005 dated April 10, 2018

1883. The assessee engaged in the business of wholesale trade acquired goods from various people and sold the same to retail sellers who subsequently sold the goods on 'Flipkart.com'. The goods sold to the retailers by the assessee was at a price less than the cost price and the AO was of the view that the action of the assessee was not a normal business activity thereby calling upon calling upon the assessee to explain the purpose of selling the goods at a price less than the cost. The plea of the assessee was that the sale at a discounted price was to increase the volume of sales but the same was not accepted by the AO who opined that the strategy of selling goods at a lower price was done to establish goodwill and reap the benefits in the later years. In view of the same, the AO regarded the predatory pricing as capital expenditure and disallowed the deduction. The Tribunal reversing the decision of the AO and the CIT (A) held that the taxing authorities could not take into account the market price of the goods to ascertain profit from the transaction in cases where the trader transfers his goods at a price less than the market price, if the transaction was a bona fide one. The Tribunal further held that the assessee had not incurred any expenditure to acquire marketing intangibles or for creation of goodwill thereby setting aside the order passed by the AO.

Flipkart India (P.) Ltd. v. ACIT - [2018] 92 taxmann.com 387 (Bangalore - Trib.) - IT APPEAL NOS. 202 & 693 (BANG.) OF 2018 dated APRIL 25, 2018

1884. The assessee bank incurred expenditure towards acquiring various categories of software and claimed deduction u/s 37(1) on the ground that the expenditure was revenue in nature. The AO denied the deduction claimed by the assessee on the ground that the expenditure was capital in nature as it conferred enduring right upon the assessee. The order of the AO was affirmed by the CIT (A) and the Tribunal. The assessee preferred an appeal before the High Court. The Court noted that the nature of articles acquired were licenses to use software and the same could not confer an enduring right on assessee. The Court held that the objective of the assessee was not to carry on software business, rather to use it as a tool to maximize the performance and to streamline the efficiency. Accordingly, the claim of the assessee for deduction of software expenses u/s 37(1) was allowed.
Oriental Bank of Commerce v. ACIT - [2018] 93 taxmann.com 432 (Delhi) - IT APPEAL NOS. 414, 415 OF 2017, 56 & 129 OF 2018 dated APRIL 17, 2018

1885. The AO had made the disallowance of expenditure incurred on Intragroup services on the ground that the same were not wholly and exclusively incurred for the purpose of business.The Tribunal deleted the disallowance of expenditure incurred for intragroup services u/s.37(1) made on protective basis noting that on perusing the assessment orders for earlier years and subsequent years, though TP addition for Intragroup services had been made, there was no disallowance made u/s.37(1) on protective basis or otherwise and hence the addition could not be sustained in view of principles of consistency.
Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018

1886. The Tribunal dismissed assessee's appeal and upheld the DRP's treatment of foreign exchange loss incurred in respect of advances received as capital as there was no material or evidence placed before it to demonstrate whether advances were in nature of revenue.It also noted that though the DRP had agreed in principle that if the losses pertained to trading item, revenue account or trading account or circulating capital of business would be revenue in nature in light of the Apex Court ruling in CIT v Woodword Governor India Pvt. Ltd but the DRP treated the same on capital account and disallowed the amount in the absence of details.
EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP)A No.1394/Bang/2012,ITA No.1332/Bang/2010 and IT(TP) A No.163/Bang/2012 dated 28.06.2018

1887. The Tribunal relied on the co-ordinate bench ruling of the assessee in earlier year and allowed the assessee's claim of provision for warranty which was certified by the actuary. It relied on the ratio laid down in Apex Court ruling in Rotork Controls Ltd. wherein it was held that warranty services are normal business expenditure and not contingent liability if the provision for the same could be measured by using substantial degree of estimation.
Toshiba India Private Limited vs ACIT [TS-609-ITAT-2018(DEL)-TP] ITA No. 1438/Del/2018 dated 18.06.2018

1888. The AO had disallowed the research and development expenditure on the ground that it was capital in nature. However, as the assessee's contention was that it had rendered research and development services against which it had earned revenue income, the Tribunal restored the issue to the AO to examine the same afresh.
Bloom Energy India Pvt. Ltd v DCIT [TS-626-ITAT-2018(CHNY)-TP] ITA No.2857/Chny/2017 dated 20.06.2018

1889. With regards to disallowance of commission expenses, the Tribunal remanded the matter back to the file of the AO to examine the details/ correspondence/ agreements regarding fixation of commission as in the present case, it could not be established that the rate of commission was as per the contract. While doing so, Tribunal held that if the payment of commission was done without reference to any document relating to consent of parties, it could not be considered as genuine.

Daga Global Chemicals P. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0007 (Mumbai ITAT) – ITA No. 5296 & 5889/Mum/2017 dated May 2, 2018

1890. The Court allowed assessee's claim of deduction towards repairing expenses incurred for the premises owned by assessee's sister concern. The same was disallowed on the reasoning that the expenditure was not for business purpose. The Court relied on the Apex Court decision in the case of CIT v Madras Auto Service (P) Ltd. reported [233 ITR 46 (SC)] wherein assessee had spent money for creating an asset of an enduring nature and though the asset so created did not belong to the assessee, it was held that such expenditure was for better carrying on of assessee's business and could be allowed as a revenue expenditure. It noted that in the present case also, repairing expenses had augmented assessee's business.
TM INTERNATIONAL LOGISTICS LIMITED v CIT - ITA 153 of 2008 (Cal HC) dated 25th July, 2018

1891. The assessee claimed deduction of retrenchment compensation paid to the two outgoing key employees/ directors at the time of severance of their employment relationship with the assessee-company. The same was disallowed by the AO on two ground viz. (i) the payment was capital in nature since it was one-time settlement payment and (ii) on settlement the director's shares were reduced and the shareholding of the holding company of assessee-company had increased. The Tribunal allowed the assessee's claim and held that the compensation was paid in the capacity of employee-employer relationship, which is evident from the appointment letters, being routine business expenditure and could not be termed as capital. Further, it was noted that the holding company had separately purchased the shares from the directors and there was no arrangement as suggested by the AO.
ACIT v BDS Projects India Private Limited – ITA No. 3737/ Mum/ 2017 dated December 11, 2018

Section 40

1892. The Tribunal held that on harmonious interpretation of provisions of section 40(b)(v) as well as clauses of partnership deed, claim of remuneration paid to partners despite 'quantum' not specified in partnership deed was to be allowed. Section 40(b)(v) does not lay down any condition of fixing remuneration or method of remuneration in partnership deed. Whether all that section 40(b)(v) provides is that in case payment of remuneration made to any working partner is in accordance with terms of partnership deed and does not exceed aggregate amount as laid down in subsequent portion of section, deduction is permissible. Since Partnership Deed specifically provided that salary/remuneration was to be computed as per section 40(b)(v); thus, harmoniously interpreting provisions of section 40(b)(v) as well as clauses of partnership deed, claim of remuneration paid to partners was to be allowed.
Unitec Marketing Services v. Asst. CIT, Circle-17(3) Mumbai-[2019] 101 taxmann.com 397 (Mumbai - Trib.)-IT Appeal No. 822 (MUM.) of 2018- dated December 5, 2018

1893. Assessee was Chartered Accountant's Firm. It was noticed by AO that under head "subscription fees" assessee had debited sum as DTT subscription fees. Assessee was asked to disclose basis / method of calculation of total subscription by DTT and DHS Mumbai and whether tax had been deducted—AO, after going through verein, (association) document and submissions of assessee noted that subscription fees were not allowable expenses under Act. In view of provisions of s 40(a)(ia) of Act, payment made by assessee was disallowed and added to total income. CIT(A) set aside AO's order. The Tribunal held that, it was not case of AO that expenses were not genuine. It was also not case of AO that expenses were not incurred wholly and exclusively for purposes of business or profession. Assessee had claimed expenses in accordance with its cash system of accounting and AO had not disputed system of accounting. Assessee had also furnished evidence to prove that assessee was member of global network of DTT, enjoyed certain advantages as result of membership and had paid its contribution of subscription to membership of global network. Said amount towards reimbursement of expenses, which was in fact incurred on behalf of assessee and there was no profit element. Revenue's appeal was dismissed.
Dy.CIT vs. Deloitte Haskins & Sells-(2018) 53 CCH 0331 KolTrib-ITA Nos. 587 & 588/Kol/2016-dated July 11, 2018

1894. Assessee was running hospital and providing treatment to patients. Assessee filed its return declaring nil income. In same hospital building, NNC also runs Neuro related clinic. Both these organizations were sharing space in same hospital building owned by assessee. NNC was charitable trust registered u/s. 12AA. Assessee admitted patients for general ailments in its hospital but occasionally if they required services of Neuro doctors/ surgeons, they were referred to NNC and NNC raised bill on assessee and patients of NNC were also admitted in assessee hospital and as and when these patients required diagnostic investigation or general ailment treatment, they were referred to doctors of assessee hospital. Bills raised were adjusted and net amount was paid / payable to creditor. Certain amount was payable by NNC to assessee. AO noted that assessee had made such payment to NNC on account of service / consultancy charges on which tax was not deducted and made disallowance u/s. 40(a)(ia). CIT(A) upheld order of AO. The Tribunal held that, in Haldia Petrochemicals Ltd vs DCIT, it was held that assessee could be treated as 'assessee in default' only when there was some tax due to be paid to exchequer on account of subject mentioned transaction. Interest charged in terms of section 201(1A) was only compensatory in nature and was collected from payer by treating payer assessee as 'assessee in default' for depriving Government of its legitimate dues. Interest was to be calculated from due date of deduction/payment of expenses warranting TDS till date of deduction/ payment, as case may be, at respective interest rates. Payee had duly shown amounts received from payer assessee as its income in its returns. Certain payments definitely fall within ambit of eligible payments warranting deduction of tax at source but same had not been fully complied by payer. Assessee had deducted tax at source and remitted same to Central Government for part of period and for part of amounts as stated in assessment order. Assessee could be treated as 'assessee in default' only when there was some tax that was legitimately due to Government which department was not able to recover from payee, and then payer could be proceeded with for remitting said tax by treating him as 'assessee in default'. No disallowance u/s. 40(a)(ia) was warranted. Assessee had brought evidence on record to prove that NNC had also duly reflected subject mentioned transaction in its returns and had claimed exemption u/s. 11. No disallowance u/s. 40(a)(ia) could be inflicted in hands of assessee payer.

Peerless Hospitex Hospital & Research Centre Ltd. vs. ITO-(2018) 53 CCH 0351 KolTrib-ITA No.1107/Kol/2014-dated July 11, 2018

1895. Assessee was Chartered Accountant Firm by profession and derived income from business or profession. Assessee was asked by AO to submit partnership deed along with note on why remuneration paid to partners might not be disallowed as per provisions on s 40(b) of Act. AO disallowed remuneration paid to partners on ground that partnership deed in present case did not defined quantum of remuneration nor method of computation of remuneration paid to partners for previous year relevant to Assessment Year.CIT(A) upheld AO's order. The Tribunal held that, in case of CIT Vs. Vaish Associates it was held that when remuneration was quantified through method of prescribed under Provisions of s 40(b) (v) then remuneration had to be allowed by AO. Therefore, in light of this CIT(A) as well as AO had not taken proper cognizance of Clauses given under partnership deed in consonance with provisions of s 40(b) (v) of Act. Assessee's appeal was allowed.

JRA & Associates vs. Asst. CIT-(2018) 53 CCH 0345 DelTrib.ITA No.5571/DEL/2015-Dated July 11, 2018

1896. The Tribunal held that, payments made by assessee to foreign commission agents did not involve element of income assessable in India, and therefore, there was no obligation upon assessee to deduct TDS. Revenue's appeal was dismissed and CIT(A)'s order deleting disallowance u/s 40(a)(ia) was upheld.

Dy.CIT vs. The Panchmahal Steel Ltd. (2018) 53 CCH 0305 AhdTrib.-ITA No.634/Ahd/2017-dated July 9, 2018

1897. The Tribunal held that no disallowance u/s.40(a)(ia) of Act can be made where the recipient had included receipts paid by assessee in its returns of income and also paid taxes on same.

Asst. CIT vs. Karle International Pvt.Ltd.-(2018) 53 CCH 0291 BangTrib.-ITA No.399/Bang/2018-dated July 6, 2018

1898. The Tribunal held that no disallowance u/s 40a(ia) is required to be made in the hands of assessee where the assessee has deducted tax at source, however, such tax could not be deposited before the close of the financial year but was deposited on or before due date of filing of the return of income.
SRS Buildcon P.Ltd. vs. ITO-(2018) 54 CCH 0307 DelTrib-ITA No.4537/Del/2014-dated December 6, 2018

1899. Where the assessee was following percentage completion method and made provision for expenditure in respect of ancillary unfinished work to compute true net profit and payee was unknown, deduction of TDS is not attracted. Thus, disallowance u/s.40(a)(ia) was not warranted.

Bengal Peerless Devt. Co. Ltd vs. Dy.CIT (2018) 54 CCH 0444 KolTrib- ITA No.2414/Kol/2017,2549/Kol/2017 dated 31.12.2018

1900. The Tribunal held that amendment brought into the provisions of s. 40(a)(ia) by the Finance Act, 2015 has been held as remedial in nature and retrospective in applicability.

ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018

1901. AO made disallowance u/s. 40(a)(i) on logistic service charges paid without deduction of of tax there from by assessee to one company, Germany. CIT(A) deleted disallowance made by AO. Tribunal held that services rendered by non-resident did not fall under category of technical or managerial services. Further, services were rendered outside India and there was no permanent establishment or business connection to non-resident in India. This fact had not been disputed by Revenue. Profits of services rendered outside India could not be taxed in India unless non-resident had permanent establishment/or business connection in India as envisaged in s 9(1). There was no infirmity in order of CIT(A) and same was upheld.

Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018

1902. Assessee made payment of lease rent against leased vehicles in relevant AY. The AO disallowed lease rent u/s 40(a)(ia) as the assessee did not furnish details of tax deducted at source on such payments. The Tribunal noted that assessee had furnished certificate from chartered accountant in prescribed form as mandated in first proviso to section 201(1) to prove that payee had included subject mentioned receipt as its income and had paid taxes thereon. The Tribunal relied on the case of Principal CIT vs Tirupati Construction, wherein it was held that application of second proviso to section 40(a)(ia) and 201(1), had been held to be retrospective in operation. Thus, the Tribunal concluded that if application of second proviso to section 40(a)(ia) and 201(1) is held to be retrospective then no disallowance u/s 40(a)(ia) could be made in the hands of assessee.

DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No.503,505/Kol/2016 dated 05.09.2018

1903. The Tribunal deleted the addition made by invoking provisions of section 40(a)(ia) for non-deduction of TDS on security charges, in view of the fact that the said amount was duly declared by payee in its return of income and, accordingly, offered to tax.

PATIDAR HOSPITAL & RESEARCH CENTRE v. ITO [2018] 53 CCH 0588 IndoreTrib- ITA No.1007, 1008 and 1541/Ind/2016 dated August 21 2018

1904. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order deleting disallowance made u/s 40(a)(ia) for short deduction of TDS against contractual / professional / rental payments made by the assessee, relying on the ratio laid down in the case of CIT vs SK Tekriwal [2014] 361 ITR 432 (Cal HC) wherein it was held that if there was any shortfall due to any difference of opinion as to taxability of any item or nature of payments falling under various TDS provisions, assessee could be declared to be assessee in default u/s 201 but no disallowance could be made by invoking provisions of section 40(a)(ia).

Dy.CIT vs SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. [2018] 53 CCH 0432 (Mum Trib) - ITA No. 6864/Mum/2012 dated August 8 2018

1905. The Tribunal deleted the disallowance made by the AO u/s 40(ba) in the case of the assessee, an AOP, with respect to payment of salary and related expenses to employees of one of its member. The AO opined that since the assessee-AOP had made payment to its member, the provisions of section 40(ba) [which provides for disallowance of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by an AOP to its member] were attracted. The Tribunal accepted the assessee's contention that the section 40(ba) is to be read along with section 67A (which provides methodology of computation of share income of a member of AOP) and the combined reading of both the section make it clear that the payments contemplated in section 40(ba) should constitute "Share income from AOP" in the hands of the recipient member i.e. it should form part of the member's income. Accordingly, it held that since the said payments were not received by the member on its own account as contemplated in section 67A r.w.s. 40(ba), rather was towards reimbursement of expenses incurred by the member on its employees on behalf of the assessee, section 40(ba) was not attacted in the present case.
ITD Cem India JV v ACIT - [2018] 97 taxmann.com 45 (Mumbai - Trib.) – ITA No. 4225 (MUM.) OF 2012 dated July 30, 2018

1906. The Apex Court disposed of the SLP filed by Revenue against the High Court's order wherein the High Court had held that deduction u/s 10A was to be allowed on profit increased by amount of disallowance u/s 40(a)(v) [being tax borne by employer which was claimed as exempt by employee u/s 10(10CC)], with the direction to follow the Apex Court ruling in the case of CIT v HCL Technologies Ltd. [2018] 93 taxmann.com 33 (SC). In the said case, the Apex Court had held that when object of formula in section 10A for computation of deduction is to arrive at profit from export business, expenses excluded from export turnover have to be excluded from total turnover also, otherwise, any other interpretation makes formula unworkable and absurd and hence, such deduction shall be allowed from total turnover in same proportion as well.
Pr.CIT v Lionbridge Technologies (P.) Ltd - [2018] 96 taxmann.com 495 (SC) - SLP (Civil) Diary No.(S). 7309 OF 2018; IR & IA NOS. 32533 & 32534 OF 2018 dated July 30, 2018

1907. The Court reversed the Tribunal's order and held that the education cess is a disallowable expenditure u/s 40(a)(ii) of the Act. It agreed with the reliance placed by the assessee on (i) the CBDT Circular F. No. 91/58/66-ITJ(19) dated 18th May, 1967 clarifiying that the word 'cess' was specifically omitted from section 40(a)(ia) while finalizing the provisions of the Act and (ii) the Apex Court decision in the case of Jaipuria Samla Amalgamated Collieries Ltd. v. CIT (1971) 82 ITR 580 (SC) holding that 'cess' is not tax.
CHAMBAL FERTILISERS AND CHEMICALS LTD. & ANR v JCIT (2018) 102 CCH 0202 RajHC - D.B. Income Tax Appeal No. 52/2018, 68/2018 dated July 31, 2018

1908. The Tribunal deleted the disallowance made u/s 40(a)(ia) on account of certain amount debited by the assessee, an authorized dealer of BSNL, in its Trading-cum-Profit & Loss Account under head 'commission to parties' with respect to which TDS was not deducted u/s 194H. The assessee claimed that the said amount represented incentives given to retailers/shopkeepers and there was no relation of 'principal and agent' so as to consider the payment to be in nature of commission. The Tribunal held the transaction between assessee and its retailers to be on principal to principal basis, noting that (i) as per an agreement entered by assesse and BSNL, all functions of marketing telecom products of BSNL was to be done by assessee through sub franchisees and retailers only and not by appointing any agents; (ii) once products were sold for cash to retailers, assessee lost all control over products and (iii) only

discount was passed on to retailers and nothing was brought on record to show any payment made by assessee to retailers by way of incentive.
ANIL DHAWAN vs. DCIT (2018) 195 TTJ 0042 (Chd) (UO) – ITA No. 1298/Chd/2016 dated 17th July, 2018

1909. The Tribunal deleted the disallowance made u/s 40(a)(ia) on account fo non-deduction of TDS while making payment of interest on loan paid to NBFCs, noting that the NBFCs had considered the amount of interest in question in their income and filed return of income and accordingly, no disallowance was called for u/s 40(a)(ia) as per second proviso to the said section.

Fortune Infonet vs ITO [2018] 54 CCH 0256 (Jai -Trib)-ITA No.866/JP/2018 dated 20.11.2018

1910. The Tribunal deleted the disallowance made u/s 40(b) by the AO with respect to remuneration paid to partners, noting that the remuneration was paid as per the partnership deed and the remuneration received had already been subject to tax in the individual hands of the partners. It relied on the decision in the case of ACIT Vs. Associated Engineers & Allied Products [ITA No.680/JP/2014] wherein it was held that since the remuneration paid as per section 40(b) was taxable in the hands of the partners, if the same was disallowed in the hands of assessee-firm then it would be result in double taxation.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. CLASSIC SUPPER CONSTRUCTION & ANR. - (2018) 52 CCH 0483 CuttackTrib - ITA NO. 57/CTK/2015, 180/CTK/2017dated Apr 11, 2018

Section 40A

1911. The Tribunal held that Provisions of section 40A(2) are not application to co-operative society and therefore, disallowance on account of alleged excess payment made in assessee-co-operative society's case would not be justified.
Dy.CIT, Bharuch v. Ganesh Khand Udyog Sahakari Mandali Ltd.- [2018] 100 taxmann.com 229(Surat-Trib.)-ITA No.3030(AHD) of 2013-dated November 13, 2018.

1912. Where assessee, engaged in exporting buffalo meat, made purchases of meat in cash in excess of Rs. twenty thousand and, Assessing Officer denied benefit of proviso to section 40A(3) and rule 6DD(e) on ground of non-satisfaction of condition provided in CBDT Circular No.8 of 2006 relating to non-furnishing of a certificate from a Veterinary Doctor, impugned order passed by High Court holding that CBDT circular could not put in new condition for grant of benefit under rule 6DD which were not provided either in Act or in rules framed thereunder was justified and thus the Apex court dismissed the SLP filed against said order.
Pr.CIT v. GEE Square Exports- [2018] 100 taxmann.com 462(SC)-SLP(CIVIL) Diary No.(s) 38352 of 2018 dated November 13, 2018

1913. The Tribunal held that where assessee purchased land from farmers and on their insistence, made payments in excess of Rs.20 thousand in cash, in view of fact that said payments were genuine, duly accounted in books of account and recipients were identifiable, impugned disallowance made by Assessing Officer under section 40A(3) was not sustainable.
K. Phani Kumar v. Asst. CIT, Central Circle, Vijaywada-ITA No.300(viz.) of 2015-dated November 30, 2018

1914. The Tribunal held that where assessee purchased land from farmers and on their insistence, made payments in excess of Rs.20 thousand in cash, in view of fact that said payments were genuine, duly accounted in books of account and recipients were identifiable, impugned disallowance made by Assessing Officer under section 40A(3) was not sustainable.
K. Phani Kumar v. Asst. CIT, Central Circle, Vijaywada-ITA No.300(viz.) of 2015-dated November 30, 201

1915. The Tribunal held that where assessee made payment in excess of Rs. 20,000/- towards purchase of jaggery from farmers, in view of fact that those farmers were mostly uneducated and did not know how

to operate bank accounts, assessee's case would fall under Rule 6DD and, thus, impugned disallowance made under section 40A(3) was to be deleted.
Tum Nath Shaw v. Asst. CIT, Circle-2, Burdwan- [2019] 102 taxmann.com 56 (Kolkata - Trib.)-IT Appeal Nos. 2043 to 2047 (KOL) of 2017 dated December 31, 2018

1916. The Court held that where assessee engaged in business of sale of Kerosene, purchased it from notified dealer by making payment in cash on ground that said payment was made as per guidance of District Civil Supply Officer, in view of fact that District Supply Officer's order did not mandate any mode of payment either in cash or by cheque, and, moreover, there were banking channels available even when supplies had been effected, impugned disallowance was rightly made by authorities below under section 40A(3).
Madhav Govind Dhulshete v. ITO [2018]99 taxmann.com 56/259 Taxmann 149(Bom)- IT Appeal (L) No. 2128 of 2018 dated October 8, 2018

1917. Assessee was engaged in trading of electronic goods. Assessee filed its return of income. Assessment u/s 143(3) of Act was passed determining total income. AO made disallowances u/ss 40A(2)(b) and 14A of Act. CIT(A) set aside AO's order of addition but confirmed disallowance u/s 14A. The Tribunal held that in case of CIT Vs. M/s Gautam Motor, it was held that there was no case made out by Department that any tax avoidance has been attempted by these arrangements. Therefore, no justification was there to hold additions made by AO and sustained by CIT(A), same was to be deleted. AO could not show that expenditure incurred by assessee was excessive or unreasonable providing market comparative price with respect to fair market value of goods. AO could not show that without offering discount goods were saleable and not in accordance with legitimate needs of business of assessee. In absence of these AO could not have applied provisions of section 40A(2)(b) of Act. Revenue's appeal was dismissed.
ITO vs. Media Satelite & Telecom Ltd.- (2018) CCH 0308 DelTrib-ITA No.415/Del/2015-dated Jul.10, 2018

1918. On basis of completed assessment u/s 143(3) by making addition on account of disallowance u/s 40A(3) and on account of excess depreciation claim, respectively, penalty proceedings u/s 271(1)(c) were initiated against assessee. AO treated mistake of claiming excess depreciation as furnishing of 'inaccurate particulars of income and thereby levied a penalty u/s. 271(1)(c). CIT(A) upheld order of AO.Held, bare perusal of penalty order, apparently went to prove, that there was no finding whatsoever on part of Revenue authorities below that any detail supplied by assessee in his return of income was found to be incorrect and erroneous or false. In case, assessee claimed excess depreciation, it was for tax authority to examine if same was allowable or not. Perusal of notice issued by AO to assessee u/s 274 proved that even at time of issuance of notice as well as at time of passing penalty order, AO was not clear, as to penalty proceedings were being initiated for 'concealment of particulars of income or furnishing inaccurate particulars of income', rather assessee had been charged for having 'concealed particulars of income as well as furnishing inaccurate particulars of such income. AO failed to make out case of 'concealment of income or furnishing of inaccurate particulars of such income' by assessee, so as to attract provisions contained u/s 271(1)(c), hence penalty levied by AO and confirmed by CIT(A) was ordered to be deleted by the Tribunal.
Replika Press Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0315 DelTrib-ITA No.120/Del/2016-dated July 10, 2018

1919. The Tribunal held that if payment is being made for the purchase of agricultural or forest produces, the disallowance under section 40A (3) would not be made. Benefit of clause (e) and (k) of Rule 6DD would be given to assessee if S company acted as agent of assessee and made direct payment to farmers after receiving from assessee. As no such circumstances had been discussed by CIT(A), matter remanded to file of AO.
Asst.CIT vs. Vadodara District Co-Op. Sugarcane Growers Union Ltd.-(2018) 53 CCH 0328 AhdTrib-ITA No.1021/Ahd/2015 & 2215/Adh/2016-dated July 12, 2018

1920. The Tribunal held that registration fee paid in cash for registration of land and building could not be disallowed u/s 40A(3) since major part of it pertained to stamp duty cost paid to the Government.

Shelter Projects Ltd vs CIT- (2018) 54 CCH 0103 KolTrib- ITA No 737/Kol/2014 dated 17.10.2018

1921. The AO disallowed certain cash payments made by assessee by invoking provisions of section 40A(3). However, the Tribunal allowed assessee's appeal solely on the ground that expenditure were negligible considering total turnover of assessee. The Court observed that the Tribunal had failed to note that assessee themselves stated that they had incurred expenses towards consumables, repairs and maintenance, for which bills and vouchers were available and thus the Tribunal should have remanded the matter for fresh consideration to examine documents available with assessee towards expenditures and ought not to have straightaway deleted the disallowance by referring to the turnover for relevant assessment year. Thus, the Court held that the order was to be set aside and, matter was to be remanded back to the AO for disposal afresh.
CIT Corporate Circle vs Vasantha Subramaniam Hospitals- (2018) 98 taxmann.com 292 (Mad)- TC no 885 of 2016 dated 04.09.2018

1922. The Tribunal held that payment made to Adani Power Ltd. was on account of re-imbursement of actual expenses.In the absence of any income element in the payment made, the obligation to deduct tax at source on such payment did not arise and consequently, provisions of Section 40(a)(ia) of the Act did not come into play in view of the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. (2013) 35 taxmann.com 638 (Guj). The law that a mere reimbursement does not require to deduction was also followed in CIT vs. ITD Cem India JV (2018) 405 ITR 533 (Bom) in respect of reimbursement of administrative expenses to a joint venture partner.
DCIT vs Adani Gas Ltd- (2018) 54 CCH 0090 Ahd Trib- ITA No 775/Ahd/2014, 2346, 2797/Ahd/2015, 2775,2776/Ahd/2016 dated 17.10.2018

1923. During search, two bills for Rs.60 lakhs and Rs.32 lakhs each raised by one. TEL against assessee for commission payble to it by the assessee for facilitating sale of building were seized. The Assessing Officer held that expenditure could not be allowed under section 40A(2). The court held that it was not noted that consideration paid for sale of plot was Rs.23 crores and that Rs.92 lakhs was commission commensurate with fair market value service rendered by TEL. Further, commission payable by the assessee to TEL was reflected duly in documents and books of the assessee filed along with its returns and same was subjected to normal assessment at time when they were reported. On facts, additions made by Assessing Officer was to be deleted.
CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103 (Delhi)- IT Appeal No. 599 of 2004 dated September 18, 2018

1924. The assessee-company purchased paddy from farmers in cash exceeding Rs.20,000. Itclaimed deduction in respect of those transactions. The Assessing Officer disallowed same under section 40A(3). The High Court had held that section 40A(3) being a deeming provision, rule 6DD clearly exempts agricultural produce i.e. 'paddy', from rigours of section 40A(3); thus disallowance of cash payments to farmers made under section 40A(3) was unjustified. SLP filed by Revenue against the High Court order is dismissed by Supreme Court.
Pr.CIT v. Keerthi Agro Mills (P.) Ltd. [2018] 95 taxmann.com 282/257 Taxman 1(SC). Special Leave Petition (Civil) Diary No(S). 18397 of 2018 dated July 3, 2018

1925. The assessee, a commission agent for purchase / sale of food grain/agricultural produce,had purchased said goods from various farmers. Those transaction were in cash exceeding Rs.20,000. The Assessing Officer disallowed same under section 40A(3). The Court held that the cash of the assessee was clearly covered by exemption provided under rule 6DD (e)(i), therefore, disallowance made under section 40A(3) was to be deleted.
Principal CIT v. Keshvala Mangaldas [2018] 96 taxmann.com 83/257 Taxman 133(Guj.)- R/Tax Appeal No. 725 of 2018 dated July 2, 2018

1926. The Tribunal held that where in course of business, assessee made payments to various airlines in excess of Rs.20,000 by cash, in view of fact that payees were reputed airlines having PAN and,

moreover, genuineness of payments had not been doubted by revenue authorities, no disallowance could be made under section 40A(3).

KGL Network (P.) Ltd. v. ACIT [2018] 97 taxmann.com 400(Delhi-Trib.)- ITA No. 301 (Delhi) of 2018

[Assessment Year 2014-15] dated July 2, 2018

1927. Where assessee after detailed enquiry and applying his mind disallowed claim of assessee u/s. 40A(2) in respect of performance bonus paid by it to its director, merely because said director was holding 36% sharecapital in company, Principal Commissioner could not assume jurisdiction u/s.263 on grounds that disallowance was to be made u/s.36(1)(ii) as payment of bonus was colorable device to evade dividend distribution tax. The Tribunal held that since assessee had filed various details to prove that such performance bonus was directly linked to duties performed by director, merely because director was holding 36% share capital in company, it could not be concluded that payment of performance bonus was a colourable device for evading payment of dividend distribution tax.

Color Publications (P.) Ltd vs Pr.CIT. [2018] 97 taxmann.com 116 (Mum Trib)- IT APPEAL NO. 4023 (Mum) of 2017 dated August 14 2018

1928. The Tribunal dismissed assessee's appeal against CIT(A)'s order confirming addition made u/s 40A(3) on account of cash payments exceeding Rs.20,000/- noting that vouchers and confirmations letters filed by assessee claiming that the said payemnts did not exceeding Rs. 20,000 were disbelieved by the CIT(A) in face of entries in cash book (as per which the payments exceeded Rs.20,000) and since the addresses of payees, as furnished by assessee were incomplete and, so veracity of the payees was not confirmable. Further, it held that the complete addresses of payees were neither provided before the AO and the CIT(A) nor were filed before the Tribunal.

Neeta Sharma vs Dy.CIT [2018] 53 CCH 0513 Agra Trib-ITA No.90/Agra/2017 dated August 30 2018

1929. The Tribunal deleted addition made u/s 40A(3) on account of cash payments exceeding Rs.20,000 made by assessee to the truck drivers who were agents of the payee by holding that though the case of assessee was not falling under any of the clauses of Rule 6DD of IT Rules, invoking of provision of section 40A(3) could be dispensed as expediency for making the payments also stood established in view of the facts that (i) as per the business practice of transporters, the consignee was required to pay the freight to the truck drivers when they deliver the goods to the consignee (ii) the truck drivers were illiterate and had no bank accounts at the place of the assessee and they delivered the goods to the assessee odd hours, mostly at mid-night. It relied on ratio laid down Dhuri Wine v. DCIT 48 ITR (Trib) 289 (Chnd), wherein it was held that even if the case of the assessee did not fall in any of the clauses of Rule 6DD of the Rules, invoking the provisions of section 40A(3) could be dispensed with if the assessee was able to prove the business expediency because of which it had to make the cash payment and if the genuineness of the transaction was verified.

Neeta Sharma vs Dy.CIT [2018] 53 CCH 0513 Agra Trib-ITA No.90/Agra/2017 dated August 30 2018

1930. The AO made an addition u/s 40A(2)(b) opining that the cost of goods purchased from related parties for re- sale/ trading was higher per case, i.e., 355% vis-à-vis manufacturing cost. He also disallowed 30% of operating expenses on the ground that books of accounts were not produced before him. The Tribunal had remanded both the issue to the AO for fresh adjudication. The assessee filed appeal before the Court against the remand direction for addition u/s 40A(2)(b). The Court upheld the Tribunal's remand directions noting that the assessee was not disputing the remand for disallowance of operating expenses and operating expenses was directly connected and had a nexus with the addition u/s 40A(2)(b) as the indirect cost incurred in manufacturing would be included in operating expenses.

ARADHANA FOODS AND JUICES PVT. LTD. v. CIT [2018] 102 CCH 0247 (Del HC) - ITA No. 701 & 702/2017 and CM No.30647 & 30648/2017 dated August 21, 2018

1931. Where the AO made an addition u/s 40A(3) for reason that assessee made cash payments for hiring trucks beyond limits prescribed, the Tribunal held that no addition could be made invoking provision of sec 40A(3) as the AO had not doubted business expediency or genuineness of transactions and copies of bills produced evidenced that payments were made though agents and accordingly, deleted the said disallowance. It relied on the ratio laid down in A Daga Royal Arts v. ITO [ITA No. 1065/JP/2016] wherein it was held that section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. If read together, it would be clear that the provisions were not intended to restrict the business activities and accordingly, genuine and bona fide transactions were to be taken out of the sweep of the said section.

Krishna Prasad Poturi vs. ITO [2018] 53 CCH 0435 KolTrib - ITA No. 450/Kol/2018 dated August 03, 2018

1932. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had upheld the Tribunal's order deleting the disallowance made u/s 40A(3) with respect to freight and cartage paid to drivers in cash in excess of limits prescribed u/s 40A(3), noting that the auditors had given their remarks stating that factory was situated in backward area and payments to transporters had to be made in cash because such persons were not having banking facility around factory area.
Pr.CIT v Lord Chloro Alkali Ltd - [2018] 97 taxmann.com 514 (SC) - SLP (Civil) Diary No.(S). 24997 OF 2018 dated July 30, 2018

1933. The Tribunal deleted the disallowance made u/s 40A(3) with respect to cash payments made by the assessee-company, a clearing and forward agent, to various airlines in excess of Rs. 20,000, noting that the authorities below had not doubted identity of payees, being reputed airlines having PAN, and genuineness of the transactions. Further, it noted that for business expediency in the line of business of assessee-company, some times cash payments are made to complete the work on behalf of Principal and accordindly held that the assessee fell in the exception provided in section 40A(3) i.e. consideration of business expediency.
KGL Network (P.) Ltd. v ACIT [2018] 97 taxmann.com 400 (Delhi - Trib.) – ITA No 301 (Delhi) OF 2018 dated July 2, 2018

1934. The Tribunal deleted the disallowance made u/s 40A on account of cash payments exceeding Rs.20,000 by the assessee-firm, engaged in business of trading in country spirit, to wholesale licensee appointed by State Government for lifting country spirit. It held that the relationship between retail vendor (assessee) and Government acting under West Bengal Excise Rules through its Authorised Wholesaler Licensee (agent) both defacto and dejure, was one of 'Principal' and 'Agent' therefore, the payment made by the retail vendor to the said agent would fall under exception provided in Rule 6DD(k) which excludes "payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person" from the applicability of section 40A.
TOPSI KENDA C.S. SHOP vs. ITO (2018) 53 CCH 0339 KolTrib – ITA No. 1264/Kol/2016 dated 13th July, 2018

1935. The Court reversed Tribunal's order and deleted disallowance u/s 40A(3) for payments made by assessee (a manufacturing company) to vendors by non-crossed bank drafts. Revenue had disallowed the expenses only on the grounds that the drafts were not crossed as mandated by section 40A(3) r.w. Rule 6DD, but it had not disbelieved the genuineness of purchases. It was noted that the documents such as registered dealer invoices, transit documents, freight charges paid, vendors' sales tax returns, letters from bank indicated that the purchases were genuine and payments made to vendors were credited to their respective bank accounts. Acccordingly, relying on judgment in Attar Singh Gurmukh Singh v ITO 191 ITR 667 (SC) (1991) wherein it was held that the main objective of crossing a demand draft is to ensure that the payment is deposited in whose favour the draft is drawn (i.e. the payee receives the payment) and it is routed through banking channels, the Court held that both the conditions

were met in the present case and thus, the spirit for which section 40A(3) was promulgated was satisfied. Therefore assessee's appeal was allowed.
M.K. Agrotech Private Limited – Income Tax Appeal No. 83 of 2010-[TS-728-HC-2018(KAR)] – dated 29.11.2018

1936. Where the assessee made provision of gratuity, the payment of which was not made before the close of the year, the Tribunal deleted the disallowance made by the AO under Section 40A(7) and upheld the order of the CIT(A) wherein the CIT(A) held that since the provision made by the assessee was an approved gratuity fund no disallowance under Section 40A(7) could be made. Further, the CIT(A) also held that that since the payment was made before the due date for filing return of income, no disallowance under Section 43B could be made.
DELHI TOURISM AND TRANSPORT DEVELOPMENT CORPORATION LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0258 DelTrib - ITA No. 3457/Del/2007, 1505/Del/2009

1937. Tribunal deleted addition made u/s 40A(3) of cash payments made by assessee to its group concerns for repayment of debt and not for any expenditure incurred and which had not been debited in P&L, observing that the provision of said section is applicable only when an expenditure has been incurred and claimed by way of debiting to P&L account.
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

1938. The Tribunal held that the AO was justified in invoking Section 40A(2) vis-à-vis the purchase of land (forming part of its stock in trade) by the assessee partnership firm from its partners and dismissed the contention of the assessee that the provisions of Section 45(3) of the Act (which states that the amount credited in the books of partner transferring capital asset to the firm would be the full value of consideration of the property) would apply. It held that Section 45(3) would apply only in the hands of the partners and would not apply to the case of the assessee firm. It further held that the asset was converted into a trading asset by the firm and therefore held that Section 45(3) would not override Section 40A(2). However, it noted that the AO had taken the value of property pursuant to inquiries from the Sub-register's office to determine the FMV of the property without appreciating the assessee's submission that the said value did not take into account various other considerations such as geographical location and other locational advantages. Accordingly, it remitted the matter to the file of the AO to re-determine the fair market value adopted by him.
ACIT v Karuna Estates & Developers - [2018] 92 taxmann.com 282 (Visakhapatnam - Trib.) - IT APPEAL NOS. 282, 367, 368 (VIZ) OF 2012 dated MARCH 23, 2018

1939. The Tribunal deleted the disallowance made u/s 40A(2)(a) on account of trade discount allowed by assessee to its related parties where no such discount was offered to other parties, as the trade discount is not a payment and therefore, does not fall in the ambit of said section. Tribunal held that there was no actual out go from the assessee as discount was allowed on sale made and in absence of any prohibitory provisions u/s 40A(2)(a) or u/s 37, same could not be disallowed.
ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018

1940. Where the assessee paid rent on machineries to its HUF and the AO disallowed the same under Section 40A(2) alleging that the rent paid was excessive, the Tribunal held that since the AO neither placed anything on record material showing fair market value of goods nor did he conduct any inquiry or verification into reasonableness of expenditure with reference to fair market charges payable under similar conditions, in light of the decisions in the case of ACIT vs. Bombay Real Estate Development Company (P) Ltd.', 64 DTR 137 and 'Jagdamba Rollers Flour Mill Ltd. Vs. ACIT', 117 ITD 260, (Nagpur) (TM), it held that no disallowance u/s 40A(2) could be made. It held that unless the payment was found to be excessive or unreasonable having regard to market value of goods, services or facilities for which payment was made and that in absence of inquiry by AO, as contemplated by provisions of section 40A(2)(a), no disallowance could be made.

ANURAG AGARWAL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0332 AgraTrib - ITA No. 497/Agra/2015 dated Mar 28, 2018

1941. The AO disallowed the expense claimed by the assessee on directors' remuneration / salary paid to four lady directors out of total eight directors u/s 40A(2) considering the same to be bogus expenditure and rejected assessee's explanation that four male directors remained involved in supervising production, marketing, etc. in the production units and the four female directors were engaged for adequate surveillance and supervising of official works including for duly timely compliance with statutory obligations in running the business. CIT(A) upheld order of AO. The Tribunal directed the AO to allow 30% of remuneration given to these lady directors, noting that even if lady directors were not involved in pure managerial or supervising work of assessee company, the AO as well as the CIT(A) indirectly accepted that to certain extent women directors are rendering services to benefit of assessee company.
BETTERMAN ENGINEERS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0115 (Kol Trib) - ITA No. 2001/Kol/2014 dated Jun 6, 2018

1942. The assessee had raised sale invoice in favour of 'C' for goods sold by assessee to the said concern and instead of making payments to assessee against the said invoice, 'C' made payments through banking channel to 'F' on behalf of assesse (i.e. to assessee's creditor). The assessee adjusted the said payments made by it's debtor ('C') directly to its creditor ('F') through journal voucher adjustments in its books of account. The AO made addition u/s 40A(3) considering the said payments made to party ('F') from whom purchases were made by the assessee to be otherwise than through account payee cheque or account payee bank draft and thus in violation of the said section. The Tribunal held that the said payment made directly by assessee's debtor to assessee's creditor through approved banking mode as prescribed in section 40A(3) in settlement of inter-se transaction between debtor and creditor would not trigger provisions of the said section and hence deleted the addition. It noted that the cardinal rational and objective of the said provisions was to plug evasion of taxes so as to ensure that unaccounted money of the tax-payer does not get recycled in the form of cash payments towards ghost expenditures or ghost payees which are out of ambit of tax net.
LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER- (2018) 53 CCH 0248 (MumTrib) - ITA No. 5998/Mum/2014 dated June 27, 2018

1943. The Tribunal deleted the addition made by the AO u/s 40A(2) on account of fess (being 0.5% of the total turnover) paid by the assesse-company to its holding company for various services rendered as per the service agreement entered between both the companies. The AO opined that the assesse-company was unduly benefitting holding company and diverting legitimate profit of company through colourable device termed as service agreement. The Tribunal, however, observed that the AO had not brought any comparable case to demonstrate that payment made by assessee was in excessive and hence held that without bringing any cogent material on record to demonstrate that payment made by assessee was excessive no disallowance could be made since the provisions of section 40A(2) were not automatic and could be called into play only if AO established that expenditure incurred was in excess of fair market value.
MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018

1944. The Tribunal deleted the addition made by the AO u/s 40A(2) on an ad hoc basis viz. 30 per cent of the payments made to the related parties with respect to commission/legal and professional charges, noting that the said disallowance was made without placing on record any material which could prove that payments were excessive or unreasonable, having regard to fair market value of the services for which same were made or keeping in view legitimate needs of business of assessee or benefit derived by or accruing to assessee therefrom. It thus held that in the absence of satisfaction of the basic condition for invoking of section 40A(2)(a), the said disallowance could not be sustained.
Nat Steel Equipment (P.) Ltd. v DCIT - [2018] 95 taxmann.com 159 (Mumbai - Trib.) - IT APPEAL NOS. 4011, 4681, 5070 & 5270 (MUM.) OF 2013 dated June 13, 2018

1945. The AO held that commission paid by assessee company to its director was excessive or unreasonable. The CIT(A) held that before invoking the provisions of S.40A(2) the AO was required to consider the fair market value of the services rendered, the benefit accrued to the assessee and the legitimate needs of business of the assessee from the standpoint of a prudent businessman. He found that the AO could not have decided what the assessee should do and pay. Disallowance could be made under section 40A(2) only when warranted and when the conditions of the said section were satisfied.The CIT(A) noted that the director was assessed to tax in the highest tax bracket and therefore, there was no loss of revenue with regard to the expenditure incurred on account of profit commission paid by the assessee.Accordingly, the CIT(A) deleted the disallowance for profit commission.The Tribunal also concurred with the finding of the CIT(A). Based on such findings, the Court held that since this was a subjective decision having regard to facts of case,there was no substantial question of law involved in appeal.
PCIT v Madras Engineering Industries (P.) Ltd. [2018] 94 taxmann.com 93 (Madras)– T.C.A NOS. 129 TO 131 OF 2018 dated 10.04.2018

1946. The Tribunal held that where assessee trust had not claimed capital expenditure incurred for purchase of land, section 40A(3) could not be invoked to disallow cash payments made by assessee for said purchase of land.
Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018

1947. The assessee who was engaged in running a clinic paid 84 percent of the total professional receipt to four doctors who were also the promoter directors and the remaining percentage was paid to seven doctors. Noting that 84 percent of the receipts were paid to 4 doctors whereas only the balance of 16 percent was paid to 7 doctors, the AO concluded that the payments made to the 4 doctors, who were incidentally promoters, was unreasonable and accordingly disallowed 15 percent of said payments under section 40A(2) on the grounds that such payments were excessive and unreasonable. The Tribunal deleting the disallowance made by the AO held that payment of higher salaries to doctors who were reputed professionals in their fields could not be regarded as excessive and unreasonable. The Tribunal further stated that there was an inherent fallacy in the approach of the AO as the remuneration depends on the market worth and the determination of the market worth was uninfluenced by what other professionals in that area earn.
ITO v. Hemato Oncology Clinic (Ahmedabad) (P.) Ltd. – [2018] 93 taxmann.com 272 (Ahmedabad – Trib.) – IT Appeal No. 3411 (AHD.) of 2015 dated April 24, 2018

1948. The Court upheld the order of the CIT(A) / Tribunal wherein it was held that where assessee inflated purchase expenditure by raising bogus claim of cash purchases exceeding Rs. 20,000, profit element embedded therein should be brought to tax and entires amount was not to be disallowed u/s 40A(3).
PCIT v Juned B. Memom [2018] 95 taxmann.com 20 (Gujrat) – R/TAX APPEAL NO. 379 OF 2018 dated 25.04.2018

1949. The assessee firm purchased certain plots of land from various persons & the payment was made partly in cash. The AO disallowed the amount pertaining to payment by cash by invoking S.40A(3) of the Act. The CIT(A) upheld the said order. The assessee claimed that the part payment was made in cash since the sellers being new to assessee, refused to accept payment through banks and due to mode of payment it could have lost the land. The assessee had even submitted copies of sale deed & other vital details for proving genuineness of the transaction. Thus, based on the above facts and further noting that the cash payments were made from disclosed sources (amount withdrawn from bank), the Tribunal held that since even the business expediency was met, no disallowance was called for.
A Daga Royal Arts v ITO [2018]94 taxmann.com 401 (Jaipur – Trib.)- ITA NO. 1065 OF 2016 dated 15.05.2018

1950. The assessee made a total payment of Rs.1.08 Cr in cash as Truck Loading Charges. The AO opined that though the transaction was genuine, since the payment was made to a single person in violation of

S.40A(3) ,he disallowed the said amount. The CIT(A) confirmed the disallowance. On appeal, the Tribunal deleted the said disallowance by giving benefit of clause (g) of Rule 6DD[exemption to S.40A(3) applicable in a case where the payment is made to a person in village/town, who on date of payment, was not served by bank].However, the Court held that as no evidence was produced by the assessee to the AO or the CIT(A), the Tribunal erred in presuming that the all the payment and the truck loading was made in the village which was not served by the bank and thus remanded the matter back to the CIT(A) for fresh disposal.
CIT V Lal Traders & Agencies (P.) Ltd. [2018] 93 taxmann.com 491 (Calcutta) – ITA NO 45 OF 2018 dated 11.05.2018

Section 41(1)

1951. The Apex court dismissed SLP against High Court ruling that where revenue had not established that excess provision for bad and doubtful debts allowable under section 36(1)(vii) written back in profit and loss account was allowed as deduction in prvious years, no addition could be made holding that excess provision written back amounted to income and within meaning of section 41(1).
CIT. v. Pragathi Gramina Bank- [2018] 99 taxmann.com 153(SC) – SLP(Civil) Diary No.35592 of 2018-dated October 26, 1018.

1952. The Tribunal held that where Assessing Officer made addition to assessee's income under section 41(1) in respect of difference between creditors recorded in his books vis-a-vis balance in books of creditors, in view of fact that Assessing Officer did not doubt about total sales and purchases made by assessee and, thus balance of creditors was to be regarded as genuine, impugned addition was deleted.
Tum Nath Shaw v. Asst. CIT, Circle-2, Burdwan-[2019] 102 taxmann.com 56 (Kolkata - Trib.)-IT Appeal Nos. 2043 to 2047 (KOL) of 2017 dated December 31, 2018

1953. The Tribunal deleted addition made u/s 41(1) with respect to deferred sales-tax liability appearing in the books of account under the head 'liabilities', relating to 'already transferred' undertaking noting that duty to pay any taxes, cesses, levies of any nature, whatsoever of the undertaking alongwith sales-tax, if any, payable in connection with and relating to the transfer, was cast on assessee. It was also noted that the sales tax liability was discharged by the assessee in subsequent period.
Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018

1954. Assessee was a tenant of BPT and was liable to pay rentals in respect of premises taken on lease to BPT.BPT increased rentals which was subject matter of litigation for AYs 1990-91, 91-92 & 92-93.Assessee in past, had provided for incremental rentals payable to BPT and claimed same as deduction in returns filed for AYs 1990-91, 91-92 & 92-93 which was disallowed by AO.Rentals were ultimately fixed at a particular price by Supreme Court.Pursuant to order of Apex Court, fixing rentals payable to BPT, High Court held that assessee was entitled for deduction only to extent of rent ultimately fixed by Apex Court.During relevant AY, assessee wrote back liabilities representing incremental rentals payable to BPT pertaining to M/s. S and credited same to its P&L account.Assessee in return of income filed for AY 2012-13 reduced said sum in computation of income on ground that for earlier years, incremental rentals were not allowed as a deduction pursuant to giving effect order passed for order of High Court.AO made addition u/s 41(1) on ground that ITAT had granted relief to assessee and hence assessee could not be given double benefit for very same amount.CIT(A) confirmed AO's action. The Tribunal held that assessee was entitled for deduction as an item to be reduced from computation of total income.Lower authorities had erroneously proceeded on ground that assessee was granted relief by ITAT for AYs 1990-91,91-92 & 92-93 in respect of provision made for incremental rentals.But lower authorities had grossly erred in not considering giving effect order to High Court order passed by AO wherein, ultimately assessee was denied benefit of deduction towards provision for incremental rentals as increased rentals were determined at a particular figure by Apex Court.There was no double benefit claimed by assessee.Provisions of s. 41(1) could be invoked only if deduction for very same sum was allowed in earlier years for assessee, which in instant case, was not granted by AO.Accordingly, AO was directed to delete addition made u/s 41(1).

GRAND WOOD WORK & SAW MILLS AND ANR. vs. ITO & ANR (2018) 54 CCH 0509 MumTrib ITA No. 380/Mum/2017 & ITA No.7556/Mum/2016 dated 19.12.2018

1955. The Apex Court granted SLP to the assessee-cooperative bank against the High Court order wherein the High Court had upheld the Tribunal's order holding that provision for establishment expenses and other expenses written back to reserves amounted to cessation of liabilities of expenses and was taxable as income in the year in which it was transferred to reserves u/s 41(1). It was assessee's contention that its entire income from banking business was exempt u/s 80P(2).

Rajasthan State Co-operative Bank Ltd vsACIT [2018] 100 taxmann.com 153 (SC)-SLP (Civil) Diary No.28056/2018 dated August 24 2018

1956. Where AO made addition u/s 41(1) on ground that the creditor could not be traced from confirmation letter filed by assessee, the Tribunal upheld CIT(A)'s order deleting said addition holding that mere non-verification of such liability or any doubt raised thereupon does not attract cessation of liability principle u/s 41(1), it had to be proved that the liability ceased to exist.

ITO vs CD Steel Pvt Ltd [2018] 53 CCH 0495 (Kol Trib) ITA No.1360/Kol/2017 dated August 29 2018

1957. The Court dismissed Revenue's appeal against the Tribunal's order deleting addition made by the AO u/s 41(1) on account of alleged cessation of liability towards creditors, noting that since the assessee had not written off liability in books of account and rather carried forward the same, the liability continued to exist.
Pr.CIT v Babul Products (P.) Ltd [2018] 96 taxmann.com 82 (Gujarat) - R/TAX APPEAL NO. 734 OF 2018 dated July 17, 2018

1958. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 41(1). The AO had added the same opining that there was cessation or remission of liability, noting that the said liability was standing since long and the directors of the creditor companies were unable to explain transactions giving rise to the said liability. The CIT(A) had noted that the said liability was never doubted in preceding or succeeding assessment years involving regular assessment and that four directors of corresponding entities had been appointed in FY 2001-02 only whereas the impugned liability dated back to almost 30 years. The Tribunal upheld the CIT(A)'s order relying on the decision in the case of CIT vs. Alvares & Thomas (2010) 69 Taxman 257 (Kar) wherein it was held that mere no verification of a liability or for that matter any doubt raised thereupon does not attract cessation of liability principle u/s 41(1) as the same has to be a case of cessation in law only.
ACIT v vs. SOORAJMULL NAGARMULL - (2018) 53 CCH 0376 KolTrib – ITA No 1907/Kol/2016 dated July 20, 2018

1959. The Tribunal deleted the addition made u/s 41(1) with respect to amount payable to sundry creditors noting that the AO had made addition merely in view of the fact that the amount was pending for payment for a period of three years and he had not obtained any confirmation from the creditor that there was no outstanding liability. It was also noted the aforesaid amount was paid by assessee in subsequent year and the outstanding liability became nil. Thus, it held that addition u/s 41(1) was not justified and allowed assessee's appeal.

Patidar Dinesh Kumar and Company vs ITO [2018] 54 CCH 0214 (Indore- Trib) - ITA No.32/Ind/2017 dated 13.11.2018

1960. The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the addition made by the AO u/s 41(1) opining that the liability towards sundry creditors had ceased. The Tribunal noted that the opening balances of the liabilities were already admitted in the immediately preceding assessment years. It was further noted that the assesse had gone into BIFR and it had filed the claim (a list of sundry creditors and other liabilities) before the BIFR. It was thus held that it is only a matter of timing that as the issue is pending before BIFR, the creditors remained suspended but there

had been no notice which could have extinguished the existing right except to the extent that they become part of the sanctioned scheme.
HINDUSTAN VEGETABLE OILS CORP. LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0131 (DelTrib) - ITA No. 6776/Del/2015, 6833/Del/2014 (Cross Objection 183/Del/2017) dated Jun 8, 2018

1961. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 41(1) with respect to difference in the sales tax liability resulting from prepayment of the said liability at discounted rate under a deferral sales tax scheme, relying on the decisions in the case of CIT vs. Sulzer India Ltd. [2014] 369 ITR 717(Bom) wherein it was held that where the assessee had made premature payment of deferral sales tax at net present value against the total liability and credited the balance to its capital reserve account, the said credited amount was a capital receipt and could not be a remission or cessation of trading liability u/s 41(1). Further reliance was placed by the Tribunal on CIT vs. Balkrishna Industries Ltd. (2017) 88 taxmann.com 273 (SC) wherein it was held that the premature payment of sales tax liability under Sales Tax Deferral Scheme of 1983 would not amount to remission or cessation of assessee's liability.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (MumTrib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June18, 2018

1962. The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the addition made by the AO u/s 41(1) with respect to sundry creditors outstanding for 6 to 20 years on the ground that where the assessee had not written back these amounts as income in its books of account such outstanding liabilities could not be regarded as income u/s 41(1). The Tribunal held that merely because liabilities were shown in books of account by the assessee as outstanding and not written back, would not, tie down the Revenue to hold such liabilities to be subsisting liability. Further, it also observed that –
- the AOhad made inquiries u/s 133(6) about said creditors in which it was found that certain creditors had categorically denied that they had made any transaction with the assessee
- notices in some cases had returned unserved
- the assessee had failed to produce said creditors as directed
- the assessee had not even furnished correct address of all creditors, their PAN numbers and confirmation

ACIT v Dattatray Poultry Breeding Farm (P.) Ltd. - [2018] 95 taxmann.com 130 (Ahmedabad - Trib.) - IT APPEAL NO. 2193 (AHD.) OF 2014 dated June19, 2018

1963. The Tribunal held that where assessee had not written back sundry creditors in his profit and loss account and had shown balance outstanding towards those creditors even in next assessment year, it could not be said that there was any cessation of liability under section 41(1).
Jashojit Mukherjee v ACIT [2018] 93 taxmann.com 366 (Kolkata – Trib.) – ITA NO. 403 OF 2017 dated 04.05.2018

1964. The assessee had availed the benefit of sales tax deferral scheme and the deferred tax payable was converted into interest free loan. The assessee made pre-payment of the said loan at its net present value and the excess of outstanding liability over net present value was written back as not being payable anymore by the assessee and was treated as a capital receipt. However the AO made the addition of the said excess amount considering the same to be remission of liability u/s.41(1). Relying on the ratio laid down in Bombay HC decision of Sulzer India, the Tribunal upheld the CIT(A)'s order deleting the addition made by the AO and held that the write back of the said excess amount had resulted in a capital receipt which could not be added u/s.41(1).
ACIT vs Johnson & Johnson Ltd [TS-537-ITAT-2018(Mum)-TP] ITA Nos.1776 & 1777/M/2017 and CO No.242/M/2017 dated 18.06.2018

Section 43

1965. The AO observed that assessee had claimed losses from derivative transactions against profits arising from sale of land and interest income. Further the AO held that loss arising on transactions in derivative

segment of shares could not be regarded as eligible transaction u/s 43(5)(d) and further denied set off loss from commodity trading against other income. The Tribunal held that assessee had claimed derivative loss in equity segment as well as in commodity segment. As regards loss that arose from derivative segment in shares, AO himself had noted that contract note issued by share broker which carried relevant details were submitted by assessee and were clearly as per SEBI guidelines, thus as specific order number and trade time were available on record it was not the case of Revenue that no transaction had been executed and thus derivative loss in terms of sec. 43(5)(d) was to be allowed. Further, as regards claim of losses arising in commodity exchange platform, transaction carried out by assessee was non speculative transaction and thus sec. 43(5) was not attracted and the Tribunal held that considering smallness of amount and having regard to documentary evidences, there was no warrant to differ with version of assessee and thus loss claimed by assessee in derivative segment was found to be covered by exception provided u/s.43(5) and consequently, such loss was to be allowed for set off against regular income of assessee.
Chirayu Exim Pvt Ltd vs ITO- (2018) 54 CCH 0016 Ahd Trib- ITA 2819/2016 dated 17.09.2018

1966. The Court held that (i) while computing written down value (WDV) u/s 43(6) for claiming depreciation, depreciation allowed under State Enactment (Kerala Agricultural Income-tax Act, 1991) could not be reduced (ii) since as per Rule 7A only 35% of assessee's income from manufacture of rubber was deemed to be taxable, only 35% of the cost of total assets was to be taken as WDV.
Rehabilitation Plantations Ltd. v CIT – (2018) 90 taxmann.com 420 (Ker) – ITA No. 29 of 2008 dated 29.01.2018

1967. In a case where transactions of currency derivatives were conducted by assessee through a recognised stock broker, on a recognised Stock Exchange and they were duly supported by time stamped contract notes, Tribunal held that the same could not be held as 'speculative transaction' as defined in section 43(5) and, therefore, loss on such derivative transactions should be allowed to be set off against other business income.
Nand Nandan Agrawal v DCIT – (2018) 169 ITD 161 (Agra Trib) – ITA Nos. 349 & 350 (Agra) of 2016 dated 18.01.2018

1968. The Court dismissed the revenue's appeal filed against the Tribunal's order allowing the assessee's claim for loss arising on account of damages paid by the assessee for not honouring its commitment to take delivery against some purchase orders placed with foreign sellers consequent to decline in the price of the goods, which was disallowed by the AO considering the said loss to be speculative loss. It held that even if a party in breach accepts the claim for damages that the other party to the contract may put forward, what actually happens is the disposal of a dispute and not any settlement of the kind that is envisaged by the word "settled" used in section 43(5).
CIT v Ambo Agro Products (P.) Ltd - [2018] 95 taxmann.com 345 (Calcutta) - GA NO. 542 OF 2015, ITAT NO. 37 OF 2015 dated June 20, 2018

1969. The assessee had claimed deduction on account of purchase of 'assets' for its in-house R&D facility. The said expenditure was disallowed on ground that expenditure resulted in acquisition of rights in or arising out of scientific research such as patents and it would come under an exclusion under section 43(4)(ii). The Tribunal held that if interpretation sought to be urged by revenue was to be accepted, then benefit sought to be conferred by provisions of section 35(1)(iv) would virtually be denied in all cases by invoking exclusion clause in section 43(4)(ii) and, therefore, AO should allow deduction claimed by assessee under section 35(1)(iv). Objective behind exclusion clause in section 43(4)(ii) appear to be that expenditure on scientific research should be incurred on research actually carried out by assessee in-house and assessee should not spend money in acquiring rights in or arising out of scientific research carried on by some other person.
Tata Hitachi Construction Machinery Company Ltd. v DCIT [2018] 93 taxmann.com 339 (Bangalore – Trib.) – ITA NO. 877 OF 2014 dated 20.04.2018

Section 43A

1970. The Tribunal held that provisions of section 43A were not applicable in respect of foreign exchange fluctuation on FCCBs utilized by assessee for acquisition of fixed assets within the country as the said

provisions are applicable in case of acquisition of assets outside India. Accordingly, loss arising due to such fluctuation was on capital account for which deduction could not be claimed.

Kanoria Chemicals and Industries Ltd. vs Asst CIT[2018] 54 CCH 0266 (Kol- Trib.)- ITA No.1880, 2086 /Kol/2014 dated 16.11.2018

1971. The Court upheld the order of the Tribunal wherein it was held that where assessee constructed a residential house and rental income earned therefrom was offered to tax as income from house property and not as business income and the assessee had not claimed any deduction or depreciation on account of lift, provisions of section 43A would not apply to apparent gain made by assessee as a consequence of foreign exchange fluctuation in respect of lift imported from abroad.
CIT v Bengal Intelligent Parks (P.) Ltd. [2018] 94 taxmann.com 399 (Calcutta) – ITAT NO. 290 OF 2016 dated 10.05.2018

Section 43B

1972. Section 43B could not be invoked for making assessment of liability of assessee State Electricity Board with regard to amount of electricity duty and surcharge collected by it as an agent of State of Kerala in view of decision in assessee's own case of Kerala State Electricity Board v. Dy. CIT [2010] 8 taxmann.com 118/196 Taxman 1/329 ITR 91(Ker.)
Asst.Com.IT, Circle-1(1), Trivendrum v. Kerala State Electricity Boar-[2018] 100 taxmann.com 132 (Cochin – Trib) – ITA Nos.29 & 30 (Coch) of 2018-dated November 1, 2018

1973. The Court held that section 43B speaks of certain deductions only on actual payment and sub-clause(f) is with respect to any sum payable by assessee as an employee in lieu of any leave at credit of his employee; thus, deduction for same was allowable only on actual payment. Though Calcutta High Court had struck down said provision, a Special Leave Petition was filed before Supreme Court, and stay was granted. Therefore, said provision would be applicable.
Dhanalakshmi Bank Ltd. v.CIT, Cochin-[2019] 102 taxmann.com 442 (Kerala)-IT Appeal Nos. 456, 498, 635, 643, 651, 712, 717, 1108, 1318 & 1691 of 2009 & ORS.-dated December 11, 2018

1974. During assessment proceeding, AO noted that assessee made employer's contribution to provident fund trust. Assessee's provident fund trust had not invested funds as per prescribed Rules during AY 2003-04, therefore, it was not considered as a Recognized Provident Fund Trust.AO disallowed entire contribution and made an addition u/s 43B.CIT(A) deleted impugned addition. The Tribunal noted that that CIT(A) held that since assessee's PF Trust was approved as registered Trust by competent authority, i.e. CIT, who had not revoked decision, AO could not have usurped jurisdiction of the CIT to hold that Trust was not registered. Further, matter was decided in assessee's favour by ITAT for AYs 2003-04 to 2007-08, and Revenue's appeal against same was dismissed by Delhi High Court for AY 2003-04. As there was no change in facts, disallowance could not be sustained moreso since no contrary material was brought on record on behalf of Revenue to take a different view.PF Trust registration was continuing till date. It could not be said that it was an un-recognized PF Trust as per Act.

Asst. CIT & ANR. vs. INDIAN SUGAR EXIM CORPORATION LTD. & ANR. (2018) 54 CCH 0438 DelTrib- ITA No. 1420/Del/2015, 1449/Del/2015 dated 31.12.2018

1975. Assessee claimed expenditure on account of service tax demand.AO found that out of total demand, a sum was service tax payable as on 31/1/2013 and assessee paid said amount during FY 2012-13 but failed to show it in P&L account.AO noted that demand arising due to an order of Commissioner of Central Excise, which was relevant for AY 2012-13 and therefore, claim of expenditure in respect of service tax demand was not admissible. CIT(A) sustained said disallowance on ground that said liability pertained to AY 2012-13. The Tribunal held that payment of tax was to be allowed only on actual payment as per s. 43B and not on basis of accrual of liability.When both years were before CIT(A) and

decided by composite order then if claim of assessee regarding actual liability of service tax was allowable in AY 2012-13 then instead of sustaining disallowance for AY 2013-14, CIT(A) ought to have allowed claim of assessee in terms of provisions of s. 43B or at best for AY 2012-13.AO was directed to allow claim of assessee for AY 2012-13.Assessee's ground was allowed.

ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018

1976. Assessment was reopened by revenue and order u/s 143(3) r.w.s 147 was framed. AO made addition on account of disallowance of provision for gratuity. CIT(A) deleted addition made by AO. The Tribunal noted that CIT(A) held that assessee had submitted that this provision of gratuity amount had been made on the basis of valuation done by LIC which was approved agency maintaining approved gratuity fund on behalf of assessee coporation. LIC had given valuation of gratuity fund and had shown shortfall of value in respect of gratuity liability during year under consideration. Asseessee had made provision at year end and had made payment to LIC dated 29.9.2008. During course of reassessment proceedings, assessee had filed letter to AO in which it had been clarly mentioned thatamount was paid to LIC on account of gratuity before due date of filing return. It was seen that assessee corporation had made payment of certain to LIC India before due date of filing return. Therefore, as per provisions of section 43B, this deduction was not disallowable. Hence, this fact was not controverted by revenue, therefore, there was no reason to interfere with finding of CIT(A).

M.P Police Housing Corporation Ltd vs ACIT- (2018) 54 CCH 0076 IndoreTrib- ITA No 383/Ind/2013, ITA No 259& 260/Ind/2015, ITA No 269,449/Ind/2016 and ITA No 125/Ind/2017 dated 10.10.2018

1977. The Tribunal held that where assessee deposited amount towards employees' contribution to Provident Fund, beyond stipulated date contemplated under Provident Fund Act but before 'due date' applicable in its case for furnishing 'return of income' under sub-section (1) of section 139, in view of amended provisions of section 43B, amount so deposited could not be disallowed by invoking provisions of section 36(1)(va), read with section 2(24)(x).

High Volt Electricals vs ACIT- (2018) 98 taxmann.com 471 (Mum- Trib)- ITA No 3813 of 2017 dated 26.09.2018

1978. Assessee in the relevant AY claimed deduction on account of write off of un-availed service tax credit, which was completely disregarded by the AO as the assessee could not show any concrete reason for such immediate write off and the same view was upheld by the DRP. The Tribunal noted that, when there was reasonable certainty that CENVAT credit was not likely to be utilized in normal course of business within reasonable time, and it was a conscious business call taken by assessee, such decision taken on account of commercial expediency could not be questioned by Revenue, It also observed that there was no point in retaining said unutilized CENVAT credit in its books and hence writing off of same in books and claiming the same as deduction was in order and could not be questioned by Revenue, thus deduction was allowed.

DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No.503,505/Kol/2016 dated 05.09.2018

1979. The assessee during the year had provided detection and security services to its clients and did not receive any amount from its clients, on which services tax was payable and claimed unpaid services tax

as its liability. However, AO was of a view that by virtue of section 43B, service tax could be allowed only when paid, thus, amount was not liable for deduction. The Court held that section 43B does not contemplate liability to pay services tax before actual receipt of funds in account of assessee and since services were rendered, liability to pay service tax in respect of consideration would arise only upon assessee receiving funds and not otherwise. Thus, liability claimed by assessee could not be disallowed under section 43B.

PCIT vs Tops Security Ltd- (2018) 97 taxmann.com 525 (Bom)- ITA No 733 of 2016 dated 10.09.2018

1980. The assessee, an NBFC engaged in business of financing vehicles, claimed Direct Marketing Agent's commission (DMA) which was partly allowed by the AO. The Tribunal held that when assessee finalized vehicle financing proposal received by it from customer through Direct Marketing Agent (DMA), it provided and paid to DMA, commission due to him for introducing customer to assessee. For accounting purposes, the assessee amortized such commission over period of financing agreement and for tax purposes, entire commission incurred and paid by assessee was claimed in the year in which financing agreement was signed. The Tribunal relying on the case of Taparia Tools held that notwithstanding accounting treatment followed by assessee, expenditure incurred during year had to be allowed in full irrespective of action of assessee of amortizing it for accounting purposes. It thus, upheld CIT(A)'s order allowing deduction of Direct Marketing Agent's commission and dismissed the Revenue's appeal.

DCIT vs Tata Motor Finance Ltd- (2018) 54 CCH 0031- Mum Trib- ITA No.3476,4353,1226,3119 & 4860/Mum/2013 dated 19.09.2018

1981. The Court held that where for relevant assessment year assessee paid its provident fund contribution beyond due date prescribed under the relevant law governing contribution to provident fund but before date of filing return under section 139(1), amount so paid could not be disallowed by invoking provisions of section 43B.

Peerless General Finance & Investment Co. vs CIT [2018] 100 taxmann.com 41 (Calcutta)- IT APPEAL NOs. 600,601 of 2004 and 246 & 248 of 2005 dated August 8 2018

1982. The Apex Court granted SLP to assessee against the High Court ruling wherein it was held that in view of provisions of section 43B, the assessee could not be allowed to claim deduction for MODVAT credit of excise duty paid by the assessee at the time of purchase of goods which remained unutilized.

Maruti Suzuki India Ltd. vs CIT [2018] 103 CCH 0287 (ISCC)- Special Leave to Appeal (C) No(s). 9074/2018 dated 30.11.2018

1983. The Tribunal, relying on the decision of the Court in CIT vs Vijayshree Ltd., GA No.2607 of 2011, held that employees contribution deposited beyond the due date prescribed under the relevant law governing contribution to provident fund would be allowable as a deduction under Section 43B of the Act as long as it is paid before the due date of filing return of income.

ASSISTANT COMMISSIONER OF INCOME TAX vs. GILLANDERS ARBUTHNOT & CO. LTD. - (2018) 52 CCH 0155 KolTrib - ITA No. 2090/Kol/2016 dated Mar 1, 2018

1984. The Tribunal upheld the CIT(A)'s deletion of disallowance made u/s 43B where the assessee had not deposited employees' contribution towards provident fund on due date as prescribed under relevant statute, but had deposited same before due date of filing of return.

DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

1985. The AO had disallowed the deduction of provision created towards leave encashment by assessee in view of the provisions of section 43B(f), rejecting assessee's contention that provision for leave encashment was not a statutory liability and hence it was not liable to be disallowed u/s 43B, placing reliance on the decision of the Supreme Court to stay the operation of the decision in the case of Exide Industries Ltd. v. Union of India (2007) 164 Taxman 9 (Cal) wherein it was held that provisions of section 43B(f) is unconstitutional. The Tribunal upheld the disallowance further noting that the Supreme Court while deciding to stay the operation of the said decision had also held that the assessee should pay tax on disallowance of provision for leave encashment as if section 43B(f) is on statute book.

Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018

1986. The Tribunal confirmed disallowance under Section 43B on account of service tax received from the service recipients, but not deposited within the return filing due-date [as contemplated u/s. 43B(a)] and rejected assessee's stand that since it had not debited the expenditure as service tax to the profit and loss account, no disallowance could be made. Noting that it was liable to pay service tax as the liability had arisen under the Point of Taxation Rules, it held that the assessee was legally obliged to declare its turnover inclusive of service tax received (which was not done by assessee) and held that the assessee could not be exonerated from its liability by saying that he accounted for the service tax received separately. It observed that the assessee did not produce any invoice before it despite the fact that the issue of invoice was mandatory under service tax rules.

Hemkunt Infratech (P) Ltd. - TS-181-ITAT-2018(DEL) - ITA No. 6683/Del./2017 dated 23.03.2018

1987. The Court dismissed Revenue's appeal filed against the Tribunal's order deleting the disallowance made u/s 36(i)(va) r.w.s. 2(24)(x) of the Act on account of Employees' Contributions to ESIC paid by the assessee-company beyond the due dates under the ESIC Act, noting that the said issue had already been decided in favour of the assessee in the case of CIT v Ghatge Patil Transports Ltd. 368 ITR 749 (Bom) wherein it was held that as per section 43B the assesse would be eligible for the said deduction if the payment was made before the due of filing of return u/s 139(1).

PRINCIPAL COMMISSIONER OF INCOME TAX vs. STARFLEX SEALING INDIA PVT. LTD. - (2018) 102 CCH 0158 (MumHC) – ITA No. 130 & 151 of 2016 dated June 27, 2018

1988. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the disallowance made u/s 36(i)(va) r.w.s. 2(24)(x) of the Act on account of depositing employees' contributions towards Provident Fund and ESIC beyond the due dates under the Provident Fund Act and the ESIC Act but before filing of return of income, following the Jurisdictional High Court decision in the case of CIT v M/s Hemla Embroidery Mills (P) Ltd [ITA no. 16 of 2009 (P&H)] wherein it was held that as per section 43B, the assessee was entitled to deduction in respect of employer and employee's contribution to ESI and Provident Fund when the same had been deposited prior to the due date of filing of the return u/s 139(1).

ASSISTANT COMMISSIONER OF INCOME TAX vs. KHYBER INDUSTRIES PVT. LTD. - (2018) 53 CCH 0266 (AsrTrib) - ITA No.395(Asr)/2017 dated June 21, 2018

1989. The Tribunal upheld CIT(A)'s order allowing the assessee's claim for deduction with respect to delayed payment of employees' contribution to ESI and PF u/s 43B, relying on the Jurisdictional High Court decision in the case of CIT v. Magus Customers Dialog P. Ltd (2015) 57 taxmann.com 94 (Kar)and not considering the decision of Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation (2014) 41 taxmann.com 100 (Guj) [wherein the issue was decided against the assesse]. In the former decision, it was held that the word "contribution" used in clause(b) of section 43B meant the contribution of the employer and the employee and that being so, if the contribution was made on or before the due date for furnishing the return of income u/s 139(1), the employer was entitled for deduction.

DEPUTY COMMISSIONER OF INCOME TAX vs. ALLEGIS SERVICES INDIA LTD. - (2018) 53 CCH 0143 (MumTrib) - ITA No. 325/Bang/2018 dated June 13, 2018

1990. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the disallowance made by the AO u/s 43B with respect to unpaid service tax amount. It was noted that the amount of service tax collected by the assessee-builder from the customers on sale of flats under construction was not paid to Government account for reason that levy of service tax on builders was challenged before High Court and High Court had granted interim stay from collection of tax till the matter was decided. It was also noted that the assessee had treated the service tax collected from customers as current liability without claiming it as expenditure during relevant assessment year and the same was paid in subsequent financial year as soon as the High Court had passed decision on the same.

Wadhwa Residency (P.) Ltd. v ACIT - [2018] 95 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NO. 5413 (MUM.) OF 2015 dated Jun 20, 2018

1991. The assessee entered into an agreement with its subsidiary to transfer its packaging division and claimed that the liability towards gratuity and leave wages of employees pertaining to the said division was also transferred and was no longer assessee's liability. Accordingly, the assessee claimed that the said liability was to be considered as paid/discharged for the purpose of Section 43B.The AO however disallowed the assessee's said claim. The Tribunal held that the basic question of treatment given by transferee in its books of account was not considered by both lower authorities and also since there was nothing on record to show as to what was decided by the buyer and seller on the question of gratuity and leave wages, it needed further verification and thus the matter was remanded back to AO for fresh adjudication.

Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.) ITA NO 2913 OF 2015 dated 16.05.2018

1992. The Tribunal deleted the disallowance u/s. 43B or 2(24)(x) r.w.s. 36(1)(v)(a) since the contribution to employee's PF was deposited before the due date of filing of return of income.

Granite Services International India Private Limited vs DCIT [TS-628-ITAT-2018(DEL)-TP]

Section 44C

1993. Following the Tribunal's decision in the assessee's own case on identical issue for earlier years, the Tribunal allowed the assessee's appeal against the disallowance of management charges paid by the assesse, an Indian branch of a UK based company, to its head office under a management services agreement, where the AO had treated the management charges as Head Office expenses and had restricted the claim of the assessee to 5% of the total adjusted income in terms of section 44C of the Act and the CIT(A) had restricted the said disallowance to 50% of the amount paid. In the earlier year, it had deleted the disallowance on account of the management charges holding that the said charges paid to did not come within the purview of section 44C of the Act.

LLOYDs REGISTER QUALITY ASSURANCE LTD. & ORS. v DCIT - (2018) 53 CCH 156 (Mum) - ITA No. 2856/Mum/2015, 2857/Mum/2015, 3920/Mum/2015 dated Jun 15, 2018

Section 43D

1994. The Court held that since provisions of section 45Q of Researve Bank of India Act, 1934 have an overriding effect vis-a vis income recognition principles in Companies Act, Assessing Officer is bound to follow the RBI Directions so far as income recognition is concerned and, thus, interest on principal loan amount which has been classified as NPA cannot be held to have 'accrued' so as to tax them under Act.

Principal CIT v. Ludhiana Central Co-op Bank Ltd. [2018] 99 taxmann.com 81 (Punj. & Har.) -IT Appeal No. 349 OF 2017javascript:void(0); ***dated September 24, 2018***

Section 44

1995. The Tribunal allowed Revenue's appeal against the CIT(A)'s order and thus rejected the claim of the assessee, an insurance company, for reduction of profits disclosed in the annual accounts by the amount of profit on sale of investment. It accepted Revenue's claim that as per the law applicable for the relevant years, there was no provision for any adjustment with regard to profit on sale of adjustment u/s 44 r.w. First Schedule to the Act since Rule 5(b) of the First Schedule (which provides for such adjustment) was deleted by Finance Act, 1988 with effect from 01.04.1989 and it was re-inserted by Finance (No.2) Act, 2009 with effect from 01.04.2011, whereas the year under consideration were AY 2008-09 and AY 2009-10.

DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

Section 14A

1996. The court held that where Tribunal deleted disallowance made by Assessing Officer under section 14A on ground that assessee had not earned any exempt income during relevant assessment year, no substantial question of law arose from Tribunal's order.
Pr.CIT, New Delhi v. McDonald's India (P.) Ltd.- [2019] 101 taxmann.com 86 (Delhi)-ITA No.725 of 2018-dated October 22, 2018

1997. The court held that disallowance under section 14A cannot exceed exempt income of relevant year.
Pr.CIT-2 v Caraf Builders & Constructions (P) Ltd. – [2019] 101 taxmann.com 167(Delhi)-ITA No.1260 of 2018-dated November 13, 2018

1998. The Court held that reopening of assessment not based on satisfaction of Assessing Officer but on audit objection regarding disallowance under section 14A could not be sustained. Consequently, it quashes the notice issued u/s 148.
Adani Infrastructure and Developers (P.) Ltdv Asst CIT – [2019] 101 taxmann.com 256 (Guj)-R/Special Civil Application No.14461 of 2018-dated November 20, 2018

1999. The Court held that where AO made disallowance under section 14A in respect of a dividend income earned by assessee from mutual fund investments, in view of plea raised by assessee that it had utilised only non-interest bearing funds in making investment in mutual funds and interest incurred by assessee was specifically towards acquisition of shares in 'G' Ltd. which company subsequently stood

amalgamated with assessee, impugned disallowance was to be deleted and, matter was to be remanded back to Assessing Officer for disposal afresh.
Roca Bathroom Products (P.) Ltd. v. Pr. CIT, Chennai-[2019] 101 taxmann.com 395 (Madras)-Tax Case Appeal Nos. 775 of 2018-dated December 4, 2018

2000. The Tribunal held that where assessee had made suo moto disallowance of expenses under section 14A read with rule 8D, however, Assessing Officer made further disallowance holding that assessee had only disallowed direct expenses under rule 8D(2)(i) and expenses under provision of section 8D(2)(iii) were not considered, since details of expenses filed by assessee showed that suo-moto disallowance included expenses coming under purview of rule 8D(2)(iii) as well, impugned further disallowance was unjustified.
Olive Bar & Kitchen (P.) Ltd. v. Dy. CIT, 13(1)(1), Mum. - [2019] 102 taxmann.com 98 (Mumbai - Trib.)-IT Appeal Nos. 5097, 5098, 5164 & 5165 (Mum.) of 2017 dated December 5, 2018.

2001. The Court upheld the Tribunal Order holding that amount of disallowance under section 14A could be restricted to amount exempt income only.
SLP dismissed in Principal CIT v. State Bank of Patiala [2018] 99 taxmann.com 286/257 Taxman 509 (SC)- dated November 8, 2018

2002. The Tribunal held that if there is no exempt income earned during relevant previous year, then there could be no disallowance of expenses u/s 14A.
Asst. CIT vs. Karle International Pvt.Ltd.-(2018) 53 CCH 0291 BangTrib.-ITA No.399/Bang/2018-dated July 6, 2018

2003. The Tribunal held that only investments that had yielded dividend income are to be considered for the purpose of computing the disallowance u/s 14A under third limb of Rule 8D(2).
Asst.CIT& Anr. vs. Tata Steel Processing & Distribution Ltd. & Anr.- (2018) 54 CCH 0304 KolTrib-ITA No. 2237/Kol/2016 (C.O. No. 96/Kol/2016)-December 5, 2018

2004. The Tribunal held that the disallowance u/s 14A cannot exceed to the exempt income received by the assessee.

Asst. CIT & ANR. vs. INDIAN SUGAR EXIM CORPORATION LTD. & ANR. (2018) 54 CCH 0438 DelTrib- ITA No. 1420/Del/2015, 1449/Del/2015 dated 31.12.2018

2005. The Tribunal held that in the absence of any tax-free income earned by the assessee, disallowance u/s 14A could not be made.

Asst. CIT vs. ORISSA MANGANESE & MINERALS LTD. (2018) 54 CCH 0399 KolTrib- ITA Nos.2150 to 2154/KOL/2017 dated 20.12.2018

2006. The Court held that AO without examining, commenting and rejecting disallowance made by assessee u/s.14A had applied Rule 8D as compulsory and universally applicable rule where assessee had earned exempt income. Rule 8D could not be invoked and applied unless AO recorded his dissatisfaction regarding correctness of claim made by assessee in relation to expenditure incurred to earn exempt income.This was mandate and pre-condition imposed by s. 14A(2).Rule 8D was in nature of best judgment determination i.e., determination in default and on rejection of assessee's explanation in relation to expenditure incurred to earn exempt income.Rule 8D was not applicable by default but only if and when AO records his satisfaction and rejects assessee's explanation regarding disallowance of expenditure.In present case, assessment order proceeded on a wrong assumption that Rule 8D would apply to all cases and was mandatory.

Pr. CIT vs. VEDANTA LIMITED. (2018) 103 CCH 0290 DelHC ITA 1467/2018 dated 18.12.2018

2007. AO completed assessment after making disallowance u/s 14A r/w Rule 8D.CIT(A) held that AO failed to apply his mind and held that there was no nexus betwee funds borrowed and investments made by assessee in form of shares, securities and mutual funds leading to exempt income.Interest free funds in form of paid-up share capital, Reserves and Surplus were sufficient for making investment.Addition made by AO under clause (ii) of Rule 8D(2) was deleted.CIT (Appeals) upheld addition under clause (iii) of Rule 8D(2) by holding that assessee should incur administrative costs for earning exempt income. The Court held that Rule 8D would apply where AO first recorded his satisfaction that disallowance, if any, made by assessee was not correct and was not in accordance with mandate of s. 14A.In absence of formation of satisfaction, AO could not apply Rule 8D.AO has treated Rule 8D as mandatory which would apply to all cases where exempt income was earned.Order passed by AO was therefore, not in terms of mandate of s. 14A(2).

Pr. CIT vs.DLF HOME DEVELOPERS LTD. (2018) 103 CCH 0328 DelHC ITA No. 1453/2018dated 18.12.2018

2008. The Tribunal held that while applying Rule 8D(2)(iii), the disallowance in any case cannot exceed the quantum of exempt income earned by the assessee and while applying Rule 8D(2)(iii), only those investments which have earned dividend income during the year have to be taken into action.

RAJBIR SINGH WALIA vs. Dy. CIT (2018) 54 CCH 0443 ChdTrib ITA No. 59/CHD/2015 & ITA No. 413/CHD/2018dated 17.12.2018

2009. The Tribunal held that only those investments were to be considered for computing average value of investment which yielded exempt income during year under consideration for working out disallowance u/s 14A r/w Rule 8D(2)(iii).

J. V. HOLDINGS PVT. LTD. vs. Dy. CIT (2018) 54 CCH 0346 BangTrib ITA No. 1337/Bang/2018 dated 13.12.2018

2010. The Tribunal held that where the assessee has not made any claim for any exemption then in such situation the disallowance u/s 14A has no application.

Dy.CIT vs. BRILLIANT ESTATE PVT. LTD.(2018) 54 CCH 0345 IndoreTribITA No. 349/Ind/2017dated 13.12.2018

2011. The Tribunal deleted the disallowance u/s.14A by holding that assessee had not earned any dividend/exempt income during year under assessment on investment made by it as was apparent from auditor's report placed on file by assessee. It was also not in dispute that AO without recording dissatisfaction as to working out made by assessee that no expenses were incurred nor earned any dividend/exempt income, proceeded to invoke provisions contained u/s 14A r/w Rule 8D in a mechanical manner.

LODHI PROPERTY COMPANY LTD. (SUCCESSOR TO DLF HOTEL HOLDINGS LTD.) vs. Dy. CIT.(2018) 54 CCH 0524 DelTribITA No.3719/Del./2018dated 14.12.2018

2012. The Tribunal held that disallowance of expenditure u/s 14A should not exceed exempt dividend income.

Sunshine Capital Ltd vs DCIT- (2018) 54 CCH 0353 DelTrib- ITA No 787/Del/2014 dated 08.10.2018

2013. The Tribunal held that if no exempt income has been earned by assessee during impugned AY then no disallowance was called for u/s 14A.

ACIT vs Sodexo Food Solutions India Pvt Ltd – (2018) 54 CCH 0056 MumTrib- ITA No 5781,5707/Mum/2016 dated 03.10.2018

2014. The Apex court dismissed Revenue's SLP with respect to disallowance u/s 14A r.w.r 8D in case of an asset management company (AMC). The assessee AMC of Reliance mutual fund had invested its own money in its fund as per business policy and then claimed the dividend received from it as exempt and filed its return of income after disallowing certain expenditure in earning said income.The AO however, opined that disallowance u/s 14A was to be worked out by applying provisions of rule 8D(2)(iii) and rejected assesse's stand. The Apex Court relying on High Court' order observed that the AO had not commented upon or made any findings on correctness or otherwise of assessee's working of disallowance of expenditure, thus formula prescribed in rule 8D(2)(iii) could not have been applied to work out disallowance under section 14A in case of the assessee.

PCIT vs Reliance Capital Asset Management Ltd.- (2018) 98 taxmann.com 361(SC)- SLP No 11379 of 2018 dated 07.09.2018.

2015. The AO during assessment observed that cash flow statement of assessee company indicated out-flow on account of interest paid and income earned from investment as dividend which was claimed as exempt. Thus, by holding that Rule 8D was procedural and had restrosepctive effect, AO made disallowance u/s 14A in respect of dividend income on investments and the same was upheld by the CIT(A). The Tribunal observed that AO had recorded reasons for not accepting assessee's contention that no expenditure was incurred to earn exempt income and further had also examined cash flow statement furnished by assesse. The Tribunal held that the reasons recorded by AO were in sufficient compliance with requirement u/s 14A(2), however, the Tribunal relied on Apex Court in CIT vs. Essar Teleholdings Ltd (2018) 401 ITR 455 (SC) wherein it was held that Rule 8D was prospective and applied only from AY 2008-09 and had no application for current AY (i.e. 2006-07). Thus, the Tribunal concluded that disallowance u/s 14A had to be computed on some reasonable basis without rule 8D and assessment order was set aside and restored back to AO for fresh computation.

North Delhi Power Ltd vs ACIT- (2018) 54 CCH 0137 Del Trib-ITA Nos 4848/Del/2010 dated 29.10.2018

2016. The Tribunal held that the book profit computed u/s 115JB can be increased by the amounts specified under Explanation 1 to the said provision. Explanation 1 to s. 115JB makes it clear that it does not refer to the disallowance made u/s 14A r/w Rule 8D. Therefore, the AO could not increase the book profit by taking recourse to the provisions of s. 14A r/w Rule 8D. However, clause-(f) to Explanation-1 to s. 115JB empowers the AO to increase the book profit by the amount of expenditure relatable to exempt income.

Tata Petrodyne Ltd vs ACIT- (2018) 54 CCH 0285 Mum Trib- ITA No 4887,5571,4914/Mum/2012 dated 28.09.2018

2017. The assessee had made investments during year under consideration out of Free Reserves and Non-Interest-Bearing Funds of assessee company and no dividend income which was exempted had been received on investment. The AO, however made disallowance u/s. 14A read with Rule 8D and the same was upheld by the CIT(A). The Tribunal relied on Cheminvest Ltd., wherein it had held that sec. 14A would not apply where no exempt income was received or receivable during relevant assessment year. Thus, in the present case as the assessee had not earned any exempt income during relevant P.Y, the disallowance u/s 14A was deleted.

Jasper Industries vs DCIT- (2018) 54 CCH 0021 Hyd Trib- ITA No 1344/Hyd/2015 dated 19.09.2018

2018. The Tribunal deleted the disallowance u/s 14A by holding that AO merely observed that there were incidental expenses in relation to earning of exempt income which were incurred by assessee. AO had nowhere recorded any satisfaction about incorrect claim having been lodged by assessee with reference to its accounts. There was no discussion whatsoever about examination of assessee's claim about actual incurring of expenses in relation to exempt income. It could be seen that AO even did not consider correct amount offered by assessee for disallowance at Rs.4,01,209/-. Authorities below had not rejected claim of assessee that it had not borrowed any funds for investment and that it was having sufficient own funds to make investment through Portfolio Managers. Tribunal set aside orders of authorities below and restricted addition to Rs.4,01,209 already offered by assessee for disallowance in return and deleted additions

Indica Industries vs ACIT- (2018) 53 CCH 0516 Del Trib- ITA No 3584/Del/2015 dated 04.09.2018

2019. The AO made ad hoc disallowance of expenses to the extent of 10%, on account of personal nature which included, telephone expenses, conveyance, car maintenance and repair expenses and depreciation on car. The CIT(A) upheld order of AO. The Tribunal observed that the AO neither pointed out any instance of inflation in expenditure claimed by assessee, nor had given any finding regarding expenditure claimed by assessee being capital in nature, for purposes of disallowance and the CIT(A) had just made general observation for sustaining addition made by AO. Thus, the Tribunal held that without sufficient evidence in support, if no element of personal expenses by Directors/Office bearers could be attributed, then addition made by AO on account of ad-hoc disallowance of expenses was to be deleted.

Galgotia Publications (P) Ltd vs ACIT- (2018) 54 CCH 0028 Del Trib- ITA No 1857, 1862, 1863, 1864, 1865/Del/2015 dated 20.09.2018

2020. The Tribunal held that in case no exempt income is received or receivable, no disallowance u/s 14A was warranted.

Zoetis Pharmaceutical research P Ltd vs ACIT- (2018) 54 CCH 0043 Mum Trib- ITA No 3715/Mum/2018 dated 26.09.2018

2021. Assessee had made investment in shares of various companies and such investment had been shown as capital investment and further interest was capitalized on such investment. The AO made disallowance @ 0.5% of average investment in terms of rule 8D and the same was upheld by CIT(A).
The Tribunal on appeal observed that, assessee had made investment in several group companies and had stated that provisions of section 14 A did not apply as these were all investment in group companies for purpose of business expediency of assessee. Further, the Tribunal noted that the assessee might have made investment in order to gain control of investee company, however, that did not appear to be relevant factor in determining issue at hand and the fact remained that such dividend income was non-taxable. Further, the Tribunal concluded that if expenditure was incurred on earning

dividend income, that much of expenditure, which was attributable to dividend income, had to be disallowed and could not be treated as business expenditure and held that thus the principle of apportionment of expenses came into play, which was engrained in sec 14A. It thus upheld finding of CIT (A) in confirming disallowance u/s 14A r.w.r 8D.

ACIT vs Lakhani India Ltd. – (2018) 53 CCH 0535 Del Trib- ITA No 3984, 3736/Del/2014 dated 10.09.2018

2022. The Tribunal held that disallowance u/s 14A cannot be more than the exempt income.

DCIT vs H.T Media Ltd- (2018) 53 CCH 0518 DelTrib- ITA no 6394/Del/2013, 2768/Del/2015, 3532,2854/Del/2016 dated 05.09.2018

2023. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.

CIT V. Chettinad Logistics (P.) Ltd. [2018] 257 Taxman 2 (SC) - Special Leave Petition (CIVIL) Diary No. 15631 of 2018javascript:void(0); ***dated July 2, 2018***

2024. The Tribunal upheld CIT(A)'s order deleting the disallowance made u/s 14A r.w. Rule 8D(2)(ii) and (iii), noting that though the assessee had made investment in shares and mutual fund, no exempt income was earned for the subject year. The CIT(A) had relied on the decision in the case of Cheminvest Ltd vs CIT [2015] 61 taxmann.com 118 wherein it was held that in case no exempt income was received by the tax-payer during relevant year under consideration, no disallowance of expenditure u/s 14A was warranted.

ACIT vs Gini and Jony Ltd. [2018] 97 taxmann.com 401 (Mum Trib) - IT APPEAL NO. 1892 and 1893 of 2017 dated August 21 2018

2025. For AY 1998-99, the Court affirmed Tribunal's order disallowing 1% of business expenditure u/s 14A on account of dividend income earned. It rejected assessee-NBFC's plea that dividend income earned from shares was business income holding that the share, securities etc. on which dividend income was earned, were purchased compulsorily by the assessee in compliance with the direction of the RBI and were different from those which are bought and sold for the purpose of profit making and thus such dividend yielding assets could not be considered as trading assets.

Peerless General Finance & Investment Co. vs CIT [2018] 100 taxmann.com 41 (Calcutta)- IT APPEAL NOs. 600,601 of 2004 and 246 &248 of 2005 dated August 8 2018

2026. The Tribunal allowed the assessee's appeal and deleted the disallowance by the AO u/s 14A r.w. Rule 8D(2)(ii) & (iii) holding that even if the assessee claimed that no expenditure was incurred by it for purpose of earning exempt income, still it was incumbent on part of the AO to record satisfaction having regard to accounts of assessee in terms of section 14A(2) / 14A(3) as to why claim so made by assessee was incorrect and only after recording such satisfaction, he could resort to computation mechanism provided in Rule 8D(2). The AO had not recorded any such satisfaction. Further, the Tribunal held that the assessee had sufficient own funds as was evident from balance sheet and thus no amount could be disallowed in second limb of Rule 8D(2)(ii).

West Bengal Electronics Industry Development Corp. Ltd vs Dy.CIT &Anr [2018] 53 CCH 0475 (Kol TRib) - ITA NOS. 1982 /KOL /2013 DATED AUGUST 24, 2018

2027. Where AO had made disallowance after applying Rule 8D(iii) in respect of administrative expenditure for earning a dividend income from investments and the assessee had suo moto accepted the disallowance of Rs.50,000/- (for which it did not furnished any working), the Tribunal did not accept the assessee's argument that it had not incurred any expenditure in relation to exempt income, noting that the assessee had not maintained separate books of account for investment activity and its business transactions. Further, noting that disallowance of Rs.50,000 was not justified for the huge dividend income earned, it directed AO to make addition of 5% of exempt income towards expenditure incurred in relation to earning of exempt income, which according to the Tribunal would meet the ends of justice.

Libra Techcon Ltd vs Dy.CIT &Anr [2018] 53 CCH 0472 (Mum Trib) ITA NO. 2475/MUM/2013 DATED AUGUST 24, 2018

2028. For AY 2000-01, the Tribunal held that there was no justification in the disallowance made u/s 14A as no fresh investment was made during the year and no nexus was proved between the borrowed funds and investment in tax free PSU Bonds. It was noted that while quashing reopening in the earlier year on basis of disallowance of interest expenditure, the High Court had accepted that the assessee had sufficient cash profits and reserves for making investment in PSU Bonds and thus, disallowance u/s 14A was not warranted. Accordingly, it allowed assessee's appeal.

Oil and Natural Gas Corporations Ltd. vsAddl.CIT &Anr [2018] 53 CCH 0462 (Del TRib) ITA NO. 357DEL/2005 DATED AUGUST 17, 2018

2029. The assessee claimed that it had not incurred any expenditure to earn exempt dividend income. However, the AO made disallowance u/s 14A. The Tribunal confirmed the disallowance holding that the AO had given a categorical finding that as per balance sheet assessee had actively made certain investment decisions which was not possible without efforts of managerial staff and directors and also assessee had not made any suo moto disallowance u/s 14A r.w.r. 8D. Further, it was noted that assessee had mixed funds and in spite of query, assessee could not establish direct nexus of borrowed funds with taxable income or interest free funds with dividend income. Accordingly, it dismissed the assessee's appeal.

Deccan Mining Syndicate Pvt Ltd. vs Dy. CIT [2018] 53 CCH 0466 (Bang Trib) - ITA NO. 1261 (BANG) 2016 DATED AUGUST 21, 2018

2030. The Tribunal remanded the issue of computation of disallowance u/s 14A which required determination as to whether strategic investments in subsdiaries should be excluded for said computation, directing the AO to have regard to the decision of Apex Court in the case of Maxxop investments Ltd vs CIT (2018) 91 taxman.com 154 (SC) wherein it was held that dominant purpose for which investment into shares was made by assessee may not be relevant as section 14A would be applied irrespective of whether shares are held to gain control or as stock-in-trade. It also directed the AO to restrict the disallowance to exempt income in case the computation exceeded the exempt income.

Asst.CIT vs JUBILANT ENPRO P. LTD. & ANR. [2018] 53 CCH 0446 (Del- Trib) ITA No. 3485/Del/2014 (Cross Objection No. 194/Del/2017)dated August 16 2018

2031. The Tribunal held that no disallowance u/s 14A was called for in view of the fact that the assessee had not earned any exempt dividend income during the impugned AY and, thus, deleted the said disallowance.

SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS [2018] 53 CCH 0432 (MumTrib)- ITA Nos. 304 & 305/Mum/2014,dated August 08 2018

2032. The Tribunal deleted the disallowance made by the AO u/s 14A with respect to interest income and dividend income received by the assessee-cooperative society engaged in the business of procuring milk, producing milk manufacturing products and distribution of milk which was eligible for deduction u/s 80P(2)(d). It relied on the decision in the case of CIT v. Kribhco [2012] 209 Taxman 252 (Delhi) wherein it was held that provisions of section 14A are applicable in case of exempt income not forming part of total income under Chapter III of Act but the said provisions cannot be applied in respect of deduction claimed u/s 80P governed by Chapter VIA of the Act.

Asst CIT vs Surat Dist. Co. op. Milk Producers Union Ltd. [2018] 97 taxmann.com 382 (Surat-Trib)IT APPEAL NOS. 1498 AHD OF 2012, 1076 & 1211 (AHD) OF 2015 SRT dated August 3 2018

2033. The Tribunal held that (i) For computing disallowance under rule 8D(2)(iii), only those investments which have yielded exempt income during relevant previous year can be considered as part of average value of investment (ii) when an assessee has sufficient interest free fund available, no disallowance under rule 8D(2)(ii) r.w.s. 14A can be made (iii) While computing book profit u/s 115JB, the AO cannot invoke provisions of section 14A r.w. Rule 8D but he has to compute the book profit in consonance with the provisions of section 115JB r/w Explanation-1(f) to the said provision (which mandates add back of expenses relating to income exempt u/s 10, 11 & 12).
Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018

2034. The Tribunal rejected the assessee's contention that the disallowance made by the AO u/s 14A r.w. Rule 8D(2)(iiI) should be deleted as it had not incurred any expense towards earning exempt income and it had suo moto accepted an adhoc disallowance of Rs.50,000. It noted that the assessee had not furnished any working as to how adhoc disallowance of Rs.50,000 was justified considering huge dividend income of Rs.1,26,05,919. It held that since the the assessee had not maintained separate books of account for investment activity and its business transactions, the possibility of certain expenditure attributable to investment services cannot be ruled out and hence the assessee's claim that that it had not incurred any expenditure in relation to exempt income cannot be accepted. The Tribunal directed the AO to disallow 5% of the exempt income on account of expenditure incurred, holding that the same would meet the end of justice.
LIBRA TECHCON LTD. & ANR. V DCIT (2018) 195 TTJ 0105 (Mumbai) (URO) – ITA No. 2475/Mum/2013, 4480/Mum/2013 dated August 24, 2018

2035. The Tribunal partly allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the disallowance made by the AO u/s 14A for AY 2007-08, computed by AO @ 10% of the dividend income. Before the Tribunal, the assessee accepted that since during the year it had sold certains shares and invested the amount received thereon in Mutual Funds, someone had definitely applied mind for the same. Accordingly, the Tribunal rejected the assessee's argument that no administrative or supervisory effort had been undertaken and directed the AO to disallow 5% of the dividend income towards administrative expenses u/s 14A.
DCIT v INTERNATIONAL TRACTORS LTD. & ORS. - (2018) 67 ITR (Trib) 0538 (Delhi) – ITA Nos 5756/Del/2013 & 6239/Del/2013 (C.O. No.130/Del/2014 & 173/Del/2014) dated July 23, 2018

2036. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order substantially reducing the amount disallowed u/s 14A r.w. Rule 8D. The CIT(A) held that (i) there could be no disallowance with respect to interest expense since the assessee had sufficient funds as paid up capital fairly exceeding the investment earning exempt income and (ii) investment made in US company was to be excluded from

the value of average investment to be considered for computing 0.5% of disallowance as per Rule 8D(2)(iii), since income from the said investment is not exempt.
NOV SARA INDIA PVT. LTD. & ANR. vs. ADD.CIT (2018) 53 CCH 0330 DelTrib – ITA No. 6920 (Del) of 2014, 825 (Del) of 2015 dated 12th July, 2018

2037. The Apex Court dismissed Revenue's SLP against High Court order upholding Tribunal order wherein the Tribunal had held that disallowance u/s 14A should not be exceed the exempt income.

Pr.CIT vs Moderate Leasing and Capital Services Pvt Ltd. [2018] 103 CCH 0272 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38584/2018dated 19.11.2018

2038. The Tribunal allowed the assessee's appeal and followed the coordinate bench ruling in assessee's own case for an earlier year wherein it was held that disallowance u/s 14A should be made only in respect of investments which have yielded dividend income during the year under consideration. Accordingly, it held that the disallowance should be restricted to 0.5% of the average value of such investments.

Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTribITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018

2039. The Tribunal allowed assessee's appeal and deleted the additional disallowance made by the AO u/s 14A r/w Rule 8D, noting that the suo moto disallowance made by the assessee already exceeded the exempt income. It relied on the ratio laid down in case of Delhi High Court of Joint Investments Pvt Ltd vs CIT wherein it was held that disallowance u/s 14A could not exceed amount of tax exempt income.

Arvind Brands Ltd and Anr vs Dy.CIT [2018] 54 CCH 0184 (AhdTrib)I.T.A. No. 1509 & 1639/Ahd/2012 dated 02.11.2018

2040. The Court dismissed Revenue's appeal against the Tribunal's order deleting the disallowance made u/s 14A r.w. Rule 8D in a case where the assessee had made suo moto disallowance against the exempt dividend income earned and the AO had not examined whether the disallowance made by assessee was justified or not before invoking Rule 8D. It relied on the ratio laid down by the Apex Court in case of Godrej Boyce Manufacturing Co Ltd vs Dy.CIT (2017) 7 SCC 421 wherein it was held that Rule 8D could be invoked only when AO was not satisfied with the claim made by assessee. Thus, the Court held that in the instant case, the jurisdictional requirement of the AO not being satisfied with assessee's correctness of claim was absent to invoke Rule 8D and accordingly, no disallowance could be made.

Pr.CIT vs Jagson International Ltd [2018] 103 CCH 0137 (Del HC)I.T.A. Nos.1234/2018 and 1179/2018dated 02.11.2018

2041. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order holding that no disallowance could be made u/s 14A in respect of interest expenditure, relating to the investment (in subsidiaries) in respect of which no exempt (dividend) income had been received/ earned during the subject year.

ITO vs Nath Bio Genes Ltd [2018] 54 CCH 0338 (Pune Trib) ITA No. 642/PUN/2015 dated 02.11.2018

2042. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 14A in view of the fact that the assessee had not claimed any income to be exempt during the subject year.
DCIT v Mc Fills Enterprise (P.) Ltd [2019] 101 taxmann.com 212 (Ahd - Trib.) – ITA No. 3469 (Ahd.) of 2015 dated December 17, 2018

2043. The Court dismissed Revenue's appeal against Tribunal's order upholding CIT(A)'s order wherein the CIT(A) had reduced the amount of disallowance made u/s 14A r.w. 8D to Rs.75.89 crores vis-à-vis AO's disallowance of Rs.144.52 crores, holding that the question of quantum of deduction was otherwise covered against Revenue. It noted that the assesse had earned exempt income of Rs.19 lakhs and thus relied on Pr.CIT v McDonalds India Pvt. Ltd. [ITA No. 725/2018 (Del HC)] wherein it was held that disallowance u/s 14A cannot exceed the exempt income for the relevant year.
Pr.CIT v Caraf Builders & Construction Pvt. Ltd. – ITA No. 1260/2018 dated November 13, 2018

2044. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the disallowance made u/s 14A r.w. Rule 8D, noting that the assessee had not earned any exempt income during the year.
DCIT v Pioneer Genco Ltd – ITA No. 734/Hyd/2018 dated 14.09.2018

2045. Where the assessee had made a suo moto disallowance u/s 14A of Rs.43,632 with respect to dividen (exempt) income of Rs.1,68,082 and the AO had invoked the provisions of Rule 8D to make a disallowance of Rs.12,62,933, the Tribunal directed the AO to restrict the disallowance upto the exempt income earned.
Sangam Spinfab Ltd - ITA no.807/Mum./2018 dated 12.09.2018

2046. The Tribunal held that where the assessee's share capital along with reserve and surplus was many times higher than the amount invested in shares etc. yielding exempt income, no disallowance could be sustained under Rule 8D(2)(ii).
Vis-à-vis the disallowance made by the AO under Rule 8D(2)(iii), the Tribunal, relying on the decision of the Court in ACB India Ltd. vs. ACIT (2015) 374 ITR 108 (Del) held that only the average of those investments which yielded exempt income were to be taken into consideration and not the average of all investments. Accordingly, it directed the AO to carry out the computation of disallowance under 8D(2)(iii) as per its findings. Further, it held that if the disallowance under clause (iii) of Rule 8D(2) exceeded the amount of exempt income, then, the disallowance was to be restricted to such income alone.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. DLF COMMERCIAL DEVELOPERS LTD. & ANR. - (2018) 52 CCH 0148 DelTrib - ITA No. 1388/Del/2013 dated Mar 1, 2018

2047. Where the CIT(A) after directing the AO to exclude the strategic investments from the average value of investments while determining disallowance of administrative expenses u/s 14A r.w. Rule 8D(2)(iii), had held that such exclusion would be restricted only to the old investments made in the group companies and not incremental amount invested during the year, the Tribunal held that once the CIT(A) had found that the investments made in the group companies were in the nature of strategic investments then no differentiation could be made between the old investments and the incremental increase made during the year and that there was no rationale behind the CIT(A)'s such differential approach. Accordingly, it directed the AO to verify if the investments claimed by the assessee were strategic investment and if so, to exclude the same from the average value of investment for computing disallowance u/s 14A r.w. rule 8D.
M. Pallonji & Co. Pvt. Ltd v ACIT – ITA No. 3739, 3523, 3524, 3740, 3741 & 3525/Mum./2015 dated 28.02.2018

2048. The Tribunal restored the matter to the file of the AO for de novo determination in a case where the assessee claimed that section 14A was not applicable as it didn't receive any exempt income during the relevant assessment year but it was not discernible from orders of the Revenue as to quantum of exempt income earned by assessee and there was no evidence on record that assessee had not received any exempt dividend income during relevant previous year.
Pyramid Consulting Engineers (P.) Ltd. v DCIT – (2018) 90 taxmann.com 411 (Mum) – ITA No. 1972/Mum of 2016 dated 23.01.2018

2049. Where there was no exempt income, Tribunal deleted disallowance of expenses incurred in relation to exempt income u/s 14A r.w. Rule 8D(2)(ii) and 8D(2)(iii) relying on Delhi HC rulings in the case of CIT vs Cheminvest Ltd [(2015) 317 ITR 86 (Del HC)] and CIT vs Deloitte Enterprises [ITA No.110 of 2009 (Del HC)]
DCIT v Amartara Pvt Ltd - TS-612-ITAT-2017(Mum) - ITA Nos. 6050 & 6114/Mum/2016 dated 29.12.2017

2050. Tribunal deleted the disallowance u/s 14A w.r.t. interest expense, noting that assessee had furnished details that its own funds were sufficient to cover investments yielding exempt income and the borrowings of assessee were utilised for other business requirements and not for making said investments.
Bennett Colman & Co. Ltd. vs. ACIT – (2018) 168 ITD 631 (Mum) – ITA Nos. 3298 & 3537 (Mum.) of 012 dated 08.01.2018

2051. The Apex Court held that dominant purpose for which investment into shares is made by assessee may not be relevant as section 14A applies irrespective of whether shares are held to gain control or as stock-in-trade. It held that where shares are held as stock-in-trade, certain dividend income exempt u/s 10(34) is earned incidentally, in such cases, section 14A would be applicable based on the theory of apportionment of expenditure between taxable and non-taxable income as held in CIT v. Walfort Share & Stock Brokers P Ltd. (2010) 326 ITR 1 (SC) and, therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares would have to be apportioned. This, however, is not in the cases where the profits are naturally treated as 'income' under the head 'profits and gains from business and profession'. The Apex Court further held that having regard to the language of section 14A(2) r.w. Rule 8D, before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, *suo moto* disallowance u/s 14A was not correct. It also held that the Rule 8D is prospective in nature and could not have been made applicable in respect of AY prior to 2007 when this rule was inserted.
Maxopp Investment Ltd. v CIT – (2018) 91 taxmann.com 154 (SC) – Civil Appeal Nos. 104-109 of 2015 & Ors dated 12.02.2018

2052. Noting that the AO had not disturbed assessee's declaration that total administrative expenses incurred by assessee for all its activities was Rs. 30 lakhs, the Court held that under no circumstances an AO could not attribute administrative expenses for earning tax free income in excess of total administrative expenditure incurred by assessee and, hence, there was no question of disallowing administrative expenses to tune of Rs. 60 lakhs u/s 14A r.w. Rule 8D(2)(iii). Accordingly, it dismissed the revenue's appeal filed against Tribunal's order wherein the Tribunal had deleted the disallowance u/s 14A r.w. Rule 8D(2)(iii) made by the AO over and above the suo-moto disallowance of Rs. 10 lakhs made by the assessee.
Pr.CIT v Adani Agro (P.) Ltd. – (2018) 253 Taxman 507 (Guj) – Tax Appeal No. 963 of 2017 dated 05.02.2018

2053. Assessee didn't make disallowance u/s 14A of the amount reported in the Tax Audit Report [which included direct as well as indirect expenses disallowable u/r 8D(2)(i) & 8D(2)(iii) respectively], contending that the investment were mainly in shares of unlisted joint venture entities, whose capital gain, when divested would be fully taxable under the head 'Capital Gains' and that the investments made in joint ventures were strategic in nature and had to be excluded while arriving at the disallowance u/s 14A. But the AO disallowed the said amount while computing income under normal provisions as well as u/s 115JB. The Tribunal held that following the catena of judgment in assessee's favour, the adjustment of disallowance u/s 14A was not required to be made in Book Profits for the purpose of section 115JB. With respect to disallowance under normal provisions, the Tribunal held that it was an uncontroverted fact that the gains from sale of investments were taxable under the head 'Capital Gains'. But noting that the assessee had failed to refute findings of Tax Auditor and could not demonstrate that it did not incur any direct expenditure to make investments, it remanded the matter to the AO to re-appreciate the factual matrix along with a direction to the assessee to justify his stand.
ACIT & ORS v INDUSIND MEDIA & COMMUNICATION LTD. & ANR. – (2018) 52 CCH 46 (Mum) – ITA No. 772/Mum/2016, 1167/Mum/2016 dated 17.01.2018

2054. The Tribunal partly allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the entire disallowance made u/s 14A r.w. Rule 8D relying on the decision in the case of CIT v Hero Cycle Limited (2010) 323 ITR 518 (P&H). With respect to disallowance u/s 14A r.w.r. 8D(2)(ii), it held that the same should not be made in the case of the assessee under consideration since the assessee had its own funds to invest in shares and securities and some of the investments were made in subsidiary companies for strategies purpose. With respect to disallowance u/s 14A r.w. Rule 8D(2)(iii), the Tribunal held that it was not total investment at beginning of year and at end of year,

which had to be considered but it was average of value of investments which had given rise to income which did not form part of total income was to be considered, accordingly, it directed the AO to compute disallowance after taking into consideration investment which had given rise to exempt income.
ITO v BONANZA TRADING COMPANY PVT. LTD. – (2018) 52 CCH 29 (Kol Trib) – ITA No. 172, 173 & 174/Kol/2016 dated 10.01.2018

2055. The Tribunal deleted the disallowance made by AO u/s 14A a) noting that the assessee had incurred only an expenditure of Rs.6,230/- during year, being payment of audit fees etc., which was shown as loss and b) as there was no exempt income earned by assessee. Reliance was placed on the decisions in the case of Cheminvest Ltd. v CIT (2015) 378 ITR 33 (Del) and CIT v Holcim India P. Ltd. (2014) 90 CCH 81 (Del HC).
ITO v MOONROCK HOSPITALITY P. LTD. – (2018) 61 ITR (Trib) 0667 (Del Trib) – ITA No.6385/Del/2016 & CO No.32/Del/2017 dated 03.01.2018

2056. The Tribunal allowed the assesee's appeal against the CIT(A)'s order confirming the disallowance made by the AO under rule 8D(2)(iii) with respect to indirect expenditure at the rate of 0. 5% of the average value of investment where the assessee had made a suo moto disallowance of Rs.99,218/- u/s 14A, holding that the provisions of section 14A r. w. r. 8D were introduced to discourage the assessees from claiming double deductions i.e. claiming expenditure against exempt income, but, the first step is incurring of expenses. Noting that the AO had neither given any details of expenses incurred by the assessee for earning exempt income nor any reason as to why the calculation made by the assessee was not acceptable, it held that no automatic disallowance could be made u/s 14A. Further, with respect to the assessee's claim about stock-in-trade, relying on the decision in the case of India Advantage Securities Ltd. (380 ITR 471), it held that the assessee was offering income from business of share trading so all the expenses related to the business had to allowed.
SIDDHESH CAPITAL MARKET SERVICES & ANR. v DCIT – (2018) 52 CCH 3 (Mum) – ITA No. 6532/Mum/2012, 2489/Mum/2015 dated 01.01.2018

2057. The Tribunal held that since the assessee had not earned any dividend or other exempt income during the year, no disallowance u/s 14A was called for
ACIT v Shyam Indus Power Solutions (P.) Ltd. – (2018) 90 taxmann.com 424 (Del) – ITA Nos. 3223 & 3224 of 2016 CO Nos. 249 & 250 (Delhi) of 2016 dated 29.01.2018

2058. The Apex Court held that rule 8D is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09, observing that (i) the Explanatory memorandum issued with the Finance Bill, 2006 and the CBDT Circular dated 28-12-2006 clearly indicates that department understood that sub-section (2) & (3) of section 14A were to be implemented w.e.f. AY 2007-08 (ii) Rule 8D has again been amended by the Income-tax (Fourteenth Amendment) Rules, 2016 w.e.f. 2-6-2016, by which sub-rule (2) has been substituted by a new provision and by interpreting the rule 8D retrospective, there will be a conflict in applicability such Amendment Rules which clearly indicates that the Rule has a prospective operation and (iii) the subordinate legislation ordinarily is not retrospective unless there is clear indication to the same and there is no indication in rule 8D to the effect that rule 8D intended to apply retrospectively.
CIT v Essar Teleholdings Ltd. – (2018) 90 taxmann.com 2 (SC) – Civil Appeal No. 2165 of 2012 dated 31.01.2018

2059. The Tribunal deleted the disallowance made u/s 14A r.w. Rule 8D by the AO over and above the suo-moto disallowance made by the assessee, noting that the exempt income earned was lower than the suo-motu disallowance made by the assessee, following the co-ordinate bench ruling in case of assessee's sister concern.
DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018

2060. The AO made disallowance under Section 14A read with Rule 8D on the investment made by the assessee in a partnership firm. The Tribunal noting the assessee's contention that the firm in which investment was made belonged to the assessee itself and that no exempt income was earned during the year under review, remitted the matter to the file of the AO since the partnership deed which

required to be examined for verifying as to whether the investment was for business purpose or for earning exempt income had not been produced before it or the lower authorities.
MAIDEEN PITCHAI RAWTHER PEER MOHAMMED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0329 ChenTrib - ITA No.2307/Chny/2017 dated Feb 16, 2018

2061. The Tribunal, following the decision of the High Court in Cheminvest 378 ITR 33 (Del) held that where no dividend income was earned, no disallowance under Section 14A could be made.
DEPUTY COMMISSIONER OF INCOME TAX vs. JUMBO TECHNO SERVICES PVT. LTD - (2018) 52 CCH 0143 DelTrib - ITA No. 6545/Del./2013 dated Feb 16, 2018

2062. The asssessee claimed that no expenses had been earned towards earning exempt income, but had in any case offered a suo-moto disallowance in its COI. However, the AO rejected the assessee's contention / suo moto claim and made addition under Section 8D(ii). The Tribunal upheld the order of the CIT(A) wherein the CIT(A) relying on the case of the High Court in Commissioner of Income Tax v/s Reliance Utilities and Power Ltd., (2009) 313 ITR 340 (Bom) held that if there were interest-free funds available to assessee sufficient to meet its investments and at same time assessee had raised a loan it could be presumed that investments were from interest free funds available and accordingly no disallowance could be made under Section 14(A) rw Rule 8D(2)(ii).
Further, the Tribunal held that for the purpose of computing disallowance under Rule 8D(2)(iii), it held that only those investments yielding exempt income were to be included in the formula provided under Rule 8D.
ASSISTANT COMMISSIONER OF INCOME TAX vs. L & T INFRASTRUCTURE FINANCE CO. LTD. - (2018) 52 CCH 0099 MumTrib - ITA Nos. 4331/Mum/2015 dated Feb 14, 2018

2063. Where the assessee earned exempt dividend income and offered a suo-moto amount u/s 14A towards management fees, custody fees, audit fees and portfolio management fees and the AO invoked provisions of section 14A and computed disallowance in terms of Rule 8D, the Tribunal upheld CIT(A)'s deletion of disallowance and held that sub-section (2) of section 14A clearly stipulated that AO should determine amount of expenditure incurred in relation to exempt income as per Rule 8D if he having regard to accounts of assessee was not satisfied with correctness of claim made by assessee and since the AO had nowhere recorded any satisfaction about incorrect claim having been lodged by assessee with reference to its accounts and there was no discussion whatsoever about examination of assessee's claim about actual incurring of expenses in relation to exempt income, no addition could be made under Section 14A.
INCOME TAX OFFICER & ANR. vs. INDICA INDUSTRIES PVT. LTD. & ANR. - (2018) 52 CCH 0133 DelTrib - ITA No. 1764/Del/2016, 3836/Del/2015, 1509/Del/2016 dated Feb 28, 2018

2064. Where the assessee earned exempt dividend income during the year and offered suo-moto disallowance @ 5 percent on the average value of investments yielding the dividend income, the Tribunal held that the AO was unjustified in re-working the disallowance under Section 14A read with Rule 8D(iii) by including all the investments of the assessee without appreciating that the rest of the investments did not yield any exempt income.
APOLLO INTERNATIONAL LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0203 DelTrib - ITA No. 6834/Del./2015 dated Mar 9, 2018

2065. The Tribunal, relying on the decision of the High Court in Cheminvest Ltd., Vs CIT reported in 378 ITR 33 held that where the assessee had not earned any exempt income during the year under review, no disallowance under Section 14A of the Act could be made.
SURYAJYOTI INFOTECH LIMITED & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0191 HydTrib - ITA No. 1241/Hyd/2015, 1278/Hyd/2015 dated Mar 16, 2018

2066. Where the assessee earned exempt income during the year under review, considering that its interest free funds were in excess of the investments yielding exempt income and the interest expense incurred by it was paid subsequent to the investments, the Tribunal held no disallowance under Section 14A read with Rule 8D(ii) could be made. Accordingly, it dismissed Revenue's appeal.
DEPUTY COMMISSIONER OF INCOME TAX vs. DEVARSONS INDUSTRIES PVT. LTD. - (2018) 52 CCH 0269 AhdTrib - ITA No. 1130/Ahd/2015 dated Mar 28, 2018

2067. Relying on the Co-ordinate Bench decision in the case of Mylan Laboratories Ltd [ITA Nos. 362/Hyd/2017 &452/Hyd/2017], the Tribunal held that it is established principle that the disallowance u/s 14A should not exceed the income earned and claimed as exemption.It, accordingly, directed the AO to restrict the disallowance to the amount of dividend earned.
G2 CORPORATE SERVICES LLP vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0130 HydTrib - ITA No. 832/Hyd/16, 833/Hyd/16 dated Jun 8, 2018

2068. The Tribunal deleted the disallowance made u/s 14A r.w. Rule 8D(2)(ii) by the AO with respect to investment made during the year, noting that the investment was only in the shape of Share Application Money pending Allotment of actual shares and these investments per-se were unable to earn any exempt dividend income. It also restricted the disallowance made u/s 14A r.w. Rule 8D(2)(iii) to the amount of exempt income earned, relying inter alia on Cheminvest Ltd. v. CIT [2015] 378 ITR 33 (Del).
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. MAHINDRA CIE AOTOMOTIVE LIMITED & ANR. - (2018) 52 CCH 0300 MumTrib - ITA No. 6659/Mum/2014 (Cross Objection No. 96/Mum/2016) dated Apr 11, 2018

2069. Where the assessee made investment in group concern, the AO made disallowance under Section 14A read with Rule 8D and held that expenditure was incurred by assessee for earning exempt income. CIT(A) allowed the assessee's appeal by following the Tribunal order in the assessee's own case for AY 2006-07 and AY 2008-09. Tribunal held that, where primary object of investment was for holding controlling stake in group concerns and not for earning an income out of that investment then provisions of section 14A could not be invoked. The Tribunal directed the AO to recompute disallowance. Thus, the appeals of the Revenue were dismissed.
ACIT & ANR. vs. SELVEL ADVERTISING PVT. LTD. & ANR. (KOLKATA TRIBUNAL) (IT A No.2196 -2197/Kol/2016 (C.O.No.97/Kol/2016) dated May 4, 2018 (53 CCH 0020)

2070. The Tribunal upheld the CIT(A)'s order to the extent that it deleted the disallowance made u/s 14A r.w. Rule 8D(2)(ii) with regard to interest expenses, in a case where the own funds of the assesse (NBFC) exceeded the amount of investment and also the interest income for the year under consideration exceeded the interest expenses. With respect to the disallowance made u/s 14A r.w. Rule 8D(2)(iii), it restricted the disallowance to the tune of dividend income.
INCOME TAX OFFICER vs. NIRMA CREDIT & CAPITAL PVT. LTD. - (2018) 53 CCH 0147 (AhdTrib) - ITA No. 2830/Ahd/2016 dated Jun 8, 2018

2071. The Tribunal deleted the disallowance made u/s 14A by the AO over and above the suo moto expenses disallowed by the assesse, holding that –

- since the assessee had sufficient interest free own funds (more than the value of investment made), no disallowance could be made under Rule 8D(2)(ii) as assessee had not incurred any expenses on account of payment of interest
- the AO as well as Ld. CIT(A) had not recorded their dissatisfaction that the computation of expenses disallowed by the assessee were not correct nor had pointed out any specific computation defects andthus, Rule 8D(2)(iii) also could not be invoked on account of administrative expenses in absence of recording of specific dissatisfaction with the claim of the assessee.

DLF HOME DEVELOPERS LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0182 (DelTrib) - ITA No. 2209/Del/2016, 2567/Del/2016 dated Jun 19, 2018

2072. In a case where the Tribunal upheld the CIT(A)'s order wherein the CIT(A) had restricted the disallowance made by the AO to the extent of expenditure of interest incurred by the assessee under Rule 8D(2)(ii) of the Rules, the Court dismissed the Revenue's appeal noting that the controversy was no longer res Integra and the Division Bench of the Court in two matters had already decided in favour of the assessee that the disallowance under Rule 8D of the Rules r/w section 14A of the Act could not exceed the expenditure directly relatable to earn the exempted income in the form of 'Dividend' as computed in accordance with Rule-8D of the Rules. The said decisions referred by the Court were (i) CIT Anr. v. Microlabs Ltd. (2016) 383 ITR 490 (Kar) wherein it was held that since the interest free funds were was much more than investments made by the assessee which could yield tax free income, no disallowance of interest expenditure u/s 14A could be made and (ii) M/s.Prergathi Krishna Gramin Bank vs. JCIT [ITA Nos. 100001 & 100002/2018 (Kar)] wherein it was held that where the assessee did not incur any such expenditure during the year in question to earn Dividends, the burden was upon the

AO to compute the interest on such borrowed funds which were dedicatedly used for investment in securities to earn such exempted Dividend income.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. ADVAITH MOTORS PVT. LTD. - (2018) 102 CCH 0081 (KarHC) - ITA No. 342/2016 dated Jun 12, 2018

2073. Where major investments were made in the earlier years from own funds and no borrowed funds were utilized in making such investments, the CIT(A) deleted the disallowance made by the AO under Section 14A of the Act read with Rule 8D of the Rules relying on the ruling of Reliance Utilities And Power Ltd. (2009) 366 ITR 505. The Tribunal upheld the order of the CIT(A) in favour of the Assessee and held that since interest-free funds were sufficient to meet the investments, no presumption could be drawn in the absence of definite material brought on record to show that the interest-bearing funds were utilized for investments earning exempt income.
ACIT& ANR. vs. ARIHANT CAPITAL MARKETS LTD. & ANR. (INDORE TRIBUNAL) (ITA No. 370/Ind/2017 (C.O. No. 17/Ind/2018)) dated May 31, 2018(53 CCH 0100)

2074. Where the Assessee earned exempt dividend income, the AO made disallowance under Section 14A of the Act read with Rule 8D of the Rules as he was of the opinion that huge investments could not be made without the help of financial advisors and directors and therefore administrative expenditure was incurred by the Assessee. Further, the AO also made an addition in respect of disallowance made under Section 14A of the Act while computing book profits under Section 115JB of the Act. CIT(A) upheld the order of the AO. Relying on the *assessee's own case before the Mumbai Tribunal in ITA No. 2474/Mum/2013 (AY 2007-08) dated 06.08.2014*, the Tribunal restricted the disallowance to 5% of the exempt income earned. In respect of the computing book profits under Section 115JB of the Act, the Tribunal relied on the order of the *Special Bench of the Delhi Tribunal in ACIT vs. Vireet Investments (P.) Ltd. (58 ITR (AT) 313)* and held that no disallowance under Section 14A of the Act read with Rule 8D of the Rules could be made while computing book profit under section 115JB of the Act. Thus, the Assessee's appeal was partly allowed.
ZEE ENTERTAINMENT ENTERPRISES LIMITED vs. ACIT (Mumbai TRIBUNAL) (ITA No. 6969/Mum/2016) dated May 31, 2018(53 CCH 0204)

2075. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the disallowance made by the AO u/s 14A r.w. Rule 8D in relation to interest expenditure on account of investment in a partnership firm which yielded income exempt u/s 10(2A). It noted that the AO had in cryptic manner only stated that he was not satisfied with the assessee's claim that no expenditure was incurred to earn exempt income. The Tribunal thus held that the AO had failed to record a satisfaction having regard to the accounts of the assessee that the assessee has incurred particular expense in relation to earning exempt income. Further, it also accepted assessee's alternative claim that since the assessee had higher amount of interest free funds than that amount invested in the partnership firm, it was to be presumed that the investment was made out of interest free funds available with assessee and, thus, held that the disallowance u/s 14A r.w. Rule 8D was incorrect.
Wadhwa Residency (P.) Ltd. v ACIT - [2018] 95 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NO. 5413 (MUM.) OF 2015 dated Jun 20, 2018

2076. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order excluding the investment made by the assessee in an Oman company for the purposes of computing disallowance u/s 14A r.w. Rule 8D. It noted that the dividend received by the assessee from the said company was chargeable to tax in India under the head 'Income from other sources' and formed part of total income, and, thereafter, a rebate of tax had been allowed to the assessee from the total taxes in terms of section 90(2) r.w. Article 25 of the Indo-Oman DTAA. Further, noting that in preceding year also, the AO had been directed to exclude the said investment while computing average value of investment under Rule 8D(2)(iii), it was held that there was no infirmity in the observations of the CIT(A).
ACIT v Indian Farmers Fertiliser Cooperative Ltd - [2018] 95 taxmann.com 114 (Delhi - Trib.) - IT APPEAL NO. 5157 (DELHI) OF 2015 dated June07, 2018

2077. The Tribunal held that in absence of any exempt income received during relevant previous year, no disallowance u/s 14A could be made.
Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April19, 2018

2078. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order restricting the disallowance made by the AO u/s 14A r.w. 8D to the extent of exempt dividend income, holding that the said provisions could not be interpreted so as to mean that entire tax exempt income was to be disallowed and thus the AO was not justified in making excessive disallowance.
TIDEL PARK LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0428 ChenTrib - ITA Nos. 1700 & 1701/Chny/2017, 1808 & 1809/Chny/2017 dated Apr 4, 2018

2079. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AOu/s 14A r.w. 8D, noting that the assessee's investments were confined to strategic investments in its subsidiaries only and it had not earned any tax free income during the year, relying on the decision in the case of Amjay Medi.Max (India) Pvt. Ltd. vs. DCIT [ITA No.1950/Ahd/2012].
DEPUTY COMMISSIONER OF INCOME TAX vs. ASMAN INVESTMNETS LTD. - (2018) 52 CCH 0445 AhdTrib - ITA No. 3139/Ahd/2015dated Apr 4, 2018

2080. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order restricting the disallowance made by the AO u/s 14A r.w. 8D(2)(iii) to Rs.23,81,828 as against the AO's disallowance of Rs.53,27,283/-, relying on the co-ordinate bench decision in the case of REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404/144 ITD 141 (Kol.) which was also affirmed by the Hon'ble Calcutta High Court [vide order dated 09.04.2014 in GA No. 3581 of 2013], wherein it was held that the disallowance as per Rule 8D shall be made by taking into consideration only those shares, which have yielded dividend income in the year under consideration.
ASSISTANT COMMISSIONER OF INCOME TAX vs. HINDUSTAN COPPER LTD - (2018) 52 CCH 0475 KolTrib - ITA No. 1616/Kol/2016dated Apr 4, 2018

2081. The assessee filed the returns and suo moto made disallowance u/s 14A of the expenses incurred for earning exempt income. The AO, without recording dis-satisfaction and pointing out any defect in the calculation of the assessee, proceeded to invoke s.14(A) r.w Rule 8D and calculated the disallowance mechanically which was not permissible. The Tribunal held that further disallowance, by invoking Sub sections (2) & (3) of S.14A r.w Rule 8D mechanically was not sustainable because the said section was to be invoked only if the AO was dissatisfied with the claim of assessee. Further, on following the decision of CIT vs. Holcim India Pvt. Ltd. - (2014) 90 CCH 081-DEL-HC, it held that the disallowance u/s 14A could not exceed the total amount of exempted income. Accordingly, the disallowance made by the AO was deleted.
DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018

2082. The assessee, during relevant AY under consideration, earned no dividend income. Despite of the said fact, the AO proceeded to disallow u/s 14A thereby making addition in the income. The CIT(A) deleted the said disallowance u/s 14A on the ground that assessee had not earned any dividend income during year under consideration The Tribunal dismissed the department's appeal and thereby upheld the order of CIT(A).
Minda Industries Ltd & Anr v DCIT & Anr (2018) 52 CCH 0404 DelTrib - ITA No. 4297/Del /2015, 4298/Del /2015, 4299/Del /2015, 4300/Del /2015, 4455/Del /2015, 4456/Del /2015 dated 27.04.18

2083. The assessee, a fashion designer & trader in garments, had taken substantial term loans from a Bank, for acquiring shares of a company engaged in fashion apparels. The assessee contended that the investment was made as a business strategy for the purpose of furthering business as it could facilitate trade through the outlets of the said invested company. The AO disallowed the interest paid on the loans u/s 14A holding that the assessee had earned dividend income on investment in the said company. The CIT(A) upheld AO's order. Before the Tribunal, the Revenue took support of the case decided by Apex Court in M/s. Maxopp Investments Ltd (Civil Appeal No.104 to 109 of 2015) dated 12.02.2018 wherein it was held that deduction of that expenditure which had been incurred by assessee in relation to income which did not form part of total income under Act was not to be allowed and reason why an assessee invested in equity shares of a company was irrelevant for application of section 14A. However, the assessee pointed out from the same judgement that it was clearly mentioned that the AO had to record a satisfaction that the claim of the assessee on expenditure relatable to exempt income was incorrect, before proceeding with a disallowance u/s.14A. The Tribunal held that since the said

Apex Court judgement was not available with the AO or CIT(A) while passing orders, the question regarding disallowance u/s.14A of the Act required to be re-visited and thus set aside the orders of the authorities and remitted back the matter to the file of AO for fresh adjudication.
Madan Ventures v ITO (2018) 52 CCH 0295 ChenTrib - ITA Nos. 2131 & 2698/CHNY/2017 dated 09/04.2018

2084. For AY 2002-03, the assessee-company did not disallow any amount u/s 14A as expenditure incurred for earning dividend income of Rs Rs. 7,09,093/- claimed as exempt u/s 10(33). However, the AO worked out Proportionate disallowance Rs. 1,59,845/- on account of the said expenditure. The CIT(A) confirmed the disallowance made by the AO. The Tribunal observed that the entire expense incurred by assessee on salaries, wages and staff welfare was taken into account by AO while computing proportionate disallowance u/s 14A and also some of said expense incurred by assessee such as garden maintenance etc. were not related to earning of dividend income. It held that the disallowance made by AO on proportionate basis was excessive and unreasonable and thus restricted said disallowance to 5% of dividend income earned by assessee.
Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018

2085. The Tribunal deleted the disallowance made u/s 14A r.w Rule 8D(2)(ii) [pertaining to interest expense] noting that after netting off interest received by assessee with interest paid and reducing the interest paid to SBI for loan borrowed and used only for purpose of business, there was no positive figure of interest payment. It was also noted that the assessee had sufficient own fund for investments earning exempt dividend income.
Rawalwasia & Sons Exim Ltd. v ITO (2018) 52 CCH 0297 KolTrib - ITA No. 273/Kol/2016 dated 06.04.2018

2086. The Tribunal rejected the assessee's argument that strategic investments made in domestic companies should be excluding while determining the amount to be disallowed u/s 14A r.w. Rule 8D(2), following the Apex Court decision in the case of Maxopp Investments Ltd vs. CIT (2018) 91 taxman.com 154 (SC) wherein it was held that u/s 14A, dominant purpose for which investment in shares is made by assessee is not relevant. With respect to the assessee's claim of excluding the interest not attributable to earning exempt income while computing disallowable u/r 8D, the Tribunal observed that the financial statements did not have bifurcations of interest in P & L A/c and it was very difficult to bifurcate interest expenditure that was attributable to earning of exempt income. It thus remitted the matter back to the file of AO directing the assessee to file all relevant details in order to establish its claim regarding interest expenditure not to be attributable for purposes of earning dividend income.
Indian Farmers Fertiliser Cooperative Ltd. v ACIT (2018) 52 CCH 0282 DelTrib - ITA No. 2394/Del/2013 dated 05.04.2018

2087. The Tribunal upheld the disallowance u/s 14A on the ground that assessee firm had negative net worth during relevant year and entire investment was financed by borrowed capital and, administrative expenditure was incurred by assessee. It further held that Section 14A would apply even if no dividend was earned by assessee from investments in shares.
Lally Motors India (P.) Ltd. v PCIT [2018] 93 taxmann.com 39 (Amritsar – Trib.) – ITA NOS. 218 (ASR.) OF 2017 dated 12.04.2018

2088. The Tribunal held that where assessee had sufficient interest free own funds to cover investments in shares, mutual funds, etc. that generated exempt dividend, no disallowance under section 14 read with rule 8D(2)(ii) was called for.
Tata Hitachi Construction Machinery Company Ltd. v DCIT [2018] 93 taxmann.com 339 (Bangalore – Trib.) – ITA NO. 977 OF 2014 dated 20.04.2018

2089. The Tribunal held that where AO did not record any satisfaction as to why suomoto disallowance made by assessee under section 14A which was worked out by assessee having regards to its accounts was not a correct working of expenditure in relation to an exempt income having regards to account of assessee, disallowance made by assessee was to be accepted.
ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018

2090. The assessee-bank claimed that it had not incurred any expenditure for earning the dividend income of Rs.1.80Cr, which was exempt. The AO, however, computed Rs.2.48Cr as the amount of disallowance u/s 14A r.w rule 8D on account ofexpenditureincurred for earning exempt income. The Tribunal concurred with the AO's finding,without considering the assessee claim's that no expenditure had been incurred and also the alternative claim that the amount of disallowance by way of expenditure on exempt income could not exceed the amount of total exempted income.The Court held that disallowing the expenditure for earning exempt income in excess to actual amount of exempt income was absurd and hypothetical. Thereby, setting aside the finding of all the three lower authorities, it remanded the matter back to the AO for re-computing the disallowance of expenditure u/s14A.
Pragathi Krishna Gramin Bank v JCIT [2018] 95 taxmann.com 41– ITA NO100001 & 100002 OF 2018 dated 28.05.2018

2091. The Tribunal remanded the matter back to the AO for fresh adjudication w.r.t. disallowance u/s 14A, noting that the AO, without bringing basic fact as to the amount of expenditure actually incurred for the exempt income, calculated the expenditure mechanically with the method prescribed in Rule 8D(ii) and made the disallowance accordingly.
Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.)- ITA NO 2913 OF 2015 dated 16.05.2018

2092. Where the assessee earned exempt interest income during AY 2004-05, the AO made disallowance of expenditure under Section 14A. Tribunal upheld the order of the CIT(A) deleting such disallowance by relying on the ruling of the co-ordinate bench in Power Grid Corporation of India Ltd (ITA No. 488/Del/2009 dated 30.10.2011) wherein it was held that since the AO had not identified any administrative expenses incurred by the assessee for earning exempt interest income, the disallowance by the AO u/s 14A based on estimation could not be sustained.
DCIT vs. NTPC Ltd. – [2018] 53 CCH 0101 (Delhi ITAT) – ITA No 15/Del/2009 dated May 4, 2018

2093. The assessment was completed u/s 143(3) for three assessment years i.e. 2004-05, 2005-06, 2006-07 but the same were reopened in terms of section 147 on the ground that the proportionate interest u/s 14A computed under Rule 8D amounting to Rs. 4,16,01,299/- was to be disallowed as Rule 8D was applicable retrospectively but the same had escaped assessment. The CIT (A) allowed the appeal of the assessee and held that the application of Sec. 14A was misdirected as there was no dividend income earned by the assessee which was further affirmed by the Tribunal. The Court applied the proposition laid down in CIT v. Essar Teleholdings Ltd. [2015] 228 Taxman 309 (Mag.) and held that Rule 8D was prospective in operation and could not be applied to any assessment operation prior to 2008-09 and accordingly dismissed the appeal of the Revenue.
PCIT v. Jammu Central Coop. Bank Ltd. - [2018] 93 taxmann.com 184 (Jammu & Kashmir) – IT Appeal Nos. 4, 14 & 13 of 2016 dated April 18, 2018

2094. The Tribunal deleted the disallowance of interest made by invoking section 14A of the Act on failure of the AO to determine nexus between investments and funds. The assessee's contention was that on perusal of financial statements it was evident that reserves and surplus were more than investments, hence there was no question of borrowing funds to make the investments. The Tribunal relied on the HC decision of HT Media and Reliance Utilities wherein it was held that if assessee's own funds exceed investment, a presumption arises that such investments are made from own funds and not borrowed funds unless revenue establishes the contrary.
Munjal Showa Ltd vs. DCIT Ltd [TS-729-ITAT-2018(DEL)-TP] ITA No.1579/Del/2015 dated 27.06.2018

2095. The Tribunal held that in absence of exempt income from investments, provisions of section 14A could not be invoked and thus no disallowance under the said section would survive.
McDonald's India Pvt Ltd v DCIT [TS-513-ITAT-2018(DEL)-TP] ITA Nos.1665 and 1769/Del/2015 692 and 296/Del/2016

2096. The Tribunal remanded the issue with respect to disallowance u/s. 14A of the Act to the AO in light of the DRP not adjudicating on a specific objection raised by the assessee that no dividend/ exempt income was earned from investments and further that it had not incurred any direct or indirect

expenditure. The DRP had deleted the disallowance u/s.14A on the basis that the investments made by the assessee were strategic investments driven by commercial expediency and hence beyond the scope of s 14A. The Tribunal accepted the stand of the Revenue that in light of the Apex Court decision of Maxoop Investment, the plea that disallowance u/s. 14A would not be applicable to strategic investment could no longer be accepted. The Tribunal observed that the assessee had raised a specific ground before the DRP that in view of no exempt income being earned qua strategic investment, disallowance u/s. 14A could not be invoked. The Tribunal opined that the decision of the ACIT v/s. Vireet Investment Pvt. Ltd. (2017) taxmann.com 415 Del Tribunal (SB) [wherein it was held that only the investments which yielded exempt income were to be considered for computing average value of investment] could be relied upon for the argument of the assessee during the course of the remand proceedings before the AO.

ACIT vs Praxair India Private Limited [TS-524-ITAT-2018(Bang)] IT(TP)A No.409 /Bang/2015 dated 04.06.2018

2097. The Tribunal allowed the assessee's appeal and held that in absence of AO recording satisfaction under the provisions of section 14(2), section 14A could not be invoked in view of the ratio laid down by the Apex Court in the ruling of Maxoop Investment Ltd. and Godrej. Thus, it deleted the disallowance u/s.14A.

The Tribunal relied upon the co-ordinate bench ruling in assessee's own case for AY 2010-11 and held that though disallowance u/s.14A was deleted for the subject year, in any case while determining the book profits under Section 115JB of the Act, disallowance if any made under section 14A of the Act could not be added to the book profits in the hands of the assessee.

KPIT Technologies Ltd (earlier known as KPIT Cummins Infosytems Limited.) v DCIT [TS-522-ITAT-2018(PUN)-TP] ITA No.505/ Pun/2016 dated 04.06.2018

2098. The assessee had debited the expenses relating to share transaction, viz., PMS expenses, DP and other charges and security transaction tax, to his capital account. However, it also held that two expenses, viz. professional fees and bank charges, debited to the Profit & Loss Account were to be considered as common expenses incurred by the assessee towards both exempt income and taxable income. The Tribunal held that the provisions of Rule 8D could not be applied, as major portion of expenses are related to other activities of the assessee and thus confirmed disallowance to the extent of Rs.10,000 out of common expenses of Rs.1.14 lakh as against disallowance of Rs.8.81 lakhs made by the AO by invoking section 14A r.w. Rule 8D(2)(iii).

Shashikiran J.Shetty v DCIT - TA No.5080/Mum/2017 dated December 4, 2018

Section 10A/ 10B/ 10AA

2099. Where assessee's claim for exemption under section 10B was rejected on ground that its sister concern get merged with it, in view of fact that both firms were doing same business and, moreover, assessee's sister concern was also an EOU, impugned order rejecting assessee's claim was to be set aside by the Tribunal. The Court upheld the said order of the Tribunal.

Commissioner of Income Tax v. Trident Minerals- [2018] 100 taxmann.com 161 (Karnataka)-

***ITA No. 100029 of 2014-October* 10, 2018**

2100. The Tribunal held that as per sec. 10A deductions contemplated therein is qua eligible undertaking to assessee standing on its own and without reference to other eligible or non-eligible units or undertakings of assessee, benefit of deduction is given by Act to individual undertaking.Aggregate of incomes under other heads and provisions for set off and carry forward contained in ss. 70, 72 and 74 would be premature for application. Deductions u/s. 10A therefore would be prior to commencement of exercise to be undertaken under Chapter VI for arriving the total income of assessee from gross total income.

DCIT vs Ausom Enterprise Ltd- (2018) 54 CCH 0088 AhdTrib- ITA No 1519, 1520/Ahd/2016 and ITA No 857/Ahd/2017 dated 15.10.2018

2101. Assessee set up a unit at Software Development Park (STPI) to develop and export PC Suit Software Chip used in mobile phones and it claimed exemption under section 10A. The AO denied said claim on ground that software was substantially developed at non-eligible unit and thereafter it was placed in hard disk and shifted to eligible unit only with an intent to claim exemption under section 10A. The Tribunal opined that software was developed at eligible unit after receiving basic engine from non-eligible unit and thus assessee was entitled to benefit of exemption under section 10A and the same was upheld by the High Court. The Supreme Court dismissed the Revenue's SLP
CIT vs Ajay Agarwal (HUF)- (2018) 99 taxmann.com 19 (SC)- SLP Diary No 32263 of 2018 dated 28.09.2018

2102. The Tribunal allowed the assessee's claim for deduction u/s 10AA in respect of profit derived from unit located in SEZ, which was disallowed by the AO on the ground that assessee had set up new unit in SEZ bysplitting/reconstruction of already existing unit. It followed the coordinate bench decision in assessee's own case for earlier year wherein similar issue u/s 10AA was considered and it was held that the assessee had established an independent unit in the SEZ to carry out manufacture and export of plain and studded golden and silver jewellery. In the earlier year, the Tribunal had also rejected the AO's argument of split-up / reconstruction holding that from the bills forming part of the paper book, it was clear that the assessee had purchased machinery of substantive value and therefore without any evidence it could not be said that the assessee had used old machinery to establish the new unit.

Asst CIT vs Sun Jewel International P. Ltd [2018] 53 CCH 0464 (MumTrib)- ITA Nos. 5549 & 5971/Mum/2014 dated August 21 2018

2103. The Tribunal held that amount eligible for deduction u/s 10B had to be worked out only after reducing (i) shortage & Loss on Foreign Exchange Fluctuation and (ii) Ocean Freight in case of CIF Export Sales (which were already reduced from export turnover by the AO) from Total turnover also, in view of the judgment in the case of Tata Elxsi Ltd. [349 ITR 98 (Kar)] wherein it was held that the amounts reduced from export turnover shall be reduced from total turnover also because total turnover was sum total of Export Turnover and domestic turnover and therefore, if an amount was reduced from export turnover, then total turnover also gets reduced by the same amount automatically.

Deccan Mining Syndicate Pvt Ltd. vs Dy. CIT [2018] 53 CCH 0466 (Bang Trib) - ITA NO. 1261 (BANG) 2016 DATED AUGUST 21, 2018

2104. The Court held that the Tribunal was correct in directing the AO to exclude expenses incurred in foreign currency and other expenses that had been excluded from Export turnover, from the total turnover also for computing deduction u/s 10A by relying on ratio laid down in CIT vs HCL Technologies Ltd. [2018] 93 taxmann.com 33(SC) wherein it was held that when the object of the formula was to arrive at the profit from export business, expenses excluded from export turnover had to be excluded from total turnover also since one of the components of Total Turnover was export turnover, otherwise, any other interpretation makes the formula unworkable and absurd.

Pr.CIT vs CYPRESS SEMICONDUCTORS TECHNOLOGY INDIA PVT. LTD. [2018] 102 CCH 0382 (Kar HC) - ITA NO. 399/2017 DATED AUGUST 16, 2018

2105. The Apex Court dismissed Revenue's SLP against HC ruling wherein it was held that mere processing of iron ore in a plant and machinery located outside customs bonded area would not disentitle assessee from claiming deduction u/s 10B noting that (i) iron ore was excavated from mining area belonging to an export oriented unit and (ii) customs bonding was not a condition precedent to the claim of deduction u/s 10B.

Pr.CIT vs Lakshminarayana Mining Company [2018] 103 CCH 0267 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 36242/2018 dated 16.11.2018

2106. The assessee had derived income from 100% EOU (eligible for deduction u/s 10B) as well as from other non-eligible unit. The AO was of the view that availability of interest free funds of large amounts to assessee by directors / shareholders was an arrangement to show more than ordinary profit by assessee so as to enable it to claim deduction on larger profits u/s 10B. Accordingly, he computed notional cost towards the interest on such funds in terms of section 10B(7) r.w.s. 80IA(10) (which provides that where it appears to the AO that, owing to the close connection between the assessee carrying on the eligible business and any other person, or for any other reason, the course of business between them is so arranged that the 'business transacted between them' produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the AO shall, in computing the profits and gains of such eligible business for the purposes of the deduction, take the amount of profits as may be reasonably deemed to have been derived therefrom). The Tribunal held that Revenue had misdirected itself in law as well as on facts in artificially computing non-existent interest costs and thus denying deduction u/s 10B eligible to assessee. It held that the charging of interest or otherwise on funds provided by the Directors/shareholders to the assessee could not fall within the sweep of expression 'business transacted between them' as contemplated u/s 80IA(10). It held that even withdrawal of interest free funds immediately on the completion of eligible period for availing benefit u/s 10B could not be regarded as overwhelming reason for the purposes of grave allegation of arrangement contemplated u/s 80IA(10). Accordingly, the Tribunal deleted the notional cost added by the AO, thereby allowing assessee's claim for deduction u/s 80IA(10).

Nabros Pharma Ltd vs Asst CIT and Addl CIT [2018] 54 CCH 0153 (Ahd Trib)I.T.A. Nos. 719 & 720/Ahd/2016 & I.T.A. Nos. 788 & 789/Ahd/2016 dated 01.11.2018

2107. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing deduction u/s 10A(1) to assessee-individual, though she had filed return after the due date mentioned in section 139(1), holding that the proviso below section 10A(1A) which mandates return filing within the said due date was not applicable to assessee's unit located in STPI as a 100% EOU claiming deduction u/s 10A(1) as against 10A(1A). It noted assessee's reference to CBDT Circular No. 3/2006 dated 27.02.2006 which provides mandatory filing of return for units in SEZs which are claiming deduction u/s 10(1A) [and not section 10A(1)]. It held that, on combined reading of section 10A(1), section 10A(1A) and proviso therein along with the CBDT Circular 3/2006, it was clear that requirement to file return before due date was applicable only to those undertakings which are set up in SEZ.
ITO v Renuka Ramchandani [TS-524-ITAT-2018(Bang)] - ITA No. 109/Bang/2017 & C.O. No. 79/Bang/2017 dated 03.08.2018

2108. The Tribunal relying on CIT vs Motorola India Electronics (P) ltd (2014) 265 CTR 94 (Kar) held that interest income from deposits lying in EEFC account and interest income earned on inter- corporate loans out of funds of undertaking is considered as business income of assessee's undertaking and eligible for deduction u/s 10AA.
DCIT vs Ausom Enterprise Ltd- (2018) 54 CCH 0088 AhdTrib- ITA No 1519, 1520/Ahd/2016 and ITA No 857/Ahd/2017 dated 15.10.2018

2109. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had upheld the Tribunal's order allowing exemption u/s 10AA with respect to freight and insurance excess receipts, where the Revenue contended that the same constituted indirect income not derived from export of goods. The Tribunal had held that the said excess receipts may not have any effect as the freight or insurance charges were to be reduced from the export turnover as well as from the total turnover.
Pr.CIT v Vedansh Jewels (P.) Ltd - [2018] 97 taxmann.com 521 (SC) - SLP (Civil) Diary No.(S). 24766 of 2018 dated July 30, 2018

2110. In the case of the assessee-company which had been claiming deduction u/s 10B/ 10A with respect to its SEZ unit till AY 2011-12 (being the last year for claiming the said deduction on account of sunset clause) and u/s 10AA from AY 2011-12 (being the year from which the EOU Unit was set-up) and the AO had disallowed the assessee's claim for deduction u/s 10AA for the present year i.e. AY 2013-14 on the ground that there is some kind of splitting up or reconstruction of the old business in terms of section 10AA(4)(ii), the Tribunal held that once the claim of deduction u/s 10AA has been accepted in the first year of the operations and also in the second year, then in the third year the same could be withdrawn by examining the factors which were required to be seen in the first year of the claim. Accordingly, on this ground alone, the AO could not deny the claim of deduction u/s 10AA in the impugned year. Further, on merits also it held that the assessee was entitled for claim of deduction u/s 10AA after noting that there was no iota of any material to show that additions to fixed assets had been by way of transfer from EOU units and that it was not a case where old employees of EOU unit had been entirely shifted to SEZ unit (which seemed to be allegation of the AO).
MACQUARIE GLOBAL SERVICES PVT. LTD. v DCIT – (2018) 62 ITR (Trib) 666 (Del Trib) – ITA No. 6794/Del/2017 dated 23.01.2018

2111. Where the AO disallowed the assessee-company's claim u/s 10A with respect to internet charges opining that internet charges might be attributable to delivery of article/thing outside India, disallowable as communication charges in view of Clause (iv) of Explanation 2 to section 10A, the Tribunal relying on the decision in the case of Patni Telecom Solutions (P) Ltd., v ITO [35 taxmann.com 87 (HYD)] held that internet expenses could not be treated as 'communication charges' under Clause-4 of Explanation-2 to Section 10A. However, since the assessee had failed to furnish amount of internet charges or any expenditure under this head, the Tribuanl relying on the decision in the case of CIT v Gem Plus Jewellery India Ltd., [330 ITR 175 (Bom)] and ITO Vs. Sak Soft Ltd. [313 ITR (AT) 353 (Chen)] held that the communication charges etc., attributable to delivery of computer software outside India which were to be reduced from export turnover should be reduced from total turnover as well, while computing deduction u/s 10A and accordingly, directed the AO to exclude same amount from Total Turnover as well and re-workout disallowance u/s 10A.
GVK BIOSCIENCES PVT. LTD. & ANR. v DCIT – (2018) 52 CCH 25 (Hyd Trib) – ITA Nos. 705 to 707 & 738 to 740/Hyd/15 dated 10.01.2018

2112. The Tribunal set aside the order of CIT(A) & AO and directed direct the AO to grant deduction u/s 10B to the assessee, 100% EOU, which was denied by the AO *inter alia* on the ground that the assessee undertaking was formed as result of reconstruction of an existing undertaking and transfer of previously used plant and machinery since the assessee had commenced its business by purchasing machinery and also taking some machinery on lease from another company 'USI'. It held that the assessee was able to satisfy conditions of section 10B, noting that —

- the assessee had filed site plan to show that it was independent unit different from USI and nature of business of assessee and USI were totally different
- the assessee had produced sufficient evidence to support its claim that assessee undertaking was not formed as result of reconstruction of existing undertaking
- the assessee also proved that assessee undertaking was not formed as result of transfer of previously used plant and machinery since very negligible amount was spent for repair on plant & machinery and USI had purchased new machinery for leasing them to the assessee

Further, the Tribunal held that the lease of plant and machinery could not be considered as transfer of capital assets and that merely because leased plant and machinery were kept by USI sometime before lease, would not prove that they were used by USI and accordingly, the claim of assessee was denied merely on presumptions.
INDIAN ARMOUR SYSTEMS PVT. LTD. & ANR. v ITO – (2018) 52 CCH 86 (Del Trib) – ITA Nos. 808/Del/2014, 5647/Del/2014 dated 29.01.2018

2113. The Court upheld the Tribunal's order wherein it had concurred with the findings of fact recorded by the CIT(A) and allowed the assessee's claim for deduction u/s 10A proportionately with respect to the sales

realised within the time stipulated in the Act, where the AO had disallowed the entire deduction claimed by the assessee *inter alia* on the ground that the assessee had failed to submit the auditor's certificate required for claiming deduction as per section 10A(5) as well as certificate regarding establishment in SEZ from competent authorities and that there were certain discrepancies in the sales invoices raised against the Bank Realisation Certificates (BRCs). It was noted that before the CIT(A), assessee had submitted that it could not produce the necessary evidence in support of its claim on account of the ill-health of two of its main persons and, accordingly, had produced few of the BRCs and Form No.56F, being the certificate by CA for claiming deduction u/s 10A before the CIT(A).
Pr.CIT v SAHJANAND LASER TECHNOLOGY LTD. - (2018) 401 ITR 0487 (Guj) - TAX APPEAL NO. 1025 of 2017 dated 29.01.2018

2114. The Court held that the process of garbling to make pepper edible does not give rise to a different commodity distinct from raw pepper purchased so as to call such process to be 'manufacture' and thus, assessee, an exporter, engaged in procurement and export of pepper, was not entitled to claim deduction u/s 10B as 100% EOU.
Nishant Export v ACIT – (2018) 91 taxmann.com 100 (Ker) - ITA Nos. 13 & 499 of 2009 dated 25.01.2018

2115. Where the assessee had only one undertaking (STPI Unit) engaged in business of export of software and it earned interest income from fixed deposits with Banks made out of export realization and advances received in normal course of its business, the Tribunal relying on the decision of Hewlett Packard Global Soft Ltd. (2017) 87 taxman.com 182 (Kar) (FA) held that all profits and gains of 100% EOU including incidental income by way of interest on bank deposits would be entitled to 100% deduction / exemption u/s.10A / 10B.
TOSHIBA SOFTWARE (INDIA) PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0170 BangTrib - ITA No. 1717/Bang/2017 dated Mar 2, 2018

2116. The assessee had 31 independent software development units or undertakings set up at distinct locations. In its original return, it claimed deduction under section 10A only in respect of 13 units but in revised return number of units eligible for benefits under section 10A was increased from 13 to 31 and separate Form 56F was filed for each of these 31 units. The High Court, observing that no material was produced to establish that assessee had the 31 units of the assessee were distinct undertakings, disallowed its claim. The Apex Court admitted the assessee's SLP against the order of the High Court.
HCL Technologies Ltd. v ACIT - [2018] 91 taxmann.com 460 (SC) - SLP (C) NOS. 18864-18865 OF 2016 dated MARCH 13, 2018

2117. The Court allowed Revenue's appeal and denied under Section 10B benefit to assessee engaged in manufacture of handicrafts. It accepted Revenue's stand that since assessee commenced business long ago in 1950, the vital requirement of Sec. 10B of allowing deduction for 10 years period from the date of commencing production, was not met and rejected assessee's stand that irrespective of the fact that the production was commenced much earlier, it must be treated as entitled to the benefit u/s. 10B with reference to the date on which it became a 100% EOU (i.e. in June, 2007). It held that merely getting the status of a 100% EOU would not result in a change in the date of beginning of production by the said unit.
M/s Windlass Steel Craft. - TS-108-HC-2018(UTT) - Income Tax Appeal No. 2 of 2016 dated 22nd February, 2018

2118. Where the AO disallowed the assessee's claim of deduction under Section 10B but the CIT(A) allowed the assessee' alternate claim of deduction under Section 10A and directed the AO to grant assessee deduction, the Tribunal, noting that the assessee had not given any submission or documents or any revised computation of income claiming alternate deduction u/s 10A in support of its claim that why deduction if not allowed u/s 10B might be given u/s 10A, held that the CIT(A) wrongly allowed alternate claim of deduction u/s 10A by totally ignoring intention of legislature to create different sections i.e. 10A and 10B for claim of different deductions and further ignoring fact that conditions for claim of deduction under these two sections were distinguishable. It held that the CIT(A) failed to provide any justification for allowing the claim and had ignored objections raised by AO in the remand report which was contrary

to provisions of law. Accordingly, it set aside the order of the CIT(A) and remanded the matter to the AO for fresh adjudication on claim under Section 10A and directed the assessee to furnish relevant documents and details.
INCOME TAX OFFICER & ANR. vs. VIKAS SETHI & ANR. - (2018) 52 CCH 0078 DelTrib - ITA Nos. 6410/DEL/2015 dated Feb 5, 2018

2119. The Tribunal held that the claim of deduction under 10A should be allowed from year of commencement of manufacture and not from year of incorporation. It held that the benefit of deduction was available from profits and gains derived by undertaking from export of articles or things or computer software for period of ten consecutive assessment years beginning with assessment year relevant to previous year in which undertaking began to manufacture or produce such articles or things or computer software and not from the date of incorporation. Accordingly, it allowed assessee'c claim.
ASPIRE SYSTEMS (I) P. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0327 ChenTrib - I.T.A. No. 2758/Mds/2016 dated Feb 1, 2018

2120. While computing deduction u/s.10A of the Act, the AO had deducted the telecommunication and insurance expenses only from export turnover and not from the total turnover.The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order accepting deduction of telecommunication and insurance expenses from export turnover and total turnover in respect of deduction u/s. 10A in view of the jurisdictional HC decision of Tata Elxsi which was approved by the Apex Court in the case of CIT v HCL Technologies Ltd. (404 ITR 719).
ACIT vs EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP) A No.163/Bang/2012 dated 28.06.2018

2121. The assessee's claim for exemption u/s 10B was disallowed by the AO on the ground that the assessee had inflated the profit of the unit eligible for exemption, being an EOU unit. The CIT(A) gave partial relief to the assessee after examining individual heads of expenses where the AO had found inflation. The Tribunal in further appeal by the assessee, deleted the entire disallowance, inter alia, observing that the assessee had maintained separate books of accounts for both the units, i.e. eligible and ineligible, and that in the earlier years, the accounting method adopted by the assessee was not disturbed by the AO. The Tribunal further held that the AO ought to have pointed out a particular expenditure incurred for earning income in the EOU and that he could not have artificially apportioned the expenditure merely on the basis of production of the stakes. The Court dismissed the Revenue's appeal, holding that the entire issue was factual in nature and hence, no question of law arose.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. SYNPOL PRODUCTS PVT LTD - (2018) 102 CCH 0097 (GujHC) - R/TAX APPEAL NO. 526 & 527 of 2018 dated June 11, 2018

2122. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for exemption u/s 10B which was disallowed by the AO on the ground that various activities (such as ironing, packing, affixing barcode labels, emblem graphics, affixing stickers, putting silica gel pouch inside packets, putting heat treated emblem on some of garments) carried out by the assessee did not amount to manufacture or production of any article or thing in course of its business of export of garments. It held that the definition of the term 'manufacture' given in clause 9.32 of rules and regulations relating to EOU framed by the Government of India were in favour of the assessee. It also noted the Tribunal's finding that the assessee performed some functions on the garments received by it though all functions were not performed on all the garments and that the expenses incurred on account of the functions performed by the assessee were reflected in the books of account which were verified by the AO. The Court thus held that the findings on facts by the Tribunal could not be termed perverse and the functions undertaken by the assessee fell within the meaning of the term 'manufacture'.
Pr.CIT v A. P. Export - [2018] 95 taxmann.com 169 (Calcutta) - ITAT NO. 156 OF 2015 , GA NO. 3673 OF 2015 dated June 27, 2018

2123. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for deduction u/s 10B which was disallowed by the AO on ground that the aseessee-company, a 100% Export Oriented Unit (EOU), was not entitled to the said deduction in respect of 'Deemed Export' of goods made by it through third party. It was noted that the Revenue was unable to establish that both

the assessee and entity through whom such export was made by theassessee had claimed any double or repetitive benefit u/s 10B for same transaction of export. The Court relied on the decision in the case of Tata Elxsi Ltd. v. Asstt. CIT [2015] 127 DTR 327 (Kar.) wherein it was held that the exports made through a third party or another units located in India within Software Technology Park (STP) only, which as per the Exim Policy were treated 'deemed export', were entitled to the benefit of deduction u/s 10A (which contains similar provisions as section 10B).
Pr.CIT v International Stones India (P.) Ltd. - [2018] 95 taxmann.com 287 (Karnataka) - IT APPEAL NOS. 258 OF 2010 AND 561 TO 564 OF 2016 dated June 12, 2018

2124. The assessee was engaged in the business of mining and export of iron ore. It outsourced the work of processing of iron ore to another company which operated plant and machinery installed in the EOU and non-EOU, both belonging to the assessee. The assessee claimed deduction u/s 10B on the profits derived from the production of iron ore which was disallowed by the AO on the grounds that the production of iron ore was outsourced by the EOU to non-EOU. The Tribunal allowing the assessee's appeal held that the customs bonding was not a condition precedent for granting exemption u/s 10B and further concluded by stating that mere processing of the iron ore in a plant and machinery located outside customs bonded area would not disentitle the assessee from deduction u/s 10B where the iron ore was excavated from the mining area belonging to an EOU. The High Court upheld the order of the Tribunal and dismissed the appeal of the Revenue and stated that no substantial question of law arose from the Tribunal's order.
PCIT v. Lakshminarayana Mining Co. – [2018] 93 taxmann.com 142 (Karnataka) – IT Appeal Nos. 715, 714 & 716 of 2017 dated April 6, 2018

Chapter VIA

2125. Where High Court upheld Tribunal's order holding that Container Fright Station (CFS) run by assessee was eligible for deduction under section 80-IA as an infrastructure facility, SLP filed against decision of High Court was dismissed by the Apex Court.
Pr. CIT, Central-1, Mumbai v. JWC Logistic Park (P.) Ltd – [2018] 100 taxmann.com 356(SC) – SLP(CIVIL) Diary No(s).38353 of 2018-dated November 19, 2018

2126. Asseessee, an authorised franchise of BSNL, was running a private telephone exchange on basis of agreement entered into with BSNL. Assessee's claim for deduction under section 80-IA was rejected by Assessing Authority on ground that nature of service done by assessee was that of commission agent of BSNL and assessee were not providing basic telecommunication services. The Court held that since from agreement entered into between assessee and BSNL and certificate issued by BSNL to assessee, it was clear that assessee was providing basic tecommunication services to its customers, assessee was entitled to claim deduction under section 80-IA(4)(ii)
Sabdhagiri Telecom v. ITO, Ward-1(1) Coimbatore-[2019] 101 taxmann.com-245(Madras)-TCA Nos.362 & 363 of 2009-dated November 14, 2018

2127. The Apex court dismissed the SLP against High Court ruling that where on examination of special audit report, filed after passing of original assessment order, it was found that claims made by assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to a charitable trust under section 80G were prima facie bogus as assessee could not substantiate their genuineness by providing relevant documents and evidences, reassessment notice on basis of said report was justified.
Multi Commodity Exchange of India Ltd. v Dy. CIT-[2019] 101 taxmann.com-13(SC) Special Leave to Apeal (C) No(s).320523 of 2018 -dated December 14, 2018

2128. The Court held that where assessee-trust had claimed approval under section 80G(5)(vi), since neither Commissioner (Exemption) had recorded any finding nor revenue had brought to fore, any breach of conditions enumerated in clauses (i) to (v) of section 80G(5) by assessee, approval under section 80G(5)(vi) could not be denied merely because donations made by assessee-trust were of insignificant amount.
CIT, Exemption, Jaipur v Mata Padmavati Shyamdaya Charitable Trust-[2019] 101 taxmann.com 82(Raj.)-D. B. ITA No. 165 of 2018-dated December 4, 2018

2129. Where assessee's claim for deduction under section 80P(2)(a)(i) was rejected on ground that it was a co-operative bank, the Tribunal remanded back the matter to Assessing Officer for consideration afresh, with a direction to assessee to produce a certificate from RBI that it did not possess license for doing banking business and further that business carried on by assessee was not akin to business of a co-operative bank.
Sri Venugopalkrishna Credit Co-operative Society Ltd. v. ITO, Ward-5(2)(4), Bglore-[2019] 101 taxmann.com 49(Bangalore-Trib)

2130. Assessee was a charitable trust registered under section 12A-it was also granted recognition undersection 80G(5)(vi). During relevant year, assessee filed an application in form 80-G seeking renewal of recognition. Director (Exemption) rejected said application on ground that income of assessee- trust was not being used for charitable purpose. Tribunal confirmed order passed by Director (exemption).The Court held that whether applicability of income of assessee whether it is for charitable purpose or not are all questions of fact and necessarily can be gone into by assessing authority only at time of assessing income of asessee consequently it held that, impugned order passed by authorities below holding that assessee was not eligible for renewal of approval under section 80G as its income was not used for charitable activities, was unjustified and deserved to be set aside.
D.R. Ranka Charitable Trust v DIT BGL- [2019] 101 taxmann.com-124(Karnataka) ITA No.180 of 2010-dated November 20, 2018

2131. Where assessee-trust had claimed approval under section 80G(5)(vi), the Court held that since neither Commissioner (Exemption) had recorded any finding nor revenue had brought to fore, any breach of conditions enumerated in clauses (i) to (v) of section 80G(5) by assessee, approval under section 80G(5)(vi) could not be denied merely because donations made by assessee-trust were of insignificant amount.
CIT, Exemption, Jaipur v. Mata Padmawati Shyamdaya Charitable Trust-[2019] 101 taxmann.com 82 (Rajasthan)-D.B. IT Appeal No. 165 F 2018 dated December 4, 2018

2132. Where assessee, engaged in business of production of L-Menthol, which was eligible for deduction under section 80-IB, entered into forward contracts to hedge itself against huge price fluctuations in prices of raw material. The Court held that since assessee entered into such contracts only for purpose of making its business more profitable, said activity was to be regarded as a part of assessee's manufacturing activity and, thus its claim for deduction under section 80-IB in respect of profits derived from hedging contracts, was to be allowed.
Pr CIT-3 v. Jindal Drugs Ltd. - [2019] 101 taxmann.com 316 (Bombay)-IT Appeal Nos. 1517, 1545 & 1642 of 2016 dated December 17, 2018.

2133. Where assessee, a co-operative credit society, was engaged in business of providing credit facilities exclusively to its members and had received interest on surplus fund parked with other societies and bank, and Assessing Officer observed that wrong claim of deduction under section 80P(2) was made in respect of interest income received from nationalized banks as interest income earned from other than co-operative societies are not eligible for deduction under section 80P. The Tribunal held that since assessee had not claimed deduction in respect of interest earned on FDs of banks, Assessing Officer had grossly erred in making disallowance of deduction in relation to amount, which was never claimed by assessee in return of income.
Dy. CIT, Circle- 2 (3), Surat v. Bardoli Vibhag Gram Udyog Vikas Co-op Credit Society Ltd. -[2019] 102 taxmann.com 110 (Surat-Trib.)-IT Appeal No. 2617 (AHD.) of 2016 - dated December 18, 2018

2134. The Tribunal held that profits and losses of all eligible undertakings are not to be netted for purpose of calculating deduction under section 80-IC and are to be taken on a standalone-basis.
Milestone Gears (P.) Ltd. v. A.C.I.T., Circle Parwanoo-[2019] 101 taxmann.com 314 (Chandigarh - Trib.)-IT Appeal Nos. 883 to 885 (CHD.) of 2017 -dated December 6, 2018

2135. The Tribunal held that where assessee had availed deduction under section 80-IC for a period of 5 years at rate of 100 per cent, he would be entitled to deduction on substantial expansion for remaining 5 assessment years at rate of 30 per cent and not at rate of 100 per cent.
Milestone Gears (P.) Ltd. v. A.C.I.T., Circle Parwanoo-[2019] 101 taxmann.com 314 (Chandigarh - Trib.)-IT Appeal Nos. 883 to 885 (CHD.) of 2017 -dated December 6, 2018

2136. The Tribunal held that plant and machinery installed by city development authority for water supply project would be eligible for 100 per cent deduction under section 80-IA(4)(1).
Haldia Development Authority v. Asst. CIT, Circle- 27, Haldia-[2019] 102 taxmann.com 235 (Kolkata - Trib.)-IT Appeal Nos. 535 to 537 & 2353-2354 (KOL.) of 2017-dated December 19,2018

2137. The Tribunal held that road developed by city development authority for water supply project would be eligible for 10 per cent deduction under section 80-IA(4)(1). Road developed by assessee would not fall under item (1) of New Appendix, Part-A under Rule 5 because road cannot be used for residential purpose. Further, such road would also not fall under item (3) of New Appendix, Part-A under Rule 5 because no machinery and plant could be installed on road. Thus, it would fall under residual item (2) which provides for 10 per cent depreciation.
Haldia Development Authority v. Asst. CIT, Circle- 27, Haldia-[2019] 102 taxmann.com 235 (Kolkata - Trib.)-IT Appeal Nos. 535 to 537 & 2353-2354 (KOL.) of 2017-dated December 19,2018

2138. The Tribunal held that where Commissioner (Exemption) denied section 80G approval for want of some documentary evidence to justify genuineness of activities of assessee-trust, since requisite for adjournment and compliance thereof were remained unattended, matter needed to be re-examined at end of Commissioner (Exemption) for proper evaluation of facts and genuineness of activities of trust. Accordingly, the matter was remanded.
Shree Surat Jilla Leuva Patidar Samaj v. CIT, (Exemption), Ahmedabad- [2019] 102 taxmann.com 162 (Surat-Trib.)-IT Appeal No. 529 (SRT.) of 2018 dated December 19, 2018

2139. The Tribunal held that obtaining occupation certificate is not a mandatory requirement in order to ascertain whether building was completed or not for purpose of deduction under section 80-IB (10).
Puran Ratilal Mehta v. Asst. CIT, Circle 23(3), Mum. - [2019] 102 taxmann.com 187 (Mumbai - Trib.) IT Appeal Nos. 1274 to 1279, 1320 to 1325 of 2011 & 6646 of 2012 dated December 5, 2018

2140. Assessee filed return of income claiming deduction u/s 80IA(2A).During assessment proceeding, AO noted that profits and gains from revenue earned from sharing of infrastructure facilities in form of cell-sites and fibre cable with other companies or undertakings were engaged in 'telecommunication services'.That would amount to leasing of said assets to third parties and income from leasing would not be income derived from 'telecommunication services'.AO also found that assessee was not engaged in business of leasing of assets.AO completed assessment after denying benefit of deduction u/s 80IA(2A) to assessee.CIT(A) held that revenues received from sharing of cell-sites and cables was income directly and inextricably linked with business income of undertaking engaged in providing telecommunication services.Such amount would be income generated from telecommunication services.The Tribunal confirmed findings of CIT(A) and thereby dismissed Revenue's appeal. It held that finding of AO that income from sharing fibre cables and cell-sites was income by way of leasing and hence not includable in revenue earned for computing profits from 'telecommunication service' was farfetched and misconceived.Assets i.e., cell-sites and fibre cables were not transferred.Third parties wanting to avail spare capacity were only allowed usage of said facilities for consideration.Payments so made by third parties were to avail and use telecom infrastructure.It would qualify as payments received for availing 'telecommunication services' as was case when a mobile phone user paid assessee for availing mobile telecom infrastructure.Income from 'telecommunication services' could be earned in different ways and manner.Assessee's income from third parties who availed telecommunication services, in form of payments received by assessee from third persons for using fibre cables and cell towers network qualified for deduction u/s 80IA.This income or receipts had to be treated as income earned by undertaking from 'telecommunication services'.Assessee had also paid bank charges as cheques issued by some of customers were dishonoured.Cheque bounce charges were also levied to customers but entire amount could not be recovered.AO held that late payment charges or cheque

bouncing charges was in nature of penalty and was not income derived from telecommunication business.Expression “income derived from” was missing and was not mandate of legislature in sub-section (2A) to s. 80IA. The Court held that finding of Tribunal that income from sharing of fibre cables and cell-sites qualify for deduction u/s 80IA(2A).

Pr. CIT vs. VODAFONE MOBILE SERVICES LTD (2019) 103 CCH 0291 DelHC INCOME TAX APPEAL Nos. 782/2017 & 784/2017 dated 03.12.2018

2141. Assessee was Co-operative Agricultural and Rural Development Bank, registered under Kerela Co-operative Societies Act, 1969 and the area of operation of assessee-society was confined to Kottayam, Changanasserry and Vaikom Taluks.The Tribunal denied deduction u/s 80P as the assessee’s area of operation was not confined to a taluk i.e one Taluk as mentioned by explanation (b) to section 80P but to 3 different taluks.

Kottayam Co-operative Agricultural & Rural Development Bank Ltd vs ITO- (2018) 54 CCH 0091 CochinTrib- ITA No 295/Coch/2018 dated 17.10.2018

2142. Assessee filed its return of income for relevant AY and claimed deduction u/ 80-IA. However, during assessment, AO held that loss of an eligible industrial unit was required to be set off against profit of other eligible industrial unit since deduction u/s 80-IA(1) was allowed to profit and gains derived from "business" referred to in s. 80-IA and not to undertaking. Therefore, AO disallowed deduction claimed by assessee. On appeal, CIT(A) deleted addition made by AO. Held, it had been held in various decisions that while computing deduction u/s 80-IA, loss of one eligible unit was not to be set off or adjusted against profit of another eligible unit. Since order of CIT(A) was in consonance with law laid down by various High Courts and various Benches of Tribunal, therefore, there was no infirmity in order of CIT(A) and Revenue’s appeal was dismissed.

DCIT vs Godawari Power & ISPAT Ltd- (2018) 54 CCH 0360 RaipurTrib- ITA No 365/RPR/2014 & C.O. No 12/RPR/2018 dated 01.10.2018

2143. The Supreme Court dismissed Revenue’s SLP in case of an assessee being a charitable organization which was granted certificate u/s 80G in 1995 and since then every year the certificate of renewal was granted. The Commissioner in the present year had come up with some fresh questions with regard to the salaries being paid to the doctors who was running the organization. The Court noting the above had held that where assessee was granted and renewed certificate of exemption under section 80G every year since its registration as charitable organization, and with the Tribunal being the last authority for fact finding categorically recording that there were no new circumstances, the CIT was not justified in denying renewal application during relevant assessment year.

CIT vs Khairabad Eye Hospital- (2018) 98 taxmann.com 266 (SC)- SLP No 29389 of 2018 dated 20.09.2018

2144. The Tribunal held that where donation had been paid by division which is demerged from other company and merged with assessee’s company, there is no warrant to deny deduction in hands of assessee on the ground that the donation receipt was in the name of company whose division had demerged and now merged with the assessee company.

DCIT vs Adani Gas Ltd- (2018) 54 CCH 0090 Ahd Trib- ITA No 775/Ahd/2014, 2346, 2797/Ahd/2015, 2775,2776/Ahd/2016 dated 17.10.2018

2145. The AO denied deduction claimed u/s. 80IB/ 80IC with respect to interest income for the reason that same had not been derived from eligible business and the AO's order was upheld by CIT(A). The Tribunal on appeal held that, crucial expression 'derived from' used in deduction provision, meant relevant income to be having a direct nexus with business activity or profits and gains derived there from. The Tribunal observed that the Court in assessee's own case (reported in 231 Taxman 585(Cal)) had already upheld Revenue's very stand and thus the Tribunal confirmed the denial of deduction u/s 80IB/IC w.r.t interest income.

DCIT vs Reckitt Benckiser (India) Ltd- (2018) 54 CCH 0033 Kol Trib- ITA No 2113,2150, 2114, 2151, /Kol/2013, 760 & 762/Kol/2014 dated 14.09.2018

2146. The assessee had claimed deduction u/s 80IB(9) and during completion of assessment proceeding the AO observed that similar deduction claimed by assessee in the preceding AYs were not allowed and CIT(A)'s decision in allowing assessee's claim was not accepted by Department in previous AYs, thus the AO disallowed assessee's claim of deduction. The Tribunal held that activity of prospecting, exploration and production of mineral oil and natural gas undertaken by assessee, whether satisfied eligibility conditions of s. 80IB(9), stood concluded in assessee's favour on the basis of assessee's previous year orders. Further, an additional ground was filed by assessee, where it had claimed deduction u/s 80IB(9) by treating each oil well as an independent undertaking. The Tribunal noted that the provision of section 80IB(9) was amended by Finance Act, 2009 with retrospective effect from 1st April 2000 by inserting an Explanation which provided that for computing deduction under said provision all blocks licensed under a single contract should be treated as a single undertaking. The Tribunal noted that the AR had relied on the case of Niko Resources Gujarat HC which allowed treating each oil well as independent undertaking and thereby claiming deduction u/s 80IB(9). The Tribunal observed that the SLP against the Gujarat HC had been accepted and it stated that all appeals pertaining to such issue shall be decided after the rulying of the Supreme Court. Thus, the Tribunal held that the issue raised as additional ground relating to 80IB(9) was to be restored to AO for fresh adjudication and to be decided in line with the ruling to be delivered by the Supreme Court.

Tata Petrodyne Ltd vs ACIT- (2018) 54 CCH 0285 Mum Trib- ITA No 4887,5571,4914/Mum/2012 dated 28.09.2018

2147. The Court held that once the initial AY commences and an assessee, by virtue of fulfilling the conditions laid down u/s 80IC(2), starts enjoying deduction, there cannot be another "Initial AY" for the purposes of section 80IC within the period of 10 years, on the basis that it had carried substantial expansion in its units and relied on the judgement of Apex Court in case of Classic Binding Industries (Civil Appeal No 7208 of 2018).

Admac Formulations vs CIT- (2018) 103 CCH 0230 PHHC- ITA No 332 of 2015 dated 06.09.2018

2148. The Tribunal held that Assessee was entitled to exemption u/s 80IB(10) where it proves that the land held as capital asset was converted into stock-in-trade before entering into Joint Development Agreement and the assessee itself had offered the capital gain accrued on conversion of capital asset into stock-in-trade. It thus held that the assessee was to be allowed exemption under 80IB (10) with respect to the profit earned on sale of its flats. However, during the course of hearing, a doubt was raised as to whether the assessee had converted his capital asset as a part of stock-in-trade before entering into JDA. As this aspect was never verified by the lower authorities though the assessee had placed the documentary evidence in support of his contentions, the Tribunal remitted the matter to the concerned authorities for verification with the direction that, if the assessee succeded in proving that capital asset was converted into stock in trade, before entering into JDA, claim of exemption of deduction u/s 80IB(10) was to be allowed.

Raja Reddy (HUF) vs ACIT- (2018) 54 CCH 0005 Bang Trib-ITA No 147/Bang/2016 dated 12.09.2018

2149. The Tribunal held that where assessee, engaged in providing telecommunication services, did not claim deduction under section 80-IA in assessment year 2006-07 (previous AY) as its gross total income in said year was nil, mere fact that in audit report filed in Form No. 10CCB, initial year of claim of deduction by inadvertent error was mentioned as assessment year 2006-07, could not be a ground for holding that assessment year 2006-07 was to be regarded as initial assessment year for claim of deduction under section 80-IA(2). (Current AY 08-09).

BT Global Communications P Ltd vs JCIT- (2018) 98 taxmann.com 475 (Mum-Trib)- ITA No 5354 of 2012 dated 12.09.2018.

2150. The assessee-company engaged in manufacturing and sale of packaging material, had three manufacturing units out of which income from Jammu unit was exempted under section 80-IB. During the year it made certain royalty payment for licensing rights regarding improved sachet pouch to be manufactured at Jammu unit. However, it claimed deduction under section 80-IB in respect of Jammu unit, by not treating royalty as payment made by Jammu unit, but as expenditure was incurred by corporate office. The AO held that royalty payment should be taken into consideration for computing deduction under section 80-IB for Jammu unit. The Tribunal held that as assessee due to unforeseen reasons could not use technical know-how at either units, therefore, royalty payment could not be considered for section 80-IB deduction. The Court observed that the AO with reference to nature of sachet pouches manufactured at Jammu unit had held that assessee had manufactured and produced sachet pouches using technical know-how and the Tribunal had reversed said finding without any discussion and explanation and arrived at a completely contrary view. Thus, the Court directed that the matter required reconsideration by Tribunal.

PCIT vs Montage Enterprises (P) ltd- (2018) 99 taxmann.com 3 (Delhi)- ITA No 892 of 895 of 2016 dated 06.09.2018

2151. Assessee, a primary agricultural credit society was denied deduction u/s 80P(2) by the AO on the ground that assessee was primarily doing business of banking and with the insertion of provisio to section 80P(4) w.e.f 01.04.2007, no deduction was allowable. Further, the AO treated interest income received on investments made with co-operative banks as 'income from other sources', thereby denying claim of deduction u/s 80P(2)(a)(i) on the account of proviso to section 80P(4).
The Tribunal relied on Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR 371] wherein it was held that co-operative societies engaged in providing credit facilities to its members who had in the course of business made investments with treasury, bank etc and earned interest income, were eligible for deduction u/s 80P(2)(a)(i) in respect of the same.Thus, the Tribunal concluded that the assessee had made investments with other co-operative banks in course of its business of providing banking/ providing credit facilities to its members, it was entitled to deduction u/s 80P(2)(a)(i) in respect of interest income received from such investments.

ITO vs Kazhakuttam Service Co-op Society- (2018) 54 CCH 0029 Cochin Trib- ITA No 184,196/Coch/2018 dated 19.09.2018

2152. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that where assessee-company had development infrastructure facilities and allotted plots to 34 units in assessment year 2010-11 which was more than minimum requirement as per Industrial Park

Scheme, 2008, assessee became eligible for benefit under section 80-IA from assessment year 2010-11 itself.

CIT v. Devraj Infrastructures Ltd. [2018] 96 taxmann.com 329/257 Taxman 336(SC) SLP (Civil)

Diary No. 19442 of 2018 dated July 6, 2018

2153. The Court held that where in original assessment proceedings Assessing Officer allowed claim of assessee under section 80-I, reopening of assessment in absence of recording of reason that income chargeable to tax had escaped assessment was unjustified.

CIT v. Elgi Tread (India)Ltd [2018] 96 taxman.com 254 (Mad.)- Tax Case (Appeal) Nos. 1313 to 1324, 1326 & 1327 of 2007 dated July 4, 2018

2154. The Court held that where assessee itself failed to make claim for deduction under section 80-I in its return, same was not a mistake which was apparent from record thus, there was noscope for invoking provisions of section 154 so as to grant deduction under section 80-I

Lakshmi Card Clothing Mfg. Co.(P.) Ltd. v. Dy.CIT [2018] 98 taxmann.com 445(Mad.)- Tax Case

(Appeal) No. 944 of 2008 dated September 24, 2018

2155. The Apex Court dismissed the SLP filed by the Revenue against the High Court order wherein it was held that local authorities can approve a project as housing project along with commercial user to extent permitted under DC Rules / Regulations framed by respective local authorities and, once approved, it has to be treated as housing project eligible for deduction u/s 80-IB(10)

CIT v Suyog Shivalaya - [2018] 96 taxmann.com 273 (SC) - SLP (Civil) Diary No(S). 22783 OF 2018 dated July 20, 2018

2156. The Court allowed the assessee's petition against the DIPP's order withdrawing the approval granted under Industrial Park Scheme, 2002 and under section 80-IA only on the ground that the built up area of property in question was less than area declared by assessee at the time of making application for grant of the said approval. The Court quashed the said order noting that there was no stipulation as to minimum constructed area of industrial park for availing benefit of the said Scheme.

Finest Promoters (P.) Ltd. v DIPP & Others [2018] 96 taxmann.com 352 (Delhi) - W.P. (C) NO. 3162 OF 2014 dated July 12, 2018

2157. The Tribunal rejected the assessee's claim for exemption u/s 10(23G) with respect to investments made in the companies which were not generating or producing electricity and were only distributing electricity, whereas the said exemption is allowed with respect to investment in companies engaged in business referred in section 80-IA(4) i.e. carrying on business of developing, operating and maintaining or developing or maintaining infrastructure facility. It thus held that the said investments were not eligible for exemption u/s 10(23G).

Cholamandalam MS General Insurance Co. Ltd. v. DCIT - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

2158. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had held that an airport is an infrastructure facility as contemplated in sub-section (2) of section 80-IA entitled to benefit of deduction as provided in sub-section (1), provided, it satisfies conditions specified in clauses (a), (b) and (c) of sub-section (4) thereof.

DCIT v Cochin International Airport Ltd - [2018] 96 taxmann.com 470 (SC) - SLP (Civil) Diary No.(S). 22821 OF 2018 dated July 27, 2018

2159. The Apex Court dismissed the SLP filed by the Revenue against the High Court's order wherein the High Court had held that an 'undertaking or an enterprise' which was established after 7-1-2003 and carried out 'substantial expansion' within specified window period, i.e., between 7-1-2003 and 1-4-2012,

would be entitled to deduction on profits @ 100% u/s 80-IC post the said expansion, though the first five years starting from the initial assessment year during which it could claim deduction @100% had expired and the undertaking was otherwise eligible for deduction @ 25% for subsequent five years, if it undertakes further 'subtantial expansion' subsequently within the specified window period.
PR.CIT v vs. MAHABIR INDUSTRIES - (2018) 102 CCH 0376 ISCC - Special Leave to Appeal (C) No(s). 16863/2018 WITH SLP(C) No. 16860/2018 (XIV) dated Jul 24, 2018

2160. The Court allowed the assessee's claim for deduction u/s 80-IA in respect of interest earned on fixed deposits and compensation received on account of non-supply of spare parts, following its earlier decision in the case of CIT vs. Jagdishprasad M. Joshi [318 ITR 420 (Bom)] wherein it was held that income earned on the fixed deposit from the bank had to be extended deductions u/s 80IA since as per the said section, deduction is allowable with respect to profits and gains derived from 'any business' of an industrial undertakings. It held that same reasoning would apply for the compensation received for non supply of spare parts also.
TEMA EXCHANGERS MANUFACTURES PVT. LTD. vs. ACIT (2018) 102 CCH 0179 MumHC – ITA No. 415 of 2004 dated July 18, 2018

2161. The Court allowed assessee's appeal against the Tribunal's order and held that the provisions of section 80IA(9A) introduced by the Finance No.2 Act, 1998, which inter alia provided that deduction u/s 80IA will be available only on profits and gains of units after deducting amount availed of as deduction u/s 80HHC (if any), was explicitly prospective w.e.f. 1st April, 1999 and could not be applied for AY 1997-98. It held that the provision was neither declaratory or clarificatory nor it was in nature of explanation and Supreme Court in DCIT vs. Core Health Ltd [298 ITR 194 (SC)] has held that when provision was introduced with effect from a particular date, then it would not have retrospective effect unless it was expressly stated to be so. Accordingly, the Court held that in absence of specific prohibition, the assessee was eligible for taking benefit of deduction u/s 80HHC as well as u/s 80IA on the same income.
INDIAN GUM INDUSTRIES LTD. vs. JCIT (2018) 407 ITR 0261 (Bom) – ITA No. 802 OF 2002 dated 13th July, 2018

2162. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee-society's claim for deduction u/s 80P and held that assessee being a primary agricultural credit society, registered under Kerala Cooperative Societies Act and classified so, under that Act was entitled to the said deduction. The AO had denied the impugned claim opining that the assessees was primarily engaged in the business of banking and therefore, in view of the provisions of section 80P(4) which was inserted with effect from 01.04.2007, the assessee was not entitled to deduction u/s 80P. The Tribunal, however, decided in favour fo assessee by relying on the decision in the case of Chirakkal Service Co-op Bank Ltd. 384 ITR 90 (Ker HC) wherein it was held that income-tax authorities could not probe into the object of the societies to undertake agricultural credit activities and provide loans and advances for agricultural purposes and such primary agricultural credit societies, not being engaged in banking business, were entitiled to benefit of deduction u/s 80P.

ITO vs Kuthannur Service Co-operative Bank Ltd. [2018] 54 CCH 0278 (Coch Trib) - ITA No.467/Coch/2018, 468/Coch/2018, 469/Coch/2018, 470/Coch/2018 (CO No.77/Coch/2018,

80/Coch/2018, 78/Coch/2018, 79/Coch/2018) dated 29.11.2018

2163. The Tribunal dismissed Revneue's appeal against CIT(A)'s order allowing the assesse-society's claim of deduction u/s 80P in respect of net income derived by extending credit facilities to its members which was disallowed by the AO opining that assessee could not be considered as Primary Agricultural Credit Society as it was engaged in banking business and only negligible percentage of loans disbursed by assessees were for agricultural purposes. The Tribunal relied on ratio laid down in Nannambra Service Co-operative Bank (ITA Nos. 436-438/Coch/2016) wherein it was held that since the assessee had extended credit facilities only to members, income generated was only out of transaction with members thus, deduction u/s 80P was to be allowed only for said income.

ITO vs Chombal Service Co-operative Bank Ltd. [2018] 54 CCH 0282 (Coch- Trib.)- ITA No.401 /Coch/2018 and 402/Coch/2018 dated 30.11.2018

2164. The Tribunal accepted Revenue's contention that the assessee (a co-operative society) was not eligible to claim deduction u/s.80P(2)(a)(i) for interest income earned by investing its surplus funds in deposits with nationalized and state banks since the said interest income had to be regarded as income under head "income from other sources" as it was not derived from business of providing credit facility to its members. However, further noting that the assesse-society had also earned interest from investments made in deposits as per section 64 r.w.s. 63 of Multi-State Co-operative Societies Act, 2002 which was attributable to business of providing credit facility to its members on which deduction u/s 80P(2)(a)(i) would be available, the Tribunal held directed AO to re-do computation afresh and allowing deduction u/s 80P(2)(a)(i) with respect to interest income earned as per section section 64 r.w.s. 63 of Multi-State Co-operative Societies Act, 2002.

Asst.CIT vs Central Bank of India Employees Co-operative Society Ltd. [2018] 54 CCH 0291 (Kol-Trib.)- ITA No.1868 /Kol/2017 dated 30.11.2018

2165. The AO had denied assessee's claim of deduction u/s 80P(2) noting that assesse, a cooperative society, had been granted a license to carry on banking business by RBI and as per section 80P(4), the said deduction was not available to any co-operative bank. Since the assesse claimed that though it was named as a bank, it was a co-operative society and was not carrying banking business, the AO sought clarification from RBI and the RBI replied stating that the assessee was a co-operative bank. The CIT(A) confirmed the AO's order relying on RBI's reply. Noting that RBI's reply was never confronted to the assessee, though it was explicitly relied upon to decide against the assessee, and the financials of the assessee for the two years under consideration had not been referred to by the AO/CIT(A) to determine whether assessee was carrying on banking business or not, the Tribunal remitted the matter to the file of the AO, to decide the issue afresh in accordance with law.

Ordnance Equipment Factory Prarambhik Bank Ltd vs Asst CIT [2018] 54 CCH 0267 (Luck-Trib.)- ITA No.783 and 784 /LKW/2017 dated 16.11.2018

2166. The Apex Court dismissed Revenue's SLP filed against the High Court order upholding Tribunal's order wherein it was held that Container Freight Station (CFS) run by assessee was eligible for deduction u/s 80-IA as an infrastructure facility.

Pr.CIT vs JWC Logistic Park Pvt Ltd. [2018] 103 CCH 0273 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38353/2018 dated 19.11.2018

2167. The Apex Court dismissed assessee's SLP against the High Court order wherein it was held that deduction u/s 80P could not be claimed without filing a return by the assessee co-operative society

KUTHUPARAMBA RANGE KALLUCHETHU VYAVASAYA THOZHILALI SAHAKARANA SANGHAM LTD vs. CIT [2018] 103 CCH 0279 (ISCC)- SLP (CIVIL) Diary No(s). 41386/2018 dated 26.11.2018

2168. The Apex Court dismissed Revenue's SLP against the High Court order wherein it was held that since new industrial unit set-up had separate premises, separate labour force and separate license and electricity connection from the existing units as well as the value of machines transferred from existing unit to the said new unit was within permissible limit of 20%, the new unit would be entitled to claim deduction u/s 80-IB separately

Asst CIT vs Leo Fastners [2018] 103 CCH 0270 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 3953/2018 dated 16.11.2018

2169. The Tribunal dimissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction u/s 80IA which was disallowed by the AO noting that the assessee was not the owner of infrastructure projects and thus opining that it was merely a contractor. The CIT(A) treated assesse as an infrastructure developer noting that (i) it had incurred expense for purchase of material, (ii) it had executed development of work before handing over possession to Government and (ii) maintainence was still undertaken by assessee for the said infrastructure faclity. It was noted that CBDT Circular dated 18-05-2010 clearly indicated that such activity was eligible for deduction u/s 80IA(4). Further, the CIT(A) had followed orders of his predecessor for earlier years. Accordingly, the Tribunal dismissed Revenue's appeal

Dy.CIT vs Aquafil Polymers Co. P Ltd [2018] 54 CCH 0175 (Ahd Trib)- ITA No.161/Ahd/2015 dated 01.11.2018

2170. The Court allowed assessee's appeal against Tribunal's order wherein the Tribunal had held that the assessee-society would not be eligible to claim deduction u/s 80P(2) on the income from the sale of goods for Public Distribution System as directed by the Government of Tamil Nadu on the ground that a credit society was not authorized to carry on such acticity. The Court followed it own decision in the assessee's case for an earlier year wherein it was held that directives issued by the Government of Tamil Nadu, as communicated by the Registrar of Cooperative Societies, were binding on the assessee and, accordingly, directed the AO to extend the benefit of deduction u/s 80P(1) r.w s. 80P(2)(a)(i).

Kodumudi Growers Co-operative Bank Ltd. vs ITO [2018] 103 CCH 0102 (Chen HC)- Tax Case Appeal No. 571 of 2011 dated 01.11.2018

2171. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for pro-rata deduction u/s 80-IB(10) with respect to profits earned from development of housing project after excluding the profit earned on sale of two flats with respect to which the assessee had violated the condition stipulated in clause (f) of the said section (prohibiting allotment of more than one flat to an individual or his family members). The CIT(A) had rejected Revenue's contention that entire deduction should be disallowed relying on the decision in the case of CIT v. Arun Excello Foundation Pvt. Ltd. [(2013) 86 DTR 99 (Mad HC)] wherein it was held that where both commercial and residential units are built, proportionate deduction to extent of compliance would be allowed u/s 80-IB(10).

ACIT v Namrata Developers TS-559-ITAT-2018(PUN) - ITA Nos.1974 to 1976/PUN/2016 dated 25.09.2018

2172. The Tribunal held that Section 80IA inter alia provides for 100% deduction of Income derived from (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any "new infrastructure facility". The tribunal held that the assessee was not entitled to the benefit of Section 80IA w.r.t. annuity received from NHAI in relation to maintainence and operation of an "existing" four lane highway since, it was not incurred for any new infrastructure facility. Further noting that, assessee had received a Combined annuity amount for maintainence and operation of an "existing" four lane highway as well as for laying down and widening of existing two way carriage way to four lane and the latter activity was eligible for deduction u/s 80-IA, the Tribunal remanded the matter back to CIT(A) with the direction to call for records from NHAI for apportionment of annuity for ascertaining the benefit to be allowed under section 80-IA

GMR Tambaram Tindivanam Expressways Ltd v DEPUTY COMMISSIONER OF INCOME TAX [TS-692-ITAT-2018 9(Bang)]- ITA No. 545&546/Bang/2018, 1130&1131 /Bang/2018 dated 26.11.2018

2173. The Court reversed Tribunal's order and held that assessee's project in Abu Dhabi for 'refinery shut down' qualified as 'foreign project' entitled to deduction u/s 80HHB(2).The AO had denied benefit

holding that assessee's work had not contributed to construction of any road, building, dam, bridge or other structure nor did it pertain to assembly or installation of any machinery or plant(as required under the said section),after going through agreements & drawings, etc. but it was part of general refinery shut down which was purely repair and maintenance work.The CIT(A) accepted assessee's contentions that the term "shut down" does not denote repairs and maintainance but is only a technical term, which is peculiar to the industry in question and held that assessee's project came within the scope of foreign project u/s 80HHB as assembly or installation of machinery or plant outside India. The Court affirmed the CIT(A)'s finding and allowed assessee's appeal.
SPIC JEL ENGINEERING vs. ASSISTANT COMMISIONER OF INCOME TAX [TS-627-HC-2018(MAD)] Tax Case Appeal No. 1420 of 2008 dated 09.10.2018

2174. The Tribunal held that interest from customers on delayed payments is eligible for deductions u/s 80I & 80IA, following the decision in the case of CIT vs Vidyut Corporation 324 ITR 221 (Bom HC) wherein it was held that payment of interest on account of delayed payment of price of goods sold was part of sale price and was profit derived from industrial undertaking for purposes of section 80-IB.
Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018

2175. The Tribunal allowed assessee's claim for deduction u/s 80IB(10) which was disallowed by the AO (i) noting that the assessee had earned profits from eligible projects and incurred loss in non-eligible projects, thereby resulting in overall loss under the head `Profits and gains of business or profession' and and (ii) by invoking provisions of section 80AB (which provides that deduction will be allowed only to the extent the gross total income includes income from eligible unit) r.w.s. 80B(5) (which defines "gross total income" to mean `the total income' computed in accordance with the provisions of the Act, before making any deduction under Chapter VI-A). The Tribunal held that, based on conjoint reading of sections 80AB and 80B(5), it is the income of the eligible projects alone which should be considered on standalone basis, rather than the income under the head `Profits and gains of business or profession', for the purposes of granting deduction, albeit with the overall ceiling of the gross total income. Accordingly, since the amount of eligible income, as claimed by the assessee, was less than the amount of gross total income, it held that the provisions of section 80AB did not apply adversely to the assessee's case. Thus, assessee's appeal was allowed.
V.B Patil v ITO [TS-726-ITAT-2018(PUN)] – ITA No. 1624/PUN/2017 dated 17.12.2018

2176. The Tribunal upheld the disallowance of deduction u/s 80P(2)(a)(i) claimed by assessee (a co-operative society engaged in banking business) in respect of 'gross' commission receipts (arising on account of collecting electricity charges for & on behalf of MSEB), noting that the amount of gross receipt from MSEB commission was less than the amount of expenses incurred for earning such commission and thus, there could be no distinct deduction u/s 80P because of the negative income earned by assessee from this activity. It held that the eligible amount for deduction can be the `income' and not the `gross receipts' from the specified source.
Panvel Peoples Nagri Sahakari Patsanstha Maryadit v ITO [TS-706-ITAT-2018(PUN)] - ITA No.2935/PUN/2017 dated 07.12.2018

2177. The Court held that stilt parking is part and parcel of housing project and thus eligible deduction u/s 80IB(10).
CIT v. Gundecha Builders (2019) 102 taxmann.com 27(Bom) (HC) - IT APPEAL NO. 347 OF 2016 dated 31.07.2018

2178. The Tribunal held that the assessee, a credit cooperative society authorized by the registrar of cooperative societies to accept deposits and lend money to its members and whose main object was to provide credit facility to members, was entitled to deduction u/s 80(P)(2)(a) on interest income earned

from fixed deposits with nationalized banks maintained to ensure liquidity and provide ready availability of funds for repayment of deposits on redemption/maturity.
BALIRAJA GRAMIN BIGARSHETI vs. INCOME TAX OFFICER - (2018) 52 CCH 0247 PuneTrib - ITA Nos. 50 & 51/PUN/2017 dated Mar 26, 2018

2179. The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction u/s 80-IB(10) which was disallowed by the AO on the ground that the assessee could not produce the completion certificate for the project completed within a period of 4 years (i.e. 05.03.2008) from the date of commencement certificate (i.e. 05.03.2004). The Tribunal had allowed the assessee's appeal following the decision in the case of ITO v Sai Krupa Developers [ITA No. 3661/Mum/2011] wherein it was held that prior to 31.03.2005, there was no requirement of obtaining any completion certificate. Noting that the Revenue's appeal against the said decision in the case of Sai Krupa Developers (supra) was also dismissed by the Court [ITA No. 1540 of 2012 (Bom)], the Court dismissed the present appeal too, holding that deduction u/s 80-IB(10) could not be denied to project approved prior to 31.03.2005 for failure to file completion certificate.
Pr.CIT v Krish Enterprises – ITA No. 1146 of 2015 (Bom) dated 05.03.2018

2180. Tribunal rejected assessee's claim of deduction u/s 80IA on sales tax subsidy received from State Govt. as an incentive for electricity generation through windmill upholding revenue's contention that there was no first-degree nexus between sales tax incentive and manufacturing activity of eligible unit. Tribunal also rejects assessee's alternative submission to treat the incentive as non-taxable capital receipt and reliance placed on various cases in this regard *inter alia* including CIT v Meghalaya Steels Ltd. [(2016) 383 ITR 217 (SC)], CIT v Chaphalkar Brothers [(2013) 351 ITR 309 (Bom)] and Garden Silk Mills v CIT & another [(2017) 394 ITR 192 (Guj)]. Tribunal instead relied on the co-ordinate bench ruling in the case of Patankar Wind Farm Pvt. Ltd. v DCIT [ITA Nos. 2225 & 2226/PN/2013].
DCIT/ ACIT v Indo Enterprises Pvt. Ltd - TS-616-ITAT-2017(PUN) - ITA No. 1362/PUN/2011 & 2389/PUN/2012 dated 22.12.2017

2181. Tribunal allowed deduction u/s 80P(2)(a)(i) to an employee credit co-operative society (engaged in providing credit facilities to employees of a nationalized bank) on interest income earned from fixed deposits, noting that the assessee was statutorily required to deposit 25% of its profits in reserve funds, which in turn, have to be parked in fixed deposits with co-operative bank or scheduled banking company as per the regulations of Maharashtra State Co-operative Societies Act. It distinguished the decision in the case of Totgar's Co-operative Sale Society Ltd. v ITO [(2010) 322 ITR 283 (SC)] and State Bank of India v CIT [(2016) 72 taxmann.com 64 (Guj)] by stating that those cases dealt with interest income from surplus funds whereas in the present case the deposits were mandated by statute. Tribunal, thus, also held that the assessee was not entitled to the said deduction with respect to interest income from savings account.
Maharashtra Bank Employees Co-op. Credit Society Ltd - TS-618-ITAT-2017(PUN) - ITA Nos.454 to 456/PUN/2015, CO Nos.16 & 17/PUN/2017 dated 22.12.2017

2182. In the case of Regional Rural Bank (RRB), the assessee, Tribunal allowed the claim of deduction u/s 80P(2)(a)(i) which was rejected by the AO on the ground that the assessee was not a copoperative society as it was not registered under Cooperative Societies Act, 1912 and that after insertion of section 80P(4) deeming status of Cooperative Society to RRB stood dissolved. Tribunal accepted assessee's submission that it was a cooperative society as per the provisions of section 22 r.w. section 32 of the Regional Rural Bank Act, 1976 which have overriding effect over the provisions of the Act, and not the provisions relied by AO.
Baroda Uttar Pradesh Gramin Bank v DCIT – (2018) 91 taxmann.com 182 (All Trib) – ITA Nos. 403, 404 & 405 (Alld.) of 2014 dated 08.01.2018

2183. The Court held that while determining the profits derived from export, for an assessee doing both export and domestic business, the proportion, which the export turnover bears to the total turnover, has to be applied to the business profits to elicit the exact amount eligible for exemption u/s 80HHC, wherein such business profits include those derived in the domestic market as well as that of high sea sales, the turnover of which has to be included in the total turnover. Thus, even in a case where the assessee suffered loss in export business but earned profit in domestic business, the turnover of export business

is to be included in the total turnover and deduction u/s 80HHC is to be allowed applying the ratio of export turnover to total turnover to the business profits derived from domestic as well as export business.
CIT v Jameela, J.S. Cashew Exporters – (2018) 401 ITR 391 (Ker) – ITA Nos. 55 of 2007 & 89 of 2008 dated 10.01.2018

2184. The Tribunal allowed deduction u/s 80-IA to the assessee-firm, engaged in generation of power by setting up windmills, with respect to two windmills set up in earlier years and generating profits without setting of loss incurred in three windmills set up during the year by considering each windmill as a separate unit eligible for deduction, noting that in terms of provisions of sub-section (5) of section 80-IA, the deduction had to be given unit-wise without considering profit or loss of other eligible units.
Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018

2185. Where assessee didn't claim deduction u/s 80-IC while filing return u/s 139(1) (original return on or before due date) but claimed the same vide the revised return u/s 139(5) and the AO disallowed the same while passing assessment order u/s 143(3) r.w.s. 147 in view of provisions of section 80AC, the Tribunal held that the provisions of section 80AC do not lay down condition that deduction u/s 80-IC must be claimed in return of income filed u/s 139(1) and even otherwise since the assessee had filed revised return u/s 139(5) within stipulated time along with audit report and certificate in Form No. 10CCB, there was sufficient compliance for claiming deduction u/s 80-IC r.w.s. 80AC. Thus, it allowed the assessee's claim for the said deduction.
ACIT v Monarch Innovative Technologies (P.) Ltd. – (2018) 91 taxmann.com 267 (Mum) – ITA No. 4815 (mum.) of 2016 dated 12.02.2018

2186. The Court allowed the claim of assessee (engaged in business of electricity distribution) for deduction u/s 80-IA with respect to the following income/ receipts, considering them to be related to business activities:-

- rebate from power generators granted from time to time as determined by the State Govt. having regard to the cost of collection of the electricity tax incurred by licensee/ assessee
- penalty recovered by assessee in terms of contract due to delay caused by supplier/contractors in execution of work contract
- income derived from deposit parked in bank for opening of LC to Power Grid Corporation Ltd. for business purpose

It denied deduction u/s 80-IA with respect to the following income/ receipts, considering them not to be related to business activities:-

- difference between WDV and books value of released assets, being not derived by an industrial undertaking
- rental income being independent income having no direct nexus towards reimbursement of manufacturing expenses
- commission received by assessee for electricity duty collected from consumers of electricity

Further, since the assessee had not placed any material on record towards amounts recovered from employees on account of certain expenses incurred by assessee, the Court upheld disallowance by lower authority of claim for deduction u/s while computing deduction u/s 80-IA.
Hubli Electricity Supply Co. v DCIT – (2018) 92 taxmann.com 31 (Kar) – ITA Nos. 100025-100028 of 2017 dated 09.02.2018

2187. Assessee filed writ petition challenging the constitutional validity of the retrospective amendment to sections 28 and 80HHC and the validity of CBDT Circular dated 17.1.2006 (which provides clarification with respect to retrospective applicability of the said amendment). The Court allowed the petition by relying on the judgement pronounced after admission of appeal by the Apex Court in the case of CIT vs.

Avani Exports (2015) 58 taxmann.com 100 (SC) wherein the retrospectivity ascribed to the amendments was held to be unconstitutional.
SARITA HANDA v UNION OF INDIA AND OTHERS – (2018) 400 ITR 0567 (Del HC) – W.P.(C) 3768, 3772/2006 & W.P.(C) 10783/2009 dated 10.01.2018

2188. The Tribunal upheld the CIT(A)'s order allowing deduction u/s 80-IA to the assessee with respect to amount generated by displaying advertisement on foot over bridge and toilet blocks developed by assessee for various municipalities/corporations, rejecting Revenue's contentions that foot over bridges could not be considered as development of road for the purpose of allowing deduction u/s 80IA and income from displaying of advertisement boards on toilet blocks and foot bridges could not be regarded as source of first degree so as to allow deduction under the said section, following the Tribunal's order in assessee's own case for earlier year. The CIT(A) had held that since the Central / Local Authority / other statutory body, did not have the funds to compensate the assessee for costs it incurred for developing infrastructure facility, the assessee was given license to collect advertisement revenue by display of advertisement panels.
DCIT v VANTAGE ADVERTISING PVT. LTD. – (2018) 52 CCH 8 (Kol Trib) – ITA No. 2616/Kol/2013 dated 03.01.2018

2189. The assessee's claim for deduction u/s 80 IA(4F) r.w.s. 80 IA(5) and section 80IB(10) in respect of four projects was disallowed by the AO on the ground that development and construction work was commenced prior to 1.10.1998. The Tribunal had allowed the said deduction holding that, as in all projects work orders were issued subsequent to 1.10.1998, there was no reason to assume that development and construction of projects started prior to 1.10.1998. The Court held that even if either development or construction starts before the specified date, benefit under provisions would not be admissible and the assessee had undertaken levelling work so as to develop land to facilitate construction of building over it and, thus, development and construction of housing project had commenced with such levelling of earth. It noted that evidence proved that foundation laying ceremony of projects might have been performed on 30.9.1998 and actual construction might have started later on but levelling of earth in project started much earlier. Thus, it was held that, with levelling of earth, development and construction of project had commenced prior to 01.10.1998 and the assessee was not eligible for deduction u/s 80IA(4F) r.w.s. 80IA(5) and 80IB(10).
CIT & ORS v SHIPRA ESTATE LTD. & ORS. – (2018) 162 DTR 0332 (All) – ITA No. 284 of 2010, 270 of 2010, 274 of 2010 dated 02.01.2018

2190. The Court upheld Tribunal's order allowing deduction u/s 80IC to the assessee undertaking job work by providing labour employment and factory space for the purpose of manufacture of medicines by various manufacturers. The Tribunal, considering the decision in the case of CIT v. Impel Forge and Forge Allied Industries Limited [(2010) 326 ITR 27 (P&H)] and CIT vs. Sadhu Forging Ltd. [(2011) 336 ITR 444 (Del HC)], held that for claiming deduction under the aforesaid provisions, the assessee was at liberty to manufacture for itself or for others and the same did not make any difference.
CIT & Anr v AISHWARYA HEALTH CARE & ANR. - (2018) 401 ITR 0398 (Patna) - Miscellaneous Appeal No. 674 & 675 of 2014 dated 29.01.2018

2191. The Tribunal held that deduction u/s 80-IB(10) could not be disallowed for entire housing project where the assessee had violated conditions of section 80-IB(10)(f) by allocating three flats to a single person and, the assessee-developer was entitled to deduction proportionately in respect of flats which fulfilled all conditions of section 80-IB(10). It held that reading the provisions of section 80-IB(10) as a whole and the legislative intent/object behind introducing such provision into the statute reveal that it is a beneficial provision introduced by the legislature to deal with the housing problem and, thus, such provision has to be construed liberally.
Om Swami Smaran Developers (P.) Ltd. v ITO – (2018) 90 taxmann.com 267 (Mum) – ITA No. 6355 (Mum.) of 2014 dated 31.01.2018

2192. The Court upheld the Tribunal order allowing assesse, a cooperative credit society engaged in providing credit facilities to its members, deduction u/s 80P(2)(a)(i) on the ground that since the

assesse was not a bank but a cooperative credit society, section 80P(4) disentitling certain co-operative bank for deduction u/s 80P are not applicable.
Pr.CIT v Ekta Co-op Credit Society Ltd. – (2018) 91 taxmann.com 42 (Guj) - Tax Appeal No. 859 of 2017 dated 23.01.2018

2193. Where the assessee had not retained any amount due to its members and invested its surplus funds in deposits with different banks, the Tribunal held that interest earned thereon could not be treated as Income from other sources and assessee would be entitled for deduction u/s. 80P(2)(a) (1).
INCOME TAX OFFICER vs. KOLKATA RESERVE BANK EMPLOYEES CO-OP. CREDIT SOCIETY LTD. - (2018) 52 CCH 0172 KolTrib - ITA No. 2253/Kol/2016 dated Mar 1, 2018

2194. The assessee a co-operative society engaged in providing credit facilities to its members claimed deduction u/s. 80P(2)(a)(i) in respect of interest derived from investment of surplus funds in short-term deposits which was denied by the AO who taxed it as income from other sources u/s. 56 as it was not arising in course of providing credit facilities to members of society. The Tribunal noted that there were two views on this issue i.e. i) that of the Apex Court in decision Totgar's Cooperative Sale Society Limited wherein it was held that such income was taxable as 'income from other sources' where the amount invested by assessee was its liability payable to its members and ii) of Tumkur Merchants Souharda Credit Cooperative Limited which distinguished Totgar's decision and held that where the source of investment was the assessee's surplus funds not immediately required for the business, interest thereon would be eligible for deduction under section 80P(2)(a)(i). Since there was no information that money invested in bank was out of money payable to members or out of surplus fund retained by assessee, it restored back the matter to the file of AO to determine the same and decide accordingly.
INCOME TAX OFFICER vs. BOKARO STEEL EMPLOYEE'S (CALCUTTA) CO-OPERATIVE CREDIT SOCIETY LTD. - (2018) 52 CCH 0200 KolTrib - ITA No. 1314/Kol/2015 dated Mar 21, 2018

2195. In the case of a co-operative society registered under Kerala Co-operative Societies Act, 1969, the Tribunal dismissed the Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 80P holding that all the conditions for becoming primary co-operative bank was complied with in case of the assessee, hence, it would fall within provisions of section 80P(4) which excludes any co-operative bank (other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank) from claiming the said deduction. It held that the assessee was registered and classified as Primary Agricultural Credit Society by the Competent Authority under Kerala Co-operative Societies Act and thus, entitled to the benefit of deduction u/s 80P(2). It noted that the Explanation to section 80P(4) stated that 'Primary Agricultural Credit Society' and 'Co-operative Bank' would have same meaning as provided in Part V of Banking Regulation Act, 1949 and the Reserve Bank of India, which was competent authority as per the Banking Regulation Act, treated the assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within ambit of Banking Regulation Act. Further, with respect to the reliance placed by the AO on the decision in the case of Citizens Co-operative Society Limited v ACIT (2017) 397 ITR 1 (SC) wherein the Apex Court had disallowed deduction u/s 80P to an assessee engaged in activity of granting loans to general public as well the member, the Tribunal held that the aforesaid case was distinguishable as in the present case, the assessee had not taken any deposits from the non-members or the public.
ITO & ORS. v EDANADKANNUR SCB LTD. & ORS. – (2018) 52 CCH 28 (Cochin Trib) – ITA Nos. 431 to 433/Coch/2017, 567/Coch/2017, 561/Coch/2017, 525 to 527/Coch/2017, 560/Coch/2017, 410/Coch/2017, 411/Coch/2017, 412/Coch/2017, 413/Coch/2017, 566/Coch/2017, 426 to 428/Coch/2017, 429 & 430/Coch/2017 dated 10.01.2018

2196. The Court reversed Tribunal's order and denied the assessee benefit under Section 80HHC on commission deducted by foreign agent from export proceeds and not brought to India in convertible foreign exchange. It noted that the assessee had included commission on sales (paid to an agency outside India) in its export turnover, but such commission was deducted in the sale invoice itself and only the balance consideration was brought into India as convertible foreign exchange and dismissed the Tribunal's finding that there was a live connection between the commission and export sale and that there was no difference in either paying commission directly in foreign exchange to the foreign agency

or in bringing it back into the country and then paying it in foreign exchange. It held that since the condition under Section 80HHC(2)(a) of bringing in the sales proceeds in India in convertible foreign exchange was not met, the Court denied benefit on the commission portion of sales consideration not brought into India.

Parry Agro Industries Ltd - TS-155-HC-2018(KER) - ITA.No. 1053 of 2009 dated 14.03.2018

2197. The Tribunal held that in terms of section 80-IE(7), 'initial assessment year' would be the year in which substantial expansion was completed by assessee which would enable it to generate revenues and claim deduction thereon and that there was no time limit prescribed in section 80-IE as to when substantial expansion should be completed by assessee. Accordingly, it held that the CIT(A) was not justified in denying deduction on the ground that once substantial expansion was undertaken it had to be completed within same financial year in order to claim deduction under section 80-IE. Accordingly, it allowed the assessee's claim of deduction under Section 80-IE.

Jay Shree Industries Ltd. v JCIT - [2018] 92 taxmann.com 304 (Kolkata - Trib.) - IT APPEAL NO. 359 (KOL.) OF 2014 dated MARCH 16, 2018

2198. Tribunal held that where the assessee was awarded a contract to construct Road by NHAI and it was to procure raw material, make arrangements for power, water, plant machinery etc., and conduct all other activities needed for construction, assessee was a developer and not a mere works contractor and, accordingly, was eligible for deduction under section 80-IA.

ACIT v Ho Hup Simplex JV - [2018] 92 taxmann.com 106 (Kolkata - Trib.) - IT APPEAL NO. 692 (KOL.) OF 2016 dated MARCH 21, 2018

2199. The Apex Court dismissed Revenue's SLP against Delhi HC judgement allowing Sec. 80HHE deduction to New Delhi Television Ltd. ('NDTV', assessee) wherein the High Court held that television news software exported by assessee outside India was 'customized electronic data' [as defined in clause (b) to Sec. 80HHE Explanation]. The Court held that since the expression 'any customized electronic data' was preceded by the disjunctive 'or' it clearly indicated that any customized electronic data would also be considered to be 'computer software' under the inclusive part of the definition and therefore held that the assessee was entitled to claim deduction under Section 80HHE.

CIT v M/S NEW DELHI TELEVISION LTD - TS-151-SC-2018 - SPECIAL LEAVE PETITION (CIVIL) Diary No. 7356/2018 dated 28-03-2018

2200. The Tribunal held that investment in building, furniture, fixture in case of a hotel would qualify to be treated as investment in plant and machinery for purpose of section 80-IC. It relied on the decision of the Apex Court in CIT v. Karnataka Power Corporation' [2000] 112 Taxman 629/[2001] 247 ITR 268 wherein it was held that the question of whether a building could be treated as plant was a question of fact and where it was found as a fact that a building had been so planned and constructed as to serve as assessee's special technical requirements, it would qualify to be treated as a plant for the purpose of investment allowance. Accordingly, it held that the restrictive meaning to the word plant given by the lower authorities was incorrect and accordingly allowed the assessee benefit under Section 80IC.

Sirmour Hotels (P.) Ltd. v DCIT - [2018] 91 taxmann.com 450 (Chandigarh - Trib.) - IT APPEAL NOS. 374 TO 376 (CHD.) OF 2017 dated MARCH 19, 2018

2201. The assessee claimed deduction u/s 80IC in respect of Unit-III Kotdwar which was denied by the AO who held that the eligible unit was formed after splitting up existing unit at Noida and hence no deduction could be granted. The Tribunal upheld the order of the CIT(A) and held that since there was no splitting up of existing unit inasmuch as there was no finding by AO that any machinery earlier used in Noida unit was transferred to Kotdwar-III unit and since the assessee started supplying its products to H and other customers from new undertaking at Kotdwar-III unit which were earlier manufactured at Noida unit, the AO was not justified in disallowing the claim of deduction under Section 80IC of the Act. Further, it noted that other than purchase of raw material from its Noida Unit, there was no reference to any interconnectivity between Kotdwar-III unit and Noida Unit and further observed that it was not case of AO that raw material purchased by assessee from Noida unit was not at arm's length price. Accordingly, it upheld the CIT(A)'s order and dismissed Revenues' appeal.

INCOME TAX OFFICER & ANR. vs. INDICA INDUSTRIES PVT. LTD. & ANR. - (2018) 52 CCH 0133 DelTrib - ITA No. 1764/Del/2016, 3836/Del/2015, 1509/Del/2016 dated Feb 28, 2018

2202. The Tribunal held that where theassessee had actually transferred money to donee trust through banking channel and its books recognized said amount on asset side till the relevant previous year wherein it decided to forgo its loan right by way of donating amount in question to donee in lieu of corresponding acceptance receipt, then deduction u/s.80G claimed by it could not be disallowed merely on the ground that the payment was not made during the year under review.
GENERAL CAPITAL AND HOLDING COMPANY PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0097 AhdTrib - ITA No. 538/Ahd/2016 datedFeb 12, 2018

2203. The Tribunal allowed the assessee deduction u/s. 80IC and held that that since the assessee claimed Sec.80IC deduction in duly filed revised return u/s 139(5) and filed tax audit report along with prescribed Form no. 10CCB there was a sufficient compliance for claiming deduction. It rejected Revenue's re-opening of the concluded assessment on the ground that Sec.80IC deduction could be claimed only by filing return within the due date provided u/s 139(1) and observed that Sec. 80AC only contemplated that for allowing deduction u/s 80IC, the assessee was required to file return of income u/s 139(1), and it did not lay down condition that deduction u/s 80IC was to be claimed in the return of income filed u/s 139(1). Moreover, noting that AO [while framing assessment u/s. 143(3)] had duly deliberated on Sec. 80IC deduction claim made by assessee in the revised return of income, the Tribunal held that it was a clear case of 'change of opinion' and quashed re-assessment.
Monarch Innovative Tech [TS-67-ITAT-2018(Mum)] - /I.T.A. No.4815/Mum/2016 dated 12-02-2018

2204. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assesee's claim for deduction u/s 80-IB(4) in respect of profits from Unit II of the assesse, where the AO had opined that Unit II is nothing but an extension of Unit I, formed by splitting up of an already existing business and thus in violation of conditions specified u/s 80IB(4) for claiming the deduction for profit derived from unit II, mainly on the premises that both units were functioning from same premise and also both units were having common registration number of all the authorities. It was noted that the above issue was already considered by the co-ordinate bench in the assessee's own case for earlier year wherein after apprising relevant facts, it was concluded that the assessee had maintained separate books of account for both the units and Unit II set up by making investment in new plant & machinery was eligible for deduction u/s 80-IB(4).
ASSISTANT COMMISSIONER OF INCOME TAX vs. DIAMOND TOOL INDUSTRIES - (2018) 53 CCH 0160 (MumTrib) - ITA No.6936 to 6938, 6940 & 6941/M/2016 dated Jun 13, 2018

2205. The Court allowed assessee's claim for deduction u/s 80IB with respect to its business of manufacturing Ayurvedic drugs, which was disallowed by the lower authorities on the ground that the assessee was not engaged in any manufacturing activity and instead, it was only doing trading of mushroom powders in capsules. The Court held that when new distinct commodity commercially accepted as such comes into existence as result of processing, that commodity could be said to have been manufactured and in the present case, the end product was not the same product which was fed into machines at first instance. Noting that the bulk form of the drug (which was imported from a foreign company) could not be nakedly consumed without putting them in an enclosure such as gelatine capsule, it held that what was done by the assessee was manufacture since the product which emerged after process of manufacture was commercially distinct commodity, could be of consumption as such containing requisite amount of ingredients in appropriate percentage, preserved in proper form as contained in license issued under authorized enactments as well as technical logo shared by foreign company.
DXN HERBAL MANUFACTURING (INDIA) PVT. LTD. vs. INCOME TAX OFFICER - (2018) 102 CCH 0167 (ChenHC) - T.C.(A) Nos. 341 & 342 of 2007 dated June21, 2018

2206. In the case of co-operative societies registered under Kerala Co-operative Societies Act, 1969, the Tribunal dismissed Revenue's appeal against the CIT(A)s' order allowing the assessees' claim for deduction u/s 80P which was denied by the AO on the ground that the assessees were doing the business of banking, and therefore, in view of insertion of provisions of section 80P(4) [disentitling certain co-operative bank for deduction u/s 80P], the assessees were not entitled to deduction u/s 80P(2)(a)(i). The Tribunal followed the decision in case of ITO v. The Chengala Service Co-operative Bank Limited [ITA No.434/Coch/2017 & Ors.] on identical issue wherein it was held that the AO was not competent to resolve / decide the issue as to whether the assessee was a 'Primary Agricultural Credit Society' or a 'Co-operative bank'and the Reserve Bank of India, which was competent authority as per

the Banking Regulation Act, treated the assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within ambit of Banking Regulation Act.
ITO& ORS. vs. KARANNUR SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0184 (CochinTrib) - ITA No. 519-521, 534-536, 558, 559 &568-570/Coch/2017dated June 20, 2018;
ITO& ORS. vs. OLAVANNA SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0197 (CochinTrib) – ITA No.469-472, 477-479, 482, 517, 518, 530-533, 480, 481, 602, 603, 483, 485 & 490-493/ Coch/ 2017 dated June 20, 2018
INCOME TAX OFFICER & ANR. vs. IRUMBUZHI SERVICE CO-OPERATIVE BANK LIMITED & ANR. - (2018) 53 CCH 0169 (CochinTrib) - ITA No.424, 425, 452 & 453/Coch/2017 dated June 14, 2018
ITO v vs. TANALUR SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0146 (CochinTrib) – ITA No. 391-393 & 401-405/Coch/2017 dated June 12, 2018

2207. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 80IB(10) towards profit derived from development of housing project which was disallowed by the AO observing that the assessee had not fulfilled conditions laid down in clause (a) to section 80IB(10). However, the CIT(A) noted that the project was part of slum redevelopment and same was approved by Slum Rehabilitation Project (SRA) and as per proviso to section 80IB(10), if housing project was approved by SRA, then clause (a) and clause (b) should not apply to such housing project. [Clause (a) provides for the time limits within which the project should be completed and clause (b) provides the that project should be on a plot of land which has minimum area of one acre]
INCOME TAX OFFICER vs. OMEGA INVESTMENT & PROPERTIES LTD. - (2018) 53 CCH 0198 (MumTrib) - ITA Nos. 869 & 870/Mum/2016 dated June 20, 2018

2208. The assessee, a primary agricultural credit society registered under Kerala Co-operative Societies Act, 1969, had claimed deduction u/s 80P which was denied by the AO on the ground that it was doing the business of banking, and therefore, in view of insertion of provisions of section 80P(4) [disentitling certain co-operative bank for deduction u/s 80P], the assessee was not entitled to deduction u/s 80P(2)(a)(i). The CIT(A), upholding the AO's order, had further held that interest received on investments from sub-treasuries and Trivandrum District Co-operative Banks were income from other source, thus, not eligible for deduction u/s 80P. The Tribunal allowed the assessee's claim, holding that a Primary Agricultural Credit Societydo not have license from Reserve Bank of India to carry on the business of banking and thus is not a cooperative bank, hit by the provisions of section 80P(4). Further, relying on the decision in the case of Kizhathadiyoor Service Cooperative Bank [ITA No. 525/Coch/2014], it also held that the assessee was entitled to the benefit of deduction u/s 80P(2) of the income-tax Act, with regard to interest received on deposits made by the assessee with sub treasury and Trivandrum District Co-operative Bank.
CHIRAYINKIZHU SERVICE CO-OPERATIVE BANK LIMITED vs. INCOME TAX OFFICER - (2018) 53 CCH 0175 (CochinTrib) - ITA No. 159/Coch/2018 (SA No. 16/Coch/2018) dated June 19, 2018

2209. The Tribunal allowed the assessee's claim for deduction u/s 80IA from the profits of the eligible business to the extent the same was enhanced on account of disallowances, following the CBDT Circular No. 37/2016 which provides that where the disallowances made u/s 32, 40(a)(ia), 40A{3), 43B, etc. and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, results in enhancement of the profits of the eligible business, the deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.
VODAFONE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0377 MumTrib - ITA No. 4749/Mum/2016 dated Apr 6, 2018

2210. Where the assessee received DEPB benefit, the AO held that they were export incentives and not derived from Industrial undertakings and consequently not eligible for deduction u/s 80IB. CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of Liberty India Ltd (207 CTR 243) (P&H HC), wherein it was held that though object behind DEPB etc. was to neutralize incidence of customs duty payment on import content of export product DEPB credit/duty drawback receipt did not come within first degree source as said incentives flow from Incentive Schemes enacted by Government and hence such incentives were not profits derived from eligible business under Section 80-IB of the Act. Tribunal held that since AS-2 and ICAI Guidance Note specify that duty drawback, DEPB benefits, rebates etc.

cannot be credited against cost of manufacture of goods, the DEPB benefit received could not be eligible for deduction under Section 80IB of the Act. Thus, the Assessee's appeal was dismissed
VARDHMAN TESTILS LTD. & ORS. vs. DCIT & ORS. (CHANDIGARH TRIBUNAL) (ITA No. 681/Chd/2007, 475, 530, 938 & 981/Chd/2008, 528 & 575/Chd/2009) dated May 4, 2018 (53 CCH 0103)

2211. The assessee, an agricultural Service Society, engaged in accepting deposits and providing credit facilities to its members, claimed deduction u/s 80P(2)(a)(i) in respect of income earned on FDRs kept with bank. The AO held that interest income earned from investment of surplus funds in Banks and government securities could not be attributable to activity carried out by society and hence was not entitled for deduction under Section 80P(2)(a)(i). CIT(A) upheld order of the AO. Tribunal held that where FDR'S in banks were made from operational funds of cooperative society while carrying out its activity of providing credit to its members, interest earned thereon being incidental to carrying out said activity, was attributable to said activity and hence entitled to deduction under Section 80P(2)(a)(i). However, the Tribunal restored the matter to the file of the AO for limited purpose of examining activities carried out by assessee society and whether deposits made by it in banks were done during course of carrying out its stated activities and thereafter decide the issue in accordance with law. Thus, the Assessee's appeal was allowed.
THE TIARA CO-OPERATIVE AGRICULTURAL SERVICE SOCIETY LIMITED vs. ITO (CHANDIGARH TRIBUNAL) (ITA Nos. 905 to 908/Chd/2017) dated May 1, 2018 (53 CCH 0109)

2212. Where the assesse had claimed deduction u/s 37 for amount paid to trust for the purpose of air conditioning of hall not owned by the assessee (but was in the name of the asssessee's founder) and on rejection of the said claim by the AO, alternatively, claimed deduction u/s 80G, the Court held that the AO could entertain the said alternative claim of the assesse though no revised return was filed for the same. However, on merits, noting that the trust had no control over the funds and acted merely as an agent of the assessee in carrying out the air-conditioning of the hall, the Court held that the activity was not applied for charitable purpose as per section 80G(2)(a)(iv) r.w.s. 80G(5). Further, observing that earlier claim was made of business expenditure which was later altered to one of a donation to the trust, it held that the purpose of the activity for which the fund is applied does not change with the change of the provision under which the claim for deduction is raised. It thus denied deduction u/s 80G.
CIT v Malayala Manorama Co Ltd [TS-375-HC-2018(KER)]- ITA.No. 96 of 2010 dated May 30, 2018

2213. The assessee was engaged in the business of manufacture and sale of carpets to IKEA Trading (India) Ltd. as supporting manufacture and had claimed deduction u/s 80HHC which was denied by the AO on the ground that the assessee was receiving export incentives in the form of Duty Draw Back (DDB) and Duty Entitlement Pass Book (DEPB). The CIT (A) allowed the assessee's appeal holding that it was entitled to the deduction of export incentives u/s 80HHC at par with the exporter. The appeal of the Revenue was dismissed by the Tribunal and the High Court, thus an appeal was filed before the Supreme Court where the question for consideration was whether the assessee was entitled for deduction at par with the exporter who also received export incentives in the form of DDB and DEPB. The Apex Court referring the matter to a larger bench stated that the precedents, i.e. CIT v. Baby Marine Exports [2007] 290 ITR 323/160 Taxman 160 (SC) and CIT v. Sushil Kumar Gupta [2012] 25 taxmann.com 368/210 taxmann.com 257 (SC), referred to were not identical and could not be accepted as Explanation (baa) of section 80HHC specifically reduces deduction of 90 per cent of the amount referable to in section 28 (iiia) to (iiie). In the light of substantial question of law, the matter was sent for re-consideration to a larger bench.
CIT v. Carpet India - [2018] 93 taxmann.com 434 (SC) - CIVIL APPEAL NOS. 4590 TO 4599 & 4601 TO 4603 OF 2018 dated APRIL 27, 2018

2214. Where the assessee co-operative society was engaged in tapping of toddy and vending it through licensed shops, the AO denied the assessee's claim for deduction u/s 80P(2)(iii) opining that toddy being an intoxicating liquor, extraction and sale were regulated by State Government under provisions of Abkari Act and, thus, income generated from such vending under license could not be covered under the said section. As section 80P(2)(iii) allows deduction to a co-operative society of the profit derived by it from the marketing of agricultural produce grown by its members, the Court allowed the assessee's claim holding that regulatory regime under Abkari Act would not be a relevant factor in deciding as to

whether assessee-society would be entitled to exemption as available u/s 80P and even otherwise, since tapping of toddy was a traditional agricultural enterprise within the State, the State also encouraged it, as distinguished from foreign liquor trade.
Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. v CIT - [2018] 95 taxmann.com 299 (Kerala) - IT APPEAL NO. 273 OF 2015 AND 139, 140, 142, 143, 151, 153, 154 & 156 OF 2016 dated June 20, 2018

2215. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for deduction u/s 80-IB(10) which was disallowed by the AO on ground that the said claim was in contravention of clause (f) of section 80-IB(10) by selling two adjacent flats in its housing project on 14-1-2008 and 16-7-2008 to two members of same family, being husband and wife. It was noted that the amendment brought on 1-4-2010 vide clause (f) to section 80-IB(10) barring such sale to related persons is prospective in nature.
CIT v Elegant Estates - [2018] 95 taxmann.com 157 (Madras) - T.C.A. NOS. 179 & 180 OF 2018 dated June 19, 2018

2216. Assessee was a government company engaged in the business of handling and transportation of containerized cargo whose operating activities were mainly carried out at its Inland Container Depots (ICDs). The assessee claimed deduction under Section 80-IA in respect of profit earned from the ICDs which was denied by the AO/CIT (A)/Tribunal. The Apex Court affirming the decision of the High Court decided in favour of the assessee and held that ICDs are Inland Ports subject to provisions of Section 80-IA and that deduction can be claimed for income earned out of these depots. It held that though 'inland ports' are not defined anywhere but the notification issued by the CBEC holds that the ICDs can be termed as Inland Ports.
CIT v. Container Corporation of India – [2018] 93 taxamnn.com 31 (SC) – Civil Appeal No. 8900 of 2012 dated April 24, 2018

2217. Certain payments were made by the assessee to a newspaper being run by a political party for insertion of some advertisements and the same was claimed as deduction u/s 80GGC. The AO disallowed the said claim on the ground that the payment had been made to a newspaper and not to a political party or electoral trust. The CIT (A) reversed the decision of the AO and allowed the claim of the assessee observing that the receipt issued by the newspaper had acknowledged donation received by Rashtrawadi Congress Party and therefore the payments fell under the purview of Section 80GGC. On further appeal, the Tribunal found that none of the receipts mentioned that the amount was received as a donation and accordingly the Tribunal remanded the matter back for verification. The Tribunal further held that where the assessee had failed to demonstrate that payments had been made for seeking legal opinion in connection with his business, the expenditure could not be allowed merely for the reason that payments had been made through cheques and TDS had been deducted on such payments.
DCIT v. Smt. Anjali Hardikar – [2018] 92 taxmann.com 430 (Pune – Trib,) – IT Appeal No. 173 (PUN.) of 2016 dated April 6, 2018

2218. The assessee company claimed to be engaged in power generation and claimed deduction under section 80-IA. The AO denied the deduction on the ground that the assessee was not engaged in the generation or distribution of power but it was merely engaged in the maintenance of the power plant owned by SPCL. On appeal, the High Court held that as per section 2(28) of Electricity Act, 2003 'generating company' meant any company which owns or operates a generating station and as per the terms of the contract between the assessee and SPCL, the assessee was not the owner of the power plant but did only maintenance work for which it was paid a fee. Thus, it upheld the denial of deduction under Section 80-IA.
Covanta Samalpatti Operating (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 38 (Madras) – Tax Case (Appeal) No. 860 of 2008 dated April 4, 2018

2219. The Apex Court dismissed the assessee's appeal against the High Court's order rejecting the assessee's claim for deduction u/s 80-O with respect to gross foreign exchange received from a foreign company for rendering specialized industrial and commercial knowledge (relating to the Indian automobile industry) to the said foreign company under a contract whereby the said company had agreed to pay remuneration being certain percent of the contractual amount between the foreign

company and its Indian customers on sale of its products so developed. The Apex Court held that there was no material on record to prove that a) the sales effected by the foreign company to its customers in India were in respect of the product developed with the assistance of the assessee's information b) how the service charges payable to the assessee were computed. It thus held that the services rendered to the foreign company were not technical services within the meaning of section 80-O, since the assessee had failed to prove the same and he had also not produced the relevant documents to prove the basis for the said payment to him.

B.L. Passi v CIT - [2018] 92 taxmann.com 341 (SC) - CIVIL APPEAL NO. 3892 OF 2007 dated April 24, 2018

2220. The assessee was engaged in the business of construction/development of Infrastructure facilities such as roads and providing necessary and crucial components of the Railway System. The claim of the assessee for deduction under section 80-IA(4) in respect of infrastructure project was rejected by the AO on the ground that the assessee was a contractor and not a developer. The decision of the AO was upheld by the CIT (A). The Tribunal held that the distinction between developer and contractor was no longer relevant in the context of changed law that was explained by the Mumbai High Court in the case of CIT v. ABG Heavy Industries [2010] 322 ITR 323 (Bom.). The Tribunal applied the proposition of law in the said case in favour of the assessee and allowed the claim u/s 80-IA(4). It held that in view of provisions of Section 80-IA(4), the term 'contractor' is not essentially contradictory to the term 'developer' and thus by entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to one being a developer.

Bhinmal Contractors Property and Land Developers (P.) Ltd. v. ACIT – [2018] 93 taxamnn.com 296 (Mumbai – Trib.) – IT Appeal Nos. 7207 of 2012, 7082, 7083 (MUM.) of 2013 & 1420 (MUM.) of 2014 dated April 26, 2018

2221. The Court allowed assessee's claim for deduction u/s 80HHC which was denied by the AO in view of the retrospective amendment to section 80HHC(3) [which provides for insertion of new pre-conditions retrospectively in 3rd and 4th proviso to section 80HHC(3) for being eligible to claim the said deduction]. It noted that the said amendment was nullified by the Gujarat High Court and the Apex Court had refused to interfere withthe same. It held that once a statutory provision, original or amended, is declared ultra vires the Constitution, the legal fiction i.e. the nullified provision is said to have never existed, comes into play.

N.SHEELA v ACIT & Anr. - [TS-409-HC-2018(KER)] - W.P (C) No.21301 of 2018 dated June 27, 2018

2222. The Tribunal restored the matter to the file of the AO with respect to the assessee's claim for deduction u/s 80IC which was denied by the AO opining that there was no manufacturing activity done by the assessee-company so as to be eligible for the said deduction. The Tribunal observed that in the earlier years, the CIT(A) had allowed the deduction u/s 80IC and the Revenue's appeal against the CIT(A)'s order was dismissed by the Tribunal, thereby indicating that the assessee-company was doing manufacturing activity. However, for the year under consideration, the AO relied on a report given by the Inspector after survey on the premises of the assessee stating that there were no sign of manufacturing activity and all the machinery were found fully detached from electric supply and the said report was not confronted to the assessee.

ARON HURLEY KCONCEPTS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 64 ITR (Trib) 0722 (Delhi) - ITA Nos. 844 & 845/Del./2017 dated April 3, 2018

2223. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 80IA with respect to rental income from modules/built up space of Industrial park, noting that in the assessee's own case for an earlier year, following the decision in the case of CIT v. Elnet Technologies Ltd [T.C.A. Nos. 391 & 392 of 2007 (Mad)], the coordinate bench had held that the lease rent income from modules/built up space of the Industrial Park was assessable under the head 'income from business' and thus such income was eligible for deduction u/s 80IA.

TIDEL PARK LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0428 ChenTrib - ITA Nos. 1700 & 1701/Chny/2017, 1808 & 1809/Chny/2017 dated Apr 4, 2018

2224. The assessee made a claim for treating interest subsidy as a capital receipt for the first time before the CIT(A) which was rejected as it was neither made in the return of income, nor was it consistent with the assessee's own stand of interest subsidy being a revenue receipt being eligible for deduction under Section 80IBof the Act. Tribunal relied on the ruling of *Shree Balaji Alloys v. CIT* [2011] 333 ITR 335 (J&K High Court), and admitting the assessee's additional ground, directed the AO to treat the same as a capital receipt.
KASHMIT TUBES vs. DCIT (AMRITSAR TRIBUNAL) (ITA Nos. 198 & 199/(Asr)/2014) dated May 31, 2018(53 CCH 0133)

2225. The assessee bank invested amounts in NON-SLR accounts i.e. investment in Bonds & Debentures and claimed deduction of interest earned thereon under Section 80P of the Act. The AO disallowed such interest under Section 80P(2)(a)(i) of the Act. CIT(A) deleted such disallowance relying on the ruling of the Supreme Court in Bihar State Co-operative Bank ltd. v CIT (39 ITR 114). Relying on the ruling of the Allahabad High Court in the case of CIT vs. Muzaffarnagar Kshetriya Gramin Bank Ltd. (256 CTR (All.) 322), the Tribunal upheld the order of the CIT(A) and the Revenue's appeal was dismissed.
DCIT& ANR. vs. RANCHI KSHETRIYA GRAMIN BANK & ANR. (RANCHI TRIBUNAL) (ITA Nos. 191 & 192/Ran/2016 (CO. Nos. 11 & 12/Ran/2017)) dated May 31, 2018(53 CCH 0203)

2226. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing deduction u/s 80P(2)(a)(i) with respect to interest income earned from Co-operative Banks by the assessee, a co-operative society providing credit facilities to its member, noting that the investments made by the assessee with Co-operative Banks were compulsory because of dictate of Maharashtra Co-operative Societies Act, which mandates all Credit Co-operative Societies operating in State of Maharashtra to deposit about 20% to 30% of its funds with Co-operative Banks/ Nationalized Banks. Section 80P(2)(a)(i) allows deduction to a co-operative society with respect to its business income attributable *inter alia* to its activity of providing credit facilities to its members.
INCOME TAX OFFICER & ANR. vs. KESHAVSMURTI NAGARI & ANR. - (2018) 52 CCH 0476 PuneTrib - ITA No. 936/PUN/2015 (CO NO.30/PUN/2017) dated Apr 4, 2018

2227. Assessee, engaged in business of running Container yard, Container Freight Station (CFS), Bonded Warehouse etc stated in its audit report that assessee's inland container depot was "inland port" and was one of the infrastructure facility for purpose of S.80IA and thus claimed that it was eligible for tax holiday u/s 80IA (4)(i). The AO rejected assessee's claim whereas the CIT (A) held that CFS ran by assessee was eligible for deduction u/s 80IA as infrastructure facility. The Tribunal upheld CIT (A)'s order. The Court concurring with CIT (A) and Tribunal's order, relying on M/s. All Cargo Global Logistics Ltd. vs. DCIT and Continental Warehousing Corporation (Nhava Sheva) Vs. ACIT wherein it was held that considering the facilities extended for loading, unloading, storage and warehousing of the goods, CFS is an infrastructure facility within the precints of the port. Thus, it dismissed the Revenue's appeal.
PCIT v JWC Logistics Park Pvt. Ltd. (2018) 404 ITR 0310 (Bom) - INCOME TAX APPEAL NO. 613 & 618 OF 2015 dated 11.04.18

2228. The assessee's business of manufacturing and export was eligible for deduction u/s 80HHC.The AO while computing profits from business for purpose of said deduction, excluded profit from machining charges on the ground that assessee was engaged in machining work, undertaking it as a job work (earning income by way of manufacturing products for other manufacturer/individuals using its own plant and machinery) and treated it to be income from other sources. However, the CIT(A) and Tribunal favoured the assessee holding that the assessee was not undertaking any exclusive business activity of doing machining jobs and included the said profit in the total income from eligible business activity. The Court concurred with the appellate authorities and held that the activity of machining done by the assessee, was when the machinery, which was used for manufacturing activities for export, was lying idle and thus, the assessee had used plant and machinery to get income which was to be considered as business only. Thus, it dismissed the Revenue's appeal.
CIT v Rambal Ltd. (2018) 404 ITR 0307 (Mad) - T.C.(Appeal) No.284 of 2007 dated 10.04.2018

2229. Assessee, engaged in the business of manufacturing and sale of cement, rayon, fire bricks, cast iron pipes, tyres and tubes & various forms of chemicals, engaged 2 power plants for its cement units and

the electricity generated was transferred only to the assessee's manufacturing unit. For Computing eligible deduction u/s 80IA in respect of captive power plants, assessee ascertained the selling price of power by State Electricity Board(SEB) which the other manufacturing units procured from SEB of respective states. AO rejected this claim of assessee determined lower profit on the basis that adoption of sale price by SEB to its customer could not be regarded as open market rate of electricity because the sale price(adopted by assessee) was higher than the price at which SEB was purchasing power from generating companies. (For explanation- AO treating assessee's cement units as third party i.e assessee deemed to be selling power to SEB first). CIT(A) held that, for ascertaining selling price, it should be weighted average of annual consumption of electricity sourced from SEBs but however that such rate be reduced by amount of electricity duty and cess charged by SEB. However, on conjoint reading of provisions of Electricity Act,2003, Karnataka Electricity Regulatory Commission's open access Regulation notified in 2004 and order of KER, it was clear that there was no statutory bar on Captive Power Plants to sell electricity to any 3rd party& that too at rate mutually agreed by and between the parties. The Tribunal followed Tamil Nadu Petro Products Ltd. vs ACIT(SC) and also DCIT vs Birla Corporation Ltd wherein it was held that price charged by SEB was good indication of market value stating that assessee did not commit any error for adopting such price for working out amount eligible for deduction u/s 80IA. Thus, the Tribunal held that the very foundation on which AO held that assessee had no option but to sell electricity to SEB alone was factually wrong & misplaced and therefore legally untenable in changed factual scenario, thereby dismissing the revenue's appeal.
Kesoram Industries Limited & Ors v ACIT & Ors (2018) 52 CCH 0398 KolTrib - ITA No. 773/Kol/2013, 1037/Kol/2012, 1722/Kol/2012, 1188/Kol/2016, 1995/Kol/2013, 505/Kol/2017, 505/Kol/201 dated 26.04.18

2230. Assessee was primary agricultural credit society, registered under the Kerala Co-operative Societies Act, 1969. For the AY under consideration, assessee filed its returns declaring the income to be 'nil' after claiming exemption u/s 80P(2)(Exemptions to various societies). AO rejected the said claim of assessee holding that the assessee was doing business of banking and it was not entitled to deduction u/s 80P(2) in view of insertion of section 80P(4)(exclusion of application S.80P(2) to co-operative banks). The CIT(A) deleted the said disallowance. The Tribunal followed Chirakkal Service Co-operative Bank Limited & Ors(HC) wherein it was decided that when a primary agricultural credit Society was registered as such under the Kerala Co-operative Societies Act, 1969, such society was entitled to benefit of deduction u/s 80P(2). Thus, the Tribunal held that since there was certificate issued by Registrar of Cooperative Societies, stating that assessee was primary agricultural credit society, assessee was entitled to deduction u/s 80P(2) thereby dismissing the revenue's appeal.
ITO & Anr v Athirampuzha Regional Service Cooperative Bank Ltd. & Anr. (2018) 52 CCH 0323 CochinTrib - ITA No. 1/Coch/2017 dated 17.04.2018

2231. The assessee had claimed deduction u/s 80IB(10) in respect of profits derived from development of residential building. During the course of assessment proceedings for subsequent AY, the AO found from the Auditor's report that one construction project of assessee was approved by SRA on 7.10.2002 and the commencement certificate was received on 31.3.2003. However, the final approval for amended plan was granted by SRA on 04.06.2004 and as on 31.03.2009 only 67% of the project was completed. The AO opined from the given facts, that the assessee did not satisfy the conditions necessary for deduction u/s 80IB(10) i.e the project should be approved by local authority after 01.04.2004 and thus reopened the assessment for the year under consideration and disallowed the said deduction. The CIT(A) allowed the deduction.The Tribunal rejected the assessee's contention that the deduction was to be allowed as the final approval was granted on 04.06.2004 holding that since the initial approval and grant of CC was before 01.04.2004, the assessee did not satisfy the required conditions for deduction u/s 80IB(10) and thus disallowed the deduction.
ITO v Omega Investment & Properties Ltd. (2018) 52 CCH 0294 MumTrib - ITA No. 868/Mum/2016 dated 09.04.2018

2232. The assessees were Primary Agricultural Credit Societies (PACS) engaged in providing credit facilities and claimed deduction u/s 80P. The AO denied the said claim on the ground that assessees were having only negligible portion as disbursement of agricultural loans and they were doing business of banking and therefore in view of insertion of provisions of section 80P(4)[which disentitles a co-operative bank other than a PACS or a Primary Co-operative Agricultural and rural development bank

for claiming said deduction], assessees were not entitled to deduction. The CIT(A), on allowing assessee's appeal held that the assessees were entitled to benefit of deduction u/s 80P(2). The Tribunal observed that the issue as to whether the assessee were 'PACS' or 'Co-operative Bank' was to be determined as per the Banking Regulation Act,which specifically provided that the determination thereof by the Reserve Bank would be final. Thus, noting that the RBI had given letters to the societies similar to assessee stating that they were Primary Agricultural Credit Societies and therefore in terms of section 3 of Banking Regulation Act were not entitled for banking license, the Tribunal held that the AO was not competent and did not possess jurisdiction to resolve issue as to whether assessee was 'PACS' or 'Co-operative bank'. Accordingly, it upheld the CIT(A)'s order allowing deduction to the assessee and dismissed the Revenue's appeal.
ITO & Ors v Chengala Service Co-Op Bank Ltd. & Ors (2018) 52 CCH 0281 CochinTrib - ITA No.434/Coch/2017 dated 05.04.2018

2233. The Court held that where assessee-company was not an owner of power generation plant but it did only maintenance work of power plant for which it was given a fee, assessee could not be considered as power generating company and could not be allowed deduction under section 80-IA
Covanta Samalpatti Operating (P.) Ltd. v ACIT [2018] 93 taxmann.com 38 (Madras) – TAX CASE (APPEAL) NO. 860 OF 2008 dated 04.04.2018

2234. The AO opined that interest income by the assessee-credit society was not earned from the activity of providing banking facilities to its members and was outside the purview of 'Principle of Mutuality'. He thus rejected assessee's claim for deduction u/s 40P(2)(d). The CIT(A) was of the view that the interest income earned by the assessee from investment made with a scheduled bank or a cooperative bank for a time period could not be said to be for the purpose of the co-operative housing society of the assessee and hence, would not be eligible for claim of deduction under section 80(P)(2)(d). He thus sustained the disallowance made by AO. The Tribunal held that a co-operative bank continues to be a co-operative society registered under Co-operative Societies,1912 or under any other law for time being in force in any State for registeration of co-operative societies, and, therefore, interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under section 80P(2)(d).
Kaliandas UdyogBhavan Premises Co-op Society Ltd. v ITO [2018] 4 taxmann.com 15 (Mumbai – Trib.) – ITA NO. 6547 OF 2017 dated 25.04.2018

2235. The Apex Court upheld the order of the High Court wherein it was held that definition of 'total turnover' given under section 80HHC and 80HHE cannot be adopted for purpose of section 10A. Explanations to sections 80HHC and 80HHE which defines total turnover clearly states that the same is for purposes of this section only.Thus, technical meaning of total turnover which does not envisage reduction of any expenses from total amount, is to be taken into consideration for computing deduction under 10A andwhen meaning is clear, there is no necessity of importing meaning of total turnover from other provisions. It further held that when object of formula in section 10A for computation of deduction is to arrive at profit from export business, expenses excluded from export turnover have to be excluded from total turnover also, otherwise, any other interpretation makes formula unworkable and absurd and hence, such deduction shall be allowed from total turnover in same proportion as well.
CIT v HCL Technologies Ltd. [2018] 93 taxmann.com 33 (SC) – CIVIL APPEAL NOS. 8489-8490 OF 2013 dated 24.04.2018

2236. The Court upheld the Tribunal's order wherein it was held that where assessee entered into an agreement for road development project with Gujarat State Road Development Corporation ('GSRDC'), in view of fact that GSRDC was a Government agency as defined under section 2(e) of Gujarat Infrastructure Development Act, 1999 and, moreover, it was totally controlled by State Government, claim for deduction under sec. 80-IA could not be rejected on ground that assessee failed to fulfill conditions of clause (b) of sec. 80-IA (4).(which requires the assessee to have entered into agreement with the Cent. Govt, State Govt, local authority or any other statutory authority to claim the deduction.
CIT v Ranjit Projects (P.) Ltd. [2018] 94 taxmann.com 320 (Gujarat) – R/TAX APPEAL NOS. 426,427 433 OF 2018 dated 02.05.2018

2237. The Apex Court dismissed Department's SLP against order of the Court wherein it was held thatwhere assessee-company had developed a road construction project and after completion transferred it for purpose of maintenance and operation to third party and received a payment for same, profit element would be relatable to infrastructure development activity of assessee and would qualify for deduction under section 80-IA.
PCIT v NilaBauart Engineering Ltd. [2018] 95 taxmann.com 45 (SC) – SLP (CIVIL) DIARY NOS. 13945 OF 2018 dated 11.05.2018

2238. The Apex Court dismissed Department's SLP against order of the Court wherein it was held that:

- if rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax u/s 28, and if any quantum of rent or interest of assessee is allowable as an expense in accordance with sections 30 to 44D and is not to be included in profit of business of assessee as computed under head 'Profits and gains of business or profession', ninety per cent of such quantum of receipt of rent or interest will not be deducted under clause (a) of Explanation (baa) to section 80HHC.
- expenses provision written back will not form a part of income since it was written off deposit which was kept in separate account and is not an income eligible for section 80-IA deduction.
- an assessee is entitled to deduction u/s 80-IA in respect of interest on deposits and that deduction u/s 80-IA is allowable in respect of compensation received on machinery breakdown and miscellaneous income being incidental to profits and gains derived from eligible business u/s 80-IA.
- interest earned on short-term deposits of money kept apart for purpose of business has to be treated as income earned on business and cannot be treated as income from other sources and was eligible for section 80-IA deduction

CIT v Chambal Fertilizers & Chemicals Ltd. [2018] 95 taxmann.com 314 (SC) – SLP (CIVIL) DIARY NO. 13731 OF 2018 dated 01.05.2018

2239. The Court held that where assessee failed to file return within period prescribed under section 139(1), its claim for deduction under section 80-IB could not be allowed even though return had been filed at a belated stage in term of section 139(4)
Suolificio Linea Italia (India) (P.) Ltd. v JCIT [2018] 93 taxmann.com 462 (Calcutta) – ITAT NO. 385 OF 2016 dated 04.05.2018

2240. The Apex Court dismissed Department's SLP against order of the High Court wherein it was held that approval under section 80G(5)(vi) could not be denied on ground that educational activity was not included in objects of assessee-trust created for up-keep and maintenance of museum
CIT v Maharaja Sawai Man Singh [2018] 94 taxmann.com 477 (SC) – SLP (CIVIL) DIARY NO. 13974 OF 2018 dated 04.05.2018

2241. The Apex Court dismissed the Department's SLP against order of the High Court wherein it was held that in terms of proviso to section 80-IA(8), AO has to explain clearly why he is rejecting profit shown by assessee from audited accounts of assessee.
PCIT v Harpreet Kaur [2018] 94 taxmann.com 247 (SC) – SLP (C) DIARY NOS. 13931 AND 13681 OF 2018 dated 04.05.2018

2242. The assessee, engaged in manufacturing polythene, claimed deduction u/s 80IA for 2 years (1998-99 & 1999-2000)and u/s 80IB for 6 years(AY 2000-01 to 2005-06). The assessee completed substantial expansion by investing in new plant & machinery of value more than 50% of value of plant and machinery already installed as on 1-4-2005 to manufacturing unit situated in Himachal Pradesh and thereafter claimed deduction u/s 80IC for next 2 years (AY 2006-07 & 2007-08). However, when the assessee claimed deduction u/s 80IC for AY 2008-09 & 2009-10, the AO disallowed the claim stating that it was the 11th and 12th year of deduction and as per Section 80IC(6) total deduction u/s 80IC and 80IB could not exceed 10 years. The Tribunal and the High Court upheld AO's order. However, the Apex Court held that as per Section 80IC(6) the deduction could not exceed 10 years only if manufacturing unit was claiming deduction under second proviso to S.80IB(4) i.e units located in North-Eastern state and since the assessee's manufacturing unit was located in Himachal Pradesh, the claim of deduction was to be allowed considering the year when the substantial expansion was completed to be the initial AY.
Mahabir Industries v PCIT [2018] 94 taxmann.com 260 (SC) / [2018] 302 CTR 449 (SC) – CIVIL APPLICATION NO 4765 – 4766 OF 2018 dated 18.05.2018

2243. The Apex Court dismissed the SLP filed by assessee against the High Court order wherein it was held that the interest earned on FD kept as security was not eligible for deduction u/s 80IC since it had nothing to do with the eligible business undertaking engaged in manufacturing and sale of electric meter.

Conventional Fastners v CIT [2018] 94 taxmann.com 80 (SC) – SLP (C) NO. 12610 OF 2018 dated 16.05.2018

2244. The assessee, a co-operative society, filed NIL income after claiming deduction under Section 80P. The AO denied benefit under Section 80P as it was noticed that there were two categories of Members - Ordinary Members and Nominal Members. AO held that transactions with non-Members, being third parties, was not entitled for deduction either under Section 80P of the Act or under concept of mutuality. CIT(A) upheld the order of the AO. The Tribunal allowed the deduction claimed under Section 80P and held that there was no distinction between ordinary members and nominal members and the nominal members cannot be treated as 'non-members'. Thus, assessee's appeal was allowed.

SAI DATTA MUTUAL AIDED CO-OPERATIVE CREDIT SOCIETY vs. ACIT (HYDERABAD TRIBUNAL) (ITA No. 888/HYD/2016) dated May 18, 2018 (53 CCH 0052)

2245. The Assessee filed an application for grant of approval under Section 80G(5). The CIT(E) denied such approval holding that approximately 50% of donations was from trustees themselves and the assessee did not qualify for charitable acts. Tribunal allowed assessee's appeal on the ground that once registration under Section 12AA was in existence, approval under Section 80G of the Act could not be denied unless there was violation of rules specified in that behalf. The Court observed that the CIT(E) had acted on mere suspicion and conjectures to deny approval to assessee-society and that purchase of land and building by itself would not be sufficient to conclude that assessee was involved in non-charitable activities. Thus, the Court dismissed Revenue's appeal and granted approval to the assessee company under Section 80G(5)(vi) of the Act.

CIT vs. VINOD KUMAR SOMANI CHARITABLE TRUST (HIGH COURT OF PUNJAB AND HARYANA) (ITA No. 47 of 2018) dated May 15, 2018 (102 CCH 0123)

2246. The Court dismissed Revenues appeal and held that for the purpose of complying with the condition that the housing development project should be commenced on or after 01.10.1998 so as to be eligible to claim deduction u/s 80IB(10), the date of commencement of a project has to be linked with actual date of construction and that mere securing of approval does not lead to any step towards development. It held that rather the foundation for various steps may ultimately lead to obtain finances and starting construction activity and thus the actual date of construction is determinative.

PCITvs. PADMINI INFRASTRUCTURE (P) LTD. (HIGH COURT OF DELHI) (ITA 586/2018) dated May 15, 2018(102 CCH 0128)

f. Income from Capital Gains

2247. The Tribunal held that where cold storage being destroyed by fire, assessee received insurance claim of Rs. 1.35 crores on account of loss of goods and cold storage plant and actual expenditure incurred on reconstruction/renovation of cold storage was Rs.3.55 crores, no short-term capital gain under section 45(1A) could be charged.

K.S. Cold Storage v. ACI, Circle-3(1), Dhule- [2019] 101 taxmann.com 120 (Pune-Trib)-ITANos. 1448 & 1580(Pun) of 2014-dated November 28, 2018.

2248. The Court held that where AO took a view that profit arising from sale of shares was taxable as business income, in view of fact that there were no instances of repetitive purchase and sale of shares and, moreover, assessee had used its own funds in order to purchase shares, impugned order was to be set aside and assessee's claim that amount in question was liable to tax as short-term capital gain, was to be allowed.

Pr.CIT-12 v. Business Match Serivces (I) (P.) Ltd.- [2018]100 taxmann.com 411(Bom)-ITA No.699 of 2016-dated November 27, 2018

2249. The Court held that in terms of Circular No. 6 dated 29-2-2016, where assessee sold shares after holding them for a period of more than 12 months, he had an option to treat profit earned on sale of shares as long-term capital gain notwithstanding the fact that investment in those shares was made out borrowed funds.
Pr. CIT - 17, Mumbai v. Hardik Bharat Patel – [2018] 100 taxmann.co 410(Bombay)- ITA (IT) No. 390 of November 19, 2018

2250. The Court held that where AO rejected assessee's claim for deduction under sec. 54 on ground that construction of new property was not completed within a period of three years as prescribed in section 54, in view of fact that delay was beyond control of assessee because construction was put up by builder, and the assessee had invested amount in construction of new property within prescribed time period impugned order passed by Tribunal allowing assessee's claim was to be upheld.
Pri. CIT, Bengaluru v. Dilip Ranjrekar-[2019] 101 taxmann.com 114 (Karnataka) – ITA No.217 of 2018-date December 5, 2018

2251. The Tribunal held that unless document is registered, it has no effect in law for purpose of section 53A of Transfer of Property Act 1882 and, therefore, where assessee received certain amount by virtue of an unregistered agreement of assignment of leasehold rights, no case of transfer of property was made out under section 2(47)(v) and said amount could be brought to tax in the said year.
Mallika Investment Co. (P.) Ltd. v. ITO, Wd-4(2), Kol- [2019] 101 taxmann.com 48 (Kolkata - Trib.)- ITA No.1245 (KOL) of 2015 – dated December 12, 2018

2252. The Tribunal held that where assessee incurred certain expenditure on levelling of agricultural land for purpose of irrigation from canal, benefit of indexed cost of improvement was to be granted in respect of said expenditure while computing capital gain arising from sale of said piece of agricultural land. It further held that while computing deduction under section 54B, stamp duty paid by assessee was to be considered as part of cost of purchase of agricultural land.
Mathur Lal v. ITO, Ward 2(2), Kota- [2018] 100 taxmann.com 51 (Jaipur-Trib.)- ITA No. 940 (JP) of 2018-dated October 12, 2018.

2253. The Tribunal held that conversion of cumulative compulsory convertible preference shares (CCPS) into equity shares could not be considered as transfer within meaning of section 2(47) and therefore, any profits derived from such conversion were not liable to capital gain tax under section 45(1)
Periar Trading Company (P.) Ltd. v. ITO, Mumbai - [2018] 100 taxmann.com 263 (Mumbai - Trib.)- ITA No.1944 (MUM.) of 2018-dated November 9, 2018.

2254. Assessee, an owner of an immovable property entered into a registered, Joint Development Agreement (JDA) in respect of property with 'S' Builders. As per JDA, assessee would get 30 per cent of built-up area and proportionate undivided share of land and builder would be entitled to 70 per cent of built-up area and proportionate undivided share of land. Revenue authorities opined that there was a transfer within meaning of section 2(47)(v) during relevant previous year by virtue of JDA. It was noted that clauses in JDA regarding possession clearly stated that what was given was not possession contemplated under section 53A of Transfer of Property Act, 1882, and that it was merely a license for builder to enter property for purpose of carrying out development. It was also found that a MOU was executed in subsequent assessment year whereby legal possession of property was delivered to builder. The Tribunal held that, there was no transfer of property within meaning of section 2(47)(v) in relevant year and, thus, capital gain could not be brought to tax in assessment year in question.
Smt. Lakshmi Swarupa v. ITO, Ward 4 (4), Bgl. - [2018] 100 taxmann.com 148 (Bangalore - Trib.) - ITA No. 2278 (BANG.) of 2018

2255. The Court held that where two partners of assessee-firm had contributed a property to assessee-firm and, later on, said partners had retired from firm and relinquished all rights and interest in property in favour of continuing partners, capital gains on sale of said property was to be taxed in hands of assessee-firm and not in hands of retired partners.
S.K. Ravikumar v. ITO, Ward 8(4), Bgl - [2019] 101 taxmann.com 18 (Karnataka)- ITA No. 82 of

2010-dated November 28, 2018

2256. The Court held that where purchase of property was delayed due to void compulsory acquisition by Appropriate IT Authority, date of purchase would relate back to original agreement, and not to date of execution of sale deed and benefit of cost indexation was to be provided from said date.

Amarjeet Thapar v. ITO, Ward 24(1)(1)- [2019] 101 taxmann.com 221 (Bom)- WP. No. 3548 of

2018-dated December 14, 2018

2257. The Tribunal held that in view of proviso to section 50C, where date of agreement fixing amount of consideration and date of registration regarding transfer of capital asset in question are not same, value dopted or assessed or assessable by stamp valuation authority on date of agreement is to be taken for purpose of full value of consideration.

Amit Bansal v. Asst. CIT, Central Circle, Karnal- [2018] 100 taxmann.com 334 (Delhi - Trib.)- ITA

No.3974 (DELHI) of 2018 -dated November 22, 2018

2258. Assessee sold a property for consideration of Rs. 42 lakhs. Assessing Officer noted that stamp value of said property was Rs. 56.19 lakhs and, accordingly, treated stamp duty value as full value of consideration under section 50C. However, assessee objected to stamp valuation and requested Assessing Officer to make a reference to District Valuation Officer (DVO). DVO determined fair market value (FMV) of property at Rs. 46.96 lakhs. Assessing Officer computed capital gain by adopting full value of consideration on basis of DVO's report instead of actual sale consideration of Rs. 42 lakhs shown by assessee which resulted into addition of Rs. 4.96 lakhs. The Tribunal held that when Assessing Officer had obtained DVO's report, same was binding on him and therefore, valuation done by DVO was correctly adopted as full value of sale consideration

Anil Murlidhar Deshmukh v. ITO, Ward-3(2), Nashik- [2019] 101 taxmann.com 93 (Pune - Trib.)- ITA

No. 1821 (PUN) of 2017-dated December 13, 2018

2259. The Tribunal held that provisions of item (b) of sub-clause (iii) of section 2(14) which provides for considering distance of land from municipal limits aerially, not by road, and which have been substituted by Finance Act, 2013 with effect from 1-4-2014 are prospective in operation. Asst. CWT, Central

Circle 1(2), Bgl. v. M.R. Jayaram-[2018] 100 taxmann.com 145 (Bangalore - Trib.)- WT Appeal Nos. 45 TO 49 (Bgl.) of 2018 CO Nos. 117,118,122&123 (BANG.) of 2018

2260. The Tribunal held that in view of amendment to proviso to section 54F by Finance Act, 2000, even if new asset purchased within prescribed period had been let out by assessee, she would still be entitled toclaim deduction under section 54F.

Asst. CIT, Cir-32, Kolkata v. Mrs. Ishita Mohatta-[2019] 101 taxmann.com 14 (Kolkata - Trib.)- ITA No.788 (KOL.) of 2017 CO No. 45 (KOL.) of 2018 -dated November 28, 2018

2261. The Tribunal held that where assessee declared profit on redemption of units of mutual fund as short term capital gain, in view of fact that only few such transactions took place during relevant year and no borrowed funds were utilised to purchase units of mutual fund, impugned order holding that profit in question was liable to tax as business income, was to be set aside therefore, profit earned on redemption of units of mutual funds was to be taxed as short-term capital gain.

Asst. CIT, Circle-32(1), New Delhi v. Wig Investment- [2018] 100 taxmann.com 135 (Delhi Trib.)- ITA Nos. 2167 (DELHI) of 2014 & 4141 (DELHI) of 2015 CO No. 21 (DELHI) of 2015.

2262. The Tribunal held that where on assessee's leaving job of Google-USA and joining Indian subsidiary Google-India, Google-USA realized Stock held by assessee under ESOP and remitted same to assessee through Google-India, gain on such sale could not be treated as perquisite under the head salary and the same was capital gains.

Dr. Muthian Sivathanu v. Asst. CIT, Non-Corporate Circle-17, Chennai-[2018] 100 taxmann.com 49 (Chennai - Trib.)- ITA No. 553 (CHNY.) of 2018-dated October 24, 2018

2263. The Tribunal held that where assessee had sold an immovable property and claimed deduction under section 54 on account of an advance given to a developer for booking of a flat in a residential project to developed, since assessee had booked flat prior to sale of existing immovable property and, further, neither on date of payment of advance nor till expiry of time period prescribed under section 54 alleged new flat was in existence, exemption under section 54 could not be granted.
Jagdish Wadhwani v. ITO, Ward 3(2), Jaipur [2018] 100 taxmann.com 79 (Jaipur - Trib.)- ITA No. 975 (JP) of 2016-dated October 31, 2018

2264. The Tribunal held that where assessee had entered into an agreement for transfer of its trademark for a period of two years, capital receipt on account of such transfer of trademark was not chargeable to tax under section 55(2) in A.Y. 1998-99 in view of the decision of the Apex Court in CIT v. BC Srinivasa Shetty [1981] 5 Taxmann1/128 ITR 294(SC) as, though trademark was a capital asset, but its cost of acquisition was not ascertainable.
ITO, Ward-5(4), New Delhi v. Modern Home Care Products Ltd.- [2018] 100 taxmann.com 282 (Delhi - Trib.)- ITA No. 2595 (DELHI) of 2002 C.O. No. 192 (DELHI) of 2007-dated November 13, 2018

2265. The Tribunal held that where AO took a view that profit arising from sale of shares was taxable as business income, in view of fact that investment in shares were made out of assessee's own funds and, moreover, assessee had maintained two protfolios, one for 'investment' and other for 'trading', mere fact that assessee held those shares for a short period, would not convert capital gain into business income and, thus, amount in question was to be taxed as short-term capital gain more so since for earlier years, revenue had accepted assessee's claim of short-term capital gain.
Principal Commissioner of Income-tax-II v. Viksit Engineering Ltd. -[2018] 100 taxmann.com 436 (Bombay)- ITA No. 485 of 2016 dated November 26, 2018.

2266. The Apex Court dismissed the SLP against High Court ruling that assessee, a co-operative society, carrying on banking business, was not required to pay tax on interest income on bad debts/doubtful debts or Non-Performing Assets (NPAs) without such interest being actually received or credited in profit & loss account of assessee
Com. of IT v. Bijapur District Central Co-operative Bank Ltd. - [2019] 101 taxmann.com 159 (SC)- Special Leave Petition (Civil) Diary No(s). 41156 of 2018 dated December 14, 2018

2267. Assessee sold a house property including furniture in house. Assessee purchased another residential house and claimed deduction under section 54 - To ascertain genuineness of sale consideration towards furniture, Assessing Officer conducted necessary enquiries and summons were issued to parties with whom agreement of sale of furniture was executed - All parties admitted that exchange of some furniture was involved but cost involved was much lesser than amount shown by assessee. These persons also admitted that main purpose of agreement for sale of furniture was to reduce stamp duty involved in transaction. Assessee did not dispute statement of these persons with whom agreement to sale was executed. List of items for sale of furniture also supported fact that value of furniture was of much lesser amount. No evidence was produced by assessee to explain that value of items under sale was more than what was determined by Assessing Officer. On facts the Tribunal held that, Assessing Officer was justified in holding that transaction of sale of furniture was sham and was to inflate value of furniture so as to evade stamp duty involved in sale transaction and also to evade proper payment of long-term capital gains and, thus, treating excess amount shown on sale of furniture as unexplained cash credit under section 68 in hands of assessee.
Devinder Kumar v. ITO, Ward- 68 (2), New Delhi- [2018] 96 taxmann.com 169 (Delhi – Trib.)-IT Appeal No. 7104 (DELHI) of 2017-dated July 6, 2018.

2268. Assessee had sold an agricultural land and utilised sale consideration for construction of new residential house and claimed deduction under section 54F. The Tribunal held that since both

Assessing officer and Commissioner (Appeals) had agreed to fact that Inspector had visited site and had reported that new house was constructed, exemption under section 54F could not be denied simply because bills and vouchers were not produced.
Govind Gangadhar Sabane v. ITO, Ward-1(4)-[2019] 101 taxmann.com 230 (Pune - Trib.)-IT Appeal No. 1654 (PUN.) of 2016 dated December 18, 2018

2269. The Tribunal held that where assessee entered into agreement with a builder for purchase of semi-finished apartment within period prescribed under sec. 54F, his claim for deduction could not be rejected merely because said builder failed to complete construction within prescribed time limit.
Dr. Kushagra Kataria v. Dy. CIT, Circle-1(1), Gurgaon-[2019] 101 taxmann.com 359 (Delhi - Trib.)-IT Appeal No. 1452 (DELHI) of 2016-dated December 21, 2018

2270. The Tribunal held that, Assessee is not entitled to benefit of section 54F in respect of investment made by assessee in purchasing capital asset (land) before period of one year prior to sale of another capital asset.
Parswanath Padmarajaiah Jain v. Asst. CIT, Circle-1(1)(1), Bengaluru- [2019] 102 taxmann.com 92 (Bengaluru – Trib) ITA No. 453 (BANG.) of 2018 dated December 21, 2018

2271. Where assessee had sold leasehold right in a plot of land acquired by it by way of an additional compensation received for compulsory acquisition of agricultural land, belonging to her late father, the Tribunal held that since it was a right in plot of deceased father against which assessee was allotted leasehold right and same could not be considered as agricultural land transferred during year, consideration received on account of such transfer of leasehold right in land was assessable to tax under head 'capital gain'
Pyaribai K Jain v. Addl. CIT, Mumbai-[2019] 102 taxmann.com 146 (Mumbai - Trib.)-IT Appeal No. 2387 (Mum.) of 2017 -dated December 21, 2018

2272. Assessee owned certain leasehold rights in land - Subsequently, assessee decided to develop said land into a residential project and thus he converted land into stock-in-trade - Assessee applied for permission from local authority for plan sanction in year 1994. Local authority gave permission for construction of project in year 1998. Thereupon, assessee entered into development agreement with 'B' developers. Since construction of project was completed in assessment year 2008-09, capital gain arising therefrom was offered to tax in said year. Assessing Officer took a view that date on which assessee had filed his application to local authority was to be taken as date of conversion of capital asset into stock-in-trade within meaning of section 45(2). The Tribunal held that for purpose of section 45(2), date of conversion of capital asset into stock-in-trade has to be determined either on basis of entry passed in books of account of assessee or intention of assessee to exploit capital asset as stock-in-trade for its business purpose. Since assessee had filed an application before local authority in year 1994 seeking permission for development of land, Assessing Officer was right in coming to conclusion that conversion of capital asset into stock-in-trade said to have been taken place in said year itself. So far as year of taxability of capital gain was concerned, since project was completed in all respects in assessment year 2008-09 and thereupon revenue from said project had been recognised, capital gain was payable in assessment year 2008-09.
Puran Ratilal Mehta v. Asst. CIT, Circle 23(3), Mum. - [2019] 102 taxmann.com 187 (Mumbai - Trib.) IT Appeal Nos. 1274 to 1279, 1320 to 1325 of 2011 & 6646 of 2012 dated December 5, 2018

2273. The Tribunal held that where assessee had entered into an agreement for transfer of development right in a land and handed over said land for development, in view of fact that such agreement was unregistered, there was no transfer of land as per provision of section 2(47)(v).
Saamag Developers (P.) Ltd. v. Asstt. CIT [2018] 98 taxmann.com 467/173 ITD 350 (Delhi – Trib.) – ITA Nos 2053 to 2057 (Del) of 2017 dated October 8, 2018

2274. The Tribunal held that where assessee had purchased new house property within stipulated period of two years from date of transfer of original asset, deduction under section 54 could not be disallowed on ground that assessee had utilized housing loan taken for purchase of home.

Hansa Shah v. ITO [2018] 98 taxmann.com 393/173 ITD 260 (Mum – Trib.)-ITA Nos. 2053 to 2057(DELHI) of 2017-dated October 8, 2018

2275. The Tribunal held that where assessee had purchased new residential house due date specified under section 139(4) from date of transfer of original asset, requirement to deposit net consideration received by assessee in capital gain account scheme as per section 54F(4) would not be attracted and assessee would be eligible to benefit exemption under section 54F.
Shrawankumar G Jain v. ITO [2018]99 taxmann.com 88/173 ITD 417 (Ahd. Trib.)- ITA No 695 (Ahd) of 2016 dated October 3, 2018

2276. AO noted that Registrar had adopted high value of sale consideration than declared sale consideration in respect of a property. Hence, provisions of s. 50C were applicable. Assessee failed to file any evidence that either he or purchaser of such property was aggrieved with stamp duty charged by Registering Authority. AO held that stamp duty charged by Registering Authority was very well as per law and agreed upon by assessee. Capital gain arising on such sale of land was calculated on sale consideration as per value adopted by Stamp Authority. CIT(A) confirmed finding of AO. The Tribunal held, section. 50C(2)(a) provides that where assessee had claimed that value adopted by SVA had exceeded FMV of a property as on date on transfer, and value so adopted by stamp valuation authority was not disputed in any appeal/ revision or no reference has made before any authority, Court or High Court, AO may refer valuation of capital assets to Valuation Officer. In present case, assessee had specifically objected before AO in respect with valuation adopted by SVA and given undisputed fact that said valuation was not disputed in any appeal or revision, AO was required to refer matter to Valuation Officer. Therefore, matter was remanded to AO to determine valuation of capital asset so transferred.
Harphool Jat vs. ITO-(2018) 53 CCH 0600 JaipurTrib-ITA No.1080/JP/2016-Dated Jul 6, 2018

2277. During assessment proceeding, AO had received an AIR alongwith sale deed from which he noticed that in return of income, assessee had showed value of property less than at circle rates. AO invoked provisions of s. 50C and assessed assessee's total income by adopting value of said property at circle rates. CIT(A) confirmed AO's finding. The Tribunal held that, when AO has passed an order without following provisions of Act, proceedings deserved to be quashed rather than giving him another chance to record proper reasons. The lower authorities had passed the order in summary manner without going into the merits of the case and analyzing the legal issue involved, the applicability of s. 50C(2)(a), in a particular. Also, the AO had not found any adverse material evidence to indicate that assessee has received any excess money over and above the sale consideration, in the return of income. AO did not deserve a second chance as he had passed a non-speaking order in a most summary manner without following provisions of the Act.
Dr. Sanjay Chobey vs. Asst. CIT –(2018) 53 CCH 0551 AgraTrib.-ITA No.140/Agr/2018-Dated Jul 2, 2018

2278. The Tribunal held that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset being land or building or both is less than the value adopted or assessed by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or asset shall be for the purpose of section 48 of the Act deemed to be the value of the consideration received or accruing as a result of such transfer. However, in present case, as property was not free from encumbrance, sale consideration of such property would always be lower than market value. Further, CIT(A) discarded assessee's claim on the ground that power of attorney and agreement to sale were executed subsequent to receipt of sale consideration by the assessee. He was of the opinion that these documents were prepared to justify the cash deposits. In normal circumstances, the suspicion of CIT(A) may be correct but in the present case, where the property is not free from encumbrance, sale consideration of such property would always be lower than the market value. Moreover, no enquiry is conducted from the buyers of the property with regard to the date of payment of sale consideration. Undisputedly, in the registered sale deed, date of receipt of sale consideration did not find any mention. It merely stated that entire sale consideration has been received. Under such circumstances, the AO ought to have made enquiries from the buyers of the property. In the absence of such enquiry and bringing some material suggesting actual date of payment

of sale consideration, it could not be considered with certainty that sale consideration was not paid prior to execution of the sale deed.
Chandravati Kaithwas ANR vs. ITO & ANR.-(2018) 54 CCH 0341 IndoreTrib-ITA No.506/Ind/2016, 508/Ind/2016-Dated December 11, 2018

2279. Assessee was partner in various firms and he had substantial land holdings. Suit property was sold and same was purchased by father of assessee and later on after death of assessee's father, property devolved on assessee. Assessee sold suit property and same was purchased by owners of a newspaper, who made constructions thereon. Assessee had not declared any capital gains in return. Sale was sought to be assessed as capital gains by AO. CIT(A) held that sale of land was not to be assessed as capital gains u/s.45. Tribunal treated transferred property as agricultural land, hence, not assessable to capital gains. On Revenue's appeal, the Court held that, AO dealt with certificate of Village Officer produced before him and negatived same as having been issued long after sale. Fact of sale made for obvious non-agricultural purpose along with user of land having not been proved. Village Officer's certificate was only document produced by assessee before AO and same could not be relevant. Inspector who visited site reported that adjacent property did not show a routine agricultural operation and was merely dotted with certain coconut trees. Assessee failed to establish that land in his possession and sold by him was agricultural land put to use for agricultural purposes—Orders of CIT(A) and tribunal were set aside and Revenue's appeal was allowed.
Pr.CIT vs. Kalathingal Faizal Rahman-(2018) 102 CCH 0155 KerHC-ITA No.99 of 2016-Dated July 2, 2018

2280. The Court held that when there was a gap of nearly 3 years between date of execution of the MOU and the execution of a formal development agreement, then, valuation of the stamp authority for collecting capital gain tax in the hands of the assessee could not be adopted.
Pr.CIT vs. Executor of Estate of Late Smt. Manjula A. Shah-(2018) 103 CCH 0217 MumHC-ITA No.859 of 2016-Dated December 11,2018

2281. During assessment proceeding, AO noted that assessee was engaged in business of borrowing and lending funds. It converted its shares held as stock in trade into investment. During relevant AY, assessee sold shares out of shares converted into investment and claimed LTCG on sale of such shares.AO treated same as business income on ground that assessee's act of shifting value of stock-in-trade to head investment clearly indicated colourable mind of assessee and thus, intentionally avoided payment of tax @35%.CIT(A) merely disposed of issue upholding version of AO. The Tribunal held that in entire framework of Act, there was no direct and specific embargo for conversion of stock-in-trade of shares to investment and vice versa.Over years, Courts held that once such conversation took place, assessee should maintain that pattern.There should not be any further change in pattern and thereby, statement of accounts should also be maintained.There should not be any action of assessee by which any loss arises to Revenue.It was not disputed that conversion took place from stock-in-trade to investment and also such conversion had no legal bar.Order of CIT(A) was set aside and assessee's ground allowed.

SAKAL PAPERS LTD. & ANR. vs. Dy. CIT & ANR. (2018) 54 CCH 0437 PuneTrib ITA No. 1450/PUN/2009, 926/PUN/2013 dated 20.12.2018

2282. The Tribunal held that once the net sale consideration has been fully applied under the provisions of s. 54, then the deeming consideration as defined u/s 50C cannot be brought into tax once the assessee is eligible for exemption u/s 54.

SABITA DEVI AGARWAL vs. ITO (2018) 54 CCH 0446 KolTrib ITA No. 1231/Kol/2016dated 19.12.2018

2283. The Tribunal held that section 54F nowhere envisages that sale consideration obtained by assessee from sale of original capital asset is mandatorily required to be utilized for purposes of meeting cost of new asset. It relied on the P&H High Court in the case of CIT vs. Kapil Kumar Agarwal wherein it was

held that s. 54F nowhere envisages that sale consideration obtained by assessee from sale of original capital asset is mandatorily required to be utilized for purposes of meeting cost of new asset. It held that investment made by the assessee may be sourced other than entirely from the capital gains. Thus, objection of the Revenue authorities cannot be sustained.

SABITA DEVI AGARWAL vs. ITO (2018) 54 CCH 0446 KolTrib ITA No. 1231/Kol/2016 dated 19.12.2018

2284. The Tribunal held that the claim of deduction u/s 54 F is to be allowed if after selling a property, the assessee invests the sale consideration towards purchase of a residential property or for the construction of a residential property though the construction of the house property is not completed within stipulated period of 3 years.

SABITA DEVI AGARWAL vs. ITO (2018) 54 CCH 0446 KolTrib ITA No. 1231/Kol/2016 dated 19.12.2018

2285. The Tribunal held that as per the newly inserted sub-section (5A) to s. 45, by the Finance Act, 2017, capital gains in case of a joint development agreement arises only in the previous year in which the certificate of completion for the whole or the part of the project is issued by the competent authority.

Dy. CIT vs. HEMA MOHANLAL(2018) 54 CCH 0393 CochinTribITA No.367/Coch/2017dated 17.12.2018

2286. The Tribunal held that assessee is not entitled to deduction on account of cost of the improvement where assessee fails to substantiate his claim with documentary evidence.During assessment proceeding, AO noted that assessee was 6.67% owner in immovable property.Assessee acquired said property by way of inheritance in year 2009.Assessee along with other co-owners sold said property for a sale consideration.Assessee claimed that he had not earned any capital gain income on sale of such property.No capital gain income was offered in income tax return.Assessee calculated capital gain income on sale of such property at nil.Assessee filed copies of duplicate bills for construction of 2 rooms on 1st floor, wall fencing and renovation of building.AO did not believe assessee's claim for improvement of cost of building.AO also observed that valuation report from registered valuer does not speak about construction of 1st floor and compound wall.AO disregarded assessee's claim and worked out LTCG.CIT(A) confirmed order of AO. The Tribunal held that assessee's claim was not substantiated before lower authorities by supporting evidence.Moreover, one of parties namely Mr. D did not appear in response to notice issued u/s 131.Other party namely Mr. G Prop of R Furniture conceded that he had provided bills to assessee on request owing a very old association with assessee.Assessee failed to discharge his onus by documentary evidence in support of his claim.Map filed by assessee showing construction of 2 rooms on 1st floor on building was proposed layout.Proposed layout does not prove that assessee had constructed two rooms on 1st floor of building.There was no other document filed by assessee evidencing that assessee had constructed two rooms on 1st floor of building.There was no mention in valuation report of registered valuer about two rooms on 1st floor of building.Registered valuer had valued property taking entire land and building constructed thereon for entire built-up area of building as on 1st April 1981.As such valuer had not reduced built up area in respect to impugned two rooms to determine actual built up area of property as on 1-4-1981.No separate deduction on account of cost of improvement for constructing two rooms and wall fencing could be given to assessee.

AMIT SUBHASCHANDRA ACHARYA vs. ITO (2018) 54 CCH 0367 AhdTrib ITA NO. 1138/AHD/2015 dated 13.12.2018

2287. The Court held that there were two significant factors why the CIT(A) and the ITAT did not adopt the valuation of the stamp authority for the purpose of collecting capital gain tax in the hands of the assessee. Firstly, there was a gap of nearly 3 years between the date of execution of the MOU and the execution of a formal development agreement. Obviously, the valuation made by the stamp authority was as on the date of the execution of the development agreement. Secondly and more importantly, the stamp valuation of Rs.4.63 crores were for a larger area of 7644 sq. meters where the assessee had assigned the development rights only with respect to 3872 sq. meters. Thus, the Court upheld the order of Tribunal and dismissed Revenue's appeal.

Pr. CIT vs. EXECUTOR OF ESTATE OF LATE SMT. MANJULA A. SHAH(2018) 103 CCH 0217 MumHCINCOME TAX APPEAL NO. 859 of 2016 dated 11.12.2018

2288. The Tribunal held that where date of agreement fixing amount of consideration and date of registration for transfer of capital assets are not same, then value adopted or assessed or assessable by stamp valuation authority on date of agreement may be taken for purpose of computing full value of consideration for such transfer.

Manoj Yadav vs ITO- (2018) 54 CCH 0072 IndoreTrib- ITA No 916,930/Ind/2016 dated 09.10.2018

2289. The Tribunal held that Section 54 and 54F are beneficial provisions and merely because the assessee has not made any specific reference, that cannot be a reason to disallow the claim of the assessee when the condition to claim exemption were fulfilled.

ACIT vs Dr S. Sankaralingam- (2018) 54 CCH 0378 ChenTrib-ITA No 3185/Chny/2017 dated 05.10.2018

2290. The Tribunal held that Indexation benefit cost of acquisition shall be available to assessee on basis of index of year in which payments are actually made by assessee. Indexed cost of acquisition has been defined to mean an amount which bears to the cost of acquisition the same proportion as cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the first year in which the asset was held by the assessee. We find that the expression used is 'held' as against 'acquired' or 'purchased' as used in other Sections like section 54 / 54F which shows that legislatures were conscious while making use of this expression. The expressions like 'owned' / 'acquired' has not been used for allowing the indexation benefit to the assessee. However, the important question that arises for consideration, is that whether the indexation benefit of even the future installments would also be allowable to the assessee from the year in which the asset is first held by the assessee. Indexation benefit against the cost of acquisition shall be available to the assessee on the basis of index of the year in which the payments were actually made by the assessee.

Lakshman Charanjiva vs ITO (Intl Taxation)- (2018) 54 CCH 0063 MumTrib- ITA No 28/Mum/2017 dated 03.10.2018

2291. During assessment proceeding, AO noted that assessee sold a land for a certain consideration on which it claimed exemption u/s 10(37). Assessee submitted that said property was an agricultural land and was compulsorily acquired by Government of Kerala and hence, it was entitled to provisions of s. 10(37). AO held that transfer of said land was within limits of Trivandrum Municipal Corporation and assessee's claim was not acceptable as it was not a compulsory acquisition but a sale through negotiated settlement. AO completed assessment after determining LTCG. CIT(A) granted relief to assessee. The Tribunal held that, Assessee's 70 cents of land was notified for compulsory acquisition by Government of Kerala for developing VIS. Though acquisition proceedings were taken under Land Acquisition Act, final price was fixed upon negotiated sale agreement. AO had allowed assessee's claim for deduction u/s 54B. Section. 54B provides for a deduction on account of transfer of land used for

agricultural purpose and for purchase of another agricultural land. Therefore, when deduction was granted u/s 54B, AO also categorically admitted that land sold was an agricultural land. AO noticed that land was within Trivandrum Municipal Corporation, and therefore, would be an urban agricultural land falling within provisions of s. 2(14)(iii). Only reason for AO to deny benefit of s. 10(37) was that impugned land was acquired by executing a sale deed in favour of VIS and it was not a case of compulsory acquisition. Entire procedure prescribed under Land Acquisition Act was followed, only price was fixed upon a negotiated settlement. Thus, acquisition of urban agricultural land was a compulsory acquisition and same would be entitled to benefit enumerated in section 10(37)

ITO vs Girijakumari- (2018) 54 CCH 0224 CochinTrib- ITA No 236/Coch/2018 dated 10.10.2018

2292. The Tribunal held that assessee was eligible for deduction under section 54F on capital gains arising from sale of property, where an assessee had sold a property which was used for commercial purposes on which depreciation was claimed and the said property was held for a period of more than thirty-six months and a residential flat was purchased from consideration received from the above sale. The AO had treated the above commercial property as short term capital asset under deeming provisions of section 50 and had disentitled the assessee from claiming exemption u/s 54F. The Tribunal allowed the claim u/s 54F relying on the case of ACIT vs Kiran Gadhia (ITA No 4021(mum) 2015) wherein under similar circumstances deduction u/s 54/54F was allowed and dismissed revenue's appeal.

DCIT vs Hrishikesh Desai- (2018) 98 taxmann.com 305 (Mum-Trib)- ITA No 2766 of 2017 dated 26.09.2018

2293. The Tribunal held that merely because the adjoining land was converted into industrial and factory land, the agricultural land of the assessee would not lose its character as agricultural land. It was not the case of the Revenue that the assessee's land was used for industry or factory. The assessee's land continued to be an agricultural land. ITAT in the assessee's own case for the AY 2011-12 found that the assessee was not in the business of real estate. Accordingly, orders of both the lower authorities were set aside by holding that the land in question was agricultural land and the profit on such sale of land was not liable for taxation by virtue of s. 2(14)(iii).

T.S.R Khannaiyann vs ACIT- (2018) 54 CCH 0159 Chen Trib- ITA No 256,257,812/Chny/2018 dated 12.09.2018

2294. Assessee, an employee of Infosys BPO Ltd., was granted ESOP options, of which 6000 options were subsequently vide Option Transfer Agreement bought back by Infosys Technologies Ltd. Few options were held for a period of more than 3 years before their transfer and thus, assessee treated such gains as 'LTCG' and claimed exemption u/s 54EC. The AO held such options to be short term in nature and denied exemption benefits and the same was upheld by the CIT(A). The Tribunal held that the options were sold to Infosys Technologies Ltd., without any exercise of option and if ESOP options had been exercised, and shares allotted thereby would have been sold after their allotment, then undisputedly gains arising therefrom would have to be treated as STCG. Further, the Tribunal relied on ITAT Delhi Bench in case of ACIT Vs. Ambrish Kumar Jhamb wherein it was held that, ESOP options provided valuable right to assessee, to exercise and have allotment of shares, thus right of shares constitituted capital asset and the gain on that was to be taxed as long term when held for more than 3 years.Thus, the Tribunal concluded that capital gain arising from transfer of ESOP options should be considered as LTCG.

N.R. Ravikrishnan vs ACIT- (2018) 54 CCH 0141 Bang Trib- ITA No 2348/Bang/2018 dated 31.10.2018

2295. Assessee had sold plots and purchased residential house at Mumbai and claimed deduction u/s 54F for investments in purchase of flat. The AO disallowed assessee's claim, by holding that assessee failed to deposit entire sale consideration in the scheme of deposits in capital gains account on or before the due date of filing return and accordingly made additions. The Tribunal relied on Karnataka High Court in CIT Vs. K. Ramachandra Rao, where in it was held that the provisions of section 54F (4) would not be attracted in the event if the assessee had purchased or constructed the residential house within the period prescribed under section 54(1) of the Act. Thus, the Tribunal observed that in the present case plot was sold on 27.2.2012 and the due date of filing of return was 29.9.2012 and the payment was made to builder of Rs.10 lakhs on 3.10.2012 and thereafter Rs.15 lakhs was paid on 2.11.2012 and agreement for purchase was registered on 3.12.2012. Thus, the Tribunal observed that the sale consideration was utilised within one year from date of sale of original asset, thus the AO was directed to allow deduction u/s 54F.

Manish Kumar Lath vs CIT- (2018) 54 CCH 0129 Indore Trib- ITA No 616/Ind/2017 dated 26.10.2018

2296. The assessee was in business of real estate and it had acquired plot of land with intention of earning profit. The AO during assessment proceedings observed that the above plot was sold and concluded that as per sec 28, it should be chargeable to income tax under head "Profits & gain of business or profession" which was however set aside by the CIT(A). The Tribunal observed that the CIT(A) had rightly not concurred with AO because the erstwhile company had purchased this land in AY 2002-03 and was shown as investment and was never treated as stock-in-trade and the land was sold during current AY 2009-10 after amalgamation.The Tribunal concluded that conduct of both assessees, amalgamating company as well assessee would indicate that from the beginning this piece of land was treated as investment and the AO had not given any other circumstances which could conclude that this transaction was to be treated as business transaction. Thus, the Tribunal concluded that the AO's conclusions were based on assumption and not on evidence and the Tribunal upheld the conclusions of CIT(A).

Ganesh Housing Corp Ltd vs DCIT- (2018) 54 CCH 0108 Ahd Trib- ITA No 3034/Ahd/2015 dated 23.10.2018

2297. The Assessee in his computation of income claimed deduction u/s. 54B on purchase of new agricultural land which the AO disallowed holding that no evidence for claim of exemption u/s. 54B was filed. The CIT(A) accepted the fact that new land was purchased, but he contended that since assessee could not establish that old and new land were used for agricultural purposes, claim of assessee was not allowed. The Tribunal noted that the observation of CIT(A) was ex-facie wrong as the Revenue authority had recorded a finding that assessee was growing soyabean and paddy from FY 2005-06 to 2009-10 and thus, the Tribunal concluded that where assessee successfully demonstrated that it had fulfilled conditions for availing benefit of section 54B, deduction was to be allowed.

Sunil Sojatia vs ACIT- (2018) 54 CCH 0110 Indore Trib- ITA No 310,312/Ind/2015 dated 23.10.2018

2298. The assessee had executed an agreement to sell but registered the same at a later date. The AO had invoked section 50C and considered the full value of consideration as on the date of registration and made certain additions to capital gain arising from sale of land. The Tribunal remanded the matter back to the AO and concluded that, in view of proviso to section 50C, the Stamp Duty Valuation on the date of agreement could be deemed as the full value of consideration for the capital asset and the AO was directed to thereafter compute long term capital gain for the current year. Further, the Tribunal also held that where assessee invests earnest money or advance received on sale of capital assets in specified

assets mentioned u/s 54EC, before the date of transfer of asset (i.e. investment made in certain bonds of NHAI & RECL or any other prescribed bonds prior to transfer of property), the amount so received on transfer would still qualify for exemption under section 54EC.

Rahul G Patel vs DCIT- (2018) 97 taxmann.com 598 (Ahd- Trib)- ITA No 2767 of 2015 dated 26.09.2018

2299. The Tribunal held that where year after year assessee had taken a stand and declared gains arising on its investment under capital gains, the AO and CIT(A) erred in considering the short-term gain from sale of shares as business income. It noted that the assessee through the D mat account made investment in shares and since no D mat account could be opened in name of partnership firm the same account was being used for investing in shares by the firm which was engaged in share transactions. In case of share transactions by assessee, entries were routed through capital account of assessee in books of partnership firm and since partnership firm had declared relevant income from business, the AO and CIT(A) questioned taxability of gain that arose on short-term basis and assessed income from 'short term capital gains' from share transactions under head income from business. The Tribunal concluded that since assessee was showing its pool of shares as investment in its hands and making declaration in this regard in balance sheet from year to year and consistently declared gains arising on its investment under head 'Capital gains', both long-term and short-term, the same was to be accepted and taxed under the head Capital Gains for the relevant year.

Satish Gupta vs ACIT – (2018) 98 taxmann.com 298 (Pune-Trib)-ITA No 1287 of 2014 dated 24.09.2018

2300. The Court held that where consideration that arose in hands of HUF (assessee) on sale of capital asset had been invested for purchase of new residential house in name of some of its members instead of the HUF assessee, deduction under section 54F would still be available to the HUF. It noted that mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to defeat the claim of deduction.

PCIT vs Vaidya Panalalmanilal (HUF)- (2018) 98 taxmann.com 189 (Gujrat)- RTax No 1165 of 2018 dated 24.09.2018

2301. The assesse being a builder/developer had entered into a development agreement by virtue of which a right in land was created in its favour by owner of land. Despite development agreement entered the landlord decided to sell land to other parties. Thus, the assessee filed a suit in Court of Law for specific performance of preemptive rights to purchase of land and acquired ‘right to sue’. The assessee claimed that 'right to sue' was a personal right and did not fall within definition of 'capital asset' under section 2(14), and thus damages received from potential purchaser for such relinquishment of 'right to sue' was claimed as a capital receipt. The Revenue authorities rejected assessee's explanation and brought the amount of damages in question under tax as revenue receipt. The Tribunal in the instant case held that in order to attract charge of tax on capital gains, receipt must have been originated in a 'transfer' within meaning of section 45, read with section 2(47), and since 'right to sue' was a right in personam and such right could not be transferred, amount received as compensation in lieu of said right was of capital nature and not chargeable to tax under section 45.

Bhojison Infrastructure (P) Ltd vs ITO- (2018) 99 taxmann.com 26 (Ahd- Trib)- ITA No 2449 of 2016 dated 17.09.2018

2302. The assesseedeclared capital gain arising from sale of agricultural land situated at Jaipur and claimed deduction under section 54F. The AO and CIT(A) had allowed deduction under section 54F only in respect of one new asset as against claim of total investment made by assessee in three separate properties in three different areas. The Tribunal upheld CIT(A) order and noted that in assessee's case there were only one constructed house and the other two were plots and that too in different areas, therefore, the deduction allowed had been correctly arrived at by the AO who had placed reliance on the decision of the Punjab and Haryana High Court in the case of Pawan Arya v. CIT [2011] 11 taxmann.com 312/200 Taxman 66, which directly covered the issue. Thus, the Tribunal concluded that the incentive for granting the deduction under section 54F was for investment in the residential house of the assessee which meant that the investment is made for own residential requirement of the assessee and not future investment in the property. Therefore, in the absence of any material to show that the three different properties were purchased to meet the residential requirement of the family of the assessee, the claim of the assessee could not be accepted

Rakesh Garg vs ITO – (2018) 98 taxmann.com 360 (Jaipur-trib)- ITA No 1100 of 2016 dated 13.09.2018

2303. The AO had taken a view that income arising from sales of shares was taxable as business income. The CIT(A) had noted that only 10 scrips were traded, and it was not a case of repeated sale of same scrip, thus it was not a case of frequent buying and selling to make quick money and concluded that profit arising from sales of shares was taxable as 'short-term capital gain'. The findings of the CIT(A), was further upheld by the Tribunal and High Court and the Apex Court dismissed Revenue's SLP.

CIT vs Hiren Dand- (2018) 98 taxmann.com 428(SC)- SLP No 9737 of 2018 dated 13.09.2018

2304. The assessee sold a port terminal owned by it to its subsidiary, KCPL as a going concern on slump sale basis and as per sale agreement, KCPL would retain certain amount out of total sale consideration and same would be paid to assessee only when assessee obtained waiver of Minimum Guarantee Throughput (MGT) from Port Trust till transfer of terminal undertaking by assessee to KCPL. The AO was of the view that as per agreement the above retained money would form part of sale consideration. The Tribunal observed that on reading of slump sale agreement it clearly showed that if assessee did not get waiver of MGT from Port Trust then assessee would not be in a position to claim the retained sum. Thus, in the actual scenario where assessee could not get waiver of MGT from Port trust, the Tribunal held that the retained sum could not be treated as a part of sale consideration and remanded the matter for re-consideration.

Konkan Storage Systems (P) Ltd vs ACIT- (2018) 98 taxmann.com 308 (Bang-Trib)- ITA No 1073 of 2017 dated 12.09.2018.

2305. The Tribunal held that where assessee sold an immovable property and invested a part of sale consideration in reconstruction of another property belonging to assessee's husband where she resided with her husband and children,the said investment would be eligible for exemption claimed u/s 54F.

Smt Kalavathy Sundaram vs ITO- (2018) Taxmann.com 640 (Chennai-Trib)- ITA No 3187 of 2016 dated 07.09.2018

2306. The assessee had entered into an agreement to sell a flat on 16-9-2011 and out of the agreed sale consideration, certain amount was received by way of advance money and sale deed of said flat was registered on 27-12-2011. Further, assessee had earlier purchased a new residential flat on 4-10-2010 and claimed the same as deduction under section 54 for the above sale. The AO had denied the exemption on the ground that assessee did not purchase residential flat within one year of sale of old asset as the AO considered date of registration i.e 27.12.11 as date of transfer of property. The Tribunal held that where assessee had executed an agreement to sell property and the vendee got a right to get the property transferred in his favour by filing a suit under Specific Performance Act, it could be deduced that some right in respect of said property had been transferred in favour of vendee on date of execution of agreement to sell. Thus, it was undisputed that assessee had purchased a new residential property within one year prior to date of execution of agreement to sell and the assessee's claim for deduction under section 54 was to be allowed.

Gautam Jhunjhunwala vs ITO- (2018) 98 taxmann.com 220 (Kol- Trib)- ITA No 1356 of 2017 dated 07.09.2018

2307. For determining whether Assessee was entitled for long term capital gain benefits the Tribunal held that the period of holding of the property will be counted from the booking of the flats pursuant to which the unstallments have been paid by the assessee and construction has been made by the builder.

Bhagwan Tahiliani vs ITO- (2018) 54 CCH 0053 Mum Trib- ITA No 1070/2015 dated 27.09.2018

2308. Assessee was co-owner in agriculture land which was sold during the year and the AO observed that assessee had failed to offer net capital gain for taxation in his return of income, therefore, assessment was reopened and notices u/s 147/142(1) were issued upon assessee. DVO had determined fair market value of agriculture land on AO's request and by adopting the above fair market value, AO computed capital gain and made addition which was upheld by CIT(A). The Tribunal held that assessee had disclosed value of land which was on basis of registered valuer's report and held that under clause (a) of section 55A, in a case where value of asset as claimed by assessee was in accordance with estimate made by Registered Valuer, AO was entitled to make reference to Valuation Officer if AO was of opinion that the value so claimed was less than fair market value. However, in the instant case since value disclosed by assessee was more than FMV, reference made to DVO was bad in law and thus the Tribunal concluded that it had to compute capital gain on basis of value adopted by assessee and reference made by AO to DVO was bad in law.

Ambalal Somabhai Prajapati vs ITO (2018) 54 CCH 0030 Ahd trib-ITA 315/2016 dated 18.09.2018

2309. Where valuation report of Chartered Engineer given by assessee was credible evidence to prove cost of construction of assessee's property, Assessing Officer was not justified in making addition by working out cost of construction of said property on mere estimation.

Robert Martiz v. ITO [2018] 96 taxmann.com 179 (Bang. – Trib.) -ITA Nos. 1179 & 1180 (BANG.) of 2018 [Assessment Year 2009-10] dated July 6, 2018

2310. The assessee sold a land for a total consideration of 32.50 lakh. He adopted cost of acquisition on basis of FMV of land as on 1-4-1981 at rate of Rs.1.10 lakh. However, the Assessing Officer however adopted cost of acquisition at lower rate on basis of Gazette Notification of 1999 giving value of properties in vicinity of area where the assessee's property was situated. The Tribunal held that since claim of the assessee was not supported by any evidence, cost of acquisition adopted by the Assessing Officer was justified.

Robert Martiz v. ITO [2018] 96 taxmann.com 179 (Bang. – Trib.) -ITA Nos. 1179 & 1180 (BANG.) of 2018 [Assessment Year 2009-10] dated July 6, 2018

2311. During relevant year, the assessee had sold its scrap paper manufacturing plant including capital wor-in-progress ('Capital WIP') to ASPL. The assessee declared short-term capital loss on said sale transaction which was accepted. The Commissioner passed a revisional order holding that cost of capital WIP could not be taken into accounting in arriving at short-term capital gain as chargeable under section 50. The Tribunal held that, since the assessee had incurred huge cost for acquiring capital WIP, it was a valuable 'property' and, hence, in nature of a 'capital asset'. Therefore, when the assessee sold plant and machinery along with capital WIP, the cost incurred on capital WIP was required to be reduced as 'cost of acquisition' while arriving at taxable amount of capital gain/loss within meaning of section 50. In view of aforesaid, the impugned revisional order was to be set aside.

Titagarh Industries Ltd. v. Dy CIT [2018] 95 taxmann.com 288 /171 ITD 559(Kol. – Trib.) -ITA No. 1052 (KOL.) of 2017 [Assessment Year 2012-13] dated July 4, 2018

2312. The assessee claimed that he was entitled for claim of deduction under section 54 on the investment/purchase of new residential house before the sale of another residential house. The Assessing Officer took a view that since new residential house had been purchased out of own sources i.e. savings from bank account and bank loans, and the assessee had not utilized long-term capital gain for the purchase of new assets, he was not eligible for claim of deduction under section 54. The Tribunal held that section 54F, nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilised for the purchase or construction of a house property. No provision has been made by the statute that in order to avail benefit of section 54F, the assessee has to utilize the amount received by him on sale of original capital asset for the purpose of meeting the cost of the new asset. The assessee has made investment well within the stipulated period. The Investment was more than the capital gain earned by him. The investment made by the assessee being within the stipulated time and more than the capital gain earned by him, the addition was rightly deleted by the Tribunal under the head long-term capital gain.

Yatin Prakash Telang v. ITO [2018] 96 taxmann.com 201/171 ITD 705 (Mum. – Trib.)- ITA No. 1136 (MUM.) of 2018 [Assessment Year 2012-13] dated July 4, 2018

2313. The Tribunal held that Capital gains utilized towards purchase of new asset before furnishing of return of income either under section 139(1) or belatedly under section 139(4), would be deemed to be sufficient compliance of section 54B (2). Where, the assessee furnished return subsequent to due date of filing return under section 139(1), but within extended time limit under section 139(4), the assessee was entitled to benefit of investment made up to date of furnishing of return as contemplated under section 54B.

Manilal Dasbhai Makwana v. ITO [2018] 96 taxmann.com 219/172 ITD 1(Ahd. – Trib.)- ITA Nos. 109 & 110 (AHD.) of 2017 [Assessment Year 2012-13]dated July 4, 2018

2314. The Apex Court allowed Revenue's appeal holding that where the assessee had set up a new industry in Himachal Pradesh and had claimed deduction u/s 80IC at 100% of profits for five years, it could not claim deduction u/s 80IC at 100% again for next five years on the basis it had undertaken substantial expansion for the same industry / unit. It held that once the assessees had started claiming deduction u/s 80-IC and the initial Assessment Year [as referred to in sub-section (3) of the said section] had commenced of the period of 10 years, there could not be another initial Assessment Year thereby

allowing 100% deduction after the first 5 years also when sub-section (3), in no uncertain terms, provided for deduction at 25% only for the next 5 years (30% where assessee was a company).

CIT vs Classic Binding Industries [2018] 96 taxmann.com 405 (SC) - CIVIL APPEAL NOS. 7208 TO 7234, 7236, 7238, 7239 OF 2018 dated August 20 2018

2315. The Court held that interest on margin money by way of fixed deposit kept with assessee's banker so as to enable bank to open a foreign letter of credit which was essential for purpose of import of critical components for carrying on assessee's business of manufacture of wind mill, was eligible for deduction u/s 80-IA.

Arul Mariammal Textiles Ltd.vs Asst CIT [2018] 97 taxmann.com 298(Madras)T.C. A NO. 909 OF 2008 dated August 07 2018

2316. Where assessee had two manufacturing units both of which were eligible for deduction u/s 80-IC, in view of fact that one of said unit earned profit whereas other unit incurred loss, the Tribunal held that the Revenue authorities were justified in setting of the said (loss) negative income of one eligible unit against (profit) positive income of other eligible unit while computing amount of deduction.

Elin Appliances (P.) Ltd vs Dy. CIT . [2018] 97 taxmann.com 302(Chandigarh-Trib) IT Appeal Nos. 1505 and 1506 (CHD) of 2017 dated August 07 2018

2317. The assessee-company commenced its operations on 29-3-2010. It claimed deduction u/s 80-IC for first time in AY 2011-12 and same was allowed by Revenue. During AY 2013-14, Commissioner invoked provisions of section 263 and held that it was not a case of setting up of new industrial unit, but that of re-organization of business already in existence and hence the assessee would not be eligible for deduction u/s 80-IC. The Tribunal set aside the CIT's order noting that stage for carrying out investigation for ascertaining if unit was newly set up or reconstructed is in its initial year and in subsequent years, the AO was precluded from examining the same.
Ganpati Herbal Care (P.) Ltd. vs PCIT [2018] 97 taxmann.com 575(Delhi Trib) - ITA NOS.2056 OF 2018 DATED AUGUST 2, 2018

2318. The Tribunal held that the claim of deduction u/s 80P could not be allowed to the assessee-cooperative society, if it was not registered under Co-operative Societies Act (being a pre-requisite for the said deduction) and remanded the matter back to AO to re-examine the aforesaid aspect as it was a new point raised during course of hearing.
UDAYA SOUHARDA CREDIT CO-OPERATIVE SOCIETY LIMITED vs. INCOME TAX OFFICER [2018] 53 CCH 0451 Bang Trib - ITA NOS.2831/BANG/ 2017 DATED AUGUST 17, 2018

2319. The Court dimissed the asessee's appeal against the Tribunal's order and held that the assessee was not entitled to deduction u/s 80IB since the manufacturing activities of electronic computers undertaken by other entities for and on behalf of assessee were not under assessee company's direct supervision and control and accordingly, it could not be said that the assessee was not carrying out manufacturing activity within the meaning of the said section. It was noted that the assessee could not produce particulars like attendance register and qualifications of the employees in spite of being asked to do so by the AO and in fact, it appeared that even the packaging material was supplied to contract manufacturers by the assessee for finished products.

DAMAN COMPUTERS PVT. LTD vs. ITO [2018] 102 CCH 0203 (Mum HC) ITA No.1 of 2008 DATED AUGUST 10, 2018

2320. The Tribunal held that where assessee claims that value adopted or assessed or assessable by stamp valuation authority exceeds fair market value of property as on date of transfer and assessee rasises specific dispute and claim before AO that stamp valuation of property sold was not its fair market value,

it is bounden duty of AO to refer the matter to VO. As the same was not done, the Tribunal upheld the CIT(A)'s order quashing the addition made by AO.

ACIT vs Tarun Agarwal [2018] 97 taxmann.com 346 (Agra-Trib)- IT APPEAL NO. 343 (Agra) OF 2017 dated August 20 2018

2321. The Court held that not only cost of construction of new property incurred after sale of old property would be eligible for exemption u/s 54(1), but also cost of land on which new property was constructed, even if such land had been purchased three years prior to sale of old property. It observed that section 54(1) nowhere contemplates that the same money received from the sale of a residential house should be used in the acquisition of new residential house as it allows adjustment and/or exemption in respect of property purchased one year prior to the transfer, which gave rise to the capital gain. Further, it opined that cost of new residential house would necessarily include cost of land, cost of materials used in construction, cost of labour and any other cost relatable to acquisition and construction of residential house

C. Aryama Sundaram vs CIT [2018] 97 taxmann.com 74 (Madras) - TAX CASE (APPEAL) NO. 520 OF 2017 dated August 06 2018

2322. Where the assessee had signed documents by virtue of Power of Attorney executed in favour of the assessee by two individual NRIs, who were original vendors of transactions of sale of immovable properties and the AO made an addition of long term capital gains to the assessee's income, the Tribunal deleted the said addition noting that in spite of having the information about the residential address of the two NRIs in India, the AO had not taken any initiative to make an enquiry about the genuineness of the whereabouts of the said vendors with intent to impose tax on capital gain upon them. It was also noted that the payments made by the purchasers were not credited in the accounts of the assessee but the NRIs.

Samir Trikambhai Patel vs ITO [2018] 96 taxmann.com 291 (Ahd Trib) - IT APPEAL NO. 1440 (AHD.) OF 2016 dated August 8 2018

2323. The Tribunal allowed the assessee's appeal and held that income from sale of shares should be treated as short term capital gains and not income from business noting that the assessee was showing its pool of shares as investment in its hands and making declaration in this regard in Balance Sheet from year to year. It held that the position of the assessee could not be disturbed and once stand had been taken by assessee in particular assessment year, same would remain applicable in subsequent assessment years also.
Ajinkya Electromelt Pvt Ltd. Vs Dy.CIT [2018] 53 CCH 0511 ITA No.891/Pun/2016 DATED AUGUST 30, 2018

2324. The assessee claimed deduction u/s 54F against the long term capital gain earned on sale of godown which was held for more than 36 months from the date of agreement i.e. 24-04-2008. The AO treated the the gain as short term capital gain on ground that period of holding was to be reckoned from the date of registration of property i.e. 11-07-2008 and the same was less than 36 months and accordingly, he made addition without granting benefit of deduction u/s 54F. The Tribunal held that "transfer" for the purpose of of section 2(47) meant a defacto ownership and not necessarily legal ownership. Further, noting that the assessee had made initial payment and acquired irrevocable right, title and interest including possession of Godown on the date of agreement i.e. 24-04-2008 and the registration of property which was done subsequently on 11-07-2008 was only formality, it held that the period of 36 months of holding of long term capital ought to be reckoned from 24-04-2008 and not from 11-07-2008 as wrongly adopted by AO. Accordingly, the Tribunal held that capital gains to be long term capital gains and allowed deduction u/s 54F thereon.

SANJAYKUMAR FOOTERMAL JAIN vs. INCOME TAX OFFICER [2018] 53 CCH 0449 ITA No.4853/Mum /2016 DATED AUGUST 28,2018

2325. The Tribunal allowed Revenue's appeal and held that sale of hotel premises by assessee was a slump sale liable to be taxed u/s 50B, rejecting the assessee contention that only the land and building of the hotel were sold and separate considerations were assigned and received for the same. It held that from the sale deed executed it was clear that the intention of the parties was to sell the hotel business as a going concern and the same was nothing but a slump sale. Further, the Tribunal noted that the entire business was sold for a total consideration of Rs.20 crore wherein the building and other amenities were valued as a whole, without assigning value to any item of the assets and consequent to the sale of the hotel premises, the business of assessee was closed down.
ASSISTANT COMMISSIONER OF INCOME TAX vs. OOTY GATE HOTEL [2018] 53 CCH 0443 (Coch Trib) ITA No.384 /Coch /2017 DATED AUGUST 14,2018

2326. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order accepting the assessee's claim that interest awarded to assessee u/s 28 of Land Acquisition Act, 1894 on enhanced compensation paid for acquisition of agricultural land would be eligible for exemption u/s 10(37) as the said interest partakes the character of compensation.
ITO v Sangappa S. Kudarikannur [2018] 96 taxmann.com 541 (Bangalore - Trib.) – ITA No. 1748 (Bang.) of 2017 dated July 20, 2018

2327. The assessee had entered into a joint development agreement with a developer on 7-12-2000 with respect to a land owned by the assessee, in terms of which 39% of constructed area was to be given to assessee and remaining 61% was to be allotted to the developer. CIT passed a revision order u/s 263 for AY 2007-08, holding that in view of section 2(47)(v) r.w.s. 45, capital gains tax ought to have been paid in AY 2007-08 i.e. the year when joint development agreement was executed. The Tribunal set aside the revision order. The Court held that no transfer within meaning of section 2(47)(v) would take place until the developer constructed the said property and handed over 39% of the same to assessee as per terms of agreement. Further, it held that even otherwise, since it was not Revenue's case that there was any monetary profit or gain that accrued to assessee at time of execution of agreement, no tax was payable u/s 45(1) in assessment year in appeal i.e. AY 2007-08.
Pr.CIT v Infinity Infotech Parks Ltd [2018] 96 taxmann.com 274 (Calcutta) - ITAT NO. 225 OF 2015; GA NOS. 4049 AND 4050 OF 2015 dated July 18, 2018

2328. The AO disallowed the assessee's claim for deduction u/s 54F on the ground that though the assessee had purchased a certain land after the sale of old asset, the residential house had not been constructed and completed on the said land within three years from date of sale of old asset. The CIT(A) allowed the assessee's appeal holding that there were genuine and bona fide reasons which resulted in the delay in completion of construction of the residential house, which were beyond the control of the assessee. The Tribunal concurred with the CIT(A)'s findings and held that the assessee was eligible for deduction u/s 54F. The Court dismissed Revenue's appeal holding that since the Tribunal and the CIT(A) had concurred in their factual finding, the appeal filed against order of the Tribunal could not be entertained.
Pr.CIT v Smt. Charumathi Seshadri - [2018] 97 taxmann.com 178 (Madras) - T.C.(A) NO. 293 OF 2018 dated July 17, 2018

2329. The assessee purchased the booking of a property vide agreement of sale dated 12-2-2007, from a person who had earlier made the said booking with a builder. The assessee sold the said property on 10-9-2010 and claimed long-term capital loss thereon, after considering indexation. The AO was of view that title of property was changed in favour of assessee only by a buyer's agreement dated 7-11-2007 signed by builder and assessee transferred apartment before period of 36 months from date of purchase, i.e., on 7-11-2007, thus, denied long-term capital loss and worked out short-term capital gain. The CIT(A) noted that the builder had vide a letter dated 19-3-2007 confirmed that the said property was transferred in the name of the assessee on 19-3-2007. Thus, it held that the period of holding of the said property started from 19-3-2007 to September 2010 which was more than 36 months and directed the AO to work out the gain as long-term capital gain. The Tribunal dismissed Revenue's

appeal against the CIT(A)'s order relying on the decision in the case of CIT v. K. Ramakrishnan [2014] 48 taxmann.com 55 (Delhi) wherein it was held that in order to determine taxability of capital gain arising from sale of property, it is date of allotment of property which is relevant for purpose of computing holding period and not date of registration of conveyance deed. Thus, it held that there was no illegality and infirmity in the order passed by the CIT(A).

DCIT v Deepak Shashi Bhusan Roy - [2018] 96 taxmann.com 648 (Mumbai - Trib.) – ITA Nos. 3204 & 3316 (MUM.) of 2016 dated July 30, 2018

2330. The assessee had entered into a development agreement with one, GPL wherein land owned by the assessee was given for development to GPL. In terms of the development agreement an amount of Rs.13.75 crores was paid as a deposit to the assessee by GPL. The agreement, *inter alia*, gave powers to GPL to obtain various permission, commence construction of homes and sell them. The agreement, *inter alia*, provided that Rs.55 crores was to be the notional costs of the land and on sale of the constructed property, 30% of its sale proceeds, were to be received by the assessee from GPL, over and above the amount towards the cost of the land. The Court held that since the development agreement was not registered it did not result in transfer as per section 2(47)(v) r.w. section 53A of the Transfer of Property Act. Further, it held that since the possession of the property was given to the Developer (GPL) for specific purposes to develop the property, it was not a right akin to the ownership of the land by the assesses and thus it was not a transfer as per section 2(47)(vi) also as the possession continued to be with the assessee. Therefore, the Court held that Rs.13.75 crores received as deposit did not constitute income in absence of transfer of land.

Pr.CIT v Fardeen Khan - [2018] 96 taxmann.com 398 (Bombay) – ITA Nos. NOS. 162 & 285 OF 2016 dated July 25, 2018

2331. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order holding that with respect to the capital asset acquired under a gift/ will, the benefit of indexed cost of acquisition is to be allowed with reference to the year in which the previous owner first held the asset, following the decision of CIT v. Manjula J. Shah [2013] 355 ITR 474 (Bom.) wherein it was held that capital gains arising on transfer of a capital asset acquired by assessee under a gift or will, indexed cost of acquisition has to be computed with reference to year in which previous owner first held asset and not year in which assessee became owner of asset.

ITO v Smt. Nita Narendra Mulani - [2018] 96 taxmann.com 204 (Mumbai - Trib.) - ITA No. NO. 243 (MUM.) OF 2016 dated July 25, 2018

2332. The Tribunal held that though provision of section 47(xiii)(b) does not envisage immediate allotment of shares in exchange of capital account balances of partners of partnership firm on or before date of succession of business of partnership firm by limited company, but the allotment of shares has to be complied with before end of relevant previous year in which such succession of business takes place. It held that providing for some period for completing said process of allotment of shares is also reasonable, however, 'reasonable period' cannot be stretched to cover a large period like 3 to 4 years. Further, the Tribunal held that in case of non-compliance of such condition, capital gains tax liability is to be fixed in hands of successor company for previous year in which requirements or conditions of section 47(xiii)(b) are not complied with vide section 47A(3).

CIT v Prakash Electric Co - [2018] 97 taxmann.com 210 (Karnataka) – ITA Nos. 884 OF 2007 & 60 OF 2015 dated July 23, 2018

2333. Where the assessee's land and building was compulsorily acquired by the Government and building was a business asset of assessee who was using it as a dhaba/hotel, the Tribunal held that the part of the consideration received on account of building which was to be treated as Short Term Capital Gain and remaining consideration, being received on account of transfer of capital asset i.e. land, would tantamount to Long Term Capital Gain. Thus, it remanded the matter to the AO to determine the quantum of consideration received on account of land and building separately.

Het Ram Sharma v ITO - [2018] 97 taxmann.com 75 (Chandigarh - Trib.) – ITA Nos. 482 & 483 (CHD.) OF 2018 dated July 23, 2018

2334. The Court reversed the Tribunal's order wherein the Tribunal had rejected assessee's claim for deduction of expenses claimed against the sale of mining right by holding them to be revenue expenses. The Court noted that for an earlier assessment year, the Tribunal had accepted the said expenses which comprised of amount paid for dismantling of existing structure, fencing of boundary, construction of temporary site office and security in plant area to be capital in nature and had thus allowed deduction of such expenses against receipts from sale of mining rights. The Court also noted that the Tribunal had disallowed the said expenses for want of details whereas the CIT(A) had given a finding that the payment was made through cheque and the same was reflected by the assessee in the balance sheet. Accordingly, it allowed assessee's appeal.
CHAMBAL FERTILISERS AND CHEMICALS LTD. & ANR v JCIT (2018) 102 CCH 0202 RajHC - D.B. Income Tax Appeal No. 52/2018, 68/2018 dated July 31, 2018

2335. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO by disallowing the assessee's claim for deduction u/s 54F against the capital gains earned from sale of plots of land. The AO noted that before selling the impugned land, the assessee had divided the same into plots after approval of layout by competent authority and accordingly, he treated the land to be capital asset only till the approval of layout (and thus gains till such date to be capital gains) and from approval of layout to till sale of plots as stock-in-trade (and thus gains from date of approval till the sale date to be business income) as per section 45(2). It was noted that assessee was never in real estate business and the land was purchased in year 1997 whereas the approval was taken after 9 years. The Tribunal held that the assessee's intention was to keep land as it was, and no intention of converting into business asset and simply because, assessee took approval for layout and divided into plots and some commission was paid for sale of same, it could not be said that land in question was in adventure in nature of trade. Thus, provisions of s. 45(2) had no application to facts of instant case. Further, it held that the the intention of the assessee at the time of purchase is paramount.
ITO v GOGINENI SARADA (2018) 53 CCH 0597 (VishakapatnamTrib) ITA Nos. 152/VIZ/2017, 122 & 152 /VIZ/2017 dated July 31, 2018

2336. The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the disallowance made u/s 14A holding that the provisions of section 14A were not applicable to insurance company. The Tribunal held that in respect of insurance companies, profit has to be computed as per provisions contained in First Schedule of the Act and, in view of Rule 5(a), expenditure which is not for insurance business cannot be allowed and the same has to be added back. Thus, it set aside the CIT(A)'s order and restored the disallowance made by the AO.
Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERS dated August 6, 2018

2337. The Tribunal dismissed the assessee's appeal against CIT(A)'s order upholding the AO's order adopting the stamp duty value of the property sold as on the date of sale to be the sale consideration and also adopting the guideline value as on 01/04/1981 to be the cost of property while computing capital gains on sale of the said property. It noted that the assessee prayed for upward revision of cost of land (FMV as on 01/04/1981) only by contending that the guideline value as on 1981 was very low compared to the market value of the property in 1981 and hence the same were subsequently revised in 1982, without furnishing any information to substantiate that the guideline value in 1981 was incorrect.
JAYANTHI BHARATH KUMAR v DCIT (2018) 53 CCH 0368 (VishakapatnamTrib) - ITA No. 272/Vizag/2017 dated July 13, 2018

2338. The AO had disallowed the assessee's claim of exemption u/s 54F on account of purchase of land against long term capital gain derived on sale of another land, though he had allowed the exemption with respect to cost of constructing a residential house thereon. The CIT(A) had allowed the said exemption only to the extent of 5 cents of the land (out of total 196.144 cents) purchased by the assessee on the ground that the remaining part could not be considered to be land appurtenant to the residential house constructed thereon (being a pre-requisite for allowing the said exemption). The Tribunal held that land appurtenant to residential house had to be determined with regard to locality where residential house was situated, social status of individual assessee, profession of individual and other factors for proper and convenient enjoyment of residential house and since such factors were not

on record, it had remanded the issue of exemption u/s 54F back to the file of AO. On second round of appeal, the CIT(A) considered 50 cents of land as land appurtenant to the residential house. The Tribunal dismissed Revenue's appeal against the said CIT(A)'s order passed in second round as Revenue agreed before the Tribunal that 50 cents of land was reasonable.

Further, with respect to AO's disallowance of the exemption on the ground that the asssessee had not deposited the sale consideration received in the Capital Gains Account Scheme, the Tribunal allowed the assessee's appeal noting that the assessee had made investment in residential house before the due date of filing of return mentioned in section 139(4) and relying on coordinate bench decision in the case of ITO v. Late Shri K.Sasidharan [ITA No.56/Coch/2017] wherein it was held that as per section 54F(4), if assessee claimed exemption by retaining cash then said amount was to be invested in the Capital Gains Account Scheme but if intention was not to retain cash but to invest in construction or any purchase of property and if such investment was made within period stipulated therein i.e. section 139(4), then section 54F(4) was not all attracted.

ACIT v TONY J. PULIKAL & Anr (2018) 53 CCH 0389 CochinTrib – ITA No. 472/Coch/2016 (CO No. 02/Coch/2017) dated July 25, 2018

2339. The Tribunal remanded the matter back to AO to make further enquiries and make assessment consistent with statutory provision in a case where the AO had adopted the stamp duty value of the property sold by the assessee-company as the sale consideration for computing capital gains as per section 50C, rejecting the assessee's contention that the stamp duty value exceeds the fair market value. It noted that as per section 50C(2), when it is pleaded that the actual amount received is a far less than the circle rates of the registration authority or that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer, the AO had to refer the matter to the DVO for the determination of the actual value, which was not done in the present case.

BETTER OPTION ESTATES PVT. LTD. v DCIT (2018) 53 CCH 0394 DelTrib – ITA No. 948/Del/2017 dated July 25, 2018

2340. The Court dismissed Revenue's appeal against the Tribunal's order accepting assessee's claim that the immovable property inherited by the assessee under will and perfection of title from perpetual leasehold rights to complete ownership did not amount to the acquisition of property by assessee. It held that acquisition took place upon bequest under will being effective. The Court held that the perfection of title from perpetual leasehold rights to complete ownership had to be regarded as cost of acquisition within meaning of such expression in section 48 and 55.

Further, it allowed the assessee's claim for deduction of amount paid to others asserting rights to the immovable property by considering the said payment as cost of improvement.

CIT v ADITYA KUMAR JAJODIA (2018) 407 ITR 0107 (Cal) – ITA No. 114 of 2014 GA No. 2277 of 2014 dated July 20, 2018

2341. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 54F on account of investment towards purchase of residential house against the long-term capital gains arising on sale of 51% unquoted equity shares of a company (EKWL). The AO had disallowed assessee's claim on the ground that deduction u/s 54F is available only if the original asset sold is a long-term capital asset other than residential house and since EKWL owned a residential property/ plot, the assessee had in effect sold a residential house and not only shares. The Tribunal relied on the Apex Court decision in the case of Bharat Hari Singhania & Ors v CWT (1994) 207 ITR 1 (SC) wherein it was held that shareholder does not own and cannot claim any portion of property held by a company of which he is the shareholder since company is an independent juristic entity and the shareholder is only entitled to participate in profits in form of dividends.

DCIT vs. NIRANJAN KOIRALA - (2018) 53 CCH 0439 DelTrib – ITA No. 2253/DEL/2010 dated July 20, 2018

2342. The Tribunal allowed assessee's claim for deduction u/s 54EC against the capital gains arising on sale of land vide sale deed dated 19.03.2012, for entire amount of Rs.1 crore invested in NHAI bonds which was allowed by the AO only to the extent of Rs.50 lakhs. It relied on the co-ordinate bench decision in the case of Aspi Ginwala, Shree Ram Engg. & Mfg. Industries vs. ACIT [20 taxmann.com 75 (Ahd)] wherein it was held that as per proviso to section 54EC, where assessee transfers his capital asset

after 30th September of the financial year he gets an opportunity to make an investment of Rs. 50 lakhs each in two different financial years and is able to claim exemption up to Rs. 1 crore u/s 54EC.
TUSHAR VASUDEVBHAI PATEL vs. DCIT(IT) (2018) 53 CCH 0393 AhdTrib – ITA No. 2954/Ahd/2015 dated 16th July, 2018

2343. The Tribunal allowed the assessee's claim and deleted the amount added by the AO considering the sale of shares to be bogus transaction and rejecting exemption claimed u/s 10(38). The AO had opined the transaction to be bogus noting that the increase in the market price of the shares was abnormal and many fold and also on the basis of statement of an employee of the stock broker who said he had no knowledge of the above transaction. Noting that the sales of the shares were not in dispute as the same were sold from the demat account against the consideration which was received by the assessee through banking channel, the Tribunal held that once holding of the shares prior to the sale and the sale transaction itself were not in dispute then the same could not be held as bogus transaction. It held that the AO's opinion was based on suspicion without any material evidence to controvert or disprove the evidence produced by the assessee.
PRAMOD KUMAR LODHA vs ITO (2018) 53 CCH 0539 JaipurTrib – ITA No. 826/JP/2014 dated 16th July, 2018

2344. The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had denied the assessee's claim for long term capital loss arising on account of reduction in share capital in a company 'ANNPL' effected under capital reduction scheme on the ground that such reduction did not result in transfer of capital asset as envisaged u/s 2(47) since the percentage of shareholding of assessee as well as face value per share remained the same after implementation of the scheme. The Tribunal allowed assessee's claim for loss noting that on account of reduction in number of shares held by assessee in ANNPL, it had extinguished its right and in lieu thereof, assessee had received certain consideration also. It relied on the Apex Court decision in the case of Kartikeya V. Sarabhai vs. CIT wherein the company had paid Rs. 500 per share upon a reduction of the share capital of the company by way of reducing the face value of each share from Rs. 1,000 to Rs. 500 and it was held that this amounted to transfer in view of the provisions of section 2(47).

Jupiter Capital Pvt Ltd vs ACIT [2018] 54 CCH 0310 (Mum- Trib.)- ITA No.445/Bang/2018 dated 29.11.2018

2345. The Tribunal remanded the issue of allowing deduction for indexed cost of improvement / construction (of 1st& 2nd floor) with respect to sale of a residential property comprising of ground floor, 1st floor & 2nd floor, noting that though the AO had in the remand report [called by the CIT(A)] had accepted the factum of construction of 1st& 2nd floor after acquisition of ground floor, assessee's claim was disallowed in absence of documentary evidence of expenditure. It held that instead of rejecting claim, correct amount of cost of construction was required to be examined by the AO as well as the CIT(A) on proper verification of record. Further, noting that the assessee had not given supporting evidence and also not maintained any account of cost of construction, the Tribunal held that the same could be considered only on estimation basis. Accordingly, it remanded the matter to AO to examine the correct amount of cost of construction on verification of record.
GHANSHYAM DAS THAKAWANIvs ITO [2018] 54 CCH 0388 (Jaip Trib.)- ITA No.876 /JP/2017 dated 26.11.2018

2346. The Tribunal held that assessee could not be denied the benefit of section 54F claimed on account of purchase of flat against long-term capital gains earned on sale of shares, even though out of total sale proceeds, he had used a part of it for providing unsecured loan to certain entity and invested in some bonds and thus, had failed to deposit monies in capital gain account scheme before due date of filing return of income u/s 139(1). It relied on the co-ordinate bench decision in the case of Sunayana Devi v. ITO [86 taxmann.com 72] wherein it was held that since the assessee had invested the sale consideration in construction of a residential house within three years from the date of transfer, he could not be denied deduction u/s 54F for the alleged reason that he had not complied with the requirements of section 54F(4).
Vijay Mahipal vs ITO [2018] 54 CCH 0245 (Kol- Trib.)- ITA No.502 /Kol/2017 dated 20.11.2018

2347. The Court allowed assessee's appeal against the Tribunal's order wherein the Tribunal had upheld the addition of capital gains made by the AO while making assessment for AY 2002-03 by invoking provisions of section 45(4) [applicable in case of deemed distribution of assets among partners at time of dissolution] on the allegation that assessee-firm had dissolved on 31.03.2002. The Court noted that there was no dissolution in assessee's case and only some partners retired and few partners were inducted and the firm continued with the earlier businesses, which was evident from the partnership deed.

G.H. Reddy and Associates vs Asst CIT (2018) 103 CCH 0224 Chen HC Tax case(Appeal) No.1106 of 2008 dated 16.11.2018

2348. The Tribunal allowed assessee's claim for deduction u/s 54F which was rejected by the CIT(A) on the ground that the tower in which flats were purchased, the lift was not installed and project was still not completed (after 3 years from the date of sale of original asset). The Tribunal held that since the assessee had made the entire payment and was in complete possession of the flat, the deduction could not be denied merrely because certain finishing work was not done. However, the Tribunal restricted the deduction (for AY 2013-14) only to one out of the two flats purchased noting that both the flats were on different floors and relying on the decision in the case of Gita Duggal (2013) 257 CTR 20 (Del HC) wherein it was held that a residential house can be construed to mean two units only if they have been purchased to be used as one and are adjacent to each other with common facilities. Accoridngly, assessee' appeal was partly allowed.

Kamala Ajmera v ITO – TS-564-ITAT-2018(DEL) - ITA No.347/DEL/2017 dated 17.09.2018

2349. The Tribunal allowed assessee's claim for deduction of amount paid by assessee for the purpose of clearing the mortgage as cost of acquisition u/s 48 where the property was mortgaged by the previous owner (assessee's father), holding that assessee could not inherit more than the interest of the testator i.e. the father, hence once the interest of the testator in the mortgaged property included the interest of mortgage, then the said interest of mortgage was also inherited by the assessee along with the flat in question.

Premlata Tibrewala v ITO [TS-608-ITAT-2018(JPR)] - ITA No.489/JP/2015 dated 10.10.2018

2350. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction u/s 54F where the assesse had invested the entire capital gains amount in the acquisition of the new residential property which was held jointly with his brother, noting that the brother had categorically admitted that he had not made any investments in the construction of the property. It held that just because the assessee had made the investment which was held jointly with his brother, it would not disentitle the assessee to claim of deduction u/s 54F, especially when he was the one, who had made the entire investment.

ITO v Shri Immnuel Charles [TS-748-ITAT-2018(CHNY)] - I.T.A.No.2366/Chny/2018 dated 13.12.2018

2351. The Court dismissed Revenue's appeal against Tribunal's order holding that the profit received by the assessee trust on sale of shares (which had been contributed to its corpus by the the settlor) was long term capital gains and not business income as claimed by the AO. It was noted that (i) the shares were through out held as investment and not as stock-in-trade (ii) only one transfer took place during the year (iii) the settlor had received 96% of the shares by way of allotment in employee stock option plan and only the balance 4% were purchased by settlor from market (iv) the sales were affected for diversification of portfolio and to take advantage of the bullish trend in the price of the said shares prevailing at the relevant time (v) the assessee trust was a genuine trust with the principal object of ensuring effective succession planning mechanism. Accordingly, the above indicated that the assessee-trust was not engaged in any business activity.
PRINCIPAL COMMISSIONER OF INCOME TAX vs VERNAN PVT TRUST [TS-763-HC-2018(BOM)] - ITA No.692 of 2016 dated 18.12.2018

2352. The Court dismissed Revenue's appeal against Tribunal's order allowing exemption u/s 54 to individual assessee for flats received as part of consideration for sale of residential property. Noting that the assessee had received sale consideration partly in cash and partly in form of new flats to be constructed and allotted, it was held that new flats amounted to assessee's investment for acquisition of new residential house and thus AO was not justified in denying benefit u/s 54. It also rejected Revenue's contention that market value of such flats could not be considered as investment in new residential house when assessee had not made payment in money terms or in kind.
CIT v Peter Savio Pereira -[TS-694-HC-2018(BOM)] – Income Tax Appeal No. 483 of 2016 dated 26.11.2018

2353. The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that sum received by individual-assessee pursuant to his retirement and dissolution of partnership firm was a capital receipt, where the assessee along with his partner had acquired development rights in a plot, however subsequently owing to dispute amongst them the matter was referred to arbitrator whereby the High Court had directed the other partner to pay assessee certain amount on dissoution of partnership. The Tribunal rejected Revenue's stand that the partnership firm was neither registered nor any activity was carried and therefore the amount received was pursuant to the relinquishment of his right in the development rights in land and could not be said to be on retirement as partner of firm, noting that (i) there was a valid partnership deed wherein the partners had contributed equally and opened a bank account (ii) agreement for acquisition of the development right in respect of the plot was executed by the assessee as agent on behalf of the firm (iii) arbitration proceedings clarified that the assessee was to retire from the said firm in lieu of the consideration to be given to him.
ITO v Ramal P. Advani [TS-534-ITAT-2018(MUM)] ITA No.6491&6963/MUM/2016 dated 27.08.2018

2354. The Tribunal allowed assessee's appeal and held that transfer of property held by assessee referred to in the Joint Development Agreement (JDA) did not take place in subject AY 2012-13 (in which JDA was entered) since pursuant to such JDA the possession of the scheduled property was not handed over to the builder and the builder was granted only a right to enter into the premises for the purpose of demolition of the existing building and re-construction and accordingly, the conditions specified in Section 53A of the Transfer of Property Act were not complied with. The Tribunal held that the transfer took place only in subsequent AY 2013-14 by execution of the POA dated August 17, 2012 through which the assessee authorized builder to convey, sell, transfer the property. Accordingly, it deleted the addition made for AY 2012-13.
Rameysh Ramdas v ITO [TS-467-ITAT-2018(CHNY)] - ITA No.1399/Chny/2017 dated 07.08.2018

2355. The Tribunal allowed assessee's claim for deduction of compensation paid to tenants for vacating possession of the property as an expenditure incurred for transfer while computing capital gain arising from transfer of property, relying on the decision in the case of CIT vs A Venkataraman & Ors [137 ITR 846 (Mad HC)], Mrs June Perrett vs ITO (2008) 298 ITR 268 (Kar HC) and CIT vs Eagle Theaters (2012) 205 taxmann.449 (Del HC) wherein it was held that the payment made to the tenants to obtain vacant possession was an expenditure incurred wholly and exclusively in connection with transfer of property and the said amount was deductible as an expenditure.
Acmevac Pumps & Engg Pvt Ltd v ACIT [TS-463-ITAT-2018(MUM)] - ITA No.5155/MUM/2017 dated 10.08.2018

2356. The Court dismissed Revenue's appeal against Tribunal's order holding that the capital gains arising on transfer of land (on which a building was standing earlier and the same was demolished before transfer) was liable to be taxed as long-term capital gains. It rejected AO's contention that what was transfered were both land as well as building and further since there was no breakup of sale consideration available for the same and the assessee-firm had failed to prove that it had not claimed any depreciation on land, the capital gains arising on transfer of entire property was taxable as short term capital gains u/s 50. The Court noted that the purchaser of the property had also sought permission to demolish the superstructure (though the assessee-firm itself had demolished the building before

transfer) and hence the building was of no value to the purchaser. It relied on the decision in the case of CIT Vs. Union Co. (Motors) Ltd. [(2006) 283 ITR 445 (Mad HC)] wherein the purchaser had himself demolished the building after transfer and yet the Court held that the sale consideration paid by the purchaser was only for the land, since the building had no value and got demolished and thus, gains on transfer of land was chargeable to tax as long-term capital gains.
JAIDAYAL PRANNATH KAPUR vs. ITO - (2018) 408 ITR 0315 (Mad HC) - Tax Case Appeal No. 143 of 2009 dated 18.09.2018

2357. The Court held that the fact that an agreement for sale of property is registered does not make it a conveyance. The sale or transfer is not complete on the date of the execution of the agreement if there are obligations to be fulfilled by both parties.
PCIT vs. Talwalkars Fitness Club (Bombay High Court) - INCOME TAX APPEAL NO. 589 OF 2016 dated 29.10.2018

2358. The Court dismissed Revenue's appeal against Tribunal's order holding that income earned by assessee from sale of a building was to be taxed as capital gains and not business income as claimed by Revenue, noting that (i) the building was shown as investment and not as stock in trade since 1978 (ii) the interest paid was not being claimed as expenditure in the profit and loss account (iii) the long years of holding the property.
Pr.CIT v Shree Shreemal Builders – ITA No. 205 OF 2016 (Bom HC) dated 31.07.2018

2359. The Tribunal allowed assessee's claim for deduction u/s 54, even though he had not deposited the unutilised long term capital gain in the designated bank account as contemplated u/s 54(2), noting that the assessee had completed the construction of new asset before the due date for filing belated return u/s 139(4). It relied on the decision in the case of Fathima Bai v. ITO [2009] 32 DTR 243 (Kar HC) wherein it was held that the timelimit for depositing under the capital gains scheme or utilisation can be before the due date for filing return u/s 139(4).
Rajesh Puneyani v ITO - ITA No.1267/Bang/2018 dated 24.09.2018

2360. The Tribunal allowed assessee's claim for deduction of indexed cost of improvement on sale of 6 cent of land, which was rejected by the CIT(A) holding that the no evidence was produced for the same. As per the purchase deed, it was noted that the assessee had in total 34 cents of land which was described as 'paddy land' in the said deed. Further, the balance 28 cent of land were compulsorily acquired under the Land Acquisition Act and the notice for such acquisition described the land as "filled wet land". Further, perusing the handwritten note book wherein the details of expenditure incurred for filling up of land and constructing a compound wall were given, the Tribunal held that CIT(A) was not justified in denying claim of indexed cost improvement on land.
Rajesh Puneyani v ITO - ITA No.1267/Bang/2018 dated 24.09.2018

2361. The Tribunal held that the conversion of a company into a LLP constitutes a "transfer". Accordingly, if the conditions of section 47(xiiib) are not satisfied, the transaction is chargeable to 'capital gains' u/s 45. It held that if the assets and liabilities of the company are vested in the LLP at 'book values' (cost), there is in fact no capital gain. The Tribunal also held that the argument that u/s 58(4) of the LLP Act, the LLP is entitled to carry forward the accumulated losses & unabsorbed depreciation of the company, notwithstanding non-compliance with section 47(xiiib) is not acceptable.
ACIT vs. Celerity Power LLP - ITA No. 3637/Mum/2015 & C.O No.2/Mum/2016 dated 16.11.2018

2362. The Tribunal held that section 50C is a deeming provision and applies only to the transfer of land or building. It does not apply to the transfer of "booking rights" and to right to purchase flats in a building.
Baniara Engineers Pvt. Ltd vs. ITO - ITA No.635/Kol/2018 dated 04.07.2018

2363. Where the assessee purchased vacant land in his own name, upon which he constructed residential property in which both he and his wife resided, the Tribunal held that the assessee was not correct in contending that the long term capital gains arising on sale of the said property was to be split between the assessee and his wife and held that since the assessee was the sole owner of the property and the

sale deed also stated so, the assessee was to be taxed on the full long term capital gains in his own name.
RAGHURAM P NAMBYAR & ANR. vs. ASSISTNAT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0158 BangTrib - ITA No. 2007/Bang/2016, 12/Bang/2014 dated Mar 2, 2018

2364. Where the assessee had transferred his share in land which was used for agricultural purposes and claimed benefit of deduction under Section 54B of the Act, the Tribunal held that the AO was not justified in denying the assessee benefit of the said deduction on the mere ground that the assessee had applied for permission to convert its land from agricultural land to non-agricultural (which was granted) without appreciating that the land was actually used for agricultural purposes. It held that notwithstanding the permission to use the land for non-agricultural purposes, what had to be considered was the actual use of the land. Accordingly, it held that the assessee was eligible for deduction under Section 54B of the Act.
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. BAJAJ SATYANARAYAN GIRDHARILAL & ORS. - (2018) 52 CCH 0312 PuneTrib - ITA No. 171/PUN/2012, 172/PUN/2012, 173/PUN/2012 dated Mar 28, 2018

2365. Where the assessee had exercised its 'right to nominate' another group concern for transfer of its unexercised call options right, the Tribunal held that since the right to nomination came to an end, in terms of Explanation 2 to section 2(47), the same was covered by definition of 'transfer' and, consequently, said transfer of capital assets was liable to be taxed as capital gain.
Vodafone India Services (P.) Ltd. v DCIT – (2018) 89 taxmann.com 299 (Ahd) – ITA No. 565 (Ahd.) of 2017 dated 23.01.2018

2366. Where the assessee inherited a capital asset/property (acquired by his father in 1945) by virtue of a will on death of his father in 2004, the Court held that the cost for which assessee's father acquired the said property was the deemed cost of acquisition and since the property was acquired in 1945, the indexed cost of acquisition was required to be computed by considering cost of acquisition (i.e. fair market value) as on 1-4-1981 and using the Cost Inflation Index for year beginning on 1-4-1981 and not the Cost Inflation Index for the year in which the assessee had inherited the property (i.e. 2003-04).
Pr.CIT v Prakash Krishnalal Bhagwati – (2018) 91 taxmann.com 291 (Guj) – Tax Appeal No. 1031 of 2017 dated 22.01.2018

2367. Where assessee (a partner in LLP) computed capital gains on land transferred by it to the LLP as capital contribution, taking the amount recorded in the books of the LLP as full value of consideration u/s 45(3), Tribunal rejected the invocation of deeming provisions of section 50C for substituting the sales consideration by the stamp duty value ruling that though section45(3) is not a specific provision overriding the other provisions of the Act and that importing a deeming fiction provided in section 50C could not be extended to another deeming fiction created by the statute by way of section 45(3) to deal with special cases of transfer between partnership firm and partner. Tribunal also rejected revenue's reliance on the ruling in the case of Carlton Hotel Pvt Ltdv ACIT [(2009) 122 TTJ 515 (Luck)] wherein it was held that provisions of section 50C overrides the provisions of section 45(3) by holding that the findings in the said ruling was given under different facts and that the Lucknow Bench had simply observed that the provisions of section 50C overrides the provisions of section 45(3) but had not given a categorical finding.
DCIT v Amartara Pvt Ltd - TS-612-ITAT-2017(Mum) – ITA Nos. 6050 & 6114/Mum/2016 dated 29.12.2017

2368. Where assessee entered into a development agreement with a builder for development of land taken on perpetual sub-lease and sold certain units so developed, the Court held that since the major portion of developed building was to remain with assessee after construction, mere sale of one unit therefrom per se or merely because for a particular unit, an intervening transaction of sale was aborted for pursuit of higher profit by itself would not confer on transaction character of business venture. It was accordingly held that the income earned by assessee from sale of developed units was to be taxed as capital gain.
CIT v. Surjeet Kaur - (2018) 91 taxmann.com 121 (Cal) - ITA No. 383 of 2008 dated 05.01.2018

2369. Where there was an agreement to sell a property between the assessee-HUF and purchaser in September, 1966, whereby, the purchaser agreed to purchase property for certain value and paid certain amount as earnest money, but due to litigation in Civil Court, the sale deed was executed later on 29-11-2010, Tribunal held that the sale deed of September 1966 was to be considered for calculating long-term capital gains and the provisions of section 50C which were not applicable in that year could not be invoked against assessee
Hari Mohan Das Tandon (HUF) v Pr.CIT – (2018) 91 taxmann.com 199 (All Trib) – ITA No. 44 (Alld) of 2016 dated 08.01.2018

2370. Tribunal held that transfer of business division on a going concern basis to subsidiary against shares and debentures is not a 'slump sale' but an 'exchange' and, thus, provisions of section 50B are not applicable. Further, Tribunal held that since the compensation (sale consideration) was not allocable item-wise and it was also not possible to attribute the cost of acquisition to individual assets in the undertaking, it was not possible to compute capital gains and, therefore, the amount of capital gains was not taxable u/s 45.
Bennett Colman & Co. Ltd. vs. ACIT – (2018) 168 ITD 631 (Mum) – ITA Nos. 3298 & 3537 (Mum.) of 012 dated 08.01.2018

2371. Tribunal held that the assessee was eligible to claim deduction u/s 54F with respect to the entire sale consideration received on sale of equity shares if it was utilised for constructing a new residential house within three years period, irrespective of the fact that the assessee had not deposited unutilized portion of sale consideration in a capital gain account scheme in year of transfer before due date of filing of return u/s 139(1).
Smt. M.K. Vithya v ITO – (2018) 91 taxmann.com 102 (Chen) – ITA No. 2739 (Mds) of 2017 dated 09.01.2018

2372. Where assessee-company, engaged in real estate development, under a shareholders agreement with a financial partner gave possession of a land to a SPV, as part of an arrangement to develop integrated township, Tribunal held that since all transactions embodied in shareholders agreement were unregistered agreements, provisions of section 2(47)(v) would not be applicable and accordingly no liability of tax could be fastened on assessee merely on basis that possession of land having been handed over by assesse.
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

2373. The assessee, vide a Power of Attorney (POA) dated 14-3-1993, had given only access of a property to developer to do certain jobs on their behalf but the said POA did not disclose that possession had been given to developer in pursuance thereto. Subsequently, a written agreement dated 30-4-2001 was entered into for transfer of the said property to the said developer which in clear terms recorded that the assessees were owner and in possession of property. The assessee claimed that no transfer was effected in AY 2002-03 but same was effected in AY 1993-94 when the said POA was executed in favour of the developer.Noting the above facts, the Court held that the transfer within meaning of section 2(47)(v) of the said property had taken place only in AY 2002-03 vide the agreement dated 30-4-2001 i.e. when actual possession was given to the developer and accordingly, it upheld the Tribunal's order confirming the AO's action of taxing the gains arising on transfer of the said property in AY 2002-03.
Dr. Joao Souza Proenca v ITO – (2018) 401 ITR 105 (Bom) – ITA No. 5 & 6 of 2012 dated 17.01.2018

2374. The Tribunal held that the proceeds from sale of plots of land were to be taxed as capital gain and not as business income considering the sale to be adventure in nature of trade in view of the following facts:

- assessee had purchased agricultural land in 1960 and with passage of time and rapid urbanization, said land, being in residential area, became non-agricultural land
- as smaller sized plots were required by end-users in this area, assessee divided said land in small sized plots to get market price

- sale consideration was not ploughed back in land investments

ACIT v Narendra J. Bhimani – (2018) 90 taxmann.com 329 (Rajkot Trib) – ITA No. 411 (Rjt.) of 2012 CO No. 18 (Rjt.) of 2012 dated 31.01.2018

2375. The Tribunal held assesse-company was not to be eligible for deduction u/s 54G on sale of its factory building as the same was not situated in notified urban area as stipulated under the said section.
DCIT v Geneva Industries Ltd. – (2018) 90 taxmann.com 406 (Bang) – ITA No. 1560 & 1628 (Bang) of 2013 dated 19.01.2018

2376. In a case where purchase of new property was not concluded or agreement of the same was not certain to be honoured on the date of filing of return, irrespective of the fact that (i) the assessee had paid a sum of Rs.1 crore to the vendor for purchase of the said property and (ii) transaction had not gone through because the vendor intended to cheat him and the assessee had issued a legal notice to the vendor and also filed a civil suit before the Civil Court at Hyderabad for specific performance of the agreement, the Tribunal held that the assessee could not have claimed to have purchased residential property within one year before or within two years after sale of original asset or to have constructed property within three years after sale of property for purposes of claiming deduction u/s. 54F(4).
Mahesh Malneedi v ITO – (2018) 169 ITD 154 (Hyd Trib) - ITA No. 1021 (Hyd.) of 2017 dated 25.01.2018

2377. The Court dismissed Revenue's appeal against the Tribunal's order upholding the deletion made by CIT(A) of the amount of long-term capital gains on sale of shares of company added by AO considering the share transaction as non-genuine transaction. It was noted that the assessee had sold shares through a SEBI registered Stock Broker, the payment for sale of shares was received through banking channels and all the documentary evidences in favour of the assessee were rejected by the AO merely on basis of some casual replies given by assessee to AO. It was also noted that the dividend received with regard to holding of the said shares was disclosed by assessee in his return of income and exemption was claimed accordingly. Thus, it held that the addition was made without any logical basis.
PR.CIT v PREM PAL GANDHI – (2018) 401 ITR 253 (P&H) – ITA-95-2017 (O&M) dated 18.01.2018

2378. The Tribunal held that sub-section (2) of section 54 which requires the assessee to deposit the unutilised amount in capital gain account scheme before filing of Income-tax return, regulates procedure for substantive rights of exemption provisions u/s 54 and this enabling section cannot abridge or modify substantive rights given vide sub-section (1) of section 54 as otherwise, the real purpose of substantive provision, i.e., sub-section (1), will get defeated. Thus, where the assessee had not deposited the unutilised amount in capital gain account scheme before filing of Income-tax return as required by section 54(2) but at time of assessment proceedings proved that he had already invested capital gains on purchase/construction of new residential house, the Tribunal held that the benefit under substantive provisions of section 54(1) could not be denied to assessee and any different or otherwise strict construction of sub-section (2) would defeat the very purpose and object of exemption provisions of section 54.
Mrs. Seema Sabharwal v ITO – (2018) 169 ITD 319 (Chandigarh Trib) – ITA No. 272 (Chd.) of 2017 dated 05.02.2018

2379. Where the assessee had utilised entire capital gain by way of making payment to developer of new flat but neither the possession of the flat was given nor the flat was completed, the Tribunal held that the assessee's claim for exemption u/s 54 could not be denied since section 54(2) does not provide that in case assessee cannot get possession of property, he would not be entitled for exemption u/s 54. It held that the requirement of section 54 is that the capital gain is utilised or appropriated as specified in section 54(2) and the assessee had complied with the conditions stipulated in section 54(2).
ACIT v M. Raghuraman – (2018) 169 ITD 315 (Chen) – ITA No. 1990 (Mds.) of 2017 dated 08.02.2018

2380. Where assessee, after receiving Rs.78 lakhs on sale of his old property, invested in another property by entering into two separate contracts on same date, one for Rs.60 lakhs for purchase of house property and remaining Rs.18 lakhs for purchase of furniture and fixtures in said property so as to claim

deduction u/s 54 and the AO disallowed assessee's claim for deduction to the extent of Rs.18 lakhs on the ground that expenses incurred on buying furniture could not be said to be expenses incurred for making house habitable, the Tribunal held that the cost of residential house is entire cost of house, and it could not be open to AO to treat only cost of civil construction as cost of house and segregate cost of other things as not eligible for deduction u/s 54. It held that even if assessee were to buy house, without furniture, consideration would have been same, therefore two agreements could not be considered in isolation and therefore, assessee's claim of deduction u/s 54 for investing capital gains in residential house along with furniture and fixtures during relevant year was to be allowed in entirety.
Rajat B Mehta v ITO – (2018) 62 ITR(T) 334 (Ahmedabad - Trib) – ITA No. 19 (Ahd.) of 2016 dated 09.02.2018

2381. Where the assessee's claim for deduction u/s 54F on account of purchase of a residential flat in Dubai out of proceeds of sale of long-term capital asset being 50% share in a private limited company in India was rejected by the AO since the new property purchased was situated outside India, the Tribunal allowed the assessee's claim for the said deduction, noting that prior to amendment in section 54F by the Finance Act, 2014 w.e.f. 1-4-2014, there was no restriction upon taxpayer to make investments outside India in purchasing residential house property and since the residential property was purchased by assessee in year 2011-12, the deduction u/s 54F was to be allowed. Further, it also admitted the assessee's claim for converting the aforesaid gains offered to tax as short-term capital gain while filing return of income into long-term capital gain wherein the said claim was made for first time before CIT(A) without filing a revised return and remanded the matter to AO for examining the said claim on merits.
Ashok Keshavlal Tejuja v ACIT – (2018) 91 taxmann.com 28 (Mum) – ITA No. 3429 (mum.) of 2016 dated 15.02.2018

2382. Where the assessee-company had offered a land, which was held by it as capital asset and converted the same into stock-in-trade in year 2000, as security for amounts advanced by another company to the sister concern of assessee-company under a Memorandum of Association entered into with the said company and the said company sold the said land belonging to assessee to one, RSPL for repayment of loan borrowed by its sister concern, the AO held that there was transfer of property between assessee and RSPL and computed long-term capital gains in the hands of assessee. Relying on the decision in case of the said sister concern of assessee of CIT v. Essorpe Holding (P.) Ltd. (2017) 249 Taxman 222 (Mad) having similar facts, the Court held that the AO should apply provisions of section 45(2) and compute capital gains upto date of conversion into stock-in-trade, and thereafter on actual sale of land, i.e., difference between value of sale and stock-in-trade, was to be considered as 'business income'.
Pr.CIT v Essorpe Mills Ltd. – (2018) 92 taxmann.com 100 (Mad) – T.C.A. No. 841 of 2017 dated 20.02.2018

2383. Where the assessee had transferred its immovable property vide an agreement dated 22.03.1992, receiving an advance for the same, but the sale deed was not executed in the name of transferee due to some problem related to the title of the property and it was only vide the sale deed dated 02.07.2011 that the impugned property was transferred, the Tribunal held that since the transfer of property was completed in terms of section 2(47)(v) r.w.s. 53A of Transfer of Property Act by giving possession of property on date of sale agreement, the capital gains would be subjected to tax in year of transfer of property i.e. financial year 1991-92 and not in the year of its registration i.e. financial year 2011-12. It thus held that capital gains arising out of sale of immovable property would be taxable in year in which sale transactions were entered into by assessee, even if transfer of immovable property was not effective or competent for want of registration under general law.
Mangilall Estates (P.) Ltd. v DCIT – (2018) 91 taxmann.com 266 (Kolkata Trib) – ITA No. 156 (kol.) of 2015 dated 21.02.2018

2384. The Tribunal rejected the assessee's contention that plots of land sold by it were agricultural land, noting that –

- though the assessee had inherited agricultural land from his father he had sold the land pieces after plotting smaller residential plots

- from size of plots also it was evident that these were residential plots and not agricultural plots of land
- there was no evidence on record to suggest that at time of sale, agriculture activities were being carried on said pieces of land
- Stamp duty authorities had also recognized plotting as residential plots which was very much evident from registered sale deeds and stamp duty paid on such sale of residential plots

Further, noting that it was not a case that the buyers had acquired agriculture plots and subsequently changed it to residential use but a case where the assessee himself had developed residential plots and then sold it to individual buyers, the Tribunal held that by such plotting of land, the assessee had converted the agriculture land held as capital asset into stock-in-trade of assessee's business and, thus, it remanded the matter to AO to determine capital gains in accordance with section 45(2) as well as business income on sale of such plots.
Mahaveer Yadav v ITO – (2018) 91 taxmann.com 476 (Jaipur Trib) – ITA No. 209 (JP.) of 2017 dated 27.02.2018

2385. The Tribunal directed the AO to assess the gains arising on sale of the plot which had devolved on the assessee after death of his father as a consequence of automatic dissolution of partnership firm in which his father was a partner under the head 'capital gain' and not as business income, noting that four plots of land had devolved on assessee and capital gain arising from sale of other three plots had been duly accepted by the AO in earlier year and there was nothing to suggest that the assessee had undertaken any business activity vis-à-vis plot of land devolved on him so as to construe profit on its sale as 'business income'. It, was, thus held that there was no justification to treat plot of land in question as 'stock-in-trade' and the gains arising from sale of the said land was taxable as capital gains.
Balkrishna P. Wadhwan v DCIT – (2018) 91 taxmann.com 432 (Mum) – ITA No. 5414 (Mum.) of 2015 dated 28.02.2018

2386. Where the AO had passed the reassessment order making additions to assessee's income on account of capital gain arising on transfer of land after finding that the assessee had entered into a development agreement in respect of its land for construction of residential house and the assessee had contended that possession of the impugned land was not transferred to developer and same was continuously enjoyed by assessee, the Tribunal held that the assessee had handed over possession to developer, attracting provisions of section 2(47)(v) r.w. section 53 of the Transfer of Property Act, 1882 and the capital gains on transfer of the impugned land was taxable in the year in which the agreement was entered into, noting that as per the said agreement, the assessee had permitted the developer to enter into premises of its land and do all necessary things for construction of apartments.
K. Vijaya Lakshmi v ACIT – (2018) 91 taxmann.com 253 (Hyderabad Trib) – ITA Nos. 1561 (hyd.) of 2016 and 372 (hyd.) of 2017 dated 28.02.2018

2387. Where the AO had passed the reassessment order making additions to assessee's income on account of capital gain arising on transfer of land after finding that the assessee had entered into a development agreement in respect of its land for construction of residential house and the assessee had contended that possession of the impugned land was not transferred to developer and same was continuously enjoyed by assessee, the Tribunal held that the assessee had handed over possession to developer, attracting provisions of section 2(47)(v) r.w. section 53 of the Transfer of Property Act, 1882 and the capital gains on transfer of the impugned land was taxable in the year in which the agreement was entered into, noting that as per the said agreement, the assessee had permitted the developer to enter into premises of its land and do all necessary things for construction of apartments. Further, it held that section 45(5A) being substantive provision and inserted vide the Finance Act, 2017, w.e.f. 1-4-2018, could not be applied to development agreement entered into during the year 2008-09, in which section 2(47)(v) was attracted.
Adinarayana Reddy Kummeta v ACIT – (2018) 91 taxmann.com 360 (Hyderabad Trib) – ITA Nos. 1712, 1714 (Hyd) of 2016, 458 and 459 (Hyd) of 2017 dated 28.02.2018

2388. Where the assessee had claimed long-term capital loss on account of sale of equity shares held in its 100% second step down subsidiary company and the AO, noting that that there was a huge price variance between the quoted price in NSE and the off-market selling price shown by the assessee, had added amount of difference in selling price of shares to assessee's income under the head 'long term capital gain' and subsequently, before the Tribunal the asessee contended that the transfer itself was not a 'transfer' in view of provisions of section 47(iv), the Tribunal accepted the assessee's contention relying on the decision in the case of Petrosil Oil Co. Ltd. v. CIT (1999) 236 ITR 220 (Bom) wherein it was held that a second step down 100% subsidiary company is also regarded as subsidiary under the Companies Act, 1956 and transfer of capital asset to such a subsidiary company could not be regarded as 'transfer' in view of provisions of section 47(iv).
Emami Infrastructure Ltd. v ITO – (2018) 91 taxmann.com 62 (Kolkata Trib) – ITA No. 880 (Kol.) of 2014 dated 28.02.2018

2389. Where a group consisting of assessee and three other family members had entered into development agreement on05-03-1995 under which they were entitled to receive 51 flats in total out of flats constructed by Developer against the surrender of their share in land (which were also subsequently sold) and the AO computed capital gains arising on sale of land in the current AY i.e. AY 2003-04 when the developer had finally handed over the completed project, relying on the decision in the case of Dr. Maya Shenoy v ACIT (2009) 124 TTJ 692 (Hyd Trib) and Potla Nageswara Rao v DCIT (2014) 365 ITR 0249 (AP), the Tribunal held that the transfer of land in consideration of flats constituted one transaction giving rise to capital gains and sale of flats by assessee constituted another transaction giving rise to capital gains and when the transfer was complete, automatically, consideration mentioned in agreement for sale had to be taken into consideration for purpose of assessment of income for assessment year when agreement was entered into and possession was given. Accordingly, it held that the action of AO in working out long term capital gains arising in AY 1995-96 in the impugned AY i.e. AY 2003-04 could not be upheld. Further, with respect to the assessee's claim for deduction u/s 54F on sale of all the flats received under the development agreement and subsequent investment in a residential house, the Tribunal held that all the apartments/ flats received in the development agreement would become one house technically, even though they were of independent units. However, since this aspect had not been considered by the AO or the CIT(A) in the correct perspective, the matter was remanded to AO for re-examination keeping in mind the date of sale of various apartments and the claim u/s 54F/54.
DR. SUDHIR NAIK & ORS. v ITO – (2018) 52 CCH 70 (Hyd Trib) – ITA No. 1463/Hyd/16 to 1470/Hyd/16 dated 31.01.2018

2390. The Tribunal dismissed assessee's appeal against the CIT(A)'s order upholding the AO's action in restricting the assessee's claim for deduction u/s 54 in respect of one flat and disallowed assessee's claim of deduction in respect of another flat at a different location, rejecting the assessee's contention that the purchase of two flats in different localities was on account of family compulsions which were only bald assertions, not supported by any cogent evidence. With respect to purchase of one the residential house, the assesssee claimed that it consisted of two flats combined to make it one residential unit. In the regard, the Tribunal accepted assessee's contention, however, remanded the matter to AO to verify whether the two flats had been joined together or not to make it a single unit.
ABHIJIT ASHOK BHALERAO & ORS. v ACIT – (2018) 52 CCH 66 (Pune) – ITA Nos. 146-148/Pune/ 2015 dated 29.01.2018

2391. The Apex Court allowed the SLP against High Court ruling wherein it was held that upon takeover of its proprietary concern by a company the assessee would not be entitled to claim capital gains exemption benefit under section 47(xiv)(c) as sub-clause (c) condition of receiving consideration only by way of share allotment was not met**.**
K. V. Mohammed Zakir v CIT - [2018] 92 taxmann.com 110 (SC) - SPECIAL LEAVE PETITION (CIVIL) DIARY NOS. 36602 OF 2017 dated MARCH 5, 2018

2392. Where assessee's claim for deduction of long-term capital loss on issue of shares was rejected on ground that sale consideration had been grossly understated and that the assessee had not been able to prove that the sale consideration at which the shares were sold were the market value, the Tribunal

held that since no enquiries whatsoever were conducted in hands of purchaser of shares, impugned disallowance made on basis of suspicion and conjectures was to be deleted.
Electrocast Sales India Ltd. v DCIT - [2018] 92 taxmann.com 85 (Kolkata - Trib.) - IT APPEAL NO. 2145 (KOL.) OF 2014 dated MARCH 9, 2018

2393. The Tribunal held that the basement having an independent entry-gate, staircase, living room, bedroom, dining room, washbasin, toilet, kitchen and mini-drawing room was a part and parcel of residential house and therefore held that the assessee was entitled to claim exemption under Section 54 of the Act by investing the capital gain realized by it.
ACIT v Shri Shrey Sharma Guleri Prime Channel Software Communications (P.) Ltd - [2018] 92 taxmann.com 43 (Mumbai - Trib.) - IT APPEAL NO. 6147 (MUM.) OF 2016 dated MARCH 22, 2018

2394. Relying on the communication dated 21st February, 2006 of the CBDT to the Chairman of the Insurance Regulatory and Developing Authority and the decision of the Apex Court in General Insurance Corpn. of India v. CIT [1999] 240 ITR 139/106 Taxman 389, the Court held that that the exemption available to any other assessee under clause 10(38) relating to long term capital, would also be available to a person carrying on non-life Insurance business. Accordingly, it dismissed the Department's appeal.
PrCIT v New India Assurance Co. Ltd - [2018] 91 taxmann.com 433 (Bombay) - IT APPEAL NO. 1025 OF 2015 dated MARCH 5, 2018

2395. The assessee had transferred its land, purchased in 2003, to a developer for joint development of the land and claimed that the gains arising out of development agreement being LTCG was exempt under Section 54F as the assessee was receiving residential flats as consideration. The AO denied the benefit under Section 54F and held that the gains were STCG as the assessee purchased the property in 2006 as against 2003. The Tribunal accepted the assessee's contention that the land was purchased by it in 2003 itself and it was only to obtain approval from the authorities (which was obtained in 2006) that there was a revised agreement dated 2006. Accordingly, it held that the AO was not justified in treating the gains as STCG. However, noting that the assessee's claim of exemption under Section 54F had not been examined, it remitted the issue back to the AO to decide the claim.
DODDAPANENI ATCHAIAH TENALI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0132 HydTrib - ITA No. 1553/Hyd/2016 dated Feb 28, 2018

2396. Where the assessee firm had purchased land in Kurla (Kurla Land) in the earlier years and during the year under review, the assessee admitted a new partner and subsequently 3 other partners retired, the Tribunal held that the AO was not justified in invoking the provisions of Section 45(4) in the hands of the assessee alleging that by way of admission and subsequent retirement of partners, the assessee had distributed the assets of the firm. The Tribunal held that admission of a new partner to the existing partnership-firm did not result in distribution of assets and that even upon the retirement of the other partners there was no redistribution of assets of the firm. It held that during the continuation of the partnership, partners do not have separate right over the assets of the firm and accordingly held that since the firm was not dissolved there was no case of there being any sort of distribution of assets to the partners.
INCOME TAX OFFICER vs. FINE DEVELOPERS DHEERAJ APARTMENT - (2018) 52 CCH 0134 MumTrib - ITA No. 5038/Mum/2012 dated Feb 28, 2018

2397. The Court upheld the applicability of Section 50C on sale of rights in immovable property and dismissed assessee's contention that since the actual owner of the land was the State of Rajashtan 50C would not apply to it considering that the assessee was granted lease rights in the property for perpetuity. Further, it dismissed the contention of the assessee that occupancy rights are not in the nature of capital assets and held that considering the assessee was granted lease rights for perpetuity, there was transfer of immovable property in light of the decision of the Apex Court in R.K. Palshikar (HUF) v. Commissioner of Income Tax, AIR 1988 SC 1305 (wherein it was held that premium paid for acquisition of the leasehold interests for a period of 99 years amounted to a transfer of capital assets). Accordingly, it dismissed assessee's appeal.
RAJESH GUPTA HUF vs. PRINCIPAL COMMISSIONER OF INCOME TAX & ANR. - (2018) 101 CCH 0196 DelHC - ITA 246/2018 & CM APPL. 7363-7364/2018 dated Feb 26, 2018

2398. The assessee declared receipt of 30% of consideration received in respect of sale of property as Long Term Capital Gains claiming that the property devolved on him in view of Memorandum of Family Arrangement cum compromised deed dated 03-06-2004 to the extent of 30%. According to the AO, since no cost was incurred by the assessee to acquire the asset and the mode of acquisition was other than that mentioned in section 49 of the Act, the cost of the previous owner could not be allowed as cost in the hands of the assessee and hence, he treated the entire share of Rs. 3.15 crore as long term capital gain. Moreso, the AO doubted the genuineness of the Memorandum alleging that there was no real dispute. The Tribunal, on examination of the facts, held that the family arrangement cum compromise deed was documented by way of Memorandum in writing which was registered in the presence of witnesses. It observed that the arrangement cum compromise clearly stated about the dispute and held that as per settled law when parties entered into family arrangement, validity of the family arrangement was not to be judged with reference to whether the parties should raised dispute or rights or claimed rights or a certain properties had in law any such right or not. Accordingly, it upheld the genuineness of the arrangement and the assessee's claim of LTCG and consequent exemption under Section 54.
KUNAL R. GUPTA vs. INCOME TAX OFFICER - (2018) 52 CCH 0245 MumTrib - ITA No. 5768/Mum/2017 dated Feb 28, 2018

2399. The assessee was engaged in the business of investment and securities and had at the relevant time maintained a distinct portfolio in respect of stock in trade and investment. For the particular year, the assessee acquired shares in certain companies that underwent amalgamation. Those companies, which had investment portfolio containing shares of the companies in which the assessee had holdings, were treated as stock in trade. The assessee shifted some of the shares to its investment account and later sold them during the Assessment Year and offered the gains on these shares as capital gains. The AO disregarded the assessee's claim and taxed all gains as business income. Noting that the assessee had distinct portfolio of shares and mutual funds under the head investments and some shares as stock in trade, the High Court upheld the Tribunal's order accepting assessee's claim.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. PAVITRA COMMERCIAL LTD. - (2018) 101 CCH 0038 DelHC - ITA 146/2018 & CM APPL. 5059/2018 dated Feb 9, 2018

2400. The Tribunal rejected assessee's contention of considering date of agreement (as against the date of registration) for the purpose of calculating holding period of property transferred under Joint Development Agreement (JDA). It observed that the assessee transferred property under JDA on June 14, 2007 which was acquired by way of an agreement to sale on June 28, 2000 but noted that the sale deed was registered/executed on December 5, 2005. It accepted assessee's contention that upon entering into agreement of sale, the seller relinquishes certain rights in favor of the buyer but held that the crucial factors to be considered is whether the buyer had taken possession of the property and paid consideration agreed. Noting that the assesse had never produced agreement to sale before the AO and that out of total consideration of Rs. 12 Lakhs, only Rs. 1 Lakhs had been paid and that there was no covenant in the agreement to sale that possession could be transferred in favour of assesse, it held that the date of agreement could not be taken as the date of transfer as the assessee had not acquired any interest in the said property from the date of agreement of sale. Hence, it held that the date of registration ought to have been considered as the date of transfer and accordingly held that the capital gains would be treated as "short term capital gains", not eligible for exemption u/s 54F.
M.C.Sathyanarayana Gowda - TS-109-ITAT-2018(Bang) - ITA No.1057 /Bang/2016 dated 26/02/2018

2401. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO to the capital gains offered to tax by the assesse on sale of land where the AO had adopted the valuation done by District valuation officer (DVO) as on 01/04/1981 to arrive at the Cost of Acquisition of the property. The valuation of property done by DVO was much less than that shown by assesse which was based on the report of registered valuer. AO had made reference to the DVO u/s 55A(b)(ii). It was noted that as per section 55A(a), prior to 01/07/2012, AO could refer valuation of capital assets to a Valuation Officer in only case where value claimed by assessee based on registered valuation report was less than its fair market value, which eveidently was not applicable in the present case. Further, to

make reference to DVO u/s 55A(b)(ii), AO had to record a finding that section 55A(a) was not applicable. In absence of such finding and placing reliance on the decision in the case of Royal Calcutta Turf Club v DCIT [ITA No.231/Kol/2013] wherein it was held that section 55A(b) can be invoked only in cases when the value of the asset claimed by the assessee is not supported by an estimate made by a registered valuer, the Tribunal held that the AO should not have invoked the provision of section 55A(b)(ii).

ITO v PIONEER IRON & STEEL CORPORATION (P) LTD. - (2018) 53 CCH 0148 (KolTrib) - ITA No. 203/Kol/2016 dated Jun 13, 2018

2402. The Tribunal dismissed assessee's appeal against the initiation of reassessment proceeding u/s 148 r.w.s. 147 where the notice u/s 148 was issued on the basis of information received that the assessee-company had received share application money from shell companies / unaccounted sources. The Tribunal rejected the assessee's argument that it had disclosed truly and fully all material facts required, noting that reassessment was initiated within 4 years from the end of the relevant assessment year and thus the proviso to section 147 was not applicable. It also held that since the return was only processed u/s 143(1), it was not a case of change of opinion, as held by the Apex Court in the case of Rajesh Jhaveri Stockbrokers Ltd. [291 ITR 500 (SC)].

RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015dated Apr 10, 2018

2403. The assessee offered to tax LTCG of Rs.10 crores u/s 50B, claiming the same to be on account of transfer of hospital business, by way of slump sale, wherein the networth of the said business was negative Rs.66.36 crores. The AO computed the sales consideration as Rs.66.46 crores (i.e. 66.36 + 10). Before the Tribunal, the assessee raised an additional ground claiming that since lands and buildings of the hospital were not transferred under the Business Transfer Agreement, it was not a case of slump sale. The Tribunal accepted assessee's claim that the hospital business transferred by it under the Business Transfer Agreement was not a slump sale as defined u/s 2(42C) for the purpose of section 50B rather a composite sale of assets. It held that wherever any left-out asset is insignificant to the assessee's business and the entire business has been sold as a going concern, it would be a slump sale but wherever any significant asset without which business of the assessee could not be continued is not sold, sale of entire business leaving that asset would not be a slump sale. Accordingly, noting that in the present case, the lands and buildings of the hospital was a significant asset, without which it was not possible to run the hospital business, it held that capital gains could not be computed u/s 50B. Further, noting that the assessee had already offered to tax the sale consideration received from the aforesaid composite sale as LTCG, the Tribunal thus deleted the addition made by the AO.

MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018

2404. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order treating the income derived by the assessee from investments in securities availing Portfolio Management Service (PMS) to be Capital Gains and not business income, noting that the assessee had been consistently employing services of PMS for augmenting value of securities and relying on the decision in the case of Shri Apoorva Patni Vs. Addl.CIT [ITA No.239/PN/2011] wherein it was held that when the income is earned by the assessee out of investments in securities using specialized professional services of PMS, such income became taxable under the head 'Capital Gains' and the same should not be construed as 'Business Income'.

INCOME DTAX OFFICER vs. ROOPA JAYANT GUPTA - (2018) 53 CCH 0233 Pune - ITA Nos. 1296 to 1300/PUN/2017dated June 20, 2018

2405. The assessees sold tenancy rights acquired by them from their father under inheritance and claimed the benefit of indexation on the cost of acquisition being the fair market value (FMV) of the said rights as on 1st April, 1981. The AO denied the said benefit by considering the Cost of acquisition to be Nil as per section 55(2)(a). CIT(A) upheld the AO's order. The Tribunal held that the cost of acquisition of the tenancy rights (which were acquired prior to 1st April, 1981) could not substituted with the FMV as on

1st April, 1981 as provided u/s 55(2)(b), since as per section 55(2)(a) the cost of acquisition of tenancy rights was to be taken as the actual purchase price paid (if any) or otherwise as Nil. Thus, it restored the case to the file of AO for the limited purposes of determining the cost of acquisition of the tenancy to the previous owners (i.e. their father) from whom the assessees had acquired rights in the tenancy by inheritance, in terms of Section 55(3). The Court held that section 55(2)(a) deals with capital assets inter alia being in nature of tenancy rights whereas section 55(2)(b) is a residuary clause dealing with the cost of acquisition of the capital assets which are not covered by section 55(2)(a) and thus section 55(2)(b) would have no application in the present case involving tenancy rights. Thus, it dismissed the assessee's appeal against the Tribunal's order. However, noting of the assessee's submission that cost to the previous owner was not ascertainable and thus in terms of section 55(3), FMV on the date on which the capital asset become the property of the previous owner was to be considered as cost, the Court held that the assessees' could challenge the orders of the AO passed pursuant to the remand.
DHARMAKUMAR C. KAPADIA & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 102 CCH 0104 (MumHC) – ITA No. 239 of 2016, 241 of 2016dated June 18, 2018

2406. The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had upheld the AO's order taxing the amount received by the assessee on issue of its own shares to its Singapore-based holding company as short-term capital gains. The Tribunal held that the endeavor of the departmental officers to tax the transaction in question as capital gains was not supported by the any legal base as there was no transfer of capital asset to invoke the provisions of section 45. It was noted that as per the balance sheet of the assesse, it had only sold some vehicles during the year and no other asset was sold. With respect to the CIT(A)'s observation that the assessee had transferred the Interest/(stake) in itself outside India to it holding company, the Tribunal held that the concept of 'creating of interest in any assets in any manner' and transferring 'interest/stake' was not part of the word 'transfer' for the year under consideration and nor it was applicable to that year, noting that Explanation 2 to section 2(47), whereby the concept of 'creating of interest in any assets in any manner', relied upon by the CIT(A), was introduced in the year 2013 (whereas the year involved was AY 2011-12). Further, with respect to Explanation 5 of the section 9, it held that the assesse was not covered by the said Explanation since it was not a non-resident.
SUPERMAX PERSONAL CARE PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0096 (MumTrib) - ITA 6107/Mum/2016dated June 1, 2018

2407. The Court upheld the Tribunal's order rejecting assessee's claim for deduction u/s 54B on account of utilization of the amount representing capital gain arising from sale of agricultural land for purchase of another agricultural land. It was noted that as per the provisions of section 54B, the assessee or the assessee's parents had to use the land for agricultural purposes for a minimum period of two years, whereas the assessee had not used the land for agricultural purposes for a minimum period of two years before its sale. The non-usage of land for agricultural purposes was evident from the facts that the asseessee had incurred expenses only for improving the land rather than for its cultivation and the assessee, in his submissions had stated that the land was purchased for the purpose of making a farm house and guest house for him and his family.
Gopal S. Pandit v CIT - [2018] 95 taxmann.com 246 (Karnataka) - IT APPEAL NO. 34 OF 2017 dated June25, 2018

2408. The Tribunal set aside the CIT(A)'s order wherein the CIT(A) had upheld the AO's order denying deduction claimed u/s 54 against the long-term capital gains which was offered to tax by the assessee in the revised return filed after issuance of notice u/s 143(2). It was noted that the AO had accepted the long-term capital gains offered to tax in the revised return but had not accepted the assessee's impugned claim u/s 54 against the said gains. The Tribunal held that the assessee can file a revised return of income even in course of the assessment proceedings, provided the time limit prescribed u/s 139(5) is available and restored the issue to the file of the AO for examining and allowing assessee's claim of deduction, subject to fulfilment of conditions of section 54.
Mahesh H. Hinduja v ITO - [2018] 95 taxmann.com 168 (Mumbai - Trib.) - IT APPEAL NO. 176 (MUM.) of 2017 dated June20, 2018

2409. The Tribunal allowed the assessee's appeal and directed the AO to allow the assessee's claim made u/s54EC on account of investment in NHAI Bonds, which was rejected by the AO on the ground that the

same did not appear in income-tax return filed by the assessee. It was noted that since XML file containing computation of income (from computerized return filing software uploaded on e-filing portal of income-tax department) showed that the assessee had claimed deduction on account of investment in NHAI Bonds u/s 54EC but due to software generated error**,** this claim remained to be considered in e-processing of return.
Rajesh Hasmukhlal Shah v ITO - [2018] 95 taxmann.com 84 (Surat-Trib.) - IT APPEAL NO. 517 (AHD.) OF 2015/SRT dated June7, 2018

2410. The Tribunal accepted assessee's claim that the income arising on sale of investment in shares was chargeable to tax as capital gains and not business income, noting that the shares were shown as investment in books of account also and in past, such income was accepted as capital gain and it was only during the relevant year the AO had not accepted the same. It held that it was not open to the AO to take a different view in respect of relevant assessment year without showing reasons for doing same. The Tribunal held that when assessee makes investment and chooses to rely on same and obtain a higher price out of it than what it originally acquired, enhanced price received is a realization of investment and, hence, same is to be treated as capital gain.
Second Leasing (P.) Ltd v ACIT - [2018] 95 taxmann.com 133 (Delhi - Trib.) - IT APPEAL NO. 1565 (DELHI) OF 2011 dated June4, 2018

2411. Where the assessee claimed deduction under Section 54 for investment in a new house property and the AO disallowed the assesseee's claim of deduction since the assessee had not invested capital gain in purchase of new house property within prescribed time which is a requisite condition for deduction under Section 54F, the Tribunal held that since the deduction was claimed under Section 54 and not under Section 54F, the conditions and restrictions imposed under Section 54F were not applicable upon the assessee. Accordingly, the matter was remitted to Assessing Officer for de novo adjudication.
Gayatri Prasoon Pandey v. ACIT – [2018] 93 taxmann.com 191 (Mumbai – Trib.) – IT Appeal No. 2940 (MUM.) of 2016 dated April 25, 2018

2412. Assessee had entered into an agreement with a construction company for development of a piece of land owned by him and as per agreement, the assessee was to receive 37.5 percent of built up area in form of 6 flats. The AO restricted assessee's claim of deduction under Section 54F to only one flat in view of the amendment to section 54F. The Tribunal held that the amendment to Section 54F (whereby the expression 'a residential house' was amended to 'one residential house') was not retrospective in nature and would be applied prospectively and that in furtherance to the various judicial pronouncements on identical facts, the assessee was entitled to deduction under Section 54F in respect of all 6 flats.
T.A.V. Gupta v. ITO – [2018] 93 taxmann.com 249 (Bangalore – Trib.) – IT Appeal No. 209 (BANG.) of 2018 dated April 25, 2018

2413. The assessee transferred its trade mark, goodwill, technical knowhow and franchise rights under different agreements in favour of another company where the trademark was valued at nearly twenty times value of goodwill. The AO opined that the assessee had undervalued goodwill as transfer of trademark was not taxable and thus he made addition u/s 45 by substitutingthe value of goodwill by a sum arrived at by him by taking book mean of transferred value of trademark and goodwill and projecting resultant figure as a consideration for transfer of goodwill. The Court upheld the order of the Tribunal and CIT(A) deleting the said addition, noting the CIT(A)'s finding that the under the transfer of trademark the assessee had not transferred merely an emblem or figure, but also reputation of its products, leaving very little by way of goodwill. It also held that if the assessee's valuation for goodwill was not backed by any material or data on the record, the substitution adopted by the AO suffered from greater vice and that there was no basis for the AO to believe that the trademark and goodwill must value at the same level.
CIT v Bisleri International (P.) Ltd - [2018] 94 taxmann.com 259 (Gujarat) - R/TAX APPEAL NO. 1530 OF 2007 dated May7, 2018

2414. The assessee sold two parcels of land and filed its returns declaring Short Term Capital Gains. In Scrutiny assessment, the AO observed that while computing STCG, assessee had claimed cost of

improvement of the land (Land filling & Construction of Compound Wall) as a part of acquisition of the land. The bills produced towards expenses were supported by corroborate evidence by the assessee. Thus, the AO issued summons u/s 131 to the three parties whom the assessee had made payments for the said expenditure. First party (for land filling) appeared and made assertion contradicting the claim of assessee and other 2 parties (for construction of compound wall) did not appear. The AO disallowed the claim of expenditure and enhanced the amount of STCG. The CIT(A) concurred with AO with regards to the expense of land filling disallowing the expenditure but granted relief in respect of the two parties for the reason that despite seeking remand report on issue, AO had failed to bring any adverse material on record. The assessee had also demanded a copy of statement as well as cross-examination of witness which was brushed aside. Thus, the Tribunal held that AO as well as CIT(A) had failed in discharging obligation cast upon them as quasi-judicial authority in this regard and their actions suffered from serious irregularities while drawing conclusion adverse to assessee. It thereby remanded back the matter for fresh adjudication to the AO.

Harjivanbhai C Patel & Anr v DCIT & Anr (2018) 52 CCH 0447 AhdTrib - ITA No. 2384/Ahd/2016, 2460/Ahd/2016 dated 27.04.18

2415. The Tribunal upheld the valuation adopted by the assessee with respect to a property sold during the year, for arriving at the cost of acquisition being the fair market value of the said property as on 01/04/1981, rejecting the value adopted by the AO based on the Sub-Registrar Office's (SRO) register. It was noted that the value adopted by the assessee was based on an approved Valuer's report (wherein the valuer had also determined cost of built up area by giving reasons) and also supported by the value at which the State Govt had purchased property in 1980 in near vicinity. Further, the AO had merely rejected the contention of the assessee without any material to the contrary. The Tribunal also observed that as per section 50C also, if any question is raised against the stamp authority valuation, reference is to be made to the DVO and thus the AO's mere reliance upon the SRO's report was not in accordance with law. Thus, noting that the assessee had not only mentioned about the comparable case but also furnished approved Valuer's report, who was a technical expert, the Tribunal upheld the valuation adopted by the assessee's.

The assessee had also claimed exemption u/s 54 but AO denied the claim on the ground that the purchase of a residential property was done in Feb 2010 whereas the sale of original property owned by assessee was made in Oct 2011 and thus in order to claim exemption u/s 54 assessee should either purchase property within period of one year or two years after which transfer took place or constructed property within period of three years after due date. Thus, assessee ought to have purchased a new property after October 2010 whereas property was purchased in February 2010 as per sale deed and second contention of construction did not apply to assessee who purchased a property as Sale deed clearly showed that property was an outright purchase of residential house, therefore it could not be said that assessee constructed residential house. Further, assessee had failed to claim exemption in original assessment as well as revised assessment. Therefore, the Tribunal dismissed assessee's ground for claiming exemption u/s 54.

Ghansham Lekhraj Rupani v ITO (2018) 52 CCH 0395 HydTrib - ITA No. 1669/Hyd/2016 dated 18.04.2018

2416. During assessment, the AO noted that the assessee along with his two brothers (also party to the appeal) had sold leasehold rights of limestone & Marble mines to a company 'J'.He held the said transaction to fall within the meaning of 'transfer' u/s 2(47) and accordingly made addition of 1/3rd of the consideration received in the hands of each assessee (being their individual share in the said right). On appeal, the CIT(A) held only one of the brothers to be the legal owner of the mining rights. Further, it held that since only the sale deed was executed but possession was not given, there was no transfer u/s 2(47).The CIT(A) thus deleted the addition made by the AO. On revenue's appeal, Tribunal held that it was a case of transfer of mining rights under lease which were agreed to be transferred for a consideration to J company. It rejected the assessee's contention that the said right were not yet transferred as the said transfer was subject to renewal of lease. The Tribunal held that though the mining rights per se were not transferred however, by virtue of agreement, the assessee transferred and surrendered his rights in said asset as on date of agreement and was bound to transfer leaseholds rights in favour of J company only whenever same were renewed by Government, thus relinquishing his right. However, the Tribunal upheld the CIT(A)'s finding that only one of the brother was the owner of the mining rights and thus the amount received for execution of the said agreement was liable to be

assessed as capital gain in the hands of the said brother (owner of mining lease).Further, the Tribunal rejected the AO's stand that since the assesses had acquired the said rights as inherited property as per section 49(1)(i)(iii)(a) and the cost of previous owner was Nil, the cost of acquisition in the hands of the assesses will be Nil. It held that it was clear from provisions of section 55(2)(a)(b) r.w.s. section 55(3) that in case, assessee had exercised his option that cost of acquisition of capital asset should be fair market value as on 01.04.1981 then, cost of acquisition of capital asset of previous owner became irrelevant for purpose of computing capital gain and accordingly, directed the AO to compute capital gain after allowing cost of acquisition being fair market value as on 01.04.1981.
ITO & Ors v Vijay Mangal & Ors. (2018) 52 CCH 0373 JaipurTrib - ITA No. 276/JP/2017dated 18.04.2018

2417. The assessee sold her bungalow and purchased 4 flats from the consideration received and claimed exemption u/s 54F.It was undisputed that the 4 flats were small units combined into 1 residential unit. The AO held that only one flat could be purchased against long term capital gain but however, took cognizance of fact that as per society bills two flats were considered as single unit, therefore, concluded that two residential units were purchased by assessee, and as such allowed exemption in respect of investment made in respect of only one residential unit. The CIT(A) held that it was conceded factual position that assessee had merged four flats into one residential unit, therefore, claim of exemption u/s 54 was rightly raised by her and to be allowed completely. The Tribunal followed CIT-12 vs. Raman Kumar Suri wherein it was concluded that where assessee had acquired one residential house consisting of two flats, it could not be said that assessee had purchased two residential houses. Thus, the Tribunal held that where acquisition of two flats had been done independently by assessee, but however, said flats were constructed in such way that adjacent units or flats could be combined into one, and eventually had been merged into single unit and were used for purpose of residence by assessee, the claim of exemption u/s 54 could not be denied and dismissed revenue's appeal.
ITO (International Taxation) v Kavita Gupta (2018) 52 CCH 0308 MumTrib - ITA No. 6884/MUM/2014 dated 11.04.2018

2418. The assessee sold certain parcels of land situated on National Highway and offered Long Term Capital Gain to tax.The assessee presented report of Government Approved Valuer which suggested that fair market value of land as on 1-4-1981 was Rs. 120 per sq. meter. AO did not accept said valuation and on basis of sale of land in a nearby village in year 1981, AO assessed fair market value of land as on 1-4-1981 at Rs. 10 per sq. meter. Thus, certain addition was made to capital gain liable to tax.The Tribunal noted that assessee's land was situated on National Highway and thus it had greater potential and market value. Moreover, there was no data available on situation of land, sale of which was referred to by AO.The Tribunal thus deleted addition made by AO. The Court held that while adopting valuation of immovable properties situational advantages and disadvantages are important factors. It further held that finding recorded by Tribunal being a finding of fact, no substantial question of law arose therefrom.
CIT v Charusheela M Bhatia [2018] 94 taxmann.com 397 (Gujarat) – R/TAX APPEAL NO. 354 OF 2018 dated 17.04.2018

2419. The Court held that actual sale consideration could not have been substituted by fair market value of capital asset for taxing capital gains arising out of sale of shares by assessee an individual to its related entity. Section 52 which allowed such substitution under certain circumstances was omitted from 1-4-1988 and thus was not applicable to relevant assessment years.
Arjun Malhotra v CIT [2018] 92 taxmann.com 338 (Delhi) – ITA NOS. 405 , 406 OF 2005 dated 20.04.2018

2420. The Court held that where assessee earned long term capital gain from sale of property, in view of fact that assessee had to pay certain liquidated damages in term of earlier agreement to sell which did not materialise, it could be concluded that there was a close nexus and connect between payment of liquidated damages and transfer of property resulting in income by way of capital gains, and, thus amount so paid was eligible for deduction under sec. 48(i)
Kaushalya Devi v CIT [2018] 92 taxmann.com 335 (Delhi) – ITA NO 600 OF 2004 dated 20.04.2018

2421. Transfer of immovable property takes place on execution of sale deed and, therefore, to hold that upon mere execution of agreement to sell, immovable property gets transferred to purchaser, even within extended definition of section 2(47), would be incorrect.
Further, benefit of deduction under section 54F in case of construction of residential house, is available only when construction is completed within a period of three years after date of transfer of long-term capital asset and, therefore, where construction took place prior to date of transfer, conditions of section 54F were not fulfilled and, consequently, assessee's claim for deduction was to be rejected. However, with respect to transfer of one of the flats, as the construction was carried out subsequent to the transfer,exemption u/s 54F could not be denies in respect of transfer of the said flat.
UshabenJayantilalSodhan v ITO [2018] 93 taxmann.com 453 (Gujarat) – R/TAX APPEAL NO. 393 OF 2014 dated 01.05.2018

2422. The Apex Court dismissed the Department's SLP against order of the Court wherein it was held that where assessee had purchased shares with clear intention of being an investor and held shares by way of investment, gain arising out of transfer of shares should be treated as capital gains and not business income
PCIT v Bhanuprasad D. Trivedi [2018] 94 taxmann.com 114 (SC) – SLP (CIVIL) DIARY NO. 11011 OF 2018 dated 04.05.2018

2423. The Tribunal held that where AO having invoked provisions of section 50C, made certain addition to assessee's income, in view of fact that even after applying provisions of section 50C, difference in capital gain declared by assessee and figure adopted by AO did not even exceed 10 per cent of stamp duty valuation, impugned addition deserved to be set aside
Surendra S. Gupta v ACIT [2018] 93 taxmann.com 456 (Mumbai – Trib.) – ITA NO 4791 OF 2014 dated 09.05.2018

2424. Assessee, engaged in business of real estate, received certain amount by granting easement rights to 'R'. The assessee contended that granting of easement rights did not result in transfer as envisaged in S.2(47) and thus capital gains arising therefrom were not taxable and further contended that since the entire consideration amount wasn't received & the amount received was shown under the head- current liability, the same was not liable to tax. AO rejected both the contentions and bought to tax the amount received during the relevant AY. CIT(A) opined that the grant of easement right resulted in transfer and capital gains arising therefrom were taxable on accrual basis irrespective of actual receipt of consideration. The Tribunal upheld the order of CIT(A).
Oikos Apartments (P.) Ltd v ITO [2018] 95 taxmann.com 44 (Bengaluru – Trib) – ITA NO 1384 OF 2017 dated 31.05.2018

2425. The assessee, one of the two partners of the partnership firm, took over the business as sole proprietor and acquired the capital assets in May 2003 on account of death of other partner on refusal of deceased's legal heir to continue the business. In July 2004, assessee sold the capital asset which was acquired by the firm in the year 1984 and made an investment in REC bonds by treating the asset as Long Term Capital Gain thus claiming deduction u/s 54EC by claiming that the acquisition date would be the date on which the said asset was acquired by the firm in which the assessee at the relevant time was a partner. However, since u/S.45(4)(inserted vide Finance Act,1987), distribution of assets on dissolution of a firm was to be construed as a 'transfer', the Tribunal held the capital asset acquired by the assessee as Short Term Capital Gain and denied exemption u/s 54EC. However, the Tribunal accepted the assessee's contention that the capital gain in the hands of the assessee would be to the extent of difference between the sale consideration of the property in July 2004 and the Fair Market Value of the same in May 2003 leading to the directing the AO to recompute the Capital Gain in the hands of assessee accordingly.
Amar Kanayalal Nagpal v ITO [2018] 94 taxmann.com 51 (Mumbai-Trib) – ITA NO 1744 OF 2012 dated 30.05.2018

2426. The assessee sold property and utilized the consideration received in constructing another residential property. In the relevant AY of transaction, the assessee neither admitted capital gains arising therefrom nor claimed deduction u/s 54F.In the course of scrutiny assessment, the AO noticed the said

transaction and issued a show-cause notice. In response to the said notice, the assessee furnished all information called for and stated that he was entitled for exemption u/s 54F since the consideration was used for construction of residential property. The AO accepted the income declared by the assessee but the Commissioner passed a revisional order disallowing the claim of deduction on the ground that the assessee failed to declare capital gain and claim exemption in the return of income. However, on assessee's appeal, the Tribunal held that since there was no dispute about the utilization of sale proceeds for constructing residential property,the assessee's claim for deduction was to be allowed.
Manohar Reddy Basani v ITO [2018] 94 taxxman.com 321 (Hyderabad – Trib.) – ITA NO 1307 OF 2017 dated 30.05.2018

2427. The assessee earned capital gain on sale of shares kept under Portfolio Management Scheme and claimed the deduction of fees of PMS. The AO disallowed the same by holding that fees for PMS could not be treated as transfer or cost of acquisition/improvement u/s 48 of the Act. Both, the CIT(A) and Tribunal upheld the said disallowance.
Mateen PyaraliDholkia v DCIT [2018] 94 taxxman.com 294 (Mumbai – Trib.) – ITA NO 6950 OF 2016 dated 30.05.2018

2428. The assessee entered into an agreement with the developer to construct a building on the land owned by the assessee, which it had converted into stock-in-trade in an earlier AY (prior to entering into the agreement). Only physical possession of the said land was handed over to developer at time of execution of the agreement. In the previous year relevant to AY 2009-10 (i.e the impugned year), the assessee received certain amount as advance as an safeguard of interest, which was equivalent to his share out of amount collected by developers from prospective buyers. The AO added the said amount to assessee's total income. However, the Tribunal held that the business profits arising to the assessee would be taxable only in the year when the land is sold/handed over by the developers to the buyers of the flat since that would be the proper period of having right to collect the said amount. Accordingly, it directed the AO to delete the addition during the relevant AY. Further, noting that the developer had recognized completion and sale of the developed portion in subsequent AY 2011-12, it held that the business profits arising to the assessee also would be taxable in the said year.
The AO had also made addition to the assessee's income being capital gains arising on conversion of capital asset (land) into stock in trade as per section 45(2). In this regard also, the Tribunal held that the capital gain arising out of the said conversion was taxable only in the subsequent year when the business profit was taxable in the hands of assessee i.e. AY 2011-12. Further, it held that the said capital gains was to be computed considering the fair market value of the land on the date of conversion as the sale consideration and not on the basis of existing market value.
ITO v Vilas BabanraoHukari (HUF) [2018] 93 taxmann.com 465 (Pune-Trib.) – ITA NO.1640 & 1640 OF 2014 dated 25.05.2018

2429. The assessee-mill sold the land(including part of the land bearing staff quarters) to a developer and the dispute arose whether the gains from sale from such land would be LTCG or STCG. The AO computed the gains as STCG since the assessee claimed depreciation on the staff quarters. However, it was evident from the development agreement that the consideration to be given by the developer was for the 'land' and not for the staff quarter and thus,theassessee bifurcated the builtup land(staff quarter) and the remaining landthereby offering to tax the gains from portion of land bearing staff quarter as STCG and from sale of remaining portion of land as LTCG which was allowed by the CIT(A).The Tribunal concurred with CIT(A) However,as neither the relevant documents nor the sale agreement was filed, the exact extent of land sold and its value could not be asserted which obviated the conclusive finding on the assessee'sclaim and thus for the said purpose/issue, the matter was remanded back to the AO.
CIT v Seth Industries (P.) Ltd. [2018] 94 taxmann.com 318 (Mumbai – Trib.)- ITA NO 4094 OF 2013 & 2279 OF 2015 dated 18.05.2018

2430. The assessee enterted into an agreement with its subsidiary to transfer its packaging division to its subsidiary against the issue of its own shares. The Revenue contended that the said transaction was "slump sale" u/s 2(42C) and therefore it was taxable as per provisions of S.50B. However, the Tribunal rejected the Revenue's contention and held that since the transfer of undertaking was not for money but

for equity shares, the said transaction was to be treated as "exchange" and not sale, and, therefore Section 2(42C) was not applicable.
Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.) – ITA NO 2913 OF 2015 dated 16.05.2018

2431. The assessee had written-off of its investment in its wholly owned Chinese subsidiary as there were persistent losses and the net worth of the company had eroded. The AO held that the claim of capital loss was not allowable as the same did not arise due to transfer of asset, thereby it did not arise as per the computation specified in Section 48. The Tribunal set aside the order of the CIT(A) and restored the matter to the file of the AO by holding that since the investment in the subsidiary company was capital in nature, there is no provision in Act regarding carry forward of loss in capital field, which is not arising out of transfer of capital asset.
Daga Global Chemicals P. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0007 (Mumbai ITAT) – ITA No. 5296 & 5889/Mum/2017 dated May 2, 2018

2432. The assessee entered into an agreement with a builder for construction and sale of dwelling units and also executed irrevocable general power of attorney on the same day. The AO held that on a conjoint reading of both the documents, assessee had delivered physical possession of land to builder on such day and that there was transfer of capital asset as defined under Section 2(47) of the Act, resulting in long-term capital gains in the hands of the assessee.
Relying on the ruling of Supreme court in CS Atwal vs CIT (2017-TIOL-374-SC-IT order dated 4.10.2017), the Tribunal held that since the agreement was not registered, there was no contract in eye of law in force under Section 53A of the Transfer of Property Act, and consequently the same would not amount to transfer within meaning of section 2(47)(v) and thereby capital gains could not be chargeable in hands of assessee during year under consideration.
Abhaya Prasad Panda & Anr. vs. ITO – [2018] 53 CCH 0011 (Cuttack ITAT) – ITA 250/CTK/2015, 214/CTK/2015 dated May 7, 2018

2433. The assessee, engaged in the activity of purchase and sale of shares, had offered income from sale of certain shares under the head 'capital gains' as the same were declared as investments in the books of the assessee. Considering the substantial nature of transactions and the magnitude of purchase and sale of shares, the AO held that income from such activity should be taxed under the head 'business and profession'. Considering the remand report and the submissions filed, the CIT(A) upheld the order of the AO. The Tribunal observed that except stating that the assessee had large number of transactions, no evidence was brought on record by the AO to substantiate that the subject income is a 'business income'. Accordingly, relying on the ruling of the Gujarat High Court in Ramniwas Ramjivan Kasat (82 taxmann.com 458) and noting that in earlier assessment year, the income was assessed as capital gains in assessee's own case, the Tribunal set aside the order of the CIT(A) and AO and held that though the rule of res judicata does not apply to Income-tax proceedings, the rule of consistency is applicable and thereby the income from sale of shares was taxable as capital gains.
ITO vs. Pedarla Srinivasa Murthy – [2018] 53 CCH 0016 (Vishakhapatnam ITAT) – ITA No. 123&124/Vizag/2016 dated May 9, 2018

2434. The assessee company gifted huge volume equity shares in a public company, without any consideration, to its sister concern by passing a board resolution and a special resolution in the extra ordinary General meeting. The AO held that the said transaction would not fall under the purview of Section 47(iii) as transfer of asset under a gift or will or an irrevocable trust is not possible by an artificial person. Further, since the assessee could neither establish the genuineness of the transaction, nor prove the commercial expediency and business prudence, AO held that the said transfer of shares was to evade taxes and hence held that the transaction was taxable under Section 45 and computed value of shares transferred by taking the market value of each share. The CIT(A) upheld the order of the AO. The Tribunal held that since assessee did not demonstrate, by way of documentary evidence or in any manner, to prove genuineness and validity of transaction, assessee was directed to provide all relevant information / details to assist the AO. Thus, the matter was set aside to the file of the AO to make proper enquiry with respect to reality, genuineness and validity of alleged transaction.
Gagan Infraenergy Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0080 (Delhi Tribunal) – ITA No. 1031/Del/2018 (Stay Application No.193/Del/18) dated May 15, 2018

2435. The assessee claimed gains on sale of agricultural land as exempt as it was not an asset under section 2(14)(iii) of the Act. The AO held that since land was purchased alongwith constructed house, it was a sale of land alongwith sale of house property and hence taxed it as capital gains after providing indexation to cost. The CIT(A) deleted the addition and held that since the land was not used for commercial purposes, the gains arising from sale of such agricultural land was exempt under Section 10. Relying on the ruling of the jurisdictional High Court in Hindustan Industrial Resources Ltd., the Tribunal held that since the land in question was agricultural land at time of purchase and also at time of sale, the said land was treated as agricultural land and no capital gain was chargeable on sale of such agricultural land.

ITO & Anr. vs. Gomantak Exims Ltd. & Anr. – [2018] 53 CCH 0106 (Delhi Tribunal) – ITA No. 2708/DEL/2012 (CO No. 435/DEL/2012) dated May 15, 2018

2436. Where the Assessee sold house property during the year and computed capital gains based on the sales consideration, the AO made addition to the income of the assessee under Section 50C of the Act on account of difference in the valuation of property done by the DVO and the sale consideration. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Patna High Court in the case ofBimla Singh vs. CIT (308 ITR 71)* wherein it was held thatin valuation of house property bonafide difference was bound to occur. Thus, the Tribunal deleted the addition made and held that the difference between investment on house property and valuer's report was too meager and could be ignored. Thus, the assessee's appeal was allowed.

AMAN JOLLY vs. ITO (DELHI TRIBUNAL) (I.T.A.No. 935/DEL/2018) dated May 14, 2018 (53 CCH 0382)

2437. Where the Assessee did not disclose sale and purchase of agricultural land in its original return of income, the AO added capital gain on sale of agricultural land but did not grant any benefit under Section 54B of the Act for purchase of agricultural land as the same was not based on original return of income but raised in revised return of income. CIT(A) upheld the order of the AO. The Tribunal held that since the assessee had duly submitted documents regarding purchase of agricultural land and same were already on record before AO, the claim exemption of exemption under Section 54B should be granted to the assessee as the AO did not find any fault in purchase documents. Thus, Tribunal set aside order passed by CIT(A).

SANJAY SHANKARRAO JADHAO vs. JCIT (NAGPUR TRIBUNAL) (ITA No.66/Nag./2017) dated May 8, 2018 (53 CCH 0153)

2438. Where the assessee converted agricultural land into residential plot before selling it, AO held gains arising from such sale was liable to be taxed in hands of assessee as *'long term capital gains'.* CIT(A) held that the same was adventure in nature of trade and the income arising thereon was liable to be taxed as *'business income'*. Tribunal held that the assessee had sold 'residential plot' on his agricultural land after developing roads etc. and since the same was an act of business and adventure in nature of trade, income was to be taxed as per provisions of section 45(2). Thus, Tribunal held that capital gains should be calculated as on date of conversion of agricultural land to 'stock in trade' and thereafter only profit and gain of business should be computed on sale. Considering totality of facts and circumstances, the Tribunal restored the matter to the AO.

SURAJ MAL vs. ITO (JAIPUR TRIBUNAL) (ITA No. 659/JP/2017) dated May 1, 2018 (53 CCH 0079)

2439. The Assessee reinvested the capital gains earned on sale of house property in purchasing / constructing three residential houses. The AO held that the Assessee would be entitled to exemption under Section 54 of the Act in respect of only one house property. The CIT(A)granted exemption under Section 54 of the Act to assessee in respect of reinvestment made in all three houses. The Tribunal upheld the order of the CIT(A) and dismissed the Revenue's appeal for the following reasons:

i. Assessee had purchased three adjacent plots of land and made construction by inter connecting buildings using steel bridges to allow movement within houses
ii. Modified occupancy certificate was issued to the assessee by considering entire building as a combined single building

iii. Section 54 was amended with effect from AY 2015-16 wherein exemption under Section 54 of the Act would have to be restricted to reinvestment in one residential house. The said amendment could not be retrospectively applied.

ACIT& ANR. vs. RESHMI P. LOYALKA & ANR. (KOLKATA TRIBUNAL) dated May 23, 2018(53 CCH 0063)

2440. The AO reopened the assessment as he was of the view that capital gains arose during year under consideration as assessee entered into a development agreement along with seven other parties. The Assessee filed a return of income declaring NIL income in response to notice issued under Section 148 of the Act. AO taxed the capital gains arising on the said development agreement and made certain other additions also. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Bombay High Court in the case of M/s. Chaturbhuj Dwaraakdas Kapadia Vs. CIT [260 ITR 491]* and held that since there was no transfer of complete control overproperty, even in so called development agreement, the capital gains tax was bad in law. Accordingly, the Assessee's appeal was allowed.

KHAMBHAMPATI JAYALAKSHMI & ORS. vs. ITO& ORS. (HYDERABAD TRIBUNAL) (ITA No. 1587, 1588, 1598, 1599, 1600& 1679/Hyd/16) dated May 23, 2018(53 CCH 0073)

2441. The assessee filed his return for a specified year which was picked up for scrutiny assessment in response to which the assessee gave detailed information in relation to the purchase and sale of flats which had resulted into capital gain, which it claimed to be exempt u/s 54F of the Act. The AO completed the assessment as per section 143(3) but later reopened the assessment on the ground that the deduction u/s 54F was incorrectly claimed. The Tribunal set aside the reassessment proceeding and held that the assessee had furnished all the details in relation to capital gains during the regular assessment to which the AO had applied his mind and the reassessment proceeding was merely a case of change of opinion of the AO. The Tribunal further held that the AO could not reopen assessment after the expiry of four years from the end of the relevant assessment year merely on the basis of certain objections that were raised by the audit party. The High Court affirmed the decision of the Tribunal.

CIT v. Shankardas B. Pahajani – [2018] 93 taxmann.com 248 (Bombay) – IT Appeal No. 1432 of 2007 dated April 24, 2018

2442. The Court held that the amount received by the retiring partner on retirement from firm on account of goodwill will not be subjected to tax as capital gains in his hands in light of the decision of the Court in CIT v. Riyaz A. Sheikh [2014] 41 taxmann.com 455/221 Taxman 118 (Mag.) wherein it was held that as per Section 45(4) income arising on account of distribution of assets upon dissolution of a firm was taxable in the hands of the firm.

PCIT v. R.F. Nangrani HUF – [2018] 93 taxamann.com 302 (Bombay) – IT Appeal No. 33 of 2016 dated April 18, 2018

2443. The assessee sold his residential units during the relevant year and claimed exemption u/s 54 in respect of a new residential flat which it purchased and obtained possession within the time prescribed u/s 54. The AO denied the exemption claim of the assessee u/s 54 on the ground that the assessee had availed house building loan and invested only part of capital gain in new residential unit. The Tribunal allowed the claim of the assessee and held that availing of house building loan from bank for purchasing a new residential unit could not act as a disqualification for claim of exemption u/s 54 when primary conditions imposed in section 54 were satisfied.

Amit Parekh v. ITO – [2018] 92 taxmann.com 295 (Kolkata – Trib.) – IT Appeal No. 41 (Kol.) of 2016 dated April 4, 2018

g. Income from Other Sources

2444. Assessee was shareholder in company, JMPP. There were total seven shareholders in company and all of them were close relatives of assessee. Company issued shares at rate of Rs. 100 per share under rights issue - Assessee alone had applied for rights issue and company had allotted shares to assessee. Fair market value of shares was Rs. 416.38 per share. Principal Commissioner invoked

revision under section 263 for reason that assessee had received shares for value lesser than book value; therefore, provisions of section 56(2)(vii)(c) would be attracted and differential amount between book value and price paid by assessee for shares required to be brought to tax under head 'income from other sources'. The Tribunal held that transactions between close relatives are outside scope of application of section 56(2)(vii)(c) and as, in instant case, transaction of transfer of shares was within family and close relatives, proviso to section 56(2)(vii)(c) clould not be applied for taxing income under head 'income from other sources.

Kumar Pappu Singh v. Dy.CIT, Circle-1, AP- [2019]101 taxmann.com 122(Vishakhapatnam Trib)-ITA No.270(viz.) of 2018-dated December 7, 2018

2445. The Tribunal held that where assessee issued compulsory cumulative convertible Preference Shares (CCCPS) at huge premium, in view of fact that as per 'Letter of Offer', holder of preference share was also given voting right on various resolutions, it became necessary to look into all terms of issue of preference shares so as to find out whether receipt of share premium in question was for issue of preference shares or for issue of equity shares and for said purpose matter was to be remanded back for disposal afresh in terms of rule 11UA.

2M Power Health Management Services (P.) Ltd. v. ITO, Ward-7(1)(2)-[2019] 102 taxmann.com 96 (Bangalore - Trib.)-IT Appeal No. 2880 (BANG) of 2018-dated December 21, 2018

2446. The Tribunal held that for purpose of sub-rule (2) of rule 11UA, an auditor cannot be accountant of assessee company. Therefore, where person who valued shares of assessee-company was none other than person who signed audit report under section 44AB, Assessing Officer was justified in ignoring valuation report submitted by assessee and determining fair market value on basis of NAV.

Kottaram Agro Foods (P.) Ltd. v. Asst. CIT (ODS), Range-4(1), Bangalore-[2019] 102 taxmann.com 183 (Bangalore - Trib.)-IT Appeal Nos. 2852 & 2853 (Bang) of 2018- dated December 28, 2018

2447. The Tribunal held that where assessee was engaged in business of real estate development and construction, interest income earned by him from depositing surplus funds in FDRs could not be considered as business receipts rather same was taxable as 'income from other sources'.

Puran Ratilal Mehta v. Asst. CIT, Circle 23(3), Mum. - [2019] 102 taxmann.com 187 (Mumbai - Trib.) IT Appeal Nos. 1274 to 1279, 1320 to 1325 of 2011 & 6646 of 2012 dated December 5, 2018

2448. During assessment proceeding, AO noted that assessee was incorporated for exploration, development and production of oil and gas. Assessee entered into a business transfer agreement with M/s JCPL and M/s JSPL for acquiring their 20% and 35% participatory interest in A Block and G Block. Due to formalities and want of approvals, actual transfer of interest was not materialized. In absence of business operations, AO held that interest paid to a sister concern was not allowable as a revenue expense and should be capitalized. Also interest on FDRs in bank and ICDs with sister concerns earned by assessee were taxable under head 'income from other sources' and not as 'business income'. CIT(A) confirmed AO's action. The Tribunal granted relief to assessee. The Court held that, Tribunal agreed and accepted that money received by assessee under ICDs was in preceding year. Thereafter, another amount was transferred and given as ICDs to M/s J also in preceding year. There was a nexus between interest paid @ 12 % p.a. and interest received @ 12.5% p.a. Assessee had earned interest of half percent. Even if interest received was taxable under head 'income from other sources', interest paid was deductible u/s 57. AO referred to original business transfer agreement between assessee and M/s JCPL and M/s JSPL.Assessee had incurred expenses of more than Rs.2,00,000/- on operations and support staff. ITAT opined that business had commenced as assessee had entered into business transfer agreement. It could be urged that this finding was not detailed, albeit assessee had furnished performance bank guarantee for M/s JCPL and M/s JSPL. Thus, performance guarantees for two blocks were given by assessee. Interest earned on FDRs obtained to procure performance bank guarantees was connected with two oil blocks. Tribunal mentioned that CIT(A) had allowed deduction u/s 35D thereby indirectly accepting that assessee had commenced business. Assessee had advanced more than Rs.12.11 Crores to M/s JCPL in furtherance to business transfer agreement to meet cash call for participatory interest in A Block. The Court held that the Tribunal's finding that business was 'set up' had sufficient backing and support from material and evidence

referred to in impugned order. However, objection regarding 'commencement of business had lost much significance and importance in view of direct nexus between interest paid and interest received on ICDs. Interest paid to earn interest had to be allowed as a deduction u/s 57 as opposed to capitalization of the same by the AO on the alleged ground that businsess had not commenced. Revenue's appeal was dismissed.

Pr. CIT vs Jubilant Energy Nelp- V- Pvt ltd- (2018) 103 CCH 0293 DELHC- ITA 1440/2018 dated Dec 12, 2018

2449. The assessee was an executive director of Dorf Ketal Chemicals India Pvt Ltd. ("Company"). On 28.01.2010 the assessee acquired 20,94,032 shares of company at 100 per share at face value for a consideration of 20.94 crores. According to the AO under Rule 11UA(c), the FMV of shares of company was Rs.1,4389.64. Therefore, the difference in share value was brought to tax u/s.56(2) (vii)(c). According to the AO, assessee being a salaried employee the shares allotted to him could also be treated as perquisite or profit in lieu of salary u/s.17. The Tribunal dismissed Revenue's appeal holding that provisions of section 56(2)(vii) did not apply to rights shares offered on a proportionate basis even if the offer price is less than the FMV of shares. Further as regards the contention of Revenue that assessee was allotted disproportionate allotment would not be applicable as the assessee applied for and was allotted a lesser than proportionate share offered to him and his shareholding reduced from 34.57% to 33.30%. It further noted that transaction of issue of shares was carried out to comply with a covenant of the loan agreement with the bank to fund the acquisition of the business by the subsidiary in USA. Thus, the shares were issued by Company for a bonafide reason and as a matter of business exigency. The CBDT Circular No.2/11 explaining the provisions of section 56(2) (viic) supported the case of assessee that the intention was not to tax transactions carried out in normal course of business or trade, the profit of which are taxable under the specific head of income. As regards the alternate contention of the AO that the same could be considered for taxability as a perquisite u/s.17, the Tribunal held that the provisions of sec 17 do not apply to shares allotted by Company to the assessee, as the shares were not allotted to the assessee in his capacity of being an employee of the company. They were offered and allotted to assessee by virtue of the assessee being a shareholder of the company.

Asst CIT vs Subodh Menon (Mumbai) (2018) 54 CCH 0375 MumTribITA No. 676/Mum/2015, 2776/Mum/2015 dated 07.12.2018

2450. AO had charged interest on advances as income of assessee. AO calculated interest accrued on FRD/TDR as per form 26AS, statements filed by bankers' proof of TDS statement deducted. The Tribunal held that, merely because assessee had treated such income differently, or that in year under consideration, initially had paid advance tax on suchbasis, it would not be conclusive of nature of income. What needed to be ascertained was whether assessee was legally correct in asserting that income did not belong to assessee, but government of Gujarat, and that therefore, it could not be taxed in hands of assessee. Assessee had been disclosing such income earlier till AY 2009-10. It was case of assessee that in light of letters of Government of Madhya Pradesh interest income accrued on fixed deposits could not be said to be income of assessee. As there was no dispute with regard to fact that as per terms of letters dated 23.3.2010 & 30.08.2018, assessee was required to spend interest income as per direction of Government, AO was directed to delete the addition.

M.P Police Housing Corporation Ltd vs ACIT- (2018) 54 CCH 0076 IndoreTrib- ITA No 383/Ind/2013, ITA No 259& 260/Ind/2015, ITA No 269,449/Ind/2016 and ITA No 125/Ind/2017 dated 10.10.2018

2451. During relevant year, the assessee raised certain loan from SFC. The assessee paid said amount as advance for purchase of one flat. In course of assessment, the Assessing Officer opined that in absence of a legally enforceable repayment agreement, amount received from SFC could not be regarded as loan and same was to be added to the assessee's income by invoking provisions of section 56(2)(vii). The Commissioner (Appeals) noted that amount given to the assessee had been also filed a confirmation before the Assessing Officer from SFC during course of assessment proceeding. The

Commissioner (Appeals), thus, deleted addition made by the Assessing Officer. The Tribunal held that when in case of SFC, amount in question was regarded as loan, the revenue could not take up a contrary stand in the assessee's case and treat same loan in hands of the assessee as gift or a sum received without consideration taxable under section 56(2)(vii)(a). Therefore, the Commissioner (Appeals) was justified in deleting the impugned addition.

ITO v. Paramveer Abhay Sancheti [2018] 95 taxmann.com 258 (Nag. Trib.)- ITA No. 215 (NAG.) of 2015 dated July 2, 2018

2452. The Tribunal set aside the AO's action in taxing the interest received by the assessee-company on refund of income-tax pertaining to various non-resident companies (which were received by assessee for reason that tax liability of these companies was upon the assessee) at the tax rate applicable to foreign companies i.e. 48% as against the assessee offering the said income at the tax rate applicable to it. The Tribunal held that it failed to understand how the tax rate of non-resident companies would be applied on the said interest income earned by the assessee on the refund of Income tax when the rate of interest was determined by the Income tax Act. It was also noted that in subsequent year the CIT(A) had decided the issue in favour of the assessee and the Revenue was advised not to file an appeal before the Tribunal against CIT(A)'s order.

OIL AND NATURAL GAS CORPORATION LTD. & ANR.vs Addl CIT[2018] 53 CCH 0462 (Del Trib) ITA NOS. 357 /Del /2005 DATED AUGUST 17,2018

2453. The assessee issued Optional Fully convertible Debentures (OFCD) and earned interest from bank on fixed deposits which were made from the amount received on issue of OFCD. It claimed the interest to be capital receipt, not chareable to tax, on the ground that the debentures were issued for purpose of setting up of hydro electric power projects. The Court noted that the CIT(A) as well as the Tribunal had recorded the finding that there was neither setting up nor commencement of business by assessee during the year under appeal and thus the amount received in form of OFCD was not received for purchase of plant and machinery. Therefore, the Court held that the interest earned from said amount could not be said to be inextricably linked with setting up of plant and machinery and the same could not be capitalized. Accordingly, it held that the Tribunal had rightly assessed interest earned by assessee under head 'income from other source' and dismissed the assessee's appeal.
Shree Maheshwar Hydel Power Corporation Ltd. v CIT [2018] 96 taxmann.com 167 (Bombay) – ITA No. 67 OF 2016 dated July 17, 2018

2454. The Tribunal allowed assessse's appeal and deleted the addition which was made by the AO u/s 56(2)(viib) by rejecting the FMV of shares determined by the assessee on the basis of valuation report prepared as per guidelines given by ICAI following Discounted Cash Flow (DCF) method and determing FMV based on Net Asset Value (NAV) method. It held that when law [i.e. section 56(2)(viib) r.w. Rule 11UA(2)(b)] had specifically given an option to assessee to choose any of method of valuation of his choice and assessee exercised an option by choosing a particular method (DCF), changing method or adopting a different method would be beyond powers of revenue authorities. Further, it noted that the AO not found any fault in the valuation reports.
Rameshwaram Strong Glass (P.) Ltd. v ITO [2018] 96 taxmann.com 542 (Jaipur - Trib.) – ITA No. 884 (JP) OF 2016 dated July 12, 2018

2455. The Tribunal held that in case of a company in which public is not substantially interested, any premium received by said company on sale of shares, in excess of its face value (to the extent it exceeds FMV), would be treated as income from other sources u/s 56(2)(viib), irrespective of the fact that the source of the funds or genuineness of the share applicant is proved as required by section 68. It held that where the company is not able to explain nature and source for credit (entire share application money / share capital) in books of account or explanation offered is not satisfactory, the entire credit would be charged to tax u/s 68. However, if an explanation is offered and it is satisfactory, then charge to tax will only be to that portion exceeding FMV determined, which any way has to occur u/s 56(2)(viib).

Sunrise Academy of Medical Specialities (India) (P.) Ltd. v ITO [2018] 96 taxmann.com 43 (Kerala) - WA. NO. 1297 OF 2018; WP(C) NO. 3485 OF 2018 dated July 12, 2018

2456. The Tribunal rejected assessee's claim for deduction u/s 57(iii) with respect to expenses incurred by way of D-mat charges, legal expenses and medical relief expenses against the interest income earned on FDRs and bank accounts which was assessed under head 'income from other sources', since the assessee could not establish that aforesaid expenses were incurred wholly and exclusively for purpose of earning interest income [the same being a pre-requisite condition for allowability of such expenditure as a deduction u/s 57(iii)].
Bank of India Retired Employees Medical Assistance Trust v ITO(E) [2018] 96 taxmann.com 277 (Mumbai - Trib.) – ITA No. 6469 (MUM.) OF 2016 dated July 11, 2018

2457. The Tribunal allowed assessee's appeal and deleted the addition which was made by the AO by taxing amount received by the assessee in her bank account as gift from her mother. The assessee claimed that the said gift was given by her mother out of the agricultural income received on sale of crops. The AO, however, noted that there were cash deposits in the mother's (donor's) bank account on the same day on which the amount was transfered to the assessee's bank, which neither the assessee nor her mother (donor) was able to explain. Accordingly, he made addition. The Tribunal noted that the assessee had filed a confirmation letter from her mother (donor) giving details of the agricultural land owned by her and the income derived from the same and also confirming that she had gifted the income to her daughter (the assessee). Thus, the Tribunal held that when all surrounding factors suggest that gift was genuine simply because assessee was not able to establish cash in hand, the addition could not be made without making enquiry, in view of the fact that the assessee's had discharged burden cast upon her by submitting the land details as well as details of her mother's (donor's) annual income.
ITO v GOGINENI SARADA (2018) 53 CCH 0597 (VishakapatnamTrib) ITA Nos. 152/VIZ/2017, 122 & 152 /VIZ/2017 dated July 31, 2018

2458. The AO disallowed the brokerage expenses claimed by assessee u/s 57 against interest income on ground that assessee failed to file details and supporting evidence. The Tribunal upheld CIT(A)'s order allowing assessee's claim by noting that copies of debit notes of brokers were already submitted during assessment proceedings which the AO had not considered. Accordingly, Revenue's appeal was dismissed.

Asst CIT vs Girish Matlani [2018] 54 CCH 0253 (Mum Trib) - ITA No.5105/Mum/2016 dated 20.11.2018

2459. The Tribunal restored the issue of addition of share premium amount received by the assesee-company on substantive basis u/s 68 and protective basis u/s 56(2)(viib) back to the AO with the direction (i) to AO - to do objective evaluation of the share valuation report submitted by the asessee (showing that the share were issued at the fair market value) and (ii) to assessee - to provide supporting evidences to substantiate the estimate of cash flow considered for valuation done on discounted cash flow (DCF) basis. Noting that the AO had rejected the valuation report on the ground that the the projected cash flow at the time of the valuation did not materialize in subsequent years, it held that if AO's such contention is accepted then the basic fallacy would arise that discounted future cash flow should be equal to the actual cash flow of the assessee. However, the Tribunal also held that if wide variations in with actual results compared with the projected cash flow subsequent years is accepted then provisions of section 56(2)(viib) would become redundant. Accordingly, it held that there was a need to do objective evaluation of the valuation report submitted.

Stryton Exim India Pvt Ltd v ITO [TS-616-ITAT-2018(DEL)] - ITA No. 5982/Del/2018 dated 23.10.2018

2460. Where the assessee had acquired shares of one, TEPL which were valued the shares as per rule 11UA of the Income-tax Rules, 1962, i.e., on basis of book value of assets of TEPL and not as per market value of assets, the Tribunal held that the AO was unjustified in making an addition under Section 56(2)(viia) by substituting the valuation adopted by the assessee with the market value and alleging that the difference was the income of the assessee. The Tribunal held that under the provision of rule 11UA there was no reference to the fair market value of the land as taken by the Assessing Officer and accordingly deleted the addition made.
Minda S M Technocast (P.) Ltd. v Add CIT - [2018] 92 taxmann.com 29 (Delhi - Trib.) - IT APPEAL NO. 6964 (DELHI) OF 2017 dated MARCH 7, 2018

2461. Where the assessee-company was not engaged in carrying on any business activity of acquisition of shares but in making long-term investments and the dividend income earned on such investment was taxable under head 'Income from other sources', the Tribunal held that any expenditure incurred to earn dividend income including finance charges was to be allowed u/s 57(iii). However,since, the assessee had failed to furnish any details in respect of investments which earned income and investments which did not earn dividend income for year under consideration, the Tribunal upheld the CIT(A)'s order directing the AO to allow finance charges on proportionate basis in respect of investments which earned dividend income after verifying facts.
Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018

2462. Tribunal rejected the stand of assessee-HUF that the shares received by it as gift from Karta's mother (not being a member) were not covered by the provisions of section 56(2)(vii) as it would qualify as gift from 'relative', noting that the proviso to section 56(2)(vii) provides separate definition of 'relatives' in case of individual and HUF and thus the 'relatives' mentioned with respect to an individual cannot be considered when the recipient of the property is an HUF, irrespective of the fact that all the members of the HUF are individuals related to the donor.
Subodh Gupta (HUF) v Pr.CIT - TS-10-ITAT-2018(DEL) - ITA No. 3571/Del/2017 dated 05.01.2018

2463. The Pr.CIT, while passing order u/s 263 brought to tax the unquoted equity shares received as gift u/s 56(2)(vii) adopting the price at which the said shares were subsequently sold by the assesse to a third party for valuing the same, placing reliance on the definition of 'fair market value' ('FMV') as provided u/s 2(22B). The Tribunal rejected revenue's adoption FMV as provided u/s 2(22B), holding that the valuation was to be done as per the specific Rule 11UA(1)(c)(b) applicable for determining FMV of unquoted equity shares for the purposes of section 56.
Subodh Gupta (HUF) v Pr.CIT - TS-10-ITAT-2018(DEL) - ITA No. 3571/Del/2017 dated 05.01.2018

2464. Tribunal upheld AO's action of denying exemption to the assessee, a mutual benefit company, with respect to its interest income derived from Fixed Deposit Receipts and Savings Bank Account and taxing the same as Income from Other Sources. It rejected assessee's contention of allowing proportionate expenditure applying the methodology laid down u/s 14A r.w. Rule 8D, observing that this may not give appropriate amount/ correct expenditure. However, noting that interest income formed major part of the income of the assessee, Tribunal directed AO to consider 10% of the receipts being taxed as an 'expenditure laid out wholly and necessarily for earning the interest income' taking support from the provisions of section 80HHC and work out the taxable income.
Hyderabad Mutual Benefit Society v ITO - TS-607-ITAT-2017(HYD) - ITA No. 692 & 693 of 2017 (HYD) dated 29.12.2017

2465. Where assessee, who was director of a company, alongwith his wife, purchased certain immovable properties from the company at a value lower than the market value determined for stamp duty purposes, Tribunal rejected revenue's contention that the difference between the stamp duty valuation and actual sale value can be added u/s 56(2)(vii)(b) as the amendment empowering AO to assess such difference as income in case of sale of property for a consideration less than stamp duty value of property was incorporated into statute by Finance Act, 2013 with effect from 1-4-2014 and, hence, not applicable for AY 2011-12 and 2012-13 being the years under appeal.
Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018

2466. Tribunal deleted the addition made u/s 56(2)(vii)(b) by the AO adopting the FMV (Rs.26.69 per share) computed as per the Net Asset Value (NAV) method with respect to shares issued by the assessee-company, where the assesse-company had issued the shares at a price which was within the FMV (Rs.54.98 per share) computed as per the Discounted Cash Flow (DCF) method. , rejecting the adoption of Net Asset Value (NAV) method . It held that DCF method is one of prescribed method and that the AO had not found any serious defect in facts and details used in determining fair market value under the said method.
ACIT v Safe Decore (P.) Ltd. – (2018) 90 taxmann.com 161 (Jaipur Trib) – ITA No. 716 (JP) of 2017 C.O. No. 36 (JP.) of 2017 dated 12.01.2018

2467. The assessee had sold its immovable property and furniture and fixtures and plant and machinery separately. The immovable property, on which there was a building, was sold for redevelopment as a result of which building was not subject matter of sale as building now did not exist and no consideration was received for the building. The AO opined that the assesse had sold assets on slump sale basis attracting provisions of section 50B. Noting the above facts, the Court upheld the CIT(A)'s order holding that there was no slump sale and directed AO to allow relief considering the amount of long term capital gains computed by assessee without invoking the computation methodology stipulated in section 50B.
Pr.CIT v Linde India Ltd. – (2018) 90 taxmann.com 412 (Calcutta) – GA No. 1113 of 2016 ITAT No. 166 of 2016 dated 15.01.2018

2468. Where the assessee which had discontinued its business operations and offered to tax interest income earned from inter corporate deposits in its return as 'income from business', the Tribunal upheld the AO's view that interest income was to be taxed as 'income from other sources' in view of fact that since all along assessee had treated interest income under head 'Income from other sources' and without any change in material facts, same could not be brought under head 'income from business' in assessment years in question. Further, it held that in view of fact that as per memorandum of association main object of assessee-company was to manufacture fregnance and flavours, there was no justification for treating interest income under head 'income from business'.
Sai Fragrance & Flavours (P.) Ltd. v ACIT – (2018) 90 taxmann.com 307 (Mum) – ITA Nos. 7012 (Mum.) of 2011 & 6085 (Mum.) of 2013 dated 31.01.2018

2469. The Tribunal denied deduction u/s 57(iii) to the assessee, a members club, of expenses incurred for upkeep of the club and other facilities including the depreciation charged on various assets against the interest income received from FDRs kept in bank which represented the membership fees received by the assessee from its members and taxable u/s 56 as 'income from other services'. It held that the eligibility for deduction u/s 57(iii) arises only if expenditure has been laid out wholly and exclusively for purpose of earning income which was chargeable under the head 'income from other sources' and since assessee failed to establish nexus between expenditure incurred under various heads including depreciation and had also failed to justify apportionment of expenditure to earning of interest income, its claim was rightly rejected by the lower authorities below.
Poona Club Ltd. v ACIT – (2018) 90 taxmann.com 422 (Pune) – ITA Nos. 1068 & 1069 (Pune) of 2014 dated 23.01.2018

2470. Where assessee vide a license agreement had acquired right to use a shop in a shopping Plaza and earned income in form of sub-license fee which was offered to tax under the head 'income from house property' after claiming statutory deduction in view of various provisions as enshrined u/s 22 to 27, the Court held that for income to be charged under head "income from house property", assessee must be owner of property and since, in the present case, conditions of clause (iiib) to section 27, including provisions of section 269UA(f) referred in the said clause (iiib) were not satisfied, the assessee could not be held to be the owner as defined in section 27. Further, noting that it was not the case of the assessee that the said income was chargeable to tax under head salary, profits and gains of business or profession or capital gains, it held that the said income had to be assessed under residuary head "income from other sources"
RAM KRISHAN ASSOCIATES & ORS. v CIT & ORS – (2018) 101 CCH 52 (Del HC) – ITA Nos. 731/2005, 732/2005 & 735/2005 dated 31.01.2018

2471. The Tribunal dismissed Revenue's appeal, and held that the amount of Rs. 1 Cr received as a gift by individual-assessee in contemplation of death of a person (with whom assessee was closely associated with) was exempt u/s. 56(2)(v)(d) proviso as the conditions set out in Sec.191 of Indian Succession Act (so as to constitute a valid gift in contemplation of death) were fully satisfied. The AO denied assessee's claim of exemption u/s. 56(2)(v)(d) proviso on the ground that FDRs and cheques amounting to Rs 1 Cr. were received by assessee from sister of the deceased and hence could not be said to have been received in contemplation of death. The Tribunal noted that before her death, the deceased expressed her will to give gift to the assessee and accordingly handed over cheques and FDRs to her sister, shortly after which she died and further observed that the sister of the deceased not only endorsed the existence of oral will/wish of her elder sister but also ensured that her sister's will was fulfilled by facilitating encashment of FDRs to the assessee by way of filing an affidavit to that effect which clearly stated that the amount of Rs.1 crore has been given to assessee in accordance with the last wish of her sister (deceased). Accordingly, the Tribunal dismissed the AO's denial of exemption.
Vijayraj Uttamchand Mundada [TS-146-ITAT-2018(PUN)] - ITA No.592/PUN/2014 dated 01-03-2018

2472. Where the assessee received interest from Goshree Island Development Authority on cancellation of auction plots under direction of Supreme Court, the Tribunal held that since interest was emanating from amount paid by assessee pursuant to auction and not directly from its business activities, it could not be considered as business income of assessee and the said interest was to be taxed as 'Income from other sources'.
Dewa Projects (P.) Ltd v ACIT - [2018] 92 taxmann.com 235 (Cochin - Trib.) - IT APPEAL NOS. 150, 151 & 219 (COCH.) OF 2014 dated MARCH 19, 2018

2473. The assessee, during year under consideration, made offer to existing shareholders for buy back of 25% of its existing share capital. The AO assessed the difference between book value of shares and purchase price (buy back price) of shares as income of assessee u/s 56(2)(viia) noting that one of the directors from whom shares had been bought back had reinvested amount in the assesse-company in form of loan and thus opining that the entire exercise of buy back was carried out to reduce liability of company by purchasing shares below fair market value. The Tribunal held that combined reading of provisions of section 56(2)(viia) and memorandum explaining provisions would show that provisions of section 56(2)(viia) would be applicable only in cases where receipt of shares become property in hands of the recipient and shares would become property of the recipient only if it was "shares of any other company". It held that since the assessee had purchased its own shares under buyback scheme and the same had been extinguished by reducing capital, the tests of "shares of any other company" and "becoming property" had failed and, hence, the tax authorities were not justified in invoking provisions of s. 56(2)(viia) for buyback of own shares. Thus, it directed the AO to delete addition made u/s 56(2)(viia).
VORA FINANCIAL SERVICES P. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0289 (Mum) - ITA No. 532/Mum/2018 dated June 29, 2018

2474. The Court upheld the Tribunal's order confirming addition u/s 68 on account of certain amount claimed by the assesse to be gift received from father-in-law. Rejecting assessee's reliance placed on the decision of co-ordinate bench in the assesse own case for an earlier year wherein the Court had decided in favour of the assesse w.r.t. gift received from Maternal Aunt, the Court held that it could not have been simply said that what applied to a gift from the aunt would have equally applied to a gift from the father-in-law, irrespective of the circumstances, suspicious or otherwise, surrounding the gift. It also rejectedthe assessee's contention that genuineness of gift could not be questioned when the identity of the donor is established, payment is through banking channels and a letter of confirmation is also available, by holding that these three facts could establish the truth of the transaction, but not genuineness. It noted that the lower authorities had suspected that that undisclosed income earned by the assessee could have been used for round tripping and routed through father-in-law to bring it back as gift. The Court also rejected submission that round tripping was not possible as he had no source of income, observing that the assessee was a director of real-estate company. Acccordingly, the Court dismissed the asssessee's appeal in this regard and decided in favour of Revenue.
Pendurthi Chandrasekhar v DCIT -[TS-411-HC-2018(AP)] - I.T.T.A.No.703 / 2016 (Telangana & AP) dated April 26, 2018

2475. The Apex Court dismissed the SLP filed by the Revenue and upheld the High Court's order wherein it was held that taxability of interest income earned by assessee on deposit of advances received from REC for Rajiv Gandhi Gramin Vidyutikaran Yojna (RGGVY), would depend upon subsequent use of said income, noting that a 'MOU' was signed between the REC and the assessee whereby inter alia it was agreed that interest earned on deposits would be used as part of cost of projects and no other purpose.

Pr.CIT v NTPC Electrical Supply Co. Ltd. - [2018] 93 taxmann.com 430 (SC) - SPECIAL LEAVE PETITION (CIVIL) (DIARY) NO. (S)11488 OF 2018 dated April 23, 2018

2476. Where the Assessee claimed interest charged by bank on housing loan as deduction under Section 57 of the Act against interest income earned from various parties to whom the advances were given, the AO disallowed such interest claimed under Section 57 of the Act. The CIT(A) upheld the order of the AO. The Tribunal held that the assessee demonstrated that she had earned substantial interest income out of advances given from amount so borrowed from bank. Tribunal held that since there was no finding by the AO or the CIT(A) that interest earned were not out of interest bearing funds taken from bank, the matter was restored back to the file of the AO to decide the matter afresh. Thus, the Assessee's appeals were allowedfor statistical purposes.

ANURADHA AGARWAL & ORS. vs. ITO& ORS. (JODHPUR TRIBUNAL) (ITA No. 498 to 500 of 2017)) dated May 25, 2018(53 CCH 0132)

2477. The Tribunal upheld the CIT(A)'s order rejecting the assessee's claim for deduction of certain expenses u/s 57 from "Income from Other Sources' for want of documentary evidence to show that the said expenses were incurred wholly and exclusively for purpose of earning income declared under head income from other sources. It was noted that the assessse had not furnished any independent evidence the regard to the receipt of the commission income, other income and share of profit itself and thus the same was not subjected to verification. Similarly, documentary evidences of various expenses claimed such as depreciation on fixed assets, legal fee, interest expense, etc. were also not produced nor their co-relation with the aforesaid income was established.

ITO & Ors v Vijay Mangal & Ors. (2018) 52 CCH 0373 JaipurTrib - ITA No. 276/JP/2017dated 18.04.2018

2478. The Tribunal held that the provisions of section 56(2)(vii)(b) are applicable to only those transactions which are entered into after 1-10-2009.

ShailendraKamalkishoreJaiswal v ACIT [2018] 94 taxmann.com 39 (Nagpur – Trib.) – ITA NO. 18 OF 2015 dated 11.05.2018

2479. The Tribunal disallowed the claim of deduction u/s 57 of the assessee for PMS charges, salaries, professional charges against the dividend/interest income. The Tribunal referring to sec 57 noted that, the case of the assessee's claim was outside the ambit of section 57(i), Further with respect to section 57(iii) the Tribunal stated that the assessee failed to establish that the above expenditure was wholly and exclusively for the purpose of earning interest/dividend. The Tribunal also rejected the assessee's alternative plea that even if expenses were not allowable u/s. 57, the same should be allowed against income from capital gain in the present year or future years by stating that the claim of expenses in present case was not for those expenses which were incurred on account of transfer of asset or cost of acquisition / improvement of asset as contemplated u/s. 48 of the Act.

Sh. M.J. Aravind vs JCIT (2)(3) Bangalore – TS-226-ITAT-2018(Bang)- ITA No. 1991/Bang/2016

2480. The assessee allotted equity shares considering the provisions of Section 56(2)(viib) read with Rule 11UA after obtaining valuation report from a merchant banker wherein fair market value of shares was computed on the basis of Discounted Cash Flow. The AO rejected the valuation report and made an addition under Section 56(2)(viib). The Tribunal observed that the AO should have made a reference to the Valuation Officer on rejecting the valuation report provide by the assessee. However, as the assessee failed to provide any evidence to substantiate the basis of projections in the valuation report, the Tribunal upheld the order of the AO and CIT(A) and held that rejection of assessee's valuation report was justified and in absence of the such evidences, referring the matter to the Valuation Officer did not also serve any purpose.

AGRO PORTFOLIO PRIVATE LTD. vs. ITO – [2018] 53 CCH 0043 (Del ITAT) – ITA No. 2189/Del/2018 dated May 16, 2018

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

Assessment

2481. Where High Court accepted assessee's plea that reason assigned for transfer of its case from one jurisdiction to another jurisdiction i.e. decentralisation of cases from central charges, did not constitute sufficient reason and thus, impugned transfer order passed by AO was not sustainable, the Apex court dismissed the SLP filed against said order.
Pr. CIT(Central) v. Rohtas Project Ltd. -SLP(Civil) Diary No(s).34314 of 2018-dated November 16, 2018

2482. The Court held that when assessment pursuant to notice under section 143(2) was pending and likelihood of substantial demands upon assessee after completion of scrutiny could not be ruled out, refund claim could not be allowed.
Vodafone Mobile Services Ltd. v. Asst. CIT W.P.(C) No.2730 of 2018 of 2018 and CM Nos.46054-55 of 2018-dated December 14, 2018

2483. Where High Court upheld order passed by Tribunal holding that in case of assessee's merger with nother company, subsequent assessment order passed in name of assessee company was a nullity, the Apexcourt dismissed SLP filed against said decision.
Principal Commissioner of Income-tax v. BMA Capfin Ltd. [2018] 100 taxmann.com 330 (SC) SLP(Civil)Diary No.40486 of 2018-dated November 19, 2018

2484. The Court held that where Assessing Officer had carefully outlined salient aspects in accounts and returns of assessee that needed to be looked into and made impugned order directing special audit and assessee had not alleged any mala fides, impugned order directing special audit was justified.
Patanjali Ayurveda Ltd. v. Dy. CIT- [2019] 101 taxmann.com 46 (Delhi) - W.P. (C) No. 2591/2013-dated December 6, 2018.

2485. The Court held that where assessment proceedings on basis of return filed being already culminated by operation of law and no incriminating material being found during subsequent search, there could not be any assessment under section 153A/153C
Assistant Commissioner of Income-tax, Central Circle-2(2), Chennai v. RPD Earth Movers (P.) Ltd.
-[2019] 101 taxmann.com 89 (Chennai - Trib.)- ITA Nos. 1606 to 1612 (CHNY) of 2018- dated December 3, 2018

2486. The Court held that where in course of remand proceedings, Assessing Officer failed to completeassessment within a period of nine months from date of service of remand order on revenue authorities, in view of provisions of section 153(2A), impugned assessment order was barred by limitation.
Surendra Kumar Jain v. Pr. CIT, Central-III, New Delhi- [2018] 100 taxmann.com 38 (Delhi)-W.P. (C) Nos. 4304 to 4311 & 4313 to 4316, 4318 & 4319 of 2018 - C.M. Appl. Nos. 16759 to 16764, 16766,16768, 16772, 16774, 16781, 16782, 16786 & 16787 of 2018 date October 1, 2018

2487. Where in case of assessee-company having registered office at Mumbai and a branch office at Indore, ITO, Indore, issued a notice under section 143(2), the Court held that in view of fact that assessee was filing e-returns from inception in Indore and, moreover, it had accepted jurisdiction of Assessing Officer at Indore in earlier assessment years, objection raised by assessee that jurisdiction in its case lay in State of Maharashtra, was rightly rejected by Chief Commissioner.
Frolic Reality (P.) Ltd. v. Chief CIT-[2019] 101 taxmann.com 311 (Madhya Pradesh)-Writ Petition No. 2876 of 2014-December 5, 2018

2488. Assessing Officer directed special audit on grounds that; firstly, assessee had failed to provide relevant information in respect of several imprest accounts maintained by it and, further, while maintaining accounts on mercantile basis, why imprest accounting (cash basis) was followed; secondly, amount of exemption claimed under section 80-IC differed in both original and revised return filed by assessee. The Court noted that order passed under section 142(2A) contained a detailed discussion as to complexity of accounts. There was complexity in allocating expenses incurred by assessee as it chose to supply information to Assessing Officer, during inquiry, in a piecemeal fashion. Information was not forthcoming from assessee in timely manner. In regard to imprest accounts, details of expenses incurred were not furnished. Also, benefit of section 80-IC was an aspect which could not be given a light treatment, but needed inquiry. Since Assessing Officer had carefully outlined salient aspects in accounts and returns of assessee that needed to be looked into and assessee had not alleged any mala fides, the Court held that impugned order directing special audit was justified.
Patanjali Ayurveda Ltd. v. Dy. CIT- [2019] 101 taxmann.com 46 (Delhi)-W.P. (C) No. 2591/2013-dated December 6, 2018

2489. The Court held that when assessment pursuant to notice under section 143(2) was pending and likelihood of substantial demands upon assessee after completion of scrutiny could not be ruled out, refund claim could not be allowed.
Vodafone Mobile Services Ltd. v. Asst. CIT-[2018] 100 taxmann.com 310 (Delhi)-W.P. (C) No. 2730 of 2018 of 2018 & CM. Nos. 46054-55 of 2018 dated December 14, 2018

2490. The Court held that where Assessee's succession to estate of Ruler was not governed by principle of primogeniture general law of succession, i.e. rules applicable to HUF, would apply and, thus after his death, assessment was to be completed by taking status of deceased assessee as that of HUF.
CIT v. Bhawani Singh ji [2018] 99 taxmann.com 338(Delhi) ITA Nos. 152 of 2001 & ORS.IT Ref. Nos. 297-98 of 1981 & ORS. WTA Nos. 2 of 1999 & ORS. Dated October 5, 2018

2491. Assessment was completed u/s. 143(3). Later case was reopened u/s. 148 and addition was made on account of unexplained amount received from company and assessment was completed u/s. 147/143(3). CIT(A) dismissed assessee's appeal. Tribunal set aside issue regarding addition to file of AO with direction to decide issue afresh. AO in absence of confirmation of creditor made addition u/s. 254/143(3). CIT(A) rejected assessee's claim that impugned order was time barred. The Tribunal held that, as per provisions of sec. 153(2A), assessment order, pursuant to order u/s 254 had to be made before expiry of one year from end of financial year in which order u/s. 254 was received by Department. Delhi High Court in case of Nokia India Private Limited vs. DCIT, held that unless entire assessment order was wholly set aside, time limit for passing fresh order u/s.153 (2A) would not be attracted. Object behind introduction of sub-section (2A) of section 153 was to prescribe a time limit for completing assessment proceedings upon original assessment being set aside or being cancelled in appeal. Along with insertion of sub-section (2A), sub-section (3) underwent simultaneous change. It was expressly made "subject to the provisions of sub-section (2A). Section 153(3) would thereafter apply only to such cases where Section 153(2A) did not apply. AO would be bound to follow time- limit imposed by sub-section (2A). Where AO was only giving effect to an appellate order, then Section 153(3)(ii) would apply. In assessee's case limitation period for passing order u/s.254/143(3) expired on 31.03.2012 whereas, impugned assessment order was passed on 28.03.2014, therefore, it was time barred.
Vivek Financial Focus Ltd. vs.Dy.CIT-(2018) 53 CCH 0311 DelTrib-ITA No.6972/Del./2017-Dated Jul.9, 2018

2492. Assessee company was primarily engaged in business of importing buying and selling and distributing wide range of mobiles phones in India and providing related post sale support services. Assessee had undertaken international transaction, AO referred matter to TPO for determination of ALP of international transaction entered into by assessee with its AE. TPO determined upward adjustment. DRP upheld assessee's order. Tribunal gave some part relief. High Court restored matter to file of Tribunal with certain directions. The Tribunal held that, assessee filed its return of income in name of M/s. Sony Ericsson Mobile Communications (India) Private Limited. Name of company was changed to

M/s. Sony Mobile Communications (India) Private Limited. AO passed draft assessment order in name of M/s. Sony Ericsson Mobile Communications India Private Limited. AO in order passed u/s. 143 (3) had passed final assessment order u/s. 143 (3)/144C in name of M/s. Sony Ericsson Mobile Communications (India) Private Limited. Final order had been framed on non-existent company. Assessment framed by AO on non-existent company was nullity in eyes of law and void and provisions of sec. 292B could not rescue revenue. Therefore, order was unsustainable and accordingly same was quashed.

Soni Mobile Communications India(P) Ltd. & ANR vs. Dy. CIT & ANR-(2018)53CCH 0323 DelTrib. - ITA No.554/Del/2015,836/Del/2014-Dated July 6, 2018

2493. On account of amalgamation order, Assessee company was merged with new entity. AO u/s. 143(3) passed assessment order in name of the amalgamating company. Assessee took plea that assessment order passed on non-existing amalgamating entity instead of amalgamated/ successor company was void ab-initio. The Tribunal held that, High Court's order in relation to amalgamation was passed wherein assessee-original entity was merged with new entity. TPO passed order in name of assessee. Draft assessment order was passed in name of original entity. DRP passed order in name of new entity. Order was passed in name of assessee/original entity. Despite AO being intimated/informed fact of amalgamation still AO choose to pass assessment order in name of non-existent company. Assessment order passed in name of a non-existent company had to be quashed.

Vertex Customer Management India Pvt.Ltd. vs. Dy. CIT-(2018)53 CCH 0295 DelTrib.-ITA No.966/Del/2016-Dated Jul. 6, 2018

2494. Assessee was originally formed under name M/s. B in Chennai which was later acquired during FY 2008-09 and accordingly, name was changed.Thereafter, assessee was permitted to transfer his registered office from Tamil Nadu to Maharashtra.Assessee filed return of income for AYs 2010-11 & 2011-12 to DCIT, Mumbai.Assessment for AY 2010-11 was completed by ACIT, Chennai.Assessee raised a legal issue contending that ACIT, Chennai did not had any jurisdiction to pass assessment order for AY 2010-11. The Tribunal held as per system prevailing in Department, though return of income was filed in Mumbai office, yet jurisdiction remained with Chennai AO in view of fact that return was filed electronically.Since assessee's case was not transferred to Bombay Officer as per record of Department, AO, Chennai issued a notice u/s 143(2).AO having original jurisdiction could be relieved of case only if transfer of case was done as per provisions of s. 127.According to assessee, CIT, Mumbai had approved transfer on 16.01.2013. As details of order passed by CIT, Chennai were not available on record. In absence of same, it might not be possible to ascertain as to whether case of assessee was transferred prior to passing of assessment order. Thus, CIT(A) was justified in rejecting contentions of assessee

CREDIT SUISSE FINANCE (INDIA) PVT. LTD. & ANR. vs. Dy. CIT & ANR (2018) 54 CCH 0410 MumTrib ITA No. 1435/M/2016, 1436/M/2016, 1415 & 1416/M/2016 dated 21.12.2018

2495. The Court dismissed assessee's writ and held that where direction for special audit is subjected to approval of Principal Commissioner, the PCIT had to apply mind before granting approval for special audit and after granting opportunity for hearing to assessee. The AO after considering nature and complexity of accounts, doubted about correctness of accounts and due to multiplicity of transactions, voluminous seized material, and total non-cooperation on part of assessee, made a request to Principal Commissioner, to accord approval for special audit. The Principal Commissioner had granted reasonable opportunity of being heard twice to the assessee and thereafter, approval for special audit was accorded after careful consideration of facts. Thus, the Court held that the requirement of pre-decisional hearing was met as Principal Commissioner, before deciding the issue of approval for Special Audit gave opportunity to assessee and, thus, writ filed by assessee to challenge said order was dismissed.

Ramswaroop Shivare vs DCIT- (2018) 98 taxmann.com 89 (MP)- WP no 7936 of 2018 dated 06.09.2018

2496. Assessee an individual, during the year his return was selected for scrutiny under CASS and a notice was issued thereafter u/s 143(2) whereby various details like bank accounts, valuation reports and documents were submitted. The assessee contented that he brought on record various documents in support of income declared in return. However, the AO without even taking into consideration those documents, passed assessment order making various additions. The assessee in response filed a writ petition before High Court contending that assessment order was liable to be set aside on ground of violation of principles of natural justice and the same was accepted by the High Court and consequently the order was quashed The Supreme Court against Revenue SLP's held that where High Court accepted assessee's contention that assessment order passed by AO was without considering material on record was in violation of principles of natural justice, SLP filed against said order was dismissed.

ACIT vs Balmiki Prasad Singh- (2018) 99 taxmann.com 204 (SC)- Special Leave to Appeal (C.) No 21738 of 2018 dated 28.09.2018

2497. The Tribunal held that if no limitation is provided for initiating action by AO and passing order under particular provisions of act (sec 201), then reasonable time limit for such action is 4 years from end of relevant financial year.

Gupta & Mahindra Tractors vs ITO(TDS)- (2018) 54 CCH 0116 Jaipur Trib- ITA No 397/JP/2017 dated 24.10.2018

2498. The AO made addition in case of the assessee on grounds that sales return claimed by assessee and consequent loss on such sales return was not explained to satisfaction of AO. In respect of those parties, who did not appear before AO, the CIT(A) confirmed addition made by AO and in respect of parties who appeared before AO and confirmed transactions, CIT(A) deleted addition. The Tribunal held, that in spite of various opportunities, assessee failed to submit relevant details to satisfaction of AO, including confirmation from parties, details of transportation of goods, necessary correspondence made between parties to follow up payment in respect of sales made in earlier year, justification for downward valuation of sales. Further, the assessee had not followed general system of control regarding movement of goods at factory. Since number of opportunities were given by AO in assessment proceedings and in remand proceedings and assessee failed to prove genuineness of transaction with these parties even during appellate proceeding, the Tribunal upheld the CIT(A)'s order.

Eskay Knit (I) Ltd vs ACIT- (2018) 54 CCH 0049 Mum Trib- ITA No 6816/Mum/2011 dated 28.09.2018

2499. Assessee Company was engaged in activity of civil construction and development and AO on perusing Profit & Loss Account & CIB information on ITD model generated through system, conducted enquiry about fixed deposits made by assessee as well as increase in cash in hand during year. However, due to lack of enough information, AO could not examine issues but completed assessment after making additions which were later deleted by CIT(A). The Tribunal on revenue's appeal held that AO made addition on basis of CIB information generated through system as per which details of various FDRs made by assessee during year were reflected, further in absence of necessary submissions and reply by assessee, AO added all FDRs made during year. Further, AO estimated interest accrued on these FDRs were also calculated and added to the income of assessee. The Tribunal upheld CIT(A)'s order and held that as the fixed deposit receipts were not unaccounted and necessary transactions relating thereto had been passed through books of accounts which were also verified by AO, it could be deduced that as the amount of fixed deposit receipt had been explained, there remained no basis for addition of interest computed there on and addition on account of unexplained investment in FDR's on basis of CIB information was not sustainable.

DCIT vs KBG Life Infra Pvt Ltd- (2018) 54 CCH 0037 Indore Trib- ITA No 951/Ind/2016 dated 12.09.2018

2500. Where the assessee challenged order passed by the Pune Bench of the Tribunal before the Bombay High Court, in view of fact that both parties to appeal were situated at Ahmednagar, and assessment order was also passed at Ahmednagar, which was within jurisdiction of the Aurangabad Bench. The Court held that it would be appropriate that instant appeal was heard and disposed of by the Aurangabad Bench of the High Court.

Suhas Sugandhilal Bora v. ITO [2018] 96 taxman.com 311(Bom.) -IT Appeal Nos. 46, 47 & 48 of 2016 dated July 2, 2018

2501. For relevant year, the assessee trust filed return of income claiming status of AOP. In course of assessment, the Assessing Officer opined that since status of the assessee was AOP, its income would be brought to tax at Maximum Marginal Rate by applying provisions of section 164(1). Subsequently, the assessee filed a rectification application under section 154 contending that it was a 'Public Charitable Trust' and not a 'Private Trust' and, thus, rate applicable was normal tax rates with basic exemption. The Assessing Officer rejected rectification application. The Tribunal held that it was noted that the assessee was not a trust registered under section 12A. Moreover, trustees of the assessee-trust were filing their own returns and were also having taxable income. In aforesaid circumstances, the Assessing Officer, on basis of original return file by the assesse, rightly treated it as an AOP and, consequently, impugned order applying provisions of section 164(1) did not require any interference.

Basil Mendes Memorial Educational & Charitable Trust v. ITO [2018] 98 taxmann.com 474/173 ITD 390 (Bang. – Trib.) ITA No. 2887 (BANG.) of 2017 [Assessment Year 2011-12] dated September 14, 2018

2502. The Court allowed Revenue's appeal against Tribunal's order wherein the Tribunal had held that the final assessment order passed pursuant to directions of DRP was void-ab-initio since the draft assessment order *itself* was passed beyond prescribed statutory period. It held that draft assessment order passed was within limitation period and was not void and invalid since clause (iv) to Explanation 1 categorically states that that the period from the date when the AO directs the special audit till the last date of furnishing such report u/s 142(2A) shall be excluded and not counted for limitation period.

Pr.CIT vs AT & T Global Network Services (India) (P.) Ltd [2018] 97 taxmann.com 462 (Delhi)- IT APPEAL NO. 292 of 2018 dated August 20 2018

2503. The Tribunal allowed assessee's appeal and deleted the disallowance made by the AO on account of interest and remuneration paid to partners while passing the assessment order u/s 144 [claiming that the assessee *had* not produced details u/s 142(1)], noting that the AO had himself recorded in impugned order that the assesee had complied with statutory notice issued u/s 142(1) and produced details of statutory audit reports, ledger copies of purchase and sale,reconciliation statements of UCO, HDFC & ICICI bank accounts,….etc. Thus, it held that the AO was not correct in completing the assessment u/s 144 and consequently in disallowing deduction of partner's interest and remuneration, also in view of the fact that the same were in accordance with terms of partnership and within the permissible limit u/s 40(b).

Bhambra Service Centre. vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 dated August 02 2018

2504. The AO had allowed assessee's claim for deduction u/s 80-IC partially while framing the draft assessment order. The assessee-company did not file objections with the DRP and thus the AO finalized the assessment as per section 144C(3). However, while passing the final assessment, the AO disallowed the entire deduction claimed u/s 80-IC. The CIT(A) observed that after framing the draft assessment order, the AO had made further enquiries with regard to eligibility of the deduction claimed and disallowed the same after giving the assessee opportunity of hearing. He thus upheld the AO's final assessment order. The Tribunal held that only in a case where final assessment order is passed in

conformity with directions of DRP, the AO can vary draft assessment order in respect of any addition/disallowance as per directions of DRP. It held that where the AO passes final assessment order u/s 144C(3), he has no such power to deviate from draft assessment order and can pass final assessment order only on basis of draft assessment order. Thus, it deleted the disallowance of deduction u/s 80-IC made by the AO in final assessment order, over and above amount disallowed in draft assessment order.

Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018

2505. The AO rejected assessee's claim for deduction u/s 80JJA and certain prior period expenses, in view of the fact that the assessee had not claimed the deduction for both the items in return of income / revised return but by filing revised statement of taxable income during the course of assessment. The CIT(A) allowed the assessee's claim relying on the decision in the cae of CIT vs. Pruthvi Brokers and Shareholding P. Ltd. [349 ITR 336 (Bom)], CIT vs. Sheth Developers (P) Ltd. [77 DTR 249] and Raj Rani Gulati vs. CIT [346 ITR 543 (All)] wherein it was held that assessee can make a fresh claim before the CIT(A). The Tribunal held that the CIT(A) was justified in admitting new claim, however, it remanded the matter back to the AO noting that certain details filed by the assessee with the CIT(A) were not before the AO and the CIT(A) had neither called AO during the hearing nor asked the AO to file a remand report.

DCIT v INTERNATIONAL TRACTORS LTD. & ORS. - (2018) 67 ITR (Trib) 0538 (Delhi) – ITA Nos 5756/Del/2013 & 6239/Del/2013 (C.O. No.130/Del/2014 & 173/Del/2014) dated July 23, 2018

2506. Where the AO was of the view that additional claim made by the assessee (by claiming higher cost of acquisition and re-computing LTCG) could not be entertained in limited scrutiny proceedings by placing reliance on CBDT Instruction No.7/2017, the Tribunal held that as per the said CBDT Instruction there was a bar on the jurisdiction of the AO to go beyond the subjected issue(s) under limited scrutiny cases, however, he was not restrained to adjudicate the issue(s) raised by the assessee. It held that correct income of assessee had to be computed and there was no bar for not entertaining the claim / issue raised by the assesee in limited scrutiny proceedings. Accordingly, the Tribunal remanded the case to the file of AO to adjudicate the claim of the assessee in accordance with law.

Thakur Raj Kumar vs Dy.CIT [2018] 54 CCH 0413 (Asr- Trib.)- ITA No.766 (Asr) of 2017 dated 27.11.2018

2507. The Court upheld Tribunal's order holding that the AO could not reject assessee's book results and transpose expenditure declared / disclosed for non-exempt unit as expenditure incurred on exempt unit, on the basis of assumption and surmises (by referring to difference in turnover, expenses and net profit rate of exempt and non-exempt units as well as vis-à-vis earlier years and other assessee), without pointing out any defects or deficiencies or wrong entry in the books of accounts for the said units. It held that the differences could be the starting point of investigation and verification but not the essence to reject the book results and make best judgment assessment u/s 144. Accordingly, the Court dismissed Revenue's appeal.

Pr.CIT vs Cincom Systems India Pvt Ltd.[2018] 103 CCH 0292 (Del HC)- ITA 365/2018 dated 29.11.2018

2508. The Tribunal dismissed assessee's appeal against CIT(A)'s order holding that income tax computation sheet (dated March 2013) made by the AO (showing reduction in the demand raised) pursuant to the Tribunal's order in the first round of litigation could not be treated as an assessment order and thus the assessment framed by the AO u/s 143(3) r.w.s. 254 (dated March, 2014) expressing inability to follow the Tribunal's directions (since the assessee had failed to furnish necessary evidences) was not non-est as there was only one order for the relevant year (i.e. dated March, 2014). It held that as per section 143(3), the assessment order necessarily has two components, i) dealing with the assessment of the

total income or loss of the assessee and ii) determining the tax payable by him or the refund due to him and in the present case, the 'Income-tax Computation' only dealt with the second component since there was no order passed by the AO assessing the income preceding such computation of income tax.

Punjab Beverages Pvt. Ltd v DCIT [TS-753-ITAT-2018(CHANDI)] - ITA No.438 & 446/Chd/2018 dated 17.12.2018

2509. Assessee firm filed its return showing income and thereafter notice u/s 143(2) followed by notice u/s142(1) was served upon assessee. The AO on the basis of information as revealed from return filed by assessee made addition to income of assessee. The CIT(A) upheld the order of AO by adopting assessee's net income at 8% of turnover. The Tribunal observed that the assessee's bank statements showed that cheques were deposited, and money was immediately withdrawn by way of cash which proved that substantial portion of expenditure were shown by assessee in cash for which it had not submitted any evidence during assessment proceedings. Further, on basis of continuous dilatory tactics of assessee in seeking adjournment on various dates of hearing and discrepancies in details submitted, it was held that books of account of assessee were not reliable Thus, the Tribunal held that in absence of major details of expenses which were not produced for verification and in presence of certain lacunae on part of assessee as observed by CIT(A) estimation of net profit @ 8% of gross turnover was justified.

MAA Engineering vs ACIT- (2018) 54 CCH 0010 Kol Trib- ITA No 739/Kol/2016 dated 14.09.2018

2510. The Tribunal dismissed assessee's appeal against CIT(A)'s order upholding AO's action in invoking section 44AD (which provides for taxation of eligible businesses on presumptive basis) in case of assessee-individual (engaged in the business of trading in cloth), noting that the turnover of the assessee was less than the prescribed threshold of Rs. 40 lakh. It also rejected assessee's contention that the said section was not applicable since it maintained regular books of account, noting that (i) assessee did not produce the books of accounts despite several opportunities (ii) he never claimed before the CIT(A) that he maintained books of account. Accorindgly, The Tribunal upheld AO's action of taking guidance from section 44AD and estimating income @ 8% of total turnover.
Kanhiyalal Tiwari v ITO [TS-498-ITAT-2018(Kol)] - I.T.A. No. 699/Kol/2016 dated 24.08.2018

2511. The Court remanded the matter back for disposal afresh, in case of an assessee who filed its return declaring certain taxable income and subsequently, filed a revised return under section 139(5) within prescribed time period, wherein value of closing stock was reduced, and administrative cost was increased. The AO in the present case had rejected the said revised return at the very threshold on ground that it was not accompanied with tax audit report. TheCIT(A) and the Tribunal concurred with the findings of the AO and dismissed assessee's appeal. The Court held that, whether on facts, if, in opinion of AO, return was defective, then procedure contemplated under sub-section (9) of section 139 ought to have been followed and since assessee had not been given an opportunity to rectify defects as contemplated under sub-section (9) of section 139, the order was to be set aside and matter was to be remanded back for disposal afresh.

Zeenath International Supplies vs CIT Central- (2018) 98 taxmann.com 219 (Madras)- Tax Case appeal no 1447 of 2008 dated 10.09.2018

2512. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) held that the AO was not justified in rejecting the books of accounts of the assessee on the ground that the electricity consumption of the assessee vis-à-vis other companies was higher and that if the DEPB benefit of the assessee was excluded it would lead to a fall in the net profit ratio of the assessee and held i) since the assessee's yield of fish (business of the assessee) was at par with the industry average there was no occasion for doubting the books of the assessee and that ii) since the assessee carried out processing activities along with preservation its electricity consumption could not be compared with the electricity consumption of companies only carrying out preservation. Accordingly, observing that the accounts of the assessee were duly audited and no specific defects were pointed out by the AO, the Tribunal held

that the AO was not justified in rejecting the books of accounts of the assessee and making addition on account of estimated profits.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. GRACY KUTHUMKAL THOMAS & ANR. - (2018) 52 CCH 0152 RajkotTrib - ITA No. 37/RJT/2013 dated Mar 1, 2018

2513. The assessee's case was selected for scrutiny and examination of certain capital gain offered to tax and the during the assessment proceedings, assessee claimed the said gains to be exempt from tax, in view of fact that in light of section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the amount of compensation received on acquisition of land was held to be exempt from tax. The AO rejected assessee's claim for exemption only on technical plea that assessee had not filed a revised return as the time available for revising the return had expired. The Assessee filed a writ petition in Court which was accepted by the Court and the assessment order was quashedto the extent it assessed the assessee to capital gains resulting from the said acquisition of land. While deciding as above, the Court also distinguished the decision in case of Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC)] by holding that the question that arose in Goetze (India) Ltd. was whether an assessee could make a claim for deduction other than by filing a revised return; whereas the question in the case on hand was whether the AO is precluded from considering an objection as to his authority to make an assessment u/s 143 merely for the reason that the petitioner has included in his return an amount which is exempted from payment of tax and that he could not file a revised return to rectify the said mistake in the return.
Raghavan Nair v ACIT - (2018) 89 taxmann.com 212 (Ker) - W.P. (C) no. 26004 of 2017 dated 04.01.2018

2514. Where assessee, a State Govt. Undertaking which was subjected to audit at hands of CAG as well as independent CA, had produced these two audit reports for the relevant years before the DCIT, the Court set aside the order for 'special audit' passed u/s 142(2-A) by DCIT mechanically without due application of mind and without giving a reasonable opportunity of hearing to assessee. It was noted by the Court that the impugned order did not disclose discussion on objections of assessee for there being no justification for special audit and that in case of one of the years, the DCIT did not even wait for objections to be placed on record and before they were furnished, he had already passed the impugned order. However, the Court gave one more opportunity to DCIT to reconsider the matter in the light of the Court's order, considering the objections and written submissions filed by the assessee in the correct perspective and pass fresh orders.
Karnataka Industrial Area Development Board v. ACIT - (2018) 401 ITR 74 (Kar) - Writ Petition No. 25223 of 2016 & 1863 of 2017 dated 02.01.2018

2515. The assessee had requested for transfer of tax files from the jurisdictional office of the erstwhile company (which got merged vide the High Court order made during the course of assessment proceedings into the assessee-company) to the assessee-company's jurisdictional officer. However, the AO had framed the assessment in the name of the non-existing erstwhile company. Since the assessee had taken an additional/ fresh ground objecting to such framing of assessment, the Tribunal remitted the matter to the DRP for examination of this issue, pursuant to which the DRP directed the AO to frame the assessment in the name of the assessee-company. Assessee filed another appeal against the order passed by the AO in the name of the assessee-company, following DRP's direction. The Tribunal held the assessment to be nullity relying on the decision in the case of Spice Entertainment Ltd. v. CIT (2012) 247 CTR 500 (Delhi) wherein it was held that, if the assessment is concluded in favour of a non-existing entity, then notwithstanding section 292B (which *inter alia* deems an assessment to be not invalid merely by reason of any mistake, defect or omission in such assessment), the position does not improve. The Court upheld the Tribunal's (second) order, holding that the DRP was not directed to require the AO to "better" the original incurable illegality.
Pr.CIT v Nokia Solutions & Network India (P.) Ltd. – (2018) 253 Taxman 409 (Del HC) – ITA No. 135 of 2018 dated 06.02.2018

2516. The Court dismissed the petition filed by the assessee against the order passed u/s 142(2A) by the assessing authority for directing Special Audit, noting that it was recorded that to understand the complex treatment of multiplicity of agreements entered into by the Petitioner for different projects, the

Special Audit was directed and that no inference could be drawn that there was breach of principles of natural justice or arbitrariness in the impugned order. It held that the Court could not go into sufficiency of reasons assigned by assessing authority for directing Special Audit and only where there were no reasons assigned or objections of assessee were not considered that the requirement of section 142(2A) could be said to have not been complied by authority.
Habitat Shelters (P.) Ltd. v Pr.CIT – (2018) 91 taxmann.com 271 (Kar) – Writ Petition no. 2009 of 2018 (T - Res) dated 12.02.2018

2517. The Court set aside CCIT's order rejecting assessee-HUF's application for condonation of delay of two months in filing return on account of mismatch in TDS actually deducted requiring corrections in TDS certificates which took considerable time, noting that the application of Karta of assessee-HUF filed in his individual capacity under identical circumstances for condonation of delay was accepted by revenue
Sahebsingh Bindrasingh Senagar (HUF) v CCIT – (2018) 91 taxmann.com 362 (Guj) – Special Civil Application No. 21411 of 2017 dated 21.02.2018

2518. Where the assessee had filed return through electronic mode but could not furnish ITR-V form within 30 days from the date of filing of return since there was no provision under electronic mode to attach ITR-V form or even send any scanned form and the Revenue treating the return as 'Nil' made assessment u/s 143(3) and initiated penalty proceedings, the Court dismissed the Revenue's appeal against the Tribunal's order wherein the Tribunal had accepted the assessee's argument that in the absence of a notice u/s 143(2) within the time stipulated, scrutiny assessment u/s 143(3) could not have been completed. It noted that the CBDT had later extended period for furnishing the ITR-V within which the assessee had availed of filing of ITR-V forms through post and that the con-joint reading of CBDT Circular No.3 of 2009 and Circular dated 01.09.2010 made it clear the CBDT itself was alive to the difficulties faced in the event of assessee choosing to file electronic mode without digital signatures.
PR.CIT v NATIONAL INFORMATICS CENTRE SERVICES INC – (2018) 400 ITR 387 (Del HC) – ITA 897/2016 dated 04.01.2018

2519. Where the assessee contended that in spite of filing overwhelming documents and making various grounds in response to showcause, AO had passed the assessment order in haste in arbitrary manner, only to meet the time limit for passing the assessment order, without even looking to documents and other materials submitted, and thus in violation to principles of natural justice, the Court held that it is a cardinal principle of law that if relevant materials and objections are produced before a quasi-judicial authority, the quasi-judicial authority is duty bound, under law to advert to consider the same, discuss them and then reject it by recording reasons. It held that in the present case, since the said principle had not been followed, it was an order based on the ipse dixit of the AO without adverting to consider the relevant materials produced before him and the objections raised by the Petitioners and thus the order had been passed in violation of the principles of natural justice. The Court quashed the assessment orders and directed the AO to decide the issue in accordance with law considering this order and the relevant documents to be filed by the assessee.
DHANANJAY KUMAR SINGH v ACIT & ORS – (2018) 402 ITR 91 (Patna) – Civil Writ Jurisdiction Case No.1391, 1527, 1520, 1402, 1415, 1518, 1522, 1428, 1429, 1539, 1451 & 1400 of 2018 dated 25.01.2018

2520. In a case where the AO added the difference between the closing stock shown in the books of accounts and the stock statement submitted to bank for availing cash credit facility against hypothecation of stock as undisclosed income of the assessee, the Court dismissed the Revenue's appeal against the Tribunal's order deleting the said addition, holding that since the CIT(A) and the Tribunal had recorded concurrent finding of fact that there was no difference in quantity of stock as reflected in books of account and in statement submitted to bank, it was not possible to state that conclusion arrived at by Tribunal suffered from any legal infirmity. While deciding the case, the Tribunal had noted that it was common practice to give inflated valuation to bank to avail cash credit facilities which were invariably given on hypothecation of stock and the price as shown in books of account was in terms of cost price whereas in the statement submitted to bank the same was at market price and hence, there was a difference. Further, there was nothing on record to show that bank officials had physically verified stock as on 31.3.2010.

PR.CIT v GLADDER CERAMICS LTD. – (2018) 401 ITR 205 (Guj) – TAX APPEAL NO. 1032 of 2017 dated 16.01.2018

2521. Where the AO made an ad hoc addition of 2 percent of raw materials consumed on the ground that the consumption of raw materials of the assessee had gone up by 25 percent but the production of finished goods only went up by 10 percent, the Tribunal set aside the order of the AO and held that the AO had failed to appreciate that the value of closing stock of finished goods and WIP had also increased by 29%. Further, it held that since the books of accounts of the assessee had not been rejected the AO was not justified in making addition on an estimated basis. Accordingly, it remitted the matter to the file of the AO for de novo adjudication.
VESUVIUS INDIA LTD. & ANR. vs. ADDITIONAL COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0326 KolTrib - ITA No. 544/Kol/2010, 518/Kol/2010 dated Mar 7, 2018

2522. The Assessing Officer noticed from the information submitted by the assessee (details of sales of flats), as well as from the information obtained by him from the website www.magicbricks.com that there was a huge variation in sale prices of the flats constructed by the assessee within the wing and also within the floor of the residential project constructed by assessee and accordingly rejected the books of accounts of the assessee and made an addition on account of unaccounted sales price in the hands of the assessee. The Tribunal noted that the AO had not asked for variation in sale prices with regard to any particular flat though the assessee requested that the explanation could be furnished once it was known in respect to which particular flat the information was to be submitted. The AO had merely proceeded on the basis of the general allegation. It held that the AO was completely unjustified in relying on the data contained on www.magicbricks.com as the disclaimer of the website clearly mentioned that the data contained therein was not actual transaction based. It noted the findings of the CIT(A) i.e. many flats were sold in "Shell condition" and only some flats were sold post completion and accordingly held that the AO had proceeded on mere guesswork. Accordingly, it held that the rejection of the assessee's books of accounts was not valid. However, it accepted the contention of the Revenue and directed the assessee to file the agreements for sale of flats with the AO for verification as to how many of the flats were sold on Shell basis.
ASSISTANT COMMISSIONER OF INCOME TAX vs. SAI SHIRDI CONSTRUCTIONS - (2018) 52 CCH 0262 MumTrib - ITA No. 5135/MUM/2015 dated (2018) 52 CCH 0262 MumTrib

2523. The Tribunal held that where the AO rejected the books of accounts of the assessee and made an addition on account of suppressed sales, which was not challenged by the assessee, the AO could not proceed to make disallowances under Section 68 and Section 40A(3) of the Act based on the rejected books of accounts.
DEEPAK MITTAL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0273 DelTrib - ITA No. 4709/Del./2017 dated Mar 23, 2018

2524. The Tribunal held that the assessment order passed in the case of the assessee making additions on account of unexplained cash credits pursuant to revision proceedings under Section 263 of the Act was bad in law as it was passed in the name of the amalgamating company which was no longer in existence as it had been amalgamated pursuant to the order of the Delhi High Court permitting the amalgamation. It held that once a company was amalgamated it would cease to be a person under Section 2(31) of the Act and therefore the assessment order passed on such person was a nullity. Accordingly, it directed the AO to pass a fresh assessment order in the name of the amalgamated company.
BASUNDHARA GOODS P. LTD. vs. INCOME TAX OFFICER - 2018) 52 CCH 0313 KolTrib - ITA No. 674/Kol/2016 dated Mar 23, 2018

2525. The assessee filed its return of income with ITO at New Delhi having jurisdiction over case of assessee. Thereafter, ITO, Faridabad issued notice under section 143(2) on 23-10-2007 but since it did not have jurisdiction over case of assessee, ITO at Delhi issued notice under section 143(2) on 28-7-2008 and completed assessment under section 143(3) wherein addition was made under section 68. The Tribunal held that since the notice under section 143(2) by the officer having jurisdiction over the

assessee was beyond period prescribed under law i.e. one year of filing of return, the assessment order was null and void. Accordingly, it dismissed Revenue's appeal.
ITO v NVS Builders (P.) Ltd - [2018] 91 taxmann.com 462 (Delhi - Trib.) - IT APPEAL NO. 3729 (DELHI) OF 2012 dated MARCH 8, 2018

2526. The assessee had shown net profit ratio at 0.96 per cent during the year under review. The AO noted that such net profit ratio was very low as net profit ratio of assessee was 5.26 per cent and 1.86 per cent in two immediately preceeding assessment years and accordingly determined income by adopting net profit ratio of 5 per cent. The Tribunal, considering factors such as past tax history of said two assessment years, huge job work receipts in earlier assessment years, which substantially reduced during relevant assessment year, fixed net profit ratio of 2.5 per cent of turnover. The Court upheld the order of the Tribunal and dismissed the Revenue's appeal.
Principal Commissioner of Income-tax v Praveen Kumar Jain - [2018] 92 taxmann.com 26 (Madhya Pradesh) - IT APPEAL NO. 220 OF 2017 dated MARCH 5, 2018

2527. The Court held that debatable issues could not be adjusted by way of intimation u/s.143(1)(a) as it would lead to arbitrary and unreasonable intimations being issued leading to chaos. Accordingly, it held that the AO was not justified in disallowing the assessee's claim of deduction on account of provision for bad debts in the intimation under Section 143(1)(a) without providing the assessee an opportunity of being heard.
BAJAJ AUTO FINANCE LTD. vs. COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0072 MumHC - INCOME TAX REFERENCE NO. 25 OF 2000 dated Feb 23, 2018

2528. The assessee was non-Government company engaged in business of share trading and returned Nil income. Since there was repeated non-compliance from side of assessee and non-production of books of accounts for his verification, AO presumed that books of accounts were not complete and unrealizable, therefore, rejected book results by invoking provisions of section 145 (3) and determined total income of assessee at certain amount by making disallowance. On appeal, the CIT(A) reversed the order of the AO. The Tribunal upheld the order of the AO and held that in the absence of production of relevant details, CIT (A) was not justified in allowing appeal filed by assessee challenging rejection of books of account and deleting various additions made by AO. Accordingly, it reversed the CIT(A)'s order and restored the AO's order.
ASSISTANT COMMISSIONER OF INCOME TAX vs. ORIGIN EXPRESS (I) NORTH PVT. LTD. - (2018) 52 CCH 0175 DelTrib - ITA No. 734/DEL/2014 dated Feb 21, 2018

2529. The Apex Court reversed the High Court order quashing notice issued u/s 143(2) which was served on assessee after 12 months from the end of the month in which return was filed. The assessee filed return of income on October 17, 2005 for AY 2005-06, and AO issued the notice u/s 143(2) on October 16, 2006 which was dispatched on October 18, 2006 and served on assessee on November 2, 2006. The Apex Court noted that Post Office attempted to serve the notice on assessee twice which could not be done since he was not available, further notice was also served on authorized representative of the assessee on October 19, 2006. Thus, the Apex Court held that the non-availability of the assessee to receive the notice sent by registered post as many as on two occasions and service of notice on October 19, 2006 on the authorized representative of the assessee whom the assessee now disowns, was sufficient to draw an inference of deemed service of notice on the assessee and sufficient compliance of the requirement of Sec. 143(2).
Dharam Narain [TS-76-SC-2018] - CIVIL APPEAL NO(S). 2262 OF 2018 dated FEBRUARY 19, 2018

2530. The Tribunal held that the income of the AOP could not be taxed in the hands of the assessee(one of the members of AOP) merely due to non-filing of PAN card and IT return of AOP. It noted that the AOP was in existence as per deed executed and that though the return of the AOP was not made available during the assessment, that could not be ground to disregard its existence. Regarding AO's objection that the bank account of the AOP did not have all names of the AOP-members, it held that even if no bank account was maintained by the AOP but the AOP was in existence and the income was earned by the AOP, then such income had to be taxed in the hands of the AOP only. Further, it held that if the

return was not filed by AOP, action could at best be taken against AOP and income could not be taxed in the hands of the individual members.
ITO v Shri B.V. Ashok Kumar - TS-134-ITAT-2018(Bang) - ITA No. 291/Bana/2017 dated 23.02.2018

2531. Opining that the asseessee had offered low profits to tax and noting that the assesse had shown huge quantity of stock as closing and opening stock without owning any godown (which the assesse claimed to have been taken on rent but he didn't furnish any details with respect to rent paid and no expense was debited under the head Godown Rent), the AO rejected the books of account of the assessee u/s 145. AO estimated the net profit of the assessee @ 3% of the gross turnover of the assesse. On appeal, CIT(A) confirmed the addition. The Tribunal noted that the AO had not given any reasons for rejection of books of account. It directed the AO to consider the past history and recompute the addition after applying the net profit @ 1.75%.
DELIP KUMAR JAIN vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0124 (Indore Trib) - ITA Nos. 529 & 530/Ind/2015 dated June 8, 2018

2532. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had considered the Short Term Capital Gain on sale of shares and Long Term Capital Gain on sale of unlisted shares in company earned by the assesse to be 'business income'. It was submitted by assessee that the shares were shown as investments in the Balance sheet (not as stock in trade) and that in earlier years also the profit on sale of investment had been taxed as Capital Gains only and the same had been accepted by the department. The Tribunal held that the income was to be assessed under head 'capital gains' only since the assessee had given detailed explanation both on facts and on law and also on consistent treatment by department in earlier years. Further, it held that the eBoard Circular [F.No. 225/12/2016/ITA.II,] dt. 02-05-2016 had settled the issue that the income arising from transfer of unlisted shares should be considered under head 'capital gains' only and even for Short Term Capital Gain on sale of listed shares, the parameters did indicate that assessee was only investing and not trading.
G2 CORPORATE SERVICES LLP vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0130 HydTrib - ITA No. 832/Hyd/16, 833/Hyd/16 dated Jun 8, 2018

2533. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO by rejecting assessee's books of account and estimating profits @8% of the total turnover. It was noted that the books of accounts were duly audited and supported with the documentary evidence and the AO had not pointed out any defect in the books of accounts maintained by the assessee except routine/minor observations. It was thus held that the books of accounts could not be rejected u/s 145(3) and there was no reason to estimate the profit after rejecting the books of account. The Tribunal further held that even if it was assumed that the books of accounts were correctly rejected u/s 145(3) then also the profit could not be estimated @ 8 % of the gross receipts in the given facts & circumstances since the AO had not brought on record any comparable cases to the business of the assesse wherein the profit @ 8% of the gross receipts had been declared.
INCOME TAX OFFICER vs. VIRGIN LOGISTICS - (2018) 53 CCH 0199 (RajkotTrib) - ITA No. 384/Rjt/2015dated Jun 20, 2018

2534. The Court dismissed assessee's appeal field against the Tribunal's order upholding the additions made by the AO based on the balance sheet submitted by the assessee to bank for availing credit facilities which was also supported by a certificate issued by the Chartered Accountants in Form 3CB under rule 6G(1)(b) of the Income-tax Rules, 1962, rejecting the assessee claim for determining his income based on a balance sheet prepared subsequently by another firm of chartered accountants. It held that the balance sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, cannot be tailor-made to suit a particular purpose or window dressed to make it attractive for bankers to rely thereupon and all gloss and sheen removed thereafter when it was time to pay tax. It thus held that it was open to the AO and income tax authorities to pin assessee down on basis of the assessee's representation contained in earlier balance sheet to avail bank loan and make additions.
Binod Kumar Agarwala v CIT - [2018] 94 taxmann.com 422 (Calcutta) - ITAT NO. 22 OF 2015, GA NO. 436 OF 2015dated June21, 2018

2535. The Tribunal accepted assessee's contention that since the notice u/s 153C and 143(2) as well as assessment order passed pursuant to such notices were in the name of the non-existing entity (being the amalgamating company) and the amalgamation was approved by the High Court long before the issue of the said notices, the said assessment order was not valid. It relied on the decision in the case of CIT v. Intel Technology India (P.) Ltd. [2016] 380 ITR 272 (Kar) wherein it was held that framing an assessment against a non-existing entity is not a procedural irregularity, but a jurisdictional defect which goes to the root of the matter, invalidating the assessment proceedings initiated against a non-existing company even after amalgamation with the successor company.
BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERSdated April10, 2018

2536. The Apex Court stayed the High Court's order confirming initiation of special audit u/s 142(2A) where the order for special audit was claimed by the Revenue to have been passed on 30.03.2013 (though the same was served on the assessee on 03.04.2013), noting that the assessee's contention that the date in the receipt register vide which proposal for special audit was forwarded to DCST was afterward tempered with a change to 30.03.2013 from 31.03.2013.
Nokia India (P.) Ltd. v ACIT - [2018] 93 taxmann.com 450 (SC) - SPECIAL CIVIL APPEAL (C) (NOS). 8384 OF 2018 dated April9, 2018

2537. The Tribunal accepted the assessee's contention that for making assessment u/s 143(3), issuance of notice u/s 143(2) within statutory time limit was mandatory requirement and could not be considered as a procedural irregularity or a curable defect, relying on the decision in the case of ACIT v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)]. However, it remitted the matter to the CIT(A) to verify whether the notice u/s 143(2) was issued to the assessee within the time prescribed as per the Act **(**since there was no reference of any date in the assessment order**)**so as to ascertain on which date such notices were issued and served on the assessee.
HATCH ASSOCIATES INDIA PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0277 DelTrib - ITA No. 4862/M/2011 & 6832/Del/2011dated April2, 2018

2538. The assessee, by way of writ petition challenged the assessment order u/s 143(3) and consequential notices of demand on the ground that there was non-compliance of Principles of Natural Justice by not giving an opportunity to the assessee to cross-examine the witness. The Court held that the DCIT was at liberty to re-frame assessment, after complying with principles of natural justice, by supplying copy of statements of witnesses as well as investigation report, to assessees and providing opportunity of cross-examination to the assessee before completing the fresh assessment.
Vishal Agarwal v DCIT (2018) 101 CCH 0212 Kar - WP No. 3801/2018 c/w W.P.Nos.5073/2018HC dated 24-04-18

2539. The assessee company received certain amount on allotment of shares of Face Value of Rs.100 each at a premium of Rs.291 per share.AO opined that the Fair Market value of the said share could only be Rs.100 and thus the share premium received by assessee was liable to be assessed as 'Income from Other Sources' u/s 56(2)(viib) (provides that where a company receives consideration for issue of shares exceeding the face value of such shares, that exceeded value is liable to be assessed as income from other sources). The assessee filed a writ petition against the AO's order making the above addition, on the ground that since the assessee's case was picked-up for scrutiny for verification of the limited issue, i.e. "Whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax", the AO had exceeded his jurisdiction while making the impugned addition. The Court, however, held that the later part of the abovementioned issue (whether the share application money had been correctly offered for tax) was an issue to be examined with reference to section 56(2)(viib) and if it was found that the share premium had not been correctly offered for tax as provided therein, the assessee had to be assessed in accordance with the said provision. Further, it held that the assessment by the AO could not be regarded without jurisdiction in the matter of passing the impugned order merely for the reason that the said funds were assessed as provided for under the said section (i.e. on merits). Thus, the Court dismissed the assessee's petition.

Sunrise Academy of Medical Specialities (India) P Ltd v ITO [2018] 94 taxmann.com 181 (Kerala) – W.P (C)NO. 3485 OF 2018 dated 22.05.2018

2540. The assessee, through its AR, attended before the AO in the course of assessment proceedings but did not mention the fact of its merger with another company. As the assessment was completed in the name of a non-est entity, the assessee claimed that the same was null and void. The CIT(A) held that the assessee could not now claim that notice was invalid as it was issued in the name of a non-est entity as it was covered by the provisions of section 292BB. On appeal, the Tribunal relied on the ruling of the Co-ordinate Bench in M/s Images Credit and Portfolio [P] Ltd (ITA Nos. 5301 to 5306, 5418/DEL/2013) and held that assessment framed in the name of a non-existing entity was null and void.
Rudraksha Agencies Company Ltd. vs. DCIT – (2018) 53 CCH 0085 (Delhi ITAT) – ITA No. 670/DEL/2018 dated May 2, 2018

2541. In the case of the assessees who were liquor contractors, the AO rejected the books of accounts as sales were unsupported by day-to-day sales and shop-wise stock registers. On the basis of information collected from the excise department, the AO estimated the sales turnover as against the sales declared by the assessee and added the differential amount as suppressed sales. The Tribunal upheld the order of the CIT(A) and relying on the ruling of the jurisdictional High Court in Balchand Ajit Kumar (263 ITR 610) & Manmohan Sadani (304 ITR 52) held that if the books of account are rejected, entire sales cannot be charged to tax as income, but only the reasonable profit margin on such sales is taxable as income.
SHIVHARE ASSOCIATES & ORS. vs. JCIT – [2018] 53 CCH 0047 (Agra ITAT) – ITA NO. 47/AGR/2015, 48/AGR/2015, 71/AGR/2015, 72/AGR/2015 dated May 16, 2018

2542. The AO rejected the books of accounts having observed that the form of reporting of the advertisement payments in the profit and loss account was not proper and hence, made disallowance of such payments. The Tribunal observed that while doing so, the AO neither pointed out any specific defect in maintenance of books of accounts by the assessee nor identified the accounting standards to be followed by the assessee. Having observed that the assessee followed the same method of accounting in the earlier years, the Tribunal set aside the order of the AO and directed the AO to accept the books of accounts of the assessee.
Google India Private Limited & Ors. vs. JDIT (IT). – [2018] 53 CCH 0027 (Bangalore ITAT) – IT(TP)A No.374/Bang/2013, 881/Bang/2016, IT(IT)A No.2845/Bang/2017, 949/Bang/2017, 950/Bang/2017, 68/Bang/2015, 387/Bang/2017, 559/Bang/2016, 69/Bang/2014, 1295/Bang/2014, 466/Bang/2013, 191/Bang/2014, 205/Bang/2015, 1299/Bang/2015, 1190/Bang/2014 dated May 11, 2018

2543. The Tribunal held that the assessment order passed by the AO in the name of an amalgamating company which was non-existent was invalid.
Genpact Infrastructure (Bhopal) (P.) Ltd. v. DCIT – [2018] 93 taxmann.com 334 (Delhi – Trib.) – IT Appeal No. 199 (DELHI) 2015 dated April 27, 2018

2544. Where the orders under Section 144 were passed by the AO within the specified time (30.12.2016) but was dispatched after the expiry of such time (07.01.2017), the assessee contended that such orders of assessment passed by the AO were barred by limitation. Relying on the ruling of Kolkata High Court in Binani Industries ltd. (59 taxmann.com 389), the CIT(A) upheld the orders in absence of any material to show that the AO re-visited such orders after the expiry of the time limit. The Tribunal held that to become a valid order of assessment, its communication must commence within period of limitation as prescribed by law though communication might end after prescribed period of limitation. Accordingly, the Tribunal set aside the assessment orders as they were time barred as the orders were dispatched after the expiry of the time limit prescribed under the Act.
Nidan Infront of DIG Officer vs. ACIT – [2018] 53 CCH 0046 (Cuttack ITAT) – ITA Nos. 32 to 37/CTK/2018 S.P.Nos.14 to 20/CTK/2018 dated May 16, 2018

2545. As the assessee, being a company had not filed its return of income voluntarily before due date under Section 139 of the Act, the AO issued notice under Section 142(1) of the Act. However, since assessee did not attend proceedings or filed an application for adjournment, penalty proceedings were issued under Section 271F of the Act. AO made addition under Section 69C in respect of certain expenditure as no documentary evidences were produced by assessee in support of any of its expenses, payments/ cash received. CIT(A) upheld the order of the AO. On appeal before the Tribunal, the assessee challenged validity of assessment order passed in absence of notice under Section 143(2) of the Act. Tribunal held that the assessee cannot take pretext of 143(2) notice being not issued by AO since notice issued by the AO [though not mentioned to be issued u/s 143(2)] had all the ingredient of notice u/s 143(2) and made it amply clear that assessment proceedings was initiated in case of assessee for relevant assessment year. Thus, Assessee's appeal was dismissed.
U-LIKE PROMOTERS (P) LTD. & ANR. vs. DCIT & ANR. (DELHI TRIBUNAL) (ITA No. 327/Del/2012, 590/Del/2012) dated May 21, 2018 (53 CCH 0061)

2546. Where the Assessee filed return of income in response to notice under Section 142(1) of the Act, the assessment was completed without service of notice under Section 143(2) after filing of return of income or during the course of entire assessment proceeding. CIT(A) upheld the order of the AO. Tribunal relied on the ruling of the *Gwalior Tribunal in the case of Umesh Agarwal Vs ACIT 1, Gwalior (ITA No. 261-266/IT/09-10/Gwl vide order dated 10.05.2011)* wherein assessment order passed under Section 153A by the AO was cancelled in absence of any notice being issued/served under Section 143(2) as the same was held as a non-curable defect. Thus, the Tribunal remitted the matter to the CIT(A), to decide the case afresh in accordance with law after affording due and adequate opportunity of hearing to the Assessee.
POONAM SHIVHARAE vs. ACIT (AGRA TRIBUNAL) (ITA No. 146/Agra/2016) dated May 1, 2018 (53 CCH 0078)

2547. The AO made an addition under Section 69 of the Act in respect of allegedly unrecorded amount deposited in bank account in relation to sale of immovable property.After considering the submissions of assessee and the findings of AO, the CIT(A) dismissed the Assessee's appeal. Before the Tribunal, the Assessee reiterated that profits from sale of immoveable property were offered to tax and the said fact was submitted before the AO and the CIT(A). Thus, the Tribunal remitted the matter back to the file of the CIT(A) and held that if the assessee filed written submissions mentioning that he had offered profit for taxation, then the matter needed verification at end of the CIT(A).
NAVITA SABLOK & ANR. vs. ITO & ANR. (RANCHI TRIBUNAL) (ITA No. 166 & 167/Ran/2016) dated May 30, 2018 (53 CCH 0172)

2548. Assessment in case of the assessee was made u/s 143(3) by AO against which the assessee filed an appeal before the CIT (A) along with a stay application which was granted to the assessee on the condition that the assessee would pay 10 percent of the demand. The assessee challenged the said condition in the stay order and filed a writ petition before the High Court contending that the return filed by the assessee had been taken for scrutiny maliciously with a view to fasten liability on the assessee for having filed a complaint against an officer of the department. The Court dismissing the petition of the assessee held that several case files were selected for scrutiny with the aid of computers and moreover, in terms of the order, the assessee was asked to pay a meagre portion of the demand which was justified.
St. Joseph's Granites v. ACIT – [2018] 92 taxmann.com 372 (Kerala) – W.P. (C) No. 9173 of 2018 dated April 4, 2018

2549. The return filed by the assessee was wrongly declared by the Department as invalid u/s 139(9) on the ground that the aggregate of the shares filed by the assessee exceeded 100%. The department further advised the assessee to file a fresh return and an application u/s 119(2)(b) to the Pr. Commissioner to condone delay in filing the return. However, the application was rejected by the Pr. Commissioner without providing an opportunity for hearing. The Court was of the view that it was obligatory on part of the Department to scrutinize whether the return filed was within time and in the instant case the Court directed the ITO to scrutinize the return even though the time had lapsed and also pass an order for refund if the assessee was entitled to it.

Shubharam Complex v. ITO – [2018] 93 taxmann.com 290 (Karnataka) – Writ Petition No. 27383 of 2016 dated April 10, 2018

Reassessment

2550. The Court held that where reassessment proceedings were pending against assessee and audit report submitted by assessee was also on record, impugned notice issued by revenue under section 142(2A)directing assessee to get its accounts audited again, deserved to be set aside.
Multi Commodity Exchange of India Ltd. v. Dy. CIT, Mum - [2018] 100 taxmann.com 180 (Bom)- WP. Nos. 143, 149 & 161 of 2018 – dated October 1, 2018

2551. The Court held that where Assessing Officer did not adjudicate objection raised by assessee as to assumption of jurisdiction under section 148 on ground that it was not feasible to pass speaking order on objections and passed impugned order of assessment, assessment order and consequent actions would be illegal. Consequently, the proceedings in question were remitted to the department for fresh hearing and decision/adjudication according to law.
Raninder Singh v. CIT, Patiala [2019] 101 taxmann.com 210 (Punjab & Haryana)- CWP Nos. 5872, 5873 of 2018 (O&M)-dated November 29, 2018

2552. The Court held that where Tribunal without adjudicating the ground challenging the initiation of reassement proceedings and, without considering material placed on record by assessee, upheld additions under section 68 made to income of assessee in respect of bogus creditors and further such additions resulted in huge gross profit ratio which could not arise in type of business of assessee, impugned additions were unjustified and matter was to be reconsidered afresh by Tribunal.
Smt. Madhu Solanki v. ITO, Ward-1(3), Bangalore- [2018] 100 taxmann.com 266 (Karnataka)-ITA No. 283 of 2010 dated November 13, 2018

2553. The Court held that where notice seeking to reopen assessment was issued in name of deceased assessee, since she could not have participated in reassessment proceedings, provisions of section 292BB were not applicable to assessee's case and as a consequence, impugned reassessment proceedings deserved to be quashed.
Rajender Kumar Sehgal v. ITO Ward 56(1), New Delhi-[2019] 101 taxmann.com 233 (Delhi)W.P. No.
11255/2017 CM NO. 46017/2017 dated November 19, 2018

2554. Where High Court set aside reassessment proceedings on ground that said proceedings were based onmere audit objection that there was undervaluation of closing stock. The Apex court dismissed the SLP filed against said order.
Pr.CIT V. S. Chand & Co. Ltd. - [2018] 100 taxmann.com 353 (SC)- SLP (CIVIL) Diary No. 38560 of 2018 dated November 16, 2018

2555. The Court held that where Assessing Officer taking a view that certain interest income accrued to assessee escaped assessment, initiated reassessment proceedings after expiry of four years from end of relevant years, in view of fact that there was no failure on assessee's part to disclose all material factsnecessary for assessment, impugned reassessment proceedings were to be quashed.
Pr. CIT-2 v. State Bank of Saurashtra - [2018] 100 taxmann.com 437 (Bombay)- ITA No. 532 of 2016-
dated November 24, 2018

2556. The Court held that where assessee challenged validity of reassessment proceedings on ground thatAssessing Officer had supplied two sets of reason, in view of fact that gist of reasons recorded in bothsets of communications sent to assessee were same, assessee's objection was to be rejected and validity of reassessment proceedings deserved to be upheld.
Himmatbhai M. Viradiya v. ITO 25(2)(4) - [2019] 101 taxmann.com 172 (Bombay)- WP. No. 3444 of
2018 dated December 13, 2018

2557. The Court held that where, there was no failure on part of assessee to disclose truly and fully all material facts necessary for assessment AO could not initiate reassessment proceedings after expiry of four (4) years from end of the relevant assessment year merely on basis of change of opinion that unutilised CENVAT credit was to be included in valuation of closing stock.
Adani Enterprise Ltd. v. Asst. CIT- [2019] 101 taxmann.com 91 (Gujarat)- R/Special Civil App. No.
14446 of 2018 dated October 16, 2018

2558. The Court held that amendment to section 149 by Finance Act, 2012, which extended limitation for reopening assessment to sixteen years, could not be resorted for reopening proceedings concluded before amendment became effective.
Brahm Datt v. Asst. CIT- [2018] 100 taxmann.com 324 (Delhi)- W.P. (C) No. 1109 of 2016 dated December 6, 2018

2559. The Apex court dismissed SLP against High Court ruling that where Assessing Officer issued notice under
section 148 to assessee on ground that it had received certain accommodation entries from a boguscompany, in view of fact that by time of issuance of notice, assessee had already merged with another company and thereby lost its legal existence, notice issued in name of assessee became invalid and,therefore, impugned reassessment proceedings deserved to be quashed.
Asst. CIT (Central) Circular 1(2) v. Dharmnath Shares & Services (P.) Ltd.- [2018] 100 taxmann.com 416(SC)- SLP (Civil) Diary No. 41239 of 2018-dated December 10, 2018

2560. The Court held that where reassessment proceedings were initiated against assessee on ground thatassessee had advanced several crores of rupees to a party but source of such amount was not explained, since assessee had not filed balance sheet or statement of affairs related to such advance, impugned reassessment proceedings were justified.
Smt. A. Sridevi v. ITO, Non-Corporate Ward 16(1)- [2018] 100 taxmann.com 434 (Madras)- WA No. 2563 of 2018 CMP. Nos. 20763 & 20766 of 2018- dated December 3, 2018

2561. The Court held that where Assessing Officer reopened assessment of assessee on basis of information received in form of observation of Tribunal in case of assessee's son that certain investments made in mutual funds jointly by assessee and her son should be taxed in hands of assessee as she was first holder, further, assessee failed to explain source of such investments while filling her return undersection 139(1), impugned reopening of assessment was justified.
Smt. S. Rajalakshmi v. ITO 12(3)(3), Mah. - [2018] 100 taxmann.com 68 (Bombay)- ITA (IT) No. 2517 of 2018 dated October 25, 2018

2562. The Apex court dismissed the SLP against High Court ruling that where assessee challenged validity of reassessment proceeding on ground that service of notice by Inspector at factory premises on security guard was not proper service under provisions of section 282(2), since in response to notice issued undersection 148, one director of assessee-company had appeared before Assessing Officer, it could beconcluded that provisions of section 292B would apply to assessee's case and, thus,assessmentproceedings could not be regarded as invalid for want of proper service of notice.
Sudev Industries Ltd. v. CIT- [2018] 99 taxmann.com 109 (SC)- SLP Appeal (C) (No(s). 26677 OF 2018- dated October 22, 2018

2563. Where AO initiated reassessment proceedings after expiry of four years from end of relevant assessment year on ground that assessee had accepted loan, deposits etc. of Rs. 20,000 or more in cash in violation of provisions of section 269SS. The Court held that since there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment, impugned reassessment proceedings deserved to be set aside.
CIT, Kolkata-II v. Sahara India Mutual Benefit Co. Ltd. [2019] 101 taxmann.com 356 (Calcutta), IT Appeal Nos. 454 & 510 of 2008 dated December 21, 2018.

2564. Where original assessee died and thereafter Assessing Officer issued notice under section 148 in his name to reopen assessment and petitioner being heir and legal representative of deceased raised an objection that assessee had already expired and, therefore, notice in his name was not valid, the Court held that merely because petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not be construed that petitioner had participated in proceedings and, therefore, provisions of section 292B would not be attracted and thus notice under section 148 was to be treated as invalid and the proceedings pursuant there to were quashed.
Chandreshbhai jayantibhai Patel v. ITO- [2019] 101 taxmann.com 362 (Gujarat)-R/Special Civil Application No. 15172 of 2018 dated December 10, 2018

2565. The Court held that where information was received from investigation wing about certain companies that they were involved in giving accommodation entries of various natures to several beneficiaries and assessee was one of them, information supplied by investigation wing to Assessing Officer, thus, formed a prima facie basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment. Thus, assessee's writ petition was dismissed.
Avirat Star Homes Venture (P.) Ltd. v. ITO - [2019] 102 taxmann.com 60 (Bombay) Writ Petition No. 3340 of 2018 dated December 13, 2018

2566. Assessee HUF had filed its return of income. Same was accepted and processed under section 143(1) - Later on, a reassessment notice was issued against assessee on ground that assessee had received gift of certain cash amount from one, KAB of Hong Kong and said donor was not related to assessee and genuineness of gift was to be proved. Tribunal noted that assessee had filed copy of passport, balance sheet and bank account of donor, which was also perused during assessment proceedings. The Court held that, since reasons as recorded in support of impugned notice to doubt genuineness of gift was not based on any material so as to form belief that assessee's income had escaped assessment on account of gift not being genuine and it was only a suspicion subject to enquiry, impugned reopening notice issued by Assessing Officer was unjustified.
Pr. CIT-32 v. Rajesh D. Nandu (HUF) - [2019] 101 taxmann.com 401 (Bombay)-IT Appeal No. 829 of 2016-dated December 18, 2018

2567. The Court held that in absence of any failure on assessee's part to disclose fully and truly all material facts necessary for assessment, reassessment proceedings could not be initiated after expiry of four years from end of relevant year, merely on basis of change of opinion of AO that due to disproportionate bifurcation of expenditure between eligible and non-eligible units, higher amount of exemption was claimed under section 10B in respect of profits earned by eligible industrial undertaking.
E-Infochips Ltd. v. Asstt. CIT [2018] 99 taxmann.com 84(Guj.)- R/Special Civil Application No. 13566 of 2018 dated October 15, 2018

2568. The Court held that in order to determine admissibility of assessee's claim under section 10B, date of commencement of manufacture or production could be ascertained from relevant documents such as certificate of registration by competent authority and mere wrong mentioning of said date in Form No.56G filed in support of claim of deduction, could not be a ground to reopen assessment.
MBI Kits International v. ITO [2018] 98 taxmann.com 473 (Mad.) W.P. No. 7416 of 2017 WMP No. 8070 of 2017-dated October 4, 2018

2569. The assessee filed its return of income after claiming deduction under section 10B. During scrutiny assessment, Assessing Officer had raised several queries asking the assessee about its claim of deduction under section 10B. The assessee replied to such queries in detail, upon which the Assessing Officer passed an assessment order under section 143(3) allowing said claim of deduction. After four years, the Assessing Officer issued reassessment notice against the assessee on two grounds; firstly, no deduction under section 10B could be allowed to the assessee as it had not filed its return on or before due date specified under section 139; secondly, there was no proof on record that there was ratification from Board of Approval for EOU scheme that the assessee was hundred per cent EOU.
The Court Held that since the Assessing Officer, in original assessment had thoroughly scrutinized claim of deduction under section 10B and allowed same, he could not reopen assessment to examine another facet of said claim.

Case Review: SLP dismissed in Dy. CIT v. Qx. KPo Services (P.) Ltd. [2018] 99 taxmann.com 301/259 Taxmann 317(SC)- LP (Civil) Diary No(s). 36238 of 2018 dated November 2, 2018

2570. The Court held that reopening of assessment on basis of information on record with revenue that assessee-company had received share capital which according to CBI were revenue receipts camouflaged as capital receipts was justified.
South Asia FM Ltd. v. Asstt. CIT [2018] 98 taxmann.com 200/259 Taxmann 266(Mad.)-W.P. Nos. 10257, 44312 & 44313 of 2016-W.M.P. Nos. 9080, 38178 & 38179 of 2016 dated October 10, 2018

2571. The Court held that completed assessment could be reopened within period of six years where there were some information with department that share premium invested by foreign company was income of assessee-company which had not been disclosed
Sun Direct TV(P.) Ltd. v Asst. CIT [2018] 98 taxmann.com 201/259 Taxman 228(Mad.) W.P. No. 44311 of 2016-W.M.P. No. 38177 of 2016 dated October 10, 2018

2572. The Court upheld that where assessee did not mention advance given to a person for purchase of a property in return of income, reassessment notice was valid.
Sridevi v ITO [2018] 99 taxmann.com 340 (Mad.) W.P. No. 20625 of 2016 & WMP No.17707 of 2016 dated October 4, 2018

2573. The Assessee was engaged in manufacture of cotton piece goods, denim, yarn, caustic soda, salt pulp nd paper, etc. The assessee filed its return claiming deduction under section 80-IC in relation to its paperand pulp unit on basis of audit report in Form 10CCA. During scrutiny proceedings under section 143(3), he Assessing Officer raised specific queries with regard to above claim which was duly responded to by the assessee. The Assessing Officer, thus, allowed a part of deduction claimed. Subsequently, the Assessing Officer initiated reassessment proceedings taking a view that the assessee had made excessive claim of deduction under section 80-IC. The Tribunal finding that the Assessing Officer had made detailed enquiries while allowing the assessee's claim in scrutiny assessment, set aside reassessment proceedings initiated on basis of change of opinion. The Court held that on facts, there was no infirmity in impugned order of the Tribunal.
SLP dismissed in Principal CIT v. Century Textiles & Industries Ltd. [2018] 99 taxmann.com 206/259 Taxman 360 (SC).com 206/259 Taxman 360 (SC). SLP (Civil) Diary No.(s) 34277 of 2018javascript:void(0); ***dated October 5, 2018***

2574. The Court held that where no return was filed in compliance of notice issued under section 148, issuing of notice under section 143(2) was not required for making assessment.
Principal CIT v. Broadway Shoe Co. [2018] 99 taxmann.com 83/259 Taxmann 223 (J & K)- IT Appeal No. 10 of 2017 dated October 11, 2018.

2575. In course of appellate proceedings, the Tribunal noticed that order passed consequent to reassessment, had not confirmed addition attributable to reasonable belief of the Assessing Officer while issuing reopening notice and that reassessment order had made an addition on an issue which was not a subject matter of reasons recorded for reassessment. The Tribunal, thus, set aside reassessment order. The Court held that no question of law arose out of impugned order.
SLP dismissed in Pr. CIT v. Lark Chemicals (P.) Ltd. [2018] 99 taxmann.com 312/259 Taxman 365 (SC)- SLP (Civil) Diary No. 34183 of 2018 dated October 5, 2018

2576. The Court held that non-quoting of reasons by Assessing Officer in section 148 notice will not vitiate entire proceedings.
Dayanidhi Maran v. Asstt CIT [2018] 98 taxmann.com 202 (Mad.)- W.P. Nos. 3405 & 43944of 2016-W.M.P. Nos. 2780 & 37778 of 2016-dated October 10, 2018

2577. The Court held that reasons to be recorded by Assessing Officer for taking decision to reopen escaped assessment does not mean that such reasons are to be communicated along with notice itself; very notice will not provide a cause of action for assessee to file writ
petitions.

South Asia FM Ltd v. Asstt CIT [2018]98 taxmann.com 200/259 Taxman 266 (Mad.) W.P. Nos. 3405 & 43944 of 2016 W.M.P. Nos. 2780 & 37778 of 2016 dated October 10,2018

2578. Department received information (charge sheet filed by CBI on direction of Supreme Court) that the assessee through his brother had received certain sum in garb of share premium. It issued notice under section 148 to the assessee. Since notice was not accompanying reasons were communicated to the assessee. However, the assessee filed writ challenging said initiation of reassessment. The Court held that in view of fact that there were some materials on record and information with Department, reopening of assessment of the assessee was in accordance with las and, as such the assessee was bound to respond to the Assessing Officer for purpose of arriving at a conclusion and for taking a decision and in event of passing an order of assessment or reassessment, he could prefer an appeal contemplated under provisions of Act. Since based on preliminary information's gathered by the Assessing Officer, section 148 notice was issued to the assessee, it would not provide a cause of action for filing of present writ petition and writ petition was premature.
Dayanidhi Maran v. Asstt. CIT [2018]98 taxmann.com 202 (Mad.)- W.P. Nos. 3405 & 43944 of 2016 W.M.P. Nos. 2780 & 37778 of 2016 dated October 10, 2018

2579. Assessee filed return of income which was assessed u/s 143(3) at an enhanced loss as compared to returned loss. Subsequently, reassessment proceedings were initiated u/s 147 on ground that as per Form 3CD report, assessee had prior period income. AO held that as assessee was following mercantile system of accounting, said prior period income should be added back to assessee's income.Reassessment was completed after making addition of prior period income. CIT(A) dismissed assessee's legal ground challenging validity of reassessment proceedings but deleted addition made by AO. The Tribunal held that, in reply to a query raised by AO, assessee submitted that prior period expenses were not claimed by assessee in its return of income and as profit / loss for year was considered only before claim of previous year expenses, no disallowance was needed in assessment proceedings. Prior period adjustment was also disclosed by way of a Note to audited balance sheet of company. Sales Tax Deferment was disclosed in computation of income of assessee which was filed along with return of income. It was very much evident that all such information was before AO during original assessment proceedings. Therefore, there was no fresh tangible material which had come in possession of AO with regard to prior period income so as to warrant initiation of reassessment proceedings. Said reassessment was based on a mere change of opinion by AO which, under law, he was not entitled to do. Revenue's appeal was dismissed.
Dy. CIT vs. Jai Parabolic Springs Ltd.- (2018) 53 CCH 0576 DelTrib-ITA No. 4717/Del/2014 & C.O. No. 189/Del/2017 (in ITA No. 4717/Del/2014)-Dated Jul 4, 2018

2580. An information was received by AO which revealed that assessee had deposited cash in his bank account. AO held that for AY 2011-12, assessee failed to file return of income hence, said amount had escaped assessment which was chargeable to tax under provisions of Act. AO recorded reasons to believe and issued SCN u/s 148 but no compliance was there. AO provided number of opportunities through issue of notice u/s 142(1) but there was no compliance. Final notice issued u/s 142(1) was received back with comments 'refused'. AO treated it to be deemed service and completed assessment after making addition on account of unexplained cash deposit in bank account. CIT(A) noted that assessee failed to file return of income and no valid source of income was shown to explain source of cash deposit. Said reopening of assessment was valid. Held, AO recorded that assessee made cash deposit in his bank account and based on that AO recorded reasons for reopening of assessment. In reasons, AO recorded about information available with him of cash deposit. There was a contradiction in statement recorded in assessment order as well as in reasons. AO without verifying information had recorded reasons for reopening of assessment. Thus, AO has not applied his independent mind to information received in this regard. Deposit in bank account per se could not be income of assessee. It was mere suspicion of AO based on an incorrect fact that income chargeable to tax had escaped assessment. AO had wrongly assumed jurisdiction u/s 147 for reopening of assessment. Assessee's appeal was allowed.
Inder Jeet Vs. Income Tax Officer-(2018) 54 CCH 0390 DelTrib-ITA.No.2740/Del/2018, ITA.No.1384 & 2647/Del./2018-Dated Dec 3, 2018

2581. The Tribunal held that Pr CIT granted approval for reassessment proceeding by merely writing 'Yes'.CIT(A) upheld AO's order. Held, ss 147 and 148 were charter to Revenue to reopen completed assessments. Section 151 provides safeguard that sword of s 147 may not be used unless competent statutory officer was satisfied that AO has good and adequate reasons to invoke reopening provisions. As per mandate of s 151(2), Competent Authority has to examine reasons, material or grounds on which reopening was sought to be based and to judge as to whether they were sufficient and adequate to formation of necessary belief of escapement of income from taxation on part of AO—It was if and only if Competent Authority, after applying his mind, was of opinion that AO's belief was well reasoned and bona fide, that he would accord his sanction thereon. In case of assessee, approval was clearly granted without application of mind, and therefore, it was not at all legally tenable approval. Assessee's appeal allowed.
Anita Yadav vs. ITO-(2018) 53 CCH 0286 AgraTrib-ITA No. 422/Agra/2017-dated Jul 4, 2018

2582. AO issued notice u/s 148 to assessee for reassessment holding that AO had reason to believe that income of assessee had escaped assessment. CIT(A) satisfied that it was fit case for issuance of notice u/s. 148 and granted approval in this regard by merely writing 'Yes'. Assessee took plea that approval was no approval in eye of law having been granted without application of mind and reassessment proceeding initiated required to be quashed. The Tribunal held that, Sections 147 and 148 were charter to Revenue to reopen completed assessments. Section 151 provided safe-guard that sword of section 147 might not be used unless competent statutory officer was satisfied that AO had good and adequate reasons to invoke reopening provisions. As per mandate of section 151 (2), Competent Authority had to examine reasons, material or grounds on which reopening was sought to be based. It was only if Competent Authority, after applying his mind, was of opinion that AO's belief was well reasoned and bonafide, then he would accord his sanction thereon. Order of Lower Authority set aside and Assessee's appeal was allowed.
Avnindra Mishra Vs. Income Tax Officer-(2018) 53 CCH 0292 AgraTrib-ITA No. 441/Agra/2017-Jul 5, 2018

2583. Assessee's income was assessed u/s 143(1). On ground that income chargeable to tax had escaped assessment proceeds on information received from Deputy Director of Investigation AO was to verify the transactions of assessee u/s 148 and accordingly passed notice. The Court held that, reasons for action of AO did not indicate any application of mind and/or further processing of the information to come to reasonable belief that income chargeable to tax had escaped assessment. In fact, it proceeded on the basis that transactions were suspicious. Reasons also did not specify, prima-facie, the quantum of tax which had escaped assessment but merely states that it would at least be Rs.1,00,000. Prima-facie, reasons recorded did not indicate reasonable belief of the AO himself to issue the impugned notice. Impugned notice was held to be without jurisdiction.
Dulraj U. Jain Vs. Asst. CIT & Ors. - (2018) 102 CCH 0198 MumHC-Writ Petition No. 1641 of 2018-dated Jul 6, 2018

2584. PCIT took up assessee's case for revision u/s 263 and observed that assessment was completed u/s 143(3) but return was filed subsequent to date of issue of letter and notice u/s 148. PCIT observed that though assessee had taxable income, it did not file returns of income. Returns were filed only after enquiries which were conducted by Department. AO completed assessment without initiating penalty proceedings. Since there was no voluntary return of income and return was filed in response to notice u/s 148, thus AO ought to have initiated penalty proceedings u/s 271(1)(c). PCIT held that order passed by AO u/s 143(3) was erroneous and prejudicial to interest of Revenue. Assessee submitted that penalty proceedings were not part of assessment proceedings, therefore, giving directions to initiate penalty proceedings u/s 271(1)(c) in revision was beyond scope of proceedings u/s 263. The Tribunal held that, assessee was in habit of not filing return of income and non-payment of taxes due to government. Since assessee had not filed return of income though it had taxable income, AO ought to have initiated penalty proceedings for concealment of income. Since AO did not initiate penalty proceedings, PCIT took up assessee's case for revision u/s 263 and held that non-initiation of penalty proceedings, which ought to have been initiated during assessment proceedings as erroneous and prejudicial to interest of Revenue. Non initiation of penalty proceedings during assessment proceedings

u/s 143(3), where AO ought to have initiated, was erroneous and prejudicial to interest of Revenue. Assessee's appeal was dismissed.
Omcon Reign Forest Projects vs. Pr. CIT-(2018) 54 CCH 0349 VishakapatnamTrib-ITA Nos. 80-82/Viz/2018-dated Dec 12, 2018

2585. Assessee filed return of income, AO noted that assessee had constructed a building. Assessee declared an investment made in year under consideration. On reference, Valuation Officer estimated cost of construction which showeddifference between value as per valuation officer report and value as declared by assessee. AO recorded reasons for initiating proceedings u/s 147. Assessee submitted that return originally filed might be treated as return filed in response to notice u/s 148. AO held that said difference in cost as reported by Valuation Officer and assessee was treated as unexplained investment u/s 69 and made addition in re-assessment order. CIT(A) granted partial relief to assessee. The Tribunal held that, reopening of assessment is bad in law. AO merely based on report of Valuation Officer recorded reasons for reopening of assessment. Valuation Report was based on mere estimate and as such same per se was not sufficient information for purpose of reopening of assessment u/s 147. Reopening of assessment in this regard was quashed.
Dr. Mamta Dinesh vs. Dy, CIT-(2018) 54 CCH 0331 DelTrib-ITA No. 1709/Del./2018-Dec 10, 2018

2586. Assessee filed return of income declaring a loss. Assessee's case was selected for scrutiny. During assessment proceeding, AO noted that assessee had incurred repair and maintenance expenses and same was claimed while filing return of income. AO completed assessment after making an addition on account of various expenses. Notice u/s 148 was issued after recording reasons to believe which were provided to assessee and an opportunity of being heard was given. Notice u/s 143(2) was issued. AR attended proceedings and furnished written submission. Thereafter, re-assessment proceeding was completed after making on account of BOT repair and maintenance expenses. No relief was granted by CIT(A). The Tribunal held that, total repair and maintenance expenses were mostly paid to labourers who does not have Bank accounts. AO did not have any fresh and new material showing that income of assessee had escaped which was chargeable to tax and therefore re-opening was unjustified. Matters on which case was reopened was already assessed and all materials were available on record. Section 147 permitted to initiate reassessment proceedings only when AO had a reason to believe that income had escaped assessment. In present case, there was no reason to believe that had escaped assessment and matters which was stated in reasons was already explained at duing initial assessment u/s 143(3).AO had wrongly reopened case u/s 147/148. AO proceeded solely on based on return of income, enclosures and information submitted by assessee during initial assessment and all material and information were available with AO at time of initial assessment u/s 143(3). AO had no fresh material to form his opinion regarding escapement of assessment and he had also not found any tangible material to record reasons for reopening of assessment of assessee. Mere change of opinion was not permissible under law. Assessee's appeal was allowed.
Vishesh Infrastructure P. Ltd. Vs. Asst. CIT-(2018) 54 CCH 0303 DelTrib-ITA No.4464/Del/2018-December 4, 2018

2587. Search and seizure operation u/s 132 were conducted on assessee wherein, his statement was recorded by stating that though he did not maintain any foreign bank account in his individual capacity, he, however did settle an offshore Trust when he was 'non-resident'. Assessee also submitted that he contributed an amount while settling of Trust, when he was a non-resident, out of his income earned from sources outside India. Assessee contended that despite such explanation, Revenue issued reopening notice u/s 148 to reopen AY 1998-99 on suspecting that assessee's income had escaped assessment. Assessee submitted that reopening of concluded assessment for AY 1998-99 was barred by limitation prescribed u/s 149. As per amended provisions to s. 149 w.e.f. 01.06.2001 time for limitation was reduced to six years. The Court held that, law of limitation was intended to give certainty and finality to legal proceedings and therefore, proceedings, which had attained finality under existing law due to bar of limitation, could not be held to be open for revival unless amended provision had clearly given retrospective operation so as to allow upsetting of proceedings, which were already completed and attained finality. Reassessment for 1998-99 could not be reopened beyond 31.03.2005 in terms of provisions of s. 149 as applicable at relevant time. Assessee's return for AY 1998-99 became barred by limitation on 31.03.2005. AO conceded in order rejecting assessee's objection that "It

was also found that assessee was a non-resident as contended by him, in AY 1998-99". There could be no question about applicability of existing provision of s. 149 (b), which stated that normal time limit for reopening assessment was 4 years, "but not more than 6 years, had elapsed from end of relevant AY unless income chargeable to tax which had escaped assessment amount to or was likely to amount to Rs.1 lakh or more for that year". Interpretation proposed by Revenue had potential of arming its authorities to re-open settled matters, in respect of issues where citizen could genuinely be sanguine and had no obligation of kind which Revenue sought to impose by present amendment. Absent a clear indication, every statute was presumed to be prospective. Revenue had sought to contend that amendment (to s. 149) was merely procedural and no one had a vested right to procedure; and procedural amendments could be given effect any time, even in ongoing proceedings. Assessee's Writ petition was allowed.

Brahm Datt Vs. Asst. CIT-(2018) 103 CCH 0154 DelHC-W.P.(C) 1109/2016-Dated Dec 6, 2018

2588. The Tribunal held that reassessment order passed by the AO without issuing notice u/s.143(2) was bad in law

Maestrro Mutistate vs ITO 2018] 54 CCH 0436 (Del- Trib.)- ITA No.3871-72/Del/2018 dated 28.12.2018

2589. Assessee's case was opened for assessment after issuance of notice u/s 148 after 4 years from end of AY for alleged escapement of income being deposits in bank and assessment framed thereafter. AO did not make any addition for said deposits or part thereof but made addition for other income i.e., unaccounted investment. The Tribunal held that as AO failed to assess income for which reasons were recorded in notice issued u/s 148, and therefore it was not open to him to make addition for unaccounted investment. Thus, AO was directed to delete alleged addition.

LATE SHRI DINESH KUMAR GOYAL LH LAXMI KANTA GOYAL AND ORS. vs. ITO (2018) 54 CCH 0403 IndoreTrib- ITA No 544 & 545/Ind/2017, ITA No 546 to 548/Ind/2017 dated 21.12.2018

2590. AO noted that in AY 1997-98, certain cash credits representing deposit and share capital were found as unexplained thus, assessment for year 1992-93 was reopened.Notice u/s 148 was issued by holding that deposits collected during AY 1992-93 were also unexplained.Assessee failed to discharge its obligations u/s 68 r/w s. 269SS.Since expenditure in respect of said deposit was not allowed, assessee's income had escaped assessment.CIT(A) granted relief to assessee.ITAT held that there was no failure on part of assessee to disclose fully and truly all material facts during original assessment. It held, if renovation work was done in present AY, it could not be presumed that same work would be done in previous year.When Department presumed 10% of gross receipt would constitute profit for a particular AY, it did not follow that same formula had to be applied to earlier AY and assessment reopened u/s 147/148.That would amount to "presumption and guess work and no valid material to reopen case".Application of mind of ITO should be that of a prudent and reasonable man.Some material might subsequently be discovered along with other discovery which income-tax authority would use to form an opinion that assessee was guilty of concealment of income.Case of Department could not be whimsical.Department could not presume something to have happened 5 years ago just because in AY 1997-98, assessee failed to explain its source of fund u/s 68 and cash fund u/s 269SS.It did not meant that it indulged in similar activity in PY 1992-93.Revenue's appeal was dismissed

CIT vs. SAHARA INDIA MUTUAL BENEFIT CO. LTD. (2018) 103 CCH 0220 Kol HC- ITA 454 of 2008 With ITA 510 of 2008 dated 21.12.2018

2591. The Tribunal held that communication of reasons for reopening assessment u/s.148 is not a mere formality or arrangement or understanding between the AR and the AO, but it is a legal requirement. The reasons recorded must be communicated to the assessee and then only the assessee would come to know the reasons recorded and furnish objections if any for reopening of the assessment. As the reason were not communicated to the assessee, the asseseement was rendered invalid.

Alapati Kasi Subrayan vs. ITO (2018) 54 CCH 0426 Vishakapatnam Trib- ITA 113-116/Viz/2018 dated 21.12.2018

2592. Assessee filed return of income which was processed by AO.Thereafter, DIT(Inv.) conducted an enquiry wherein, it was found that huge accommodation entry racket was operated by various groups of operators.Investigation Wing compiled with a report & data of beneficiaries of such entries which revealed that assessee had ploughed back unaccounted money in its business through channel of accommodation entry.Assessee failed to disclose fully and truly all material facts necessary for its assessment, and also tax was paid on such amount.Subsequently, AO issued notice u/s 148 by recording his reasons to believe that assessee's income for AY 2004-05 had escaped assessment.During assessment proceedings, assessee filed confirmation of parties, copies of their accounts.Assessee was asked to produce four parties, namely, M/s. P, M/s. A, M/s. K & M/s. P.K. for his examination for verifying genuineness of transactions against which assessee appeared before AO.However, none were produced for his examination.Assessee also failed to explain as to why a sum received by assessee from those four parties should not be treated as assessee's income.Hence, assessee miserably failed to adduce evidence regarding genuineness of transactions and credit worthiness of concerned parties concerned.AO completed assessment after making addition u/s 68.CIT(A) confirmed action of AO. The Tribunal held that form for recording reasons for initiating proceedings u/s 148 revealed that AO failed to verify assessee's assessment records as it was not traceable.Thus, before coming to conclusion based on report of Investigation Wing, it could not be said that he had applied his mind independently.When it was clearly mentioned in form that assessment records were not traceable, then, how Addl. CIT was satisfied on reasons recorded by AO that it was a fit case for issue of notice u/s 148.AO reopened assessment merely on basis of report of Investigation Wing without independent application of his mind as he was not aware as to whether assessment proposed to be made for first time since records were not traceable and since Addl. CIT in a mechanical manner had given approval, therefore, assumption of jurisdiction u/s 147/148 was not as per law.Impugned reassessment proceedings initiated by AO merely on basis of report of Investigation Wing and due to non-application of mind and thus not sustainable.

TOPCHEM (INDIA) PVT. LTD. vs. ITO (2018) 54 CCH 0395 DelTribITA No.2364/Del/2013dated 19.12.2018

2593. The Tribunal held that even though notice u/s 148 was issued but **since** notice u/s 143(2) was not issued hence, reassessment order passed u/s 147 r/w s. 143(3) was invalid bad in law and void ab initio and thus liable to be quashed.

Asst. CITvs. SUKHAMANI COTTON INDUSTRIES AND ANR. (2018) 54 CCH 0490 IndoreTribITA No. 222/Ind/2017, 223/Ind/2017 (CO No. 16/Ind/2018, 04/Ind/2018)dated 21.12.2018

2594. The Tribunal held that reopening of the assessment was bad in law and quashed the same. It held that the AO merely on the basis of the report of Valuation Officer recorded reasons for reopening of the assessment. The Valuation Report was based on mere estimate and as such the same per se is not sufficient information for the purpose of reopening of the assessment u/s 147.

DR. MAMTA DINESH vs. Dy.CIT (2018) 54 CCH 0331 DelTrib ITA No. 1709/Del./2018 dated 10.12.2018

2595. The Tribunal held that if order has been passed in the name of non-existent company i.e the amalgamating company, same has to be quashed and provisions of section 292B will not come to resuce of Department.

DCIT vs NDC Telecommunications India Pvt Ltd- (2018) 54 CCH 0089 DelTrib- ITA No 3011/Del/2015 dated 16.10.2018

2596. Congress Party had given loan to AJL to write off its debts and restart newspaper National Herald. The said loan was assigned to a non-profit company YI (incorporated and registered u/s 12AA), which subsequently in turn issued shares to assessee at a price less than FMV which was not disclosed in the return of income. The assessment was completed u/s 143(3). Subsequently, the AO issued notice u/s 148 to reopen the assessment which was challenged by way of a writ petition. The Court noted that in their returns, assessee did not disclose event of share acquisition. The assessee submitted that as per second proviso to section 56(2)(vii)(c)(ii), there was no obligation to disclose shares received from non-profit company YI. However, Revenue placed reliance on memorandum of YI which stated that in event of cessation of membership or death of a member/shareholder, shares of outgoing member would be sold at FMV and reference to monetary nature of transaction i.e. FMV, meant that promoters and shareholders of company YI visualized that shares of YI (a not-for-profit company) could increase depending on its activities and income derived by it. The Court, thus concluded that assessee's argument about non-disclosure of their interest upon acquiring shares (on account of their non-taxability at that stage) was unpersuasive and held that since assessee had failed to disclose primary fact of taxing event i.e. allotment of shares in their returns, initiation of reassessment proceedings u/s 147 was justified.

Sonia Gandhi vs ACIT- (2018) 97 taxmann.com 150 (Delhi)- WP No 8293 of 2018 dated 10.09.2018

2597. Pursuant to survey action u/s 133A, the AO had initiated re-assessment proceedings u/s 147 and thereafter the assessee had asked the AO to provide reasons recorded for reopening, which were however not furnished by the AO and assessment was completed which was upheld by the CIT(A). The Tribunal relied in case of Home Finders Housing Ltd (93 taxmann.com 371) wherein it was held that if order was passed without following the prescribed procedure, the entire proceedings would not be vitiated. In the present case even when the reasons recorded were not furnished, the assessee had participated and cooperated with the AO in completion of assessment proceedings. Thus, the Tribunal remitted the matter back to the file of AO with the direction to provide reasons recorded and follow other required procedures correctly in accordance with law and pass order had to be passed accordingly.

Regional Oilseeds Growers Co-op Societies Union Ltd vs JCIT- (2018) 53 CCH 0538 BangTrib- ITA No 1352 to 1355/Bang/2016 dated 05.09.2018

2598. During the year the assessee had sold some immovable property after paying stamp duty and as per information received from CIB to AO, there were difference in amount of valuations and thus to assess capital gain arising on sale of immovable property as per provisions of Section 50C, proceeding u/s. 147 were initiated by AO. In response to notice u/s.148, neither any compliance was made, nor return was filed by assessee and since assessment was going to be time barred, AO passed the ex-parte assessment order u/s. 144/147 and the same was upheld by CIT(A). The assessee's case was that no notice u/s.148 was received thus reassessment proceeding initiated u/s.148 could not be considered as valid. The Tribunal noted that, the A.O. passed the ex-parte re-assessment order under section 144/147 on 30.03.2015 and the assessee had filed an appeal before CIT(A)on 29.04.2015 i.e., within 30 days, thus there was no question that notice under section 148 was not served upon assessee at same address where the order was also received. Further, the assessee did not challenge the ex-parte re-assessment issue before Ld. CIT(A) nor did it challenge the findings of the A.O. that assessee did not cooperate in re-assessment proceedings.

The Tribunal further noted that the AO was having credible information that assessee sold property for Rs.10 lakhs and for stamp duty purpose it was valued at Rs.12,18,000, thus the Tribunal concluded that there were sufficient tangible material available with AO to initiate re-assessment proceedings against assessee and reopening of assessment was justified.

Sabbal Ahmad vs ITO- (2018) 53 CCH 0517 Del Trib- ITA No 594/Del/2018 dated 04.09.2018

2599. In case of an assessee a Regional Rural Co-operative Bank the AO issued notice u/s 148 for reopening of assessment for already completed assessment year 2008-09 with regard to disallowance u/s 36(1)(viia) and the same was upheld by CIT(A). The Tribunal observed that notice u/s 148 was issued on 24.3.2015 and this date fell after completion of four years from the relevant A.Y. Further, for the relevant AY the assessee duly filed return of income and assessment was completed u/s 143(3) and submitted all material facts necessary for assessment. The Tribunal held that the first proviso to section 147 was squarely applicable on given facts for relevant A.Y. and thus as reopening was beyond four years from end of relevant assessment year the same was held to be invalid and accordingly, reassessment proceedings u/s 147 were quashed.
Jhabua Dhar KshetriyaGramin Bank vs DCIT- (2018) 53 CCH 0520 Indore Trib- ITA No 106 to 114/2017 dated 05.09.2018

2600. Search operation u/s 132 were carried out at business premises of one of the Directors of assessee-company and a pen-drive was found from his possession. There were debits of certain amount in respect of expenses made on various heads which were apparently not entered in books and were not declared in return of income. Thus, the AO held that amount of undisclosed expenditure made by assessee was covered within provisions of section 69C and further the AO held that on basis of pen-drive found from possession of director he had reasons to believe that unexplained expenditure had escaped assessment and thus initiated reassessment proceeding against assessee, which was further upheld by the CIT(A). The Tribunal observed that the director from whose possession pen-derive was found did not make any allegation against assessee-company and further, in reasons for reopening of assessment, name of director was not mentioned and it did not refer to any material to connect assessee-company with escapement of income or incurring any unaccounted expenses. Further, the AO did not verify details contained in pen-drive and initiated re-assessment on the pretext of unaccounted expenditure u/s. 69C, but, later on, AO did not make any addition u/s.69C. Thus, the Tribunal held that the AO failed to establish that assessee-company had incurred expenses in question and the entries in pen-drive were connected with assessee company had also not been established. Thus, the Tribunal concluded that there was absence of link between tangible material and formation of belief and the belief of AO was based on mere imagination, speculation and suspicion, therefore, it was not a fit case for initiation of reassessment proceedings u/s. 147/148.
RL Travels Pvt Ltd vs DCIT- (2018) 54 CCH 0018 Del Trib- ITA No 893/Del/2015 dated 18.09.2018

2601. The Tribunal held that even though the case was reopened u/s 148 and reason for reopening were supplied, the AO was expected to serve the notice u/s 143(2) within a period of six months, if the notice u/s 143(2) was not issued within prescribed time, then there will be presumption that the AO accepted the return filed by the assessee. As the said notice was not issued within 6 months, the Tribunal held that it was unable to uphold the orders of the lower authorities.
T.S.R Khannaiyann vs ACIT- (2018) 54 CCH 0159 Chen Trib- ITA No 256,257,812/Chny/2018 dated 12.09.2018

2602. The AO had issued notice under section 147 to reopen assessment on ground that assessee had deposited certain cash post-demonetization, while its return of income for relevant assessment year did not justify such cash deposit and, thus, the AO had reason to believe that income to that extent had escaped assessment. The Court observed that in pre-notice queries, the AO had asked assessee to explain source of aforesaid cash deposit and the assessee had disclosed such source being her own bank accounts and their withdrawals matching quite closely to deposits. Thus, the Court held that the AO having no reason to discard such disclosure by the assessee was not justified in issuing notice of reassessment.
Swati Malove Divetia vs ITO- (2018) 98 taxmann.com 447(Guj)- Spcial Civil Applicatio No 7628 of 2018 dated 10.09.2018

2603. The Court held that where pursuant to issuance of re-assessment notice, assessee itself had accepted that original return filed by it was incorrect for reason that assessee had failed to disclose income

earned by way of royalty and fee for technical service and, accordingly, declared additional income, reassessment u/s 147 was justified. It also noted the fact that Tax at Source had been deducted on royalty and fee for technical services would not matter, as the returns filed were wrong and required a correction and modification and deduction of tax at source and failure to disclose taxable income were different and distinct aspects, thus reassessment was justified.
Samsung Electronics Co Ltd vs DCIT (Intl Tax)- 98 taxmann.com 306 (Del)- ITA No 969 of 2018 dated 04.09.2018

2604. During the year assessee filed its return disclosing taxable income under section 115JB and the AO completed assessment under section 143(3) making certain addition to taxable income. However, subsequently, the AO initiated reassessment proceedings taking a view that computation of book profit in assessment order was incorrect, resulting in escapement of income from assessment. The assessee preferred a writ and the High Court opined that, since there was no new material on record to suggest that assessee was guilty of suppression of relevant facts at time of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified.
Binani Industries Ltd vs DCIT- (2018) 98 taxmann.com 472 (Calcutta)- WP No 232 of 2011 dated 27.09.2018

2605. The Court held that where in reassessment, gains on sale of agricultural land was taxed as business income and in revision application, there was no dealing with issue of validity of relevant reassessment notice, validity of reassessment could not be challenged in writ petition. The Court remitted back the matter to the Pr. CIT to reconsider the entire matter afresh.
Pallavarajha vs PCIT- (2018) 98 taxmann.com 450 (Mad)- WP No 2292 & 2293 of 2018.

2606. The AO in the present case issued notice u/s 147 on the ground that assessee had sold a land during the year and capital gains on such transaction had escaped assessment. The assessee challenged the notice on filing writ petition and contended that she had never sold land and sale deed was fraudulently executed. The Court held that it could not consider the validity of the the said sale transaction and the assessee must submit to jurisdictional AO who alone could ask relevant questions in this respect and take a final decision while framing reassessment, thus dismissed assessee's petition.
Abha Vinaykumar Jain vs ITO- (2018) 99 taxmann.com 6 (Guj HC)- Spcl Civil Application No 14841 of 2018 dated 25.09.2018

2607. After completion of assessment, the AO received a letter from the AO of one PGIIPL stating that PGIIPL had given advances to assessee-firm in which two of its shareholders had substantial interest The AO on the basis of said letter, reopened assessment to consider applicability of section 2(22)(e) The assessee challenged the reopening contending that it was a case of change of opinion as said advances had been discolsed in financial statements. The Court held that when there was no information before the AO regarding shareholding pattern of PGIIPL or its accumulated profits, it could not be said that assessee had disclosed all necessary materials for assessment in this regard and ruled that reopening of assessment was not a case of change of opinion.
Aswani Enterprises vs ACIT- (2018) 100 taxmann.com 178 (Mad HC)- Tax Case Appeal No 1111 & 1112 of 2008 dated 25.09.2018

2608. The Tribunal held that if reassessment proceedings do not culminate in making addition on ground mentioned for reopening in reassessment notice and addition is made on other grounds, found during course of reassessment proceedings, then entire addition made by AO is liable to be quashed being invalid.
Simplex Solutions Pvt Ltd vs ITO- (2018) 54 CCH 0015 Bang Trib- ITA No 1339/Bang/2018 dated 14.09.2018

2609. The AO initiated reopening of assessment in case of assessee which was later set aside by the CIT(A). The Tribunal held that, CIT(A) while dismissing appeal of Revenue had categorically noted that assessee during the assessment proceedings had specifically denied having provided any

accommodation entries to any company and name of assessee or companies who had invested / purchased shares of these companies had never cropped up during assessment proceedings. The CIT(A) had further given categorical findings that six companies from whom assessee had received share application money were still active companies duly registered under Indian Companies Act and were even filing income tax returns and such companies were having huge paid up share capital and reserves. Further, the Tribunal observed that, there was no material available with AO to held that transactions entered by these companies with assessee were bogus and AO despite having made enquiries failed to bring on record any specific material to show that these companies were paper companies. Further, the Tribunal also observed that there was no specific material or oral statements pointing out that any money had been paid by assessee to investor against cheques received. Thus, the Tribunal concluded that the CIT(A) gave factual finding that there was no material available before AO to held that transactions entered into by assessee company were bogus or that same *were accommodation entries and thus reassessment proceedings were not justified.*

ACIT vs Krishna Jewellers & investment- (2018) 54 CCH 0087 Chd Trib- ITA No 697/Chd/2016 dated 07.09.2018

2610. In case of the assessee, assessment u/s 143(3) was completed by AO and subsequently, re-opening notice was issued u/s 148. In reassessment order, difference between interest accrued as per balance sheet and interest as per P&L account was added to assessee's income and reassessment was completed after considering revenue audit objection. The CIT(A) granted relief to assessee. The Tribunal observed that the CIT(A) had quashed reassessment proceedings but Department had not challenged such annulment and it had only challenged deletion of addition on merits. Thus, the Tribunal held that, in absence of a ground challenging quashing of reassessment proceedings by CIT(A), there was no reason found to interfere and the department had no case in this regard

DCIT vs Sahara India Life Insurances Co Ltd – (2018) 54 CCH 0139 Del Trib- ITA No-3509,6243,6244,1347,6245,6246/Del/2013 dated 31.10.2018

2611. The Court held that if reassessment proceedings were held to be invalid by the Tribunal or a Court of Law, in that situation, it cannot be held that the original assessment stood obliterated. In other words, if the initiation of reassessment proceedings was held to be invalid, the assessee would revert back to the situation where he originally stood, i.e. the original assessment order would revive. Thus, the doctrine of merger would have no application in the case where subsequent order u/s 147 was held to be unsustainable in law. The said doctrine would apply only in a situation where the subsequent reassessment order had been held to be valid in law. Thus, concluded that whatever income was assessed u/s 143(3) would stand and would not get merged in the reassessment order passed u/s 147 if the latter reassessment order was annulled because of some reason.

Patiala Improvement Trust vs ACIT- (2018) 103 CCH 0142 PH HC- ITA No 301/2015 dated 22.10.2018

2612. Search was conducted at some Marvel Group wherein, documents pertaining to assessee were found and thus the AO reopened assessee's case by issuing notice u/s 148 and completed assessment which was further upheld by the CIT(A).The Tribunal relied on the co-ordinate bench in case of V.L. Khandge and held that where the provisions of section 153C of the Act are attracted as per the given set of facts and documents impounded during the course of search, then the proceedings have to be initiated under section 153C of the Act as per prescribed procedure and no proceedings could be initiated under section 147 / 148 of the Act.

Vikram Munishwarlal Bajaj vs ITO- (2018) 54 CCH 0133 Pune Trib- ITA No 2552/Pun/2017 dated 29.10.2018

2613. Assessee's case was not selected for scrutiny, thereafter, AO received an information through ITD, wherein it was intimated that assessee sold some scrip named T which was ascertained as a penny scrip and assessee had claimed exemption u/s 10(38), thus the AO issued reopening notice u/s 148.

The Court held that since there was no scrutiny assessment, AO had no occasion to form any opinion on any issue arising out of return filed by assessee and thus concept of change of opinion would therefore have no application. Further, the Court observed that AO had material on record which would suggest that assessee had sold number of shares of a company which was found to be indulging in

providing bogus claim of long term and short-term capital gain and the company was found to be a shell company. Thus, the Court held that when the AO had material available with him which he had perused, considered, applied his mind and recorded finding of belief that income chargeable to tax had escaped assessment, re-opening could not and should not be declared as invalid.
Purviben Panchhigar vs ACIT- (2018) 103 CCH 0145 Guj HC- Special Civil Application No 16725 of 2018 dated 29.10.2018

2614. The assessee-company was engaged in business of real-estate development and construction activities. The AO sought to reopen the assessment as it observed that company made payment of certain amount which ought to had been disallowed u/s 40A(2)(b), thus issued notice u/s 148 and the same was upheld by the CIT(A).The Tribunal observed that the question arose in this case was whether the assessee had made payment or not. It observed that in the current AY it had only repaid the sale consideration earlier received from the director, for sale of plot and that consideration was offered for taxation. This year, it cancelled the sale of earlier year, and repaid sale consideration. Further, the Tribunal noted that there was no payment which was covered u/s 40A(2)(b) for harbouring belief that income had escaped assessment. Further, it noted that in audited accounts as submitted by assessee, detail mentioned for this issue was, "cancellation of booking of land purchase and further assessee had given details showing that there was no loss to company. Thus, the Tribunal held that on perusal of record it would indicate that there was much less fresh information which could authorize the AO to form an opinion or record reasons showing escapement of income, thus no information was available with AO to harbor a belief that income had escaped assessment on this issue. Accordingly the Tribunal held that reassessment was bad in law.
Ganesh Housing Corp Ltd vs DCIT- (2018) 54 CCH 0108 Ahd Trib- ITA No 3034/Ahd/2015 dated 23.10.2018

2615. The AO sought to reopen assessee's case u/s 147, (after 4 years from the end of the relevant AY) after receiving information from DIT regarding assessee being one of the beneficiaries to a person providing accommodation entries. During assessment proceeding, AO noted that assessee had received a sum from five parties as share capital and various opportunities were given to assessee and notices u/s 131 were also issued to produce directors, however due to non-compliance of notices, AO made an addition and completed assessment and the same was upheld by the CIT(A). The Tribunal observed that t*he A.O. in the recorded reasons to believe relied mainly upon a letter/report received from the Investigation Wing, however, the report did not form part of the reasons and neither was it annexed to the reasons. Thus, the Tribunal held that if the Revenue had any basis to show that the primary facts were incorrect, the same ought to have been set out in the reasons to believe. Thus, it concluded that the assessee could not be said to have failed to disclose fully and truly all the material facts. This being a jurisdictional issue, the assumption of jurisdiction under section 147 and 148 was erroneous and thus assessee's appeal was allowed.*
Peethamabra Buildcon vs ITO- (2018) 54 CCH 0223 Del Trib- ITA No 637/Del/2018 dated 23.10.2018

2616. The Court held that reassessment proceedings initiated on basis of notice served under section 148 on accountant of company were vitiated, as accountant was not Principal Officerof Company, nor was there any material to show that he had been authorised by company toaccept any notice.
SLP dismissed in CIT v. Kanpur Plastipack Ltd. [2018] 95 taxmann.com 140/256 Taxman 394(SC)- Special Leave Petition (CIVIL) Diary No. 19775 of 2018 dated July 3, 2018

2617. The assessee filed appeal before the Commissioner (Appeals) challenging initiation of reassessment proceedings on ground that notice issued by the Assessing Officer was without approval of competent authority. The Commissioner (Appeals) rejected the assesse's plea taking a view that the assessee had not filed any evidence in said regard. The Tribunal held that once a challenge is posed that necessary approval in terms of statutory mandate is not on record, adjudicating authority is required to look into record and pass an order after following due procedure prescribed by law. In view of aforesaid legal position, impugned order was to be set aside and issue was to be remanded back to file of the Commissioner (Appeals) for disposal afresh.
Smt. Jasleen Kaur v. ITO [2018] 99 taxmann.com 336 (Chd. – Trib.) -ITA Nos. 362 & 363 (CHD.) of 2018 dated September 4, 2018

2618. The Tribunal held that even if assessment was reopened in consequence of or to give effect to any finding or direction of Appellate Authority, requirement of sanction u/s 151 is mandatory for issuing notice u/s 148 and *accordingly*, it quashed the entire reassessment proceedings initiated after expiry of period of 4 years from end of assessment year, without obtaining sanction u/s 151. It held that the requirement of sanction u/s 151 was mandatory and in the nature of check and balance and it was a measure against the misuse of power by the assessing authority for assessment or reassessment on basis the reasons not being found satisfactory by the authorities provided u/s 151.

Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018

2619. The Court set aside the reassessment notice issued u/s 148 by the AO on the reason to believe that assessee's *claim* of deduction u/s 54B with respect to sale of agriculatural land was not sustainable. It noted that the AO in the original assessment proceedings had called for and examined various details with respect to sale and purchase of properties as well as working of capital gains and accordingly, held that the AO had formed an opinion during the original assessment and reopening would result in change of opinion. Further, it held that there was nothing mentioned in the reasons to reopen that assessee had failed to disclose truly and materially all facts necessary for assessment which is an essential pre-condition in cases where re-opening is beyond a period of 4 years, like the present case.

Devendrasinh Chhatrasinh Vaghela vs JCIT [2018] 97 taxmann.com 173 (Gujarat)- R/SPECIAL CIVIL APPLICATION NO. 3506 OF 2018 dated August 20 2018

2620. The Apex Court dismissed Revenue's SLP against HC ruling that tax evasion petitions received by *investigation* wing of income-tax department for previous years could not have formed basis for reopening of assessment for relevant year as AO had not referred to orders passed therein at time of recording reasons for reopening assessment for current year.

ITO vs Sky View Consultants (P) Ltd.[2018] 96 taxmann.com 424 (SC)- SLP (CIVIL) DIARY Nos.27416 of 2018 dated August 17 2018

2621. The Court held that when department had correct address of assessee furnished in return of income, sending notice u/s.148 notice at incorrect address available with bank and then drawing presumption of service of notice *on* ground that notice was not received back unserved, could not be sustained. Accordingly, the Court allowed assessee's appeal and set aside the order of Tribunal directing the CIT(A) to adjudicate the case on merits

Suresh Kumar Sheetlani vs ITO [2018] 96 taxmann.com 401 (SC)- IT Appeal No.413 of 2011 dated August 14 2018

2622. The Tribunal quashed reassessment proceedings initiated by the AO u/s 147 r.w.s. 148 beyond a period of four years as the assessee had truly and fully disclosed the material facts while filing return of income as well during assessment proceedings. The AO had reopened the assessment on ground that interest received on fixed deposit was to be taxed under income from other sources (and not as business income) and, thus, the income chargeable to tax had escaped assessment as assessee had received undue benefit by claiming set off of business losses against such interest income. The Tribunal had also noted that the AO while framing original assessment u/s 143(3), after careful consideration of material on record, had come to the conclusion that income from interest on fixed deposits was to be assessed to tax as business income and not income from other sources

Ambuja Cement India Pvt Ltd. Vs Asst.CIT [2018] 53 CCH 474 (Kar) ITA No.2600/Mum/2014 DATED AUGUST 27, 2018

2623. The Tribunal dismissed assessee's appeal and upheld the validity of reassessment order u/s 147, rejecting the assessee's contention that (i) reasons recorded were not stated in the notice issued u/s 148 for initiating reassessment and (ii) its objections were not disposed by a separate speaking order. It held that the statute did *not* require that the notice u/s 148 should disclose the reasons for re-opening of the assessment and only recording of reasons was a condition precedent to re-opening. Further, the Tribunal held that the AO was only required to dispose of the objections of the assessee to the notice issued u/s. 148 by a speaking order and there was no requirement of a separate order, as in the instant case the AO had disposed of the objections in the assessment order itself which was tantamount to considering all the objections raised by the assessee.

Dr. RP Patel Vs Asst.CIT [2018] 53 CCH 0460(Cochin Trib) ITA No.586 to 588/Coch/2017 DATED AUGUST 17, 2018

2624. The Court allowed assessee's writ petition quashing the reassessment notice issued u/s 148 and subsequent orders noting that reasons were not recorded before the issue of impugned notice on 28.05.2007. It was noted that there was an inescapable inference from records made available that reasons to believe had not been recorded prior to issue of notice u/s 148, but were recorded later. Thus, the Court opined that reassessment was not sustainable where the "reasons to believe" had not been recorded prior to the issue of notice u/s 148, given that it was a mandatory requirement.

PRABHAT AGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX [2018] 102 CCH 0191(Del HC) W.P.(C) 8907/2008 DATED AUGUST 16,2018

2625. The AO reopened *assessment* in the assessee's case beyond 6 years on the basis of CIT(A)'s order in case of another assessee wherein the CIT(A) had excluded certain amount from the income of that another assessee and directed that the said amount be taxed in the hands of the present assessee. The assessee filed writ petition before the Court praying to quash the reassessment notice issued u/s 148 as well as assessment order passed u/s 147. The Court quashed CIT(A)'s aforesaid directions which recorded adverse findings noting that in case of Rural Electrification Corporation Limited vs CIT [2013] 355 ITR 345 (Del HC) it was held that before a notice u/s 148 can be issued beyond the six year period prescribed u/s 149, the ingredients of (erstwhile) Explanation 3 to Section 153 [now Explanation 2(b)] had to be satisfied which unequivocally postulate that any adverse order has to be proceeded by adequate opportunity of hearing to the concerned party (the present assessee). In the instant case, the procedure of issuing notice and granting opportunity to the party (asesssee) likely to be affected adversely was given a go-by by the CIT(A) while giving the aforesaid directions. However, it further held that if the CIT(A) wanted to proceed against the assessee, he should do so provided he shall issue appropriate notice in that regard. Accordingly, the Court allowed the assessee's writ petition to the above extent.

RAMESH CHANDRA & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. [2018] 102 CCH 0204(Del HC) W.P.(C) 5684 & 5717/2017 DATED AUGUST 14,2018

2626. The Court quashed the reassessment notice issued u/s 148 on ground that the AO's conclusion to form reasonable belief, i.e. share capital and share premium money received by the assessee was actually its own unaccounted money, was based on surmises and conjectures. It was noted that the AO had received information of share investment in assessee by Garg Logistics Pvt Ltd. which was made by the name of different companies but subsequently the said investment was owned up by Garg Logistics Pvt Ltd. under the Income declaration scheme. Inspite of this, the AO shifted the burden on assessee-company to establish that the declaration made by Garg Logistics Pvt Ltd. was correct and to prove in negative that money was not the assessee's unaccounted income.

M.R. SHAH LOGISTRICS PRIVATE LIMITED vs. DEPTUY COMMISSIONER OF INCOME TAX [2018] 102 CCH 0344 (Guj HC) R/SPECIAL CIVIL APPLICATION NO. 21028 of 2017 DATED AUGUST 14,2018

2627. The Tribunal allowed assessee's appeal to set aside the reassessment order and held that merely because addition has been made in hands of co-owner, no presumption could be drawn that income has escaped *assessment* in the hands of assessee, without there being independent 'reasons to believe', based upon cogent materials. The AO had reopened the assessment on the reason that in case of co-owner, his claim that the gains arising on sale of agricultural land was not being exigible to tax u/s 2(14)(iii)(b) (as it was excluded from the definition of capital asset) was rejected by the AO on the ground that the land was located in an industrial hub and not used for purpose of agriculture. Accordingly, in that case, the AO had brought to tax the capital gains arising thereon and the same was upheld by the CIT(A) also.

POONAM BHALLA vs. ASSISTANT COMMISSIONER OF INCOME TAX [2018] 53 CCH 0436(Del Trib) ITA No. 1125/Del/2015 DATED AUGUST 09, 2018

2628. The Court dismissed assessee's writ petition filed against the reassessment notice issued u/s 148 and order passed by the AO rejecting assessee's objection to the reassessment proceedings, accepting Revenue's contention that the assesee had the liberty to avail statutory (alternate) remedy available under the Act. The AO had initiated reassessment proceedings u/s 147 r.w.s. 148 on ground that the assessee was not eligilble for weighted deduction u/s 35(2AB) with respect to entire R&D expenses incurred which was partly allowed during the original assessment. The Court held that in absence of any concluded facts being available *before* it, it would not be proper to interfere with the impugned notice and order.

Alkem Laboratories Ltd. vs Pr.CIT [2018] 103 CCH 0057 (Pat HC) - Civil Writ Jurisdiction Case No. 10859 of 2018 dated August 02 2018

2629. The Tribunal quashed the reassessment notice issued u/s 148, reassessment proceedings and consequent orders, holding that the AO had initiated reassessment proceedings on the basis of borrowed satisfaction without any application of mind (since the AO's conclusion was based on reproduction of conclusion drawn in *investigation* report and the same could not be held as valid reason to believe after application of mind) and that he did not examine or investigate the information received to establish any nexus with the information. It was noted that the AO had initiated reassessment proceedings on basis of information received from investigation wing that assessee had taken bogus entires and further during post survey proceedings, the assessee had not submitted satisfactory explanation to prove identity, genuineness and creditworthiness of share capital / premium introducers.

PIONEER TOWN PLANNERS PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX [2018] 103 CCH 0057 (Pat HC) - Civil Writ Jurisdiction Case No. 10859 of 2018 dated August 02 2018

2630. The Apex Court dismissed Revenue's SLP against HC ruling that where Income-tax officer had not been authorized to *exercise* his power under section 131(1A), reports submitted by him could not have formed valid basis for re-opening assessment

ITO vs Sky View Consultants (P) Ltd. [2018] 96 taxmann.com 424 (SC)- SLP (CIVIL) DIARY Nos.27416 of 2018 dated August 17 2018

2631. Where the AO had reopened the assessment u/s 147 r.w. 148, after completion of original assessment, to tax the amount received / recovered by the assesseee as advance from its JV partner on account of its semi finished software product, the Court dismissed Revenue's appeal against the Tribunal's order

holding that the reassessment proceedings were based on mere change of opinion. It noted that the said amount recovered was disclosed in the income-tax return and thus it could not be said that income chargeable to tax which had escaped assessment came to the notice only subsequently.
Pr.CIT v Santech Solutions (P.) Ltd. [2018] 97 taxmann.com 179 (Madras) - T.C. (A) NO. 435 OF 2018 dated July 17, 2018

2632. Where the AO had raised specific question with respect to allowability on loss on sale of stores during original assessment and the assessee had explained same, the Tribunal held that it could be assumed that the AO had indeed formed an opinion about deductibility of loss on sale of stores and, therefore, in absence of any new material, reopening of assessment on said issue was clearly on account of change of opinion and thu bad in law.
Atul Ltd. v DCIT [2018] 95 taxmann.com 161 (Ahmedabad - Trib.) – ITA No. 1766 (AHD.) OF 2014 dated July 11, 2018

2633. The assessee, engaged in insurance business, was allowed deduction with respect to re-insurance premium paid to non-resident re-insurance company during the original assessment completed u/s 143(3). Reassessment notice u/s 148 was issued on ground that the said payment was made contrary to the provisions of Insurance Act and moreover, without deducting TDS. The assessee contended that the reopening of assessment was only due to change of opinion since the details of re-insurance premium were available before the AO at the time of original assessment and thus the AO could not reopen the assessment. The Tribunal accepted the assessee's aforesaid contention, noting that the assessment was reopened based on the material already available while processing the assessment u/s 143(3) and no new material was found. Therefore, it held the reopening was not justified and accordingly set aside the reassessment order passed.
Cholamandalam MS General Insurance Co. Ltd. v. DCIT - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

2634. The Court allowed the assessee's writ petition against the reassessment notice for AY 2010-11 which was issued on the basis of information received from Investigation Wing for AY 2007-08 stating that the assessee had claimed unduly high contract charges for AY 2007-08 and these amount allegedly were distribution of illegal gratifications by the assessee. The AO claimed that the assessee's modus operandi for AY 2010-11 was same as AY 2007-08. The Court noted that (i) assessments for AY 2007-08 and AY 2008-09 were also revisited earlier u/s 263 (revision) / u/s 147 r.w.s. 148 on the same issue, but the issue was decided in favour of the assessee (ii) for AY 2009-10 also, the Court had quashed the reassessment proceedings noting that there was no new tangible material (iii) for the relevant year under appeal i.e. AY 2010-11 also, the AO relied on the same material (i.e. information from Investigation Wing) which he had relied for earlier years and there was no fresh evidence supporting the reassessment (iv) the material on record show that the AO had conducted inquiries at the time of completion of the original assessments and there was nothing to show that the entities to whom payments were made (by the assessee) were fictitious and in fact TDS was apparently deducted. It thus quashed the reassessment proceeding for AY 2010-11 also in absence of any new tangible material.
Sky View Consultants (P.) Ltd. – ITO [2018] 96 taxmann.com 419 (Delhi) - W.P. (C) NO. 11324/2017; C.M. APPL. No. 46251 OF 2017 dated July 30, 2018

2635. The Court upheld the Tribunal's order quashing the reassessment order passed u/s 143(3) r.w.s. 147 holding that since the permission to issue the notice u/s 148 was not granted by the Additional Commissioner as required by section 151(2) but by the Commissioner (though a higher authority), the sanction was in breach of section 151.
CIT v Aquatic Remedies (P.) Ltd- [2018] 96 taxmann.com 609 (Bombay) – ITA No. 904 OF 2016 dated July 25, 2018

2636. The Court upheld Tribunal's order setting aside the reassessment notice issued u/s 148 as well as the assessment order framed thereon, where the AO had issued the said notice on the reasons that (i) the dividend income, interest income and other income were to be classified as 'Income from Other Sources' instead of business income and (ii) business loss was to be set-off against the capital gains earned during the year. The Tribunal had held that since the business of the assessee itself was that of

investing in shares and securities, dividend income was taxable as business income only. Further, the Tribunal had noted that in the preceding year as well as subsequent year and even while framing the original assessment for the year under consideration, the aforesaid incomes were treated as business income and the AO had not given any reason to deviate from the said view while issuing the notice u/s 148 of the Act. Thus, this resulted in change of opinion. With respect to reason (ii), the Tribunal held that the said reason was factually incorrect as the business loss was set-off against the capital gains earned by the assessee during the said year. The Tribunal also noted that the reopening was made on the basis of objection of the audit party and there was no independent application of mind by the AO. Accordingly, the Court held that the Tribunal had arrived at reasonable and sustainable findings based on relevant materials and, thus, dismissed Revenue's appeal.

CIT v GMR HOLDING PVT. LTD (2018) 407 ITR 439 (Karn) - I.T.A. No. 58/2012 dated July 31, 2018

2637. The Court allowed assessee's writ petition filed against the reassessment notice issued u/s 148 to re-open assessment for AY 2010-11 on the ground that Tax Evasion Petition (TEP) received by the investigation wing alleged that the contract charges claimed by the assessee were bribe amount distributed by the assessee. It was noted that the investigation wing had recommended reassessment for AY 2007-08 and AY 2008-09 on the basis of aforesaid TEP and the AO had mechanically followed the investigation unit's recommendation for AY 2009-10 & AY 2010-11 (present year) also. It also noted that in earlier years, the AO called the concerned sub-contractors, who had disclosed the amount received from assessee in their returns. The Court further noted that in AY 2007-08 and AY 2008-09 also, the disallowance was restricted to only 5% and this fact was not mentioned in the reopening notice for the present year. Accordingly, it held that the trigger for all the reassessment attempts by the revenue was the same TEP and there was nothing to show that the entities to whom payments were made (by the assessee) were fictitious, in fact TDS amounts were apparently deducted. Accordingly, it held that there was no was no evidence or tangible, specific material to support the reassessment.

SKYVIEW CONSULTANTS PVT. LTD. vs ITO (2018) 258 TAXMAN 331 (Delhi) - W.P.(C) 11324/2017, C.M. APPL.46251/2017 dated July 30, 2018

2638. The Tribunal dismissed assessee's appeal wherein the assessee contented that the reassessment proceedings were initiated for AY 2011-12 & AY 2013-14 solely on the basis of the DVO's report showing difference in cost of construction estimated by him vis-à-vis the cost recorded in the books of account, without application of independent mind by the AO. It held that while completing the scrutiny assessment for AY 2012-13, which was the base year in which the reference was made to the DVO, the AO had made an addition for similar difference after applying his mind to the DVO's report and thereafter he had recorded reasons and issued notice u/s 148 for AY 2011-12 & AY 2013-14. Accordingly, it held that the cases relied on by the assessee to contend that reopening only based on valuation report is bad in law was not applicable to the present case.

GOPAL KUMAR DEEWAN & ORS. V ITO (2018) 53 CCH 0440 JaipurTrib – ITA No. 498/JP/2017, 617/JP/2017, 02/JP/2017, 178/JP/2017, 499/JP/2017, 618/JP/2017 dated July 26, 2018

2639. The Court dismissed Revenue's appeal against Tribunal's order annulling the reassessment proceedings which was initiated on the reasons that the assessee had failed to furnish a copy of sale deed of land sold during the year and stamp duty value for the said property was higher than the sale consideration adopted by the assessee for computing capital gains. It was noted that the Tribunal had given a finding that the assessee had produced a copy of the sale deed during the regular assessment proceedings and the same was also subjected to consideration as queries were made by the AO on the issue of capital gains on the said sale of land. Further, the Court noted that the reasons recorded did not state that the AO had failed to considered the provisions of section 50C rather it proceeded on the basis the assessee had failed to furnish a copy of the sale deed. Accordingly, it held that once the sale deed was before AO and enquiries were made during the regular assessment proceedings regarding the quantum of capital gains, it must follow that the AO had taken view on facts and in law as in force at the relevant time and, thus, this was a case of change of opinion.

PR.CIT v vs. INARCO LIMITED - (2018) 102 CCH 0206 MumHC – ITA No. 102 of 2016 dated July 23, 2018

2640. The Court allowed the writ petition filed by the assessee and set aside the reassessment order passed by the AO u/s 147 without furnishing the reasons for reopening, prior to passing the assessment order. It relied on the Apex Court decision in the case of GKN Driveshafts (India) Ltd. V. ITO [2003] 259 ITR 19 (SC) wherein it was held that the AO is bound to disclose the reasons for reopening within a reasonable time after receipt of the assessee's request for furnishing the said reasons. The Court thus held that the impugned order stood vitiated for non furnishing of reasons, which is mandatory u/s 148(2).

S. PADMALAKSHMI vs. DCIT (2018) 102 CCH 0251 ChenHC – W.P.(MD)No.5974 of 2013 and M.P.(MD)No.1 of 2013 dated July 23, 2018

2641. The Tribunal quashed the reassessment proceedings where the assessee had furnished an affidavit denying service of notice u/s 148 and the Revenue had not brought any material on record to establish valid service of notice. It held that edifice of entire proceedings was not in accordance with law and thus untenable.

DHARA SINGH vs. ITO – 0(2018) 53 CCH 0370 DelTrib - ITA No. 2213/DEL/2018 dated July 20, 2018

2642. The Tribunal quashed the reassessment proceedings which were initiated on the basis of show cause notice issued by the Central Excise department to the asssessee alleging suppression of value of sales, without taking note of the fact that the order passed by Commissioner of Central Excise pursuant to the said show cause notice was set aside by CESTAT. It held that since the CESTAT's order had neither been stayed nor reversed, it had to be given effect to without any restriction and, therefore, the reasons recorded subsequent to the order of CESTAT were not valid reasons to assumption of jurisdiction to invoke u/s 147.

ACIT v CENTURY METAL RECYCLING PVT. LTD. (2018) 53 CCH 0586 DelTrib - ITA No. 6657/DEL/2017 & C.O. NO. 36/DEL/2018 (IN ITA No. 6657/DEL/2017) dated July 19, 2018

2643. The Court allowed the assessee's writ petition against the reassessment proceedings which was initiated on the reasons that assessee had not offered for taxation the amount remaining untilized (not applied) out of the amount accumulated as per clause (a) to third proviso to section 10(23C) for specified purpose. It held that the relevant schedule to the returns, clearly disclosed the position vis-a-vis the accumulation of surplus and, thus, "the reasons to believe" recorded were unsustainable as they amounted to an attempt to form a second opinion or carry out a review, which are both impermissible in law in view of the decision in the case of CIT vs. Kelvinator of India Ltd [320 ITR 561 (SC)]. Accordingly, the re-assessment notice and all further proceedings emanating from it were quashed

ISHAN EDUCATIONAL RESEARCH SOCIETY vs. ITO(E) & Anr.(2018) 102 CCH 0157 DelHC – W.P.(C) 9990/2017 & CM APPL. 40736/2017 (stay) dated 16th July, 2018

2644. The Court allowed the writ petition filed by the assessee against the reassessment notice issued u/s 148 relying on ratio laid down in case of Carlton Overseas Pvt. Ltd. v. Income Tax officer & Ors. [(2009) 318 ITR 295] wherein it was held that reliance by the Revenue upon an audit report could not be considered as tangible material to form the basis for issuing the said notice. It was noted that the reassessment notice u/s 148 was issued solely on the basis of audit objection which revealed that in computation of income, assessee was allowed deduction on account of Forex gain on interest income which was revenue in nature. Accordingly, the Court quashed the impugned notice.

FIS Global Business Solutions India Pvt Ltd vs Pr.CIT WP (C) 12277/2018 CM APPL 47539/2018 (2018) 103 CCH 0103 (Del HC) dated 16.11.2018

2645. The Tribunal quashed the reassessment order passed u/s 147 noting that as per first proviso to section 147 where an assessment is completed u/s 143(3), re-assessment could not be done after expiry of four years from end of relevant AY unless any income chargeable to tax had escaped assessment by reason of failure on part of assessee to disclose fully and truly all material facts and, in the instant case, in the reassessment notice issued u/s 148, the AO failed to refer any material which indicated any such failure on part of assessee. Accordingly, the asessee's appeal was allowed.

Ayoki Fabricon Pvt Ltd vs Dy.CIT [2018] 54 CCH 0257 (Pun- Trib.)- ITA No.1723/Pun/2014,11/Pun/2015 and 1608/Pun/2015 dated 20.11.2018

2646. The Tribunal allowed Revenue's appeal against CIT(A)'s order wherein the CIT(A) had quashed the reassessment notice issued u/s 148 and consequent proceedings on ground that the AO had only relied on the letter by investigation wing stating that assessee had been providing accomodation entries regularly instead of making any independent enquiry for making addition u/s 68. The Tribunal held that the AO had properly recorded reasons by independent application of mind and his assumption of jurisdiction u/s 148 was valid for the reason that (i) the AO in his assessment order had referred to seized material from premises of certain person indicating that assessee was involved in taking and giving accomadation entries (ii) the AO had also observed that details of share capital were not furnished truthfully at the time of original assessment order passed u/s 143(3). Accorindgly, it set aside CIT(A)'s order and remanded the matter to the CIT(A) for fresh disposal on merits.

Dy.CIT vs Second Realtors Pvt Ltd.[2018] 54 CCH 0244 (Del- Trib.)- ITA No.3189/Del/2015dated 20.11.2018

2647. The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had upheld Tribunal's order quashing the reassessment proceedings (initated on account of incorrect TDS claim) in absence of fresh tangible material in possession of the AO.

Ayoki Fabricon Pvt Ltd vs Dy.CIT [2018] 54 CCH 0257 (Pun- Trib.)- ITA No.1723/Pun/2014,11/Pun/2015 and 1608/Pun/2015 dated 20.11.2018

2648. The Tribunal quashed the reassessment notice issued u/s 148 as well as the subsequent proceedings on the ground that no independent enquiry was carried out by AO himself with respect to the information received from CIT's office revealing that the assessee had received accommodation entries from certain person, before reaching his independent satisfaction that alleged escapement had actually occurred or that assessee in fact was beneficiary of any sum received having nature of accommodation entry. It held that the information given by CIT could only be a basis to ignite/ trigger "reason to suspect" for which reopening could not be made and further examination ought to be carried out by the AO. Thus, the Tribunal held that the reopening was done without satisfying conditions precedent in section 147 and for that reason reassessment was without jurisdiction.

Premier Vyapaar Pvt Ltd vs ITO[2018] 54 CCH 0178 (Kol- Trib.)- ITA No. 1953/Kol/2017, 1010/Kol/2018 dated 02.11.2018

2649. The Tribunal quashed the reassessment proceedings on ground that proceedings had been initiated not on basis of any material but on basis of mere alleged information. It was noted that the AO had initiated reassessment proceedings on basis of information received from Investigation Wing which revealed that in a search and seizure operation conducted in premises of Mr. C, a pen drive was recovered containing name of persons whose money and wealth Mr.C was administering and assessee was one of such person. The Tribunal noted that the reassessment proceedings were initiated by the AO based on the above information only and no further inquiry was made or documents were verified by the AO during assessment proceedings. Accordingly, it held that the AO had no material or evidence whatsoever in his possession or on his record but proceeded to initiate proceedings u/s 148 without satisfying preconditions of section 147 i.e. having reasons to believe based on material found.

Jagat Singh vs Asst CIT [2018] 54 CCH 0177 (Del- Trib.)- *ITA No. 3036 to 3039/Del/2015****, dated 02.11.2018***

2650. The Tribunal held that initiation of reassessment proceedings on the basis of information regarding survey by Sales Tax Department (wherein it was found that assessee had suppressed its turnover by maintaining duplicate set of books) without making any enquiry or application of mind by the AO was not sustainable in law as the condition precedent for issue of notice u/s 148 i.e. reason to believe that income had escaped assessment was lacking. It was noted that the AO had solely used the impugned information regarding survey in letter and spirit for formation of belief of escapement of income without making any enquiry or application of mind, particularly when subsequent proceedings before various authorities of Sales Tax Department were available before issuance of notice u/s 148 and were acknowledged to the AO before passing the reassessment order. Accordingly, the Tribunal held that the reopening of assessment was invalid.

HARI STEELS & GENERAL INDUSTRIES LTD. vs Dy.CIT [2018] 54 CCH 0176 (Del- Trib.)- ITA No. 6199/Del/2014, dated 05.11.2018

2651. The Apex Court dismissed Revenue's SLP against HC ruling wherein reassessment proceedings had been quashed in view of the fact that by the time of issuance of notice(on ground that it had received certain accommodation entries from a bogus company), assessee had already merged with another company, thereby losing its legal existence and thus, the notice issued u/s 148 in name of assessee was invalid.

Asst CIT (Central) vs Dharmnath Shares and Services Pvt Ltd [2018] 103 CCH 0265 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38121/2018 dated 20.11.2018

2652. The Tribunal allowed assessees' appeal against CIT(A)'s order and held that the reassessment made u/s 147 was invalid in absense of valid service of notice u/s 148, noting that the said notice was served upon the part time accountant, who was not authorized to receive any document on behalf of the assessees. Relying on Rules of Code of Civil Procedure, 1908 in respect of service of summons, it held that only if summons are accepted by authorized agent of defendant it could be called a "good service".

Smt. Sarojben Manubhai Shah & other v ITO [TS-737-ITAT-2018(Ahd)] - I.T.A. Nos.1215, 1269 & 1475/Ahd/2015 dated 14.12.2018

2653. The Tribunal upheld the re-assessment proceedigns initiated beyond 4 yrs period from relevant AY, noting that the assessee had not made full disclosure regarding apportionment of head office (HO) expenses while computing deduction u/s 80IA in respect of its wind power generating undertakings. It noted that while claiming deduction u/s. 80IA, assessee had only considered direct operation and maintenance expenses without charging proportionate HO expenses. It was acknowledged that it could be assessee's position that HO expenses have no nexus with tax holiday units and therefore, there was no necessity to allocate these expenses in the first place, however, such a position of assessee and the related facts were not disclosed by assessee and hence, the issue of allocation of HO expense was not examined at all during the course of original assessment. Accordingly, the Tribunal rejected assessee's contention that there was a change of opinion. However, on merits, it remanded the matter back to AO to recalculate the eligible profits after allocating expenses in the nature of employee costs and other establishment expenses in the ratio of turnover.
Rajasthan State Mines and Minerals Limited - ITA No 704/JP/2018 -[TS-662-ITAT-2018(JPR)] – dated 05.11.2018

2654. The Tribunal quashed the reassessment order passed assessing the wrong person, holding that income arising after the death of assessee, is to be assessed in the hands of "Estate of deceased assessee" u/s 168 and not in the hands of the "Legal heir of the deceased" u/s 159. It was noted that Assessee (who passed away in 2005 and was survived by his 2 sons i.e. legal heirs) had written a will

and had also appointed executors, the Executors were filing return of income for the “Estate of deceased assessee”; Pursuant to the details of assessee's HSBC Bank a/c, Geneva coming to notice of Revenue in 2011, AO had issued re-assessment notice u/s 148 to “ Legal Heir of assessee” and had assessed the amount of deposits found therein in the hands of legal heir. The Tribunal rejected Revenue's stand that “Legal Heir of assessee” and “Estate of assessee” are one and the same thing and hence re-assessment on former is valid, holding that the Act provides two different provisions, viz., Section 159 and Section 168, for the assessment of the income of deceased assessee earned during his life time and income earned post his death respectively and since the deposits were found during subject AY 2007-08, i.e., subsequent to the date of death of the assessee, these deposits could not have been made by the assessee and accordingly, could not be assessed in the hands of legal heir.
Estate of Late Shri Vrajlal Chandulal Mehta v ACIT [TS-499-ITAT-2018 (Mum)] – ITA No. 4252/MUM/2017 dated 29.08.2018

2655. The Tribunal held that a notice u/s 143(2) issued by the AO before the assessee files a return of income has no meaning and thus if no fresh notice is issued after the assessee files a return (pursuant to notice u/s 148), the AO has no jurisdiction to pass the reassessment order and the same has to be quashed.
Sudhir Menon vs. ACIT - ITA No. 1744 & 1466/Mum/2016 dated 03.10.2018

2656. The Tribunal held that the information given by DIT (Inv) can only be a basis to ignite/ trigger "reason to suspect" and the AO has to carry out further examination to convert the "reason to suspect" into "reason to believe". Thus, if the AO acts on borrowed satisfaction and without application of mind, the reopening is void.
Devansh Exports vs. ACIT - ITA No. 2178/Kol/2017 dated 15.10.2018

2657. The Tribunal held that if the AO issues the notice for reopening the assessment before obtaining the sanction of the CIT, the reopening is void ab initio and the fact that the sanction was given just one day after the issue of notice makes no difference.
ITO vs. Ashok Jain - ITA.No.1505/Ahd/2017 dated 14.11.2018

2658. The Tribunal held that if the notice u/s 143(2) is issued prior to the furnishing of return by the assessee in response to notice u/s 148, the notice issued u/s 143(2) is not valid and the reassessment framed on the basis of said notice has to be quashed. It also held that section 292BB does not save the assessment.
Halcrow Group Ltd vs. ADIT - ITA No. 5163 & 5164/Del/2010 & 5554/Del/2012 dated 02.07.2018

2659. The Tribunal held that (i) Sanction granted by writing "Yes, I am satisfied" is not sufficient to comply with the requirement of section 151 because it means that the approving authority has recorded satisfaction in a mechanical manner and without application of mind, (ii) if information is received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information cannot be said to be tangible material per se and, thus, reassessment on said basis is not justified.
Pioneer Town Planners Pvt. Ltd vs. DCIT - ITA No.132/Del/2018 dated 06.08.2018

2660. The Tribunal held that the order of the AO passed during reassessment proceedings without disposing off the objections filed by the assessee was in violation of the law laid down by the Apex Court in GKN Driveshafts (259 ITR 19 – SC) and therefore the said order was bad in law and liable to be quashed. It refused to restore the matter to the AO to redo the procedure as per law and held by doing so it would enable assessing officers to get away with passing order that were without jurisdiction.
ABHISHEK SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0251 AgraTrib - ITA No. 64/Agra/2016 dated Mar 21, 2018

2661. In the original assessment, the AO had disallowed only Rs.242 crores from the Misc. Expenses claimed of Rs.339.96 crores even after noting that the entire Misc. Expenses was not routed through the P&L A/c. The assessment was sought to be reopened on the ground that the said expense allowed of Rs.97.74 crores were not routed through the P&L A/c and hence, the same was not allowable. The CIT(A) held the reassessment proceedings to be invalid since the reasons recorded for reopening dealt

with the very same issue which were subject matter of consideration during the original assessment. The Tribunal upheld the CIT(A)'s order. The Court dismissed Revenue's appeal filed against the said Tribunal's order, holding that the AO had applied his mind during the original assessee over the issue forming the basis of reopening and thus, reopening based on mere change of opinion was not sustainable.

Pr.CIT v ICICI Bank Ltd – ITA No. 1113 of 2015 (Bom) dated 07.03.2018

2662. The assessment was sought to be reopened on the ground that the assessees-FIIs (claiming to be exempt from tax in view of Article 14 of India-Denmark DTAA) which were registered as 'Fund' with SEBI and had taken PAN in the status of 'AOP (Trust)' may not be eligible for exemption for India-Denmark DTAA benefit since the 'possibility' of an AOP not being a taxable unit under the tax law of Denmark could not be ruled out (which was a pre-requisite for claiming the said benefit). The Court dismissed the Revenue's appeal filed against the Tribunal's order quashing the reassessment proceedings u/s 147 on the ground that the reopening notice issued did not indicate any reason to believe that income chargeable to tax had escaped assessment since the reasons proceeded merely on presumption and surmises without any tangible material. It also rejected the revenue's proposition that the use of word 'possibility' was a mistake which would not invalidate the impugned notice and that the reasons could be changed to that extent, holding that the reasons which form the basis of reopening must be strictly read and it is not open to either to improve upon or change the reasons recorded.

CIT v Investeringsforeningen BankInvest I – ITA No. 838, 839 & 1009 of 2015 (Bom) dated 16.01.2018

2663. The Court granted interim relief by staying the reassessment proceedings and admitted the writ petition filed by assessee objecting to the initiation of reassessment proceedings observing 'prima-facie' non-application of mind by JCIT while sanctioning the reopening on the basis of application made by the AO wherein the provisions referred to for reopening, i.e. section 147(b), is the one which is no longer in the statute. It rejected department's stand that the AO inadvertently mentioned 147(b) instead of section 147 and that the defect was curable u/s. 292B holding that the issue involved was not with regard to the mistake/ error committed by AO while taking sanction from JCIT but whether there was due application of mind by JCIT while giving the necessary sanction for issuing the impugned notice.

Kalpana Shantilal Haria v ACIT - TS-608-HC-2017(BOM) - WRIT PETITION (L) NO. 3063 OF 2017 dated 22.12.2017

2664. Where AO had accepted the claim of assesse for exemption u/s 10(1) with respect to the entire income from sale of raw coffee subjected to pulping and drying (instead of taxing 25% as per Rule 7B) and it was noted that the assessee's such claim was accepted for several years and there were hundreds of other coffee growers whose income were also exempted, the Court held that reopening notice issued only against assessee during the relevant assessment year being mere change of opinion was unjustified

P. Chidambaram v. ACIT - (2018) 90 taxmann.com 166 (Mad) - Writ Petition No. 29413 to 29416 of 2017 & 31685 to 31688 of 2017 dated 02.01.2018

2665. Where AO had allowed deduction u/s 80-IA(4) after discussing all the relevant contracts and after excluding income from works like which did not fall within definition of 'developing, operation and maintaining any infrastructure facility', the Court held that the reassessment notice issued after four years from the end of the relevant assessment year, without satisfying the twin conditions for invoking the jurisdiction u/s 147/148 viz. (i) failure on the part of the petitioner-assessee to truly and fully disclose the relevant facts, and (ii) that the original AO did not consider or apply his mind to the allowability of deduction u/s 80-IA(4) on the facts and evidence placed before him while passing the assessment order, was unjustified.

Kotarki Constructions (P.) Ltd. v. ACIT - (2018) 89 taxmann.com 265 (Kar) - Writ Petition No. 61671 of 2016 dated 02.01.2018

2666. The Court held that since section 151(1) requires CCIT or CIT to be satisfied on reasons recorded by AO for issuance of a reassessment notice after expiry of 4 years from end of relevant assessment year,

where original assessment was made u/s 143(3), issuance of notice u/s 148 without such sanction is unjustified.
Maruti Clean Coal & Power Ltd. v ACIT - (2018) 400 ITR 397 (Chhattisgarh) - Writ Petition (T) No. 346 of 2017 dated 03.01.2018

2667. Tribunal quashed the additions/disallowances made by the AO in course of proceedings u/s 153A, , in view of fact that said additions/disallowances had been made without reference to any specific incriminating material/evidence found as a result of search and seizure and were based on re-appreciation of facts unconnected to search.
Priya Holding (P.) Ltd. v ACIT - (2018) 90 taxmann.com 408 (Ahd) – ITA Nos. 366 to 370 (Ahd) of 2012 dated 05.01.2018

2668. Court upheld the Tribunal's order dismissing the assessee's cross appeal filed against assessment reopening without adjudicating the same, after dismissing the revenue's appeal on merits of the case, as such adjudication would only be of academic interest. However, the Court gave assessee the liberty to challenge validity of reassessment order in event revenue filed an appeal challenging Tribunal's order on merit.
Vishwa Bharati Education Society v DCIT – (2018) 91 taxmann.com 34 (Kar) – ITA No. 100020 of 2017 dated 08.01.2018

2669. The Court held that a complaint or information from a third party before AO, when it is 'definite' information and not mere gossip or guess or rumour, can certainly be a ground for issue of notice u/s 147/148 albeit AO must form an honest belief upon some material, and basis, which supports such belief. However, in the present case, since the AO had merely observed and recorded that the objections raised by the assessee were untenable and wrong, without elucidating and dealing with contentions and issues raised in the objections letter, the Court held that the AO had not applied his mind to the assertions and contentions raised by the assessee and remanded the matter back to AO to pass a fresh order.
Scan Holding (P.) Ltd. v. ACIT – (2018) 90 taxmann.com 396 (Del HC) - W.P.(C) No. 9800 of 2015 dated 08.01.2018

2670. Noting that the AO initiated reassessment proceedings on account of incorrect valuation of closing stock, incorrect allowance of depreciation, disallowances under Section 40(a) and 43B which were all reflected in the tax audit report filed with the AO during original assessment proceedings, the Tribunal held that notwithstanding the fact that the reassessment proceedings were initiated within a period of 4 years, the proceedings were invalid as they were initiated on the basis of the same set of information and facts available during the original assessment proceedings. It held that merely because the AO did not express any opinion vis-à-vis the aforesaid issues during original assessment proceedings it would not validate reassessment proceedings as there was no fresh tangible material.
MAHANADI COALFIELDS LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0189 CuttackTrib - ITA No. 300/CTK/2014, 329/CTK/2014 dated Mar 19, 2018

2671. The AO during original assessment proceedings made disallowance of 20 percent of expenditure under Section 40A(3), which was deleted by the CIT(A). Subsequently, the AO initiated reassessment proceedings pursuant to inquiries made by him through which he concluded that the dealers were non-existent. The CIT(A) once again set aside the AO's order which was upheld by the Tribunal. The Court, noting that the assessee had not brought anything on record to prove that the dealers actually existed and that they were genuine dealers held that the AO was justified in initiating reassessment proceedings and upheld the order of the AO.
COMMISSIONER OF INCOME TAX vs. PARRISONS ROLLER FLOUR MILLS PVT. LTD. - (2018) 101 CCH 0104 KerHC - ITA No. 377 of 2009 dated Mar 15, 2018

2672. Where the issue of sale of shares held in Goa Carbon Ltd was adequately examined and subjected to inquiry during original assessment proceedings, the Court held that the AO was not justified in initiating reassessment proceedings on the basis that Form 29B had not been filed, after 4 years from the end of

the relevant assessment year where there was no failure to fully and truly disclose material facts on the part of the assessee. It held that the primary facts were duly disclosed by the assessee during original assessment proceedings and it was not for the assessee to tell the AO what inferences of facts were to be drawn from those facts. Accordingly, it quashed the notice issued under Section 148 as well as the order disposing of objections.

DEMPO BROTHERS PRIVATE LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0107 MumHC - WRIT PETITION NO. 1060 OF 2017 dated Mar 6, 2018

2673. The Division bench of the Court referred the matter to a larger bench on whether the interpretation of section 147 r.w. Explanation (3) thereto, as given by the co-ordinate bench in Ranbaxy Laboratories Ltd. v CIT (2011) 336 ITR 136 (Del HC), following the decision in the case of CIT v Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom), holding that if reassessment proceedings do not culminate in an order that adds the amounts relatable to the reassessment notice, and rather adds amounts on other issues, the reassessment orders would be invalid. It opined that any explanation only clarifies the provision and cannot go beyond or against the main provisions of the Act and thus the emphasis placed in Jet Airways's case on "and also" undermines the essential objective of Section 147 and unduly restricts and narrows it. The Division bench also opined that the view of the Karnataka High Court in the case of N. Govind Raju v ITO (2015) 377 ITR 243 (Kar) was a more accurate one wherein it was held that if notice u/s 148 was found to be valid, then addition could be made on all grounds or issues (with regard to 'any other income' also) that may come to notice of the AO subsequently during course of proceedings u/s 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive.

Pr.CIT v Jakhotia Plastics Pvt Ltd [TS-40-HC-2018(DEL)] – ITA No. 727, 728 & 925/2017 & CM APPL. 31671/2017 dated 22.01.2018

2674. The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had quashed re-assessement proceedings u/s 147 initiated after the scrutiny assessment and it was noted that the AO had not received any objective material warranting reopening of a concluded scrutiny assessment and that the re-assessment was based upon the observations of the audit report which had scrutinized the return for the concerned year on standalone basis.

DCIT v ALcatel Lucent India Ltd [TS-13-SC-2018] – SLP (CIVIL) Diary No(s). 33126/2017 dated 08.01.2018

2675. The Tribunal held that the AO was unjustified in reopening assessment under Section 148 of the Act in the case of the assessee (whose return was processed under Section 143(1) based on information in the report of the investigation wing wherein it was stated that the assessee had obtained profit on account of share transactions which were mere accommodation entries, without appreciating that the assessee had not undertaken any sale transactions during the year under review. Further noting that the reasons mentioned that the assessee sold shares via one broker but the assessment order stated that the shares were sold via another broker, the Tribunal held that the AO had failed to apply his mind to the reasons and had merely relied on the report of the investigation wing without establishing any link between the assessee and the alleged income escaping assessment. Accordingly, it quashed the order passed under Section 147 of the Act.

LEELA BHANJI GADA & ANR. vs. INCOME TAX OFFICER & ANR - (2018) 52 CCH 0163 - ITA No. 2801/Mum/2014, 2798/Mum/2014 dated Mar 9, 2018

2676. Where the assessee had filed its return during original assessment proceedings and claimed a deduction under Section 10A of the Act (supported by Form 56F wherein the entire working of deduction was provided) and the AO post examining the claim of 10A deduction allowed the same, the Tribunal held that the AO was not justified in re-opening assessment beyond a period of 4 years from the end of the assessment year to deny the entire 10A deduction on the allegation that freight and insurance charges of a sum of Rs.2.51 crore were not deducted from export turnover leading to losses in the other business activities. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) held that the reassessment proceedings were bad in law as i) the AO did not specify the failure on the part of the assessee to disclose fully and truly all material facts relevant for assessment ii) reassessment was initiated on the basis of information forming part of the original assessment records iii) the issue of claim

under Section 10A was completely examined during original assessment proceedings iv) the AO erred even on the merits of the case as the assessee had duly proved that the freight and insurance expenses did not pertain to the export sales under Section 10A. The Tribunal noted that the AO had reopened assessment merely on the basis of the objections of the audit party without any application of mind and accordingly dismissed the Revenue's appeal.
ASSISTANT COMMISSIONER OF INCOME TAX vs. SAMSUNG INDIA ELECTRONICS PVT. LTD. - (2018) 52 CCH 0184 DelTrib - ITA No. 386/DEL/2015 dated Mar 15, 2018

2677. The AO initiated reassessment proceedings u/s 147/148 after recording reasons on basis of information received from Investigation Wing of Department on basis of search and seizure operation and made addition of share capital under Section 68 of the Act alleging that the assessee had issued share capital as a camouflage to introduce its own fund through entry operator. The Tribunal on perusal of the reasons held that the AO had blindly followed the information received from the Investigation Wing and had failed to bring anything to link the reasons to the assessee. It held that basis of belief should be discernible from material on record which was available with AO when he recorded reasons, absent which the reassessment proceedings were bad in law. Further, it noted that the Commissioner had simply affixed "approved" at bottom of note sheet prepared by ITO and held that if the Commissioner had read report carefully he could not have come to conclusion that this was fit case for issuing notice u/s 148. Noting that the Commissioner had nowhere recorded satisfaction note, it held that the sanction granted was mechanical and contrary to Section 151 of the Act. Accordingly, it quashed the entire proceeding.
TARA ALLOYS LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0159 DelTrib - ITA No. 2421/Del/2017 dated Mar 1, 2018

2678. Where pursuant to information received from the Add CIT i.e. the assessee had provided a loan to a co-operative society on which it earned interest of Rs. 10 crore and the Tribunal in the case of the society had held that the interest was taxable in the hands of the assessee, the Tribunal upheld the reassessment proceedings initiated by the AO and held that the information constituted new tangible material which justified initiation of reassessment proceedings.
DEPUTY COMMISSIONER OF INCOME TAX (LTU) & ANR. vs. RURAL ELECTRIFICATION CORPN LTD. & ANR. - (2018) 52 CCH 0248 DelTrib - ITA No. 3009 to 3011/Del/2014 dated Mar 26, 2018

2679. The Apex Court dismissed Revenue's SLP against the decision of the Gujarat HC quashing re-assessment on the ground that the reason stated for re-opening was subject matter of appeal before lower authorities. The High Court noted that assessee's appeal was pending before ITAT with respect to its claim that receipts from premature transfer of leasehold rights in land was a capital receipt, however, the AO had issued Sec. 148 notice taking stand that alleged receipt was income from other sources. The Court clarified that when the impugned issue was the subject matter of appeal, the principle of merger would apply and also noted that there could not be two separate considerations to the same subject matter relatable to the income, one by the appellate authority or forum and another by the AO in fresh re-assessment.
Radhaswami Salt Works vs ITO - TS-144-SC-2018 - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 42502/2017 dated 16-03-2018

2680. Where interest income from bank deposits was disclosed by assessee in profit and loss account but it was not disclosed in return, by virtue of Explanation 1 to section 147, the Court held that this resulted in non-disclosure of material facts and therefore held that the AO was justified in initiating reassessment proceedings to tax the impugned interest income.
CIT v Tata Ceramics Ltd - [2018] 92 taxmann.com 124 (Kerala) - IT APPEAL NO. 1375 OF 2009 - MARCH 8, 2018

2681. The Tribunal held that reopening of assessment on the basis of report received from the DVO was sustainable where the AO during original assessment proceedings sought to examine the investment made by the assessee in hotel building and referred the matter to the DVO but however could not make the addition as the report of the DVO was received after the statutory limit for completion of assessment under Section 143(3).

ACIT v Mashal Hotels Pvt Ltd – (2018) 52 CCH 0131 (Indore Trib)- ITA NO 618 / Ind / 2015 – dated Feb 28, 2018

2682. The Court upheld the initiation of reassessment proceedings for AY 1987-88 and 1988-99 to deny the assessee claim of deduction 80HHC (earlier allowed during original assessment) noting that the CIT(A) for the earlier years denied the assessee deduction on the ground that the assessee had not provided a certificate from the export house / trading house to substantiate its claim. The Court held that the order of the CIT(A) constituted information and could not be classified as a change of opinion. Accordingly, it dismissed assessee's appeal.
BABY MARINE EXPORT vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0114 KerHC - ITA Nos. 12 of 2009 & 30 of 2009 dated Feb 20, 2018

2683. The Tribunal deleted the addition made by the AO in reassessment proceedings on account of prior period expenses and claim of receivables noting that there was no tangible material outside the record which was the basis of reassessment proceedings. Further it held that there could be no reason to believe that income had escaped assessment, as the assessee had not claimed the impugned amount as a deduction in the first place (which was noted in the original assessment proceedings).
ASSISTANT COMMISSIONER OF INCOME TAX vs. SAMSUNG INDIA ELECTRONICS PVT. LTD. - (2018) 52 CCH 0160 DelTrib - ITA No. 4181/Del/2011 dated Feb 23, 2018

2684. The Tribunal held that reopening of completed assessments based on judgments delivered subsequently after completion of assessments was invalid as assessee could not be held guilty of not disclosing all material facts truly and fully necessary for making assessment.
KALYANCHAND MANAKCHAND LALWANI (HUF) & ORS. vs. INCOME TAX OFFICER & ORS. - (2018) 52 CCH 0162 PuneTrib - ITA NO. 1891/PUN/2014, 1892/PUN/2014, 1893/PUN/2014 dated Feb 23, 2018

2685. Where the AO initiated reassessment proceedings based on information received from the office of the Addl CIT Range-1 New Delhi (which was based on the statement of one PK Jindal) that the persons from whom the assessee received share application money were bogus entities, the Tribunal noting that the AO had ignored the evidences provided by the assessee and had merely based his opinion on the statement of PK Jindal without any independent application of mind held that the reassessment proceedings were not valid in law. Further, it also held that the sanction obtained from the Add CIT were at best a mere mechanical sanction as there was no evidence that the Add CIT had gone through any evidence to establish that the assessee's income had escaped assessment. It held that merely writing "Yes I am satisfied" was not requisite sanction under Section 151 of the Act. Accordingly, it quashed the entire proceedings.
INCOME TAX OFFICER & ANR. vs. VIRAT CREDIT & HOLDINGS PVT. LTD. & ANR. - (2018) 52 CCH 0161 DelTrib - ITA No. 89/Del./2012 (CO No.57/Del/2012) dated Feb 9, 2018

2686. The Court held that absent sanction from the CCIT under Section 151(1), the initiation of reassessment proceedings after a period of 4 years from the end of the relevant assessment year was invalid. It held that obtaining a sanction under Section 151(1) was a pre-requisite for initiating reassessment proceedings and accordingly held that the Tribunal was justified in quashing the re-assessment order. Accordingly, it dismissed Revenue's appeal.
CIT v Gee Kay Finance & Leasing Co Ltd – (2018) 101 CCH 0034 Del HC – ITA 935 / 2009 dated Feb 8, 2018

2687. The assessee claimed deduction being the expenditure incurred by way of interest, advertisement, business promotion, printing and stationery, share application forms, traveling and other expenses which was allowed during original assessment proceedings. The AO based on audit objections re-opened assessment u/s.147 after a period of 4 years proposing to revise assessment order passed earlier under Section 143(3) on ground that income of assessee escaped assessment disallowing expenditure that was earlier allowed. The Court observed that the materials / facts relevant were admittedly and already available in concerned original assessment proceedings and there were no new facts and therefore held that the reassessment was on a mere change of opinion by blindly following the

audit objections. Therefore, it held that AO was unjustified in reopening assessment and accordingly set aside the order.
KUMARS METALLURGICALCORPORATION LTD. vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0071 APHC - ITTA No. 158 of 2005 dated Feb 9, 2018

2688. The Court dismissed the assessee's writ petition [filed by Sky Light Hospitality LLP converted into LLP from Pvt. Ltd. Co.], challenging the re-assessment notice issued in the name of erstwhile Pvt. Ltd. Co wherein the Petitioner contended that despite the Pvt. Ltd. Co. ceasing to exist in May 2016, the notice under Section 148 was addressed in its name in March 2017 and hence the notice issued to a dead juristic person ought to be treated as invalid and void. The Court referred to the reasons recorded by AO based on the Tax Evasion Report forwarded by the Investigation wing (in respect of the purchase of land transaction and collaboration agreement entered into with DLF) and held that the "reasons to believe" established a live link and connect with the inference drawn that income had escaped assessment in the hands of the assessee. On the issue of validity of notice issued in the name of the company, it noted that conversion of the private limited company into a LLP was noticed and mentioned in the tax evasion report, reasons to believe recorded by AO, approval obtained from Pr. CIT and order u/s. 127, however, the only mistake was made in addressing the notice and accordingly held that the same was as an 'error' and a 'technical lapse' which could be cured u/s. 292B.
Sky Light Hospitality LLP vs ACIT - [TS-57-HC-2018(DEL) - W.P.(C) 10870/2017 and CMNo. 44503/2017 dated FEBRUARY 02, 2018

2689. Where during the original assessment proceedings the AO had partly accepted assessee's claim of deduction under Section 80-IA of the Act but the AO subsequently issued notice under Section 148 of the Act on the ground that the assessee had not prepared a separate P&L and balance sheet of its undertaking, the Court noting that the assessee's claim for deduction u/s 80-IA was examined by AO minutely during scrutiny assessment proceedings and that the AO had given detailed reasons for reducing the claim and accepting rest of claim, held that any attempt now on part of AO to modify this position would be based on change of opinion. Accordingly, it set aside the notice issued under Section 148 of the Act.
AJANTA PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX AND ANOTHER - (2018) 101 CCH 0123 GujHC - SPECIAL CIVIL APPLICATION NO. 15865 of 2016 dated Feb 5, 2018

2690. The Court upheld initiation of reassessment proceedings in a case where income chargeable to tax for relevant year which had escaped assessment was more than one lakh in view of the provisions of section 149(1)(b), according to which proceedings could be taken for six years as against four years limitation as provided under section 149(1)(a), if income chargeable to tax which had escaped assessment amounted to or was likely to amount to one lakh rupees or more.
DR. A. V. Sreekumar v CIT – (2018) 90 taxmann.com 355 (Ker) - ITA No. 186 of 2013 dated 24.01.2018

2691. The reassessment notice issued u/s 148 in the case of the assessee, engaged in business of development of housing projects, whose claim for deduction u/s 80-IB for AY 2010-11 was allowed by the AO during scrutiny assessment after making due enquiries on ground that the claim of assessee for deduction was rejected in AY 2013-14 as it sold two separate residential units to a husband and wife, in contravention of section 80-IB(10)(f)(i). The Court set aside the notice issued u/s 148 as there was absence of allegation of allotment of residential units in breach of conditions as prescribed in section 80-IB for assessment year under consideration i.e. AY 2010-11.
Royal Infrastructure v DCIT – (2018) 91 taxmann.com 309 (Guj) – Special Civil Application No. 23178 of 2017 dated 21.02.2018

2692. The Court quashed the reassessment notice issued u/s 148 in the name of deceased father of the assessee-son (being the legal representative), relying on the decision in the case of Rasid Lala v ITO (2017) 77 taxmann.com 39 (Guj) wherein it was held that notice was required to be issued in name of heir of deceased assessee in a case where the reassessment proceedings were initiated against dead person after a long delay, even if section 159 was attracted. In the present case also, the authorities were very well aware that the current assessee was heir and legal representative of deceased

assessee, though more than four years had lapsed after the death of the assessee, the impugned notice was issued in name of deceased. As regards section 292BB deeming notices issued under the Act to be valid where an assessee had appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it was held that nothing contained in the said section should apply in the present case since the assessee had raised the objection before completion of such assessment or reassessment.

JAYDEEPKUMAR DHIRAJLAL THAKKAR v ITO – (2018) 401 ITR 0302 (Guj) – SPECIAL CIVIL APPLICATION NO. 17186 of 2017 dated 22.01.2018

2693. The Court dismissed Assessee's writ petition filed against the notice issued u/s 148 for initiation of reassessment proceeding holding that income of assessee had escaped assessment since deduction granted u/s 10B for AY 2005-06 was proposed to be disallowed in view of non-compliance with section 10B(3) providing for bringing the foreign export receipts into Country, within six months from close of previous year. The Court held that the reassessment proposed, within six year period was perfectly in order, if said amounts have not already been disallowed in original assessment order itself.

SUNTEC BUSINESS SOLUTIONS PVT. LTD. v UNION OF INDIA AND OTHERS – (2018) 401 ITR 0101 (Ker) – WA No. 1094 of 2013 dated 09.01.2018

2694. Where pursuant to survey, incriminating documents showing receipt of unaccounted cash and professional income by assessee were found and impounded and after accepting to have received the same, assessee had included the income in return filed by him in response to reassessment notice and the same was accepted by AO during assessment proceedings, the Court set aside the notice issued u/s 148 for reopening assessment which was issued on the ground that the figures of unaccounted cash amounts in the entries in impounded material were recorded after dropping one zero and that, accordingly, assessee had not disclosed true particulars of his unaccounted income even in said return. The Court held that there was no new information or material which did not form part of original assessment proceedings and, thus, AO could not issue fresh reassessment notice, that too, beyond a period of four years.

Jalil Abdulbhai Shaikh v DCIT – (2018) 254 Taxman 26 (Guj) – Special Civil Application Nos. 16898 &19899 of 2017 dated 06.02.2018

2695. Where assessee, a partnership firm made payment of certain sum as pension to retiring partners as per partnership deed and the same was allowed in original assessment, the Court held that initiation of reassessment proceedings to disallow said payment opining that since a partner was not an employee of firm, not entitled to pension after retirement and thus, capital in nature, beyond the period of four years from the end of relevant assessment year, was unjustified. It held that all these details were on record before AO, when original assessment proceedings were being made and there was nothing outside of record which could have thrown any light on nature of payment and its deductibility and thus, there was no failure on part of assessee.

Deloitte Haskins & Sells v DCIT – (2018) 253 Taxman 490 (Guj) – Special Civil Application Nos. 22407 & 22408 of 2017 dated 06.02.2018

2696. The assessee's return of income was accepted by revenue authorities u/s 143(1) without scrutiny and subsequently, based on information received, the AO reopened the assessment on the ground that the assessee had booked contrived losses to extent of Rs.16.51 lakhs through NMCE platform operated by certain person. Taking note of the assessee's submission that he had never claimed loss of Rs. 16.51 lakhs and that the said figure appearing in his balance sheet was on credit side and, in fact, had received said sum of Rs. 16.51 lakhs and not suffered such an alleged loss, the Court set aside the reassessment notice issued u/s 148 holding that since there was nothing on record showing that said sum of Rs.16.51 lakhs was a loss claimed by assessee, the reason recorded by AO for reopening assessment was palpably incorrect.

Narendrakumar Mansukhbhai Patel v ITO – (2018) 92 taxmann.com 259 (Guj) - Special Civil Application nos. 16788 to 16790 of 2017 dated 07.02.2018

2697. Where AO had reopened assessment proceedings on the ground that certain amount deposited in bank account by the assessee could not be verified as the assessee had not filed the return of income (since

the return was not reflected in IT System of department), taking note of the fact that assessee had filed return manually which had been duly acknowledged and in said return assessee had furnished proper details in respect of contractual receipts deposited in bank account, the Tribunal quashed the impugned reassessment proceedings.
Narain Dutt Sharma v ITO – (2018) 91 taxmann.com 463 (Jaipur Trib) – ITA No. 203 (JP.) of 2017 dated 07.02.2018

2698. Where the assessee had purchased certain shares at Rs. 10 per share, the value of which were less than Rs. 5 per share as per rule 11UA and there was a complete disclosure of all facts during regular assessment proceedings, the Court held that reassessment notice issued u/s 148 for valuing these shares at Rs. 35 as per valuation by Government valuer was without jurisdiction since the impugned notice indicated a change of opinion, as this very issue namely - valuation of share was a subject matter of consideration during the regular assessment proceedings and further, the Explanation to section 56(2)(vii) states that the fair market value is to be determined in accordance with the Income-tax Rules i.e. Rule 11UA. Accordingly, it admitted the assessee's petition and granted interim relief by staying the reassessment proceedings.
Shahrukh Khan v DCIT – (2018) 253 Taxman 487 (Bom) – Writ Petition No. 58 of 2018 dated 08.02.2018

2699. The Apex Court dismissed the SLP filed by assessee against the High Court's order wherein the High Court had held that merely because reasons recorded by AO proceeded on same basis on which the AO had initially desired to make additions but which failed on account of setting aside order of assessment [since the assessment was carried out without issuing notice u/s 143(2)], it would not preclude AO from carrying out exercise of reopening of assessment.
Krishna Developers & Co. v DCIT – (2018) 91 taxmann.com 306 (SC) – Petition(s) Special Leave to Appeal (C) No. 23760 of 2017 dated 08.02.2018

2700. The Apex Court dismissed the SLP filed against the High Court wherein the High Court had quashed the re-opening notice issued u/s 148 in absence of any tangible material available to prima facie show that the assessee had received any money in cash on account of sale consideration of land over and above the consideration mentioned in the sale deed other than one 'Sauda Chitthi' seized from third party wherein neither the assessee (seller) nor the purchaser was signatory and which was not acted upon.
ITO v Chintan Jadavbhai Patel – (2018) 91 taxmann.com 426 (SC) – SLP (Civil) Diary No. 1464 of 2018 dated 09.02.2018

2701. Where the AO initiated the reassessment proceedings on the reasoning that he had received information from Investigation Wing of department that the assessee had received certain amount by way of loan from a company working as an entry operator and it was noted that the reasons recorded did not proceed only on the information supplied by the Investigating Wing but the AO had applied his mind and formed his belief that the income chargeable to tax had escaped assessment, the Court dismissed the assessee's petition filed against the notice issued u/s 148 holding that there was sufficient material before AO to form a belief that income of assessee had escaped assessment and also in view of the fact that the said belief was formed based on the above referred information received after original assessment was over.
Jayant Security & Finance Ltd. v ACIT – (2018) 91 taxmann.com 181 (Guj) – Special Civil Application No. 18921 of 2017 dated 12.02.2018

2702. The assessee-company had transferred certain shares of huge market value to its subsidiary company without consideration and this transaction was scrutinized during original assessment and no additions were made by AO. The AO issued notice u/s 148 to initiate reassessment proceedings on the ground that even though capital gain could not be charged, assessee had to pay dividend distribution tax on transferred shares, as such transfer amounted to payment of dividend as per section 2(22)(a). The Court set aside the notice issued u/s 148, holding that once (after scrutinizing the transaction with respect to the issue whether such transaction would invite capital gain tax) the AO had not expressed that assessee had to pay dividend distribution tax in original order of assessment, he could not have a

second inning to examine same transaction from a different angle by resorting to reopening of assessment.

Demuric Holdings (P.) Ltd. v ACIT – (2018) 91 taxmann.com 270 (Guj) – Special Civil Application No. 22517 of 2017 dated 14.02.2018

2703. Where the return of income filed by the assesse-trust was accepted u/s 143(1) and reassessment notice u/s 148 was issued on ground that assessee-trust had deposited cash in a bank account and that no return of income was filed by assessee for relevant assessment year, the Court set aside the impugned notice noting that the AO in reasons recorded, proceeded on erroneous footing that the assessee had not filed return at all but the assessee did file return of income for year under consideration which was duly acknowledged by department. Further, it had noted that the AO only contended that cash deposits could only be verified through reassessment and he did not even contend that said cash deposits were not duly reflected in return filed, but that he wished to verify validity of such deposits. Thus, it held that reopening of assessee was not permissible for mere verification or for a fishing inquiry.

Sunrise Education Trust v ITO – (2018) 92 taxmann.com 74 (Guj) – Special Civil Application No. 16726 of 2017 dated 19.02.2018

2704. The Court set aside the notice issued u/s 148 and annulled the assessment order passed u/s 143(3) r.w.s. 147 on ground of merger of order, in a case where the assessee's claim for deduction u/s 80-IA which was rejected by the AO under scrutiny assessment was allowed by the CIT(A) in entirety and the assessment was reopened on the grounds viz. firstly, post monitoring expenses under heading "Long term provisions" was not actual expenses but merely a provision and not an allowable expenditure u/s 37(1); secondly, cell utilization expenses claimed as deduction was contingent expenditure which might be or might not be incurred in future and hence, not allowable u/s 37(1); thirdly, amount debited on account of land utilization was a sort of depreciation on land which was not allowable. It held that the initial assessment order of AO had merged with order of CIT(A) and thereafter it could not be open for AO to reopen the same claim for possible disallowance of part thereof.

Gujarat Enviro Protection & Infrastructure Ltd. v DCIT– (2018) 91 taxmann.com 436 (Guj) – Special Civil Application no. 16165 of 2017 dated 19.02.2018

2705. The Court quashed the notice issued u/s 148 in a case where the assessee's claim for deduction u/s 80-IA which was rejected by the AO under scrutiny assessment was allowed by the CIT(A) in entirety and the assessment was reopened, after four years from the end of the relevant assessment year, on the ground that amount on which assessee had claimed deduction included interest income assessable under head 'Income from other sources' and same was not derived from infrastructure development activity of assessee, thus, could not be considered for deduction u/s 80-IA. It noted that during the scrutiny assessment, the AO had examined the assessee's claim of deduction u/s 80-IA as well as the assessee's treatment to interest income and assessee's reply to the AO showed that out of the total interest income, the assessee had attributed a sum of certain amount as business income and, thus, it held that there was no failure on the part of the assessee to disclose fully and truly all relevant facts. Further, it held that once AO had rejected claim of deduction u/s 80-IA(4) in its entirety and, in appeal, the CIT(A) had allowed the said claim, it would thereafter be not open for AO to reassess this very claim for possible disallowance of part thereof on some additional ground due to merger of order. The Tribunal, however, rejected the assessee's contention of possible change of opinion holding that since the AO had rejected entire claim, he had no occasion to thereafter comment on a part of such claim relatable to the assessee's interest income.

Gujarat Enviro Protection & Infrastructure Ltd. v DCIT– (2018) 91 taxmann.com 186 (Guj) – Special Civil Application no. 16163 of 2017 dated 19.02.2018

2706. The Court dismissed the petition filed by the assessee against initiation of reassessment proceedings by the AO after recording the reasons for reopening to be receipt of information from Investigation Wing of department that assessee had received certain amount by way of share capital and share premium from several shell companies which were working as an accommodation entry providers. It noted that there was material on record suggesting that AO had received entirely new set of documents and materials for his consideration in form of report received from investigation wing and such materials did

not form part of original assessment proceedings. The Court held that since Assessing Officer had sufficient material at his command to form a reasonable belief that income chargeable to tax had escaped assessment, merely because these transactions were scrutinised by the AO during original assessment would not preclude him from reopening assessment.
Aradhna Estate (P.) Ltd. v DCIT– (2018) 254 Taxman 1 (Guj) – Special Civil Application no. 21999 of 2017 dated 20.02.2018

2707. The Tribunal allowed assessee's appeal and held the assessment order passed u/s 143(3) r.w.s. 147 to be invalid on the ground that the reopening was barred by the limitation provided in the first proviso to section 147, in a case where the AO had reopened the assessment after expiry of four years from end of relevant year to disallow u/s 40(a)(ia) in respect of failure of assessee to deduct tax at source from payment of channel rent and it was noted that the reasons recorded by the AO didn't point out to any failure on the part of the assessee as contemplated in the first proviso to section 147 (i.e. either to file return or to disclose fully and truly all material facts necessary for his assessment).
Dipak Kumar Dasbhowmik v ITO – (2018) 92 taxmann.com 75 (Kolkata Trib) – ITA No. 2384 (Kol) of 2017 dated 23.02.2018

2708. The Court dismissed the Petition filed by the assessee against the initiation of reassessment proceedings u/s 148 in case where the assessment was reopened based on a report of Auditor resulting from a special audit directed by the Forward Market Commission, received after completion of assessment, wherein it was observed that claims made by assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to a charitable trust u/s 80G were *prima facie* bogus as assessee could not substantiate their genuineness by providing relevant documents and evidences, holding that the special audit report was a fresh tangible material which formed basis of AO's reasonable belief that income chargeable to tax had escaped assessment.
Multi Commodity Exchange of India Ltd. v DCIT– (2018) 91 taxmann.com 265 (Bom) – Writ Petition no. 2739 of 2017 dated 23.02.2018

2709. The Court upheld the Tribunal's order quashing the reassessment proceedings initiated u/s 148 in a case where the assessment was reopened on the basis of audit part objection against the deduction allowed u/s 80-IB in respect of duty drawback incentive and it was noted that the reasons recorded by the AO to reopen assessment were identical to the audit objections. It held that there was no material on record to even remotely suggest that the AO had any independent application of mind (without being influenced by audit report).
CIT v Rajan N. Aswani – (2018) 91 taxmann.com 313 (Bom) – ITA No. 606 of 2015 dated 24.02.2018

2710. Where the AO had not furnished the reasons recorded for reopening the assessment to the assessee after the same being sought by the assesssee, the Court set aside the reassessment order passed u/s 143(3) r.w.s. 147 and directed the AO to consider the assessee's request for furnishing the reasons recorded for reopening the assessment within a period of 15 days from the date of receipt of a copy of the Court's order and the assessee to file her objections/reply within 30 days after furnishing of such reasons for reopening so as to enable the AO to consider the same and redo the assessment as expeditiously as possible.
Manjula Athur v ITO – (2018) 91 taxmann.com 438 (Mad) – W.P. No. 33318 of 2017 W.M.P. Nos. 36760 of 2017 & 2328 of 2018 dated 27.02.2018

2711. Where assessee submitted that the gratuity expenses had been claimed and allowed to it with respect to the scheme which was approved by CIT way back in year 1976 and after that LIC undertook responsibility to manage same and on said basis it had been raising claim year after year right since its inception without any issue being raised by AO in this regard in the past years, the Court set aside the notice issued u/s 148 to initiate reassessment proceedings on ground that the said deduction was wrongly claimed as the gratuity scheme was not approved as per requirements of section 36(1)(v). It held that merely because assessee did not provide an additional declaration in its return that the scheme was approved and was unable to produce a copy of order approved by CIT, it could not be categorized as failure on part of assessee to disclose truly and fully all material facts so as to validate

the issuance of impugned notice beyond a period of four years from the end of the relevant assessment year, irrespective of the fact that the AO during the original assessment has not pointedly examined this aspect, nor raised any queries for being satisfied about this claim of deduction.
Valsad District Central Co-Op. Bank Ltd. v ACIT – (2018) 92 taxmann.com 280 (Guj) – Special Civil Application No. 20801 of 2017 dated 05.02.2018

2712. The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that the assessment made u/s 143(3) r.w.s. 147 could not be sustained, where the AO had reopened the assessment on the ground that since bogus purchases were found during search proceedings in the case of assessee for subsequent years, a similar discrepancy in respect of the purchases of the assessee could be inferred for the year under consideration. It held that in absence of any failure on part of assessee to disclose fully and truly all material facts necessary for its assessment, the concluded assessment of assessee could not be reopened after lapse of period of 4 years from end of relevant assessment year and mere drawing of inferences by the AO for year under consideration, on basis of facts pertaining to subsequent years, could not form basis for reopening assessment.
DCIT & ORS. v WIND WORLD (INDIA) LIMITED – (2018) 52 CCH 50 (Mum) – ITA No. 5714/Mum/2015 dated 17.01.2018

2713. The Tribunal allowed assessee's appeal against the reopening of assessment and held the same to be bad in law noting that the reasons for reopening were not communicated to the assessee violating the directions of the Apex Court in the case of GKN Drive Shaft [259 ITR 19] (SC)
N. SRINIVAS v JCIT – (2018) 52 CCH 34 (Hyd Trib) – ITA No. 1400/HYD/2012 dated 12.01.2018

2714. The AO initiated reassessment proceeding u/s 147 on the reason that certain investment was made out of undisclosed income of assessee, which escaped assessment. However, the addition was made on issue of capital gain arising on transfer of property and the CIT(A) while deciding the matter against assessee relied on the decision in the case of Sri N Govindaraju vs. ITO (2015) 377 ITR 243 (Kar.) wherein it was held that if notice u/s 148 was found to be valid, then addition could be made on all grounds or issues (with regard to 'any other income' also) that may come to notice of the AO subsequently during course of proceedings u/s 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive. The CIT(A) rejected the reliance placed by the assessee on the decisions in the case of Ranbaxy Laboratories v CIT (2011) 336 ITR 136 (Del HC) and CIT v Jet Airways India Ltd. (2011) 331 ITR 236 (Bom) on the ground that the decision of Sri N Govindaraju (supra) was rendered later than Ranbaxy Laboratories (supra) and Jet Airways India Ltd. (supra). The Tribunal held that the reasoning adopted by CIT(A) was not in accordance with law. Noting that neither of the above decisions were rendered by the jurisdictional High Court, it held that where two non-jurisdictional High Court's decisions are opposed to each other, one in favour of assessee is required to be followed by the Tribunal and, thus, it set aside and cancelled the reassessment order.
MEENA KUNDRA v ITO – (2018) 52 CCH 38 (Agra Trib) – ITA No. 67/AGR/2017 dated 11.01.2018

2715. The AO had received information from Addl. DIT (Inv) stating that that the assessee had received bogus entry in form of gift from one D and addition was also made on account of bogus gift but the AO had initiated re-assessment proceedings u/s 147 r.w.s. 148 on the basis of reasons to believe escapement of income being bogus purchase/sale of shares. The Tribunal held that the reasons recorded were vague and farfetched which showed that the AO had no specific information. Noting that the assessee had not entered into any transaction of purchase/sale of shares and no new adverse information was brought on record which could suggest any justification for satisfaction to initiate proceedings u/s 147/148, in spite of specific request of assessee, it held that the AO had not discharged his onus to prove that income had escaped assessment, rendering initiation of reassessment proceedings void. It thus held that initiation of reassessment proceedings was bad in law.
PRIYANK MITTAL v ITO – (2018) 52 CCH 45 (Agra Trib) – ITA No. 268/Agra/2016 dated 08.01.2018

2716. The Tribunal allowed the cross objection raised by the assessee against the CIT(A)'s order holding that non-issue of notice u/s 143(2) by itself could vitiate reassessment proceedings initiated by the AO and it held in the absence of any notice issued u/s 143(2) after receipt of fresh return submitted by the

assessee in response to notice u/s 148, the reassessment order passed was bad, void ab initio. In view of above decision, the appeal filed by the Revenue was held to be infructuous.
ACIT & ANR. v DIMENSION PROMOTERS PVT. LTD. & ANR. – (2018) 52 CCH 1 (Del Trib) – ITA No. 1105/Del./2011 (C.O. No. 326/Del./2011) dated 02.01.2018

2717. The Tribunal set aside the reassessment proceedings flowing from invalid initiation in the case where the assessee-company's income was assessed during the assessment accepting taxability of operational revenue u/s 44BB @ 10% and the assessment was sought to be reopened u/s 148 on the ground that assessee's income was from 'Fees for technical services', taxable @ 20% u/s 44DA r.w.s. 115A. It held that it was clear case of change of opinion which could not justify initiation of reassessment, noting that –

- the services provided by assessee were found to be covered by provisions of section 44BB
- all necessary details about taxability of assessee's income u/s 44BB were available before AO at time of original assessment
- original assessment was made by the AO with full knowledge of nature of work carried out by assessee
- no fresh material came into existence igniting the AO to initiate reassessment

Further, the Tribunal noted that the provisions of section 44DA were inserted from AY 2011-12 and relied on the jurisdictional High Court in the case of B.J. Services Company Middle East Ltd. & Ors. Vs. DDI(IT) (2011) 339 ITR 169 (Uttarakhand) wherein the said section was held to be prospective and under similar circumstances initiation of reassessment were also held to be invalid.
IPR INTERNATIONAL LTD. v ADIT (IT) – (2018) 52 CCH 87 (Del Trib) – ITA No. 4408/Del/2011 dated 23.01.2018

2718. Where in case of the assessee-charitable trust (engaged in livestock development), the AO had raised a specific issue with regard to assessee-trust's activity and verified whether its income was covered by term 'charitable purpose' as appearing in section 2(15), the Court admitted the assessee-trust's petition holding that the notice issued u/s 148 on belief that income chargeable to tax had escaped assessment in respect of certain amounts received from State Govt. on the ground that the assessee-trust's activity would not be covered within definition of charitable purpose u/s 2(15), was prima facie a case of change of opinion. Accordingly, it also granted interim stay.
J.K. Trust Bombay v DCIT – (2018) 91 taxmann.com 269 (Bom) - Writ Petition Nos. 2469 & 2472 of 2017 dated 25.01.2018

2719. The AO after due application of mind had allowed assessee to carry forward deficit of earlier year at the time of scrutiny assessment. Subsequently, only on the basis of an audit objection, for making disallowance of adjustment of carry forward deficit on the ground that income of the trust was not computed as business income which is a pre-requisite for allowing carry forward and set off of losses of earlier years against income of current year, the AO reopened the assessment by issuing notice u/s 148. The Court held that the notice was based on a mere change of opinion and, thus, not sustainable. Further, with respect to assesses's contention that the AO had not considered the objections filed by it against the reopening, it held that, in view of decision of GKN Driveshafts (India) Ltd. v. ITO (2002) 125 Taxman 963 (SC), the AO is bound to decide on the objections raised by assessee against reasons recorded for reopening of assessment where such objections were filed prior to framing of assessment order, irrespective of the fact that the objections were submitted belatedly, almost after 100 days after receipt of reasons recorded. Consequently, the Court quashed the notice issued u/s 148 as well as the reassessment order passed u/s 143(3) r.w.s. 147.
Bharatmaiya Memorial Foundation v DCIT – (2018) 91 taxmann.com 25 (Guj) - Special Civil Application No. 20513 of 2017 dated 25.01.2018

2720. The Court quashed the notice u/s 148 for reopening assessment issued after expiry of four years from the end of relevant assessment year, noting that there was no failure on part of assessee as to full and true disclosure at time of assessment and that reassessment proceedings could not be initiated on the basis of a mere change of opinion, wherein during the course of scrutiny assessment, AO had allowed

assessee's claim for deduction u/s 80-IB(8A) after a detailed analysis in relation to the activities carried out by the assessee and the reopening was sought on the ground that income of assessee was not eligible for claim of deduction u/s 80-IB(8A) since assessee was providing professional services of research to its clients, which did not lead to any technology development.
Lambda Therapeutic Research Ltd. v ACIT – (2018) 90 taxmann.com 308 (Guj) – Special Civil Application no. 16338 of 2017 dated 29.01.2018

2721. In the case of the assessee-firm which was converted into a private limited company where notice u/s 148 was issued to tax the income upto the date of succession in the hands of the firm, the Court quashed the notice on the ground that it was issued based on change of opinion. It Court noted that the AO during scrutiny assessment had accepted the return of income declaring nil income upon being convinced by explanation given by assessee that the profit earned till conversion was transferred to successor company and company also paid tax on same.
Giriraj Steel v DCIT – (2018) 91 taxmann.com 342 (Guj) – Special Civil Application no. 18138 of 2017 dated 31.01.2018

2722. The Court quashed the reassessment proceedings initiated by issue of notice u/s 148 noting that there was no fresh material available with AO for reopening and, thus, in absence of any tangible fresh material, reopening of an assessment after four years cannot be done. During the original scrutiny assessment, the AO had allowed assessee's claim for depreciation u/s 32 with respect to vendor and dealer network and goodwill acquired under a business purchase. However, on basis of an audit objection raised by audit party, AO called for an explanation on the said claim for depreciation and initiated reassessment proceedings. It was further noted that based on the information obtained by the assessee under RTI, it was clear that on objection being raised by audit party (CAG), the AO stood by his decision of allowing the said claim.
Mobis India Ltd. v DCIT – (2018) 90 taxmann.com 389 (Mad) - Writ Petition no. 11371 of 2016 WMP no. 9819 of 2016 dated 24.01.2018

2723. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order quashing re-assessment orderpassed by the AO u/s 147 r.w.s. 143(3) where the assessment was reopened after 4 years from the ended of the relevant assessment year on the ground that income chargeable to tax had been escaped assessment in view of wrong claim made u/s 80IB (4) of the Act and the CIT(A) had held that there was no allegation that the assessee had failed to disclose fully and truly all material facts necessary for assessment (which is prerequisite for reopening after 4 years from the end of the relevant assessment year). Further, the AO had reopened the assessment on mere change of opinion without there being any new material which suggests escapement of income.
ASSISTANT COMMISSIONER OF INCOME TAX vs. DIAMOND TOOL INDUSTRIES - (2018) 53 CCH 0160 (MumTrib) - ITA No.6936 to 6938, 6940 & 6941/M/2016 dated Jun 13, 2018

2724. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the initiation of reassessment proceeding u/s 147 which was reopened solely on the basis of basis of information received by the AO from Investigation Wing, noting that the Pr.CIT had given the approval for initiating the said proceedings without applying his mind in a slip-shod manner by only writing the word "approved". Therefore, it quashed the reassessment proceedings u/s 147 initiated by issuing the notice u/s 148 on the basis of mechanical approval by the Pr. CIT without recording satisfaction on objective material.
GORIKA INVESTMENT AND EXPORT (P) LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0168 (DelTrib) - ITA No. 3396/Del/2018 dated Jun 13, 2018

2725. The Tribunal accepted the assessee's appeal against the CIT(A)'s order upholding the reassessment proceedings u/s 147 by considering the assessee to be the agent of the non-resident to whom he had made payment towards purchase of property without deducting TDS u/s 195. It was noted that the notice u/s 148 was issued on 24.03.2014 whereas as per section 149(3) time limit for issue of notice u/s. 148 in case of agent of non-resident was two years from end of relevant assessment year, which had expired on 31.03.2010 and the amendment made to section 149(3) to provide for six years instead of two years was only effective from 01.04.2012. Thus, it heldthat the reassessment proceedings

initiated by the AO was barred by limitation and accordingly, quashed the notice issued u/s 148 and held the consequent assessment proceedings to be void ab initio.

V. PRATIM ARAO & ORS. vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) & ORS. - (2018) 53 CCH 0114 VishakapatnamTrib - ITA No. 69/Viz/2018, 70/Viz/2018, 71/Viz/2018, 72/Viz/2018, 73/Viz/2018, 74/Viz/2018 dated Jun 6, 2018

2726. The Court upheld the Tribunal's order holding the re-opening of assessment u/s 147 r.w. 148 to be bad in law as it was based on change in opinion of the AO, noting that the assessment was sought to be reopened for disallowing deduction u/s 80-IC on 'other income' whereas the claim of section 80-IC deduction was the subject matter of enquiry by AO in the regular assessment proceedings. It held that the AO was conscious of the claim of deduction made by the assessee u/s 80IC which led to the enquiry and it was for the AO to decide the extent and nature of enquiry in respect of claim u/s 80IC. It further held that when the AO had taken a conscious decision of making enquiry u/s 80IC then it was not open to him to turn around and claim that certain aspects of the claim u/s 80IC were not considered by him. It also rejected the reliance placed by the Revenue on the decision in the case of Export Credit Guarantee Corporation of India Ltd. v. ACIT (2013) 350 ITR 651 (Bom) wherein the re-opening was held to be valid since no query had been raised during the regular assessment by the AO, thus indicating non-application of mind. It held that in the present case, the reasons for re-opening were not premised on non-application of mind by the AO to the claim for deduction u/s 80IC, but it proceeded to exclude 'other income' from the claim on account of omission by the AO during the regular assessment proceedings.

Pr.CIT v Century Textiles and Industries Ltd [TS-178-HC-2018(BOM)] – ITA No. 1367 of 2015 dated April 4, 2018

2727. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order quashing the reassessment proceedings in a case where the AO had reopened the assesseement u/s 147 r.w.s. 148 on the reasons that a complaint was received from the PMO which alleged that the assesse had much more income that the income declared to the income-tax department and also stated the minimum charges for decoration and arrangement for marriages and other parties per day was Rs.6 lakhs, whereas it was noted by the Tribunal that the assessee was in catering business (i.e. not decoration, etc.). It held that the nature of the complaint was known and the AO had reopened the assesse without verifying the information received. The Tribunal held that the information received by the AO could raise suspicion against the assessee but without any basis and without any tangible material, reason to suspect could not become the reason to believe that income had escaped assessment.

INCOME TAX OFFICER & ANR. vs. S.K. CATERERS PVT. LTD. & ANR - (2018) 53 CCH 0350 (DelTrib) - ITA No. 1647/DEL/2015 (CO No. 302/DEL/2015) dated June 27, 2018

2728. The Court allowed assessee's petition against the initiation of reassessment proceeding by issue notice u/s 148 to disallow assessee's claim for deduction on account of certain amounts debited to the P & L A/c which were not so disallowed during the regular assessment. It was noted that the assessment was sought to be reopened after a period of four years from the end of relevant assessment year. The Court held that for the assessment to be reopened after four years, the jurisdictional requirement of showing that there had been a failure on the part of the assessee to disclose the material facts had to be fulfilled and where such requirement was not present, it was open to the assessee to challenge the action of reopening by invoking Article 226 of the Constitution of India. It held that in the present case the assesse had produced all the necessary documents before the AO and the fresh exercise was only a change of opinion. Thus, the AO had no jurisdiction to proceed u/s 147 r.w.s. 148.

GOA STATE COOP. BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR - (2018) 102 CCH 0165 (MumHC) - WRIT PETITION NO. 33 OF 2018 dated June 27, 2018

2729. The Court upheld the Tribunal's order quashing the entire reassessment proceeding where it was noticed that no notice u/s 143(2) was issued by the AO before undertaking the reassessment. The Court relied on the Apex Court decision in the case of ACIT v. Hotel Blue Moon [321 ITR 362 (SC)] wherein it was held that omission on the part of the AO to issue notice u/s 143(2) within the time allowed to do so, for the purpose of completing an assessment, was not a procedural irregularity and the same was not curable and, therefore, the requirement of notice u/s 143(2) could not be dispensed

with. It also held that section 292BB also does not dispense with the issuance of any notice that is mandated to be issued under the Act, but merely cures the defect of service of such notice if an objection in such regard is not taken before the completion of the assessment or reassessment.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. OBEROI HOTELS PVT. LTD. -(2018) 102 CCH 0108 (KolHC) - ITAT No.152 of 2015 & GA No. 3671 of 2015dated June 22, 2018

2730. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order quashing the assessment order passed pursuant to reassessment notice issued u/s 148 since the said notice was issued during the pendency of scrutiny assessment proceedings, relying on the decision in the case of Trustees of H.E.H the Nizam's Supplement Family Trust Vs. CIT [242 ITR 381 (SC)] wherein it was held that unless the return of income already filed is disposed of, notice for reassessment under section 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.
ASSISTANT COMMISSIONER OF INCOME TAX vs. KAKADE INFRASTRUCTURE PVT. LTD. - (2018) 53 CCH 0206 (PuneTrib) - ITA No. 854/PUN/2015dated June 20, 2018

2731. The Tribunal held the notice u/s 148 and all the proceedings pursuant thereto to be null and void ab initio noting that the AO had not recorded anywhere in the reasons for reopening assessment, after four years from the end of the relevant assessment year, suggesting/ showing that the income chargeable to tax which had escaped assessment was Rs.1 lakh or more. It relied on the decision in the case of Mahesh Kumar Gupta Vs. CIT [363 ITR 300 (All)]wherein it was held that since the assessment had been reopened after four years from the end of the relevant assessment year, the sanctioning authority should have been made aware of the fact that the case been dealt with involved income chargeable to tax which had escaped assessment was Rs.1 lakh or more and that it had exercised power of extended period of limitation u/s 149(1)(b).
USHA AGARWAL vs. INCOME TAX OFFICER - (2018) 53 CCH 0318 (AgraTrib) - ITA No. 167/Agra/2018 dated June 19, 2018

2732. The Court granted interim stay to the reassessment proceedings initiated by issue notice u/s 148, holding that prima facie the said notice was issued without jurisdiction since the reasons in support of the same indicated change of opinion. The assessment was sought to be r-teeopened to disallow the assessee's claim for deduction with respect to provisionmade for diminution on account of restructured Advances in accordance with the RBI guidelines. It was noted that the assessee had claimed the said deduction in the computation of income and the notes annexed thereto made a reference to the fact of such provision made in accordance with RBI guidelines. Further, it was noted that the assessment order passed by the AO during regular assessment mentioned about examining the computation of income and certain disallowances were also made but there was no disallowance on account of the said provision. The Court held that it must necessarily be inferred that the AO had applied his mind at the time of passing an assessment order to this particular claim made in the basic document viz. computation of the income by not disallowing it in proceedings u/s 143(3) as he was satisfied with the basis of the claim as indicated in that very document and, therefore, where he accepted the claim made, the occasion to ask questions on it would not arise nor did it have to be indicated in the order passed in the regular assessment proceedings. It was thus, held thatissuing the impugned notices on the above ground, prima-facie, amounted to change of opinion.
STATE BANK OF INDIA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0087 MumHC- WRIT PETITION NO. 271 OF 2018 ALONGWITH WRIT PETITION NO. 278 OF 2018 dated June 20, 2018

2733. The Tribunal set aside the notice issued u/s 148 and held the reassessment order passed pursuant to such notice to be unsustainable on account due to non-service of valid notice. The AO had claimed to have served to the deceased-assessee notice u/s 148 as well as 142(1) through affixture at his last known address and notice u/s 142(1) to the legal heir (after knowing about the assessee's demise) again through affixture and receiving no response, framed the assessment u/s 144. The Tribunal held that there were many doubts with regard to genuineness of service of notice on deceased assessee because if notice had been served then certainly the notice server would had used his due and reasonable diligence for not finding deceased assesse. Further, it was held that the AO never tried to

serve legal heir in ordinary way, however made attempt only through substituted service which also created lots of doubts about service and validity of notices which was not a mere procedural requirement but was mandatory. The Tribunal thus held that no notice was properly served either u/s 148 or 142(1) upon deceased assessee or his sole legal heir.
SHRIDHAR BEDI THROUGH LEGAL HEIR vs. INCOME TAX OFFICER - (2018) 53 CCH 0171 (AsrTrib) - ITA No. 02(Asr)/2017 dated June 20, 2018

2734. The Tribunal quashed the notice issued u/s 148 for initiating reassessment proceedings where the assessment was reopened solely on the basis of basis of information received by the AO from Investigation Wing and the Pr. CIT had given approval mechanically in a slip-shod manner without recording satisfaction on the objective material. It was noted that the Pr.CIT gave the approval by writing the word "approved", without mentioning how and in what manner he was satisfied. It thus held that it could not be said that the Pr. CIT had applied his mind while giving the approval for reopening the assessment. The Tribunal relied on the decision in the case of Pr. CIT v N. C. Cables Ltd. [ITA No. 335/2015 (Del HC)] wherein it was held that the competent authority, authorizing the reassessment notice, has to apply his mind and form an opinion and mere appending of the expression 'approved' says nothing.
GORIKA INVESTMENT AND EXPORT (P) LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0168 (DelTrib) - ITA No. 3396/Del/2018 dated June 13, 2018

2735. The assessee company, engaged in business of manufacturing of overhead transmission lines, cables and conductors was served a notice u/s 148 based on audit objection.AO observed that assessee had not complied with provisions of section 145A of Act and had failed to include excise duty while valuing closing stock at end of year. The CIT(A) upheld the order of the AO. Tribunal observed that as per the audit certificate providing details of valuation of closing stock of the assessee, such value was derived after adding excise duty to basic price of goods and further adding other charges. Further, the Tribunal opined that the AO had merely made guess work on such audit objection and thereby made addition without bringing any material on record to prove that opening and closing stock valued by assessee company did not contain element of excise duty and taxes. Thus, the Revenue's appeal was dismissed.
ACITvs. NARMADA TRANSMISSION PVT. LTD. (INDORE TRIBUNAL) (ITA No. 215/Ind/2015) dated May 31, 2018(53 CCH 0202)

2736. Where re-assessment notice was issued in the name of erstwhile company despite the company having ceased to exist as it had been converted into LLP, the Court held that the same would not invalidate the re-assessment proceedings as wrong name mentioned in the said notice was merely a clerical error which could be corrected u/s 292B.
Sky Light Hospitality LLP v. ACIT – [2018] 92 taxmann.com 93 (SC) – Special Leave to Appeal (C) No. 7409 of 2018 dated April 6, 2018

2737. The Court kept the reassessment proceedings in abeyance noting that the AO had committed lapses in not observing the directives issued by the Supreme Court in GKN Driveshafts (India) v ITO and Ors. (2003) 259 ITR 59 (SC) by not passing a speaking order. It was noted that the assesse had raised an objection that it was not permissible to take the sworn statement in action u/s 133A as it does not have evidentiary value and the same was supported by various decisions referred by the assesse during the hearing. The Court directed that the AO to consider the objections filed by the assessee, refer to the decisions relied on by the assessee and pass a speaking order on merits and in accordance with law.
K. VELAYUTHAM vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0095 ChenHC - W.P.Nos.33917 to 33920 of 2017 & 37620 to 37623 of 2017dated June 13, 2018

2738. The Tribunal allowed assessee's appeal against reassessment proceedings initiated by issuing notice u/s 148 and completed u/s 144, holding the reasons recorded for reopening the said assessment to be null and void. The assessment was reopened by the AO noting that the assesse had made certain deposits in the bank account but was not filing return of income. The Tribunal relied on the decisions in the case of Sunil Kumar Saraswat vs. ITO [ITA No.109/Agra/2017] and Saraf Gramodyog Sansthan vs. ITO [108 ITD 115 (Agra)] wherein it was held that the mere fact that the deposits had been made in the bank account did not indicate that these deposits constituted income which had escaped assessment.

With respect to the reliance place by the Department on the decision in the case of M/s Ginni Filaments Ltd. Vs. CIT [Writ Tax No. 1402/2004 (All)] to contend that adequacy of material before the AO at the time of recording of the reasons cannot be gone into by the Court, the Tribunal held that in that case it was also held that there must be a nexus between the material and the belief of escapement of income and in absence of necessary inquiry by the AO in the light of the information received, the said nexus/ link was missing in the present case.
SATYADEV SINGH vs. INCOME TAX OFFICER - (2018) 53 CCH 0107 (AgraTrib) - ITA No. 243/Agra/2017dated June 04, 2018

2739. Where Joint Commissioner informed the AO that assets on which depreciation was allowed were very old and therefore, their value was nil, reassessment on the basis of said information was unjustified since no basis of giving nil value had been placed on record.
CIT v. S & S Power Switchgear Ltd. – [2018] 92 taxmann.com 429 (Madras) – Tax Case (Appeal) Nos. 849 & 850 of 2008 dated April 3, 2018

2740. The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had upheld the reassessment proceedings initiated by issuing notice u/s 148. The reassessment was sought to be reopened on the ground that information was received from Investigating Wing, based on which the AO was of the view that the source of certain amount invested by the assesse was not disclosed before the department. The Tribunal held that the link between information available with the AO and formation of belief by the AO was missing since from the reasons it was evident that there was no independent application of mind by the AO to material forming basis of reasons recorded. It noted that the AO, in reasons, had just stated information received and his conclusion about alleged escapement of income and as to what the AO did with information made available to him was not discernible from reasons. Further, noting that the material referred to in the reasons on the basis of which the AO had stated to have formed his belief was only supplied to assessee in remand proceedings, where too, objections of assessee were not met, it held that this was in direct contravention of theprinciples of natural justice.
DEEPRAJ HOSPITAL PVT. LTD. & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 53 CCH 0093 AgraTrib - ITA No. 40 &41/Agra/2017dated June 01, 2018

2741. The Court allowed the writ petition filed by the assessee challenging the notice issued u/s 148 on the ground that the proceedings initiated were contrary to the statutory requirements as envisaged u/s 149(1)(b)which contemplates reopening in a case where the escaped assessment amount is or is likely to be Rs.1 lakh or more, if the time limit has elapsed 4 years but not more than 6 years. Noting that the reasons assigned by the AO for initiating reassessment proceedings did not specify that the escaped assessment amounted to or was likely to amount to Rs. 1 lakh or more, it held that it was mandatory for the AO to specify the same in his reasons recorded, to bring the case within the ambit of section 149(1)(b) as it was based on the reasons assigned by the AO, that the CIT /Sanctioning Authority on application of mind could take a decision whether it was a fit case for issuance of notice u/s 148. The Court, thus, quashed the notice issued u/s 148.
Novo Nordisk India (P.) Ltd. v DCIT - [2018] 95 taxmann.com 225 (Karnataka) - WRIT PETITION NO. 21206 OF 2014 (T-IT) dated June 25, 2018

2742. The Court dismissed Revenue's appeal against the Tribunal's and CIT(A)'s order holding the reassessment proceedings to be invalid which were initiated on the ground of non-genuineness of cash received as gifts by the assessee from NRI. It was noted that the AO had carried out detailed enquiry in respect of the said gift while framing block assessment pursuant to search operations in the case of the assessee and had held majority of the amount of gift to be genuine and rest as non-genuine. The Court held that once gifts were assessed in block assessment proceedings, the same could not be subject matter of assessment in regular assessment. It further held that it was not open for the AO to examine the question of genuineness of the gifts in regular assessment for which he had resorted to reopening of assessments u/s 147 r.w.s. 148.
CIT v Mukesh M Sheth - [2018] 95 taxmann.com 128 (Gujarat) - R/TAX APPEAL NOS. 1537, 1696 OF 2007 AND 543 & 544 OF 2008dated June 13, 2018

2743. The Court granted interim stay restraining the Revenue from acting further upon the notice issued u/s 148 for initiating re-assessment proceedings after four years from the end of the relevant assessment year, on the ground that information was received from Deputy Director (INV) stating that the assessee had a bank account which it had failed to disclose during assessment proceedings. Noting that during course of assessment proceedings, the assessee had submitted details of its bank accounts (which included the said bank account) and that the said bank account was also reflected in its balance sheet which was a subject matter of consideration during assessment proceedings, the Court held that in absence of any failure on part of the assessee to disclose the facts fully and truly, the AO could not exercise jurisdiction u/s 147 r.w.s. 148.
Akshar Developers v ACIT - [2018] 95 taxmann.com 104 (Bombay) - WRIT PETITION NO. 11441 OF 2017dated June 7, 2018

2744. The assesseee, whose husband died on 26/01/2010, received notice u/s 148 on 30/03/2017 to re-open the assessment in the case of her husband. Upon informing the Revenue about her husband's death, the assessee was asked to submit all the documents pertaining to her husband's assessment. The Court allowed the writ petition filed by the assessee against the said notice holding that notice issued in name of dead person was not enforceable in law and thus the same could not be enforced against the assessee. Further, with respect to Revenue's contention that it was not informed about the said death, it was held that there is no statutory obligation on part of legal representative of deceased to immediately intimate death of assessee or take steps to cancel PAN registration and the provisions of section 159 dealing with the liability of the legal representative could be invoked only if the proceedings had already been initiated when the assessee was alive.
Alamelu Veerappan v ITO - [2018] 95 taxmann.com 155 (Madras) - WRIT PETITION NO. 30060 OF 2017; WMP NO. 32631 OF 2017 dated June 7, 2018

2745. The Court dismissed the writ petition filed by the assesseee against the re-opening notice issued u/s 148 by the ITO, Noida, where after three months from the date of receipt of the said notice, the assessee had raised an objection stating that the assessee was regularly filing returns with ITO, Delhi and, accordingly, the said notice issued by ITO, Noida was illegal and without territorial jurisdicition. It held that the assessee could not call in question jurisdiction of the ITO, Noida after expiry of one month from date of a service of reassessment notice upon him in view of the provisions of section 124(3) which states that no person can call in question jurisdiction of an AO in case of non-compliance and/or after the period stipulated in clauses (a) and (b).
Abhishek Jain v ITO - [2018] 94 taxmann.com 355 (Delhi) - WRIT PETITION (CIVIL) NO. 11844 OF 2016dated June 1, 2018

2746. The Court allowed the writ petition filed by the assesseee against the re-opening notice issued u/s 148 by the AO, after four years from the end of the relevant assessment year. The said notice was issued mainly on ground that the assessee had shown profit from partnership firm 'S' of Rs. 7.65 crores,whereas 'S' had declared profit of Rs. 32.00 crores, according to which the assessee's share would come to Rs. 6.40 crores and thus the excess of Rs. 1.25 crores was required to be added as income u/s 68. It was noted from records that during assessment proceedings, the assessee had pointed out that the amount in question was received from two separate firms and the assessee had also produced returns of said two firms which showed matching figures. Another ground for issuance of the said notice was disallowance u/s 14A, with respect to which the Court held that since the reopening was sought to be made beyond the period of four years and there was no element of failure of the assessee in disclosing full facts, reopening was not permissible on such ground also.
Alpeshkumar Dahyabhai Patel v ITO - [2018] 95 taxmann.com 48 (Gujarat) - R/SPECIAL CIVIL APPLICATION NO. 17700 OF 2017 dated April10, 2018

2747. The Apex Court dismissed the SLP filed by the assessee against the High Court order wherein it was held that where pursuant to survey, assessee-company had voluntarily disclosed certain amount as its undisclosed income towards allotment of shares to several companies but director of assessee-company failed to give details of investors of companies and investment made by them, reassessment was justified

Laxmiraj Distributors (P.) Ltd. v Pr.CIT - [2018] 95 taxmann.com 109 (SC) – SLP (CIVIL) (DIARY) NO. 1757 OF 2018dated April20, 2018

2748. The Apex Court dismissed the SLP filed by the Revenue against the High Court order setting aside the reassessment notice issued u/s 148, holding that since the question as to how and to what extent deduction should be allowed u/s 10A was well considered in original assessment proceedings itself, initiation of re-assessment proceedings u/s 147, merely because of fact that now the AO was of view that the said deduction was allowed in excess, was based on nothing but a change of opinion. It also held that before interfering with proposed re-opening of assessment on the ground that same was based only on a change of opinion, the Court ought to verify whether the AO in the assessment earlier made had either expressly or by necessary implication expressed an opinion on a matter which was basis of alleged escapement of income. Further, it held that if assessment order was non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on questions that were raised in the proposed re-assessment proceedings. But every attempt to bring to tax income that has escaped assessment, could not be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in re-assessment proceedings.
ITO v TechSpan India (P.) Ltd - [2018] 92 taxmann.com 361 (SC) - CIVIL APPEAL NO. 2732 OF 2007dated April24, 2018

2749. In the assessment order passed u/s 143 (3), the AO accepted assessee's contention that the business of assessee-company, carrying on activity of mushroom farming was an agricultural activity. However,the AO issued notice u/s 148 for reassessment for the reason that there was escapement of income referring to the CBDT Circular dated 14-06-1979 [which holds the assessee liable to tax by providing that mushroom farming was not exempt u/s 10(1)]. The CIT(A) upheld AO's order. The assessee contended both in reply to reasons as well as in the said petition that the circular was not binding on the assessee as it had lost its efficiency and was substituted by another circular dated 27.03.2009 [which widens the scope of agricultural income] The Court held that the AO lacked jurisdiction for reopening of assessment on the grounds that (1) the CBDT circular, though binding on revenue was not a tangible material to be regarded as reason to reopen assessment (2) Assuming that the CBDT Circular dated 14-06-1979 was a tangible material, the assessee had rightly stated that the said Circular was inefficient and thus not relevant. Thus, the Court quashed the notice issued u/s 148.
Zuari Foods and Farms Pvt. Ltd. v ACIT (2018) 101 CCH 0292 MumHC - WRIT PETITION NO. 1001 of 2017 dated 11.04.18

2750. Where the AO initiated reassessment proceeding in the case of the assessee on the ground that its shares were purchased by fictitious companies, in view of the fact that the assessee had produced voluminous documents from public offices which maintained records of those companies as well as assessment orders passed in case of said companies, the High Court quashed the reassessment proceeding on the ground that the assessee had proved the genuineness of the share transactions. The Apex Court did not find any ground to interfere with the order of the High Court and thereby dismissed the Revenue's appeal.
PCIT v. Paradise Inland Shipping (P.) Ltd. – [2018] 93 taxamnn.com 84 (SC) – Special Leave Petition (Civil) Diary No (s). 12644 of 2018 dated April 23, 2018

2751. The assessee was engaged in trading in shares through his broker and claimed a trading loss of a certain amount during the relevant assessment year. In a survey conducted by the PDIT u/s 133-A at the premises of twelve brokers, it was found that Client Code modification (CCM) was used as a tool for tax evasion and the broker of the assessee was one of them. The AO, on the basis of the above information, issued a notice under Section 148 to the assessee after obtaining necessary satisfaction of the Principal Commissioner. In response to the notice, the assessee filed a writ petition contending that the notice was issued by the AO merely upon borrowed satisfaction without application of mind. The Court dismissed the assessee's petition held that there were several details pertaining to alleged sham transactions between the assessee and his broker which showed that within a period of nine months, there were 74 modifications and it was necessary to ascertain whether these were inadvertent errors or

were deliberate adjustments from broker's other clients. Based on such facts, initiation of impugned reassessment proceedings under Section 148 by the AO against the assessee was justified.
Rakesh Gupta v. CIT – [2018] 93 taxmann.com 271 (Punjab & Haryana) – CWP No. 27068 of 2016 dated April 27, 2018

2752. The assessee was a company engaged in Investment and trading in shares and debentures. The assessee filed its return declaring a loss which was processed u/s 143(1). The assessment was subsequently reopened by the AO by issuing a notice under Section 148 on the basis of an intimation received from DDIT (Inv.) about Mahasagar Securities Pvt Ltd. entering into suspicious transaction. The High Court dismissed the appeal of the Revenue and held that the re-opening notice had to be issued by the AO on his own satisfaction and not on borrowed satisfaction and stated that the action of the AO was clearly in breach of settled position of law. The Court further held that the intimation received from DDIT (Inv.) only mentioned that Mahasagar Securities Pvt Ltd. was engaged in suspicious transaction but contained no further indication as to how the assessee was linked to the activities of Mahasagar Securities Pvt Ltd. Accordingly, the reassessment order was set aside and the appeal was dismissed.
PCIT v. Shodiman Investments (P.) Ltd. – [2018] 93 taxamnn.com 153 (Bombay) – IT Appeal No. 1297 of 2015 dated April 16, 2018

2753. The AO made addition in assessee's income u/s 68(Unexplained Cash Credit) for AY 2012-13 stating that the assessee failed to produce corroborative evidence for introduction of capital amount and to co-relate trail of funds. The CIT(A) allowed assessee's appeal holding that the Capital was introduced in FY 2009-10 and 2010-11 and that the AO could only take cognizance of matter by way of initiating suitable proceedings. Thus, the ITO issued notice u/s 148 to the assessee for reopening the assessment and passed order holding that the income had escaped assessment. The assessee challenged the reassessment on the ground that proper reasons were not given. However, the Court observed that since the ITO had made it clear that that assessee did not file its returns of income for AY 2010-11 and 2011-12 and therefore, there was no opportunity to verify transactions claimed to have been made in those years. Further, the assessee was not maintaining any bank account and failed to furnish any other proof to establish link between capital introduced and its withdrawals for purpose of investments. Thus, the Court held that the reasons stated in notice issued u/s 148 were valid and the reopening of assessment was justified.
Alfa Investments v ITO (2018) 167 DTR 0095 (Mad) - W.A.Nos. 1438 and 1439 of 2017 and CMP Nos. 19350 and 19351 of 2017 dated 10.04.18

2754. AO got information that assessee had deposited an amount in saving bank account during FY 2007-08 & thus wrote a letter to assessee requesting him to explain source of cash deposits in bank account. According to AO, this letter was not replied with, hence assessment was reopened and notice u/s 148 was issued. AO passed exparte assessment u/s 144 r.w.s. 147 and recorded a finding that amounts were deposited in Bank on various dates and made addition with aid of section 68 on account of unexplained cash credit in hands of M who was deceased. CIT(A) upheld order of AO. The assessee contended that M had passed away which the AO had the knowledge of and despite that the AO didn't try to locate his legal heirs and issue notice to them. The Tribunal held that 'assessee' means a person by whom a tax is payable under this act & included every person who was deemed to be the assessee. However, in this case the notice was issued to a deceased who ceased to be called as an 'individual'. Thus, the Tribunal observed that the issuance of valid notice was the very foundation of validity of reassessment which was deviated in this case and quashed the reassessment proceeding.
Ishwarbhai Maganbhai Desai (2018) 52 CCH 0374 AhdTrib - ITA No. 90/Ahd/2017 dated 23.04.18

2755. Assessee was an individual and its assessment was completed u/s 143(3) for AY 2007-08 after making an addition towards long term capital gains and after allowing deduction u/s 54 EC towards investments in REC bonds. AO observed that the flat was sold within three years of acquisition and thus the exemption u/s 54EC was not allowable as gain on transfer of asset was STCG. AO was of opinion that income had escaped assessment and issued notice u/s 148 for reopening of assessment on 17.7.2013 i/e 4 years from the end of the relevant AY. CIT(A) confirmed order of AO. However the Tribunal followed CIT Vs Arvind Remedies Ltd and held that AO failed to record anywhere his satisfaction/ belief that income chargeable to tax had escaped assessment on account of failure of assessee to disclose

truly and fully all material facts necessary for assessment. On contrary, it was AO who had failed to consider materials placed before him at time of regular assessment and thus the re-assessment was set aside.

Late Kolisetty Nagesware v ITO (2018) 52 CCH 0417 HydTrib - ITA No. 1220/Hyd/2017 dated 20.04.2018

2756. After the original assessment u/s 143(3) was completed, the AO had reopened the assessment u/s 147/ 148 on subsequently finding that the assessee had set off excess application of income brought forward from previous AY against the current year's receipts/ income. It was noted that the claim of set off was available on record before the AO when fresh assessment u/s 143(3) was made. Accordingly, relying on the decision in the case of TANMAC India v. DCIT [Tax Case (Appeal) No.1426 of 2007 (Mad)] the Tribunal held that since the entire material was available before the AO during the original assessment, in absence of any new material, the AO could not reopen assessment u/s 147. Thus, it held that the consequential order passed by the AO could not stand.

DCIT & Anr v The Willingdon Charitable Trust & Anr (2018) 52 CCH 0349 ChenTrib - TA Nos. 2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018

2757. The AO initiated reassessment proceedings u/s 147 on the ground of income escaping assessment. The assessee made a specific written request to the AO to supply reasons for believing that the income had escaped assessment but the AO failed to furnish the same. The AO made certain addition u/s 56(2)(vii). On appeal, the CIT(A) did not adjudicate the ground of non-supply of reason raised by the assessee but decided the issue on merits in favour of the assessee. In response to the Revenue's appeal, the assessee filed cross-objection challenging the non-supply of reasons recorded by AO. The Tribunal followed GKN Driveshafts(Supra) wherein it was held that AO was bound to furnish reasons within reasonable time and on receipt thereof, noticee was entitled to file objections to issuance of notice and also AO was bound to dispose of same by passing speaking order. The Tribunal held that non-supply of reasons to assessee was in direct violation of 'GKN Driveshafts', debarring the assessee from exercising his legal right to file objections against issuance of reassessment notice and since reasons recorded by AO to form belief of escapement of income were not communicated to assessee despite specific written request, proceedings initiated u/s 147 culminating in assessment order were illegal.

ITO & Anr v Rishi Godani & Anr (2018) 52 CCH 0335 AgraTrib - ITA No. 493/Agra/2015 dated 16.04.2018

2758. The assessee had sold a property and offered to tax Long Term Capital Gain thereon. The AO however reopened assessment u/s 147 r/w s.143(3) and adopted the valuation as per the stamp valuation authority for the said property as on the date of sale, thereby making addition. CIT(A) upheld AO's order. However, the Tribunal observed that reopening had been made to meet objections raised by audit party and it was also not disputed that assessment was reopened after four years from end of relevant assessment year and no approval u/s 151 was placed on record. Thus, the Tribunal held that since assessee had placed before AO all relevant material during original assessment proceedings, and under these undisputed facts, action of AO was contrary to settled law, which demonstrated that AO had not applied his mind independently, assessment order was to be quashed being contrary to law.

Rama Goyal v ITO (2018) 52 CCH 0522 JaipurTrib - (2018) 52 CCH 0522 JaipurTrib dated 12.04.2018

2759. The AO issued reopening notice u/s 148 on receipt of information from Investigation Wing that certain persons called 'beneficiaries' had resorted to money laundering by giving unaccounted cash to entry operators and in turn taking from them cheques/DDs in garb of share application money or sale proceeds of non-existent goods thereby ploughing back to undeclared cash into accounts or business. The AO passed the reassessment order inter alia making addition on account of share application money received. The CIT(A) upheld AO's order. The Tribunal observed that the Investigation Wing had not analyzed transaction of accommodation entries prior to AY 2005-06 whereas present case pertained to AY 2004-05 and even the order of AO did not reveal that he had undertaken any such exercise before recording of reasons. Further, reasons recorded did not specify other party who either received or provided accommodation entries and they also did not establish involvement of assessee in

information unearthed by Income-tax Department in respect of huge money laundering mechanism. Thus, the Tribunal held that re-opening was bad in law as the satisfaction of AO was not based on any sound reasoning and thus the order passed by the AO was not legal or binding.
Meta Plast Engineering Pvt. Ltd. v ITO (2018) 52 CCH 0353 DelTrib - ITA No. 5780/Del/2014 dated 06.04.2018

2760. The Tribunal dismissed assessee's appeal against the initiation of reassessment proceedings by the AO where the reopening notice was issued based on receipt of information from DGIT (Investigation) stating that the assessee had obtained accommodation entries of bogus purchase bills from one company. It was noted that on receipt of the information, the AO had analyzed the same and after matching the same from the website of Sales Tax Department came to conclusion that the certain purchases made by the assessee were non-genuine. The Tribunal held the AO had reasons to believe for income escaping assessment (which was a condition precedent for reopening assessment) since the AO received tangible material from appropriate authority and had applied its mind on information received.In the reassessment order passed by the AO, he had also made addition u/s 68 on account of receipt of share application money/ share capital/ share premium. In this regard, it was noted that that no tangible material / information was available with the AO qua this item either at the time of initiation of proceedings or during reassessment proceedings suggesting factum of escapement of income. Thus, Tribunal accepted assessee's contention that the AO could not make fishing and roving enquiries to unearth new grounds of addition which wasn't the subject matter for initiating reassessment proceedings. It deleted the said addition, holding that the AO could not assume jurisdiction with respect to independent and unconnected items without any tangible material or information suggesting escapement of income which was the basic requirement of section 147.
Juliet Industries Limited & Anr v ITO & Anr (2018) 52 CCH 0278 MumTrib - ITA No. 5452/Mum/2016, 5975/Mum/2016 dated 04.04.2018

2761. The Court held that where during scrutiny assessment AO carried out minute possible detailed inquiry with respect to cash purchases of raw cotton from individual farmers and assessee had produced every person who AO required for purpose of ascertaining factum of sale, reopening of assessment after four years for further inquiry was justified.
Jaydeep Cotton Fibres (P.) Ltd. v ACIT [2018] 95 taxmann.com 227 (Gujarat) – SPECIAL CIVIL APPLICATION NO.20187 OF 2017 dated 09.04.18

2762. AO issued a notice under section 148 seeking to reopen assessment.Reason recorded for reopening assessment was that a search was carried out in case of 'V' Group engaged in transactions of purchase and sale of land and in course of search proceedings, certain documents were seized showing that the assessee had purchased four parcels of land from 'V' Group for which assessee had paid a part of purchase consideration in cash which was not recorded in her books of account. Assessee's objections to initiation of reassessment proceedings were rejected. Since the assessee failed to rebut material brought on record by AO such as cash vouchers, summary of sale deed etc. and, moreover, original return filed by her was accepted without scrutiny,a case for reopening of assessment was clearly made out and therefore, the Court dismissed the petition filed by assessee.
KiranRavjibhaiVasani v ACIT [2018] 94 taxmann.com 354 (Gujarat) – R/SPECIAL CIVIL APPLICATION NOS. 16385 OF 2017 dated 02.04.2018

2763. Where reassessment notice under section 148(1) was issued against assessee after expiry of period of limitation at old address of assessee which was already changed by assessee before date of issuance of said reassessment notice in official record by updating PAN data base, the Court held that there was no service of reassessment notice upon assessee and thus quashed the reassessment proceedings.
Ardent Steel Ltd. v ACIT p2018] 94 taxmann.com 95 (Chhattisgarh) – WP (T) NO. 168 OF 2016 dated 04.05.2018

2764. Wherethe original assessment was completed u/s 143(1) and the reassessment proceesings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, the Court held that reassessment could not be held unjustified.

Amit polyprints (P.) Ltd. v DCIT [2018] 94 taxmann.com 393 (Gujarat) – SPECIAL CIVIL APPLICATION NOS. 22489 AND 22514 OF 2017 dated 07.05.2018

2765. The Court held that where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment along with reasons recorded by AO for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified
BaldevbhaiBhikhabhai Patel v DCIT [2018] 94 taxmann.com 428 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 21092 OF 2017 dated 09.05.2018

2766. The Court held that where the AO accepted loss declared by assessee on sale of immovable property in which she was one of co-owners, he could not reopen assessment subsequently on ground that in case of another co-sharer of same property, AO had disputed value and referred question to DVO and, on basis of valuation so presented, he had computed certain capital gain.
KalpanaChimanlal Shah v ITO [2018] 94 taxmann.com 252 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 5670 OF 2018 dated 09.05.2018

2767. The assessee was issued notice u/s 148 r.w S.147 by registered post and through inspector of Department. The assessee did not file the return in response to the said notice albeit their director "R" appeared before the AO and upon R's request, reasons recorded for issue of notice and a copy of notice u/s148 was furnished to R. Further, best judgement assessment was completed where additions were made and CIT(A) confirmed the said addition. In the appellate proceeding, the assessee for the first time raised a plea of improper service u/s 282(2) stating that the notice was served by the inspector to the security guard at the factory premises of the assessee and the Tribunal accepted the assessee's plea and quashed the assessment. However, the Court dissented with the Tribunal's view on the reasons that (i) The notice was served by Registered Post as well, which is the prescribed mode of service (ii) S.282(2) is to ensure compliance of principles of natural justice and not for finding fault and held that it was clear that the of notice was served by making the assessee aware of the initiation of proceedings and thus the notice u/s 148 r.w S.147 was valid. However, for the purpose for adjudicating the matter on merits, the Court remanded the matter back to the Tribunal.
CIT v Sudev Industries Ltd. [2018] 94 taxmann.com 373 (Delhi) – ITA NO 805 OF 2005 dated 31.05.2018

2768. The AO made addition on account of two out of four reasons recorded in the notice as reasons for re-opening assessment u/s 148 r.w s.147and no addition was made with respect to the other two reasons which were initially(originally) stated in the said notice. The assessee, relying on Travancore Cements Ltd. v. Asstt. CIT [2006] 4 KLT 344, contended that only if all recorded reasons end in assessment of escaped income, there can be assessment made on issues of escapement detected during course of re-opening. However,the Court, relied on the decision in the case of CIT v. Jet Airways (I) Ltd. [2010] 331 ITR 236 (Bom.) wherein it was held that the decision of Travancore was rendered prior to the insertion of Explanation 3 (which provides that the AO can assess or re-assess the assessee' s income on any issues other than those forming part of reasons for reopening). It held that the present case was not the one wherein addition was made on the issues not originally recorded u/s 148(2) and two of the reasons recorded did conclude in assessment of escaped income. Accordingly, it decided the above issue in favour of the Revenue. However, noting that the AO had only made certain changes in the apportionment of sales of the various business units of the assessee while re-computing the deduction allowable u/s 80IA, during the reassessment proceedings and the said issue on merits was decided in favour of the assessee by the Court in the assessee's own case for another assessment year, it held the reassessment proceedings to be incomplete since it was based on mere change of opinion against the binding precedent of other AY.
CIT v MalayalaManorama Co. Ltd [2018] 95 taxmann.com 136 (Kerala) – ITA NO 26 OF 2010 dated 29.05.2018

2769. In the Original Assessment, the assessee (tea trader) incurred loss which was allowed by the AO and the relevant facts and materials were disclosed fully. The AO reopened the assessment after 4 years stating that as the assessee sold tea which was grown in its own plantation, it would be Agricultural

Income and would be liable to be excluded from the loss. As the reassessment was initiatied without detection of new facts and only for the application of Rule 8 (which provides that 40% of the income derived from sale of tea grown and manufactured in India is deemed to be income liable to tax), the Court held that the reassessment was invalid as reassessment proceeding u/s 147 could be permitted after 4 years only on failure on part of the assessee, to disclose materials facts and there was no such failure in the instant case.

CIT v Parry Agro Industries Ltd. [2018] 95 taxmann.com 100 (Kerala) – ITA NO. 1123 OF 2009 dated 23.05.2018

2770. The AO, noticing that the income chargeable to tax had escaped assessment, initiated reassessment u/s 147 to which the assessee raised objection. Without disposing the objection, the AO proceeded to pass the reassessment order. Aggrieved, the assessee had challenged the reassessment order before the High Court on the ground that AO failed to observe the directions to be followed & violated the law declared by the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 wherein it was held that the AO should pass a speaking order taking into account the assessee's objections against the re-opening. The High Court had however held that the non-compliance of procedure indicated by the SC would not render the reassessment order void but such a violation was a procedural irregularity which could be cured by remitting matter to the authority. Accordingly, the matter was remitted back to lower authority. The SLP filed by the assessee against the said High Court's order was dismissed by the SC.

Home Finders Housing Ltd. v ITO [2018] 94 taxmann.com 84 (SC) – SPECIAL LEAVE TO APPEAL (CIVIL) NO 12721 OF 2018 dated 18.05.2018

2771. The AO had not furnished a copy of "reasons to believe" for reopening assessment after issuing notice u/s 147/148, even after the assessee had requested the AO twice for the same. The reassessment proceeded and the AO made several additions which included additions made on grounds other than those included in the "reasons to believe" u/s 147/148. Aggrieved, the assessee relied on Ranbaxy Laboratories Ltd. v. CIT which enunciated the rule that if reassessment proceedings did not culminate in an order making additions of the amounts relatable to the reassessment notice, and rather additions are made of amounts on other issues, the reassessment order would be invalid. The Revenue on the other hand relied on N. Govinda Raju v. ITO wherein it was held that the AO can even assess income with respect to "any other income" which comes to his notice subsequently during course of proceedings. The High Court, in the present case, held that despite there being a failure on part of AO on not adhering to assessee's request to furnish the copy of "reasons to believe", it could not per se invalidate the assessment proceedings. However, it further held that since different views were taken by High Courts in the above two cases, it was appropriate to refer the case to the larger Bench for reason that there was some doubt as to inaccuracy of interpretation of section 147 r.w.Expln.3. The SLP filed by the assessee against High Court's order referring the matter to the larger bench was dismissed by the SC.

Jakhotia Plastics (P.) Ltd v PCIT [2018] 94 taxmann.com 96 (SC)SPECIAL LEAVE TO APPEAL (CIVIL) NO 12622 OF 2018 dated 18.05.2018

2772. The Apex Court dismissed the SLP filed against the order of High Court wherein it was held that the notice for reassessment for AY 2006-07 issued by the AO based on the assessment order passed for AY2005-06 despite being aware of the order of CIT(A) setting aside the assessment order (before issuing such notice), was invalid since, in such circumstance, the AO could not have any reason to believe that income chargeable to tax had escaped assessment relying to the order of AY 2005-06.

DCIT v Atomstroyexport [2018] 95 taxmann.com 260 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 19055 OF 2017 dated 17.05.2018

2773. The AO had found one sauda chitthi (signed by assessee) during search that purportedly disclosed that one land was sold at a higher price for which the sale deed was executed at a lower consideration and the balance amount was received by the assessee in cash. Thus, the AO issued reassessment notice to add the balance amount to the assessee's income. However, noting that the assessee wasn't the

owner of the land and the sale deed was executed by original owners, the High Court held that there was no tangible material available on record to form a reasonable belief that the amount was received by assessee in cash and accordingly had set aside the reassessment notice. The Department's SLP filed against the said order of the High Court was dismissed by the SC.

DCIT v Alpesh Gokulbhai Kotadia [2018] 95 taxmann.com 108 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 13051 OF 2018 dated 16.05.2018

DCIT v VinodbhaiShamjiRavani [2018] 94 taxmann.com 246 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 13518 OF 2018 dated 16.05.2018

2774. The assessee, engaged in Computer Training and Software Development, made project exports to certain parties and claimed exemption u/s 10A (being in free-trade zone) on the profit. The said claim, which was supported by the Auditor's certificate and report, was duly accepted as per intimation issued u/s 143(1). However, the AO issued a notice to assessee u/s 148 based on the statement made by the Auditor that till date of signing of Report, certain amount against the projects exports remained unrealized. During the course of proceeding, the assessee filed supplementary Auditor's report claiming the profit from software export at the reduced figure due to sales return against project export (thus, claiming the unrealized amount to be the sales return).The AO without accepting the claim of sales return took the net profit at the original figure but reduced exemption under section 10A by the amount in question. On appeal, the CIT(A) directed the AO to reconsider and compute the net profit. The order of the CIT(A) was upheld by the Tribunal. The Court held that the AO's approach of reducing exemption of profit u/s 10A by detaching it from the reduction in sales figure on account of sales return, could not be done in isolation. Further, it relied on the CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) and CIT v. Sun Engineering Works (P.) Ltd. [1992] 198 ITR 297 (SC) wherein it had been held that the AO can reassess but cannot review and held that since the exercise that resulted in the intimation issued u/s 143(1) was done on the basis of material and evidence then available, it could not be said that the assessee's income had escaped assessment to tax. Accordingly, it dismissed the revenue's appeal.

CIT v L. C. C Infotech Ltd.[2018] 94 taxmann.com 117(Calcutta)- ITA NO 16 OF 2017 dated 11.05.2018

2775. The AO reopened the assessment as the assessee had not furnished source of investment towards purchase of property. The assessee objected that though the said property was purchased in his name, but the same was purchased in the capacity of trustee / agent. The AO disposed-off the objections after due consideration and held that since no documentary evidences were submitted, the said investment made by assessee had escaped assessment. On writ petition, the Court held that initiation of reassessment by issue of notice under Section 148 of the Act was justified where AO was of the view that assessee's income has escaped assessment.

Chandra Mohan Tiwari vs. ITO – [2018] 102 CCH 0001 (Allahabad High Court) – Writ Tax No. 572 of 2018 dated May 2, 2018

2776. The AO reopened the assessment only on the basis of information (copy of lease deed) received from the Investigation Wing. The Court quashed the reassessment proceedings as such information was already available on record with the AO during the assessment proceedings under Section 143(3) and that the 'reasons to believe' did not establish any live nexus that income had escaped assessment. Accordingly, the Court held that AO could not re-examine the issue already examined in assessment under Section 143(3) of the Act.

Meadow Infradevelopers Private Limited vs. ITO – [2018] 102 CCH 0003 (Delhi High Court) – W.P.(C) 11554/2017 dated May 1, 2018

2777. Pursuant to information received from the Value Added Tax Department that assessee was one of the beneficiaries in hawala transactions, the AO reopened the assessment proceedings for the year under review on the ground that information regarding purchases made by the assessee from such Hawala dealers 'needed deep verification'. The Court quashed the reassessment proceedings and held that reopening of assessment would not be permitted for a fishing or a roving inquiry.

PCIT vs. Manzil Dineshkumar Shah – [2018] 102 CCH 0008 (Gujarat High Court) – TAX APPEAL NO. 451, 457,458 of 2018 dated May 7, 2018

2778. Pursuant to information received from the Investigation Wing that assessee was one of the beneficiaries in bogus Long Term/Short Term Capital Gain and bogus gifts etc. (Hawala Entries) the AO reopened the assessment proceedings. The Tribunal quashed such proceedings and held that as there was no independent application of mind by AO to tangible material which forms basis of reasons and the reasons fail to demonstrate link between tangible material and formation of reasons to believe escapement of income, such reasons recorded by AO for reassessment were to be considered as unsustainable.
Manoj Kumar Jain vs. ITO – [2018] 53 CCH 0009 (Agra ITAT) – ITA No 277/Agr/2017 dated May 4, 2018

2779. Pursuant to information received from the Investigation Wing, that assessee has received bogus share capital from paper entities, the AO reopened the assessment proceedings and made addition under Section 68. The Tribunal upheld the CIT(A) order deleting the said addition, on the following grounds:

i. There was no specific evidence which could constitute tangible or relevant material to issue notice under Section 148

ii. Notice under Section 148 was issued by the AO mechanically

iii. AO did not apply his mind or make any independent enquiry on the documentary evidences received so as to give rise to a bonafide belief that income of assessee had escaped assessment

iv. No enquiries were confronted to the assessee despite specific request

v. Bank statement of the assessee duly established that the transaction was through banking channel and the said fact was neither denied nor disputed

ACIT vs. Madhusudan Packaging Pvt. Ltd. – [2018] 53 CCH 0021 (Delhi ITAT) – ITA No 4930 of 2017 dated May 9, 2018

2780. The AO issued notice under Section 148 of the Act for reassessment holding that income of assessee had escaped assessment. The CIT(A) upheld order of AO. Tribunal held that since this was a second reopening of assessment beyond period of four years from end of the Assessment Year and since the AO did not allege that assessee had failed to disclose fully and truly material facts necessary for completion of assessment, re-opening of assessment was bad in law as it did not fulfill requirement of the Proviso to Section 147 of the Act and also, no tangible material came to possession of the AO. Thus, re-assessment proceedings were quashed and the Assessee's appeal was allowed.
CYGNUS INVESTMENTS & FINANCE PVT. LTD. vs. ACIT (KOLKATA TRIBUNAL) (ITA No. 117/Kol/2018) dated May 18, 2018 (53 CCH 0053)

2781. Based on search and seizure operations conducted on the assessee, the AO issued a notice under Section 148 of the Act to the assessee after four years from the end of the Assessment Year. CIT(A) held that reopening of assessment was bad in law. Tribunal held that since the AO did not allege that there was failure on part of assessee to truly and fully disclose all material facts which were necessary for assessment, re-opening of assessment was bad in law as the mandatory requirements of the proviso to Section 147 were not fulfilled. Thus, reassessment proceedings were quashed and the Revenue's appeal was dismissed.
ACIT vs. ADHUNIK CEMENT LTD. (KOLKATA TRIBUNAL) (ITA No. 1375/Kol/2017) dated May 18, 2018 (53 CCH 0179)

2782. Assessee individual, filed his return of income declaring income from commission and salary. Assessment was completed under Section 143(3) r.w.s. 153C of the Act. Subsequently, assessment was re-opened under Section 147 of the Act after expiry of four years from the end of the relevant assessment year and the AO made addition under Section 68 of the Act in respect of cash credit. CIT(A) upheld the order of the AO. The Tribunal held that since the notice under section 148 was served after the expiry of four years from the end of the relevant assessment year, the AO should have obtained the prior approval of CIT. In absence of such approval, Tribunal held that the notice was invalid and all subsequent actions thereto were also void and that violation of mandatory provision

provided under statute could not be validated by resorting to 292B or 292BB. Thus, re-assessment proceedings were quashed and the Assessee's appeal was allowed.
ASHOK BALDEVBHAI PATEL vs. ACIT (BOMBAY TRIBUNAL) (ITA No. 787/Mum/2014) dated May 8, 2018 (53 CCH 0150)

2783. The AO reopened the assessment and made an addition under Section 68 of the Act. The CIT(A) upheld the order of the AO. The Tribunal observed that as per *Notification No. 9579 dated August 5th,1994*, only the AO in Dehradun had jurisdiction for assessment under the Act in the case of the Assessee and accordingly, notice issued under Section 148 by the AO in Mumbai for reopening the assessment was not valid and hence the consequent re-assessment was void-ab-initio and was liable to be quashed. Thus, the Assessee's appeals were allowed.
MYUNG HWAN LEE vs. ADIT (IT) (DELHI TRIBUNAL) (ITA No.2100/Del./2016 & 2101/Del./2016) dated May 25, 2018(53 CCH 0082)

2784. The assessee filed his return of income pursuant of issuance of notice u/s 148 declaring agricultural income and prior to that no return of income was filed. The AO re-opened the assessment in view of the information available that the assessee had earned capital gains on sale of land and had unexplained deposits in assessee's bank account maintained with PNB which had escaped taxation. The AO made addition in respect of the same and completed assessment under Section 147 of the Act. The CIT(A) upheld the order of the AO. With respect to sale of land, the Tribunal held that there was lack of nexus between the material and formation of prima-facie belief that income had escaped taxation for the impugned AY, as the AO had not examined the sale deed (being the relevant material) which showed that the capital gains was earned in the subsequent year and not in the present year. It thus held that re-assessment proceedings could not have been initiated against the assessee on this reason / ground. However, the Tribunal upheld the reassessment on the second ground i.e. unexplained deposit in bank account, in view of non-filing of return of income by the assessee.
JAGDISH NARAYAN SHARMA & ORS. vs. ITO& ORS. (JAIPUR TRIBUNAL) (ITA No. 751/JP/2015, 752/JP/2015, 753/JP/2015) dated May 25, 2018(65 ITR (Trib) 0194)

2785. The assessee filed his return of income which was processed under Section 143(1) of the Act. Thereafter, the AO re-opened the assessment in view of the information available that the *assessee had purchased farm house land for which excess money, over and above amount mentioned in registered deed, was paid by purchasers.* The AO made addition in respect of the same and completed assessment under Section 147 of the Act. The CIT(A) upheld the order of the AO. The Tribunal quashed such re-assessment proceedings for the following reasons

i. AO mechanically issued notice under Section 148 of the Act on basis of information allegedly received by him from DCIT
ii. Approval granted by competent authority was mechanical approval
iii. There was no allegation in reasons recorded that there was failure on part of assessee to disclose fully and truly all material facts necessary for assessment under Section 147
iv. Notice under Section 148 of the Act was issued after four years from end of assessment year in case where assessment had been framed
v. Reasons recorded did not constitute valid reason to believe for initiating proceedings under Section 147 of the Act

SUNIL AGARWAL vs. ITO (DELHI TRIBUNAL) (ITA No. 988/Del/2018) dated May 24, 2018(53 CCH 0090)

2786. Relying on the assessee's own case before the Delhi Tribunal in ITA No. 2676/Del/2010, dated August 8, 2013, the Tribunal held that as per statutory scheme and provisions, during pendency of proceedings under Section 153A of the Act, the AO was not empowered to issue notice under Section 147/148 of the Act and hence the notice initiating re-assessment being illegal, the re-assessment proceedings could not be sustained. Accordingly, the Assessee's appeal was allowed.
VIPUL MOTORS PVT. LTD. vs. ACIT (DELHI TRIBUNAL) (ITA No. 5217-18/Del/2013) dated May 23, 2018(53 CCH 0076)

2787. The assessee company was engaged in the business of running hospital at Pune. During the course of assessment proceedings, the AO made ad-hoc disallowance under Section 14A of the Act and thereby

computed / assessed loss of the Assessee. Thereafter, the AO reopened the assessment and made certain disallowances. The CIT(A) upheld the order of the AO. The Tribunal observed that the AO failed to provide copies of the reasons recorded to the assessee despite written requests and that there was no tangible material to support reasons relied on by AO in re-assessment proceedings. Accordingly, the Tribunal directed the CIT(A) to pass a speaking order stating the grounds supporting the validation of the re-assessment proceedings. Accordingly, the Assessee's appeal was allowed for statistical purposes.

ADITYA BIRLA HEALTH SERVICES LTD. vs. DCIT (PUNE TRIBUNAL) (ITA No.248/PUN/2015) dated May 23, 2018(53 CCH 0077)

2788. The assessee, a Real Estate Promoter, filed his return of income as nil for the relevant assessment year which was passed by the AO u/s 143(3). The AO invoked section 147 and issued a notice u/s 148 to the assessee. Pursuant to the request made by the assessee, the AO furnished the reasons for invoking Section 147 and ultimately passed the reassessment order but failed to dispose off the objections of the assessee that were submitted on receipt of the reasons furnished by the AO for invoking Section 147. The assessee challenged the order before the High Court on the ground that by not passing a specific order after receiving objections, the AO violated the law laid down by the SC in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 and resultantly the order was bad in law. The issue, whether the non-compliance of a procedural provision would ipso facto make the assessment order bad in law, was answered by the HC in the negative and subsequently held that such a violation in the matter of procedure was only an irregularity which could be cured by remitting the matter to the authority and accordingly decided the matter in favour of the Revenue.

Home Finders Housing Ltd. v. ITO – [2018] 93 taxmann.com 371 (Madras) – W.A. No. 463 of 2017 dated April 25, 2018

2789. Where the assessment u/s 143(3) was completed by taking cost of construction of building on the basis of expert approved valuer, the Court held that reopening of assessment after about seven years on the basis of report of departmental valuer would amount to change in opinion and accordingly decided in favour of the assessee by holding that the report of the Departmental valuer was inconclusive and could, at best, be treated as an opinion.

CIT v. P. Nithilan – [2018] 93 taxmann.com 435 (Madras) – Tax Case (Appeal) No. 834 of 2008 dated April 4, 2018

2790. The assessee filed its return for the relevant year claiming deduction u/s 80M and the assessment was completed u/s 143(3). The AO reopened the assessment after four years on the ground that the assessee had failed to reduce expenditure incurred in earning dividend income to the extent of 5 percent of gross dividend income which resulted in excess claim of deduction. The Court noted that the issue raised by the AO was a factual issue which was subject matter of consideration while passing order u/s 143(3). The Court further noted that there was a true and full disclosure by the assessee during the regular assessment proceeding and held that it was a case of change of opinion and accordingly allowed the petition of the assessee.

ITC Classic Finance Co. v. V. Nagaprasad – [2018] 93 taxmann.com 393 (Bombay) – W.P. No. 2029 of 2000 dated April 10, 2018

2791. The assessee had filed the return for the relevant assessment year and the assessment order was passed u/s 143(3). The AO, after a period of four years initiated reassessment proceedings on the ground that the assessee had received External Development Charges (EDC) from land developers which was not offered for tax by the assessee but was instead shown as liability in the balance sheet under the head 'other liabilities'. A petition was filed by the assessee challenging the validity of the reassessment proceedings. The Court dismissed the petition and stated that the issue relating to the taxability of EDC was not considered by the AO at the time of assessment and there was no disclosure of any material relating to EDC mentioned by the assessee during assessment. Accordingly, the Court upheld the validity of the reassessment proceedings and stated that the reopening of the assessment was not based on change of opinion.

Greater Mohali Area Development Authority v. DCIT - [2018] 93 taxmann.com 441 (Punjab & Haryana) - CWP NO. 26125 OF 2017 (O&M) dated APRIL 27, 2018

2792. The assessee, a family trust, declared nil income for the relevant assessment year. The assessment was completed u/s 143(3) but was subsequently reopened u/s 147 by the AO. During reassessment, the assessee-trust was assesseed in status of AOP and at a total income of Rs. 67,14,805/- was computed at the maximum marginal rate by the AO who further held that the trust property belonged to the trust and not to the beneficiaries and though the shares of the beneficiaries were definite in the trust, they were not the co-owners of the trust property. The CIT (A) confirmed the action of the AO in taxing the rental income in the hands of the assessee-trust and subsequently, an appeal was preferred by the assessee before the Tribunal. The Tribunal held that the share of income from the trust which devolved on the beneficiary had to be treated as the income of the beneficiary. The Tribunal further held that the tax on share of each beneficiary was to be separately calculated as if it formed part of the beneficiary's income and the tax payable by the trust was the sum total of tax calculated on the share of each beneficiary. Accordingly, the reassessment order was set aside and the appeal of the assessee was allowed.
Abad Trust v. ADIT - [2018] 93 taxmann.com 214 (Cochin - Trib.) - IT APPEAL NO. 193 (COCH.) OF 2016 dated APRIL 19, 2018

Rectification

2793. The Court dismissed Revenue's appeal against the Tribunal's order setting aside the rectification order passed by the AO u/s 154 to recalculate (reduced) indexed cost of acquisition by applying provisions of section 48(iii) and enhance long term capital gainfrom transfer of shares, holding that power u/s 154 could be exercised only when mistake, which was sought to be rectified was an obvious mistake, which was apparent from record and not a mistake, which was required to be established by long drawn process of reasoning on points.
Pr.CIT v Aura Securities (P.) Ltd - Aquatic Remedies (P.) Ltd - [2018] 96 taxmann.com 417 (Gujarat) – ITA No. 904 OF 2016 dated July 25, 2018

2794. The Tribunal held that if deductors has delayed payment of taxes to credit of Central Government for no fault of assessee and same consequently let to issue of TDS certificate late by said payers of income then assessee should be entitled for TDS credit.
Express Global Logistics Pvt. Ltd. vs. Asst. CIT-(2018) 53 CCH 0317 MumTrib-ITA No. 1194/Mum/2017-Dated Jul 11, 2018

2795. The assessee filed a Nil return under Section 139 of the Act claiming carry forward of losses based on which it claimed a refund which was granted to it. The AO then passed a rectification order under Section 154 of the Act denying the assessee its claim of TDS which was annulled by the CIT(A) pursuant to which the AO initiated reassessment proceedings and estimated the net profit from the assessee's project at the rate of 5.5.% of the cost of project incurred during and also made certain other disallowances on account of computer expenses, the disallowance under section 40A(3) of the Act, Transfer Pricing Adjustment and addition of Interest income. The addition made pursuant to reassessment proceedings was deleted by the CIT(A) and also the Tribunal. Subsequently, the AO invoked Section 154 to disallow the assessee's claim of carry forward of losses. The Tribunal held that once it had settled the issue upholding the decision of CIT(A), nothing remained for rectification under section 154 of the Act for the Assessing Officer and accordingly held that the AO was not justified in invoking Section 154 to deny the assessee's claim of carry forward of losses.
ACIT v INTERNATIONAL METRO CIVIL CONTRACTORS - (2018) 52 CCH 0138 MumTrib - ITA No. 3935/Mum/2016 dated Feb 28, 2018

2796. The Court set aside the Tribunal order cancelling the AO's order passed u/s 154 wherein the AO had charged interest u/s 220(2) and 245D(6A) which he had omitted to charge in the assessment order and the Tribunal had considered such rectification order to be an order of review, holding that the legal contours of an error apparent on the face of the record could not be exactly identified and the element of indefiniteness was inherent in its very nature and must be left to be determined judicially on the facts of each case.

CIT v YOUNUS KUNJU, YOUNUS CASHEW INDUSTRIES – (2018) 402 ITR 0095 (Ker) – ITA.No. 64 of 2015 dated 11.01.2018

2797. Where the assessee was not granted exemption under section 10(10C) and her rectification application was rejected without granting her any personal hearing, the Court held that the order of the AO rejecting the application being in violation of principles of natural justice, was to be set aside. Accordingly, it directed the Assessing Officer to dispose of the rectification applications, as expeditiously as possible in accordance with law (within four weeks from the date of the order).
Mrs. Mugdha Shirish Agarkar v Pr CCIT - [2018] 91 taxmann.com 459 (Bombay) - WRIT PETITION NO. 12515 OF 2017 dated MARCH 1, 2018

2798. The Tribunal held that where assessee filed rectification application on ground that Tribunal had not adjudicated certain grounds which were specifically mentioned, in view of fact that all grounds pertained to order passed under section 263 by Commissioner and those grounds were not only taken into body of order but at same time an elaborate judgment had been passed regarding same, assessee's application deserved to be rejected.
U.P. Forest Corporation v DCIT [2018] 93 taxmann.com 437 (Lucknow – Trib.) – M.A. NOS 58 AND 59 OF 2016 dated 02.05.2018

2799. The assessee claimed deduction on expenses incurred for the granite business where infact no such business actually commenced and expense was actually incurred on Market Survey conducted abroad (European Countries). The said expense was allowed. Subsequently, the AO passed rectification order u/s 154 of the IT Act disallowing the said deduction .The Tribunal held that it was a debatable issue and an examination of records and evidence would be required before passing the rectification order. However, since the assessee itself admitted about the non-commencement of granite business and expenditure on market survey conducted abroad, the Court held that it was no longer a debatable issue and held that the AO was justified in passing the rectification order.
CIT v Parry Agro Industries Ltd. [2018] 94 taxmann.com 462 (Kerala) – ITA NO1595 OF 2009 dated 23.05.2018

2800. Where the assessee, a non-resident Indian citizen, e-filed his return of income under Section 139(1), the same was processed under Section 143(1) and a demand was raised. The assessee filed application under Section 154 with the AO requesting for re-calculation of his income, claiming that income earned was not taxable in India since he was a non-resident. AO rejected such application as changing the income figure could not be considered as mistake apparent on record under the provisions of Section 154 and also observed that the assessed income could not be less than returned income. The Tribunal held that if it is established that the assessee's income was not subject to tax in India, the same was to be considered as mistake apparent on record as per Section 154 and the assessee had right to modify it by filing an application for rectification of such mistake. Thus, the Tribunal restored the matter to the file of the AO and directed the assessee to substantiate its stay in India for claim of exemption.
Manoj Kumar Nayak vs. JCIT – [2018] 53 CCH 0059 (Cuttack ITAT) – ITA No 389/CTK/2014 dated May 17, 2018

Revision

2801. The assessee sold a property and invested sale consideration from same for purchase of another aimed exemption under section 54, however, Assessing Officer allowed exemption under section 54F instead of section 54, and, assessee filed an appeal against said order.
The Court held that since larger issue was pending before Commissioner (Appeals), Commissioner could not invoke jurisdiction under section 263 against said order of Assessing Officer.
Smt. Renuka Philip v. ITO, Business Ward-XV (2) Chennai-[2019] 101 taxmann.com 119 (Madras)-TCA No. 286 of 2012 -date November 14, 2018

2802. The Commissioner passed a revisional order on ground that assessee had debited certain amounttowards provisions for gratuity and provision for bad and doubtful advances which was required to be disallowed. In view of fact that assessee's income was eligible for deduction under sec. 80P and,

thus,the aforesaid disallowance would only lead to enhanced deduction under section 80P, the Tribunal heldthat the impugned revisional order was to be set aside as the assessment order sought to be revised was not prejudicial to the interest of Revenue.

Goghat Thana Large Sized Primary Cooperative Agricultural Marketing Society Ltd. v. Asst. CIT, Circle -1, Hooghly-[2018] 100 taxmann.com 460 (Kolkata - Trib.)- ITA No. 1872 (KOL) of 2017-dated November 30, 2018

2803. The High Court upheld Tribunal's order that while determining assessee's income in respect of godown receipts on estimate basis, AO had adopted a plausible view and, thus, revisional order passed by Commissioner on said issue was not sustainable. The Apex court dismissed the SLP filed against decision of High Court

Pr. CIT-I v. V. Dhana Reddy & Co.- [2018] 100 taxmann.com 358 (SC)- SLP (Civil) Diary Nos. 34500 of 2018-dated October 29, 2018

2804. Assessee filed revision petition challenging additions made in reassessment proceedings on ground that notice of reassessment and opportunity of hearing was not granted to it, in view of fact that in revision petition assessee clearly admitted that not only were notices received, even reassessment order was received but assessee did not care to appeal against it; and later on revision petition was filed after expiryperiod of limitation. The Court held that Commissioner was justified in dismissing said petition.

Jindal Metal Co. v. Pr. CIT, Delhi - [2018] 100 taxmann.com 183 (Delhi)- W.P. (C) No. 11739/2018 & CM Nos. 45456-57/2018 date October 31, 2018

2805. The Court held that where assessee filed an application seeking condonation of delay in filing revisionpetition on ground that its tax consultant was indisposed for about 6 to 7 months due to serious back injury, assessee's application was to be allowed and, matter was to be remanded back for disposal on merits.

Karanja Terminal & Logistics (P.) Ltd. v. Dy. CIT, Co. Circle 6(3), Mum- [2019] 101 taxmann.com 160 (Bombay)- W. P. Nos. 1685 & 1693 of 2018 – November 30, 2018

2806. Where Tribunal upheld revisional order passed by Commissioner giving direction to AO to reframe assessment in accordance with law, after examining issue and after giving an opportunity of being heard, the Court held that since matter was sent back for re-determination for Assessing Officer and all issues had been kept open, no substantial question of law arose from Tribunal's order.

V.K. Bharathi v. CIT, Bengaluru-[2019] 102 taxmann.com 55 (Karnataka) -IT Appeal No. 32 of 2018 -dated December 11, 2018

2807. The Tribunal held that in terms of section 55A, Assessing Officer has discretionary power to refer matter to DVO for valuation of property and, thus, where Assessing officer was satisfied with valuation made by assessee and did not refer matter to DVO, it could not be a ground to invoke revisional power of Commissioner under section 263.

Jitindar Singh Chadha v. Pr. CIT-18, New Delhi-[2019] 102 taxmann.com 93 (Delhi - Trib.)-IT Appeal No. 2732 (Delhi) of 2018- dated December 31, 2018

2808. The Tribunal held that in view of contrary decisions of High Court, issue as to whether notional income on unsold flat held by assessee-builder as stock-in-trade in its books of account should be assessed as income from house property is a debatable issue, and hence order of Assessing Officer for not bringing unsold flats to tax at notional letting value under head 'income from other sources' which was one of possible views, was not erroneous and therefore, section 263 could not be invoked.

S.D. Corporation (P.) Ltd. v.Pr. CIT-3, Mumbai-[2019] 102 taxmann.com 226 (Mumbai - Trib.)-IT Appeal No. 3311 (Mum) of 2018-dated December 26, 2018.

2809. Assessee filed return of income which was selected for scrutiny. AO noted that assessee had received FDI comprising of share capital and share premium from a company, namely, M/s P which was a resident of Mauritius. Assessee had submitted evidences in support of its claim. Assessee's case was

assessed after making proper enquiries by AO. Thereafter, PCIT received information in form of White Paper from Finance Ministry regarding unaccounted wealth generated in India which was routed back to Country through FDIs, GDRs from outside Country. PCIT found assessment order passed by AO was erroneous and prejudicial to interest of Revenue on ground that AO failed to make proper enquiries relating to share capital and share premium received by ssessee from M/s P, which was a resident of Mauritius. Accordingly, PCIT revised assessee's case by invoking provisions u/s 263. The Tribunal held that, identity of investor company was duly proved by Certificate of Incorporation issued as per laws of Country and Tax Residency certificate issued by Mauritian Revenue authorities, giving name and address of investor company and certifying that it was a company incorporated in Mauritius as per its laws and was a resident of Mauritius for Income Tax purposes. Genuineness of transaction, that share capital was received from said investor company could be sufficiently gathered from copy of return filed to RoC, submitting said fact of receipt of share capital from investor company and also from copy of share certificates issued to it.That money was genuinely received on account of share capital from said investor was evidenced by documents submitted by remitting and accepting bank to RBI as per FDI norms governing impugned transaction i.e. FIRC issued by bank remitting money from Mauritius to India i.e. accepting bank. Letter issued by RBI allocating a unique Identification number to transaction, thus confirming that transaction was taken on record, further corroborated genuineness of transaction. Certificate of CA certifying manner of determining FMV of share of assessee, justified premium also received. Documents filed before AO sufficiently established identity of investor that it was a company incorporated in Mauritius and also a tax resident of Mauritius, genuineness of transaction, that it had invested in share capital of assessee and also justification for premium. No infirmity was pointed out in documents by PCIT. AO was rightly satisfied with genuineness of share capital received. Premises on which PCIT had rested his case was based on general information issued by Ministry of Finance regarding unaccounted wealth generated in India, which was routed back to country through FDIs, GDRs from outside Country. It was merely suspicion of PCIT that money received by way of share capital was unaccounted income of assessee itself. There had to be a definite finding of error based on material evidences and not on suspicion. PCIT had to come to such conclusion and himself decided that order was erroneous, by conducting necessary inquiries, if required and necessary, before order u/s 263 was passed. Commissioner could not remand matter to AO to decide whether findings recorded were erroneous. Adequate inquiries were conducted by AO regarding share capital received from Mauritius Company, order could not be said to be erroneous even as per Explanation 2 to s. 263. Credit standing in name of investor who was a non-resident, onus to explain source did not lie with assessee, as per s. 68. PCIT failed to point out why any further enquiry was required to be made. It was not a case where any infirmity was pointed out in documents submitted by assessee or for that matter, huge share premium was justified. If that be case then of course, satisfaction of AO could not said to be reasonable and definitely in such a case enquiry of AO would have been clearly deficient. Identity, genuineness and even share premium received was established and justified. No reason remained for doubting transaction. Assessee appeal was allowed.

Colors Textiles Limited vs. ITO-(2018) 54 CCH 0300 ChdTrib-ITA No. 1514/Chd/2017-Dated Dec 5, 2018

2810. Assessee filed return of income. AO noted that assessee had claimed deduction for remuneration topartners. Assessee during course of survey had declared investment in Hotel Imperial, source of which could not be explained and such declared income was considered as income u/s 69. Income from declaration in investment of Hotel could not be treated as business income and could not be included in income while calculating remuneration u/s 40(b). AO restricted assessee's claim u/s 40(b) and made addition towards excess salary paid to partners. Thereafter, CIT issued a notice u/s 263 on ground that disallowance of expenses and depreciation were not examined by AO, and additions were not made under appropriate head. CIT found that during course of survey, assessee had declared investment in Hotel Imperial source of which could not be explained as such declared income was considered as income u/s 69. CIT concluded that income from declaration in investment of Hotel could not be treated as business income and could not be included in income while calculating remuneration u/s 40(b). Thus, assessment order was erroneous and prejudicial to interest of Revenue. The Tribunal held that, AO was conscious of fact that income so surrendered did not partake character of business income. However, he disallowed claim of partner's remuneration but allowed claim of set off of loss/expenditure against income so surrendered. It was also noted that assessment order does

not speak of consideration of claim of donation by AO. Assessee failed to demonstrateincome so surrendered during course of search had any link with business receipts. In absence of such link, set off of expenditure against such income would not be allowed. Allowance of such expenditure by AO in absence of supporting evidence of business income was patently erroneous and consequently prejudicial to interest of Revenue. No infirmity was found into order of CIT(A). Assessee's appeal was dismissed.

A-One Enclave vs. Pr. CIT-(2018) 54 CCH 0299 IndoreTrib-ITA No. 311/Ind/2017-Dated Dec 5, 2018

2811. The Tribunal held that since there is no provision u/s 115JB for addition of "Forex Losses" OR "PriorPeriod Expenditure", such disallowances/additions are not tenable under the law and the PCIT cannot issue directions u/s 263 to make additions/disallowances which are not allowed under the law.

Harman Connected Services Corporation India Private Limited vs. Pr. CIT-(2018) 54 CCH 0301 BangTrib-ITA No. 1101/Bang/2016-Dated Dec 5, 2018

2812. Search and seizure operation u/s 132 was conducted at assessee's business and residential premises wherein, certain materials and documents were seized and impounded. AO initiated proceeding u/s 153A and issued notice to assessee. In reply, assessee disclosed its total income for AY 2009-10. AO completed assessment after determining total income. Thereafter, PCIT found that assessee had debited an amount in the P&L account towards shortage of materials for which no reasons was recorded.Expenditure claimed towards shortage of material into railway rack for onward transportation was not an allowable expenditure u/s 37(1) and thus, assessment order passed by AO was erroneous and prejudicial to interest of Revenue. Accordingly, AO was directed u/s 263 to re-do same afresh after examining issue in detail. The Tribunal held that, difference claimed as expenditure and in case of shortage of material, customers deducted cost of materials from bills raised by assessee and same was brought to knowledge of AO in earlier years. In earlier assessment u/s 143(3), AO having called for information had made addition and completed assessment after satisfaction and observations. PCIT observed that assessee had no eligibility for claim of expenditure. As per questionnaire in original assessment proceedings, assessee had satisfied availability of evidence and thereby assessment was completed. Expenditure claimed by assessee considering business was normal in nature and business operations of expenditure was arising out of shortages, which was already submitted and completed assessments could be interfered with by AO while making assessment u/s 153A only based on incriminating material unearthed during course of search which were not produced. When no incriminating material was found in respect of shortage of materials in course of search operations, order of revision u/s 263 by PCIT could not be sustained.

Basukinath Roadways Pvt. Ltd. vs. Pr. CIT-(2018)54 CCH 0305 CuttackTrib-ITA No.204/CTK/2018-Dated December 5, 2018

2813. Assessee filed return of income which was assessed by AO without making any addition.Thereafter, CIT issued SCN in order to revise assessee's case.CIT noted that in computation of income, assessee claimed deduction as loan written back under OTS scheme, considering it as "capital receipt" not liable to tax.It was apparent from perusal of the Balance-sheet, Schedule under head "Secured Loan" that assesses had obtained cash credit an working capital loan from Bank which was shown as outstanding but was reduced to NIL.Similarly, loan from another Bank was shown towards Term Loan and Corporate Loan, apart from International Funded loan.Said amount remained outstanding to Bank on account of part payment and one time settlement scheme.AO failed to carry out relevant and meaningful inquiries about reasons for which loans were taken and also about terms and conditions of one time settlement as a result of which there were no dues to Financial Institution or Banks.Even book profit u/s 115JB was wrongly worked out.Assessee had claimed unabsorbed depreciation.AO failed to consider whether Deferred Tax Asset was considered for Book Loss shown or there was a separate entry for it.Assuming figure was not correct and Deferred Tax Asset had to be considered also for Book Loss then also AO failed to consider correct figure for adjustment u/s 115JB.If there was typographical error on part of assessee, then also no question was asked during assessment proceedings.AO acted in a mechanical fashion to pass the assessment order hence, he was directed to form fresh assessment. The Tribunal held that after printing words 'working capital', same was cut and by hand it was mentioned 'term loan'.Language used was clearly confusing and does not categorically state that all loans were taken for trading activity.In reply to show cause reproduced by CIT in his order u/s. 263,

cutting of 'working capital' substituting of same with 'term loan', was not mentioned therein. AO had not made any enquiry regarding nature of loans waived off purposes for which they were utilized. Assessee at no stage gave correct and complete details and purposes for which all loans were utilized.CIT directed AO to pass an order after doing meaningful enquiry and as per law and after giving assessee reasonable opportunity. The Tribunal held that no prejudice was caused to assessee and assessee's appeal was dismissed.

Expo Gas Containers Ltd vs CIT [2018] 54 CCH 0435 (Mum- Trib.)- ITA No.5210 /Mum/2015 dated 27.12.2018

2814. The Tribunal held that as Commissioner while exercising power u/s 263 did not set aside issue for adjudication to AO, rather he himself enhanced income and gave a direction to AO for inclusion of those amounts, unless his order was challenged before Tribunal and directions modified, Order giving effect by AO in pursuance of such directions, could not be agitated before CIT(A). The Tribunal thus dismissed the assessee's appeal.

Adhyakshya Lok Mela Amlikaran Sammittee vs ITO- (2018) 54 CCH 0206 RajkotTrib- 05.10.2018

2815. Assessee filed return of income declaring income under head "income from house property and capital gain". Assessee's case was selected for scrutiny through CASS wherein, AO noted that details equisitioned during course of hearing were furnished and were examined with reference to income shown by assessee. AO also stated that assessee had declared LTCG on sale of Booth No. 36 and concluded assessment taking note of an office note which was also appended in assessment order. Thereafter, CIT exercised his powers u/s 263. PCIT stated that assessee made investment in shop-cum-flat which was primarily a commercial property purchased jointly in name of Smt. SR, Smt. SB and Smt. MB. Said property was a single property and could not be sold in parts as per composite sale deed registered with competent registering authority. AO had allowed assessee's claim without inquiring nature of said property. Inquiries were got conducted through ACIT. Thus, said assessment was erroneous in so far as prejudicial to interest of Revenue in view of provisions of s. 263, including Explanation 2(a). Assessment order u/s 143(3) was set-aside and AO was directed to pass a fresh order. The Tribunal held that, in order to justify exercise of power vested by Statute u/s 263, it was incumbent upon PCIT to demonstrate that at time of investment, property was not a residential property and in terms of Explanation 2(a), PCIT was required to demonstrate that order passed was without making enquiries or investigation. PCIT was not able to show that order passed either suffered from any error let alone such an error which was prejudicial to interests of Revenue. Issues were enquired into by AO during assessment proceedings. Before AO, assessee's explanation was offered. Plan and map site was also made available. Nothing was brought out in order to show status of property at time of investment. Thus, explanation 2(a) was not attracted and accordingly, order passed by PCIT was quashed.

Meenu Bansal vs Pr.CIT- (2018) 54 CCH 0352 ChdTrib- ITA No 627/CHD/2017 dated 08.10.2018

2816. The AO had completed assessment of assessee's income, originally u/s 143(3) after making various additions. However, later the Pr.CIT issued notice u/s 263 on the ground that in profit and loss account, assessee had shown closing stock which included gold jewellery and silver jewellery which was valued at cost price or NRV whichever is lower and the same was not examined by AO. Further the Pr.CIT held that valuation of closing stock ought to have been done by taking average of opening stock and purchase price and held the order of assessment was erroneous as well as prejudicial to interest of revenue. The Tribunal, on appeal held that assessee was consistently following same method of valuation of closing stock which was also followed in current year and profit was deduced in accordance with method adopted by assessee. Thus, the PCIT was not justified in disturbing consistent method of valuation and Tribunal observed that valuation of unsold stock at close of accounting period was necessary part of process of determining trading results of that period and held that it could in no sense be regarded as source of such profits and thus concluded that order passed by PCIT could not be sustained.

Sree Alankar vs PCIT- (2018) 54 CCH 0019 Cuttack Trib- ITA No 108/CTK/2018 dated 12.09.2018

2817. On scrutiny of assessment records, the CIT found that deprecation @80% was granted on certain assets i.e. boilers, turbine and bio-gas plant, thus the CIT believed that AO failed to conduct inquiry and thus, his order was erroneous and prejudicial to interest of Revenue and invoked revision u/s 263.The Tribunal held that, for invocation of powers u/s 263, fulfillment of twin condition was must i.e. assessment order should be erroneous and it should be prejudicial to the Revenue and if any one condition was lacking, then action u/s 263 would not be justified. The Tribunal observed that the assessee was entitled for deduction u/s 80IA/80IC and thus, the moment depreciation was being disallowed, it would be added to total income of assessee, and accordingly enhanced deduction **u/s** 80IA/80ICwould be given to assessee, thus no prejudice was being caused to Revenue on grant of depreciation. Thus, the Tribunal concluded that the order of CIT was not sustainable on this issue as it failed to fulfill twin conditions as laid down u/s 263.

Gujarat Ambuja Exports Ltd vs PCIT- (2018) 54 CCH 0127 Ahd Trib-ITA No 1049/Ahd/2018 dated 26.10.2018

2818. Assessment was completed by AO u/s 143(3), thereafter the CIT by invoking provisions u/s 263 noticed that assessee company had claimed expenditure under the head "Legal and Professional charges" in P&L a/c which were allowed without due care and verification by AO and thus held that the assessment order passed by AO was erroneous and pre-judicial to interest of revenue.
The Tribunal observed that the AO had raised specific query related to all expenses debited in accounts and copies of ledger accounts with necessary evidences were to be produced, but only ledgers were produced by the assessee. The Tribunal thus held that enquiries as to expense claim of legal and professional charges could not be allowed merely on the basis of ledger unless supported with documentary evidence and thus explanation 2 to Section 263 was attracted in this case. The Tribunal concluded that the AO passed order without making enquiries or verification and thus CIT had passed legal and valid order directing AO to make fresh assessment so far as expenses claim was concerned, by affording reasonable opportunity of being heard to assessee.

Supreme Build Cap P Ltd vs PCIT- (2018) 54 CCH 0122 Del Trib- ITA No 4739/Del/2018 dated 25.10.2018

2819. The Tribunal held that if assessee consistently claims exchange fluctuation loss as deduction, there shall absolutely be no case for invoking revisionary jurisdiction u/s 263 with regard to allowability of foreign exchange fluctuation loss.

Himadri Chemicals & Industries Ltd vs Pr.CIT- (2018) 54 CCH 0002 Kol Trib- ITA No 813/Kol/2018 dated 05.09.2018

2820. The Tribunal held that while computing Gross Total income under Chapter IV of the Act, if CIT himself in his order passed u/s 263 admits deduction u/s 10AA, then assessment order passed by AO granting exemption to assessee cannot be considered as erroneous and prejudicial to interest of revenue.

Himadri Chemicals & Industries Ltd vs Pr.CIT- (2018) 54 CCH 0002 Kol Trib- ITA No 813/Kol/2018 dated 05.09.2018

2821. The Tribual held that if issue of provision for MTM losses has been allowed by AO after due examination of same, then no error can be attributed in assessment order of AO warranting revisionary jurisdiction u/s 263

Himadri Chemicals & Industries Ltd vs Pr.CIT- (2018) 54 CCH 0002 Kol Trib- ITA No 813/Kol/2018 dated 05.09.2018

2822. Search and seizure operation u/s. 132 were conducted in case of assessee at residence & office premises of IRC Group and at lockers maintained in name of individual assessees with various banks and notice u/s.153A was issued asking assessee to file correct return of its total income. Assessee had claimed operating expenses of certain amount which was disallowed by AO. Further, the PCIT had observed that some amount being part of operating expenses was disallowed namely sundry balance written off in preceding assessment order u/s.143(3) but same disallowance had not been made when order was passed u/s.153A r/w section 143(3), thus PCIT concluded that assessment order passed by AO was erroneous and prejudicial to interest of revenue and therefore and initiated proceedings u/s 263. The Tribunal, noted that since there was no incriminating material unearthed during search, AO had not made any additions in his assessment order, based on incriminating material thus it was not case of Pr. CIT that AO failed to make any additions/disallowances based on incriminating material seized/unearthed during search. Thus, the Tribunal held that items of regular assessment could not be added back in proceedings u/s 153A when no incriminating documents were found in respect of disallowed amounts in search proceedings and concluded that PCIT erred in exercising his revisional jurisdiction u/s 263

Indian Roadways Corp Ltd vs PCIT- (2018) 54 CCH 0038 Kol Trib- ITA No 787/Kol/2018 dated 12.09.2018

2823. Assessee being Tata Motors dealer, filed its return of income and assessment was completed u/s. 143(3) making certain additions and disallowances. The CIT perused assessment records of assessee u/s. 263 and observed that assessee claimed depreciation on trucks @30% instead of 15% as entitled and had invested in equity shares and proportionate interest was required to be disallowed u/s.14A, but AO had not examined this issue. Thus, CIT held assessment order to be erroneous and prejudicial to interests of revenue. The Tribunal observed that the assessee had accepted to its wrong claim of depreciation on trucks and noted that the AO had not made any verification on the same, further the assessee contested that the CIT initiated revision u/s 263 on the basis of audit objections. However, the Tribunal observed that there were no material to prove that revision proceedings were intittaed on the basis of audit objections. Thus, the Tribunal held that the AO had not made any verifications for the above issues and upheld the order u/s 263 and dismissed assessee's appeal.

Jasper Industries vs DCIT- (2018) 54 CCH 0021 Hyd Trib- ITA No 1344/Hyd/2015 dated 19.09.2018

2824. The assessee was engaged in the business of manufacturing/ trading of yarn and fiber waste and was subject to survey u/s 133A wherein the assessee had surrendered certain sum as additional income and assessment was completed. Subsequently, the CIT passed an order u/s 263 holding that the AO's order was erroneous and prejudicial to the interests of the revenue and observed that the AO had failed to make proper verification. The Tribunal however, quashed the order of CIT.

The Court noted CIT's observations that AO had failed to reject books of accounts despite assessee's own admission that there were discrepancies in the books, as well as a huge surrender of additional income of Rs. 2.15 cr. had been made during the survey and there was drastic fall in the GP rate as well as the net profit rate as compared to earlier years. Thus, in the light of the above the Court upheld CIT's order u/s. 263 and ruled that it could not be concluded that the assessment order passed u/s 143(3) of the Act was not erroneous and prejudicial to the interests of the revenue, and AO had simply accepted assessee's explanations without independent application of mind. Moreover, if excess stock/excess cash was found, it was inconceivable that such books of account were reliable.

In light of above, HC upheld CIT's order u/s 263 and fortwith directed Registry to forward this ruling copy to CBDT to issue necessary instructions to all AOs in cases of survey/search and seizure operations especially where surrender or concealment has been detected, to ensure proper scrutiny of such cases. It further directed that CBDT directive should require AO to discuss reasons for rejecting or accepting the books of account of the assessee and not to merely record in slipshod or cursory manner that the books of account produced and test checked as done by the AO in the present case.

PCIT vs Venus Wollen Mill- TS -724-HC-2018(P&H)- ITA No 111 of 2015 dated 27.09.2018

2825. Assessment was completed in case of assessee u/s 143 r/w/s 263 and the AO in such order did not allow claim of deduction made u/s 10B representing export proceeds which was not billed during relevant AY and not brought to India within stipulated time and the same view was upheld by the CIT(A). The Tribunal held that the CIT(A) erred in not adjudicating issue raised before him on merits as the Tribunal in the appeal against order passed u/s 263, while confirming jurisdiction of administrative CIT in passing order u/s 263, had clarified that issue raised on merits was left open as there were no specific direction by CIT while passing his order u/s 263. Thus, CIT(A) should have decided the same de hors observations made by CIT in revisionary order passed u/s 263. Thus, the Tribunal held that the matter needed to be examined by CIT(A) afresh and matter was remanded.

U.S. Technology International Pvt Ltd vs ACIT- (2018) 54 CCH 0157 Cochin Trib- ITA No 109/Coch/2018 dated 24.09.2018

2826. The Court held that power under section 154 is exercisable only when mistake is manifest and could be identified by a mere look which does not need a long drawn out process of reasoning and a mere mistake by itself cannot be a ground to invoke section 154.

Lakshmi Card Clothing Mfg. Co.(P.) Ltd. v. Dy.CIT [2018] 98 taxmann.com 445(Mad.)- Tax Case (Appeal) No. 944 of 2008 dated September 24, 2018

2827. The assessee incurred certain R&D expenditure and claimed weighted deduction u/s 35(2AB) which was allowed by AO. The Principal Commissioner issued notice u/s 263 on grounds that the AO failed to exclude expenditure on account of quality control and regulatory approvals out of R&D expenses on which assessee had claimed weighted deduction. It was noted that during scrutiny assessment, assessee clarified that expenditure relating to quality control and regulatory approvals were not grouped into R&D expenses and quality control was claimed as an ordinary expenditure as it was a part of production costs. Further, the AO while framing the scrutiny assessment had also taken note of the fact that Approving Authority i.e. DSIR after verification had excluded certain expenditure from the amount eligible for weighted deduction u/s 35(2AB) and accordingly it could not be said that he had not applied his mind and thus made an error. Accordingly, the Tribunal set aside and cancelled the order issued u/s 263 by the Pr.CIT.

Torrent Pharmaceuticals Ltd. vs Dy.CIT [2018] 97 taxmann.com 671 (Ahmedabad - Trib.)- IT APPEAL NO. 164 (AHD.) OF 2018 dated August 08 2018

2828. Where the AO had passed the order without inquiry into the issue whether assessee (being a cooperative society) could *claim* deduction u/s 80P with respect to income earned from trading, the Tribunal held that there was no infirmity in the order of Pr.CIT passed u/s 263 who had set aside the issue for fresh adjudication denovo, to the extent of examining the claim of deduction u/s 80P. It was held that since there was no application of mind to the said issue in the assessment order, such order was erroneous and in the instant case, it was also pre-judicial to the interest of the Revenue.

ADAMBANDH SAMABAY KRISHI UNNAYAN SAMITY LTD. vs. CIT [2018] 53 CCH 0471 (Kol-Trib.)- ITA No.164 (AHD.) OF 2018 dated August 24 2018

2829. Where the AO had treated the unexplained amount credited to the capital account as unexplained income u/s 68 and allowed set off net business loss against that unexplained income, the Tribunal held that the CIT had not erred in exercising jurisdiction u/s 263 as the AO had allowed excessive relief to the assessee which was *prejudicial* to the interest of the Revenue. It relied on the decision of Fakir Mohmed Haji Hasan Vs. CIT ([2001] 247 ITR 290 (Guj.) wherein it was held that various deductions which are applicable to the corresponding incomes under various heads could not be allowed in the case of deemed incomes which were covered under the provisions of sections 69, 69A, 69A and 69C in view of the scheme of those provisions. Accordingly, the Tribunal held that AO's order was erroneous and prejudicial to the interest of the Revenue and dismissed assessee's appeal.

BHIMA JEWELLWERS vs. PRINCIPAL COMMISSIONER OF INCOME TAX [2018] 53 CCH 0459 (Cochin-Trib.)- ITA No.208/Coch/OF 2018 dated August 20 2018

2830. The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revisional order passed by the CIT u/s 263 wherein the CIT not only disputed the computation of deduction allowed to the assessee u/s 80-I but also attempted to demonstrate that the said deduction itself could not be claimed by the assessee, *whereas* the Tribunal (in appeal against the assessment order) had already directed the AO to allow deduction u/s 80-I in accordance with law. It was held that the Tribunal (in appeal against the assessment order) had only directed the AO to make the computation in terms of the legal provision i.e. for that limited exercise only the matter was sent to the AO and thus the CIT had exceeded its jurisdiction u/s 263. Accordingly, the Court held that Tribunal's order was neither perverse nor vitiated by any error of law apparent on the face of record.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. KOCHI REFINERIES [2018] 102 CCH 0418 (Bom HC.)- ITA No.109 of 2016 dated August 21 2018

2831. The Court upheld the Tribunal's order holding that since the AO had made sufficient inquiries in the course of assessment before concluding that the derivative loss claimed by assessee as a business loss was a genuine loss which had to be allowed, the revision order passed by the CIT u/s 263 setting aside the assessment order on ground that no proper inquiry was made could not be sustained.
Pr.CIT v Ivory Consultants (P.) Ltd [2018] 96 taxmann.com 539 (Calcutta) – GA NO. 3117 OF 2017; ITAT NO. 326 OF 2017 dated July 10, 2018

2832. The Tribunal allowed assessee's appeal against the CIT's revision order passed u/s 263, holding that the issue under consideration i.e. determination of annual lettable value (ALV) of premise was not only involved in appeal before the CIT(A) but he had also considered the same and thus the order passed by the CIT u/s 263 was clearly without jurisdiction. It was noted that for the year under consideration, the Tribunal had remanded the matter to the AO for determination of ALV of the premise and the AO had passed an order giving effect to the Tribunal's order wherein he had accepted the ALV adopted by the assessee. However, the AO had subsequently passed another order giving effect to the Tribunal's order wherein he had made an addition to the ALV adopted by the assessee. In the appeal filed against the subsequent order giving effect to Tribunal's order, the CIT(A) held that the AO had no jurisdiction / power to pass the subsequent order. The CIT(A) also discussed the merits of the issue of determination of ALV, though the assessee had not filed any ground of appeal for the same. The Tribunal held that an assessment order may be challenged by an assessee in appeal as beyond jurisdiction as well as on merits and in such appeal, it is open to the appellate authority to decide both the issues i.e., with respect to the jurisdiction as well as on merits. Accordingly, it concluded that though the determination of ALV was not a subject matter of appeal before the CIT(A), since he had considered and decided on the same, CIT could not exercise his jurisdiction u/s 263.
INDOKEM LTD. vs. CIT (2018) 53 CCH 0391 MumTrib - ITA Nos. 3282/Mum/2014, 3283/Mum/2014, 3284/Mum/2014, 3285/Mum/2014, 3286/Mum/2014, 3287/Mum/2014 dated July 25, 2018

2833. The Court allowed Revenue's appeal against the Tribunal's order wherein the Tribunal had set aside the CIT's revision order passed u/s 263. The CIT had excercised the revisionary power on the ground that the AO's order was erroneous and prejudicial to the interest of Revenue since the AO had not made enquiries *inter alia* with respect to huge duty drawbacks claimed and certain loans given by the assessee. The Tribunal held that it was not a case of lack of enquiry by the AO, at best could be a case of inadequate inquiries, and that the CIT doubted the genuineness of transactions without any substantive evidence. The Court noted that the AO had not recorded any observation or findings on the issues and thus held that it was difficult to validate the Tribunal's approach of reading into AO's order, reasons which were simply not there. Accordingly, the Court set aside the Tribunal's order.
Pr.CIT v Braham Dev Gupta & anr (2018) 408 ITR 0291 Delhi - ITA 907/2017, C.M. APPL. 38789/2017 & ITA 1162/2017, C.M. APPL.46234/2017 dated July 20, 2018

2834. The Tribunal held that clause (c) of Explanation 1 to Section 263, which restricts the CIT's revisionary powers to subject matters which are not considered and decided in an appeal, included and extended to subject matter which though are not considered and decided in appeal but are pending before CIT(A). It was noted that the assessee had filed an appeal before the CIT(A) against the AO's order disallowing 25% of unverifiable purchases from two parties and the Pr.CIT had invoke his revisionary power to disallow 100% of such purchases.
GAD FASHION vs. PR.CIT (2018) 53 CCH 0374 JaipurTrib – ITA No. 670/JP/2018 dated 17th July, 2018

2835. The Court dimissed Revenue's appeal against the Tribunal's order setting aside the CIT's revision order passed u/s 263 wherein the CIT had held the assessessment order passed by the AO u/s 143(3) to be erroneous and prejudicial to the interest of Revenue since the assessee had failed to explain certain credit entries to the partner's capital account. The Tribunal held that since the AO had examined the book of accounts were produced by the assessee and was satisfied with assesee's explaination with respect to the transactions in the partner's capital account, there appeared no illegality in accounting entries made in the books of account. Accoridngly, it was held that the CIT could not exercise suo-motu power u/s 263 in absence of sufficient material to satisfy that assessment order was erroneous and prejudicial to interest of Revenue.
CIT vs. GREEN LAND MOTORS (2018) 102 CCH 0125 AllHC – ITA No. 259 of 2013 dated 13th July, 2018

2836. The AO did not accept assessee's claim for deduction of commission paid to Societies under Sugarcane Act on ground that payment related to AY 2012-13 and therefore could not be allowed as deduction in AY 2013-14. Assessee filed a revision application u/s 264 before Pr.CIT claiming deduction of commission in AY 2012-13 along with an application for condonation of delay but the application was rejected on ground of delay in filing. The assessee filed a writ petition against such rejection and the Court condoned the delay in filing application, noting that since the commission was paid in AY 2013-14 pursuant to order dated 19/06/2012, the assessee had taken a view that deduction was allowable in AY 2013-14 only and it is only after the AO disallowed the claim in AY 2013-14, assessee had filed the revision application within month of order of AO for AY 2013-14. Further, it directed the Pr.CIT to consider the application on merits.
DWARIKESH SUGAR INDUSTRIES LTD. vs. DCIT (2018) 102 CCH 0162 MumHC – WRIT PETITION NO. 1206 OF 2018 dated 12th July, 2018

2837. The Apex Court dismissed assessee's SLP against the High Court order wherein the High Court had set aside Tribunal's order quashing the revision order passed by CIT u/s 263, holding that the Tribunal could not substitute its own reasoning to justify the original assessment order passed by the AO when the AO himself did not give any reason in the order, on aspects, which were not expressly reflected in the assessment order and thus revision by CIT was warranted.

Braham Dev Gupta vs Pr.CIT [2018] 103 CCH 0284 (SC)- Special Leave to Appeal (C) No(s).30377/2018 dated 30.11.2018

2838. The Tribunal allowed assessee's appeal against the revision order passed by the PCIT u/s 263 holding that since the AO's order was not erroneous, the twin conditions, viz. a) order of AO sought to be revised was erroneous and b) prejudicial to interest of Revenue, were not fulfilled and, therefore, the order passed by the AO could not be subject matter of revision. It was noted that the AO had allowed assessee's claim for deduction of foreign exchange loss on currency swap (conversion of loan in Japanese yen to American dollars) and the PCIT had passed the revision order holding that loss was capital in nature for the reason that ECB borrowed was used for acquiring a capital asset. The Tribunal relied on ratio laid down in case of coordinate bench decision in Cooper Corporation Private Ltd vs. DCIT wherein it was held that where assessee's act of conversion of Indian currency loan which was availed for acquisition of assets, etc. into foreign currency loan was dictated by revenue consideration towards saving interest cost, foreign exchange fluctuation loss being on revenue account was allowable expenditure u/s 37. Thus, it held that in the said case, the assessee had entered in to foreign currency

swap agreement to hedge foreign exchange fluctuation risk of liability of foreign currency which was revenue loss and, thus, an allowable deduction.

JBF Industries vs Pr.CIT [2019] 54 CCH 0365 (Mum Trib)- ITA No.701/Mum/2018 ITA No.702/Mum/2018 dated 16.11.2018

2839. The Tribunal allowed assessee's appeal against the PCIT's order passed u/s 263 to disallow assessee's claim for deduction u/s 54 and cancelled the said order. The PCIT opined that the assessee was not eligible for the said deduction since he had acquired land (on which he constructed residential house) prior to sale of old property (though he had completed construction within a period of 3 years as provided u/s 54). The Tribunal held that in order to claim deduction u/s 54, in case of construction of residential houses, date of commencement of construction of house property was irrelevant and construction commenced even before transfer of property was entitled for the said deduction, if the same is completed during with the period of 3 years from date of the said transfer. Accordingly, it cancelled the PCIT's revisional order.

Gandaraju Prabhavati vs Pr.CIT [2018] 54 CCH 0212 (Vishakaptanam Trib)- I.T.A.No.512/Viz/2017 dated 06.11.2018

2840. The Tribunal allowed assessee's appeal and held that the exercise of jurisdiction by CIT u/s 263 was both invalid and bad in law where the CIT opined that the AO had erred in droping the reassessment proceedings initiated u/s 147 r.w.s. 148. It was noted that the AO in original assessment u/s 143(3) had allowed assessee-firm's claim for deduction u/s 80IA(4)(i)(a) & (b) [w.r.t. income from eligible business of development, operation and maintenance of infrastructural facilities] noting that the partnership firm which fulfilled all the criteria provided u/s 80IA(4)(i)(a) & (b) would be eligible for getting the benefits of the provisions of the said section. Subsequently, reassessment proceedings which were initiated for the reason that assessee-firm was not eligible to claim the aforesaid deduction, were dropped by the AO accepting assessee's plea that (i) no new material had come to the possession of AO and (ii) said issue had been discussed in the order passed u/s 143(3). The Tribunal held that the CIT had erred in exercising his jurisdiction u/s 263 against the order dropping proceedings u/s 147/148 because the said order did not decide the issue of deduction u/s 80IA(4)(i)(a) & (b) since the AO had already taken a view in original assessment. It held that the CIT could not disturb the said view as it would amount to change of opinion.

Suyojit Infrastructure vs ITO [2018] 54 CCH 0230 (Pune Trib)- ITA Nos.850 & 851/PUN/2016 dated 06.11.2018

2841. The Tribunal allowed assessee's appeal and quashed the revision order passed by the Pr.CIT u/s 263 where the notice was issued under the said section only for the reason that assessee had shown substantial profits in Rudrapur Unit (for which it had claimed deduction u/s 80IC) whereas its Vijaywada unit was showing lesser profits on account of managerial remuneration, labour charges, etc. being debited to Vijaywada Unit which were not debited in the case of Rudarapur unit. The Tribunal held that invocation of revisionary power u/s 263 was not justified since during the assessment proceedings, the AO had called for all the details necessary before allowing the deduction u/s 80IC and there was no error in the assessment order. It observed that the PCIT was unable to specify any issue which made the assessment as erroneous or prejudicial to the interests of the Revenue. Accoridngly, it held that there was no error which caused prejudice to the interests of Revenue.
Liners India Ltd vs Asst.CIT[2018] 54 CCH 0211 (Vishakapatnam Trib)- ITA No. 310/VIZ/2017. dated 06.11.2018

2842. The Tribunal reversed PCIT's revision order passed u/s 263 and held that the original assessment order passed by the AO u/s 143(3) was not erroneous and prejudicial to the interest of Revenue in allowing deduction u/s 80-IB with respect to export incentives derived by the assessee-company. The PCIT opined that export incentive received was not an income derived from eligible business and hence, on such income, deduction u/s 80-IB was not allowable. It was noted that the assessee (engaged in manufacturing in plastic sector) had received the impugned incentive as per the Govt's Foreign Trade Policy by exporting goods manufactured in India and the same could be utilized against import of capital goods relating to manufacturing activity in plastic sector. Thus, the Tribunal held that such incentive was an instance involving reimbursement of cost of running eligible business forming part of profits qualified for deduction u/s 80-IB.

KKalpana Industries (India) Ltd. vs Pr.CIT[2018] 54 CCH 0237 (Kol Trib)- ITA No.814/Kol/2018 dated 06.11.2018

2843. The Tribunal quashed the revision order passed by the CIT u/s 263 wherein the CIT had held that the assessment order passed by the AO was erroneous and prejudicial to the interest of Revenue since the assessee had not included included interest on advance given to certain company while computing book profits u/s 115JB whereas the same was offered to tax under normal provisions of the Act. The Tribunal held that once the accounts have been certified by the auditors and adopted in the AGM, the AO has a limited power to make adjustments as provided for in the explanation of section 115JB and therefore, the AO had taken a correct view as the matter stood covered in favour of the assessee. Further, it noted that the assessee had explained that this income was not accounted for in the books of account due to uncertainty of receipt but the same was offered in the computation of the normal income due to abundant caution. Accordingly, it allowed assessee's appeal.
Tata Realty and Infrastructure Ltd. vs Pr.CIT [2018] 54 CCH 0362 (Mum -Trib)- ITA Nos.7135 to 7137 /Mum/ 2018 dated 02.11.2018

2844. The Court dismissed Revenue's appeal against Tribunal's order holding that the original assessment order passed by the AO u/s 143(3) was not erroneous and thus revisionary powers u/s 263 could not be invoked, where the CIT while exercising his power u/s 263 opined that the AO had not examined the assessee's claim for deduction u/s 54 and allowed the same without application of mind. The Court noted that (i) while allowing the claim, the assessment order specifically adverted to the facts and rendered a finding that sale proceeds of flat sold have been invested in 3 years and (ii) CIT had not alleged that the AO's order was contrary to the statutory provisions rather his only basis was that the case was not properly investigated.
Pr.CIT v Shri Hari L. Mundra - INCOME TAX APPEAL NO.144 of 2016 (Bom HC) dated 04.07.2018

2845. Where the CIT invoked revision proceedings in the case of the assessee noting that the assessee had claimed an expense of Rs.3.50 crore on account of 'land premium' which the CIT opined was wrongly allowed as a revenue expenditure, the Tribunal, noting that neither any enquiry had been made on the impugned issue nor was there any finding in the assessment order, held that the CIT was justified in invoking revision proceedings under Section 263 of the Act.
CUTTACK DEVELOPMENT AUTHORITY vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0151 CuttackTrib - ITA No. 361/CTK/2014 dated Mar 5, 2018

2846. The Court dismissed Revenue's appeal against the Tribunal's order holding that the provisions of section 263 could not be invoked by the CIT since the twin conditions viz. the AO's order is erroneous as well as prejudicial were not satisfied. The CIT had opined that the AO's order was erroneous since the AO had allowed assessee's to carry forward and set-off unabsorbed depreciation pertaining to AY 1974-75 to AY 1996-97 against the income for AY 2007-08. On merits, the Court held that the issue had become academic since the Court had in the case of CIT v Hindustan Unilever Ltd (2017) 394 ITR 73 (Bom) approved the decision of General Motors India P. Ltd. v DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001 (also since the Tribunal had decided in favour of the assessee following the said decision of the Gujarat High Court). The Court further noted that vide the Finance Act, 2001, section 32(2) was amended to

remove the restriction against set off and carry forward that was limited to 8 years beyond which the benefit could not be claimed prior to amendment.
Pr.CIT v Hindustan Antibiotics Ltd – ITA No. 1042 of 2015 (Bom) dated 20.02.2018

2847. Where assessee itself had accepted before CIT that it had not maintained separate books of account in respect of research and development facility even though it was required to maintain same as per provisions of Act for claiming deduction u/s 35(1), the Tribunal upheld CIT's revision order passed u/s 263 setting aside the AO's order wherein the assessee's claim for the said deduction was wrongly allowed.
Nivo Controls (P.) Ltd. v CIT – (2018) 90 taxmann.com 271 (Mum) – ITA No. 3533 (mum.) of 2014 dated 31.01.2018

2848. Where the AO passed the assessment order considering the revised computation (and not revised return) filed by the assessee offering Nil income to tax as against Rs.8.32 crores offered in the original return filed, Tribunal held that since the assessment order itself was null and void based on non-est revised return, the CIT could not exercise jurisdiction u/s 263
Hari Mohan Das Tandon (HUF) v Pr.CIT – (2018) 91 taxmann.com 199 (All Trib) – ITA No. 44 (Alld) of 2016 dated 08.01.2018

2849. Where the assessee, a US LLP, rendering consultancy and technical services had filed its return of income claiming certain sum received for services rendered outside India as not chargeable to tax in India as per Article 15 of India-USA DTAA and the AO, after making due enquiries with regard to non-taxability of receipts by assessee for services rendered outside India and applicability of article 15 of India-USA DTAA, had accepted the total income of assessee as declared in return of income, the Tribunal quashed the revisional order passed u/s 263 by the CIT on ground that there was complete lack of enquiry/verification by AO during scrutiny proceedings. It held that the CIT sought to substitute his view with that of the AO since it is evident that the AO made due enquiries before completing the assessment and, thus, the AO's order cannot be termed as erroneous for lack of proper enquiry before concluding the assessment.
Pricewaterhouse Coopers LLP USA v ACIT – (2018) 91 taxmann.com 444 (Kolkata Trib) – ITA No. 540 (kol.) of 2015 dated 14.02.2018

2850. Where the assessment order revealed the AO had picked up the figures of 'Book Profits' u/s 115JB as per 'Return of Income' without applying any mind thereupon and adopted the same as such without any *iota* of discussion in the quantum assessment order, the Tribunal held that *prima facie*, this was a case of 'no inquiry' by AO and not the case of 'inadequate inquiry' or 'Lack of Inquiry' or 'adoption of one of the possible views' and therefore as per the statutory provisions as contained in section 263 including Explanation 2 the order of AO was deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. However, on merits, it held that since the employee benefit cost, i.e., Fringe Benefit Tax, was not part of income-tax, the same was not required to be added back while arriving at Book Profits u/s 115JB. Thus, the Tribunal held that since one of the prime condition viz. prejudicial to interest of revenue to invoke the revisional jurisdiction u/s 263 had remained unfulfilled, the order passed u/s 263 by the CIT could not be sustained in law and accordingly was set aside.
Rashtriya Chemicals & Fertilizers Ltd. v CIT – (2018) 91 taxmann.com 104 (Mum) – ITA No. 3625 (Mum.) of 2017 dated 14.02.2018

2851. The assessee had made a revision application u/s 264 against the AO's order passed u/s 144 (since the assessee had not complied with the notice issued u/s 148) bringing to tax the long-term capital gains on the sale of agricultural lands, just before the expiry of period available for making such application (i.e. one year from the date of passing of the AO's order) instead of filing an appeal against the AO's order. The said application was rejected by the Pr.CIT on the ground that the assessee could not produce adequate documentary evidences to support its contentions (that they were entitled to only 1/3rd share in the property and that also that the sale consideration was utilised for purchase of agricultural land, entitling deduction u/s 54B). On writ been filed against the Pr.CIT's order rejecting the application, the Court at the outset held that the Pr.CIT had rightly rejected the assessee's prayer. In the writ, the assesse also contended that they being illiterate agriculturists could not avail the regular

remedy of appeal and later on, preferred the said petition u/s 264 which ought to have been allowed in the facts and circumstances of the case. The Court held that the remedy by way of revision u/s 264 could not be treated as a regular remedy bypassing regular remedy of appeals against impugned assessment orders and one could not be allowed to avail said revisional remedy in a routine manner bypassing requirement of payment of tax and allowing regular appellate authorities to apply their minds to relevant facts and evidence on record. It held that the fact that the assessee preferred the revision petitions u/s 264 just before the expiry of one year of passing of AO's order reflects that they were very conscious and aware of the legal provision and deliberately avoided the availing of the regular remedy by way of an appeal and at the nick time of the expiry of the time period, preferred the present revision petition u/s 264, which for good reasons, came to be dismissed by the Pr.CIT.

Nataraju (HUF) v Pr.CIT – (2018) 91 taxmann.com 467 (Kar) – Writ Petition Nos. 54836-54837 of 2017 (T-IT) dated 20.02.2018

2852. The Court upheld the CIT's order u/s 263 in case of the assessee, developer of SEZ, where the deduction claimed u/s 80-IAB on income from sale of bare shell building in SEZ to its co-developer was allowed by AO during assessment and the CIT had passed the revision order u/s 263 on the ground that sale of building to co-developer neither being an activity of development of SEZ nor operation and maintenance of SEZ was not eligible for deduction u/s 80IA, noting that the AO had not made a detailed analysis of factual narration before granting deduction u/s 80-IAB with respect to transactions and documents, having regard to provisions of SEZ Act and purpose for which SEZs were set-up.

CIT v DLF Commercial Developers Ltd. – (2018) 92 taxmann.com 10 (Del HC) – ITA Nos. 507 of 2014 and 563 of 2015 and 610 of 2017 C.M. Appl. 28227 of 2017 dated 22.02.2018

2853. The Tribunal dismissed the assessee's appeal against the CIT's revision order passed u/s 263 setting aside the AO's order on the ground that the AO had not made any proper verification and enquiries of documents seized during search, therefore, said assessment order was deemed to be erroneous and insofar as prejudicial to interest of Revenue rather he had disallowed assessee's claim for deduction of expenditure on account of business activity noticing that the assessee was not engaged in any business activity nor it had started any business project/work. It held that though the assessment was reopened u/s 148 on allegation of accommodation entry taken from S group, however AO had not made any enquiry regarding accommodation entry pertaining to the assessee specifically which was found during course of search and that once adequate or proper enquiry was not done, then in terms of Explanation 2 inserted in section 263, the assessement order was deemed to be erroneous in so far as it was prejudicial to interest of Revenue.

SURYA FINANCIAL SERVICES LTD. v PR.CIT – (2018) 52 CCH 22 (Del Trib) – ITA No. 2915/DEL/2017 dated 08.01.2018

2854. The Tribunal allowed the assessee's appeal against the CIT's order passed u/s 263 on the ground that the AO had not properly verified workings for disallowance u/s 14A r.w. Rule 8D as total interest paid by assessee on borrowed funds should have been considered by the AO while working out disallowance made u/r 8D(2)(ii), noting that the AO on due satisfaction of replies given, proceeded not to make any disallowance of interest as diverted for non-business purposes u/s 36(1)(iii)—Assessee gave entire details of interest payment on borrowed funds and its specific utilization before the AO itself and AO took conscious decision on the same and did not disallow any interest u/s 36(1)(iii). Accordingly since the AO had made elaborate enquiry about aspect of 14A and took possible view on same while discussing it elaborately in assessment order, it held that the entire revisionary jurisdiction exercised by CIT u/s 263 was not sustainable.

KISHAN GOPAL MOHTA & ANR. v JCIT & ANR– (2018) 52 CCH 6 (Kol Trib) – ITA No. 310/Kol/2015, 634 & 635/Kol/2016 dated 03.01.2018

2855. CIT passed revisional order u/s 263 taking a view that while completing assessment, AO had only verified identity of share applicant, being a Swiss entity holding 74% equity in the assessee-company but he had failed to verify the genuineness of transactions and creditworthiness of Swiss entity. Noting that (i) AO had made enquiry by seeking information from Switzerland Tax Authorities through proper channel of FT TR division of CBDT, for exchange of information so as to verify identity, source of funds and creditworthiness of Swiss company and its promoters, (ii) such an information was made available

by Swiss Authorities from financial statements of Swiss entity and (iii) further the assessee had explained source from where the Swiss entity had made investment, the Tribunal held that the transactions in question could not be regarded as bogus or sham transactions u/s 68 and, accordingly, it set aside the impugned revisional order.

Bycell Telecommunications India (P.) Ltd. v Pr.CIT – (2018) 90 taxmann.com 268 (Del Trib) - ITA Nos. 2819 to 2823 (Delhi) of 2017 dated 24.01.2018

2856. Where the assessing officer during original assessment proceedings examined the issue pertaining to issue of share capital under Section 68 and no addition was made, the Tribunal held that the Pr CIT was not justified in stating that the issue was not enquired into by the AO and that the order of the AO was erroneous and prejudicial to the interest of the revenue.

Vis-à-vis the second issue raised by the Pr CIT i.e. notional loss wrongly allowed by the AO during assessment proceedings, the Tribunal noted that the loss occurring was arising out of the valuation of the assessee's stock in trade at cost or net realizable value whichever was less and that the Pr CIT had incorrectly classified it as notional loss. Accordingly, it held that the revision proceedings were without jurisdiction and bad in law.

RBS CREDIT & FINANCIAL DEVELOPMENT PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0165 KolTrib - ITA No. 1156/Kol/2017 dated Mar 9, 2018

2857. The assessee debited an amount towards provision for doubtful debts which was not added back for the purpose of computation of total income under regular provisions and also for the purpose of computation of book profit under section 115JB which was accepted by the AO. The CIT observed that the provision made during the year was not debited to provision for doubtful debts account and consequently, the provision for doubtful debts was not obliterated. According to the Commissioner, it was only for disclosure purpose that the amount was shown as reduction from the trade receivables in the balance sheet and therefore he initiated proceedings under Section 263 of the Act. On perusal of the assessment order passed by the AO, the Tribunal held that there was no application of mind on his part and that he simply accepted the impugned claim of the assessee without any application of mind or enquiry on this issue. It held that based on the evidence available on record it was not enough to hold that this claim of the assessee was objectively examined or considered by the Assessing Officer. Accordingly, it held that the order of the AO was erroneous. Vis-à-vis assessee's contention that the AO had taken a possible view and therefore the order was not prejudicial, the Tribunal held that mere failure on the part of the Assessing Officer to make the necessary inquiries or to examine the claim made by the assessee in accordance with law, renders the resultant order erroneous and prejudicial to the interest of the revenue and nothing more was required to be established in such a case. It held that if the AO passed an order mechanically without making the requisite inquiries or examining the claim of the assessee in accordance with law, such an order will clearly be erroneous in law as it would not be based on objective consideration of the relevant materials. It therefore held that the failure on the part of the Assessing Officer in not making the inquiries or not examining the claim of the assessee in accordance with law that per se renders the resultant order erroneous and prejudicial to the interest of the revenue.

Cochin International Airport Ltd v ACIT - [2018] 92 taxmann.com 277 (Cochin - Trib.) - IT APPEAL NO. 501 (COCH.) OF 2016 dated MARCH 15, 2018

2858. Where the assessee sold agricultural land during the year under review and claimed that the consequent gains on sale were not taxable as agricultural land did not constitute a capital asset, which was accepted by the AO during original assessment proceedings, the Tribunal held that the CIT was not justified in invoking revision proceedings under Section 263 on the contention that other than the Tehlsidar's certificate, the assessee had not provided any further substantiation with regard to the land being agricultural in nature. It held that when the claim of the assessee was accepted in assessment order after due consideration of the facts, it could not be said that the assessment order was erroneous as assessment was passed after application of mind. Further, it held that when assessment order is passed u/s 143(3) of the Act, there is presumption that assessment order has been passed after application of mind and accordingly held that if an Assessing Officer takes one of the two possible views, assessment order could not be treated as erroneous. Accordingly, it quashed the order of the CIT passed under Section 263 of the Act.

SANGEETA JAIN vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0101 DelTrib - ITA No. 3888/DEL/2017 dated Feb 15, 2018

2859. The Tribunal quashed the revision order passed by the Pr CIT under Section 263 and held that the order of the AO allowing the assessee's claim of taxing interest derived by it under Rule 8 of the Income-tax Rules, 1962 (where interest income was composite with the agricultural operation) was valid. It held that the Pr CIT had alleged that the interest income had no connection with the agricultural operations of the assessee without pointing out any defects in the assessee's submission before it wherein the assessee had adequately proved that the interest derived by it was directly linked with its agricultural operations. Accordingly, it held that the assessee's claim was correctly allowed by the AO.
Darjeeling Organic Tea Estates v DCIT – (2018) 52 CCH 0136 KolTrib – ITA No 964 / Kol / 2017

2860. Notice u/s 263 was issued by the CIT contending that the amount reflected in assessee's books as provisional for warranty/promise obligation was erroneously allowed by the AO without enquiry as to whether such deduction was calculated on basis of scientific method. The CIT held that AO had not looked into these expenses and verified their genuineness and thus assessment was erroneous and had caused prejudice to interests of revenue and accordingly proceeded to pass order under Section 263 requiring the AO to re-examine matter afresh. Before the Tribunal, the assessee contended that the CIT relied on certain documentation including the statement of a certain person (Mr. X) and that the CIT ought to have provided it with the opportunity to rebut the same. The Tribunal held that while the CIT was free to exercise his jurisdiction on consideration of all relevant facts, full opportunity to controvert same and to explain circumstances surrounding such facts as might be considered relevant by assessee must be afforded to him by CIT prior to finalization of decision. It noted that the addition was based on a certain X's statement which was not provided to assessee. Accordingly, it directed the CIT to provide a copy of the statement and any other material that he chooses to rely upon to the assessee and after hearing the objections of the assessee, proceed to make the final order.
HUMBOLDT WEDAG INDIA PRIVATE LIMITED vs. COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0091 DelHC - ITA 242/2018 dated Feb 26, 2018

2861. The Tribunal quashed CIT's order u/s. 263 denying deduction u/s 80IA(4) to assessee (a partnership firm having 3 corporate entities as its partners) and rejected Revenue's stand that deduction u/s 80IA(4) was available only to a company or a consortium of companies and since the assessee was a partnership firm, it was not eligible for impugned deduction. Referring to the provisions of Sec. 80IA(4)(i)(a), it observed that that the section was applicable to an enterprise being a company registered in India or a consortium of companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act and held that the word "consortium" had not defined in the Income Tax Act, hence relying on the definition of the word in the Merriam Webster dictionary, it held that a consortium would be defined to mean "an agreement, combination, or group (as of companies) formed to undertake an enterprise beyond the resources of any one member". Further, it relied on the decision of Madhya Pradesh HC ruling in Org Informatics wherein it was observed that a consortium is akin to a partnership where each partner is liable for action of other partners. Since there was nothing brought on record by the Revenue to demonstrate that the view taken by the AO was an impermissible view or was contrary to law or was upon erroneous application of legal principles it held that invocation of Section 263 of the Act was invalid.
Rohan & Rajdeep Infrastructure - TS-118-ITAT-2018(PUN) - ITA No.633/PUN/2017 dated 23.02.2018

2862. The assessee's original assessment was completed u/s 143(3) wherein the AO accepted income declared by the assessee by allowing deduction on account reserve debited in profit and loss account as per the requirements of statutory requirements of the Rajasthan Cooperative Societies Act, 2001. The Pr CIT invoked proceedings under Section 263 of the Act on the ground that the amount was to be disallowed under Section 40A(9) as there was no actual payment was made. The Tribunal observed that the AO merely reproduced accounting entries by way of transfer to general reserve and education reserve as reflected in profit/loss appropriation account which could not be read and understood to mean that AO examined allowability of these reserve transfers for tax purposes. It held that In absence of any specific query by AO and in absence of any specific finding in assessment order, it could not be

said that the AO formed an opinion in the first place. It held that there was no due and proper application of mind by AO and it was a clear case of non-examination and non-application of mind by AO and therefore it held that the order of AO was clearly erroneous to this extent. Accordingly, it upheld the revision proceedings.

BIJAYLLNAGAR KRAYA VIKRYA vs. INCOME TAX OFFICER - (2018) 52 CCH 0076 JaipurTrib - ITA No. 330/JP/2016 dated Feb 5, 2018

2863. The Tribunal allowed the assessee's appeal and set aside the Pr.CIT's revision order passed u/s 263 where the revision proceedings were initiated to disallow 25% of the royalty expense claimed by the assessee treating the same as capital expenditure on the only reasoning that in its sister concern's case also technical know-how, as well as running royalty had been disallowed and when the matter travelled upto the High Court, the Court answered the question in favour of the Revenue and the Supreme Court had also dismissed the appeal against the said High Court order. In the present case, the Tribunal held that the said Supreme Court decision did not support the Revenue as in that case the issue was decided in favour of Revenue because the assessee in that case (i.e. asseessee's sister concern) was not at all in existence at the time when the Joint Venture Agreement was entered into to set the sister concern (a JV company) and the royalty was agreed to be paid as per the said agreement, whereas the assesse in present case was in existence since the year 2000 and was paying royalty since past 11 years. It thus held that considering the facts of the case in hand, the PCIT had erred in assuming jurisdiction u/s 263 by considering the facts of the case of the sister concern without appreciating the facts of the case in hand in true perspective.

HONDA MOTORCYCLE AND SCOOTERS INDIA PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0241 (DelTrib) - ITA No. 2330/DEL/2018 dated June 26, 2018

2864. The Assessee's daughter being the only partner of a partnership firm other than the assesse, released her share in the firm to the exclusive share of the assessee which resulted in dissolution of partnership firm and conversion of the partnership firm into a proprietorship firm. Subsequently, the assessee sold all the assets of the firm and offered inter alia the consideration received for land, goodwill and trademark for taxation as long term capital gains, however, he claimed exemption u/s 54EA on account of investment in UTI. The AO allowed the said claim of exemption. The CIT sought to revise the AO's order u/s 263 to disallow the said claim on the ground that the assesse got the exclusive possession of the properties only on dissolution of the firm and since the sale had been made within 36 months of such dissolution, it resulted in short term capital gains, not eligible for exemption u/s 54EA. The Tribunal held that CIT's order u/s 263 was not sustainable on the reasoning that the AO had considered the question of long term capital gains and allowed it. The Court held that it could not be said that on dissolution the assessee had merely taken away a pre-existing right in assets of firm rather there was a transfer on release of share of other partner and rights over that property accrued to assessee, only on such release being effected by other partner. It held that the assessee was entitled to exemption u/s 54EA to the extent of his share which he received exclusively on dissolution being relatable to pre-existing right he had, as one of partners. With respect to the remaining share in which other partner had a pre-existing right and which was released in favour of the assessee, the Court held that the right over it could be claimed only from date of release and since the subsequent sale fell within 36 month period, necessarily assets were to be assessed as short term capital gains to that extent. Therefore, the revenue's appeal was partly allowed.

COMMISSIONER OF INCOME TAX vs. DR. P.N. BHASKARAN - (2018) 102 CCH 0083 KerHC - ITA No. 1622 of 2009 dated June12, 2018

2865. A reassessment order was passed in the case of the asssessee, after a scrutiny assessment, to disallow deduction claimed with respect to interest paid on loan from bank (not utilized for business purpose). Subsequently, notice was issued u/s 263 by the CIT to disallow interest on loan, administrative, selling and distribution expenses and bad debts written off, etc. The assessee filed a writ petition against the said notice. The Court rejected the assessee's claim that the revision proceedings amounted to change of opinion since the same issue was dealt with in reassessment proceedings, noting that the issue in the reassessment proceedings was only with regard to disallowance of interest paid by the assessee whereas notice u/s 263 was not restricted to the disallowance of interest on loan alone but with other aspects also such as claims of the assessee regarding administrative, selling and

distribution expenses and bad debts written off, etc. However, the Court accepted the assessee's contention that since notice u/s 263 raisedissues, which were not subject matter of re-assessment proceedings, then two year period contemplated u/s 263(2) would begin to run from date of original assessment and not from date of re-assessment. Section 263(2) provides that no order shall be made under the said section after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Thus, it held that the impugned notice was issued without jurisdiction and accordingly set aside the same.

Indira Industries v Pr.CIT - [2018] 95 taxmann.com 103 (Madras) - W.A. NO. 1091 & 1092 OF 2017; C.M.P. NO. 15223 &15224 OF 2017 dated June14, 2018

2866. The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revision order passed by the CIT u/s 263 wherein the revision proceedings were initiated on the ground that the AO had not carried out proper inquiries with respect to two issues viz. introduction of certain sum in the capital account of the assessee and receipt of certain amount by way of loan from the assessee's brother. It was noted that during the block assessment proceedings, the AO had not made any addition in respect of the above amounts considering the assessee's explanations that he, being a NRI for over two years, had made foreign remittances over a period of time and that his brother, who was running a successful business of trading, was man of standing and means. It was held that the AO having carried out such detailed inquiries, it was not open for the CIT to thereafter reopen the issues on mere apprehension and surmises.

CIT v Kamal Galani - [2018] 95 taxmann.com 261 (Gujarat) - R/TAX APPEAL NO. 1376 OF 2007 dated June11, 2018

2867. The assessee-LLP was successor-in-interest of original assessee-company. The CIT passed an order u/s 263 in the case of the original assessee-company for the assessment year when the company was in existence without issuing any show cause notice under the said section. The assessee contended that no opportunity was offered to it prior to the order being passed by the CIT. The Court held that even though a previous notice u/s 263 was not a *sine qua non* for the jurisdiction to be exercised thereunder by the CIT, the provision mandates an opportunity of hearing to be afforded to the assessee. Thus, noting that the Tribunal had not addressed this aspect of the matter, it directed the Tribunal to satisfy itself as to whether the assessee herein as the successor-in-interest of the erstwhile company had notice of the hearing u/s 263. It also held that ifthere was sufficient material that the original assessee and the assessee-LLP carried on business at the same premises and notice was served at such premises, the assessee could not feign ignorance by merely stating that the notice was erroneously addressed to a defunct entity.

Brolly Dealcom LLP v Pr.CIT - [2018] 93 taxmann.com 448 (Calcutta) - IT APPEAL NO. 25 OF 2018 dated May7, 2018

2868. The assessee had entered into agreement to sell land to 'M' for a sale consideration of Rs.38.74 lakhs and had received Rs. 1 lakh at time of execution of the said agreement. Subsequently, the assessee executed a sale deed in which land in question was sold to one 'G' Ltd. for a sale consideration of Rs. 4.43 crores and in the said sale deed, the assessee was seller, 'G' Ltd. was buyer and 'M' was confirming party. The sale deed showed that the assessee received balance sale consideration of Rs.37.74 lakhs (out of original consideration of Rs.38.74 lakhs), whereas the remaining amount of Rs. 4.04 crores was received by 'M'. The assessee thus considered sale consideration to be Rs. 38.74 lakhs and computed capital gains accordingly. The same was accepted by the AO. The CIT passed a revisional order u/s 263 holding that the sale consideration ought to be considered was Rs. 4.43 crores. The Tribunal, however, set aside revisional order. The Court held that since the assessee never received anything beyond the consideration originally agreed in the agreement to sale, the question of charging capital gain from the assessee on a sum larger than the said consideration could not arise. Accordingly, the Revenue's appeal was dismissed.

Pr.CIT v Lalitaben Govindbhai Patel - [2018] 94 taxmann.com 396 (Gujarat) - R/TAX APPEAL NO. 329 OF 2018 dated April11, 2018

2869. The Tribunal allowed the assessee's appeal and set aside the revision order passed by the CIT u/s 263, where the CIT had held the AO's order passed u/s 143(3) to be erroneous as far as prejudicial to the

interest of revenue on the ground that the AO had made the assessment considering the revised return filed by the assessee without examining the relevant details as to why the income was reduced in the revised return as compared to the original return of income. It was noted that the revised return of income was necessitated on account of reconciliation exercise carried out consequent to migration from use of one accounting software package to another, resulting into an adjustment to the originally returned income. Further, the said revised return also contained a explaining the rationale for the said adjustment. It relied on the decision of the co-ordinate Bench in the case of Gaurav Mathrawala vs CIT[ITA No. 2378/Mum/2015]wherein it was held that a specific finding by the CIT as to how the claim of the assessee was wrong on the basis of facts and material on record was required before the assessment order could be set-aside for redoing of the assessment and thus held that CIT was wrong in considering the assessment order as erroneous for merely requiring the AO to verify the situation and to amend the originally assessed income depending upon the outcome of the verification exercise.
BOMBAY STOCK EXCHANGE LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0469 MumTrib - ITA NO. 3502/MUM/2016 dated April3, 2018

2870. The Tribunal dismissed the assessee's appeal against the CIT's revisional order passed under section 263, wherein the CIT had held the AO's order to be erroneous and prejudicial to interest of revenue on the ground that the AO had not made proportionate disallowance out of indirect expenses claimed in Profit and loss account which were not loaded on to work in progress. The Tribunal observed that during the course of assessment proceedings, the AO had not made any enquiry about valuation of closing stock and had merely asked what was basis of valuation of closing stock. It held that there was subtle distinction between basis of valuation of closing stock and items, which had gone into valuation of closing stock. It thus held that the AO had not applied mind to determine cost of work in progress and the assessee's case fell under category of lack of inquiry and not a case of inadequate Inquiry.
RED ICE PRODUCTIONS PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0268 (Del Trib) - ITA No. 5351/Del/2016 dated Apr 3, 2018

2871. The Tribunal quashed CIT's revisional order passed under section 263 wherein the CIT had held the AO's order to be erroneous and prejudicial to interest of revenue on the ground that the AO had not enquired into the aspect of applicability of section 2(22)(e), during the course of assessment proceedings, with respect to loan received from a related party, SVPL. It was noted that during assessment, the AO had inquired into facts that SVPL was a related party and that it had given loans to the assessee and thus it could not be said that there was no enquiries or verification made by the AO on this issue of loan, though the AO had not recorded that he had examined the transaction from the angle of section 2(22)(e). Further, it held that inadequate enquiries could not be a basis for invoking powers u/s 263. On merits also, it held that section 2(22)(e) was not attracted in the facts of the present case since SVPL (the lending company) was an NBFC and interest was charged on the said loan received.
CASTRON TEHNOLOGIES LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0427 KolTrib - ITA No. 945/Kol/2017 dated Apr 4, 2018

2872. While computing the amount eligible for deduction u/s 80HHC, the AO didn't exclude the amount allowed as deduction u/s 80IB. The CIT was of the opinion that the provisions of section 80HHC(4B) mandated exclusion of deduction allowed u/s 80IB while quantifying the deduction u/s 80 HHC. Thus, he passed revisional order u/s 263 holding that the assessment order passed by the AO was prejudicial to the interest of Revenue and the Tribunal confirmed the said order without considering the grounds challenging the assumption of jurisdiction to pass the said revision order. Aggrieved, the assessee filed the present appeal before the High Court wherein it was observed that in CIT vs. Max India Ltd. it was pointed out that phrase "prejudicial to interest of Revenue" u/s 263 had to be in conjunction with expression "erroneous" order passed by AO and further, pointed out that where two views were possible and ITO had taken one view with which CIT disagreed, it could not be treated as erroneous order prejudicial to interest of Revenue, unless view taken by income tax officer was unsustainable in law. In the present case also, the Court noted that there were two conflicting decisions on the issue under consideration and the said issue was also pending before the SC for adjudication. Thus, the Court held that the CIT could not have invoked power u/s 263, as ITO had adopted one of two views possible.

Agasthiya Granite P Ltd v ACIT (2018) 403 ITR 0279 (Mad) - T.C.(Appeal) No.450 of 2007 dated 16.04.18

2873. The assessee, an individual, was engaged in providing various services including strategic Management services as well as legal services for the recovery of assets and debts. For the relevant year, he had claimed deduction with respect to certain legal and finance expense incurred in connection with a litigation pending in the court involving ownership of an immovable property wherein the assessee was representing one of the party. As per the agreement with the said party, the assessee was to bear the said expense and was entitled to receive a percent of the value in the property as profit. The assessee's return was selected for scrutiny and assessment was framed u/s 143(3) by the AO wherein the AO had accepted the declared income. However, the CIT u/s 263 held the AO's order to be erroneous in so far as prejudicial to interest of the Revenue, inter alia on the ground that the aforesaid expenditure incurred by the assessee was capital in nature as it was related to immovable properties, assuming that the assessee was interested in buying the property in future, and therefore not eligible for deduction. The Tribunal held that as there was no allegation in the order of the CIT u/s 263 that the expenditure was not in connection with the business of the assessee. It held that no capital asset resulted after incurring the said expenses and thus, the expenditure was revenue expenditure eligible for deduction u/s 37(1). The Tribunal also observed that the assessment order was passed after conducting necessary enquiries and considering submission filed by assessee and mere non-discussion of issues could not render order erroneous or prejudicial to the interest of revenue on account of non-verification of issues. Accordingly, the Tribunal quashed the order passed by CIT u/s 263.

Hartaj Sewa Singh v DCIT (2018) 52 CCH 0412 KolTrib - ITA No. 1011/Kol/2017 dated 27.04.18

2874. The AO had passed assessment order u/s 143(3) and made GP addition based on estimates by considering GP rate of 5% as against 4.66% offered by assessee. The Pr.CIT issued notice for revision of assessment u/s 263 holding that the AO failed to verify/enquire into facts and thus, the assessment order passed by the AO was prejudicial to the interest of the revenue. The Tribunal observed that the AO had passed order after conducting detailed enquiries on all issues and further, even during revision proceedings, the assessee had submitted necessary details such as copy of accounts from creditors containing their names, address, PAN etc, calculation sheet of capital gains etc regarding the same issues dealt during assessment proceedings. The Tribunal relied on the decision in the case of DIT Vs. Jyoti Foundation (357 ITR 388) wherein it was held that in case the Revisionary Authority is of the view that there is inadequate enquiry then the Revisionary Authority must make enquiry and show that the assessment order is erroneous. It thus held that since the Pr.CIT did not make any enquiry and had also failed to address replies of assessee even after extracting them in order, the Pr CIT had passed bald order without bringing out any error whatsoever let alone error which could be said to be prejudicial to interests of revenue. Accordingly, it quashed the revision order passed by the CIT thereby allowing assessee's appeal.

Abhimanyu Gupta v PCIT (2018) 52 CCH 0581 ChdTrib - ITA No. 771/Chd/2017 dated 09.04.2018

2875. After the completion of original assessment u/s 143(3), the CIT found that assessee company had claimed loss incurred on account of "cross currency swap"/ interest rate swap and provision for Non-performing assets (NPA) which were not allowable expenditure. Accordingly CIT passed order u/s 263 holding that original assessment order was erroneous and prejudicial to interest of revenue because the said deductions were wrongly allowed and the AO had not examined issues properly. With respect to provision for NPA, the Tribunal observed that out of total provision, certain amount was suo moto added back in computation of income and further sum was disallowed by AO in original assessment order. The balance amount represented actual write off and thus there was no error or prejudice to the interest of Revenue. With respect to the interest rate swap, the Tribunal observed that it was actual loss and only net loss after setting of gain of interest rate swap was claimed as deduction. Further, noting that both these issues were duly examined by AO vide Questionnaire to which replies were furnished, the Tribunal held that the finding of CIT that issues were not examined properly was not correct and since CIT failed to point out definite and specific error in original assessment order, it held that the revision order was bad in law and void-ab-initio. Accordingly, the assessee's appeal was allowed.

Ge Capital Services India v ACIT (2018) 52 CCH 0372 DelTrib - ITA. NO. 2697/DEL/2007 & 231/DEL/2012 dated 23.04.2018

2876. Where Commissioner issued a notice under section 263 taking a view that when AO had found purchases to be bogus, there was no question of limiting addition on basis of GP Ratio the Court quashed the said notice in view of fact that a) AO did not hold that relevant purchases were bogus and b) moreover, assessment order had been merged with order passed by Commissioner(Appeal) who had deleted the addition.
Haryana Paper Distributors (P.) Ltd. v PCIT [2018] 95 taxmann.com 152 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 2818 OF 2018 dated 16.04.2018

2877. The assessee was engaged in business of purchasing agricultural land and converting the same for non-agricultural purpose and selling it. It claimed the following expenses viz "Labour Charges", "Expense of Commission" and "Work in Progress". The assessee furnished the details of expenses along with the names and addresses of the parties to whom the payment for expenses was made along with their PAN details. Some part of expense was disallowed by AO and CIT(A) also upheld the order. However, CIT (Administration) by virtue of s.263 of the Act passed a revisional order for disallowing the whole expense on the grounds such as discrepancies in certain facts and need for verification. Aggrieved by the revisional order, assessee filed appeal on the ground that the said order u/s 263 was without of jurisdiction since there was merger of assessment order with the order of the CIT(A). Also, if CIT wasn't satisfied with the order, it could have re-opened the assessment or appealed to the Tribunal. The Tribunal set aside the revisional order and the Court upheld the Tribunal's order thereby dismissing the Revenue's appeal.
Principal Commissioner of ITO v H. Nagaraja [2018] 94 taxmann.com 464 (Karnataka) – ITA NOS 604-605 OF 2017 dated 29.05.2018

2878. The Tribunal quashed revision order under Section 263 wherein the Pr.CIT held that AO's order u/s 153A r.w.s. 143(3), was erroneous and prejudicial to the interest of Revenue since the AO allowed claim of assessee for deduction u/s 80IA by solely relying on claim made by assessee without enquiry. Tribunal held that no addition or disallowance could be made in the order under Section 153A r.w.s. 143(3) without any incriminating material found during course of search under Section 132 of the Act. Also, relying on the ruling of Madras High Court in M/s Tamilnadu Petro Products Ltd. Vs ACIT (338 ITR 643), the Tribunal concluded that deduction under Section 80IA(4) could not be denied even if infrastructural facility was for captive use.
Rashmi Metaliks Ltd. vs. DCIT – [2018] 53 CCH 0005 (Kol ITAT) – ITA No 813 to 816/Kol/2017 dated May 2, 2018

2879. The assessees sold jewellery to a company, which was received by them during the course of their marriage from the respective parents and relatives. The AO made addition in respect of such jewellery thereby rejecting the explanation offered by the assessees. The assessees also filed revised return disclosing all the jewellery and offered the same for taxation, before initiation of penalty proceedings under Section 271(1)(c). The said returns were accepted by the AO and no additions were made. Accordingly, the AO dropped the penalty proceedings. The CIT exercised powers under Section 263 and held that voluntary offer of income by the assessees by way of revised return does not absolve the assessees from penalty under Section 271(1)(c). Relying on the ruling of the Supreme Court in Suresh Chandra Mittal (251 ITR 9), the Tribunal set aside the order of the CIT and upheld the action of the AO in dropping the penalty proceedings as the Department did not discharge its burden of proving that income was concealed.
S. Ashok Kumar & Ors. vs. ACIT – [2018] 53 CCH 0128 (Chennai ITAT) – ITA Nos. 2450/2451/2452/2387/2388/2389/2391/2392/2393/2395/2396/2397/2399/2400/ 2401 of 2016 dated May 17, 2018

2880. Although incriminating documents were found and seized during search and seizure operations, AO accepted assessee's explanation and did not make any addition to the total income of the assessee. However, CIT concluded that since it was a case of further enquiry which AO had failed to make, the assessment order passed by the AO was erroneous and prejudicial to interest of Revenue. Thus, CIT

set aside the assessment order. The CIT(A) upheld the AO's order passed pursuant to the CIT's direction u/s 263. Appeal filed by the assessee against the said CIT(A)'s order as well as the revision order were heard together by the Tribunal. On merit, the Tribunal decided the issue in favour of the assessee, noting that there was no evidence on record to show that the assessee had paid on money for purchase of certain land. With respect to revision order, the Tribunal held that since additions made by lower authorities were set aside on merits, no revision order could be passed against assessee under Section 263 of the Act. Thus, assessee's ground was allowed.
AMARJEET DHALL & ORS. vs. CIT & ORS. (CHANDIGARH TRIBUNAL) (ITA No. 366/CHD/2012, 148/CHD/2014, 263/CHD/2012, 369/CHD/2014, 459/CHD/2014) dated May 21, 2018 (53 CCH 0186)

2881. The CIT passed revision order u/s 263 directing the AO to redo assessment noting that there were certain discrepancies with respect to the vehicle numbers provided during the assessment proceedings by the assessee, a transport contractor, which were used for transport, rejecting the assessee's submission that the same was on account of a typographical error made by the accountant making the data entry. During the remand proceedings before the AO, the assessee also submitted a list of the correct vehicle numbers and submitted that a perusal of the correct numbers and the recorded numbers demonstrates that there was single number variation, which could occur if numbers were not fed correctly in to the computer, which resulted in the error. The AO, however, did not consider the assessee's submission / explanation and passed the revised assessment order holding that the asssessee had inflated expenditure incurred towards transport charges by producing fake and fabricated vouchers and receipts. The Tribunal relied on the ruling of *ACIT vs. ITW India (P) Ltd [40 SOT 348 (Hyd)],* wherein it was held that the assessee can substantiate its claim of a particular expenditure even in a case which was remanded to file of AO by CIT while exercising revisionary powers u/s 263 for fresh adjudication on merit. The Tribunal held that AO should not have refused to examine the explanation given by assessee and should have conducted an enquiry into evidence given by assessee to verify whether claim made that typographical and data entry errors of vehicle numbers had crept in was correct or not. However, noting that the assessee had not properly supported his case by producing necessary evidence in support of the expenditure claimed, it directed the AO to assess the income @ 5% of gross receipts, relying on the decision in the case of Sri Venkata Balaji Transport vs. ACIT [ITA No.1236/Hyd/2015] andDCIT vs. M/s. Sri Sai Ram Transport [ITA No. 102/Hyd/2013].
MODIYAM VENKATARAVINDRA REDDY vs. ITO (HYDERABAD TRIBUNAL) (ITA No. 952/Hyd/2016) dated May 8, 2018 (53 CCH 0152)

2882. The Tribunal dismissed assessee's appeal against the PCIT's revision order passed u/s 263 setting aside the AO's order on the ground that the AO had not made any proper enquiry to find out income generated by assessee from business operations. It was noted by the PCIT that the assessee had not disclosed the entire unaccounted cash found during the search operations at the premises of the partners of the assessee-firm. It was noted that the partner had accepted that the cash found during search was in respect of the unaccounted income generated outside the books of account and the AO had not made proper inquiry with respect to any accounted income as per booksof accounts from the assessee's business operations. It thus held that the PCIT had rightly exercised his jurisdiction u/s 263.
SURABI BULLION vs. DCIT (CHENNAI TRIBUNAL) (ITA No. 2489/Chny/2016, 2569/Chny/2017) dated May 3, 2018 (53 CCH 0141)

Search / Survey

2883. During search conducted upon premises of assessee's cousin, key belonging to assessee's locker was found and search warrant was issued in respect of said locker. Since Additional Director had not disclosed any material or information on basis of which he had entertained belief that said locker contained valuable jewellery or other articles representing undisclosed income. The Court held that the impugned search warrant was unjustified.
Shah E Naaz Judge v. Addl. Dir. of IT (Inv)-Unit-VI - [2018] 100 taxmann.com 346 (Delhi)- W. P. (CIVIL) Nos. 5937, 11842 & 11843 of 2016 -November 30, 2018

2884. The assessee filed a writ petition challenging notice issued under section 153A on ground that after deposit of amount of tax, surcharge and penalty under Pradhan Mantri Garib Kalyan Yojana, 2016, he as entitled for benefit of provisions of clauses 199-I and 199-J of PMGKY, 2016. In view of fact that grievance of assessee stood fully redressed in light of written instructions of Revenue which stated that income which had been disclosed by him under PMGKY would be excluded from assessment of block year for which notice under section 153A had been issued, the Court dismissed the instant petition.
Gopal Kesarwani v. Dir. Gen. of IT (Investigation) Lucknow- [2019] 101 taxmann.com 176 (Allahabad)- MISC. Bench No. 35701 of 2018-December 12, 2018.

2885. A search was carried out in case of real estate broker 'L' in course of which a document was seized showing that assessee had purchased a property in shopping mall. The Assessing Officer, initiated assessment proceedings against assessee under section 153C. In course of assessment, the Assessing Officer taking a view that assessee had failed to explain source of money from which property was purchased, added said amount to her taxable income. Subsequently, 'L' retracted his statement made in search proceedings and submitted that document in question might belong to any other broker. The Tribunal having formed an opinion that said document did not belong to the assessee, deleted impugned addition. The High Court in impugned order noted that no attempt was made by the Assessing Officer to enquire into matter to find out if at all there was any such other broker who had prepared document in question. Moreover, there were internal contradictions and inconsistencies in document in as much as document specified that rent for property in question was payable by the assessee from year 2006 onwards whereas according to revenue, said property had already been purchased by assessee.
The Court held that on facts, addition made on basis of single document whose genuineness itself was in doubt, was rightly deleted by the Tribunal.
SLP dismissed in Principal CIT v. Vinita Chaurasia [2018]98 taxmann.com 468/259 Taxman 129(SC)-W.P. Nos. 3405 & 43944 of 2016 W.M.P. Nos. 2780 & 37778 of 2016 dated October 10, 2018

2886. A search u/s 132 was carried out at M/s. D group of cases wherein, business premises of assessee was also covered. In reply, assessee filed its return of income and filed requisite details as called for by AO. During assessment proceeding, AO observed that assessee had purchased nickel from four parties. In course of post search enquiry, summons u/s 131 were issued to said four parties but same were returned unserved by Postal Authorities. AO asked Shri V, Director of assessee company to produce said four parties for his examination which he failed to do so. AO conducted enquiry through Inspector of Unit who reported that such concerns could not be located. AO found that said parties never existed at address provided by assessee. AO noted that while routine payments were made to other entities from 7 to 30 days of date of issue of bills, however, in case of said four parties, payments were made on very next day of raising bill. AO recorded statement of Shri D and confronted him about discrepancies of non-existence of parties at given address as well as unusual manner of payments to those parties. Assessee furnished details like copy of Form No.C issued by Asstt. Commissioner, Commercial and copy of VAT return to prove purchases. AO held that said details did not prove existence of parties nor about their genuineness. AO held that assessee failed to prove identity and genuineness of parties from whom purchases were made thus, treated same as unexplained and made an addition to assessee's income. CIT(A) deleted such addition. The Tribunal noted that DR submitted that when concerned parties were not available at given address as found by Department during post search enquiries and since assessee failed to produce those parties to prove their identity, credit worthiness and genuineness, therefore, CIT(A) was not justified in deleting addition so made. Counsel for assessee submitted that merely because those parties were not traceable at given address, addition could not be made on account of such purchases, especially when such payments were made through banking channels and assessee had substantiated purchase by providing documents such as purchase invoices, copy of ledger accounts, evidences for having made payments through banking channels, C Form issued to suppliers, copy of VAT return duly reflecting said purchases, copy of Form No.XXXVIII issued by Commercial Tax Department containing name of seller of goods, details of transporter, truck number, name and address and licence number of driver. There was also no finding that raw materials purchased from said parties were not utilized in manufacturing process and sales were accepted by Revenue. It was an admitted fact that enquiries were conducted at a later stage and

there might be a number of reasons for those parties to shift their place of business. The names of those parties were existing at website of Government of NCT, Delhi earlier, but, at relevant time of enquiry, status of concerns was shown as 'cancelled'. This indicated that at some point of time,
those concerns were very much available in Government's website and, therefore, it could not be said that those firms were bogus when assessee purchased goods and made payments through banking channel and assessee substantiated all necessary documents which was required to be kept. Assessee had discharged initial onus casted on it. No such blank cheque books and vouchers of alleged four concerns were found. No infirmity was found in order of CIT(A) in deleting addition on account of purchase from four parties. Revenue's appeal was dismissed.
Assistant Commissioner of Income Tax vs. Karam Chand Rubber Industries (P) Ltd.- (2018) 54 CCH 0409 DelTrib-ITA No. 6599/Del/2014-Dated Dec 12, 2018

2887. The Tribunal held that once the factum of the assessee having purchased the gold bars during the course of search in 2009 got established, for which income was also offered for taxation as well, no fault could be found with the CIT(A) in accepting the assessee's explanation that 100 gold bars found from the locker pursuant to search in 2012 came out of the amount surrendered in the search carried out in 2009. AO held that gold bars found from lockers were physically different as compared to one claimed by assessee. CIT(A) deleted additions. The Tribunal held that Assessee has specifically submitted that gold bars earlier declared were exchanged later on with the new gold bars which were placed in the bank locker and found at the time of search. AO simply dislodged claim of assesses on premise that they could not place on record any evidence of such exchange. He has not pointed out anywhere in orders that investment in gold bars surrendered by assessee during the course of the earlier search was liquidated and amount so realized was utilized elsewhere. No fault could be found with CIT(A) in accepting assessee's explanation that 100 gold bars found from locker pursuant to search in 2012 came out of amount surrendered in search carried out in 2009.
Asst.CIT vs. Roshan Agarwal & Shishir Agrawal-(2018)53 CCH 0577 DelTrib-ITA No.4645/Del/2015 & ITA No.4646/Del/2015-Dated July 4, 2018

2888. Tribunal did not entertain assessee's additional claim made before it on ground that second proviso to sec. 158BC(a) prohibited assessee who was subjected to search or whose books of accounts were required u/s. 132A for filing revised return of income. Tribunal held that assessee had not excluded or reduced lease rentals from depreciation offered to tax while filing return of undisclosed income for block period it was not entitled to do so later on in view of second proviso to sec. 158BC. The Court held that, prohibition in Second Proviso to sec.158BC(a) of filing revised return of income before AO would not prohibit assessee from raising additional claim before Appellate Authorities. In Goetze (India) Ltd. v. CIT after holding that AO had no power to entertain claim for deduction otherwise than by filing revised return of income by assessee. Apex Court clarified that same would not fetter appellate authority from entertaining claim not made before AO. Appeal of assessee on issue of additional claim made before Tribunal was restored to Tribunal for fresh disposal on merits in accordance with law.
Alok Textile Inds. Ltd. vs. Dy. CIT-(2018)102 CCH 0152 MumHC-ITA No.118 of 2003-Dated Jul. 10, 2018

2889. In proceedings u/s 153A, AO had simply added amount on account of alleged unverified software purchases for purpose of computation of income only and said addition was not based on any incriminating material. Further the said additions were made in regular assessment proceedings were deleted by the Tribunal. In the impugned appeal post search proceedings, the Tribunal held that no addition could be sustained on same item in proceedings u/s 153A as the additions in dispute made in regular assessment proceeding had already been deleted by Tribunal & no incriminating material related to addition in dispute was found during course of search proceedings. Assessee's appeal was allowed.
Minda Inds Ltd. vs. Dy. CIT-(2018) 53 CCH 0287 DelTrib-ITA Nos.2462 & 2463/Del/2015-Dated Jul 5, 2018

2890. Search and seizure operation u/s 132 was conducted in case of M/s. PDPL wherein, various documents were seized belonging to assessee. Copies of documents related to assessee and based on which satisfaction was recorded for issuing notice u/s 153C were supplied. AO made additions on two counts.

CIT(A) granted partial relief to assessee. The Tribunal held that, no specific ground was raised before CIT(A) challenging assessment on ground that no satisfaction was recorded by AO of searched person and thus, assessment was vitiated. Satisfaction of AO of searched person was a sine-qua-non to effect that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned belonged to; or any books of accounts or documents, seized or requisitioned pertains or pertain to, for any information contained thereto, related to a person other than person referred to in sub-section (1) of s. 153A. No satisfaction note by AO of searched person was furnished by Revenue, despite categorical directions given by Tribunal. However, a satisfaction note in case of assessee was furnished by Revenue. DR fairly conceded that despite various reminders, satisfaction note by AO of searched person i.e. M/s. PDPL was not made available. For purpose of s. 153C, AO before handing over items to AO having jurisdiction must be "satisfied" that items belonged to person other than person referred to in s. 153A. View formed by AO after his own enquiry does not entail in seating in appeal over satisfaction of first AO, who had handed over items to him. Accordingly, proceedings u/s 153C were not validly initiated and was contrary to settled position of law and same was therefore quashed.
Avalanche Reality Pvt. Ltd. vs. Asst. CIT-(2018) 54 CCH 0295 IndoreTrib-ITA No. 535/Ind/2013-Dated Dec 4, 2018

2891. During assessment proceedings, various documents were filed to prove identity and creditworthiness of shareholders and also to prove genuineness of transactions. AO required assessee to provide directors. AO rejected explanation/evidences furnished by assessee to discharge initial onus u/s 68 by lifting corporate veil. AO made addition in respect of share application money. CIT(A) deleted addition made by AO. The Tribunal held that, it could not be concluded that share applicant companies did not exist or that transactions were not established. Only in two case, copies of ITRs could not be furnished by Assessee. Even in these cases, copies of balance sheets filed indicated that companies had funds / sources to make investment in share application towards Assessee company. Revenue could not be taking two different stands. On one hand revenue was accepting and admitting compliance to its own laws and procedure by way of filing of ITR, payment of taxes, processing and issue of refunds, and also tax scrutiny of cases. On other hand, revenue could not take stand that share applications were unexplained as some of share applicant companies could not be physically located by Inspector at given address. When assessee was not confronted with Inspector's report, it could not be alleged by revenue that assessee failed to establish transactions. Order of CIT(A) was upheld and Revenue's appeal was dismissed.
Asst. CIT vs. Superb Developers (P) Ltd.- (2018) 53 CCH 0301 DelTrib-ITA No. 54 & 56/DEL/2014 & 403/DEL/2015-Dated Jul 9, 2018

2892. Search and seizure operation was conducted at assessee's premises wherein incriminating documents were found.AO formed a belief that an amount was paid by assessee to UPDA.Assessee strongly contended that its notings/entries on loose sheets/diaries found at premises of Shri RKM/UPDA did not have any evidentiary value.AO framed assessment u/s 153C r.w.s 153A based on documents seized from premises of Shri RKMrecorded u/s 132(4).Assessment proceedings u/s 153C were started on 11.12.2006 when AO received satisfaction note and documents belonging to the assessee.AO completed assessment after making additions u/s 68.Assessee filed a writ petition before High Court of Calcutta challenging order passed u/s 127 transferring jurisdiction from ACIT Calcutta to New Delhi wherein, proceeding was stayed by Court and interim order was passed.Thereafter, authorities were direction to proceed with matter u/s127.CIT(A) dismissed assessee's appeal. The Tribunal held that as per provisions of Act contained in s. 153B(b), AO had to frame assessment order by 22.03.2008, excluding period of stay and adding same period to nine months whereas assessment order was framed on 30.12.2008 and hence, was beyond period of limitation.When stay got vacated on 07.05.2017 and there was no further stay only such time during which order of High Court was passed granting stay till same was allowed could alone be excluded.Assessment order framed u/s 153C r.w.s 153A dated 30.12.2008 was barred by limitation.Since assessment order was held to be barred by limitation, proceedings subsequent to the happenings got vitiated.

LORDS DISTILLERY LIMITED & ORS. vs. Dy. CIT & ORS. (2018) 54 CCH 0370 DelTrib- ITA No. 2576/Del/2010 dated 14.12.2018

2893. Where, though as per assessment order dated 12-02-2009 passed after search, seized cash was to be refunded to assessee but despite such order cash was not refunded, writ petition filed by assessee on 04.07.2018 for refund of cash seized was dismissed on ground of delay and laches.

Kishore Jagjivandas Tanna vs DCIT-(2018) 98 taxmann.com 235 (Bombay)- WP No 20179 of 2018 dated 17.09.2018

2894. The assessee was investigated by police personnel who had seized certain amount from his car u/s 102 of Cr.P.C. Further, summons u/s 131 of IT act were issued and in response the assessee submitted that out of the seized money certain money belonged to some other businessmen and some part belonged to assessee's mother and wife which he was carrying to Bhilwara from Vijaynagar. The assessee thus filed a writ petition seeking a direction to produce satisfaction note/reasons recorded, if any, under Section 132A(1) of the Income Tax Act, 1961 and further to declare the action u/s 132A(1) without jurisdiction and to release the seized amount. The Court relied on Nk Jewellers vs CIT (12 SCC 627) where in it was held that with regard to amendment made in s. 132A by Finance Act, 2017 i.e., "reason to believe" or reason to suspect", should not be disclosed to any person or any authority or ITAT and in that case the authorities had noted that money which was seized by police could always be claimed by assessee, after Department concluded its proceedings, which were initiated by issuing notice to assessee. Thus, the Court in the present case held that, in case summons to assessee were issued u/s 131 and assessee was asked to explain amount so seized, the authorities were bound to conclude proceedings as per law and assessee had all liberty to avail remedy provided against such order being passed, thus dismissed assesse's Writ petition.

Shiv Tiwari vs PDIT (Investigation)- (2018) 103 CCH 0111 Raj HC- S.B Civil Writ No 17567/2018 dated 07.09.2018

2895. Notice u/s 153A was issued to assessee in pursuance to search u/s. 132(1) carried out by investigation wing of department and in response assessee had offered original return filed declaring loss. The AO held that assessee started business operations from 20/09/2010 and therefore, there was no business carried out in impugned AY (2009-10) and thus the assessee was not at all entitled to claim any expenditure before setting up of business. Consequently, expenditure claimed by assessee was treated as capital expenditure and disallowed. The CIT(A) deleted the addition stating that in absence of any incriminating material on issue, addition so made was beyond scope and outside the ambit of assessment envisaged u/s. 153A. The Tribunal on appeal held that, assessment for impugned AY was non-abated assessment since no proceedings were pending on date of search and time limit for issuance of scrutiny assessment notice u/s 143(2) had already expired which was a statutory requirement. Further, the additions made by AO were not based on any incriminating material found during search operations since expenditure as claimed by the assessee had been disallowed by AO on the basis that business was not set-up by assessee during the AY. Thus, genuineness of expenditure was not in question since AO himself had treated same as capital expenditure and thus Tribunal concluded that addition made in proceedings u/s 153A were not sustainable.

DCIT vs United Stock exchange of India- (2018) 54 CCH 0006 Mum Trib- ITA No 541/Mum/2017 dated 12.09.2018

2896. The assessee for relevant years filed its returns declaring certain taxable income. No notice under section 143(2) was issued within time limit prescribed under statute and, thus, returns of income stood assessed and attained finality. Subsequently, in year 2007, a search was carried out by Investigation wing in case of Commodities Exchange Group and assessee being a member of said group was also covered under search and seizure action. A notice under section 153A was issued to assessee relating to six assessment years immediately preceding assessment year of year of search, which included

assessment years in question. In response to the notice the assessee filed its return of income which was identical to original return and the AO made addition on account of deemed dividend which was further upheld by the CIT(A). The Tribunal held that the assessment for relevant years had already attained finality and, no incriminating material was found during course of search relating to addition made on account of deemed dividend, thus deleted the addition. The Court held that the order passed by the Tribunal did not suffer from any legal infirmity thus the same was upheld.

PCIT vs Jignesh Shah- (2018) 99 taxmann.com 111 (Bom)- ITA No 554 & 555 of 2016 dated 26.09.2018

2897. The Assessee was an individual engaged in business of retail trade of timber / furniture wood and during assessment proceedings AO noted that during course of search and seizure operations u/s. 132 in group cases of M/s. L, certain incriminating material of assessee was found and seized and thereafter notice u/s. 153C was issued to assessee and addition made on account of unaccounted purchases and the same was partly allowed by CIT(A). The Tribunal noted that assessee submitted that certain purchases were made outside books of account and whenever he received payments, same were paid to suppliers, thus, there were unaccounted purchases and simultaneously unaccounted sales also. The Tribunal held that the assessee was not able to explain details of unexplained purchases, quantity of purchases and also details of unaccounted sales and source for unrecorded purchases, thus the request for GP addition for un accounted sales only could not be considered and thus assessee's appeal was dismissed.

Mugada Gopala Rao vs ACIT- (2018) 54 CCH 0093 Vishakapatnam Trib – ITA No 84,85/Viz/2018 dated 17.10.2018

2898. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year.

Pr.CIT v. Meeta Gutgutia [2018] 96 taxmann.com 468/257 Taxman 441(SC)Special Leave Petition (Civil) Diary Nos. 18121 of 2018 dated July 2, 2018

2899. Where AO made addition to assessee's income by invoking provisions of section 153C on basis of document seized in course of search carried out in case of L, in view of fact that subsequently L retracted his statement that said document belonged to assessee and, therefore, Tribunal as well as HC set aside said addition, SLP filed against decision of HC was dismissed

Pr.CIT vs Vinita Chaurasia [2018] 98 taxmann.com 414 (SC) - SLP(C) Diary No.27566 of 2018 dated August 20 2018

2900. The Apex Court dismissed Revenue's SLP against HC ruling that where Revenue failed to establish any linkage between material seized from assessee's premises and the material seized from premises of UP Distiller's Association (of which assessee was a member) in respect of illegal payments made to various officials and politicians, no addition could be made in the hands of assessee-company on the presumption that the said illegal payment were made by the assess-company through the said Association.

CIT vs Radio Khaitan [2018] 98 taxmann.com 359 (SC) - SLP(C) Diary No.26744 of 2018 dated August 23 2018

2901. The Court dismissed Revenue's appeal against the Tribunal's order wherein the Tribunal had deleted the addition made to assessee's income in course of proceedings u/s 153C on account of certain undisclosed cash payments received, noting that the said payments were received by the assessee during earlier assessment year and not in the relevant year. Further, it observed that in case there was any material on record pointing out that unexplained cash payments had been made to assessee in earlier assessment year, it was open to Revenue to initiate reassessment proceedings for said assessment year

Pr.CIT vs Jayant K. Furnishers [2018] 98 taxmann.com 394 (Bombay)- IT Appeal No.142 of 2016 dated August 06 2018

2902. The Court dismissed assessee's writ petition to quash and set aside search and seizure conducted by authorities at registered office and corporate office of assessee-society wherein, on receipt of specific information that the assessee-society was engaged in siphoning off funds, warrant of authorization u/s 132 was issued and order u/s 133A(3)(ia) was passed to seize the documents as well as electronic media in form of hard disc/CD/Pen Drive, etc. found during course of survey proceedings. It was noted that satisfaction note had been considered and scrutinized minutely by relevant authorities and all authorities offered their own comments and thereafter authorization was issued. It was also observed that since assessee society was involved in siphoning off of funds from society to shell companies by way of advancing loans without any equivalent collateral securities, the allegation of huge tax evasion by group had been substantiated. Accordingly, the Court held that since the authorization was based on definite information and after discreet verifications, it could be termed adequate and order passed u/s 133A(3)(ia) was also absolutely in consonance with provisions of the said section.

Adarsh Credit Co-operative Society Ltd vs Joint DIT-[2018] 97 taxmann.com 353 (Gujarat) R/SPECIAL CIVIL APPLICATION NO. 10449 OF 2018 CIVIL APPLICATION NOS. 1 AND 2 OF 2018 dated August 08 2018

2903. The Tribunal held that the assessment framed u/s 153A read with section 143 (3) was not sustainable in view of the law laid down in case of CIT vs Kabul Chawla [380 ITR 173 (Del)] wherein it was held that since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed. The Tribunal noted that no incriminating material had come on record during the search and seizure operation conducted at the premises of the assessee rather assessment has been based upon special audit report whereas such facts were already brought on record by the assessee by filing original return of income along with computation

ATS Infrastructure Ltd vs Asst CIT-[2018] 53 CCH 0509 Del Trib - ITA No. 5811/Del./2014, 5812/Del./2014, 5813/Del./2014 dated August 31 2018

2904. The Tribunal held that in the case where time limit for issuance of notice u/s 143(2) had expired and assessment had been completed, a notice u/s 153C could not be issued without having any incriminating material. It noted that, in the instant case, the documents which were foundation of issue of notice u/s 153C did not indicate any financial transaction leading to understatement of income except mention of purchase of property which was not relevant for subject AY as the said transaction pertained to an earlier year. Therefore, it held that the said documents could not be held to be incriminating material for purpose of initiating proceedings u/s 153C and accordingly, quashed the impugned notice issued u/s 153C.

KAMALA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - [2018] 53 CCH 0424 Vishakapatnam Trib ITA No. 113 to 115/Viz /2017dated August 03 2018

2905. During the course of search proceeding carried out at the assessee's premises on 18-12-2008, a valuation report of the site engineers of the project work-in-progress (WIP) as on 31-11-2008 was found, as per which the value of WIP was higher as compared to the value appearing in the assessee's books of account as on 31-11-2008 and accordingly, the assessee agreed to offer to tax the said difference in value of WIP while filing return of income for the relevant year i.e. AY 2009-10. However, the assessee did not offer the said income claiming that the valuation done as on 31-11-2008 was only on provisional basis. The AO, however, made an addition u/s 69C on account of the said difference. The Tribunal upheld CIT(A)'s order deleting the additon by holding that the AO had not disputed the valuation of closing work-in-progress appearing in the books as on 31-3-2009 which was arrived on actual verification. The Court dimissed Revenue's appeal noting that the Revenue could not challenge the Tribunal's finding of fact that there was no excess work-in-progress than that declared by the respondent-assessee as on 31-3-2009 and the valuation done of the work-in-progress as on 31-11-2008 was only on provisional basis. Thus, it held that there was no occasion to apply section 69C.

CIT vs B.G. Shirke Construction Technology (P.) Ltd [2018] 96 taxmann.com 608 (Bombay)- IT APPEAL NO. 199 OF 2016 dated August 08 2018

2906. During search at assessee's husband residential premises, unexplained jewellary weighing 1748.8 gms was found from locker of assessee which was treated as unexplained by the AO. The CIT(A) held that out of total jewellery found, jewellery weighing 833.10 gms was almost identical to description and weight to the items disclosed in the probate case records of assessee's (deceased) husband and thus it was proved that these items were acquired long ago and could not be brought to tax for the relevant year in the hands of assessee. Further, he held that as per CBDT instruction gold ornaments weighing of 500 gms per married woman and 250 gms per unmarried woman were to be treated as customary and not seized. Therefore, he gave credit of another 750 gms of gold. Thus, he sustained the addition of the balance jewellery of 165.70 gms. The Tribunal held that there was no infirmity in CIT(A)'s order and accordingly upheld the same.

Asst CITvs. Padmarani Kapala and Ors[2018] 53 CCH 0490 DelTrib- ITA No.3612/Del/2014 dated August 30 2018

2907. The AO initiated proceedings in case of assessee u/s 153C based on certain documents found during search carried out in case of 'T' Group, opining that the assessee had not disclosed income from sale of land, which was claimed by the assessee to be in nature of agricultural land. The Tribunal held that in view of the fact that documents seized in course of search had no bearing on determination of assessee's income and moreover, while making addition there was no reference whatsoever to said documents, the initiation of proceedings u/s 153C was bad in law and thus liable to be cancelled.
Green Range Farms (P.) Ltd. v DCIT [2018] 96 taxmann.com 249 (Delhi - Trib.) – ITA No. 5365 (DELHI) OF 2014 dated July 13, 2018

2908. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had held that in course of block assessment proceedings, the AO had no jurisdiction to reject assessee's books of account and refer matter to DVO to verify cost of construction of building and, thereupon make addition to assessee's income u/s 69C on basis of valuation arrived at by DVO, in absence of any undisclosed income detected as a result of search
Pr.CIT v Rajni Developers (P.) Ltd [2018] 96 taxmann.com 221 (SC) - SLP (Civil) Diary No.(S). 22633 OF 2018 dated July 23, 2018

2909. The Tribunal upheld the CIT(A)'s order deleting the addition made on account of bogus purchases. During survey proceedings, the AO found that assessee firm was engaged in practice of issuing bogus bills to various parties and one of the partner had accepted that the payment on basis of these bogus bills were returned to other parties out of cash sales. The Tribunal noted that the assessee had made payment to party through banking channels and held that the statement of the said partner could not be accepted without such person being subjected to cross examination. Further, noting that the (seller)

party itself had taken legal action for recovery of dues from assessee on purchases made for which it had issued bills and there had been amicable settlement of dues and payment had been made by assessee to said party, it held that the said statement itself lost its credibility and evidentiary value.
ACIT v MEROFORM INDIA PVT. LTD. & ANR. (2018) 66 ITR (Trib) 0306 (Delhi) - ITA Nos. 4630 – 4635 & 4494/Del/2014 dated July 31, 2018

2910. The Tribunal upheld the AO's estimation of turnover based on pencil entries made in register maintained by the assessee-company, engaged in real estate business, which were found in course of search proceedings, noting that the assessee had not brought any evidence to counter the AO's working of estimation and the assesssee's main contention was for reconciliation of the said working. It, however, directed the AO to exclude the advance amounts received with respect to 79 plots unsold as on date of search while quantifying the suppressed turnovers, subject to verification of the fact that such plots were actually not sold. Further, the Tribunal accepted assessee's contention that rate of profit estimation @ 40% of the suppressed turnover [as directed by CIT(A)] was high considering the fact that the assessee had accounted for 70% of the turnover and had declared 4% profit on such accounted turnover. It, accordingly, held that since the assessee is engaged in real estate business, end of justice would be met by estimating income @ 12.5% of the suppressed turnover. Accordingly, the assessee's appeal was partly allowed.
SRI SRI GRUHANIRAMAN INDIA PVT. LTD. & ANR. v ACIT (2018) 67 ITR (Trib) 0178 (Hyd) - ITA Nos. 2237-2241 & 2273-2275/Hyd/17 dated July 27, 2018

2911. The Court dismissed the writ petition filed by the assesse for release of amount seized during search and seizure operation carried out at its business premises and also at banks in which it had their accounts, noting that the Court had already dismissed an earlier writ peitiion filed by the assesse against the search proceedings noting that the authorities had found incriminating material during survey proceedings conducted prior to such search. Further, it was noted that the assessment proceedings were yet to be completed and there were huge unexplained cash deposited in bank account as well as with assesse. Accordingly, it held that unless assessment proceedings were completed, amount could not be released to assessee.
RICH UDYOG NETWORK LTD. & ORS. vs. DIRECTOR OF INCOME TAX (INVESTGATION) ORS. - (2018) 408 ITR 0068 (All) - WRIT TAX No. 80 of 2017 dated July 24, 2018

2912. The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had reduced the gross profit rate of 3.5% adopted by the AO to 1.77% (being the gross profit rate disclosed by the assessee for the relevant year) with respect to alleged bogus purchases discovered during survey proceedings by placing onus on AO to ascertain factual position. The Tribunal noted that the assessee could not conclusively substantiate delivery of material and had failed to produce any party to confirm transactions and thus held that the addition on account of bogus purchases was justifiable since the primary onus of proving purchase transactions was not discharged by assessee. It held that, in such a situation, the addition made had to factor in the profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. Accordingly, the Tribunal increased the gross profit rate to 4% of the alleged bogus purchases.
ACIT & ANR. vs. AMIT RAJENDRA SHETH & ANR. (2018) 53 CCH 0326 MumTrib – ITA Nos. 5835/Mum/2015, 753/Mum/2016, 755/Mum/2016 dated 13th July, 2018

2913. The Tribunal quashed the block assessment proceedings for the period 1996 to 2002 initiated u/s 158BD pursuant to search and seizure operation conducted in the case of UIC group companies. During search, it was found that the said group allotted its own shares to various companies including the assessee-company and it was alleged that unaccounted cash was channeled in the form of bogus purchase / sale of shares. The Tribunal noted that there was no search warrant in name of assessee and held that notice u/s 158BD could be validly issued to the assessee only if material belonging to assessee disclosing undisclosed income of assessee was found during course of search at the premise of UIC group, which was not the case. Accordingly, it held that the jurisdictional fact to invoke section 158BD was absent and, thus, framing of assessment u/s 158BD was ab initio void.
TUHADI SUPPLIERS PVT. LTD. vs. ACIT (2018) 53 CCH 0338 KolTrib – I.T(SS).A. No. 66, 69, 72, 80 & 1718/Kol/2013 dated 13th July, 2018

2914. The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed AO's disallowance of expenses exceeding 30% of the gross receipts on the basis of assessee's statement recorded during survey operation u/s 133A that his expenses were about 30% of gross receipts. The Tribunal held that what was stated by assessee was only estimated expenditure against the receipts and it was not really necessary that entire expenditure must be incurred in same period in which receipts were accounted. Further, it held that the approach of lower authorities of making disallowance only based on assessee's statement was fallacious and untenable in law as the statement recorded u/s 133A had no evidentiary value. Accordingly, it deleted the disallowance made.
Dr.Suresh Manjibhai Prajapati vs Asst.CIT [2018] 54 CCH 0271 (Ahd Trib)- ITA 1357/Ahd/2017 dated 16.11.2018

2915. The Tribunal allowed assessee's appeal and deleted the addition made only on the basis of statement taken during survey without bringing on record any corroborative materials, noting that the said statement was also retracted by the assessee by filing an affidavit within one month from the date of recording such statement. It also noted that the said retraction was conveyed to the survey team before the survey report was made and to the AO before any proceedings were initiated by the AO and thus was legal and valid and was not belated. Further, the retraction was supported by explanation of impounded documents to the Survey team. The Tribunal also noted that the impounded document did not contain any information which was not recorded in the books of accounts.

Concept Communication Ltd.vs Dy.CIT [2018] 54 CCH 0274 (Mum Trib) - ITA 2800 to 2805/Mum/2016, ITA No.3026/Mum/2016 dated 16.11.2018

2916. The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that assumption of jurisdiction by AO to issue notice u/s 153C was void ab initio and bad in law and vitiated the entire assessment proceedings since the AO of searched person had not recorded a satisfaction note that the seized material belonged to person other than searched person (i.e. assessee) and thus, the condition precedent u/s 153C was not satisfied.

Asst CIT vs Surbhi Sen Jindal and Anr [2018] 54 CCH 0154 (Del Trib)- ITA 4809/Del/2014 dated 01.11.2018

2917. Where the AO sought to deny a percentage of expenses incurred by the assessee charitable trust, pursuant to search proceedings carried on in the premises of the assessee on the ground that the assessee was also carrying on business activities, the expenses pertaining to which were not allowable as deduction, the Tribunal noting that the AO in his assessment order nowhere referred to any document, information arising out of the search held that there was no incriminating material recovered from the search proceedings which formed the basis of the disallowance of expenses. Relying on the decision of
CIT vs. Kabul Chawla reported in 380 ITR 573(Delhi), it held that in the absence of incriminating material no addition could be made under Section 153A and accordingly deleted the disallowance.
SOCIETY FOR EDUCATIONAL EXCELLENCE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0197 DelTrib – ITA No. 6957, 6960 and 3606/Del/2017 dated Mar 19, 2018

2918. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had quashed the proceedings initiated against the assessee u/s 153C since the AO of assessee had not proved that the documents seized during search of third party belonged to assessee and not to the searched person and the satisfaction notes recorded by AO of assessee and AO of searched person were identically worded and no reason was recorded as to how the satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of searched person.
ITO v Canyon Financial Services Ltd. – (2018) 91 taxmann.com 252 (SC) – SLP (Civil) Diary No. 2726 of 2018 dated 19.02.2018

2919. The Tribunal held that the AO could not assume valid jurisdiction for assessment by issuing notice u/s 153A, where no search had been conducted at place of business of assesse but at a place which neither belonged to assessee-firm nor was the assessee-firm carrying on any business therefrom and, consequently, assessment made in consequence of such notice is invalid and void ab initio.
Regency Mahavir Properties v ACIT - (2018) 169 ITD 35 (Mum) – ITA No. 682 & 683 of 2016 dated 04.01.2018

2920. The Court dismissed the Department's SLP filed against the High Court ruling whereby the proceedings initiated u/s 153C were quashed noting that the assessee's AO had not proved that the documents seized from premises of third party belonged to assessee and not to the searched person and that the satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of the searched person.
ITO v Canyon Financial Services Ltd. – (2018) 90 taxmann.com 169 (SC) – SLP (Civil) Diary Nos. 41879 of 2017 dated 11.01.2018

2921. Where addition was made by AO u/s 69 on the basis of incriminating material found and the statement of assessee's mother during search proceedings and the assessee's mother had retracted the statement subsequently, Tribunal set aside the CIT(A)'s order wherein CIT(A) had held that AO made addition u/s 69 without any evidence and addition cannot be made solely on the basis of loose papers. Tribunal held that it was only with reference to the search and seizure material that assessee's mother had given a specific amount to various heads wherein the undisclosed income had been utilized, which was separately accepted by assessee also and hence it cannot be said that the addition is not based upon any incriminating material found or searched. Tribunal had also noted that the retraction was by the mother of the assessee and that there was no retraction whatsoever by the assessee.
Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 144 (Mum) – ITA Nos. 2524 and 2769 (Mum) of 2015 dated 16.01.2018

2922. The Court held that the notice issued under section 133(6) for furnishing requisite information against the deceased would have to be complied with by the legal representative or persons who inherited estate of deceased persons and they could not deny to furnish such information. It was noted that when information was called from noticee fact of death of noticee was not in knowledge of concerned AO.
Mrs. S. Savithri v. ITO - (2018) 400 ITR 513 (Kar) – Writ Petition No. 22020 of 2017 dated 02.01.2018

2923. With regards to the assessment proceedings u/s 153A r.w.s. 143, the Court rejected the assessee's contention that the said proceedings were non-est as the documents relied on to make additions, being not one seized in search conducted but received before search by Department through a Tax Evasion Petition allegedly filed by one of brokers involved in transaction. It noted that it was pursuant to search and enquiry conducted thereafter that it was revealed that (i) assessee had rental income from a flat purchased at Bangalore which had been sold, (ii) assessee had suppressed account maintained by assessee in which there was unaccounted consideration from purchaser also was unearthed and (iii) exact amount of income escaped from assessment was supported by ample evidence.
DR. A. V. Sreekumar v CIT – (2018) 90 taxmann.com 355 (Ker) - ITA No. 186 of 2013 dated 24.01.2018

2924. The Tribunal upheld the CIT(A)'s order deleting the addition made the AO of additional income solely based on the disclosure made by the assessee-firm's partner in the statement recorded during survey action u/s 133A (which was subsequently retracted) where the AO contended that there were defects in maintenance of books of accounts and the assessee had not co-operated with the Revenue during assessment proceedings and many evidences as were sought by the AO were not furnished, holding that admission or confession was not conclusive evidence as to the truth of matter, it was only piece of evidence relevancy of which was required to be judged basing on material evidence and circumstances in which it was made. Noting that the AO had referred to minor discrepancies in books of accounts and bills which were not entered in books of accounts, it held that minor discrepancies in absence of other tangible incriminating material against the assessee did not warrant any addition. It further held that the

Revenue had failed to even cross examine partner of assessee post retraction of his statement wherein the assessee had alleged that the Revenue had obtained forced confession from assessee to surrender income.

ACIT v ORIENTAL DCORATORS – (2018) 52 CCH 14 (Mum) – ITA No. 820/Mum/2015 dated 05.01.2018

2925. The AO had initiated assessment proceedings u/s 153A pursuant to search action u/s 132 at assessee's premises and on the basis of material seized in search action on a group. The AO observed that the assessee had invested amount in certain project which, similar to the case of another investor and made an addition to assessee's income. The Tribunal relied on the decision in the case of Kabul Chawla 380 ITR 573 (Del HC) where it was held that in case of completed assessments, no addition could be made without any incriminating material found in search action and also held that during search action at premises of assessee, no incriminating material was found. It held that no assessment proceedings were pending in instant assessment year as on date of search. Relying on the decision in the case of Pr.CIT v Subhash Khattar [ITA No. 60/2017 (Del HC)], the Tribunal held that no addition could had been made in absence of any incriminating material found from premises of assesseea and the addition on merit also deserved to be deleted.

ASHA RANI LAKHOTIA v ACIT – (2018) 52 CCH 40 (Del Trib) – ITA No. 424/Del/2015 dated 16.01.2018

2926. The Tribunal held the block assessment to be illegal on the ground that no valid authorization or search u/s 132(1) was made in name of assessee and at premises of assessee. Since the warrant of authorisation and panchnama was made in the name of "M/s. Verma Transport Company" instead of "M/s. Verma Roadways", the Court held that the Tribunal had not examined sufficiency of material on which authorization u/s 132(1) was issued by the competent authority but had examined identity of person in respect of whom the authorization was issued and search and seizure operations were carried on. It held that the use of wrong name was more in the nature of clerical mistake than mistake of identity since the search and seizure actually was conducted at the premises of assessee and whatever was seized included money and document belonged to the assessee and further the assessee had at no point of time, before ACIT/AA raised any such dispute that authorization as well as panchnama prepared by search and seizure team relate to another person. Thus, it held that the search and seizure operations must be held to have been conducted against the assessee and, therefore, on the basis of material collected in search and seizure operations, the ACIT/AA was justified in proceeding to make assessment under Section 158BC.

VERMA ROADWAYS & ANR. v ACIT– (2018) 101 CCH 15 (All HC) – TAX APPEAL NO. 3 of 2000, 4 of 2000 dated 11.01.2018

2927. The Tribunal quashed the assessment framed u/s 143(3) r.w.s. 153A, pursuant to search, noting that nothing was brought on record by the Revenue in support of its contention that during course of search some incriminating material was found which required adjudication in assessment proceedings and thus, holding that in absence of incriminating material found during course of search, the regular assessment concluded could not be reopened and reframed u/s 143(3) r.w.s. 153A.

VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018

2928. Where the reasons assigned by the AO in the satisfaction note for issuing notice u/s 153C was agreement for sale between UTI and the assessee-company for purchase of office space in property which was taken in schedule of fixed assets in balance sheet of the assessee and the AO did not make any addition on account of such purchase of property treating it as undisclosed income but determined annual letting value with respect to such property, the Tribunal held that the reasons recorded by AO in satisfaction note were factually incorrect or without sustenance because property in question purchased was already disclosed in regular books of accounts it was clearly beyond scope of proceedings u/s 153C because annual letting value was determined in assessment year without reference to any incriminating material found during course of search and accordingly dismissed the revenue's appeal against the CIT(A)'s order wherein the CIT(A) had held that the addition had been made without

reference to any material, found during the course of search, therefore, it was clearly beyond the scope of the proceedings u/s 153C.
ACIT v NAHID FINLEASE PVT. LTD. – (2018) 52 CCH 51 (Del Trib) – ITA No. 4822 to 4824/Del/2014 dated 22.01.2018

2929. Where the AO made an addition on account of unexplained share capital for the impugned AYs i.e. AY 2006-07 and 2007-08, based on subsequent information received in connection with the documents seized during search proceedings, the Tribunal held that the documents in itself did not constitute incriminating material as the addition was made on the basis of subsequent information. Accordingly found during search, no addition could be made. Accordingly, relying on the decision of CIT vs. Kabul Chawla reported in 380 ITR 573(Delhi), it held that in the absence of incriminating material no addition could be made under Section 153A.
ASIAN COLOUR COATED ISPAT LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0187 DelTrib - ITA No. 2838/DEL/2015, 2839/DEL/2015 dated Mar 19, 2018

2930. The Tribunal held that the AO and CIT(A) were unjustified in concluding that the assessee had undisclosed and unexplained interest income on the basis of a single paged document seized during search proceedings as the impugned document i) was not even in the handwriting of the assessee ii) neither did it mention the name of the assessee nor contained the signature of the assessee and iii) the document did not even indicate whether the assessee had an investment, loan or deposit. It held that in the absence of further inquiry, no addition could be made on bald allegations.
NEERAJ GOEL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0271 DelTrib - ITA No. 5951/Del./2017 dated Mar 21, 2018

2931. Where the AO made an addition in the hands of the assessee pursuant to search conducted at the premises of the assessee, which included the assessee's brother's premises, based on documents seized from the assessee's brother, the Court dismissed the assessee's contention that the addition was invalid as no separate notice under Section 153C had been issued to the assessee and observed that i) the warrant was issued in the name of the assessee as well as his brother ii) the panchnama was signed by both the assessee and the brother iii) the statements of the assessee as well as his brother were recorded on the same date iv) the assessee and his brother were involved in a common business. Accordingly, it held that there was no requirement for issue of separate notice under Section 153C of the Act. Further, it dismissed the assessee's contention that he was not given the opportunity to rebut AO's allegations and observed that his statement along with his brother's statement and all other relevant documentation were duly made available to him to enable him to make submissions before the AO. Accordingly, it upheld the addition made by the AO.
VINOD KUMAR GUPTA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0083 DelHC - ITA 1003/2017, C.M. APPL.41767-41768/2017 & 3505/2018 dated Mar 12, 2018

2932. Where the AO, pursuant to search in the premises of the Mukesh Gupta group of companies seized books of accounts pertaining to the assessee and proceeded to issue notice under Section 153C to the assessee, the Tribunal held that in the absence of a satisfaction note by the AO to state that the books of accounts seized during search of the Mukesh Gupta group constituted incriminating material in the case of the assessee, the issue of notice under Section 153C of the Act was without jursidction. It held that even CBDT vide its Circular No.24/2015 has provided that even if the Assessing Officer of the searched person and the other person is the one and the same, then also the Assessing Officer has to record his satisfaction in the case of the other person i.e., other than the searched person. Accordingly, it quashed the order passed by the AO.
ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. GUPTA DOMESTIC FUELS (NAGPUR) LTD. & ORS. - (2018) 52 CCH 0236 NagTrib - ITA Nos. 195/Nag/2014 to 200/Nag/2014 dated Mar 6, 2018

2933. The Tribunal deleted the addition made by the AO pursuant to seizure of unexplained jewellery found at the premises of the assessee. It held that as per the CBDTinstruction No 1961 dated 11.05.1994, considering that the assessee's family consisted of 5 members, the permitted levels of jewellery was 1450 gms whereas the amount of jewellery found at the premises was only 847 gms. Accordingly, it

held that the jewellery possessed by the assessee was reasonable and therefore deleted the addition made by the AO.

RITU BAJAJ vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0166 DelTrib - ITA No. 4101/DEL/2017 dated Mar 9, 2018

2934. The AO, pursuant to initiation of search proceedings, made an addition under section 68 on account of unexplained share capital which was deleted by the CIT(A) on the merits of the case. The Tribunal, noting that no assessment was pending for the year under review and that the AO made addition based on the book entries which were already disclosed by the assessee, admitted the assessee's petition under Rule 27 and held that in the absence of incriminating material no addition could be made under Section 153A of the Act.

ASSISTANT COMMISSIONER OF INCOME TAX vs. RAVNET SOLUTIONS PVT. LTD. - (2018) 52 CCH 0223 DelTrib - ITA No. 6589, 6590, 6591 & 6592/Del./2013 dated Mar 16, 2018

2935. Where, pursuant to search proceedings, the AO made addition under Section 68 in the hands of the assessee (on account of unsecured loan received by the assessee) based on the statements of two persons recorded under Section 131 wherein they stated that the company providing loan was an accommodation entry provider, the Tribunal deleted the addition made by the AO observing that the statements of those two persons were recorded after completion of search and were not material found during course of search. Accordingly, it held that the statements did not constitute incriminating material found during the search proceedings and deleted the addition.

E-CITY PROJECTS LUCKNOW PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0266 CuttackTrib - IT(SS)A NO. 02/CTK/2018 dated Feb 28, 2018

2936. Where search and seizure operations u/s. 132 was conducted in case of one of partner in assessee firm from where certain documents were seized and proceedings u/s. 153C was initiated against assessee, the Tribunal relying on the decision of the Apex Court in CIT Vs. Calcutta Knitwears, [2014] 362 ITR 673 (SC) [wherein it was held that recording of satisfaction was sine qua non for taking action against person u/s.158BD i.e. a person in whose case search was not conducted] noted that in the assessee's case both the satisfactions which were required to be recorded by AO as per provisions of Section 153C, one in capacity as AO of searched person and other in capacity of AO of assessee (other person) were missing in the instant case. Accordingly, it held that initiation of proceedings u/s.153C was bad in law and without jurisdiction, and the orders passed by AO u/s.153C r.w.s. 143(3) years under consideration were liable to be cancelled.

JOYRAM ENTERPRISE vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0225 GauTrib - ITA No. 260 to 266/GAU/2017 dated Feb 22, 2018

2937. Where pursuant to survey conducted in the business premises of assessee, assessee was queried on discrepancy of cash and the assessee submitted a reconciliation statement of stock along with original records before AO but the AO made addition on unexplained stock on basis of statement of one director wherein he allegedly admitted to pay tax thereon on unexplained stock, the Tribunal observing that in fact i) the director made no statement admitting to pay tax thereon on unexplained stock ii) that there was no difference between quantitative details in stock register and physical stock taken iii) the assessee offered proper explanation to alleged stock verification iv) the valuation in books of accounts of assessee was on basis of historical costs, the Tribunal deleted the addition on account of unexplained stock.

STEEL CITY FOOD PRODUCTS PVT. LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR - (2018) 52 CCH 0141 RanchiTrib dated Feb 28, 2018

2938. Where the AO made an addition in the hands of the assessee under Section 153A of the Act contending that the assessee ought to have declared net profits at 12 percent as opposed to 3.3 percent, the Tribunal held that the addition was unsustainable as there was no reference to incriminating material found during search in the order of the AO, absent which the addition was unsustainable. It held that the addition was based on mere suspicion and surmises.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. DINGLE BUILDCONS PVT. LTD. & ANR. - (2018) 52 CCH 0073 DelTrib - ITA Nos. 4666 & 4667/DEL/2016 dated Feb 1, 2018

2939. The Tribunal held that despite there being incriminating material in possession of Revenue which might implicate assessee (Information was received in form of document collected by Government of India as part of tax information exchange treaty as per which certain persons in India held bank accounts with a bank in Switzerland), but same could not be used within scope of Section 153A when nothing had been found from search, especially when assessee too had denied any such involvement and there was no material gathered during search to rebut such denial by assessee. Accordingly, it held that the addition made by the AO i.e. amount in the said bank account as well as interest on such deposits was to be deleted.

ANURAG DALMIA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0106 DelTrib - ITAs. No. 5395 & 5396/DEL/2017 dated Feb 15, 2018

2940. Based on the admission of an ex-partner of the assesse-firm with respect to payment of certain unaccounted money for purchase of sand ghat, the assessee's case was reopened wherein initially the assessee's partner had disclosed certain amount as additional income, however, filed the return of income of firm without offering such additional income. AO made addition based on the statement of the ex-partner, which was not accepted by other partners. CIT(A) deleted addition on account of undisclosed investment. It was noted that the examination of books of account had shown that amount was paid for acquisition of sand ghat. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order, holding that de hors any corroborative material, statements of ex-partner who was no longer partner in firm for last many years could not be said to be conclusive evidence of firm having made payment through undisclosed means for acquisition of sand ghat. It also upheld the reliance placed by the CIT(A) on the CBDT Circular No. 286/2003/IT dated 10.03.2003 which states that efforts should be made by revenue official**s** to obtain credible evidence and obtaining admission de hors evidence should be avoided.

INCOME TAX OFFICER vs. PROGRESSIVE CARRIERS - (2018) 53 CCH 0137 (NagTrib) - ITA No. 222/Nag./2015 dated Jun 11, 2018

2941. During search and seizure operation, it was found that the assessee was engaged in providing accommodation entries for issuing bogus bills. The addition made by the AO considering commission rate @ 2% charged by the assessee for such entries was upheld by the CIT(A). The Tribunal dismissed the assesse's appeal against the CIT(A)'s order, noting that the seized documents indicating that the assessee had minimum commission rates of 1.50% and maximum rate of 3.85%. It also rejected the assessee's claim for deduction on account of expenditure against the said addition, holding that neither the assessee had shown any proof of such expenditure nor were the same found during the search proceedings.

VAIBHAV JAIN vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0310 DelTrib - ITA No. 3770 to 3775/Del/2014dated Apr 12, 2018

2942. The Apex court accepted the application seeking for exemption from filing certified copy of the order of the High Court, wherein the High Court upheld order of Tribunal deleting addition made on account of unaccounted sundry creditors (purchases) and unexplained share of money thereby limiting scope of Assessment u/s 153A on basis of incriminating material discovered in search only.

CIT vs. SKS ISPAT AND POWER LIMITED (SUPREME COURT OF INDIA) (SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 15366/2018) dated May 18, 2018 (102 CCH 0065 ISCC)

2943. On the basis of a document seized during search, seizure and survey operations carried out on the premises of the Assessees, the AO issued notice under Section 148 in respect of land purchased by the Assessee alongwith 11 other buyers and made an addition under Section 69 of the Act. The CIT(A) upheld the order of the AO. The Tribunal observed that there was no evidence or material available in the seized document, as per the order of the AO or the CIT(A)'s order to show that the Assessees had paid the consideration over and above the consideration registered in the purchase document. Further, since the Revenue failed to prove that excess consideration had passed on in the said transaction, Tribunal deleted the addition made under Section 69 of the Act as unexplained investment. Thus, the Assessee's appeal was allowed.

SATHI SURYANARAYANA REDDY & ORS. vs. DCIT& ORS. (VISHAKAPATNAM TRIBUNAL) (ITA No. 178 to 189 of 2017) dated May 30, 2018(53 CCH 0173)

2944. The Assessee admitted unrecorded transactions relating to his real estate business and also offered additional income on being summoned under Section 131 of the Act post survey enquiriesunder Section 133Aof the Act. Basis the same, the AO made an addition under Section 68 of the Act. The CIT(A) confirmed the order of the AO. However, the Tribunal observed that the addition was made merely on the basis of loose sheet entries and a power of attorney in the Assessee's name which did not co-relate with any investment made by him from undisclosed sources. Further, the Tribunal observed that such documents did not bear acknowledgement in any form or signature by/of the Assessee. Accordingly, the Tribunal held that in the absence of any corroborative evidences, the Assessee could not be subject to any addition under Section 68 of the Act only on the basis of admission/confession. Thus, the Assessee's appeals were allowed.

DIDAR SINGH vs. DCIT (AMRITSAR TRIBUNAL) (ITA No. 542(Asr)/2016) dated May 29, 2018(53 CCH 0116)

2945. The assessee was providing lockers without verification of KYC details, various lockers were given on rent to Hawala operators involved in illegal transfer of cash. Based on the cash found and seized documents, the AO made addition of undisclosed income. CIT(A) upheld order of the AO. Tribunal held that it was not necessary that details of undisclosed income of each day of financial year was unearthed; rather details of certain part of the year which were detected could be extrapolated for the entire year. Thus, Tribunal held that since assessee could not substantiate his income from business and since details of unaccounted income were unearthed in a diary found during search, fair estimation of undisclosed income based on entries found on seized documents was justified. Thus, the assessee's appeal was dismissed.

KALURAM MALI vs. DCIT (BOMBAY TRIBUNAL) (ITA No. 392/Mum/2018) dated May 1, 2018 (53 CCH 0089)

2946. Survey operations were conducted on the assessee and bogus billing racket was found which was admitted by the Assessee. AO rejected the books of accounts under Section 145(3) of the Act as the assessee did not give any satisfactory explanation and also made addition to returned income which included the amounts surrendered by the assessee during assessment proceedings. The CIT(A) upheld order of the AO. Tribunal observed that assessee had offered explanation and also produced documentation during the course of assessment proceedings. Tribunal held that although AO rejected the books of accounts but accepted amount as surrendered by the assessee during course of survey, there was contradiction in statement of assessee and findings of AO and hence the matter required reconsideration by the AO. Accordingly, the ITAT restored the matter to the file of the AO fresh determination.

VICHITRA PRESTRESSED CONCRETE UDYOG PVT. LTD. & ANR. vs. DCIT & ANR. (DELHI TRIBUNAL) (ITA No. 73, 74, & 75, /Del./2015, 71/Del./2015) dated May 18, 2018 (53 CCH 0057)

2947. The Tribunal allowed assessee's appeal against the CIT(A)'s upholding the AO's order passed u/s 153A wherein the AO had made addition u/s 68 by treating share capital and share premium as unexplained cash credit based on statement recorded of an associate of the assessee group. It accepted the assessee's contention that no incriminating material was found in respect of the addition made and the statements recorded u/s 132(4) did not constitute as incriminating material. It was further observed that the statement of associate of group company was non descriptive and vague and subject to cross checking of fact to be explained after access to books of accounts. Thus, the Tribunal held that since no incriminating material was found/seized during the course of search, the addition made by AO and upheld by the CIT(A) in the proceedings conducted u/s 153A were void ab-initio and liable to be deleted.

MOON BEVERAGES LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0120 (DelTrib) - ITA No. 7374/Del/2017, 7567/Del/2017 dated Jun 7, 2018

2948. The Tribunal allowed assessee's appeal against the CIT(A)'s upholding the AO's order disallowing the assessee's claim for deduction u/s 40(b) with respect to remuneration to partners against the additional income offered to tax by the assessee on account of discrepancies found in stock of gold and silver during survey action u/s 133A. The Tribunal relied on decision in the case of M/s. Surekh Jewellers Vs. DCIT [ITA No.18/PN/2016], wherein it was held that the additional income disclosed by the assessee in

the survey action u/s 133A partakes the character of business and therefore, the assessee was entitled to the benefits of excess remuneration qua the additional income as per the provisions of section 40(b) of the Act. Thus, following the said decision, the Tribunal held that in the instant case, the excess stock linked additional income partook not only the character of business profit but the same was also eligible for quantifying the remuneration u/s 40(b) of the Act.
SILVER PLACE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0300 (PuneTrib) - ITA No. 893/PUN/2016 dated June29, 2018

2949. During the course of survey proceedings, the assessee, engaged in the business of manufacturing Coils/Strips and Generation of Power, revealed that a maximum loss of 5.6% was incurred in the manufacturing process. The AO treated the excess loss claimed by the assessee above 5.6% as suppressed / undisclosed sales, thereby also rejecting the books of accounts of the Assessee. The CIT(A) deleted the addition made by the AO as the addition was solely made on the basis of the statement recorded during the survey proceedings and that the AO has not brought any other evidence suggesting that the assessee had suppressed the production leading to suppressed sale. The Tribunal observed that CBDT discouraged officers to make any addition merely on the basis of the statements recorded, without bringing any tangible material for such addition. The Tribunal upheld the order of the CIT(A) wherein the addition made by the AO was deleted in absence of any evidence for the same.
DCITvs. REAL STRIPS LTD. (AHMEDABAD TRIBUNAL) (ITA No. 2255/Ahd/2016) dated May 31, 2018 (53 CCH 0094)

2950. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made u/s 68 in the course of assessment proceedings u/s 153A r.w.s. 153C on the basis of certain document found in search operation in the premises of another person. Noting that all the documents had already been brought on record by the assessee during assessment proceedings in the completed assessment, the Tribunal held that the CIT(A) had rightly deleted the addition and thus the addition made by the AO u/s 153C was outside the scope of proceedings. It held that even on merits, when the assessee had brought on record complete identity with PAN, confirmation, bank statements, memorandum and article of association and audited financials of the company from which the amount was received by the assesse to substantiate the genuineness of the transactions, the AO could not make addition on the basis of surmises that funds received by the assessee from the said company were in fact has been received from some other person.
INCOME TAX OFFICER vs. NAHID FINLEASE PVT. LTD - (2018) 53 CCH 0228 (DelTrib) - ITA No.6246/Del./2014 dated June22, 2018

2951. The Tribunal dismissed assessee's appeal filed against the CIT(A)'s order upholding the AO's order rejecting the assessee's books of account during the course of assessment proceedings after search and seizure operation conducted upon the assesse. Noting that the assessee had failed to explain the huge variation in the stock pointed out at the time of the search vis-a-vis its books of account, it held that the AO had successfully demonstrated that the rejection of books of account was justified and warranted, in the peculiar facts and circumstances of the present case.
BHAWANI INDUSTRIES LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0207 (ChdTrib) - ITA No. 74/CHD/2017 dated June20, 2018

2952. Where 25% of cash deposited in the assessee's bank account (which was discovered in course of survey operation u/s 133A) was considered to be the unaccounted income of the assesse and the lower authorities had given a finding that the business in which the appellant was engaged involved mostly cash and credit card payments, the Court dismissed the assessee's appeal against the said findings, holding that these were factual issues and thus no substantial question of law arose.
PINAKI RANJAN DAS vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0107 (KolHC) - GA NO. 115 OF 2017 WITH ITAT NO.15 OF 2017 dated June20, 2018

2953. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO applying higher Gross Profit (GP) rate as compared to the GP rate declared towards profits in respect of trading in bullion carried on by assesse, relying on the decision given by the Tribunal in the case of the Father- in-law of the assesse [ITA No. 4241-4243/Del/2014]. In that, on identical facts, the issue was decided in favour of

the assessee, noting that the AO had accepted the opening stock, purchases, closing stock and cash deposits in bank accounts which were recorded by the assessee in his books of accounts maintained in regular course of businessand sale was duly declared by assessee in his VAT returns filed and that no inflated sale was pointed out by the AO. In that case, it was thus held that the ad-hoc addition made by the AO, by applying the GP rate was not justified, particularly when no comparable case was brought on record wherein such a profit was earned.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. SUMEDHA PATHAK & ANR. - (2018) 53 CCH 0104 (DelTrib)- ITA No. 6082/Del/2014 (CROSS OBJECTION NO. 207/Del/2015) dated June04, 2018

2954. The Tribunal quashed the assessment order passed u/s 153A pursuant to search proceedings, noting that there was no reference to seized materials whatsoever based on which additions/disallowances were made in the said order and that the assessments for all the three years involved were unabated assessments as there was no pending proceedings and time limit for issue of notice u/s 143(2) for all such years had expired. It relied on the decision in the case of CIT Vs. Gurinder Singh Bawa [386 ITR 483 (Bom)] wherein it was held that once an assessment was not pending but had attained finality for particular year, it could not be subject to proceedings u/s 153A, if no incriminating materials were found in course of search.

ABHISHEK ENTERPRISES vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0217 MumTrib - ITA Nos. 1008, 1009 & 1010/MUM/2016 dated June04, 2018

2955. The Court upheld the Tribunal's order rejecting the assessee's appeal against the order passed by the AO u/s 153A, after taking the prior approval of the JCIT as per section 153D, wherein the assessee challenged the validity of the said order on the ground that the JCIT did not give any notice and opportunity of hearing to the assessee before granting approval to the draft assessment order of the AO. The assessee relied on the clause 9 of Manual of Office Procedure, Volume-II [Technical], February, 2003 issued by the Directorate of Income Tax on behalf of Central Board of Direct Taxes (CBDT) which lays down the guidelines for giving such an opportunity of being heard to the assessee by the Supervisory Officer to the proposed block assessment. The Court held that the internal guidelines issued by the CBDT, bereft of the statutory provisions in section 153D could not bind the approving authority, namely, the JCIT to comply with the principles of natural justice. It further held that the AO undoubtedly had given adequate and reasonable opportunity of hearing to the assessee, considering all objections on merits, and the assessee was also not able to point out any prejudice caused to him on account of approving authority not giving him an opportunity of hearing

Gopal S. Pandit v CIT - [2018] 95 taxmann.com 246 (Karnataka) - IT APPEAL NO. 34 OF 2017 dated June25, 2018

2956. With respect to the assessment year under consideration [i.e. AY 2004-05], the assessee filed his return of income after the due date u/s 139(1) [i.e. 31/10/2004] but within the time permitted by notice issued u/s 153A(1)(a) pursuant to search proceedings initiated [on 02/09/2004] after the end of the relevant previous year [i.e. FY 2003-04]. The carry forward of loss claimed by the assessee under the said return was denied on the ground that such a claim was contrary to the provisions of section 139(3) which requires the return to be filed on or before the due date stated in section 139(1) for carrying forward such losses. The Court held that as per section 153A(1), upon initiation of search proceedings, it was not necessary for the assessee to file his regular return by the due date mentioned in section 139(1) as the obligation to file the return remained suspended till such time that a notice was issued to him u/s 153A(1)(a). It further held that where the assessee had filed the return within reasonable time permitted by such notice, such return would then be deemed to have been filed within time permitted u/s 139(1) for benefit u/s 139(3) to be availed of by the assessee.

Shrikant Mohta v CIT - [2018] 95 taxmann.com 224 (Calcutta) - ITAT NOS. 19 & 20 OF 2015, GA NOS. 246 & 247 OF 2015 dated June25, 2018

2957. Where the Revenue submitted before the Court that while quashing the proceedings initiated u/s 153C, the Tribunal had proceeded on the erroneous finding that no satisfaction was recorded by the AO of the searched person where the satisfaction was in fact recorded by the AO, the Court relegated the Revenue to file a rectification application before the Tribunal pointing out to the Tribunal what was

stated in the appeal to the Court with supporting material and directed the Tribunal to decide the same in accordance with law and on its own merits.
Pr.CIT v Mehul Lavjibhai Mehta - [2018] 95 taxmann.com 321 (Gujarat) - R/TAX APPEAL NOS. 208 TO 211 OF 2018 dated June18, 2018

2958. The Court dismissed Revenue's appeal against the Tribunal's upholding the CIT(A)'s order deleting the addition made u/s 69A on account of seizure of jewellery found in possession of the assessee, who was a salesman working with 'P' Jewellers, At the time of seizure, the assessee had recorded statement u/s 132 admitting that the said jewellery belonged to him. However, subsequently during block assessment proceedings, he brought on record various documents to establish that jewellery seized from him actually belonged to his employer i.e. 'P' Jewellers. The Court held that there was no requirement in law that evidence in support of its case must be produced by the assessee only at time when seizure was made and not during assessment proceedings and thus the impugned addition was rightly deleted by the authorities below.
CIT v Rakesh Ramani - [2018] 94 taxmann.com 461 (Bombay) - IT APPEAL NO. 1435 OF 2007 dated June4, 2018

2959. The CIT passed a revisional order u/s 263 setting aside the order passed by the AO u/s 153A r.w.s. 143(3) (which was passed after obtaining the approval of the JCIT as per section 153D). The order passed by the AO making certain additions pursuant to the said revisional order was set aside by the CIT(A) on the ground that no fresh approval had been taken by the AO u/s 153D. The Tribunal allowed the revenue's appeal and matter was restored to the CIT(A) for deciding case on merits irrespective of fact that there was no fresh approval u/s 153D before passing the impugned assessment order. On assessee's appeal, the Court upheld the Tribunal's order holding that section 153D is only applicable for passing an assessment order or re-assessment order and there is no requirement u/s 153D for prior approval for complying with remand directions.
Osho Forge Ltd. v CIT - [2018] 93 taxmann.com 369 (Punjab & Haryana) - IT APPEAL NO. 430 OF 2017(O&M) dated April27, 2018

2960. The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made by the AO on account of the difference between the amount disclosed towards jewellery and cash by the assessee and other family members in the statement recorded u/s 132(4) during the course of search operation and the amount shown in the returns filed by all the family members, holding that the AO could not have made entire addition in hands of the assessee when disclosure statement u/s 132(4) was made for and on behalf of all family members. It was noted that no addition was made in the hands of the other family members.
Pr.CIT v Pradip Jayantilal Karia - [2018] 94 taxmann.com 323 (Gujarat) - R/TAX APPEAL NO. 286 OF 2018 dated April4, 2018

2961. The Tribunal cancelled the assessment order passed u/s 153A r.w.s. 143(3) pursuant to search operation, noting that the addition made u/s 68 on account of unexplained cash credit was not based on any incriminating material found during search. It relied on the decision in the case of CIT v. IBC Knowledge Park (P.) Ltd. [2016] 385 ITR 346 (Kar) wherein it was held that the fact that search had been conducted would not justify issuance of notice u/s 153A and it is only during a valid search when certain incriminating materials are detected, the said notice could be issued.
BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERSdated April10, 2018

2962. The Apex Court held that although section 158BD does not speak of 'recording of reasons' as postulated in section 148, but since proceedings u/s 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the AO in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings u/s 158BD. Thus, noting that notice u/s 158BC was issued on the same date to the searched person and also the person other than the searched person (to whom the undisclosed income belonged), it held that the notice u/s 158BC issued to the other person was not valid as no reasonable or prudent man couldhave come to the satisfaction that the undisclosed income belonged to the other person unless the seized books of

accounts etc were verified. The Court held that in such case, the AO was empowered to issue a second notice u/s 158BD to the other person.

Tapan Kumar Dutta v CIT - [2018] 92 taxmann.com 367 (SC) - CIVIL APPEAL NO. 2014 OF 2007dated April24, 2018

2963. Upon survey conducted in the business premises of the assessee, certain shortage of stock was found and the assessee had accepted the value representing deficit stock to be arising from sales outside the books. Accordingly, at the time of filing of return for the year under consideration, he filed the return declaring income inter alia including the entire amount representing the said deficit. However, subsequently, he revised the said return offering only 5% of the value of shortage of stock found at the time of survey as his income. The AO heldthat the revised return filed by the assessee was an afterthought and assessed the income admitted in the original return. The CIT(A) upheld the AO's order. The Tribunal noted that it was clear from the survey findings that the assessee had not maintained books of accounts for his purchases as well as sales and the assessee by a sworn statement had accepted the value representing deficit stock as his income. Further, it noted that original return filed was supported by a tax audit report, whereas the revised return was not supported by any tax audit report and the assessee had not pointed out any specific defects or omissions in the original return. Thus, the Tribunal held that the admission made by the assessee in the original return and the addition made by the AO on such admission had to be sustained. Accordingly, it dismissed the assessee's appeal.

N. RAGOTHAMAN & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0473 ChenTrib - ITA Nos. 216 to 220/Chny/2017, 112/Chny/2017dated April3, 2018

2964. The Tribunal allowed assessee's appeal and set aside the assessment order passed by the AO u/s 153C wherein the AO had made addition on account of unsecured loans received by the assessee in cash from various persons alleging that the assessee could not furnish any explanation with regard to source and nature of credits of such receipt **(**which were found during the survey carried out in case of group of the assessee**)**. The assessee submitted that the unsecured loans were recorded in the books of accounts and the same could not amount to incriminating material on the basis of which an addition could be made u/s 153C.The Tribunal accepted the assessee's plea relying on the coordinate bench decision in the case of L. Suryakantham Vs. ACIT [ITA Nos.300 to 305/Vizag/2012] wherein it was held that the AO had no jurisdiction to make additions u/s 153A, for the assessments which are not pending as on the date of search and also the time limit for issue of notice u/s 143(2) of the Act has expired, in absence of any incriminating material found during the course of search.

LALITHA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0472 VishakapatnamTrib - ITA Nos. 111 & 112/Vizag/2017dated April4, 2018

2965. The assessee was engaged in the business of manufacturing tread rubber as well as the business of money lending. The assessee filed its returns declaring certain amount being as agricultural income for AY 2004-05 in the year 2010. The AO carried out search u/s 132 and survey u/s 133A and found incriminating material and thereafter the AO issued notice u/s 153A (after search, AO can frame assessment for 6 preceding years). The AO treated a certain amount as non agricultural income from the agricultural income declared by the assessee in its returns thereby making addition in the assessee's total income. The CIT(A) confirmed the addition. The Tribunal, on concurring with the lower authorities stated that the onus was on the assessee to prove that the income was actually earned from agriculture and not from other sources and since in this case the assessee failed to provide evidence with reference to earning of agricultural income and corresponding expenditure incurred with reference to agricultural operations, the Tribunal held that AO had made a reasonable estimate on basis of material seized and dismissed assessee's appeal.

K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18

2966. The AO conducted search and seizure operation u/s 132 and issued notice u/s 153A pursuant to which the assessee filed its returns. The AO observed that the assessee had claimed deduction of huge 'Advertisement Expenses' paid to two parties. Notices issued u/s 133(6) to both the parties remained uncomplied with and thus he made addition in respect of 'Advertisement expenses'.The CIT(A) deleted the addition. The Tribunal upheld CIT(A)'s order noting that the AO had made addition without

conducting any further inquiry or ascertaining genuineness of these transactions and the inference was based simply on non-compliance by these two parties, whose complete particulars were with him.It held that in case of non-compliance, AO ought to have deputed Inspector or got enquiry conducted by any other means before jumping to conclusion of non-genuineness of transactions. Further, the Tribunal held that no addition could be made u/s 14A in respect of completed assessments as on date of search if no incriminating material was found. However, since the assessee could not produce copy of computation of income or its original assessment order, which was stated to have been passed u/s 143(3) to demonstrate that no such disallowance was earlier made either by assessee or the AO and return was actually filed u/s 139 under consideration,it remitted the matter to file of AO for examining the same.

ACIT & Anr v Devyani International Ltd. & Anr (2018) 52 CCH 0380 DelTrib - ITA Nos. 857 to 859 & 861/Del/2015 (CO Nos. 291 & 292/Del/2015) dated 23.04.2018

2967. The Court held that where in course of search carried out at premises of a third person, a hard disk was seized on basis of same proceedings under section 153C were initiated against assessee, since AO of searched person failed to record a specific satisfaction as to how said hard disk belonged to assessee, impugned proceedings under section 153C were unjustified.

PCIT v N.S. Software (Firm) [2018] 93 taxmann.com 21 (Delhi) – ITA NO. 791 OF 2017 dated 18.04.2018

2968. The Court held that where in case of assessee engaged in business of real estate development, a search was conducted and certain documents were seized, addition could not be made in respect of those deals which fell through and documents themselves suggested that profits were shown on projected basis. Further, the Court held that where on basis of documents seized during search, AO made addition of premium in respect of commercial area which remained unsold in a mall, in view of fact that said shops did not command prime location and they were allotted to family members without charging any premium, impugned addition was to be deleted.

PCIT v KamleshPrahladbhaiModi [2018] 94 taxmann.com 356 (Gujrat) – R/TAX APPEAL NOS. 331 TO 337 OF 2018 dated 18.04.2018

2969. During search proceedings, one of the directors of assessee company surrendered a certain sum (on account of unexplained cash receipts, unexplained work in progress as well as the share capital and share premium received) as undisclosed income only for the AY in question. AO regarded this statement of director as an incriminating material qua each of preceding assessment years and made addition thereto for each of the six assessment years preceding year of search u/s 153A. The High Court held that the assumption of jurisdiction u/s 153A and consequent addition on said basis was not justified. The Department's SLP filed against the said order of the High Court was admitted by the Supreme Court.

PCIT v Best Infrastructure (India)(P.) Ltd [2018] 94 taxmann.com 115 (SC) SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 14821 OF 2018 dated 14.05.2018

2970. Where survey (under Section 133A) conducted at the premises of a connected person was consequential to the search (under Section 132) conducted at the premises of the assessee, Court upheld the action of the AO in making Block Assessment under Section 158BB and held that any material or evidence found / collected in such survey would fall under words 'and such other materials or information as were available with AO and relatable to such evidence' occurring in section 158BB.

CIT vs. Ajit Kumar – [2018] 102 CCH 0002 (Supreme Court) – Civil Appeal No. 10164 of 2010, 10917 OF 2013, 4449 OF 2015, 5255 OF 2015, 10165 OF 2010 dated May 2, 2018

2971. The assessee individual, a medical practitioner, agreed to surrender certain sum during the course of survey under Section 133A and the same formed part of income declared in his return. The AO made an addition on account of cash surrendered at time of survey. The CIT(A) upheld the addition as there was is difference in the name of the patients and some of the amounts. The Tribunal observed that for the assessee, it was normal that a patient was accompanied by relatives and hence the difference in name per se could not be a ground to reject assessee's explanation. The Tribunal held that since the

amount found during course of survey was included by assessee in his return of income, the addition of such amount made by the AO was deleted.
Dr. Anoop Kumar Gupta vs. ACIT – [2018] 53 CCH 0040 (Delhi ITAT) – ITA No 3648/DEL/20146 dated May 16, 2018

2972. The assessee, running a kirana shop at a small place, was not required to maintain books of accounts as per Section 44AA r.w.s. 44AF of the Act. Although the assessee surrendered certain sum on account of excess stock, loose papers etc. during the course of survey, the statement was retracted by the assessee later. The AO made additions on the basis of the statements recorded during the course of survey. The Tribunal directed the AO and held that AO should have considered facts in right perspective before making additions solely on basis of statement of the assessee recorded during course of survey.
Ashok Vani vs. ITO – [2018] 53 CCH 0048 (Indore Tribunal) – ITA No 303 of 2017 dated May 18, 2018

i. <u>Withholding tax</u>

2973. Assessee-University conducted examinations through various colleges affiliated to it. In absence of any material to establish that affiliated colleges/centres were rendering services of professional or technical nature in matter of conducting University's examination. The Court held that the Tribunal did notcommit any error in holding that tax was not deductable on such reimbursement of expenses incurred by colleges/centres under section 194J
Pr. CIT (Central), Kanpur v. M.P. Biscuits (P.) Ltd.- [2019] 101 taxmann.com 189 (Allahabad)- ITA No. 82 of 2018 dated December 5, 2018

2974. Assessee debited Letter of Credit (LC) discount charges to its profit and less account without deducting tax at source under section 194A and, thus, same were disallowed by AO. In view of fact that said charges were merely in nature of reimbursement of cost incurred by suppliers under agreed arrangement and no interest payments had been made to suppliers. The Court upheld the Tribunalorder deleting the impugned disallowance.
Principal Commissioner of Income Tax, Central, Ahmedabad v. Plastene India Ltd.-[2018] 100 taxmann.com 414 (Gujarat)- R/TA No. 1284 of 2018 dated November 19, 2018

2975. The Tribunal held that where due to mistake, TDS related to HUF of assessee whereof assessee was karta was credited to assessee's TDS account, assessee could claim refund of such TDS credit, provided HUF had not availed benefit of such TDS certificate.
Ratanlal Biharilal Atal v. Income-tax Officer, Ward-1, Amravati- [2018] 100 taxmann.com 70 (Nagpur - Trib.)- ITA No. 90 (NAG.) of 2017-dated October 26, 2018

2976. The Court held that Bank guarantee commission is not in nature of commission paid to an agent but it is in nature of bank charges for providing one of banking service and, thus, while making payment of bank guarantee commission, requirement of deduction of tax at source under section 194H would not arise.
CIT (TDS)-1 v. Larsen & Toubro Ltd. - [2019] 101 taxmann.com 83 (Bom)- ITA No. 769 of 2016 dated December 4, 2018

2977. The Tribunal held that where assessee purchased an immovable property alongwith three othermembers of family for Rs. 1.50 crores, in view of fact that share of each co-owner came to Rs. 37.50 lakhs which was under threshold limit prescribed by section 194-IA, assessee was not required todeduct tax at source while making payment in question
Vinod Soni v. ITO, TDS-Ward, Faridabad-[2019] 101 taxmann.com 190 (Delhi - Trib.)- ITA Nos. 2736 to 2739 (DELHI) of 2015-December 10, 2018

2978. The Court upheld the order of the Tribunal holding that In terms of section 194A(1), time of deduction of tax is undisputedly time at which interest is to be credited to account of payee or when it is paid

incash/cheque or draft therefore, deduction of tax at source on interest income before close of financial year concerned as provided under section 194A(4) would not absolve assessee bank from penalty for not deducting tax at source at time of credit of said income in payee's account
Union Bank of India v. Addl. CIT (TDS), Kanpur - [2018] 100 taxmann.com 231 (Allahabad)- ITA Nos. 225 & 230 of 2017 dated November 20, 2018

2979. The Apex Court dismissed the SLP against High Court ruling that where assessee, a co-operative society, carrying on banking business, paid interest income to members on time deposits, it was not required to deduct tax at source under section 194A by virtue of exemption granted vide clause (v) of sub-section (3) of section 194A.
Com. of IT v. Bijapur District Central Co-operative Bank Ltd. - [2019] 101 taxmann.com 159 (SC)- Special Leave Petition (Civil) Diary No(s). 41156 of 2018- December 14, 2018

2980. The Court held that NOIDA, being an industrial development authority, was eligible to exemption under section 194A(3)(iii))(f) and, thus, banks were not entitled to deduct TDS on interest payment.
Canara Bank v. CIT (Appeals) - [2019] 101 taxmann.com 188 (Allahabad)- WT No. 394 of 2016 dated December 3, 2018

2981. The Tribunal held that where assessee procurement agency which procured paddy entered into anagreement with a miller for milling paddy for consideration of certain cash amount and as per agreement, by-product arising from process of milling was property of miller, such by-product retained by miller did not constitute a payment of consideration for work of milling of paddy and, thus, assessee was only liable to deduct TDS on cash consideration paid for milling work
ITO, TDS Patiala v. Distt. Manager, Punjab State Warehousing Corporation- [2018] 100 taxmann.com 28 (Chandigarh - Trib.)-ITA Nos. 162, 685, 1241, 1242, 1309 & 1310, 1312-1314 (CHD.) of 2016 669, 1424, 1425 (CHD.) of 2017 & 77, 78, 316-325 & 336 (CHD.) of 2018 dated October 30, 2018

2982. The Apex Court upheld the order of High Court holding that New Okhla Industrial Development Authority (NOIDA) is a Corporation established by a State Act and is, therefore, entitled to exemption of payment of tax at source under section 194A(1)
CIT(TDS), Kanpur v. Canara Bank- [2018] 95 taxmann.com 81 (SC)- [2018] 95 taxmann.com 81 (SC)-Civil Appeal No. 6020 of 2018-dated July 2, 2018

2983. The Assessee was provider of Direct to Home (DTH) services. The assessee entered into agreement with third party Installation Service Providers (ISP'S) for installation of dish antenna and incidental hardware at premises of subscribers. For this service, the assessee paid installation charges after deducting TDS as per provisions of section 194C. The Assessing Officer was pf view that work involved professional services by technical manpower and, therefore, same was within ambit or section 194J. The Tribunal held that in view of decision in case of Jt.CIT v. Bharat Business Channels Ltd. [2018] 92 taxmann.com 216/170 ITD 628 (Mum. – Trib.), installation of dish antenna and incidental hardware by installation service providers amounted to work contract under section 194C and no technical expertise was required so as to make the assessee liable under provisions of section 194J. Therefore, the assessee had correctly deducted tax under section 194C.
Tata Sky Ltd. v Asst. CIT [2018] 99 taxmann.com 272(Mum. – Trib.) -ITA Nos. 6798, 6799, 6803, 6804 & 6923 to 6926 (MUM.) of 2012-dated October 12, 2018

2984. The Assessee was provider of Direct Home (DTH) services. It entered into agreement with distributor for sale of Set Top Box (STB) and recharge coupon vouchers. As per agreement products were sold to distributor at discounted price. The assessee also provided festival/seasonal discount to distributors.The Assessing Officer held the assessee to be in default as per section 201(1) for non-deduction of tax at source under section 194H in respect of discount offered to distributor and, consequently, made the assessee liable for interest under section 201(A). The Tribunal held that discount granted to distributor could not be considered as commission and, hence not liable for deduction of tax at source under provisions of section 194H.

Tata Sky Ltd. v Asst. CIT [2018] 99 taxmann.com 272(Mum. – Trib.) ITA Nos. 6798, 6799, 6803, 6804 & 6923 to 6926 (MUM.) of 2012-dated October 12, 2018

2985. The Tribunal held that document management services was not a technical or professional work which required special skills, thus, provision to section 194J could not be applied.
Tata Sky Ltd. v Asstt. CIT [2018] 99 taxmann.com 272(Mum. - Trib.) ITA Nos. 6798, 6799, 6803, 6804 &6923 to 6926 (MUM.) of 2012 dated October 12, 2018

2986. Assessee was co-operative society registered as co-operative bank and had obtained licence from RBI to carry out banking operations as co-operative bank. AO held that interest on deposits paid by assesee in excess of Rs. 10,000/- to its members was liable for tax deduction at source. AO u/s.40(a)(ia) made disallowance of interest on deposit paid by assesee. CIT(A) held that interest on deposits paid in excess of to its members was liable for tax deduction at source u/s. 194A. Assessee contended that assessee was not liable to deduct tax as assessee was exempt from TDS as per provisions of s. 194A(3)(v). The Tribunal held that, case of assessee squarely fell within provision of 194A(3)(v) being a specific provision. Section 194A(3)(i)(b) should not be applicable being general in nature. Specific provision i.e s 194A(3)(v) should override general provision, i.e s 194A(3)(i)(b), in case of over lapping or conflict, hence s.194A(3)(v) was applicable to facts of said case. Assessee's appeal was allowed.
Chikmagalur Jilla Mahila Sahakara Bank Niyamitha vs. Asst CIT-(2018) 53 CCH 0284 BangTrib-ITA No. 1384/Bang/2018-Dated Jul 4, 2018

2987. Assessee was banker of NOIDA (Authority). Assessee made payment as interest to Authority in form of FDs/Deposits for financial year 2005-06. AO found that assessee did not deduct tax at source u/s. 194A towards interest paid to Authority on its deposits. AO passed order u/s. 201(1)/201(1A) read with Section 194A declaring assessee Bank as assessee in default. CIT(A) set aside order of AO—Tribunal held that payment of interests by assessee to State Industrial Development Authority did not require any deduction at source in terms of Section 194A(3)(iii)(f). High Court held that NOIDA was constituted by State Act and entitled to exemption of payment of tax at source u/s 194-A(1). The Apex Court held that High Court did not commit any error in dismissing the appeal filed by the Revenue. NOIDA, an Authority, established by the Uttar Pradesh Industrial Area Development Act, 1976 is entitled to exemption of payment of tax at source u/s 194-A(1).
CIT vs. Canara Bank- (2018) 102 CCH 0114 ISCC- Civil Appeal No.6020 of 2018-Dated Jul 2, 2018

2988. A survey under section 133A conducted by Department revealed that assessee, a third-Party Administrators (TPA) had made payments to various hospitals during the year without deducting tax at source under section 194J which invited a disallowance under section 40(a)(ia). The CIT(A) and Tribunal had deleted the disallowance and a Division Bench of High Court in Income Tax Appeal No. 1797 of 2013 (CIT v. Health India TPA Services (P.) Ltd.) had already dealt with a similar question proposed by revenue and by a detailed judgment, dismissed revenue's appeal holding that assessee was only facilitating payment by insurer to insured for availing medical facilities and was not rendering any professional services, and, would not attract section 40(a)(ia) disallowance .Thus the Court dismissed revenue's appeal as it had been earlier dealt with by High Court.
CIT vs Dedicated Healthcare Servives (TPA) India P Ltd – (2018) 98 taxmann.com 7 (Bombay)-ITA No 1313 & 1315 of 2015 dated 17.09.2018

2989. Assessee was public limited company engaged in business of trading of mobile phones handsets, manufacturing trading, servicing, maintenance of computer hardware. AO held assessee as "assessee in default" u/s. 201(1) and also levied interest u/s. 201 (1A), in respect of failure to deduct tax at source in respect of payments made to various distributors/dealers. CIT(A) upheld order of AO. The Tribunal held that the, assessee during previous year paid certain amount to regional distributors on account of reimbursement of expenses against third party bills, incurred by them for advertisement in relation to assessee's products sold by them on their own account. From records it was seen that these expenses included manpower reimbursement to RDS, Salesman incentives and other reimbursement to RDS. Thus, assessee raised bill in name of payee and assessee also produced evidences before AO to establish that parties to the reimbursement had been made had actually complied with Provisions of

Chapter XVII-V. CIT(A) had not looked into evidences produced before AO as well as before CIT(A). Assessee's ground was allowed.
Spice Mobility vs ACIT- (2018) 54 CCH 0025 Del Trib- ITA No 2289,2286,2288 & 2287/Del/2016 dated 19.09.2018

2990. Assessee company made provision for recruitment expenses, where TDS had been deducted at time of actual payment or credit to party. AO treated assessee as "assessee-in-default" w.r.t recruitment expenses and levied interest u/s. 201(1A). CIT(A) upheld order of AO. The Tribunal held that if TDS has been deducted at time of actual payment or credit to party, then assessee cannot be called as assessee in default.
Spice Mobility vs ACIT- (2018) 54 CCH 0025 Del Trib- ITA No 2289,2286,2288 & 2287/Del/2016 dated 19.09.2018

2991. The Tribunal upholding the CIT(A) order held that where lease line charges were paid by assessee-company to internet service provider for faster internet access on dedicated lease line, said payment had been made for use of telecommunication services/connectivity for transmission of voice/data facility and not for use of any asset involved in provision of such facility/service covered in section 194-I. Thus, the assessee was not liable to deduct tax at source from the payment in question under section 194-I and it could not be treated as the assessee in default under section 201 (1)/201(1)A.
ACIT Circle (3) vs SDV International Logistics- (2018) 97 taxmann.com 573 (Kol-Trib)-ITA No 510 of 2016 dated 12.09.2018

2992. The Tribunal held that where sale is made on the basis of a credit card, it is clearly a transaction of merchant establishment and credit card company only facilitates electronic payment, for a certain charge. Thus, the commission retained by credit card company is in the nature of normal bank charges and not in nature of commission/brokerage for acting on behalf of merchant establishment. Thus, the Tribunal concluded that payments to banks on account of utilization of credit card facilities would be in the nature of bank charge and not in nature of commission within the purview of section 194H. Consequently, it held that there was no requirement for deducting TDS on the Commission retained by the credit card companies and there was no merit in the appeal filed by Revenue.
Velankani Information Sysytems Ltd vs DCIT- (2018) 97 taxmann.com 599 (Bang- Trib)- ITA No 218 & 283 of 2017 dated 12.09.2018

2993. The Court held that where land belonging to State Government was encroached upon, and such encroachment was removed by assessee, and such encroaching squatters/hutment dwellers were rehabilitated, there was no question of land being acquired by assessee and, therefore, provisions of section 194L i.e payment of compensation on acquisition of a capital asset would not be applicable.
CIT (TDS) vs MMRDA- (2018) 97 taxmann.com 461 (Bom)- ITA No 308 of 2016 dated 06.09.2018

2994. The Court held that where assessee made payments in respect of maintenance contracts which included and were related to minor repairs, replacement of some spare parts, greasing of machinery, and other ancilary services did not require any technical expertise. Thus, the same could not be categorized as 'technical services' and provision of section 194J could not be invoked.
CIT (TDS) vs MMRDA- (2018) 97 taxmann.com 461 (Bom)- ITA No 308 of 2016 dated 06.09.2018

2995. The Tribunal held that Third Party Administrator (TPA), who were responsible for making payment to hospitals for rendering only medical services to policy holders under various medical insurance policies issued by several insurers, were liable to deduct tax at source under section 194J from payments made to hospitals. It concluded that only professional services relating to medical services alone would be liable for deduction of TDS under section 194J and not payment towards bed charges, medicines used on patients, transportation charges, implants, consumables etc. which are reimbursements and thus the issue was squarely covered vide CBDT Circular No 8/2009.
Vipul Medcorp TPA vs ACIT- (2018) 97 taxmann.com 670 (Delhi-Trib)- ITA No 4398 of 2013, 3234 of 2014 & 4756 of 2015 dated 04.09.2018

2996. The assessee was following cash system of accounting and had received certain amount as professional receipts after payer deducted tax at source under section 194J. He claimed credit for prepaid taxes on account of TDS, even in respect of those professional receipts appearing in Form 26AS which were not shown by assessee as professional receipts in return of income for relevant year. During assessment, the AO made addition which had resulted because of mismatch between gross professional receipts as per Form 26AS and receipts shown by assessee in return of income and the same was confirmed by CIT(A) relying upon Rule 37BA, on ground that assessee had taken credit of corresponding tax deducted at source. The Tribunal held that the approaches of both assessee and revenue are wrong. It further held that provisions under Rule 37BA did not authorize revenue to bring such amounts to tax which are not assessable during relevant year on basis of regular method of accounting followed by assessee. The Tribunal also concluded that revenue could not, merely because credit for tax deducted at source was erroneously claimed by assessee, bring corresponding professional receipts to tax, if such receipts were otherwise not assessable as income in accordance with law. Thus, the Tribunal set aside the order of CIT(A) and the matter was remanded back to recompute income of assessee in accordance with cash system of accounting followed and to give credit for prepaid taxes on account of tax deducted at source, as per law, having regard to section 199, read with rule 37BA of Income Tax rules.

Dhruv Sachdeva vs ACIT- (2018) 100 taxmann.com 150 (Del- Trib)- ITA No 6261 of 2015 dated 18.09.2018

2997. Assessee during the year had engaged labour force of S company in his unit and made payment to labourers through bank account of S company and booked expenditure in his account. The AO during proceedings held that payment of expenditure was shown in order to reduce profit in order to avoid payment of legitimate tax and further assessee had failed to produce primary evidence such as provident fund and ESI subscription made for labours of S company. Thus, the AO inferred that payment was bogus and by applying section 40(a)(ia) disallowed same which was upheld by CIT(A). The Tribunal on appeal held that, labour of S company was engaged for work of assessee and the assessee paid wages to labourers through said party and no income element of S was involved in this transaction. Further, labour wages alone were reimbursed to S company by assessee. Thus, the Tribunal also concluded that when amount paid was merely reimbursement and no income was embedded in payment made to payee, there was no obligation to deduct TDS u/s 194C out of such payment. Thus, Tribunal deleted the disallowance u/s 40(a)(ia).

Dilip Kumar Nayak vs JCIT- (2018) 53 CCH 0519 Cuttack Trib- ITA No. 86/CTK/2017 dated 06.09.2018

2998. Assessee-company was engaged in trading and financing activities. It applied to Assessing Officer for granting a certificate of exemption u/s 197 from deduction of tax at source. Assessing Officer on tentative re-working of assessee's accounts formed a prima facie opinion that loss of assessee would come to Rs. 26.57 crore, and he therefore suggested collection of tax at reduced rate of 1 per cent. Commissioner noticed that losses projected by assessee-company did not appear to be genuine as only business of assessee was obtaining loans from outside agencies and advancing loans or making investments in group companies, and accordingly, during relevant year also large amount of interest were paid to outside parties on loans but similar charges were not collected from them. The Tribunal held that the, projected accounts were not acceptable, and hence, application was to be rejected. Further, it held that, since Assessing Officer by suggesting collection of tax at reduced rate of 1 per cent had not expressed his final decision, his opinion would not be binding on department and, thus, assessee's application to deduct tax at reduced rate could not be accepted, particularly when assessee had option to claim refund of tax deposited with Government.

OPJ Trading (P) Ltd vs ITO- (2018) 98 taxmann.com 117 (Guj)- Special Civil Application No 6088 of 2018 dated 11.09.2018

2999. The Court held that the Greater Noida Industrial Development Authority is entitled for benefit of section 194A(3)(ii)(f) and, therefore, interest received by it would be exempt under section 194A(3).

New Okhla Industrial Development Authority v. CIT [2018] 95 taxmann.com 80/257Taxman 3

(SC)- Civil Appeal No. 15613 of 2017 & Others dated July 2, 2018

3000. The assessee received transportation charges as contractor of various companies. It then made payment to various persons/truck owners for carrying out work as sub-contractor. The Assessing Officer found that, the assessee contractor did not deduct tax on payments made for carrying out work of one company, and therefore, the addition was made by way of disallowance under section 40(a)(ia) for non-deduction of TDS. The High Court held that section 194C, read with section 204(ii), will come into operation only on payment made by the assessee-contractor and here was an agreement between the said company and the assessee that freight payment would be made by said company directly to truck owners and TDS deduction as applicable would be made by said company; since payment was not made by the assessee, default in TDS was that of other company and not that of the assessee. SLP filed by Revenue against the High Court order is dismissed by the Supreme Court.

CIT v. Daulat Enterprises [2018 95 taxmann.com 142/256 Taxman 422(SC) Special Leave Petition (Civil) Diary No. 18240 of 2018 dated July 2, 2018

3001. The Court held that TDS is to be deducted under section 194-I on payment of lease rent to Greater Noida Development Authority for a plot taken on lease.

New Okhla Industrial Development Authority v. CIT [2018] 95 taxmann.com 80/257 Taxman 3 (SC)- Civil Appeal No. 15613 of 2017 & Others dated July 2, 2018

3002. The Tribunal held that where assessee entered into agreement with BEL, a government of India Defence undertaking for providing assembly services of raw material in respect of small component called, since no technical consultancy had been offered by BEL, assessee was justified in deducting tax at source under sec. 194C while making payments to BEL. The AO had erred in holding that activities carried out by BEL involved technical staff and qualified enginners and therefore, payments made for providing technical assistance would be covered by provisions of section 194J.

ITO vs Akon Electronics India (P.) Ltd [2018] 97 taxmann.com 176 (Delhi Tribunal)- IT Appeal No.1281 (Delhi) of 2016 dated August 14 2018

3003. The Court dismissed Revenue's appeal against the Tribunal order holding that section 194L / 194LA (dealing with payment of compensation on acquisition of immovable property) had absolutely no application in the case where the assessee made payment to the illegal / unauthorized persons who were squatters/hutment dwellers for the purpose of implementing scheme of Government relating to road widening near railway track. It opined that the Revenue had totally misunderstood the law by assuming that the squatters / hutment dwellers were deemed owners of the land on which they squat or encroach upon and therefore the compensation paid to them was for compulsory acquisition of land either under the Land Acquisition Act, 1894 or any other enactments. The Court held that the squatters / hutment dwellers had absolutely no title in the land on which they squat or build their illegal and unauthorized hutments.

CIT vs MUMBAI METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY & ORS [2018] 102 CCH 0228 (MumHC) - ITA No. 308, 309, 310, 311 of 2016 dated August 23 2018

3004. The Court dismissed Revenue's appeal against Tribunal's order holding that TDS had to be deducted u/s 194C (payment made to contractors) and not u/s 194J (fees for professional or technical services) for payments made by assessee in respect of maintenance contracts which related to minor repairs, replacement of some spare parts and greasing of machinery, etc. since these services did not required any technical expertise.

CIT vs MUMBAI METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY & ORS [2018] 102 CCH 228 (Mum HC)- IT No.309,311,312,314 and 373 of 2016 dated August 23 2018

3005. The Court allowed Revenue's appeal against Tribunal's order wherein the Tribunal had restored the issue of non-deduction of TDS u/s 194J (fees for technical services) while making payment of backhaul link usage charges back to the AO with a direction to examine a technical expert to ascertain as to whether there was a human intervention in the services for which the said charges were paid. The Tribunal relied on the Apex Court decision in CIT v.Bharati Cellular Ltd. (2010) 234 CTR 146(SC)wherein

it was held that if there was no human intervention, there could be no fees for technical services. The Court held that the Tribunal being the fact finding authority ought to have looked into facts and could not adopt the directions given by the Honourable Supreme Court in the said case without looking into the distinction on facts on which the directions were issued as against the facts available in the case before it. Accordingly, it directed the Tribunal itself to examine a technical expert and decide the issue.
COMMISSIONER OF INCOME TAX vs. JEEVAN TELECASTING CORPORATION [2018] 102 CCH 0217 (Ker HC) - ITA Nos.100, 104, 105, 106 and 107 of 2011 dated August 10 2018

3006. In case of the assessee-company which had deducted TDS on perquisite received by its employee on account of ESOP on the date of allotment of shares, the AO had taken a view that TDS should have been deducted on the date of exercise of option and held assessee as assessee-in-default for late deduction/deposit of TDS and accordingly levied interest under section 201(1A). The AO's opinion was based on the contention that Explanation (c) to section 17(2)(vi) requires the FMV of the shares as on the date of exercise of option to be considred for determining the perquisite value and thus, TDS should also deducted on the date of exercise of option. The Tribunal held that section 17(2)(vi) was only to determine the value of ESOP transaction and the obligation for withholding tax accrued only when the shares were allotted after completion of commitments on the part of the person who exercised the option and thus, TDS was deposited by assessee on correct due dates.

Bharat Financial Inclusion Ltd. vs Dy.CIT [2018] 96 taxmann.com 540 (Hyd) - ITA No. 237 (HYD.) of 2017dated August 03 2018

3007. The Tribunal dismissed assessee's appeal and upheld CIT(A)'s order holding the assessee to be assessee-in-default u/s 201(1) [thereby levying interest u/s 201(1A)] on account of non-deduction of TDS while making payment of consideration to NRI for purchase of property. It rejected assessee's plea that that non-resident seller had declared capital gain arising on sale of property in his return and paid taxes thereon, thus, in view of the above, assessee was not liable to pay interest. The Tribunal held that provisions of section 201(1A) clearly provide that a person who was bound to make a deduction of tax at source as per statute, if does not deduct, or after deducting fails to pay the tax, then such a person is liable to pay simple Interest on the amount of tax not deducted and such liability of the tax deductor is absolute.

Harpal Singh vs Dy.CIT (IT) Chd [2018] 97 taxmann.com 429 (Chandigarh Trib)- IT APPEAL NO. 37 (CHD.) OF 2016 dated August 08 2018

3008. The Court upheld the Tribunal's order deleting the disallowance made u/s 40(a)(ia) with respect to provision for expenses pertaining to lease rental payments, operating and maintenance charges and repairs and maintenance charges, which was disallowed by the AO as no TDS was deducted at time of credit of these liabilities. It was noted that aforesaid provision was contingent liability for which bills were not received during year under consideration and TDS was deducted as and when final bills were received. The Court also held that the assessee was not liable to deduct TDS u/s 194-I while making payment of reimbursement of lease rent charges to 'S', which were paid by 'S' on behalf of the assessee (lessee) to the lessor, noting that 'S' had deducted TDS on the same.
Pr.CIT v Sanghi Infrastructure Ltd [2018] 96 taxmann.com 370 (Gujarat) - R/TAX APPEAL NO. 404 OF 2018 dated July 16, 2018

3009. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia) with respect to interest paid to NBFCs without deducting TDS u/s 194A. The assessee submitted that since the NBFCs had already paid tax on the impugned amount of interest received from assessee by filing return of income, the said amount could not be disallowed in assessee's hands u/s 40(a)(ia) in view of insertion of second proviso to section 40(a)(ia) vide the Finance Act, 2012 which provides that no disallowance needs to be made if the recipient has included the payment made by the assessee in its receipts and has paid the taxes thereon. The Tribunal rejected Revenue's claim that the said amendment vide the Finance Act, 2012 is effective only from 1-4-2013, relying on the decision in the case of CIT v. Ansal Land Mark Township (P.) Ltd. [2015] 234 Taxman 825 (Del HC) wherein it was

held that the said proviso is declaratory and curative in nature and thus has retrospective effect from 1-4-2005 [i.e. the date when section 40(a)(ia) was inserted].
DCIT v Esaote India (NS) Ltd. - [2018] 96 taxmann.com 624 (Ahmedabad - Trib.) – ITA No. 55 (AHD.) OF 2016 dated July 31, 2018

3010. The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had held that TDS was not to be deducted u/s 194C while making payment of licence fee by the assessee to IRCTC for granting contract of catering service since the payment of licence fee was made by the assessee-contractee to the contractor (IRCTC) whereas the said section is attracted where the payment is made by contractor to contractee.
Pr.CIT v Hakmichand D & Sons - [2018] 97 taxmann.com 584 (SC) - SLP (Civil) Diary No.(S). 24740/2018 dated July 30, 2018

3011. The Tribunal held that once certificate had been issued by revenue authorities under section 197, then assessee would be liable to deduct TDS only as per said certificate not on any higher rate and thus the assessee could not be treated as 'assessee in default' u/s 201(1) for short deduction.
Kribhco Shyam Fertilizers Ltd. v ITO(TDS) – ITA Nos. 79 ,80 (LKW.) OF 2013 AND 723 & 724 (LKW.) OF 2015 dated July 27, 2018

3012. The Tribunal held that since the supplier transported goods to assessee through its own transport agency and the assessee made payment as per bill issued by supplier, it could not be said that the assessee had engaged the services of transporter as there was no express or implied contract between assessee and transporter and, thus, the assessee was not liable to deduct TDS u/s 194C with respect to the said payment.
K.V. Satyanarayana Murthy v ITO - [2018] 96 taxmann.com 252 (Visakhapatnam - Trib.) – ITA No. 428 (VIZ.) OF 2014 dated July 25, 2018

3013. The Tribunal held the assessee to be assessee-in-default u/s 201(1) for non-deduction of TDS on commission paid by the assessee-telecom operator to its distributors. The assessee had claimed that there was no principal to agent relationship between itself and its distributors and thus the margin earned by the distributors could not be considered as commission so as to attract section 194H requiring TDS on commission payments. The Tribunal followed the decision of coordinate bench in the case of Vodafone Mobile Services Ltd. [ITA Nos. 1189/Hyd/104 and 1401 to 1405/Hyd/2015] wherein, on identical issue, it was held that distributor was merely link between assessee and ultimate consumer / subscriber and distributor could at best enforce obligation on part of assessee to provide connection / talk-time to subscriber which itself would not change characteristic of transaction from 'principal to agent' to 'principal to principal'.
IDEA CELLULAR LTD. vs. ACIT - (2018) 53 CCH 0379 HydTrib - ITA Nos. 1445 & 1446/Hyd/2015 dated July 20, 2018

3014. The Tribunal held that the payments made to the labourers through maistries could not be construed as payment for a contract of supply of labour between the assessee and maistries and did not attract TDS u/s 194C. It accepted assessee's submission that maistries were first among four to five persons of a group of labourers and for sake of convenience, it had made payment to group leader who in turn paid amount to remaining labourers in group.
ACIT v A. KASIVISWANADHAM - (2018) 173 ITD 0478 (Visakhapatnam-Trib.) – I.T.A. No. 138/Viz/2017 & Cross Objection No. 48/Viz/2017 dated July 20, 2018

3015. The Tribunal dismissed assessee's appeal and held it to be assessee-in-default u/s 201(1), thereby levying interest u/s 201(1A), on account of non-deduction of TDS on amount paid as leave travel consession (LTC) to assessee's employees and claimed by the employees' to be exempt u/s 10(5), though the same pertained to ineligible foreign travels. It followed the co-ordinate bench decision in the assessee's own case for earlier year wherein it was held that assessee was well aware of fact that its employees had travelled in foreign countries by availing LTC for which they were not entitled for exemption u/s 10(5) and thus the assessee could not plead that it was under bona fide belief that amounts claimed were exempt u/s 10(5).

STATE BANK OF INDIA vs. ACIT (2018) 53 CCH 0336 BangTrib – ITA No. 1141/Bang/2017 dated 13th July, 2018

3016. The Tribunal held that the assessee-corporation could not be considered as assessee-in-default u/s 201(1) for the alleged delay of 5 days in deposit of cheque for payment of TDS to the Government, noting that (i) assessee had admittedly tendered cheque with bank well within stipulated 'due date' and the delay was on part of bank / clearing house in making remittance to Government Account and (ii) the CBDT vide its Circular No. 261 dated 08.08.1979 had clarified that the date of tendering of cheque for payment of government dues would be deemed to be the date of payment of such taxes. It held that the aforesaid circular was binding on Revenue. Accordingly, the Tribunal deleted interest levied u/s 201(1A) and allowed asssessee's appeal.

Oil and Natural Gas Corporation Ltd. vs Dy.CIT [2018] 54 CCH 0298 (Mum Trib) - ITA 5394 to 5398/Mum/2017 dated 30.11.2018

3017. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order holding that assessee being a primary agricultural cooperative society within meaning of section 2(19) was exempted from deduction of TDS u/s 194A on interest paid to its own members and thus disallowance u/s 40(a)(ia) for such no-deduction of TDS could not sustain. The AO had held that the assessee was not a primary agricultural cooperative society since it was engaged in business of banking. However, the Tribunal noted that the assessee was registered under the Kerala State Co-operative Societies Act and no approval was obtained from the RBI for carrying out the banking activities and accordingly, held the assessee to be a primary agricultural cooperative society

ITO vs Kuthannur Service Co-operative Bank Ltd. [2018] 54 CCH 0278 (Coch- Trib.)- ITA No.467/Coch/2018, 468/Coch/2018, 469/Coch/2018, 470/Coch/2018 (CO No.77/Coch/2018, 80/Coch/2018, 78/Coch/2018, 79/Coch/2018) dated 29.11.2018

3018. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting disallowance u/s 40(a)(ia) on account of non-deduction of TDS u/s 194A on payment of interest on loan taken from bank, noting that (i) the assessee had taken agricultural loans from the bank as a tie up arrangement with the farmers for holding the agricultural commodities and stocks in cold storage and to avail the facilities of cold storage (ii) it had made the payment of interest directly to bank on behalf of farmers since the bank had sanctioned the loans to the farmers (iii) entire loan was utilized by assessee for cold storage plant. It thus, held that the interest payment made to bank did not attract TDS as per section 194A.

Dy.CIT vs Madhava Hi-Tech Cold Storage Pvt Ltd [2018] 54 CCH 0278 (Coch Trib) - ITA No.467-470/Coch/2018 (CO No.77-80/Coch/2018) dated 29.11.2018

3019. The Apex Court disposed Revenue's SLP against High Court following the Apex Court ruling in case of CIT(TDS) v. Canara Bank [Civil Appeal No. 6020 of 2018] wherein it was held that New Okhla Industrial Development Authority (NOIDA), being a Corporation established by a State Act, was entitled to exemption of tax deducted at source on payment of interests by the banks to the State Industrial Development Authority in terms of section 194A(3)(iii)(f).

CIT(TDS) vs Vijaya Bank [2018] 103 CCH 0251 (ISCC)- Special Leave to Appeal (C) No(s). 28062/2017 dated 12.11.2018

3020. The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that the assessee was not liable to deduct TDS u/s 194I on lease premium paid to MMRDA for acquiring lease rights on

immovable property, relying on the co-ordinate bench rulings in Wadhwa Associates Realtors (P) Ltd. [36 taxmann.com 526 (Mum Trib)] and Enam Financial Consultants Pvt Ltd. [ITA.Nos. 4421 & 4422/MUM/2015] wherein it was held that lease premium paid by the assessee to MMRDA for acquisition of lease hold rights on the property is not in the nature of rent as contemplated u/s 194-I. It also noted that CBDT Circular No. 35/2016 itself clarified that lump sum lease premium or one-time upfront lease charges paid by the assessee for acquiring long term leasehold rights over land or any other property were not in the nature of rent u/s 194-I.

DCIT vs Bank of India [TS-758-ITAT-2018(Mum)] - ITA Nos. 6039 & 6040/MUM/2016 dated 20.12.2018

3021. The Tribunal allowed assessee's appeal against CIT(A)'s order and held that the assessee could not be treated as assesse-in-default u/s 201(1) for non deduction of TDS u/s 194-I on demurrage charges paid to foreign shipping companies, rejecting AO's contention that since the demurrage charges were paid for the delay of loading/unloading of the goods, therefore, the demurrage charges were like rent paid by the assessee to other companies and hence the provision of section 194-I was attracted. Further, noting that the non-resident shipping companies were subjected to tax u/s 172, it relied on the decision in the case of Dempo & Company Pvt. Ltd [95 CCH 30 (Mum HC)] wherein it was held that Chapter XVI of the Act in respect of deducting tax at source would not apply in respect of payment made towards demurrage charges in cases where section 172 is applicable since the said section is a charging as well as machinery provision in respect of non-resident shipping companies.

Jindal Saw Limited v ITO [TS-751-ITAT-2018(Rjt)] - ITA No. 220/Rjt/2014 dated 03.12.2018

3022. The Tribunal allowed assessee's appeal against CIT(A)'s order and deleted the interest levied u/s 201(1A) for depositing TDS through online banking channel for the quarter ending June on the due-date i.e. 7th July, though it was debited from the assessee's bank account the next day (i.e. 8th July), holding that date of TDS payment has to relate back to the date of online payment and not the date of credit into account of Revenue. Similarly, it deleted interest levied u/s 201(1A) with respect to TDS remitted by depositing a 'cheque' on the due-date for quarter ending June, 2007, i.e. 7th July and which was cleared in the normal banking channel (into Revenue's account) on 10th July, holding that the payment has to relate back to the date of presentation of the cheque and not to the date of its realization. It inter alia relied on the co-ordinate bench decision in the case of Sandip Bhagat v. ACIT (2017) 88 taxmann.com 356 (Delhi Trib.) wherein it was held that when the cheques issued have not been dishonoured the payment is to relate back to the date of receipt of the cheque.

Interocean Shipping (India) Pvt. Ltd v DCIT [TS-752-ITAT-2018(DEL)] - ITA No.3637 & 3638/Del./2016 dated 21.12.2018

3023. The Tribunal allowed assessee's (distributor of Idea Cellular Limited) appeal against CIT(A)'s order and deleted addition u/s 40(a)(ia) with respect to commission paid to retailers/dealers, rejecting Revenue's contention that the commission paid was liable to TDS u/s 194H. It noted that the assessee had received commission income from the principal, Idea Cellular Limited which was already subjected to TDS and as per the agreement between the Idea Cellular Limited and the assessee as well as the dealers/retailers, the said commission received by the assesse was then shared with dealers/retailers. Accordingly, it held that the retailers/dealers were not agent of assesse since the commission was originally paid by the Idea Cellular Limited who was acting as a principal and all other parties being distributor, dealers and retailers were receiving the commission from Idea Cellular Limited. The Tribunal also clarified that only for the sake of completeness of the entries in the books, the commission was routed through the assessee's books of account.

Shri Rahul Singhal v ITO [TS-746-ITAT-2018(JPR)] - ITA No. 1029/JP/2018 dated 20.12.2018

3024. The Court dismissed Revenue's appeal against Tribunal's order deleting the disallowance made u/s 40(a)(ia) for non-deduction of TDS u/s 194H on commission paid by the assessee (engaged in business of booking air tickets) to her various agents, accepting the assessee's contention that the travel agents booking air tickets through assessee made payment of tickets at concessional rates (considered as commission by the AO) and they were assessee's customers and not her agents. It relied on the decision in the case of Ahmedabad Stamp Vendors' Association v. UOI (2002) 257 ITR 202 (Guj HC) wherein it was held that the principal-agent relationship was essential for applying section 194H
Pr.CIT v MANISHABEN N MASHRU - TAX APPEAL No. 1104 of 2018 (Guj HC) dated 10.09.2018

3025. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia), holding that since entire profit was deductible u/s 80IC, the disallowance would not make any difference as the assessee would be eligible for deduction on such disallowance amount, which was also clarified by the CBDT Circular No.37/2016.
ITO v Laxmi Electronics - TA No.1994/Del./2015 dated 10.09.2018

3026. The Tribunal held that the law in Idea Cellular (2010) 325 ITR 148 (Del HC) that there is a principal-agent relationship between the telecom company and the dealers does not mean that a similar relationship can be inferred between the dealers and the sub-dealers. Accordingly, the incentive paid by the dealers to sub-dealers cannot be equated with commission as stipulated u/s 194H and so there is no requirement for deducting TDS.
Rakesh Kumar vs. CIT - I.T.A. No.3386/DEL/2014 dated 13.08.2018

3027. The Court held that no functionary other than the officer referred to in the relevant statutory provision, namely section 197 and Rule 28AA of the Income Tax Rules, 1962 (dealing with issuance of lower or nil TDS deduction certificate), is permitted to take over the jurisdiction or interfere in the exercise of the discretionary power envisaged by this statutory provision. It held that the concerned official has to record his satisfaction while issuing the TDS certificate.
TLG India Private Limited v. JCIT - WRIT PETITION(L)NO. 2764 OF 2018 (Bom HC) dated 08.10.2018

3028. The Court held that if the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue.
Devarsh Pravinbhai Patel vs. ACIT - SPECIAL CIVIL APPLICATION NO. 12965-12966 of 2018 (Guj HC) dated 24.09.2018

3029. The Tribunal held that the discount i.e. difference between MRP and the selling price, allowed by the assessee (engaged in the business of providing telecommunication services) to its distributors against advance payment made by the distributor was in the nature of commission and accordingly held that the assessee was liable to deduct taxes under section 194H of the Act. Accordingly, it held that the assessee was an assessee in default under Section 201 of the Act.
TATA TELESERVICES LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0186 DelTrib - ITA Nos. 3328 to 3332/Del./2015 dated Mar 15, 2018

3030. The Tribunal upheld the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia) by the AO on account of short deduction of tax at source, following the Tribunal's decision in the assessee's own case for earlier year wherein the Tribunal had followed the decision in the case of S.K. Tekriwal [361 ITR 432 (Cal)] and Prayas Engineering Ltd. [Tax Appeal No. 1237/2014 (Guj)] wherein it was held that no disallowance can be made u/s 40(a)(ia) if there is any shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under various TDS provisions since the said section refer only to the duty to deduct tax and pay to the Govt. account.
DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018

3031. The Tribunal remanded the matter to AO where the AO had held that assessee (which was a Co-operative society was formed for welfare of LIC employees) was involved in banking business and tax

had to be deducted at source on interest paid on time deposits of its members. Tribunal noted that the AO had not considered assessee's own case for previous assessment year which was decided in favour of assessee by Tribunal and also that he had not gone through the cited decision of jurisdictional High Court in the case of Coimbatore District Central Co-operative Bank Ltd. v. ITO (2016) 382 ITR 266 (Mad).

LIC Employees Co-operative Bank Ltd. v ACIT – (2018) 91 taxmann.com 183 (Mad) – W.P. No. 812 of 2018, WMP No. 979 of 2018 dated 18.01.2018

3032. Though the assessee had made provision for audit fees and claimed the same as deduction, it contended that the provisions of section 194J would not apply to audit fees, as question of payment to auditor would arise only after signing of accounts which took place after year end. Noting the provisions of section 194J, requiring deduction of tax at source either at time of credit of expenditure to account of payee or at time of payment whichever is earlier, the Tribunal held that since assessee had made provision for audit fees to account of payee, provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance u/s 40(a)(ia)

Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018

3033. Where the AO opined that the expenses claimed by assessee under the head 'trade discount and cash discount' which were given by it to its customers/ dealers on account of bulk quantity of goods purchased by them were nothing but commission expenses liable for deduction of TDS u/s 194H, the Tribunal held that since the assessee supplied goods to its dealers on principal-to-principal basis and there was no relationship between assessee and its customers as of principal and agents, the discount offered could not be termed as commission u/s 194H.

EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018

3034. Where the assessee had made payment to a company for managerial and technical services rendered on cost to cost basis without deducting TDS u/s 194J, the Court held that section 194J was not attracted since no income was reflected in Balance Sheet and Profit & Loss Account of the Recipient company towards payment made by the assessee and it was reimbursement of expenses incurred on cost to cost basis by assessee. Thus, it held that if no income was attributable to the payee, there was no liability to deduct TDS in the hands of the tax deductor, as TDS is only an alternative method of collection of taxes.

CIT v Kalyani Steels Ltd. – (2018) 91 taxmann.com 359 (Kar) – ITA No. 260 of 2013 dated 12.02.2018

3035. The Court dismissed the revenue's appeal against the Tribunal's order deleting disallowance made u/s 40(a)(ia) on ground that TDS was not deducted on hired vehicles, holding that hiring of vehicles does not fall within ambit of section 194C and it was only with effect from 1-6-2007 that TDS for hiring of vehicles was to be deducted u/s 194-I, whereas the year under consideration was AY 2007-08

CIT v Pioneer Peresonalised Holidays (P.) Ltd. – (2018) 92 taxmann.com 107 (Ker) – ITA Nos. 138 & 176 of 2013 dated 26.02.2018

3036. The Court dismissed revenue's appeal against the Tribunal's decision with respect to the certain issues relating to TDS wherein the Tribunal had held that –

- Placement fees/carriage fees paid by assessee-entertainment/TV company to cable operators and MSO/DTH operators were payment for work contract so as to be covered u/s 194C and not u/s 194J as fees for technical services
- Tax is not to be deducted u/s 194H on reimbursement of commission expenses, which was paid by another company on behalf of assessee
- Commission paid to non-executives/independent directors could not be treated as salary and, thus, there would be no occasion to deduct tax u/s 192

However, it admitted the revenue's appeal with respect to the certain other TDS issues wherein –

- the Tribunal had held payments made by assessee entertainment/TV company to production house for programme software purchase, equipment hire charge and other production related expenses excluding dubbing and processing charges were payments for works contract u/s 194C and the Revenue contended same to be fees for technical service u/s 194J
- assessee had deducted tax u/s 194C on payments to event managers and the Revenue contended that as per CBDT's Notification No. 188 of 2008, sport related event managers would be liable u/s 194J

CIT, TDS v Zee Entertainment Enterprises Ltd. – (2018) 92 taxmann.com 30 (Bom) – ITA Nos. 1107, 1117, 1174 of 2015 & 126 of 2016 dated 28.02.2018

3037. Where an Indian company had sent its employee on an expatriate assignment to an US company and the during relevant period, the employee was on payroll of the US company and had received salary and certain allowances in USA for meeting his cost of housing, transportation etc. and had also received a part of salary, based on a monthly basis, and certain bonus in India to meet certain obligations in India such as housing loans repayments etc., AAR ruled that the salary paid by the Indian company to the said employee could not be considered as chargeable to tax in India, since the employee was a non-resident in India during the relevant period rendering services in USA and, thus, the salary would accrue to him in USA. It further ruled that as per terms of Article 16 of India-USA DTAA, income earned by the employee from services rendered in USA would be chargeable to tax in USA, and not in India. With respect to the taxation in the hands of the said employee after his return to India, AAR ruled that once the employee became resident on return to India and the nature of payments made to him by applicant-employer was in nature of salaries, provisions of TDS u/s 192(2) would apply. However, the Applicant could give credit to the employee for taxes deducted during his deputation outside India in view of article 25 of India-USA DTAA.
Texas Instruments (India) (P.) Ltd., In re vs – (2018) 301 CTR 1 (AAR) – A.A.R. No. 1299 of 2012 dated 29.01.2018

3038. The Tribunal dismissed the assessee's appeal for AY 2009-10 against the CIT(A)'s order upholding the AO's order with respect to disallowance u/s 40(a)(ia) on the ground of delay in payments of TDS, noting that the assessee itself had submitted before the CIT(A) that it had claimed these expenses on which income-tax was deducted at source which was paid late beyond period prescribed u/s 40(a)(ia), in subsequent year i.e. AY 2010-11 and thus, claim of expenses could be allowed in A.Y 2010-11 after verification by the AO.
PEARL FREIGHT SERVICES PVT. LTD. v ACIT – (2018) 52 CCH 2 (Mum) – ITA No. 4014/Mum/2014 dated 02.01.2018

3039. The Tribunal deleted the addition made by the AO in the case of the assessee, a civil contractor firm which worked for various government departments, on the ground the assessee had not disclosed tax receipts from two government divisions in its profit and loss account, rejecting assessee's explanation that the two works were sub-let to sub-contractor and entire amount was passed on to sub-contractor on 'no profit and no loss' basis. It held that when the AO did not dispute assessee having passed on amount to sub-contractor and that the assessee did not receive any amount, the addition was unsustainable. Further, with respect to Revenue's argument that no TDS had been deducted by the assessee on payment made to the sub-contractor, the Tribunal held that there is no violation of the provisions of section 40(a)(ia) where the assessee had merely passed on the amount to the sub-contractor and TDS had been deducted by govt. department while making payment to the assessee.
SAI CONSTRUCTION v ITO – (2018) 52 CCH 48 (Agra Trib) – ITA No. 54/Agra/2017 dated 08.01.2018

3040. The Tribunal held that second proviso to section 40(a)(ia) inserted by Finance Act, 2012 to provide that when recipient of interest had included interest amount in their return of income and offered the same to tax then no disallowance was called for u/s 40(a)(ia) is effective retrospectively as it was inserted to remove hardship faced by assessee. However, the matter in the present case was remanded back to the AO for limited purpose to verify fact that as to whether interest income had been included in the return of income by the recipients and offered to tax.

ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018

3041. Where the certificate issued for deduction of tax at lower rate u/s 197 was cancelled on the ground that at the time of issuance, aspect of rule 28AA (providing for procedure to be followed for issue of certificate for deduction at lower rates) was not considered in context of pending demands and that financial condition of Petitioner was such that any future tax payable may not be recoverable from Petitioner, the Court quashed the order cancelling the certificate granted on the ground that the impugned order did not indicate any material to show any change in circumstances which would warrant cancellation of certificate and further it did not deal with Petitioner's contention that entire demand could be adjusted against refundable deposit arising consequent to order of Tribunal in its favour. Petitioner had also submitted that the accumulated losses were so huge that there was no likelihood of any tax becoming payable in the subject assessment year and that the huge financial loss was one of considerations which weighed with the Revenue while granting certificate u/s 197.
Tata Teleservices (Maharashtra) Ltd. v DCIT – (2018) 90 taxmann.com 1 (Bom) – Writ Petition No. 2701 of 2017 dated 25.01.2018

3042. The Court upheld Tribunal's order deleting the disallowance made u/s 40(a)(ia) on account of channel placement fees paid to cable operations by the assessee during AY 2009-10 on which tax was deducted @ 2% u/s 194C and the Revenue contended that tax was to be deducted @ 10% u/s 194J in view of the amended 'royalty' definition vide the Finance Act, 2012 by virtue of retrospective insertion of Explanation 6 to section 9(1)(vi). It held that a party cannot be called upon to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. Further, noting that the meaning of royalty for the purposes of section 40(a)(i) was that as provided in Explanation 2 to Section 9(1)(vi) and not Explanation 6 to Section 9(1)(vi), it held that no disallowance could be made u/s 40(a)(ia) since the channel placement fee was not royalty in terms of Explanation 2 to Section 9(1)(vi).
CIT v NGC Networks (India) Pvt. Ltd [TS-41-HC-2018(BOM)] – ITA No. 397 of 2015 dated 29.01.2018

3043. The Tribunal held that the AO failing to appreciate that the distributor of the assessee was not its agent, erroneously invoked the provisions of Section 194H to contend that the assessee ought to have deducted tax on the discount extended to the distributors on its pre-paid sim cards. Further, it noted that no payment had been made by the assessee and the discount was a mere arrangement. Accordingly, it held that the assessee was not liable to deduct TDS under Section 194H of the Act and therefore held that the assessee could not be considered as an assessee in default under Section 201 of the Act.
VODAFONE DIGILINK LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0261 JaipurTrib - ITA No. 67/JP/2015 dated Mar 8, 2018

3044. Where the Assessing officer passed order under Section 201 of the Act in the case of the assessee after a period of 2 years from the end of the financial year in which the assessee filed its TDS statements, the Tribunal upheld the assessee's contention that the order was time barred in light of the provisions of Section 201(3) [as amended by Finance Act 2012] wherein it was provided that no order under Section 201(1) would be passed at any time after the expiry of two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed. Relying on the decisions of the Courts in CIT v. Vatika Township (P.) Ltd. [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249 (SC), Tata Teleservices v. Union of India [2016] 385 ITR 497/238 Taxman 331/66 taxmann.com 157 (Guj.), Troikaa Pharmaceuticals Ltd. v. Union of India [2016] 68 taxmann.com 229 (Guj.) etc, it dismissed the Revenue's contention that the amendment to Section 201(3) in Finance Act 2014 (which extended the time limit to a period of 7 years) was retrospective and held that there was no mention that the amendment was to be applied retrospectively. Further, it noted that the legislature while amending the impugned section in 2014 stated that the same would be applicable w.e.f. 1/10/2014. Considering the order under Section 201(1) of the Act was passed beyond the two year time limit as provided in the pre-amended section, it held that the order was time barred and therefore was null and void.

Sodexo SVC India (P.) Ltd. v DCIT - [2018] 92 taxmann.com 260 (Mumbai - Trib.) - IT APPEAL NO. 980 (MUM.) OF 2018 dated MARCH 28, 2018
Vodafone Cellular Ltd v DCIT – (2018) 91 taxmann.com 466 (Pune – Trib) – ITA NO 1961 / Pune / 2013 dated March 12, 2018

3045. The assessee possessed manufacturing facility along with license of manufacturing of beer but did not own any brand of its own and since the beer manufactured by it was sold on brand name, it made a payment of royalty to its parent company. Noting that the assessee deducted TDS u/s @2% u/s 194C on payments made to parent company, whereas the brand fee was in nature of royalty for use of brand name liable to tax withholding u/s 194J, the AO treated assessee as assessee-in-default in respect of short deduction of tax at source and raised demand, pursuant to which penalty was imposed u/s 271C for short deduction of tax at source. The Tribunal dismissed the contention of the assessee that it had reasonable cause as it believed the payment to be in the nature of contract and held that the agreement clearly indicated that payment was brand fee and that the assessee had not entered in any contract for rendering services but manufactured goods on its own in brand name of parent company. Accordingly, it held that the argument of assessee that short deduction did not cause loss to revenue was not reasonable explanation and accordingly upheld the levy of penalty.
UNITED BREWERIES LTD. vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0177 VishakapatnamTrib - ITA No. 454-456/Viz/2017 dated Mar 14, 2018

3046. The Tribunal held that no TDS under Section 194J of the Act was to be deducted on transmission / wheeling charges paid by the assessee. It held that Section 194J would apply only when technology or technical knowledge, experiences/skills of person was made available to others which could be further used by him for its own purpose and not where by using technical systems, services were rendered to other, which was not so in the case of the assessee. Further, relying on the decision of Hon'ble Delhi High Court in the case of CIT vs. Bharati Cellular Limited [175 Taxmann 573 (Del)] affirmed by the Hon'ble Supreme Court in 193 Taxman 97(SC), it held that technical services for the purpose of section 194J would mean those technical services which involve human interface/element. Since the Department failed to prove that the services received by the assessee involved human interface, it held that the payment would not be subjected to Section 194J. Accordingly, it deleted the disallowance made under Section 40(a)(i) of the Act.
NOIDA POWER COMPANY LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0196 DelTrib - ITA No. 4878/DEL/2016 dated Mar 19, 2018

3047. The Court held that where the assessee-company engaged in refining crude oil, storing and selling of petroleum products, entered into an agreement with a carrier for providing trucks for transportation of products so manufactured, it being a case of 'works contract', the assessee was required to deduct tax at source under section 194C while making payment of transporting charges and not under section 194-I as contended by the AO. Accordingly, it dismissed Revenue's appeal.
CIT (TD) v Indian Oil Corporation Ltd - [2018] 92 taxmann.com 281 (Uttarakhand) - IT APPEAL NOS. 37 & 38 OF 2014 dated MARCH 6, 2018

3048. The Tribunal held that installation of set-top box by installation services providers amounted to works contract for which no technical expertise was required. Accordingly, it held that the assessee was not liable to deduct tax under Section 194J and had rightly deducted TDS under section 194C. Accordingly, it held that the AO had incorrectly held the assessee to be an assessee in default under Section 201 of the Act.
Further, it held that trade discount granted to principal distributor for distribution/sale of set-top boxes (STB), sale of recharge vouchers, prepaid vouchers etc could not be considered as commission and, hence was not liable for deduction of tax at source under provisions of section 194H
JCIT v Bharat Business Channels Ltd - [2018] 92 taxmann.com 216 (Mumbai - Trib.) - IT APPEAL NOS. 7047, 7048, 7200 & 7201 (MUM.) OF 2012 datedMARCH 20, 2018

3049. Where assessee paid lease rent to Kerala State Co-operative Hospital Complex without deducting tax at source, in view of fact that said resident receiver filed its return belatedly and did not pay tax on rent

received, the Court held that the assessee could not be absolved from consequences flowing from sections 201(1) and 40(a)(ia).
Academy of Medical Sciences v CIT - [2018] 91 taxmann.com 293 (Kerala) - IT APPEAL NOS. 232 TO 236 OF 2014 AND 152 OF 2015 dated MARCH 7, 2018

3050. The Court upheld the order of the CIT(A) and Tribunal wherein it was held that where the assessee was reimbursing payments to another company viz. HSL absent any income element no TDS the AO was incorrect in classifying the assessee as an assessee in default on account of non-deduction of TDS under Section 194-J.
COMMISSIONER OF INCOME TAX & ANR. vs. KALYANI STEELS LTD. – (2018) 101 CCH 0181 KarHC - ITA No. 260/2013 c/w ITA No. 289/2014, 263/2013, 265/2013, 2008/2014 & 262/2013 dated Feb 12, 2018

3051. Where the assessee deducted tax under Section 194C of the Act on payments made for the purpose of marine geotechnical investigation for rock excavation but the AO alleged that the assessee ought to have deducted tax under Section 194J, the Tribunal directed the AO to verify the tender / contracts under which the payment was made and held that i) if the payment was made for construction of retaining wall against the Mithi river, Section 194C would apply and ii) if the payments were made for rock excavation, Section 194J would apply.
Mumbai Metropolitan Region Development Authority v ACIT – (2018) 52 CCH 0082 MumTrib – ITA No 5186 / Mum / 2016 dated Feb 7, 2018

3052. Where the assessee merely purchased residential sites from the developer/contractors for the allotment to its residents, the Tribunal held that the AO erred in invoking Section 194C alleging that the work carried out by developer/contractor on behalf of assesse was in nature of works contract. It held that the assessee was not required to deduct tax at source towards payment of advance sale consideration as it was for seller of sites to pay capital gains depending upon tax payable by him.
INCOME TAX OFFICER vs. REMCO (BHEL) HOUSE BUILDING CO-OPERATIVE SOCIETY LTD. - (2018) 52 CCH 0074 BangTrib - ITA Nos. 1372 to 1377/Bang/2017 dated Feb 2, 2018

3053. The Court held that the AO was not justified in disallowing the discount granted by the assessee to advertisement agencies by erroneously characterizing it as commission under Section 194-H. It held that the AO had not made any enquiries and had made a general allegation that the discount was in the nature of commission, ignoring the books of accounts and credit notes issued by the assessee and therefore held that his basis was unjustified. Further, it held that the discount to advertisement agencies sprung from a relationship on principal to principal basis and therefore did not constitute commission under Section 194H.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHAILENDRA GARG - (2018) 101 CCH 0061 RajHC - D.B. Income Tax Appeal No. 6/2018 dated Feb 15, 2018

3054. The Tribunal held the assessee not to be an assesse-in-default u/s 201(1) with respect to payment made to Gujarat Enviro Protection and Infrastructure Limited (GEPIL) without deducting TDS u/s 194C, following the Tribunal's order in the assessee's own case for an earlier year wherein it was noted that the assessee had acted only as a custodian for disbursement of funds for earmarked purposes, i.e. as nodal agency of Government for smooth implementation of the Municipal Solid Waste Management in designated areas and though funds continued to remain with the assessee, ownership or utilization did not vest in it. Thus, it was held that with respect to the funds disbursed to GEPIL, there could not be any obligation to deduct TDS as the payment was effectively made by Government to GEPIL through the assesse. Accordingly, the assessee's appeal was allowed.
ASANSOL DURGAPUR DEVELOPMENT AUTHORITY vs. ITO (TDS) - (2018) 53 CCH 0314 (Kol Trib) - I.T.A No. 1494, 2185, 1452& 1453 & 1439 & 1440, 2155/Kol/2016 dated June 29, 2018

3055. The Tribunal held that the assessee-telecom operator was not liable to deduct TDS u/s 194J with respect to payment of roaming charges to other telecom operator (for service provided by them to the subscribers of assessee's network), holding that roaming services were in the nature of use of standard facilities, which do not require any human interface, and did not involve rendering of managerial,

technical or consultancy services and thus, the said services could not be construed as 'fees for technical series' as defined u/s 194J. Further, following the coordinate bench decision in the assessee's own case for another year, the Tribunal held that the provisions of section 194H were not applicable with respect to discount offered to pre-paid distributors since the arrangement between the appellant and its prepaid distributors was on a 'principal to principal basis' and the assessee neither booked nor paid any commission to its prepaid distributors.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. VODAFONE WEST LTD. & ANR. - (2018) 52 CCH 0304 AhdTrib - ITA Nos. 1317 & 1318/AHD/2016 (Cross Objection No.89/AHD/2016) dated Apr 4, 2018

3056. The AO made disallowance u/s 40(a)(ia) with respect to payments made to the transporters without deducting TDS u/s 194C. Section 194C(6) *inter alia* provides that TDS is not to be deducted from any payment made to a contractor during the course of business of plying, hiring or leasing goods carriages who furnish a declaration stating that he owns 10 or less than 10 goods carriages and aslso furnishes his PAN. Section 194C(7) further provides that the person making such payment shall furnish particulars of persons referred in section 194C(6) to the prescribed authority. In the instant case, it was noted that though all the transporters had furnished their PAN and the same were also furnished in the TDS return, the AO made the aforesaid disallowance opining that the provisions of Section 194C(6)/194C(7) had not been complied with. The Tribunal dismissed revenue's appeal against the CIT(A)'s order deleting the said disallowance, following the decision in the case of Le Modulor Pvt. Ltd. [ITA No.693/Ahd/2016] wherein it was held that section 194C(6) and 194C(7) are independent of each other and cannot be read together to attract disallowance u/s. 40(a)(ia) r.w.s. 194C of the Act
ASSISTANT COMMISSIONER OF INCOME TAX vs. EAGLE STEEL INDUSTRIES PVT. LTD. - (2018) 53 CCH 0265 (AhdTrib) - I.T.A. No.431 & 432/Ahd/2018 dated June 28, 2018

3057. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had disallowed the assesses' claim for deduction for certain payment made to custom house agent for reimbursement of custom duty paid by it on behalf of the assesse, without deducting TDS. The Tribunal held that payment of custom duty to Government on import of goods even if paid through agent by way of reimbursement could not warrant deduction of income-tax at source within provisions of Act. It was also noted that the agent had raised separate invoices for its service charges and the assesse had claimed that it had deducted TDS on all such service charges paid to the agent.
LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER- (2018) 53 CCH 0248 (MumTrib) - ITA No. 5998/Mum/2014 dated June 27, 2018

3058. The Court dismissed Revenue's SLP filed against the High Court's decision allowing the assessee's writ to quash section 201(1)/(1A) proceeding for AY 2001-02, which were initiated by the Revenue consequent to the adverse High Court ruling rendered in 2010 with respect to another assessee, relying on the proviso to sub-section(3) of Sec 201 inserted vide the Finance Act, 2009 w.e.f. April 1, 2010 (stipulating that order u/s 201 for FY commencing on or before April 1, 2007 may be passed at any time on or before March 31, 2011). High Court had accepted assessee's stand that proviso to Sec 201(3) has to be read consistently with the law laid down by NHK Japan ruling (laying down four years limitation period for initiation of Sec 201 proceedings) and should not permit Department to initiate Sec 201 proceedings after a period more than four years prior to March 31, 2011. Further, with respect to reliance placed by the Revenue on the extended time-limit available u/s 153(3)(ii) [for giving effect to findings/ directions issued by Court], the High Court had held that the extended time-limit u/s 153(3)(ii) could be applied only to the assessee in whose case such order was made by the Court.
ACIT v Tata Teleservices Ltd [TS-154-SC-2018] - Special Leave to Appeal (C) NO. 3766/ 2017 dated April2, 2018

3059. The Tribunal allowed asseessee's appeal filed against the CIT(A)'s order wherein the CIT(A) had confirmed the AO's action in disallowing the assesse claim for deduction of discounting charges paid due to non-deduction of TDS u/s 194A requiring TDS deduction on interest payments. Referring to the definition of the term 'interest' as given u/s 2(28A), the Tribunal held that discounting charges are outside the purview of interest expenses and, therefore, the question of making any disallowance on account of non-deduction of TDS on such discounting charges did not arise. It also relied on the decision in the case of PCIT vs. M. Sons Gems N. Jewellery Pvt. Ltd. [69 Taxmann.com 373 (Del HC)]

wherein it was held that TDS was not to be deducted u/s 194A on payment of "factoring/discounting charges".

DEPUTY COMMISSIONER OF INCOME TAX vs. STERLING ORNAMENT (P) LTD. - (2018) 53 CCH 0252 (DelTrib) - I.T.A. No. 4395/DEL/2014 dated June 27, 2018

3060. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for depreciation on computers and softwares acquired from foreign vendors and capitalized by the assesse disallowed by the AO u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made for such acquisition. The Tribunal followed the decision in the case of Kawasaki Microelectronics Inc - India Branch V. DDIT(IT) [IT(IT)A No.1512/Bang/2010] wherein it was held that once the amount paid for software was capitalized (forming part of the block of asset) and not claimed as expenditure, depreciation on the same could not be disallowed even if TDS was not deducted while making the said payment.

DEPUTY COMMISSIONER OF INCOME TAX vs. SANGEETHA MOBILES PVT. LTD. - (2018) 53 CCH 0176 (BangTrib) - ITA No. 715/Bang/2017dated June 15, 2018

3061. The Tribunal allowed Revenue's appeal and reversed the CIT(A)'s order to the extent the CIT(A) had deleted the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS while making payment for purchase of software (considering the same as royalty payment). For the said disallowance, the AO had placed reliance on the decision in the case of CIT vs. Samsung Electronic Company Ltd (2012) 345 ITR 494 (Kar) [dated 15/10/2011] wherein it was held that the consideration paid for purchase of software is 'royalty'. The CIT(A) agreed with the decision of the AO to the extent that the consideration paid for purchase of software is in the form of royalty and therefore non-deduction of tax at source attracted the provisions of Section 40(a)(i), relying on the aforesaid decision. However, it granted relief to the assesse on the ground of impossibility of performance, accepting the assessee's contention that the aforesaid decision was rendered on 15.10.2011 i.e. after the end of the relevant previous year and thus it was not possible for the assessee to deduct the tax at the time of making the payment. The Tribunal held that since the assessee even in the subsequent years had not deducted TDS otherwise it would have produced record for deduction of tax in subsequent years and since the assessee was continuing its business in subsequent year and TDS could be deducted in subsequent year, the conclusion recorded by the CIT(A) was wrong as there was no impossibility of performance. Further, it held that the Courts only interpret the law and do not lay down a new law and thus it was not impossible for the assessee to deduct TDS at the time of making the payment (as the law interpreted by the High Court in the aforesaid case was holding the field at the relevant time)

DEPUTY COMMISSIONER OF INCOME TAX vs. ALLEGIS SERVICES INDIA LTD. - (2018) 53 CCH 0143 (MumTrib)- ITA No. 325/Bang/2018 dated June 13, 2018

3062. The Court dismissed Revenue's appeal against the Tribunal's order deleting the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS u/s 194C in respect of packaging materials purchased and u/s 194H in respect of target incentives given to the distributors. The Tribunal had held that section 194C was not attracted in the present case since a "work" does not include supply of a product according to a customer's requirements / specification by using materials purchased from a person other than the customers and consequently there was no application of provisions of section 40(a)(ia). With respect to target incentives, the Tribunal held that the only relationship between the appellant and the dealers and distributors was of seller and buyer and all the transactions took place on a principal to principal basis and hence the payment of target incentives made by the appellant company through credit notes could not be termed as 'commission or brokerage' as stipulated in section 194H. The Court held that the reasoning given by the Tribunal was based on factual analysis of the transactions and there was no perversity in such analysis.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHALIMAR CHEMICAL WORKS LTD. - (2018) 102 CCH 0153 KolHC - ITAT No. 18 of 2017 With GA No. 181 of 2017dated June 12, 2018

3063. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO for non-deduction of TDS u/s 194A in respect of interest payment on time deposits during the AY 2012-13. It was noted that in the case of CIT v. Bijapur District Central [(2018) 93 taxmann.com 211 (Kar)] and Sri Basaveswara Sahakari Bank Ltd [(2016) 74 taxman.com 21 (Kar)] it was held that the

provisions of the section 194A(3)(v) which had been amended to expressly provide that the exemption provided from TDS from payment of interest to members by a co- operative society under section 194A(3)(v) shall not apply to the payment of interest on time deposits by the co-operative banks to its members was effective from the prospective date of 1st June, 2015 and, thus, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015.

ASSISTANT COMMISSIONER OF INCOME TAX vs. BELLARY DIST. CO-OPERATIVE CENTRAL BANK LTD. - (2018) 53 CCH 0290 BangTrib - ITA No. 2016/Bang/2016 dated June 1, 2018

3064. The assessee functioning under the Ministry of Information and Broadcasting was engaged in the running of the TV Channel 'Doordarshan' and had been regularly telecasting advertisements of several consumer companies. It had entered into an agreement with several advertising agencies to enable them to do business of telecasting advertisements of several consumer products on its channel which contained the mode and time within which agency would make payment to assessee and assessee would pay 15 percent by way of commission to the agencies. The AO during assessment proceedings held that the provision of Section 194H would be applicable to the assessee as the payment made to the agencies were made in the nature of 'commission' and further the provision of section 201(1) would also be applicable as the assessee had failed to deduct tax at source from the amount paid to various agencies. The Supreme Court held that once the provisions of Section 194H were held to be applicable to the transactions in question, it was obligatory on part of the assessee to have deducted the tax and the non-compliance of the same attracted the rigour of section 201(1) which provides for consequence of failure to deduct the tax as provided u/s 194H. The Apex Court dismissed the appeal of the assessee and held that Section 194H would be applicable because payment made by the assessee to the agencies were to secure more business and in the nature of commission.

Director, Prasar Bharati v. CIT – [2018] 92 taxmann.com 11 (SC) – Civil Appeal Nos. 3496-3497 of 2018 dated April 3, 2018

3065. The Tribunal held that the assessee, a statutory corporation, was liable to deduct TDS u/s 192 from payment made to its retired employees towards unutilized leave period since the employees of the assessee-corporation, could not be regarded as State or Central Government employees so as to to be entitled to exemption u/s 10(10AA)(i). However, since the assessee was under bona fide belief that its employees were entitled to the said exemption and the Revenue had accepted in the past the manner in which TDS was deducted by the assessee, it held that the assessee had discharged its obligation u/s 192 and, hence, proceedings u/s 201(1) and 201(1A) were quashed.

KPTCL v ITO(OSD)(TDS) - [2018] 93 taxmann.com 89 (Bangalore - Trib.) - IT APPEAL NOS. 2223 TO 2300 (BANG.) OF 2017 dated May2, 2018

3066. Assessee was engaged in the manufacture and export of casting material. The AO disallowed the export commission paid by the assessee on the ground that the tax deducted at source on said charges had not been deposited with the Government before the end of the relevant financial year even though the same was deposited after five months from the end of the relevant financial year. The Apex Court decided in favour of the assessee and held that the amendment made by the Finance Act, 2010 to the provisions of section 40(a)(ia) was curative in nature and should be given retrospective operation on the ground that the amended provisions should be interpreted liberally so that an assessee should not suffer unintended and deleterious consequences beyond what the object and the purpose of the provision mandates.

CIT v. Calcutta Export Company – [2018] 93 taxmann.com 51 – Civil Appeal Nos. 4339-4340 of 2018 dated April 24, 2018

3067. Airline operators collected passenger service fees (PSF) from passengers at the time of booking of tickets, on behalf of the assessee-airport. While paying the same to the assessee,the Airlines operators retainedcertain percent of invoice value on account of cash discount or collection charges. The Tribunal held that the said collection charges or cash discount retained by the airline operators assumed the character of commission paid by principal to its agents and thus, the assessee being the principal was required to deduct TDS u/s 194Hon such payments to airlines operators.

Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April19, 2018

3068. The Court allowed the assessee's appeal and held that the assessee could not be said to be a defaulter u/s 201(1) for non-deduction of TDS on payment made to an education society for making good the deficit in tuition fees of employees' children since the said payment did not amount to perquisite u/s 17 for the relevant AYs i.e. AY 2000-01 and 2001-02 as the Rule 3(e) prior to amendment in 2001 provided only for valuation of perquisites/ benefit resulting from provision of 'free' educational facility and the word 'concessional' was inserted by the amendment in 2001 only for subsequent period.
GUJARAT CO.OPERATIVE MILK MARKETING FEDERATION LTD - TS-246-HC-2018(GUJ) - R/TAX APPEAL No. 894 & 895 of 2007 dated May 9, 2018

3069. The Assessee, a registered co-operative housing society and also a listed scheduled bank, paid interest to its members and non-members without withholding TDS under Section 194A of the Act. The AO made an addition under Section 40(a)(ia) of the Act in respect of such interest payments. The CIT(A) deleted the disallowance as it was observed that the assessee was not a co-operative society but a co-operative bank. Tribunal observed that since the assessee was a co-operative bank, carrying on banking business with approval of RBI, the assessee was not liable to withhold TDS under Section 194A of the Act on interest paid to its own members. However, in respect of interest payment to non-members, the Tribunal held that the assessee was liable to withhold / deduct TDS under Section 194A of the Act. Thus, the Revenue's appeal was partly allowed.
ACITvs. KODUNGALLUR TOWN CO-OPERATIVE BANK LTD. (CHENNAI TRIBUNAL) (ITA Nos. 527-529 & 526/Coch/2015) dated May 31, 2018 (53 CCH 0105)

3070. The Assessee, a cellular service provider, issued its recharge vouchers/ starters packets to its distributors at discounted rates without withholding TDS thereon. The AO held that the discount offered was to be construed as commission and TDS should have been deducted thereon. Accordingly, the AO treated the assessee to be in default under Section 201(1)/201(1A) of the Act. The CIT(A) upheld the order of the AO. On appeal, the Tribunal relied on the ruling of *Bharati Cellular Ltd. V. ACIT (2013) 354 ITR 507 (Cal.)(HC)* and held that the AO should have examined whether distributors offered such commission to tax in their return and that the AO could resort to collection mechanism of section 201 of the Act only in cases of failure to pay taxes on part of the deductees. Thus, the Tribunal partly allowed the assessee's appeal and directed the AO to verify payment of taxes by distributors of assessee.
IDEA CELLULAR LTD. & ORS. vs. ACIT& ORS. (KOLKATA TRIBUNAL) (ITA No. 1204 &1302/Kol/2016, 2490/Kol/2016 & 22/Kol/201)7dated May 31, 2018 (53 CCH 0158)

3071. The Tribunal held that as per CBDT circular 715 dated 8-8-1999, a contract for putting up a hoarding was in the nature of advertising contract and provisions of section 194C would be applicable. However, if a person had taken a particular space on rent and thereafter sub-lets the same, fully or in parts, then such payments would be liable for tax deduction at source u/s 194-I and not u/s 194C. Accordingly, the matter was remanded to the AO.
Accord Advertising (P.) Ltd. v. ITO – [2018] 93 taxmann.com 398 (Mumbai – Trib.) – IT Appeal Nos. 3528 to 3530 (MUM.) of 2014 dated April 13, 2018

3072. The Assessee, a cellular service provider, did not withhold TDS on commissions paid to agents on prepaid SIM cards and recharge coupons which were sold through agents. AO held that TDS should have been deducted under Section 194H of the Act and hence the assessee was treated to be in default under Section 201(1) of the Act. The CIT(A) upheld the order of the AO. On appeal, the assessee challenged the order of the AO and the CIT(A) as they were issued in the wrong name, despite intimation of the Assessee company's merger and change in name thereon to the AO and the CIT(A). Relying on the ruling of the Supreme Court in *Skylight Hospitality LLP Vs ACIT in (SLP (L) No. 7409/2018 dated 06.04.2018),* the Tribunal held that wrong name stated in the notice/ order was merely a clerical error which could be corrected u/s 292B of the IT Act. On merits, the Tribunal followed the Assessee's own case of the jurisdictional High Court which was decided in favour of the Revenue. Accordingly, the Assessee's appeals were dismissed.
VODAFONE MOBILE SERVICES LTD. vs. ACIT (HYDTRIBUNAL) (ITA Nos.40 & 41/Hyd/2018) dated May 30, 2018(53 CCH 0136)

3073. The Tribunal remitted the matter back to the AO to verify the truthfulness of contentions of the assessee and genuineness of additional evidences, in a case where the AO had disallowed certain expenses u/s 40(a)(ia) on account of non-deduction of TDS on payments towards labour/ contract charges and lack of supporting evidences. For the first time, before the Tribunal, the assessee had submitted large number of evidences to contend that he had not entered into any contract/sub-contract and consequentially no TDS was required to be deducted. The Tribunal admitted the additional evidences in interest of justice, noting that the assessee was prevented to produce these evidences due to medical emergencies.
SHRINIWAS SHRITEJU SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0260 MumTrib - ITA No. 2058/Mum/2014dated April2, 2018

3074. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO with respect to professional charges paid by the assessee to 80-90 professionals on different dates, without deducting TDS. The AO had alleged that the said payments were made entirely in cash and on the same date, thus exceeding the prescribed limit for attracting the TDS on payment made to professionals. It was noted that the AO's finding that all professional charges were made in cash was factually wrong as payments were made to various temporary professional staff by cheque. It was thus held that the AO's findings were merely based on doubts, surmises and conjectures without bringing any concrete material against the assessee and the professional charges was incurred wholly and exclusively for purpose of business of assessee (being provision of IT/ BPO services).
ASSISTANT COMMISSIONER OF INCOME TAX vs. SHRUTI NANDA - (2018) 65 ITR (Trib) 0189 (Delhi) - ITA.No.5914/Del./2014dated April3, 2018

3075. The assessee (a Govt. company, engaged in transmission of electricity) sought a ruling from the AAR on the question as to whether it was liable to deduct TDS u/s 194C or 194J on payment of transmission and wheeling charges to RVPN under transmission service agreement (for maintaining transmission lines) and on payment made to State Load Dispatch Centre (SLDC) for SLDC charges. The AAR held that from perusal of the duties and obligations of RVPN viz-a-viz the applicant, it could be seen that it was not a mere case of RVPN maintaining its system with the help of its professional and technical personnel but also a case of such personnel ensuring regular and consistent transmission of electrical energy at the grid voltage at the distribution point of the applicant. It, accordingly, held that the consideration paid towards transmission charges partook the character of fees for technical services and thus the applicant was obliged to withhold tax thereon u/s 194J. As far as SLDC charges were concerned, it held that the SLDC were constituted for the purpose of exercising the powers and discharging the functions under Part V of the Electricity Act, which deals with the Transmission of electricity and considering the nature of its obligations and the role it performed, it appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the state as a whole. The AAR thus held that TDS was not required to be deducted u/s 194J or 194C on payment of SLDC charges.
AJMER VIDYUT VITRAN NIGAM LIMITED, IN RE - (2013) 353 ITR 0640 - AAR No. 1012 of 2010 dated April27, 2018

3076. The assessee, engaged in the business of providing providing basic & mobile telecommunication service and internet service, filed its returns declaring loss for the relevant AY under consideration. The AO re-opened assessment as the AO found that assessee had not deducted tax at source on alleged commission paid to distributors on sale of prepaid sim cards and recharge coupon vouchers. The AO rejected assessee's claim that the relation between assessee & distributors was on principal-to-principal basis and held that the discount on MRP by assessee to distributors was in nature of commission as per S.194H(on which tax was not deducted at source) and thus made disallowance u/s 40(i)(ia). The CIT(A) deleted the disallowance. The Tribunal upheld CIT(A)'s order and accepted assessee's contention that the relation between assessee & distributors was on principal-to-principal basis and further held that the distributors could not be treated as agents of assessee and thus the said sale to the distributors was outside the ambit of S.194H
ACIT & Ors v Tata Teleservices (M) Ltd. & Ors (2018) 52 CCH 0397 MumTrib - ITA No.T 5031/Mum./2016, 5032/Mum./2016, 5033/Mum./2016 dated 27.04.18

3077. The Tribunal upheld the CIT(A)'s order confirming the AO's order passed u/s 201(1)/ 201(1A) holding the assessee to be in default for non-deduction of TDS u/ 192 while making payment of Leave Travel Concession (LTC) to its employees, noting that the travel destinations were outside India and the provisions of section 10(5) exempting the LTC from tax was introduced to motivate employees and encourage tourism 'in India'. Accordingly, the assessee's appeal against the CIT(A)'s order was dismissed.
State Bank of India & Ors v ACIT & Ors (2018) 52 CCH 0298 BangTrib dated 06.04.2018

3078. The CIT passed revision order u/s 263 on finding that the assessee had made two payments towards computerizing records but failed to deduct tax at source u/s 194C and thus directed the AO to examine the said issue. The AO passed order u/s 143(3) r.w.s 263 and made addition in assessee's income u/s 40(a)(ia). The CIT(A) deleted the addition made by the AO, following Merilyn Shipping and Transports v. Addl. CIT (2012) 136 ITD 23 (Visag)(SB) wherein it was held that section 40(a)(ia) is applicable only to expenditure which is payable as on 31st March of every year and cannot be invoked to disallow the amounts which have already been paid during the previous year, without deducting tax at source. The Tribunal reversed the CIT(A)'s order noting that the Apex Court in the case of Palam Gas Service. V CIT [2017] 81 taxmann.com 43 (SC) has held that the word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid.
ACIT v Guntur Co-operative Central Bank (2018) 52 CCH 0551 VishakapatnamTrib - I.T.A.No.75/Vizag/2016 & C.O. No.36/Vizag/2016 dated 06.04.2018

3079. The Tribunal held that credit for tax deducted at source has to be given in assessment year in which income has actually been assessed/offered to tax and not in year of deduction itself.
Surendra S. Gupta v ACIT [2018] 93 taxmann.com 456 (Mumbai – Trib.) – ITA NO 4791 OF 2014 dated 09.05.2018

3080. The Tribunal held that where assessee had claimed an expenditure towards labour& fabrication charges paid by it and furnished requisite evidences to prove that payee had duly considered such charges paid by assessee in its return of income, no disallowance under section 40(a)(ia) could be inflicted in respect of such charges in hands of assessee payer.
Jashojit Mukherjee v ACIT [2018] 93 taxmann.com 366 (Kolkata – Trib.) – ITA NO. 403 OF 2017 dated 04.05.2018

3081. The assessee-company, had entered into an agreement with one pharmaceuticals company (PC) according to which the PC would manufacture the pharmaceutical products in the brand name "Sorbiline" by using materials from its own source and sell the same to the assessee on "principal to principal" basis. The deduction claimed for payment made to the PC was disallowed by the AO for non-deduction of TDS u/s 194C. However, the said deduction was allowed by the CIT(A) holding that section 194C was not applicable in the instant case, since clause (e) of Explanation (iv) of section 194C itself excludes manufacture/supply of product to a customer by using material purchased from person other than such customer from the ambit of the said section. Thus,the Tribunal upheld the order of CIT(A) giving concurrent finding as above.
DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018

3082. The Tribunal held that no disallowance could be made u/s 40(a)(ia), where the assessee-bankhad paid interest to depositors who deposited Form 15G/15H without deducting TDS even though the assesseehad failed to submit the said Forms before the prescribed authoritysince the requirement of filing of Forms 15G and 15H with prescribed authority viz., Commissioner is only procedural, relying on the decision in the case of CIT v Sri Marikamba Transport Co [2015] 379 ITR 129 (Karnataka) wherein it was held that non-filing of Form No. 15-I/J (required for non-deduction of TDS u/s 194C while making payments to sub-contractors) is only a technical defect and provisions of section 40(a)(ia) were not attracted.Further, the Tribunal held that interest paid by bank on deposits held by its customer, though may not strictly fall within ambit of section 36(1)(iii), yet thesame wouldfall within ambit of section 37(1)

and, thus, in case of payment of interest without deducting tax at source, provisions of section 40(a)(ia) would apply

JCIT v vs. Karnataka VikasGrameena Bank - [2018] 93 taxmann.com 256 (Bangalore - Trib.) - IT APPEAL NOS. 673 & 674 (BANG.) OF 2014 dated 25.04.2018

3083. The assessee was a research institute in dairy development, established as society under Societies Registration Act,1860.The assessee was providing rent-free accommodation to its employees and failed to deduct tax at source u/s201(1)for the perquisite value of rent-free accommodation. The Commissioner (TDS) issued a show cause notice as to why the assessee shouldn't be treated as assessee-in-default u/s 201(1) for not deducting tax at source. The assessee contended that the employees of the said society, for the purpose of evaluating perquisites of rent free accommodation, were to be treated as the employees of the Central Govt. and thus clause (i) of Sub Rule 1 of Rule 3 was applicable. The Tribunal held that the employees of assessee-society were not to be treated as employees of Central Govt making clause(ii) of Sub Rule 1 of Rule 3 (employees other than Central Government) applicable to the assessee thereby making the assessee-society liable to deduct tax at source.

National Dairy Research Institute v ACIT [2018] 94 taxmann.com 19 (Bengaluru – Trib.) – ITA NOS 1759 TO 1761 OF 2017 dated 31.05.2018

3084. The assessee- broker had paid borrowing fee to NSCCL (SEBI approved intermediary), for opting in Securities Lending Scheme, 1997 formulated by SEBI. It was noted that SEBI was just an intermediary between lenders and borrowers and the borrowing fee wasn't their income but it was beneficial to the lenders. Since the entire transaction was strictly to be carried out through NSCCL, assessee-broker obviously was not aware of the identity of the lender and thus Tribunal held that the assessee could not be fastened with liability of TDS u/s 194A (TDS on interest other than on securities) and the provisions became unworkable on the ground that assessee had no contact with the lender and they were completely unknown to each other. Further, as there was no enquiry (regarding the said transaction and acquaintance of the lenders and borrowers) held by AO nor the CIT(A), the matter was remanded back and to be restored for fresh adjudication by AO.

JM Financial Services v DCIT [2018] 95 taxmann.com 129 (Mumbai – Trib.) – ITA NO. 3041 OF 2016 dated 23.05.2018

3085. The Apex Court dismissed the Department's SLP filed against the order of the High Court wherein the High Court had deleted the disallowance made u/s 40(a)(ia) with respect to freight payment made directly by the company(from whom the assessee-contractor received transportation charges) to the assessee's sub-contractor without deducting TDS. The HC noted that since the freight payment wasn't made by the assessee and also, there was a direct agreement between the company and the sub-contractor the assessee had no role/liability.

CIT v Daulat Enterprises [2018] 94 taxmann.com 262 (SC) – SLP (C) DIARY NOS 15537 & 15542 OF 2018 dated 17.05.2018

3086. Where the assessee withheld TDS in respect of management and license fees @ 20% instead of 20.6% (TDS 20% plus Surcharge 3% on TDS) and the CIT(A) confirmed the action of the AO in making disallowance under Section 40(a)(ia) of a proportionate sum to the extent of such short deduction, Tribunal relied on the decision of the Kolkata Tribunal in SK Tekriwal (48 SOT 515) (affirmed by Kolkata High Court) and held that disallowance under Section 40(a)(ia) cannot be made for short deduction of taxes.

Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018

3087. The assessee society entered into agreements with developers / contractors for identifying suitable lands and forming residential layout for allotment of residential sites to its members and did not withhold TDS on the payments made to them. The AO held that since the said agreements were in the nature of works contracts, the provisions of Section 194C were applicable and thereby held that assessee to be assessee in default under Section 201(1) for failure to withhold TDS. The CIT(A) observed that the scope of the agreements had to be treated as whole and not in piece meal manner and thus allowed the assessee's appeal by holding that the provisions of Section 194C were not applicable on payments

made to developers / contractors, as the payments are made for purchase of land and the same could not constitute works contract merely because the developers were required to lay out roads and undertake other activities before delivery of completed sites. Relying on the ruling of the jurisdictional High Court in Karnataka State Judicial Department Employees House Building Co-operative Society Ltd (ITA No. 1275 of 2006), Tribunal held that since assessee was only a purchaser, the provisions of Section 194C were not applicable and that the assessee was not required to withhold TDS.
ITO(TDS) vs. Bangalore City KSRTC Employees Housing Co-operative Society Ltd. – [2018] 53 CCH 0102 (Bangalore ITAT) – ITA No 6 to 17/Bang/2017 dated May 4, 2018

3088. Where assessee engaged third-party contractors to carry out non-technical work and made payments after deducting TDS under Section 194C of the Act, the AO held that assessee was liable to withheld TDS under Section 194J and not under Section 194C. Accordingly, the AO made disallowance under Section 40(a)(ia), which was deleted by the CIT(A). The Tribunal held that since payments made to semi-skilled personnel did not involve any technical or professional knowledge on their part, the same was liable to TDS under Section194C and not under Section 194J. Accordingly, it dismissed the Revenue's appeal.
ACIT vs. WTI Advance Technology Ltd. – [2018] 53 CCH 0029 (Mum ITAT) – ITA No 1656/Mum/2016 dated May 11, 2018

3089. Where the assessee incurred interest expenditure and after adjusting the same against interest income, claimed the balance amount against directors' remuneration, CIT(A) upheld the AOs order wherein it was held that since assessee did not withheld TDS under Section 194A while making payment of said interest, the same would be disallowed under Section 40(a)(ia). Setting aside the order of the CIT(A), Tribunal held that since the since provisions of Section 40(a)(ia) could be invoked only while computing income under the head 'business and profession', no disallowance could be made in the hands of the assessee under Section 40(a)(ia) since the interest expenditure was claimed by him under the head 'income from other sources'.
[Section 58(1A) is amended to cover such disallowance on account of provisions of Section 40(a)(ia) wef. 01-04-2018]
Rajesh Pagaria vs. ITO – [2018] 53 CCH 0028 (Kolkata ITAT) – ITA No 464 of 2014 dated May 11, 2018

3090. The assessee, a member of a co-operative society, did not withhold TDS while making payment of monthly maintenance charges levied by such society. The AO held that such payments were under an implied contract and since no taxes were withheld under Section 194C or 194I, disallowance under Section 40(a)(ia) was made in respect of such monthly maintenance charges paid. The CIT(A) held that the provisions of Section 194C were not applicable as no contract existed between the assessee and the society. The CIT(A) further held that the provisions of Section 194I were also not applicable as the maintenance charges was merely a reimbursement to the society for expenses incurred on behalf of its members. The Tribunal confirmed the order of the CIT(A) and upheld the deletion of such disallowance.
ACIT vs. vs. Modi Rubber Limited – [2018] 53 CCH 0044 (Del Tribunal) – ITA No 1952 of 2014 dated May 15, 2018

3091. The assessee paid last mile charges for use or hire of optical fibres to provide connectivity at customers' premises through which the assesse carried its own Bandwidth / Internet bandwidth. Where such fibres were hired on requirement basis and were returned once the services discontinued, the AO held that the assessee was liable to withhold TDS under Section 194J. The CIT(A) held that payment of such last mile charges was analogous to payment of rent and hence the assessee was liable to withhold TDS under Section 194I. Relying on the ruling of the co-ordinate bench in Standard Chartered Bank (ITA 3824/Mum/2006), the Tribunal held that the impugned payments were not in the nature of royalty since the charges were paid in lieu of availing standard facilities, without any control on corresponding hardware. Thus, the order of the CIT(A) was upheld.
ITO & Anr. vs. RCIL (Eastern Region) Railtel Corporation of India & Anr. – [2018] 53 CCH 0045 (Kolkata ITAT) – ITA No 700-701,734-735/Kol/2016 dated May 17, 2018

j. Others

Appeals / Rectification Application

3092. The Tribunal held that in terms of sub-section (4) of section 249, payment of tax is mandatory butrequirement of paying such tax before filing appeal is only directory and, therefore, when defect in appeal, being non-payment of such tax, is removed, earlier defective appeal becomes valid
Smt. Sushila Devi Malu v. ITO, Ward-3, Kalaburagi - [2019] 101 taxmann.com 85 (Bangalore - Trib.) – ITA No. 564 (BANG.) of 2018- November 20, 2018

3093. The High Court refused to condone delay in filing appeal which was on ground that appeals on identical issues for earlier years were pending before Court and, thus, assessee was under a bona- fide belief that relief, if any, granted in those appeals pending before Court would enure to his benefit for subjectassessment year as well. In view of fact that High Court had to decide question of law between parties in any case in respect of earlier assessment years. The Apex Court held that it should not have taken such technical view of dismissing appeal in instant case on ground of delay. It thus, set aside the impugned order.
Anil Kumar Nehru v. Asst. CIT, Circle 16(2), Mumbai- [2019] 101 taxmann.com 191 (SC)- Civil Appeal Nos. 11750/2018 dated December 3, 2018

3094. The Tribunal held that where tax effect by virtue of order passed by Commissioner (Appeals) was below Rs. 20 lakhs in assessee's case, in view of mandate issued by CBDT in Circular No. 3, dated 11-7-2018,
appeal filed by revenue was to be dismissed being non-maintainable.
Dy. CIT, Central Circle- 1, Baroda v. Shashiben Rajendra Makhijani- [2019] 101 taxmann.com 248 (Ahmedabad - Trib.)- IT (SS) Appeal Nos. 254 & 255 (AHD.) of 2016-C.O. Nos. 170 & 171 (AHD.) of 2016 dated December 17, 2018

3095. Where Commissioner (Appeals) dismissed assessee's appeal on ground that assessee did not wish to pursue appeal, since revenue failed to bring any evidence to prove actual service of notice of hearing on assessee, requirements of procedure as mentioned in section 250(1) and (2) could not be said to have been fulfilled and, thus, the Tribunal held that the impugned order was to be set aside and the Commissioner (Appeals) was directed to pass denovo order as per law.
HV Metal ARC (P.) Ltd. v. Asst. CIT, Circle 11(1), New Delhi- [2018] 100 taxmann.com 4 (Delhi - Trib.)- IT Appeal No. 1912 (DELHI) of 2018 – dated October 16, 2018

3096. The Tribunal held that where assessee filed appeal before Tribunal with a delay of 107 days without showing that it had taken all possible steps to file appeal within prescribed time period and delay in filing appeal occurred due to factors which were beyond its control, appeal was to be rejected and, as a consequence, appeal was to be dismissed being barred by limitation.
Krishna Developers v. Dy. CIT, -8(1) Mum.- [2019] 102 taxmann.com 51 (Mumbai - Trib.)-
IT Appeal No. 3914 (Mum.) of 2015 - dated December 5, 2018

3097. The Assessee was a joint venture company which was controlled by the State Government. An assessment order was passed against the assessee Against said order of assessment an appeal was filed to the Commissioner (Appeals) after a delay of 231 days. The assessee filed an affidavit explaining reason for delay that its Director and Chief Executive Officer (DCEO), an IAS Officer, nominated by the Government, who had to take decision on filing an appeal, had resigned, and as a result of which, a decision could not be taken. Post of DCEO remained vacant and, subsequently, a new DCEO was appointed by the Government who after considering issue, took up matter before the Board of Directors and a decision to file appeal was taken and, accordingly, appeal was filed. The Court held that the revenue had not filed any counter affidavit disputing correctness of affidavit filed by the assessee in support of delay condonation petition. Thus, averments set out by the assessee in affidavit remained uncontroverted. On facts, the Commissioner (Appeals) was not justified in refusing to condone impugned delay. Therefore, the matter was to be remanded back to the Tribunal to take a decision on merits of case.

Elnet Technologies Ltd. v. Dy. CIT [2018] 99 taxmann.com 219 (Mad.)- Tax Case (Appeal) No. 997 of 2008 dated October 8, 2018.

3098. The Assessee, a partnership firm, had undertaken construction project. There were search and seizure actions under section 132 during which incriminating documents were seized. The statement of DKS, partner of assessee, was recorded in which he admitted to have collected Rs.30 lakhs as on-money over and above agreement value. The Assessing Officer held that on-money over and above agreement value. The Assessing Officer held that on-money was to be taken as income and, accordingly, made addition to income of the assessee. The Commissioner (Appeals) also upheld same. The assessee filed a miscellaneous application on ground that entire on-money did not represent its income and reasonable expenses were to be deducted from same and only balance amount was to be taxed. The said application was rejected by the Tribunal. The assessee filed second miscellaneous application which was disposed of by the Tribunal in chambers without hearing the assessee and without assigning detailed reasons. The Court held that the Tribunal is a last fact finding authority and it is obliged to consider appeal on facts and law aggrieved parties before the Tribunal must an opportunity to demonstrate that findings of Assessing Officer even it confirmed by the First Appellate Authority, are indeed erroneous both on facts and law and that such an opportunity ought to be extended and no technicalities should come in way of a proper and complete adjudication of contested issues. Therefore, the Tribunal was unjustified in rejecting second miscellaneous application filed by the assessee.

D.K. Enterprises v. ITAT [2018]99 taxmann.com 151(Bom.) IT Appeal Nos. 144, 145, 220, 227 & 228 of 2002 dated October 3, 2018

3099. The Tribunal held that instruction no.3 of 2018 dated 11/07/2018 restraining subordinate authorities from filing appeal before Tribunal in case tax effect by virtue of the relief given by CIT(A) is less than Rs.20 Lakhs is applicable even on pending appeals as on date of issuance of such instructions. Accordingly, the Tribunal dismissed Revenue's appeal as the tax effect was less than 20 Lacs.

ITO & ANR. vs. Flexell Computer Forms Pvt. Ltd. & ANR. - (2018) 54 CCH 0292 AhdTrib- ITA No. 277/Ahd/2015, 344/Ahd/2015-Dated Dec 3, 2018

3100. AO completed assessment after making additions of assessee's declared income.CIT(A) enhanced assessment for all three AYs and estimated income of assessee by applying N.P. rate of 8.5%, 9.5% and 10% for AYs 2012-13 to 2014-15 respectively. The Tribunal held that CIT(A) could exercise its power to enhance income u/s 251 on issue which was subject matter of assessment.Said power could not be exercised in respect of issue which was not subject matter of assessment and therefore, there was a restriction on exercise of power of enhancement not to take up an altogether new source of income.There was a distinction between subject matter of assessment and scope of assessment.Subject matter of assessment was confined only on issue and subject which took up for scrutiny by AO whereas scope of assessment was very wide which includes even an enquiry of any issue and claim but might not have been taken up by AO during scrutiny assessment.Subject matter of assessment was matters which were taken up by AO during the scrutiny assessment are very much subject matter of appeal so far as power of CIT(A) exercising enhancement of income.Issue and subject matter which were falling under scope of assessment but were not taken up for scrutiny would fall in ambit of provisions of s. 263 and Commissioner in its revisionary power could take up those matters for revision of assessment order.There was segregation of jurisdiction under Ss 263 and 251.CIT(A), therefore, though, vested with very wide powers u/s 251(1) so far as subject matter and aspects of assessment about which assessee made a grievance as well as regarding any other matter considered by AO and determined in assessment.It was not open to CIT(A) to introduce in assessment a new source of income and assessment must be confined to those items of income which were subject matter of original assessment which meant items of income and aspects on which AO took up for scrutiny.In present case, AO made certain disallowances of expenses while completing assessment u/s 143(3) whereas CIT(A) invoked powers to enhance assessment by rejecting books of account and consequently income of assessee was enhanced by applying G.P. rate to estimate income of assessee.Said issue and aspect of not accepting book results was never taken up by AO in scrutiny assessments.Even if AO ought to have considered said point of correctness of books of account and rejection of same u/s 145(3) if said matter was not taken up for scrutiny and enquiry then it was a subject matter falling in ambit of revisionary power u/s 263 on ground that there was a complete lack of

enquiry on AO's part to examine correctness of books of account.Thus, impugned order passed by CIT(A) was set aside and assessee's ground was allowed

ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018

3101. The Tribunal dismissed Revenue's appeal as the tax effect was less than 20 lakhs by holding that CBDT Circular No.3/18 dated 11.07.2018, revising the monetary limit for not filing appeal before the ITAT will be operative retrospectively to the pending appeals.

Dy. CIT vs. ORACLE INDIA LTD. ((2018) 54 CCH 0330 DelTrib ITA No. 3995/Del/2014 dated 10.12.2018

3102. The Tribunal held that in the absence of any evidence to prove bonafideness of the assessee, merely on the basis of self- serving documents (i.e the new consultant (as against the old one) had advised the assessee to file appeal), huge delay of 285 days in filing appeal cannot not be condoned.

Astec Life Sciences vs DCIT- (2018) 54 CCH 0197 MumTrib- ITA No 955/Mum/2016 dated 05.10.2018

3103. The Tribunal condoned 387 days in filing appeal in view of the bonafide explanation offered by assessee i.e that cause of delay in filing appeal was due to turbulent time in family as well as with his earlier C.A., who had mischievously prepared accounts and also filed return of income in his own signatures without assessee's knowledge, was bonafide.

Nitesh Agarwal vs ACIT (2018) 97 taxmann.com 459 (Jaipur-Trib)- ITA No 825 of 2018 dated 19.09.2018

3104. The Court quashing Tribunal's ex-parte order observed that the representative for the assessee had withdrawn his power of attorney and a notice was issued to parties to appear for the proceedings and the Tribunal had failed to ascertain whether notice was duly served on assessee, or whether there was a proof of service of notice and whether assessee had avoided intentionally and deliberately to attend case or hearing.Thus, the Court ruled that the Tribunal should not have proceeded further with the proceedings and such an approach would result in miscarriage of justice. Accordingly, it remanded the matter to the Tribunal to re- hear the appeal.

Lalitnirman Business Deelopment (P) Ltd vs ITO (2018) 98 taxmann.com 190 (Bombay)- IT No 17 of 2016 dated 19.09.2018

3105. The Tribunal held that if because of wrong advice given by advocate, assessee could not prefer appeal before Tribunal, then assessee could not be faulted for not preferring appeal on time. The Tribunal held that the Hon'ble Supreme Court in the case of Collector of Land Acquisition vs Mst Katiji & Others 167 Hon'ble Apex Court has emphasized that substantial justice should prevail over technical consideration. The Hon'ble Apex Court has also observed that a litigant does not stand to benefit by lodging the appeal late. The Hon'ble Apex court has also observed that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational, common sense and pragmatic manner. In the light of the aforesaid judicial precedent and taking into

consideration the fact that because of the wrong advice given by the Ld. AR Shri Tiwari caused the assessee in not preferring an appeal before this Tribunal. Therefore, the assessee cannot be faulted for not preferring an appeal on time. Taking into consideration the aforesaid facts given for causing the delay, Tribunal was of the opinion that the delay should be condoned and Tribunal did so and admit the appeal for adjudication

Jayant Saha vs DCIT- (2018) 54 CCH 0022 Kol Trib- ITA No 106/2018 dated 19.09.2018

3106. Revenue had preferred an appeal before High Court challenging an order passed by the Tribunal. However, such appeal was defective and thus rejected. Department took abnormal time of 1371 days in removing those defects. An application for condonation of delay was also filed which was dismissed by the High Court. The Apex Court held that no doubt, there was a long delay in removing office objections, but High Court should have condoned delay and heard matter on merits. Accordingly, Revenue was directed to pay one lac rupees for such delay and matter was remitted back to High Court for consideration.

CIT vs Reliance Industries Ltd- (2018) 103 CCH 0067 ISCC- Civil Appeal No 10774 of 2018 dated 26.10.2018

3107. Where there was nothing on record to show that assessee had consciously and knowingly waived right to be heard, the Tribunal allowed assessee's appeal against the CIT(A)'s ex-parte order and restored the matter back to CIT(A) directing him pass a speaking order after giving assessee a reasonable opportunity of being heard. Noting that the ex-parte order was passed only on basis the written submissions of assessee where he was unable to advance his case, it was held that there was lack of opportunity of being heard.

Harbans Lal vs ITO [2018] 97 taxmann.com 622 (Chandigarh - Trib.) IT APPEAL NO. 419 (CHD.) OF 2018 dated August 06 2018

3108. The Tribunal rejected assessee's application for condonation of delay of 316 days in filing of appeals holding that although power available to Tribunal u/s 253(5) was discretionary, however it could be exercised only in case of sufficient cause. In the present case, it was contended that the delay on the ground that the Official Liquidator remained occupied in other works and hence could not apply his mind into the assessee-company's case. The Tribunal held that the Official Liquidator failed to demonstrate as to how he could not apply his mind for filling appeal till 316 days as the same not believable.

New Gujarat Synthetic Ltd. vs ITO [2018] 53 CCH 0604 (Ahd - Trib.) ITA No. 752 TO 754/Ahd/2016 dated August 01 2018

3109. The Court dismissed Revenue's appeal as withdrawn as tax effect of the appeal was less than Rs.50L in view of the CBDT Circular No.3/2018 revising monetary limits for filing of appeals by Department before High Courts to Rs.50,00,000.

Pr.CIT vs Shriram Chits (Karnataka) Pvt Ltd. [2018] 102 CCH 0250 (Kar HC) INCOME TAX APPEAL NO. 344 OF 2018 dated August 02 2018

3110. The Tribunal dismissed Revenue's appeal holding since the tax effect of the appeal was below Rs.20 Lakhs and in view of the CBDT Circular No.3/2018 revising monetary limits for filing of appeals by Department, the same was not maintainable.

KAMALA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - [2018] 53 CCH 0424 Vishakapatnam Trib ITA No. 113 to 115/Viz /2017dated August 03 2018

3111. The Court dismissed Revenue's appeal as withdrawn as tax effect of the appeal was less than Rs.50L in view of the CBDT Circular No.3/2018 revising monetary limits for filing of appeals by Department before High Courts to Rs.50,00,000.

DIRECTOR GENERAL OF INOCME TAX & ANR. vs. A. ABDUL RAFEEKH - [2018] 102 CCH 0229 KarHC ITA No. 255/2018 dated August 06 2018

3112. The Court allowed assessee's writ petition and set aside Tribunal's order not entertaining assessee's miscellaneous / rectification application against the original Tribunal order which was a non-speaking order. It was noted that the Tribunal had passed the original order with a finding that no positive material was brought on record by the assessee to show that the investment made by the five companies in the assessee-company's shareholding was genuine inspite of the assessee filing a paperbook indicating identity, creditworthiness and genuiness of investment. Further, it was noted that there was no discussion of the various case laws given in the submissions. Accordingly, the Court not only set aside the rectification order but also the original Tribunal order.

AMORE JEWELS PRIVATE LTD. vs. Dy.CIT [2018] 102 CCH 0186 (Mum HC) CIVIL JURISDICTION WRIT PETITION NO. 1833 OF 2018 dated August 03 2018

3113. The Court set aside Tribunal's order wherein the Tribunal had remanded the issue of disallowance of depreciation on fixed asset (claimed by AO to be unverified asset, accussing the assessee to have failed to produce invoices and details relating to purchase of such assets) back to the AO, noting that the Tribunal had erroneously observed that the assessee had not produced books of accounts before the AO when books of accounts, invoices and details relating to purchases etc. were produced before the AO and filed before it also. The Court directed the Tribunal to examine the issue afresh and to remand, only if the said question could not be answered on the basis of papers and documents filed.

ARADHANA FOODS AND JUICES PVT. LTD. vs. CIT [2018] 102 CCH 0247 (Del HC) - ITA No. 701/2017 and CM No.30647/2017 & ITA No. 702/2017 and CM No. 30648/2017 dated August 21,2018

3114. The Tribunal upheld the CIT(A)'s order striking down the action of the AO in treating LTCG on sale of equity shares of a certain company to be STCG while passing the order giving effect to the remand direction of the Tribunal in first round of appeal wherein the Tribunal had denied the benefit of section 47(xiib) on conversion of assessee company into LLP and had remanded the computation of capital gains thereon. The Tribunal held that the AO ought not to have taken a different stand in the proceedings giving effect to its directions by treating the resultant gains on sale of equity shares as STCG.

Aravali Polymers LLP & ANR Vs ACIT & ANR. [2018] 53 CCH 0485 ITA No.222 & 267/Kol/2015, DATED AUGUST 29,2018

3115. The Court allowed assessee's appeal against Tribunal's order wherein the Tribunal had erroneously recalled its earlier order, noting that the Tribunal's finding, irrespective of its correctness, in the earlier order was based on evidences on record and submissions made. Whereas in the rectification order, the Tribunal had not given any reason for coming to the conclusion of recalling the earlier order. The Court held that the power of rectification is circumscribed with the condition that the same can be exercised for correcting error be of law or facts apparent on record and such power vested in Tribunal was not akin to review power.

SHAMBHUBHAI MAHADEV AHIR vs. INCOME TAX APPELLATE TRIBUNAL- [2018] 103 CCH 0087 Guj HC R/Special Civil Application No. 6337 of 2018 dated August 20 2018

3116. The Court allowed assessee's writ petition and quashed the order passed by the Tribunal for consolidation of appeals since the said order was passed without giving notice to the assessee and was without reasoning.
BPTP Ltd. v Pr.CIT [2018] 95 taxmann.com 234 (Delhi) - W.P. (C) NO. 7098 OF 2018 dated July 16, 2018

3117. The Court set aside the Tribunal's order wherein the Tribunal had dismissed the assessee's miscellaneous petition for rectification only on the ground of delay in filing the said petition. The petition was filed by the assessee against the Tribunal's order dismissing the assessee's appeal against the penalty proceedings u/s 271(1)(c), without giving relief in view of order passed by the Court in case of CIT v. Manjunatha Cotton & Ginning Factory in [2013] 359 ITR 565 (Kar), wherein it was held that notice u/s 274 should specifically state grounds mentioned in section 271(1)(c) and mere notice sent in a printed form without mentioning grounds would not satisfy requirement of law. The Court held that in order to do substantial justice, in view of the power under articles 226 and 227 of the Constitution of India, the delay had to be condoned and thus it remanded the matter back tto the Tribunal to decide the misc. petition on merits strictly.
Muninaga Reddy v ACIT [2018] 96 taxmann.com 230 (Karnataka) - WRIT PETITION NO. 25553 OF 2018 (T-IT) dated July 12, 2018

3118. The AO passed an order u/s 201(1) treating the assessee as assessee in default for failure to deduct tax at source. On appeal filed against the said order, since the assessee neither appeared before the CIT(A) nor filed any written submissions, the CIT(A) vide ex parte order upheld findings of the AO without even considering the assessee's objections filed before the AO. The Tribunal held that though there was failure on the part of the assessee in appearing before the CIT(A) on various dates but the CIT(A) could have considered the written submissions filed by the assessee before the AO in the light of the observations made by the AO and thus it remanded the matter back to the CIT(A) to decide the issue afresh in light of objections filed by assessee before the AO.
Baweja Movies (P.) Ltd. v ITO(TDS) - [2018] 97 taxmann.com 73 (Mumbai - Trib.) – ITA Nos. 2670 & 2671 (MUM.) of 2015 dated July 31, 2018

3119. The Tribunal dismissed the appeals filed by the Revenue following the Circular No. 3/2018, dated 11-7-2018, whereby monetary limits for filing of appeals by department before Tribunal and High Courts and SLP before Supreme Court had been increased, upholding the retrospective application of the said Circular to pending SLPs/appeals/cross objections/references. It held that the said Circular, which itself states that it is applicable to pending SLPs/appeals/cross objections/references, was binding on the Revenue, as held by the Apex Court in the case of Commissioner of Customs v. Indian Oil Corporation Ltd. [2004] 267 ITR 272 (SC).
ACIT v Khalishpur Cold Storage (P.) Ltd - [2018] 96 taxmann.com 420 (Kolkata - Trib.) – ITA Nos. 1054,1259 TO 1260/1661 & 1795 OF 2016; CO. NO. 95 (Kol) of 2017 dated July 30, 2018

3120. The assessee's case was reopened u/s 147 and the AO had made addition by treating agricultural income of assessee as non-agricultural. Whereas, in the remand report submitted by the AO before the CIT(A), he himself accepted that the assessee was carrying on agricultural activity and, thus, she was earning agricultural income thereof. Accordingly, CIT(A) allowed the assesssee's claim of agricultural income on basis of said remand report. However, Tribunal disallowed said claim of assessee without taking into consideration that order allowing assessee's appeal by CIT(A) was based upon remand report. The Court also dismissed appeal filed by the assessee against the said Tribunal order. For the first time before the Court in a Review Application, the assessee raised the claim that the appeal before the Tribunal was not maintainable since the CIT(A)'s order was based on consideration of the AO's remand report. The Court allowed the Review Application and remanded the matter to the Tribunal to decide the question of its jurisdiction to entertain the appeals filed by the Revenue against the CIT(A)'s order.

Smt. B. Jayalakshmi v ACIT - [2018] 96 taxmann.com 486 (Madras) - REVIEW APPLICATION NOS. 88 TO 90 OF 2014 dated July 30, 2018

3121. The assessee-company had bought back its own shares from its 99.99% holding company at Mauritius at an abnormally high price and the Tribunal held that the payment for buy-back in excess of fair market price of shares of assessee, would certainly fall within ambit of section 2(22)(e) and could be taxed as dividends, in hands of assessee-company. However, since this aspect of matter had not been examined by authorities below, the Tribunal remanded the matter to assessing authority. The assessee filed an appeal against the Tribunal's direction. The Court held that the Tribunal has power to give directions for fresh enquiry into aspects of subject matter of appeal filed before it either suo motu or on any grounds raised by either party to appeal which have not been investigated or enquired into by lower authorities earlier and which may result in enhancement of tax liability of assessee. Further, it held that the said directions could not be said to be per se amounting to taxability of said payout by assessee as 'Dividend' but same would depend upon nature of enquiry to be conducted by assessing authority and findings arrived at in pursuance of said direction. Thus, it dismissed the assessee's appeal.
Fidelity Business Services India (P.) Ltd. v ACIT [2018] 95 taxmann.com 253 (Karnataka) - ITA No. 512 OF 2017 dated July 23, 2018

3122. The Apex Court dismissed the SLP filed by Revenue against the High Court's rejection of Revenue's application filed with a delay of 958 days for restoration of appeal, which was dismissed in view of the fact that the Revenue had failed to remove office objections pointed out in its appeal in terms of rule 986 of Bombay High Court (Original Side) Rules, 1980, within prescribed time period without showing any reasonable cause.
CIT v Bharati Vidyapeeth [2018] 96 taxmann.com 496 (SC) - SLP (Civil) Diary No.(S). 24604 OF 2018 dated July 23, 2018

3123. The Tribunal allowed assessee's appeal and restored the matter to file of CIT(A) with direction to readjudicate issue on merits, noting that the CIT(A) had dismissed the assessee's appeal for delay in filing of appeal without considering the fact that the address mentioned in the assessment order was wrong and thus there was high probability that assessment order was not served on directors of the assessee-company, in absence of any material proving to contrary. Further, it was noted that the assessee had filed within the prescribed time (i.e. 30 days) from the date a copy of assessment order was provided to the assessee, upon the tax consultant's request for giving the same.
NOKODA GRANITE & MARMO PVT. LTD. vs. ITO - (2018) 53 CCH 0380 MumTrib - ITA No. 6340/Mum/2014 dated July 23, 2018

3124. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing admission of additional evidence furnished before the CIT(A), noting that the show cause notice for assessment proceeding was issued by the AO for first time on 15-03-2013 (which was served on assessee on 18-03-2013), the assessee had replied to the same on 25-03-2013 and on 26-03-2013 assessment order was passed. It held that chronology of events clearly indicated that assessee did not have sufficient time to respond to queries raised by the AO in the said notice. Further, it noted that the CIT(A) gave due opportunity to the AO to comment on documents furnished by assessee as additional evidence but the AO merely chose to oppose admission of these documents without commenting on merits of the additional evidence.
DCIT v RAJENDRA BANSILAL RAISONI - (2018) 53 CCH 0606 PuneTrib – ITA Nos. 1264 & 954/PUN/2016 dated July 20, 2018

3125. The Tribunal allowed the miscellaneous apealication filed by the assessee against the Tribunal's ex-parte order, noting that on the date of the impugned order, the assessee's application for consolidation of Revenue's appeal and assessee's appeal was pending for disposal. Acccordingly, it recalled its ex-parte order passed in respect of appeal filed by Revenue and scheduled hearing for the same on date of hearing of assessee's appeal.
Ashok N . Mehta - (2018) 53 CCH 0619 MumTrib – M.A. No.80/Mum/2018 (Arising out of ITA No. 2775/Mum/2016) dated July 20, 2018

3126. The Tribunal deleted the addition made by the CIT(A) by disallowing expenditure incurred by the assessee on account of procurement of materials from third party vendors u/s 40(a)(ia), following the Apex Court decision in the case of CIT vs. Shapoorji Pallonji Mistry [44 ITR 891 (SC)] wherein it was held that AAC is not competent to enhance assessment in appeal by discovering new source of income not mentioned in return or considered by the Assessing Officer in assessment. The Tribunal held that since in the present case also, there was no discussion of any such disallowance either in the return of income or in the assessment proceedings, therefore, the disallowance made by the CIT(A) by discovering a new source of income was not sustainable in law.
LG ELECTRONICS INDIA (P) LTD. vs. ACIT (2018) 53 CCH 0375 DelTrib – ITA Nos. 3612 & 3613/Del/2017 dated 18th July, 2018

3127. The Tribunal held that the assessee had reasonable cause in not filing appeal against the CIT(A)'s order in within period of limitation and hence condoned the delay of 546 days. It was noted that (i) when the order of CIT(A) was passed, the assessee was focused on the search proceedings carried out in its case and (ii) the assessee was wrongly advised by a Tax Practitioner that in view of initiation of search proceedings, the pending proceedings would stand terminated.
ACIT & ANR. vs. R.P.P. INFRA PROJETS LTD. & ANR. (2018) 53 CCH 0373 ChenTrib – ITA No. 2127/Chny/2016, 3161/Chny/2017 dated 17th July, 2018

3128. The Tribunal dismissed Revenue's appeal holding that Revenue should not have filed the appeal in view of CBDT Circular No.3/18 dated 11.07.2018, vide which CBDT has revised monetary limit to Rs.20,00,000/- for filing appeal before the Tribunal and instructions provided in Circular would operative retrospectively to pending appeals. Revenue contended that since CIT(A) had decided legal issue the monetary limit was not applicable since it was not a blanket bar on filing of appeals before ITAT as the said Circular itself mentions that where tax effect could not be quantified like in case of Registration u/s 12AA, the monetary limit would not be applicable. The Tribunal held that nowhere in the said Circular it was mentioned that the monetary limit was not applicable in case of legal issue.

Asst CIT vs Bishan Steel Industries Ltd [2018] 54 CCH 0281 (Asr- Trib.)- ITA No.588/Asr/2014 dated 30.11.2018

3129. The Tribunal dismissed Revenue's appeal as not maintainable holding that tax effect was less than Rs.20 lakhs and vide Circular No. 3 of 2018 dated 11.07.2018 issued by CBDT u/s 268A, it was directed that Department should not file appeal before the Tribunal in case where tax effect did not exceed monetary limit of Rs.20 lakhs. Further, such instruction would apply retrospectively to pending appeals and appeals to be filed henceforth in Tribunal.

Dy CIT vs Woven Gold Acrylic (I) Pvt Ltd[2018] 54 CCH 0381 (Del- Trib.)- ITA No.4965/Del/2015 dated 15.11.2018

3130. The Apex Court dismissed SLP filed by Revenue on ground of low tax effect (being below the threshold of Rs.1 crore).

CIT vs Chemical Dyestuff Industries [2018] 103 CCH 0276 (ISCC)-SLP Civil Diary Nos 18716/2017 dated 19.11.2018

Dy.CIT vs Jalil Abdulbhai Shaikh [2018] 103 CCH 0274 (ISCC)-SLP Civil Diary Nos 37893/2018 dated 19.11.2018

Dy.CIT vs SC Johnson Products Pvt Ltd.[2018] 103 CCH 0278 (ISCC)-SLP Civil Diary Nos 40504/2018 dated 22.11.2018

Pr.CIT vs Ruby Singla [2018] 103 CCH 0255 (ISCC) -SLP(CIVIL) Diary No(s). 38318/2018 dated 13.11.2018

CIT(E) vs Patanjali Yogpeeth (NYAS) [2018] 103 CCH 0243 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 21945/2018 dated 02.11.2018

Pr.CIT vs Ashok Kumar Agarwal [2018] 103 CCH 0241 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 35523/2018 dated 02.11.2018

Pr.CIT vs FIIT JEE Ltd. [2018] 103 CCH 0249 ISCC-SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 35920/2018 dated 12.11.2018

3131. The Court allowed assessee's appeal to quash Tribunal's order and restored the matter to Tribunal for fresh consideration noting that the Tribunal had dismissed assessee's appeal by merely recording that it agreed with the view of CIT(A) without giving any independent reasons showing consideration of submissions made on behalf of assessee. It held that an appellate order which affirms the order of the lower authority need not be a very detailed order, nevertheless, there should be some indication in the order passed by the appellate authority, of due application of mind to the contentions raised by the asseseee in the context of findings of the lower authority which were the subject matter of the challenge before it.

Cheryl J Patel vs Asst CIT [2018] 102 CCH 0401 (Bom HC) - IT No.643 & 424 of 2016 dated 26.11.2018

3132. The Court disposed of assessee's writ petition noting that the assessee had also filed an appeal against Tribunal's order on the same issue and thus held that the issues would be decided on merits in tax appeal cases filed u/s 260A. Further, noting that as per the interim order the assessee was granted stay against recovery proceedings, it held that the interim protection granted would continue till stay petitions in said tax case appeals were being heard.

Cholamandalam MS General Insurance Company Ltd. vs ITAT and ors.[2018] 103 CCH 0084 (ChenHC)-WP Nos.22376 to 22379 of 2018 etc. dated 13.11.2018

3133. The Tribunal allowed assesee's appeal alongwith the Miscellaneous Application (M.A.) filed against Tribunal's own order for AY 2012-13 wherein the Tribunal had denied assessee's claim for deduction u/s 54 with respect to long term capital gains arising out of sale of property, accepting Revenue's contention that the assessee was not eligible for the said deduction since he had purchased three residential houses. In M.A., the Tribunal accepted assessee's contention that it had not considered earlier decision of Jurisdictional Tribunal Bench. Accordingly, it allowed assessee's claim relying on the decision in case of Laxman Singh Rawat vs ACIT [ITA nos. 1668 & 2256/Del/2013] (which was subsequently affirmed by HC) wherein it was held that the amendment brought in section 54 to limit the exemption u/s 54 to one residential unit was applicable only from AY 2015-16 and prior to such amendment, the expression "a residential house" would mean more than one residential house.

Harbinder Singh Chimni vs Dy.CIT [2018] 54 CCH 0249 (Del- Trib.)- M.A No. 437/Del/2018 dated 20.11.2018

3134. The Court allowed assessee's writ petition and directed the Tribunal to expeditiously dispose off assessee's Miscellaneous Application (MA), noting that though the said application was filed in July 2018 yet till October 2018, the assessee had no information of when the same was to be heard. The

Court also directed the Revenue to not take any coercive measure to recover taxes & penalty, pending such application.

Lupin Investments Pvt. Limited vs. ITAT Mumbai & Ors [TS-620-HC-2018(BOM)] WP(Lodging) No.3104 of 2018 dated 15.10.2018

3135. The Court dimissed Revenue's appeal where it contended that CBDT Circular dated 11-7-2018 laying down the monetary limit for filing appeal by Revenue was not applicable in view of Para 10 of the said Circular which inter alia allows filing appeal where Revenue Audit objection in the case has been accepted by the Department. It held that mere raising objection in terms of CBDT Circular is not enough, CBDT Circulars continue to bind revenue and if they contain any conditions, whether such conditions are attracted or not would have to be proved and established by Revenue. The Court hed that in the present case, no records were produced to show that the audit objection was accepted by the Department.

Pr.CIT v Nawany Construction Co. (P.) Ltd. - [2018] 258 Taxman 365 (Bom HC) - ITA No. 1142 of 2015 dated 10.09.2018

3136. The Tribunal, while considering assessee's request for condonation of delay in appeal, held that an assessee supported by large number of CAs & Advocates cannot seek condonation of delay on the ground that the officer handling the issue was transferred. A party cannot sleep over its rights and expect its appeal to be entertained. The fact that the issue on merits is covered in favour of the assessee makes no difference to the aspect of condonation of delay

Catholic Syrian Bank Ltd vs. DCIT (ITAT Cochin) - I.T.A. Nos. 341 to 345/Coch/2018 dated 08.10.2018

3137. The Tribunal levied exemplary cost of Rs. 1 lakh upon assessee-trust for fraud in wrongly seeking exemption on basis that it is controlled & managed by the Govt. It held that the Tribunal is deemed to be a Civil Court and its proceedings are deemed to be judicial proceedings within the meaning of s. 193 & 228 & of the Indian Penal Code. Thus, any attempt to play fraud on the ITAT by way of conveying wrong and false facts and pleadings is required to be strictly dealt with.

Sri Dashmesh Academy Trust vs. CIT (Exemptions) - ITA No. 1257/CHD/ 2017 dated 08.10.2018

3138. Noting that in the earlier year, the Tribunal had decided the issue in favour of the assessee and the CIT(A) for the instant year had taken an adverse view even after taking note of the said Tribunal order (against which no appeal was pending before the High Court), the Court allowed the assessee's writ petition against CIT(A)'s order and held that such totally callous, negligent and disrespectful behaviour shown by the Departmental authorities should not be tolerated at all. It held that it is because of this kind of lack of judicial discipline which if it goes unpunished, will lead to more litigation and chaos and such public servants are actually a threat to the society. The Court also directed the CIT(A) to pay cost of Rs. 1 lakh from his personal funds.

XLHealth Corporation India Pvt. Ltd. Vs. UOI (Karnataka High Court) - WRIT PETITION No.37514/2017 dated 22.10.2018

3139. The Court allowed assessee's writ petition against Tribunal's order consolidating 13 appeals pending before different Benches in assessee's case based on Revenue's application for such consolidation, noting that the Tribunal did not follow proper procedure laid down in Dr. Prannoy Roy [W.P. (C) No. 4742/2018] and Olympia Paper & Stationery Stores (63 ITD 148) viz. firstly, it should have given

adequate notice to the Appellant on the issue of consolidation and secondly, if the Revenue‟s request is found feasible and reasonable, indicate brief reason as to why the consolidation was essential. Accordingly, it quashed the Tribunal's order consolidating the appeals.

BPTP Ltd v Pr.CIT - W.P.(C) 7098/2018 (Del HC) dated 16.07.2018

3140. The Tribunal held that an order passed by the Tribunal even one day after the prescribed period of 90 days from the date of hearing causes prejudice to the assessee and is liable to be recalled u/s 254(2) and the appeal posted for fresh hearing.

Kaushik N. Tanna vs. ACIT - M.A. No. 98/Mum/2018 dated 01.11.2018

3141. The Tribunal held that if a decision is challenged by the assessee both on the issue of jurisdiction as well as on merits, the appellate authority [CIT(A)] has to decide both issues. He cannot decline to decide one of the issues on the basis that the decision on the other issue renders it academic. This approach leads to multiplication of proceedings and leads to delay.

ITO vs. Mohanraj Trading & Exchange - I.T.A. No.6098/Mum/2016 dated 02.07.2018

3142. The Apex Court dismissed Revenue's appeal holding that there was an inadequate and unconvincing explanation given for the delay of 596 in filing the petition. Further, noting that the Revenue had given a totally misleading statement about pendency of a similar matter, it held that Union of India through the CIT had taken the matter too casually and, accordingly directed the petitioner / Revenue to pay cost of Rs.10 lakhs to be paid to the Supreme Court Legal Services Committee.

CIT v. Hapur Pilkhuwa Development Authority (2018) 258 Taxman 125 (SC) - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 26127/2018 dated 27.08.2018

3143. The Court dismissed assessee's writ petition where in the Tribunal had upheld order of CIT(A) upholding applicability of Explanation 2 to section 2(22) holding that loans and advances made to directors of company were taxable as deemed dividend. The assessee did not chose to file any appeal before the High Court, rather filed belatedly only a Miscellaneous Petition purportedly seeking certain corrections in order passed by Tribunal. The Tribunal rejected the application as it was barred by limitation and thus the assessee further preferred instant writ petition in High Court. The Court concluded that the writ jurisdiction against the order passed by the Tribunal dismissing the Miscellaneous Petition was time barred and was not available to the assessee as it was a discretionary order. Further it also held that the assessee could have preferred an appeal to High Court u/s 260A, if at all the assessee was dissatisfied with the Tribunal dismissing the appeal and if any question of law arose.

Smt Rinku Chakraborthy vs DCIT- (2018) 98 taxmann.com 188 (Karnataka)- WP no 40052 of 2018 dated 24.09.2018.

3144. Where the CIT(A) deleted the addition made by the AO under Section 68 by admitting the additional evidence filed by the assessee which substantiated the identity, capacity and genuineness of the share allottees to whom the assessee had issued share capital, the Tribunal held that since the AO was not given the opportunity of examining the additional evidence, the mandate of Rule 46A was violated. Accordingly, it set aside the case to the file of the AO to consider the additional evidences filed.

COMMISSIONER OF INCOME TAX & ANR. vs. DIAMOND HUT INDIA PVT. LTD. & ANR. - (2018) 52 CCH 0263 DelTrib - ITA No. 3428 & 3425/Del/2013, 3427/Del/2013 dated Mar 5, 2018

3145. The assessee filed the writ petition against the reference made by the AO to the District Valuation Officer (DVO) u/s 50C wherein the AO had sought valuation of land belonging to a company while considering the assessee's claim for loss on account of sale of equity shares of the said company. It was noted that before filing the petition, the AO had passed the assessment order accepting assessee's claim of loss but subject to receiving the valuation report from the DVO. The assessee had filed an appeal before the CIT(A) against the said assessment order but had not raised a grievance with regard to the impugned reference. The Court held that since the assessee had availed of a remedy of an appeal under the Act, the present petition could not be entertained. However, further noting that the assessee had not raised the impugned grievance before the CIT(A) on a bonafide belief that the since the assessment order had accepted the loss claimed, an appeal would not lie, it granted assessee the liberty to file the additional ground before the CIT(A) with respect to the aforesaid issue.
Praham India LLP v ITO – Writ Petition No. 682 of 2017 (Bom) dated 05.01.2018

3146. The Tribunal confirmed the CIT(A)'s order deleting the addition made by the AO on account of difference in the amount of incentive remuneration as appearing in the return filed (shown at a lower amount) and the amount reflected in Form 26AS considering the reconciliation statement submitted by the assessee, rejecting Revenue's contention that the relief had been granted by CIT(A) in exercise of power u/s 251 on basis of additional evidence in form of reconciliation statement which were in contravention of provisions of Rule 46A, in view of fact that reconciliation statement had been duly filed before AO in course of assessment proceeding and he did not find any defect in same. Accordingly, it concluded that no additional evidence had been submitted by assessee at time of appellate proceedings as alleged by Revenue
DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018

3147. With respect to the revenue's argument that the assessee had claimed deduction u/s 80P for the first time before the CIT(A), placing reliance on various decisions, Tribunal held that it is well settled law that the Appellate Authorities have power to consider the claim not made in a return.
Baroda Uttar Pradesh Gramin Bank v DCIT – (2018) 91 taxmann.com 182 (All Trib) – ITA Nos. 403, 404 & 405 (Alld.) of 2014 dated 08.01.2018

3148. The Court upheld the Tribunal's order in denying condonation for delay of over four years in filing cross-objection by the assessee to challenge the disallowance u/s 14A by claiming the investment in subsidiary was made for business purpose and not for investment purposes, in an appeal filed by revenue with the Tribunal against limited relief granted by CIT(A), stating the cross-objections so raised meant that assessee was seeking to rake up stale issues in respect of which tax liability had become final.
Jubilant Securities (P.) Ltd. v DCIT – (2018) 400 ITR 527 (Del HC) – ITA Nos. 1000, 1001 &1014 of 2017, and C.M. No. 41761, 41761 & 41800 of 2017 dated 10.01.2018

3149. Where the AO had disallowed commission paid by assessee-company to agent-firms on the ground that parties related to director of assessee-company were partner in such firms and hence such commission was paid only to avoid tax and the Tribunal deleted such disallowance noting that assessee had been paying commission to the agents regularly year after year and in some of the years it was not doubted by the Revenue and was accepted and also the receipt of payment of commission was duly reflected in the books of account of the agents and offered to tax, which was also accepted by the Revenue, the Court held that the Tribunal's order could not be treated as perverse.
CIT v Hind Nihon Proteins (P.) Ltd. – (2018) 91 taxmann.com 43 (Del HC) – ITA Nos. 574, 655 & 684 of 2005 dated 10.01.2018

3150. Where the assessee had filed a revision application with the CIT u/s 264 with respect to the penalty order passed u/s 271(1)(c) by the AO for concealment of income after filing an appeal before the CIT(A) against the said penalty order and CIT had accepted the assessee's revision application, the Court

upheld the Tribunal order setting aside the CIT(A)'s order wherein CIT(A) had decided appeal on merits and dismissed the same even after the said acceptance of revision application by CIT and after the assessee conveying his wish to withdraw appeal. It held that once the penalty order was set aside by revisional authority, it was thereafter not open for CIT(A) to still examine merits of such an order and declare his legal opinion on same.
Nitin Babubhai Rohit v Dharmendra Vishnubhai Patel – (2018) 91 taxmann.com 196 (Guj) – Special civil application no. 22959 of 2017 dated 05.02.2018

3151. Where assessee's appeal against the AO's order denying deduction u/s 80P(2)(a) was pending before CIT(A) and the AO had also not passed any order with respect to the application filed by the assessee before AO for not treating it as assessee-in-default u/s 220(6), the Court dismissed the writ filed by the assessee seeking a direction to CIT(A) to decide pending appeal expeditiously, considering the writ to be premature in nature. It directed assessee to appear before both concerned authorities, namely, CIT(A) and AO and pursue for disposal of its appeal as well as application filed u/s 220(6) in accordance with law.
Primary Agriculture Credit Co-operative Society Ltd. v CIT(A) – (2018) 92 taxmann.com 263 (Kar) – writ petition no. 5647 of 2018 (T-IT) dated 06.02.2018

3152. Where the assessee erroneously made certain disallowance in its return on account of non-deduction of tax at source and same was not contested before CIT(A), the Tribunal held that there was no estoppel against the statute and it was open for assessee to challenge said disallowances before the Tribunal for first time. Accordingly, it remanded the said issue to file of AO for adjudication on merits.
Allahabad Bank v DCIT – (2018) 169 ITD 189 (Kol Trib) – ITA Nos. 127 of 2011 & 649 (Kol.) of 2013 dated 07.02.2018

3153. Where assessee had filed the Miscellaneous Application (MA) on 17-03-2017 with respect to the order of the Tribunal passed on 06-04-2016 and it was noted that as per the provision of section 254(2) as amended by the Finance Act, 2016 w.e.f. 01.06.2016 an application for rectification of apparent errors in the order of the Tribunal had to be filed within six months from the end of the month in which the order was passed whereas prior to the aforesaid amendment, such an application could be filed at any time within four years from the date of the order, the Tribunal held that the MA though filed after 1-6-2016 would continue to be governed by the law of limitation laid down u/s 254(2) on the date when the order against which application was sought to be filed was passed and not as per the amended law and, thus, the MA had to be construed as one filed within the period of limitation.
Gifford & Partners Ltd. v ADIT – (2018) 169 ITD 224 (Kol) - M.A. Nos. 39 & 40 (Kol.) of 2017, ITA Nos. 2082 (Kol.) of 2010 and 1489 (Kol.) of 2011 dated 02.02.2018

3154. The Court dismissed the Department's notice of motions praying for condonation of delay of 318 days in filing appeal against the order of the Tribunal. The reason cited by the Department was that the impugned order dated 15-4-2016 was received by the Principal Commissioner on 5-7-2016. Thereafter, on 11-7-2016 it was forwarded to the Commissioner (Exemptions) who transferred the papers to the office of the Deputy Commissioner (Exemptions) who on 21-9-2016 the Deputy Commissioner prepared his report which was approved by Joint Commissioner. Thereafter, the report was sent on 29-9-2016 to the Commissioner (Exemptions) and on receipt of the above reports, he forwarded it to the Chief Commissioner, New Delhi for approval which approval from the Commissioner, Delhi was received by on 29-5-2017. Thereafter, this appeal was filed on 20-7-2017] was not sufficient / satisfactory. The Court held that if the reasons of the Department were to be accepted it would tantamount to accepting the proposition that work takes time and, therefore, the period of limitation imposed by the State should not be applied in case of revenue's appeal where the tax effect involved is substantial, which was contrary to the law. Further, it dismissed the contention of the Department since none appeared for the Assessee, the assessee had no objection against the application for condonation of delay and held that merely because the assessee does not appear, it cannot follow that the revenue is bestowed with a right to the delay being condoned. Accordingly, it dismissed the notice of motions filed by the Department.
CIT(E) v Lata Mangeshkar Medical Foundation - [2018] 92 taxmann.com 80 (Bombay) - NOTICE OF MOTION NOS. 1779 AND 1783 OF 2017 dated MARCH 18, 2018

3155. The Tribunal held that the CIT(A) erred in allowing assessee's additional ground of deduction of manpower and service expenses by admitting additional evidence (bills etc) without obtaining a remand report from the AO. It held that the CIT(A) acted in violation of Rule 46A of the Income-tax Rules and accordingly directed the CIT(A) to decide the ground afresh after affording an opportunity of hearing to the AO.
DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. JSW STEEL PROCESSING CENTRES LTD. & ANR. - (2018) 52 CCH 0167 BangTrib - ITA No. 1978/Bang/2017, 2001/Bang/2017 dated Mar 7, 2018

3156. Where the AO disallowed assessee's claim for deduction on account of loss on account of foreign exchange forward contracts as the assessee had not proved that the forward contract pertained to its exports but the CIT(A) on examining additional evidence filed by the assessee allowed the claim (which was upheld by the Tribunal), the Court held that the Revenue was not justified in contending that the CIT(A) had erred in admitting the additional evidence and held that as per Rule 46A(4), the CIT(A) had the independent power and jurisdiction to call for production of any document to enable him to dispose of the appeal. Further, it noted that the Revenue had merely raised technical objections and did not raise any objections on the merits of the case. Accordingly, it dismissed the Revenue's appeal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. L.G.W. LIMITED - (2018) 101 CCH 0063 KolHC - GA NO. 2274 OF 2016 WITH ITAT NO. 311 OF 2016 dated Feb 13, 2018

3157. Where the issues for appeal before the Court were framed on 26th September 2016 (KR Shriram J) and the plaintiffs were to file their list of witnesses, Evidence Affidavit and compilation by 24th October 2016 but failed to do so and applied for time to comply with these directions (for which matter was kept on November 2016) and had not done so till 2018, the Court computed the period of delay from November 2016 to the date of hearing at 450 days and directed the plaintiff to pay costs of Rs. 1000 per day i.e. Rs.4,50,000- noting that till date no application for condonation of delay had been granted. It held that the contention of the plaintiff i.e. it was a trust was not a consideration in the instant case.
RAM NAGAR TRUST & ANR. vs. MEHTAB L SHEIKH & ORS. - (2018) 101 CCH 0074 MumHC - CIVIL JURISDICTION SUIT NO. 2012 OF 2009 dated Feb 27, 2018

3158. The AO noted that the assessee did not file complete details and addresses regards amounts received from various parties and family and accordingly made an addition in the hands of the assessee., which was upheld by the CIT(A). The assessee filed an appeal before the Tribunal after a delay of 1403 days. The Tribunal noted that in any case the assessee had no material evidence with him to explain unexplained income and that the appeal was filed by it only when the penalty appeals were dismissed by CIT(A). Accordingly, it dismissed the application for condonation of delay and dismissed assesssee's appeal.
SHAMBHU DAYAL SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0075 DelTrib - ITA Nos. 211, 212, 213/Del./2015 dated Feb 2, 2018

3159. The Tribunal upheld the CIT(A)'s order allowing the asssesse's claim to carry forward the short term capital loss which was not claimed by him in the return of income but was claimed during the assessment proceeding before the AO, which was not allowed by the AO since no revised return had been filed by the assesse, though it had file revised computation. It held that even if the AO could not have considered the claim of assessee but there was no bar on the powers of the appellate authority to consider the claim of assessee as per law and the powers of the CIT(A) are co-terminus powers to that of the AO. It held that the assessee was, therefore, not legally barred from making such claim and the CIT(A) had correctly directed the AO to consider the claim of assessee for carry forward of short term capital loss.
DEPUTY COMMISSIONER OF INCOME TAX vs. JUGAL KISHORE ARORA - (2018) 53 CCH 0190 DelTrib - ITA.No.157/Del./2015 dated June 21, 2018

3160. The Court dismissed Revenue's appeal against the Tribunal's order refusing to entertain the appeal relying on the circular of the CBDT restraining the Department from filing appeals where the tax effect is less than Rs.2 lakhs. The issue involved was as to whether 1/6th amount paid by the assessee for

know-how for the purpose of setting up of modern plant was allowable u/s 35AB when the assesseee had not commenced business in the relevant assessment year. Before the Court, the Revenue placed reliance on the decision of the Division Bench dated 31.10.2017 in ITA 70/2014 wherein the Court had directed another appeal to be considered on merits despite the CBDT directions on monetary limit. Noting that the tax effect, in the subject year and the succeeding years was NIL for reason of the assessee having continuosly suffered loss in all the years, it was held that there could be no cascading effect atleast in the case of the assessee. Therefore, the revenue's appeal were rejected answering the question against the Revenue.

CIT v TATA CERAMICS LTD. - (2018) 102 CCH 0094 KerHC - ITA.No. 1377 of 2009 dated June08, 2018

3161. The Court dismissed the appeals of the Revenue as 'withdrawn' in accordance with the CBDT Circular No.21/2015dated December 10, 2015as the tax effect in the appeals taken together was lesser than Rs.20,00,000. The Court held that since the Revenue failed to place any material to prove that the appeals had any cascading effect or 'Tax Effect' beyond Rs.20,00,000, the Revenue's appeals were dismissed.

CITvs. COMMISSIONER, BELGAUM URBAN DEVELOPMENT AUTHORITY (BUDA) (KARNATAKA HIGH COURT) (ITA No. 243, 244, 246, 247 & 249 of 2006) dated May 29, 2018(102 CCH 0093)

3162. The assessee's claim for benefit of sections 11 to 13 was denied by the AO while passing assessment order u/s 143(2). The CIT(A) however directed the AO to grant the said benefit. While passing the order to give effect to the CIT(A)'s order, the AO didn't take into account all expenses incurred by assessee to earn gross income which resulted in a surplus taxable income even after application of section 11. On appeal, the CIT(A) set aside the said order of the AO on ground that the AO passed order without giving a hearing to the assessee and figures taken to determine exempted income had to be reworked. The Tribunal set aside order of the CIT(A) holding that appeal from order giving effect to order of CIT(A) had raised issues which were not subject matter of appeal filed in first round, i.e., from order of the AO passed u/s 143(3) to the CIT(A). The Court allowed assessee's appeal holding that the order of the AO had not appropriately dealt with the directions of the CIT(A) and the same was on account of incorrect application of section 11, inter-alia, taking incorrect figures to give effect to the said directions. Further, it held that the purpose and object of the orders passed under the Act was to ensure that the Act is properly implemented and the assessee was not burdened with tax which under the law, it was not obliged to pay. Thus, the Court held that the aforesaid finding of the Tribunal was incorrect and, according, it allowed the assessee's appeal.

Cotton Textiles Exports Promotion Council v ITO(E) - [2018] 95 taxmann.com 296 (Bombay) - IT APPEAL NO. 292 OF 2002 dated June 27, 2018

3163. The Tribunal set aside the CIT(A)'s order wherein the CIT(A) had not admitted the additional evidence, in form of a registered valuer's report on valuation of the assessee's own shares issued by its, on the ground that it had no relevance to the issue involved in the appeal of the assessee. It was noted that the AO had brought to tax u/s 56(2)(viib), the amount representing the difference between the fair market value of the shares as per Rule 11UA(1)(b) and the value amount actually received on such issue of shares, without giving the assessee an opportunity to exercise its option given as per Explanation (a)(ii) to section 56(2)(viib) to substantiate the higher value at which the shares were issued. The Tribunal held that the said additional evidence was very much relevant to decide the issue relating to the addition made u/s 56(2)(viib) and thus the matter was restored to the file of the AO with a direction to decide the issue afresh on merits after considering thesaid valuation report.

ASG Leather (P.) Ltd. v ITO - [2018] 95 taxmann.com 151 (Kolkata - Trib.) - IT APPEAL NO. 2562 (KOL.) OF 2017 dated June 20, 2018

3164. The Court dismissed Revenue's appeal against the Tribunal's order wherein the Tribunal had held that the direction given by the CIT(A) to the AO to reopen the matter to ascertain whether further income had escaped tax in the course of hearing for appeal filed by the assessee against the penalty order passed by the AO u/s 271(1)(c), was unwarranted. It was noted that Explanation to section 251 provides that in disposing of an appeal, the CIT(A) can consider and decide "any matter arising out of proceedings in which the order appealed against was passed", notwithstanding that such matter was

not raised before the CIT(A) by the appellant. The Court held that it is evident from section 251(1) that since an appeal against an order of assessment is covered by clause (a) thereof and an appeal against an order imposing a penalty is covered by clause (b) thereof, independent appeals arise out of orders of assessment and orders imposing any penalty. It thus held that in the appeal arising out of the order imposing the penalty, the matter pertaining to some other income escaping assessment did not fall within the purview of the expression "any matter arising out of proceedings in which the order appealed against was passed".
Pr.CIT v KPC Medical College & Hospital - [2018] 95 taxmann.com 322 (Calcutta) - ITAT NO.165 OF 2015, GA NO. 3718 OF 2015 dated June19, 2018

3165. The assessee had filed appeal before the CIT(A) against the AO's disallowance of deduction claimed u/s 54F against the long-term capital gains arising on sale of development rights in a land. The CIT(A) instead, without issuing any show-cause notice to the assessee, held that the income on sale of development rights was to be treated as adventure in nature of trade/business income which resulted in enhancement of Assessment. The Tribunal held that in view of no opportunity or any show-cause notice of enhancement been given to the assessee, as required u/s 251(2), the order of CIT(A) suffered from infirmity and the same could not be sustained. Further, noting that the CIT(A) had held the assessee to be otherwise eligible for claim u/s 54F and that the Revenue had not filed an appeal against the CIT(A)'s order, the Tribunal directed the AO to allow the assessee's claim u/s 54F.
Naresh Sunderlal Chug v ITO - [2018] 93 taxmann.com 485 (Pune - Trib.) - IT APPEAL NO. 765 (PUNE) OF 2014 dated April12, 2018

3166. The Apex Court dismissed Revenue's appeal against the High Court's order wherein the High Court had held that the limitation period of 120 days mentioned in section 260A(2)(a) for filing an appeal before the High Court against the Tribunal order is to be reckoned from the date of receipt of Tribunal's order by any CIT including the CIT (Judicial) and the same was not limited only to the concerned CIT having jurisdiction over assessee receiving a certified copy of the Tribunal order.
CIT v ODEON BUILDERS PVT. LTD [TS-225-SC-2018] - ITA 52, 755 & 756 /2015, CM APPL 23522/2015 dated March 24, 2017

3167. Where the Tribunal remanded the matter to AO for fresh calculation, the Court laid down that the Tribunal does not have the power to enhance assessment and take back the benefits that had been granted by the AO. The Court relied on the decision of the Apex Court in the case of MCORP Global (P.) Ltd. v. CIT [2009] 178 Taxman 347/309 ITR 434 and held that the direction of the Tribunal to AO to determine depreciation or business loss of each year and carry forward lower of the two adjustments u/s 115JA would result in enhancement of assessment and accordingly allowed the appeal of the assessee.
Sanmar Speciality Chemicals Ltd. v. ITO – [2018] 93 taxmann.com 330 (Madras) – T.C. (Appeal) No. 885 of 2008 dated April 4, 2018

3168. In a writ petition filed against an ex-parte Tribunal order dismissing the appeal for default, the Court remanded the matter to the Tribunal and held that the Tribunal has to dispose of an appeal on merits irrespective of whether appellant appears or not, in view of Rule 24 and 25.
N. S. Mohan v ITAT [2018]94 taxxman.com 92 (Madras) – W.P NO. 8126 OF 2018 dated 16.04.2018

3169. The Court held that where assessee filed instant petition challenging validity of Tribunal's order under section 254(2), in view of fact that Tribunal had accepted additional evidence without complying with provisions of rule 29 of ITAT Procedure Rules, impugned order passed by Tribunal became defective and, thus, same was to be set aside.The Court accordingly directed the Tribunal to deal with the assessee's application on merits and pass appropriate order in accordance with law.
Dr. Prannoy Roy v SCIT [2018] 93 taxmann.com 328 (Delhi) – CM APPLICATION NOS. 18248 TO 18251 OF 2018 dated 04.05.2018

3170. Assessee had filed application for stay of outstanding demand, originally before Surat bench which was rejected considering that relevant appeals were pending before Ahmedabad bench and subsequently, assessee moved stay application before Ahmedabad bench. However, at time of hearing, AO having

jurisdiction to assess income of assessee was located at New Delhi at relevant time, which falls in jurisdiction of Delhi benches. The Tribunal thus held that jurisdiction for hearing of there applications, and hearing of related appeals, vested in Delhi benches of Tribunal. However, in view of rule 4(1) of the Incomw-Tax Appellate Tribunal Rules, 1963, it held that it was for the President of Tribunal to take a final call on issue and hence, registry was to be directed to place matter before President for final decision on transfer of assessee's case to Delhi benches.

Vedanta Ltd v Asst. Director of Income-Tax [2018] 93 taxmann.com 203 (Ahmedabad – Trib.) – S.A. NOS. 41 TO 45 OF 2018 dated 11.05.2018

3171. During the assessment, AO made addition of unexplained cash credits and also imposed penalty u/s 271(1)(c) at 100% of the Tax sought to be evaded which came to Rs.13,00,990. The Tribunal, held that the penalty could be imposed in proportion to the profit of the business which the assessee might not have offered to tax. Without saying so effectively, the Tribunal considered 10% of the total deposits as the assessee's profit from the business and that is how reduced the penalty to about 1/10th of the originally imposed.Revenue has filed this petition for two reasons. Firstly, according to the counsel for the petitioner, the Tribunal has exceeded his jurisdiction as under section 271(1)(c), the discretion to impose penalty ranges between equivalent to amount of tax sought to be evaded to three times that much. The Tribunal imposed penalty which was 10% of the tax sought to be evaded which was wholly impermissible. The other reason for the Revenue to file this writ petition was that as per CBDT circular dated 10-12-2015, no appeal would be filed before the High Court if the tax effect is less than Rs. 20 lacs. The Court held that it may be possible for the Revenue to argue that the monetary limits set out by CBDT are for filing appeals before various foras including the High Court and the Supreme Court but these limitations could not be applied to a writ petition that may be filed by the Revenue. Under the circumstances, it held that they were not inclined to entertain this petition. However, before closing, it held that when the proceedings of assessment in which the additions in the hands of the assessee were made, the Tribunal could not have ignored such final conclusions by simply adopting the different mode or yardstick to judge the amount of tax sought to be evaded by the assessee.

PCIT v DevendraJasraj Kothari [2018] 94 taxmann.com 291 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 7872 OF 2018 dated 11.05.2018

3172. The question before the Court was as to whether the appeal in question should be heard on merits in view of the fact that by reason of the assessee's death, there was abatement of the said appeal and the Revenue had filed the application for setting aside of the abatement after a delay of 3345 days. The Revenue contended that it was only when notice issued to assessee from Court could not be served, death of the assessee was brought to notice of CIT and immediately thereafter, the said application was filed. However, noting that for executing the Tribunal's order, the Tax Recovery Officer had written a letter wherein demand was raised from the assessee's wife showing the assessee as deceased, the Court held that it could be concluded that department was aware of death of assessee long before and there was no explanation for gross delay caused. Accordingly, the appeal filed by the Revenue was dismissed as abated.

CIT v V.M.Varghese [2018] 94 taxmann.com 319 (Kerala) – ITA NO 1429 OF 2009 dated 23.05.2018

3173. The assessee filed an appeal before the Commissioner against the order of the AO dated 14-02-16 in manual form. The Commissioner opined that the appeal was to be filed only in electronic form and since it was filed manually, the appeal was not maintainable. The Tribunal on an appeal held that the CBDT circular which mandated the e-filing of the appeal was not applicable to orders passed prior to 1-03-2016 and since the AO had passed the order on 14-02-2016, the Commissioner was directed to admit the appeal of the assessee and pass an order on the merits of the case.

Ashraf Aziz Kasmani v. ITO – [2018] 92 taxmann.com 283 (Mumbai – Trib.) – IT Appeal No. 235 (MUM.) of 2018 dated April 2, 2018

3174. The Tribunal had dismissed the assesse's appeal for non-prosecution (ex-parte) instead of disposing of the same on merits. The rectification application filed by the assessee u/s 254(2) with the Tribunal was also dismissed by the Tribunal on account of delay in filing the said application being the prescribed the time-limit of 4 years. On appeal against the Tribunal's order rejecting the rectification application, the Court held that the assessee had to follow the mandated time-limit prescribed to approach the Tribunal

for rectification. However, it held that the Tribunal had exceeded its jurisdiction by dismissing the assesse's appeal on account of non-prosecution and not on the merits of the case since Rule 24 and 25 of the Tribunal Rules mandated the Tribunal to decide the appeal on merit even in case of ex-parte hearing. Thus, noting that the proviso to the said Rules do not stipulate any period of limitation within which the aggrieved party can approach the Tribunal, the Court held that it was open to the appellant to approach the Tribunal with a suitable application for restoration of the appeals and, accordingly, directed the Tribunal to consider the appeal on merits and in accordance with law after hearing both the parties.

Om Prakash Sangwan v ITO [2018] 94 taxmann.com 394 (Delhi) ITA NOS 625 & 626 OF 2018 dated 22.05.2018

3175. Where the CIT(A) dismissed the assessee's appeal on the ground that appeal filed in paper form was not valid, the Tribunal held that since e-filing of appeal was only a technical consideration and that eventually the appeal, although in paper form, was already on record, the CIT(A) should not have dismissed the appeal solely on ground that assessee had not filed the appeal electronically. Accordingly, it remitted the matter back to the file of the CIT(A) to decide the appeal on merits.

All India Federation of Tax Practitioners vs. ITO – [2018] 53 CCH 0087 (Mumbai ITAT) – ITA No 7134/Mum/2017 dated May 4, 2018

3176. Where the CIT(A) deleted addition on account of incentives paid by assessee to various State Electricity Boards (SEBs) under the terms of one-time settlement scheme, the Tribunal relied on the ruling of the Jurisdictional High Court in the case of Rural Electrification Corp. Ltd and held that, since the Committee on Disputes (COD), had not permitted the CBDT to pursue such issues, the said appeals were to be disposed and the Revenue would be entitled to ask for revival of the appeals if they succeed in the appeal before the Supreme Court in the other pending matters.

DCIT vs. NTPC Ltd. – [2018] 53 CCH 0101 (Delhi ITAT) – ITA No 15/Del/2009 dated May 4, 2018

3177. Where the order of the Tribunal was passed after 90 days of completion of hearing without recording any reason for the delay, Tribunal relied on the ruling of the Bombay High Court in Shivsagar Veg. Restaurant (317 ITR 433) and the Mumbai Tribunal in G. Shoe Exports v. ACIT (89 taxmann.com 308) and held that, in view of Rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963 r.w.s 254(2) of the Act, unexplained delay in pronouncement of order was not curable and even administrative clearance could not cure the same. Accordingly, accepting the assessee's request, the Tribunal held that such order was to be recalled and heard afresh as there was mistake apparent from record.

CROMPTION GREAVES LIMITED vs. CIT – [2018] 53 CCH 0039 (Mumbai ITAT) – MA No. 151/Mum/2016 Arising out of ITA No. 1994/Mum/2013 dated May 11, 2018

3178. Where the Revenue filed appeal against order of CIT(A), the assessee pleaded that the Revenue's appeal was not maintainable as the tax effect in the said appeals was less than monetary limit as prescribed in Circular No. 21/2015 dated 10 December 2015. The Tribunal held that since the Circulars were binding on the Revenue, appeals filed by the Revenue on 30 May 2014 were dismissed.

DCIT vs. Chemical & Metallurgical Design Co. Ltd. & Arn. – [2018] 53 CCH 0035 (Kolkata ITAT) – IT (SS) A. Nos. 94 & 95/Kol/2014, 1090-1092/Kol/2014 dated May 15, 2018

3179. Where the Department filed an appeal before the Court within 120 days of receipt of the Tribunal order, the Court allowed the appeal for admission hearing and held that the time limit for filing an appeal before the Court commenced from the date of receipt of the Tribunal order by the officer entitled to file the appeal. The fact that the officer was aware of the Tribunal order as it was party to various collateral proceedings was not relevant, unless there was actual receipt of the Tribunal order.

DIT(IT) vs. Hyundai Heavy Industries Co. Ltd. – [2018] 102 CCH 0012 (Uttarakhand High Court) – ITA No 30 of 2011 dated May 17, 2018

3180. The Department filed an appeal against a Tribunal order dispatched on 09.09.2009 stating that since copy of impugned order was received in office of Department only on 16.3.2011 theappeal was filed within time, the assessee argued that the appeal filed by Department was not maintainable as it was barred by limitation. The Court observed that the order was communicated and received by the office of

the Director only on 16.3.2011, pursuant to which the appeal was filed within the statutory time limit prescribed.The Court held that knowledge of such order could not be attributed to Department earlier than 16.3.2011, by virtue of it being party to various proceedings or even proceedings under Section 263 unless there was actual receipt of the order. Thus, it held the Revenue's appeal to be in time and listed the matter for hearing on admission.

DIT (IT) vs. HYUNDAI HEAVY INDUSTRIES CO. LTD. (HIGH COURT OF UTTARAKHAND) (ITA No. 30 of 2011 With Delay Condonation Application No. 3188 of 2018) dated May 17, 2018 (102 CCH 0012)

3181. The assessee filed his return of income which was enhanced by the AO by passing an order u/s 143(3) resulting in a demand of Rs. 1.39 lakhs. The assessee filed his declaration under the Samadhan Scheme, which was notified as a part of the Finance Act, 1998 during the pendency of the appeal before the Tribunal, seeking to settle its dispute and computed the amount payable to arrive at the settlement of the dispute at Rs. 38,703 determined on the basis of tax unpaid on the date of declaration. The Designated authority rejecting the computation done by the assessee, arrived at an amount of Rs. 1.66 lakhs for settlement of the tax dispute on the basis of tax unpaid on the date of deduction. A petition was filed by the assessee against the computation done by the Designated Authority as it resulted in a figure higher than what the assessee was required to pay under the Samadhan Scheme. The Court restored the matter to the Designated Authority to determine the disputed income on the basis of taxes unpaid as provided u/s 87(e) and (f) of the Samadhan Scheme which required the disputed income to be arrived at on the basis of tax unpaid on the date of filing declaration under the Samadhan scheme and not on the basis of taxes already paid by the assesseee.

Nimesh Indravadan Shah v. H.C. Parekh - [2018] 93 taxmann.com 186 (Bombay) - WRIT PETITION NO. 722 OF 1999 dated APRIL 4, 2018

3182. The Tribunal in its original order, relying on the order of the assessee's sister concern for earlier years, allowed the assessee's appeal and held that the rent received by it from its sister concern was taxable as income from other sources and not income from house property. On Revenue's application under Section 254, the Tribunal recalled its earlier order on the issue on taxability of rent received by the assessee from its sister concern on the ground the order relied upon did not consider the claim of the Revenue that rent/ compensation was chargeable to tax under the head 'income from the house property' while holding it to the taxable as 'income from other sources'. The Court admitted the assessee's Writ Petition and held that the order of the Tribunal recalling its earlier order was without jurisdiction as it amounted to review of its own order. It observed that the Tribunal had relied on the earlier year's orders in the case of the assessee's sister concern wherein the issue was duly considered and accordingly held that the Tribunal exceeded its jurisdiction in admitting the Revenue's application under Section 254 of the Act. More so, it held that the issue was a debatable issue and was outside the scope of rectification. Accordingly, it set aside the impugned order of the Tribunal.

PROCTER & GAMBLE HOME PRODUCTS PVT. LTD. vs. INCOME TAX APPELLATE TRIBUNAL & ORS. - (2018) 101 CCH 0102 MumHC - WRIT PETITION NO. 2738 OF 2017 dated Mar 9, 2018

3183. The assessee sought rectification of Tribunal's order on ground that while applying net rate of 10 per cent on gross receipt, Tribunal failed to take into consideration binding order passed by co-ordinate Bench of Tribunal of effect that net profit rate of 5 per cent was a reasonable rate. The Court held that in view of fact that Tribunal had passed impugned order on basis of order passed by co-ordinate Bench in another case relied upon by revenue, judicial discretion exercised by Tribunal could not be construed to be an error on face of record which could be rectified by resorting to section 254(2)

Ajay Kapoor v CIT [2018] 93 taxmann.com 433 (Jammu & Kashmir)- ITA NO 05 OF 2017 dated 18.04.2018

Deemed Dividend

3184. Assessee-company borrowed a sum of Rs. 4 crores from company, MPPL for business purpose.Assessing Officer noticed that there were common directors in both assessee company and MPPL and, therefore, sum of Rs. 4 crores received from MPPL was liable to be added as deemed dividend under section 2(22)(e) in hands of assessee. The Tribunal noted that in view of decision in case of Asstt. CIT v. Bhaumik Colour Labs (P.) Ltd. [2009] 118 ITD 1/27 SOT 270 (Mum.) (SB), deemed

dividend can be assessed only in hands of a person who is a shareholder of lender company and not in hands of a person other than a shareholder - since assessee, in instant case, was not a shareholder in lender company. The Tribunal held that Assessing Officer was unjustified to tax sum of Rs. 4 crores as deemed dividend under section 2(22)(e)(e).

Microfinish Valves (P.) Ltd. vs. Asst. CIT, Circle 2(1) Hubli- [2018] 100 taxmann.com 146

(Bangalore –Trib.)- ITA No. 1706 (BANG) of 2017-dated November 16, 2018

3185. Assessee-company was a common shareholder in two companies, namely, 'V' and 'P'. An information was received from Deputy Commissioner that 'P' had given loan to 'V' and since assessee was a registered shareholder having substantial interest in 'P' as well as in 'V', deemed dividend within meaning of section 2(22)(e) had arrived in hands of assessee. On basis of said information, reassessment notice was issued against assessee and addition was made. The Tribunal noted that amount given by 'P' to 'V' was depicted in balance-sheet of 'P' as Inter-Corporate Deposit (ICD) and so was position in balance-sheet of recipient, i.e., 'V'. It was abundantly clear that both parties to transaction had transacted considering transaction to be one of an ICD. The Tribunal held that since transaction demonstrated that it was in form of a 'deposit' and not as a 'loan', impugned addition made under section 2(22)(e) was justified.
KIIC Investment Company v. Dy. CIT(IT)-3(1)(2), Mumbai- [2019] 101 taxmann.com 19 (Mumbai - Trib.)- ITA Nos. 1381 (MUM) of 2017 & 564 (MUM) of 2018-November 6, 2018

3186. Assessee was a major shareholder in three companies namely, 'P', 'GVR' and 'DHR'. During year, 'P' had advanced monies to 'GVR' and 'DHR'. Assessing Officer was of view that amounts given by 'P' was deemed dividend in hands of assessee. The Tribunal noted that on dates when advances were given by 'P' to 'GVR', assessee was neither holding any shares in 'GVR' nor it was a shareholder of 'P' on aforesaid dates. Further, there was no material to point out that payment made by 'P' to 'GVR' was for individual benefit of any shareholder of 'P' or payment made to GVR was for individual benefit of assessee. However, as far as advances given by 'P' to 'DHR' were concerned, assessee had failed to bring on record any deposit agreement or any other bilateral agreement, which would prove that advances given by 'P' to 'DHR' was not loan. Thus, inclusion of amount paid by 'P' to GVR within scope of section 2(22)(e) was unjustified. However, in case of advances given by 'P' to 'DHR', same was rightly treated to be falling within scope of section 2(22)(e).
KIIC Investment Company v. Dy. CIT(IT)-3(1)(2), Mumbai- [2019] 101 taxmann.com 19 (Mumbai - Trib.)- ITA Nos. 1381 (MUM) of 2017 & 564 (MUM) of 2018-November 6, 2018

3187. Where Assessee-company and other group companies were taking money from each other and utilizing same for purpose of business transactions only and no amount had gone to shareholder, the Tribunal held that same could not be considered as loans and advances as per section 2(22) (e).
Saamag Developers (P.) Ltd. v. Asst.CIT [2018]98 taxmann.com 467/173 ITD 350 (Delhi – Trib) IT Appeal Nos. 2053 to 2057(DELHI) of 2017 dated October 8, 2018

3188. The Tribunal upheld AO’s order treating loans / advances received from the two lender companies (whose 99% shareholding was held by Sunjewel India Ltd. which also held 88% shareholding of asssessee) as deemed dividend u/s 2(22)(e), relying on the ratio laid down by Apex Court in the case of Gopal & Sons (HUF) vs CIT (2017) 391 ITR 1 (SC) wherein it was held that even a beneficial shareholder holding substantial interest in the lender company would come within the purview of section 2(22)(e). Since Sunjewel India Ltd. held more than 20% shareholding in assessee-company as well as the lender companies, it clearly had substantial interest in the assessee as well as lender companies.

Asst CIT vs Sun Jewel International P. Ltd [2018] 53 CCH 0464 (MumTrib)- ITA Nos. 5549 & 5971/Mum/2014 dated August 21 2018

3189. The Tribunal deleted the addition u/s 2(22)(e) as deemed dividend of amounts received from three companies in which assessee was a director and a substantial shareholder, holding that the provisions of said section were not attracted as the impugned amounts were received in ordinary course of business. It was noted that the assessee had received the said amounts as (i) advance as well as security deposits from one of the company (who was a tenant) with respect to property let out in normal course of business of letting out of property (ii) an advance on account of agreement to sell and (iii) interest. Accordingly, the Tribunal allowed assessee's appeal.

Jinendra Kumar Jain vs Asst CIT [2018] 54 CCH 0241 (DelTribITA NO.4126/ Del//2014 dated 19.11.2018

3190. The Court dismissed Revenue's appeal and upheld Tribunal's order deleting addition made u/s 2(22)(e), noting that the assessee never received "Payment" of "any sum" as required under the said section. It was noted that the amount credited to the sister concern's a/c in books was only an accounting entry which was reversed in subsequent year since the cheque received from the said sister concern was not accepted by the assessee (and was subsequently cancelled).

COMMISSIONER OF INCOME TAX vs. M/S ASSOCIATED METALS CO. – [TS-179-HC-2018(ALL)] - ITA No.532 of 2011 dated 01.12.2017.

3191. The Tribunal allowed assessee's (engaged in the business of 'speciality eye care hospital') appeal and deleted the addition made by the AO u/s 2(22)(e) with respect to a residential flat purchased by the assessee-company for use by its director (having 99% share of assessee-company). It was noted that the assessee-company had neither transferred the funds outside the company nor to the director, infact loan was taken for purchasing the flat. Accordingly, it was held that the provisions of section 2(22)(e) were not attracted in the present case. The Tribunal also relied on the decision in the case of Azadi Bachao Andolan 263 ITR 706 (SC) to hold that tax planning on the part of the assessee-company may be permissible so long as there is no violation of any provision of the Act.

Aditya Jyot Eye Hospital PVt. Ltd v ITO – (2018) 54 CCH 115 (Mum Trib) - I.T.A. No.5325/Mum/2015 dated 24.10.2018

3192. Where assessee director of a company received an advance from said company for blocking deal of sale and purchase on behalf of company, the Tribunal held that sum advanced to assessee was for business purposes, and same could not be taxed in assessee's hands as deemed dividend under section 2(22)(e).
Dinesh Pandey v DCIT - [2018] 92 taxmann.com 125 (Delhi - Trib.) - IT APPEAL NO. 3562 (DELHI) OF 2017 dated MARCH 9, 2018

3193. Where amounts were being received by assessee, a publishing company, from its subsidiary company engaged in distributing assessee's publications in Gulf region, only as part of regular business transactions and which were being accounted properly, the Court held that such payments could not be treated as loan or advances, so as to make disputed amounts a deemed dividend, as defined u/s 2(22)(e)
CIT v. Malayala Manorama Co. Ltd. - (2018) 253 Taxman 292 (Ker) – ITA Nos. 167 of 2008 & 1686, 1693 of 2009 dated 03.01.2018

3194. The Tribunal deleted the addition made by CIT(A) u/s 2(22)(e) considering the amounts received from various group companies as deemed dividend. It noted that assessees along with its group companies was in the process of execution of various real estate projects and that all the group companies

maintained current account with each other and transferred the money as and when needed to each other. Thus, it held that the transaction between group concerns were current and inter banking accounts containing both types of entries i.e. giving and taking amount and, hence, held that the same could not be considered as loans and advances as contemplated u/s 2(22)(e).
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

3195. The Tribunal held that where the assessee holding 48.46 percent of shares in N Ltd had received a repayment of sum given to N Ltd in the earlier years on which no addition was made, the AO was not justified in treating a similar amount received in the impugned year as deemed dividend under Section 2(22)(e) of the Act. Accordingly, it deleted the addition made.
Nanak Ram Jaisinghani v ITO - [2018] 92 taxmann.com 86 (Delhi - Trib.) - IT APPEAL NO. 6729 (DELHI) OF 2014 dated MARCH 7, 2018

3196. The assessee- partnership firm consisting of three partners, namely, 'N', 'S' and 'J' Ltd. having a profit sharing ratio of 35%, 15% and 50% respectively, had taken a loan from 'J' ltd. (wherein the assessee-firm had subscribed to the equity capital in the name of two of its partners, namely, 'N' and 'S' totalling 48.19% of the total shareholding). Thus, 'N' and 'S' were shareholders on the company's register as members of the company. They held the aforesaid shares for and on behalf of the firm, which happened to be the beneficial shareholder. The question arose as to whether for section 2(22)(e) got attracted in as much as a loan had been made to a shareholder being a person who is the beneficial owner of shares holding not less than 10% of the voting power in the assessee-company, and whether the loan was made to any concern in which such shareholder was a partner and in which he had a substantial interest (which is defined as being an interest of 20% or more of the share of the profits of the firm). The Apex Court held that for the purpose of attracting provisions of section 2(22)(e), after the amendment made in in 1987, it was not necessary for a beneficial owner to also be the registered owner. However, since the assessee placed reliance on the decision in the case of CIT v. Ankitech (P.) Ltd. (2012) 340 ITR 14 (Del HC) wherein it was held that the expression "shareholder" would continue to mean a registered shareholder even after the amendment and the same was affirmed by the Apex Court in the case of CIT v. Madhur Housing & Development Co. [Civil Appeal No. 3961 of 2013], the Apex Court placed the matter before the Chief Justice of India in order to constitute an appropriate Bench of three learned Judges in order to have a relook at the entire question.
National Travel Services v CIT – (2018) 401 ITR 154 (SC) – Civil Appeal Nos. 2068 to 2071 of 2012 & 837 of 2018 dated 18.01.2018

3197. Where the assessee-firm upon receipt of advance from group concern contended that it being a partnership firm could not be a registered shareholder in the group companies and thus could not attract provisions of section 2(22)(e), the Tribunal held that section 2(22)(e) gets attracted not only in case of registered shareholder but also in case of concern in which such shareholder is a member or partner having substantial interest. However, the Tribunal accepted that the assessee's contention thatall advances received from group companies cannot be treated as deemed dividend within the meaning of section 2(22)(e) and that the initial onus is on the AO to demonstrate that excess payments received by assessee over and above the value of transaction of purchase and sale from group concerns constituted non-trade advances and not on account of current account to record business transactions between or among group concerns. It further held that the current year business profits could not be considered as part of accumulated profits for purpose of section 2(22). The matter was remanded to AO to decide the issue de novo in the light of above observations.
Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018

3198. Where AO during assessment proceedings had examined the issue of deemed dividend in respect of loans taken from sister concern and after a detailed discussion added a certain sum as deemed dividend u/s 2(22)(e), Court held that the initiation of reassessment, after a period of four years, on the ground that while making addition u/s 2(22)(e), AO had considered only credit balance in account, not all transactions of loan/advance, is completely without jurisdiction. Court held that the reasons recorded

sought to take a different view (i.e. change of opinion) on same material on which original assessment order was passed.
B.M. Associates v ACIT – (2018) 90 taxmann.com 162 (Bom) – Writ Petition No. 2976 of 1999 dated 18.01.2018

3199. The assessee received an advance of Rs 20 Cr from Ginza Industries Ltd. ('Ginza') (in which it held more than 10 percent of its share capital) towards procurement of import License worth Rs.50 Cr. approx., which the AO taxed as deemed dividend. The Court noted that the assessee utilized advances for purchasing shares, giving loans which showed that it was assured of advance being for its own purpose and that no import license was procured and no actual imports were done by Ginza which had no intention or relevant knowledge or expertise to deal in such premium markets. Accordingly, it held that the appellate authorities had erred in ignoring the AO's detailed investigation and had erroneously classified the advances as business advancesand accordingly taxed the advance as deemed dividend in the hands of the assessee.
Prasidh Leasing Ltd. - TS-90-HC-2018(DEL) - ITA 637/2004 dated 20.02.2018

3200. The Court dismissed assessee's appeal against the Tribunal's order confirming the addition u/s 2(22)(e) on account of loan received by the assessee from a closely held company in which she was a shareholder, noting that though the assessee contended that she did not have 10% shareholding in the said company so as to be covered u/s 2(22)(e), the AO had found that the annual returns filed before Registrar of Companies (RoC), indicated the assessee had more than 10% shareholding. It was also noticed that though the company had filed a revised annual return with the RoC indicating the transfer of shares held by her, such revised return was filed only after she received notice u/s 148 for initiating reassessment proceedings to tax the said loan amount as deemed dividend u/s 2(22)(e) and thus was an afterthought to wriggle out of the liability. The Court held that all the documents produced by the assessee to claim that she did not have 10% shareholding were cooked up and since all the authorities below had concurred on the facts, no question arose from the Tribunal's order.
Lailabi Khalid v CIT - [2018] 95 taxmann.com 298 (Kerala) - IT APPEAL NO. 179 TO 181 & 197 OF 2013 dated June 11, 2018

3201. The Apex Court stayed the operation of the High Court's order wherein the High Court had upheld deemed dividend taxability on the advances received by the assessee-companyfrom another company (in which it had more than 10% shareholding), rejecting the assesse's contention that the advance was received as 'advance in the course of business'. The High Court had noted that the AO had carried out extensive and painstaking enquiry which indicated that the assessee had utilized the advances for purchasing shares and giving loans and, thus, it was concluded that the advance was used by the assessee for its own purpose.
M/S NEGOLICE INDIA LTD v CIT - [TS-280-SC-2018] - Petition(s) for Special Leave to Appeal (C) No(s). 10006/2018 dated May 04, 2018

3202. The Tribunal held that where the assessee-company was not the shareholder of lender-company, then notwithstanding the fact that both companies had common shareholder having substantial interest in both companies, taxability of deemed dividend in terms of provisions of section 2(22)(e) would not arise in hands of recipient-company (assessee) which was not registered shareholders of lender company.
INCOME TAX OFFICER & ORS. vs. PRIMA TRANSFORMER PVT. LTD. & ORS. - (2018) 52 CCH 0305 AhdTrib - ITA No(s) 573-580/Ahd/2016 dated April 02, 2018

3203. The assessee was an individual who held certain shares in the company 'B'(shares without voting rights). The said company gave loan to another company 'M' in which also the assesee held shares (15% noncumulative preference shares & shares through partnership firm but without voting rights).The AO treated the loan amount as deemed dividend in the hands of the assessee u/s 2(22)(e). However, the assessee contended that the said provisionswere applicable only if the assessee held 10% of the voting right in the payer company and held 20% of the beneficiary owners right in the receiving company. In this case, as the assessee did not hold requisite no. of shares to attract the provision of S.2(22)(e),the CIT(A) accthe Tribunal dismissed the appeal filed by the revenue.

ACIT v K.P. Singh [2018] 95 taxmann.com 263 (Delhi-Trib) – ITA NO 5472 OF 2014 dated 31.05.2018

3204. The assessee received certain amount of money under transactions recorded in mutual or current account with a company in which she owned 25.24% equity. The AO treated the same as deemed dividend under Section 2(22)(e). The Court upheld the order of the Tribunal wherein it was held that if any sum was received by the assessee which formed part of running current account giving rise to mutual obligations, the same could not be treated in the character of loan or advance out of accumulated profit. Thus, the Court held that the provisions of Section 2(22)(e) were not applicable to the sum received by the assessee.
CIT vs. Gayatri Chakraborty – [2018] 102 CCH 0053 (Kol High Court) – ITA No 160 of 2016 dated May 3, 2018

3205. Where the assessee received certain amount from a Company in the nature of loans and advances, CIT(A) upheld the AOs order wherein it was held that such amount was in the nature of deemed dividend as per Section 2(22)(e). Before the Tribunal, it was contended that the assessee's account with such Company was in in the nature of current account and not loans and advances. Relying on the decision of the co-ordinate bench in Smt. Gayatri Chakraborty (ITA No. 151/Kol/2013 dated 30.10.2015), the Tribunal held that provisions of Section 2(22)(e) are not applicable if the relevant transactions are in nature of current account transactions. However, it held that since the nomenclature by assessee alone could not determine exact nature of the relevant transactions, the matter was remanded to the AO for verification.
Rajesh Pagaria vs. ITO – [2018] 53 CCH 0028 (Kolkata ITAT) – ITA No 464 of 2014 dated May 11, 2018

Exempt Income

3206. The Court held that accumulated balance lying in provident fund of assessee upto retirement is eligible for exemption under section 10(12)
Principal Commissioner of Income-tax, Bengaluru v. Dilip Ranjrekar-[2019] 101 taxmann.com 114 (Karnataka) – ITA No.217 of 2018-date December 5, 2018

3207. The Tribunal held that where assessee-firm, in view of partnership deed (which clearly laid down that no interest on capital and remuneration was payable to partners), did not pay any interest and remuneration to its partners, such interest on capital and remuneration were not to be excluded from amount of profit eligible for exemption under section 10AA.
Asst. CIT, Circle-1 (2), Surat v. Mukta Enterprise-[2018] 100 taxmann.com 44 (Surat-Trib.)-ITA No. 294 (SRT.) of 2017-October 26, 2018

3208. The Court held that interest awarded on enhanced compensation paid by Government for acquisition of agricultural land of assessee under section 28 of Acquisition Act would partake of character of compensation and would be eligible for exemption under section 10(37) ITO, Ward-2(2),
Hubballi v. Vinayak Hari Palled- [2018] 99 taxmann.com 90 (Bangalore - Trib.)-ITA No. 05 (BANG.) of 2017-dated Ooctober 12, 2018

3209. The Court held that where assessee was holding more than 10 per cent of equity shares of lending company and also having substantial interest in borrowing company, amount of loan given by lender company to borrower company was rightly added to assessee's taxable income as deemed dividend.
Shri. Sahir Sami Khatib v. ITO [2018] 98 TAXMANN.COM 453/259 Taxman 160 (Bom.) IT AL Nos. 722 & 724 of 2015 dated October 3, 2018

3210. Assessee company was engaged in business of manufacturing drugs and pharmaceuticals. Assessee had claimed deduction u/s 10A. AO sought justification from assessee for not excluding forex income earned from export turnover and profits of business of assessee for purpose of calculating exemption u/s 10AA of Act. AO, however, found submissions of assessee unacceptable, and held that gain or profit arising out of exchange fluctuations nothing to do with sale/export of goods and not part of profit of business of an undertaking, and same was to be treated as separate income for claiming deduction u/s

10AA of Act. AO accordingly disallowed claim of assessee and recomputed eligible deduction. CIT(A) set aside AO's order. The Tribunal held that, appellant had reduced gains due to foreign exchange rate fluctuation from export turn over nut not from profit and business income as per provisions of s 10AA(7) of Act but AO in his working had reduced such gain from business profit also. This working of AO where he has completely excluded said gain from deduction u/s. lOAA was not justified under provision of income tax Act nor was supported by legal position interpreted by various judicial pronouncement which are discussed in detailed by CIT(A).

Dy.CIT vs. Zydus Hospita Oncology P.Ltd.-(2018) 53 CCH 0306 Ahd.Trib -ITA No.81/Ahd/2016- dated Jul. 9, 2018

3211. AO passed assessment order rejecting contention of assessee that its income was exempted u/s. 10(20). CIT (A) passed order holding that assessee was local authority within meaning of section. 10(20). Tribunal accepted Revenue's claim that assessee was not covered within definition of Clause (iii) of Explanation to sec. 10(20). Appellate Tribunal allowed appeal and restored back matter to CIT (A). High Court held that assessee to be local authority within meaning of sec. 10(20) Explanation. After answering issue in favour of assessee, High court held that other issues had become academic. Consequently, appeals filed by Revenue were dismissed and that of assessee were allowed. Issue was whether Urban Improvement Trust constituted under Rajasthan Urban Improvement Act, 1959 was local authority or not within meaning of Explanation to sec. 10(20). The Apex Court held that, sec. 10(20A), which existed prior to amendments made by Finance Act, 2002 exempted any income of authority constituted in India by or under any law enacted either for purpose of dealing with and satisfying need for housing accommodation or for purpose of planning, development or improvement of cities, towns and villages or for both. Rajasthan Urban Improvement Act, 1959 was enacted for improvement of Urban Areas in Rajasthan. Perusal of Scheme of Rajasthan Urban Improvement Act, 1959 as well as Rajasthan Municipalities Act, 1959 indicated that Urban Improvement Trust undertakes development in urban area included in municipality/municipal board. Urban Improvement Trust was not constituted in place of municipality/municipal board rather it undertakes act of improvement in urban areas of municipality/municipal board under Rajasthan Urban Improvement Act, 1959. It might also perform certain limited power of municipal board as referred to in sec. 47 and 48 but on strength of such provision Urban Improvement Trust did not become municipality or municipal board. Prior to deletion of sec. 10(20A), sec. 10(20A) was provision which exempted income of authority constituted in India by or under any law enacted for purpose of planning, development or improvement of cities, towns and villages or for both. There could not be any dispute that Urban Improvement Trust, i.e. assessee was fully covered by definition of authorities as contained in sec. 10(20A) prior to its deletion. When there was specific deletion of sec. 10(20A), said deletion was for object and purpose that Income of certain Housing Boards etc. to become taxable. Deletion of authorities, which were enumerated in sec. 10(20A) was clear indication that such authorities, which were enjoying exemption u/s. 10(20A) should no longer be entitled to enjoy exemption henceforth. Scheme of Rajasthan Urban Improvement Act, 1959 did not permit acceptance of contention of assessee that Urban Improvement Trust was Municipal Committee within meaning of sec. 10(20) Explanation (iii). High Court based its decision on fact that functions carried out by assessee were statutory functions and it was carrying on functions for benefit of State Government for urban development. Said reasoning could not lead to conclusion that it was Municipal Committee within meaning of Section 10(20) Explanation Clause (iii). High Court had not adverted to relevant facts and circumstances and without considering relevant aspects had arrived at erroneous conclusions. Judgments of High Court deserved to be set aside and Revenue's appeal was allowed.

ITO vs Urban Improvement Trust- (2018) 103 CCH 0034 ISCC- CIVIL APPEAL NO. 10577 OF 2018 (arising out of SLP (C) No. 16836 of 2018), CIVIL APPEAL NO. 10578 OF 2018 (arising out of SLP (C) No. 16837 of 2018), CIVIL APPEAL NO. 10579 OF 2018 (arising out of SLP (C) No. 16838 of 2018), CIVIL APPEAL NO. 10580 OF 2018 (arising out of SLP (C) No. 16839 of 2018), CIVIL APPEAL NO. 10581 OF 2018 (arising out of SLP (C) No. 18076 of 2018), CIVIL APPEAL NO. 10584 OF 2018 (arising out of SLP (C) No. 23293 of 2018), CIVIL APPEAL NO. 10582 OF 2018 (arising out of SLP (C) No. 18662 of 2018), CIVIL APPEAL NO. 10586 OF 2018 (arising out of S.L.P. (C) No. 28107 OF 2018) (Diary No. 24603 of 2018), CIVIL APPEAL NO. 10585 OF 2018 (arising out of SLP (C) No. 23294 of 2018) & CIVIL APPEAL NO. 10583 OF 2018 (arising out of SLP (C) No. 22987 of 2018)- dated 12.10.2018

3212. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.
CIT V. Chettinad Logistics (P.) Ltd. [2018] 257 Taxman 2 (SC) - Special Leave Petition (CIVIL) Diary No. 15631 of 2018javascript:void(0); ***dated July 2, 2018***

3213. The Court held that New Okhla Industrial Development Authority (NOIDA) is not a Municipality as contemplated in clause (e) of article 243P of Constitution; nor is it covered by definition of local authority as contained in Explanation to section 10(20) and thus it is income is not eligible for exemption under section 10(20).
New Okhla Industrial Development Authority (NOIDA) v. Chief CIT {2018] 95 taxmann.com 58 /256 Taxmann 396(SC)- Civil Appeal Nos. 792 & 793 of 2014 dated javascript:void(0);***July 2, 2018***

3214. Where in order to grow mushrooms, instead of horizontal use of soil, vertical space is used, still growth of mushrooms would not stand apart from agricultural operations and [Income from production and sale of mushrooms had to be regarded as agricultural income]. The Tribunal held that 'Soil' is a part of the land. Land is also part of earth. The upper strata of the land is soil and this is cultured and made fit for production of crops, vegetables and fruits etc., by enriching the soil. When such soil is placed on trays, it does not cease to be land and when operations are carried out on this 'soil', it would be agricultural activity carried upon land itself.
Dy. CIT v. Inventaa Industries (P.) Ltd. [2018] 95 taxmann.com 162/172 ITD 1(Hyd. -Trib) (SB)- IT Appeal Nos. 1015 to 1018(HYD.) of 2015 C.O. Nos. 53 to 56 (HYD) of 2015 [Assessment Years 2008-09 TO 2012-13]dated July 9, 2018

3215. The Court held that the assessee, who had retired from ICICI Bank under Early Retirement Option Scheme, was entitled to benefit of exemption u/s 10(10C), even though he had filed revised return u/s 139(5) beyond the prescribed time period, relying on the decision in the case of S. Sevugan Chettiar v. Pr. Chief CIT [2017] 392 ITR 63 (Mad.) decided in favour of the assessee on identical issue.
N. Annamalai v Pr.CIT [2018] 96 taxmann.com 183 (Madras) – WP NO. 16748 OF 2018 dated July 11, 2018

3216. The Court upheld the Tribunal's order quashing the order passed by CIT(E) by which the CIT(E) had withdrawn the approval granted to the assessee-society u/s 10(23C)(vi) on the ground that the assessee had invested / deposited funds in mode other than the ones prescribed u/s 11(5). It was noted that 13th proviso to section 10(23C)(vi) of the Act provides powers/ jurisdiction to withdraw the approval to the Govt. or the prescribed authority and the prescribed authority is CIT(E) whereas in the present case, the show cause notice issued prior to the CIT(E)'s order was signed by DCIT(Hqr). Further, it was noted that the language of the said notice also did not exhibit any thought process of / application of mind by CIT(E) rather it revealed that the same was issued and signed by DCIT(Hqr) as per instructions and directions of CIT(E). Accordingly, the Tribunal held that since the notice was not issued by the prescribed authority, the same was invalid and consequently the order passed by the CIT(E) was also invalid for want of jurisdiction.
CIT v MODERN SCHOOL SOCIETY - (2018) 407 ITR 0228 (Raj) - D.B. Income Tax Appeal No. 172/2018 dated July 31, 2018

3217. The Tribunal upheld CIT(A)'s order confirming the addition made by AO on account of proportionate decrease in the agricultural expenses incurred during the relevant year as compared to the same expenses incurred for the preceding year, holding that no plausible reasons with documentary evidences were placed for such decrease. It was noted that the assessee carried commercial (taxable) as well as agricultural (not taxable) activities and nothing concrete had been placed on record to show as to why the agricultural expenses had decreased during the year even when other expenditure on commercial activities had increased in comparison to preceding years.

Krishidhan Seeds Pvt Ltd vs Dy.CIT [2018] 54 CCH 0280 (Indore- Trib.)- ITA No.37/Ind/2013,84/Ind/2013,231/Ind/2013 and 315/Ind/2013 dated 30.11.2018

3218. The Tribunal upheld CIT(A)'s order denying exemption u/s 10(1) with respect to certain receipts claimed to be agricultural income by the assessee, noting that the assessee had failed to prove that the receipt was out of agricultural operation and that she did not produce any materials whatsoever as to give details of the nature of crop grown, expenditure incurred thereof, etc.

Urmila Ramesh vs Asst CIT [2018] 54 CCH 0269 (Bang Trib) - ITA No.2505 and 2506/Bang/2018,84/Ind/2013,231/Ind/2013 and 315/Ind/2013 dated 30.11.2018

3219. The Tribunal allowed assessee's claim for exemption u/s 10(17A)(ii) of one time receipt / award received by the assessee (foremer cricketer) from BCCI and other associations in recognition of his past achievement in Indian cricket, relying on the CBDT Circular No.447 of 1986 dated 22/01/1986 (which provides that awards received by a sportsman, who is not a professional, will not be liable to tax in his hands as the award will be in the nature of a gift and/or personal testimonial). It noted that the assessee was in employment elsewhere and thus held that the receipt was not received for professional reasons but in the capacity of a 'sportsman'. Section 10(17A) (ii) provides for exemption in respect of the payments made as a reward by the Central Government or any State Government for the specified purposes in public interest.

Chandrakant Gulabrao Borde v ITO [TS-641-ITAT-2018(PUN)] - ITA No.104/PUN/2018 dated 05.10.2018

3220. The Court allowed benefit u/s 10(23C)(iiiab) to assessee-trust having multiple education institutions under common umbrella even though some of the individual institutions did not fulfill requirements u/s 10(23C)(iiiab). It rejected Revenue's contention to deny exemption to the 3 institutions run by the assessee trust which did not receive Government grant and whose total receipts exceeded Rs. 1 Cr, holding that section 10(23C)(iiiab) is not relatable to the individual institution run under the common umbrella of a trust, it exempts the income received by a person on behalf of the institutions specified in the said clause and if the assessee trust satisfies the statutory requirement, the exemption provision would apply, irrespective of the fact that in isolated cases of a few institutions runs by such trust, the requirement may not be seen to have been fulfilled.
The Commissioner of Income Tax (Exemptions) v Deccan Education Society - ITA No 400 of 2016 -[TS-682-HC-2018(BOM)] – dated 26.11.2018

3221. Where assessee had claimed exemption u/s 10(38) in respect of LTCG on purchase and sale of units (arising on account of its investment in) a Venture Capital Fund (VCF) contending that transactions giving rise to LTCG had suffered STT and AO denied such exemption on the ground that STT liability was borne by concerned Venture Capital Fund and not by assessee, the Tribunal held that section 115U(1) clearly indicates that income accruing or arising or received by any person out of investments made by him in a VCF has to be treated on par with investments directly made by such Venture capital undertaking and once the deeming provision comes into play, it has to be given full effect. Further, with respect to Revenue's contention that compliance with SEBI (VCF) Regulations, 1996 had not been established, the Tribunal held that Form No. 64 specified in Rule 12C which is to be furnished by the VCF was filed by the assessee and the said Form by necessary implication meant that the VCF had complied with the conditions set out in Explanation (1) to section 10(23FB) and the AO had not found anything wrong in the said Form.
Gopal Srinivasan v DCIT – (2018) 91 taxmann.com 33 (Chen) – ITA Nos. 948 and 1423 (Mds) of 2016 dated 11.01.2018

3222. The Tribunal quashed CIT's order for revision u/s 263 observing that (i) the CIT had not pointed out in the impugned order as to what was the kind of enquiry that AO ought to have made but failed to make and that (ii) there were two views possible on the issue as to whether the assessee-partners would be entitled to exemption u/s 10(2A) on the share of profits credited in the partner's capital account or the share of total income of the firm declared in the firm's return of income (where both are not same).

Shri Vinod Agarwal & other v Pr.CIT - TS-17-ITAT-2018(Kol) - I.T.A No. 1895 to 1898/Kol/2017 dated 03.01.2018

3223. The Tribunal allowed exemption to assessee-employee u/s 10(10B) in principle considering the ex-gratia compensation received from the employer as 'retrenchment compensation', where the employee had invoked provisions of Industrial Disputes Act 1947 against his employer for his inter-city transfer, and after losing the case before the Industrial Tribunal, the employer agreed to an 'out-of-court' settlement under which employee received such 'ex-gratia' amount. It rejected revenue's claim that the amount was a mere 'ex-gratia' and ruled that amount was in the nature of compensation under the Industrial Disputes Act, 1947 as the employee's termination falls within the definition of 'retrenchment' under Industrial Disputes Act.
Vishnu Mohan T Nair v ITO - TS-4-ITAT-2018(Ahd) - ITA No. 1472/Ahd/2014 dated 02.01.2018

3224. The Court dismissed the Revenue's appeal against the Tribunal's order wherein relying on the Apex Court decision in the case of CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392 (SC), Tribunal had held that grant received by assessee from State Govt. in shape of allotment of land for purpose of generating employment for over 3000 people was to be regarded as capital receipt and, thus, same could not be brought to tax. It also considered the decision in the case of CIT v. Chaphalkar Bros Pune (2017) 400 ITR 279 (SC) wherein the Apex Court had approved the decision of J&K High Court in Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (SC). [The year under consideration was AY 2009-10 i.e. prior to amendment of definition of 'income' vide the Finance Act, 2015 w.e.f. 01.04.2016 inter alia to grant received from Central & State Govt.]
Pr.CIT v Capgemini India (P.) Ltd. – (2018) 90 taxmann.com 409 (Bom) – ITA No. 721 of 2015 dated 15.01.2018

3225. The Court allowed exemption u/s 10(46) in respect of grants received from government, lease, rent and fees, etc. by the assessee-authority, engaged in undertaking works relating to housing schemes and land development schemes along with various municipal functions like roads, water supply, street lighting, etc., noting that the income received by assessee was intrinsically, immediately and fundamentally connected and formed part of its role, functions and duties and the funds received by assessee were to be used for planned development and municipal services which were for general public good. It further held that the expression 'any commercial activity' used in sub-clause (b) of section 10(46) to exclude certain authorities from eligibility of exemption, would not include within its ambit and scope any activity for which fee, service charges or consideration was charged and paid, if the same was intrinsically associated, connected and had immediate nexus with object of regulating and administering activity for benefit of general public.
Greater Noida Industrial Development Authority v Union of India – (2018) 91 taxmann.com 352 (Del HC) – Writ Petition (Civil) No. 732 of 2017 dated 26.02.2018

3226. The Court held that the exemption under section 10(34) was available only for amount, which had suffered tax under section 115-O and, since, in case of deemed dividend under Section 2(22)(e) (which was not covered under 115-O for AY 2005-06), there was no payment of additional tax under section 115-O, same was not exempted.
Dr. T.J. Jaikish P.V.S. Hospitals (P.) Ltd. v CIT - [2018] 92 taxmann.com 351 (Kerala) - IT APPEAL NO. 191 OF 2013 dated MARCH 8, 2018

3227. The assessee, an employee of ICICI Bank, claimed exemption u/s 10(10C) under the revised return filed after the original return was processed u/s 143(1) with respect to Early Retirement Optional Scheme opted by him. The AO rejected the said claim on the ground that the original return was already processed u/s 143(1) and that amount received under the said scheme was not eligible for exemption u/s 10(10C). On writ petition filed by the assessee, the Court noted that in various decisions dealing with the eligibility of employees of RBI and even ICICI Bank to claim exemption u/s 10(10C) have decided in favour of the asseessee. It held that the Circular No.14(XL35) of 1955, dated 11.04.1955 mandates that the tax payers have to be guided by the AO in the matter of claims and reliefs and, thus, when an assessee files a return and pays excess tax, it is incumbent on the officials of the Income Tax Department much less the Assessing Authority to inform the reliefs entitled to the

assessees. It thus set aside the AO's order and directed the Revenue to refund the excess amount, which the assessee was entitled to, as per section 10(10C).
R. BANUMATHY vs. COMMISSIONER OF INCOME TAX & ANR. - (2018) 102 CCH 0156 ChenHC - W.P(MD) No. 10602 of 2011 dated June 05, 2018

3228. The Tribunal upheld the CIT(A)'s order allowing the assessee's claim for exemption u/s 10(37) with respect to interest awarded to him u/s 28 of Land Acquisition Act, 1894, on enhanced compensation paid for compulsory acquisition of agricultural land. As per section 10(37), any income chargeable under the head "Capital gains" arising from the compensation / enhanced compensation received for compulsory acquisition of agricultural land is exempt from tax. The Tribunal followed the decision in the case of Movaliya Bhikhubhai Balabhai v. ITO [2016] 388 ITR 343 (Guj) wherein it was held that interest u/s 28 of the said Act, partook the character of compensation and it did not fall within the ambit of the expression "interest".
ITO v Basavaraj M Kudarikannur - [2018] 95 taxmann.com 106 (Bangalore - Trib.) - IT APPEAL NOS. 1747 AND 1750 (BANG.) OF 2017 dated June 1, 2018

3229. The Court allowed the writ petition filed by the assessee, an employee of ICICI Bank, against the notice of demand issued by the income-tax department asking to pay tax payable with respect to a consolidated payment received by the assessee as per the Voluntary Retirement Scheme of the said bank, claimed as exempt u/s 10(10C) by the assesssee. The department had opined that the said scheme was not in conformity with rule 2BA and thus the amount received under the said scheme was not eligible for exemption u/s 10(10C). The Court, however, held that the demand raised by the department was not sustainable, following the decision in the case of Chandra Ranganathan v. CIT [2010] 326 ITR 49 (SC) and CIT v. KoodathilKallyatanAmbujakshan [2009] 309 ITR 113 (Bom.) wherein it was held that the employees of RBI were eligible for exemption u/s 10(10C).
A. Kumarappan v CIT - [2018] 95 taxmann.com 194 (Madras) - W.P. (MD) NO. 8436 OF 2013, M.P. (MD) NO. 2 OF 2013 dated April26, 2018

3230. The Court allowed assessee's claim for exemption u/s 10(10C) for VRS payment received by the assessee, an employee of ICICI Bank. The assessee's claim was denied by the Income-tax authorities holding that the scheme was not in consonance with Rule 2BA. The Court relied on Bombay HC ruling in Koodathil Kallyatan Ambujakshan and SC ruling in Chandra Ranganathan & Ors wherein it was held that merely because the scheme may not expressly set out that the posts (of the retiring employee) will not be filled, it could not result in the scheme not being a scheme falling under s.10(10C) r/w r.2BA. The Court noted that Bombay HC had held that Rules being procedural in nature have to be read in harmonious construction with substantive provision. It further noted that pursuant to the Bombay HC ruling, the Income Tax Department had issued a circular stating that the retiring employees of RBI (having similar scheme) would be eligible for exemption u/s 10(10C). Thus on similar lines it allowed assessee's claim for exemption.
A.Thenappan vs ITO ward no 1(3) & ACIT Circle II Madurai – TS- 252-HC-2018 (Mad)- W.P (MD) No. 9001 of 2010 & MP (MD) No. 1 of 2010.

Charitable Trust

3231. The Tribunal held that where nursing school was located within hospital's premises and students of nursing school got training in hospital, assessee's activities of running hospital and nursing school were intricately connected and dependent on each other and thus, was one inseparable activity entitling to exemption under section 11(1)
MAJ Hospital v. Dy CIT (Exemption), Kochi- [2018] 100 taxmann.com 1 (Cochin - Trib.)- ITA No. 499 (COCH.) of 2017-November 12, 2018

3232. The Tribunal held that amendment to section 11 denying depreciation to trust is prospective in nature.
MAJ Hospital v. Dy CIT (Exemption), Kochi- [2018] 100 taxmann.com 1 (Cochin - Trib.)- ITA No. 499 (COCH.) of 2017- November 12, 2018

3233. The Tribunal held that where State Government accredited Nirmithi Kendra, formed with objectives of generating and propagating innovative housing ideas, carried out construction activities in lieu of supervisory charges and said activity became its principal activity, exemption could not be allowed.
Nirmithi Kendra v. Dy. CIT, Esemption- [2018] 100 taxmann.com 293 (Cochin - Trib.)- ITA Nos. 45 (COCHI) of 2017 & 111 (COCH.) of 2018-October 26, 2018

3234. The Tribunal held that where assessee-society was formed with an object to build, maintain and run hospitals, dispensaries and provide and other medical reliefs mere fact that it charged certain nominal fee for providing said services, it could not be concluded that assessee's case fell under proviso to section 2(15) and, thus, exemption of income claimed by assessee was to be allowed.
ITO (E), Trust ward-1(1), New Delhi v. Escorts Cardiac Disease Hospital Society-[2018] 99 taxmann.com 86 (Delhi - Trib.)- ITA No. 6439 (DELHI) of 2015 October 5, 2018

3235. The assessee paid honorarium to doctors outside India for attending a seminar conducted for benefit of its parent body. The Tribunal held that in view of fact that even though said payments were covered under FEMA, yet assessee did not obtain approval of RBI, there was violation of section 11(1)(c) and, consequently, assessee's claim for application of income in respect of payments in question was to be rejected.
ITO (E), Trust ward-1(1), New Delhi v. Escorts Cardiac Disease Hospital Society-[2018] 99 taxmann.com 86 (Delhi - Trib.)- ITA No. 6439 (DELHI) of 2015 Ooctober 5, 2018

3236. The assessee paid honorarium to doctors outside India for attending a seminar conducted for benefit of its parent body. The Tribunal held that in view of fact that even though said payments were covered under FEMA, yet assessee did not obtain approval of RBI, there was violation of section 11(1)(c) and, consequently, assessee's claim for application of income in respect of payments in question was to be rejected
ITO (E), Trust ward-1(1), New Delhi v. Escorts Cardiac Disease Hospital Society-[2018] 99 taxmann.com 86 (Delhi - Trib.)- ITA No. 6439 (DELHI) of 2015 Ooctober 5, 2018

3237. Where funds of assessee-trust were utilized for purchase of car in name of its trustee and there was violation of section 13(2)(b), read with section 13(3), the Tribunal held denial of exemption under section 11 should be limited only to amount which was diverted in violation of section 13(2)(b). The Court dismissed the Department's appeal and upheld the order of the Tribunal.
CIT(Exemptions), Pune v. Audyogik Shikshan Mandal- [2019] 101 taxmann.com 247 (Bombay)
ITA No. 764 of 2016- dated December 18, 2018

3238. Where High Court upheld Tribunal's order that rent paid by assessee-trust to a trustee for using land and building was not excessive and, thus, exemption could not be denied to assessee under section 11 by invoking provisions of section 13(1)(c), SLP filed against said order was to be dismissed by the Apex Court.
CIT, (Exemptions) v. Bholaram Educational Society- [2019] 101 taxmann.com 193 (SC)-SLP(CIVIL)
Diary No. 44677 of 2018-dated December 14, 2018

3239. Assessee was a charitable trust enjoying registration under section 12AA. During relevant years assessee had incurred expenditure, some of which was paid to one SBC towards advertisements in various magazines and souvenirs. Assessing Officer noticed that said SBC was a partnership firm consisting of three partners who happened to be trustees of assessee trust. Assessing Officer opined that firm i.e. SBC, was a firm covered under section 13(3)(e) vis-a-vis trust and thus denied benefit under section 11 relying upon provisions of section 13(2)(c). Commissioner (Appeals), however, took a view that payments made by assessee were not in excess of what may be reasonably paid for services in question and deleted disallowance made by Assessing Officer. Tribunal upheld order passed by Commissioner (Appeals). The Court held that in order to invoke provisions of section 13(2)(c), essential requirement is that amount paid to person referred to in sub-section (3) of section 13 is in excess of what may be reasonably paid for services rendered and since, in instant case, Commissioner (Appeals)

and Tribunal had elaborately examined accounts of assessee, payments made to SBC, payments made to other agencies for similar work, comparative rates of payments etc. and came to conclusion that no excess payment was made to related person, impugned order passed by them did not require any interference.
CIT, (Exemption) Pune v. Sri Balaji Society-[2019] 101 taxmann.com 52 (Bombay)- ITA Nos. 762 & 782 of 2016-December 11, 2018

3240. Where High Court upheld Tribunal's order holding that activity carried on by assessee to advancecomputer communication in India in all aspects with a view to promote rapid nationwide development of sector and to promote technological growth of country was charitable in nature, SLP filed against said decision was granted by the Apex Court.
CIT (Exemption) v. Ernet India-[2019] 101 taxmann.com 60 (SC)- SLP(CIVIL) Diary No (S). 41159/2018-December 3, 2018

3241. The Apex Court dismissed SLP against High Court ruling that where assessee society was set up with object of imparting education and it had entered into franchise agreements with satellite schools and also used gains arising out of these agreements in form of franchisee fees for furtherance of educational purposes, it fulfilled requirements to qualify for exemption under section 10(23C)(vi)
Dir. of IT (Exemptions) v. Delhi Public Schools Society- [2018] 100 taxmann.com 80 (SC)- SLP(CIVIL) Diary Nos. 38347 of 2018-dated November 12, 2018

3242. The Apex Court dismissed SLP dismissed against High Court ruling that where assessee society was set up with object of imparting education and it had entered into franchise agreements with satellite schools and also used gains arising out of these agreements in form of franchisee fees for furtherance of educational purposes, it fulfilled requirements to qualify for exemption under section 10(23C)(vi).
Dir. of IT (Exemptions) v. Delhi Public Schools Society- [2018] 100 taxmann.com 370 (SC)- SLP(CIVIL) Diary No. 41122 & 42797 of 2018 – December 4, 2018

3243. Where assessee did not include value of land owned by him in taxable wealth on ground that he had entered into a joint development agreement with a builder and, thus, said land constituted stock-in-trade, the Court held that in view of fact that land was reflected as capital asset in assessee's books of account and, no development took place after executing agreement with builder, land in question was to be treated as an 'asset' includible in net wealth under sec. 2(ea)
Devineni Avinash v. Pr. CIT, Vijayawada- [2018] 100 taxmann.com 75 (Andhra Pradesh and Telangana)- W.T.A. No. 2 of 2017 & 1, 2 & 3 of 2018-dated October 11, 2018

3244. Assessee-trust was granted registration under section 12AA. Subsequently, Commissioner cancelled assessee's registration on ground that assessee had not carried out charitable activities during relevant period. Tribunal set aside order passed by Commissioner on ground that whether assessee was involved in a charitable activity or not, could be considered in assessment proceeding. The Court held that whether the assessee was involved in any charitable activities or not and whether income so derived had been apportioned towards any other purpose, could be considered only during course of assessment proceedings and not at time of considering application for registration under section 12A and upheld the order of the Tribunal.
Dir. IT, Exemption v. D.R. Ranka Charitable Trust-[2018] 100 taxmann.com 371 (Karnataka)- ITA No. 44 of 2014-November 20, 2018

3245. The Tribunal held that where assessee educational institution existed solely for purpose of education and its receipts were applied only for educational purpose and Assessing Officer also did not dispute the same, assessee could not be denied exemption under section 10(22) merely on ground that it was receiving fees from foreigner students in foreign exchange abroad by way of an arrangement with an educational organisation abroad.
Dy. Dir. IT- (E), Mumbai v. American School of Bombay Education Trust -[2018] 100 taxmann.com

338 (Mumbai - Trib.)- ITA No. 5581 (MUM) of 2014- CO No. 16 (MUM.) of 2016-November 28, 2018

3246. The Court upheld the Tribunal order holding that even if payer company had not paid tax on dividend distribution under section 115-O, exemption would be allowed to receiver in terms of section 10(34).
Pr. CIT v. Smt. Kayan Jamshid Pandole-[2018] 100 taxmann.com 284 (Bombay)- [2018] 100 taxmann.com 284 (Bombay)-ITA No. 387 of 2016-November 19, 2018

3247. The Tribunal held that where Commissioner (Exemptions) had a valid and reasonable apprehension that in case of dissolution, properties of trust created and constituted out of 100 per cent grants given by Government, may be distributed amongst private individual members of trust, application of trust for registration under section 12A had been rightly rejected
Sri Dashmesh Academy Trust v. CIT, (Exemptions), Chandigarh-ITA No. 1257 (CHD) of 2017-October 30, 2018

3248. The Court held that where assessee-trust was established pre-dominantly with an object of providing education to all sections of society, mere fact that it spent a meagre amount of its total income on some allied charitable activities such as providing food and clothing to relatives of poor students, would not stand in way of denying benefit to it under section 10(23C)(iiiad)
Sri Sai Educational Trust v. CIT (Exemption), Chennai-[2018] 100 taxmann.com 50 (Madras)- W.P. No. 11301 of 2018- WMP No. 13199 OF 2018-dated October 10, 2018

3249. The Tribunal held that where receipts of assessee-association, (formed with an object to promote and afeguard rubber industries), from non-members and other sources was utilised/applied solely towards promotion of objects of association and no portion was paid or transferred directly or indirectly to its members, proviso to section 2(15) would not be attracted and the exemption u/s 11 could not be denied.
All India Rubber Industries Association v. Addl. Dir. IT (E), Mum-[2018] 100 taxmann.com 7 (Mumbai - Trib.)-[2018] 100 taxmann.com 7 (Mumbai - Trib.)- ITA Nos. 1368, 3994 (MUM.) of 2016 & 247 (MUM.) of 2017-October 12, 2018.

3250. The Tribunal held that contribution made by assessee-association, (formed with an object to promote and safeguard rubber industries), to corpus of Rubber Skill Development Centre, a section 25 company formed under Prime minister Sector Skill development programme, was not a case of investment as envisaged under section 11(5) read with 13(1)(d), and, thus, assessee could not be denied exemption under section 11.
All India Rubber Industries Association v. Addl. Dir. IT (E), Mum-[2018] 100 taxmann.com 7 (Mumbai - Trib.)- ITA Nos. 1368, 3994 (MUM.) of 2016 & 247 (MUM.) of 2017-October 12, 2018.

3251. The Tribunal held that (i) where assessee charitable trust was engaged in promotion of cricket and Assessing Officer denied its entire claim for exemption under section 11 on grounds that a part of expenditure incurred by assessee was not for object of trust, since assessee had not violated any of conditions of section 13, assessee's claim for exemption could not be disallowed fully but it had to be disallowed only to extent of such part of expenditure which was not incurred for object of trust.

(ii) Where application of assessee charitable trust for issuance of notification under section 10(23) impugned assessment year was still pending before appropriate authority, Assessing Officer wasto be directed to consider assessee's claim of exemption under section 10(23) in case a notification under section 10(23) was issued for impugned assessment year by appropriate authority.

(iii) Where assessee trust claimed expenditure towards travel expenses of its office bearer claimingthat he had gone to Delhi to pursue application of assessee under section10(23) before CBDT, since assessee had not furnished details along with corresponding invoices and vouchers in respect of such visit of its office bearer and, thus, failed to justify such travel expenditure, Assessing Officer had correctly disallowed same.

(iv) Where assessee trust, engaged in promotion of cricket, claimed expenditure on account ofpurchase of complementary tickets for different international matches for VIPs so as to popularise game of cricket amongst VIPs, since assessee had furnished details of ticketspurchased withsupporting evidence and Commissioner (Appeals) had also given a factual finding that amount spent for purchase of tickets was very small having regard to operations of assessee, expenditure claimed by assessee was to be allowed.

(v) Where assessee trust, engaged in object of promotion of cricket, claimed expenditure towardsforeign travel of its office bearers for purpose of attending a meeting, since Commissioner (Appeals), after perusing material on record, was convinced that there was a definite purpose for which foreign visits were undertaken by concerned persons, foreign travel expenditureclaimed by assessee was to be allowed.

(vi) Entertainment expenditure for wine, food and gift incurred by assessee-charitable trust, engaged in promotion of cricket, for Government officials and other persons during a meeting was not to be allowed.

Board of Control for Cricket in India v. ITO(Exemp.) Ward-1(1), Mumbai -[2018] 100taxmann.Com 246 (Mumbai - Trib.)- ITA Nos. 9272 (MUM.) of 2004, 616, 1443, 2244, 6705, 7066 (MUM.) of 2005- October 31, 2018

3252. The Tribunal held that where assessee, a trust registered under section 12AA, was running various educational institutions, in view of fact that it collected huge amount of capitation fee from students for admission to medical colleges, impugned order passed by Commissioner (Exemption) cancelling registration granted to assessee under section 12AA as well as withdrawing exemption granted to it under sections 10(23C)(vi) and 10(23C)(via) was justified.
Indian Medical Trust v. Pr CIT(Central) Jaipur-[2018] 99 taxmann.com 273 (Jaipur -ITA Nos. 736 (JP) of 2017 & 252, 253 & 545(JP) of 2018- October 12, 2018

3253. The Tribunal held that where assessee trust engaged in running various educational institutions was denied registration under section 12AA merely on ground that some part of land on which assessee had setup a university was not in ownership of said university as per certain Government notification, same was unjustified.
Indian Medical Trust v. Pr CIT(Central) Jaipur-[2018] 99 taxmann.com 273 (Jaipur - Trib.)- ITA Nos. 736 (JP) of 2017 & 252, 253 & 545(JP) of 2018- October 12, 2018

3254. The assessee, Urban Improvement Trust constituted under the Rajasthan Urban Improvement Act, 1959 claimed that it was a local authority within the meaning of clause (iii) of Explanation to section 10(20) and was thus entitled for exemption under section 10(20). The Assessing Officer rejected the claim of the assessee that its income is exempted under section 10(20). CIT(A) passed an order holding that assessee is a local authority within meaning of section 10(20). The Tribunal accepted the revenue's claim that assessee is not covered within definition of clause (iii) of Explanation to section 10(20). The High Court held the assessee to be local authority within the meaning of section 10(20) Explanation. On appeal by revenue before the Supreme Court, the Apex Court held upon perusal of Scheme of Rajasthan Urban Improvement Act as well as Rajasthan Municipalities Act, it was evident that though assessee undertook development in urban area included in municipality/municipal board, it was not constituted in place of municipality/municipal board. Further, scheme of Rajasthan Urban Improvement Act, 1959 did not permit acceptance of contention of assessee that it was a Municipal Committee. Moreover, fact that functions carried out by assessee were statutory functions carried out for benefit of State Government for urban development also did not lead to conclusion that assessee was a Municipal Committee within meaning of clause (iii) of Explanation to section 10(20). Thus, assessee not being a Municipal Committee within meaning of clause (iii) of Explanation to section 10(20) would not be entitled to tax exemption under said provision.
Income Tax Officer v. Urban Improvement Trust-[2018] 98 taxmann.com 237 (SC)-CA Nos. 10577 to 10586 of 2018- date October 12, 2018

3255. Assessee-trust had advanced certain amount without interest to two independent trusts. Trustee of assessee-trust was also President of those two independent trusts. Assessing Officer was of opinion that assessee-trust had utilized funds for benefit of its trustee and thus, denied claim of assessee under section 11. However, as Assessing Officer had not verified that said trustee of assessee-trust held more than 20 per cent share of profit in those two trusts. matter was remanded by Tribunal to be remanded back for said factual verification.

Asst. CIT (Exemptions), Cir.-1, Kolkata v. Hooghly Engineering & Technology College Society-[2018] 96 taxmann.com 14 (Kolkata - Trib.)-ITA No. 1579 (KOL.) of 2016-dated July 4, 2018

3256. Where Assessing Officer disallowed a part of remuneration paid to trustee by assessee -trust taking a view that it was excessive. The Court held that in view of fact that assessee -trust earned income and paid remuneration to trustee who had also offered tax on remuneration received by her, impugned disallowance was to be deleted.

CIT, Mangaluru v. Swadeshi Internationals-[2019] 102 taxmann.com 373 (Karnataka)- IT Appeal No. 244 of 2010 dated December 11, 2018

3257. The Court held that where one of trustees had gone abroad for promoting business of assessee. Trust, mere fact that he went on a tourist visa could not be a ground to conclude that no business was transacted and, thus, impugned disallowance of 50 per cent of foreign travel expenditure was to be deleted.

CIT, Mangaluru v. Swadeshi Internationals- [2019] 102 taxmann.com 373 (Karnataka)- IT Appeal

No. 244 of 2010, dated December 11, 2018

3258. The Assessee was registered society under Rajasthan Societies Act, 1958 for charitable and general public utility services. The Assessee filed an application for registration under section 12AA. The Commissioner (Exemptions) rejected said application on ground that in order to decide matter of seeking registration under section 12AA, genuineness of activities being undertaken by the assessee were to be examined but in spite of granting sufficient opportunity, the Assessee failed to produce details and documents in support of its claim for registration. The Tribunal opined that stage for consideration of relevance of object of trust and application of its fund would arise at time of assessment when benefits were claimed by the Assessee in terms of sections 11 and 12. However, at time of registration of trust, what has to be looked into is whether trust is genuine one or it is a sham institution floated only to avail benefits of exemption under Act. The Tribunal thus allowed appeal filed by the Assessee and passed order to grant registration under section 12AA to the Assessee. The Court Held that order of the Tribunal was justified.

SLP granted in CIT v. Dali Bai Sewa Sansthan [2018] taxmann.com 290/259 Taxmann 346(SC)-

Special Leave Petition (Civil) Diary No. 32465 of 2018 October 12, 2018

3259. The Commissioner (Appeals) passed an order whereby he cancelled registration of the assessee under section 12A retrospectively with effect from 1-4-2005 on ground that activities of the assessee were not being carried on in accordance with provisions of section 12A retrospectively with effect from 1-4-2005 on ground that activities of the Assessee were not being carried on in accordance with provisions of section 12A. The Tribunal after examining matter at length, recorded a finding of fact that since there was no cogent material or evidence to establish any violation of provisions of section 12AA (3), cancellation of registration of assessee-society retrospectively was not justified. The Court held that no question of law arose out of impugned order.

SLP granted in CIT v. Rama Educational Society [2018] 99 taxmann.com 282/259 Taxman368

(SC). SLP (Civil) Diary No(s). 29841 of 2018 dated October 1, 2018

3260. During assessment proceeding, assessee was denied registration u/s 12AA as activities carried on by it involving carrying on of business and trade did not fall within definition of preservation of environment as it was inserted in s. 2(15) w.e.f. 01/04/2009. Later on, assessee's application for registration u/s 12AA was granted by CIT(A) as it was held to be doing charitable activity. CIT(A) also allowed exemption u/s 11. The Tribunal held that CIT(A) found that phrase "not involving activities for profit", was deleted by way of Finance Act 1983 w.e.f. 1-4-1984 and same was reintroduced in Act by way of

Finance Act 2008 w.e.f. 1-04-2009. During period 1-4-1984 to 31-3-2009 there was no provision in Act which qualified charitable activities by "not involving activities for profit". AO had interpreted a meaning while framing assessment of a term which was not part of Act for period under consideration. Said findings of CIT(A) were crystal clear and did not require any interference. Revenue's ground dismissed.

Dy. CIT vs. U. P. Forest Corpn-(2018) 54 CCH 0369 LucknowTrib-ITA Nos. 352 to 356/Lkw/2017-

Dated Dec 13, 2018

3261. The Tribunal held that removal and disposal of trees and exploitation of forest resources is in the nature of preservation of environment and thus, such activities are held to be Charitable in nature. Thus, the order of the CIT(A) granting registration u/s 12A was upheld and Revenue's appeal was dismissed.

Dy. CIT vs. U. P. Forest Corpn-(2018) 54 CCH 0369 LucknowTrib-ITA Nos. 352 to 356/Lkw/2017-

Dated Dec 13, 2018

3262. Assessee was aggrieved by cancellation of registration granted u/s 12AA and was also aggrieved by enhancement of its income by CIT(A) from NIL income to Rs. 4,88,140/- even knowing that said amount of contribution was received by assessee from members for reimbursement of expenses. The Tribunal held that Bombay High Court in Trustees of Shri Kot Hindu Stree Mandal Vs. CIT held that membership and subscription amounts received by assessee from its members could not be characterized as "voluntary contribution".CIT(A) declined to recognize said judgment only on ground that assessee was assessed in status of an AOP and its registration as member was cancelled.Since registration u/s 12AA was protected till 01.10.2014, therefore, action of CIT(A) was uncalled for.Assessee's ground was allowed.

LORDS DISTILLERY LIMITED & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS.

(2018) 54 CCH 0370 DelTrib- ITA No. 2576/Del/2010 dated 14.12.2018

3263. During assessment proceeding, AO noted that assessee in its computation of income had claimed, excess application made during year and excess application of income of earlier year to be carried forward and to be set off against future income receipts.AO stated that even though capital expenses in case of a charitable institution were allowable as application of income, no claim for carry forward of loss on account of capital expenses was allowable.AO disallowed carry forward of either current year loss or of earlier year loss.CIT(A) confirmed AO's action. The Tribunal held that coordinate Bench in assessee's own case for AYs 2008-09 and 2009-10 held that in case of a charitable trust, their income was assessable under self contained code mentioned in Ss 11 to 13 and income of charitable trust was not assessable under head "profit and gains of business" u/s 28 in which provision for carry forward of losses was relevant.Income derived from trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by trust for charitable religious purpose in earlier years against income earned by trust in subsequent year will have to be regarded as application of income of trust for charitable and religious purpose.Thus, carry forward of current year's loss was allowed to be set off in future years

KSD CHARITABLE TRUST vs. ASSISTANT COMMISSIONER OF INCOME TAX. (2018) 54 CCH

0347 DelTrib- ITA No. 3033/Del/2015 dated 13.12.2018

3264. The AO found that administrative expenses claimed by assessee worked out to 95.40% of total expenses and hence, in violation of Foreign Contribution Regulation Rules,2011 wherein, it was defined that not more than 50% of foreign contribution should be defrayed to meet administrative expenses of association. The CIT(A) disallowed assessee's claim. The Tribunal confirmed the disallowance by relying on Maddi Venataraman & Co P ltd vs Apex Court wherein it was held that it was against public policy to allow benefit of deduction under one statue of any expenditure incurred in violation of provisions of another statue.

Avvai Village welfare society vs ITO- (2018) 54 CCH 0205 ChenTrib-dated 08.10.2018

3265. During assessment proceedings, AO observed that Assessee trust had paid an amount as rent to its own accountant Shri A, which was disallowed by the AO as the Trust was already having its own building in address and said programme was carried out basically in costal areas and there was no

need for a separate rental building to be maintained as office. The Tribunal held that assessee made provision for office rent and electricity charges and in order to maintain separate records and personnel pertaining foreign aided GIZ project, assessee had opened separate office and paid rent. Since owner of building insisted rent in cash, Financial controller of society drew a cheque in his own favour, enchased the same and paid to building owner. Moreover, the said rent was not paid from resources of society but out of foreign fund.

Avvai Village welfare society vs ITO- (2018) 54 CCH 0205 ChenTrib-dated 08.10.2018

3266. Assessee had claimed deduction u/s 11(2). Assessee submitted that it was engaged in providing medical facilities at various centers. At time of setting apart of funds, two hospital projects were coming up and modern amenities were required to be provided in existing hospitals. Board of trustees passed resolution to set apart such amount to finance future requirement of trust's projects. AO held that neither there was no such specification in declaration in Form 10 nor in resolution of board of trustees contained any such specification. CIT(A) confirmed AO's action. However, ITAT granted relief to assessee. Held, section. 11(2)(a) provided that such person furnishes statement in prescribed form and in prescribed manner to AO staying purpose for which income was being accumulated or set apart and period for which income had to be accumulated or set apart which should in no case exceed 5 years. Statement of purpose for which income was accumulated or set apart was one of requirements which must be satisfied before assessee could avail benefit u/s 11(2). However, that by itself would not mean that any inaccuracy or lack of full declaration in prescribed format by itself would be fatal to claimant. Prime requirement of said clause was of stating of purpose for which income was accumulated or set apart. In present case, AO called upon assessee to explain position in response to which, assessee pointed out background under which board of trustees had met, considered material and eventually passed a formal resolution setting apart the funds for ongoing hospital projects of Trust and for modernization of existing hospitals. There was a clear statement made by assessee setting out purpose for which income was being set apart. The Court held that ITAT had rightly allowed assessee's appeal. Consequently, Revenue's appeal was dismissed by the Court.

CIT(Exemptions) vs Bochasanwasi Shri Akshar Purshottam Public Cable Trust- (2018) 103 CCH 0225 GujHC- R/Tax Appeal No 1260,1261 of 2018

3267. Assessee, registered society u/s. 12AA was engaged in imparting education through running school. AO noted that Assessee made investment in purchase of land and farm houses during year out of sale proceeds of land sold in AY 2007-08, which were not used for purpose of education. AO issued show cause notice giving reference to substantial profits generated year after year, rejection of approval u/s. 10(23C)(vi) and investment in purchase of farm houses and land not used for purpose of education. AO denied benefit of exemption u/s. 11(1) and computed income under chapter-IVD, by treating surplus amount as income mainly on ground that assessee-society was not engaged in providing education but for earning profits only. AO held that sale consideration of land was utilised in purchase of any asset during previous year relevant to AY 2007-2008 and disallowed deduction u/s. 11(1A)(a) for capital gain. CIT(A) applied s 11(1B) and directed to enhance income. The Tribunal held that, assessee had purchased land and used accumulated amount for charitable and educational purposes. No evidence had been brought on record by Revenue to prove that land at Gopalpura and Lohari were used for non-educational and non-charitable purposes. CIT(A) made reference to two properties which had got no bearing on issue, as said two properties according to explanation of assessee, were not utilised for accumulated profits u/s. 11(2) because accumulation had been made u/s. 11(2) in respect of three properties only. CIT(A) wrongly applied sec. 11(1B) as assessee accumulated its income u/s. 11(2) and in that situation sec. 11(1B) was not applicable. Accumulation was u/s. 11(2) and not under explanation to sub-section 11(1) as was clear from order passed by CIT(A) and Tribunal in AY 2007-2008 and it was clearly noticed that Form-10 had been filed in AY 2007-2008 which was applicable for accumulation of income u/s. 11(2) only. Findings of CIT(A) that sec. 11(3) was applicable was also not correct because income accumulated u/s. 11(2) was applied for educational purposes. Considering totality of facts and circumstances of case no addition could be made against assessee of such nature. Order of CIT(A), therefore, could not be sustained in law for enhancing income of assessee and that too by invoking sec. 11(1B) and 11(3), which were not applicable to case of assessee.

ACIT vs The Scientific and Educational Advancement Society- (2018) 54 CCH 0096 DelTrib- ITA

No. 4944,4430/Del/2012 dated 15.10.2018

3268. The Tribunal relying on CIT v. Institute ofBanking Personnel Selection [2003] 264 ITR 110/131 Taxman 386 (Bom.) and Govindu Naicker Estate v. Asstt. DIT [2001] 248 ITR 368/[1999] 105 Taxman 719 (Mad.) allowed exemption u/s 11 to an assessee trust and held that expenditure incurred for religious and charitable purposes by assessee in an earlier year could be adjusted against income of the succeeding year while computing taxable income.

ITO ward 1 vs Namma Sangha (2018) 98 taxmann.com 307 (Banglore-Trib)- ITA No 1562 of 2018

dated 24.09.2018

3269. The Tribunal allowed assessee's appeal for statistical purposes whose registration had been denied by Commissioner u/s 12A and held that where a trust/institution that did not function in conformity with its objects, could not claim genuineness of its activities and profit-making per se could not be regarded as detrimental as long as it feeds a charitable purpose. Further, the Tribunal held that education is a charitable purpose per se and activities, of an educational trust would not necessarily have to be targeted to serve or educate the poor.Thus, the Tribunal, remanded the matter back to the AO and gave assessee an opportunity to exhibit its' activities as being undertaken toward and in satisfaction of its stated object/s, and in line with the intention of its' founder/promoter's exhibited while forming the Trust.

Lord Shiva Education Welfare Society vs CIT(Exemption)- (2018) 97 taxmann.com 501 (Amritsar-

Trib)- ITA No 605 of 2017 dated 10.09.2018

3270. During scrutiny assessment, AO noted that assessee had advanced a sum to M/s. VUB Timbers which was a proprietary concern of wife of the Managing Trustee of assesse.The AO held that there was violation of provisions of section 13(1)(c) as money was advanced to person specified u/s 13(3) and concluded that assesse was liable to be taxed for further amount @18% interest on advance and since there was a violation of provisions of s. 13(1)(c), exemption u/s 11 was denied by AO and the same was further upheld by the CIT(A). However, the CIT(A) directed to allow exemption for balance amount thereby restoring exemption u/s 11.The Tribunal observed that the timber is normally purchased only subsequent to construction of building but here even without constructing any building, assessee had made advance for purchase of timber and further, no wood was received by assessee, hence, the Tribunal concluded that in the garb of purchase of timber, advance amounts were diverted for personal benefit of an interested party and thus there was clear violation of provisions u/s 13(1)(c). Further, the Tribunal also held that assessee was paying interest on borrowings, and therefore, notional interest @ 18% on advance amount was rightly brought to tax by AO.

Ilahia Trust vs ACIT (exemption)- (2018) 54 CCH 0131 Cochin Trib- ITA No 313/Coch/2018 dated

29.10.2018

3271. The Assessee filed an application u/s 12AA for grant of registration in office of CIT (E) and the same was rejected by noticing that AO had not recommended case for grant of registration u/s 12AA as assessee had failed to furnish information/documents as desired by AO and no work of charity was done by assessee. The Tribunal had allowed assessee's appeal by holding that CIT(E) had refused to grant registration without disclosing complete contents of report and without confronting same to assessee on Revenue's appeal,the Court noted that both CIT(E) and Tribunal had passed a non-speaking order and held that orders passed by them were in violation of principles of natural justice, thus the Court remitted the matter to CIT(E) to pass a fresh speaking order after affording an opportunity of hearing to the assessee.

CIT (exemptions) vs Tara Ripu Damanpal Trust- (2018) 103 CCH 0144 PH HC- ITA No 196/2016

dated 22.10.2018

3272. The Tribunal held that where the assessee an educational trust filed affidavit to effect that trust was created with main object of educating public by establishing schools, technical colleges and other educational institutes and it was not doing any activities other than educational services, registration

under section 10(23C)(vi) could not be denied merely because aims and object of assessee-trust included some clauses which were not for purposes of education.

St Mary's Education Trust vs CIT(Exemption)- (2018) 97 taxmann.com 639 (Amritsar- Trib)- ITA No 710 of 2017 dated 06.09.2018

3273. The Tribunal held that where an assessee educational trust was engaged in running, managing and developing school to provide educational facilities along with scholarships to poor and disabled children, registration under section 12A could not be denied on ground that assessee claiming exemption under section 10(23C) (iiiad) should have sought approval under section 10(23C) (vi) and not under section 12A.

Swami Vivekanand Education Society vs CIT (Exemption)- (2018) 98 taxmann.com 232 (Chandi-Trib)- ITA No 388 of 2018 dated 06.09.2018

3274. The Court held that where an assessee-trust filed application for registration under section 12AA with a delay of 18 years contending that the founder of trust was an elderly person who was under bona fide impression that trust had been registered under Act, reason so assigned by the assessee was held not sufficient for condonation of delay and, thus, registration granted to assessee-trust could only be from prospective effect.

CIT-I vs Hemla Trust-(2018) 98 taxmann.com 293 (Madras)- Tax Case No 637 of 2009 dated 03.09.2018

3275. Assessee Trust was established for benefit of humanity which were charitable in nature and had applied for registration u/s 12AA before CIT and also an application was filed for exemption u/s 80G.The CIT rejected assessee's grant of registration and application for exemption and noted that there were five initial trustees, and all were non-residents. Further, inn terms of Explanation 1 to section 60 and 73 of Indian Trust Act, a non-resident could not be a trustee of an Indian resident trust unless they are domiciled in India. The Tribunal on appeal held that, section. 73 of Indian Trust Act, 1882 does not forbid appointment of NRI, and such provision per se could not invalidate a Trust, but rather provided bar for appointment of non-resident as a trustee. Further, the Tribunal noted that, before CIT in application filed in 'Form 10A', assessee had already given list of trustees and one of the trustees was citizen of India and domiciled in India. Thus, it held that simply because other four trustees were non-resident it would not make the assessee an invalid trust. Further, the Tribunal held that CIT had not examined objects and genuineness of activities of assessee which were required to be examined while considering registration u/s 12AA, and therefore, the Tribunal restored back to CIT the matter of registration and directed to examine 'objects' of Trust as well as genuineness of its activities.

Global academy of emergency medicine vs CIT- (2018) 54 CCH 0125 Del Trib- ITA No 6291/Del/15 dated 14.09.2018

3276. Assesee, a society registered u/s.12A was the apex body for Indian automobile manufacturers and worked for sustainable growth of automobile industry in India. The Ministry of Road Transport and Highway (Ministry) had sanctioned certain sum to the assessee for setting up model inspection & certification centres. Assessee was to execute project for and on behalf of Ministry and amount received was in form of a financial sanction and not a grant. The AO made addition on account of un-utilized funds, for overseeing project and held that amount received from Ministry was income/revenue receipt. The CIT(A) deleted the addition and the same was uphled by the Tribunal. The Court observed that on completion of project, unutilised amount was to be returned to Ministry. Further even though funds were routed and kept in a separate bank account in name of assessee it did not belong to assessee but belonged to Ministry. Thus, the Court concluded that, there was no reason upsetting the the finding of the Tribunal and it did not find any merit in submission made by Revenue that amount received from Ministry belonged to assessee and was their income.

CIT vs Society for Indian Automobiles Manufactures- (2018) 103 CCH 0014 Del HC- ITA No. 976/2018 dated 07.09.2018

3277. During relevant years, the revenue authorities denied exemption under section 11 to assessee and made addition of corpus donations to the assessee's taxable income. The Tribunal held that it was an admitted fact that assesee had failed to file necessary evidences to prove that corpus donations were made with specific direction that they would form part of corpus of trust. In aforesaid circumstance, the impugned addition was to be confirmed.

Free Trade Union Multipurpose Project Trust v. ITO (E) [2018] 95 taxmann.com 297 (Mum. – Trib.)- ITA Nos. 3080 to 3084 (MUM.) of 2016 & Othrs [Assessment Years 2005-06 to 2009-10 & 2012-13 to 2014-15] dated July 4, 2018

3278. The assessee was a charitable trust engaged in various charitable activities as per objects of trust deed. It filed return for relevant years claiming exemption of income. The Assessing Officer noted that trustees had siphoned off money by booking expenditure on repairs of building which was not owned by trust. He, thus, rejected the assessee's claim by invoking provisions of section 13(1)(c) and 13(2). The Tribunal held that it was noted that co-ordinate Bench of the Tribunal in the assessee's own case in earlier assessment years, had upheld order of the Assessing Officer in invoking provisions of section 13(1)(c) and 13(2). In absence of any change in circumstances, following aforesaid order of the Tribunal, the impugned order passed by the Assessing Officer was to be confirmed in assessment years in question as well.

Free Trade Union Multipurpose Project Trust v ITO (E) [2018] 95 taxmann.com 297(Mum. – Trib.) ITA Nos. 3080 to 3084 (MUM.) of 2016 & Othr [Assessment Years 2005-06 to 2009-10 & 2012-13 to 2014-15] dated July 4, 2018

3279. The Tribunal held that without verifying claim of assessee trust that it was occupying third and fourth floor of building without paying any rent and trustee was required to repay expenditure incurred by assessee, AO could not have disallowed expenditure incurred towards repairs and renovation of building owned by trustee on ground that it was in contravention of provisions of section 13(1)(c) as a benefit had accrued to the trustee through such payment. Accordingly, matter was to be restored to AO for verifying assessee's claim.

Children Welfare Education Trust vs ITO(Exemptions) Thane [2018] 97 taxmann.com 427(Mum-Trib) ITA Nos.4979 to 4981 of 2016 dated August 31 2018

3280. The Apex Court allowed Revenue's SLP against order of High Court where order of Commissioner cancelling registration of assessee- foundation was set aside on ground that at time of initiation of proceedings for cancellation of registration in year 2008, Commissioner did not have such a power in terms of sub-section (3) of section 12AA which was brough in by Finance Act, 2010, w.e.f. 1-6-2010.

Pr.CIT vs JIS Foundation [2018] 96 taxmann.com 611(SC) SPECIAL LEAVE PETITION (CIVIL) DIARY NOS. 24831 OF 2018 dated August 06 2018

3281. The Court held that the Tribunal was justified in law in allowing carry forward and set off of excess application of income/ expenditure of the current year to next year even when there was no provision in the Act to allow carry forward of such deficit, relying on the decision in case of CIT(E) Vs. Ohio University Christ College [ITA.No.312 & 313 of 2016 (Kar HC)]. In the case it was held that income derived from the trust property had to be computed on commercial principles and if commercial principles were applied, then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year would have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year.

Pr.CIT vs THE NEW CAMBRIDGE EDUCATIONAL TRUST [2018] 102 CCH 0230 (Kar HC) ITA No. 319 OF 2018 dated August 14 2018

3282. The Tribunal deleted the addition made by the AO considering the donation received by the assessee-society as unexplained cash credit u/s 115BBC / section 68, noting that (i) assessee had disclosed the donation in its books of accounts (ii) produced a confirmation letter signed by the Secretary of the donee-sansthan who had also signed the cheque and (iii) the said donation was utilized for construction of the building.

SHREE BANKEY BIHARI EDUCATIONAL SOCIETY (REGD.) vs. ADDITIONAL COMMISSIONER OF

INCOME TAX [2018] 53 CCH 0421 (DelTrib) ITA No. 2497/Del/2013 dated August 03 2018

3283. Where the assessee-society filed an application u/s 12A for grant of registration and same was responded only after nine months, the Court held that the registration was deemed to be granted automatically on expiry of six months period specified in section 12AA(2) for disposal of said application.
CIT v TBI Education Trust [2018] 96 taxmann.com 356 (Kerala) – ITA No. 54 of 2009 dated July 20, 2018

3284. The assessee-association, an Apex sports body for selecting athletes to represent India at Olympic Games, Asian Games and other international athlete meets at these events, claimed exemption u/s 11. The AO rejected the claim opining that proviso to section 2(15) [which provides that the advancement of any other object of general public utility shall not be a charitable purpose if it involves carrying on of an activity in the nature of trade, commerce or business for a cess or fee] was squarely applicable to the assessee on the only ground that it received some sponsorship from a private company in respect of Asian games and Youth Olympic games. The Tribunal held that the assessee was engaged in multi level activities of diverse nature but primary and dominant activity was promoting sports activities not only in India but also in international forum and that it would not lose its character of charitable purpose merely because some sponsorship was accepted from a private company in respect of Asian games and Youth Olympic games. It held that the proviso to section 2(15) would be attracted only if the real object was to make / earn profit.
The Tribunal also held that even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes u/s 11(1), yet depreciation would be allowed on assets so purchased.
DCIT v India Olympic Association [2018] 96 taxmann.com 184 (Delhi - Trib.) – ITA No. 1130 (DELHI) OF 2016 dated July 19, 2018

3285. The Tribunal set aside the AO's order denying the claim of assessee-trust of exemption u/s 11 on the ground that the assessee's activity of running hostel and providing lodging facility to students did not fall within ambit of charitable purpose u/s 2(15). It held that providing hostel facility is an essential component of an educational institution and it is an aid for attaining educational objects and thus, the said activity would fall under purview of 'education' as provided u/s 2(15). The Tribunal therefore restored the issue to the file of the AO to re-determine taxable income of the assessee after providing benefit u/s 11.
Shree Ahmedabad Lohana Vidyarthi Bhavan v ITO(E) [2018] 96 taxmann.com 251 (Ahmedabad - Trib.) – ITA No. 993 (AHD.) OF 2017 dated July 12, 2018

3286. The assessee-company, registered u/s 12A, was incorporated with a dominant object to secure accurate figures of circulation of newspapers and periodicals published in country through a standard process of independent audit to assist advertisers in estimating value of any publication for reaching consumers. It was continuously allowed exemption u/s 11 since registration. However, during the relevant assessment year, assessee was denied the said exemption on ground that in view of amendment in section 2(15), activity of assessee was to be considered as a commercial activity. The

Tribunal held that if the dominant purpose is charitable, the incidental activities are not required to be treated as business in nature. It held that objects of the company were for the ultimate benefit of the public and since there was no change in activity of assessee since past years, amendment by insertion of proviso to section 2(15) could not make activity of assessee as trade, business and commerce in nature specifically in circumstances when there was not a single instance of any business on record carried on by assessee. Thus, the Tribunal allowed the assessee's claim for exemption u/s 11.
Audit Bureau Circulations Wakefield House v ADIT(E) - [2018] 96 taxmann.com 421 (Mumbai - Trib.) – ITA Nos. 5681 (MUM.) of 2015 & 6393 (MUM.) of 2016 dated July 31, 2018

3287. The Apex Court granted SLP to the Revenue against the High Court's order wherein the High Court had held that mere non-communication of changes in objects clause to authority will not automatically cancel the assessee's registration u/s 12AA, rather, it would be open for department, while making assessment, to follow provision of section 11(5) and section 13 to disallow expenses or income, as the case may be, if same was not as per approved bye-laws.
CIT(E) v Rajasthan Cricket Associatio [2018] 98 taxmann.com 426 (SC) - SLP (Civil) Diary No.(S). 24269 OF 2018 dated July 30, 2018

3288. The Tribunal held that since the predominant object of assessee society was advancement of general public utility (i.e. object of promotion of game of tennis) and the same involved incidental or ancillary activity in nature of trade, commerce or business and generating income therefrom (i.e. commercially exploiting rights of hosting 'Davis Cup Match'), the receipt of incidental business (i.e. income from organizing of Davis Cup) would be treated as income from 'charitable purposes' and thus exempt u/s 11 to the extent of limit prescribed by second proviso to section 2(15), i.e. Rs.25 lakhs for the relevant year. However, the income from such incidental business exceeding the said limit prescribed as per second proviso to section 2(15) would be treated as 'business income' liable to be included in total income.
Chandigarh Lawn Tennis Association v ITO(E) - [2018] 95 taxmann.com 308 (Chandigarh - Trib.) - ITA No. 1382 (CHD.) OF 2016 dated July 26, 2018

3289. The Apex Court granted SLP to the Revenue against the High Court order wherein the High Court had held that since at time of initiation of proceedings for cancellation of registration u/s 12AA, i.e. in year 2008, the CIT did not have such power of cancellation (which was brought in sub-section (3) of section 12AA by Finance Act, 2010, with effect from 1-6-2010), the order passed by the CIT cancelling registration was to be set aside.
Pr.CIT v JIS Foundation - [2018] 96 taxmann.com 257 (SC) - SLP (CIVIL) DIARY NO.(S) 22373 OF 2018 dated July 23, 2018

3290. The Court upheld the CIT's order cancelling the registration granted to the assessee-trust u/s 12AA, noting that the assessee had departed from charitable objectives and was carrying on business as sub-contractor, implementing the welfare schemes of various State Governments of supplying food to the poor school children, with the funds of the State Government, received by the assessee as contract amounts.
CIT v Annadan Trust - [2018] 96 taxmann.com 207 (Kerala) - IT APPEAL NO. 213 OF 2013 dated July 23, 2018

3291. The Apex Court granted SLP to the Revenue against the High Court order wherein the High Court had held that registration of a trust does not involve enquiry into actual activities or application of funds, etc. and at that stage only enquiry required to be conducted is with respect to object of trust alone and if the assessee is found to have been engaged in any non-charitable activity, benefit of exemption may be denied during assessment.
CIT v Babu Ram Education Society [2018] 96 taxmann.com 607 (SC) - SLP (CIVIL) DIARY NO.(S) 22641 OF 2018 dated July 23, 2018

3292. The Tribunal allowed the assessee's claim for exemption u/s 11 with respect to income derived from training and consultancy, which was disallowed by the AO on the ground that the same was not incidental to the object of the assessee-institution for which registration u/s 12A was given and that the

assessee did not maintain separate books of account as envisaged in section 11(4A). The Tribunal held that the training and consultancy fee was charged in course of attainment of main object, i.e. education, and thus was incidental activity and not any independent activity. Further, income realized from training and consultancy fee was not significant keeping in view total revenue of assessee. Accordingly, it held that provisions of section 11(4A) were not applicable.

XAVIER INSTITUTE OF MANAGEMENT vs. ITO - (2018) 53 CCH 0398 CuttackTrib - ITA Nos. 98, 99, 100 & 101/CTK/2016, 266, 267 & 320/CTK/2017 dated July 27, 2018

3293. The Tribunal remanded the matter back to the CIT(E) for re-examining and reconsidering the asesseess's application for registration u/s 12AA, noting that the CIT(E) had rejected the said application solely on the ground that the President and the Managing Trustee of the assessee-trust were to be chosen from two families, which as per the CIT(E) was in the nature of revocable transfer not permissible in view of section 63, and that the CIT(E) had not examined assessee's application for registration in light of the genuineness of the objects of the Trust.

MAA SARASWATI MANDIR NYAS V CIT(E) - (2018) 53 CCH 0387 DelTrib – ITA No. 3514/Del/2015 dated July 24, 2018

3294. The Court dismissed Revenue's appeal against the Tribunal's order directing the CIT(E) to grant registration u/s 12AA, holding that non-disposal of the assessee's application for the said registration within six months from date on which application was received results in deemed registration. It relied on the Apex Court decision in the case of CIT v Society for the Promn.of Education (2017) 11 SCC 480 wherein it upheld the High Court decision allowing deemed registration u/s 12AA but applicable only from the date of expiry of the six month period as mandated in section 12AA(2) and not from the date of filing of application.

CIT vs. EDUCATION TRUST ENANALLOOR - (2018) 102 CCH 0154 KerHC – ITA No 54 of 2009 dated July 20, 2018

3295. The Tribunal set aside the CIT(E)'s order rejecting the assessee-society's request for grant of approval u/s 80G. The CIT(E) had declined to grant approval u/s 80G in the absence of the details related to other chapters of the assessee-society. The Tribunal held that the CIT(E) ought to have made enquiries from the Jurisdictional Assessing Authority, where other chapters of society were registered and assessed. Further, it directed the assessee to furnish complete details of other chapters of the society and its financial and administrative relations with such chapters

GLAUCOMA SOCIETY OF INDIA vs. CIT(E) (2018) 53 CCH 0360 IndoreTrib – ITA No. 92/Ind/2018 dated 18th July, 2018

3296. The Tribunal held that even if the amount spent on purchase of capital asset by charitable institution was treated as application of income, it was also entitled to claim depreciation on same capital asset utilised for business for AY 2010-11 & AY 2011-12, in view of the decision in the case of DIT (E) vs. Indraprastha Cancer Society (2015) 53 taxmann.com 463 (Del HC) wherein it was held that insertion of subsection (6) to section 11 (prohibiting such double deduction) is prospective w.e.f. 01.04.2015 and, hence, no disallowance on account of depreciation can be made in years prior to AY 2015-16.

ACIT vs. ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD. (2018) 53 CCH 0327 DelTrib – ITA Nos. 5660 & 5661/Del/2015 dated 12th July, 2018

3297. The Tribunal allowed Revenue's appeal and held that the assessee was not eligible for exemption u/s 11 noting that the major income of assessee in year under consideration was on account of Stall space charges and major expenses was also on Hall Rent and nothing else was brought on record in support of contention that assessee had carried out any activities in connection with its main objective (i.e. promoting, training and diffusion of knowledge to standards in manufacture of Tools and Gauges). It held that at the stage of granting registration u/s 12A, only the objects as per the relevant Trust Deed were required to be seen and if the objects were charitable, such registration had to be granted but granting of such registration was not final and binding for granting exemption u/s 11 in assessment proceedings. Accordingly, it disallowed assessee's claim for exemption u/s 11.

ITO vs Tool and Gauge Manufacturers Association of India [2018] 54 CCH 0235 (Bang Trib.)- ITA No. 2864/Bang/2017 dated 16.11.2018

3298. The Tribunal directed the AO to allow assessee's claim for exemption u/s 11 and held that merely because the assessee had constructed and sold dwelling units, it did not make the assesssee a business venture as long as its predominant object (for which it was set up by State Government) was implementation of provisions of trust (i.e. providing affordable accomodation) through various schemes. It held that the objects of assessee were covered by objects of general public utility and registration granted to assessee was still valid. Further, it held that lawful statutory schemes could not be considered as business activity and as a corollary exemption u/s 11(2) could not be declined by invoking proviso to section 2(15) which would only come into play only where assessee was pursuing activities in nature of trade, commerce or business.

Gujarat Housing Board (GHB) vs Dy.CIT [2018] 54 CCH 0247 (Ahd Trib.)- ITA No. 3297/Ahd/2016 dated 16.11.2018

3299. The Apex Court dismissed Revenue's SLP against HC ruling where the Court had held that assessee sociey was entitled to exemption u/s.10(23C)(vi) as it was using the franchise fee received under the franchise agreements with satellite schools for furtherance of educational purposes which was its main object.

CIT vs The Delhi Public School Society [2018] 103 CCH 0281 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 40502/2018 dated 26.11.2018

3300. The Tribunal allowed assessee's (public religious temple/institution) claim for exemption u/s 10(23C) for AY 2015-16 which was disallowed by the AO on the ground that there was no approval for that AY. It was noted that when the assessee filed application for renewal with CIT(A) in 2016, he granted approval from AY 2016-17 instead of AY 2015-16, holding that the application was not filed in time. The Tribunal noted that (i) the assessee was granted approval u/s 10(23C) first time in 1989 and it was renewed subsequently from time to time till AY 2014-15 (ii) what was sought for by the assessee was renewal of approval granted earlier. Accordingly, it directed the CIT(E) to grant approval u/s 10(23C)(v) to the assessee from AY 2015-16 so that exemption could be continued without any break.

Arulmigu Devi Karumariamman Thirukoil vs ITO (Exemptions) [2018] 54 CCH 0255 (Chen Trib)- ITA No.1090/Chny/2018 dated 16.11.2018

3301. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing the claim of assesse (carrying on activity to promote, coordinate, guide, implement and maintain act addition system for laboratories) for exemption u/s 11 and 12 which was denied by the AO for the reason that since assessee's activity fell under the sixth limb i.e. 'advancement of any other object of general public utility' and was capable of generating profit, in view of proviso to section 2(15) [which provides that activities falling under sixth limb shall not be considered for charitable purpose if it involves carrying on activity in nature of trade, commerce or business, unless the receipts do not exceed Rs.10 lakhs], the activity could not be considered for charitable purpose. The Tribunal held that the CIT(A) had rightly held that assessee's primary objective was to ensure general public prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection which could not be considered as trade / commercial activity, merely because testing procedures, or accreditation involved charging of fees. It held that the expressions "trade", "commerce" and "business", as occurring in first proviso to section 2(15) must be read in context of intent and and where the dominant object of an organization was charitable any incidental activity for furtherance of the object would not fall within the expression "business","trade" or "commerce.

Dy.CIT vs National Accreditation Board for Testing and Caliberating Laboratories [2018] 54 CCH 0277 (Del- Trib.)- ITA No.3872/Del/2015 dated 28.11.2018

3302. The Court dismissed Revenue's appeal against Tribunal's order allowing assessee's (a charitable trust) claim for carry forward of deficit (i.e. excess of application of money over receipt) and setting off the same against the income of the subsequent years, relying on the decision in the case of CIT v. Institute of Banking Personnel Selection (IBPS) (2003) 131 Taxman 386 (Bom HC) decided against the Revenue on identical issue.
CIT(E) v Somaiya Vidyavihar – ITA No. 456 of 2016 (Bom HC) dated 22.11.2018

3303. The Tribunal allowed assessee-trust's appeal and held that application of income in subject AY i.e. AY 2012-13 should be first considered as having been made out of the accumulation u/s 11(2) of preceding AY 2011-12 and only the remainder should be considered as application of income of current AY 2012-13. It rejected Revenue's contention that entire amount applied during current year should be considered as amount applied from the current year's income, acknowledging the fact that if assessee's stand was accepted it would get one more year to apply the accumulated income of AY 2012-13. The Tribunal also found merit in assessee's contention that the identity of the monies as accumulation of AY 2011-12 or the income of AY 2012-13 was not possible since accumulations for preceding year as well as current year income were deployed in the form of bank FDs.
Infosys Science Foundation v ITO [TS-453-ITAT-2018(Bang)] - ITA No.2163/Bang/2017 dated 08.08.2018

3304. The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had denied exemption u/s 11 to the assessee-trust for AY 2011-12 on the ground that it had received registration u/s 12AA only w.e.f. 01/04/2011. It held that the proviso added to section 12A(2) [which provides that the exemption u/s 11 shall to be available with respect to AY with respect to which assessment proceedings are pending before the AO as on the date of registration u/s 12AA] was retrospectively in operation because the legislators in its wisdom had brought the said proviso to prevent genuine hardship which could be caused on the assessee due to non-registration u/s 12A. Further, noting that the assessment order was passed on 29/01/2014, it held that the said proviso was applicable to the assessee's case and thus it was eligible for benefit of section 11. Thus, the Tribunal remanded the matter back to AO for fresh consideration in light of the above observations.
SAI WIRAN WALI EDUCATIONAL TRUST vs. INCOME TAX OFFICER - (2018) 305 TTJ 0956 (Asr) dated 11.09.2018

3305. The Court admitted the Department's writ against the order of the Single Judge directing the AO to grant the assessee educational institution exemption under Section 10(23C)(vi) of the Act and held that the said exemption would be granted to educational institutions who existed solely for the purpose of education. Noting that the objects of the assesse also included eradication of untouchability, dealing with environmental pollution, plantation, AIDS Education, achievement of communal harmony, over all local development, promotion of fruit bearing trees and plantation in the hill areas, it held that the order of the Single Judge was incorrect. Accordingly, it directed the Department to take a decision afresh after considering the decisions of the Apex Court in American Hotel & Lodging Association Educational Institute v. CBDT reported in (2008) 10 SCC 509 and Queen's Educational Society vs. Commissioner of Income Tax reported in (2015) 8 SCC 47.
CHIEF COMMISSIONER OF INCOME TAX vs. J.B. MEMORIAL MANAS ACADEMY MANAGEMNET SOCIETY - (2018) 101 CCH 0111 UAHC - CLMA DELAY CONDONATION APPLICATION NO. 991 OF 2018 IN SPECIAL APPEAL No. 64 of 2018 dated Mar 19, 2018

3306. The Court allowed the exemption claim u/s 10(23C) of the assessee-society which was running two educational institutions as the aggregate annual receipts for each institution did not exceed Rs. 1 crore cap 'individually' and clarified that if it had been the intention of the legislature to have limited the scope of the provision, it could easily have said that, if the aggregate annual receipts of any person from all institution(s) do not exceed Rs. 1 crore, instead of saying that the aggregate annual receipts of the 'educational institution' (and not the person) do not exceed Rs.1 crore.
Vivekanand Society of Education and Research - TS-620-HC-2017(J & K) - ITA No. 23/2014; MP No. 01/2016 dated 29.12.2017

3307. Where Revenue denied exemption u/s 11 to assessee-town development authority based on dismissal of SLP by the Supreme Court filed against the ruling of a non-jurisdictional High Court which had denied such exemption to another such authority, Tribunal held that summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble SC under Article 141 of the Constitution and, thus, it was bound to follow decision of jurisdictional High Court allowing the exemption to the assessee in it own case. Further, noting that the issue before the non-jurisdictional High Court was about cancellation of registration u/s 12AA(3) and not denial of exemption u/s 11 as in the case under consideration and that assessee was allowed exemption u/s 11 consistently in the past, Tribunal upheld assessee's exemption claim

Moradabad Development Authority v ACIT - TS-9-ITAT-2018(DEL) - ITA Nos.4631 & 4632/Del/2017 dated 04.01.2018

3308. The Court dismissed the writ filed by assessee-trust, running various educational institutions and also registered u/s 12AA, against the order passed by Director General (Inv.) withdrawing exemption/ approval granted to assessee-trust under section 10(23C)(vi), noting that it had collected huge amount of capitation fee from students for admission to medical colleges under innocuous name of 'anonymous donations', huge payments of honorarium and lease rent to the trustees and amounts were transferred to trustees for building their personal assets.

Navodaya Education Trust v Union of India – (2018) 253 Taxman 412 (Kar) – Writ Petition Nos. 3468 to 3472 of 2018 (T-IT) dated 05.02.2018

3309. Where assessee, a Wakf duly registered with State Wakf Board, had applied for registration u/s 12AA producing certain documents along with application for registration including an order passed by State Wakf Board recognising assessee trust as registered under said Board, the Court held that the assessee application could not be rejected only because the assessee could not provide a registered trust deed, noting that the order of State Wakf Board provided full details of objects and functions of assessee-wakf including manner of appointment of Mutawalli, etc. and accordingly, the fact of existence of assessee-trust was established by the said order. It held that where a religious trust is not created under an instrument, factum of existence of trust could also be established by producing documents evidencing creation of trust.

Pr.CIT(Exempt) v Dawoodi Bohra Masjid – (2018) 402 ITR 29 (Guj) – Tax appeal no. 852 of 2017 dated 06.02.2018

3310. Where the CIT cancelled the registration of assessee-trust u/s 12AA(3) (i) only on the basis of information received from Investigation Wing that assessee-trust was receiving bogus donation from various parties and (ii) where there was no other material with CIT to assume that assessee had indulged in such activity and also (iii) where the said information was not even supplied to assessee, Tribunal held that the cancellation of registration in the matter was merely on presumption. Accordingly, it set aside the cancellation order and restored the registration u/s 12AA

Bioved Research Society v CIT – (2018) 91 taxmann.com 268 (All Trib) – ITA No. 109 (Alld.) of 2017 dated 08.01.2018

3311. Where the assessee, a body corporate, was formed under U.P. Urban Planning and Development Act, 1973, to promote and secure development of local area and for said purpose it had power to acquire, hold, manage and dispose of land, to execute works in connection with supply of water and electricity, to dispose of sewage and to provide and maintain other services and amenities, the Tribunal held that it could be concluded that assessee had been created with object of general public utility which was a charitable object within meaning of section 2(15) and, thus, its application seeking registration u/s 12AA was to be allowed.

Firozabad Shikohabad Development Authority v CIT – (2018) 169 ITD 202 (Agra Trib) – ITA No. 55 (Agra) of 2015 dated 07.02.2018

3312. Where assessee-trust was formed for complying Corporate Social Responsibility (CSR) requirement under Companies Act and its objects were eradicating hunger and poverty, promotion of education etc. and other activities as prescribed by Govt., the Tribunal directed the CIT(Exemption) to grant registration u/s 12AA and approval u/s 80G(5)(vi) to the assessee, noting that CIT(Exemption) had not

doubted genuineness of activities of assessee-trust nor doubted its charitable object, but had denied registration/ approval on other reasons such as the trust was created for the purpose of carrying out CSR activities, no activities in sync with the requirement of the Companies Act had taken place in the trust so far, activities so far further showed that the trust had relinquished its function as the primary implementation agency by the transferring its funds to other society, social enterprises cannot be a direct recipients of money from corporate, etc. It held that the CIT was empowered to satisfy himself only about two factors, i.e., the objects of the trust and the genuineness of the activities of the trust and such powers do not extend to the eligibility of the trust for exemption u/s 11 r.w.s. 13 which falls in the domain of the AO. It further held that the issue that CSR expenditure is allowable expenditure u/s 37(1) or not, is relevant only for taxability of company incurring such expenditure and was not relevant for granting the said registration.

Nanak Chand Jain Charitable Trust v CIT(Exempt) – (2018) 169 ITD 534 (Delhi Trib) – ITA Nos. 6527 & 6528 (Delhi) of 2016 dated 09.02.2018

3313. Where the assessee was engaged in preparing and supplying mid-day-meals to students at primary schools in various villages, against a contract awarded by State Govt and the assessee received food preparation and distribution charges, on per child, per month basis from State Govt, the Court upheld the Tribunal's order allowing registration u/s 12AA to the assessee, holding that since assessee was engaged in an activity that was inseparably linked to and performed in continuation of charitable scheme of Government. Noting that total excess of income over expenditure was Rs.2,432/- only and that the assessee appeared to have acted merely as an agent of the State, it held that merely because some money had been paid to it to defray expenses met to perform task of cooking and supplying meals, restriction created by first proviso to section 2(15) did not operate and, thus, activity carried out by assessee would fall within ambit of general public utility.

CIT v Shri Balaji Samaj Vikas Samiti – (2018) 91 taxmann.com 26 (All) – ITA No. 49 (All) of 2014 dated 09.02.2018

3314. The Tribunal directed the DIT(E) to grant registration u/s 12AA to the assessee, a private university engaged in imparting education, which the DIT(E) had rejected on the reasons that the assessee was fully controlled by a Sponsoring Body trust and was not independent and that there were intermingling of the funds, as some of it was received by the assessee and the rest by the sponsoring body trust. With respect to the independence of the assessee, it held that the objects of the university are to impart education and whether such education is being imparted in a controlled manner, financially or administratively, those objects would not change and, hence this aspect was not relevant to test genuineness of objects of the university. Further, with respect the observation of the DIT(E) that funds had been paid to sponsored body trust or by the sponsored body trust to university, the Tribunal held that even if the assessee had taken funds from sponsored body trust it would not affect its objects and if it had extended some undue benefits to sponsored body trust then safeguards were already provided u/s 13.

Indus University v ACIT – (2018) 91 taxmann.com 41 (Ahmedabad Trib) – ITA No. 2934 (Ahd.) of 2014 dated 20.02.2018

3315. Where the assessee, educational society, had filed application to seek approval u/s 10(23C)(vi) for AY 2015-16 beyond the time limit prescribed in the Act i.e. six months from end of previous year, the Tribunal held that it could not be taken that the CIT(E) had condoned the delay in filing the application for AY 2015-16 since there is no provision in the Act which empowers the CIT(E) to condone the delay. However, since the CIT(E) had disposed of the application on 17.11.2016 which was after 30.09.2016 thus, preventing the assessee from making fresh application for AY 2016-17 within prescribed time of 30.09.2016, the Tribunal held that the very same application should be deemed as application for AY 2016-17. Further, with respect to the CIT(E)'s other reason for rejection of approval i.e. objects in Memorandum of Association showed that the society was not existing solely for educational purposes, the Tribunal relied on the decision in the case of Yuvodaya Charitable Trust v CIT(E) [ITA No.389/CTK/2016] wherein it was held that even though objects of society contained other objects which constituted purpose other than educational purpose but as there was no dispute to fact that society carried on object of conducting school only, it could not be denied exemption u/s 10(23C)(iiiad). Accordingly, it directed the CIT(E) to grant approval to assessee society u/s 10(23C)(vi) for AY 2015-16.

VINERINI SISTERS EDUCATIONAL SOCIETY v CIT – (2018) 52 CCH 228 (Cuttack Trib) – ITA No. 52/CTK/2017 dated 23.01.2018

3316. The CIT(A) had denied exemption/benefit of section 11 to the assessee on the ground that there was a separate provision under the Act i.e. 10(23C)(iv), (v) and (vi) under which the assessee could have claimed the exemption and since assessee had not availed the exemption u/s 10(23C), it was debarred from claiming exemption u/s 11. The Tribunal held that there was no bar or disharmony between the said sections and exemption u/s 11 could not be denied even when there is a specific provision u/s 10(23C). It further held that once all requisite conditions for exemption u/s 11 had been met and even if conditions u/s 10(23C) had not been complied with, then there should be no bar to seek exemption u/s 11. Further, the Tribunal held that the fees charged by assessee from its students, not being capitation fee at all, which had been applied for its dominant purpose/object of carrying out educational activity was neither for profiteering nor for carrying any activity beyond its dominant object and had to be seen as an application of income for charitable purpose.
Adarsh Public School v JCIT – (2018) 90 taxmann.com 356 (Del Trib) – ITA No. 3782 (Delhi) of 2017 dated 31.01.2018

3317. In case of a trust registered u/s 12AA and engaged in imparting education and educational activities, the Court dismissed the appeal filed by Revenue against Tribunal's order allowing assessee's claim of depreciation, rejecting Revenue's contention that claiming both depreciation as well as application of income with respect to purchase of capital tantamounted to double deduction.
CIT(E) v SHYAM LAL PANWAR ANANDI DEVI MEMORIAL CHARITABLE TRUST – (2018) 400 ITR 0393 (Raj) – D.B. Income Tax Appeal No. 337, 344, 388, 339 / 2017 dated 02.01.2018

3318. The Court disposed of the writ petition filed by the assessee against the reassessment notice issued u/s 148, holding the petition to premature in the sense that the petitioner had not sought for the reasons for reopening of the assessment. It directed the AO and assessee to follow the guidelines prescribed in the case of GKN Driveshafts (India) Ltd v ITO (2003) 259 ITR 19 (SC) laying the procedure to be adopted adopt on being served with a notice u/s 148.
ANNAMALAI UNIVERSITY v ITO – (2018) 401 ITR 0080 (Mad) – W.P.Nos.11735 to 11740 of 2006 and WPMP Nos.13352 to 13357 of 2006 dated 02.01.2018

3319. The Tribunal held that the AO was unjustified in denying the assessee (charitable society registered u/s 12AA with object to open school, colleges, orphanage and destitute home) exemption under Section 11 on the alleged ground that it had applied its income to particular community as it allegedly operated under the motive to evangelize. The Tribunal upheld the order of the CIT(A) and held that imparting religious education along with recognized education was a part of Indian heritage and any society/trust could not be barred from claiming exemption u/s 11 merely because of fact that it is imparting Theological courses to its students. Further, it observed that there was no evidence on record to prove that the assessee had had converted Indians into Christianity. Accordingly, it dismissed the Revenue's appeal.
INCOME TAX OFFICER vs. BHARAT SUSAMCHAR SAMITI - (2018) 52 CCH 0198 DelTrib - ITA No. 235/Del./2015, 236/Del./2015 dated Mar 16, 2018

3320. The Tribunal, relying on the decision of the Hon'ble Supreme Court in case of CIT Vs. Rajasthan and Gujarati Charitable Foundation in Civil Appeal NO. 7186/2014 dated 13.12.2017 wherein it has been held that up to the assessment year 2015-16 the assessee was entitled to claim the cost of acquisition of fixed assets as application of income and further deprecation thereon in subsequent years, directed the AO to delete the disallowance of depreciation claimed by the assessee charitable trust.
SOCIETY FOR EDUCATIONAL EXCELLENCE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0197 DelTrib – ITA No. 6957, 6960 and 3606/Del/2017 dated Mar 19, 2018

3321. The Tribunal held that the CIT(E) erred in denying the assessee registration under section 12AA of the Act merely because the trust deed was not registered under Indian Registration Act. It held that that as per the Act and Rules it was not mandatory for a trust to be registered under the Indian Registration Act for it to be eligible for registration under Section 12AA of the Act. Noting that the CIT (E) had not

examined objects of trust, it held that the CIT(E) had not carried out duty enjoined upon him with regard to grant of registration u/s12AA and accordingly restored the matter to file of CIT (E) to adjudicate on assessee's application for registration de novo.
NURTURE-A DEVELOPMENT INITIATIVE vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0217 PatTrib - ITA No. 102/Pat./2016 dated Mar 16, 2018

3322. The Tribunal held that when the CIT granted registration u/s 12AA after examining genuineness of activities of Trust, it was not proper for CIT to reject application of trust for benefit of exemption u/s 80G(5) by holding that activities of trust were not genuine.
DR. GYANENDRA GOEL FOUNDATION vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0284 AgraTrib - ITA No. 173/AGR/2017 dated Mar 8, 2018

3323. The Tribunal held that under section 12AA, the Commissioner is entitled to see as to whether the objects of the trust are charitable in nature, and also to see whether the activities are genuine or not and the scope of such enquiry does not extend beyond that point. It held that the registration granted by the Commissioner would not extend any exemption to an institution under section 11 though such registration is mandatory for claiming exemption under section 11 and that exemption under section 11 can be availed of by institutions which are genuinely engaged in 'charitable activities'. However as the benefit of section 11 is subject to application of income for charitable activities the Assessing Officer is well entitled to see whether such application had been done and the other conditions of section 11 have been complied. The Assessing Officer has to see whether exemption under section 11 is barred by application of section 13. Therefore, it held that the Commissioner was not justified in denying registration to the assessee Trust on the ground that the assessee also earned profits for augmenting its business which was not as per Section 11 read with Section 2(15) of the Act.
BSA College v CIT(E) - [2018] 92 taxmann.com 39 (Agra - Trib.) - IT APPEAL NO. 408 (AGRA) OF 2017 – dated MARCH 13, 2018

3324. The Commissioner rejected assessee's application under section 12AA mainly on ground that it was charging hefty fee from students. In view of fact that though hefty fees were being charged by assessee-society at same time, it was also providing free education to needy students and free medical aid to needy patients, the Court held that the aforesaid fact could not change its nature from charitable society to profit making society. Accordingly, the impugned order passed by Commissioner was set aside.
B.B. Educational Society v CIT - [2018] 92 taxmann.com 300 (Delhi - Trib.) - IT APPEAL NO. 4994 (DELHI) OF 2014 dated MARCH 16, 2018

3325. Where in the case of assessee-society engaged in imparting education, application for exemption under section 10(23C)(vi) was allowed by the order of the Single Bench without considering Revenue's objection that assessee had disproportionate fee structure which was devised to earn maximum money for purpose of expansion of institution which did not fall within ambit of charitable activity, the Court held that the impugned order was to be set aside and, matter was to be remanded back for disposal afresh.
Chief Commissioner of Income-tax v J.B. Memorial Manas Academy Management Society - [2018] 92 taxmann.com 305 (Uttarakhand) - SPECIAL APPEAL NO. 64 OF 2018 dated MARCH 19, 2018

3326. Where the assessee claimed exemption under section 11 in respect of surplus earned by it by organising exhibition, which was a well-organized and regular activity incidental to assessee's business but assessee had not maintained separate books of account in respect of the said activity, as mandated under section 11(4A), the Court held that the exemption under section 11 could not be granted.
Indian Machine Tools & Manufacturers Association v DIT(E) - [2018] 91 taxmann.com 465 (Bombay) - IT REFERENCE NO. 104 OF 2000 dated MARCH 9, 2018

3327. The Tribunal held that receipt of subscriptions from members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating dominant object of assessee-trust, viz., providing knowledge, information, awareness, demonstrations, etc., to

members of Fragrance and Flavours industry and thus it fell within realm of section 2(15) and the assessee was eligible to claim exemption under Section 11 of the Act.
Fragrance & Flavours Association of India v DDIT(E) - [2018] 92 taxmann.com 325 (Mumbai - Trib.) - IT APPEAL NO. 6545 (MUM.) OF 2016 dated MARCH 22, 2018

3328. The Tribunal held that registration granted to a trust or institution u/s 12A could not be cancelled where the activities of trust or institution were genuine and were carried out in accordance with objects of trust or institution. Accordingly, it held that the CIT was not justified in revoking the registration on the ground that there was an addition in the objects of the trust without communication to the Department when the additions made (i.e. establishment of diagnostic center) was in line with the original objects of the trust i.e. relief to the poor. Accordingly, it set aside the order of the CIT.
PARAMOUNT CHARITY TRUST vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0272 AhdTrib - ITA No. 3119/Ahd/2014 dated Feb 27, 2018

3329. The Tribunal held that the assessee could not be denied deduction on account of depreciation even though the purchase of capital assets was allowed as an application of funds earlier year. It held that the amendment denying such depreciation was applicable with prospective effect from 01.04.2015. Accordingly, it dismissed Revenue's appeal.
INCOME TAX OFFICER vs. SURYA BUX PAL CHARITABLE TRUST - (2018) 52 CCH 0117 LucknowTrib - ITA No. 193/Lkw/2016 dated Feb 23, 2018

3330. The assessee trust was registered u/s.12AA and engaged in field of educational activities and claimed deprecation and also claimed capital expenditure as application towards objects of Trust. The AO held that since assessee claimed capital expenses as application towards objects of Trust, claim of depreciation would amount to double deduction and accordingly disallowed the claim of depreciation made by assessee. The Tribunal upheld the order of the CIT(A) deleting disallowance made by AO and held that the Bombay High Court, in case of CIT vs. Institute of Banking Personnel Selection [264 ITR 110 (Bom)], held that normal depreciation could be considered as legitimate deduction in computing real income of assessee on general principles or U/s.11(1)(a).
DEPUTY COMMISSIONER OF INCOME TAX vs. AMC MEDICAL EDUCATION TRUST - (2018) 52 CCH 0080 AhdTrib - ITA No. 3089/AHD/2015 dated Feb 2, 2018

3331. The Tribunal upheld CIT(Exemption)'s order and rejected the assessee's application for grant of approval for exemption u/s 10(23C)(vi) observing that the assessee generated huge surplus running into hundreds of crores from year to year from funds parked in FDRs instead of being redeployed into education. On perusal of financial data for past years, it observed that as on March 31, 2017, out of the total funds available of Rs. 1486 cr., over Rs. 1100 cr. were lying in term deposits and savings account and accordingly noted that a major portion of the funds available were applied in current assets more specifically in the form of cash and FDRs and very little funds were utilized for investing in fixed assets for the purpose of imparting education. It further observed that the applicant was spending on an average only 60% of its receipt / income on its stated charitable activities of imparting education, instead of 85% prescribed by Sec. 10(23C)(vi) and also that the Auditor's report highlighted that grants were not utilized for the purpose for which they were received. Accordingly, it held that the parking funds in FDRs continuously for the last so many years showed that the assessee had neither any intention nor any vision or plan to spend the huge funds so generated and accumulated, for achieving the stated objects of imparting education and accordingly held that the assessee was rightfully denied approval under Section 10(23C).
I. K. Gujral Punjab Technical University - TS-102-ITAT-2018(CHANDI) - ITA No. 910/Chd/2017 dated 23.02.2018

3332. Where the assessee charitable trust had earned income of Rs 4.41 crore and applied 4.78 crore (leading to deficit of Rs.36.51 lakh) and claimed accumulation at 15 percent of gross receipts as per Section 11(1)(a) of the Act, which was denied by the AO as there was no income remaining after deducting the application of funds, the Tribunal held that as per the provisions of the Act, the 15 percent accumulation was to be claimed on the real income and not assessed income and since there was no express provision in the Act preventing the assessee from claiming the said benefit in cases where the

assessee had in fact made losses, the AO could not deny the assessee the claim. Accordingly, it upheld the assessee's claim (for accumulation as well as carry forward and set off of the losses + accumulation).

LALJI VELJI CHARITABLE TRUST vs. INCOME TAX OFFICER (EXEMPTION) - (2018) 52 CCH 0330 MumTrib - ITA No. 5322, 5323/Mum/2016 dated Feb 28, 2018

3333. The Apex Court reversed the Madhya Pradesh HC ruling in case of State Government Undertaking (established for development of industrial growth centres/areas) and held that prior to 2004 amendment (enactment of Sec. 12AA(3) with prospective effect from October 1, 2004), the CIT had no power to cancel registration certificate granted u/s 12A for charitable purpose. It held that the functions exercisable by CIT u/s 12A are neither legislative nor executive, but are quasi-judicial in nature and held that the order u/s 12A could not be rescinded or modified applying provisions of Section 21 of General Clauses Act as order mentioned therein must be in the nature legislative or executive order. Moreover, it held that quasi-judicial orders could be varied or reviewed when obtained by fraud or when such power was conferred by the Act or Rules under which it was made and noting that the express power to cancel registration was granted to CIT only by way of enactment of Sec. 12AA(3) with prospective effect from October 1, 2004; held that the CIT was not empowered to cancel it in the instant case (in 2002).

Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. [TS-64-SC-2018] - CIVIL APPEAL No.6262 OF 2010 dated February 16, 2018

3334. The AO denied the assessee's claim for exemption u/s 11 on the ground that the assessee had not incurred any expenditure relating to charitable activity for the cause of education, medical aid or relief to poor and even not incurred any expenditure for the general public utility since the assesse only provided services towards water quality testing and had incurred expenditure with reference to the said services. The Tribunal held that the assessee's activity came within the purview of exceptions provided u/s 2(15)(i) for the reason that the assessee's activity of testing water quality monitored quality in reservoirs and slum areas and almost the entire fee charged for the same was spent towards testing activity. It held that the testing of water and thereby supplying good quality of water contributes to health of the people and to take care of health of the people was one of the objects of the assessee. Thus, the Tribunal held that the activity of the assessee was to be considered as advancing of general public utility eligible for exemption u/s 11 of the Act.

INSTITUTE OF HEALTH SYSTEMS vs. INCOME TAX OFFICER - (2018) 53 CCH 0262 (Hyd Trib) - ITA No. 1783/Hyd/2017 dated June 28, 2018

3335. The Tribunal deleted the addition made by the AO denying the assesse benefit of exemption u/s 11 where on the ground that the assesse-society had violated the provisions of section 13(1)(c) since the office bearers where related to each other and that the Executive President and the Director General were staying on the 4th and 5th floor of the building of the Institute/ society. The Tribunal followed its own decision in the assesse's own case for another year wherein it was held that as per section 13, the benefit u/s 11 could be denied if some advantage or benefit had been taken by the persons who were in the governance of the institution, however there is no condition specified, that the persons in governance should not be relatives. It was also held that the Executive President and the Director General were occupying the premises in the capacity as Executive President and the Director General and in terms of provisions of section 13(2)(c) salary allowance or otherwise could be paid to such person for services rendered by such person, wherein the only condition was that the amount so paid should not be in excess of what may have been reasonably paid for such services, which was not so in the present case.

TAX OFFICER vs. INSTITUTE OF MARKETING & MANAGEMENT - (2018) 53 CCH 0227 (Del Trib) - ITA No.:- 4444/Del/2015 dated June 28, 2018

3336. The AO brought to tax the income which was claimed to be exempt u/s 80G(5C) by the assessee-trust, registered u/s 12A and also approved u/s 80G(5), created for a specific object of providing relief to earthquake victims of Gujarat before 31-3-2004. The AO opined that the assessee had neither applied the sum before 31-3-2004 nor transferred same to Prime Minister's National Relief Fund, as required by section 80G(5C). The Tribunal granted benefit of the said exemption to the extent the assessee had spent on construction of a school but with respect to the remaining amount, which had not been actually

spent, the said benefit was not granted. However, noting that though total sum was not applied for earthquake relief before 31-3-2004, but was transferred by the assessee to the Prime Minister's National Relief Fund on 31-12-2004, the Court held that the assessee had fulfilled terms of section 80G and thus, said sum was not taxable.

Amul Relief Trust v ADIT(E) - [2018] 95 taxmann.com 111 (Gujarat) - R/TAX APPEAL NO. 1391 OF 2007 dated June 12, 2018

3337. The Court dismissed Revenue's appeal against the Tribunal's order allowing exemption u/s 11 to the assessee -society, established with a view to undertake and promote activities connected with development of cattle and buffaloes covered by section 2(15), with respect to income earned by it from sale of semen, relying on the decision in the case of DIT(E) v. Sabarmati Ashram Gaushala Trust [2014] 362 ITR 539 (Guj) wherein it was held that merely because while carrying out activities for purpose of achieving objects of trust, certain incidental surpluses were generated, the same would not amount to activity in nature of trade, commerce or business.

Pr.CIT v Animal Breeding Research Organisation (India) - [2018] 95 taxmann.com 226 (Gujarat) - R/TAX APPEAL NO. 522 OF 2018 dated June 11, 2018

3338. The application filed by the assessee on 25-5-1999 requesting for grant of registration u/s 12A with effect from 1-4-1998 (alongwith the request for condonation of delay in filing of application for registration of less than 2 months) was not disposed by the CIT(E) for long. On being persuaded by the Revenue to file another application for registration, the assessee filed other applications on different dates which were rejected by the CIT on technical grounds despite the fact that at the relevant point of time, assessee was enjoying the recognition u/s 80G. Finally, the registration was granted only with effect from 1-4-2016 after making a detailed verification of the records and enquiry. Noting that the revenue could not answer the query as to why said application was not disposed off, the Tribunal held that the CIT(E) had failed to dispose of the application within the prescribed period of 6 months from end of month in which application was received, as per section 12AA(2) and accordingly, it set aside the CIT(E)'s order grant registration only with effect from 1-4-2016. Further, taking note of the assessee's request for condonation of delay in filing the said application, it directed the CIT(E) to grant registration with effect from 1-4-1998.

Visvesvaraya Technological University v CIT(E) - [2018] 94 taxmann.com 431 (Bangalore - Trib.) - IT APPEAL NO. 8 (BANG.) OF 2016 dated June 4, 2018

3339. In the case of an assessee Trust, the CIT(A) allowed claim of assessee that deficiency in one year could be set off against excess application of earlier year. However, according to Revenue, excess application of income, in particular year could not be adjusted with deficiency in another year. The Tribunal concurred with the CIT(A)'s finding relying on Jurisdictional High Court decision of CIT v. Maharana of Mewar Charitable Foundation wherein it was held that assessee was entitled to set off excess application of earlier year against deficiency in next year. The Tribunal also concurred with the CIT(A)'s finding that though the assessee earned rental income, since it was utilised and applied for the object of the trust, the activity of letting out property was not a commercial activity. Thus, it dismissed Revenue's appeal against the said finding of the CIT(A). The Tribunal also dismissed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had brought to tax, as per section 11(3), the amount accumulated by the assessee-trust u/s 11(2) for specified purpose, noting that the same was not applied for such specified purpose and the application of income during the year was made from the income which was received as donation. The Tribunal held that since the income accumulated for specific purpose u/s 11(2) was not used for the purpose for which same was accumulated, the assessee was not eligible for exemption u/s 11 in respect of such accumulated income.

DCIT & Anr v The Willingdon Charitable Trust & Anr (2018) 52 CCH 0349 ChenTrib - TA Nos. 2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018

3340. The assessee (Charitable Trust registered u/s12AA qualifying for exemption) was a local authority engaged in the business of buying, developing and selling of lands, plots, flats and developed properties and also received rent from commercial properties and other places. The AO opined that nature of activities carried on by assessee were not covered by the definition of 'charitable purpose' u/s

2(15) as they were hit by the proviso to the said section which bars exemption claimed u/s 11 w.r.f activities in nature of trade, commerce or business. He thus treated entire surplus as income taxable for year, disallowing the said exemption. However, the CIT(A) deleted the addition holding that the proviso to S.2(15) was not applicable to assessee's case. On Revenue's appeal, the Tribunal held that the test for carrying on of any activity in nature of trade, commerce or business as mentioned in first proviso to Sec. 2(15) would be satisfied if profit making was not real object. Accordingly, noting that there was no material suggesting that assessee was conducting its affairs solely on commercial lines with a motive to earn profit and that no material was brought on record which suggested that the assessee deviated from its objects for which it had been constituted, the Tribunal held that proviso to s. 2(15) was not applicable to assesee's case and dismissed revenue's appeal.
DCIT v Raipur Development Authority (2018) 52 CCH 0529 RaipurTrib - ITA No. 212/RPR/2014 dated 16.04.2018

3341. The Apex Court dismissed the SLP filed by the Revenue on the substantial question of law as to whether any excess expenditure incurred by the trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking section 11.
COMMISSIONER OF INCOME TAX (EXEMPTION) vs. SUBROS EDUCATIONAL SOCIETY - (2018) 166 DTR 0257 (SC) - MISCELLANEOUS APPLICATION NO. 941/2018 IN CIVIL APPEAL NO(s). 5171/2016 dated Apr 16, 2018

3342. The assessee was registered under Society Act, 1860 and filed application for registration u/s.12AA. CIT rejected the same on ground that there were only very little activity carried out in previous year. Further, for holding some event, the assessee society looked for donors and thus the CIT assumed that there would be huge commercial consideration by way of advertisement, selling ticket, broadcasting rights over game thereby violating the ambit u/s 2(15) of 'charity'. However, the Tribunal followed CIT vs. Red Rose School wherein it was decided that with regard to genuineness of activities of trust, whose objects did not run contrary to public policy and were, in fact, related to charitable purposes, CIT was empowered to make enquiries as he thinks fit and in case activities were not genuine and they were not being carried out in accordance with objects of trust/society or institution, of course the registration could be refused. The Tribunal held that, CIT could not presume that the income derived by trust/institution were not used in proper manner without making any enquiry. Further, it was clarified by CBDT that if cut-off specified was exceeded acc to proviso to S.2(15), that amount would be out of scope of exemption and would be chargeable to tax but the exemption u/s 12AA could not be completely eroded and registration could not be refused and thus the Tribunal set aside the order of CIT.
Cuttack District Tennis Association v CIT (2018) 52 CCH 0314 CuttackTrib - ITA No. 454/CTK/ 2013 dated 12.04.2018

3343. The assessee-trust, registered u/s 12AA owning hospital including building and plant machinery, entered into MOU with company wherein the company was to manage/run the hospital on principle of revenue sharing formula, strictly for charitable objects/purpose of Trust. The AO, on considering arrangements outlined in MOU qua objects of assessee trust, considered the same as colorable device in nature and also invoked provision of section 13(1)(c) thereby withdrawing claim of exemption u/s.11. The CIT(A) allowed benefit of exemption claimed by assessee. The Tribunal observed the MOU had bound the company to follow the charitable objects of the trust. Further, various MOU clauses clearly mentioned endeavour to utilize poor and indigent patients funds for objects of scheme and also that the share of revenue received by trust for purpose of poor and indigent patients as well as other needy patients. Thus, the Tribunal held that the AO had not brought any solitary instance to demonstrate irregular diversion of trust funds or exploitation of property trust for benefit of trustees or company. With respect to the AO's contention that the certain amount paid by the assessee to an individual doctor, who also happened to be the ex-trustee and shareholder/ director was against the charitable purpose thus attracting provision of section 13(1)(c), the Tribunal held that consulting fees paid by assessee to Dr. was in normal course of medical professionals and there was no question of any benefit flowning directly or indirectly from Trust to doctor thereby upheld the CIT(A)'s order and dismissed Revenue's appeal.

ACIT & Anr. v Mallikarjun Health Care & Research Centre & Anr (2018) 52 CCH 0467 PuneTrib - ITA No. 117/PUN/2015, 1248/PUN/2015 dated 06.04..2018

3344. The assessee had filed application for grant of approval u/s 10(23C)(vi) within prescribed time limit w.e.f AY 2016-17. The CIT(E) granted approval w.e.f AY 2016-17 but later on shifted to AY 2017-18 on finding that the assessee had in the meanwhile filed its return of income for AY 2016-17 claiming exemption u/s. 10(23C)(vi) though it had still not been granted approval under said section. The Tribunal held that the assessee's act of filing return claiming exemption was justified as the grant of approval was delayed on the part of CIT(E),and moreover the assessee was granted approval thereafter. It held that there was no justifiable reason for shifting grant of approval to AY 2017-18 when otherwise assessee was eligible for approval from AY 2016-17. Thus, the Tribunal directed the CIT(E) to grant approval to assessee from AY 2016-17 onwards and allow the claim of exemption.
C.M. Public School v CIT(E) (2018) 52 CCH 0580 ChdTrib - ITA No.1540/Chd/2017 dated 06.04.2018

3345. The assessee-society(charitable trust), providing education by running a school, applied for registration u/s 12AA and its gross receipt being below Rs.100 lacs, claimed exemption on its' entire income u/s. 10(23C)(iiiad).The CIT(E) held that financial statements of assessee-society revealed it to have sources of income other than from school and it was also charging, apart from tuition fee, fees under various heads, viz. admission fee, registration fee, development fund, transport charges, etc. and indicated it to be for profit. Thus, the registration was denied on the ground that charge of hefty fees undermined and violated very basis or notion of charity and regarded it to be a non-profit society. The Tribunal observed that the school was running on CBSE pattern and thus reasonableness was to be considered with reference to cost of providing education and maintaining quality. The Tribunal further noted that there was nothing to suggest of costs being inflated and surplus, by itself would not render society as not a non-profit society. However, noting that the CIT(E) did not comment adversely on the objects of the society as well as genuineness of its activities and also didn't express satisfaction, the Tribunal assumed it to be overlooked by the CIT(E) and held that the order was to be set aside and restored to the file of CIT(E) for fresh adjudication.
Swami Vivekanand Educational and Welfare Society v CIT (2018) 52 CCH 0418 AsrTrib - ITA No. 422/(Asr)/2017 dated 20.04.2018

3346. The assessee was a charitable trust registered u/s 12AA(3). A search and seizure was carried out at the registered office of the assessee and based on this operation, assessment proceedings were carried out u/s 153-A/143(3) for the relevant year. Further, the Commissioner issued a show cause notice for the cancellation of registration with retrospective effect on the ground that the assessee was not carrying out charitable activities. A writ petition was filed by the assessee challenging the retrospective effect of cancellation of registration. The Court dismissing the writ petition held that all pleas including the plea that the registration could not be cancelled with retrospective effect could be raised by the Petitioner before the Principal Commissioner, who shall necessarily consider all the relevant pleas and take a decision thereon after recording his satisfaction in terms of section 12AA(3) and there was no reason for the Court to believe that he wouldn't have done so.
Hind Charitable Trust v. PCIT - [2018] 93 taxmann.com 483 (Allahabad) - MISC. BENCH NO. 7201 OF 2018 dated APRIL 11, 2018

3347. The assessee was a registered society who had established 11 schools and had also permitted societies with similar object to open schools under the name of 'Delhi Public School'. The main objective of the assessee was to establish progressive schools without any distinction of caste or creed. The assesseee had been enjoying exemption in respect of its income u/s 10(22) since assessment year 1977-78 till assessment year 2007-08 but in view of change in law, section 10(22) was substituted by section 10(23C)(vi) and the assessee's application for exemption u/s 10(23C)(vi) for assessment year 2008-09 onwards was denied by the ADIT on the grounds that the franchisee fee received by assesseee from the satellite schools in lieu of its name, logo and motto amounted to a 'business activity' with a profit motive and no separate books of account had been maintained by assesseee. A writ petition challenging the decision of the ADIT was filed by the assessee wherein the Court noted that the assesseee had maintained accounts which had been audited in detail for the relevant years. The Court

further observed that the surpluses accrued by assesseee society in form of franchisee fee from satellite schools were fedback into maintenance and management of assesseee schools which was in furtherance of charitable purposes and accordingly held that the assessee society qualified for exemption u/s 10(23C)(vi).
DIT v. Delhi Public School Society - [2018] 92 taxmann.com 132 (Delhi) - W.P. (C) NO. 5340 OF 2008 dated APRIL 3, 2018

3348. The Court held that provisions of section 12AA which provide that registration is mandatory to claim exemption would come into force with prospective effect from 1-4-1997.
PCIT v Poorna Prajana Vidya Peetha Prathisthana [2018] 94 taxmann.com 297 (Karnataka)- ITA NOS. 187 TO 190 AND 9 OF 2018 dated 05.04.2018.

3349. The Tribunal held that where assessee was engaged in microfinancing especially for poor women and collected interest at rate much higher than banks and NBFCs and levied penal interest even on poors, it was not entitled to benefit of section 11.
Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018

3350. The assessee, an educational institute filed an application for grant of approval u/s 10(23C) as (a) for the grant of approval under section 10(23C)(vi), the institution must exist 'solely' for educational purpose and not for profit which is clear from the plain reading of the section, (b)the objects in the MOA of the assessee not only included educational objects but also other non-educational objects. The Tribunal upheld the order of the CIT which rejected the application of the assessee.
Desales Educational Society v PCIT(Exemptions) [2018] 94 taxxman.com 206 (Vishakhapatnam – Trib) / [2018] 171 ITD 170 (Vishakhapatnam – Trib.) – ITA NO 389 OF 2016 dated 30.05.2018

3351. The assessee, a charitable trust entitled to exemption u/s 11 of the Act, received voluntary contributions (corpus donation) from the donors. The donors instructed that the interest would also form part of the corpus donation and thus the assessee claimed exemption u/s 11(1)(d) on the interest earned on the said corpus donation. The AO rejected assessee's claim for exemption. However, the Tribunal allowed the assessee's claim and the High Court concurred with the Tribunal's finding that the interest earned on voluntary contribution would also partake the character of voluntary contribution as the instructions issued by the donors were undisputed . The Department's SLP filed against the High Court's order was dismissed by the SC.
CIT(Exemption) v Mata Amrithanandamayi Math Amritapuri [2018]94 taxmann.com 82 (SC)SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 11590 OF 2018 dated 14.05.2018

3352. Consultancy fees were paid by the assessee trust to a Company whose two directors were also trustees of the assessee. The AO denied exemption claimed by the assessee trust under Section 11 of the Act by applying the provisions of Section 13(1)(c). The Tribunal observed that the AO had neither shown how the said Company satisfied the requirements of Explanation 3 to Section 13(1)(9), nor had he demonstrated that such payments were excessive viz-a-viz services rendered. Thus, distinguishing the ruling of the Kerala High Court in Agappa Child Centre vs. CIT (226 ITR 211), the Tribunal held that there was nothing to show that any of trustees had unduly benefited from payments made to such Company and hence exemption under Section 11 was held to be allowable.
DCIT vs. St. Xavier Educational & Charitable Trust – [2018] 53 CCH 0092 (Chennai ITAT) – ITA No 1192/CHNY/2017 dated May 3, 2018

3353. The assessee society was registered under section 12AA whose main object was to promote efficiency in the functioning of the Government in its various departments responsible for providing benefits/amenities to citizens. The assessee in addition to the statutory fee (fixed by the Government) also charged service fee for acting as an interface between the concerned Department of the Government and the citizens through better coordination and induction of technology. The assessee claimed exemption u/s 11 which was denied by AO on the grounds that the assessee was hit by the provisions of section 2(15) and the nature and scope of assessee's activities fell within the ambit of 'business'. The Tribunal dismissed the appeal of the assessee and held that the service fee charged, in

addition to the statutory fee, could be increased at any time by the assessee. This explained the ability of the assessee to produce profit from the services and therefore it was concluded that the assessee has undertaken business as per section 2(15).
Sukhmani Society for Citizen Services v. ACIT – [2018] 93 taxamnn.com 292 (Amritsar – Trib.) – IT Appeal Nos. 52 (ASR.) of 2014 & 594 (ASR.) of 2017 dated April 24, 2018

3354. Where the assessee, being a charitable trust, made certain payments without deducting TDS, the AO made a disallowance under Section 40(a)(ia) of the Act in respect of such expenditure. On appeal, relying on the rulings of the Bombay High court in Bombay Stock Exchange Ltd. (365 ITR 181) and other Tribunal rulings, CIT(A) observed that since disallowance under Section 40(a)(ia) could only be made in respect of a taxpayer whose income was assessable under Section 28, such provisions of section 40(a)(ia) were not applicable in case of the assessee trust as income and expenditure was computed in terms of section 11. The Tribunal upheld the speaking order passed by the CIT(A) and sustained relief granted to the assessee.
ITO vs. Army Wives Welfare Association – [2018] 53 CCH 0013 (Kol High Court) – ITA No 160 of 2016 dated May 3, 2018

3355. Where the assessee, being a charitable trust, advanced loans to another trust, CIT(A) upheld the action of the AO in denying benefit of exemption to the assessee under Section 11 by invoking provisions of Section 13(1)(d) on ground that there was violation of mode of investment in terms of Section 11(5) by advancing loan to another charitable trust. Relying on the rulings of the Bombay High Court in Sheth Mafatlal Gagalbhai Foundation Trust (249 ITR 533) and Delhi High Court in Agrim Charan Foundation (253 ITR 593), the Tribunal held that as per section 13(1)(d), only the income from such investment or deposit which had been made in violation of section 11(5) of the Act was liable to be taxed. Relying on the Ruling of the Gujarat High Court in Sarla Devi Sarabai Trust (40 Taxman 388), The Tribunal held that Sec.11(5) could not be applied to present facts as the money advanced was not an investment but a loan.
Puran Chand Dharmarh Trust vs. ITO – [2018] 53 CCH 0069 (Delhi ITAT) – ITA No 1994/Del/2011 dated May 4, 2018

Interest

3356. The Tribunal held that amendment to provisions of section 200A with effect from 1-6-2015 empowering Assessing Officer levying fees under section 234E has prospective operation and, therefore, Assessing Officer while processing TDS statements for period prior to 1-6-2015, was not empowered to charge fees under section 234E
Trimurty Buildcon (P.) Ltd. v. Dy. CIT, CPC, TDS, Ghaziabad-[2018] 100 taxmann.com 39 (Jaipur –
Trib.)-ITA Nos. 18 to 20 (JP.) of 2017-dated October 29, 2018

3357. The Court held that where assessee's claim for refund of excess tax collected was withheld and refunded by department after a huge delay merely on ground of pendency of appeal filed by revenue, since there was no stay granted by Appellate Authorities, assessee would be entitled to compensation by way of interest for such delay but assessee would not be entitled to interest on interest which was awarded as compensation.
Nima Specific Family Trust v. Asst. CIT, Circle 5(2)- [2018] 100 taxmann.com 262 (Gujarat)- R/Special Civil App. No. 7073 OF 2018-dated October 3, 2018

3358. The Court held that where assessee's claim for refund of excess tax collected was withheld and refunded by department after a huge delay merely on ground of pendency of appeal filed by revenue, since there was no stay granted by Appellate Authorities, assessee would be entitled to compensation by way of interest for such delay but assessee would not be entitled to interest on interest which was awarded as compensation.
Nima Specific Family Trust v. Asst. CIT, Circle 5(2)- [2018] 100 taxmann.com 262 (Gujarat)- R/Special Civil App. No. 7073 OF 2018-dated October 3, 2018

3359. The Tribunal Held that where in respect of purchase of property, assessee deposited tax at source under section 194-IA and also filed a statement to that effect much prior to date when section 194-IA and also filed a statement to that effect much prior to date when section 234E came into existence, i.e., 1-6-2015, impugned order lying fee under section 234E for violation of section 200(3) was to be set aside

Meghna Gupta v. Asst. CIT [2018] 99 taxmann.com 334 (Delhi – Trib.) -ITA No. 2649 (DELHI) of 2018 dated October 1, 2018

3360. Assessee's TDS returns/statements was being processed. Intimation was issued by AO u/s 200A/206CB of Act, on basis of which AO levied late fees u/s 234E of Act. CIT(A) upheld same. The Tribunal held that, in case of Shri Fatehraj Singhvi and Others', it was held that, it was hardly required to be stated that, as per well established principles of interpretation of statute, unless it was expressly provided or impliedly demonstrated, any provision of statute was to be read as having prospective effect and not retrospective effect. Under circumstances, substitution made by clause (c) to (f) of sub-section (1) of Sec 200A could be read as having prospective effect and not having retroactive character or effect. Resultantly, demand u/s 200A for computation and intimation for payment of fee u/s 234E could not be made in purported exercise of power u/s 200A by respondent for period of respective assessment year. However, if any deductor has already paid fee after intimation received u/s 200A, aforesaid view would not permit deductor to reopen said question unless he had made payment under protest. Hence, in said case grievance of assessee was accepted as justified and levy of fee was cancelled.

Yasoda Grah Nirman Sahkari Sanstha Maryadit vs. ITO (TDS)-(2018) 53 CCH 0348 AgraTrib-ITA No.414- 415, 474-475, 478- 549 & 551-588/Agr/2018-Dated Jul 11, 2018

3361. The Tribunal held that the insertion of the proviso below s. 209(1)(d) vide Finance Act, 2012, cannot be considered to have retrospective effect so as to expose a non-resident company to levy of interest u/s 234B for the AYs prior to 2013-14.

Dy. CIT & ANR. vs. TECHNIP UK LTD. & ANR. (2018) 54 CCH 0373 DelTrib ITA No. 1116/DEL/2014 dated 17.12.2018

3362. The Tribunal held that as per section 234C, interest is required to be calculated on the basis of returned income and not on the basis of assessed income.

Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018

3363. In appellate proceedings, the Tribunal had held that the assessee was entitled to interest under section 244-A on refund of excess self-assessment tax paid. The High Court noted that the Tribunal passed aforesaid order by following decision of High Court in Stock Holding Corporation of India Ltd. v. N.C. Tewari, Commissioner of Income Tax 373 ITR 282 and had concluded that no substantial question of law arose from the Tribunal's order. The Supreme Court ruled that, where the High Court had held that assessee was entitled to interest under section 244-A on refund of excess self-assessment tax paid, SLP filed against said order was to be granted

PCIT vs Bank of India-(2018) 100 taxmann.com 106 (SC)- SLP No 29853 of 2018 dated 17.09.2018

3364. AO levied interest for alleged late deposit of TDS u/s. 201(1A), in respect of provision made for commission to directors. CIT(A) upheld order of AO. The Tribunal held that Assessee made a provision for commission to directors at the end of the year, which can be paid strictly in accordance with Section 211 of the Companies Act, 1956 and TDS can be deducted and paid, when actual liability is ascertained, which generally happens after five/six months from the end of the financial year. Further, in

Finance Bill, 2012, Section 194J of the Income Tax Act, 1961 has been amended and a clause (ba) to sub section (1) of the Section 194J effective from 1st July 2012 has been Introduced wherein tax is required to be deducted on the remuneration paid to director, which is not in nature of salary, at the rate of 10% of such remuneration. Thus, the contention of the Ld. AR that this clause is applicable w.e.f. 1.07.2012 was just and proper.

Spice Mobility vs ACIT- (2018) 54 CCH 0025 Del Trib- ITA No 2289,2286,2288 & 2287/Del/2016 dated 19.09.2018

3365. The High Court rejected assessee's interim prayer to submit return of income within the extended due-date of October 15th without insistence of interest payment u/s. 234A; The High Court opined that the matter required further consideration and it was posted for hearing on a later date and directed that the assessee may pay the interest without prejudice to the contentions raised with regard to illegality of interest levy, and clarified that the Department shall refund the interest in case assessee was found not liable for the same.

Hindu Forum vs UOI- TS-568-HC-2018 (Ker)- WP No 31520/2018 dated 28.09.2018

3366. The Tribunal upheld CIT(A)'s order directing the AO to not charge interest u/s 234D (interest on excess refund) noting that the refund was received by the assessee on 01.02.2003, whereas the said section was inserted vide the Finance Act, 2003 w.e.f. 01.06.2003 and thus was not in force when the refund was received.

Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTrib)ITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018

3367. The Tribunal allowed assessee's appeal against AO's & CIT(A)'s methodology for computation of interest on refund u/s 244A and directed the AO to re-compute interest u/s 244A by first adjusting the amount of refund already granted towards the interest component payable to the assessee and balance to be adjusted towards the tax component payable to the assessee. It applied the ratio of co-ordinate bench ruling in Union Bank of India (2016) 72 taxmann.com 348 (Mum Trib) wherein it was held that since the statute itself has already prescribed a particular method of adjustment in explanation to section 140A(1) [regarding payment of taxes], then justice, fairness, equity and good conscience demands that same method should be followed while making adjustment for refund of taxes, especially when no contrary provision has been provided.

Bank of Baroda v DCIT [TS-754-ITAT-2018(Mum)] - ITA No.1646 & 2565/Mum/2017 dated 20.12.2018

3368. The Tribunal held that where refund on account of excess TDS and Advance Tax was less than 10 per cent of total tax determined on regular assessment, no interest under section 244A could have been granted on same in light of the proviso to section 244(1)(a).
Indian Aluminum Company Ltd. v DCIT - [2018] 92 taxmann.com 141 (Mumbai - Trib.) - IT APPEAL NO. 5326 (MUM.) OF 2015 dated MARCH 23, 2018

3369. The Court dismissed assessee's petition field against the CCIT's order rejecting assessee's application u/s 220(2A) for waiver of interest payable u/s 220(2) on account of delay in payment of tax for the block period 01.01.1985 to 24.0.1995, in regards to which the taxes were fully paid only in September 2016. It rejected assessee's contentions that it was a case of genuine hardship since the entire video cassette industry (to which the assessee-partnership firm belonged) was rendered non-functional in view of change in technology. Noting that the assessee's partners were in possession of sufficient funds to meet the obligation, it held that in view of section 188A which makes the partners jointly and severally liable for the tax payable by the firm under the Act, the assessee's submission that the assessee-firm's

hardship should be seen on a standalone basis without considering the partner's financial position could not be accepted.
Video Master v CCIT – Writ Petition No. 2519 of 2017 (Bom) dated 16.03.2018

3370. The Apex Court dismissed Revenue's SLP against High Court judgement allowing interest u/s. 244A to assessee on refund arising on account of waiver of interest u/s 220(2) by CCIT. High Court had refused to restrict the scope of expression 'in any other case' as used in section 244A(1)(b) to the cases of refund of tax and penalty observing that the legislative intent was not to limit the expression 'any amount becomes due' occurring in section 244A(1) or the expression 'in any other case' occurring in section 244A(1)(b) only to cases of refund of tax and penalty. High Court had also clarified that payment of aforesaid interest could not be characterised as payment of 'interest on interest' (as contended by revenue).
Naresh Kumar Aggarwal - TS-18-SC-2018 - SLP (Civil) Diary No(s). 39917, 40007 & 40240/2017 dated 09.01.2018

3371. The Court granted waiver of interest u/s 234A, 234B and 234C in view of clause (e) of CBDT Circular No.400 laying guidelines for waiver of interest u/s 234A noting that assessee was under bonafide belief that it had no taxable income since assessee's main source of income was from property and owing to partition suit pending in relation to family dispute over the properties, assessee could not anticipate the accrual/receipt of property income. It rejected revenue's contention that clause (e), which allows waiver if "The return of income could not be filed by the assessee due to unavoidable circumstances and the return of income was filed voluntarily before detection by the Assessing Officer", was not applicable as the return was filed by assessee consequent upon a survey. It further held that a survey could not tantamount to detection by the AO as referred to in the said clause.
R.Mani v CCIT - TS-613-HC-2017(MAD) - W.P.No.21477 of 2004 dated 04.12.2017

3372. Court held that the assessee was not liable to pay interest levied u/s 234B and 234C where the assessee's liability to pay tax was fastened only due to the ruling of AAR which was pronounced after the due date of filing return and thus it could not pay any tax unless case was decided by AAR.
Van Oord ACZ v CCIT - (2018) 89 taxmann.com 342 (Mad) - W.P..No 14165 of 2009 M.P. No. 1 of 2009 dated 03.01.2018

3373. Where the assessee's application filed u/s 154 for rectification of order passed by AO for rejecting assessee's application for waiver of interest u/s 220(2A) was pending before the CCIT, noting that the assessee's contention that CCIT had passed the impugned order without considering the assessee's claim under the appeal that it was not liable to capital gains itself (CCIT had only noticed assessee's claim of quantification of capital gains) and that the CCIT in the impugned order had not stated any cogent reason for rejecting the request, the Court set aside the impugned order and remanded the matter to CCIT for fresh consideration.
Narayanan Chettiar Industries v. CCIT – (2018) 90 taxmann.com 269 (Mad) – Writ Petition No. 30776 of 2007 M.P. No. 1 of 2007 dated 03.01.2018

3374. Where AO computed 'assessed tax' for the purpose of sections 234B and 234C without considering available MAT credit, the Tribunal held that in view of Explanation 1(v) of sub-section (1) of section 234B, MAT credit had to be allowed from 'assessed tax' and, thereafter, interest under sections 234B and 234C could be computed only after such set off of MAT credit.
Ellenbarrie Industrial Gases Ltd. v ITO – (2018) 169 ITD 194 (Kol Trib) – ITA No. 1687 (Kol.) of 2016 dated 07.02.2018

3375. The AO had not levied interest u/s 234B(1) during the regular assessment, on account of TDS and sufficient taxes paid by the assessee as advance tax but levied interest u/s 234B(3) while passing the reassessment order u/s 147. The Tribunal held that interest u/s 234B(3) was consequential to levy of interest u/s 234B(1) and, thus, since there was no liability to pay interest u/s 234B(1), there would be no liability to pay interest u/s 234B(3). The Court rejected Tribunal's above view holding that under section 234B(3), the words "amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased" were not employed to make levy of interest

u/s 234B(3) consequential to levy under sub-section (1) but only to specify the amount on which interest was to be levied. However, on peculiarity of facts viz. the advance tax paid by the assessee was in excess of 90% of tax dues for year determined under the second reassessment order (which attained finality) without considering the advance tax amount (along with TDS) refunded to the assessee pursuant to appellate orders passed subsequent to original assessment, the Court held that there was no cause for imposition of interest liability u/s 234(1) or 234(3).

CIT v BABY MARINE EXPORTS – (2018) 163 DTR 0503 (Ker) – ITA.No. 94 of 2008 dated 11.01.2018

3376. The assessee had not filed return in response to notices issued u/s 142(1) on 26.8.2002, 9.9.2002, 17.10.2002 and 17.12.2002 but filed the same only on 13.1.2005 but filed application for rectification u/s 154 as well application for waiver of interest imposed u/s 234A, 234B & 234C. The Court held that it could not be said that return could not be filed due to unavoidable circumstances and the assessee's application for waiver of interest was rightly rejected by the competent authority since the assessee's case was not covered by any of the conditions prescribed in CBDT Circular dated 26.6.2006 (providing for the class of income or class of cases in which reduction or waiver of interest u/s 234A, 234B & 234C could be considered). Further, with respect to application made u/s 154, the Court held that there was no mistake apparent from record.

HARISH KUMAR GUPTA v CCIT– (2018) 163 DTR 0260 (Uttarakhand) – Writ Petition (M/S) No. 1658 of 2013 dated 10.01.2018

3377. The Court held thatinterest under section 158BFA(1) could not be levied from assessee for period of delay in filing return caused due to delay in obtaining copies of seized material from department, which was beyond control of assessee.

K. Balan v DCIT [2018] 93 taxmann.com 452 (Madras) – TAX CASE (APPEAL) NO. 764 OF 2007 dated 23.04.2018

3378. The AO found that there was late furnishing of TDS statement by assessee and that late filing fees were levied under Section 234E of the Act. The Assessee claimed that it had neither received any communication from the AO in respect of such fees levied under Section 234E, nor did such communication come to knowledge of Assessee prior to the notice of outstanding demand reference issued by AO. The CIT(A) dismissed the appeals of assessee by holding them to be time barred. The CIT(A) also held that demand raised under Section 234E of the Act was not appealable. Tribunal held that the orders levying fees under Section 234E of the Act were available online and were also served on the same email-id as used for filing the return of income. Accordingly, since no sufficient cause was explained for delay in filing appeals before CIT(A) and since the said orders were not appealable before CIT(A), appeals filed by the Assessee before the Tribunal were dismissed.

P3P VENTURES PVT. LTD. vs. DCIT, CPC (TDS) (DELHI TRIBUNAL) (ITA.Nos.7593 to 7600 of 2017) dated May 28, 2018(53 CCH 0084)

3379. The Tribunal accepted assessee's claim that interest u/s 220(2) could not be charged on account of delay in adjustment of refund amount, since the delay in adjustment of refunds was not attributable to assessee at all rather it was on account of procedural problems faced by the department. However, it held that interest u/s 220(2) could be charged if the assesee was granted interest u/s 244A with respect to the said refund amount. Since it was not clear from the records as to whether the assessee was granted interest u/s 244A or not, the AO was directed to verify the same.

The Tribunal rejected the AO's computation of interest u/s 234B from the first day of the relevant AY to the end of the month date in which reassessment order was passed. The Tribunal held that in case of reassessment / recomputation, sub-section (3) of the said section is attracted and the interest was to be computed from the date on which determination of tax was made under section 143(1)(a). [It is to be noted that section 234B(3) has been amended vide the Finance Act, 2015 to provide that in case of reassessment/ recomputation, interest is to be computed from the first day of the relevant AY; however, the AY under appeal in the above case was 2008-09]

VODAFONE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0377 MumTrib - ITA No. 4749/Mum/2016 dated Apr 6, 2018

Penalty

3380. Penalty was imposed on assessee bank for not having deducted TDS under section 192 knowing fully that Leave Fare Concession (LFC) is applicable for travel in India only and no foreign travel is allowable. However, it was found that assessee bank had undertaken reasonable steps in terms of verifying assessee's claim towards their LFC claims and was aware of employees travelling to foreign countries as part of their travel itinerary but at same time, there was an error of judgment on part of assessee bank in understanding and applying provisions of section 10(5) because assessee bank was under bona fide belief that there was no bar on travel to a foreign destination during course of travel to a place in India and there was nothing explicit provided in section 10(5) to prohibit such travel in order to deny exemption. Therefore, there being reasonable cause in terms of section 273B for not deducting tax by assessee bank, penalty so levied under section 271C was to be deleted.
State Bank of India v. Asst. CIT, (TDS) Jaipur- [2019] 101 taxmann.com 61 (Jaipur - Trib.)-ITA Nos. 1135 (JP.) of 2018-December 31, 2018

3381. The Tribunal held that penalty levied under section 272A(2)(k) could not be sustained where income tax deducted at source was deposited in time and only filing of TDS return was delayed in initial years of switch-over from manual system in a e-filing of quarterly TDS returns due to several technical glitches in working of revenue's server.
Board of Control for Cricket in India v. Asst. CIT, (TDS) - [2018] 100 taxmann.com 2 (Mumbai Trib.)-ITA No. 1999 (MUM.) of 2017 dated October 5, 2018

3382. The Tribunal held that where assessee, in course of search, made a statement under section 132(4) in which he admitted an undisclosed income and specified manner in which such income was earned and had also paid tax along with interest, assessee would be liable to pay penalty at rate of 10 per cent in terms of clause (a) of section 271AAB(1) but not under clause (c) at 30 percent of section 271AAB.
Asst. CIT, Central Circle- 2 (3), Kolkata v. Vishal Agarwal- [2018] 100 taxmann.com 283 (Kolkata – Trib.)-ITA Nos. 1536, 1537 & 1540 (KOL.) of 2017-C.O. Nos. 106 & 107 (KOL) of 2017-dated November 16, 2018

3383. The Tribunal held that penalty proceeding under section 272A(2(e) is a separate proceeding from assessment of income and, thus, once assessee, liable to file return under section 139(4A), failed to do so within prescribed time period, provisions of section 272A(2)(e) would attract automatically irrespective of income determined in course of assessment
Himalayan Educational Trust v. Addl. CIT (Exemptions), Coimbatore-[2019] 101 taxmann.com 113 (Chennai - Trib.)-ITA No. 1772 (CHNY) of 2018-dated November 27, 2018

3384. Where High Court set aside penalty order in respect of deduction claimed by assessee for makingpayments to employees under VRS taking a view that two views were possible i.e., whether amount paid was allowable as deduction under section 37(1) or deduction was to be allowed under section 35DDA and, thus, claiming full amount as deduction did not amount to furnishing inaccurate particulars of income the Apex Court dismissed the SLP filed against said order.
Pr. CIT v. Modipon Ltd.- [2018] 100 taxmann.com 58 (SC)-SLP (CIVIL) Diary Nos. 34309 of 2018- dated October 22, 2018

3385. Where High Court upheld decision of Tribunal deleting penalty under section 271(1)(c) in respect of disallowance made under section 14A because there was no evidence of furnishing inaccurate particulars of income. The Apex Court dismissed the SLP filed against said order.
Pr. CIT 2 v. Gruh Finance Ltd. - [2018] 100 taxmann.com 104 (SC)-SLP (CIVIL) Diary No.34494/ 2018- dated October 26, 2018

3386. The Tribunal held that where assessee was found to have received certain sum in cash andcontention of assessee that said cash was towards capital contribution of various projects was not supported by any evidence, penalty under section 271D was leviable.
Golla Narayana Rao v. Asst. CIT, Circle-2(1), Vijayawada- [2018] 100 taxmann.com 174 (Visakhapatnam-Trib.)-ITA Nos. 380, 433, 487-489, 499 & 503(VIZ) of 2017 & ORS. - Cross Objection Nos. 80-85 (viz) of 2017-dated October 5, 2018

3387. The Court held that where assessee claimed depreciation on non-existent assets, penalty under section 271(1)(c) was to be levied for filing inaccurate particulars of income.
SLP dismissed in Sundaram Finance Ltd. v Dy. CIT [2018] 99 taxmann.com 152/259 Taxmann 220 (SC). SLP (Civil) Diary No. 34548 of 2018 October 26, 2018

3388. CIT(A) deleted penalty levied on assessee. The Tribunal held that, sub-clause (iii) of section 271(1)(c) provided mechanism for quantification of penalty. It contemplated that assessee would be directed to pay a sum in addition to taxes, if any, payable him, which should not be less than but which should not exceed three times of amount of tax sought to be evaded by reason of concealment of income or furnishing of inaccurate particulars of income. In other words, quantification of penalty was depended upon addition made to income of assessee. Assessee filed appeal before CIT(A) against quantum addition. Adjudication of quantum addition was pending before CIT (A) and penalty proceedings was solely depended upon ultimate determination of income, therefore, appeal arising out of imposition penalty could not be decided before adjudication of quantum appeal. Order of CIT(A) was set aside and issue remitted to file of AO for fresh adjudication.
Asst.CIT vs. Vadodara District Co-Op. Sugarcane Growers Union Ltd.-(2018) 53 CCH 0328 AhdTrib-ITA No.1021/Ahd/2015 & 2215/Adh/2016-dated July 12, 2018

3389. Undisclosed investment in property was added to income of assessee on the basis of valuation ofStamp Valuation Authority.Penalty proceedings were initiated for concealment and furnishing of inaccurate particulars of income. A.O levied penalty u/s 271(1)(c) of Act, on aforesaid addition. CIT(A) upheld AO's order. The Tribunal held that, assessee had disclosed all relevant facts of sale of property to Revenue Department. Assessee declared sale consideration as per sale deed and also offered short term capital gain for taxation. Thus, A.O. did not bring any positive evidence on record to show that assessee had concealed particulars of income or furnished any inaccurate particulars. Valuation of Stamp Valuation Authority was not conclusive evidence of receipt of money by assessee over and above what was recorded in sale deed. A.O. had not brought any concrete evidence of concealment of income in order. In absence of any positive evidence with respect to concealment of income, there were no justification for A.O. to levy penalty in matter. Assessee's appeal was allowed.
Ashwani Jaipaty Vs. Dy. CIT-(2018) 53 CCH 0340 DelTrib-ITA.No.276/Del./2018-Dated Jul 11, 2018

3390. The Tribunal held that if order passed levying penalty is beyond 6 months from when proceedings of penalty were initiated with issuance of show cause notice was barred by limitation and thus quashed the same.
Sarvottam Construction P. Ltd. Vs. Asst. CIT-(2018) 53 CCH 0346 DelTrib-ITA No.-1650/Del/2009-Dated Jul 11, 2018

3391. AO initiated the penalty proceedings u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income while the penalty was levied u/s 271(1)(c) of the Act on account of concealment of taxable income.AO in the notice u/s 274 of the Act has not mentioned the specific charge on which the penalty proceedings were initiated u/s 271(1)(c) of the Act. In Sanraj Engineering Pvt. Ltd. Vs ITO it was held that drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law and the notice issued u/s 274 r. w. s. 271(1)(c) of the Act shall specify under which limb of Sec. 271(1)(c) of the Act the penalty proceedings were initiated, and in the absence of such clarity, the proceedings are bad in law. Following the aforesaid referred to order, the penalty levied by the AO and sustained by the ld. CIT(A) u/s 271(1)(c) of the Act was deleted by the Tribunal.
Star Wire (India) Ltd. Vs. Asst. CIT-(2018) 53 CCH 0324 DelTrib-ITA No. 4875/Del/2016, 4876/Del/2016-Dated Jul 9, 2018

3392. During assessment proceeding, AO levied penalty u/s 271(1)(c) on two grounds viz. (i) in respect of profits on sale of impugned shares & unit treated as 'business income' by the Assessing Officer being upheld by the CIT(A) and (ii) in respect of withdrawal of deduction u/s 80IA(4).CIT(A) sustained penalty imposed in respect of profits on sale of shares (which was accepted by assessee). However, CIT(A) deleted penalty levied in respect of withdrawal of deduction u/s 80IA(4). On appeal by the Revenue, the Tribunal held that CIT(A) passed his decision on factual analysis and interpretation along with guidance taken from decision of Apex Court in Liberty India Vs. CIT wherein, it categorically held that eligible

profits were to be computed as if such eligible business was only source of income of assessee.CIT(A) analyzed that AO had apparently proceeded to treat assessee's making a claim of deduction u/s 80IA as furnishing of inaccurate particulars of come.Expression ‘inaccurate particulars of income’ could not be extended to issues, which were capable of different interpretations under law and therefore, assessee’s case could not be said to be a case of ‘furnishing of inaccurate particulars of income'.There was no infirmity found with findings of CIT(A) and hence, relief provided to assessee was ustained and Revenue’s ground dismissed.

Dy. CIT & ANR. Vs. SAKAL PAPERS LTD. & ANR. (2018) 54 CCH 0437 PuneTrib 926/PUN/2013 dated 20.12.2018

3393. AO noted that assessee had recognized revenue from LB and LP till construction and development crossed threshold of 35% and cost so incurred was booked under head ‘capital work in progress’.Threshold of 30% of development for LB and LP were crossed during AYs 2010-11 and 2011-12 respectively and accordingly proportionate cost and revenue was booked in P&L account and offered to tax.‘Indirect’ expenses in respect of LB and LP were treated and shown by assessee as deductible in returns for AYs 2010-11 and 2011-12.Assessee submitted that they under PoC Method had rightly not accounted for revenue in respect of LB and LP for AYs 2010-11 and 2011-12 as projects had not crossed threshold limit.AO held that assessee had wrongly booked ‘indirect' project expenses relating two projects in the two years.‘Indirect’ costs should be booked and treated as ‘capital work in progress’.Thus, AO proceeded to make additions to assessee’s income.Assessee had not filed any appeal against assessment orders for AYs 2010-11 and 2011-12.Assessee revised return of income for 2011-12.When matter reached before ITAT, it was held that assessee’s claim for expenses was inconsistence with Guidance Notes 2006, issued by ICAI.Assessee submitted that claim of expenses was in accordance with Guidance Notes 2012 of ICAI.Assessee’s explanation was not bona fide because when returns were filed by assessee, Guidance notes 2012 had not been issued by ICAI, and instead, Guidance Notes issued by ICAI in 2006 were applicable.Consequently, assessee was covered by Explanation 1(B) to s. 271(1)(c). The Tribunal noted that disallowance of expenses by AO, was accepted by assessee. However, it held that mere surrender and voluntary disclosure by an assessee could not be a ground to delete penalty for concealment.‘Indirect’ expenses could not have been claimed as expense under AS-7 as it was inconsistent with Guidance Note, 2006 which was applicable when returns were filed.Reference made to Guidance Note, 2012 was considered irrelevant as they were not applicable at relevant time when returns of income were filed.Sham and bogus claim reducing tax liability would be lame excuse and not a bona-fide explanation.Certificate of CA in compliance with statutory requirements would not absolve assessee from penalty if act or attempt in claiming deduction was not bona fide.An explanation even on a legal claimed when without any basis and foundation should be rejected as this would give a license to unscrupulous assessees to make wholly untenable and unsustainable claims in hope that return would not be taken for scrutiny assessment.Dictum as expounded was correct. The Court held that an assessee to escape penalty for concealment as per clause (B) to Explanation 1 must establish its bona fides in making the rejected claim. Assessee must establish that all facts and material for computation of total income were duly disclosed. The Court noted that audit report stated that assessee had recognized revenue from projects based on PoC Method in relation to sold areas on basis of percentage of actual construction and other related costs incurred thereon excluding land cost as against total estimated cost of project under execution subject to such actual cost being 30% or more of total estimated cost.There were disclosures under heading 'inventory and cost of construction/development' to effect that 'work in progress' was valued at lower of cost than net realizable value, cost of pricing of land including development rights, material services and other overheads.Costs of construction/development incurred would be charged to P&L accounts proportionate to project area sold, in cases where threshold of 30% had exceeded. It held that full details with regard to expenses claimed under selling, administrative and another expense was disclosed. Full and complete disclosure of material facts was made by assessee. Thus, Assessee could not be burdened with penalty for concealment of income u/s 271(1)(c).

GRANITE GATE PROPERTIES PVT. LTD. vs. Pr. CIT(2018) 103 CCH 0327 DelHCITA Nos. 398/2017, 399/2017dated 19.12.2018

3394. The Tribunal held that penalty levied u/s 271(1)(c) is unsustainable where no specific charge has been leveled against the assessee in the notice and the AO has merely mentioned both the limbs i.e. concealed the particulars of income or furnished inaccurate particulars of income.

BANSIDHAR SOMANI vs. DEPUTY COMMISSIONER OF INCOME TAX(2018) 54 CCH 0374 IndoreTribITA No. 619 to 624/Ind/2017 dated 17.12.2018

3395. The Tribunal deleted penalty by holding that penalty levied u/s 271(1)(c.) was not sustainable where the notice issued to assessee does not specify exactly on which limb penalty u/s 271(1)(c.) had been initiated.

YMK Holdings Ltd vs ITO- (2018) 54 CCH 0082 Del trib- ITA No 2174/Del/2016 dated 12.10.2018

3396. The AO did not impose any penalty, though he made disallowance u/s 40A(3), the CIT(A) made enhancement to assessee's income by treating total purchases made from three paties as non genuine and also initiated penalty proceedings and also initiated penalty proceedings and imposed penalty u/s 271(1)(c.). The Tribunal held that it was not brought on record whether purchases were to be treated as bogus or not and hence deleted the alleged penalty.

Ganesh Industries vs ITO- (2018) 54 CCH 0203 AhdTrib- ITA No 93,814/Ahd/2016 dated 10.10.2018

3397. AO imposed penalty u/s 271(1)(c) towards non disclosure of various amounts of remuneration and interest from partnership firm M/s. S. CIT(A) upheld order of AO. The Tribunal held that, entries towards remuneration and interest were simply being credited to account of assessee without any actual payment and it was only in AY 2007-08, some amounts were paid by firm. Consequently, in absence of specific details, assessee was not in position to declare income. As mitigating circumstances exist for not including income towards remuneration and interest from partnership firm which were not actually received and Assessee had taken consistent position towards its lack of awareness on point, penalty towards such addition was not justified.

Rajan Dilipbhai Desai vs ACIT- (2018) 54 CCH 0102 AhdTrib- ITA No 1874 to 1880/Ahd/2016 dated 16.10.2018

3398. The Court upheld Tribunal's order in case of an assessee which had claimed depreciation on assets purchased from a subsidiary company and further leased back to the parent company of such subsidiary company. The Tribunal had observed that the sale and lease back transaction was bogus and assessee had failed to substantiate with evidence its claim of 100 per cent depreciation on leased assets. Further, it upheld the imposition of penalty for concealment of income under section 271(1)(c). It also noted that items mentioned in lease agreement were part of a bigger system of machinery and the same were incapable of commercial purchase and sale in open market and assets mentioned in lease were permanently fixed as part of machinery. Thus, assets were not capable of being sold and sale existed only on paper and not in real sense and hence imposition of penalty for concealment of income was justified.

Magna Credit &Financial Services vs DCIT- (2018) 98 taxmann.com 392(Madras) – TC (A) No 1522 of 2007 dated 20.09.2018

3399. The Assessee had filed return of income which was selected for scrutiny and during such proceedings, the AO observed that the assessee had claimed deduction u/s 80IA in respect of manufacturing Gutkha pan masala and while claiming such deduction in return of income, assessee had relied on a favourable decision of Ahmedabad Bench of ITAT in Kothari Products Ltd. V/s ACIT. However, the AO had disallowed assessee's claim and imposed a penalty u/s 271(1)(c). The CIT(A) had deleted such penalty and the same was upheld by the Tribunal. The Court held that deduction claimed by assessee u/s 80IA was based on judicial decisions prevailing at time of making such a claim and all particulars relating thereto were disclosed in return of income, thus it could hardly be said that assessee had furnished inadequate particulars or had concealed his income within meaning of section 271(1)(c), thus penalty was deleted.

PCIT vs Dhariwal Industries Ltd – (2018) 103 CCH 0046 Bom HC- ITA No 1133,1136 &

1129/2016 dated 04.09.2018

3400. While completing assessment proceeding in case of the assessee, the AO initiated penalty proceeding without specifying any limb u/s 271(1)(c) and the same were confirmed by the CIT(A).The Tribunal relied on Karnataka High Court in case of CIT vs. SSA's Emerald Meadows wherein it was held that notice issued by AO u/s 274 r/w s. 271(1)(c) was bad in law as it did not specify the specific limb u/s 271(1)(c). Further, the Tribunal had observed that when the penalty proceedings was initiated, the notice issued was in standard pro forma wherein irrelevant clauses were not struck off which indicated AO's non-application of mind while issuing such notice. Thus, the Tribunal held that penalty proceedings initiated by AO were bad in law.

DCIT vs Sahara India Life Insurances Co Ltd – (2018) 54 CCH 0139 Del Trib- ITA No-3509,6243,6244,1347,6245,6246/Del/2013 dated 31.10.2018

3401. The AO had imposed penalty u/s. 271(1)(c) on disallowance of deduction claimed u/s 80IB(10) by assessee and the same was upheld by the CIT(A). The Tribunal noted that the assessee was denied deduction u/s 80IB(10) because commercial constructed area sold by assessee exceeded statutory limit provided under the provisions of Section 80IB(10). Thus, the Tribunal held that may-be technical formality of obtaining completion certificate was not satisfied, but, it would-not mean that assessee had claimed incorrect or false deduction and concluded that mere non-satisfaction of condition of deductions would not mean that assessee had furnished incorrect return, which would make it liable for penalty, thus concluded that lower authorities erred in levying penalty u/s. 271(1)(c) for disallowance of deduction u/s. 80IB(10) merely on technical ground.

Fortune Builders vs ACIT- (2018) 54 CCH 0098 Indore Trib- ITA No 82-84/Ind/2017 dated 18.10.2018

3402. The Tribunal deleted penalty levied u/s 272A r.w.s 276BB for failure of non-filing/belated filing of TDS return in case of an assessee engaged in business of production of potable country liquor/alcohol. The Tribunal observed that the assessee had no default in deduction and deposit of TDS, but due to their licensees being small operators who could not provide PAN, and the accounts manager of the company being on leave due to severe illness, there was belated compliance on part of the assessee, resulting in delay in filing return/statement. The Tribunal thus, held that since on filing belated returns/statements, Revenue department had not suffered any loss, because tax deducted was already deposited on time and there was mere a technical or venial breach to provisions contained in Act for submitting return/statement of TDS, penalty was liable to be deleted.

Haryana Distillery vs JCIT- (2018) 97 taxmann.com 571 (Delhi- Trib)- ITA No 1642 of 2015 dated 04.09.2018

3403. Search u/s 132(1) was conducted at premises of assessee pursuant to which notice u/s 153A was issued. In compliance to such notice, neither assessee attended nor any written submission was filed by assesse. Thus AO levied seven penalties u/s 271(1)(b) for non-compliance of consolidated notice issued u/s 142(1) which was upheld by the CIT(A). The Tribunal held that before levying penalty u/s 271(1)(b), there must be specific notice to assessee for specific assessment requirements to be complied with which must have relevance and apparent nexus with assessment of assessment year to be completed. It further concluded that statutory provision for levy of penalty was not for mere technical non-compliance, but for actual or habitual defaulters. The grievance of assessee was found to be justified and as assessee had not been shown to be a heavy defaulter, penalty imposed were cancelled.

Satish Kumar Arora vs DCIT- (2018) 54 CCH 0065 Agra Trib- ITA No 400-406/2017 dated 27.09.2018

3404. The Tribunal relying on the judgement in case of Narad Investment & Trading P Ltd held that in accordance with CBDT circular, where original assessment order has been set aside by the Tribunal and matter was restored to AO for fresh assessment, the interest if any on delayed payment in response to notice of demand could be levied only from date of default of demand notice in pursuance to fresh assessment order. Thus, the Tribunal held that CIT(A)'s order holding that interest u/s 220(2) had to be levied from date of default from original assessment order could not be sustained.

Premium Capital Market & Invstment Ltd vs ACIT- (2018) 54 CCH 0039 Indore Trib- ITA No 356/2012 & 390/2012 dated 25.09.2018

3405. In case of an assessee where search u/s 132 was conducted, based on certain seized material and notings on it, the AO held certain amount as unaccounted advances and accordingly assessed the same along with interest as undisclosed income for the block period. The CIT(A) deleted the addition holding that the amount of money was not advanced by the assessee but was borrowed and the same was upheld by the Tribunal. However, the JCIT then initiated penalty u/s 271D for the amount borrowed, which was deleted by CIT(A).The Tribunal held that the department had taken two different stands i.e. while framing assessment it held monies were advanced and assessed as undisclosed income and when appellate authorities deleted addition holding that said sum represents loans borrowed, department had made 'U' turn and initiated penalty proceedings u/s. 271D. The Tribunal relying on Commissioner of Income-tax vs. Standard Brands Ltd, held that once amount in question was assessed as undisclosed income of assessee in block assessment for block period, provision of sec. 269SS r.w.s 271D could not be resorted to and hence upheld CIT(A)'s order cancelling penalty u/s 271D.

ACIT vs G.V.S.L. Kantha Rao- (2018) 54 CCH 0026- Vishakapatnam Trib- ITA No 108/2017 dated 20.09.2018

3406. Assessee was subjected to search and seizure operations at his premises and certain documents were seized containing details of cash payments made to various parties for acquisition of land. The AO levied penalty u/s 271AAA on limited ground that assessee had not substantiated manner in which

undisclosed income was derived. The CIT(A) had set aside the order of AO which was further upheld by the Tribunal.The Court on appeal observed that one of directors of assessee had surrendered undisclosed amount in his statement recorded on oath u/s 132(4) on basis of seized documents, however, the assessee had included this amount in return of income. Further, no addition to returned income was made by AO and penalty order passed u/s 271AAA was equally brief and the AO had not relied upon or claimed that there was violation of clause (i) to sub-section (2) to Sec 271AAA i.e admission of undisclosed income and the manner in which it was derived in a statement u/s 132(4) in the course of search but had imposed penalty on account of fact that there was violation and non-compliance of clause (ii) to sub-section (2) to Section 271AAA, i.e., assessee was not able to substantiate manner in which undisclosed income was derived. Thus, the Court concluded that penalty levied u/s 271AAA on the ground that the assessee had not substantiated the way the undisclosed income was derived was not sustainable where the assessee had already in the return of income included that amount (on the basis of statement of its director) and no addition to the returned income was made by the Assessing Officer.

PCIT vs Bhavi Chand Jindal- (2018) 103 CCH 0011 Del HC- ITA No 973/2018 dated 13.09.2018

3407. Assessee, a finance company, filed its original return declaring Nil income and pursuantly Notice u/s 148 was issued, in response to which assessee submitted that its original return be treated as return in compliance to such notice. The AO during proceedings got enquiry conducted from Reserve Bank of India, from which it transpired that assessee's application for registration as NBFC was rejected by RBI and finally assessment was completed on basis of material available on record, making additions, on account of interest, commission and depreciation. The AO further imposed penalty in respect of these three disallowances which was upheld by CIT(A). The Tribubal on appeal held that where income was estimated, or disallowance of expenses was made on estimate basis, there could be no penalty and merely because certain disallowance of expenses had been made, it could not itself justify imposition of penalty u/s 271(1)(c). The Tribunal observed that penalty was initiated on specific charge of 'furnishing inaccurate particulars of income', but penalty order was eventually passed with vague and uncertain default of 'furnishing of inaccurate particulars/concealment of income, thus held that CIT(A) was not justified in confirming penalty imposed in respect of disallowance of interest and commission.

Farrukhabad Investment (India) Ltd vs DCIT- (2018) 54 CCH 0064 Agra Trib- ITA No 141/Agra/2009 dated 11.09.2018

3408. The Tribunal held that if notice issued u/s 274 does not specify charge against assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income, then imposition of penalty cannot be sustained.

Jayant Saha vs DCIT- (2018) 54 CCH 0022 Kol Trib- ITA No 106/2018 dated 19.09.2018

3409. During assessment, the AO noticed some difference in TDS as reflected in Form No.26AS and that shown in return of income. The assessee submitted that it had claimed lesser credit of TDS of Rs. 3,419/- as there was dispute regarding billing of Rs. 3,13,542/-. However, AO made addition of such gross receipt of Rs. 3,13,542/- holding that assessee had failed to explain such difference and initiated penaty u/s 271(1)(c.) which was further upheld by the CIT(A). The Tribunal noted that the assessee had explained reason for difference in TDS as being TDS of disputed billings not taken credit of it in return of income and it had also filed all details of receipts and TDS relating to the same, pointing out that all bills had been accounted for in books of assessee which was confirmed from letters filed during assessment proceedings and submissions made before CIT(A). Thus, the Tribunal held that merely because assessee agreed to any addition to avoid litigation, it would not upturn facts of case to make it a case of concealing and furnishing inaccurate particulars of income to initiate penalty proceedings.

Heritage Marketing vs ITO- (2018) 54 CCH 0316 Chd Trib-ITA No 284/Chd/2018 Dated 24.09.2018

3410. Search u/s. 132 was carried out in assessee's case and based on seized material where there was noting of certain amount given to MR and to ANR, the AO held that amount to be unaccounted advances given by assessee and accordingly assessed same along with accrued interest as undisclosed income for block period. The CIT(A) deleted addition holding that amount was not money advanced by assessee but it was the money borrowed by assessee and the same was upheld by the Tribunal. Further, the JCIT initiated penalty u/s. 271D on the ground of borrowed money, which was later deleted by CIT(A). The Tribunal noted that the department had taken two different stands i.e. while framing assessment it was held as monies advanced and assessed as undisclosed income and when appellate authorities deleted addition holding that said sum represents loans borrowed, department had made 'U' turn and initiated penalty proceedings u/s. 271D. The Tribunal relied on Commissioner of Income-tax vs. Standard Brands Ltd, wherein it was held that once amount in question was assessed as undisclosed income of assessee in block assessment, provision of sec. 269SS r.w.s 271D could not be resorted to. Thus, following the judicial precedents, the Tribunal deleted penalty levied u/s 271D.

ACIT vs G.V.S.L kantha Rao- (2018) 54 CCH 0026 Vishakapatnam Trib- ITA No 108/Viz/2017 dated 20.09.2018

3411. Assessee was subjected to search and seizure operations at his premises, and documents were seized containing details of cash payments made to various parties for acquisition of land and the AO initiated penalty proceedings u/s 271AAA which was later on set aside by the CIT(A). The Tribunal observed that the penalty proceedings u/s 271AAA had been initiated by AO on limited ground that assessee had not substantiated manner in which undisclosed income was derived. The Tribnal held that penalty levied u/s 271AAA on the ground that the assessee had not substantiated the manner in which the undisclosed income was derived was not sustainable where the assessee in the return of income had included such amount and no addition to the returned income was made by the AO, thus penalty levied u/s 271AAA was deleted.

Pr.CIT vs Bhavi Chand Jindal- (2018) 103 CCH 0011 Del HC- ITA no 973/2018 dated 13.09.2018

3412. During assessment proceeding, the AO found that assessee had claimed that sales tax incentive was in nature of a capital receipt and therefore was not taxable, however, the AO rejected assessee's claim and accordingly made additions and also imposed penalty on assessee. The CIT(A) deleted such penalty which was further affirmed by the Tribunal. The Court held that the assessee had made the above claim based on a decision of a Special Bench of ITAT, Mumbai in DCIT v/s Reliance Industries Ltd and in the present case, facts relating to receipt of subsidy by way of sales tax exemption/deferral scheme and its treatment by assessee, was clearly mentioned in computation of income. Thus, the Court concluded that the CIT(A) as well as Tribunal were correct in deleting the penalty and held that submitting an incorrect claim in law would not tantamount to furnishing inaccurate particulars of income or its concealment u/s 271(1)(c).

PCIT vs Dhariwal Industries Ltd – (2018) 103 CCH 0046 Bom HC- ITA No 1133,1136 & 1129/2016 dated 04.09.2018

3413. The Legislature did not intend to penalize every person who makes a wrong claim for deduction. The Court held that in view of judgment of the Supreme Court in the case of CIT v.Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322/322 ITR 158, merely because the assessee had claimed expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract penalty under section 271(1)(c).

Principal CIT v. Samtel India Ltd. [2018] 96 taxmann.com 162 (Delhi)- IT Appeal No. 43 of2017

dated July 9, 2018

3414. The Court dismissed Revenue's appeal against Tribunal's order deleting penalty leveied u/s 271(1)(c) on account of addition of interest earned on income tax refund which the assessee had netted off against the interest paid while computing deduction u/s 10B instead of treating interest on income tax refund as income from other sources. It held that the conduct of assessee in netting of income received from interest paid was bona fide as clearly there was a link between interest paid towards the overdraft facility to the bank which was taken to make payment of tax to the Income Tax Department and the interest received from the Department.
Pr.CIT vs American Express India Pvt Ltd. [2018] 102 CCH 0252 (Del HC) - Income Tax Appeal No.422/2018 dated August 27 2018

3415. The Tribunal upheld CIT(A)'s order confirming penalty levied u/s 272A(1)(c) for not furnishing the information called under the summons issued u/s 131(1A), holding that the conduct of assessee was not bonafide as no prejudice would have been caused is by submitting the details called for by the ADIT (Investigation) as per the summons if those details, as claimed by the assessee, were already available in the records of the I.T. Department or on the website of the Ministry of Corporate Affairs.
Young Indian vs Addl Director of Income-tax [2018] 53 CCH 0498 (Del) (Trib)- ITA No.5303/ Del/ 2016 dated August 30 2018

3416. Where assessee-institute had shown the loan and advances given, in its Audit report, under the head application or use of income or property for the benefit of persons referred to u/s 13(3) and had failed to charge interest on loan in the computation of income due to inadvertent error of the auditor, the Tribunal deleted penalty u/s.271(1)(c) relying on the ratio laid down in CIT Vs Pricewater House Coopers Pvt. Ltd. (2012) 348 ITR 306 (SC). In the said case, it was held that no penalty could be levied when assessee in its tax audit report had indicated that provision towards payment of gratuity was not allowable but it failed to add provision for gratuity to its total income due to bonafide and inadvertent error.

INSTITUTE OF HAEMATOLOGY vs. INCOME TAX OFFICER (EXEMPTIONS) [2018] 53 CCH 0628 (Del) (Trib)- ITA No.5303/Del/2016 dated August 31 2018

3417. Where the AO disallowed interest expenditure u/s 36(1)(iii) on account of assessee not carrying on business and without prejudice also made a disallowance u/s.14A in view of assessee investing its borrowed funds in shares which did not yield any dividend income, the Tribunal deleted penalty levied u/s 271(1)(c) by the AO noting that assessee had merely discontinued its transport business and the AO itself had observed that it was still making investments. The Tribunal hed that thus the very premise that the assessee was not carrying on 'any' business had failed and by no stretch of imagination is could be said that assessee's explanation was spurious, vexatious, mere bluster or frivolous, as claimed by the AO. It relied on the Hon'ble Apex Court in the case of Reliance Petroproducts (P.) Ltd. wherein it was held that disallowance of a claim made by the assessee or a wrong claim by the assessee could not by itself lead to levy of penalty u/s 271(1)(c).

ROBUST TRANSPORATION PRIVATE LIMITED vs.Dy.CIT [2018] 53 CCH 0469 (Mum) (Trib)- ITA No.3195/Mum/2018 dated August 23 2018

3418. The Apex Court dismissed SLP filed by Revenue against High Court ruling wherein the High Court has held that merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to Revenue, that by itself would not attract penalty u/s 271(1)(c).

CIT-2 vs.U.P. State Bridge Corporation Ltd [2018] 97 taxmann.com 279 (SC)- SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 24275 OF 2018 dated August 10 2018

3419. The Tribunal deleted the penalty levied u/s 271(1)(c) holding that the notice issued u/s 274 r.w.s 271 was defective as it did not specify the charge of offence committed by the assessee viz whether it had

concealed the particulars of income or had furnished inaccurate particulars of income and imposition of penalty on basis of defective notice was not sustainable in law.

ZENITH LIFE STYLE PVT. LIMITED. vs. CIT(A) [2018] 53 CCH 0613 Kol Trib- ITA No.1928/Kol/2017 dated August 10 2018

3420. The Court upheld the Tribunal's order deleting the penalty levied u/s 271(1)(c) holding that view taken by Tribunal on facts of the case was a possible view. The Tribunal had set aside the AO's penalty order by holding that explanation given by assessee was bonafide as to why it had claimed a higher rate depreciation of 40% vis-à-vis eligible rate @ 25%, noting that assessee was eligible to claim higher rate of depreciation @ 40% in immediately-preceding year (since it had added plant & machinery in that year thus was eligible for additional 15% depreciation) and accordingly while preparing depreciation chart by downloading relevant figures from chart of immediately preceding year it had mistakenly considered the said higher rate.

PRINCIPAL COMMISSIONER OF INCOME TAX vs. BUNGE INDIA PVT. LTD. [2018] 103 CCH 0015 Mum HC- INCOME TAX APPEAL NO. 356 OF 2016 dated August 08 2018

3421. The Tribunal cancelled the penalty levied u/s 271(1)(c) by the AO on account of (i) treating the amount offered to tax as capital gains to be business income and (ii) disallowance of claim for deduction u/s 80C regarding the tuition fee and LIC premium. Firstly, it was noted that the charge, viz. for furnishing inaccurate particulars or concealment of income, was not certain from the show cause notice and the levy of penalty in the order u/s 271(1)(c) was for both the limbs which was inconsistent. With respect to capital gains, the Tribunal noted that it was only a case of different view and with respect to claim of deduction u/s 80C, it noted that same was disallowed for want of payment receipt. Accordingly, it held that it could only be considered as furnishing the inaccurate particulars of income but not as concealment of income and allowed assessee's appeal.
Kailash Chand JAT vs. ITO [2018] 53 CCH 0590 Jaipur Trib- ITA No.229/JP/2018 dated August 09 2018

3422. The Tribunal deleted the penalty levied u/s 271(1)(c) by the AO on account of disallowance made for interest on loan liability, depreciation and repairs and maintainences noting that (i) the particulars with respect to the loan liability for which assessee had claimed deduction of interest expenditure were on record and hence that it was not a case of concealment of particulars and (ii) with respect to other additions (being repairs and maintainence and depreciation), that assessee had merely made a claim for which was not sustainable in law and could not amount to furnishing of inaccurate particulars.
MSEB Holding vs. Asst CIT [2018] 53 CCH 0425 MumTrib- ITA No.852 and 853/M/2018 dated August 03 2018

3423. The Court dismissed Revenue's appeal against Tribunal's order deleting penalty levied u/s 271(1)(c) holding that there was no substantial question of law warranting interference by the Court as the Tribunal had arrived at factual findings. The Tribunal had upheld CIT(A)'s order deleting penalty u/s 271(1)(c) levied on account of additions of unexplained cash credit made u/s 68 and rental income noting that (i) identity and creditworthiness was not in dispute as the assessee had received loan from NRI after obtaining approval from RBI, what was rejected was conversion of loan to gift by assessee and (ii) reasonable cause was shown for omission of rental income in the return as assessee had filed ROI before the audit of the tenant company.

Pr.CIT vs. MP Purushothaman [2018] 103 CCH 0038 ChenHC- I.T.A. No. 1313 /Mds/2008 dated August 06 2018

3424. The AO rejected assessee's claim of deduction u/s 36(1)(vii) opining that since the assessee-bank was engaged in re-financing of long-term financing loans given by other financial institutions for purchase of residential houses in India and not directly engaged in providing such finance as required by the said section. He levied penalty u/s 271(1)(c) on account of such disallowance which was deleted by the Tribunal. The Court upheld the Tribunal's order deleting the said penalty, noting that the conduct of

assessee bank was bonafide and that the assessee had taken due care and caution to make a specific disclosure of the said deduction in its return of income and thus, it could not be regarded as guilty of concealment of income or furnishing inaccurate particulars of income.

Pr.CIT vs National and Housing Bank [2018] 100 taxmann.com 401 (Mum Trib)- IT APPEAL NO. 1892 and 1893 of 2017 dated August 21 2018

3425. The Court upheld the Tribunal's order holding that sincepenalty proceeding initiated u/s 271(1)(c) against the assessee was dropped after considering the reply submitted by the assessee, the AO was not justified in initiating fresh penalty proceedings on same set of facts.
Pr.CIT v Geetaben Chandulal Prajapati[2018] 96 taxmann.com 100 (Gujarat) – R/TAX APPEAL NO. 816 OF 2018 dated July 10, 2018

3426. The Court upheld the Tribunal's order deleting the penalty levied u/s 271(1)(c) which was levied on account of disallowance of the assessee's claim of exemption u/s 54 in absence of any evidence that property sold by assessee was used for residential purposes, noting that the Tribunal had arrived at factual finding that assessee had neither concealed his income nor furnished inaccurate particulars of income.
CIT v D.Harindran [2018] 97 taxmann.com 297 (Madras) – T.C.(APPEAL) NO. 360 OF 2018 dated July 10, 2018

3427. The Tribunal dismissed assessee's appeal filed against the CIT(A)'s order confirming the penalty levied by the AO u/s 271(1)(c) on account of concealment of interest income received from Fixed Deposit Receipts (FDR) purchased from one bank, rejecting the assessee's claim that he was under a bona fide belief that the said interest income was not taxable since the bank had not deducted TDS thereon. It noted that the assessee had shown the agricultural income even though it was not taxable in the return of income and had also shown the interest received on FDR's from other Banks. Thus the Tribunal held that the assessee's plea that interest had been omitted on bona fide belief, could not be accepted as the same was not proved and it was a clear case of concealment of income.
Nitin Chauhan v ITO - [2018] 97 taxmann.com 669 (Chandigarh - Trib.) - ITA No. 1409 (CHD.) OF 2017 dated July 27, 2018

3428. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty levied u/s 271D and 271E for accepting loan / deposit from various sister concern through journal entries thereby alleging violation of provisions of section 269SS / 269T. It relied on the High Court decision in the case of assessee's group company i.e. CIT vs. Ajinath Hitech Builders Private and Others [ITA No.171,172,202, 203, 218 and 219 of 2015 (Bom)] wherein it was held that since the transaction by way of journal entries were undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc, in absence of any adverse finding by authorities that journal entries were made with a view to achieve purposes outside normal business operations or there was any involvement of money, there was a reasonable cause for not complying with section 269SS.
DCIT v LODHA CONSTRUCTION (DOMBIVALI) & Othrs (2018) 53 CCH 0405 MumTrib - ITA No. 110, 111, 135, 139-142/Mum/2017, 6602-6606, 6612/Mum/2016, (C.O. No.157, 154/Mum/2018) dated July 30, 2018

3429. The Tribunal deleted the penalty levied u/s 271(1)(c) noting that, in quantum appeal, the addition on the basis of which penalty was levied was deleted.
XAVIER INSTITUTE OF MANAGEMENT vs. ITO - (2018) 53 CCH 0398 CuttackTrib - ITA Nos. 98, 99, 100 & 101/CTK/2016, 266, 267 & 320/CTK/2017 dated July 27, 2018

3430. The Tribunal deleted the fee levied u/s 234E for late filing of TDS return / statement noting that the intimations u/s 200A for all the relevant AYs were issued before 01.06.2015 and in the case of Smt. G. Indhirani v. DCIT (2015) 60 taxmann.com 312 (Chen) it had already been held by the Tribunal that prior to 01.06.2015, there was no enabling provision in section 200A for making adjustment in TDS return / statement by levying fee u/s 234E and therefore, the AO could not make any adjustment by levying fee u/s prior to 01.06.2015.

A.R.R. CHARITABLE TRUST v ACIT - (2018) 66 ITR (Trib) 69 (Chennai) - ITA No. 1307/Chny/2017 & ITA Nos. 238, 239, 240 & 241/Chny/2018 dated July 24, 2018

3431. The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revision order passed by the CIT u/s 263 wherein the CIT had held that the AO had erred in not passing a penalty order u/s 271(1)(c) even though he had stated in the assessment order that penalty proceedings have been initiated. It was noted that the AO had made a noting in his filed that there was no concealment of income or inaccurate furnishing of particulars and hence the penalty proceedings had been dropped. The Court held that the proposal for initiating such proceeding did not by itself constitute initiation of such proceeding and the AO's noting which suggested dropping of penalty proceeding itself had all attributes of formal order.
Pr.CIT vs. SRI UDAY CHAKRABORTY - (2018) 102 CCH 0226 KolHC – ITAT NO. 411 of 2017 & GA No. 3791 of 2017 GA No. 3792 of 2017 dated 18th July, 2018

3432. The Court dismissed assessee's appeal against the Tribunal's order giving partial relief to the assessee by partly deleting the penalty levied u/s 271D with respect to loans received in cash in breach of section 269SS. The assessee claimed that the Tribunal's order was not sustainable because on the same set of facts, it had deleted penalty in respect of some parties while upheld penalty in respect of the other parties. The Court noted that the Tribunal had passed a detailed speaking order wherein the Tribunal had (i) deleted the penalty wherever reasonable cause was shown, (ii) restored the issue to AO for fresh consideration where reasonable cause was likely and (iii) upheld penalty where reasonable cause was not shown. It thus held that on facts of the case, the Tribunal had taken a reasonable view which could not be said to be perverse.
SHIVAJI RAMCHANDRA PAWAR (HUF) vs. JCIT (2018) 102 CCH 0336 MumHC – ITA NO. 145 OF 2016 WITH ITA NO. 154 OF 2016 WITH ITA NO. 171 OF 2016 dated 18th July, 2018

3433. The Tribunal upheld the penaty levied u/s 271D on account of violation of provision of section 269SS for receipt of cash from unsecured creditor (being promoter & director), holding that the assessee-company had failed to prove with reasonable cause for such receipt. It was noted that (i) the assessee company had failed to show reasonable cause that the emergency funds in form of cash deposited by Dr.AMA (promoter & director) were for business exingencies as the cash flow produced by assessee clearly negated such claim and (ii) In the assessment order of one Mr.J which was made pursuant to search, a finding was given that the unaccounted income of Mr.J had been routed through Dr.AMA and deposited into the accounts of assessee which were laundered and then withdrawn by Dr.AMA and returned to Mr.J and thus, unaccounted income in respect of loan transaction were traced as unaccounted income of J.

Vasan Healthcare P. Ltd vs Addl CIT [2018] 54 CCH 0262 (Del- Trib.)- ITA No.42194-21919/CHNY/2018 dated 26.11.2018

3434. The Tribunal deleted the penalty levied u/s 271(1)(c) holding that notice issued by AO u/s 271(1)(c) r.w.s. 274 was bad in law as it did not specify under which limb of section 271(1)(c) the penalty proceedings were initiated i.e. whether it was for concealment of particulars of income or furnishing of inaccurate particulars.

Iqbal Singh Dahiya vs ITO [2018] 54 CCH 0258 (Del -Trib)-ITA No.4861/Del/2018 dated 20.11.2018

3435. The Tribunal deleted the penalty levied u/s 271(1)(c) holding that the notice issued u/s 271 r.w.s. 274 itself was defective since it did not specify the charge of offence committed by the assessee viz. whether it had concealed the particulars of income or had furnished inaccurate particulars of income.
New Life Sonoscan Centre vs ITO [2018] 54 CCH 0416 (Kol -Trib)- ITA No.2560/Kol/ 2017 dated 02.11.2018

3436. The Tribunal held that since gross receipts of assessee (engaged in running of trucks and earned commission on hiring trucks) exceeded Rs 1 crore, provisions of section 44AB(a) were applicable and therefore, consequent failure to get his accounts audited called for penalty u/s 271B. It was noted that the assessee did not declare correct income in the return of income and that the assessee had not only income from plying of the six trucks but was also doing business of hiring trucks from which the assessee also earned business commission income which was the reason for the gross receipts of the assessee exceeding Rs. 1 crore. Accordingly, the Tribunal dismissed assessee's appeal
Jaswant Singh vs ITO [2018] 54 CCH 0289 (Del -Trib)- ITA No.4152/Del/ 2018 dated 01.11.2018

3437. The Tribunal deleted the penalty levied u/s 271(1)(c) on account of disallowance of deduction of administrative expenses against the interest & dividend income received by the assessee (a shipping company). It was noted that though in quantum appeal the Tribunal had upheld the disallowance on the ground that the said incomes could not be classified as income from an activity incidental to the shipping business so as to adjust administrative expenses against them, the assessee had only made a legal claim under a bonafide belief and this took assessee out of clutches of penalty provisions as contained in section 271(1)(c). Further, noting that the High Court had admitted substantial question of law arising from the Tribunal's order in quantum appeal, the Tribunal held that this was also a strong indicative of the fact that the issues under consideration were debatable in nature.
The Shipping Corporation of India Ltd. vs Dy.CIT [2018] 54 CCH 0286 (Mum -Trib I.T.A. No.3870 & 3871/Mum/2016 dated 02.11.2018

3438. The Tribunal deleted the penalty as levied by the AO u/s 271(1)(c) and confirmed by CIT(A) with respect to the claim of the assessee for treating income from sale of fixed assets as well income by way of profit from sale of other fixed assets to be income from core shipping activities albeit the said claim stood rejected by all the authorities concurrently including ITAT in assessee's own case for impugned AY 2006-07. It observed that in various decisions it was held that income arising from sale of assets should be treated to be income from core shipping activities. Thus, the issue being a debatable one involving interpretation of legal provisions of a newly inserted special scheme of taxation of shipping companies and the explanations offered by the assessee to that effect could not be termed as not bonafide albeit rejected even by ITAT in quantum. Accordingly, it allowed the assessee's appeal.
The Shipping Corporation of India Ltd. vs Dy.CIT [2018] 54 CCH 0286 (Mum -Trib I.T.A. No.3870 & 3871/Mum/2016 dated 02.11.2018

3439. The Tribunal allowed Revenue's appeal and upheld the penalty levied u/s 271AAA(1) [being 10% of undisclosed income in case where search proceeding are initiated], holding that the assesse could not get benefit of section 271AAA(2)(ii) which provides that penalty will not levied if the assesse inter alia substantiates the manner in which undisclosed income was derived since the assessee, instead of substantiating manner in which undisclosed income was derived, actually took a contrary stand that the undisclosed income had not accrued. Further, it held that to claim benefit u/s 271AAA(2), admission of undisclosed income by an assessee was required to be made in a statement u/s 132(4), whereas the disclosures were not made u/s 132(4) but instead, by way of letter addressed to DDIT(Inv.) which also did not contain specifics of manner in which such income was derived.

Dy.CIT vs Nirala Housing Pvt Ltd. [2018] 54 CCH 0419 (Del Trib) - ITA Nos. 3531/Del/2015 & 3135, 3136, 3137, 3155/Del/2015 dated 16.11.2018

3440. The Tribunal deleted the penalty levied u/s 271(1)(c) for capital gains not disclosed by assessee on switch over of investment from one Mutual Fund (MF) scheme to another, holding that assessee was guided by article in Economic Times and thus, was under bona fide belief that such switchover would not qualify as transfer u/s 2(47) to attract capital gains as investment remains with same MF. It also accepted assessee's contention that it was a mere interpretation of a debatable subject and not concealment of income. Accordingly, the Tribunal allowed assessee's appeal.
Kamalesh Basu v CIT [TS-637-ITAT-2018(Kol)] - ITA No.529/Kol/2014 dated 10.10.2018

3441. The Tribunal held that provisions of Section 269SS of the Act were not applicable on the loan transaction between husband and wife. It relied on the judgment in case of Tuhinara Begum Hoogly Vs JCIT wherein it was held that the provisions of Section 269SS were not applicable on the loan

transaction between husband and wife because there was no debtor-creditor relationship. The transaction between the husband and wife are protected from the legislation as long as they are not for commercial use. Thus, the question of levying of penalty u/s 271D of the Act does not arise.
NABIL JAVED vs. ITO [TS-701-ITAT-2018(DEL)] ITA No.3797&3798/Del/2018 dated 27.11.2018

3442. The Tribunal allowed assessee's appeal and deleted penalty levied u/s 271(1)(c) in respect of interest and commission disallowances, noting that (i) disallowance of 10% of total interest expenses was made on account of non-production of books of accounts which were taken away by certain disgruntled depositors as RBI had rejected assessee's request for NBFC license and (ii) assessee had paid commission for deposits to agents over and above the RBI prescribed rate of 2% and hence the same was disallowed invoking explanation 1 to section 37(1). With respect to interest expense, it held that the AO had not disputed genuineness of depositors and further the assessee could not produce books for reasons beyond its control and there was no concealment / furnishing of inaccurate particulars on the part of assessee. With respect to commission expense, it was held that when the assessee had made payment, Explanation 1 to section 37(1) was not on the statute and hence, though disallowance could be made by way of retrospective application of the said explanation, penalty could not be levied as it did not amount to concealment of income or furnishing of inaccurate particulars of income.
Farrukhabad Investment (India) Ltd v DCIT [TS-536-ITAT-2018(AGR)]- ITA No. 141/Agra/2009 dated 09.08.2018

3443. The Tribunal upheld penalty levied u/s 271(1)(c) for AY 2006-07 pursuant to the search and seizure operations carried out u/s 132 wherein the director of assessee-company had surrendered an undisclosed income for entire group for AY 2008-09 and based on entry made in the seized documents, the AO had found that the income offered with respect of assesse-company for AY 2008-09 actually related to AY 2006-07 (i.e. relevant AY). It was noted that the assesse had not filed a return for the relevant AY and had filed the same only pursuant to notice issued u/s 153A declaring nil income and accordingly, deeming provisions of Explanation 5A to section 271(1)(c) were attracted. As per the said Explanation, assessee is deemed to have concealed particulars of his income or furnish inaccurate particulars of such income if, in course of search proceedings, he is found to be owner of any income based on an entry in document for a previous year for which due date of filing return has expired and no such return has been filed. It was also noted that the assessee had accepted the quantum addition and not filed an appeal against it and had only challenged the penalty addition.
Spaze Towers Pvt Ltd vs Dy.CIT [2018] 54 CCH 0250 (Del Trib)-ITA Nos. 2044 & 2045/Del/2014 and ITA No.2558/Del/ 2012 dated 20.11.2018

3444. The Tribunal held that in intimation prepared u/s 200A up to 31st May 2015, late filing fee u/s 234E could not be charged while processing TDS return/statement because enabling clause (c) of s. 200A(1) have been inserted w.e.f. 01.06.2015.

MADHYA PRADESH POWER TRANSMISSION LTD. & ORS. vs. Dy. CIT (CENTRALIZED PROCESSING CELL-TDS) & ORS. ((2018) 54 CCH 0504 IndoreTrib ITA Nos. 740 & 741/Ind/2014 dated 20.12.2018

3445. Where the order imposing penalty under Section 271(1)(b) was passed in March 2008 whereas the assessment orders forming the basis of initiation of penalty were passed in financial year ended March 2000 and March 2002 and the show-cause notice for levy of penalty had expired on March 2002 and March 2003, the Tribunal deleted the penalty levied observing that the penalty orders were time barred in view of the time limits provided in Section 271(1)(c) of the Act (which provides two time limits, firstly, expiry of the financial year in which the proceedings in the course of which action for the imposition of the penalty is initiated or completed; or secondly, six months from the end of the month in which action for imposition of penalty is initiated). Further, it noted that the quantum proceedings had been set aside for fresh adjudication and therefore held the penalty proceedings would not survive.
R. K. RANA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0259 PatTrib - ITA Nos. 178, 179 & 180/Pat/2017 dated Mar 9, 2018

3446. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied u/s 271(1)(c) on account of addition made with respect to accrued interest on certain loans / advances which was not accounted for by the assessee-NBFC following mercantile system of accounting, where the assessee specifically stated in it notes to account that on account of policy decision, it had not accounted for interest accrued as well as interest payable pertaining to loans / advances given/ received by the erstwhile entities which had merged with the assessee company. It held that the assessee had taken a bonafide policy decision of not accounting for interest receivable as well as payable with respect to which full disclosure was made and that non-acceptance of the claim could not by itself lead to penalty.
Pr.CIT v RPG Cellular Investments and Holdings Pvt. Ltd. – ITA No. 826 of 2015 (Bom) dated 23.01.2018

3447. In a case where during the course of assessment proceedings, the AO had recorded his satisfaction that the assessee had furnished inaccurate particulars of its income, but ultimately he levied penalty u/s 271(1)(c) on both the charges viz. furnishing inaccurate particulars of income and concealing the particulars thereof, the Tribunal deleted the said penalty levied, holding that the AO could not levy penalty on both the charges and the AO must be sure about the specific charge for which assessee is in default. It relied on the decision in the case of CIT v Samson Perinchery (2017) 392 ITR 4 (Bom) wherein it was held that the order imposing penalty had to be made only on the ground of which the penalty proceedings had been initiated, and it cannot be on a fresh ground of which the assessee had no notice.
Makcon v ITO – ITA No. 1940/Mum./2016 dated 28.02.2018

3448. Where AO passed penalty order u/s 221(1) on account of assessee's failure to pay self-assessment tax within stipulated period, in view of fact that amended section 140A(3) w.e.f. 01.04.1989 does not envisage any penalty for non-payment of self-assessment tax, the Tribunal deleted the penalty.
Heddle Knowledge (P.) Ltd. v ITO – (2018) 90 taxmann.com 376 (Mum) – ITA No. 7509 (Mum.) of 2011 dated 19.01.2018

3449. The Court set aside the order of CIT(A) and the order of Tribunal confirming CIT(A)'s order wherein CIT(A) had held that since there was no specific mention of proceedings taken under Explanation 1(B) to section 271(1) in the notice issued u/s 271 which was an imperative mandate, penalty order invoking the said Explanation passed by AO was to be set aside. It held that when a notice was issued under section 271, Explanation also being included under the said provision, assessee was sufficiently put to notice of entire provision as available u/s 271(1).
CIT v Smt. Vasantha Anirudhan – (2018) 401 ITR 279 (Ker) – ITA No. 78 of 2008 (Ker) dated 12.01.2018

3450. The Court accepted assessee's contention that it was incumbent upon the Revenue to complete penalty proceedings and pass order u/s 271(1)(c) within 6 months period from the date of receipt of CIT(A)'s order where the revenue had withdrawn the appeal filed against the CIT(A)'s order giving part relief to the assessee with respect to additions made by AO while computing the book profit and the AO had initiated penalty proceedings beyond six months of receipt of the CIT(A)'s order contending that the period of limitation u/s 275 should be reckoned from date on which order of Tribunal permitting withdrawal of appeal was received. In this regard, it was held that it was an adjudicatory 'order' which culminated in Proceeding that was to be deemed a terminus quo for completion of Penalty Proceeding.
Salora International Ltd. v CIT – (2018) 91 taxmann.com 287 (Del HC) – ITA No. 799 of 2005 dated 20.02.2018

3451. The Tribunal held that once the addition on which penalty had been levied is set aside to the AO for fresh consideration, it is as good as there is no addition for levy of penalty u/s 271(1)(c) and in such case, if at all penalty can be levied, the AO shall take up penalty proceedings after the receipt of order of the Tribunal and modifying the assessment as per directions of the Tribunal. Since, in the present case, the AO had finalized the penalty proceedings before waiting for outcome of the Tribunal's orders, it was held that the issue was to be re-examined by the AO in light of provisions of section 275(1A).

Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018

3452. The Court stayed the operation of the Tribunal's order confirming the penalty levied u/s 271(1)(c) after the assessee's claim of exemption u/s 10B on interest income in return of income was not accepted by revenue, noting that in the subsequent assessment years, the assessee had been granted benefit of deduction u/s 10B to extent of its interest income. It held that the controversy in respect of deduction of interest income u/s 10B stood resolved in favour of the assessee and at the very least, it could be a debatable issue.
Cybertech Systems & Software Ltd. v DCIT – (2018) 91 taxmann.com 407 (Bom) – ITA Nos. 578, 579 & 582 of 2016; Notice of Motion Nos. 166, 181 & 183 of 2018 dated 23.02.2018

3453. Where assessee had admitted an income out of speculative business from sale of commodities pursuant to search conducted in respect of a group in which assessee was one of the key persons and the penalty was levied u/s 271AAB on ground that the said income admitted by assessee found during search was not reflected in regular books of account, rejecting assessee's contention that since he was not engaged in business or profession, he was not required to maintain books of account as per section 44AA or section 44AA(2), the Tribunal held that since income under question was infact entered in 'other documents' maintained by assessee in normal course, which were retrieved during search, the amount offered by assessee did not fall in ken of 'undisclosed income' defined in section 271AAB and thus no penalty could be levied.
DCIT v Manish Agarwala – (2018) 92 taxmann.com 81 (Kolkata Trib) – ITA No. 1479 (Kol.) of 2015 dated 09.02.2018

3454. Where assessee had disclosed an income out of speculative business from sale of commodities pursuant to search conducted in respect of the group to which it belonged and the penalty was levied u/s 271AAB on ground that the said income had been found during search u/s 132 which was not reflected in regular books of account, rejecting assessee's contention that since it was for first time that it was doing unsystematic speculative activity which earned income brought to tax under head 'Income from other sources', it was not required to maintain books of account as stipulated in section 44AA or section 44AA(2)(ii), the Tribunal held that since the speculative transactions had been found to be recorded in 'other documents' which were retrieved from assessee's accountant's drawer and it was based on that the said income offered by assessee under the return of income filed was accepted by the AO as income under head 'Income from other sources', the amount offered by assessee could not be termed as 'undisclosed income' as defined in section 271AAB and thus no penalty could be levied.
DCIT v Subhas Chandra Agarwala & Sons (HUF) – (2018) 91 taxmann.com 442 (Kolkata Trib) – ITA No. 1470 (Kol.) of 2015 dated 19.02.2018

3455. The Tribunal deleted the late filing fees (of TDS return) charged u/s 234E by the AO where the assessee claimed that prior to amendment u/s 200A w.e.f. 01.06.2015, levy of fee u/s 234E during processing of TDS statement was not tenable, noting that the said amendment made vide the Finance Act, 2015 enabling the AO to make adjustments while levying fees u/s 234E had prospective effect since the amendment was procedural in nature and, thus, the AO while processing TDS statements/returns for period prior to 01.06.2015 was not empowered to charge fees u/s 234E.
DHARAM DEEP PUBLIC SCHOOL & ANR. v DCIT – (2018) 52 CCH 16 (Del Trib) – ITA Nos. 3112/Del/2016, 3113/Del/2016, 3114/Del/2016, 3115/Del/2016, 3116/Del/2016, 2317/Del/2016, 2318/Del/2016, 2319/Del/2016dated 05.01.2018

3456. The Tribunal deleted the penalty levied u/s 271(1)(c) for concealing particulars of income and furnishing of inaccurate particulars of income on account of addition made to the assessee's income in respect of bogus/unproved purchases admitted by the Director of asssessee-company during search operation on group companies, keeping in view peculiar facts of the case, smallness of amount vis-a-vis returned loss and bonafide explanation of assessee. Noting that the sole reliance of the Revenue was based on an incriminating statement recorded of third person who was never confronted to assessee nor said statement stood test of cross examination by assessee and there was no voluntary disclosure made by assessee company w.r.t. bogus purchases during course of search u/s 132(1), while the same was

made by another Group concern, it held that the fact that the assessee had not chosen to further litigate the matter of quantum additions did not mean that penalty u/s 271(1)(c) was to be levied automatically and the penalty proceedings being altogether different proceedings, the Revenue had to show by positive material that the assessee furnished inaccurate particulars of income or concealed particulars of income.

BALAJI MOTION PICTURES LTD. v DCIT – (2018) 61 ITR (Trib) 0421 (Mum) – ITA No. 7643/Mum/2016 dated 03.01.2018

3457. The Tribunal deleted penalty levied u/s 271(1)(c) by the AO towards addition made on account of bogus purchase as

a) there was not even an allegation by the AO anywhere in the assessment order that the assessee had either concealed the particulars of income or furnish inaccurate particulars of income.

b) the AO had initiated penalty proceedings u/s 271(1)(c) issuing notice u/s 274 r.w.s. 271(1)(c) in a standard format without striking-off the inappropriate words so as to constitute his satisfaction as to whether the assessee had concealed the particulars of income or furnished inaccurate particulars thereof.

INDRANI SUNIL PILLAI v ACIT – (2018) 52 CCH 49 (Del Trib) – ITA Nos. 491/Del/2012, 492/Del/2012, 5647/Del/2011, 446/Del/2012, 447/Del/2012, 5503/Del/2010, 5648/Del/2011 dated 19.01.2018

3458. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty levied by the AO u/s 271(1)(c) where the penalty notice was issued without specifying charge for which penalty was initiated and as there was no striking off of limb in notice. It relied on the decision in the case of Meherjee Cassinath Holdings v. ACIT [ITA.No. 2555/Mum/2012] wherein it was held that the action of AO in non-striking off relevant clause in notice showed that charge being made against assessee was not firm and therefore, the proceedings suffered from non-compliance with principles of natural justice in as much as AO himself was not sure of the charge and the assessee was not made aware as to which of two limbs of section u/s 271(1)(c) he had to respond. Further, following the decision in the case of Orbit Enterprises v. ITO [60 ITR (T) 252] wherein similar view was taken, it held that the notice issued by the AO u/s. 274 r.w.s. 271(1)(c) was on account of non-application of mind and on this account itself, penalty imposed was liable to be deleted.

DCIT & ANR. v PENNZOIL QUAKER STATE INDIA LTD. & ANR – (2018) 52 CCH 42 (Mum) – ITA Nos. 7386/MUM/2014, 7503/MUM/2014 dated 12.01.2018

3459. The Tribunal cancelled the penalty levied for concealment vide order passed u/s 271(1)(c), following the decision in the case of Sachin Arora v ITO [I.T.A No. 118/Agra/2015] involving similar facts and circumstances wherein it was held that since the AO had stated in the assessment order that the penalty was initiated on the ground of 'a' particular charge (say, concealment of income), however immediately thereafter the AO had issued show cause notice u/s 274 r.w.s 271(1)(c) mentioning both charges (i.e. concealment of income or furnishing of any inaccurate particulars thereof), the penalty notice suffered from non-application of mind and, thus, the penalty order passed pursuant to such notice was void ab initio.

SUMAN GUPTA v ITO – (2018) 52 CCH 62 (Agra Trib) – ITA Nos. 484, 486 & 491/Agra/2015, 80 to 82, 85, 86, 142, 144, 149, 150, 172, 180, 254 & 256 /Agra/2016 & 53, 91 & 181 /Agra/2017 dated 10.01.2018

3460. The Tribunal while deleting the penalty levied u/s 271(1)(c) had recorded the findings (i) that one of the partner of assesse-firm, in his statement u/s 132(4)at the time of the search, had explained the entries recorded in seized material and stated that such entries pertained to 'on money' in its building project and (ii) that assessee had also quantified total amount of such 'on money' and during the course of recording of such statement, specific questions had not been asked to substantiate the manner in which the income was derived received. The Court after noting that the assessee had also paid taxes and interest on declared income before the passing of the assessment order, held that the conditions envisaged in clauses (i), (ii) & (iii) 271AAA(2) were fulfilled and, hence, the Tribunal had rightly deleted the penalty levied by AO u/s 271AAA for default of not substantiating manner in which undisclosed

income was earned. It held that there is no prescription as to the point of time when the tax has to be paid *qua* the amount of income declared in the statement made u/s 132(4) and, thus, there would be sufficient compliance with the provision if tax is shown to have been paid before the assessment was completed.
Pr.CIT v Swapna Enterprise – (2018) 91 taxmann.com 12 (Guj) - Tax Appeal No. 826 of 2017 dated 22.01.2018

3461. The Tribunal deleted penalty levied u/s 271E (for violating conditions u/s 269T by repaying loan other than through banking channels) for conversion of loan into equity by assessee-company. It held that squaring-off loan by way of allotment of equity shares was a usual business practice and a part of routine corporate debt restructuring exercise and hence could not be held as violation of provisions of Sec. 269T. It dismissed Revenue's contention that the assessee utilized the amounts raised through share capital for making alternate investment and instead could have utilised the funds to repay the loan & avoid Sec. 269T violation and held that if the Revenue's stand was to be accepted it would only tantamount to stepping into the shoes of the businessman which was not warranted, more so in the penalty proceedings u/s 271E of the Act.
Arkit Vincom Pvt. Ltd. [TS-105-ITAT-2018(Kol)] - I.T.A No. 2397/Kol/2016 dated 07.03.2018

3462. Where assessee accepted deposits from staff members in cash in violation of provisions of section 269SS, the Court held that since assessee failed to discharge its burden in proving that there was a reasonable cause in accepting deposits from staff members other than by way of cheque or draft, penalty order passed under section 271D was to be confirmed.
CIT v AL-Ameen Educational Trust Kulapully P.O - [2018] 92 taxmann.com 128 (Kerala) - IT APPEAL NOS. 199 & 203 OF 2013 dated MARCH 13, 2018

3463. Where the assessee merely made a voluntary surrender by way of revised return pursuant to survey proceedings and did not offer any explanation as to the nature of income or its source, the Court held that in light of the decision in the Apex Court in MAK Data 358 ITR 593 (SC) such voluntary surrender of income after survey by filing a revised income would not save the assessee from levy of penalty for concealment of income in the original return if there was no explanation as to the nature of income or its source.
PrCIT v DR. VANDANA GUPTA - ITA 219/2017 dated 20.02.2018

3464. Where the AO levied penalty under section 271AAB on the basis that a loose sheet found during search conducted at the premises of the assessee indicated undisclosed income, the Tribunal held that since such loose sheet did not indicate any suppression of income but it was only projection of profit statement, impugned penalty under section 271AAB was unjustified.
ACIT v Marvel Associates - [2018] 92 taxmann.com 109 (Visakhapatnam - Trib.) - IT APPEAL NOS. 147 (VIZAG) OF 2017 dated MARCH 16, 2018

3465. Where the assessee had declared additional income pursuant to search proceedings but failed to provide the specified manner in which such income was earned, the Court held that the AO was justified in levying penalty under Section 271AAA of the Act.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. RITU SINGAL - (2018) 101 CCH 0077 DelHC - ITA 672/2016 dated Mar 12, 2018

3466. Where the AO sought to levy penalty under Section 271(1)(c) of the Act but did not specify the charge against the assessee in its notice under Section 274 of the Act i.e. **whether for concealment of particulars of income or for furnishing of inaccurate particulars**, the Tribunal held that no penalty could be levied.
OM LOGISTICS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0173 DelTrib - ITA No. 529/Del/2016 dated Mar 1, 2018

3467. The Tribunal, relying on the decision of the Court in CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 held that where the AO sought to levy penalty under Section 271(1)(c) of the Act but did not specify the charge against the assessee in its notice under Section 274 of the Act i.e.

whether for concealment of particulars of income or for furnishing of inaccurate particulars, no penalty could be levied. More so, it noted that the Tribunal in quantum proceedings deleted the addition based on which the penalty was levied and accordingly held that the levy of penalty was invalid.
TRADELINK SECURITIES LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0176 KolTrib - ITA Nos. 914&915/Kol/2015 dated Mar 14, 2018

3468. Where the assessee claimed deduction of provision for leave encashment which was allowed during original assessment proceedings but subsequently disallowed during reassessment proceedings, the Tribunal upheld the order of the CIT(A) and held that no penalty could be levied under Section 271(1)(c) of the Act as the assessee had not furnished any inaccurate particulars. It held that mere making of a claim which was not sustainable in law would not amount to furnishing of inaccurate particulars.
DEPUTY COMMISSIONER OF INCOME TAX vs. RELIANCE PETROMARKETING LTD. - (2018) 52 CCH 0252 MumTrib ITA No. 5950/Mum/2016 – dated Mar 21, 2018

3469. Pursuant to notice under Section 148 the assessee filed return of income withdrawing its erroneous claim of setting off of long term capital gain from long term capital loss in respect of sale of equity share of D company to NSE which was 100% holding company of assessee company as a result of which the entire long term capital loss claimed by assessee in its original return could no longer be carried forward. The AO accordingly levied penalty under Section 271(1)(c) which was confirmed by the CIT(A). Noting that the withdrawal of claim of set off of long term capital gains were germane to the reassessment proceedings, and that the assessee on coming to know the error had suo-moto disallowed/withdrawn same without being confronted by Revenue, the Tribunal held that the assessee had demonstrated its bona-fide. Accordingly, the Tribunal deleted the penalty levied under Section 271(1)(c). It held that every legal claim which was filed and which was not allowed by Revenue did not automatically lead to levy of penalty u/s 271(1)(c) and further held that since the assessee voluntarily withdrew claim in return of income, no penalty was exigible u/s 271(1)(c).
NSE IT LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0235 MumTrib - ITA No. 5935/Mum/2014 dated Mar 28, 2018

3470. The assessee had claimed deduction under Section 35(1) of the Act on account of amount given to Indian Medical Scientific Research Foundation (IMSRF). Pursuant to the investigation conducted by the CBI wherein the CBI found the IMSRF to be bogus, the assessee informed the AO of the development and applied for withdrawal of claim of the deduction. However, the AO completed the assessment without disallowing the claim. Subsequently, the AO reopened the assessment and made disallowance of the said amount and sought to levy penalty under Section 271(1)(c). The Court noted that at the time of making the payment, the assessee had no idea about IMSRF being bogus and upon being informed, withdrew its claim before the AO and accordingly upheld the order of the CIT(A) and Tribunal deleting penalty as there was complete disclosure on the part of the assessee.
CIT v Man Industries Ltd – (2018) 101 CCH 188 Mum Trib – ITA No 898 of 2015 dated Feb 7, 2018

3471. Where the AO levied penalty under Section 271(1)(c) on the ground that the depreciation claimed by the assessee was not allowable absent physical verification of assets and the Tribunal, on the merits of the case allowed the assessee's claim of depreciation stating that once the assets formed part of a block of assets physical verification would not be required, the Tribunal upheld the order of the CIT(A) deleting penalty proceedings on the ground that the disallowance pertaining to which penalty was initiated had been deleted by the Tribunal.
ACIT v Ajmet Vidyut Vitaran Nigam Ltd – (2018) 52 CCH 0085 Jaipur Trib – ITA No 933 to 935 / Jp / 2017

3472. Pursuant to search proceedings conducted in the premises of the Shakumbri group of companies, the AO found certain loose papers and documents in the possession of the three directors of the company (one being the assessee) and held that the expenditure reflected therein was incurred by the directors and since no explanation was provided made proportionate addition in the case of each director. Accordingly, the AO levied penalty under Section 271(1)(C) of the Act. The Tribunal noted that penalty was levied merely on the basis of the documents which were undated and that the AO had not been able to rebut the explanation of the assessee that these expenses had been incurred by the company

and not by him. Accordingly, in the absence of such rebuttal, no penalty could be levied under Section 271(1)(c).
Sunil Rastogi v ACIT – (2018) 52 CCH 112 Del Trib – ITA No 1921 / Del / 2016 dated Feb 7, 2018

3473. Where the assessee claimed deduction under Section 80IC of the Act on the manufacture of pharmaceutical products carried out at its Baddi Unit but the AO disallowed the same on the ground that the assessee had not even started production and levied penalty under Section 271(1)(c) for furnishing inaccurate particulars, the Tribunal noting assessee's contention that it was utilizing capacity of its other unit for getting its pharma products manufactured under its supervision and control on job charge basis wherein raw materials and packing material was also supplied by assessee, held that merely because the assessee made a claim of deduction which was not accepted by the AO, no penalty could be levied as the AO had not brought anything on record to prove that the claim was ex-facie wrong or made with the intent to defraud the Revenue. Accordingly, it upheld the order of the CIT(A) deleting penalty
ASSISTANT COMMISSIONER OF INCOME TAX vs. ANKUR DRUGS & PHARMA LTD. -(2018) 52 CCH 0124 MumTrib - ITA No. 7529/Mum/2011 dated Feb 27, 2018

3474. Where the AO levied penalty on both disallowance under Section 14A as well as adjustment on account of MAT, the Tribunal held that since the income of the assessee under the normal provisions of the Act was lower than the income as per MAT, no penalty could be levied on the disallowance made under Section 14A. Vis-à-vis the penalty under MAT, it noted that neither the AO nor the CIT(A) had provided the assessee to justify its claim (of reducing capital gains from the book profits for MAT) and therefore set aside the order to the AO to reconsider the issue after providing the assessee an opportunity of being heard.
INCOME TAX OFFICER vs. NCS INVESTMENTS PVT. LTD. - (2018) 52 CCH 0144 HydTrib - ITA No. 1654/HYD/2014 dated Feb 16, 2018

3475. The Tribunal held that penalty proceedings initiated u/s.271(1)(c) was void ab initio and liable to be quashed, if AO issued vague notice u/s. 274 r.w.s 271(1)(c) without striking off irrelevant portion of notice and also if AO had not made specific charge whether penalty proceeding was initiated for concealment of particulars of income or furnishing of inaccurate particulars of income. Accordingly, it held that the penalty proceeding initiated by AO were bad in law and liable to be quashed.
TATA COMMUNICATIONS TRANSFORMATION SERVICES LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0114 MumTrib - ITA No. 3108/M/2016 dated Feb 21, 2018

3476. Where the AO made an addition in the hands of the assessee pursuant to search proceedings which was based on material not found during the search proceedings i.e. inquiries during assessment **proceedings**, the Tribunal deleted penalty levied pursuant to such adjustment and held that the addition itself could not be sustained as it was not made on the basis of any incriminating material found during search.
GETAMBER ANAND vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0126 DelTrib - ITA No. 3127/Del/2016 dated Feb 27, 2018

3477. The Tribunal quashed imposition of penalty u/s 271(1)(c) on assessee-individual observing that the AO had imposed penalty alleging 'concealment of particulars of income', while CIT(A) had confirmed penalty on the ground of 'furnishing inaccurate particulars of income'. It held that the imposition of penalty was solely dependent upon the 'satisfaction' of the AO [unless initiated by CIT(A)] and nothing else, and since the basis and foundation for imposition of penalty was altered by CIT(A), the penalty order passed by AO was liable to be struck down. It held that where the original basis of imposition of penalty was altered in a significant way by the first appellate authority, the very basis for sustaining the penalty was rendered non-existent and accordingly deleted the penalty levied.
Kantibhai Naranbhai Prajapati [TS-86-ITAT-2018(Ahd)] - /I.T.A. No.2880/Ahd/2014 dated 15/02/2018

3478. The Court admitted Revenue's appeal against the order of the Tribunal wherein the Tribunal deleted penalty levied u/s 271(1)(c) by AO on addition on account of undisclosed income on ground that in

quantum proceedings addition was deleted. It held that since the questions on which quantum appeal was admitted by the Tribunal were not in respect of claim for deduction or pure interpretation of law or document which could lead to appeal on deletion of penalty not being entertained.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHREE GOPAL HOUSING & PLANTATION CORPORATION - (2018) 101 CCH 0042 MumHC - INCOME TAX APPEAL NO. 701 OF 2015 dated Feb 6, 2018

3479. The Tribunal cancelled the penalty levied u/s 271(1)(c) where the assessee had omitted to include capital gains arising on transfer of property while filing return of income and the assessee had paid tax on the same on the date on which the assessment order was passed u/s 143(3) r.w.s. 147, holding that the judicial pronouncements were absolutely clear that if the return of income had certain mistake, which was bona-fide and there was also no loss to the Revenue (as in the present case since the assessee paid the taxes on the date of assessment order itself), then in the absence of any material on record, it could not be concluded that the assessee had deliberately concealed the income or had furnished inaccurate particulars of income. Noting that there was nothing on record to show that there was any malafide intention on the part of the assessee to conceal the income or furnish inaccurate particulars of income, it deleted the penalty.
Pankaj Kumar Gupta v ITO – ITA No.486/LKW/2016 dated 16.01.2018

3480. The Tribunal quashed the penalty levied u/s 271D & 271E (for violating section 269SS / 269T conditions by accepting / repaying loan in cash) on individual-assessee on account of cash loan accepted / repaid from/to sister-in-law and nephew for more than Rs.20,000, relying on the co-ordinate bench ruling in the case of Sri Mansur Ali Laskar in ITA No.1094/Kol/2011 wherein the Tribunal had considered Niece, Uncle, Aunty, Wife of brother, Wife's Sister and Cousin sister as family members and noting that the said decision had also been approved by the High court in ITAT No.111 of 2012 GA No.1498 of 2012. The Tribunal also held that the transactions between these family members were neither loans nor deposit and purely a family system and purely a family requirement to help each other in the needy hours.
Jagmohan Sharma v JCIT [TS-22-ITAT-2018(Kol)] – ITA No. 552 & 553/Kol/2015 dated 10.01.2018

3481. The Court dismissed the Revenue's appeal against the Tribunal's order in the case of the assessee, a builder and developer, wherein the Tribunal, after referring to the clauses of the allotment letter as well as the possession letter, had held that the sale of flats took place only in subsequent AY when possession was given and not in the year under consideration when the allotment letter was issued and that the amount received in year under consideration was only in the nature of advances. It also noted that the Revenue did not highlight any circumstances to indicate that by bringing the said transactions to tax in the next AY instead of the current year, there was likely to be a loss to the Revenue.
CIT v Millennium Estates Private Ltd. [TS-186-HC-2018(BOM)] – ITA No. 853 of 2015 dated 30.01.2018

3482. The Tribunal deleted the late filing fees (of TDS return) charged u/s 234E by the AO through the order of intimation u/s 200A on assessee-individual during AY 2014-15, holding that the amendment u/s 200A w.e.f. 01.06.2015 made vide the Finance Act, 2015 enabling the AO to levy fees u/s 234E while making adjustments through intimation u/s 200A had prospective effect and it could not apply to the period prior to 01.06.2015. It relied on the decision in the case of CIT v Vatika Townships (P) Ltd. (2014) 271 CTR (SC) wherein it was observed that "if a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect".
Nimaben Rameshbhai Thakkar v DCIT [TS-15-ITAT-2018(Ahd)] – ITA No. 3111/Ahd/2015 dated 04.01.2018

3483. The Tribunal remanded the matter to the file of CIT(A) where the CIT(A) had upheld the AO's order levying penalty u/s 271(1)(c) of the Act, noting the quantum order of CIT(A) also remanded to the file of the CIT(A) by the Tribunal. Accordingly, it directed the CIT(A) to adjudicate the issue of levy of the said penalty after considering the outcome of the **quantum** appeals.

HANS ISPAT LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0145 (DelTrib) - ITA No. 3849/Del/2015, 3850/Del/2015, 3851/Del/2015, 3852/Del/2015 dated Jun 13, 2018

3484. The Tribunal remanded the issue of levy of penalty u/s 234E on account of delay in filing TDS return back to the CIT(A) to decide the issue on merit, noting that the CIT(A) had dismissed the assessee's appeal on the ground that there was inordinate delay in filing of appeal without any sufficient cause. It also rejected Revenue's argument that the appeal was not maintainable even otherwise since the order levying penalty u/s 234E became an appealable order only after 01/06/2015 and the notice of demand was sent to the assessee on 30/05/2014 on email. The Tribunal noted that the Revenue could not produce any evidence to establish the above fact and the relevant date of notice of demand was 28/11/2016.
SUBHASH CHAND NAWAL (HUF) vs. INCOME TAX OFFICER - (2018) 52 CCH 0478 JaipurTrib - ITA No. 1037/JP/2017 dated Apr 10, 2018

3485. The Tribunal upheld the CIT(A)'s order deleting the penalty levied u/s 271(1)(c) by the AO on account of disallowance made with respect to (i) annual consideration paid to BCCI (ii) lodging, boarding and aircraft expenses, travelling expenses and vehicle hire charges and (iii) payment towards website charges. It was noted that (i) annual consideration was disallowed due to difference in interpretation of law (ii) expenses of lodging, boarding, etc. were disallowance on adhoc basis and (iii) the Tribunal in quantum had restored the matter with regard to disallowance of website charges after observing that the CIT(A) in assessee's own case for the subsequent assessment year had held that website generating charges were revenue expenditure.
KNIGHT RIDERS SPORTS PVT. LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0336 MumTrib - ITA No. 5587/Mum/2015, 5614/Mum/2015 dated Apr 16, 2018

3486. The Tribunal allowed the assessee's appeal against the CIT(A)'s order confirming the penalty levied u/s 272A(1)(c) on the ground that there was no co-operation from assessee on date of survey and even thereafter, neither did any responsible person appear, nor were books of account produced. It held that the levy of penalty u/s 272A(1) was not automatic and compulsory and the provisions of section 272A(1) and (2) [including clause (c) or (d) of sub-section (1)] were covered by provisions of 273B as per which, where assessee had proved that there was reasonable case for default, penalty was not leviable. It held that the assessee had reasonable cause for non-appearance before AO on certain dates of hearing and it could not be considered as case of non-compliance. Further, it was noted that as per section 274(1), no order imposing penalty could be passed by any Income Tax authority unless person on whom penalty was proposed to be imposed, was given an opportunity of being heard in matter by such authority.
P. MURALI MOHANA RAO vs. ADDITIONAL COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0112 (HydTrib) - ITA No. 1173/Hyd/2017 dated Jun 6, 2018

3487. As the assessee had failed to produce books of accounts and audit report u/s 44AB during the assessment proceedings, the AO initiated penalty proceedings u/s 271B. In response to the penalty notice, the assessee furnished the tax audit report. However, subsequent enquiries conducted by the AO revealed that the audit report was manipulated and fabricated and also the CA who had signed the audit report, in a sworn statement, stated thathe had prepared tax audit report without examining the books of account. The AO thus levied penalty u/s 271B. The CIT(A) upheld the order of the AO. Before the Tribunal, the assessee contended that the he didn't maintain books of accounts and thus there was no question of their examination or producing the same. The Tribunal rejected the assessee;s above contention noting that the assessee had admitted before the AO that books of account could not be produced on the pretext being misplaced. It further held that the P & L A/c filed with return indicated that the assessee was liable to get his books of account audited u/s 44AB and since the assessee had failed to get his accounts audited, he was liable to penalty u/s 271B. Thus, the assessee's appeal was dismissed
BRIJ GOPAL CHAUHAN vs. INCOME TAX OFFICER (DELHI TRIBUNAL) (ITA No. 2167/Del./2015) dated May 22, 2018 (53 CCH 0064)

3488. The AO made additions to the income of the assessee pursuant to search and seizure operations. Thereafter, the AO levied penalty on the assessee under Section 271(1)(c) of the Act. The CIT(A) upheld the order of the AO. The Tribunal held that imposition of penalty was not justified as the quantum appeal of the assessee was admitted by the High Court on the merits as well as on the legal issue. Further, the Tribunal quashed the penalty proceedings and held that levy of penalty under Section 271(1)(c) was not sustainable as the AO did not levy any specific charge on the additions made in the show cause notice as well as the assessment order (i.e. of concealment of income or furnishing of inaccurate particulars). Thus, the assessee's appeal was allowed.
HARSH INTERNATIONAL PVT. LTD. vs. DCIT (DELHI TRIBUNAL) (ITA No. 861 & 862/Del/2018) dated May 22, 2018 (53 CCH 0066)

3489. Where the AO made additions in respect of unexplained cash credits u/s 68, 69 and 69C, penalty proceedings under Section 271(1)(c) of the Act were initiated separately for concealment of particulars of incomewithin Explanation-1 to section 271(1)(c). The CIT(A) upheld the order of the AO. Tribunal held that since the notice under Section 274 r.w.s. 271 of the Act was not specific about the charge against assessee (i.e. of concealment of income or furnishing of inaccurate particulars), penalty could not be imposed on assessee as the notices were not valid in law. Thereby, penalty levied by the AO was unsustainable on technical grounds and hence the Assessee's appeal was allowed.
SARLA DEVI AGARWAL vs. ITO (AGRA TRIBUNAL) (ITA No. 70/Agra/2017) dated May 18, 2018 (53 CCH 0056)

3490. The Tribunal allowed Revenue's appeal against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO after finding that the assessee had made a false claim of earning agricultural income which actually was business income. It noted that the assesse-company had purchased seeds from the farmers and claimed the said activity of procuring seeds as agriculture income by way of creating a chain of documents or papers of lease agreements etc and thus the explanations furnished by the assessee were not found to be bonafide. It held that it was not the simple case of disallowance of expenditure as in CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that merely because the assessee had claimed deduction which was not accepted by the Revenue, penalty u/s 271(1)(c) was not attracted. It held that the assessee had claimed its activity of purchase of the seeds from the farmers as agriculture income in a fraudulent manner to evade the taxes.
DEPUTY COMMISSIONER OF INCOME TAX & ORS. vs. PHI SEEDS PRIVATE LIMITED & ORS. - (2018) 53 CCH 0273 (Del Trib) - ITA No. 6622/Del/2013, 6645/Del/2013, 4366/Del/2015 dated June29, 2018

3491. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO on account of certain additions made to the loss computed as per the normal provisions of the Act as well as per the MAT provisions. CIT(A) held that disclosures made by assessee and other disclosures in financial statements indicated that the assessee had neither concealed any particulars of its income/profit nor furnished any inaccurate particulars thereof and that for (deliberate) concealment of income, there should have been 'hiding of income or profit' or 'keeping of secret' some particulars that resulted in income or profit being concealed. It had thus held that merely because explanations or contention of assessee were not accepted, there was no conclusive ground for levy of penalty. The Tribunal held that the CIT(A)'s order was in conformity with the decision in the case of CIT vs. Nalwa Sons Investment ltd [Special Leave to Appeal (Civil) No(s).18564/2011] wherein it was held that when tax payable on income computed under normal procedure was less than tax payable under deeming provisions of Section 115JB , then penalty u/s. 271(1)(c) could not be imposed with reference to additions /disallowances made under normal provisions.
DCIT& ANR. vs. USHA MARTIN LIMITED & ANR - (2018) 53 CCH 0260 (RanchiTrib) - ITA Nos. 185 to 187/Ran/2016 (C.O. Nos.10 & 11/Ran/16) dated June 28, 2018

3492. The AO levied penalty u/s 271(1)(c) on account of certain cash deposits made by the assesee in his bank account on the ground that assessee could not substantiate the source of the same and had agreed to the addition of the same (though the assesse stated that cash deposits were with respect to sale/ purchase of agricultural produce and had produced some bills / vouchers of sale and purchase). It

was noted that the said bills/ vouchers were not proven to be false and during the assessment, the assesse had also offered to produce concerned persons if some time was given to him. Noting the above facts and following the decision in the case of CIT Vs. M/s. Gem Granites (Karnataka) [ITA No.504/09 (Mad HC)] wherein it was held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, the Tribunal held that it was not a fit case for levy of penalty u/s 271(1)(c) and, accordingly, it directed the AO to cancel the penalty.

ARCHIT AGGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0264 (DelTrib) - ITA No.4441/Del/2015 dated June 28, 2018

3493. The AO levied penalty u/s 271(1)(c) on account of certain cash deposits made by the assesee in his bank account on the ground that assessee could not substantiate the source of the same and had agreed to the addition of the same, though the assesse stated that cash deposits were with respect to sale/ purchase of agricultural produce and had produced some bills / vouchers of sale and purchase. It was noted that the said bills/ vouchers were not proven to be false and during the assessment, the assesse had also offered to produced concerned persons if some time was given to him. Noting the above facts and following the decision in the case of CIT Vs. M/s. Gem Granites (Karnataka) [ITA No.504/09 (Mad HC)] wherein it was held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, the Tribunal held that it was not a fit case for levy of penalty u/s 271(1)(c) and, accordingly, it directed the AO to cancel the penalty.

ARCHIT AGGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0264 (DelTrib) - ITA No.4441/Del/2015 dated June 28, 2018

3494. The Tribunal deleted the penalty levied by the AO u/s 271(1)(b) for non-compliance of notice issued u/s 153A(1) for filing of return post search proceedings, noting that –

- no statutory notice u/s 274(1) was ever issued to assessee (to be heard before imposing penalty and thus, no mandatory reasonable opportunity of being heard was ever given to assessee before imposing penalty, which was very essential)
- necessary statutory satisfaction required u/s 271(1) that assessee had failed to comply with notices and AO was satisfied to initiate penalty proceedings had not been recorded anywhere
- entries in order sheets did not show issuance of any notice u/s 274 r/w s 271(1) or of recording of any such satisfaction.

ANIL KUMAR SETH vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0215 (DelTrib) - ITA Nos. 7516 to 7522/Del/2017 dated June 22, 2018

3495. The Tribunal dismissed the assesse's appeal against the penalty levied u/s 272A(2)(k) on account of substantial delay ranging for almost more than one year in filing quarterly TDS statements. It held that simply because the assessee had deposited amount to the Government account, it would not go to mitigate rigors of the assessee's failure to file TDS statements within stipulated time. Moreover, the assessee being a Government Organization was supposed to make strict compliance of law. The Tribunal held that though there was no loss to revenue due to delay in filing TDS statements, as requisite TDS was deposited to Govt. account in time, but such an inordinate delay might cause loss to the Revenue while processing refunds, if any, to deductees which fetches substantial amount of interest to be paid by Government on such refunds, if paid with delay. Further, it held that the assessee's reason for delay i.e. change /lack of staff, was not found substantiated by any evidence on record and such a reason, did not constitute to be a reasonable cause to file TDS statements with such an inordinate delay.

DELHI DEVELOPMENT AUTHORITY COMMON WEALTH GAMES 2010 vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0225 DelTrib - ITA No. 3407/Del/2015 dated June 22, 2018

3496. The Tribunal deleted the penalty u/s 271(1)(c) which was levied by the AO in the course of reassessment proceedings alleging that the assesse had received accommodation entries in its bank

account from various concerns, noting that the said reassessment proceedings itself were quashed by the Tribunal in quantum appeal.
INTIME CREDIT & HOLDING PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0192 DelTrib - I.T.A. No. 2944/DEL/2015 dated June 21, 2018

3497. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO on account of addition made **in** the assessment order passed u/s 144, noting that the CIT(A) had deleted the penalty on basis that entire addition had been deleted by him and, hence, there was no question of imposing penalty.
INCOME TAX OFFICER vs. YOGESH KATARIA - (2018) 53 CCH 0191 (DelTrib) - I.T.A. No. 3385/DEL/2015 dated June 21, 2018

3498. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty u/s 271(1)(c) after rejecting the claim of the assesse, Foreign Institutional Investor, for carrying forward the long term capital loss on purchase and sale of shares and setting off the same against the long term capital gains exempt u/s 10(38). It was noted that the assessee had disclosed in its return the said loss and further in the return, note was also given that it had reserved its right to carry forward the loss. Thus, the Court held that the assessee bonafidely believed that u/s 10(38), the loss is not required to be considered and only income is required to be considered relying on the phraseology of the said provision. The act of the assessee in giving the said note was not with some ulterior intention or concealment of income or giving inaccurate particulars.
DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. NOMURA INDIA INVESTMENT FUND MOTHER FUND - (2018) 404 ITR 0636 (Bom) – ITA No. 1848 of 2014 dated June 21, 2018

3499. The Tribunal quashed the penalty order u/s 271(1)(c) passed by the AO on account of various disallowances made in the assessment order, noting that in the notice issued u/s 274 r.w. 271(1)(c) itself the AO had not specified as to whether he was issuing notice to initiate the penalty proceedings either for "concealment of particulars of income" or "furnishing of inaccurate particulars of such income" rather he had incorporated both the limbs of section 271(1)(c). It held that even from the assessment order, it was prima facie not discernible as to which default has been committed by the assessee since the AO had merely recorded findings at the fag end of his order in mechanical manner that it was a fit case for imposition of penalty u/s 271(1)(c) on all the issue on which addition/disallowances had been made. The Tribunal thus held that from the from the above finding in the assessment order, the factum of non-application of mind on the part of the AO in issuing vague and ambiguous notice u/s 274 r.w.s. 271(1)(c) got further corroborated.
MODI RUBBER LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX(2018) 53 CCH 0170 DelTrib - ITA No. 2559/Del./2018 (Stay No.353/Del/2018) dated June14, 2018

3500. The Tribunal upheld the CIT(A)'s order deleting the penalty levied by the AO u/s 271(1)(c) on account of disallowance made u/s 40(a)(ia) for non-deduction of TDS and non-reconciliation of AIR mismatch, holding that that mere disallowance of certain expenses during assessment proceedings does not attract penalty provisions u/s 271(1)(c) if such disallowance is made for technical or venial breach of TDS provisions. It relied on the decision in the case of CIT vs L.G. Choudhari (2013) 33 taxmann.com 156 (Guj) wherein it was held that where the expenditure is disallowed due to failure to deduct TDS or late deposit of TDS, no penalty is leviable u/s 271(1)(c) on the ground that disallowance shall, at the most, be a technical default, there being nothing to indicate any concealment of income. It also relied on the decision in the case of Satyajeet Movies Pvt Ltd vs ACIT [ITA No.6036/Mum/2011] wherein it washeld that no penalty could be levied u/s 271(1)(c) for any addition made u/s 40(a)(ia) for failure to deduct TDS, once such payment has not been doubted.
ASSISTANT COMMISSIONER OF INCOME TAX vs. WIRE AND WIRELESS TISAI SATELLITE LTD. - (2018) 53 CCH 0166 MumTrib - I.T.A No.09/Mum/2016 dated June13, 2018

3501. The Tribunal deleting the penalty levied by the AO u/s 271(1)(c) on account of the deduction claimed by the assesseewith respect interest on delayed payment of TDS and donation, which the assessee had stated were claimed by mistakes and accordingly had surrender the same during the course of assessment proceeding. With respect to the AO's contention that the act of claiming expenditure which

was not allowable under the provisions of the Act was an act of furnishing of inaccurate particulars of income and concealment and the CIT(A)'s observation that the explanation of the assessee regarding inadvertent error lacked bona fides, the Tribunal relied on the decision in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that in order to expose the assessee to the penalty unless the case was strictly covered by the provision, the penalty provision could not be invoked and by any stretch of imagination, making an incorrect claim in law could not tantamount to furnishing inaccurate particulars.
G.N. INFOMEDIA P. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0162 (DelTrib) - ITA No.5371/Del/2016 dated June13, 2018

3502. Pursuant to search proceedings conducted u/s 132 in the case of the assesse on 30/10/2014, the assesse disclosed and surrendered certain income during the said proceedings as well as the return of income field on 30/09/2015. The AO levied penalty u/s 271AAB with reference to the surrendered income and the same was upheld by the CIT(A). The Tribunal deleted the said penalty relying on the decision in the case of Shri Ravi Mathur [ITA No. 969/JP/2017] wherein it was held that when the assessee was not required to maintain the books of account as per section 44AA and the alleged income was found recorded in the diary which was nothing but the other record maintained in the normal courseas per clause (c) to Explanation to section 271AAB, the same would not fall in the definition of undisclosed income and once the said income was found as recorded in the other documents maintained in the normal course, then it could not be presumed that the assessee would not have disclosed the same in the return of income to be filed after about one year from the date of search.
ANUJ MATHUR vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0276 JaipurTrib - ITA No. 971/JP/2017 dated June13, 2018

3503. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied by the AO u/s 271(1)(c) on account of disallowance of the assessee's claim for depreciation with asset purchased and given under 'sale and lease back' arrangement, where the Tribunal had deleted the said disallowance in quantum appeal and the appeal filed by the department against the Tribunal's order of quantum appeal was earlier admitted by the Court. The Court, in the present case, held that at the relevant time, when the assessee had made claim for depreciation, there was no statutory provision or decision contrary to stand taken by the assesse and the issue was debatable, thus the claim was bonafide. Noting that the Revenue has not been able to show even remotely that there was any concealment of income or filing of inaccurate particulars of income, it held that no penalty was imposable only for making a claim not acceptable to the Revenue. The Court relied on the decision in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that merely because the assessee's claim was not accepted or not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c).
COMMISSIONER OF INCOME TAX vs. L & T FINANCE LTD. - (2018) 102 CCH 0058 (MumHC) - ITA No. 1363 OF 2015 WITH 1358 OF 2015 WITH 1359 OF 2015 dated June04, 2018

3504. The Court dismissed Revenue's appeal against the Tribunal's and CIT(A)'s order deleting penalty levied by the AO u/s 271(1)(c) on account of additional income offered to tax by the assessee under the revised return filed after issuance of notice u/s 143(2) and on account of non-production of proof of remittance of TDS deducted on certain payment into Government account. It was noted that the additional income offered represented advance received by the assessee, a cine artist, in the relevant assessment year from various cinema producers towards work to be done by her and the same had been shown in the balance sheet annexed to the original return and, thus, there was no intention on part of the assessee to conceal any amount. With regard to disallowance qua non-furnishing of chalans for deduction and remittances of TDS, on facts the CIT(A) & the Tribunal hadheld it was an advertent error on the part of the accountant.
CIT v Trisha Krishnan - [2018] 95 taxmann.com 105 (Madras) - TAX CASE (APPEAL) NO. 239 OF 2017 dated June14, 2018

3505. The Tribunal dismissed assessee's appeal against the CIT(A)'s order confirming the penalty levied u/s 271D for violation of provisions of section 269SS by taking cash loans exceeding the limit specified in the said section. It noted that the assessee had failed to show that there was a reasonable cause for

getting loans in violation of provisions of section 269SS as it could not show any urgent business necessity for accepting loans in cash and that it was not having sufficient funds in its possession to fulfill the said business necessity.
Deepak Sales & Properties (P.) Ltd. v ACIT - [2018] 95 taxmann.com 166 (Mumbai - Trib.) - IT APPEAL NO. 6304 (MUM.) OF 2012 dated June13, 2018

3506. The AO during assessment found out that the assessee had accepted loans by way of cash which was in contravention to section 269SS and thus a penalty was imposed u/s 271D. The CIT (A) allowed the assessee's appeal by holding that the transaction was in the nature of trade transactions relating to the purchase of raw material which was later overturned by the Tribunal and the penalty order given by the AO was restored. The HC noted that the assessee had been given an opportunity to substantiate the genuineness of the parties and the claim that the transaction related to trade alone but the assessee failed to establish the same. It dismissed the appeal by observing that there was no distress situation for assessee so as to take loan in cash, since it was their own case that they had sufficient cash during the relevant period.
Five Star Marine Exports (P.) Ltd. v. DCIT – [2018] 92 taxmann.com 404 (Madras) – Tax Case (Appeal) No. 476 of 2008 dated April 3, 2018

3507. The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied u/s 271(1)(c) on account of addition made by the AO adopting the stamp duty valuation of the immovable property sold by the assessee as the sale consideration instead of the actual sale consideration claimed to be received by the assessee. Noting that the application of section 50C(1) could not automatically give rise to penalty proceedings and that the assessee had initially disputed stamp valuationby pointing out inter alia that the property was facing certain restrictions from the forest department, and later on gave up challenge, the Court held that there was no reason to interfere with the judgement of the Tribunal wherein the Tribunal had held that merely because the assessee had agreed to addition on basis of valuation made by stamp valuation authority the same was not conclusive proof that sale consideration as per sale agreement was incorrect and wrong and the penalty could not be levied on basis of deeming provision.
Pr.CIT v Sun on Peak Hotel (P.) Ltd - [2018] 95 taxmann.com 320 (Gujarat) - R/TAX APPEAL NO. 556 OF 2018 dated June12, 2018

3508. The Court dismissed the assessee's appeal against the Tribunal's and the CIT(A)'s order confirming the penalty levied u/s 271(1)(c) on account of additional income offered by the assessee under the revised return filed by it pursuant to survey proceedings conducted in the case of the assessee, wherein certain incriminating evidences regarding purchase were found. The Court held that the revised returns filed by the assessee, could not be termed to be voluntary, as it was done by the assessee after the revenue deducted non-disclosure, inflation of purchases and concealment of income during the survey proceedings. It also held that the burden was on the assessee to prove non-concealment against additional income disclosed in the revised return, wherein the instant case, no explanation was offered for not having disclosed income earlier in original return.
Khandelwal Steel & Tube Traders v ITO - [2018] 95 taxmann.com 15 (Madras) - T.C. (APPEAL) NOS. 186 AND 187 OF 2005, TC M.P. NOS. 164 AND 165 OF 2005, W.P. NOS. 43110 & 43111 OF 2016 dated June 4, 2018

3509. The Court deletedthe penalty u/s 271(1)(c) which was levied on the assessee-firm on account of inaccuracy in the statement of income to the extent of Rs.91,000 for AY 1987-89, noting that it didn't appear that the assessee had any intention of evading tax as the aforesaid amount if shown as income would have still shown a loss return. Taking note of the assessee's contention that the aforementioned amount had been inadvertently not included in their income in tax return, the Court relied on the Apex Court ruling in the case of Price Waterhouse Coopers Pvt. Ltd. [2012]348 ITR306 (SC) wherein it was held that an inadvertent mistake in the calculation of income would not be construed as furnishing inaccurate particulars or concealment thereof.
B.M.BAGARIA & CO. v CIT [TS-341-HC-2018(CAL)] - ITR No.16 of 1998dated June 6, 2018

3510. The Tribunal deletedthe penalty levied u/s 271(1)(c) holding that the show cause notice issued u/s 274by the AO was defective since it did not specify charge against the assessee as to whether it was for concealing particulars of income or furnishing inaccurate particulars of income, by striking out the inappropriate words.
PEDEN DOMA BHUTIA vs. INCOME TAX OFFICER - (2018) 52 CCH 0458 KolTrib - ITA No. 1659/Kol/2016dated April4, 2018

3511. The AO levied penalty for delay in filing the TDS return u/s 272(2)(K)/274. The relevant AY under consideration was the first year of filing e-TDS statement. The CIT(A) upheld the penalty for Quarter no III by stating that the Section 273B (which provides that penalty is not to be imposed where the default is on account of reasonable cause) did not cover the said section under which penalty was levied. However, the CIT(A) had deleted the penalty for Quarter no IV by relying on provisions of S.273B. The Tribunal followed Nav Maharashtra Vidyalaya Vs. Addl. CIT (TDS) Range wherein it was held that since this was the first year of requirement of furnishing e-TDS Statement & there were complications because of system failure (admittedly amended 18 times by Department), delay to furnish e-TDS Statement could not be attributed to the assessee. Onus was on the authorities to provide of easy-compliance to newly introduced provisions. The Tribunal observed that e-TDS could not be filed without depositing tax at source to credit of Central Govt. In this case, the assessee had deposited tax at source duly on time but hadn't filed the e-TDS statement due to technical problems and thus the Tribunal held that there was no default on assessee's part as the assessee had reasonable cause to delay in furnishing the e-TDS Statement.
Director VJNT OBC & SBC Walfare v ACIT (2018) 52 CCH 0403 PuneTrib - ITA NO. 906/PUN/2016 dated 27.04.18

3512. The assessee had claimed deduction u/s 80IB but however it was rejected by the AO on the ground that assessee did not comply with conditions precedent for availing of benefit of section 80IB and added the amount to the income of assessee. Thereafter, AO levied penalty u/s 271(1)(c) for concealment of income and CIT(A) confirmed the said penalty. The Tribunal observed that the penalty was levied by the AO on ground that assessee had concealed its particulars of income in respect of specified income whereas assessee had disclosed entire income and simultaneously claimed deduction of that income u/s 80IB(10). Thus the Tribunal held that merely making of claim of deduction which was found to be not allowable did not invite penalty u/s 271(1)(c) and in absence of details of any income where particulars were found to be concealed by assessee, penalty imposed on assessee was untenable thereby deleting the said penalty.
Maruti Estates (India) Pvt. Ltd v ACIT (2018) 52 CCH 0337 CuttackTrib - ITA No. 321/CTK/2017 dated 17.04.2018

3513. The AO had made certain addition to the assessee's income which was confirmed by the Tribunal. The AO had levied penalty u/s 271(1)(c) on account of such addition and the said penalty was also sustained by the CIT(A). Before the Tribunal, the assessee challenged the penalty order contending it to be barred by limitation. The assessee claimed that though the quantum Tribunal order was received by the concerned Pr.CIT having consideration over assessee on 21st May,2015 but the same was received by the CIT(Judicial) on 9th April 2015 and according to S.275(1)(a) the order of penalty should've been passed within a period of six months from the end of the month in which the order of the Tribunal was received by the CIT(Judicial) i.e. on or before 31st October, 2015. However, the penalty order was passed on 27th November 2015. The Tribunal accepted the assessee's contention relying on the Jurisdictional HC decision in the case of PCIT Vs. Kamaljeet Khosla [ITA. No. 822/2017 (Delhi)] wherein it was held that the limitation period for passing penalty order is to be reckoned from the date of receipt of the Tribunal order by any CIT and not necessarily the 'concerned' CIT. It thus quashed the penalty order as the same was barred by limitation.
Indian Sugar Exi Corporation Ltd. v DCIT (2018) 52 CCH 0446 DelTrib - IT Appeal No. 3860/Del/2017 dated 16.04.2018

3514. The assessee had filed its returns declaring total loss. In scrutiny assessment, the AO observed that the assessee had received capital subsidy from different banks towards assistance for purchase of plant & machinery which was not reduced from the cost of the fixed assets, but instead reflected in liability side

of the balance sheet.Accordingly, he added back to the returned income, excessive depreciation claimed by assessee by not reducing the cost of asset. He held that the assessee filed inaccurate particulars and sought to evade tax by claiming excess depreciation and thus levied penalty u/s 271(1)(c). The CIT(A) deleted the penalty holding that the assessee had reflected subsidfy on credit side of balance sheet as 'Capital reserve' as the assessee envisaged the likelihood of reimbursement of the subsidy under the TUFS scheme for failure on its part in payment of instalment and interest. The Tribunal held that though treatment given by assessee to capital subsidy received under TUFS scheme did not find favour with the AO, complete details of capital subsidy and computation of deprecation on fixed assets was furnished by assessee as part of enclosures forming part of its return of income and thus no penalty u/s 271(1)(c) was liable to be imposed on the assessee. Accordingly, it dismissed Revenue's appeal.

DCIT v Federal Brands Ltd. (2018) 52 CCH 0287 MumTrib - ITA No. 741/MUM/2016 dated 06.04.2018

3515. The Tribunal deleted the penalty levied u/s 271(1)(c) by the AO on account of disallowance of various deductions claimed by the assessee viz. deduction u/s80HHC, weighted deduction u/s 35(2AB), Transfer Pricing addition and loss due to foreign exchange fluctuation relying on the Apex Court decision in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., wherein it was held that merely because the assessee's claim for expenditure was not accepted or was not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c).

DCIT & Anr v Cadila Pharmacueticals Ltd. & Anr (2018) 52 CCH 0319 AhdTrib - ITA No. 852/Ahd/2015, 651/Ahd/2015 dated 04.04.2018

3516. The Court upheld the order of the Tribunal confirming thepenalty levied u/s 271(1)(c) for filing inaccurate particulars of income whereassessee claimed depreciation on non-existent assets (arising out of non-genuine sale and lease back transaction.)

Sundaram Finance Ltd. v ACIT [2018] 93 taxmann.com 250 (Madras) – T.C.(APPEAL) NOS. 876 &877 of 2008 dated 23.04.2018

3517. The assessee, an individual, had filed return of income without disclosing long term capital gain on sale of agricultural land under the belief that he was eligible for deduction u/s 54B on the entire amount of gains as he invested entire gains in agricultural land within 2 years of sale. However, during assessment, the AO made addition on account of the said gain to the extent the same was not invested before filing of return of income and levied penalty u/s 271(1)(c) thereon. The Tribunal deleted the penalty u/s 271(1)(c) as the assessee was under bonafide belief that since investment was made in new agriculture land, no capital gain liability would arise. The Tribunal further held that though assessee had not challenged the capital gain addition, but he had substantiated his explanation with the help of details of payments, copies of sale deed as well as receipts of payments executed by vendors. It held that the assessee could easily harbor a belief that there was no long term tax liability upon him even though that belief did not meet AO's approval.

Sh Nitinkumar Desai vs ACIT, Patan Circle TS- 267- ITAT-2018 (Ahd)-ITA No- 2065/AHD/2017 dated 13.04.2018

3518. The search and seizure took place at the assessee's business premises. Upon finding certain seized documents and discrepancies in the stock, the Managing Director was asked to explain the same, who declared certain amount as undisclosed income merely to buy peace of mind and avoid litigation. The AO levied penalty u/s 271AAA which was deleted by CIT(A) in view of the provision of S.271AAA(2) which provides that penalty in not leviable on undisclosed income if in the course of search, the assessee admits the income, substantiate manner of deriving the same and pays tax with interest. However, the Tribunal held that since the assessee had failed to specify/substantiate the manner as to how the undisclosed income was derived, the assessee could not avail the benefit of S.271AAA(2) and hence the penalty order passed by AO was restored.

ACIT v SSA International Ltd. [2018] 94 taxmann.com 17 (Delhi-Trib) – ITA NO 5051 OF 2013 dated 30.05.2018

3519. The assessee, a film actor was gifted a villa in Dubai. He disclosed notional income of the villa at Rs.14 Lakhs but the same was not offered to tax in India as the assessee was under the bonafide view that the income was not taxable in India under Article 6 of Ind-UAE Tax Treaty (which provides that income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.) However, the AO assessed the said sum of Rs.14 lakhs by way of "Income from House Property" averring that it was taxable by the virtue of Notification No. 90 and 91 issued by the CBDT [which clarifies about the import of the term "may" in Article 6(1) in Ind-UAE DTAA]. During the assessment proceedings, the AO also rejected the assessee's claim for benefit of indexation while computing LTCG on sale of non-convertible debentures on the ground that it was a structural product liable to be taxed as per the proviso to section 112 without claiming indexation benefit. The assessee paid tax on the gain computed without claiming benefit of indexation and did not file an appeal with respect to the same. As regard the addition with respect to income from house property, the same was upheld by the CIT(A) and the Tribunal. The AO levied penalty u/s 271(1)(c) on account of both the additions holding that the assessee furnished inaccurate particulars of income or concealed the actual income. The CIT(A) deleted the said penalty holding that there was no deliberate intention to evade tax by the assessee. On appeal filed by the Revenue before the Tribunal, the assessee also contended that the AO, at the outset, had no jurisdiction to levy penalty as AO had failed to strike off the irrelevant default in the show-cause notice i.e whether assessee furnished inaccurate particulars of income or concealed the actual income and thus the assessee had remained divested of any opportunity of putting forth its case before AO. However, the assessee's contention didn't sustain because the Tribunal held that although S.254 r.w Rule 11 of the ITAT Rules provides that the Tribunal has discretion to allow any party to raise a new point/contention without any new facts required to be brought on record but it is only after giving the other side an opportunity to address the newly raised point and the assessee in the present case had raised objection for the first time during the course of hearing that too orally and without putting the other party to notice in advance. The Tribunal also rejected the reliance placed by the assessee on Section 253 r.w Rule 27 of the ITAT Rules to contend that the assessee can support the order appealed against any grounds decided against it,without filing any cross appeal or cross-objection, noting that in the present case, the assessee's contention that AO exceeded its jurisdiction was not a ground even in the order of the CIT(A) and therefore the question of supporting the order appealed against the assessee did not arise.

However, on merits of penalty, the Tribunal confirmed the deletion of the penalty holding that the addition of house property income was a debatable issue, not justifying levy of penalty and the differential tax treatment given to the capital gain by the AO by denying indexation benefit would also not be a ground for penalty u/s 271(1)(c).

DCIT v Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai – Trib.) – ITA NO. 5767 OF 2014 dated 21.05.2018

3520. Based on the opinion of advocate of Supreme Court, the Assessee revalued its shops and claimed extra depreciation on the same. By taking a conservative view with an object to end litigation and buy peace, the assessee withdrew such claim during the course of assessment proceedings (since the time for filing revised return of income had expired) and also paid taxes on the additional income offered. The AO accepted such withdrawal of claim in the order under Section 143(3) but initiated penalty proceedings under Section 271(1)(c) for furnishing of inaccurate particulars of income. Tthe Tribunal deleted the penalty levied by the AO (reconfirmed by the CIT(A)), by holding that since the assessee offered bonafide and plausible explanations, mere making of a claim which did not found favour with the Revenue would not automatically lead to levy of penalty under Section 271(1)(c).

Waman Hari Peths Sons Private Ltd. vs. DCIT – [2018] 53 CCH 0024 (Mumbai ITAT) – ITA No 2730 of 2016 dated May 10, 2018

3521. The assessee filed revised return to claim deduction under Section 80IC in respect of interest accrued on FDRs, by producing certificate in Form 10CCB. The AO denied the claim since interest income was not generated by the business, eligible for deduction under Section 80IC. Thereafter, the AO levied penalty under Section 271(1)(c) for such disallowance made in assessment order. The Court upheld the order of the CIT(A) and ITAT setting aside such order imposing penalty by holding that mere making of claim which was found to be not sustainable in law would not amount to furnishing inadequate particulars.

PCIT vs. Mahima Udyog – [2018] 102 CCH 0013 (Uttarakhand High Court) – ITA No 13 of 2018 dated May 9, 2018

3522. In respect of loan taken from various NBFCs, the assessee did not withhold TDS while making payment of interest on such loans. The AO observed that even though the assessee was to repay to the NBFCs in EMIs, constituting of principal amount and interest component, the exact amount was known and hence the AO treated the assessee as a defaulter u/s 201(1) and 201(1A) and simultaneously initiated penalty proceedings under Section 271C of the Act. Though the assessee furnished copies of Form 26A from the NBFCs, to show that the interest income was offered to tax in their returns of income, the AO observed that proceedings under Section 201 are different from the proceedings under Section 271C of the Act. The Tribunal deleted the penalty noting that the assessee's failure to withhold TDS was based on a bonafide belief that since the NBFCs had collected post-dated cheque from it, comprising of the principal and interest component, which could be encashed directly from its bank account, there could have been no occasion to deduct TDS. Further, even the auditor, under the above bonafide belief, had certified in his tax audit report that wherever the tax ought to have been deducted at source, the assessee had complied with the statutory obligations.
SIBY MINING AND INFRASTRUCTURE PVT. LTD. vs. JCIT – [2018] 53 CCH 0140 (Hyderabad ITAT) – ITA. Nos. 28 to 34/Hyd/2018 (S.A. Nos. 13 to 19 / Hyd / 2018) dated May 11, 2018

3523. The AO made additions to the income of the assessee on protective basis pursuant to search and seizure operations. The Tribunal confirmed the same as substantive additions. Thereafter, the AO initiated penalty proceedings without making specific satisfaction as to whether the assessee was guilty of concealing the particulars of income or furnishing inaccurate particulars of income. The Tribunal quashed the penalty proceedings and held that levy of penalty under Section 271(1)(c) was not sustainable as the AO was not sure about the specific charge on the assessee for which penalty was levied.
GAURAV SHARMA vs. ACIT – [2018] 53 CCH 0041 (Indore ITAT) – ITA Nos. 136 to 141/Ind/2017 dated May 16, 2018

3524. The assesseepurchased FDRs in his name out of the loan given to him by charitable and religious organization, wherein he was a General Secretary. The AO held that since such receipt by the assessee was in cash and was beyond limits laid down under Section 269SS, penalty was levied under Section 271D of the Act. CIT(A) upheld the order of the AO. The Tribunal deleted the penalty levied by holding that there was no loan or deposit, as the Tribunal primarily relied on entries in books of account wherein only two cash payments were made under the imprest account. The Court held that since the Tribunal did not consider the specific aspects referred to in order to levy penalty under Section 271D of the Act and also failed to consider the observations of the CIT(A), the matter was remitted back to the Tribunal for fresh determination.
CIT vs. PAWAN KUMAT JAIN (DELHI HIGH COURT)(ITA 640/2005) dated May 24, 2018(102 CCH 7)

3525. The AO made additions in respect of expenditure incurred on account of increasing authorized capital and also denied deduction u/s 10B w.r.t. interest income, sale of scrap and other Misc. business receipts. Consequent to which, penalty proceedings under Section 271(1)(c) of the Act were initiated separately for concealment of particulars of income. The AO levied penalty for furnishing of inaccurate particulars of income. The CIT(A) partially allowed the appeal of the Assessee. The Tribunal observed that since the AO initiated penalty proceedings on one limb and levied penalty on another limb of section 271(1)(c) of the Act, he did not have clarity of thought and suffered from ambiguity in his mind with regard to applicable limb of section 271(1)(c) to facts of case. Thereby, penalty levied by the AO was unsustainable on technical grounds and hence the Assessee's appeal was allowed.
DCIT& ORS. vs. ENDRESS + HAUSER FLOWTEH INDIA PVT. LTD. & ORS. (PUNE TRIBUNAL) (ITA No. 949, 995&996/PUN/2016 (C.O.No.09/PUN/2018)) dated May 23, 2018 (53 CCH 0067)

3526. Where the assessee in course of search had admitted undisclosed income and the manner in which such income had been derived, the Court held that in such cases the provisions of Section 271AAB

would automatically be attracted. (Section 271AAB provides for penalty where the search has been initiated u/s 132 at a rate of 10 percent of the undisclosed income of the specified previous year)
Sandeep Chandak v. PCIT – [2018] 93 taxmann.com 406 (SC) – Special Leave to Appeal (C) Nos. 7085-7087 of 2018 dated April 23, 2018

Method of Accounting

3527. The Court held that where assessee, engaged in business of land development, had been consistently following mercantile system of accounting in respect of all its projects, assessee was not justified in adopting cash system of accounting in respect of only one project.
Ace Real Estate & Developers v. Asst. CIT- [2018] 100 taxmann.com 228 (Bom)-ITA NO. 452 of 2016- dated November 19, 2018

3528. The Tribunal held that where assessee builder could not prove expenditure incurred with relevant books and vouchers, estimation of income at rate of 11 per cent was reasonable.
Golla Narayana Rao v. Asst. CIT, Circle-2(1), Vijayawada- [2018] 100 taxmann.com 174 (Visakhapatnam - Trib.)-ITA Nos. 380, 433, 487-489, 499 & 503(VIZ) of 2017 & ORS.- Cross Objection Nos. 80-85 (viz) of 2017-dated October 5, 2018

3529. Assessee debited certain amount on account of difference arising from foreign exchange in value of sundry creditors account and MMD SBI account. AO observed that it was notional loss and represented contingent liabilities which had not been actually incurred by assessee. AO disallowed sum debited towards loss for re-statement of foreign exchange and added same to total income of assessee.CIT(A) deleted disallowance made by AO. The Tribunal held that in assessee's own case for A.Y.2005-06. The Tribunal held that adjustment was made by assessee in terms of AS 11 issued by ICAI and in pursuance of mercantile system of accounting as notified u/s 145.Foreign currency transactions should be recorded on initial recognition in reporting currency, by applying to foreign currency amount exchange rate between reporting currency and foreign currency at date of transactions.Exchange differences arising on settlement of monetary items or on reporting an enterprise's monetary items at rates different from those at which they were initially recorded during period, or reported in previous financial statements, should be recognized as income or as expenses in period in which they arose. The Tribunal held that CIT(A) rightly deleted disallowance made by AO and Revenue's ground was dismissed.
Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR. - (2018) 53 CCH 0294 KolTrib-ITA No.1533/Kol/2015,168/Kol/2016-Dated Jul 6, 2018

3530. AO rejected books of account of assessee and estimated income in respect of comparative cost to sales ratio and selling and marketing expense ratio. AO made addition. CIT(A) observed that AO made addition of various expenses, only on basis that these were higher than immediately preceding year, without verifying books of accounts and vouchers etc. The Tribunal held that, AO could not have made an addition on account of various expenses simply because of fact that these were much higher than immediately preceding year. If AO wanted to make addition on basis of higher expenses incurred by assessee compared to immediately preceding year, books of account could have been examined along with vouchers/other evidences—If assessee was found wanting in respect of providing evidence/supports in relation to incurring of these expenses, AO could have proceeded to reject Books of Account u/s 145(3) before making any addition on this basis—AO without detecting any bogus expenses and without rejecting explanation of assessee behind higher expenses during year, simply proceeded to apply expense ratio of immediately preceding year resulting in massive additions under two heads—Addition made by AO on account of higher cost to sales ratio and higher selling and marketing expenses was not at all justified.
Asst CIT vs. Tirupati Infrabuild P. Ltd.- (2018) 53 CCH 0302 DelTrib-ITA No. 6604/Del/2014 & Cross Objection No.212/Del/2015-Dated Jul 9, 2018

3531. Assessee Company was asked to explain why accumulated balance of unutilized MODVAT credit be not included in valuation of closing stock and why same should not be treated as income for subject year. AO being not satisfied with assessee's submissions added unutilized MODVAT credit and added

whole of amount to value of closing stock by referring to section 145A of Act. CIT(A) upheld order of AO. The Tribunal held that, company was trader of machines/goods and not manufacturing company. This amount was not included in purchases and did not form part of closing stock as well in books of account .AO as well as CIT(A) had not taken cognizance of actual calculation relating to counter valley duty and service tax paid by assessee. Therefore, this needed to be examined at level of AO. Thus, the Tribunal directed AO to look into this aspect as per provisions of Section 145A as well as in light of provisions of given under Income Tax Act and decide this issue afresh.
CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA-No. 5017/ DEL/ 2012, 2671/DEL/2013-July 3, 2018.

3532. The Tribunal held that once there is no material defect is found in the books of account then the same cannot be rejected on the reason that the assessee has declared less G.P. for the year under consideration or day to day moment of material is not reflected in the stock register.

ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018

3533. The Tribunal held that in absence of any finding as to incorrectness in books of account or stock details, merely for reason that there is fall in gross profit ratio, books of account cannot be rejected u/s 145(3). Assessee had been maintaining same set of books of accounts and stock register year after year and they had been accepted by AO in past. Even otherwise, assessee had reconciled quantity details of raw materials and finished goods category wise. Under these set of facts, adhoc addition was unjustified. AO erred in rejection of books of account u/s. 145(3) without recording any reasons as to how books of account maintained by assessee were inconsistent with regular method of accounting fattened- and accounting standards. In absence of any finding as to incorrectness in books of account or stock details, merely for reason that there was fall in gross profit ratio, books of account could not be rejected u/s. 45(3), more particularly, when assessee had reconciled difference in gross profit ratio with necessary evidences

ACIT vs Kamani Oil Industries Ltd- (2018) 54 CCH 0071 MumTrib- ITA No 5010/Mum/2016 dated 10.10.2018

3534. The Supreme Court granted Revenue's SLP against High Court order wherein the High Court had opined on the method of accounting with relation to bogus purchases assessed under section 153A for an assessee company deriving its income from manufacturing of jewellery and trading in gemstones. The Court had ruled that since average gross profit (GP) rate in assessee's industry was 12 per cent, where ever profit of assessee was more than 12 per cent, same would not be refunded to assessee but where it was less than 12 per cent, income would be assessed on basis of 12 per cent GP.

CIT vs Clarity Gold (P) Ltd- (2018) 99 taxmann.com 47(SC)- SLP No 29307 of 2018 dated 24.09.2018

3535. Assessee was in business of Indian Made Foreign Liquor (IMFL) and for assessment year 2011-12, assessee filed return of income declaring income. During previous year relevant to Assessment Year(AY) 2010-11, assessee made purchases of Rs. 2,36,62,794/- and admitted sales of Rs. 3,06,14,597. During assessment proceedings, AO called for details and verified books of accounts— Since assessee failed to produce stock register, sale bills with quantity of sales item wise and quantitative details of valuation of closing stock etc., AO rejected books of accounts and estimated net profit at 20% of purchases put to sale. CIT(A) was of view that profit could not be uniformly adopted in all cases and it required to be considered on facts of each case. CIT(A) further observed that Government itself had accepted before High Court of A.P., that there were huge violations in liquor trade with regard to sale prices. CIT(A) directed AO to re compute income estimating net profit @10%

of purchase price. The Tribunal held that, though CIT(A) had taken support of affidavit filed by Govt. of Andhra Pradesh and Telangana for distinguishing case of this Tribunal, no specific deviations in assessee's case were brought on record. Neither Commissioner nor AO had specifically pin pointed discrepancies for making estimation of income at higher rate than what was adopted by Tribunal. Though CIT(A) held that assessee's case was not normal case, CIT(A) did not specially showed reasons how assessee's case was abnormal. Neither AO,nor CIT(A) had analyzed books of accounts and brought on record specific defects found during course of assessment proceedings to resort for higher estimation. AO rejected books of accounts because of non production of stock register, sale bills, quantitative details of stocks sold and valuation of closing stock with details. Defects pointed out by AO were common in all IMFL cases and assessee's case could not be given separate treatment for resorting to higher estimation of income as held by CIT(A). Order of CIT(A) was set aside and AO was directed to estimate income @5% of goods sold.

B. Durga Prasad vs ITO – (2018) 54 CCH 0117 Vishakapatnam Trib- ITA No 451/Viz/2016 dated 24.10.2018

3536. The AO had primarily rejected assessee's books on the ground of declaring net loss for the current AY as against net profit shown for previous AY and the AO further rejecting books of accounts computed taxable income by applying 4% gross profit ratio.The Court ruled that fall in gross profit ratio could be due to various reasons and cannot be sole and only ground to reject books of accounts so as to frame best judgment assessment. The assessee in the present case had acquired informatic division from Crompton Greaves with objective of consolidating similar types of business under one company and as per terms, assessee had agreed to take over future liability of division towards unexpired warranty and AMC. The AO disregarded the assessee's submission and rejected books of account on grounds that no opening or closing stock was declared and assessee had written back substantial amount and had also claimed provision for doubtful advances. The Court concluded that since the books of account were not rejected by AO as unreliable on grounds of transaction omission, or proper particulars and vouchers were missing or that method of accounting deployed was not regularly followed or it was not possible to deduce profit and gains from method deployed, rejection of books of account was unjustified. Accordingly, thereason given in the assessment order on hypothetical basis was contrary to well settled law and revenue's appeal was dismissed.

PCIT vs IBILT Technologies- (2018) 98 taxmann.com 255 (Delhi)- ITA No 995 of 2018 dated 12.09.2018

3537. During assessment, the AO observed that assessee had carried out large scale trades in different commodities but was unable to produce stock registers to enable the AO to verify quantitative records and to verify trading results. Thus, the AO held that trading results as reported by assessee were unreliable and rejected books of accounts by invoking provisions u/s. 145(3) and held that the GP rate reported by assesse (i.e 0.88%) was on lower side thus, the AO estimated a higher rate (i.e 1.5%). The CIT(A) lowered the GP rate (i.e 1%)as estimated by AO. The Tribunal observed that the AO in the order had not elaborated reasons for adopting higher profit as compared to earlier years and further no comparable cases were brought on record by AO for determining higher rate of profit. Thus, the Tribunal held that profit declared by assessee in earlier years cannot be brushed aside for estimating profit of relevant year until and unless, there are changes in facts and circumstances or AO brings any results of comparable cases to justify the action thus higher rate estimated by AO was to be deleted.

ACIT vs Shiv Binod Gupta- (2018) 54 CCH 0134 Kol Trib- ITA No 964/Kol/2015 dated 29.10.2018

3538. The assessee had to maintain its books of accounts and prepare its financial statements according to Insurance Act and further as per section 44 r/w First Schedule, Profit and gains from life insurance business had to be computed separately from any other business of assesse. The AO noted that assesse had filed returns under incorrect provisions of Act hence, same was not accepted by the AO,

which however was reversed by the CIT(A). The Tribunal held that provisions of section 44 r/w First Schedule are non obstante i.e. they override other provisions of Act and, therefore, income chargeable of tax of an insurance company had to be computed in accordance with provisions thereof and thus concluded that there was no reason to interfere with the directions of the CIT(A).

DCIT vs Sahara India Life Insurances Co Ltd – (2018) 54 CCH 0139 Del Trib- ITA No-3509,6243,6244,1347,6245,6246/Del/2013 dated 31.10.2018

3539. The Tribunal dismissed assessee's appeal and upheld CIT(A)'s order taxing interest income accrued during the year though not received but was duly recognized by the debtor in its ledger account, noting that assessee was following mercantile system of accounting and thus it was not permitted to follow cash flow system of accounting in respect of such interest income.

Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018

3540. The Apex Court dismissed SLP against the HC ruling that where assessee had not given cogent reasons for suffering huge loss while most of assessees in said line of business had declared positive income, assessee's books of account was rightly rejected and income was rightly estimated by applying net profit rate on basis of similarly situated identical cases.

Raja Ram Rajendra Bhandari & Party (Ajmer Group) vs CIT [2018] 97 taxmann.com 348 (SC)-SPECIALLEAVE TO APPEAL (c) Nos.38999 of 2016 dated August 20 2018

3541. The Tribunal allowed assessee's appeal and deleted the addition made by the AO arbitrarily by applying the percentage completion method to a project for development of lands owned by the assessee, noting that (i) project completion method/completed contract method of accounting had been consistently adopted by the assessee and the same was accepted by the Revenue for earlier years and (ii) AS-7 issued by ICAI also recognize the position that in case of construction contracts, assessee can follow either project completion method or percentage completion method.

Ashoka Hi-Tech Builders (P.) Ltd.vs Dy.CIT [2018] 96 taxmann.com 547 (Indore Trib)- IT APPEAL NOS. 121 & 686 (IND.) OF 2016 dated August 03 2018

3542. Where the AO made addition to income of the assessee-company (engaged in project consultany services) on account of advances received for on-going / incomplete project without recording any reasons as to how advance received by the assessee formed part of revenue for the current year, the Tribunal held that the CIT(A) had rightly deleted the addition by holding that once the assessee was following proportionate completion method, being a method of accounting prescribed by ICAI for recognition of revenue from the kind of projects the assessee was undertaking, and such method had been accepted by the department in the earlier year, there was no reason for the AO to deviate from the method followed by the assessee without any change in facts and circumstances.

Dy.CIT vs Libra Technon Ltd [2018] 53 CCH 0472 (Mum Trib)- ITA No. 4480/Mum/2013 dated August 24 2018

3543. The Tribunal set aside CIT(A)'s order wherein the CIT(A) had deleted the disallowance made with respect to interest paid by the assessee-cooperative bank to its member on share capital contributed (where the assessee claimed that payment of interest on share capital was a compulsory obligation under AP Mutually aided Cooperative society) on the ground that the same related to year FY 2010-11 which was relevant for AY 2011-12 and not for impugned year i.e. AY 2012-13. It was noted that neither

CIT(A) nor AO had given clear finding with regard to correct assessment year in which interest was accrued. Hence, the Tribunal remitted the matter back to the file of AO to examine the issue with regard to accrual of liability as per system of accounting followed by assessee and decide the issue afresh on facts and merits.

Asst.CIT vs MAHARAJA CO-OPERATIVE URBAN BANK LTD. & ANR. [2018] 53 CCH 0454 (Vishakapatnam Trib)- ITA No. 211 and 212/Viz/2018 dated August 17 2018

3544. The AO rejected assessee's books of accounts by invoking provisions of section 145 (on the ground that the assessee had not maintained proper books of account for its business activities) and estimated the profits at 1% of turnover (as against 0.06% declared by assessee), which was subsequently reduced to 0.5% of turnover by the CIT(A). The Tribunal held that the AO could not make a wild guess but had to estimate the income of the assessee on the basis of past accepted results and, accordingly, directed the AO to compute income by applying net profit of 0.25% of turnover noting that 0.25% was the highest profit in the preceding five assessment years.

Bhambra Service Centre. vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 and 13/CTK/2018 dated August 02 2018

3545. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order upholding the assessee's method of accounting revenue from incomplete project on proportionate completion method by taking into account percentage of work done for the project, as against the AO's determination of total income by taxing the advance received for incomplete project on the basis of gross profit declared from completed project. It held that once the assessee was following method of accounting which was in accordance with method prescribed by ICAI for recognition of revenue from kind of projects assessee was undertaking and such method had been accepted by department in earlier year, there was no reason for the AO to deviate from method followed by assessee without any change in facts and circumstances.
LIBRA TECHCON LTD. & ANR. V DCIT (2018) 195 TTJ 0105 (Mumbai) (URO) – ITA No. 2475/Mum/2013, 4480/Mum/2013 dated August 24, 2018

3546. The Court allowed Revenue's appeal against Tribunal's order upholding the CIT(A)'s order wherein the CIT(A) had directed the AO to determine whether excise duty had been paid/incurred or not by the assessee-manufacturer and recompute value of closing stock accordingly. The AO had made addition on account of excise duty not included in value of closing stock of finished goods (which had otherwise resulted in lower profits for the year). The Court held that excise duty becomes payable, the moment excisable goods were manufactured as the taxable event u/s 3 of the Cental Excise Act was manufacturing or production of the excisable goods and it would be immaterial whether the assessee had paid the excise duty or not for the purposes of arriving at the correct valuation of the closing stock.
CIT vs. CHHATA SUGAR COMPANY LTD. (2018) 102 CCH 0124 AllHC - ITA No. 140 of 2007 dated 16th July, 2018

3547. The Tribunal remanded the issue of revaluation of closing stock done by the AO by including unutilized MADVAT credit back to the AO, directing him to make such adjustments towards opening stock as well as closing stock, following the decision in the case of CIT vs Indo Nippon Chemicals Co Ltd [245 ITR 384 (Bom HC)] wherein it was held that if unutilized Modvat credit is adjusted in the closing stock, similar adjustment should be made to opening stock also.
Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018

3548. The AO made addition to the income of the assessee noting that the assesse had not included freight amount in the valuation of closing stock (thus resulting in lower income), as per regularly and consistently followed method of valuation of stock accepted by the Revenue in past. The DRP also upheld the AO's order. The Tribunal allowed the assessee's appeal and deleted the addition, noting that

the closing stock of particular year was opening stock of subsequent year and it was not case of revenue that method of valuation of closing stock was materially affecting accounts and profits disclosed by the assesse. It held that materiality is a concept which is well recognized both in accountancy and law and the Accounting standards notified by the CBDT u/s 145(2) mandates that the concept of materiality be taken into consideration when finalizing the accounts of an assessee.
HERO MOTO CORP LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0200 (DelTrib) - ITA No. 6990/DEL/2017 dated Jun 20, 2018

3549. Taking note of the huge outstanding dues to the assessee from a debtor with no signs of either payment or improvement in financial position of the said debtor, the assessee took a decision to recognize revenue from the said debtor on cash basis. Such a change in method of accounting was not accepted by the AO. Noting that the assesee had furnished detailed explanations for conversion of revenue recognition, the Tribunal held that the assessee company had satisfactorily explained circumstances under which it was forced to change mode of revenue recognition from mercantile system of accounting to cash basis and there was no loss to revenue due to such change, thus, the assessee was allowed to make the said change.
Delhi International Airport (P.) Ltd. v DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April19, 2018

3550. The Court set aside the Tribunal's order for AY 1990-91 wherein the Tribunal had rejected the assessee's method of valuing the closing stock of shares and securities in the income tax return at lower of market value or cost as against the valuation on cost basis in books of account. The Court noted that during relevant AY, the assessee-bank had invested a proportion of its investment in shares and securities of public limited companies under RBI directions and had treated such investment as stock in trade. It relied on the decision of United Commercial Bank v CIT (1999) 8 SCC 338 wherein the Apex Court had stressed on the determination of real income rather than theoretical principles of accountancy, for the purposes of arriving at taxable income and thus held that the assessee could value the securities and shares at cost or market price to show real income.***United Bank of India v CIT - [TS-355-HC-2018(CAL)] - ITR No.19 of 1999 & ITR No. 7 of 2000 dated June 27, 2018***

3551. The AO made addition to assessee's total income u/s 145A on account of difference in valuation of closing stock of finished goods lying in the godown as per the books of account and as determined by the AO, increasing the said valuation by the amount liability toward excise duty on such goods.. The CIT(A) deleted the said addition after following CIT vs. Loknete Balasaheb Desai SSK Ltd wherein it was held that in respect of excisable goods manufactured and lying in stock, excise duty liability would get crystallized on date of clearance of goods and not on date of manufacture. Thus, the Tribunal, on concurring with the decision of CIT(A) held that Central excise duty on stock lying in goddown was not to be incurred unless stock was removed, thus, in this case,no question of excise duty liability arose.
DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018

3552. The Tribunal held that where valuation of closing stock of assessee according to LIFO method which was consistently followed by the assessee since its inception was accepted by revenue in earlier assessment years, same could not be rejected in year under consideration on the ground that valuation of inventories should be done on basis of First In First Out (FIFO) method or weighted average method and not on LIFO method as FIFO assumption approximated more closely to reality and LIFO adopted by assessee was not giving true profit of year.
RoopshreeJewellers (P.) Ltd. v ITO [2018] 93 taxmann.com 159 (Kolkata – Trib.) – ITA NOS. 442 & 828 (KOL.) **OF 2015 dated 17.04.2018**

3553. The Court upheld the Tribunal's order wherein it was held that where assessee, engaged in construction business, was following project completion method, its income could be brought to tax only in year when sale deeds of units sold were registered even though sale consideration might have been received earlier from buyer.
CIT v Happy Home Corporation [2018] 94 taxmann.com 292 (Gujarat) – R/TAX APPEAL NO. 465 OF 2018 dated 09.05.2018

3554. The assessee, owning the registered trademark 'Vibes', received Rs.22Lfor giving the trademark on franchise basis under the Infrastructure & facility management agreement which was entered for the period of 5 years. One of the agreement-clause enumerated that assessee would terminate agreement on breach of any term without refunding the consideration received. However, since the agreement was for 5 years, the assessee relied on the AS-9 by issued by the ICAI pertaining to revenue recognition & apportioned Rs.1,91,666 as income for AY under consideration treating the remaining amount as goodwill in liability side of balance sheet. The AO also relied on the AS-9 & observing that the assessee shifted entire risk to other person & also the consideration received was non-refundable, he taxed the differential amount shown as liability as income for the AY under consideration. The CIT(A) upheld AO's order. On further appeal, the Tribunal observed that according to agreement, the assessee had to participate in management of business and certain other responsibilities. Thus, relying on Special Bench decision of Chennai Bench in ACIT v. Mahindra Holidays and Resorts India Ltd. [2010] 39 SOT 438 (Chennai) (SB) which upheld the principle of deferment of revenue recognition it directed the AO to delete the said addition.
Alankar Slimming & Cosmetic Clinic (P.) Ltd v ITO [2018] 94 taxmann.com 11 (Kolkata -Trib.) – ITA NO. 1374 OF 2016 dated 15.05.2018

3555. Where the assessee recognized revenue based on project completion method, the AO changed the said method to percentage of completion method and thereby made an addition of 10% of the advance received from customers. In view of the Accounting Standard (AS) 7 and AS 9 and relying on the ruling of the Supreme court in Bilahari Investment (P) Ltd. (299 ITR 1), Realest Builders & Services Ltd (307 ITR 202) and the co-ordinate bench in Awadesh Builders (37 SOT 122) & Haware Construct ions Pvt. Ltd. (ITA 5601/Mum/2009), the CIT(A) deleted the said addition and held that the accounting policies consistently followed by the assessee should be adopted. The Tribunal upheld the CIT(A)'s order and held that when the assessee was following project completion method, the AO could not, at its discretion, change said method to percentage completion method.
ITO vs. BELLOR HOMES AND REALTORS PVT. LTD. – [2018] 53 CCH 0037 (Mumbai ITAT) – ITA No 4445 of 2016 dated May 15, 2018

3556. The assessee, an Association of Person (AOP), was following mercantile system of accounting. AO made an addition and held that the assessee should have recognized interest on NPA on accrual basis as per provisions of Act as it was following the mercantile system of accounting. CIT(A) upheld the order of the AO. Tribunal held that while determining tax liability of an assessee, two factors would come into play—Firstly, recognition of income in terms of recognized accounting principles and secondly, after such income was recognized, computation thereof, as per the provisions of Act. Tribunal held that since the recognition of income was as per the RBI directions in view of the provisions of section 45-Q of RBI Act, the provisions of Section 145 would not be applicable. Thus, assessee's appeal was allowed.
ANGUL UNITED CENTRAL CO-OP BANK LTD. vs. DCIT (CUTTACK TRIBUNAL) (ITA NO. 513/CTK/2017) dated May 8, 2018 (53 CCH 0139)

3557. The Tribunal directed the AO to delete the addition for decrease in gross profit rate for the subject year since the AO had examined the bills/ invoices of expenditure with help of the books of accounts and could not allege suspicious decline in gross profit and further, the books of accounts had also not been rejected by the AO by invoking section 145(3).
Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018

Minimum Alternate Tax

3558. Assessee filed its return declaring certain income under section 115JA. Assessee claimed certainamount as provision for 'Non-performing Assets' covered under policy with Deposit Insurance and Credit Guarantee Corporation. Assessing Officer re-computed income under section 115JA and added back said amount of provision to assessee's income. Tribunal, however, directed Assessing Officer to allow provision as deduction while computing book profit under section 115JA. The Court held

that in view of order passed by Supreme Court in Vijaya Bank v. CIT [2010] 190 Taxman 257/323 ITR 166, matter was to be remanded back to Commissioner (Appeals) with a direction to look into records and to record a finding as to whether bad and doubtful debts were reduced from loan and advances of debtors from assets side of balance sheet and thereafter, re-compute income under section 115JA.
CIT v. Syndicate Bank, Mangaluru-[2019] 101 taxmann.com 171 (Karnataka)- ITA No. 164 of 2009- dated December 4, 2018

3559. Where AO while computing book profit under sec. 115JA, added back provision for 'Non-performing Assets' covered under policy with Deposit Insurance and Credit Guarantee Corporation. The Court held that matter was to be remanded back to Commissioner (Appeals) with a direction to look into records and to record a finding as to whether bad and doubtful debts were reduced from loan and advances of debtors from assets side of balance sheet and thereafter, re-compute income under section 115JA.
CIT v. Syndicate Bank, Mangaluru-[2019] 101 taxmann.com 171 (Karnataka) IT Appeal No. 164 OF 2009 dated December 4, 2018

3560. Where waiver of principal and interest under one-time settlement with lender was disclosed in 'Notes' to Auditors Report. The Tribunal held that it was obligatory on part of Assessing officer to have considered same while determining 'book profit' under section 115JB.
Mukand Ltd. v. ITO, 3(2)(2), Mumbai-[2019] 101 taxmann.com 214 (Mumbai - Trib.)-IT Appeal No. 679 (Mum.) of 2011 dated December 5, 2018

3561. The Tribunal held that while computing book profits under section 115JB, assessee's claim for deduction in respect of prior period adjustments could not be allowed.
Mukand Ltd. v. ITO, 3(2)(2), Mumbai-[2019] 101 taxmann.com 214 (Mumbai - Trib.)-IT Appeal No. 679 (Mum.) of 2011- dated December 5, 2018

3562. The Tribunal held that subsidy received by the assessee from Government of West Bengal under Incentive Scheme 1999 is a capital receipt is not taxable under normal provision of Act. Assessee had established a new industrial undertaking and subsidy was given to assessee for establishment of new industrial unit. In case of CIT vs. Rasoi Limited, High Court held that Sales Tax Incentive granted by GOWB to assessee with object to a provide incentive to set up new industrial undertaking or substantial expansion of existing undertakings was capital receipt and not revenue in nature. Also, incentives received was not liable for consideration under book profit under MAT proceedings u/s.115JB.
Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR.- (2018) 53 CCH 0294 KolTrib-ITA No.1533/Kol/2015,168/Kol/2016-Dated Jul 6, 2018

3563. The Tribunal held that no disallowance relatable to exempt income can be made u/s 14A r/w Rule 8D while computing book profit u/s 115JB.

TATA SONS LIMITED vs. Asst. CIT (2019) 54 CCH 0505 MumTrib ITA No. 1213/Mum/2018dated 13.12.2018

3564. The tribunal held that amount disallowed u/s 14A could not be added to arrive at book profit for purposes of section 115JB. Even if some addition had been confirmed u/s 14A, then also it could not be adjusted in book profit for purposes of section 115JB.

DCIT vs Ausom Enterprise Ltd- (2018) 54 CCH 0088 AhdTrib- ITA No 1519, 1520/Ahd/2016 and ITA No 857/Ahd/2017 dated 15.10.2018

3565. The assessee was engaged in business of distribution of electricity and during assessment proceeding the AO had enhanced assessee's book profit u/s 115 JB and the same was upheld by the CIT(A). The Tribunal held that the CBDT understood that companies engaged in business of generation and distribution of electricity and enterprises engaged in developing, maintaining and operating infrastructure facilities, as a matter of policy, were not brought within purview of amendment (s. 115JA) for the reason that such a policy would promote infrastructural development of country and such an

understanding of CBDT was binding on Department. Thus, the Tribunal held that section 115JB had no application to facts of case in hand and accordingly additions made to enhance book profits were directed to be deleted.

North Delhi Power Ltd vs ACIT- (2018) 54 CCH 0137 Del Trib-ITA Nos 4848/Del/2010 dated 29.10.2018

3566. Where the assessee had made only a provision for doubtful investments and doubtful loans and advances which was not written off in the books by the assessee, the Tribunal held that the said provision being provision made for dimunition in value of any asset as per Explanation 1 to section 115JB had to be added back to book profits.

West Benegal Electronics Industry Development Corp. Ltd vs Dy.CIT &Anr [2018] 53 CCH 0475 (Kol TRib) - ITA NOS. 1982 /Kol /2013 DATED AUGUST 24, 2018

3567. The Tribunal held that section 115JB does not apply to insurance companies as they are required to prepare accounts as per Insurance Act and regulations of Insurance Regulatory Development Authority (IRDA) and not as per Parts II and III of Schedule VI of Companies Act.
DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018

3568. The Tribunal held that the benefit of clause (iii) to Explanation 1 to section 115JB (i.e. deduction of lower of brought forward losses or unabsorbed depreciation as per books of account) is not available in event either unabsorbed loss or unabsorbed depreciation becomes NIL.
Milan Intermediates LLP v ITO - [2018] 96 taxmann.com 338 (Ahmedabad - Trib.) – ITA No 209 (ADH.) OF 2018 dated July 26, 2018

3569. The Tribunal held that the amount of the MAT tax credit, inclusive of surcharge and education cess etc., if any, should be reduced from the amount of tax determined on the total income after adding surcharge and education cess, etc. It explained that the prescription of section 115JAA(2A) is that if the amount of tax under the regular provisions is, say, Rs. 110/- (tax of Rs. 100 and surcharge and cess etc. at Rs. 10) and u/s 115JB(1) it is Rs. 121/- (tax of Rs. 110 and surcharge and cess etc. at Rs. 11), the assessee is entitled to tax credit of Rs. 11/- (Rs.121/- minus Rs. 110/-) in subsequent years, which has two components, viz., tax of Rs. 10 and surcharge etc. of Rs. 1. Accordingly, in the subsequent year, the assessee is entitled to take MAT tax credit of Rs.11 against the tax liability determined under regular provisions after adding surcharge and education cess, etc, if any. The Tribunal also held that the charging of interest u/s 234B and 234C etc. is to be done on the net amount of tax determined after reducing the amount of MAT tax credit from the amount of tax payable for the year in the same way as advance tax and TDS are reduced.
Consolidated Securities Ltd. v ACIT - [2018] 96 taxmann.com 418 (Delhi - Trib.) – ITA NO. 3739 (DELHI) OF 2015 dated July 26, 2018

3570. The Tribunal held that since applicability of provisions of Schedule VI of Companies Act was excluded in respect of insurance companies, provisions of Section 115JB which enable companies to compute book profit, is not applicable to insurance companies
Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERS dated August 6, 2018

3571. The Tribunal allowed assessee's appeal against CIT(A)'s order and deleted the disallowance made u/s 14A while computing assessee's book profit u/s 115JB, holding that the issue was squarely covered by the co-ordiante bench decision in case of assessee's group company in Arvind Ltd. vs. DCIT [ITA No.1816/Ahd/2011] wherein it was held that theAOwas not entitled to tinker with book profits contemplated u/s 115JB towards disallowance made u/s 14A.

Arvind Brands Ltd and Anr vs Dy.CIT [2018] 54 CCH 0184 (AhdTrib)I.T.A. No. 1509 & 1639/Ahd/2012 dated 02.11.2018

3572. The Tribunal allowed assessee's appeal against CIT(A)'s order for AY 2008-09 wherein the CIT(A) had confirmed AO's action in not considering the surcharge and education cess alongwith MAT paid for AY 2006-07 while allowing MAT credit against the income-tax liability (including surcharge and education cess) for AY 2008-09, relying on Eastern Jewels Pvt. Ltd. vs ACIT (ITA No.163/Jp/2017)wherein it was held that MAT credit including surcharge and cess would be allowed to be carried forward and set off against income-tax including surcharge and cess. It also noted that Explanation 2 to section 115JB (though not in context of MAT credit but) clearly states that tax includes surcharge and cess.

SI Group India Pvt. Ltd. v DCIT [TS-711-ITAT-2018(Mum)] - ITA NOs.2348 & 2350/Mum/2017 dated 11.10.2018

3573. The Tribunal following the decision of Hon'ble Calcutta High Court in the Case of Srei Infrastructure Finance Ltd [(2016) 72 taxmann.com 239] held that MAT Credit u/s 115JAA of the Act brought forward from earlier years is to be set off against the tax on total income under normal provisions after taking into account the amount of Surcharge and Education Cess computed on such tax.
Chanda Investment and Trading Co Pvt. Limited v ACIT [TS-717-ITAT-2018(PUN)] – ITA No.2451/PUN/2017 dated 01.11.2018

3574. The Tribunal allowed assessee's appeal and deleted adjustment made by AO towards capital gains arising to assessee-company on sale of property while computing book profit u/s 115JB, though the assessee had credited profit derived from transfer of property to the Reserves & Surplus account in the balance-sheet without routing it through P&L Account, rejecting Revenue's contention that financial statements were not in accordance Parts II and III of Schedules VI to the Companies' Act, 1956. It held that the AO has to accept the authenticity of the accounts prepared as per provisions of Companies Act and certified by the statutory auditors and further approved by the company in general meeting. The Tribunal relied on the decision of Apollo Tyres Ltd v CIT [255 ITR 273 (SC)] wherein it was held that the AO does not have a power to embark upon the fresh enquiry with regard to the entries made in the books of account of the company, when the accounts of the assessee company is prepared in terms of Parts II and III of Schedules VI to the Companies' Act, 1956.
Acmevac Pumps & Engg Pvt Ltd v ACIT [TS-463-ITAT-2018(MUM)] - ITA No.5155/MUM/2017 dated 10.08.2018

3575. The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing exclusion of profits of assessee (sick company) from computation of book profits till the AY 2010-11, being the year in which the net worth of company became positive as per Explanation 1 (vii) to section 115JB, rejecting AO's contention that since in the impugned AY the net-worth had turned positive, the aforesaid benefit was not available. It noted that the said Explanation clearly defines ending point for exclusion of book profit, which is AY in which the net worth of the company becomes equal to or exceeds the accumulated losses and thus held that the benefit of exclusion of the entire profit shall be available for the year in which net worth becomes positive and the company shall be liable to pay tax u/s 115JB from the next year.
ACIT v Gujarat Sidhee Cement Ltd [TS-716-ITAT-2018(Rjt)] - I.T.A No.688/RJT/2014 dated 11.12.2018

3576. The assessee claimed a tariff adjustment in respect of electricity bills, in respect of which application was pending before CERC for revision in tariff rates. The AO held that assessee's application was pending before CERC and, therefore, it was not an ascertained liability and accordingly added back the amount of provision to book profit under section 115JB. The Court held that although the liability towards power tariff would be quantified and discharged to adjust it at a future date, the liability was capable of being estimated with reasonable certainty and since the assessee estimated the liability after taking all relevant factors into consideration, it held that the addition on account of tariff adjustment was to be deleted as it was not a contingent liability.
PrCIT v NHPC Ltd. [2018] 92 taxmann.com 130 (Punjab & Haryana) - IT APPEAL NO. 356 OF 2015 (O & M) dated MARCH 21, 2018

3577. Where the assessee had claimed deduction on account of bad debts written off through provision for doubtful debts under clause (i) of Explanation 1 to section 115JB without providing details in support of his claim to the AO and the CIT(A) had deleted the addition made by AO in this regard after the assessee submitted the relevant documents before it, the Tribunal remanded the matter back to AO for re-examination, noting that necessary details of provision created by assessee in earlier years for bad debts were not supplied by assessee to AO at time of assessment proceedings and CIT(A) had admitted fresh evidences in contravention of the provisions of rule 47A.
EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018

3578. The Court allowed deduction towards lease equalization charges debited by the assessee in its profit and loss account while computing book profits for the purpose of MAT u/s 115JB noting that the method employed by the assessee over the full term of the lease period would result in the lease equalization amount being reduced to a naught, as the debit and credits in the profit and loss account would square off with each other and such method of accounting which follows some established principles, one of which includes offering only revenue income for tax, could not be faulted, rather represented a true and fair view of the accounts, which is a statutory requirement u/s 211(2) of the Companies Act.
CIT v MGF India Ltd – (2018) 91 taxmann.com 405 (Del HC) – ITA Nos. 378 of 2004 and 76 of 2007 dated 21.02.2018

3579. The assessee had debited certain amount as 'diminution in value of investment' to the P&L A/c, being the amount resulting on account of the accounting principle laid down in AS 13 requiring the assessee to value the current investments at the lower of cost and fair value. The AO added the said amount while computing book profits u/s 115JB considering the amount to be Provision for diminution in value of current investment. Noting that the assessee had credited the difference between the sale price and fair value as on 31.03.2008 to P & L A/c and not the difference between sale price and its cost, the Tribunal held that such accounting treatment was impossible where the provision was made instead of write off. It held that the said amount was not a provision for diminution in value of investment but the actual charged for the loss in the diminution in value of investment, not warranting an increase in the book profits computed u/s 115JB. Further, it relied on the decision in the case of CIT v Vodafone Essar Gujarat Ltd. [Tax Appeal No.749 of 2012 (Guj)] wherein the above issue had been discussed in detail and, accordingly, dismissed the Revenue's appeal.
ACIT v Reliance Welfare Association Circle – (2018) 52 CCH 35 (Mum) – ITA No. 976/M/2012 dated 15.01.2018

3580. The Tribunal accepted assessee's contention that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the net profit u/s 115JB of the Act, relying on the Special Bench decision in the case of ACIT v Vireet Investment Pvt. Ltd. [82 taxmann.com 415 (Del Trib)] wherein it was held that "*the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D*". However, relying on the decision in the case of CIT v Jayshree Tea Industries Ltd. [ITAT No.47 of 2014 (Cal)] wherein it was held that since the assessee had not claimed the amount of expenditure relatable to exempted income to be Nil, the amount of the said expenditure was to be computed by applying clause (f) of Explanation 1 u/s 115JB without resorting to section 14A, the Tribunal directed the AO to work out the disallowances in terms of the clause (f) to Explanation 1 of section 115JB independently after considering the expenses debited in the profit & loss account as mandated under the provisions of law.
INCOME TAX OFFICER vs. NIRMA CREDIT & CAPITAL PVT. LTD. - (2018) 53 CCH 0147 (AhdTrib) - ITA No. 2830/Ahd/2016 dated Jun 8, 2018

3581. The AO disallowed assessee's claim for provision for bad and doubtful debts, while determining the book profits for the purpose of MAT liability, considering the same to be unascertained liability as per clause (c) of the Explanation 1 to section 115JB. The Tribunal held that provision made for doubtful debts, being unascertained liability, deserved to be added to book profit. However, noting that the amount claimed was actually part of the ascertained liability, i.e. bad and doubtful debts written off, which was only adjusted in the provision account separately maintained by the assessee, it held that

since the aforesaid clause (c) speaks of making additions to book profit only in event where provision made for meeting unascertained liability, the disallowance made by the AO was to be deleted.
Southern Power Distribution Company of AP Ltd. v DCIT - [2018] 93 taxmann.com 451 (Hyderabad - Trib.) (TM) - IT APPEAL NOS. 1460 & 1533 (HYD.) OF 2013 dated April27, 2018

3582. The Court held that interest under sections 234B and 234C cannot be charged when total income is assessedto tax under section 115J.
TamilnaduMagnesite Ltd. v DCIT [2018] 94 taxmann.com 245 (Madras)- M.P. NO. 1 of 2008 dated 09.04.2018

3583. Where assessee had charged depreciation for wind mills at 80 per cent but AO restricted claim of depreciation on windmills to 5.28 per cent as per Schedule XIV of Companies Act, 1956while computing MAT liability u/s 115JB, the Tribunal held that since nothing was brought on record to show how and on what basis, higher rate of depreciation was arrived at by assessee, lower authorities were justified in holding that assessee had no reason to provide depreciation at higher rate.
Indus Finance Corpn Ltd. v DCIT [2018] 93 taxmann.com 215 (Chennai – Trib.) – ITA NO. 1348 OF 2017 dated 03.05.2018

3584. The Court held that an assessee's case would fall within the ambit of clause (c) of section 115JA(1) only if amount is set aside as provision. The Court further held that the provision is made for meeting a liability and the provisions should be for other than ascertained liabilities i.e. for an unascertained liability.
L.R.N. Finance Ltd. v. ACIT – [2018] 93 taxmann.com 106 (Madras) – T.C. (Appeal) No. 916 of 2008 dated April 9, 2018

3585. The assessee earned gains on sale of agricultural land and the AO did not make any addition to the book profit while calculating MAT under Section 115JB. However, (on appeal being filed by the assessee on other issues) the CIT(A) directed the AO to include income earned from sale of agricultural land in book profits and determine tax payable under Section 115JB. The Tribunal allowed the assessee's appeal against the said direction of CIT(A). It held that since the income from sale of agricultural land was exempt from tax, the said exempt income could not be added to the books profit while calculating the MAT under Section 115JB.
ITO & Anr. vs. Gomantak Exims Ltd. & Anr. – [2018] 53 CCH 0106 (Delhi Tribunal) – ITA No. 2708/DEL/2012 (CO No. 435/DEL/2012) dated May 15, 2018

Refund

3586. The Assessee had filed returns for relevant AY's within the prescribed time limit for claiming refund. The returns were not processed within the time limit u/s 143(1) due to technical glitches in processing software. CBDT had extended the date for processing the return but excluded the cases covered u/s 143(1D) i.e. cases where returns have been transferred by CPC to AO and the assessee's case was one of such. The Court allowed assessee's writ petition and held that in such cases the manual processing of return ought to be allowed and refund should be issued within timelimit by the AO. Further, noting that Notification No.S.O.17(E) dated 4th January,2012 sub-clause (iib) of clause 8 confers power on the Commissioner to decide the order of priority for processing of returns of income based on "administrative requirements", so to avoid arbitrariness, the Court also directed CBDT to formulate a 'rational' policy for processing of returns within 2 months from the date of direction.
Tata Projects Limited & another v DCIT & others – Writ Petition No. 782, 2051, 2498 of 2017 -[TS-1-HC-2018(BOM)] – November 21-23, 2017

3587. The Court held that the Income-Tax dept. should bring some order and discipline to the aspect of granting refunds and all pending refund applications should be processed in the order in which they are received. It held that it is the bounden duty of the Revenue to grant refunds generated on account of orders of higher forums and disburse the amount expeditiously. The Court also cautioned that in the absence of a clear policy, the Courts may impose interest on the quantum of refund at such rates determined by the Court.

SICOM Ltd vs. DCIT - WRIT PETITION NO. 2200, 2353, 2460,2467 &2479 of 2018 (Bom HC) dated 01.10.2018

3588. The Apex Court dismissed Revenue's SLP against High Court's ruling wherein the High Court held that where co-operative bank made deposits in government securities and earned interest, on basis of principle of presumption that government departments had deposited TDS on interest, bank's claim for refund of TDS was to be allowed.
CBDT v Meghalaya Co. Operative Apex Bank Ltd - [2018] 92 taxmann.com 374 (SC) - SPECIAL LEAVE PETITION (CIVIL) (DIARY) NO. 1948 OF 2018 dated MARCH 19, 2018

3589. Where the assessee made payment of royalty to a non-resident French company and deducted tax @ 20 percent under Section 206AA but subsequently realized that as per the India-France DTAA tax was to be deducted @ 10 percent, consequent to which the assessee filed application for refund before the CBDT, the Court held that the CBDT was unjustified in refusing to grant the assessee refund on the ground that the application was belated by 9 months. The Court noted that the excess deduction of TDS was on account of a bonda-fide mistake and condoned the delay in filing application. Accordingly, it directed the CBDT to consider the plea of refund on merits.
MULTIBASE INDIA LTD. vs. INCOME TAX OFFICER & ORS. - (2018) 101 CCH 0179 GujHC - SPECIAL CIVIL APPLICATION NO. 22195 of 2017 dated Feb 15, 2018

3590. Where certain amount of refund receivable by the assessee had been unblocked but the payment had not been made, the Court held that it was the responsibility of Revenue to ensure that unblocked amount was paid and credited to account of assessee and that the interest was to be paid till amount was refunded and not up to date of unblocking.
Vodafone Mobile Services Ltd. v ACIT - (2018) 253 Taxman 168 (Delhi HC) - W.P. (C) Nos. 9126 & 9127 of 2017 dated 04.01.2018

Set off and carry forward of losses

3591. The Tribunal held that loss incurred on account of derivatives would deemed business loss under proviso to section 43(5) and not speculation loss and, hence, Explanation to section 73 could not be applicable; and such loss would be set off against income from business.
Magic Share Traders Ltd. v Dy. CIT, Circle-2(1)(2), Ahm.- [2018] 100 taxmann.com 42(Ahm-Trib)-ITA No.770(AHD) of 2016-dated October 31, 2018

3592. The Court held that where assessee had transacted in shares only on two occasions and there wasno material on recort to hold that assessee was in business of buying and selling of shares,assessee's claim for set off loss from sale of shares from one transaction against gain from second transaction could not be disallowed on the alleged ground that both the transactions werebusiness transactions and that the assessee had purposely entered into the second transaction resulting in loss to set off the same against profit from the first transaction.
Pr.CIT (Central) v. Adar Cyrus Poonawala-[2018] 100 taxmann.com 227(Bom) – ITA (IT) No.226 of 2016-dated November 19, 2018

3593. The assessee had business loss of Rs. 3.04 crores, whereas, the assessee had earned short-termcapital gains of Rs. 8.80 lakh. The assessee in the return of income did not set off the business loss against the short-term capital gain. However, after adjusting the capital gains of the year against the brought forward short-term capital loss and claiming deduction under section 80 returned the taxable income at 'nil' with carry forward business loss of Rs. 2.91 crores. The lower authorities, however adjusted the current year capital gains against the current year business loss and accordingly computed the income of the assessee. The Tribunal held that a perusal of the Legislative history reveals that the assessee has always been given an option to set off his losses against the income from capital gains. However, as per the provisions of sub-section (3) of section 71, the assessee is not allowed to set off capital loss against income under any other head. [Para 6]. In view of this, there was no justification on the part of the lower authorities in making the impugned adjustment and, therefore, the same is set aside.

Ajay Kumar Singhania v. Dy. CIT, CPC, Bangalore-[2018] 99 taxmann.com 335 (Chandigarh – Trib.)-ITA No. 1650 (CHD) of 2017 dated October 4, 2018

3594. During assessment proceeding, assessee had claimed long term capital loss in AY 2010-11. Assessee while filing return of income clearly mentioned a sum representing long term capital loss to be eligible to be carried forward to subsequent years. Assessee had incurred long term capital loss in respect of sale of equity oriented mutual funds on which security transaction tax was paid. AO held that such long-term capital loss was not eligible to be carried forward to subsequent years for future set off. CIT(A) affirmed AO's findings. The Tribunal held that, assessment was made u/s 143(3) wherein no mention was made by AO with regard to eligibility of assessee for carry forward of long-term capital loss. Assessee had not claimed any set off of long-term capital loss against LTCG. Eligibility of loss brought forward from earlier year for set off had to be examined by AO only in year in which such loss was sought to be set off against any income. Eligibility to claim set off of long-term capital loss pertaining to AY 2010-11 should be looked upon by AO only in year in which loss is sought to be set off against income. Assessee's ground was allowed.
Asst. CIT & Anr. vs. Tata Steel Processing & Distribution Ltd. & Anr. - (2018) 54 CCH 0304 KolTrib-ITA No. 2237/Kol/2016 (C.O. No. 96/Kol/2016)-December 5, 2018

3595. The Court accepted assessee's petition to receive refund along with interest and to set aside the order of Revenue authorities. The Revenue authorities had against refund due to assessee adjusted demand relating to subsequent years, whereas the assessee filed petition contesting that no demand was raised for subsequent years. The Court noted that though demand notice u/s 156 were found from revenue's official records, there was no evidence of the same being served to the assessee. Thus, the court concluded that, there was nothing in records which could attribute knowledge of tax demand to assessee and in view of negligent approach adopted by revenue authorities, the order adjusting refund was set aside and a direction was issued to grant refund to assessee along with applicable rate of interest.
Nu tech Corporate Services Ltd vs ITO (2018) 98 taxmann.com 454 (Bombay)- WP no 1730 of 2018 dated 24.09.2018.

3596. The assessing officer rejected assessee's application of refund for the current AY by adjusting the refund due against previous year demand and further raising demand notice for the balance outstanding. The Court remitted the matter back to the AO accepting assessee's contention that the demand raised for previous year was erroneous as advance tax paid was not considered by the AO. The Court gave specific directions to consider assessee's claim of payment of advance tax substantiated by bank certificate and to then recompute tax arrears, if any.
T.V Ramanathan (HUF) vs ACIT- (2018) 98 taxmann.com 451 (Madras)- WP No 9544 of 2016 dated 24.09.2018

3597. The Assessee filed return of income which was selected for scrutiny and order was passed as per direction of DRP. Subsequently, a demand notice u/s 156 was attached with assessment order showing assessee's net tax payable and the AO also added back refund which was already paid. The Tribunal observed that the AR had submitted that amount of refund was wrongly added as no refund was actually received by assessee and it would require verification at the end of AO as it would have an impact on calculation of interest u/s 234D. The Tribunal further noted that the D.R. did not have objection for verification of same at level of AO, thus the order of AO were set aside and matter was restored to AO with a direction to verify assessee's claim and pass consequential order.
Global Construction Mauritius Services Ltd vs ADIT- (2018) 54 CCH 0145 Del Trib- ITA No 5341/Del/2011 dated 04.09.2018

3598. The Tribunal held that assessee was entitled to set off loss incurred by it in 100% EOU unit against profits of other units run by it. It placed reliance on Hon'ble Bombay High Court in the case of DCIT vs Hindustan Unilever (2012) 343 ITR 108 (Bom)
Heg Ltd vs ACIT-(2018) 54 CCH 0050 Indore Trib- ITA No 583/Ind/2012 dated 28.09.2018

3599. Assessee had also claimed long term capital loss on sale of shares, claiming that its share broker had bought and sold shares on behalf of assessee and such loss was claimed after deducting sale value of

shares. However, AO doubted nature of such agreement and proceeded to disallow such losses claimed. On appeal, CIT(A) upheld findings of AO. Further, Tribunal also upheld decision. The Court held that, AO found that assessee had not filed proper details.AO gathered some information from M/s.Aditya Securities u/s 133(6), but what was furnished was only a ledger account. In absence of any evidence produced by assessee to indicate that there were, indeed, transactions of purchase and sales of shares by it, AO held that purported loss of sale of shares was a speculation loss and could not be set off against other gains except gains, if any, on any other speculation business as envisaged under s.s. (1) of s. 73. Thus, reasons assigned by AO as confirmed by CIT (A) as well as Tribunal were perfectly legal, valid and did not call for any interference. Assessee's ground was dismissed.
Jaidayal Prannath Kapur vs ITO- (2018) 103 CCH 0081 Chen HC- Tax Case appeal No 143 of 2009 dated 18.09.2018

3600. The Court held that explanation to section 73 is not applicable, where gross total income of assessee company mainly consisted of income from 'other source' and, consequently, loss incurred by assessee in share transaction could not be said to be a speculative loss.
CIT v. Madona Commercial (P.) Ltd [2018] 96 taxmann.com 16/257 Taxman 116 (Bom)- IT Reference No. 19 of 2002 dated July 2, 2018

3601. The Tribunal held that business loss incurred in earlier year could not be set-off against income under head income from other sources during relevant year.
GVK Airport Developers Ltd. v. ITO [2018] 96 taxmann.com 236/172 ITD 109 (Hyd. – Trib.) IT APPEAL NO. 488 (HYD.) of 2017 [A.Y. 2012-13] dated July 5, 2018

3602. The Tribunal held that CIT(A) was justified in disallowing assessee's claim of set off of notional trading loss (by valuing shares at lesser amount without any basis) against other business income and thereby making addition to assessee's income, rejecting the assessee's contention that the CIT(A) had no power to enhance assessment by discovering new sources of income which was not mentioned in return or considered by the AO. It held that the CIT(A) had not unearthed a new source of income but only on basis of annual report/statements enclosed to return of assessee found that assessee had claimed the set off of trading loss and the AO had not examined the said claim. Accordingly, the Tribunal held that the CIT(A) had power to enhance income u/s 251 by directing AO to disallow loss claimed in trading account.

Fincity Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 616 (Hyd Trib)- IT APPEAL NOS. 591 & 732 HYD. OF 2006, 616 HYD. OF 2008 AND 119 (HYD.) OF 2010 dated August 03 2018 - appeal

Veeyes Investments (P.) Ltd.. vs ACIT [2018] 96 taxmann.com 545 (Hyd- Trib) IT APPEAL NO. 588 (HYD.) OF 2006 dated August 03 2018

Elem Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 272 (Hyderabad - Trib.) IT APPEAL NOS. 589, 731 (HYD.) OF 2006, 617 (HYD.) OF 2008, 121 (HYD.) OF 2010 dated August 03 2018

3603. The Tribunal allowed Revenue's appeal and denied assessee-company's claim for set-off of long term capital loss arising on sale of shares against long term capital gains arising on sale of property ruling that the share transaction was a sham transaction, a colourable device to generate loss to avoid tax payable for capital gains on sale of property. It noted that the assessee had entered into sale agreement for a property and received part consideration thereof, immediately thereafter assessee entered into collaboration agreement with group co. (CRPL) to develop the same property and received earnest money Rs 9 Cr, out of which Rs. 7.5 cr. was transferred to the account of another group co. (VBPL) towards share allotment at a premium of Rs. 190 per share; then assessee cancelled the collaboration agreement during same year and returned the earnest money by way of selling VBPL shares at book value of Rs. 82.5, The Tribunal remarked that once the property was agreed to be sold then why for the same property collaboration agreement was entered into with CRPL. It also held that though the premium was justified by a valuation report but the same appeared to be a selfserving

document since no prudent person would pay a hefty premium of Rs. 190/- hold it for one year, and then sell the same shares at book value of Rs.82.5.
Dy. CIT v B.S. Infosolution Pvt Ltd. [TS-491-ITAT-2018 (DEL)]- ITA No. 2989/DEL/2016 dated 23.08.2018

3604. The Tribunal allowed assessee's plea that the short-term capital gain derived during the current year should (first) be set off against short-term capital loss brought forward from earlier years and not against the business income earned during the current year, holding that as per provisions of section 71, assessee has the option to set off business loss against capital gains, however, it is not mandatory to do so. It took support from the decision in the case of Coated Fabrics (P.) Ltd. v. Jt. CIT' [2006] 101 ITD 297 (pune Trib) wherein assessee claim that loss suffered by it under head 'Business' should be set off against 'Income from other sources', in first instance, and only surviving loss should be set off against 'income from capital gains' was accepted.
Ajay Kumar Singhania v DCIT - [2018] 173 ITD 474 (Chandigarh - Trib.) – ITA No. 1650 (CHD) OF 2017 dated 04.10.2018

3605. The Tribunal held that loss arising on purchase and sale of shares cannot be treated as "speculation loss" under the Explanation to section 73 where the shares were held as investments.
ACIT vs. RJ Corp Ltd - ITA.No.3661/Del./2014 dated 01.10.2018

3606. The assessing officer while passing the assessment order disallowed the set off of loss on account of long-term capital loss suffered by assessee on sale of shares against the profit of long term capital gain earned on sale of immovable asset contending that the transaction was designed to avoid tax. The Tribunal noted that the assessee sold shares held by it for a period of 15 years at market value (supported by a valuation report) and that the AO had not doubted the genuineness of the transaction. Accordingly, it held that merely because the assessee had claimed set-off of capital loss against the capital gain earned during the same period, the transaction could not be said to be a colourable device or method adopted by assessee to avoid the tax.
Mrs. Madhu Sarda v ITO - ITA No. 7410//Mum/2012 dated 09.03.2018

3607. The AO denied the set off of brought forward house property losses against the current year's house property income in view of provisions of section 79 since the during the current year more than 51% of the shareholding pattern of the assessee-company had changed. The assessee submitted that the two persons who held the shares of the assessee-company on the last day of the previous year when the loss was incurred continued to remain the beneficial owner of the same and exercised the voting powers through two companies, the Tribunal accepted assessee's contention and held that as per section 79 test to be satisfied is not whether 51 % shares should be held by same persons on last day of previous year in which loss is incurred and on last day of previous year in which loss so incurred was to be set off but the test is whether 51 % of 'voting power' is beneficially held by same persons on aforesaid two days. Thus, it held that the ownership of shares with same person was not contemplated for denying set off of loss.
Wadhwa & Associates Realtors (P.) Ltd. v ACIT – (2018) 92 taxmann.com 37 (Mum) – ITA No. 967 (mum.) of 2016 dated 14.02.2018

3608. The Tribunal rejected assessee-company's plea to grant relief against AO's action in denying set off of carry forward of losses for AY 2007-08 to 2010-11 against the income of AY 2012-13 in view of provisions of section 79, noting that the assessee-company's shares which were initially held by two persons both holding 50% shares each were transferred to a listed company in which public were substantially interested to the extent of 25.64% of shareholding in AY 2010-11 and further a fresh allotment of shares was made to the said listed company during the previous year relevant to the AY 2011-12 so as to increase its shareholding to 62.28%. It rejected the assessee's contention that since it had become a subsidiary of the listed company HDFC and thus, a company in which the public were substantially interest, the provisions of section 79 were not applicable to it, holding that though the listed company held more than 51% shares but it did not hold same for entire year and, thus, the conditions for becoming a public company in which public were substantially interested as stipulated in section 2(18)(b)(B)(c) were not met. The Tribunal, however, allowed the set off or carry forward of losses arising in AY 2011-12 for the AY 2012-13 since there was no change in shareholding pattern in AY

2012-13. Further, it held that section 79 does not speak about carry forward and set off of unabsorbed depreciation and bar created by provisions of said section would not be applicable so far as carry forward and set off of unabsorbed depreciation was concerned.
DCIT v Credila Financial Services (P.) Ltd. – (2018) 192 TTJ 511 (Mum) – ITA No. 1491 (mum.) of 2016 co no. 305 (Mum) of 2017 dated 16.02.2018

3609. Where the assessee had suffered loss in trading of derivatives carried through Multi Commodity Stock Exchange, the Court held that the derivative transactions being separate from trading in shares, provisions of Explanation to section 73 (which deem the business of certain specified companies consisting of purchase and sale of such shares to be speculative business for the purpose of section 73 dealing with set off & carry forward of loss from speculative business) will not be applicable to such transactions and hence, the loss incurred by assessee in derivative transactions through recognised stock exchange will have to be set off against other business income as per provisions of Act. It further held that since the transaction carried out by assessee was a non-speculative transaction, section 43(5) was not attracted.
CIT v Sri Vasavi Gold & Bullion (P.) Ltd. – (2018) 92 taxmann.com 290 (Mad) – T.C.A. No. 853 of 2017 dated 20.02.2018

3610. Where the assessee was carrying on business of trading in commodity derivatives on various exchanges like NSE, BSE, MCX, ICEX etc. and the AO, applying the provisions of sections 43(5)(d), bifurcated the earnings from trading for the recognized stock exchanges and non-recognized stock exchanges and treated the loss booked from trading in derivatives from unrecognized exchange as speculative loss not allowed to be set off against business profit from trading in derivatives on recognised exchanges, the Tribunal held that for the relevant assessment year i.e. AY 2012-13 commodity derivative transactions were speculative transactions since clause (d) of section 43(5) only excluded transactions in respect of the trading in derivatives referred to in section 2(ac) of Securities Control (Regulation) Act, 1956 from the definition of 'speculative business' and commodity derivative trading is not covered by the said Act and further the clause (e) of section 43(5) excluding commodity derivative transaction from the said definition was inserted by the Finance Act, 2013 to be effective from 01.04.2014. Accordingly, it held that assessee's business being only and only derivatives trading in commodity, the loss incurred or profit earned should be speculative loss/profit irrespective of whether the transactions were carried on recognised or unrecognised exchanges and, hence, should be allowed to set off against each other.
Kunal G. Kataria v ACIT – (2018) 91 taxmann.com 345 (Mum) – ITA No. 5179 (mum.) of 2016 dated 23.02.2018

3611. The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee to set-off business loss against the income voluntarily disclosed pursuant to search operation and taxable as income from other sources where the AO contended that the loss incurred by assessee was speculative loss in view of Explanation to section 73 (which deems certain companies to be carrying on speculation business to extent to which business consists of purchase and sale of such shares) and thus not allowable to be set-off against income from other sources. The Court noted that the CIT(A) and the Tribunal had concurrently found the assessee to be excepted out of the application of the said Explanation (since the assessee's main income after considering the income disclosed voluntarily was 'Income from other sources', that being one of the condition for exception). It thus held that the loss incurred by assessee would be business loss entitled to be set off same against its income from other sources u/s 71.
PR.CIT v JANKI TEXTILE & INDUSTRIES LIMITED – (2018) 101 CCH 11 (Kol HC) – G.A No. 755 of 2016 ITAT No. 131 of 2016 dated 17.01.2018

3612. The Tribunal held that where there has been amalgamation of a company owning an industrial undertaking with another company then, in view of provisions of section 72A, notwithstanding anything contained in any other provisions of Act, accumulated loss and unabsorbed depreciation of amalgamating company shall be deemed to be loss of amalgamated company for previous year in which amalgamation was affected, irrespective of the fact that BIFR order (in pursuance of which amalgamation was effected) did not direct any such relief.

Hindustan Engineering & Industries Ltd. v DCIT – (2018) 90 taxmann.com 230 (Kol Trib) - ITA Nos. 146 to 152 (Kol) of 2017 dated 24.01.2018

3613. The Tribunal held that as per Section 32(2) unabsorbed depreciation of earlier years was to be treated as the depreciation of the current year and thus it would partake the nature of current year's business loss and therefore as per Section 71(1) read with section 71(2A) since current years business loss could be set off against any income except the income under the head salary, it dismissed Revenue's contention and held that brought forward depreciation could be set off against income from other sources of the current year.
Nanak Ram Jaisinghani v ITO - [2018] 92 taxmann.com 86 (Delhi - Trib.) - IT APPEAL NO. 6729 (DELHI) OF 2014 dated MARCH 7, 2018

3614. Since the assesse had filed belated return u/s 139, its claim for carry forward of business loss was not allowed during the original assessment completed as per section 80. Assessee's said claim was not allowed also while completing the assessment u/s 153A (as well rectification order passed u/s 154 relating thereto) during which, the assesse had filed the same return which it had filed u/s 139. On appeal against the assessment order passed u/s 153A r.w. 154, the assessee contended that return under section 153A is deemed to be return under section 139(1) and as such provisions of section 80 do not apply. Tribunal accepted the assessee's contention holding that when the AO had accepted the return filed by the assessee u/s 153A, no occasion arose to refer to the previous return filed u/s 139 and for all purposes of the Act, the return that has to be looked at is the one filed u/s 153A. Relying on the decision in the case of Sanjay Nandlal Vyas v ITO [ITA No. 771 to 774/PN/2010] wherein it was held that the return of income filed in response to the notice u/s 153A on the basis of which assessment had been framed had replaced the original return for determining the net income in the assessment u/s 153A and the return u/s 153A was to be considered for allowability of carry forward of loss rather than the original return u/s 139 and thus the restrictive provisions of section 80 were not applicable. Thus, it held that the assessee was eligible for carry forward of business loss.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. SPLENDOR LANDBASE LIMITED & ANR. - (2018) 53 CCH 0118 (Del Trib) - ITA NO. 2461/DEL/2016 (C.O. NO. 215/DEL/2016) dated Jun 6, 2018

3615. The Court set aside the Tribunal's order wherein the Tribunal had directed the AO to allow the assessee's claim for set off of speculation loss arising on purchase and sale of shares. The AO as well as the CIT(A) disbelieved the assessee's claim that dealing in shares resulted in speculation loss of Rs.84.74 crores noting that the assesse didn't respond to a number of notices issued by the AO and subsequently when it responded, it submitted a a rectified set of profit and loss accounts together with an auditor's certificate which showed speculation loss of Rs. 84.74 crores as against the income from share dealing of Rs.50.28 crores. Noting the above findings of the AO and the CIT(A), the Court held that the Tribunal's order was exceptionable in the perfunctory manner in which a matter of some importance was dealt with. However, it also held that the CIT(A)'s order would also not be given effect to, subject to deposit of Rs.25 lakhs by the assessee, and on such deposit being made by the assessee, the AO would look into the matter afresh including any explanation that the assessee may have to furnish.
COMMISSIONER OF INCOME TAX vs. DOE JONES INVESTMENT AND CONSULTANTS (PVT.) LTD. - (2018) 99 CCH 0405 (Kol HC) - ITAT No. 4 of 2015 & GA No. 526 of 2015 dated Jun 19, 2018

3616. The assessee set off brought forward losses from earlier year against the additional income disclosed by the assesse in its revised return pursuant to a survey conducted wherein certain incrimination papers indicating cash receipts and cash payments were found and impounded. The AO denied the assessee's claim for such set off treating the additional income as unexplained money, taxable as "income from other sources" and not as "eligible business income". The CIT(A) upheld the AO's order. The Tribunal reversed the CIT(A)'s order and held that the entries available on impounded material suggested business nexus of additional income and thus the income in question was derived from business activities of assessee although they were outside books of account of the assesse. It held that there was no law to automatically tax each and every 'unaccounted income' disclosed during search / survey actions as 'income from other sources'. Therefore, it held that the income was to be treated as the

'business income' of the assessee and consequently, the benefit of set off/carry forward was granted to the assessee

CONSTRUCTION PORTAL PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0312 PuneTrib - ITA Nos. 1607 & 1608/PUN/2014dated Jun 06, 2018

3617. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO wherein the AO had treated the derivative losses arising on future & options trading to be speculative loss u/s 73. The Tribunal took the view favourable to the assessee, noting that though the Delhi High Court had taken a different view on this matter, the Calcutta High Court in the case of Asian Financial Services Ltd. v. CIT [2016] 240 Taxman 192 (Cal.) has held that loss incurred on account of derivatives would be deemed business loss under proviso to section 43(5) and not speculation loss and, accordingly Explanation to section 73 could not be applied.

ITO v Upkar Retail (P.) Ltd. - [2018] 94 taxmann.com 450 (Ahmedabad - Trib.) - IT APPEAL NO. 2237 (AHD.) OF 2014 dated June18, 2018

3618. The Court dismissed Revenue's appeal against the Tribunal's order remanding the matter to the file of the AO for examining the assessee's explanation, on how was the brought forward loss and unabsorbed depreciation directly relatable to units transferred by the assessee-demerged company to the resulting company under the scheme of demerger approved by the High Court, on merits. The AO had rejected the benefit of provisions of section 72A(4)(a), which provides that in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shallbe allowed to be carried forward and set off in the hands of the resulting company, where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, on the ground that assessee had not maintained separate accounts. The Court held that the Tribunal had rightly concluded that statutory provisions did not command that in order to avail benefit of section 72A(4)(a) separate books of account were to be maintained.

Pr.CIT v Adani Retail Ltd - [2018] 95 taxmann.com 153 (Gujarat) - R/TAX APPEAL NO. 521 OF 2018dated June11, 2018

3619. The Tribunal held that there is no bar in adjustment of unabsorbed business losses from speculation profit of current year, provided speculation losses earlier years has been first adjusted from speculation profit.

Edel Commodities Ltd. v DCIT [2018] 92 taxmann.com 133 (Mumbai – Trib) – ITA Nos. 3426 AND 3576 (MUM.) OF 2016 dated 06.04.2018.

3620. The Tribunal held that where holding company of assessee transferred its entire shareholding in assessee company to another subsidiary company, in view of fact that in such a case beneficial ownership of assessee-company continued to vest in its ultimate holding company, provisions of sec. 79 placing restrictions in respect of carry forward and set off of losses incurred in previous years against profits of subsequent years would not apply to assessee's case.

CLP Power India (P.) Ltd. v DCIT [2018] 93 taxmann.com 326 (Ahmedabad – Trib.) – ITA NO 1123 OF 2016 dated 23.04.2018

3621. The assessee claimed set off of loss arising on bullion trading against profit from consultancy business, which was disallowed by the AO holding that the bullion trading loss was speculative loss since no actual delivery of the gold had taken place. The Court dismissed Revenue's appeal observing that the CIT(A) and Tribunal had given concurrent finding of fact that actual delivery of bullion had taken place, noting that (i) parties with whom trading was done were produced before the AO and none of them denied actual delivery (ii) assessee had produced delivery not for each transaction (iii) assessee had paid VAT @1% which is applicable to delivery based transactions.

Pr.CIT v Mobile Trading & Investment P. Ltd - ITA No. 509 of 2016 (Bom HC) dated 24th November, 2018

Settlement Commisssion

3622. After search and seizure, petitioner company filed application for settlement of case in which it declared additional income of Rs. 30 lakhs. Individual share percentage of directors was 9.3 per cent, 11 per cent, 11 per cent, respectively. Petitioner company contended that collective stake of directors exceeded 20 percent in company. Thus, directors had substantial interest in petitioner company and, therefore, petitioner company would qualify as a 'specified person' within meaning of Explanation (a) to section 245(1) being covered under clause (v) of Explanation (a) to section 245C and thus, settlement application could be filed. However, Settlement Commission rejected impugned application on ground that clubbing of shareholding held by different shareholders to make collective shareholding of 20 per cent is not permissible under law and, thus, settlement application could not be admitted. The Court held that settlement application was rightly rejected by Settlement Commission.
Bhatia Colonizers (P.) Ltd. v. Dy. CIT, Kota- (2019) 101 taxmann.com 404(Raj)-S.B. Civil Writs No. 2050 of 2018 dated December 18, 2018

3623. The Settlement Commission rejected the application by holding that 'prima facie' the conditions prescribed in section 245C(1) were not fulfilled. On a writ petition being filed, the Court held that the opinion formed by Settlement Commission in case of rejection under section 245D(1) is conclusive and final and not 'tentative' or 'prima facie' and if Settlement Commission was unable to form a decisive opinion to give a definitive finding for rejection of settlement application after initial and preliminary hearing, proceeding to second stage is the only option.Thus the Settlement Commission notwithstanding earlier preliminary scrutiny under section 245D, should have,as per statutory mandate called the Principal Commissioner/Commissioner to submit their report as second stage examination under section 245D(2C) in which more in-depth scrutiny and verification takes place. The present writ petition was allowed and the impugned order of the Settlement Commission rejecting the settlement applications of the petitioners under section 245D(1) was set aside, with an order of remand to the Settlement Commission
R.T Industries vs IT Settlement Commission- (2018) 98 taxmann.com 236(Del)- WP No 4398 of 2017 dated 13.09.2018

3624. The Revenue had filed an appeal against the order of settlement commission reducing or waiving interest u/s 234B for AY 1992-93 and 1993-94 to the Apex Court. The Apex Court referring to its decision in CIT v. Anjum M.H. Ghaswala (2001)119 Taxman 352 held that the Settlement Commission did not have the power to reduce or waive the statutory interest, except to the extent of granting relief under two circulars issued by the CBDT and remanded the matter back to Settlement commission who withdrew the waiver of interest u/s 234B and shifted the terminal date for calculation of interest u/s 234B till the date of order passed u/s 245D(4). The Single Bench of High Court allowed assessee's writ petition against the said direction of the Commission shifting the terminal date for charging of interest in view of it amounting to recalling its earlier order as under the prior order (before the Apex Court directions) interest u/s 234B was charged till the date of assessment order and Apex Court had remanded the matter back only for the purpose of granting relief as mentioned in the CBDT circulars. In the writ petition filed by Revenue against the said order of the Single Bench, the Court held that Settlement Commission does not have the power to review but has power to rectify an order and thus it had rightly found that later decision of the Supreme Court declaring the correct legal position would render order passed earlier erroneous. Thus, interest u/s 234B was to be charged up to the date of order u/s 245D(4) and the order of the Settlement Commission that the assessee would be charged interest u/s 234B up to the date of the order u/s 245D(4), did not warrant any interference.

UNION OF INDIA AND OTHERS vs. DR. L. SUBRAMANIAN AND ANOTHER [2018] 102 CCH 0269(Chen HC) WA No. 496 of 2018 DATED AUGUST 06, 2018

3625. The assessee filed two applications u/s 245C(1) before the Settlement Commission for several AYs, whereas the Settlement Commission passed an order u/s 245D(4) considering only some of the AYs and the remaining AYs were not considered and decided. The Revenue filed writ petition challenging the order passed by the Settlement Commission not considering the settlement application for all the years for which the application was submitted. The Court held that to consider the petition on merit, the foremost question to be decided was whether the Revenue could be considered as an "aggrieved person/ party" in the present case. It held that it is the assessee who approaches the Settlement Commission for settlement as per section 245 and, therefore, if at all anybody who can be said to be

aggrieved by the rejection of the application by the Settlement Commission and/or non-consideration of the application for settlement for which the settlement application is submitted, is the assessee and not the Department/ Revenue. Therefore, the Court held that the present petition was not required to be considered further on merits as the department could not be said to be aggrieved by the order of Settlement Commission. However, the Court held that even otherwise, on merits, the impugned order did not suffer from any procedural lapse and no principles of natural justice were violated and thus the order passed by the Settlement Commission was not required to be interfered with. Accordingly, it dismissed Revenue's petition.

CIT v Income-tax Settlement Commission - [2018] 97 taxmann.com 78 (Gujarat) - R/SPECIAL CIVIL APPLICATION NOS. 17177, 17179 TO 17186 OF 2013 dated July 25, 2018

3626. The Court dismissed the writ petition filed by the Revenue against the Settlement Commission's order wherein the Commission had given relief to the assessee on three issues. It was noted that of the three issues, two issues were covered in favour of the assessee by the Court's own order. The third issue pertained to deletion of transfer pricing adjustment with respect to delay in outstanding receivables from AE relating to 'J' project wherein the Commission had accepted the assessee's submission that since it had already shown super-normal profits of 500% with respect to 'J' project, there could not be any adjustment in this regard. The Court held that its scope to remit while dealing with the orders of Settlement Commission are categorical viz. only in the case where there is manifest and egregious findings of law that are erroneous, non-application of mind or lack of bona fides. Accordingly, since none of these vitiating factors were disclosed by the Revenue in the present case, it declined to interfere with the impugned order.

CIT v STEAG ENERGY SERVICES GMBH (2018) 102 CCH 0126 DelHC – W.P.(C) 7216/2018 dated 17th July, 2018

3627. The Court upheld the rejection of settlement application filed by assesse before the Settlement Commissioner noting (i) that the Settlement Commission had rejected the application on ground that the assesse had failed to make full and true disclosure including the disclosure of manner of earning undisclosed income admitted during search proceedings and (ii) that the Settlement Commission had observed that entries appearing in documents seized during search did not match with assessee's explanations and the deficiencies pointed could not be clarified by assessee. The Court held that the first and foremost condition for an assessee to fulfil before Settlement Commission is to satisfy Commission that his disclosure was full and true and if this basic ingredient is not satisfied, Commission can reject application at very threshold. It further held that the Court cannot dictate procedure that Settlement Commission has to follow at stage of section 245D(1) unless there is a palpable error or violation of any procedures under Act

Anbuchezhian v IncomeTax Settlement Commission – (2018) 253 Taxman 253 (Mad) – Writ Petition No. 666 of 2018 WMP Nos. 836 to 838 of 2018 dated 19.01.2018

3628. The Apex Court granted SLP against the High Court's ruling that application made to Settlement Commission would be maintainable as long as the order of assessment was not passed and the date of dispatch or service of order on assessee would not be material for such purpose.

Shalibhadra Developers v Secretary, Income-tax Settlement Commission – (2018) 91 taxmann.com 272 (SC) – SLP (C) No. 15267 of 2017 dated 23.02.2018

3629. After accepting the assessee's application u/s 245, the Settlement Commission had passed a final order u/s 245D(4) rejecting the application as not maintainable as there was no full and true disclosure. In such case. When the assessee challenged the Settlement Commission's initial order accepting the application in the present writ and the final order was challenged in a separate writ petition, the Court held in view of fact that final order of Settlement Commission rejecting application of assessee was challenged by way of separate proceedings, examining questions raised in the instant appeal would be an exercise in futility and directed all contentions of the assessee, as raised in instant appeal, to be raised in the said writ petition.

Pr.CIT v Boyance Infrastructure (P.) Ltd. – (2018) 91 taxmann.com 437 (Kar) – Writ Petition Nos. 47042-47045 of 2015 & 240-243 of 2016 (T-IT) dated 20.02.2018

3630. The Settlement Commission rejected the application for settlement filed by the assessee on the ground that the assesse-petitioner had made false claim with respect to refund receivable which came to the light from the supplementary report filed by the Pr.CIT with the Commission (which stated the said refund was already received by the assesse and the assesse submitted that it was a inadvertent and technical mistake). On a writ petition filed by the assessee against the said rejection, the Court held that the assesse-petitioner should be permitted to proceed further and for which purpose the petitioner should be given an opportunity to pay the tax since the Commission had not conducted any enquiry to satisfy itself that the stand taken by the PCIT by way of a supplementary report could be a valid ground to come to a conclusion that the assessee had made a false claim on the refund due. It held that holding the assessee to have misrepresented facts without an enquiry into the matter, in the light of the stand taken by the assessee pleading inadvertence and bona fide mistake, was a flaw in the decision making process.

DR. PRATHAP CHANDRA REDDY vs. INCOME TAX SETTLEMENT COMMISSION - (2018) 102 CCH 0113 (ChenHC) - W.P. No. 5333 of 2018 & W.M.P. Nos. 6553 & 6554 of 2018 dated June 19, 2018

3631. The Court allowed the writ petition filed by the assessee against the Settlement Commission's order passed u/s 245(D)(4) rejecting the application for settlement filed by the assessee on the ground that there was failure to make a full and true disclosure of its income on the part of the assessee. Noting that failure to disclose was alleged essentially on account of Retention money, Purchase of steel, Sub-contracting and Sales Commissions whereas the assessee had made a full and complete disclosure of primary facts on all the aforesaid heads, it held that prima facie the basis of rejection was contrary to law laid down by the Court. It relied on the decision in the case of Pr. CIT v. Income-Tax Settlement Commission, [2017] 79 taxmann.com 186 (Bom) wherein it was held that to establish that there was failure to make a full and true disclosure of income as required u/s 254(C)(1), it would be necessary for the Revenue to prove that there was a non-disclosure of primary facts and not mere non-acceptance of certain claims made before the Commission.

Shreem Engineering Industries v Income Tax Settlement Commission - [2018] 95 taxmann.com 190 (Bombay) - WRIT PETITION NOS. 13194 TO 13197 OF 2017 dated June 21, 2018

3632. The assessee filed an application before the Settlement Commission subsequent to an order passed by the AO u/s 158BC. The assessee also filed a special civil application challenging validity of section 245HA containing provisions of abatement of proceedings before the Commission. In the meantime, this issue had reached the Supreme Court in another case in which also, vires of very same section was challenged. However, the petitioner in that case before Supreme Court withdrew its application. In such background, the Commission was of opinion that abatement provisions contained in section 245HA would apply to the assessee and passed an order declaring the proceedings before it to have abated as proceedings could not be completed on the specified date. On writ filed by the assessee, the Court held that the disposal of proceedings before the Supreme Court without expression of opinion on merits, could not be allowed to extinguish the assessee's right to challenge vires of section 245HA. It held that even otherwise, since proceedings were not delayed due to reasons attributable to the assessee, the impugned order of declaration of abatement of proceedings was to be set aside.

M. Kantilal & Co. v Income Tax Settlement Commission - [2018] 94 taxmann.com 293 (Gujarat) - R/SPECIAL CIVIL APPLICATION NO. 20442 OF 2017 dated April18, 2018

3633. Assessee filed an application for settlement of its proceedings contending that till then, reassessment proceedings were pending. Department took a stand that application for settlement was not maintainable as AO had already passed orders of reassessment against assessee on the date of filing the application. Assessee contended that though the reassessment orders passed against assessee were given to dispatch a day before making the application, the same were received by assesseelater. The Settlement Commission accepted the application. In a writ petition filed by revenue, the Court held that in view of decision in case of Shailbhadra Developers v Secretary [2017] 245 Taxman 160 (Guj.) for purpose of maintainability of a settlement application, a case would be pending only as long as order of assessment is not passed and date of dispatch or service of order on assessee would not be material for such purposes. Thus, it held that the settlement commission was unjustified in accepting application of assessee.

PCIT v Vallabh Pesticides Ltd.[2018] 94 taxmann.com 434 (Gujarat) [2018] 94 taxmann.com 434 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 5940 OF 2018 dated 16.04.2018

Stay of demand

3634. Stay applications were filed seeking extension of the stay granted by the Tribunal in respect of income tax and interest demands, arising out of the assessment orders, which were impugned in appeals before Tribunal and had been referred to a Special Bench of the Tribunal and the assessee pointed out that though the Special Bench was constituted almost two years ago, the matter has not come up for hearing at all. The Tribunal held that such an inordinate delay in fixation of hearing of special benches cases, particularly when stay is granted, is not only inappropriate and contrary to the scheme of the Art, but it does reduce the efficacy and utility of the mechanism of special benches to deal with important matters on which there is divergence of views by the Division Benches or which are otherwise of wider ramifications and national importance. With a view to ensure the expeditious hearing of cases referred to Special Benches and Third Members. The Tribunal formulated some guidelines that the Special Benches shall, commence hearing within 120 days of the Benches being constituted and if it is not in a position to commence hearing, it shall record the reasons, in brief, for delay in commencement for hearing and that it is only in exceptional circumstances that the adjournment may be granted and it should not exceed period of 30 days.
Doshi Accounting Services (P.) Ltd. v. Dy. CIT, Vadodara-[2019] 101 taxmann.com 62 (Ahmedabad –Trib.)-ITA Nos. 1285 of 2012 & 1822 (AHD) of 2014-dated December 26, 2018

3635. Where during pendency of appellate proceedings against addition made under section 68, High Court directed assessee-society to deposit only one per cent of amount demanded, SLP filed against said decision was dismissed by the Apex Court.
Anad Farmers Service Co-operative Bank Ltd. v. Central Board of Direct Taxes (CBDT) -[2018] 100 taxmann.com 98 (SC)-SLA (C) Nos. 27516-27517 of 2018 dated November 2, 2018

3636. The Court held that where during pendency of appeal, assessee's application for stay of demand was rejected by revenue by a single line order, without stating any reason or finding as to why application was liable to be rejected, impugned order was set aside with a direction to revenue to decide assessee's application on merit and in accordance with law.
Archit Khemka v. Pr. CIT, Corporate Circle-1(1), Chennai-[2019] 101 taxmann.com 488 (Madras)-W.P. No. 33800 of 2018-W.M.P. Nos. 39257 & 39261 of 2018 dated December 19, 2018

3637. The Court held that the Commissioner (Appeals) is obliged to entertain and dispose of appeal before him on merits without any regard to fact that amounts demanded have been paid/deposited or not paid/deposited by the assessee before him. Once hearing on appeal is concluded, then stay application becomes infructuous as appeal itself would stand disposed of by an appropriate order of the Commissioner (Appeals).
Saibaba Sansthan Trust (Shirdi) v. Union of India [2018] 255Taxmann 36(Bom) Writ Petition No. 939 of 2018 dated March 27, 2018

3638. The Tribunal granted stay to the assessee subject to specified deposit till disposal of appeal and held that in the case of assessee the facts were not properly and thoroughly examined and verified by lower authorities. The Tribunal noted that the assessee was providing marketing and support services to a foreign company, Uber B. V. which was incorporated in Netherlands and was collecting payments on behalf of said company and making disbursements to driver-partners as per directions of Uber B. V. The assessing Officer (TDS), had held that assessee was liable to deduct TDS under section 194C, which assessee had defaulted and thus assessing Officer accordingly treated assessee in default and raised demand on account of TDS and interest. The assessee filed instant application seeking stay of demand during pendency of appeal and it was noted that assessee denied liability to deduct TDS under section 194C on ground that it was not a person responsible for making payment to Driver-Partners as contract was between Uber B. V. and driver-partners.It was also stated that there were practical

difficulties as it was not possible for assessee to collect TDS on cash payments received by driver-partners directly. Thus, the Tribunal disposed off stay applications and also directed not to pass orders imposing penalty till disposal of appeal.
Uber India Systems (P) Ltd vs JCIT (TDS)- (2018) 98 taxmann.com 199 (Mumbai- Trib)- SA Nos 436 & 437 (Mum) of 2018 dated 28.09.2018.

3639. The Assessee had filed an application for stay of demand during pendency of appeal, before the CIT(A) the Deputy Commissioner had rejected assessee's stay application and communicated to assessee that it should pay 20 per cent of outstanding amount failing which collection and recovery would continue. The Court on assessee's writ petition held that, once it was an appealable order and the appeal had been filed, on its pendency, the assessee should get either an opportunity to seek a stay during during pendency or the AO should have held the demand in abeyance. In the present case, the AO did none of the above and proceeded to dismiss stay application.Thus, the Court directed that the appellate authority was to dispose the appeal as expeditiously as possible without calling upon assessee to pay any sum, much less to extent of 20 per cent of demand claimed to be outstanding by Revenue.
Bhupendra Murji Shah vs DCIT- (2018) 98 taxmann.com 233 (Bombay)- WP No 2157 0f 2018 dated 11.09.2018

3640. The CIT(A) had granted a stay on disputed tax amount subject to payment of 50% thereon which was reduced to 20% by the Single Judge Bench of the High Court in the writ petition filed against CIT(A)'s order. On second writ petition filed by assessee against the order of single judge, the Court noted that members of assessee co-operative bank were general public and marginalised sections and directed the assessee to make a deposit of 1 % of disputed tax amount .
Aruvikkara Farmers Service Co-Operative Bank Ltd. Vs ITO [2018] 97 taxmann.com 46(Kerala) WPC NO. 15070 OF 2018DATED AUGUST 2, 2018

3641. The assessee filed a writ petition requesting the Court to direct the Revenue authorities to not recover the disputed tax demand from the assessee till the appeal before the CIT(A) was pending. The Court disposed of the writ petition with a direction to the CIT(A) to dispose off the appeal pending before him within ten weeks from date of receipt of certified copy of the order and stated that interim order would enure to the benefit of assessee till consideration of appeal.
Mphasis Ltd. Vs Dy.CIT [2018] 97 taxmann.com 219 (Karnataka) W.P. NO. 13313 OF 2017 (T-IT) DATED AUGUST 1, 2018

3642. The Pr.CIT had partly allowed the assessee's stay application by directing the assessee to pay 20% of the tax demand, pending disposal of appeal. For this, Pr.CIT had relied on the Office Memorandum issued by CBDT requiring the income-tax authorities to grant stay of demand to the asssessee till the appeal before the CIT(A) was disposed, subject to payment of 20% of tax demanded. The High Court had allowed the assessee's writ petition and had set aside the Pr.CIT's order with a direction to the Pr.CIT to consider the merits of the case before disposing of the stay application. The Apex Court disposed of Revenue's appeal filed against the High Court's order, holding that it will be open to the authorities, on individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.
PR.CIT & Othrs v & ORS. vs. LG ELECTRONICS INDIA PVT. LTD. (2018) 303 CTR 0649 (SC) – CIVIL APPEAL NO. 6850 OF 2018 dated July 20, 2018

3643. The Court disposed off the writ petition filed by the assessee against the non-action of the AO with respect to application filed by the assessee before the AO to stay receovery of demand till proceedings before the CIT(A) were pending, by directing the AO to considering the same. It also rejected Revenue's contention that since the assessee had made payment of only 15% of disputed demand as per the earlier CBDT Circular and subsequently vide new circular dated 31/07/2016 the assessee is required to deposit 20% of disputed demand, holding that since the appeal was filed by assessee in beginning of 2017 and 15% of demand was also remitted by the assessee in March, 2017, the earlier Circular was applicable his case.
SUBIN ABDUL RASHEED v ACIT - WP(C).No. 24138 of 2018 (Ker HC) dated 23.07.2018

3644. The Court held that if the assessee has exercised on time its statutory remedy of filing an appeal and also filed a stay petition, procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition.
Kerala State Co-op Agricultural And Rural Development Bank Ltd vs. ITO - WP(C).No. 40456 of 2018 (Kerala HC) dated 12.12.2018

3645. The Tribunal granted conditional stay of demand to the assessee subject to payment of Rs. 15 Cr. & payment of income-tax refund of Rs. 28 Cr. (due in the name of amalgamating company, as and when received by the assessee). It noted that vis-à-vis AY 2011-12, the issue in respect of deduction u/s 10A was covered in its favour by co-ordinate bench order in assessee's own case and that the large part of the addition for AYs 2012-13 & 2013-14 was on account of dispute on the selection of comparables. It took note of the assessee's submission that various courts held that huge turnover comparables cannot be considered comparable with small turnover company and accordingly held that the assessee had a prima facie case in its favour.
Thomson Reuters International Services Private Limited - TS-121-ITAT-2018(Mum) - S.A. No. 521/Mum/2017, /S.A. No. 561/Mum/2017 and /S.A. No. 562/Mum/2017 dated 13.03.2018

3646. In a case where the appeal was pending before the CIT(A) and on an application made by the assessee for staying the demand, the AO mechanically referring to CBDT instruction No. 1914 dt. 21st March, 1996 directed the assessee to deposit 20% of the demand amount, the Court held that the assessing authority had to examine the applicability of the said instructions in as much as whether the assessment was "unreasonably highpitched" or whether "any genuine hardship would be caused to the assessee" due to payment of 20% of the disputed demand. Further, noting that the order passed by the AO was a non-speaking order and without application of mind, it held that the AO was not justified in directing the assessee to deposit 20% of the demand amount mechanically referring to the said instruction. Accordingly, it quashed the impugned order passed by the AO and remanded the matter to him to reconsider the application for stay in accordance with law in an expedite manner.
CHARISHMA HOTELS (P) LTD. vs. INCOME TAX OFFICER – Writ Petn. Nos. 12789 to 12790 of 2018 (Kar) dated 27.03.2018

3647. Where the AO as well as the Pr.CIT had rejected the application for stay of demand filed by the assessee u/s 220(6) without considering the decision in the case of KEC International Ltd v B.R.Balakrishnan & Other 251 ITR 158 (Bom) and UTI Mutual Fund v ITO [WP(L) No. 606 of 2012 (Bom)] which laid down the manner in which stay application u/s 220(6) had to be disposed by the authorities under the Act, the Court set aside the order of the AO as well as the Pr.CIT rejecting the said application and directed the AO to decide on the application afresh in view of the aforesaid decisions as well as the decision in the case of MMRDA v DCIT [W.P.(L) No. 2348 of 2014 (Bom)].
Niranjan B. Bhadang v ACIT – Writ Petition No. 706 of 2018 (Bom) dated 15.03.2018

3648. While disposing off an application for stay of disputed demand of Rs.47.05 crores, the Tribunal directed assessee to pay Rs. 5 Cr on or before 31.01.2018 and retain balance of another Rs.10 Cr (~20%) as balance in its bank account while granting stay for 3 months for balance amount and observed that-

- there was no 'prima facie' case in favour of the assessee as the issue involved in appeal was covered against the assessee by earlier year order in assessee's own case
- much importance could not be given to the rectification application filed by assessee (which according to assessee would reduce the total demand to Rs.34.66 Cr) as such application was filed just a day prior to filing stay application and therefore, could not be considered by AO
- assessee did not demonstrate any 'financial hardship'

Vodafone mobile services limited - TS-16-ITAT-2018(Bang) - S.P. No.300/Bang/2017; IT(IT)A No.2818/Bang/2017 dated 05.01.2018

3649. The Court granted ad-interim stay on demand and directed revenue to restrain from taking any coercive steps to recover outstanding demands, in a case where assessee's appeal was pending for disposal by CIT(A) and assessee had deposited 38% of outstanding demand. It also held that the mere having of funds i.e. no financial hardship would not itself justify deposit where a prima facie case was made out

Vodafone India Ltd. v. CIT - (2018) 400 ITR 516 (Bom) - Writ Petition (L) no. 18 of 2018 dated 04.01.2018

3650. The Court dismissed the petition filed by assessee against the Tribunal's order rejecting assessee's claim for stay of demand noting that the Tribunal had rejected stay after considering well settled parameters such as existence of a prima facie case, balance of convenience and irreparable injury caused to assessee, and thus, the impugned order did not require any interference.
United Spirits Ltd v DCIT – (2018) 90 taxmann.com 86 (Kar) – W.P. No. 57883 of 2017 dated 09.01.2018

3651. The AO had treated the loss incurred in the business as capital expenditure on the ground that the loss in the form of discounts offered to customers was intended to build-up brand value/monopoly or primacy in the online market, resulting in addition of Rs.1322 crores which was partially reduced by CIT(A). During the hearing for grant of stay before the Tribunal, the assessee had not advanced any arguments as to how there is patent error in the methodology adopted by the TPO for the purpose of arriving at the value of intangibles nor was there any argument rebutting the case of the TPO that the loss incurred by the assessee-company in the form of discounts offered was nothing but intangibles, the Tribunal held that no case was made out by the assessee-company that there was a strong prima facie case in its favour on merits. As regards financial hardship, the Tribunal noted that though the assessee-company was incurring losses but it had sufficient liquidity to pay the disputed tax liability on account of receipt of huge share capital and huge share premium and thus, no case was made out in favour of the assessee-company on account of financial hardship too. Further, as regards balance of convenience also, it held that the assessee-company had failed to make out any case in its favour. Accordingly, it directed the assessee to pay 50% of the demand in question and furnish bank guarantee for balance demand for a period of 6 months.
Flipcart India (P.) Ltd. v ACIT – (2018) 169 ITD 211 (Bang) – Stay petition No. 25 (bang.) of 2018 ITA No. 202 (bang.) of 2018 dated 06.02.2018

3652. Where the Tribunal had granted stay of demand of Rs. 109.52 crores during pendency of appeal subject to deposit of 50% of demand in question and furnishing of bank guarantee for the balance amount, the Court grant further relief to the assessee by directing it to deposit a sum of Rs. 10 crores against impugned demand during pendency of appeal and undertake not to seek any adjournment of hearing of the said appeal in view of the fact that appeal itself was coming up for final hearing shortly after pre-ponement of hearing date and that a sum of Rs. 25.66 crores had already been paid by the assessee-company.
Flipkart India (P.) Ltd. v Union of India – (2018) 90 taxmann.com 381 (Kar) – Writ Petition No. 6533 of 2018 (T-IT) dated 15.02.2018

3653. Where the assessee, subsequent to filing an appeal before the CIT(A), filed an application for stay of demand before the AO who directed the assessee to pay 20 percent of the demand, pursuant to which the assessee filed an application before the Commissioner for stay of full demand and the Commissioner, rejecting the application directed the assessee to pay 50 percent of the demand, Court held that the power of suo motu enhancement of the payment which had been ordered by the Assessing Officer was not available to the Commissioner in terms of the CBIT Circular dated 29-2-2016. It held that as per the Circular, the Commissioner could only enhance the amount to be deposited on a reference by the Assessing Officer to the Administrative Principal Commissioner that the party should be asked to deposit in excess of 20 per cent of the demand for stay of the balance demand. It noted that the demand had arisen as the AO sought to change the method of valuation of shares adopted by the assessee from DCF to NAV which was contrary to Rule 11UA which afforded the assessee an opportunity to choose either method. Accordingly, it held that there would be a stay of the assessment order to the extent of the demand raised for a period of 4 weeks. Further, it held that in case, the assessee filed a stay application to the Commissioner (Appeals) within a period of 4 weeks, the demand of Rs. 62.38 crores arising consequent to the impugned order would be stayed till the stay application was disposed of.
Vodafone M-Pesa Ltd v Pr CIT - [2018] 92 taxmann.com 73 (Bombay) - WRIT PETITION NO. 654 OF 2018 dated MARCH 1, 2018

3654. The Court held that once hearing on appeal was concluded by the CIT(A), then stay application would become infructuous as appeal itself would stand disposed of by an appropriate order of Commissioner (Appeals). It held that the approach of the CIT(A) in taking up the stay application of the assessee after hearing the appeal on merits was only done so as to collect some revenue before 31-3- 2018. Accordingly, it set aside the order of the CIT(A) passed in pursuance to the assessee's stay application, directing the assessee to pay a sum of Rs. 15.16 crore out of total demand of Rs. 122.04 crore.
Saibaba Sansthan Trust (Shirdi) v UOI - [2018] 92 taxmann.com 299 (Bombay) - WRIT PETITION NO. 939 OF 2018 dated MARCH 27, 2018

3655. Where, pursuant to orders of writ court, the assessee company had deposited 30 per cent of demand of tax in default and had furnished bank guarantee to extent of 45 per cent, and appeal on merits was pending before Tribunal, the Court held that since the interest of revenue stood adequately safeguarded, there was no justification for increasing demand to 55 per cent of dues.
CIT v Google India (P.) Ltd. - [2018] 92 taxmann.com 38 (Karnataka) - WRIT PETITION NO. 5193 OF 2017 (T-IT) dated MARCH 7, 2018

3656. The Division Bench of the Karnataka HC dismissed the assessee writ appeal and refused to interfere with the Single Judge order directing additional payment /furnishing of bank guarantee in respect of outstanding demand for AYs 2009-10 to 2012-13. It noted that the Tribunal, relying on HC order for AY 2013-14, had directed further payment of Rs.175 Cr and maintenance of balance in bank account of amount equivalent to 20% of disputed demand but the Single Judge (pursuant to Writ filed by the assessee), modifying the Tribunal order, directed assessee to (i) furnish bank guarantee for 25% of demand for AY 2009-10 and 2010-11 and for 45% of demand for AY 2012-13, (ii) pay 20% of tax demand and furnish bank guarantee to cover 25% of tax demand for AY 2011-12. It dismissed assessee's argument that since Tribunal in the first instance, had granted stay with proper application of mind, it was not open to the Single Judge to impose additional conditions. Noting that stay order u/s 254(2) was a discretionary order, it held that both the Hon'ble Single Judge's order as well as consequent Tribunal order could not be classified as those which any reasonable person cannot pass.
GOOGLE INDIA PRIVATE LIMITED [TS-55-HC-2018(KAR)] - WRIT APPEALS No.50-52/2018

3657. The Court dismissed the assessee's writ petition filed against the Tribunal's order imposing the condition of making payment of 20% of demand amount for the grant of stay on the remaining demand. It held that since two views were possible in the matter [involving disallowance u/s 40(a)(iib)], the Tribunal was right in imposing the said condition. However, having regard to the financial hardship pleaded by the assessee, the Court enlarged the time fixed for payment of 20% of the amount for a further period of six weeks.
Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. v ACIT - [2018] 94 taxmann.com 91 (Kerala) - W.P. (C) NO. 10173 OF 2018 dated April 13, 2018

3658. The demand of tax was made to the assessee for AY 2012-13 and 2015-16 by the AO. The Stay petition for AY 2012-13 by assessee was pending before the CIT(A). The Court disposing this petition for AY 2015-16, directed the assessee to file an appeal before the CIT(A) for AY 2015 -16 and thereby directed the CIT(A) to take up pending stay petition and the to-be filed petition by assessee and pass orders on merits and in accordance with law. Further, it directed that the impugned order passed by AO should be kept in abeyance and should abide by the order passed by the CIT(A).
G.R.D. Trust v DCIT (2018) 255 TAXMAN 0121 (Madras) - W.P.No.5587 of 2018 & W.M.P.No.6917 of 2018 dated 10.04.2018

3659. The assessee challenged the order passed by the AO u/s 220(6) that rejected the assessee's application for stay of penalty imposed by the AO itself u/s 271(1)(c) till the disposal of appeal filed by assessee before the CIT(A). Also, the AO u/s 156 demanded the payment within 7 days (normal period being 30 days, the AO having discretion to reduce the period) without stating the reasons of reducing the period to make the payment. However, the AO, by his order u/s 220(6) had stated that the stay application would be considered only after assessee paid 20% of the penalty imposed and further, attached assessee's bank A/C by exercising powers u/s 226 of the Act. Assessee being aggrieved by

the attachment of its bank a/c filed the said writ petition. The Court quashed the order passed by the AO u/s 220(6) and thereby directed the AO to communicate the reasons for reducing the period to 7 days u/s 156 and to pass a fresh order in accordance with law on assessee's stay application after hearing the assessee.Thus, the Court accepted the assessee's plea and directed the AO to withdraw attachment of assessee's bank a/c for the reasons that it would be impossible for the assessee to carry its business.

White Pay LLP v ITO (2018) 101 CCH 0325 MumHC - WRIT PETITION NO. 966 OF 2018 dated 02.04.18

3660. The Court held that mere pendency of an appeal before the CIT(A) was no ground to state that there should be stay on recovery of tax demanded as a) the Assessee had miserably failed to substantiate their contention that they were unable to mobilize funds to comply with direction of Assistant Commissioner to deposit 20 per cent of tax demanded b) they had brought out as to how they had made out a prima facie case for grant of an unconditional stay. However, as the assessee- company had established Eye Hospitals in various parts of country and there were several persons employed with them and there were several senior citizen, who required care and attention, assessee-company was directed by the Court to pay 5 per cent of tax demanded during the pendency of the appeal before CIT(A).

Vasan Health Care (P.) Ltd. v ACIT [2018] 93 taxmann.com 439 (Madras) – WP NOS 6040 TO 5052 OF 2018 dated 28.04.2018

3661. The Court held that the power of stay confers on appellate authority cannot be equated to power granted to AO u/s 220(6) and the AO should first consider assessee's request for stay of demand as referred to in guidelines issued by CBDT.

Cavinkare (P.) Ltd. v. CIT – [2018] 93 taxmann.com 14 (Madras) – W.P. No. 3338 of 2018 dated April 4, 2018

3662. The assessee filed its return claiming deduction u/s 80-IC which was rejected by the AO on the basis of an information received from Central excise department that the process adopted by the assessee did not amount to 'manufacture'. The assessee filed an appeal against the order of the AO before the Tribunal and subsequently filed an application for stay of recovery of outstanding demand during the pendency of the appeal which was rejected by the Tribunal on the ground that the assessee was unable to show strong prima facie case in its favour. On appeal, the Court noted that AO had no independent material in his hands while rejecting the assessee's claim and also, the Tribunal should have done a thorough exercise as to whether the AO was justified in denying the entire deduction claimed by the assessee. After perusing the materials placed on record, the Court allowed the application of the assessee seeking stay of demand during pendency of appeal on the ground that thirty percent of the tax demand was already deposited by the assessee and the same was sufficient to safeguard the interests of the Revenue.

Turbo Energy (P.) Ltd. v. Assistant Registrar, ITAT – [2018] 93 taxmann.com 62 (Madras) – Writ Petition Nos. 6648 to 6650 of 2018 dated April 6, 2018

3663. The Tribunal dismissed the Revenue's application for vacation of stay granted by the Tribunal vide an earlier order holding that if the Department was aggrieved by the order of the Tribunal, it should've sought for remedy from higher forum/High Court and not show open resentment or disrespect the order of the Tribunal by filing such applications which now a days have become a common act by the Department. Further, it held that such conduct of open resentment against judicial orders would also compel to initiate and recommend to High Court for appropriate action under contempt of courts Act

ITO v Chandigarh Lawn Tennis Association (2018) 52 CCH 0537 ChdTrib - M.A. No. 37/Chd/2018 in Stay Application No. l8/Chd/2016 (in ITA No. 1382/Chd/2016) dated 06.04.2018

3664. The Court allowed the writ petition filed by the assessee-company and directed the Revenue to not take any coercive action for recovering tax due till the AO considers the assessee's stay application filed u/s 220(6).

SFO TECHNOLOGIES PRIVATE LIMITED v ACIT - WP(C).No. 41112 of 2018 (Ker HC) dated December 18, 2018

Recovery

3665. The Court held that before a person can be arrested and detained, the provisions contained in rule 73 of second schedule are to be complied with. Where the Tax Recovery Officer had followed due procedure established under provisions of the Income Tax Rules before directing arrest of detenue for recovery of arrears of tax, order could not be said to being violation of article 21 of the Constitution of India.

Ayush Kataria v. Union of India [2018] 97 taxmann.com 137(MP) -Writ Petition No. 10329 of 2018 dated July 9, 2018

3666. The Court held that TRO cannot declare a transaction of sale of attached property null and void under section 281, if notice for recovery under rule 2 of Schedule II was not served upon owner/defaulter, prior to sale of said property.

Rekhadevi Omprakash Dhariwal v. TRO [2018] 96 taxmann.com 84/257 Taxman 109 (Guj.) - Special Civil Application No. 1492 of 2018 dated July 2, 2018

3667. Where the purchase of property by the petitioner was declared as void by the Tax Recovery Officer on the ground that it was under attachment proceedings for recovery of tax dues of vendor, the Court dismissed the writ petition filed by the petitioner claiming that the property was not liable for attachment as the vendor had no income-tax dues payable and the that Tax Recovery Officer attached petitioner's property for arrears of vendor long after petitioner had bonafidely purchased the property. The Court held that the petitioner could not have approached writ court invoking jurisdiction under Article 226 of Constitution of India and thus dismissed the petition 'as not maintainable' with a direction to the petitioner to file a claim before the Tax Recovery Officer.

Champa Devi v Tax Recovery Officer-1 [2018] 96 taxmann.com 218 (Madras) - W.P. NO. 8148 OF 2012; M.P. NO. 1 OF 2012 dated July 12, 2018

3668. In a case where the assessee was confined in jail due to non-payment of tax dues, the Tribunal stayed recovery of outstanding dues except deposit of specified amount and ordered the TRO to arrange for release of the assessee immediately on deposit of said amount. It also directed the Income Tax Authorities to promptly do the necessary formalities including issue of release warrant to the Jail officials on compliance of the directions of the Tribunal.

Devinder Singh Gill vs. DCIT - STAY APP. Nos. 43 & 44/Chd/2018 (in ITA Nos. 498 & 499/Chd/2015) dated 24.08.2018

3669. The Court held that where during pendency of appellate proceedings, stay was granted torespondent no. 2 firm in which assessee was an while partner subject to deposit of a part of amount demanded, proceedings under sec. 188A could not be initiated against assessee as long as respondent No.2 firm continued to deposit amount so demanded even in instalments.

Mukesh Kumar Prabhatbhai Desai v. ITO- [2018] 100 taxmann.com 130 (Gujarat)-R/Special Civil Application No. 13571 of 2018-dated October 29, 2018.

3670. The Tax Recover Officer issued on assessee a notice dated 18-11-2004 for auction of its attached property, challenging which the assessee filed writ petition praying to quash said notice. The Court observed that the notice was barred by limitation because of rule 68B of Second Schedule- which specifies the time limit of 3 years from the end of FY in which the demand arises and the immovable property is attached for recovery. The Assessee had challenged the original assessment order up to Supreme Court and the same vide order dated 16-1-2001 had been dismissed against the assessee. The Court further held that the period of limitation of 3 years enacted by parliament in rule 68B(1) of second schedule of Income Tax Act would begin to apply from 1.4.2001 and therefore the above mentioned issued notice on 18.11.2004 was barred by limitation i.e beyond 3 years and the attachment of property was set aside.

Rambilas Gulabdas (HUF) vs TRO- (2018) 98 taxmann.com 309 (Bom)- WP no 3388 of 2005 dated 27.09.2018

3671. Assessee acquired property by executing sale deed for consideration through power of attorney of original owner. Transaction was carried out after due diligence like public advertisement and title clear certificate. TRO under rule -16 of second schedule of Income Tax Rules held that sale deed of property was declared null and void, and property was also ordered to be under communication. The Court held that, 2nd Schedule of Income Tax Act was procedure for recovery of tax wherein Rule 2 provides for issuance of notice for recovery of arrears by Tax Recovery Officer upon defaulter requiring defaulter to pay amount specified in certificate within fifteen days from date of service of notice and intimating that in default, steps would be taken to realize amount under this schedule Rule 16 provides for considering private alienation to be void in certain cases. This rule required service of notice on defaulter under Rule 2 and after such service defaulter or his representative in interest shall not be competent to alienate property in manner prescribed belonging to defaulter without permission of TRO. It also prohibits for issuance of any process by Civil Court against such property in execution of decree for payment of money. It also provided that where attachment had been made under this schedule private transfer or delivery of property attached should be void as against all claims enforceable under Attachment Act. From affidavit as well as from additional affidavit department had not been able to bring on record service of notice under Rule 2 of Schedule 2, only documents on record along with additional affidavit were order of attachment of immovable property whereas no notice as contemplated under Rule 2 was found on record. Assessee's petition was allowed.
Rekhadevi Omprakash Dhariwal vs. Tax Recovery Officer-(2018) 102 CCH 0214 GujHC-R/Special Civil Application No. 1492 of 2018-Dated Jul 2, 2018

3672. The Apex Court dismissed Revenue's SLP against HC ruling wherein it was held that section 226(3)(x) did not confer arbitrary power on Income-tax department to recover amount of tax liability of Mining department from assessee who was awarded tender for settlement of sand Ghats by Mining department. The assessee-company was awarded tender for settlement of Sand Ghats located in different districts and it was required to pay settlement amount in three instalments with simultaneous payment of required amount of tax to Sale Tax Department and the assessee received notice issued by ITO under section 226(3) calling upon to deposit a sum being income-tax liability of Mining department for default in deducting TCS by the Mining department from various settlements. The Court held that income-tax authorities had arbitrarily deducted said amount from bank account of assessee without any action being carried out by Income-tax department against Mining department for failure to deposit TCS under sections 276B and 276BB. The tax was the liability of the Mines and Geology Department and instead of taking coercive action under section 276B and section 276BB, action of Income-tax Department by attaching the bank account and directing the same to be recovered from the account of the assessee was most unreasonable. It directed the Income-tax Department to return the said amount with interest.

Principal Chief Commissioner of Income tax vs SAINIK FOOD PVT. LTD. AND ORS. [2018] 103 CCH 0254 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38319/2018 dated 13.11.2018

3673. The Court dismissed the assessee's writ petition against the Tax Recovery Officer's (TRO) order raising demand against the assesse who had purchased lease rights from a company on November 17, 2006 whose property was attached by the TRO on March 31, 2004. It rejected assessee's contention that since the sale was not made by the Tax Authorities within 3 years of the date of attachment (i.e upto March 31, 2007) as per Rule 68B of Second Schedule to the Act, attachment stood vacated and the sale deed executed in favour of assessee could not be termed as void. It held that the attachment was enforceable on that day when the sale was executed. Further, the Court also noted that TRO had an option to appoint a person as Receiver instead of directing of sale of property and the Receiver was already appointed by Bombay HC, thus there was no occasion for TRO to proceed with the sale. It accordingly held that the sale transaction executed in favour of the assessee by defaulter purchaser was void and the demand raised on assessee to pay the dues of defaulting company was wholly justified.
Premier Texto Trade Pvt Ltd v Tax Recovery Officer [TS-194-HC-2018(RAJ)] - S.B. Civil Writs No. 8308& 4369/2010 dated April 12, 2018

3674. Certain amount of cash, jewellery, fixed deposit and National Savings Certificates (NCSs) were seized during the search and seizure proceedings conducted at the residential premises of the assesse and his spouse. The AO also passed penalty order u/s 271(1)(c) by raising demand of amount for various years from 2005-2006 to 2011-2012. When the assesse requested to release cash and other assets seized, he was informed that entire cash was adjusted against outstanding demand. The assessee file a writ petition with the high Court against such refusal to release cash and other assets. The Court held that since entire cash amount seized was adjusted against various demands raised during assessment proceedings and even details of such adjustment had been provided to theassessee, there was no question of return and/or release of cash seized. With respect to release of fixed deposit/ NCSs and jewellery, the Court held that after adjusting the amountoutstanding in case of the assessee's spouse, the balance fixed deposit receipts / NSCs and jewellery seized as per the seizure panchnama should be returned to the assesses at the earliest, wihtin twoweeks.
SANDEEP RAGHUNATH GUPTA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0117 (GujHC) - R/SPECIAL CIVIL APPLICATION NO. 2017 of 2018 With R/SPECIAL CIVIL APPLICATION NO. 2022 of 2018 dated June 25, 2018

3675. The assessee company was liable to pay income tax for period 1995-96 to 2002-03 but was declared to be wound up. The assessee company owned two immoveable properties and by two registered sale deeds, it sold property to the Petitioner. Prior to the execution of such sale deed, the assessee-company had made an application with the AO to issue certificate under Section 230A [an erstwhile provision mandating a certificate from the AO stating that all the liability under the Act have either been discharged or satisfactory provisions have been made for the same, before registering any document for transfer of property], which was rejected by the AO as there were demands for income-tax arrears from the assessee. However, after the said section itself was repealed, the said sale deeds were executed. Noting the above, the ACIT passed an order u/s 281 declaring that sale of two immoveable properties to as void, since the sales consideration was far below the market value of property and thus indicating that the sale was done with view to defraud the Revenue. An order was also passed for attachment of property. The Petitioner filed the present writ petition against the said order passed u/s 281 and the order of attachment. The Court dismissed the petitioner's argument that the Tax Recovery Officer, like any other creditor has to go to the Civil Court seeking a judicial declaration to give effect to the statutory declaration u/s 281, holding that the Revenue cannot be equated with a mere creditor and tax due to the state is crown debt. It observed that the Petitioner had taken chance by going ahead with the purchase even after knowing about non-payment of tax arrears by the assessee and rejection of application for a Certificate u/s 230A. It thus declined to set aside the order of attachment and the order u/s 281 declaring the sale to be void.
ACIT vs. PRUDENTIAL CONSTRUCTION CO. LTD. (HIGH COURT OF ANDHRA PRADESH) (Writ Petition No. 11629 of 2007) dated May 2, 2018 (102 CCH 0052)

3676. The assessee filed a petition before the Court challenging the notice issued under section 226(3) addressed to the assessee's banker for recovery of tax demand. The assessee contended that the Revenue was not authorized to issue the said notice before the expiry of time limit to file an appeal before Tribunal against the order passed by the CIT (A). The Court in view of the facts held that the Revenue cannot direct the assessee to remit entire tax well before the expiry of limitation period for filing an appeal. Therefore, the interim protection was to be granted to the assessee till the assessee approached the Tribunal subject to the condition that the assessee would pay 20 percent of the disputed tax demand. Accordingly, the matter was remanded by the Court to the Tribunal.
S.P. Mani & Mohan Dairy v. ACIT – [2018] 93 taxmann.com 11 (Madras) – W.P. No. 8113 of 2018 dated April 6, 2018

3677. The Court quashed the order passed u/s 179 to recover the demand outstanding in the case of a company in which the assesse was a director noting that when the notice was issued to initiate the said recovery proceedings, the assesse was in Jail and the said notice should have been served on him through Superintendent of Jail, which course was not adopted by the Tax Authority.It thus held that order u/s 179 could not have been passed without affording concerned parties an opportunity of hearing and hence not in compliance with the principles of natural justice. The Court directed the Tax Authority to pass fresh order u/s 179 after affording the petitioner an opportunity of hearing. Further, with respect to the order passed u/s 230 holding that the assesse could not leave the territory of India by land, sea

or air unless he furnished a Tax Clearance Certificate to the effect that satisfactory arrangements had been made by him for payment of his tax dues, it was held that after considering the fresh order to be passed u/s 179 as directed, a fresh order u/s 230 should also be passed either confirming or varying the earlier one.

MAILAKKATTU VARGHESE UTHUP vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0085 (KerHC) - W.P.(C).No. 10675 of 2018-H dated June11, 2018

3678. Where the AO passed an order u/s 220(6) directing the assessee to deposit 50 percent of the tax demand without considering the assessee's stay application pending disposal by CIT (A), the Court set aside the order of the AO as it was arbitrarily directed upon the assessee to deposit 50 percent of the tax demand.

Sushil Bhatia (HUF) v. ACIT - [2018] 94 taxmann.com 30 (Bombay) - WRIT PETITION NO. 804 OF 2018 dated APRIL 19, 2018

3679. The assessee was engaged in the provision of the Managing Consultancy Services. The ITO passed an order u/s 143(3) and made an addition u/s 69 against the return filed by the assessee on the ground that the assessee was unable to explain the source of funds in respect of the investment that the he had made. An appeal was filed by the assessee before the CIT (A) on the same day. The assessee also filed a stay application before the ITO requesting to stay the demand until the disposal of appeal. The ITO directed the assessee to pay 50 percent of the tax demand subject to which the recovery of the balance demand would be stayed. The assessee paid 20 percent of the tax demand and approached the PCIT to stay the recovery of the balance demand until the disposal of the appeal but the PCIT confirmed the order of the ITO to pay 50 percent of the tax demand. The assessee filed an application before the CIT (A) for stay of recovery of the balance demand until the disposal of the appeal and at the same time a communication was issued by the ITO to the CIT (A) to proceed with the recovery notwithstanding the pendency of the stay application before the CIT (A). Further, the CIT (A) passed an order and held that the CIT (A) had no jurisdiction to pass order on the stay application as the issue was already decided by the PCIT. Pursuant to which, the ITO issued a garnishee notice directing the bank to make payment towards the demand of tax from the account of the assessee. A writ petition was filed challenging the said order. The Court noted that the PCIT had confirmed the order of the ITO demanding 50 percent of the taxable amount without assigning any reasons and the same was liable to be set aside on the basis of the well settled principle that any order passed without assigning reasons was invalid in the eyes of the law. Accordingly, the order passed by the CIT (A), stating that the matter was already decided by the PCIT, and the garnishee notice were held invalid and the appeal of the assessee was allowed.

Fincare Business Services Ltd. v. ITO - [2018] 92 taxmann.com 355 (Karnataka) - WRIT PETITION NO. 13913 OF 2018 (T-IT) dated APRIL 4, 2018

3680. The assessee was a former director of Shravan Developers Pvt Ltd. and had resigned in the year 2013 following which the company became a delinquent private limited company owing to failure to pay taxes for AY 2011-12. The assessee received a show cause notice u/s 179(1) seeking to recover the taxes dues of Rs. 4.69 crores of the delinquent Private Ltd. Company as its director. In response, the assessee sought details of the notices issued on the company but without responding to the assessee, an order u/s 179(1) making a demand of Rs. 4.69 crores. The assessee filed a writ petition and contended that the order was without jurisdiction for the reason that section 179(1) could be invoked only when the taxes due to the company could not be recovered from it. The Court held that the efforts made and the failure to recover taxes from the company in a notice u/s 179(1) was sine qua non but the show cause notice issued by the AO did not indicate any particulars of the failed efforts to recover taxes from the company and accordingly the order was quashed.

Mehul Jadavji Shah v. DCIT - [2018] 92 taxmann.com 401 (Bombay) - WRIT PETITION NO. 291 OF 2018 dated APRIL 5, 2018

3681. The Court allowed the writ petition filed by the assesse against the AO's order directing the assessee to pay 20% of the tax demand as per the CBDT Office Memorandum dated 31.07.2017, for being entitled for stay of the demand of the remaining tax till the disposal of the appeal before the CIT(A), noting that

the AO had not dealt with the assessee's specific plea that their income of the relevant year was 1/4th of tax assessed and the plea about the financial position and the prejudice that was caused on account of the high pitched assessment. Referring to the said Memorandum, it held that the CBDT had not completely ousted the jurisdiction of the officer, while examining a prayer for stay of the demand of tax pending appeal and the AO could not have passed the impugned order without taking note of the assessee's case and without considering as to whether the assessee had made out a prima facie case for grant of interim relief. Accordingly, the matter was remanded back to AO for fresh consideration.
Samms Juke Box v ACIT - [2018] 95 taxmann.com 247 (Madras) - WRIT PETITION NO. 3735 OF 2018; W.M.P. NO. 4550 OF 2018 dated June28, 2018

3682. The Court quashed the order of attachment passed in the name of the assessee's deceased son with respect to a property which the assessee had settled in favour of her son in 2011. It accepted the assessee's claim that the settlement was a conditional settlement, subject to the life interest reserved by the assessee-petitioner, and thus she was entitled to be in possession and enjoyment of the property and only after her life time, the settlement would take effect. The Court held that as on date, the petitioner-assessee being the absolute owner of the property was entitled to be in possession and enjoyment and, thus, the question of attaching the said property could not arise, more particularly, by issuing an order of attachment in the name of a deceased person.
S Rathinam v The Tax Recovery Officer - [TS-357-HC-2018(MAD)] - W.P.No.4585 of 2018 and W.M.P.Nos.5637 & 5638 of 2018 dated June 22, 2018

3683. The Court held that tax Recovery Officer can not declare a transaction of transfer as void under section 281 and if revenue wants to have transaction nullified under section 281, it must go to civil court to seek declaration to that effect.
Agasthiya Holdings (P.) Ltd. v CIT [2018] 93 taxmann.com 81 (Madras) – C.M.P. (MD) NOS. 7953 & 8250 OF 2017 dated 13.04.2018

3684. The AO wrongly and illegally recovered certain amounts from the assessee, ignoring the submissions made by assessee (delivered manually and also through e-mail) for objecting against adjustment of refund for earlier AY against demand for current AY and despite the Stay order of Tribunal against recovery of demand. On filing the miscellaneous application, the Tribunal observed that coercive recovery effected by authorities was violative of the principles of judicial discipline and natural justice. Accepting the apology of the AO and the Addl CIT, the Tribunal disposed-off the assessee's application as the amount recovered illegally was refunded to the assessee and that the assessee was no more aggrieved.
Greater Mohali Area Development Authority vs. DCIT – [2018] 53 CCH 0110 (Chandigarh ITAT) – M.A. No. 70/Chd/2018 in Stay Application No. 18/Chd/2017 (in ITA No. 1560/Chd/2017) dated May 9, 2018

3685. A notice was issued to the assessee u/s 156 for payment of advance tax u/s 210(3) which stated that if the assessee was to pay the amount less than what had been asked to pay then the assessee would be required to send to the AO the reason for low estimate under Form 28A. The assessee on receipt of the notice paid an advance tax of Rs. 30 lakhs (as against the demand of Rs. 1, 26, 41,650/-) but failed to file Form 28A as given in the notice. Thus, the AO issued impugned notice u/s 226(3) proposing to attach the assessee's bank account and recovering the entire amount of tax. The assessee filed a writ petition against the order of the AO wherein the Court stated that the assessee had to be partly blamed for not filing Form 28A, however, the form was filed subsequently by the assessee and the same was to be considered by the Revenue. Thus, the notice issued u/s 226(3) could not be given effect to and the matter stood remanded.
Swami Arvind v. ACIT – [2018] 92 taxmann.com 327 (Madras) – Writ Petition No. 7709 of 2018 dated April 3, 2018

3686. The Court held that no coercive step should be taken for recovery of outstanding tax demand till the expiry of period of limitation for filing an appeal against the order passed by the Commissioner.
Kalaignar TV (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 190 (Madras) – W.P. Nos. 7819 & 7820 of 2018 dated April 4, 2018

3687. Where during the pendency of appeal before the High Court, a notice of attachment of assessee's bank account was issued in view of the fact that the assessee had already paid a part of the tax demand, it was held by the Court that in the interest of justice, recovery proceedings were to be stayed subject to payment of a further of Rs. 5 lakh by assessee.
V. Sabitamani v. ACIT – [2018] 93 taxmann.com 280 (Madras) – W.P. No. 7957 of 2018 dated April 16, 2018

3688. Where the commissioner passed an order in terms of section 245 whereby refund available to the assessee for assessment year 2005-06 was adjusted against demands for assessment years 2004-05, 2006-07 and 2008-09, the Court held that since the said order was a non-speaking one and, moreover, it was passed without considering assessee's objection, it was to be set aside. Accordingly, the matter was remanded back to ACIT for disposal afresh.
Vodafone India Ltd. v. DCIT – [2018] 92 taxmann.com 399 (Bombay) – Writ Petition No. 3064 of 2017 dated April 10, 2018

Prosecution

3689. The Court held that if a stay application is filed before the CIT(A) to seek a stay of the assessment order, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed.
Ramchandran Ananthan Pothi vs. UOI (Bombay High Court) - WRIT PETITION NO.761 OF 2018 dated 04.09.2018

3690. Where during pendency of assessee's appeal before Tribunal, his stay petition was dismissed and thereupon AO initiated prosecution proceedings under section 276C for non-payment of determined tax, in view of fact that assessee was agitating his case before Tribunal, which was final fact-finding body, the Court held that there was no necessity to launch prosecution hurriedly because law of limitation under section 468 Cr. P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.
Sayarmull Surana v. ITO, Business Ward XII (3), Chennai- [2019] 101 taxmann.com 228 (Madras)-CRL. R.C. No. 111 of 2011-CRL.M.P. No. 1 of 2011 dated December 14, 2018

3691. Where during pendency of assessee's appeal before Tribunal, his stay petition was dismissed and thereupon AO initiated prosecution proceedings under section 276C for non-payment of determined tax, in view of fact that assessee was agitating his case before Tribunal, which was final fact-finding body, the Court held that there was no necessity to launch prosecution hurriedly because law of limitation under section 468 Cr. P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.
Sayarmull Surana v. ITO, Business Ward XII(3), Chennai- [2019] 101 taxmann.com 228 (Madras)-CRL. R.C. No. 111 of 2011-CRL.M.P. No. 1 of 2011 dated December 14, 2018

3692. Assessee filed return of income for AY 1998-1999 disclosing his income at Rs.48,150/-.Thereafter, Department conducted investigation and found that assessee's income was Rs.29,05,126/- and determined tax payable, including interest.CIT(A) determined assessee's income and tax payable.ITAT dismissed his stay petition.Assessee was thus, held liable to be punished u/s 276C(2) for non-payment of determined tax.On summons, assessee appeared and prosecution was commenced.Assessee filed petition u/s 245(1) Cr.P.C. for discharge, which was dismissed by Trial Court. The High Court held that authorities created under Income Tax Act are fact-finding bodies and assessee was knocking doors of those bodies challenging determination of income by ITO.There was no supine indifference on assessee's part in not paying demanded tax, but, he agitated before various fore and at end of day, fact-finding body itself concluded that assessee's income for relevant period was only Rs.2,82,650/- and tax payable by him thereon was only Rs.1,10,402/-.There was no necessity for Department to have launched prosecution hurriedly since law of limitation u/s 468 Cr.P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.Even in complaint, ITO stated that assessee had approached ITAT which proves that ITO was aware that assessee was agitating his

case before ITAT.But, it could not be stated that assessee was wilfully evading payment of tax.Order passed by Additional CMM was set aside and assessee was discharged from prosecution.Assessee's petition was allowed.

SAYARMULL SURANA vs. ITO (2018) 103 CCH 0155 ChenHC Crl.R.C. No. 111 of 2011 & Crl.M.P. No.1 of 2011 dated 14.12.2018

3693. Penalty was levied u/s 271(1)(c) and further prosecution was initiated by the revenue against, the assessee who applied to the CCIT for compounding of offence and offered to pay compounding fees. The CCIT levied some fees against which assessee applied for rectification of compounding fees and stated that it should be levied on amount of tax sought to be evaded and not on amount of income sought to be evaded. The Court noted that as per CBDT circular dated 23.12.14, it prescribed compounding fees at 100% of amount sought to be evaded and section 276C(1) prescribed punishment for person who wilfully attempted in any manner to evade any tax, penalty or interest. Thus, the Court held that when there was a reference to amount sought to be evaded, it must be seen in light of wilful attempt on part of concerned person to evade tax, penalty or interest and directed the CCIT to carry out fresh computation of assessee's liability to pay compounding charges.

Supernova System P Ltd vs CCIT- (2018) 103 CCH 0018 Guj HC- Special Civil Application No 8715 of 2018

3694. The Court held that where prosecution under section 276CC was launched against assessee on account of his failure to furnish return of income in response to notice issued u/s 142(1), the offence under section 276CC, prima facie, stood constituted as there was evident failure on part of assessee to not furnish return of income for relevant AY within period prescribed as per law. Thus, the mere fact that the assessee had subsequently furnished return of income for relevant AY and no amount of tax was due, would not exempt the assessee from liability of prosecution.Thus, the criminal revision petition filed by assessee was dismissed and the prosecutionproceedings would continue in light of the above order.

Karan Luthra vs ITO- (2018) 98 taxmann.com 455 (delhi)- CRL M.C no 3385,3390 of 2016 dated 14.09.2018

3695. Assessee was running a finance company and a survey under section 133A was carried out in office premises of assessee and thereupon a notice under section 143(2) was issued. In absence of any response from assessee, assessment was completed under section 144 and the AO also lodged a complaint under section 276C, read with section 277. The magistrate took cognizance of the said complaint and issued proceedings against the assessee. In response the assessee filed instant petition challenging validity of prosecution proceedings. The Court held that, ground taken by assessee that there was no wilful default on his part in concealing income was not tenable, because it was a factual defence, which was to be proved during course of trial. Thus, the Court concluded that complaint lodged by AO and process issued thereon against assessee did not suffer from any infirmity of law.

Arun Arya vs ITO- (2018) 98 taxmann.com 470 (J&K)- IA No 01/2015 dated 28.09.2018

3696. The assessee filed a writ petition u/s 482 of Cr.P.C. seeking to quash criminal proceedings initiated against him on ground that he had given false statements during the search and seizure conducted (where large unaccounted cash from lockers belonging to assessee were recovered) and indulged in acts of commission constituting offences under provisions of the Act and Cr.PC. It was assessee's contention that it had approached Settlement Commission u/s 245-C(1) on which Settlement Commission had passed order allowing said settlement applications "to be proceeded with further" and

upon such application for settlement being entertained by Settlement Commission, filing of criminal complaint was impermissible and bad in law. The Court rejected assessee's argument noting that settlement applications had been dismissed by the Settlement Commission, nor any order to such effect accorded suo motu by the Settlement Commission u/s 245-H granting immunity from prosecution temporary or otherwise was passed. The Court dismissed assessee's writ petition by observing that assessee had not produced material to rule out and displace assertions contained in charges levelled against it and thus, it was not a fit case to invoke jurisdiction u/s 482 in ongoing criminal prosecution of assessee.

Aditya Sharma vs. Income tax Department [2018] 102 CCH 0244 DelHC- CRL. M.C. 4666/2015 & CRL. 16736/2015 dated August 20,2018

3697. A company, of which the assessee was an MD, had claimed bogus expenses/ deduction / loss. Accordingly, ACIT filed a complaint inter alia against the assessee for offence under Indian Penal Code (IPC) and u/s 276C(1), 277, 278 and 278B of the Act treating assessee as Principal Officer of the company. The assessee contended that she was not in-charge and responsible for carrying on day-to-day affairs of company and thus without issuance of notice u/s 2(35) by the ACIT to treat her as Principal Officer, the complain filed against her was not maintainable. The Court dismissed the petition filed by the assessee holding that since the assessee had subscribed her signature in P&L A/c and balance sheet for relevant assessment year which were filed alongwith returns, ACIT was justified in naming her as principal officer and accordingly she could not be exonerated for offence u/s 277. Further, it held that for filing a complaint u/s 276(C)(1), 277 and 278B, determination of a Principal Officer was not necessary and non-issuance of individual notice before filing of complain would be of no consequence.
Mrs. Sujatha Venkateshwaran v ACIT(Prosecution) [2018] 96 taxmann.com 203 (Madras) - CRL R.C. NO. 615 OF 2011; M P NO. 2 OF 2011 dated July 13, 2018

3698. The Court dismissed assessee's petition filed under section 482 of the Cr.P.C. againt the summons issued by the Metropolitian Magistrate calling upon the assesse to appear before him as accused after taking cognizance of offence u/s 276CC r/w s. 278B of the Act. It was noted that the assessee had failed to furnish return of income for the relevant year and Revenue issued notice u/s 142(1) which was not complied with and return was finally filed on 19.03.2014 (showing that the assesse was eligible for refund), and thereafter a criminal complaint was instituted by Revenue for non-compliance of section 142(1). The Court rejected assessee's reliance placed on proviso to section 276CC (which provides that prosecution shall not lie for non filing return of income u/s 139(1) if the tax payable does not exceed Rs.3000) relying on the ratio laid down in Apex Court decision in Sasi Enterprises v. Assistant CIT (2014) 5 SCC 139 wherein it was held that benefit of proviso to sec. 276CC could be taken only under section 139(1) and the provisions of section 142(1)(i) or 148 were conspicuously absent. Accordingly, it held that there was no merit in asessee's contentions for assailing of the said summons order.

Jay Polychem India Ltd. and Anr vs Asst CIT[2018] 103 CCH 0123 (Del-HC.)- CRL.M.C. 239/2015 dated 26.11.2018

3699. In a case of prosecution for non-deduction of TDS, the Chief Metropoliton Magistrate held that in the case of default, Mens rea has to be presumed to exist and it is for the accused to prove the contrary and that too beyond reasonable doubt. It rejected assessee's plea that default in payment of TDS occurred due to delay by department in refunding excess TDS due to the assessee, holding that amount deducted by way of TDS has to be deposited within prescribed time irrespective of any counter claim of the assessee.
ITO vs. VCI Hospitality Ltd - CC No.536182/16 (Chief Metropoliton Magistrate) dated 28.08.2018

3700. Where there was no material to establish that assessee, a Non-Executive Director of the company, was in-charge of day-to-day affairs, management, and administration of his company, the Court held that the AO could not have named him as Principal Officer and prosecute him under section 276B for TDS default committed by his company.

Kalanithi Maran v UOI - [2018] 92 taxmann.com 308 (Madras) W.P. NO. 34010 OF 2014 dated MARCH 28, 2018

3701. The assessee-company deducted an amount as TDS but failed to credit same in account of Central Government. However, later on, assessee credited amount of TDS with interest. The Commissioner issued sanction order to prosecute assessee for offence committed under section 276B, pursuant to which the assessee filed a writ petition against sanction order. The Court noted that on criminal complaint being preferred, the Additional Chief Metropolitan Magistrate had already taken cognizance of issue of non-depositing of TDS by assessee and issued summons to assessee for appearance and to face trial and in view of the fact that trial had already been initiated against assessee in criminal court, it held that it would not be fair or proper for it to decide question of validity of sanction order on merits as it would amount to a pre trial adjudication and held that the questions and issues relating to issue of sanction order could be raised and decided during trial. Accordingly, it dismissed assessee's writ.
Indo Arya Central Transport Ltd v CIT (TDS) - [2018] 92 taxmann.com 129 (Delhi) - WRIT PETITION (CIVIL) NO. 3964 OF 2017 dated MARCH 12, 2018

3702. Where the assessee had filed compounding application u/s 279(2) with respect to prosecution proceedings initiated against it for failure to remit TDS and the said application was rejected for non-payment of compounding fees as the assessee had disputed its quantum, the Court rejected the assessee-petitioner's contention that when there was a genuine dispute about the quantum of compounding fee payable by them, it was not open for Pr. CCIT to reject the application for compounding, without first resolving the dispute. It rejected the assessee's plea that reduced compounding fee @ 3% was applicable in view of the revised CBDT guidelines of December 2014, since the revised guidelines were applicable only to compounding applications filed after January 1, 2015 and the guidelines that were in existence at the time of filing of the compounding application in August, 2014 (which prescribed for higher compounding fees @ 5%) were applicable in the present case. The Court, however, permited the assessee to pay the balance compounding fees within 4 weeks and get the offence compounded.
Sagar Asia Pvt. Ltd v Pr.CIT [TS-372-HC-2018(AP)] - Writ Petition No.14702 of 2018 dated May01, 2018

3703. The Court dismissed the writ petition filed by the assessee requesting the Court to issue a writ of prohibition, preventing the Authorities from initiating prosecution against the assessee under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on apprehension of the assessee that prosecution will be initiated, as section 48 of the said Act permits the Authority to grant sanction to prosecutewithout even waiting for the assessment to be completed. Further, it also rejected the plea of the assessee that since 9 months had elapsed since the assessee had given all the relevant details, a direction be issued to the DDIT(Investigation) to pass an order forthwith u/s 10(3). The Court held that under normal circumstances, the Statutory Authorities could be directed to perform their functions expeditiously when no time lines are fixed under the relevant statute, and if there was slackness, the Court would fix a peremptory time limit. However, such power could not be exercised in the instant case, since time limit for the same is fixed u/s 11(1).
Srinidhi Karti Chidambaram v Pr.CIT - [2018] 92 taxmann.com 392 (Madras) - WRIT PETITION NOS. 8832 TO 8835, 8840 & 8841 OF 2018, W.M.P. NOS. 10701, 10702 & 10706 OF 2018 dated April 12, 2018

Penny stocks/ Bogus capital gains

3704. On basis of information from DGIT (Inv.), Kolkata that some companies were engaged in business of issuing penny stocks for which there were large number of beneficiaries claiming bogus long- term capital gain/short-term capital loss/business loss/speculation loss, Assessing Officer found that assessee was one of beneficiaries of said racket and had earned profit on sale of investments in equity shares of a company, (Rutron) and claimed same as exempt under section 10(38). The Tribunal held that assessee had produced relevant records to show allotment of shares by company on payment of

consideration by cheque and he dematerialized shares in D-mat account which was also an independent material and said evidence could not be manipulated. It held that Assessing Officer had not brought any material on record to show that assessee had paid over and above purchase consideration and that therefore in absence of any evidence, it could not be held that assessee had introduced his own unaccounted money by way of bogus long-term capital gain.

Ramprasad Agarwal v. ITO 2(3)(2), Mumbai- [2018] 100 taxmann.com 172 (Mumbai - Trib.)-ITA Nos. 1228 & 4843 (MUM.) of 2018 dated November 30, 2018

3705. Assessee, an individual, had claimed to have received Long Term Capital Gain (LTCG) on sale of shares of a company (NFGL). However, Assessing Officer noted that assessee had purchased these shares off market and doubted receipt of astronomical gain by selling of these shares. After having taken note of reports of SEBI and Investigation Wing of department that there was such an adverse admission made by an accommodation provider against NFGL, he was of opinion that entire transaction was bogus and, therefore, he added entire sale consideration under section 68 as income of assessee. Assessee had furnished all primary evidences in form of bills, contract notes, demat statements and bank accounts to prove genuineness of transaction relating to purchase and sale of shares resulting in LTCG. Further, transaction was made by assessee through registered stock broker through Bombay Stock Exchange, after remitting STT and all payments were transacted through bank and shares were held in Demat account. Further, no attempt had been made by Assessing Officer to issue summons to parties involved in all these transactions to record any adverse inference against assessee. In light of the aforesaid facts the Tribunal deleted the addition.

Smt. Madhu Killa v. Asst. CIT, Circle-36, Kolkata-[2018] 100 taxmann.com 264 (Kolkata - Trib.)-ITA No. 834 (KOL.) of 2018-November 2, 2018

3706. Assessee, an individual and in his return of income had claimed exemption on account of Long-Term Capital Gains on purchase and sale of shares of M/s. UNNO Industries Ltd and M/s. NCL Research & Financial Services Ltd. However, during assessment, AO on basis of a general report and modus operandi adopted generally in those cases and on general observations had concluded that assessee had claimed bogus long term capital gain.Therefore, he made an addition of entire sale proceeds of shares as income and rejected claim of exemption made u/s 10(38).Evidence produced by assessee in support of genuineness of transaction was also rejected.On appeal, CIT(A) upheld decision of AO. The Tribunal held that, in a number of cases bench of Tribunal had consistently held that decision in all such cases should be based on evidence and not on generalisation, human probabilities, suspicion, conjectures and surmises. Therefore, in all such cases additions were deleted. Revenue could not controvert claim of Counsel for assessee that issue in question was covered by such decisions of High Courts and ITAT. Consequently, addition made by AO was deleted.

Neeraj Gupta vs ITO- (2018) 54 CCH 0238 KolTrib- ITA No 863/Kol/2018 dated 05.10.2018

3707. Assessee was Association of Persons (AOP) and had filed its return declaring income. It derived income from commodity trading, long term capital gains on account of sale of shares, dividend income on investments in shares and received interest income from non-convertible debentures and deposits. Assessee claimed exempt income u/s 10(38) on account of long term capital gains (LTCG in short) on sale of listed equity shares of Sharp Trading & Finance Ltd (STFL in short) which was also subjected to Securities Transaction Tax (STT) and transactions routed through recognized stock exchange. AO sought to treat LTCG reported by assessee as bogus as according to him, scrip did not justify such huge increase in its sale price and that increase in share price thereon was only artificial and due to price rigging carried out by some persons in market. AO held that LTCG claimed exempt as bogus and added same as unexplained cash credit u/s 68 and added same to total income of assessee. CIT(A) set aside order of AO. The Tribunal held that, CIT(A) had given categorical finding in his appellate order that concerned scrip was not suspended by SEBI either at time of transaction of allotment of shares to assessee or sale of shares by assessee. He also observed that AO had disallowed claim of assessee and treated long term capital gain as unexplained cash credit solely on basis of general report of investigation wing, Kolkata and accordingly action of AO was based purely on surmises and suspicions. There was no finding by AO that transactions were between related parties. CIT(A) had rightly deleted addition made u/s 68 in respect of LTCG on sale of shares.

ITO vs Stuti Welfare Trust- (2018) 54 CCH 0119 Kol Trib- ITA No 1508/Kol/2017 dated 24.10.2018

3708. The assessee had purchased off market scrips and derived profits @6163% and 1201%. The AO had opined that such astronomical rise in shares had reasons attributable to something suspicious rather than flowing from normal market trends and thus believed share price movement was a pre-arranged trading pattern revealing artificial price rigging in these two scrips as per details right from the date of acquisition. The AO treated assessee to have engaged in bogus long-term capital gain arrangements and in collusion with entry operators. Further AO on reference to DIT's investigation report assesseed long term capital gain as unexplained cash credits and also made commission disallowance/addition @ 2.5% as unexplained expenditure, which was upheld by CIT(A). The Tribunalon appeal held thatAO as well as CIT(A) had been guided by report of investigation wing prepared with respect to bogus capital gains transactions, however, AO as well as CIT(A) had not brought out any part of investigation wing report in which assessee had been investigated and /or found to be part of any arrangement for purpose of generating bogus long term capital gains and the report only informed AO that some persons might have misused script for purpose of collusive transaction. Thus, as AO had not brought on record any evidence to prove that transactions entered by assessee which were otherwise supported by proper third-party documents were collusive transactions, the addition in terms of bogus long-term capital gain as well as unexplained commission was deleted.

Jignesh Desai vs ITO- (2018) 54 CCH 0045 Kol Trib- ITA No 1263/2018 dated 26.09.2018

3709. The assessee had sold 5,000 shares of one M/s. Kappac Pharm Ltd and earned long term capital gains arising from such sale, which was claimed as exempt u/s.10(38).The AO disbelieved the sale of the shares, relying on reports of Directorate of Income Tax (Investigation) Kolkata and Delhi, which mentioned that M/s. Kappac Pharm Ltd was a penny stock company.The Tribunal following the judgement in case of Vimalchand gulabchand, Gatraj Jain & Sons held that transactions claimed by the assessee whether real or sham required re-visit by the AO and only after all the steps required under law are complete, it could be ascertained whether a transaction was bogus or not. Thus, the Tribunal set aside the orders and remitted the issue back to the AO.

Deepak Bhatad (HUF) vs ITO- (2018) 54 CCH 0027 Chen Trib- ITA No 1287/2018 dated 19.09.2018

3710. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the unexplained cash credit added u/s 68 by the AO by disbelieving the assessee's claim that the impunged amount was received on sale of shares which resulted in long term capital gains eligible for exemption u/s 10(38). The Tribunal relied on coordinate bench decision of Saurabh Mittal (ITA No.16/JP/2018) dealing with the identical transaction of sale and purchase of shares, wherein it was held that assessee had discharged its onus by providing all necessary details/evidences noting that (i) payment for shares were made through bank account (ii) AO had not brought any material to controvert supporting evidence of purchase bills, payment of consideration through bank, dematerialization of shares in DEMAT account, allotment of the shares, etc. It was thus held that the AO was unable to show that the assessee had introduced his own unaccounted money by way of bogus long term capital gain, hence share transaction could not be treated as sham and not genuine. Accordingly, share transaction resulting in capital gains was a valid transaction and eligible for exemption u/s section 10(38).

ITO vs. Kapil Mittal [2018] 53 CCH 0532 JaiTrib- ITA No.17/JP/2018 dated August 30 2018

3711. The assessee had earned long-term capital gain from sale of shares of one, CSL and claimed the same as exempt. Based on investigation carried out by DIT (Investigation), it was found that CSL was a scrip which was identified to be involved in scheme of bogus LTCG/STCG to more than 60,000 beneficiaries and that assessee was also part of list of such beneficiaries. Thus, sale consideration received by assessee on sale of shares was added to his income as unexplained cash credit u/s 68. The Tribunal

deleted the said addition noting that the observations of Investigation wing were general in nature and were applied across board to all 60,000 assessees who fell in this category and there was no specific evidences produced against assessee. It also noted that nothing was brought on record to show that persons investigated, including entry operators or stock brokers, had named that the assessee was in collusion with them.

Navneet Agarwal v ITO [2018] 97 taxmann.com 76 (Kolkata - Trib.) - IT APPEAL NO. 2281 (KOL.) OF 2017 dated July 20, 2018

3712. The Tribunal held that when the person/entities who have sold shares to assessee have accepted that the share transactions were bogus and they had provided accommodation entries only on commission basis, it could not be held as genuine in assessee's hand as they are two sides of the same coin. Accordingly, it confirmed the addition made on capital gain as undisclosed sources and commission payment thereon as undisclosed expenditure.

Rabindu N Shah vs ITO-(2018) 54 CCH 0152 Mum Trib- ITA No 997 & 998/Mum/2018 dated 31.10.2018

3713. The Tribunal deleted the addition made by the AO u/s 68 by treating the amount received on sale of shares of M/s K as unexplained cash credit where, on the basis of information received from investigation wing, the AO opined that long term capital gains earned by assessee were in nature of an accommodation entry and transactions in question were not genuine. It noted that the AO and CIT(A) failed to controvert assessee's copious evidences filed which clearly supported his case qua LTCG claimed as exempt u/s 10(38) on sale of shares. The Tribunal relied on the in the case of CIT Vs Vishal Holding and Capital Pvt. Ltd (Del HC) wherein it was held that since the AO had made the addition with respect to long term capital gains without verying the details furnished by the assessee but only based on information received from Investigation Wing, the addition could not be sustained. Accordingly, it allowed assessee's appeal.

Arun Kumar and Ors vs Asst CIT [2018] 54 CCH 0183 (Del Trib) - ITA Nos. 2825, 2826 & 457/Del/2018 dated 05.11.2018

3714. The Tribunal allowed assessee's appeal and deleted the addition made by the AO on account of suspicious long term capital gains on shares on basis of statement of Sh.VK, holding that the addition made on the basis of a statement of a third party without providing any opportunity to the assessee to cross examine him, was unsustainable in law and against the law laid down in Apex Court in Andaman Timber vs CIT (Civil Appeal No. 4228 of 2006) wherein it was held that not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority was a serious flaw which made the order nullity in as much as it amounted to violation of principles of natural justice.

Anubhav Jain vs ITO [2018] 54 CCH 0273 (Del- Trib.)- ITA No.4565/Del/2018 dated 26.11.2018

3715. The Tribunal remitted the issue of disallowance of assessee's claim of long term capital gains exemption u/s 10(38) upon sale of share of 'penny stock' company back to the AO, noting that the AO had made the addition only based on the information from the investigation wing stating that the share price of the said company were inflated abnormally and the AO had not brought anything on record to establish assessee's role in promoting the company or in inflating its share price. It held that if the assessees were innocent investors, then they could not be faulted merely because the investments were made in a penny stock company. The Tribunal directed the AO to (i) enquire as to - how a penny stock company was allowed to continue as a registered company, who were the promoters of the penny stock company, whether the IT Department's finding was brought to the notice of Ministry of Company Affairs and the action taken thereupon (ii) furnish the copy of investigation report to assessee and (iii) decide the issue afresh after giving a reasonable opportunity to assessee.

Vandana Sankhala & other v ACIT [TS-647-ITAT-2018(CHNY)] - ITA No.1333 & 1334/Chny/2018 dated 14.11.2018

3716. The Tribunal held that the fact that the assessee bought and sold shares of groups concerns with a view to book loss and off-set the capital gains from another transaction does not mean that the loss can be treated as bogus if the documentation is in order and thus it cannot be said that there was an attempt to evade taxes.
ACIT vs. RJ Corp Ltd - ITA.No.3661/Del./2014 dated 01.10.2018

3717. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 with respect to capital gains arising on sale of shares [and also consequent claim for exemption u/s 10(38)], noting that the AO had not controverted the evidence of purchase bills, payment of consideration through bank, DEMAT account, allotment of amalgamated shares, sale of shares through stock exchange at prevailing price, payment of STT etc. It also held that the reliance by AO on statements recorded by the Investigation Wing to conclude that the capital gains were bogus without giving an opportunity of cross examination was a complete violation of principles of natural justice as held in CCE Vs Andaman Timber Industries 127 DTR 241(SC).
DCIT vs. Saurabh Mittal - ITA No. 16/JP/2018 dated 29.08.2018

3718. The Court set aside the Tribunal's order reversing the CIT(A)'s order wherein the CIT(A) had allowed assessee's appeal against the addition made by the AO u/s 68 disbelieving the genuineness of the capital gains arising on purchase and sale of shares of a company. The Court held that the Tribunal had not considered all relevant and other material evidence existing on record such as contract notes/bills receipt, payments made through banking channel and copies of passbook of its demat account in support of assessee's claim of long term capital gain to be genuine and correct and that Tribunal had only based its decision solely on the fact that the purchase transaction was recorded late in the demat passbook. Accordingly, it remitted the matter to Tribunal for reconsidering the issue of genuineness of the transaction of purchase of shares.
AMITA BANSAL v CIT - (2018) 400 ITR 324 (All) – ITA No. 326 of 2010 dated 30.03.2018

3719. Assessee filed return of income declaring LTCG and claimed as exempt u/s 10(38).During assessment proceeding, AO found few people were indulge in getting bogus LTCG from penny stocks and concluded that assessee was also one beneficiaries who took accommodation entry.Assessee had purchased and sold shares of M/s. C which amalgamated into M/s. K.AO held that scrips M/s. K were used by entry providers for providing bogus accommodation entries and also noted that in some other matter in course of proceedings u/s 131 before Investigation Wing, one CA had confirmed that he had provided accommodation entry in scrip of M/s. K and based on such statement, AO drew adverse inference that this was also same kind of accommodation entry.AO treated LTCG as he taxed same u/s 69.CIT(A) confirmed said addition mostly based on general observation. The Tribunal held that once purchase of shares were not doubted and sale was made through BSE routed through DMAT account then consideration received had to be treated from amount of sale of shares whether price was rigged or not.One factor which weighed heavily on lower authorities in present case was that share price had risen to more than 37 times.Once SEBI held that there was no adverse evidence or material that there was any violation of provision of PFUT regulation in respect of K and restrain order on trading was revoked, then it followed that share price of which was sold for genuine quoted price and therefore, sale proceeded had to be reckoned from sale of such shares and would be treated as explained credit or investment.LTCG shown by assessee was genuine and consequently liable for exemption u/s 10(38).Assessee's appeal was allowed.

VIDHI MALHOTRA & ANR. vs. ITO & ANR (2018) 54 CCH 0429. ITA No. 93/Del/2018, 94/Del/2018 dated 20.12.2018

3720. During assessment proceeding, AO noted that assessee had claimed an amount as LTCG which was earned through sale of shares of M/s. E and same was exempted u/s 10(38).In support of its claim, assessee had furnished details of mode of acquisition of those shares, bank A/c statements where sale proceeds were credited, depository participant statements and stock broker notes.AO found that exempt LTCG claimed by assessee was not genuine but was pre-arranged collusive transaction in form of accommodation entry without real substance.There was unrealistic returns on investment.DIT(Inv.) carried-out investigation to un-earth organized racket for generating bogus entries of LTCG which was

exempt from tax.Statement of several entry operators were recorded including Shri S who admitted that M/s. E was a penny stock company whose shares were artificially manipulated to provide LTCG.Further, assessee contended that opportunity to cross-examine said statements were not given.Assessee's case was covered u/s 68.Section 115BBE was applicable and same was taxable @30%.AO completed assessment after making required additions.CIT(A) held that AO was not under obligation to allow cross-examination of any person. The Tribunal held that, assessee placed sufficient documentary evidences before AO to prove genuineness of transaction.Assessee purchased shares through banking channel and actually got shares transferred in his name.Purchase was made through cheque which was supported by bank statement.Transactions of sale was made through Demat account.Contract note along with other details were produced to show that purchase and sale of shares were made through banking channel through recognized Stock Exchange through Demat account on which Security Transaction Tax was also paid.AO did not made any enquiry on documentary evidences filed by assessee.No materials were brought on record against assessee to disprove its claim.Assessee's claim of purchase and sale of shares were supported by documentary evidences.Statement of Shri S was recorded by Investigation Wing, Kolkata, but, same was not confronted to assessee and his statement was also not subjected to cross-examination on behalf of assessee.Therefore, his statement could not be read in evidence against assessee.AO did not mention any fact as to how claim of assessee was sham or bogus.Assessee satisfied conditions of s. 10(38).Broker through whom transactions were carried out had not denied transaction conducted on behalf of assessee.Addition was merely made on presumption and assumptions of certain facts which were not part of record.There was no other material available on record to rebut claim of assessee of exemption claimed u/s 10(38).Assessee's appeal was allowed.

AMAR NATH GOENKA & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. ((2018) 54 CCH 0344 DelTrib ITA No. 5882/Del./2018, 5883/Del./2018, 6457/Del./2018, 6458/Del./2018, 6459/Del./2018 dated 12.12.2018

3721. During assessment proceeding, AO noted that assessee was engaged in purchase and sale of shares of M/s. SRKIL.Assessee had claimed exemption u/s 10(38) in respect to LTCG earned on those transactions.AO found that company in which assessees had purchased equity shares had no creditability and no prudent investor would make such investment.AO received a report from Investigation Wing revealing that members who participated in trading of scrip during mid-2013 to mid-2014 were part of syndicate of brokers and brokering entities indulging in price rigging.AO completed assessment after denying assessee's claim and treated those transaction as unexplained cash credit u/s 68.CIT(A) confirmed AO's action. The Tribunal held that, AR could not justify any of their claims made before Revenue Authorities that transaction was genuine.Further AR could not successfully controvert any of findings of Revenue Authorities which were against assessee.Instead AR only come out with a plea that assessee were not provided with opportunity of cross-examining witness, investigation report was not furnished and proper opportunity was not provided of being heard.However such arguments were never alleged before Revenue Authorities when matter was before them.Thus, orders of Revenue Authorities was confirmed on ground that AO as well as CIT(A) had arrived at their respective decisions after considering issues in detail and there was nothing to disturb their findings.Assessee's appeal was dismissed.

PANKAJ AGARWAL & SONS (HUF) AND ORS. vs. ITO& ORS. (2018) 54 CCH 0479 ChenTrib I.T.A. No.1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420/CHNY/2018 dated 06.12.2018

3722. The Tribunal remanded the issue of alleged bogus claim of LTCG back to the AO, where the AO disbelieved sale of shares by assessee in M/s. K (allegedly a penny company) on the basis of report received from DIT(Investigation), noting that the assessee was not provided the said report. It held that the rules of justice required that the reports of investigation wing relied on by the AO to be put before the assessee and seek its explanation, before deciding whether these were relevant in the assessment of the assessee.

Jaishree Bomboly vs ITO [2018] 54 CCH 0190 (Chen Trib.)- I.T.A. No.1679 /CHNY/2018 dated 08.11.2018

3723. AO noted that assessee had claimed an exempt income received on account of shares sold.AO received an information from Investigating Unit, Kolkata which indicated that assessee entered into a transactions that was merely accommodation entries taken for the purpose of bogus LTCG made during PY.In garb of alleged LTCG, assessee earned exempt income and huge amounts were brought into books without payment of any taxes.AO completed assessment after making addition u/s 68.CIT(A) held that payment through Banks, performance through stock exchange and other such features were only apparent features.Real features were manipulated and abnormal price of off load and sudden dip thereafter.Said transactions as discussed by AO would fall in realm of "suspicious" and "dubious" transactions.AO had therefore necessarily to consider surrounding circumstances, which he did in a very meticulous and careful manner. The Tribunal held that assessee's paper book comprised of all details of its LTCG, copy of its bill in connection with purchase of shares of M/s S and M/s. P, bank statement.Said entities amalgamated with M/s K, contract notes in respect of sale of share of M/s S.Similar contract notes regarding M/s K shares sold, bank statement reflecting payment receipts along with corresponding demat statements stood perused.Once assessee had discharged his onus, then onus shifted to shoulders of AO then AO had to examine veracity of documents produced by assessee and if it was found to be correct and valid then in all fairness AO should accept claim of LTCG.In case if AO on verification finds that documents produced by assessee was false or fabricated, then AO should bring his adverse findings to notice of assessee and confront her with adverse material/findings.Then again onus would shift to assessee to prove genuineness of transaction.Though AO/CIT(A) were swayed by report of SEBI/Investigation Wing of Department, both authorities could not point out what was role of assessee in any wrong doing which was prohibited by law.AO merely carved out certain features/modus-operandi of companies indulging in practices not sanctioned by law.Neither any investigation were carried out against assessee, nor against brokers to whom assessee dealt with or companies in which assessee dealt with purchase and sale of shares in question were done by AO.Action of AO and CIT(A) was not justified in rejecting claim of assessee based on theory of surrounding circumstances and human conduct and preponderance of probability against assessee. Impugned addition made u/s 68 on account of bogus LTCG was to be deleted.

UDIT AGARWAL vs. Dy. CIT (IT) [2018] 54 CCH 0424 (Kol- Trib.)- ITA No. 1839/Kol/2017 dated 26.12.2018

3724. During assessment proceeding, AO found that assessee had claimed LTCG on sale of shares of M/s. UIL and M/s. NCL, which was claimed as exempt u/s 10(38).AO noticed that assessee bought purchased shares in name of M/s P from M/s. UDL.Thereafter, M/s. P was merged with M/s. UIL.Accordingly, said purchased shares were sold to M/s. UIL by assessee.AO received an information from DGIT(Inv.) in respect of 'Dissemination of intelligence regarding tax evasion by showing LTCGs perpetrated through accommodation entry operators'.Thereafter, AO observed that name, address and PAN of assessee along with name of scrip.AO held that assessee had not purchased or sold any other share except impugned transaction and only made investment in those scrips anticipating a windfall and claimed a substantial amount of LTCG, which was totally exempt u/s 10(38).Assessee's share transaction was a kind of sham transaction to evade taxation and to channelize her own fund from unknown sources to a legitimate form of income.Assessee's claim in respect of exempt income under head LTCG was a bogus claim.AO completed assessment after making addition under head undisclosed income.CIT(A) confirmed action of AO. The Tribunal held that AO/ CIT(A) had not appreciated that transaction of sale of shares by assessee was duly backed up by material/evidence including contract notes, de-mat statement, bank account reflecting transactions, shares were sold on online platform of stock exchange and each trade of sale of shares were having unique trade number and trade time.AO had not brought any evidence on record to show that statutory agencies of Government had alleged any stock manipulation by assessee or brokers or Company's scrip in question at time when assessee made sale.Shares were sold on date mentioned in contract note at prevailing market price duly recorded in stock exchange.Evidence gathered by Director Investigation's office by way of unknown parties statements recorded which admittedly was recorded behind assessee's back was relied upon by Revenue to make any additions.When such actions were carried out, AO had to ensure to give copies of adverse material/statement given to assessee and allowed assessee an opportunity of cross examination, if AO was going to rely on any adverse statements of third party as evidence to draw adverse inference against assessee.If any material or

evidence was sought to be relied upon by AO, he had to confront assessee with such material.Assessee's claim could not be rejected based on mere conjectures unverified evidence under pretentious garb of preponderance of human probabilities and theory of human behavior by Department.Nothing was brought on record to show that persons investigated, including entry operators or stock brokers, had named that assessee was in collusion with them—In absence of such finding how was it possible to link their wrong doings with assessee—In fact, investigation wing was a separate Department which was not assigned with assessment work and was delegated the work of only making investigation.Income Tax Act had vested widest powers on this wing—It was duty of investigation wing to conduct proper and detailed inquiry in any matter where there was allegation of tax evasion and after making proper inquiry and collecting proper evidences the matter should be sent to assessment wing to assess income as per law.No such action was executed by investigation wing as against assessee.Assessee could not be held to be guilty or linked to wrong acts of persons investigated.AO at best could have considered investigation report as a starting point of investigation.Said report only informed AO that some persons might have misused scrip for purpose of collusive transaction.AO was duty bound to make inquiry from all concerned parties relating to transaction and then to collect evidences that transaction entered into by assessee was also a collusive transaction.Assessee's claim of exempt income on LTCG on sale of scrips of M/s. NCL was allowed.

MINU GUPTA vs. ITO (2018) 54 CCH 0343 KolTrib ITA No. 731/Kol/2018 dated 12.12.2018

3725. The AO disallowed the assessee' claim for exemption u/s 10(38) and made addition accordingly with respect to LTCG derived from transfer of shares held in M/s K. on the basis of report received from Investigation wing stating that M/s.K was engaged in providing accomadation entries and also alleging that assessee was part of the scam. The Tribunal deleted the said addition, holding that neither the AO nor the CIT(A) had brought out any part of the investigation wing report in which the assessee has been investigated and /or found to be a part of any arrangement for the purpose of generating bogus LTCG. It held that the AO was duty bound to make inquiry from all concerned parties relating to the transaction and then to collect evidences that the transaction entered into by the assessee was also a collusive transaction. Acccordingly, since the Revenue had failed to indicate any specific evidence against the assessee with respect to her LTCG, the Tribunal allowed assessee' appeal.

Aruna Bansal and Ors. vs ITO [2018] 54 CCH 0226 (Kol Trib.)- ITA No.946/Kol/2018 dated 14.11.2018

3726. The Tribunal held where the assessee submitted various documentary evidences to prove genuineness of transaction of sale and purchase of shares which included copy of purchase bill, copy of share transfer form in favour of assessee, the AO was unjustified in ignoring the same and alleging that the sale of shares undertaken by the assessee on which it claimed exemption under Section 10(38) was a sham transaction and making consequent addition under Section 68 merely on the basis of report of the Investigation Wing. The Tribunal held that though the AO had given the entire modus operandi of bogus LTCG scheme he failed to bring any material on record to prove that the assessee was directly involved in such scheme. Accordingly, it deleted the addition made under Section 68 of the Act.
MEENU GOEL vs. INCOME TAX OFFICER - (2018) 52 CCH 0232 DelTrib - ITA No. 6235/Del/2017 dated Mar 19, 2018

Unexplained income / expenses / investments

3727. Where High Court upheld Tribunal's order deleting addition under section 68 in respect of amount received by assessee from various depositors on ground that necessary enquiries relating to identity and creditworthiness of said depositors had not been done by AO, SLP filed against decision of High Court was granted by the Apex Court.
Pr. CIT, Delhi v. DLF Commercial Project Corporation- [2018] 100 taxmann.com 309 (SC)- SLP(Civil) Diary No. 40497 of 2018 dated November 19, 2018.

3728. Where High Court upheld Tribunal's order deleting addition made by Assessing Officer under section 69A on ground that there was no reliable or independent evidence to come to conclusion that assessee had accepted on-money for sale of constructed properties, SLP filed against decision of High Court was dismissed by the Apex Court.
Pr. CIT v. Nishant Construction (P.) Ltd.- [2019] 101 taxmann.com 180 (SC)-SLP(Civil) Diary No(s). 42776/2018-December 14, 2018.

3729. Where Assessing Officer made addition to assessee's income in respect of unconfirmed trade creditors and expenses, in view of fact that assessment order did not refer to and elucidate whether or not assessee had produced invoices, bills, manner and mode of payment to tradecreditors and, moreover, details and nature of expenses incurred were not elucidated, impugned addition was deleted by the Tribunal. The High Court upheld the order of the Tribunal.
Pr. CIT, Delhi-17 v. Rajesh Kumar-ITA No. 1173 of 2018- [2018] 100 taxmann.com 267 (Delhi)-CM No. 44972 of 2018-dated October 29, 2018

3730. Where assessee challenged addition made to its income under section 68 in respect of amount deposited in bank contending that said amount came from sale of wearing apparel and traditional silver utensils, since there was no evidence and material to establish sale or inheritance, etc. The Court upheld the order of the Tribunal confirming the addition made by authorities below.
Rajiv Jain v. ITO-[2019] 101 taxmann.com 92 (Delhi)-ITA No. 1115 of 2017-dated November 13, 2018

3731. Where High Court upheld Tribunal's order rejecting assessee's application for rectification of order on ground that while making addition under section 68, assessee was not given an opportunity to cross examine person who allegedly gave accommodation entries, SLP filed against decision of High Court was to be dismissed by the Apex Court.
R. L. Traders v. ITO, Ward 47(1) - [2018] 100 taxmann.com 332 (SC)-SLP (CIVIL) Diary No. 29085 of
2018-dated November 13, 2018

3732. Where High Court upheld Tribunal's order to delete addition made under section 68 in respect of trade advances on ground that said advances were adjusted against sales made in subsequent years, SLP filed against said decision was dismissed by the Apex Court.
Pr. CIT (Central-3) v. Montage Enterprises (P.) Ltd. - [2018] 100 taxmann.com 100 (SC)-Special Leave Petition (Civil) Diary No(s). 35272 of 2018-dated October 26, 2018

3733. Where High Court upheld Tribunal's order confirming addition made to assessee's income in respect of unaccounted business receipts having regard to fact that gross profit declared by assessee was much lesser than profit in said line of business and, moreover assessee had failed to provide stock register despite several opportunities, SLP filed against said decision was dismissed by the Apex Court.
Pradeep Kumar Biyani v. ITO- [2019] 101 taxmann.com 131 (SC)- SLA (C) No.28940 of 2017-SLA (C) No. 28940 of 2017-dated December 4, 2018.

3734. Where assessee had claimed expenses towards purchase of machineries from several parties and had filed copies of PAN cards of these parties so as to establish their identity and had also furnished relevant details regarding payments made against bills raised by such parties by way of account payee cheque after deduction of TDS. The Tribunal held that Assessing Officer was unjustified in making additions under section 69C treating such purchase of machineries to be bogus.
Pravesh Kejriwal v. ITO- [2019] 101 taxmann.com 170 (Kolkata - Trib.)-Ward-35(1), Kolkata-ITA No. 698 (KOL.) of 2018- dated December 19, 2018

3735. The Tribunal held that where there was no specific details brought in by assessee which could show that assessee had entered into a contract for hedging of forward trading of its goods to guard against loss through price fluctuation which might arise from contracts for delivery of goods, hedging loss arising from alleged contracts did not fall under proviso (a) of section 43(5); therefore, alleged hedging loss claimed by assessee was to be disallowed.

Premier Industries (India) Ltd. v. Jt. CIT, Range-1, Indore- [2018] 100 taxmann.com 337 (Indore - Trib.)-ITA Nos. 610 & 611 (IND.) of 2016-dated November 19, 2018

3736. The Tribunal held that where assessee had itself accepted that interest bearing funds were applied for making investment in equity shares and alleged investment was for non-business purposes, additions under section 36(1)(iii) upheld by Commissioner (Appeals) in respect of Interest expenditure paid on such interest-bearing funds was justified.
Premier Industries (India) Ltd. v. Jt. CIT, Range-1, Indore- [2018] 100 taxmann.com 337 (Indore - Trib.)-ITA Nos. 610 & 611 (IND.) of 2016-dated November 19, 2018

3737. Where High Court upheld Tribunal's order deleting addition in respect of undisclosed sales of flats on ground that sale was infact carried out by developer and sale proceeds never came into possession of assessee, SLP filed against said decision was dismissed by the Apex court.
CIT v. Sadiq Sheikh- [2018] 100 taxmann.com 10 (SC)-SLP (Civil) Diary No. 32566 of 2018-dated October 22, 2018

3738. Assessee, a Kenyan national, was maintaining a bank account with Indian Bank which showed a credit entry which represented foreign remittance received from Barclays Bank, UK. Assessing Officer treated said sum as unexplained investment of assessee. Details revealed that said sum was received by assessee as a beneficiary of family trust set up by her father in 1974 in UK. The Tribunal held that as investment was reasonably explained, application of section 69 was out of question.
Dy. CIT, Ahmedabad v. Pratibha Pankaj Patel- [2018] 100-taxmann.com 48 (Ahmedabad - Trib.)-IT (SS) Appeal No. 278 (AHD.) of 2016-dated October 18, 2018

3739. Where High Court upheld view taken by Tribunal that in absence of any corroborative evidence, addition could not be made to assessee's income in respect of confessional statement made by one 'R' under Maharashtra Central Organised Crime Act, 1999, that he paid certain undisclosed amount to assessee, SLP filed against decision of High Court was dismissed by the Apex Court.
CIT v. Jagdishprasad Mohanlal Joshi- [2018] 99 taxmann.com 288 (SC)-SLP (CIVIL) Diary No. 24313 of 2018 dated October 12, 2018

3740. Assessee had filed his tax return which was processed under section 143(1). Subsequently, an information was received by Government of India from French Government under DTAA in form of a document known as 'base note' that some Indian nationals and residents had foreign bank accounts in HSBC Bank, Geneva, Switzerland which were not disclosed to Indian Taxation department.On basis of 'base note', Investigation Wing of Income-tax department conducted a survey under section 133A at premises of one, KBSC in which it was found that assessee had also deposited money in a foreign bank account which was opened by an overseas discretionary trust known as 'B' trust set up by MDBS, an NRI. Assessing Officer after initiating proceedings under section 147 made addition in hands of assessee in respect of amount deposited in bank account. Assessee had filed sworn affidavit stating that he was not aware of existence of any of such foreign bank account.He further stated that he never carried out any transaction in relation to said foreign bank account nor received any benefit from said account.Assessee had also filed a clarificatory letter taken from HSBC Bank, Geneva stating that assessee had neither visited nor opened or operated bank accounts and that no payments was received from him or made to in relation to said account. Further, revenue had also failed to bring any cogent and convincing materials on record which proved that assessee was owner of money in HSBC bank account. Since money in question in foreign bank account was owned and held by MDBS and he had also admitted that he was owner of said money, impugned addition in hands of assessee was to be deleted by the Tribunal.
Deepak B Shah v. Asst. CIT 16(2), Mumbai- [2018] 100 taxmann.com 43 (Mumbai - Trib.)-IT Apeal Nos. 6065 to 6068 (MUM.) of 2014 dated Ooctober 30, 2018.

3741. The Tribunal held that where AO made addition to assessee's income under section 69A in respect of unaccounted receipts reflected in loose papers seized in course of search, in view of fact that assessee could not earn gross receipts without incurrence of expenditure, it was only net profit embedded in unaccounted receipts which deserved to be added to his taxable income.

Dy. CIT, Central Circle 3, Surat v. Mehul T. Desai- [2019] 101 taxmann.com 234 (Surat-Trib.)-ITA No. 350 (AHD) of 2017 dated December 13, 2018

3742. The Apex court dismissed Revenue's SLP against High Court ruling that where in order to prove genuineness of share transactions, assessee brought on record all relevant facts such as names, address and PAN of share applicants, it was thereupon duty of Assessing Officer to obtain separate confirmation from concerned parties if required, and, where he failed to do so, it could not be a ground to reopen assessment
Dy. CIT, Circle-3(1)(1) v. Orient News Prints Ltd.- [2018] 100 taxmann.com 69 (SC)-SLP(Civil) Diary No(s). 36260 of 2018-dated November 2, 2018

3743. The Tribunal held that where assessee company had received share premium and filed sufficient evidences such as share allotment details, annual return, details including name, address and PAN of shareholder who had subscribed to its shares and same was not negated by Assessing Officer, merely because Assessing officer felt that share premium received by assessee was high, genuineness of transaction could not be doubted for purpose of section 68.
Dy. CIT, Circle 7(3)(2), Mumbai v. Piramal Realty (P.) Ltd. [2018] 100 taxmann.com 294 (Mumbai - Trib.) - ITA No. 2317 (MUM) of 2017-November 16, 2018

3744. The Tribunal held that where assessee had clearly showed commercial expediency and corporate strategy for advancing interest bearing funds as interest free advances to a company wherein assessee had 50 per cent of stake through its 100 per cent subsidiary company, disallowance of part of interest on borrowed funds by Assessing Officer was unjustified.
Dy. CIT, Circle 7(3)(2), Mumbai v. Piramal Realty (P.) Ltd. [2018] 100 taxmann.com 294 (Mumbai - Trib.) - ITA No. 2317 (MUM) of 2017-November 16, 2018

3745. The Tribunal held that where additions were made to income of assessee, who was a non-resident since 25 years, since, no material was brought on record to show that funds were diverted by assessee from India to source deposits found in foreign bank account and assessee had filed necessary evidences to prove that same had been acquired / sourced out of foreign income which which had not accrued / arisen in India impugned additions were unjustified.
Dy. CIT(IT), Mumbai v. Hemant Mansukhlal Pandya- [2018] 100 taxmann.com 280 (Mumbai – Trib.)- ITA Nos. 4679 & 4680 (MUM) of 2016-C.O. 58 & 159 of 2018-November 16, 2018

3746. Where assessee accepted unsecured loans from three parties, in view of fact that assessee failed to prove creditworthiness of said parties and, moreover, cash had been deposited to bank accounts of those parties on same day when cheques were issued to assessee. The Court held that impugned addition made under section 69A in respect of loan amount was to be confirmed.
Shree Krishana Kripa Feeds v. CIT, Karnal- [2019] 101 taxmann.com 162 (Punjab & Haryana) ITA No. 126 of 2018(O&M) dated November 1, 2018

3747. Where assessee made purchases from two parties, in view of fact that as per Inspector's report, there was no concern existing at given address and, moreover, in bills of said parties, there were no sales tax number/TIN number or CIN number, the Court held that revenue authorities were justified in treating said purchases as bogus and making addition under section 69C to assessee's income in respect of amount in question.
Shree Krishana Kripa Feeds v. CIT, Karnal- [2019] 101 taxmann.com 162 (Punjab & Haryana) ITA No. 126 of 2018(O&M) dated November 1, 2018

3748. The Tribunal held that where assessee-company received share application monies from four farmers and one company and had given complete details about share applicants which clearly established their identity and creditworthiness and also source of their income, no addition could be made under section 68 on account of share application.
Britex Cotton International Ltd. v. Dy. CIT, Mumbai- [2019] 101 taxmann.com 232 (Mumbai - Trib.)-ITA No. 2831 (MUM.) of 2016- dated December 12, 2018

3749. The Tribunal held that where Assessing Officer made addition to assessee's income under section 69A on basis of documents seized in course of search carried out in case of 'M' group, in view of fact that

assessee was never found to be in possession of any real money and, moreover, there was no mention of assessee's name in seized document, impugned addition merely based on presumption and surmises, was to be deleted.
Asst. CIT, Central Circle-3, New Delhi v. Navneet Kumar Sureka-[2018] 100 taxmann.com 439 (Delhi - Trib.)-ITA Nos. 5573, 6660 & 6661 (DELHI) of 2016 dated November 29, 2018.

3750. During course of assessment, Assessing Officer noticed that assessee had invested his share application money in two companies - He further noticed that aforesaid shares were subsequently sold by assessee - After analysing sale transaction, Assessing Officer concluded that amount of Rs. 6 crores that had been introduced as sale of shares was nothing but assessee's own unaccounted money and invoking provisions of section 68, made addition to assessee's income. The Tribunal deleted the addition by holding that in view of fact that Assessing Officer had accepted purchase of shares by assessee as genuine transaction, in such a situation, he could not make impugned addition by taking a view that sale of shares was nothing but assessee's own unaccounted money.
Asst. CIT, Central Circle-3, New Delhi v. Navneet Kumar Sureka-[2018] 100 taxmann.com 439 (Delhi - Trib.)-ITA Nos. 5573, 6660 & 6661 (DELHI) of 2016 dated November 29, 2018.

3751. The Court held that where Assessing Officer had specific information from DIT (Investigation) that assessee company was merely a dummy concern of a person who allegedly used dummy companies for routing his unaccounted money and, further, assessee also had certain amount ofbogus share application, it could be said that there was material on basis of which notice under section 148 could be issued. At this stage, this Court does not find any reason to interfere with the notice as well as within the order passed by the respondents.
Etiam Emedia Ltd. v. ITO-2(2) – W.P. No. 28177 of 2018 - December 19, 2018

3752. Where High Court upheld Tribunal's order confirming addition under section 68 in respect of share capital on ground that documents pertaining to share applicants produced by assessee did not demonstrate that such alleged applicants had invested in assessee's share capital, SLP filed against said decision was dismissed by the Apex Court.
J.J. Development (P.) Ltd. v. CIT, Kolkata- [2018] 100 taxmann.com 102 (SC)-SLA (C) No(s). 28056 of 2018 dated October 29, 2018.

3753. Certain credit entries were reflecting cash deposit in bank account of assessee. Assessee submitted that said sum was loan taken from some parties. Said parties claimed to have generated agricultural income, but such agricultural income was not declared in their income-tax return. It was treated as undisclosed income of assessee. In absence of disclosure of agricultural income in income-tax return the Tribunal held that, it cannot be believed that parties had generated agricultural income. It further held that bank statement is not considered as books of account and, therefore, any sum found credited in bank pass book cannot be treated as an unexplained cash credit and in interest of justice and fair play, matter was to be restored to file of Assessing Officer for fresh adjudication in accordance with provisions of law.
Smt. Ramilaben B. Patel v. ITO, Ward-3, Gandhinagar- [2018] 100 taxmann.com 325 Ahmedabad - Trib.)- ITA No. 3393 (AHD.) of 2014-dated December 11, 2018

3754. The Tribunal held that where in respect of share capital and share premium received from investing companies, assessee brought on record all necessary evidence such as their address, PAN, confirmation letters etc., merely because it failed to produce directors of investing companies personally for confirmation, amount in question could not be added to assessee's income under section 68.
Asst. CIT, Circle-4, Nagpur v. Swiftsol (I) (P.) Ltd.- [2018] 95 taxmann.com 286 (Nagpur – Trib.) ITA Nos. 407 (NAG.) of 2016 & Others-dated July 2, 2018

3755. During year, assessee received huge amount as gift from his nephew, who was a resident of USA. Assessing Officer opined that donor did not have adequate creditworthiness and treated gift received by assessee as unexplained credits under section 68. Before Commissioner (Appeals), assessee contended that income was earned by donor by functioning as a consultant of a company at UAE and gift was received through banking channels. Commissioner (Appeals) allowed assessee's appeal and deleted addition under section 68. However, Tribunal restored additions made by Assessing Officer. The Court noted that assessee did not place on record any sufficient cause before Commissioner (Appeals) as to why alleged additional income earned by donor by doing consultancy work for a

company in UAE was not offered by him before Assessing Officer. Further, so called transfer through a bank account was also self-serving because amount was transferred through telegraphic transfer and source of transfer was not established as to how it was relatable to donor. It held that whether, on facts, Assessing Officer and Tribunal rightly concluded that probability of a salaried donor giving, a gift of huge cash amount to assessee, his uncle, who was an affluent businessman, was hard to believe and, therefore, impugned addition made by Tribuanl was justified.
Narendra Kumar Sakaria v. Asst. CIT, Circle XI, Chennai-[2019] 102 taxmann.com 473 (Madras)-Tax Case Appeal No. 1600 of 2008 dated December 14, 2018

3756. Where High Court upheld Tribunal's order deleting addition made by Assessing Officer under section 69A on ground that there was no reliable or independent evidence to come to conclusion that assessee had accepted on-money for sale of constructed properties, SLP filed against decision of High Court was dismissed by the Apex Court.
Pr. CIT v. Nishant Construction (P.) Ltd.- [2019] 101 taxmann.com 180 (SC) Special Leave Petition (CIVIL) Diary No(s). 42776/2018 dated December 14, 2018

3757. The Court held that where Tribunal deleted addition to assessee's income on account of unexplained investment in-house property on basis of facts on record, same did not require any interreference.
SLP granted in CIT v. Nirmal Kumar Agarwal [2018] 99 taxmann.com 292/259 Taxmann 320 (SC). SLP (CIVIL) Diary No(s). 33282 of 2018 dated October 12, 2018

3758. A search was conducted in business premises of the assessee wherein certain loose slips were recovered, which showed several entries pertaining to cash and cheque transactions in respect of purchase of a property. The assessee accepted in his statement that slip represented on money payment made for purchase of property in question. Later on, the assessee retracted from his statement and claimed that loose slips were only dumb slips. The Tribunal however, rejected claim of the assessee and confirmed addition. The Court held that since notings in loose slips were clear, retraction made by the assessee after period of two years was rightly rejected as an afterthought. Thus, the impugned order could not be interfered.
Thiru S. Shyam Kumar v. Asstt.CIT [2018] 99 taxmann.com 39 (Mad.) Tax Case (Appeal) No. 1371 of 2008 dated October 10, 2018

3759. In course of the assessee, the Assessing Officer made addition to the assessee's income on basis of confessional statement made by one 'R' under Maharashtra Central Organised Crime Act, 1999, to effect that he had made certain unaccounted payments to the assessee. The Tribunal noted that statement of 'R' had not been confronted to the assessee to verify whether amount was actually paid. It was also found that no corroborative evidence had been produced or brought on record to substantiate fact of alleged payment. Accordingly, the Tribunal deleted impugned addition. The Court upheld that on facts the impugned order of the Tribunal was to be upheld.
SLP dismissed in CIT v. Jagdishprasad Mohanlal Joshi [2018] 99 taxmann.com 288/259 Taxmann 342 (SC). SLP (Civil) Diary No. 24313 of 2018 dated October 12, 2018

3760. The Tribunal held that where assessee was not able to bring on record any material evidence to prove credit worthiness and capacity of his father to advance huge amount of cash gift of Rs.10.50 Lacs from any known source/income, impugned addition made under section 68 by authorities below was to be confirmed more so since the father did not even operate even a regular bank account.
Sunil Ramakrishna v. Dy. CIT [2018]99 taxmann.com 221/173 ITD 468(Bang. Trib.)- IT Appeal No. 2463 (BANG.) of 2018 -October 12, 2018

3761. Assessee's case was reopened wherein, AO made addition on account of cash deposits in SB account in banks as no source of deposit was explained. Before CIT(A), assessee contended that a sum was received as a sale consideration which was deposited in bank account. CIT(A) found that agreement to sale was executed subsequent to receipt of sale consideration and thus, rejected assessee's contentions. The Tribunal held that, in assessee's own case, submissions were accepted on ground that AO had not carried out any verification from buyer of land to ascertain actual date of payment of sale consideration. In AY under consideration, AO also failed to verify said facts hence, it was unable to affirm findings of lower authorities. AO was directed to delete impugned addition.
Chandravati Kaithwas ANR vs. ITO & ANR. -(2018) 54 CCH 0341 IndoreTrib-ITA No.506/Ind/2016,

508/Ind/2016-Dated December 11, 2018

3762. AO observed that assessee was engaged in development of real estate by developing plots of land without carrying any construction of superstructure thereon and as per audited accounts company was following percentage completion method. AO found that assessee failed to provide details, despite statutory notices regarding basis for calculating sales accounted for on percentage completion method. AO on basis of transaction reported in AIR information made addition of Sales transaction. CIT(A) deleted addition made by AO. The Tribunal held that, assessee gave a detailed ledger account of all its projects which revealed that aforesaid receipts were on account of sale transactions in 'Hill Granage Project. Assessee produced a copy of sale deed in respect of all four sale transactions and mode of payment in relation to said sales. It was revealed that entire amount in relation to these sales transactions was received by cheque. Sales transactions reported in AIR information were duly reflected by Assessee in its books of accounts. AO erred in making addition against assessee and CIT(A) rightly deleted addition made by AO.

Asst CIT vs. Tirupati Infrabuild P. Ltd.- (2018) 53 CCH 0302 DelTrib-ITA No. 6604/Del/2014 & Cross Objection No.212/Del/2015-Dated Jul 9, 2018

3763. AO noticed that assessee was listed company which during previous year increased its share capital. Increase was not through public issue but by way of investment in equity share directly through fully convertible warrants. AO noted that assessee was merely showing bogus sale and purchase, hence, addition was made u/s 68. CIT(A) Set aside AO's order. The Tribunal held that, it was clear that assessee produced sufficient documentary evidences before A.O. at assessment as well as appellate proceedings to prove ingredients of s 68. A.O however, did not make any further inquiry on documents filed by assessee. Thus, A.O. failed to conduct scrutiny of documents at assessment stage and merely suspected transaction between investor companies and assessee on irrelevant reasons which were disproved in findings of Ld. CIT(A). Therefore, assessee discharged its initial onus to prove identity of investor companies, their creditworthiness and genuineness of transaction in matter. No material was produced to rebut finding of fact recorded by CIT(A). Hence, no justification was found to interfere with order of Ld. CIT(A) in deleting addition and Revenue's appeal dismissed.

ITO vs. XO Infotech Ltd.- (2018) 53 CCH 0297 DelTrib -ITA No. 3342/Del/2013-Dated Jul 9, 2018

3764. AO issued show-cause notice stating that amount of sales as estimated by Excise Department should be considered as unaccounted sales. AO proceeded to adopt figures of Excise Department as unaccounted sales and made additions for alleged unaccounted sales. CIT(A) deleted addition made by AO. The Tribunal held that, in case of Futura Ceramics Pvt. Ltd, Division Bench held that if Assistant Commissioner of Commercial Tax utilized material collected by Excise Department; including statements of Assessee and other relevant witnesses and had come to an independent opinion that there was in fact evasion of excise duty by clandestine removal of goods, then he would have been justified in making additions for the purpose of VAT Act.But in assessee's case no such exercise was undertaken. Nowhere AO concluded that there was a case of clandestine removal of goods without payment of tax under the VAT Act.Merely because Excise Department issued a show cause notice, that could not be a ground to presume and conclude that there was evasion of excise duty implying thereby that there was also evasion of tax under the VAT Act. Asstt. Commissioner acted in a mechanical manner and passed final order of assessment merely on premise that Excise Department had issued a show cause notice alleging clandestine removal of goods. Order of Authority was not sustainable and Revenue's appeal dismissed.

Dy. CIT vs. Belgium Glass & Ceramics P. Ltd.- (2018) 53 CCH 0359 AhdTrib-ITA Nos. 2783 to 2787/ Ahd /2015-Jul 11, 2018

3765. Assessee had received share application money. Assessee company submitted details showing name of companies who had given share application money. AO held that assesssee failed to establish Identity, Creditworthiness and genuineness of transaction done with investor companies. AO treated share application as cash credit appearing in books of assessee and u/s. 68 made additions to income of assessee. CIT(A) deleted addition made by AO. The Tribunal held that, assessee had duly submitted all necessary details in respect of share application received. Assessee had duly discharged its onus and no onus was cast on assessee in impugned assessment year to produce persons or books from

investment companies. AO was not justified to take up issue of obtaining explanation from Directors/promoters of investing companies. Revenue's appeal was dismissed.

Asst. CIT & ORS. vs. Swiftsol (I) Pvt. Ltd. & ORS.- (2018) 53 CCH 0282 NagTrib-ITANo.407/Nag/16-Dated Jul 2, 2018

3766. The Tribunal held that addition on account of unexplained sundry creditors was not sustainable where there was a minor difference in the ledger account of assessee and creditor in respect of some commission charged by assesee which was not acknowledged by the other party.

ITO & ANR. vs. Kishore Hariram Paryani (HUF) & ANR.- (2018) 54 CCH 0306 IndoreTrib-ITA No. 233/Ind 2017, 234/Ind/2017-Dated December 6, 2018

3767. During assessment proceeding, AO noted that assessee had purchased goods from sundry creditors and same were reflected in books of accounts. AO completed assessment after making addition u/s 68 in respect of unexplained five sundry creditors. CIT(A) deleted such addition. The Tribunal held that, while deleting alleged addition, CIT(A) noted that there was no difference in accounts which called for such addition. Confirmation of amounts of all alleged five creditors were examined by CIT(A) and there was no dispute to fact that payment to those creditors were made through proper banking channel in succeeding FY. No interference was called for in finding of CIT(A) deleting impugned addition and same was upheld and Revenue's ground was dismissed.

ITO & ANR. vs. Kishore Hariram Paryani (HUF) & ANR.- (2018) 54 CCH 0306 IndoreTrib-ITA No. 233/Ind/2017, 234/Ind/2017-Dated December 6, 2018

3768. AO noted that assessee was engaged in business of distribution of Dettol Liquid Soap and Dettol Antiseptic Liquid however, discrepancy in stock of Dettol soap fresh was noted. SCN was issued in reply to which, assessee filed copy of audited Balance Sheet, Management Certificate and Auditor's Certificate. Assessee explained conversion factor was erroneously applied by assessee and also filed details of actual opening stock, purchases, sales and closing stock and demonstrated same with documents. AO completed assessment without making any additions. Subsequently, CIT initiated revision proceedings u/s 263 and revised assessment directing AO to tax value of goods less 5% on account of breakages as unaccounted investment in purchases and directed to modify order u/s 143(3). ITAT quashed revision proceedings. High Court confirmed order of ITAT. When matter reached before Apex Court, same was restored back for fresh adjudication. AO during remand proceedings noted that assessee showed stock of Dettol Soap Fresh, whereas on considering opening stock, purchases and sales, quantity of closing stock worked out to a negative figure. Assessee had furnished detailed working of stock of Dettol Soap Fresh claiming that difference was caused due to application of conversion factor of 250 gms as against correct conversion factor of 75 gms. Assessee submitted that difference in quantity detail of stock was due to error and erroneous application of conversion factor but actually there was no difference in value of closing stock or profit of business. AO noted that reconciliation was submitted by assessee. AO concluded that there was no supporting documentary evidence to prove a bonafide claim of error and hence he added differential amount. CIT(A) affirmed AO's findings. The Tribunal held that, addition of 1737.46 MT was due to three factors i.e. error in conversion factor, total no. of boxes taken as 52,404 instead of 49,681 and breakages. Due to wrong multiplier factor of 48,000 adopted instead of 14,000, while opening stock of Dettol Fresh Soap was 72.25 MT and purchases was 666.74 MT, closing stock was 165.45 MT. Because of erroneous conversion factor adopted, assessee had negative stock at year end. CIT took 5% as breakages, whereas on a total stock of 11629.12 MT handled during year, breakage of 63 MT amounted to less than 1%. Though Soaps were hard and do not break easily, wrapper gets torn during transportation, storage. Assessee could not sell Soaps with torn wrapper, therefore in such cases also same was treated as breakage. Distribution arrangement with RBL came to an end in FY 2002-03 and assessee was not conducting any business, since then. Assessee also claimed that it had only skeleton staff, since its operations were currently negligible. It was relevant to mention that for filing of returns under Income Tax as well as filing before Registrar of Companies, there was no requirement of providing detailed working sheets, in relation to computation of stock and its conversion. Assessee was adopting calendar year, for purpose of internal accounting, in line with global practice of its parent. Computation of stock and its conversion was prepared for calendar year, instead of FY and same was filed before AO, in respect of previous 3 AYs; however, same were discarded by AO. Assessee made a mistake while preparing quantitative information for relevant AY, as concerned official of assessee instead of applying weight of Dettol soap fresh cake as 75 gms, applied as 250 gms. Assessee had filed complete

data and Revenue could not controvert stated facts. Difference in stock of Dettol was entirely due to said errors, which was properly explained with re-conciliations supported by book entries. No difference in stock was found hence, addition was deleted.

Reckitt Piramal Pvt Ltd vs DCIT- (2018) 54 CCH 0342 MumTrib- ITA No 1626/Mum/2017 dated Dec 12,2018

3769. AO noted that assessee had deposited cash in his saving bank account.Assessee claimed that such deposits were made out of past saving as well as income earned by his wife.AO found certain defects in assessee's submission.AO treated said sum as unexplained cash credit u/s 68.AO completed assessment after making addition.CIT(A) contended that said cash was deposited out of past savings and salary income.There was also income in hands of assessee's wife which she earned from her source of tuition and beauty parlor work. The Tribunal held that assessee just explained source of cash deposited in bank but failed to substantiate same by documentary evidence.Onus lied on assessee to explain source of cash deposited which assessee failed.There was no dispute regarding sale consideration of immovable property.Assessee had also not challenged sale consideration of property either before AO or CIT(A).Assessee 1st time took a plea that cash deposited represented part of sale proceeds of immovable property.AR submitted that cash deposited in bank account was representing sale proceeds of immovable property thus, same would be considered as part of sale consideration and accordingly same would be subjected to tax under head LTCG. The Tribunal held that there was no merit found in argument raised by Counsel for assessee and Assessee's ground was dismissed.

AMIT SUBHASCHANDRA ACHARYA vs. ITO (2018) 54 CCH 0367 AhdTrib ITA NO. 1138/AHD/2015 dated 13.12.2018

3770. Assessee, was engaged in business of retail trade in rice bran and husk. Survey u/s 133A was conducted at assessee's business premised and AO made addition of amount credited to Capital Account being gift received from her husband who was also an income tax assessee, assessed to tax.In view of the Additional evidence viz gift deed and ITR of the husband filed by the assessee, the Tribunal restored the matter to the file of the AO for examination of the veracity of the assessee's claim.

C.I Indira vs ITO- (2018) 54 CCH 0080 BangTrib- ITA No 2439/Bang/2018 dated 12.10.2018

3771. The Tribunal held that when assessee has amply established the identity of its share subscribers, their creditworthiness and genuiness of the transaction, there is no justification on part of the AO to invoke section 68 to make addition, especially, without undertaking any investigation with regard to the objection of the AO that assessee failed to produce the Directors of the subscriber company, in this regard it is submitted that if on the face of the evidences the examination of Directors was required, in that eventuality the AO ought to have summoned the Directors either by issuing summons or could have got them examined by appointing a commission.

ACIT vs Nitesh Chains- (2018) 54 CCH 0113 AgraTrib- ITA No 412/Agr/2015 dated 10.10.2018

3772. The Tribunal held that in the absence of any specific allegation and evidence that investment in share capital of the assessee by contributors was bogus transaction, addition made merely on the basis of assumption was not tenable in law especially when the assessee has discharged the primary burden of proving by evidences of the genuineness of the transactions and creditworthiness of the alottees. It further held that addition made on the basis of the statements recorded by the Investigation wing of an individual who admitted that he was indulged in providing accommodation entries for commission to various persons and entities, without supplying the copies of the said statements to the assessee was not tenable.

Pooja Industries Pvt Ltd vs ITO- (2018) 54 CCH 0318 ChdTrib- ITA No 1016/CHD/2016 dated 08.10.2018

3773. AO noted that assessee had received share application and premium from company run by one MC, whose admission was that these entities were utilized by him only in business of providing bogus share application money. AO noted that assessee had utilized their own resources but through MC operated company for routing back its undisclosed and unaccounted income in form of share application money and share premium. AO added receipts of share application money and share premium as cash credit u/s. 68. CIT(A) upheld order of AO. The Tribunal held that assessee had furnished Name, Address, PAN no and Share Application Form to prove that shares were allotted to applicants.Assessee had also furnished its bank statement to show that money was received through banking channels and there were no immediate withdrawals from banks which showed that share application amounts have not been returned back to these parties in cash.Thus, assessee had discharged primary onus cast upon it to prove identity, capacity and genuineness of transactions. Thus, addition made by AO on account of share application money and share premium was deleted.

Sunshine Metals & Alloys Industries Pvt Ltd vs ITO- (2018) 54 CCH 0105 MumTrib- ITA No 3212/Mum/2014 dated 12.10.2018

3774. The AO based upon the search conducted in the premises of a third party, initiated reassessment in case of the assessee and made additions under section 68 as unexplained investment. The CIT(A) as well as the Tribunal deleted the said addition holding that relevant enquiry based upon materials furnished by assessee had not been made and the AO had only relied on one report and not made any further findings. The High Court also noted that the assessee had discharged the onus initially casted upon it by providing basic details like bank accounts etc. which were not suitably enquired by AO. Thus, the Supreme Court dismissed Revenue's SLP

PCIT vs Adamine Constructions (P) Ltd – (2018) 99 taxmann.com 45 (SC)- SLP (Civil) 33542 of 2018 dated 28.09.2018

3775. The Tribunal deleted the addition made u/s 69B by the AO on account of excess stock found in the stock statements filed during assessment proceedings vis-à-vis quantity of stocks in books of account of assessee and added the cost of such stock as income of assessee from undisclosed investment. The Tribunal noted that the assessee had filed reconciliation statement justifying such difference in quantity of stock which was accepted by the District supply officer and thus deleted the addition.

ACIT vs Overseas trading- (2018) 99 taxmann.com 136 (Rajkot-Trib)- ITA No 211 of 2017- dated 28.09.2018.

3776. Survey operations u/s 133A was conducted upon assessee wherein, evidence regarding sales & purchases made outside books was found. Based on same material, assessee declared an additional income which was subsequently revised declaring profit derived from sales made outside books and circulating capital involved in such business. AO noted that assessee had credited a sum by way of capital introduction in his personal balance sheet. Assessee submitted that his balance sheet was prepared post survey thus, same formed part of additional income offered during survey. Assessee had also furnished detailed reconciliation statement along with an explanation. AO added back said amount by holding that assessee was unable to substantiate its source.CIT(A) deleted said addition. The Tribunal held that, assessee had duly reconciled and explained introduction of capital in his personal balance sheet and that it indeed formed part of additional income disclosed during survey. Since Assessee was able to explain entries in his balance sheet, addition made by AO was unwarranted and deleted.

ACIT vs Shiv Binod Gupta- (2018) 54 CCH 0134 Kol Trib- ITA No 964/Kol/2015 dated 29.10.2018

3777. The assessee had raised share capital and share premium during the year under consideration and the AO sought to verify the veracity of such share capital and share premium as he believed that if there was no substantial business activity carried on by assessee, it could not command huge share premium.Further, notice u/s 133(6) were issued to all shareholders which were duly replied and further summons u/s 131 were issued to directors which remained partially complied and assessee failed to produce directors of investor companies, thus the AO concluded that share premium raised by assessee was unexplained cash credit u/s 68. The CIT(A) deleted such addition made on account of share premium. The Tribunal observed that the assessee had furnished complete details of share subscribers to prove their identity, genuineness of transaction and creditworthiness of share subscribers and were duly supported by documentary evidences. Further, all share subscribers were assessed to income tax and transaction with assessee company were routed through banking channels. Thus, the Tribunal held that once receipt of share capital had been accepted as genuine within the ambit of section 68, there was no reason for AO to doubt share premium component received from the very same shareholders as bogus. Thus, the Tribunal concluded that when all the necessary ingredients of section 68 had been duly complied with by assessee there could not be any addition u/s 68 merely because assessee could not produce directors of share subscribing companies.

ITO vs Trend Infra Developers Ltd – (2018) 54 CCH 0128 Kol Trib- ITA No 2270,2273/Kol/2016 dated 26.10.2018

3778. The assessee had filed its return which was selected for scrutiny wherein the AO noted that assessee had raised share capital against allotment of equity shares and that most of share subscribers had petty income in form of interest or commission and they did not declare any substantial income. Thus, the AO held that assessee had failed to establish evidences furnished by share applicants by not producing them and accordingly added share capital along with share premium as unexplained cash credit u/s 68, which was later deleted by the CIT(A). The Tribunal held that both nature & source of share application received was fully explained by assessee and it had discharged its onus to prove identity, creditworthiness and genuineness of share applicants by submitting PAN details, bank account statements, audited financial statements and Income Tax acknowledgments before AO. Thus, the Tribunal concluded that no addition was warranted u/s 68 where assessee has discharged its onus to explain nature and source of sum credited in the year under consideration.

DCIT vs Jagannath Banwarilal Texofabs Pvt Ltd- (2018) 54 CCH 0126 Kol Trib- ITA No 1762/Kol/2016 dated 26.10.2018

3779. A Mauritius based company named M/s NSR had invested in assessee by way of Compulsory Convertible Preference Shares (CCPS) and the assessee received a premium and same was credited to Securities premium account in the Balance sheet.The AO noted that assesse had allotted shares to management entities at par whereas, allotted CCPS to such investor at premium and was of the view that difference amount of premium per share was to be treated as unjustified premium amount and could not be considered as “Share premium amount” and held that assessee had only proved “source” and not “nature of receipts” in respect of unjustified premium and thus made addition of the same u/s 68, which was later deleted by the CIT(A). The Tribunal observed that Share premium amount worked out in Valuation Certificate submitted by assessee was minimum amount that could be collected by assessee and hence, there was no bar on collecting higher amount as share premium and the CIT(A) had rightly observed that, there were several factors that are taken into consideration while issuing equity shares to shareholders/investors and the AO was not entitled to sit on arm chair of a businessman and regulate manner of conducting business.Thus, the Tribunal concluded that once the AO was satisfied with identity and credit worthiness of an investor and genuineness of transactions, assessee could be said to have proved “nature and source” of cash credits and further the AO himself had accepted share premium to an extent as Capital receipt, thus excess share premium amount could not be considered as income.

DCIT vs Varsity Education Management P Ltd- (2018) 54 CCH 0156 Mum Trib- ITA No 6991/Mum/2016 dated 24.10.2018.

3780. During the assessment proceedings, the AO observed that the capital account of assessee showed drawings of Rs. 1,20,000/- only and further observed that the assessee had 3 school going children and had directorship in 3 companies and was a partner in firm, thus concluded that assessee could not survive at Rs. 8,000/- p.m. and added Rs. 4,80,000/- to income of the assessee on account of lower withdrawals. The CIT(A) gave partial relief of Rs. 62,500 considering withdrawals of wife & HUF. The Tribunal observed that the authorities made addition purely on estimation basis and noted that school fees were shown separately in capital account and assessee contented that they lived in a joint family and huge expenses have been debited in the family account. Thus, the Tribunal concluded that when assessee had proved the reasonableness of household expenses claimed by him, no addition was called for on adhoc basis, which was not based on any evidence, thus restricted the disallowance to the extent of Rs 2 lakh.

Sunil Sojatia vs ACIT- (2018) 54 CCH 0110 Indore Trib- ITA No 310,312/Ind/2015 dated 23.10.2018

3781. The Assessee had received a gift of Rs.15 lakhs from his mother and the AO after the remand proceedings had also accepted the same, however, the CIT(A) noted that before giving gift, cash of Rs. 15,00,000 was deposited by the assessee's mother and thus CIT(A) held that cash was deposited by assessee and thus made addition for the same. The Tribunal held that there was no evidence to demonstrate that cash of Rs.15 lakhs was deposited by assessee and also observed that mother of the assessee was a regular income tax payee and it could not be inferred that she was not having any source of income. Thus, the Tribunal concluded that since, donor was having sufficient source to donate and was duly assessed to income tax, finding of CIT(A) could not be sustained and gift made could not be taxed in the hands of donee.

Sunil Sojatia vs ACIT- (2018) 54 CCH 0110 Indore Trib- ITA No 310,312/Ind/2015 dated 23.10.2018

3782. During the course of scrutiny proceedings, the AO noted that assessee was sole proprietor of his proprietorship concern (Jay Jewellers) and his capital account showed credit of Rs. 1,85,64,955 but capital account of assessee, in his personal accounts, reflected closing balance of only Rs. 43,16,557. Thus, the difference in credit entry was treated as unexplained, and added to the income of assessee u/s 68 and the same was confirmed by CIT(A). The Tribunal observed that the assessee had one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern. Further, the Tribunal held that maintenance of such separate books of account was allowable and an assessee may have his own capital of 'x' amount, and yet his capital contribution in capital account of a proprietorship concern can be more than 'x' amount because funding of capital could be not only out of own capital but out of other available funds as well. The AO should have compared the capital account of the Jay Jewellers with the account of Jay Jwellers in the hands of assessee, its's propritor. These two accounts are actually mirror images of each other.Thus the Tribunal concluded that capital introduction stood explained in books of Jay Jewellers and addition made under section 68 was deleted.

Ajay Jaysukhlal Mehta vs ACIT- (2018) 99 taxmann.com 155 (Ahd- Trib)-ITA No 1329 of 2014 dated 28.09.2018

3783. Where assessee was a partner in a firm and the AO had made additionin income of assessee under section 69B on ground that during relevant assessment year there was a difference of amount in capital account balance of assessee in his account books vis-à-vis account books of firm. The Tribunal concluded that since the assessee had explained difference by stating that his share of profit from firm for assessment year was not included in his account books, impugned difference stood duly and fully explained and, therefore, addition was not justified.

DCIT vs Hrishikesh Desai- (2018) 98 taxmann.com 305 (Mum-Trib.)- ITA No 2766 of 2017 dated 26.09.2018

3784. The Tribunal allowed Revenue's appeal for statistical purposes and remanded the matter to the file of AO for fresh adjudication where additions were made to assessee's income u/s 68 in respect of share capital. The Tribunal noted that CIT(A) had deleted the addition on the basis of additional evidence provided by the assessee but without providing opportunity to the AO. The Tribunal held that the CIT(A) neither sought remand report from the assessing officer nor gave an opportunity to rebut additional evidence to the AO and there was a clear-cut violation of Rule 46A, thus the CIT(A) order was set aside and matter was remanded back to the AO for fresh disposal.

ACIT vs R&B Infra Projects (P) Ltd. (2018) 98 taxmann.com 456 (Mumbai-Trib)- ITA No 5347 of 2016 dated 24.09.2018

3785. Where on basis of information received from sales tax authorities, AO found that assessee was beneficiary of bogus purchase bills and assessee could not produce any material purchased by it nor it could ensure presence of supplier, the Court held that AO was unjustified in limiting addition under section 69C on basis of GP ratio

Shoreline Hotel (P) Ltd vs CIT- (2018) 98 taxmann.com 234 (Bom)- ITA No 332 of 2016 dated 11.09.2018

3786. In the previous year relevant to AY in dispute , the assessee had received certain unsecured loan and share capital investment and the same were routed through banking channel, but the AO doubted the creditworthiness and genuiness based on the interim order of SEBI which was later reversed by the CIT(A).The Tribunal held that where assessee had furnished several documentary evidences to prove genuineness of unsecured loans and share capital investment and creditworthiness of parties, no additions u/s 68 could be made in respect of such loan and share capital by merely relying upon the order of SEBI that some of shareholders of assessee were part of several entities who were linked to money laundering. Thus, the Tribunal held that the SEBI report was not in the case of the assessee but in case of persons, who were share applicants of assessee and assessee was required to prove source of funds at its hand and could not be called upon to prove source of source.

ITO ward 15(2)(1) vs Iraisaa Hotels (P) Ltd – (2018) 97 taxmann.com 623(Mum- Trib)- MA no 29 of 2017 dated 10.09.2018

3787. Assessee received certain amount from 35 individuals and share certificateswere issued to them. AO held that assessee failed to establish identity of shareholders, genuineness of transaction and credit worthiness of share applicants and held share application money as unexplained cash credit u/s. 68 and accordingly made addition. The CIT(A) deleted addition observing that share application money was allotted to respective shareholders and further held that share application money could not be taxed in hands of company and AO was free to assess same in hands of individuals. The Tribunal held that having filed confirmations and share applications, assessee had discharged its burden and all share applicants were having substantial land holdings to make contribution to share capital, therefore, there was no reason for doubting creditworthiness of subscribers. Having received confirmations, it was for AO to make further enquires and to prove whether contribution to share capital was bogus or genuine.No such effort was made by AO and it simply scrutinized confirmations furnished by assessee and made addition holding that share applicants did not have sufficient means.Since assessee had filed confirmations it was for revenue to discharge onus that share capital introduced by assessee was bogus.All share applicants were agriculturists and had no taxable income, therefore, there was no case for submission of PAN details. The Tribunal concluded that as the assessee had explained source of

capital contribution, established identity of creditor and also creditworthiness, hence there was no case for making addition u/s. 68 and since no such effort was made by AO, onus of revenue was not discharged.

ACIT vs Mulpuri Foods and Feeds P Ltd- (2018) 54 CCH 0044 Vishakapatnam Trib- ITA No 292/Viz/2017 dated 26.09.2018.

3788. The AO during proceedings noticed that during years under consideration, share capital of assessee-company was substantially increased as compared to preceding years and assessee had issued substantial volume of equity shares and thus beleiveing it to be accommodation entries, the AO made additions appearing in books of assessee in form of share capital and share premium, as unexplained credits u/s. 68, which was however deleted by the CIT(A). The Tribunal observed that the assessee during the proceedings before lower authorities had submitted details such as names and present addresses of the investor companies, their PANs, bank statements, balance sheets and its annexures to prove their identity, creditworthiness and genuineness of the transaction.The Tribunal noted that the AO had miserably failed to point out any defects in documents submitted and thus held that once, all documentary evidences were produced, assessee had discharged onus cast upon him u/s 68, the Tribunal also held that low profit declared by investor companies, would not be reasonable basis to treat credit entries as fictitious or accommodation entries and concluded that in view of aforesaid facts and plethora of evidences submitted by assessee, on which no reasonable doubts had been created by AO, onus that lay on assessee u/s 68, was completely discharged and it upheld the order of CIT(A) deleting addition u/s 68.

DCIT vs Sutlej Agro Products- (2018) 54 CCH 0008 Del Trib- ITA No 289 to 293/Del/2015 dated 14.09.2018

3789. Search operation was carried out at business premises of one of the directors of Assessee-Company and pen-drive was found from his possession and it contained debits of certain amount in respect of expenses made on various heads which were apparently not entered in books of account nor declared in return of income. The AO held that the pen-drive represented accounts of unaccounted transactions which were being kept and maintained by assessee. Further, peak credit of all credit entries maintained in each and every ledger account had been worked out and AO made addition u/s.68 on account of unexplained cash credit. The CIT(A) held that amount clearly represented expenses thus, confirmed the addition u/s 69C. The Tribunal observed that the assessee was a fund manager for 148 persons for which moneys were frequently withdrawn or deposited. The assessee had discharged its onus in explaining entries by filing details before AO, CIT(A) and in remand proceedings. Further, the assessee also demonstrated details of entries from where the funds were managed. Thus, the Tribunal held that if assessee discharged its primary burden in explaining entries in terms of section. 68, then no addition u/s.69C could be made against assessee.

RL Travels Pvt Ltd vs DCIT- (2018) 54 CCH 0018 Del Trib- ITA No 893/Del/2015 dated 18.09.2018

3790. The AO while completing assessment, called for information with regard to sources for capital introduction, sources for payment of licence fees, copies of bank account, confirmation of unsecured loans, creditors and the same were placed by assessee before AO. Further, being satisfied with genuineness, identity and credit worthiness of creditors and sources for investment of capital and other investments, AO accepted sources for investment and did not make any addition on account of sources for investments as well as introduction of capital. However, AO made addition by rejecting books of accounts of assessee and estimated income @ 20% of Cost of goods sold. The CIT(A) restricted it to 10%, however the CIT(A) noticed that assessee had made investments towards the advance license fee and further observed that the AO has neither caused any enquiries nor called for the details and the assessee also did not furnish the sources for investments. The CIT(A) thus stated that there was

inconsistency in respect of explanation for the sources of investment and held that the assessee failed to prove the identity and credit worthiness of the parties and the genuineness of the transactions and therefore, enhanced the income u/s 68 as unexplained cash credits. The Tribunal held that CIT(A) was not permitted to make enhancement on completely new source of income, which was not considere by the AO. It held that during appeal proceedings while adjudicating estimation of income, CIT(A) re examined sources for investments stating that AO had not caused any enquiries. From assessment order, it was clear that AO had called for details and verified sources for investment and cash credits. Further verification of sources for investments into business by CIT(A) was nothing but re examination of same issue which was already examined and accepted by AO. At best it could be termed as inadequate enquiry, but could not be held that there was lack of enquiry. From above, it was clear that enhancement was towards altogether new and different source of income and tantamount to redoing entire assessment. Issue in this case was whether CIT(A) was permitted enhance assessment on new source of income and re do assessment. In case of CIT Vs. B.P. Sherafudin, it was held that undeniably, precedential position on powers of first appellate authority under section 251 undulates. There were seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lai, there was consistent judicial assertion that powers u/s 251 were, indeed, very wide; but, wide as they were, they did not go to extent of displacing powers under, say, sections 147, 148, and 263. For escapement of income, there were remedial measures provided u/s 147 and 148. If order passed by AO was erroneous and prejudicial to interest of the revenue, alternative remedy was provided u/s 263. Similarly, if mistake was committed by AO, which was apparent form record, remedial measures were provided u/s 154. If CIT(A) was allowed to make enhancement on new source of income which was not considered by AO, provisions of section 147, 148 and 263 would become redundant. Therefore, the Tribunal was of considered opinion that CIT(A) was not permitted to make enhancement on completely new source of income, which was not considered by AO. Order of CIT(A) was set aside and enhancement made by CIT(A) was deleted

B. Durga Prasad vs ITO – (2018) 54 CCH 0117 Vishakapatnam Trib- ITA No 451/Viz/2016 dated 24.10.2018

3791. Section 68 addition was made in hands of the assessee-company since the assessee was not able to produce any of the director, shareholders or principal officer of companies to whom shares were allotted and lenders from whom unsecured loans was taken. However, the Tribunal considered said issue in detailed manner and deleted said addition holding that the assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders. The Court held that on facts, there was no infirmity in the impugned order.

Principal CIT v. Hi Tech Residency (P). Ltd. [2018] 96 taxmann .com 402/257 Taxman 390 (Delhi)- IT Appeal No. 628 of 2016 dated July 7, 2018

3792. The Assessing Officer made addition to assesee-firm's income under section 68 in respectcapital introduced by one partner of firm. The High Court had held that in view of fact that amount received by assessee-firm had been duly reflected in books of account maintained byconcerned partner and he had also confirmed such contribution; impugned addition was tobe deleted. SLP filed by Revenue against the High order is dismissed by the Supreme Court.

Pr.CIT v. Vaishnodevi Refoils & Solvex [2018] 96 taxmann.com 469/257 Taxman 440(SC)Special Leave Petition (Civil) Diary No. 22842 of 2018 dated July 9, 2018

3793. During search in premises of the assessee company, seven slips reflecting amounts of Rs.45.08 lakhs were seized from wallet of one, SA who explained that slips pertained to cash received from the assessee.The Assessing Officer held that there was nothing to establish a link between assessee's cash eflected in its books with said cash slips. Therefore, he concluded that amounts were given to SA outside books of account and, accordingly, added back said amount to income of the assessee. The

Court held that the Commissioner (Appeals) notedand analysed manual cash book which showed certain cash balance amounts and same wasverified to be correct. Further, there was no other material to substantiate assumption that slips denoted amounts outside cash book in documents which were also subject matter of assessment, since amounts reflected in seized slips were fully explained in relevant cashbalances found in books of account and bank statements of the assessee, impugnedadditions was to be deleted.

CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103(Delhi)- IT Appeal No. 599 of 2004 dated September 18, 2018

3794. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons to shareholders under section 131 could not be served as addresses were not available, and, moreover, those shareholders were first time assessees and were not earning enough income to made deposits in question, addition made by Assessing Officer under section 68 was to be confirmed.

Konark Structural Engineers (P.) Ltd. v. Dy. CIT [2018] 96 taxmann.com 255/257 Taxman262 (SC). SLP (Civil) Diary No. 17215 of 2018 dated July 6, 2018

3795. The assessee claimed that consideration received from transfer of property under development agreement was only security deposit which was to be returned on completion of project and it did not offer it for tax. The Court held that since there was no provision in agreement enabling buyer to get refund of any part of sale consideration and further buyer treated amount paid to assessee as stock-in-trade, addition on account of amount of sale consideration received by assessee was justified.

CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103 (Delhi)- IT

Appeal No. 599 of 2004 dated September 18, 2018

3796. The assessee was doing real estate business. Search was conducted at the assessee'spremises and certain advance receipts found which the assessee claimed to have received from prospective plot owners. The assessee submitted that said sums were reflected in diaries found during search but it had not linked entries on these pages with cash flow summary submitted by him to explain source of money invested in land. Accordingly, theAssessing Officer treated said sum as unexplained investments. The High Court had held that amounts were received from bulk purchasers as per agreement. Further, the assessee hadalso filed cash flow statement and looking to modus operandi of business said sums were verifiable; thus, no addition was required to be made on this account. SLP filed by Revenue against the High Court order is dismissed by the Supreme court.

CIT v. Ranjeet Singh Yadav [2018] 95 taxmann.com 237/257 Taxman 29(SC) Special Leave Petition (Civil) Diary No(S). 19580 of 2018 dated July 3, 2018

3797. During course of search in premises of the assessee-company, a diary was seized from office premises of sister concern wherein it was written '100 crores divided into 70-30 for 167.112 acres". The Assessing Officer found that assessee had entered into an agreement to purchaseentire shareholdings of company ATPL for total consideration of Rs.70 crores. The Assessing Officer came to conclusion that actually assessee had purchased 167.112 acres of land from ATPL as mentioned in seized diary for consideration of Rs.70 crores while Rs.30 crores werepaid in cash. Concequently, he bought to tax an amount of Rs.30 crores holding it to be cash paid. The Court held that during search, no other evidence was recovered to prove that in fact any payment outside books of account was made by the assessee to ATPL. Even person against whose name notings of diary was made was not examined during assessmentproceedings. Since sold basis of an addition was entirely hinging upon interpretation

of certain figures in a diary, no addition could be made in hands of the assessee purely on assumption and presumptions.

CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103(Delhi)- IT

Appeal No. 599 of 2004 dated September 18, 2018

3798. The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that no section 69B addition could be made In hands of assessee merely on basis of statement of director when there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence.

CIT v. Mantri Share Brokers (P.) Ltd. [2018] 96 taxmann.com 280/257 Taxman 337 (SC) SLP (Civil) Diary No. 18434 of 2018 dated July 3, 2018

3799. The assessee-hotel was purchasing 'Indian Made Foreign liquor' in wholesale from the State Corporation and selling same at higher price. During survey it was found that the assessee- hotel had sold 'IMFL' in excess of price shown in books of account and return. The Assessing Officer on basis of documents recovered made addition of income of the assessee on account of supressed sales. The Court held that it was noted that there was no restriction with respect to price for which liquor had to be sold by a person holding licence to run bars under theAabkari Act. Since, the price was variable and sale suppression detected during survey wasactual price for which liquor was sold, the addition made on account of sale suppression was to be sustained.

CIT v. Archana Trading Co. [2018] 96 taxmann.com 339/257 Taxman 386 (Ker)- IT Appeal

Nos. 226 & 229 OF 2013 dated July 10, 2018

3800. The Tribunal confirmed the addition made by the AO with respect to contract receipts shown in Form 26AS as unaccounted income, rejecting assessee's contention that they were a part of its sales and no contract work was executed / labour was supplied for which TDS u/s 194C had to be deducted. It was noted that the assessee had failed to produce books of accounts and supporting evidence to demonstrate that amount received was part of sales and not contract receipt.

Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018

3801. The AO had disallowed the interest paid on unsecured loan on the ground that the loan itself was unexplained (addition was made u/s 68 in the earlier year) and therefore, the claim of interest being consequential to the claim of loan had to be disallowed. The Tribunal remanded the issue noting that it was a consequential issue and directed the AO to quantify the amount of disallowance of interest, if any, after considering if the addition made u/s 68 attained finality in the earlier assessment years.

Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018

3802. The Apex Court dismissed Revenue's SLP against the HC decision wherein the Tribunal's order deleting addition in respect of alleged undisclosed investment made in certain properties was upheld noting that the order passed by Tribunal was based on evidence on record.

CIT vs Lodha Builders [2018] 98 taxmann.com 430 (SC) - SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 27571 OF 2018 dated August 20 2018

3803. The Court set aside the addition made by the AO towards amount of share premium and share capital received for fresh allotment of shares (in lieu of settlement of the pre-existing liability) by treating them to be unexplained cash credits u/s 68. It held that the credits towards share capital were only by way of book adjustment and no cash was involved in the said transaction of allotment of share as the pre-existing liability was converted into share capital and share premium and hence could not be considered as share subscription money.

V. R. Global Energy (P.) Ltd. vs ITO [2018] 96 taxmann.com 647 (Madras)- TAX CASE (APPEAL) NO. 246 OF 2017dated August 06 2018

3804. The Court dismissed assessee's appeal and held that addition made u/s 69A on account of amount deposited in the bank as unexplained cash deposits was justified, rejecting the assessee's contentions that he withdrew certain amount of cash from his bank account for construction of a building and surplus money, when not required, was redeposited in same bank account. It was noted that the asessee had failed to provide any details of cost of construction (in form of bills of purchase of construction material or any payment to contractor) incurred by him on being asked by the AO and accordingly, he had failed to justify substantial cash withdrawals and the so claimed re-deposits. The Court held that though the assessee had conveniently claimed that entire construction expenditure was incurred without bank transaction or bill, vouchers, etc. but the same was not plausible.

Dinesh Kumar Jain. vs Pr.CIT [2018] 97 taxmann.com 113 (Delhi)- IT APPEAL NO. 468 OF 2018 dated August 08 2018

3805. The Tribunal directed the AO to delete the addition of Rs.55,27,500/- out of the total addition u/s 68 of Rs.65,27,500/- on account of unexplained share application money, as identity, genuiness and creditworthiness of share applicant of Rs.55,27,500/- was proved and it was only two person (relating to the remaining amount of Rs.10,00,000/-) whose identity were not proved. Further, noting that the AO had the address of those two person [but no enquiry was initiated by issuing notice u/s 133(6)], it remanded the matter to the file of the AO for carrying out necessary enquiry and verification with the assistance of documents to be filed by the assessee after providing it a proper opportunity of being heard.

AJIT & AJAY ESTATE & RESORTS PVT. LTD. vs. INCOME TAX OFFICER [2018] 53 CCH 0494 IndoreTrib- ITA No.762/Ind/2016 and 763/Ind/2016 dated August 30 2018

3806. The Tribunal upheld CIT(A)'s order wherein the CIT(A) had (i) deleted the addition on account of unexplained cash to the extent of Rs.5.5 crores as the fact remained that aforesaid income had been taxed in the hands of Dr.MV Rao (assessee's husband) and (ii) confirmed the addition to the extent of Rs.49 Lakhs as undisclosed income of assessee since no evidence was placed before the authorities to show the correlation between the respective dates of deposits of the said cash in the bank lockers vis-a-vis withdrawal from bank accounts.
Asst CITvs. Padmarani Kapala and Ors [2018] 53 CCH 0490 DelTrib- ITA No.3612/Del/2014 dated August 30 2018

3807. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the unexplained cash credit u/s 68 made by AO on account of amount received by the assessee-company from its director for meeting its day to day expenses, noting that genuineness, creditworthiness and identity of the assessee's director was nowhere in issue. Further, it rejected Revenue's contention that the CIT(A) should have called for a remand report from the AO, noting that all the details were filed with AO during assessment and accordingly there was no material indicating admission of additional evidence.

ITO vs. C.D. Steel Pvt Ltd[2018] 53 CCH 0495 KolTrib- ITA No.1360/Kol/2017 dated August 29 2018

3808. The Tribunal deleted the addition made by the AO towards unexplained cash deposits in bank account disbelieving the assessee's explanation of source being earlier cash withdrawals (alleging that the cash withdrawn would have been utilized by it), relying on the ratio laid down in the case of S.R. Ventakaratnam vs CIT & Others [127 ITR 807 (Kar)] wherein it was held that once the assessee discloses the source as having come from the withdrawals made on a given date from a given bank, it was not open to the Revenue to examine as to what the Assessee did with that money and could not choose to disbelieve the plea of the Assessee merely on the surmise that it would not be probable for the Assessee to keep the money unutilized.

Vinatha Madhusudan Reddy vs. Asst.CIT [2018] 54 CCH 0151 MumTrib- ITA No.257 /Bang/2018 dated August 24 2018

3809. The AO made an addition of amount introduced as capital by the assessee in her proprietary firm on the ground that the said amount was received from a partnership firm where the assessee was a partner and the said amount was not shown as payable in the balance sheet of the assessee. The CIT(A) deleted the addition noting that the amount received from the partnerhisp firm was repaid in cash during the year by the assessee and same was reflected in the cash book of the assessee and, therefore, it was not shown in the balance sheet of the assessee. The Tribunal dismissed Revenue's appeal against CIT(A)'s order noting that Revenue could not point out any error in the aforesaid findings of CIT(A) by bringing any positive material on record.

BHAWANIPATNA WARD vs. SEEMA SACHDEVA. [2018] 53 CCH 0480 CuttakTrib- ITA No.67/CTK/2018 dated August 23 2018

3810. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting addition by the AO on account of unsecured loan obtained and interest paid thereon as Revenue could not point out any error in CIT(A)'s order that the unsecured loans having been obtained in FY 2004-05, no addition could be made treating the same as not genuine in AY 2013-14, when genuineness of loans had not been questioned in the earlier years, and accordingly interest on same also had to be allowed.

BHAWANIPATNA WARD vs. SEEMA SACHDEVA. [2018] 53 CCH 0480 CuttakTrib- ITA No.67/CTK/2018 dated August 23 2018

3811. The Tribunal upheld CIT(A)'s order confirming the addition on account of unexplained income u/s 68 on ground that assessee had not furnished compelling reasons for accepting loans in cash in contravention of provisions of section 269SS and further noting that for none of creditors, assessee had filed evidence to show that creditors had credit worthiness and capacity to advance such huge sums. In case of K, amounts were withdrawn in small amounts from ATM and said sums being advanced to assessee was not believable and acceptable.In case of B, assessee had not filed any evidence to show that creditor had capacity to advance sum of Rs.5 lakhs.In case of A, amounts were advanced out of gifts received from various donors on occasion of the birthday, but no supporting evidence was submitted to AO.In case of KVS , though he had stated that advance was given out of personal savings of his wife and father, no supporting evidence was furnished and the credit worthiness was not established.In case of R, assessee was an agriculturist, but no evidence was furnished with regard to cultivation of agricultural land and earning of income. In case of S, transaction appearing in bank passbook appeared to be an accommodation entry and no evidence was filed by assessee with regard to credit worthiness of the person.

Dr.SUGNAM BHARATHI vs. INCOME TAX OFFICER [2018] 53 CCH 0480 CuttakTrib- ITA No.67/CTK/2018 dated August 23 2018

3812. The Tribunal dismissed assessee's appeal and upheld CIT(A)'s order confirming the addition made u/s 69A on account of amount surrendered during course of survey which was not recorded in the books, rejecting assessee's contention that the Revenue had not brought on record any other source of income and therefore, the investments were out of the receipts of the hospital. It held that there was no logic in not recording the said amount as receipts from hospital as assessee could have claimed deduction u/s 80IB(11C). Further, the Tribunal held that merely stating that the amount pertained to the receipts from hospital would not absolve the assessee from the burden to prove that the said amounts were part of the receipts from the hospital based on evidence.

PATIDAR HOSPITAL & RESEARCH CENTRE vs. INCOME TAX OFFICER. [2018] 53 CCH 0588 IndoreTrib- ITA No.1007,1008 and 1541/Ind/2016 dated August 21 2018

3813. The Tribunal deleted the addition made on account of unexplained cash credit accepting assessee's contention that the amount pertained to purchase of jewellery which was returned subsequently and at the time of return of such jewellery, assessee had failed to make necessary entries immediately in stock book as well as creditors ledger and hence there was a difference which was alleged to be unexplained cash credit. Further, noting that the liability as well as the stock were declared and continued in the books of accounts, the Tribunal held that it was not a case of under assessment, and there was no bogus liability to make the addition.

GRANDHI SRI VENKATA AMARENDRA vs. ASSISTANT COMMISSIONER OF INCOME TAX [2018] 53 CCH 0587 (VishakapatnamTrib)- ITA Nos. 23/Viz/2018 dated August 21 2018

3814. The Tribunal upheld CIT(A)'s order confirming the addition on account of unexplained cash noting that the assessee made voluntary surrender during course of assessment proceedings on account of cash found and seized during course of search. It rejected asessee's conention that the surrender was made under duress or under influence of threat or pressure noting that (i) search was conducted on 01.03.2007 and voluntary surrender was made vide letter dated 20.08.2008 and (ii) Objection to surrender was filed 2 days before date of assessment order. Thus, the Tribunal did not find any infirmity in CIT(A)'s order.

P Shyamaraju and Ors vs Asst CIT. [2018] 53 CCH 0442 BangTrib- ITA No.1147/Bang/2012 dated August 14 2018

3815. The AO made an addition on account of alleged unexplained investment (being cash payment for purchase of land) based on the extract of documents seized from premises of GM of Finance of assessee's group. The AO submitted a remand report before the CIT(A), wherein it was submitted that companies were barred from owning land in Karnataka and accordingly the assessee had purchased the land in the name of an individual who had dealings with the assessee group. However, the CIT(A) deleted the addition. The Tribunal set aside CIT(A)'s order holding that though the AO had stated in his remand report that the person in whose name the land was purchased belonged to the assessee's group but this aspect was not examined by the CIT(A). The Tribunal held that more investigation was required from the sub-registrar's office to find out as to whether the persons in whose name the land was registered by sub-registrar's office was in a position to buy the land and in fact whether they belonged to the assessee group. If it was proved that the persons in whose name the land was registered belonged to the assessee, the entries found in the seized materials were correct entries and the addition could be made in the hands of the assessee. Accordingly, it restored the matter to the AO to readjudicate the issue in terms indicated above.

Asst CIT vs P Shyamaraju and Ors [2018] 53 CCH 0442 BangTrib- ITA No.1147/Bang/2012 dated August 14 2018

3816. The Tribunal allowed the assessee's appeal and deleted the addition made u/s 68 on account of unexplained share application monies holding the assessee had proved the identity, creditworthiness of investors and genuineness of transaction. It was noted that the assessee had produced complete

details (name, CIN No. PAN No and Registered Address, Master Data of the Investor Company) during the course of assessment proceedings and it was the AO who did not conduct any enquiry from the banker of the Investor and Income Tax record of the Investor Company. Further, the valuation report filed by the assessee supported explanation of assessee that though shares were issued at premium (FV-Rs.10/- and premium of Rs.1190/-) it was still below the fair market value per share of Rs.1221/-.

PRIYATAM PLASCHEM PVT. LTD. vs. INCOME TAX OFFICER. [2018] 53 CCH 0448 DelTrib- ITA No.2534 /Del /2018 dated August 10 2018

3817. The AO brought to tax the share capital received by the assessee-company by issuing 0% convertible preferential shares in a private placement to three investors namely, Dalmia Cements Ltd., India Cements Ltd. and Suguni Constructions Pvt. Ltd. as business income u/s 28(iv) [i.e. any benefit or perquisite arising in business or profession] on the allegation that the directors (also major shareholder) of the assesee-company had influence in the State Govt. of Andhra Pradesh and the aforesaid amount was received on account of various concessions received by the three investors from the Govt. of AP. The CIT(A) sustained the taxation of the said amount but held it to be in nature of "Income from Other Sources" assessable u/s 56. The Tribunal remanded matter back to AO with a direction to redo the assessment observing that in order to lift corporate veil for purpose of determining whether any benefit is passed on to shareholders/directors, they have to bring on record proper evidence/cogent material, no such evidence was brought on record rather circumstantial evidence and test of human probabilities were applied to convert capital transaction as per Companies Act into revenue transaction under Income-tax Act.

Bharathi Cement Corporation Pvt Ltd vs. Asst CIT[2018] 53 CCH 0612 HydTrib- ITA Nos. 696 & 697/Hyd/2014 dated August 10 2018

3818. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by AO u/s 68 on account of bogus purchases pursuant to a statement of Mr.V who admitted that he used to provide bogus bills in lieu of commission. It was noted that (i) assessee had produced Gate Entry Register, stock register and production records which supported assessee's explanation that whatever material was purchased were entered into statutory registers and material had been used in production process (ii) no adverse views were taken either by the VAT Department or by the Excise Department against the assessee (iii) the AO did not rebut the documentary evidences filed by the assessee (iv) purchases were supported by Form D-3 issued by VAT Department (v) payment for all the purchases were made through banking channel. Further, the Tribunal held that the statement of Mr.V was not admissible since he did not turn up for cross-examination to be done on behalf of the assessee.

Dy.CIT vs Padmini VNA Mechatronics Pvt Ltd. [2018] 53 CCH 0410 (Del) (Trib)- IT(SS)A No. 2/Viz/2016 dated August 08 2018

3819. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting addition made u/s 68 on account of unexplained loans received noting that the CIT(A) had emphasized that assessee had produced basic details of creditors and their confirmations and their existence was not in doubt and how they procured funds.Thus, assessee had not only proved source of funds but also source of source, which was not otherwise required under law.

Dy.CIT vs Torque Holdings LLP [2018] 53 CCH 0411 (Ahd) (Trib)- ITA No.1743/Ahd/2015 dated August 01 2018

3820. The AO made an addition of amount advanced and interest charged promissory notes found during survey proceedings and allegedly not incorporated in books of accounts. The Tribunal deleted the addition observing that (i) amounts indicated in promissory notes were actually part of money lending business of assessee and this business was consistently carried out by assessee along with business of retail trade of GC sheets and PVC pipes (ii) sundry debtors figures shown by assessee in his

statement of facts was actually the promissory notes issued to various person during the course of money lending business (iii) Assessee had also given the detailed working of the promissory notes with the year of the issue of the promissory notes, interest received year by year, amounts returned back by the borrowers along with dates and amount of such receipts.
Dinesh Kumar Choudhary vs. ITO - [2018] 53 CCH 0429 Indore Trib ITA No. 757/Ind/2016dated August 02 2018

3821. The Tribunal confirmed the addition made by AO towards unaccounted purchases on the basis of bills found during the course of survey proceedings, noting that cost of goods sold emanating out of records filed by assessee was much more than total sale which clearly established that the assessee was engaged in making sales out of record not disclosed in the total turnover.
Dinesh Kumar Choudhary vs. ITO - [2018] 53 CCH 0429 Indore Trib ITA No. 757/Ind/2016dated August 02 2018

3822. The assessee, engaged in the manufacture and sale of gold ornaments of different sizes, shapes and models with different designs, paid making charges to the local goldsmiths depending on item ranging from Rs. 82/- to Rs. 166/- per gram. However, based on certain deficiencies found in the vouchers, the AO adopted the minimum rate of Rs. 82/- per gram as making charges for the entire gold manufactured and disallowed the excess amount paid. The Tribunal held that if the AO found some defective vouchers, the amount involved on the said vouchers should have been disallowed, but the AO should not have made universal application of minimum rate of making charges to the entire gold ornaments manufactured and sold by the assessee. Accordingly, it directed adoption of the rate of Rs.150/- per gram considering it to be fair and reasonable.

GRANDHI SRI VENKATA AMARENDRA vs. ACIT [2018] 53 CCH 0587 (VishakapatnamTrib) - ITA Nos. 24/Viz/2018 and 50/Viz/2018 dated August 21 2018

3823. The assessee company supplied high carbon ferro chrome to T company, assessee' sister concern, and as per agreement between T company and assessee-company, if chrome contents in materials offered by assessee-company was less than minimum percentage indicated in product quality/norms, pro rata deduction would be made on charges payable to assessee. Based on such understanding, T company made some reduction in the charges payable to assessee on account of low recovery of chrome and the assessee claimed deduction of such amount reduced. The AO was of the view that the aforesaid expenses were being claimed with an intent to reduce total taxable income of assessee and suspected the understanding between T company and assessee. The CIT(A) deleted addition made on account of expenses for low recovery of chromium. The Tribunal upheld CIT(A)'s order holding that there was no material brought on record by Revenue to show that agreement between assessee and T company for manufacture / supply of high carbon ferro chrome was sham and the AO was conclusion was based on suspicion and conjectures and without any proof.

ACIT vs. T.S. ALLOYS LIMITED [2018] 53 CCH 0433 (CuttackTrib)-ITA Nos. 404 and 405/CTK /2017 dated August 09 2018

3824. The Tribunal remanded the issue of addition made in the hands of the assessee-society on account of difference in the amount of receipts shown by the assessee and the receipts appearing in Form 26AS back to the AO, noting that the AO and CIT(A) did not have the benefit of amended Form 26AS wherein the factual mistake of amounts mentioned was rectified. Accordingly, it directed the AO to consider the amended Form 26AS and then compute the difference, if any, to be added. Further, the Tribunal held that in case any addition was to be made on account of difference between the receipts shown in the books and the receipts shown in the Form No. 26AS, the said amount would be eligible for deduction u/s 80P in view of the coordinate bench decision in assessee's own case for an earlier year wherein it was held that income from FDRs made from operational funds of cooperative society while carrying out its activity of providing credit to its members was exempt u/s 80P.

Japiur Pensioners Hitkari Sahakari Samiti Ltd. vs. ITO [2018] 53 CCH 0684 JaiTrib- ITA No.321/JP/2018 dated August 27 2018

3825. The Apex Court dismissed the SLP filed by the Revenue against the High Court order wherein the High Court had deleted the addition made u/s 68 holding that assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders, irrespective of the fact that the assessee was not able to produce any of director, shareholders or principal officer of companies to whom shares were allotted and lenders from whom unsecured loans was taken
PCIT v Hi-Tech Residency (P.) Ltd [2018] 96 taxmann.com 403 (SC) - SLP (Civil) Diary No(S). 18123 of 2018 dated July 19, 2018

3826. The AO made an addition u/s 69C with respect to amount payable to the creditors for purchases made from them, opining that since most of the notices issued u/s 133(6) to the creditors were received back with remarks not available/wrong address etc, the creditors were not genuine. The Tribunal deleted the said addition noting that (i) purchases made by assessee were properly recorded in books of account (ii) payments were made through banking channels and (iii) sales against those purchases were not doubted. The Tribunal also rejected Revenue's contention of taxing the aforesaid amount u/s 41(1) holding that since amount was shown as payable in balance sheet of assessee, there was no cessation of liability.
Smt. Sudha Loyalka v ITO [2018] 97 taxmann.com 303 (Delhi - Trib.) – ITA No. 399 (DELHI) OF 2017 dated July 18, 2018

3827. The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made of of peak of negative cash balance found during the course of assessment pursuant to search proceeding, accepting the assessee's contention that since he had offered to tax entire unaccounted income found during search, the negative cash balance could not be added in total income as undisclosed investment.
Pr.CIT v Aliasgar Anvarali Varteji [2018] 96 taxmann.com 231 (Gujarat) - R/TAX APPEAL NO. 827 OF 2018 dated July 17, 2018

3828. The Court confirmed the addition made by the AO u/s 68 on account of loan received from a company, noting that the lender company did not have tangible or intangible fixed assets and, moreover, it had declared a meagre income of few thousand rupees and, thus, it was not in a position to give such a huge loan to assessee. It also observed that merely because the loan transaction was squared in the next financial year, it would not establish that the transaction was genuine and not bogus.
Seema Jain v ACIT [2018] 96 taxmann.com 307 (Delhi) – ITA No. 723 OF 2018; CM NO. 26947 OF 2018 dated July 11, 2018

3829. The Court allowed Revenue's appeal against the Tribunal's order wherein the Tribunal had deleted the addition made by the AO u/s 68 as cash credit with respect to certain deposits received from its dealers/agents and also from general depositors. The Tribunal had deleted the addition on the finding that the assessee had accepted deposits from public as permitted by Companies Act, 1956 and that since majority of the deposits received from the public and the agents had been proved by the assessee, the ones in which proof was not offered also had to be taken as being sourced from the public or agents. The Court held that merely because there was a permission granted under Companies Act to accept deposits from public, it did not necessarily follow that deposits shown by assessee were really those received from members of public or from agents, therefore, deletion of addition by Tribunal was erroneous. It held that the Tribunal also erred in applying rule of probability as against the provision of section 68 and deleting the addition with respect to deposits which were not proved before the AO. However, noting that the assessee had produced proof with respect to some deposits, it remanded the issue to the AO to verify the veracity of the said proof, only with respect to those deposits. Thus, the Court held with respect to the remaining deposits the assessee had to satisfy the tax due.
CIT v Mathrubhumi Printing & Publishing Co. Ltd - [2018] 96 taxmann.com 617 (Kerala) – ITA No. 107 & 135 OF 2010 dated July 24, 2018

3830. The Tribunal remanded the matter back to the file of AO for disposal afresh after taking into consideration evidences produced by assessee, noting that the AO had made addition u/s 69A disregarding the assessee's explanation that cash deposited in bank account represented sale proceeds of sagwan trees grown on agricultural land gifted to her by family members. It was noted that

income from sale of Sagwan trees was supported by gift deed, pratilipi from tehsil depicting existence of 'Sagwan Trees' and, photographs showing trees had been cut down.
Poonam Pandey v ACIT [2018] 97 taxmann.com 175 (Delhi - Trib.) - IT APPEAL NO. 7660 (DELHI) OF 2017 dated July 20, 2018

3831. The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made u/s 68 by the AO alleging introduction of share capital as unexplained cash credit. It was noted that (i) the persons who invested in shares of assessee had PAN numbers allotted to them which was made available by assessee to AO (i) shareholders also filed affidavits before AO pointing out that they had invested in shares of assessee out of their own bank accounts and (iii) Copies of acknowledgement of return of income of shareholders was also filed. The Court held that the identity of shareholders was established, investment made by shareholder in assessee-company was genuine and thus investment made by shareholders was not hit by section 68. It held that the entire basis of Revenue's case was based on surmise that assessee was taking bogus purchase bills and cash was introduced in form of share capital without any evidence in support.
PR.CIT v ACQUATIC REMEDIES PVT. Ltd (2018) 171 DTR 0426 (Bom) – ITA NO. 83, 84, 85, 463 & 465 OF 2016 dated July 30, 2018

3832. The Tribunal allowed assessee's appeal and deleted the addition made u/s 68 by the AO. During search proceedings, the AO had found a pen drive in possession of a director of the assessee-company wherein the director maintained unaccounted money of various persons / entities. The AO added the peak credit balances of different accounts as income in hands of the assessee. The Tribunal, however, noted that one of the director had accepted the income arising from the peak credit balances to be his income and accordingly, held that once the said peak credits had been added in hands of Director, same could not be again added in hands of assessee.
R.L. AGENCIES PVT. LTD. v. DCIT (2018) 53 CCH 0541 (DelTrib) – ITA No. 2196/Del/2015 dated July 30, 2018

3833. The Apex Court dismissed Revenue's SLP filed against the High Court order where the High Court had confirmed the Tribunal's order holding that the provisions of section 69B were not applicable to the assessee's case as the assessee had not maintained any regular books of account, which is essential to invoke the said section.
COMMISSIONER OF INCOME TAX (CENTRAL) vs. GAURAV KUMAR SHARMA (SINCE DECEASED) THROUGH LEGAL HEIRS – (2018) 102 CCH 0355 (SC) – SLP Civil Diary Nos. 24708/2018 dated July 30, 2018

3834. The Tribunal deleted the adhoc addition with respect to amount invested in construction of hotel building which was made by the CIT(A) on the ground of absence of complete set of bills and vouchers for the material purchased for construction. It was noted that the CIT(A) had accepted the assessee's contention to consider State PWD rate instead of Central PWD rate for valuing the contructed area and the value arrived by applying the State PWD rate to the plinth area of construction for each floor as per DVO's methodology of valuation (instead of Central PWD rate applied by DVO) is almost same as the cost of construction appearing in the books of account. Accordingly, the Tribunal held that in view of the above, there was no justification in sustaining adhoc disallowance on the ground of absence of complete set of bills and vouchers for material.
GOPAL KUMAR DEEWAN & ORS. V ITO (2018) 53 CCH 0440 JaipurTrib – ITA No. 498/JP/2017, 617/JP/2017, 02/JP/2017, 178/JP/2017, 499/JP/2017, 618/JP/2017 dated July 26, 2018

3835. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO alleging suppression of value of sale of alumninium dross. The AO had made the addition on the basis of show cause notice issued by the Central Excise department to the assessee alleging that the assessee had suppressed the value of sales. It was noted that the CESTAT had set aside the order of Commissioner of Central Excise passed on the basis of the said show cause notice, holding that Revenue failed to bring out any corroborative evidences in form of any cash transaction or other evidences to support its finding. Accordingly, the Tribunal held that since the CESTAT had already decided the issue, the addition was rightly deleted by the CIT(A).
ACIT v CENTURY METAL RECYCLING PVT. LTD. (2018) 53 CCH 0586 DelTrib - ITA No. 6657/DEL/2017 & C.O. NO. 36/DEL/2018 (IN ITA No. 6657/DEL/2017) dated July 19, 2018

3836. The Tribunal deleted the addition made u/s 68 as unexplained cash credit with respect to certain amounts credited to the assessee's bank account representing advances received from four parties for sale of land. It noted that (i) the assessee, who was engaged in business of purchase and sale of lands, had had duly disclosed amounts received as advance towards sale of land from four parties stated as liability in the balance sheet prepared as on the end of the relevant year; (ii) identity and creditworthiness of the parties were never questioned / doubted; (iii) proposed lands to be bought by intending buyers were not registered, thereby it attains character of advance received towards sale of land and (iv) advance for sale of land were duly adjusted with sale proceeds of land during next financial year.

AMAR DAS vs. ITO (2018) 53 CCH 0337 KolTrib – I.T.A No. 306/Kol/2017 dated 13th July, 2018

3837. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made on account of sale of scrap, where the AO, after considering market value of scrap, profit margin, transport charges, burning loss, opined that the sale of scrap was understated. It was held that the rates of scrap per Metric Tonne shown by assessee were within prescribed limits as per Metallurgical Guidelines issues by Ministry of Mines and further the examination of comparative chart on sale of scrap as well as comparative quotes of various scrap dealers, showed that assessee had not understated sale of scrap in any manner. The Tribunal thus held that the AO had made the additions only on surmises and conjectures.

FORCE MOTORS LIMITED vs. DCIT (2018) 53 CCH 0593 PuneTrib – ITA Nos.1205 & 1206/PUN/2016, ITA Nos.1412 & 1413/PUN/2016 dated 18th July, 2018

3838. The Tribunal dismissed assessee's appeal against CIT(A)'s order confirming addition of income from undisclosed sources on account of cash found in assessee's bank locker, in absence of proper explanation or evidence for the same. It was noted that though the assessee in her statement stated that cash found in lockers during search and seizure u/s 132A represented money received on various occasions like birthday of her children and also represented her past savings over years out of cash withdrawn, the assessee had not withdrawn any cash from her bank accounts during last 7 years and thus, her statement was false and incorrect.

Rupinder Dhanoa Sidhu vs ACIT [2018] 54 CCH 0272 (Del- Trib.)- ITA No.146/Del/2016 dated 28.11.2018

3839. The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order deleting addition made u/s 68 on account of unexplained cash deposits made in the assessee-company's bank account, noting that the assessee had declared the said cash deposits as part of its total/gross income and such fact was not disputed by the AO. It was noted that the assessee had discharged its burden by furnishing the invoices and addresses of the parties from whom payments were received through both account payee cheques as well as cash and the AO had not brought any evidence on record to prove that assessee's transactions were not genuine. Accordingly, the Tribunal held that there was no infirmity in the CIT(A)'s order since the assessee had made full disclosure and veracity of documents had not been challenged by the AO.

ACIT vs Crayons Advertising Ltd. and ANR [2018] 54 CCH 0421 (Del- Trib.)- ITA No.4872/Del/2015 dated 27.11.2018

3840. The AO made an addition on account of assessee's failure to prove credit worthiness of sundry creditors and genuiness of transaction. It was assessee's contention that the said outstanding was advance received from customers which was adjusted against sales in subsequent year for which it produced invoices before CIT(A). The Tribunal deleted the addition holding that receipt of advances from customers is a starting point and conclusion of transaction is the relevant sales and hence there was no justification for making the addition of advances received from the customers in view of the fact that (i) the sales in subsequent year were accepted by the AO (ii) advance was received in cheque and

not cash and (iii) assessee had produced invoices for the said sales before the CIT(A). Accoridngly, it allowed assessee's appeal.

Madhava Hi-Tech Cold Storage Pvt Ltd vs Dy.CIT [2018] 54 CCH 0240 (Vishakapatnam Trib.)- ITA Nos. 480/Viz/2016 dated 16.11.2018

3841. The Tribunal allowed Revenue's appeal and remanded the matter back to the AO where the AO had found that the assessee did not maintain books of accounts properly, thereby making addition for unaccounted sources of income and the CIT(A) had deleted the addition holding that AO had not understood assessee's book keeping. The Tribunal held that if the CIT(A) believed that the AO had erred in understanding scheme of entry of assessee, he should have clearly brought on record rebuttal to AO's finding in his appellate order. Whereas the CIT(A) had summarily held that AO had misconstrued such entries and there was no description in CIT(A)'s order of appreciation of assessee's bookkeeping. Accorindgly, it remitted the matter back to AO to consider issue afresh in light of observations of CIT(A).

Asst CIT vs Girish Matlani [2018] 54 CCH 0253 (Mum Trib.)- ITA No. 5105/Mum/2016 dated 20.11.2018

3842. The Tribunal upheld CIT(A)'s order deleting the addition made by treating share premium monies as unexplained cash credit, noting that the relevant documentary evidence in the form of Annual Reports, Bank statements, copies of PAN Card, of the shareholder companies were produced before the AO in order to establish the identity as well as creditworthiness of the said shareholder companies. Further, the notices issued by the AO were also duly responded by the said shareholder companies by filing their replies. The AO, however, doubted their creditworthiness as well as the genuineness of the share premium amount mainly on the ground that assessee failed to produce the Directors of the shareholder companies for examination. The Tribunal relied on the ratio laid down in case of coordinate bench in ITO vs. M/s. Trend Infra Developers Pvt. Ltd [ITA No. 2270/KOL/2016] wherein it was held that additions u/s 68 was not called for merely because assessee could not produce the directors of the share subscribing companies and accordingly, dismissed Revenue's appeal.

ITO vs BSNL Commercial Pvt Ltd. [2018] 54 CCH 0254 (Mum Trib.)- ITA No. 686/Kol/2017 dated 20.11.2018

3843. The Tribunal partly allowed assessee's appeal and held that the AO as well the CIT(A) erred in not giving set off of the unexplained debit entries appearing on the very same impounded document on the basis of which addition of unexplained credit entries (which contained name of persons along with amount shown as credit receipt) was made by the AO. It relied on the decision of Tirupati Construction Company wherein it was held that "only peak of debit and credit entries of the seized papers/diary could be assessed as undisclosed income in the hands of the assessee, and there was no justification for adding the entire receipt side of the seized papers". The said decision was upheld by the High Court. Accordingly, the Tribunal confirmed addition to the extent of peak credit.

Patidar Dinesh Kumar and Company. vs ITO [2018] 54 CCH 0214 (Indore- Trib.)- ITA No.32/Ind/2017 dated 13.11.2018

3844. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO in case of non-resident assessee towards deposits made in his foreign bank account maintained with HSBC Bank Geneva on the allegation that the said deposit was sourced out of income derived in India. It held that the assessee being a non-resident, having money in a foreign country could not be called upon to pay income tax on that money in India unless it satisfied the tests of taxability of non-resident

under the provisions of the Act, which in the instant case was not getting satisfied. Thus, the bank account of HSBC Bank, Geneva was outside the purview of the Act. Further, the Tribunal held the circumstantial evidences relied on by the AO including the news paper report nowhere conclusively established that the source of the deposits, since the inception (i.e.1997), in the bank account was from India.

Dy.CIT vs Hemant Mansukhlal Pandya [2018] 54 CCH 0236 (Mum Trib.)- I.T.A No.4679 & 4680/Mum/2016 (C.O.58 & 59/Mum/2018) dated 16.11.2018

3845. The Tribunal allowed assessee's appeal and deleted the addition made u/s 68 on account of advances received in cash for sale of gold alleging that adjustment of customers account (advance) with sales was bogus and assessee had failed to establish capacity, credit worthiness and identity of customers who gave such advances. It held that the assessee had discharged its burden and duly accounted the advances received and issued necessary sales bills to the customers. It was noted that the assessee had maintained the stock register, purchase account and the sales account which were accepted by the AO in toto without pointing out any defects in the books of accounts. The Tribunal held that in case, the sales made to the customers who paid the advances in cash was bogus, the AO should have examined the issue and reduced the sales to that extent. Accordingly, having accepted the books of accounts and sales account, it held there was no reason to suspect the advances received in cash.

Seeram Padmanabha Jewellers Pvt Ltd vs ITO [2018] 54 CCH 0227 (Vishakapatnam Trib.)- ITA No. 468/VIZ/2017 dated 14.11.2018

3846. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO alleging certain outstanding liability to be bogus liability, noting that the AO did not bring any evidence on record to hold that such liability had ceased to exist or remitted by the creditor. Further, the said liability was shown as payable by the assessee in his balance sheet and confirmation was also received from the creditor which proved that such sum was not remitted by the creditor.

ITO vs Satish Kumar [2018] 54 CCH 0186 (DelTrib.)- ITA.No.3698/Del./2010 dated 06.11.2018

3847. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO by treating loan received by assessee from BMPL as unexplained credit u/s 68 on the basis of information received from DCIT stating that BMPL had indulged in providing bogus entries. It was noted that the allegation that BMPL was involved in providing bogus entries did not survive since BMPL was absolved of the said charge by CIT(A) in its own case against which Revenue had not preferred an appeal. Further, as the loan was received through bank transaction, it held that genuiness stood proved. Thus, it held that when 'nature' and 'source' of credit amount appearing in the 'books of accounts' was established by the assessee beyond doubt, same could not be held as an unexplained cash credit u/s 68.

Dy.CIT vs Udaipur Properties and Finance Ltd.[2018] 54 CCH 0213 (MumTrib.)- ITA No. 6449/Mum/2017 dated 09.11.2018

3848. The Tribunal deleted the addition made u/s 68 on account of share premium received by assesee-company from two parties, noting that (i) complete details of financial statements of the two parties from whom share application money and share premium received were furnished by assessee (ii) even the bank account statements of the said parties clearly showed that the amounts received by the assessee from these parties were received further from third parties (iii) the assessee had filed copies of assessment orders of both the shareholders where the AO had accepted share capital part which further proved that he had not doubted transaction per se being genuine. Accordingly, it held that the assessee had established the genuineness of the transaction.

IB Commercial Ltd vs Dy.CIT [2018] 54 CCH 0192 (MumTrib.)- ITA No. 3268/Mum/2016 dated 09.11.2018

3849. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made u/s 68 on account of share premium, noting that (i) there was no dispute to the identities of share applicant who were companies having PAN and were regulary filing their returns of income (ii) the share applicants had sufficient funds in form of capital and reserve and surplus to invest (iii) the transaction was made through banking channels and duly recorded in books of accounts and reflected in audited financial statements (iv) there were no instances of cash deposit in any account (v) even the share applicant companies were regularly assessed to tax and scrutinized. Accordingly, it held that the impugned addition could not be made since the identity, creditworthiness and genuiness of transactions were proved by assessee.

ITO vs Goldstar Tracom Pvt Ltd [2018] 54 CCH 0191 (KolTrib.)- ITA No. 1215/Kol/2015 dated 09.11.2018

3850. The Court dimissed assessee's appeal against Tribunal's order upholding addition made u/s 68 on account of unexplained cash deposit in bank account noting that the assessee had failed to discharge the burden of explaining the source of cash deposit. The Tribunal had rejected assessee's explanation / contention that the deposits were made from the earlier cash withdrawals, noting the time gap between withdrawals and deposits. The Court held that assessee's explanation was duly considered and not ignored. Accordingly, it held that since the factual findings of Tribunal were based on cumulative effect of all facts covering all essential points, it would not interfere with the same.

Shashi Garg vs Pr. CIT [2018] 103 CCH 0134 (Del HC)- ITA No. 1235/2018 dated 02.11.2018

3851. The AO was of the view that purchase of brokerage stamps by assessee in cash were bogus as it was not supported by any evidence and accordingly he disallowed the expenses claimed with respect to the same. The Tribunal deleted the disallowance holding that merely on basis of non-furnishing of details of vendors, addition could not be made in case of purchase of stamps. It held that consumption of stamps was required to be considered based on volume of business and consumption account and once the Revenue had accepted settlements and mandatory requirement of affixing stamps there was no reason to suspect expenses incurred by assessee towards stamp duty merely based on surmises and conjunctures of AO without bringing any evidence to show that stamps account was incorrect. Accordingly, assessee's appeal was allowed

Steel City Securities vs Asst.CIT [2018] 54 CCH 0232 (Vishakapatnam- Trib.)- ITA No.161/Viz /2017 dated 14.11.2018

3852. The AO had rejected the books results and estimated the net profit at 10% of turnover. He also made additions for unexplained sundry creditors and unexplained unsecured loan (as the identity, genuineness and creditworthiness of the creditors / lenders were not proved by the assessee). The CIT(A) adopted a net profit rate of 8% of turnover however he did not adjudicate on the two issues of unexplained sundry creditors and unexplained unsecured loans, taking a view that since the profits were estimated as such no other addition was called for. The Tribunal, however, held that unexplained sundry creditors and unexplained unsecured loans credited in the books of accounts need to be explained by the assessee else he may have to face provisions of section 68 since they may not have necessary been used for purchase of goods but also for purchase of capital asset or services. Accordingly, it set aside the issues of identity, genuineness and creditworthiness of the sundry creditors and unexplained unsecured loan to the file of the CIT(A) for fresh adjudication.

Asst CIT vs Sanjay Bagdi [2018] 54 CCH 0225 (Indore Trib)- ITA 327/Ind/2017 dated 14.11.2018

3853. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting addition made u/s 68 on account of excess share premium received by assessee on issue of Compulsory Convertible Preference Shares to a Mauritius based Venture Capital Fund over their discounted cash flow (DCF) valuation. The AO contended that the assessee had failed to prove the genuiness of the excess premium. The Tribunal relied on the decision in the case of CIT v Green Infra Limited (2017) 392 ITR 7 (Bom HC) and Gagandeep Infrastructure P. Ltd. (2017) 394 ITR 680 (Bom HC) wherein it was held that once the assessee had discharged burden placed upon him u/s 68, no addition could be made on account of share premium collected. In the instant case, the AO was otherwise satisfied with the identity andcreditworthiness of the investor and that the transactions were carried outthrough banking channels. The Tribunal also accepted assessee's contention that share premium amount worked out as per DCF valuation in the Valuation Certificate for FEMA purpose was the minimum amount that could be collected by the assessee and there was no bar on collecting higher amount as share premium.

DCIT v Varsity Education Management Pvt. Ltd [TS-628-ITAT-2018(Mum)] - ITA No. 6991/Mum/2016 - dated 14.11.2018

3854. The Tribunal allowed assessee's appeal against CIT(A)'s order and deleted addition made with respect to unexplained silver utensils found in the locker of assessee (a married lady) during the course of search for AY 2015-16, relying on the CBDT instruction No.1916 dated 11.5.1994 which directs the income tax authorities conducting the search not to seize the 'jewellery ornaments' found during the course of search of 500 grams per married lady. It accepted the contention that as per Indian customs and traditions, at the time of marriage silver utensils are also given to the bride and held that it is quite possible that the word silver utensils were not included in the CBDT instructions because at that point of time silver utensils were not coming under the category of capital assets. It held that CIT(A) should have taken a liberal approach.

Smt. Rashmi Mujumdar v DCIT [TS-773-ITAT-2018(Ind)] - IT(SS) No.227 to 232/Ind/2017 & ITA No.592/Ind/2017 dated 10.12.2018

3855. The AO made an addition on account of difference in gross receipts as per P&L Account and billing amount (for which bill was raised) in view of understatement of billing amount, considering the same to be unexplained. The CIT(A) deleted the said addition accepting assessee's explanation that the difference between the billing amount and gross receipts was on account of receipts which had accrued during the instant year and accordingly offered as income in the instant year, though the bills were issued in the succeeding year (which was accepted in the assessment framed for subsequent year). The Tribunal upheld CIT(A)'s order holding that the AO had not disputed claim made by assessee, other than to state that no details/explanation were furnished during assessment proceedings. Accordingly, Revenue's appeal was dismissed.

ACIT vs Crayons Advertising Ltd. and ANR [2018] 54 CCH 421 (Del Trib)- ITA No.4872/Del/2015 dated 27.11.2018

3856. The Tribunal allowed Revenue's appeal against CIT(A)'s order wherein the CIT(A) had deleted the addition made by the AO u/s 69B towards unexplained investment in respect of loan advanced by assessee-company through its bank account, but not reflected in the balance sheet. It rejected assessee's submission that in anticipation of an amalgamation, it had arranged the funds to pay one party (JTPL) on behalf of the proposed amalgamating co. 'W' and all the payments (debits) and receipts (credits) were entered into the ledger account of 'W'. It also rejected CIT(A)'s view that once the transactions were recorded in the ledger accounts but did not appear in the balance sheet at the year end as the account was squared off (since the said loan given to JTPL was debited to W's account and the account was credited by amount received from four parties on behalf of 'W'), it could not be said that the investment was not recorded in the books of account. It held that there was no reason whatsoever as to why these sums were routed through account of the assessee except for the scheme

of layering of entries which fall under the realm of money laundering. The Tribunal also took note of Revenue's stand that assessee's explanation of amalgamation proposal was merely an afterthought since the application for amalgamation was submitted to the High Court in 2013 (which was still pending) after the initiation of enquiry by the AO. Accordingly, it upheld the addition made u/s 69B.
ITO v Ved Investment & Trading Co. Pvt Ltd [TS-490-ITAT-2018(Mum)] - I.T.A. No.5376/Mum/2016 dated 21.08.2018

3857. The Tribunal allowed assessee's appeal and deleted the addition made by the AO with respect to additional commission income allegedly earned by the assessee over and above the commission income offered tax tax by the assesssee based on seized document found during search. It was noted that the assessee had earned commission income from MCX dabba trading which he had offered to tax based on seized documents at the rate of Rs.500/- per crore trade value. Whereas, the AO had made an addition to the said income on the basis of statement of Mr.G who had deposed during search proceedings that commission was earned at the rate of Rs.2000/- per crore trade value. The Tribunal noted that there was no material on the basis of which additional commission income at the rate of Rs.1500/- was added and further the assessee was not given an opportunity to cross examine Mr.G. Thus, it held that not allowing the assessee to cross examine the witness by the adjudicating authority, though statements of those witnesses were made the basis of the impugned order, amounted to a serious lapse which made the order a nullity as it amounted to violation of principles of natural justice. Accordingly, it deleted the addition.
HIMANSHU KOHLI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 67 ITR (Trib) 0551 (Delhi) - ITA No. 6590-92/Del/2017 dated 05.09.2018

3858. The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had upheld the addition of cash deposited in assesse's saving bank, rejecting asessee's explanation that had sufficient amount with him out of savings / cash withdrawals of earlier years which was the source of making deposit in cash. The Tribunal noted that the assessee had submitted the cash book in support of his explanation and neither the AO nor the CIT(A) had brought any material to show that assessee did not have the amount to deposit. Accordingly, it held that the plausible explanation of assessee could not be rejected by AO without examining same and bringing any material on record to show why said explanation was not acceptable and thus, deleted the addition made.
AJAY MORE vs. INCOME TAX OFFICER - (2018) 54 CCH 0003 CuttackTrib - ITA No. 273/CTK/2018 dated 12.09.2018

3859. The Court held that, where an addition has been made u/s 68 on account of unexplained cash credit in bank account, in order to avail of the theory of "peak credit", the assessee has to make a clean breast of all facts by explaining each of the sources of the deposits and the corresponding destination of the payment without squaring them off. The ITAT cannot proceed merely on the basis of accountancy and overlook the settled legal position.
CIT vs. JRD Stock Brokers Pvt Ltd (Delhi High Court) - ITA 544/2005 dated 12.09.2018

3860. The Tribunal held that failure by the AO to offer cross-examination of the persons whose statements are relied upon by the AO (for making addition u/s 68 on account of share application money from certain companies) would mean that no adverse inference could be drawn against the assessee on the basis of such statement. It also rejected Revneue's plea for a remand, holding that the assessee had discharged primary onus to prove identity of the investors, their creditworthiness and genuineness of the transaction.
Rajat Exports Import (India) Pvt. Ltd vs. ITO - ITA No. 5637/Del/2013 dated 01.10.2018

3861. The Court held that the share transaction was genuine because it was supported by contract notes, bills, were carried out through recognized stockbroker of the Stock Exchange and all payments made to, and received from, the stockbroker, were through account payee instruments. Thus, it held that a transaction fully supported by documentary evidences could not be brushed aside on suspicion and surmises.
CIT vs. Alpine Investments - ITA No. 620 of 2008 & GA No.2589 of 2008 (Cal HC) dated 26.08.2018

3862. The Tribunal held that a private limited co cannot say that it has no clue about the subscribers to its share capital. The genuineness of the transaction has to be determined by ground realities and not by documents like PAN cards, board resolutions, share certificates etc. Even shell cos have these documents. If the assessee is not able to produce the brains behind these companies and the documents with respect to their financials, the transaction cannot be regarded as genuine.
Pee Aar Securities Ltd vs. DCIT - ITA No. 4978/Del/2014 dated 23.08.2018

3863. The AO made an addition in the hands of the assessee, AOP on the ground that it had not substantiated the identify of the party which provided it an advance. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) observing that the party who provided the assessee with the advance was a member of the AOP, directed the AO to examine the source of funds in the hands of that said party. Accordingly, it upheld the deletion of the addition made by the AO.
DEPUTY COMMISSIONER OF INCOME TAX vs. SUDHIR KR. SINGH - (2018) 52 CCH 0291 PatTrib - ITA No. 35/Pat/2015 dated Mar 7, 2018

3864. The CIT(A) noting that the assessee had received an amount as security premium and had taken unsecured loan prior to the commencement of its business held that the credits could not be treated as income of the assessee as it's business had not commenced in the first place. Accordingly, the Tribunal held that the receipts were capital receipts not subject to tax.
INCOME TAX OFFICER vs. WAII INFRA PRIVATE LIMITED - (2018) 52 CCH 0224 GauTrib - ITA No. 126/GAU/2017 dated Mar 8, 2018

3865. The Court dismissed Revenue's appeal filed against the Tribunal's order deleting the addition made u/s 68 by the AO's on account of share subscription money received by the assessee-company from its shareholder. The Revenue contended that the nature, source and genuineness of the funds invested by the shareholders not established by the assessee. The Court noted that the proviso to section 68, requiring an assessee to explain the source of funds in respect of amounts credited in the books of a company in which the public are not substantially interested was introduced in the Act vide the Finance Act, 2012 w.e.f. 01.04.2013 whereas the relevant AY was 2008-09 and thus, the said proviso had no application. The Court relied on its decision in the case of CIT v Gagandeep Infrastructure Pvt. Ltd. [ITA No. 1613 of 2014 (Bom)] wherein it was held that the said proviso was neither introduced with retrospective effect nor did it indicate that it was introduced for removal of doubts.
Pr.CIT v SDB Estate Pvt. Ltd. – ITA No. 1356 of 2015 (Bom) dated 27.03.2018

3866. The Tribunal deleted the addition made u/s 68 with respect to unexplained cash credit holding that the assessee at assessment stage had produced sufficient evidences before AO so as to discharge its initial onus to prove identity of shareholders from whom the assessee had received share application money, their creditworthiness and genuineness of transactions, where it was noted that (i) to prove identity and creditworthiness of applicants and genuineness of transactions, assessee furnished copies of their certificates of incorporation, copy of ITR, bank statements, balance sheet and payment details (ii) assessee produced all replies filed by these investors in response to inquiry notice issued to them u/s 133(6) before AO in which these investors had confirmed making investments in assessee company and (iii) assessee's request to issue summons against said investors u/s 131 for their production at assessment stage was not considered by AO.
Prinku landfin (P.) Ltd. v ITO – (2018) 91 taxmann.com 120 (Delhi Trib) – ITA Nos. 6004 (delhi) of 2013 dated 02.02.2018

3867. The Tribunal held that addition u/s 69 could not be made on basis of documents being found from premises of third party where neither name of assessee was mentioned nor any document was found evidencing fact that assessee had paid any cash as on-money to said party for purchase of any property
Regency Mahavir Properties v ACIT - (2018) 169 ITD 35 (Mum) – ITA No. 682 & 683 of 2016 dated 04.01.2018

3868. Based on the fresh evidence produced by assessee and admitted by CIT(A), showing that (i) amount deposited in savings bank account (with respect to which assessee had failed to explain source during assessment) actually came from sale of agricultural land, (ii) that population of village where land was situated, was less than 10,000 people and (iii) that land was being used for growing of crops, CIT(A) had deleted the addition made u/s 68 after the AO could not rebut such evidences in remand proceedings. The Tribunal dismissed the frivolous appeal filed by revenue against such CIT(A)'s order noting that the revenue authorities had accepted additional evidence brought on record by assessee.
ITO v Kulwinder Singh – (2018) 91 taxmann.com 177 (Chandigarh Trib.) – ITA No. 1193 (Chd.) of 2017 dated 12.01.2018

3869. The Tribunal deleted that addition made by AO u/s 69C on the basis of papers seized during the course of search at business premises of assessee as per which certain amounts for purchase of land from various sellers had been paid in cash and had not been recorded in books of account, noting that the assessee had not purchased any land from persons mentioned in papers. Tribunal held that neither AO had made any independent inquiry from such persons nor had he brought any adverse material on record or given a finding with cogent evidence contrary to that of the assessee.
Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018

3870. The Tribunal rejected assessee's appeal against addition made by AO as undisclosed income u/s 69A on basis of loose papers seized in respect of cash rental receipt where assessee claimed that she had already offered such cash rental receipts in return filed in response to notice u/s 153A and had asked the AO to telescope the same against other incomes disclosed. Tribunal noted that AO had clearly given a finding that income which the assessee wanted to be telescoped related to separate piece of loose paper and they had nothing to do with seized paper with reference to which this addition had been made. Tribunal further held that merely making such a statement would not support the case of the assessee when incriminating material had been found.
Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 1 (Mum) – ITA Nos. 2771 (Mum) of 2015 dated 16.01.2018

3871. Where assessee, in who cases search was conducted, had entered into an agreement with a company for a professional consideration of US $ 2,40,000 and the copy of ledger and bank statement showed receipts of only US $1,85,930 and subsequently, assessee explained that US $ 54,070 consisted of $ 4070 as tax and $ 50,000 was inadvertently included in list of receipts from unidentified parties, noting that the noting in the copy of loose sheets supported assessee's claim and that it was not case of Revenue that difference in amount which had been explained to be included in head of unidentified parties was any different amount, Tribunal held that assessee's explanation deserved to be accepted. Further, where the assessee submitted that she was not paid full but only half of the amount agreed from a party for participation in an international event without producing any evidence or any letter whereby she had demanded balance amount to be paid, Tribunal held that the impugned addition made u/s 69A was to be confirmed.
DCIT v Ms. Priyanka Chopra – (2018) 89 taxmann.com 297 (Mum) – ITA No. 2523 (Mum) of 2015 dated 16.01.2018

3872. Where assessee as well as her mother gave statements accepting investment of Rs.10 lakhs out of books in purchase of property to clear encumbrances, Tribunal held that the additions so made by AO u/s 68 based upon incriminating material found during search in case of assessee were to be upheld.
Ms. Priyanka Chopra v DCIT – (2018) 89 taxmann.com 288 (Mum) – ITA No. 2770 (Mum.) of 2015 dated 16.01.2018

3873. Based on the fresh evidence in form of copy of sale agreement of landproduced by assessee and admitted by CIT(A) for sale of a piece of agricultural land with respect to which assessee had failed to submit any evidence before AO, CIT(A) had deleted the addition made u/s 69A after the AO accepted that the fresh evidence pertained to advance for sale of specific property in remand proceedings. Tribunal dismissed the frivolous appeal filed by Revenue against such CIT(A)'s order noting that evidence relied upon by assessee had not been rebutted by Revenue authorities and, thus, the occasion to file an appeal against consequential relief did not arise.

ITO v Jagdev Singh - (2018) 91 taxmann.com 24 (Chandigarh) – ITA No. 424 of 2017 dated 04.01.2018

3874. The Court dismissed assessee's appeal against the Tribunal's order wherein the Tribunal had upheld the addition made by AO u/s 68 on account of certain sum received as loan from two companies found to be shell entities by AO, in view of the fact that the bank statement of lender companies revealed high transactions during day and a consistently minimal balance at end of working day and the day assessee was given loan there were credit entries of almost similar amounts, and balance after these transactions was a small amount and the assessee had failed to produce these lenders for verification. It held that the Tribunal had given elaborate reasons to come to conclusion that entire loan transaction was not genuine.
Pavankumar M. Sanghvi v ITO – (2018) 301 CTR 265 (Guj) – Tax Appeal No. 1037 of 2017 dated 12.02.2018

3875. Where the assessee-company had only submitted a copy of acknowledgment of filing return of income of the NRI from whom share application money was received, wherein she had shown a meager income as compared to the money advanced by way of share application and the assessee had neither submitted copies of her capital a/c, balance sheet, bank statement, etc. nor filed any details/evidence as to her activities in Dubai and her source of income in Dubai to substantiate her financial capacity and her permanent address of residence/office of NRI in Dubai, the Tribunal upheld the addition made by AO u/s 68 holding that the assessee had not discharged onus of proving creditworthiness. The Tribunal didn't give credence to a CA certificate submitted by assessee showing the NRI's net worth since in the said certificate the net worth was allegedly based on information available though the said information had not at all been specified and also because Dubai/UAE had no financial regulatory network.
ITO v Spartacus Farms (P.) Ltd. – (2018) 91 taxmann.com 15 (Mum) – ITA No. 3073 (mum.) of 2014 dated 13.02.2018

3876. The AO, on the basis of AIR database of Revenue, had added certain undisclosed income (on which TDS was deducted u/s 194H) to the assessee' income u/s 69. The assessee contended that no income was earned by it and merely because the income was reflected in AIR database, the same could not be added to the income. The CIT(A) directed the AO to verify contentions of assessee as to factual aspect of matter and grant relief on merits. The Tribunal rejected assessee's contention that issuance of the said direction by the CIT(A) was prejudicial to interest of assessee, holding that no prejudice was caused to assessee in undergoing such verifications process more so when said income was reflected in AIR database of Revenue pertaining to assessee.
DCIT v Credila Financial Services (P.) Ltd. – (2018) 192 TTJ 511 (Mum) – ITA No. 1491 (mum.) of 2016 co no. 305 (Mum) of 2017 dated 16.02.2018

3877. Where the assessee had received certain amount as gift from his maternal aunt and the AO had made addition u/s 68 on the ground that the assessee could not show on what 'occasion' such gift was received, noting that the donor had given a confirmation letter clearly stating therein that she gave the said gift out of her natural love and affection towards her nephew and further, in view of section 56(2)(v) which provides that no occasion needs to be proved for accepting a gift from a relative, the Court held that the gift received by the assessee from his relative i.e. maternal aunt, could not be added as unexplained credit u/s 68. With respect to the loan received by assessee from a friend in U.K whose identity and capacity to lend were established, it was held that addition of loan amount to assessee's income as unexplained cash credit u/s 68 was not justified. Similarly, where the copy of bank account statement of one 'JV' from who certain amount of loan was received showed that the said sum was withdrawn from his account and transferred to assessee's account, also establishing the identity of JV and the said sum was repaid by bank transfer, the Court held that the addition of said loan to assessee's income as unexplained cash credit u/s 68 was not justified. Further, where the assessee had received loan from his wife which were out of gift received by her from her father and the assessee's father-in-law had given confirmation letter that he had given amount towards gift to her daughter out of love and affection, it was held that AO could not have raised doubt about capacity of assessee's wife to lend money and, thus, no addition could be made u/s 68 as unexplained cash credit.
Pendurthi Chandrasekhar v DCIT – (2018) 91 taxmann.com 229 (AP&T) – ITA Nos. 701 & 702 of 2016 dated 23.02.2018

3878. The Tribunal deleted addition made u/s 69A with respect to foreign currency found during search with respect to which the assessee had claimed that foreign currency was savings out of foreign tours to various countries after noting that the assessee was regularly travelling abroad to the countries where these currencies were used, that the assessee had purchased reasonable quantities of these foreign currencies for his use and the quantities of these currencies found in possession of the assessee were of small amounts. However, the Tribunal upheld the addition made u/s 69A with respect to foreign currency found during search with respect to which the assessee had claimed he had received it as gifts from donors, noting that the source of earning of donors and their bank statements was not available, there were no contemporaneous evidence in support of these gifts and amount being huge, explanation offered by assessee about gifts was unacceptable.
Samir S. Sheth v ACIT – (2018) 92 taxmann.com 275 (Ahmedabad Trib) – ITA No. 1310 (Ahd.) of 2009 dated 27.02.2018

3879. The Tribunal upheld the addition made by AO u/s 69 on account of some loose papers/documents seized during search proceedings which indicated investments of huge amount made by assesse, even though the assessee's MD had denied making such investments as he could not explain nature of transactions found in said documents to satisfaction of AO. It held that since assessee merely denied said investments without tendering any credible explanation, assesse didn't discharge the initial burden of proof to show that investments transactions in loose sheets were not in nature of income.
DCIT v Geneva Industries Ltd. – (2018) 90 taxmann.com 406 (Bang) – ITA No. 1560 & 1628 (Bang) of 2013 dated 19.01.2018

3880. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 during assessment proceedings initiated pursuant to search conducted at assessess's premises on account of share application money received from some parties, noting that no adverse material was found during course of search to prove that share application money received by assessee was bogus or was an arranged affair of assessee. The AO had not brought any evidence on record that investments made by investor companies actually emanated from coffers of the assessee-company so as to enable it to be treated as undisclosed income of assessee. Further, it held that the AO could not ask assessee to prove source of source and thus the assessee had discharged initial onus to prove identity of investor companies, their creditworthiness and genuineness of transaction.
ACIT & ORS. v GARUDA IMAGING & DIAGNOSTICS PVT. LTD. & ORS. – (2018) 191 TTJ 0765 (Del Trib) – ITA Nos. 449, 450 & 451/Del./2016, 446 & 447/Del./2016, 449 & 447/Del./2016 (C.O.No.163, 164 & 165/Del./2016, 121 & 122/Del./2016) dated 05.01.2018

3881. AO not being satisfied with materials furnished by the assessee with respect to certain amounts received as share application money from a company, held that assessee did not discharge onus/burden of proving genuineness of identity of applicant, genuineness of transactions or creditworthiness of investor and made addition u/s 68. CIT(A) set aside the addition and the Tribunal confirmed the CIT(A)'s order. The Court dismissed Revenue's appeal against the Tribunal's order noting the existence of company as income tax assessee and that it had furnished audited accounts and bank details was not in dispute, irrespective of the fact of lone circumstance of Director of the said company disowning the document per se. It held that if the AO were to conduct his task diligently, AO ought to have at least sought material by way of bank statements etc. to discern whether in fact amounts were infused into shareholder's account in cash at any point of time or that amount were such as to be beyond the means of share applicant and in absence of any such enquiry, the findings that assessee had not discharged onus placed upon it by law was unreasonable.
PR.CIT v ORIENTAL INTERNATIONAL CO. PVT. LTD. – (2018) 101 CCH 4 (Del HC) – ITA 9/2018 dated 08.01.2018

3882. In the case of two assessees, one (MM) being the purchaser of the property i.e. agricultural land and other (MS) being seller of the said property, which were heard together, MS and MM claimed that the cash recovered by police from MS was received by him from MM on account of sale of his agricultural land to MM. Finding that there was a difference in value mentioned in sale deeds and cash recovered and not being satisfied by MM's explanation about the source of cash, the AO assessed the cash over and above the amount mentioned in the sale deeds as unaccounted income u/s 69 in hands of MM. In case of MS, the AO treated the value mentioned in the sales deed as sales consideration towards

transfer of property and considered the remaining amount of cash recovered as unexplained cash u/s 69A. Noting that except his own statement, MM had failed to produce any other plausible evidence to rebut circumstantial evidences on file that MM had paid amount over and above sale consideration mentioned in registered deed, the Tribunal upheld the addition made in the case of MM. In the case of MS, the Tribunal held that the consideration in question could not be said to be amount received towards sale consideration of land, rather, the same constituted extra money paid as consideration for execution of registered deed of sale of land and not for sale of land itself, taxable as income from other sources since the amount received over and above sale consideration mentioned in registered document, partakes character of taxable gift.

ACIT & ORS. v MOHINDER SINGH & ORS. – (2018) 52 CCH 55 (Chd Trib) – ITA No. 665/Chd/2016, 666/Chd/2016, 474/Chd/2017 dated 18.01.2018

3883. Pursuant to search operations conducted u/s 132/133A in case of the assessee, the AO issued notice u/s 153A and noting that in the relevant year, the assessee-company had received share capital and share premium from a Mauritian company, called for assessee's explanation to verify the genuineness of the transaction and also to verify the identity and creditworthiness of the said company. The AO had also received information through FT & TR Division stating that the said investor company had shown income of only 3 US $ and accordingly, he added the amount of share capital and share premium received as unexplained cash credit u/s 68. The CIT(A) deleted addition noting that on date of search original assessment was completed and subsequently no incriminating material was found during course of search against assessee so as to prove that assessee had received any bogus share capital/share premium so as to warrant addition u/s 68 and the AO had not made any enquiry on documentary evidence filed by the assessee which included the details of its turnover, net profit, net worth and dividend declared by the said company which in total were sufficient reasons for foreign investor to make investment in the assessee-company. The Tribunal upheld the CIT(A)'s order and held that the assessee had discharged its initial onus to prove the identity of the investor company, its creditworthiness and genuineness of the transaction, noting that the reply received from Mauritius Revenue Authorities proved identity of investor, its creditworthiness and genuineness of transaction and that it was not reported if any, cash was found deposited in account of investor before making investment in assessee company and the fact that not only in AY under appeal but in earlier years also, the said company had made investment in assessee-company through banking channel supported by documentary evidence.

ACIT & ORS v SPECTRUM COAL & POWER LIMITED & ORS. – (2018) 52 CCH 72 (Del Trib) – ITA Nos. 6103-6104, 5585-5587 & 3221-3222/Del./2016 (Cross Objection Nos. 15-16, 210 & 1/Del./2017 & 247-248 & 355/Del./2016) dated 17.01.2018

3884. The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the addition made by the AO as unexplained investment on account of investment made by assessee along with other family members in a company promoted by them from amounts received on sale of gold and borrowings, noting that –

- no enquiry was conducted in assessee's case and those enquiries conducted in some of other promoters cases could not be relied upon, in absence of cross-examination
- Observations of the CIT(A) did not state that sources were totally bogus and since no enquiries worth were made, the CIT(A)'s order could not be relied on for denying genuineness of credits
- affidavits from the creditors in support of borrowals furnished were not disproved

N. SRINIVAS v JCIT – (2018) 52 CCH 34 (Hyd Trib) – ITA No. 1400/HYD/2012 dated 12.01.2018

3885. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 as unexplained cash credit on the ground that the assessee had not proved the creditworthiness of the Investor Company, noting that the assessee-company had produced sufficient documentary evidence before the AO to prove the ingredients of section 68, however, the AO had failed to conduct any enquiry and scrutiny of documents at assessment stage and merely suspected transaction between the Investor Company and the assessee-company because Investor Company was from Kolkata. It held that the assessee-company had discharged its initial onus to prove identity of the Investor Company, its creditworthiness and genuineness of transaction.

ACIT & ANR. vs. TRN ENERGY PVT. LTD. & ANR. – (2018) 52 CCH 23 (Del Trib) – ITA No. 453/Del./2016 (C.O.No.96/Del./2016) dated 01.01.2018

3886. The Tribunal sustained disallowance made by AO u/s 69C for want of confirmation letters and difference in balances of sundry creditors and sundry debtors to the extent of 20% of the amount noting that assessee had proved majority of expenses and furnished primary details for all expenditure but there was failure on part of assessee to reconcile difference and obtain confirmation letters from certain parties since they had closed business or were not traceable.
Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018

3887. The Tribunal deleted addition made u/s 68 by the AO on the basis of investigation/enquiry conducted by Investigation Wing in case of some companies whose business activities were suspicious and which were indulging in entry operation, wherefrom it was revealed that assessee had received money through those companies. AO had noted that the assessee-company had received unsecured loan and share application money from these companies but failed to submit documentary evidences in respect of share allotment made to these companies and opined that these transactions were sham. Tribunal, however, noted that assessee had furnished names and addresses of share applicants, their PAN and confirmation with their bank account and Income-tax returns and that the AO had not at all carried out any investigation to show that those companies did not exist but were paper company or they were not having worth of investing and transaction lacked genuineness. It further noted that the investigation wing report was not shown to assessee and held that the assessee had discharged initial onus cast upon him u/s 68.
ACIT v Shyam Indus Power Solutions (P.) Ltd. – (2018) 90 taxmann.com 424 (Del) – ITA Nos. 3223 & 3224 of 2016 CO Nos. 249 & 250 (Delhi) of 2016 dated 29.01.2018

3888. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 on account of fresh share capital received along with share premium from a company. The AO had opined that the said company was not having sufficient sources of income. The Tribunal noted that from the bank account it was evident that the amount was transferred from such account on various dates and that the assessee had filed copy of return of income and confirmation of the said company for having paid money for share capital and share premium. It held that nothing adverse was brought on record by the AO, which could prove that money received from the said company was not its own money rather an accommodation entry and that the documentary evidences filed by the assessee before the AO satisfactorily established that the said company had applied for share capital and share premium out of its own money which was realized from sale of its investments reflected in balance sheet.
DCIT v DRS ROOF-TECH & INFRASTRUCTURAL PVT. LTD. – (2018) 52 CCH 7 (Del Trib) – ITA No. 4355/DEL/2012 dated 04.01.2018

3889. The Tribunal held that if the balance sheets and other details of the investor companies as submitted by assessee did not show that companies had made investment in assessee company, then the share capital issued by assesse was to be considered as unexplained and addition u/s.68 was required to made.
COMMISSIONER OF INCOME TAX & ANR. vs. DIAMOND HUT INDIA PVT. LTD. & ANR. - (2018) 52 CCH 0263 DelTrib - ITA No. 3428 & 3425/Del/2013, 3427/Del/2013 dated Mar 5, 2018

3890. Where the assessee failed to explain the source of the funds which he used to granted an advance to a film producer in India (which was repaid during the year), the Tribunal held that the AO was justified in making an addition in the hands of the assessee. It dismissed the assessee's submission that he had received the funds from a US based company and noted that the AO on inquiry with the US tax authorities had found out that the said company had stopped operations. Accordingly, it held that the explanation provided by the assessee was not sufficient.
SYED SERWAT SEVY ALI vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 52 CCH 0211 MumTrib - ITA No. 1638/Mum/2015 dated Mar 9, 2018

3891. The Court confirmed the order of the AO making addition on account of peak cash credit in the hands of the assessee noting that a sum of Rs. 33 lakh had been deposited in the bank account of the assessee

and his minor sons which the assessee claimed as receipt of advance towards sale of property (total consideration of 45 lakh). The Court upheld the order of the Tribunal and noted that i) the assessee had failed to provide the agreements to sell to the AO and only did so belatedly before the CIT(A) ii) it seemed unbelievable that the purchaser of the property would pay 75 percent of the consideration wholly in cash iii) the cash advance was not deposited in the assessee's bank account on a single date but was deposited on different dates and iv) the buyers had declared income of Rs.1.48 lakh, 1.54 lakh and 0.69 lakh respectively and therefore the financial capacity of the buyers had not been established. Accordingly, it dismissed assessee's appeal and upheld the addition stating that the agreement to sell and the receipt of Rs. 33 lakh was sham and make belief.

KRISHAN KUMAR SETHI PROPRIETER vs. COMMISSIONER OF INCOME TAX & ANR. - (2018) 101 CCH 0109 DelHC - ITA 101/2017 dated Mar 14, 2018

3892. Where the assessee received a sum as advance against the sale of its property from U and the assessee filed a confirmation from U along with its bank statement, acknowledgment of filing ITR and balance sheet, and the fact that the assessee was owner of the property was undisputed, the Tribunal upheld the CIT(A)'s order and held that the AO was unjustified in making an addition under Section 68 merely because the agreement to sell was made on plain paper as against stamp paper. It held that the evidences filed by the assessee evidenced the creditworthiness and genuineness of U and also noted that the entire transaction was duly recorded in the books of accounts.

INCOME TAX OFFICER vs. NECLEUS STTL PRIVATE LIMITED - (2018) 52 CCH 0221 DelTrib - ITA No. 369/Del./2015 dated Mar 23, 2018

3893. Pursuant to search conducted in the premises of the assessee, the assessee's explanation was that the gold jewellery was gifted to his family members on various occasions and family get-together, such as marriages, birthdays etc for which he produced photographs taken on family occasions. The AO however rejected the explanations and made an addition on account of unexplained investments alleging that the gold, silver and jewellery found at his premises was excessive. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) deleted the addition observing that the assessee's submission was reasonable considering the societal pattern in India and also that the jewellery was claimed to be belonging to other family members of the assessee who were also Income Tax Assessees. The CIT(A) estimated that out of the total jewellery, 30 percent could be reasonably attributed to the assessee (amounting to Rs.39 lakh) and accordingly held that considering the assessee's returned income in his individual capacity from AY 2005-06 to AY 2011-12 aggregated to a little under Rs 4 crores, the assessee could reasonably explain the source of his individual investment. Accordingly, the Tribunal dismissed Revenue's appeal.

ASSISTANT COMMISSIONER OF INCOME TAX vs. KANDULA VISVESWARA RAO - 2018) 52 CCH 0240 HydTrib - ITA No. 55/Hyd/2016 dated Mar 28, 2018

3894. The Tribunal held that the AO was not justified in making an addition on account of bogus purchases based on the statement of one Rajendra Jain wherein he stated that the one of the entities from whom the assessee had purchased diamonds was engaged in the business of providing accommodation entries noting that i) the statement of Rajendra Jain was subsequently retracted ii) the assessee maintained regular books of accounts including day to day stock register iii) the assessee proved the quantity and quality details of stock from which purchase, consumption and sale of stock by way of bills containing the name, address as well as sales tax numbers together with PAN and ledger accounts of those parties from whom goods were purchased and iv) the assessee had furnished a summary of diamonds movement indicating quantity and value in opening balance, purchases, sales and closing balance and v) the AO accepted the fact that purchases of diamonds indeed had been made by assessee, Noting that the payments were made through banking channels in the subsequent year, the Tribunal held that the AO erred in alleging that the assessee had received the cash back in lieu of account payee cheques (to make purchases in the grey market) in the year under review and held that since the payment was made by the assessee in the next year even assuming the AO's allegation that the supplier was an accommodation entry provider was correct, no cash could would be received by the assessee during the year under review and therefore the allegation that the assessee purchased the diamonds in the grey market was unsustainable. Accordingly, the addition was deleted.

M.B. JEWELLERS & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0234 KolTrib - ITA No. 1/Kol/2017 dated Mar 28, 2018

3895. Where the assessee did not earn any business income as a result of which no books of accounts were maintained by it, the Tribunal held that no addition under Section 68 of the Act could be made on the basis of the assessee's pass book as the pass book could not be considered as its books of accounts.
NANOOMAL GUPTA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0249 AgraTrib - ITA Nos. 275 to 278/Agra/2013 datedMar 26, 2018

3896. Where pursuant to information received from the Director General regarding beneficiaries in hawala transaction as detected under statement during investigation by the Sales tax department , the AO reopened the assessment proceedings for the year under review and made addition in the hands of the assessee on the ground that the assessee failed to produce original bills or copies of purchases made from alleged parties for verification, transport and octroi receipts and the CIT(A) reduced the addition to 25 percent of the value of purchases noting that this was not a case of bogus purchases but that of inflated purchases , the Tribunal held that since the assessee was not given an opportunity to cross examine the person whose statement was relied on for the purpose of reopening the assessment despite of its request, no addition on account of bogus purchases could be made.
ANITA SANJAY AGRAWAL & ORS. vs. INCOME TAX OFFICER & ORS. - (2018) 52 CCH 0257 PuneTrib ITA Nos. 2622 to 2624/PUN/2016 dated Mar 28, 2018

3897. The assessee was engaged in trading of plots, agricultural land and minor development work. During the year its authorized capital of assessee company had increased pursuant to allotment of shares of Rs.10 face value at a premium of Rs. 90 per share to the five companies, for which the assessee filed confirmation from parties along with their memorandum of articles, permanent account number and ciopy of their bank statements as evidence. AO found that bank statement submitted by assessee was totally different from bank account statement submitted by banker of share subscribers and therefore made addition u/s 68 holding that assessee failed to prove creditworthiness of depositors as well as genuineness of transaction. The Tribunal observed that the bank accounts submitted by assessee along with confirmation of depositor were forged and not correct statements and dismissing the claim of assessee that it was not required to prove source of credit and noted that the bank accounts of depositor companies clearly showed that cash was deposited of huge amounts subsequent to which it issued cheques. Further, it noted that the investment shown in balance sheet of the depositor companies did not tally with the balance sheet of the assessee. Accordingly, it confirmed the addition.
SHAAN CONSTRUCTION PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0243 DelTrib - ITA No. 4520/Del/2009 and 613/Del/2013 dated Mar 28, 2018

3898. The assessee withdrew certain amount of cash from her bank account to buy property for which earnest money in cash was to be paid. As the deal could not be fructified, a part of such amount was re-deposited in same bank account after more than 7 months. The AO, treated the same as unexplained cash credit and addition was made under section 68. The Court held that since the explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible, the impugned additions under section 68 were to be deleted.
Jaya Aggarwal v ITO - [2018] 92 taxmann.com 108 (Delhi) - IT APPEAL NO. 315 OF 2005 dated MARCH 13, 2018

3899. The Tribunal held that the share premium received by the assessee was to be taxed as undisclosed income under Section 68 considering that (a) the directors were allotted shares at par while others are allotted at premium, (b) the high premium was not justified by a valuation report, (c) the high premium was not supported by the financials, (d) based on financials the value of shares was less and no genuine investor would invest at the premium.
M/s. Cornerstone Property Investments Pvt. Ltd v ITO - I.T. A. No.665/Bang/2017 dated 09.02.2018.

3900. Where in order to prove genuineness of share transactions, assessee submitted confirmation, bank statements, copies of returns, PAN of share applicants, the Tribunal held that the assessee had discharged the primary onus cast upon it by section 68 and thereupon it was incumbent upon AO to carry out investigation for falsifying evidence submitted by assessee and, since, he failed to do so, impugned addition made under section 68 was to be set aside.
Deem Roll Tech Ltd. v DCIT - [2018] 92 taxmann.com 72 (Ahmedabad - Trib.) - IT APPEAL NO. 3619 (AHD.) OF 2015 dated MARCH 1, 2018

3901. The Tribunal held that the AO was not justified in making addition under Section 68 merely on the ground that 4 of the 19 parties to whom the assessee had issued shares had not responded to the AO's notice under Section 133(6) of the Act. It held that no adverse inference could be drawn against the assessee merely because the replies had not been received by the AO more so when the assessee had furnished name, address, PAN, etc supporting evidences in respect of each of the shareholder which included confirmation, copies of bank statements of each of the shareholder, copy of share application form, copy of income tax return, copy of audited balance sheet and profit and loss account.
UMBRELLA PROJECTS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0154 DelTrib - ITA No. 5955/DEL/2014 dated Feb 23, 2018

3902. The Tribunal held that the AO was not justified in making addition under Section 68 of the Act on the ground that assessee failed to produce attendance of the directors of companies who subscribed to the share capital of the assessee and that the income of the companies who invested in the company was meagre. The Tribunal held that income of the concern could not be the basis to disbelieve the creditworthiness of the concern if it had sufficient capital and free reserves and also noted that the assessee had provided the affidavits of the directors of the companies confirming the investment in the assessee. It noted that the assessee had duly filed the Form 2, board resolutions, certificate of incorporation, MOA, PAN Card, bank statements and ITR copies of the all the investee companies and accordingly held that it had discharged its duty. Accordingly, it deleted the addition made under Section 68 of the Act.
ZION PROMOTERS & DEVELOPERS PVT. LTD. vs. ADDITIONAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0137 DelTrib - ITA No. 679/Del/2015 dated Feb 28, 2018

3903. The assessee company was engaged in business of manufacturing, trading and exporting pharmaceutical items and had received share application money during the year under review. The AO noting that the assessee received share application money from 3 parties but the cheque deposits in Bank of Baroda were made by single person held that the assessee failed to discharge genuineness of transactions and creditworthiness of parties and accordingly treated the amount received as undisclosed income and same was brought to tax u/s 68. The Tribunal upheld the order of the CIT(A) deleting addition and held that since the i) share applicants had paid share application money to assessee through bank accounts also disclosed investments in their financial statements for relevant financial year ii) the assessee had furnished necessary evidence to prove identity of share applicants and their PAN details to AO, and the AO had brought noting on record to refute the same, the department could not make addition in the hands of the assessee and was free to proceed to reopen the individual assessments in hands of the investors, if permissible in law.
DEPUTY COMMISSIONER OF INCOME TAX vs. ALCON BIOSCIENCES PVT. LTD. - (2018) 52 CCH 0231 MumTrib - ITA No. 1946/Mum/2016 dated Feb 28, 2018

3904. Where the assessee failed to offer any explanation vis-à-vis the source of investment made by him in agricultural land and had failed to respond to the notices issued by the AO under Section 143(2) and 142(1) of the Act, the Tribunal upheld the order of the AO making addition on account of unexplained investments in the hands of the assessee pursuant to search proceedings. It observed that the balance sheet submitted by the assessee did not disclose any investment in agricultural land and that the contention of the assessee that the source of the funds was the sale proceeds arising out of sale of land by its HUF was unsubstantiated.
Sekhar Reddy v ACIT – (2018) 52 CCH 0140 Hyd Trib – ITA No 1392 / Hyd / 16 – dated Feb 28, 2018

3905. Where, over and above the fact that the assessee furnished copy of Income-tax Returns, balance-sheet, profit and loss account as well as bank statement of lender, apart from copy of annual return filed by lender with Registrar of Companies etc, the assessee paid interest on the loan and had in fact repaid the loan, the Tribunal held that the AO was not justified in treating the loan as an unexplained cash credit in the hands of the assessee merely because the lender was not produced before the AO. Accordingly, it dismissed Revenue's appeal.
DEPUTY COMMISSIONER OF INCOME TAX vs. JBR NIRMAN PVT. LTD. - (2018) 52 CCH 0274 AhdTrib -ITA No. 2694/Ahd/2014 dated Feb 28, 2018

3906. The Tribunal observed that i) the bank statement of the lender had a meagre balance of Rs.7,000 to Rs.8,000 rupees and only when the lender lent money to the assessee of Rs 10 – 15 lakh was there a corresponding credit of the same amount in the bank statement ii) the lender had a turnover of Rs.122.92 crores but had no closing stock, and declared a profit of only 0.09% on the turnover leading to a tax payment of Rs.1,96,138 iii) the lender made purchases of Rs.123.04 crores but all that the lender spent on salaries was Rs.2,26,000, office expenses of Rs.8,560, office rent of Rs.27,600 and printing and stationary of Rs.8,560. iv) the lender conducted its business without a rupee spent of telephones and accordingly held that the addition made in the hands of the assessee under Section 68 was justified as the lenders were not genuine.
PAVANKUMAR M. SANGHVI vs. INCOME TAX OFFICER - (2018) 101 CCH 0156 GujHC - TAX APPEAL NO. 1037 of 2017 dated Feb 12, 2018

3907. The assessee a public limited company reported receipt of sum as share premium and call in arrears pertaining to offering in public issue made by assessee in 1994-95. The AO for the impugned year AY 2005-06 made an addition under Section 68 on the ground that the assessee failed to explain mode of receipts of money received as share premium and calls in arrears and also failed to furnish address of all such persons, despite sufficient time and several opportunities provided. The Court upheld the order of the CIT(A) and Tribunal wherein it was held that the assessee being public limited company could not be expected to keep track of its individual shareholders and their details. It noted that the assessee had more than 50,000 shareholders and its shares were quoted at Bombay and Delhi Stock Exchanges and that its trading results had been accepted year after year and accordingly held that, there was no reason to suspect that assessee was having funds outside account books. Moreso it held that no addition had been made in the earlier years and accordingly dismissed Revenue's appeal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. RATHI ISPAT PVT. LTD. - (2018) 101 CCH 0039 DelHC - ITA 151/2018 dated Feb 9, 2018

3908. The Tribunal upheld Revenue's plea that the assessee (a private limited company & engaged in real estate business) received high share premium as a conduit to route the funds involved as a 'layering' process and held that the share-premium of Rs.49.5cr was taxable u/s 68 as unexplained cash credit considering the facts that i) there was no proper valuation report to justify high premium ii) the financials were relatively weak compared to high valuation iii) issue of shares to directors was at par and therefore in light of the discrepancies / abnormal features held that the share issue was "made up" to camouflage the real purpose/intention of routing money.
Cornerstone Property Investments Pvt. Ltd. - TS-97-ITAT-2018(Bang) - I.T. A. No.665/Bang/2017 dated : 09.02.2018.

3909. Where the AO made an addition on account of bogus purchases in the hands of the assessee and made addition at the entire value of purchases [which was reduced to 12.50 percent by the CIT(A)], the Tribunal noted that Assessee was neither able to produce any of parties nor was able to provide evidence as to the transportation of goods but also noted that the sales were not disputed. Accordingly, it upheld the order of the CIT(A).
RAMNIKLAL BROTHERS vs. INCOME TAX OFFICER - (2018) 52 CCH 0083 MumTrib -ITA No. 3155/Mum/2017 dated Feb 6, 2018

3910. Where the AO added as income the entire turnover determined by excise authorities as assessee's sales after excluding turnover already shown in books of account and the CIT(A) directed the AO to estimate income at 6.2% being the average profit on gross turnovers of the impugned years, noting that the assessee had no objection for adopting the excise turnovers in income-tax proceeding, the Tribunal directed the AO to adopt same profit ratio as offered by assessee on disclosed turnovers to undisclosed turnover as well, in each of assessment years. It deleted the addition made in respect of unaccounted purchases, since the Central Excise Authorities quantified turnover based on various inputs like fund flow into various bank accounts etc, once turnover was brought to tax, any unaccounted purchases pertaining to that turnover would get adjusted in same and, thus, there was no need to separately bring to tax unaccounted purchases.
ALLADI DRILLING EQUIPMENTS PVT. LTD. & ANR. v DCIT – (2018) 52 CCH 31 (Hyd Trib) – ITA Nos. 881 to 884/Hyd/16 & 913 to 916/Hyd/16 dated 12.01.2018

3911. The Tribunal remanded the issue of taxability of bogus accommodation entries with respect to the sum involved in assessee-company's bank account opened and operated by assessee's ex-director (Mr. Pradeep Jindal, who was the director till September, 2000), to the file of AO for AYs 2000-01, 2001-02 and 2002-03 noting that the AO made addition in the hands of the assessee based on the information from investigation wing and statement of Mr. Jindal (admitting that he was involved in providing accommodation entries). It took note of modus operandi and observed that all the transactions carried out by Mr Pradeep Jindal from the account of the assessee company or from the other companies named in the statement were all bogus transactions which had not at all been recorded in the books of accounts. It further noted that the AO had merely made the addition without identifying the real beneficiaries of the accommodation entries and that the banking transactions were carried out without proper KYC norms. The Tribunal held that unless the assessee came out with the clean hands before the Ld. assessing officer it could not escape the taxation of the whole amount and accordingly remitted matter back to AO and directed AO to make complete examination of the bank accounts and identify the beneficiaries with the discretion to also take into consideration the applicability of Prohibition of Benami Property Transaction Act, 1988 on such transactions and make necessary efforts to penalise the entry operator, the beneficiaries and the bankers, if found guilty.
View Judgement
Precision Agencies Pvt. Ltd [TS-94-ITAT-2018(DEL)] - ITA No. 1814/Del/2013 dated 05/02/2018

3912. The Tribunal upheld the CIT(A)'s order deleting the addition made u/s 68 of unexplained cash credit by the AO on protective basis on account of share application money received from two shell companies, noting that investigations had revealed the names of persons who were 100% shareholders of two companies which had introduced share application money in the assessee-company and the Apex Court in the case of CIT v. Lovely Exports P. Ltd. [2009] 319 ITR (St.) 5 (SC) has held that if share application money was received by assessee company from alleged bogus shareholders, whose names were given to the AO, then Department was free to proceed to re-open their individual assessments in accordance with law.
RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015dated Apr 10, 2018

3913. The Tribunal upheld the CIT(A)'s order deleting the addition made on account of unsecured loan / cash credit with respect to which the assessee had not proved the genuineness of liability, noting that the assessment was completed by the AO u/s 144 by estimating net profit @ 12% [reduced by the CIT(A) to 8%]. It relied on the decision in the case of CIT Vs. G.K.Contractor [ITA No.13 of 2009 (Raj)] wherein it was held that even if assessee had failed to discharge his onus of proof in explaining cash credits shown in books of account, the AO having estimated higher profit rate on total contract receipts after rejection of books of account, no separate additions could be made on account of unexplained cash credit u/s 68.
ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. CLASSIC SUPPER CONSTRUCTION & ANR. - (2018) 52 CCH 0483 CuttackTrib - ITA NO. 57/CTK/2015, 180/CTK/2017dated Apr 11, 2018

3914. Based on admission of 'one' person during the search operation that the group from which the assessee purchased goods was issuing bogus bills, the AO made addition in the assessee's case on account of the alleged bogus purchase. The Tribunal deleted the said addition noting that (i) the three suppliers from whom purchases were made had not only appeared before the AO but also filed an affidavit confirming the sales made by them (ii) they had filed book entries, bills, bank statements in support of their claim of genuine sales (iii) the assesse had made only export sales and there was no doubt about genuineness of such sales.
SHANTIVIJAY JEWELS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0354 MumTrib - ITA No. 1045/Mum/2016dated Apr 13, 2018

3915. The assessee received discounted value of advance lease rental from MGPL for leasing of gas cylinders. The AO doubted the entire transaction and treated such sum as income of the assessee from undisclosed sources and made addition under Section 68 of the Act. CIT(A) upheld order of AO. The Tribunal deleted the addition made by AO and held that in context of cash credit in books of accounts, it was primarily liability of assessee to establish identity, genuineness of transaction and credit worthiness of donor. And that the Assessee was not required to establish source of source. However, the Court

observed that MGPL virtually paid 80% of cost of equipment for taking it on rent. Since neither the assessee nor MGPL provided full details of payments made to assessee and that MGPL avoided producing its books of account citing reason of their incompletion, the Court held that the assessee could not prove the genuineness of the transaction. Thus, the revenue's appeal was allowed.
CIT vs. LABH LEASE & FINANCE LTD. (HIGH COURT OF GUJARAT) (R/TAX APPEAL No. 1242 of 2007) dated May 10, 2018 (102 CCH 0090)

3916. The Tribunal deleted the addition made by the AO u/s 68 treating the amount received on sale of shares of a company 'U' listed on recognized stock exchange (the priceof which had increased 3100% in 24 months) to be unaccounted income. It held that the addition was made merely on suspicion and in a routine and mechanical manner. It noted that the AO had referred to a company 'S' as being the manipulated company, whereas the assesse had sold shares of 'U' company. Further, the AO had made general statements about various enquiry been carried out by the Directors of Income-tax which had resulted in unearthing of a huge syndicate of entry operators, share brokers and money lenders involved in providing of bogus accommodation entries. Noting that neither any report nor any evidence collected by DIT had been brought on record, it held that the evidence collected from third parties could not be used against the assessee without giving a copy of same to assessee and thereafter giving him an opportunity to rebut same. Thus, the Tribunal allowed the assessee's appeal holding that the assessee's submissions were backed by evidence whereas the revenue had not based its finding on any evidence.
PRAKASH CHAND BHUTORIA vs. INCOME TAX OFFICER - (2018) 53 CCH 0275 (Kol Trib) - ITA No. 2394/Kol/2017 dated June 27, 2018

3917. The Court dismissed assessee's appeal against the AO's order making addition u/s 68 on account of share application money received by the assesse-company from an HUF and another company, noting that the assesse could not establish the identity of the both the entities. It was noted that apart from the fact that the two alleged share applicants did not show up before the AO and the documents pertaining to the share applicants which were produced by the assessee did not demonstrate that such alleged applicants had invested in the share capital of the assessee, in the case of the HUF when some additional documents or information were sought, the stock excuse was that the relevant person was "out of station". Further, with respect to the investor company, the AO made enquiries and discovered that the registered address of the said company was in a residential complex and none of the neighborhood knew about such company. The Court held that upon the identity of the person who has put in the money being established by the assessee, the onus is on the Revenue to discredit the explanation offered in terms of section 68, however, in the present case, the identities of the alleged share applicants could not be established. It thus held that since the AOhad found on facts that there was no plausible explanation justifying the cash credits and the Tribunal accepted the same, no substantial question of law was raised.
J. J. DEVELOPMENT PVT. LTD. vs. COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0120 (KolHC) - ITAT No. 329 of 2016 & GA No. 2631 of 2016 WITH GA No. 1308 of 2018 dated June 27, 2018

3918. The Tribunal allowed the assessee's appeal and deleted the addition made by the AO u/s 68 on account of share application money received by the assesse-company from another company, where the assesse had submitted all the relevant documents but the assesse could not produce the director of the investor company. It held that once all important and crucial documents were filed by the assessee to prove its case qua share capital received u/s 68, then simply harping on non-production of director in person before the AO could not be justified ground to draw adverse inference without adequate discharge of secondary burden lying on AO u/s 68. The Tribunal held that even if there was any doubt regarding the creditworthiness of the share applicants, then the AO should have made enquiries from the AO of the share subscribers as held by Hon'ble High Court in CIT vs Dataware Private Limited [ITAT No. 263 of 2011 (Cal HC)], in absence of which no adverse view could have been drawn. It held that the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus had shifted to the AO to disprove the documents furnished by assessee and the same could not be brushed aside by the AO to draw the adverse view.
MOTI ADHESIVES PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0249 DelTrib - ITA No. 3133/Del/2018 dated June25, 2018

3919. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 on the alleged ground that the assesse had obtained accommodation entries in form of unsecured loans from entities. It was held that the AO had made addition only based on presumption and the statement of one of the concerned party which was also retracted later, noting that he did not make any efforts to conduct independent enquiries with the lender companies. It noted that nothing was placed on record to suggest that the information furnished by the assessee [in the form of copy of affidavit, establishing identify of the lender, copy of the ledger giving details of loans confirmation taken and also repayment in subsequent years, copy of bank statement highlighting the natures of loan taken and repayment in subsequent years to establish the genuineness of the transactions and copy of ITR -V filed establishing creditworthiness of the lender] were non-genuine. Further, it noted that the interest was paid through banking channel by the assessee on such loans and no cash was found even during the survey. It thus held that the assessee had discharged its onus as provided u/s 68.
ASSISTANT COMMISSIONER OF INCOME TAX vs. SHREEDHAM BUILDERS - (2018) 53 CCH 0212 MumTrib - ITA No. 5589/Mum/2017 dated June22, 2018

3920. The AO made addition u/s 68 of cash deposited in the assessee's bank account, which the assessee claimed were on account of travel cheques and gift from father, but the AO didn't accept the said explanation. The Tribunal noted that generally after lapse of time, the details of traveler cheques are not available with the assessee but the assessee was not given credit also with respect to the amount withdrawn from his NRE A/c, which was evidenced by Bank entries. The amount gifted by his father was also withdrawn from his bank account and the father had given confirmation for such gift. It held that just because the confirmation was not dated, it could not be rejected. Further, it was noted that when the matter was remanded to AO by the CIT(A), the AO didn't make any enquiries and without rejecting the evidences filed by the assesse, simply disbelieved them. Noting that the assessee was a**n**NRI having substantial withdrawals from US and was also globe trotter being a senior employee, the Tribunal held that the explanation given by the assessee could not be simply rejected when he stated that he had encashed traveler cheques and deposited cash in bank account. It thus held that the amounts were explained and hence addition was not warranted.
VENU MYNENI vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 53 CCH 0216 (HydTrib) - ITA No. 2094/HYD/2017 dated June 22, 2018

3921. The Tribunal deleted the addition made by the AO considering the purchases made by the assesse from one party to be bogus purchases (since the said party was involved in providing fake bills), following the Tribunal decision in assessee's own case for an earlier year wherein it was noted that –
- the assessee-company had discharged its onus by providing all relevant evidences in supporting of said purchases
- the books of accounts of the assessee were duly audited
- the assessee also maintained Stock Register which was evident from Tax Audit Report
- the sales shown by the assessee of very same goods that has been found to be bogus and disallowed by the AO, had been accepted as correct

ALLOY STEEL EMPORIUM PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0205 KolTrib - I.T.A. No. 286/Kol/2017 dated June 20, 2018

3922. The Court dismissed **R**evenue's appeal against the Tribunal's order allowing the assessee's claim for speculation loss arising from off market commodity transactions, where the said transaction were considered to be bogus by the AO on the ground that the broker through whom the transaction were undertaken was expelled by the commodity exchange for issuing forged and fraudulent contract notes and the commodity exchange had informed that the transactions were not done in the name of the assessee. The Tribunal had held that there was no law to inform the exchange about the off market transactions and the fact that the broker was expelled could not be criteria to hold transaction as bogus. Further, the Tribunal had also held that all transactions through broker were duly recorded in books of the assessee as well as the broker and thus the transactions of commodity exchanged had not only been explained but also substantiated from confirmation of party duly supported with books of accounts and bank transactions. Noting that the no material had been shown which negatedthe Tribunal's above findings, the Court held there was **no** scope of **any** interference with the order of the Tribunal.
PRINCIPAL COMMISSIONER OF INCOME TAX vs. BLB CABLES AND CONDUCTORS PVT. LTD. - (2018) 102 CCH 0106 KolHC - ITAT No. 78 of 2017 GA No. 747 of 2017 dated June19, 2018

3923. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO with respect to unaccounted production and sale, noting that no evidence of purchases and sales outside the books of accounts were brought before the authorities below. The Tribunal followed its earlier order in the assessee's own case wherein it was held that production loss depends on number of factors and in absence of any comparable to show that loss shown by the assessee was excessive, the appeal was decided in favour of the assesse.

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (MumTrib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June18, 2018

3924. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 on account of share subscription money received by the assesse-company, noting that PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on the AO's record whereas the department was unable to bring any material to show that share application was in nature of accommodation entries. It held that the material with respect to the conditions as required u/s. 68 i.e. identity, creditworthiness and genuineness of transaction were placed before the AO and onus had shifted to the AO to disprove materials placed before him and the addition made by the AO, without doing so, was based on conjectures and surmises, hence, could not be justified.

INCOME TAX OFFICER vs. WIZ-TECH SOLUTIONSL PVT. LTD. - (2018) 53 CCH 0155 KolTrib - ITA No. 1162/Kol/2015 dated June14, 2018

3925. The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO u/s 68 on account of consideration received on sale of shares to seven companies with respect to which deduction u/s 54F was claimed. The AO had held that the parties to whom shares had been sold were not having income to explain purchases of shares by them but the AO had not investigated genuineness of shares transfer due to paucity of time. The CIT(A) had deleted the addition noting that the assessee had discharged the onus of proving identity of parties to whom the shares were sold and the purchase of shares had been confirmed by all seven parties. The CIT(A) held that once the sale consideration was taxed u/s 45 (since it formed part of gross income), the same could not be taxed again u/s 68 and that addition u/s 68 was not called for since it was case where one asset got replaced by another asset and not of cash credit. It noted that the shares sold by the assesse were received by her as gift from her husband and the same was not doubted by the AO. Thus, the CIT(A) had assessed the income derived from transfer of shares in accordance of the provisions of section 64(1)(iv) and not section 68.

INCOME TAX OFFICER & ANR. vs. SHIKHA KHANDEWWAL & ANR. - (2018) 53 CCH 0159 DelTrib - ITA No. 3513/Del/2014 (CROSS OBJECTION NO. 234/Del/2017) dated June4, 2018

3926. The AO made additions to the income of the (two) non-resident assessees, American citizens, for AYs 2003-04, 2004-05 & 2006-07 to 2008-09 with respect to deposits made to the HSBC Bank Account opened with the Geneva (Switzerland) Branch in Joint Name of the (two) assessees and sister of one of the asssessee. The CIT(A) had deleted the said additionon the premise that it was a foreign bank account of a non-resident and the deposits therein could not be added in the hands of the assessee individual. The Tribunal allowed the Revenue's appeal noting that –

- though the assessee had given upIndian citizenship in 2002 and accepted the citizenship of US, he had given his invalid Indian Passport to open the said bank account in 2002
- the assessee had not given any cogent response to the AO's query as to whether the assesse**e**s had disclosed these bank accounts to the US authorities
- other than for two remittances made, the assessees had not provided any details of the source of the amount credited to the said account

However, the Tribunal remitted the matter to the file of the AOto make further investigation into the source of the deposits in the bank accounts. Further, noting that addition of the same amount had been made in the hands of both the assessees (though the account was held in three joint names), it also directed the AO to apportion the amounts in the name of the account holders.

DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) vs. RAHUL RAJNIKANT PARIKH& ANR. - (2018) 53 CCH 0342 (MumTrib) - I.T.A. No. 5889, 5568, 5890, 5891, 5892, 5893, 5567, 5569, 5570, 5897, 5572/Mum/ 2016 dated June1, 2018

3927. The Court dismissed assessee's appeal filed against the Tribunal's order confirming the addition made by the AO as cash credit u/s 68 on account of certain deposits received in the bank account of the assessee, where the assessee had claimed that the said amount represented unsecured loans/ gifts received from various parties. It was noted that the Tribunal had recoded the finding that the assessee had not been able to prove that the source of the gifts were from agricultural income and past savings of the donors as the assessee had neither produced any bank statement (rather it was claimed that the donors were not maintaining any bank account) nor any bills, receipts, etc for sale of agricultural produce. The Court held that though all the concerned persons had given confirmations about giving the alleged gifts/ unsecured loans, the confirmations were required to be decided and/or considered along with the capacity / financial capacity of the concerned persons and that mere confirmation alone was not sufficient.
Sitaram Ramchanddas Patel v ITO - [2018] 95 taxmann.com 290 (Gujarat) - R/TAX APPEAL NO. 641 of 2018 dated June26, 2018

3928. The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made u/s 68 on account of money deposited in the foreign bank account [with HSBC Bank, Geneva, Switzerland] of the non-resident assessee, which was claimed by the AO to be sourced from India based on information received from the office of DIT (Inv.). It noted that the assessee had retired from a partnership firm in India in 1978 and became non-resident in 1979 and that he did not have any business operations in India. Further, noting the CIT(A)'s observation that a circumstantial evidence whenever used had to be conclusive in nature and the circumstantial evidences relied on by the AO nowhere led to the conclusion that the amounts in the alleged foreign bank account were sourced from India, the Tribunal held that there was no income which had deemed to accrue or arise to assessee in Indiaand bank deposits of assessee in foreign country could not be taxed in India.
DCIT v Dipendu Bapalal Shah - [2018] 95 taxmann.com 171 (Mumbai - Trib.) - IT APPEAL NOS. 4751 & 4752 (MUM.) OF 2016 dated June19, 2018

3929. The AO made addition of undisclosed income u/s 68 on the basis of certain material seized and impounded during the survey proceedings carried out at the business premises of the assessee and statement of directors of the assessee-company, which the AO opined to have revealed certain cash transactions with respect to sale of land. The Tribunal deleted the said addition *inter alia* noting that the directors had retracted their statements during the assessment proceedings. Further, noting that neither any agreement to sell was executed nor did the assessee have the absolute right to sell the said property as the same was in litigation, the Tribunal held that it was unlikely that an unknown person would give sizable cash to assessee even before agreement to sell was executed. The Court thus held that since the Tribunal, based on appreciation of evidence, had concluded that the Revenue had failed to bring on record sufficient evidence to show that cash was received by the assessee, no question of law arose.
Pr.CIT v Texraj Realty (P.) Ltd. - [2018] 95 taxmann.com 102 (Gujarat) - R/TAX APPEAL NO. 612 OF 2018 dated June12, 2018

3930. The Tribunal deleted the addition made u/s 69 by the AO on basis of loose papers seized in course of search in respect of unexplained payments for purchase of flat, noting that the said papers only reflected a proposal to buy a flat which was later on cancelled. It further deleted the addition made u/s 69C in respect of certain cash payments not reflected in books of account, holding that since the said payments had been offered for tax as undisclosed income in return of income filed by the assessee's mother, it would amount to double taxation. The Tribunal also deleted the addition u/s 69A which was made by the AO based onlyon the statement of the assessee's secretary, that the assessee had charged certain amount for performing in weddings which was not accounted for in books of account. It was held that there was no evidence on record showing attendance of said marriage functions by the assessee and a mere statement by the secretary could not be said to be a conclusive proof of undisclosed income earned.
Ms. Priyanka Chopra v DCIT - [2018] 94 taxmann.com 122 (Mumbai - Trib.) - IT APPEAL NOS. 4565, 4569, 4601 (MUM.) OF 2015 dated June1, 2018

3931. The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO as unexplained cash credits u/s 68 on protective basis in respect of share application money received by the assessee-company from two companies whose 100% shareholding was ultimately held by two individuals, noting

that an addition was made u/s 69 on substantive basis in the hands of the those two individuals in respect of their investment in the said two companies. It relied on the decision of the Hon'ble Apex Court in the case of CIT v. Lovely Exports (P.) Ltd. [2018] 216 CTR 195 (SC) wherein, while dismissing the SLP filed by the revenue, it was held that, "*if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to re-open their individual assessments in accordance with law*".
BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERSdated April10, 2018

3932. Assessee had shown in cash flow statement receipt of DD Rs.13.65 lakhs for which assessee had not shown identity of person from whom it had been received and could not prove identity of creditors/genuineness of transactions and thus the AO treated the same as unexplained credit and made addition. CIT(A) upheld AO's order. The Tribunal observed that assessee was operating bank account in name of his employees which was admitted by assessee in his sworn statement recorded u/s. 132(4) which itself was an evidence. The assessee though agreed to treat account as suppressed receipts, only plea was that GP rate was to be considered on peak credit to estimate income. However the Tribunal held that whenever any unexplained deposits was found in name of assessee, then it was duty of assessee to explain source of same for which the assessee was not able to lead any evidence and thus whole deposit was to be considered as income of assessee since expenditure relating to receipts had already been taken care of by expenditure claimed in assessee's regular books of accounts.
K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18

3933. The AO made addition to assessee's income u/s 68 (Unexplained cash credit) opining that the alleged loan transaction from one LFPL was not genuine and stating that the assessee failed to prove the creditworthiness / source of the fund. CIT (A) upheld AO's order. The Tribunal observed that the issue pertained to AY 2010-11 whereas the amendment to S.68 (w.r to source of funds) introduced by Finance Act,2012 was applicable from AY 2013-14 i.e. not in the instant case(relying CIT v Gagandeep Infrastructure Pvt Ltd). Further, it held that assessee showed the necessary details to prove the genuineness and creditworthiness & thus the revenue's contention of assessee to explain the source of funds stood dismissed. Further, relying on Lovely Exports (supra) which provided that the Revenue, if aggrieved must proceed against the creditor/shareholder according to law, the Tribunal held that the AO was not entitled to invoke S.68 and accordingly deleted the addition u/s 68. The Court concurred with Tribunal's order and dismissed the Revenue's appeal.
PCIT v Veedhata Tower Pvt. Ltd (2018) 302 CTR 0490 (Bom) - INCOME TAX APPEAL NO. 819 OF 2015 dated 17.04.18

3934. The assessee was engaged in business of manufacturing of commercial/ blasting explosives etc. In the AY under consideration, the assessee manufactured explosives and sold to its customers. The AO observed that average value of opening and closing stock was higher than sale price shown by assessee and difference of amount was treated by AO as under reporting of sales which was added to total income of assessee. CIT(A) deleted addition made by AO. The Tribunal upheld CIT(A)'s order on the following grounds : (1) The valuation of closing & opening stock could not be basis of making addition in hands of assessee on account of suppression of sales in view of fact these were two different accounting principles & couldn't be compared (2)The books of a/c were duly audited without defects in the audit report and Sales was made mainly to big institutional houses, public sector under takings through tender system thus in such scenario there remained no scope for manipulating sale price. (3)Assessee had declared value of opening and closing stock of goods after including element of Excise duty whereas sale price was net of excise duty, therefore both stock and sale price could not be compared for purpose of determining suppressed sale.
DCIT & Anr vs Indian Explosives Ltd. & Anr (2018) 52 CCH 0416 KolTrib - ITA No. 58/Kol/2014 (C.O. No. 22/Kol/2015) dated 27.04.2018

3935. The assessee had purchased a land to set up factory and office building. AO found that land was purchased at rate of Rs.1550 per sq meter and total cost came to Rs.41,34,051 while as per cash flow statement cost of land was shown at Rs.12,63,773 and thus added difference of two to total income by treating it as undisclosed investment in land. CIT(A) upheld order of AO. The Tribunal observed that there was reference of statement of one K.C Thomas in assessment order and adopted value of

property at Rs.1550 per sq meter on basis of statement of K C Thomas in whose favour power of attorney was obtained. Further, land was purchased in AY under consideration from 16 different owners and enquiry was not made with these persons regarding extra payment. Thus the Tribunal remitted the issue to the AO with a direction to the AO to furnish a copy of the statement of Shri K.C. Thomas and also to enquire with the respective seller and decide with fresh consideration. Thus the ground of appeal was allowed for statistical purpose.

K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18

3936. The AO added certain amount to the total income of the assessee on the ground that, on perusal of AIR data there was discrepancy in income in AS-26. The AO required assessee to submit explanation as to why the alleged transactions were not appearing in Books of Accounts. The assessee claimed that at the first place, there were no such transactions and thus the same did not appear in Books of Accounts. However, AO rejected the claim and CIT(A) confirmed the addition. The Tribunal followed M/s. A.F. Ferguson & Co. v. JCIT and held that AO failed to make any enquiries with parties when assessee was denying any transactions with them and when assessee was denying any transactions with parties, onus was on AO to verify transactions with parties and to establish that assessee indeed entered into any transactions with said parties and had received income from them and since no such enquiries or effort was made by AO to find out whether assessee entered into such transaction with parties, the Tribunal deleted the addition.

ACIT v Zee Media Corporation Ltd. & Anr (2018) 52 CCH 0322 MumTrib - ITA NO. 2166/MUM/2016, 2695/MUM/2016 dated 16.04.2018

3937. The assessee, an individual was engaged in business of manufacturing and trading of ornaments and jewellery. On search and seizure, it was found that assessee had entered into one transaction of purchase of diamond from N and thus AO reopened assessment regarding the said transaction as bogus purchase on the basis that payment against diamonds purchased by assessee from N was made after period of 21 days and it was hard to believe that seller from Surat would give credit of 21 days to unknown buyer in Kolkata. The AO added the amount of payment to the total income of assessee and CIT(A) confirmed the addition. However, during the course of assessment proceedings, the assessee had explained that the purchase vide bill was genuine and payment was settled by cheque transaction and also the quantity of diamond purchased not only was entered in the stock register but also corresponding sale of the same was duly recorded. To support the explanation, relevant documentary evidence were also filed before the AO. The Tribunal held that the evidence was brushed aside by lower authorities only on the ground that there was some delay in payment and also that no enquiries were made by lower authorities to verify the claim which was supported by documentary evidence by assessee and thus, deleted the addition made by AO and CIT(A).

Gautam Kumar Pincha v ITO (2018) 52 CCH 0301 KolTrib - ITA No. 2302/Kol/2017 dated 11.04.2018

3938. The assessee, engaged in manufacturing and export of stainless steels etc, incurred business expenditure by way of Polishing Charges. The AO asked the assessee to furnish complete details along with confirmation of persons who had done polishing work to which the assessee submitted names of all 18 parties/persons along with their addresses, PAN and amount paid along with quantitative details of polishing. Thereafter, AO issued notice u/s 133(6) to the said parties [power to call for information from other persons] and since some letters returned unserved and some of the parties' reply was not received, the AO disallowed 50% of total polishing charges. The CIT(A) confirmed AO's order. The Tribunal dissented with the lower authorities and held that merely because the parties failed to respond to notices u/s 133(6) it could not be used against assessee to disallow those expenses, when the PAN of those persons were provided and also assessee had deducted tax at source on those payments. However, noting that on identical issue the Tribunal in earlier year had upheld the disallowance upto 15%, it held that some disallowance was to be made based on the history in earlier year and facts of present year. Accordingly, the Tribunal directed the AO to limit the disallowance only to the extent of 5% of total expenses.

Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018

3939. The assessee was earning rental income by way of cold storage of products in its premises. On survey, the AO found boxes of apples in the assessee's business premises and held that the assessee failed to

provide the details of parties to whom the apple boxes belonged and thus, made addition to the total income of undisclosed income treating the boxes to be the stock-in-trade lying in the premises. The CIT(A) deleted the addition. The assessee contended that its business was just to store the products given by the owners of the products and collect rent from them for storing and if assessee demanded details like addresses, PAN etc information for mere storage, the assessee would've lost business to some other cold storage. The Tribunal held that since assessee was only interested in rent received from persons who delivered goods for storage and then took these back on payment of rent as per gate pass, it could not be said that the products were stock of assessee and that there was any scope of undisclosed source of income. Thus, it upheld CIT(A)'s order deleting the addition.
ITO v C.C. Cold Storage (2018) 52 CCH 0545 ChdTrib - ITA No. 1137/Chd/2016 dated 09.04.2018

3940. The AO held that the share application money received by assessee company from company G was unexplained and sham in as much as the said company was not in de-factor existence and thus added same u/s 68. CIT(A) deleted the addition of share application/premium made by the AO noting that it was assessee's group company (having common director) who had made impugned investment. CIT(DR) concurred with the AO holding that the investor company had adopted cash deposit root to reinvest same in assessee's stake holding (i.e infusing cash into the accounts and within a short while withdrawing the same to pay for the shares). The Tribunal held that the Revenue had failed to bring on record any such cogent material indicating G to have first deposited cash sums followed by its reinvestment in assessee's share holding and also any material to indicate any misappreciation of evidence by the CIT(A).It held that since the assessee had produced its common director before AO with all necessary details viz certificate of incorporation, return of income, computation, tax audit report, audited account, bank statement, etc and also was able to prove all three components of identity, genuineness and creditworthiness of impugned share application/premium amount to have come from its group company G,the same could not be added to assesse's income as 'Unexplained cash credits' u/s 68. Accordingly, the Tribunal dismissed the Revenue's appeal.
DCIT v Gyscoal Alloys Ltd. (2018) 52 CCH 0307 AhdTrib - ITA No. 102/Ahd/2014 dated 06.04.2018

3941. The Court upheld the order of the Tribunal deleting additions on account of suppressed sales which were made a) solely based on information received by AO from Central Excise Department b)without bringing any independent material on record to justify thesame.
PCIT v Vrundavan Ceramics (P.) Ltd. [2018] 95 taxmann.com 13 (Gujrat) – R/TAX APPEAL NOS. 78, 79, 82, 83 TO 91, 94 & 95 OF 2016 dated 25.04.2018

3942. The Court reversed the order of the Tribunal and confirmed the addition made u/s 68 r. w S.158BB where in course of block assessment proceedings, AO made addition to assessee's undisclosed income in respect of gift, in view of fact that assessee did not even know donor personally and, moreover, he himself in presence of his Chartered Accountant had made a statement under sec. 132(4) admitting that said gift was bogus.
CIT v M. S. Aggarwal [2018] 93 taxmann.com 247 (Delhi) – ITA NOS. 169 OF 2005 dated 23.04.2018

3943. The Apex Court dismissed the Department's SLP against order of the Court wherein it was held thatwhere AO had made addition to income of assessee by way of unexplained cash credit only on presumption that loan was not found to be reflected in balance sheet of donor, since assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified.
PCIT v Bhanuprasad D. Trivedi [2018] 94 taxmann.com 114 (SC) – SLP (CIVIL) DIARY NO. 11011 OF 2018 dated 04.05.2018

3944. The Apex Court dismissed Department's SLP against order of the Court wherein it was held thatwhere purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, AO was not justified in treating said purchases as bogus under section 69C.
PCIT v TejuaRohitkumar Kapadia [2018] 94 taxmann.com 325 (SC) – SLP (CIVIL) DIARY NO. 12670 OF 2018 dated 04.05.2018

3945. During search at assessee's residential premises, Jewellery of 2531.5 gms was found. AO had given assessee benefit of 950 gms. on account of wife and two children and balance was added as unexplained investment under section 69A. The Tribunal held that since assessee belonged to a wealthy family and jewellery was received on occasions from relatives, excess jewellery was very much reasonable and, thus, no addition under section 69A was called for.
Vibhu Aggarwal v DCIT [2018] 93 taxmann.com 275 (Delhi – Trib.) – ITA NO. 1540 OF 2015 dated 04.05.2018

3946. The Tribunal held that where on transfer of an employee to assessee company from its group company, transferor company had transferred a cheque in respect of amount payable to said employee on account of gratuity and leave encashment and claimed same as an expenditure but assessee did not pay said amount due to employee even on his retirement but showed it as 'current liability' payable in its balance sheet, addition under section 68 of such amount to assessee's income on mere suspicion that assessee might also claim it as an expense in future was unjustified.
ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018

3947. The Court held that where AO made addition under section 68 in respect of increase in share capital of assessee-company, in view of fact that addresses of most of purported shareholders were identical and they could not be traced out despite notice issued under section 131, Tribunal was justified in confirming impugned addition.
DRB Exports (P.) Ltd v CIT [2018] 93 taxmann.com 490 (Calcutta) – ITAT NO 218 OF 2016 dated 07.05.2018

3948. The Apex Court dismissed the SLP filed against the High Court's order wherein the High Court had deleted the addition made u/s 68 on account of receipt of share application money where then the assessee had expressed its inability to produce all persons/share applicants for examination but the share applicants were identifiable persons having capacity and creditworthiness of making share application.
CIT v Jalan Hard Coke Ltd.[2018] 95 taxmann.com 331 (SC) – SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 16078 OF 2018 dated 15.05.2018

3949. During search proceedings, 'T', accommodation entry provider submitted that he received cash from assessee & in return gave entry of share capital in form of cheque and thus, the AO concluded that the share premium and share application money was unexplained credit u/s 68. However, it was found that T's statement was recorded behind assessee's back without giving assessee an opportunity to cross-examine. Further, assessee had also furnished the declaration of director of share applicant company, share application form, certificate of incorporation from Registrar of Companies as well as income-tax return of share applicant-company and AO did not make any verification about the said documents. Thus, the High Court had held that the addition u/s 68 was uncalled for. The Department's SLP filed against the High Court's order was admitted by the Supreme Court.
PCIT v Best Infrastructure (India) (P.) Ltd [2018] 94 taxmann.com 115 (SC) – SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 14821 OF 2018 dated 14.05.2018

3950. The assessee company allotted equity shares of face value of Rs. 10 each at premium of Rs. 10 each. The AO made an addition under Section 68 as the premium charged was in excess of the intrinsic valuation of shares and since the assessee could not offer satisfactory explanation. Relying on the ruling of the jurisdictional High Court in Vodafone India Services Pvt. Ltd. (368 ITR 01) and the ruling of the coordinate bench in Green Infra Ltd. (ITA No. 7762/Mum/2012 dated 23.08.2013) and the CBDT Instruction No. 2/2015 dtd. 29.01.2015, the CIT(A) held that share premium could not be treated as income of the assessee. The Tribunal upheld deletion made by the CIT(A) and held that the since the AO had made disallowance by relying on the of facts which were not supported by incriminating material / evidences on record, disallowance under Section 68 could not be made
DCIT vs. Finproject India Private Ltd – [2018] 53 CCH 0001 (Mum ITAT) – ITA No 4860/Mum/2016 dated May 2, 2018

3951. Where the assessee issued share capital during the year under review, but the shareholders were not traceable and the assessee could not produce them before the AO or the CIT(A), Tribunal upheld the order of the AO and the CIT(A) and held that addition under Section 69 of the Act was sustainable as the assessee was not able to prove genuineness of transactions and the creditworthiness of the investing companies. While doing so, Tribunal observed that merely submitting the copies of return of allotment in form no 2 filed with MCA or the resolutions passed by the assessee / investing companies have CIN was not sufficient as these are merely ministerial / administrative functions which needs to be done in any case by all the companies allotting shares.
ITO vs. Krishnav Construction P. Ltd. – [2018] 53 CCH 0004 (Kol ITAT) – ITA No 1942/Kol/2016 dated May 4, 2018

3952. Where the assessee could not could the produce the party who had deposited cash in his bank account, the AO treated such amount as unexplained cash credit under Section 68 of the Act by holding that the assessee could not prove the genuineness of transaction and creditworthiness of the party. The Tribunal deleted the said addition made by the AO and confirmed by CIT(A) by holding that assessee had discharged his onus by producing evidences (i.e. name, address, PAN, bank account, accounts statements, Income Tax Returns, affidavits and confirmations regarding / from the creditor) and that the assessee could not be faulted for non-appearance of its creditors as it was well within the AOs powers to ensure their presence.
B. R. Oil Industries vs. DCIT – [2018] 53 CCH 0030 (Agra ITAT) – ITA No 171 of 2016 dated May 10, 2018

3953. The assessee had raised share capital during the year from six shareholders, out of whom three were the 'original shareholders' of the company. The AO observed that the onus to prove the identity, genuineness and creditworthiness of the three 'new shareholders' was on the assessee and since he failed to do so, the AO treated the said amount received from the new shareholders as unexplained cash credit under Section 68. The Tribunal upheld the order of the CIT(A) wherein it was held that since the new shareholders, who contributed to 89% of the total share capital of the company, were not traceable, the sanctity of their confirmations, documents filed by the assessee was lost. The Tribunal also held that merely saying that return of allotment in Form no 2 was filed with the MCA or that resolutions were passed by the assessee or these companies have CIN, was not sufficient as these were merely ministerial/administrative functions.
PRATIK SYNTEX PRIVATE LTD. vs. INCOME TAX OFFICER – [2018] 53 CCH 0042 (Mumbai ITAT) – ITA Nos. 6690/Mum/2016 dated May 11, 2018

Miscellaneous

3954. The Tribunal held that provisions of section 269T are applicable in case of adjustment of loan towards sale of flats but not applicable in respect of payment of interest in cash.
Golla Narayana Rao v. Asst. CIT, Circle-2(1), Vijayawada- [2018] 100 taxmann.com 174 (Visakhapatnam - Trib)-ITA Nos. 380, 433, 487-489, 499 & 503(VIZ) of 2017 & ORS. - Cross Objection Nos. 80-85 (VIZ) OF 2017-dated October 5, 2018

3955. The Court dismissed assessee's petition praying that Union of India & IT Department be directed to pay the assessee principal amounts and interest & 18% along which were seized during search proceedings and held that Karta of the HUF had initiated litigation against alleged illegal search u/s 132, and in absence of any allegations of misfeasance at hands of Karta, the assessee being a member of HUF could not restart the same litigation and file a writ petition long many years after the cause of action had arisen. The Court observed that the law does not recognize multiple actions at the hands of different members of an HUF. It noted that one of the essential elements of maintaining a writ petition under article 226 of the Constitution of India which pertains to Court's discretionary powers of issuing writs, is timely action at the end of the petitioner. Thus, the Court concluded that the Petitioner could not file a writ petition 17 years later on the ground that he only recently attained majority and had no independent right to raise grievances

Alay Rakesh Shah vs Dept of Income Tax- (2018) 98 taxmann.com 448 (Guj)- Application no 13477 of 2018 dated 24.09.2018

3956. The Court held that the requirement of a certified copy of instrument of partnership deed being filed along with return of income for assessment years commencing from amendment to section 184 on 1-4-1993, only applies to firms which seek to be assessed as a partnership firm for first time after the said amendment. Where the assessee firm was assessed as a partnership firm prior to assessment year 1993-94 and there was no change in its constitution, it should continue to be assessed as a partnership firm for subsequent assessment years.

Badshah Enterprises v. Assessing Officer [2018] 95 taxmann.com 245 (Bom.)- IT Appeal No.

28 of 2002 dated July 2, 2018

3957. Single judge upheld entitlement of the assessee to have their applications processed for benefit of the Direct Tax Dispute Resolution Scheme, 2016. The Revenue on appeal submittedthat only those the assesses, who had been levied penalty under provisions of the Income-tax Act which provided for levy of minimum penalty and maximum penalty alone could claimbenefit of the Scheme. Hence, according to revenue instant cases being cases where penalty had been levied under sections 271D and 271E and as sections did not specify any minimum penalty or maximum penalty, cases of the assessees were outside the Amnesty Scheme. The High Court held that according to section 271D, a person who was liable to pay penaltythereunder was liable to pay, by way of penalty, a sum equal to amount of loan or deposit or specified sum so taken or accepted, in contravention of section 269SS. Similarly, under section 271E also, penalty provided was a sum equal to amount of loan or deposit or specified advance, if so repaid. Thus, when a specified sum is so provided as penalty, such specified sum is minimum penalty payable and it does not mean that benefit of the Scheme could be claimed only by those the assesses who had been levied penalty under provisions of the Act providing for minimum penalty and maximum penalty. Therefore, the assesses could not be denied benefits of the scheme. SLP filed by Revenue against the High Court order is dismissed by the Supreme Court.

Jt. CIT v. Grihalakshmi Films[2018] 96 taxmann.com 176/257 Taxman 188(SC); Grihalakshmi

Films v. Jt.CIT[2017] 83 Taxmann.Com 215(Ker.)Special Leave Petition (Civil) Diary No. 14034 of 2018 dated July 2, 2018

3958. Assessees who were owners of land at village had not included the value of the land in their returns of net wealth. AO initiated porceedings and issued notice under section 17 of the Wealth Tax Act. The assessee had stated that the said lands did not come under the ambit of definition of wealth as per Explanation 1(b) to section 2(ea) which defined 'urban land' as it was situated 11 kms away from BBMP limits. The AO concluded the order of assessment holding that the land was situated within 8 kms away from the BBMP limits in straight line method and further held that the said land fell within the jurisdiction of newly created administrative authority i.e. BIAPPA. The AO also held that BIAPPA had all the powers assigned to any local administrative authority and therefore, should also be considered to be Municipality for the purpose of tax administration. The AO brought the aforesaid lands under the ambit of wealth and adopting a guideline value of the lands brought the same to tax. The CIT(A) allowed the assessee's appeal. On appeal, the Revenue submitted that the calculation of the distance of 8 kms from BBMP limits has to be measured as the crow flies i.e. that the aerial distance has to be caculated and not the distance as per road.The Tribunal dismissed Revenue's appeal and upheld the order of CIT(A) by holding that provisions of item(b) of sub-clause(iii) of section 2(14) of 1961 Act which provides for considering distance aerially, not by road and which have been substituted by Finance Act,2013 with effect from 01.04.2014 are applicable only for and from AY 2014-15 onwards and therefore, would operate prospectively and cannot be given retrospective operation.

ACITvs MR Padmavathy Trust 2018] 97 taxmann.com 349 (Bang Trib)- IT Appeal No.24 and 29 (Bang) of 2017 CO Nos. 39 and 43 (Bang) of 2018 dated August 17 2018

3959. The High Court allowed assessee's petition against the SCN proposing for transfer of its case from Kolhapur to Mumbai (issued merely on ground of facilitating better co-ordinated investigation) and quashed the SCN holding that the notice proposing the transfer did not give sufficient indication for the reasons to transfer the assessee's case from Kolhapur to Mumbai and merely stating that the transfer is proposed/being done for the purposes of coordinated investigation was not sufficient. Thus, it held that SCN proposing transfer of case u/s 127 without explaining reasons, was breach of Audi Alteram Partem Rule, and hence quashed.

D.Y. PATIL EDUCATION SOCIETY vs. COMMISSIONER OF INCOME TAX (EXEMPTIONS) AND

ANR. [2018] 102 CCH 0310 MumHC- WRIT PETITION NO. 5496 OF 2018 dated August 09,2018

3960. The High Court directed the Tribunal to examine as to whether the assessee company (incorporated under Registration of Companies (Sikkim) Act, 1961) was an Indian company during AY 1987-88 to 1991-92. The lower authorities proceeded on the basis that the assessee was a foreign company. However, the assessee had argued that it fell within the description of Indian company as defined in section 2(26) and that it could not be treated as a foreign company u/s 115A for the purpose of taxing dividend income received by it as well as for other provisions of the Act. The assessee contended that the Indian Income Tax Act was brought into force or extended to the territory of Sikkim w.e.f. 01.04.1990. The Court held that the question as to the applicability of Section 2(26) and its interplay with other provisions of the Act went to the root of the matter and accordingly, remanded the matter to Tribunal to examine as to whether the assessee company was an Indian company.

Sikkim Janseva Pratishtan P. Ltd vs. COMMISSIONER OF INCOME TAX [2018] TS-464-HC-2018(Del)] ITA 89/2004 dated August 02,2018

3961. Where assessee disclosed undisclosed income for a year under Income Declaration Scheme, 2016 and paid first instalment of tax, while notice under section 143(2) had already been issued for scrutiny assessment and, therefore, Revenue rejected assessee's application under Disclosure Scheme, the Court directed the Revenue to adjust amount of tax deposited by assessee.

Smt. Sangeeta Agrawalvs v. Pr.CIT [2018] 96 taxmann.com 171 (Madhya Pradesh)- W.P. NO. 16028 OF 2018 dated August 03 2018

3962. The Apex Court clarified that the Superannuation age of President and Members of ITAT would be 65 years and 62 years respectively.
Kudrat Sandhu v UOI [2018] 95 taxmann.com 167 (SC) - WRIT PETITION (CIVIL) NO. 279 OF 2017 dated July 16, 2018

3963. The Revenue held auction of certain property fixing reserve price of Rs. 32.11 crores but none participated. After auction, the petitioner communicated an offer to CBDT for purchase of said property at Rs. 32.11 crores but same was not entertained. The Revenue held fresh auction, wherein reserve price was fixed at Rs. 30 crores and the Petitioner submitted its Bid at Rs. 30.10 crores along with other documents. The Revenue did not accept the bid on grounds that the petitioner had itself offered Rs. 32.11 crores in respect of the said property prior to holding of the auction. Further, CBDT directed Revenue to cancel the earlier auction and hold fresh auction after re-determining a reserve price by taking into account fresh valuation report of District Valuation Officer determining fair market value of the said property at Rs. 31.07 crores. The writ petition filed by the petition against the said cancellation of earlier auction was dismissed by the Court holding the same as not arbitrary.
Sankalp Recreation (P.) Ltd. v UOI - [2018] 96 taxmann.com 349 (Bombay) - WRIT PETITION NO. 1598 OF 2018 dated July 27, 2018

3964. The Court allowed the writ petition filed by two assesses claiming that they should be allowed to file Income-tax returns for AY 2018-19 without complying with condition of providing Aadhaar number, in view of the fact that the deadline for PAN-Aadhaar linkage having been extended to 31-3-2019. It directed the CBDT to amend digital form to enable assessees to 'opt out' of mandatory requirement of PAN-Aadhaar linkage till deadline of 31-3-2019.
Shreyasen v UOI - [2018] 95 taxmann.com 256 (Delhi) - W.P. (C) NO. 7444 OF 2018; C.M. APPL. NO. 28499 OF 2018 dated July 24, 2018

3965. The Court dismissed assessee's appeal where the assessee claimed that the urban land held by it was not chargeable to wealth tax since the definition of "assets" contained in section 2(ea) Clause (v) of the Wealth tax act excludes from its scope "urban land" on which construction of a building is not permissible under any law for the time being in force. It held that there is a clear distinction between a case where the construction of a building is not permissible under any law for the time in force and where construction though permissible, must be preceded by permission, approval or sanction from the prescribed authority. Court upheld wealth tax liability on urban land held by assessee noting that construction was permitted on the said land subject to prior approval of authority.
SAROVAR HOTELS PVT. LTD vs. DEPUTY COMMISSIONER OF WEALTH TAX [TS-703-HC-2018(BOM)] - Wealth Tax Appeal No.414, 415, 418,425,426 ofp 2016 dated 03.12.2018

3966. The Court directed the CBDT to Consider Petitioners' representation seeking extension of due date for filing income tax return and Tax Audit report to 31-12-2018 (though the said due date had already been extended to 31-10-2018 from 30-09-2018) noting that the same involves various processes and information to be obtained by the concerned assessees including information relating to GSTR-9.
TAX BAR ASSOCIATION AND SRI AMIT PAREEK vs. UNION OF INDIA AND ANRS AND CBDT [TS-593-HC-2018(GAUH)]- WP(C) 7361/2018 dated 12.10.2018

3967. The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that amendment to section 2(14)(iii)(b) of Income Tax Act vide Finance Act, 2013 (amending the definition of agricultural land) is not retrospective in operation and the same could not be relied upon by the AO in connection with assessee's wealth tax assessment for AYs 2007-08 & 2009-10. The AO had relied on the amended section 2(14)(iii)(b) to contend that the land in question was urban land on the ground that when aerially measured, the land would come within the distance of 8 kms from municipality limits. Tribunal noted that the Finance Act, 2013 has amended section 2(14)(iii)(b) w.e.f. April 1, 2014 (to state that the distance was to be aerially measured) and the same could not be given retrospective effect. It relied on SC ruling in Vatika Township Pvt. Ltd (367 ITR 466) which states that "if the amendment Act expressly states that the substituted provision shall come into force from the date the amendment comes into force, then the said provision is prospective in nature and it would not be open to any Court to give retrospective operation to such provision."
Assistant Commissioner of Wealth Tax v Mr Jayaram; Mr Anandaram; Mr Janakiram; Mr Kodandaram & Mr. Seetharaman – WTA Nos. 49, 117,118,122,123/BANG/2018 -[TS-669-ITAT-2018(BANG)] –; dated 05.11.2018

3968. The NCLT held that objections of the income-tax dept. that the scheme of amalgamation was a deliberate measure to avoid tax burden and was an 'Impermissible Avoidance Agreement' (a pre-requisite to attract GAAR provisions) because it would result in avoidance of Divided Distribution Tax (DDT), tax on business profits and MAT u/s 115JB, etc had merit and accordingly, the scheme was not in public interest and thus could not be sanctioned.
In Re Gabs Investments Pvt Ltd & Ajanta Pharma Ltd - CSP No. 791 & 792, 995 & 996 of 2017 (NCLT Mumbai) dated 30.08.2018

3969. The Court held that a co-operative housing Society is not expected to indulge into profiteering business from its members and thus Transfer fees cannot be charged under the pretext of "voluntary donation". It held that amount which is accepted above permissible limits towards transfer fee is illegal and taxable as income in the hands of the society.
Alankar Sahkari Griha Rachana Sanstha Maryadit vs. Atul Mahadev Bhagat - WRIT PETITION No. 4457 OF 2014 with CIVIL APPLICATION No. 2589 OF 2015 (Bom HC) dated 31.08.2018

3970. The Apex Court held that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. Further, it held that given section 238 of the Insolvency and Bankruptcy Code, 2016, the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act.
PCIT vs. Monnet Ispat And Energy Ltd - Petition(s) for Special Leave to Appeal (C) No(s). 6483/2018 (SC) dated 10.08.2018

3971. Where the assessee faced a delay of 37 days in filing of its return of income owing to the fact that its erstwhile auditors refused to complete the audit due to a qualification vis-à-vis the valuation in a business transfer, which was communicated to the assessee on the last date of filing of return, pursuant to which the assessee obtained an NOC and got its accounts audited by another auditor, the Court held that the CBDT was unjustified in refusing to condone the delay (application for which was made under Section 119 of the Act). The Court held that the assessee had satisfactorily explained reasons for the delay in filing of its return and that the CBDT was incorrect in refusing to condone the delay on the ground that the assessee failed to prove that the delay was caused due to the professional misconduct of the auditor. Accordingly, the Court set aside the order refusing to condone delay issued by the CBDT.
REGEN POWERTECH PRIVATE LTD. vs. CENTRAL BOARD OF DIRECT TAXES - (2018) 101 CCH 0117 ChenHC W.P. No. 24273 of 2016 dated Mar 28, 2018

3972. Where e-returns filed by assessees were forwarded by CPC to AO for processing, but were not processed within the time-frame prescribed u/s. 143(1) second proviso as proper ITBA software was not available, the Court, referring to Centralized Processing of Return Scheme, 2011 and the relevant CBDT notifications of January, 2012, held that there was no provision in both the notifications which laid down that after the returns were sent to AO, if he found that the returns could not be processed on ITBA or any other software, the same could not be processed manually. The Court directed expeditious processing of assessees' returns for AYs 2014-15 to 2016-17 within 2 weeks' time and issue of refunds (if any) within 3 weeks' time. It directed Govt/CBDT to issue necessary directions to IT Department permitting manual processing in such cases within one month of the judgment. The Court expressed surprise regarding absence of order of priority laid down by any authority which would bind the AO for processing of returns and held that there could not be a pick and choose policy. It directed CBDT to formulate a 'rational' policy for processing of returns without any arbitrariness within 2 months
Tata Projects Limited - TS-1-HC-2018(BOM) - WRIT PETITION NOs. 782 & 2051 of 2017; WRIT PETITION (L) NO. 2498 of 2017 dated 21.11.2017, 22.11.2017 & 23.11.2017

3973. The Court held that AO can exercise jurisdiction u/s 179(1) for recovery from directors of a private company only when it fails to recover its dues from such company and that such jurisdictional requirement cannot be said to be satisfied by a mere statement in the order that recovery proceedings had been conducted against the defaulting company. It was held that since the show cause notice issued u/s 179(1) did not indicate or give any particulars in respect of steps taken by department to recover tax dues from defaulting private company, the impugned order passed u/s 179(1) was to be set aside.
Madhavi Kerkar v ACIT - (2018) 253 Taxman 288 (Bom) - Writ Petition No. 567 of 2016 dated 05.01.2018

3974. The Tribunal rejected revenue's request for constitution of special bench with respect to issue of software taxation involving assessee group's various companies wherein Tribunal in its original order had held that receipts from sale of software are not taxable as 'royalty' on the ground that –
- Firstly, a reference to constitute a Special Bench must flow from the members and not from the parties to the case
- Furthermore, such a reference can be made by the members when they do not agree with the view taken by the earlier order of the Tribunal

DDIT v Reliance Communication Ltd - TS-2-ITAT-2018(Mum) - ITA No.4672/Mum/2007 and other appeals dated 03.01.2018

3975. The Court dismissed writ petition of the assessee filed for grant of stay as the assessee and Tax Recovery Officer (TRO) willfully disobeyed the instructions of the Court. The Court in its earlier order had refused to grant ad-interim stay to the Tribunal's order requiring the assessee to pay certain amount to revenue for keeping the remaining demand in abeyance. However, assessee-society's President wrote a letter to the bank stating that the High Court, through 'oral' directions, had instructed the tax department to not withdraw the funds received by the assessee in its bank account. TRO also wrote to bank stating the High Court through 'oral' directions, had instructed the department to allow assessee to withdraw funds; whereas no such directions/ instructions were given by the Court. The Court directed initiation of civil as well as criminal contempt against the assessee-society's President and TRO and appreciated Senior counsel J. D. Mistry's conduct, who withdrew himself as petitioner's counsel, acted as an officer of Court and brought to the notice of the Court the facts of the case.
Sinhgad Technical Education Society v DCIT - TS-6-HC-2018(BOM) - WRIT PETITION NO. 13099 OF 2017 dated 05.01.2018

3976. The Court dismissed Revenue's writ filed against the grant of stay by Tribunal on payment of certain of amount, with exemplary cost of Rs. 50,000 each, to be paid personally by 2 Pr.CITs & an ACIT, for their irresponsible and unfair behaviour in filing the writ petition just for the sake of proving their 'fictional desires'. It held that the entire demand raised was prima facie not even sustainable as the controversy was apparently covered in assessee's favour by non-jurisdictional High Court and jurisdictional Tribunal bench decisions.
ACIT v Epson India Pvt Ltd - TS-19-HC-2018(KAR) - Writ Petition No.12913/2017 (T-IT) dated 09.01.2018

3977. Where in course of investigation on FIR of an individual, police recovered certain amount in cash and applications filed by department in session court for interim release and possession of currency seized by police were dismissed, on such dismissal being challenged by the department before the High Court on ground that it was entitled to the possession of money as the same was unaccounted money of individual under provisions of Act, the Court held that department was entitled to retain cash till final conclusion of proceedings under Act.
Vipul Chavda v State of Gujarat - (2018) 253 Taxman 263 (Guj) – Special Criminal Application possession of muddamal No. 10055 of 2017 dated 18.01.2018

3978. The assessee, non-resident Indian, filed a Petition before the CBDT for condonation of delay of 1232 days in filing of return of income on the ground that the delay occurred as there was severe financial crises in the USA and also that she had been injured in an accident (for which she filed a medical report). The CBDT rejected the petitioner vide order under Section 119(2)(b) of the Act wherein it dimissed the assessee's explanation and held that since the assessee had a professional advisor, she should have filed the returns on time. The Court in Writ Proceedings held that the explanation offered by the assessee was acceptable and genuine and accordingly remanded the matter to the CBDT directing it to condone the delay in filing of return.
Smt. Dr. Sudha Krishnaswamy v Chief, Commissioner of Income-tax, (Intl. Taxation - [2018] 92 taxmann.com 306 (Karnataka) - WRIT PETITION NOS. 15891-15893 OF 2016 dated MARCH 27, 2018

3979. The assessee filed an application before President of Tribunal for constitution of Special Bench as well as transfer of its matter from Bangalore to another bench for disposal of its appeal. The President rejected both the applications and directed the Touring Bench in Bangalore to dispose of assessee's appeal pursuant to which the assessee filed a writ petition wherein the Single Judge passed an order directing Tribunal to decide assessee's appeal in expeditious manner by stating that "a direction is issued to the Appellate Tribunal, Bengaluru Bench to hear and dispose of the appeals by its Members in an expeditious manner, on or before 16/04/2018". In appeal, the Court dismissed the assessee's contention raised in petition against the order of the Single Judge that the Single Judge had practically confined the matter to be heard only by the Members of the Bengaluru Bench of the Tribunal and had therefore wrongfully assumed the powers of the President of the Tribunal. It noted that the learned Single Judge passed the order impugned only after taking note of the fact that the President had

rejected the prayer of the appellant for transfer of the appeals outside Bengaluru and therefore dismissed the assessee's contention.

Google India (P.) Ltd. v DCIT (IT) - [2018] 91 taxmann.com 21 (Karnataka) - WRIT APPEAL NOS. 828-829 OF 2018 (T-IT) dated MARCH 1, 2018

3980. The Court dismissed the assessee's writ petition and confirmed Revenue's initiation of Special Audit u/s 142(2A) rejecting assessee's contention that assessment proceedings for AY 2009-10 had been abated and time barred due to non-communication of order requisitioning special audit before March 31, 2013. It noted that the AO had issued a show-cause notice for special audit on March 21, 2013 and passed order requiring special audit on March 30, 2013 and dismissed assessee's contention that since it had received the order only after March 31, 2013 (i.e. last date for completion of assessment) the assessment was time barred and held that the order u/s 142(2A) would stand communicated when it was sent out (i.e. before March 31, 2013) as it went out of AO's control and there was no chance to change his mind or modify order. Accordingly, it held that the period of exclusion for limitation to pass assessment order in terms Explanation 1 to Sec. 153, would commence from the date on which AO directed assessee to get his accounts audited u/s 142(2A) and not the date on which assessee received the order, and since the order of special audit was despatched before March 31, 2013, it held that the assessment was not time barred.

Nokia India (P.) Ltd v Add CIT - [2018] 92 taxmann.com 76 (Delhi) - WRIT PETITION (CIVIL) NO. 2974 OF 2013 dated MARCH 6, 2018

3981. The Court refused to lift attachment on immovable property purchased by Petitioner from a tax defaulter, noting that demand notice under Rule 2 of second schedule (as mandated u/s. 281) was served upon tax defaulter prior to the execution of the sale transaction. It held that the moment such a notice was served by virtue of Rule 16(1) of the second schedule, the defaulter became incompetent to deal with the property and therefore as per Section 11 of the Contract Act 1872, he could not have passed any valid or legal title to the purchaser (Petitioner). It rejected the Petitioner's stand that the defaulter vendor ceased to have any interest in the property on the date when attachment was made, and held that as per Rule 11(3)(a) (pertaining to immovable property), the date of attachment was not relevant. However, it quashed TRO's order to the extent it declared the transaction as null and void and held that only a civil court could declare a transaction as null and void.

D.S.Senthilvel vs Tax Recovery Officer - TS-166-HC-2018(MAD) - W.P (MD) Nos.2932 to 2939 of 2018 dated 07.03.2018

3982. Where assessee filed its return after five months, and nearly after a period of four years filed an application before CBDT to condone delay in filing return, for sole reason of illness of auditor, the Court held that since the details of illness and any respective proof, namely, doctor's prescription, was not given, delay could not be condoned.

B.U. Bhandari Nandgude Patil Associates v CBDT - [2018] 91 taxmann.com 241 (Delhi) - WRIT PETITION (CIVIL) NO. 6537 OF 2017 dated MARCH 12, 2018

3983. The Court dismissed the assessee's Petition praying for condonation of delay in making payment of the third installment of undisclosed income under the Income Declaration Scheme Rules, 2016 and held that the reasons given by the Petitioner i.e. that she was 70 years of age and suffering from ill health which had become a hurdle in her day-to-day work and that she had forgotten to pay the third installment was unbelievable and a lame excuse. It observed that such declarations were unique and made after due deliberation and thought and further observed that the amount payable towards the third installment was substantial and therefore concluded that it was clear that the Pfetitioner was unable to pay the amount, and thereafter pleaded and attributed it to loss of memory. It held that the time period fixed was mandatory and had to be adhered to and accordingly dismissed the petition challenging the order of the CBDT denying it condonation of delay.

MEENA RASTOGI vs. CENTRAL BOARD OF DIRECT TAXES & ANR. - (2018) 101 CCH 0168 DelHC - W.P.(C) 1219/2018, CM Nos.5050-5051/2018 dated Feb 9, 2018

3984. The Court set-aside Central Information Commission's ('CIC') order directing the CBDT to supply the information pertaining to the net wealth of certain MLAs and MPs under the Right to Information Act,

2005 ('RTI'). It noted that the respondent (an individual) had alleged that the net wealth of certain MLAs and MPs had increased five-fold and CBDT had denied the information on the ground that the affidavits submitted by MPs and MLAs disclosing their assets were forwarded to DG (Investigation) for verification, and pending such 'investigation', the information (including DG's responses) was exempt from disclosure u/s. 8(1)(h) of the RTI Act. At the outset, the Court rejected CBDT's stand on Sec. 8(1)(h) exemption and held that verification from records could not be termed as an 'investigation' and that regular assessment proceedings could not be considered as part of 'process of investigation'. However, it held that the DGIT (Investigations) was listed as excluded offices from RTI applicability (under the Second Schedule as contemplated u/s. 24 of the RTI Act) and accordingly concluded that the CBDT was right in denying information.

Satya Narain Shukla -TS-98-HC-2018(DEL) - W.P.(C) 5547/2017 & CM No. 23333/2017 dated 19.02.2018

3985. The Apex Court refused to interfere with the order of the Bombay HC directing initiation of civil and criminal contempt proceedings against the President of Sinhgad Technical Education Society (assessee) as also against the Tax Recovery Officer ('TRO') for misrepresenting the order of the Court and for wilful disobedience of Court's order. It noted that subsequent to HC's refusal to grant relief against Tribunal's order to deposit Rs.18 cr., President Mr. Navale had filed communications before the Bank officials & TRO, claiming that the Court, through 'oral' directions, had allowed assessee to withdraw funds received by it in its bank account (post this communication the assessee withdrew Rs. 9 cr from bank account received from Social Welfare Department). Similar misrepresentation was also made by TRO to the assessee's bank. Noting the undisputed and agreed position between the parties that no such 'oral' instructions were given by the Court, the Court had held that the conduct of Mr. Navale and TRO amounted to wilful disobedience of the Court's order. Accordingly, the Apex Court refused to interfere with the order of the Court but also stated that the Petitioner had the remedy of approaching the High Court to tender an unqualified apology and also to make the offer of payment/deposit as was made before it. It held that the High Court was free to pass such order as it may be consider appropriate.

Sinhgad Technical Education Society [TS-53-SC-2018] - PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 3703/2018 dated 09-02-2018

3986. The Apex Court dismissed Revenue's SLP filed against the High Court's order allowing credit of advance tax paid and TDS paid against the tax payable under the Income Declaration Scheme, 2016 (IDS) where the assessee had not filed return u/s 139 from AY 2010-11 onwards owing to non-audit of accounts, however had paid advance tax for past 5 years, credit for which had been claimed along with TDS while making declaration under IDS.

Kumudam Publications [TS-46-SC-2018] – SLP (CIVIL) Diary No(s). 33000/2017 dated 29.01.2018

3987. The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had quashed the block assessment for the block period 1989-90 to 1999-2000, holding the notice issued u/s 158BC by the AO, Nagpur to be without jurisdiction. The CIT, Raipur (pursuant to search operations carried out) had transferred the assessee's case u/s. 127 from Rajnandgaon to Nagpur in July, 1999 which was set-aside by the MP High Court, however, the CIT had passed fresh order of transfer u/s. 127 (similar to earlier order) in 2000 pursuant to MP High Court directions and the Revenue contended that by virtue of subsequent order of 2000, the earlier order of 1999 passed u/s 127 stood revived and consequently the AO, Nagpur would retrospectively enjoy the status of the AO even on the date when notice was issued. The High Court had held that transfer of proceedings u/s 127 could not be retrospective so as to confer jurisdiction on a person who does not have it.

CIT v Lalit Kumar Bardia [TS-11-SC-2018] – SLP (CIVIL) Diary No(s). 40053/2017 dated 09.01.2018

3988. The Apex Court set aside the order of High Court quashing the notice issued u/s 143(2) and held that since it was due to the non-availability of assessee to receive the impugned scrutiny notice sent by registered post as many as on two occasions that the notice was served on the authorized representative of the assessee whom the assessee had disowned, it was sufficient to draw an inference of deemed service of notice on assessee and there was sufficient compliance of requirement of section 143(2).

ITO v Dharam Narain – (2018) 301 CTR 41 (SC) – Civil Appeal No.(S) 2262 of 2018 dated 19.02.2018

3989. The Mining department had failed to collect TCS from payment of various settlements of Sand Ghats, including the payments made by asssessee, and the assessee was called upon by the ITO as per section 226(3) to deposit the sum being income-tax liability of Mining department followed by arbitrarily deduction of the said amount from bank account of assessee by the Income-tax authorities. The Court held that section 226(3)(x) does not confer arbitrary power to Income-tax department to recover amount of tax liability of mining department from the innocent assessee after surrender of settlement and such an action was most unreasonable, in view of the fact that (i) no action was taken by Income-tax department against Mining department for failure to deposit TCS u/s 276B and 276BB (ii) Income-tax department had not carried out any factual enquiry to examine whether there was any liability to be paid by assessee in connection with settlement of Sand Ghat (iii) settlement surrendered by assessee was accepted by Govt. and after such surrender, order u/s 226 was passed. The Court, accordingly, directed the Income-tax Department to forthwith return the said amount with interest.
Sainik Food (P.) Ltd. v Pr.CIT – (2018) 92 taxmann.com 9 (Patna) – Civil Writ Jurisdiction case no. 16778 of 2017 dated 08.02.2018

3990. Where the assessee who had filed declaration of undisclosed income under Income Declaration Scheme, 2016 had paid only 50% of total tax, surcharge and penalty in two instalments and had filed an application to Chairman, CBDT seeking extension of time for making payment of third instalment on the reasoning that he was involved in office work and marketing activities and forgot to pay third instalment, the Court held that the order passed by Chairman, CBDT rejecting the prayer for extension, did not require invoking of writ jurisdiction since assessee had not made out an extraordinary cause for grant of further time, even if it is assumed that time stipulated under Scheme could be extended by Board u/s 119(2).
Siddharth Rastogi v Central Board of Direct Taxes – (2018) 402 ITR 17 (Del HC) – W.P. (C) No. 1069 & 1070 of 2018 CM Nos. 4455 to 4458 of 2018 dated 05.02.2018

3991. The Court held that where the Petitioner had voluntarily agreed for compounding of offence and had undertaken to pay to the department compounding charges and to withdraw his appeal as per the Guidelines on Compounding of Offences, 2014, issued by the CBDT, he was bound by the same and that merely because, due to delay attributable purely to Petitioner, amount of compounding charges turned out to be much higher than principal and interest, the compounding charges would not per se be rendered illegal or arbitrary. It held that compounding fee is in nature of a payment made to avoid punishment for a criminal offence and the same could not be merely compared with principal and interest charged but had to be adjudged from point of view of long duration during which there was wilful non-payment of taxes. It further held that Explanation to section 279 vests CBDT with powers to issue circulars, orders, instructions or directions for proper composition of offences and CBDT Guidelines on Compounding of Offences, 2014, issued under such power were exhaustive in nature and did not reflect any exercise of power which was arbitrary or illegal
Vikram Singh vs. Union of India – (2018) 401 ITR 307 (Del HC) - W.P.(C) No. 6268 of 2017 dated 23.01.2018

3992. The petition filed by the assesse before the Sessions Court was for grant of anticipatory bail in view of show cause notice received as per Rule 73 of the Second Schedule to the Act was rejected by the Sessions Judge. The assessee approached the High Court to seek protection from arrest under section 438 of Cr.P.C. The Court held that the assessee's petition seeking the said protection was not maintainable. It held that section 438 of Cr.P.C. is a device to secure the liberty of a person who is apprehending his arrest in a non-bailable offence and the 'reason to believe' that a person is likely to be arrested for a non-bailable offence is a sine qua non for invoking the jurisdiction u/s 438 of Cr.P.C. It was noted that the notice was issued under Rule 73 of the Second Schedule of the Act for the recovery of the tax dues determined u/s 222 of the Act, i.e. in course of recovery proceedings. It held that the assessee's apprehension that on issuance of the said notice, he had a reason to believe that he would be arrested and detained in prison was wholly misconceived and misplaced, since the Rule 73 specifically provides that no order for the arrest and detention in a civil prison of a defaulter could be

made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause as to why he should not be committed to civil prison. It held that the assessee was not accused of committing any non-bailable offence so as to invoke the jurisdiction of the Sessions Court or High Court under section 438 of Cr.P.C.
M A Zahid v Assistant Commissioner of Income Tax (OSD) - [2018] 95 taxmann.com 71 (Karnataka) - CRIMINAL PETITION L NO. 3668 OF 2018 dated June 26, 2018

3993. The Court dismissed the writ petition filed by the Petitioner who had purchased an immovable property from the assessee against the AO's order declaring the sale of the said property by the assessee to the petitioner to be void in terms of section 281, since the said sale was below market price and there was outstanding demand of tax arrears payable by the assessee. The petitioner had also challenged the Tax Recovery Officer's order for attachment under rule 48 of Second Schedule to Act. It was noted that prior to the said sale/ purchase, the AO had rejected the assessee's application for certificate under section 230A on the ground that there was a demand for income tax arrears due from company. However, subsequently section 230A itself was repealed. It was held that the clause (i) of section 281(1) which inter alia provides that the transfer shall not be void if it is made without notice of any tax or other sum payable by the assessee under the Act was not applicable since, in instant case, on account of refusal of the AO, to issue a certificate u/s 230A, petitioner became aware of arrears of tax and other sums payable by the assessee. The Court also rejected the petitioner's plea that if the Department found that a property of assessee had been transferred with intention to defraud revenue, it would have to file a suit under rule 11(6), to have transfer declared void under section 281, holding that if a transfer had been made by a defaulter in contravention of rule 11(6), it was automatically void.
Shriya Bhupal v ACIT - [2018] 95 taxmann.com 230 (Andhra Pradesh) - WRIT PETITION NO. 11629 OF 2007 dated May2, 2018

3994. The Court dismissed the petition filed by the Union of India's (UOI) for permanent injunction against the Vodafone Group and restraining them from pursuing arbitrations under India UK bilateral Investment Promotion Agreement (BIPA) since the arbitration proceeding under India Netherland BIPA initiated in 2012 were pending. However, it provided liberty to UOI to raise the issue of abuse of process before Arbitration Tribunal constituted under India-United Kingdom BIPA. The Court observed that it can grant injunction only if there are very compelling circumstances, where the Court has been approached in good faith and there is no alternative efficacious remedy available. Further, noting the UOI's contention that Vodafone's claim under India Netherlands BIPA was without jurisdiction, the Court held that invocation of another treaty could not be regarded as an abuse per se. It also directs that the Arbitration Tribunal while deciding the issue will take into account the Vodafone's undertaking to the Court that if the UOI gives its consent, it would agree to consolidation of the two BIPA arbitration proceedings before the India-United Kingdom BIPA Tribunal.
UOI v Vodafone Group Plc United Kingdom & Anr [TS-230-HC-2018(DEL)] - CS(OS) 383/2017 & I.A.No.9460/2017dated May7, 2018

3995. Where due to a communication gap between the Revenue's Counsel and the AO, incorrect information was given to the Revenue's counsel causing unintended waste of time of the Court and the revenue sought closure of matter by giving an assurance that it would be more careful in future in respect of statements made in Court, the Court held that the CBDT should lay down a standard procedure in respect of manner in which the Departmental Officer/ AO should assist the Counsel for the Revenue while promoting/ protecting the Revenue's cause. It also directed the CBDT to reconsider the practice of appointing retired revenue officers as panel counsel. The Court explained that while the retired officials have domain expertise and do render assistance, they lack the skill and conduct required to appear as an Advocate and also lack the objectivity expected from officers of the Court. It held that the CBDT could consider holding of a training programme, where leading Advocates could address the domain expert on the ethics, obligation and standard expected of Advocates before they start representing the State.
CIT v Grasim Industries Ltd. - [2018] 94 taxmann.com 81 (Bombay) - IT APPEAL NO. 778 OF 2015dated April 18, 2018

3996. The Court granted interim relief to the assessee-petitioners' by directing the Revenue/ State to accept the assessees' income-tax returns for AY 2018-19 without indicating Aadhaar no. / Aadhaar enrolment no. and / or linking with PAN, if uploaded before June 30th 2018 and in case the system does not accept the Returns in absence of Aadhaar details, to file the returns in physical form with the jurisdictional AO, following recent decisions of Punjab and Haryana High Court in case of Pradeep Kumar Vs. UOI [C.W.P. 7672 of 2018] and Delhi High Court in case of Mukul Talwar Vs. UOI [WP No. (C) 3212 of 2018] granting similar relief in view of PAN-Aadhaar linking deadline extended to June 30, 2018. The Court observed that it was not open to the State to take a stand that the orders passed by the Punjab & Haryana High Court and Delhi High Court were contrary to the statute and/or made on incorrect concession made by the counsel for the State, without even attempting to have the same set aside either in appeal and/or recalled/varied. It however clarified that the above directions were without prejudice to the rights and contentions of the Revenue/ State that such returns without quoting Aadhaar numbers are contrary to the provisions of the Act and the above directions were only applicable in the case of the petitioners involved.
Hussain Indorewala and Ors v UOI & Ors. - [TS-369-HC-2018(BOM)] - WRIT PETITION NO. 1709 OF 2018 dated June29, 2018

3997. Assessee-company was engaged in the business of printing and publishing newspapers, and out of the profits, acquired some properties. Consequent to enactment of S.40 of the Finance Act,1983 (bringing land & building not used for business purposes by companies in which public are not substantially interested to wealth tax), the assessee received notices u/s 16(4) of Wealth Tax Act, directing the assessee to file its return of wealth & notices of penalty were also issued. The assessee challenged S.40 on the ground that it was unconstitutional, violated Art. 14(not bringing to wealth tax the companies in which public are substantially interested) and thus to be regarded void. However, the Court rejected assessee's claim holding that the allegation against the statute was to be specific, clear and unambiguous. Further, it was observed that the Finance Minister, in his speech, made it clear about the purpose of enacting S.40 for the reason that individuals would transfer their assets to the company closely held by them to evade wealth tax since wealth tax was not attracted to companies. Therefore, the Court held that the fact that land and building owned by company was not used for purposes of business was sufficient to hold that these assets were to be taken into account u/s 40(3) of the Finance act for purposes of wealth tax and the said section was not violative to the constitution.
Indian Express Newspapers (Bombay) Pvt. Ltd. & Anr. v Inspecting Asst. CIT & Anr (2018) 101 CCH 0129 MumHC - WRIT PETITION NO. 2983 OF 1987 dated 02.04.18

3998. The Tribunal held that though section 206C does not impose any limitation period for the AO to hold the assessee to be in default for collection of tax at source, a reasonable time limit of four years has to be read into the statute. Orders passed after this period are beyond the limitation and are void. The fact that the Dept became aware of the default later is irrelevant. The fact that the assessee admitted his liability is also irrelevant.
ITO vs. Eid Mohammad Nizamuddin - ITA No. 316/JP/2018 dated 29.08.2018

3999. The Court held that general direction for extending due date for filing returns under section 139(1) could not be issued as that would be contrary to scheme of Act, however, CBDT was to consider applications under section 119(2)(a)/(b) by assessees in Kerala towards claim of deductions/exemptions/refunds or waiver of interest/penalty, taking note of flood situation that affected State of Kerala.
Alwaye Chartered Accountants Association v. Union of India- [2018] 100 taxmann.com 458 (Kerala) WP (C) No. 35382 of 2018-dated December 19, 2018

4000. The Court held that there is no discipline in the manner the income-tax dept. conducts matters. It held that the dept. should not take legal matters casually and lightly. There should be a dedicated legal team in the department. Lack of preparation is affecting the performance of the advocates. They do not have full records & do not have the assistance of officials who can give instructions. The CITs should devote more time to their work rather than attending some administrative meetings and thereafter boasting about revenue collection in Mumbai.
PCIT vs. Radan Multimedia Ltd – ITA NO.1320 of 2018 (Bom HC) dated 26.09.2018

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