Important Judgements Of the Bombay High Court (Reported / Unreported / SLP Admitted/ Rejected) (Jan 2109 - Feb 2020)

Advocate Neelam Jadav has collated all the important judgements of the Bombay High Court delivered in the period from January 2019 to February 2020. She has arranged all the judgements section-wise to aid reference. Several of the judgements are not yet reported in the Journals. She has also highlighted the cases where the Supreme Court has granted or rejected Special Leave Petitions

Honourable Bombay High Court has delivered more than 500 judgments in a year on direct taxes many are unreported. For the benefit of Tax professionals we have tried to prepare the gist of 362 Judgements, section wise, which may be useful in their day to day practice .

1.S.2 (14)(a): Capital asset –Advance given to subsidiary – Loss – Held to be allowable as short term capital loss [S. 2(42A) ,2(47)]
Dismissing the appeal of the revenue the Court held that, advance given to subsidiary which was written off is held to be allowable as short term capital loss.(Arising from ITA No.3833/Mum/21,dt.31/03/2016)(ITA No.1366 of 2017 dt.26/08/2019)(AY. 2002-2003)
CIT v.Siemens Nixdorf Information Systems Gmbh (2020) 114 taxmann.com 531 (Bom)(HC)

2.S.2(15) : Charitable purpose - Objects of general public utility -Primary object of assessee trust was to carry out work in area of research, studies, training, education, health etc. Only for charitable purpose- Eligible for registration [S.12AA]

While dismissing the appeal of the revenue, court held that claim for registration u/s. 12AA by taking a view that primary object of assessee trust was to conduct work in area of research, studies, training, education, health etc. only for charitable purpose within meaning of s. 2(15), Eligible for registration. (Arising out of ITA No.3784/Mum/2013 dt.03/06/2015)(ITAX No. 1200 OF 2016 dt.10/01/2019 (Bom)(HC)
CIT (E) v. Pratham Institute for Literacy Education Vocational Training, (2019) 108 taxmann.com 312 (Bom) (HC)
Editorial: SLP of revenue is dismissed. (SLP No.16485 of 2019 dt.15/07/2019) [2019] 265 Taxman 546 (SC)/ 416 ITR 127 (St)

3.S. 2(22)(e): Deemed dividend- Loans from companies – Not beneficial shareholder in lender companies – Cannot be added as deemed dividend.
Dismissing the appeal of the revenue the Court held that, the assessee was not a beneficial owner of any shares in the creditor companies which had advanced the loans. No loan had been given by the creditor companies to any concern in which the assessee had a substantial interest. What was contemplated by the second limb of S.2(22)(e) was that the creditor companies gave a loan not directly to its shareholder but to any concern in which such shareholder had substantial interest. The common shareholder having a substantial interest in the assessee as well as in the creditor companies was only SIPL which held 86 per cent. of the shareholding in the assessee and 99 per cent. in the creditor companies. Hence, the transaction between the assessee and the creditor companies did not fall within the second limb of S.2(22)(e).(AY.2009-10)

PCIT v. Sunjewels International Ltd. (2019) 411 ITR 613/183 DTR 411 (Bom)(HC)

4. S. 2(31): Person – Status of an entity incorporated abroad has to be determined even in India, according to the law of the country where the entity is incorporated. [S. 74, 80, 139(3)]
The Court held that, in accordance with the principles of Private International Law, as held by the Supreme Court in case of Technip S.A. vs. SMS Holding (P) Ltd. & Ors. (2005) 5 SCC 465, the status of an entity incorporated abroad, has to be determined even in India, according to the law of the country where the entity is incorporated. Accordingly, the Court held that change in avtar in law of

the assessee would not disentitle the assessee in claiming loss. (AY. 2011-12) (WP No. 9358 of 2018, dt . 08.03.2019)

Aberdeen Institutional Commingled Funds LLC & Ors. v. AAR & Anr. (2019) 308 CTR 287 (Bom.)(HC)

5.S. 4: Charge of income-tax – Compensation awarded by Motor Accident Claims Tribunal - Interest on compensation awarded up to date of order of Tribunal or Court is held to be not taxable- Provision of deduction at source is not charging section. [S.2(28A, 56(2)(viii), 145A(b), 194A, Motor Vehicles Act, 1988, S. 171]

Petitioner when he was 8 years old while crossing the Road knocked down by a speeding vehicle. He was in coma for six months. Compensation was determined after 36 years after the accident. Motor Accident Tribunal awarded compensation within three months and the rate of interest payable was 12 per cent per annum on the unpaid amount. The insurance company before depositing the tax deducted the tax at source at 10 per cent on interest component. The petitioner filed the return and claimed the refund on the ground that the tax was wrongly deducted. The petitioner moved the petition challenging the vires of S.194A(3)(ix), and (ixa) as also S.145A(b) and 56(2) (viii) of the Act. When the petition was pending, the AO has passed the order. The petition was amended accordingly. Allowing the petition the Court held that, awarding interest for delayed computation of compensation is therefore an integral part of this exercise. Interest awarded in motor accident claims cases is, thus, compensatory in nature and forms part of the compensation itself hence not taxable. Court also held that clause (viii) of sub-section (2) of S. 56 by itself would not make the receipt of interest on compensation chargeable to tax as income from other sources, if such receipt is not income. Clause (b) of S.145A of the Act does not make interest on compensation or enhanced compensation taxable if it is otherwise not exigible to tax. It merely provides for the point of time when it would be subjected to tax if otherwise taxable. The provision for deduction of tax at source is not a charging provision. It only provides for deduction of tax at source on payment of a sum, which, in the hands of the payee, is income. If the payee has no liability to tax on such income, the liability to deduct tax at source in the hands of the payer cannot be fastened. The provision for deducting tax at source cannot govern the taxability of the amount which is being paid. Accordingly the question of deduction of tax at source would arise only if the payment is in the nature of income of the payee. (AY. 2016 -17)

Rupesh Rashmikant Shah v. UOI (2019) 417 ITR 169/182 DTR 203/310 CTR 826/266 Taxman 474 (Bom.)(HC)

6. S. 4 : Charge of income-tax - Bonus shares – Cannot be assessed as income . [S.2(24)]

Court held that bonus shares given by company in proportion to holding of equity capital by shareholders would, in absence of express provision to contrary be treated as capital and not income. (AY. 2006 -07 to 2009 -10)

PCIT v. Ashok Apparels (P.) Ltd. (2019) 264 Taxman 50 (Bom)(HC)

7. S. 4: Charge of income-tax -Capital or revenue - Foreign exchange fluctuation gain - Business not commenced - Profits or gains arising out of fluctuation of foreign exchange rate would be capital in nature-Revision is held to be not justified. [S.4, 28(i), 263]

Assessee-company was constituted as a special purpose vehicle to carry out foundational tasks for setting up a coal based power plant. Assessee had not commenced any business activity during relevant period to assessment year. Assessee had entered into contract for purchase of plant and machinery from abroad. In relation to such purchase, on account of cancellation of contracts and on account of notional adjustment, due to favourable fluctuation of foreign exchange rate, assessee had gained certain income. AO accepted the contention of the assessee. CIT revised the order and directed the AO to redo the assessment. The Tribunal held that the imports made by the assessee were part of the project of setting up power plant. It was recorded that, the business of the company had not commenced during period relevant to assessment year in question. The profit or loss which arose to an assessee on account of appreciation or depreciation in the value of foreign currency held as capital asset which was liable to be treated as capital in nature. Accordingly the order of AO is affirmed. On appeal the High court affirmed the order of the Tribunal. (AY.2009 -10)

PCIT v. Coastal Gujarat Power Ltd. (2019) 264 Taxman 244 (Bom)(HC)

8. S. 4 : Charge of income-tax –Capital or revenue –Sale of shares upon open offer – Additional consideration paid in terms of open offer due to delay in making offer and dispatch of letter offer - Capital receipt.

Dismissing the appeal of the revenue the Court held that the additional amount received by the assessee was part of the offer from the sale of shares made by it. The additional sum was part of the sale price and retained the same character as the original price of the share. The additional receipt of the assessee relatable to this component was a capital receipt.

CIT v. Morgan Stanley Mauritius Co. Ltd. (2019) 413 ITR 332/ 308 CTR 139/176 DTR 413 (Bom)(HC)

9. S. 4: Charge of income-tax – Capital or revenue - Sales tax waiver benefits are in nature of capital receipts.

Dismissing the appeal of the revenue the Court held that, sales tax waiver benefits are in the nature of capital receipts. Followed Indian Petrochemicals Corporation Ltd (2016) 74 taxmann.com 163 (Guj.)(HC) and CIT v. Nirma Ltd. (2017) 397 ITR 49 (Guj)(HC)

CIT v. Indian Petrochemicals Corpn. Ltd. (2019) 261 Taxman 251 (Bom.)(HC)

10. S.5: Scope of total income – Accrual - Year of taxability - Income accrues only when it becomes due – When the other party accepts the liability to pay the amount. [S.4, 145]

The assessee is in the business of promoter and developer of land. It sold the land under a memorandum of understanding (MOU) for a consideration of 120 crores. The assessee offered only Rs 100 crores for tax in the year 2012-13 as the MOU provided that a sum of Rs 20 Crores would be paid by the purchaser on execution of sale deed after getting plan sanctioned and on inclusion of the name of the purchaser in the 7/12 extract. However the AO taxed entire sum of Rs 120 crores in the assessment year 2012-13 only. On appeal CIT (A) also confirmed the order of the AO. On further appeal the Tribunal deleted the addition following the ratio in Morvi Industries Ltd v. CIT (1971) 82 ITR 835 (SC). On appeal by the revenue dismissing the appeal of the Court held that, the income accrues only when it becomes due when the other party accepts the liability to pay. Followed CIT v Shoorji Vallabdas & Co (1962) 46 ITR 144 (SC) , the Court also referred CIT v. Nagri Mills Co .Ltd (1958) 33 ITR 681 (Bom) (HC) wherein the High Court held that when the tax rate is the same the department should not fritter away the energies in fighting matters. (ITA No.306/Pun/2015 dt.9-02-2017)(AY.2012 -13)(ITA No 1345 of 2017 dt.18 -11-2019)

PCIT v. Rohan Projects (2020) 113 taxmann.com 339 (Bom) (HC)

11. S. 5 : Scope of total income -Accrual - Real income theory-Bad debt -Mercantile system of accounting - Bill raised for premature termination of contract- Contracting company not accepting Bill — Income did not accrue –Another bill of which a small part is received after four years –Claim as bad debt is to be accepted.[S.36(1)(vii), 145]

Dismissing the appeal of the revenue the Court held that though the assessee following the mercantile system of accounting Bill raised by assessee for premature termination of contract however the contracting company not accepting Bill. Income did not accrue. As regards another bill of which a small part is received after four years, claim as bad debt is to be accepted. (AY. 2002-03)

CIT v. Bechtel International Inc. (2019) 414 ITR 558 (Bom)(HC)

12.S. 6(6) : Residence in India - Not-ordinarily resident - Cash credits -If the assessee is non – resident amount found deposited in a foreign bank is not taxable in India either u/s 68 or u/s 69 of the Act – Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. [S. 68,69]

The assessee was born in India in year 1960 and thereupon he went to foreign country for education and carrying on his profession . During the year assessee was in India for 173 days. AO treated the assessee as resident. CIT (A) and Tribunal held that the assessee was not an ordinary resident. Dismissing the appeal of the revenue the Court held that if the assessee is non –resident amount found deposited in a foreign bank is not taxable in India either u/s 68 or u/s 69 of the Act .Period of

182 days to be considered for calculating residential status of a person migrated to Foreign Country. Residential status was regarded as 'not an ordinary resident. (AY.2006-07)

PCIT v. Binod Kumar Singh (2019) 178 DTR 49 / 264 Taxman 335/ 310 CTR 243 (Bom)(HC),www.itatonline.org

13. S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection- Royalty - Broadcasting services -Subscription - TV channel operator from customers - Receipt was not for transfer of any copyright in literary, artistic or scientific work- Cannot be categorized as royalty income- DTAA- India –Singapore [S.9(1) (vii) , Copy Right Act 1957 , S.2(y), 14 , 37, Art,5,12]

Assessee is a Singapore based company and operated TV channels through different agencies. Assessee received a part of subscription charges paid by customers which enable customers to view channels operated by assessee. Dismissing the appeal of the revenue the Court held that this was not a case where payment for any copyright in literary, artistic or scientific work was being made, nor was assessee parting with any copyrights therefore payment could not be categorized as royalty. (Followed Set Satellite (Singapore) P. Ltd (2008) 307 ITR 205)(Bom)(HC), Dy. CIT v Set India (P) Ltd. (ITA No.4372/Mum/ 2004 dt.25/04/2012)

CIT v. MSM Satellite (Singapore) Pte. Ltd. (2019) 265 Taxman 376 / 180 DTR 13 (Bom)(HC)

14. S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty -The insertions of Explanations 5 & 6 to s. 9(1)(vi) by the Finance Act 2015 w.r.e.f. 01.04.1976, even if declaratory and clarificatory of the law, will not apply to the DTAAs. The DTAAs are a bilateral agreement between two Countries and cannot be overridden by a unilateral legislative amendment by one Country –Not liable to deduct tax at source -DTAA- India –Nether lands [S.5, 6, 195, Art.]

Question before the High Court was, whether the Respondent assessee while making payment on royalty to the payee Company failed to deduct tax at source, though required in law? .Dismissing the appeal of the revenue the Court held that, The insertions of Explanations 5 & 6 to s. 9(1)(vi) by the Finance Act 2015 w.e.f. 01.04.1976, even if declaratory and clarificatory of the law, will not apply to the DTAAs. The DTAAs are a bilateral agreement between two Countries and cannot be overridden by a unilateral legislative amendment by one Country. Followed, New Skies Satellite BV 382 ITR 114 (Delhi)(HC) & Siemens AG 310 ITR 320 (Bom) (HC). Held not liable to deduct tax at source. (ITA No. 1395 of 2016, dt.05.02.2019)

CIT v. Reliance Infocomm Ltd (2019) 179 DTR 112 (Bom)(HC),www.itatonlin.org

15. S. 10(23C): Educational institution-Wholly or substantially financed by Government - Receiving grant from Government in excess of 50 Per Cent. of its total receipts —Entitled to benefit of exemption for assessment years prior to amendment- Original assessment u/s 143(1) – Reassessment is held to be proper . [S.10(23C)(iiiab), 143(1) 147 , 148]

Dismissing the appeal of the revenue the Court held that, receiving grant from Government in excess of 50 Per Cent. of its total receipts can be considered as substantially financed by Government hence entitled to benefit of exemption for assessment years prior to amendment. Original assessment u/s.143(1) accordingly reassessment is held to be proper. (AY.2004-05, 2006-07, 2007-08)

DIT v. Tata Institute of Social Sciences (2019) 413 ITR 305/ 177 DTR 417 / 308 CTR 759/ 263 Taxman 387 (Bom)(HC)

16. S. 10(23C): Educational institution- Exemption cannot be denied on the ground that in isolated case few institutions run by the Trust may not fulfill the requirements [S. 10 (23C(iiiab)]

Dismissing the appeal of the revenue the Court held that, Exemption cannot be denied on the ground that in isolated case few institutions run by the Trust may not fulfill the requirements. Exemption is not relatable to any individual institution run under the common umbrella of a Trust. (Arising out of ITA NO.1480/Pune/2014 dt.13/07/2015)(AY. 2008 -09)

CIT (E) v. Deccan Education Society (2019)173 DTR 323/ 306 CTR 525 (Bom)(HC)

17. S.10(23EA) : Exemption - Contribution - Claim was not made during the filing of return of income but as an alternative at the appellate stage before the CIT(A) – held to be allowable. (S. 10, 11 to 13)

There is no prohibition in law which would prevent the assessee , Trust which qualifies for benefits u/s. 11 to 13 of the Act from claiming exemption u/s.10. (Arising out of ITA No.1021/Mum/2014 dt.23/05/2014)(ITA NO.12170 of 2016, dt.04/01/2019)

DIT (E) v. National Stock Exchange Investor Protection Fund Trust ((2019) 109 taxmann.com 275 (Bom)(HC)

Editorial: SLP of revenue is dismissed (SLP No.17794 of 2019 dt.26/07/2019)(2019) 266 Taxman 180 (SC) / 416 ITR 129 (St.)(SC)

18. S.10(34):Dividend – Domestic companies - Tax on distribution of profits – Exemption cannot be denied to receiver of dividend, though the payer company had not paid tax on dividend distribution u/s. 115-O of the Act. [S. (22)(d), 115-O]

Dismissing the appeal of the revenue the, Court held that; exemption cannot be denied to receiver of dividend, though the payer company had not paid tax on dividend distribution u/s. 115-O of the Act. (AY.2008-09)

PCIT v. Kayan Jamshid Pandole. (Smt.) (2019) 260 Taxman 32/306 CTR 597/174 DTR 141 (Bom)(HC)

19. 10A : Free trade zone - Computation of deduction - loss of another unit – cannot - Set off against profit of unit eligible for deduction-Deduction in respect of eligible unit has to be allowed before setting off brought forward depreciation and losses of a non-10A unit .[S.72]

Export oriented undertaking, while computing deduction u/s.10A, loss of another unit of Assessee Company could not be set off against profit of unit eligible for deduction. Followed , CIT v. Black & Veatch Consulting (P.) Ltd (2012) 348 ITR 72 (Bom) (HC)

(AY. 2005 -06) (Arising ITA 6139/M/2010 dt.18/06/2013)(ITXA No.2354 of 2013 dt.19/01/2016)

CIT v. Russan Pharma Ltd(2019) 107 taxmann.com 111(Bom.)(HC)

Editorial:SLP of revenue is dismissed (SLP No.12984 of 2019 (2019) 414 ITR 6(St.)(SC)/ (2019) 265 Taxman 1 (SC)

20. S. 10A : Free trade zone - Disallowance of expenses -Enhanced profit due to statutory disallowances – Entitle to deduction .[S.40(a)(ia)]

Tribunal held that disallowance made under section 40(a)(ia) would not affect assessee's liability to tax because even if said amount was disallowed and added to income, same would be exempted under section 10A . High Court upheld Tribunal's order. (Followed CIT v Gem Plus Jewellery India Ltd (2011) 330 ITR 175 (Bom) (HC) (AY. 2006-07)(Supreme Court followed CIT v. HCL Technologies Ltd 2018 (6) SCALE 524)

CIT v. BMC Software India (P.) Ltd. (2019) 109 taxmann.com 277 / 266 Taxman 179 (Bom)(HC)

Editorial: SLP of revenue is dismissed, PCIT v. BMC Software India (P.) Ltd. (2019) 266 Taxman 178 (SC)

21. S. 10A : Free trade zone - Expenditure incurred in foreign exchange on communication/internet charges are to be excluded from total turnover.

Dismissing the appeal of the revenue the Court held that, Expenditure incurred in foreign exchange on communication/internet charges are to be excluded from total turnover. CIT v HCL Technologies Ltd (2018) 302 CTR 191 (SC) followed. **(**ITA No. 268 & 273 of 2016 dt.12-10-2018) (AY. 2005-06, 2007-08)

CIT .v. Ness Technologies (India)(P) Ltd (2019) 307 CTR 588 / 174 DTR 260 (Bom)(HC)

22. S.10A : Free trade zone - Deduction to be computed before adjusting business loss or Depreciation [S.10B,70,71,72,74,80IA(5),80IA(6)]

Dismissing the appeal of the revenue the Court held that, the Tribunal is justified in holding that, deduction to be computed before adjusting business loss or Depreciation. Referred, Circular No 7/DV/2013 dt.16 -07 2013, Followed CIT v Yokogawa India Ltd (2017) 77 taxmann.com 41 (SC), CIT v Galaxy Sufactants Ltd ITA No. 3465 of 2010 dt.7/02/2012(ITA No.1356/PN/2014 dt.05-05-2016)(ITA No.1368 of 2017 dt.27/01/2020)(AY. 2007-08)

Editorial: Also, refer CIT v Shantivijay Jewels Ltd (ITA No 1336 of 2013 dt.7/4/2015(Bom)(HC)

PCIT v Aesseal India Pvt Ltd (Bom)(HC)(UR)

23.S.11: Exemptions –Trust was not engaged in running the restaurant, bar etc. - Exemption is held to be allowable.

The Assessee trust was nowhere engaged in running the restaurant, bar etc, and therefore, the question of maintaining separate books of accounts for such activities did not arise . No violation of provision of S. 11. (Arising out of ITA No.3114/Mum/2012 dt.26/10/2015)(ITA No. 1680 of 2016, dt.11/02/2019)

CIT(E) v. Matoshri Arts & Sports Trust. (Bom) (HC) (UR)

Editorial: SLP of revenue is dismissed (SLP No.17828 of 2019 dt.26/07/2019)(2019) 416 ITR 127 (St.)(SC)

24. S.11: Property held for charitable purposes –Registration granted – AO cannot revisit objects again while examining compliance with S.11 of the Act. [S.2(15) , 12A]

Dismissing the appeal of the revenue the Court held that once registration was granted to assessee trust under S. 12A the AO while examining compliance with S. 11 cannot revisit objects of assessee again. Followed ACIT v. Surat City Gymkhana (2008) 370 ITR 214 (SC).(AY. 2008-09)

DIT(E) v. Gemological Institute of India (2019)105 taxmann.com 179/ 263 Taxman 349 (Bom) (HC)

Editorial: SLP of revenue is dismissed on the ground of low tax effect.DIT(E) v. Gemological Institute of India (2019) 263 Taxman 348 (SC)

25. S. 11 : Property held for charitable purposes – Income applied for the object of the Trust - Promotion of sports, games and providing recreation facilities to the public at large and to the members in particular and therefore receipts on account of compensation from decorator against gymkhana function, miscellaneous income and compensation from caterer (restaurant) cannot be construed as activities in the nature of trade, commerce or business for the purpose of the proviso to S. 2(15) of the Act- Capital expenditure allowed as application of income – Depreciation is allowable [S.2(15), 12 , 13, 32]

Dismissing the appeal of the revenue the Court held that, promotion of sports, games and providing recreation facilities to the public at large and to the members in particular and therefore receipts on account of compensation from decorator against gymkhana function, miscellaneous income and compensation from caterer (restaurant) cannot be construed as activities in the nature of trade, commerce or business for the purpose of the proviso to S. 2(15) of the Act. Followed ,CIT v. Bombay Presidency Golf Club Ltd ITA No.235 of 2017. dt. 2-04 2019 (Bom) (HC) , DIT (E) v Shri Vile Parle Kelavani Mandal, (2015) 378 ITR 593 (Bom) (HC) DIT (E) , DIT (E) v. Shree Nashik Panchvati Panjrapole, (2017) 397 ITR 501 (Bom) (HC) ,Add.CIT v . Surat Art Silk Cloth Manufacturers Association,(1980) 121 ITR 1 (SC). As regards capital expenditure is allowed as application of income and also entitle to depreciation. The appeal of the revenue is dismissed following the judgements in CIT v . Rajasthan and Gujrat Charitable Foundation, Poona, (2018) 402 ITR 441 (SC)(ITA No.4468/Mum/2013 dt 30 -11-2016) (ITA No 1767 of 2017 dt 22-01 -2020) (AY.2009 -10)

CIT (E) v. Matunga Gymkhana (Bom)(HC)(UR)

26. S. 11 : Property held for charitable purposes - Carry forward of deficit – Allowed to be set off against income of the subsequent year [S.12,32 , 72]

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in setting off of the earlier loss against the setting off of income of the subsequent year. Followed CIT (E) v Sbros Educational Society (2018) 7 SCC 548.(ITA No.5391/Mum/2016 dt.01/02/2017)(AY.2012-13)(ITA No.1761 of 2017 dt.22-01 2020)

CIT (E) v Rustomjee Kerawalla Foundation (Bom)(HC)(UR)

27. S. 11: Property held for charitable purposes - Golf facilities to its members for promotion of sport- No element of activity of being in nature of trade, commerce or business - Interest earned from banks or financial institutions on investment of surplus funds arising from charitable activities was exempted from tax. [S.2(15)]

Court held that the main object of assessee-golf club was to provide golf facilities to its members for promotion of sport and there was no element of assessee club being in nature of trade, commerce or business, interest earned from banks or financial institutions on investment of surplus funds was exempted from tax. CIT v. Common Effluent Treatment Plant (Thane Belapur)Association (2010) 328 ITR 362 (Bom)(HC) is distinguished)(AY.2009 -10)

CIT v. Bombay Presidency Gold Club Ltd. (2019) 264 Taxman 55 / 182 DTR 454/ 311 CTR 578 (Bom)(HC)

28. S. 12A : Registration –Trust or institution- Amount collected by the assessee as donation from the students was within the permissible limit of 15% - Denial of exemption is held to be not valid [S.11, 12AA(3), 13(1)(d)]

Appeals filed by the revenue the issue involved is whether the amount collected by the assessee as donation from the students was within the permissible limit of 15% or whether the same was done with the profit motive to suggest that the assessee is running the related educational institute on commercial line. Court followed the order in assesees, own case in ITA No 59 of 2015 dt.11/09/2017 for the assessment years 2010-11 and 2011-12 and involving the same issue. Relevant portion of the order dated 11.09.2017 is extracted hereunder:-

"9. The Tribunal found that the assessee - trust is more than 100 years old. It runs more than 60 educational institutions imparting education to more than 70000 students in various fields. It was granted registration earlier under Section 12A. The Commissioner of Income Tax, however, relied on certain amounts styled as 'donations collected from students'. He held that this was against the assurance to admit them to these educational courses. Collection of such donations or moneys, therefore, attracts the provisions under the Capitation Fee Act. The Tribunal found that there is no merit in this finding of the Commissioner. The assessee pointed out that as against 70 management quota seats in the educational institutions, the assessee collected donation from nine students. The sum of the donation is within the prescribed limit and the Government of Maharashtra has not at all prohibited the receipt of the same. In paragraphs 8.3 and 8.4 of the order of the Tribunal, the details of such students and donations collected from them have been referred. Then, the other objection of the Commissioner was that the assessee is accumulating huge surplus year after year. However, the Tribunal found that this surplus is within the permissible limit of 15% and how that is worked out is apparent from paragraph 8.5 of the Tribunal's order. Thus, the Tribunal found that the accumulation of surplus is within the permissible limit. It cannot be said that the assessee is running educational institution on commercial lines."

Accordingly the appeal of the revenue is dismissed. (ITA Nos.1127 to 1133/PN/2011 dt.19-10 -2016) (ITA Nos. 1061 of 2017 /1062 of 2017 /2017 of 2017 /283 of 2018/ 384 of 2018/526 of 2018 /762 of 2018 dt 20 -01 2020 (AY.2003 - 04, 2009 -10)

PCIT v Shikshan Prasarak Mandali (Bom) (HC) (UR)

29. S. 12A : Registration–Trust or institution - 71% of the receipt were spent in accordance with the object of the Trust- Partial expenditure were spent on religious- Trust is held to be genuine – Entitle for registration – Benefit of S.11 is not available only to the extent of partial expenditure which were spent on religious .[S.11]

Dismissing the appeal of the revenue the Court held that at stage of registration, question of application of income of trust is premature. DIT (E) rejected petitioner's application for registration under S. 12A on ground that 29 per cent of its gross receipts were expended on making donations for religious purposes which was not in accordance with objects of trust . Court held that 71 per cent of receipt of trust were being spent in accordance with its object, it was established that trust was genuine. Court also held that spending a partial expenditure which was not authorized by trust would not make trust non-genuine and only consequences would be that benefit of S. 11 would not be available to that extent.

CIT v. Manekji Mota Charitable Trust (2019) 267 Taxman 16(Bom)(HC)

30. S. 12AA : Procedure for registration –Trust or institution- Object to help of literary persons of different aptitudes or classes ,plays written in different languages could be converted in to dramas or episodes or T.V. Plays – Cannot be regarded as commercial in nature –Denial of registration is not justified. [S.2.15, 12A.)

Assessee trust filed an application for registration .AO rejected the application on the ground that the object to help of literary persons of different aptitudes or classes ,plays written in different languages could be converted in to dramas or episodes or T.V. Plays is commercial in nature . Tribunal allowed the application of the assessee. On appeal by the revenue the High Court, affirmed the order of the Tribunal.

(Editorial: Order in Kanakia Art Foundation. v. Dy.CIT (2015) 59 taxmann.com 468/ 39 ITR 53 (Mum) (Trib) is affirmed)

CIT(E) v. Kanakia Art Foundation. (2019) 265 Taxman 281 (Bom)(HC)

31. S. 12AA : Procedure for registration –Trust or institution-Object of assessee trust was to conduct work in area of research, studies, training, education, health etc.- Charitable in nature – Entitle to registration [S.2(15)]

Dismissing the appeal of the revenue the Court held that primary object of assessee trust was to carry out work in area of research, studies, training, education, health etc. only for charitable purpose within meaning of S.2(15) of the Act . Tribunal is justified in allowing the registration.

CIT (E) v. Pratham Institute for Literacy Education & Vocational Training. (2019) 108 taxmann.com 312/ 265 Taxman 547 (Bom)(HC)

Editorial: SLP of revenue is dismissed, CIT (E) v. Pratham Institute for Literacy Education & Vocational Training. (2019) 265 Taxman 546 (SC)

32. S. 12AA : Procedure for registration –Trust or institution- Charitable purpose - Cancellation of registration is held to be not valid-Orders made by the CIT and ITAT are quashed and the registration held by the GIDC is ordered to be revived. [S. 2(15) 11,12A]

The appellant is a Statutory Corporation established under the Goa, Daman and Diu Industrial Development Corporation Act, 1965 (GIDC Act) with the object of securing orderly establishment in industrial areas and industrial estates and industries so that it results in the rapid and orderly establishment, growth and development of industries in Goa. The CIT, withdrew the registration granted to the appellant by observing that it is crystal clear that the activities of the appellant are interconnected and interwoven with commerce or business based on the proviso to S. 2(15) of the Act. Order of the Tribunal is affirmed by the Tribunal. On appeal High court held that there are no categorical findings that the activities of GIDC are not genuine or are not in accordance with the objects of the trust or the institution. Merely because, by reference to the amended provisions in S. 2(15), it may be possible to contend that the activities of GIDC are covered under the proviso, that, by itself, does not render the activities of GIDC as non-genuine activities so as to entitle the CIT to exercise powers under S. 12AA(3) of the said Act. Accordingly the orders made by the CIT and ITAT are quashed and the registration held by the GIDC is ordered to be revived. (ITA No 2 of 2013 dt.04/2/2020)

Goa Industrial Development Corporation v CIT (Bom)(HC)(UR)

33. S. 13 : Denial of exemption-Trust or institution-Investment restrictions – Funds utilised for purchase of car in name of its trustee-Denial of exemption should be limited only to amount which was diverted in violation of S. 13(2)(b) of the Act . [S.11 , 132(2) (b)]

Dismissing the appeal of the revenue the Court held that where funds of educational trust were utilized for purpose of purchase of car in name of its trustee, there is violation of S.13(2)(b), read with S. 13(3) of the Act . However, denial of exemption under S 11 should be limited only to amount which was diverted for purchase of car in name of prohibited person, i.e., trustee of assessee, in violation of S.13(2)(b) of the Act. (AY.2004 -05)

CIT (E) v. Audyogik Shikshan Mandal. (2019) 261 Taxman 12 (Bom)(HC)

Editorial: Audyogik Shikshan Mandal v. ITO (2015) 156 ITD 1 (TM) (Pune)(Trib.) is affirmed .

34. S. 14A : Disallowance of expenditure - Exempt income – Tribunal is justified in restricting the disallowance of 5% of exempt income -Rule 8D would not be applicable retrospectively [R.8D]

Dismissing the appeal of the revenue the Court held that, Tribunal is justified in restricting the disallowance of 5% of exempt income -Rule 8D would not be applicable retrospectively.(ITA No. 623 of 2017 dt.26 -08 -2019) (AY. 2007-08)

PCIT v Reliance Natural Resources Ltd (2019) 267 Taxman 644 (Bom) (HC)

35. S. 14A: Disallowance of expenditure - Exempt income -Interest – Disallowance can be only on net interest on theloan. [R.8D]

Dismissing the appeal of the revenue the Court held that disallowance can be only on net interest on the loan. (AY. 2008-09)

CIT v. Jubiliant Enterprises P. Ltd. (2019) 416 ITR 58 (Bom) (HC)

Editorial: SLP is granted to the revenue,CIT v. Jubilant Enterprises P. Ltd. (2017) 397 ITR 32 (St)

36. S. 14A: Disallowance of expenditure - Exempt income –Not recorded the satisfaction for not accepting the disallowance- Deletion of addition is held to be justified.[R.8D]

Dismissing the appeal of the revenue the Court held that the Assessee has made suo motu disallowance, however the AO applied the Rule 8D(2) of the Act. Tribunal held that the AO has not recorded the satisfaction for not accepting the disallowance hence, deleted the addition. Order of Tribunal is affirmed by High Court.(ITA No.237 of 2017,dt.02.04.2019)(AY.2009-10)

PCIT v. Bajaj Finance Ltd. (2019) 178 DTR 219/ 309 CTR 28 (Bom)(HC),www.itatonline.org

37. S. 14A: Disallowance of expenditure - Exempt income – When there is no exempt income declared during the year no disallowance can be made. [R. 8D (2) (ii)]

Dismissing the appeal of the revenue the Court held that, when there is no exempt income declared during the year no disallowance can be made.Followed Cheminvest Ltd v CIT (2015) 378 ITR 33 (Delhi) (HC), CIT v Shivam Motors Pvt Ltd (2015) 230 Taxman 63 / 272 CTR 277 (All) (HC), PCIT v Man Infra projects Ltd ITA NO dt 9-04 2019. (ITA No.5241/2013 dt.18 -10 2016)(ITA No. 1124 of 2017 dt.27/01/2020) (AY.2008 -09)

Editorial: Also refer, PCIT v. Ballapur Industries Ltd (ITA No. 51 of 2016, dt.13.10.2016) (Bom.) (HC), www.itatonline.org , PCIT v. Oil Industries Development Board (2019) 262 Taxman 102 (SC), www.itatonline.org , Cheminvest Ltd v. ITO (2009) 27 DTR 82 /124 TTJ 577 / 121 TTD 318 (SB) (Delhi) (Trib.)

PCIT v Khoinoor Project Pvt Ltd (Bom) (HC) (UR)

38. S. 14A : Disallowance of expenditure - Exempt income – When there is no exempt income declared during the year no disallowance can be made .[R.8D(2) (ii)]

Dismissing the appeal of the revenue the Court held that when there is no exempt income declared during the year no disallowance can be made. Followed CIT v. Delite Enterprises ITA No 110 of 2009 dt 26.2.2009 (Bom) (HC) CIT v. India Debt Management Pvt Ltd ITA No 266 of 201 dt

15.4.2019 (Bom) (HC) (ITA No 114/Mum/2013 and Cross-objection No. 215/Mum/2015 dt 5-01 2017 . (ITA No 1701 of 2017 dt 21-1-2020) (AY.2008 -09)
PCIT v .Morgan Stanley India Securities P Ltd (Bom)(HC)(UR)

39. S. 14A : Disallowance of expenditure - Exempt income – Rule 8D is not applicable to assessments prior to AY. 2008 -09 [R.8D]
Dismissing the appeal of the revenue the Court held that Rule 8D of the Income tax Rules 1962 is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008 -09. Followed Godrej and Boyce Manufacturing Co Ltd v. Dy. CIT (328 ITR 81 (Bom) (HC) , CIT v. Essar Teleholdings Ltd (2018) 90 taxmann.com 2 (SC) (ITA No 2966 / 3085 /Mum/ 2014 dt 13-07-2016) (ITA No .1996 of 2017 dt 23 –1 2020)
PCIT v. Bank of India (Bom) (HC) (UR)

40. S. 14A : Disallowance of expenditure - Exempt income - In the absence of any exempt income, disallowance is not permissible. [R.8D]
The assessee made investment in group concerns, which yielded no dividend income during the relevant assessment year. Tribunal deleted the disallowances on appeal by revenue dismissing the appeal the Court held that, **i**n the absence of any exempt income, disallowance is not permissible. Followed, CIT v. Essar Teleholdings Ltd. (2019) 401 ITR 445 (SC), PCIT v. Oil Industry Development Board (2019) 103 taxmann.com 326 (SC) (ITA no 2067/Mum/2015 dt.20-12-2106)(ITA No. 1545 of 2017 dt.11-02 -2020 (AY. 2009-10.)
PCIT v Dish TV India Ltd (Bom) (HC) (UR).

41. S.14A : Disallowance of expenditure - Exempt income –Satisfaction- AO cannot disallow the expenditure far in excess of what has been disallowed , without demonstrating how the working of the assessee is wrong .[R.8D]
Dismissing the appeals of the revenue the Court held that *AO* cannot disallow the expenditure far in excess of what has been disallowed, without demonstrating how the working of the assessee is wrong.(AY.2009-10)

CIT v. DSP Adiko Holdings Pvt. Ltd. (2019) 414 ITR 555 (Bom)(HC)

CIT v. DSP HMK Holdings P. Ltd. (2019) 414 ITR 555 (Bom)(HC)

42. S. 14A: Disallowance of expenditure - Exempt income -Interest free funds were utilized for making exempt investment-No disallowance can be made. [R.8D]
Court held that there is a presumption that interest free funds were utilized for making exempt investment, assessee would not be expected to establish same and it would be for revenue to establish to contrary. No disallowance can be made. (AY. 2006 -07 to 2009 -10)
PCIT v. Ashok Apparels (P.) Ltd. (2019) 264 Taxman 50 (Bom)(HC)

43. S. 14A: Disallowance of expenditure - Exempt income -Sufficient interest free funds in excess of interest bearing fund to make investment-Deletion of disallowance is held to be justified. [R.8D]
Dismissing the appeal of the revenue the Court held that the Tribunal has given the finding that the assessee had sufficient interest free funds in excess of interest bearing funds to make investment which would result in exempt income. Accordingly the deletion of disallowance is held to be justified. (AY. 2008 -09)
PCIT v. Premier Finance & Trading Co. Ltd. (2019) 262 Taxman 341 (Bom) (HC)

44. S. 14A: Disallowance of expenditure - Exempt income - Disallowance cannot exceed exempt income earned — Tribunal restricting disallowance to extent offered by assessee is held to be proper. [R.8D]
Dismissing the appeal of the revenue the Court held that the disallowance of expenditure incurred to earn the exempt income could not exceed the exempt income earned. The ratio of the decisions in the cases of Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi) (HC)) and CIT v. Holcim India (P) Ltd.

(I. T. A. No. 486 of 2014 decided on September 5, 2014(Delhi) (HC)) would include a facet where the assessee's exempt income was not nil, but had earned exempt income which was more than the expenditure incurred by the assessee in order to earn such income. The order of the Tribunal which restricted the disallowance of the expenditure to the extent voluntarily offered by the assessee was not erroneous. (AY. 2009 -10)

CIT v. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 (Bom) (HC)

45. S. 14A: Disallowance of expenditure - Exempt income -Disallowance cannot exceed assessee's exempt income. [R.8D]

The assessee earned dividend income of Rs.1,13,72,545 which was exempt from tax. The AO disallowed interest and administrative expenditure in relation to the exempt income in a sum of Rs.4,22,72,425/- of the Act. The Tribunal confirmed the disallowances. On appeal court held that the disallowance under section 14A read with rule 8D could not exceed the assessee's exempt income. The disallowance under section 14A was to be limited to the extent of the dividend income earned by the assessee which was exempt from tax. (AY. 2008 -09)

Nirved Traders Pvt. Ltd. (2020) 421 ITR 142 (Bom) (HC)

46. S.23: Income from house property- Annual value - Interest free deposit - Rented property – Deletion of the 12 per cent. Interest on the interest-free deposit received by the assessee, to determine the annual letting value of the rented property- Held to be valid.[S.24]

Court held that the Tribunal was justified in upholding the order of the CIT (A) directing the AO to delete the 12 per cent. Interest charged by him, on the interest-free deposit received by the assessee, to determine the annual letting value of the rented property. Followed CIT v . Tip Top Typography (2014) 368 ITR 330 (Bom)(HC)(AY. 2008-09)

CIT v. Jubilant Enterprises P. Ltd. (2019) 416 ITR 58 (Bom) (HC)

Editorial: SLP is granted to the revenue,CIT v. Jubilant Enterprises P. Ltd. (2017) 397 ITR 32 (St)

47. S. 23: Income from house property - Annual value – Standard rent -illegal tenant - Deposit of certain compensation on monthly basis in Court, could not form basis to make addition to assessee's rental income in respect of other tenants who are protected under Rent control Act. [S.22, Delhi Rent Control Act.]

Dismissing the appeal of the revenue the Court held that; deposit of certain compensation on monthly basis in Court in respect of one of the tenant who occupied the premises illegally, could not form basis to make addition to assessee's rental income in respect of other tenants who are protected under Rent control Act. (AY.2003-04 to 2006 -07)

PCIT v. Seth Properties (2019) 262 Taxman 124 (Bom)(HC)

48. S. 23: Income from house property - Annual value - Property which is not legally occupy able and not occupied - Could not be made liable to tax on notional rental income for that period. [S.22]

Assessee purchased commercial property under conveyance deed, dated 18-12-2008, but Occupancy Certificate (OC) for same was given on 24-5-2009, only. In meantime, assessee had leased out property with effect from 1-4-2009. AO held that assessee was liable to pay tax on rental income of property from 1-1-2009 to 31-3-2009, on notional basis. CIT (A) and Tribunal also confirmed the addition. On appeal the Court held thatbetween 1-1-2009 to 31-3-2009, the property was legally not occupiable and not occupied. Under such circumstances, charging of tax on notional rental basis and the question of interpretation of S. 23(1)(a) did not arise at all. Accordingly the order of Tribunal is reversed. (AY. 2009 -10)

Sharan Hospitality (P.) Ltd. v. DCIT (2020) 268 Taxman 443 (Bom) (HC)

49. S. 28(i): Business income –Income from house property –Leasing of shops in a mall along with various other facilities- Assessable as business income and not as income from house property. [S.22]

Assessee-company is engaged in business of leasing out shop space in shopping malls. Assessee has shown income received from leasing out of shops and other commercial establishments as business

income. AO assessed the income as income from house property. Tribunal held that the assessee is providing various facilities and amenities apart from giving shopping space on lease accordingly assessable as business income. Dismissing the appeal of the revenue the Court held that since it was not a case of giving shops on rent simplicitor rather assessee desired to enter into a business of renting out commercial space to interested individuals and business houses, amount in question was rightly brought to tax as business income. (AY-2008 -09)(Raj Dadarkar & Associates (2017) 394 ITR 592 (SC) is distinguished.)

PCIT v. Krome Planet Interiors (P.) Ltd. (2019) 265 Taxman 308 (Bom) (HC)

50. S.28(i): Business income- Client code modification-(CCM)- Shifting of profits- Addition as income on the basis of alleged doubtful transaction is held to be not valid – Deletion of addition b the Tribunal is affirmed. [S.69, 143(3)]

The assessee is a member of Multi Commodity Exchange of India Ltd (MCX) and National Commodity and Derivative s Exchange of India. The assessee is carrying on trading activities both on derivatives and delivery based transactions on its own account as well as on behalf of various clients. AOhas added the entire amount of doubtful transactions by way of assessee's additional income on the basis of client code modification. CIT (A) deleted the addition on the ground that all the clients are having PAN and regularly filing their returns and profits were taxed in their hands. Clients are not related parties. Modification was around 3% of the total transactions. All of them were complied with KYC norms. Tribunal affirmed the order of CIT(A)). On appeal by the revenue , dismissing the appeal the Court held that ,even if the Revenue's theory of the assessee having enabled the clients to claim contrived losses is correct, the Revenue had to bring on record some evidence of the income earned by the assessee in the process, be it in the nature of commission or otherwise. Adding the entire amount of doubtful transactions by way of assessee's additional income is wholly impermissible. The fate of the individual investors in whose cases the Revenue could have questioned the artificial losses is not known. Accordingly the appeal of the revenue is dismissed.(ITA No.1257 of 2016, dt.15.01.2019)(AY. 2006 -07)

(**Editorial**: Order of Mumbai Tribunal in ITO v. Pat Commodity Services P. Ltd (ITA No. 3498/3499/Mum/2012 dt.07/08/2015)(AY. 2006 07, 2007-08) is affirmed.

PCIT v. Pat Commodity Service Pvt. Ltd. (Bom.)(HC), www.itatonline.org

51.S.28(i): Business income – Leasing the hotel and charging one percentage of total revenue – Assessable as business income and not as income from house property.[S. 22, 23]

Assessee leased out its hotel claimed that amount received is taxable as business income. AO assessed the receipt as rental income. Tribunal held that the as the assessee is not receiving any rent amount but was receiving one per cent of total revenue hence taxable as business income . High Court affirmed the order of the Tribunal. (AY. 2007-08, 2008-09)

CIT v. Plaza Hotels (P.) Ltd. (2019) 107 taxmann.com 287/265 Taxman 90 (Bom.)(HC)

Editorial: SLP of revenue is dismissed, CIT v. Plaza Hotels (P.) Ltd. (2019) 265 Taxman 89 (SC)

52. S.28(i): Income from business – Income from house property – Exploitation of property commercially by way of complex commercial activities - Rental income is to be taxable as income from business – Not as Income from House Property. [S.22]

Assessee declared its income under the head Income from Business. The AO however, treated the same as Income from House Property which was affirmed by the CIT (A) . Tribunal decided the issue in favour of the assessee. On appeal before the High Court , question raised is " Whether, on the facts and in the circumstance of the case and in law, the Hon'ble Tribunal was justified in holding that the assessee had exploited its property commercially by way of complex commercial activities and hence, the rental income received by the assessee to be taxable as income from business and not under the head "Income from House Property' ?" The Honourable Court considered the object clause of the company and various services provided such as marketing and promotional activities and also organising various events and programs. Court also noted in the context of the revenue sharing agreement copies of which have been placed on record on which the revenue receives not only

license fee of the amounts specified therein and percentage of net revenue. In some of the agreements the compensation is either license fee or percentage of net revenue, whichever is higher. The Intention of the Assessee is also a material circumstance and the objects of Association, the kind of services rendered clearly point out that the Income is from Business. All the factors cumulatively taken demonstrate that the assessee had intended to enter into a Business of renting out commercial space to interested parties. The other income is only an income which is a dividend income from the deposits received from the Business income. Therefore, considering all these factors which have been enumerated above and referred to by the Tribunal, the findings rendered by the Tribunal on assessment of the factual position before it that the income in question has to be treated as business Income. Referred Chennai Properties and Investments Ltd. v. CIT [2015] 373 ITR 673 (SC) Raj Dadarkar , Associates v ACIT[2017] 394 ITR 592 /81 taxmann.com 193 (SC) PCIT v. Krome Planet Interiors (P.) Ltd [2019] 107 taxmann.com 443 / 265 Taxman 308 (Bom) (HC) .(ITA No .1783/Mum/ 2015 dt.23-09 -2016 (ITA No.1583 of 2017 dt.13/01/2020)(AY.2010-11.)
PCIT v. City Centre Mall Nashik Pvt. Ltd (Bom)(HC)(UR)

53. S.28(i): Business income – Royalty -Addition cannot be made in respect of which no services were rendered .
Dismissing the appeal of the revenue the Court held that, Tribunal is justified in holding that addition cannot be made in respect of which no services were rendered. (AY.2004-05, 2005-06)
PCIT v. Tulip Hospitality Service Ltd. (2019) 261 Taxman 16/ 411 ITR 595 (Bom)(HC)

54. S. 28(i): Business loss – Loss on revaluation of permanent category investments – Held to be allowable as business loss [S.260A]
Dismissing the appeal of the revenue the Court held that Loss of Rs.16,84,481 on account of loss on revaluation of permanent category investments is held to be allowable as business loss. No question of law. Followed CIT v. Union Bank of India, ITA No.1977 of 2013 dt.8/2/2016.
PCIT v. State Bank of India (2020) 420 ITR 376 / (2019) 181 DTR 275 (Bom.)(HC),www.itatonline.org

55. S.28(1): Business loss – Futures and options- Allowable as business loss. [S.37(1)]
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in directing the Assessing Officer to treat the notional loss incurred on transaction as normal business loss was concluded against the Department by the decision of this court. Followed CIT v Bharat R. Ruia (HUF) (2011) 337 ITR 452 (Bom)(HC)(AY.2008 -09)
CIT v. Hardik Bharat Patel (2019) 410 ITR 202 / 260 Taxman 294(Bom) (HC)

56. S.28(i) :Business loss - Business expenditure — Obsolescence allowance — Write of off obsolete stock – Allowable as business loss .[S. 37(1) 145A]
Dismissing the appeal of the revenue the Court held that the obsolete stock which was not disposed of or sold was allowable as expenditure. Order of Tribunal is affirmed.
CIT v. Gigabyte Technology (India) Ltd. (2020) 421 ITR 21 (Bom)(HC)

57. S.32: Depreciations – Leased assets - Assessee brought on record reliable documentary evidence showing genuineness of lease transactions – depreciation is held to be allowed.
Dismissing the appeal of the revenue , the Court held that ,the order of the Tribunal allowing the assessee's claim of depreciation on leased assets by taking a view that assessee had brought on record reliable documentary evidence showing genuineness of lease transactions in question. (Arising out of ITA No. No.1905/Mum/2013 dt.10/07/2015)(ITA No.1197 of 2016, dt.10/1/2019)(AY 1996 – 1997)
P CIT v. Ushdev International Ltd (2019) 110 taxmann.com 22. (Bom)(HC)
Editorial: SLP of revenue is dismissed (SLP No. 17793 of 2019 dt.26/07/2019)(2019) 416 ITR 128 (St.)(SC)/ 2019) 266 Taxman 371 (SC)

58. S.32: Depreciation -Charitable trust – Depreciation and carry forward of deficit on account of excess expenditure is allowable. [S.11]
Assessee-trust can claim depreciation on assets, cost of which had been fully allowed as application of income u/s.11 in past years. Assessee can depreciation on assets which it received on account of transfer and cost of acquiring of which was not incurred by assessee. Carry forward deficit of earlier years and set it off against surplus of subsequent years is allowable. (Arising out of ITA No.5647/Mum/2011 dt.05/06/2013)(ITXA No.286 of 2014 dt.2/08/2019)(AY . 2008 -2009)

DIT (E) v. Society for Applied Microwave Electronic Engineering & Research (2019) 106 taxmann.com 203 (Bom)(HC)

Editorial: SLP of Revenue is dismissed (SLP No.23300 of 2017)(2019) 413 ITR 317 (St.)(SC)/(2019) 264 Taxman 81 (SC)

59. S.32 : Unabsorbed depreciation carried forward and adjusted setoff after eight years is correct as per the amendment made in Finance Act, 2001 [S.32 (2)]
Unabsorbed depreciation Carry forward and set off of for AY 1997-98 to 2002-03 was allowed after lapse of 8 assessment years in view of S. 32(2) as amended by Finance Act, 2001. Followed *CIT* v. Hindustan Unilever Ltd (2017) 394 ITR 73 (Bom) (HC)
(ITXA Nos. 134 to 136, 140 to 141 and 148 of 2016 dt.13/06/2018) (AY. 1997-98, 1998-99, 1999-2000, 2000-01, 2001-02 ,2002-03)

CIT v. Bajaj Hindustan Ltd.[2019] 103 taxmann.com 31(Bom)(HC)

Editorial: SLP of Revenue is dismissed (SLP No.582 of 2019) (2019) 411 ITR 3(St.)(SC)/**(2019) 261 Taxman 558 (SC)**

60. S.32: Depreciation –Installation of windmill - 80% depreciation allowed on Civil Construction, electrical and other non-integral part of installations - Held to be allowable.
Revenue contended that the depreciation is allowable at 15% and not 80% claimed by the assessee. Dismissing the appeal of the revenue the Court held that windmill was erected in the desert area of Rajasthan which required special foundation of reinforced cement concrete and that said reinforced cement concreate formed integral part of wind mill. Referred CIT v. Herdilla Chemicals Ltd (1995) 216 ITR 742 (Bom)(HC). Court followed ITA No.1326 of 2010 dt.14 -06 2017. **(**ITA No. 1769 of 2016 dt.30/01/2019)
PCIT v. Mahalaxmi Infra Projects Ltd (Bom) (HC) www.itatonline.org.

61. S. 32: Depreciation- Additional depreciation- Revision of orders prejudicial to revenue - Tribunal allowed assessee's claim for additional depreciation by following order of jurisdictional High Court – Revision is held to be not valid.[S.263]
AO allowed assessee's claim for additional depreciation. CIT passed revision order and directed the AO to reframe assessment. Tribunal set-aside the revisional order. High Court affirmed the order of Tribunal following the jurisdictional High Court in CIT v. Continental Ware Housing Corporation (Nhava Sheva Ltd. (2015) 374 ITR 645 (Bom) (HC) and CIT v. Murli Agro Products Ltd (2014) 49 taxmann.com 172 (Bom)(HC).Revenue authorities, however, pointed out that Karnataka High Court in Canara Housing Development Co v. Dy. CIT (2014) 49 Taxmann.com 98 (Karn)(HC) on similar issue had taken a different view. High Court held that the Tribunal was bound by decision of jurisdictional High Court. (AY. 2006 - 2007)
PCIT v.Jitendra J. Mehta (2019) 104 Taxman.com 448 / 263 Taxman 6 (Bom)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Jitendra J. Mehta. (2019) 263 Taxman 5 (SC)

62. S. 32: Depreciation- Prior to insertion of Explanation 5 to S.32 of the Act- Optional and could not be thrust upon-Matter remanded.

Appeal by the revenue the Court held that High Court had not the benefit of the decision in Plastiblends India Ltd v Add. CIT (2017) 398 ITR 568 (SC), accordingly the matter is remanded to the High Court. (AY.2003-04 to 2006 -07)

CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466/ 175 DTR 1 / 307 CTR 121/ 261 Taxman 164 (SC)

Editorial: Order of Bombay High Court in CIT (LTU) v. Reliance Industries Ltd.(ITA Nos. 1550/ 1592/ 1775 and 1881 of 2014 dt 22-08 2017, 23 -08 2017 is affirmed.(2018) 161 DTR 420, (2019) 410 ITR 468 (Bom)(HC)

63. S.32: Depreciation -Intangible asset-Non –compete fee- The expression "or any other business or commercial rights of similar nature" used in Explanation 3 to sub-section 32(1)(ii) is wide enough to include non-compete rights – Eligible for depreciation. [S.32(i(ii)]

Dismissing the appeal of the revenue the Court held that, rights acquired under a non-compete agreement gives enduring benefit & protects the assessee's business against competition. The expression "or any other business or commercial rights of similar nature" used in Explanation 3 to sub-section 32(1)(ii) is wide enough to include non-compete rights , hence eligible depreciation . Followed (2018)) PCIT v. Ferromatic Milacron India (P) Ltd (2018) 99 Taxman.com 154 (Guj.)(HC)(ITA No. 556 of 2017, dt.11.06.2019)

PCIT v. Piramal Glass Ltd (Bom)(HC),www.itatonline.org

64.S. 32: Depreciation - Licenses, permits, approvals – Intangible - Purchased in slump sale-Depreciation is allowable at rate of 25 per cent.

Dismissing the appeal of the revenue the Court held that intangible assets in question being permits, licenses and approvals were required for carrying on business of hotel, they fell within meaning of intangible assets u/s.32 which were purchased in slump sale,Tribunal is justified in allowing depreciation. (AY.2004-05, 2005-06)

PCIT v. Tulip Hospitality Service Ltd. (2019) 261 Taxman 16/ (2019) 411 ITR 595 (Bom) (HC)

65. S. 36(1)(iii) :Interest on borrowed capital - Interest paid on decommissioning cost recovered from customers was rightly allowed as deduction- No substantial question of law .[S.260A]

Assessee was engaged in business of establishing nuclear power plants and generating nuclear energy. Power plants so established had a fixed life after which those plants were required to be decommissioned.Since said exercise required considerable expenditure, Government of India allowed assessee to collect decommissioning costs from its customers. Under another notification issued by Department of Atomic Energy, assessee had to account for 12 per cent interest on such decommissioning charges collected by it. During relevant year, assessee debited certain amount towards interest on decommissioning reserves and claimed such interest by way of deduction. AO disallowed the claim. Tribunal held that funds did not belong to assessee but same were used for purpose of business and assessee paid interest to funds at instance of Department of Atomic Energy. Accordingly the Tribunal thus held that such interest could not be said to be notional interest and expenditure was rightly claimed by assessee by way of deduction. High Court affirmed the order of the Tribunal. (AY .1992 -93)

CIT LTU v. Nuclear Power Corpn of India Ltd. (2019) 108 taxmann.com 310 / 265 Taxman 554 (Bom) (HC)

66.S.36(1)(iii) :Interest on borrowed capital –Investment in sister concern- Sufficient interest free loans – Deletion of addition is held to be justified.

Dismissing the appeal of the revenue the Court held that the assesseee had sufficient interest free loans. Accordingly the deletion of addition is held to be justified. Followed CIT v. Reliance Utilities and Power Ltd (2009) 313 ITR 340 (Bom.)(HC)(ITA No. 1248 of 2016, dt.28.01.2019)

PCIT v. Aegis Limited (Bom)(HC),www.itatonline.org

67.S. 36(1)(iii) :Interest on borrowed capital - Interest-free funds available with assessee is sufficient to meet investment — Presumption is that investments in subsidiaries were out of interest free funds — No disallowance can be made .[S.14A]

Dismissing the appeal of the revenue the Court held that, Interest-free funds available with assessee are sufficient to meet investment. Presumption is that investments in subsidiaries were out of interest free funds accordingly no disallowance can be made . (AY. 2003 -04 to 2006 -07)

CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466/ 175 DTR 1 / 307 CTR 121/ 261 Taxman 164 (SC)

Editorial: Order of Bombay High Court in CIT (LTU) v. Reliance Industries Ltd.(ITA Nos.1550/ 1592/ 1775 and 1881 of 2014 dt.22-08 2017, 23-08 2017 is affirmed (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom)(HC)

68. S. 36(1)(iii) :Interest on borrowed capital – Allowable as deduction though capitalised in the books of account. [S.43(1)Ex.8,145]

Dismissing the appeal of the revenue the Court held that interest paid on borrowings for setting up of Agro Gas plant, though capitalised in the books of account is held to be allowable as deduction. Followed CIT v. Core Health Care Ltd (2008) 298 ITR 194/167 Taxman 206 (SC)(ITA No 51 of 2008 dt.22-11-2019 / 2 -01 2020) (AY.1995 -96)

CIT v. Zuari Industries Ltd (Bom) (HC) (UR)

69. S. 36(1)(iii) : Interest on borrowed capital – Interest and finance charges - loans taken for investment in acquiring controlling interest in a foreign subsidiary which is in same line of business - Allowable as expenditure. [S.37(1)]

Dismissing the appeal of the revenue the Court held that interest expenditure and finance expenditure incurred on loans taken for investment in acquiring controlling interest in a foreign subsidiary which is n same line of business of assessee so as to expand the business in foreign country is held to be allowable expenditure. Followed CIT v Srishti securities (P) Ltd (2010) 321 ITR 498 (Bom) (HC)(AY.2008-09,2009-10)

PCIT v. Concentrix Services (I) (P.) Ltd. (2019) 267 Taxman 625 (Bom.)(HC)

70. S.36(1)(iii) :Interest on borrowed capital - Interest paid on decommissioning cost recovered from customers was rightly allowed as deduction- No substantial question of law. [S. 260A]

Assessee was engaged in business of establishing nuclear power plants and generating nuclear energy. Power plants so established had a fixed life after which those plants were required to be decommissioned. Since said exercise required considerable expenditure, Government of India allowed assessee to collect decommissioning costs from its customers. Under another notification issued by Department of Atomic Energy, assessee had to account for 12 per cent interest on such decommissioning charges collected by it. During relevant year, assessee debited certain amount towards interest on decommissioning reserves and claimed such interest by way of deduction. AO disallowed the claim. Tribunal held that funds did not belong to assessee but same were used for purpose of business and assessee paid interest to funds at instance of Department of Atomic Energy. Accordingly the Tribunal thus held that such interest could not be said to be notional interest and expenditure was rightly claimed by assessee by way of deduction. High Court affirmed the order of the Tribunal. (AY. 1992-93)

CIT LTU v. Nuclear Power Corpn. of India Ltd. (2019) 108 taxmann.com 310 / 265 Taxman 554 (Bom) (HC)

71. S. 36(1)(iii) :Interest on borrowed capital - Investment in share capital of sister concern, with a view to earn dividend income-Expenditure incurred is held to be allowable as deduction .

Dismissing the appeal of the revenue the Court held that Tribunal found that assessee had made investment which would yield income in form of dividend and therefore, investment was made for purpose of earning income. Accordingly the expenditure incurred for earning such income had to be allowed. (AY. 2008 -09)

PCIT v. Premier Finance & Trading Co. Ltd. (2019) 262 Taxman 341 (Bom.)(HC)

72. S.37 (1): Business expenditure – Legal expenses incurred to protect the directors for complaint filed against them in individual capacity – Not allowable as business expenditure.
Dismissing the appeal of the assessee the Court held that the Company was no way involved in the legal proceedings taken against the Directors /shareholders in their individual capacities. Accordingly the Tribunal is right in holding that legal expenses incurred to protect the directors for complaint filed against them in individual capacity is not allowable as business expenditure. (ITA No. 1166 to 1172 of 2017 dt.06/11/2019)(AY.2005-06 to 2009-10)
National Refinery Pvt Ltd v ACIT (2019) CTCJ -December -P. 153 (Bom.)(HC)

73.S.37(1): Business expenditure – Capital or revenue – Different treatment in accounts and computation- Allowable as revenue expenditure. [S.145]
Dismissing the appeal of the revenue the, merely because the assessee has shown capital expenditure in accounts and claimed as revenue in the return , claim of assessee cannot be disallowed. Order of Tribunal is affirmed. Followed CIT v Reliance Footprint Ltd. (ITA No.948 of 2014 dt.05/07/2017(Arising out of ITA No.1661 /Mum/ 2013 dt.13-07 -2016)(ITA No.985 of 2017 dt.17-11-2019 (AY. 2008 -09)
Reliance Fresh Ltd v ACIT (2019) BCAJ -November -P 56 (Bom)(HC)

74.S.37 (1): Business expenditure –Expenditure on temporary structure & Provision for deferred liability – Held to be allowable. [S.115JB]
The liability in question related to the provisions made for directors' retirement benefit, liability arising out of voluntary retirement scheme etc. is allowable expenditure. Further addition in respect of provision for deferred tax liability holding that the addition resulted into double disallowance to the assessee was deleted.(Arising out of ITA No.3787/Mum/2009 dt.29/07/2015)(ITA No.1658 of 2016, dt.04/03/2019)(AY 2002-2003)
CIT v ACC Ltd[2019] 112 taxmann.com 402(Bom.)(HC)
Editorial:SLP of revenue is dismissed,CIT(LTU)v. ACC Ltd. SLP (c) No.22082 of 2019dt. (2019)418 ITR 9 (St)(SC)/(2020) 269 Taxman 14 (SC)

75.S.37(1) : Business expenditure – Capital or revenue - Bank NRI mobilisation expenditure – Amount paid to vacating the premises - Held to be allowable
Expenditure incurred for Bank NRI Mobilisation expenditure paid to the agent for mobilization and collection of India Millennium Deposits (IMD) is allowable. (Arising out of ITA No.4670/Mum/2005, dt.20/11/2015)(ITA No.1588 of 2016, dt.04/03/2019)(AY.2001 – 2002)
CIT v. Hongkong and Shanghai Banking Corporation Ltd[2020] 114 taxmann.com 275 (Bom.)(HC)
Editorial: SLP of revenue is dismissed (SLP (C)No.19466 of 2019dt)(2019) 418 ITR 9 (St) (SC)/**(2020) 114 taxmann.com 276 (SC)**

76. S.37(1) :Business expenditure - Commission paid to the foreign agents for having worked on behalf of the Assessee in procuring sales is held to be allowable- Business Loss - No colourable device employed by Assessee in the process sale of shares at low price- Loss is held to be allowable .[S.28(i)]
Commission paid to the foreign agents for having worked on behalf of the Assessee in procuring sales in outside India is allowable and sale of shares at lower rate / price was not colourable device employed by the Assessee. (ITA No.1161 of 2016, dt.16/01/2019)
PCIT v .Navin Fluorine International Ltd. (Bom)(HC)(UR)
Editorial: SLP of revenue is dismissed (SLP No.19379 of 2019 dt.13/08/2019) (2019) 417 ITR 55 (St.)(SC)

77.S.37(1): Business expenditure - Commission paid to Iraqi Government agency for purchase of oil – Held to be allowable expenditure .

Assessee had purchased oil from Iraq and payments were made by an agent, there being no evidence to suggest that assessee had made any illegal commission payment to Oil Market Organization of Iraqi Government as alleged in Volckar Committee Report, Tribunal's order allowing payment for purchase of oil was to be upheld. There was no evidence that assessee had paid any illegal commission, there was no finding that assessee had made illegal payments and that payments were made by an agent. Since entire issue was based on appreciation of evidence, hence claim is held to be allowable. (Arising out of ITA No.1347/Mum/2011 dt.24/04/2015)(ITA No.1024 of 2016, dt.15/01/2019)

CIT v. Reliance Industries Ltd(2019) 102 taxmann.com 142 (Bom.) (HC)
Editorial: SLP of revenue is dismissed (SLP No.16937 of 2019 dt.19/07/2019)(2019) 416 ITR 124 (St.)(SC)

78.S.37(1) : Business expenditure : Bank NRI deposits mobilisation expenditure – replacement of shares - Held to be allowable
Assessee assist and facilitate the investments by NRIs, such a branch was set up. The said amount was expended towards administrative and other related expenses and the entire expenditure was for the purposes of head office and, therefore, no restrictions in terms of S.44C should be imposed. And also replacement of shares by assessee to its clients is allowable. (ITA No. 1561 of 2016, dt.06/02/2019)
CIT v. Hongkong and Shanghai Banking Corporation Ltd.(Bom) (HC) (UR)
Editorial: SLP of revenue is dismissed (SLP No.18521 of 2019 dt.02/08/2019)(2019) 416 ITR 124 (St.)(SC)

79.S.37(1) : Business expenditure – Interest on decommissioning reserves – held to be allowable . [S.36(1) (iii)]
Assessee collected decommissioning charges and the directive of the Government of India under which it had to pay interest on its decommissioning reserves. The funds do not belong to the assessee but the same were used for the purpose of business and the assessee paid interest to the funds at the instance of the Department of Atomic Energy. Such interest cannot be said to be notional interest and the expenditure was rightly held as eligible for business expenditure. (ITA No.1002 of 2016, dt.15/01/2019)(AY.1992 - 1993)
CIT v. Nuclear Power Corporation of India Ltd (2019) 108 taxmann.com 310 . (Bom)(HC)
Editorial: SLP of revenue is dismissed (SLP No.16532 of 2019 dt.12/07/2019)(2019) 416 ITR 126 (St.)(SC)/ (2019) 108 taxmann.com 311 (SC)

80. S. 37(1): Business expenditure- Cash credits- Bogus purchases-Despite admission by the assessee that the purchases were mere accommodation entries, the entire expenditure cannot be disallowed. Only the profit embedded in the purchases covered by the bogus bills can be taxed. The GP rate disclosed by the assessee cannot be disturbed in the absence of incriminating material to discard the book results. [S.68, 69, 143(3)]
The AO had made the addition on the ground that the assessee's purchases were found to be bogus. The entire purchase amount was therefore, added to the assessee's income. The Tribunal, however, restricted to the said sum of Rs.2,21,600/-. The Tribunal recorded that the AO has not rejected either the purchases or the sales made out of the said purchases. The Tribunal therefore, was of the opinion that the addition should be restricted to 10% of the total purchases.On appeal the High Court held that the Tribunal held that the Department had not rejected the instance of the purchases since the sales out of purchase of such raw material was accounted for and accepted. With above position, the Tribunal applied the principle of taxing the profit embedded in such purchases covered by the bogus bills, instead of disallowing the entire expenditure. Accordingly the order of Tribunal is affirmed. (ITA No. 413 of 2017, dt.15.07.2019)(AY.2005-06)
PCIT v. Paramshakti Distributors Pvt. Ltd. (Bom)(HC), www.itatonline.org

81.S.37(1) : Business expenditure- Expenditure incurred for any purpose which is an offence or which is prohibited by law- Custom redemption fine is held to be not allowable as deduction, in view of explanation I to S.37(1) of the Act. [S.69C]

Allowing the appeal of the revenue, the Court held that customs redemption fine is held to be not allowable as deduction in view of explanation 1 to S. 37(1) of the Act. on concept of expenditure incurred for any purpose which is an offence or which is prohibited by law**.**Court held that there was ample evidence on record suggesting that assessee had made imports through his direct involvement by using import licence of Rajnikant Brothers and that Ranjikant Brothers was only entitled to service charges and further redemption fine was paid by assessee, assessee could not not disassociate or divest himself from irregularities or illegalities committed in process of importing goods and penalty was levied for infraction of law committed by assessee. Under these circumstances, redemption fine was not allowable business expenditure.Ratio laid down in Hazi Aziz & Abdl Shakoor Bros v.CIT (1961) 41 ITR 350 (SC) continues to hold the field even post decisions in the case of Prakah Cotton Mills Pvt Ltd v.CIT (1993) 201 ITR 684 (SC) and CIT v. Ahmedabad Cotton Mfg Co Ltd(1994) 205 ITR 163 (SC). In neither of these two decisions, the ratio laid down in Hazi Aziz, which was a decision of Bench of three Judges, has been diluted (CIT v. Pannalal Narottamdas & Co (1968) 67 ITR 667 (Bom) (HC) distinguished) (ITA NO 51 of 2016 dt 22-2-2019 (AY. 1988-89)

PCIT v. Sushil Gupta Legal Representative of Late Mahvir Prasad Gupta (2019) 262 Taxman 41/ 102 taxmann.com 409/ 175 DTR 385 / 307 CTR 681 (Bom)(HC) www.itatonline **.org**

82.S.37 (1): Business expenditure- Capital or revenue -Purchase of software- Held to be revenue expenditure.

Dismissing the appeal of the revenue the Court held that payment made for acquisition of software utilized for assessee's existing business is revenue expenditure as the US. Company has granted license for use of software only in India for limited right of user, without any right to sub license and the software require up gradation of replacement. (ITA No.544 of 2018 dt.12/02/2019 (AY.1998-99) (ITA NO. 5161 /M/2001 dt.20-04-2016)(AY. 1998 – 99)

CIT v. Global Tele-Systems Ltd (2019) 183 DTR 381 (Bom) (HC)

83.S.37 (1): Business expenditure- Capital or revenue -Amortized premium on investment in govt. Securities held under category "Held to Maturity" (HTM) is held to be revenue expenditure.

Dismissing the appeal of the revenue the Court held that; Amortized premium on investment in govt .Securities held under category "Held to Maturity" (HTM) is held to be revenue expenditure. . Followed CIT v. Thane Bhart Sahakari bank Ltd (ITA No.1117 of 2013 dt.17-03-2015)(ITA.No 1003 of 2016 dt 29 -01-2019)

PCIT v. Laxmi Co -Operative Bank Ltd (Bom)(HC)(UR)

84.S. 37(1): Business expenditure – Capital or revenue- Pre-Operative expenses -Expenditure incurred on estimate basis could be reduced from dividends -Transfer pricing adjustment to consultancy charges-High Court has failed to independently evaluate the merits -Matter remanded to High Court for fresh consideration. [S.80M,92C]

Allowing the appeal of the revenue the Court held that, whether pre-operative expenses allowable as revenue expenses, whether the expenditure incurred on estimate basis could be reduced from dividends and whether transfer pricing adjustment to consultancy charges is justified or not , as the High Court has failed to independently evaluate the merits the departmental appeals , the matter remanded to High Court for consideration afresh. (AY. 2003 -04 to 2006 -07)

CIT (LTU) v. Reliance Industries Ltd. (2019) 410 ITR 466/ 175 DTR 1 / 307 CTR 121/ 261 Taxman 164 (SC)

Editorial : Order of Bombay High Court in CIT (LTU) v. Reliance Industries Ltd.(ITA Nos 1550/ 1592/ 1775 and 1881 of 2014 dt 22-08 2017 , 23 -08 2017 is affirmed(2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom)(HC)

85.S. 37(1) : Business expenditure – Capital or revenue - Payment to for the purpose of having continuous supply of limestone as a raw material – Held to be capital expenditure - Order of

Tribunal directing for the payment to be amortised for a period of 8 years is held to be not valid – Question is answered in favour of the revenue . [S.145]

The assessee claimed the payment to Texmaco for the purpose of having continuous supply of limestone as a raw material as revenue expenditure. The AO treated the said expenditure as capital expenditure. CIT(A) confirmed the order of the AO . On appeal the Tribunal held that payment made to Texmaco as deferred revenue expenditure thereby permitting the assessee to amortise the payment for a period of eight years . Reversing the order of the Tribunal the Court held that the responded had obtained a long term capitive source of the new raw material by purchase of right from Texmaco. However at the same time the raw material was required to be won, gotten and brought to the surface and as such, cannot be said to be a stock in trade, hence the question was answered in the negative and in favour of appellant. Followed R.B Seth Moolcahnd Suganchand v CIT (1972) 86 ITR 647 (SC)(ITA No.51 of 2008 dt.22/11/2019/ 2/01/2020) (AY.1995 -96)

CIT v. Zuari Industries Ltd (Bom)(HC)(UR)

86.S. 37(1): Business expenditure – Business loss- Write off of losses towards stock obsolescence in respect of Laptops and motherboards -Held to be allowable as revenue expenditure [S.28 (i), 145A]

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that write off of losses towards stock obsolescence in respect of Laptops and motherboards is held to be allowable as revenue expenditure .Followed CIT v Heredilla Chemicals Ltd (2002) 255 ITR 532 (Bom) (HC) (ITA No. 28 of 2014 dt 7 -01 -2020)

CIT v .Gigabyte Technology (India) Ltd (Bom)(HC)(UR)

87.S.37(1): Business expenditure – Capital or revenue – Foreign currency convertible Bond-(FCCB) issuing expenses – Held to be allowable as revenue expenses.

Dismissing the appeal of the revenue the Court held that expenses incurred on issue of foreign currency convertible Bond (FCCB) for raising loan is held to be revenue expenditure. (AY.2007-08)

PCIT v Reliance Natural Resources Ltd. (2019) 267 Taxman 644 (Bom)(HC)

88.S.37(1): Business expenditure –Raising loan- Capital or revenue - Expenses for issuing Foreign Convertible Bond only on interpretation of DTAA - Question of law [S.260A]

Revenue urged the following question of law for consideration;

"Whether on the facts and in the circumstances of the case and in law , the Tribunal was justified in deleting the disallowance of expenses of Rs .28 58, 28, 246 / on the issue of Foreign Currency Convertible Bond without appreciating the fact that expenses were incurred for the issue of FCCB of Rs.1,304.13 Crores which is capital in nature " ?

Question of law is admitted. (ITA No.623 of 2017 dt.26/08/2019)(AY.2007-08)

PCIT v Reliance Natural Resources Ltd (2019) 267 Taxman 644 (Bom)(HC)

89. S. 37(1): Business expenditure-Contribution to State Government towards construction of a bridge- Allowable as revenue expenditure.

Assessee made contribution to State Government who had asked mining companies to contribute towards construction of a bridge which would be used by them for transportation of their goods and claimed as revenue expenditure. AO treated the said expenditure as capital expenditure which was up held by the CIT (A). Tribunal allowed the expenditure as revenue expenditure. On appeal by the revenue High Court up held the view of the Tribunal. (AY.2008-09)

CIT v. Salgaocar Mining Industries (P.) Ltd. (2019) 265 Taxman 317 (Bom)(HC)

90. S. 37(1): Business expenditure — Compensation paid is held to be not allowable – Payment was held to be not genuine – No question of law. [S.260A]

Dismissing the appeal the Court held that regarding the sum of Rs.6,00,60,000 the entire issue was based on appreciation of materials on record. The two revenue authorities and the Tribunal had concurrently come to the conclusion that the claim of expenditure was not genuine. There were major

discrepancies in the accounts and the documents presented by the assessee in relation to such claim. Regarding the expenditure of Rs.4.07 corers also, the Assessing Officer, the CIT (A) and the Tribunal held that it was not genuine expenditure. Here also the entire issue was based on appreciation of materials on record. The Revenue authorities and the Tribunal concurrently held that the payments were not genuine. The expenditures were not deductible. No question of law arose from the order of the Tribunal. (AY. 2009 10)
Rajkumari Suniel Mutha (Smt). v. ITO (2019) 417 ITR 295/ (2020) 269 Taxman 70 (Bom) (HC)

91.S.37(1): Business expenditure – Capital or revenue - Fixing of MS sliding gates, different pipes for sprinkler system in main ground, excavation of soil, purchasing of LED replay screen, electric materials etc., for upgrading stadium in accordance with ICC Standards, is revenue in nature.
Dismissing the appeal of the revenue the Court held that , expenditure incurred for renovation and interior work of stadium, construction of foundation of camera, staircase, control room, fabrication and erection of structural steels, fixing of MS sliding gates, different pipes for sprinkler system in main ground, excavation of soil, purchasing of LED Reply screen, electric materials etc., for upgrading stadium in accordance with ICC standards, was revenue in nature as assessee did not create a new asset or create a source of enduring benefit and expenditure was for upgradation of existing facilities is revenue in nature. (AY. 2007 -08)
PCIT v. Cricket Club of India (2019) 265 Taxman 95 (Bom)(HC)

92.S. 37(1): Business expenditure —Year of allowability of expenditure - Method of accounting - Rate of tax is same in both assessment years — Question academic — No question of law. [S.145, 260A]
Court held that the highest rate of Income-tax attracted to both the assessee was uniform for the assessment years 2010-11 and 2011-12. Since the rate of Income-tax in the assessment years 2010-11 and 2011-12 was uniform, it was of no consequence to the Revenue whether to allow the expenditure in the assessment year 2010-11 or 2011-12.No question of law . Followed CIT v Nagri Mills Co Ltd. (1958) 33 ITR 681 (Bom) (HC), CIT v. Aditya Builders Ltd (2015) 378 ITR 75 (Bom)(HC), CIT v Triveni Engineering and Industries Ltd (2011) 336 ITR 374 (Delhi) (HC) CIT v. Gujarat State Forest Development (2007) 288 ITR 28 (Guj) (HC) (AY. 2011-12-2012-13)
PCIT v. Rajesh Prakash Timblo (2019) 415 ITR 334 / (2020) 185 DTR 34(Bom)(HC)

93.S. 37(1): Business expenditure –Capital or revenue - Amount forfeited by seller upon failure to pay full instalments within stipulated time period would be capital expenditure. [S.28(i)]
Dismissing the appeal of the assessee the Court held that the Amountforfeited by seller upon failure to pay full instalments within stipulated time period in respect of a windmill plant for power generation would be capital expenditure. (AY. 2009-10)
Nandkishor Motilal Shah v. CIT(2019) 415 ITR 429 /263 Taxman 36 (Bom)(HC)

94.S.37(1): Business expenditure – Year of deduction-Slum development expenditure - Contingent upon authority giving vacant possession of plot- Authority was unable to hand over vacant possession of land- Disallowance of expenditure is held to be justified. [S.145]
Assessee claimed deduction for expenditure towards liability to carry out construction free of cost. Tribunal held that assessee's liability was contingent upon authorities being able to give vacant possession of portion of plot on which such construction would be carried out while record suggested that such portion was occupied by slum dwellers who were resisting their eviction and whatever be reason, Slum Rehabilitation Authority was unable to put assessee on vacant possession in said area for years together. Since liability was contingent and same was not crystallized, same would not be allowed as expenditure. On appeal High Court affirmed the view of the Tribunal. (AY. 2010- 11)
Grace Shelter v. ACIT (2019) 262 Taxman 423 (Bom)(HC)

95.S. 37(1): Business expenditure –Deferred expenditure - No concept of deferred revenue expenditure – Expenditure is allowable as deduction.

Dismissing the appeal of the revenue the Court held that there is no concept of deferred expenditure hence it is not opens the AO to defer expenses over a period of time. Order of tribunal is affirmed. (AY.2009-2010)
PCIT v. Manugraph India (P) Ltd (2019) 267 Taxman 437 (Bom)(HC)

96.S.37(1) : Business expenditure- Expenditure incurred for any purpose which is an offence or which is prohibited by law- Custom redemption fine is held to be not allowable as deduction, in view of explanation I to S.37(1) of the Act. [S. 69C]
Allowing the appeal of the revenue, the Court held that customs redemption fine is held to be not allowable as deduction in view of explanation 1 to S. 37(1) of the Act. on concept of expenditure incurred for any purpose which is an offence or which is prohibited by law**.**Court held that there was ample evidence on record suggesting that assessee had made imports through his direct involvement by using import licence of Rajnikant Brothers and that Ranjikant Brothers was only entitled to service charges and further redemption fine was paid by assessee, assessee could not not disassociate or divest himself from irregularities or illegalities committed in process of importing goods and penalty was levied for infraction of law committed by assessee. Under these circumstances, redemption fine was not allowable business expenditure.Ratio laid down in Hazi Aziz & Abdl Shakoor Bros v.CIT (1961) 41 ITR 350 (SC) continues to hold the field even post decisions in the case of Prakah Cotton Mills Pvt Ltd v.CIT (1993) 201 ITR 684 (SC) and CIT v. Ahmedabad Cotton Mfg Co Ltd(1994) 205 ITR 163 (SC). In neither of these two decisions, the ratio laid down in Hazi Aziz, which was a decision of Bench of three Judges, has been diluted (CIT v.Pannalal Narottamdas & Co. (1968) 67 ITR 667 (Bom)(HC) distinguished)(AY.1988- 1989)
PCIT v. Sushil Gupta Legal Representative of Late Mahvir Prasad Gupta (2019) 262 Taxman 41/ 102 taxmann.com 409/ 175 DTR 385 / 307 CTR 681 (Bom)(HC)www.itatonline **.org**

97.S.37(1): Business expenditure -Deputation and other cost - Hotel management and marketing fees - Reasonable and necessary to run business- Held to be allowable .
Dismissing the appeal of the revenue the expenditure on deputation, other cost Hotel management and marketing fees being reasonable and necessary to run business, allowable as business expenditure. (AY.2004 -05, 2005-06)
PCIT v. Tulip Hospitality Service Ltd. (2019) 261 Taxman 16 /(2019) 411 ITR 595 (Bom)(HC)

98.S.37(1): Business expenditure-Consultancy services - Foreign travelling expenditure of representative – Allowable as business expenditure .
Dismissing the appeal of the revenue the Court held that foreign travelling expenditure of representative for expansion of existing business is held to be allowable as business expenditure.
PCIT v. Business Match Services (I) (P.) Ltd. (2019) 260 Taxman 190 (Bom) (HC)

99.S. 37(1): Business expenditure - Marketing and publicity expenses -Expenditure by way of marketing and publicity expenses for promoting its regional channels 'Star Pravaha' and 'Star Maza'- Held to be allowable as business expenditure.
Dismissing the appeal of the revenue the Court held that; expenses incurred by way of marketing and publicity expenses for promoting its regional channels 'Star Pravaha' and 'Star Maza' which were primarily incurred for purpose of business, incidental benefit to some other party from such expenses, would not reduce allowability of such expenditure and, thus, entire expenditure so incurred was allowable as deduction. (AY. 2010-11)
PCIT v. Star Entertainment Media (P.) Ltd. (2020) 269 Taxman 66 (Bom) (HC)

100.S.40(a)(i) : Amounts not deductible - Deduction at source – Commission or brokerage – Manufacture of goods as per specification – No principal -Agent relationship – Not liable to deduct tax at source- No disallowances can be made [S.194H]
Dismissing the appeal of the revenue the Court held that, manufacture of goods as per specification; there is no principal, agent relationship hence not liable to deduct tax at source. Accordingly no disallowances can be made.(Arising from ITA No.2087/ M/2012 dt.23/03/2016)(ITA No.953of 2017 dt.27/08/2019 (AY.2009-10)

PCIT v. Sandu Pharmaceuticals Ltd (2019) BCAJ-October -P. 65 (Bom.) (HC)

101.S.40(a)(ia): Amounts not deductible - Deduction at source – Professional fees – Payment made outside India – Not chargeable to tax in India – Not liable to deduct tax at source -DTAA -India -China .[S. 9(1)(vii) ,90(2) 195]

Dismissing the appeal of the revenue, the Court held that fees for professional services in nature of audit and advisory outside India, which is not chargeable to tax in India hence not liable to deduct tax at source. Accordingly no disallowances can be made. (Arising from ITA No. 1918/1480/ M/2013 dt.18/03/2016)(ITA No.690 of 2017 dt.24/09/2009 dt.24/09/2019 (AY.2008-09)

CIT v. KPMG (2019)BCAJ -October -P. 55 (Bom)(HC)

102.S. 40(a)(ia): Amounts not deductible - Deduction at source -The second proviso to S. 40(a)(ia) is beneficial to the assessee and is declaratory and curative in nature. Accordingly, it must be given retrospective effect. [S.201(1)]

Dismissing the appeal of the revenue the Court held that, The second proviso to S. 40(a)(ia) is beneficial to the assessee and is declaratory and curative in nature. Accordingly, it must be given retrospective effect Followed, CIT v. Ansal Land Mark Township P Ltd (2015) 377 ITR 635 (Delhi) (HC). Hindustan Coca Cola Beverages P Ltd v. CIT (2007) 293 ITR 226 (SC)(ITA No. 707 of 2016, dt. 07.01.2019)

PCIT v. Perfect Circle India Pvt. Ltd. (Bom)(HC), www.itatonline.org

103.S.40(a)(ia):Amounts not deductible - Deduction at source –Amendment to S.40A(ia) by Finance Act, 2010 permitting deposit of tax deducted at source till due date for filing return is retrospective in operation. [S.139(1), 260A]

Dismissing the appeal of the revenue the Court held that the amendment to S. 40(a)(ia) by the Finance Act, 2010 , was retrospective in operation with effect from April 1, 2005. The various High Courts had taken the view that the provision being a machinery provision, retrospective effect being given to it was appropriate. There was no reason as to why such view should be departed from. No question of law arose. Followed CIT v. Naresh Kumar (2014)362 ITR 256 (Delhi)(HC), CIT v. Omprakash R. Chaudhary (2014) 3 ITR–OL 282 (Guj)(HC), CIT v Sri Scorpio Engineering Ltd (2016) 388 ITR 266 (Karn) (HC) , CIT v. Virgin Creations (ITA No 302 of 2011 dt 23-11-2011) (Cal) (HC) (AY. 2009 10)

CIT v. Shraddha and S. S. Kale, Joint Venture (2019) 417 ITR 439 (Bom) (HC)

104.S.40(a)(ia):Amounts not deductible - Deduction at source –Commission or brokerage – Payment to banks for processing of credit card transactions not liable to deduction u/s. 194H. [S.194C, 194H]

Payments to banks for processing of credit card transactions is not liable for deduction of tax at source u/s. 194H of the Act as in such transactions, the banks do not act as the 'agents' of the customer and therefore the payments cannot be characterised as commission. The banks enter into such transactions as independent parties. The fee charged/retained by them is towards provision of banking services, and not brokerage or commission. Appeal of revenue is dismissed .(Followed CIT v. JDS Apparels P.Ltd (2015) 370 ITR 454 (Bom) (HC) , CIT (TDS) v .Larsen and Toubro Ltd , ITA No . 769 of 2016 dt 4-12- 2018 (Bom) (HC)) (AY. 2009 -10)

PCIT v. Hotel Leela Venture Ltd. (2019) 174 DTR 247/307 CTR 466 /(2020) 420 ITR 385 (Bom.)(HC)

105. S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable - TV broadcasting right of cricket match -Cancellation of one match and addition of another match - Addition of price difference in broadcasting rights of matches cannot be made.

Dismissing the appeal of the revenue the Court held that AO was not justified in making addition of amount of difference between rate of two matches under S. 40A(2) merely for reason that broadcasting right of cancelled match was priced higher than match that was added .

PCIT v. NEO Sports Broadcast (P.) Ltd. (2019) 264 Taxman 323 (Bom)(HC)

106. S. 40A(9) : Expenses or payments not deductible -Contributions to unapproved and unrecognized funds – Held to be allowable if they are genuine in nature. [S. 36(1)(iv), 36(1)(iva) 36(1)(v)]

Dismissing the appeal of the revenue the Court held that, even contributions to unapproved and unrecognized funds have to be allowed as a deduction if they are genuine in nature. Provision is not meant to hit genuine expenditure by an employer for the welfare and the benefit of the employees.

PCIT v. State Bank of India (2020) 420 ITR 376 / (2019) 181 DTR 275 (Bom)(HC),www.itatonline.org

107.S. 41(1): Profits chargeable to tax - Remission or cessation of trading liability – Waiver of loan- Cannot be assessed as cessation of liability or as business income. [S.28(iv)]

Dismissing the appeal of the revenue the Court held that argument of Revenue that loan taken from agents/ dealers is on revenue account or that on waiver of the loan, its character undergoes a change and it becomes on revenue account is not correct. S. 28(iv) & 41(1) cannot apply if the loan is on capital account and the assessee has never claimed any deduction therefor in the past (Solid Containers Ltd v. Dy.CIT (2009) 308 ITR 417 (Bom) (HC) distinguished, CIT v. Mahindra and Mahindra Ltd (2018) 404 ITR 1 (SC) followed)(ITA No. 896 of 2017, dt.25.09.2019) (AY. 2009-10)

PCIT v. Colour Roof (India) Ltd.(Bom)(HC),www.itatonline.org

108. S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability - Old unpaid liability for sundry creditors- Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased- Addition cannot be made .

Dismissing the appeal of the revenue the Court held that , it is well settled through series of judgments that merely because a debt has not been repaid for over three years, would not automatically imply cessation of liability. Exhaustion of period of limitation may prevent filing of recovery proceedings in a Court of law, nevertheless it cannot be stated by itself that the liability to repay the amount had ceased. Such liability cannot be termed as bogus. (ITA No. 1288 of 2016, dt.04.01.2019)(AY.2010-11)

PCIT v. Pukhraj S. Jain (Bom)(HC),www.itatonline.org

109. S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability – Merely because period of three years expired from arising of the liability would not automatically mean that the liability has ceased – Order of Tribunal is affirmed .

Dismissing the appeal of the revenue the Court held that merely because period of three years expired from arising of the liability would not automatically mean that the liability has ceased. Order of Tribunal is affirmed. (ITA No. 1769 of 2016 dt.30-01-2019)

PCIT v. Mahalaxmi Infra Projects Ltd (Bom) (HC) www.itatonline.org.

110. S.41(1) : Remission or Cessation of trading liability - Not enjoyed actual benefit of remission of trading liability, and, hence, no addition can be made in to the income in respect of principal loan.[S. 28(iv)]

The waiver of the principal amount of loan granted to the extent of Rs.29,63,27,000/- in terms of OTS Scheme is in the nature of capital receipt and not chargeable to tax. Hence, waiver of the principal amount of loan utilized for acquisition of capital assets and not for the purposes of trading activity, no addition is attracted. (ITA No.477 of 2015, dt.18/08/2017)

CIT v. Rieter India Pvt. Ltd. (Bom)(HC)(UR)

Editorial:SLP of revenue is dismissed (SLP No.12690 of 2019 (2019) 414 ITR 3(St.)(SC)

112.S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability – Remission of loan by Government of Maharashtra cannot be assessed u/s 28(iv) or 41(1) of the Act – Order of Tribunal is affirmed [S.28(iv)]

Question before the High Court is "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that CIT(A) was correct in deleting Rs. 114.98 crores on account of remission of loan by Government of Maharashtra u/S. 41(1)/28(iv) without considering that the

waiver of liability u/S. 41(1)/28(iv) is in character of stock-in-trade and certainly a trading liability?" Following the decision of Supreme Court in CITv Mahindra A Mahindra Ltd (2018) 404 ITR 1 (SC),High court decided the issue in favour of the assessee. (ITA No.1685/Mum/2009 dt.6/12/2016 (ITA No 1692 of 2017 dt.21-01 2020)(AY.2003 -04)

PCIT v. SICOM Ltd (Bom) (HC) (UR)

113.S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability -Not claimed any deduction of any trading liability in any earlier year- No addition could be made on extinguishment of bond .

On account of attack on World Trade Centre on 11-9-2001, financial market collapsed and market price of bonds and debenture was brought down at value less than its face value . Assessee purchased bonds from market and extinguished them . In this process of buyback, it gained Rs. 38.80 crores . AO treated such amount as assessable to tax under S. 41(1) of the Act . Tribunal held that since assessee had not claimed any deduction of any trading liability in any earlier year, section 41(1) would not be applicable and no addition could be made on extinguishment of bond . High Court affirmed the order of the Tribunal . (AY. 1996 -97)

CIT v Reliance Industries Ltd (2019) 261 Taxman 283 (Bom) (HC)

114.S. 42: Business for prospecting - Mineral oil – Surrender of oil blocks before commencement of commercial production would be treated as surrender for claiming deduction of oil exploration expenditure. [S.42(1)(a)]

Dismissing the appeal of the revenue the Court held that, surrender of oil blocks before commencement of commercial production would be treated as surrender for claiming deduction of oil exploration expenditure and eligible deduction. Court also observed thatS. 42 recognizes the risks of the business of oil exploration which activity is capital intensive and high in risk of entire expenditure not yielding any fruitful result. Entire purpose or enactment would be destroyed if the rigid interpretation of the revenue is accepted. (AY. 2008 -09)

PCIT v. Hindustan Oil Exploration Company Ltd. (2019] 264 Taxman 154 (Bom) (HC)

115.S. 43(1) : Actual cost – Subsidy - Setting up new industry- Calculation of subsidy on the basis of sales tax or excise duty - Amount of subsidy was not to be deducted from actual cost for purpose of calculating depreciation etc. [S. 4, 32]

District of Kutch suffered due to devastating earthquake. Subsidy was granted under schemes framed by State and Central Government which was to be given to assessee who set up new industry in Kutch District. Scheme was envisaged to encourage investment which would in turn, provide fresh employment opportunity in district .State Government introduced Sales Tax Exemption/deferment scheme on new investment for specific period. Similarly, Central Government offered Central Excise Exemption Scheme for a specified period. Tribunal held that amount of subsidy was not to be deducted from actual cost for purpose of calculating depreciation etc. On appeal by the revenue dismissing the appeal the Court held that even though subsidy was to be calculated on basis of sales tax or excise duty, such subsidy would be capital in nature because same was given for purpose of setting up new industry. Since subsidy was not payment towards acquisition of plant or machinery/capital assets, amount of subsidy was not to be deducted from actual cost under S. 43(1) for purpose of calculating depreciation etc. (AY.2009-10)

PCIT v. Welspun Steel Ltd. (2019) 264 Taxman 252 (Bom)(HC)

116.S. 43B: Certain deductions on actual payment – Payment of interest on delayed payment of custom duty is part of duty – Allowable as deduction in the year of payment. [S.37(1)]

Dismissing the appeal of the revenue the Court held that Payment of interest on delayed payment of custom duty is part of duty is held to be allowable as deduction in the year of payment.Followed Mahalaxmi Sugar Mills Co v CIT (1980) 123 ITR 429 (SC)(ITA No. 809 of 2017, dt.27.08.2019) (AY. 2007 -08)

PCIT v. M. J. Export Pvt. Ltd. (Bom)(HC), www.itatonline.org

117. S. 43D : Public financial institutions – Method of accounting -Accurval of income – Real income theory -Interest on NPAs- Even though the special provision in S. 43D for taxing interest income on NPAs on receipt basis does not apply to NBFCs, it does not mean that NBFCs have to offer interest on bad or doubtful debts to tax on accrual basis. Such interest is not taxable on the real income theory [S.145]

Dismissing the appeal of the revenue the Court held that ,even though the special provision in S. 43D for taxing interest income on NPAs on receipt basis does not apply to NBFCs, it does not mean that NBFCs have to offer interest on bad or doubtful debts to tax on accrual basis. Such interest is not taxable on the real income theory. (ITA No. 237 of 2017, dt. 02.04.2019) (AY.2009 -10)

PCIT v. Bajaj Finance Ltd. (2019) 178 DTR 219/ 309 CTR 28 (Bom)(HC),www.itatonline.org

118. S. 44: Insurance business - Loss from jeevan suraksha fund cannot be added while computing the income from insurance business. [(S. 10)23AAB]

The loss incurred from the pension fund like Jeevan Suraksha Fund had to be excluded while determining the actuarial valuation surplus from the insurance business u/s. 44 of the Act,cannot be faulted. (Arising out of ITA No.4874/MUM/2014 dt.24/02/2016)(ITA No.131 of 2017 dt.12/03/2019)(AY.2010 – 2011)

PCIT v. Life Insurance Corporation of India. (Bom)(HC)(UR)

Editorial : SLP granted to the revenue (CA No.7335 of 2019 dt.06/09/2019)(2019) 418 ITR 14 (St.)(SC)

119. S. 44BB : Mineral oils – Computation - Unabsorbed depreciation - Carried forward from earlier year- Cannot be set off against while computing the profits and gains of eligible business u/s 44BB of the Act .[32(2)]

Dismissing the appeal of the assessee , the Court held that Tribunal was justified in rejecting the claim of the assessee for set off of unabsorbed depreciation carried forward from the earlier year while computing the income under S. 44BB of the Act . (AY. 2008 -09)

Boskalia International Dredging v. DIT (IT)(2019) 182 DTR 148 (Bom)(HC)

120. S. 44C : Non-residents - Head office expenditure - Entire expenditure was for purposes of head office- No restrictions in terms could be imposed -Order of Tribunal is affirmed. [S.260A]

Assessee bank claimed expenditure under head 'NRI Deposit Mobilization'. According to assessee, said amount was expended towards administrative and other related expenses and entire expenditure was for purposes of head office and, therefore, no restrictions in terms of S. 44C could be imposed. Tribunal accepted assessee's claim. On appeal High court held that in an identical situation for earlier assessment years, revenue had not carried matter due to low tax effect. High Court thus dismissed revenue's appeal in assessment year in question as well. (AY. 2000-01)

CIT v. Hongkong and Shanghai Banking Corpn. Ltd. (2019) 267 Taxman 502/ 111 taxmann.com 284 (Bom)(HC)

Editorial : SLP of revenue is dismissed as the tax effect involved of less than 2 crores,CIT v. Hongkong and Shanghai Banking Corpn. Ltd. (2019) 267 Taxman 501 (SC)

121.S. 45: Capital gains – Land - There was no building on the land which was subject to depreciation - Rent was received only in respect of law - Provision of S.50 cannot be applied . [S.50 , 194I]

During the period relevant to the assessment year 2010 -11 , the assessee sold a piece of land and offered the consideration to long term capital gain. During the bsurvey operation , however the AO recorded a statement of the representative of the assessee company indicating that there was a factory building situated on the land . The revenue therefore contended that such building would be subject to depreciation and for the purpose of charging capital gain the depreciated value of the super structure should be taken in to consideration . The statement was promptly retracted . On appeal the Tribunal held that there was no super structure on the land which could be subjected to depreciation . Considering the records the Tribunal held that the provision of S.50 cannot be applicable to the facts of the appellant . On appeal by the revenue ,dismissing the appeal of the revenue the Court held that

the Tribunal is justified in holding that there did not exist any building on the sold property especially in view of the fact the specification in agreement of sale and incriminating material found in survey confirmed existence of super structure on sold property. (Arising out of ITA. No.6224/Mum/2012 dt.22/01/2016)(ITA NO. 124 of 2017, dt.12/03/2019) (AY. 2010-11)

P CIT v. Firoz Tin Factory (Bom)(HC)(UR)

Editorial: SLP of revenue is dismissed (SLP No.21694 of 2019 dt.06/09/2019)(2019) 417 ITR 56 (St.)(SC)

122. S.45: Capital gains – No cost of acquisition of TDR (Development rights) – Not liable to capital gain tax.

There was no cost of acquisition of the TDR, hence in absence of the cost of acquisition of the development rights, the TDR cannot be taxed as a capital gain. (Arising out of ITA No.7582/Mum./2014 dt.09/10/2015)(ITA No.822 of 2016, dt.07/01/2019)

PCIT v. Shri Manohar H. Kakwani. (Bom) (HC) (UR)

Editorial: SLP of revenue is dismissed (SLP No.18498 of 2019 dt.02/08/2019)(2019) 416 ITR 125 (St.)(SC)

123.S. 45 : Capital gains – Capital asset – Agricultural land -Land situated at distance of 5 kms from limits of Municipal Corporation-It was not excluded from definition of term capital asset - Agricultural land within jurisdiction of municipality or cantonment board etc., having population not less than ten thousand- Liable to capital gains tax. [S.2(14)(iii)(a)]

Assessee had sold agricultural land and claimed exemption. AO held that land was situated at distance of 5 kms from limits of Municipal Corporation. AO held that it was not excluded from definition of term capital asset hence liable to capital gains tax. CIT (A) allowed the appeal of the assessee. Tribunal held that sale of agricultural land is a capital asset on ground that land in question was situated at distance of 5 kms from limits of Municipal Corporation and, therefore, it was not excluded from definition of term capital asset. On appeal High also affirmed the order of the Tribunal by observing that a perusal of s. 2(14)(iii) would show that exclusion of agricultural land from term 'capital asset' would again be excluded if land falls either under (a) or (b) thereof—Sub-clause (a) would cover any agricultural land which was comprised within jurisdiction of municipality or cantonment board etc. and which had a population of not less than ten thousand. If agricultural land under reference was one which was comprised within jurisdiction of a municipality or cantonment etc. board having population of not less than ten thousand, it would not fall outside definition of capital asset. Clause (b) would cover any area within such distance not more than 8 kms from local limits of municipality or cantonment board etc. referred to in item (a) as a Central Government may specify under a notification. An agricultural land may fall either in clause (a) or clause (b) or neither but not both. If it happens to be a land comprised within jurisdiction of municipality or cantonment board etc., having population not less than ten thousand, it would fall under clause (a). When a particular land was not comprised within jurisdiction of municipality or cantonment board etc., as referred to in sub-clause (a), question of applicability or inapplicability of sub-clause (b) would arise. Reference to words "any municipality or cantonment board referred to in item (a)" in sub-clause (b) must be to "any municipality or cantonment board which had a population of not less than ten thousand" which is phrase used in sub-clause (a). Accordingly the appeal of the assessee is dismissed. (AY. 2009- 10)

Hari Jasumal Thakur v. CIT (2019) 178 DTR 138/309 CTR 530 (Bom)(HC)

124. S. 45 : Capital gains – Business income- Sale of shares -Shares settled by settlor – Shares received by way of Employee Stock Option Plan- Assessable as capital gains and not as business income- Entitle to exemption.[S.10 (38), 28(i)]

Assessee earned profit on sale of shares which was shown as exempt. AO taxed profit on sale of shares earned as business income. Tribunal held that the shares in question were not purchased by assessee trust at all. It was also found that shares in question were settled by settler of trust who himself had not purchased majority of those shares but had received by way of Employee Stock Option Plan and shares were held by settler himself for over two years before settling them in trust. Accordingly the Tribunal held that profit arising from sales of shares was to be treated as capital gain

exempt from tax under section 10(38) of the Act. High Court affirmed the order of the Tribunal.(AY.2010-11)
PCIT v. Vernan (P.) Trust (2019) 107 taxmann.com 432 / 265 Taxman 158 (Bom) (HC)
Editorial: SLP of revenue is dismissed,PCIT v. Vernan (P.) Trust. (2019) 265 Taxman 157 (SC)

125. S.45: Capital gains- Transfer- Agreement to sell flats which were yet to be constructed – No transfer has taken place during the year -Not assessable as capital gains. [S.2(47)(v), Transfer of property Act ,1881 S.53A]
AO made addition in respect of capital gain arising from transfer of flats. Tribunal found that during relevant year an agreement to sell had been executed as flats were yet to be constructed. Tribunal further held that since possession had not been delivered, provisions of section 53A of Transfer of Property Act, 1881, would not apply and, therefore, sub-clause (v) of section 2(47) would also not apply. High Court affirmed the order of the Tribunal.
CIT v. Sadiq Sheikh. (2019) 106 taxmann. Com 333/ 264 Taxman 170 (Bom) (HC)
Editorial: SLP of revenue is dismissed, CIT v. Sadiq Sheikh. (2019) 264 Taxman 169 (SC)

126. S. 45: Capital gains- Sale of shares of subsidiary – Cannot be assessed as slump sale. [S.2 (42C), 50B]
Assessee sold its entire shareholding in its subsidiary UHEL to a third party. AO held that the sale of shares in UHEL to a third party resulted in slump sale of undertaking and, computed the capital gains as per S.50B of the Act. CIT (A) confirmed the order of AO. On appeal the Tribunal held that the transfer of shares by assessee in UHEL was just transfer of shares simplicitor and, said transfer of shares could not be considered to be a slump sale of undertaking within meaning of section 2(42C) of the Act. On appeal by the revenue High Court up held the order of the Tribunal. (AY. 2007-08)
PCIT v. UTV Software Communication Ltd. (2019) 261 Taxman 562 (Bom.)(HC)
Editorial: UTV Software Communication Ltd v. ACIT (2016) 157 ITD 71 (Mum)(Trib.) is affirmed.

127. S. 45 :Capital gains-Allotment letter-The allottee gets title to property on issue of allotment letter- the payment of instalments is only a follow-up action-Taking delivery of possession is only a formality- the date of allotment is the date on which the purchaser of a residential unit can be stated to have acquired the property and not on the date of registration of agreement – Assessable as long term capital gains – Entitle to benefit of S. 54F.[S.2(14), 2(29A, 2(29B)2(42A), 54,54F]
Affirming the order of Tribunal the High Court held that. The allottee gets title to property on issue of allotment letter. The payment of instalments is only a follow-up action. Taking delivery of possession is only a formality. The date of allotment is the date on which the purchaser of a residential unit can be stated to have acquired the property and not on the date of registration of agreement. Sale consideration is assessable as long term capital gains. Followed CIT v. TATA Services Ltd. (1980) 122 ITR 594 (Bom.)(HC) Circular No.471 dt.15-10-1986.(1986) 162 ITR 17 (St), Circular No.672 dt.16-12-1993(1994) 205 ITR 329 (St.)(ITA No.1549 of 2016, dt.22.01.2019)(AY.2009-10)
PCIT v. Vembu Vaidyanathan (2019) 413 ITR 248 / 261 Taxman 376/ 176 DTR 446 / 308 CTR 302(Bom.)(HC),www.itatonline.org
Editorial: SLP of revenue is dismissed. PCIT v Vembu Vaidyanathan (2019) 265 Taxman 535 (SC) /Order of DCIT v. Shri Vembu Vaidyanathan, ITA No.5749/Mum/2013 dt.29-10-2015.

128. S.45: Capital gains- Surrender of tenancy rights – Assessable as capital gains and not as income from other sources – Invested in capital bonds is eligible for exemption u/s 54EC of the Act. [S.48, 54EC, 56]
The assessee is an HUF on surrender of tenancy rights received compensation of Rs.50 lakhs which was invested in capital bonds and claimed exemption u/s 54EC of the Act. The AO treated the amount received on surrender of tenancy rights as income from other sources and denied the exemption u/s 54EC of the Act . Order of the AO is affirmed by the Tribunal. On appeal by the assessee allowing the appeal of the High Court held that the assessee had disclosed the amount of Rs.50 lakhs received from M/s. Carlton Coats Pvt. Ltd. for settlement of its claim to the property and had further disclosed that the said amount was invested in capital bonds. Thus the said amount was received by the assessee

as long term capital gains in view of surrender of rights by the assessee vis-a-vis the property in question. In the circumstances, merely on the basis of suspicion, the revenue authorities ought not to have rejected the claim of the assessee that the said amount was received as long term capital gains but to treat the said amount as income from other sources.(ITA No. 4511/Mum/2016 dt 24-08-2016, (AY. 2009- 10)(ITA No.1219 of 2017 dt.27-01-2020)
Amol C. Shah (HUF) v. ITO (Bom.)(HC)(UR)

129. S.45: Capital gains - Carry forward of long term capital loss on sale of shares to be set of in subsequent years - long term capital loss on sale of the shares being exempt u/s. 10(38) of the Act- Question of law is admitted by the High Court . [S. 2(14) (a) , 2(29B),10(38) , 72, 260A]
On appeal by the revenue the following question of law is admitted by High Court.
"Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in directing to allow the claim for carry forward of long term capital loss on sale of shares to be set of in subsequent years without appreciating that the long term capital loss on sale of the shares being exempt u/s. 10(38) of the Income Tax Act, 1961 the loss was not liable to be set of against the taxable long term capital gains on sale of other assets or to be carried forward for set of against taxable long term capital gains in the subsequent assessment years ?"
(Editorial : Tribunal followed Raptakos Brett & Co. Ltd.(ITA Nos. 3317/Mum/2009 and 1692/Mum/2010 10.06.2015 dismissed by High Court ITA No.357 of 2016 dt.18-08-2018 for want of non-prosecution. Also refer, Royal Calcutta Turf Club v. CIT (1983)144 ITR 709 (Cal)(HC) favour to assessee. Kishorebhai Bhikhabhai Virani v. ACIT (2015)367 ITR 261 (Guj)(HC), against the assessee.) (ITA No.4751/Mum/2012 dt.28-10-2016 (AY.2005 – 2006)(ITA No.1176 of 2017 dt.27-01-2020)
PCIT v. Vibhadeep Investments & Trading Ltd. (Bom) (HC) (UR)

130. S. 45 : Capital gains –Business income- Sale of shares – Average holding period of 628 days- Assessable as capital gains. [S.28(i)]
Dismissing the appeal of the revenue the Court held that, the average period of holding of most of those shares was 628 days, in certain scripts the assessee had incurred loss and that in the earlier years the assessee's investment in shares was assessed under the head capital gains because consistently the assessee had been showing in the balance-sheet that the shares were purchased out of his own surplus funds. Accordingly the Tribunal is right in assessing the gains as capital gains. (AY. 2008 -09)
CIT v. Hiren M. Shah. (2019) 413 ITR 143 / 264 Taxman 320 (Bom)(HC)

131.S.45: Capital gains- Business income- Short term capital gains- Taken delivery of shares and used own funds – Assessable as capital gains and not as business income. [S.28 (i)]
Dismissing the appeal of the revenue the Court held that, the assessee had used its own funds in order to purchase shares, had taken physical delivery of shares and in books of account, treated same as an investment. Accordingly the Tribunal is justified in holding that the gain is assessable as short term capital gains.
PCIT v. Business Match Services (I) (P.) Ltd. (2019) 260 Taxman 190 (Bom) (HC)

132. S.45: Capital gains- Business income- Set of off loss from one transaction against gain form second transaction is held to be allowable .[S.28(i)]
Dismissing the appeal of the revenue the Court held that ; the assessee had entered into only two transactions ie first was sale of shares of CPPL received from his father as a gift who held these shares as investment and in second transaction he bought shares of HCL Technologies, which he sold and incurred loss. Accordingly the Tribunal was justified in allowing the set of off loss from one transaction against gain from second transaction (.AY.2007 -08)
PCIT v. Adar Cyrus Poonawalla (2019) 260 Taxman 41 (Bom)(HC)

135. S.45: Capital gains- Business income - No distinction can be made whether borrowed money or own funds – Circular is binding on department -Consistency must be followed - Surplus from sale of shares is assessable as capital gains and not as business income.[S.28(i)]

Dismissing the appeal of the revenue the Court held that, the circular makes no distinction whether the investments made in shares were out of borrowed funds or out of its own funds. That the Department was bound by Circular No. 6 of 2016 dt.29/02/2016(2016) 382 ITR 14 (St). However, the stand once taken by the assessee would not be subject to change and consistently the income on the sale of securities which are held as investment would continue to be taxed as long-term capital gains or business income as opted for by the assessee (AY.2008 -09)

CIT v. Hardik Bharat Patel. (2019) 410 ITR 202 / 260 Taxman 294 (Bom) (HC)

136. S.45: Capital gains-Capital loss- Assignment of loan- Capital asset – Allowable as capital loss. [S. 2(14)(a), 2(47), Wealth tax Act, 1957 S. 2(e)]

Dismissing the appeal of the revenue the Court held that loan given by assessee to its subsidiary in India by the foreign company constituted capital asset and loss arising on assignment of loan is allowable as capital loss. Followed Bafna Charitable Trust v CIT (1998) 230 ITR 864 (Bom) (HC) , CWT Vidur V .Patel (1995) 215 ITR 30 (Bom) (HC) , CIT v. Minor Bababhai Alias Lavkumar Kantilal (1981) 128 ITR 1 (Guj) (HC),(ITA No.1366 of 2017 dt 26 -08 2019) (AY. 2002 -03)

CIT v. Siemens Nixdorf Information Systemse Gmbh (2019) 184 DTR 277 (Bom) (HC)

137. S.45: Capital gains - Carry forward of long term capital loss on sale of shares to be set of in subsequent years - long term capital loss on sale of the shares being exempt u/s. 10(38) of the Act- Question of law is admitted by the High Court.[S.2(14)(a), 2(29B), 10(38), 72, 260A]

On appeal by the revenue the following question of law is admitted by High Court."Whether on the facts and in the circumstances of the case and in law, Tribunal was justified in directing to allow the claim for carry forward of long term capital loss on sale of shares to be set of in subsequent years without appreciating that the long term capital loss on sale of the shares being exempt u/s. 10(38) of the Income Tax Act, 1961 the loss was not liable to be set of against the taxable long term capital gains on sale of other assets or to be carried forward for set of against taxable long term capital gains in the subsequent assessment years ?

(Editorial: Tribunal followed Raptakos Brett & Co. Ltd.(ITA Nos. 3317/Mum/2009 and 1692/Mum/2010 10.06.2015 dismissed by High court ITA No 357 of 2016 dt 98-08- 2018 for want of non-prosecution. Also refer, Royal Calcutta Turf Club v.CIT (1983)144 ITR 709 (Cal)(HC) favour to assessee. Kishorebhai Bhikhabhai Virani v ACIT (2015) 367 ITR 261 (Guj) (HC), against the assessee)(ITA No.4751/Mum/2012 dt.28/10/2016 (AY. 2005-06.)(ITA N0. 1176 of 2017 dt.27 -01 -2020)

PCIT v. Vibhadeep Investments & Trading Ltd (Bom)(HC)(UR)

138. S.45(3) : Foreign exchange forward contract loss – Allowable as business loss and setoff against loss.

Dismissing the appeal of the revenue Court held that, the Mark to Market Loss on account on foreign exchange forward contract loss, said loss was a notional loss and hence is allowable. (Arising out of ITA No.3757/Mum/2013 dt.24/06/2015)(ITA No.594 of 2016 dt.03/12/2018)

PCIT v. Rikin Exports (Bom)(HC)(UR)

Editorial : SLP of revenue is dismissed. (SLP18517/2019 dt.24/02/2020)

139. S. 45(4) : Capital gains - Distribution of capital asset - Retirement of partner- Amount received by a partner on her retirement from a partnership firm is not liable to capital gain tax. [S.45]

Dismissing the appeal of the revenue the Court held that, amount received by a partner on her retirement from a partnership firm was not liable to capital gain tax. (AY. 2006-07)

Hemlata S. Shetty (Smt.) v. ACIT (2019) 262 Taxman 324 (Bom)(HC)

140. S. 45(4): Capital gains - Distribution of capital asset -Retirement of partner -If new partners come into the partnership and bring cash by way of capital contribution and the retiring partners take cash and retire, the retiring partners are not relinquishing their interest

in the immovable property-. What they relinquish is their share in the partnership- As there is no transfer of a capital asset, no capital gains or profit can arise [S.45]
Dismissing the appeal of the revenue the Court held that, if new partners come into the partnership and bring cash by way of capital contribution and the retiring partners take cash and retire, the retiring partners are not relinquishing their interest in the immovable property. What they relinquish is their share in the partnership. As there is no transfer of a capital asset, no capital gains or profit can arise. (CIT v. A. N. Naik (2004) 265 ITR 346 (Bom) (HC**)** distinguished, Dynamic Enterprises (2013) 359 ITR 83 (FB)(Karn.)(HC)followed. (ITA No.137 of 2017, dt.26.03.2019) (AY.2010-11)
PCIT v. Electroplast Engineers (2019) 263 Taxman 120 / 178 DTR 316/ 310 CTR 238 (Bom)(HC),www.itatonline.org

141. S. 50C: Capital gains-Full value of consideration- Stamp valuation –Entire consideration was invested in bonds -The assessee cannot avoid the impact of S. 50C by claiming that his S. 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation- Such interpretation renders S. 50C redundant.[S.45,48. 54EC]
The asseeee declared capital gains of Rs 21 19 344 and claimed exemption u/s.54EC of the Act. The stamp authorises valued the share of the appellant at Rs.76,17,702/-. AO determined the capital gains at Rs.49,47,344/-. The Assessee contended that entire sale consideration of Rs.25 lakhs was invested in specified bonds and deeming provision of S.50C is not applicable .CIT (A) allowed the appeal. Tribunal affirmed the view of the AO. On appeal the High Court held that, the assessee cannot avoid the impact of S. 50C by claiming that his S. 54EC investment is large enough to cover the deemed consideration based on stamp duty valuation. Such interpretation renders S. 50C redundant. Order of Tribunal is affirmed. (AY.2008-09)(ITA No. 981 of 2016, dt.12.03.2019)
Jagdish C. Dhabalia v. ITO (2019) 176 DTR 417/ 308 CTR 295 / 262 Taxman 453 (Bom)(HC), www.itatonline.org
Mehul Jagdish Dhabala v. ITO (2019) 176 DTR 417/ 308 CTR 295 (Bom) (HC) . www.itatonline.org

142. S. 54 : Capital gains - Profit on sale of property used for residence -Ownership of land - Housing complex was situated on a piece of land which was occupied by Co-operative Housing Society under a long term lease- Exemption cannot be denied in respect of sale of flat in a society. [S. 45]
Assessee was an owner of flat in a society. Residential building in which assessee's flat was situated, had been constructed by housing society on leased land. AO denied the exemption on ground that the asseee had not transferred land along with flat. Tribunal allowed the claim. On appeal the Court held that in case of a constructed building of a Co-operative Housing Society, member owns constructed property and along with other members enjoys possessory rights over land on which such building is situated therefore merely because housing complex was situated on a piece of land which was occupied by Co-operative Housing Society under a long term lease, would make no difference.
PCIT v. Rahul Uday Tuljapurkar (2019) 264 Taxman 36/ 180 DTR 132 / 310 CTR 800 (Bom) (HC)

143. S.68 : Cash credits – Share Application Money -In the absence of incriminating material found during search - No addition can be made. [S. 132, 153C]
No incriminating material was found to support additions made by the AO u/s. 68 on account of share application money in the assessments u/s. 153C r/w S. 143(3). Addition done by the AO is unsustainable in law. Followed CIT v. Continental Warehousing Corpn. (Nhava Sheva) Ltd (2015) 374 ITR 645 (Bom) (HC)/ CIT v. Gurinder Singh Bawa (2017) 386 ITR 483 (Bom) (HC)(Arising out of ITA No.8628/M/2010 dt.12/10/2015)(ITA No. 73 of 2017 dt.06/03/2019)(AY. 2001 - 2002)

PCIT v. Dhananjay International Ltd(2020) 114 taxmann.com 317(Bom.)(HC)

Editorial: SLP granted to the revenue. (tagged along with 4090 of 2016) (CA No. 7600 of 2019, 16/09/2019)(2019) 418 ITR 17(St.)(SC)/(2020) 114 taxmann.com 351 (SC)

144.S.68: Cash credits – Advance received-Produced bank statements and other details produced – Discharged the burden- Deletion of addition as cash credits is held to be justified.
Dismissing the appeal of the revenue the Court held that, the assesssee discharged to burden by producing bank statements and other details .Ratio laid down in CIT v. P Mohanakala (2007) 291 ITR 278 (SC) is held to be not applicable. (AY.2008 -09)
PCIT v.Skylark Build (2019) 180 DTR 266 (Bom)(HC)

145.S. 68: Cash credits- Bogus share capital- Shell company –Huge premium- Failure to produce the subscribers and based on the statement of the Director that entire invest was bogus-Addition is held to be justified.[S.132(4)]
Dismissing the appeal of the assessee the Court held that, no rational person with sound mind will invest huge amount in the share subscription of a paper/shell company having no worthwhile business/project in hand at such a huge premium. The onus is on the assessee to prove the genuineness of the transaction as well credit worthiness of the share subscribers. The failure to produce the subscribers and statement of the director that the entire investment is bogus justifies the addition. (ITA No.438 of 2017, dt.22.07.2019)(AY.2007-08)
Royal Rich Development Pvt. Ltd. v. PCIT (2019) 184 DTR 293 (Bom)(HC)

146. S. 68 : Cash credits –Non –Resident – Not an ordinary resident -If the assessee is non – resident amount found deposited in a foreign bank is not taxable in India either u/s 68 or u/s 69 of the Act – Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. [S.6(6), 69]
Dismissing the appeal of the revenue the Court held that if the assessee is non –resident amount found deposited in a foreign bank is not taxable in India either u/s 68 or u/s 69 of the Act.Period of 182 days to be considered for calculating residential status of a person migrated to Foreign Country. Residential status was regarded as 'not an ordinary resident'. (AY. 2006 -07)(ITA No.107 of 2017, dt.22.04.2019)
PCIT v. Binod Kumar Singh (2019) 178 DTR 49 / 264 Taxman 335/ 310 CTR 243(Bom)(HC),www.itatonline.org

147. S. 68: Cash credits - Bogus Share Capital- Merely because the investment was considerably large and several corporate structures were either created or came into play in routing the investment in the assessee through a Mauritius entity would not be sufficient to brand the transaction as colourable device- The assessee cannot be asked to prove the source of source.
Dismissing the appeal of the revenue the Court held that, merely because the investment was considerably large and several corporate structures were either created or came into play in routing the investment in the assessee through a Mauritius entity would not be sufficient to brand the transaction as colourable device. The assessee cannot be asked to prove the source of source. (PCIT v. NRA Iron & Steel (2019) 103 Taxmann.com 48 (SC) is referred)(ITA No.1502 of 2016, dt.26.03.2019)(AY.2009-10)
PCIT v. Aditya Birla Telecom Ltd (2019) 178 DTR 418 (Bom)(HC),www.itatonline.org

148.S. 68: Cash credits – Share application money and share premium- Identity,genuineness of transaction, creditworthiness is proved – Deletion of addition is held to be justified.
Dismissing the appeal of the revenue the Court held that, the assessee has proved, identity,genuineness of transaction, creditworthiness of the share application money and share premium hence deletion of addition by the Tribunal is held to be justified. Addition cannot be made as cash credits. (ITA No 4607 /Mum/2012 AY. 2008 -09 dt.18-10-2016) ITA No 991 of 2017 dt.4-11-2019)
PCIT v. Shree Rajalakshmi Textile Park Pvt Ltd (2020) BCAJ-January -P. 46 (Bom) (HC)

149.S. 68: Cash credits – Share capital- Substantial part of share application money was received in earlier assessment years – Balance amount sufficient evidence was produced such as identity and genuineness - Deletion of addition is held to be valid.

Dismissing the appeal of the revenue , the Court held that , substantial part of share application money was received in earlier assessment year accordingly the amount could not be added in impugned assessment year Balance amount sufficient evidence was produced such as identity and genuineness. Order of Tribunal is affirmed. (Arising from ITA No. 4836/Mum/ 2011 dt.30-06 2016)(ITA No. 957 of 2017 dt.04-11-2019)(AY. 2007-08)

PCIT v. Realvalue Realtors (P) Ltd.(2020) 113 taxmann.com 62 (Bom)(HC)

150. S. 68: Cash credits - Share capital- Identity of the investors were not in doubt- Furnished PAN, copies of the income tax returns of the investors as well as copy of the bank accounts in which the share application money was deposited in order to prove genuineness of the transactions- Not required to prove source of the source- Deletion of addition by the Tribunal is held to be justified.

Dismissing the appeal of the revenue the Court held that, the identity of the investors was not in doubt. The assessee had furnished PAN, copies of the income tax returns of the investors as well as copy of the bank accounts in which the share application money was deposited in order to prove genuineness of the transactions. In so far credit worthiness of the creditors were concerned, the bank accounts of the investors showed that they had funds to make payments for share application money. The assessee was not required to prove source of the source. Nonetheless, the inquiries through the investigation wing of the department at Kolkata proved source of the source (PCIT v NRA Iron & Steel (2019) 412 ITR 161 (SC) distinguished) (ITA No. 1231 of 2017, dt.29.01.2020) (AY. 2010-11)

PCIT v. Ami Industries (India)P. Ltd (2020) 116 taxmann.com 34 (Bom)(HC), www.itatonline.org

151.S. 68 : Cash credits -Identity of creditor established – Need not prove the source of the source – Addition confirmed by the Tribunal is deleted.

The assessee had taken unsecured loan from various persons. The Assessee has filed the confirmation letters. The AO has doubted the genuineness of the loan and made addition as cash credits. The Tribunal is also confirmed the addition. On appeal by the assessee allowing the appeal the Court held that the assessee need not prove the source of the source. Accordingly the addition was deleted. Followed PCIT v Veedhata Tower Pvt Ltd (2018) 403 ITR 415 (Bom)(HC). (ITA NO. 6160 /Mum/2016 dt 11-05 2017 (AY. 2010-11)(ITA No 1750 of 2017 dt.22-01 2020)

Gaurav Triyugi Singh v ITO (Bom) (HC) www.itatonline .org

152. S. 68: Cash credits – Share application money and share premium- Identity, genuineness of transaction, creditworthiness is proved – Deletion of addition is held to be justified.

Dismissing the appeal of the revenue the Court held that, the assessee has proved, identity, genuineness of transaction, creditworthiness of the share application money and share premium hence deletion of addition by the Tribunal is held to be justified. Addition cannot be made as cash credits. (ITA No 4607/Mum/2012 AY. 2008-09 dt.18/10/2016)ITA No.991 of 2017 dt.04-11-2019)

PCIT v. Shree Rajalakshmi Textile Park Pvt Ltd (2020) BCAJ-January-P. 46(Bom)(HC)

153. S. 68: Cash credits – Loan – Accommodation entries -Creditor admitting loan was not genuine – Retraction of admission after more than two years – No evidence was produced to prove genuineness of loan- Order of Tribunal is affirmed-No substantial question of law. [S.36(1)(iii),131,133A, 260A]

Dismissing the appeals of the assessee the Court held that, it was an admitted position that Moxdiam was indulging in accommodation entries. The majority of the activities of Moxdiam were of accommodation entries. It was the assessee which sought to assert a deviation from Moxdiam regular activity to contend that in the assessee's case it was not an accommodation entry, but a genuine loan. The burden on the assessee to show the genuineness of the entry was thus heavier. Such a burden

could not be casually shifted. Merely because certain entries had been shown in the books of account of Maxdiam they could not be held to be conclusive and must be construed in the light of all surrounding circumstances. The genuineness of the loan transaction, financial capacity, and the surrounding circumstances were some criteria for determination in such matters. Further though sought to be retracted, the admission before the officers was a significant circumstance. Further, Bharat Jain had retracted his statement after two years and eight months. Such retraction was rightly held not bona fide. An admission made during a survey of such proceedings could be relied upon by the Assessing Officer. Two authorities and the Tribunal had evaluated each piece of evidence to conclude that this transaction was not a genuine loan transaction. The nature of the transaction would depend on the facts and circumstances. The view taken by the Tribunal on the assessment of evidence was not perverse, and merely because another view was possible by re appreciating the evidence, it could not give rise to a question of law as envisaged under section 260A. (AY. 2007-08, 2008 -09)
Swastik Realtors.v. ACIT (2019) 418 ITR 1/ 267 Taxman 27 / 311 CTR 946 (Bom) (HC)

154. S. 68: Cash credits -The expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned- If the cash credits are credited in the FY 2006-07, it cannot be brought to tax in a later AY.2009-10[S.3]
The question before the High Court was "On the facts and in the circumstances of the case and in law, whether the Tribunal was right in sustaining the additions made of old outstanding sundry credit balances". Allowing the appeal of the assessee the Court held that,the expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned. If the cash credits are credited in the FY 2006-07, it cannot be brought to tax in a later AY.2009-10. Followed CIT v. Bhaichand H. Gandhi (1983), 141 ITR 67 (Bom)(HC), CIT v. Lakshman Swaroop Gupta & Brothers (1975), 100 ITR 222 (Raj)(HC), Bhor Industries Ltd. v. CIT AIR 1961 SC 1100 (TA No.29 of 2013, dt.14.02.2020)(AY.2009-10)
Ivan Singh v. ACIT (Bom)(HC) www.itatonline.org

156. S.69A: Unexplained money – Search and seizure-illegal capitation fees –Addition on estimate basis is held to be justified.
Dismissing the appeal of the assessee the Court held that since assessee did not bring any material on record to enable revenue authorities to determine his earning from illegal capitalisation fees addition to income on the basis seized material is held to be justified.
Arvind Janardhan Pandey. v. ITO (2019) 262 Taxman 401 (Bom)(HC)

157.S.69C : Unexplained expenditure -Bogus purchases –Trader in fabrics - -Entire purchases cannot be added without disturbing the sales – Addition is to be restricted to the extent of G.P rate.[S.145]
Dismissing the appeal of the revenue the Court held that; even if the purchases are bogus, the entire purchase amount cannot be added. As the department had not disputed the assessee's sales & there was no discrepancy between the purchases and the sales, the purchases cannot be rejected without disturbing the sales in case of a trader. The addition has to be restricted to the extent of the G.P. rate on purchases at the same rate of other genuine purchases (N.K .Industries Ltd v. Dy.CIT (2016) 72 taxmann.com 289 (2017) 292 CTR 354 (Guj.),(HC), N. K. Proteins v. Dy.CIT (2017) 250 Taxman 22 (SC) referred.(ITA 1004 of 2016, dt.11.02.2019)
PCIT v. Mohommad Haji Adam (Bom)(HC),www.itatonline.org

158.S. 69C : Unexplained expenditure – Bogus purchases – Accommodation entries - Restricting the disallowances at 5% of alleged bogus purchases is held to be justified – Entire purchases cannot be disallowed . [S. 37(1)n,144]
The assessee is engaged in the business of manufacturing and dealership of all kinds of industrial power controlling instrument cables and related items. On the basis of the information received from the sales tax department the AO disallowed the entire purchases from the alleged hawala bill givers and passed the order u/s 144 of the Act. On appeal considering the additional evidences added only 2% of the profit element on alleged purchases .On appeal by the revenue the Tribunal directed the AO to make further disallowance of 3% alleged purchases . Against the order of the Tribunal the revenue

filed an appeal to the High court. Followed,CIT v. Bholanath Polyfab Ltd (2013), 355 ITR 290 (Guj)(HC) and distinguished the ratio in Kaveri Rice Mills v . CIT (2006)157 Taxman 376 (All) (HC),CIT v. La Medica (2001) 250 ITR 575 (Delhi)(HC) (Arising from ITA No.7773/Mum/2014 dt .3-11-2016 (ITA No.1330 of 2017 dt.20-02 -2020)(AY.2010-11)
PCIT v. Rishabhdev Tachnocable Ltd (Bom) (HC). www.itatonline .org

159.S. 69C: Unexplained expenditure – Bogus purchases - Business of Civil Contactor - Even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed- As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated. [S.37(1), 68]

The Respondent-Assessee carried on business as a Civil Contractor. The assessment was reopened under Section 147 of the Income Tax Act. Information was received from the Sales Tax Department that Respondent-Assessee had taken bogus purchase entries of Rs.1,69,48,368/- from the different parties. The reassessment order was accordingly passed on 17 February, 2014 determining the total income of Rs.2,18,13,430/.

On appeal CIT (A) who partly allowed the Appeal and sustained addition of based on the net profit @ 5.76 % on the contracted amount. On appeal by the revenue the Tribunal affirmed the order of the CIT(A) . dismissing the appeal of the revenue the Court held that, even if the purchases made by the assessee are to be treated as bogus, it does not mean that entire amount can be disallowed- As the AO did not dispute the consumption of the raw materials and completion of work, only a percentage of net profit on total turnover can be estimated. Court also held thatassuming that the Respondent-Assessee the purchasers from whom the purchases were made was bogus, inview of the finding of fact that the material was consumed; the question would be of extending the percentage of net profit on total turnover. This would be a matter of calculations by the concerned authority. In this context, if the CIT (A) and the Tribunal chose to follow the percentage arrived by the Settlement Commission in the Respondent-Assessee's own case for the other years, this exercise cannot be considered as irregular or illegal. Followed PCIT v . Mohommad Haji Adam & Co (Bom)(HC) www. itatonline.org, PCIT v. Paramshakti Distributors Pvt Ltd.(Bom)(HC) www.itatonline.org (ITA No.1453 of 2017 dt.08-01-2020)(AY. 2019-10)
PCIT v .Pinaki D. Panani (Bom) (HC) www.itatonline .org

160. S. 69C : Unexplained expenditure – Hawala transaction- Bogus purchases – Trading in paper and paper products - Adoption of profit at 12.5 % of alleged bogus purchases is held to be justified . [S.143(3)]
Assessee was trading in paper and paper products. AO held that as the assessee involved in hawala transactions and substantial purchases made by it were bogus in nature, disallowed purchases and added same in income of assessee as unexplained expenditure under S. 69C of the Act. CIT (A) held that even if purchase transactions were not verifiable what was taxable was only income component and not entire purchase. He adopted average profit rate at 3.67 per cent and disallowed 3.67 per cent of bogus purchases. Tribunal, on appeal filed by revenue, enhanced disallowance from 3.67 per cent to 12.5 per cent of bogus purchases. On appeal by the assessee the Court held that since all authorities had come to a finding of fact that substantial purchases made by assessee were bogus in nature, extent of disallowance did not give rise to any substantial question of law. (AY. 2010 -11, 2011-12)
Pooja Paper Trading Co (P.) Ltd. v. ITO (2019) 264 Taxman 260 (Bom) (HC)

161. S.72: Loss- Carry forward and set off- Scheme sanctioned by BIFR - Objection by Revenue to grant tax concession- Writ is held to be not maintainable. [S,72A, Sick industrial companies (Special provisions) Act,1985, S.18,19, Art.226]
Dismissing the petition the Court held that, in view of clear stand of the Department raising specific objection at the time of framing of the scheme against grant of tax waiver the BIFR could not have in

the final scheme given directions for giving such benefits .In the context of income-tax waiver, the Department contended before the BIFR that the company has not quantified the tax liability and therefore, the relief can be considered only after the details are received from the company. Without quantification thus, the Department was not willing to give any concession or tax Waiver. It was, in this context that the BIFR noted that expression to consider has already been used. Scheme did not contain any mandate to the IT Department to grant the tax concession requested the assessee company. Accordingly the Writ petition challenging the Revenue s 'order rejecting the assessee's application for waiver of income-tax pursuant to scheme framed by the BIFR is held to be not maintainable.

Olympia Industries Ltd. v. UOI (2019) 181 DTR 253/(2020) 312 CTR 248 (Bom)(HC)

162. S. 72: Carry forward and set off of business losses – Return was not filed with in prescribed time – Application for condonation of delay was not filed with in permissible time limit – Rejection of application is held to be justified .[S.119 , 139(1) , 254(1)]

AO rejected assessee's claim for carry forward of loss on ground that return was not filed within time prescribed under S. 139(1) of the Act. On appeal Tribunal directed assessee to seek condonation of delay in filing return from CBDT. Assessee did not file application for condonation of delay even before CBDT within permissible time limit. CBDT rejected application on ground of limitation and latches. On writ the Court held that rejection of application by CBDT is held to be justified. (AY.2008-09)

Ganesh Sahakari Bank Ltd. v. Government of India (2019) 264 Taxman 150 (Bom)(HC)

163.S. 80 : Return for losses - losses can be allowed to be carry forward and set off only if return of income has been filed in the year in which the loss arise claiming such losses. [S. 74, 139(1)]

Petitioner an LLC incorporated outside India was managing three investment series (funds) in India. Such series had suffered loss in the earlier year and were claimed as such in their respective return of income. The Petitioner sought an AAR ruling whether such loss would be allowed in the hands of the Petitioner, which was answered in the negative. On Writ challenging such order, the High Court held that, the Petitioner was not the assessee who had claimed such loss in its return of income. In fact, the Petitioner had obtained PAN after such year and it had not filed any return of income in the year in which loss arose claiming such loss. As a result, as per section 80, the Petitioner was held not eligible for claiming such losses. (AY 2011-12) (WP No. 9358 of 2018, dt.08.03.2019)

Aberdeen Institutional Commingled Funds LLC v. AAR (2019) 308 CTR 287 (Bom.)(HC)

164. S.80I : Deduction for Industrial undertaking – deduction should be given on profit without reducing the deduction u/s.80HH .[S.80HH]

Assessee is entitled to the simultaneous benefit of Section 80I and Section 80HH of the Act. (ITXA No. 805 of 2015 dt.05/02/2018)

CIT v. Hindustan Lever Ltd. (Bom)(HC)(UR)

Editorial: SLP is granted to the revenue (C A No. 2015 of 2019)(2019) 413 ITR 320(St.)(SC)

165.S.80IB: Industrial undertaking- Business of manufacturing Menthol-Profit from hedging – Hedging activity of Mentha Oil has direct nexus with the manufacturing activity and profit derived from hedging is eligible for deduction.

Dismissing the appeal of the revenue the Court held that, the assessee who is carrying on business of manufacturing Menthol, hedging activity of Mentha Oil has direct nexus with the manufacturing activity and profit derived from hedging is eligible for deduction. (AY. 2006 -07, 2007- 08, 2009-10)

PCIT v. Jindal Drugs Ltd (2019) 306 CTR 241/ 173 DTR 345 (Bom) (HC)

166.S. 80IB: Industrial undertakings - Profit from sale of slag, which was a by-product in manufacture of pig iron, was to be considered as profit from business of industrial undertaking engaged in manufacture and sale of pig iron for purpose of deduction.

Allowing the appeal of the assessee the Court held that, slag generated during process of manufacturing of pig iron was part of manufacturing process and was a by-product of pig iron and, thus, profits earned from sale of such by-product was to be considered as part of profits derived from

business of industrial undertaking engaged in manufacture and sale of pig iron and would be eligible for deduction. (AY. 2004-05)

Sesa Industries Ltd. v. CIT (2019) 415 ITR 257/ 264 Taxman 95/ 180 DTR 25/ 309 CTR 380 (Bom) (HC)

167. S. 80IB: Industrial undertakings - Initial assessment year - Commenced manufacture in accounting year relevant to Assessment Year 2002-03 — Assessee cannot claim subsequent assessment year as year for initial deduction. [S.80IB(4), 80IB(14)]

Dismissing the appeal of the assessee the Court held that the material on record showed that prior to the amendment by the Finance Act, 2002 in section 80IB(4), the assessee had declared that its industrial undertakings had begun manufacture on March 26, 2002. However, after the amendment of the extended date for commencement of manufacture up to March 31, 2004, the assessee sought to contend that the manufacture began for the first time at its industrial undertakings only on February 1, 2003. The Appellate Tribunal had also noted that absolutely no evidence was produced on record that the processes undertaken were in the nature of testing or trial production. No contemporaneous report of such trial production or testing was produced by the assessee. No reports of the production staff for testing were ever produced. All this material was more than sufficient to sustain the findings of fact recorded by the Assessing Officer and the Appellate Tribunal. The Appellate Tribunal was justified in law by holding that the assessment year 2002-03 was the initial assessment year, as contemplated under clause (c) of sub-section (14) of S. 80IB of the Act. (TA No.27 of 2011 dt.05-09-2019)(AY.2002 -03)

Teracom Ltd . v. ACIT (2020) 420 ITR 1 /113 taxmann.com 233 (Bom) (HC)

168.S.80IB (10): Housing projects – Deduction could not be denied on the ground that project not completed within prescribed time limit.

The first approval has been given by BMC on 17/03/2004, deduction claimed was quite different from the project which the previous developer had convinced, that deduction could not be denied on the ground that project was not completed within prescribed time limit. (ITA No. 581 of 2016, dt.03/12/2018)

PCIT v. Yash Associates (Bom) (HC) (UR)

Editorial: SLP of revenue is dismissed (SLP No.18066 of 2019 dt.29/07/2019)(2019) 417 ITR 60 (St.)(SC)

169. S.80IB(10) :Housing projects -Completion of projects- Satisfied all the conditions stipulated in the provisions – Held to be eligible for claim

The assessee satisfied all the conditions mentioned in the provisions of S. 80IB(10) for completion of housing projects within stipulated time and hence eligible for deduction claimed u/s.80IB(10).(ITA No.793 of 2016, dt.10/12/2018)

PCIT v. Kewal Real Estate Pvt Ltd.(Bom)(HC)(UR)

Editorial: SLP of revenue is dismissed (SLP No.18492 of 2019 dt.02/08/2019)(2019) 416 ITR 129 (St.)(SC)

170. S. 80IB (10) : Housing projects- Completion of project- Partial construction of project – Eligible for exemption

Question raised before the High Court by the revenue was "Whether on the facts and in the circumstances of the case and in law, the ITAT has erred in holding that the project was complete on or before 31.03.2009 when occupation certificate was accorded only in respect of 9206.30 Sq.Mtr. Against sanction of 11960.15 sq.Mtr. ?

"Following the order of High Court in assessee's own case bearing ITA No. 655 of 2017 dt.6-6-2019 for the AY. 2009-10 the question raised is decided against the revenue and in favour of the assessee. (ITA No.2099/Mum/2015 dt.15-12-2016)(ITA No.1755 of 2017 dt.22-01-2020 (AY.2010 -11)

PCIT v . Sadhana Builders Pvt. Ltd. (Bom)(HC)(UR)

171.S. 80IB(10) : Housing projects- Allotment of more than one unit to members of same family - Allottees Later removing partitions and combining two flats into one — No breach of condition that each unit should not be of more than 1000 Sq. Ft. — Entitled to deduction.

Dismissing the appeal of the revenue the Court held that allotment of more than one unit to same family members no breach condition.Allottees Later removing partitions and combining two flats into one ,no breach of condition that each unit should not be of more than 1000 Sq. Ft**.** Argument of the revenue that condition inserted by Finance Act, 2009 with effect from April 1-2010 is procedural and applicable to pending cases was rejected.(AY.2009 -10)

PCIT v. Kores India Ltd. (2019) 414 ITR 47 (Bom.) (HC)

172. S.80IB (11A): Undertaking –Business of processing, preservation and packaging of fruits or vegetables- Business of manufacturing and exporting honey is eligible to claim deduction.

The assessee firm which is engaged in the business of manufacturing and exporting honey. It claimed deduction under S. 80IB(11A) in respect of benefit received under Vishesh Krishi and Gram Udyog Yojana (VKGUY). AO denied the deduction om the ground that the VKGUY scheme is part of Foreign Trade Policy 2009-14 framed by the Government of India, Ministry of Commerce and Industry. Tribunal also up held the view of the AO. On appeal high Court held that perusal of the scheme would suggest that the objective of the scheme was to promote export of agricultural produce and their value added products, minor forest produce and their value added variants, Gram Udyog products, forest based products and other produces as maybe notified. In relation to exports of such products, benefits in the form of incentives would be granted at the prescribed rate. The objective behind granting such benefit was in order to compensate high transport cost and to offset other disadvantages. In clear terms, thus, the Government of India realized that the products such as agricultural produce, minor forest produce and Gram Udyog products as also forest based products would have high transport cost and would be accompanied by various other disadvantages. In order to make the export of such products viable, the Government of India decided to grant certain incentives under the said scheme. The clear objective behind the scheme was, thus, to reduce the cost of its procurements and to neutralize certain inherent disadvantages attached to such products. Accordingly the court held that the assessee's claim of deduction under section 80IB (11A) in relation to the benefits received by the assessee under VKGUY scheme upon the export of its agro products was to be allowed. (AY. 2009-10)

Pioneer Foods & Agro Industries. v. ITO (2019) 265 Taxman 53 (Mag)/ 181 DTR 60 / 311 CTR 573 (Bom) (HC)

173.S. 80HHC : Export business - Entitle to deduction on gross total income without reducing it by the deduction allowed u/s 80IB of the Act .[S. 80IA (9) , 80IB]

Allowing the appeal of the assessee the Court held that the assessee is entitle to deduction on gross total income without reducing it by the deduction allowed u/s 80IB of the Act .Followed Associated Capsules (P) Ltd v Dy.CIT (2011) 332 ITR 42 (Bom) (HC)

IPCA Laboratories Ltd v ACIT (2019) 112 taxmann.com 331 / (2020) 268 Taxman 328 (Bom) (HC)

Editorial: SLP of revenue is dismissed ACIT v IPCA Laboratories Ltd. (2020) 268 Taxman 327 (SC)

174.S. 80HHC: Export business – Business profits - Receipts by way of re-assortment charges and labour commission — cannot be excluded from business profits for purpose of computation of business profits – Prior to amendment with effect from April 1, 1992.

The assessee exported cut and polished diamonds. It also undertook the work of other exporters on contract basis and gave the work of cutting and polishing of diamonds on sub-contract. The assessee claimed deduction under section 80HHC of the Act. On the receipts on account of re-assortment charges and labour commission charges. The AO excluded such amounts for the purpose of deduction u/s.80HHC. The CIT(A) allowed the appeal filed by the assessee. The Tribunal recorded that the re-assortment charges were nothing but commission received by the assessee from the diamond traders

when the assessee facilitated the sale of their goods to foreign buyers and that the labour commission was received by the assessee from other diamond dealers for cutting and polishing the diamonds. The Tribunal held that such receipts were not includible in the business profits for the purpose of computation of special deduction under S.80HHC and allowed the appeal filed by the Department. On appeal High Court held that the Tribunal was not justified in excluding from the total business income of the assessee the receipts of re-assortment charges and the labour commission for the purpose of calculation of deduction under S.80HHC of the Act. (AY. 1991-92)

Seven Stars v. DCIT (2020) 421 ITR 16 (Bom)(HC)

175.S. 80 M : Inter corporate dividends – Deduction to be on gross income and not on net income. [S.80HHC]

Dismissing the appeal of the revenue the Court held that, deduction to be allowed on gross income. Followed CIT v. Modern Terry Towers Ltd (2013) 357 ITR 750 (Bom) (HC)(756), court held that principle computing deduction u/s 80HHC of the Act cannot be imported in to S. 80M of the Act. "The provisions of section 80HHC are entirely different from those of sections 80M and 80AA. There is no basis for importing the provisions of section 80HHC with section 80M. The same does not lead to a satisfactory computation of the net dividend under section 80M". (ITA No. 718 of 2017, dt. 18.06.2019)

PCIT v. State Bank of India (2019) 181 DTR 275 / (2020) 420 ITR 376 (Bom)(HC),www.itatonline.org

176.S. 92: Transfer pricing - Arm's length price -Arm's Length Price to be restricted to transaction of assessee with associated enterprise.[S.92C]

Dismissing the appeal of the revenue the Court held that the determination of the arm's length price should be restricted to the international transactions of the assessee with its associated enterprise.(AY.2008 -09)

CIT v. Phoenix Mecano (India) Pvt. Ltd. (2019) 414 ITR 704/ 265 Taxman 354 (Bom) (HC)

Editorial: SLP of revenue is dismissed CIT v. Phoenix Mecano (India) Pvt. Ltd (2018) 402 ITR 32 (ST).

177. S.92C: Transfer pricing- International Transactions –Arm's length price – comparable – Investment advisor or sub -advisor cannot be compared with a merchant banker or investment banker.

Investment advisor or sub-advisor cannot be compared with a merchant banker orinvestment banker whether it is a inclusion or exclusion of certain comparable. (ITA No.8 of 2017, dt.11/03/2019)

PCIT v. Blackstone Advisors India Pvt. Ltd, (Bom)(HC)(UR)

Editorial: SLP of revenue is dismissed (SLP No.24300 of 2019 dt.04/10/2019) (2019) 418 ITR 13 (St.)(SC)

178.S.92C: Transfer pricing - Arms' length price – Whether one entity is comparable to another – question of fact – No substantial questions of law. [S.260A]

Dismissing the appeal of the revenue the Court held that, whether one entity is comparable to another is a question of fact. Since Tribunal's well-reasoned order deleting the comparables, as prayed by assessee, cannot be termed either as perverse or vitiated by any error of law apparent on the face of the record, no substantial question of law arises. (AY. 2005-06, 2007-08)

CIT v. Ness Technologies (India) (P) Ltd (2019) 307 CTR 588 / 174 DTR 260 (Bom) (HC)

179.S. 92C : Transfer pricing - Arms' length price - Most appropriate method vis-a-vis rule of consistency—TPO applied the RPM and CPM method for benchmarking international transactions - Tribunal however applied TNMM on the aggregated transactions observing that it has been consistently applied over the years—Justified.

On appeal it was held that, Tribunal was justified in applying TNMM on the aggregated transactions of import of finished goods for resale and export of finished goods to AEs, observing that TNMM has been consistently applied over the years and also because Revenue has not been able to show any material difference in the subject assessment year which would justify a change in the most

appropriate method (TNMM) adopted while benchmarking the international transactions. (AY. 2005-06)
PCIT v. Vishay Components India (P) Ltd (2019) 307 CTR 744 / 176 DTR 46 (Bom)(HC)

180. S. 92C: Transfer pricing - Even if the assessee does not report the specified transaction & the AO has no occasion to notice it, the TPO has no jurisdiction to suo moto determine the ALP-.He has to call for a reference from the AO-.Alternate remedy is not a bar if the action is without jurisdiction & can be severed from the rest.[S. 40A (3A), 92BA(i) 92CA,92E, Art .226]
Allowing the petition the Court held that, even if the assessee does not report the specified transaction & the AO has no occasion to notice it, the TPO has no jurisdiction to suo moto determine the ALP. He has to call for a reference from the AO.Alternate remedy is not a bar if the action is without jurisdiction & can be severed from the rest. (AY. 2015 -16)
Times Global Broadcasting Company Ltd. v. UOI (2019) 176 DTR 321/ 308 CTR 123 (Bom.)(HC) ,www.itatonline.org

181.S. 92C : Transfer pricing – Arm's length price -Corporate guarantee- Arm's length price of corporate guarantee cannot be determined on the basis of bank guarantee- Adjustment of 3% of the amount of guarantee given by the assessee is held to be not justified.
Dismissing the appeal of the revenue the Court held that Arm's length price of corporate guarantee cannot be determined on the basis of bank guarantee- Adjustment of 3% of the amount of guarantee given by the assessee is held to be not justified (Followed ITA No. 1302 of 2014 dt.2-2-2017)(AY.2009-10)
CIT v. Glenmark Pharmaceuticals Ltd (2019) 417 ITR 479/ 260 Taxman 249 (Bom)(HC)
Editorial: SLP of revenue is dismissed CIT v. Glenmark Pharmaceuticals Ltd. (2019) 416 ITR 138 (St)

182. S. 92C : Transfer pricing – Purchase and sale of shares- TPO was not justified in treating the transaction as loan and charging interest on notional basis – Corporate guarantee – Tribunal is justified in restricting the addition at 1 %of guarantee commission as against addition of at 5 % of commission by the TPO. [S.92B]
Dismissing the appeal of the revenue the Court held that TPO was not justified in treating purachse and sale of shares as loan there by charging interest on notional basis . Court also held that the Tribunal is justified in restricting the addition 1 %of guarantee commission as against addition of 5 % of commission by TPO. Followed CIT v. Everest Kento Cylinders Ltd (2015) 58 taxmann.com 254 (Bom) (HC)(ITA No. 1248 of 2016, dt.28.01.2019)
PCIT v. Aegis Limited (Bom)(HC),www.itatonline.org

183. S. 92C : Transfer pricing – Arm's length price – Know -how – Royalty - TPO is not justified in making the addition without applying any specified method.
Assessee had made purchase of raw material from its associated enterprises, agreeing to pay 2 per cent of net sale amount by way of royalty. TPO made adjustments to assessee ALP primarily on ground that assessee had not derived any specific benefits out of such technology nor assessee had received any incremental benefits on account of payment of such royalty amount .TPO also recorded that assessee had not used any technology which was purchased and for which royalty payment was made. CIT (A) deleted additions which are affirmed by the Tribunal. On appeal by the revenue, dismissing the appeal the Court held that, TPO is not justified in making the addition without applying any specified method. Accordingly the order of AO is affirmed. (AY. 2007 -08)
CIT v. SI Group-India Ltd. (2019) 265 Taxman 204 (Bom) (HC)

184. S.92C: Transfer pricing –Pro-rata adjustment considering only associated enterprises - Matter remanded- No question of law.[S.260A]
In transfer pricing proceedings, TPO made adjustment to entire segment of manufacturing activity instead of making adjustment for only international transaction. Tribunal held that TPO was not justified in making adjustment to entire segment of manufacturing activity and remanded matter back

to TPO in respect of import of raw material for pro-rata adjustment considering only Associated Enterprise transactions. No substantial question of law.
PCIT v. Bunge India (P.) Ltd. (2019) 265 Taxman 207 (Bom.)(HC)

185. S. 92C : Transfer pricing – Arm's length price – Interest -11.30 per cent interest paid by assessee to its associated enterprises was very much within arm's length rate- Deletion of addition is held to be valid .
Assessee engaged in business of identifying investment opportunities in financially distressed companies. Assessee raised funds through debt instruments from group companies by issuing Compulsory Convertible Debentures (CCDs) .During relevant year, assessee paid interest at rate of 11.30 per cent on CCD to its associated enterprises. TPO held that interest paid to associated enterprises was excessive, made certain adjustment to assessee's ALP. Tribunal held that rate of interest at 11.30 per cent is reasonable. High Court up held the order of the Tribunal. (AY. 2010-11)
PCIT v. India Debt Management (P.) Ltd. (2019) 417 ITR 103 / 264 Taxman 42 / 178 DTR 223/ 309 CTR 32 (Bom)(HC)

186. S. 92C : Transfer pricing – Arm's length price – Export of finished valves and valves in kit form to its AE and also to its group companies across globe -TPO ought to have arrived at ALP of assessee's sale to its AE by only comparing it with uncontrolled transaction of sale. [S.92]
Assessee-company had exported finished valves and valves in kit form to its AE and also to its group companies across globe. TPO held that supply of valves and kits to other group companies was at higher price and thus, adjusted profit margin (average) of similar supplies made to group companies to enhance/revise sales price of valves and kits sold to AE. Tribunal deleted the addition. On appeal High Court held that since in terms of provision of Act, ALP cannot be determined by comparing prices charged to Group Companies, i.e., controlled transaction, TPO ought to have arrived at ALP of assessee's sale to its AE by only comparing it with uncontrolled transaction of sale and, therefore, approach of TPO was contrary to provisions of law. (AY. 2004 -05)
PCIT v. Audco India Ltd. (2019) 264 Taxman 237 (Bom)(HC)

187.S. 92C : Transfer pricing – Arm's length price- Mutually agreed procedure (MAP) adopted by Governments of India and USA in relation to US based transactions for determination of ALP could also be adopted for determining ALP of on –US based transactions.
Dismissing the appeal of the revenue the Court held that, the Asseessee had 96% international transactions with US based AEs and rest were with non – US based AEs. There was no distinction between US and non –US based transactions. US Govt entered in to Mutually Agreed Procedure for determining tax in two countries. CBDT, in later years agreed that such transfer pricing in relation to US based transactions could safely be adopted for purpose of assessee's non –US based transactions to which the aseessee agreed under Advance Pricing Agreement. Tribunal held that for determining ALP of non –US transactions said MAP between India and US could be applied. High Court up held the order of the Tribunal. (AY. 2007 -08)
PCIT v. J. P. Morgan Services India (P) Ltd (2019) 263 Taxman 141 / 182 DTR 373/ 311 CTR 15 (Bom) (HC) .

188.S. 92C : Transfer pricing – Arm's length price-Company which outsources its work is not comparable for ALP determination with a company that does activity in house - A company having substantial related party transactions, could not be selected as comparable.
Dismissing the appeal of the revenue the Court held that; a company which outsources its work is not comparable for ALP determination with a company that does activity in house. A company having substantial related party transactions could not be selected as comparable. (AY. 2003-04)
PCIT v. Pfizer Ltd. (2019) 262 Taxman 215/ 308 CTR 389/ 177 DTR 110 (Bom)(HC)

189.S.92C: Transfer pricing- Arm's length price- Comparable – Merger and Amalgamation had taken place in a company –Cannot be selected for comparable –Securities and stock broker cannot be compared with merchant banker – Interest earned on margin money deposited with AE for broking services for futures and options should be factored in to determine ALP.

Dismissing the appeal of the revenue the Court held that; while determining the Arm's length price, Merger and Amalgamation had taken place in a company cannot be selected for comparable .Securities and stock broker cannot be compared with merchant banker. Interest earned on margin money deposited with AE for broking services for futures and options should be factored in to determine ALP. (AY. 2006 -07)

PCIT v. J.P.Morgan India (P) Ltd (2019) 261 Taxman 404/ 180 DTR 179 / 310 CTR 17 (Bom) (HC)

190. S. 92C: Transfer pricing – Purchase of equity shares at value in excess of FMV is capital transaction and does not give raise to any income Taxability under Transfer Pricing provisions of shares purchased at value in excess of FMV-As the transaction of purchase of equity shares is a capital transaction and does not give rise to any income, the transfer pricing provisions do not apply. Chapter X is a machinery provision- It can only be invoked to bring to tax any income arising from an international transaction. It is necessary for the revenue to show that income does arise from the international transaction. S. 2(24)(xvi) & 56(2)(viib) are prospective. [S.2(24) (xvi) 56 (2) (viib), 92B]

Dismissing the appeal of the revenue the Court held that, Purchase of equity shares at value in excess of FMV is capital transaction and does not give raise to any income Taxability under Transfer Pricing provisions of shares purchased at value in excess of FMV: As the transaction of purchase of equity shares is a capital transaction and does not give rise to any income, the transfer pricing provisions do not apply. Chapter X is a machinery provision. It can only be invoked to bring to tax any income arising from an international transaction. It is necessary for the revenue to show that income does arise from the international transaction. S. 2(24)(xvi) & 56(2)(viib) are prospective .(ITA No. 1685 of 2016, dt.20.02.2019)(AY.2010-11)

PCIT v. PMP Auto Components Pvt. Ltd (2019) 416 ITR 435/ 175 DTR 404 / 307 CTR 739 / 262 Taxman 104 (Bom)(HC),www.itatonline.org

191. S. 92C: Transfer pricing - Arm's length price — Loan syndication fee received from associated enterprise — Tribunal remitting matter to AO - Not erroneous. [S.254(1),260A]

The Tribunal remanded the matter to the AO to decide the issue afresh of allocation of non-syndication fees between the assessee and its associated enterprise. On appeal High Court held that, on the facts there was no error or infirmity in the view taken by the Tribunal in remanding the matter to the AO for a fresh decision. (AY. 2008-09)

CIT v. RBS Financial Services (India) Pvt. Ltd. (2020) 421 ITR 1 (Bom)(HC)

192.S. 92CA Reference to transfer pricing officer -Transfer Pricing — Jurisdiction of Transfer Pricing Officer —In specified domestic transactions Transfer Pricing Officer has no jurisdiction unless specific reference is made to him by Assessing Officer-High Court can consider issue of jurisdiction though alternative remedy is available. [Art.226]

Allowing the petition the Court held that in specified domestic transactions Transfer Pricing Officer has no jurisdiction unless specific reference is made to him by Assessing Officer. Accordingly the order of the Transfer Pricing Officer was quashed in so far as it recommended an adjustment of the arm's length price towards payment of creditors in the demerger process of a sum of Rs. 57.54 crores. Court also held that it can consider issue of jurisdiction though alternative remedy is available.However in respect of the adjustment made by the Transfer Pricing Officer towards payment of subscription fees, even though the assessee may have certain arguable points, that by itself, would not enable the High Court to bypass the entire statutory scheme of assessment, appeal and revision. The order dealing with the balance after deducting Rs. 57.54 crores would not be interfered with. (AY. 2015-16)(WP. No.3386 of 2018 dt.15-03-2019)

Times Global Broadcasting Company Ltd. v. UOI (2019) 413 ITR 42 (Bom)(HC)

193.S. 92CA :Reference to transfer pricing officer -Jurisdiction of TPO- Whether can examine any transaction which come to his notice during course of proceedings though not referred to him by the AO- Passing ad-interim relief , the AO is prevented from passing any further orders till issue raised is decided by the Court.[S.92C]

Issue raised in the petition was jurisdiction of TPO, whether TPO can examine any transaction which comes to his notice during course of proceedings though not referred to him by the AO. By way of an ad -interim relief the High Court directed the AO not to pass further orders till issue raised is decided by the Court. (Dt.16-12-2018)

Times Global Broadcasting Company Ltd v. UOI (2019) 260 Taxman 314 (Bom)(HC)

194.S. 115AC : Capital gains - Bonds – Global Depository - Foreign currency - Transfer of Shares covered by scheme — Computation of capital gains to be made under provisions of scheme — Subsequent Amendment of provisions in Income-tax Act is not applicable. [S.47(x),49(2A), 264, Foreign Currency Exchangeable Bonds Scheme , 2008,]

Allowing the petition the Court held that ,the revisional authority fell in clear error in taking assistance of the amendments made by the Finance Act, 2008. The assessee was right in urging that the cost of acquisition of the shares was to be determined with reference to the date of acquisition of the foreign currency convertible bonds. Thus the period for which the shares should be regarded as having been held by the assessee should also be reckoned from the date of acquisition. The second respondent failed to consider the scheme and therefore, once these clauses were included in the 1993 Scheme itself, then, they would govern the foreign currency convertible bonds related transactions to the extent the corresponding provisions are not made in the Act. The authority was not right in holding that the cost of acquisition of the shares as per clause 7(4) of the 1993 Scheme was not tenable. The Government of India notified Scheme affected from 1992 held the field and was the applicable one. The Foreign Currency Exchangeable Bonds Scheme, 2008 had equal status but was admittedly a later one. The computation made by the assessee was accurate and had to be accepted.

Kingfisher Capital CLO Ltd. v. CIT (2019) 413 ITR 1/ 263 Taxman 198 / 308 CTR 537/ 177 DTR 225 (Bom)(HC)

195.S. 115B: Life Insurance business – Surplus available in shareholder's account was not to be taxed separately as income from other sources and same was to be taxed at normal corporate rate as specified under section 115JB of the Act. [S.56]

Dismissing the appeal of the revenue the Court held that surplus available in shareholder's account was not to be taxed separately as income from other sources and same was to be taxed at normal corporate rate as specified under S. 115JB of the Act . (AY. 2010-11, 2011-12)

PCIT v. ICICI Prudential Life Insurance Company Ltd. (2019) 415 ITR 389/105 taxmann.com 471 / 263 Taxman 471 (Bom)(HC)

Editorial: SLP is granted to the revenue, PCIT v. ICICI Prudential Life Insurance Company Ltd. (2019) 263 Taxman 470/ 411 ITR 39 (St.)(SC)

196.S. 115B: Life Insurance business – Surplus available in shareholder's account was not to be taxed separately as income from other sources and same was to be taxed at normal corporate rate as specified under section 115JB of the Act.[S.56]

Dismissing the appeal of the revenue the Court held that surplus available in shareholder's account was not to be taxed separately as income from other sources and same was to be taxed at normal corporate rate as specified under S. 115JB of the Act . (AY. 2010-11, 2011-12)

PCIT v. ICICI Prudential Life Insurance Company Ltd. (2019) 415 ITR 389/105 taxmann.com 471 / 263 Taxman 471 (Bom)(HC)

Editorial: SLP is granted to the revenue, PCIT v. ICICI Prudential Life Insurance Company Ltd. (2019) 263 Taxman 470/ 411 ITR 39 (St.)(SC)

197. S.115JB: Book profit –Provision is not applicable when Profit & Loss is prepared in accordance with Insurance Act 1938. [S.44]

Provision of MAT will only come into play, only when assessee prepares its P&L account in accordance with part (II) and part (III) of Schedule (VI) of the Companies Act. Since the assessee's P&L account is prepared in accordance with Insurance Act 1938, as specifically provided in S. 44 read with First schedule, therefore, the provision of S. 115JB willnot apply. (ITA No. 428 of 2017 dt.04/06/2017) (AY.

PCIT v. The New India Assurance Co. Ltd. (Bom)(HC)(UR)
Editorial:SLP granted to the revenue. (CA No. 8178 of 2019 dt.18/10/2019)(2019) 418 ITR 14(St.)(SC)

198.S. 115JB : Book profit - Banking – Insurance – Electricity company- Are not company bound by provisions of Companies Act - (Pre amendment by Finance Act, 2012)-Provision is not applicable to a banking company , insurance & electricity cos- The mechanism provided for computing book profit in terms of S. 115JB(2) is wholly unworkable for a banking company- When the machinery provision fails, the charging section also fails-Provision is not applicable - The anomaly was removed by the Finance Act, 2012-However, the amendments are neither declaratory nor clarifactory but make substantive and significant legislative changes which are applicable prospectively.
Dismissing the appeal of the revenue the Court held that, Banking, Insurance and Electricity Company are not company bound by provisions of Companies Act. (Pre amendment by Finance Act, 2012) Provision is not applicable to a banking company (also insurance & electricity cos).The mechanism provided for computing book profit in terms of S. 115JB(2) is wholly unworkable for a banking company. When the machinery provision fails, the charging section also fails- The anomaly was removed by the Finance Act, 2012-However, the amendments are neither declaratory nor clarificatory but make substantive and significant legislative changes which are applicable prospectively.(Followed Kerala State Electricity Board v. Dy. CIT (2010) 329 ITR 91 (Ker)(HC)(ITA No.1196 of 2013 and 1175 of 2013, dt.16.04.2019)
PCIT v. Union Bank of India (2019) 177 DTR 305/ 308 CTR 797/ 263 Taxman 685 (Bom)(HC).www.itatonline.org
Editorial: SLP is granted to the revenue. PCIT v. Union Bank of India (2019) 418 ITR 9 (St.)(SC)

199. S. 115JB : Book profit - While computing book profit, provision made for payment of wealth tax could not be included in it as section 115JB only refers to income-tax paid or payable or provisions made therefor –No question of law .[S.260A]
Section 115JB pertains to special provision for payment of tax by certain companies. As is well known, detailed provisions have been made to compute the book profit of the assessee for the purpose of the said provision. Explanation 1 contains list of amounts to be added while computing assessee's book profit under section 115JB. In plain terms, clause (a) as noted above refers to amount of income-tax paid or payable or the provision made therefor. The legislature has advisedly not included wealth tax in this clause. By no interpretative process, the wealth tax can be included in clause (a). Clause (c) would include the amount set aside for provisions made for meeting liabilities other than ascertained liabilities. For applicability of this clause, therefore, fundamental facts would have to be brought on record which in the present case, the revenue has not done. In fact, the entire thrust of the revenue's argument at the outset appears to be on clause (a) which refers to the income-tax which according to the revenue would also include wealth tax. This question, therefore, is not required to be entertained. (AY.2002-03)(ITA No.5769 /M/2013 dt.16-09 2015)
CIT-LTU v. Reliance Industries Ltd. (2019) 261 Taxman 283 (Bom.)(HC)
200.S.115JB : Book profit – Provisions as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to a banking company governed by provisions of Banking Regulation Act, 1949- Companies which are not required to prepare its profit and loss account in accordance with part II & III of Schedule VI of the Companies Act , 1956 - Adjustment cannot be made. [S.115JB(2), Companies Act , 1956 , S 211(2), Banking Regulation Act, 1949]
Dismissing the appeal of the revenue the Court held that the Tribunal was correct in law holding that the provisions of S.115JB of the income -tax Act, 1961 are not applicable to assessee to whom proviso to sub-section (2) of section 211 of the Companies Act,1956,applies, i.e.Companies which are not required to prepare its profit and loss account in accordance with part II & III of Schedule VI of the Companies Act, 1956. Followed CIT v Union Bank of India (2019) 105 taxmann.com 253/ 263 Taxman 685 (Bom)(HC)(ITA No.2966 / 3085 /Mum/ 2014 dt.13-07- 2016)(ITA No.1996 of 2017 dt.23/01/2020)
PCIT v. Bank of India (Bom)(HC)(UR)

201.S. 115JB : Book profit - Forward foreign exchange -Not contingent in nature – Binding obligation on date of contract against the assessee- Deletion of addition by the Tribunal is affirmed – Question which was not raised before the Tribunal cannot be raised first time before Court during the Course of oral arguments. [S. 37 (1) ,260A]

Dismissing the appeal of the revenue the Court held that, Forward foreign exchange is not contingent in nature it is binding obligation on date of contract against the assessee. Accordingly the deletion of addition by the Tribunal is affirmed. Court also held that question which was not raised before the Tribunal cannot be raised first time before Court during the Course of oral arguments. (Arising from ITA No. 617/Mum/2014 dt.28/07/2016)(ITA No. 1097of 2017 dt.5 -11-2019)(AY. 2009 -10)

PCIT v Hotel Leela Venture Ltd (2019) 112 taxmann.com 377 (Bom)(HC)

202.S. 115JB: Book profit - Provision for bad and doubtful debt – Ascertained liability – No addition can be made.

Tribunal deleted addition made in respect of provision for bad and doubtful debts in computation of book profits. High Court up held the order of the Tribunal followed Apollo Tyres Ltd. v CIT (2002) 255 ITR 273 (SC).

CIT (LTU) v. ACC Ltd. (2019) 112 taxmann.com 402 / (2020) 269 Taxman 15 (Bom) (HC)

Editorial: SLP of revenue is dismissed; CIT (LTU) v. ACC Ltd. (2020) 269 Taxman 14 (SC)

203.S. 115V-I : Shipping business - Shipping income -Tonnage tax scheme - Forex rate fluctuation gains -Gains on account of exchange rate variations of foreign loan taken for purchase of ships being connected to assessee's core activities of operating qualifying ships would be entitled to benefit under Chapter XII-G.

Dismissing the appeal of the revenue the Court held that the Tribunal was justified in holding that, notional gains on account of restatement of foreign exchange liabilities on loan taken for purchase of ships would be considered to be a part of core activity of shipping company entitled to benefit of Chapter XII-G of the Act. (AY.2008 -09)

PCIT v. M. Pallonji Shipping (P.) Ltd. (2019) 262 Taxman 326 / 177 DTR 115 (Bom)(HC)

204.S. 115WA: Fringe benefit tax -Employer – Free medical samples distributed to doctors is in the nature of sales promotion – Not liable to pay fringe benefit tax.[S.115WG]

Dismissing the appeal of the revenue the Court held that since there is no employer -employee relationship between the assessee on one hand and doctors on the other hand to whom the free samples were provided , the expenditure incurred for the same cannot be construed as fringe benefits to be brought within the additional tax net by levy of fringe benefit tax.Followed CIT v Tata Consultancy Services Ltd. (2015) 374 ITR 112 (Bom)(HC)(ITA No.7899 / Mum/2011 dt.25 -01 2017)(AY. 2006 -07)(ITA N0.1961 of 2017 dt.23-01-2020)

PCIT v . Aristo Pharmaceuticals P.Ltd. (Bom)(HC)(UR)

205.S.142(2A): Inquiry before assessment– Special audit– An attempt to understand the books of account-Huge amount of professional fees was paid- Reference to special Audit is held to be valid.

Dismissing the petition the Court held that ,merely because some of the transactions were subjected to transfer pricing mechanism, would not debar the Assessing Officer from exercising powers under S. 142(2A) of the Act, if the conditions for exercising such powers were otherwise satisfied. The Transfer Pricing Officer would be essentially concerned with the assessment of the arm's length price of the specified transactions with an associated enterprise. Principle of natural justice is followed hence the reference to special audit is held to be valid. (AY. 2015-16)

Multi Commodity Exchange of India v. Dy.CIT (2019) 310 CTR 274/ 176 DTR 385 (Bom)(HC)

206. S.142(2A): Inquiry before assessment– Special Audit –Show cause is mandatory - Order passed without issuing the show cause notice is held to be bad in law – Order of Tribunal is affirmed.[S.132, 260A]

On appeal by the assessee, the Tribunal held that show cause notice was required to be given to the assessee by the Assessing Officer before making the order proposing conduct of special audit under S. 142(2A) of the Act and even if the administrative Commissioner approves the said proposal after giving opportunity to the assessee, nonetheless such a course of action would be vitiated because of non- compliance to the principles of natural justice at the stage of making the proposal. Accordingly, Tribunal interfered with the same. It may also be mentioned that following setting aside of the approval given by the administrative Commissioner, the assessment order in the present case (following search) was found to be beyond the period of limitation. Therefore, the same was declared invalid and bad in law. Dismissing the appeal of revenue High Court affirmed the order of the Tribunal. (ITA Nos.448/PN/2013 and 309/PN/2013 dt. 21-12-2016)(AY .2005-06, 2006 -07)(ITA NO. 1329 of 2017, ITA NO. 1188 of 2017/ ITA No.1321 of 2017 dt.27 -01 -2020)

PCIT v. Vilson Particle Board Industries Ltd.(2020 116 taxmann.com 12 (Bom)(HC)

207.S. 143(2) : Assessment – Notice - Mere mentioning of new address in the return of income is not enough-.If change of address is not specifically intimated to the AO, he is justified in sending the notice at the address mentioned in PAN database- If the notice is sent within the period prescribed in s. 143(2), actual service of the notice upon the assessee is immaterial- CIT (A) is directed to decide the appeal on merits. [S.250, 282,292BB]

The assessee participated in the assessment proceedings. However, the assessee challenged the notice under sections 143(2) and 142(1) of the Act on the ground that the said notices were not served upon the assessee as the assessee company never received those notices and subsequent notices served and received by the company were beyond the period of limitation prescribed under proviso to S.143 of the Act. The AO has not accepted the contention of the assessee. On appeal the CIT (A) held that the order is bad in law, however the appeal was not decided on merits as regards the merits of the addition. Order of CIT (A) is affirmed by the Tribunal and High Court. On appeal by the revenue allowing the appeal of the Court held that, mere mentioning of new address in the return of income is not enough. If change of address is not specifically intimated to the AO, he is justified in sending the notice at the address mentioned in PAN database. If the notice is sent within the period prescribed in S. 143(2), actual service of the notice upon the assessee is immaterial. Order of High Court and Tribunal is set aside and CIT (A) is directed to decide the appeal on merits on other grounds. (AY. 2006-07)(CA No.8132 of 2019, dt.18.10.2019)

PCIT v. Iven Interactive Ltd. (2019) 418 ITR 662/ 311 CTR 165/ 182 DTR 473 / 267 Taxman 471 (SC), www.itatonline.org

Editorial: Order in PCIT v. Iven Interactive Ltd (Bom)(HC),(ITA No.94 of 2016 dt.27 -06 -2018)(2019) 418 ITR 665 (Bom.)(HC) is set aside.

208.S. 143(2): Assessment – Notice – Mandatory -Block assessment – Non issue of notice – Assessment is held to be bad in law .[S.132 , 158BC]

Dismissing the appeal of the revenue the Court held that the assessment made by the AO without issuing the mandatory notice u/s 143(2) of the Act is held to be bad in law.

CIT v. Sodder Builder and Developers (P.) Ltd. (2019)419 ITR 436 (Bom)(HC)

209.S. 143(2) : Assessment – Notice – Defective return- On removing the defects in the return with in time permitted relate back to the date of filing of original return -Limitation for issue of notice has to be from the date of filing of original return- Notice issued was held to be in valid. [S.139(9)]

Allowing the petition the Court held that, on removing the defects in the return, with in time permitted relate back to the date of filing of original return -Limitation for issue of notice has to be from the date of filing of original return. Accordingly the notice issued considering the date on which the defects were removed is was held to be in valid. (WP No.3501 of 2018 dt.24-01-2019)(AY. 2016-17)

Atul Projects India Pvt Ltd v. UOI (2019) 178 DTR 441/ 309 CTR 392(Bom)(HC)

210.S. 143(3) :Assessment – Capital -Revenue – Share premium- -Reassessment –Addition is made on account of share premium , without issuing show cause notice and without following

the principle of natural justice -Income from other sources- Alternative remedy is available – Directed to file an appeal with in four weeks. [S. 4, 56(1), 148, 246A, Art.226]

The AO passed the order on 28.12.2019 bymaking addition of sum of Rs.394,46,61,260/- to the income of the assessee under S. 56(1) of the Act as benefit received on account of receipt of share premium by the assessee by way of getting control and management of M/s. NRPL during the relevant previous year. The assessee filed the writ petition against the said order and submittedthat the addition was made without any notice to the petitioner and without hearing the petitioner. That apart, the addition is devoid of any deliberation by the Assessing Officer leading to such addition and principle of natural justice is violated. Revenue contended that the alternative remedy is available to the assessee hence the writ is not maintainable. Court observed that , after hearing learned counsel for the parties and on due consideration, Court is of the view that petitioner may file appeal under S. 246-A of the Act before the first appellate authority against the assessment order dated 28.12.2019 within a period of four weeks from today. It is also open to the petitioner to file an application for stay along with the appeal in which event the same shall be considered by the appellate authority in accordance with law. (WP No. 261 of 2020 dt.24-01-2020)(AY.2012 -13)

Deepak Kochhar v UOI (Bom)(HC)(UR)

211.S. 143(3): Assessment –Ad-hoc addition- Labour charges –On facts the High Court affirmed the order of the Tribunal. [S.260A]

The AO has disallowed 10% of the labour charges. Similar disallowances were made in earlier years which were not contested in appeal. Order of the AO is affirmed by CIT(A) and Tribunal. High Court held on facts no substantial question of law. (Abdul Qayume v. CIT (1990) 184 ITR 404 (All(HC),Laxmi Engineering Industries v. ITO [2008] 298 ITR 203 (Raj)(HC), J.K. Woollen Manufacturers v. CIT (1969) 72 ITR 612 (SC) PCIT v. Chawla Interbild Construction Co. (P) Ltd., [2019] 104 taxmann.com 402 (Bom)(HC) is distinguished)(TA No.29 of 2013, dt.14.02.2020)(AY.2009-10)

Ivan Singh v. ACIT (Bom)(HC) www.itatonline.org

212. S. 145: Method of accounting –Rejection of books of account – Suppression of production- Mismatch of consumption of raw material and output of drugs manufactured- Addition is held to be justified.

Dismissing the appeal of the assessee the Court held that the Tribunal is justified in confirming the rejection of books of account and addition made by the AO when there is Mismatch of consumption of raw material and output of drugs manufactured. (AY. 2009-10)

Paras Organics (P.) Ltd. v. ACIT (2019) 263 Taxman 44 (Bom)(HC)

213.S. 145: Method of accounting -Income -Accrual- land development, had been mercantile system of accounting- Cash system of accounting-Cannot adopt cash system in respect of one project and mercantile system in respect of other projects. [S.5]

Dismissing the appeal of the assessee the Court held that; where the assessee is following consistently mercantile system of accounting in respect of all other projects cannot follow cash system of accounting in respect of one project. (AY.2007 -08)

Ace Real Estate & Developers. v. ACIT (2019) 260 Taxman 37 / 175 DTR 437 / 308 CTR 481 (Bom)(HC)

214.S.147: Reassessment-After the expiry of four years- Change of opinion- Sale of goods - Stock in trade – Reassessment notice is held to be bad in law [S. 68, 148, Art.226]

Allowing the petition the Court held that it cannot be said that there was any failure on part of the assessee to produce any material particulars, accordingly the notice issued by the AO is quashed. (WP.No.2386 of 2019 dt.09/10/2019 (AY. 2012 013)

Sutra Ventures Pvt Ltd v UOI (2019) 111 taxmann.com 442(Bom.)(HC)

215.S.147 : Reassessment-After the expiry of four years- Reopened on the ground that in another assessee where similar claim with the same housing project - No failure on the part of the assessee to disclose truly and fully all relevant facts – reassessment held to be invalid. [80IB(10)]

The AO has not linked any material in order to make this observation, he mainly relied on the findings of the AO of another Assessee same conclusion was reversed by the CIT(A) noting that in fact all along there was evidence suggesting that the commencement of construction of the housing project was some time in the year 2002. And the assessment of another assessee was set aside. Hence, there is no part of the to remain undisclosed by the assessee. Reassessment is invalid. (Arising out of 5584 of 2012 dt.15/07/2015)(ITA No.678 of 2016, dt.07/11/2018) (AY. 2004 -05)

PCIT v. Vaman Estate (2020) 113 taxmann.com 405 (HC)

Editorial: SLP of revenue is dismissed , due to low tax effect , (SLP No.22927/2019 dt.06/09/2019)(2019)416 ITR 135(St.) (SC)**(2020) 113 taxmann.com 406 (SC)**

216.S. 147: Reassessment – After the expiry of four years- Bogus purchases- Accommodation entries- No failure to disclosure material facts- Change of opinion- Reassessment is held to be bad in law.[S.69C,148]

The petitioner is a partnership firm carrying on the business of manufacture and exports of diamonds. The assessment was completed u/s 143(3) and thereafter reopening was done for alleged bogus purchases. The assessment was done by making GP additions. Thereafter the reassessment notice was issued again for alleged accommodation entries. On writ allowing the petition the Court held that the omission of the AO to make an assertion in the reasons that there was a failure to disclose fully and truly all material facts necessary for the assessment is sufficient to set aside the reassessment notice. Also, a notice issued on change of opinion is bad in law. (WP No.2506 of 2019, dt.12.12.2019)(AY. 2012-2013)

Usha Exports v. ACIT (2020) 312 CTR 237/ 185 DTR 87 (Bom.)(HC), www.itatonline.org

217.S.147: Reassessment-After the expiry of four years- Exemption – Excessive deduction - No failure to disclose material facts – Reassessment is held to be bad in law.[S.11(1)(a) 11(2)]

Dismissing the appeal of the revenue the Court held that CIT(A) and Tribunal held that the assessee had disclosed fact of acquisition of asset and transfer of development rights in note attached to return of income and in audited balance- sheet hence, there was no failure on assessee's part in reasons recorded by AO, there was not even an allegation that there was any failure on part of assessee to disclose any material facts which in turn lead to escapement of income .Accordingly the notice of reassessment is held to be bad in law . On appeal High Court also affirmed the order of the Tribunal. Followed City and Industrial Development Corporation of Maharashtra Ltd. v. ACIT(WP No.1568 of 2013 dt.24/03/2014)(2014) 222 Taxman 203 (Mag.)/44 taxmann.com 443 (Bom.)(HC)(AY.2003-04)

CIT (E) v. Marhatta Chamber of Commerce Industries & Agriculture (2019) 175 DTR 137 (Bom)(HC)

218.S.147: Reassessment-After the expiry of four years- Benefit of Double taxation benefit – Tax residency certificate-Introduced subsequently- Reassessment is bad in law - DTAA-India – UAE [S.148, Art.4(b)]

Allowing the petition the Court held that, no specific reasons were recorded regarding the material which was not truthfully disclosed. In the original assessment the assessee had disclosed that he was governed by the Double Taxation Avoidance Agreement between India and the United Arab Emirates. The details called for had been furnished and placed on record. The passport also was produced to establish the number of days the assessee was abroad to qualify to be a non-resident. A perusal of the reasons for notice of reassessment clearly showed that the only reason was that the tax residency certificate or any other details were not supplied by the assessee. The requirement to produce the tax residency certificate was introduced by the Finance Act, 2012 with effect from April 1, 2013. The present proceedings were in connection with the assessment year 2005-06 and there was no need of producing such certificate as on that date. Besides that, the requirement of stay in the United Arab Emirates for a period of six months had been introduced in article 4(b) of the amended

Double Taxation Avoidance Agreement between India and the United Arab Emirates which came into effect only from November 28, 2007. Accordingly reassessment is held to be not valid. (AY.2005 -06)
Prashant M. Timblo v. CCIT (2019) 414 ITR 507 (Bom) (HC)
Editorial: SLP of revenue is dismissed CCIT v. Prashant M. Timblo (2018) 408 ITR 72 (St) (SC)

219.S.147: Reassessment-After the expiry of four years- Cash credits - Share capital-Mauritius based company - Supplied certificate of foreign inward remittance of funds, tax residence certificate of foreign company, copy of ledger account showing share application money being credited in bank account and source – Merely on the basis of information from investigation Wing, reassessment is bad in law. [S.68]
Court held that at time of assessment, assessee had duly supplied certificate of foreign inward remittance of funds, tax residence certificate of foreign company, copy of ledger account showing share application money being credited in bank account and source thereof. Assessment was completed u/s 143(3). On facts, assessee had disclosed all material facts in course of assessment. Accordingly the initiation of reassessment proceedings after the expiry of four years, merely on basis of information received from Investigation Wing was not permissible. (AY. 2011-12)
NuPower Renewables (P.) Ltd. v. ACIT (2019) 104 taxmann.com 307 / 264 Taxman 27 (Mag) / 182 DTR 344/ 311 CTR 398 (Bom.)(HC)
Editorial: SLP of revenue is dismissed, ACIT v. NuPower Renewables (P.) Ltd. (2019)267 Taxman 393 (SC)

220.S.147: Reassessment-After the expiry of four years- Bogus sales and purchases – Dealer in iron and steel- If the AO disallowed 2.5% of alleged bogus purchases during the regular assessment-Reassessment to disallow entire amount is said to be bad in law- There is difference between revisional powers and reassessment. [S.68, 69, 143(1) , 148, 263]
Assessment which was accepted u/s 143(1) which was reopened on the ground that the purchase from hawala dealers on the basis of information received from Sales tax department . The AO after detailed verification made an addition of 2.5% of alleged bogus purchases.AO once again issued notice u/s 147 on the ground that as per N. K. Proteins Ltd 2017-TIOL-23-SC-IT the entire amount should have been disallowed. On writ allowing the petition the court held that as per settled law, if a claim or an issue had been examined by the Assessing Officer during the previous assessment proceedings, in absence of any material available to the Assessing Officer later on to reassess such income would base on mere change of opinion and, therefore, impermissible. Court also observed, the Act recognizes the revisional powers of the Commissioner to be exercised in case where the assessment order is erroneous and prejudicial to the interest of the Revenue. However, the reopening of assessment is an entirely independent and vastly different jurisdiction and cannot be confused with the revisional powers of the higher authority. (WP No. 3495 of 2018, dt.17.01.2019)(AY.2011-12)
Saurabh Suryakant Mehta v. ITO (Bom)(HC), www.itatonline.org

221.S. 147 : Reassessment – After the expiry of four years- No failure to disclose material facts which are necessary for assessment – Order of Tribunal is affirmed .[S.14A, 40(a)(ia),115JB ,148,194J]
Dismissing the appeal of the revenue the Court held that, admittedly, there is no details given by AO as to which the fact or material was not disclosed by the assessee which lead to escape assessment. Merely referring a bald assertion that" I have reason to believe that it is a failure of assessee part or not to add back the amount of Rs 58 , 94 437 / to the total income u/s 40(a)(ia) of the Act" is not sufficient to frame notice for re-opening concluded assessment beyond four years . Thus the notice (impugned notice u/s 148 is bad in law) and does not qualify a sustainable notice under scrutiny law , hence the legal ground raised by the asssee is allowed and the re -opening of assessment is held to be as invalid. (ITA No.2365/Mum/ 2013 dt.30/03/2016, AY. 2005-06) (ITA No 1679 of 2017 dt.23-01-2020)
CIT v. IDBI Ltd (Bom)(HC)(UR)

222.S.147: Reassessment-After the expiry of four years- Outstanding credit balances-No failure to disclose material facts – Reassessment is held to be not valid [S.148, Art, 226]

Allowing the petition the Court held that, the reasons recorded established that the AO was proceeding on the basis of material already on record. Apart from there being no allegations even in the reasons recorded that there was any failure on the part of the assessee to disclose true and full material facts, in fact, at every important stage, the AO had referred to and relied upon the material on record. There was not a single item, no document or material which did not form part of the original assessment proceedings on the basis of which the AO had formed a belief that the income chargeable to tax had escaped assessment. The assessee had furnished the necessary details before the AO of the said amount having been shown in the profit and loss account but not offered it to tax. If during the original assessment proceedings, the AO desired to inquire further into this claim of the assessee, nothing prevented him from doing so. The second ground raised by the AO suffered from factual error and non-application of mind on his part. The AO now could not contend that this issue was debatable or was a factual aspect. On the third ground raised by him the AO had proceeded solely on the basis of material already on record clearly debarring his jurisdiction for issuing notice of reassessment beyond four years. The notice of reassessment was not valid. (AY. 2011-12)

State Bank of India. v. CIT (2019) 418 ITR 485 / 175 DTR 335/103 taxmann.com 164 /310 CTR 560 (Bom.)(HC)

223.S.147: Reassessment-After the expiry of four years- Furnishing all details in response to notices-Non-application of mind by assessing officer to materials produced at the time of original assessment - Reassessment is held to be invalid .[S. 142(1) , 143(2) 148 , Art . 226]

Allowing the petition the Court held that there was no application of mind by the Assessing Officer to the jurisdictional requirements to issue notice under section 148. Firstly, the assessment was sought to be reopened after four years and it was not mentioned that the assessee had failed to disclose all material facts in the reasons supporting the notice for reassessment. Secondly, on the facts, there had been no failure by the assessee to fully and truly disclose all the material facts. The reasons in support of the notice of reassessment under section 147 mentioned the areas in which reassessment needed to be carried out, and the record showed that the material regarding these topics was called for over two occasions from the assessee and was supplied. The first jurisdictional requirement was that the notice must disclose application of mind by the authority seeking to reopen the assessment to the additional requirement under section 147 in case of reopening after four years was missing. The assessee in its objections had pointed out there was no averment in the reasons that the assessee had failed to disclose fully and truly all the material facts necessary for the assessment, and factually there had been no such failure. While rejecting the objections, the Assessing Officer had not even noticed this requirement. Accordingly the Court held that , there was no failure by the assessee to fully and truly disclose all the material facts necessary for the assessment. The assessee had explained in the note how the valuation of share premium was arrived at. Having considered the material, it was clear that there was no failure by the assessee to fully and truly disclose all the material facts for the assessment as regards the reasons supplied under the notice for reassessment. (Referred Titanor Components Ltd v ACIT (2012) 343 ITR 183 (Bom)(HC)(AY.2012-13)

Supra Estates India Pvt. Ltd. v. ITO (2019) 418 ITR 130/ (2020) 268 Taxman 88 (Bom) (HC)

224.S. 147 : Reassessment - After the expiry of four years- Shah Commission's report - Cash credit -Underinvoicing - Merely on basis of Shah Commission's Report opining that there was under-invoicing of export price by iron-ore miners and exporters, reassessment could not be initiated when there was nothing to indicate that any particular income had accrued to anyone as a result of price difference- Notice based on report of commission is held to be not valid [S.28(i), 68, 148]

The petition was carrying on business of mining and export of iron ore. After scrutiny, assessment order under section 143(3) was passed. Reassessment proceedings were initiated after the expiry of four years on basis of information of Shah Commission Report that there was under invoicing of export by exporters of iron ore, Assessing Officer initiated reassessment. The reasons for reopening the assessment was as under (i) There was under invoicing of exports by the assessee, (ii) alternatively, mining activity being illegal, income arising from it ought to be assessed as inform other sources and (iii) escapement of income from assessment was on account of failure on the part of the assessee to disclose wholly and truly all material facts necessary for the assessment. On writ allowing

the petition the Court held that *since* under-invoicing was nothing but a matter of expression of opinion by Commission, Assessing Officer could not follow same as primary for reopening assessment. As Assessing Officer had not applied his mind to this aspect of matter, reassessment order was to be quashed as there was nothing to indicate that any particular income has accrued to anyone as a result of such difference in prices. As regards the allegation of illegality the Court held that when the income from the activity of mining and export ore arose also when it was assessed to tax there was nothing to suggest that the activity was illegal. Accordingly the notice of reassessment was held to be invalid. Ratio in Raymond Woollen Mills Ltd v .ITO (1996) 236 ITR 34 (SC) is distinguished. (AY.2008-09)

Sesa Sterlite Ltd v. ACIT (2019) 417 ITR 334 / 267 Taxman 275 / 310 CTR 668 / 181 DTR 290 (Bom) (HC)

225.S.147: Reassessment-After the expiry of four years-No failure to disclose all material facts – Reassessment is bad in law .[S.80IB(10), 148]

Allowing the petition the Court held that there was no failure to disclose material facts; reassessment is held to be bad in law. (AY. 2011-12)

Akshar Anshul Construction LLP v. ACIT (2019) 264 Taxman 65 (Bom)(HC)

226. S.147: Reassessment-After the expiry of four years- Possession of cash amount- All documents were made available at time of original assessment- Reassessment merely on basis of change of opinion was held to be not justified-The fact that the assessee did not disclose the material is not relevant if the AO was otherwise aware of it. [S.69A, 133A,148,153A]

Assessment was completed under S 153A, read with section 143(3) of the Act. After expiry of four years from end of relevant year, AO initiated reassessment proceedings on ground that seized documents disclosed that assessee had cash in hand of Rs. 20 lakhs which did not form part of assessee's return and, thus, escaped assessment. On writ the Court held that AO was in possession of all relevant documents at time of assessment, there being no failure on part of assessee to disclose fully and truly all material facts, initiation of reassessment proceedings merely on basis of change of opinion was not justified.The fact that the assessee did not disclose the material is not relevant if the AO was otherwise aware of it. If the AO had the information during the assessment proceeding, irrespective of the source, but chooses not to utilize it, he cannot allege that the assessee failed to disclose truly and fully all material facts & reopen the assessment. (WP No. 3546 of 2018, dt.05.04.2019)(AY. 2011-12)

Rajbhushan Omprakash Dixit. v. DCIT (2019) 416 ITR 89/ 264 Taxman 222 / 180 DTR 153 (Bom) (HC) www.itatonline.org

227. S.147: Reassessment-After the expiry of four years- Prior period expenses - Disclosed all material facts necessary for assessment-Initiation of reassessment proceedings merely on basis of change of opinion is not justified. [S.37(1),148]

Allowing the petition the Court held that the assessee had duly disclosed all material facts necessary for assessment in respect of prior period expenses .Accordingly in view of proviso to S.147, initiation of reassessment proceedings merely on basis of change of opinion is held to be not justified. (AY. 2011-12)

CMI FPE Ltd. v. UOI (2019) 263 Taxman 433 (Bom.)(HC)

228. S.147: Reassessment-After the expiry of four years- Penny stock – Shares-No failure to disclose all material facts- Merely on basis of information received from Investigation Wing without conducting any independent enquiries.[S.69A, 148]

Allowing the petition the Court held that, there was no failure on the part of the assessee to disclose material facts. It was fond that at relevant time period, there was no company by name of Nivyarh Infrastructure & Telecom Services Ltd was in existence and merely on basis of information received from Investigation wing without conducting any independent enquiries issue of notice for initiating reassessment proceedings is held to be bad in law (AY. 2011-12)

South Yarra Holdings v. ITO (2019) 263 Taxman 594 (Bom.)(HC)

229. S. 147 : Reassessment – After the expiry of four years- Outstanding creditors for more than 10 years –Capital gains-Where the assessee had made the due disclosure, assessment could not be reopened after four years from the end of the Assessment year. [S. 41(1), 45, 115-O]

A notice for reopening of assessment was issued beyond a period of our years from the end of the relevant assessment year on three grounds. With respect to the first ground of cessation of liability, the assessee had transferred the outstanding interest in inter-branch accounts to the P&L Account. Since all the relevant details with respect to this issue were already filed in the course of original assessment, there was no failure on the part of the assessee to disclose truly and fully all material facts. With respect to the second ground, the assessee had in the original return of income offered a capital gain of Rs.4.68 crores to tax, which was erroneously written as Rs.44.68 crore in the assessment order. The assessee filed a rectification application before the AO which was accepted and the mistake rectified. In the reopening notice, the AO has contradicted himself by saying that the correct amount of capital gain was not offered to tax. Reopening cannot be sustained on this ground either. In the third ground, the AO argued that in calculating dividend distribution tax, the assessee was allowed to deduct only the dividend received from the subsidiaries in the given financial year. With respect to this ground too, the assessee had truly and fully disclosed all the relevant facts in the original assessment proceedings. The reopening was therefore to be quashed. (Referred Dr.Amin's Pathology Laboratory (2001) 252 ITR 673 (Bom)(HC) Raymond Woollen Mills Ltd v ITO (1999) 236 ITR 34 (SC) (WP no . 3588 of 2018 dt.17-01 -2019)(AY.2011-12)

State Bank of India v. ACIT (2019) 175 DTR 335/103 taxmann.com 164 /310 CTR 560/ 418 ITR 485 (Bom.)(HC)

230. S.147: Reassessment - After the expiry of four years- Interest income – Accrual- No failure to disclose material facts – Reassessment is bad in law [S.5, 148]

Dismissing the appeal of the revenue the Court held that; there was no failure on part of assessee to disclose truly and fully all material facts. Accordingly the reassessment is rightly quashed by the Tribunal. (AY. 2001-02)

PCIT v. State Bank of Saurashtra (2019) 260 Taxman 194 (Bom)(HC)

231.S. 147 : Reassessment – After the expiry of four years - Block assessment - Addition deleted by CIT (A) – Notice to reassess the same is held to be not valid. [S.132, 148, 158BC, Art.226]

In the year 2000, proceedings u/s.132 of the Act were undertaken and a search was conducted at the office and residential premises of the assessees. In pursuance of the search, a block assessment was carried out which resulted in the passing of order dated September 27, 2002 under S. 158BC of the Act. The assessee appealed against the order dated September 27, 2002 to the CIT (A), who, by order dated July 13, 2006, set aside the order dated September 27, 2002, thereby deleting the addition. On September 13, 2006, the Department appealed against the order dated July 13, 2006 to the Appellate Tribunal. On October 18, 2006, the Department issued notice invoking the provisions of S. 148 of the Act stating that this very income of Rs. 10.33 crores had escaped assessment and therefore reassessment or reopening of assessment was proposed for the assessment year 2002-03. On a writ petition challenging the notice, the Court held that since there was full disclosure and in fact, the amount had even become the subject matter of the assessment both under S. 158BC and S. 143(3), there could have been no reason to believe that the income chargeable to tax had indeed escaped assessment. The notice of reassessment was not valid. (WP No. 166 of 2007 dt.27-11-2019)(AY.2002-03)

Audhut Timblo v. ACIT (2020) 420 ITR 62 (Bom)(HC)

232.S.147: Reassessment - After the expiry of four years - Reasons recorded there was no reference to any new tangible material - Financial statement – Reassessment notice is quashed. [S.44, 148, Art.226]

Assessee is engaged in business of life insurance, filed its return declaring taxable income in accordance with provisions of S. 44 of the Act. After expiry of four years from end of relevant year, AO sought to initiate reassessment proceedings. Objections to reassessment proceedings were rejected. On writ the Court held that in reasons recorded there was no reference to any new tangible material, but reference was only to financial statement of assessee itself. Accordingly since there was

no failure on part of assessee to disclose all material facts at time of assessment, initiation of reassessment proceedings on basis of mere change of opinion was not justified. (AY. 2012 13)
Bajaj Allianz Life Insurance Company Ltd. v. DCIT (2020) 269 taxman 208 (Bom) (HC)

233. S.147: Reassessment – After the expiry of four years - Change of opinion- Interest income on fixed deposit assessed as business income – Re assessment on the ground that it has to be assessed as income from other sources. [S.56, 148, Art.226]
Assessee, in return of income claimed interest income earned on fixed deposit as part of its business income and AO disallowed same on ground that it did not carry out any business during year and passed assessment order under S. 143(3) on 30-3-2014 and subsequently AO issued reopening notice dated 26-3-2018 on ground that interest income was required to be taxed as income from other sources. On writ the Court held that notice was issued beyond period of four years from end of assessment year 2011-12 and there had been a complete disclosure of all material facts on part of assessee during regular assessment proceedings u/s.143(3), impugned notice was clearly hit by first proviso to section 147 and deserved to be set aside. (AY. 2011 -12)
DCIT v. MSEB Holding Co. Ltd. (2019) 102 taxmann.com 288 (Bom) (HC)
Editorial: SLP of revenue is dismissed, since tax effect is less than Rs.2Crore. DCIT v. MSEB Holding Co. Ltd. (2020) 269 Taxman 22 (SC)

234.S.147: Reassessment-After the expiry of four years- In absence of any failure on part of assessee to disclose fully and truly all material facts at time of assessment- Reassessment proceedings is held to be bad in law . [S.80IA , 148]
Dismissing the appeal of the revenue the Court held that notice to reopen assessment had been issued beyond four years from end of relevant assessment year and, there was no failure on part of assessee to disclose fully and truly all material facts at time of assessment. Accordingly the Tribunal rightly held that reassessment notice is issued due to change of opinion. Order of Tribunal is affirmed. (ITA No.1357 of 2016 dt.11-1-2019)
PCIT v. L&T Ltd. (2020) 113 taxmann.47 /268 Taxman 391 (Bom)(HC)
Editorial: SLP of revenue is dismissed. PCIT v. L&T Ltd. (2020) 268 Taxman 390 (SC)

235.S. 147: Reassessment - After the expiry of four years- Stock in trade - Debit of purchase of traded goods- In the original assessment proceedings profit and loss account was thoroughly scrutinised by the AO- No failure to disclose on part of assessee to produce all material particulars during original assessment proceedings - Notice for reassessment is held to be not valid. [S.68, 148, Art.226]
Allowing the petition the Court held that in the original assessment proceedings the AO has examined the profit and loss account thoroughly and thereafter passed the order. As there is No failure to disclose on part of assessee to produce all material particulars during original assessment proceedings- Notice for reassessment is held to be not valid. (AY.2012-13)
Sutara Ventures (P) Ltd v UOI (2020) 268 Taxman 367 (Bom) (HC)
236. S.147 : Reassessment -After the expiry of four years- No Failure to disclosematerial facts - change of opinion – Reassessment is not valid.. [S.148]
Assessee had placed on record the necessary information for the purpose of assessing income as regard the transfer of shares. Reopening of assessment after four years, on a mere change of opinion is not justified as the non-furnishing of the Form is only an excuse given by the Assessing Officer to attempt to exercise a non-existent power.
Dempo Brothers Private Limited vs. ACIT (2018) 403 ITR 196 (Bom)(HC)
Editorial: SLP of Revenue is dismissed (SLP No.32769 of 2018) (2019) 410 ITR 162(St.)(SC)

237.S.147: Reassessment - After the expiry of four years- Limitation — Family settlement - Notice for assessment year 1999-2000 Notice issued to Power of Attorney holder within six Years —Held not barred by limitation -Reassessment is held to be valid – Dispute settled and consent decree passed – No family settlement – Consideration is held to be taxable as capital gains .[S.45 ,148,163]

The appellant was a power of attorney holder for two assessee, who were sisters. The sisters were involved in a dispute relating to an immovable property in the State of Goa. In relation to AY.1999-2000, notices under s. 148 of the Act were issued to the assessees, seeking to reopen the assessment, inter alia, on the ground that the amount was taxable "capital gains". These notices were accompanied by reasons for reopening, in which, it was stated that the power of attorney holder was proposed to be treated as the agent of the assessees as provided in section 163. This was, however, followed by another communication dated June 21, 2005 in which the Assessing Officer clarified that the notices under section 148, dated March 14, 2005 may be read as being served upon M as the power of attorney holder. Subsequently the Assessing Officer made an assessment order, bringing to tax the amount of Rs. 5.50 crores as capital gains. This was upheld by the Tribunal. On appeal the Court held that from the clarification contained in the communication dated June 21, 2006, it was apparent that the notice issued to P.P .Mahtame was not in his capacity as the agent of the non-resident assessee, but it was issued to him as the power of attorney holder of the non-resident assessee. In such a situation, the period of limitation for issuance of the notice was always 6 years. Therefore, the notice dated March 14, 2005 being within 6 years from the end of the relevant assessment year, which was 1999-2000, was well within the period of limitation, as then prevalent. Accordingly the reassessment notice is held to be valid. Court also held that dispute settled and consent decree passed. There being no family settlement, consideration is held to be taxable as capital gains. (ITA Nos.3,4,9&10 of 2012, dt.8-11-2019)(AY. 1999-2000)

P. P. Mahatme, Power of Attorney Holder.v. ACIT (2020) 420 ITR 71 (Bom) (HC)

238.S.147: Reassessment -Failure to file return- Huge loss – National and muti commodity exchange – Objections stating that no income was earned and suffered heavy loss not considered – Reassessment is held to be bad in law.[S.139, 148 Art. 226]

Assessee is an individual was engaged in trading in commodity exchange.The assessee has suffered heavy loss on accounting transactions in national and multinational exchange. He has not filed the return. On the basis of an information that as per NMS data and ITS details, assessee had made transactions of huge amount in National /multi commodity exchange, but assessee had not filed his return of income during year. Accordingly the notice of reopening was issued. Assessee raised objection that he had earned no income out of trading in commodity exchange and he had actually suffered a loss during year and, therefore, he had not filed return of income .AO rejected the objection and proceeded ahead. On writ the Court held that,the assessee did communicate to Assessing Officer that he had no taxable income and, therefore, there was no requirement to file return however the AO did not carry out any further inquiry before issuing impugned reopening notice. Accordingly the notice was set aside. (AY.2011-12)

Mohanlal Champalal Jain v. CIT (2019) 102 taxmann.com 293 (Bom) (HC)

Editorial: SLP of revenue is dismissed ITO v. Mohanlal Champalal Jain (2019) 267Taxman 391 (SC)

239.S. 147: Reassessment – Failure to follow the procedure laid down in GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC) and to pass a separate order to deal with the objections- Renders the assumption of jurisdiction by the Assessing Officer ultra vires. [S.148]

The AO without making any order disposing of the objections filed by the Appellants, proceeded to make an assessment order dated 26th March, 2004. Tribunal affirmed the order of the AO. High Court admitted the following substantial question of law. “Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal ought to have held that since the respondent did not furnish to the appellantthe reasons recorded for reopening of the assessment for the assessment year 1997-98 and did not comply with the mandatory preconditions laid down by the Hon’ble Supreme Court in GKN Driveshaft (India) Ltd v. ITO (2003) 259 ITR page 19, the reassessment order was bad in law as being opposed to the principles of natural justice ?” Allowing the appeal the Court held that, it is mandatory for the AO to follow the procedure laid down in GKN Driveshafts (India Ltd v ITO (2003) 259 ITR 19 (SC) and to pass a separate order to deal with the objections. The disposal of the objections in the assessment order is not sufficient compliance with the procedure. The failure to follow the procedure renders the assumption of jurisdiction by the Assessing Officer ultra vires (Bayer Material Science (P) Ltd v Dy.CIT (2010)382 ITR 333 (Bom) (HC) & KSS Petron Pvt Ltd v ACIT (Bom)(HC) (ITXA No. 224 of 2014 dt 20 -03 -2017 www.itatonline.org followed) .(TA No.63 of 2007, dt. 30.08.2019) (AY.1997 -98)

Fomento Resorts & Hotels Ltd. v. ACIT (Bom)(HC)(Goa Bench),www.itatonline.org

240.S. 147:Reassessment - Bogus share capital- Though the reopening is based on information supplied by the investigation wing, the reasons do not specify that the investment was non-genuine- The AO cannot reopen to investigate into the source of genuineness and creditworthiness of the investors as it falls within the realm of fishing enquiries which is wholly impermissible in law.[S.68,148]

Allowing the petition the Court held that the reasons only refer to a simple piece of information supplied to the Assessing Officer by the Investigation Wing, stating that the assessee company had received share application money of Rs.49.99 Crores from First land. To reiterate, this information is nothing which the Assessing Officer did not have at his command when the Assessment was framed. The reasons do not specify that the information supplied to the Assessing Officer by the Investigation Wing, suggested that such investment was no genuine. In this context, Assessing Officer refers to the requirement of verifying the genuineness of investor and requirement of further investigation. These observations in para 3 of the reasons, would not further the case of the Revenue, these being no information with the Assessing Officer, prima facie, indicating that the investments were not genuine. The investigation into the source of genuineness and creditworthiness of the investor company would fall within the realm of fishing enquiries, which is wholly impermissible in law in the context of the reopening of the assessment. For such reasons, impugned notice is set aside.Petition is allowed.(WP No. 3618 of 2018. dt. 07.03.2019)

Nu Power Renewable Pvt. Ltd. v. ACIT (Bom)(HC), www.itatonline.org

241.S. 147: Reassessment –Delay in filing objections- -If the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in Asian Paints 296 ITR 90 (Bom) that the AO should not pass the assessment order for 4 weeks- A writ petition to challenge the reopening is not entertained .[S.148]

The Petitioner raised the objections before the Assessing Officer to the notice of reopening of the assessment on 14.12.2018. Objections were disposed of by the Assessing Officer on 28.12.2018. Since the last date for framing the assessment was fast approaching and the assessment would get time barred on 31st December, 2018, the Assessing Officer passed the order of assessment on 28.12.2018. The Petitionerhas approached the Court challenging very notice of reopening of the assessment and also including the challenge to the order of reassessment as consequential to the main challenge to reopening of the assessment. Dismissing the petition the Court held that a reason for reopening of the assessment by the Assessing Officer was supplied to the assessee on 14.9.2018. Without filing the objection the assessee approached the Court by filing the Writ Petition in November, 2018 After withdrawing the petition on 13 -11-2018 the objection was filed on 14-12-2018 .Dismissing the petition , considering the facts of the case the Court held that ; if the assessee delays filing objections to the reasons and leaves the AO with little time to dispose of the objections and pass the assessment order before it gets time barred, it destroys the formula provided in Asian Paints Ltd v. Dy. CIT (2008) 296 ITR 90 (Bom.)(HC) that the AO should not pass the assessment order for 4 weeks. Accordingly, the writ petition was not entertained.(WP No. 284 of 2019, dt.01.02.2019)(AY.2011-12)

Cenveo Publisher services India Ltd. v. UOI (2019) 180 DTR 244 (Bom)(HC),www.itatonline.org

242.S.147:Reassessment -Income from other sources – Change of opinion- Entire question of taxing assessee's interest income was minutely scrutinized by the AO during original assessment proceedings-Reopening based on mere change of opinion – held to be invalid. [S.148 ,56]

Entire question of taxing interest income was minutely scrutinized by AO during original assessment proceedings, in such a case, reopening of assessment would be based on mere change of opinion. (WP No.3130 of 2018, dt.20/12/2018) (AY. 2013-14)

Rubix Trading (P.) Ltd. v. ITO(2019) 108 taxmann.com 176(Bom.)(HC)

Editorial:SLP of revenue is dismissed (SLP No.16656 of 2019)(2019)416 ITR 136(St.) (SC)/ (2019) 265 Taxman 423 (SC)

243.S. 147: Reassessment -Share application money- Merely because AO examined the transactions does not preclude him from subsequent inquiry if additional material prime facie shows that disclosures made by assessee were not true- Mere non recitation of allegation regarding failure of full & true disclosure does not invalidate the reasons or the fact that the reasons are based on allegations of lack of true and full particulars- Reassessment notice is held to be valid . [S.148, Art, 226]

Dismissing the petition the Court held that; merely because AO examined the transactions does not preclude him from subsequent inquiry if additional material prime facie shows that disclosures made by assessee were not true. Requirement of true and full disclosure runs through the entire assessment and does not end on filing of return. Reasons have to read as a whole. Mere non recitation of allegation regarding failure of full & true disclosure does not invalidate the reasons or the fact that the reasons are based on allegations of lack of true and full particulars(WP. No.3656 of 2018., dt.08.02.2018)

Kalsha Builder Pvt. Ltd. v. ACIT (Bom)(HC),itatonline.org

244.S. 147 : Reassessment –With in four years- One time settlement with bank – Query raised and replied -Issue discussed in the original assessment proceedings – Reassessment is held to be bad in law. [S. 4, 143(3), 148]

Dismissing the appeal of the revenue the Court held that , once a query is raised during assessment proceedings and the assessee has responded to the query to the satisfaction of the AO , then there has been due consideration of the same . Accordingly issuing of re-opening notice on the same facts which were considered earlier clearly amounts to a change of opinion hence without jurisdiction. (From the order of ITAT No.6995 /Mum/ 2013 dt.23-05 2016)(ITA No 1039 of 2017 dt.4-11-2019)(AY. 2006-07)

PCIT v. Everlon synthetics Pvt Ltd. (2020)113 taxmann.com 442/269 Taxman 215 (Bom)(HC)

245.S. 147: Reassessment - Export business- No new material- Notice under direction of Commissioner-Reassessment is held to be not valid. [S80HHC, 148]

The AO allowed the claim u/s 80HHC after considering the submission of the assessee.. Despite a strong reply to the audit objection, the AO upon requiring him to take "remedial action forthwith", had issued notice dated February 17, 2000, i.e., on the very next day, under section 148 of the Act, seeking to reopen the assessment. Tribunal quashed the reassessment proceedings. On appeal by the revenue dismissing the appeal the Court held that the material on record indicated that there was no independent application of mind on the part of the Assessing Officer. The notice was not valid. Distinguished IPCA Laboratories Ltd v Dy. CIT (2001) 251 ITR 420 (Bom)(HC)(AY.1995-96)

CIT v. Narcissus Investments P. Ltd. (2019) 417 ITR 512/ 182 DTR 73 (Bom)(HC)

246. S. 147 : Reassessment –With in four years- Transfer of leasehold rights- Allegation that the transaction is not genuine – No new material- Reassessment is held to be not valid .[S. 45, 56, 148]

Allowing the petition the Court held that undisputedly, the assessee had disclosed the transaction of having received a sum of Rs. 40.51 crores from Morarji Textiles Ltd under a deed evidencing transfer of leasehold rights in the land. Not only in the return, but during the assessment also, the assessee had made such disclosures. This transaction was also examined by the Assessing Officer during assessment. In the reasons recorded itself, the Assessing Officer had referred to this transaction as emerging from the assessment records. Thus, in clear terms, the assessee had offered such receipt to tax. In the notice for reassessment the Assessing Officer held that the leasehold rights belonged to Morarji Textiles Ltd itself and therefore, Morarji Textiles Ltd was wrong in claiming that it had purchased such rights from the assessee. He recorded the satisfaction that the income of the assessee to the tune of Rs.40.51 crores chargeable to tax had escaped assessment. The entire issue had been examined by the Assessing Officer during the original scrutiny assessment. No material outside of the assessment records was shown to have been brought to the notice of the Assessing Officer. He only referred to the order of the assessment passed by the Assessing Officer of Morarji Textiles Ltd such

assessment was based on the documents which were already part of the assessment in the case of the assessee. The notice of reassessment was not valid. (Distinguished Kalyani Maviji and Co v. CIT (1976) 102 ITR 287 (SC), and Phool Chand Bajrang Lal v .ITO (1993) 203 ITR 456 (SC)(AY. 2013-14)

Integra Garments and Textiles Ltd. v. ITO (2019) 418 ITR 139 / 310 CTR 570/ 175 DTR 241 (Bom)(HC)

247.S. 147: Reassessment –Shares held as investment- Capital asset –Capital gains -Not considered the objections raised by the Assessee- Proceedings stayed –Matter remanded to the AO to pass speaking order. [S.10(38), 45, 143(1), 148, Art.226.]

Allowing the petition the Court held that the Assessing Officer did not consider objections raised by assessee that shares which were sold were held for a period in excess of one year before sale entitling exemption under section 10(38), reassessment was stayed and directed the AO to pass speaking order considering all objections of the assessee. (AY.2011-12)

Swastik Safe Deposit and InvestmentsLtd. (2019)263 Taxman 303 / 176 DTR 423 (Bom)(HC)

248.S. 147 : Reassessment –Non disclosure of receipt- Capital gains- Sale of shares- Long term – STT paid - The attempt of further verification would amount to rowing inquiry- Reassessment is bad in law . [S.2(29A, 10(38) ,115JB, 143(1) , 148]

Allowing the petition the Court held that, even in a case where the return is accepted u/s 143(1) without scrutiny, the fundamental requirement of income chargeable to tax having escaped assessment must be satisfied. Mere non-disclosure of receipt would not automatically imply escapement of income chargeable to tax from assessment. There has to be something beyond an unintentional oversight or error on the part of the assessee in not disclosing such receipt in the return of income. In other words, even after non-disclosure, if the documents on record conclusively establish that the receipt did not give rise to any taxable income; it would not be open for the AO to reopen the assessment referring only to the non-disclosure of the receipt in the return of income. The attempt of further verification would amount to rowing inquiry. (Distinguished, ACIT v Rajesh Jhaveri Stock Brokers (P) Ltd (2007) 291 ITR 500 (SC) , Raymond Woollen Mills Ltd v .ITO (1999) 236 ITR 34 (SC) followed Prashant S. Joshi v ITO (2010) 324 ITR 154 (Bom) (HC), Inductotherm (India) (P) Ltd v M.Gopaln Dy.CIT (2013) 356 ITR 481 (Guj) (HC) (AY. 2011-12)(WP No. 1230 of 2019, dt. 25.06.2019)

Swastic Safe Deposit and Investment Ltd. v. ACIT (2019) 265 Taxman 164 / (2020) 312 CTR 389 / 185 DTR 156 (Bom)(HC),www.itatonline.org

249.S. 147 : Reassessment –Deemed dividend- Audit information -Loan from company - loan transaction was duly scrutinized by Assessing Officer in original assessment- Notice was issued on insistence of audit party- Reassessment is held to be bad in law .[S.2(22) (e) , 148]

Allowing the petition the Court held that, loan transaction was duly scrutinized by Assessing Officer in original assessment. Notice was issued on insistence of audit party, hence reassessment is held to be bad in law. (AY. 2012-13, 2013-14)

Hamilton Housewares (P.) Ltd. v. DCIT (2019) 262 Taxman 410 (Bom)(HC)

250.S. 147 : Reassessment –With in four years- Cash credits – Bogus accommodation entries- sums were received in earlier assessment year 2010-11 and were already verified and assessed by revenue authorities- Reopening of assessment in current assessment year is held to be not valid. [S. 68, 133, 148].

Allowing the appeal of the assessee the Court held that alleged bogus accommodation entries were received in earlier assessment year 2010-11 and were already verified and assessed by revenue authorities. Hence reopening of assessment in current assessment year is held to be not valid. (AY. 2013-14)

Jalaram Enterprises (P.) Ltd. v. ITO (2019) 262 Taxman 404 (Bom)(HC)

251.S.147: Reassessment —Change of opinion — Provision for diminution in the value of an asset and provision for doubtful debts -Held to be bad in law [S. 115JB ,148]

On writ the proceedings for reassessment was quashed following the order for the AY. 2004 -05 in Rallis India Ltd. v. ACIT (2010) 323 ITR 54 (Bom)(HC). Held, allowing the petition, which in view of the decision of the High Court in the case of the same assessee for the assessment year 2004-05, there was no justification for reopening the assessment for the assessment year 2005-06 on change of opinion. The reassessment proceedings were invalid.(Note: SLP of revenue is dismissed, (2018) 408 ITR 28 (St.))

Rallis India Ltd. v. DCIT (2019) 411 ITR 452 (Bom)(HC)

252 .S. 147:Reassessment- With in four years-Intimation- Wrong recording of reasons – order on disposal of objections must deal with the objection- The mere fact that the return is processed u/s 143(1) does not give the AO a carte blanche to issue a reopening notice-Reassessment notice is quashed [S.143(1), 148]

Allowing the petition the court held that, the basic condition precedent of 'reason to believe' applies even to S. 143(1) intimations. If the assessee claims the facts recorded in the reasons are not correct, the order on objection must deal with them. Otherwise an adverse inference can be drawn against the revenue.(WP No.3344 of 2018, dt.10.01.2019)(AY.2011-12)

Ankita A. Choksey v. ITO (2019) 411 ITR 207(Bom)(HC), www.itatonline.org

253.S. 147: Reassessment –With in four years- An issue which was never examined by Assessing Officer during original scrutiny assessment- Reopening of assessment is held to be justified. [S.11,13,148]

Dismissing the petition of the assessee the Court held that, donation received and reimbursement of expenses was not examined during original assessment proceedings. Accordingly an issue which was never examined by Assessing Officer during original scrutiny assessment, reopening of assessment was justified. (AY.2013-14)

Hinduja Foundation.v. ITO (2019) 262 Taxman 111 (Bom) (HC)

254.S.147: Reassessment - Assessment u/s 143(1) can be reopened on basis of information obtained during course of assessment of earlier assessment year under S. 143(3) of the Act [S.143(1), 148, Art.226]

The assessee-construction company filed return where Rs.5.20 cores was shown as the cost of plot and farm development expenses and Rs.25 cores as the proportionate land cost. The assessment was completed u/s 143(1) of the Act. The reassessment notice was issued on the basis of earlier assessment which was completed u/s 143(3) of the Act. On writ the court held that the assessment for the subject assessment year was by virtue of intimation under section 143(1). Therefore, the Assessing Officer had no occasion to examine the claim of the assessee. It is on the basis of tangible information now received that the impugned reopening notice has been issued, as is evident from the reasons recorded. Therefore, the reasons do make out a prima facie case that income chargeable to tax for the subject assessment year has escaped assessment. Accordingly the writ petition is dismissed. (AY. 2017-18)

Belazio Construction (P) Ltd. (2020) 268 Taxman 170 (Bom.)(HC)

255.S.148: Reassessment — Objection to reopening notice— Breach of procedure laid down by Supreme Court in case of GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC) - Writ is held to be not maintainable. [S. 143(3),147 , Art, 226]

Assessee after being supplied reasons for reopening of assessment by AO on 14.9.2018, approached Writ Court by filing Writ Petition without first raising objections before AO. This was in clear breach of procedure laid down by Supreme Court in case of GKN Driveshafts. Assessee could not without any reason or explanation, at his would choose to file Writ Petition directly before Court. In present case, assessee raised objections promptly after withdrawing petition from Court, would not in any manner dilute fact that it was on ground of assessee's conduct that AO was left with little time to dispose of his objections and thereafter complete assessment before it become time barred. In a case

where order of assessment was passed, jurisdiction of AO to pass such an order based on validity of reopening of assessment would be one part of challenge. Another part would involve challenge to assessment made by AO and would necessarily entail examination of facts on record which High Court would be loath to do as a Writ Court. Ordinarily, therefore, Court would insist that in such a situation assessee should take appellate route. Otherwise, assessee would argue jurisdictional question in High Court and if he fails, would opt to challenge order on merits before Appellate Authority, which would be most convenient. (AY. 2011-12)

Cenveo Publisher Services India Ltd. v. UOI (2019) 180 DTR 244 / 311 CTR 843 (Bom) (HC)

256.S.148 : Reassessment -Notice– Un explained investment in shares -Loss suffered during the year –No return was filed - AO had not looked into objections raised - Reassessment notice was unjustified. [S. 139 (1) 147]

Assessee is a senior citizen , who is engaged in trading in commodity exchange . AO received an information that as per NMS data and ITS details, assessee had made transactions of huge amount in National /multi commodity exchange . The assessee had not filed his return of income during year . AO issued reopening notice against assessee on ground that profit/gain on commodity exchange remained unexplained . Assessee raised objection stating that he had earned no income out of trading in commodity exchange and he had actually suffered a loss during year and, therefore, he had not filed return of income . The AO rejected objection. On writ the Court held that the assessee did communicate to AO that he had no taxable income and, therefore, there was no requirement to file return . Further the AO did not carry out any further inquiry before issuing impugned reopening notice. In fact, even when assessee brought facts and figures about loss suffered by him to his notice, AOrefused to look into it. Accordingly the Court held that on facts, impugned reassessment notice was unjustified and was to be set aside(W P NO. 3629 of 2018,dt.31/01/2019) (AY. 2011 -12)

Mohanlal Champalal Jain v. ITO (2019) 102 taxmann.com 293 (Bom) (HC) (UR)

Editorial: SLP of revenue is dismissed (SLP No.21397 of 2019 dt.04/09/2019)(2019) 417 ITR 61 (St.)(SC)/ (2019) 267 Taxman 391 (SC)

257.S. 148: Reassessment – Notice – Issue of notice prior to recording of reasons for reopening of assessment is held to be without jurisdiction – Deserves to be quashed – Defects could not be cured by invoking S.292B of the Act. [S.147, 292B]

Dismissing the appeal of the revenue the Court held that issue of notice u/s 148 without recording reasons for same, it was not a mere case of clerical error, but substantial condition for valid issue of reopening notice had not been fulfilled and, such a defect could not be cured by invoking provisions of S. 292B of the Act . (AY. 2004 -05)

PCIT v. Tata Sons Ltd. (2019) 267 Taxman 13 (Bom)(HC)

258.S. 148: Reassessment – Notice -Territorial Jurisdiction of High Court - Assessment at Hyderabad - Notice of reassessment at Mumbai - Bombay High Court has discretion to refuse to consider writ petition. [S.147,Art. 226]

Assessee is assessed at Hyderabad. Notice of reassessment is issued at Mumbai. The Assessee challenged the notice before Bombay High Court.Dismissing the petition the Court held that the assessee was being assessed to tax consistently at Hyderabad. The assessee had a permanent account number card at such place. The assessee had never applied for transfer of the permanent account number card. Admittedly, therefore, against the assessments appeals would lie before the Appellate Commissioner stationed there. Further appeal by the aggrieved party would lie before the Income-tax Appellate Tribunal. Section 269 of the Income-tax Act, 1961 defines the High Court as to mean in relation to any State the High Court for that State. Any challenge to the orders of the Assessing Officer, the Appellate Commissioner or the Tribunal would lie before the High Court of Telangana (previously High Court of Andhra Pradesh). The Assessing Officer and the appellate authorities therefore would be bound by the law propounded by the High Court. In the context of challenge to the notice of reassessment issued in Bombay, the Bombay High Court would apply the decisions of that

High Court. This would be wholly undesirable. Accordingly the Bombay High Court refused to entertain the writ petition. (AY. 2011-12)

HSBC Holdings Plc. v. DCIT (2019) 417 ITR 74 / 266 Taxman 82 / 183 DTR 269/ 311 CTR 565 (Bom)(HC)

259.S.148: Reassessment – Notice – Validity - Special audit report was a fresh tangible material - Formed reasonable belief for escaped assessment-Reassessment notice is valid. [S.37(1) 80G , 147]

On examination of special audit report, filed after passing of original assessment, it was found that claim 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, reassessment notice on basis of said report was justified. (W P No.2739 of 2017 dt.2/02/2018) (AY. 2010-11)

Multi Commodity Exchange of India Ltd. v. Dy. CIT(2018) 91 taxmann.com 265 (Bom)(HC)

Editorial:SLP of Assessee is dismissed (SLP No.20523 of 2018) (2019) 410 ITR 162(St.)(SC)/(2019) 260 Taxman 243 (SC)

260.S. 148 : Reassessment – Notice- Notice to dead person- Notice to legal heir of deceased - Assessment order is held to be invalid .[S.147 , Art .226]

Allowing the petition the Court held that as per settled law, notice for reopening of assessment against a dead person is invalid. The fact that the AO was not informed of the death before issue of notice is irrelevant. Consequently, the S. 148 notice is set aside and order of assessment stands annulled .Followed Alamelu Veerappan v. ITO (2018) 257 Taxman 72 (Mad)(HC), and Chandreshbhai Jayntibhai Patel v. ITO (2019) 413 ITR 276 (Guj)(HC), followed (WP No. 404 of 2019, dt. 05.04.2019)(AY. 2007-08)

Rupa Shyamsundar Dhumatkar v. ACIT (2020) 420 ITR 256 (Bom)(HC), www.itatonline.org

261.S. 148 : Reassessment – Notice- Mere issue of a notice is not sufficient – service of notice is essential - If the postal authorities return the notice unserved, the Dept has to serve under Rule 127(2) using one of the four sources of address (such as PAN address, Bank address etc). The failure to do so renders the reassessment proceedings invalid.[S. 127, 147, 149, 282 Rule, 127]

Petitioner never filed the return of income since she did not have any taxable income. The AO issued the notice u/s 148 which was returned with a remark "Left". Assessment was passed ex -parte. The AO started recovery proceedings. On getting the information telephonically about certain despatches by the Department she rushed from Jabalpur to Mumbai and gathered basic information. The assessee challenged the reopening of the assessment and consequential actions taken by the department. Allowing the petition the, Court held that mere issue of s.148 notice is not sufficient. Service is essential. If the postal authorities return the notice un-served, the Dept. has to serve under Rule 127(2) using one of the four sources of address (such as PAN address, Bank address etc). The failure to do so renders the reassessment proceedings invalid. Followed Y. Narayan Chetty v. ITO (1959) 35 ITR 388 (SC)(WP No. 513 of 2019, dt.16.07.2019) (AY. 2011-12)

Harjeet Suraprakash Girotra v. UOI (2019) 266 Taxman 29 / 311 CTR 260 (Bom)(HC), www.itatonline.org

262.S.148: Reassessment – Notice in the name of deceased assessee- For acquiring jurisdiction to reopen an assessment, notice should be issued in name of living person, i.e., legal heir of deceased assessee-S.292B could not be invoked to correct a fundamental/substantial error-Notice is held to be bad in law .[S.147, 292B, 292BB]

The petitioner, who is the legal heir, challenged the issue of notice on the ground that it was without jurisdiction on the ground that it was issued in the name of deceased asseeee. Allowing the petition the court held that, the issue of a notice under section 148 is a foundation for reopening of assessment. The sine qua non for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of the correct person. This requirement of issuing notice to a correct person and not to a dead person is not merely a procedural requirement but is a condition precedent to the impugned

notice being valid in law. Accordingly a notice which has been issued in the name of the dead person is also not protected either by provisions of section 292B or section 292BB.. Therefore, both the impugned notice dated 29-3-2018 and the order dated 13-11-2018 was quashed and set aside. (AY.2011-12)
Sumit Balkrishna Gupta. v. ACIT (2019) 414 ITR 292 / 262 Taxman 61 / 178 DTR 286 / 309 CTR 182 (Bom)(HC)

263.S. 151: Reassessment - Sanction for issue of notice – Sanction by CIT instead JCIT – Reassessment is held to be bad in law. [S.147, 151]
Dismissing the appeal of the revenue the Court held that, as the Act provides for sanction by the JCIT, the sanction by the CIT does not meet the requirement of the Act and the reopening notice is without jurisdiction. The fact that the sanction is granted by a superior officer is not relevant **.**Followed Ghanshyam K. Khabrani v. ACIT (2012) 346 ITR 443 (Bom.)(HC)(ITA No. 371 /Lkw/2016 dt 19-10-2016) (ITA No. 1035 of 2017, dt.11.05.2019)(AY. 2008 -09)
PCIT v. Khushbu Industries (Bom)(HC), www.itatonline.org

264.S. 151: Reassessment - Sanction for issue of notice - Sanction order indicated non-application of mind to reasons recorded for reopening, therefore, reopening notice was bad in law and quashed.[S.147,148]
An information was received from ADIT (In) that during search conducted in case of Himanshu Verma Group it was found that Himanshu Verma Group was engaged in activity of providing bogus accommodation entries and that assessee was also a beneficiary of Himanshu Verma Group . On basis of such information, reopening notice was issued against assessee. CIT also granted sanction under S. 151 of the Act. It was found that reasons recorded in support of reopening notice recorded activity Himanshu Verma Group group in providing accommodation entries while order granting sanction proceeded on basis that it was assessee who was engaged in providing accommodation entries. Court held that it is a settled position in law that grant of sanction by CIT under S. 151 is not a mechanical act on his part but it requires due application of mind to reasons recorded before granting sanction .Accordingly the Court held that the sanction order indicated non-application of mind to reasons recorded for reopening hence reopening notice was bad in law and quashed. (AY. 2011-12)
My Car (Pune) (P) Ltd. v. ITO (2019) 263 Taxman 626/ 179 DTR 236 (Bom.)(HC)

265.S. 153A : Assessment – Search- Abated assessment- It is open to both parties, i.e. the assessee and revenue, to make claims for allowance or disallowance. [S.132, 139(1)]
Dismissing the appeal of the revenue the Court held that, once the assessment gets abated, the original return filed u/s 139(1) is replaced by the return filed u/s 153A. It is open to both parties, i.e. the assessee and revenue, to make claims for allowance or disallowance. The assessee is entitled to lodge a new claim for deduction etc. which remained to be claimed in his earlier/ regular return of income (CIT v. Continental Warehousing Corporation(Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bom)(HC), referred) ITA No . 1934 of 2017, dt.05.02.2020)(AY.2008 -09)
PCIT v. JSW Steel Ltd. (2020) 115 taxmann.com 165(Bom)(HC)
www.itatonline.org

266.S.153C:Assessment - Income of any other person – Search - Seized documents were not in name of assessee, no action can be undertaken- Entire decision being based on huge amounts revealed from seized documents not being supported by actual cash passing hands, additions under S. 69C were also not sustainable.[S.69C , 153C]

During search certain incriminating documents were found in possession of one DD, managing and handling land acquisition on behalf of assessee-company and his statement was recorded. AO issued notice u/s.153C and initiated proceedings against assessee.Held that, since seized documents did not belong to assessee but were seized from residential premises of one DD who had later retracted his statement, no action u/s. 153C could have been undertaken in case of assessee. Court also held that further since entire decision was based on seized documents and there was no material to conclusively

show that huge amounts revealed from seized documents were actually transferred from one side to another, additions under S. 69C were not sustainable .(AY 2009 – 2010)
(Note : CIT v. Lavanya Land (P.) Ltd.(2017) 83 taxmann.com 161 (Bom) (HC) 397 ITR 246 (Bom) (HC)

CIT v. Krutika Land Pvt. Ltd (2017) 397 ITR 246 (Bom) (HC) .
Editorial: SLP of Revenue is dismissed (SLP No.7112 and 8741 of 2018)(2019) 411 ITR 6 (St.)(SC)/ **(2019) 261 Taxman 454 (SC)**

267. S. 153C: Assessment - Income of any other person - Search -Pendency of writ petition the AO passed the assessment order-Directed to file an appeal and all contentions are left open. [Art. 226]
AO carried out a search against a person other than assessee and thereafter issued on assessee a notice dated 27-4-2018 under section 153C on ground that incriminating material was found during such search against person other than searched person. Assessee filed writ petition challenging impugned notice dated 27-4-2018. During pendency of petition, Assessing Officer passed assessment orders on assessee pursuant to notice issued under section 153C. Court advised to adopt appeal remedy against orders of assessment passed by Assessing Officer.
Gemini Engi-Fab Ltd. v. DCIT (2019) 265 Taxman 195/ 181 DTR 405 / 310 CTR 587 (Bom) (HC)

268.S.154 : Rectification of mistake -Fringe benefits tax — Assessing Officer enhancing assessable fringe benefits by passing rectification order- Held to be not valid. [S.115WE(3)
Dismissing the appeal of the revenue the Court held that the Assessing Officer having examined the assessee's claim and having passed the order accepting the fringe benefits tax after scrutiny, could not have modified such an order in purported exercise of rectification powers under section 154 . The power of rectification was not the same as review power. Under such power the Assessing Officer could rectify errors apparent on record. Detailed consideration was impermissible. (AY. 2008-09)
CIT v. Aristo Pharmaceuticals Pvt. Ltd. (2019) 412 ITR 112 (Bom)(HC)

269.S. 158BD: Block assessment - Undisclosed income of any other person – To hand over the seized material to the AO of the said person to proceed u/s. 158BC-No substantial question of law. [S.158BC. 260A,]
Where in the course of search, material is found pertaining to any other person, then in terms of section 158BD, the right course of action is to hand over the seized material to the AO of the said person, who would then proceed to carry out the assessment as per section 158BC of the Act. Appeal of revenue is dismissed. Question no (b) followed CIT v. HDFC Bank Ltd (2014)366 ITR 505 (Bom) (HC). As regards depreciation on lease back question is admitted and will be heard along with ITA No 927 of 2014. (AY. 1996-97 to 1998-99)
PCIT v. HDFC Bank Ltd. (2019) 174 DTR 92 (Bom.)(HC)

270.S. 179 : Private company - Liability of directors - There was nothing on record to suggest that tax dues could not be recovered from company and same could be attributed to any gross neglect, misfeasance or breach of duty on part of assessee in relation to affairs of company, impugned recovery proceedings deserved to be quashed.
Assessee was a director of the company. For relevant year, Assessing Officer completed assessment in case of said company giving rise to certain tax demand, during pendency of appellate proceedings; AO issued a notice to assessee under S. 179 seeking to recover tax dues of company. The Assessee raised a plea that there was nothing on record to suggest that tax dues could not be recovered from the company and same could be attributed to any gross neglect, misfeasance or breach of duty on part of assessee in relation to affairs of company . AO rejected the application of the assessee. On writ the Court held that in order to apply provisions of sub-section (1) of section 179, first requirement is that tax dues cannot be recovered from private company and even in such a case, it is open for concerned director to prove that such non-recovery cannot be attributed to any gross negligence, misfeasance or

breach of duty on his part in relation to affairs of company, since aforesaid requirements were not satisfied in assessee's case, impugned order passed by AO was set aside. (AY. 2015 -16)
Vanraj V. Shah. v. DCIT (2019) 266 Taxman 137/181 DTR 5 (Bom)(HC)

271.S. 192 : Deduction at source – Salary -Hospital-Consultant Doctors are not employees – Not liable to deduct tax at source as salary -Payments for call centre expenses — Tax deductible at source under S. 194C -Services of Managers of another organisation utilised — Reimbursement of expenses- Not liable to deduct tax at source [S.194C, 194J , 201(1),201(IA)]
Dismissing the appeal of the revenue the Court held that there existed no relationship of employer and employee between the assessee and the consultant doctors employed in the hospital. Hence the provisions of section 192 were not applicable. Followed CIT (TDS) v. Grant Medical Foundation (Ruby Hall Clinic) (2015) 375 ITR 49 (Bom) (HC) .Payments made to HTMT/HGS Ltd., towards call centre expenses for providing the customer information pertaining to the hospital and fixing appointments, Tribunal is justified in holding that tax was correctly deducted at source under S. 194C . Service charges paid for supplying the drugs correctly deducted the tax at source u/s. 194C. .Reimbursement of expenses of services of Managers of another organisation utilised, not liable to deduct tax at source.
PCIT (TDS) v. National Health and Education Society. (2019) 412 ITR 404/ 262 Taxman 240 (Bom)(HC)

272.S. 194C : Deduction at source – Contractors -Placement fees/carriage fees - work contract and not fees for technical service [S.194J]
The question before the High Court was "Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the placement fees/carriage fees paid to cable operators/MSO/DTH Operators are payments for work contract covered u/s 194C and not fees for technical service u/s 194J, without appreciating that the service received by the assessee are technical in nature? . Following the order in CIT v. UTV Entertainment Television Ltd (2017) 399 ITR 443 (Bom)(HC), decided in favour of the assessee.(Arising out of ITA No.669/Mum/2012 dt.17/03/2015)(ITA No. 399 of 2016 dt.14/08/2018) (AY 2008 – 2009 , 2009 – 2010)

CIT v. Times Global Broadcasting Co. Ltd. (2019)105 taxman .com 313 / 263 Taxman 466(Bom)(HC)
Editorial: SLP of revenue is dismissed, CIT v. Times Global Broadcasting Co. Ltd. (2019) 263 Taxman 465 (SC)/ (SLP No.6242 of 2019)(2019) 412 ITR 41 (St.)(SC)

273.S. 194C : Deduction at source – Contractors advertisement services- Principle of natural justice must be followed- Assessing Officer is not justified in deciding that tax should be deducted under Section 194J without giving an opportunity of hearing . [S.194J , 197, 201(1) 201(IA) ,Art. 226]
The assessee is an advertising and media agency, engaged in the business of advertising by creative and production work, media planning and incidental activities. The assessee deducted the tax as per S.194C of the Act. According to the revenue tax should have been deducted as per S.194J of the Act as the rate applicable to professional or technical services . The Income-tax Officer (TDS) passed orders under section 201(1)/(1A) and held that the assessee had short tax deducted/not deducted tax at source to the tune of Rs.91.10 crores during the assessment years. On a writ petition to quash the order the Court held that the orders could not survive the test of following the principles of natural justice. The Income-tax Officer (TDS) had collected extensive material, which was attributable to his own research, but never put such material to the assessee for its comments and most importantly his entire orders were founded on such research material. The orders were not valid. Accordingly the order was quashed. (AY.2017-2018) (WP No 1719 of 2019 dt.29-07-2019)
TLG India Pvt. Ltd. v. ITO (TDS)(2019) 418 ITR 324/ 267 Taxman 319 / 184 DTR 329 / (2020) 312 CTR 179 (Bom)(HC)

274.S. 194C : Deduction at source – Contractors - Services clerical in nature — Not technical or managerial services — Provisions of S.194C is applicable and not S.194J [S.194J]
Dismissing the appeal of the revenue the Court held that where the payment made to services clerical in nature provisions of S.194C is applicable and not provision of S.194J the services cannot be held to be of technical or managerial services.
CIT v. Reliance Life Insurance Co. Ltd. (2019) 414 ITR 551/ 264 Taxman 296 (Bom)(HC)

275.S. 194C : Deduction at source – Contractors - Catering services – Rightly deducted the tax at source u/s 194C and provision of S.194J is not applicable .[S.194J
Dismissing the appeal of the revenue the Court held that payment to contractor the tax was rightly deducted as contractor and service of cooking did not include any technical service.
CIT v. Saifee Hospital Trust. (2019) 262 Taxman 461 (Bom)(HC)
276.S. 194C: Deduction at source – Contractors - Payments for services rendered towards maintenance of its medical equipment - Liable to be deduct tax at source u/s 194C and not under S. 194J of the Act .[S.194J]
Dismissing the appeal of the revenue the Court held that ,payments made were payments for work contract covered under S. 194C of the Act and the same does not involve any technical service which would require deduction of tax at source u/s 194J of the Act . (AY. 2008 -09, 2009-10, 2010-11)
CIT v. Saifee Hospital. (2019) 262 Taxman 343 (Bom) (HC)

277.S. 194C : Deduction at source – Contractors - Annual Maintenance Contract in respect of various specialised hospital equipments - Not be in nature of fees for technical services- Deduction of tax at source as contractor- Held to be proper. [S.194J]
Dismissing the appeal of the revenue the Court held that Annual Maintenance Contract in respect of various specialised hospital equipments is not be in nature of fees for technical services hence deduction of tax at source as contractor is held to be proper .(Followed CIT v. Grant Medical Foundation (2015) 375 ITR 49 (Bom) (HC)
CIT v. Asian Heart Institute and Research Centre (P.) Ltd. (2019) 262 Taxman 395 (Bom)(HC)

278. S. 194C: Deduction at source – Contractors - Services clerical in nature — Not technical or managerial services — Provisions of S.194C is applicable and not S.194J [S.194J]
Dismissing the appeal of the revenue the Court held that where the payment made to services clerical in nature provisions of S.194C is applicable and not provision of S.194J the services cannot be held to be of technical or managerial services.
CIT v. Reliance Life Insurance Co. Ltd. (2019) 414 ITR 551 / 264 Taxman 296 (Bom)(HC)

279. S. 194C : Deduction at source – Contractors - Channel placement fee – Payment to cable operators for channel placement fee was subject to deduction of tax at source u/s 194C and not under S. 194J of the Act. [S.194J]
Dismissing the appeal of revenue the Court held that by assessee to cable operators for channel placement fee was subject to deduction of tax at source under S.194C and not under S. 194J. (AY. 2010 -11)
PCIT v. StarEntertainment Media (P.) Ltd. (2020) 269 Taxman 66 (Bom)(HC)

280. S. 194D: Deduction at source - Insurance commission – Tax was rightly deducted on net commission excluding service tax.
Dismissing the appeal of the revenue the Court held that *t*ax was rightly deducted on net commission excluding service tax.
CIT v. Reliance Life Insurance Co. Ltd. (2019) 414 ITR 551/ 264 Taxman 296 (Bom)(HC)

281. S. 194H : Deduction at source – Commission or brokerage - Bank guarantee commission – Not eligible for deduction at source . [S.201(IA)]

Dismissing the appeal of the revenue the Court held that , bank guarantee commission is not in the nature of commission paid to an agent, it is in the nature of bank charges for providing one of the banking service. Hence, the requirements of s.194H not arise. Followed CIT v. Larsen & Toubro Ltd.(2019) 260 Taxman 271 (Bom) (HC)
(Arising out of ITA Nos.3156 & 3157/Mum/2014 dt.06/11/2015)(ITA NO.1382 & 1392 of 2016, dt.18/01/2019)(AY 2010 – 11 & 2011 – 12)
CIT v. Nimbus Communications Ltd. [2019] 109 taxmann.com 497(Bom)(HC)
Editorial: SLP of revenue is dismissed (SLP No. 17155 of 2019 dt.15/07/2019)(2019) 416 ITR 128 (St.)(SC)/(2019) 266 Taxman 375 (SC)

282.S. 194H : Deduction at source – Commission or brokerage -Bank credit card payment – Not liable to deduct tax at source – Lounce charges are covered u/s 194C and not u/s 194I of the Act [S.40(a)(ia), 194I]
Questions raised before the High court was ;"Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in upholding the order of the CIT (A) and holding that the amount retained by a bank/credit card agency out of the sale consideration of the tickets booked through credit cards is not covered under the definition of "commission or brokerage" given in the Explanation (i) to section 194H of the Act and the assessee was not liable to deduct tax at source under section 194H in respect of this amount?"

"(b) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was justified in holding that the uses of lounge premises paid by the assessee were payments for contract of work under section 194C of the I.T. Act and not in the nature of rent as per section 1941 of the I.T. Act"
Following the ratio in CIT v JDS Apparsal Ltd (2015) 370 ITR 454 (Delhi)(HC) first question is answered in favour of the assessee. As regards question no (b) Following the Japan Airlines Company Ltd (2015) 377 ITR 372 (SC) has overruled such decision of Delhi High Court. Supreme Court approved the view of Madras High Court in case of CIT v Singapore Airlines Ltd (2013) 358 ITR 237 (Mad)(HC)(ITA No. 628 of 2018 dt 23 -04 2019)(AY. 2009-10)
CIT v. Jet Airways India Ltd (2019) 180 DTR 115 / (2020) 420 ITR 389 (Bom) (HC)

283. S. 194H : Deduction at source – Commission or brokerage – Bank guarantee commission is not in the nature of commission paid to agent, it is bank charges for providing one of banking services – Not liable to deduct tax at source
Dismissing the appeal of the revenue the Court held that, Bank guarantee commission is not in the nature of commission paid to agent, it is bank charges for providing one of banking services .Accordingly not liable to deduct tax at source. (AY. 2010-11)
CIT v. Larsen & Toubro Ltd (2019) 260 Taxman 271 / 307 CTR 464 / 174 DTR 246 (Bom)(HC)

284. S. 194J : Deduction at source - Fees for professional or technical services – Tax deducted at source as contractor – Demand is raised for short deduction of tax at source – Order passed without following the principle of natural justice – Order set aside[S.194C, 201(1), 201(IA)]
AO passed the order raising the demand for short deduction of tax at source. The AO relied on the various research materialswithout providing an opportunity of hearing. On writ the Court held that the AO has to follow the principles of natural justice. The least that he was expected to do was to share such material with the Petitioner giving an opportunity to rebut the same if so desired by the Petitioner. By suggesting that the Petitioner is already engaged in the same business and therefore would be aware about intrinsic nature services rendered, is begging the question. In plain terms, the impugned orders cannot survive the test of following principles of natural justice. In the result, the orders are quashed only on *this ground.* The Petitioner would have six weeks from today to make a representation along with desired material before the said authority. If the same is done, the Income Tax Officer (TDS) shall take it into consideration before passing final orders (WP No. 1788 of 2019 dt 29 -07-2019)(AY.2017-18)
TLG India Pvt Ltd. v ITO (2019) 184 DTR 331/(2012) 312 CTR 182(Bom) (HC)

285.S. 194J: Deduction at source - Fees for professional or technical services – Payment to doctors –No employer and employee relationship - Not liable to deduct tax at source as salary [S. 192]

Dismissing the appeal of the revenue the Court held that the Tribunal rightly held thatthere did not exist employer-employee relationship between the assessee and full time consultant doctors and the payments made to them by the assessee came in the purview of section 194J. Accordingly, order passed by the Assessing Officer was set aside.

CIT v. Asian Heart Institute and Research Centre (P.) Ltd. (2019)262 Taxman 471 (Bom) (HC)

286.S. 194J : Deduction at source - Fees for professional or technical services –Doctors-Payment to full time consultant doctors would fall within purview of S.194J as fees for professional services, and not under S. 192 as salary [S.192]

Dismissing the appeal of the revenue, the court held that payment to full time consultant doctors would fall within purview of S.194J as fees for professional services, and not under S.192 as salary. (Followed CIT v. Grant Medical Foundation (2015) 375 ITR 49 (Bom)(HC)

CIT v. Asian Heart Institute and Research Centre (P.) Ltd. (2019) 262 Taxman 395 (Bom)(HC)

287.S. 195: Deduction at source - Non-resident - Royalties and fee for technical services - Banking services- Foreign bank- Rendering financial services in order to raise capital abroad through issuance of Global Depository Receipts ('GDRs')- Not liable to tax in India as fee for technical services- Not liable to deduct tax at source –Article 12 of OECD Model Convention. [S. 9(1)(i), 9(1) (vii)]

Assessee was a scheduled bank engaged in banking business duly registered under Banking Regulation Act. For its need for capital, assesse bank decided to raise capital abroad through issuance of Global Depository Receipts ('GDRs'). Assessee had engaged one Amas Bank which was incorporated under laws of United Arab Emirates and was carrying on financial services, for providing services such as Global coordinator and Lead Manager to said GDR offer. AO held that payments made to Amas bank were liable to tax in India as fee for technical services. Tribunal held that services rendered by Amas Bank were purely of a commercial nature and bore character of income arising to it wholly outside India, emanating from commercial services rendered by Bank in course of carrying on of its business wholly outside India. Tribunal further held that such services were neither rendered in India nor utilized in India and therefore, payments for services so rendered did not partake character of fees for technical services. Accordingly the addition was deleted.On appeal High Court up held the order of the Tribunal.

CIT (IT) v. Indusind Bank Ltd. (2019) 415 ITR 115 /264 Taxman 190/ 179 DTR 18 / 311 CTR 858 (Bom)(HC)

288. S. 195 :Deduction at source - Non-resident -Deputation -Contract between assessee manpower provider and Kuwait based company-Employee was deputed in Kuwaiti company who was under employment of assessee-, assessee was not required to deduct tax at source. [S.9(1)(vii),40(a)(ia)]

Dismissing the appeal of the revenue the Court held that as per manpower supply contract, assessee manpower provider supplied commissioning engineer to Kuwait based company .Kuwaiti company paid deputation charges of US $ 5500 per month to assessee and assessee paid US $ 4000 per month to employee. While Kuwait based company would enjoy considerable supervising powers over said employee as long as employee was working for it, nevertheless, assessee-company continued to enjoy employer-employee relationship with said employee. Court held that assessee-company was not required to deduct tax in respect of payment of remuneration made to deputed employee.

PCIT v. Supriya Suhas Joshi (Smt.)(2019) 106 taxmann.com 57/264 Taxman 25 (Mag) / 182 DTR 109(Bom)(HC)

289. S. 197: Deduction at source - Certificate for lower rate – Alternative remedy - Revision would be futile /academic in nature - Writ is maintainable [S. 201(1) 201(IA), 264, Art. 226]

Allowing the petition the Court held that , certificates dated 10-9-2019 being primarily based upon the order dt 9 -09 2019 passed u/s 201(1) , 201(IA) of the Act is required to be set aside as a consequence of having set aside the order dated 9 -09-2019. Court also held that revision if filed against the said certificates, would be futile /academic in nature as the basis of the certificates dt.10 -09 -2019 has already been set aside. Accordingly the certificates and order are set aside. (AY. 2017-18, 2018 -19, 2019-20)(WP No.2574 of 2019 dt.18 -11-2019)

TLG India (P) Ltd v. Dy.CIT (2019) 184 DTR 345 (Bom) (HC)

290. S. 197 : Deduction at source - Certificate for lower rate – Capital gains- Sale of shares by non-resident —Rejection of application on ground that transaction of sale of shares was not genuine —Rejection of application is held to be not Justified- Substance over form- piercing the corporate veil – DTAA – India - Mauritius. [S.9(1)(i),90,195, Art.13]

The assessee, a Mauritius based company, had made a sizable investment in an Indian non-banking financial company of which the assessee was a majority stakeholder. At the appropriate time, when the share prices were high, the assessee decided to book its profits in part. A portion of the shareholding was off-loaded. This gave rise to a net gain to the tune of about Rs.800 cores. The assessee filed an application under S. 197. The Assistant Commissioner carried out detailed inquiry in relation to such application of the assessee. He called upon the assessee to provide several documents which the assessee did. At the end of the inquiry, the said authority passed an order rejecting the application of the assessee for certificate under S. 197 of the Act on the ground that the entire transaction was not genuine. On writ the Court held that,the mere fact that the assessee-company had not transacted any other business by itself may not be conclusive. The observation that mere transfer of money through banking channels would not be conclusive, may be correct but it could not be a ground against the assessee unless there was adverse material. The extent of administrative expenditure and the employment structure may be some of the factors which eventually would go to establish whether the transaction was sham and the very existence of the assessee was fraudulent, but by themselves they were not sufficient. The order dated June 20, 2018 passed under S. 197 of the Act had to be quashed. The Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the transaction is a sham or tax avoidant.After balancing the equities, the court directed the respondents to release the withheld payment subject to adjustment in the assessment.

Indostar Capital. v. ACIT (2019) 415 ITR 513/ 178 DTR 161 / 309 CTR 202/ 265 Taxman 59 (Bom) (HC)

291. S.199: Credit for tax deducted - deductor failed to upload correct details in Form 26-A, benefit of TDS should be given to assessee .[From 26A]

Revenue objected claim of TDS on ground that there was mis-match in TDS certificate issued by deductors. Rejecting the appeal of the revenue held that deductor failed to upload correct details in Form 26-A, benefit of TDS should be given to assessee on basis of evidence produced before Department. (Arising out of ITA No.852 & 853/Mum/2014 dt.29/07/2015)(ITA No. 1745 & 1746 of 2016, dt.22/01/2019)(AY. 2010 – 2011 , 2011 – 2012)

PCIT v. v. Tata Communication Ltd. (Bom) (HC) (UR)

Editorial: SLP of revenue is dismissed (SLP No.20304 of 2019 dt.23/08/2019)(2019) 417 ITR 58 (St.)(SC)

292. S. 201: Deduction at source - Failure to deduct or pay – Natural justice violated -The order of revenue must speak for itself and cannot be improved upon by an affidavit-in-reply filed by assessee, it's not permitted-Orders of revenue were set aside—Matter restored to revenue for fresh disposal of show cause notice after following principles of natural justice i.e. due consideration of assessee submission by speaking order. [S. 40(a)(ia), 194C, 194J, 197, 201(1), 201 (IA), Art. 226]

Assessee, advertising agency, recovers amount from its clients and makes payment to media owners for advertisement of its clients, on its media. While making payment, Assessee's clients deduct tax at source u/s 194C and assessee again deducts tax at source u/s 194C while making payment to media

owners. Show-cause notices were issued as to why it should not be treated as assessee in default u/s 201(1) and 201(1A) for failure to deduct tax on payments u/s 194J and failure to deduct tax on provisions for expenses, which was disallowed u/s 40(a)(ia) of the Act. Assessee filed the reply, however the AO held that assessee in default u/s 201(1) and 201 (1A) of the Act. On writ the Court held that when assessee filed representation in respect of proceedingsu/s 201 and 201(1A), revenue was in undue haste passed an order determining huge sums payable by assessee for failure to appropriately deduct tax. This entire exercise was done in undue haste as Revenue was obliged to issue tax deduction certificate u/s 197.It was only on determination of assessee's tax liability, could revenue reduce amount of tax to be deducted by assessee's customers while making payment. Court held that the entire proceedings leading to orders were vitiated for breach of natural justice. Orders of revenue were set aside. The Court also observed that the order of revenue must speak for itself and cannot be improved upon by an affidavit-in-reply filed by assessee, it's not permitted.Matter restored to revenue for fresh disposal of show cause notice after following principles of natural justice i.e. due consideration of assessee submission by speaking order. (AY.2017-18, 2018-19, 2019-20)
TIG India Pvt. Ltd. v. DCIT (2019) 184 DTR 349 / (2020) 312 CTR 199 (Bom)(HC)

293. S. 201 : Deduction at source - Failure to deduct or pay – Rs.10 Million US Dollars in escrow account - TDS liability - Notices issued under S.201 and 201(1A) would stand stayed during pendency of proceedings. [S.195, 201(1), 201(IA)]
Court held that in view of fact that assessee had kept a sum of Rs.10 Million US Dollars in escrow account which would be by and large sufficient to meet with its TDS requirement if ultimately so arose, notices issued to assessee under S. 201 and 201(1A) would stand stayed during pendency of proceedings. The writ petition was posted for hearing on 14 -06 -2019.
Business Process Outsourcing, LLC v. AAR (2019) 264Taxman 59 (Bom)(HC)

294.S. 205: Deduction at source – Credit for tax deduction at source -Bar against direct demand – No recovery from the assessee for default committed by the deductor to deposit the tax deducted amount with the Government Treasury- Garnishee proceedings was quashed and directed the revenue to refund the amount recovered from the assessee. [S.199, 226(3)]
Allowing the petition the Court held that it is always open for the department and in fact the Act contains sufficient provisions to make coercive recovery of such unpaid tax from the payer whose primary responsibility is to deposit the same with the Government revenue scrupulously and promptly. If the payer after deducting the tax fails to deposit it in the Government revenue, measures can always be initiated against such payers. Garnishee proceedings was quashed and directed the revenue to refund the amount recovered from the assessee.Followed Yashpal Sahani v. Rekha Hajarnvis (2007) 293 ITR 539 (Bom)(HC)(AY.2006-17)
Pushkar Prabhat Chandra Jain v UOI (2019) 176 DTR 99/ 262 Taxman 118 / 309 CTR 218 (Bom) (HC)

295.S. 220 : Collection and recovery - Assessee deemed in default –Pendency of appeal before CIT(A)- Stay of demand - The power of the AO to review the situation every six months, would not authorize him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances.[S.220(6) , 254(2A)]
The AO stayed the recovery proceedings when the appeal was pending before the CIT(A) on payment of 15% of tax in disputes .Thereafter he lifted the stay granted earlier relying the judgement of Supreme Court in Asian Resurfing of Road Agency v. CBI (AIR 2018 SC 2039) and directed to pay all pending demands with in seven days . The petitioner approached PCIT. PCIT also rejected the application for stay . The petitioner fled Writ petition challenging the order of PCIT & AO. While passing the ad .interim order of stay the Court held that the the Dept is not right in relying upon the decision of the Supreme Court in Asian Resurfing of Road Agency Pvt Ltd v. CBI (AIR 2018 SC 2039) to contend that any stay against recovery granted would automatically lapse after six months. This is neither the purport of the judgment of the Supreme Court , nor the observations made in the said judgment in the context of civil and criminal litigation can be imported in present set of

quasi-judicial proceedings. The power of the AO to review the situation every six months would not authorize him to lift the stay previously granted after full consideration and insist on full payment of tax without the assessee being responsible for delay in disposal of the appeal or any other such similar material change in circumstances. By way of ad-interim relief, the impugned orders dated 22.1.2019 and 11.2.2019 are stayed. The respondents are prevented from carrying out any further recoveries pursuant to the order of assessment in respect of the petitioner for assessment year 2013-14.(WP No. 542 of 2019, dt.28.02.2019) (AY. 2013-14)

Editorial: It seems the department has accepted the order of High Court. Accordingly the final order was passed on 4-04 2019 which reads as under "Learned counsel for the petitioner stated that on instructions that the issues in the present petition been resolved. He therefore does not press this petition. Disposed as not pressed. Interim relief, if any, stands vacated."

Oracle Financial Services Software Ltd. v. DCIT (Bom)(HC), www.itatonline.org

296. S. 220: Collection and recovery - Stay –Pendency of appeal before CIT(A)- 20% of the disputed demand – Consideration is not received cannot be a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending in appeal. [S.220(6)]

Court held that the decision of the authorities to demand payment of 20% of the disputed demand is in consonance with the department's circulars. There are no extra ordinary reasons for imposing condition lighter than one imposed by the authorities. The contention that the assessee that he received no consideration and no tax could have been demanded from him is subject matter of the Appeal proceedings and cannot be a ground for lifting the rigor of the requirement of deposit of 20% of the disputed tax pending appeal. (WP No.1887 of 2019, dt.15.07.2019)

Kalpana Ashwin Shah v. ACIT (Bom)(HC), www.itatonline.org

297.S. 220: Collection and recovery - Assessee deemed in default – Stay – Recovery of demand is stayed on deposit of 20% of outstanding demand – Advance tax paid and tax deducted at source while filing the return should also be considered.

AO passed the making certain additions and raising the demand .Appeal is filed and pending for disposal. Petitioner made an application before the AO to keep recovery of tax in abeyance till disposal of its appeal. AO Officer passed order providing that recovery would be stayed pending appeal if petitioner deposited 20 per cent of outstanding demand. On writ the Court held that while considering the outstanding demand advance tax and TDS deposited by petitioner at time of filing of return should be taken into consideration for said purpose. (AY. 2016-17)

Keva Fragrances (P.) Ltd. v. ACIT (2019) 265 Taxman 20(Mag.) (Bom)(HC)

298. S. 220: Collection and recovery - Assessee deemed in default - Stay -Recovered 38% of disputed tax amount- No special circumstances pointed out to permit revenue to carry out full recoveries – Pending disposal of appeal further recovery proceedings were stayed.

On writ to stay the recovery proceedings the Court held that, as many as 17 appeals were pending against assessee before the CIT(A) and pending appeal, revenue had recovered approximately 38 per cent of disputed tax amount. It was found that instant Court had more than one year back passed interim order preventing revenue from carrying out further recoveries pending appeal .Departmental circulars also envisage stay pending appeal before Commissioner (Appeals), ordinarily upon deposit of 20 per cent of disputed tax .This requirement had also been fulfilled in instant case. Further, no special circumstances were pointed out to permit revenue to carry out full recoveries. Moreover, some appeals had already been decided by CIT(A) and also by Tribunal, which were in favour of assessee Accordingly pending disposal of remaining appeals, revenue would not be permitted to carry out any further recoveries. (WP No. 443 of 208 dt.03-06-2019)

Vodafone India Ltd. v. CIT (TDS)(2019) 265 Taxman 98 (Bom) (HC)

299. S. 220 : Collection and recovery - Assessee deemed in default –Stay- Issue decided in favour of assessee by CIT (A) in other proceedings - Pendency of appeal before CIT (A)- AO cannot pass the order to deposit 20 % of tax in dispute- Stay was granted against recovery of demand.

During the pendency of appeal the AO demanded the 20% of tax in dispute, though the issue was decided in favour of assessee by CIT(A) in other proceedings . On writ the Court held that AO cannot pass the order to deposit 20% of tax in dispute and stay was granted against recovery of demand.
ARCIL Retail Loan Portfolio 001-D- Trust v. pr. CIT (2019) 264 Taxman 61 (Bom) (HC)

300.S. 222: Collection and recovery - Certificate to Tax Recovery Officer -Attachment and sale of immovable property — Limitation-Attachment of immovable property in 1997 — Proclamation of sale in February, 2019 — Barred by limitation. [Sch. II, R. 68B, Art. 226]
Allowing the petition the Court held that, Part D of Chapter XVII of the Income-tax Act, 1961 pertains to collection and recovery of tax. Schedule II to the Act pertains to the procedure for recovery of tax. The Schedule contains detailed rules for recovery of unpaid taxes through various modes envisaged in sub-section (1) of S.222. One of the modes is attachment and sale of immovable property. Rule 68B was inserted with effect from June 1, 1992. For the first time with effect from June 1, 1992 a time-limit of a period of three years was prescribed for sale of attached immovable property starting from the end of the financial year in which the order giving rise to a demand of tax, interest, etc., became conclusive. Sub-rule (4) of rule 68B provides for the consequences of the immovable property not being sold within such time. Under this sub-rule in such a situation, the attachment order in relation to the property would be deemed to have been vacated on the expiry of the time-limit specified.
Court held, that the attachment of the immovable properties was ordered in the year 1997. The sale proclamation which was made in February, 2019 was thus, hit by the period of limitation prescribed under rule 68B. The sale proclamation was barred by limitation. (AY. 1974 -75 to 1999-2000)
Sapana Charudatt Ranadive. v. ITO (2019) 418 ITR 193 / 181 DTR 127 / 310 CTR 432 / 266 Taxman 4 (Bom) (HC)

301.S. 222: Collection and recovery - Certificate to Tax Recovery Officer -Amalgamation - Tax Recovery Officer could not seek recovery of taxes of reassessment from assessee-company inasmuch as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings.[S.147, 148, Art. 226]
Company Mahadev Floorings (India) Pvt Ltd. was amalgamated with assessee-company. AO had reopened assessment of company Mahadev Floorings (India) Pvt Ltd. and passed assessment order on raising tax demand upon it. Subsequently Tax Recovery Officer issued on assessee-company a notice to recover tax dues of company Mahadev Floorings (India) Pvt Ltd and on failure of assessee to pay tax dues of company Mahadev Floorings (India) Pvt Ltd had attached bank accounts of assessee. On writ the court held that Tax Recovery Officer could not seek recovery of taxes due of Mahadev Floorings (India) Pvt Ltd arising out of order of reassessment from assessee-company inasmuch as assessee neither had been served with notice of reopening of assessment, nor had any occasion to participate in such reassessment proceedings. Accordingly the notice of recovery was set aside and attachment of bank accounts was lifted. (AY. 2010-11)
Hinal Estates (P.) Ltd. v. UOI(2019) 266 Taxman 411/ 184 DTR 297 (Bom)(HC)

302.S. 225 : Collection and recovery - Stay of proceedings – Pendency of appellate and revision proceedings – Tax recovery officer demanded for 50% of tax demand -PCIT directed to pay 20 % of tax demand – On writ High Court directed to pay only 5% of tax in dispute. [S.226, 264 Art. 226]
Assessee first approached Tax Recovery Officer seeking stay of demands pending appellate and revisional proceedings. Tax Recovery Officer insisted that assessee must deposit 50% of tax demand to avoid recovery of rest. PCIT directed to pay 20% of tax demand. High Court held that assessee would have arguable points against many of additions made by AO. Nature of additions concerns finding of bogus purchases and inflated premium and share application money besides others. Therefore, assessee would deposit 5% of principal tax demand arising out assessment orders for AY. 2009-10, 2010-11, 2011-12.
JIK Industries Ltd. v. DCIT (2019) 178 DTR 444 / 310 CTR 287 (Bom) (HC)

303.S. 225 : Collection and recovery - Stay of proceedings – ITAT has granted conditional stay against the recoveries – Sizeable amount was recovered –Contempt - Court directed not to recover further and pending the petition directed the petitioner to approach the ITAT for appropriate relief – Fresh petition was dismissed. [S.226, 254(1), Art. 226]

Assessee is an educational trust had filed return of income. Huge demand was raised and appeal was pending before the Tribunal Pending appealsthe assessee prayed for interim injunction against recovery of unpaid tax and interests before ITAT. ITAT granted conditional stay against recoveries which was again challenged before High Court vides Writ Petition. High Court noticed a misrepresentation of Court's order by President of assessee and in connivance with ITO, assessee withdrew sizeable amount from its Bank accounts. Division Bench of High Court dismissed assessee's Petition on ground of such misdemeanour and also initiated suo moto contempt proceedings against President of assessee and concerned employee of Department. Such Contempt Petition resulted into imposition of jail term against contemptors which was also confirmed by Apex Court. Subsequently, ITAT passed an order in assessee's pending appeals wherein, no relief was granted against conditions imposed by ITAT in its earlier order to enjoy protection against recoveries of unpaid tax and interest, nor fulfilled such conditions. Consequently, fresh stay applications filed by assessee was dismissed. ITAT had passed an order protecting assessee against recoveries of unpaid tax and interest on condition that, assessee deposits with Department, a sum of Rs.18 Crores in three equal instalments. Since assessee could neither have these conditions altered, nor could assessee fulfil conditions, ITAT later on passed impugned order rejecting stay applications of assessee. This would give rise to recovery of entire tax with interest. Department had initiated coercive recovery.Whatever be interim events, ITAT had found prima facie case in favour of assessee which persuaded ITAT to grant stay against and further recoveries on condition of depositing said amount. Not protecting assessee at this stage, might have severe adverse effect on running its several educational and medical institutions, rendering staff jobless and students without college. Therefore, put assessee back to same position, ITAT had granted conditional stay to assessee, which order, in any case, Department had not challenged. Assessee was insisted to deposits with Department a total sum upon which, there should be stay against further recoveries. Assessee would also co-operate for early disposal of appeals before ITAT. Division Bench of High Court in Writ Petition, assessee and similarly situated Trusts complained about State Government not releasing educational grants. From said order passed by Division Bench, it was found that under order of Court, State Government had deposited sizeable amount which was payable to assessee. However, Division Bench did not release said amount in favour of assessee. There should be stay against further recoveries of tax and interest dues arising out of assessee's pending appeals till final disposal. By virtue of this order and subject to assessee fulfilling conditions contained, there should be no further recoveries of impugned tax dues from any source. It would be open for assessee to approach Co-ordinate Bench in pending Writ Petition and pray for appropriate relief. Accordingly assessee's writ Petition was partlyallowed. (AY. 2009-10, 2014-15)

Sinhgad Technical Education Society v. DCIT (2019) 176 DTR 315 / 310 CTR 292 (Bom)(HC)

304.S.226: Collection and recovery - Modes of recovery –Pendency of appeal before CIT(A) – CIT(A) is directed to hear the appeal with on four weeks from the date of the receipt of an authenticated copy of the order- Stay proceedings were stayed. [S.179, 226(3)]

The AO disallowed the expenses u/s 60, 63 of the Act and raised the demand on the assessee. The appeal is pending before the CIT (A). The AO issued garnishee notices to the Directors u/s 179 of the Act. When the appeal was pending the revenue issued notice u/s 179 of the Act to the Directors. On writ the High Court directed the CIT(A) hear the appeal with on four weeks from the date of the receipt of an authenticated copy of the order. Stay proceedings were stayed. UTI Mutual Fund v ITO (2012) 345 ITR 71 (Bom)(HC) WP No.228 of 2020 dt.24-01-2020)

Teleperformance BPO Holdings Pvt Ltd v ACIT (Bom)(HC)(UR)

305.S. 234C : Interest - Deferment of advance tax – Waiver of interest – Demerger of business- Advance tax payment made by demerged company after appointed date - Resulting company entitled to waiver of Interest. [S.119]

Allowing the petition the Court held that any scheme of amalgamation, merger or demerger of companies would have to be approved by the jurisdictional High Court and the effective date may be the one provided by the High Court in its order. The appointed date may be one envisaged in the scheme or if any specification made in the orderthat may be provided by the High Court. Therefore, any such scheme would be approved having retrospective effect. Till approval comes from the High Court, the scheme remains at the stage of proposal. Under such circumstances the Chief Commissioner was in error in refusing waiver based on a fallacious consideration that the instalments were paid by GrasimIndustries Ltd. and not Samruddhi Cement Ltd.The order rejecting the waiver of interest was quashed. The Department should waive the interest payable by the assessee under S. 234C, in terms of the Board's Circular dated June 26, 2006 for the period in question. Consequently, if such interest had been already recovered, it was refundable. (AY. 2010-11)
Ultratech Cement Ltd. v. CCIT (2019) 416 ITR 449/ 311 CTR 7/ 182 DTR 113 (Bom)(HC)

306 .S. 234C : Interest - Deferment of advance tax – Demerger of the unit – Not justified in levying the interest for period before acquisition of cement business by assessee- Interest is directed to be waived. [S. 119(2), Art. 226]
Assessee-company was a successor of company Samruddhi Cement Ltd. Which was incorporated on 4-9-2009 as a subsidiary of Grasim Industries Ltd. Grasim Industries Ltd demerged its cement unit which was taken over by Samruddhi Cement Ltd. Scheme of demerger was framed which envisaged 1-10-2009 as appointed date . Scheme was approved by High Court and effective date was fixed as 18-5-2010. Scheme provided that Grasim Industries Ltd. would carry on cement business from appointed date to effective date in trust and on behalf of SCL and; advance tax payment made by Grasim Industries Ltd in respect of profits of cement business would be deemed to be paid by Samruddhi Cement Ltd and that scheme would have retrospective effect. Pursuant to such clause, Grasim Industries Ltd paid advance tax on profits of cement business in two instalments falling due on 15-3-2012 and 15-9-2012. AO held that Samruddhi Cement Ltd. had not paid advance tax instalments falling due on 15-6-2009 and 15-9-2009 and, thus, interest under S. 234C was levied. Assessee claimed for waiver of interest under S. 234C whichwas denied. Court held that scheme itself provided that all taxes paid by Grasim Industries Ltd on profit of cement business arising on and after 1-10-2010 would be deemed to be paid by Samruddhi Cement Ltd and scheme was approved having a retrospective effect. Further, Samruddhi Cement Ltd. was incorporated only on 4-9-2009 and company was not in existence on 15-6-2009. Further, by time second instalment fell due on 15-9-2009, cement business from Grasim Industries Ltd was not acquired by Samruddhi Cement Ltd. Accordingly the interest levied upon assessee under S. 234C was to be waived. (AY. 2010 -11)
Ultratech Cement Ltd. v. CIT (2019) 266 Taxman 390 (Bom) (HC)

307.S. 237: Refunds – Application for refund of excess amount paid is rejected –Remedy of revision application is maintainable - Writ is not maintainable. [S.197,246A,264, Art.226]
The assessee filed petition against order passed by AO rejecting its application seeking refund of excess amount paid as tax in relevant assessment year. The revenue raised objection to maintainability of petition itself. Court held that,if one contrasts S. 264 with S.246A which provides for appeal, it would be noticed that unlike S.246A which specifies sections from which an appeal would lie. S.264 provides for revision from 'any order' under the Act. This is another indication that the Commissioner has very wide powers to correct any order passed by an officer subordinate to him. Accordingly the petition is dismissed. (AY.2005-06)
Aditya Marine Ltd. v. DCIT (2020) 268 Taxman 230 (Bom)(HC)

308. S.244A:Interest on refund –held to be allowable to the Assessee on the self-assessment tax refunded.(244(1)(b)) Interest u/s. 244A is allowable on the self-assessmenttax refunded to the assessee. (Arising out of ITA No. 2284/M/2013 dt.29/01/2016)(ITA NO.1589 of 2016, dt.05/02/2019)(AY 2001 – 2002)
PCIT v. Bank of India(Bom)(HC)(UR)
Editorial: SLP granted to the revenue. (CA No. 7426 of 2019 13/09/2019)(2019) 418 ITR 17(St.)(SC)

309. S. 244A : Refund – Interest on refunds – Claim was made first time before Tribunal- Claim was allowed in remand proceedings by CIT (A) - Refund order was not delayed for any period attributable to assessee, Tribunal is justified in allowing interest to assessee. [S.244A(1)]

Assessee had not claimed certain expenditure before Assessing Officer but eventually raised claim before Tribunal. In remand proceedings CIT(A) granted additional benefit claimed by assessee which resulted in refund. Tribunal held that delay could not be attributed to assessee and therefore, directed payment of interest. On appeal revenue contended that by virtue of section 244A(2), since delay in proceedings resulting in refund was attributable to assessee, assessee would not be entitled to such interest revenue the Court held that there was no allegation or material on record to suggest that any proceedings were delayed on accounts of reasons attributable to assessee. Accordingly the order of Tribunal is affirmed.

CIT v. Melstar Information Technologies Ltd. (2019) 106 taxmann.com 142/ 265 Taxman 50 (Mag) / 181 DTR 29 (Bom)(HC)

310. S. 244A : Refund – Interest on refunds – Claim was made first time before Tribunal- Claim was allowed in remand proceedings by CIT (A) - Refund order was not delayed for any period attributable to assessee, Tribunal is justified in allowing interest to assessee. [S. 244A(1)]

Assessee had not claimed certain expenditure before Assessing Officer but eventually raised claim before Tribunal. In remand proceedings CIT (A) granted additional benefit claimed by assessee which resulted in refund. Tribunal held that delay could not be attributed to assessee and therefore, directed payment of interest. On appeal revenue contendedthat by virtue of S. 244A(2), since delay in proceedings resulting in refund was attributable to assessee, assessee would not be entitled to such interest revenue the Court held that there was no allegation or material on record to suggest that any proceedings were delayed on accounts of reasons attributable to assessee. Accordingly the order of Tribunal is affirmed.

CIT v. Melstar Information Technologies Ltd. (2019) 106 taxmann.com 142/ 265 Taxman 50 (Mag) / 181 DTR 29 (Bom)(HC)

311.S. 244A : Refunds – Interest on refunds -Amount seized – Shown as advance tax -Return accepted - Entitled to interest.[S.132B(4)]

Court held that theamount seized was shown as advance tax in the return and the return was accepted. The assessee is entitled to interest. (AY. 2015-16)

Agarwal Enterprises v. DCIT (2019) 415 ITR 225/ 307 CTR 322 / 175 DTR 437 (Bom)(HC)

312.S. 244A : Refunds – Interest on refunds -Appellate Tribunal directing Assessing Officer to calculate interest based on Supreme Court and High Court Decisions — Assessing Officer cannot traverse beyond scope of such order - Existence of alternative remedy is not bar to exercise of writ jurisdiction when the order is passed is bad in law and when authority exceeds his jurisdiction. [Art . 226]

The Tribunal gave certain directions to the AO to compute and pay such interest. The Assessing Officer in his order passed pursuant to such directions of the Tribunal did not agree with the contention of the assessee. On writ the Court held that the Assessing Officer cannot traverse beyond scope of such order. Accordinglythe order passed by the Assessing Officer was to be set aside. Court also held that existence of alternative remedy is not bar to exercise of writ jurisdiction when the order is passed is bad in law and when authority exceeds his jurisdiction. (AY.1994-95)

Tata Communications Ltd. v. DCIT (2019) 415 ITR 344/ 180 DTR 121 / 265 Taxman 461/ 311 CTR 690 (Bom)(HC)

313.S.245D: Settlement Commission - failed to offer any explanation and manner regarding nature of expenses in application for settlement – rightly rejected the application.

Assessee filed an application before Settlement Commission; Commission found that assessee had claimed certain expenditure as 'speed money' for getting clearances from different authorities. Since assessee failed to offer any explanation regarding nature of said expenses, Commission rejected assessee's application on ground that it had not come with clean hands. Assessee filed petition challenging order passed by Commission. High Court held that, once non-disclosure was deliberate

and possibly made with a view to present a picture different than what existed before Commission, writ jurisdiction could not be exercised.

Rashmi Infrastructure Developers Ltd. v. ITSC [2017] 396 ITR 210 (Bom.)(HC)

Editorial: SLP of Assessee is dismissed (SLP No.20185 of 2017)(2019) 412 ITR 44 (St.)(SC)

314.S. 245D : Settlement Commission – Application- Settlement Commission can declare an application for settlement invalid, but such order has to be passed within prescribed time and under no circumstances, Settlement Commission can give retrospective effect to order invalidating settlement application of assessee- Settlement Commission has no jurisdiction to pre date its order. [S.245C, 245D(2C), 245D(4)]

The issue came up for consideration in relation to the order of the Settlement Commission, invalidating the settlement application by passing the order dated 31-5-2016 but relating it back to the original order of S. 245D(2C) dated 29-1-2015. Thus, the dispute had direct relation to the period of limitation available with the Assessing Officer for completing the assessment in such cases. If the effective date of such order was taken as 29-1-2015, the Assessing Officer would have left 6 days to complete the assessment after the Settlement Commission passed the impugned order. Since he had passed the orders of assessment on 14-7-2016, his action would be plainly barred by limitation. If, on the other hand, the effect of Settlement Commission's said order invalidating the settlement application of the assessee, was taken as 31-5-2016 i.e. the actual date of passing the order, the AO would have the benefit of exclusion from limitation period from the date of filing the application till passing of the impugned order by the Settlement Commission. Court held that ,once the Settlement Commission did pass an order, whether legally permissible to do so or not, the Settlement Commission simply did not have the authority or jurisdiction to predate such order. The Settlement Commission could have rejected the request of the revenue to go back to the stage of passing the order under S. 245D(2C) and proceed further to pass final order of settlement under section 245D(4), but under no circumstances, the Settlement Commission could have made a declaration of invalidity on 31-5-2016 giving it a retrospective effect of 29-1-2015. The Settlement Commission exceeded its jurisdiction in doing so. When the Settlement Commission had no jurisdiction to give retrospective effect to its order, whether the revenue requested for the same or the assessee, would be wholly inconsequential. In essence, the Settlement Commission could either have refused the request of the department or accepted it but under no circumstances could it have passed the order of invalidation with retrospective effect.

Under S. 245D(2C), thus the Settlement Commission can declare an application for settlement invalid, but such order has to be passed within prescribed time. In the present case, the Settlement Commission to overcome such time limit, passed an order giving it retrospective effect. If one recognizes the powers of the Settlement Commission to pass such retrospective orders, the time limits envisaged by the legislature at various stages of settlement proceedings would be destroyed.

In the present case, the order passed by the Settlement Commission left six days to the Assessing Office to complete the assessments. Be that as it may, it is held that the Settlement Commission, while giving retrospective effect to its order of invalidation, acted wholly without jurisdiction.

Another important aspect of the matter is, that the portion of the order of Settlement Commission giving retrospective effect to the declaration of invalidity of the settlement application is clearly severable from the main order of invalidity. While therefore, striking down this illegal, severable portion of the order, there is no need to disturb the principle declaration made by the Settlement Commission. Under the circumstances, it is held that the observation/direction of retrospective effect of the order is set aside and the order passed by the Settlement Commission on 31-5-2016 would take effect from such date. With these observations, the petition is disposed of. (WP Nos. 2321 of 2017 dt.28-2-2019)(AY.2008-09 to 2013-14)

PCIT v. ITSC (2019) 418 ITR 339 / 263 Taxman 73/ 176 DTR 264/ 310 CTR 37 (Bom) (HC)

315.S. 250: Appeal - Commissioner (Appeals) – Guidelines for disposal of appeals – Incentive to CIT (A) –Target of disposal - Enhancement and penalty – Impermissible and invalid-Portion of Central Action Plan prepared by CBDT which gives higher weightage for disposal of appeals by quality orders i.e where order passed by Commissioner (Appeals) is in favour of revenue was to be set aside. [S.119, 250(6A)]

Allowing the petition the Court held that, The CBDT is empowered to lay down broad guidelines for disposal of appeals by CIT (A). However, it cannot offer 'incentives' to CIT(A) for making enhancement and levying penalty. Such policy transgresses the exercise of quasi-judicial powers & is wholly impermissible and invalid u/s 119. The 'Incentives' have the propensity to influence the CIT (A) and they will be tempted to pass an order in a particular manner so as to achieve a greater target of disposal.Portion of Central Action Plan prepared by CBDT which gives higher weightage for disposal of appeals by quality orders i.e. where order passed by Commissioner (Appeals) is in favour of revenue was to be set aside. (WP No. 3343 of 2018, dt.11.04.2019)
Chamber of Tax Consultants v. CBDT (2019) 416 ITR 21/ 263 Taxman 551 / 177 DTR 284 / 308 CTR 464 (Bom)(HC), www.itatonline.org

316.S.251: Power and scope of CIT(A) – already availed remedy of appeal by filing substantive appeal before CIT(A) – maintainability of petition on same ground – not allowed. (S.147)
Assessee challenged assessment by filing an appeal before CIT(A). Assessee also filed a petition challenging reopening of assessment. Dismissing the petition held that since assessee had already availed remedy of appeal challenging assessment order, it could raise all grounds as raised in writ petition in substantive appeal so filed. (WP No.13955 of 2018, dt.12/03/2019, Aurangabad Bench)
Kisan Agro Mart (P) Ltd. v. ITO [2019] 103 taxmann.com 495(Bom) (HC)
Editorial: SLP of Assessee is dismissed (SLP No.17840 of 2019 dt.26/7/2019)(2019) 417 ITR 63 (St.)(SC)/(2019) 266 Taxman 373 (SC)

317.S. 251 : Appeal - Commissioner (Appeals) – Powers – Additional grounds – Order of Tribunal holding that CIT(A) has no jurisdiction to admit addition grounds is set aside – Directed the CIT (A) to decide on merit considering the additional ground. [S.254(1)]
Allowing the appeal of the assessee the Court held that the Tribunal was not justified in holding that CIT (A) ought not to have admitted the additional grounds raised before the CIT (A) .Accordingly the order of Tribunal is set aside and directed the CIT (A) to decide the appeal on merits considering the additional grounds. (ITA No .67 of 2014 dt.05-2 2020)(AY. 2009-10)
Siva Equipment Pvt. Ltd. v ACIT (Bom)(HC)(UR)

318. S. 252 : Appellate Tribunal – Departmental promotion (DPC) - Assistant registrar – The Dept is expected to follow up the proposals to fill up the posts of Assistant Registrars in such quota as well as for issuing promotions for the posts of Deputy Registrars so that all these pots to the extent possible can be filled up at the earliest.
In a PIL filed before the Bombay High Court the Court held that, the work of important Tribunal like Income Tax Appellate Tribunal (ITAT) should not be allowed to suffer on account of shortage of administrative staff. There is no lethargy on the part of the Dept in filing up said posts. The Dept. is expected to follow up the proposals to fill up the posts of Assistant Registrars in such quota as well as for issuing promotions for the posts of Deputy Registrars so that all these pots to the extent possible can be filled up at the earliest. (WP. No. 2873 of 2018, dt.27.08.2019)
All India Federation of Tax Practitioner (AIFTP) v. UOI (Bom)(HC), www.itatonline.org

319.S. 254(1): Appellate Tribunal- Duties- Relying on the case laws not cited by both the parties- Not dealing with the case law cited by the representative of the assessee- Matter remanded to the Tribunal to pass the fresh order. [S.80IB (10)]
The Tribunal the dismissed the appeal of the assessee by relying on 63 cases which were not cited by either side. The Tribunal also not given any finding on case law relied by the authorised representative. High court at the stage of admission its self-allowed the appeal by observing that, this manner of disposing appeals by the Tribunal is not expected of it and cannot stand to the scrutiny of law and justice. The Tribunal cannot refer to decisions on its own without giving the litigant an opportunity to distinguish it. This results in a breach of the principles of natural justice. It also cannot omit to deal with the decisions relied upon by the litigant. Not dealing with the cited decisions leads to the order being bad as an order without reasons. Accordingly the matterremanded. (ITA No. 1009 of 2017, dt. 30.01.2020) (AY. 2007 -08)(Also refer, DSP Investment Pvt Ltd v. Add. CIT ITA No 2342

of 2013 dt. 8-03 2016 (Bom) (HC), Reliance Infrastructure Ltd vs. Dy .CIT ITA No.701of 2014 dt.29-11-2016 (Bom) (HC), Dattani and Co v. ITO ITA No . 847 of 2013 dt 21-10 2013 (Guj) (HC) , Lakhmi Mewal Das v ITO (1972) 84 ITR 649 (Cal) (HC) (659), Kranti Associates Pvt Ltd v Masood Ahamed Khan & ors (2010) 9 SCC 496)

Bhavya Construction Co. v. ACIT (Bom)(HC), www.itatonline.org

Editorial : Order in Bhavya Construction Co. v. ACIT (2017) 162 ITD 352 (Mum) (Trib) is set aside .

320.S. 254(1): Appellate Tribunal –Duties- The Tribunal should not make general observations that there are "contrary decisions"- Tribunal to be specific about the decisions and make a mention of the citation in the order and not make general observations.

Court held that the Tribunal should not make general observations. This statement led us to direct counsel to examine the law and bring to our attention any decision contrary to the view taken by the Supreme Court in Mahalaxmi Sugar Mills 123 ITR 429 etc. We are now informed by Counsel that there are no contrary decisions. All this effort and time would have been saved if the Tribunal had made specific reference to contrary decisions or not stated so in the absence of referring to the citations. We request the Tribunal to be specific about the decisions and make a mention of the citation in the order and not make general observations.(ITA No.809 of 2017, dt.27.08.2019)(AY. 2007 -08)

PCIT v. M. J. Export Pvt. Ltd. (Bom)(HC), www.itatonline.org

321.S.254(1): Appellate Tribunal – Power -Delay of 3389 days – NO sufficient cause is shown – Tribunal is justified in rejecting the application for condonation of delay .[S.260A]

The appeal of the assessee was delayed by 3389 days. The affidavit filed by the assessee was rejected by observing that "Thus examining the present case on the touchstone of above, we find that in this case there has been inordinate delay of about 10 years in filing the appeal. Firstly, the assessee had submitted that it was an inadvertent error. In another affidavit assessee had tried to submit that appeal papers were prepared but were not filed without any reason by the Chartered Accountant. The submission is not supported for its veracity or reasoning. Furthermore, there is no rationale in allowing a person to file an appeal after ten years simply because ten years ago also he had thought of filing the appeal. There can be many reasons why a person having thought of filing an appeal may decide not to pursue the matter. Hence, the contents of the second submission cannot be treated but as an afterthought." On appeal High Court also affirmed the order of the Tribunal. (referred Collector, Land Acquisition v. Mst. Katiji (1987) 167 ITR 471 (SC) Cenzer Industries Ltd., v. ITO dt.15th January, 2016 passed in NM Nos.492 of 2015 and 493 of 2015 in ITA (L) Nos.2079 and 2077 of 2014 (Bom) (HC) .(ITA No.3403/Mum/2014 dt 28 -02 -2017 (AY.2001-02.) (ITA No 1269 of 2017 dt 28 -01 -2020)

Perfect Circle India Ltd. (Now known as Anand I-Power Ltd.) v. ACIT(Bom)(HC)(UR)

322. S. 254(1) : Appellate Tribunal – Duties- Delay of 253 days in filing the appeal before the Tribunal is condoned – Directed the assessee to deposit Rs 10000 / with the Maharashtra State Legal Services Authority and submit receipt of the same before the Office the Tribunal - Directed the Tribunal to decide on merit [S.12A(3), 253]

The assessee has preferred an appeal before the Tribunal against the cancellation of the registration. The appeal was delayed by 253 days and affidavits were filed. Tribunal refused to condone the delay on the ground that there were inconsistences in the affidavit filed by the assessee. On appeal High Court condoned the delay and directed the Tribunal to decide on merit. Court also directed the assessee to deposit Rs.10,000/- **with** the Maharashtra State Legal Services Authority and submit receipt of the same before the Office the Tribunal. (ITA No. 942/PUN/2010 dt 21-03 -2017)(ITA No 1762 of 2017 dt.22-01-2020(AY. 2009-10)

Nandkishor Education Society v CIT (Bom) (HC) (UR)

323. S. 254(1): Appellate Tribunal – Duties-Strictures - Disallowance of administrative expenses- Matter remanded to the Tribunal following the earlier year order. [S.40(a)(ia), 40(b)(a), 194C]

The department has raised the question regarding the disallowance of expanses for failure to deduct tax at source. During the course of the arguments, learned standing counsel Revenue has fairly placed before the Court a copy of order of this Court in the case of CIT v . ITD CEM India JV, (2018) 405 ITR 533 (Bom) (HC) and submits that the same issue was gone into by this Court in respect of the same assessee for the assessment year 2008-09. Regarding deletion of the disallowance under the head of 'administrative expenses', it was held that it was a concurrent finding of fact and no substantial question of law arose therefrom. However, on the question of deletion of the amount of salary which was disallowed by the Assessing Officer under Section 40(ba) of the Income Tax Act, 1961, the same was remanded back to the Tribunal for a fresh decision on merit and in accordance with law. Honourable Court referred " para 25. However, we have expressed our displeasure and unhappiness at the manner in which the Tribunal approached the matter/issue insofar as the applicability of Section 40(ba) (question no. 10(a) reproduced above) of the IT Act is concerned, we allow this Appeal. We set aside the Tribunal's order to that extent. We restore the issue to the file of the Tribunal for being decided afresh on merits and in accordance with law. The Tribunal shall not be influenced in any manner by it's earlier observations. We also clarify that when we note the rival contentions, beyond that exercise, we have expressed no opinion on the correctness of these contentions. All of them are open insofar as this issue is concerned for being raised before the Tribunal. There will be no order as to costs." Following the order the matter is remanded to the Tribunal. (ITA No.1246/Mum/2015 dt.19 -10 -2016) (ITA NO .1742 of 2017 dt.20-01 2020 (AY. 2011-12)

PCIT v .ITD CEM INDIA JV (Bom) (HC) (UR)

324.S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Bogus purchases –Estimation of profit at 1.5 % of on sales and purchases - Re hearing of appeal is not permissible in law- Writ against the rectification is held to be not bonafide – Cost of Rs 10000 is imposed on each of the petitioners [S.69C, 254(1) , Art.226]

The assessee is in the business of builder and developer. Writ petition is filed against the order of Tribunal rejecting the miscellaneous application filed by the appellant. CIT (A) has restricted the addition to 1.5% from 3 % on sales and purchases of the alleged bogus purchases. Tribunal affirmed the order of the CIT (A). The petitioner moved the application for rectification of mistake which was dismissed by the Tribunal. Dismissing the petition the Court observed as "In the instant case, what we notice is that not only was there no mistake from the record but in the garb of the miscellaneous application, petitioner had sought for review of the final order passed by the Tribunal and for re-hearing of the appeal which is not permissible in law. In our view, Writ petition does not appear to be bonafide." Accordingly the petition is dismissed and cost of Rs.10,000/- is imposed on each of the petitioners on the petition. (Arising out of MA. No.658/M/2018 dt.13/03/2019, ITA No.4875/Mum /2014 (WP. No.2471 of 2019 dt.31-01-2020)(AY. 1999-2000)

Cavalier Trading Pvt Ltd v. Dy. CIT (Bom)(HC)(UR)

325.S.254(2): Rectification of mistake apparent on record – Application for rectification was filed within period of six months – Order recalling the order is beyond period of limitation is held to be valid . [S.255(5) , ITAT R. 24 ,Art.226]

Tribunal recalled its order in the case of Nutrela Marketing Pvt Ltd v .ITO ITA No 3910/ Mum/ 2010 dt 10 -01 2018 and placed for hearing . After hearing the Tribunal recalled the earlier order on 01-02 -2019. On writ the department contended that miscellaneous application was filed by the assessee on 9 -7 -2018 i.e with in period of six months however the Tribunal did not dispose the same with in the period of limitation , hence the order passed by the Tribunal is beyond the jurisdiction . Court held that the initial order passed by the Tribunal on 10thJanuary, 2018 was an ex-parte one for the AY. 2006- 07. The limitation of six months as noticed above was substituted by the Finance Act, 2016 with effect from 1st June, 2016. Therefore, for the assessment year under consideration the limitation

period may be construed to be four years from the date of the order. Even otherwise, if a view is taken that since the order was passed by the Tribunal on 1stFebruary, 2019, the substituted limitation period of six months would be applicable, then also it is seen that the said period of six months was available to respondent till 31st July, 2018. Respondent had filed the application for recall of the ex-parte order on 9th July, 2018 within the limitation period of six months. However, Tribunal passed the impugned order only on 1st February, 2019. Court also observed that from a careful reading of the provision, it is seen that Tribunal is vested with the power to rectify any mistake apparent from the record to amend any order passed by it under sub-section (1) of Section 254 at any time within six months from the end of the month in which the order was passed, provided the mistake is brought to its notice by the assessee or by the Assessing Officer. The use of the expression "may" in the aforesaid provision is clearly indicative of the legislative intent that the limitation period of six months from the end of the month in which the order was passed is not to be construed in such a manner that there cannot be any extension of time beyond the said period of six months. This is so because the assessee or the Assessing Officer can only bring the mistake to the notice of the Tribunal. The assessee or the Assessing Officer has no control over the Tribunal. For one reason or the other, the Tribunal may not be in a position to pass the order under Section 254(2). For the inability of the Tribunal to pass such an order within the period provided, neither the assessee nor the revenue should suffer. What therefore becomes relevant is that the assessee or the Assessing Officer should bring the mistake to the notice of the Tribunal within the limitation period. (Referred Srei Infrastructure Finance Ltd v. Tuff Drilling Private Limited, (2018)11 SCC 470. Grindlays Bank Ltd. v.. Central Government Industrial Tribunal, 1980 Supp SCC 420, Kapra Mazdoor Ekta Union v. Birla Cotton Spinning and Weaving Mills Limited, (2005) 13 SCC 777,Sree Ayyanar Spinning and Weaving Mills Ltd v. CIT (2008) 301 ITR 434 SC, Harshavardhan Chemicals and Minerals Limited v. UOI (2002) 256 ITR 767(Raj)(HC), Assam Company Ltd. v. State of Assam (2001) 248 ITR 567 (SC)(MA No.483/M/2018 dt .1-02 2019 (AY.2006 -07) (WP NO.2858 of 2019 dt.24-01-2020)

PCIT v. ITAT (Bom)(HC) www.itatonline.org

326.S.254(2) : Miscellaneous Application—Recall of order—Validity - If order of tribunal was correct, there is no reason or necessity for recalling such correct order just because Co-ordinate Bench decision was not mentioned or discussed.

While allowing the appeal of the revenue High Court observed that, tribunal allowed miscellaneous application by recalling order. In miscellaneous application there was no reference to any provision of law under which it was filed, court treats it to be an application u/s. 254(2) and not an application under Rule 24 since admittedly order dated 30.04.2008 was not an ex-parte one. All that is stated in application is that Tribunal did not refer to order of its Co-ordinate Bench regarding block assessment, moreover, in application, assessee had merely stated that a mistake had crept in order of Tribunal for not considering its own order passed by Co-ordinate Bench.

High Court held that, it was not case of assessee that it was a mistake apparent from record which was required to be rectified; all mistakes cannot be rectified u/s. 254(2). Only a mistake which is apparent from the record can be rectified under said provision. On one hand Tribunal says that its decision was correct, court fails to understand why and how Tribunal had recalled said correct order. If order was correct, there was no reason or necessity for recalling such correct order, order passed by Tribunal in quantum appeal, no prejudice has been caused to assessee. (WP No. 1813 Of 2009 dt.02/03/2020) (AY 1999 – 2000)

CITv . Ronak Parikh (HUF),(Bom)(HC)UR)

327. S. 254(2):Appellate Tribunal-Rectification of mistake apparent from the record –Failure to deal with an argument does not constitute a 'mistake apparent from the record' does not apply to a case where a fundamental submission is omitted to be considered by the Appellate Tribunal - The omission is apparent from the record and should be rectified by the Appellate Tribunal-The Tribunal ought to have decided the issue of the character of distribution fees, whether royalty or not, as all the facts were available on record before it and the submissions also were made, rather than remanding the issue to the Transfer Pricing Officer. [S.92C, 254(1)]

Allowing the petition the Court held that, the law in that failure to deal with an argument does not constitute a 'mistake apparent from the record' does not apply to a case where a fundamental submission is omitted to be considered by the ITAT. The omission is apparent from the record and should be rectified by the ITAT. The Tribunal ought to have decided the issue of the character of distribution fees, whether royalty or not, as all the facts were available on record before it and the submissions also were made, rather than remanding the issue to the Transfer Pricing Officer. (Considered. CIT v. Ramesh Electrical Co.(1993) 203 ITR 497 (Bom.)(HC)(WP No.3508 of 2018, dt.03.01.2019)(AY.2011-12)

Sony Pictures Networks India Pvt. Ltd. v. ITAT(2019) 411 ITR 447/ 306 CTR 593/ 174 DTR 89 (Bom)(HC),www.itatonline.org

328.S. 260A : Appeal - High Court - Jurisdiction - Bombay High Court does not have jurisdiction to entertain appeals in respect of order passed by the Bangalore Bench of the Tribunal, notwithstanding the fact that an order was passed under S.127 transferring the assessee's case from AO at Bangalore to AO at Pune. [S. 116, 124, 127]

High Court held that, since Tribunals and High Courts are not listed under S.116 of the Act Sections 124 and 127 will have no bearing in deciding the jurisdiction of the High Courts which will have jurisdiction over the orders of Tribunal. Jurisdiction of the Court to which the appeal would lie under the Act would be decided by the seat of the Tribunal (i.e. in which State it is), hence Bombay High Court does not have jurisdiction to entertain appeals under S. 260A in respect of order passed by the Bangalore Bench of the Tribunal, notwithstanding the fact that an order was passed under S.127 transferring the assessee's case from AO at Bangalore to AO at Pune (ITA No.1142 of 2016 dt. 26-02-2019) (AY. 2008-09)

PCIT .v. Sungard Solutions (I) (P) Ltd (2019) 308 CTR 22 / 176 DTR 57 (Bom)(HC)

329. S.260A : Appeal to High Court – Limitation –Delay of 318 days -No reasonable explanation for delay – Delay was not condoned.

Period of limitation should not come as a hindrance to do substantial justice between parties; however, at same time, a party cannot sleep over its right ignoring statute of limitation and without giving sufficient and reasonable explanation for delay. Officers of revenue should be well aware of statutory provisions and period of limitation and should pursue its remedies diligently.

CIT v. Lata Mangeshkar Medical Foundation (2019) 410 ITR 347/ 254 Taxman 347 (Bom.)(HC)

Editorial:SLP of revenue is dismissed (SLP No.42811 of 2018)(2019) 414 ITR 1(St.)(SC)

330 .S.260A: Appeal -High Court – Sale of shares- Income earned from sale of shares held for more than one year – Held as long-term capital gain- Applicability Explanation to S. 73 cannot be raised for first time in proceedings pending before High Court. [S. 45, 73]

Assessee earned income from sale of shares.AO assessed entire gain as business income. Tribunal held that shares which were sold after period of one year would give rise to long-term gain. In appeal the revenue raised the question framed related to applicability of Explanation to S. 73 of the Act. Dismissing the appeal the Court held that applicability Explanation to S. 73 cannot be raised for first time in proceedings pending before High Court.

PCIT v. Envision Investment & Finance (P.) Ltd. (2019) 264 Taxman 242 (Bom)(HC)

331.S. 263: Commissioner - Revision of orders prejudicial to revenue – Interest on NPA- AO passed the order after due consideration of the submission- Revision is held to be not justified. [S.145]

Dismissing the appeal of the revenue the Court held that the AO passed the order allowing the interest on NPAs after due consideration of the submission. Revision is held to be not justified. (Arising from ITA No. 1955 /PN/ 2014 dt.20/05/2016)(ITA No.683 of 2017 dt.26/08/2019)(AY. 2010-11).

Janalaxmi Co-Operative Bank Ltd v PCIT (2019) BCAJ -December - P. 40 (Bom)(HC)

332.S. 263 : Commissioner - Revision of orders prejudicial to revenue – Income should be taxed as business income or as arising from the other source was a debatable issue - revision is held to be not justified.

The income should be taxed as business income or as arising from the other source was adebatable issue, the AO took a plausible view. Revision proceeding is unjustified. (Arising out of ITA No.2637/Mum/2013 dt.28/10/2015)(ITA No. 1761 of 2016, dt.11/02/2019)(AY 2008 – 2009)

PCIT v. Canara Bank Securities Ltd (Bom)(HC)(UR)

Editorial:SLP of revenue is dismissed (SLP No.24546 of 2019 dt.14/10/2019) (2019) 418 ITR 17 (St.)(SC)

333.S. 263 : Commissioner - Revision of orders prejudicial to revenue - AO had made detailed enquiries - Claim for deduction of business expenditure - Revision is held to be not sustainable. [S.37(1)]

The assessee had incurred substantial loss arising out of reduction in the value of stock lying at the end of the year. The AO had carried out detailed enquiries and taken a plausible view. AO ha/s rightly allowed loss to the Assessee, revision is no justified. (ITA No. 1196 of 2016, dt.28/01/2019)(AY 2010 – 2011)

PCIT v. Sumatichand Tolamal Gouti(2019 111 taxmann.com 286 (Bom) (HC)

Editorial: SLP of revenue is dismissed (SLP No.19864of 2019 dt.19/08/2019)(2019) 417 ITR 62 (St.)(SC)/(2019) 267 Taxman 494 (SC)

334.S. 263 : Commissioner - Revision of orders prejudicial to revenue – Capital asset - Surrender of right, title and interest in plot allotted by MIDC in favour of third party- Not assessable as business income .[S.2(14) 28(i) 45]

Assessee entered into a joint venture agreement for acquisition of a plot from Maharashtra Industrial Development Corporation (MIDC) . Allotment of plot was made by MIDC in February, 2006. Assessee relinquished its right, title and interest in said plot in favour of other company and shown the receipt as capital receipt. AO accepted the claim on the basis that the assessee did not carry on any business activity during relevant year or earlier years. Commissioner passed a revisional order setting aside assessment on ground that income earned by assessee was in nature of business income. Tribunal held that the that Assessing Officer had thoroughly examined issue during course of scrutiny assessment proceedings and, had given a very categorical finding that any property whether connected with business or not other than stock-in-trade was a capital asset. Accordingly set aside the order of the revisional order of CIT. High Court upheld Tribunal's order. (AY. 2008 -09)

PCIT v. Well Wisher Construction (P.) Ltd. (2019)106 taxmann.com 259/ 264 Taxman 86 (Bom)(HC)

Editorial: SLP of revenue is dismissed, PCIT v. Well Wisher Construction (P.) Ltd. (2019) 264 Taxman 85 (SC)

335.S. 263 : Commissioner - Revision of orders prejudicial to revenue -Rectification of mistake – When the claim is justifiably allowed by the AO the rectification order could not be construed to be erroneous and prejudicial to the interest of revenue. [S.154]AO on the basis of rectification application rectified the assessment order and allowed unobserved depreciation of earlier years. CIT revised the order. On appeal the appellate Tribunal set aside the revision order following the judgement in CIT v. Virmani Industries Pvt. Ltd., (1995) 216 ITR 607 which view has been followed by several High Courts as well as by the Tribunal and held that when the claim of the respondent was justifiably allowed by the assessing officer then the same could not have been interfered with by the Commissioner by invoking the provisions of S. 263 of the Act because the rectification order could not be construed to be erroneous and prejudicial to the interest of Revenue. On appeal by the revenue, High Court affirmed the view of the Tribunal. (Arising from I.T.A. No.3055/ Mum/2015 dt 28-10 - 205) (ITA no 1029 of 2017 dt.23/02/2020 (AY.2011-12)

PCIT v .Destimoney India Services Pvt. Ltd (Bom)(HC)(UR)

336.S. 263 : Commissioner - Revision of orders prejudicial to revenue-Merger- Commissioner has no jurisdiction to consider matters considered by CIT (A) in Appeal [S. 2(15), 10(20) 11, 251]

Dismissing the appeal of the revenue the Court held that the Commissioner in exercise of the revisional powers u/s.263 could not initiate a fresh inquiry about the same claim made by the assessee on the ground that one of the aspects of such a claim was not considered by the Assessing Officer. Once the claim of the assessee for exemption under S.11 was before the CIT (A), he had the powers and jurisdiction to examine all the aspects of such claim. If the Department was of the opinion that the assessment order could not have been sustained as the assessee did not fall within the ambit of S. 10(20) the ground on which the Assessing Officer had rejected the claim and the other legal ground of S. 2(15), it should have contended before the CIT (A) to reject the assessee's claim on such legal ground. The Tribunal did not commit any error in setting aside the revision order. (AY. 2009 10)

CIT v. Slum Rehabilitation Authority. (2019) 412 ITR 521/ 178 DTR 434 / 265 Taxman 10 (Mag.)(Bom)(HC)

337.S. 263 : Commissioner - Revision of orders prejudicial to revenue – No loss to revenue – Assessment after detailed inquiry – Revision is held to be not valid [S. 45(2), 143(3)]

PCIT set aside the order of the AO in respect of three issues. On appeal the Tribunal held that as regards first issue did not result in any revenue loss hence assumption of jurisdiction is held to be not valid. As regards the second issue the assessee has shown the income under the head income from other sources, directing the AO to assessee the income as undisclosed income is held to be without jurisdiction. As regards the applicability of S.45 (2) the CIT had accepted applicability of the said provision, hence no error in the order of the AO. Further the AO has passed the order after detailed inquiry hence, revision order was quashed. On appeal by the revenue, High Court affirmed the order of the Tribunal. (ITA No 2881/Mum/2015 dt.14/05/2015)(ITA No.1740 of 2017 dt.22-01-2020 (AY.2010-11)

PCIT v. Rakesh Kumar Agarwal (2020) BCAJ-March – P.54(Bom)(HC)

338. S. 263: Commissioner - Revision of orders prejudicial to revenue – Operation loss in share trading – Verified D-mat accounts, sales, purchases and closing stock – Revision is held to be bad in law [S.28(i), 143(3)]

Assessee is engaged in business of financing and trading in shares, filed return declaring operating loss. During assessment proceeding, AO recorded that he had examined D-mat account in order to verify share trading activities sale, purchase and closing stocks were also examined Revision order passed by the CIT is quashed by the Tribunal on the ground that the show cause notice was issued by the CIT, without examining the assessment records. On appeal by the revenue the Court held that the AO had applied his mind while accepting assessee-company's claim of operating loss, which was a possible view, there was no basis to invoke S. 263 to revise assessment order on ground that books of account and transaction accounts of share trading carried out by assessee vis-a-vis D-mat accounts had not been examined by AO (AY.2011-12)

PCIT v. Cartier Leaflin (P.) Ltd. (2020) 268 Taxman 222 (Bom)(HC)

339. S. 264 :Commissioner - Revision of other orders – Accumulation of income -Mistake in form no 10- Delay in filing the form – CIT is directed to consider whether cogent reason exists for condonation of delay .[S. 11(2), 12AA, 139(4A), Form No 10, Art .226]

The assessee Trust filed the return of income u/s 139(4A) disclosing nil income, after claiming exemption us 11(2) of the Act .In the intimation passed by the AO u/s 143(1) of the Act accumulation of income to the extent of Rs 58,00, 000 was refused on the ground that form No 10 as required to be filed was filed beyond the period specified in S.11(2) of the Act. The assessee trust moved application u/s 264 of the Act to condone the delay in filing of form no 10, which was rejected. On writ it was contended that, the there was error while filing up form No 10 electronically and for this error entire claim ought not to be rejected. Court held that there was no finding in the order as to whether the entry was made due to error or it was a deliberate act. The Court remanded the matter to CIT (E) to decide on merits and also whether cogent reason exists for condonation of delay. (WP No. 3633 of 2019 dt.03-01-2020)

St. Thomas Orthodox Syiran Church v CIT (E)(Bom)(HC)(2020) CTCJ-Feb- P.120

340 S. 264 :Commissioner - Revision of other orders -Non grant of refund – Not an appealable order – Subject to revision- Alternative remedy is available- Writ is not maintainable [S. 197 ,246A, Art .226]

Court held that though an order refusing to issue refund is not an appealable order u/s 246A, it is subject to revision u/s 264. As the alternate remedy of revision is available, the Writ is not maintainable(Larsen & Toubro Ltd v ACIT (2010) 326 ITR 514 (Bom) (HC) referred).(WP No. 2484 of 2019, dt.03.10.2019) (AY. 2005 -06)

Aditya Marine Ltd v. DCIT (2019) 183 DTR 89/ 311 CTR 311 (Bom)(HC),www.itatonline.org

341. S. 264 :Commissioner - Revision of other orders –Income from sale of property is shown as short term capital gains- Revision application made to assessee the income as business income [S.5A, 28(i),45(2), 143(1) ,Portuguese Civil Code , Art .226]

Petitioners have filed the return of income showing the sale of property income as short term capital gains . The return was accepted u/s 143(1) of the Act . The petitioner there after filed the revision application u/s 264 of the Act contenting that they have wrongly shown as short term capital gains the correct position should have been the income should have shown as business income . CIT rejected the petition on the ground that application on the ground that it was afterthought top avoid the payment of capital gains tax . Allowing the petition the Court held that the petitioners have made a genuine error hence directed the CIT to dispose the petition expeditiously as possible and in any case with in a period of four months from today. (WP No. 924 of 2019 dt.14-01 2020 (AY. 2015 16)

Rajesh Prakash Timlo v. PCIT (Bom)(HC)(UR)
Vidya Rajesh Timlo v. PCIT (Bom)(HC)(UR)

342.S. 264: Commissioner - Revision of other orders – husband's ill health- Transactions in immoveable properties – Unexplained money- Matter remanded for re-adjudication. [S.69A, 143(3), Art.226]

Assessee did not file return believing that she had no taxable income. AO issued notices which were not responded .AO passed an ex-parte order holding that assessee had purchased two immovable properties and source of fund was not disclosed. He made addition of said fund to income of assessee. The assessee filed revision application before the Commissioner. Commissioner rejected the application on the ground of non -appearance before AO though the assessee pointed out that earlier notices were issued at her old address which she had changed and later notices could not be responded as her husband, who was looking after her financial matter, became bed ridden due to hip surgery She further pointed out that, she purchased one property only and sold another, that too jointly with her husband. On writ the court held that the Commissioner should examine revision petition on merits as necessary materials in support of assessee's contention could not be verified. Accordingly the matter remanded to the Commissioner to re-adjudicate on merits. (AY. 2010-11)

Daxa Bipin Dedhia (Mrs) v. PCIT (2019) 267 Taxman 62 (Bom)(HC)

343 S. 264 :Commissioner - Revision of other orders –Housing projects- Failure to claim deduction in return- Commissioner cannot grant the deduction in revisional jurisdiction by virtue of S.80A(5) of the Act. [S.80A(5), 80IB(10),

The assessee did not claim deduction under S. 80-IB(10) of the Act on its income earned from housing development projects. Assessment was completed u/ 143(3) of the Act . The revision petition was filed after the stipulated period of limitation. The Commissioner refused to condone the delay. The assessee filed writ petitions against such order. The court ordered the condonation of delay and directed the Commissioner to decide the revision applications on its merits. The Commissioner rejected the revision application on the ground that the assessee had not made a claim under S. 80-IB(10) in the return of income and that by virtue of S. 80A(5) , the claim could not be granted. In a writ petition the assessee contended that the restriction imposed by S. 80A(5) applied only to the powers of the Assessing Officer and not to the Commissioner in exercise of revisional powers . Dismissing the petition the Court held that sub-section (5) of S. 80A mandated that if the assessee failed to make a claim in his return of income for any deduction under the provisions specified

therein, it would not be granted to the assessee. This condition or restriction was not relatable to the AO or the Income-tax authority. The provision contained in sub-section (5) of S. 80A was a statutory interdiction which would prevent the Commissioner from granting a fresh claim in exercise of his revisional jurisdiction under S. 264. The width of the powers of the Commissioner under S. 264 would not permit him to ignore the requirement of S. 80A(5) or allow the claim of an assessee in breach of the condition contained therein. The assessee having given up the challenge to the Constitutionality of the retrospectively of S. 80A(5) , could not bring in the concept of reading down of the provision in order to save it from being unconstitutional. The provision contained in sub-section (5) of S. 80A was to be enforced as it stood in the statute book. (AY. 2008 -09)

EBR Enterprises v. UOI (2019) 415 ITR 139/ 180 DTR 73/ 266 Taxman 15 / 311 CTR 698 (Bom)(HC)

344.S. 264: Commissioner - Revision of other orders –Delay of seven years- Return accepted u/ s 143(1) - Rejection of revision application is held to be justified. [S.143(1)]

Dismissing the petition the Court held that; if, assessee wanted to dispute his own declaration in return; he had to take appropriate steps before Commissioner within one year of acceptance of return of return. The assessee could not take shelter of non-communication of intimation of acceptance of return under S. 143(1) for filing revision application with a delay of seven years. (AY. 2007 -08)

Sham Anand Salunkhe.v.PCIT (2019) 263 Taxman 190 (Bom)(HC)

345.S. 264: Commissioner - Revision of other orders – Subsidy - Settlement proceedings - Assessee had not raised any dispute regarding subsidy received by it during entire Settlement proceedings till settlement order was passed by Commission, it could not urge Commissioner to examine said issue in exercise of revisional powers. [S.4, 245D(4), 245F]

Dismissing the petition the Court held that ; assessee had not raised any dispute regarding subsidy received by it during entire Settlement proceedings till settlement order was passed by Commission, it could not urge Commissioner to examine said issue in exercise of revisional powers. (AY. 2006-07 to 2013-14)

Mandhana Industries Ltd. v. PCIT (2019) 262 Taxman 137 / 178 DTR 57/ 309 CTR 1(Bom)(HC)

346.S. 268A: Appeal –Instructions – Tax effect below Rs .50 lakhs - Mandate issued by CBDT in circular No. 3, dated 11-7-2018- Binding on revenue - Appeal was dismissed on ground of low tax effect. [S.260A]

Court held that where tax effect by virtue of order passed by Tribunal was below Rs.50 lakhs in view of mandate issued by CBDT in circular No.3, dated 11-7-2018, appeal filed by revenue was to be dismissed on ground of low tax effect.

PCIT v. Hotel Leela venture Ltd. (2019) 106 taxmann.com 242/ 264 Taxman 27 (Bom)(HC)

347. S. 269SS: Penalty — Mode Of receipt of loan and deposits - Not offering reasonable cause – levy of penalty is held to be justified. [S.271D, 273B]

Dismissing the appeals the Court held that the assessees did not bring on record their financial position, the details of any time bound purchase orders that were required to be executed and did not correlate the purchases made from the cash loans in question. The assessees had all along relied on the oral assertions of urgent requirement of funds without producing any material to establish such assertion. Order passed by the Tribunal affirming the levy of penalty is held to be justified. (AY.2008 -09)

Nitin Mohan Wadikar. v. ACIT (2019) 414 ITR 647 (Bom)(HC)
Manisha Nitin Wadikar v .ACIT (2019) 414 ITR 647 (Bom)(HC)

348. S. 269UC : Purchase by Central Government of immoveable properties – Restrictions on transfer - Chapter XX-C of Income-Tax Act Litigation between owner and department — Writ petitions by original assessees withdrawn in 2016 — Income-Tax Department had not taken any steps to take possession of land from 1994 to 2017 — High Court directing Income-Tax

Authorities to take conciliatory action under S. 119(2) of the Act. [S.119(2) S. 269UD,269UG , Art.226]

On a writ petition by the housing society against the order the Court held that, the building was constructed on a piece of land, title to which had vested in the Central Government in the year 1994. The original owner, therefore, had no authority to deal with the land in question. He had fraudulently executed another development agreement with the developers. The assessee-society or its members did not have any legal title to the land in question. The erstwhile owner upon being divested of title, could not have passed on any valid title to the developer and in turn, the developer could not have passed valid title to the assessee-society. The society had no locus standi to file the writ petition. However it was an agreed position that after the passing the order under section 269UG of the Act, the Department took no further steps to safeguard its interest in the land. Taking into account the inaction on the part of the Income-tax Department in safeguarding its rights in the property by having the appropriate entries made in the property records, some conciliation had to be found. The Central Board of Direct Taxes should sympathetically examine these facts and take appropriate decision in terms of its powers under S. 119(2). That respondent No. 9 was a legal heir of one of the original purchasers. The proceedings qua the deceased had abated. In any case, no grievance could be examined at his instance in this petition. However on equitable grounds the original purchasers or their heirs must receive a sum of Rs. 14 lakhs they had paid to the owner in July, 1994.

New White Rose CHS Ltd. v. Appropriate Authority (2019) 417 ITR 122/ 310 CTR 781 / 182 DTR 25 (Bom) (HC)

349. S. 271(1)(c) : Penalty – Concealment – Method of accounting -Project completion method- Year of allowability of expenses – Mere making the claim which is not sustainable in law will not amount to furnishing in accurate particulars of income -Penalty cannot be levied. [S.145]

Dismissing the appeal of the revenue the Court held that, the difference between the assessee and the revenue is merely on account of difference in the year of allowability of claim and in the absence of any doubt with regard to genuineness of the expenses claimed, penal provision cannot be attracted. Accordingly the order of Tribunal is affirmed. (Arising from ITA No. 4403/M/ 2013 dt.29-04- 2016) (ITA No.992 of 2017 dt.17-09 -2019 (AY. 2007-08)

CIT v.Lokhandwala Construction Industries Pvt Ltd. (2019) BCAJ -December -P. 41 (Bom) (HC)

350.S.271(1)(c): Penalty -Concealment -Search - There was no addition to the declared income in any of the years- Deletion of penalty is held to be justified [S.132 , 153C]

Dismissing the appeal of the revenue the Court held that , the three returns had been filed even before issuance of notice u/s.153C and inother two cases as accepted by the AO theAssessee had no taxable income. There was no addition tothe declared income in any of the years, penalty was correctlydeleted, Explanation 5A r.w.s.271 ofthe Act not applicable in searched person case. (ITA No. 897 of 2016, dt.08/01/2019) (AY. 2005 -06 , 2006 -07)

PCIT v. Rajkumar Gulab Badgujar(2019) 111 taxmann.com 256(Bom)(HC)

Editorial:SLP of revenue is dismissed (SLP No.17514 of 2019 dt.08/07/2019)(2019) 416 ITR 134 (St.)(SC)/(2019) 267 Taxman 488 (SC)

351.S. 271(1)(c) : Penalty – Concealment – Recording of satisfaction- In applicable portions are not struck off-Levy of penalty is held to be not valid

Dismissing the appeal of the revenue the Court held that Levy of penalty u/s 271(1)(c) is not valid if (i) there is no record of satisfaction by the AO that there was any concealment of income or that any inaccurate particulars were furnished by the assessee or (ii) If the notice is issued in the printed form and the inapplicable portions are not struck off. Followed, CIT v. Samson Perinchery (2017) 392 ITR 4 (Bom)(HC) & PCIT v. New Era Sova Mine (ITA Nos.70 of 2018 dt.18/06/2019)[2019 SCC online Bom 1032(Bom)(HC)]. Distinguished, Mak Data v. CIT (2013) 358 ITR 593 (SC) (ITA No. 24 of 2019, dt.11.11.2019)

PCIT v. **Goa Coastal Resosts & Recreation Pvt. Ltd.(Bom)(HC),www.itatonline.org**

352 .S. 271(1)(c): Penalty – Concealment - Explanation 5A— Disclosure of additional income in the statements and in return filed under S.. 153A - Notwithstanding that the income declared in the return fled for the period under consideration is accepted – Liable to penalty. [S.153A]

Dismissing the appeal of assessee, Court held that by virtue of Explanation 5A to S.271(1)(c) of the Act, where any income based on any entry in books, documents, transactions, statements recorded, etc is found and it represents assessee's income as claimed by him, then, penalty is leviable in view of Expln. 5A of S.271(1)(c) of the Act, notwithstanding that no further additional income has been assessed in the assessment under S.153A of the Act. (ITA Nos. 1081, 1090, 1092 , 1292 of 2016 dt.09-01-2019) (AY. 2005-06 to 2008-09)

Dr. Nitin Laxmikant Lad .v. ACIT (2019) 307 CTR 213 / 174 DTR 341 (Bom)(HC)

353.S. 271(1)(c): Penalty- Concealment – Debatable issue -Merely because the addition is confirmed levy of penalty is not justified - Deletion of penalty on the sole ground that the High Court has admitted the Appeal and framed substantial questions of law, it cannot be said that the entire issue is debatable one and under no circumstances, penalty could be imposed

Dispute between the assessee and the Department is with regard to payment of purchase of flat whether deduction u/s 54F is available. The assessee had made bona fide claim. Neither any income nor any particulars of income were concealed. The Tribunal deleted the penalty on the sole ground that quantum appeal is admitted by the High Court. Dismissing the appeal of the revenue the Court held that, merely because the addition is confirmed levy of penalty is not justified. relied on CIT v. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC).Court also observed thatMerely because the High Court has admitted the Appeal and framed substantial questions of law, it cannot be said that the entire issue is debatable one and under no circumstances, penalty could be imposed. Referred, CIT v Dharamshi B. Shah (2014) 366 ITR 140 (Guj)(HC)(ITA No. 169 of 2017, dt.19.03.2019)(AY. 2006 -07)

PCIT v. Rasiklal M. Parikh (Bom)(HC),www.itatonline.org

354.S. 271(1)(c) : Penalty – Concealment – Tribunal set aside the order to CIT(A) to decide the penalty on merits - Order of Tribunal is affirmed by the High Court - Directed the appellant to appear before CIT(A) .[S.254(1)]

Dismissing the appeal of the assessee the Court held that the order of Tribunal directing the CIT(A) to decide the issue on merit is held to be valid . The appellant is directed to appear before CIT(A) in order to enable the CIT(A) to decide the appeal on merits whether the penalty was correctly levied . (ITA No 52 of 2014 dt 4-2- 2020)(AY.1997 -98)

Gangadhar Narsingas Agrawal (HUF) v ACIT (Bom)(HC)(UR)

355.S.271(1)(c) : Penalty – Concealment –Quantum deleted -Levy of penalty was quashed.

Dismissing the appeal of the revenue the Court held that even if the order of the Court raises arguable questions. Levy of penalty is not justified. (AY.2000-01 to 2003-04)

CIT v. Ajanta Pharma Ltd. (2019)105 taxmann.com 160/ 263 Taxman 353 (Bom)(HC)

356.S.271 (1)(c) : Penalty – Concealment-Tax paid claimed as deduction - Mistake of chartered accountant – Neither the affidavit nor evidence was produced -Levy of penalty is held to be justified. [S.37(1), 40(ii)]

Assessee claimed deduction in respect of tax paid which was disallowed by the AO. In penalty proceedings the assessee contended that the deduction was claimed on basis of advice given by Chartered Accountant which was rejected and the penalty was levied. Penalty was confirmed by the Tribunal. Dismissing the appeal of the assessee the Court held that there was no material in support of assessee's claim either in form of evidence of assessee or affidavit of Chartered Accountant. Accordingly the order of Tribunal was affirmed.

Jivanlal and Sons. v. ACIT (2019)103 taxmann.com 207/ 262 Taxman 24 (Bom) (HC)

Editorial: SLP of assessee is dismissed, Jivanlal and Sons. v. ACIT (2019) 262 Taxman 23 (SC)

357.S. 271(1)(c) : Penalty – Concealment – Depreciation- Claim was withdrawn in the course of search proceedings- Deletion of penalty by the Tribunal is held to be justified. [S.32, 132(4), 153A]

Assessee filed its return claiming depreciation on its intellectual property rights. During the course of search proceedings as per the statement u/s 132(4) director of the company reduced the claim depreciation. AO imposed penalty under S. 271(1)(c) for raising a false claim. On appeal the Tribunal held claim of depreciation being a plausible claim, mere fact that same was withdrawn during subsequent search proceedings, would not give rise to penalty. Followed CIT v Reliance Petro Products (P) Ltd (2010) 322 ITR 158 (SC)(AY.2004 -05)

PCIT v. Financial Technologies India Ltd (2019) 112 taxmann.com 398 (2020) 269 Taxman 33 (Bom.)(HC)

Editorial: SLP of revenue is dismissed;PCIT v. Financial Technologies India Ltd. (2020) 269 Taxman 32 (SC)

358.S. 271C: Penalty - Failure to deduct at source – Pendency of appeal before Appellate Tribunal- Revenue authorities should be restrained from passing any order imposing penalty.[S.201 , 206AA]

On account of assessee's failure to deduct tax at source, AO raised demand under S. 201 and during pendency of appellate proceedings; he initiated penalty proceedings under S.271C of the Act. On writ the Court has directed that so long as appeal was pending before Tribunal, revenue authorities should be restrained from passing any order imposing penalty on assessee u/s.271C and 206AA of the Act. (AY.2018 -19)

Uber India Systems (P.) Ltd. v. JCIT (2019) 262 Taxman 133 (Bom)(HC)

359.S. 276C : Offences and prosecutions - Wilful attempt to evade tax –Penalty appeal is admitted by High Court-When the Appeal is admitted on substantial questions of law, there is no justification for the DCIT to threaten the assessee with prosecution- Even if such prosecution is launched, the same shall not proceed till the pendency of the appeal.[S. 260A, 271(1)(c)]

Allowing the notice of motion the Court held that; once appeal is admitted on substantial questions of law, there is no justification for the Dy. CIT to threaten the appellant/applicant with any prosecution. Even if such prosecution is launched, the same shall not proceed till the pendency of this Appeal. The Notice of Motion is made absolute in terms of prayer clause (a).(ITA No. 785 of 2017, dt. 21.08.2017)

Deepak Fertilizer and Petrochemicals Corporation Ltd v. ACIT (Bom)(HC),www.itatonline.org

Editorial: Also refer Suresh Company Pvt Ltd v PCIT (ITA No.738 of 2016, Notice of motion 84 of 2019 dt.25-1-2019)(Bom)(HC)

360.S. 281B : Provisional attachment – Search -Attachment of bank accounts and two immoveable properties - Tax ,interest penalties were unlikely to exceed attached two immoveable properties- Directed to lift provisional attachment on bank accounts. [S.132]

Pursuant to search action in order to protect interest of revenue, assessee's bank accounts and two immovable properties had been put under provisional attachment. On writ the Assessee submitted that he being 65 years of age, such action of Department which had virtually prevented him from accessing his own funds in bank accounts would cause great difficulty in meeting his day-to-day expenses, to meet with special requirements for medical attention for himself and his aged mother. Further, attachment on movable properties being enough to cover all possible tax, interest and penalty which may arise even if all defences of assessee were negative, attachment of back accounts be lifted. Court held that in view of fact that assessee's tax, interest and possible penalty liabilities were unlikely to exceed valuation of aforesaid two immovable properties; provisional attachment of his bank accounts was to be lifted without disturbing attachment of immovable properties till litigation with respect to alleged undisclosed foreign income was over. The petitioner is prevented from selling,

transferring, creating any charge or encumbrances on the said two immovable properties till the present litigation is over or without leave of the Court
Darius Sammotashaw v. DIT (inv.) (2019) 265 Taxman 8 (Mag.)(Bom)(HC)

361.Income Declaration Scheme 2016 (IDS)-Finance Act , 2016 (2016) 381 ITR 134 (St)(S. 178 to 196) , (2016) 384 ITR 165 (St). (Refer AIFTPJ. July 2016)

S.183: Scheme - Composite declaration for several years —Condition laid down in scheme is fulfilled in respect of some of years - Entitled to benefit of scheme for those years - Self-assessment tax and advance tax is not adjustable against amounts due under scheme - Appeal will be entertained without raising the issue of limitation if the appeals are filed latest by April 30, 2019 [S.246A]
Court held that, c**o**mposite declaration for several years is not permissible under the scheme. However where the condition laid down in scheme is fulfilled in respect of some of years the assessee is entitled to benefit of scheme for those years. Self-assessment tax and advance tax is not adjustable against amounts due under scheme. Court directed the CIT(A) to entertain the appeal without raising the issue of limitation if the appeals are filed latest by April 30,2019**.**(Circular No.25 of 2016 dt.30/06/2016 (2016) 385 ITR 22 (St).
Umesh D. Ganore. v. PCIT (2019) 413 ITR 66/ 308 CTR 377 / 177 DTR 185 (Bom) (HC)
Mangesh D. Ganore v. PCIT (2019) 413 ITR 66/ 308 CTR 377/177 DTR 185 (Bom) (HC)

362 .Constitution of India - Art . 227 : Corona Virus Lockdown Crisis - Extension of interim orders – Expiring before 30 -04 -2020 – Shall continue to operate till then – Interim orders which are not granted for limited duration are to operate till further orders shall remain unaffected by this order .[Art . 226]
The Bench of four Judges of Bombay High Court was constituted on 26-03 -2020 emergent situation considering the outbreak of COVID-19
and consequential lockdown. Honourable Court held that , as the lock down is now declared till 14.04.2020,normal working of this court at least till then is not possible. As the staff is not available, files cannot be made over to court. As local transport is shut down, lawyers and litigants are finding it difficult to approach the court. In this situation, we find it appropriate to continue all interim orders which are operating till today and are not already continued by some other courts / authority including this court and the same shall remain in force till 30.04.2020, subject to liberty to parties to move for vacation of interim orders only in extreme urgent cases.

Thus, all interim orders passed by this High Court at Mumbai, Aurangabad, Nagpur and Panaji as also all courts/ Tribunal and authorities subordinate over which it has power of superintendence expiring before 30.04.2020, shall continue to operate till then. It is clarified that such interim orders which are not granted for limited duration and therefore, are to operate till further orders, shall remain unaffected by this order.(WPNo 20 of 2020 dt 26-03 -2020)

Court on its own Motion (Bom) (HC) www.itatonline.org.