Important Case Laws – For Nov 2014

SR No.	Maters/ Issues	Judgement/ Decision	In Case of
		Basic Concepts	
1	Can waiver of loan or advance taken for the purpose of relocation of office premises be treated as a revenue receipt liable to tax?	It was held that since the advance taken by the assessee company was utilized by it for the purpose of **relocating its office premises** i.e., for acquisition of a capital asset, namely, a new office, the waiver of the same cannot be said to be waiver or remission of trading liability to attract taxability under the Act. Waiver of such advance, being **capital in nature**, is not taxable under the Act.	CIT v. Softworks Computers P. Ltd. (2013) (Bom.)
2	What is the nature of grant received by a subsidiary company from its holding company to recoup the losses incurred year after year and to enable it to meet its liabilities - Capital or Revenue?	It was held that grant given by the holding company in this case is in the nature of **capital receipt since its purpose is to secure and protect the capital investment** made in the subsidiary company.	CIT v. Handicrafts and Handlooms Export Corp. of India Ltd. (2014) (Delhi)
3	Can power subsidy recd. by the assessee from the state Govt., year after year, on the basis of actual power consumption be treated as a capital receipt?	It was held that the **power subsidy** recd. by the assessee from the SG on the basis of actual power consumption has to be treated as a **trading receipt** & not as a cap receipt.	CIT V. Rassi Cement Ltd. (2013)
4	In case the sh. capital is raised in a foreign country & repatriated to India as Need basis from time to time for approved uses, can the gain arising on the B/sheet date due to fluctuation in foreign exchange, in respect of that part of sh. capital which is to be used as working capital, be treated as a revenue receipt?	The HC held that for determining the nature of receipt, due consideration should be given to the source of fund & not to the ultimate use of the funds. Therefore, the entire gain has to be treated as cap receipt as the source of fund in this case is capital in nature.	CIT V. Jagatjit Industries Ltd (2011)
5	Can subsidy received by the assessee from Gov. under the scheme of industrial promotion for expansion of its capacities modernization & improving its marketing capabilities be treated as a capital receipt?	It was held that, the subsidy received has to be treated as a capital receipt & not as a revenue receipt.	CIT V. Rasoi Ltd (2011)
6	What is the nature of incentives received under the scheme formulated by the CG for recoupment of capital employed & repayment of loan taken for setting up/expansion of a sugar factory – capital or revenue?	It was held that the main eligibility cond. for the scheme was that the incentive had to be utilized for the repayment of loans taken by the assesses to setup a new units or substantial expansion of a existing unit. The subsidy receipt by the assessee was, therefore not in the course of a trade & hence, was of capital nature.	CIT V. Kisan Sahkari Chini Mills Ltd. (2010)
		Incomes which do not form part of the total Income	
7	Whether Sec. 14A is applicable in respect of deduction, which are permissible & allowed u/chapter VI A?	It was held that no disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.	CIT V. Kribhco (2012)

8	In a case where the application for registration of a charitable trust is not disposed of within the period of 6 months as required u/s 12AA(2), can the trust be deemed to have been registered as per provisions of section 12AA?	It was held that the time frame mentioned in section 12AA(2) is **only directory in nature** and not mandatory. Non-consideration of the registration application within the said time frame of six months would not amount to "deemed registration".	CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013) (Mad) / CIT v. Sheela Christian Charitable Trust (2013) (Mad)
9	Where a charitable trust applied for issuance of registration u/s 12A within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?	The High Court observed that, with the money available with the trust, it cannot be expected to carry out activity of charity immediately. In such a situation, the **objects of the trust** as mentioned in the trust deed have to be **taken into consideration** by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it.	DIT (Exemptions) v. Meenakshi Amma Endowment Trust (2013) (Kar.)
10	Can the assesses, being a charitable inst. Claim dep. u/s 32 in respect of an asset, where the cost of such asset has been treated as application of income for charitable purpose u/s 11(1)(a)?	The court held that once the exp. on acquisition of asset has been treated as application of income, the full value of asset stand w/off. Therefore the trust is not eligible to claim dep. on such capital exp.	Lissie Medical Inst. V. CIT (2012)
11	Can explanation to sec. 11(2) be applied in respect of the accumulation up to 15% referred to in sec. 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation up to 15% as income of the trust?	It was held that even if the donation by the assessees to another charitable trust were out of part accumulation u/s 11(1) (a) i.e. up to 15%, the same would NOT be liable to be included in the total income as assessed by the AO.	DIT (exemption) V. Bagri foundation (2012)
12	Would the provisions of deemed dividend u/s 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	It was held that financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).	CIT v. Ambassador Travels (P) Ltd. (2009)
	Income from Salary		
11	Can notional int. on security deposit given to the landlord in respect of residential premises **taken on rent by the employer & provided to the employee**, be included in the **perquisites** value of rent free accommodation given to the employee?	It was held that the AO is not right in adding the notional int. on the security deposit given by the employer to the landlord in valuing the perquisites of rent free accommodation, since the perquisite value has to be computed as per rule 3 of the IT rules, 1962 & there is **no concept of determination of fair rental value for purpose of ascertaining the value of perk**.	CIT V. Shankar Krishnan (2012), Bom.
	Income from House Property		
12	Can service charges recd. along with rent in respect of a property, be brought to tax under the head "I/H/P", if the service agreement is dependent upon the rental agreement?	It was held that the amount recd. as service charges have to be considered as a part of the rent recd. & subjected to tax under the head "I/H/P".	CIT V. J. K. Investor (Bom.) Ltd. (2012)
13	Whether the rental income derived from the unsold flats which are shown as stock-in-trade would be taxable under the head 'PGBP' or under the head 'I/H/P'?	It was held that rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be assessed under the head "I/H/P" and not under the head "PGBP".	New Delhi Hotels Ltd. v. ACIT (2014) (Delhi)

14	Can an assesses engaged in letting out of rooms in a lodging house also treat the income from renting of a business to bank on long term lease as business income?	On the issue, it was decided that while lodging is a business, however, letting out the building to the bank on long term lease could not be treated as business income. Therefore, the rental income from bank has to assessed as Income of house property.	Joseph George & Co. V. ITO (2010) (Kerala)
15	Can the benefit of self-occupation of H/P u/s 23(2) be denied to a HUF on the ground that it cannot occupy a H/P, being a fictional entity?	The court held that the HUF is entitled to claim benefit of self-occupation of H/P u/s 23(2).	CIT V. Hariprased Bhojnagarwala (2012) (Guj.)
16	Can Notional int. on interest free deposit received by an assessee in respect of a shop let out on rent be brought to tax as "Business Income" or "I/H/P"?	It was held that the Notional int. is not assessable either as "Business Income" or "I/H/P".	CIT V. Asian Hotels Ltd. (2010)
	Profit and Gains of Business or Profession		
17	Can the amount of employees' contribution towards PF, deducted and credited to the employee's PF account by the employer-assessee **after the "due date" under the EPF & Miscellaneous Provisions Act**, 1952, **but before the due date of filing return of income** under the Income-tax Act, 1961, be allowed as deduction while computing business income of the employer-assessee?	It was held that the employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing the return for the previous year.	CIT v. Kichha Sugar Co. Ltd. (2013) (Uttarakhand)
18	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	It was held that such expenditure on glow sign boards displayed at dealer outlets was revenue in nature. Following observations shall be considered- **a)** The glow sign board is not an asset of permanent nature. It has a short life. **b)** Such expenditure incurred by the assessee with the object of facilitating the business operation and not with the object of acquiring asset of enduring nature.	CIT v. Orient Ceramics and Industries Ltd. (2013) (Delhi)
19	Can share issue expenses incurred by a co. be treated as capital in nature, if the public issue could not ultimately materialize on account of non-clearance by SEBI?	The HC noted that the expenditure incurred was only for the purpose of expansion of the capital base. The capital nature of the expenditure would not be lost on account of the abortive efforts. The expenditure, therefore, constitutes a capital expenditure.	Mascon Technical Services Ltd. v. CIT (2013) (Mad.)
20	Can depreciation under sec. 32 be allowed on the plant and machinery which is ready for use but could not be put to use at any time during the previous year due to some **extraneous reason**, for example, paucity of raw material?	It was held that, in this case, the machinery was entitled to depreciation since the **business was a going concern** and the machinery, being ready for use, could not be actually put to use **due to an extraneous reason,** namely, raw material paucity.	CIT v. Chennai Petroleum Corporation Ltd. (2013) (Mad.)

21	Can depreciation on leased vehicle be denied to the lessor on the ground that the vehicles are registered in the name of the lessee & that the lessor is not the actual user of the vehicle?	The SC therefore held that assessee was entitled to claim depreciation in respect of vehicle leased out since it has satisfied both the requirement of section 32, namely ownership of the vehicle & its usage in the course of biz.	I.C.D.S. Ltd. V. CIT (2013) (SC)
22	Can remuneration paid to working partner as per the partnership deed be considered as unreasonable & excessive for attracting disallowance u/s 40A (2) (a) even though the same is within the statutory limits prescribed u/s 40 (b) (v)?	The high court held that remuneration paid to w/partners within the limits specified u/s 40 (b) (v) **cannot** be disallowed by invoking the provision of sec. 40A (2) (a).	CIT v. Great city manufacturing co. (2013) (Allahabad)
23	Can unpaid electricity charges be treated as "fees" to attract disallowance u/s 43B?	The court therefore held that deduction is allowable in respect of such electricity charges as the prov. of sec. 43B do not incorporate electricity charges.	CIT v. Andhra ferro Alloys (P) Ltd. (2012) (AP)
24	Can waiver of loan given to the assessee by the GOI from steel development fund to meet the capital cost of asset be reduced to arrive at the actual cost as per sec. 43(1) for computing depreciation u/s 32?	The HC held that by applying the main provision of sec. 43(1), the amount of loan waived by the govt. is to be reduced from the cost of asset to arrive at the "actual cost" for computing depreciation.	SAIL V. CIT (2012) (Delhi)
25	What would be the nature of exp. incurred by the assessee by way of severance cost paid to the employee in respect of suspension of one of the activities, in a case where he continues to carry on other biz. Activities – capital or revenue?	The court held that said exp. will be allowed as revenue exp. thought it was related to manufacturing activity which was suspended.	CIT V. KJS India Pvt. Ltd. (2012) (Delhi)
26	Is the exp. incurred on payment of retrenchment compensation & int. on money borrowed for the payment of retrenchment compensation **on closure of one of the textile manufacturing units** of the assessee co. revenue in nature?	The HC held that deduction was allowable in respect of exp. on payment of retrenchment compensation & int. on money borrowed for payment of retrenchment compensation.	CIT V. DCM Ltd (2010) (Del.)
27	Is the commission paid to doctor's by a diagnostic centre for referring patients for diagnosis be allowed as a biz exp. u/s 37 or would it be treated as illegal & against public policy to attract disallowance?	The demanding as well as paying of such comm. is bad in law. It is not a fair practice. Thus, the high court held that comm. paid to doctor for referring patient for diagnosis is not allowable as a biz exp.	CIT V. Kap scan & Diagnosis centre P. Ltd. (2012) (P&H)
28	What would be the nature of the repair & reconditioning exp. incurred on a machine which broke down years ago – revenue or capital?	The Delhi High Court observed that it is in nature of capital exp.; on which dep. can be claimed.	Bharat Gears Ltd V. CIT (2011) (Delhi)
29	Can the exp. incurred for purchase of second hand Medical equipment for the use as spare parts for existing equipment be claimed as revenue expenditure?	It was held that since the second hand Medical equipment was purchased for the use as spare parts for existing equipment. Therefore the assesses was eligible to claim deduction of exp. in the relevant previous year ended 31st Mar.	DR. Aswath N Rao V. ACIT (2010) (Karn.)

30	Can exp. incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue exp.?	The HC observed that the exp. incurred by the assessee for **commercial expediency** relates to carrying on of biz. The operational exp. incurred by the assessee solely intended for the enterprise can by no means be treated as exp. of capital nature.	CIT V. Hindustan Zinc. Ltd (2010) (Raj.)
31	Can advance given to employees and security deposit paid to the landlord by the amalgamating co., which becomes irrecoverable, be allowed as a biz loss in the hand of the amalgamated co.?	The court held that such advances given to persons who had been employed by the assesses co. which have become irrecoverable would be treated as biz loss & as regards the allow ability of non-recoverable security deposit given to the landlord for obtaining lease of premises for purpose of biz, the high court observed that the security deposit were refundable & therefore, were not in the form of rent. Therefore, it is not allowable as B/loss.	CIT V. Triveni Engg. & Industries Ltd. (2012) (Delhi)
32	Can "Money payable" in respect of a building sold by the assessee (which has to be reduced from the opening WDV of the block of asset for calculating depreciation) be construed as the FMV of asset instead of actual sale price?	On the issue, the HC held that WDV of asset falling within that block of asset at the beginning of P/Y has to be adjusted by the amount for which the asset is actually sold & not by its FMV.	Cable Corporation of India Ltd. V. CIT (2011) (Bom.)
	Capital Gains		
33	Where the stamp duty value u/s 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption u/s 54F, irrespective of the source of funds for such reinvestment?	On the issue of exemption u/s 54F, the High Court held that when capital gain is assessed as per the provisions of section 50C, and the higher value i.e., the stamp duty value has been adopted as the full value of consideration then the entire amount reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.	Gouli Mahadevappa v. ITO (2013) (Kar.)
34	Where **transfer of shares** in a company has been effected, fulfilling all the requirements for claim of exemption u/s 10(38), can such exemption be denied on the ground (contended by dept.) that the transaction is a colorable device, since the **underlying asset transferred is, in effect, land**, which is a short-term capital asset, on sale of which capital gains tax liability would have been attracted?	The Karnataka HC observed that, in this case, the assessee-company was holding shares in BFSL (as LTCA). The transaction had taken place through the RSE and STT has been paid on such sale. Hence all the conditions have been fulfilled to claim exemption u/s 10(38) in respect of long-term capital gains arising from such transfer. The HC further noted that the event of transfer of shares happened in ordinary course of business and is legal. The transaction is, therefore, real, valuable consideration is paid, all legal formalities are complied with, and what is transferred is shares and not immovable property. Hence, it is a valid legal transaction and cannot be termed as a colorable device or sham transaction or an unreal transaction.	Bhoruka Engineering Inds. Ltd. v. DCIT (2013) (Kar.)

35	In the case of an assessee, being a dealer in shares and securities, whose portfolio comprises of shares held as stock-in-trade as well as shares held as investment, is it permissible under law to convert a portion of his stock-in-trade into investment and if so, what would be the tax treatment on subsequent sale of such investment?	The HC concurred with the Tribunal's ruling that the gains arising on sale of those shares held as investments by the dealer-assessee (i.e., the difference between the sale price and the fair market value on the date of conversion) were to be assessed under the head "Capital gains" and not under the head "PGBP".	CIT v. Yatish Trading Co. Pvt. Ltd. (2013) (Bom.)
36	Where a leasehold property is purchased and subsequently converted into freehold property and then sold, should the period of holding be reckoned from the date of purchase or from the date of conversion for determining whether the resultant capital gains is short-term or long-term?.	The HC observed that the difference between "short-term capital asset" and "long-term capital asset" **is the period over which the property has been held by the assessee** and not the nature of title over the property. The lessee of the property has rights as the owner of the property subject to the covenants of the lease deed. The rights of the lessee from leasehold to freehold is only by way of **improvement** of her rights over the property, which she enjoyed and therefore the period of holding shall be reckoned from the date of acquisition and not from the date of conversion into freehold right from leasehold right.	CIT v. Smt. Rama Rani Kalia (2013) (All.)
37	In determining the Period of Holding of c/asset received by a partner on dissolution of firm, can the POH of the c/asset by the firm be taken into account?	The HC held that POH of the asset by the assessee in this case has to be reckoned from the date of dissolution of the firm. Since the assessee sold the property within 3 days of acquiring the same, the gain has to be treated as STCG.	P. P. Menon V. CIT (2010) (Ker.)
38	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year the same was first acquired by the previous owner?	The HC held that indexed COA in case of gifted asset has to be computed with reference to the year in which the **previous owner first held** the asset & not from the year in which the assesses become the owner of the asset.	CIT V. Manjula J. Shah (Bom.)
39	What would be the POH to determine whether the c/gain on renunciation of right to subscribe for additional shares is short term (ST) or long term (LT)?	It was held that, the **POH would be from** the date on which **such right** to subscribe for additional shares **come into existence** up **to** the **date of renunciation** of such right.	Navin Jindal V. ACIT (2010) (SC)
40	Can non-cumulative Pref. shares carrying a fixed rate of dividend with a fixed holding period be said to be equated with bonds or debenture so as to deny the indexation benefit while computing c/gain on its t/f, applying the third proviso to sec. 48?	Therefore the court held that the indexation benefit on the t/f of LTCA, being 4% non-cumulative p/shares cannot be denied applying the prov. of the third prov. to sec. 48.	CIT V. Enam securities Pvt. Ltd. (2012) (Bom)
41	Where a building, comprising of several floors, has been developed and reconstructed, would exemption u/s 54/54F be available in respect of the cost of construction of the new residential house (i.e., all independent floors handed over to the assessee)	It was held that the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee **as it is neither expressly nor by necessary implication prohibited**. <u>Note</u>: For the purpose of claiming exemption u/s 54/ 54F following points should be considered-	CIT v. Gita Duggal (2013) (Delhi)

		a) Sec. 54F uses the expression "residential house" and not "residential unit". **b)** Flats situated in the same residential building will constitute "a residential house". **c)** The only requirement is that it should be for residential use and not for commercial use.	
42	Would an assessee be entitled to exemption u/s 54 in respect of purchase of two flats, adjacent to each other & having common meeting points?	It was held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were **adjacent to each other & had a common meeting point**.	CIT v. Syed Ali Adil (2013) (AP)
43	Can exemption u/s 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	The Delhi high court, **having regards to the rule of purposive construction & the object of enactment** of sec. 54F, held that the assessee is **entitled to claim exemption** u/s 54F in respect of utilization of sale proceeds of c/asset for investment in residential H/property in the name of his wife.	CIT v. Kamal Wahal (2013) (Delhi)
44	In case of a house property registered in joint names, whether the exemption u/s 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the H/property or will it be restricted to his share in the h/property?	The court held that the conditions stipulated in Sec 54F stand fulfilled & the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assesses.	CIT V. Ravindra kr. Arora (2012) (Del.)
45	Can the assesses claim exemption u/s 54F, on account of c/gain arising on t/f of depreciable asset held for more than 36 months i.e. a long term capital asset, though the same is deemed as capital gain arising on t/f of short term capital gain by virtue of sec. 50?	The HC held that Sec 54F being an independent section will not be bounded by the prov. of sec. 50. Therefore, the exemption u/s 54F on t/f of depreciable asset held for more than 36 month cannot be denied on account of fiction created by sec. 50.	CIT V. Rajiv Shukla (2011) (Del.)
46	Can the exemption u/s 54F be denied to an assesses in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which t/f took place, an account of pendency of certain finishing work like flooring, electrical fitting, fitting of door shutter?	The court held that in this case the assessee would be entitled to exemption u/s 54F in respect of the amount invested in construction within the prescribed period.	CIT V. Sambandam udaykumar (2012) (Ker.)
47	Can exemption u/s 54B be denied solely on the grounds that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per sale deed?	It was held merely because the assessee's son was shown in the sale deed as co-owner; it did not make any difference. Therefore, the assessee was entitled to deduction u/s 54B.	CIT V. Gurnam Singh (2010) (P&H)

48	Can an assesses be deprived of claiming exemption u/s 54EC, if bonds of assesses choice are not available or available only for a broken period within the period of 6 month after the date of t/f of c/asset & the bonds are purchased shortly after it becomes available next time after the expiry of the said 6 month?	The high court held that since the assesses invested in the bonds on 31.01.2007 i.e. within 9 days of their being available once again from 22.01.2007, he **cannot** be deprived of exemption u/s 54EC. the time to invest in the bonds get automatically extended till the bonds are available in the mkt.	CIT V. Cello Plast (2012) (Bom.)
49	Can exemption u/s 54EC be denied on account of the bonds being issued after 6 month of the date of t/f even though the payment for the bond was made by the assesses within the 6 month period?	It was held that if such payment is within a period of 6 month from the date of t/f, the assessee would be eligible to claim exemption u/s 54EC.	HUL V. DCIT (2010) (Bom.)
	IFOS		
50	What can be the tests to determine "substantial part of business" of lending Co. for the purpose of application of exclusion provision u/s. 2(22)?	In this case, 42% of the assets of lending Co. were deployed by it by way of loan & advance. Further if interest income is excluded, the other business had resulted in a Net loss. These factors were considered in concluding that lending of money was a substantial part of business of the co. hence money given by way of loan & advance to the assesses **could not** be regarded as a divided, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in sec. 2(22).	Parle Plastics Ltd. V. CIT (2011) (Bom.)
51	Can the loan or adv. given to a shareholder by the co., in return of an advantage conferred on the co. by the shareholder, be deemed as dividend u/s 2(22)(e) in the hands of the shareholder?	In present case, the advance given to the assessee by the co. was **not** in the nature of a gratuitous advance given, instead it was given to protect the interest of the co. therefore, the said advance **cannot** be treated as deemed dividend in the hands of the shareholder u/s 2(22) (e).	Pradip kr. Malhotra V. CIT (2011) (Cal.)
52	Would the prov. of deemed dividend u/s 2(22)(e) be attracted in respect of financial tranx entered into in the normal course of biz?	The HC held that such financial tranx cannot under any circumstances be treated as loans or advances received by the assesses from the concerns for the purpose of Sec. 2(22)(e).	CIT V. Ambassador Travels (P) Ltd (2010) (Del.)
53	Can winning of prize money on unsold lottery ticket held by the distributor of lottery be assessed as business income & be subject to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize Money is **not** in his capacity as a lottery ticket distributor but as a holder of the lottery ticket which won the prize. Therefore, the HC held that the rate of 30% prescribed u/s 115BB is applicable in respect of winnings from lottery received by the distributor.	Manjoo & Co. V. CIT (2011) (Ker)
	Set-off & carry forward of losses		
54	Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	The loss suffered by the erstwhile partnership firm before dissolution of the firm cannot be carried forward by the successor sole-proprietor, since it is not a case of succession by inheritance. The assessee sole-proprietor is, therefore, not entitled to set-off the loss of the erstwhile partnership firm against his income.	Pramod Mittal v. CIT (2013) (Delhi)

55	Can the legal heirs of the deceased partner inducted as partners in the p/firm be treated as succession by inheritance for the purpose of set-off of carried forward losses?	Upon death of a partner, his legal heirs were inducted as partners in the partnership firm. The partnership firm was not dissolved on the death of the partner. The partnership firm which suffered the losses continued with induction of the legal heirs of the deceased partner. This, being a case of succession by inheritance, the benefit of carry forward of losses was given to the re-constituted partnership firm.	Saroj Aggarwal V. CIT
	Deductions from Gross Total Income		
56	Can Duty Drawback/ sale of export incentive/ Duty entitlement passbook scheme (DEPB) benefit be treated as profit derived from the business of the industrial undertaking to be eligible for deduction u/s 80-IB?	Duty drawback are incentives subsidy which flow from the schemes framed by the Central Government. Sec 80-IB provides for the allowing of deduction in respect of profits and gains derived from eligible business. Hence incentive/ ancillary profits cannot be said to be profits derived from eligible business u/s 80-IB for the purpose of computation of deduction u/s 80-IB.	CIT v. Orchev Pharma P. Ltd. (2013) (SC) / Liberty India v. CIT (2009) / CIT
57	Would grant of transport subsidy & refund of excise duty qualify for deduction u/s 80-IB?	The HC held that there should be a direct nexus between the generation of profits & gains and source of profit & gains, the latter being directly relatable to the business of the assesses. In this case, **subsidy had no direct nexus** with profit derived by assessee from its industrial activity, so the subsidy could not be taken into account for purpose of deduction u/s 80-IB. But refund of the **excise had a direct nexus with manufacturing activity**, being a profit linked incentives. Therefore, the refund of excise duty had to be taken into account for purpose of deduction u/s 80-IB.	Meghalaya Steels Ltd. V. CIT (2011) (Gauhati)
58	Can an assessee not claiming deduction u/s 80-IB in the initial years claims the said deduction for the remaining years during the period of eligibility, if the conditions are satisfied?	The Delhi HC held that the provision of sec. 80-IB does not stipulate any condition for claiming the deduction. Therefore, the deduction u/s 80-IB should be allowed to the assessee for the remaining years during the period of eligibility, provided conditions u/s 80-IB are fulfilled.	Praveen Soni V. CIT (2011) (Delhi)
	Assessment of Various Entities		
59	Would interest earned on FD made by a social club with its corporate members satisfy the principal of mutuality to escape taxability?	The court held that social relationship & activities of the club have nothing to do with its deposit with corporate members. Therefore, the said interest income is not exempt on the principal of mutuality.	CIT V. Secunderabad Club Picket (2012) (A.P.)
60	Would interest earned on surplus fund of a Club deposited with institutional members satisfy the Principle of Mutuality to escape taxability?	The HC held that interest earned from investment of surplus funds does not satisfy the Principle of Mutuality & hence cannot be claimed as exempt.	Madras Gymkhana Club V. DCIT (2010)(Mad.)
61	Can t/f fees received by a co-operative housing society from its incoming & outgoing members be exempt on the ground of principal of mutuality?	The HC held that t/f fee received is **not** liable to tax on the ground of principal of mutuality.	Sind co-operative Housing Society V. ITO (2009) (Bom.)

Assessment Procedure			
62	Can an assessee, objecting to the reassessment notice issued u/s 148, directly approach the High Court in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	The HC noted that the assessee has not filed objections before the AO and has directly approached the court by way of the writ petition. The HC, on the basis of a reference to the decision of Gujarat HC in Garden Finance Ltd.[2004], wherein it was observed that the exercise of the powers by AO u/s 148 may be so arbitrary or mala fide that the court may entertain the petition **after recording concurrent reasons, but such a case was an exception and not a rule**. However, the said case does not require a different treatment from the procedure followed in other cases in which re-assessment proceedings are initiated, since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.	Samsung India Electronics P. Ltd. v. DCIT (2014) (Del.)
Appeal & Revision			
63	Would the period of limitation for an order passed u/s 263 be reckoned from the original order passed by the AO u/s 143(3) or from the order of re-assessment passed u/s 147, where the subject matter of revision is different from the subject matter of reassessment u/s 147?	The court held that, period of limitation in respect of the order of comm. u/s 263 in respect of a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order u/s 143 (3) & not from the date of reassessment order u/s 147.	CIT V. ICICI Bank Ltd. (2012) (Bom.)
64	Can the CIT initiate revision proceeding u/s 263 on the grounds that the AO's order not initiating penal proceeding was erroneous and prejudicial to the interest of the revenue, in a case where non initiation of penal proceeding was a pre-condition for surrender of income by the assessee?	The HC observed that, as perusal of the office note issued by the AO, it was clear that the assessee had made surrender of income with a clear condition that no penal action u/s 271(1) (c) would be initiated. Once that was so, the CIT cannot take a different view & levy penalty.	Subhash Kr. Jain V. CIT (2011) (P&H)
Penalties			
65	Can penalty u/s 271(1)(c) be imposed on the ground of disallowance of a certain deduction under chapter VI-A owing to the subsequent decision of the SC?	The Bombay HC affirmed the decision of appellate tribunal deleting the penalty u/s 271(1)(c) on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assessee to furnish accurate particulars nor on account of furnishing inaccurate particulars.	CIT v. Celetronix Power India Pvt. Ltd. (2013) (Bom.)
66	In the case of an assessee liable to pay minimum alternate tax u/s 115JB, can penalty u/s 271(1)(c) be imposed on account of addition made in respect of certain c/expenditure, treated by the assessee as r/expenditure, if, even after such addition to t/income, the assessee is still assessable u/s 115JB?	The HC held that merely for the reason that the assessee co. had claimed the exp. to be revenue will not render it liable to penal proceeding, when there has been no concealment of income.	CIT v. Amtek Auto Ltd. (2013)

67	Can the payment made to contractors for hiring dumpers by an assessee engaged in transportation of building material, be treated as Rent for Machinery or equipment to attract TDS u/s 194I?	The HC observed that the assessee had given contract to the parties for the transportation of goods & had not taken Machinery & equipment on rent. Such payment could not be termed as rent paid for the use of Machinery & Prov. of sec. 194I would, therefore, not be applicable.	CIT (TDS) V. Shree Mahalaxmi Transport Co. (2011) (Guj.)
68	Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	It was held that there is no separate identity for the partnership firm and the partner. Hence the partner is entitled to use the funds of the firm. In the present case, the assessee has acted bona fide and that there was a reasonable cause within the meaning of sec 273B. Therefore, the transaction can't be said to be in violation of sec 269SS and no penalty is attracted in this case.	CIT v. V. Sivakumar (2013) (Mad.)
		TDS	
69	Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions u/s 194J or in the alternative, under 194C?	The AAR, held that **transmission and wheeling charges** paid by the applicant to the transmission company are in the nature of fees for technical services and shall attract TDS u/s 194J. **As regards SLDC charges**, the AAR opined that the SLDC charges paid appeared to be more of a supervisory charge with a **duty to ensure** just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS u/s 194J or u/s 194C.	Ajmer Vidyut Vitran Nigam Ltd., (2013) **(AAR)**
70	Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions u/s 194H?	It was held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of Sec 194H.	Bharti Cellular Ltd. v. ACIT (2013) (Cal.)
71	Would commission payment remitted outside India to a non-resident (who is not liable to pay tax in India) for procuring export orders outside India attract disallowance u/s 40(a)(i) for non-deduction of tax at source u/s 195?	The HC held that there was no obligation to deduct tax at source u/s 195 on the commission paid to a non-resident recipient, who was not liable to pay tax in India and consequently, disallowance u/s 40(a)(i) is not attracted in respect of payment of such commission	CIT v. Model Exims (2013) (Allahabad)
72	Where the assessee fails to deduct tax at source u/s 194B in respect of the winnings, which are **wholly in kind**, can he be deemed as an assessee-in-default u/s 201?	Where the winnings are wholly in kind then the payer must ensure that tax is paid by the winner of the prize **before thewinnings are released** in his favour. The HC observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, Sec 271C empowers the JC to levy penalty equivalent to the amount of tax not paid, and u/s 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 7 years and with fine. However, the High Court held that proceedings u/s 201 cannot be initiated against the assessee.	CIT v. Hindustan Lever Ltd. (2014) (Kar.)

73	Are TDS provisions u/s 194H attracted in a case where an assessee, a dairy, makes an outright sale of milk to its concessionaires at a certain price (which is lower than the MRP fixed by the assessee-dairy) and the concessionaires make full payment for the purchases on delivery and bear all the risks of loss, damage, pilferage and wastage?	The HC opined that the issue had to be decided on the basis of the fact as to when and what point of time the property in the goods passed to the concessionaire. Here, the concessionaire became the owner of the milk and products on taking delivery of the same from the assessee-dairy. Therefore the relationship between the assessee and the concessionaire is a Principal to Principal relationship. The High Court, held that the difference between the purchase price (price paid to the Dairy) and the MRP is the concessionaire's income from business and cannot be categorized as commission to attract the provisions of section 194H.	C IT v. Mother Dairy India Ltd. (2013) (Delhi)
	Miscellaneous		
74	Are the provisions of section 234D levying interest on excess refund attracted in a case where the refund granted to the assessee in pursuance of the order of CIT (A) was reversed on account of setting aside of such order by the Tribunal?	The High Court observed that interest u/s 234D is chargeable only where the refund has been granted to the assessee u/s 143(1) and thereafter, such refund is found to be excessive under the regular assessment (here regular assessment means assessment made u/s 143(3) or assessment made for the first time u/s 147 or 153A). However in the present case, the same was granted pursuant to the order passed by the CIT(A) and consequently, the provisions of Sec 234D were not attracted.	DIT (International Taxation) v. Delta Air Lines Inc. (2013) (Bom.)
75	Can refund of tax due to the assessee for a particular AY be adjusted, against sums due from the assessee in respect of another AY, u/s 245, without giving prior intimation to the assessee of the proposed adjustment?	Karnataka HC, in this case, held that the communication informing the adjustment of refund, without prior intimation to the assessee, is illegal and contrary to law.	Jeans Knit P. Ltd. v. DCIT (2013) (Kar.)
76	Can the Int. u/s 234B & C, be levied on the basis of **int. calculation given in the computation sheet** annexed to the assessment order, though the **direction to charge such int. is not mentioned in the assessment order**?	The Court held that the levy of int. & basis for arriving at the quantum thereof has been explicitly indicated in the computation sheet & therefore, such int. has to be paid.	CIT V. Assam Mineral Dev. Corp. Ltd (2010) (Gau.)