Hon'ble Bombay High Court Direct-tax Case Law Digest

January 2021 to December 2022

Income-tax Appellate Tribunal Bar Association – Mumbai

Editor

Dr. K. Shivaram, Senior Advocate

Research Team

Mr. Paras Savla, Advocate

Mr. Rahul Hakani, Advocate

Mr. Shashi Bekal, Advocate

ITATONLINE.ORG

YOUR ONE-STOP RESOURCE FOR ALL ITAT RELATED MATTERS & MORE

EDITORIAL

Bombay High Court-Important Judgments of the Hon'ble Bombay High Court (Reported/ Unreported/ SLP Admitted/ Rejected) (January 2021 to December 2022)

The Honourable Bombay High Court delivered many landmark judgements from January 2021 to December 2022. During the period of the pandemic as well as thereafter, the Honourable Bombay High Court tax Bench headed by Honourable Mr Justice K.R. Shriram disposed around 5000 cases in a short span of nine months. For the benefit of Tax professionals, the research team has prepared the gist of important case laws, which are published in the form of an e-journal.

Honourable Mr. Justice K.R. Shriram delivered an inaugural lecture on November 12, 2022, for the Chamber of tax consultants, Mumbai on the subject of Land Mark Income tax rulings (Virtual mode). One can watch the lecture and also download its gist.

In the last two years, 90 per cent of the writ petitions filed before various High Courts are challenging the reassessment proceedings. The research team is of the considered view that the gist of the case laws and lecture delivered by Honourable Mr Justice K.R. Shriram will help the tax professionals to better understand the law on reassessment. Though the law on the subject of the reassessment has changed, the ratio of the judgements will be useful to understand the new provision as well.

The research team is of the view that if the tax administration should follow guidelines referred to in the various judgements of the Bombay High Court for the assessment and reassessment, it will benefit the assessees as well as the tax administration.

Editorial Board

Dr. K. Shivaram, Senior Advocate

Research team

Mr. Paras S. Savla, Mr. Rahul Hakani & Mr. Shashi Bekal, Advocates

I N D E X

17	Anup Lakhmichand Anand v. CIT (2022) 216 DTR 401 / 328 CTR 716 (Bom.) (HC)	202
18	Apar Corporation Pvt. Ltd. v. ACIT (Bom.)(HC) (UR)	144
19	Ashok Bhagirathmal Jiwrajka v. DCIT (Bom.)(HC)(UR)	150
20	Ashok Devichand Jain v. UOI (Bom.)(HC)(UR)	141
21	Ashok G. Jhaveri v. UOI(2021) 438 ITR 652 / (2022) 211 DTR 288/ 325 CTR 302 (Bom.)(HC)	222
22	Ashraf Alibhai Nathani v. ACIT (2022) 211 DTR 336 (Bom.)(HC)	97
23	Ashutosh Bhatt; CIT(IT) v. (2022) 287 Taxman 436/ 217 DTR 381 / 329 CTR 541 (Bom.)(HC)	216
24	Asian Paints Ltd. v. ACIT (2022) 285 Taxman 65 (Bom.)(HC)	102
25	B.K. Associates v. NEAC (Bom.)(HC) (UR)	49
26	Batliboi Environmental Engineering Ltd.; PCIT v. (2022) 446 ITR 238 (Bom.)(HC)	44 22
27	Bennett Coleman & Co. Ltd. v. Dy. CIT (2022) / 441 ITR 25/ 211 DTR 227 / 325 CTR 545 (Bom.)(HC)	176
28	Bennett Property Holdings Company Ltd. v. DCIT (Bom.)(HC) (UR)	85
29	Bharat Petroleum Corporation Ltd. v. ADIT (2022) 284 Taxman 647 (Bom.)(HC)	178
30	Bhavani Gems (P) Ltd. v. ACIT (2022) 287 Taxman 682 (Bom.)(HC)	123
31	Bhavesh Mohan Lakhwani v. PCIT (2022) BCAJ-March-P. 49 (Bom.)(HC)	203
32	Bhavi Homes Pvt. Ltd. v. NFAC (2021) The Chamber's Journal-December-P. 165 (Bom.)(HC)	61
33	Bhupendra Harilal Mehta v. PCIT (2021) 435 ITR 220 / 201 DTR 89 / 320 CTR 483 (Bom.)(HC)	228
34	Borkar Packaging (P.) Ltd.; CIT v. (2021) 276 Taxman 131 / 199 DTR 526/ 320 CTR 792 (Bom.)(HC)	34
35	Bramha Corp Hotels and Resorts Ltd.; PCIT v. (2022) 136 taxmann.com 398 (Bom.)(HC)	24

36	C.F. Andrews Education Society v. UOI (2021) 434 ITR 423 / 320 CTR 331 / 200 DTR 289 / 280 Taxman 4 (Bom.)(HC)	16
37	CEAT Ltd. v. ACIT (Bom.)(HC)(UR)	82
38	Chandan Magraj Parmar; CIT v. (2022) 445 ITR 674/ 285 Taxman 565 (Bom.)(HC)	197
39	Chander Arjandas Manwani v. NFAC (2021) 283 Taxman 380 (Bom.)(HC)	59
40	Chandrakant Narayan Patkar Charitable Trust v. ITO(E) (2022) 287 Taxman 685 (Bom.)(HC)	123
41	Chandrakant Narayan Patkar Charitable Trust v. UOI (2021) 436 ITR 601 / 203 DTR 401 / 321 CTR 404 (Bom.)(HC)	230
42	Chetan D. Divekar v. NFAC (Bom.)(HC)(UR)	48
43	Coca-Cola India P. Ltd. v. DCIT (2022) 440 ITR 20 (Bom.)(HC)	77
44	Connectwell Industries Pvt. Ltd. v. DCIT (Bom.)(HC)(UR)	114
45	Conopco Inc v. UOI (2022) 285 Taxman 472 / 215 DTR 283 (Bom.) (HC)	133
46	Cooperative Rabobank U A v. CIT(IT) (2022) 284 Taxman 40 (Bom.)(HC)	223
47	Cooperative Rabobank U. A. v. CIT(IT) (2021) 436 ITR 459 / 203 CTR 281 / 321 CTR 352 / 283 Taxman 22 (Bom.)(HC)	228
48	Co-Operative Rabobank U. A. v. CIT(IT) (2021) 437 ITR 639 / 205 DTR 113/ 322 CTR 257/ (2022) 284 Taxman 175 (Bom.)(HC)	227
49	Crescent Construction Co.; PCIT v. (2022) 288 Taxman 730 / 328 CTR 230 / 217 DTR 74 (Bom.)(HC)	22
50	CVO Chartered & Cost Accountants' Association, Mumbai v. UOI (2021) 434 ITR 219 / 278 Taxman 307 / 198 DTR 85 / 319 CTR 60 (Bom.)(HC) www.itatonline.org	43
51	Darshan Jitendra Jhaveri v. CIT(IT) (2021) 439 ITR 514 / (2022) 285 Taxman 212 (Bom.)(HC)	42

52	Daryapur Shetkari Sahakari Ginning and Pressing Factory v. ACIT (2021) 277 Taxman 155 / 200 DTR 417 / 320 CTR 456 (Bom.)(HC)	191
53	Davariya Brothers Private Limited v. ACIT (Bom.)(HC)(UR)	142
54	Delta Global Allied Ltd. v. ACIT (Bom.)(HC)(UR)	49
55	Dempo Industries (P.) Ltd.; PCIT v. (2021) 279 Taxman 166 / 205 DTR 489 / 322 CTR 676 (Bom.)(HC)	169
56	Dentsu Aegis Network Marketing Solutions Pvt. Ltd. v. ACIT (2022) 441 ITR 41 (Bom.)(HC)	99
57	Dhananjay Mishra; PCIT v. (Bom.) (HC) www.itatonline.org	33
58	Dhiren Anantraj Modi v. ITO (The Chamber's Journal-January-P. 73 (Bom.)(HC)	139
59	Dilip Bhagirathmal Jiwrajka v. DCIT (Bom.)(HC)(UR)	150
60	Dilipkumar P. Chheda v. ITO (2021) 435 ITR 101 / 202 DTR 33 / 278 Taxman 106 (Bom.)(HC)	180
61	Dinar Tarcar v. ACIT (2022) 286 Taxman 638 / 213 DTR 57 / 326 CTR 310 (Bom.)(HC)	160
62	Dinesh Vazirani v. PCIT (2022) 445 ITR 110 / 288 Taxman 325 (Bom.)(HC)	28
63	Directi Services Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)	172
64	Divesh Prakashchand Jain v. PCIT (2022) 445 ITR 496 / 285 Taxman 206 (Bom.)(HC)	41
65	ECGC Ltd. v. ACIT (Bom.)(HC) (UR)	80
66	Edelweiss Asset Reconstruction Co. Ltd. v Tax Recovery Officer (2021) 438 ITR 568/ 205 DTR 1/ 322 CTR 137 (Bom.) (HC)	182
67	Edgar Braz Afonso v. CIT (2021) 436 ITR 616 / 204 DTR 376 / 322 CTR 121 / 128 taxmann.com 180 / 281 Taxman 171 (Bom.)(HC)	193
68	E-Land Apparel Ltd. v. ACIT (Bom.) (HC) www.itatonline.org.	103
69	Emarsso Exports Private Limited; PCIT v. (Bom.)(HC) www.itatonline.org	195
70	Emsons Exim Pvt. Ltd.; CIT v. (2021) 439 ITR 607 (Bom.) (HC)	210

71	EPC Industries Ltd.; PCIT v. (2021) 439 ITR 210 (Bom.)(HC).	113
72	Equitable Financial Consultancy Services Pvt. Ltd. v. ITO (Bom.)(HC) (UR)	152
73	Equity Trust (Jersey) Ltd. v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 (Bom.)(HC)	6, 10
74	ExxonMobil Company Private Limited v. DCIT (Bom.)(HC) (UR)	65
75	Farmacia Molio v. ITO (2022) 444 ITR 65 / 287 Taxman 11 / 216 DTR 219 / 327 CTR 71 (Bom.)(HC)	129
76	First Source Solutions Ltd. v. ACIT (2021) 438 ITR 139 / 206 DTR 441 / 323 CTR 18 (Bom.)(HC)	112
77	Footcandles Film Pvt. Ltd. v. ITO (2023) 146 taxmann.com 304 (Bom.)(HC)	220
78	Future Corporate Resources Ltd.; CIT v. (2022) 284 Taxman 122 (Bom.)(HC)	199
79	Gagan Omprakash Navani v. ITO (2022) 286 Taxman 668 / 445 ITR 147 (Bom.)(HC)	129
80	Ganga Iron & Steel Trading Co. v. CIT (2022) 286 Taxman 21 (Bom.)(HC)	216
81	Gemstar Construction (P.) Ltd. v. UOI (2022) 285 Taxman 457 (Bom.) (HC)	132
82	GIA laboratory Pvt. Ltd. v. ITO (2023) 430 ITR 7 (Bom.)(HC)	175
83	Girish Raghvan v. PCIT (Bom.)(HC)(UR)	203
84	Glaxosmithkline Pharmaceuticals Ltd. v. ACIT (2022) 286 Taxman 324 (Bom.)(HC)	91
85	Goa Carbon Ltd. v. JCIT (2022) 446 ITR 590 / 289 Taxman 322 (Bom.) (HC)	194
86	Goa Dourado Promotions Pvt. Ltd.; PCIT v. (2021) 433 ITR 268 (Panji) (Bom.) (HC)	217

87	Goa Industrial Development Corporation (Through its Managing Director) v. NFAC (2022) 442 ITR 212 /285 Taxman 464/ 209 DTR 57/ 324 CTR 129 (Bom.)(HC)	57
88	Goa State Co-operative Bank Ltd.; PCIT v. (2021) 318 CTR 497 / 197 DTR 305 / 110 CCH 54 (Bom.)(HC)	166
89	Godrej and Boyce Manufacturing Co. Ltd. v. ACIT (Bom.)(HC) (UR)	88
90	Golden Peace Hotels and Resorts (P.) Ltd.; PCIT v. (2021) 124 taxmann.com 248 (Bom.) (HC)	218
91	Golden Tobacco Ltd. v. ACIT (2022) 447 ITR 736 / 285 Taxman 688 (Bom.)(HC)	121
92	Golden Tobacco Ltd. v. NFAC (2022) 442 ITR 204 / 284 Taxman 292 (Bom.)(HC)	54
93	Goldline Pharmaceuticals Pvt. Ltd.; PCIT v. (2022) 441 ITR 543 / 210 CTR 57 / 324 CTR 640 / 136 taxmann.com 36 (Bom.)(HC)	21
94	Gopal Extrusions Pvt. Ltd. (Through its Director Sanjay Ramgopal Taparia) v. ITR (2022) 326 CTR 713/ 214 DTR 105 (Bom.)(HC)	194
95	Govindrajulu Naidu v. PCIT (2021) 435 ITR 703 / 201 DTR 241 / 320 CTR 673 / 280 Taxman 392 (Bom.)(HC)	224
96	Grasim Industries Ltd. v. DCIT (Bom.)(HC)(UR)	119
97	Great Eastern Shipping Co. Ltd. v. NFAC (2022) 211 DTR 442 / 327 CTR 482 (Bom.)(HC)	136
98	Greatship (India) Ltd. v. ACIT (Bom.)(HC). www.itatonline.org	184
99	GSA Constructions v. National Faceless Assessment Centre (2021) 203 DTR 305 / 321 CTR 362 (Bom.)(HC)	64
100	Gstaad Hotels Pvt. Ltd. v. NFAC (2022) 218 DTR 265 (Bom.)(HC)	51
101	H.P. Diamond India (P) Ltd v. Dy. CIT (2022) 139 taxmann.com 515 (Bom)(HC)	140
102	Halite Personal Care India (P.) Ltd. v. DCIT (2022) 448 ITR 303 / 218 DTR 531 / 286 Taxman 464 (Bom.)(HC)	91
103	Hanwant Manbir Singh v. Dy.CIT (Bom.)(HC)(UR)	78

104	Hapag Lloyd India Pvt. Ltd. v. PCIT (2022) 443 ITR 168 / 212 DTR 99(Bom.)(HC)	204
105	Haren Textiles (P.) Ltd. v. PCIT (2021) 206 DTR 465 / 323 CTR 14 / 284 Taxman 58 (Bom.)(HC)	215
106	Harish Gangji Dedhiya v. UOI (2022) 443 ITR 273 (Bom.)(HC)	157
107	Harsh Kaushal Corporation v. ITO (Bom.)(HC) (UR)	80
108	Hassan Ali Khan; PCIT v. (2021) 124 taxmann.com 208 (Bom.)(HC)	33
109	HDFC Bank Ltd. v. ACIT (2022) 445 ITR 196 / 286 Taxman 365 (Bom.)(HC)	128
110	Hemant Lalwani v. ITO (Bom.)(HC) www.itatonline.org	219
111	Hindustan Unilever Ltd. v. Dy. CIT (2021) 439 ITR 333 / (2022) 284 Taxman 252 / 212 DTR 323 / 326 CTR 325 (Bom.)(HC)	108
112	Hitech Corporation Ltd. (Formerly known as Hitech Plast Ltd.) v. ACIT (Bom.)(HC)(UR)	78
113	Idea Cellular Ltd.; CIT v. (2021) 125 taxmann.com 171 (Bom.)(HC)	169
114	Ideal Associates v. ACIT (2022) 448 ITR 260 (Bom.)(HC)	154
115	Implenia Services and Solutions Pvt. Ltd. v. Dy. CIT (Bom.)(HC) (UR)	141
116	Indofil Industries Ltd.; PCIT v. (2022) 285 Taxman 476 (Bom.)(HC)	22
117	Ingram Micro Inc v. ITO (IT) (2022) 444 ITR 568 / 212 DTR 360 / 326 CTR 650 (Bom.)(HC)	172
118	J. Ray Mc Dermott Eastern Hemisphere Ltd.; CIT (IT) v. (2022) 288 Taxman 574 (Bom.)(HC)	2
119	J.K. Trust v. ACIT (Bom.)(HC) (UR)	76
120	J.M. Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT (2022) 215 DTR 98 / 327 CTR 458 (Bom.)(HC) www.itatonline.org	155
121	Jacob Engineering India (P) Ltd v. ACIT (2022) 285 Taxman 326 (Bom.)(HC)	39
122	Jainam Investments v. ACIT (2021) 439 ITR 154 / 283 Taxman 439 / 206 DTR 447 / 323 CTR 25 (Bom.)(HC)	111

140	Knight Riders Sports Pvt. Ltd. v. Dy. CIT (2022) 329 CTR 779 / 220 DTR 190 (Bom.)(HC)	72
141	Kumar Builders Consortium; PCIT v. (2022) 447 ITR 44 (Bom.)(HC). www.itatonline.org.	37
142	L.K.P. Merchant Financing Ltd. v. Dy. CIT (2022) 447 ITR 507 / 288 Taxman 389 / 329 CTR 909 / 220 CTR 231 (Bom.)(HC)	19
143	Lintas India (P.) Ltd. v. UOI (2022) 324 CTR 539 / 209 DTR 473 (Bom.)(HC)	156
144	Lintas India Pvt. Ltd. v. UOI (Bom.)(HC) (UR)	84
145	Little Angels Education Society v. UOI (2021) 434 ITR 423 / 320 CTR 331 / 200 DTR 289 / 280 Taxman 4 (Bom.)(HC)	16
146	LKP Securities Ltd. v. Dy.CIT (2022) BCAJ-August-P. 77 (Bom.)(HC)	51
147	Lokhandwala Construction Industries v. Dy. CIT (Bom.)(HC) www.itatonline.org	105
148	Macrotech Developers Limited v. PCIT (2021) 434 ITR 131 / 200 DTR 121 / 320 CTR 79 / 280 Taxman 37 (Bom.) HC)	233
149	Maharashtra Oil Extraction Private Limited v. Dy. CIT (2022) 287 Taxman 465 / 114 CCH 315 (Bom.)(HC) www.itatonline.org	135
150	Maharashtra State Electricity Distribution Co. Ltd. v. DCIT (Bom.)(HC) (UR)	84
151	Maharashtra State Electricity Distribution; PCIT v. (Bom.)(HC) (UR)	197
152	Maharashtra State Power Generation Company Ltd. v. DCIT (2022) 286 Taxman 333 (Bom.)(HC)	92
153	Mahendra Corporation v. PCIT (2021) 436 ITR 527 / 321 CTR 415 / 282 Taxman 150 / 203 DTR 425 (Bom.)(HC)	231
154	Mahindra CIE Automotive Ltd. v. ACIT (2022) 216 DTR 457 (Bom.)(HC)	113
155	Mahindra Engineering and Chemical Products Ltd.; PCIT v. (2022) 285 Taxman 699 (Bom.)(HC)	20

172	MSPL Limited v. PCIT (2021) 436 ITR 199 / 202 DTR 117 / 321 CTR 1 (Bom.)(HC)	192, 196
173	Mukund Bhavan Trust; CIT v. (Bom.)(HC)	17
174	Multiplier Brand Solutions Pvt. Ltd. v. ITO (2022) 442 ITR 202 (Bom.)(HC)	53
175	Murli Industries Limited v. ACIT (Nag-Bench) (2022) 441 ITR 8 / 209 DTR 337/ 324 CTR 355 (Bom.)(HC) www.itatonline.org.	148
176	Naresh Balchandrarao Shinde v. ITO (2022) 220 DTR 401 (Bom.)(HC)	159
177	Naroli Resorts Private Limited v. ACIT (Bom.)(HC)(UR)	79
178	National Construction Company v. The Designated Committee under Sabka Vishwas Legacy Disputes Resolution Scheme, 2019 (2022) 326 CTR 799/ 213 DTR 423 (Bom.)(HC)	244
179	National Health & Education Society; PCIT(E) v. (2021) 197 DTR 147 / 318 CTR 500 (Bom.)(HC)	14
180	National Stock Exchange; PCIT v. (2021) 323 CTR 1025 (Bom.) (HC)	238
181	Nayan Jayantilal Balu v. UOI (Bom.)(HC) www.itatonline.org	219
182	ND's Art World Private Limited v. NFAC (Bom.)(HC)(UR)	47
183	Nelco Ltd. v. ACIT (Bom.)(HC) (UR)	86
184	Neville Tuli v. ITO (2022) 213 DTR 1 / 326 CTR 432 (Bom.)(HC)	2
185	New Ear Vaglar Mine; PCIT v. (2021) 433 ITR 249 (Panji) (Bom.) (HC)	218
186	New Era Keli Mine; PCIT v. (2021) 433 ITR 249 (Panji) (Bom.) (HC)	218
187	New Era Sova Mine; PCIT v. (2021) 433 ITR 249 (Panji) (Bom.) (HC)	217
188	New Lakshmi Jewellers v. PCIT (2021) 431 ITR 570 / 318 CTR 713 / 278 Taxman 403 / 200 DTR 264 (Bom.)(HC)	43
189	Nexus Builders and Developers (P.) Ltd.; PCIT v. (2022) 285 Taxman 233 (Bom.)(HC)	29
190	Nirajkumar N. Rungta v. CWT (2021) 435 ITR 179 / 201 DTR 289 / 320 CTR 289 (Bom.)(HC)	242

191	Nirmal Bang Securities Pvt. Ltd. v. ACIT (Bom.) (HC) www.itatonline.org	104
192	Nirupa Udhav Pawar (Smt.) v. ACIT (2021) 439 ITR 541 328 CTR 771 / 214 DTR 427 (Panji Bench) (Bom.)(HC)	70
193	Nitinkumar v. JCIT. (2022) 443 ITR 411 (Bom.) (HC)	131
194	Nitn Nagarkar v. ITO (Bom.)(HC), www.itatonline.org.	220
195	Novelty Properties & Investment Pvt. Ltd. v. ACIT (2022) 209 DTR 185 / 325 CTR 373 (Bom.)(HC)	162
196	Nuclear Power Corporation of India Ltd.; CIT, LTU v. (2021) 283 Taxman 549 (Bom.)(HC)	199
197	Nusli N. Wadia v. ACIT (2022) 447 ITR 363 / 142 taxmann.com 333 (Bom.)(HC)	158
198	Om Shivam Buildcon Pvt. Ltd. v. UOI (2022) 441 ITR 655 (Bom.) (HC)	229
199	Omega Investments and Properties Ltd. v. CIT (Bom.)(HC) www.itatonline.org	229
200	Oracle Financial Services Software Ltd. v. Dy. CIT (2022) 442 ITR 160/ 286 Taxman 469 (Bom.)(HC)	131
201	Oracle Park, off Western Express Highway v. Dy. CIT (2022) 210 DTR 33 / 325 CTR 95 (Bom.)(HC)	136
202	Pankaj v. NEAC (2022) 441 ITR 502 / 211 DTR 313 / 325 CTR 567 (Bom.)(HC)	55
203	Parag Kishorchandra Shah v. NFAC (Bom.)(HC)(UR)	48
204	Parinee Realty (P.) Ltd. v. ACIT (2022) 286 Taxman 337 / 217 DTR 279 (Bom.)(HC)	126
205	Parle Bisleri (P) Ltd. v. Dy. CIT (2022) 288 Taxman 673 (Bom.)(HC)	18
206	Parle Products (P.) Ltd. v. ACIT (2022) 286 Taxman 235 (Bom.)(HC)	127
207	Patel Engineering Ltd. v. Dy. CIT 446 ITR 728 / 285 Taxman 655 / 210 DTR 185 (Bom.)(HC)	95
208	Pavan Morarka v. ACIT (2022) 211 DTR 201 / 325 CTR 377 / 136 taxmann.com 2 (Bom.)(HC)	149

209	Peninsula Land Ltd. v. ACIT (2021) 439 ITR 582 / (2022) 134 taxmann.com 33 / 284 Taxman 556 (Bom.)(HC)	110
210	Perizad Zorabian Irani v. PCIT (2022) 287 Taxman 406 / 328 CTR 909 / 218 DTR 219 / 113 CCH 339 (Bom.)(HC)	26
211	Peter Vaz v. CIT (2021) 436 ITR 616 / 204 DTR 376 / 322 CTR 121 128 taxmann.com 180 / 281 Taxman 171 (Bom.)(HC)	193
212	Pfizer Ltd. v. ACIT (2022) 285 Taxman 188 / 209 DTR 149 / 327 CTR 189 (Bom.)(HC)	102
213	Pidilite Industries Ltd. v. UOI (2022) 288 Taxman 227 (Bom.)(HC)	72
214	Pinnacle Vastunirman Pvt. Ltd. v. UOI (2021) 438 ITR 27 / 206 DTR 227 / 323 CTR 159 (Bom.) (HC)	225
215	Piramal Enterprises Ltd. v. Addl. CIT (2021) 282 Taxman 407 / 205 DTR 81 / 322 CTR 370 (Bom.)(HC)	65
216	Plaza Diamond Properties Pvt. Ltd. v. CCIT (2021) 435 ITR 595 (Bom.)(HC)	213
217	Praful M. Shah v. NAFC (2022) 136 Taxmann.com 295 (Bom.)(HC)	53
218	Prakash Krishnavtar Bhardwaj v. NFAC (Bom)(HC)	160
219	Prakash Nanji Paatel v. National Faceless Assessment Centre (2021) 203 DTR 220 / 321 CTR 256 (Bom.)(HC)	64
220	Prathamesh Constructions; PCIT v. (2022) 285 Taxman 287 / 324 CTR 542 / 209 DTR 363 (Bom.)(HC)	37
221	Preethi Kitchen Appliances (P.) Ltd. v. ACIT (2022) 446 ITR 411 / 286 Taxman 483 (Bom.)(HC)	126
222	Premlata Mohan Agarwal (Mrs.) v. PCIT (2021) 439 ITR 268 (Bom.) (HC)	229
223	Premlata Ramakant Fatehpuria v. PCIT (2022) 288 Taxman 54 (Bom.)(HC)	46
224	Prethi Kitchen Appliances Pvt. Ltd. v. ACIT (2022) The Chamber's Journal-February-P. 180 (Bom.)(HC)	125
225	Qmax Synthetics Pvt. Ltd.; PCIT v. (Bom.)(HC)(UR)	189

226	Quepem Urban Co-Operative Credit Society Ltd.; PCIT v. (2021) 438 ITR 631 / 281 Taxman 245 / 203 DTR 141 (Goa) (Bom.)(HC)	37
227	Racahna Morarrka v. ITO (2022) 211 DTR 201 / 325 CTR 377 / 136 taxmann.com 2 (Bom.)(HC)	149
228	Raja Builders v. National Faceless Assessment Centre (2021) 280 Taxman 304 (Bom.)(HC)	65
229	Rajasthan Udyog and Tools Private Limited v. ACIT (Bom.)(HC)(UR)	115
230	Rajebahadur Madhusudan Trimbak v ITO (2022) 443 ITR 49 / 212 DTR 241/ 325 CTR 49 (Bom.)(HC)	146
231	Rajendra R. Singh v. ACIT (2022) 328 CTR 691 / 216 DTR 386 /143 taxmann.com 34 (Bom.)(HC)	165
232	Rajeshwar Land Developers (P.) Ltd. v. ITO (2022) 288 Taxman 186 / (2023) 430 ITR 108 (Bom.)(HC)	73
233	Rajhans Metal Pvt. Ltd.; PCIT v. (Bom.)(HC) (UR)	196
234	Rajkumar S. Singh v. ACIT (2022) 287 Taxman 296 / 114 CCH 300 (Bom.)(HC)	89
235	Ram Builders; PCIT v. (Bom.)(HC) www.itatonline.org.	32
236	Ramacanta Velingkar Minerals; CIT v. (2021) 430 ITR 161 / 277 Taxman 299 / 205 DTR 324 / 322 CTR 350 (Bom.)(HC)	14
237	RBL Bank Limited v. ACIT (Bom.)(HC)(UR)	49
238	Rediff.com India Ltd.; PCIT v. (2021) 283 Taxman 552 (Bom.)(HC)	21
239	Regency Nirman Ltd. v. ACIT (2022) 443 ITR 301 (Bom.)(HC)	93
240	Reliance Industries Ltd. v. CCIT (2022) 441 ITR 434 / 209 DTR 51 / 324 CTR. 1 / 285 Taxman 610 (Bom.)(HC)	235
241	Renaissance Services Bv v. Dy. CIT(IT) (2022) 445 ITR 27 (Bom.)(HC)	67
242	Reuters India (P.) Ltd. v. Dy. CIT (2022) 285 taxman 557 (Bom.)(HC)	95
243	Reynolds Shirting Ltd. v. ACIT (2022) 285 Taxman 554 (Bom.)(HC)	96
244	Rhenus Logistics India Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)	50

245	Rich Feel Health and Beauty Private Limited v. ITO (2022) 440 ITR 41 (2021) 132 taxmann.com 228 (2022) 284 Taxman 286 (Bom.)(HC)	110
246	Rishab Steel House v. ACIT (2021) 206 DTR 205 / 322 CTR 857 / (2022) 440 ITR 223 s (Bom.) (HC)	226
247	Rita Rajkumar Singh v. ACIT (2022) 287 Taxman 413 / 114 CCH 318 (Bom.)(HC)	89
248	River Valley Meadows and Township (P.) Ltd. v. Dy. CIT (2022) 284 Taxman 536 (Bom.)(HC)	145
249	Rohan Developers Pvt. Ltd. v. ITO(IT). (2022) 442 ITR 404 / 211 DTR 164 / 325 CTR 395 (Bom.)(HC)	174
250	S. A. Developers v. ACIT (2022) 285 Taxman 238 (Bom.)(HC)	138
251	S. V. Jiwani; PCIT v. (2022) 449 ITR 583 / 145 taxmann.com 230 (Bom.)(HC)	31
252	Sadruddin Tejani v. ITO (2021) 434 ITR 474 / 320 CTR 121 / 200 DTR 353 / (Bom.)(HC) www.itatonline.org	231
253	Sagar Bullion Pvt. Ltd. v. UOI (2022) 324 ITR 146 / 209 DTR 281 (Bom.)(HC)	156
254	Sahil International v. ACIT (2021) 281 Taxman 221 (Bom.) (HC)	148
255	Sai Enterprises v. UOI (Bom.)(HC)(UR)	142
256	Sainath Rajkumar Sarode v. State of Maharashtra (2021) 283 Taxman 494 (Bom.)(HC)	166
257	Salsette Catholic Co-Operative Housing Society Ltd. v. ACIT (2021)433 ITR 259/ 202 DTR 160 (Bom.)(HC)	164
258	Samson Maritime Ltd. v. ACIT 2022)448 ITR 691 / 209 DTR 476/ 326 CTR 208 (Bom.)(HC)	164
259	Sandvik Asia Pvt. Ltd.; PCIT v. (2022) 449 ITR 312 (Bom.)(HC)	13
260	Sanghvi Woods Ltd. v. ACIT (2022) 285 Taxman 252 / 209 DTR 323 / 324 CTR 332 (Bom.)(HC)	137
261	Sanjay Devkinandan Gupta v. UOI (Bom.)(HC)(UR)	118
262	Sanjay Dhokad (Mr.); PCIT v. (Bom)(HC)	30

263	Sanjay Ghodawat University, Kolhapur v. CIT(E) (2021) 431 ITR 559 / 202 DTR 396 / 280 Taxman 63 / 322 CTR 54 (Bom.)(HC)	11 12
264	Sanjeev Amritlal Chheda v. ITO (2022) The Chamber's Journal-February-P. 176 (Bom.)(HC)	124
265	Sanjeevkumar v. UOI (2022) 444 ITR 334 / 288 Taxman 334 / 214 DTR 265 / 327 CTR 84 (Bom.)(HC)	42
266	SBI Life Insurance Company Ltd.; CIT v. (2021) 439 ITR 566 / (2022) 285 Taxman 322 (Bom.)(HC)	167
267	SBI Life Insurance Company Ltd.; CIT v. (2022) 285 Taxman 705 (Bom.)(HC)	94
268	Sea Glimpse Investments Pvt. Ltd. v. Dy. CIT (2022) 209 DTR 318 / 324 CTR 535 (Bom.)(HC)	161
269	SEA Sagar Construction Co. v. V.A. Nair ITO (2022) 444 ITR 385 / 213 DTR 393 / 288 Taxman 609 / 328 CTR 897 (Bom.)(HC)	130
270	Seema Jagdish Patil v. National Hi-Speed Rail Corporation Ltd. (2022)445 ITR 382 / 288 Taxman 26 / 288 Taxman 26/ 215 DTR 153 /327 CTR 281 (Bom.)(HC)	171
271	Sesa Goa Ltd. v. CIT (NO. 1) (2021) 430 ITR 109 (Bom.)(HC)	34
272	Sesa Goa Ltd.; CIT v. (2021) 436 ITR 17 / 203 DTR 97 / 321 CTR 113 (Bom.)(HC)	13, 18
273	Sesa Starlite Ltd. v. CIT (2021) 430 ITR 121 / 318 CTR 197 / 277 Taxman 443 / 206 DTR 315 (Bom.)(HC)	201
274	Setu Securities (P) Ltd. v. NFAC (2021) 323 CTR 646 / 207 DTR 425 (Bom.)(HC)	61
275	Sharvah Multitrade Company Pvt. Ltd. v. ITO (2022) 285 Taxman 397 / 209 DTR 369 / 324 CTR 366 (Bom.)(HC) www.itatonline.org.	140
276	Sheetal Dushyant; PCIT v. (2022) 134 Taxman 327 (Bom.)(HC)	132
277	Shell India Market Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)	66
278	Shell India Markets Pvt. Ltd. v. ITO (2022) 443 ITR 366 / 214 DTR 153 / 327 CTR 69 (Bom.)(HC)	69

279	SHL (India) Pvt. Ltd. v. Dy.CIT (2021) 438 ITR 317 / 282 Taxman 334 / 204 DTR 233 / 321 CTR 655 (Bom.)(HC)	69
280	Shreji Investment & Advisory Services v. NFSC (2021) 207 DTR 357 / 323 CTR 505 (Bom.)(HC)	60
281	Shrikant Phulchand Bhakkad (HUF) v. JCIT (2022) 446 ITR 250 / 213 DTR 361 / 328 CTR 64 / 287 Taxman 440 (Bom.)(HC)	123
282	Siolim Urban Co-op Credit Society Ltd. v. CIT (2021) 198 DTT 228 / 319 CTR 213 (Goa) (Bom.)(HC)	181
283	Skoda Auto Volkswagen India Private Limited v. ACIT (2022) 441 ITR 74 / 217 DTR 427 / 134 taxmann.com 96 (Bom.)(HC)	100
284	Skoda Auto Volkswagen India Private Ltd. v. NFAC. (2022) 214 DTR 0281 / 327 CTR 0347 (Bom.)(HC)	214
285	Slum Rehabilitation Authority v. UOI (2021) 436 ITR 172 / 200 DTR 9/ 278 Taxman 315 / 323 CTR 637 (Bom.)(HC)	192
286	Small Industries Development Bank of India v. CBDT (2022) 441 ITR 80 / 285 Taxman 113 / 209 DTR 171 / 324 CTR 317 (Bom.) (HC)	40, 243
287	Souvenir Developers (I) Pvt. Ltd. v. UOI (2022) 444 ITR 167/ 326 CTR 697/ 214 DTR 81 / 287 Taxman 338 (Bom.)(HC)	24
288	SPL Gold India Pvt. Ltd. v. ACIT (Bom.)(HC) www.itatonlline.org	45
289	Starent Network (India) Private Limited v. DCIT (Bom.)(HC)(UR)	116
290	Sterling and Wilson (P.) Ltd. v. ACIT (2022) 285 Taxman 468 (Bom.)(HC)	133
291	Stride Multimedia Pvt. Ltd. v. ACIT (2021) 439 ITR 141 / (2022) 284 Taxman 684 (Bom.)(HC)	222
292	Sunil Hanskrishna Khanna v. ACIT (2022) 139 taxmann.com 555/ 288 Taxman 46 (Bom.)(HC)	75
293	Sunjewels India (P) Ltd v. ITO (2022) 288 Taxman 562 (Bom.)(HC)	73
294	Sunjewels India (P) Ltd v. ITO (2022) 288 Taxman 591 (Bom.)(HC)	73
295	Sun-N-Sand Hotels Pvt. Ltd. v. NFAC (2022) 215 DTR 220 (Bom.)(HC)	71

296	Super Religare Laboratories Ltd.; CIT (TDS) v. (2021) 133 taxmann.com 313 / 323 CTR 757 / 208 DTR 21 / (2022) 284 Taxman 657 (Bom.) (HC)	168
297	Surendra Bhagirathmal Jiwrajka v. DCIT (Bom.)(HC)(UR)	150
298	Surendra Shantilal Peety; CIT v. (2022) 445 ITR 590 (Bom.)(HC)	209
299	Sureshkumar S. Lakhotia v. National E-Assessment Centre (2021) 438 ITR 225 / (2022) 284 Taxman 340 (Bom.)(HC)	64
300	Svitzer Hazira (P.) Ltd. v. ACIT (2022) 441 ITR 19 / 285 Taxman 393 / 211 DTR 387 / 326 CTR 96 (Bom.)(HC)	162
301	Tanna Builders Ltd. v. ITO (2022) 288 Taxman 300 (Bom.)(HC)	74
302	Tata Capital Financial Services Limited v. ACIT (2022) 443 ITR 127 / 212 DTR 55 / 325 CTR 57 / 287 Taxman 1 (Bom.)(HC) www.itatonline.org	106
303	Tata Communication Ltd. v. UOI (2021) 435 ITR 632 / 320 CTR 686 / 281 Taxman 162 / 201 DTR 188 (Bom.) (HC) www.itatonline.org	185
304	Tata Communications Ltd v. UOI (2021) 201 DTR 185/320 CTR 683 (Bom.) (HC)	184
305	Tata Communications Transformation Services Ltd v. UOI (2021) 281 taxman 222 (Bom.) (HC)	148
306	Tata Communications Transformation Services v. ACIT (2022) 443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom.) (HC)	146
307	Tata Sons Limited v. Dy. CIT (2022) 443 ITR 282 (Bom.)(HC)	93
308	Tata Sons Ltd. v. CIT (2022) 286 Taxman 587 (Bom.)(HC)	128
309	Tata Teleservices (Maharashtra) Ltd. v. Dy. CIT(TDS) (2021) 430 ITR 273 / 277 Taxman 119 / 198 DTR 345 / 319 CTR 258 (Bom.)(HC)	175
310	Tech Engg Project Services and Equipments (I) (P) Ltd. v. UOI (2022) 287 Taxman 24 / 220 CTR 209 / 329 CTR 665 / 113 CCH 282 (Bom.)(HC)	120
311	Teleperformance Global Services Pvt. Ltd. v. ACIT (2021) 435 ITR 725 / 201 DTR 161 / 322 CTR 734 / 281 Taxman 331 (Bom.) (HC)	149

312	The Great Eastern Shipping Company Ltd. v. ACIT (Bom.)(HC)(UR)	82
313	The Great Eastern Shipping Company Ltd. v. K.C Naredi, Add. CIT (2021) 208 DTR 273 / 440 ITR 58 (Bom.)(HC)	108
314	The Shipping Corporation of India Ltd. v. ACIT (Bom.)(HC)(UR)	83
315	TLG India Private Ltd. (As successor to 'Solutions Integrated Marketing Services Private Ltd.) v. NFAC (2022) 219 DTR 383 (Bom.)(HC)	143
316	Trendsutra Client Services (P.) Ltd. v. NEAC (2021) 283 Taxman 558 (Bom.)(HC)	63
317	Trent Ltd. v. Dy. CIT (2022) 285 Taxman 460 (Bom.)(HC)	134
318	Uday Desai HUF v. NFAC (2021) 283 Taxman 570 (Bom.)(HC)	59, 60
319	Underwater Services Co. Ltd. v. ACIT (2022) 448 ITR 691 / 209 DTR 476/ 326 CTR 208 (Bom.) (HC)	164
320	Universal Music India Pvt. Ltd.; PCIT v. (2022) 446 ITR 287 (Bom.)(HC)	198
321	UOI v. Dodsal Ltd. (2022) 441 ITR 47 / 211 DTR 189 / 35 taxmann.com 249/ 35 taxmann.com 249 (Bom.) (HC)	179
322	Upal Developers Pvt. Ltd. v. Dy. CIT (2022) 441 ITR 636 / 211 DTR 196 / 285 Taxman 23 / 134 taxmann.com 113 (Bom.)(HC)	101
323	Uttam M. Jain (HUF) v. ITO (2022) 285 Taxman 100 / 209 DTR 51 / 324 CTR 141 (Bom.)(HC)	57
324	Vadraj Energy (Gujarat) Ltd. v. ACIT (2022) 445 ITR 15 (Bom.)(HC)	52
325	Vahanvati Consultants (P) Ltd v. ACIT (2022) 448 ITR 258 / 138 taxmann.com 51 (Bom.)(HC)	144
326	Valuable Properties Pvt. Ltd.; PCWT v. (2022) 220 ITR 298 (Bom.)(HC)	241
327	Vapi Infrastructure and Industrial Township LLP v. ITO (2022) 287 Taxman 468/ 114 CCH 97 (Bom.)(HC)	121
328	Vedanta Ltd. v. CIT (2021) 279 Taxman 358 (Bom.)(HC)	200

329	Verna Trading v. ITO (Bom.)(HC) (UR)	153
330	Virbac Animal Health India (P) Ltd. v. ACIT (2022) 287 Taxman 590 / 113 CCH 256 (Bom.)(HC)	90
331	Vishakha Accounting Services Pvt Ltd. v. ACIT (Bom.)(HC) (UR)	152
332	Vishal Ashwin Patel v. ACIT (WP Nos. 3209/2019, 3150/2019, 3208/2019 and 3137/2019 (Bom)(HC) dated January 11, 2022	140
333	Vishnu Enterprises; PCIT v. (Bom.)(HC)(UR)	35
334	Vodafone Cellular Ltd.; CIT(TDS) v. (2021) 131 taxmann.com 191 (Bom.)(HC)	167
335	Vodafone Idea Ltd. v. ACIT (2022) 211 DTR 99 / 325 CTR 241 / 285 Taxman 381 (Bom.)(HC)	99
336	Vodafone Idea Ltd. v. Dy. CIT (2021) 126 taxmann.com 184 (Bom.) (HC)	183
337	VPK Urban Co-Operative Credit Society Ltd. (2021) 438 ITR 631 / 203 DTR 141 / 281 Taxman 245 (Goa) (Bom.)(HC)	37
338	Vrinda Sharad Bal v. ITO (2021)435 ITR 129/ 201 DTR 425/ 320 CTR 785 (Bom.) (HC)	177
339	Warburg Pincus India Pvt. Ltd.; PCIT v. (2022) 449 ITR 329 / 329 CTR 933 / 219 DTR 361 (Bom.)(HC)	38
340	Wyeth Ltd. v. ACIT (2022) 211 DTR 393 / 329 CTR 803 (Bom.) (HC)	162
341	Yes Bank Ltd.; PCIT v. (2022) 285 Taxman 434 (Bom.)(HC)	137
342	Yogini Bipin Soneta v. ITO (Bom.)(HC) www.itatonline.org	138
343	Zeal Real Estate Ltd. v. UOI (2022) 444 ITR 442 / 283 Taxman 377 (Bom.)(HC)	212
344	Zeus Housing Company v. UOI (2022) 441 ITR 666 / 283 Taxman 377 (Bom.)(HC)	56
345	Zoetis India v. ACIT (Bom.)(HC) (UR)	87
346	Zuari Maroc Phosphates Ltd.; PCIT v. (2021) 432 ITR 316 / 279 Taxman 333 (Goa) (Bom.)(HC)	200
347	Zydus Nycomed Healthcare Pvt. Ltd. v. ITO (Bom.)(HC)(UR)	116

Bombay High Court – Important Judgments of the Hon'ble Bombay High Court – Reported / Unreported / SLP admitted / rejected (January 2021 - December 2022)

S. 4 : Charge of income-tax-Loss of source of income-The amount received under the deed for restrictive covenant as a capital receipt not liable to tax. [S. 7(1)(iv), 17(3)(i), 28(va), Art. 226]

The appellant was whole time Director. In view of his capabilities and knowledge and in order to ensure that appellant did not act/harm the interest of the company upon termination of his employment, the company entered into non-compete agreement dated termed as Deed for Negative Covenants imposing certain restriction on appellant from carrying out certain professional activities over a period of 10 years after the termination of his employment**.** In lieu of appellant agreeing not to compete with the company for a period of 10 years after termination, under Article 2 of the agreement the company agreed to pay Rs.2 Crores to appellant. The company satisfied such payment by allotting 20,00,000 Equity Shares of the nominal face value of Rs.10 each to appellant. The Assessing Officer assessed the amount as perquisite under section 17(1)(iv) read with section 17(3)(i) of the Act. The addition was affirmed by the CIT(A) and Tribunal. On appeal the court held that the agreement expressly provides that appellant shall not directly or indirectly engage in or be concerned or connected with any business which is similar to and/or in competition with the business of the company in the metro cities of Bombay, Delhi, Ahmedabad and Bangalore and appellant shall not directly or indirectly

control or operate or cause to control or operate or participate in any similar business in the metro cities. In fact, the agreement goes to the extent of even stating that appellant shall not associate himself or be an advisor, employee or be a partner in any similar business as that of the company and he shall cease and desist from participating in similar business activities as that of the company and not to use his goodwill or expertise in respect of similar business as that of the company. To that extent, in our view it was loss of source of income for him in the future. The agreement, i.e., the deed for negative covenants was an independent obligation undertaken by appellant with the company in same field for a period of ten years. Therefore, the compensation attributable to restrictive covenant, i.e., 20,00,000 Equity Shares of Rs.10/-each in the hands of appellant was a capital receipt in as much as it was appellants' profit making capabilities for a period of ten years from the date of appellant leaving the employment of the company either on his own or in association with professional competitors. Appeal was allowed. Followed Guffic Chem P Ltd. v. CIT (2011) 332 ITR 602 (SC) (AY. 2003-04). As the appeal was allowed, the Writ petition of the appellant was dismissed.

Neville Tuli v. ITO (2022) 213 DTR 1 / 326 CTR 432 (Bom.)(HC)

Neville Tuli v. ITAT (2022) 213 DTR 1 / 326 CTR 432 (Bom.)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Liaison office-Supply of information having preparatory or auxiliary character-Would not constitute Permanent Establishment-DTAA-India-Mauritius. [Art. 5, 2(c), 5(3)(ii)]

Dismissing the appeal of the Revenue the Court held that place of business of assessee in India was only for supply of information having preparatory or auxiliary character and same would fall under article 5(3)(e)(ii) and did not constitute 'PE' as per article 5(2)(c) of Indo-Mauritius DTAA. Order of Tribunal affirmed. (AY. 1998-99)

CIT (IT) v. J. Ray Mc Dermott Eastern Hemisphere Ltd. (2022) 288 Taxman 574 (Bom.)(HC)

Editorial: Affirmed, ADIT v. J. Ray Mc Dermott Eastern Hemisphere Ltd (2016) 158 ITD 923 /180 TTJ 660 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Representative assessee-Trustee-Business connection-British Virgin Islands by company registered in Jersey-Trust in Jercy becoming sole beneficiary-Power to make investment in in India-Foreign Trustees recognised by Indian Income-Tax Law-Arrangement for purposes of commercial expediency-Income that accrued to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or section 161 of the Act conjointly with the provisions of article 24 of the DTAA. Income accruing-Ruling of AAR was quashed-DTAA-India-UAE. [S. 5(2), 10(23FB), 61, 62, 63, 90, 160, 161, 245-O, Indian Trusts Act, 1882, S. 1, 3, Art. 4 (2)(d), 24]

The assessee filed its return of income in India, disclosing therein income that fell within the scope of section 5(2) of the Act but in view of the exemption available in terms of the DTAA, reported nil taxable income. The assessee did not have any permanent establishment or fixed place of business or any other form of presence in India and did not have any business connection or operations in India. According to the assessee income derived from making investment and debt securities in India was not assessable to tax in India having regard to the provisions of article 24 of the DTAA read with sections 61 and 161 of the Act. The assessee applied to the Authority for Advance Rulings constituted under section 245-O to give a ruling on the question. The Authority held that : (a) the trust was registered in Jersey and there was no treaty between India and Jersey, (b) sections 61 and 63 of the Act would apply only to those trusts which fell under the Indian Trusts Act, 1882 and as the trust did not meet the definition, characteristics and features of trust as per Indian law, (c) India had not ratified the Hague trust convention of July 1, 1985 and hence trust laws of foreign jurisdictions were not applicable in India, (d) the settlor

could not be the sole beneficiary, (e) sections 60 to 64 were designed to over take and circumvent the counter design by a taxpayer to reduce its tax liability by parting with its property in such a way that the income would no longer be received by him but at the same time he retained certain powers over the property or income, (f) though section 160(1)(i) or (iv) provides that a trustee can be a representative assessee, in this case the trustee being a resident of Jersey could not be an agent of the assessee, (g) no authority or material had been placed before the Authority to suggest that the provisions of section 161 would be applicable to a foreign trust or trustee, (h) the assessee's representative could not satisfactorily answer the query as to why the assessee would like to route its investment in non-convertible debenture funds through Jersey route for investment in Indian market and the assessee itself being a registered foreign institutional investor could have directly invested in Indian portfolios and taken advantage of article 24 of the DTAA, (i) as the assessee was receiving income through a device and not from direct or immediate receipt the income received from Indian debt investment was not derived by the assessee and did not fall under article 24 of the DTAA, (j) there was a proposed amendment (it has come into effect only from April 1, 2021) which supported the view that if an entity is a resident of the U. A. E. and through this entity the assessee was in receipt of some income then the income would be exempted from tax under section 10 of the Act and the proposed amendment suggested that indirect accrual of income is not eligible for treaty benefit. On writ allowing the petition the Court held that; (a) income earned through the assessee's investment in the Indian debt portfolios directly would have been exempted under article 24 of the DTAA; (b) the assessee was registered as a foreign institutional investor and later foreign portfolio investor with the SEBI; (c) the deed of settlement with ETL regarding the trust; (d) the assessee had made a capital commitment of USD 200 million in the trust in the capacity of the settlor of the trust, ETL was the trustee of the trust and the assessee was also the sole beneficiary of the trust; (e) the trust was registered as a foreign portfolio investor with

the SEBI. Section 61 of the Act provides that any income arising to any person by virtue of a revocable transfer shall be chargeable to tax as the income of the transferor. The deed of settlement and particularly clauses from the deed of settlement showed that there was a revocable transfer by the settlor, i.e, the assessee to the trustee ETL, and as such any income arising to the trustee should be chargeable in the hands of the assessee. The word trust in section 63 covers all trusts within its ambit. The Hague trust convention does not decide the issue one way or the other. There was nothing to even suggest in the ruling of the Authority how the ratification of Hague trust convention would affect the status of foreign trusts in India. Even a foreign trust is a trust under the Act and the Income-tax return form prescribed under the Act requires the details of the trust created under the laws of a country outside India. The trust created in terms of the deed of settlement was consistent with the requirements of both, the Indian Trusts Act as well as Trust (Jersey) Law, 1984 as to what constitutes a trust. The Act does not make any provision that the settlor cannot be a sole beneficiary. Secondly, there is no provision under the Indian Trusts Act which debars the settlor from being beneficiary. In the present instance, the settlor was not the trustee but was the sole beneficiary which was clearly permissible. If the assessee had invested the amount directly, the income derived from such investment would be exempted under article 24 of the DTAA. The assessee had not created the trust to avoid tax. The assessee had routed its investment in certain instruments through the trust only for commercial expediency. This assessee had explained in detail to the Authority why it had routed its investment in non-convertible debentures through the Jersey route for the India market. The Act does not provide anywhere that only a trustee who is resident of India can be an agent under section 160 of the Act. Even if the trust were based out of Jersey and the trust was settled in Jersey, the assessee being the settlor and sole beneficiary of the trust and resident of the U. A. E. in terms of article 24 of the DTAA, the income which arose to it by virtue of investment in Indian portfolio companies would be governed by the beneficial

provisions of the DTAA. To take it further, even if the trust structure were to be discarded, it must necessarily follow that the investment must be regarded as having been made by the assessee and hence the income would arise in the hands of the assessee, and such income would not be taxable in India by virtue of provisions of the DTAA. There was no attempt whatsoever to reduce the tax liability by using the trust structure. When the provisions of the trust deed provided that the assessee had the right to reassume power over the entire income arising on the investments made by the trust in the portfolio companies, the entire income arising therefrom had in terms of section 61 of the Act to be assessed in the hands of the assessee. This would mean the exemption under article 24 of the DTAA would be attracted. Even if the income is taxed in the hands of the trustee in terms of section 161(1), it will be taxed in the "like manner and to the same extent" as the beneficiary. Once again, the assessee was the sole beneficiary of the trust and income assessed in the hands of the trustee would take colour of the assessee's income and thereby, the benefit of the DTAA must be granted. The assessee could reassume the power and hence the contribution to the trust was a revocable transfer thereby making the income arising to the trust taxable in the hands of the assessee which was exempt under article 24 of the DTAA. In the circumstances the ruling dated March 18, 2020 had to be quashed. The income that accrued to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or section 161 of the Act conjointly with the provisions of article 24 of the DTAA. Since the ruling was quashed the steps taken in furtherance of the Ruling order passed therein were also quashed and set aside.

ABU Dhabi Investment Authority v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 / (2022) 284 Taxman 492 (Bom.) (HC)

Equity Trust (Jersey) Ltd. v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 (Bom.)(HC)

Editorial : Ruling in Copal Partners Ltd, In re (2021) 431 ITR 379 (AAR) overruled.

S. 9(1)(i) : Income deemed to accrue or arise in India-Representative assessee-Trustee-Business connection-British Virgin Islands by company registered in Jersey-Trust in Jercy becoming sole beneficiary-Power to make investment in in India-Foreign Trustees recognised by Indian Income-Tax Law-Arrangement for purposes of commercial expediency-Income that accrued to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or section 161 of the Act conjointly with the provisions of article 24 of the DTAA. Income accruing-Ruling of AAR was quashed-DTAA-India-UAE. [S. 5(2), 10(23FB) 61, 62, 63, 90, 160, 161, 245-0, Indian Trusts Act, 1882, S. 1,3, Art. 4(2)(d), 24]

The assessee filed its return of income in India, disclosing therein income that fell within the scope of section 5(2) of the Act but in view of the exemption available in terms of the DTAA, reported nil taxable income. The assessee did not have any permanent establishment or fixed place of business or any other form of presence in India and did not have any business connection or operations in India. According to the assessee income derived from making investment and debt securities in India was not assessable to tax in India having regard to the provisions of article 24 of the DTAA read with sections 61 and 161 of the Act. The assessee applied to the Authority for Advance Rulings constituted under section 245-O to give a ruling on the question. The Authority held that : (a) the trust was registered in Jersey and there was no treaty between India and Jersey, (b) sections 61 and 63 of the Act would apply only to those trusts which fell under the Indian Trusts Act, 1882 and as the trust did not meet the definition, characteristics and features of trust as per Indian law, (c) India had not ratified the Hague trust convention of July 1, 1985 and hence trust laws of foreign jurisdictions were not applicable in India, (d) the settlor could not be the sole beneficiary, (e) sections 60 to 64 were designed to over take and circumvent the counter design by a taxpayer to reduce its tax liability by parting with its property in such a way that the income would

no longer be received by him but at the same time he retained certain powers over the property or income, (f) though section 160(1)(i) or (iv) provides that a trustee can be a representative assessee, in this case the trustee being a resident of Jersey could not be an agent of the assessee, (g) no authority or material had been placed before the Authority to suggest that the provisions of section 161 would be applicable to a foreign trust or trustee, (h) the assessee's representative could not satisfactorily answer the query as to why the assessee would like to route its investment in non-convertible debenture funds through Jersey route for investment in Indian market and the assessee itself being a registered foreign institutional investor could have directly invested in Indian portfolios and taken advantage of article 24 of the DTAA, (i) as the assessee was receiving income through a device and not from direct or immediate receipt the income received from Indian debt investment was not derived by the assessee and did not fall under article 24 of the DTAA, (j) there was a proposed amendment (it has come into effect only from April 1, 2021) which supported the view that if an entity is a resident of the U. A. E. and through this entity the assessee was in receipt of some income then the income would be exempted from tax under section 10 of the Act and the proposed amendment suggested that indirect accrual of income is not eligible for treaty benefit. On writ allowing the petition the Court held that; (a) income earned through the assessee's investment in the Indian debt portfolios directly would have been exempted under article 24 of the DTAA; (b) the assessee was registered as a foreign institutional investor and later foreign portfolio investor with the SEBI; (c) the deed of settlement with ETL regarding the trust; (d) the assessee had made a capital commitment of USD 200 million in the trust in the capacity of the settlor of the trust, ETL was the trustee of the trust and the assessee was also the sole beneficiary of the trust; (e) the trust was registered as a foreign portfolio investor with the SEBI. Section 61 of the Act provides that any income arising to any person by virtue of a revocable transfer shall be chargeable to tax as the income of the transferor. The deed of settlement and particularly clauses

from the deed of settlement showed that there was a revocable transfer by the settlor, i.e., the assessee to the trustee ETL, and as such any income arising to the trustee should be chargeable in the hands of the assessee. The word trust in section 63 covers all trusts within its ambit. The Hague trust convention does not decide the issue one way or the other. There was nothing to even suggest in the ruling of the Authority how the ratification of Hague trust convention would affect the status of foreign trusts in India. Even a foreign trust is a trust under the Act and the Income-tax return form prescribed under the Act requires the details of the trust created under the laws of a country outside India. The trust created in terms of the deed of settlement was consistent with the requirements of both, the Indian Trusts Act as well as Trust (Jersey) Law, 1984 as to what constitutes a trust. The Act does not make any provision that the settlor cannot be a sole beneficiary. Secondly, there is no provision under the Indian Trusts Act which debars the settlor from being beneficiary. In the present instance, the settlor was not the trustee but was the sole beneficiary which was clearly permissible. If the assessee had invested the amount directly, the income derived from such investment would be exempted under article 24 of the DTAA. The assessee had not created the trust to avoid tax. The assessee had routed its investment in certain instruments through the trust only for commercial expediency. This assessee had explained in detail to the Authority why it had routed its investment in non-convertible debentures through the Jersey route for the India market. The Act does not provide anywhere that only a trustee who is resident of India can be an agent under section 160 of the Act. Even if the trust were based out of Jersey and the trust was settled in Jersey, the assessee being the settlor and sole beneficiary of the trust and resident of the U. A. E. in terms of article 24 of the DTAA, the income which arose to it by virtue of investment in Indian portfolio companies would be governed by the beneficial provisions of the DTAA. To take it further, even if the trust structure were to be discarded, it must necessarily follow that the investment must be regarded as having been made by the assessee and hence the income

would arise in the hands of the assessee, and such income would not be taxable in India by virtue of provisions of the DTAA. There was no attempt whatsoever to reduce the tax liability by using the trust structure. When the provisions of the trust deed provided that the assessee had the right to reassume power over the entire income arising on the investments made by the trust in the portfolio companies, the entire income arising therefrom had in terms of section 61 of the Act to be assessed in the hands of the assessee. This would mean the exemption under article 24 of the DTAA would be attracted. Even if the income is taxed in the hands of the trustee in terms of section 161(1), it will be taxed in the "like manner and to the same extent" as the beneficiary. Once again, the assessee was the sole beneficiary of the trust and income assessed in the hands of the trustee would take colour of the assessee's income and thereby, the benefit of the DTAA must be granted. The assessee could reassume the power and hence the contribution to the trust was a revocable transfer thereby making the income arising to the trust taxable in the hands of the assessee which was exempt under article 24 of the DTAA. In the circumstances the ruling dated March 18, 2020 had to be quashed. The income that accrued to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or section 161 of the Act conjointly with the provisions of article 24 of the DTAA. Since the ruling was quashed the steps taken in furtherance of the Ruling order passed therein were also quashed and set aside.

ABU Dhabi Investment Authority v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 (Bom.)(HC)

Equity Trust (Jersey) Ltd. v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 (Bom.)(HC)

Editorial : Ruling in Copal Partners Ltd, In re (2021) 431 ITR 379 (AAR) overruled.

S. 10(23C) : Educational Institution-Assessee filed an application for gaining exemption-Application was rejected being delayed-Application for AY. 2018-19 was not delayed-Order for the exemption for further AY. 2018-19 needs to be passed accordingly-Petitioner to file condonation application with CBDT for current AY. 2019-20. [S. 10(23C)(vi), 119(2)(b), Art. 226]

The CIT(E) rejected the application of the petitioner dated 31-10-2019 for exemption under section 10(23C)(vi) of the Act for the assessment year 2019-20 and AYs thereafter. The application was rejected referring to the 16th proviso to section 10(23C)(vi) which says that an application for exemption or continuance of exemption under section 10(23C)(vi) has to be fled on or before the 30th day of September of the relevant assessment year from which the exemption is sought which date in the instant case would be on or before 30-9-2019, as the due date to file application was 30-9-2019 and CIT(E) had no power to condone such delay. The assessee filed Writ Petition seeking direction to quash the order of rejection. The Hon'ble High Court held that CIT(E) was not authorized to condone the delay with respect to AY.2019-20 and hence the assessee had to file an application before the CBDT under section 119(2)(b) to authorize CIT(E) to condone the delay in fling its application dated 31-10-2019. With respect to the contention of dealing with grant of exemption with regards to future AYs, the High Court directed the CIT(E) to consider such application as being filed within time limit and take necessary action. (AY. 2009-10)

Sanjay Ghodawat University, Kolhapur v. CIT(E) (2021) 431 ITR 559 / 202 DTR 396 / 280 Taxman 63 / 322 CTR 54 (Bom.)(HC)

S. 10(23C) : Educational Institution-Assessee filed an application for gaining exemption-Application was rejected being delayed-Application for AY. 2018-19 was not delayed-Order for the exemption for further AY. 2018-19 needs to be passed accordingly-Petitioner to file condonation application with CBDT for current AY 2019-20. [S. 10(23C)(vi), 119(2)(b), Art. 226]

The CIT(E) rejected the application of the petitioner dated 31-10-2019 for exemption under section 10(23C) (vi) of the Act for the assessment year 2019-20 and AYs thereafter. The application was rejected referring to the 16th proviso to section 10(23C)(vi) which says that an application for exemption or continuance of exemption under section 10(23C)(vi) has to be fled on or before the 30th day of September of the relevant assessment year from which the exemption is sought which date in the instant case would be on or before 30-9-2019, as the due date to file application was 30-9-2019 and CIT(E) had no power to condone such delay. The assessee filed Writ Petition seeking direction to quash the order of rejection. The Hon'ble High Court held that CIT(E) was not authorized to condone the delay with respect to AY.2019-20 and hence the assessee had to file an application before the CBDT under section 119(2)(b) to authorize CIT(E) to condone the delay in fling its application dated 31-10-2019. With respect to the contention of dealing with grant of exemption with regards to future AYs, the High Court directed the CIT(E) to consider such application as being filed within time limit and take necessary action. (AY. 2009-10)

Sanjay Ghodawat University, Kolhapur v. CIT(E) (2021) 431 ITR 559/ 202 DTR 396 / 280 Taxman 63/ 322 CTR 54 (Bom.)(HC)

S. 10B : Export oriented undertakings-Deduction and not exemption-Set off of losses-Loss from export oriented undertakings-Can be set off against other business income-Payment of management fees-Transfer pricing adjustment-Closing stock addition-Provision for absolute inventory-Valuation of stock on scientific basis-Question of fact. [S. 70, 71, 260A]

The question before the High Court was "whether on the facts and circumstances of the case and in law, the Income-tax Appellate Tribunal was justified in allowing the losses suffered by newly set up export oriented unit against its other business income" Dismissing the appeal of the Revenue the Court held that the Tribunal was right in allowing set off of the losses suffered by the newly set up export oriented unit against its other

business income. As regards other issues such as payment of management fees, transfer pricing adjustment, closing stock addition, provision for absolute inventory valuation of stock on scientific basis. Order of Tribunal is affirmed. Followed Rotork Controls India. P. Ltd. v. CIT (2009) 314 ITR 62 (SC), Hindustan Unilever Ltd. v. Dy. CIT (2010) 325 ITR 102 (Bom.)(HC), CIT v. Galaxy Surfactants Ltd. (2012) 343 ITR 108 (Bom.)(HC). (AY.2005-06)

PCIT v. Sandvik Asia Pvt. Ltd. (2022) 449 ITR 312 (Bom.)(HC)

S. 10B : Export oriented undertakings-Manufacture of article-Processing of iron ore amounts to manufacture-Entitle to exemption-Determination of market value required verification by the Revenue-The order of remand was justified. [S. 10B(7), 80IA (8), 80IA(10)]

Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the assessee was entitled to the benefit under section 10B. Applied CIT v. Sesa Goa Ltd (2004) 271 ITR 331 (SC). Court also held that the assessee had also purchased crude ore, run of mines, from outside parties, that is from the mines belonging to other parties. The price paid by the assessee to these outside parties, according to the Tribunal, could be regarded as the best evidence for determining the market value of the crude ore the assessee extracted from its own mine and used. The Tribunal felt that the determination of market value required verification by the Revenue. The order of remand was justified.

CIT v. Sesa Goa Ltd. (2021) 436 ITR 17 / 203 DTR 97 / 321 CTR 113 (Bom.)(HC)

S. 10B : Export oriented undertakings-Manufacture-Conversion of crude ore into iron ore concentrate fines amounts to manufacture-Entitle to benefit. [S. 2(29BA)]

Dismissing the appeals of the revenue the Court held that the assessee purchased run-of-mines, which included a lot of impurities; it was crude

ore, practically of no use unless it was processed and made suitable for its intended end-use. Iron ore concentrates were manufactured by the process of magnetic separation. It essentially amounted to manufacture or processing. The assessee was entitled to the benefit under section 10B of the Act. (AY.2008-09, 2009-10)

CIT v. Ramacanta Velingkar Minerals (2021) 430 ITR 161 / 277 Taxman 299 / 205 DTR 324 / 322 CTR 350 (Bom.)(HC)

S. 11 : Property held for charitable purposes-Running of pharmacy-Pharmacy store was ancillary to the main object of running the hospital-Denial of exemption was held to be not justified. [S. 10, 10(22), 10(23C)(via), 11(4A)]

Dismissing the appeal of the revenue the Court held that the running of pharmacy store was ancillary to the main object of running of the hospital. Therefore, income accrued therefrom was incidental to the dominant object of the respondent i.e., running of the hospital. The assessing officer was not justified in treating the pharmacy store as business activity and denying the exemption. Tribunal relied on *Hiranandani Foundation* in I.T.A. No.561/Mum/2016 dt.27-5-2016, AY. 2006-07, *Aditanar Educational Institution v. Add. CIT* (1997) 224 ITR 310 (SC) *Baun Foundation Trust v. CIT* (2012)73 DTR 45 (Bom.)(HC) (AY. 2010-11)

PCIT(E) v. National Health & Education Society (2021) 197 DTR 147 / 318 CTR 500 (Bom.)(HC)

S. 11 : Property held for charitable purposes-School-Exemption-For delay in filing form Nom 10B denial of exemption is not justified-Petitioner is directed to file an application before the CBDT within a period of three weeks from today, and CBDT shall pass an appropriate order in terms of direction No.1 above within a period of four weeks from the date of receipt of such application with due intimation to the petitioner. [S. 2(15), 12, 119 (2)(b), Form No. 10B, Art. 226]

The petitioners are charitable trusts providing education to students belonging to middle class families through various schools situated in Mumbai. Both the petitioners are assessed to income tax under the Income Tax Act, 1961(**Act**).

Challenge made in both the writ petitions is to the orders dated 19.02.2020 passed by the Commissioner of Income Tax (Exemptions), Mumbai declining to condone the delay in filing Form No.10B of the Act for the assessment year 2018-2019.

It is stated that for the assessment year 2018-19, petitioner filed return of income on 25.07.2018 declaring nil income. Form No.10B was obtained on 15.08.2018 from the auditor. It is stated instead of uploading Form No.10B in the income tax portal, petitioner uploaded Form No.10BB because of mistake of the chartered accountant and accountant.

the CPC under section 143(1) of the Act raising a demand of Rs.1,46,01,489.00 as payable by the petitioner for the assessment year 2018-19 by denying exemptions under sections 11 and 12 of the Act.

Petitioner uploaded Form No.10B on the income tax portal on 06.11.2019 and also filed an application for condonation of delay. As a matter of fact, petitioner filed Form No.10B for assessment years 2017-18 and 2018-19.

Respondent No.2 i.e., Central Board of Direct Taxes issued Circular No.2 of 2020 dated 03.01.2020 empowering the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for a period upto 365 days from the assessment year 2018-19 onwards.

However, vide the impugned order dated 19.02.2020, Commissioner of Income Tax (Exemptions), Mumbai rejected the application of the petitioner for condonation of delay for the assessment year 2018-19. The said order

was passed following Circular No.2 / 2020 of the Central Board of Direct Taxes.

Aggrieved, the related writ petition has been filed for quashing of order dated 19.02.2020 and for a direction to the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for the assessment year 2018-19.

Court held that being the position and having regard to the mandate of section 119(2)(b), we feel that even at this stage, petitioner may approach CBDT under the aforesaid provision seeking a special order to the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 which is beyond 365 days and thereafter to deal with the said claim on merit and in accordance with law.

Petitioner shall file an application before the CBDT under section 119(2)(b) of the Act to authorize the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 and to deal with the same on merit in accordance with law;

If such application is filed by the petitioner within a period of three weeks from today, CBDT shall pass an appropriate order in terms of direction No.1 above within a period of four weeks from the date of receipt of such application with due intimation to the petitioner (AY. 2018-19)

Little Angels Education Society v. UOI (2021) 434 ITR 423 / 320 CTR 331 / 200 DTR 289 / 280 Taxman 4 (Bom.)(HC)

C.F. Andrews Education Society v. UOI (2021) 434 ITR 423 / 320 CTR 331 / 200 DTR 289 / 280 Taxman 4 (Bom.)(HC)

Editorial : On the basis of the application made by the Trust, the Board has condoned the delay and allowed the exemption.

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Rent charged to trustee less than market rate-Violation of section 13 exemption cannot be denied-Only the income to the extent of violation is liable to tax at maximum marginal rate. [S. 11, 12, 12A, 13(1)(c)(ii)]

The AO held that rent charged from one of the Trustee is less than the market rent and rent charged from other tenants in the same premises. The AO denied the exemption u/s. 11 on entire income of the Trust on the ground that the assessee has violated the provision of the section 13(1)(c)(ii) of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that exemption u/s 11 cannot be denied for violation of section 13 of the Act and the disallowance should be restricted to the extent of violation of provisions of section 13(1)(c)(ii) and 13(b) of the Act and the matter was remanded for verification.

On appeal by the Revenue the question raised before the High Court is "Whether on the facts and circumstances of the case and in law the Honourable ITAT is right in holding that the violation of section 13(1)(c)(ii) does not lead to denial of exemption u/s. 11 as against the principle laid down by the Hon'ble Apex Court in the case of DIT v. Bharat Diamond Bourse dt. 1 December 2002 (2003) 179 CTR 225 ?"

Following the judgement in CIT(E) v. Audyogik Shikhan Mndal (2019) 101 taxmann.com 247 / 261 Taxman 12 (Bom.)(HC), the question of law raised by the Revenue was dismissed. Order of Tribunal is affirmed. (ITA No. 683 of 2018 dt. 5-8-2022) (AY. 2010-11) (ITA No. 223/Pun/2014 dt. 28-6-2017)

CIT v. Mukund Bhavan Trust (Bom.)(HC)

S.14A : Disallowance of expenditure-Exempt income-Enhancement of disallowance is held to be not valid. [R.8D]

Dismissing the appeal of the revenue the Court held that the Assessing Officer had accepted that the assessee had not borrowed funds. The

assessee had deducted certain proportionate expenditure, which the Assessing Officer had not disbelieved or disputed. Volume of investment, the assessee was said to have received charge-free services from banks and other financial institutions with whom it had invested. The Tribunal had correctly deleted the disallowance of Rs. 12.29 crores under section 14A of the Act in accordance with rule 8D of the Income-tax Rules.

CIT v. Sesa Goa Ltd. (2021) 436 ITR 17 / 203 DTR 97 / 321 CTR 113 (Bom.)(HC)

S. 32 : Depreciation-Bottles and crates-Business of manufacturing and sales of soft drinks-Plant-Bottles and crates used for bottling soft drinks manufactured would be included in definition of plant-Eligible for 100 per cent depreciation. [S. 32(1)(i), 43(3)]

Assessee-company, engaged in business of manufacturing and sale of soft drinks, had purchased bottles and crates from various suppliers. For purpose of distribution to customers, soft drinks manufactured were filled in bottles and stacked in crates by assessee. Assessee claimed 100 per cent depreciation on such bottles and crates. Assessing Officer denied the claim of depreciation on ground that table of Plant and machinery under Income-tax Rules,1962 framed under rule 5 does not have any reference of bottles and crates in listed items, therefore, same could not be considered as plant and rather should be treated as stock-in-trade. Tribunal affirmed the order. On appeal the Court held that since 'bottles and crates' were used by assessee for bottling soft drinks manufactured by it, same would be included in definition of 'plant' and, thus, would be eligible for 100 per cent depreciation under section 32(1)(i) of the Act. Court also held that depreciation could not be disallowed merely on argument of revenue that bottles and crates could not be included in definition of 'plant' as they do not fall under categories listed in Income-tax Rules, 1962. (AY. 1989-90)

Parle Bisleri (P) Ltd. v. Dy. CIT (2022) 288 Taxman 673 (Bom.)(HC)

S. 36(1)(vii) : Bad debt-Pendency of dispute-Lease rental-Depreciation-Once a business decision has taken to write off a debt as a bad debt in books of account should sufficient to allow the claim as bad debt. [S. 36(2)]

The assessee is a non Banking Finance Company engaged in the business of inter alia of lease finance. The lessee defaulted in payment of instalments. The Assessee approached the High court seeking winding up of Orson Electronics Ltd and appointment of Official liquidator too safe guard the interest of the creditor. The assessee wrote off the amount due as bad debt in the books of account. The Assessing Officer disallowed the claim of the assessee on the ground that pendency of dispute. The Order of assessing Officer is affirmed by the Tribunal. On appeal allowing the claim the Court held that once a once a business decision has taken to write off a debt as a bad debt in books of account should sufficient to allow the claim as bad debt. (AY. 1991-92)

L.K.P. Merchant Financing Ltd. v. Dy. CIT (2022) 447 ITR 507 / 288 Taxman 389 / 329 CTR 909 / 220 CTR 231 (Bom.)(HC) www.itatonline.org.

S. 36(1)(vii) : Bad debt-Deposit made with sister concern-Capital,loss-Interest income assessed as business income-Waiver of principal amount and interest accrued-Allowable as bad debt. [S. 28(i), 36(2)(i)]

Assessee made deposits/advances with its sister-concern in assessment year 2001-02. In relevant assessment year, after assessing financial condition of sister concern (MCCL) assessee waived off principal amount of deposit and interest accrued on it as bad debts. Assessing Officer disallowed assesee's claim of bad debts under section 36(1)(vii) on ground that assessee was not in business of lending money and non-recovery of deposit made to sister-concern would be a capital loss. On appeal CIT(A) up held the order of Assessing Officer. Tribunal deleted the addition. On appeal by the revenue the Court held that since in initial assessment year interest

income accrued on deposits made by assessee was taxed as business income, deposits would be assumed to be done in ordinary course of business. Since the condition required under section 36(2)(i) was satisfied by assessee and would be entitled to deduction on bad debts under section 36(1)(vii) of the Act. (AY. 2005-06)

PCIT v. Mahindra Engineering and Chemical Products Ltd. (2022) 285 Taxman 699 (Bom.)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Ware house business-Expenditure for raising floor height of Godown-Expenditure incurred to run the business profitably is revenue expenditure.

Where the assessee had incurred expenditure to conduct its business more efficiently and to increase its profits, while no new asset was brought into existence, it would be a revenue expenditure. (AY. 1991-92)

Jetha Properties Pvt. Ltd. v. CIT (2022) 440 ITR 524 / 209 DTR 201 / 324 CTR 326 (Bom.)(HC)

S. 37(1) : Business expenditure-Expenses in providing free gifts Facilities to Medical Practitioners-Allowable as deduction-Expenses prohibited by law-Oppressive circulars would have prospective application.

Dismissing the appeal of the revenue the Court held that the Board's Circular No. 5 of 2012, dated August 1, 2012 (2012) 346 ITR 95 (St) could not have been applied retrospectively to the assessment year 2010-11. The circular imposed a new kind of imparity and therefore, the Tribunal had consistently held that the Board's Circular No. 5 of 2012 would not have any retrospective effect but would operate prospectively from August 1, 2012. These decisions of the Tribunal were not assailed before the High Court. The Tribunal was justified in deleting the expenses in providing free gifts facilities to Medical Practitioners. (AY.2010-11)

PCIT v. Goldline Pharmaceuticals Pvt. Ltd. (2022) 441 ITR 543 / 210 CTR 57 / 324 CTR 640 / 136 taxmann.com 36 (Bom.)(HC)

S. 37(1) : Business expenditure-Salary, professional fees etc.-Allowable as revenue expenditure

Dismissing the appeal of the revenue the Court held that the expenses were incurred in connection with existing business and admittedly were of routine nature like salary, professional fees, etc., and these expenses were otherwise clearly of revenue in nature as they did not bring into existence any new asset, same would be allowable as business expenditure.

PCIT v. Rediff.com India Ltd. (2021) 283 Taxman 552 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Tax deposited before filing of return-No disallowance can be made-Amendment made by the Finance Act, 2010 being curative in nature required to be given retrospective operation i.e., from the date of insertion of the said provision. [S. 139(1)]

The assessee had made payment on account of sub-contracting, expenses, transporters, machine hiring charges etc. Out of the payments to sub-contractors, the Assessing Officer found that tax deducted at source (TDS) was deposited beyond due dates prescribed under chapter XVII-B but before the due date of furnishing of return of income. The Assessing Officer disallowed on various accounts under section 40(a)(ia) of the Act. On appeal CIT(A) as the amount was deposited within the due date of filing of the return of income no disallowance could be made for delayed deposit of tax. Tribunal affirmed the order of CIT(A). On appeal by revenue, dismissing the appeal the Court held that the disallowance could not have mad under section 40(a)(ia) of the Act in view of the retrospective nature of the proviso to the said section. CIT v. Calcutta Export Company (2018) 404 ITR 654/ 255 Taxman 293 /302 CTR 201 (SC) followed (ITA No. 667 of 2018 dt.29-7-2022) (AY. 2005-06)

PCIT v. Crescent Construction Co. (2022) 288 Taxman 730 / 328 CTR 230 / 217 DTR 74 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Commission paid to Chairman and managing director-Part of salary provision of section 192 is applicable and not section 194H-TDS is deductible at the time of payment and not when the provision was made-No disallowance can be made. [S. 192, 194H, Form No. 16]

Assessee-company made a provision for commission and later, paid said commission to its Chairman and Managing Director (CMD) Assessing Officer held that said payment was to be covered under section 194H and as assessee failed to deduct TDS at time of making provision, same was to be disallowed under section 40(a)(ia) of the Act. CIT(A) deleted the addition which is affirmed by the Tribunal. On appeal the Court held that Chairman and managing Director was full time employee and said commission paid was nothing but salary. Commission paid was shown as part of his salary in Form-16 for relevant assessment year and was included in total salary paid. Accordingly section 192 would be applicable where TDS was required to be paid only at time of payment and no disallowance could be made under section 40(a)(ia) of the Act Followed CIT v. Nagri Mills Co Ltd (1958) 33 ITR 681 (Bom.)(HC). (AY. 2010-11)

PCIT v. Indofil Industries Ltd. (2022) 285 Taxman 476 (Bom.)(HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability--Debts barred by limitation do not cease to be debts-Not to be treated as income. [S. 28(i), Limitation Act, 1963]

Dismissing the appeal of the Revenue the Court held that debts barred by limitation do not cease to be debts. Not to be treated as income. Referred, CIT v. Indian Rayon and Industries Ltd. (2011) 336 ITR 479 (Bom.)(HC) (AY. 2011-12)

PCIT v. Batliboi Environmental Engineering Ltd. (2022) 446 ITR 238 (Bom.)(HC)

S. 43(5) : Speculative transaction-Derivatives-Amendment not retrospective-Entitled to set off of loss incurred in transactions of derivatives against business-As amended by Finance Act, 2005 With Effect From 1-4-2006. [S. 28(1), 43(5)(d), 70, 73]

The assessee collected toll fees and also carried on business of shares and derivatives. It claimed set off in respect of the loss suffered by it in the transaction in derivatives against the income from its infrastructure business under the head of income from business or profession under section 28. The Assessing Officer disallowed the claim. The Commissioner (Appeals) held that the assessee was not entitled to claim set off against the income from a non-speculative business. The Tribunal confirmed his order. On appeal allowing the appeal the Court held that the Tribunal could not have confirmed any addition on transaction in derivatives on recognised stock exchange as defined in section 43(5)(d) with reference to the Explanation given to section 73 which was applicable to speculative transaction. The Assessing Officer did not consider the effect of insertion of the proviso to section 43(5) in his order. The Commissioner (Appeals) had considered the Explanation to section 73 and had erroneously observed that income from share trading was to be regarded as speculative income. However, the set-off being speculative loss could not be set off against the regular business income assessed by the Assessing Officer as claimed by the assessee. The Commissioner (Appeals) did not consider the contention of the assessee that in view of the amended provisions of section 43(5)(d), the trading of shares in derivatives was to be assessed as the regular business and not speculative business and therefore, the loss if any in transactions in derivatives was required to be set off against the other heads of income. The assessee had not claimed any set-off of the loss suffered in the transactions in shares where delivery was actually effected but had claimed set-off of the loss suffered in respect of transactions in derivatives in view of the amendment in law with effect from April 1, 2006. None of the authorities below had considered and dealt with the effect of insertion of proviso (d) to section 43(5) by the 2005 Act with effect from

April 1, 2006 the AY in question being 2009-10, i. e., after insertion of clause (d) to the proviso to section 43(5). Transactions in derivatives carried out by the assessee after April 1, 2006 therefore, were not speculative transactions. Referred Snowtex Investment L td. v. P CIT (2019) 414 ITR 227 (SC). Court held that Tribunal was not justified in confirming any addition on transactions in derivatives on a recognised stock exchange as defined under section 43(5)(d) with reference to the Explanation given to section 73 which was applicable to speculative transactions. By virtue of insertion of clause (d) to the proviso to section 43(5) the transactions in respect of the trading in derivatives would not be speculative transactions. Therefore, the assessee was entitled to claim set off of the loss suffered by it in the transactions in derivatives against its income from infrastructure business under section 70. (AY. 2009-10)

Souvenir Developers (I) Pvt. Ltd. v. UOI (2022) 444 ITR 167 / 326 CTR 697 (Bom.)(HC)

S. 43B : Deductions on actual payment-Employees' and employers contribution-Paid before due date of filing of return-Allowable as deduction. [S. 139(1)]

Dismissing the appeal of the Revenue the Court held that both employees' and employer's contributions are covered under amendment provided by Finance Act, 2003 to section 43B, thus, payments thereof were subject to benefits of section 43B and were to be allowed as deductions. Order of Tribunal affirmed. Followed CIT v. Ghatge Patil Transports Ltd (2014) 368 ITR 749 (Bom.) (HC). (AY. 2007-08)

PCIT v. Bramha Corp Hotels and Resorts Ltd. (2022) 136 taxmann.com 398 (Bom.)(HC)

Editorial : SLP filed against order of High Court was to be dismissed as withdrawn. PCIT v. Bramha Corp Hotels and Resorts Ltd. (2022) 286 Taxman 265 (SC)

S. 43B : Deductions on actual payment-Purchase tax paid on raw materials and packing materials-Set off is allowed against sales tax payable on finished goods manufactured out of them-Deemed actual payment-Allowable as deduction.

On appeal the Court held that the law permitted the assessee to set off or adjust the sales tax already paid at the time of purchase of raw materials against the sales tax collected at the time of sale of finished goods, and the assessee had retained the sales tax amount which had already been paid and claimed a set off. To the extent of the sales tax paid on the raw materials, the assessee had actually been reimbursed by the sales tax collected at the sale of the finished product. Adjustment, by legal fiction, was deemed to be an actual payment of the tax liability and was deductible under section 43B. (AY. 1988-89)

Merck Ltd. v. Dy. CIT (2021) 438 ITR 220 / (2022) 284 Taxman 220 (Bom.)(HC)

S. 44AB : Audit of accounts-Business-Profession-Remuneration received from Partnership Firm-Firm is separate legal entity-Remuneration and interest from partnership firm-Not to be included in gross receipt or turnover-Presumptive basis-No tax Audit is required, if remuneration does not exceeds threshold limit for Tax Audit-Return cannot be treated as invalid for failure to get Tax Audit report. [S. 2(13), 2(31)(iv), 2(36), 44AD, 139(9), 264,271B, Art. 226]

The petitioner is an actress shown her professional income and also remuneration from two partnership firms in her return of income.. The professional income being less than prescribed limit petitioner has not obtained the tax Audit report. The Assessing Officer held that though the professional income was less than the prescribed limit for the Tax audit, the remuneration received from two partnership firms being more than the prescribed limit of gross receipts of one crore, the petitioner ought to have obtained tax audit report. As the tax audit report was not obtained the

return was treated as invalid. The petitioner filed revision application before the Commissioner u/s 264 of the Act. Commissioner also affirmed the order of the Assessing Officer. The petitioner filed writ petition before the High Court challenging the treating the return as invalid. Honouarble Court referred to the decision of the Hon'ble Madras High Court in the case of **Anandkumar v. ACIT (2021) 430 ITR 391 (Mad.)(HC)** where the Assessing Officer held that the assessee did not have any turnover and receipts on account of remuneration and interest from the firms cannot be construed as gross receipts mentioned in Section 44AD of the Act. The case was decided in the favour of the Revenue. The Honourable High Court held that the remuneration and interest from the partnership firm cannot be treated as gross receipt of the assessee. The order of Commissioner affirming the order of the Assessing Officer treating the return as in valid was quashed and set aside. (AY. 2017-18)

Perizad Zorabian Irani v. PCIT (2022) 287 Taxman 406 / 328 CTR 909 / 218 DTR 219 / 113 CCH 339 (Bom.)(HC)

S. 45 : Capital gains Full value of consideration-Deductions-Consideration on sale shares including sum held in Escrow Account offered to tax-Receiving reduced sum from Escrow Account after Completion of assessment-Whole amount credited in book not taxable as capital gains-Only actual amount received taxable-Entitled to refund of excess tax paid-Recomputation can be less than the returned income-Proviso to section 240 is not applicable-The assessee can be asked to pay only such amount of tax which is legally due under the Act and noting more-Entitle to refund of excess tax paid [S. 48, 264, Art. 226]

The assessee computed the capital gains on sale of shares taking into account the proportion of the total consideration which included the escrow amount which had not been received by the time returns were filed but were received by the promoters but were still parked in the escrow account. The income declared by the assessee was accepted in the scrutiny

assessment. The assessee stated that subsequent to the sale of the shares certain statutory and other liabilities arose for the period prior to the sale of the shares and according to the agreement, certain amount was withdrawn from the escrow account and it did not receive the amount. The assessee filed an application under section 264 before the Principal Commissioner and submitted that the capital gains were to be recomputed accordingly reducing the proportionate amount from the amount deducted from the escrow account and that an application under section 264 was filed since the assessment had been completed by the time the amount was deducted from the escrow account. The Principal Commissioner rejected the assessee's application. On writ allowing the petition the Court held that that capital gains was computed under section 48 of the Act by reducing from the full value of consideration received or accrued as a result of transfer of capital asset, cost of acquisition, cost of improvement and cost of transfer. The real income (capital gains) could be computed only by taking into account the real sale consideration, i. e., sale consideration after reducing the amount withdrawn from the escrow account. The amount was neither received nor accrued since it was transferred directly to the escrow account and was withdrawn from the escrow account. When the amount had not been received or accrued it could not be taken as full value of consideration in computing the capital gains from the transfer of the shares of the assessee. The purchase price as defined in the agreement was not an absolute amount as it was subject to certain liabilities which might have arisen on account of certain subsequent events. The full value of consideration for computing capital gains would be the amount which was ultimately received after the adjustments on account of the liabilities from the escrow account as mentioned in the agreement. The liability as contemplated in the agreement should be taken into account to determine the full value of consideration. Therefore, if the sale consideration specified in the agreement was along with certain liability, then the full value of consideration for the purpose of computing capital gains under section 48 of the Act was the consideration specified in the agreement as reduced by

the liability. The full value of consideration under section 48 would be the amount arrived at after reducing the liabilities from the purchase price mentioned in the agreement. Even if the contingent liability was to be regarded as a subsequent event, it ought to be taken into consideration in determining the capital gains chargeable under section 45. Such reduced amount should be taken as the full value of consideration for computing the capital gains under section 48. If income did not result at all, there could not be a tax, even though in book keeping, an entry was made about hypothetical income which did not materialize. Therefore, the Principal Commissioner ought to have directed the Assessing Officer to recompute the assessee's income irrespective of whether the computation would result in income being less than the returned income. CIT v. Shoorji Vallabhdas and co.(1962) 46 ITR 144 (SC), relied. Court also held that reliance by the Principal Commissioner on the provisions of section 240 to hold that he had no power to reduce the returned income was erroneous because the circumstances provided in the proviso to section 240 did not exist. The proviso to section 240 only provides that in case of annulment of assessment, refund of tax paid by the assessee according to the return of income could not be granted to the assessee. The only thing that was sacrosanct was that an assessee was liable to pay only such amount which was legally due under the Act and nothing more. Therefore, the assessee was entitled to refund of excess tax paid on the excess capital gains. (AY.2011-12)

Dinesh Vazirani v. PCIT (2022) 445 ITR 110 / 288 Taxman 325 (Bom.)(HC)

S. 68 : Cash credits-Enquiry was conducted by the Assessing Officer-Transaction was through banking channel-Creditworthiness established-Statement of lenders recorded-Explanation was not found to be false-Deletion of addition is affirmed. [S. 131(1)(d)]

Dismissing the appeal of the Revenue the Court held that the loan transaction was through banking channel, creditworthiness established, statement of lenders were recorded. Merely on suspicion and without properly evaluating the genuineness of transactions addition cannot be made when the explanation offered by the assessee was not found to be false. (ITA No. 156 of 2018 dt. 25-3-2022) (AY. 2009-10).

PCIT v. Aarhat Investments (2022) BCAJ-May-P. 47 (Bom.)(HC)

S. 69A : Unexplained money-Survey-Addition of hypothetical basis-Deletion of addition by the Tribunal is affirmed. [S. 133A, Indian Evidence Act, 1872, S. 65B]

The assessee had sold many flats. In the course of survey and search premises of the assessee CD was found and in the said CD sale transacyion. of Mr Devendra Singh Tomar was found. According to the Assessing officer Assessing Officer simply multiplied difference in sale price of Rs. 8.55 lakhs to number of flats sold and added a sum of Rs. 3.06 crores under section 69A as disallowance on account of undisclosed money. Commissioner (Appeals) dismissed appeal but reduced undisclosed income to Rs. 2.97 crores. On appeal the Tribunal accepted explanation of assessee that initially said flat, of which letter was found, was negotiated and sold for a sum of Rs. 59.34 lakhs, however, said booking was cancelled on ground that agreed price was much higher than prevailing market price. Thereafter, Devendra Singh Tomar approached assessee and negotiated to purchase flat at Rs. 49.18 lakhs which amount said Devendra Singh Tomar paid in three instalments. Devendra Singh Tomar had also filed an affidavit giving details as well as proofs of payment There was no evidence found against assessee and no enquiry was carried out by Assessing Officer to find out more details and entire addition had been made on hypothetical basis. Order of Tribunal is affirmed.

PCIT v. Nexus Builders and Developers (P.) Ltd. (2022) 285 Taxman 233 (Bom.)(HC)

S. 69C : Unexplained expenditure - Civil Contractor engaged in civil construction contracts- Purchases from suspicious dealers - Official websites of the Sales Tax Department, Government of Maharashtra -Bogus purchases -Books of account not rejected - Opportunity for cross examination was not provided-Purchases through banking channels-Deletion of addition is upheld. [S. 133(6), 143(3)]

The assessee is in the business of Civil Construction. Relying upon certain statements of the proprietors of the 21 firms referred to in the notice, and since none attended or made any submissions on behalf of the assessee after receiving a show cause notice, the Assessing Officer presumed that the assessee had nothing to say and that the said purchases should be treated as his income. He passed the assessment order treating the entire purchase amount of Rs. 4,99,27,664/- as unexplained expenditure under the provisions of Section 69C of the Act. On appeal the CIT(A) deleted the addition on the ground that the books of account of the appellant was not rejected and the opportunity for cross-examination of the parties whose statement was relied on was not provided. Order of CIT(A) was affirmed by the Tribunal. On appeal by the Revenue dismissing the appeal the Court held that there are concurrent findings arrived at by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, on the fact that the Respondent had satisfactorily discharged the initial burden of proving the genuineness of the transactions. Relied on CIT v. CIT v. Nikunj Eximp Enterprises (P.) Ltd. (2013) 216 Taxman 171 (Mag.) (2015) 372 ITR 619(Bom.)(HC (ITA No.795 of 2018 dt.9 -1 -2023)(AY. 2010 -11)

PCIT v. Sanjay Dhokad (Mr.) (Bom)(HC)

S. 69C : Unexplained expenditure-Bogus purchases-Accommodation entries-Civil contract work-Municipal Corporation of greater Mumbai-Information received from the Sales Tax Department through the Director General (Inv)-Purchases through banking channels-Disallowance restricted to profit element-Order of Tribunal affirmed. [S. 143(3), 260A]

The assessee undertook civil contract works mostly for the Municipal Corporation of Greater Mumbai. The assessment was reopened on the basis of information received from the Sales Tax Department through the Director General (Inv) on the ground that the assessee had made purchases for an amount which seemed to be accommodation entries. Order was passed making an addition of the amount as bogus purchase under section 69C of the Act. On appeal the assessee has produced the purchase invoices and ledger statements. Commissioner (Appeals) held that payments made by the assessee were through banking channels, that there was no evidence to prove that the cash had flowed back to the assessee, and that the sale proceeds of the goods having been duly accounted for in the books of account and offered to tax, the entire purchase amount could not have been added and restricted the disallowance at 12.5 per cent. The Tribunal held that without purchasing materials and goods, it would not have been possible on the part of the assessee to execute the contract work with the Municipal Corporation which was a Government authority, that the Assessing Officer did not dispute the turnover of the contract work executed by the assessee and that unless the assessee procured the materials and goods, if not from the declared sources but from some other sources, it would not be possible on the part of the assessee to execute the contract and that the entire purchase made by the assessee could not be added back as income, but only the profit element embedded therein. On appeal dismissing the appeal the Court held that the Tribunal had taken into account all the relevant facts before passing the order holding that the entire purchase made by the assessee could not be added back as income but only the profit element embedded therein. The order of Tribunal affirmed. Referred N.K. Proteins Ltd v. Dy. CIT (2020) 421 ITR 15 (St) N.K. Industries Ltd. v. Dy. CIT (2017) 8 ITR-OL. 336 (Guj)(HC) (AY.2009-10)

PCIT v. S. V. Jiwani (2022) 449 ITR 583 / 145 taxmann.com 230 (Bom.)(HC)

S. 69C : Unexplained expenditure-Income from undisclosed sources-Bogus purchases-Civil works-Road construction-Information from Sales Tax Department-Order of Tribunal estimated profit of 12.5% on unexplained and non-genuine purchases is affirmed by High Court. [S. 37(1), 143(3), 260A]

The assessee is involved in the execution of Civil works like road construction etc. under the Public Works Department of the Government of Maharashtra and Municipal Corporation of the Government of Maharashtra. Based on the information received from the Sales Tax Department the Assessing Officer asked the assessee to explain purchases from twelve parties and was asked to produce the parties. The Assessee failed to do so. The Assessing Officer added the entire purchases as non-genuine expenditure. On appeal the CIT(A) restricted the addition by estimating profit of 12. 5% on the total purchases. On appeal the Tribunal up held the order of the CIT(A). On further appeal the High Court affirmed the order of the Tribunal. (AY. 2010-11) (ITA No. 398 of 2018 dt 18-7-2022)

PCIT v. Ram Builders (Bom.)(HC) www.itatonline.org.

S. 69C : unexplained expenditure-Bogus hawala purchases-Third party statement-Opportunity of cross examination was not provided-Payments were through banking channels by way of letter of credit-Order of Tribunal deleting the addition was affirmed-No question of law. [S. 260A]

Dismissing the appeal of the revenue the Court held that the assessment order could not have been passed by the Assessing Officer without granting an opportunity to respondent to defend his position or cross-examine the two persons on whose affidavits, the Assessing Officer had relied upon to conclude that respondent had made certain purchases from those persons identified as Hawala Traders. The Assessing Officer also should have investigated further or should have dealt with in his assessment order as to why he was not accepting the explanation of respondent that he had paid in excess of Rs.25,62,560/-through the Bank L.C. to one of the parties

allegedly doing business of issuing bogus bills. Order of Tribunal is affirmed. (ITA No. 971 of 2017 dt. 28-9-2021) (AY. 2010-11) (Arising ITA No. 7287/M/2014 dt.7-10-2016)

PCIT v. Dhananjay Mishra (Bom.)(HC) www.itatonline.org

S. 69C : Unexplained expenditure-Seized material-Department not provided the details of transaction-Deletion of addition is held to be justified-No question of law. [S. 132, 260A]

Department filed an appeal against the order of the Tribunal wherein the Tribunal deleted the addition of Rs. 739.04 lacs stating that payment by the assessee of the amount of Rs. 739.04 lacs had not been established from the seized material and therefore no addition could be made on this account ignoring the fact that the assessee never provided the details of the transaction either during the course of assessment proceedings or thereafter and the assessee was in the exclusive knowledge. High Court dismissed the appeal being question of fact.

PCIT v. Hassan Ali Khan (2021) 124 taxmann.com 208 (Bom.)(HC)

Editorial : SLP of revenue is dismissed PCIT v. Hassan Ali Khan,(2021) 277 Taxman 398 (SC)

S. 72 : Carry forward and set off of business losses-Can be set off against capital gains. [S.45]

Dismissing the appeal of the revenue the Court held that Loss under the head Profits and gains of business or profession can be carried forward and set off against profits of any business or profession. It is not the requirement of section 72 of the Income-tax Act, 1961 that such gains or profits must be taxable under the head “Profits and gains of business or profession. (AY.2011-12)

PCIT v. Alcon Developers (2021) 432 ITR 277 (Bom.)(HC)

S. 80HHC : Export business-Shipping agency fees, hire charges of machinery and installation must be reduced on net Basis-Proceeds of services and repairs by Shipyards not to be reduced. [S. 80HHC Explanation (baa)]

Court held that the receipts by way of shipping agency fees and the hire charges of machinery and installation had to be reduced in terms of Explanation (baa) to section 80HHC of the Income-tax Act, 1961. However, such reduction had to be on net basis and not on gross basis. That the receipts toward hire of ships/transhippers and hire charges of barges had to be reduced in terms of Explanation (baa) to section 80HHC. That proceeds of services and repairs of vessels by shipyards were not covered under Explanation (baa) to section 80HHC and, therefore, there was no question of reduction of such receipts from out of the profits. (AY.1997-98)

Sesa Goa Ltd. v. CIT (NO. 1) (2021) 430 ITR 109 (Bom.)(HC)

S. 80IB : Industrial undertakings-Failure to provide details of number of workmen working in each units in form No. 10CCB-Denial of exemption is held to be not valid. [Form no. 10CCB]

Assessing Officer denied assessee deduction under section 80-IB, because, assessee in Form No. 10CCB failed to provide details of number of workmen working in each of Units of assessee. Tribunal held that omission on part of assessee whilst filling in Form 10CCB, was not such an omission which was not rectifiable and Assessing Officer should have granted assessee an opportunity for rectifying this omission. On appeal by the revenue the Court held that since assessee, prior to assessment, produced material before Assessing Officer which evidenced that each of Units of assessee employed more than 10 workers, there was material before Assessing Officer to conclude that assessee fulfilled conditions required for claiming deduction under section 80IB. (AY. 2006-07, 2007-08)

CIT v. Borkar Packaging (P.) Ltd. (2021) 276 Taxman 131 / 199 DTR 526 / 320 CTR 792 (Bom.)(HC)

S. 80IB(10) : Housing projects-Developer-SRA project-Ownership of land is not requirement of the statute-Entitle to deduction-Revision was held to be not valid. [S. 263]

Dismissing the appeal of the Revenue the Court held that the assessee cannot be considered as a mere contractor simply for the reasons that the land was conveyed to SRA, since assessee has taken up the entire responsibility to construct the tenements along with infrastructural facilities and the building so constructed has been handed over to SRA. The court referred to the judgement of Hon'ble Gujarat High Court in CIT v. Radhe Developers(2012) 341 ITR 403 (Guj)(HC) where Gujarat High Court has rejected the argument of Revenue that in order to receive benefit under Section 80IB(10) of the Act requirement of ownership of the land must be read into the statute. Referred CIT v. Abode Builders (ITA No. 2020 of 2017 dt 16-2-2022) For the AY. 2006-07 revision order was quashed. (TXA No.945 of 2017/ TXA No.470 of 2017 dt 3-3-2022) (AY 2006-07, 2007-08.) **PCIT v. Vishnu Enterprises (Bom.)(HC)(UR)**

S. 80IB(10) : Housing projects-Commencement of development of residential project-Owner or developer-Date of approval-Ownership of land-Joint venture-The project for which permission was granted on 24th July 2002 was not the same as that for which the ID lapsed in 2001-Eligible to deduction.

The AO has rejected the claim of the assessee on the ground that the assessee was not owner of the land and BMC has given sanction to plan through letter dt. 21 st September, 1996 hence the date of initial approval would be the operative date of approval. On appeal the CIT(A) allowed the claim of the assessee which was affirmed by the Tribunal. On appeal the Revenue contended that the assessee is not eligible for exemption on three points (a) Lack of ownership of land on which the project was constructed (b) assessee has not invested in the construction activity or done construction could not be considered as a developer (c) Project was approved and commenced before the stipulated date 1st October 1998.

Dismissing the appeal of the Revenue the Court held that the Commencement certificate (CC) is in the name of assessee tax related to land was paid by assessee from 1998 onwards. The Court held that the date of final approval would be the operative date of approval. The project completed was different project for which initial approval was granted. The original lay-out plan became in valid after 7th January 2001. The Assessee has applied for IOD for the second time on 22 November 2021 and was granted permission on 21st July 2002. The project for which permission was granted on 24th July, 2002 was not the same as that for which the ID lapsed in 2001. Accordingly the order of Tribunal was affirmed. Referred CIT v. Radhe Developers (2022) 341 ITR 403 (Guj)(HC) (AY. 2005-6),

CIT v. Abode Builders (2022) 448 ITR 262 / 213 DTR 251 / 326 CTR 262 (Bom.)(HC)

S. 80IB(10) : Housing projects-Two flats excess of the prescribed limit of 1500 sq.ft-Pro rata deduction in respect of eligible flats not exceeding prescribed limit is eligible-Interpretation of taxing Statutes-When the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises. [S. 260A]

The assessee firm engaged in the business of developing residential projects in return. The assessee claimed deduction u/s. 80IB(10) of the Act. The Assessing Officer held that two flats were having an area in excess of the prescribed limit of 1500 sq. ft hence denied the deduction. On appeal the CIT(A) directed to allow the pro rata deduction in respect of eligible flats not exceeding prescribed limit of a covered area of 1500 sq.ft. On appeal by Revenue the Tribunal affirmed the order of the CIT(A). On appeal to High Court by the Revenue, High Court affirmed the order of the Tribunal. Court relying on Nelson Motis v. UOI AIR 1992 SC 1981 held that it is well settled principle of interpretation of statues that when the language of a statute is unambiguous and admits of only one meaning, no question of

construction of a statute then arises. (AY. 2011-12)(ITA No. 82 of 2018 dt. 18-7-2022)

PCIT v. Kumar Builders Consortium (2022) 447 ITR 44 (Bom.)(HC). www.itatonline.org.

S. 80IB(10) : Housing projects-Completion certificate for seven buildings-Plan for eight building was revised-Entitle to deduction for seven buildings [S. 260A].

The Assessing Officer disallowed the claim u/s 80IB(10) on ground that completion certificate of housing project issued did not show building G, thus, it was a part completion certificate and, accordingly, assessee was not entitled to deduction under section 80-IB(10). On appeal the CIT(A) allowed the claim. Tribunal affirmed the order of the CIT(A). On appeal by the revenue dismissing the appeal the court held that the building 'G' was to be considered as a separate project and it was not a part and parcel of original housing project as its plan was approved much later. Order of Tribunal allowing the claim was approved. (AY. 2008-09)

PCIT v. Prathamesh Constructions (2022) 285 Taxman 287 / 324 CTR 542 / 209 DTR 363 (Bom.)(HC)

S. 80P : Co-operative societies-Credit society-Credit facility to its members-Exemption allowable. [S. (2(19), 80P(2)(a)(i)]

Dismissing the appeal of the revenue the Court held that since assessee had been registered as co-operative credit society and banking had never been its core activity. The assessee is eligible for deduction under section 80P(2)(a)(i) of the Act. (AY. 2012-13)

PCIT v. Quepem Urban Co-Operative Credit Society Ltd. (2021) 438 ITR 631 / 281 Taxman 245 / 203 DTR 141 (Goa) (Bom.)(HC)

VPK Urban Co-Operative Credit Society Ltd. (2021) 438 ITR 631 / 203 DTR 141 / 281 Taxman 245 (Goa) (Bom.)(HC)

S. 92C : Transfer pricing-Arm's length price-Selection of comparables-An investment advisor or sub-advisory cannot be compared with a merchant banker or investment banker-Tribunal's finding based on decision of Supreme Court-No question of law. [S. 260A]

Dismissing the appeal of the Revenue the Court held that An investment advisor or sub-advisory cannot be compared with a merchant banker or investment banker. Followed CIT v. Carlyle India Advisors (P) Ltd (2013) 357 ITR 584 (Bom.)(HC) (AY.2009-10)

PCIT v. Warburg Pincus India Pvt. Ltd. (2022) 449 ITR 329 / 329 CTR 933 / 219 DTR 361 (Bom.)(HC)

S. 92C : Transfer pricing-Arm's length price-Adjustments-Comparable-Tribunal correctly applied the principle and decided on facts-No question of law Stricture-Court directed that the Commissioner of Income-tax and CIT (Judicial) would well to review all appeals filed and with draw the same if it is on facts and settled law. The Court also directed the Counsel of Revenue to serve a copy of this order on the law Secretary (Government of India), Central Board of Direct Taxes, Principal Chief Commissioner of Income tax (Maharashtra) and CIT (Judicial) for necessary action. [S. 260A]

Dismissing the appeal of the revenue the Court held that the Revenue has failed to show as to how the finding arrived by the ITAT is perverse in any manner, The Revenue has also not been able to demonstrate that the analysis done by the ITAT while excluding the companies suggested by the revenue from the list of companies was in any manner contrary to the settled position in law. Order of Tribunal is affirmed. Court also suggested that the Commissioner of Income-tax and CIT (Judicial) would well to review all appeals filed and with draw the same if it is on facts and settled law. Court also directed the Counsel of Revenue to serve a copy of this order on the law Secretary (Government of India), Central Board of Direct

Taxes, Principal Chief Commissioner of Income tax (Maharashtra)) and CIT (Judicial) for necessary action.

PCIT v. 3I India Ltd. (2022)445 ITR 504 / 284 Taxman 487 (Bom.)(HC)

Editorial : SLP of Revenue dismissed, PCIT v. 3I India Ltd(2022) 289 Taxman 295 (SC)

S. 92C : Transfer pricing-Arm's length price-Comparable-Opportunity of hearing was not given-Matter remanded. [S. 254(1)]

Tribunal excluded three companies from comparable list without giving an opportunity to the assessee to counter argue against exclusion of comparable. On appeal High Court remanded back to consider whether said companies were comparable or not. (AY. 2010-11)

Jacob Engineering India (P) Ltd v. ACIT (2022) 285 Taxman 326 (Bom.)(HC)

S. 113 : Tax-Block assessment-Search cases-Levy of Surcharge-Amendment by Finance Act, 2002-Amendment not retrospective-Search proceedings initiated in November 1995-Surcharge not Leviable. [S. 132, 245D, Art. 226]

Allowing the petition the Court held that since the search was carried out on November 23, 1995 and the proviso to section 113 of the Act, which provides for levy of surcharge, was introduced only with effect from June 1, 2002, the levy of surcharge could not be made applicable retrospectively. No surcharge was payable as a consequence of the block assessment. (AY. 1985-86 to 1996-97)

Karia Erectors Pvt. Ltd. v. UOI (2022) 444 ITR 86 / 287 Taxman 116 (Bom.)(HC)

S. 115-O : Domestic companies-Tax on distributed profits-Not liable to pay dividend distribution tax on dividend paid by it to share holders. [S. 2(22)(a), 115R, Art. 226, SIDBI Act, 1989, S. 29(2), 50]

Assessee was a financial institution established under SIDBI Act. It had transferred certain amount in accordance with provision of section 29(2) of SIDBI Act out of its profit and made a deposit to meet its liability towards payment of dividend to its shareholders. Revenue was of view that any amount declared or distributed or paid by assessee by way of dividend was liable for additional tax by way of dividend distribution tax under provisions of section 115-O of the Act. Assessee paid such additional tax, however, under protest. The assessee filed writ petition and sought for a refund of said additional tax paid contending that tax on payment of dividend as per section 115-O was exempted by virtue of section 50 of SIDBI Act and, therefore, assessee was entitled to refund of such tax paid under protest. Allowing the petition the Court held that section 50 of SIDBI Act exempts SIDBI from paying dividend distribution tax on dividends under section 115-O of Income-tax Act, 1961, and thus, assessee was not liable to pay same on dividends paid by it to shareholders. Accordingly the additional tax already paid by assessee under protest was directed to be refunded. (AY. 1997-98 to 2000-01)

Small Industries Development Bank of India v. CBDT (2022) 441 ITR 80 / 285 Taxman 113 / 209 DTR 171 / 324 CTR 317 (Bom.) (HC)

S. 127 : Power to transfer cases-Transfer of case from Mumbai to Bangalore-No reason was recorded-Order of transfer of case was set aside. [S. 127(2), Art. 226]

A notice under section 127(2) was also issued upon assessee to transfer his case from Mumbai to Bengaluru and an order of transfer was passed. On writ the court held that the revenue had only narrated facts but had not given any reasons why assessee's case was to be transferred to Bengaluru. Both assessee and firm in which assessee was partner were assessed in Mumbai. Court also held that pendency of a case before Addl. CMM could not be a reason for transfer of assessee's assessment from Mumbai to

Bengaluru. Accordingly the order of transfer of assessee's case passed under section 127 was to be set aside.

Divesh Prakashchand Jain v. PCIT (2022) 445 ITR 496 / 285 Taxman 206 (Bom.)(HC)

S. 127 : Power to transfer cases-Transfer from one Commissioner to another-Search and Seizure-Connected-Notice must be specific-Failure to deal with reply of assessee-Notice was quashed. [S. 127 (1). 127(2), 132, Art. 226]

Allowing the petition the Court held that the order was passed without granting a personal hearing though the assessee had requested one and sub-section (2)(a) of section 127 required that such an order could be passed after giving the assessee a reasonable opportunity of being heard in the matter and after recording his reasons for doing so. Even though in the order the Commissioner (IT) had stated that the assessee was provided opportunity under section 127(1), he had exercised his powers under section 127(2) which showed his non-application of mind. He had failed to deal with all the points raised by the assessee in his reply. Moreover, the notice itself was defective as it had been issued by the ITO (IT) and not by the Commissioner who exercised his power. In the intimation notice apart from stating you are connected to this group there were no other details as to how the assessee was connected to the searched party, Salagaocar group of companies The word connected has a varied and a wide meaning. The Department ought to have mentioned in the notice as to how the assessee was connected to the searched party. The contention of the Department that the assessee should have been aware in view of the past events as to what the Department meant by connected with the Salagaocar group of companies could not be accepted. Notice was quashed. The Respondent was directed to retransfer of files to the back to original Assessing Officer. Referred Om Shri Jigar Association v. UOI (1994)) 209 ITR 608 (Guj.)(HC) (AY.2018-19).

Darshan Jitendra Jhaveri v. CIT(IT) (2021) 439 ITR 514 / (2022) 285 Taxman 212 (Bom.)(HC)

S. 132B : Application of seized or requisitioned assets-Seizure of cash-Delay in release of cash beyond period laid down in Section-Interest payable for such delay till date of payment. [S. 132B(4)(b),153A, Art. 226]

A search was conducted at the residence of the assessees on October 31, 2017 and cash was seized.The assessment was completed assessing the Nil income. The assessees applied for release of the seized cash. On November 17, 2021, respondent No. 3 released cash without payment of any statutory interest as per section 132B(4)(a) and (b) of the Act. The period of 120 days came to an end on March 2, 2018. On a writ allowing the petition the Court held that there was delay in releasing the cash amount of the assessees seized by the respondents and such payment was not made within a period of 120 days from the date on which the last authorisation for search under section 132 was executed to the date of completion of assessment under section 153A or under Chapter XIV-B of the Act, 1961. The respondents were solely responsible for the gross delay in not releasing the cash amount of the petitioners under section 132B(4)(b) of the Act and thus could not refuse the payment of compensation to the assessees for wrongfully withholding the amount from the date of assessment order till payment.

Sanjeevkumar v. UOI (2022) 444 ITR 334 / 288 Taxman 334 / 214 DTR 265 / 327 CTR 84 (Bom.)(HC)

S. 132B : Application of seized or requisitioned assets-High court could not direct release of gold in favour of the alleged owner when appeal before the CIT(A) was pending. [S. 250, Art. 226]

The Petitioner claimed that it was the owner of certain quantity of gold which was seized from the job worker to whom the gold was given to convert into jewellery and in whose hands the same was added as

undisclosed income as he could not explain the source thereof. The order of assessment in the case of the job worker was pending before the CIT(A). The High Court held that as the ownership over the gold had not been finalized and the appeal in the case of the job worker was pending before the CIT(A), it could not direct the release of the gold in favour of the Petitioner. (AY. 2017-18)

New Lakshmi Jewellers v. PCIT (2021) 431 ITR 570 / 318 CTR 713 / 278 Taxman 403 / 200 DTR 264 (Bom.)(HC)

S. 139 : Return of income-Audit-Extension of due date of filing-COVID-19-Power of CBDT is discretionary-CBDT was justified in denying further extension. [S. 119, Art. 226]

Dismissing the petition the Court held that power exercised by the CBDT u/s. 119 is discretionary, accordingly the order passed by the CBDT on 11.01.2021 cannot be said that CBDT had failed to exercise its discretion or that it acted in an arbitrary or unreasonable manner in refusing to grant further extension of the due dates. Accordingly writ for further extension of the due dates was rejected. (AY. 2020-21)

CVO Chartered & Cost Accountants' Association, Mumbai v. UOI (2021) 434 ITR 219 / 278 Taxman 307 / 198 DTR 85 / 319 CTR 60 (Bom.)(HC) www.itatonline.org

S. 143(3) : Assessment-Bogus purchases-Hawala dealers-Sales tax Department-Gift materials-Additions made to the total income on account of bogus purchases-Stock register and quantity details filed-Deletion Tribunal-Order of Tribunal is affirmed [S.69C, 260A]

The assesssee is engaged in the business of manufacturing and selling Indian made Foreign liquor. The Assessing Officer disallowed the alleged bogus purchases on the ground that the Director has made statement before the Assistant Commissioner of Sales Tax (I-27), Investigation Branch Mumbai admitting that they have issued invoices /bills without delivery of goods as hawala bills. The notice issued to these parties u/s

133(6)) of the Act remained unserved they are not available / traceable. Officer by an order sheet requested the assessee to produce the said parties before officer for verification but the assessee did not produce them. The appeal was partly allowed because the addition by the Assessing Officer on account of alleged bogus purchases was confirmed by the CIT(A). On appeal Tribunal deleted the addition. Relied on order in MPIL Steel Structuress Ltd. v. DCIT (ITA No. 6602 /Mum/ 2014 (AY. 2011-2012 On appeal by Revenue the High Court held that the quantity details and stock register stating various gift item purchased from various parties, delivery challans and also confirmation from few wine shops about description of goods and quantity of goods distributed. Accordingly affirmed the order of the Tribunal. (ITA No.1404 of 2017, 1418 of 2017 dt. 22-11-2021)(AY. 2009-10)

PCIT v. Allied Blenders and Distillers Pvt. Ltd. (Bom.)(HC)(UR)

S. 143(3) : Assessment-Bogus purchases-No rule that entire purchases should be added-Sales accepted-Disallowance of 12.5 Per Cent. of purchases held to be proper. [S. 37(1)]

Held, dismissing the appeal the Court held that the sales having been accepted it was not necessary that the entire amount should be added to the income of the assessee. The Tribunal was right in upholding the order of the Commissioner (Appeals) directing the Assessing Officer to delete the disallowance made by the Assessing Officer on account of bogus purchases. (AY. 2011-12)

PCIT v. Batliboi Environmental Engineering Ltd. (2022) 446 ITR 238 (Bom.)(HC)

S. 143(3) : Assessment-Bogus purchases-Estimation of profit at 10% of total alleged bogus purchases is held to be justified-No substantial question of law. [S. 37(1), 40A(3), 260A]

The Assessing Officer disallowed the entire purchases as bogus purchases. On appeal the Commissioner of Income-tax (Appeals) estimated the

estimated the profit at 15%. On appeal the Tribunal reduced the estimated the profit at 10 %. On appeal by the revenue, dismissing the appeal the Court held that estimation of net profit being question of fact, the order of Tribunal is affirmed. No substantial question of law. (ITA No 1850 of 2017 dt 28-10 2021). (AY.2019-10)

PCIT v. JK Surface Coatings Pvt. Ltd. (Bom.)(HC) www.itatonline.org.

S. 143(3) : Assessment-Natural justice-Covid-19-Lockdown-Returned income was loss of Rs.10,57,049 and income assessed was 114,57,33,424-Only three working days notice was given to file various details-Order passed without giving sufficient time is violative of the principle of natural justice-Order was set aside. [S. 144, Art. 226]

The assessee is in the business of trading of Precious Metals-Gold and Silver Bullion. During the lockdown period the assesee was served with notice to file the details with in three working days. The returned income was loss of Rs. 10, 57, 049. The Assessing Officer passed the order by estimating the income at 8% of sales turnover and assessed the income at Rs 114, 57, 33,424. The assessee filed writ before the High Court. Allowing the petition the Court held that Order passed without giving sufficient time is violative of the principle of natural justice. Order was set aside. (AY. 2018-19) (WPNO. 1368 of 2021 dt. 28-10-2021)

SPL Gold India Pvt. Ltd. v. ACIT (Bom.)(HC) www.itatonlline.org

S. 143(3) : Assessment-E. Assessment-Non furnishing draft assessment order-Order not having been passed in conformity with the requirements of the Faceless Assessment Scheme, 2019 held to be non-est and shall be deemed to have never been passed-Order was quashed and set aside. [S. 143(3A), 143(3B), Art. 226]

In response to various notices the assessee filed the reply and also requested for personal hearing. The assessment was completed without

passing the mandatory draft assessment order. The assessee challenged the assessment order by filing the writ petition. Though in the assessment order it was stated that the draft assessment order was provided with the show cause notice dated 1st February, 2021, from the affidavit in reply it was found that draft assessment order was generated in ITBA system only on 25th February, 2021. The Court held that order not having been passed in conformity with the requirements of the Faceless Assessment Scheme, 2019 held to be non-est and shall be deemed to have never been passed-Order was quashed and set aside. Referred CBDT order dated 13-8-2020. (WP No. 3195 of 2021 dt. 21-9-2021) (AY. 2018-19)

Chander Arjandas Mnwani v. National Faceless Assessment (Bom.) (HC) www.itatonline.org

S. 144B : Faceless Assessment-Natural justice-Personal hearing was not granted-Order was quashed and set aside. [Art. 226]

In response to show cause notice the assessee requested for personal hearing. The order was passed without granting any opportunity of personal hearing. On writ the Court held that order of assessment was liable to be set aside on ground of violation of principles of natural justice. Directed to pass fresh assessment order within a period of four months.

Premlata Ramakant Fatehpuria v. PCIT (2022) 288 Taxman 54 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Assessment order passed without draft assessment order-No personal hearing given-Order was quashed and set aside. [S. 133(6), 143(2), 156, 271AAC, 271B, 274, Art. 226]

Petitioner filed return of income. Petitioner's case was selected for complete scrutiny under the CASS and accordingly notice under Section 143(2) of the Act was issued. The assessment order was passed. On writ the petitioner contended that the assessment order, was not preceded by any draft assessment order as its required under Section 144B of the Act. There

is also non compliance with the mandatory provisions of Section 144B of the Act, where sub Section 1(xvi)(b) provides for an opportunity to the assessee to be heard. Allowing the petition the court held that Sub Section 9 of Section 144B provides that any order not in accordance with the proceedings laid down in Section 144B will be non-est. Therefore, the assessment order is non-est. Accordingly the demand notice issued under Section 156 of the Act and show cause notices under section 274 r/w Section 271AAC and Section 271B, were quashed and set aside as non-est. (WP No. 1623 of 2021 dt 13-10-2021 (AY. 2018-19).

ND's Art World Private Limited v. NFAC (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Show cause notice was never served upon the petitioner-Natural justice-Personal hearing shall be issued at least seven working days in advance-Stricture-Harassment to assessee-Wasting precious judicial time and unnecessary expenditure on lawyers-The court held that the conduct of Assessing Officer was unacceptable and issuing of show cause notice cannot be just an empty formality. [S. 147, 148, Art. 226]

The assessment order passed under section 147 read with 144B of the Act. On writ the petitioner contended that the show cause notice as to why proposed the variation should not be made was never served upon the petitioner. On writ allowing the petition the Court held that even if the Court proceed on the basis that show cause notice has been served on the petitioner, effective time given for responding was less than 10 working hours. The court held that the conduct of Assessing Officer was unacceptable and issuing of show cause notice cannot be just an empty formality. Petitioner should have been given a reasonable time and passing such orders amounts to nothing but harassment to assessee. In these circumstances, the assessment order dated 23.03.2022 is quashed and set aside and the matter is remanded for denovo consideration. Petitioner shall submit its reply / response to the show cause notice dated 19.03.2022

within two weeks from today. The Assessing Officer shall pass fresh orders on or before 31.08.2022, after giving a personal hearing to petitioner. The notice for personal hearing shall be issued at least seven working days in advance. (WP (L.) No. 13394/2022 dt. 6-5-2022).

Chetan D. Divekar v. NFAC (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural justice-Order passed without considering petitioners submission-Reasonable time not given to respond to show cause notice-Order and subsequent notices quashed-levied cost on the Assessing Officer Rs. 25,000 to be deposited to PM Cares Fund. [S. 142(1), 143(3), 156, 270A, 217AAC, Art. 226]

The Assessment order was passed under Section 143 (3) read with Section 144 B the Act together with notice of demand under Section 156 of the Act and show cause notice under section 274 read with section 270 A, 271 AAC of the Act. The petitioner filed the writ petition to quash the assessment order on the ground that the order has been passed without following principles of natural justice in as much as reasonable time to file response to the draft assessment order was not granted and even the response and documents filed earlier have not been considered in the draft assessment Order. Allowing the petition the High Court set aside the impugned assessment order, notice of demand as well as show cause notice and levied cost on the Assessing Officer Rs. 25,000 to be deposited to PM Cares Fund. (WP (L) No.11052 of 2021 dt. 27-10-2021)

Parag Kishorchandra Shah v. NFAC (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural justice-Sufficient time was not given to petitioner to respond assessment order-Matter is remand to the stage when the draft assessment order was issued. [S. 147, 148, Art. 226]

The draft assessment order was passed without giving a reasonable opportunity of hearing. The petitioner challenged the said draft order and

also notice issued u/s. 148 of the Act. The court did not interfere with the notice issued under Section 148 but gave relief to assessee by quashing assessment order dated 30th September 2021 and remanded the matter to the Assessing Officer to the stage when the draft assessment order was issued. Revenue relied on Amaya Infrastructure (P) Ltd v. ITO [2016] 383 ITR 498 / (2017) 79 taxmann.com 345 (Bom.)(HC) (WP No. 8859 of 2021, dt. 13.12.21) (AY. 2013-2014)

B.K. Associates v. NEAC (Bom.)(HC) (UR)

S. 144B : Faceless Assessment-Natural justice-Personal hearing was not granted-Show cause-cum-draft Assessment order-Order was set aside. [Art. 226]

The petitioner challenged the assessment order on the ground that show-cause-cum-draft assessment order was not served on the petitioner. Counsel for respondents and as an Officer of the Court, in fairness states that the grievance of petitioner that show cause-cum-draft assessment order was not delivered appears to be a justified reason. The Court remanded the matter for denovo consideration. (WP No. 7350 of 2021, dt 20.12.21). (AY. 2019-2020)

RBL Bank Limited v. ACIT (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural Justice-Personal hearing not given-Order was quashed and set aside-Directed to grant personal hearing. [Art. 226]

One of the ground of challenge in the writ petition was the assessment order was passed without following the principle of natural justice, to wit, no personal hearing was granted. Allowing the petition the Court held that when the assessee has made a request for grant of personal hearing, the request has to be granted. Followed Piramal Enterprises Limited v. ACIT (2021) 127 taxmann.com 189/ 281 Taxman 1 (Bom.)(HC) (WP No. 1639 of 2021, dt. 25-8-21). (AY. 2018-2019)

Delta Global Allied Ltd. v. ACIT (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural justice-Draft Assessment order-Video Conferencing.-Request for personal hearing was not granted-Order was quashed and set aside-Directed to pass the order after granting personal hearing. [Art. 226]

The order was passed without following the principle of natural justice. The petitioner has requested for personal hearing which was overlooked by the Assessing Officer. On writ allowing the petition the Court observed that what is averred in the Affidavit-in-Reply is contrary to what is there in the Assessment order and there is total non-application of mind in filing the Affidavit-in-Reply. At the same time, in view of what is stated in the Affidavit-in-Reply, the Court cannot express any satisfaction that Petitioner's reply to the show cause notice has been given due consideration. Certainly and admittedly, Petitioner has not been granted a personal hearing which was requested. Accordingly the order was quashed and set aside and directed to pass the order after granting personal hearing. (WP No. 1639 of 2021 dt 25-8-21) (AY. 2018-2019).

Rhenus Logistics India Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural justice-less than two days to reply-Personal hearing was not given-Stricture-The Assessing Officer could not care for the assessee and was not even conscious of what he was actually doing-This is a pure form of harassment of the assessee, a tax payer-The entire approach smacks of high handedness and don't care attitude-Directed the Assessing Officer to pay a sum of Rs. 25,000 as cost from his salary / personal bank account to PM Care fund-The matter shall be placed before different from the Officer who had passed the impugned order dated 22-4-2021-Order was set aside for denovo consideration. [Art. 226]

The draft assessment order dated 19-4-2021 was digitally signed at only 18. 40 P.M. OF 19-4-2021 but time to respond was given only till 23.59 hours of 20-4-2021, though there was lockdown in force in the State due to the second wave of COCID pandemic. In the show cause notice cum draft

assessment order the amount mentioned was nil. In the assessment order the income assessed was Rs.53,80,12,676. The petitioner was given less than 2 days to give reply to show cause notice cum draft assessment order and total taxable income was mentioned as NIL. Allowing the writ petition the Court held that the respondent shall strictly follow the mandatory provisions of Section 144B. The order and consequential notice of demands was set aside for denovo consideration. The matter shall be placed before different from the Officer who had passed the impugned order dated 22-4 2021. The court also observed that the Assessing Officer could not care for the assessee and was not even conscious of what he was actually doing. This is a pure form of harassment of the assessee, a tax payer. The entire approach smacks of high handedness and don't care attitude. The court observed that by conduct, the Assessing Officer has compelled petitioner to knock at the doors of the court and thereby has also impinged on the valuable judicial time of the Court. Court directed the Assessing Officer to pay a sum of Rs. 25,000 as cost from his salary /personal bank account to PM Care fund. The petition was listed for compliance on 24-2-2022 for compliance. (WP No. 2253 of 2021 dt. 9-2-2022)

Gstaad Hotels Pvt. Ltd. v. NFAC (2022) 218 DTR 265 (Bom.)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Opportunity of hearing-Personal hearing through video conference was denied-Matter remanded. [Art. 226]

The assessment order was passed without giving an opportunity of personal hearing through video conference. On writ the High Court set aside the order and remanded the matters back to the Assessing Officer for de novo consideration after granting an opportunity of personal hearing and after taking into further submissions that the petitioner may make. (WP No. 2076-2077 of 2022 dt. 4-7-2022) (AY. 2016-17, 2017-18)

LKP Securities Ltd. v. Dy. CIT (2022) BCAJ-August-P. 77 (Bom.)(HC)

S. 144B : Faceless Assessment-Best judgment assessment-Natural justice-Directed to afford due opportunity of hearing before passing final assessment order-Reassessment-Notices were seta side-Directed to consider objections and pass the order giving an opportunity of hearing. [S. 144, 147, 148, 156, 270A, Insolvency and Bankruptcy Code, 2016, Art. 226]

On a writ petition against the orders passed under section 144 read with section 144B and section 270A, the demand notice under section 156 of the Income-tax Act, 1961 for the assessment year 2018-19 on the grounds that they had been passed without granting the assessee an opportunity of personal hearing and without considering the legal effect of the assessee having emerged out of the corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016 and the reassessment notices issued under section 148 for the assessment years 2013-14 to 2017-18. The court set aside the orders passed under section 144 read with section 144B and section 270A and the demand notice issued under section 156 of the Income-tax Act, 1961 for the assessment year 2018-19 and remanded the matters to the Assessing Officer for giving an opportunity of personal hearing to the assessee before passing the final order. In respect of the notices issued under section 148 for the assessment years 2013-14 to 2017-2018, the Assessing Officer was to consider the objections raised by the assessee giving an opportunity of hearing. Matter remanded. (AY.2013-14 to 2018-19)

Vadraj Energy (Gujarat) Ltd. v. ACIT (2022) 445 ITR 15 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Opportunity of hearing-High Court set aside assessment for de novo consideration, with a direction to concerned authority to pass assessment order and strictly comply with mandatory provisions prescribed under section 144B, considering all submissions made by assessee and also granting a personal hearing. [S. 143(3), 144B(7), Art. 226]

Assessee filed writ petition challenging faceless assessment order on ground that opportunity of personal hearing was not granted. High Court set aside assessment for de novo consideration, with a direction to concerned authority to pass assessment order and strictly comply with mandatory provisions prescribed under section 144B, considering all submissions made by assessee and also granting a personal hearing.

Praful M. Shah v. NAFC (2022) 136 Taxmann.com 295 (Bom.)(HC)

Editorial : Notice issued in SLP filed by assessee, Praful M. Shah v. NAFC (2022) 286 Taxman 263 (SC)

S. 144B : Faceless Assessment-Final order passed without issuing draft assessment order-Matter remanded. [S. 144B(1)(xvib), 156, Art. 226]

The assessment order was passed without issuing the draft assessment order as required under section 144B(1)(xvi)(b). According to the affiant, under section 144B(1)(xvi)(b) it was not mandatory and it was not indicated by the risk unit since the issue of draft assessment order fell within the purview of the risk unit. On a writ the Court held that there had been non-compliance with the mandatory procedure laid down under section 144B and hence the assessment order was non est. Therefore, the assessment order and the consequent demand and penalty notices were quashed and set aside. The matter was remitted back to act in accordance with law. Matter remanded.

Multiplier Brand Solutions Pvt. Ltd. v. ITO(2022)442 ITR 202 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-No show cause notice was issued-Order passed without following mandatory procedure-Order was quashed. [Art. 226]

Allowing the petition the Court held that the assessment order had been issued without following mandatory procedure prescribed under section

144B, namely, without issuing show cause notice to assessee, impugned order was to be quashed and set aside as non est. (AY. 2018-19)

Abacus Real Estate (P.) Ltd. v. Dy. CIT (2022) 284 Taxman 654 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural Justice-Order passed without issuing show cause notice and draft assessment order-Order was quashed and set aside. [S. 143(3), 144B(1)(xvi), Art. 226]

NFAC passed a final assessment order against assessee without issuing a show-cause notice in form of draft assessment order to provide an opportunity of hearing to assessee, which was mandatory requirement for faceless assessment under section 144B(1)(xvi) of the Act. On writ allowing the petition the Court held that assessment order being in violation of procedure laid down under section 144B was to be quashed and matter was to be remanded. (AY. 2018-19)

Golden Tobacco Ltd. v. NFAC (2022) 442 ITR 204 / 284 Taxman 292 (Bom.)(HC)

S. 144B : Faceless Assessment-Draft assessment order and notice-Reply not considered-Request for personal hearing not considered-Non-application of mind by Assessing Officer-Order and consequential demand was set aside-Matter Remanded-Strictures-Assessing Officer was directed to pay Rs.10,000 as donation from his personal account to P.M. Care Fund. [S. 156, 270, Art. 226]

Allowing the petition the Court held that there had been total non-application of mind and gross abuse of process by the respondents. No personal hearing had been granted and the reply dated May 12, 2021 had also not been considered. The assessment order dated September 23, 2021 and consequential notices issued under sections 156 and 270A were quashed and set aside. The matter was remanded for de novo consideration. The Assessing Officer who would not be the same Officer

who passed the earlier assessment order should consider the reply filed by the assessee on May 12, 2021, afford an opportunity of hearing to the assessee and pass an assessment order. Matter remanded. The Court also directed the Assessing Officer to pay Rs.10,000 as donation from his personal account to P.M. Care Fund.

Milestone Brandcom Pvt. Ltd. v. NFAC (2022) 441 ITR 470 (Bom.)(HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Reply filed was not taken in to consideration-Order remanded with the direction to pass the order in accordance with law after giving due opportunity of hearing to the assessee. [S. 143(3), 144B(7)(viii), 144B(7)(xii), Art. 226]

A request for personal hearing was also made while seeking time till 21st April, 2021. On that day the assessee did file his reply to the show-cause notice. However, the same has not been taken into consideration though the assessment order was passed much later on 14th May, 2021. Allowing the petition the Court held that the assessment order dt. 14th May, 2021 has been passed without granting proper and meaningful opportunity to the assessee to respond to the show-cause notice. A mere statement in the affidavit-in-reply that the assessee's response to the show-cause notice did not contain any new or material fact cannot be accepted as such reason is not found in the impugned assessment order. Assessment order dt. 14th May, 2021 is set aside and proceedings are remanded to the respondent No. 1 for a fresh consideration in accordance with law after giving due opportunity of hearing to the assessee.

Pankaj v. NEAC (2022) 441 ITR 502 / 211 DTR 313 / 325 CTR 567 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Order passed without considering the reply filed by the assessee-Order and consequential demand notice was set aside-Strictures-Officers are

not truthful in filing their affidavit-Directed to circulate copy of this order to Commissioner of income-tax (Judicial) Mumbai and also to all Commissioner (Judicial) in the Country-Department to be truthful and accept their mistakes instead of filing false affidavit. [S. 156, Art. 226]

The assessment order was passed on the ground that the assessee did not respond to notice and draft assessment order. On Writ allowing the petition the Court held that respondent No. 3 had erred in stating that the assessee did not even respond to the show-cause notice. A print-out of the e-proceedings response acknowledgment from the Department was annexed which confirmed that the reply to the notice had been submitted on April 27, 2021. Therefore, it was obvious that respondent No. 3 had not considered the reply filed by the assessee before passing the assessment order. The assessment order dated April 29, 2021 and the consequent demand notice issued under section 156 were quashed and set aside. Court also observed that Officers are not truthful in filing their affidavit and Directed to circulate copy of this order to Commissioner of income-tax (Judicial) Mumbai and also to all Commissioner (Judicial) in the Country and held that the Department to be truthful and accept their mistakes instead of filing false affidavit.

Zeus Housing Company v. UOI (2022) 441 ITR 666 / 283 Taxman 377 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Failure to issue show cause notice and draft assessment order-Order was quashed and set aside-Directed to pass assessment order by following due procedure as contemplated under section 144B of the Act and giving an opportunity of hearing through video-Conferencing. [S. 2(15), 12A, 144, 148, 156, 222, 232, Art. 226]

The assessment of the appellant was completed denying the exemption u/s 2(15) of the Act. The assessee challenged the assessment order by filing writ petition and contended that the Assessment Authorities had not issued

a notice calling upon the petitioner to show cause as to why the assessment should not be completed as per the draft assessment order. Allowing the petition the Court set aside the order of assessment and directed to pass assessment order by following due procedure as contemplated under section 144B of the Act and giving an opportunity of hearing through video-Conferencing. (AY. 2018-19)

Goa Industrial Development Corporation (Through its Managing Director) v. NFAC (2022) 442 ITR 212 / 285 Taxman 464 / 209 DTR 57 / 324 CTR 129 (Bom.)(HC)

S. 144B : Faceless Assessment-Accommodation entries-Bogus sales-Penny stock companies-Order passed violation of principle of natural justice-Order was quashed-Notice of reassessment was held to be valid. [S. 69, 143(3), 147, 148, Art. 226]

Court held that there was nothing in this notice which could be termed illusory, hypothetical or a matter of conjecture, therefore, said notice could not have been set aside in exercise of jurisdiction under article 226 of Constitution. Court also held that the order passed by the Assessing Officer being in gross breach of order passed by High Court was to be quashed and set aside. Matter remanded. (AY. 2012-13)

Uttam M. Jain (HUF) v. ITO (2022) 285 Taxman 100 / 209 DTR 51 / 324 CTR 141 (Bom.)(HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Order was not passed in accordance with procedure laid down under section 144B(9) Act-Order was set aside-Court also observed that such orders are continued to be passed, substantial costs will be imposed on concerned Assessing Officer which would be recovered from his/her salary and also department is to be directed to place such judicial orders in career records of such Assessing Officer. **[S. 144B(9), 156, 270A, Art. 226]**

Petitioner challenged assessment order passed under section 144 along with notice of demand issued under section 156 and penalty proceedings initiated under section 270A of the Act. Allowing the petition the Court held that the assessment order passed by revenue was an exact reproduction of draft assessment order without considering replies filed by petitioner and petitioner's request for personal hearing. The Court held that the assessment order was passed without application of mind and was not in accordance with procedure laid down under section 144B(9) of the Act. The Court also observed that, if such orders are continued to be passed, substantial costs will be imposed on concerned Assessing Officer which would be recovered from his/her salary and also department is to be directed to place such judicial orders in career records of such Assessing Officer. (AY. 2018-19)

Mantra Industries Ltd. v. NFAC (2021) 283 Taxman 459 / 323 CTR 249 / 207 DTR 161 (Bom.)(HC)

Editorial : Notice issue in SLP filed by Revenue, NFAC v. Mantra Ind. Ltd. (2022) 287 Taxman 219/114 CCH 252 (SC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Request for personal hearing had been was not granted-Draft assessment order was not issued-Order passed is held to be non-est and set aside. [S. 143(3), Art. 226]

The assessment order was passed without giving an opportunity of hearing and also without issuing draft assessment order. On writ the Court held that where assessee's request for personal hearing had been ignored and mandatory draft assessment order had not been issued to assessee the assessment order and consequential notices for demand and penalty, having been passed without following requirements of Faceless Assessment Scheme, 2019 were to be treated as non est and were to be quashed and set aside. The Court also observed that it is open to respondents to take such steps as advised in accordance with law. (AY. 2018-19)

Chander Arjandas Manwani v. NFAC (2021) 283 Taxman 380 (Bom.)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Order passed without providing due opportunity-Notice cum draft assessment order-Provided only one day time-Order was set aside. [Art. 226]

The Assessing Officer issued a notice-cum-draft assessment order proposing certain additions and only one day was granted to respond to same. Assessee sought adjournment on same day on ground that time granted was too short to file a response to said notice. The Assessing Officer passed a final assessment order in terms of draft assessment order even before time of adjournment expired. On writ the Court held that time granted of only one day in show-cause notice certainly could not be accepted as sufficient time given to assessee to respond. Assessment order passed by Assessing Officer without providing assessee due opportunity to file his submissions to notice-cum-draft assessment order was in violation of principles of natural justice and, same was to be set aside. The matter is sent to the Assessing Officer for de novo consideration. (AY. 2018-19)

Uday Desai HUF v. NFAC (2021) 283 Taxman 570 (Bom.)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Order passed without providing due opportunity-Notice cum draft assessment order-Provided only one day time-Order was set aside. [Art. 226]

The Assessing Officer issued a notice-cum-draft assessment order proposing certain additions and only one day was granted to respond to same. Assessee sought adjournment on same day on ground that time granted was too short to file a response to said notice. The Assessing Officer passed a final assessment order in terms of draft assessment order even before time of adjournment expired. On writ the Court held that time granted of only one day in show-cause notice certainly could not be

accepted as sufficient time given to assessee to respond. Assessment order passed by Assessing Officer without providing assessee due opportunity to file his submissions to notice-cum-draft assessment order was in violation of principles of natural justice and, same was to be set aside. The matter is sent to the Assessing Officer for de novo consideration. (AY. 2018-19)

Uday Desai HUF v. NFAC (2021) 283 Taxman 570 (Bom.)(HC)

S. 144B : Faceless Assessment-Principle of Natural justice is violated-Cash credits-Order was passed without giving an opportunity of hearing-Order was set aside. [S. 68, 142(1), 143(3), Art. 226]

The assessment order was passed making addition u/s. 68 of the Act, without issuing the show cause notice. On writ the Court held that the issuance of show cause notice is the preliminary step is required to be understanding. The purpose of show cause notice is to enable a party effectively deal with the case made out by the respondent. On the facts the addition was made without issue of show cause notice, the order was quashed and set aside. Followed Om Shri Jigar Association v. UOI, 1994 SCC Online.Guj 77.

Shreji Investment & Advisory Services v. NFSC (2021) 207 DTR 357 / 323 CTR 505 (Bom.)(HC)

S. 144B : Faceless Assessment-Cash credits-Violation of principle of natural justice-Two days time was not granted-Draft assessment order was not provided-Assessment order was set aside [Art. 226]

The assessment order was passed making addition of Rs.29,51,28,460 under section 68 of the Act, without giving a reasonable opportunity of hearing also not providing the draft assessment order. The assessee filed the writ petition. High Court set a side the order of the Assessing Officer for violation of natural justice and not providing draft assessment order. (AY. 2018-19)

Setu Securities (P) Ltd. v. NFAC (2021) 323 CTR 646 / 207 DTR 425 (Bom.)(HC)

S. 144B : Faceless Assessment-Cash credits-Violation of principle of natural justice-Two days time was not granted-Draft assessment order was not provided-Assessment order was set aside. [Art. 226]

The assessment order was passed making addition of Rs. 29,51,28,460 under section 68 of the Act, without giving a reasonable opportunity of hearing also not providing the draft assessment order. The assessee filed the writ petition. High Court set a side the order of the Assessing Officer for violation of natural justice and not providing draft assessment order. (AY. 2018-19)

Setu Securities (P) Ltd. v. NFAC (2021) 323 CTR 646 / 207 DTR 425 (Bom.)(HC)

S. 144B : Faceless Assessment-Order passed without providing the draft assessment order-Order was quashed-Directed the revenue to prepare draft assessment order as prescribed by law. [Art. 226]

The assessee received the show cause notice stating as to why the assessment order should not be completed as per Draft Assessment order, however no draft assessment order was furnished to the assessee. The assessment was completed. The assessee challenged the assessment order by filing writ petition. High Court set aside the assessment order and directed the revenue to consider the response submitted by the assessee and provide the draft assessment order and pass the order in accordance with law. (W.P. No. 1646 of 2021 dt. 24-11-2021)

Bhavi Homes Pvt. Ltd. v. NFAC (2021) The Chamber's Journal-December-P. 165 (Bom.)(HC)

S. 144B : Faceless Assessment-Order passed without considering the reply-Incorrect affidavit by the Assessing Officer-Show cause

notice was issued for perjury proceedings-Cost of Rs. 10,000 was imposed payable to PM Cares Fund-Order was set aside. [Art. 226]
The assessment order was passed without considering the reply of the assessee. In the affidavit in reply the revenue stated that no reply was received before completion of the assessment proceedings. High Court observed that the time allotted in the show cause notice was up to 23.59 on April, 12 2021 whereas the assessee filed the response on that date at 8. 20 am. The Assessment was signed at 2.53 pm, but the affidavit by the official mentioned the time as 3.17 pm. The court observed that the affidavit did not reflect the true facts and had been prepared in a very lackadaisical manner without confirming the veracity of the statement being on oath. The Court observed that the assessment order was passed even before the response time had expired and without checking whether any reply has been filed. The Court quashed and set aside the order. The Court also order for payment of Cost of Rs.10,000 which is to be paid to the PM Cares fund. The Court also issued show cause notice why perjury proceedings should not be initiated for making incorrect statements on oath, particularly without verifying the documents of the Department annexed to the petition. (WP No. 1286 of 2021 dt. 17-9-2021)
Mateen Pyarali Dholakia v. UOI (2021) The Chamber's Journal-October-P. 105 (Bom.)(HC)

S. 144B : Faceless Assessment-Order passed without considering the reply-Incorrect affidavit by the Assessing Officer-Show cause notice was issued for perjury proceedings-Cost of Rs 10000 was imposed payable to PM Cares Fund-Order was set aside. [Art. 226]
The assessment order was passed without considering the reply of the assessee. In the affidavit in reply the revenue stated that no reply was received before completion of the assessment proceedings. High Court observed that the time allotted in the show cause notice was up to 23.59 on April, 12 2021 whereas the assessee filed the response on that date at 8. 20 am. The Assessment was signed at 2.53 pm, but the affidavit by the

official mentioned the time as 3.17 pm. The court observed that the affidavit did not reflect the true facts and had been prepared in a very lackadaisical manner without confirming the veracity of the statement being on oath. The Court observed that the assessment order was passed even before the response time had expired and without checking whether any reply has been filed. The Court quashed and set aside the order. The Court also order for payment of Cost of Rs. 10,000 which is to be paid to the PM Cares fund. The Court also issued show cause notice why perjury proceedings should not be initiated for making incorrect statements on oath, particularly without verifying the documents of the Department annexed to the petition. (WP No. 1286 of 2021 dt. 17-9-2021)

Mateen Pyarali Dholakia v. UOI (2021) The Chamber's Journal-October-P. 105 (Bom.)(HC)

S. 144B : Faceless Assessment-Order passed without show cause and draft assessment order-Order was quashed. [S. 143(3), 144B(xi)(b), Art. 226]

The assessee filed the writ petition challenging the assessment order on the ground that it has been passed in breach of the provisions of the Faceless Assessment Scheme, 2019. Allowing the petition the Court held that the NFAC passed a final assessment order under section 143(3), read with section 144B, against assessee without issuing any show cause notice which was mandatory requirement for faceless assessment under section 144B as well as serving draft assessment order, the assessment order was set aside. (AY. 2018-19)

Trendsutra Client Services (P.) Ltd. v. NEAC (2021) 283 Taxman 558 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Order was passed without considering the request for an adjournment-Pending the final disposal the assessment order, notice of demand and penalty proceedings are stayed. [S. 143(3), 270A, 271AAC, Art. 226]

The Assessing Officer has passed the assessment order without considering the request for an adjournment. On writ the High court passed an interim order staying the assessment order, notice of demand and penalty proceedings till next date of hearing.

GSA Constructions v. National Faceless Assessment Centre (2021) 203 DTR 305 / 321 CTR 362 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Order was passed enhancing the income without following the procedure-Stay was granted till next date. [S. 143(3), Art. 226]

The assessee challenged the assessment order on the ground that the Assessing Authority has passed the order enhancing the income without following the procedure. High Court granted the interim stay till the next date of hearing.

Prakash Nanji Paatel v. National Faceless Assessment Centre (2021) 203 DTR 220 / 321 CTR 256 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice-Personal hearing was not granted-Order was set aside. [Art. 226]

Allowing the petition the Court held that the statement and affidavit-in-reply and orders noted in the assessment order that no reply or explanation was furnished by the assessee was contrary to what the records indicated. The assessment order was quashed and set aside. The matter was remanded back to the concerned authority to consider the matter de novo and pass an order after granting personal hearing to the assessee. Matter remanded. (AY. 2018-19)

Sureshkumar S. Lakhotia v. National E-Assessment Centre (2021) 438 ITR 225 / (2022) 284 Taxman 340 (Bom.)(HC)

S. 144B : Faceless Assessment-Personal hearing was not granted-Assessment order was not in accordance with law and being non-est was to be set aside. [S. 143(3) 144, 144B(1), Art. 226]

Allowing the petition the Court held that show-cause notice had been issued to assessee to which assessee had responded to from time-to-time, requesting for personal hearing, however, personal hearing had not been provided, assessment not made in accordance with procedure laid down under section 144B being non-est and set aside. (AY. 2017-18)

Piramal Enterprises Ltd. v. Addl. CIT (2021) 282 Taxman 407 / 205 DTR 81 / 322 CTR 370 (Bom.)(HC)

S. 144B : Faceless Assessment-Natural justice. [S. 143(3), 270A, 271AAC, Art. 226]

Order passed by the Faceless Assessment Scheme without giving an opportunity before passing final assessment order. On writ operation of assessment order passed under section 143(3) read with section 144B was to be stayed.

Raja Builders v. National Faceless Assessment Centre (2021) 280 Taxman 304 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel-Remand proceedings-Draft assessment order has not been issued before the final assessment order is passed-The order set aside. [S. 92CA, 254(1), Art. 226]

The assessment order was passed without passing the draft assessment order. The assessee filed writ petition to quash the order which was passed without passing the draft assessment order. Allowing the petition the Court held that, Section 144C (1) of the Act mandates that the draft assessment order was necessary before the Assessing Officer can proceed to pass the final assessment order. Even in partial remand proceedings from the Tribunal, it is averred the Assessing Officer is obliged to pass the draft assessment order under Section 144C(1) of the Act. Accordingly the order was quashed and set aside. (WP No. 451 of 2022, dt. 18.04.22) (AY. 2006-2007)

ExxonMobil Company Private Limited v. DCIT (Bom.)(HC) (UR)

S. 144C : Reference to dispute resolution panel-Mandatory-Failure to follow the procedure under Section 144C(1) of the Act would be a jurisdictional error and not merely procedural error or a mere irregularity-Order of assessment was quashed and set aside. [S. 292B, Art. 226]

The order was passed without following the procedure under section 144C(1) of the Act. On writ the Court relied on the SHL (India) Pvt. Ltd. v. DCIT, (2021) 438 ITR 317 (Bom.)(HC) held that the requirement under Section 144C(1) of the Act to first pass the draft assessment order and to provide a copy thereof to the assessee is mandatory requirement that gave substantive right to the assessee to object to any variation, that is prejudicial to the assessee. Depriving petitioner of this valuable right to raise objection before DRP would be denial of substantive right to the assessee. Order of assessment was quashed and set aside. (WP No. 1802 of 2021, dt. 22.12.21)

Shell India Market Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Limitation-No objection raised by assessee-Assessment order passed on 27-9-2021-Barred by limitation. [Art. 226]

Allowing the petition the Court held, that the Deputy Commissioner had passed the draft assessment order dated April 19, 2021 under section 143(3) read with section 144C of the Act proposing to make an addition. By letter dated May 15, 2021, forwarded to him by e-mail on May 17, 2021, the assessee informed him that it would not be opting for the Dispute Resolution Panel route and instead would pursue the normal appellate channel. The communication was received by the Deputy Commissioner on May 17, 2021 and therefore, the time limit under sub-section (4) of section 144C of the Act would expire on June 30, 2021. Even if the submission of the Deputy Commissioner that e-mail dated May 17, 2021 was not uploaded in the Income-tax Business Application system were accepted and that the e-mail had to be ignored, still, the draft order having

been received by the assessee on April 19, 2021, the thirty day period provided under sub-section (2) of section 144C of the Act would have expired on May 18, 2021 which would mean the time limit under sub-section (4) of the Act expired on June 30, 2021. On facts the order had been passed on September 27, 2021. Neither Circular No. 8 of 2021 nor Notification No. 74 of 2021 dated June 25, 2021 ([2021] 435 ITR (St.) 24) or press release dated June 25, 2021 would help the Deputy Commissioner. The assessment order dated September 27, 2021 had been passed beyond prescribed time limit. Order was quashed. (AY.2015-16)

Renaissance Services Bv v. Dy. CIT(IT) (2022) 445 ITR 27 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel-Faceless Assessment-Limitation period for completion of Assessment by Assessing Officer on receipt of order of Dispute Resolution Panel against draft Assessment order-Not falling within period from March 20, 2020 to December 31, 2020 as stipulated under Section 3(1) of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020-Assessment order barred by time and consequent demand and penalty notices set aside. [S. 143(3), 144B, 144C(1), 144C(5), 144C(13), 156, 270A, 274, Art. 226]

The Deputy Commissioner passed a draft assessment order for the AY. 2016-17 under section 143(3) read with section 144C(1) after making certain transfer pricing adjustments as proposed by the Transfer Pricing Officer in the order under section 92CA(4). The assessee filed an application before the Dispute Resolution Panel against the draft assessment order. The Dispute Resolution Panel passed an order dated March 20, 2021 under section 144C(5). The Assessing Officer passed an assessment order under section 143(3) read with section 144C(13) and section 144B, dated September 30, 2021. A demand notice under section 156 and penalty notice under section 274 read with section 270A, both dated September 30, 2021 were also issued. On a writ petition, allowing the petition, the

Court held that since the order of the Dispute Resolution Panel was received by the Assessing Officer only on March 20, 2021, the assessee did not fall under sub-section (1) of section 3 of the 2020 Act as the time-limit for completion of assessment did not fall within the period from March 20, 2020 to December 31, 2020. Therefore, Notification No. 20 of 2021 dated March 31, 2021 was not applicable to the assessee since it provided that if the time-limit to complete the assessment under section 144C(13) expired on any date up to March 31, 2021, the date for completion was extended up to April 30, 2021.. That since the expiry of the time-limit for completion of assessment or for passing the order in the assessee's case under section 144C(13) of the Act on April 30, 2021 was not due to an earlier extension of time-limit by an earlier notification but was on account of the fact that the directions were issued by the Dispute Resolution Panel on March 20, 2021, Notification No.38 of 2021 dated April 27, 2021 was not applicable to the assessee. That there was no specific reference to the time-limit under section 144C(13) in Notification No. 74 of 2021 dated June 25, 2021 and there was no extension of time-limit for completion of assessment or passing of any order under section 144C(13). Since the time-limit in the assessee's case had not been extended by earlier notifications, this notification was not applicable to the assessee. Hence, there was no extension of time-limit to September 30, 2021 to pass the order under section 144C(13) against the assessee. That the assessment order dated September 30, 2021 passed under section 143(3) read with sections 144C(13) and 144B for the AY. 2016-17, the consequent demand notice under section 156 and penalty notice under section 274 read with section 270A were quashed and set aside. The undertaking by the assessee to withdraw the statutory appeal filed against the assessment order was accepted.(The Central Board of Direct Taxes issued the first Notification No. 20 of 2021 dated March 31, 2021 ([2021] 432 ITR (St.) 141). Notification No. 38 of 2021, dated April 27, 2021 ([2021] 434 ITR (St.) 11) Notification No. 74 of 2021, dated June 25, 2021 ([2021] 435 ITR (St.) 24)) (AY. 2016-17)

Shell India Markets Pvt. Ltd. v. ITO (2022) 443 ITR 366 / 214 DTR 153 / 327 CTR 69 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel-Order passed without following the procedure-Not a procedural irregularity-Not a curable defects-Final order passed without the draft assessment order was not valid. [S. 292B, Art. 226]

Court held that the requirement under section 144C(1) to first pass a draft assessment order and to provide a copy thereof to the assessee is a mandatory requirement which gives a substantive right to the assessee to object to any variation, that is prejudicial to it. The procedure prescribed under section 144C of the Act is a mandatory procedure and not directory. Failure to follow the procedure under section 144C(1) would be a jurisdictional error and not merely procedural error or irregularity but a breach of a mandatory provision. Therefore, section 292B of the Income-tax Act cannot save an order passed in breach of the provisions of section 144C(1), the same being an incurable illegality. Accordingly the final assessment order had been passed without the draft assessment order as contemplated under section 144C(1). The order was not valid. (AY. 2017-18)

SHL (India) Pvt. Ltd. v. Dy.CIT (2021) 438 ITR 317 / 282 Taxman 334 / 204 DTR 233 / 321 CTR 655 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Estimate of gross profit-Reassessment notice to make addition of 5 percent of turnover instead of 1 percent addition was made in scrutiny assessment-Change of opinion-Notice and order disposing the objection was quashed. [S. 148, Art. 226]

The notice of reassessment was issued on the ground the Assessing Officer has had added back only 1 per cent. of the total turnover or sales to the income of the assessee instead of adding back 5 per cent. On writ allowing the petition the Court held that there was nothing to indicate why it should

be 5 per cent. Accordingly the notice and order disposing the objection was quashed. (AY.2013-14)

Manan Trading Co. Pvt. Ltd. v. Dy. CIT (2022) 449 ITR 587 (Bom.)(HC)

S. 147 : Reassessment-After expiry of four years-Capital gains-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed. [S. 2(47)(v), 45, 148, Art. 226]

The petitioner filed the writ against the disposal of objection against reassessment notice. Allowing the petition the Court held that there was no failure to disclose the material facts. The Court held that the assessing officer has the power to reopen the assessment provided there is tangible material to conclude that there is escapement of income from assessment and further, the reasons must have a live link with the formation of the belief. A mere change in opinion cannot be a reason to reopen. This decision holds that there is a conceptual difference between power to review and power to reassess and that the assessing officer has no power to simply review (AY. 2010-11)

Nirupa Udhav Pawar (Smt.) v. ACIT (2022) 439 ITR 541 / 328 CTR 771 / 214 DTR 427 (Panji Bench) (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-No new information-Reassessment notice and order disposing objection was quashed. [S. 80IA, 148, Art. 226]

Against the disposal of objection the assessee filed writ before the High Court. Allowing the petition the Court held that in the present case, the petitioner had truly and fully disclosed all material facts necessary for the purpose of assessment. They were carefully scrutinized and figures of income as well as deduction were carefully reworked by the Assessing Officer. In fact, in the reasons for reopening, there is not even a whisper

as to what was not disclosed. Accordingly this is not a case where the assessment is sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but this is a case wherein the assessment sought to be reopened on account of change of opinion of the Assessing Officer about the manner of computation and deduction under Section 80-IA of the Act. Accordingly the same is not permissible. (AY. 2014-15)

Sun-N-Sand Hotels Pvt. Ltd. v. NFAC (2022) 215 DTR 220 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Franchise fee-Capital or revenue-No failure to disclose material facts-Specific query in the course of original assessment proceedings-Reassessment notice and order disposing the objection was quashed. [S. 37(1), 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. Notice for reassessment was issued on the ground that non consideration of exchange rate had benefited the assessee to the extent of Rs.33,80,77,707/-which has not been offered by the assessee to tax. Hence, there is an escapement of income. The objection of the assessee was dismissed. On writ allowing the petition the Court held that hat these figures were all available before the Assessing Officer, who has considered the same and after applying his mind, passed the original assessment order. Therefore the reason to reopen on change of opinion. The Assessing Officer had all materials facts before him when he made the original assessment. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Even if the Assessing Officer, who passed the assessment order, may have raised too many legal inferences from the facts disclosed, on that account the Assessing Officer, who has decided to reopen assessment, is not competent to reopen assessment proceedings. it would

not be open to reopen the assessment based on the very same material with a view to take another view. Accordingly the reassessment notice and order disposing the objection was quashed. (AY. 2012-13)

Knight Riders Sports Pvt. Ltd. v. Dy. CIT (2022) 329 CTR 779 / 220 DTR 190 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Deduction allowed unit wise-Reasons for reassessment notice was the assessee should have been allowed deduction of 30 per cent and not 100 per cent-Reassessment notice and order disposal of objection was quashed. [S. 80IC, 148, Art. 226]

Assessee had six industrial undertakings in State of Himachal Pradesh. It claimed deduction under section 80-IC in respect of its two units at rate of 100 per cent. Assessing Officer allowed the claim and passed the order u/s 143(3) of the Act. Reassessment notice was issued after expiry of four years reopened such assessment for reasons that assessee should have been allowed deduction of 30 per cent and not 100 per cent. On writ allowing the petition the Court held that in assessment order Assessing Officer had discussed on unit wise details of income and expenses claimed under various heads as 80-IC units and non 80-IC units and had also disallowed certain interest hence it was a clear case of change of opinion. Re assessment notice and order disposal of objection was quashed and set aside. Followed PCIT v. Aarham Softronics (2019) 412 ITR 623 / 261 Taxman 529 (SC) (AY. 2012-13)

Pidilite Industries Ltd. v. UOI (2022) 288 Taxman 227 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Business expenditure-Reply to queries in respect of said expenses were furnished-Reassessment notice and order disposing objection was quashed. [S. 37(1), 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. Assessing Officer issued notice under section 148 dt. 30-3-2021 to assessee alleging that

assessee had claimed excess amount of deduction on account of other expenses in profit and loss account statement. The Assessing Officer rejected the objection of the assessee. On writ it was submitted that in scrutiny assessment, assessee had submitted details of all expenses, even reply to queries in respect of other expenses, unsecured loans were also furnished. High Court quashed the Reassessment notice and order disposing objection. (AY.2013-14)

Rajeshwar Land Developers (P.) Ltd. v. ITO (2022) 288 Taxman 186 / (2023) 430 ITR 108 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Depreciation-Straight line method-Written down value method-No failure on part of assessee to disclose facts, reopening of assessment was not justified. [S. 10A, 32, 148, Art. 226]

The assessee filed its return of income under section 139(1) declaring total income at Rs. Nil after claiming depreciation on straight line method It was stated so in notes to account in balance sheet filed along with return of income in respect of exemption under section 10A. Assessment order was passed under section 143(3), after scrutiny, was issued on 31-1-2001. Notice under section 148 was issued to assessee, proposing to reassess income of assessee. On writ allowing the petition the Court held that there was not even an assertion that there was failure on part of assessee to disclose fully and truly all material facts, which was a mandatory requirement to assume jurisdiction by Assessing Officer. Assessing Officer proceeded on ground that assessee had applied straight line method instead of written down value method in respect of depreciation which was a clear change of opinion. Accordingly there being absolutely no failure on part of assessee to disclose facts, reopening of assessment was not justified. (AY. 1998-99)(1997-98)

Sunjewels India (P) Ltd v. ITO (2022) 288 Taxman 562 (Bom.)(HC)

Sunjewels India (P) Ltd v. ITO (2022) 288 Taxman 591 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Business income-Unsecured non-convertible redeemable debentures was actually sale consideration received in respect of sale of flats and that had escaped assessment-Issue of debentures had been a subject of consideration of assessment proceedings-Reopening on same basis was not permissible. [S. 28(1), 148, Art. 226]

Assessee-company was engaged in business of construction of residential building. It recouped cost of construction of building by issue of redeemable debentures to shareholders. During assessment proceedings, assessee explained how it issued further debentures for covering cost of construction. Assessing Officer completed assessment accepting income as per return of income filed by assessee. Assessing Officer issued notice u/s 148 of Act on the ground that amount which assessee received against new unsecured non-convertible redeemable debentures was actually sale consideration received in respect of sale of flats and that had escaped assessment. On writ allowing the petition the Court held since issue of debentures had been a subject of consideration of assessment proceedings, reopening of assessment after four years on same basis relying on same primary facts disclosed was not permissible. Reassessment notice and order disposing the objection was quashed. (AY. 2001-02)

Tanna Builders Ltd. v. ITO (2022) 288 Taxman 300 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Information from DDIT (Inv)-Accommodation entries-Bogus capital gains and losses-Penny stock scrips-Original assessment proceedings transaction was treated as bonafide-Even if it was assumed that Assessing Officer had committed a mistake, still, assessment could not have been reopened to remedy error-Reassessment notice and order disposing the objection was quashed. [S. 45, 69, 148, Art. 226]

Assessment was sought to be reopened on ground that information was received from office of DDIT (Inv) that company JRI Industries was

involved in providing accommodation entries in form of bogus long term capital gains/short term capital lossess in penny stock scrips to beneficiaries by manipulating stock market and assessee was one of persons/beneficiaries who had traded in scrip of JRI Industries and entire consideration from sale of shares of said scrip remained unexplained. The objection for recorded reason was dismissed. On writ allowing the petition the Court held that in assessment proceedings, assessee had furnished particulars of transaction in JRI Industries and same was treated by Assessing Officer as bona fide transactions. Even if Assessing Officer had no means to know that transactions in scrip of JRI Industries were not bona fide and even if it was assumed that Assessing Officer had committed a mistake, still, assessment could not have been reopened to remedy error. Reassessment proceedings was quashed and set aside. Referred Gemini leather Stores v. ITO (1975) 100 ITR 1 (SC) (AY. 2013-14)

Sunil Hanskrishna Khanna v. ACIT (2022) 139 taxmann.com 555/ 288 Taxman 46 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Tribunal decided the issue in favour of assessee in earlier years-Order of Tribunal binding on the Assessing Officer though the matter is pending for admission before High Court-Re assessment notice based on the order of earlier years is bad in law-Assessing Officer cannot rely on assessment orders which are non existing because these orders have been held unjustified by the ITAT. [S. 143(1), 148, Art. 226]

The Department had made disallowances for AY 2012-13, 2013-14 and 2014-15. AO admits that the Assessment Order for A.Y. 2012-13, 2013-14 and 2014-15 on which reliance has been placed for issuance of notice under Section 148 of the Act is held to be unjustified by the Hon'ble Income Tax Appellate Tribunal. The assessment was completed u/s 143(1) of the Act on 16-8-2016. The reassessment notice was issued on 19-3-2021. Order rejecting the objection was passed on 7-1-2022. According to AO since the

department has not accepted the decision of the ITAT and has filed an appeal against these appellate orders before the Bombay High Court the issue of reassessment notice was valid. On writ against the disposal of objections allowing the petition the Court relied on the judgement of The Hon'ble Apex Court in UOI v. Kamlakshi Finance Corporation Ltd. [1992 Supp (1) Supreme Court Cases 443 wherein the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department-in itself an objectionable phrase-and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws. The court also stated that reliance on the assessment order of the previous years for re-opening itself is ill founded because these assessment orders have been set aside by the ITAT. Therefore, the Assessing Officer cannot rely on assessment orders which are, in fact, non existing because these orders have been held unjustified by the ITAT. (WP. No. 974 of 2022 dt. 3-3-2022) (AY. 2015-16)

J.K. Trust v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-After the expiry of four years-Demerger-Notice not specifying failure to disclose any material facts truly and fully by assessee-Notice and subsequent order invalid. [S. 148, 263, Companies Act, 1956, S. 391 to 394, Art. 226]

The assessee submitted a second revised return for the AY 1998-1999 in which it stated that the demerger of its bottling operation had resulted in a loss. In accordance with articles 143(2) and 142(1), the AO issued a notice along with a questionnaire. In addition to providing explanations in answer to the many inquiries made, the assessee also gave the balance sheet and the profit and loss account, together with the reasons for filing the revised income tax forms. After making a few disallowances and offsetting losses

from prior years, the Assessing Officer passed an order under section 143(3) computing the assessee's total income as Nil. The assessee appealed to the Commissioner (Appeals). By an order under section 263, the Commissioner directed the AO to pass an order after taking the issued raised in his order into consideration. Following that, a section 143(3) read with section 263 order was passed. After the expiry of four years the AO issued a notice under section 148 to reopen the assessment under section 147. On writ the Court held that the reasons recorded for reopening of the assessment did not state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the AY 1998-99. The notice issued under section 148 after a period of four years for reopening the assessment under section 147 and the consequential order passed were quashed and set aside. Distinguished Crompton Greaves Ltd v. ACIT (2015) 55 taxmann.com 59 / 229 Taxman 545/ 275 CTR 79 (Bom.)(HC) Referred Hindustan Lever Ltd. v. R.B. Wadkar (2004)268 ITR 339/ 138 taxman 40, 2004 (3) Mh.L.J.517(Bom.)(HC) (WP No.1779 of 2006 dt. 26-11-2021) (AY. 1998-99)

Coca-Cola India Private Limited v. DCIT (2022) 440 ITR 20 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Deemed dividend-No failure to disclose truly and fully material facts-Referred 68 cases laws however not stated how case laws are applicable to the facts-The Order was quashed by observing that the Faceless Assessing Officer has wasted his time in writing unsustainable order on objects. [S. 2(22)(e), 148, Art. 226]

Investments have been made by petitioner in shares of M/s. Poona Galvanizers Pvt. Ltd., (PGPL) and shares of M/s. Karamtara Fasteners Pvt. Ltd. (KFPL). DCIT Mumbai after raising a query on the share holding pattern of PGPL and KFPL from whom PGPL had taken loan; passed the assessment order taxing a sum of Rs.1,07,33,270/-as deemed dividend under Section 2(22)(e) of the Act. PGPL challenged this order before CIT (A)). The CIT

(A) held that amount of Rs.1,07,33,270/-should have been brought to tax as deemed dividend under Section 2(22)(e) of the Act in the hands of petitioner who is having substantial interest and not PGPL and KFPL. Order was up held by the Appellate Tribunal even before the reasons for re-opening were recorded and even after the reasons was recorded and notice was issued to petitioner. On writ High Court quashed and set aside the notice u/s. 148 of the Act dated 25th January, 2014 and the order dated 16th March, 2015 (WP No. 954/2014 dt. 11-3-2022 (AY. 2008-09)

Hanwant Manbir Singh v. Dy.CIT (Bom.)(HC)(UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Not dealt with any of the submissions-Referred 68 case laws without stating how the case laws are applicable to the facts of the petitioner-Reassessment notice is bad in law. [S. 148, Art. 226]

The issues raised in the reasons for reopening were subject matter of consideration before the Assessing Officer. On writ the Court held that when primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled to change of opinion to commence the proceedings for reassessment. The court quashed and set aside the notice and the order. Court also observed that the Assessing Officer has not dealt with any of the submissions and referred 68 case laws without stating how the case laws are applicable to the facts of the petitioner. (WP (L) No.6861/2022 dt. 9-3-2022. (AY. 2015-16)

Hitech Corporation Ltd. (Formerly known as Hitech Plast Ltd.) v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Quarries raised during assessment proceedings-Notice is held to be bad in law and quashed. [S. 148, Rule 11UA, Art. 226]

The assessment of the petitioner was completed u/s. 143(3) of the Act. During the assessment proceedings valuation report was sought and valuation by the Chartered Accountant was submitted. Notice has been issued after the expiry of four years from the end of relevant assessment year. On writ allowing the petition the Court held that the proviso to Section 147 of the Act is applicable and it is for respondents to show that there has been escapement of income due to failure on the part of the assessee to truly and fully disclose material fact required for assessment during the assessment year. On the facts during the assessment proceedings valuation report was sought and valuation by the Chartered Accountant was submitted which was not disputed or denied. Not only the petitioner had disclosed all information but respondent had also raised queries during the course of assessment proceedings and passed an assessment order under Section 143(3) of the Act. The Court quashed and set aside the notice issued and the order. Referred Aroni Commercial Ltd v. Dy. CIT (2014) 362 ITR 403/ 224 Taxman 13/ 44 taxmann.com 304 (Bom.)(HC) (WP No. 391of 2022 dt 2-5-2022) (AY. 2014-15)

Naroli Resorts Private Limited v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Revenue audit-Insurance business-Income from dividend from equity shares and interest from tax savings bonds-Reassessment notice and order disposing objection was quashed. [S. 10,44, 148, Art. 226]

The reassessment notice was issued on the ground that the assessee was wrongly allowed the exemption under section 10 of the Act in respect of income from dividend from equity shares and interest from tax savings bonds. The petitioner challenged the said notice and order disposing the objection**.** Allowing the petition the Court held that in the assessment order dated 18th February, 2016 it is recorded that petitioner has also referred to the judgment of this court in General Insurance Corporation of India v. DCIT (2021) 131 taxmann.com 327 (Bom.)(HC) in which this court had

occasion to consider whether the exemption granted under Section 10 of the Act were available to insurance company engaged in the business of general insurance and the court had answered in the affirmative. In fact, in the assessment order there is also reference to the portion of the judgment where the court has considered the circular issued by the CBDT to hold that the exemption granted under Section 10 of the Act were available to non life insurance business. Court also observed that the reassessment notice was issued on the basis of Revenue Audit. Notice and order disposing objection was quashed. (WP No. 1631 of 2022, dt.18.04.22) (AY. 2013-14)

ECGC Ltd. v. ACIT (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Closing stock-Notional income-No failure to disclose material facts-Notice and order rejecting the objection was quashed. [S. 22, 23, 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. In the course of assessment proceedings the Assessing Officer has asked specific question closing stock. After considering the reply the assessment was completed. The assessee received the notice dt. 3-3-2021 for proposing to reopen on the ground of not showing the notional income on stock in trade. The objection of the assessee was rejected. On writ allowing the petition the Court held that it is not a case where the assessment is sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but this is a case wherein the assessment sought to be reopened on account of change of opinion of the Assessing Officer about the manner of computation. In view of proviso to section 147 of the Act, the same is not permissible. Notice and order rejecting the objection was quashed**.** (WP No. 1179 of 2022 dt. 26.04.22) (AY. 2014-2015)

Harsh Kaushal Corporation v. ITO (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Audit query-Amount received towards corpus-Notice for reassessment and order disposing the objection was quashed. [S. 148, Art. 226]

Reassessment notice was issued on 31-3-2021. In the recorded reason it was stated that amount received towards corpus fund has to be treated as income of the current year. The objection of the assessee was rejected. On writ allowing the petition the Court held it is nothing but change of opinion which is not permissible in law and there was no failure on the part of petitioner to fully and truly disclosed any material fact. It is settled law that where a notice under Section 143 of the Act is issued after expiry of four years after relevant assessment year, such a notice can be issued only if respondents are able to effectively demonstrate that there was failure on the part of assessee to fully and truly disclosed material facts before the original Assessment order was passed. Court also observed that DCIT (E) which indicates that decision to reopen the assessment on the basis of audit query. Notice for reassessment and order disposing the objection was quashed. (WP No. 3045 of 2021, dt. 8.12.2021)(AY. 2013-2014)

All India Rubber Industries Association v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment--After the expiry of four years-Change of opinion-No failure to disclose material facts-Mistake of Assessing Officer-Error discovered reconsideration of same facts does not give power to the Assessing Officer to reopen the assessment-Reassessment notice and order disposal of objection was quashed. [S. 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. Notice was issued u/s 148 of the Act on 27-3-2019, after expiry of four years. Recorded reasons stated that basis of re-opening is due to mistake of the Assessing Officer that resulted in under assessment. The objection of the assessee was rejected. On writ allowing the petition the Court held that the Hon'ble Apex Court in Indian & Eastern Newspaper Society v. CIT (1979) 119 ITR

996 (SC) has held that an error discovered on a reconsideration of the same material (and no more) does not give power to the Assessing Officer to re-open the assessment. Referred Dell India (P) Ltd v. JCIT (2021) 432 ITR 212 (FB) (Karn)(HC). Reassessment notice and order disposal of objection was quashed/ (WP. No. 3363 of 2019, dt.22-12121) (AY. 2012-2013)

CEAT Ltd. v. ACIT (Bom.)(HC)(UR)

[**Editorial** : SLP OF Revenue dismissed, ACIT v. CEAT Ltd. (2022) 449 ITR 171 (SC)]

S. 147 : Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Notice and order rejecting the objection was quashed. [S. 33AC, 80A(2), 80I, 80M, 148, Art. 226]

The assessment was completed after raising issuing specific issue of allowability of claim u/s 80I of the Act. Notice u/s 148 of the Act was issued on 21-8 2001. The Assessing Officer rejected the objections. The assessee filed writ petition. Allowing the petition of the Court held that the fact that petitioner has been allowed a deduction under Section 33AC of the Act in respect of income from dividends, long term capital gains and interest cannot be the ground for initiating proceedings under Section 148 of the Act and the exercise to reopen a validly framed assessment is merely on the basis of change of opinion by succeeding Assessing Officer and such a mere change of opinion cannot justify the exercise of jurisdiction under Section 148 of the Act. The notice and order rejecting the objection was quashed**. (**WP No. 2428 of 2001, 25-11-21) (AY. 1992-1993)

The Great Eastern Shipping Company Ltd. v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Disallowance of expenditure-Exempt income-Return was not filed in pursuance of notice u/s 148 of the Act-No hard and fast rule that the assessee should first file its return pursuant to the notice-Reassessment notice was quashed. [S. 14A, R. 8D, Art. 226]

The assessment was completed u/s 143(3) of the Act. Notice u/s 148 of the Act on 21-3-2001. The assessee filed writ petition challenging the said notice. The writ petition was admitted. When the writ petition came for final hearing the Revenue contended that the assessee has not filed the return in response of notice u/s 148 of the Act hence the writ petition deserved to be dismissed. Relied on GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC). On behalf of the assessee it was contended that there is no hard and fast rule that the assessee should first file its return pursuant to the notice**.** Relied on the order of High Court in Caprihans India Ltd. v. Traun Seem, Dy. CIT (2003) 132 Taxman 123 (2004) 266 ITR 566 (Bom.)(HC). Allowing the writ petition of the assessee, the Court held that entire basis for reopening is that provisions of Section 14A and Rule 8D with regard to dividend income was attracted but while completing the scrutiny assessment no mention is made for the same. Petitioner has specifically addressed the query with regard to dividend income from which it is clear that the notice has been issued without proper jurisdiction and therefore, It is not permissible for respondents to change its opinion based on the same set of facts. (WP No. 3440 of 2019, dt 20.12.21) (AY. 2012-2013)

The Shipping Corporation of India Ltd. v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Query raised in the course of assessment proceedings-No discussion in the assessment order-Credit for tax deduction at source-Notice of reassessment and order disposing objection was quashed. [S. 148, Art. 226]

In the course of assessment proceedings specific query was raised as regards credit for tax deduction at source and the assessment was completed u/s. 143(3) of the Act. The notice for reassessment was issued on 31-3-2019. Detailed reply was filed, however order disposing the objection was passed. On writ the Court held that there has been no failure on the part of assessee to disclose and the entire re-opening is on the basis of details available on record and change of opinion. Relied on Indian and

Eastern Newspaper Society v. CIT (.1979) 119 ITR 996 (SC)]. The Court also observed that when query was raised, though there is no discussion in the assessment order, the reassessment is not permitted. Relied on Aroni Commercial Ltd v. Dy. CIT (2014) 362 ITR 403/ 44 taxmann.com 304 (Bom.)(HC). Notice of reassessment and order disposing objection was quashed. (WP No. 3501 of 2019 dt. 19-1-2022) (AY. 2012-2013)

Lintas India Pvt. Ltd. v. UOI (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Demerger-Same material-Reassessment notice and order disposing the objection was quashed. [S. 148, Art. 226]

Petitioner was formed as a result of demerger of the erstwhile Maharashtra State Electricity Board. The assessment was completed u/s 143(3) of the Act. The notice u/s. 148 dt. 30-3-2019 was issued and the order disposing the objection was passed on 22-11-2019. On writ allowing the petition the reasons recorded for re-opening, the JAO himself admits that the re-opening of assessment by him is based on the very same material which was considered by the original Assessing Officer, to take another view. Reassessment notice and order disposing the objection was quashed. Followed Crompton Greaves Ltd. v. ACIT (2015) 55 taxmann.com 59 / 229 Taxman 545 (Bom.)(HC) & Ananta Landmark Pvt. Ltd. v. DCIT. (2021) 439 ITR 168 / 283 Taxman 462 (Bom.)(HC) (WP No. 3573 of 2019 dt. 4-1-2022) (AY. 2012-2013)

Maharashtra State Electricity Distribution Co. Ltd. v. DCIT (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Income from house property-Business income-Income from other sources-No failure to disclose fully and truly all material facts-Notice of reassessment and order disposing the objection was quashed. [S. 22, 24, 28(i), 56, Art.226]

The assessment was completed u/s. 143(3) of the Act was completed on 12-3-2015. In the course of assessment proceedings notice was issued under section 142(1) of the Act. The petitioner provided all the details as required. The rental income was assessed as income from house property and deduction was claimed u/s 24 of the Act. The notice was issued u/s 148 of the Act on the ground that since the properties were not transferred from BCCL to petitioner the income was assessessable under the head business income or income from other sources and the assessee is not entitle to the deduction under section 24 of the Act. On writ allowing the petition the Court held that the Assessing Officer had in his possession all the primary facts and it was for him to make necessary enquiries and draw proper inference as to whether the amount was to be allowed as deduction under section 24 of the Act. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for re-assessment. Notice of reassessment and order disposing the objection was quashed. (WP No. 2984 of 2019, dt-4-1-22) (AY. 2012-2013)

Bennett Property Holdings Company Ltd. v. DCIT (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-When the Assessing Officer does not accept the objections filed, he shall not proceed further in the matter within a period of four weeks from the date of service of the said order of the objections on the assessee-Order was quashed-Notice and order rejecting the objection was also quashed. [S. 148, Art. 226]

The assessment was completed under section 143(3) of the Act on 22-2-2016. The notice under section 148 dated 20-3-2020 was issued on the assessee. The assessee filed its objections to the re-opening and order rejecting objections dated 24th September, 2021 was passed. Assessment order was passed on 29th September, 2021 within five days. The assessee filed writ petition. Allowing the petition the Court held that in Asian Paints Ltd. v. DCIT, [2008] 296 ITR 90 (Bom.)(HC), in when it was held that if the

Assessing Officer does not accept the objections filed, he shall not proceed further in the matter within a period of four weeks from the date of service of the said order of the objections on the assessee. This court had also directed that all Income Tax Officers concerned shall follow the proceedings strictly in all such cased of re-opening of assessment. Respondent are in breach of the order of this court. Accordingly the assessment order dated 29-9-2021 was set aside. Court also held that the re assessment notice is due to change of opinion accordingly, notice dated 20-3-2020 and order passed rejecting the objections dated 24-9 2021 also set aside. (WP. No. 7342 of 2021 dt. 19-1-2022) (AY. 2013-2014)

Nelco Ltd. v. ACIT (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Amalgamation-Valuation of shares-Advertisement and Business Promotion on medical practitioners-Reopening on same material with a view to take another view is held to be not valid-Notice and order disposing the objection was quashed. [S. 37(1), 56(2)(viib), 148, Art. 226]

Petitioner is engaged in the business of manufacturing and trading in animal health care products. Pfizer Animal Pharma Private Limited, a wholly owned subsidiary of petitioner has been amalgamated with petitioner. The assessment was completed under section 143(3) of the Act. In the course of assessment proceedings the Assessing officer asked specific question on valuation of shares and also CBDT Circular dated 1-8-2012 which stated that the Indian Medical Council has imposed prohibition on Medical Practitioners and their professional associates from taking gift, travel facilities, hospitality, cash, monetary grant etc. The Assessing Officer issued notice under section 148 of the Act dt. 13-3-2020 and order rejecting the objection was passed on 29-9-2021. On Writ allowing the petition the Court held that two points have triggered re-opening. First is valuation of shares of petitioner which was issued to its parent company Zoetis Pharmaceutical Research P. Ltd. and second is expenses in the sum

of Rs.3,99,03,688/-as cost of samples under the head Advertisement and Business Promotion. The Court held that as regards the first point, i.e., valuation of shares as per discounted cash flow method and addition under Section 56(2)(viib) of the Act is nothing but change of opinion. As regards the second point regarding cost of samples, this has also been discussed during the assessment proceeding and why the circular of CBDT dated 1st August, 2012 relied upon by the JAO is not applicable. Therefore, the Assessing Officer is not entitled on change of opinion to commence proceedings for re-assessment. Accordingly the reassessment notice and order disposing the objection was quashed. **(**WP. No. 21206 of 2021, dt. 11-1-22) (AY. 2013-2014)

Zoetis India v. ACIT (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Book profit-Revision was dropped-Sanction for reassessment was without application of mind-Reassessment notice and order disposing the objection was quashed. [S. 148, 151, 263, Art. 226]

The assessment of the petitioner was completed u/s. 143(3) of the Act assessing the income u/s. 115JB of the Act. Commissioner issued show cause notice u/s. 263 of the Act on account Diminution in the value of investment which was debit in the profit & Loss account and allowed while computing the book profit. After considering the reply the revision proceeding was dropped. Thereafter the petitioner received notice u/s. 148 of the Act. One of the recorded reason was diminution in the value of investment in a subsidiary and debit in the profit and loss account. objection of the petitioner was dismissed. On writ allowing the petition the Court held that PCIT review the assessment order under Section 263 of the Act and passed an order directing the proceedings initiated under Section 263 of the Act to be dropped. Later grant approval under Section 151 of the Act to re-open an assessment. This shows total non-application of mind by the PCIT while according the approval. Relied on German Remedies Ltd. v. DCIT (2006) 287 ITR 494 (Bom.)(HC) The Court also held to grant or

not to grant approval under Section 151 of the said Act to re-open an assessment is coupled with a duty and the Commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Such power cannot be exercised casually, in a routine and perfunctory manner. Reassessment notice and order disposing the objection was quashed. (WP. No. 3555 of 2019, dt. 13-11-2022) (AY. 2012-2013)

Godrej and Boyce Manufacturing Co. Ltd. v. ACIT (Bom.)(HC) (UR)

S. 147 : Reassessment-After the expiry of four years-Penny stock-Capital gains-Information from DDIT(Inv)-No allegation of failure to disclose material facts-Reassessment notice is not valid. [S. 45, 68, 148, Art. 226]

Assessment was sought to be reopened in case of assessee after expiry of four years from end of relevant assessment year on ground that based on information received from DDIT (Inv), assessee had done transactions in shares of Finalysis Credit and Guarantee Company Ltd which was a penny stock company traded in Bombay Stock Exchange. Reasons also mentioned that statements of directors of Finalysis Credit and Guarantee Company Ltd had been recorded and they had admitted that company was a paper company. Investigation revealed that assessee had sold shares of Finalysis Credit and Guarantee Company Ltd worth Rs. 29.43 lakhs during relevant assessment year and therefore, assessment of said transactions had escaped assessment. On writ the Court held that there was no allegation at all in reasons recorded for reopening or in affidavit in reply that investigations revealed that assessee was mastermind or actively involved in rigging of share prices of Finalysis Credit and Guarantee Company Ltd in stock market. To a query raised under section 142(1), assessee had also admitted that it had traded in Finalysis Credit and Guarantee Company Ltd and even provided documents thereto. Thus, issue of capital gains from shares which included shares of Finalysis Credit and Guarantee Company Ltd was under active consideration before Assessing Officer. Accordingly

here being no failure on part of assessee to truly and fully disclosed material facts, reopening of assessment after expiry of four years was not justified. (AY. 2013-14)

Rajkumar S. Singh v. ACIT (2022) 287 Taxman 296 / 114 CCH 300 (Bom.)(HC)

Rita Rajkumar Singh v. ACIT (2022) 287 Taxman 413 / 114 CCH 318 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Sales promotion/freebees-No failure to disclose material facts-Reassessment notice is bad in law. [S. 37(1), Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2022]

Assessee company was engaged in business of marketing of animal health products. Assessing Officer issued a reopening notice on ground that expenditure incurred by assessee towards cost of purchase of samples for distribution under head 'advertisement and sales promotion' was in violation of provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2022 and, thus, same was not admissible under section 37(1) being expenses prohibited by law. On writ the Court held that it was evident from affidavit-in-reply that Assessing Officer had all material facts related to such expenses before him when he made original assessment. Apart from it, specific query in respect of expenditure in question was raised at time of original assessment and same was also replied by assessee-There was no failure on part of assessee to truly and fully disclose all material facts necessary for purpose of assessment which were carefully scrutinized by Assessing Officer during original assessment. In reasons for reopening, there was not even a whisper as to what was not disclosed by assessee for which assessment was sought to be reopened. Reassessment notice was quashed on the ground of change of opinion. (AY. 2014-15)

Virbac Animal Health India (P) Ltd. v. ACIT (2022) 287 Taxman 590 / 113 CCH 256 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Amount payable to sundry creditors-Cessation of liability-No new information-Re assessment notice is quashed. [S. 41(1), 148, Art. 226]

A notice was issued under section 148 on ground that genuineness of amount payable to sundry creditors which was pending for long period was not ascertained during original assessment and should have been treated as cessation of liability in terms of section 41(1) and to ought to be added to assessee's income. On writ the Court held that the Assessing Officer sought to reopen assessment proceedings based on same material facts which were present before him during original proceedings and there was not even a whisper of any additional information. Re assessment based on mere change of opinion is not permissible in view of proviso to section 147 of the Act. (AY. 2015-16)

Meer Gems v. ACIT (2022) 446 ITR 754 / 287 Taxman 689 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Audit objection-Security deposit-Interest expenditure-Change of opinion-Reassessment was quashed. [S. 37(1), 148, Art. 226]

Allowing the petition the Court held that basis for reopening assessment was merely audit objections relying on the documents already filed before the Assessing Officer. There was no failure on part of assessee to truly and fully disclose facts, it could not be said that Assessing Officer had reasons to believe that income had escaped assessment. Reassessment was quashed. The AO cannot take recourse to reopen to remedy the error resulting from his own oversight relied Gemmeni Leather Stores v. ITO (1975) 100 ITR 1 (SC)) (AY. 2012-13)

Glaxosmithkline Pharmaceuticals Ltd. v. ACIT (2022) 286 Taxman 324 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Provision for sales and operating expenses-No failure to disclose material facts-Reassessment notice was not valid. [S. 148, Art. 226]

Allowing the petition the Court held that the assessee provided all details called for including breakup of various expenses like provisions for sales return and other operating expenses and assessment was completed accordingly. All points, which had been raised in reasons for reopening, were raised by Assessing Officer during original assessment proceedings and all documents and details were provided to Assessing Officer. Reassessment notice was not valid. Relied on 3I Infotech Ltd v. ACIT (2010) 329 ITR 257 (Bom.)(HC), Cromton Greaves Ltd v. ACIT (2015) 55 taxmann.com 59 / 229 Taxman 545/ 275 CTR 49 (Bom.)(HC) (AY. 2012-13)

Halite Personal Care India (P.) Ltd. v. DCIT (2022) 448 ITR 303 / 218 DTR 531 / 286 Taxman 464 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Rate of depreciation-Software licence-Audit information-Reassessment notice was quashed. [S. 32, 148, Art. 226]

Reassessment notice was issued on the ground that excess claim of depreciation was made by assessee at rate of 60 per cent in respect of software licences instead of 25 per cent. On writ allowing the petition the Court held that identical objection, as raised in reasons for reopening, was raised and communicated to assessee by way of audit queries and assessee had provided clarifications to Assessing Officer. Reassessment notice was quashed. Relied on Indian and Eastern Newspaper Society v. CIT (1979) 119 ITR 996 (SC), ICICI Home Finance Co. Ltd. v. ACIT (2012) 25 taxmann. Com 241 (Bom.)(HC), IL & FS Investment Managers Ltd. v. ITO (2008) 298

ITR 32 (Bom.)(HC) and Jagat Jayantilal Parikh v. DCIT (2013) 32 taxmann.com 161 (Guj.).(HC) (AY. 2012-13)

Maharashtra State Power Generation Company Ltd. v. DCIT (2022) 286 Taxman 333 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Business expenditure-Leased assets-Repurchase expenses-No failure to disclose material facts-Reassessment notice is not valid. [S. 37(1), 148, Art. 226]

Held that during course of scrutiny assessment, Assessing Officer had made specific query as regards leased assets repurchase expenses and solicited explanation and documents and in compliance thereto, assessee furnished requisite information and documents. Once it becomes evident that Assessing Officer had raised query and reply thereto was furnished by assessee, endeavour on part of revenue to reopen assessment is fraught with two infirmities, namely, it cannot be said that income escaped assessment on account of failure to make a true and full disclosure of material facts (in cases where proviso operates) and reassessment would then fall in realm of mere change of opinion on basis of very same material, which is legally impermissible. Reassessment notice was quashed. (AY. 2006-07)

Mangalore Refinery and Petrochemicals Ltd. v. DCIT (2022) 286 Taxman 607 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-No tangible material-Change of opinion-Reassessment notice not valid. [S. 10A, 80HHE, 148, Art. 226]

Allowing the petition the Court held that the reasons recorded for the proposed reopening an assertion that the assessee had suppressed facts was singularly lacking. What accentuated the situation was the fact that after the initial scrutiny assessment under section 143(3) of the Act, the assessee had preferred an appeal before the Commissioner (Appeals) and

thereafter pursuant to the order passed by the Commissioner (Appeals), the assessment was finalised. In this context, the assertion of the assessee that it had furnished an explanation and submitted documents in response to the multiple notices at the stage of initial assessment could not be controverted. A bare perusal of the reasons indicated that the exercise was influenced by a mere change of opinion. The notice of reassessment was not valid. (AY. 2003-04)

Tata Sons Limited v. Dy. CIT (2022) 443 ITR 282 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Loan transaction accepted as genuine after enquiry-Notice on ground that loan transaction was not genuine-Not valid. [S. 132, 148, 153A, Art. 226]

Allowing the petition the Court held that all the primary facts were placed before the Assessing Officer by the assessee. The search action under section 132 of the Income-tax Act, 1961, did not reveal any tangible material qua the transaction of unsecured loan from JMPL. In fact, the assessee was called upon to explain the very transaction, in respect of which, during the course of scrutiny assessment, the then Assessing Officer had already solicited information and documents. Eventually, during the course of scrutiny assessment, the Assessing Officer having been satisfied with the explanation furnished by the assessee, did not make any addition. Even in the course of the proceedings under section 153A, the Department did not claim that any incriminating material was found qua the transaction with JMPL. In this view of the matter, the reopening of the assessment on the premise that the creditor lacked the creditworthiness and thus the loan transaction was sham, was nothing but a change of opinion. The notice was not valid. (AY. 2013-14)

Regency Nirman Ltd. v. ACIT (2022) 443 ITR 301 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Life Insurance company-Actuarial report-No failure to disclose material facts-Reassessment is not justified. [S. 44, 57, 148, Art. 226]

Assessee carried out life insurance business. During assessment proceedings, it furnished its actuarial report as on 31-3-2003. Assessing Officer after examination, made addition of surplus disclosed in actuarial valuation report The Assessing Officer reopened assessment on ground that assessee did not offer incremental negative reserves as a part of surplus arrived at as per actuarial valuation, for purpose of computing income from insurance business which had resulted in income escaping assessment. CIT(A) allowed the appeal. Tribunal affirmed the order of the CIT(A). On appeal by the revenue dismissing the appeal the Tribunal held that the Assessing Officer completed re-assessment disallowing provision for negative reserve. Since negative reserve was part of actuarial report furnished by assessee during original assessment proceedings and Assessing Officer while completing assessment had considered said report, it could not be said that there was non-disclosure of material facts relevant for assessment. Reopening of assessment is not valid. (AY. 2003-04)

CIT v. SBI Life Insurance Company Ltd. (2022) 285 Taxman 705 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Sub contract and sub-contract-During assessment proceedings all details are furnished-Survey-Reasons cannot be improved or supplemented Re assessment notice is not valid. [S. 133A, 148, Art. 226]

Re assessment notice was issued on 31st March, 2019 to reopen assessment. Ba sis, for reopening was that certain companies were accepting contracts and were sub-contracting those contracts to other entities and revenue came to know about this based on a survey under section 133A of one SEPCL. Assessing Officer had recorded reasons that a contract was received by assessee from one SECPL during relevant assessment year. On writ the Court held that during assessment

proceedings, on being asked about details of sub-contract given, assessee had given entire details required by Assessing Officer therefore, it could not be said that there was non-disclosure on part of assessee. Re assessment notice is held to be bad in law. Referred, First Source Solutions Ltd v. ACIT (2021) 438 ITR 139 (Bom.)(HC) (AY. 2012-13)

Patel Engineering Ltd. v. Dy. CIT (2022) 446 ITR 728 / 285 Taxman 655 / 210 DTR 185 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Certificate was issued for nil TDS-Reassessment notice on the ground that misrepresentation of facts-Agreement was made available when the certificate was issued-Reassessment is held to be not justified. [S. 148, 197, Art. 226]

Assessee, an Indian company and subsidiary of foreign company (Reuters UK), was engaged in distribution of their products to subscribers in India. Assessee requested for no-objection certificate as regards payment made to Reuters UK without deduction of tax at source and assessee was granted with same. Almost after six years, reassessment was initiated on ground that assessee had evaded payment of tax by procuring nil TDS certificate by misrepresenting facts and, thus, payment made by assessee was tax deductible at source. On writ the Court held that the reasons for reopening of assessment listed out various clauses of agreement between assessee and Reuters UK and said agreement was made available to Assessing Officer by assessee when it applied for no-objection certificate. On facts, reasons recorded for reopening could not be accepted and reassessment was unjustified. (AY. 1996-97, 1997-98)

Reuters India (P.) Ltd. v. Dy. CIT (2022) 285 taxman 557 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Information received from Director (Investigation)-Bogus

suspicious transaction-Fishing enquiry-Reassessment notice is quashed. [S. 68, 148, Art. 226]

Assessee-company filed its return of income which was accepted and an assessment was completed. The notice was issued for reopening of assessment. In the reasons recorded merely indicated information received from Director (Investigation) about certain entity entering into suspicious transactions and material was not further linked by any reason to come to conclusion that assessee had indulged in any activity which could give rise to reason to believe on part of Assessing Officer that income of assessee chargeable to tax had escaped assessment. On writ the court held that this was an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax had escaped assessment. Re assessment notice is quashed. (AY. 2012-13)

Reynolds Shirting Ltd. v. ACIT (2022) 285 Taxman 554 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Alleged excess deduction-Basis of information and material already on record-Re assessment notice was quashed. [S. 80IB, 80IC, Art. 226]

The assessment of the petitioner was completed u/s. 143(3) of the Act. allowing the deduction u/s 8IB and 80IC of the Act. The reassessment notice was issued to disallow the claim allowed in the original assessment proceedings. On writ the Court held that the Assessing Office was acting solely on basis of information and material already on record in original assessment, hence reopening notice issued beyond period of four years was unjustified and quashed. (AY. 2011-12)

Marico Ltd. v. ACIT (2021) 133 taxmann.com 121 (Bom.)(HC)

Editorial: SLP of revenue is dismissed; ACIT v. Marico Ltd. (2022) 284 Taxman 365 (SC)

S. 147 : Reassessment-After the expiry of four years-Sale of shares-Judgement relied was existence before passing of original assessment order-Error due to oversight-Issue discussed and

considered by the Assessing officer-Reassessment notice was quashed. [S. 54EC, 132, 143(3), 148, 153A, Art. 226]

Allowing the petition the Court held that duty of disclosing of primary facts relevant to the decision of the question before the assessing authority lies on the assessee. The duty, however, does not extend beyond the full and true disclosure of all primary facts. Once, the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inference of facts can be reasonably drawn and what legal inference ultimately to be drawn. It is not for somebody else to tell the assessing authority the inferences whether of facts or law should be drawn. Even for a moment, it is accepted that the AO has missed to take note of the law laid down by the Punjab & Haryana Court, Sumeet Taneja v. CIT ITA No. 293 of 2012 dt. 22-8-2013 still that cannot be a reason to take recourse to reopen to remedy the error resulting from this oversight. Reassessment notice was quashed Referred Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC) and Gemini Leather Stores v. ITO (1975) 100 ITR 1 (SC) 2013-14)

Ashraf Alibhai Nathani v. ACIT (2022) 211 DTR 336 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Real estate agent-ITS data-Non disclosure of turnover-Details were furnished in the scrutiny assessment-Reassessment notice was quashed. [S. 69, 148, Art. 226]

The assessment of the petitioner was completed u/s. 143(3) of the Act. Reassessment notice was issued on the ground that as per ITS data petitioner sold 55 flats and no turnover related to said sales was disclosed in his income tax return. On writ allowing the petition the Court held that in scrutiny assessment petitioner had filed detailed response with respect to ITS data which was accepted by Assessing Officer. The Assessing Officer was aware of issue of ITS data and had applied his mind in regular assessment proceeding of petitioner, it would not be open for Assessing Officer to reopen assessment after a period of 4 years in absence of

material to show escapement of income merely on basis of change of opinion. Notice for reopening assessment was to be quashed. (AY. 2012-13)

Monarch & Qureshi Builders v. UOI (2022) 284 Taxman 643 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-The documents and submissions which were available before the AO, before passing of the original assessment order;-Not even a whisper as to what was not disclosed-Reassessment notice was quashed. [S. 148, Art. 226]

Allowing the petition the Court held that to meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the ITO might have discovered, the legislature has put in Explanation to S. 147. The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. The Explanation 1 to S. 147 cannot enlarge the scope of the section by casting a duty on the assessee to disclose inferences, to draw the proper inferences being the duty imposed on the ITO. Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. Entire basis for proposing to reopen, as can be seen from the reasons, is on the documents and submissions which were available before the AO, before passing of the original assessment order; in the reasons for reopening, there is not even a whisper as to what was not disclosed. Reassessment notice was quashed. (AY-2013-14)

Vodafone Idea Ltd. v. ACIT (2022) 211 DTR 99 / 325 CTR 241 / 285 Taxman 381 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Set off of unabsorbed depreciation or business loss-Book profit-No new Tangible material-Notice and order rejecting objection raised by Assessee was set aside. [S. 115JB, 143(3), 148, Art. 226]

Allowing the petition the Court held that a specific query was raised during the original assessment and the assessee had submitted the details of unabsorbed depreciation and business loss and also the computation of income. The assessee had also disclosed in the Schedule relating to minimum alternate tax the details of the working of book profits including specific disclosures of the amount under the head "loss brought forward or unabsorbed depreciation, whichever is less". There was no tangible material for the Assessing Officer to conclude that income had escaped assessment. The Assessing Officer had exceeded the limit of his jurisdiction to reopen the assessment in the exercise of powers under section 147 read with section 148. The notice and the order rejecting the objections were quashed and set aside. (AY.2012-13)

Dentsu Aegis Network Marketing Solutions Pvt. Ltd. v. ACIT (2022) 441 ITR 41 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Transfer pricing-Notice stating that fact had not been disclosed-Mere statement that there had been failure to disclose material facts is not sufficient-Reassessment notice on the basis of change of opinion was quashed. [S. 92CA(3), 143(3), 148, Art. 226]

Allowing the petition the Court held that the assessee had in its annual report mentioned the technical know-how fee, royalty and technical assistance fee that it had paid and had also filed form 3CEB in which it had disclosed the details and description of the international transactions in respect of technical know-how and patents and regarding the royalty paid

and lump-sum fees paid for the technical services. Before the original order was passed under section 92CA(3), the Transfer Pricing Officer also had raised all these queries and had considered the royalty, technical know-how fees paid. The assessee had not only filed its account books and other evidence but those had been considered by the Transfer Pricing Officer whose order also had been considered by the Assessing Officer while passing the original order under section 143(3). Therefore, there could be nothing which had not been truly and fully disclosed. The contention of the Department that Explanation 1 to section 147 provided that production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence should have been discovered by the Assessing Officer was no defence, was not tenable. The notice issued under section 148 and the reassessment order were quashed and set aside. (AY.2004-05)

Skoda Auto Volkswagen India Private Limited v. ACIT (2022) 441 ITR 74 / 217 DTR 427 / 134 taxmann.com 96 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Leave and licence agreement-Income from house property-Developing and running shopping mall-Income from business-No failure to disclose any material facts-Change of opinion-Notice issued by succeeding Assessing Officer-Notice was quashed. [S. 148, Art. 226]

The assessee offered the amount of licence fee as income chargeable under the head Income from house property and the common area maintenance charges as income chargeable under the head Income from business and profession. In computing the income under the head Income from business and profession the assessee reduced the expenses of maintaining the common area from the amount received by it as common area maintenance charge. The assessment was completed u/s 143(3) of the Act. Successor officer issue notice u/s 148 on the ground that amount should be taxed as income from house property. On writ allowing the petition, that the notice issued under section 148 for reopening the assessment under

section 147 was based on a change of opinion and not due to any failure on the part of the assessee to fully and truly disclose all material facts. The reasons recorded did not make out any case of failure on the part of the assessee to fully and truly disclose any material fact. The figures and details were available not only in the return of income, profit and loss and balance sheet filed by the assessee but all those points were raised and considered in the original assessment order passed. The assessee had fully and truly disclosed all material facts necessary for the purpose of assessment which were wrongfully alleged as not disclosed fully and truly. Not only were the material facts disclosed by the assessee truly and fully but they were carefully scrutinized and figures of income as well as deduction were reworked carefully by the Assessing Officer. In the reasons for reopening, the Assessing Officer had relied upon the annual report and audited profit and loss account and balance-sheet and had admitted that various information/material were disclosed. But according to the new Assessing Officer, the fact that other service charges were inseparably connected to the letting out of the building of the assessee was not acceptable. When on consideration of material fact one view was exclusively taken by the Assessing Officer that it would not be open to reopen the assessment based on the very same material with a view to take another view. (AY.2012-13)

Upal Developers Pvt. Ltd. v. Dy. CIT (2022) 441 ITR 636 / 211 DTR 196 / 285 Taxman 23 / 134 taxmann.com 113 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Capital or revenue-Advertisement and sales promotion expenses-Reassessment notice was quashed. [S. 37(1), 148, Art. 226]

Allowing the petition the Court held that in the course of original assessment proceedings the assessee has furnished party wise details advertisement and sales promotion expenses and purpose of its payment.Also furnished the details of TDS deducted on the said payments. Reassessment proceedings on basis of agreement entered in to by assessee

with its dealer in subsequent year to treat the said expenditure as capital in nature is held to be without jurisdiction. The Reassessment proceedings are quashed. Followed Asian Paints Ltd. v. Dy.CIT (2019)) 261 Taxman 380 (Bom.)(HC) (AY. 2012-13)

Asian Paints Ltd. v. ACIT (2022) 285 Taxman 65 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Failure to deduct tax at source-Payments to stockists-No failure to disclose material facts-Reassessment notice was quashed. [S. 40(a)(ia), 148, 184H, 201(1), 201(IA), Art. 226]

The reassessment notice was issued for failure to deduct tax at source in respect of payments made to stockists. On writ allowing the petition the court held that in the original assessment proceedings issue had been discussed and the assessee has given detailed explanation. Accordingly the order and consequential notices are set aside. Followed Aroni Commercial Ltd. v. Dy. CIT (2014) 362 ITR 403 (Bom.) (HC) (AY. 2012-13)

Pfizer Ltd. v. ACIT (2022) 285 Taxman 188 / 209 DTR 149 / 327 CTR 189 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Tax audit report-No new material-Notice was quashed. [S. 115JB, 148, Art. 226]

Allowing the petition the Court held that there was no new tangible material. The Assessing Officer issued the notice u/s 148 of the Act relying upon facts and figures available in audited account and tax audit report which were already filed along with return during original assessment. Reassessment notice was quashed. (AY. 2012-13)

Acron Developers (P) Ltd. v. Dy. CIT (2020) 285 Taxman 411 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Interest and property tax paid subsequently after slump sale-Claimed as deduction in the year of payment-Amount disclosed in tax audit report relying on case law-Reassessment notice for incorrect claim-Change of opinion-Reassessment notice was quashed. [S. 43B, 44AB, 148, Art. 226]

In the Form No 3CD tax audit report the assessee has mentioned that the deduction on account of interest and tax liability was claimed u/s 43B of the Act, based on the case law CIT v. Diza Electricals (1996) 222 ITR 156 (Ker)(HC). The assessment was completed us. 143(3) of the Act. There was no discussion in the assessment order. The Reassessment notice was issued after the expiry of four years on the ground that the claim was incorrect which was discovered subsequent to the original assessment hence there is no change of opinion. Allowing the petition the Court held that the assessee has disclosed in the form 3CD which is mandatory obligation to furnish with its return of income the report of Auditor which was fulfilled by the assessee. The reassessment notice was quashed. Relied on 3i Infotech Ltd v. ACIT (2010) 329 ITR 257/ 192 Taxman 137 (Bom.)(HC), Ranbaxy Laboratories Ltd v. Dy CIT (2013) 351 ITR 23 / 30 taxmann.com 410 (Delhi)(HC) (WP. No. 951 of 2022 dt. 21-2-2022 (AY. 2014-2015)

E-Land Apparel Ltd. v. ACIT (Bom.) (HC) www.itatonline.org.

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Information based on search of third party-Reason recorded not indicated anywhere or any stretch of imagination the income has escaped assessment-Non application of mind by the sanctioning authority-Observed that the Assessing Officers will record better reasons for reopening and the Authority granting approval will also apply their mind sincerely before granting approval-Re assessment proceedings was quashed. [S. 148, 151, Art. 226]

The assessment was completed under section 143(3) of the Act, asking for various details. Thereafter the assessment was reopened on the ground that a large cash transaction was received. Upon consideration of submissions no addition was made. The assessment once again reopened after the expiry of four years. In the reasons supplied it was stated that on the basis of search information with record to accommodation entry, STR, etc in which assessee is the beneficiary. A detailed objection was filed by the assessee denying most of the alleged transactions. The order disposing of the objections was passed by the Assessing Officer. Against the disposal of objection, a writ was filed. Allowing the petition, the court held that the recorded reasons does not indicate what address was searched from whom such information was received, what was the information etc. The court observed that reasons recorded not indicated anywhere or any stretch of imagination the income has escaped assessment. There was non-application of mind by the sanctioning authority. Court further observed that the Assessing Officers could record better reasons for reopening and the Authority granting the approval will also apply their mind sincerely before granting approval. Re assessment proceeding was quashed. (WP. No. 671 of 2022 dated February 08, 2022) (AY 2013-14)

Nirmal Bang Securities Pvt. Ltd. v. ACIT (Bom.) (HC) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Builder stock in trade-Notional income-Reassessment notice on the basis of Judgement of Delhi High Court in Ansal Housing Finance and Leasing Company Ltd (2013) 354 ITR 180 (Delhi)(HC) to assessee the income under section 23 of the Act was quashed. [S. 22, 23(5), 148, Art. 226]

The assessment of the petitioner was completed u/s 143(3) of the Act. In the course of assessment proceedings specific question was raised as regards assessment of stock in trade on notional basis. The assessee has

filed the detailed reply and no addition was made. The reassessment notice u/s 148 was issued after four years. In the recorded reason the Assessing Officer relied on Ansal Housing Finance and Leasing Company Ltd (2013) 354 ITR 180/ 213 Taxman 143 (Delhi) (HC) and Emtici Engineering Ltd v ACIT (1997) 58 TTJ 27 (Ahd)(Trib). The objection of the assessee was rejected by the Assessing Officer. On writ allowing the petition the Court held that when the assessment was completed the judgement of Delhi High court was available to the Assessing Officer. The reopening of assessment based on the change of opinion is held to be bad in law. Court relied on Aroni Commercial Ltd v. Dy.CIT (2014) 362 ITR 403 / 224 Taman 13 (Bom.)(HC) wherein the Court held that once a query has been raised and it has been replied to the Assessing Officer is deemed to have applied his mind and considered the same even if that the issue has not been discussed in the assessment order. (WP. No. 102 of 2022 dt 27-1-2022) (AY. 2016-17)

Lokhandwala Construction Industries v. Dy. CIT (Bom.)(HC) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Revenue directed to guidelines for reassessment-CBDT to issue guidelines to its officers based on the Order with clear instructions which are to be strictly followed. [S. 148, 149, 150, 151, Art. 226]

The Hon'ble Bombay High Court, *inter alia* directed the revenue to adhere to certain guidelines to be followed for reassessment proceedings, they are:

(a)While communicating the reasons for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to the assessee. This would contain comment or endorsement of the Superior Officer with his name, designation and date. The Assessing Officer shall not merely state the reasons in the letter addressed to the assessee.

(b) If the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons.

Such a portion as it does not bear reference to the assessee concerned could be redacted.

(c) The order disposing of the objections should deal with each objection and give proper reasons for the conclusion.

(d) A personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted.

(e) If the Assessing Officer is going to rely on any judgment/order of any Tribunal or Court reference / citation of these judgments/orders shall be provided along with notice for personal hearing so that the assessee will be able to deal with/distinguish these judgments / orders.

A copy of the Order to be placed before the CBDT to issue guidelines to all its officers based on these directions with clear instructions that they shall be strictly followed. (WP NO. 546 OF 2022 dated February 15, 2022) (AY. 2013-14)

Tata Capital Financial Services Limited v. ACIT (2022) 443 ITR 127 / 212 DTR 55 / 325 CTR 57 / 287 Taxman 1 (Bom.)(HC) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Interest expenses-No failure to disclose material facts-Reassessment notice was quashed. [S. 57, 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. The Reassessment notice was issued on the ground that the interest paid to HDFC bank was not allowable as deduction u/s 57 of the Act. The assessee filed the writ petition to quash the reassessment notice, allowing the petition the Court held that there is no failure on the part of the assessee to truly and fully disclose all primary facts necessary for the purpose of assessment. Accordingly the reassessment notice was quashed. Followed Calcutta Discount Co Ltd v. ITO (1961) 41 ITR 191 (SC), Ananta Land Mark Pvt. Ltd. v. Dy. CIT (2021) 439 ITR 168 (Bom.) (HC). (AY. 2012-13)

Kalpataru Plus Shrayans v. Dy. CIT (2021) 207 DTR 138 / 323 CTR 747 / (2022) 440 ITR 269 (Bom.) (HC)

S. 147 : Reassessment-After the expiry of four years-Shipping business-Reserves-Dividend and long term capital gains-No failure to disclose material facts-Return was not filed in pursuance of notice issued u/s. 148 of the Act-There is no hard and fast rule that the assessee should file the return pursuant to notice, when the reasons do not disclose on the face of it any failure on the part of the assessee to disclose all material facts necessary for assessment-Reassessment notice was quashed. [S. 33AC, 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. The reassessment notice was issued on 30-11-2000, for alleged wrongly allowing the deduction u/s 33AC of the Act. The petitioner requested for copy of the recorded reasons which was not provided. The assessee filed the writ before the High Court. The writ was admitted on 18th December 2001 and ad-interim stay was granted. The reason was given in the affidavit filed in the reply by the respondent. The revenue contended that as the petitioner has not filed the return pursuant to the notice u/s 148 of the Act as per the ratio laid down by Supreme Court in GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC), the petition should be rejected. The petitioner relied on the Judgement in Caprihans India Ltd. v. Traun Seem Dy. CIT (2003)) 132 Taxman 123 (Bom.)(HC) for the proposition that there is no hard and fast rule that the assessee should file its return pursuant of the notice u/s 148 of the Act, more so when the reasons do not disclose on the face of it any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The Court could certainly entertain the petition and set aside the notice. On the facts the Court in its wisdom thought fit to issue rule and also grant relief on 18 th December 2021. Court referred the Judgement in CIT v. Trend Electronics (2015) 379 ITR 456 (Bom.)(HC) wherein the court observed that "**where the**

jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of implication can arise. We also do not appreciate the stand of the Revenue, that the respondent-assessee had asked the reasons recorded only once and therefore, seeking to justify non-furnishing of reasons. We expect the State to act more reasonably".

The court held that the petitioner has been allowed a deduction under section 33AC of the Act in respect of income from dividends, long term capital gains and interest is no ground for initiating proceedings u/s 148 of the Act. Reassessment notice was quashed. (AY. 1994-95)

The Great Eastern Shipping Company Ltd. v. K.C Naredi, Add. CIT (2021) 208 DTR 273 / 440 ITR 58 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Loss disclosed and allowed in original assessment-No failure to disclose material facts-Notice to withdrawal of loss allowed-Held to be not valid. [S. 143(3), 148, Art. 226]

Allowing the petition the Court held that in the reasons for the reopening of the assessment the Assessing Officer had merely stated that the assessee had failed to disclose fully and truly all the material facts necessary for its assessment for the assessment year 2012-13. The Assessing Officer had based his assessment on the books of account and arrived at the conclusion that the assessee had incurred long-term capital loss and had allowed such long-term capital loss while completing the assessment under section 143(3). The notice of reassessment after four years to disallow the loss was not valid. Followed Ananta Land Mark Pvt. Ltd. v. Dy. CIT (2021) 439 ITR 168 (Bom.) (HC) (AY.2012-13)

Hindustan Unilever Ltd. v. Dy. CIT (2021) 439 ITR 333 / (2022) 284 Taxman 252 / 212 DTR 323 / 326 CTR 325 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Duty of assessee only to disclose facts and not to draw inferences-Notice has to state which facts not disclosed-Change of opinion-Notice was quashed. [S. 80IB(10), 148, Art. 226]

Allowing the appeal the Court held that all material facts necessary for assessment has been disclosed by the assessee truly and fairly but they were scrutinized and the income and deduction were reworked by the Assessing Officer in the original assessment. In the recorded reasons for reopening of assessment it was not mentioned what facts was not disclosed. Therefore, the condition precedent to the reopening of assessment beyond the period of four years had not been fulfilled. The notice issued under section 148 to reopen the assessment under section 147 for the assessment year 2012-13 and the order rejecting the objections raised by the assessee were quashed and set aside. (AY. 2012-13)

Kalpataru Limited v. Dy. CIT (2021) 439 ITR 284 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Business expenditure-Advertisement and marketing expenditure-Change of opinion-Reassessment notice was quashed. [S. 37(1), 148, Art. 226]

The assessment was completed u/s. 143(3). In the course of original assessment proceedings the Assessing Officer has raised specific query on advertisement expenses. After considering the reply the expenses were allowed. The Assessing Officer issued notice u/s 148 of the Act to disallow the expenses in view of Explanation 1 to section 37(1) of the Act. On writ allowing the petition the Court held that where the Assessing Officer in original assessment was aware of issue of expenses incurred on advertisement and marketing by assessee and assessee had filed all requisite details called for by Assessing Officer. Primary facts necessary for assessment having been fully and truly disclosed, it would not be open for Assessing Officer to reopen assessment based on very same material and

to take view that advertisement and marketing expenditure incurred by assessee were not deductible in view of Explanation 1 to section 37(1) of the Act. (AY. 2013-14)

Rich Feel Health and Beauty (P.) Ltd. v. ITO (2022) 440 ITR 41 / (2021) 132 taxmann.com 228 (2022) 284 Taxman 286 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Subsequent search and Seizure of another party-Loan activity not established-Recorded reasons must indicate the manner in which the Assessing Officer has come to the conclusion that income chargeable to tax has escaped assessment-Reason recorded cannot be substituted-Reassessment Notice was quashed. [S. 68, 132, 133A, 148, 153A, Art. 226]

The petitioner challenged the notice issued u/s 148 of the Act, on the ground that there was not even a whisper as to what was the tangible material in the hands of the AO which made him to believe that income chargeable to tax has escaped the assessment and what was the material fact that was not fully and truly disclosed. Allowing the petition the Court held that in the reasons for reopening the AO does not even disclose when the search and survey action 132 was carried out. The reasons for reopening are absolutely silent as to how the search and survey action on M/s Evergreen Enterprises or the statement referred to or relied upon in the reasons have any connection with the petitioner. The reassessment notice was quashed and set aside. (AY. 2012-13)

Peninsula Land Ltd. v. ACIT (2021) 439 ITR 582 / (2022) 134 taxmann.com 33 / 284 Taxman 556 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Accommodation entries-Penny stock-Survey-General information-No failure to disclose material facts-Reassessment notice was held to be bad in law. [S. 45, 68, 69, 133A, 148, Art. 226]

The assessment was completed under section. 143(3), after issuing the summons to the assesseee and with detailed investigation. Reassessment notice was issued on the basis of survey on third party and alleging the accommodation entries.

Allowing the petition the Court held that in the Course of original assessment proceedings the assessee had furnished all information regarding said transactions of receiving loan and entities from which loans were taken. Even in statement of assessee recorded under section 131 it had disclosed about such unsecured loans taken by it. On facts the reassessment notice was held to be not valid. As regards the alleged penny stock scripts and was a beneficiary of bogus short-term capital loss. It was held that there was no tangible material disclosed by Assessing Officer in reasons for reopening-Assessing Officer simply said Investigation wing had analyzed trade data of identified penny stocks and concluded that assessee was found to be involved in trading in one of those penny stocks. This was far too general. Reassessment notice was quashed. (AY. 2014-15)

Jainam Investments v. ACIT (2021) 439 ITR 154 / 283 Taxman 439 / 206 DTR 447 / 323 CTR 25 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Interest income-Deduction-Change of opinion-No power of review-Reassessment is held to be bad in law. [S. 37(1), 56, 57, 148, Art. 226]

The assessee is engaged in the business of real estate and development. The assessment was completed u/s. 143 (3) of the Act allowing the deduction claimed against interest income u/s 57 of the Act. The Assessment was reopened on the ground that the interest paid on the loans is allowable under section 37 (1) of the Act. Since there was no business income during the year, the entire interest should have been capitalised to the WIP as against claiming as deduction u/s 57 which is not an allowable deduction. Against the disposal of objection, the assessee filled writ before the High Court. Allowing the petition the Court held that there was neither

an omission nor failure on the part of the assessee to disclose material facts necessary for assessment. Reassessment notice was held to be bad in law. (AY.2012-13)

Ananta Land Mark Pvt. Ltd. v. Dy. CIT (2021) 439 ITR 168 / 323 CTR 138 / 283 Taxman 462 / 131 taxmann.com 52 / 207 DTR 33 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Set-Off of short-term capital gains against business income-No failure to disclose material facts-Disclosure was mentioned in the assessment order-Reassessment notice was quashed. [S. 10A, 10AA, 143(3) 148, Art. 226]

Allowing the petition the Court held that there was no failure on the part of the assessee to disclose fully and truly the fact that short-term capital gains had been set off against the losses claimed under section 10AA. It was expressly mentioned that the assessee had added short-term capital gains and in his order, the Assessing Officer had allowed the set off of the short-term capital gains. The notice under section 148 was issued without jurisdiction. The notice and the order rejecting the objections were set aside. (AY. 2012-13)

First Source Solutions Ltd. v. ACIT (2021) 438 ITR 139 / 206 DTR 441 / 323 CTR 18 (Bom.)(HC)

S. 147 : Reassessment-Order disposing the objection must be reasoned order-If the assessing Officer is going to rely on any order or Judgment of any court or Tribunal a list thereof shall also be provided to Petitioner along with a notice for personal hearing so that Petitioner can deal with/distinguish those Judgments during personal hearing-Order disposing the objection was quashed-Directed to pass speaking order giving an opportunity of personal hearing. [S. 148, Art. 226]

The assessee challenged the reassessment notice and order disposing the objection. Allowing the petition the Court held that order disposing the objection must be reasoned order. If the assessing Officer is going to rely on any order or Judgment of any court or Tribunal a list thereof shall also be provided to Petitioner along with a notice for personal hearing so that Petitioner can deal with/distinguish those Judgments. Notice and order disposing the objection was quashed and directed the Assessing Officer to pass speaking order by giving an opportunity of personal hearing. (AY. 2016-17)

Mahindra CIE Automotive Ltd. v. ACIT (2022) 216 DTR 457 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Waiver of loan-Change of opinion-Query raised during regular assessment proceedings-Order of Tribunal affirmed. [S. 28(iv), 41(1), 148]

Dismissing the appeal of the Revenue the Court held that once a query had been raised with regard to a particular issue during the regular assessment proceedings it must follow that the Assessing Officer had applied his mind and taken a view in the matter as reflected in the assessment order. A query was raised by the Assessing Officer in the original assessment in respect of the waiver of loan on account of the one time settlement with the bank and the assessee had filed a detailed submission as to why the principal amount waived by the bank on account of the one time settlement was not taxable. Reassessment on a change of opinion was impermissible. No question of law arose. Referred, CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC), followed Aroni Commercials Ltd v.ACIT (2014) 367 ITR 405 (Bom.) (HC), Marico Ltd. v. ACIT(2019) 111 taxmann.com 253 / (2020) 425 ITR 177 (Bom.)(HC). (ITA No.1858 of 2017 dt 26 10-2021) *(*AY.2007-08)

PCIT v. EPC Industries Ltd. (2021) 439 ITR 210 (Bom.)(HC).

S. 147 : Reassessment-Weighted deduction-Recorded reasons-Added in the assessment order-No failure to disclose fully and truly all material facts-Failure to deal with the objections raised by the petitioner-Reassessment notice and subsequent order was quashed. [S. 35(2AB), 148, Art. 226]

The petitioner had filed a Writ Petition challenging notice issued under section 148 of the Act. The primary ground that was raised is that the Assessing Officer has made a gross error in the reasons that has been recorded for reopening. In computation of income in the assessment order, Disallowance after excess weighted deduction under section 35(2AB) of the Act of Rs.31,32,852 has been added to the income of the petitioner. Therefore, the Assessing Officer has grossly erred in alleging in the reasons recorded for reopening that petitioner had claimed deduction of disallowed amount by DSIR of Rs.31.32 lakhs and that there has been failure to disclose fully and truly all the material facts. Hence, the said amount of Rs.31,32 lacs is required to be added to the income and that has escaped assessment. Allowing the petition the Court held that in the assessment order this amount is already added to the income. When these facts were brought to the notice of the Assessing Officer in the objection dated 26.11.2021 filed through petitioner's Chartered Accountant in the order dated 24.01.2022 while disposing petitioner's objection the Assessing Officer has conveniently chosen not to deal with the submissions of petitioner on merits. The court quashed and set aside the said notice dated 30 March 2021and the subsequent order dated 24 January 2022. (WP No. 1379/2022)(16-3-2022). (AY.2016-17)

Connectwell Industries Pvt. Ltd. v. DCIT (Bom.)(HC)(UR)

S. 147 : Reassessment-Change of opinion-Reassessment notice and order was quashed. [S. 115JB, 148, Art. 226]

In this case assessment under section 143(3) of the said Act has been completed and assessment order had been passed. The reasons recorded for reopening itself discloses that it is nothing but change of opinion of the

AO proposing to reopen. The court quashed and set aside the impugned notice and the order. (WP (L) No. 3403/2022, dt.16-3-2022.)(AY. 2017-18)

John Cockerill India Limited v. UOI (Bom.)(HC)(UR)

S. 147 : Reassessment-Wrong recording of reasons-Recorded reasons refers sale of property-Non application of mind-Notice and order was quashed and set aside. [S. 148, Art. 226]

In the recorded and order it is expressly provided that the petitioner has sold and not purchased the land as mentioned in the reasons recorded for reopening. On writ the Court held that the entire basis for the Assessment Officer's opinion that there has been escapement of income from assessment is wrong. The Court quashed and set aside the notice and the order rejecting the Petitioner's objections. (WP. No. 572 of 2022 dt. 3-3-2022 (AY. 2014-15).

Rajasthan Udyog and Tools Private Limited v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-Change of opinion-Share capital-Share premium-Reasons that the amounts allegedly received from issuing of shares were its own funds-Reopening notice is bad on account of a change of opinion. [S. 148, Art. 226]

The Petitioner had issued share capital to its holding company at a premium. The Petitioner had filed Form 3-CEB with the Revenue along with its return of income for Assessment Year 2009-10. In its annexure to Form 3-CEB, the Petitioner had specifically declared the international transaction inter alia relating to issue of share capital to an Associated Enterprises (AE) having face value of Rs.100/-at a premium of Rs.1200/-per share. The aforesaid transaction was referred to by the AO to the TPO. TPO accepted the Petitioner's Form 3-CEB in respect of the issue of shares at premium to its AE. AO reasons that the amounts allegedly received from its AE. On writ the Court held that the notice is bad on account of change of opinion. (WP No. 99 of 2015 dt. 11-3-2022 (AY. 2009-10)

Starent Network (India) Private Limited v. DCIT (Bom.)(HC)(UR)

S. 147 : Reassessment-Export oriented undertakings-Tribunal for the Assessment year 2006-07 has held that the assessee has not violated the conditions u/s 10B((9) of the Act-The order of Tribunal was up held by the High Court-Reassessment notice and order disposing the objections were quashed. [S. 10B(9), 148, Art. 226]

The assessment was reopened for the AY. 2003-04, 2004-05 and 2005-06, solely based on the allegations made in the AY. 2006-07 that petitioner had violated the conditions specified in Section 10B(9) of the Act during assessment year 2003-04. The assessee filed, writ petitions. Allowing the petition the Court held that the ITAT by an order dated 26th June 2013 allowed the appeal of petitioner for Assessment Year 2006-2007 holding that petitioner had not violated the conditions provided in Section 10B(9) of the Act. Appeal was also upheld by Bombay High Court. Relying on the above judgement, High court quashed the reassessment notice and order disposing the objections. (WP. No. 2361 of 2010, dt. 18-2-22)(AY. 2003-2004 to 2005-2006)

Zydus Nycomed Healthcare Pvt. Ltd. v. ITO (Bom.)(HC)(UR)

S. 147 : Reassessment-Change of opinion-Order of special Bench-Carry forward and set off of business losses-Unabsorbed depreciation-Reassessment notice and order disposing the objection was quashed. [S. 32, 143(3), 147, Art. 226]

The reassessment notice was issued on the ground that as per section 72 of the Income-tax Act 1961 no business loss can be carried forward and set off against any other heads of income except income under the head of business or profession for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed. Further as per section 32 of the Income-tax Act, 1961, unabsorbed depreciation can be carried forward for set off against any income under any head for a maximum period of eight years starting from AY. 1997-

98.i.e. up to A.Y. 2004-05. The Assessing Officer has relied upon the order of the special Bench of the ITAT in the case of DCIT v. Times Guaranty Limited (2010) 4 ITR 210/ 131 TTJ 257 (SB) (Mum.)(Trib.) to form an opinion that Petitioner's income has escaped assessment. On writ the Court held that order of ITAT is dated 30th June, 2010 but the assessment of the Petitioner under section 143(3) of the Act was completed on 27th December, 2010. Therefore, this is a clear case of change of opinion. Further, the order of ITAT has not been accepted by the Gujarat High Court in General Motors India (P) Ltd. v. DCIT (2012) 25 taxmann.com 364 (Guj)(HC) and Bombay High Court in PCIT v. Supreme Petrochem Ltd. (ITA No. 661 of 2017 dt. 7-6-2019. (WP. No. 1215 of 2014, dt. 10-2-22) (AY. 2008-2009)

Morarjee Textiles v. ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment-With in four years-Change of opinion-Change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped-Survey operation-Notice of reassessment and order disposing the objection was quashed. [S. 133-A, 147, Art. 226]

Upholding the petition of the assessee the Court held that; It is settled law that reopening cannot be based on change of opinion. Change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. Court also observed that according to Respondent No.2, the Assessing Officer who passed the original assessment order should not have accepted the payment as expenditure but should have treated it as 'capital payment', which clearly show change of opinion. Notice of reassessment and order disposing the objection was quashed. (WP. No. 1072 of 2014, dt 29-4-22) (AY. 2008-2009)

Anjis Developers Pvt. Ltd. v. CIT (Bom.)(HC) (UR)

S. 147 : Reassessment-With in four years-Change of opinion-Revenue cannot improve upon the reasons in its oral argument or affidavit in reply-Reassessment notice and order disposing the objection was quashed. [S. 54, 148, Art. 226]

During the original assessment proceedings the Assessing Officer has asked specific query regarding sale surrender and allotment of new flats and claim u/s 54 of the Act. The assessment was completed u/s 143(3) of the Act. The Assessing Officer in the reasons for the re-opening stated that he is of the opinion that there has been escapement of income, on perusal of revised return of income filed, ledger of profit on surrender/allotment of new flats, details filed and submission made by the assessee that the transfer of capital assets has been effected by way of exchange in this case and as per assessees calculations. On writ allowing the Court held that it is clear that the primary facts necessary for assessment were also disclosed. It is settled law that the Assessing Officer is not entitled for change of opinion to commence proceedings for reassessment. It is also settled law that when on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view. Court also held that Revenue cannot improve upon the reasons in its oral argument or affidavit in reply. Relied on First Source Solutions Ltd v. ACIT (2021) 438 ITR 139/ 132 taxmann.com 121 (Bom.)(HC). Reassessment notice and order disposing the objection was quashed. (WP. No. 3415 of 2019 dt. 25-12-21) (AY. 2014-2015)

Sanjay Devkinandan Gupta v. UOI (Bom.)(HC)(UR)

S. 147 : Reassessment-Revenue Audit-Deductions on actual payment-Two Assessing Officers disagreed with the view of Revenue Audit-Reassessment notice and order disposing the objection was quashed. [S. 43B, 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. The reassessment notice was issued on the basis of Revenue Audit, though the two Assessing

Officers have disagreed with the view of Revenue Audit. On writ allowing the petition the Court held that the opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. Therefore, the true evaluation of the law and its bearing on the assessment must be made directly and solely by the Income Tax Officer. Notice and order rejecting the objection was quashed. Relied on Indian and Eastern Newspaper Society v**.** CIT (19979) 119 ITR 996 SC) IL and FS Investment Managers Ltd v. ITO (2009) 298 ITR 32 (Bom.)(HC). (WP No. 3068 of 2019, dt 7-12-21)

Grasim Industries Ltd. v. DCIT (Bom.)(HC)(UR)

S. 147 : Reassessment-With in four years-Share capital-Share premium-Income from other sources-Produced evidence in support of increase of authorised share capital, share allotment and names and address of parties from whom share premium received-Change of opinion-Reassessment was quashed. [S. 56 (2)(viib), 148 Art. 226]

Allowing the petition the Court held that during assessment proceedings assessee-company in support of increase in its authorized share capital had produced evidences in form of details of share allotment, names and addresses of parties from whom share premium was received etc. and Assessing Officer after considering same had finalized assessment and passed assessment order, subsequent reopening of assessment on same issue was purely on change of opinion. Reassessment notice was quashed. Referred Crompton Greaves Ltd. v. ACIT (2015) 229 Taxman 545/ 275 CTR 49 (Bom.)(HC). (AY. 2013-14).

Kalpataru Land Pvt. Ltd. v. ACIT (2022) 136 taxmann.com 434 (Bom.) (HC)

Editorial : SLP of Revenue dismissed ACIT v. Kalpataru Land Pvt. Ltd. (2022)447 ITR 364 (SC)

S. 147 : Reassessment-Carry forward and set off of brought forward losses-Business expenditure-Tax Audit Report-Provided all details in repose to notice-Provided break-up of head-wise expenses and these figures were also mentioned in statement of profit and loss filed by assessee, reopening of assessment being mere change of opinion was not justified. [S. 37(1), 72, 148, Art. 226]

Held that the assessee had received notice calling upon it to furnish details of brought forward losses and assessed losses, if any, along with proof and, assessee had provided all details as sought for. Therefore, reopening of assessment being merely by way of change of opinion relying on same set of primary facts which had been submitted by assessee during original assessment proceedings was to be quashed and set aside. As regards the expenditure the Assessee had replied to this notice by a communication addressed through assessee's Chartered Accountants and in said document assessee had provided all details as sought for. In fact these figures were also mentioned in statement of profit and loss filed by assessee. Therefore, reopening of assessment being merely by way of change of opinion relying on same set of primary facts which had been submitted by assessee during original assessment proceedings was to be quashed and set aside. (AY.2013-14)

Tech Engg Project Services and Equipments (I) (P) Ltd. v. UOI (2022) 287 Taxman 24 / 220 CTR 209 / 329 CTR 665 / 113 CCH 282 (Bom.)(HC)

S. 147 : Reassessment-Cash credits-Source of loan explained-Change of opinion-Reassessment notice is not sustainable. [S. 68, 133(6), 148, Art. 226]

Assessing Officer issued notices to loan providers under section 133(6) for verification and confirmation of loan transactions and said parties responded and disclosed their identity, explained creditworthiness, genuineness of transactions, source of funds, etc. Assessing Officer after considering responses of loan providers and all documents and

explanations submitted by assessee passed assessment order under section 143(3). Thereafter Assessing Officer reopened above assessment for reasons that as assessee offered no explanation about nature and source of loan and creditworthiness of creditors and genuineness of transactions had not been explained, source of loan remained unexplained and needs to be added to total income of assessee. On writ the Court held that since entire issue which was subject matter of reasons recorded had been raised during assessment proceedings, response obtained from assessee and assessee's explanation had been accepted by Assessing Officer reopening was purely based on change of opinion and, thus, not sustainable. (AY. 2014-15)

Vapi Infrastructure and Industrial Township LLP v. ITO (2022) 287 Taxman 468/ 114 CCH 97 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Reason must be based on tangible material-Change of opinion-Assessment order did not mention these issues not material-Reasons cannot be improved or supplemented or substituted by affidavit or oral submissions-Notices and order rejecting objections quashed and set aside. [S. 142(1), 143(2), 148, Art. 226]

Held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration by the Assessing Officer while completing the assessment. It is not necessary that the assessment order should contain a reference or discussions to disclose his satisfaction in respect of the query raised. Aroni Commercials Ltd. v. Dy.CIT (2014) 362 ITR 403 (Bom.)(HC).Court also held taht reasons cannot be improved or supplemented or substituted by affidavit or oral submissions. First Source Solutions Ltd. v. ACIT (2021)) 438 ITR 139 (Bom.)(HC). (AY.2003-04)

Golden Tobacco Ltd. v. ACIT (2022) 447 ITR 736 / 285 Taxman 688 (Bom.)(HC)

S. 147 : Reassessment-Complaint with Maharashtra RERA-Complaint was amended-Reassessment notice without verifying the amended RERA complaint is held to be not valid. [S. 68, 148, Art. 226]

Assessee filed objections stating that complaint with Maharashtra RERA was subsequently amended and provided amended copy of RERA complaint. Assessing Officer vide order dated 12-11-2019 rejected objections stating that authenticity of amended copy of RERA complaint was not ascertainable. On writ the Court held that objections were filed on 4-7-2019 and order on objection was passed on 12-11-2019 (five months and one week later) and Assessing Officer had enough time to find veracity or authenticity of amended RERA complaint if he had any doubt and he could not have dismissed objections by just a wave of his hand. Notice was set aside. (AY. 2012-13)

Anil Gulabdas Shah v. ACIT (2022) 287 Taxman 402 (Bom.)(HC)

S. 147 : Reassessment-Share premium-Provided working of fair value of equity shares as per rule 11UA in the original assessment proceedings-Change of opinion-Reassessment notice is not valid. [S. 56(2)(viib), 148, R. 11UA, Art. 226]

In response to queries raised during assessment proceedings, assessee had provided working of fair value of equity shares as per rule 11UA, details of large share premium received during year, name, address and PAN of persons who had applied for shares along with copy of share application and copy of bank statement reflecting such payments, creditworthiness and identity of investors and genuineness of investment in share capital and details of expenses incurred for increase in share capital. The AO issued notice for reopening of assessment on the ground that the assessee had issued shares at excess premium which was required to be added under section 56(2)(viib)of the Act. On writ allowing the petition the Court held that the very issue of share premium was a subject matter of consideration

by Assessing Officer during original assessment proceedings hence the notice for reassessment is not valid. (AY 2014-15)

Bhavani Gems (P) Ltd. v. ACIT (2022) 287 Taxman 682 (Bom.)(HC)

S. 147 : Reassessment-Charitable trust-Accumulation of income-Deemed accumulation of income-Change of opinion-Reassessment is not justified. [S. 11(2), 148, Art. 226]

Assessee, a registered charitable Trust, filed its return of income and claimed an accumulation of Rs. 70 lakhs for being used for charitable and religious purposes in India over a period of five years under section 11(2) of the Act. In audit report and in return of income, inadvertently it was mentioned that such accumulation was against section 11(1) which was explained during course of assessment proceedings which was accepted. The AO issued notice for reassessment. On writ the Court held that reassessment notice due to change of opinion hence the notice was quashed. (AY.2016-17)

Chandrakant Narayan Patkar Charitable Trust v. ITO(E) (2022) 287 Taxman 685 (Bom.)(HC)

S. 147 : Reassessment-Bogus transaction-Information from investigation wing-Limited scrutiny-Futures and options-Loss was set off against normal business-Reassessment notice valid. [S. 43(5)(d), 133(6), 148, 151, Art. 226]

Held that the issue under consideration had not been examined by the Assessing Officer while passing the assessment order. The transactions entered into by the assessee were non-genuine and were carried out with a view to avoid paying tax. The assessee had set off the loss incurred from futures and options trading against profits booked from normal business activity. This was a text book case of tax avoidance. The notice of reassessment was valid. (AY. 2016-17)

Shrikant Phulchand Bhakkad (HUF) v. JCIT (2022) 446 ITR 250 / 213 DTR 361 / 328 CTR 64 / 287 Taxman 440 (Bom.)(HC)

S. 147 : Reassessment-Borrowed cash loan-Violation of section 269SS-Reason did not mention that income that escaped assessment-Mechanical approval-Reassessment notice is invalid and quashed. [S. 148, 151, 269SS, 269T, Art. 226]

In the recorded reasons the AO has mentioned that the assessee had borrowed cash loan and violated the provisions of section 269SS of the Act. On writ the Court held that the reasons recorded did not mention that income has escaped assessment, hence the notice issued was quashed. (WP No. 3620 of 2019 dt.15-1-222)(AY. 2012-13)

Sanjeev Amritlal Chheda v. ITO (2022) The Chamber's Journal-February-P. 176 (Bom.)(HC)

S. 147 : Reassessment-Change of opinion-Depreciation on intangible-Acquisition of Brands-Information from Investigation Wing-All materials were before the Assessing Officer during original assessment proceedings-Once the query raised was subject to the consideration of the AO, while completing the assessment, it is not necessary that the assessment order should contain reference and / or discussion to disclose his satisfaction in respect of each of query raised-Reassessment based on same records quashed on the ground of change of opinion [S. 32, 92CA(4), 148, Art. 226]

In the reasons for the proposed re-opening of assessment it was recorded that after the assessment order was passed the department received certain information from the Directorate of Income Tax, Intelligence & Criminal Investigation Chennai from where it was fund that the acquisition of brands and the assessee has claimed incorrect depreciation. On writ the Court held that on consideration of facts the AO has conclusively taken one view and based on same material, it will not be open to reopen the assessment to take another view. The fact pertaining to the acquisition of Good will, Trade Mark, Patents and Brands were not only available before

the Original assessment by the AO but were also analysed by the AO during the original assessment proceedings. The Court observed that it was true that there was no detailed reference to the query raised by the AO during the assessment proceedings and reply provided by the assessee along with documentary evidence. But, once the query raised was subject to the consideration of the AO, while completing the assessment, it is not necessary that the assessment order should contain reference and / or discussion to disclose his satisfaction in respect of each of query raised. If the AO has to record the consideration bestowed by him on all issues raised during the assessment proceedings even where he is satisfied, then it would be impossible for the AO to complete all the assessments which are required to be scrutinized by him under section 143(3) of the Act. Notice issued for reopening of assessment was quashed. (WP No. 3546 of 2019 dt. 4-1-2022)(AY. 2012-13)

Prethi Kitchen Appliances Pvt. Ltd. v. ACIT (2022) The Chamber's Journal-February-P. 180 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Interest free loans to sister concern-Charge of interest-Change of opinion-Reassessment notice was quashed. [S. 36(1)(iii), 148, Art. 226]

Held that issue of loan being given to group companies either at low interest rate or no interest rate was a subject matter of consideration by Assessing Officer during original assessment proceedings and assessee had provided party wise details along with address of parties to whom loans/advances were given and interest received on such loans and nature of loans/advances had been considered in assessment order, reopening of assessment by Assessing Officer on ground that interest should be charged at 12 per cent per annum on loan given to sister concern and therefore this interest income had escaped assessment, being a mere change of opinion on very same material, was not justified. Reassessment notice was quashed.(AY. 2017-18)

Parinee Realty (P.) Ltd. v. ACIT (2022) 286 Taxman 337 / 217 DTR 279 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Depreciation-Information from Directorate of Income Tax, Intelligence & Criminal Investigation-Goodwill, trademarks and patents and Brands-Reopening of assessment on basis of very same material to take a different view was not justified-Reassessment notice was quashed. [S. 32, 148, Art. 226]

Assessment was sought to be reopened in case of assessee on ground that revenue received certain information from Directorate of Income Tax, Intelligence & Criminal Investigation, Chennai, from where it was found that acquisition of Brands and Goodwill as claimed by assessee was incorrect and said transfer had not been established and thus, assessee had claimed incorrect depreciation. On writ allowing the petition the Court held that facts pertaining to acquisition of Goodwill, trademarks and Patents and Brands were not only available before Assessing Officer at time of original assessment, but were also analysed by him during course of assessment proceedings. Assessing Officer after considering all points passed assessment order, accepting fact that transfer had been established and there was proper acquisition of Brands and Goodwill, as claimed by assessee. Hence where on consideration of material on record, one view was conclusively taken by Assessing Officer, it would not be open to reopen assessment based on very same material with a view to take another view. Notice for reassessment was quashed. (AY. 2012-13)

Preethi Kitchen Appliances (P.) Ltd. v. ACIT (2022) 446 ITR 411 / 286 Taxman 483 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Speculative transactions-loss of cancellation of forward contract-Change of opinion-Reassessment notice was quashed. [S. 43(5), 148, Art. 226]

The Assessing Officer sought to reopen assessment in case of assessee as on verification of records, he observed that Schedule 31 in profit and loss account showed that assessee company had debited a sum of Rs. 1070.42 lakhs towards 'net loss of cancellation of forward contract'. According to Assessing Officer, this amount of Rs. 1070.42 lakhs was speculation loss and should not have been allowed against regular business income. On writ the Court held that all these details were available before Assessing Officer who passed assessment order and between date of order of assessment sought to be reopened and date of formation of opinion by Assessing Officer, nothing new had happened. It was merely a fresh application of mind by a different Assessing Officer to same set of fact. Accordingly the notice for reopening assessment and order passed disposing of objections was quashed and set aside. (AY. 2012-13)

Parle Products (P.) Ltd. v. ACIT (2022) 286 Taxman 235 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Sale of shares-Business income-Capital gains-Change of opinion-Reassessment notice was quashed. [S. 28(i), 148, 154 Art. 226]

Assessing Officer passed assessment order under section 143(3) dated 31-12-2007. Rectification order under section 154 dated 6-5-2009 was also passed. Subsequently assessment was reopened and order under section 143(3) read with section 147 dated 18-12-2009 was passed. Thereafter assessee received a notice dated 31-3-2010 under section 148 from Assessing Officer alleging that he had reason to believe that assessee's income chargeable to tax for assessment year 2005-06 had escaped assessment within meaning of section 147 of the Act. Assessing Officer also rejected assessee's objections to reopening On writ allowing the petition the Court held that the entire basis of forming an opinion that there had been an escapement of assessment was that profit arising out of sale of shares by assessee was nothing but business income and, therefore, profit arising out of sale of shares held by assessee in group companies would be

treated as assessee's income from business and not profit arising out of sale of investment-It was also noted that in assessment order dated 31-12-2007 passed under section 143(3) same point raised in reasons for reopening had been discussed and considered. Reassessment notice on basis of change of opinion which could not be a ground for reopening. Reassessment notice was quashed. (AY. 2005-06)

Tata Sons Ltd. v. CIT (2022) 286 Taxman 587 (Bom.)(HC)

S. 147 : Reassessment-Bad debt-Rural branch-Withdrawal of claim in subsequent year-Reassessment is not valid. [S. 36(1)(viia), 148, Art. 226]

During assessment, Assessing Officer sought clarification on allowability of claim u/s 36(1(viia) of the Act. The claim was allowed. The Assessing Officer proposed to reopen assessment on ground that during assessment proceedings for assessment year 2010-11 when assessee was called upon to submit details of rural branches and advances, assessee had withdrawn claim for deduction under section 36(1)(viia) of the Act hence the assessee was likely to have claimed incorrect deduction as many branches initially projected as rural branches were not rural branches as prescribed in Explanation (ia) to clause (viia)of the Act. On writ the Court held that since specific queries were raised related to allowability of deduction under section 36(1)(viia) and upon consideration of same claim was allowed for relevant assessment year, reassessment on premise that it was likely that assessee claimed incorrect deduction in past assessment year without any tangible material would be in nature of guess. Accordingly the notice for reassessment was to be quashed. (AY. 2006-07)

HDFC Bank Ltd. v. ACIT *(*2022) 445 ITR 196 / 286 Taxman 365 (Bom.)(HC)

S. 147 : Reassessment-Capital gains-Profit on sale of property used for residence-Investment in six residential flats-Change of opinion-Reassessment is not valid. [S. 45, 54, 148, Art. 226]

Assessee claimed exemption under section 54 which was allowed. Thereafter, a notice under section 148 was issued to assessee on ground that documents relating to acquisition of new property showed that it related to six residential flats and since under section 54, exemption is not allowed if assessee purchases more than one residential house from capital gain accrued from sale, assessee was not eligible for section 54 exemption. On writ allowing the petition the Court held that the assessee had provided all evidences to justify that when he purchased flat, it was one residential unit and that issue of deduction under section 54 was a subject matter of consideration by Assessing Officer during assessment proceedings. Accordingly the reopening of assessment was quashed on the ground of change of opinion. (AY. 2016-17)

Gagan Omprakash Navani v. ITO (2022) 445 ITR 147 / 286 Taxman 668 (Bom.)(HC)

S. 147 : Reassessment-Failure to file return of income-Cash deposited in the bank account-Reassessment notice is justified. [S. 68, 139, 148, Art. 226]

The assessee did not file a return of income. The reassessment notice was issued based on the information that the cash was deposited in the ban account of the assessee. The assessee filed the writ petition, dismissing the petition the Court held that the objections raised by the assessee were considered by the Assessing Officer and the Principal Commissioner for determining whether any prima facie case was made out to reopen the assessment and not for the final assessment. Relied on New Delhi Television Ltd. v. Dy. CIT (2020) 424 ITR 607 (SC) Phool Chand Bajrang Lal v. ITO (1993) 203 ITR 456 (SC) and Central Provinces Manganese Ore Co. Ltd. v. ITO (1991) 191 ITR 662 (SC). *(*AY. 2017-18)

Farmacia Molio v. ITO (2022) 444 ITR 65 / 287 Taxman 11 / 216 DTR 219 / 327 CTR 71 (Bom.)(HC)

S. 147 : Reassessment-Limitation-No finding or recording of reason that income has escaped assessment on account of failure of assessee to disclose truly and fully all material facts-Notice And Order Rejecting Objections Unsustainable. [S. 148, 149 150. Art. 226]

Notice was issued of under section 148 beyond the period of limitation prescribed under section 149. On a writ petition allowing the petition the Court held that there was no specific finding that income chargeable to tax had escaped assessment for the AYs 2001-02, 2002-03 and 2003-04 nor was there a direction to the Assessing Officer to initiate reassessment proceedings under section 147 by issuing notices under section 148. On the contrary, the Tribunal had recorded specific findings that following the project completion method the assessee had offered income in respect of the project in the AY 2003-04 which had been accepted by the Department. Once income was taxed in the AY 2003-04 on the completion of the project, there could not be any question of taxing the same amount in the earlier years by applying a particular percentage on the amount of work-in-progress shown in the balance-sheet. There was nothing in the reasons recorded for reopening of the assessments to indicate that there was any escapement of income due to failure on the part of the assessee to truly and fully disclose material facts. Accordingly the notice issue was quashed. (AY. 2001-02 to 2003-04)

SEA Sagar Construction Co. v. V.A. Nair ITO (2022) 444 ITR 385 / 213 DTR 393 / 288 Taxman 609 / 328 CTR 897 (Bom.)(HC)

S. 147 : Reassessment-Duty of Assessing Officer-Rejection Of Objections must be by speaking order recording reasons for rejection of each objection-Matter remanded. [S. 148, 153C, Art. 226]

The Income-tax Officer rejected the objections filed by the assessee. On a writ the Court held that the order rejecting the objections raised by the assessee against reopening of the assessment under section 147 was in

violation of the principles laid down by the court in the case of Tata Capital Financial Services Ltd. v. ACIT (2022)443 ITR 127 (Bom.) (HC). The Assessing Officer has to consider each and every objection raised by the assessee against reopening of the assessment under section 147 of the Income-tax Act, 1961 and record reasons for his conclusion. The various objections raised by the assessee are required to be answered by sufficient and cogent reasons. (AY. 2016-17)

Nitinkumar v. JCIT. (2022) 443 ITR 411 (Bom.) (HC)

S. 147 : Reassessment-With in four years-All relevant material in respect of employee costs reimbursed to overseas subsidiaries furnished in the course of original assessment proceedings-Change of opinion-Reassessment notice is not valid. [S. 92CA, 148, Art. 226]

Allowing the petition the Court held that all relevant material in respect of employee costs reimbursed to overseas subsidiaries furnished in the course of original assessment proceedings. Once a query is raised during the assessment proceedings and the assessee has furnished a reply thereto, it implies that the query so raised was a subject matter of consideration of the assessing authority. It is not an immutable rule that an assessment order should contain reference or discussion on such query. Reassessment notice is not valid. Relied on Aroni Commercials ltd. v. Dy. CIT (2014) 362 ITR 403 (Bom.)(HC) *(*AY.2014-15)

Oracle Financial Services Software Ltd. v. Dy. CIT (2022) 442 ITR 160/ 286 Taxman 469 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Change of opinion-Information from investigation wing-Reassessment was quashed [S. 143(3), 148]

Dismissing the appeal of the revenue the Court held that the reasons only referred to need to verify the documents and there is no link between the

statement with the rest of the reasons supplied. Relied on Nivi Trading Ltd v. UOI (2015) 375 ITR 308 (Bom.)(HC).(AY. 2006-07)

PCIT v. Sheetal Dushyant (2022) 134 Taxman 327 (Bom.)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Sheetal Dushyant (2022) 285 Taxman 85 (SC)

S. 147: Re assessment-Change of opinion-Housing project-Full details of residential unit was furnished in the course of assessment proceedings-Re assessment is held to be bad in law. [S. 80IB(10), 148 Art. 226]

Allowing the petition the Court held that where assessee had disclosed truly and fully material facts pertaining to deduction claimed under section 80-IB(10) and same were carefully scrutinized by Assessing Officer and he had taken a view that assessee would be entitled to deduction under section 80-IB(10), assessment sought to be reopened on account of change of opinion of Assessing Officer about manner of computation of deduction under section 80-IB(10) was not justified.

Gemstar Construction (P.) Ltd. v. UOI (2022) 285 Taxman 457 (Bom.) (HC)

S. 147 : Reassessment-With in four years-Capital gains-Shares-Rate of tax at 10 %-Application of mind during original assessment proceedings-Notice issued u/s 148 is quashed. [S. 48, 112, 143(3), 148, Art. 226]

Petitioner sold shares and earned long-term capital gain. He filed return of income and paid tax on capital gain at rate of 10 per cent as per proviso of section 112. During assessment, petitioner clarified queries raised by Assessing Officer as to why rate of tax on capital gains should be computed at rate of 10 per cent instead of 20 per cent under section 112 and of applicability of first proviso to section 48. The Assessing Officer after being satisfied with petitioner's submissions passed assessment order. The notice us. 148 was issued 13th March 2008 on ground that rate of tax to be applied

to capital gain that arose to petitioner would be 20 per cent in terms of section 112(1)(c)(ii) and not 10 per cent. On writ the Court held that since issue of applicability of first proviso to section 48 as well as that of rate of tax under section 112 were discussed during assessment proceedings under section 143(3) and there was due application of mind by Assessing Officer during original assessment, reopening assessment on same issue would be a mere change of opinion and impugned notice was to be quashed. (AY. 2004-05)

Conopco Inc v. UOI (2022) 285 Taxman 472 / 215 DTR 283 (Bom.) (HC)

S. 147 : Reassessment-Depreciation on goodwill-Change of opinion-Re assessment notice is not valid. [S. 32, 148, Art. 226]

Reassessment was initiated in case of assessee-company to disallow assessee's claim of depreciation on goodwill. On writ the Court held that in original assessment proceedings, assessee had provided details regarding claim of depreciation with supporting evidence and Assessing Officer after considering said evidences, allowed said claim. On facts, initiation of reassessment was nothing but mere change of opinion. Re assessment notice is quashed. (AY. 2014-15)

Sterling and Wilson (P.) Ltd. v. ACIT (2022) 285 Taxman 468 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Store launch expenses-Capital or revenue-Change of opinion-Reassessment notice is quashed. [S. 37, 148, Art. 226]

During relevant year, assessee had claimed expenses incurred till opening of new stores under head store launching expenses in its books of account. Such expenditure incurred by assessee prior to launching a new retail store comprised of cost of advertisement and promotion, employee recruitment and training, travel etc. which was allowed as revenue expenditure. Assessing Officer sought to reopen assessment to disallow store launching

expenses incurred during year on ground that these were classifiable as capital expenditure and not as revenue expenditure. On writ the Court held that subsequent to assessment, no new information or fact had come to notice of Assessing Officer so as to initiate proceedings under section 148. Assessing Officer had in his possession all primary facts when original assessment order was passed and on consideration of material on record, and explanation offered, he had arrived at a final conclusion that assessee was entitled to deduction as claimed. Reopening of assessment on basis of very same material being a clear case of change of opinion is not justified. (AY. 2004-05)

Trent Ltd. v. Dy. CIT (2022) 285 Taxman 460 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Change of opinion-Payment to related parties-Incentives to senior employees-Difference in VAT return and Turnover as per profit and loss account-Reconciliation-Questions asked in the course of original assessment proceedings-No discussion in the assessment order-Reassessment notice was quashed. [S. 40A(2)(b), 148, Art. 226]

The assessment of the petitioner was completed under section 143(3) of the Act. In the Couse of assessment proceedings the Assessing Officer has issued specific questions as regard the payments made to related parties in the form of incentives and also on the issue of difference in turnover VAT return and as per the profit and loss in the return of income. The petitioner gave the detailed reply after considering the said reply the Assessing Officer had not made any addition however there was no discussion in the assessment order. The Assessing Officer issued notice u/s 148 of the Act. In response to recorded reasons, the detail explanation was filed by the petitioner. The Assessing Officer passed the order disposing the objection. The petitioner filed writ before the High Court. Allowing the petition the Court held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a

subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. The re-opening of the assessment by the impugned notice is merely on the basis of change of opinion from that held earlier during the course of assessment proceedings. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. Followed Aroni Commercials Ltd. v. Dy.CIT [2014] 44 taxmann.com 304 / 224 Taxman 13/ 362 ITR 403 (Bom.) (HC) (AY. 2017-18) WP No. 1797 of 20022 dt.25-4-2022.

Maharashtra Oil Extraction Private Limited v. Dy. CIT (2022) 287 Taxman 465 / 114 CCH 315 (Bom.)(HC) www.itatonline.org

S. 147 : Reassessment-With in four years-No new tangible material-Reason recorded and reasons stated in objections disposing the objection are different-Reassessment notice was quashed. [S. 2(47), 47(iv), 47A, 143(3), 148, Art. 226]

Allowing the petition the Court held that there is no tangible material coming into existence after conclusion of regular assessment proceedings and before recording of the reasons on the issues stated in the reasons recorded for reopening the case. The reasons itself suggest that there is no new tangible material post the assessment proceedings and reassessment is stated to be made on the material already on record and considered at the time of passing the original assessment order under s. 143(3). In fact, by its letter dt. 7th Aug., 2017, assessee had placed on record during the regular assessment proceedings a statement giving details of the long-term capital loss incurred on the redemption of preference shares of GI Ltd. during the year ended 31st March, 2015 and the factum of GI Ltd. being a wholly owned subsidiary. The fact that GI Ltd. was wholly own subsidiary was expressly stated in the balance sheet filed by assessee and also in the letter dt. 19th Sept., 2017 addressed by the AO. Therefore, it cannot be stated that any new fact or material has come to light to alter this position

Court also observed in this case, one set of reasons was provided to assessee and when objected to by assessee, respondents justify the reopening by producing an undated and unsigned reasons which was never furnished to the assessee at any point of time prior thereto. Reassessment notice was quashed. Followed Aroni Commercials Ltd. v. Dy. CIT (2014) 362 ITR 403/ 224 Taxman 13/ 44 taxmann.com 304 (Bom.)(HC) (AY. 2015-16)

Great Eastern Shipping Co. Ltd. v. NFAC (2022) 211 DTR 442 / 327 CTR 482 (Bom.)(HC)

S. 147 : Reassessment-Within period of four years-Change of opinion-Foreign remittance-Failure to deduct tax at source-No failure to disclose material facts-Issue was considered in the original assessment proceedings-Not specifically dealt in the assessment order-Reassessment notice was quashed. [S. 14, 40(a)(i), 90, 91, 92CA(3), 143(3), 148, 195, Art. 226]

The reassessment notice was issued for failure to deduct tax at source on foreign remittances. Allowing the petition the Court held that there was no failure to disclose material facts. Issue was considered in the original assessment proceedings though not specifically dealt in the assessment order. Reassessment notice was quashed. Followed Calcutta Discount Co Ltd. v. ITO (1961) 41 ITR 191 (SC), CIT v. Kelvinator India Ltd (2010) 320 ITR 561 (SC) (AY. 2014-15)

Oracle Park, off Western Express Highway v. Dy. CIT (2022) 210 DTR 33 / 325 CTR 95 (Bom.)(HC)

S. 147 : Reassessment-Block assessment-Deduction disallowed in the block assessment order-Reassessment notice is bad in law. [S. 80HHA, 80I, 80IA, 132, 143(3), 148, 158BA, 158BC, Art. 226]

Assessment was completed under section 143(3), read with section 147 allowing partial deduction under section 80IA of the Act. On appeal CIT (A) allowed the claim of the assesses. There was search on the assessee and

block assessment order was passed u/s 158BC of the Act and disallowed the claim u/s 80IA of the Act Thereafter, on 30-3-2004 the, Assessing Officer issued notice under section 148 alleging that assessee's income chargeable to tax for assessment year 1997-98 had escaped assessment and calling upon assessee to file a return of its income within 30 days. On writ, allowing the petition the Court held that on date on which impugned notice dated 30-3-2004 was issued, Assessing Officer could not have any reason to believe that income chargeable to tax had escaped assessment under section 148 because in block assessment order dated 30-1-2004, deduction claimed by assessee had been disallowed and therefore reopening of assessment on ground that deduction claimed by assessee under sections 80-I, 80-HHA and 80-IA had not been examined properly in regular assessment could not have been allowed. Reassessment notice was quashed. Followed CIT v. H.N. Shindore (1978.) 113 ITR 679 (Bom.))(HC) (AY. 1997-98)

Sanghvi Woods Ltd. v. ACIT (2022) 285 Taxman 252 / 209 DTR 323 / 324 CTR 332 (Bom.)(HC)

S. 147 : Reassessment-Bad debts-Audit objection-Provision for standard asset / advances under general loan loss provision excluding provision for NPA and claiming deduction-Order of Tribunal quashing the reassessment was affirmed. [S. 35D, 36(1)viia), 148, 260A]

Dismissing the appeal of the revenue the Court held that opinion of internal audit party of income tax department cannot be recorded as information within the meaning of section 147(b) for reopening of assessment. Court held that true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income-tax officer. Order of Tribunal is affirmed. Followed Indian & Eastern News Paper Society (1979) 2 taxman 197 (SC), Jainam Investments v. ACIT (2021) 439 ITR 154 (Bom.)(HC)

PCIT v. Yes Bank Ltd. (2022) 285 Taxman 434 (Bom.)(HC)

S. 147 : Reassessment-Capital gains-Penny stock alternative remedy-Reassessment notice was held to be valid. [S. 45, 142(1), 148, Art. 226]

Reassessment notice was issued for verifying the exemption claimed in respect of penny stock on the basis of information received. The objection of the assessee was rejected by the Assessing Officer. On writ dismissing the petition the Court held that the assessee has not offered the short term capital gains hence the reassessment notice was held to be valid. (AY. 2012-13) (W.P. No. 2817 of 2019 dt. 3-1-2022)

Yogini Bipin Soneta v. ITO (Bom.)(HC) www.itatonline.org

S. 147 : Reassessment-With in four years-HUF-Partner-Interest paid to partner-Materials were on face of a document available before Assessing Officer-Reassessment notice was quashed. [S. 148, 184, Art. 226]

Assessment was sought to be reopened on the ground that according to Assessing Officer, an HUF could not become a partner of a firm or enter into a contract with other person and hence assessee had not complied with provisions of section 184 and interest paid to partners could not be considered for deduction. On writ allowing the petition the Court held that it was found that assessee had filed Form No. 3CD in which HUF was shown as a partner with 10 per cent profit sharing ratio. Form No. 3CD also indicated that a certain sum had been paid as interest to said HUF. Court held that view of the Assessing Officer being change of opinion, reopening of assessment was not justified. (AY. 2014-15)

S. A. Developers v. ACIT (2022) 285 Taxman 238 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Jurisdictional issue-Capital gains-Large deduction of expenses-Exemption claimed-Prima facie showing escapement of income-Notice of reassessment

is held to be valid-Writ is held to be not maintainable [S. 45, 54F, 143(1), 148, Art. 226]

Dismissing the petition the Court held that presenting the writ petition on the same day of lodging of objections to the notice of reassessment. The assessee had pursued the writ remedy as a parallel remedy, which was impermissible in law. Moreover, at least, prima facie, the contention of the assessee of an error of jurisdictional fact having vitiated the proceedings initiated by the Assistant Commissioner was not tenable. The notice of reassessment was valid. (AY.2016-17)

John Sebastian Zezito Lobo v. ACIT (2021)439 ITR 537 / 283 Taxman 229 (Panji Bench) (Bom.) (HC)

S. 147 : Reassessment-Within four years-Reasons based on erroneous and incorrect facts-Non application of mind-Notice was quashed. [S. 143(1), 148,151 Art. 226]

Allowing the partition the Court held that the reasons recorded are based on totally erroneous and incorrect facts and non application of mind. Averment made in the petition was not denied. Reassessment notice was quashed. (WP No. 3224 of 2019 dt.15 12-2021)

Dhiren Anantraj Modi v. ITO (The Chamber's Journal-January-P. 73 (Bom.)(HC)

S. 147 : Reassessment-Reasons recorded-Cash credit-Accommodation entries-Sanction-Non-application of mind-Strictures-CBDT to formulate a Scheme to train officers for recording reasons-Commissioners to not to grant sanction in a mechanical manner-Reassessment proceedings was quashed. [S. 148, 151, Art. 226]

Allowing the writ petition the Court held that where the recorded reasons suggested that the assessee received bogus accommodation entries from itself, it was a clear case of non-application of mind in forming the recorded reasons for reopening. The High Court has suggested that the CBDT could

formulate a scheme to train officers for applying their mind in recording the reasons. Further, the CBDT to advise the concerned Commissioners to not grant approval under section 151 of the Income-tax Act, 1961 in a mechanical manner. Reassessment proceedings was quashed. (AY. 2014-15) (ITO WP No. 3581 of 2021 dt. 20-12-2021)

Sharvah Multitrade Company Pvt. Ltd. v. ITO (2022) 285 Taxman 397 / 209 DTR 369 / 324 CTR 366 (Bom.)(HC) www.itatonline.org.

S. 148 : Reassessment-Notice-Challenged on several grounds - writ petition dismissed. [S. 147, Art. 226]

The Assessee filed writ petition against the issue of notice u/s 148 of the Act and a number of issues or grounds are raised in a writ petition. High Court dismissed the assessee's writ petitions challenging the reopening of assessments under section 148 of the Income-tax Act, 1961 without passing a speaking order and deciding the merits of the case.

Vishal Ashwin Patel v. ACIT (WP Nos. 3209/2019, 3150/2019, 3208/2019 and 3137/2019 (Bom)(HC) dated January 11, 2022.

H.P. Diamond India (P) Ltd v. Dy .CIT (2022) 139 taxmann.com 515 (Bom)(HC)

Editorial: Order of High court set aside and directed to decide on merits.

Vishal Ashwin Patel v. ACIT (2022) 443 ITR 1 / 212 DTR 123/ 325 CTR 699 / 132 taxmann.com 372 (SC)

H.P. Diamond India (P) Ltd. v. Dy. CIT (2022) 449 ITR 163 / 287 Taxman 559 / 114 CCH 196 (SC.)

S. 148 : Reassessment-Notice-Notice issued to non-existing entity-Notice invalid-Notice could not be corrected u/s. 292B of the Act. [S. 147, 292B, Art. 226]

The notice u/s 148 was issued to non-existing entity. The assessee challenged the said notice by filing writ petition. Allowing the petition the Court held that notice issued to non-existing entity is bad in law which could not be corrected u/s. 292B of the Act. The notice issued was quashed. Order

in Sky Light Hospitality LLP v ACIT (2005) 405 ITR 296 (Delhi)(HC), Sky Light Hospitality LLP v ACIT(2018) 92 taxmann.com 93 (SC) distinguished, followed PCIT v. Maruti Suzuki India Ltd (2019) 416 ITR 613 (SC). (WP (L) No. 14088/2021 dt 25-10-2021)

Implenia Services and Solutions Pvt. Ltd. v. Dy. CIT (Bom.)(HC) (UR)

S. 148 : Reassessment-Notice-Income above 20 Lakhs-ITO has no jurisdiction to issue notice-Notice should be issued by AC/DC as per CBDT instruction No.1/2011 [S. 147, 151, Art.226]

The petitioner had filed a Writ Petition challenging Notice issued under section 148 of the Act. According to Petitioner as per instruction No. 1/2011 dated 31st January, 2011 issued by the Central Board of Direct Taxes, where income declared/returned by any Non-Corporate assessee is up to Rs. 20 lakhs, then the jurisdiction will be of ITO. The Petitioner's income was above Rs. 20 lakhs. It was held that, the notice under section 148 of the Act is a jurisdictional notice and any inherent defect in the said notice is not curable and quashed the same (WP No. 3489/2019 dt.8-3 2022)(AY 2012-13)

Ashok Devichand Jain v. UOI (Bom.)(HC)(UR)

S. 148 : Reassessment-Notice-Reasons for reopening has blanks-notice not digitally signed-Petitioner has not filed its objections to the notice-Petitioner directed to file its objections within two weeks-The Assessing Officer shall grant a personal hearing and pass an assessment order. [S. 147, 151, Art. 226]

The reassessment notice issued is not even digitally signed and the reasons for reopening has blanks. Therefore, the notice should not be even accepted as valid notice. On writ the Court found that petitioner has not filed its objections to the notice, though returns have been filed pursuant to the notice. Therefore, it directed the petitioner to file its objections within two weeks and the objections shall be heard and disposed within three weeks

thereafter by the Assessing Officer. The court however, didn't make any observations on the merits of the case. (WP. No.3081 of 2022 dt. 17-3-2022)

Sai Enterprises v. UOI (Bom.)(HC)(UR)

S. 148 : Reassessment-Notice-Recorded reasons not provided-Non-application of mind by the Assessing officer-There is no section 148D under the Income-tax Act-Notice and order quashed. [S. 147, 148D 151, Art. 226]

Petitioner filed its response to notice u/s 148 of the Act and brought to the notice of Assessing Officer that petitioner has not been provided with the reasons recorded for reopening of the assessment and a copy of sanction accorded under section151 of the Act. The Assessing Officer instead of responding, issued a show cause notice. Petitioner received order under section 148D of the Act. On writ allowing the petition the Court held that the issue of notice being non-application of mind by the concerned officer. Moreover in the said order, the officer is totally silent on the grievance raised by petitioner that reasons recorded in the proposed reopening has not been provided. The court quashed and set aside the issues notice u/s 148. Consequent orders/notices are also quashed and set aside. Court observed that there is no section 148D under the Income-tax Act, 1961 (WP No. 2226 of 2022 dt. 4-5-2022) (AY. 2015-16)

Davariya Brothers Private Limited v. ACIT (Bom.)(HC)(UR)

S. 148 : Reassessment-Notice-Amalgamation-Notice was sent to the original assessee despite various communications sent to department informing of the amalgamation and non-existence of the assessee-Notice issued to a non-existing entity is bad in law-Notice was quashed. [S. 147, Art. 226]

The petitioner filed the writ petition and contended that the notice of reassessment and assessment order is bad in law on the grounds that notice issued u/s 148 of the Act has been issued to a non-existing entity.

Original assessee 'Solutions Integrated Marketing Services Private Limited' to whom notice has been issued under Section 148 of the said Act, amalgamated with petitioner TLG India Private Limited, pursuant to the scheme of amalgamation approved by the High Court of Bombay. The Petitioner brought to the notice of DCIT about the scheme of amalgamation being approved by the Court. Various other communications were also sent informing of the amalgamation. Despite all the communications, the petitioner received notice under Section 148 of the said Act in the name of 'Solutions Integrated Marketing Services Private Ltd.' which is a non-existing entity. The Court relied on the judgement of Alok Knit Exports Ltd v. DCIT (2021) 283 Taxman 221/ (2022) 446 ITR 748 (Bom.)(HC)) said that notice issued to a non-existing entity is bad in law. Therefore, the impugned notice was quashed and set aside. Consequently, assessment order was also quashed and set aside. (WP No. 2001/2022 dt. 6-5-2022)

TLG India Private Ltd. (As successor to 'Solutions Integrated Marketing Services Private Ltd.) v. NFAC (2022) 219 DTR 383 (Bom.)(HC)

S. 148 : Reassessment-After the expiry of four years-Notice issued on non existing company-Amalgamation-Amalgamating entity ceases to exist upon the approved scheme of amalgamation and notice issued to non-existing company, is not curable defect under Section 292B of the Act.-Reassessment notice and order disposal of objection. was quashed. [S. 139(1), 147, 292B, Art. 226]

The notice dt. 31-3-2021 under section 148 of the Act was issued on the company which was ceased to exist. The petitioner has filed the return filed earlier and also objections to the reopening and one of the objection was the entity was not in existence on 31-3-2021 and Scope had merged with petitioner by virtue of order dated 30-9-2019 passed by NCLT. Not with standing this the Revenue rejected the petitioner's plea by order dt 3-2-2022. The petitioner filed writ against the rejection order. Allowing the petition the Court held that, the basis on which jurisdiction was invoked

was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation and notice issued to non-existing company, is not curable defect under Section 292-B of the Act. Notice under which jurisdiction was assumed by the Assessing Officer was issued to the non-existing company which amounts to substantive illegality and not a procedural violation of the nature adverted to in Section 292-B of the Act. Accordingly the reassessment notice and order disposing the objection was quashed. Followed PCIT v. Maruti Suzuki India Ltd.(2019) 416 ITR 613 (SC), Alok Knit Exports Ltd v. Dy.CIT (2021) 283 Taxman 221 /(2022) 446 ITR 748 (Bom.) (HC) (WP No. 6728 of 2022, dt. 29-4-22) (AY. 2013-2014)

Apar Corporation Pvt. Ltd. v. ACIT (Bom.)(HC) (UR)

S. 148 : Reassessment-Notice-Merger-Succession to business otherwise than on death-Notice issued in the name of non-existent company-Notice is bad in law. [S. 147, 170, 292B, Art. 226]

Allowing the petition the Court held that assessee-company was merged into another company, under an approved scheme cleared by NCLT, and thereby lost its existence, and order of merger was available to revenue. Accordingly the notice issued under section 148 in name of non-existent company was bad-in-law. Followed PCIT v. Maruti Suzuki India Ltd (2019)) 416 ITR 613 (SC) (AY 2012-13)

Vahanvati Consultants (P) Ltd v. ACIT (2022) 448 ITR 258 / 138 taxmann.com 51 (Bom.)(HC)

Editorial: SLP of Revenue disposed off granting liberty to pursue appropriate proceedings in accordance with law by way of a review before High Court, ACIT v. Vahanvati Consultants (P) Ltd. (2022) 287 Taxman 176/ 131 CCH 161 (SC)

S. 148 : Reassessment-Notice-Notice was issued prior approval of Additional Commissioner-Notice was quashed. [S. 147, 151(2), Art. 226]

On writ allowing the petition the Court held that notice under section 148 was issued to assessee on 25-6-2019 and prior mandatory approval of Additional dated 26-6-2019. Court held that issue of notice was illegal as there was no prior approval as required under section 151(2) of the Act. Court also observed that it is open to Respondents to take such steps as advised in law and it is open to Petitioner to raise such objections as and when they receive a fresh notice.

River Valley Meadows and Township (P.) Ltd. v. Dy. CIT (2022) 284 Taxman 536 (Bom.)(HC)

S. 148 : Reassessment-Notice-Constitutional validity-The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021-Reassessment notices issued under section 148 of the Act are quashed-It is left open to the assessing authority to initiate-Re-assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]

The Hon'ble Bombay High Court agreeing with the views taken by the Allahabad High Court, Rajasthan High Court, Delhi High Court and Madras High Court further held that there is no savings clause for applicability of erstwhile Sections 147 to 151 of the Act, and the explanations under the impugned notifications does not cover section 147 of the Act, therefore the procedure under section 148A of the Act should be followed, and the Relaxation Act does not operate for AY. 2015-16 and subsequent years. Notice issued under section 148 of the Act was quashed. (WP NO.1334 OF 2021 (Bom.)(HC) dated February 24, 2022)

Editorial: ***Followed*** High Court of Allahabad (Division Bench) in **Ashok Kumar Agarwal v. UOI (2021) 131 taxmann.com 22 (Allahabad)**, High Court of Delhi (Division Bench) in **Mon Mohan Kohli v. ACIT & Anr. (2021) 133 taxmann.com 166 (Delhi)**, High Court of Rajasthan (Single Judge) in **Bpip Infra (P.) Ltd. v. ITO (2021) 133 taxmann.com 48 (Rajasthan)**, and High Court of Calcutta in **Bagaria Properties and Investment Pvt. Ltd. and Anr. V. UOI and Ors. W.P.O. No.244 of 2021 dated Janu 17,2022** and Division Bench of Rajasthan High Court in **Sudesh Taneja v. ITO D.B. Civil Writ Petition No.969 of 2022 pronounced on January 27, 2022** and High Court of Madras (Division Bench) in **Vellore Institute of Technology V/s. Central Board of Direct Taxes and Anr. Writ Petition No.15019 of 2021 dated February 04, 2022.**

Dissented from the Chhattisgarh High Court in **Palak Khatuja v. UOI 2021 (438) ITR 622 (Chatt) (HC)**

Tata Communications Transformation Services v. ACIT (2022)443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom.) (HC)
Rajebahadur Madhusudan Trimbak v ITO (2022)443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom.)(HC)

S. 148 : Reassessment-Merger-Notice issued in the name of entity which had ceased to exist-Fundamental error-Which cannot be corrected under section 292B of the Act. [S. 147, 292B, Art. 226]

Assessing Officer issued despite being aware that said entity had merged with petitioner company and had ceased to exist.-The Assessing Officer submitted that it was a human error which could be corrected under section 292B of the Act. On writ allowing the petition the Court held that the Assessing Officer before issuing notice under section 148 had not applied his mind to look for documents which were already on file. The Assessing Officer having committed a fundamental error, stand of Assessing Officer that it was an error which could be corrected under section 292B was not

acceptable. Notice issued notice and order rejecting objections to said notice were to be quashed and set aside. (AY. 2012-13)

Alok Knit Exports Ltd. v. Dy. CIT (2021) 283 Taxman 221 / (2022) 446 ITR 748 / 213 DTR 74 (Bom.)(HC)

S. 148 : Reassessment-Issuance of notice of reassessment-Resolution personal-Provisions of this Code to override other laws-For period prior to approval of resolution plan under the Insolvency & Bankruptcy Code, 2016 ('IBC')-Once the public announcement is made under the IBC by the Resolution Professional calling upon all concerned, including the statutory bodies, to raise claim, it would be expected from all the stakeholders to diligently raise their claim-Not maintainable against the Corporate Debtor-Notice issue was quashed. [S. 147, The Insolvency and Bankruptcy Code, 2016, S. 7, 30(2), 238, Art. 226]

Where notice under Section 148 of the Income Tax Act, 1961 (**Act**) to a Corporate Debtor, calling upon it to submit a return in the prescribed form for the assessment year falling prior to the date of approval of Resolution Plan under the IBC on the ground that the Ld. Assessing Officer had a reason to believe that the income chargeable to tax of the Corporate Debtor has escaped assessment within the meaning of Section 147 of the Act, it was held that once the public announcement is made under the IBC by the Resolution Professional calling upon all concerned, including the statutory bodies, to raise claim, it would be expected from all the stakeholders to diligently raise their claim. The Income Tax authorities in that sense, ought to have been diligent to verify the previous years' assessment of the Corporate Debtor as permissible under the law and to raise the claim in the prescribed form within

time before the Resolution Professional. In the present case, the Income Tax Authorities failed to do so and therefore, the claim stood extinguished. The Impugned Notices issued under section 148 of the Act are quashed and set aside. Petitions are allowed. *Followed* Ghanashyam Mishra and Sons

Private Limited v. Edelweiss Asset Reconstruction Company Limited and others reported in 2021(9) SCC 657. (WP No. 2948 of 2021 dt. 23-12-2021)

Murli Industries Limited v. ACIT (Nag-Bench) (2022) 441 ITR 8 / 209 DTR 337 / 324 CTR 355 (Bom.)(HC) www.itatonline.org.

S. 148 : Reassessment-Notice-Constitutional validity-Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020-CBDT's notification No. 20/2021, dated 31-03-2021-Notice issued under old provisions of section 148 on or after 1-4-2021-, Notice was issued to revenue and Attorney General of India-Order passed staying the proceedings till next date of hearing. [S. 147, 148A, 149, TLA Act, 2020, S. 3, Art. 226]

On writ challenging the issue of notice u/s 148 allowing the revenue to issue reassessment notice under old provisions of section 148 read with section 149 of the Act as per section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.. Notice was to be issued to revenue and Attorney General of India. Order was passed staying the proceedings till next date of hearing.

Tata Communications Transformation Services Ltd v. UOI (2021) 281 taxman 222 (Bom.) (HC)

Sahil International v. ACIT (2021) 281 Taxman 221 (Bom.) (HC)

S. 148 : Reassessment-Amalgamation Of Companies-Intimation was conveyed to the revenue-Notice in name of non-existing entity-Not curable defect-Notice is void. [S. 147, 292B, Art. 226]

Allowing the petition the Court held that if a statutory notice is issued in the name of a non-existing entity, entire assessment would be a nullity in the eye of law. Such defect cannot be treated as procedural defect and mere participation of appellant would be of no effect as there is no estopped against law. Such a defect cannot be cured by invoking provisions under section 292B. The notice issued by the Assessing Officer, without realising

that the company was a non-existing entity, directing it to file a return of income within thirty days stating there was reason to believe that income chargeable to tax had escaped assessment. The notice was void.(AY. 2012-13)

Teleperformance Global Services Pvt. Ltd. v. ACIT (2021) 435 ITR 725 / 201 DTR 161 / 322 CTR 734 / 281 Taxman 331 (Bom.) (HC)

S. 150 : Assessment-Order on appeal-Time limit for reopening of assessment-Deemed dividend-Section 150 will apply only to reopening assessment to give effect to finding or direction in appellate orders of CIT(A) and not to appellate orders of any High Court u/s 260A. [S. 2(22)(e), 116, 147, 148, 149, Art. 226]

The High Court held that loan given by closely held company to concern in which shareholder of the company is substantially interested, cannot be taxed as deemed dividends in the hands of the concern but left it open to Revenue to tax it in the hands of the shareholder. The Revenue re opened the assessment beyond period of six years from the end of the relevant assessment year on the basis of observation of the Delhi High Court. On writ allowing the petition the Court held that observation of the High Court does not amount to a "direction" for section 150 purposes as it leaves it to discretion of Revenue. It cannot be called "finding" as it is not essential to adjudicate whether concern can be taxed or not. Even if it be a direction or finding, it is not an order by an authority under the Act as High court is not an authority. Section 150 will apply to appellate or revisional or reference order of High Court under any other Act. Assessment may be reopened beyond time u/s 150 to give effect to High Court orders passed under any other law but not to give effect to High Court 's orders passed under the Act. Reassessment notice was quashed. (AY. 2006-07)

Pavan Morarka v. ACIT (2022) 211 DTR 201 / 325 CTR 377 / 136 taxmann.com 2 (Bom.)(HC)

Racahna Morarrka v. ITO (2022) 211 DTR 201 / 325 CTR 377 / 136 taxmann.com 2 (Bom.)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Errors in Column No.8 and 9 of the Form for re-opening-DCIT,PCIT,CIT to explain the basis on which re-opening was approved when the form had errors-wrong amount was mentioned as income originally assessed-Safeguards provided in Sections 147 and 151 were lightly treated by the Officers-Notice was quashed. [S.147, 148 Art. 226]

The petitioner filed the writ petition stating that notice issued under Section 148 of the Act and also an order on objections filed by petitioner for reopening the assessment. There were errors in Column, No. 8 and 9 of the Form for re-opening. The sanction granted under Section 151 of the Act was on the basis of incorrect information. The amount mentioned as income originally assessed is Rs.6,01,66,964/-,whereas income originally assessed was Rs.11,11,34,621/-.Allowing the petition the Court held that the important safeguards provided in Sections 147 and 151 were lightly treated by the Officers. They appear to have taken the duty imposed on them under these provisions as of little importance. The court quashed and set aside the notice issued under Section 148 of the Act. The facts of Writ Petition No.3181 of 2019 and Writ Petition No.3615 of 2019 almost identical Writ Petition No.3023 of 2019 so both petitions were disposed accordingly. The notice was quashed. Referred Chhugamal Rajpal v. S. P. C haliha & Ors (1971) 79 ITR 603 (SC), German Remedies Ltd. v. Dy. CIT (2006) 287 ITR 494 (Bom.)(HC) (WP No. 3023/2019 dt 15-3-2022 (AY. 2012-2013)

Dilip Bhagirathmal Jiwrajka v. DCIT (Bom.)(HC)(UR)
Ashok Bhagirathmal Jiwrajka v. DCIT (Bom.)(HC)(UR)
Surendra Bhagirathmal Jiwrajka v. DCIT (Bom.)(HC)(UR)

S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice-Approval obtained for issuing notice u/s 148 of the Act is not in accordance with the mandate of section 151-Sanction from Additional Commissioner of Income-tax and not from the PCIT-Notice issued is bad in law hence quashed. [S.148, Taxation

and other Laws (Relaxation of Certain Provisions) Act, 2020, Art. 226]

Notice was under section 148 of the Act. The petitioner challenged the notice on the ground that the approval obtained for issuing notice u/s 148 of the Act is not in accordance with the mandate of section 151 as the said approval is of Addl. CIT instead of PCI. The Court held that, since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, they have to set aside the notice issued under section 148 of the Act. (WP.(L.) No.7733of 2022 dt. 4-5-2022 2022) (AY 2015-16)

Johnson and Jonson Private Limited v. DCIT (2022) 213 DTR 340 / 326 CTR 868 (Bom.)(HC)

S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice-Sanction by Additional CIT is not valid-Taxation and other laws (Relaxation of Certain Provisions) Act, 2020-Not applicable-Reassessment notice and order disposing the objection was quashed. [S. 147, 148, 151(1), 151(2), Art. 226]

The reassessment notice dated 31-3-2021 was issued to the petitioner. The petitioner challenged the notice and order disposing the objections on various grounds. One of the ground of challenge was sanction 151 of the Act was obtained from Additional Commissioner of Income tax instead of Principal Commissioner of Income-tax. Allowing the petition the Court held that approval ought to have been given by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and not by the Additional Commissioner of Income Tax. Followed Voltas Ltd. v. ACIT 2022 SCC Online Bom. 741 and J.M. Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT (2022) 215 DTR 98/ 327 CTR 458. Accordingly

reassessment notice and order disposing objection was quashed. (WP No. 1204 of 2022, dt 20-4-22) (AY. 2015-2016)

Vishakha Accounting Services Pvt Ltd. v. ACIT (Bom.)(HC) (UR)

S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice-Sanction by Additional CIT is not valid-Taxation and other laws (Relaxation of Certain Provisions) Act, 2020-Not applicable-Reassessment notice and order disposing the objection was quashed. [S. 147, 148, 151(1), 151(2), Art. 226]

The petitioner challenged the notice and order disposing the objection on various grounds one of the ground of challenge was the sanction was obtained by Additional CIT hence the notice is bad in law. According to the Respondents relied on Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020, by which limitation, inter alia, under provisions of section 151(1) and Section 151 (2) which were originally expiring on 31st march 2020 stood extended to 31st March 2021. Court held that Relaxation Act provisions cannot be applicable. Even if, the time to issue notice is considered to have been extended, that would not amount to amending the provision of section 151 of the Act. Allowing the petition the Court held that the approval ought to have been given by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and not by the Additional Commissioner of Income Tax. Notice and order disposal of objection was quashed. Relied on Voltas Ltd. v. ACIT 2022 SCC Online Bom 741. and J.M. Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT, WP No. 1050 of 2022 dt 4-4-2022. (WP No. 43 of 2022, dt. 27-4-22) (AY. 2015-2016)

Equitable Financial Consultancy Services Pvt. Ltd. v. ITO (Bom.)(HC) (UR)

S. 151 : Reassessment-Sanction for issue of notice-Mechanical approval-Non-application of mind-Approval was granted was based on erroneous statement recorded in reasons-Reassessment notice

and order disposing the objection was quashed. [S. 147, 148, Art. 226]

The assessment was completed under section 143 (3) of the Act. The reassessment notice was issued and order disposing the objection was passed. The petitioner has objected for approval of erroneous reasons. On writ the court allowed the petition and held that while granting approval it was obligatory on the part of the Commissioner to verify whether there was any failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment year. It was also obligatory on the part of the Commissioner to consider whether or not power to reopen is being invoked properly. Relied on Chhugamal Rajpal v. S.P. Chaliha (1971) 79 ITR 603 (SC) and German Remedies Limited v. DCIT (2006) 287 ITR 494 (Bom.)(HC). Reassessment notice and order disposing the objection was quashed. (WP No. 930 of 2022, dt.29-4-2022)

Verna Trading v. ITO (Bom.)(HC) (UR)

S. 151 : Reassessment-Sanction for issue of notice-Reasons for re-opening-Non application of mind-Reasons recorded and reasons supplied are different-Column 9.in left blank-Column 8 the answer given was 'Yes' it should have been 'No'-Reassessment notice and order disposing objection was quashed. [S. 147,148,Art. 226]

The petitioner challenged the reassessment re assessment notice and order dispoising the objection on various grounds. One of the ground was approval for reassessment notice was granted in mechanically done a ministerial job. Allowing the petition the Court held that it is settled law as held by the Division Bench of this court in German Remedies Ltd. v. DCIT (2006) 287 ITR 494 (Bom.)(HC) that while granting approval it was obligatory on the part of the PCIT to verify whether there was any failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment order. If the PCIT had only read the reasons and also the form for recording

the reasons together and referred to other documents in the file, none of which seems to have been done, he would have sent the file back to the person who has filled the form for recording the reasons. Petitioner is justified in raising a contention that the approval granted itself suffered from non-application of mind. Notice of reassessment and order disposing objection was quashed**.** (WP No. 3101 of 2019, dt. 22-12-21)

Kandoi Polytex Pvt Ltd. v. ACIT (Bom.)(HC)(UR)

S. 151 : Reassessment-Sanction for issue of notice-Application of mind by sanctioning authority-Notice valid. [S. 147, 148, Art. 226]

Dismissing the petition, that there had been application of mind by the authority while granting the approval under section 151 for issue of notice under section 148 for reopening the assessment under section 147. During the assessment proceedings the assessee could raise all grounds before the Assessing Officer who should pass his orders in accordance with law. If the assessee was aggrieved by such order, he could avail of the remedy of filing appeal under the provisions of the Act. (AY.2015-16)

Ideal Associates v. ACIT (2022) 448 ITR 260 (Bom.)(HC)

S. 151 : Reassessment-After the expiry of four years-Limitation-Sanction-Sanction by Additional Commissioner instead of Principal Commissioner-Taxation and other laws (Relaxation of certain Provisions) Act, 2020 only extended period of limitation and not for approval by the competent Authority-Sanction by Additional Commissioner was held to be bad in law-Reassessment notice was quashed. [S. 147, 148, Art. 226]

The asessee is in the business of investment and financing activities. For the Assessment year 2015-16 the assessment was completed under section 143(3) of the Act on. 12-12-2017. The notice u/s 148 of the Act dt. 31-3-2021 was received by the assessee. The various objections of the assessee was rejected and order disposing the objection was passed on 24-1 2022. The assessee challenged the order disposing the objections on various

grounds by filing the writ before the High Court. One of the ground of challenge was the assessment of the assessee was reopened after expiry of four years from the relevant assessment year after obtaining the approval from the Additional Commissioner instead of Principal Commissioner. The revenue contended that In view of the Taxation and other Laws (Relaxation of certain Provisions Act, 2020 (Relaxation Act) limitation, inter alia under provisions of section 151 (1) and section 151 (2) which were originally expiring on 31st March 2020 stand extended too 31st March, 2021. According to the Income tax officer the assessment year 2015-16 which falls under the category with in four years as on 31st March 2020, the statutory approval for issuance of notice under section 148 of the Act for the Assessment year 2015-16 may be given the Range Head as per the said provisions. Allowing the petition the Court held that since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the additional Commissioner of Income tax. Accordingly the notice issued under section. 148 of the Act with the approval of Additional Commissioner was quashed (AY. 2015-16) (WP No. 10050 of 2022 dt. 4-4-2022)

J.M. Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT (2022) 215 DTR 98 / 327 CTR 458 (Bom.)(HC) www.itatonline.org

S. 151 : Reassessment-Sanction-After the expiry of four years-Sanction was granted by Addl. CIT and not PCIT-Reference contained another entity-Non application of mind-Order was quashed and set a side. [S. 148, 151, Art. 226]

The reopening of the assessment was challenged on the ground that sanction was granted by Addl. CIT and not PCIT. Allowing the petition the Court held that the Assessing Officer has to record the reason which has to be final and it cannot be draft submission. Sanction cannot be given

mechanically. In the reference to recorded reasons pertains to another entity by the name Laxi Organic, which shows non application of mind. Notice was set aside.

Lintas India (P.) Ltd. v. UOI (2022) 324 CTR 539 / 209 DTR 473 (Bom.)(HC)

S. 151 : Reassessment-Sanction-After the expiry of four years-Sanction was given mechanically-Without application of mind-Reason recorded stated that the assessment was completed u/s 143(1), where as the assessment was u/s. 143(3)-Business of jewellery-Reason stated that failure to disclose salary-Reassessment notice was quashed. [S. 147, 148, Art. 226]

The assessment was completed u/s 143(3) of the Act. The reassessment notice was issued after expiry of four years. In the recorded reasons it was stated that stated that the assessment was completed u/s 143(1), whereas the assessment was u/s 143(3). Assessee is in the business of jewellery where as in the recorded reason it was that failure to disclose salary. On writ the High Court quashed the reassessment notice on the ground that sanction was given mechanically without application of mind. (AY. 2012-13)

Sagar Bullion Pvt. Ltd. v. UOI (2022) 324 ITR 146 / 209 DTR 281 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Shares or Derivatives-Reopening of Assessment has to be Tested or examined only on basis of reasons recorded and cannot be supplemented by affidavits-Notice vitiated by non-application of mind. [S. 148, 151, Art. 226]

On a writ petition challenging the notice issued under section 148 for reopening the assessment under section 147, allowing the petition the Court held that the reasons recorded did not indicate what was the trading activity during the year that the assessee was involved in or from what

shares or derivatives the assessee had made huge profit. The fact that the Assessing Officer had explained in the order on the assessee's objections what was the report and information and details on which he formed a reason to believe would be of no assistance. In the reasons recorded the information based on which the Assessing Officer had formed an opinion that there was reason to believe escapement of income, it was stated that it was related to the AY. 2015-16 but in the conclusion the AY. was mentioned as 2016-17. Therefore, the Assessing Officer himself was not clear for which year or based on information for which year he had proposed to reopen the assessment. The casual excuse of typographical error was not satisfactory. If only the Additional Commissioner, who had recommended the proposal of the Assessing Officer or the recommending authority himself, while according approval under section 151 that the case was fit for issue of notice under section 148 had read the reasons recorded, they would have found the errors and directed the Assessing Officer to correct the reasons or refused to grant approval on reasons fraught with errors. This also indicated non-application of mind by the recommending authority and the approving authority. The notice issued under section 148 was vitiated. ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) and First source Solutions Ltd. v. ACIT (2021) 438 ITR 139 (Bom.) (HC) relied on. *(*AY. 2014-15)

Harish Gangji Dedhiya v. UOI (2022) 443 ITR 273 (Bom.)(HC)

S. 148 : Reassessment-Notice-Reasons recorded not furnished-Directions issued to Department to furnish the reasons recorded. [S. 147, Art. 226]

The court dismissed the writ petition filed by the assessee against notice under section 148 of the Income-tax Act, 1961, directing the Department to provide a copy of the reasons based on which the notice was issued and the assessee to respond to the notice and the Department to proceed in accordance with law.

Nusli N. Wadia v. ACIT (2022) 447 ITR 363 / 142 taxmann.com 333 (Bom.)(HC)

Editorial : SLP of assessee dismissed with directions Nusli N. Wadia v. ACIT (2022) 447 ITR 376 / 142 taxmann.com 334 (SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Period granted was less than seven days-Responded the notice-Amount in dispute less than 50 lakhs-Notice issued beyond three years-Notice and order was quashed and set aside. [S. 148, 148A(d), 149(1)(b), Art. 226]

The petitioner challenged the order passed under section 148A(d) of the Act. The notice under Section 148 A(b) dated 23.03. 2022 grants time to the petitioner to respond to the same by 29.03. 2022. The period as granted is less than seven days as prescribed by Section 148A(b) of the Act of 1961. The petitioner has responded to the notice by his reply dated 29.03. 2022. As regards deposit of cash of Rs.16,20,000/-is concerned, the petitioner had sought disclosure of the material or the source of information on the basis of which such notice was issued. The petitioner denied having deposited the aforesaid amount in his bank account. The material/source of information was not supplied to the petitioner. Even if the amount of Rs.40,00,000/-as mentioned in the notice dated 23.03. 2022 is excluded from consideration for the reason that the petitioner is not the purchaser of the property in question, the amount remaining for consideration is Rs.20,71,500/-and Rs.16,20,000/-thus totaling Rs.36,91,500/-. In this regard, if the provisions of Section 149(1)(b) of the Act of 1961 are considered, it is seen that only if the amount in question that is likely to have escaped assessment is Rs.50,00,000/-or more, the time limit for issuing notice to re-open the assessment is three years but less than ten years. Thus if the income that is likely to escape assessment is only Rs.36,91,500/-after excluding the amount of Rs.40,00,000/-, it is clear that the proceedings are not liable to be re-opened as the amount involved is less than the one contemplated under Section 149(1)(b) of the Act of 1961

and the same pertains to Assessment Year 2015-16. The notice under Section 148(b) is dated 23.03. 2022 which is beyond the permissible period of three years. Court also held that it would be futile to require the petitioner to face proceedings under Section 148 of the Act of 1961. The material on record that was placed before the Assessing Officer warranted consideration especially in the light of the fact that the document relied was a registered sale deed. If the amount of Rs.40,00,000/-mentioned therein is excluded from consideration, the notice as issued on 23.03. 2022 falls foul of the provisions of Section 149(1)(b) of the Act of 1961. Hence for this reason, court did not find that the petitioner should be required to further contest the proceedings under Section 148 of the Act of 1961. The order dated 31.03. 2022 passed under Section 148 A(d) of the Income Tax Act, 1961 as well as notice dated 31.03. 2022 issued under Section 148 of the Act of 1961 are quashed and set aside. (AY. 2015-16)

Naresh Balchandrarao Shinde v. ITO (2022) 220 DTR 401 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unsigned notice - Order is bad in law- Notice and order was quashed. [S. 147, 148 292B, Art. 14, 226]

Petitioner is a non-resident Indian, residing in Dubai, UAE and since his total income for the relevant financial year was below the maximum amount chargeable to tax, he has not filed the return of income. The petitioner filed his response to the said notice electronically on 28.03.2022, pursuant to which, Respondent No.1 addressed an order under clause (d) of section 148A of the Act on 02.04.2022. It is the petitioner's case that this order was never received by him through e-mail; however, he has subsequently received a copy of this order on 16.04.2022 by speed post. The notice was unsigned. The petitioner filed writ petition and contended that since the notice dated 02.04.2022 issued u/s.148 of the Act was unsigned and never sent to the petitioner, the same is invalid, bad-in-law and deserves to be quashed and set aside; that since the purported

unsigned notice issued u/s.148 of the Act itself was never issued in the eyes of law and three years have been elapsed from the end of the relevant assessment year, in this case Assessment Year 2015-16, as prescribed u/s.149(1)(b) of the Act, the action is beyond limitation. Allowing the petition the Court held that the order passed on the basis of unsigned notice is bad in law . Notice and order was quashed and set aside . Relied on CIT v. Aparna Agency (P.) Ltd. (2004) 267 ITR 50/ 139 Taxman 132 (Cal)(HC) B.K. Gooyee v. CIT (1966) 62 ITR 109 (Cal)(HC) Umashankar Mishra v. CIT (1982) 136 ITR 330 / 11 Taxman 75 (MP)(HC) (WP No. 9835 of 2022 dt. 9-1-2023)(AY. 2015 -16)

Prakash Krishnavtar Bhardwaj v. NFAC (Bom)(HC)

S. 150 : Assessment-Order on appeal-Reassessment-Deemed dividend-Addition deleted-Finding-Direction-Left open for the Assessing Officer in the hands of share holders-Order cannot be construed as direction. [S. 147, 148, 153, Art. 226]

Commissioner (Appeals) passed an order deleting addition of deemed dividends and left it open for Assessing Officer to make assessment of such deemed dividend in hands of petitioner shareholders of assessee-company. The Assessing Officer issued notice under section 150 of the Act on the ground that the order of CIT(A) contained the direction as contemplated u/s 150 of the Act. On writ allowing the petition the Court held that the said order could not be said to have issued any directions as contemplated under section 150 of the Act. Court als0 observed that the finding in order of Commissioner (Appeals) was recorded without granting petitioners an opportunity of being heard, accordingly the reopening notices issued on basis of said order by invoking provisions of section 150 were quashed. (AY. 2010-11)

Dinar Tarcar v. ACIT (2022) 286 Taxman 638 / 213 DTR 57 / 326 CTR 310 (Bom.)(HC)

S. 151 : Reassessment-Sanction-Recorded reasons are not correct-**Date of return was filed on 25th November 2014, where as in the recorded reasons it was stated as 27th October, 2016-Assessee holds shares 0.01%, i.e. 10 shares in itself-How can a company hold its own shares-Reassessment notice was quashed. [S. 147, 148, Art. 226]**

The Assessment of the petitioner was completed u/s. 143(3) of the Act. In the recorded reason it was stated that the return was filed on 25th November, 2014, where as in the recorded reasons it was stated as 27th October, 2016.It was stated that assessee holds shares 0.01%, i.e. 10 shares in itself. How can a company hold its own shares. On writ allowing the petition the Court held that approval granted by the Dy. Commissioner without application of mind and verifying the facts. The reassessment notice was quashed. Followed Ankita A. Choksey v. ITO(2019) 411 ITR 207(Bom.)(HC), German Remedies Ltd. v. Dy. CIT (2006) 287 ITR 494 (Bom.)(HC). (AY. 2014-15)

Sea Glimpse Investments Pvt. Ltd. v. Dy. CIT (2022) 209 DTR 318 / 324 CTR 535 (Bom.)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Reason recorded was furnished of other assessee-Two further reasons were signed by successor officer and no fresh approval was obtained-Reassessment notice was quashed. [S. 147, 148, Art. 226]

The petitioner challenged the issue of notice on the ground that approval to annexure to the recorded reason was not legible. The petitioner also contended that the recorded reason pertain to other assessee. Two other reasons are signed by successor officer and not the Officer who has issued the notice. Allowing the petition the Court held that the reasons pertain to another assessee and sanction was also not in accordance with law. The notice was quashed. (AY. 2012-13)

Novelty Properties & Investment Pvt. Ltd. v. ACIT (2022) 209 DTR 185 / 325 CTR 373 (Bom.)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Approval and reasons recorded of same date-Sanction was not properly obtained-Reassessment notice was quashed. [S. 147, 148, Art. 226]

Allowing the petition the Court held that the approval that has been provided to assessee and copy whereof has been annexed to the petition is dt. 26th March, 2013 and has been received by Asstt. CIT on 28th March, 2013, whereas the reasons for reopening itself is dt. 28th March, 2013. The Asstt. CIT did not annex any document to indicate that reasons were recorded on 25th March, 2013, nor has he explained as to how the reasons provided to assessee show the date 28th March, 2013. Therefore, the explanation given in affidavit in reply is rejected and it is held that sanction was not properly obtained. On this ground alone the notice has to be quashed and set aside. Court also observed that the reasons recorded do not indicate any non disclosure of material facts. Reassessment notice was quashed. Followed Dell India (P) Ltd v. JCIT (2021) 432 ITR 212 (FB) (Karn)(HC) (AY. 2006-07)

Wyeth Ltd. v. ACIT (2022) 211 DTR 393 / 329 CTR 803 (Bom.) (HC)

S. 151 : Reassessment-Sanction for issue of notice-No prior sanction was granted before issue of notice-Notice was quashed. [S. 147, 148, Art. 226]

Allowing the petition the Court held that there is complete non-application of mind on the part of Joint CIT, Range 5(3) Mumbai while granting sanction 151 of the Act. There is no prior sanction was granted before issue of notice under section 148 of the Act. Accordingly jurisdictional condition was not satisfied hence the notice was quashed. (AY. 2014-15)

Svitzer Hazira (P.) Ltd. v. ACIT (2022) 441 ITR 19 / 285 Taxman 393 / 211 DTR 387 / 326 CTR 96 (Bom.)(HC)

S. 153 : Assessment-Limitation-Order giving effect to appellate order-Matter remanded to Principal Commissioner to consider all issues and pass fresh orders. [S. 153(5), 244A, 250, Art. 226]

Petitioner filed three writ petitions seeking direction to the respondents to give effect to the appellate orders passed by the appellate authority i.e. Commissioner of Income-tax (Appeals) Allowing the petitions the Court held that in order to comply with the provisions of section 153(5), the orders giving effect to the appellate orders should have been passed by June 30, 2019. If the extended period of six months was added to this, then the orders ought to have been passed by December 30, 2019. However, nothing had been shown as to whether the Asst. Commissioner made a written request before the Principal Commissioner for extension of time and was granted such extension of time on the latter's being satisfied. Thus, there was delay in passing the orders by the Asst. Commissioner giving effect to the appellate orders. The requirement to pay interest under section 244A was also missing in the orders which were also silent on the adjustment of the 20 per cent. of the initial outstanding dues paid by the assessee before the Commissioner (Appeals) while filing stay applications. The impact of Circular No. 19 of 2019, dated August 14, 2019 ([2019] 416 ITR (St.) 140) issued by the Central Board of Direct Taxes on the orders dated August 11, 2020, December 14, 2020 and December 14, 2020 was also required to be assessed because those orders had been manually issued without quoting any document identification number. There were outstanding demands against the assessee from the assessment years 2008-09 to 2017-18 which were required to be adjusted against any refund that was to be made to the assessee. Therefore, the Principal Commissioner was to consider those aspects and the impact of the Board's circular and thereafter decide afresh the issues in respect to giving effect to the orders of the Commissioner (Appeals) passed under section 250 for all the three assessment years 2008-09, 2013-14 and 2014-15. (AY. 2008-09, 2013-14, 2014-15)

Salsette Catholic Co-Operative Housing Society Ltd. v. ACIT (2021) 433 ITR 259 / 202 DTR 160 (Bom.)(HC)

S. 153A : Assessment-Search or requisition-Assessment of undisclosed Income-Notice should be based on material seized under Section 132 or documents requisitioned under Section 132A-Notice was quashed. [S. 132, 132A, Art. 226]

There was no incriminating material was found or requisitioned. The notice was issued u/s 153A of the Act. The assessee filed writ to quash the notice issued u/s 153A of the Act. Allowing the petition the Court held that the Department did not indicate in its notice what were the seized material under section 132 or books of account or other documents or any assets requisitioned under section 132A. The notice was bereft of any material. The Department had not mentioned in the notice the basis for issuing the notice under section 153A so that the assessee could comply with it as prescribed. The notice issued under section 153A was not valid. (AY. 2012-13)

Underwater Services Co. Ltd. v. ACIT (2022) 448 ITR 691 / 209 DTR 476/ 326 CTR 208 (Bom.) (HC)

Samson Maritime Ltd. v. ACIT 2022)448 ITR 691 / 209 DTR 476/ 326 CTR 208 (Bom.)(HC)

S. 179 : Private company-Liability of directors-Managing Director of Ltd Company-Violation of principle of natural justice-lifting the corporate veil-Satisfaction was not recorded-Order was quashed. [S. 220(2), Art. 226]

The petitioner is managing director of Crest Paper Mills Limited ("CPML") Order was passed under section 179 holding Assessee liable to pay a demand along with interest under section 220(2) which was otherwise due and payable by company, CPML. On writ allowing the petition the Court held that notice under section 179 issued by Revenue did not at all inform Assessee of its intention to treat company, i.e., CPML as a public company

by invoking principle of 'lifting corporate veil' much less did it refer to any material or conclusion based upon which it could assume jurisdiction under section 179 against directors of a Private Company. Procedure adopted by Revenue was clearly violative of principles of natural justice and without affording to Assessee, an opportunity of being heard on question, as to why principle of 'lifting corporate veil' be not applied in case of CMPL to justify recovery of tax dues from directors. Court also held that orders are also unsustainable on another ground that power under section 179 can be exercised against Directors upon satisfaction of certain conditions only if tax dues cannot be recovered from private company to justify that tax dues cannot be recovered, Assessing Officer has to enumerate steps taken towards recovery of tax dues from company. On facts there was no satisfaction recorded that tax cannot be recovered. Petition was allowed. (AY. 2010-11)

Rajendra R. Singh v. ACIT (2022) 328 CTR 691 / 216 DTR 386 / 143 taxmann.com 34 (Bom.)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Builder-Judgement debt-Compensatory interest failure to hand over possession of flat-TDS was not liable to be deducted. [S. 2(28A), Real Estate (Regulation & Development) Act 2016 (RERA), Art. 226]

Assessee entered into an agreement with a builder for purchase of two residential flats. Flats booked were not delivered in committed period. Real Estate Regulatory Authority directed builder to refund advance amount paid by assessee with compensatory interest. Builder deducted TDS on amount of compensatory interest paid to assessee. The petition was filed for seeking directions for the recovery of arrears due to the petitioners under a Recovery Warrant dated 15 th October 2018 passed by the Maharashtra Real Estate Regulatory Authority against the respondents. The respondents have paid the compensation in Instalments as per the consent order. Respondent builder deducted the tax at source on the amount of interest

payable as per the consent terms. Petitioners moved application before the Court urging that the such amounts could not in law be deducted. Court held that the amount so payable is in the nature of a judgement debt or akin to a judgement debt, the payment of which cannot establish a debtor-creditor relationship between the parties. As such the said sum or any part thereof cannot be liable to tax deducted at source under the relevant provisions of the Income tax Act on interest component. Interim application was allowed. (AY 2021-22)

Sainath Rajkumar Sarode v. State of Maharashtra (2021) 283 Taxman 494 (Bom.)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-No liability to deduct tax based on the specific exclusion provided to the assessee under section 194A(3)(v)-Provisions would not apply. [S. 40(a)(ia), 194A(3)(i)(b), 194A(3)(v)]

AO disallowed interest paid to various members of the society where interest exceeded 10,000 under section 40(a)(ia) and relied on the provisions of section 194A(3)(i)(b). The CIT(A) relied on provisions of section 194A(3)(v) and held that provisions of section 194A(1) did not apply to income credited or paid by a co-operative society to its members. High Court upheld the tribunal and CIT(A) order relying on the Finance Act 2015, where clause (v) of section 194A(3) was amended to exclude co-operative banks w.e.f 1-6-2015 which indicates that prior to the said date benefit of exemption was available to co-operative banks. (ITA No. 14 of 2017 dt. 7-01-2021) (AY.2013-14,2014-15)

PCIT v. Goa State Co-operative Bank Ltd. (2021) 318 CTR 497 / 197 DTR 305 / 110 CCH 54 (Bom.)(HC)

S. 194D : Deduction at source-Insurance commission-Insurance Agent-Survey-Foreign travel expenses-Expenses were paid directly to service provided-No amount was paid to the agents-Not liable to

deduct tax at source-Order of Tribunal is affirmed. [S. 133A, 194J, 201(1), 201(IA)]

Dismissing the appeal the Court held that under section 194D the obligation to deduct is on the person who is paying and the deduction to be made at the time of making such payment. Factually and admittedly no amount had been paid to the agents by the assessee as a reimbursement of expenses incurred by the agent on foreign travel. The assessee had made arrangement for foreign travel for all the agents and paid expenses directly to those service providers. Therefore as no amount was paid to the agents by the respondent, the obligation to deduct Income-tax thereon at source also would not arise. Referred CIT v. Reliance Life Insurance Co Ltd (2019) 414 ITR 551 (Bom.)(HC)

CIT v. SBI Life Insurance Company Ltd. (2021) 439 ITR 566 / (2022) 285 Taxman 322 (Bom.)(HC)

S. 194H : Deduction at source-Commission or brokerage-Sale of prepaid SIM cards to distributors-Discounts given by assessee-telecommunication company on sale of prepaid SIM cards to distributors-Not liable to deduct tax at source.

Dismissing the appeal of the revenue the Court held that that no TDS provisions under section 194H were attracted on discounts given by assessee-telecommunication company on sale of prepaid SIM cards to distributors.

CIT(TDS) v. Vodafone Cellular Ltd. (2021) 131 taxmann.com 191 (Bom.)(HC)

Editorial : Notice is issued in SLP filed by the revenue, CIT(TDS) v. Vodafone Cellular Ltd. (2021) 283 Taxman 292 (SC)

S. 194H : Deduction at source-Commission or brokerage-No principle agency relation ship-Laboratory and testing services-laboratory and testing services to customers through its own and

through third party collection centres-Not liable to deduct tax at source. [S. 201 (1), 201(1A)]

Assessing Officer held that such discount allowed by assessee to collection centres was in nature of commission and assessee was obligated under section 194H to deduct tax at source on same. CIT (A) allowed the appeal of the assessee. On appeal the ITAT has relied upon respondent's own case for Assessment Year 2006-2007 wherein it has held that discount allowed by respondent to the collection centres is not commission and not attracted by the provisions of section 194H for the reason that there is no principal agent relationship between respondent and the collection centre and the relationship between respondent and collection centres is only principal to principal relationship and therefore, provisions of section 194H have no application. On appeal by the revenue the Court held that the provision of section 194H to deduct tax was applicable only to a person who was responsible for paying, at time of credit to account of payee or at time of payment. Since assessee did not perform any act of paying but was only receiving payments from these collection centres, there was no obligation on assessee-company to deduct tax at source under section 194H on discount so allowed.

CIT (TDS) v. Super Religare Laboratories Ltd. (2021) 133 taxmann.com 313 / 323 CTR 757 / 208 DTR 21 / (2022) 284 Taxman 657 (Bom.) (HC)

Editorial : Notice issued in SLP filed by the Revenue, CIT v. Super Religare Laboratories Ltd. (2022) 287 Taxman 561/ 288 Taxman 639 (SC)

S. 194H : Deduction at source-Commission or brokerage-Trade discount-Newspaper vendors and advertising agencies-Not in the nature of commission-Not liable to deduct tax at source. [S. 40(a)(ia), 194C]

Dismissing the appeal of the revenue the Court held that, newspaper vendors and advertising agencies were not agents of assessee. Tribunal is right in holding that the assessee would not be liable to deduct tax at source

on payment made to newspaper vendors and advertising agencies. No disallowance could be made. (AY. 2011-12)

PCIT v. Dempo Industries (P.) Ltd. (2021) 279 Taxman 166 / 205 DTR 489 / 322 CTR 676 (Bom.)(HC)

S. 194H : Deduction at source-Commission or brokerage-Sale of sim cards / recharge coupons at discounted rate to distributors-Not commission-Not liable to deduct tax at source. [S. 201]

Dismissing the appeal of the revenue sale of sim cards / recharge coupons at discounted rate to distributors is not commission, therefore not liable to deduct tax at source. (AY. 2013-14)

CIT v. Idea Cellular Ltd. (2021) 125 taxmann.com 171 (Bom.)(HC)

Editorial: SLP granted to the revenue, CIT (TDS) v. Idea Cellular Ltd. (2021) 278 Taxman 188 (SC)

S. 194IC : Deduction at source-Payment under specified agreement Compensation received on Acquisition of Land for Public Project under an agreement-Award-Assessee not specific person under Section 46-Compensation received not liable to Deduction of tax at source-Deductor to file correction statement of Tax Deducted-Department to process statement-Tax Deducted at source to be refunded. [S. 139, 194LA, 199, 200(3), 200A(d), 237, Rule 37BA(3)(i), Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 46, 96, Art. 226]

NHRCL acquired the land of the assessee purportedly under an agreement and deducted tax at source from the compensation paid. Thereafter, a supplementary deed was entered into between the assessee and the NHRCL under which some additional amount was paid to the assessee and tax was deducted from that part of the compensation also. The assessee requested NHRCL to reverse the tax deducted on the ground that no tax was deductible. NHRCL replied that exemption from tax was not applicable to

the compensation on the land acquired from the assessee and that the tax deducted from the payment made to the assessee was duly deposited with the Department. According to the assessee her income was exempted from tax and she could not fill Schedule TDS-2 and hence could not make an application under section 199 of the 1961 Act read with rule 37BA(3)(i) of the Income-tax Rules, 1962 whereas according to NHRCL the assessee had to file a return and claim refund. On a writ allowing the petition the Court held that the income received by the assessee on account of the property acquired by NHRCL by private negotiations and sale deed was exempted from tax. According to the public notice issued for acquisition of land through direct purchase and private negotiations by the office of the Sub-Divisional Officer for implementing the project, while purchasing the land directly for the project the compensation would be fixed by giving 25 per cent. enhanced amount of the total compensation being calculated for the land concerned in terms of the provisions of sections 26 to 33 and Schedule I to the 2013 Act. Undisputedly, the land was acquired for a public project. A policy decision had been taken by the State Government under its Government Resolution dated May 12, 2015 for acquiring the property by private negotiations and purchases for implementation of public project. The methodology was also provided. The computation of compensation had to be under the provisions of the 2013 Act which was introduced to expedite the acquisition for the implementation of the project. If the parties would not agree with the negotiations and direct purchase, then compulsory acquisition under the provisions of the 2013 Act had to be resorted to. The 2013 Act also recognised the acquisition through an agreement. NHRCL was not a specified person within the meaning of section 46 of the 2013 Act and the provisions of the section would not be attracted. Therefore, since the exemption under section 96 of the 2013 Act would apply and no tax can be levied on the amount of compensation NHRCL should not have deducted tax from the amount of compensation paid to the assessee. Balakrishnan v. UOI (2017)391 ITR 178 (SC) and Viswanathan M. v. CCIT WP (C) No. 3227 of 2020, dated 18-2-2020 relied on. Court also held that

it was not possible for the court to arrive at a conclusion as to whether the assessee was required to file return or not. NHRCL had already deducted tax which it ought not to have been deducted. Therefore, (i) NHRCL should file a correction statement as provided under the proviso to sub-section (3) of section 200 of the 1961 Act to the effect that the tax deducted by it was not liable to be deducted, (ii) the Department shall process the statement including the correction statement that might be filed under section 200A more particularly clause (d) thereof and (iii) the parties should thereafter take steps for refund of the amount in accordance with the provisions of the 1961 Act and the 1962 Rules. Circular No. 36 of 2016, dated October 25, 2016 (2016) 388 ITR (St.) 48).

Seema Jagdish Patil v. National Hi-Speed Rail Corporation Ltd. (2022)445 ITR 382 / 288 Taxman 26 / 288 Taxman 26/ 215 DTR 153 /327 CTR 281 (Bom.)(HC)

S. 195 : Deduction at source-Non-resident-Collection agent in respect of monies receivable from Indian customers by its Associated enterprise a UAE registered entity-Failure to deduct tax at source-Oder was quashed without making any observations on the merits of the case-Assessing Officer was directed to pass fresh order after giving a reasonable opportunity to the assessee-DTAA-India-UAE. [S. 133(6), 201(1), 201(1A), Art. 5(4), Art. 226]

The Petitioner is wholly owned subsidiary of Endurance International Group (India) Pvt. Ltd. which in turn is a subsidiary of Endurance Singapore Holdings 2 Pvt Ltd. Petitioner carries on business as a collection agent in respect of monies receivable from Indian customers by its Associated Enterprise. PDR Solutions FZC, UAE registered entity. The Assessing Officer passed an under Section 201(1) and 201(1A) read with Section 195 of the Act holding petitioner liable to pay a sum under Section 201(1) of the Act and some sum under Section 201(1A) of the Act and raised a total demand of Rs.8,45,12,593/-. The notice of demand under section 156 was also made on account of default in not deducting the tax as shown under Section

195 of the Act on the sums credited. On writ the court quashed the order and any consequential demand notice issued therein and asked the Assessing Officer to pass fresh orders after hearing the petitioner. If the Assessing Officer feels need to add any further points in the show cause notice the Assessing Officer shall issue fresh show cause notice to petitioner and petitioner may respond to the said show cause notice. (WP. No 1439 of 2021 dt 25-10-2021. (AY. 2016-2017)

Directi Services Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)

S. 195 : Deduction at source-Non-resident-Share purchase agreement guarantor-No obligation to deduct tax at source. [S. 201, Art. 226]

The Assessing Officer initiated proceedings under section 201 of the Act to treat the assessee as an assessee-in-default for failure to deduct tax on the payment for purchase of shares of THL. On a writ petition the Court held that the share purchase agreement showed that the assessee was the guarantor of the payment to be made by IMAHI and not the purchaser. The purchaser himself could not be the guarantor also and that itself indicated that the assessee was not the purchaser of the shares of THL. The Assessing Officer had also not produced any evidence or referred to any document to even indicate that the assessee had paid any amount or could be even regarded as the person responsible for paying any sum to a non-resident (or a foreign company) chargeable under the provisions of the Act. As section 195 is applicable only to a person who is responsible for paying to deduct tax at the time of credit to the account of the payee or at the time of payment and the assessee did not make any payment to THL, there was no obligation on the assessee to deduct tax at source. The notice under section 201 was not valid.

Ingram Micro Inc v. ITO (IT) (2022) 444 ITR 568 / 212 DTR 360 / 326 CTR 650 (Bom.)(HC)

S. 195 : Deduction at source-Non-resident-Lower deduction of tax-Indexation-Binding precedent-Order of Tribunal is binding on lower Authorities-Capital gains-Cost of acquisition of the property in the hands of seller is deemed to be the cost for which the said property was acquired by previous owner-Excess tax paid by the petitioner was directed to be refunded with interest. [S. 2(29A), 2(42A), 45, 48, 49(1)(ii), 55(2)(b)(ii), 195(2), 244A(1)(b), Art. 226]

Petitioner filed an application under Section 195(2) of the Act requesting him to issue a low tax rate Certificate for Deduction of Tax at Source in respect of consideration for purchase of immovable property from seller. According to the petitioner the cost of acquisition under Section 49(1)(ii) of the Act in the hands of the seller is deemed to be the cost for which the said property was acquired by Late Mrs. Dolly Jehangir Gazdar. It is also petitioner's case that under clauses (29A) and (42A) of Section 2, the period of holding of late Mrs. Dolly Jehangir Gazdar, Mrs. Rhoda Rustom Framjee and Mr. Rustom Framjee is also to be included in the period of holding of the seller for ascertaining whether the said property is held by him as a short-term capital asset or as a long-term capital asset. Therefore, in its application under Section 195(2) of the Act, petitioner annexed a copy of draft computation of long-term capital gains of the seller in respect of the transfer of the said property. While computing the capital gains the petitioner took the benefit of the option provided in the provisions of Section 55(2)(b)(ii) of the Act, which provides that where a capital asset became the property of the assessee by any of the modes specified in Section 49(1) of the Act and the capital asset became the property of the previous owner before the 1st day of April 1981, cost of acquisition means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of April 1981 at the option of the assessee. Based on the scheme of the Act as is provided in Section 49(1)(ii), clauses (29A) and (42A) of Section 2 and Section 55(2)(b)(ii) of the Act, petitioner claimed that indexation of the cost of acquisition under the second proviso to Section 48 should be available from the financial year 1981-82. The

petitioner relied on the Judgement of Special Bench in the case of **DCIT v. Manjula J. Shah (2009) 126 TTJ 145 (SB) (Mum.)(Trib.)**. The application for lower tax was rejected. The petitioner paid the tax under protest and filed the writ for rejection of application for lower rate of tax. Allowing the petition, the Court held that the mere fact that the order of the appellate authority is not acceptable to the department or is the subject matter of an appeal cannot be a ground for not following it unless its operation has been suspended by a competent court. This has been reiterated by this Court in its order **Karanja Terminal & Logistic Private Limited v. CIT (WP No. 1397 of 2020 dated January 31, 2022) (Bom.)(HC)**. The Court directed the department to accept the computation of the capital gains after taking into consideration the index cost and cost of the previous owner. The court also directed the revenue to pay interest under Section 244A(1)(b) of the Act for the period from the date of payment of tax, i.e., 7th January, 2011 till date. (WP. No. 331 of 2011 February 3, 2022)

Rohan Developers Pvt. Ltd. v. ITO(IT). (2022) 442 ITR 404 / 211 DTR 164 / 325 CTR 395 (Bom.)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Issuance of certificate at higher rate than nil rate without recording reasons-Matter remanded. [S. 264, ITR, 28AA, Art. 226]

Allowing the petition the Court held that since the authorities were required to pass an order under section 197 either rejecting the application for such certificate or allowing such application resulting in issuance of certificates which may be at rates higher than nil as sought for by the assessee, such an order must be supported by reasons. Not only that, a copy of such an order had to be furnished to the assessee so that it could be challenged under section 264 if aggrieved. Not passing an order to that effect or keeping such an order in file without communication would vitiate the certificates. The reasons for not granting nil rate certificates to the assessee were not known. The contemporaneous order required to be passed under

section 197 was also not available. The order was set aside and the certificates were quashed. The matter was remanded to the Dy. CIT (TDS) for passing fresh order and issuing consequential certificates under section 197 complying with the requirements of rule 28AA. Matter remanded. (AY.2021-22)

Tata Teleservices (Maharashtra) Ltd. v. Dy. CIT(TDS) (2021) 430 ITR 273 / 277 Taxman 119 / 198 DTR 345 / 319 CTR 258 (Bom.)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Earlier order was set aside by the Tribunal-Department appeal is pending for hearing-Order of Tribunal not stayed-Order holding that the assessee in default for latter year following the order of earlier year was quashed-Order of Tribunal is binding on the Assessing Officer-Order treating the assessee in default was quashed. [S. 260A, Art. 226]

An order was passed u/s 201 for the assessment year 2014-15 against the assessee following the order of the Dispute Resolution panel for the assessment year 2010-11. The assessee filed writ before the High Court and contended that earlier order was set aside and reversed by the Appellate Tribunal in Gemological Institute of America Inc v. Add. CIT (IT) (2021) 189 ITD 254/ 88 ITR 505 (Mum)(Trib). The Tribunal held that the amount paid to GIA was not taxable. Allowing the petition the court held that the order of the Tribunal is binding on the Assessing Officer unless stayed by a competent Court. Accordingly the order was quashed. Followed UOI v. Kamlakashi Finance Corporation Ltd (1992) Supp. (1) SCC 443 (AY. 2014-15)

GIA laboratory Pvt. Ltd. v. ITO (2023) 430 ITR 7 (Bom.)(HC)

S. 215 : Interest payable by assessee-Advance tax short of assessed tax-Fresh assessment made by Assessing Officer giving effect to Commissioner's revision order constitute a regular

assessment-Entitle to waiver of interest only to extent stated in order under Rule 40(1). [S. 139(8), 215(4),215(6), 263]

Dismissing the appeal the Court held that the Tribunal was right in holding that a fresh assessment made by the Assessing Officer to give effect to the directions of the Commissioner under section 263 setting aside the original assessment, constituted a regular assessment for purposes of section 215 of the Act. The Deputy Commissioner in exercise of power under rule 40 had held that delay in finalization of the assessment was not attributable to the assessee and therefore the assessee was not liable to pay interest under section 215 beyond the period of one year from the date of filing of return. His order had not been challenged by the Department or the assessee and as a result such order had attained finality. In the absence of challenge to the order under rule 40(1) the assessee was not entitled to waiver of interest for a period of one year and was entitled to the benefit of order passed under rule 40(1) only to the extent stated therein and was liable to pay the balance amount according to the order of the Deputy Commissioner. Order of Tribunal is affirmed. (AY.1985-86)

Bennett Coleman & Co. Ltd. v. Dy. CIT (2022) / 441 ITR 25/ 211 DTR 227 / 325 CTR 545 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Deposit of 20 Per Cent. of demand-Order is held to be justified. [Art. 226]

Dismissing the petition the Court held that the Assessing Officer was justified in not exercising the discretion to grant unconditional stay or stay on payment of lesser amount than 20 per cent. of the tax demand. The Assessing Officer while rejecting the case of the assessee had recorded reasons in great detail. The Commissioner while rejecting the revision application had recorded reasons why the order passed by the Assessing Officer shall not be interfered with. There was no infirmity in the order passed by the Assessing Officer or by the Commissioner. (AY. 2015-16)

Mascot Construction Co. v. PCIT (2022) 446 ITR 719 / 213 DTR 449 / 326 CTR 863 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Settlement Commission-Interest payable up to date of order accepting application. [S. 220(2) 245D(4), Art. 226]

Allowing the petition the Court held that interest under section 220(2) was payable from January 5, 1997 which was the 36th day after the assessment order dated November 27, 1996 was passed, up to April 9, 1997 when the assessee's application came to be accepted under section 245D(1) of the Act. (AY. 1985-86 to 1996-97)

Karia Erectors Pvt. Ltd. v. UOI (2022) 444 ITR 86 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Pendency of appeal-Excess amount recovered-Assessing Officer restrained from recovering balance tax due till disposal of pending appeal. [S. 220 (6) 237, 244A, 245, Art. 226]

Allowing the petition the Court held that the amount recovered from the assessee over and above the amount as per instructions, memoranda, circular towards demand of tax for the AY. 2013-14 pending in appeal would be returned to the assessee with interest and the refund of amounts over and above the amount as per circulars, instructions and guidelines issued by the Central Board of Direct Taxes may not be adjusted towards tax demand for the AY. 2013-14 till disposal of the appeal. Having regard to the instructions, circulars and memoranda issued from time to time, which were not disputed by the Department, it would be expedient that the Assessing Officer refrained from recovering tax dues demanded for the AY. 2013-14 and a restraint was called for. (AY. 2012-13 to 2019-20)

Vrinda Sharad Bal v. ITO (2021)435 ITR 129/ 201 DTR 425/ 320 CTR 785 (Bom.) (HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Paid 20 percent of disputed demand-Assessee cannot be held to be assessee deemed to be in default-Adjustment of refund without giving an intimation u/s 245 of the Act is held to be bad in law-Directed to refund with accumulated interest. [S. 245, Art. 226]

The assessee has paid the demand of 20 percent of tax in dispute. The Assessing Officer adjusted the refund without giving intimation under section 245 of the Act. On writ allowing the petition the Court held that the Assessing Officer shall grant stay of demand where outstanding demand is disputed on petitioner paying 20 per cent of disputed demand hence the petitioner cannot be treated as deemed to be an assessee-in-default for recovery provisions. Court also held that where petitioner was entitled to refund from revenue and revenue sought to adjust this refund amount against demand that it had against petitioner, however, no intimation under section 245 was given before making adjustment, impugned adjustment of refund was unjustified, hence, petitioner would be entitled to refund of entire amount together with accumulated interest, if any, in accordance with law**.** (AY. 2015-16, 2016-17, 2017-18)

Bharat Petroleum Corporation Ltd. v. ADIT (2022) 284 Taxman 647 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Interest-Order of CIT(A) directing to withdraw investment allowance was set aside by the Tribunal-Settlement Commission reducing the interest payable by assessee-Writ of revenue to set aside the order of Settlement Commission was dismissed. [S. 32A, 145, 220(2), 245D(4), Art. 226]

The assessment order was rectified under section 154 on July 27, 1992 revising the total income after allowance of set off of unabsorbed investment allowance brought forward from the assessment years 1986-87, 1987-88 and 1988-89. The assessee made an application under section 245C before the Settlement Commission which passed an order

under section 245D(4). The Assessing Officer gave effect to the order under section 245D(4) and also calculated the interest payable under section 220(2). The quantum of interest was rectified and a revised order was passed. The assessee sought rectification of the order passed by the Settlement Commission on the ground that since the order under section 245D(4) was silent on the point of charging interest under section 220(2) it should be considered to have been waived. The Settlement Commission held that it did not consider it to be a good case for waiver of interest chargeable under section 220(2). However, regarding the method of charging of interest the Settlement Commission directed the Assessing Officer to take the income as determined by him in his order dated July 27, 1992, adjust it in accordance with its order under section 245D(4) but without withdrawing the benefit of set off of brought forward investment allowance under section 32A. The Department filed petition contending that the Settlement Commission could not have granted the assessee the benefit of set off of brought forward investment allowance. The Settlement Commission rejected the application filed by the Department. On a writ dismissing the petition, that according to the proviso to sub-section (2) of section 220, once the amount on which interest was charged got extinguished the liability of the assessee to pay interest on such amount would also be extinguished. The order of the Commissioner (Appeals) directing the Assessing Officer to withdraw the investment allowance granted under section 32A was set aside by the Tribunal. Therefore, interference with the orders passed by the Settlement Commission reducing the liability of the assessee to pay interest under section 220(2) would result in directing the assessee to pay interest on an amount which had been extinguished and consequently would result in miscarriage of justice.(AY.1989-90)

UOI v. Dodsal Ltd. (2022) 441 ITR 47 / 211 DTR 189 / 35 taxmann.com 249 / 35 taxmann.com 249 (Bom.) (HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Pendency of appeal-Failure to appear cross examination-Demand is kept in abeyance [S. 69A, 220(6), Art. 226]

During pendency of said appeal, assessee filed an application under section 220(6) for stay of demand before ITO who granted same subject to payment of 20 per cent of outstanding demand. The assessee filed writ petition ND contended that total demand was to be kept in abeyance till disposal of appeal by Commissioner (Appeals) as the Assessing Officer made the addition on the basis of third party and he failed to appear for cross examination and also due to financial hardship. Allowing the petition the Court held that on facts, entire demand was to be kept in abeyance till disposal of appeal on merits by Commissioner (Appeals). (AY 2012-13)

Dilipkumar P. Chheda v. ITO (2021) 435 ITR 101 / 202 DTR 33 / 278 Taxman 106 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT (A)-Entire demand was kept in abeyance till the disposal of appeal on merits by CIT(A) [S. 147, 156, 220 (6), Art. 226]

The assessment was reopened and huge demand was raised. The assessee preferred an appeal before the CIT (A) and made an application before the Assessing Officer to stay of demand till the disposal of appeal. The Assessing Officer rejected the stay application and directed to pay 20% of tax in dispute. Aggrieved by the order of the Assessing Officer the assessee filed writ petition before high Court. Allowing the petition the Court held that the revenue ought to have considered the case prima facie balance of the petitioner. Accordingly directed the revenue to keep the demand in abeyance till the disposal of appeal and directed the CIT (A) to dispose the appeal with in a period of four months from the date of receipt of an authenticated copy of the order and till the disposal of appeal within the said period, notice of demand was kept in abeyance. (WP No. 812 of 2020 dt 12-3 2020) (AY. 2012-13)

Mayur Kanjibhai Shah v ITO (2021) BCAJ-April-P. 66 (Bom.) (HC)

S. 226 : Collection and recovery-Modes of recovery-Appeal pending before CIT (A)-Deposited 20 % of tax in dispute-Stay was granted till the disposal of appeal by CIT(A) [S. 225, Art. 226]

On writ against the issue of notice to the bank of the assessee the Court held that there was absolutely no justification for the Respondents to recover the amount of Rs.13,77,638/-from the Petitioner by issuance of the impugned notice to the Karnataka Bank. The record indicates that the Respondents had, with themselves, an amount of Rs.5.32 lakhs which corresponds to more than 20% of the demanded amount for the Assessment Year 2017-18. At the highest, the Respondents could have inquired with the Petitioner as to whether this amount could be adjusted since the Petitioner had already informed the Department about the filing of the Appeal. Stay was granted till disposal of appeal by the CIT (A). (AY. 2014-15)

Siolim Urban Co-op Credit Society Ltd. v. CIT (2021) 198 DTT 228 / 319 CTR 213 (Goa) (Bom.)(HC)

S. 226 : Collection and recovery-Modes of recovery-Attachment by income tax department-Priority of debts-Mortgaged property-Secured creditors-Income-Tax Department does not have priority of Income-tax dues-Secured creditors have priority over Income-Tax Department-The order of attachment was held to be not valid. [Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(2), 13(4) Art. 226]

Court held that the charge of a secured creditor would have priority over Government dues under the Income-tax Act, 1961. There is no provision in the Income-tax Act which provides for any paramountcy of the dues of the Income-tax Department over secured debt. The Revenue could not come

in the way of the petitioner's rights as secured creditor. The order of attachment was not valid.

Edelweiss Asset Reconstruction Co. Ltd. v Tax Recovery Officer (2021) 438 ITR 568/ 205 DTR 1/ 322 CTR 137 (Bom.) (HC)

S. 237 : Refunds-Commercial establishment-Appeal was decided in favour-Directed to refund the amount with interest with in four weeks-If there are no provision for payment of interest then the interest shall became payable at 12 % p.a. on the amount due after expiry of four weeks. [Wealth-tax Act, 1957, S. 2(ea)(i), 34A, Art. 226]

The petitioner owned commercial properties and had given on leave and licence basis. The AO held that the commercial properties are liable to wealth tax. On appeal the CIT (A) has held that the assessee was not liable for wealth tax. When the appeal was pending the assessee has paid the wealth tax as per the Assessment order. The request for the refund of tax paid was not entertained. The Assessee filed the writ petition for not granting of refund. The Court held that the Appellate Authority rightly held that the AO's finding that the commercial properties should be used by assessee in his own business otherwise would form a part of the total wealth of assessee was erroneous. The exemption under section 2(ea)(i)(5), is to any property in the nature of commercial establishments or complexes and it does not provide anywhere that such commercial properties should be used by assessee for his own purpose. As the asseesse's appeal for the assessment year 2005-06 having been decided in favour of assessee rejection of refund for the Assessment years 2006-07 to 2009-10 was not sustainable. The Court directed to refund the amount with interest with in four weeks. If there are no provision for payment of interest then the interest shall became payable at 12 % p.a. on the amount due after expiry of four weeks. (AY. 2006, 07, 2007-08, 2008-09, 2009-10)

Mohandas Isardas Chatlani v. ITO (2021) 439 ITR 577 / 205 DTR 102 / 322 CTR 365 (Bom.)(HC)

S. 240 : Refund-Appeal-No part of the refund can be withheld in relation to the income-tax demands which are ether quashed by appellate authority or Tribunal or stayed. [S.244A]

Notice of motion was taken by the department seeking modification or recall of order dated 4-9-2019 passed by the Honourable Court in respect of non-releasing of refund of Rs 43-25 crores. Dismissing the notice of motion the Court held that no part of the refund can be withheld in relation to the income-tax demands which are ether quashed by appellate authority or Tribunal or stayed. (NM (L) No. 487 of 2019, WP No. 2146 of 2019 dt 1-10 2019)

Vodafone Idea Ltd. v. Dy. CIT (2021) 126 taxmann.com 184 (Bom.) (HC)

Editorial : SLP of revenue is dismissed on the ground of delay. Dy. CIT v. Vodafone Idea Ltd (2021) 279 Taxman 446 (SC)

S. 244A : Refund-Interest on refunds-Tax deduction at source-Directed to complete the process of refund along with applicable interest within a period of two weeks from the receipt of the order. [S. 143(1), Art. 226]

The petitioner filed the return of income claiming the refund of tax deducted at source. Petitioner did not receive any intimation under section 143(1) of the Act from the respondents and consequently did not receive any refund, it has been compelled to file the present writ petition seeking the reliefs for refund of tax deducted at source as per return of income. The court directed the revenue to complete the processing of the refund claim of the petitioner and thereafter, release the due refund amount to the petitioner alongwith applicable interest in accordance with law within a period of two weeks from the date of receipt of a copy of this order. (AY. 2019-20)

Tata Communications Ltd v. UOI (2021) 201 DTR 185/320 CTR 683 (Bom.) (HC)

S. 245 : Refund-Set off of refunds against tax remaining payable-Adjustment made without prior intimation is held to be bad in law. [Art. 226]

The Assessing Officer adjusted the refund without giving any prior intimation. On writ allowing the petition the Court held that where a party raises objection in response to the intimation, the Assessing Officer exercising powers under section 245 of the Act must record reasons why the objection was not sustainable and also communicate it to the assessee and this would ensure that the power of adjustment under section 245 of the Act is not exercised arbitrarily. On facts of the case the Court held that action of the Assessing Officer making the adjustment without prior intimation is bad in law and illegal hence quashed. (AY. 2008-09) (WP. No. 1476 of 2022 dt. 18-7-2022)

Greatship (India) Ltd. v. ACIT (Bom.)(HC). www.itatonline.org

S. 245 : Refund-Set off of refunds against tax remaining payable-The Dept has not complied with the requirements of s. 245 of the Act-It is difficult to appreciate the stand of the Dept that the order passed by the high court would not cover/operate over the matters and orders passed by the ITAT, Union of India being not a party to the matter-Such a justification from and the approach of, the authorities is difficult to be approved of which is not in fitness of stature, especially of the state department, which is supposed to act like a model litigant-Directed to refund the amount with interest with in four weeks. [S. 220 (6), Art.226]

Refund was adjusted without following the requirement of section 245 of the Act. The assessee filed writ against adjustment of refund. Allowing the petition the Court held that although the respondents purport to contend that proper procedure had been followed, record does not bear that there

had been any communication made to the petitioner as to its submissions being not acceptable before or at the time of making the adjustment. Decisions in the cases of A. N. Shaikh v. Suresh Jian (1987 165 ITR 86 (Bom.) (HC) Hindustan Unilever Ltd. v. Dy. CIT (.2015) 377 ITR 281 (Bom.) (HC) and Milestone Real Estate Fund v. ACIT (2019) 415 ITR 467 (Bom.) (HC) relied on, on behalf of the petitioner have not been met with by the respondents nor it is the case of the respondents that any other course could be adopted for adjustment of refund. There is stark absence of material showing compliance of requirements viz: application of mind to contentions on behalf of the petitioner, reasoned order and its communication to the assessee. The facts and circumstances lend lot of substance to submissions advanced on behalf of the petitioner that there is absence of compliance of requirements under section 245 of the Act, coupled with observations of high court in the decisions relied upon on behalf of the petitioners. writ petition was allowed and the respondents directed to refund the amount to the petitioner for AY 2019-20 as determined under intimation under section 143 (1) of the Act dated 17th January, 2021 with interest thereon, as per law, within a period of four weeks from the date of receipt of this order. (AY. 2019-20) (WP No. 732 of 2021 dt. 6-4-2021)

Tata Communication Ltd. v. UOI (2021) 435 ITR 632 / 320 CTR 686 / 281 Taxman 162 / 201 DTR 188 (Bom.) (HC) www.itatonline.org

S. 245 : Refund-Set off of refunds against tax remaining payable-Stay of demand-Adjustment of refund without giving an intimation in writing is held to be bad in law. [Art. 226]

Allowing the petition the Court held that adjustment of refund against demands for assessment years 2015-16 and 2016-17 without following the mandatory prior requirement of intimation under section 245 before making adjustment and fact that there was stay for recovery of outstanding demand for said assessment years 2015-16 and 2016-17, impugned

adjustment of refund was unjustified. Followed Suresh B. Jain v. A.N. Shaikh, ITO (1987) 165 ITR 151 (Bom.)(HC) (AY. 2019-10).

Jet Privilege (P.) Ltd. v. Dy. CIT (2021) 205 DTR 145 / 322 CTR 684 / 131 taxmann.com 119 (Bom.) (HC)

S. 254(1) : Appellate Tribunal-Duties-Housing project-Tribunal cannot differ from earlier order of Tribunal in assessee's own case and follow the order of Tribunal in another assessee-The matter has to be referred to larger Bench in case the Tribunal desires to differ from earlier order of the Tribunal-The Tribunal should have considered the order of the High court which was placed on record through rectification application-Order of Tribunal is set aside. [S. 80IB(10), 254(2, 260A, Art. 226]

The original assessment of the appellant was completed u/s 143(3) of the Act wherein the deduction u/s. 80IB(10) was allowed. For the Assessment year 2009-10 the Assessing Officer disallowed the claim on the ground that the approval was granted on 7-10-2002 hence the Assessee is not eligible for deduction u/s 80IB(10) of the Act. CIT(A) allowed the claim which was affirmed by the Tribunal and appeal of the revenue was dismissed by the High Court. While the deciding the appeal for the Assessment year 2007-08 the CIT (A)) following the order for the Assessment year 2009-10 decided the issue on merit as well as on reopening of assessment in favour of the assessee. Revenue filed an appeal before the Tribunal. Tribunal without following the order of the Tribunal for the Assessment year 2009-10 followed the order of the Tribunal in the case of Bhavya Construction v. ACIT (2017 77 taxmann.com 66 (Mum) (Trib) and allowed the appeal of the revenue. The Assessee filed Miscellaneous petition which was dismissed. The assessee filed an appeal as well as writ before the High Court. Allowing the petition the Court held that the Tribunal cannot differ from earlier order of Tribunal in assessee's own case and follow order of Tribunal in another assessee. In case the Tribunal desires to differ from earlier order the matter has to be referred to larger Bench. The Court also

held that the Tribunal should have considered the Order of the High court which was placed on record through rectification application. The order of the Tribunal was quashed and set aside with the direction that the Tribunal should decide the appeal afresh on its own merits in the light of observations made in the order. (ITA No. 127 of 2021, WP No. 1217 of 2020 dt 7-6-2022)(AY. 2007-08)

Omega Investments and Properties Ltd. v. CIT (Bom.)(HC) www.itatonline.org

S. 254(2) : Appellate Tribunal-Appellate Tribunal-Rectification of mistake apparent from the record-Accommodation entries-Bogus purchases-Evidences / statements collected from the accommodation entry provider has not been provided, ITAT has not even dealt with that objection-Order of Jurisdictional High Court-Order of Tribunal set aside. [Art. 226]

Petitioner raised a grievance before ITAT that CIT(A) has erred in sustaining 12.5% disallowance on account of bogus purchases and also in upholding the validity of re-opening. In the Appeal before ITAT various grounds were raised including the challenge to re-opening itself. According to Petitioner there was no tangible material. Moreover Petitioner also alleged that reliance has been placed upon information received by Revenue from Maharashtra Sales Tax Authority that Assessee was beneficiary of Hawala accommodation entries from entry provider by way of bogus purchase. It is also alleged that accommodation entry provider has deposed and admitted before Maharashtra Sales Tax Authority vide statement/affidavit that they were engaged in providing bogus accommodation entries wherein bogus sales bills were issued without delivery of goods, in consideration for commission. It is stated that Assessee was one of the beneficiaries of this bogus entries of sale of material from Hawala entry providers. These accommodation entry providers on receipt of cheques from parties against bogus bills for sale of material, later on withdrew cash from their bank accounts which were returned to beneficiaries of bogus bills after deduction

of their agreed commission. Petitioner challenged that order before the Income Tax Appellate Tribunal (ITAT) which was dismissed. The miscellaneous application of the petitioner was also dismissed. On writ the petitioner contended that these details/information like admission of accommodation entry provider before Maharashtra Sales Tax Authority implicating Petitioner has not been provided to Petitioner despite repeated requests. This ground has been raised before ITAT. The Honourable Court referred the judgement in In S. Nagaraj & Ors. v. State of Karnataka, 1993 Supp (4) SCC 595, Sahai, J. stated:

> "15. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative Law, the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order"….. (p.618)".

The Honourable Court allowed the petition and directed the Tribunal to follow the ratio in PCIT v. Mohommad Haji Adam & Co. ITA No. 1004 of 2016 dated 11/02/2019.

Mithalal B.Jain v. ITO(2022) 214 DTR 25 (Bom.)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Department had withdrawn the Appeal that was pending before the Tribunal based on a Circular No 3 of 2018 dt. 11-7-2018 (2018) 405 ITR 29(St)-Later the Circular was amended and exceptions were added-Department filed miscellaneous application to recall the withdrawn appeal-The Writ petition of Revenue was dismissed. [Art. 226]

Department had withdrawn the Appeal that was pending before the Tribunal based on the Circular No 3 of 2018 dt. 11-7-2018 (2018) 405 ITR 29(St) The said circular was amended on 20th August, 2018,(2018) 407 ITR 7 (St) wherein two new exceptions were included. The department filed the Miscellaneous Application stating that the amended circular will prevail and therefore, the order of withdrawal of Appeal should be recalled and Appeal should be restored. The Tribunal rejected the miscellaneous application. On writ dismissing the petition the Court held that the newly added exceptions were not there when the Appeals were withdrawn on 3rd August, 2018. Therefore, it cannot be stated that there was any mistake apparent from the record in the order of Tribunal to rectify the same and amend the order passed by it under Sub Section (1) of Section 254 of the Act. (WP No.852 of 2020 dt 13-9 2021)

PCIT v. Qmax Synthetics Pvt. Ltd. (Bom.)(HC)(UR)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Appeal which was dismissed and review petition also dismissed-Dismissal of rectification order by the Tribunal is justified. [S. 47(xiv), 260A, Art. 226]

The petitioner has claimed exemption u/s 47(xiv) which was disallowed. order was affirmed by the CIT(A) and Tribunal. Appeal to High Court was dismissed.(ITA No. 1731 of 2014 dt. 18-7 20016. SLP was dismissed (SLP (C) No. 23753/ 2016 dt. 17-8 2016, Review petition was also dismissed by the High Court R. P(L) No. 36 of 2016 dt..9-2-2017. The petitioner filed an application under section 254(2) of the Act too recall the order which was dismissed on 5-7 2019. The petitioner filed writ petition against the dismissal of order by the Tribunal. Dismissing the petition the Court held that the Tribunal has correctly applied the principle that under the guise of rectification of an error, a party cannot be permitted to recall the order on merits. Thus, no fault can be found with the impugned order. Referred CIT v. Reliance Telecom Ltd [2021] 133 taxmann.com 41(SC)**(**WP No. 247 of 2020, dt. 28.01.22) (AY. 2009-2010)

Kantilal Gopalji Kotecha v. CCIT (Bom.)(HC) (UR)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Delay of 3052 days-Period of limitation would commence from date when affected party got knowledge of decision in question and it would not commence from the date when order was passed-Tribunal cannot dismiss the appeal for non appearance, it has to decide on merits-Cost of Rs. 10,000 was imposed on the assessee for each year of appeal. [S. 254(1), 260A]

Tribunal by an order dated 1-2-2013 dismissed assessee's appeal against an assessment order making addition to income of assessee for default of appearance by assessee. On 19-11-2019 Tax Recovery Officer proceeded to attach immovable properties of assessee for tax recovery. Thereafter, on 30-12-2019 assessee filed an application before Tribunal to set aside its order dated 1-2-2013 and rehear appeal on merits along with an application for condonation of delay of 3052 days in seeking restoration of appeal Tribunal dismissed both of these applications. On appeal the Assessee contended that Tribunal was not justified in dismissing appeal of assessee merely for absence of any representation on behalf of assessee. It further

contended that period of limitation would begin to run from date when assessee got knowledge of order i.e. on 19-11-2019 and not from date of passing of order. On appeal the Court held that Tribunal has to dispose of an appeal on merits and it cannot dismiss same solely on account of non-appearance of a party, thus, impugned order of Tribunal dismissing assessee's appeal merely for default of appearance was unjustified and same was to be set aside. Court also held that period of limitation prescribed in section 254(2) would commence from date when affected party got knowledge of decision in question and it would not commence from date when order was passed. Accordingly period of limitation would commence only from 19-11-2019 which was date of obtaining knowledge of order dated 1-2-2013 and, accordingly, impugned application filed by assessee was not barred by limitation. Court also held that from December 2019 till March 2020, the applicant had taken various steps in its attempt to have the appeals restored. The present appeals have been filed on 22-6-2020 in the midst of the lockdown. The aforesaid events are thus found sufficient to condone the delay subject to imposing costs on the applicant. Accordingly the delay in filing each appeal stands condoned subject to costs of Rupees Ten thousand per appeal to be paid to the Revenue within a period of three weeks. The applications are allowed and disposed of in aforesaid term. (AY. 2002-03 to 2004-05)

Daryapur Shetkari Sahakari Ginning and Pressing Factory v. ACIT (2021) 277 Taxman 155 / 200 DTR 417 / 320 CTR 456 (Bom.)(HC)

S. 254(2A) : Appellate Tribunal-Stay-Justified in imposing condition upon assessee to pay Rs. 20 crores for granting stay against outstanding demand of Rs. 269.96 crores [S. 220, Art. 226)

Tribunal granted stay subject to deposit only of an amount of Rs. 20 crores in two instalments. Assessee filed an instant writ petition against such condition for stay of demand. High Court held that the assessee had paid till date Rs. 116.09 crores out of total tax demand of Rs. 386.05 crores, thus, balance amount payable stood at Rs. 269.96 crores. Tribunal was

justified in imposing condition upon assessee to pay Rs. 20 crores for granting stay against outstanding demand of Rs. 269.96 crores. (AY 2011-12 to 2014-15)

Slum Rehabilitation Authority v. UOI (2021) 436 ITR 172 / 200 DTR 9/ 278 Taxman 315 / 323 CTR 637 (Bom.)(HC)

S. 255 : Appellate Tribunal-Powers of Tribunal-Tribunal cannot transfer case from Bench falling within jurisdiction of a particular High Court to Bench under jurisdiction of different High Court. [S. 254(1), ITAT R, 1963, R. 4. Art. 226]

An order dated August 20, 2020 passed by the President of the Tribunal under rule 4 of the Income-tax (Appellate Tribunal) Rules, 1963 directing that the appeals be transferred from the Bangalore Bench of the Tribunal to be heard and determined by the Mumbai Benches of the Tribunal at Mumbai. On a writ petition against the order, a preliminary objection was raised regarding maintainability of the petitions. The Court held that the writ petition was maintainable because the petitioner had no other statutory remedy. Having regard to the mandate of clause (2) of the article 226 of the Constitution, the Bombay High Court had jurisdiction to entertain the petitions. Court also held that the fact that the assessee may have expressed no objection to the transfer of the assessment jurisdiction from the Assessing Officer at Bangalore to the Assessing Officer at Mumbai after assessment for the assessment years covered by the search period, could not be used to non-suit the petitioner in his challenge to the transfer of the appeals from one Bench of the Tribunal to another Bench in a different State and in a different zone. The two were altogether different and had no nexus with each other. That the orders dated March 19, 2020 and August 20, 2020 were wholly unsustainable in law. (AY. 2005-06 to 2008-09)

MSPL Limited v. PCIT (2021) 436 ITR 199 / 202 DTR 117/ 321 CTR 1 (Bom.)(HC)

S. 255 : Appellate Tribunal-Procedure-Cross objection-Jurisdiction issue can be raised before ITAT, without filing cross objection-Matter remanded to Tribunal for fresh consideration of appeals instituted by revenue after permitting assessee to raise issue of non-compliance with in jurisdictional parameters of section 153C of the Act-Delay of 248 days in filing cross objection was condoned. [S. 153C, 253, 254(1), 260A (7), ITAT R, 27, Form. 36A, Code of Civil Procedure, 1908 rule 2 of Order II, Limitation Act, 1963 Limitation Act, 1963, S. 5]

The Assessing Officer made an addition u/s 2 (22) (e) of the Act. On appeal the CIT (A) deleted the addition. Revenue filed an appeal before the Tribunal. The assessee filed cross objection with condonation delay of 248 days raising the jurisdictional issue under section 153C of the Act. ITAT allowed the appeal of the revenue and dismissed the cross objection. assessee filed an appeal before the High Court and the question before the High Court was whether it was open to the appellant/assessee to have supported the orders of the Commissioner (Appeals), based on the ground that the jurisdictional parameters prescribed under section 153C of the I.T. Act were not fulfilled, even without the necessity of filing any cross objections. High Court set aside the order of the Tribunal and matter was to be remanded to Tribunal for fresh consideration of appeals instituted by revenue after permitting assessee to raise issue of non-compliance with in jurisdictional parameters of section 153C of the Act. Delay of 248 days in filing cross objection was condoned. (AY. 2006-07 to 2011-12)

Peter Vaz v. CIT (2021) 436 ITR 616 / 204 DTR 376 / 322 CTR 121 128 taxmann.com 180 / 281 Taxman 171 (Bom.)(HC)

Edgar Braz Afonso v. CIT (2021) 436 ITR 616 / 204 DTR 376 / 322 CTR 121 / 128 taxmann.com 180 / 281 Taxman 171 (Bom.)(HC)

S. 260A : Appeal-High Court-Ex-parte order on merits-Change of address-Gross negligent on the part of the appellant-One more

opportunity is granted to the Appellant-Directed to pay cost of Rs. 25000. [S. 254(1)]

Against the ex-parte order the assessee filed an appeal. Court held that it was the duty of the Appellant to give changed address with the Tribunal. The Appellant did not give it's new address to the Tribunal and the notice was served to the Appellant on the address given by it. In fact, it was also the boundant duty of the Appellant to attend to the Appeal filed by it. Simply by filing the Appeal the duty of the Appellant does not come to an end, it has to attend the matter. Considering that in the absence of the Appellant the matter has been decided on merits and the Appeal involves the right of the Appellant the Court directed the appellant to pay cost of Rs, 25000 and directed the Tribunal to decide on merits.

Gopal Extrusions Pvt. Ltd. (Through its Director Sanjay Ramgopal Taparia) v. ITR (2022) 326 CTR 713 / 214 DTR 105 (Bom.)(HC)

S. 260A : Appeal-High Court-Valuation of stock-Valuation adopted by Revenue valid-No question of law.[S.145

Dismissing the appeal the Court held that all the Income-tax authorities based on the material before them, or the lack of proper evidence before them, held that the disparity between the cost price and the market price remained unexplained by the assessee. The Tribunal noted that the assessee failed to explain the basis for valuation of the closing stock being lower than even the average cost or the average market price. The Tribunal also noted that the assessee failed to produce any cogent evidence to substantiate its claim even before the Tribunal itself despite the grant of opportunity. The valuation adopted by the Revenue was valid. No question of law arose from the order. (AY. 2009-10)

Goa Carbon Ltd. v. JCIT (2022) 446 ITR 590 / 289 Taxman 322 (Bom.) (HC)

S. 260A : Appeal-High Court-Delay in disposal of appeals-Change in Panel counsels-CIT(judicial) to make necessary arrangements in two weeks.

Where on account of change of panel counsels there are adjournment requests on behalf of the Revenue to take instructions and file Vakalatnamas; resulting in delay in disposal of appeals. The Department is directed to take a review of all such matters and make alternative arrangements in advance. Further, CIT(Judicial) to take necessary steps and complete the exercise within two weeks starting June 15, 2022. (ITXA No. 267 of 2018 dated June 15, 2022.

PCIT v. Emarsso Exports Private Limited (Bom.)(HC) www.itatonline.org

S. 260A : Appeal-High Court-Order transferring case-Every order Writ is maintainable-Appeal is not maintainable. [S. 127, 255, Art. 226]

Court held that a careful reading of section 260A(1) would go to show that an appeal shall lie to the High Court from every order passed in appeal by the Tribunal if the High Court is satisfied that the case involves a substantial question of law. The expression every order in the context of section 260A would mean an order passed by the Tribunal in the appeal. In other words, the order must arise out of the appeal, it must relate to the subject matter of the appeal. An order related to transfer of the appeal, would be beyond the scope and ambit of sub-section (1) of section 260A.

Clause (2) of article 226 makes it clear that the power to issue directions, orders or writs by any High Court within its territorial jurisdiction would extend to a cause of action or even a part thereof which arises within the territorial limits of the High Court notwithstanding the fact that the seat of the authority is not within the territorial limits of the High Court.

Court held that order transferring the case the writ petition was maintainable because the petitioner had no other statutory remedy. Having regard to the mandate of clause (2) of the article 226 of the Constitution,

the Bombay High Court had jurisdiction to entertain the petitions..(AY. 2005-06 to 2008-09)

MSPL Limited v. PCIT (2021) 436 ITR 199 / 202 DTR 117 / 321 CTR 1 (Bom.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to verify fall in gross profit-Revision of order is not valid-Order of Tribunal is affirmed. [S. 260A]

The AO had raised queries on the drop of gross profit and the assessee had submitted requisite information/details along with explanation. The AO accepted the explanation being satisfied with the explanation. Tribunal held that such a decision cannot be held to be erroneous simply because in his assessment order the AO did not make any elaborate discussion in that regard. Moreover, the Commissioner himself, even after initiating proceedings in revision and hearing the assessee, has simply said submissions made by the assessee are considered but the same is not acceptable. The Commissioner has not given any detailed explanation why the explanation of the assessee was not acceptable. Without coming to such conclusion or discussing why assessee's explanation was not acceptable, the Commissioner cannot simply ask the AO to conduct enquiries/fresh determination. On appeal by the Revenue the Court held that Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand. Order of Tribunal is affirmed. (ITA No. 1838/2017 dt. 3-3 2022).

PCIT v. Rajhans Metal Pvt. Ltd. (Bom.)(HC) (UR)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Excess depreciation-Subsidy-Revision is held to be not valid-Order of Tribunal affirmed. [S. 32, 43(1), 260A]

Revision order was quashed by the Tribunal on the ground that the CIT has contradicted himself in his order. On appeal by the Revenue dismissing the

appeal the Court held that ITAT has rightly concluded that it cannot be found anywhere as to how CIT arrived at the figure of excess depreciation of Rs.41,19,74,440/-in the initial part of his order. Moreover, CIT has also asked the Assessing Officer to examine the details and compute the admissible depreciation. No substantial question of law arises. (WP No. 276 of 2018, dt. 19-4-22)

PCIT v. Maharashtra State Electricity Distribution, (Bom.)(HC) (UR)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Agricultural land-Capital asset-land sold by assessee was situated beyond 8 kms from local limits of any municipality or cantonment board-Not capital asset-Revision order is not valid. [S. 2(IA), 2(14)(iii), 143(3)]

Assessing Officer accepted the land sold is agricultural land hence not liable to tax. PCIT passed the revision order on ground that Assessing Officer had failed to examine genuineness of such transaction of transfer of land by assessee in course of assessment which rendered said assessment order erroneous and prejudicial to interest of assessee. On appeal the Tribunal held that land sold by assessee was situated beyond 8 kms from local limits of any municipality or cantonment board as referred in proviso to section 2(1A) and section 2(14) and, thus, certainly it would not fall within definition of capital asset and, accordingly, question of any capital gain would not arise on sale of said agricultural land. During original assessment, Assessing Officer had raised various queries with regard to claim of capital gain on transfer of land by assessee who had furnished details in respect to distance of agricultural land from municipal limits, record of population as per last census and only after considering said material on record, Assessing Officer had accepted claim of assessee. Since the Assessing Officer had passed assessment order after making necessary inquiries order is not prejudicial to the interest of revenue. (AY. 2011-12)

CIT v. Chandan Magraj Parmar (2022) 445 ITR 674/ 285 Taxman 565 (Bom.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Payment to specified persons-Revision proceedings cannot travel beyond the reasons given in show cause notice-0rder of Tribunal is affirmed. [S. 40A(2)(b)]

Dismissing the appeal of the revenue, the Court held that, where the show cause notice under section 263 of the Act suggested only 2 issues but the order under section 263 of the Act directed the ld. AO to make enquiry and examine the two issues and a third issue, the Tribunal held that the third issue cannot form the basis for revision of assessment order under Section 263 of the Act. Order of the Tribunal upheld. (AY. 2009-10) (ITA No. 238 of 2018 dated April 19, 2022)

PCIT v. Universal Music India Pvt. Ltd. (2022) 446 ITR 287 (Bom.)(HC)

Editorial : CIT v. Amitabh Bacchan (2016) 384 ITR 200/ (69) taxmann.com 170 (SC) *distinguished.*

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Exempt income-Strategic investment-View taken by Assessing Officer being a possible view could not have been interfered by Commissioner-Order of Tribunal quashing the revision was affirmed. [S. 14A, R. 8D, 260A]

Commissioner passed the revision order with directions to frame a fresh assessment order on ground that Assessing Officer failed to make a disallowance of interest under provisions of section 14A read with rule 8D and therefore order of Assessing Officer was erroneous and prejudicial to interest of revenue. Tribunal set aside order of Commissioner. On appeal the Court held that Commissioner had not disputed nature of investments being strategic investment made for purpose and in course of business of assessee and had only looked at matter from a different legal view on same set of facts therefore, view taken by Assessing Officer being a possible view could not have been interfered by Commissioner under section 263 of the Act. Order of Tribunal is affirmed. (AY. 2011-12)

CIT v. Future Corporate Resources Ltd. (2022) 284 Taxman 122 (Bom.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Book profit-Decommissioning levy, interest on decommissioning fund, interest on R & M fund and interest on R & D fund to profit as per profit and loss account-Revision was held to be not justified when in order passed by Commissioner, there was no mention as to under which category of Explanations (a) to (k) of section 115JB(2) these four items would fall-Order of Tribunal quashing the revision order was affirmed. [S. 115JB, 143(3)]

Dismissing the appeal of the revenue the Court held that in order passed by Commissioner, there was no mention as to under which category of Explanations (a) to (k) of section 115JB(2), these four items would fall. Tribunal, on appeal, had also observed that disputed four items were not part of list appearing in section 115JB and without identifying under which part of list disputed four items would fall, Commissioner could not have exercised revisionary powers. Order of the Tribunal is affirmed. (AY. 2009-10)

CIT, LTU v. Nuclear Power Corporation of India Ltd. (2021) 283 Taxman 549 (Bom.)(HC)

Editorial: SLP of Revenue dismissed, CIT v. LTU v. Nuclear Power Corporation of India Ltd. (2022) 287 Taxman 218/ 114 CCH 49 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Under-invoicing-Justice Shah Commission report-Notice based on reports of Serious Fraud Investigation Office (SFIO)-Assessment was completed without proper inquiries-Revision is held to be justified, it was competent for Commissioner to invoke revisional jurisdiction and direct fresh assessment.

Dismissing the appeal of the assessee the Court held that Tribunal held that since only direction was issued for passing fresh assessment, issues raised

by assessee could always be gone into by Assessing Officer after granting full opportunity to assessee-Whether since assessment was completed without proper inquiries, it was competent for Commissioner to invoke revisional jurisdiction and direct fresh. Order of Tribunal is affirmed. (AY. 2008-09)

Vedanta Ltd. v. CIT (2021) 279 Taxman 358 (Bom.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Carry forward of loss-Acceptance of claim Of without application of mind to material on record-Revision of order setting aside the Assessment order is held to be justified. [S. 37(1), 72]

On appeal by the revenue the Court held that the Assessing Officer had allowed the expenses without application of mind and allowed the setoff of carryforward of loss. This was also not a case where the Commissioner had failed to undertake inquiry in the course of the exercise of revisional jurisdiction. It was only in pursuance of such inquiry that the Commissioner had recorded a categorical finding that the assessee had not even claimed payment of any fees from P Ltd. in respect of any technical or management services said to have been rendered by it. This was not a case of some plausible view but a case where the decision was a result of non-application of mind to the materials on record. The Commissioner was justified in setting aside the assessment order under section 263. Ratio in Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC) is explained. (AY.2009-10)

PCIT v. Zuari Maroc Phosphates Ltd. (2021) 432 ITR 316 / 279 Taxman 333 (Goa) (Bom.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Queries raised but order without application of mind and consideration of material provided-Revision of order is held to be valid. [S.10B]

Court held that there was no consideration whatsoever of the information provided by the assessee in the context of its claim. This was a case of no consideration as opposed to mere inadequate consideration. This was a clear case of non-application of mind to the material on record, without even going into the issue whether the material supplied by the assessee was adequate or inadequate to determine its claim for deduction under section 10B. The circumstance that for certain subsequent assessment years the claim of the assessee for deduction under section 10B of the Act was allowed by the Tribunal was not strictly speaking relevant to determining whether the revision jurisdiction was correctly invoked. Firstly, the view taken by the Tribunal had till date, not attained finality. Secondly, the view was in the context of the subsequent assessment years. It was possible that for a given assessment year the assessee did not fulfil the prerequisites for claiming the deduction under section 10B. From the material on record, it was not possible to say that the Commissioner, in this case, had acted under dictation from any extraneous authority. Although the Commissioner, in invoking revision jurisdiction, had made reference to the report of the Serious Fraud Investigation Office. However, that did not mean that the Commissioner had acted under dictation. Therefore, any subsequent and allegedly changed report of the Serious Fraud Investigation Office would not dent the exercise of jurisdiction by the Commissioner under section 263. The Commissioner was correct in setting aside the assessment order. Followed Rampyari Devi Saraogi v. CIT (1968) 67 ITR 84 (SC) (AY.2006-07, 2007-08)

Sesa Starlite Ltd. v. CIT (2021) 430 ITR 121 / 318 CTR 197 / 277 Taxman 443 / 206 DTR 315 (Bom.)(HC)

S. 264 : Commissioner-Revision of other orders-Business loss or speculation-Amount voluntary agreed can also be the subject matter of revision-Rejection of revision application was not valid-Directed the Commissioner to decide on merit after considering all the submissions. [S. 43(5) (d), 139, Art. 226]

The assessee filed the return showing the derivative loss as speculation loss and has not setoff against other income. On realizing the mistake the assessee filed revision petition stating that due to mistake he has shown derivative loss as speculative loss instead of business loss. The revision petition was dismissed on account of delay. High Court set aside the order for denovo consideration. The Commissioner dismissed the petition on the ground that additions which are voluntarily agreed cannot be the subject matter of revision. On writ allowing the petition the Court held that even if, return as submitted by the assessee is accepted by the Assessing Officer, and if thereafter, the assessee comes to know about the mistakes committed, that he was not liable for more taxation or had paid more tax, he can definitely approach revenue authority and in such event, it is open to the revisional authority to exercise its jurisdiction u/s 264 of the Act. Once assessee is able to satisfy about mistake due to which there was over assessment, the Commissioner had power to correct the same u/s 264(1) of the Act. In such situation, we would expect the Commissioner to apply his mind to the question and decide the matter. Simply saying, additions which are voluntarily agreed, cannot be the subject matter of revision, would be little harsh on assessee. Therefore, we hereby set aside order dated 29.09.2014 impugned in this petition and remand the matter to the Commissioner of Income Tax for denovo consideration of petitioner's application u/s 264 of the Act. (WP No. 1777 of 2015, Dt. 29-4-22) (AY. 2008-2009)

Anup Lakhmichand Anand v. CIT (2022) 216 DTR 401 / 328 CTR 716 (Bom.) (HC)

S. 264 : Commissioner-Revision of other orders-Petition cannot be dismissed on the ground that the assessee has not waived the right of appeal before the Commissioner of Income-tax (Appeals). [S. 246A, 264(4), Art. 226]

The petitioner filed revision petition before the Commissioner. The Commissioner dismissed the petition on the ground that the same was not

maintainable as an appeal lies against the order against which the application has been made for revision and assessee has not waived their right of appeal before the Commissioner of Income-tax Appeals). On writ allowing the petition the Court directed the PCIT to consider the application on merit. Relied on Aafreen Fatima Fazal Abbas Sayed v. ACIT, (2021) 127 taxmann.com 819 / 280 Taxman 429 / 434 ITR 504 (Bom.))(HC) **(**WP No. 751 of 2021, dt.1-2-2022)

Girish Raghvan v. PCIT (Bom.)(HC)(UR)

S. 264 : Commissioner-Revision of other orders-Private company-Liability of directors-Non speaking order without any reasons-AO wishes to rely on any judgements or order passed by any Court or Tribunal he should provide a copy thereof to the petitioner and allow an opportunity to deal with those judgements or distinguish those judgements and the submission of the assessee shall also be dealt with in the order-Order of Assessing officer is set aside. [S. 179, Art. 226]

The AO initiated the proceedings u/s. 179 of the Act. The petitioner has filed a detailed reply. The AO rejected the application on the ground that same is not accepted. The petitioner filed an application under section 264 of the Act against an order passed u/s 179 of the Act. The Commissioner rejected the application without dealing with the submission of the assesee. On writ the Court set aside the order and directed the AO to give personal hearing in advance. The Court also observed that if the AO wishes to rely on any judgements or order passed by any Court or Tribunal he should provide a copy thereof to the petitioner and allow an opportunity to deal with those judgements or distinguish those judgements and the submission of the assessee shall also be dealt with in the order. (WP.No. 560 of 2021 dt 31-1-2022). (AY. 2015-16)

Bhavesh Mohan Lakhwani v. PCIT (2022) BCAJ-March-P. 49 (Bom.)(HC)

S. 264 : Commissioner-Revision of other orders-Commissioner can give relief to an assessee who has committed mistake-DTAA-India-Kuwait [S. 143(3), Art. 10, Art. 226]

In the original return and revised return the petitioner has not claimed the benefit of article 10 of the India-Kuwait Double taxation Avoidance Agreement. The petitioner filed application under section 264 of the Act. The application was rejected on the ground that the assessment was completed under section 143(3) and there was no apparent error on the record in the assessment order. On writ allowing the petition the Court held that section 264 of the Income-tax Act, 1961, does not limit the power of the Commissioner to correct errors committed by the sub-ordinate authorities and can even be exercised where errors are committed by the assessee. There is nothing in section 264 which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the assessee detects mistakes after the assessment is completed.

Court held that the very foundation of the application under section 264 was that the assessee had inadvertently failed to claim the benefit of article 10 of the Double Taxation Avoidance Agreement between India and Kuwait, under which the dividend distribution was taxed at a lower rate. The Commissioner had the power to consider the claim under section 264. The rejection of the application for revision was not valid. Geekay Security Services (P) Ltd v. Dy.CIT (2019) 101 taxmann.com 192 (Bom.)(HC) followed. (AY. 2016-17)

Hapag Lloyd India Pvt. Ltd. v. PCIT (2022) 443 ITR 168 / 212 DTR 99(Bom.)(HC)

S. 264 : Commissioner-Revision of other orders-Binding precedent-Subordinate Authority to follow the ruing of Higher Authority-Rejection of revision petition on ground that appeal pending in High Court on similar issue against order of Tribunal-Held to be not proper-Matter remanded for de novo consideration [S. 260, Art. 226]

The Commissioner rejected the petition on the grounds that though the Tribunal had deleted the addition made by the Assessing Officer on account of interest earned from fixed deposit by the assessee for the assessment years 2012-13 to 2015-16 the Department had not accepted the decision of the Tribunal and had filed an appeal before the High Court and that various courts had held that interest earned under similar circumstances and facts to be of revenue in nature and liable to tax. On a writ petition the Court held, that unless there was a stay by a competent court of the operation of the order of the Tribunal, the Principal Commissioner should give effect to the order and pass an order in accordance with law. The order of the Tribunal or the operation of the order had not been suspended by any court. The Principal Commissioner should grant a personal hearing to the assessee and provide an opportunity to rely on or distinguish any judgments or order passed by any court or Tribunal and consider the assessee's submissions in the assessment order. The order rejecting the assessee's petition under section 264 read with section 260 was set aside and the matter was remanded for de novo consideration. Matter remanded. referred UOI v. Kamlakshi Finance Corporation Ltd. [1992] Supp (1) SCC 443 (AY.2012-13 to 2015-16)

Karanja Terminal and Logistic Pvt. Ltd. v. PCIT (2022) 442 ITR 400 / 211 DTR 161/ 325 CTR 392 / / 287 Taxman 410 (Bom.) (HC)

S. 264 : Commissioner-Revision of other orders-Appeal filed after expiry of time limit-Revision application is held to be valid. [S. 143(1)(a), 246A, 264(4), Art. 226]

Allowing the petition the Court held that the assessee had not filed an appeal against the order under section 143(1) under section 246A of the Act and the time of 30 days to file the appeal had also admittedly expired. Once such an option had been exercised, a plain reading of the section suggested that it would not then be necessary for the assessee to waive such right. That waiver would have been necessary if the time to file the appeal had not expired. The application for revision was valid. Order of PCIT

was set aside and directed to hear the application afresh on merits after giving an reasonable opportunity to the assessee. (AY.2018-19)

Obiter dicta : Where errors can be rectified by the authorities, the whole idea of relegating or subjecting the assessee to the appeal machinery or even discretionary jurisdiction of the High Court, is uncalled for and would be wholly avoidable. The provisions in the Income-tax Act for rectification, revision under section 264 are meant for the benefit of the assessee and not to put him to inconvenience.

Aafreen Fatima Fazal Abbas Sayed v. ACIT (2021) 434 ITR 504 / 202 DTR 1 / 280 Taxman 429 / 321 CTR 583 (Bom.)(HC)

S. 268A : Appeal-Application-Reference-Instructions-Monetary Limits-Exceptions-Circular No. 23 of 2019 providing that monetary limits would not apply where CBDT by special order directed filing of appeals-The legislative intent is clear that circular dated September 6, 2019 would not apply with retrospective effect-Though the Revenue had alleged organized tax evasion activity on the part of the assessee in those pending appeals as on the date of Circular No. 23 of 2019, the Revenue could not be allowed to pursue these appeals. Since the tax effect involved in this batch of appeals was less than the monetary limit prescribed in the earlier circulars of the Central Board of Direct Taxes-, The Revenue was not allowed to proceed the appeals on the merits-Appeals of the revenue was dismissed. [S. 119, 260A]

Dismissing the appeals of the Revenue the Court held that a perusal of section 268A of the Income-tax Act, 1961 clearly provides that the Central Board of Direct Taxes is empowered to issue orders, instructions or directions to the Income-tax authorities fixing such monetary limits as it may deem fit for the purpose of filing of appeals or applications for reference by any Income-tax authority under the provisions of Chapter XX.

By Circular No. 3 of 2018 ([2018] 405 ITR (St.) 29), in supersession of Circular No. 21 of 2015, dated December 10, 2015 ([2015] 379 ITR (St.) 107), the Board decided that Departmental appeals may be filed on the merits before the Appellate Tribunal and High Courts and special leave petitions and appeals before the Supreme Court keeping in view the monetary limits and conditions specified therein. For appeals before the High Courts, the monetary limit is prescribed as Rs. 50 lakhs. By Circular No. 17 of 2019, dated August 8, 2019 ([2019] 416 ITR (St.) 106), the Board enhanced the monetary limit from Rs. 50 lakhs to Rs. one crore. In Circular No. 23 of 2019, dated September 6, 2019 ([2019] 417 ITR (St.) 4), the Board noticed that several references had been received by the Board in a large number of cases where organised tax evasion came through bogus long-term capital gains and short-term capital loss on penny stocks and the Department was unable to pursue these cases before higher judicial fora on account of enhanced monetary limits. The Board further noticed that in a large number of cases the Tribunal and the High Court had recognized the unique modus operandi involved in such scam and had passed judgments in favour of the Revenue. However, in cases where appellate fora had not given due consideration to position of law or facts investigated by the Department, there was no remedy available with the Department for filing further appeals in view of the prescribed monetary limits. The Board accordingly clarified that notwithstanding anything contained in any circular issued under section 268A specifying monetary limits for filing of Departmental appeals before the Tribunal and High Courts and special leave petitions and appeals before the Supreme Court, appeals may be filed on the merits as an exception to the circular where the Board, by way of special order directed the filing of appeals on the merits in cases involved in organised tax evasion activity. Circular No. 23 of 2019 was clarified by Office Memorandum dated September 16, 2019 ([2019] 417 ITR (St.) 53) that by virtue of powers of the Board under section 268A of the Act, the monetary limits fixed for filing appeals before the Tribunal, the High Court and special leave petitions, and appeals before the Supreme

Court shall not apply in cases of assessees claiming bogus long-term capital gains and short-term capital loss through penny stocks and appeals and special leave petitions in such cases shall be filed on the merits. It is, thus, clear beyond reasonable doubt that the exception is carved out by Circular No. 23 of 2019 to file appeals on the merits in cases involved in organized tax evasion activity notwithstanding anything contained in any circular issued under section 268A of the Act, specifying monetary limits for filing of Departmental appeals. However, on a plain reading of Circular No. 23 of 2019 read with Office Memorandum dated September 16, 2019, it is clear that appeals are directed to be filed on the merits as exception to the earlier circulars issued under section 268A of the Act in cases involving organized tax evasion activity from the date of Circular No.23 of 2019, dated September 6, 2019 and not to appeals already filed and were pending involving organized tax evasion activity on the part of an assessee prior to the date of circular dated September 16, 2019. Circular No.23 of 2019 read with Office Memorandum dated September 16, 2019 would not apply to pending appeals though involving an organized tax evasion activity on the date of the circular. Circular No. 23 of 2019 does not provide that it would apply even to pending cases lodged on the date of the circular. Appeals pending on the date of Circular No. 23 of 2019 thus would not be covered by Circular No. 23 of 2019 even with the special order of the Board. Circular No. 23 of 2019, dated September 6, 2019 read with Office Memorandum dated September 16, 2019 do not empower the Board to pass any special order directing the Income-tax Department to file an appeal on the merits in pending cases even if alleging organized tax evasion activity on the part of the assessee. Paragraph 13 of Circular No. 3 of 2018, dated July 11, 2018 specifically prescribes that the circular would apply to special leave petitions, appeals, cross objections and references to be filed from the date of the circular in the Supreme Court, High Courts and Tribunals and it shall also apply retrospectively to pending special leave petitions, appeals, cross objections and references. The Income-tax Department was directed to withdraw or not press pending appeals below the specified tax limits set

out in para 3 of the circular. However, no such specific direction was given in Circular No. 23 of 2019, dated September 6, 2019, thereby to apply the conditions set out therein to pending special leave petitions, appeals, cross objections and references before the Supreme Court, High Courts and Tribunal involving organized tax evasion activity. Circular No. 3 of 2018, dated July 11, 2018 cannot be read with Circular No. 23 of 2019, dated September 6, 2019 read with Office Memorandum dated September 16, 2019. The legislative intent is clear that circular dated September 6, 2019 would not apply with retrospective effect. Accordingly, dismissing the appeals, the Court held that in view of the fact that Circular No. 23 of 2019, dated September 6, 2019 read with Office Memorandum dated September 16, 2019 is not applicable with retrospective effect, though the Revenue had alleged organized tax evasion activity on the part of the assessee in those pending appeals as on the date of Circular No. 23 of 2019, the Revenue could not be allowed to pursue these appeals. Since the tax effect involved in this batch of appeals was less than the monetary limit prescribed in the earlier circulars of the Central Board of Direct Taxes, the Revenue was not allowed to proceed with these appeals on the merits. (AY.2005-06)

CIT v. Surendra Shantilal Peety (2022) 445 ITR 590 (Bom.)(HC)

S. 268A : Appeal-Instructions-Issue involved having cascading effect-Fee-Default in furnishing the statements-Does not fall with any criteria prescribed in clause 10 of Circular No 3 of 2018 dated July, 11, 2018 (2018) 405 ITR 29 (St), as amended by circular dated August 20, 2018 (2018) 407 ITR 7(St)-Alternative remedy-Writ against the order of Tribunal deleting the addition is held to be not maintainable. [S. 234E, 254(1), 260A, 268A(4), Art. 226]

Revenue filed writ petition challenging the order of Tribunal wherein the Tribunal deleted levy of fee under section 234E of the Act for default in furnishing the statements. Dismissing the petition the Court held that an appeal against an order passed by the Appellate Tribunal under

section 234E of the Act was maintainable under section 260A. The circular dated August 8, 2019 (2019) 416 ITR (St.) 106) of the Central Board of Direct Taxes provides that no appeal shall be filed in the High Court in respect of an assessment year or years or years in which the tax effect is less than the monetary limit of Rs. one crore. The tax effect involved in the writ petition was below the monetary limit of Rs. one crore as prescribed in Circular No. 17. On the facts of the case, none of the exceptions as laid down by the Supreme Court in the case of Radha Krishan Industries v. State of Himachal Pradesh (2021) 88 GSTR 229 (SC), 2021 SCC Online SC 834, principles governing the excise of writ jurisdiction by the High Court in the presence of alternative remedy had been fulfilled. Referred, Whirpool Corporation v. Registrar of Trade Marks Mumbai (1998) 8 SCC 1

CIT v. Emsons Exim Pvt. Ltd. (2021) 439 ITR 607 (Bom.) (HC)

S. 269UD : Purchase by Central Government of immoveable properties-Notice must give details which led to inference of undervaluation-Order pf Pre-Emptive purchase not valid-Transferee has a right to challenge order of purchase. [Art. 226]

Allowing the petition the Court held that issuance of a show-cause notice was not an empty formality. Its purpose was to give a reasonable opportunity to the affected persons to contend that the apparent consideration under the agreement to sell the property was the market price or that there was no undervaluation because of peculiar facts. There was no finding that the undervaluation was intended to evade tax, let alone discharging the onus of establishing that undervaluation was with a view to evade tax. In the third order of the Appropriate Authority, it was only stated that the transaction under consideration was proposed to take place at a rate lower than the fair market value by more than 15 per cent. considering the fair market value determined by the Appropriate Authority. On this ground alone, the order was quashed and set aside. The view taken by the Appropriate Authority was palpably erroneous and could not stand the scrutiny of law even on the merits. The Valuation Officer had noted on April

22, 1991 and the Deputy Commissioner (Appropriate Authority) had noted on April 24, 1991 that the property was not under-valued. The Appropriate Authority had not stated in the reasons recorded in 1991 why it did not accept these two reports. The Appropriate Authority had not stated anywhere why he was not accepting the three comparables mentioned by the Valuation Officer and had not given the basis for comparing the properties SF and NA with the property in question, when those two properties were farther away than the three properties used by the Valuation Officer to compare. In any case, the valuation of the property NA used in the first order dated April 29, 1991 by the Appropriate Authority was only about 9 per cent. more compared to the property in question. The mathematical calculations by adding and subtracting advantages and disadvantages to arrive at a conclusion that there was undervaluation in excess of 15 per cent. limit could be stated to be far from being honest. This 15 per cent. limit also could not be applied mechanically but a reasonable margin of error had to be considered. Since the difference was only about 9 per cent. the Appropriate Authority for reasons which were obvious, in the supplementary show-cause notice read with the statement of valuation annexed thereto, had resorted to mathematical calculations and by adding and subtracting advantages and disadvantages had arrived at a conclusion that there was undervaluation in excess of 15 per cent. which was most improper on his part. He had not explained anywhere why the two properties of SF and NA were chosen as comparables and from where the details of those two properties were obtained. The Appropriate Authority ought to have disclosed everything in a transparent manner to enable the assessee to effectively respond. There was also no finding that the undervaluation was intended to evade tax which was mandatory vitiating the stand of the respondents. Even assuming that there was a difference of 15 per cent., the Appropriate Authority could not assume jurisdiction under section 269UD automatically. Various factors determined the price for a property such as demand, supply, terms of payment, the urgency for the seller to sell or for the buyer to buy, relationship between

parties, dominance of a party etc. None of these were considered by the Appropriate Authority. Therefore, the third order of the Appropriate Authority under section 269UD was set aside. Court also held that Transferee has a right to challenge order of purchase.

Zeal Real Estate Ltd. v. UOI (2022) 444 ITR 442 (Bom.)(HC)

S. 269UD : Purchase by Central Government of immoveable properties-Transfer of property by charitable Trust-Sanction of Charity Commissioner should be taken in to account-Adequate opportunity was not given-Notice and pre-Emptive purchase was held to be not valid. [S. 269UC, 269UL, Bombay Public Trust Act, 1950, S. 36, Art. 226]

Allowing the petition the Court held that the show-cause notice was bereft of any materials or details. It did not contain any material to show why the Appropriate Authority felt that an order under section 269UD(1) was required to be made. A reply was filed on April 22, 1993 on behalf of the transferor trust and the petitioner, the buyer. In the order the Appropriate Authority had relied upon a valuation report. Admittedly the report was not provided to the petitioner. Moreover, the Appropriate Authority had given six sale instances but none of these details were provided to the petitioner with the show-cause notice or at any stage. The Court also observed that the approval of Charity Commissioner ensures reasonableness of the agreement of sale and it was a factor which has to be borne in mind by the Income-tax Authorities while exercising its power under section 269UD of the Act.Referred Madhukar Sundelal Sheth v. S.K.laul (1992) 198 ITR 594 (Bom.) (HC).The order under section 269UD was not valid. The Appropriate Authority was directed to issue no objection certificate under sub-section (1) of section 269UL of the Act to the petitioner within four weeks of receiving a copy of this order. If there is no such authority, this order should be considered as a “no objection certificate” for the transfer.

Jugal Kishore Jajodia v. S. C. Prasad, Chief Engineer (2021)439 ITR 132 (Bom.)(HC)

S. 269UD : Purchase by Central Government of immoveable properties-Leasehold rights in property-Central Government in possession of property after expiry of lease-Central Government is Liable to pay Municipal taxes on property. [S. 269UD(1), Art.285, Mumbai Municipal Corporation Act, 1888, S. 139]

Court held that when the property is purchased by the Central Government as per section 269UD(1) of the Act the lease hold right in property is in possession of Central Government it is the liability of the Central Government to pay Municipality taxes on property. However under article 285(1) of the Constitution of India, the property of the Union, shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. Thus, the taxes and charges levied by the Mumbai Municipal Corporation on the suit premises would fall within the ambit of the taxes by a local authority, provided it was held that the suit premises were the property of the Union of India. The question whether the leasehold interest which the Union of India had acquired in the suit premises, by virtue of the provisions contained in section 269UD(1) of the Act qualified for exemption under article 285(1) of the Constitution of India, could not be examined in this proceeding, especially in the absence of the Municipal Corporation, which had levied the taxes.. Thus it was necessary to modulate the relief in such a way that the defendants got an opportunity to pursue their stand that the suit premises were exempt from payment of taxes, with the municipal authorities and in the event of failure to obtain a favourable order of exemption, direct the defendants to pay the municipal taxes and charges, as accumulated up to date, and continue to pay them as they fell due till the disposal of the suit.

Plaza Diamond Properties Pvt. Ltd. v. CCIT (2021) 435 ITR 595 (Bom.)(HC)

S. 270A : Penalty for under-Reporting and misreporting of income-Pendency of appeal before Commissioner (Appeals)-Order

imposing the penalty was not valid-The concerned Assessing Officer may take further steps in accordance with law after the appeal is disposed by CIT (A) as far as it relates to penalty provisions under Section 270A of the Act-Faceless Assessment Officer was directed to pay a sum of Rs 10,000 from his personal account to 'PM Care Fund'. [S. 144(C)(3), 246A, 275, Art. 226]

Assessment order was passed under Section 143(3) read with Section 144C(3) r.w.s 144B of the making certain additions to petitioner's income. Against the order the petitioner has filed appeal under Section 246A of the Act which was pending. The Assessing Officer levied the penalty u/s 270A of the Act. On writ it was submitted that by virtue of provisions of Section 275 of the Act, any order imposing penalty under Section 270A of the Act could be passed only when no appeal is filed under Section 246A of the Act. Allowing the petition the court held that despite acknowledging that an appeal has been filed and provisions of Section 275 requiring the penalty proceeding have to be kept in abeyance, the Faceess Assessing Officer has passed the order, levying the penalty. The Court directed the Faceless Assessment Officer to pay a sum of Rs. 10,000 from his personal account to 'PM Care Fund **'.** The court also held that the concerned officer may take further steps in accordance with law after the appeal is disposed by CIT (A) as far as it relates to penalty provisions under Section 270A of the Act. The court did not make any observations on the merits of the case. (WP No. 5555 of 2022 dt.6-5-2022)(AY. 2017-18)

Skoda Auto Volkswagen India Private Ltd. v. NFAC. (2022) 214 DTR 0281 / 327 CTR 0347 (Bom.)(HC)

S. 270AA : Immunity from imposition of penalty, etc-Application accepted the assessee cannot file an appeal or revision application-Application is rejected there is no bar-Matter remanded. [S. 246A, 264, 270AA(4), Art. 226]

The petitioner filed an application under section 270AA(4) of the Act for waiver of penalties. The application was rejected. The assessee filed a

revision application before Commissioner under section 264 of the Act. Commissioner rejected Petitioner's application on the ground that sub-section 6 of section 270(AA) specifically prohibits revisionary proceedings under section 264 of the Act against the order passed by Assessing Officer under section 270(AA)(4) of the Act. On writ the Court held that :

where an assessee makes an application under section 270AA(1) and such an application has been accepted under section 270AA(4), assessee cannot file an appeal under section 246A or an application for revision under section 264 against order of assessment or reassessment passed under section 143(3) or section 147. However, this does not provide for any bar or prohibition against assessee challenging an order passed by the Assessing Officer, rejecting its application made under section 270AA(1) of the Act. Order of Commissioner was set aside and directed to decide the matter in accordance with law. (AY. 2017-18)

Haren Textiles (P.) Ltd. v. PCIT (2021) 206 DTR 465 / 323 CTR 14 / 284 Taxman 58 (Bom.)(HC)

S. 271(1)(c) : Penalty-Concealment-Inaccurate particulars-Mistake committed in calculation-Non-Resident-Peak amount offered on account of funds lying in the bank accounts held by JWL and SF with HSBC Bank Zurich-Revised return filed before issue of notice u/s 148 of the Act which was accepted without making addition-Deletion of penalty is held to be valid. [S. 139, 143(3), 148]

The assessee was non-resident. The assessee had filed original return. Thereafter revised the return before receipt of notice u/s 148 of the Act offering the peak amount on account of funds lying in the bank accounts held by JWL and SF with HSBC Bank Zurich. The second revised return was filed showing the additional income. The second revised return was accepted by the Revenue without making any additions. The AO levied penalty of 200% of the tax sought to be levied on the amount declared subsequent to filing of original return. On appeal the CIT(A) deleted the penalty on the ground that the assessee has suo-moto and voluntarily

offered additional income to tax and that income which was offered for tax by the assessee in the revised return of income was in any case not chargeable to tax in India. On appeal by the Revenue the Tribunal held that there was mistake in calculating the peak in the revised return which was revised once again. The revised return was accepted without making any addition to income offered. Tribunal affirmed the order of CIT(A). On appeal by the Revenue High Court affirmed the order of the Tribunal. Referred Mak Data (P.) Ltd. v. CIT (2013) 358 ITR 593 (SC) (AY. 2007-08)

CIT(IT) v. Ashutosh Bhatt (2022) 287 Taxman 436/ 217 DTR 381 / 329 CTR 541 (Bom.)(HC)

S. 271(1)(c) : Penalty-Concealment-Cash credits-Recording of satisfaction-Show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income-Deletion of penalty is held to be valid. [S. 274]

Allowing the appeal the Court held that where show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income the levy of penalty is not valid. Followed Mohd. Farhan A. Shaikh v. Dy.CIT (2021) 434 ITR 1/ 280 Taxman 334 (Bom.)(HC).(FB)

Ganga Iron & Steel Trading Co. v. CIT (2022) 286 Taxman 21 (Bom.)(HC)

S. 271(1)(c) : Penalty-Concealment-Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act,-Order is bad in law-Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness. [S. 274]

While dealing with the issue of non-striking off of the irrelevant part while issuing Notice under section 271(1)(c) of the Income-tax Act, 1961 the

Court held that the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness. CIT v. Kaushalya (Smt.) (1995] 216 ITR 660 (Bom.)(HC) distinguished Ventura Textiles Ltd. v. CIT [2020] 426 ITR 478 (Bom.)(HC) distinguished. Dilip N. Shroff v. JCIT [2007] 291 ITR 519 (SC) followed. (AY. 2006-07, 2007-08) ITA No. 51 & 57 of 2012 dt. 11-3-2021.

Mohd. Farhan A. Shaikh v. ACIT (2021) 434 ITR 1 / 200 DTR 65/ 320 CTR 26/ 280 Taxman 334 / 125 taxmann.com 253 (Panji) (FB) (Bom.) (HC)

Editorial : Followed in Shrivallabh V. Shete v. DCIT ITA No.538-39/PUN/2018 dated May 18, 2021, Vijay Mohan Harde v. ACIT ITA No.588/PUN/2017 dated May 17, 2021, and ACIT v. Shri Vithalrao Rangnathrao Ambarwadikar ITA No.1547/PUN/2017 dated April 26, 2021

S. 271(1)(c) : Penalty-Concealment-Not striking off the irrelevant limb-Levy of penalty is held to be bad in law. [S.274].

Where in the notice issued under section 274 of the Act, the irrelevant limb (concealment of income or furnishing of inaccurate particulars of income) was not struck off, the penalty proceedings were bad in law and were to be quashed.

PCIT v. Goa Dourado Promotions Pvt. Ltd. (2021) 433 ITR 268 (Panji) (Bom.) (HC)

S. 271(1)(c) : Penalty-Concealment-Not striking off the irrelevant limb-Penalty is held to be bad in law. [S. 274]

Dismissing the appeal of the revenue the Court held that where in the notice issued under section 274 of the Act, the irrelevant limb (concealment of income or furnishing of inaccurate particulars of income) was not struck off, the penalty proceedings were bad in law and were to be quashed.

PCIT v. New Era Sova Mine (2021) 433 ITR 249 (Panji) (Bom.) (HC)

PCIT v. New Ear Vaglar Mine (2021) 433 ITR 249 (Panji) (Bom.) (HC)

PCIT v. New Era Keli Mine (2021) 433 ITR 249 (Panji) (Bom.) (HC)

S. 271(1)(c) : Penalty-Concealment-Not recording satisfaction-Not striking irrelevant portion in the notice-Levy of penalty is not valid. [S. 260A]

Dismissing the appeal of the revenue the Court held that the Assessing Officer has not recorded satisfaction and even not-striking irrelevant portion in the notice, hence the deletion of penalty is held to be valid. Relied on CIT v. Shri Samson Perinchery (2017 392 ITR 4 (Bom.) (HC) Pr. CIT v. New Era Sova Mine (2020) 420 ITR 376 (Bom.) (HC)

PCIT v. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom.) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 277 Taxman 595 (SC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Compounding application-Failure to dispose the compounding application by the Principal Commissioner-Directed the Principal Commissioner to dispose the pending compounding application with in the period of three months from to day and not later than 27 th February 2023. [S. 204, 278B, 279(2), Art. 226]

The prosecution was launched against the company and its directors for failure to deposit tax deducted at source as per obligation u/s 204 of the Act. The petitioners have filed an application for compounding which is pending before the appropriate authority since 4th January, 2020, on which no action was taken till date neither any reasons communicated to the petitioners. In the meantime the Magistrate Court started proceedings and issued bailable warrants. The petitioners filed writ petition against the Revenue for failure to dispose the pending compounding application.

Allowing the petition the honourable Court directed the Principal Commissioner to dispose the pending compounding application with in the period of three months from to day and not later than 27th February 2023. (WP(L) No. 35424 of 2022 dt. 28th November, 2022)

Hemant Lalwani v. ITO (Bom.)(HC) www.itatonline.org

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Bogus purchase-Estimate of 12.5 per cent of Bogus Purchase upheld by CIT(A) and ITAT-No penalty was levied-High Court held that prima facie ingredients of offenses are satisfied-Assessee has wilfully and intentionally evaded his tax liability-Writ petition to quash the prosecution was dismissed. [S. 148, 279(1), Art. 226 Code of Criminal Procedure, 1973, S. 482]

The petitioner filed writ petition challenging the sanction of prosecution against the petitioner under section 276(1) of the Income-tax Act, 1961. Dismissing the petition the Hon'ble High Court held that where the Ld. Assessing Officer made an addition of 12.5 percent of purchases as bogus purchases and the same was upheld by the CIT(A) and ITAT. The Petitioner has wilfully and intentionally evaded his tax liability. The *prima facie* ingredients of the offense under section 276C(1) of the Income-tax Act, 1961 are satisfied. Writ petition to quash the prosecution was dismissed. (C.WP. No. 2698 of 2021 dt. December 07, 2021)

Nayan Jayantilal Balu v. UOI (Bom.)(HC) www.itatonline.org

S. 279 : Offences and prosecutions - Sanction - Chief Commissioner - Commissioner - Compounding can be done beyond a period of 12 months - Guidelines contrary to the Act - Rejection of Compounding Application quashed. [S. 192, Art. 226]

There was delay in depositing the tax deducted at source on account of TDS deducted from the salaries of the employees, however the tax was paid voluntarily before issue of show cause notice. The assessee moved an application for compounding of application, which was rejected relying on

CBDT F. No. 285/ 35/ 2013-IT (Inv)/108 dated June 14, 2019 on the ground that the application was filed after 12 months. The assessee filed writ before Bombay High Court. Allowing the petition, the Court held that it was held that the limitation imposed by Guidelines are contrary to the provisions of sub-section (2) of Section 279 of the Income-tax Act, 1961. The order rejection compounding application was quashed. (WP No. 429 of 2022 November 28, 2022)

Footcandles Film Pvt. Ltd. v. ITO (2023) 146 taxmann.com 304 (Bom.)(HC)

S. 281 : Certain transfers to be void-Natural justice-Order passed without giving an opportunity of hearing-Bad in law-Tax recovery Officer has no jurisdiction to examine whether the transfer is void-Order was quashed. [S. 222, Rule 11 of the Second Schedule, Art. 226, Transfer of Property Act, 1882, S.53]

The petitioner challenged the order passed by the Tax Recovery Officer under section 281 of the Act. Allowing the petition the Court held that the order was passed without giving an opportunity of hearing hence the order is bad in law. The Court also held that the Tax Recovery Officer cannot examine whether the transfer is void, the Department being in the position of creditor will have to file a suit for a declaration that the transaction of transfer is void under section 281 of the Act. The Court followed Tax Recovery Officer v. Gangadhar Vishwanath Ranade (1998) 234 ITR 188/ 100 Taxman 236(SC) / Tax Recovery Officer v. Gangadhar Vishwanath Ranade (2007) 294 ITR 614/ (2008) 170 Taxman 289 (Bom.)(HC). Writ petition was allowed. (WP No. 3815 of 2021 dt 19-7-2022)

Nitn Nagarkar v. ITO (Bom.)(HC), www.itatonline.org.

The Direct Tax Vivad Se Vishwas Act, 2020, (2020) 422 ITR 121(St)

S. 2(1)(a)(ii) : Appellant-Locus standi-Rejection of application on the ground that there is no clarity of Legal Heirs-Appeal was filed beyond limitation period-Rejection of application was held to be not valid-Directed the Designated Authority to accept the declaration. [S. 3, 4(1) IT Act, S. 132, Art. 226]

Application under the DTSV of the Act was rejected on the ground that there is no clarity of legal Heirs and the appeal was filed beyond limitation period. On writ allowing the petition the Court held that time for filing the appeals against the order of CIT(A) had not expired on the date of filing of declaration. As regards the Legal Heir who desires to put an end or close to all disputes between the deceased and tax Authorities. The Rejection of application was not valid. The Court also observed that the order of the Court cannot be used by petitioner in any proceedings between petitioner and the legal heirs of Late Kalyani Bhagat too lay claim to any estate of deceased Kalyani Bhagt if there are any such proceedings /disputes pending or may arise in future. (AY. 1983-84 to 1989-90, 2006-07)

Jayantilal K. Bhagat v. ACIT (2022) 445 ITR 515 / 324 CTR 632 / 210 DTR 81 (Bom.)(HC)

S. 2(1)(a)(i) : Person-Pendency of appeal-Application for condonation of delay was pending before CIT(A)-Notice of hearing was issued-Rejection of application on the ground that the appeal was not admitted was held to be not justified-Order of rejection set aside. [S. 2(1)(a)(n), IT Act, S. 246A, 250, Art. 226]

Application of the petitioner was rejected on the ground that delay in filing the appeal was not condoned. On writ allowing the petition the Court held that the CIT(A) himself has addressed a letter asking the petitioner to furnish ground-wise submissions on the grounds of appeal if he was not opting for the VSV Scheme, 2020. This itself would also mean that the delay has been condoned. The order of rejection was set aside. The Designated

Authority was directed to process the forms filed by the petitioner. (AY. 2017-18)

Stride Multimedia Pvt. Ltd. v. ACIT (2021) 439 ITR 141 / (2022) 284 Taxman 684 (Bom.)(HC)

S. 2(1)(a)(i) : Appellant-Pendency of appeal-Condonation of delay-Order of condonation of delay relates back to the filing of an appeal-Rejection of application was held to be not valid. [S. 3, 9, Art. 226]

The application of the petitioner under DTVS Act was rejected on the ground that there is no appeal pending of the petitioner. On Writ the Court held that in view of the Department's own stand that the delay in filing the appeal before CIT (A) has been condoned. The Court held that it is a matter of first principles that the order of condonation of delay relates to the appeal. Court directed the revenue to accept the application of the petitioner as per the provisions of section 3 of the DTVSV Act.

Karan Ventakeshwara Associates v. ITO (2021) 204 DTR 310 / 322 CTR 148 (Bom.)(HC)

S. 2(1)(a)(ii) : Appellant-Service of order after one year-Rejection of application was set aside. [S. 148, 156, 282, Art. 226]

Allowing the petition the Court held that the service of the order ought to have been effected by delivering or transmitting a copy thereof in the manner prescribed under section 282 of the 1961 Act which had not been done until December 15, 2020. The assessment order dated December 22, 2019, had not been served upon the assessee until he obtained a copy on December 15, 2020 and the assessee could not file an appeal against it before the specified date of January 31, 2020 for no fault of his. In such circumstances, the assessee would fall within the term appellant under section 2(1)(a)(ii) of the 2020 Act. Circular No. 9 of 2020, dated April 22, 2020 (2020) 422 ITR (St.) 131. (AY.2012-13)

Ashok G. Jhaveri v. UOI(2021) 438 ITR 652 / (2022) 211 DTR 288/ 325 CTR 302 (Bom.)(HC)

S. 2(f) : Disputed tax-Amount payable by declarant-Interest-Interest granted under section 244A cannot be recovered by revenue authority under Direct Tax Vivad se Vishwas Act, 2020, by adding same to amount of disputed tax payable by assessee [S. 3, ITACT, S. 234D, 244A, Art. 226]

While calculating the disputed tax, the revenue directed the petitioner to add the amount of interest paid under section 244A of the Act. On writ allowing the petition the court held that interest granted under section 244A cannot be recovered by revenue authority under Direct Tax Vivad se Vishwas Act, 2020, by adding same to amount of disputed tax payable by assessee. Revenue was directed to accept the declaration filed by the petitioner. (AY. 2010-11)

Cooperative Rabobank U A v. CIT(IT) (2022) 284 Taxman 40 (Bom.)(HC)

S. 2(1)(j) : Disputed tax-Tax arrear-Amount payable by the assessee could not be increased by withdrawing interest already granted under section 244A of the Act. [S. 2(1)(o), 3, 7, Income-tax, S. 244A, Art. 226]

The petitioner filed the declaration showing the amount refundable to the petitioner. The Designated Authority reduced the amount of refund adjusting the interest granted under section 244A of the Act. On writ allowing the petition the Court held that the amount payable by the assessee could not be increased by withdrawing interest already granted under section 244A of the Act.

Mantelone Investment Ltd. v. CIT (2021) 323 CTR 129 / 207 DTR 79 / (2022) 440 ITR 111 (Bom.)(HC).

S. 2(b) : Appellate forum-Disputed Tax-Pendency of appeal-Declaration cannot be rejected on ground that assessee had offered an amount for taxation-The rejection of the declaration under the 2020 Act was not valid. [S. 2(j)]

The declaration was rejected on the online portal without giving any opportunity to the assessee observing that there was no disputed tax in the case of the declarant, as the declarant had himself filed a return reflecting the income. On writ allowing the petition the court held that the Department did not dispute that an appeal had been filed by the assessee before the appellate forum. There existed a dispute as referred to under the 2020 Act and the Rules. In such a scenario, the Department's contention that the assessee had offered the income and as such, the tax thereon could not be considered disputed tax, would not align itself with the object and the purpose underlying the bringing in of the 2020 Act. The rejection of the declaration under the 2020 Act was not valid. (AY. 2014-15)

Govindrajulu Naidu v. PCIT (2021) 435 ITR 703 / 201 DTR 241 / 320 CTR 673 / 280 Taxman 392 (Bom.)(HC)

S. 3 : Amount payable by declarant-Credit for tax paid under Income Declaration Scheme, 2016-Denial of credit is held to be not valid-Directed the Revenue to give credit and rectify Form No. 3 issued under DTVSV Act with DTVSV rules. [Income Declaration Scheme, 2016, S. 183, 184, 185, 191, Art. 226]

The petitioner made application under the Direct Tax Vivad Se Vishwas Act 2020 (DTSV Act). The appeal of the petitioner was pending before CIT(A) for the assessment year. The issue involved in the appeal was the Revenue has not given credit for amount paid under Income Declaration Scheme, 2016. While arriving at the amount payable Designated Authority did not give credit to the amount paid under IDS. The petitioner challenged the legality and validity of the refusal by the Revenue to adjust / give credit to the amount paid by the petitioner under the Income Declaration Scheme, 2016. Allowing the petition the Court held that, Sub-Section (3) of Section 187 of IDS also categorically provides if the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under Section 183 on or before the dates specified in sub-Section 1, the declaration filed

by him shall be deemed never to have been made under the Scheme. This would mean that the declaration will be non-est. The Revenue cannot retain any amounts paid under a declaration which contemplated under the Scheme is deemed never to have been made. The Scheme does not provide for Revenue to retain the tax so paid in respect of a declaration which is void and non-est. Therefore, the provision of Section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid and accordingly the retention of the tax by Revenue is illegal. The Revenue was directed to give credit and rectify Form No. 3 issued under DTVSV Act with DTVSV rules. Referred Hemlatha Gargya v. CIT (2003) 9 SCC 510, Sajan Enterprises Miraj v. CIT, WP No. 4132 of 1999 dt.13-6-2015 (SC) (UR), Patchala Seethramaiah v. CIT, 1999 SCC Online AP 495 (WP No. 844 of 2021 dt. 11.08.21) (AY. 2016-2017)

Pinnacle Vastunirman Pvt. Ltd. v. UOI (2021) 438 ITR 27 / 206 DTR 227 / 323 CTR 159 (Bom.) (HC)

S. 3 : Amount payable by declarant-Filing of declaration and particulars to be furnished-Appeal of assessee and department appeal-Option is with the declarant to decide which matter to be settled-Clarification issued by the CBDT is binding on the department-The Department was directed to accept the declaration filed by the assessee only in respect of appeal of assessee. [S. 4, Art. 226]

The petitioner has filed declaration to settle only the dispute in the appeal filed by the petitioner and not appeal filed by the department. The Designated Authority calculated the tax payable considering the amount in dispute of the appeal of the revenue. On writ the Court held that the option is with the declarant to decide which matter to be settled. Clarification issued by the CBDT is binding on the department. The Department was directed to accept the declaration filed by the assessee only in respect of appeal of assessee. (AY. 2006-07)

Rishab Steel House v. ACIT (2021) 206 DTR 205 / 322 CTR 857 / (2022) 440 ITR 223 s (Bom.) (HC)

S. 3 : Disputed tax-Disputed arrears-Interest-Department appeal-Matter remanded to Assessing Officer-Designated Authority demanding 100 per Cent of Disputed tax as payable-Held to be not sustainable. [S. 2(1)(j), 2(1)(j)(o), 4, 5, 6, IT Act, 2(43), 234D, 244A (3), Art. 226]

Court held that the appeal before the Tribunal was not filed by the assessee against the order of Commissioner (Appeals), but by the Department which went to the Tribunal against the order of the Commissioner (Appeals). The court sent the matter back to the Tribunal and what was before the Tribunal was a matter by the Department. Factually as well as in law it was the Department's matter which was revived. The pending appeal being a Departmental appeal the first proviso to section 3 of the 2020 Act would be applicable and only 50 per cent. of the disputed tax could be payable. Followed Co-Operative Rabobank U. A. v. CIT (IT) (2021)436 ITR 459 (Bom.) (HC). Court also observed that from a conjoint reading of sections 2(1)(j)(A), (o)(i), 3, 5 and 6 of the 2020 Act, it was clear that there is no provision in the 2020 Act, which authorises recovery of interest paid earlier by the Department under section 244A of the 1961 Act as disputed tax. Therefore, there being no statutory mandate for the Designated Authority to recover interest as disputed tax by adding it to the amount of disputed tax in the manner sought to be done the addition of Rs. 7,75,272 to the disputed tax in form 3 was bad in law. The court quashed form 3 issued by the Designated Authority for assessment year 2003-04 and directed the Designated Authority to issue a fresh form 3 to the assessee determining the amount of disputed tax in accordance with the judgment. The Court also observed that while section 6 of the 2020 Act does not permit the Designated Authority to charge interest on tax arrears as defined under the 2020 Act, it may not be correct to say that there is a complete prohibition on recovery, as the restraint to institute proceedings

is only in respect of an offence but not for recovery of interest on refund concerned in the present matter. The court observed that it was not necessary to go into whether the Department could have recourse to section 244A(3) of the 1961 Act as contended by the assessee or section 234D of the 1961 Act as contended by the Department, as it was always open for the Department to take steps as per law.(AY.2003-04)

Co-Operative Rabobank U. A. v. CIT(IT) (2021) 437 ITR 639 / 205 DTR 113/ 322 CTR 257/ (2022) 284 Taxman 175 (Bom.)(HC)

S. 3 : Amount payable by declarant-Tribunal remanding the matter to Assessing Officer-High Court remanding the matter to Tribunal-Entitle to lower rate of disputed tax [S. 5, IT Act, S. 253, Art. 226]

On writ the High Court directed the Tribunal to decide the matter afresh. Meanwhile with the enactment of the Direct Tax Vivad Se Vishwas Act, 2020 on March 17, 2020 ([2020] 422 ITR (St.) 121), the assessee made declaration in form 1 along with an undertaking in form 2 according to the provisions of the 2020 Act. The assessee indicated an amount payable under the 2020 Act as Rs. 7,50,014 which was 50 per cent. of the disputed tax. On January 28, 2021, form 3 was issued by the designated authority indicating the amount payable as Rs. 15,00,029 which was 100 per cent. of the disputed tax. On a writ the Court held that the whole process resurrected under the orders of the High Court was not the proceeding in the Tribunal by the assessee but of the Revenue preferred under section 253 of the Act where the Revenue was the appellant. May be the appeal by the Revenue is revived at the instance of the assessee because of its proceedings in the High Court, but that would by no stretch of imagination make the appeal before the Tribunal an appeal by the assessee under section 253 of the Act. Hence the first proviso to section 3 of the 2020 Act would become applicable and, accordingly, the amount payable by the assessee would be 50 per cent. of the amount, viz., 50 per cent. of the disputed tax. (AY. 2002-03)

Cooperative Rabobank U. A. v. CIT(IT) (2021) 436 ITR 459 / 203 CTR 281 / 321 CTR 352 / 283 Taxman 22 (Bom.)(HC)

S. 3 : Amount payable by declarant-Search cases-Enhanced rate of tax-Assessment-Income of any other person-No evidence that assessee was involved in alleged bogus transaction-Enhanced rate of tax could not be levied. [S.4, 5]

Held, that no search had been initiated in the case of the assessee. There was no allegation that any incriminating material belonging to the assessee was obtained in the course of the search. By order dated January 26, 2021, the designated authority, passed an order in form 3 under section 5(1) of the 2020 Act read with rule 4 of the 2020 Rules, determining the tax payable by the assessee to be Rs. 2,57,67,714 being 125 per cent. of the disputed tax as against Rs. 2,02,69,581 being 100 per cent. of the disputed tax declared by the assessee. The order was not valid. Circular No 21 of 2020 (2020) 429 ITR 1 (St). (AY. 2015-16)

Bhupendra Harilal Mehta v. PCIT (2021) 435 ITR 220 / 201 DTR 89 / 320 CTR 483 (Bom.)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Pendency of appeal-Condonation of delay-Appeal admitted prior to January 2020-Appeal pending-Directed the respondent to process the declaration. [S. 2(1)(a), Art. 226]

The assessee on April 7, 2019, had filed an appeal challenging the assessment orders along with an application for condonation of delay. The declaration of the assessee was rejected. On writ allowing the petition the Court held that once the delay has been condoned in filing appeal, the declaration under section 4 of the Direct Tax Vivad Se Vishwas Act, 2020, prior to January 31, 2020, will fall in the category of appeal pending on the specified date.Hence the appeal was pending within the meaning of the Direct Tax Vivad Se Vishwas Act. The rejection of the declaration filed by the assessee under section 4 of the Direct Tax Vivad Se Vishwas Act,

2020 was bad in law. Respondents were directed to process the declaration. (AY.2011-12 to 2013-14, 2015-16 and 2017-18)

Om Shivam Buildcon Pvt. Ltd. v. UOI (2022) 441 ITR 655 (Bom.) (HC)

S. 4 : Filing of declaration and particulars to be furnished-Tax arrears-Interest not excluded-Charge of interests-Rejection of declaration was held to be not valid-Delay was condoned and communication was issued-Rejection of declaration was held to be erroneous. [IT-ACT, S. 234A, 234B, 234C, Art. 226]

The assessee has filed the declaration for settling the levy of interests levied under section 234A, 234B and 234C of the Act. There was delay in filing of the appeal however the delay was condoned. The declaration was rejected on the ground that the tax arrears does not include interest payable under the 1961 Act On writ the Court held that the assessee was eligible to file the declaration under the 2020 Act for the disputed interest that was charged under section 234A or section 234B or section 234C of the 1961 Act. There is no provision in the 2020 Act to exclude interest charged under sections 234A, 234B and 234C of the 1961 Act. The designated authority was, therefore, not correct in rejecting the declaration of the assessee. The delay was condoned by the CIT (A) hence the rejection order passed by the PCIT was bad in law and he was directed to process the declaration filed by the asseessee under the 2020 Act. (AY.2012-13)

Premlata Mohan Agarwal (Mrs.) v. PCIT (2021) 439 ITR 268 (Bom.) (HC)

S. 4 : Filing of declaration and particulars to be furnished-Pendency of appeal-No classification of appeals under the Act-Interpretation of CBDT Circular excluding appeals from orders under Section 143 (1)) of the Act-Portion of circular in conflict with provisions of statute Held to be not valid. [S. 143(1), Art. 226]

Allowing the petition the Court held that the answer to question No. 71 in the Circular No. 21 of 2020 (2020) 429 ITR 1 (St) tends to overreach the purpose and intendment underlying the provisions of the Act and the Rules and purports to exclude an otherwise eligible assessee on a ground and reason neither contained in nor reflected from the scheme. The answer to question No.71 in Circular No. 21 of 2020 purporting to exclude appeals against the orders under section 143(1)(a)(i) or (ii) is unsustainable and unacceptable. Held to be not valid. (AY. 2010-11)

Chandrakant Narayan Patkar Charitable Trust v. UOI (2021) 436 ITR 601 / 203 DTR 401 / 321 CTR 404 (Bom.)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Settlement of Disputes-The Designated Authority cannot reject the declaration filed under section 4(1) of the DTVSV Act, when the declarant's case does not fall under section 4(6) and in any of the disqualifications mentioned in section 9 of the said Act. [S. 4(1), 4(6),9, IT Act, S. 264, Art. 226]

Pending the application u/s 264 of the Act, the Petitioner preferred to settle the litigation under DTVSV Act, 2020. On filing the declaration u/s 4(1) of DTVSV Act, 2020, the Petitioner was asked to justify his claim that there is a 'disputed tax' when there is no 'disputed income' as per the relief sought in the applications filed u/s 264 of the Act. The Petitioner responded to the same and submitted that as per section 2 (1)(a)(v), an assessee whose application is pending on the specified date is an 'appellant' for the purpose of DTVSV Act, 2020. The disputed tax in such cases is defined in section 2(1)(j)(F) as the amount of tax payable by the appellant, if such application for revision was not accepted. In the Petitioner's case there are 'tax arrears' as per the definition in section 2(1)(o) of the DTVSV Act, 2020. Thus, the Petitioner determined the amount payable u/s 3(a) of DTVSV Act, 2020. The Designated Authority did not appreciate the said explanation of the Petitioner and rejected the declaration without assigning any reason for the same. On writ the Court held that The Designated Authority cannot reject

the declaration filed under section 4(1) of the DTVSV Act, when the declarant's case does not fall under section 4(6) and in any of the disqualifications mentioned in section 9 of the said Act. High Court directed the Designated Authority to act upon the declaration of the Petitioner in Form 1 as per law within a period of two weeks. (WP No: 611 dt 09.04.2021) (AY. 1987-88 to 1998-99)

Sadruddin Tejani v. ITO (2021) 434 ITR 474 / 320 CTR 121 / 200 DTR 353 / (Bom.)(HC) www.itatonline.org

S. 5 : Time and manner of payment-Declaration accepted and Form 3 issued specifying demand-Revocation of Form 3 without affording adequate opportunity to be heard-Principles of natural justice violated-Revocation of Form 3 is held to be not valid. [Art. 226]

Allowing the petition the Court held that the Department had sought to withdraw the benefit granted to the assessee under the Act entailing adverse consequences without affording the assessee sufficient opportunity of hearing or making submissions. Considering that form 3 had already been issued on the declarations and undertaking filed by the assessee, any action thereon entailing adverse consequences, ought to have afforded the assessee with a fair and reasonable opportunity to explain its case, which the Revenue had ex facie failed to offer. The order of revocation of form 3 was not valid. (AY. 2011-12)

Mahendra Corporation v. PCIT (2021) 436 ITR 527 / 321 CTR 415 / 282 Taxman 150 / 203 DTR 425 (Bom.)(HC)

S. 9(a)(ii) : Act not to apply in certain cases-Tax arrear-Prosecution has been instituted on or before the date of filing of declaration-Wilful attempt to evade tax-Tax deduction at source-Prosecution-Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 (2020) 429 ITR 1 (St) would stand set aside and quashed. [Art. 14, Art. 226]

The petitioner sought a declaration that the clarification given by CBDT to question No.73 vide circular No. 21 of 2020 dated December 04, 2020 is violative of Article 14 of the Constitution of India and thus is arbitrary and ultra vires to the provisions of the Direct Tax Vivad se Vishwas Act, 2020 (**VSVA**) and the Direct Tax Vivad se Vishwas Rules, 2020.

For the assessment year 2015-16, petitioner/ its subsidiary (before merger) had filed return of income under section 139(1) of the Act. The balance of self-assessment tax after deduction of TDS was paid by the petitioner after the due date for filing of the return.

The department issued notice to the petitioner on to show cause as to why prosecution should not be initiated against the petitioner under section 276-C(2) of the Act for alleged wilful attempt to evade tax on account of delayed payment of the balance amount of the self-assessment tax. Subsequently After the due process of law, instituted a case in the 38th Metropolitan Magistrate's Court at Ballard Pier.

The Ld. AO made certain disallowances towards workmen's compensation and other related expenses for the AY 2015-16 vide order under section 143(3) of the Act. The disallowances were upheld by the CIT(A). The Petitioner preferred an appeal before the ITAT and the matter was pending before the ITAT.

The CBDT issued impugned circular No.21/2020 dated 04.12.2020 giving further clarifications in respect of the VSVA. Question No.73 contained therein is when in the case of a tax payer prosecution has been initiated for a particular assessment year, with respect to an issue which is not in appeal, would he be eligible to file declaration for issues which are in appeal for the said assessment.

The Petitioner is prosecuted for delay in payment of self-assessment tax however is ineligible to settle a matter under VSVA for another issue.

Court held that from a reading of the statement of objects and reasons what is deducible is that the purpose for introduction of the Vivad se Vishwas Bill was to reduce tax disputes pertaining to direct taxes.

The exclusion referred to in section 9(a)(ii) of VSVA is in respect of tax arrear relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Thus, what section 9(a)(ii) postulates is that the provisions of the Vivad se Vishwas Act would not apply in respect of tax arrear relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Therefore, the prosecution must be in respect of tax arrear relating to an assessment year.

The interpretation given by respondent No.2/CBDT in the answer to question No.73 is not in alignment with the legislative intent which has got manifested in the form of section 9(a)(ii) of VSVA.

To hold that an assessee would not be eligible to file a declaration because there is a pending prosecution for the assessment year in question on an issue unrelated to tax arrear would defeat the very purport and object of the Vivad se Vishwas Act. Such an interpretation which abridges the scope of settlement as contemplated under the Vivad se Vishwas Act cannot therefore be accepted.

Therefore, Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 would stand set aside and quashed. (AY. 2015-16) (WP No. 79 of 2021 dated March 25, 2021)

Macrotech Developers Limited v. PCIT (2021) 434 ITR 131 / 200 DTR 121 / 320 CTR 79 / 280 Taxman 37 (Bom.) HC)

S. 9(c) : Act not to apply in certain cases-Disqualification of persons under prosecution-Named in charge sheet and first information report-Denial of benefit is held to be valid. [Indian Penal Code, 1860, S 120B, 420, Prevention of Corruption Act, 1988. [S. 131(1)(d), 132(2), Art. 226]

The assessee's declarations under the 2020 Act were rejected on the grounds that the assessee was charged with having conspired to commit offences under section 120B of the Indian Penal Code, 1860, conspiracy to commit offences was in respect of cheating under section 420 of the Code 1860 and offences under section 13(1)(d) and section 13(2) of the Prevention of Corruption Act, 1988. On a writ dismissing the petition, the Court held that (i) that in both the cases, under sections 120B and 420 of the 1860 Code and also for offences under section 13(1)(d) and section 13(2) of the 1988 Act prosecution was instituted against the assessee and first information report had been duly lodged. In both cases the assessee was charged with having conspired to commit offences under the 1988 Act casting a shadow on the monies sought to be offered to tax. The pendency of criminal proceedings against the assessee was an admitted position. The contention of the assessee that despite the pendency of these two criminal proceedings, it would not fall within the ambit of section 9(c) of the 2020 Act and that since in the first proceeding prosecution had not yet been instituted and in the second proceeding it was not punishable for offences under the 1988 Act were misconceived and baseless. The charge against the assessee under the 1988 Act would have to be read as composite whole as framed and could not be segregated. The assessee having been charged with conspiracy to have committed acts of corruption which were punishable under the 1988 Act ex facie, there was a shadow of illegality on the money sought to be offered to tax. Therefore, the assessee was not eligible to the benefit under the 2020 Act and its declarations were rightly rejected.

(ii) That even if it was assumed that the designated authority was required to delve into or consider the issue of applicability of the 1988 Act, it was trite law that there could be abettors or conspirators to the offence under section 13 of the 1988 Act who might be private persons.

The Court held that the benefits granted by the Direct Tax Vivad Se Vishwas Act, 2020, by legislative policy are not available to persons identified in section 9(c) of the Act. The purpose and intent behind this provision is clear and unambiguous that the Act would only apply to monies acquired by legal means and not to monies generated from socio-economic offences and to ensure that the Act which is a beneficial legislation, is not utilised for regularising or seeking benefits qua tainted monies or monies which fall under the shadow of a socio-economic offence. There was a clear purpose and intent to the provisions of section 9(c) which is to ensure that revenue which has been clogged and the income which is being offered to tax is not shadowed by a likelihood of the income having arisen from socio-economic crimes for which prosecution has been instituted. The 2020 Act does not and cannot be read as providing a window to "regularise" tainted money.

Reliance Industries Ltd. v. CCIT (2022) 441 ITR 434 / 209 DTR 51 / 324 CTR. 1 / 285 Taxman 610 (Bom.)(HC)

Editorial : SLP of assessee dismissed, Reliance Industries Ltd. v. Chief CIT (2022) 443 ITR 358 (St) / 287 Taxman 223 / 114 CCH 34 (SC)

Income Declaration Scheme, 2016-Finance Act, 2016, (2016) 384 ITR 87 (St)

S. 184 : Charge of tax and surcharge-Payment of tax-Credit for advance tax-Credit for advance tax must be given-Directed the respondents to issue certificate as required by Rule 4(5). [S. 183, 185 IT Act, S. 139, 199, 210, 219, Art. 226]

The advance tax paid credit was not given to the declarant. Petitioner filed writ before the High Court. Allowing the petition the Court held that overriding effect of sections 184 and 185 of the Act of 2016 is confined to

the rate at which the tax is to be imposed on the undisclosed income, surcharge to be paid thereon and the penalty. The substance of the matter, especially the fact that the advance payment made by the declarant retains the character of tax, however, cannot be lost sight of. The assessee shall be entitled to and given credit for the advance tax already paid by the assessee and the respondent No. 1 shall not refuse to issue Form No. 4 on the said count. Court also observed that there is no sustainable ground to make a distinction between TDS and advance tax for the purpose of credit; there is no reason not to equate an advance tax with TDS for the purpose of the Income Declaration Scheme, 2016; if a TDS is entitled to credit, a fortiori advance tax must get the same dispensation. The Respondent was directed to issue certificate as required by Rule 4(5). (AY. 2011-12 to 2014-15)

Kamla Chandrasingh Kabali v. PCIT (2022) (2022) 443 ITR 148 / 211 DTR 1 / 286 Taxman 580 (Bom.)(HC)

Expenditure tax Act, 1987.

S. 21 : Revision-Notice-Notice can be issued only by Commissioner-Notice issued by Assistant Commissioner-Not Valid-Principles of natural justice-Principle of waiver cannot be invoked so as to confer jurisdiction.

Dismissing the appeal of the Revenue the Court held that the notice under section 21 of the Act was issued and signed by the Assistant Commissioner. As a consequence, the notice being without jurisdiction, all the proceedings subsequent thereto were without authority of law. They were not valid.

It is the settled position of law that the principle of waiver cannot be invoked so as to confer jurisdiction. (AY. 1991-92 to 1994-95, 1997-98,1998-99)

CIT v. Alcon Resort Holding Ltd. (2022) 448 ITR 127 (Bom.)(HC)

Securities Transaction Tax-Finance (No. 2) Act, 2004,

S. 98 : Securities Transaction tax-Short collection of tax-Interest and penalty-Purchase or sold through a broker registered with the stock exchange-Stock exchange was not liable to any interest and penalty. [S. 15, 99, 104, Securities Transaction Tax Rules, 2004, R. 3]

The Tribunal held that the STT is collected through a member broker under a particular client code. The client code is provided by the brokers and not by the stock exchange. Responsibility of the stock exchange is to ensure firstly that STT is collected as per s. 98, secondly, it has been determined in accordance with s. 99 read with r. 3 and Explanation thereto, and lastly, such STT collected from the purchaser or seller is credited to the Central Government as provided under s 100 Tribunal further held that the stock exchange can only ensure determination of the value of taxable securities transaction purchased and provided sold through a client code at the prescribed rate. However, there is no mechanism provided enabling the stock exchange to collect STT beyond the client code. If a broker had not taken any separate client code then the stock exchange cannot be held responsible. Such failure could not be ascribed to the stock exchange because the client codes were not provided by the stock exchange but by the member brokers. Dismissing the appeal of the revenue the Court held that under the statute stock exchange was not liable for any alleged short deduction of STT and therefore, no fault can be prescribed to the stock exchange and to hold the stock exchange to be in default for short collection of STT. (FY. 2005-06)

PCIT v. National Stock Exchange (2021) 323 CTR 1025 (Bom.) (HC)

Kar Vivad Samadhan Scheme, 1988

S. 88 : Tax arrear-Amount payable-Adjustment of refund was made as per request of the assessee-Not disclosed the truth and suppressed the communication-Writ petition was dismissed. [S. 245, Art. 226]

The petitioners application was rejected on the ground that there was no tax arrears payable by the assessee. The assessee filed the writ petition and contended that adjustment of the refund was illegal and without informing the assessee. Dismissing the petition the Court held that the petitioner has suppressed the communication addressed by the Chartered Accountant of the assessee, stating that the refund of tax be adjusted against the tax demand of the asessee firm. The Court observed that the conduct of the petitioner is suppressing a material fact intends to impede and prejudice the administration of justice. Judiciary is the bedrock and hand maid of orderly life and Civilized Society. Court referred the judgement of Apex Court in Sciemed Overseas Inc v. BOC India Ltd 2016 ALL SCR 370, S.P. Chengavaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. (1994) 1 SCC 1, Oswal Fats and Oils Ltd v. Additional (Administrator)Bareilly Division, Bareilly (2010) 4 SCC 728 Court held that one who comes before the Court must come with clean hands and unhealthy trend in filing of affidavits which are not truthful should be strongly discouraged. (AY. 1987-88)

Anand Nagar & Company v. CCIT (2022) 444 ITR 552 / 209 DTR 313 / 324 CTR 370 (Bom.)(HC)

Wealth-Tax Act, 1957

S. 2(ea) : Asset-Stock in trade-Urban land-Net wealth-Special Township and Tourism Project-Stock in trade-Not liable to wealth-tax-The aggregate value of debt owed by Respondent in respect of assets owned by Respondent have to be reduced from the aggregate value of asset belonging to Respondent. [S. 2(e)(a)(v), 2(m), Bombay Tenancy and Agricultural Lands Act, 1948, S. 63-IA(1)]

Respondent was developing a project in the name of "Mega City" spread over 600 acres of land at Panvel. The project was duly approved by State Government under the provisions of Special Township Development Scheme. The land was purchased in the financial year 2008-09 and 2009-10. In the financial statement of Respondent, the land was reflected as inventories, i.e., stock in trade. Therefore, Respondent did not take this land into account while computing net wealth under the Wealth Tax Act. According to Respondent, it was not an asset which is covered by Wealth Tax being stock in trade and excluded for 10 years from the date of acquisition. Notwithstanding the fact that Respondent had started preliminary work to develop a special township after proper approval of the Government and as per the sanction letter of State Government dated 9th August, 2007 Respondent was required to complete the work of development of special township within a period of 15 years, the Assessing Officer did not accept the contention of Respondent and held that any land which was acquired for industrial purpose, does not form part of stock in trade as the same remained unused for two years, and it will form part of wealth of Respondent. The Assessing Officer further held that Respondent was not a dealer in land who is engaged in business of buying and selling of land and the land acquired by Respondent can not be considered as an inventory. On appeal the CIT(A) held that the Assessing Officer has actually allowed all expenses incurred by Respondent as business expenses, which would mean Respondent was pursuing development work and hence land

in question would not fall within the definition of 'Urban Land' being stock in trade and business asset of Respondent. On appeal the Tribunal held that the explanation (1)(b) attached with Section 2(ea) of the Act clearly specified that any land held by assessee as stock in trade for a period of 10 years from the date of acquisition will not be included in the definition of 'Urban Land'. ITAT also held that as per Section 2(m) of Wealth Tax Act, while determining the wealth tax liability of Respondent, the aggregate value of debt owed by Respondent in respect of assets owned by Respondent have to be reduced from the aggregate value of asset belonging to Respondent. On appeal by the Revenue High Court affirmed the order of the Tribunal. (AY. 2010-11, 2011-12, 2012-13)

PCWT v. Valuable Properties Pvt. Ltd. (2022) 220 ITR 298 (Bom.)(HC)

S. 7 : Value of assets-Assets seized-Possession of revenue Authorities-Value of assets cannot be included in net wealth-The court directed that the Department shall forthwith release 85,617 grams of gold, jewellery, cash and other valuable articles as per the panchanama and hand it over to the petitioners being the legal heirs of the assessee. [S.7(1), IT Act, S.132]

On reference the Court held that the seizure of the gold had taken place on December 7, 1965, and from that date onwards the gold was in the custody of the Collector of Central Excise, Jaipur. The gold was not smuggled nor was it foreign marked gold. The gold was indigenous which the original assessee had acquired over a period of years and had kept with him for future security. The original assessee paid the penalty of Rs. 25,000 as directed under rule 126L(16) of the Gold Control Rules, 1962 (corresponding to section 74 of the Gold Control Act, 1968) for seeking return, release and investment of the seized gold in the Gold Bond Scheme. However, the gold was not released, nor invested till date thereby rendering the valuable right of the assessee completely infructuous. The original assessee would not be liable to wealth-tax assessment on the value

of the seized gold if the assessments were made on any date after October 20, 1965.The court directed that the Department shall forthwith release 85,617 grams of gold, jewellery, cash and other valuable articles as per the panchnama and hand it over to the petitioners being the legal heirs of the assessee.*(*AY. 1961-62 to 1975-76, 1979-80 to 1984-85, 1986-87 to 1993-94, 1994-95 and 1995-96, 1996-97 to 1998-99)

Nirajkumar N. Rungta v. CWT (2021) 435 ITR 179 / 201 DTR 289 / 320 CTR 289 (Bom.)(HC)

Interpretation of taxing statutes-Non obstante clause-Additional tax on distributed profits. [S. 2(22)(a), 115-O, Small Industries Development Bank of India Act, 1989, S. 29(2), 50]

Section 50 of the SIDBI Act contains *non obstante* clause giving overriding effect over provisions of Income-tax Act in respect of any income, profits, gains derived or any amount received by the company. It is well settled that a provision beginning with *non obstante* clause must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. A *non-obstante* clause is generally appended to a Section with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the *non-obstante* clause. It is equivalent to saying that despite the provisions of the Act mentioned in the *non-obstante* clause, the provision following it will have its full operation or the provisions embraced in the *non-obstante* clause will not be an impediment for the operation of the enactment of the provision in which the *non-obstante* clause occurs. But, the same principle cannot be applied, *ipso facto*, when one comes across two or more enactments containing similar *non-obstante* clauses operating in the same or similar direction. Relied on the Supreme Court in *Central Bank of India* v. *State of Kerala* [2009] 4 SCC 94 observed thus:-

"103. A *non obstante* clause is generally incorporated in a statute to give overriding effect to a particular section of the statute as a whole. While interpreting *non obstante* clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the *non-obstante* clause is used. This Rule of interpretation has been applied in several decisions.". (AY. 1997-98 to 2000-01)

Small Industries Development Bank of India v. CBDT (2022) 441 ITR 80 / 285 Taxman 113 / 209 DTR 171 / 324 CTR 317 (Bom.) (HC)

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019-Chapter-V of the Finance Act, 2019-Amnesty Scheme.

Clause 126 : Failure to deposit the tax with in stipulated time-Rejection of application is held to be justified. [Art. 226]

Petitioner could not deposit the tax due to pandemic arising out of COVID-19. Designated Authority rejected the application. On writ the Court held that writ court has no competence to add to or alter the terms of the scheme to enable the party, which had sought to avail the benefits of the scheme, to deposit the determined amount beyond the period as fixed by the respondent. Relied on UOI v. Charak Pharmaceuticals (India) Ltd. (2003)154 E.L.T. 354 (SC)

National Construction Company v. The Designated Committee under Sabka Vishwas Legacy Disputes Resolution Scheme, 2019 (2022) 326 CTR 799 / 213 DTR 423 (Bom.)(HC)

THANK YOU