Reported case laws of Honourable Mr. Justice M. S. Sonak, Bombay, High Court.

For the benefit of the Tax Professionals, the reported case laws are summarized section-wise for easy reference, by Ms. Neelam Jadhav, Advocate, KSA Legal Chamber, Research Team.

S. 2(22)(e): Deemed dividend – Shareholder – Advances to shareholder – Portuguese Civil Code – Companies Act – Concept of common ownership of assets by spouses under Portuguese Civil Code is not applicable – Order of Tribunal affirming the addition is affirmed. [S. 260A, Companies Act, 1956, 150, 152A, Portuguese Civil Code, 1867]

Held that the "beneficial owner of shares", "shareholder" and "member" in the company referred therein, shall only be the registered shareholder or registered beneficial owner of a share whose name is found in the register of members/shareholders of the company under section 150 or register of the beneficial owner under section 152A of the Companies Act, 1956. Clearly, the provisions of the Portuguese Civil Code could not create any right in a spouse, who is not a registered shareholder of the company, by operation of law, in relation to other shareholders of that company including her spouse, as the provisions of the Companies Act, 1956 exclusively regulate this relationship between the company and a shareholder. Under no circumstances would the provisions of the Civil Code confer or create an ownership right in the shares, of a company or give the right of voting, in proportion to the share in the capital of the company, to the other spouse. Accordingly, the provisions of clause (e) of section 2(22) of the 1961 Act, would, therefore, fully apply to the husband, who would be the owner of the entire 33 per cent. share in each of the companies with the entire voting power (which was more than 20 per cent. in such company), to the exclusion of the wife. Consequently, the submission that the wife of the spouse, married under the provisions of Portuguese Civil Code, by operation of law, would be entitled to the beneficial ownership of the shares of the husband was not tenable. Order of Tribunal is affirmed.(AY.2007-08, 2009-10 to 2012-13)

Dattaprasad Kamat v. ACIT (2023) 458 ITR 201 /153 taxmann.com 702 (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 /127 taxmann.com 354 (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. 10B: Export-oriented undertakings – Expansion of existing processing capacity – Eligible deduction. [S.10B(7), Industrial, (Development and Regulation) Act, 1951, S. 14]

Dismissing the appeal of the revenue the Court held that there is no requirement of law that there has to be separate permission for each unit. Just because the Government granted permission by amending the original permission letter it does not affect the eligibility for deduction under section 10B of the Act. (AY. 2006-07)

CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 1) (2020) 429 ITR 207 / 276 Taxman 90 / 196 DTR 377 / (2021) 318 CTR 38 (Bom.)(HC)

Editorial: Notice issued in SLP filed against order of High Court , CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (2021) 281 Taxman 297 / 283 Taxman 1/ 283 Taxman 6 (SC) / SLP dismissed, CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (2022)443 ITR 34 / 211 DTR 305/ 325 CTR 507/286 Taxman 221 (SC)

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

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

orders made by the CIT and ITAT are quashed and the registration held by the GIDC is ordered to be revived.

Goa Industrial Development Corporation v. CIT (2020) 421 ITR 676 / 187 DTR 175 / 313 CTR 589 / 271 Taxman 58 (Bom.) (HC)

S. 14A : Disallowance of expenditure – Exempt income – Onus to establish such proximity on department – Assessing Officer must give a clear finding with reference to the assessee's accounts of how expenditure related to exempt income. [S. 10(35), R.8D]

Dismissing the appeal of the revenue the Court held that Assessing Officer must give a clear finding with reference to the assessee's accounts how expenditure related to exempt income, there must be a proximate relationship between the expenditure and the exempt income and only then would a disallowance have to be effected. (AY.2009-10)

CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 2) (2020) 429 ITR 358 / (2021) 277 Taxman 6/ 207 DTR 381 / (2022) 324 CTR 524 (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 / 127 taxmann.com 354 (Bom.)(HC)

S. 14A: Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income earned. [R. 8D]

Dismissing the appeal of the revenue the Court held that Disallowance cannot exceed exempt income earned. Followed, Nirved Traders Pvt. Ltd. v. Dy.CIT (2020) 421 ITR 142 (Bom.)(HC). (AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 (2021) 277 Taxman 543 (Bom.)(HC)

S. 14A: Disallowance of expenditure – Exempt income – Tribunal justified in deleting the addition made by the Assessing Office. [S.10 (38), R.8D]

Dismissing the appeal of the revenue the Court held that the disallowance made by the assessee is reasonable hence the order of the Tribunal is affirmed. Relied on CIT v. Calcutta Knitewears (2014) 6 SCC 444. Referred ITO v. Daga Capital Management Capital Pvt Ltd (2009) 117 ITD 169 (SB) (Trib.) (AY. 2006-07)

CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 1) (2020) 429 ITR 207 / 276 Taxman 90 / 196 DTR 377 / (2021) 318 CTR 38 (Bom.) (HC)

Editorial : Notice issued in SLP filed against order of High Court , CIT v. Sociedade De Fomento Industrial Pvt. Ltd (2021) 281 Taxman 297 / 283 Taxman 1 / 283 Taxman 6 (SC)

S. 28(i) : Business income – Capital gains – Object of firm is to purchase and sell land – Profit from purchase and sale of land assessable as business income. [S. 45]

Dismissing the appeal the Court held that the business of the assessee very specifically included buying and selling properties situated in various places in Goa either wholly or in plots. Considering the wide phraseology employed, it was obvious that the business of the assessee included buying and selling even agricultural properties. Therefore, this was not a case of sale of a solitary property, by way of a one off transaction. The gains from sale of land were assessable as business income. (AY...2007-08)

Afonso Real Estate Developers v. CIT (2020) 425 ITR 153 / 271 Taxman 40 (Bom.)(HC)

S. 28(i): Business loss – Business expenditure – Obsolescence allowance – Write of off obsolete stock – Allowable as business loss. [S. 37(1), 145A]

Dismissing the appeal of the revenue the Court held that the obsolete stock which was not disposed of or sold was allowable as expenditure. Order of Tribunal is affirmed. Followed CIT v Heredilla Chemicals Ltd (2002) 255 ITR 532 (Bom.)(HC)

CIT v. Gigabyte Technology (India) Ltd. (2020) 421 ITR 21 / 195 DTR 334 / 273 Taxman 184 (Bom.)(HC)

S. 28(iv) : Business income - Value of any benefit or perquisites - Converted in to money or not -Advances - Benefit had to be benefit other than a benefit in shape of money or cash- Order of Tribunal deleting the addition is affirmed – No substantial question of law. [S. 260A]

Assessee accepted advances for which no proper explanation was furnished. The Assessing Officer made addition under section 28(iv) of the Act. Commissioner (Appeals) deleted addition. Tribunal affirmed the order of the CIT(A) relied on Mahindra & Mahindra Ltd. v. CIT (2003 128 Taxman 394 261 ITR 501 (Bom)(HC) upheld in Commissioner v. Mahindra and Mahindra Ltd (2018) 255 Taxman 305 404 ITR 1(SC). On appeal the Court held that n view of judicial precedent on the subject that benefit as contemplated by section 28(iv) had to be some benefit other than a benefit in the shape of money and cash and in instant case assessee had accepted advances for which no proper explanation was furnished. Order of Tribunal is affirmed. No substantial question of law.

ACIT v. Infrastructure Logistics (P.) Ltd [**2024] 161 taxmann.com 384 (Bom)(HC)**

S. 32: Depreciation–UPS-Component/equipment connected with computer-Entitle to 60 per cent depreciation.

Dismissing the appeal of the revenue the Court held that, UPS is Component/equipment connected with computer-Entitle to 60 per cent depreciation. (AY. 2008-09)

PCIT v. Goa Tourism Development Ltd. (2019) 261 Taxman 500 (Bom.)(HC)

S. 35E : Deduction for expenditure on prospecting etc. for certain minerals- Capital or revenue - Amount paid to mining lessees is not towards acquisition of right to mine but was towards expenditure undertaken by said lessees for purpose of developments like roads and trenches, temporary huts, drilling, etc.- Allowable as deduction. [S. 37(1)]

Assessee Company claimed deduction in respect of payments made by it to mining lessees. It claimed that same is towards expenditure undertaken by said lessees for purpose of developments like roads and trenches, temporary huts, drilling, etc. AO held that said amount was paid by assessee for obtaining right to mine, thus, same could not be allowed as revenue expenditure. CIT (A) allowed the claim, which is affirmed by Tribunal. On appeal the Court held that material on record clearly indicated that amount paid by assessee to mining lessees was not towards acquisition of right to mine but was towards expenditure undertaken by said lessees for purpose of developments like roads and trenches, temporary huts, drilling, etc. Order of Tribunal allowing the deduction is affirmed. (AY.2008-09)

CIT, Karnataka v. Mukhtar Minerals (P.) Ltd. (2020) 195 DTR 393 / (2021) 432 ITR 152 / 321 CTR 30 / 276 Taxman 218 (Bom.)(HC)

S. 36(1)(iii) :Interest on borrowed capital – Advance of interest-free loans to its subsidiary – Commercial expediency - Sufficient interest-free funds – Order of Tribunal deleting the addition is affirmed – No substantial question of law. [S. 260A]

Assessee-company advanced interest-free loans to its subsidiary. Assessing Officer made disallowance on account of interest paid on borrowed funds under section 36(1)(iii). CIT (A) deleted the disallowance. Order of CIT (A) is affirmed by the Tribunal. On appeal the Court held that the assessee was holding company and had a deep interest in its subsidiary. There was no allegation at all that loans advanced by assessee were utilized for personal benefit of directors of subsidiary . Besides, there was material on record that interest free loans advanced to subsidiaries were

not from borrowed monies. Material on record suggested that assessee had reserves of huge amount to cover such loans advanced to its subsidiary . On facts, there could not be any disallowance of interest under section 36(1)(iii) and, accordingly. Order of Tribunal is affirmed . (AY. 2011- 12)

PCIT v. V.S. Dempo Holding (P.) Ltd [2021] 130 taxmann.com 456 (Bom(HC)

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

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

CIT v. Zuari Industries Ltd. (2020) 420 ITR 323 / 185 DTR 281 / 312 CTR 416/ 115 taxmann.com 337 (Bom.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Investment in sister concern – Shares of subsidiary – Control over the company.

Investment made by the assessee company out of bank overdraft in the shares of its subsidiary company to have control over that company being an integral part of its business, interest paid by the assessee which is attributable to said borrowings is allowable as deduction under section 36(1)(iii).

CIT v. Phil Corporation Ltd. (2011) 61 DTR 15 / 244 CTR 226 / 202 Taxman 368 (Bom.)(HC)

S. 36(1)(va) : Any sum received from employees – Late deposit of employee's contribution to PF and ESI – Disallowance is justified – Assessment order under section 143(1)(a) would make no difference .[S.143(1)(a), 260A]

Assessee filed its return of income. Assessing Officer made disallowance under section 36(1)(va) towards late deposit of employee's contribution to PF and ESI by

assessee .CIT(A) and Tribunal up held the disallowance . On appeal the court held that since assessee had not deposited such sum within stipulated time as prescribed in respective Acts, in view of decision in case of Checkmate Services (P.) Ltd. v. CIT [2022] 143 taxmann.com 178/290 Taxman 19/448 ITR 518 (SC) disallowance on account of employees contribution to ESI and PF under section 36(1)(va) was justified and fact that assessment order was made under section 143(1)(a) would make no difference . (AY. 2019-20)

Rohan Korgaonkar v. Dy. CIT (2024) 298 Taxman 159 (Bom.)(HC)

S.37 (1): Business expenditure - Contribution to temple -Allowed as deduction- No violation of Rule 46A(3)- Appeal of Revenue is dismissed .[S. 260A , R. 46A(3)]

Assessee contributed certain amount to temples and claimed deduction of same as revenue expenditure . Assessing Officer disallowed the claim .Commissioner (Appeals) deleted addition. Order of CIT(A) is affirmed by Tribunal . On appeal the Revenue submitted before High Court that Commissioner (Appeals) admitted additional evidence but no opportunity was given to it to deal with documents and this was contrary to provisions of rule 46A(3) . Court held that no additional evidence was allowed to be produced and Assessing Officer made addition based upon evaluation of material before him and Commissioner (Appeals) on evaluating very same material disagreed with Assessing Officer, it was not a case of any violation of rule 46A(3) and substantial question of law sought to be raised did not arise in instant appeal . Appeal of Revenue is dismissed.

ACIT v. Infrastructure Logistics (P.) Ltd [2024] 161 taxmann.com 384 (Bom)(HC)

S. 37(1): Business expenditure – Capital or revenue – Contribution towards reconstruction of Bridge to enable transportation of assessee's products to port – Allowable as revenue expenditure.

Dismissing the appeal of the revenue the Court held that contribution towards the reconstruction of the Bridge to enable transportation of assessee's products to port is allowable as revenue expenditure. (AY.2009-10)

CIT v. Sociedade De Fomento Industrial Pvt. Ltd. (No. 2) (2020) 429 ITR 358 / (2021) 277 Taxman 6/ 207 DTR 381/ (2022) 324 CTR 524 (Bom.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Payment to for the purpose of having continuous supply of limestone as a raw material – Held to be capital expenditure – Order of Tribunal directing for the payment to be amortized for a period of 8 years is held to be not valid – Question is answered in favour of the revenue. [S. 145]

The assessee claimed the payment to Texmaco for the purpose of having continuous supply of limestone as a raw material as revenue expenditure. The AO treated the said expenditure as capital expenditure. CIT(A) confirmed the order of the AO. On appeal the Tribunal held that payment made to Texmaco as deferred revenue expenditure thereby permitting the assessee to amortise the payment for a period of eight years. Reversing the order of the Tribunal the Court held that the respondend had obtained a long term captive source of the new raw material by purchase of right from Texmaco. However at the same time the raw material was required to be won, gotten and brought to the surface and as such, cannot be said to be a stock in trade, hence the question was answered in the negative and in favour of appellant. Followed R.B Seth Moolcahnd Suganchand v. CIT (1972) 86 ITR 647 (SC) (ITA No 51 of 2008 dt 22-11-2019 / 02-01-2020) (AY.1995-96)

CIT v. Zuari Industries Ltd. (2020) 420 ITR 323 / 185 DTR 281 / 312 CTR 416 / 115 taxmann.com 337 (Bom.)(HC)

S. 37(1) : Business expenditure – Staking and handling expenses and blending and screening charges – Sister concern – Deletion of addition is justified.

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting the Staking and handling expenses and blending and screening charges paid to sister concern (AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

S. 37(1): Business expenditure–Capital or revenue–Repair and renovation is held to be revenue expenditure.[S. 30]

Dismissing the appeal of the revenue the Court held that the expenditure incurred towards repairs and renovation of its hotel properties such as dismantling Mangalore tiles, laying laterite stones, laying plaster, plaster of Paris and painting, waterproofing, replacement of tiles and plumbing was an allowable revenue expenditure. (AY. 2008-09)

PCIT v. Goa Tourism Development Ltd. (2019) 261 Taxman 500 (Bom.)(HC)

S.37(1): Business expenditure – Capital or revenue -Godown on lease - Providing interior decoration, replacement of existing roof with that of cement sheets, replacement of floor with that of marble, etc.- Allowable as revenue expenditure. [S.260A]

Dismissing the appeal of the Revenue the Court held that expenditure incurred by the assessee in converting the godown taken on lease into office premises by renovating it, providing interior decoration, replacement of existing roof with that of cement sheets, replacement of floor with of marble, etc., could be termed as revenue expenditure. Referred, Assam Bengal Cement Co. Ltd. v. CIT (1955) 27 ITR 34 (SC). "If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If, on the other hand, it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits, it is a revenue expenditure. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure." (AY. 1988 -89)

CIT v. HEDE Consultancy (P.) Ltd. [2002] 258 ITR 380 / [2003] 127 Taxman 597 / 180 CTR 70 (Bom)(HC)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident - Income - Deemed to accrue or arise in India Demurrage paid - In terms of relevant sales contract – Income not accrued in India – Not liable to deduct tax at source .[S. 5(2)(b) ,9(1)(i)]

Assessee-company is engaged in business of mining, production and export of iron ore, shipping and ship building. Demurrage charges paid by assessee to non-resident companies were disallowed by Assessing Officer for failure to deduct tax at source . On appeal the Court held that demurrage paid by assessee-company to non-resident buyers of iron ore in terms of relevant sales contract was not income accrued or arisen to said non-resident buyers in India within meaning of section 5(2)(b) read with Explanation 1(b) to section 9(1)(i), and thus no disallowance was to be made under section 40(a)(i). (AY. 2008 -09)

Sesa Goa Ltd. v. JCIT [2020] 117 taxmann.com 96 / 423 ITR 426 (Bom) (HC)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Agreement with co -owners of land for construction of complex – Allotment of area – Not contractor –Sub -Contractor- Not liable to deduct tax at source .[S.80G , 194C]

Assessee entered into agreements with owners of land for construction of complex on said land. Assessing Officer held that provision of S. 40(a)(ia) would apply hence disallowed the expenditure . CIT(A) and Tribunal held that provision of S.40(a)(ia is not applicable . On appeal the Court held that the assessee was to be allotted some area in said complex . Assessee was given full liberty to thereafter sell, transfer and convey area in favour of third party . Assessee had assigned its rights in favour of one Prabhu Construction, Since neither assessee nor Prabhu Construction could be styled as contractors, it was obvious that provisions of section 194C were not attracted in instant case. Since provisions of section 194C were not applicable, consequent provisions of section 40(a)(ia) would also not apply. Court held that S. 194C of the IT Act refers to any person responsible for paying 'any sum' to any resident referred to as contractor in the said section for

carrying out any work in pursuance of a contract. The expression sum in the context, would mean sum of cash money as was held by the Hon'ble Supreme Court in the case of H.H. Sri Rama Verma v. CIT [1991] 57 Taxman 149 (187 ITR 308 95 CTR 26 (SC)/ 1991 Supp (1) SCC 209, though in the context of the provisions of Section 80G of the IT Act as then stood. The Hon'ble Apex Court has held that when the language of the provision is plain and clear, the Courts cannot enlarge the scope of the provision by adopting an interpretative process. No disallowance can be made for failure to deduct tax at source. No substantial question of law.

ACIT v. Alfran Construction P. Ltd. [2020] 116 taxmann.com 125 (Bom)(HC)

S. 40(a)(ii) : Amounts not deductible – Any rate or tax levied – Education cess is held to be deductible. [S. 246A, 254(1) Indian Income-tax Act, 1922, S. 10(4)]

Court held that in the Indian Income-tax Act, 1922, S. 10(4) had banned allowance of any sum paid on account of "any cess, rate or tax levied on the profits or gains of any business or profession". In the corresponding section 40(a)(ii) of the Income-tax Act, 1961 the expression "cess" is quite conspicuous by its absence. In fact, legislative history bears out that this expression was in fact to be found in the Income-tax Bill, 1961 which was introduced in Parliament. However, the Select Committee recommended the omission of expression "cess" and consequently, this expression finds no place in the final text of the provision in section 40(a)(ii) of the Act. The effect of such omission is that the provision in section 40(a)(ii) does not include, "cess" and consequently, "cess" whenever paid in relation to business, is allowable as deductible expenditure. This is also the view of the Central Board of Direct Taxes as reflected in Circular No. F. No. 91/58/66-ITJ(19), dated May 18, 1967. The Central Board of Direct Taxes Circular, is binding upon the authorities under the Act like the Assessing Officer and the appellate authority. The, education cess is held to be deductible. Though the claim to deduction of education cess and higher and secondary education cess was not raised in the original return or by filing a revised return, the assessee had addressed a letter claiming such deduction before the assessment could be completed. However, even if we proceed on the

basis that there was no obligation on the Assessing Officer to consider the claim for deduction in such letter, the Commissioner (Appeals) or the Appellate Tribunal, before whom such deduction was specifically claimed, was duty bound to consider such claim. Followed CIT v. Orient (Goa) P Ltd [2010] 325 ITR 554 (Bom.) (HC) (AY.2008-09, 2009-10)

Sesa Goa Ltd. v. JCIT (2020) 423 ITR 426 / 117 taxmmann.com 96 / 193 DTR 41 / 316 CTR 446 (Bom.)(HC)

Editorial: JCIT v. Sesa Goa Ltd. (2023) 295 Taxman 236 (SC), High Court order is reversed .

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable -Stacking and handling expenses - Blending and screening charges to its sister concern – Order of Tribunal deleting the disallowance is affirmed .[S. 260A]

Assessee-company paid stacking and handling expenses and blending and screening charges to its sister concern . Revenue contended that there was no evidence that sister concern was involved in such kind of activities and such expenses should be added back to income of assessee . Tribunal deleted disallowance . Order of Tribunal deleting the disallowance is affirmed (AY. 2010 - 11)

PCIT v. Ajit Ramakant Phatarpekar [2021] 277 Taxman 543 /[2020] 429 ITR 319 (Bom) (HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Books of account not rejected – Transactions involving less than Rs. 20,000 – H Forms obtained – Deletion of addition is held to be justified. [S. 37(1)]

Dismissing the appeal of the revenue the Court held that both the Commissioner (Appeals) and the Tribunal had recorded concurrent findings on the issue of cash purchases. The cash purchases were around 2 per cent. of the total purchases. Such purchases were in a series of transactions which involved an amount of less than Rs. 20,000 and the books of account of the assessees were not rejected by the

Assessing Officer. Order of Tribunal is affirmed. Shree Choudhary Transport Co. v. ITO (2020)426 ITR 289 (SC) distinguished. (AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxmann 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

S. 41(1): Profits chargeable to tax – Remission or cessation of trading liability – Confirmation was filed – Deletion of addition is held to be justified.

Dismissing the appeal of the revenue the Court held that there was material on record which also suggested that the confirmations from the trade creditors were received and filed by the assessees though there were contradictory findings by the Assessing Officer. Relied CIT v. Chase Bright Steel Ltd. (NO. 2) [1989] 177 ITR 128 (Bom.) (HC).(AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020)429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

PCIT v. Neelam Ajit Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

S. 68: Cash credits – Payments for purchases – Deletion of addition is held to be justified.

During year, assessee had claimed to make purchases of certain amount from several parties. AO made additions on account of said amount paid by assessee to said parties for purchases on ground that two of such parties did not respond to notices or otherwise appear and confirm purpose for which such payments were made and, thus, same were fictitious entities. On appeal the Tribunal held that payments were made to these two entities by cheques and same was in respect of certain purchases. Accordingly deleted the addition. On appeal by the revenue, High court affirmed the view of the Tribunal. (AY. 2008-09)

CIT v. Mukhtar Minerals (P.) Ltd. (2020) 195 DTR 393 / (2021) 432 ITR 152 / 321 CTR 30 / 276 Taxman 218 (Bom.)(HC)

S. 68: Cash credits – Source of source – Cash deposited – Brother in law and close friends – How money was transferred from Bangalore to Goa was not satisfactorily explained – Addition is held to be justified. [S. 153A]

Assessing Officer made addition owing to unaccounted cash receipts on ground that assessee failed to establish identity and creditworthiness of creditors from whom he had received a huge amount of Rs. 8.49 crores. CIT(A) affirmed the order of the AO. On appeal, Tribunal accepted assessee's explanation that said amount was transferred into assessee's bank account from out of bank accounts of his brother-in-law and a close friend and, further, that said creditors confirmed to have made payment to assessee and deleted the addition. On appeal by the revenue the Court held that the Tribunal ignored vital facts emanating from record that said creditors had not produced evidence to establish their capacity to raise such a huge amount and also that they were not clear about their precise role in transaction involving said amount. The Court also observed that merely pointing out to a source and the source admitting that it has made the payments is not sufficient to discharge the burden placed on the assessees by s. 68. The explanation has to be plausible and backed by reliable evidence. 'Fantastic or unacceptable' explanations are not acceptable. (TXA NO.18 & 19-2014 dt 14-10-2020).

CIT v. Sadiq Sheikh (2020) 429 ITR 163 / 122 taxmann.com 39 / (2021) 276 Taxman 292/ 197 DTR 191/ 318 CTR 382 (Bom.)(HC)

CIT v. Sadia Sheikh (2020) 429 ITR 163 / 122 taxmann.com 39 / (2021) 276 Taxman 292/ 197 DTR 191 / 318 CTR 382 (Bom.)(HC)

Editorial: SLP of assessee is dismissed, Sadiq Sheikh v. CIT (2021) 277 Taxman 594 (SC)

S. 68 : Cash credits – The expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned – If the cash credits are credited in the FY 2006 – 07, it cannot be brought to tax in a later AY.2009-10. [S. 3]

The question before the High Court was "On the facts and in the circumstances of the case and in law, whether the Tribunal was right in sustaining the additions made of old outstanding sundry credit balances" Allowing the appeal of the assessee the Court held that, the expression "any previous year" does not mean all previous years but the previous year in relation to the assessment year concerned. If the cash credits are credited in the FY 2006-07, it cannot be brought to tax in a later AY.2009-10. Followed CIT v. Bhaichand H. Gandhi (1983), 141 ITR 67 (Bom.) (HC) CIT v. Lakshman Swaroop Gupta & Brothers (1975), 100 ITR 222 (Raj) (HC) Bhor Industries Ltd v. CIT AIR 1961 SC 1100 (AY. 2009 10)

Ivan Singh v. ACIT (2020) 422 ITR 128 / 195 DTR 227 / 272 Taxman 36 / (2021) 322 CTR 851 (Bom.)(HC)

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 277/128 taxmann.com 371 (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: Industrial undertakings – Initial assessment year – Commenced manufacture in accounting year relevant to Assessment Year 2002-03 – Assessee cannot claim subsequent assessment year as the year for initial deduction. [S. 80IB (4), 80IB(14)]

Dismissing the appeal of the assessee the Court held that the material on record showed that prior to the amendment by the Finance Act, 2002 in section 80IB (4), the assessee had declared that its industrial undertakings had begun manufacture on March 26, 2002. However, after the amendment of the extended date for commencement of manufacture up to March 31, 2004, the assessee sought to contend that the manufacture began for the first time at its industrial undertakings only on February 1, 2003. The Appellate Tribunal had also noted that absolutely no evidence was produced on record that the processes undertaken were in the nature

of testing or trial production. No contemporaneous report of such trial production or testing was produced by the assessee. No reports of the production staff for testing were ever produced. All this material was more than sufficient to sustain the findings of fact recorded by the Assessing Officer and the Appellate Tribunal. The Appellate Tribunal was justified in law by holding that the assessment year 2002-03 was the initial assessment year, as contemplated under clause (c) of sub-section (14) of S. 80IB of the Act. (AY. 2002-03)

Teracom Ltd. v. ACIT (2020) 420 ITR 1 / 113 taxmann.com 233 / 187 DTR 440 / 315 CTR 402 (Bom.)(HC)

S. 80IB: Industrial undertakings – Computation of deduction- Depreciation- Mandatory to deduct depreciation, though not claimed by assessee.[S. 32]

Dismissing the appeal the Court held that the Tribunal was justified in holding that it was mandatory to deduct depreciation allowable under section 32 while determining assessee's entitlement to deduction under section 80 IB, even though assessee had not claimed such depreciation.Followed Scoop Industries (P.) Ltd. v. ITO (2007) 289 ITR 195 (Bom)(HC), Plastiblends India Ltd. v. Addl. CIT (2009) 185 Taxman 187/ 318 ITR 352 (FB)) (Bom)(HC)

Betts India (P.) Ltd. v. ACIT [2020] 114 taxmann.com 509 (Bom)(HC)

S. 80IB (10) : Housing projects – Condition coming into effect from 19-8-2019 – Allotments made prior to that date – Entitled to pro-rata deduction. [S. 80IB (10)(f)]

Dismissing the appeal of the revenue the Court held that, clause (f) to section 80-IB(10) came into force on August 19, 2009, in terms of which, there was a prohibition for allotment in favour of a spouse. The allotment of the two flats to SK on March 13, 2009 and June 29, 2009 and the allotment of the flat to SP on June 26, 2009 would not constitute a breach of the condition in section 80-IB(10)(f). Even if the area proportionate to the four residential units was excluded from consideration, the available area exceeded 4000 sq. meters or one acre. Since only one of the

residential units could be excluded, the area exceeded one acre and there was no breach whatsoever on this count. (AY. 2012-13)

Kamat Constructions Pvt. Ltd. v. CIT (2020) 429 ITR 609 / 277 Taxmann 640 (Bom.)(HC)

S. 80IB(10) : Housing projects – Pro rata deduction is eligible. [S. 80IB(10)(c)]

Allowing the appeal of the assessee the Court held that the Tribunal was not justified in denying pro rata deduction to the assessee under section 80-IB(10). The order of the Commissioner (Appeals) to the extent he granted pro rata deduction was restored.(AY.2010-11 to 2012-13)

Models Construction Pvt. Ltd. v. Dy.CIT (2020) 429 ITR 605 / (2021) 279 Taxman 247 (Bom.)(HC)

S. 80IB(10) : Housing projects – Eligible deduction on proportionate basis.

Dismissing the appeal of the revenue the Court held that the assessee is eligible deduction on proportionate basis. (AY.2007-08 to 2011-12)

Devashri Nirman Ltd. v. ACIT (2020) 429 ITR 597 / (2021) 277 Taxman 408 (Bom.)(HC)

PCIT v. Devashri Nirman Ltd. (2020) 429 ITR 597 / (2021) 277 Taxman 408 (Bom.)(HC)

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

Dismissing the appeal of the assessee the Court held that that the material on record showed that prior to the amendment by the Finance Act, 2002 in section 80IB(4), the assessee had declared that its industrial undertakings had begun manufacture on March 26, 2002. However, after the amendment of the extended date for commencement of manufacture up to March 31, 2004, the assessee sought to contend that the manufacture began for the first time at its industrial

undertakings only on February 1, 2003. The Appellate Tribunal had also noted that absolutely no evidence was produced on record that the processes undertaken were in the nature of testing or trial production. No contemporaneous report of such trial production or testing was produced by the assessee. No reports of the production staff for testing were ever produced. All this material was more than sufficient to sustain the findings of fact recorded by the Assessing Officer and the Appellate Tribunal. The Appellate Tribunal was justified in law by holding that the assessment year 2002-03 was the initial assessment year, as contemplated under clause (c) of sub-section (14) of S. 80IB of the Act. (AY. 2002-03)

Teracom Ltd. v. ACIT (2020) 420 ITR 1 / 113 taxmann.com 233 / 187 DTR 440 / 315 CTR 402 (Bom.)(HC)

S. 80IC: Special category States – Consumption of electricity – Mismatch of production – Denial of exemption is held to be not justified.

Assessing Officer, on the basis of consumption of electricity in various Units of the assessee, concluded that profits of newly established Unit N were unreasonably high and he denied assessee deduction under section 80IC by observing that consumption of electricity was increased only by 1497 percent, but sales had increased by 7102 per cent . Commissioner (Appeals) as well as Tribunal held that alleged mismatch between production and profits at various Units as determined by consumption of electricity at such units could not be sole ground for denial of exemption. On appeal by the revenue High Court affirmed the order of the Tribunal. (AY. 2006-07, 2007-08)

CIT v. Borkar Packaging (P.) Ltd. (2021) 276 Taxman 131 / 199 DTR 526/ 320 CTR 792 (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 (Bom.)(HC)
VPK Urban Co-Operative Credit Society Ltd. (2021) 438 ITR 631 / 203 DTR 141 / 281 Taxman 245 (Bom.)(HC)

S. 132: Search and seizure – Seizure of Jewellery - Release of seized assets -Bank guarantee – Matter pending for final adjudication- Belong to HUF or Karta – Directed to release the jewellery on furnishing of Bank Guarantee. [Art. 226]

In course of search revenue seized jewellery from a premises a larger HUF, a smaller HUF and Karta was present at said premises. Matter is pending for final adjudication to decide whether belong to HUF or Karta. On writ the Court held that as the issue of ownership of seized jewellery was a matter which was pending for final adjudication, release of seized jewellery on furnishing of a bank guarantee provided by Karta would not be prejudicial to interest of revenue. (AY. 1999-2000 to 2009-10)

M.N. Navale (Bigger HUF) v. Somnath M. Wajale, Dy.CIT [2015] 57 taxmann.com 5 (Bom)(HC)

S. 139: Return of income-Refund-Delay in filing return-Condonation of delay-Deduction of tax at source- Assessing Officer directed to decide in accordance with law after subjecting return to scrutiny assessment.[S. 119(2)(b), 139(1), 139(4), Art. 226]

Assessee could not file the return within the time specified under section 139(1) of the Act. Thereafter the assesse filed return of income and claimed a refund of Rs.6,34,929, there was delay of 22 months . The AO did not act upon the return. The assesse filed an application under section 119(2)(b) before the CBDT for condonation of delay . CBDT rejected the application. The assesse filed writ petition. Allowing the petition the Court held that assesse has not benefited by resorting to delay and the Assessing Officer is directed to decide in accordance with law after subjecting return to scrutiny assessment. (AY. 1997-98)

Artist Tree Pvt. Ltd. v. CBDT (2014) 369 ITR 691 / (2015) 228 Taxman 108/ 273 CTR 14/113 DTR 370 (Bom.)(HC)

S. 143(3): Assessment - Reassessment - Notice – Principle of natural justice – Alterative remedy - Non – existent company – Assessment order is up loaded - Cash deposits - Notices were served on assessee's Chartered Accountant through e-mail Id which is registered by assessee with Income-tax Department – Writ petition is dismissed - Liberty is granted to assessee to appeal against assessment order made in pursuance of impugned notices on all grounds. [S. 147, 148, Art. 226]

Assessee filed writ petition challenging the notice seeking to reopen assessment and penalty notices based on reassessment notices for relevant assessment year on grounds of breach of principles of natural justice and fair play as assessment order was uploaded against PAN that did not pertain to assessee but pertained to a non-existent company. Court held that records did not make out a prima facie case of breach of principles of natural justice or fair play. Impugned notices might have been marked to PAN number, which assessee claimed it had already surrendered, however, impugned notices were served on assessee's Chartered Accountant through e-mail Id which was registered by assessee with Income-tax Department for service of notices. Further, revenue had produced documentary material on record to indicate that cash deposits were made in assessee's bank account as against PAN number that assessee claimed to have already surrendered. Additionally, in affidavit filed by Assistant Commissioner, it was asserted that even after 2012, PAN was used by assessee for regularly conducting business transactions. There was also a statement that all notices were sent through a registered e-mail Id quoting this PAN. High Court dismissed the petition however liberty is granted to the assessee to appeal against the assessment order made in pursuance of impugned notices on all grounds. (AY. 2013-14)

Chowgule Industries (P.) Ltd. v. ACIT [2022] 142 taxmann.com 472 (Bom) (HC)

S. 143(3) : Assessment – Ad-hoc addition – Labour charges – On facts the High Court affirmed the order of the Tribunal- No substantial question of law . [S.37(1), 260A]

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

Ivan Singh v. ACIT (2020) 422 ITR 128 / 195 DTR 227/ 272 Taxman 36 (2021) 322 CTR 851 (Bom.)(HC)

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

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

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

S. 144C: Reference to dispute resolution panel -Draft assessment order - Assessment order is passed without issuing a draft assessment order- Matter is remanded with the direction to follow the correct procedure. [S.144C (1), Art.226]

On writ, the Court held that the final assessment order is passed without furnishing a draft order to assessee is set aside. However, an opportunity is to be given to revenue to follow the correct procedure and proceed with the matter in accordance with law matter is remanded. (AY. 2021 -22)

Birla Furukawa Fibre Optics (P.) Ltd. v. NFAC [2024] 161 taxmann.com 517 (Bom)(HC)

S. 144C: Reference to dispute resolution panel – Draft assessment order - Transfer pricing –Non - Resident – Eligible assessee- Revised return - Merely because the assessee claimed otherwise in his revised returns assessee would not be eligible assessee as defined under section 144C(15)- Draft assessment order is set aside. [S. 6, 92CA (3) , 144C(15) , Art. 226]

Assessee filed return claiming status of resident of India. Thereafter, a revised return was filed wherein he claimed status of non-resident. During draft assessment proceedings it was held that assessee was a resident and not a non-resident. However, despite said finding draft assessment order was passed. DRP also upheld said order. On writ the Court held that instant case is not a case where variations referred to in section 144C (1) arose as a consequence of order of TPO passed under section 92CA (3). Since revenue upon considering material had categorically held that claim of assessee in revised return was incorrect, revenue could not distance itself from its own finding merely because assessee claimed otherwise in his revised returns. The assessee would not be eligible assessee as defined under section 144C (15) and procedure as prescribed under section 144C could not apply to assessee . Accordingly the draft assessment order is set aside. (AY. 2021-22**)**

Aldrin Alberto Araujo Soares v. DCIT [2024] 162 taxmann.com 186 (Bom)(HC)

S. 145: Method of accounting – Valuation of stock – Valuation adopted by Revenue valid – No question of law. [S.260A]

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 despite the grant of opportunity. The valuation adopted by the Revenue was valid. No question

of law arose from the order. Followed CIT v. British Paints India Ltd (1991) 188 ITR 44 (SC)(AY. 2009-10)

Goa Carbon Ltd. v. JCIT (2022) 446 ITR 590/ 289 Taxman 322 (Bom.)(HC)

S. 145: Method of accounting – Valuation of closing stock – Undervaluation – Deletion of addition is held to be justified.

Dismissing the appeal of the revenue the Court held the department cannot accept rendering of service as genuine and transaction on such basis and also contend that closing stock was undervalued. Deletion of addition is held to be justified. (AY.2002-03)

PCIT v. Ajit Ramakant Phatarpekar (2020) 429 ITR 319 / 196 DTR 296 / (2021) 277 Taxman 543 (Bom.)(HC)

S. 147: Reassessment – After the expiry of four years – Capital gains – Cost of Acquisition – No Failure to Disclose Material Facts – Reassessment notice and order disposing the objection is quashed. [S. 45, 48, 148, Art. 226]

Allowing the petition, the Court held that there was no allegation that the assessee failed to disclose fully and truly all material facts necessary for his assessment. Neither the notice nor the reasons disclosed what was suppressed by the assessee and how such suppression offered the Assessing Officer reason to believe that income had escaped assessment. Reassessment notice and order disposing the objection is quashed. (AY. 2015-16)

Teofilo Fernando Antonio Pinto v. UOI (2023) 295 Taxman 633/(2024) 464 ITR 249 (Bom.)(HC)

S. 147: Reassessment – After the expiry of four years - Unexplained moneys – No return is filed within time allowed – Not explained receipt of amount – Reassessment notice is held to be valid – Writ petition is dismissed. [S.69A, 148, Art. 226]

Assessing Officer issued on assessee a notice under section 148 stating that he had reason to believe that certain amount received by assessee was chargeable to tax

and it had escaped assessment. The assessee neither filed the return nor explained the receipt of amount. On writ the Court held that since assessee did not file any return during year, it did not file any response to notice within time allowed, it filed return only after eight months at stage when time limit for completing reassessment proceedings was almost due to conclude and it had not explained receipt of amount, it could not be said that Assessing Officer either had no reason to believe that assessee's income chargeable to tax had escaped assessment or his reason to believe was based on some non-extent material or extraneous and irrelevant material. Writ petition is dismissed. (AY. 2015 -16)

Hede Ferrominas (P.) Ltd. v. ACIT [2023] 147 taxmann.com 215 (Bom)(HC)

S. 147: Reassessment – After the expiry of four years – No Failure to Disclose Material Facts – Annual Accounts Certified by the Chartered Accountant/Auditor Wherein a Clear Reference was made to the Fact which was the Subject Matter of Reopening – Notice and order disposing the objection is quashed. [S. 69A, 148, Art. 226]

Notice was issued under section 148 of the Act after a period of four years from the end of the relevant assessment year. The same was challenged by way of a writ petition before the Bombay High Court. The High Court observed that though the reasons recorded stated that the assessee had failed to fully and truly disclose "the following material facts", the Assessing Officer omitted to mention what were the material facts which the assessee had failed to disclose. The High Court observed that it was well settled that the reasons recorded by the AO cannot be supplemented by filing an affidavit or making oral submissions and that the reasons recorded must be clear and unambiguous and should not suffer from any vagueness. The High Court quashed the notice issued under section 148 of the Act as there was no disclosure in the reasons as to which fact or material was not disclosed by the assessee fully and truly and which the AO thought was necessary for assessment of the relevant AY. The High Court further observed that the assessee had along with the return of income also filed annual accounts certified by the Chartered Accountant/Auditor wherein a clear reference was made to the fact

which was the subject matter of reopening. Accordingly, the assessee had disclosed fully and truly all the material facts that were alleged to have been suppressed. (AY. 2012-13)

Tumkur Minerals (P.) Ltd. v. JCIT (2023) 456 ITR 286 / 291 Taxman 340 / 330 CTR 177 (Bom)(HC)

S.147: Reassessment – After the expiry of four years - No failure to disclose material facts – Year of taxability – Mercantile system of accounting –Reassessment notice and order disposing the objection is set aside . [S.5, 145, 148, Art. 226]

Assessee-company is carrying on mining business. During year under consideration an e-auction of Iron Ore (mining) had been conducted by monitoring committee appointed by Supreme Court of India by assessee and total e-auctioned amount for financial year 2011-12 was determined. Assessee had filed its return of income for assessment year 2012-13 . Subsequently, notice under section 148 was issued after expiry of four years from filing of return for reasons that as company maintained its account as per mercantile system, e-auctioned amount in financial year 2011-12 (assessment year 2012-13) had to be accounted in same year . Allowing the petition the Court held that from records it was found that assessee had made complete disclosures and informed revenue that during assessment year 2012-13, certain tons of ore was e-auctioned by the Monitoring Committee and it received no portion of sale proceeds during said year and sale proceeds were ultimately received during the assessment year 2013-14, which was duly accounted for during the said year. From records, it was apparent that the assessee did not fail to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year 2012-13, and therefore, the notice and order disposing of the objection is quashed and set aside. To reopen assessment was to be quashed and set aside . (AY. 2012 -13)

Chowgule & Co. (P.) Ltd. v. JCIT [2023] 147 taxmann.com 286 (Bom)(HC)

S. 147: Reassessment – After the expiry of four years – Housing project – No failure to disclose material facts – Reassessment is held to be not valid. [S. 80(IB)(10)(f), 148, Art. 226]

Petitioner had submitted returns within prescribed period and assessment was completed u/ s. 143(3) of the Act. After prescribed period of 4 years, reassessment notice was issued to petitioner on ground that there was non-compliance on part of petitioner with respect to provisions of section 80IB of the Act, insofar as disclosure of some of sales were concerned. The assessee challenged the reassessment proceedings by filing writ petition and contended that in course of assessment proceedings before Assessing Officer, it had itself submitted that a few flats might had been allotted to persons in violation of section 80IB(10)(f) of the Act. Allowing the petition the Court held that disclosures were made in relation to sale transactions and it was even suggested that some of the sale transactions might not be compliant with provisions section 8IB (10)(f) and no details were submitted by revenue as to material which was allegedly not disclosed either truly and fully and, thus, they had failed to make out any case that there was no true and full disclosures by petitioner. Since revenue had failed to establish this pre-condition even prima facie, reassessment was unjustified. (AY. 2012-13)

Anand Developers v. ACIT (2020) 271 Taxman 44 /425 ITR 261 (Bom.)(HC)

S.147: Reassessment – After the expiry of four years - Amalgamation- Set off of loss – Book profit -Change of opinion – No failure to disclose material facts - Reassessment notice and order disposing of the objection is quashed. [S.115JA , 143(3) , 148 , Art . 226]

The Assessing Officer assessed under section 143(3). In doing so, the Assessing Officer clearly took into consideration the disclosures made by the assessee in its return of income. On the said basis, the Assessing Officer allowed the claim of the assessee and set off the loss of PPGM for the financial year 1998-99 against the book profits of the assessee for that financial year for the purposes of determining the assessee's MAT liability under section 115JA. After expiry of four years from end of relevant assessment year, the Assessing Officer initiated reassessment

proceedings taking a view that assessee's claim for set off of loss PPGM against its book profits was wrongly allowed. On writ the Court held that Assessing Officer considered all relevant materials disclosed by assessee and thereafter allowed assessee's claim for set off of loss of company amalgamated with it against its book profits while determining MAT liability, in absence of any failure on assessee's part to disclose truly and fully all material facts necessary for assessment, Assessing Officer could not initiate reassessment proceedings after expiry of four years from end of relevant year merely on basis of change of opinion that aforesaid loss was wrongly set off . (AY.1999 -2000)

Crompton Greaves Ltd. v. ACIT [2015] 229 Taxman 545 / 275 CTR 49 (Bom) (HC)

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

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

Audhut Timblo v. ACIT (2020) 420 ITR 62 / 196 DTR 335 (Bom.) (HC)

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

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

P. P. Mahatme, Power of Attorney Holder v. ACIT (2020) 420 ITR 71 / 186 DTR 260 (Bom.)(HC)

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

The petitioner filed the writ against the disposal of objection against the 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 the power to review and the 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- Failure to file the return of income-Cash deposited in the bank account-Reassessment notice is justified. [S. 68, 69A, 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 bank 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-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 (Bom.) (HC)

S. 147 : Reassessment – Failure to furnish reasons recorded by Assessing Officer – Furnishing the recorded reasons when the matter was pending before Appellate Tribunal – Tribunal remanding the matter – Order of Tribunal remanding matter and subsequent assessment and demand notice set aside. [S.148, 254(1)]

Allowing the appeal the Court held that it was not open to the Assessing Officer to refuse to furnish the reasons for issuing notice under section 148. By such refusal, the assessee was deprived of the valuable opportunity of filing objections to the reopening of the assessment under section 147. The approach of the Assessing Officer was contrary to the law laid down by the Supreme Court. On the facts, the furnishing of reasons for reopening of the assessment at the stage when the matter was pending before the Tribunal could not cure the default in the first instance. The remand ordered by the Tribunal and the consequential assessment order and demand notice issued on the basis thereof were set aside. (AY.2004-05)

New Era Shipping Ltd. v. CIT (2020) 196 DTR 137 / (2021) 430 ITR 431 / 318 CTR 400 (Bom.)(HC)

S. 147: Reassessment-Export business-No new material-Notice under the direction of Commissioner-Reassessment is held to be not valid. [S. 80HHC, 148]

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

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

S. 148: Reassessment – Notice – Seized documents, computers, hard disks etc.-Not taken serious measures to release the documents seized – Writ petition is dismissed. [S. 147, Art. 226]

Reassessment proceedings were initiated against the Assessee. The Assessee filed a writ petition contending that the Crime Branch had seized certain documents, computers, hard disks, etc. from the Assessee and until all those were released, the assessee would not be in a position to effectively respond to notices of reassessment. Assessee sought for a direction to revenue to release all seized documents, data, and articles and further to stay all further de novo assessment proceedings. The court held that there was a vague and omnibus statement in the petition that the assessee pursued the matter for release in terms of the order passed by the Judicial Magistrate, however, this vague and omnibus statement was not backed by any material, documents, etc. There was nothing on record to indicate that the assessee took any serious steps to obtain documents/material/hard disks from the crime branch. Since it was apparent that the assessee simply wanted to stall reassessment proceedings/ de novo

proceedings at any cost, writ Court could not assist the assessee in such endeavours. (AY. 2010-11)

Francisco Xavier Pacheco v. State of Goa (2024) 298 Taxman 660 /339 CTR 572 (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 shareholders-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)

Manisha Tarcar (Mrs) v. ACIT (2022) 286 Taxman 638/ 213 DTR 57/ 326 CTR 310 (Bom.)(HC)

S. 158BC: Block assessment – No assessment could be made under section 158BC without issuing a notice u/s. 143(2). [S.143(2), 260A]

Dismissing the appeal of the Revenue the Court held that assessment order passed assessing undisclosed income of assessee under section 158BC without issuing any notice under section 143(2), impugned assessment order would stand vitiated for want of said mandatory notice. Followed, Asstt. CIT v. Hotel Blue Moon [2010] 188 Taxman 113 (SC)

CIT v. Sodder Builder & Developers (P.) Ltd. [2020] 115 taxmann.com 251 (Bom)(HC)

S. 194C : Deduction at source – Contractors – Advance payment – Liability to deduct tax at source only if there is income – Reimbursement of expenses – No income arises – Tax not deductible at source. [S. 190]

Allowing the petition the Court held that unless the paid amount has any "income element" in it, there will arise no liability to pay any Income-tax upon such amount. Further, in such a situation, there will also arise no liability of any deduction of tax at source upon such amount. Again, the liability to deduct or collect Income-tax at source is upon "such income" as referred to in section 190(1) of the Income-tax Act, 1961. The expression "such income" would ordinarily relate to any amount which has an "income element" in it and not otherwise. When no composite bills are issued but separate bills are issued towards reimbursement of transportation charges, Circular No. 715 ([1995] 215 ITR (St.) 12) is not applicable.

Zephyr Biomedicals v. JCIT (2020) 428 ITR 398 / 317 CTR 129 / 194 DTR 337 / (2021) 276 Taxman 305 (Bom.)(HC)

Orchid Biomedical Systems v. JCIT (2020) 428 ITR 398 / 317 CTR 129 / 194 DTR 337 / (2021) 276 Taxman 305 (Bom.)(HC)

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. 220: Collection and recovery – Assessee deemed in default – Pendency of appeal before CIT(A)- Assessing Officer failed to disclose reasons while rejecting stay application and Commissioner (Appeals) also failed to consider stay application considering financial hardships – Assessee was directed to deposit 10 per cent of disputed demand – Matter remanded. [S. 69A, 144, 156, 250, Art. 226]

Assessee-company was a 100 per cent State Government owned company and filed loss in its return. Assessing Officer passed assessment order under section 144 and raised demand under section 156 of the Act. Assessee filed an application for stay of demand. Assessing Officer rejected said application on ground that assessee failed to pay 20 per cent of disputed demand. On writ the Court held that since Assessing Officer failed to disclose reasons while rejecting stay application and Commissioner (Appeals) also failed to consider stay application considering financial hardships, assessee was directed to deposit 10 per cent of disputed demand. Matter remanded. (AY. 2017-18)

Goa Forest Development Corporation v. PCIT (2023) 293 Taxman 62 /333 CTR 509 (Bom.)(HC)

S. 220: Collection and recovery - Assessee deemed in default – Modes of recovery -Pendency of appeal before CIT (A)-Recovered more than 20 percent of demand – Revenue is directed to refund excess amount recovered from the bank. [S. 226, Art. 226]

Assessee deposited 20 per cent of assessed amount when the appeal was pending before Commissioner (Appeals) to secure interim relief in respect of assessment for assessment year 2014-15 .Later, appeal for said assessment year was allowed by Commissioner (Appeals) . Assessing Officer once again passed an assessment order on same issue for relevant assessment year which was contrary to order made by Commissioner (Appeals) for assessment year 2014-15 and demand was made to pay tax - Assessee filed appeal before Commissioner (Appeals) . In meanwhile Assessing Officer issued notice to bank to seize accounts of assessee and remit

demand amount to revenue. On writ the Court held that since revenue already had amount earlier deposited by assessee with Commissioner (Appeals) in relation to assessment year 2014-15 which corresponded to more than 20 per cent of demand amount for relevant assessment year, issuance of notice to assessee's bank to recover demand amount was not justified - Held, yes - Whether said amount was to be treated as deposit in appeal challenging assessment order for assessment year 2017-18 and revenue is directed to refund amount recovered from bank account of assessee.(AY. 2017 -18)

Siolim Urban Co-op. Credit Society. Ltd. v. CIT [2021] 127 taxmann.com 812 (Bom)(HC)

S. 220: Collection and recovery – Assessee deemed in default – Stay application – Directed to dispose stay application expeditiously and until said application is disposed of the Assessing Officer should not insist upon compliance of the recovery notice. [S. 220(6), Art. 226]

The assessing Officer issued a notice dated 12-2-2020 to the assessee's bank requiring it to remit an amount of Rs. 33.42 lakhs as dues towards payment of income tax by assessee. Earlier Assessing Officer vide communication dated 15-1-2020 addressed to assessee had made it clear that recovery of entire amount could be stayed pending disposal of appeal provided assessee pays 20 per cent of demanded amount, which came to Rs. 13.37 lakhs. Assessee filed writ petition stating that before issuing of impugned notice dated 12-2-2020 it vide application dated 22-1-2020, which was in fact an application seeking for stay on recovery of entire demanded amount, had pointed out to Assessing Officer that it was to get refund of Rs. 23.66 lakhs from department and, therefore, amount of Rs. 13.37 lakhs might be adjusted from out of refund due to it. Said application was yet to be decided by Assessing Officer and in these circumstances there was no justification for issuance of notice dated 12-2-2020. Allowing the petition the Court directed the Assessing Officer to dispose of assessee's application dated 22-1-2020 expeditiously and until said application was disposed of, Assessing Officer would not insist upon compliance with notice dated 12-2-2020.

Pirna Urban Co-op. Credit Society Ltd. v. ITO (2020) 271 Taxman 32 (Bom.)(HC)

S. 245D : Settlement Commission – Settlement of cases - Powers – Settlement Commission is yet to apply its mind whether an enquiry under section 245D(3) should be ordered –Writ petition of revenue was held to be not maintainable [S.245D(3), 245D(4) Art. 226]

The Commissioner has challenged an order passed by the Settlement Commission under the provisions of section 245D(2C) The Court held that Commission is yet to apply its mind whether an enquiry under section 245D(3) should be ordered hence writ petition of revenue was held to be not maintainable. The Court also held that since the proceedings are pending before the Settlement Commission, it would not be appropriate for this court to entertain the proceedings any further. (W.P. No 9617 of 2013 dated 21-10-2013)

CIT v. ITSC (2013) 263 CTR 479 / 40 taxmann.com 201 / (2014) 360 ITR 539 (Bom.)(HC)

S. 234B : Interest - Advance tax - Waiver or reduction - Income-tax authorities - Instructions to subordinate authorities - Due to financial difficulties there was delay in payment of advance tax, interest levied under section 234B and 234C cannot be waived .[S. 119, 234C, , Art. 14, 226]

The assessee was acting as a real estate agent. Due to financial difficulties, there was delay in payment of advance tax. The assessee filed application for waiver of interests levied, which was rejected . The assessee filed writ petition against the said order, and contended that it had made out a case for grant of waiver / refund and the same had been declined by misinterpretation and / or narrow interpretation of the order F. No. 400/29/2002 - IT(B) dated 26-6-2006 (Said order) issued by the Central Board of Direct Taxes (CBDT). In the alternative, it was contended that paragraph 3 of the said order, to that extent it declined the benefit of waiver of interest charged under section 234B, and 234C to the class or classes referred to in paragraphs 2(a) and 2(d) of the said order dated 26-6-2006, was arbitrary and unequal and was in violation of Article 14 of the Constitution of India. The High Court held that said order specifically mentioned that it would not apply to sections

234B and 234C, in view of above, the assessee was not entitled to any waiver / reduction of interest. Accordingly the writ petition was dismissed. (AY. 2008-09)

De Souza Hotels (P.) Ltd. v. CCIT (2012) 207 Taxman 84 / 78 DTR 135 / 253 CTR 541 (Bom.)(HC)

Editorial:- SLP of assessee was rejected. De Souza Hotesls Pvt. Ltd. v. CCIT [SLP (Ciivil) CC No. 13729 of 2012, dated 21-8-2012 (2012) 210 Taxman 96(Mag.) (SC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Powers of Appellate Authorities – Appellate Authorities can consider claim not raised before Assessing Officer Education cess is held to be deductible. [S. 40(a)(ii), 254(1)]

Court held that though the claim to deduction of education cess and higher and secondary education cess was not raised in the original return or by filing a revised return, the assessee had addressed a letter claiming such deduction before the assessment could be completed. However, even if we proceed on the basis that there was no obligation on the Assessing Officer to consider the claim for deduction in such letter, the Commissioner (Appeals) or the Appellate Tribunal, before whom such deduction was specifically claimed, was duty bound to consider such claim. Followed CIT v. Orient (Goa) P Ltd [2010] 325 ITR 554 (Bom.) (HC) (AY.2008-09, 2009-10)

Sesa Goa Ltd. v. JCIT (2020)423 ITR 426 / 117 taxmmann.com 96 / 193 DTR 41 / 316 CTR 446 (Bom.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Inadvertently omitted to make claim for deduction under section 10B – All necessary facts were already on record – CIT (A or Appellate Tribunal ought to have entertained claim – Unlike an ordinary appeal, basic purpose of a tax appeal is to ascertain correct tax liability of assessee in accordance with law – Matter remanded. [10B, 139, 246 , 250, 254(1)]

Assessee filed its income tax return for relevant year, however, inadvertently omitted to make claim for deduction under section 10B in respect of two 100 per cent Export Oriented Undertakings (EOUs), which according to him were eligible for

deduction under section 10B. Assessee, during assessment proceedings, filed letters claiming for deduction under section 10B in respect of aforesaid units, however, Assessing Officer refused to consider this claim for deduction, on ground that such claim was not raised by filing revised returns. Commissioner (Appeals) as well as Tribunal upheld order made by Assessing Officer. On appeal the Court held that Appellate Authorities may confirm, reduce, enhance or annul assessment or remand case to Assessing Officer, because, unlike an ordinary appeal, basic purpose of a tax appeal is to ascertain correct tax liability of assessee in accordance with law. Therefore Commissioner (Appeals) in exercise of his plenary/co-terminus powers, as well as Tribunal, ought to have entertained claim for deduction under section 10B as all necessary facts were already on record. Appellate Authorities could not have refused to consider assessee's claim for deduction on ground that such claim was not made in original returns or revised returns filed before Assessing Officer. Followed CIT v. Pruthvi Brokers & Shareholders [2012] 349 ITR 336 (Bom.) (HC) Referred Circular No 14 (XL-35 of 1955 dt 11-4-1955. (AY.2005-06)

Sesa Goa Ltd. v. ACIT (2020) 430 ITR 114 / 272 Taxman 543 (Bom.)(HC)

S. 251: Appeal – Commissioner (Appeals) – Powers – Additional grounds – Power of the Appellate authorities is co-terminus with the power of the assessing authorities – Order of Tribunal holding that CIT (A) has no jurisdiction to admit addition grounds is set aside – Directed the CIT (A) to decide on merit considering the additional ground. [S. 154, 254(1)]

Allowing the appeal of the assessee the Court held that the Tribunal was not justified in holding that CIT (A) ought not to have admitted the additional grounds raised before the CIT(A). Accordingly the order of Tribunal is set aside and directed the CIT(A) to decide the appeal on merits considering the additional grounds. Power of the Appellate authorities is co-terminous with the power of the assessing authorities. (Distinguished Addl CIT v. Gurjargravures P. Ltd [1978] 111 ITR 1 (SC) followed, Jute Corporation of India v. CIT [1991] 187 ITR 688 (SC) CIT. Kanpur coal syndicate [1964] 53 ITR 225 (SC). (ITA No.67 of 2014 dt 5-2 2020) (AY. 2009-10)

Siva Equipment Pvt. Ltd. v. ACIT (2020) 423 ITR 20 / 187 DTR 249 / 313 CTR 787 / 274 Taxman 420 (Bom.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Additional evidence – Failure by Appellate Tribunal to exercise jurisdiction vested in it – Matter Remanded to Appellate Tribunal. [S.69C, 260A, ATR, 1963, R.29]

Allowing the appeal of the assessee the Court held that the Appellate Tribunal had not considered the assessee's application seeking leave to produce additional evidence at the stage of appeal by it. This amounted to failure to exercise jurisdiction which was vested in the Tribunal by virtue of the provisions in rule 29 of the 1963 Rules. Upon exercise of such jurisdiction, thereafter, it was open to the Tribunal to examine whether the application made by the assessee fulfilled the parameters of rule 29 of the Rules, 1963 or whether something was required to be said as regards the documents that were sought to be produced at the appellate stage. There was no discussion on whether such material could be admitted in evidence at the appellate stage and thereafter considered. The order of the Tribunal was to be set aside and the matter was to be remanded to the Tribunal for consideration of the assessee's application seeking leave to produce additional evidence before the Tribunal. Matter remanded.

Braganza Construction Pvt. Ltd. v. ACIT (2020) 425 ITR 115 / 193 DTR 332 / 271 Taxman 173 (Panaji) (Bom.)(HC)

S. 254(1) : Appellate Tribunal – Duties- Survey – Revised return – Barred by limitation- Deletion of addition- Matter remanded to the file of the Assessing Officer to assess original return of income. [S.133A, 139 (5), 260A]

Assessee company filed its return of income declaring total income of certain amount . Thereafter, a survey was conducted at premises of assessee pursuant to which it filed revised return disclosing an income of certain amount. Thereafter, the Assessee addressed a letter dated 28-12-2009, to the Assessing Officer (AO), urging that the revised return was filed only to cooperate with the Revenue. However, it was pointed out that the correct offer of income was reflected in the

original return itself and, therefore, it is only the original return which may be assessed. However the Assessing Officer accepted revised return filed by assessee .CIT (A) dismissed the appeal of the Assessee. On appeal the Tribunal held that revised return was barred by limitation and, therefore, same could not be acted upon by Assessing Officer. The Tribunal also deleted disallowances/additions made by Assessing Officer. On appeal the Revenue raised the question "Whether on that facts and circumstances of the case, the Tribunal is right in law in accepting the contentions of the Assessee without giving an opportunity to the Assessing Officer by way of a remand, particularly, when the Assessee has withdrawn the statement unsuccessfully without legal basis ?" The Court held that consequent upon the ITAT's finding that the revised return was filed beyond the prescribed period of limitation, the matter is now remanded to the AO to assess the original return of the assessee, as expeditiously as possible, on its own merits and in accordance with law. The matter is remanded back to Assessing Officer to assess original return of assessee . (AY. 2007 -08)

CIT v. Mukhtar Minerals (P.) Ltd [2021] 276 Taxman 138 (Bom)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Tribunal must adopt a justice oriented approach and not defeat the legitimate rights on the altar of procedures and technicalities- Even a mistake by the assessee can be rectified- Tribunal and parties are not adsarial to each other-Application not to be dismissed at threshold.[Art. 226]

It is a settled position in law that every authority exercising quasi judicial powers has inherent/ incidental power in discharging of its functions to ensure that justice is done between parties i.e. no prejudice is caused to any of the parties. This power has not to be traced to any provision of the Act but inheres in every quasi judicial authority. This has been so held by the Supreme Court in Grindlays Bank Ltd. v/s. Central Government Industrial Tribunal 1980 SCC 420. Therefore, the aforesaid principle of law should have been adopted by the Tribunal. It is expected from the Tribunal to adopt a justice oriented approach and not defeat the legitimate rights

on the altar of procedures and technicalities. This is particularly so when there is no specific bar in the Act to correct an order passed on rectification.

(ii) It is fundamental principle of law that no party should be prejudiced on account of any mistake in the order of the Tribunal. Though not necessary for the disposal of this Petition, we express our disapproval of the stand taken in the impugned order that Section 254(2) of the Act are meant only for rectifying the mistakes of the Tribunal and not of the parties. The Tribunal and the parties are not adversarial to each other. In fact, the Tribunal and the parties normally represented by Advocates/ Chartered Accountants are comrades in arms to achieve justice. Therefore, a mistake from any source be it the parties or the Tribunal so long as it becomes a part of the record, would require examination by the Tribunal under Section 254(2) of the Act. It cannot be dismissed at the threshold on the above ground.(WP No. 2548 of 2014, dt. 24.12.2014.)(AY. 1999-2000, 2000-01, 2001-02)

Supreme Industries Ltd. v. ACIT (2014) 369 ITR 758 / (2015) 229 taxman 387 (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 –Prosecution- Appeal against acquittal under code of 1973 - High Court has power or jurisdiction to condone delay in filing an application seeking leave to appeal against an acquittal or in entertaining an appeal against acquittal under Code of 1973 [S. 279 , Code of Criminal Procedure Code , 1973, 378 , Limitation Act , 1963 , S. 5, 24, Art. 14, 136 , 226]

Special leave to appeal was instituted 480 days beyond the prescribed period of limitation. The applicant filed a Criminal Miscellaneous. Application seeking condonation of delay. The Respondent raised the preliminary objection as regards the powers to condonation of delay. The court held that the High Court has the power or jurisdiction to condone delay in filing an application seeking leave to appeal against an acquittal or in entertaining an appeal against an acquittal under Code of 1973. The matter was remanded to a single judge to decide on merits.

ITD v. Dattaraj Vassudeva Salgaoncar (2024) 298 Taxman 778 (Bom.)(HC)

S. 260A: Appeal – High Court – High court refusing to frame question as substantial question of law – High Court cannot review its decision – Even if the principle of res judicata does not apply to tax matters, consistency and certainty of law would require the State to take a uniform position and not change its stand in the absence of change in facts or the law-

Revenue's appeal before High Court would not lie if tax appeal fall short of monetary limit of Rs. 1 crore. [S. 260A(4), 268A]

Dismissing the appeal the Court held that S. 260A (4) does not empower the High Court to reconsider its earlier view in the same proceedings and reformulate a question of law which it had earlier refused to formulate. In other words, (1) a question that had escaped the court's earlier attention, or (2) a question the appellant had not presented to the court, or even (3) a question that cropped up because of subsequent developments stands on a different footing. But a question which the High Court consciously refused to treat as a substantial question of law fails to qualify under any of the above three categories. Even if the principle of res judicata does not apply to tax matters, consistency and certainty of law would require the State to take a uniform position and not change its stand in the absence of change in facts or the law. Revenue's appeal before High Court would not lie if tax appeal fall short of the monetary limit of Rs. 1 crore. (AY.2008-09)

CIT v. V. M. Salgaonkar Brothers (P.) Ltd. (2020) 428 ITR 386 / 317 CTR 529 / 195 DTR 241 / (2021) 277 Taxman 469 (Bom.)(HC)

S. 260A: Appeal – High Court – Territorial Jurisdiction of High Court – Precedent –Reassessment - Assessed in Karnataka – Appeal decided by Mumbai Tribunal – Bombay High Court has no jurisdiction to decide the appeal. [S. 147, 148, Art. 142, 226, 227]

The Assessing Officer, Belgaum, reopened the assessment. Commissioner (Appeals), Bangalore decided the appeal. Panji Bench of the Tribunal decided the matter in favour of the assessee. Department has filed an appeal before the Bombay High Court. Dismissing the petition the Court held that the assessee was located in Karnataka, and so were the Income-tax authorities. The primary order, too, emanated from Karnataka; so did the first appellate order. All challenges, including the appeal before the Tribunal, were in continuation of that primary adjudication or consideration before the Assessing Officer at Belgaum, Karnataka. The Bombay High Court had no jurisdiction to entertain the appeal. Relied on Ambica Industries v. CCE AIR 2007 SC 1812/ (2009) 20 VST 1 (SC) (AY.2008-09)

CIT v. MD Waddar and Co. (2020) 429 ITR 451 / 317 CTR 713 / 196 DTR 33 / (2021) 277 Taxman 558 (Bom.)(HC)

S. 260A: Appeal - High Court - Power of review - Review petition is dismissed against the order of High Court in tax appeals.[S. 260A(7)]

Revenue filed application seeking review the order passed by the High Court in the tax appeal. The assessee relying on judgment in the case of CIT v. West Coast Paper Mills Ltd. (2009) 319 ITR 390 (Bom.) contended that no review is maintainable, enabling review of the order by the High Court in tax appeal and sub section (7) of section 260A does not permit such a course. The revenue contended that the power of review is a akin to section 100 of the C.P.C. and if an appeal lies on the substantial question of law under section 100 of the C.P.C., the High Court while exercising the appellate power in terms of this provision, is empowered to review its own orders. The revenue submitted that section 114 of the C.P.C. read with order XL.VII, Rule (1) of the C.P.C. specifically confers power of review in appeal and in these circumstances all provisions enabling the High Court, in exercise of its appellate power, to deal with first appeals and second appeals have been made applicable, that would include the power of review. The Court held that power of review cannot be read into sub-section (7) of section 260A and therefore, the review petition is not maintainable against the order passed by the High Court in tax appeals by invoking sub-section (7) of section 260A.

CIT v. Automobile Corporation of Goa Ltd. (2012) 206 Taxman 640 / 80 DTR 81 (Bom.)(HC)

Editorial:- Followed CIT v. West Coast Paper Mills Ltd. (2010) 229 CTR 239 (Bom.)(HC) and dissented from D. N. Singh v. CIT (2010) 325 ITR 349 (FB)(Patna)(HC)

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. The 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 (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. 263: Commissioner – Revision of orders prejudicial to revenue – Transfer pricing – Failure to provide draft assessment order – Direction to pass fresh assessment order – Void ab initio – Revision is held to be not valid. [S. 92CA, 144C]

The assessment order was passed without referring the matter to pass Draft Assessment order. The assessee challenged the said order before CIT(A). when the appeal was pending before the CIT(A) the Commissioner passed revision order and

set aside the original order, with the direction to pass fresh assessment order. Against the revision order, the assessee filled an appeal before the Tribunal. Tribunal up held that the revision order. Assessee filed an appeal before the High Court against the revision order affirmed by the Appellate Tribunal. On behalf of the assessee, it was contended that when the order passed by the AO being void ab-initio or a nullity revision jurisdiction is bad in law. It was argued on behalf of the revenue that the Tribunal was justified in holding that revision is justified as the assessee has not challenged the original order by filing writ petition. On appeal the Court held that merely because the assessee has not filed writ petition but challenged in appeal, ratio laid down by various High Courts could not have been ignored by the Tribunal merely observing that these were the decisions in writ petitions instituted by the assessees. Accordingly the revision order was set aside and consequently the order of the ITAT also set aside. (Referred Zuari Cement Ltd v. ACIT (AP) (HC) (WP.No. 5557 of 2012 dt 21-2 2013), Control Risk India (P) Ltd v. Dy.CIT (2019) 107 taxmann.com 82 (Delhi) (HC), International Air Transport Association v Dy.CIT (2016) 68 taxmann.com 246 (Bom.) (HC), PCIT v. Lion Bridge Technologies (P) Ltd (2019) 260 Taxman 273 (Bom.) (HC), Vijay Television (P) Ltd v. Dispute Resolution Panel Chennai (2014) 46 taxmann.com 100 (Mad.)(HC). (AY. 2006-07)

Cigabyte Technology (India) (P) Ltd v. CIT(2020) 195 DTR 337/ 317 CTR 585 / (2021) 276 Taxman 104 (Bom.)(HC)

S. 264: Commissioner – Revision of other orders – Conversion of immoveable property in to stock in trade – Shown as capital gains – Matter remanded to Commissioner. [S. 5A, 143(1), Art. 226]

Petitioners purchased an immovable property (land) in Goa and showed same under head Investment. In year 2014, they converted said property into stock-in-trade for purpose of development. In assessment year 2015-16, they computed profits from sale of said property after giving effect to provisions of section 5A.Thereafter, they filed petition under section 264 and applied for revision of intimation under section 143(1) for assessing gain on sale of said property as business income. However, Commissioner had rejected said application on the

ground that since petitioners had not produced any evidence to support their claim of conversion of said capital asset into stock-in-trade and neither books of account/ledgers nor balance sheets were produced by petitioners along with their application under section 264 of the Act. On writ allowing the petition interests of justice would require that petitioners should be given an opportunity to produce relevant material before Commissioner, and thus, matter be remanded back. (AY. 2015 -16)

Rajesh Prakash Timlo v. PCIT (2020) 272 taxman 59 /116 taxmann.com 487 (Bom.)(HC)

S. 268A: Appeal – Monetary limits – Less than Rs.1 crore – Appeal of Revenue is dismissed – Contribution to construction of new bridge – Capital of revenue.[S.37(1), 260A]

Assessee incurred expenditure by way of contribution towards the construction of new bridge . Tribunal treated said expenditure as revenue expenditure . Revenue filed instant appeal against Tribunal's order . Assessee contended that tax effect in instant appeal would be hardly Rs. 15 lakhs Court held that since tax effect in instant appeal was lower than threshold limit of Rs. 1 crore fixed by Circular No. 17/2019, dated 8-8-2019, , appeal of Revenue is dismissed .(AY. 2008 -09)

CIT vs. Velingkar Brothers [2020] 114 taxmann.com 727 (Bom)(HC)

S. 271(1)(c) : Penalty – Concealment – Alleged wrong claim of deduction – Claim was allowed - Deletion of penalty is held to be justified. [S.. 10B]

Dismissing the appeal of the revenue the Court held that the assessee had correctly claimed the deduction under section 10B which was ultimately allowed and, therefore, there was no question of levy of penalty. Referred CIT v. Sesa Goa Ltd (2021) 436 ITR 17 (Bom)(HC) (AY.2009-10)

PCIT v. Sesa Goa Ltd. (2021)439 ITR 188 /132 taxmann.com 42 (Bom) (HC)

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. [2020] 113 taxmann.com 630 / (2021) 433 ITR 268 (Panji) (Bom.) (HC)

S. 271(1)(c) : Penalty – Concealment – Not recording of satisfaction – Order of Tribunal quashing the reassessment proceeding was affirmed. [S.274]
Dismissing the appeal of the revenue the Court held that there was no recording of satisfaction by Assessing Officer in relation to any concealment of income or furnishing of inaccurate particulars by assessee in notice issued for initiation of penalty proceedings under section 271(1)(c), same being sina qua non for initiation of such proceedings, Tribunal had rightly ordered to drop penalty proceedings. Distinguished. Mak Data (P.) Ltd. v. CIT (2013) 358 ITR 593 (SC)
PCIT v. Goa Coastal Resorts and Recreation (P) Ltd. (2020) 272 Taxman 157 (Bom.)(HC)

Direct Tax Vivad Se Vishwas Act, 2020

S. 3:Amount payable by declarant – Time and manner of payment – Determined tax payable within 15 days of receipt of Form -3 - Requirement of paying an additional amount was informed to assessee only by communication dated 1-4-2022, long after extended date of 31-10-2021- Assessee should not have been denied benefits under DTVSV Act. [S. 5 , Form No1 , Form No 3, Form No 4, Art. 226 [
Assessee filed declaration in Form 1 giving particulars of tax arrears and amounts payable in respect of pending income tax dispute for relevant assessment year . Revenue issued Form 3 determining amounts payable as 14.04 lakhs (if paid on or before 31-3-2021) and Rs.16.26 lakhs (if paid after 31-3-2021) Accordingly,

assessee paid amount of Rs.14.04 lakhs on 12-10-2021. However, assessee received a communication that her declaration was null and void as there was delay in filing of Form-4 and last date for payment of tax extended upto 31-10-2021 had also lapsed. Thereafter, assessee received another communication rejecting assessee's declaration with new reason that assessee ought to have paid Rs. 16.26 lakhs since such payment was made after 30-9-2021. On writ the assessee contended that in response to revised Form 3 made payment of disputed tax determined within 15 days in Form 4 and also payment made on 12-10-2021 was acknowledged by revenue . Requirement of paying an additional amount was informed to assessee only by communication dated 1-4-2022, long after the extended date of 31-10-2021 had lapsed. Allowing the petition the Court held that fact revenue should have either accepted assessee's payment made within 15 days from receipt of Form 3 or at least informed assessee that she was required to pay an additional amount on or before 31-10-2021 .Since assessee determined amount payable under VsV Act correctly but had to struggle to get revenue's determination corrected, communications rejecting assessee's declaration is to be quashed . The Revenue is directed to accept the declaration, subject to making the payment within 21 days. (AY. 2017 -18)

Neelam Ajit Phatarpekar (Mrs.) v. ACIT [2024] 462 ITR 467 (Bom)(HC) / 163 taxmann.com 335 (Bom)(HC)

Direct Tax Dispute Resolution Scheme, 2016, Finance Act, 2016

S. 204 : Time and manner of payment – Failure to deposit the tax beyond control of the assessee- Assessee was incapacitated from reasons beyond its control and power, writ of mandamus were to be issued that BCCI should pay tax and interest on behalf of assessee within 180 days .[Art. 226

Assessee State Cricket Association was affiliated to parent body, BCCI . It used to receive funds from BCCI to carry out activities including payment of tax dues . Under Direct Tax Dispute Resolution Scheme, 2016, a declaration was made by assessee, income tax department sought to issue certificate on condition that

assessee should deposit tax on or before date specified . However, in case of BCCI, Supreme Court had already passed an order injuncting BCCI from paying money to State Cricket Associations . Since assessee was incapacitated from reasons beyond its control and power, writ of mandamus were to be issued that BCCI should pay tax and interest on behalf of assessee within 180 days . (AY. 2006 -07 to 2012-13

Goa Cricket Association v. PCIT [2020] 113 taxmann.com 287 (Bom)(HC)

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