1. MATTUL SERVICE CO-OPERATIVE BANK LTD. V ITO [2010] 186 TAXMAN 409 (KER.)

Petitioner was a co-operative bank registered under provisions of Kerala Co-operative Societies Act. Concerned ITO issued it a notice calling for information under section 133(6). Petitioner objected to said notice, inter alia, on ground that co-operative banks are not 'persons' as defined under section 2(31) and not, admittedly, a banking company, so as to invoke power under section 133.

On appeal the court ruled that going by sub-clause (v) of section 2(31), which defines term 'person', and also in view of nature and construction of a co-operative society, it can be said that a co-operative society is a 'body corporate' given shape by members of such society, whose functioning is controlled under relevant provisions of Co-operative Societies Act/Rules and that being position, contention raised by petitioners that notice under section 133(6) was not attracted in case of a co-operative society, was wrong and misconceived.

2. CIT v Brindavan Beverages Ltd. [2010] 186 TAXMAN 233 (KAR.)

During the relevant assessment year, the assessee had sold its soft drink bottling unit to one H for a consideration of Rs. 55 crores. The assessee claimed that the sale of the asset was in the nature of ‘slump sale’, and the surplus receipt for transfer of the asset, which was in a sum of Rs. 43 crores in the nature of capital receipt had been credited to its capital reserve account as surplus from sale of soft drink undertaking and had not been offered for tax, in the return filed for the assessment year 1999-2000 (This was for the reason that for AY 1999-2000 slump sale was not taxable, provisions of section 50B was not applicable). The assessee was of the opinion that the amount being capital receipt was not taxable and hence had transferred it to Capital Reserve. The AO treated it as a normal sale and levied capital gains tax. Also he modified the book profit in terms of 115JB by adding the surplus on transfer of the unit.

The assessee, however, urged that there is absolutely no scope for the Assessing Officer to tinker with or alter the book profits as determined by the assessee and as has been accepted by the authorities under the Companies Act in which event it is presumed to have been so computed only in terms of the provisions of parts II & III of Schedule-VI to the Companies Act, 1956 and on the authority of good number of judgments of the Supreme Court and the High Courts, it is not open to the Assessing Officer to sit in judgment over the ascertainment of book profits by the assessee and as recognized/approved by the corresponding authorities under the provisions of the Companies Act, 1956 and, on facts, the instant situation being not one covered under any one of the clauses (a) to (f) of the Explanation to sub-section (2) of section 115JA, there was no way of the Assessing Officer to redetermine the book profits for the purpose of section 115JA by adding the so called surplus as a result of the slump sale which had been directly taken to the capital reserve account without having been debited to the profit and loss account of the assessee in terms of clauses (a) & (b) of the Explanation.

On appeal the Court observed that it was the finding of the AO and approval of the ITAT was the sale was actually not a slump sale but a normal sale on valuation of assets by an examiner and the assessee had tried to cover the same as slump sale to evade tax. The Court ruled that the sale would attract capital gains tax as it was a normal sale.

The question before the Court was whether the surplus amount arising as a result of sale of the bottling unit could have been added back to the book profits of the assessee for the purpose of determining its deemed income for the year under consideration in terms of the provisions of section 115JB.

Though book profits as ascertained by assessee and as certified by auditors and accepted by authorities under Companies Act cannot be, in any way, faulted with by Assessing Officer or authorities under IT Act, but authorities under Companies Act do not, in any way, control or are responsible in manner of computation of book profit as computed under section 115JB, if book profit as computed under section 115JB(2) is required to be further modified or altered by working Explanation to section 115JB(2). Therefore, even after preparation of profit and loss account of assessee for relevant previous year in accordance with provisions of Parts II and III of Schedule VI of Companies Act, Assessing Officer can compute book profits for purpose of section 115JB by examining applicability of each clause in Explanation to sub-section (2) of section 115JB.

The Assessing Officer should proceed on the premise that the surplus amount itself was the gain attributable to the transaction of transfer of bottling plant as a going concern and the same should be added to the book profit to determine the correct tax liability.

Note : In this case the assessee had conceded in the notes to the accounts that there was a surplus on sale of the bottling unit.

3. CIT v Smt. Vandana Verma [2010] 186 TAXMAN 88 (ALL.)

A warrant for search under section 132(1)(c) was issued duly signed by competent authority in joint name of assessee and her husband to enter and search their residence. During search operation, seizure operation was also carried out, seizing books of account, documents, papers and diaries including loose papers and other materials of all entities.

A notice under section 153A in name of assessee was issued for computation of undisclosed income of block period and same was duly served on her to which she tendered her reply but reply so tendered did not find favour with assessing authority, resulting in computation of total income including undisclosed income at Rs. 17.31 crores. On second appeal before Tribunal, assessee raised a preliminary objection with regard to framing of assessment in individual capacity as search warrant was in joint name.

On appeal the High Court ruled that when warrant of authorization under section 132(1)(c) had been issued in joint names of assessee and her husband living together in a single premises, it was not open for assessing authority to assess assessee in her individual capacity on basis of documents seized during course of search and that too by invoking provisions of section 153A. Therefore, impugned assessment order was to be quashed holding that assessment could not be framed in an individual capacity but it had to be framed either as an AOP or as body of individuals.

4. CIT v Krishna Saraf [2010] 186 TAXMAN 1 (MAD.)

During search conducted at premises of one ‘G’, revenue authorities found and seized a safe deposit vault belonging to respondent assessee which contained cash, IVPs, jewellery and bullion. Thereafter, assessment order was passed in case of assessee. The assessee appealed against the search assessment order. Subsequently, Assessing Officer passed another order to give effect to appellate order and determined amount refundable to assessee but he did not grant any interest on refund, on ground that since no seizure had been effected in case of assessee, interest under section 132B(4) had no application.

On appeal the High Court ruled that though search was said to have been held in premises of ‘G’, since seizure and recovery were from safe deposit lockers belonging to assessee and after seizure revenue proceeded to issue notice under section 142(1) to assessee, it could be said that seizure made under section 132 had every nexus to assessee and safe deposit lockers belonging to him. Therefore, assessee was entitled to seek for necessary interest under section 132B in event of delay in grant of refund.

5. CIT v Whirlpool of India Ltd. [2009] 185 TAXMAN 387 (DELHI)

Assessee-company was incorporated with main object of carrying on business of financing of all kinds of goods and financing of private industrial enterprises in India by way of loans or advances and so on. Its first board meeting was held on 12-8-2009 in which appointment of additional directors, auditors, executives, etc., took place. During months of September and October, 2009, assessee purchased computers and appointed various key employees such as branch managers, regional managers, consumer finance managers, company secretary, finance manager and accounts manager, etc. During period from November, 2009 to January, 2010, it paid salary to employees through two other companies and incurred petty expenses through them. It opened its bank account on 1-2-2010 and, thereafter, all subsequent expenses were incurred from same. In its return of income for relevant assessment year, it claimed expenditure on footing that business was set up with effect from 1-11-2009. Assessing Officer, however, held that assessee’s business could be said to have been set up only with effect from date of opening of bank account, i.e., 1-2-2010, and expenditure incurred after that date only could be allowed as deduction.

On appeal, the High Court upheld the order of the Tribunal, held that as the assessee-company was engaged in rendering financial services, it was possible to say that business was set up when directors were appointed, staff such as regional and branch managers were appointed and their salaries were paid, computers were acquired and installed and company was ready to commence business. It, therefore, deleted disallowance of expenses prior to 1-2-2010 by holding that business was set up on 1-11-2009 as claimed by assessee.

6. Indo Rama Synthetics (I) Ltd. v CIT [2009] 185 TAXMAN 277 (DELHI)

Assessee was manufacturer of yarn and polyester for a number of years. It had been generating substantial cash from its existing business. With a view to utilize said surplus cash and to expand its existing operations, it commenced setting up of a spinning and weaving unit for manufacture of fabric and textiles during financial year 2008-09 in State of Karnataka. Said unit was part of process of vertical integration by utilizing products manufactured by existing units as raw material for new unit. For setting up new unit, assessee identified manpower from existing pool of resource. Unit was proposed to be established under common control of board of directors. In relation to setting up of said unit, assessee, from time-to-time, incurred expenditure in nature of salary, wages, repairs, maintenance, design and engineering fee and other expenses of administrative nature. However, assessee could not procure allotment of requisite land from Government of Karnataka and, therefore, setting up of said proposed unit was abandoned during relevant assessment year. The Court ruled that the aforesaid expenditure could be allowed deduction of project related expenses as revenue expenditure.

Assessee-company had engaged services of an international firm of consultancy for carrying out a detailed study on various aspects relating to its operations and to suggest measures for improving operational efficiency and profitability of its business. However, based on review of cost benefit analysis, said assignment was terminated shortly after mandate had been given. In respect of work already done by consultancy firm until date of termination of mandate, assessee paid certain sum to said firm and claimed deduction of said payment as revenue expenditure. The court ruled that such expenditure as well would be allowed as deduction under section 37(1).

7. CIT v Eicher Ltd. [2009] 185 TAXMAN 243 (DELHI)

The assessee had made some inter-corporate deposits with company L. The interest on loan given to ‘L’ had been credited in the books of account on a yearly basis and had been assessed to tax, though interest was actually received only for the first two years; and that since no interest was received thereafter, the directors decided not to account for the interest income in the books of account. Total outstanding amount of Rs. 617 lakhs including principal amount of Rs. 350 lakhs and interest amount of Rs. 267 lakhs was ultimately settled at Rs. 480 lakhs (principal Rs. 350 lakhs and interest Rs. 130 lakhs) *vide* one-time settlement agreement.

Assessing Officer made certain addition to returned income of assessee on account of interest accrued on inter-corporate deposits made by assessee in company ‘L’. The assessee contended that loan had become irrecoverable and, so, no interest could be said to have accrued thereupon. It further explained that interest on said loan given to ‘L’ had been credited in books of account on a yearly basis up to 31-3-1999 which was duly assessed to tax, though interest was actually received only for first two years. On appeal, High Court deleted addition holding that no tax was payable unless interest income was real income and not merely accrued income, especially when principal amount had been written off as bad debt in subsequent years.

8. Climate Systems India Ltd. v CIT [2009] 185 TAXMAN 139 (DELHI)

Assessee-company engaged in manufacturing and sale of heat exchangers (radiators) entered into a technical collaboration agreement with an American company for purpose of upgrading and manufacturing of radiators with technology owned by American company. Under said agreement, assessee was permitted to be a mere user of technology regarding manufacturing of upgraded radiators for which it was obliged to make a lump sum payment to American company. Under said agreement, assessee was also obliged to pay a fixed percentage of royalty on domestic and export sales to American company for a period of 7 years for using technology and for availing of technical services. Assessee claimed amount of royalty paid as deductible expenditure, treating same as revenue/business expenditure. Assessing Officer disallowed same holding aforesaid expenditure to be of capital nature

The High Court on appeal ruled that :

On a reading of the technical collaboration agreement entered into between the assessee and the foreign company, it was clear that for transfer of technology, the assessee agreed to pay a lump sum amount. That payment was, admittedly, treated as capital expenditure by the assessee and had been shown as such. However, insofar as payment of royalty was concerned, that depended on the domestic as well as export sales. Quantum of the said sales would determine the extent of royalty to be paid and it would decrease or increase every year depending upon the decrease or increase in the sales. Significantly, that payment was not because of 'transfer' of technology, but for providing 'technical service'. In such circumstances, the payment of royalty, which was a continuous process, should have been treated as revenue expenditure.

9. CIT v Sahib Chits (Delhi) (P.) Ltd. [2009] 185 TAXMAN 34 (DELHI)

Discount distributed to subscribers of a chit fund in form of bid amount offered by successful bidder who takes chit, would not fall within ambit of interest under section 2(28A). Therefore, where assessee-chit company while disbursing such a discount to subscribers of chit did not deduct tax at source within meaning of section 194A, it could not be treated as assessee-in-default under section 201.

10. H. Ebrahim v DCIT [2009] 185 TAXMAN 11 (KAR.)

The first petitioner was the managing director and petitioner Nos. 2 to 4 were the directors of a company which had not filed returns of income since its inception in 1991 till date of search conducted on it on 18-1-2001. Pursuant to the said search, the Assessing Officer passed an assessment order determining undisclosed income of the company and the net tax payable by it. The petitioners being the directors of the company, proceedings were initiated against them under section 179 on the ground that if the company was not in a position to meet the demands of payment of income-tax, the directors were personally liable to satisfy the said claim.

The petitioners' case was that under section 179 only the amount of tax could be recovered and the said amount would not include the interest and penalty. It was their further case that none of the three ingredients under section 179, viz., gross neglect, misfeasance or breach of duty on the part of the directors in relation to affairs of the company was satisfied before initiation of proceedings under section 179 and, therefore, they were liable to be absolved of the proceedings under section 179.

On appeal the High Court pointed out that for invoking section 179 it is not necessary that all three ingredients, viz., gross neglect, misfeasance and breach of duty are satisfied; it is sufficient if it is held that there is a gross neglect or misfeasance or breach of duty on part of directors in relation to affairs of company. Petitioners were managing director / directors of assessee-company which had not filed its returns of income for more than a decade and was not in a position to meet demands of payments of ncome-tax and dues of statutory authorities. On facts, it could be said that there was a gross neglect on part of directors of company and, hence, all ingredients of section 179 were satisfied.

The phrase 'tax' as conteplated under section 179 does not include penalty and interest, insofar as the directors of the company are concerned. However, this interpretation of phrase 'tax would not be' is under section 179 and does not encompass the company. Indeed, the company was liable to pay all the three components, i.e., 'tax', 'interest' and 'penalty' and any other sum due or recoverable from it as contemplated under section 222.

11. CIT v Smt. Shakuntala Devi [2009] 185 TAXMAN 8 (PUNJ. & HAR.)

During pendency of assessment, Assessing Officer came across certain material showing escapement of income, on which proceedings were initiated under section 147 and notice under section 148 was issued on 18-8-2005. After considering reply of assessee, assessment was made on 7-12-2006, making addition to declared income.

On appeal, Commissioner (Appeals) set aside notice under section 148 on ground that same could not be issued during pendency of assessment and only remedy for Assessing Officer was to proceed under section 143(2). Tribunal upheld said order.

On appeal the High Court ruled that in view of specific provisions contained in Explanation 2(b) to section 147 (Return of income filed but no assessment made shall be treated as income deemed to have escaped assessment), proceedings initiated under section 147 were in accordance with the law.

12. Arun Sunny v DCIT [2009] 184 TAXMAN 498 (KER.)

The property held by the assessee became a capital asset as per the notification issued on 6-1-1994. Admittedly, the asset which was declared as capital asset by notification became the asset of the assessee long prior to 1-4-1981.

As per section 55(2)(b), the cost of any improvement in relation to a capital asset means all expenditure of a capital nature incurred in making any additions or alterations to the capital asset on or after 1-4-1981 by the previous owner or the assessee.

The Legislature while explaining the term of cost of acquisition has in express terms provided that it is the value of the assets acquired as on 1-4-1981 together with all such expenditure of capital nature incurred in making any additions or alterations to the said asset. Therefore, the contention of the assessee that the value of the asset should be as on the date of the notification when it became a capital asset cannot be accepted.

On appeal the High Court ruled that the only condition which must be satisfied in order to attract charge to tax under section 45 is that property transferred must be a capital asset on date of transfer; it is not necessary that it should have been capital asset also on date of its acquisition by assessee. Cost of acquisition/fair market value of an asset is to be computed as on 1-4-1981 in terms of section 55(2)(b) and not as per date of notification, on which date asset was notified as a capital asset.

13. CIT v Cebon India Ltd. [2009] 184 TAXMAN 290 (PUNJ. & HAR.)

Assessee filed return for assessment year-in-question on 30-11-1996, which was processed under section 143(1)(a) on 30-5-1997. Thereafter, assessment was framed under section 144. On appeal, Commissioner (Appeals) held that there was no evidence to show that notice under section 143(2) had been served on assessee before 30-11-1997, i.e., within one year of filing of return and, accordingly, treated assessment was void. Revenue brought on record that a notice had been duly dispatched to assessee on 13-11-1997 and irregularity or defect in issuing notice was curable under section 292BB.

On appeal the High Court ruled that since it has not been brought on record that the notice was at all served, mere giving of dispatch number would not cure said defect by roping in section 292BB. It is a case of absence of notice and not service beyond time. Therefore, assessment was rightly treated as void.

14. Apex Metchem (P.) Ltd. v ITAT [2009] 184 TAXMAN 243 (RAJ.)

A search under section 132 was conducted upon ‘M’ of Mumbai during which certain amount of cash and documents were found. In course of search of his bank account, name of assessee-company was found having debit and credit statements. Block assessment proceedings were initiated against ‘M’ at Mumbai and against assessee-company at Jaipur. Assessing authority at Mumbai passed an order of assessment in case of ‘M’ against which appeal was preferred before Commissioner (Appeals), Mumbai and was decided on 30-4-2003. Since assessee-company also appeared as an intervenor in proceedings initiated against ‘M’, M also preferred appeals against order of assessment and order of Commissioner (Appeals) before Tribunal, Mumbai which were transferred by Tribunal, Mumbai to Jaipur Bench.

However, on assessee’s application President of Mumbai Bench of Tribunal passed an order dated 4-4-2005 directing said appeals to be heard and determined by Mumbai Bench. In meantime, assessee was assessed against which appeal was preferred and came to be decided by Commissioner (Appeals), Jaipur.

Both, revenue and assessee, preferred appeals against order of Commissioner (Appeals) which were decided by common order dated 29-3-2006 under section 254(1). However, thereafter, Jaipur Bench of Tribunal recalled its order dated 29-3-2006 on ground that there was mistake apparent from record inasmuch as order dated 4-4-2005 of President of Tribunal had not been brought to its notice. It further directed to consolidate both appeals to be heard along with appeal pending before Mumbai Bench of Tribunal.

The issue before the High Court was whether the directive of the President of the Tribunal to transfer the case to Jaipur in the instant case would constitute a order and further more would it constitute a mistake apparent from record.

The High Court on appeal pointed out that the Tribunal considered the direction of the President not being brought to its notice constituted a mistake apparent from record was in fact, an order dated 4-4-2005 being passed by President of Mumbai Bench of Tribunal, whereby appeal filed by assessee in case of 'M' was transferred from Jaipur to Mumbai Bench. The Court ruled that there was no order available on record of consolidating appeals in assessee's case for being heard at Mumbai Bench, there could not be said to be any mistake apparent from record being committed by Tribunal, Jaipur Bench in hearing such appeals and deciding those finally under section 254(1). Therefore, order passed in exercise of powers under section 254(2) was liable to be quashed irrespective of fact whether Tribunal acts on its own motion or at behest of parties. It is imperative that there must be a mistake apparent from record which would require order in appeal to be amended.

15. CIT v Trans Bharat Aviation (P.) Ltd. [2009] 184 taxman 118 (Delhi)

Assessee was engaged in business of air taxi. During course of verification proceedings, it was found that assessee in year under consideration had made payments to Airports Authority of India in respect of space rent, rent for office space, parking charges, etc., at various airports all over India on which no tax was deducted at source. Assessing Officer held that assessee was liable to deduct TDS and since TDS was not deducted, it was in default under section 201(1) and also liable for interest under section 201(1A).

On appeal held that since Airports Authority of India is a Government undertaking, taxes may be presumed to have been paid by due date of filing of its return of income and, therefore, liability of assessee to pay interest on amount which was to be deducted as TDS ended with due date of filing of return by Airports Authority of India. It was further noted that since the deductee is a Government of India undertaking, it cannot be presumed that it has not paid tax.

16. Liberty India v CIT [2009] 183 TAXMAN 349 (SC)

Duty drawback receipt / DEPB benefits do not form part of the net profits of eligible industrial undertaking. Apex court opined that the remission of duty is on account of the statutory provisions in the Customs Act, framed by the Central Government. Held that such profits derived by way of such incentives do not fall within the expression "profits derived from industrial undertaking" in section 80IB.

17. Vipin Malik (HUF) v CIT [2009] 183 TAXMAN 296 (DELHI)

The assessee, an HUF, sold its agricultural land in September, 1995 giving rise to a long-term capital gain. The assessee claimed to have purchased a flat in a co-operative group housing society in his own name alongwith his mother and, therefore, claimed the entitlement to the benefit of section 54F. Admittedly, allotment of the said flat was made in terms of the allotment letter dated 27-10-1998 and most of the payment to the co-operative society had been made before one year of the sale of the agricultural land. Further, the amount invested for the purpose of purchasing the flat was not the entire amount of the capital gain but only a part of it and the balance amount was not deposited in Capital Gain Account Scheme. All the three authorities, namely, the Assessing Officer, the Commissioner (Appeals) and the Tribunal declined the benefit of section 54F to the assessee.

On appeal the High Court ruled that:

The facts clearly showed that the amount, which was available to be taxed as capital gain, was not utilized for the purchase of the flat either one year before the sale of the agricultural land or two years after the sale of the agricultural land inasmuch as most of the amount had already been paid to the co-operative society before one year of the sale of the agricultural land. The assessee also could not be said to have constructed a residential house within 3 years of the sale of the agricultural land, as the amount received from sale of the agricultural land was not utilised for the purchase of the flat. The assessee, therefore, could not be said to have purchased a residential house within the meaning of section 54F either one year before the sale of the agricultural land or within two years after the sale of the agricultural land. Looking at the ownership of the flat from the point of view of an allotment letter as per draw of lots, it was clear that the allotment letter or the draw of lots was only in September/October, 1998, i.e., after two years of the sale of the agricultural land, whereas before the Tribunal, the assessee took up a stand of his having constructed the flat within three years of the sale of the agricultural land. relying upon a circular of the CBDT which gave benefit of section 54F to an allottee of a DDA flat. The scheme of the DDA, which was approved by the CBDT, was on the basis that the allotment letter was issued and when payment of the first instalment of the cost of construction was made, then such allotment was final unless it was cancelled or the allottee withdrew from the scheme. The allottee under the DDA scheme of self-financing gets title on the issuance of the allotment letter. The said circular of the CBDT was, therefore, inapplicable to the case of the appellant.

Independent of the above discussion, an aspect which overrode the above issue, was that, the agricultural land, which was sold was of the HUF of the assessee but the flat purchased in the co-operative society was not in the name of the HUF. The flat was in the individual name of the assessee along with his mother. To claim the benefit of section 54F, the residential house which is purchased or constructed has to be of the same assessee whose agricultural land is sold and it was not the case in the instant case.

Since amount received from sale of agricultural land was not utilized for purchase of flat, assessee could not be said to have purchased a residential house within meaning of section 54F, hence the exemption was not available.

18. DCIT v Arvind Mills Ltd. [2009] 183 TAXMAN 189 (GUJ.)

Only requirement of provisions of 115JB(1A) is that accounts, more particularly profit and loss account for relevant previous year, have to be prepared in accordance with Parts II and III of Schedule VI to the Companies Act, 1956 and accounts so prepared have to be certified by chartered accountants. Assessing Officer cannot discard accounts prepared in accordance with requirements of Parts II and III of Schedule VI to the Companies Act and certified by chartered accountants, on ground that same had not been approved at annual general meeting of company.

19. Ms. Madhushree Gupta v UOI [2009] 183 TAXMAN 100 (DELHI)

As per the amended provisions of section 271(1)c) read with 271(1B), the AO has to be satisfied that the it is a fit case for imposition for penalty and he records the satisfaction in the assessment order. The assessment order shall be deemed satisfaction. In this connection the High Court on appeal for constitutional validity passed an order on the following points:

(i) The position of law is that the Assessing Officer will have to arrive at a prima facie satisfaction during the course of proceedings with regard to the assessee having concealed particulars of income or furnished inaccurate particulars before he initiates penalty proceedings;

(ii) Prima facie satisfaction of the Assessing Officer that the case may deserve the imposition of penalty should be discernible from the order passed during the course of the proceedings. Obviously, the Assessing Officer would arrive at a decision, i.e., a final conclusion only after hearing the assessee;

(iii) At the stage of initiation of penalty proceeding, the order passed by the Assessing Officer need not reflect satisfaction vis-a-vis each and every item of addition or disallowance, if overall sense gathered from the order is that a further prognosis is called for.

(iv) However, this would not debar an assessee from furnishing evidence to rebut the 'prima facie' satisfaction of the Assessing Officer, since penalty proceeding are not a continuation of assessment proceedings.

(v) The proceedings for initiation of penalty proceeding cannot be set aside only on the ground that the assessment order states that 'penalty proceedings are initiated separately', if otherwise it conforms to the parameters set out.

20. Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v CIT [2009] 182 taxman 287 (SC)

The assessee-society was a co-operative society running a co-operative store. It was dealing in non-controlled commodities through its branches and was also doing the work of distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the Government under the Public Distribution Scheme for which it was getting commission. The distribution of the controlled commodities was regulated by the District Supply Officer under the Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976. The assessee claimed to be stockist/distributor of controlled commodities. It took delivery from Food Corpn. of India and Rajasthan Rajya Upbhokta Sangh as per the directives of the State Government, stored those goods in its godowns, both owned and rented, and then delivered same to the fair price shops as per the directions of the State Government. For the relevant assessment years, it filed its returns claiming deduction under section 80P(2)(e) on commission received by it from the Government for storage of controlled commodities. The Assessing Officer disallowed the assessee's claim on the ground that the assessee was a wholesaler of foodgrains and not a mere stockist as claimed.

The Supreme court ruled that exemption under section 80P(2)(e) is available in respect of income derived from letting of godowns or warehouses, only where purpose of letting is storage, processing or facilitating marketing of commodities. Assessee-society was a co-operative society running a co-operative store. It was a dealer in non-controlled commodities and was also authorized holder in respect of controlled commodities under Rajasthan Foodgrains and Other Essential Articles (Regulation of Distribution) Order, 1976. For that purpose, it took delivery from FCI and Rajasthan Rajya Upbhokta Sangh as per directives of State Government, stored said goods in its godowns and then delivered same to retailers. It earned commission from Government for storage of controlled commodity on principle of netting, i.e., it set off issue price against sale price and retained commission. It claimed deduction under section 80P(2)(e) on said commission as income arising from letting out of godowns. Since facts revealed that assessee was storing commodities in question in its godowns as its own trading stock, it was not entitled to claim deduction of such margin under section 80P(2)(e).

21. Prime Securities Ltd. v Varinder Mehta, ACIT (Inv) [2009] 182 TAXMAN 221 (Bom.)

In November, 1990, the assessee-company had sold out certain shares held by it in two companies to its holding company, namely, G. For the relevant assessment year, it filed the return of income on 31-12-1991 claiming capital gains arising on the transfer of shares to G as not chargeable to tax in view of the provisions of section 47(v). Said return was signed by the company secretary. In March, 1992, the assessee had issued fresh shares to entities other than its holding company, as a result whereof the shareholding of G came down from 100 per cent to 43 per cent of the assessee's share capital. However, the Assessing Officer, by letter dated 9-10-1992, informed the assessee that the return filed by it on 31-12-1991 was invalid inasmuch as the return was signed by the company secretary and not by the managing director as required under section 140 and called upon it to show cause as to why the return filed should not be treated as an invalid return.

On 15-10-1992, the assessee substituted the return filed on 31-12-1991 by another return which was identical to the one filed on 31-12-1991 except that it was signed by the director in accordance with section 140 and requested the Assessing Officer to treat the original return filed on 31-12-1991 as a valid return. The Assessing Officer issued an intimation under section 143(1)(a) accepting the income disclosed in the return filed on 15-10-1992. However, thereafter, he issued a letter to the assessee on 16-10-1992 pointing out that the return filed on 31-12-1991 was an invalid return and the return filed on 15-10-1992 would be considered as the original return; that in the return filed on 15-10-1992, the assessee had claimed the benefit of section 47(v), even though it had ceased to be a 100 per cent subsidiary of G with effect from March, 1992. He, therefore, called upon the assessee to show cause as to why the intimation issued on 15-10-1992 should not be rectified in accordance with section 155(7B), read with section 47A.

On appeal the High Court ruled that :

A bare reading of the provisions of section 292B makes it clear that a return of income shall not be treated as invalid merely by reason of any mistake, defect or omission in such return of income, if such return of income is in substance and effect in conformity with or according to the intent and purpose of the Act. The return of income, therefore, if not signed by signatory as contemplated by section 140, would be mistake, defect or omission. Question is whether in spite of the defect, the return was, in substance and effect, in conformity with or according to the intent and purpose of the Act. Submission of the revenue was that by virtue of fresh shares issued by it, the assessee ceased to be a subsidiary company of G and, consequently, benefit of section 47 was not available. The assessment year was 1991-92. The previous year would be 1990-91. Admittedly, when the assessee filed the return, it was a 100 per cent subsidiary of G and continued to be so up to March, 1992. Return had been filed on 31-12-1991. The return had been substituted on 15-10-1992 by which date the assessee had ceased to be a 100 per cent subsidiary of G.

When section 140 mandates that return of income has to be signed in case of a company by managing director and where managing director is not available by any director thereof, signing of return by company secretary would not amount to a mere irregularity, but said return would have to be treated as defective. However, such a return would not be treated as invalid if in spite of defect, return is in substance and effect in conformity with or according to intent and purpose of Act. Such defect in return can be cured by virtue of section 139(9)

In the instant case, when the assessee filed its return for the previous year 1990-91, it was a fully owned subsidiary of G. The assessee ceased to be fully owned subsidiary only after March, 1992. The defect in signature was removed on 15-10-1992, but in respect of the same assessment year 1991-92. The subsequent event could not result in holding that the return as originally filed was not, in substance and effect, in conformity with or according to the intent or purpose of the Act on the date the return was filed. The test to be applied is whether on the date the original return was filed, the return was in conformity with or according to the purpose of the Act. On the date of filing the return, the assessee was, admittedly, a wholly owned subsidiary of G. It was true that the return was invalid as originally filed because of defect in the person signing the return, but by virtue of section 139(9), that defect could be cured and was, in fact, cured. Though the defect was cured on 15-10-1992, it would relate back to 31-12-1991, the date of original filing of the return.

22. Molly Trading Co. (P.) Ltd. v UOI [2009] 181 TAXMAN 66 (BOM.)

TRO issued a notice to assessee company as well as to its bank directing to pay certain sum as dues of ‘J’ on account of income-tax. Accordingly, bank sent certain amount being balance in account of the company to revenue department. Assessee filed an affidavit before TRO stating therein that it did not owe any money to ‘J’ and, therefore, money attached from its bank account should be refunded. TRO noted that company was a guarantor of loan taken by its sister concern ‘SIL’ from ‘J’ and, it had also pledged certain shares to ‘J’. TRO, therefore, declined to refund money attached from bank account. The Company filed a writ petition against order of TRO. Held when petitioner was a guarantor for loan taken by ‘SIL’ and said debt had not been discharged, liability of company would continue to remain joint and several along with ‘SIL’. The action of the TRO was proper and correct.

23. S.R. Batliboi & Co. v Department of Income-tax (Investigation) [2009] 181 TAXMAN 9 (DELHI)

Held in terms of section 132(1)(iib) revenue is not entitled to demand an unrestricted access to and/or right to acquire electronic records present in laptops, that belong to auditor of assessee and not to assessee himself, including electronic records pertaining to third parties unconnected with assessee.

Further, the words ‘other person’ employed in section 153C must only be construed as referring to the ‘other person’ having dealings or transactions with the party who is being searched or whose material is being seized. Otherwise, the provisions may well be seen as violative of the fundamental rights enshrined in articles 14 and 19 of the Constitution. The department acts as a post office, viz., it sends the seized material to the concerned Assessing Officer. This proposition is legally acceptable so long as it is restricted to any person having dealings or transactions with the person who is the subject of the search and seizure operation.

24. P.V. Chandran v ACIT [2009] 226 CTR 488(MAD)

The appellant Ambika Cotton Mills (P) Ltd., originally incorporated on 6th Oct., 1988 and later changed to Ambika Cotton Mills Ltd. on 6th Sept., 1994. There were three groups of promoters, viz., P.V. Chandran (the appellant herein), P.K. Ganeshwar and M. Rathnaswamy. The appellant had 19 per cent shareholding in the company while the group of P.K. Ganeshwar and M. Rathnaswamy had 38 per cent shareholding. The business of the company was that of operating spinning mills. certain differences arose between two groups of promoters, viz., the appellant group and the group comprising of P.K. Ganeshwar and M. Rathnaswamy. Finally, a resolution was arrived at that the whole shares held by the two dissenting promoters P.K. Ganeshwar and M. Rathnaswamy comprising approx. 21,99,000 shares at an average price of Rs. 250 per share. It was accepted that the appellant would continue with the company and assume the management. Thus, the appellant, with a view to settle the dispute, had assured the dissenting promoters, to realise the price of Rs. 250 per share, with the assurance that in the event of the realisation being less than Rs. 250 per share the appellant will compensate to the extent of shortfall. an escrow agreement was entered into on 24th Aug., 2005. As per the escrow agreement, the appellant would assure the sale realisation @ Rs. 250 per share to the dissenting promoters and in the event of a shortfall, such shortfall would be made good by the appellant. If there was any excess realisation over and above Rs. 250, that would be taken by the appellant. The shares were sold at a higher price and thus, the appellant received Rs. 2,74,12,446.

The assessee was of the contention that the surplues amount received was capital in nature / windfall receipt and not taxable.

On appeal the High Court ruled that

the appellant has entered into escrow agreement for sale of the shares of divesting promoters at an agreed price, which is based on certain calculation. In order to see that the shares are being sold at the agreed price, the assessee put in certain efforts by way of marketing and placement of the company shares to the institutional fund through M/s Polar Securities Growth Fund, Bangalore, for which the appellant has paid a sum of Rs: 30 lakhs as commission. Thus, it is evident that the appellant had played the roll in the overall equity shares diverting activity either directly or through broker for obtaining best price.

If the assessee is not entitled to the surplus amount, the amount certainly would have become taxable in the hands of the divesting promoters. Hence it is taxable as income in hands of the assessee as income.

25. CIT v H.S. Ramachandra Rao [2009] 226 CTR 260 (KAR.)

A search was conducted in the assessee's premises on 14th July, 2000 and during the course of search the assessee admitted that he had received from Dr. K.R. Paramahamsa, chairman of Paramahamsa Foundation (R) Trust, Bangalore a sum of Rs. 42 lakhs for relinquishing his life membership and the secretaryship in Jayanagar Education Society.

Held that the amount received by the assessee cannot be treated as a capital receipt since to forego life membership or secretaryship, there is no capital asset which has been transferred by the assessee in favour of Dr. Paramahamsa. Further the assessee was not earning any income or making profit out of the said posts and by virtue of relinquishing the same, the assessee did not lose monetarily and as such the amount received from Dr. Paramahamsa by the assessee cannot be termed or construed as capital receipt.

26. CIT v Ghanshyam (HUF) [2009] 182 TAXMAN 368 (SC)

Treatment of enhanced compensation on compulsory acquisition

Provisions in the land acquisition was introduced to mitigate the hardship caused to the owner of the land who is deprived of its enjoyment by taking possession from him and using it for public purpose, because of considerable delay in making the award and offering payment thereof. To obviate such hardship the Legislature envisaged that the owner is entitled to 12% pa additional amount on the market value upto the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. This additional amount payable is neither interest nor solatium. It is an additional compensation designed to compensate the owner of the land, for the rise in price during the pendency of the land acquisition proceedings. It is a measure to offset the effect of inflation and the continuous rise in the value of properties. Therefore, this amount payable is an additional compensation in respect of the acquisition and has to be reckoned as a part of the market value of the land.

In addition to the market value of the land, the Court shall in every case award a sum of 30% on such market value, in consideration of the compulsory nature of acquisition. Award of solatium is mandatory. The award of interest is discretionary. Interest applies when the amount originally awarded has been paid or deposited and when the Court awards excess amount. In such cases, interest on that excess amount alone is payable. The Court is empowered to award interest on the excess amount of compensation awarded by it over the amount awarded by the Collector. This award of interest is not mandatory but is left to the discretion of the Court. Interest is applicable only in respect of the excess amount, which is determined by the Court on appeal. This interest does not compensate the cases of undue delay in making award of compensation.

Thus, interest is different from compensation. However, interest paid on the excess amount depends upon a claim by the person whose land is acquired, whereas normal interest is for delay in making payment. Interest for undue delay is part of the amount of compensation whereas normal interest is only for delay in making payment after the compensation amount is determined.

It is clear that additional benefits are available on the market value of the acquired land interest is available in respect of the entire compensation.

Thus, interest awardable would include within its ambit both, the market value and the statutory solatium. Solatium means an integral part of compensation and; interest would be payable on it. Normal interest postulates award of interest at 9 per cent per annum from the date of taking possession only until it is paid or deposited. It is a mandatory provision. Basically, normal interest is for payment of interest for delayed payment.

It is true that ‘interest’ is not compensation. It is equally true that section 45(5) refers to compensation. But the provision of the 1894 Act awards ‘interest’ both as an accretion in the value of the lands acquired and interest for undue delay. Interest under section 28 unlike interest under section 34 is an accretion to the value. Hence, it is a part of enhanced compensation or consideration which is not the case with interest under section 34 of the 1894 Act. So also, additional amount under section 23(1A) and solatium under section 23(2) of the 1894 Act form part of enhanced compensation under section 45(5)(b) of the 1961 Act.

27. ACIT v Shubhash Traders [2009] 226 CTR 372 (MP)

On a scrutiny of provisions of section 260A, it is clear that no provisions for condonation of delay are prescribed in section 260A which stand in contradistinction to sub-sections 249 and 253. Hence the High Court cannot condone the delay.

28. CIT v Singapore Airlines Ltd. [2009] 180 TAXMAN 128 (DELHI)

Assessee(s)-airlines had executed Passenger Sales Agency (PSA) agreements with travel agents in terms of which they would supply blank tickets to travel agents and would pay standard commission to them on published fare of tickets sold by them. Travel agents were required to pay net fare to assessees, even though they would obtain amount over and above net fare.

Assessees deducted tax at source on amount of standard commission, but did not make deduction on supplementary commission, i.e., amount received by travel agents over and above net fare, on ground that it was in nature of discount and would not fall within ambit of section 194H. As supplementary commission was a payment which travel agents received from passengers by virtue of sale of air tickets of which assessees were proprietors at a point till transaction was made, would clearly establish that it was a ‘commission’ within meaning of section 194H as against discount as claimed by assessee-airlines. Therefore, assessee(s)-airlines were obliged to deduct tax at source on supplementary commission also.

If assessee-airlines issued tickets to its travel agents at a concessional price, transaction between assessee and travel agents was that of principal-to-principal and difference in price was discount. Therefore, such transaction would not fall with ambit of section 194H.

29. S. Nagoor Babu v CCIT [2009] 181 TAXMAN 33 (MAD.)

Assessee was a popular playback singer. For relevant assessment year, he filed his returns voluntarily but after due date. Assessing Officer accepted returns and also levied interest under sections 234A, 234B and 234C. Assessee filed waiver petition before Chief Commissioner contending that his peak period had been from 1992 to 1998, during which he spent most of his time in Hyderabad and normally worked for 16 hours a day and because of his commitment he could not file his returns in time. Chief Commissioner allowed partial relief under sections 234A and 234B but confirmed levy of interest under section 234C.

On appeal High Court ruled that since assessee was not a habitual defaulter in filing income-tax returns and for relevant years also he had filed his returns voluntarily, reason assigned by him could be construed as unavoidable circumstances under clause 2(e) of Notification dated 23-5-1996 in F. No. 400/234/95-IT(B) and, accordingly, his claim for waiver of interest could be considered.

30. Gilbs Computer Ltd. v ITAT [2009] 184 TAXMAN 342 (BOM.)

Whether where assessee is assessed at a loss, in such a situation, appeal fees to the ITAT payable by assessee would be five hundred rupees only.

31. Computation of deemed income under section 44B

Assessee had not offered tax on certain amount received by it towards reimbursement of expenses, which included customs duty. Held reimbursement of custom duty being statutory in nature, could not form part of amount taxable under section 44BB[1].

Reimbursed catering expenses and fuel expenses are parts of gross receipts for purpose of section 44BB[2].

Mobilization/demobilization charges received by assessee including mobilization/demobilization charges paid for transportation of plant and machinery from a place outside India to locations in India or its territorial waters form part of gross receipts for purpose of computing income under section 44BB[3].

[1] Director of Income-tax, International Taxation v Schlumberger Asia Services Ltd. [2010] 186 TAXMAN 436 (Uttarakhand**)**

[2] CIT v RBF Rig Corporation [2009] 181 TAXMAN 144 (UTTARAKHAND)

[3] CIT v R & B Falcon Drilling Co. [2009] 181 TAXMAN 62 (UTTARAKHAND)