

INCOME TAX ACT 1961

CASE LAWS

Income Tax - Case Laws - Decision Year - 2009

1 2010 TMI - 35401 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LUCKNOW PUBLIC EDUCATIONAL SOCIETY

Dated: 09-01-2009

Sections - 143, 011, 139, 010(23C),

Original return filed late claiming exemption u/s 10(23C) under bonafide belief – revised return claiming exemption u/s 11 - we are of the view that the Assessing Officer has treated the revised return as “non est” wrongly for the reason that the Assessing Officer himself has passed the order under section 143(3) on the basis of the original return where the assessee was legally entitled for the exemption under section 11, if not under section 10 (23C). The Department should not take advantage of the ignorance of the assessee as per the Central Board of Direct Taxes Circular No. 14 (XL-35)/1955 dated April 11, 1955, quoted in Parekh Brothers v. CIT. Hence, it was the duty of the Assessing Officer to ask information from the assessee at the time of scrutiny but he has not asked any information before completing the assessment under section 143(3) of the Act.

2 2010 TMI - 35400 - CALCUTTA HIGH COURT

SHREE RAM ELECTROCAST P. LTD. AND ANOTHER Versus COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 06-01-2009

Sections - 127,

Transfer of case - In the writ petition, the petitioner, has challenged the order passed under section 127 by the Commissioner transferring the file from Kolkata to Ranchi on the ground that neither the petitioner was given an opportunity of hearing to present its case, nor the order reveals how written objections filed pursuant to the notices proposing transfer were considered. - It is clear from the order impugned that the written objections were not at all scrutinised and the order was passed mechanically. In my opinion, filing of objection is not an idle and empty formality. Therefore, the order impugned passed under section 127 of the Act cannot be sustained and is, thus, set aside and quashed.

3 2010 TMI - 35395 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PURSOTTAM SA.

Dated: 28-08-2009

Sections - 80CCA, 80CCB,

Assessee had made an investment in National Savings Scheme - His claim for deduction under sections 80CCA and 80CCB on the above investment was rejected by the Assessing Officer, on the ground that the investment had not come out of income chargeable to tax - held that investment in National Savings Certificates, etc. for claiming deduction under section 80C of the Act, need not be from the income earned up to that period, it would be sufficient if the total income of the assessee for that year covers the investment

4 2010 TMI - 35392 - MADHYA PRADESH HIGH COURT

UNION Of INDIA Versus BHUPENDRA SINGH

Dated: 05-05-2009

Sections - 276, 278,

Power of Appellate court to reverse the order of acquittal – failure to furnish return - offence punishable under sections 276 and 278 - The reasons given by the trial court for acquitting the respondent appears to be reasonable and are based on evidence. It is well-settled that even if on the basis of the same evidence, if other view is possible, the appellate court will not be justified in reversing the order of acquittal if the same is based on evidence on record and the view taken is a possible and reasonable view.

5 2010 TMI - 35389 - MADRAS HIGH COURT

The Commissioner of Income Tax, Salem. Versus M/s. R.M.S.Trust, 65, Rangar Sannathi Street, Namakkal.

Dated: 07-12-2009

Sections - 012A, 012AA, 080G,

Registration of trust – old provisions of Section 12A versus new provisions of section 12AA - The assessee trust came to existence on 01.12.1995 claiming that the main object was providing medical facilities to the sick and handicapped and also provide medical education, training and research in the field. The Trust filed an application in Form 10A and 10B and 12A(a) and 80G of the Act for registration of the Trust under section 12AA and exemption under section 80G(vi) of the Income Tax Act on 10.03.2006. The application for registration was belated by more than 10 years for which condonation petition was filed stating that the delay was due to ignorance of law. On verification of the Trust deed along with its enclosures, the Commissioner of Income Tax noticed that the requisite clause indicating that any amendment to the trust deed would be carried out after obtaining approval from the Commissioner of Income Tax, has not been incorporated, and on that ground directed the assessee Trust to file an amended deed, which is duly registered along with notes on the activities of the Trust with regard to various expenses debited in Income and Expenditure Account for the years ending 31.03.2003, 31.03.2004 and 31.03.2005 by 15.09.2006 positively. The assessee Trust did not respond to the letter. Therefore, the Commissioner of Income Tax held that the assessee Trust was not entitled to registration under section 12AA and exemption under section 80G(vi) of the Act – ITAT allowed the appeal and remitted back the matter – held that - Requisition made by the Commissioner is a extra statutory requisition. – order of tribunal remitting back the order is correct.

6 2010 TMI - 35383 - MADRAS HIGH COURT

The Commissioner of Income-tax, Madurai. Versus M/s. Ramco Industries Ltd., Rajapalayam.

Dated: 07-12-2009

Sections - 010B, 234D,

Deduction u/s 10B – Interest u/s 234D – Held that - The exact mistake of the audit party was that after its stand that the book depreciation relating to all the units should be added back in the memo of total income, but it omitted to consider the fact that the assessee would be entitled to income tax depreciation in respect of all the units whereas the company had claimed only income tax depreciation of other units except 10B unit. This is the mistake committed by the audit party and even though the proper and correct reply was submitted by the assessee, the assessing officer, without due application of mind, revised the assessment order - the revenue is not able to establish that the view taken by the Commissioner of Income Tax (Appeals) and confirmed by the Tribunal is not in accordance with law. So is the issue with regard to section 234D

penalty. The Commissioner of Income tax (Appeals) has observed that section 234D of the Act is applicable only where any refund is granted to the assessee under section 143(1) of the act and the same is payable back to the department on completion of the assessment under section 143(3) of the Act. The assessing officer has not granted refund under section 143(1) of the Act and in the circumstances section 234D is not applicable – decided in favor of assessee

7 2010 TMI - 35382 - MADRAS HIGH COURT

Commissioner of Income Tax IV, Chennai. Versus Subbu Shashank

Dated: 07-12-2009

Sections - 144,

Assessment u/s 144 – Assessee claims that notice u/s 143(2) not received - The assessee filed his return for the assessment year 2005-06 on 30.06.2006 admitting a total income of Rs.2,05,280/-. It is the case of the revenue that the revenue issued notice under section 143(3) of the Act, but there was no response. The assessment was completed under section 144 on 24.12.2007 on a total turnover of Rs.37,32,880/- and a demand of Rs.17,22,990/- was made. The assessee is a flute artist. He claimed to be a non resident for the previous year 2004-05 and claimed to have been in India only for a total period of 181 days, but that was not accepted by the department by saying that the assessee has not proved by producing his stay outside India – held that – since department failed to produce the evidence of service of notice u/s 143(2) the order passed under section 144 of the Act was invalid and ab initio void – decided in favor of assessee

8 2010 TMI - 35381 - MADRAS HIGH COURT

The Commissioner of Income Tax, Versus Smt.Tasneem Z Madraswala

Dated: 07-12-2009

Sections - 263,

Power to revise the assessment order – Section 263 – power of the commissioner - The assessee filed her return of income on 15.12.2004 admitting a total income of Rs.7,77,440/- for the assessment year 2004-05. The same was processed under Section 143(1) of the Income Tax Act on 20.06.2005. Thereafter, the case was taken up for scrutiny and the regular assessment under Section 143(3) was completed on 20.11.2006, determining the total income at Rs.8,02,440 - By exercising the power under Section 263 of the Income Tax Act, 1961, the Commissioner of Income Tax (Appeals), Chennai VI, has set aside the order passed by the Assessing Officer and further directed the Assessing Officer to pass a fresh assessment order by following the procedure contemplated under Section 50 C (2)(b) of the Income Tax Act. – held that - Remanding the matter, the Commissioner of Income Tax (Appeals) ought not to have given a specific direction to complete the assessment in a particular manner. Further, the Tribunal has only set aside the above said direction by which the Assessing Officer was directed to complete the assessment by following Section 50 C (2)(b) of the Act – No power to CIT to direct the assessing officer to make assessment in a particular manner – decided against the revenue

9 2010 TMI - 35380 - MADRAS HIGH COURT

Commissioner of Income Tax, Versus M/s. FL Smidth Ltd., Formerly M/s. Fuller India Ltd.

Dated: 07-12-2009

Sections - 037,

Future Warranty expenses – Deduction u/s 37 - The assessee is engaged in

manufacture and supply of cement plant, engineering and structural drawings, goods and services. The assessing officer did not allow the deduction in respect of provision for warranty of a sum of Rs.9,79,68,895 – Held that - warranty became an integral part of the sale price; in other words, the warranty stood attached to the sale price of the product. Warranty provision had to be recognised because the assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of the obligation. The value of the contingent liability like the warrant expense, if properly ascertained and discounted on accrual basis, can be an item of deduction under section 37 of the Act. The principle of estimation of the contingent liability is not the normal rule. It would depend on the nature of the business, the nature of sales, the nature of the product manufactured and sold and the scientific method of accounting adopted by the assessee. It would also depend upon the historical trend and upon the number of articles produced. A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: (a) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation and held that the provision made for warranty in respect of such sophisticated goods would be entitled to deduction from the gross receipts under section 37 of the Act. – decided in favor of assessee

10 2010 TMI - 35379 - MADRAS HIGH COURT

Estate of M. M. Ispahani Versus The Commissioner of Income-tax, (Exemptions)- II

Dated: 14-12-2009

Sections - 011,

Accumulation of income u/s 11(2) – Charitable Trust - purpose of accumulation of the income - The assessing officer while deciding the application of income in Form No.10 was of the opinion that the purpose of accumulation mentioned therein are vague and not specific and hence declined the benefit of accumulation under Section 11(2) of the Act by following the decision of the jurisdictional High Court in the case of CIT Vs. M.Ct.M.Chettiar Family Trust [2008 -TMI - 14945 - MADRAS High Court] – held that - , the assessee was allowed to adduce fresh evidence to show the specific purpose for which the trust requires accumulation of the income - the order of the Tribunal is hereby set aside and the matter is remitted back to the assessing officer

11 2010 TMI - 35378 - MADRAS HIGH COURT

Commissioner of Income Tax III Versus M/s. SPIC Limited

Dated: 07-12-2009

Sections - 032, 037,

Depreciation – u/s 32 on standby parts – standby parts were not taken for use – Expenditure related to fixed deposits – investment allowance - revenue versus capital expenditure – setoff of unabsorbed expenditure from income from house property - held that – depreciation should be allowed on standby spare parts even though they were not taken for use during the year - investment allowance should be allowed on standby spare parts even though they were not taken for use during the year - the act of borrowing money was incidental to the carrying on of business, the loan obtained was not an asset or an advantage of enduring nature, the expenditure was made for securing the use of money for a certain period and it was irrelevant to consider the object with which the loan was obtained and therefore, the amount spent was not in the nature of capital expenditure and was laid out or expended wholly and exclusively for the purpose of the assessee's business and was therefore allowable as a deduction - the very statute provides that such a set off can be done till the provision was amended

with effect from 1.4.2002 – setoff was allowed – decided in favor of assessee

12 2010 TMI - 35377 - MADRAS HIGH COURT

Commissioner of Income Tax I Versus M/s. Thiruvengadam Investments Pvt, Ltd

Dated: 01-12-2009

Sections - 50C,

Applicability of provisions of section 50C on a business asset – income from sale of property held as business asset – valuation for the purpose of stamp duty - The assessee company filed its return of income for the assessment year 2004-2005 on 1.11.2004 admitting an income of Rs.78,23,894/- and claimed set off of the entire income against the earlier years' losses and claimed capital loss of Rs.83,64,350/-. While completing the assessment, the Assessing Officer noticed that the assessee claimed a capital loss on the sale of the property at Greams Road. The consideration shown was for Rs.5 Crores - As the assessee was engaged in the business of property development, the activities of the assessee were treated as business. Therefore, while computing the income, the question of indexation cost was not considered and the cost of the land was taken as Rs.3,19,49,496/-. In the balance sheet, the value of the property has been shown as Rs.2,55,87,815/- under current assets. The Assessing Officer held that though the apparent sale consideration was for Rs.5 Crores, the sale price should be taken at the amount as fixed by the Registering Authority on the basis of the guideline value of Rs.6,94,45,920/- – held that - The invocation of Section 50C of the Act as can be seen from the provisions of the Act can be made in order to find out the true value of the capital asset. In the very facts and circumstances of the case, the property in the hands of the assessee was treated as business asset and not as capital asset, there is no question of invoking the provisions of Section 50C of the Act, which is, as already stated, pertaining to determining the full value of the capital asset. – decided in favor of assessee

13 2010 TMI - 35376 - MADRAS HIGH COURT

M/s. Southern Foundation P.Ltd., Versus The Assistant Commissioner of Income Tax

Dated: 01-12-2009

Sections - 037,

Direct Expenditure on project – ITAT disallowed the direct expenditure incurred towards various projects as claimed by the appellant - The assessee is engaged in the business of promotion of real estate and construction. For the assessment year 1997-98, the assessee filed return of income on 28.11.1997 admitting the total income of Rs.1,08,720/-. While completing the assessment, among other disallowances, the Assessing Officer disallowed a sum of Rs.12,29,025/- towards direct expenses, namely, site electricity, site expenses, commission, rent etc. The Assessing Officer chose to disallow the direct expenditure in respect of four projects namely Yesodha, Blossom, Gayathri and Krishna arcade – held that - It is clear from the assessment order where the amount of Rs.12,29,025/- claimed as expenses has been accepted by the assessee itself that the claim should be disallowed. - However, the assessee filed an appeal by stating that the commission and brokerage in respect of procurement of land have not been granted as expenses incurred by the assessee. Both before the First Appellate Authority and the Tribunal, this stand has been taken by the assessee. We are unable to appreciate the arguments of the learned counsel for the assessee, as what was disallowed by the Assessing Officer was on the consent given by the assessee regarding expenses as direct expenditure on the projects in a sum of Rs.12,29,025/-. Apart from that, the amount of brokerage or commission has never been considered in the assessment order. An issue which is not available in the assessment order has been taken on appeal before the two Authorities below and

ultimately before us also – appeal dismissed – decided in favor of revenue.

14 2010 TMI - 35375 - MADRAS HIGH COURT

Commissioner of Income Tax Versus M/s E.I.D. Parry (India) Ltd

Dated: 01-12-2009

Sections - 115JA, 234B, 234C,

Minimum Alternate Tax - MAT Credit u/s 115JA – Interest u/s 234B and 234C – MAT credit to be adjusted before charging interest u/s 234B and 234C – held that - . The Delhi High Court has considered the relevant provisions and dealt with the matter in detail and held that the credit under Section 115JAA should be given effect to before charging of interest under Section 234A, 234B and 234C of the Act. We are in agreement with the reasoning given by the Delhi High Court. The learned counsel appearing for the revenue has not produced any materials or given compelling reasons to take a contrary view with that of the Delhi High Court - vs. Jindal Exports Ltd [2009 - TMI - 32986 - DELHI HIGH COURT] – decided in favor of assessee

15 2010 TMI - 35374 - MADRAS HIGH COURT

Commissioner of Income Tax, Chennai Versus M/s Chakiat Agencies P Ltd

Dated: 01-12-2009

Sections - 271,

Penalty u/s 271(1)(c) - The assessee is a shipping agent. For the assessment year 1996-97, the assessee had claimed deduction under Section 80-O of the Income Tax Act on the ground that the assessee rendered service to foreign shipping company and also do certain technical services like booking of cargos and gathering and supplying the details of Market condition to foreign shipping companies. The Assessing Officer found that there was no actual receipt of foreign exchange by the assessee and thus levied penalty under Section 271(1)(c) in a sum of Rs.30,30,430/-. Held that - The quantum tax case appeal has been decided by this Court in the case of Commissioner of Income Tax vs. Chakiat Agencies Pvt. Limited reported in [2009 -TMI - 33216 - MADRAS HIGH COURT], wherein the order of the Tribunal granting the relief in favour of the assessee has been uuheld - In view of the fact that the quantum appeal has been decided in favour of the assessee, virtually the basis for imposition and levy of penalty under Section 271(1)(c) is not available

16 2010 TMI - 35373 - MADRAS HIGH COURT

Commissioner of Income Tax, Coimbatore Versus M/s Sri.Natesar Spg. & Wvg. Mills Ltd

Dated: 01-12-2009

Sections - 028, 031,

Replacement of Machinery – Bringing into existence of a new asset - Whether the replacement of machinery parts will amount to revenue expenditure or not - Whether bringing into existence of a new asset or obtaining a new advantage would amount to revenue expenditure or not - Having regard to the law now prevailing as declared by the Supreme Court in the above said cases, even in these cases, as there is no specific finding about the enduring nature of the assets or the increase in the production capacity, we are of the view that without answering the question of laws, the matter has to be remitted back to the assessing authority for redoing the exercise as per the dictum laid down by the Supreme Court in the aforesaid cases. – held that - , as there is no specific finding about the enduring nature of the assets or the increase in the production capacity, we are of the view that without answering the question of laws, the matter has to be remitted back to the assessing authority for redoing the exercise -

matter is remitted back to the Commissioner of Income Tax (Appeals) to reconsider the issue in the light of the direction given by the Supreme Court

17 2010 TMI - 35372 - MADRAS HIGH COURT

[The Commissioner of Income-Tax, Tamil Nadu I, Madras Versus M/s India Pistons Limited](#)

Dated: 01-12-2009

Sections - 043, 043B,

Valuation of Closing Stock - The assessee claimed deduction of excise duty and custom duty payable from the value of closing stock. The Assessing Officer of the opinion that the excise duty payable on finished goods is not taken into account for the purpose of valuation of stock of finished goods. The Income tax Officer added back the excise duty payable on finished goods. The first appellate authority deleted the addition so made. The department preferred an appeal before the Income Tax Appellate Tribunal and the Income Tax Appellate Tribunal following the decision in the case of Commissioner of Income Tax vs. English Electric Co. Of India Limited reported in [2008 -TMI - 15290 - MADRAS High Court] held that excise liability not to be included in valuation of closing stock. The Assessing Officer disallowed the investment allowance claim on the ground that by notification 50 - 233(e) dated 19.03.1990, the Government abolished the scheme of investment allowance with effect from 01.04.1990. – held that - the imported goods are yet to be cleared from the customs and they still remain in the bonded warehouse and the manufactured goods are also very much available within the assessee's factory and it is not cleared by payment of excise duty. - excise liability not to be included in valuation of closing stock - that increase in the liability of the assessee during the previous year on account of the change in the rate of exchange is part of the actual cost of the machinery acquired from a foreign country and the assessee is entitled to investment allowance on the additional cost - answered in favour of the assessee

18 2010 TMI - 35369 - PUNJAB AND HARYANA HIGH COURT

[Commissioner of Income Tax-I, Amritsar Versus M/s Central Mall](#)

Dated: 10-11-2009

Sections - 037,

Additional Evidence - Deduction of future expenditure – production of additional evidence under rule 46A - additions of Rs. 20,21,710/- by including the provision for future expenses in the value of the work in progress as on 31.03.2003 - The assessee is a builder. In the course of assessment the Assessing Officer made addition to the declared income on the basis of the valuation of the work in progress. CIT (A) upheld the valuation of the assessee. The CIT (A) took into account affidavit filed before it by the assessee reiterating its stand. The view taken by the CIT (A) was upheld by the Tribunal, rejecting the contention that additional affidavit could not be taken into account, as doing so would violate Rule 46A of the Income Tax Rule 1962. – held that - It is clear that the affidavit filed by the assessee was mere reiteration of the contention raised before the Assessing Officer. Rule 46A applies when there is additional evidence and not when there is affidavit reiterating the submissions.

19 2010 TMI - 35368 - PUNJAB AND HARYANA HIGH COURT

[Commissioner of Income Tax-I, Ludhiana Versus M/s Amar Enterprises](#)

Dated: 10-11-2009

Sections - 080HHC,

Non allowance of export incentives u/s 80HHC – appropriation of 10% of expenses

against the export incentive – held that – CIT(A) and ITAT deleted the addition of Rs. 3,66,343/- on account of deduction u/s 80HHC by allowing the deduction of 10% of export incentive in addition to the direct expenses and indirect expenses while calculating profits of the business u/s 80HHC (3) (b) – Held that – in view of Supreme Court Decision in the matter in Hero Exports vs. Commissioner of Income Tax [2008 - TMI - 2470 - Supreme Court of India] the decision of ITAT to be maintained - that the benefit of cost not related to export turnover can be deducted from income from export incentives

20 2010 TMI - 35366 - MADRAS HIGH COURT

M/s. FLS Automation India (P) Ltd., Versus The Assistant Commissioner of Income-tax

Dated: 07-12-2009

Sections - 037,

Provision of warranty – Disallowance - The assessee is engaged in the business of design, manufacture, sale, erection and commissioning of equipments and projects. In respect of the assessment year 2002-03 the assessee filed its return of income on 29.10.2002 admitting an income of Rs.36,60,370/-, after claiming relief under section 80HHC of the Act. The assessment was completed under section 143(3) of the Act on 10.03.2004. While making the above assessment, the assessing authority disallowed claims in respect of service tax and CST liability, purchase of software and provision for warranty. The assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals), who confirmed the disallowance in respect of purchase of software and provision for warranty. The assessee appealed further to the Tribunal. The Tribunal remitted the issue relating to expense on computer software, however, rejected the claim in respect of warranty. – held that - the warranty became an integral part of the sale price; in other words, the warranty stood attached to the sale price of the product. Warranty provision had to be recognised because the assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of the obligation. The value of the contingent liability like the warrant expense, if properly ascertained and discounted on accrual basis, can be an item of deduction under section 37 of the Act. - Controls India P. Ltd. v. CIT, [2009 -TMI - 33420 - SUPREME COURT OF INDIA] – Decided in favor of assessee

21 2010 TMI - 35362 - DELHI HIGH COURT

Commissioner of Income Tax Versus AIMIL Limited and others

Dated: 23-12-2009

Sections - 036, 043B,

Late deposit of PF and ESI - During the assessment proceedings, the Assessing Officer (AO) found that the assessee had deposited employers' contribution as well as employees' contribution towards provident fund and ESI after the due date, as prescribed under the relevant Act/Rules. Accordingly, he made addition of Rs.42,58,574/- being employees' contribution under Section 36(1)(va) of the Act and Rs.30,68,583/- being employers' contribution under Section 43B of the Act. – CIT(A) deleted the addition by holding that the assessee had made the payment before the due date of filing of the return, which was a fact apparent from the record - that if the employees' contribution is not deposited by the due date prescribed under the relevant Acts and is deposited late, the employer not only pays interest on delayed payment but can incur penalties also, for which specific provisions are made in the Provident Fund Act as well as the ESI Act. Therefore, the Act permits the employer to make the deposit with some delays, subject to the aforesaid consequences. Insofar as the Income Tax Act is concerned, the assessee can get the benefit if the actual payment is made before

the return is filed, as per the principle laid down by the Supreme Court in Vinay Cement – Decided in favor of assessee

22 2010 TMI - 35351 - BOMBAY HIGH COURT

[Sitaldas K.Motwani, Versus 1. Director General of Income Tax \(International Taxation\), 2. Joint Director of Income Tax \(International Taxation\), 3. CIT 4. UOI](#)

Dated: 15-12-2009

Sections - 119,

Delay in filing an appeal – refund is arising out of such return - The assessee filed his return of income for the first time for A.Y. 2000-01 claiming that the Short Term Capital Gains on sale of shares of Indian Companies qualify to be investment income u/s.115C of the Act, taxable at a flat rate of 20% and claimed a refund of Rs.20,78,871/-. Needless to mention that prior to filing this return on 24th September, 2003, the assessee did not file any return for any assessment year. The return of income for A.Y.2000-01 had become barred by limitation on 31st March, 2002 and therefore, the return was filed on 24th September, 2003 along with an application u/s.119(2)(b) for condonation of delay in filing of return and claiming refund. – held that - Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. – matter remanded for fresh consideration.

23 2010 TMI - 35324 - SUPREME COURT

[Commissioner of Income Tax, Bhopal Versus M/s. H.E.G. Limited](#)

Dated: 03-12-2009

Sections - 244A,

Interest on Interest - , the question raised by the Department is whether the assessee was entitled to claim interest on interest under the provisions of Section 244A of the Income Tax Act, 1961 –that during the Assessment Year 1993-1994, the amount paid by the assessee towards TDS was Rs.45,73,528/-. The Tax paid after Original Assessment was Rs.1,71,00,320/-. The total of TDS amounting to Rs.45,73,528/- plus Tax paid after Original Assessment of Rs.1,71,00,320/- stood at Rs.2,16,73,848/-. In other words, the total tax paid had two components, viz., TDS + Tax paid after Original Assessment. The respondent was entitled to the refund of Rs.2,16,73,848/- (consisting of Rs.1,71,00,320/- and Rs.45,73,528/- which payment was made after 57 months and which is the only item in dispute assessee claimed interest for delayed refund - held that - this is not a case where the assessee is claiming compound interest or interest on interest as is sought to be made out in the civil appeals filed by the Department. - we are of the view that the assessee was entitled to interest for 57 months on Rs.45,73,528/-. The principal amount of Rs.45,73,528/- has been paid on 31st December, 1997 but net of interest which, as stated above, partook the character of "amount due" under Section 244A

24 2010 TMI - 35323 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI VI, NEW DELHI versus TRIVENI ENGINEERING and INDUSTRIES LIMITED

Dated: 23-01-2009

Sections - 032, 037,

Capital versus Revenue Expenditure - ITAT allowed the the expenditure incurred by the assessee in connection with the modernization and expansion of, inter alia, its Deoband and Ramkola units by treating the same as expenditure of a revenue nature. – ITAT allowed the said expenditure although the assessee, in its books of accounts, had treated the same as capital expenditure. – tribunal had permitted deduction of administrative expenses incurred in the course of the renovation of the two units. – held that - as the new unit was part of the existing business and there was no dispute that there was unity of control and interlacing of the units, the expenses incurred by the assessee for the setting up of a new unit, would be of a revenue nature – The tribunal, in our view, has correctly concluded that the authorities below had erred in holding the said expenditure to be of a capital nature. We agree with the conclusion of the tribunal that the whole of the expenditure is to be allowed as revenue expenditure and consequently there would be no question of grant of depreciation on such expenditure.

25 2010 TMI - 35306 - HIGH COURT OF GUJARAT

THE INCOME TAX OFFICER Versus SACHINAM TRUST

Dated: 04-03-2009

Sections - 044AB, 271B,

Tax Audit - Penalty u/s 271B - Audit u/s 44AB - inclusion of deemed turnover for the purpose of calculation of monetary limit of Tax Audit - The Assessing Officer was of the view that in terms of provisions of Section 44AB of the Income Tax Act, 1961 (the Act), the Assessee was under an obligation to get its accounts audited because the total amount of advances during the year under consideration constitute the turnover of the assessee which exceeded the stipulated limit of Rs.40 lacs. As the audit report had not been filed by the assessee, a show cause notice was issued on 05.11.1992. The assessee filed reply on 12.11.1992 contending that provisions of Section 44AB of the Act are not applicable in its case because the Gross Receipts did not exceed the sum of Rs.40 lacs. The said contention was not accepted by the Assessing Officer and penalty of Rs.72,451/- was levied under the provisions of Section 271B of the Act. - held that - In fact, on a reading of provisions of Section 44AB of the Act, it is a moot question as to which of the three phrases can be said to be applicable in a given case, and the same would depend on facts of each case and no straight jacket formula can be evolved in this context. Accordingly, the assessee was entitled to contend that when the terms Turnover and Gross Receipts are separated by the use of word or, the assessee would be entitled to bonafidely believe that Gross Receipts would constitute the basis for ascertaining the limit of Rs.40 lacs so as to attract Section 44AB of the Act.

26 2010 TMI - 35296 - PUNJAB AND HARYANA HIGH COURT

The Shahabad Cooperative Sugar Mills Ltd. Versus CIT, Aayakar Bhawan, Karnal

Dated: 30-11-2009

Sections - 037,

Business Expenditure - In this case, the Assessing Officer disallowed the expenditure of Rs.1,15,000/- on account of installation of machinery as revenue expenditure and the said expenditure was treated as capital expenditure. CIT(A) as well as the ITAT have affirmed the finding of the Assessing Officer that the said expenditure was not on account of repair and maintenance, as claimed by the assessee, but the same was on account of installation of machinery - as per the details filed, the expenditure was

charged to erection/commission head on account of multitudes supplied Rs. 1 lac and S.S. Polly baffle Type Rs. 15,000/-. It is stated that in reply, the assessee could not explain as to how the said expenditure is on account of repair and maintenance and not on account of installation of machinery. – expenditure rightly disallowed – decided in favor of revenue

27 2010 TMI - 35295 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Versus M/s Sheena Industries, Ujha Road, Panipat

Dated: 23-11-2009

Sections - 80HHC,

Export Incentives – Deduction u/s 80HHC – supporting manufacturer - In the assessment framed under Section 143 (3) of the Act, the Assessing Officer did not accept the contention of the assessee for computing deduction allowable to him under Section 80 HHC of the Act as per the provision of Section 80 HHC (1A) read with Section 80 HHC (3A) read with clause (baa) of explanation of Section 80 HHC of the Act, as the respondent is a supporting manufacturer, and allowed deduction of Rs.1,40,49,120/- under Section 80 HHC of the Act, instead of Rs.7,19,78,869/-, as claimed by the assessee – held that - upheld the claim of the assessee under Section 80 HHC of the Act as a supporting manufacturer at par with the direct exporter – deduction / exemption to be allowed – decided in favor of assessee.

28 2010 TMI - 35294 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Faridabad Versus Shri Lal Singh and others

Dated: 20-11-2009

Sections - 002(14), 054B,

Nature of land – deduction u/s 54B – agriculture land - In the Financial Year 1995-96 relevant to Assessment Year 1996-97, late Smt. Phusha Devi wife of Jug Lal had sold her agricultural land situated in Village Fazilpur, Jharsa for a sum of Rs.89,75,000/-. After her death, notices under Section 148 were issued to her legal heirs. In response to that, a return was filed showing the net taxable income of Rs.37,000/-. In the said return, the long term capital gain was shown as nil. In order to claim that the agricultural land owned and sold by the assessee did not fall in the definition of “Capital Assets” as defined in Section 2(14)(iii) of the Income Tax Act, 1961, the assessee produced a certificate from Tehsildar, Gurgaon to the effect that the land of the assessee was situated beyond 8 Kms. from the Gurgaon municipal limits. The Assessing Officer while not accepting the said report and while relying upon the report given by the Inspector, did not accept the assessee's contention of exemption under Section 54B and determined the capital gain to the tune of Rs.86,65,900/- in the assessment order – held that - without the help of the revenue officials, it is difficult for a person to identify the land and then to measure the distance of the said land with the municipal limits. – CIT(A) and ITAT accepted the the report dated 16.1.2004 given by the Tehsildar – exemption to be allowed – decided in favor of assessee

29 2010 TMI - 35293 - PUNJAB AND HARYANA HIGH COURT

Jai Bharat Gum & Chemicals Ltd. Versus Addl. Commissioner of Income Tax

Dated: 19-11-2009

Sections - 80IB,

Export Incentives – Deduction u/s 80IB - In the present case, the assessee is engaged in the business of manufacturing of guar gum. For the assessment year 2006-07, the assessee filed its returns declaring an income of Rs. 28,25,476/-. The return was processed under section 143 (1) of the Act and a refund of Rs. 24,80,660/- was granted

vide order dated 14.9.2007. Thereafter, the case was taken up for scrutiny and processed under section 143 (3) of the Act. Vide order dated 28.3.2008, the Assessing Authority disallowed the claim made by the assessee under section 80-IB of the Act, which was claimed by the assessee being the profits derived from industrial undertaking Unit II - . According to the Assessing Authority, the said profit includes export incentives of Rs. 3,08,40,231/- including DEPB profits – CIT(A) allowed the deduction – ITAT denied the deduction – held that - Duty Draw Back and DEPB are incentives, which flow from the schemes framed by the Central Govt. or under Section 75 of the Customs Act, 1962 and these incentive profits do not fall within expression “profits derived from industrial undertaking in Section 80-IB of the Act – benefit not to be allowed – decided in favor of revenue.

30 2010 TMI - 35287 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-I, Chandigarh Versus M/s Simla Chandigarh Diocese Society

Dated: 19-11-2009

Sections - 011,

Exemption u/s 11(1)(a) / ii(1)(d) – CIT(A) and ITAT hold that assessee is entitled to benefits of exemption of income under section 11(1)(a) of the Income Tax Act – ITAT deleted the of Rs.37,89,983/- concluding that interest income is not 'income from other sources' and therefore part & parcel of accumulated funds – held that – similar issue has already has been answered against the revenue ITA No.566 of 2008 titled Commissioner of Income Tax-I, Chandigarh vs. M/s Simla Chandigarh Diocese Society, Catholic Church, Sector 19-A, Chandigarh and ITA No.939 of 2008 titled Commissioner of Income Tax-II, Chandigarh vs. M/s Sarvhitkari Educational Society, Sector 21-B and now Sector 42, Chandigarh. – decided in favor of assessee

31 2010 TMI - 35286 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-II, Ludhiana Versus M/s Arisudana Spinning Mills Ltd., Ludhiana

Dated: 19-11-2009

Sections - 271,

Penalty u/s 271(1)(c) - In its return of income, the assessee claimed deduction under Section 80 IA of the Act in respect of profits derived from trading turnover i.e. trading in the raw wool and knitted cloth. The return of income filed by the assessee was accompanied by Audited Balance Sheet, Profit & Loss Account and an Audit Report in Form No.10CCB relating to the claim of deduction under Section 80 IA of the Act. The Assessing Officer denied the said deduction to the assessee while coming to the conclusion that deduction under Section 80 IA was allowable only in respect of income derived from manufacturing of goods and not from trading in the raw wool and knitted cloth. The Assessing Officer also initiated the penalty proceedings under Section 271(1)(c) of the Act for furnishing inaccurate particulars of income in its return with an intention to evade tax. – held that - the ITAT has rightly come to the conclusion that the assessee did not deliberately or consciously concealed the true particulars of income or furnished inaccurate particulars of income. – penalty not to be imposed – decided in favor of assessee

32 2010 TMI - 35285 - PUNJAB AND HARYANA HIGH COURT

Harisons Overseas, Panipat Versus Commissioner of Income Tax, Karnal

Dated: 18-11-2009

Sections - 080IB,

Deduction u/s 80IB – Duty draw back – Duty Entitlement Passbook DEPB - the assessee, who derived income from manufacturing of handloom goods and its export, claimed deduction on the business profit, which included the amount of export incentives received on account of the Duty Draw Back and the Duty Entitlement Pass Book Scheme (hereinafter referred to as 'DEPB') under Section 80-IB of the Act. The Assessing Officer, vide his order dated 31.3.2008, while following the decision of the Supreme Court in CIT v. Sterling Foods – held that - decision of this Court in the case of Liberty India has been affirmed by the Hon'ble Supreme Court in Liberty India v. Commissioner of Income-Tax, wherein while dismissing the appeal of the assessee, it has been concluded that Duty Draw Back and DEPB are incentives, which flow from the schemes framed by the Central Govt. or under Section 75 of the Customs Act, 1962 and these incentive profits do not fall within expression “profits derived from industrial undertaking in Section 80-IB of the Act. Therefore, Duty Draw Back and DEPB do not form part of net profits of the industrial undertaking for the purposes of Section 80-IB of the Act. – Deduction not be allowed - Decided against the assessee

33 2010 TMI - 35284 - PUNJAB AND HARYANA HIGH COURT

Jawand Sons, Ludhiana Versus Commissioner of Income Tax (Appeals)-II, Ludhiana

Dated: 18-11-2009

Sections - 80IB, 147,

Reassessment – full and true disclosure – section 147 – held that - because a pure finding of fact has been recorded to the effect that the re-assessment proceedings have rightly been initiated after framing the opinion that some income chargeable to tax has escaped assessment. Under Section 147 of the Act, after its amendment with effect from 1.4.1989, wide power has been given to the Assessing Officer even to cover the cases where the assessee had fully disclosed the material facts. The only condition for action is that the Assessing Officer should have reason to believe that the income chargeable to tax had escaped assessment. Such belief can be reached in any manner, and is not qualified by a precondition of faith and true disclosure of material facts by the assessee as contemplated in the pre amended Section 147 (a) of the Act - as far as merits of the case is concerned, with regard to the permissible deduction under Section 80-IB of the Act, it is clear position that the assessee was not entitled to claim deduction on account of Duty Draw Back and DEPB incentives, as these incentive profits do not fall within expression “profits derived from industrial undertaking” in Section 80-IB of the Act. Therefore, Duty Draw Back and DEPB do not form part of net profits of the industrial undertaking for the purposes of Section 80-IB of the Act. – Decided against the assessee

34 2010 TMI - 35283 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Faridabad Versus Sh. Bharat Lal Daggar (HUF)

Dated: 16-11-2009

Sections - 271,

Penalty u/s 271(1)(c) - ITAT hold that the issue of taxability of compensation on agricultural land and interest thereon received by the assessee being a highly debatable issue on which two views are clearly possible and the claim of the assessee in adopting one possible view being bonafide one, no case of penalty u/s 271 (1) (c) of the Act could be made out - The question is not of taxability but of not paying tax when the issue was debatable. The assessee had arguable case and earlier view was in favour of the assessee in CIT v. Karanbir Singh, which is based on the judgment of the Hon'ble Supreme Court in CIT v. Hindustan Housing and Land Development Trust Ltd., which has now been reversed in Ghanshyam – penalty not to be imposed

35 2010 TMI - 35276 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Versus M/s Lakhani India Ltd.

Dated: 16-11-2009

Sections - 002, 036, 043B,

Contribution of PF, EPF, EC – Non deposit of amount by due date - ITAT deleted the addition of Rs.69,10,329/- and Rs.69,89,302/- made by the Assessing Officer, inter alia, on account of employees' contribution to PF & EC - The assessee claimed deduction in respect of payment of contribution towards provident fund, which was disallowed on the ground that payment was beyond the stipulated date. The CIT (A) upheld that claim of the assessee by referring to explanation to Section 43B, read with Explanation to Section 36(1)(va) and Section 2(24)(x) of the Act with further observation that the payment was within the due date, as per circular issued under the Employees Provident Funds and Miscellaneous Provisions Act, 1952. This view has been upheld by the Tribunal – held that - View of the Tribunal is consistent with the view of judgment of Gauhati High Court in Commissioner of Income Tax v. George Williamson (Assam) Ltd against which SLP was dismissed and which was followed in judgment of Delhi High Court in Commissioner of Income Tax v. Dharmendra Sharma. with which we respectfully agree. No substantial question of law arises. The appeal is dismissed. – Decided in favor of assessee

36 2010 TMI - 35275 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Faridabad Versus Shri Rajiv Agnihotri

Dated: 16-11-2009

Sections - 263,

Revision by Commissioner u/s 263 – ITAT quashed the order under Section 263 of the Income Tax Act, 1961 passed by the Chief Commissioner of Income Tax (OSD) by holding that neither any specific defect in the assessment order has been pointed out in detail nor any such finding to this effect has been recorded – Tribunal further hold that merely subjective difference in opinion of the Assessing Officer and the Commissioner of Income Tax cannot be termed as erroneous - held that - is well settled that power under Section 263 could be exercised only if the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue. From the finding of the Tribunal, it is clear that the order of the Assessing Officer had not been shown to be erroneous by the Commissioner and in such a situation, the Tribunal rightly quashed the order of the CIT (A). – decided in favor of assessee.

37 2010 TMI - 35274 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Jalandhar Versus M/s Punjab Gas Cyclinder Ltd. Ludhiana.

Dated: 13-11-2009

Sections - 003,

Previous year – option - Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee had a right to exercise option to adopt its previous year from 1.1.1983 to 30.6.1984 under Section 3 (1) (e) (i) and was not required to obtain permission under Section 3 (4) of the Income-tax Act, on the ground that business had commenced with effect from 1.12.1983 – held that - Learned counsel for the appellant has placed reliance on Commissioner of Income-tax vs. Ravinder Kumar wherein business not being new business, it was held that choice of previous year without permission could not be exercised. This judgment is clearly distinguishable as in the present case, the business of the assessee has been held to be new business. - In view of reasons given by the Tribunal, it stands established that

the business of the assessee commenced on 1.12.1983 and in such a situation the Tribunal was justified in holding that no prior permission was required under Section 3 (1) (e) (i). The question referred, thus, has to be answered against the revenue and in favour of the assessee

38 2010 TMI - 35273 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus Shri Pran Nath Gupta

Dated: 13-11-2009

Sections - 037,

Deduction - deduction of Rs.6,20,000/- on account of payments made to the subcontractors from the gross contract receipts – Tribunal allowed the deduction – ITAT found that Copy of agreement dated 10.12.1984 made it clear that the assessee did assign certain job to the subcontractors. We have already seen that the practice of subletting of contractor was common and the Tribunal has taken a consistent view that payments made to subcontractors may be allowed as a deduction – held that - . In the present case, the Tribunal has referred to material justifying deduction. In view thereof, the Tribunal was right in permitting the deduction. – Decided in favor of assessee

39 2010 TMI - 35272 - PUNJAB AND HARYANA HIGH COURT

S.Tirath Singh Lalvani Educational Foundation Versus Commissioner of Income Tax

Dated: 13-11-2009

Sections - 080G,

Deduction u/s 80G - registration and exemption - Section 80-G(5)(vi) of the Income Tax Act – petition, are that the petitioner-Trust was duly registered under the Societies Registration Act, 1860. The certificate of registration dated 28.01.2003 has been added with the petition (Annexure P-1). The petitioner-Trust applied for exemption under Section 80-G of the Income Tax Act and the application was rejected vide impugned order dated 30.09.2003 - The petitioner-Trust has claimed that in pursuance of creation and acting in tandem with the objectives of the petitioner-Trust, a Day School with the name of “Bawa Lalvani Public School”, an institute known as Lalvani Institute of Technology at Kapurthala, were duly established.- held that - learned counsel for the revenue made an attempt to furnish legal justification of the impugned order. - However, he has not been able to propose the primary submission made by learned counsel for the petitioner-Trust which is to the effect that the matter requires re-look as the various documents produced by the petitioner-Trust collectively after passing of the impugned order have not been considered by the Commissioner – matter referred back to CIT – decided in favor of assessee

40 2010 TMI - 35271 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax. Versus M/s Varren Financial Services Ltd.

Dated: 13-11-2009

Sections - 028,

Business loss – speculation loss - Section 114 of the Indian Evidence Act - The assessee made claim for business loss and speculation loss in the business of shares but the said claim was turned down by the Assessing Officer by making best judgment assessment, in absence of books of account. On appeal, the CIT (A) partly allowed relief to the assessee by holding that rate per share should have been taken to be Rs.88/-, as against the rate of Rs.92.90 per share, assessed by the Assessing Officer. The Tribunal upheld the view of the CIT(A) – held that - The matter is clearly in the realm of appreciation of evidence. No substantial question of law arises.

41 2010 TMI - 35265 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-III Versus M/s Nahar Spinning Mills Ltd.

Dated: 12-11-2009

Sections - 035D, 080HHC,

Deduction u/s 80HHC – pre-operative expenses - ITAT hold that Central Sales Tax and Sales Tax be excluded from the total turnover of the assessee while computing deduction u/s 80 HHC - ITAT directed not to reduce 10% of the interest income portfolio income, investment income, Misc. receipt and rental income from the profit of business for the purpose of computation of deduction under section 80 HHC of I.T. Act, 1961 – tribunal allowed pre-operative expenses of Rs.6011,744/- held that – matter require reconsideration by tribunal – matter remanded

42 2010 TMI - 35264 - PUNJAB AND HARYANA HIGH COURT

Jasbir Singh Versus Commissioner of Income Tax, Aayakar Bhawan, Patiala.

Dated: 12-11-2009

Sections - 142, 144,

The assessee filed return in pursuance of notice under Section 142 (1) declaring nil income, apart from non-taxable income from agricultural. The Assessing Officer found investments in banks and deposits in the name of the son of the assessee and treating the said amount as unexplained income, additions were made, under Section 144. CIT (A) and the Tribunal upheld the assessment – held that - attention of the learned counsel for the appellant was drawn to second proviso to Section 144. Notice under Section 142 having been served upon the assessee, there was no error in making assessment under Section 144. The question raised cannot be held to be substantial question of law. - The concurrent findings of CIT(A) are based on appreciation of evidence. Argument advanced by the learned counsel for the appellant that the authorities did not appreciate the evidence correctly is not enough to hold that substantial question law arises.

43 2010 TMI - 35263 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Ludhiana Versus M/s Pearl Woolen Mills, Ludhiana

Dated: 12-11-2009

Sections - 254,

Readjudication of an order u/s 254(2) – rectification of mistake - Unaccounted stock - The assessee derived income from manufacture and sale of woolen yarn and scooter and declared loss for the year in question but the Assessing Officer added unaccounted stock pledged with the bank and not accounted for in the books of account, as undisclosed income. The addition was partly upheld by the CIT (A). The Tribunal, vide its order dated 18.3.1976, restored the addition. – . The assessee filed an application under Section 254 (2) for rectification of order dated 18.3.1976. The said application was dismissed by order dated 12.7.1977 holding that there was no mistake apparent on the record and points raised were of argumentative nature - After 9 months, second application under Section 254 (2) was made which was almost similar to the application earlier made and dismissed on 12.7.1977. The said application was accepted, vide order dated 31.3.1979 and reversing the view earlier taken by the Tribunal, addition made by the Assistant Appellate Commissioner was upheld. - held that - the Tribunal could not have readjudicated the matter under Section 254 (2). - There is no express power of review conferred on the Tribunal - Tribunal was not justified in recalling its previous finding restoring the addition, more so when an application for the same relief had been earlier dismissed

44 2010 TMI - 35262 - PUNJAB AND HARYANA HIGH COURT

Hansa Exports Corporation Versus Deputy Commissioner of Income Tax and another

Dated: 11-11-2009

Sections - 147, 148,

Reassessment – issuance of notice u/s 148 - change of opinion –there was no employer employee relationship between Shri Sanjeev Suri and the petitioner firm. The CWP No. 17246 of 2009 alleged allegation in the notice as well as in the reasons sheet is that the claim made in respect of Keyman Insurance Policy on the life of Shri Sanjeev Suri was not allowable deduction as Shri Sanjeev Suri was partner of the firm. On account of the mistake committed in status of the aforesaid Shri Sanjeev Suri, the assessment is sought to be re-opened – held that - argument that the show cause notice and proceedings thereafter are without jurisdiction, is wholly without merit. It is not a case where the department is proceeding on the basis of change of opinion. The department appears to be well within its right to re-open the assessment as there is error apparent on the face of record. The case set up by the department would not fall within the prohibition contemplated for re-opening of assessment proceedings on account of escapement of income – issue of notice u/s 148 upheld

45 2010 TMI - 35261 - PUNJAB AND HARYANA HIGH COURT

M/s Hemyog Hotel (P) Limited, Chandigarh Versus The Commissioner of Income Tax, Patiala

Dated: 10-11-2009

Sections - 139,

Belated Return – Return of Loss – Carry forward of loss – The assessee filed return on 30.9.1985 declaring loss including carried forward loss. The time for filing return had earlier expired and extension had been allowed upto 31.8.1985 vide order dated 27.7.1985. The return was not filed within the stipulated time nor any application was made upto the stipulated date. Application made on 30.9.1985 was not considered and assessment was made ignoring the return which has been upheld by the CIT(A) as well as the Tribunal. – held that - since power to extend time was available under Proviso to Section 139(1) read with Rule 13 of the Rules, the Assessing Officer was bound to consider the same and convey his decision thereon to the assessee. There may not always be automatic extension of time for failure to convey decision on the prayer for extension of time and it may depend on a fact situation whether deemed extension is to be presumed. - Ignoring the application for extension of time and the belated return, without passing any order on the said application and without considering the reasons for seeking extension of time, could not be a part of fair procedure – decided in favor of assessee

46 2010 TMI - 35260 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income-Tax, Patiala Versus M/s Garg Enterprises

Dated: 09-11-2009

Sections - 040A,

Cash Payment – disallowance u/s 43A(3) read with rule 6DD - . The assessee is engaged in sale and purchase of tractors and its spare parts, mainly required by agriculture sector. The Assessing Officer made assessment for the year in question but thereafter CIT exercising powers under Section 263 of the Act set aside the order of the Assessing Officer on the ground that as per CBDT's circular No. 220 dated 31.5.1977 confirmation of concern party was required before benefit of Rule 6 DD (j) was allowed. – ITAT deleted the addition - It is clear from the above observations that the Assessing

Officer had made necessary inquiries and confirmations were furnished to the Assessing Officer from the parties who were supplying agricultural implements and had no bank account. – ITAT order maintained – decided in favor of assessee.

47 2010 TMI - 35259 - PUNJAB AND HARYANA HIGH COURT

M/s Ram Ji Dass & Co. Abohar Versus The Commissioner of Income Tax, Patiala.

Dated: 09-11-2009

Sections - 144, 145,

Rejection of books of account - The Assessing Officer rejected the books of account and assessed net profit @ 10% of the turn over. On appeal, net profit rate was reduced to 9.25%. The Department filed appeal before the Tribunal and the assessee filed cross-objections. The appeal of the Department was dismissed but cross-objections of the assessee were not considered on merits, while dismissing the appeal of the Department. The assessee applied for recalling of the order and for decision of cross-objections on merits. – ITAT rejected the prayer – held that - assessee submits that while deciding the appeal of the Department, the Tribunal only considered whether reduction of the net profit rate from 10% to 9.25% was justified or not and not the question whether said rate should be further reduced to 6.29%, as sought by the assessee - From perusal of the impugned order, it is clear that the view point of the assessee put forward by way of cross-objections was not considered on merits. Accordingly, question referred has to be answered in favour of the assessee and against the Department. The cross-objections of the assessee are, thus, required to be heard and decided on merits - Decided in favor of assessee

48 2010 TMI - 35258 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Verses M/s Channy Enterprises, Mandi Gobindgarh

Dated: 09-11-2009

Sections - 069,

Excess Stock – unexplained investment - As a result of search and seizure operation conducted on 12.8.1987 at the business premises of the assessee and its sister concerns, assessment was made by making addition to the declared value of closing stock and also by holding that there was unexplained investment by the assessee. The additions were confirmed by CIT(A) but the Tribunal deleted the same accepting the explanation of the assessee – held that - The Assessing Officer and the CIT(A) made and upheld addition on account of excess stock only on the basis of difference in the stock as per books of accounts and value of stock declared in the statement furnished to the bank. On examination of the matter, the Tribunal held that the value of stock as disclosed in the books of account was correct. Once that is so, no objection could be taken to the deletions on that account. If the value of the stock was accepted as correct, further inference regarding correctness of value of rolls purchased on 28.3.1988 was also rightly held to be not called for – decided in favor of assessee

49 2010 TMI - 35257 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus M/s Sood Harvestors, Patiala

Dated: 09-11-2009

Sections - 041,

Taxability of sale of machine by the firm to one partner and by such partner to another firm - The assessee firm had three partners and sold its harvester combine to one of its partners. The said partner became partner of another firm and she transferred the said combine to that firm. Thereafter, the combine was further sold by the firm to two

individuals - The Assessing Officer held that by transferring the harvester to the partner and thereafter to another firm of which the said partner had become partner was just a device and, thus, the harvester continued to be that of the assessee firm. Income derived from use of the said harvester combine was required to be added to the income of the assessee, apart from capital gain to be calculated with reference to ultimate sale price. The Assessing Officer added income from running of the combine and profit on sale under Section 41 (2) – ITAT deleted the addition – revenue submitted that neither registration was done with the competent authority under the provisions of Motor Vehicle Act, nor the partner to whom sale was made was earlier partner of the earlier firm. She became partner only two days before the sale – held that - Even though there may be substance in the submissions made, having regard to the fact that the matter relates to period of more than 20 years ago and the amount is not substantial nor the issue is of recurring nature, we do not consider it appropriate to take a final view on merits and consider it proper to return the reference unanswered, leaving the question open

50 2010 TMI - 35256 - PUNJAB AND HARYANA HIGH COURT

Chandigarh Bottling Co.Chandigarh Versus Commissioner of Income Tax, Chandigarh

Dated: 06-11-2009

Sections - 029,

Loss on account of leakage / breakage of bottles - The assessee is engaged in trading and distribution of soft drinks and made a claim towards loss on account of leakage/breakage of bottles. The said claim was rejected by the Assessing Officer in absence of evidence to substantiate the same. It was also observed that the assessee was only a distributor and loss claimed was attributable to the principal. This view has been affirmed by the CIT(A) as well as the Tribunal. – held that - . Even for claiming loss, the assessee has to establish that loss was factually suffered. All the authorities have concurrently recorded a finding of fact that loss in question was never suffered by the assessee. The said finding is not shown to be perverse. – deduction disallowed – decided against the assessee

51 2010 TMI - 35255 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax-I Versus Shri A.K. Sachdeva.

Dated: 06-11-2009

Sections - 068,

Unexplained gift – The assessee claimed to have received a gift of Rs.5 lac from his maternal uncle Ramesh Arora but the said amount was added to his income by the Assessing Officer, as undisclosed income - CIT(A) and ITAT deleted the addition of Rs.5,00,000/- on account of unexplained gift – held that - In view of concurrent finding of fact recorded by the CIT(A) and the Tribunal that the gift was genuine, no substantial question of law arises - This fact was not disputed that the maternal uncle i.e. Shri Ramesh Arora is the proprietor of M/s Rachna Exports and the cheque was issued by him. It is not a condition precedent that only the cheques/draft/ amount issued from personal bank account is only allowable for making any gift. The ingredients of making gift are duly satisfied in the present appeal. – decided in favor of assessee.

52 2010 TMI - 35254 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Versus Shri Pritam Singh Chahil.

Dated: 06-11-2009

Sections - 027, 054F, 269UA,

Ownership of house – Capacity of Individual or HUF - Whether in the facts &

circumstances of the case, the Ld. ITAT was right in law in not appreciating the fact that as per the mandate of section 27(iii)(b) read with sub-clause (f) of Sec.269UA of the Income Tax Act, the assessee is "owner of the leased property" and is therefore, not entitled for deduction u/s 54F of the Income Tax Act – held that – house was owned by the assessee in individual capacity and not in capacity as HUF – decided in favor of assessee

53 2010 TMI - 35253 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Karnal Versus Balbir Singh Mohinder Singh

Dated: 05-11-2009

Sections - 069,

Cash found during search and seizure operation u/s 132 - block assessment – ITAT deleted the addition on the ground that the assessee has explained the source of money recovered from him. ITAT further observed that The assessee's income is to be assessed by the assessing officer on the basis of material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement of third party unless and until there is a material to corroborate that statement. - . The mere fact that one of the accomplices tendered inconsistent statement that itself cannot be treated as having resulted in an irrebuttable presumption against the assessee specially when in the receipt seized along with the money names of these persons are mentioned, the statements of these persons were duly recorded and they were examined by the assessing officer. – held that - The finding of the Tribunal has not been shown, in any manner, to be perverse. The questions proposed cannot be held to be substantial questions of law – decided in favor of assessee

54 2010 TMI - 35250 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Faridabad Versus Smt. Sita Devi Juneja

Dated: 02-12-2009

Sections - 041,

Addition on account of cessation of liability – liability was six years old - and on inquiry conducted by the Assessing Officer creditors were untraceable and also the assessee failed to produce the creditors, their Income Tax particulars and even present address of the creditors despite opportunity being afforded to the assessee – AO made the addition u/s 41(1) – CIT(A) and ITAT deleted the additions - Assessing Officer in his assessment order has observed that though copies of accounts of sundry creditors appearing in the books of the assessee signed by the concerned creditors were filed by the assessee, the assessee herself admitted during the assessment proceedings that she had lost contact with the creditors and their latest addresses are being located and further, the addresses of creditors and their PANs were also not given during the assessment proceedings – held that - It is the conceded position that in the assessee's balance sheet, the aforesaid liabilities have been shown, which are payable to the sundry creditors. Such liabilities, shown in the balance sheet, indicate the acknowledgment of the debts payable by the assessee. Merely because such liability is outstanding for the last six years, it cannot be presumed that the said liabilities have ceased to exist. It is also conceded position that there is no bilateral act of the assessee and the creditors, which indicates that the said liabilities have ceased to exist – Order of ITAT sustained – not addition to be made

55 2010 TMI - 35248 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Faridabad Versus M/s GP International Ltd., Faridabad

Dated: 02-12-2009

Sections - 041,

Existence and genuineness of the liability – failure to failed to prove the existence, genuineness and creditworthiness of these share holders – held that - the aforesaid liability of the assessee cannot be said to have ceased to exist and the provision of Section 41 (1) and explanation to this provision are not applicable, because the assessee is still showing it as a liability in its books and has not written off the same. - Regarding the addition of Rs. 15,00,000/- on account of unexplained share capital, it has been held that at the time of the original assessment, the assessee had supplied the list of the persons along with their addresses to whom the shares were sold. The said list contained information, such as name, address and number of shares allotted. The AO issued enquiry letter under Section 133 (6) of the Act at random basis to 25 persons, out of whom some persons did not respond - Merely because some of the persons did not respond to the notice issued by the Assessing Officer under Section 133 (6) of the Act, it cannot be taken that the said transaction was ingenuine.

56 2010 TMI - 35244 - KARNATAKA HIGH COURT

1. The Asst. Commissioner of Income –Tax, 2. The Commissioner of Income Tax Versus Dr. K. Satish Shetty

Dated: 22-02-2009

Sections - 271B,

Penalty u/s 271B – audit report – assessee has tree concerns - but audit report u/s 44AB was obtained only for one concern - For other two business he had not obtained audit reports on the ground that individually from these two businesses, he had not exceeded the total turnover of Rs. 40,00,000/- for the relevant AY, as contemplated u/s 44AB – AO levied the penalty u/s 271B – CIT(A) confirmed the penalty – ITAT deleted the penalty – held that - A bare reading of the provisions of law makes it abundantly clear that the Assessee was required to furnish audit with regard to his business as S. 44AB does not show or contemplate that all business are required to be consolidated together for working out the aggregate of the turnover. - The subsequent clarification issued by the Chartered Accountants of India cannot be pressed into service to the disadvantage of the Assessee - it is clear to us that assessee had acted in bonafide belief and had no dishonest intention in not obtaining audit report for all the three businesses carried on by him – penalty not imposable

57 2010 TMI - 35243 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus The Punjab State Industrial development Corporation Chandigarh

Dated: 04-11-2009

Sections - 036,

Addition on account of waiver of interest – deletion of addition made by the AO on account of interest remitted and entries reversed by the assessee amounting to Rs.24,48,161 – held that - The Assessing Officer disallowed the waiver of interest on the ground that for the period to which waiver related, income had already been taxed, as mercantile system of accountancy had been employed. The CIT (A) followed the earlier orders which have not been annexed with the paper book - Since the revenue has neither filed the orders for the earlier assessment years, which have been followed nor it has been shown that the said orders have been interfered with, the questions have to be answered against the revenue and in favour of the assessee to maintain consistency.

58 2010 TMI - 35242 - MADRAS HIGH COURT

M/s.Empee Distilleries Limited Versus The Assistant Commissioner of Income

Tax

Dated: 02-11-2009

Sections - 037,

Manipulation of accounts – disallowance - claim of deduction of purchase of old bottles – interest on certain loans – non compete fee paid to MD - The assessing officer has given reason to the effect that the assessee had made entries in the books of accounts as to the purchase of old bottles but those entries were not proved as genuine with relevant materials. The assessing officer has also disallowed a sum of Rs.14,82,288/- representing interest component on certain lease transactions, which was found by him as bogus. The claim of non-competing fee was also rejected. – held that - The authorities have found that in respect of one machinery, the transaction was bogus and no such machinery has been purchased and leased out to the assessee and the amount of interest stated to have been paid in respect of that machinery in a sum of Rs.14,82,288/- has not been proved and the same was rejected - the assessee had miserably failed to make out a case for entertaining these appeals, particularly, with reference to the questions of law referred to above in this order

59 2010 TMI - 35241 - MADRAS HIGH COURT

M/s.Jayaram Paper Mills Ltd. Versus 1. The Commissioner of Income Tax 2. The Assistant Commissioner of Income Tax

Dated: 10-11-2009

Sections - 147, 148,

Reasons for reopening of an assessment – power under section 148 – held that - From the return of income filed by the petitioner, the Assessing Officer had found that the petitioner had earned interest on deposits to the tune of Rs.12,80,258/- and that they sought deduction of a sum of Rs.9,26,830.84 towards admissible expenses that included the general administrative expenses, vehicle maintenance, salaries etc. The losses brought forward from the previous assessment years were also set off and the petitioner claimed a total income of only Rs.3,02,626.16. It is this that prompted the second respondent to issue a notice under Section 148 - The Assessing Officer has taken a stand, prima facie, that the expenditure debited to the profit and loss account under various heads are not incidental to the earning of interest income. Therefore the stand taken by the second respondent that he has reason to believe that certain income chargeable to tax escaped assessment, cannot be said to be vague, irrational or devoid of any basis.

60 2010 TMI - 35240 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus M/s Rieta Biscuit Co. (P) Ltd.,

Dated: 04-11-2009

Sections - 032,

Enhanced rate of depreciation – worker's quarter – ITAT allowed depreciation @ 40% under section 32 (1) (iv) on the workers' quarters constructed by the assessee - the land had been leased out to another concern and the assessee was not required to keep any workers after leasing out its assets – held that - Where business of the assessee is of leasing, even according to the learned counsel for the revenue there will be no difficulty in view of judgment in Shaan Finance. - Where the income so derived is assessed as business income, in our view, the same principle will apply – higher depreciation allowed – decided in favor of assessee

61 2010 TMI - 35239 - PUNJAB AND HARYANA HIGH COURT

Grover Fabrics (India) Pvt. Ltd. Versus Commissioner of Income Tax.

Dated: 04-11-2009

Sections - 068, 145,

Cash Credit - Addition to the declared income - Whether on the true and correct interpretation of Section 145 once the trading addition has been made, then whether a separate addition u/s 68 towards such credit is - sustainable - The Assessing Officer did not accept the trading results reflected in the books of account and accordingly, made addition to the declared income. Apart from making the said addition, the Assessing Officer made further addition in respect of credit entries from bogus entities. The CIT(A) deleted the trading addition after giving the benefit of telescoping against addition in respect of unexplained credit entries – ITAT remanded the matter – held that - Unexplained credit entries may or may not have nexus with the trading results, as assessed. The CIT (A) deleted additions in respect of trading results after giving benefit of telescoping. It will, thus, be a question of fact in each case whether addition on account unexplained credit entries was justified, inspite of addition made to the declared trading results. – appeal dismissed

62 2010 TMI - 35238 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-II Versus M/s Hero Cycles Ltd.

Dated: 04-11-2009

Sections - 014A,

Section 14A – Nexus between income and expenditure – Assessee earned dividend income, which is exempted under Section 10 (34) and (35). The Assessing Officer made an inquiry whether any expenditure was incurred for earning this income and as a result of the said inquiry addition was made by way of disallowance under Section 14A (3), which was partly upheld by the CIT (A). The Tribunal held that there was no nexus with the expenditure incurred and the income generated. - ITAT deleted the disallowance of Rs.3,48,04,375/- under Section 14A of the Income-tax Act, 1961 – held that – Disallowance under Section 14A requires finding of incurring of expenditure where it is found that for earning exempted income no expenditure has been incurred, disallowance under Section 14A cannot stand. In the present case finding on this aspect, against the revenue, is not shown to be perverse. Consequently, disallowance is not permissible – decided in favor of assessee

63 2010 TMI - 35210 - HIGH COURT OF ALLAHABAD

M/S Tularam Rameshwar Pd. Versus C.I.T.

Dated: 16-12-2009

Sections - -

Agriculture Income - Whether the Tribunal was correct in law in holding that agricultural income in question belongs to assessee firm - Sri Tula Ram had certain agricultural land. After the death of Tula Ram, the agricultural land devolved on his four sons. One of the sons separated himself and the remaining three sons formed a partnership firm through partnership deed dated 21st of October, 1960 - The object of the said partnership firm is to manufacture and sell Khand and molasses by running crusher and such other business which the partners may from time to time agree upon – held that - in the earlier assessment year the agricultural income was shown by the assessee as firm's income - . The only explanation which could be given by the learned counsel for the assessee is that the agricultural income was wrongly shown as that of the assessee firm in the earlier assessment years - There is no justification for giving a different treatment to the agricultural income on the mere saying of the assessee Firm – Moreover findings of fact of the ITAT can not be held as illegal or perverse

64 2010 TMI - 35209 - HIGH COURT OF ALLAHABAD

The Commissioner Of Income Tax, Allahabad & Another Versus M/S Varshney Bhandar, 89, Meerganj, Allahabad

Dated: 17-12-2009

Sections - 040A,

Cash Payment – Disallowance u/s 40A(3) - The Assessing Officer added the said payment as income by invoking the Section 145(1) of the Act. The addition was deleted in the appeal and the order of the Appellate Authority has been confirmed by the Tribunal vide order under appeal – held that - The findings recorded by the Appellate Authority are essentially finding of facts. They have accepted the explanation furnished by the assessee for making cash payment - No illegality or perversity could be pointed out by the learned counsel for the department – Deduction of expenditure allowed

65 2010 TMI - 35208 - HIGH COURT OF ALLAHABAD

Nand Lal Bajoriya {Tax} Versus Union Of India And

Dated: 14-12-2009

Sections - 269UD,

Compulsory purchase u/s 269UD – Valuation – Compensation – Interest on late payment. – held that - In the proceedings initiated under Chapter XXC of the Income-tax Act, the property vests in the Government and the Government derived considerably undue advantage for several years, although the value of the property in the meantime considerably appreciated. Thus, on account of the said action, the petitioner suffered losses, which are detriment to him and as such, in the totality of the facts and circumstances of the case, we are of the view that the petitioners are entitled to a simple interest @6% from the date when the department has received the possession of the property in question till the date of payment

66 2010 TMI - 35207 - HIGH COURT OF ALLAHABAD

The Commissioner Of Income Tax & Another versus M/S Agra Machine Tools Pvt. Ltd.

Dated: 01-12-2009

Sections - -

Valuation of stock – LIFO method – tribunal upheld the LIFO method employed by the assessee for valuation of closing stock as correct – held that - The Tribunal under appeal has relied upon its earlier order relating to the earlier assessment years wherein the Tribunal has accepted the method of accounting as employed by the assessee as correct. We have been informed that the earlier order of the Tribunal was also subject matter of appeal before this Court but the said appeal has been dismissed. - that it is the choice of the assessee to adopt a particular recognised mode of accounting – revenue appeal dismissed

67 2010 TMI - 35206 - HIGH COURT OF ALLAHABAD

Comm. Of Income Tax Versus Subhash Chand

Dated: 10-12-2009

Sections - 044AC, 263,

Revision of order u/s 263 by CIT – computation of profit u/s 44AC – The CIT u/s 263 - after considering the submissions made on behalf of the assessee, set aside the assessment order dated 27th April, 1992 with the direction to the Assessing Officer to reframe the assessment by including the amount of Excise Duty of Rs.47,05,008/- in the "Purchase Price" for working out the profit as per the provisions of Section 44AC of the Act – order of CIT cancelled by ITAT - held that - The Tribunal has placed reliance upon a judgment of the Apex Court in the case of Union of India & others versus A

Sanyasi Rao & others J.T. [2008 -TMI - 5502 - SUPREME Court], wherein it has been held that inspite of section 44 AC, a regular assessment order has to be framed. This Court has considered the controversy in detail and has held that Nirgam Mulya cannot form part of purchase price for the purposes of deduction under section 44AC of the Act.

68 2010 TMI - 35205 - HIGH COURT OF ALLAHABAD

[Commissioner Of Income Tax, Kanpur Versus M/S Krishna Gopal & Sons Kanpur](#)

Dated: 15-12-2009

Sections - -

Non discloser of work in progress in closing stock - The explanation offered by the assessee that it is following the mixed system of accounting and its receipts were being accounted for on cash basis whereas the expenses were being worked out on mercantile basis, did not find favour with the assessing authority but has been accepted by the First Appellate Authority and Tribunal as well. – held that - CIT (A) and Tribunal both followed their earlier year's order wherein it was held that there is nothing objectionable if the assessee has not disclosed the work in progress in the closing stock. The income of assessee is being assessed on the basis of profit and loss account and the assessee has not taken into account its opening stock also. The assessee is maintaining the account books in the same fashion as it was doing earlier and was accepted by the department. This being so, the Tribunal was justified in not sustaining the additions made by the Assessing Officer in this regard

69 2010 TMI - 35204 - HIGH COURT OF ALLAHABAD

[M/s Raje Filling Station, Faizabad Versus The Commissioner of Income Tax, Faizabad & another](#)

Dated: 07-12-2009

Sections - 264,

Revision by the commissioner of Income Tax – Power of the CIT to revise the return – prejudicial to assessee – held that - "the order passed under Section 264 provides substantial relief to the assessee not carrying any miscarriage of justice; nor are there any errors apparent on the face of the record which attract interference in the present proceeding. The power of this Court to interfere with an order passed by the Commissioner under section 264 of the Act is not automatic." - petition under Section 264 is not in the nature of appeal but understood to be in the nature of mercy petition being largely discretionary. - In the instant case, the Commissioner has exercised its discretionary power under Section 264 on the application made by the assessee and gave a substantial relief to the assessee out of the addition of Rs. 8,65,000/-. The Commissioner by its impugned order has sustained the addition only of Rs. 2,70,000 – Court propose to restore the matter back to AO to examine evidence afresh – not opted by the assessee – petition dismissed.

70 2010 TMI - 35203 - HIGH COURT OF ALLAHABAD

[Commissioner Of Income Tax Agra versus M/S Sumat Kumar Anand Kumar And Co. Agra](#)

Dated: 09-12-2009

Sections - 271,

Penalty u/s 271(1)(c) - . A balance-sheet dated 5th September, 1985 was also found and seized. The said balance-sheet contained capital account in the name of minor son of the partner - . The penalty proceedings under Section 271(1)(c) of Income Tax Act were initiated against the respondent/assessee for non disclosure of the capital account

of the minor son as found in the said balance-sheet – penalty as imposed by the AO deleted by CIT(A) and ITAT – held that - The Tribunal while confirming the order passed by the authorities below has noticed that the respondent/assessee during the course of search proceedings itself accepted the concealed income and filed the return even before the order under Section 132(5) was passed thereby surrendering the income to the tune of Rs. 22,04,947/-. The income tax in respect of the income was also paid prior to 29th September, 1986 - no penalty can be levied in the circumstances noticed above.

71 2010 TMI - 35202 - HIGH COURT OF ALLAHABAD

M/s Trimurtee Fertilizers Ltd. Versus Dy. Commissioner of Income-Tax, Lucknow & another

Dated: 14-12-2009

Sections - 044AB, 0271B,

Penalty - period of limitation of imposing penalty - Due date for filing return was 31.7.1988. The audit-report should have been obtained on or before 30.6.1988. In the instant case, the assessee has obtained audit report on 28.7.1988 and has filed the same along with the return on 28.7.1988. The assessee has not obtained the tax audit report before or on due date, so the Assessing Officer has levied the penalty under Section 271-B for Rs. 1,00,000/-. The same was not only upheld by the First Appellate Authority but also by the Tribunal. – held that - , there was delay of about 28 days. At the relevant time, it is true that the assessee was not supposed to furnish the tax audit report along with the return but he was under obligation to obtain the report on or before due date. In the instant case, the assessee has admittedly obtained the tax audit report belated. For obtaining report belated, no cogent or reasonable reason has been given as per the provisions of Section 44-AB. – Penalty confirmed

72 2010 TMI - 35187 - HIGH COURT OF ALLAHABAD

Commissioner Of Income Tax & Another Versus M/S.Malik Singh & Co.

Dated: 07-12-2009

Sections - 040A,

Deletion of addition made u/s 40A(3) – deletion of addition of Rs. 3,71,530/- which include Rs. 82,500/- on account of Sales Tax and Royalty – held that - , it has been found by the two authorities concurrently that no purchases of Rs. 6,23,625/- were made by the assessee during the year. The assessee made the purchases to the tune of Rs.2,86,197/- and the payment was made through cross demand draft, even not by order drafts. The Tribunal has rightly noticed that this aspect of the case was considered by the CIT(Appeal) who found that amount of Rs. 5,34,000/- was withdrawn from the bank through 12 bearer cheques, were utilised by the assessee for purchasing demand draft for coal and for other expenses. The authorities below have accepted the explanation furnished by the assessee and the learned Standing Counsel could not point out any error legal or factual therein. – Deletion of additions upheld

73 2010 TMI - 35186 - HIGH COURT OF ALLAHABAD

The Commissioner Of Income Tax Bareilly & Another Versus M/S Mentha & Allied Products Ltd.

Dated: 01-12-2009

Sections - 080HHC, 080I,

Deduction u/s 80HHC versus Deduction u/s 80-I – ITAT directed the A.O. not to deduct the amount of deduction in respect of 80 HHC for allowing the deduction under section 80 I of the Income Tax Act – held that - that an assessee will be entitled to get benefit

of Section 80-I and 80-HHC of the Income Tax Act, as both the sections are independent to each other – Decision in Joint Commissioner Income Tax Vs. Mandideep Engineering and Packaging Industries (P) Ltd [2008 -TMI - 6565 - SUPREME Court], followed

74 2010 TMI - 35185 - HIGH COURT OF ALLAHABAD

The Commissioner Of Income Tax, Meerut & Another Versus M/S Ganga Kisan Sahkari Chini Mills Ltd.

Dated: 01-12-2009

Sections - 037,

Deduction of an expenditure u/s 37(1) - the Development Commissioner (subsidy & commission), Society Commission, cane development expenses and fertilizers supplied to the farmers paid to the cane growers formed – part of purchase price – held that - the Tribunal was correct under law in holding that the commission and subsidy paid to cane growers formed part of purchase price of the cane and thus allowable for deduction under Section 37(1) of the Income Tax Act

75 2010 TMI - 35180 - HIGH COURT OF ALLAHABAD

Comissioner Of Incom Tax & Another Versus M/S.Eastern Book Company

Dated: 09-12-2009

Sections - -

Capital Receipt versus Revenue Receipt – Receipt on account of infringement of copy right - The assessing officer and the first appellate authority as well rejected the contention of the assessee that the said amounts were received as capital receipt. But the Tribunal in second appeals has held that the said amounts are not revenue receipts but are capital income and therefore, not liable to be taxed – held that - . The assessing authority has recorded that assessee's copyright in the relevant books has not been affected and has remained fully intact as capital asset. Certain publishers unauthorisedly infringed the copyright of assessee and the injuries received on account of such publishers have been redressed by paying compensation for the damages caused to the assessee's business of publication. On this factual scenario we are of the view that compensation amount received by the assessee is not towards the loss of capital but is towards the loss of its income

76 2010 TMI - 35179 - HIGH COURT OF ALLAHABAD

M/s Venus Auto Prvt.Ltd. versus The Commissioner of Income Tax, Allahabad.

Dated: 18-12-2009

Sections - 080HH, 080I,

Industrial undertaking - claim u/s 80HH and 80I has been denied by the three authorities below on the ground that the condition of clause (iv) of Section 80-I is not fulfilled inasmuch as the workers employed through contractor are not to be treated as the workers employed in the Industrial Undertaking – held that - The real test for deciding whether the contract is one of employment is to find out whether the agreement is for the personal labour of the person engaged, and if that is so, the contract is one of employment whether the work is time-work or piece-work, or whether the employee did the whole of the work himself, or whether he obtained the assistance of other persons also for the work. The question whether or not a person is an employee is a question of fact. - On the own showing of the assessee, it has employed with it only five workers. The other workers were employed by the contractor. The workforce employed by the contractor will not be counted for the purposes of afore stated clause in view of the words "it employs".

77 2010 TMI - 35178 - HIGH COURT OF ALLAHABAD

C.I.T., Kanpur Versus M/S Saran Engineering Co., Kanpur

Dated: 16-12-2009

Sections - 030, 037,

Expenditure – Capital Expenditure versus Revenue Expenditure - Repairs to Factory Building – Replacement of GC Sheets – allowance of deduction of bonus on actual payment as well on accrual basis - Writing back of a liability to pay gratuity, whether amounts to cessation of liability – held that - The repairs may be small or major. If it is major repair, it may involve considerable amount of money. But the amount of money spent alone cannot be a factor to determine whether the expenditure falls under "Current Repairs" or not. – Expenditure are revenue in nature - that by making entries in the books of account, the assessee has not got any benefit which it had already received deduction in the earlier years for the assessment year 1972-73 – mere writing back of a liability is not amount to cessation of liability – Amount of bonus paid on cash basis as well as on accrual basis allowed

78 2010 TMI - 35172 - HIGH COURT OF ALLAHABAD

M/S Crown Cork Manufacturers [P] Ltd. Versus The Assistant Commissioner Income Tax Lucknow & Others

Dated: 01-12-2009

Sections - 044AB, 271B,

Impact of non filing of Audit Report as contemplated u/s 44AB – Can it snatch away the valuable right as guaranteed under the statute – power to condone the delay – inherent as well as extra ordinary jurisdiction – Penalty u/s 271B - For the assessment year under consideration (1985-86), the assessee has filed the Tax Audit Report on 22.11.1985 along with the return of income. For filing the Tax Audit Report belated, the A.O. has levied the penalty under Section 271-B of the Income Tax Act, 1961 for Rs.25,887/-. The same was upheld not only by the first appellate authority but also by the Tribunal by its impugned order – held that - . For the delay, no explanation or reason was given by the assessee. The plea of the appellant - assessee that he made the application for extension of time is not acceptable for the reason that he never produce any proof of filing the application for extension of time - we find no reason to interfere with the impugned order passed by the Tribunal. The same is hereby sustained along with the reasons mentioned therein – penalty confirmed

79 2010 TMI - 35171 - HIGH COURT OF ALLAHABAD

M/S Modinagar Paper Mills Ltd. Versus The Dy.Commissioner And Anr.

Dated: 17-12-2009

Sections - 080HH, 080I,

Allowance for brought forward losses - Claim of deduction u/s 80HH and 80-I - The business income – held that – The Assessing Officer has to take into account the provisions of Section -71 providing for set off of loss from one head against income from another and Section -72 providing for carry forward and set off of the business loss. Section 32(2) makes provision for carry forward and set off of the unabsorbed depreciation of a particular year. The effect of the above mentioned provisions is that while computing the total income, the losses carried forward and depreciation have to be adjusted and thereafter the Assessing Officer has to work out the gross total income of the assessee - . Sub-section (2) of section 80A specifically enacts that the aggregate of deductions under Chapter VI-A should not exceed the gross total income of the assessee. If the gross total income is found to be a net loss on account of the adjustment of losses of the earlier years or "nil", no deduction under this Chapter can

be allowed - Synco Industries Limited [2008 -TMI - 3485 - Supreme court] followed

80 2010 TMI - 35170 - HIGH COURT OF ALLAHABAD

[The Commissioner of Income Tax-II, Lucknow versus M/s. Krishi Utpadan Mandi Samiti, Barabanki and others](#)

Dated: 04-12-2009

Sections - 011, 012A,

Deletion of additions - A.O. made the various additions, which were upheld by the first appellate authority. However, the Tribunal vide its impugned orders has observed that these entities were created under U.P. Krishi Utpadan Mandi Adhiniyam, 1964 and they are subject to provision of the Act and control of the Government. Finally, Tribunal treated these assesseees as "Charitable Institutions" and deleted the addition made by the A.O. – held that - these institutions were accepted by this court as charitable institution for the assessment year 2003-04 and subsequent assessment years including the assessment years under consideration. Once, these assesseees are declared "Charitable Institutions", their income is exempted from Income Tax. When income is exempted then there is no justification to make additions and the same are likely to be deleted.

81 2010 TMI - 35169 - HIGH COURT OF ALLAHABAD

[Commissioner of Income Tax-I, Lucknow Versus Krishi Utpadan Mandi Samiti, Purva, Unnao](#)

Dated: 02-12-2009

Sections - 011, 012A,

Scope of the term property u/s 11 - 'Krishi Utpadan Mandi Samiti' – w.e.f. 1.4.2003 change in the scope status of local authority withdrawn - For this purpose, necessary applications were made under Section 12-A which were rejected by the Commissioner of the Income Tax department but the said registration was granted by the Tribunal vide its impugned order – held that - after April 1, 1984, even if there is some profit in the activity carried on by the trust/institution, so long as the dominant object is of general public utility, it cannot be said that the said trust/institution is not established for charitable purposes - the expression "property" used in Section 11 of the Act is of wide amplitude and it includes the business undertaking itself. - The word "property" in section 11 includes immovable and movable property like money, shares, securities etc. Therefore, where a trust/institution fulfills all the conditions mentioned in Section 12A/12AA, registration cannot be denied on the ground that some conditions of Section 11 and 12 are not fulfilled.

82 2010 TMI - 35168 - HIGH COURT OF ALLAHABAD

[Smt. Neeru Agarwal Versus Union Of India & Others](#)

Dated: 18-12-2009

Sections - 142, 153A, 245C, 245D, 245I,

Re-opening of assessment– petitioner made certain investments in bonds and units which were not disclosed before the department nor the petitioner has explained the source of investments therein either before the department or even in the statement of facts filed before the Settlement Commission – AO reopened the assessment - petitioner contended that the matters covered by the order of the Settlement Commission cannot be reopened in any proceeding under the Act or under any law for the time being in force – held that - The assessing authority has no jurisdiction to issue the notice for making further enquiry in the matter in view of Sections 245D (6) and 245 I of the Act. - after passing of the order by the Settlement Commission, no power vests

in the assessing authority to issue impugned notice in respect of the period and income covered under the order of the Settlement Commission - Income Tax department may move to the Settlement Commission if it has material to establish that the order was obtained by fraud or misrepresentation of facts

83 2010 TMI - 35167 - HIGH COURT OF ALLAHABAD

Smt. Mayuri Mittal Versus Union Of India Thru' Secy. Min. Of Finance & Others

Dated: 10-12-2009

Sections - 148,

Notice u/s 148 – Assessment - The petitioner prior to her marriage was residing at Chennai and was filing her returns with DCIT-II, Madras. She filed the returns for the assessment years 1990-1991 to 1998-1999 at Chennai. On 19.2.1990 her marriage was solemnized thereafter she is residing at Agra. - The notice under section 148 has been issued for the assessment year 1998-1999 at Agra. – held that - Section 148 of the Income Tax Act provides that before making assessment, reassessment or computerization under section 147 of the Income Tax Act, the "assessing officer" shall serve on the assessee a notice requiring him to furnish return of the income. The said power has been given on the assessing officer. Indisputably, in the present case for the assessment year in question, the officer at Chennai was the assessing officer of the petitioner - the very issuance of the notice under section 148 of the Income Tax Act by Agra officers is totally without jurisdiction

84 2010 TMI - 35156 - SUPREME COURT

Commissioner of Income Tax, Nagpur Versus Baba Saheb Kedar Ginning and Pressing Cooperative Society Ltd.

Dated: 03-12-2009

Sections - -

Nature of income - ginning and pressing charges - The assessee(s) and the Federation(s) [State Cooperative Cotton Market Federation] have entered into an Agreement which governs conditions of processing, ginning and pressing of cotton, fixation of processing rates and godown rent – held that - it is not in dispute that the assessee(s) provides storage facilities to the members of the Federation(s) carrying on ginning and pressing activities. It appears from the record that, during the relevant years, the Department has been adopting an ad-hoc measure of attributing fifty per cent of the charges payable to the assessee(s) as rental income – In our view, Department has failed to take into account number of factors, namely, the provisions of Cotton Ginning and Pressing Factories Act, 1925, the expenses incurred towards payment of labour charges, etc. – Matter remanded for limited purpose to examine the total income of the assessee(s) and after applying the principle of proportionality,

85 2010 TMI - 35148 - HIGH COURT OF ALLAHABAD

CIT & Another Versus M/S The Kisan Cooperative Sugar Factory Ltd.

Dated: 03-12-2009

Sections - 028,

Revenue versus Capital - the deductions made from the cane growers at the rate of 35 paise per quintal towards loss equivilisation and capital redemption fund - in reassessment proceeding, the revenue has sought to treat the above amount as income of the assessee who is a co-operative society. In response to show cause notice, a written reply was submitted on the ground that the said amount of collection towards loss equivilisation and capital redemption fund is contribution by the farmers towards share capital and the same being a capital receipt is not at all taxable – held

that - the non-refundable and refundable deposits cannot be treated as income of the assessee Society. It has also taken into consideration that there are two kinds of deposits namely special deposit and general deposit. It has found that the obligation to repay is stood annexed to the deposited amount at the time it was received by the assessee subject of course to the occurrence on contingency satisfied by bye laws itself - Shri Chatrapati Sahakari Shakar Karkhana Ltd [2008 -TMI - 6148 - SUPREME Court]

86 2010 TMI - 35147 - HIGH COURT OF ALLAHABAD

M/S. Injecto Plast Versus Union Of India And Others

Dated: 08-12-2009

Sections - -

KVSS - Kar Vivad Samadhan Scheme, 1998 - whether the amount deposited by the petitioner before the date of declaration in pursuance of the assessment order, which is subject matter of appeal, is liable to be adjusted towards the tax due first or towards the accrued interest – held that - a matter which has already been settled cannot be reopened under the scheme and the benefit under the scheme should not be extended to an assessee even with regard to the admitted income. If the tax has been paid or adjusted, no re-adjustment has to be done in terms of the provisions of section 88 of the scheme. In other words, it means that past is past. An accomplished fact cannot be reopened or reconsidered after commencement of the KVSS - Applying the said principle to the facts of the present case, it is no longer open to the petitioner to urge that the adjustment made by the department by making credit entry towards tax due and interest is incorrect, in a proceeding under KVSS.

87 2010 TMI - 35146 - HIGH COURT OF ALLAHABAD

CIT Kanpur Versus M/S, Deltek Carbide & Chemicals

Dated: 08-12-2009

Sections - 143,

Adjustment under section 143(1)(a) – effect of retrospective amendment - provisions of Section 143(1A)(B) of the Income Tax Act, 1961 substituted by the Finance Act, 1993 with retrospective effect from 01.04.1989 – AO made the addition but CIT(A) deleted the addition made u/s 143(1)(a) – ITAT confirmed the order of CIT(A) as valid – held that - Tribunal was not justified in deleting the additional tax levied upon the respondent/assessee. However, it was pointed out by the learned counsel for assessee that an application for rectification under Section 154 of the Act was filed. The said application is still pending consideration. Filing of the said application also finds place in the statement of the case. The authority concerned is therefore, to pass an appropriate order on the said application if the said application is pending consideration. – ACIT Vs. J.K. Synthetics Ltd. [2008 -TMI - 6033 - SUPREME Court]

88 2010 TMI - 35145 - Authority for Advance Rulings

Seabird Exploration FZ LLC

Dated: 22-12-2009

Sections - 044BB, 044DA,

Seismic data acquisition and processing services are an integral part of the process of prospecting for, or extraction of mineral oil which includes petroleum and gas - Applicability of section 44BB or Section 44DA – CBDT circular – held that - The Circular, therefore, clarified that Section 44BB was applicable. We cannot accept the contention of the departmental representative in view of the discussion at paragraphs 7.4 and 7.5 of the above ruling and the background in which the Circular was issued

was also explained. No case has been made out for reconsideration on this aspect. Moreover the conclusion was reached irrespective of the circular and on the interpretation of Section 44BB for which elaborate reasons were given. - Therefore, it is held that the income earned by the applicant in India is covered under the provisions of 44BB of the Income-tax Act, 1961

89 2010 TMI - 35144 - AUTHORITY FOR ADVANCE RULINGS

M/s Wavefield Inseis ASA

Dated: 21-12-2009

Sections - 044BB, 044DA, 115A, 195,

Non Resident - offshore seismic data acquisition and other associated services to global oil companies - . This data is collected on large storage tapes and then interpreted/processed by specialist professionals with the help of specialized equipments (computers and software) to present the subsurface data in a manner that it can help geologists draw conclusions about the existence of potential hydrocarbons in the area. Seismic surveys can paint a picture of the subsurface in order to better target oil and gas reserves. This results in fewer dry holes and even avoids drilling if seismic data suggests a low potential for oil and gas. – held that - . On the whole, it appears to us that the transaction falls more appropriately under the second limb of sub-section (1) of Section 44BB rather than the first limb – income to be computed u/s 44BB – rate of withholding tax is 4.223% - once provision of section 44BB are attached, provisions of section 44DA and 115-A can not be applied

90 2010 TMI - 35143 - AUTHORITY FOR ADVANCE RULINGS

Dana Corporation

Dated: 30-11-2009

Sections - 045, 048, 092, 195,

Merger of two companies – transfer of shares – levy of income in India – held that - If by application of the provisions of Section 45 read with Section 48 which are integrally connected with each other, the income cannot be said to arise, Section 92 of the Act does not come to the aid of Revenue, even though it is an international transaction. The expression 'income' in Section 92 is not used in a sense wider than or different from its scope and connotation elsewhere in the Act. Section 92 obviously is not intended to bring in a new head of income or to charge the tax on income which is not otherwise chargeable under the Act. - the transfer of shares of the three Indian companies by Dana Corporation to US Dana WC and Dana Global is not chargeable to tax as capital gains under the Income-tax Act, 1961. The first question is accordingly answered in the affirmative. The second question is answered by observing that the applicant can seek appropriate remedies under the Act for the refund of advance tax paid.

91 2009 TMI - 35120 - HIGH COURT OF DELHI

JAGJIT PAL SINGH ANAND Versus COMMISSIONER OF INCOME TAX DELHI

Dated: 30-11-2009

Sections - 069, 148,

Reopening of an assessment – basis – adjudication order passed by the Collector of Customs – alleged that he was the only person investing in his business which was not disclosed to the Department of Income Tax. On this basis notice under Section 148 of the Act was issued for the assessment year 1993-94 stating that appellant had invested in purchasing of goods which had escaped assessment – held that - The finding recorded by the Commissioner of Customs and upheld by the CEGAT amply depicts that it was the appellant who had imported the aforesaid material and undervalued the

same to the extent of Rs.10,79,995/-. This would clearly mean that assessee made an unexplained investment of the aforesaid amount namely the appellant had invested this money in importing the goods which were unexplained. Therefore, addition under Section 69 of the Act could validly be made.

92 2009 TMI - 35119 - HIGH COURT OF DELHI

COMMISSIONER OF INCOME TAX, DELHI-IV Versus H.B. STOCK HOLDINGS LTD

Dated: 16-11-2009

Sections - 148,

Dealing in Shares – Re assessment - Capital Assets versus Business Assets – held that - the ITAT has stated that it is the distorted reading of the order of the CIT(A) passed in those block assessment proceedings. We agree with this observation of the Income Tax Appellate Tribunal. Reading of the order of the CIT(A) in block assessment proceedings clearly demonstrates that the CIT(A) held that stocks were rightly shown by the assessee as investment in his books of accounts which could not be treated as stock-in-trade. We are of the opinion that in view of this categorical finding of the CIT(A) in block assessment proceedings which had attained finality, notice under Section 148 predicated on the same ground was impermissible. - In view of the order of the CIT(A) which was even upheld by the Tribunal it was not open to the A.O. to re-open the proceedings under Section 148, on the ground which had been dealt with specifically and decided in favour of the assessee. - It is trite law that even where two views are possible, proceedings under Section 148 cannot initiated

93 2009 TMI - 35118 - AUTHORITY FOR ADVANCE RULINGS

Federation of Indian Chambers of Commerce and Industry (FICCI)

Dated: 30-11-2009

Sections - 195,

Technology Assessment and Commercialization" ("ATAC") – assisting DRDO laboratories in identification and business development of competitive global technologies from its inventory of existing defence-related innovations - award of certain work to to perform certain work and services for the "IC2-FICCI-DRDO Innovation programme" in USA – Applicability of DTA – Applicability of with holding tax (TDS) – held that - Evaluating the potential of technologies after interaction with the experts and passing on the results of its interaction or furnishing relevant informations which are mostly in public domain in order to enable DRDO to find potential customers for the concerned technologies do not, in our view, fall within the scope of services contemplated by paragraph 4 of Art.12 of the DTAA - Provision of DTAA applicable – Income of UT is not taxable in India – TDS is not required to be deducted

94 2009 TMI - 35116 - AUTHORITY FOR ADVANCE RULINGS

Geofizyka Torun Sp.zo.o.

Dated: 07-12-2009

Sections - 044BB, 044DA,

Exploration operations - Scope of Section 44BB – Computation of income – Section 44BB versus 44DA - The applicant provides geophysical services to international oil and gas industry. The applicant conducts seismic surveys and provides on-shore seismic data acquisition and other associated services such as processing and interpretation of such data to global and oil companies – held that - section 44D undoubtedly took precedence over section 44BB - there is nothing in Section 44DA which has the effect of superseding or overriding Section 44BB. Both these provisions should be harmoniously read. If so read, the profits derived from business of providing

services in connection with the prospecting for or extraction or production of mineral oil are squarely and exclusively governed by Section 44BB, irrespective of the nature of services, provided the services are intimately connected to Prospecting and exploration of oil

95 2009 TMI - 35073 - SUPREME COURT

Commissioner of Income Tax Versus M/s. Alom Extrusions Limited

Dated: 25-11-2009

Sections - 043B,

Amendment to section 43B - omission [deletion] of the second proviso to Section 43-B – whether retrospective in nature – regarding restriction of deduction in respect of any sum payable by an employer by way of contribution to provident fund/superannuation fund or any other fund for the welfare of employees, unless it stood paid within the specified due date – held that - the second proviso resulted in implementation problems, which have been mentioned hereinabove, and which resulted in the enactment of Finance Act, 2003, deleting the second proviso and bringing about uniformity in the first proviso by equating tax, duty, cess and fee with contributions to welfare funds. Once this uniformity is brought about in the first proviso, then, in our view, the Finance Act, 2003, which is made applicable by the Parliament only with effect from 1st April, 2004, would become curative in nature, hence, it would apply retrospectively with effect from 1st April, 1988 – Decision in Allied Motors (P) Limited vs. Commissioner of Income Tax, [2008 -TMI - 5575 - SUPREME Court], followed

96 2009 TMI - 35072 - SUPREME COURT

Income Tax Officer, Udaipur Versus M/s Arihant Tiles & Marbles (P) Ltd.

Dated: 02-12-2009

Sections - 080IA,

Deduction u/s 80IA – conversion of marble blocks by sawing into slabs and tiles and polishing – whether amount to manufacture – held that - the word "manufacture" and the word "production" have received extensive judicial attention both under the Income Tax as well as under the Central Excise and the Sales Tax laws. - that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only there is manufacture but also an activity which is something beyond manufacture and which brings a new product into existence – Decision in Commissioner of Income Tax Vs. N.C. Budharaja & Co., reported in [2008 -TMI - 5433 - SUPREME Court] followed

97 2009 TMI - 35070 - SUPREME COURT

Commissioner of Income Tax, Coimbatore Versus M/s Textool Co. Ltd.

Dated: 09-09-2009

Sections - 036,

Deduction u/s 36(1)(v) – amount paid directly to Life Insurance Corporation towards Group Gratuity Fund – held that - True that a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the Section, yet a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the Act. (See: Shri Sajjan Mills Ltd. vs. Commissioner of Income Tax, M.P. & Anr. [2008 -TMI - 5911 - SUPREME Court] . From a bare reading of Section 36(1)(v) of the Act, it is manifest that the real intention behind the provision is that the employer should not have any control over the funds of the irrevocable trust created exclusively

for the benefit of the employees – deduction allowed since the conditions stipulated in Section 36(1)(v) of the Act were satisfied

98 2009 TMI - 35069 - SUPREME COURT

CHHOTALAL SAMJI Versus INCOME TAX OFFICER

Dated: 30-04-2009

Sections - 028, 080HHC,

Consequence of retrospective amendment of section 28(iia) and 28(iic) – Business profit – exemption u/s 80HHC – Duty Drawback and DEPB – held that - By the Finance Act, 1990, Section 28 of the Income-tax Act, 1961 has been amended by inserting therein, clauses (iia), (iib) and (iic) with retrospective effect with a view to ensure that cash compensatory support (CCS), duty drawback (DD) and profit on sale of import entitlement licences (IL) shall be taxable under the head "Profits and Gains of Business or Profession" – assessee claims the deduction of duty drawback and DEPB – held that - None of the above questions have been decided by the High Court. In the circumstances, we set aside the impugned order and restore Tax Appeal No.1127 of 2006 for de novo consideration by the High Court in accordance with law

99 2009 TMI - 35068 - SUPREME COURT

Commissioner of Income Tax, Salem Versus M/s. Sugavaneeshwara Spg. Mills Ltd.

Dated: 16-11-2009

Sections - 031, 037,

Replacement of machinery – Capital Expenditure Versus Revenue Expenditure – application of certain judgment – held that – matter remitted to the High Court for de novo consideration in the light of the judgment in the case of Sri Mangayarkarasi Mills Private Limited [2009 -TMI - 34189 - SUPREME COURT], which has been delivered only on 21st July, 2009. The High Court would also consider the tests laid down by this Court in the cases of Commissioner of Income Tax vs. Saravana Spinning Mills Private Limited reported in [2007 -TMI - 1775 - SUPREME COURT OF INDIA], and Commissioner of Income Tax vs. Ramaraju Surgical Cotton Mills, reported in [2007 - TMI - 2064 - SUPREME COURT OF INDIA], while disposing of this case on merits.

100 2009 TMI - 35024 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus (1) KATARIA ROAD LINES (2) KATARIA TRANSPORT COMPANY

Dated: 26-02-2009

Sections - 145,

Method of Accounting – Hire Purchase - assessee has claimed deduction of finance commission which was charged as expenditure in the profit and loss account of the assessee. The aforesaid deduction was claimed in the same year in which the hire purchase agreement was entered by the assessee irrespective of the fact that the actual payment was made even in the following years – held that - It is not in dispute that the mercantile accounting system was adopted by the assessee and was permitted by the Revenue for several years. - By virtue of the said accounting system, the assessee was claiming benefit of finance commission in the year of hire purchase agreement itself irrespective of the fact that the amount of instalments as per the hire-purchase agreement was actually paid in the subsequent years - the same system is required to be continued for the assessment years and this arrangement is allowed looking to the peculiar facts and circumstances of the case as the firms have already closed their business and the amount so claimed is not quite higher

101 2009 TMI - 35021 - MADRAS HIGH COURT

KAMAL BASHA Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 20-04-2009

Sections - 041, 271,

Penalty for concealment of income – rejection of sundry creditors - The Assessing Officer brought to tax the sundry creditors under Section 41(1) of the Act and initiated penalty proceedings under section 271(1)(c) of the Act. The Assessing Officer, after considering the reply of the assessee dated 02.02.2006, rejected the plea of the assessee that the additional income was offered voluntarily in order to buy peace and should not be construed as concealment of income and or furnishing of inaccurate particulars of income. – held that - the assessee's attitude before the officer is inconsistent and even the inconsistent stand could not be established with the supportive evidence or materials - penalty under section 271(1)(c) of the Act is attracted in this case

102 2009 TMI - 35019 - RAJASTHAN HIGH COURT

RAM BAGH PALACE HOTEL P. LTD. Versus COMMISSIONER OF INCOME-TAX (and vice versa)

Dated: 26-02-2009

Sections - 002(7), 032, 032A,

Industrial Company – Concessional Rate of Tax – Investment Allowance – Hotel Business – held that - It is true that such activity has been held to be 'manufacturing process' as defined under section 2(k) of the Factories Act. But, it is a well known canon of interpretation of statutes that the meaning given to the words in one statute cannot be automatically imported for interpretation in another statute. All depends upon the purpose of the Act and the context in which the words appear - The clear object of the Act was to give concession in the rate of income-tax to manufacturing concerns. The concession was not intended to be given to trading concerns. – hotel business not entitled for concession - Admittedly, the assessee runs a hotel. It cannot be said that it engaged in Construction work nor can it be said that by running hotel it manufactures any article or thing. Hotel is made for lodging and boarding. No plant and machinery exist in hotel, which is referred to in section for the purpose of benefit under section 32A of the Act. – Higher rate of depreciation not allowed

103 2009 TMI - 35018 - PUNJAB AND HARYANA HIGH COURT

TIRLOCHAN SINGH Versus COMMISSIONER OF INCOME TAX AND ANOTHER

Dated: 20-01-2009

Sections - 171,

Hindu Undivided Family – Partition – Partial Partition - for the applicability of Section 171(9), two pre-requisites are essential. Firstly, the partial partition should have taken place after 31.12.1997. And secondly, such partial partition must have taken place in a Hindu Undivided Family which hitherto before was assessed as a Hindu Undivided Family. It is not a matter of dispute, that the appellant-assessee had not been assessed as a Hindu Undivided Family ever before the Assessment Year in question, namely 1997-98. We are, therefore, of the firm view, that the second essential ingredient for the applicability of Section 171(9) cannot be treated to have been fulfilled in the facts and circumstances of the present case. As such we are of the view that Section 171(9) would be clearly inapplicable to the facts of the present case - , the action of the authorities below in invoking the provision of Section 171, when the appellant was never assessed before the issuance of notice under Section 148 of the Act on 14.3.2002 for assessment year 1997-98, illegal and not sustainable

104 2009 TMI - 35017 - SUPREME COURT OF INDIA

CIT Versus M/s. Sahara India Savings & Investment Corporation Ltd.

Dated: 24-11-2009

Sections - -

Tax on Interest - credit institution - Section 2(7) of the Interest Tax Act, 1974 - held that - when assessee buys bonds and debentures of approved nature, they constitute investment and they cannot be treated as loans and advances. Therefore, interest on such investment cannot be taxed under the Interest Tax Act, 1974. - in order to constitute a miscellaneous finance company, it has to be a company which carries on exclusively two or more classes of business referred to in the preceding sub-clauses (i) to (v). In other words, if there is a company which is investment company and also finance company, it can fall under section 2(5B)(vi). Therefore, a residuary non-banking company cannot fall within sub-clause (vi) as contended by the Department as the said sub-clause specifically says that a miscellaneous financial company should carry two or more classes of business referred to in the preceding sub-clauses. Moreover, unlike residuary non-banking companies, none of the companies mentioned in sub-clauses (i) to (v) are empowered to accept 17 deposits - interest tax is not leviable

105 2009 TMI - 35016 - High Court of Karnataka

CIT versus Sumsung Electronics Co. Ltd and others

Dated: 24-09-2009

Sections - 195, 200,

TDS – Withholding Tax – Import of Software – Download of Software - The assessee imported 'shrink-wrapped' computer software from outside India for use in its business. No tax was withheld in respect of such payments on the ground the same cannot be treated as royalty either under the Income Tax Law or DTAA - ITO held such payments to be in the nature of royalty and subject to deduction of tax at source – held that - Charging provisions are independent of the provisions governing deduction of tax at source - The Tax Authority is not required to determine the income of a non-resident for the purpose of determining the taxes to be withheld - Any payment resulting in any income in the hands of a non- resident would be subject to withholding tax – Decision of Supreme Court in, Transmission Corporation of A.P. Ltd. v CIT (2008 -TMI - 5757 - SUPREME Court) and TCS v State of Andhra Pradesh (2008 -TMI - 4143 - Supreme Court), followed.

106 2009 TMI - 35015 - SUPREME COURT

M/s. Mepco Industries Ltd., Madurai Versus Commissioner of Income Tax & Anr.

Dated: 19-11-2009

Sections - 154, 264,

Rectification u/s 154 of an order passed u/s 264 - Following the judgement of this Court in the case of 2008 TMI - 5620 - SUPREME Court, delivered on 19th September, 1997, the CIT Tax passed an order of rectification dated 30th March, 1998. The only ground on which rectification was sought to be made by the Commissioner of Income Tax was that Power Tariff Subsidy given to the appellant herein was admissible only after commencement of production – held that - the present case is an example of change of opinion - in each case, one has to examine the nature of the subsidy - The judgement of this Court in Sahney Steel and Press Works Limited & Ors. (supra) was on its own facts; so also, the judgement (2008 TMI - 5620 - SUPREME Court) Therefore, the Department has erred in invoking Section 154 of the Act. – rectification order set aside.

107 2009 TMI - 34999 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KODANADU TEA ESTATE COMPANY

Dated: 27-01-2009

Sections - 260A,

Appeal before ITAT – held that - the tax effect is less than Rs. 2 lakhs, the limit prescribed under the abovesaid Circular dated March 27, 2000. The appeal is filed on April 15, 2004. Hence, the circular is binding on the Revenue. The appeal is dismissed.

108 2009 TMI - 34998 - GAUHATI HIGH COURT

SMT. TIJENDER KAUR Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 24-06-2009

Sections - 144,

Best judgment assessment – Additional evidence – opportunity to AO – held that - , admittedly additional evidence was sought to be introduced by the assessee before the first appellate authority which was so permitted. Thereafter, such additional materials were considered by the first appellate authority in coming to a conclusion different from what was recorded by the Assessing Officer in the assessment made under section 144 of the Act. No opportunity was given to the Assessing Officer with regard to the additional materials or evidence that was introduced by the assessee, though under sub-rule (3) of rule 46A such a requirement is clearly spelt out. It is such a situation that the learned Tribunal has held that the order of the first appellate authority was contrary to the provisions of rule 46A(3) of the Rules. Reading the provisions of the aforesaid sub-rule (3) of rule 46A which are clear and unambiguous and, do not admit any contrary view, we do not see as to how any infirmity can be found in the order of the learned Tribunal. – Order of ITAT maintained.

109 2009 TMI - 34982 - ALLAHABAD HIGH COURT

M/s. Pannalal Mahesh Chandra Jewellers Versus Dy. Commissioner of Income Tax

Dated: 13-11-2009

Sections - 148, 158BA,

Search - Legality and validity of notice u/s 148 – change of opinion – re assessment versus block assessment – held that - the income which can be included in the block assessment is only such income which is directly evidenced by the material found during the search and does not include the income which has been discovered on the basis of post-search enquiries made during the block assessment proceeding. However, after the amendment made by the Finance Act, 2002, the assessment of undisclosed income can only be based on the evidence found in the search and the material or information gathered in post-search enquiry made on the basis of the evidence found in the search. - The issue whether the petitioner is entitled for deduction as a 'trader exporter' or a 'manufacturer exporter' having not been addressed in the block assessment order even, it is a clear case of initiation of reassessment proceedings. – proceedings u/s 148 are legal

110 2009 TMI - 34981 - DELHI HIGH COURT

SHIVA KANT JHA Versus UNION OF INDIA & ORS.

Dated: 11-11-2009

Sections - 090,

Misuse of treaties - Double Taxation Avoidance Agreements - governance of international treaties – violation of constitutional mandate – public interest litigation – held that - In our considered view, the admissibility of a procedure to be devised where such a treaty is to be placed before the Parliament or requiring its approval is a matter

to be left to the Government and the Parliament - It would not be within the domain of exercise of writ jurisdiction under Article 226 of the Constitution of India of this Court to issue any direction in that behalf - It is, thus, submitted that the executive power of the Union extends to matters to exercise of rights by virtue of any treaty or agreement with by virtue of Article 73 (1) (b) of the Constitution of India but that is "subject of course to constitutional limitations".

111 2009 TMI - 34980 - AUTHORITY FOR ADVANCE RULINGS

Jodhpur Vidyut Vitran Nigam Limited In re

Dated: 20-11-2009

Sections - 036, 115JB,

Application of Accounting Standard (AS) no. 12 - Section 115JB - held that - the amount of interest paid to RRVPN Rs. 1168841/- on the amount of FDR loan raised by RRVPN from financial institutions on behalf of assessee company is allowable - amount debited under the head "prior period expenses" can not be added back for the purpose of book profit u/s 115JB - regarding application of AS 12 When the Companies Act itself provides for departure in the case of Companies engaged in the supply of electricity, it is difficult to rule out the application of the accountancy principles contained in the statutory rules framed under the Electricity (Supply) Act. The Authority is of the considered view that the submission made by the applicant's counsel in this regard has considerable force - since the issue of application of AS 12 raised first time before authority issue left open to AO to examine.

112 2009 TMI - 34979 - AUTHORITY FOR ADVANCE RULINGS

M/s. Sumitomo Mitsui Construction Co. Ltd., In re

Dated: 20-11-2009

Sections - 090, 115,

Tax on Royalties - The DTAA has been amended by reducing the maximum rate of tax payable on royalty at 10% and the protocol was notified by the Central Govt. under Section 90 of the Income-Tax Act, 1961 on 19th July, 2006. The applicant contends that in view of the amendment, the tax liable to be paid on the gross amount should be @ 10% instead of 20% - held that - income by way of royalty accruing to the applicant is liable to be taxed in terms of Article 12 of the DTAA at a rate not exceeding 10% from the assessment year 2008-09 onwards.

113 2009 TMI - 34978 - MADRAS HIGH COURT

M/s. Empee Distilleries Limited Versus The Assistant Commissioner of Income Tax

Dated: 02-11-2009

Sections - 037, 037,

Inflation of expenditures on the purchase of old bottles - claim of process loss - disallowance of interest on pretext of fictitious transactions - non compete fees - assessee admitted the huge inflation and huge purchase without document - transaction in respect of machinery found bogus and therefore claim of interest disallowed - in respect to non compete fee paid to manager director the case was remitted back to the authorities - held that - assessee had miserably failed to make out a case for entertaining these appeals, particularly, with reference to the questions of law referred to above in this order. The appeals are therefore dismissed.

114 2009 TMI - 34976 - MADRAS HIGH COURT

The Commissioner of Income-tax Coimbatore Versus M/s. Bannari Amman

Sugars Limited

Dated: 03-11-2009

Sections - 028, 080HHC,

Capital Receipt versus Revenue Receipt - the Additional Price received for sale of free sugar - Exclusion of Excise Duty and Sales-tax Collection from the total turn over for the purpose of computing the Income under Section 80HHC of the Income-tax Act, 1961 - held that - the character of the receipt of a subsidy in the hands of the assessee under a Scheme has to be determined with respect to the purpose for which the subsidy was granted. In other words, one has to apply the purpose test - Additional Price received for sale of free sugar is a capital receipt - Just as commission received by the assessee is relatable to exports and yet it cannot form part of "turnover" for the purposes of section 80HHC, excise duty and sales tax also cannot form part of 'turnover'. Just as interest, commission, etc., do not emanate from the 'turnover' so also excise duty and sales tax do not emanate from such turnover. - excise duty and sales tax also cannot form part of the 'total turnover' under section 80HHC(3).

115 2009 TMI - 34975 - MADRAS HIGH COURT

Express Newspapers Limited Versus The Deputy Commissioner of Income Tax

Dated: 17-11-2009

Sections - 028, 254,

Business loss - business of potatoes - sale by one purchase by another - bogus in one hand and genuine in another hand - rectification of mistake under section 254(2) - held that - , it is clear that in respect of all the three points, the Tribunal has considered and discussed all the contentions raised and argued by both the parties and ultimately recorded a finding - The order of the Tribunal may be an erroneous order with which we are not expressing any opinion, which can only be rectified or modified or set aside in the procedure known to law, but not in a petition under section 254(2) - we are of the view that the Tribunal fell in error in invoking the jurisdiction of Section 254(2) of the Act to re-write the judgment while reviewing the issue already decided, which bears no apparent mistake on the face of the record so as to invoke the jurisdiction. Hence, the writ petition is allowed and the rule is made absolute.

116 2009 TMI - 34972 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax, Shimla Versus M/s. Kiran Enterprises

Dated: 16-11-2009

Sections - 080IA,

Freight Subsidy – Deduction u/s 80IA – held that - After the aforesaid detailed analysis, the Apex Court held that the duty draw backs could not be deemed to be profits derived from business. It is apparent that the Apex court held that it is only the profits generated i.e. operational profits which are entitled to the benefit under Section 80-1A. In Sterling Food the Apex Court has also laid down a test as to what is the source of income. In the present case the source of income transport subsidy is not the business of the assessee but the scheme framed by the Central Government. Applying the tests laid down in Liberty India's case (2009 -TMI - 34471 - SUPREME COURT) and Sterling Food's case (2008 -TMI - 5740 - SUPREME Court) it is apparent that the transport subsidy received by the assessee is not a profit derived from business since it is not an operational profit. The source of the subsidy is not the business of the assessee but scheme of the Central Government. – Not eligible for deduction u/s 80IA

117 2009 TMI - 34971 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus M/s. Bilaspur District Truck Operators

Transport Co. Op. Society Ltd.

Dated: 16-11-2009

Sections - 194C,

TDS – Section 194C(a) – person liable to deduct TDS – Registered Society / Association – held that - Admittedly, the society does not retain any profits. It only retain as nominal amount which is used for meeting the administrative expenses of the society. There is no dispute with the submission that the Society has an independent legal status and is also contractor within the meaning of Section 194C. It is also not disputed that the members have a separate status but there is no sub-contract between the society and the members. In fact if the entire working of the society is seen it is apparent that the society has entered into a contract on behalf of the members. The society is nothing but a collective name for all the members and the contract entered by the society is for the benefit of the constituent members and there is no contract between the society and the members. - Section 194C(2) of the Act is not attracted and the assessee Society is not liable to deduct tax at source on account of payments made to the truck owners who are also members of the society

118 2009 TMI - 34969 - MADRAS HIGH COURT

The Commissioner of Income-tax Versus M/s. Annamalai Finance Ltd.

Dated: 02-11-2009

Sections - 028, 145,

Overdue charges – accrual basis of accounting - overdue charges on accrual basis not accounted the books of account - additional financial charges (overdue charges) – held that - The change of method of accounting of overdue charges from the mercantile basis to cash system, method of accounting, as followed by an assessee, does not create any income; but the method of accounting only recognizes income. Therefore, either to apply the accrual system or cash system, recognition of income is a paramount factor - When the instalment itself is overdue, is not collected, there is no basis for making out a case that the additional overdue charges payable by the parties would be collectible with certainty. The terms of the agreements which enable the assessee-company to demand overdue charges is only an enabling provision and that enabling provision does not guarantee the collection of overdue charges. It only gives a cause of action to the assessee. In such cases it is very difficult to recognize income against overdue charges – addition can not be made on deemed accrual basis.

119 2009 TMI - 34968 - DELHI HIGH COURT

THE COMMISSIONER OF INCOME TAX Versus M/S ZORAVAR VANASPATI LIMITED

Dated: 24-07-2009

Sections - 234A, 234B,

Deletion of interest under section 234A or 234B – held that - The plea taken is that since the charging of interest is not specifically mentioned in the assessment order, though it is mentioned in the ITNS 150, no interest could be charged from the assessee. That issue is yet to be decided by the tribunal in the assessee's appeal. The question raised by the revenue before the tribunal was not with regard to the levy of interest per se, but the question as to whether interest could be levied on the basis of returned income or assessed income ? That issue was, of course, not decided by the tribunal. For these reasons, we feel that the appropriate course to follow would be to set aside the impugned order and to remand the matter to the tribunal so that the revenue's appeal is heard alongwith the assessee's appeal

120 2009 TMI - 34960 - MADHYA PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DAWOODI BOHRA JAMAT

Dated: 22-06-2009

Sections - 012A, 012AA, 013,

Religious trust - Charitable Purpose – Exemption - applicability of the provisions of section 13(1)(b) can or cannot be looked into at the time of examining the registration application under section 12A – held that - all the objects of the assessee were religious in nature because the same are supported by the writings in Holy Quran and as such the assessee-trust following the directions from the Holy Quran on the religious occasions, religious education and religious activities for Dawoodi Bohra community, had been organizing various activities in pursuance with the objects of the trust - the finding of the CIT in the impugned order that the objects of the assessee are charitable in nature is not justified – ITAT hold that respondent is a public religious trust – the provisions of section 13 (1)(b) of the Act will not be applicable because the same are applicable in the case of the trust established for charitable purposes. - Section 13(1)(b) is attracted in the case of income of the trust for charitable purpose of a community or caste, which is not the case here.

121 2009 TMI - 34959 - ALLAHABAD HIGH COURT

RANJIT NARANG Versus COMMISSIONER OF INCOME-TAX

Dated: 20-07-2009

Sections - 054F,

Capital Gains - Tribunal hold that the capital gain arising from the transfer of shares, which was chargeable to tax in the assessment year 1990-91, but which, in view of the provisions of section 54F of the Act became liable to be taxed in assessment year 1993-94 should be computed in accordance with law applicable to the assessment year 1993-94 – held that - From a plain reading of section 54F of the Act we are of the considered opinion that the amount of capital gains which has not been utilised under section 54F has to be charged under section 45 as income of the previous year, after the expiry of three years from the date of sale of the asset which in the present case is for the assessment year 1993-94 – decided in favour of the Revenue and against the assessee

122 2009 TMI - 34958 - ALLAHABAD HIGH COURT

NAVEEN MEENA JAIN (HUF) Versus COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 26-03-2009

Sections - 147, 149,

Notice for re assessment - writ petition for challenging the notice under section 147 of the Income-tax Act, 1961 – assessee claimed that notice has been issued beyond the maximum period of six years fixed under section 149(b) of the Act, therefore, the notice is ex facie bad in law. According to him, the notice has been issued for the assessment year 2002-03 – held that - It is correct to say that if the issuance of notice or passing of any order is absolutely without jurisdiction, alternative remedy cannot be held to be bar but when factually we find that the period of six years under section 149(b) of the Act is not expired, we cannot hold and say that the issuance of notice on account of escapement of assessment is absolutely beyond jurisdiction - Alternatively, right to challenge the decision of the Assessing Officer by the assessee is composite in nature which includes the nature of subjective satisfaction by the Joint Commissioner. Therefore, at this stage we do not find any reason to interfere with the notice – writ petition dismissed

123 2009 TMI - 34957 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PRABHU DAYAL AND BROTHERS

Dated: 16-07-2009

Sections - 044AB, 271B,

Compulsory Audit of Accounts – Failure – Section 44AB read with 271B - circular dated June 19, 1985 – ITAT hold that in view of the assessee filing the return of income within the time up to which extension had been sought and making the payment of tax under section 140A within that extended time, the assessee had satisfied the condition of the Central Board of Direct Taxes circular for payment of self-assessment tax within the normal period prescribed under section 139(1) of the Act for filing the return of income and thereby cancelled the penalty imposed under section 271B of the Income-tax Act – held that - As in the present case, in view of the circular of the Board the audit report has been obtained on September 30, 1985, that would be sufficient compliance with section 44AB of the Act. Thus, the Tribunal was justified in deleting the penalty. – decided in favor of assessee

124 2009 TMI - 34955 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus VELUMANICKAM LODGE

Dated: 23-06-2009

Sections - 037,

Capital Expenditure versus Revenue Expenditure – Construction of hockey stadium – amount of Rs. 24 paid for securing the contract - held that - The Tribunal also noted that the mere willingness expressed by the assessee to construct the hockey stadium in the District Collectorate for a value of Rs. 24 lakhs cannot be construed as a bribe to a person or the money was contributed for a private fund or for the benefit of any individual which could be regarded as a form of illegal gratification - Therefore, the claim made by the assessee that he volunteered for constructing the hockey stadium for generating goodwill and for promoting his business activities, especially where such construction of hockey stadium was for the welfare of the public which was not prohibited in law, has to be sustained – expenditure in the nature of promotion of business – allowed to be deducted

125 2009 TMI - 34953 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus KISAN SAHKARI CHINI MILLS LTD.

Dated: 13-05-2009

Sections - 028,

Capital receipt versus Revenue Receipt - additional quota for free sale of sugar – CIT(A) found that , the very right to receive the excess price and the excess excise duty was based on the obligation to recoup the capital employed, since the amount could not have been received without that obligation, there was a clear nexus and consequently a diversion of income. Hence, from any point of view the amounts received took the nature of capital receipt by reason of the incentive scheme and thus, could not be treated as part of the assessee's income – held that - main eligibility condition for the scheme was that the incentive had to be utilised for the repayment of loans taken by the assessee to set up a new unit or substantial expenses of a existing unit and subsidy receipt by the assessee was not in the course of a trade and was of capital nature – ITAT order confirmed the decision of CIT(A) not interfered with.

126 2009 TMI - 34951 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus KAILASH CHANDRA DEEPAK KUMAR

Dated: 16-07-2009

Sections - 269SS, 271D,

Advance – amount received otherwise than by way of account payee cheque or bank draft – held that - assessing authority had added Rs. 1,00,000 which is the same amount as unexplained cash credit under section 68 of the Act and the Commissioner of Income-tax (Appeals), vide order dated December 1, 1993, had held that the aforesaid amount had been taken as advance from M/s. Babu Ram Ganga Ram against subsequent purchase of pulses made from the assessee respondent. From the order of the Tribunal, we find that against advance of Rs. 1 lakh, pulses worth Rs. 1,02,957 have been supplied to M/s. Babu Ram Ganga Ram, Suriyawan, Varanasi, on various dates which also substantiates that the amounts in question were advanced towards future supply of goods. The provision under section 269SS of the Act is applicable only in case of loan or deposit and does not cover cash advance for purpose of goods in future – provisions of section 269S not applicable – penalty not to be imposed.

127 2009 TMI - 34949 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income-tax Versus M/s H.P. State Co-operative Bank Ltd.

Dated: 03-11-2009

Sections - 80P,

Deduction u/s 80P - interest earned on deposits made even out of the non-SLR funds - normal banking business/activities – held that - The words used by the legislature are very important. The first word used is attributable, which is much wider in scope than the word derived. The second phrase used is any one or more of such activities. Any banking business providing credit facilities to its members and investing the sums deposited by the members of the society is part of banking business. - the investment of the funds by the banks including the non reserves were part of the banking activities since no bank would like its reserve funds to remain idle and not earn any interest. This is not only prudent business management but is also a part of the activity of banking. Therefore, the interest earned on such deposits is directly attributable to the business of banking. – answered in favor of assessee – deduction u/s 80P(2)(a)(i) allowed

128 2009 TMI - 34946 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus STANDING CONFERENCE OF PUBLIC ENTERPRISES (SCOPE)

Dated: 25-09-2009

Sections - -

Principle of Mutuality – income received from non members - interest received by the assessee on FDRs/deposits – held that - the assessee is incorporated as a society and the main objective is to improve the purpose of public enterprises. The membership of the society is open to public sector enterprises of Central/State Governments. It is, thus, performed for the benefit of its members, which are public sector enterprises. It is not indulging in any “commercial activities” in traditional sense, but is catering to the needs of its members - Of course, for using convention centre as well as other parts of the building, members pay some charges which becomes additional source of income. That by itself cannot be treated as commercial activity of the assessee – answered in favor of assessee – appeal dismissed with cost.

129 2009 TMI - 34945 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus JAGATJIT INDUSTRIES LTD.

Dated: 25-09-2009

Sections - -

Capital receipt versus revenue receipt - to whether the receipt on account of exchange rate fluctuation of foreign exchange receipt is a capital receipt or revenue receipt irrespective of the source of the said income. An alternate plea was also taken by the Revenue to the effect that 22% of the funds were utilized for working capital, which is in a nature of circulating capital and therefore, 22% of the gain on account of exchange rate fluctuation is to be held as revenue receipt. – held that - to whether the loss suffered by the appellant was a trading loss or a capital loss could not be answered unless it was first determined whether the amounts were held by the appellant on capital account or on revenue account – in the present case, funds kept in UK were raised by issuing capital, thus it was held on capital account. Applying this test given due to exchange fluctuation would be capital gain – answered in favor of assessee.

130 2009 TMI - 34944 - DELHI HIGH COURT

Commissioner of Income Tax, Delhi-IV Versus DLF Power Ltd.

Dated: 09-10-2009

Sections - 080IA, 115JB, 154, 163,

Revision of an order – erroneous order – held that - even if two views were possible, and the view taken by the AO was plausible one, it by the CIT, that would not provide sufficient ground for the CIT to assume jurisdiction under Section 263 of the Act merely because he had a different view in Malabar Industrial Co. (decision of supreme court) – revision of order is not correct - after passing of order under Section 154 of the Act, the CIT could not have exercised jurisdiction to cancel the assessment order under Section 143(3) of the Act - order passed by the CIT under Section 263 of the Income Tax Act, 1961 as set aside by the ITAT held correct.

131 2009 TMI - 34943 - DELHI HIGH COURT

Commissioner of Income Tax, Delhi -IV Versus Tony Electronics Limited

Dated: 09-10-2009

Sections - 154,

Rectification of mistake – law relating to the limitation of correcting error under Section 154 of the Income Tax Act, 1961 – doctrine of merger – held that - the word 'Order' used in the expression "from the date of the order sought to be amended" occurring in sub-section (7) of Section 154 of the Act - the word 'Order' had not been qualified in any way and it does not necessarily mean the original order. It can be any order, including the amended or rectified order - once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the said authority merges into the order of the appellate authority. With this merger, order of the original authority ceases to exist and the order of the appellate authority prevails, in which the order of the original authority is merged - when assessment order is not challenged and amended by the appellate authority. Once rectification order under Section 154 of the Act is passed it would mean that the appeal effect order is rectified – answered in favor of revenue.

132 2009 TMI - 34942 - DELHI HIGH COURT

Digamber Jain Society for Child Welfare Versus Director General of Income Tax (Exemptions)

Dated: 09-10-2009

Sections - 010(23C),

Exemption u/s 10(23C) - petitioner claims that it is a charitable society and is, thus, entitled to exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 - Modern

School in various cities like Faridabad, Noida, Vaishali and a school under the name "Delhi International Happy School – held that - a society or a trust or other similar body running educational institutions solely for educational purposes and having the overall object of not to make any profit can be regarded as 'other educational institution' even if some surplus arises from its activities - the petitioner society has mainly been formed with the objective of carrying out educational activity - even if the petitioner society states some other activities as per its object clause, the surplus arising from the educational activity will not be utilized for any other purpose, but solely for educational purpose – exemption u/s 10(23C)(vi) allowed

133 2009 TMI - 34941 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus NANAK RAM JAISINGHANIA

Dated: 10-07-2009

Sections - -

Maintainability of appeal – circular instruction no. 5 of 2008 dated 15.05.2008 – held that - In the present case, appeal was filed in the year 2005 before the Income-tax Appellate Tribunal and it was dismissed on November 30, 2007, as not maintainable. These instructions came much thereafter, and in view of paragraph 11 thereof, has no applicability to the case. The Income-tax Appellate Tribunal, therefore, rightly dismissed the appeal as non-maintainable. The present appeal preferred thus clearly is a misuse of the process of law and in spite of the aforesaid clear instructions of the Central Board of Direct Taxes itself, we fail to understand as to why this appeal is preferred when the appeal before the Income-tax Appellate Tribunal itself was not maintainable. In these circumstances, we dismiss the appeal with costs quantified at Rs. 10,000 to be paid to the Delhi High Court Mediation and Conciliation Centre.

134 2009 TMI - 34940 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus SHARATH INVESTMENTS P. LTD.

Dated: 18-08-2009

Sections - 028, 045,

Loss of sale of shares – expenditure on acquisition of shares – business profit – held that - purchase of shares by the assessee-company on April 4, 1995, at a price of Rs. 220 per share against the market price of Rs. 70 per share was definitely not either as a normal business transaction of the assessee nor for any exigency of the business requirement of the assessee-company - need of the individual directors cannot be elevated to the status of the need of the company - an acquisition of share, at a value far higher than the market value when the shares otherwise were available at Rs. 70 per share, but paying Rs. 220 per share to purchase them only from a particular seller cannot be construed as any part of the business transaction – loss on sale of shares is not a business loss – it is short term capital loss – The issue that whether interest on amount borrowed for the purpose of acquisition of shares is allowed as deduction or not, matter remanded to AO

135 2009 TMI - 34939 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SWISS TIMES AND ELECTRONICS

Dated: 26-03-2009

Sections - 158BC, 158BD,

Assessment u/s 158BC versus 158BD – assessment against warrant or without warrant - Assessment was one completed under section 158BC of the Income-tax Act, 1961, after search conducted in the residential premises of the partner of the assessee-firm

and after conducting survey in the business premises of the assessee on the same day. In first appeal, the assessee contested the validity of the assessment under section 158BC and the additions on the merits. The Commissioner of Income-tax (Appeals) allowed the appeal by holding that the assessment should have been made under section 158BD as the search was not pursuant to warrant issued in the name of the assessee-firm – ITAT maintained the order of CIT(A) – held that - This order of the Tribunal is patently wrong and unsustainable because the very same Bench in the subsequent order issued in the name of the partner held that warrant was in the name of the firm and not against the partner – matter remanded

136 2009 TMI - 34938 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PUNJAB STATE WAREHOUSING CORPORATION

Dated: 15-01-2009

Sections - 057,

Deduction u/s 57(iii) – the term “purpose” – income from other sources - assessee has adopted a policy of extending loans to its employees. These loans are extended to enable the employees to purchase houses and motor vehicles. assessee charges interest on the loans extended to the employees. - The issue - whether the interest income derived by the respondent-assessee can be set off as against the interest paid by the respondent-assessee for taking a loan from the NABARD? – held that - the term “purpose” referred to in clause (iii) of section 57 of the 1961 Act, for the present controversy, is relatable to the activity of the respondent-assessee in earning income by extending loans to its employees. In so far as the deduction conceived of under clause (iii) of section 57 of the 1961 Act is concerned, the same is relatable only to expenditure incurred for the said “purpose” – deduction of expenditure of interest paid to NABARD not allowed.

137 2009 TMI - 34936 - KERALA HIGH COURT

KERALA STATE CIVIL SUPPLIES CORPORATION LTD. Versus JOINT COMMISSIONER OF INCOME-TAX (ASSESSMENT)

Dated: 13-07-2009

Sections - 154, 244A,

Rectification of mistake - .AO revised the original order of assessment with a view to withdraw the excess interest. He took the view that the assessee's return is not complete in all respects as the audit report in Forms Nos. 3CA and 3CD and also the audit report under section 44AB of the Income-tax Act as also the report contemplated under section 619 of the Companies Act were not filed. Therefore, attributing the delay on the part of the assessee excess interest granted by the earlier order was demanded – held that - The net result of the proceedings under section 154 earlier initiated against the assessee as a matter of fact, would be completed in the sense that once he noticed that AO could not have passed an order completing the assessment without deciding this issue and without referring the same to the Chief Commissioner, he would have only cancelled the assessment and then, after obtaining the decision from the Chief Commissioner or the Commissioner, he could have incorporated the same and completed the assessment – The same has been done by the AO – appeal dismissed.

138 2009 TMI - 34934 - GAUHATI HIGH COURT

PANCHARATNA CEMENT P. LTD. Versus UNION OF INDIA AND OTHERS

Dated: 30-06-2009

Sections - 147, 148,

Reassessment – income escaping assessment – reason to believe – transport subsidy and insurance subsidy earlier sanctioned u/s 80 IC - held that - reason to believe to be valid has to have a rational and logical inter relation with the belief that a taxable income has escaped assessment. The belief necessarily has to be genuine and bona fide and not a charade - notice initiating the proceeding under section 148 of the Act against the petitioner is not in conformity with the legislative prescriptions mandated in section 147 of the Act - As a mere change in opinion cannot be a valid ground for reopening an assessment already made, on an objective evaluation of the return and the supporting materials thereof, the impugned reassessment proceeding is vitiated by want of jurisdiction

139 2009 TMI - 34921 - SUPREME COURT

Assam State Text Book Production and Publication Corporation Limited Versus Commissioner of Income Tax, Gauhati-I

Dated: 20-10-2009

Sections - 010(22),

Educational Institution – section 10(22) of the 1961 Act - According to the AO, since the assessee, during the relevant years, had income exclusively from publication and selling of text books to the students, exemption under Section 10(22) as it stood at the material time, was not admissible. According to the AO, the assessee did not exist solely for educational purposes, particularly in view of Clause 21 of the Memorandum of Association which provides for distribution of dividends, hence, its income was not exempt – held that - the High Court, failed to consider (i) the historical background (ii) the source of funding, the share-holding pattern and aspects, such as Return on Investment; (iii) the letters issued by C.B.D.T. and (iv) the judgments – matter remanded back to AO instead of HC

140 2009 TMI - 34920 - MADRAS HIGH COURT

The Tamil Nadu State Transport Versus The Chief Commissioner of Income Tax

Dated: 08-09-2009

Sections - 220,

Stay of recovery – held that - Admittedly, the appeals are pending and the petitioner is a Public Sector Undertaking owned by Government of Tamil Nadu and is having huge immovable properties and movable properties such as Transport buses – department ought to have considered the request of the petitioner for the stay of the recovery proceedings - set aside the orders passed by the 4th respondent in W.P.(MD)No.2209 of 2009, dated 09.01.2009 and the 5th respondent in W.P.(MD)No.2210 of 2009 dated 18.02.2005 and directed the respondents to consider the request of the petitioner for the grant of stay and pass a speaking order - it is ordered, directing the 3rd respondent to dispose of the appeal pending on his file, within a period of four weeks from the date of the receipt of a copy of this order.

141 2009 TMI - 34919 - MADRAS HIGH COURT

The Commissioner of Income Tax Versus M/s. Hi Tech Arai Limited

Dated: 01-09-2009

Sections - 032,

Additional Depreciation - Wind Mills even though the main business of the assessee is not producing or generating of electricity – held that - It cannot also be said that setting up of a wind mill will not fall within the expression setting up of a new machinery or plant - When we find that the Tribunal has applied the law correctly in the impugned order, there is no gain saying that there was an earlier order by the Co-ordinate Bench

and therefore, for that reason, this time also the Tribunal should have blindly followed its own earlier decision even if such earlier decision did not reflect the correct position of the law - the contention that the setting up of a wind mill has nothing to do with the power industry, namely, manufacture of oil seeds etc. is totally not germane to the specific provision contained in Section 32(1)(ia) of the Act. – Additional depreciation not allowed.

142 2009 TMI - 34918 - MADRAS HIGH COURT

Dr. S. Panneerselvam Versus The Assistant Commissioner of Income Tax

Dated: 21-10-2009

Sections - 260A,

Appeal before high court versus writ petition – held that - , the writ petitioner without exhausting the appeal remedy as provided under the statute has chosen to file the writ petitions challenging the final order of the Income Tax Appellate Tribunal dated 27.11.2000 after six years on 14.6.2006. There is no proper reason given for the delay. In any event, the writ petitions are not maintainable in view of the alternative remedy provided under the statute - Both the writ petitions are, therefore, dismissed on the ground that the writ petitioner has failed to pursue the alternative remedy under the statute and also on the ground of delay and laches which has not been explained

143 2009 TMI - 34915 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus MS. SUSHMA KAPOOR

Dated: 26-10-2009

Sections - 014A,

Disallowance u/s 14A – interest on loan from bank – interest free advances - CIT (A) arrived at a finding that on the last date of accounting year the investment was only Rs.80,000/-. Another finding of fact which was recorded was that the investment was made in the preceding year and no part of investments were correlated with the borrowed funds. The CIT found that investment made in Zurich India Top 200 funds was advances from the loan and, therefore, only to this extent the interest could be disallowed under Section 14A of the Act - ITAT confirmed the order of CIT(A) – held that - no question of law, much less substantial question of law, arises for consideration – appeal dismissed.

144 2009 TMI - 34914 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus TADASHI MURAKAMI

Dated: 22-10-2009

Sections - 015, 195A,

Salary in Indian currency as well as in foreign currency - While framing the assessment the Assessing Officer (AO) added an amount of Rs.1,68,104/- treating it to be a monetary perk - AO also grossed up tax liability, applying the provisions of 195A – ITAT deleted the addition of non monetary benefit - Insofar as grossing up is concerned the ITAT held that the AO had not given any finding to the effect that the tax on monetary benefits/salary was paid by the employer and, therefore, such grossing up of the tax was not sustainable – held that - Since the finding of fact is arrived at that advance tax has been paid by the employee and not by the employer the basis for this grossing up by the AO was clearly unsustainable - advance tax was in fact paid by the Assessee himself. In the circumstances, we are of the view that no question of law arises, insofar as the grossing up is concerned. - since the tax effect on that amount is much less than Rs.4 lac, we refuse to entertain the appeal on that ground

145 2009 TMI - 34913 - DELHI HIGH COURT

ONGC VIDESH LIMITED & ANOTHER Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 21-10-2009

Sections - 220, 271,

Penalty proceedings – extension of stay of recovery of penalty – main appeal is pending for dispose off – DCIT ordered that No further stay in this respect can not be granted. You are requested to make the payment of the demand of Rs.114.20 crore along with the interest u/s 220(2) of the IT Act within 7 days and show me the proof of payment of the same – held that - no coercive steps be taken by the Respondents for recovery of the amount due – appeal should be decided expeditiously by the CIT (A) – regarding application for extension of stay dated 13.10.2009 - the application dated 13th October, 2009 preferred by the Petitioner is rejected, reasons in support of such a decision shall be given in the order. That order shall not be operative for a period of 15 days to enable to the Petitioner to seek further remedies as advised

146 2009 TMI - 34912 - DELHI HIGH COURT

EMMPAC HOLDINGS PVT. LTD. Versus COMMISSIONER OF INCOME TAX, DELHI-VIII & ANR.

Dated: 15-10-2009

Sections - 037,

Proof of expenses – consultancy service - The Assessee come out with the plea that the real motive of the licensor was that Assessee firm should not have complete control on the usages of the premises in question and with a view to accomplish the aforesaid objective the Assessee had no option but to accept the the condition to pay an amount in the name to consultancy service to M/s Raas Consultants & Company – Finding that in fact no consultancy services were provided by the said consultants, the Assessing Officer disallowed the aforesaid expense – held that - even when one has to go into the nature of the agreement, it is clearly a consultancy services agreement - , it is clear that the consultants had agreed to provide consultancy services in connection with the administration and management of the showroom. The appointment was in connection with the running of the music shop on the terms and conditions as set out in the said agreement – expenses allowed.

147 2009 TMI - 34911 - ALLAHABAD HIGH COURT

Commissioner of Income Tax (Central) Versus Smt. Vandana Verma

Dated: 09-11-2009

Sections - 132, 158BC, 158BD,

Warrant of authorization - Search and seizure – block assessment - ITAT hold that assessment was not justified simply because the warrant of search was not in the single name of the assessee but included the name of her husband also – held that - the warrant of authorization must be issued individually by the Director/Commissioner at the time of issuing the same. If the same is not issued individually, then assessment cannot be made in an individual capacity as done by the Assessing Officer in the instant case. The warrant was issued jointly, as stated hereinabove, so the assessment will have to be made collectively in the name of both the persons in the status of AOP/BOI. Thus, the Tribunal has rightly held that assessment could not be framed in an individual capacity but it should be framed either as association of persons or as body of individual.

148 2009 TMI - 34910 - DELHI HIGH COURT

The Motor & General Finance Ltd. And MGF India Ltd. Versus Commissioner of Income Tax-VI, New Delhi

Dated: 30-10-2009

Sections - 244A,

Interest u/s 244A(1)(b) – interest on interest - every month or part of the month – refund of wrongful retention of interest – held that - It is only when the excess amount of tax is refunded but the interest is not refunded along therewith, the retention of interest amount would become unjustified and interest on interest would also become payable. The reason is simple. It is the tax which was paid in excess by the assessee which became refundable. The assessee would be compensated by paying interest thereupon. It is only when the interest is not refunded along with excess tax that the withholding of the said interest becomes unjustified and it becomes an „amount due to the assessee on which the assessee can claim further interest. Such a situation has not happened in the present case as the amount of interest is calculated and refunded along with the refundable tax amount. – interest on interest not allowed.

149 2009 TMI - 34909 - MADRAS HIGH COURT

N. Meenakshi Versus The Assistant Commissioner of Income Tax

Dated: 11-09-2009

Sections - 50C, 153,

Valuation – value of land determined for stamp duty purpose as the sale value u/s 50C - petitioner offered the capital gains for assessment based on the actual consideration received by her, namely Rs.99 Lakhs and paid capital gains tax. However, the Registering Authority adopted the guideline value of the property which comes to Rs.3,92,68,800/- and levied stamp duty and the Indian Oil Corporation which is the purchaser has also paid stamp duty on the said amount. – AO propose to assess the capital gains on such value assessed by the Registering Authority – held that - Assessing Authority himself has no right to have extension of the period of assessment, by virtue of the powers under Section 153(3)(ii) of the Act - Considering the facts that the petitioner is 96 years old and the matter has been referred by the respondent for valuation the petitioner must be given an opportunity to take advantage of the valuation report that may be filed by the statutory authority – assessment order set aside – matter remitted

150 2009 TMI - 34908 - MADRAS HIGH COURT

Mani Versus The Commissioner of Income Tax-I

Dated: 07-09-2009

Sections - 158BC, 158BFA, 220,

Block Assessment – waiver of interest levied u/s 158BFA – payment of tax in installments – held that - . From a perusal of Section 220(2A), it is clear that that section begins with a non obstante clause and is a self contained provisions. It overrides the charging provision as contained in section 220(2) but also restricts the power of the authority concerned to reduce or waive the amount of interest paid or payable by an assessee only if he is satisfied that the conditions as set out in the three clauses are satisfied – CIT is bound to consider the petition, as to whether the petitioner fulfilled all the three conditions laid down under Section 220(2A) and record reasons as to how the petitioner is not entitled to the waiver of penal interest – CIT directed to consider the claim of the assessee with regard to waiver of interest afresh and pass a considered order after giving sufficient opportunity to the petitioner in accordance with law

151 2009 TMI - 34907 - MADRAS HIGH COURT

M/s. Visvas Promoters P Ltd. The Income Tax Appellate Tribunal

Dated: 11-09-2009

Sections - 80IB, 254,

Rectification of mistake - Housing Project – claim of deduction u/s 80IB(10)- binding precedence of decision of another bench – AO denied the deduction in respect of two projects since all the flats were not of specified size – CIT(A) allowed the deduction – tribunal denied the deduction – held that - in the impugned order, the first respondent Tribunal has explicitly taken note of the substance of the issue decided by the Kolkatta Tribunal in Bengal Ambuja Housing Developments Ltd. v. CIT, wherein it was decided that the eligibility condition for deduction under section 80I-B(10) of the Act - It would not amount to non-consideration of a material fact which could amount to a mistake apparent on the record which could be rectified under section 254(2) of the Act

152 2009 TMI - 34905 - ALLAHABAD HIGH COURT

The Commissioner of Income Tax-I Versus M/s. Kohli Brothers Color Lab (P) Ltd.

Dated: 05-11-2009

Sections - 036,

Bad Debts – obligation to prove that the debt written off by him is indeed a bad debt for the purpose of allowance u/s 36(1)(vii) – power of AO to question the veracity of bad debts - business of developing and printing of photos – held that - 1.4.1989 the words 'any bad debt, or part thereof, which is established to have become, a bad debt in the previous year' were used and after the amendment w.e.f. 1.4.1989, same has been substituted by "any bad debt or part thereof which is written off as irrecoverable in the account of assessee for the previous year" - All the judgment, which have been cited at the Bar, genuineness of entries, have never been doubted therein - Under Section 143(2) of the Act, Assessing Officer is empowered to require the assessee to produce the evidence in support of the return - , that said debt was arising out of trading activity, there was relationship of debtor or creditor, same was irrecoverable – AO has power to examine the genuineness – ITAT order set aside

153 2009 TMI - 34904 - DELHI HIGH COURT

Ansal Housing & Construction Ltd. Versus Commissioner of Income Tax

Dated: 30-10-2009

Sections - 035D,

Interpretation of section 35D - Amortisation of certain preliminary expenses – Expenditure of Rs.49,13,479.85 was incurred towards the right issue and Rs.75,06,601.80 towards the public issue - The assessment was completed under Section 143(3) of the Act on 26.3.2001 wherein the Assessing Officer (AO) disallowed the expenses claimed by the appellant as revenue expenditure. – held that - The activity of construction can, by no stretch of imagination, be treated as manufacturing activity as it does not amount to manufacture or production of an article or a thing - opined that the business of construction of building will not fall within the ambit of industrial company - Since the appellant does not qualify to be an industrial undertaking, whether amendment to Section 35D of the Act is clarificatory in nature or applies retrospectively will not have any bearing. Therefore, it is not necessary to decide this question in the facts of this case

154 2009 TMI - 34903 - DELHI HIGH COURT

Commissioner of Income Tax, Delhi - XIII Versus M/s. Mereena Creations.

Dated: 30-10-2009

Sections - 080HHC,

Interest on Fixed Deposit – Claim u/s 80HHC - The AO worked out the deduction under Section 80HHC by adopting negative figure and computed the figure accordingly, thereby making a deduction of Rs.28,88,993/- held that - Interest earned on fixed deposits for the purposes of availing credit facilities from the bank, does not have an immediate nexus with the export business and therefore has to necessarily be treated as income from other sources and not business income – duty drawback are not - “For purposes of such computation both profits and losses have to be taken into account. Thus the word profit in section 80 HHC (3) will mean profits after taking into account losses if any. More importantly in our view the term profit in section 80 HHC both in sub section (1) and in sub section (3), means a positive profit worked out after taking into consideration losses if any. Thus the word “profit” has the same meaning in section 80 HHC sub section (1) and (3)

155 2009 TMI - 34901 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax Versus M/s Rieta Biscuit Co. (P) Ltd.

Dated: 04-11-2009

Sections - 032, 032A,

Higher depreciation on workers' quarters – investment allowance on plant and machinery leased out to another concern – held that - the workers' quarters were let out as a part of the plant and income so derived was assessed as business income. The claim for depreciation, thus, had nexus with the business of the assessee. There is, thus, no error in the view taken by the CIT(A) and the Tribunal. The question is answered against the revenue and in favour of the assessee - once three conditions of owning a machinery, use for the purpose of business of the assessee and the nature of machinery being of the specified category are fulfilled, Section 32A will be attracted - Where business of the assessee is of leasing, even according to the learned counsel for the revenue there will be no difficulty in view of judgment in Shaan Finance. Where the income so derived is assessed as business income, in our view, the same principle will apply - Accordingly, the questions referred are answered against the revenue and in favour of the assessee

156 2009 TMI - 34900 - MADRAS HIGH COURT

Dr. S. Panneerselvam Versus The Assistant Commissioner of Income Tax

Dated: 21-10-2009

Sections - 254,

Rectification of order by tribunal – writ petitioner has at the first instance filed an application MP No.17/2001 for rectification which has been allowed on 25.4.2001. Thereafter, after more than two years, petitioner filed another rectification petition for rectifying the original order of the appellate tribunal dated 27.11.2000 – tribunal rejected the second rectification application – held that - if the assessee is aggrieved by the order of the Tribunal on appreciation of the materials on record, the remedy available to the writ petitioner/assessee will be to file an appeal as provided under the statute and not challenge the same by way of writ petitions stating that the Tribunal should have decide the matters in one way or the other as intended by the assessee/writ petitioner - As against the order passed under Section 254(1) and the rectification order passed under Section 254(2) of the Income Tax Act, there is an appeal remedy provided under Section 260A(1) of the Act and such remedy has not been exhausted by the present writ petitioner – writ petition dismissed.

157 2009 TMI - 34899 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-II Versus M/s Hero Cycles Ltd.

Dated: 04-11-2009

Sections - 014A,

Disallowance of expenses u/s 14A - the interest bearing funds have been vested for investments generating tax free dividend income – evidence - It earned dividend income, which is exempted under Section 10 (34) and (35). The Assessing Officer made an inquiry whether any expenditure was incurred for earning this income and as a result of the said inquiry addition was made by way of disallowance under Section 14A (3), which was partly upheld by the CIT (A). The Tribunal held that there was no nexus with the expenditure incurred and the income generated. – held that - deduction for interest was permissible when loan was taken for business purpose and not for diverting the same to sister concern without having nexus with the business - In the present case, admittedly, the assessee did not make any claim for exemption. In such a situation, Section 14A could have no application

158 2009 TMI - 34898 - BOMBAY HIGH COURT

GILBS COMPUTER LTD. Versus INCOME-TAX APPELLATE TRIBUNAL AND OTHERS

Dated: 29-07-2009

Sections - -

Appeal to appellate tribunal – payment of court fee – how to determine - In making the assessment AO disallowed the petitioner's claim for interest to the extent of Rs. 11,98,97,222 – CIT(A) had dismissed the petitioner's appeal – Appeal filed before ITAT in accordance with section 253 and consistent with its stand that the requisite fee payable was Rs. 500, the Form 36 that was filed in the registry was accompanied by a challan evidencing payment of a fee of Rs. 500 - The registry by its letter dated August 25, 2009, communicated the defect in the memo of appeal inasmuch as the appeal fee paid was less by Rs. 9,500 – held that - the expression “more and less” will have to be given the natural meaning. It can only be more than a negative income even if the expression “income” is held to be both positive and negative income. Negative income cannot be more. It will always be less - , the appellants were right in paying court fee of Rs. 500 – order rejecting the appeal set aside – appeal restored.

159 2009 TMI - 34893 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus ACE MULTITAXES SYSTEMS PVT. LTD.

Dated: 05-01-2009

Sections - 080IA,

Industrial Undertakings – exemption under section 80IA – Audit Report – held that - Sub-section (7) of section 80-IA of the Act also does not cast any obligation on the assessee that the return must be accompanied by the audit report. There appears to be proper reasoning as to why in all cases it cannot be accompanied by audit report. For meeting the practical difficulties of the assessee, it is not necessary that in all cases, it must be accompanied by the audit report.

160 2009 TMI - 34882 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME TAX Versus GIANI RAM AND COMPANY

Dated: 16-07-2009

Sections - 043B, 260A,

Appeal – Aggrieved person – appeal by department / revenue – deduction was allowed under Section 43B of the Act on account of licence fee paid to the Excise Department. Against the order of the Assessing Officer, the Commissioner Income Tax (Appeals) dismissed the appeal and held that the Assessing Officer was justified in treating and

declaring income of the assessee from undisclosed sources and also in allowing the deduction under Section 43B of the Act - held that - The Commissioner Income Tax (Appeals) having upheld the order of assessment and not interfered with any liability under the order of assessment, the Tribunal was justified in observing that revenue cannot be treated to be aggrieved party.

161 2009 TMI - 34881 - CHHATTISGARH HIGH COURT

ASSISTANT COMMISSIONER OF INCOME-TAX Versus MAHAVIR PRASAD VERMA (and other appeals)

Dated: 16-06-2009

Sections - 260A,

Delay in filing of an appeal – condonation of delay – applicability of provisions of period of limitation act, 1963 – held that - the Income-tax Act, 1961, is a special law. The nature of the remedy provided therein are such that the Legislature intended it to be a complete code by itself which alone should govern the several matters provided by it. The scheme of the Income-tax Act, 1961, support the conclusion that time-limit prescribed under section 260A to file an appeal before the High Court is absolute and unextendable by court under section 5 of the Limitation Act and the limitation cannot be extended by invoking the provisions of section 5 of the Limitation Act.

162 2009 TMI - 34852 - SUPREME COURT

The Commissioner of Income Tax, New Delhi Versus M/s Maruti Udyog Ltd.

Dated: 28-10-2009

Sections - 037, 043B,

Payment of excise duty through MODVAT / CENVAT credit – application of section 43B – addition of customs duty to the value of closing stock - held that - Tribunal was right in holding that the claim for depreciation on account of enhanced cost of depreciation due to fluctuation in foreign exchange rate was admissible for deduction under Section 3 - , the question as to whether interest and miscellaneous income is taxable under the head "Income from Other Sources" under Section 56 of the Income Tax Act, 1961 is not required to be examined in this case as the Department failed to make submissions on this point before the Tribunal – High Court directed to decide the questions for applicability of section 43B for adjustment of unutilized MODVAT credit and valuation of closing stock

163 2009 TMI - 34851 - ALLAHABAD HIGH COURT

M/s Samayadeen Amarnath Kaisarganj Versus Income Tax Appellate Tribunal

Dated: 28-10-2009

Sections - 253,

Delay in filing an appeal – negligence of the counsel – sufficient reasonable cause – held that - counsel who had been handed over the papers took full responsibility that it was his part of negligence on account of which appeal in question could not be filed well within time, as such there was delay. To the said affidavit which has been filed there was no material to counter the averments mentioned therein, in this background once there was no counter material then assessee ought not to have penalized for such fault of his counsel who had been handed over entire papers after fulfilling each and every requisite formality required for but failed to file appeal in time – appeal to be treated to be filed well in time – ITAT directed to decide the appeal on merit.

164 2009 TMI - 34811 - AUTHORITY FOR ADVANCE RULINGS

M/s International Tire Engineering Resources LLC, In re

Dated: 28-10-2009

Sections - 005, 009,

Fee for technical services versus royalty – section 5(2), 9(1)(i) and article 12(5) of DTAAA with USA - business of supplying advance technology for the manufacture of radial tyres - a perpetual irrevocable right to use the know-how as well as to transfer the ownership in tread and side-wall designs and patterns required for the manufacture of radial tyres for a lump sum consideration of US \$ 7,10,220 – held that - the sum of USD 343,425 representing consideration for the transfer of know-how and the grant of right to use the know-how can be subjected to tax in India, treating the same as deemed income by way of royalty - the amount of consideration related to the transfer of ownership in the tread and side wall designs/patterns amounting to USD 218,405 cannot be subjected to tax. However, the consideration for product development, totaling 148,390 USD stands on the same footing as transfer of know-how and is liable to be taxed under the Income-tax Act – withholding rate of tax is 10% plus purchase

165 2009 TMI - 34810 - BOMBAY HIGH COURT

Plastiblends India Limited Versus Additional Commissioner of Income-Tax

Dated: 16-10-2009

Sections - 080IA,

Computation of gross total income – manner of claiming special deduction under chapter VI-A – deduction of depreciation allowance – held that - quantum of deduction under Section 80IA is not dependent upon the assessee claiming or not claiming depreciation, because, under Section 80IA the quantum of deduction has to be determined by computing total income from business after deducting all deductions allowable under Section 30 to 43D of the Act - for the purposes of deduction under Chapter VIA, the gross total income has to be computed inter alia by deducting the deductions allowable under section 30 to 43D of the Act, including depreciation allowable under section 32 of the Act, even though the assessee has computed the total income under Chapter IV by disclaiming the current depreciation

166 2009 TMI - 34808 - CALCUTTA HIGH COURT

Bengal & Assam Company Ltd. Versus Commissioner of Income Tax

Dated: 29-07-2009

Sections - 028, 037, 043,

Speculative Transactions – AO/CIT/ITAT found that the assessee has failed to explain as to whether and in what circumstances the purchases and sales were made and thus came to the conclusion and held that the assessee failed to substantiate its claim about the transactions coming within the ambit of Section 43(5)(b) and the loss under consideration as a “speculative loss” and not of the nature of “hedging loss” as claimed by the assessee – regarding claim of bad debts of from sister concerns - Tribunal found out that sole intention of the assessee was to help other sister companies therefore claim of bad debts not allowed – held that – ITAT is correct in deciding the issue – decided in favor of revenue and against the assessee – the claim of bad debts as claimed by the appellant and treating the same as business loss, cannot be accepted in view of the fact that the assessee had granted accommodation to its sister concern only

167 2009 TMI - 34807 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus Maggronic Devices Pvt. Ltd.

Dated: 07-10-2009

Sections - 009,

Royalty – ITAT held that amount paid for supply of data and information cannot be

treated as a royalty under the provisions of Section 9 of the Income Tax Act, 1961 and in allowed remittances without deduction of tax at source – held that - The foreign company has no business in India. It has no plant in India. The transaction took place in Singapore. The agreement was entered into between the parties at Singapore and the documents were handed over to the representative of the Indian company at Singapore. This is a case of outright purchase of plant know how and not a case of transfer of interest – ITAT was right in holding that the assessee had purchased the designs, sketches, photographs etc – answered in favor of assessee and against the revenue

168 2009 TMI - 34806 - HIMACHAL PRADESH HIGH COURT

Mrs. Poonam Arora and Mr. Parveen Kumar Versus Income Tax Officer and others

Dated: 14-10-2009

Sections - 080IA, 080IB,

Manufacture - “roasted groundnut” from “groundnut seed” – trading unit or manufacturing unit – held that - ‘manufacture’ a new material should be produced - The process of roasting groundnut is an extremely simple process. According to the assessee, the raw groundnut is put into machines which are in the shape of moving drums. These drums are attached to ‘Bhatties’ and the groundnut is roasted. Thereafter, the groundnut is sieved and the net product is packed into gullible packs of different sizes. In our view, this process is only of roasting and is even less cumbersome than the process applied to shrimps, prawns and lobsters in Sterling Foods’ case and the process of roasting and powdering chicory roots in Sacs Eagles Chicory’s case – assessee is not entitled for benefit of exemption u/s 80IA or 80IB

169 2009 TMI - 34804 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus Eastbourne Hotels Pvt. Ltd.

Dated: 07-10-2009

Sections - 043B,

Payment of Luxury Tax – Applicability of provisions of section 43B – deferral scheme of incentive - ITAT held that circular No.496 and 674 issued by the Central Board of Direct Taxes were applicable to the luxury tax in relation to the provisions of Section 43B of the Income Tax Act, 1961, whereas the said circulars cover the sales tax only and do not have mention of luxury tax – held that - The circulars issued by the CBDT relate to the manner in which Section 43B of the Act has to be interpreted. This interpretation has to be consistent for every tax deferral scheme and the interpretation cannot change from Act to Act. The CBDT has not granted any exemptions from the provisions of Section 43B but has held that if its instructions are complied with then it will be deemed that the requirement of Section 43B has been met. This will be applicable across the Board to all Acts and cannot be limited only to the Sales Tax Acts. - However, the assessee must produce before the Assessing Officer the requisite certificates showing that it is covered under the deferral Scheme

170 2009 TMI - 34803 - HIMACHAL PRADESH HIGH COURT

M/s. Hari Industries Versus Asstt. Commissioner of Income Tax

Dated: 19-10-2009

Sections - 145,

Rejection of books of accounts – high yield versus law yield - Addition of Rs.13,22,292/- was made on the basis that the assessee in the year in question had shown a percentage yield 1.6 %. There was an abnormal fall in the yield since in the previous

year percentage oil yield from the cedar wood was more than 4.6%. The Assessing Officer held that the yield percentage could not have been less than 4% and thereby made addition of Rs.13,22,292/-. – ITAT confirmed the order of AO – held that - The Tribunal has made reference to the arguments raised on behalf of the revenue as well as the assessee and it is apparent that one of the main arguments raised was whether the books of account could be rejected or not? In fact, according to the Tribunal, the first issue to be decided was whether the Assessing Officer was justified in rejecting the books of account. After considering the entire material, the Tribunal came to the conclusion that the Assessing Officer was justified in rejecting the books of account. It has also given reasons for the same. – order of ITAT upheld

171 2009 TMI - 34802 - MADRAS HIGH COURT

Commissioner of Income Tax-III Versus M/s. Rajini Investment Pvt. Ltd.

Dated: 05-10-2009

Sections - 036, 037,

Claim of Bad debts - The AO as well as the CIA(A)) by making a reference to Section 36(2)(i) of the Act, took the view that since the assessee discontinued his money lending business subsequent to the relevant assessment year, the claim for deduction by way of bad debts was not permissible. The Tribunal, however, by interpreting Section 36(2)(i) of the Act, held that the assessee, having suffered a bad debt, as a matter of fact in the relevant assessment year relatable to the previous year, was entitled for the deduction – held that - , merely because the money lending business was subsequently discontinued, that is in the subsequent accounting year relating to the relevant assessment year, it cannot be held that the assessee was disentitled to claim such a deduction

172 2009 TMI - 34794 - ALLAHABAD HIGH COURT

Deep Chand Gupta Versus Income Tax Officer & Others

Dated: 28-10-2009

Sections - 148,

Non supply of order of passed u/s 148 – held that - The CIT Meerut is not justified in refusing to supply of copy of the order terminating the proceedings under Section 148 of the Income Tax Act on the ground that the remedy of the petitioner lies elsewhere. On the facts of the present case, the income tax returns were invited by the department by issuing notices under Section 148 of the Act. The said notices were issued by the assessing authority. In this view of the matter, the assessing authority or the Commissioner of Income Tax, as the case may be, is under legal obligation, to give a copy of the order terminating the proceedings under Section 148 of the Act. We also noticed the observation made by the CIT Meerut that the notices under Section 148 of the Act are meant to tax the escaped income and create additional demand and they are not meant to regularise the belated returns claiming refund. The said observation is totally uncalled for, when the proceedings were initiated by the department on their own accord.

173 2009 TMI - 34777 - AUTHORITY FOR ADVANCE RULINGS

Mrs. Delna Rustum Boyce, In re

Dated: 28-10-2009

Sections - 080IB,

Processing – Fruit Juice, Mixed Fruit Juice, Fruit Juice Concentrate, Fruit Powder – held that - the expression should not be confined to minimal processing that would not change the identity of the fruit. If processing and preservation is to be confined only to

fruits as such and not to the derivatives from the fruits, the benefit intended to be given to agro-processing industries will operate in a very limited sphere, thereby defeating the very object of the provision. The extraction of juice and oil from the fruits or further converting the homogenized juice into fruit powder and adding the substances meant for preservation would legitimately fall within the sweep of the expression 'processing' – exemption u/s 80IB allowed.

174 2009 TMI - 34776 - ALLAHABAD HIGH COURT

Commissioner of Income Tax Versus Banaras Hotel Ltd.

Dated: 28-10-2009

Sections - 80HHD,

Exemption u/s 80HHD - The AO found that the assessee has claimed the deduction under Section 80 HHD on room rent also, which according to him, is not permissible under the said Section. He was of the view that under Section 80 HHD, only such deductions will be admissible which relate to the service provided to the foreign tourists – held that - If the room rent is excluded from the consideration for the purposes of Section 80HHD, the object of enactment of Section 80HHD would become meaningless and it will fail to achieve its purpose. - The ITAT has rightly reached to the conclusion that the provisions for amenity in the nature of rooms is an integral part of hotel business and if someone prefers to enjoy this amenity, then, he is said to have availed the services of nature as envisaged in the provisions of Section 80 HHD - the room rent charged by the hotel should also be taken into consideration for granting deduction under Section 80 HHD of the Income Tax Act, 1961

175 2009 TMI - 34775 - DELHI HIGH COURT

THE COMMISSIONER INCOME TAX Versus M/S MMTC OF INDIA

Dated: 23-10-2009

Sections - -

Review of order – held that - , the entire purpose of routing matters through the Committee on Disputes is that, the State and/or its instrumentalities do not fritter away valuable funds, and clog the courts with disputes which perhaps can be resolved inter-departmentally. In the instant situation, where the court has already provided the answer, to the issues raised in the reference; an approval for filing the reference was not a pre-requisite - since all that the reference sought to achieve was to bring the impugned judgment in line with an earlier decision of this court. If we are to take a strict view of the matter, the institution of the instant review application ought to have had the approval of the Committee on Disputes. Which, it does not have. – Review application dismissed.

176 2009 TMI - 34774 - PUNJAB AND HARYANA HIGH COURT

M/s Dewan Engineering Works Sirhind Versus The Commissioner of Income Tax, Patiala and another.

Dated: 14-10-2009

Sections - 275,

Time limit for imposing penalty – period of limitation – six months – held that - the assessee filed appeal before the Tribunal and also wrote a letter seeking deferment of penalty proceedings till the appeal was decided. On the request of the assessee, the proceedings were deferred and penalty proceedings were initiated after order of the Tribunal. Even if delay was not condoned and the assessee filed time barred appeal and on that ground sought deferment of penalty proceedings, the assessee could not be heard to say that filing of appeal should be ignored. No one can take advantage of

his own wrong - since the quantum appeal was pending before the Tribunal, the limitation period for imposing penalty had not yet expired

177 2009 TMI - 34773 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax Versus M/s Torque Pharmaceuticals Pvt. Limited

Dated: 15-10-2009

Sections - 031,

Current Repairs - The assessee made a claim for repair and maintenance of buildings which was partly disallowed by the AO on the ground that the same gave enduring benefit to the assessee. - The disallowance by the AO was upheld by the CIT(A) - The expenditure which was allowed by the AO was disallowed by holding that the same would confer advantage and would bring into existence new asset and such expenditure was beyond the concept of 'current repairs' under section 31 of the Act. The Tribunal restored the order of the Assessing Officer and set aside the enhancement – held that - test laid down for determining whether particular expenditure was covered by the concept of 'current repairs' is well known and though it may, to some extent, over-lap with the parameters applied for determining whether expenditure was revenue or capital with reference to Section 37 of the Act, there may be difference to the extent that even capital expenditure may be covered by 'current repairs' in certain situations – order of ITAT sustained.

178 2009 TMI - 34771 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus HYBRID RICE INTERNATIONAL PVT. LTD.

Dated: 09-10-2009

Sections - 032, 034, 043,

Depreciation – WDV on germplasm seeds which is a plant – actual cost – held that - depreciation is a privilege and can only be on the basis of actually allowed and not notionally allowed – if assessee did not claim the benefit of depreciation during the earlier year, the cost can not be reduced notionally for the purpose of depreciation for subsequent years

179 2009 TMI - 34755 - ALLABAHAD HIGH COURT

M/s. Sabet India Private Ltd. Versus Assistant Commissioner of Income-Tax

Dated: 08-10-2009

Sections - 147,

Validity of notice issued u/s 147 – held that - The case on hand is indisputably not a case for computation of capital gains. The dispute relates with regard to the investment in the building made by the petitioner-company during the relevant assessment years. - no reference to the Valuation Cell could have been made for the purposes of determining the investment made by the petitioner in the building - report of D.V.O cannot form relevant material for the purposes of assessment of Income Tax of a assessee. If it cannot form basis for the purposes of determining the investment made by the assessee for the building, obviously it is not a relevant material so far as re-assessment proceedings are concerned – notice u/s 147 scrapped.

180 2009 TMI - 34754 - MADRAS HIGH COURT

S. Pankajam Versus Chief Commissioner of Income Tax

Dated: 10-09-2009

Sections - 119,

Orders of CBDT u/s 119(2)(a) – waiver of interest – earlier waiver of interest granted on the basis of a circular / order dated 23.5.1996 and 30.01.1997 – that circulars were withdrawn subsequently – held that - Considering the limited prayer of the learned Senior Counsel appearing for the parties and taking into consideration the very order itself clearly states that when there is a rejection such petition may be reconsidered and decided in the new order dated 26.06.2006, no harm could be caused to the Department in reconsidering the very same issue especially when in identical matter between the same parties waiver had been given to the other group. – entitled to get waiver

181 2009 TMI - 34752 - ALLAHABAD HIGH COURT

[Mohmed Zuber Quereshi Versus Commissioner Of Income Tax](#)

Dated: 07-10-2009

Sections - 028, 133,

Declaration of higher stock before bank - AO has obtained a statement from the bank under Section 133 (6) of the Income-tax Act, 1961. The information, which has been obtained from the bank is with regard to the stocks available with the assessee on different dates. - Accordingly closing stock of the appellant on an average basis for the assessment year under consideration is Rs.9,75,775/-, instead of Rs.3,48,559/- and accordingly enhanced the taxable income – Held that - no foundation has been laid down for enhancement of stock except that it was taken on an average of the stock furnished by the assessee to the Bank - The necessary information was obtained from the Bank under Section 133 (6) of the Income-tax Act. Further, no cogent reason has been assigned by the Assessing Authority as to why he has taken average of the stock instead of relying on the closing stock as disclosed in the accounts books on 31.3.2002 – matter remanded for fresh consideration

182 2009 TMI - 34751 - ALLAHABAD HIGH COURT

[Commissioner of Income Tax Versus M/s. U.P. State Bridge Corporation Ltd.](#)

Dated: 07-10-2009

Sections - 271,

Penalty u/s 271(1)(C) – held that - While perusing the order of the Commissioner of Income-tax, it reveals that penalty has been levied on the basis of the additions which are made either due to difference of opinion or merely on presumptions or of routine nature. Before imposing penalty for concealment of income, the Assessing Officer should bring concrete evidence or material on record for his satisfaction that income has been concealed or inaccurate particulars thereof have been furnished - Mere initiation of proceedings under Section 271(1)(c) cannot be assumed that such a satisfaction was arrived at by the Assessing Officer. Accordingly, the appeal was allowed and the penalty deleted being not sustainable.

183 2009 TMI - 34750 - ALLAHABAD HIGH COURT

[Assistant Commissioner of Income Tax Versus Income Tax Appellate Tribunal And Another](#)

Dated: 08-10-2009

Sections - 080HHC,

Export Realization – petitioner contended that - that export realizations after one year but before the completion of two years should have taken for deduction u/s 80 HHC of the Income Tax Act – Held that – matter remitted to AO to decide the same strictly on merit after examining the entire evidence but by providing the reasonable opportunity to

the assessee

184 2009 TMI - 34749 - MADRAS HIGH COURT

Deputy Commissioner of Income Tax Versus K.S. Suresh

Dated: 21-07-2009

Sections - 148,

Challenge to the notice issued u/s 148 – held that - as stipulated under Section 147/148 of the Act, it is not necessary for the revenue to establish to the entire satisfaction of the respondent reasonable belief based on which the notice came to be issued under Section 148 - the assesses have adopted a sinister motive in challenging the notice under Section 148 of the Income Tax Act and thereby thwarted the reassessment proceedings till this date - exemplary costs awarded as against the assesseees

185 2009 TMI - 34748 - MADRAS HIGH COURT

Commissioner of Income Tax Versus Shri K.K. Palanisamy

Dated: 06-10-2009

Sections - 054, 147,

Issue of notice u/s 147 – denial of exemption u/s 54 – held that - the matter went before the Commissioner of Income-tax (Appeals), who took the view that it was not really a case of escaped assessment, but was one of change of opinion by the assessing Authority - when the reassessment notices were issued and when admittedly there is no failure on the part of the assessee, who disclosed fully and truly all the material facts for assessment, it can only be construed as change of opinion and that it will not come under the category of escapement of assessment – revenue appeal dismissed.

186 2009 TMI - 34746 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus M/s. Kiran Enterprises and others

Dated: 06-10-2009

Sections - 080IA,

Scope of term “derived from industrial undertaking” – freight subsidy – held that - one needs to read Sections 80I, 80-IA and 80-IB as having a common Scheme - profits are to be computed as if such eligible business is the only source of income of the assessee - apart from eligibility, sub-section (1) purports to restrict the quantum of deduction to a specified percentage of profits. This is the importance of the words “derived from industrial undertaking” as against “profits attributable to industrial undertaking” - the transport subsidy received by the assessee is not a profit derived from business since it is not an operational profit. The source of the subsidy is not the business of the assessee but scheme of the Central Government - decided in favour of the revenue and against the assessee

187 2009 TMI - 34745 - ALLAHABAD HIGH COURT

Shri Ram Murti Smarak Trust Versus Chief Commissioner of Income Tax

Dated: 08-10-2009

Sections - 010(23C),

Exemption u/s 10(23-C) – rejection of – place of service of notice – opportunity of being heard – Petitioner in the writ petition as well as in rejoinder affidavit has tried to contend that notice was served on the petitioners. It has been reiterated that the petitioners have got its head office at Lucknow and the petitioner is assessed at Lucknow, as such there was no occasion for serving notice at Bareilly. Petitioner in the writ petition as well as in rejoinder affidavit has tried to contend that notice was served on the petitioners. It

has been reiterated that the petitioners have got its head office at Lucknow and the petitioner is assessed at Lucknow, as such there was no occasion for serving notice at Bareilly. - held that - as such liberty is given to the petitioner to approach the CCIT ventilating its grievances.

188 2009 TMI - 34738 - CALCUTTA HIGH COURT

Commissioner of Income Tax, Kolkata - III Versus Bhagwati Prasad Agarwal

Dated: 29-04-2009

Sections - 045, 056,

Information from third source - determination of nature of income - Rs.34,81,165/- was treated as income from other sources by the AO, based on the information received from the Calcutta Stock Exchange. The amount was claimed by the assessee as long term capital gains - CIT(A) and ITAT deleted the additions - Held that - Exchange shows that the name of the assessee is not appearing in respect of the transactions-in-question. The tribunal found that the chain of transaction entered into by the assessee have been proved, accounted for, documented and supported by evidence. The assessee produced before the Commissioner of Income Tax (Appeal) the contract notes, details of his DEMAT account and, also, produced documents showing that all payments were received by the assessee through bank - Information from stock exchange can not be relied upon - Revenue Appeal rejected.

189 2009 TMI - 34721 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-II Versus M/s. Nank Milk Food (India) Pvt. Ltd.

Dated: 27-08-2009

Sections - 271,

Deletion of penalty – loss return - The assessee was alleged to have concealed income while declaring net loss. The Assessing Officer after making assessment, initiated proceeding for levy of penalty and passed an order of penalty. Levy of penalty was deleted by the CIT(A), which view has been upheld by the Tribunal – held that - even if there is loss, penalty could be levied for concealment of income under Section 271(1)(c) of the Act. This legal position has not been disputed by learned counsel for the assessee - the view taken by the Tribunal has to be reversed. The substantial question of law has to be answered in favour of the revenue and against the assessee – penalty to be levied

190 2009 TMI - 34720 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Versus M/s. Porrits & Spencers (Asia) Limited

Dated: 30-07-2009

Sections - 037,

Foreign Tour Expenses of wife – Nexus with the business activity - The Assessing Officer disallowed foreign tour expenses of wife of the Managing Director. The CIT(A) allowed the same but the Tribunal allowed the same to the extent of 50% - held that – 100% expenditure on foreign travel of wife of the Managing Director allowed.

191 2009 TMI - 34719 - SUPREME COURT

Assistant Commnr of Income Tax, Indore Versus M/s. Neo Sack Private Limited

Dated: 09-10-2009

Sections - 080IA,

Export Incentive - Deduction u/s 80IA – Held that – since the question under consideration has neither been answered by Income Tax Appellate Tribunal nor by the

High Court. We grant liberty to the appellant herein to move the High Court and raise the issue specifically, particularly in view of the fact that an important question of law on interpretation of Section 80IA of the Act arises for determination

192 2009 TMI - 34695 - ALLAHABAD HIGH COURT

M/S Kraft Palace Versus C.I.T.

Dated: 05-10-2009

Sections - 037,

Deduction under section 37(2A) - expenditure on providing 'hospitality' - On scrutiny of the details of expenses, it was found by the Assessing Officer that the expenditure includes expenses on account of providing hot and cold drinks, beer and whiskey to foreign tourists. Consequently, it allowed a statutory deduction of Rs.5,000/- and a sum of Rs.1,09,620/- was disallowed treating the expenditure as that of entertainment nature – ITAT confirmed the order of AO – Assessee pleaded that expenditure disallowed by the Tribunal can be allowed under Section 37 (1) of the Income Tax Act – Held that – question of deduction under section 37(1) has not be referred to high court – therefore answer is restricted to deduction u/s 37(2) – order of ITAT uphold.

193 2009 TMI - 34685 - DELHI HIGH COURT

INDO RAMA SYNTHETICS (I) LTD. Versus COMMISSIONER OF INCOME TAX

Dated: 22-09-2009

Sections - 115JB,

Computation of Book Profit for the purpose of MAT u/s 115JB – Minimum Alternate Tax (MAT) - amount withdrawn from the revaluation reserve and credited to the profit and loss account – Held that - assessee company takes benefit of additional depreciation on account of revaluation of the fixed assets by increasing the revaluation reserve in the relevant assessment year 2000-2001 and consequently, the same definitely has the effect of reducing the net profit for the said Assessment Year. - the amount withdrawn from the revaluation reserve and credited to the profit and loss account is not to be reduced from the net profit as per the profit and loss account unless the book profit had been increased by the amount of the reserve in the year of the creation of such reserve.

194 2009 TMI - 34684 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus M/S CREATIVE DYEING & PRINTING PVT. LTD.

Dated: 22-09-2009

Sections - 002(22),

Deemed Dividend - nature of advance payment for a commercial purpose to the assessee company by its sister concern – held that - , the word 'advance' has to be read in conjunction with the word 'loan' - Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment - that the amounts advanced for business transaction between the parties was not such to fall within the definition of deemed dividend under Section 2(22)(e).

195 2009 TMI - 34682 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus N. W. W.

Dated: 22-07-2009

Sections - 133A,

Survey – Surrender of Income – Section 133A - A survey was conducted under section 133A of the Act on December 4, 2003, at the premises of the assessee. In pursuance thereof, the assessee made surrender with condition that there will be no penalty or prosecution. It has been found by the CIT(A) as well as ITAT that the surrender was accepted. However, the AO added taxable income over and above the surrendered amount, which was deleted by the CIT(A) as well as by ITAT – held that - We are unable to hold that any substantial question of law arises. There is a concurrent finding of fact that the Department had accepted the surrendered income and if the finding is against the record, the remedy of the appellant is to apply for rectification and not by way of this appeal – revenue appeal dismissed

196 2009 TMI - 34679 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus NIIT Ltd.

Dated: 22-09-2009

Sections - 194I,

TDS on payment made to Franchisee - head “Infrastructural Claims” – Section 194I - TDS on rent – Held that - that the broad objective of the agreement between the assessee and the Franchisee was to share the revenue and certainly it was not hire the premises provided by the assessee. Therefore, the assessee is not liable to deduct the taxes under section 194-I of the act in respect of the amount shared by the assessee and remitted to the Franchisee for infrastructure claims

197 2009 TMI - 34674 - PUNJAB AND HARYANA HIGH COURT

BUDHEWAL CO-OP. SUGAR MILLS LIMITED Versus COMMISSIONER OF INCOME-TAX

Dated: 22-05-2009

Sections - 80P,

Co-operative society – user of power - Whether a co-operative society engaged in the business of manufacture and sale of sugar out of the sugarcane grown by its members, can be denied deduction under section 80P(2)(a)(iii) of the Income-tax Act, 1961 on the ground that processing involves use of power? – held that - the field of operation of sub-clause (iii) and sub-clause (v) is different inasmuch as sub-clause (iii) applies where the members of the co-operative societies are the growers of the agricultural produce whereas sub-clause (v) applies in case where the agricultural produce need not be grown by its members but may belong to them. Additionally, a notice can be taken of a fact that there cannot be sufficient market for purchase of sugarcane itself as grown by the members. The sugarcane necessarily is to be converted into sugar, etc., before it can be made marketable. In the light thereof, keeping in view the legislative intent for enacting section 80P(2)(a)(iii), the benefit thereunder could not be denied to the appellant

198 2009 TMI - 34672 - PATNA HIGH COURT

MAURYA REALTORS PVT. LTD. Versus UNION OF INDIA AND OTHERS

Dated: 20-07-2009

Sections - 147, 148, 150,

Reassessment – held that - the provisions of section 150(1) of the Act opens with a non obstante clause and overrides every other provision of the Act including sections 147, 149, 151, etc. It is thus evident that if circumstances exist so as to justify initiation of proceedings under section 150(1) of the Act, then other circumstances indicated in

section 147 and the allied provisions of the Act are not required to be complied with - It is evident that certain items have been deleted from the assessed income of Sanjiv Kumar and have been directed to be considered in the petitioner's case. This is to give effect to the appellate order of an authority contemplated by section 150(1) of the Act. - it is open to the authorities to reopen the concluded assessment proceedings

199 2009 TMI - 34670 - UTTARAKHAND HIGH COURT

CIT Versus NATIONAL INSTITUTE OF AERONAUTICAL ENGINEERING EDUCATIONAL SOCIETY

Dated: 15-07-2009

Sections - 002(15), 012AA,

Charitable Purpose – Registration u/s 12AA – ITAT held that the assessee carded on activity for charitable purpose in terms of section 2(15) and directed the Commissioner of Income-tax to grant registration under section 12AA of the Act to the assessee society Held that - that mere imparting education for primary purpose of earning profits cannot be said to be a charitable activity - , in the expression “charitable purpose”, “charity” is the soul of the expression - Mere trade or commerce in the name of education cannot be said to be a charitable purpose. And the Commissioner Income-tax has to satisfy himself as provided under sect 12AA of the Act before allowing the registration – order of ITAT is not correct – decided in favor of revenue.

200 2009 TMI - 34669 - UTTARAKHAND HIGH COURT

CIT AND ANOTHER Versus IQBALPUR CO-OPERATIVE CANE DEVELOPMENT UNION LTD.

Dated: 08-05-2009

Sections - 080P,

Interest on investment of unutilized funds – co-operative societies – ITAT hold that the interest earned by the assessee-co-operative society (engaged in agricultural credit facility), from unutilized funds invested in the banks other than the co-operative bank, as fixed deposit receipts, and Kisan Vikas Patra with post offices, is liable to be deducted under section 80P of the Income-tax Act, 1961 – Held that deduction is allowed u/s 80P – order of ITAT upheld – decided in favor of assessee.

201 2009 TMI - 34666 - MADRAS HIGH COURT

Tube Investments of India Limited Versus The Assistant Commissioner of Income Tax

Dated: 29-09-2009

Sections - 040, 194C,

Non compliance of section 194C – TDS - disallowance u/s 40(a)(ia) – constitutional validity – held that - that there is no ambiguity to be cleared, the question of applying the doctrine of Reading Down to Section 40(a)(ia) does not arise - provision is constitutionally valid, having regard to the various inbuilt safeguards in the substantive Section read along with its proviso - the object sought to be achieved while enacting Section 40(a)(ia) was for augmenting the provision of TDS, with which object we do not find any impermissibility or lack of constitutionality and hence there is no scope for applying the doctrine of Reading Down to the said provision – writ petitions rejected.

202 2009 TMI - 34665 - PATNA HIGH COURT

BENGALI SINGH (HUF) Versus COMMISSIONER OF INCOME TAX AND ANOTHER

Dated: 11-02-2009

Sections - 022,

Rental Income – Joint Ownership – Partition of HUF – High court in earlier writ petition found that there is no partition and income to be assessed as family income – matter is pending in Supreme Court – Subsequent writ petition on the basis of municipal receipts can not be entertained since the matter is under consideration before the supreme court.

203 2009 TMI - 34664 - CHHATTISGARH HIGH COURT

INCOME-TAX OFFICER Versus DHAN SAI SRIVAS (and other cases)

Dated: 16-06-2009

Sections - 010(10C),

Retrospective application of amendment to section 10(10C) – ITAT allowed the claim of the assessee for exemption under section 10(10C) of the Income-tax Act, 1961 (for short 'the Act') to the extent of Rs. 5,00,000 by applying the prospective amendment retrospectively – held that - salary or benefit in lieu of salary payable to an employee opting for voluntary retirement is chargeable to tax under section 15(a) as soon as it became due, though not paid. The amount so received is exempted from being charged to tax to the extent of Rs. 5,00,000 by the reason of section 10(10C) of the Act. Even if the payment is stretched over a period of years, the same would not become chargeable to tax in any subsequent assessment year – decided in favor of assessee – revenue's appeal dismissed.

204 2009 TMI - 34663 - CALCUTTA HIGH COURT

SINGHAL ENTERPRISES P. LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 06-01-2009

Sections - 127,

Transfer of case u/s 127 after search– objection filed by assessee – held that - In the instant case, the petitioner had filed two representations dated June 11, 2008, and September 8, 2008, objecting to the proposed transfer. However, the order impugned is silent how the replies and enclosures on record were considered. Since the two written objections were filed and as filing of objection is not an empty formality, it was incumbent upon the Commissioner of Income-tax, Kolkata-I, respondent No. 1, to deal with the objections. - Hence, the order impugned passed under section 127 of the Act by respondent No. 1 cannot be sustained and is, thus, set aside and quashed

205 2009 TMI - 34661 - MADRAS HIGH COURT

1. CANARA JEWELLERS 2. YOGESH PALKE alias YOGESH ACHAR (Decd. by LRS) Versus SETTLEMENT COMMISSION AND ANOTHER

Dated: 16-07-2009

Sections - -

Difference between closing and opening stock – order of settlement commission – held that - When once the income disclosed by the assessee under section 245C is not accepted as full and true disclosure of their respective income, in view of the judgments of the Supreme Court and this court, as referred to above, we hold that the applications under section 245C preferred by the assessee were not maintainable and, therefore, the Settlement Commission had no jurisdiction to pass any order enhancing the income, showing higher income in respect of the assessee. - So far as section 245F is concerned, though the Settlement Commission is empowered to have all powers which are vested in an income-tax authority under the Act, in addition to the power conferred under Chapter XIX-A, but such power can be exercised for the purpose of procedure of settlement of application under section 245C and not for reassessment of tax of a

particular year which is vested with the assessing authority. – Order of settlement commissioner set aside.

206 2009 TMI - 34655 - CALCUTTA HIGH COURT

KOLKATA PORT TRUST Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 12-01-2009

Sections - 154,

Consequence of amendment to section 43(6) – Held that - by letter dated January 2, 2009, the petitioner has prayed the matter before the High Powered Committee for grant of necessary clearance for pursuing the matter before the High Court at Calcutta no order is passed on this writ petition. Hence, the writ petition is dismissed. However, the petitioner is at liberty to file application for revival of the writ petition after clearance is obtained from the Committee.

207 2009 TMI - 34652 - GAUHATI HIGH COURT

COMMISSIONER OF INCOME TAX Versus INDIA CARBON LIMITED

Dated: 21-04-2009

Sections - 154,

Order of ITAT - AO rectified the order u/s 154 by addition of an amount of Rs. 1,27,45,138 received by the respondent-company on account of transport subsidy – CIT(A) and ITAT confirmed the addition and rectification – Held that - The Tribunal is a quasi-judicial body and is the last fact finding authority under the provisions of the Act - Even in a situation where the first appellate authority affirms the finding of the primary authority, a minimum reasoning has to be disclosed though in such cases an elaborate discussion of the various issues need not be recorded, as the same already exists in the order of the primary authority. In the present case when the order of the Commissioner (Appeals) itself was a highly cryptic order, the same could not have been affirmed by the learned Tribunal in the manner done – matter remanded to ITAT for de novo consideration.

208 2009 TMI - 34651 - KARNATAKA HIGH COURT

CIT AND ANOTHER Versus KARNATAKA URBAN INFRASTRUCTURE DEVELOPMENT AND FINANCE CORPORATION

Dated: 09-01-2009

Sections - 028, 056,

Interest Income - assessee is a nodal agency and is not carrying on any business of its own. It is only an implementing agency. The money received from the bank and interest accrued thereon is parked with the assessee for implementation of the scheme entrusted to it. It is not carrying on business activities of its own and every rupee received by it is accounted for – held that - in computing the total income of the assessee for any previous year the interest accrued on the bank deposits cannot be treated as an income of the assessee as the interest is earned out of the money given by the Government of India for the purpose of implementation of the mega city scheme – interest income is not chargeable to tax.

209 2009 TMI - 34630 - AUTHORITY FOR ADVANCE RULINGS

Gearbulk AG., In re

Dated: 30-09-2009

Sections - 172,

Charter of Vessels – Permanent Establishment - The applicant, during the relevant

years appointed JM Baxi & Co. as its port agent in India for handing the cargo. The activities of JM Baxi & Co., an independent shipping and logistics service provider consists of shipping agency services, charter brokering services and clearing and forwarding agent services. J.M.Baxi & Co. is working as port agent in India on behalf of several other shipping companies. JM Baxi & Co. has, on behalf of the applicant, deposited income-tax under S.172 of the IT Act, on 7.5% of the freight charges received by the applicant. – Held that – The shipping profit is not taxable in India – There is Permanent Establishment in India - freight income received by the applicant on account of carrying the cargo from the Indian ports to the foreign ports by deploying chartered vessels is liable to be taxed in India

210 2009 TMI - 34629 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Versus M/s Porrits & Spencers (Asia) Limited

Dated: 30-07-2009

Sections - 037,

Disallowance of foreign tour expenses without evidence, traveling of wife, commission paid to MD, personal use of car – The Assessing Officer disallowed foreign tour expenses of wife of the Managing Director. The CIT(A) allowed the same but the Tribunal allowed the same to the extent of 50%. The Assessing Officer also disallowed the commission paid to the Managing Director and other executives. However, the CIT(A) and the Tribunal allowed the same. The Assessing Officer disallowed amount attributable to personal use of the car but the CIT(A) held that expenditure was not attributable to personal use. - Held that – the issues involved are question of fact and are not substantial question of law - The findings of the Tribunal on those issues are not liable to be interfered with

211 2009 TMI - 34628 - PUNJAB AND HARYANA HIGH COURT

Budhewal Co-op. Sugar Mills Limited Versus C.I.T.

Dated: 22-05-2009

Sections - 080P,

Deduction u/s 80P(2)(a)(iii) - business of manufacture and sale of Sugar out of the sugar-cane grown by its members – held that - The court only interprets the law and cannot legislate. If a provision of law is misused and subjected to the abuse of the process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary. Legislature casus omissus cannot be supplied by judicial interpretative process - keeping in view the legislative intent for enacting Section 80P(2)(a)(iii), the benefit thereunder could not be denied to the appellant - to the view expressed by the Division Bench of this Court in Karnal Cooperative Sugar Mills Ltd's case over-ruled.

212 2009 TMI - 34627 - MADRAS HIGH COURT

Commissioner of Income Tax Versus M/s. VTM Limited

Dated: 08-09-2009

Sections - 032,

Additional Depreciation on Windmill – whether generation of power by windmill would amount to manufacture or production of any article or thing – held that - When we find that the Tribunal has applied the law correctly in the impugned order, there is no gain saying that there was an earlier order by the Co-ordinate Bench and therefore, for that reason, this time also the Tribunal should have blindly followed its own earlier decision even if such earlier decision did not reflect the correct position of the law. – Additional depreciation allowed – decision of the ITAT hold that activity of generation of power is manufacturing activity upheld.

213 2009 TMI - 34624 - BOMBAY HIGH COURT

Star Television News Limited Versus Union of India and others

Dated: 07-08-2009

Sections - 245D, 245HA,

Arbitrary Cut-off Date - Constitutional validity – Time Limit for settlement of cases under Income Tax – Held that - A Harmonious Interpretation of Section 245D(4A) and Section 245HA(1)(iv) would remove the vice of arbitrariness and save the provisions from being struck down as unconstitutional. - for an application to abate under section 245HA(1)(iv) it must mean that Parliament assumed that the Settlement Commission would disregard the aforesaid mandatory statutory command to dispose of all such applications by the specified date – an assumption or intention, it is submitted, that can never be ascribed to Parliament. However, even if such an intention could be ascribed to Parliament, the result would necessarily be to render section 245D(4A)(i) redundant and otiose - Section 245HA(1)(iv) to mean that in the event the application could not be disposed of for any reasons attributable on the part of the applicant who has made an application under Section 245C. Consequently only such proceedings would abate under Section 245HA(1)(iv).

214 2009 TMI - 34623 - MADRAS HIGH COURT

MANGILAL JAIN Versus INCOME-TAX OFFICER

Dated: 16-06-2009

Sections - 068,

Cash Credit – Held that - that merely because the loan transaction was sought to be relied upon by the assessee, as that transaction was given by cheque, by itself will not prove the genuineness of the transaction - that the assessee must prove not only the identity of the creditor but their creditworthiness and genuineness of the transaction has also to be proved beyond any reasonable doubt by the assessee - has not made any legal ground calling for interference of this court and the order passed by the Tribunal in respect of both the claims raised cannot be said to be perverse or illegal – appeal dismissed.

215 2009 TMI - 34621 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ZENITH STEEL PIPES AND INDUSTRIES LTD.

Dated: 14-01-2009

Sections - 035B,

Weighted Deduction u/s 35B – Held that - in view of the admitted fact that as a major percentage of the goods advertised were in fact sold within India, it cannot be said that the expenditure was incurred wholly and exclusively for the sale of exported goods - the expenditure on fees paid for certificates of origin, legalisation of export documents and stamp fees on such documents would also not amount to expenditure on performance of services outside India or expenditure on activities for the promotion of sale outside India - export inspection charges, brokerage, insurance, bank charges and clearing charges are not entitled to weighted deduction - printing and stationery and rent for teleprinter and direct telephone lines, is merely normal business expenditure - that fees paid to the Registrar of Companies amounts to a capital expenditure - expenditure had been incurred on obtaining market survey for setting up of a new unit of manufacturing, the said expenditure amounted to capital expenditure – assessee not entitled for weighted deduction u/s 35B

216 2009 TMI - 34620 - BOMBAY HIGH COURT

YUVRAJ Versus UNION OF INDIA AND ANOTHER

Dated: 30-04-2009

Sections - 147,

Issue of notice u/s 147 – Held that - The Assessing Officer had applied his mind and then passed a reasoned order for issuing notice under section 148. There is no dispute on the point that mere issuance of notice would not conclude the issue finally. At that stage, it would be sufficient if the Revenue demonstrates that there were good reasons which were recorded by the Assessing Officer by applying his mind. We find that this court shall not interfere at the stage of mere issuance of notice. The petitioner is not remedyless and all the opportunities which are available to the petitioner in law could be utilized by the assessee – notice issued u/s 147 to be complied with.

217 2009 TMI - 34615 - DELHI HIGH COURT

SHIPRA SRIVASTAVA & ANR. Versus ASSTT. COMMISSIONER OF INCOME TAX

Dated: 08-09-2009

Sections - 147, 148,

Reasons Reopening of an Assessment – Earlier returns were processed u/s 143(1) - AO found that the petitioners have wrongly valued perquisite on account of rent free accommodation provided by the employers of the petitioners and the annual letting value of the house property should have been declared for assessment purposes as the assessee had made a claim of interest expenditure on the housing loan taken for the property - petitioner contended that the notices in question are clearly misconceived and are simply for harassing the petitioners who are professionals. He contended that the reasons which have been given for reopening of the assessment do not show that any new material has come to light for reopening of the assessment – Held that - present writ petition is liable to succeed with costs - The reasons which have been recorded seeking reopening of the assessment show that there is no application of mind by the AO which can be said to be the mind of a reasonable person to arrive at a conclusion – Notice issued u/s 147/148 quashed with cost of Rs. 25,000/-

218 2009 TMI - 34614 - DELHI HIGH COURT

TRIVENI ENGINEERING & INDUSTRIES LTD. Versus THE COMMISSIONER OF INCOME TAX

Dated: 11-09-2009

Sections - 036, 037, 043B, 145,

Change in method of valuation of closing stock – deduction of interest u/s 36(1)(ii) – contingent liability or a crystallized liability – Held that the change in the method of valuation of the closing stock was not bona fide for the A.Y. in question seeking of change in the method of valuation of the closing stock was in the year where there were huge rise in the profits of the assessee company and the change was adopted in order to reduce profits in the relevant year – Interest accrued upto 31.3.1991 but payable from 1996 to 2000 - interest cannot be said to have accrued to become due and payable in the relevant P.Y. interest cannot be said to have accrued to become due and payable in the relevant previous year – disallowance of interest u/s 36(1)(ii) read with S. 43B(d) upheld - Once this issue was alive and pending and the appellant company could have succeeded in the Special Leave Petition in the SC, clearly, the liability remained contingent and could not be said to have been crystallized – assessee's petition dismissed

219 2009 TMI - 34613 - ALLAHABAD HIGH COURT

Commissioner of Income Tax Versus M/s Badri Prasad Vishvanath Jewellers,

Dated: 16-09-2009

Sections - -

Additions on account of increase in weight of gold ornaments and silver ornaments – AO made the addition of Rs. 26,85,161 and 49517 – ITAT deleted the addition – Assessing Officer has made addition in all the assessment years merely on the basis that percentage of alloy being mixed in the pure gold of 24 caret by assessee is shown at 8 to 9% while in general practice, it is upto 20% and the remaining portion of percentage is being retained by the assessee and sold outside books. The contention of the assessee is that whatever gold is being given to the karigars is duly recorded in the books of account and amount of gold/silver ornaments returned by the karigars alongwith increase in weight due to mixing of alloy which is always upto 9% is returned and duly recorded in the books of account - Held that - additions were rightly deleted in each year in respect of increase in weight on account of impurity content in silver/gold ornaments and all the grounds of the department fail on this point

220 2009 TMI - 34612 - DELHI HIGH COURT

ANURENA TRISTAR Versus I.T.O.

Dated: 14-09-2009

Sections - 032,

Additional Depreciation u/s 32(1) – ITAT have held that the appellant-assessee is not entitled to the benefit of additional depreciation as the machinery in question is not new – Held that - There is a finding of fact arrived at by all the three authorities below that the machinery is old/used machinery and the same cannot be interfered by this Court under Section 260A of the Act as undoubtedly the Income Tax Appellate Tribunal is the final fact finding authority. In view of the finding of fact that machines in question are old machines, we uphold the order of Income Tax Appellate Tribunal that the assessee is not entitled to the benefit of additional depreciation of 15% under Section 32(1)(iia).

221 2009 TMI - 34610 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PIONIOR MINERALS

Dated: 19-02-2009

Sections - 032,

Depreciation on compressor – Whether claim of higher rate of depreciation mandatory in the return - The assessee filed its return and claimed depreciation on the compressor at 30 per cent. being used in mines and quarries. The Income-tax Officer allowed 10 per cent. depreciation holding that under the Income-tax Rules, no such rate has been prescribed in respect of this item of machinery Held that - If the compressor is used for mining and quarries, depreciation has to be allowed to the extent of 30 per cent - the petitioner has no rebuttal to it – petitioner disputed it by submitting that it can be allowed only if it has been claimed by the assessee under this head - Record possessed by the learned counsel for the petitioner do not spell out whether in the assessment, it has been claimed under this particular entry - If, in the assessment, the assessee has claimed depreciation under entry No. 8, as stated above, the assessee in that event is entitled to the depreciation at 30 per cent – matter remanded to ITO of examination of facts.

222 2009 TMI - 34609 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PARAMHANS ASHRAM

Dated: 17-02-2009

Sections - 011,

Exemption u/s 11 – Charitable Trust - as per the trust deed, the trust is involved in the activities of maintenance of the existing dharamshalas for help of members of the Agarwal community and other widows and children. The objects of the trust are charitable and religious and the activities of the trust are in conformity with the aims and objects of the trust. It has been registered with the Charity Commissioner, Government of Rajasthan – Held that - sole purpose of the trust was to run a dharamshala which is an object of general public utility and so when this was the sole object, the income derived therefrom in the shape of the rent from the dharamshala is exempt under section 11 read with section 2(15) of the Act – reference answered in favor of assessee and against the revenue.

223 2009 TMI - 34607 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus WOLKEM INDIA LTD.

Dated: 14-01-2009

Sections - 037, 145,

Obsolete Stores – Held that - As per the provisions of section 145A of the Act of 1961, the income from business under the head “Profits and gains from business” has to be computed in accordance with method of accounting regularly employed by the assessee. Similarly, section 145A of the Act of 1961 provides that the inventory shall be valued in accordance with the method of accounting employed by the assessee, therefore, if the method of valuation adopted by the assessee is recognized method, then, the same cannot, be rejected on the ground that the net realizable value/market value has been determined on the basis of certain estimate. - It has come on record that the assessee has valued the inventories such as nut, bolt, glass fuse, bearing bushes, lock pin, pipe, screw etc., which were rusted non-moving and unusable on account of obsolescence/damage/deterioration by efflux of time at cost and net realization value, whichever is lower. - It is also not disputed before this court that the assessee had made the requisite efforts to dispose of the same. – Decided in favor of assessee

224 2009 TMI - 34604 - GUJARAT HIGH COURT

NAVJIVAN ROLLER FLOUR AND PULSE MILLS LTD. Versus DEPUTY CIT (ASSESSMENT)

Dated: 04-03-2009

Sections - 037,

Liability on account of arbitration award - Whether the liability of Rs. 7,14,824 arising under the arbitration award against the appellant declared in the assessment year 1988-89 had not accrued in that year only because the award was challenged in appeal by the assessee and, therefore, was not allowable in the assessment year 1988-89? – Held that - Admittedly, the assessee is following the mercantile system of accounting. On May 28, 1987, when the Trade Association made an award for damages for breach of contract the liability to pay such damages had already been incurred by the assessee. Merely because the award was challenged in appeal by the assessee cannot be a ground for holding that the liability had not been incurred – ITAT has committed an error - the liability arose in the hands of the assessee and merely because the award was challenged that fact did not make the award unenforceable in law. The assessee was accordingly held entitled to claim deduction in the said case – decided in favor of assessee

225 2009 TMI - 34601 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SATYENDRA KUMAR DOSI AND ANOTHER

Dated: 19-01-2009

Sections - 158BFA,

Block Assessment - Penalty u/s 158BFA – Mandatory Penalty - Income-tax Appellate Tribunal has committed no error in holding that the provisions of section 158BFA(2) providing for imposition of penalty in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC is discretionary and not mandatory - The learned Income-tax Appellate Tribunal has rightly held that the addition is result of estimation of the opening capital involved prior to the block period and in the block assessments while computing the undisclosed income for the block period, capital possessed by the assessee prior to the block period as revealed from the ledger and the material seized during the search could not be treated as undisclosed income of the first assessment year in the block period – revenue appeal dismissed against the order of ITAT setting aside the penalty.

226 2009 TMI - 34600 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SUNIL KUMAR GOEL

Dated: 03-03-2009

Sections - 271D, 271E,

Cash Loan - Penalty u/s 271D and 271E – Violation of section 269SS – Held that - assessee had produced his cash books, depicting loans taken by him unilaterally before the Revenue - no prejudice was caused to the Revenue - assessee did not attempt by the impugned act to avoid any tax liability - there is no dispute about the fact that the instant cash transactions of the respondent assessee were with the sister concern and that these transactions were between the family and due to business exigency - A family transaction, between two independent assessee, based on an act of casualness, specially in a case where the disclosure thereof is contained in the compilation of accounts and which has no tax effect, in our view establishes “reasonable cause” under section 273B of the Act. Since the respondent assessee had satisfactorily established “reasonable cause” u/s 273B of the Act he must be deemed to have established sufficient cause for not invoking the penal provisions (sections 271D and 271E of the Act) against him – penalty set aside.

227 2009 TMI - 34599 - HIGH COURT OF KARNATAKA

THE MEDI ASSIST INDIA TPA (P) LTD. Versus DCIT (TDS), CIT (TDS), CBDT & UOI

Dated: 13-08-2009

Sections - 194J, 201,

TDS u/s 194J -Third Party Administrator (TPA) - According to the petitioners an individual will not come within the ambit of section 194J of the Act, In as much as, the payments are made in fulfillment of the contractual obligations between the insurance company and the policy holder and not towards rendering any professional services. Hence, according to the petitioners, sections 194J are not at all attracted to these payments - Held that - A perusal of the terms of payment would clearly indicate that it is the duty and the obligation of the TPA to pay the hospitals. Indeed the insurer in this regard will not have any role to play, in as much as, it is only to replenish the amount in the float account once the amount deposited therein is exhausted. Ultimately the agreement entered into inter se between the hospital and the TPA for payment of money holds the field. In the circumstance, it cannot be said that the TPA who is the authority or the person to pay the amount to the hospital is not required to deduce the tax at source and section 194J is not attracted cannot be accepted.

228 2009 TMI - 34596 - GUJARAT HIGH COURT

THE C.I.T. Versus YUDHISTHIR INVESTMENT P.LTD.

Dated: 21-07-2009

Sections - 018,

Income under the head interest of securities u/s section 18(1)(ii) for the AY 1988-89 – Held that - That the interest on debentures bonds issued by all companies, whether or not established by a Central, State or Provincial Act, was liable to be computed as income under the head “Interest on securities” under the provisions of Section 18(1)(ii) of the Income-tax Act for the assessment years under consideration. - Interest on debentures of ASE and R was liable to be considered as income only when received by the assesseees and not when it was due for payment by the respective companies

229 2009 TMI - 34595 - GUJARAT HIGH COURT

THE COMMISSIONER OF INCOME TAX Versus ALFA ENGINEERS

Dated: 22-07-2009

Sections - -

Production Incentive - Whether the Appellate Tribunal is right in law and on facts in allowing the assessee's claim towards production incentive to the extent of Rs.2,42,476/- when the assessee had failed to produce evidence in support before the Assessing Officer? – Assessing Officer has rejected the claim of the assessee for production incentive only on the ground that the assessee has not furnished any details such as agreement with workers, method of computation and extra amount of production achieved by workers – Held that - Tribunal being final fact finding authority ought to have ascertained by calling for the records of the Income Tax Officer and if such details were there on record, then only the claim should have been allowed. It appears that the Tribunal has not undertaken this exercise and claim was allowed without ascertaining as to whether details are there on record or not – matter remanded to tribunal with direction – departmental appeal allowed

230 2009 TMI - 34594 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus MAHENDRA MILLS LIMITED

Dated: 27-07-2009

Sections - 037,

Allow ability of expenditure - Whether the Appellate Tribunal is right in law and on facts in holding that deduction in respect of purchase price payable by the assessee in respect of supply of gas received from ONGC should be allowed in the respective years when such supply of gas was received on the basis of price which had been finally determined by the Supreme Court? – Held Yes - the liability of the assessee was contractual which came to be crystallized by virtue of the decision of the Apex Court by fixing the price of the Gas supplied by ONGC. We are, therefore, of the view that the view taken by the Tribunal is correct

231 2009 TMI - 34592 - ALLAHABAD HIGH COURT

M/s Kamdhenu Sweets Versus Assistant Commissioner of Income Tax

Dated: 18-09-2009

Sections - 158BD,

Search and Seizure – Applicability of provisions of section 158BD in respect of block assessment – Held that - The proceedings under section 158-BD against a person other than the person raided are part of the proceedings which commence with search under section 132 and culminate in proceedings under Chapter XIVB of the Act and if at any stage the assessing officer is satisfied that any undisclosed income belongs to some other person, similar notice is to be issued to such person also. Hence it has been concluded that issuance of notice under section 158BD to a person other than the

person raided need not wait till the completion of the proceedings under section 158BC against the person raided – regarding retention of books accounts, department has sought permission within time limit as prescribed – writ petition rejected – retention of books of account upheld – notice for block assessment sustained.

232 2009 TMI - 34591 - ALLAHABAD HIGH COURT

M/s Ema India Ltd. Versus Asstt. Commissioner of Income Tax

Dated: 16-09-2009

Sections - 148,

Validity and legality of notice issued u/s 148 – held that - The essential requirement for initiating reassessment proceeding u/s 147, read with sec. 148 is that the assessing authority must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year. - The High Court in the exercise of its jurisdiction under article 226 of the Constitution can interfere in a writ petition against a notice u/s 148 of the Act when it is of the opinion that there is no material in possession of the assessing authority on which reasonably an opinion can be formed that the income has escaped assessment - the amount of Rs. 8, 34,720 was not credited in the profit and loss account even though it was mentioned in the balance sheet, however, it cannot be said that mere production of the account books before the Assessing Officer would amount to disclosure within the meaning of explanation 1 to Section 147, since the same could have been discovered by the Assessing Officer only with due diligence – notice issued u/s 148 held to be valid and legal.

233 2009 TMI - 34590 - AUTHORITY FOR ADVANCE RULING

PINTSCH BAMAG, In re

Dated: 11-09-2009

Sections - 006,

PE / Business Profit – DTAA – Held that - The more crucial question that needs to be considered now is whether the work place set up by the sub contractor to carry out the works entrusted to him by the applicant can be treated as the work place and the permanent establishment of the applicant. - it cannot be concluded that the business of the applicant is being carried on through the sub contractor's workshop - the concept of PE conveys the idea that the enterprise's presence has to be "visible" through an establishment in the other country - at the present juncture it is not possible to hold that the applicant has or will have a PE in India. Hence, its business profits arising from the periodical payments made by TPT as a consideration for the contract cannot be subjected to tax under the Income-tax Act, 1961 in view of Article 7.1 of DTAA between India and Germany.

234 2009 TMI - 34587 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax Versus M/s Punjab Tractors Ltd.

Dated: 14-09-2009

Sections - 028, 037,

Bad Debts written off – Business Loss – no efforts for recovery – held that - it is not the case of the revenue that the debt was ever recovered or had ever become recoverable. Before the Tribunal, the contention on behalf of the revenue was that the amount may be treated as bad debt in subsequent year. While the debt has to be allowed as bad debt in the year in which the same became bad debt, it will depend on facts of each case as to the year in which the same became bad debt, depending upon judgment of the assessee unless such a judgment was not genuine - . In the present case, the judgment of the assessee that the amount became bad debt in the year relevant for

assessment i.e. 1984-85 itself, could not be rejected. Mere fact that assessee continued efforts by obtaining decree which could not be executed in subsequent year is not enough to reject the opinion of the assessee that the amount had already become bad debt

235 2009 TMI - 34586 - UTTARAKHAND HIGH COURT

Director of Income Tax International Taxation Versus M/s Western Geco International Ltd.

Dated: 11-09-2009

Sections - 209, 234B,

TDS liable to be deducted – Advance Tax – Interest u/s 234B - the I.T.A.T. has rightly held that the interest under Section 234B of the Act is not payable on the tax payable by the assessee, particularly after the tax is deducted at source

236 2009 TMI - 34585 - PUNJAB AND HARYANA HIGH COURT

M/s Regal Industries Limited Versus Commissioner of Income Tax, Chandigarh.

Dated: 10-09-2009

Sections - 80IA,

Deduction u/s 80IA - AO denied the deduction - Held that - the assessee neither produced the records of purchasing raw material nor explained the process of manufacturing and also no proof of sale. For claiming deduction under Section 80IA, the assessee is supposed to explain that the end product, if any, is commercially known differently. However, in the present appeal the assessee even has not explained what is manufactured by it or whether the assessee is actually manufacturing anything, therefore, in the absence of all these facts, the benefit of deduction cannot be extended to the assessee

237 2009 TMI - 34570 - DELHI HIGH COURT

Jaypee Institute of Information Technology Society Versus Director General of Income Tax (Exemptions), Delhi

Dated: 21-08-2009

Sections - 010(23C),

Charitable Purpose – Exemption u/s 10(23C)(vi) – educational activities – other activities like “undertaking extra mural studies, extension programmes and field outreach activities to contribute to the development of society” – Held that - The petitioner Institute, admittedly, fulfils the requirement of imparting formal education by a systematic instruction, as noted above. If the same university introduces the courses with the objective of “greater interface with the society through extra mural, extension and field action related programmes”, these are not the objectives independent of education but are aid to the education - The petitioner Institute fulfils all the requirements of Section 10(23C)(vi) of the Act and is, thus, entitled for grant of registration and consequently exemption under the aforesaid provision of the Act

238 2009 TMI - 34569 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus M/s Shree Kangra Steel Pvt. Ltd.

Dated: 08-09-2009

Sections - 250,

Power of commissioner (appeals) – section 250(4) and Rule 46A(3) and 46A(4) – Held that - A bare perusal of the statutory provisions show that the Commissioner(Appeals) at the time of hearing of the appeal can make such further inquiry as it deems fit and

may ask the Assessing Officer to make such an inquiry. This provision in the Act vests the appellate authority with the power to make further inquiry which would in our opinion include the power to admit further evidence. - Before the ITAT the main ground urged on behalf of the revenue was that even if evidence was to be permitted to be adduced by the assessee at the appellate stage, the Assessing Officer should have been given an opportunity to verify/rebut the evidence. This submission of the revenue was rejected by the ITAT on the ground that Rule 46A (4) does not warrant giving of any opportunity to the Assessing Officer. It also held that the power to admit additional evidence under Section 250 could not be circumscribed by the rules. – order of the ITAT set aside.

239 2009 TMI - 34562 - BOMBAY HIGH COURT

Commissioner of Income Tax Versus M/s. Techno Shares & Stocks Limited and others

Dated: 11-09-2009

Sections - 032,

Depreciation on Bombay Stock Exchange Membership Card ('BSE card') - acquired either by nomination or directly - intangible asset - section 32 - Held that - the expression 'licences' in Section 32(1)(ii) of the Act has to be construed restrictively so as to apply to licences relating to acquisition / user of intellectual property rights, because, firstly, plain reading of Section 32 of the Act makes it clear that the depreciation is restricted to the categories of intangible assets specifically enumerated therein and not to all intangible assets - expression 'licences' in section 32(1)(ii) of the Act relates to the class of intellectual property rights - expression 'licences' is used in section 32(1)(ii) of the Act to apply to licences relating to intellectual properties only and not to all licences - under section 32 of the Act depreciation is not allowed on all capital assets but is allowable on capital assets which fall in any of the categories enumerated in the Section.- Depreciation cannot be allowed on the BSE card.

240 2009 TMI - 34561 - DELHI HIGH COURT

M/S DIWAKAR ENGINEERS LTD. Versus THE INCOME TAX OFFICER

Dated: 09-09-2009

Sections - 147, 148,

Re-opening of assessment – assessment completed earlier u/s 143(3) – assessee challenged the reassessment – held that - at the stage of issuing of notices under Section 148, it is not necessary that the materials must be extensive and detailed - Income Tax Officer during the subsequent assessments for the year 1983-1984 realised that various cash credits/loans were bogus and consequently, detailed reasons have been given for these assessments years as reproduced above which reasons are good enough for reopening of the assessment - during the scrutiny of the returns of the assessment year 1983-84 whereby time and again the ITO asked the assessee to file particulars with respect to the details of the persons with respect to whom the credits were appearing in the books of accounts as loans and which were not complied with by the assessee - The assessment proceedings are, therefore, rightly initiated under Section 147(a)

241 2009 TMI - 34560 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income-tax Versus M/s. Shivalik Hatcheries Pvt. Ltd.

Dated: 02-09-2009

Sections - 032, 043,

Depreciation – Poultry Sheds – Building versus Plant - Held that - Buildings of the

poultry sheds had been specifically designed with a view to protect the birds from disease. It has been designed to ensure proper light and circulation of air; proper and scientific feeding arrangement; proper water system; proper arrangement for collection of manure and droppings; proper arrangement for medication and vaccination; and a right environment conducive for laying of eggs by the birds. The buildings had been designed in a manner so as to protect the birds and increase their productivity. The argument made on behalf of the revenue that the building can be used with a certain modification for certain other purposes cannot be accepted. - The law is clear that if it is found that the building has been designed specifically to further the cause of manufacture or production then the same is a plant. Applying the aforesaid tests, we hold that the poultry sheds are plant within the meaning of Section 43(3), as it then stood.

242 2009 TMI - 34559 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus M/s. Anil Hardware Store

Dated: 02-09-2009

Sections - 040,

Interest Paid to Partners – section 40(b)(v) – remuneration clause in the partnership deed is in line with section 40(b) - It is contended on behalf of the revenue that in respect of the profits upto Rs.75,000/-, even in the partnership deed, the word “upto Rs.50,000/- or 90% of the book profits” have been used which shows that the partnership deed does not exactly determine the remuneration of the partners – Held that - the manner of fixing the remuneration of the partners has been specified. In a given year, the partners may decide to invest certain amounts of the profits into other venture and receive less remuneration than that which is permissible under the partnership deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the partnership deed. The method of remuneration having been laid down, the assessee firm is entitled to deduct the remuneration paid to the partners under Section 40(b)(v) of the Income Tax Act

243 2009 TMI - 34558 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus M/s. Kshitij Hotels Pvt. Ltd.

Dated: 02-09-2009

Sections - 002(47), 170,

Transfer of share holding – amalgamation – succession – Section 2(24) and 170(1) - An agreement was entered into by the erstwhile share-holders and management of the company on 14.3.1993 agreeing to transfer the shares and the management to a new set of share-holders w.e.f. 31.3.1993. It was also agreed that the liabilities of the company were to be borne by the outgoing group of Directors/shareholders – Held that - that a limited liability company is a distinct legal entity separate from its shareholder. Change in the shareholders of the company does not change the legal identity of the company. A limited liability company is thus different from a partnership-firm because while a company is distinct from its shareholders and directors, a partnership firm is not different from its partners and it is not a distinct legal entity. Since the assessee is a limited liability company change in the ownership of its shares will have no effect on the legal identity of the company – Capital gain is not chargeable in the hands of company – it does not amounts to succession.

244 2009 TMI - 34557 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus M/s. H.P State Forest Corporation Ltd.

Dated: 02-09-2009

Sections - 144, 154,

Best Judgment Assessment – Rectification of Mistake – assessed income can not be less than returned income – We are of the considered view that once the Tribunal had set aside the order of the Assessing Officer framing the assessment under the best judgment method under Section 144 of the Act, it could have remanded the case back to the Assessing Officer to frame the assessment afresh on the basis of the audited accounts. The ITAT however, had no jurisdiction, whatsoever, to have further given a direction that the income of the assessee could not be assessed at less than the amount of income returned by it in the returns which were treated to be “non est” by the Assessing Officer. Once the returns were treated to be “non est” then it meant that they were nonexistent in the eyes of law. Such a return which is “non est” cannot be used even against the assessee. – Tribunal order of remand making assessment with direction set aside – matter remanded for fresh assessment.

245 2009 TMI - 34556 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax Versus H.P. Financial Corporation

Dated: 01-09-2009

Sections - 036(1),

Bad Debts – Banking Company - the bad debts of Rs.19,04,000/- had been written off in the books of account, even though no corresponding entries to this effect had been made in the individual accounts of the loanees – revenue contented that mandatory condition laid down in Section 36(1)(vii) of the Income-tax Act, was not satisfied – Held that - Admittedly, the Financial Corporation is following the cash system and has written off the bad debts in according with the accounting system following by the Company. There is no error in the order of the ITAT. The first question is accordingly decided in favour of the assessee and against the Revenue deduction of bad debts allowed – However the limit of 5% fixed by amendment to section 36(1)(vii)(c) was not considered, the matter remanded for limited purpose.

246 2009 TMI - 34551 - ALLAHABAD HIGH COURT

The Commissioner of Income Tax Versus M/s Amrit Banaspati Company Limited

Dated: 09-09-2009

Sections - 273,

Advance Tax – Penalty u/s 273(2)(aa) - wrong estimate of advance tax - The item on which the issue is to be decided is the sales tax liability of Rs.1,30,65,719/-. It is an admitted fact that this amount was realised by the appellant in the last month of the accounting year and was shown payable in the balance sheet. The assessing authority has held that this item should have been paid accordingly under the provisions Section 43B of the Act and since the appellant had failed to do so, he was liable for penalty under section 273(2)(aa) of the Act. – Held that - CIT (Appeals) as well as the Tribunal has taken a view that the assessee's claim of bonafide belief about the sales tax liability was genuine and legitimate. - The Tribunal as well as CIT (Appeals) has given satisfactory, cogent and convincing reasons for setting aside the penalty order – Order of the tribunal deleting the penalty maintained.

247 2009 TMI - 34549 - MADRAS HIGH COURT

The Commissioner of Income Tax I Versus M/s. TVS Motor Company Ltd.

Dated: 04-08-2009

Sections - 147, 148,

Re-assessment – reason to believe – assessment already completed u/s 143(3) - Appellate Tribunal held that the re-assessment, having been initiated after four years from the end of the assessment year and there being no finding that there was any

failure on the part of the assessee to make a full and true disclosure of material facts, the re-assessment is bad in law and accordingly, dismissed the appeal preferred by the revenue – Held that - in the present case, there was no finding at all with regard to concealment - the order of the Tribunal does not call for any interference and the reasoning given by the Tribunal is sound and correct

248 2009 TMI - 34539 - SUPREME COURT OF INDIA

INCOME TAX OFFICER AND ORS. Versus U.K. MAHAPATRA & CO. AND ORS.

Dated: 29-07-2009

Sections - 133A,

Return of documents /records seized – High Court ordered that survey operation under Section 133A in the petitioner's premises, impounding of books of account/documents on 28.5.2008 and retention of the same till date being made illegally without following the procedure as laid down in Section 133A of the I.T. Act, the petitioner is entitled to get back the impounded books of account/documents – department challenged the order of HC – Held that - we direct the aforesaid officer of the High Court to return the documents to the respondents herein, within two weeks from the date of receipt of a copy of this order, subject to the condition that the appellants herein would be entitled to take the print out of all the pages of the documents and the copies of the CD ROM, which may be certified by the said Deputy Registrar. Also similar certification would be granted by the said officer in respect of the photocopies of the blank cheques and other documents which have been photocopied

249 2009 TMI - 34538 - SUPREME COURT OF INDIA

M/S. UNNAO DISTILLERIES AND BRAVERIES LTD. Versus COMMISSIONER OF INCOME-TAX-II AND

Dated: 28-07-2009

Sections - 127,

Jurisdiction – Effect of search and seizure – centralization of case u/s 127 – Commissioner proposed to centralize the cases vide notice dated 10.11.2006 – assessee challenged the notice and prayed for an opportunity of hearing vide letter dated 2.1.2007 – No response from department side to letter dated 2.1.2007 – Ex party order was passed on 18.1.2007 – Held that – in view of subsequent events - the proceedings for transfer of the file of the appellant from Kanpur to Delhi, for the purpose of centralising the cases for coordinated investigation and meaningful assessment has become infructuous. In this view of the matter, the impugned order cannot be sustained which is set aside accordingly. The appeal is allowed

250 2009 TMI - 34498 - ALLAHABAD HIGH COURT

Commissioner of Income Tax Versus Mohd. Farooq Kanpur

Dated: 03-09-2009

Sections - 260A,

Delayed filing of appeal u/s 260A – Condonation of delay – application of the provisions of Sections 4 to 24 of the Limitation Act, 1963 as provided under Section 29 (2) of the Limitation Act, 1963 – Held that - The remedy of appeal is a statutory right and hence it has to be presented in accordance with the procedure, the manner and within the time prescribed by the Statute, and the principles of natural justice are not remotely attracted so far as the question of limitation is concerned. - Delay in filing the appeals cannot be condoned; - provisions of Limitation Act, 1963 are not applicable.

251 2009 TMI - 34497 - PUNJAB AND HARYANA HIGH COURT

Rajesh Syal Versus Commissioner of Income-tax

Dated: 01-09-2009

Sections - 158BB,

Undisclosed income – discloser of income after the date of search but before the date of expiry of return - assessee submits that income for the assessment year in which search took place, could not be treated as undisclosed income in view of provisions of Section 158BB(1)(d) of the Act – Held that - There is no inflexible rule in any of the judgments that mere fact that time for return had not expired was enough to hold that the income disclosed after search could not be treated as undisclosed. Such interpretation is not justified even on plain language of the statute. Thus, it is not possible to hold that finding of fact with regard to undisclosed income is perverse

252 2009 TMI - 34496 - ALLAHABAD HIGH COURT

CIT Lucknow Versus R.M.L. Mehrotra

Dated: 02-09-2009

Sections - 144, 158BB,

Block Assessment versus Best Judgment – ITAT held that in a block assessment there is no scope of an assessment based on best judgment of an Assessing Officer – ITAT further held that since no hidden assets, movable or immovable, had been found, the assessee could not be expected to have made a fortune of unaccounted professional receipts – Held that - if the Assessing Officer had come to the conclusion that some other income of the assessee (unconnected with the materials found at the time of search) has escaped assessment he is at liberty to initiate proceedings under Section 147/148 of the Act in accordance with law - /-. However, there was no material to show that any other income which may have been concealed and any undisclosed assets have been found in the search – Assessment can not be made on the basis of best judgment assessment.

253 2009 TMI - 34495 - HIMACHAL PRADESH HIGH COURT

Commissioner of Income Tax, Shimla Versus M/s. Panchraton Hotels Pvt. Ltd. Manali

Dated: 26-08-2009

Sections - 002(47), 037, 170,

Transfer u/s 2(47) – Revenue versus capital expenditure – Succession of Business u/s 170 - 100% share holding of the company transferred to New Management – held that - A bare reading of Section 170 shows that the transfer of the business should be from one assessee to another. Person under Section 2(31)(iii) of the Income Tax Act includes a company. Under Company Law, a company is a juristic person. The share holders are not the owners of the company. It is the company itself which is its own owner having its own seal and succession – Section 170 is not applicable – There is no transfer as per section 2(47) in the hands of company – Expenditure incurred on repairs and renovations are revenue expenditure.

254 2009 TMI - 34493 - DELHI HIGH COURT

CIT-II versus JAGDAMBA MARBLES LTD.

Dated: 04-09-2009

Sections - 158BD, 158BE,

Block Assessment – Notice under section 158BD – Change of Address – Period of limitation for passing assessment order - as per the A.O. the notice u/s 158BD dated 24.1.2002 was served upon the appellant on 15.2.2002. - as the notice was served on 15.2.2002, the limitation for completion of block assessment proceedings comes to

February, 2004 – as per the assessee submitted the envelop and copy to notice to prove that notice was served on him on 30.1.2002 – Held that - since the Order dated 5.2.2004 has been passed beyond the permissible statutory period which expired on 31.1.2004, it is, therefore, legally non est

255 2009 TMI - 34492 - ALLAHABAD HIGH COURT

The Commissioner of Income Tax Versus M/S Rawalpindi Flour Mills

Dated: 03-09-2009

Sections - 022, 028, 032AB,

Rental Income – Income from house property versus income form business - business of the assessee which was running the flour mill in question has not been closed and certain surplus godowns was let out – Held that - the income from letting out would be clearly fall under the head 'income from business' and consequently, the assessee is entitled for deduction under Section 32AB of the Act as also the depreciation of warehouse and repair expenses

256 2009 TMI - 34491 - SUPREME COURT

Standard Chartered Bank Versus Asstt.Commr. of Income Tax, Bombay & Ors.

Dated: 25-08-2009

Sections - -

Partly heard matter by CIT(A) – transfer of CIT(A) –Mr. Kuntal K. Sen, CIT (A), Central V, Mumbai, who has already heard out the appeal, was under transfer – Held that - he has heard out the matter in detail and only the matter is to be decided finally after hearing the heirs and legal representatives of the HSM - Mr. Kuntal K. Sen should be allowed to stay for a period of six months from this date to hear out the Income Tax Appeal and dispose of the same finally – CIT(A) directed to dispose of the Income Tax Appeal pending before it within six months from this date without granting any unnecessary adjournment whatsoever - broker Harshad Shantilal Mehta (HSM)

257 2009 TMI - 34489 - DELHI HIGH COURT

Commissioner of Income Tax Delhi-IV, New Delhi Versus M/s. Dass Trading & Holding (P) Ltd.

Dated: 19-08-2009

Sections - 271,

Penalty u/s 271(1)(c) – recording of satisfaction – while deleting the penalty ITAT held that investigations in the case of another company cannot be used to implicate the assessee without independent investigation in its own case and hence, we cancel the penalty sustained by the CIT (Appeals) – Held that - the assessee had declared bogus agricultural income - . Inquiries had revealed that the assessee had not sold any agricultural produce - assessee had procured bogus bills to show sale of the agricultural produce - Cat was out of box on the culmination of inquiry and report dated 9/16.5.1995. It is only thereafter that the revised return was filed on 8.3.1996 - It is, thus, a clear case of giving inaccurate and false particulars and concealing the income. The ingredients of this provision stand fully satisfied – ITAT order set aside – penalty restored.

258 2009 TMI - 34488 - DELHI HIGH COURT

Commissioner of Income Tax Delhi-IV Versus Escorts Finance Limited

Dated: 24-08-2009

Sections - 271,

Penalty u/s 271(1)(c) – Disallowance of expenses u/s 35D - the relief available under Section 35D of the Act to a finance company is ex facie inadmissible as that is confined only to the existing industrial undertaking for their extension or for setting up a new industrial unit – Held that – the claim of deduction u/s 35D by the assessee, not a 'wrong claim' preferred by the assessee, but is a clear case of 'false claim' - The assessee pleaded bona fide, as according to it, it was based on the opinion of the Chartered Accountant - We fail to understand as to how the Chartered Accountants who are supposed to be expert in tax laws, could give such an opinion having regard to the plain language of Section 35D of the Act

259 2009 TMI - 34487 - DELHI HIGH COURT

Commissioner of Income Tax Versus Sahib Chits (Delhi) (Pvt.) Ltd.

Dated: 24-07-2009

Sections - 002(28A), 194A, 201,

Surplus on Chit Funds or Discount on Chit Funds – scope of section 2(28A) as Interest - deduction of TDS u/s 194A – Non deduction of TDS, assessee in default u/s 201 – Held that - a chit agreement clearly does not fall within the ambit of "money lending" or "debt incurred" and, therefore, will not be covered by the definition of "interest" as contemplated by the Act - Assessing Officer proceeds on the basis as if the contribution given by the subscribers/members every month amounts to deposit with the chit fund company, i.e. the assessee, and on that basis he proceeds as if the assessee is working as a banker and, therefore, the amount of bid disbursed equally among members is to be treated as 'interest' payable on money borrowed. This approach is fallacious on the face of it - the amount disbursed to the members from their contribution cannot be treated as 'interest' – No TDS u/s 194A is not deductible

260 2009 TMI - 34486 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus M/S. DALMIA AGENCIES (P) LTD.

Dated: 21-07-2009

Sections - 271,

Penalty u/s 271(1)(c) – wrong application of provisions – amount paid to employees under voluntary retirement scheme – deduction is available u/s 35DDA but assessee claimed deduction u/s 37(1) - assessee believed that the payment made in a settlement arrived at under Section 18(1) of the Industrial Disputes Act, would qualify as revenue expenditure and it could claim the entire deduction under Section 37 of the Income Tax Act. – whereas Section 35 DDA of the Act covers such a situation – held that ingredients of Section 271(1)(c) of the Act are not satisfied – penalty not to be imposed.

261 2009 TMI - 34484 - ALLAHABAD HIGH COURT

Commissioner of Income-tax, Lucknow Versus Khalsa Cycle Stores

Dated: 27-08-2009

Sections - 271B,

Penalty u/s 271B - the audit report obtained within the 'specified date' though furnished alongwith the belated return filed under Section 139 (4) of the Income Tax Act, 1961 - Assessment Year 1989-90 - penalty under Section 271B of the Act, as it stood at the relevant point of time prior to its amendment by the Finance Act, 1995, which came into existence with effect from 1st July, 1995, was not exigible in case the audit report has been obtained within the specified date and the return of income has been filed beyond time. – penalty not to be imposed.

262 2009 TMI - 34471 - SUPREME COURT

M/s Liberty India Versus Commissioner of Income Tax

Dated: 31-08-2009

Sections - 80IB, 80AB, 80I, 80IA,

Deduction u/s 80-IB – Income from Business – profit from Duty Entitlement Passbook Scheme (DEPB) and Duty Drawback Scheme – Held that - duty drawback, rebate etc. should not be treated as adjustment (credited) to cost of purchase or manufacture of goods. - They should be treated as separate items of revenue or income and accounted for accordingly - for the purposes of AS-2, Cenvat credits should not be included in the cost of purchase of inventories - duty drawback, DEPB benefits, rebates etc. cannot be credited against the cost of manufacture of goods debited in the Profit & Loss account for purposes of Sections 80-IA/80-IB as such remissions (credits) would constitute independent source of income beyond the first degree nexus between profits and the industrial undertaking - Duty drawback receipt/DEPB benefits do not form part of the net profits of eligible industrial undertaking for the purposes of Sections 80I/80-IA/80-IB of the 1961 Act

263 2009 TMI - 34467 - HIGH COURT OF DELHI

ICAI Accounting Research Foundation & Anr. Versus Director General of Income Tax (Exemptions) & Ors.

Dated: 28-08-2009

Sections - 010(23C),

Meaning and Scope of Charitable Purpose - Institute of Chartered Accountants of India - Government projects were undertaken by the Petitioner Foundation, namely, that of Municipal Corporation of Delhi (MCD), Kolkata Municipal Corporation (KMC) project and Strengthening Rural Decentralization (SRD) project for research and consultancy work - Held that - there is not even an iota of doubt that the ICAI is involved in education and, thus, meets the description of charitable institution - It is hardly possible for a charitable trust to work with no source of income. - As long as the user of that money is charitable, then the exemption has to be granted - Merely because some remuneration was taken by the Petitioner Foundation for undertaking these projects would not alter the character of these projects, which remained research and consultancy work - The amended definition of charitable purpose would not alter this position - Direction/mandamus given to the department to accord requisite exemption to the Petitioner Foundation under Section 10(23C)(iv)

264 2009 TMI - 34455 - DELHI HIGH COURT

M/S. UNITED EXPORTS Versus COMMISSIONER OF INCOME TAX, DELHI

Dated: 25-08-2009

Sections - 40A,

Excessive amount paid to sister concern – applicability of provisions of section 40A(2)(b) – AO allowed the trade discount at the rate of 3% only – CIT(A) increased it to 8% - ITAT reduced it to 5% - Assessee claimed 11% - Held that - ITAT has clearly erred and its findings cannot be said to be those of a reasonable person. The conclusions are clearly perverse and are liable to be set aside - it is quite clear that a trade discount of 11% was allowed in the AY 03-04 and that too when the sales to the sister concern was Rs. 2.09 crores as compared to Rs.8.30 crores made to others. In the present AY the sale to the sister concern was 11.11 crores and to others it was Rs.2.09 crores, - trade discount at 11% justified - Further there is no rationale or basis or any logic of the authorities below in unilaterally deciding a disallowance by reducing the entitlement – On the issue of application of section 40A(2)(b) - held that - trade discount is a trade discount, and not an expenditure, therefore there does not arise the question of applicability of Section 40-A(2)(b).

265 2009 TMI - 34454 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus RAINEE SINGH

Dated: 20-08-2009

Sections - 147, 148,

Bogus Payment – Assumption / Presumption – AO initiated proceedings on the following two assumptions - (1) The assessee herein had diverted her income amounting to Rs.6.30 crores by way of showing the bogus payment of that amount to M/s Rath Ispat Ltd. which was a loss making company. (2) The presumption was drawn that M/s Rath Ispat Ltd would have returned back that amount to the assessee in cash. – Held that - M/s Rath Ispat Ltd. was not a loss making undertaking and it had paid the taxes on the amount received from the assessee herein, it could not be disputed by the learned counsel. Thus, we find from this that the very basis for initiating proceedings under Section 147 is on wrong premise as it is neither factually correct that M/s Rath Ispat Ltd. was a loss making company and on the other hand it also stands established that the payment was received by M/s Rath Ispat Ltd. for the services rendered by it to the assessee which had been shown as income in its return and duly taxed by the Income Tax Department. – Department appeal dismissed.

266 2009 TMI - 34453 - DELHI HIGH COURT

NORTHERN STRIPS LIMITED & ANOTHER Versus INCOME TAX OFFICER WARD (13(3), NEW DELHI

Dated: 24-08-2009

Sections - 147, 148,

Re-assessment u/s 147 – Issue of Notice u/s 148 – Earlier AO allowed the deduction u/s 80IA during assessment u/s 143(3) – Held that - The law is well settled that the proceedings under Section 147/148 cannot be initiated merely because there is a change of opinion and there are no new facts for justifying the initiation of reassessment proceedings. - According to the Assessing Officer, the activity carried on by the assessee is not a manufacturing activity. - This very issue was duly considered and the assessee furnished detailed note as also its letter dated 10.12.2002 and 24.3.2003 justifying the allowability of deduction under Section 80IA and which was duly allowed by an order passed under Section 143(3) of the Act, it is clear that there is no basis for initiating proceedings under Section 147/148. – writ petition allowed – notice u/s 148 and assessment order u/s 147 quashed.

267 2009 TMI - 34452 - DELHI HIGH COURT

CARLTON OVERSEAS PVT. LTD. Versus INCOME TAX OFFICER & ORS.

Dated: 18-08-2009

Sections - 147, 148, 80IA, 80HHC,

Re-opening of an assessment – change of opinion - The Audit Report merely gives an opinion with regard to the non-availability of the deduction both under Section 80-IA and under Section 80-HHC and that the deduction under Section 80-IA was not deducted from the profits of the business while computing deduction under Section 80-HHC. Clearly, therefore, there was no new or fresh material before the Assessing Officer except the opinion of the Revenue Audit Party - . it is settled law that mere change of opinion cannot form the basis for issuing of a notice under Section 147/148 of the Act – proceedings initiated u/s 148 quashed

268 2009 TMI - 34451 - ALLAHABAD HIGH COURT

M/s Bharat Construction Company. Versus Commissioner of Income Tax

Dated: 12-08-2009

Sections - 184,

Registration of Partnership Firm – Renewal - opportunity of being heard – AO refused to renew registration without issuing show cause notice and without affording any opportunity of being heard to the assessee for explaining the delay in furnishing the declaration within the specified time contemplated U/s 184 (7) – ITAT upheld the order of AO – Held that It will be appreciated that, even if an application is filed before the Income-tax Officer which prima facie appears to be out of time, the Income-tax Officer cannot straightaway reject it or refuse to entertain it. He will have to give an opportunity to the assessee to show cause as to how it can be entertained. Sometimes, even his impression that there is delay may itself be shown to be wrong. If the assessee satisfies the Income-tax Officer that there was sufficient cause, then the application has to be entertained by the Income-tax Officer

269 2009 TMI - 34450 - CALCUTTA HIGH COURT

COMMISSIONER OF INCOME TAX, KOLKATA-XV Versus M/S. SHREE HANUMAN RICE MILLS

Dated: 12-08-2009

Sections - 40A,

Payment in Cash in excess of Rs. 20,000 – Procurement of Paddy from co-operative societies – Applicability of provisions of section 40A(3) read with Rule 6DD – Held that - admittedly, the assessee made the payment in cash for procuring paddy to the primary agricultural credit society. Therefore, they were entitled to exemption from the rigour of the provisions of Section 40A(3) of the Income Tax Act, 1961.

270 2009 TMI - 34449 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-I, Ludhiana Versus M/s Kings Exports

Dated: 25-08-2009

Sections - 014A, 036, 080HHC,

Bad Debts u/s 36(1)(vii) - 'Bad Debts' written off included incomes not received – Application of provisions of Section 14A - The assessee is engaged in manufacturing and export of engineering goods. The Assessing Officer disallowed claim for bad debts under Section 36(1)(vii) on the ground that the assessee had claimed deductions under Section 80HHC and in such a situation claim for bad debts will be hit by Section 14A of the Act. The CIT(A) partly upheld the claim of the assessee – ITAT upheld the order of CIT(A) – Held that - On perusal of Section 80HHC and Section 14A, it is clear that expenditure incurred from export income cannot be held to be for earning income which does not form part of total income, which concept is dealt with under Section 10 of the Act. Section 80HHC deals with deduction of the element of profit from export from taxable income – Deduction allowed.

271 2009 TMI - 34448 - PUNJAB AND HARYANA HIGH COURT

Such Chain Chits Pvt. Ltd. Versus Commissioner of Income Tax, Panchkula

Dated: 25-08-2009

Sections - 069B, 069C,

Interpretation of provisions of section 69B and 69C – piercing of the corporate veil - The Assessing Officer made additions to the declared income under Section 68 of the Act in respect of amount purported to have been paid to its Directors as chit money. It was held that payments were not in fact made and the amount remained available with the assessee as its income. The CIT(A) deleted the said additions – ITAT reversed the order of CIT(A) – Held that - The Tribunal has found that the amount representing

payment to chit holders was in fact paid to Suresh Chand Gupta, a Director of the assessee, which was a private company controlled by the recipient of the amount. The amount was available with the assessee itself and payments were made representing expenditure which was never incurred. The amount was, thus, available with the assessee as undisclosed income which justified additions made by the Assessing Officer – order of ITAT upheld

272 2009 TMI - 34447 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax-I, Chandigarh. Versus M/s Punjab State Industrial Development Corporation

Dated: 25-08-2009

Sections - 037,

Interest earned on refinancing operations – deduction - Whether on the facts and circumstances of the case, the Hon'ble ITAT is right in holding that interest earned on refinancing operations is to be excluded from the taxable interest? – Held that - The assessee received income from interest on the loans advanced. Interest was passed on to IDBI and SIDBI under Refinancing Scheme. However, the said income was added to the income of the assessee. The CIT(A), held that interest paid to IDBI and SIDBI under Refinancing Scheme was permissible deduction – ITAT confirmed the order of CIT(A) – Held that - income earned by the assessee can be adjusted towards the interest paid to the IDBI and SIDBI under Refinancing Scheme – appeal dismissed – appeal was also dismissed on the ground of undue delay of 945 days in filing appeal

273 2009 TMI - 34434 - UTTARAKHAND HIGH COURT

Director of Income Tax International Taxation Delhi-II Versus M/s Western Geco International Ltd.

Dated: 21-08-2009

Sections - 234B,

Deletion of interest u/s 234B - Whether Income Tax Appellate Tribunal has wrongly held that the interest under Section 234B of the Act is not payable on the tax payable by the respondent assessee, particularly after the tax is deducted at source? - Held that tribunal is correct in deleted interest u/s 234B.

274 2009 TMI - 34432 - ALLAHABAD HIGH COURT

M/S Desh Raj Udyog Versus Income Tax Officer

Dated: 25-08-2009

Sections - 147, 148,

Reassessment u/s 148 - reason for re-opening of an assessment - petitioner submitted that the initiation of the proceedings under Section 147/148 of the Act is a 'change of opinion' and as such proceedings are liable to be quashed - Held that - while accepting the return there was no application of mind by the AO, simply the intimation u/s 143(1) was sent and the assessment of the said years were not framed under Section 143 (3), therefore, it can not be said that the regular assessments were framed - the assessee firm had credited misc. receipts as rent from property amounting to Rs. 8,83,080 and sales of Rs. 30,82,001/- and gross profit of Rs. 6,28,459/- only and debited business expenditure to the tune of Rs. 11,20,413/- giving a net profit of Rs. 3,91,158/- which was less than the rent, received - Issuance of notice u/s 148 upheld - It is a settled law that res-judi-cata does not apply to income tax proceedings and each assessment year being a separate unit and is new and is based on different facts and circumstances

275 2009 TMI - 34419 - MADRAS HIGH COURT

Commissioner of Income Tax Versus B.G. Subramaniam

Dated: 18-08-2009

Sections - 040A,

Payment exceeding Rs. 20,000 in cash – business expediency' - disallowance – In the case on hand, the Tribunal has noted that the payments were made at the insistence of the Sugar Mill from where the purchases were made by the assessee. Purchases were said to have been made from the District Co-operative Sugar Mill, which is a quasi Government concern, and the payments were also made in the branches of the co-operative banks which were located in the concerned Co-operative Sugar Mill. In such circumstances, the conduct of the assessee in having deposited the payment in cash in the branches located in the Co-operative Sugar Mill at the insistence of the concerned Sugar Mill will squarely fall under the expression 'considerations of business expediency'. – expenses allowed despite the fact that that payment was made in excess of Rs. 20000 in cash.

276 2009 TMI - 34397 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Faridabad Versus M/s SSP Ltd.

Dated: 20-08-2009

Sections - 271,

Penalty u/s 271(1)(c) – ITAT deleted the penalty – Held that - A concurrent finding has been recorded on facts that there was valid explanation that the assessee had raised debatable issue for claiming the expenditure and disallowance is no ground for levying penalty. Mere erroneous claim in absence of any concealment or giving of inaccurate particulars is no ground for levying penalty - Assuming the assessee was not justified in delaying the deposit and was liable to pay tax on the said amount, this could not be conclusive to infer deliberateness of default on the part of the assessee. Issue of levy of penalty has to be decided on facts of each case.

277 2009 TMI - 34390 - SUPREME COURT

C.I.T., Delhi Versus Atul Mohan Bindal

Dated: 24-08-2009

Sections - 271,

Penalty u/s 271(1)(c) – Mandatory penalty - The revenue filed appeal u/s 260A before the High Court of Delhi. The High Court considered the question whether the Assessing Officer had recorded a valid satisfaction for initiating penalty proceedings under Section 271(1)(c) of the Act. High Court has held that from the reading of the assessment order, it was not discernible as to why the Assessing Officer chose to initiate proceedings against the assessee and under which part of Section 271(1)(c). The High Court, therefore, accepted the view of the Tribunal and CIT (Appeals) and dismissed the appeal of the Revenue with cost of Rs. 5,000/-. Held that - Having thoughtfully considered the matter, in our judgment, the matter needs to be reconsidered by the High Court in the light of the decisions of this Court in Dharamendra Textiles and Rajasthan Spinning and Weaving Mills. – Revenue appeal accepted, matter remanded back to HC

278 2009 TMI - 34383 - MADRAS HIGH COURT

The Commissioner of Income Tax-I Versus M/s. Forbes Tea Brokers

Dated: 30-06-2009

Sections - 040A,

Disallowance u/s 40A(2) - Assessing Officer found that the payment made as per the agreement was excessive in nature and by applying Section 40A(2)(a) of the Income

Tax Act, disallowed those payments made to the company for the assessment year 1987-88 to the tune of Rs.9,92,496/-. Similar disallowance of Rs.10,50,000/-, Rs.1161,844/-, Rs.6,54,484/- and Rs.2,89,460/- were made for the assessment years 1988-89, 1990-91, 1991-92 and 1992-93 respectively – CIT(A) disallowed the deduction for the AY 1997-88 and 1988-89 – Successor CIT(A) allowed the deduction for the AY 1990-91, 1991-92 and 1992-93 – Therefore two contradictory sets of orders - ITAT held that the disallowance made under Section 40A(2) in respect of services charges could not be disallowed u/s 40A(2) of the Income Tax Act for the assessment years 1987-88, 1988-89, 1990-91, 1991-92 and 1992-93 – Held that the issue is in respect of finding of fact the finding is reasonable one – ITAT order maintained.

279 2009 TMI - 34382 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-I, Chandigarh Versus M/s Manav Mangal Society

Dated: 19-08-2009

Sections - 011,

Charitable Societies/Institutions – Application of Income – Exemption - Held that - Once exclusion contemplated under section 11(4A) is not applicable, the exemption had to be allowed as Sections 11(1), (2) and (3) become applicable even in respect of profits and gains.– Regarding accumulation of income – held that - Even if 85% income has not been applied in the manner laid down, it is not enough to disallow exemption unless there is a further condition of accumulation beyond contemplated period or not maintaining accounts or intimating the Assessing Officer as laid down. - Thus, while holding that the observation of the Tribunal that sub-section (1), (2), (3) or (3A) of Section 11 do not apply to the income falling under Section 11(4A) of the Act is erroneous, there is no error in the conclusion for holding the assessee eligible for exemption

280 2009 TMI - 34381 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax, Faridabad Versus Shri Khacheru (HUF)

Dated: 18-08-2009

Sections - 171,

Partition of HUF – Partial Partition - Recognition of partition u/s 171(9) – held that substantial question of law whether partial partition could be recognized when assessee had already been assessed in the status of HUF for the period prior to the partition even if date of assessment was later to the date of partition has to be answered in favour of the revenue and against the assessee.

281 2009 TMI - 34380 - HIMACHAL PRADESH HIGH COURT

H.P. State Industrial Development Corporation Ltd. Versus Commissioner of Income Tax, Shimla

Dated: 17-08-2009

Sections - 036, 154,

Specific Reserve - Deduction u/s 36(1)(viii) – Retrospective effect of the amendment for calculated 40% of profit – held that - during the assessment years in question, the entire total income of the assessee had to be taken into consideration. The assessee was not permitted to bifurcate his income into two heads i.e. one from long term finance investments and the other from other categories of business. This meant that his entire income, which obviously included losses, would have to be taken into account and on this 40% deduction was to be allowed – regarding rectification u/s 154 – held that - AO committed an error apparent by not taking the income/loss derived from other businesses while computing the total income. It is only after the amendment was

brought about in the year 1996 that the assessee has been held entitled to deduction of 40% only on the income derived from long term financing business. – This mistake can be rectified u/s 154

282 2009 TMI - 34379 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Patiala Versus Mandeep Singh

Dated: 19-08-2009

Sections - 037,

Credit worthiness of loan creditors – disallowance of commission paid to dealers where address could not be furnished - AO noticed that the assessee has claimed deduction of Rs.8,08,003/- on account of commission. The assessee was asked to justify the payment of such commission alongwith documentary evidence. - Ultimately the AO was of the view that assessing neither filed the details of persons to whom the discount was paid nor furnished any documentary evidence in the shape of any agreement with these persons and disallowed the deduction - The claim of the assessee is that the discount was given to the customers in order to boost the sales of post paid connections due to tough competitions - List of such connections was furnished to the AO – Held that - expenditure are allowed

283 2009 TMI - 34378 - MADRAS HIGH COURT

M/s Orient Hospital Ltd. Versus The Deputy Commissioner of Income Tax

Dated: 29-06-2009

Sections - 028, 056,

Business Income or Income From Other Sources – Leasing of the hospital - As the assessee company suffered loss in running the business, the hospital building along with various equipments and machineries was leased out to Apollo Hospitals Enterprises Ltd., on a monthly lease of Rs.3,00,000/-per month and the same was claimed as business income against which earlier business losses were set off – AO treated the income from lease of the hospital as 'income from other sources' and therefore disallowed setting off the earlier years business losses and assessed the lease income from the hospital as 'income from other sources' – Held that income from leasing of the hospital can be assessed only as income from other sources – decided in favor of revenue – ITAT order upholding the order of AO maintained.

284 2009 TMI - 34377 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus The Patiala Distt. Coop. Milk Producers Union Ltd.

Dated: 19-08-2009

Sections - 144, 145,

Rejection of Books of Accounts - assessee had failed to furnish the requisite separate trading and profit & loss account of trading of various commodities and that of the bottling plant – CIT(A) and ITAT hold that there is no case for rejection of books of accounts – Held that Admittedly, every Assessment Year is a separate and independent year which should be considered to the facts of that year. Even otherwise the Assessing Officer has not given any basis while increasing the Gross Profit rate while comparing the rate of purchases and sales of the last year specially when the rate of purchases for the impugned Assessment Year considerably increased in comparison to last year - The assessee has followed the Fifo method while valuing the stock at cost and copies of bills were submitted during assessment proceedings and the latest rates were available with the assessee in respect of its products – Order of CIT(A) and ITAT upheld.

285 2009 TMI - 34376 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-II, Chandigarh Versus M/s Sarvhitkari Education Society

Dated: 19-08-2009

Sections - 011,

Exemption u/s 11(1)(a) – capital expenditure incurred on fixed assets – application of income – Held that - There may be conceptual difference in the constitution of a Trust or any other Institution if such difference has relevance having regard to statutory scheme for exemption. In the present case, expression used in Section 11 (1) (a) is “income derived from property held under Trust” irrespective of the fact whether income is derived by a Trust or any other Institution. Requirement is only of holding the property under Trust. The Commissioner, referring to the definition of ‘person’ under Section 2 (31) of the Act, observed that neither society was specified as a separate category nor trust was specified as a separate category and both were covered by the expression ‘association of persons’ in clause (v) or by residue clause (vii). – Exemption allowed – appeal dismissed.

286 2009 TMI - 34375 - ALLAHABAD HIGH COURT

Commissioner of Income-tax, Allahabad Versus M/s. Kesar and Zarda Bhandar, Allahabad.

Dated: 18-08-2009

Sections - 271B,

Failure to get its account audited – penalty u/s 271B - Tribunal cancelled the penalty of Rs.1,00,000/- levied u/s 271B in spite of the fact that the assessee was under obligation to get his accounts audited and to file the audit report within the stipulated time as provided under section 139 (1) of the I.T. Act - held that - the penalty under Section 271B of the Act, as it stood at the relevant point of time prior to its amendment by the Finance Act, 1995, which came into existence with effect from 1st July, 1995, was not exigible in case the audit report has been obtained within the specified date and the return of income has been filed beyond time – order of tribunal maintained.

287 2009 TMI - 34374 - ALLAHABAD HIGH COURT

Commissioner of Income-tax, Lucknow v. Shri Mukesh Jain, Lucknow.

Dated: 18-08-2009

Sections - 271B,

Failure to get its account audited – penalty u/s 271B – Audit report obtained before specified date but submitted after the specified date - Tribunal cancelled the penalty of Rs.1,00,000/- levied u/s 271B in spite of the fact that the assessee was under obligation to get his accounts audited and to file the audit report within the stipulated time as provided under section 139 (1) of the I.T. Act - held that - the penalty under Section 271B of the Act, as it stood at the relevant point of time prior to its amendment by the Finance Act, 1995, which came into existence with effect from 1st July, 1995, was not exigible in case the audit report has been obtained within the specified date and the return of income has been filed beyond time – order of tribunal maintained.

288 2009 TMI - 34373 - ALLAHABAD HIGH COURT

C.I.T. Versus M/s Rajjab Carpets

Dated: 18-08-2009

Sections - 035B,

Meaning of expression "Agency" – Section 35B(1)(b)(iv) - weighted deduction under Section 35B - Tribunal held that the expression maintenance of agency meant an act of continuing the relationship of principal and agent - has held that the assessee cannot be said to be maintaining a foreign agency where there was no requirement or obligation on the assessee under the terms of the agreement to maintain the agency of the foreign party outside India and it was only required to pay commission as per agreement in respect of the contract order procured by the said foreign agency and, therefore, it was not entitled for weighted deduction under Section 35B(1)(b)(iv) of the Act – Decided in favor of revenue – ITAT order is not correct.

289 2009 TMI - 34372 - ALLAHABAD HIGH COURT

Commissioner of Income-tax, Lucknow Versus Ishwar Das Rajendra Prasad

Dated: 18-08-2009

Sections - 271B,

Failure to get its account audited – penalty u/s 271B – Audit report obtained before specified date but submitted after the specified date - Tribunal cancelled the penalty of Rs.1,00,000/- levied u/s 271B in spite of the fact that the assessee was under obligation to get his accounts audited and to file the audit report within the stipulated time as provided under section 139 (1) of the I.T. Act - held that - the penalty under Section 271B of the Act, as it stood at the relevant point of time prior to its amendment by the Finance Act, 1995, which came into existence with effect from 1st July, 1995, was not exigible in case the audit report has been obtained within the specified date and the return of income has been filed beyond time – order of tribunal maintained.

290 2009 TMI - 34371 - DELHI HIGH COURT

VIPIN MALIK (HUF) Versus C.I.T.

Dated: 07-08-2009

Sections - 54F,

Exemption u/s 54F – Capital Gain – Sale of long term asset – investment in new residential house property - As per the claim made before the authorities below, the claim was with respect to "purchase" of a flat. This is important because Section 54-F contains two eventualities claiming for benefit, one, is the purchase of the residential house and second is construction of a residential house. - A reading of the orders of the CIT(A) and the I.T.A.T shows that the assessee has sought to bring his case under the eventuality of "purchase" or "construction", at his own convenience before the authorities. While before the CIT(A) the stand which was taken was that of purchase of a flat, the stand which was taken up before the I.T.A.T by the assessee was that of a construction of a house within three years of sale of agricultural land. Before this court, once again the stand which has been taken up was of purchase and not of construction within three years of the sale agricultural land. – Benefit of section 54F denied.

291 2009 TMI - 34370 - DELHI HIGH COURT

SONIA MAGU and others Versus COMMISSIONER OF INCOME TAX

Dated: 11-08-2009

Sections - 68,

Unexplained investment in Jewellery – Block Period – before the CIT(A) that the assessee was able to explain the source of entire jewellery. After accepting the explanation, the CIT(A) still proceeded to give partial relief to the assessee in view of voluntary statement contained in Form 2-B as per which the assessee had offered 20% of the jewellery amount to tax in respect of excess jewellery worked out at Rs.22,96,000/- i.e. 4,59,200/-. Thus, maintaining the addition of Rs.4,59,200/-, relief to

the extent of Rs.5,62,390/- was given by the CIT(A) – ITAT maintained the order of CIT(A) – Held that - Once the assessee has given satisfactory explanation regarding the purchase/acquisition of the disputed jewellery, the necessary consequence is that there was no unexplained asset in the hands of the assessee. – In such a situation, it is neither proper nor legally permissible for the revenue to still fasten the assessee with the liability of tax - Addition of Rs. 4,59,200/- is set aside

292 2009 TMI - 34369 - BOMBAY HIGH COURT

Satish Balan & Ors. Versus Union of India & Ors.

Dated: 10-08-2009

Sections - 269UC,

Compulsory Acquisition of property – Chapter XXC of the Income Tax Act, 1961 - . Assessee contended that he acquisition is to be effected only when there is a significant undervaluation in the agreement of sale with a view to evade tax and an order of compulsory purchase of immovable property can be made only if the appropriate authority is satisfied that the apparent consideration, as shown in the agreement of sale, was less than the fair market value by 15% or more – Department contended that Since there were no sale instances of open land or land with a small structure constructed thereon, the sale instance of the builtup apartments could be referred to as a guide for arriving at proper valuation of the said property – Appropriate authority had remanded the matter to ascertain the value corrected – Held that order of appropriate authority not to be interfered with.

293 2009 TMI - 34368 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus SOPHISTICATED MARBLES & GRANITE INDUSTRIES

Dated: 11-08-2009

Sections - 080IB,

Manufacture or Production – Marble Stones – Processes – after purchasing of blocks of slabs and getting them cut by cutting machines from outside, the process which is undertaken by the assessee is to put full size fibre on one side of the slab which is technically required to give support to the slab; to fill holes and cracks in these slabs to make it marketable by applying chemicals on holes and cracks; mixing of chemicals and powder for the aforesaid purpose is done by the assessee; polishing the slab by different machines; for bringing shine on the slab applying different types of tix oxide and thereafter cutting the finished slabs to proper size and shapes from which the marketable size of slabs, moulded pieces, edged pieces and tiles are made - Tribunal order that the processes are falling within the meaning of expression production or manufacture upheld – revenue appeal dismissed.

294 2009 TMI - 34367 - DELHI HIGH COURT

THE COMMISSIONER OF INCOME TAX-III Versus SPORTKING INDIA LIMITED

Dated: 19-08-2009

Sections - 080IA,

Benefit of Section 80IA - on account of loss of goods which were destroyed by fire, the assessee company was given an insurance claim - The AO was of the view that the amount received from the Insurance Company is not “derived from” the manufacturing activity of the assessee company and consequently the assessee was not entitled to the benefit of Section 80IA – CIT(A) and ITAT allowed the claim u/s 80IA and deleted the addition made by AO – ITAT held that Moreover, the said receipts on account of insurance claim, in our opinion, are in the nature of reimbursement of loss actually

incurred by the assessee as a result of goods damaged by fire and there being no element of profit involved therein, the same cannot be treated as any income separately earned by the assessee so as to exclude them for the purpose of computing deduction u/s 80IA – Held that - we accept the contention of the assessee and reject the contention of the Revenue – revenue appeal dismissed.

295 2009 TMI - 34366 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX, DELHI-VI Versus WHIRLPOOL OF INDIA LTD.

Dated: 19-08-2009

Sections - 037,

Allowance of expenditure – from the date of commencement of business - setting up of the business Versus commencement of business - While examining the return the Assessing Officer noted that the assessee had claimed expenditure on the footing that the business had been “set up” with effect from 1.11.1995. He took the view, disagreeing with the assessee, that the business can be said to have “set up” only on 1.2.1996 when the bank account was opened in the assessee’s name and therefore only the expenditure incurred thereafter can be allowed as a deduction – CIT(A) confirmed the order of AO but ITAT deleted the addition – Held that - The facts of the present case are however more in line with the decision of this Court in the case of Hughes Escorts Communications Ltd [2009 -TMI - 33670 - DELHI HIGH COURT] – Expenses allowed to be deducted.

296 2009 TMI - 34365 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus YAMAHA MOTOR INDIA PVT. LTD.

Dated: 19-08-2009

Sections - 032, 043,

Computation of Depreciation – Deduction of scrap value of assets which have been discarded and written off in books - The contention of the Revenue is that with respect to any machinery for which depreciation is claimed under Section 32, the same cannot be allowed unless such machinery is used in the business and since discarded machinery is not used in the business, therefore, with respect to the discarded machinery no depreciation can be allowed – Held that - ITAT was correct in law in directing the Assessing Officer to re-compute depreciation after reducing the scrap value of the assets which have been discarded and written off in the books of accounts for the year under consideration from the written down value of the block of assets - Actual user of the machinery is not required with respect to discarded machinery and the condition for eligibility for depreciation that the machinery being used for the purpose of the business would mean that the discarded machinery is used for the purpose of the business in the earlier years for which depreciation has been allowed

297 2009 TMI - 34361 - MADRAS HIGH COURT

The Commissioner of Income Tax Chennai Versus Shri C. Jayantilal

Dated: 28-07-2009

Sections - -

[i] Whether on the facts and circumstances of the case, the Tribunal was right in deletion of sum of Rs.37,71,931/- being the difference in stock value found? [ii] Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the Assessee has discharged burden of proof cast upon him for Rs.11,00,000/- being the advance paid for purchase of land especially as the same was not shown in the Trial Balance? [iii] Whether on the facts and circumstances of the case, the Tribunal is right in not considering the fact that the voluntary statement made

without any coercion or duress nor retracted given could form basis for the Assessment? – Held that - it cannot be said that the Appellate Tribunal in the case before us has omitted to consider any material fact or any material piece of evidence – appeal dismissed.

298 2009 TMI - 34360 - UTTARAKHAND HIGH COURT

M/s Western Geco International Ltd. Versus Assistant Commissioner of Income Tax Dehradun

Dated: 07-08-2009

Sections - 010(10CC),

Tax Paid by the employer – perquisite in the hands of employee – exemption u/s 10(10CC) - ITAT has upheld the order passed by the Commissioner of Income Tax (Appeals) observing that there is no infirmity in the order of the CITA observing that the tax paid by the employer is a perquisite provided for by way of monetary payment and the provisions of Section 10(10CC) are not applicable – matter remanded to ITAT for reconsideration

299 2009 TMI - 34359 - UTTARAKHAND HIGH COURT

Director of Income Tax International Taxation Delhi-II, New Delhi Versus M/s Western Geco International Ltd.

Dated: 07-08-2009

Sections - 234B,

Interest u/s 234B - ITAT has upheld the order passed by the Commissioner of Income Tax (Appeals) observing that there is no infirmity in the order of the CITA deleting the interest charged under Section 234B of the Act - In the return, exemption under Section 10(10CC) of the Act was claimed. The Assessing Officer (for short A.O.) noticed that no exemption under the said provision of the Act was available to the assessee and a notice under Section 148 of the Act was issued - A.O. did not allow the exemption on the perquisite claimed by them and after applying principle of multiple stage grossing up, the income was assessed as mentioned the Assessment Order – order of ITAT maintained – revenue appeal dismissed.

300 2009 TMI - 34353 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax, Karnal Versus M/s Unique Autofelts (P) Ltd.

Dated: 17-08-2009

Sections - 263,

Order u/s 263 – originally assessment order was passed u/s 143(3) – thereafter thereafter order of ratification under Section 154 – CIT(A) in exercise of its power under Section 263 of the Act, cancelled the order of assessment and directed making of assessment de novo – ITAT held that CIT(A) was not justified in invoking its jurisdiction under Section 263 of the Act, as the Assessing Officer had duly applied his mind, made inquiries and examined the accounts – Held that - Tribunal rightly held that power under Section 263 of the Act could be exercised where view taken by an Assessing Officer was erroneous. While exercising such power, the Commissioner was bound to take into account all relevant facts. If order invoking the said power proceeds on an erroneous assumption, the same could be set aside by the Tribunal. Finding of the Tribunal is not shown to be perverse

301 2009 TMI - 34351 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax (Central), Ludhiana Versus M/s Majestic Auto Limited

Dated: 17-08-2009

Sections - 037,

Disallowance of expenses - Rs.4,40,183/- out of travelling expenses, Rs. 1,10,804/-out of salary and Rs.53,543/- out of research and development expenses claimed by the assessee pertaining to M/s Honda Motor Cycles for which the assessee is a promoter and is separate identity under the head of Hero Honda Ltd. and came into existence afterwards – revenue submitted that since it is a new venture and expenditure being of capital nature, that of promoter, cannot be allowed as revenue expenditure – held that - finding of the Tribunal shows that the expenses had been incurred in the course of the business of the assessee with a view to get latest technology know-how of mopeds from Honda Motors Company Limited. In such a situation, the expenses incurred had nexus with the existing business of the assessee – order of ITAT upheld deleting the allowing the deduction

302 2009 TMI - 34347 - MADRAS HIGH COURT

P.V. Chandran Versus The Assistant Commissioner of Income-tax

Dated: 10-08-2009

Sections - 028, 056,

Revenue Receipt Versus Capital Receipt – Taxability u/s 28 or 56 - the appellant ventured to sell the shares of the other promoters of the Company assuring the agreed price and undertaking to compensate them in case the shares are sold less than the agreed price – held that - 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. Ultimately, the venture proved that the appellant not only gained control of the mill, but also received substantial amount. Therefore, the profit on the sale of shares was a calculated move and it cannot be regarded as a wind fall. The surplus amount thus realised by the assessee is an income. If the assessee is not entitled to the surplus amount, the amount certainly would have become taxable in the hands of the divesting promoters.

303 2009 TMI - 34346 - MADRAS HIGH COURT

M/s. WCI (Madras) (P) Ltd. Versus The Assistant Commissioner of Income Tax

Dated: 10-08-2009

Sections - 148,

TDS – Amount of TDS - Reopening of an assesment on the basis of– difference in TDS certificate and amount shown in Profit and Loss Account - In respect of the assessment years 1996-97 to 2002-03 the assessing officer noted that there was a difference between the income as per the TDS certificate and that credited in the profit and loss account. The assessee's explanation was that in this line of business, tax is deducted on the gross income including reimbursable expenses incurred by the assessee. The explanation was not accepted by the assessing officer and he made an addition of the difference between the income as per the TDS and that credited in the profit and loss account – CIT (A) accepted the contention of assessee – ITAT remitted the matter by directing the assessee to explain and prove by way of proper reconciliation and documentary evidence the reason for the discrepancy – further ITAT held that difference in TDS certificate and profit and loss account is sufficient ground to issue notice under section 148 – order of ITAT upheld

304 2009 TMI - 34344 - CALCUTTA HIGH COURT

(1) DILIP KUMAR AGARWAL, (2) KRISHNA KUMAR AGARWAL Versus COMMISSIONER OF INCOME-TAX

Dated: 17-03-2009

Sections - 127,

Transfer of Cases – power under section 127(2)(a) - the petitioners by letters furnished on January 27, 2009, had filed detailed objections, those have not been considered. Though simultaneous searches were not conducted as evident from panchnama, yet transfers have been directed on the said basis – AO stated that petitioners have business connection with their father, the stand taken in the order – held that - the onus has been put on the petitioners to produce material evidence that they are not connected with their father. Rather had the respondents any evidence in support of their case they should have furnished the same. - mere family connection cannot be a ground for transfer – order of transfer set aside and quashed.

305 2009 TMI - 34343 - CALCUTTA HIGH COURT

ANAND KUMAR ARYA AND ANOTHER Versus COMMISSIONER OF INCOME-TAX

Dated: 12-03-2009

Sections - 127,

Transfer of Cases – Section 127 - It is to be noted that the respondents have tried to justify the order transfer by supplementing reasons in their affidavit-in-opposition. In my view, the validity of an order has to be judged from the order itself. If the affidavit filed by the respondents justifying the reasons for such transfer is accepted, then the order of transfer which is not within the parameters of section 127 may get validated by the additional grounds later brought by way of affidavit which, in my view, cannot be done. Therefore, the writ petition is allowed. Hence, the order of transfer dated January 19, 2007, is set aside and quashed. Consequential proceedings are also quashed. The application is also disposed of accordingly

306 2009 TMI - 34341 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus GAJANANA ENTERPRISES

Dated: 18-03-2009

Sections - 028, 045,

Conversion of agricultural land into industrial use and residential plots – AO concluded that the assessee was carrying on an adventure in the nature of a trade and, therefore, was liable to be taxed under the head “Income from business” and not under the head “Income from capital gains” – held that - taking into consideration the nature of the transaction, it cannot be said by any stretch of imagination that there was any intention to make the profit and even otherwise we do not find that the transaction was in the nature of trade. It is in the context of these circumstances that the Commissioner of Income-tax (Appeals) and also the Income-tax Appellate Tribunal concurrently held that it is not in the nature of a trade and the profit earned thereby cannot be under the head “Business” and it has to be under the head “Capital gains.” – Order of CIT(A) and ITAT maintained – appeal dismissed.

307 2009 TMI - 34340 - KARNATAKA HIGH COURT

SUBBANNA GOWRAMMA FAMILY TRUST Versus COMMISSIONER OF INCOME-TAX

Dated: 10-06-2009

Sections - 161,

AOP – Charge of tax in terms of section 161(1A) and Explanation 2 below sub-section (3) of section 164 of the Act. - In this view of the matter though the learned counsel for the appellant contends that the dismissal of the special leave petition does not absolve

the Tribunal to examine the facts and legal evidence on record and the fact that the appellant-trust would earn other income other than the rental income from the single property owned by the trust. In this view of the matter it would be suffice for us to direct the assessing authority to consider the facts pleaded in these appeals as to whether the assessee has earned income only from the house property or any other income other than the house property was earned during the assessment years 1985-86 and 1986-87 at the time of giving effect to the assessment orders

308 2009 TMI - 34337 - CALCUTTA HIGH COURT

NEW RUPAYAN JEWELLERS Versus UNION OF INDIA AND OTHERS

Dated: 24-02-2009

Sections - 220,

Stay of Recovery of demand in pursuance of demand under section 220(6) - After receiving such notice of demand the petitioner had filed an application for stay which was rejected by an order dated November 10, 2008. – Held that - section 220(6) of the Act, postulates that where an appeal under section 246 or under section 246A is pending, the Assessing Officer has the discretion, subject to such conditions as he may think fit to impose, to treat the assessee as not being in default in respect of the amount in dispute in the appeal, as long as such appeal remains pending though the time for payment might have expired. Consequently, a circular dated March 6, 1989, has been issued by the Revenue. - found that discretion has been exercised mechanically and without the application of mind – writ petition allowed.

309 2009 TMI - 34336 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus VATIKA TOWNSHIP P. LTD.

Dated: 06-01-2009

Sections - 113,

Whether the proviso appended to section 113 is clarificatory and / or curative in nature - As the said proviso was introduced with effect from June 1, 2002, i.e., with prospective effect and by reason thereof, tax chargeable under section 113 of the Income-tax Act is to be increased by surcharge levied by a Central Act, we are of the opinion that keeping in view the principles of law that the taxing statute should be construed strictly and a statute, ordinarily, should not be held to have any retrospective effect, it is necessary that the matter be considered by a larger Bench

310 2009 TMI - 34333 - PUNJAB AND HARYANA HIGH COURT

M/s Mahashwari Synthetics Pvt. Ltd. Versus Commissioner of Income Tax (Central), Ludhiana & another

Dated: 11-08-2009

Sections - -

Appeal against remand order - No doubt, where material is enough, the appellate Court should normally determine the issue on merits, even if such issue has not been dealt with by the original authority. However, power of remand can be exercised when as a result of finding of the appellate authority, re-determination of issue becomes necessary. In the present case, on facts, the Tribunal held that it was necessary to have re-determination of assessment for the reasons mentioned in the impugned order. We are unable to hold that the reasons mentioned by the Tribunal for rejecting the conclusion for re-determination of issues are perverse.

311 2009 TMI - 34332 - DELHI HIGH COURT

SAGA DEPARTMENTAL STORES LTD. Versus COMMISSIONER OF INCOME

TAX(APPEALS)

Dated: 10-08-2009

Sections - 037,

Expenditure incurred for payment of commission to taxi drivers, guides and other commission agents - The assessee carries on the business of departmental stores in which various handicrafts items, carpets etc. are sold to tourists. For the Assessment Year in question i.e. 2005-2006, the assessee claimed expenditure towards commission paid to the taxi drivers, guides and other commission agent to the tune of Rs.11,45,47,937/-. The Assessing Officer allowed Rs.1,21,55,213/- as expenditure out of the aforesaid amount claimed by the assessee. The assessee declared a total income of only 1.43 crores on a turnover of Rs.55,45,91,631/-. The declared gross profit rate was 54.15% and the net profit rate was only 1.93% - CIT(A) allowed expenditure at 14% - ITAT increased it to 16% - Assessee claimed at 18-20% - ITAT order maintained.

312 2009 TMI - 34331 - CALCUTTA HIGH COURT

COMMISSIONER OF INCOME TAX KOL-XVI Versus M/S. RAMKRISHNAPUR CO-OPERATIVE BANK LTD.

Dated: 15-07-2009

Sections - 068, 080P,

Co-operative Bank – Deduction u/s 80P – Unexplained Income - The assessee invested certain sums, out of the surplus funds available out of the working capital including voluntary reserves, in various government securities and with the banks. Such investments are integral part of normal banking activities and, therefore, the assessee claimed deduction in respect of such income under Section 80P(2)(a)(i) of the Income Tax Act, 1961 – held that interest and dividend income derived out of investment are entitled to deduction - The assessing officer added Rs.2,86,260/- as unexplained cash credit under Section 68 of the said Act. - Such liability in suspense account was shown by the assessee in the normal course of its business as the amount could not be properly identified - the amount could not be treated as unexplained cash credit inasmuch as in the daily business of the banking transactions there are number of entries, which could not be properly tallied due to various mistakes, and, therefore, was shown in the suspense account

313 2009 TMI - 34330 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax-II, Chandigarh Versus The Investment Trust of India Ltd., Chennai.

Dated: 11-08-2009

Sections - 154,

Rectification of mistake - ITAT held that depreciation allowed earlier cannot be withdrawn by revoking the provisions of Section 154 – held that - Only argument raised is that the asset itself did not exist and thus, the claim of the assessee was bogus. This submission cannot be accepted. There is nothing to substantiate this argument. Regular assessment had been done under Section 143(3) of the Act and depreciation was held to be admissible. It has been held that the assessee purchased the asset and leased out the same in the course of its business. Rectification was permissible only if there was error apparent on the face of the record and not something which could be established by long drawn process of reasoning – revenue appeal dismissed.

314 2009 TMI - 34329 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax-I(Central), Ludhiana Versus M/s Bahadur

Chand Investment (P) Ltd.

Dated: 10-08-2009

Sections - -

Charge of tax at low rate applicable to industrial company - assessee claimed itself to be an industrial company for claiming lesser rate of tax. The Assessing Officer rejected the said claim. The CIT(A) upheld the plea of the assessee - the assessee must itself be engaged in manufacturing activity of the nature specified in the definition and mere holding of shares of an industrial company, was not enough to declare an investment company to be an 'industrial company'. Disposed off in favor of revenue.

315 2009 TMI - 34328 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax (Central) Ludhiana Versus M/s. Thakur Devi Investment (P) Limited

Dated: 11-08-2009

Sections - 80M,

Deduction under Section 80-M - gross dividends and without deducting the amount of interest and other expenses - The assessee claimed deduction under section 80-M of the Act on the gross dividend but the Assessing Officer did not accept the claim. It was held that the amount of interest paid by the assessee was required to be reduced from the gross dividend income while working out relief under section 80-M of the Act. This view was affirmed by CIT(A) but the Tribunal reversed the said view – held that – ITAT order is not cored and reversed.

316 2009 TMI - 34315 - AUTHORITY FOR ADVANCE RULINGS

M/s. Invensys Systems Inc., In re

Dated: 06-08-2009

Sections - 195,

Payment made by IIPL – The applicant incurs expenditure in relation to the functions enumerated in Schedule I to the said Agreement for the benefit of the Group as a whole. Pursuant to the Agreement the applicant raises invoice on IIPL for the amounts worked out on the basis of the formula in the Agreement. It is stated that none of the personnel of the applicant visited nor would in the future visit India for providing the centralized assistance to IIPL - Question whether payment made by IIPL towards the costs allocated by the Applicant is taxable in India – Whether IIPL is liable to deduct TDS (withhold tax) - Assuming that some of the activities are not really services but they are more in the nature of stewardship/shareholder activities, for that reason, the amounts received by the applicant from IIPL in terms of the invoices raised by it cannot be taxed in India in the absence of permanent establishment of the applicant – Amount is not taxable in India – TDS (withholding tax) is liable to be deducted.

317 2009 TMI - 34308 - MADRAS HIGH COURT

M/s. Madras Gymkhana Club Versus The Deputy Commissioner of Income Tax

Dated: 30-07-2009

Sections - 056, 147,

Mutuality – Interest on Fixed Deposits / investments out of surplus funds received from its members - such deposits/investments were made with institutional members who were either banking institutions or Public Sector Undertakings – held that - investment of surplus fund with some of the member banks and other institutions in the form of Fixed Deposits and securities which in turn result in earning of huge surplus amounts by way of interest cannot be held to satisfy the mutuality concept - the assessee filed nil return and since the Assessing Authority by invoking substantive part of Section 147

sought the interest earned by the assessee from the surplus income deposited with the financial institutions and Public Sector Undertakings as one of escaped assessment, the question of limitation does not arise

318 2009 TMI - 34307 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax, Faridabad Versus Mr. Harjit Singh

Dated: 04-08-2009

Sections - 132, 158BFA,

Undisciplined Income - Order of the Tribunal – restoring the issue of charging interest u/s 158 BFA(1) – non production of any details/evidence before the Ld.CIT(A) or the Assessing Officer despite opportunities allowed by both of them. – held that - findings recorded by the Tribunal are findings of fact based on appreciation of evidence – not to be interfered with being no substantial question of law arises.

319 2009 TMI - 34306 - PUNJAB AND HARYANA HIGH COURT

Mr. Manak Chand Agarwal Versus CIT

Dated: 04-08-2009

Sections - -

Conflicting Findings of the ITAT – Non reliability of the accounts and statement of the proprietor - assessee submits that the view taken by the Tribunal is inconsistent with its order for assessment year 1992-93 and that addition was not called for as the account of M/s Vijay Bottle Stores in whose favour credit entry was made in the accounts book of the assessee, was not properly maintained – held that the matter has been duly considered concurrently by the three authorities and the addition has been made and upheld. The findings of fact so recorded cannot be held to be perverse. There was no question of inconsistency with the finding for the year 1992-93 as it has been held that the amount related to assessment year in question

320 2009 TMI - 34305 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Faridabad Versus M/s Puneet Udyog

Dated: 04-08-2009

Sections - 037,

Disallowance of expenses – Expenses on of total fuel and firewood has been allowed in the earlier year but rejected in the current year by the AO whereas CIT(A) and ITAT allowed the expenses – AO disallowed the expenses and made addition from inward and outward freight expenses on the basis that no bills were produced for such expenses, CIT(A) and ITAT allowed the expenses on the GRN's (Goods Return Notes) issued by the transporters – Held that - concurrent findings recorded by the CIT(A) as well as the Tribunal are based on appreciation of evidence – order maintained.

321 2009 TMI - 34301 - CHATTISGARH HIGH COURT

M/s. Chandra Prasad Liquor Versus Commissioner of Income Tax

Dated: 07-07-2009

Sections - 144, 271,

Penalty u/s 271(1)(c) – rejection of books of accounts - AO was called upon to produce books of account and other documents maintained by him in respect of the business, however, the assessee did not produce it on the pretext that the accountant, who maintains books of account, is absconding. The A.O. not accepting the explanation held that the assessee failed to comply with the terms of notice under Section 142 (1) and 143 (2) and accordingly, proceeded to make best judgment assessment under

Section 144 and made a lump sum addition of Rs.3 lakhs on the profit disclosed by the assessee – Held that since the assessee failed to explain the expenditure, penalty leviable

322 2009 TMI - 34294 - DELHI HIGH COURT

[THE COMMISSIONER OF INCOME TAX -V Versus PANACEA BIOTECH LTD.](#)

Dated: 27-07-2009

Sections - 032, 035,

Depreciation on Flats and Machines u/s 32 – Expenditure on R&D office u/s 35 – Held that - the expression “used for the purpose of business” includes passive user of the assets in the business. - the asset cannot be said to be not used when the same is kept ready for use – depreciation allowed – regarding expenditure on scientific research - expenditure for scientific research means “to become liable to” i.e. to incur a debt and at such time the expenditure can be said to have been incurred. It was further held that the expression “incurring” includes either an actual payment or that the concerned person has become liable for payment but had not actually made payment – therefore benefit can not be denied where payment has not been made

323 2009 TMI - 34293 - PUNJAB AND HARYANA HIGH COURT

[The Commissioner of Income-Tax, Patiala Versus M/s R.K. Rice Mills](#)

Dated: 31-07-2009

Sections - 145,

Rejection of books of accounts - AO on the basis of photocopy of the stock statement, came to the conclusion that the assessee was having 732.21 qtls stock of paddy basmati as on 31st March, 1997 while the stock was shown ‘nil’ in the books of account - AO did not point out any mistake in the books of account maintained by the assessee - The method of accounting was followed consistently by the assessee and there was no change in the method of accounting, no instance of suppressed sale was pointed out by the Assessing Officer - In such type of cases, the stock register is the subject matter of verification by the Excise authorities, in the present case, the said authorities had also not pointed out any mistake in the stock register maintained by the assessee – order of ITAT deleting the addition maintained.

324 2009 TMI - 34292 - PUNJAB AND HARYANA HIGH COURT

[The Commissioner of Income Tax, Faridabad Versus Brij Pal Sharma](#)

Dated: 29-07-2009

Sections - 144,

Deemed Net Profit of 8% in view of section 44D - when the assessee failed to produce the account books as well as the requisite information in spite of repeated opportunities - The CIT(A) after appraising the factual position manifested by the books of account and other details led by the assessee was satisfied that the profit as declared by the assessee in the books of account was fair and proper – ITAT upheld the findings of CIT(A) – order of ITAT maintained.

325 2009 TMI - 34291 - PUNJAB AND HARYANA HIGH COURT

[Surinder Kumar Versus The Income-Tax Officer](#)

Dated: 29-07-2009

Sections - 069, 147,

Unexplained money u/s 69A – recording of findings before initiation of proceedings u/s 147 – investment made in the FDRs of Rs.1,50,000/- each on 9.6.95 and 14.8.95 - Held

that In the present case, the findings having been recorded by the Assessing Officer, CIT(A) as well as the Tribunal that the assessee had unexplained income which could be added to taxable income, cannot be held to be perverse merely because the assessee was aged 19 – addition u/s 69A upheld.

326 2009 TMI - 34290 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai III Versus Sri Sudarshan Kumar Rungta

Dated: 20-07-2009

Sections - 068,

Cash Credit – section 68 – A proprietorship firm was merged with a company - A sum of Rs.2,94,16,923/- was reflected in the accounts by way of credit entries under the caption 'sundry creditors'. At that point of time, there was no response from the assessee for producing the person, who extended such credit in the form of security deposit to the tune of Rs.2 crores and another credit of Rs.42,71,373 – Such cash credit was assessed in the hands of company and tax levied – AO wanted to assess the same in the hands of proprietor – held that that action of AO is not valid – the same transaction can not be subject to double taxation.

327 2009 TMI - 34289 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Faridabad Versus M/s. Nuware India Ltd.

Dated: 31-07-2009

Sections - 271,

Penalty u/s 271(1)(c) – retrospective amendment – insertion of Explanation 4 - The assessee declared loss but during assessment, the Assessing Officer did not accept the extent of loss claimed and addition was made to the income. Proceedings were also initiated for penalty. Finally, penalty was levied – ITAT set aside the penalties – matter remanded to ITAT

328 2009 TMI - 34287 - AUTHORITY FOR ADVANCE RULINGS

M/s SPAHI Projects Private Ltd. In re

Dated: 29-07-2009

Sections - 009, 195,

Marketing and Promotion of Business - Issue of existence of P/E in India and Deduction of TDS - Services were being rendered outside India - No office in India - Commission is received out of sale proceeds for every completed transaction - no office establishment maintained in India - Held that amount paid on account of the commission paid to it by the applicant is not chargeable to tax in India by virtue of Art. 7 of DTAA and Section 9(1)(i) read with the Explanation thereto, the applicant is not obliged to deduct the tax at source under Section 195 of the Income-tax Act 1961.

329 2009 TMI - 34286 - BOMBAY HIGH COURT

Manish D. Shah Versus C.M. Betgeri, Commissioner of Income Tax, Bombay

Dated: 27-07-2009

Sections - 220, 234B,

Interest u/s 234B - Period of computation - whether Interest under Section 234B can be claimed upto the date of intimation under Section 143(1) or regular assessment under Section 143(3) - Whether the interest under Section 243B can be charged along with interest under Section 220 - Held that interest u/s 234B is payable upto the date of assessment u/s 143(3) - Interest payable u/s 220 is not connected with section 234B and interest u/s 220 is payable for failure to pay demand u/s 156 - Simultaneous levy of

interest u/s 234B and 220 are not unconstitutional - decision in the matter of Umesh S. Bangera vs. Union of India & Ors., [2008 -TMI - 11128 - BOMBAY High Court] followed.

330 2009 TMI - 34271 - PUNJAB AND HARYANA HIGH COURT

Smt. Kusum Lata Thakral Versus Commissioner of Income Tax

Dated: 24-07-2009

Sections - 068,

Undisclosed Sources - Genuine Gift - assessee claimed certain gifts but the Assessing Officer made addition to the declared income by treating the alleged gifts to be income from undisclosed sources - appellant submitted that the donors had given affidavits and the gift deeds were also produced. The Assessing Officer obtained report from Mr. R.S. Bura, Assessing Officer, Rohtak, where the donors disowned the making of the gifts – Held that The object of cross-examination is to test the veracity of the version given in examination in chief. In the present case, even if cross-examination was allowed and the donors who had disowned the making of gifts, were confronted and shown to be factually wrong, the same would have made no difference, as there was no natural love and affection and in its absence, the gifts were not genuine. – Addition confirmed.

331 2009 TMI - 34270 - PUNJAB AND HARYANA HIGH COURT

Prempal Gandhi Versus Commissioner of Income Tax

Dated: 22-07-2009

Sections - 271,

Penalty u/s 271(1)(c) – surrender / admission by filling revised return - surrender has been accepted as such without making any further enquiries - the assessee concealed transactions in the bank account and when notice of re-assessment was issued, finding no other way out, the assessee surrendered income, to avoid penal consequences. – Held that in such a situation, it could not be held, as was held in the cases relied upon, that the assessee wanted to buy peace of mind and there was no evidence of concealment, which called for penalty. This is not a case where penalty has been imposed only because assessee disclosed higher income voluntarily but a case of clear concealment where the assessee having found no other way out, was forced to surrender undisclosed income. – Levy of penalty upheld.

332 2009 TMI - 34269 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax, Hisar Versus Smt. Shakuntala Devi

Dated: 21-07-2009

Sections - 147, 143, 148,

Initiation of proceedings u/s 147 – validity of proceedings – ignorance of explanation 2(b) of section 147 - Even if it is assumed that proceedings could not be initiated under Section 147 in respect of pending assessment, there being no bar in the present case to proceed under Section 143(2), proceedings were valid - It is true that this aspect was not raised by the revenue before the CIT(A) or before the Tribunal but this being purely legal point arising out of the admitted facts, HC allow this point to be raised at this stage – decision of ITAT reversed

333 2009 TMI - 34268 - PUNJAB AND HARYANA HIGH COURT

CIT Versus M/s Chabal Kalan Co-op. L & C Society Ltd.

Dated: 22-07-2009

Sections - 158BC,

Search and Seizure – reopening of completed assessments u/s 143(3) /144 / 147 – ITAT held that Tribunal clearly are that the material found in search was taken into account during regular assessment and there was no undisclosed income, which may be subjected to block assessment under section 158BA – decision the tribunal sustained.

334 2009 TMI - 34267 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Jalandhar-I, Jalandhar Versus M/s. Atam Valves (P) Ltd.

Dated: 22-07-2009

Sections - 068,

Estimated Sales – Loose Slips collected during survey u/s 133A – held that AO is not justified in estimating the sales on the basis of loose slips without substantiating that the assessee has actually made the sales to that extent of estimation made by the AO and having no iota of evidence in the form of sale bills or bank account or movable and immovable property which represent earning of unaccounted income by the assessee - No doubt, a false explanation of assessee may be a circumstance to be taken into account for recording a finding of undisclosed income and some degree of guess work is also permissible in such a situation, as held by the Supreme Court in Kachwala Gems Vs. Joint Commissioner of Income Tax [2008 -TMI - 3365 - SUPREME COURT] it depends upon facts and circumstances of each case as to what is to be fair estimate of undisclosed income.

335 2009 TMI - 34266 - UTTARAKHAND HIGH COURT

Director of Income Tax International Taxation Delhi-II Versus M/s Schlumberger Asia Services Ltd.

Dated: 24-07-2009

Sections - 044BB,

Gross Receipt – Custom duty forming part of gross receipt for computing income u/s 44BB or not – Held that reimbursement towards the custom duty, paid by the assessee, being statutory in nature, cannot form part of amount for the purposes of deemed profits unlike the other amounts received towards reimbursement

336 2009 TMI - 34265 - UTTARAKHAND HIGH COURT

Western Geco International Ltd. Versus Assistant Commissioner of Income Tax Dehradun.

Dated: 24-07-2009

Sections - 010(10CC),

Income from salary - Perquisites – Exemption u/s 10(10CC) – Tax paid by the employer on behalf of assessee – assessee claimed the exemption from perquisites in the Return – AO denied the claim - The larger bench of ITAT has taken the view that the tax paid by the employer on behalf of the employees, was not a perquisite in the nature of monetary perquisite to its employees, and as such assessee is entitled to exemption under Section 10 (10CC) of the Act – matter remitted to tribunal for re-consideration in view of larger bench decision

337 2009 TMI - 34264 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-II, Chandigarh Versus M/s Diplast Plastics Limited

Dated: 24-07-2009

Sections - 068,

Nature of evidences collected during survey u/s 133A – rough notes - A survey under Section 133A of the Act was conducted at the business premises of the assessee on 17.9.1999 and certain loose papers and documents were found. The Assessing Officer held that trading results declared by the assessee were not verifiable. The assessee could not co-relate the transactions in the books of accounts with the RG register. Since the Assessing Officer was not satisfied with the explanation of the assessee, he made addition to the declared income – held that books of account maintained by the assessee were duly audited and Assessing Officer had not pointed out any specific defect whatsoever in such books of account maintained by the assessee – addition can not be made.

338 2009 TMI - 34263 - PUNJAB AND HARYANA HIGH COURT

[The Commissioner of Income Tax, Faridabad Versus M/s. Random Constructors Pvt. Ltd., Gurgaon.](#)

Dated: 28-07-2009

Sections - 037,

Revenue Expenditure Versus Capital Expenditure – Durable item – AO denied the claim of deduction on account of shuttering expenses being a durable item – held that material could be used in the subsequent A.Y. is no ground to deny the claim for deduction

339 2009 TMI - 34258 - MADRAS HIGH COURT

[The Commissioner of Income Tax Chennai Versus M/s. Habeeb Tanning Co.](#)

Dated: 20-07-2009

Sections - 147, 148,

Re computation – Re Assessment – Change of Opinion – Section 147 and Section 148 – Held that - The assessment is related to the year 2001-2002 – Reassessment should have been initiated on or before 31.03.2006, on which date the period of four years came to an end - the present action for re-assessment came to be initiated on 18.12.2006 - the proceedings for re-assessment having been hit by proviso to Section 147 of the Act, the whole of the proceedings have no legal support.

340 2009 TMI - 34256 - KERALA HIGH COURT

[DR. R.P. PATEL Versus COMMISSIONER OF INCOME TAX, KOTTAYAM](#)

Dated: 03-04-2009

Sections - 028, 037,

Computation of Income – Doctor's Profession - Disallowance of expenses – IVP as a Capital Assets – Ignorance of Decisions of Supreme Court – If market value is zero, can it be constituted as Capital Goods – Regarding claim of expenses, tribunal rejected the claim for the reason that the claim was made for the first time before the Tribunal and the assessee never raised the issue in assessment before the officer or in first appeal before the first appellate authority – Regarding IVP, tribunal rejected the claim by holding that IVP is nothing but a deposit with the Post Office which entitles the assessee to a specific rate of interest on compoundable basis and assessee can encash the deposit only for the maturity value which is pre-determined – HC uphold the decisions of ITAT and dismissed the appeal - Government security is not comparable to IVPs

341 2009 TMI - 34255 - DELHI HIGH COURT

[C. I. T. Versus DALMIA CEMENT BHARAT LTD.](#)

Dated: 24-07-2009

Sections - 036,

Disallowance of Interest – Diversion of funds to subsidiary company – held that that no portion of the interest paid by the assessee on its borrowed funds can be disallowed on the ground that a portion thereof has been diverted to subsidiary company and that that the Assessing Officer was not justified in disallowing the assessee company in debiting the interest paid to the bank as a revenue expenditure merely because it had given further loan of Rs.40,00,000/- to its subsidiary company

342 2009 TMI - 34252 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI-IV Versus M/S EICHER LTD.

Dated: 15-07-2009

Sections - 028, 037,

Interest Income – Assessee claims that interest is not accrued since the loan had become irrecoverable - Revenue strongly contended that the debtor company of the assessee was in a strong financial position and had many assets and consequently, the decision of the assessee company not to initiate any legal proceedings was clearly doubtful – Held that the action of AO to make addition on account of mercantile system of accounting and calculating interest on irrecoverable debts is not correct – Decision of Supreme court in Godhra Electricity Co. Ltd. Vs. CIT [2008 TMI - 5588 - SUPREME Court] followed.

343 2009 TMI - 34251 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus H.B. STOCK HOLDINGS LIMITED

Dated: 24-07-2009

Sections - 028, 036,

Disallowance of claim of loss on account of share transactions – disallowance of claim of interest – Regarding disallowance of loss on share transactions, AO found that the transactions were entered into with group concerns and the AO doubted the genuineness – Regarding disallowance of the claim of deduction of interest, AO reasoned that the assessee had given interest free advances amounting to its sister concern M/s. Mount Finance Company Pvt. Ltd - The Assessing Officer was, therefore, of the view that the expenditure was not incurred by the assessee wholly, exclusively and necessarily for the purpose of its business and, therefore, he disallowed the same – Held that both the actions of AO are not correct - deduction are allowed.

344 2009 TMI - 34250 - DELHI HIGH COURT

THE COMMISSIONER OF INCOME TAX-XVII Versus TRANS BHARAT AVIATION (P) LTD.

Dated: 16-07-2009

Sections - 201,

Interest on TDS u/s 201(1)(A) – TDS not deducted by the appellant for payment made to the AAI – AAI has deposited tax such income - Assessing Officer held the assessee was liable to deduct TDS and since TDS was not deducted, the assessee was held to be in default under Section 201(1) and also liable for interest under Section 201(1)(A) of the Act – ITAT set aside the demand of TDS by following the decision in the matter of CIT Vs. Adidas Marketing P.Ltd [2008 TMI - 3391 - DELHI HIGH COURT] but confirmed the interest u/s 201(1)(A) – Held that interest is payable from the due date of liability of TDS to due date of filing of return by AAI.

345 2009 TMI - 34247 - GAUHATI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus BIMAL AUTO AGENCY

Dated: 23-06-2009

Sections - 158BC,

Treatment of expenditures as undisclosed income – Held that Assessing Officer should have made an endeavor to segregate the items of expenditure under separate heads and only those items which were found to be unconnected with the business of the assessee or were in respect of persons not connected with the assessee which could have legitimately formed the basis of an addition to the undisclosed income. As the Assessing Officer had failed to so act, we are of the view that the learned Tribunal should have remitted the matter to the Assessing Officer for a de novo consideration. – Matter remitted to AO by setting aside the order of ITAT.

346 2009 TMI - 34244 - MADRAS HIGH COURT

VIJAYASHREE SPINNING MILLS P. LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 30-04-2009

Sections - 037,

Capital Expenditure – Revenue Expenditure – Supreme Court in the matter of CIT v. Ramaraju Surgical Cotton Mills [2007 -TMI - 2064 - SUPREME COURT OF INDIA] has considered the issue that whether the replacement of assets without increasing the production capacity would amount to revenue expenditure – therefore matter remitted to AO to ascertain whether in view of the addition made by the assessee any earning capacity has increased or decreased and also as per the other directions given in the above said judgment of the Supreme Court

347 2009 TMI - 34230 - DELHI HIGH COURT

MS. MADHUSHREE GUPTA and BRITISH AIRWAYS PLC Versus UNION OF INDIA & ANR.

Dated: 24-07-2009

Sections - 271, 274,

Constitutional Validity of New Provision 271(1B) "C Initiation of Penalty Proceedings "C Satisfaction of the AO "C Retrospective Amendment by Finance Act, 2008 "C Held that - Section 271(1B) of the Act is not violative of Article 14 of the Constitution. - The position of law both pre and post amendment is similar, in as much, 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 - Prima facie "C satisfaction of the Assessing Officer that the case may deserve the imposition of penalty should be discernible from the assessment order "C new provision would not debar an assessee from furnishing evidence to rebut the prima facie "C satisfaction of the Assessing Officer; since penalty proceeding are not a continuation of assessment proceedings. - Due compliance would be required to be made in respect of the provisions of Section 274 and 275 of the Act. "C New provision held to be valid.

348 2009 TMI - 34228 - MADRAS HIGH COURT

The Commissioner of Income-tax, Chennai Versus Shri Sri Krishna Saraf

Dated: 07-07-2009

Sections - 132B, 154, 271,

Penalty u/s 271(1)(c) – Claim of Interest u/s 132B(4) amounts of rectification u/s 154 – Held that - even going by the assessing authority's order itself, none of the basic ingredients of Section 271(1)(c) gets attracted, and therefore, the question of levy of

penalty did not arise at all. – when the assessing authority, having passed its order of and the assessee is entitled for grant of interest and when the same did not find a place in the order of refund, it is nothing but a mistake apparent on the face of the record which could have been rectified either on its own motion by the assessing authority himself under Section 154(2)(a) and in the absence of any such rectification carried out, the assessee was fully entitled to invoke Section 154(2)(b) and seek for necessary rectification.

349 2009 TMI - 34227 - MADRAS HIGH COURT

The Commissioner of Income-tax Versus P & C Constructions (P) Ltd.

Dated: 14-07-2009

Sections - 028, 004,

Taxability of an account on which TDS has been deducted - retention money and the additional security deposit - The Assessing Officer found that the assessee omitted to admit the entire contract receipts that had been shown in the TDS Certificate and in the P & L Account – Held that when the assessee had no right to receive the money by virtue of the contract between the parties and the assessee also had no right to enforce payment, it could not be said that the right to receive payment of the remaining retention money or additional security had accrued –the department cannot include the said amount for the assessment year when actually this amount has not been paid to the assessee.

350 2009 TMI - 34226 - MADRAS HIGH COURT

M/s. Operating Lease & Hire Purchase Co. Ltd. Versus The Assistant Commissioner of Income Tax

Dated: 14-07-2009

Sections - 037,

Deduction Reversal of Income – Earlier the assessee has booked the income on accrual basis – later the agreement and contract was cancelled – Accordingly assessee has reversed the income by way of entries in books of account – AO has denied the deduction on account of reversal of Income which was confirmed by the CIT(A) and ITAT – HC also upheld the view on the ground of issue of fact, since the assessee failed to prove documentary evidence – On the issue of allowance of interest pertaining for the Year 2001-02 but deduction was claimed in the year 2002-03, HC uphold the decision of lower authority in which AO has disallowed the deduction of interest during the year 2002-03

351 2009 TMI - 34212 - AUTHORITY FOR ADVANCE RULINGS

Fujitsu Services Limited, In re

Dated: 23-07-2009

Sections - 048, 112,

Sale of shares for a non resident to a person in resident in India – Rate of Income Tax on Long Term Capital Gain – Held that tax on long term capital gain is required to paid at the rate of 10% u/s 112(1) instead of Normal rate of tax equal to 20% - The words “before giving effect to 2nd proviso to section 48” only mean that the calculation under the 2nd proviso shall not enter into the computation of capital gain, wherever that proviso is applicable. The said expression cannot be construed as a condition precedent for invoking the proviso to section 112(1). – Further LTCG to be computed by applying Section 48 of the Income-tax Act read with first proviso to Section 48 and Rule 115A

352 2009 TMI - 34211 - BOMBAY HIGH COURT

Prime Securities Limited Versus Varinder Mehta, Assistant Commissioner of Income-tax

Dated: 27-04-2009

Sections - 139, 140, 292B, 047,

Defective return - removal of defect - Person competent to sign the return - once Section 140 of the Act mandates that the return has to be signed in the case of a company by the Managing Director and where Managing Director is not available by any Director thereof, it is not possible to hold that the signing of the return by the Company Secretary is merely an irregularity – return to be treated as defective – but such defective return can be removed u/s 139(9) - Even if the defect has the effect of treating the return as nonest, the legislature still has provided for curing such defects. If the defect is cured then the return becomes a valid return.

353 2009 TMI - 34210 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus The Roadmaster Industries of India (P) Limited

Dated: 03-07-2009

Sections - 035B,

Weighted Deduction – Section 35B(1)(b) - The assessee, inter-alia, derived income from export and made a claim for weighted deduction under section 35B in respect of sea freight for transportation of the goods from India to their destination – held that the assessee will be not entitled to deduction under Clause (viii) in respect of claim specifically disallowed under Clause (iii) of section 35B (1) of the Act. – decided in favor of Revenue – ITAT order reversed.

354 2009 TMI - 34209 - PUNJAB AND HARYANA HIGH COURT

Smt. Ram Piari Versus The Commissioner of Income Tax, Patiala

Dated: 09-07-2009

Sections - 271,

Initiation of Penalty Proceedings – Section 271(1)(C) – concealment of particulars - Contention that the penalty was liable to be set aside on account of CIT (A) describing the action of the assessee as “showing inaccurate particulars, while the Assessing Officer described the same as “concealing the particulars” cannot be upheld. - The observations of the CIT (A) are also in the context of concealing and mere fact that mention of inaccurate particulars was also made, did not make any difference. – Penalty is leviable – Decision of supreme court in the matter of UOI Vs. Dharamendra Textile Processors [2008 -TMI - 31520 - SUPREME COURT] followed.

355 2009 TMI - 34207 - PUNJAB AND HARYANA HIGH COURT

Thakur Devi Investments (P) Ltd. Versus The Commissioner of Income Tax

Dated: 08-07-2009

Sections - 104,

Statutory rate of tax - Linked with declaration of Dividend – Section 104(2) of Income Tax Act, 1961 - Assessing Officer resorted to provision of Section 104(1) of the Act and applied the statutory rate of tax stipulated thereunder on the ground that the assessee did not declare the dividend, as required. Justification put forth by the assessee for not declaring the dividend was found not acceptable. – Statutory rate of tax held to be applicable.

356 2009 TMI - 34206 - PUNJAB AND HARYANA HIGH COURT

[The Commissioner of Income Tax, Patiala Versus M/s. Ganesh Steel Indus.](#)

Dated: 08-07-2009

Sections - 263,

Revision – Section 263 - it was provided that power under Section 263 of the Act could be exercised even if an order of assessment had been subject matter of appeal. The amendment was, on its terms, retrospective and covers every appeal, which may have been filed on or before or after 1.6.1988 and, thus, the present case was covered by the said amendment. Judgments of Hon'ble the Supreme Court in Commissioner of Income Tax Vs. Shri Arbuda Mills Ltd. [2008 -TMI - 5650 - SUPREME Court] and judgment of Bombay High Court in Commissioner of Income Tax Vs. Ratilal Bacharilal and sons [2008 -TMI - 9547 - BOMBAY High Court] followed. - once order of assessment had been appealed against, the same can also be thereafter subjected to revision under Section 263 of the Act.

357 2009 TMI - 34205 - PUNJAB AND HARYANA HIGH COURT

[Commissioner of Income Tax, Faridabad Versus M/s Cebon India Limited](#)

Dated: 07-07-2009

Sections - 143, 292BB,

Scrutiny Assessment – Defect in service of notice u/s 143(2) – irregularity curable u/s 292BB - Notice was not served within the stipulated time. Mere giving of dispatch number will not render the said finding to be perverse. In absence of notice being served, the Assessing Officer had no jurisdiction to make assessment. Absence of notice cannot be held to be curable under Section 292 BB of the Act.

358 2009 TMI - 34202 - PUNJAB AND HARYANA HIGH COURT

[The Commissioner of Income-tax, Patiala Versus M/s Fair Deal Traders, Ludhiana](#)

Dated: 17-07-2009

Sections - 045,

When to compute - Sale of Land – Advance Money Receive – Transfer of Assets – Tribunal held that amount received as advance money towards sale price of land was not be considered as assessee's income till the sale was complete and title passed to the buyers under registered sale deeds, though possession of land had been given - the moment an earnest money or deposit is received, certain legal incidents are attached to it. It is a security received for due performance of the contract. If the purchaser commits breach of the agreement, earnest money can be forfeited. Once earnest money or deposit is received, it is not a refundable amount. This is a great factor to be reckoned in determining whether the receipt of earnest money is a trading or revenue receipt or a capital receipt. – Held that Tribunal Order is not correct and answered in favor of revenue.

359 2009 TMI - 34200 - PUNJAB AND HARYANA HIGH COURT

[The Commissioner of Income Tax, Patiala Versus M/s Punjab State Electricity Board, Patiala](#)

Dated: 09-07-2009

Sections - -

Tax Planning Versus Tax Avoidance - Agreement to reduce tax liability artificially – ITAT held that , no colourable device has been adopted by the assessee, even when the intention of the assessee behind drafting the agreements between the assessee and the financial institution was to reduce the tax liability artificially of both the parties - "Tax Planning may be legitimate provided it is within the framework of law. Colourable

devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.” – Decision of ITAT upheld by following the decision of Supreme Court in the matter of CIT Vs. A. Raman & Co [2008 -TMI - 5051 - SUPREME Court]

360 2009 TMI - 34199 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax I, Ludhiana Versus M/s Sidhartha Enterprises, Ludhiana

Dated: 14-07-2009

Sections - 271,

Penalty u/s 271(1)(C) – Whether mandatory – whether decision of Supreme Court in the matter of Union of India v. Dharmendra Textile Processors [2008 -TMI - 31520 - SUPREME COURT] to be following in each case – held that The judgment of the Hon'ble Supreme Court in cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability under section 276C and penalty under section 271(1) (c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, concept of penalty has not undergone change by virtue of the said judgment. Penalty is imposed only when there is some element of deliberate default and not a mere mistake. – Penalty is not imposable in the present case.

361 2009 TMI - 34198 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income Tax, Patiala Versus M/s Raj Bricks Industry

Dated: 15-07-2009

Sections - 028, 045,

Adventure in the nature of trade – sale of land – Business Profit or Capital Gains - The land was sold on winding up of the firm. The said income was claimed to be income from capital gain. - The Assessing Officer, however, held the said income to be not from capital gain but from business, by treating the sale to be adventure in the nature of trade – CIT (A), ITAT answered in favor of assessee by following the decision of Supreme Court in the matter of Raja Bahadur Kamakhya Narain Singh Vs. CIT [2008 - TMI - 6192 - SUPREME Court] – Held that it was not business of assessee to purchase and sell the land and having regard to all the circumstances, the income of the assessee was covered by the head of capital gain

362 2009 TMI - 34197 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Versus Dhani Ram

Dated: 02-07-2009

Sections - 069,

Unaccounted Sale – Addition - Assessing Officer asked the assessee to explain why addition be not made, on account of unaccounted to the returned income revealed from the documents seized during the survey conducted on 6.11.1998 for the assessment year 1999-2000. The explanation furnished by the assessee was not accepted by the Assisting Officer and addition of Rs.1,22,604/-. It was observed that the assessee had made investment but the same has not been explained and accounts were not produced. 60% of the peak investment was treated as income - On appeal, the Commissioner of Income-tax partly set aside the addition. It was also held that instead of taking 60 peak investment as income, the amount of the profits assessed on the basis of commission at the rate of 5% of the total sale should be added. The Tribunal

upheld the said view – HC decision in the matter of CIT vs. President Industries [2008 - TMI - 12381 - GUJARAT High Court] – Appeal of the assessee dismissed.

363 2009 TMI - 34196 - PUNJAB AND HARYANA HIGH COURT

[M/s Duggal Exports. Versus C.I.T., Ludhiana.](#)

Dated: 17-07-2009

Sections - 80IB,

Deduction u/s 80IB – Duty Drawback and Premium on DEPB – ITAT hold that the appellant was not entitled to the deduction u/s 80IB in respect of profits and gains arising on account of duty drawback and premium on DEPB which is intrinsically related/connected to the business profits of the industrial undertaking – ITAT order upheld by following the decision in the matters of India v. Commissioner of Income Tax[2007 -TMI - 1767 - HIGH COURT, PUNJAB AND HARYANA] and Five Star Rugs v. Commissioner of Income Tax[2008 -TMI - 13576 - PUNJAB AND HARYANA High Court]

364 2009 TMI - 34189 - SUPREME COURT

[Commissioner of Income Tax, Madurai Versus M/S. Sri Mangayarkarasi Mills \(P\) Ltd.](#)

Dated: 21-07-2009

Sections - 031, 037,

Replacement of machinery – Capital Expenditure Versus Revenue Expenditure - AO held that the expenditure are capital in Nature and depreciation can be claimed - CIT(A), ITAT and High Court held that the expenditure revenue in nature and allowed the deduction – Held that, it is clear on record that the assessee has sought to treat the said expenditure differently for the purposes of computing its profit and for the purpose of payment of income tax. The said expenditure has been treated as an addition to the existing assets in the former and as revenue expenditure in the latter. Though accounting practices may not be the best guide in determining the nature of expenditure, in this case they are indicative of what the assessee itself thought of the expenditure it made on replacement of machinery and that the claim for deduction under the Act was made merely to diminish the tax burden, and not under the belief that it was actually revenue expenditure – Order of AO restored by holding that the expenditure is capital in nature.

365 2009 TMI - 34176 - BOMBAY HIGH COURT

[Sind Coop. Hsg. Society Versus Income Tax Officer](#)

Dated: 17-07-2009

Sections - -

Concept of Mutuality – Taxability of Income received from its members – Co-operative Housing Society - High Court held that concept of mutuality can be tested considering the followings (1) Is there any commerciality involved. (2) From the moneys received are the services offered in the nature of profit sharing or privileges, advantages and conveniences. (3) Are the participants and contributors identifiable and belong to the same class in the case of cooperative housing society. (4) Do the members have the right to share in the surplus and do they have a right to deal with its surpluses. - Once these tests are satisfied, there can be no doubt that the principle of mutuality will apply to a cooperative Housing Society which has its predominant activity, the maintenance of the property of the society which includes its building or buildings and as long as there is no taint of commerciality, trade or business – Transfer fee received from its members it not taxable.

366 2009 TMI - 34175 - BOMBAY HIGH COURT

Indian Planetary Society Versus Central Board of Direct Taxes

Dated: 10-07-2009

Sections - 035,

Recognition as Scientific and Industrial Research Organization (SIRO) - The aims and objects of the society inter alia includes research in planetary science, astronomy – astrophysics, solar physics and allied subjects. Apart from that other objects are to popularize science among the general public of our country, to conduct short courses on science, astronomy, geography for students and teachers in schools, colleges and universities, to Publish news letters/magazines etc. - The Ministry of Science and Technology, accorded to the Petitioner, recognition as Scientific and Industrial Research Organization (SIRO) – But CBDT refused to recognize u/s 35(1)(ii) – HC after setting aside the order of CBDT ordered the Board to reconsider the matter afresh.

367 2009 TMI - 34173 - GUJARAT HIGH COURT

GUJARAT MINERAL DEVELOPMENT CORPORATION LTD. Versus INCOME-TAX APPELLATE TRIBUNAL

Dated: 19-02-2009

Sections - 253, 254,

PSU – approval of COD before filing an appeal before tribunal - ITAT refused to admit the appeal as no COD approval was obtained – In the present case, the impugned order reveals that the Tribunal has assumed powers which it does not have, for determining whether the appeal is to be admitted or not. The Tribunal has lost sight of the fact that, both the assessee and the Revenue, are statutorily vested with a right under the Act by virtue of section 253(1), 253(2) and 253(4) of the Act to file an appeal or cross-objections. Such right granted by the statute cannot be divested by the Tribunal on an erroneous assumption of powers arrogated to itself under a mistaken belief of law - The appeals filed by the assessee and the Revenue before the Tribunal stand restored to the file of the Tribunal for being heard and decided afresh on the merits in accordance with law.

368 2009 TMI - 34170 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus FATEH GRANITE PVT. LTD

Dated: 02-03-2009

Sections - 010B,

Industrial Undertaking - The expression “manufacture” or “production” are different expressions and the word “production” has a wider meaning - the word “production” under section 10B considering similar expression in section 80IB will have to be given this wider meaning, considering that the expressions are not defined in the Act but the expressions are used in the same Act. The only difference between section 80-IB and section 10B is that section 10B applicable to a 100 per cent. export oriented unit, whereas section 80-IB can be in respect of any unit – held that the cutting, polishing and sizing granites amounted to either manufacturing or processing and accordingly, the assessee was entitled for deduction under section 10B of the Income-tax Act.

369 2009 TMI - 34152 - SUPREME COURT

Commissioner of Income-tax, Faridabad Versus Ghanshyam (HUF)

Dated: 16-07-2009

Sections - 045, 002(47), 045, 155,

Enhanced compensation – ITAT deleted deletion of enhanced compensation and interest thereon from the total income of the assessee on the ground that the said two items, awarded by the Reference Court, was under dispute in First Appeal before the High Court – Held that the receipt of such enhanced compensation/consideration is to be taxed in the year of receipt subject to adjustment, if any, under Section 155(16) of the 1961 Act, later on. - This is the scheme of Section 45(5) and Section 155(16) of the 1961 Act - We may clarify that even before the insertion of Section 45(5)(c) and Section 155(16) the receipt of enhanced compensation under Section 45(5)(b) was taxable in the year of receipt – Decision in favor of revenue.

370 2009 TMI - 34151 - SUPREME COURT

[Udaipur Sahkari Upbhokta Thok Bhandar Ltd. Versus Commissioner of Income-tax](#)

Dated: 16-07-2009

Sections - 080P,

Section 80P(2)(e) – Interpretation of - whether "commission" received by the appellant from the State Government was really in the nature of payment for the letting of the godowns? – appellant is 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 (PDS) for which it is getting commission - issue price is set-off against the sale - netting/difference between the two prices constituted receipt on a commercial basis or net profit – held that assessee was storing the commodities in question in its godowns as part of its own trading stock, hence it was not entitled to claim deduction for such margin under Section 80P(2)(e) of the 1961 Act

371 2009 TMI - 34150 - ALLAHABAD HIGH COURT

[Commissioner of Income Tax Kanpur Versus Iqbal Hussain](#)

Dated: 10-07-2009

Sections - 148,

Re-assessment - proceeding under section 148 of the Act was initiated and on the basis of report of District Valuation Officer investment in the property was added – Held that District Valuation Officer cannot be made the basis for initiating reassessment proceeding – Decision of Supreme Court in the matter of Amiya Bala Paul followed.

372 2009 TMI - 34149 - ALLAHABAD HIGH COURT

[The Commissioner of Income Tax Central Kanpur and another Versus Smt. Kalpana Devi Singhania](#)

Dated: 14-07-2009

Sections - 269L,

Valuation of Immovable Property – Annual Letting Value (A.L.V.) – Report of Competent Valuation Officer – HC uphold the annual letting value as per the report of competent valuation officer as held by ITAT

373 2009 TMI - 34129 - ALLAHABAD HIGH COURT

[SMT. MALTI DEVI Versus TAX RECOVERY OFFICER AND ANOTHER](#)

Dated: 09-01-2009

Sections - 222, 276, R011,

Recovery of Tax – Attachment and sale of property – Petition purchased property from father in laws who was defaulter and against whom recovery proceedings were initiated - the Commissioner of Income-tax has referred sub-rule (6) of rule 11 of Part I of the

Second Schedule to the Income-tax Act, which provides that any claim or objection preferred by a party may institute a suit in a civil court to establish the right which he claims to the property in question. The said rule further provides that the order of the Tax Recovery Officer is conclusive subject to the result of the suit – commissioner's order as approved by the civil court upheld.

374 2009 TMI - 34117 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus WACKHARDT INTERNATIONAL LTD.

Dated: 11-02-2009

Sections - 037,

Bad Debts - Revenue contended that the loss have been shown as bad debt for the financial year 1993-94 and not for the assessment year 1999-2000 - the amount became irrecoverable when the assessee wrote it off in its books of account and that, therefore, the assessee was entitled to claim the amount - even if duty drawback was available for the previous assessment year, what will be relevant was when the same is treated as bad debt by the assessee in his books of account – the fact that there was no income in the course of assessment year 1999-2000 would not disentitle the assessee from claiming the business expenditure in the said assessment year – claim of bad debts allowed.

375 2009 TMI - 34099 - MADRAS HIGH COURT

The Commissioner of Income Tax Versus M/s. FAL Industries Ltd.

Dated: 24-06-2009

Sections - 080HH,

Deduction u/s 80HH – Miscellaneous income – tribunal held that miscellaneous accounts viz., scrap sales, freight charges, insurance claim, refund from customs department, interest, rectification charges etc., should be treated as income derived out of business for computation of deduction u/s.80HH – Held that (a) Interest borrowed on delayed payment of bills, (b) Transport and Forwarding expenses and (c) Rectification charges are eligible for deduction u/s 80HH – But, (i) Scrap sales, (ii) Insurance claim and (iii) Amount received from Collector of customs towards excess duty are not eligible for benefit of deduction u/s 80HH.

376 2009 TMI - 34098 - MADRAS HIGH COURT

G.S.R. Krishnamurthy, Indira & G. Adishesagiri Rao Versus The Income Tax Officer

Dated: 29-06-2009

Sections - 276C, 277, 278, 279,

Withdrawal of Prosecution proceedings – Magistrate dismissed the withdrawal petition – HC refused to agree with a view expressed by the learned counsel for the petitioner because here it is not an error committed by the Magistrate, but the Magistrate totally not dealt with the petition by exercising his discretion in the way contemplated as per law and as per the cited judgement. Once there is total non-exercise of discretion on the proper line by the Magistrate and that resulted in the dismissal of the petition, it is not for the revisional Court to consider for the first time the prayer in the petition and pass orders either by dismissing the petition or allowing the same. Matter remanded to decide the petition afresh in view of Apex Court's Decision.

377 2009 TMI - 34097 - MADRAS HIGH COURT

M/s. Vira Properties Versus Asst. Commissioner of Income-tax

Dated: 01-07-2009

Sections - 147, 148,

Reassessment - Notice under section 148 – reason for reopening the assessment – opportunity of personal hearing – on 04-08-2006 department has issued a notice under Section 148 seeking to reassess the income under Section 147 of the Act. The petitioner, vide its letter dated 17.08.2006 had sought for the reason for reopening the assessments. Department stated that certain income chargeable to tax has escaped assessment – assessee challenged the notice issued under Section 148 before the HC – HC directed the department not to proceed with the assessment pending disposal of the interim applications, the department went ahead and completed the impugned assessments on the plea that the same was getting time barred without affording the petitioner a personal hearing. – Held that the impugned order dated 31.12.2007 passed by the CIT is set aside and the matter is remanded to the respondent for fresh assessment and the respondent is directed to pass orders on the fresh assessment after affording an opportunity of hearing to the petitioner.

378 2009 TMI - 34091 - SUPREME COURT

[Nectar Beverages Pvt. Ltd. Versus Deputy Commissioner of Income Tax](#)

Dated: 06-07-2009

Sections - 032, 041, 050,

Head of Income – Balancing Charge - Sale of assets on which 100% depreciation claimed - Cost of assets less than Rs. 5000 – bottles and crates purchased prior to 31.3.1995 did not form part of the block of assets, hence, profits on sale of such assets were not taxable as a balancing charge, neither under Section 41(1) nor under Section 50. In respect of bottles and crates purchased after 1.4.1995, on account of deletion of proviso to Section 31(1)(ii) (vide Finance Act, 1995) such bottles and crates formed part of block of assets and consequently such assets purchased after 1.4.1995, in this case, became exigible to capital gains tax under Section 50 – However matter remitted to AO for small issue to find out whether earmarking “profits from sale of assets” as “miscellaneous income” has resulted in the understatement of net profits at the pre-Section 28 stage and taxable profits at post-Section 28 stage. In all other cases, sale proceeds have been earmarked as “profits on sale of assets” and in those cases, therefore, there is no question of verification by the A.O.

379 2009 TMI - 34090 - UTTARAKHAND HIGH COURT

[The Commissioner of Income-tax, Dehradun Versus Tehri Hydro Development Corporation](#)

Dated: 03-07-2009

Sections - 057,

Deduction u/s 57(iii) – Nature of amount received from employees and oustees as capital receipts - the deductions to the extent of 2.5% towards administrative costs on the interest income on short term deposits allowed - the interest and rent received from its employees and oustees in Dam area had a nature of capital receipts, as the construction process was still on and the respondent-assessee had yet not started the business activity.

380 2009 TMI - 34089 - UTTARAKHAND HIGH COURT

[R & B Falcon Drilling Versus The Addl. Commissioner of Income-tax](#)

Dated: 03-07-2009

Sections - 005, 028, 044BB,

Mobilization revenue – reimbursement of expenses u/s 44B – the payment made to the

assessee on account of mobilization fee is not the actual reimbursement, rather, it includes the expenditure incurred by the company in transporting the drilling units of rigs to the specified drilling locations in India. As such, such amounts received are liable to be included in the 'gross receipts'. That being so, in our opinion, the amount received by the assessee in the present case towards mobilization / demobilization charges form part of the amount mentioned in sub-section (2) of Section 44BB of the Act. - sub-section (1) of Section 44BB read with Clause (a) of sub-section (2) of Section 44BB of the Act expressly provides that it makes no difference whether the amount was paid or payable in or outside India. The section does not exclude the mobilization / demobilization charges paid for transportation of the plant and machinery from the place out of India to the locations in India or its territorial waters. – Decided in favor of revenue

381 2009 TMI - 34063 - BOMBAY HIGH COURT

The Commissioner of Income Tax Versus Uttamchand Jain

Dated: 02-07-2009

Sections - 068,

Unaccounted Income - Cash Credit - In the return of income filed for A.Y. 1998-1999, the assessee claimed to have sold the said jewelry declared under VDIS, 1997 thereby earning long term capital gains amounting to Rs.1,75,520/-. The said return was processed under Section 143(1)(a) of the Act on 23-7-1999. - CIT(A) and confirmed the addition of 10,35,562/- as non-existence of diamond jewellery allegedly purchased and the cash deposits made in the bank accounts before issuing cheques to various parties - tribunal set aside the addition - tribunal decision uphold - revenue petition rejected.

382 2009 TMI - 34061 - AUTHORITY FOR ADVANCE RULINGS

Fact Set Research Systems Inc., In re

Dated: 30-06-2009

Sections - 009, 195,

Subscription Fees - Data Base retrieval system - databases outside but subscribers in India - in the case of US-based financial data analytics firm FactSet Research Systems, which provides financial and economic information to Indian customers by entering into licence agreements with them, granting them the right to use its database and software tools. "Providing a client with the use of search and retrieval software and access to a database does not involve the exercise of special skill or knowledge when the software and database is delivered to the client," the ruling has said. Thus, payments by Indian companies cannot be seen as money spent on services of a 'technical nature'. Under the income-tax laws in India, receipts in lieu of technical services are taxable.

383 2009 TMI - 34058 - KERALA HIGH COURT

MINI MUTHOOTU MUTUAL FUNDS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 19-02-2009

Sections - 245,

KVSS – Kar Vivad Samadhan Scheme – the amount payable under the Kar Vivad Samadhan Scheme by the declarant shall be determined at the rates specified in that Scheme and the declarant would only be liable to pay that amount, instead of the actual amount due – assessee filed a declaration claiming benefit of rs. 26,82,606 due against interest – revenue granted benefit of Rs. 12,29,969/- only after adjustment of refund due to assessee for subsequent years – assessee challenged the order of adjustment

of refund with tax in arrear and interest specifically not notice was issued u/s 245 – In between there was a revision u/s 264 – HC observed that the two technicalities are there and accepted the technicality raised by the Revenue. Therefore, since the petitioner has not chosen to challenge the order in revision, the petitioner is not entitled to succeed in this original petition as rightly pointed out by the counsel for Revenue – Petition dismissed.

384 2009 TMI - 34054 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus BHARAT STEEL ROLLING MILLS

Dated: 20-04-2009

Sections - 187,

Assessment of a Firm – Dissolution versus Change in Constitution - Tribunal hold that two separate assessments be made for the separate periods ignoring the fact that this is a case covered under section 187(1) of the Income-tax Act, 1961 – tribunal has allowed depreciation for both the periods – assessee was a firm and was constituted with 13 partners, which was engaged in the manufacturing of M S Rounds. With effect from July 1, 1977, two partners retired and by mutual consent, the partnership was treated as dissolved - On July 1, 1977, two other persons, joined as partners along with the eleven remaining partners of the firm and a new partnership deed was executed on July 2, 1977, which was made effective from July 1, 1977, itself – Held that case is covered under section 187(1) of the Act and the Tribunal was not justified in deleting the addition of Rs. 2,00,155 on the ground that there was no question of any addition to be made in the hands of new firm and has ignored the provisions of section 187(1) of the Act – Only one assessment be made.

385 2009 TMI - 34039 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus N. R. PAPER AND BOARD LTD.

Dated: 03-02-2009

Sections - 80I, 80IA, 158BB,

Deduction u/s 80-I and 80-IA – Undisclosed income of the Block Period - provisions of Section 158BB of the Act have been amended by Finance Act, 2002 with retrospective effect from 01.07.1995 - assessee, a Limited Company, claimed deduction under Sections 80-I or 80-IA of the Act in relation to the 'total undisclosed income' of the block period. The said claim was rejected by the Assessing Officer and the matter carried before Tribunal. The Tribunal vide its impugned order dated 18.05.1988 allowed the relief – Held that in view of the amended provisions, which have been made retrospectively applicable, no fault can be found with the impugned order of the Tribunal holding that the assessee is entitled to claim deduction under Section 80-I or 80-IA of the Act. Assessee entitled to relief.

386 2009 TMI - 34020 - UTTARAKHAND HIGH COURT

The Commissioner of Income Tax, Dehradun Versus Tehri Hydro Development Corporation

Dated: 26-06-2009

Sections - 057,

Deduction u/s 57(iii) - deduction of administrative cost from interest income - held that deduction is allowable on percentage basis of interest income

387 2009 TMI - 34019 - MADRAS HIGH COURT

Madhu Dadha Versus The Assistant Commissioner of Income Tax

Dated: 23-06-2009

Sections - 253, 260A,

Delay in Filing an appeal before ITAT (Tribunal) - Condonation of Delay - section 253(5) - Tribunal rejected the appeal on the grounds of limitation alone without considering and adjudicating the various other grounds - held that when appellant fails to explain the delay, tribunal is right in rejecting the appeal

388 2009 TMI - 34018 - MADRAS HIGH COURT

[Commissioner of Income Tax Coimbatore Versus M/s. Textool Co. Ltd.](#)

Dated: 23-06-2009

Sections - 037,

Deduction under section 37 - additional commission - when the CIT appeals is equally empowered as that of the Assessing Authority to be satisfied as regards the documentary evidence, in support of any claim made by the assessee and such exercise has been done by the CIT appeals, who rendered the finding based on the relevant documents placed before him, the ultimate conclusion of the said authority and the confirmation of the same by the Tribunal cannot be found fault with - additional commission paid is allowed as deduction.

389 2009 TMI - 34007 - AUTHORITY FOR ADVANCE RULINGS

[Cable & Wireless Networks India Private Limited, In re](#)

Dated: 30-06-2009

Sections - 009, 195,

Permanent Establishment – P/E – Nature of Income – Business Profit - M/s Cable and Wireless UK (C &W UK) is providing end to end international long distance telecommunication services to its Indian customers. Whereas the applicant will carry the calls and data within the country, C&W UK will further carry those calls and data to the recipients outside India. The network and equipments of C&W UK will not be used in India and the applicant's network and equipments will not be used outside India. Thus in telecom parlance, domestic half circuit will be provided by the applicant and international half circuit will be provided by C&W UK. In respect of the aforesaid services rendered by C&W UK, the applicant will pay fees to the former. – Held that the payments made by the applicant to C&W UK are in the nature of business profits. In the absence of there being any permanent establishment of C&W UK in India, this income is not at all taxable here. Since this income is not chargeable to tax under the Act, there is no question of making any deduction at source u/s 195.

390 2009 TMI - 34005 - PUNJAB AND HARYANA HIGH COURT

[Commissioner of Income Tax, Panchkula Versus Haryana Warehousing Corporation](#)

Dated: 01-07-2009

Sections - 010(29), 271,

Concealment of Income – penalty – Assessee filed nil return claiming exemption u/s 10(29) – on assessment AO found that certain income is not allowed for exemption and assessed the income at Rs.1,81,93,618/- and propose to levy penalty under section 271(1)(c) of the Income Tax Act, 1961 – held that despite the fact that the respondent- assessee had filed a nil income tax return for the assessment year 1993-94, claiming exemption under section 10(29) of the Act, yet it had disclosed its entire income by, depicting clearly the various heads under which the said income had been earned. And as such, it was not as if the respondent assessee had “concealed the particulars of his income” or “furnished inaccurate particulars of his income” – Penalty is not leviable.

391 2009 TMI - 33981 - MADRAS HIGH COURT

PRANAM FOUNDATIONS Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 10-02-2009

Sections - 037, 158B,

Search and Seizure – Meaning of Undisclosed Income - assessee received unaccounted money towards the sale of flats apart from certain illegal payments such as bribes debited as construction expenses, which are disallowable against gross receipts. Certain unexplained investments in the property made by the senior partner were also detected. Cash was found in excess of cash balance recorded in the books. Some amount was received from the flat owners on various dates towards various expenses involving additional amount paid for acquisition of land and extra amenities provided in the flats - Out of these certain amounts had already been accounted for in the earlier years' books of account leaving a balance of Rs. 39,68,999 and towards this the assessee offered a sum of Rs. 40 lakhs as undisclosed income. AO proceeded to estimate the cost of construction and arrived at an additional sum of Rs. 30,79,298 for the block period being illegal expenses accounted for in the books as construction expenses. – HC did not find any merit in appeal and dismissed the appeal

392 2009 TMI - 33951 - AUTHORITY FOR ADVANCE RULINGS

Cal Dive Marine Construction (Mauritius) Ltd., In re

Dated: 26-06-2009

Sections - 005, 044B,

DTAA – Mauritius Tax Treaty – Section 5 and 44BB of the IT Act – Article 7 of the treaty - Applicant is a foreign company undertaking contract for laying pipelines under the sea and constructing the structures inclusive of pre-commissioning of the pipelines – whole contract divided into parts i.e. activities wholly performed in India, activities wholly performed outside India and activities partly in India and partly outside India – Held that the applicant cannot be said to have permanent establishment within the meaning of Article 5 read with Article 5.2(i) of the DTAA between India and Mauritius. When there is no permanent establishment, the question of taxing any part of the business profits in India does not arise. It is not contended and it cannot be contended that payment received by the applicant under the contract constitutes 'fee for technical services'. Whatever technical services are provided, they were only integral to the performance of the project work – No income is taxable in India.

393 2009 TMI - 33950 - MADRAS HIGH COURT

Commissioner of Income Tax, Trichy Versus Shri. PL. Gandhi

Dated: 16-06-2009

Sections - 143,

Assessment under section 143 – Issuance of notice after expiry of 12 months - the returns were all filed on 23.03.1998, 17.03.1998 and 23.03.1998 for the assessment year 1997-98 whereas the notice under Section 143 (2) came to be issued on 17.08.1999 in respect of all the three returns – Held that having regard to the specific stipulation in Section 143 (2) of the Act that the issuance of the notice under the said Section should be made within 12 months from the end of the month in which the return of income was filed, it was legally obligated upon the appellant to have issued the said notice on or before 31.03.1999. The Tribunal's conclusion of having annulled the order of assessment on that score being valid in law, the same cannot be found fault with. The question of law is answered against the appellant.

394 2009 TMI - 33949 - MADRAS HIGH COURT

Commissioner of Income Tax Versus ICL Shipping Ltd.

Dated: 08-06-2009

Sections - 002(30), 002(42), 006,

Residential Status under section 6 – residential status of crew members – deduction of TDS from the amount / salary paid to such members - tribunal held that the Indian shipping company need not deduct tax at source with respect to its crew for the days on which the ship was outside the territorial waters of India and the number of such days exceeds 182 in any particular year – held that there was no scope to find fault with the action of the Indian shipping company in not having deducted any tax at source in respect of the salary paid to such crew for the relevant period – tribunal decision upheld.

395 2009 TMI - 33941 - MADRAS HIGH COURT

V. Akilandeswari Versus The Chief Commissioner of Income Tax

Dated: 09-06-2009

Sections - 234A, 234B, 234C,

Interest u/s 234, 234B, 234C - Circular No.400/234/95-IT(B), dated 23.5.96 - waiver of interest where tax is paid voluntarily - it is seen in the present case that the petitioner has paid the tax voluntarily and has also pleaded a good and sufficient reason for the non payment of tax on time. The fact of the death of petitioner's father who was looking after the business, and as well as the petitioner's mother and guardian was an house wife unfamiliar with such transactions, is not denied by the respondent. On the contrary, he has given some logical interpretation for overruling the claim made by the petitioner. - Held that. The claim made by the petitioner is bona fide and genuine and the respondent has not exercised his discretion in terms of law interest levied under Sections 234A, 234B and 234C is set aside and it is declared that the petitioner need not pay any interest for those two assessment years - At the same time, if any excess amount had been paid, she is also not entitled to seek refund of the same.

396 2009 TMI - 33940 - MADRAS HIGH COURT

Sumitra Menon Versus The Assistant Commissioner of Income Tax

Dated: 15-06-2009

Sections - 143,

Remand of a case by the tribunal - non-service of order of hearing properly - however auditor was appeared and represented - tribunal has considered that the alleged irregularity was practically waived by the appellant which cannot be found fault with, in as much as, at no point of time till the final order was passed by the C.I.T. (Appeals), the appellant made any grievance as regards the representation and appearance made by Mr. S. Thyagarajan in his capacity as auditor, who admittedly filed the returns - Held that the ultimate relief granted by the Tribunal in directing the C.I.T.(Appeals) to decide the appeal de novo in accordance with law after providing adequate opportunity to the assessee is perfectly in order and we do not find any question of law in order to entertain this appeal.

397 2009 TMI - 33937 - BOMBAY HIGH COURT

The Commissioner of Income Tax-IV Versus The Solapur Nagari Audyogic Sahakari Bank Ltd.

Dated: 16-06-2009

Sections - 80P,

Deduction u/s 80P - Interest income from KVP and IVP invested from voluntary

reserves - whether to be treated as business income under section 80P(2)(a)(i) of the Income Tax Act, 1961 - the surplus funds not immediately required for day to day banking were kept in voluntary reserves and invested in KVP/IVP - there is no dispute that voluntary reserves were the funds generated from the banking business - held that in all these cases the Tribunal was justified in holding that the interest income received by the cooperative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act.

398 2009 TMI - 33922 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus East Coast Constructions Limited

Dated: 16-04-2009

Sections - 115JAA, 234B, 234C,

MAT Credit - Assessing Officer granted MAT (Minimum Alternate Tax) under section 115JAA credit after calculating the interest under Section 234B and 234C - Commissioner (Appeals) and Tribunal has accepted the contention of assessee and allowed the MAT credit first before charging of interest u/s 234B and 234C - held that the intention of the legislature is to give tax credit to tax and not to the tax and interest. Once the intention is clear, the revenue cannot rely on the Form-I to say that the MAT credit under Section 115JAA should be given only after tax and interest. Further we have answered the first question of law in favour of the assessee i.e. the MAT credit under Section 115JAA should be given effect to before charging the interest under Section 234B and 234C. Rule 12(1)(a) and Form-I cannot go beyond the provisions of the Act. Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act - Revenue's appeal rejected

399 2009 TMI - 33862 - UTTARAKHAND HIGH COURT

The Commissioner of Income-tax, Dehradun Versus M/s Foramer France & M/s Pride Foramer

Dated: 12-06-2009

Sections - 071, 090,

1. Whether, the assessee, a non-resident company, was entitled to claim deduction for expenses incurred by it between the period 1993-1999, particularly, when according to the Department there was no permanent establishment in existence in India during the relevant period? - Held No. - 2. Whether, the Income Tax Appellate Tribunal has erred in law in holding that the expenses claimed by the assessee were allowable and constitute business loss to be set off under Section 71 of the Income Tax Act, 1961? - Held Yes. - Order of ITAT set aside.

400 2009 TMI - 33861 - AUTHORITY FOR ADVANCE RULINGS

M/s Yongnam Engineering & Construction (Pte.) Ltd., In re

Dated: 17-06-2009

Sections - 009,

Income deemed to accrue or arise in India - Applicant is engaged in (a) off shore supplies from outside India; (b) on shore supplies from India; and (c) design, detailing, painting and erection of the PTB and Fore Courts - Off shore supplies relate to overseas fabricated items and according to the applicant, the contract envisages supply, fabrication and delivery by the applicant outside India - Held that since the applicant has failed to provide the related details and documents, it is not possible to answer the question.

401 2009 TMI - 33860 - AUTHORITY FOR ADVANCE RULINGS

M/s Hyosung Corporation, In re

Dated: 17-06-2009

Sections - 005, 002(31), 009, 115,

Construction of power station – offshore supplies made by the applicant (a company incorporated in Korea) and onshore operations are undertaken by an Indian Company – Question:- On the facts and circumstances of the case, whether the amounts received/receivable by the applicant i.e. Hyosung Corporation from Power Grid Corporation of India Limited (“PGCIL”) for offshore supply of equipments, materials, etc., are liable to tax in India under the provisions of the Act and India-Korea tax treaty – AAR held that under the terms of the contract, the sale of equipments and materials took place outside the territories of India and the income in relation thereto cannot be said to accrue or arise in India and, therefore, not liable to be taxed under the Income-tax Act, 1961 – Further the applicant cannot be said to have a Permanent Establishment within the meaning of Art. 5.3 of DTAA - However, question of PE left open to AO subject to inquiries.

402 2009 TMI - 33859 - KERALA HIGH COURT

ARUN SUNNY, SON OF C.V.SUNNY Versus THE DEPUTY COMMISSIONER OF INCOME TAX

Dated: 04-06-2009

Sections - 045, 048, 055,

Sale of Capital Assets – Cost of improvement – property held by assessee was declared as capital goods by notification dated 6-1-2004 – date of acquisition was before 1-4-1981 - computation of capital gain under section 55(2) - 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 - the valuation report of the expert was not accepted by the Tribunal. Admittedly the assessee did not seek any such reference either before the first appellate stage or before or before the Tribunal. It is only at the appellate tribunal stage that such a contention was raised. The appellate tribunal considered the matter and rejected the same. No substantial question of law, much less a substantial question of law arises for consideration in this appeal. We find no merit in the appeal and it is dismissed.

403 2009 TMI - 33856 - BOMBAY HIGH COURT

M/s Dipti Textile Industries & M/s Nina Textile Industries Ltd Versus The Commissioner of Income-Tax, Bombay

Dated: 15-06-2009

Sections - 037,

Deduction u/s 37 – interest paid on discounting of the bills – tribunal held that the interest paid of Rs.1,66,959/- for discounting the bills with the banks during the course of the business activities was not allowable in computing the business income under Section 37 of Income-Tax Act, 1961 – HC held that interest paid for discounting of bills are allowable expenditure under section 37.

404 2009 TMI - 33855 - BOMBAY HIGH COURT

The Commissioner of Income-tax, Bombay Versus M/s. Swedish Telecoms International

Dated: 12-06-2009

Sections - -

Exempted income under DTAA – Technical Fees versus Management Fees -

supervision charges relating to technical management charges - tribunal held that fees for technical services of U.S. \$ 2,17,250 accrued under the consultancy agreement dated 23-6-1985 with Videsh Sanchar Nigam Ltd. be considered as "Industrial or Commercial Profits" and therefore exempt from taxation as per Article III(1) of the Double Taxation Avoidance Agreement between India and Sweden dated 30th July, 1958 – HC held that the amounts in question received by the assessee for executing the aforesaid work was nothing but management fees which cannot be considered as "commercial profits" under Article III of the DTAA 1958.

405 2009 TMI - 33854 - JAMMU AND KASHMIR HIGH COURT

Jammu Development Authority Versus U.O.I & Ors.

Dated: 05-06-2009

Sections - 142,

Special Audit under section 142(2A) – Assessee contended that the Assistant Commissioner has erred in issuing the order for conducting special audit without considering the response to the show cause notice issued to assessee, in the spirit contemplated by law, thereby violating the principles of natural justice in directing Special Audit of its accounts, contrary to the spirit of the first Proviso to Section 142 (2A) of the Act. The issuance of show cause notice by the Assistant Commissioner was a mere formality to facilitate the Special Audit of the petitioner's accounts which was not otherwise warranted in the facts and circumstances of the case when nothing had been hidden by the Authority in its accounts and the Balance Sheets made available by the Authority to the Assistant Commissioner – since the assessee had failed to explain the complexity in the accounts pointed out by the Assessing Officer in the show cause notice – the order of the AC u/s 142(2A) justified.

406 2009 TMI - 33839 - BOMBAY HIGH COURT

DIRECTOR OF INCOME-TAX (INTERNATIONAL TAXATION) Versus NGC NETWORK ASIA LLC

Dated: 14-01-2009

Sections - 195, 234B,

The assessee had not paid advance tax on the interest income. The payer of interest had not deducted the tax – held that We are clearly of the opinion that when a duty is cast on the payer to pay the tax at source, on failure, no interest can be imposed on the payee-assessee.

407 2009 TMI - 33838 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SRI SAKTHI TEXTILES LTD.

Dated: 06-04-2009

Sections - 043B,

The Assessing Officer, while completing the assessment, found that the assessee had paid contribution to gratuity fund amounting to Rs. 7,83,495 beyond the accounting period. The Assessing Officer held that the extended due date as per the proviso to section 43B of the Act was not applicable to gratuity and superannuation fund. He, therefore, disallowed the claim for deduction under section 43B of the Act - Admittedly, it could be seen from the records that the assessee has paid the gratuity before the due date for filing of the return. Hence the decision in the case of Nexus Computer P. Ltd, squarely covers the issue in favour of the assessee and against the Revenue

408 2009 TMI - 33744 - ALLAHABAD HIGH COURT

City Montessori School (Regd.) Versus The Union of India & 2 others

Dated: 29-05-2009

Sections - 010(23C),

Exemption u/s 10 (23C) - application for grant of approval of the prescribed authority u/s 10(23C)(vi) rejected by Chief Commissioner of Income Tax – petitioner assessee is a charitable institution which is engaged wholly for the purposes of education, especially when no material has been brought to prove that there was any element of personal profit - deposits/investments of surplus is permissible as per the proviso of Section 10(23C). Hence, assessee is entitled for the exemption u/s 10(23C)(vi) - impugned order is quashed

409 2009 TMI - 33666 - MADRAS HIGH COURT

S. Nagoor Babu @ Mano Versus The Chief Commissioner of Income Tax - II

Dated: 20-04-2009

Sections - 234A, 234B, 234C,

Non-filing of returns in time due to 'busy schedule' - petitioner is not a habitual defaulter - as per Notification No.400/234/95/IT(B) if return could not be filed by the assessee due to unavoidable circumstances and such return is filed voluntarily, reduction or waiver of interest under Section 234A, 234B or 234C can be considered - impugned order is quashed in so far as the non-granting of waiver of interest in respect of Section 234C and partial consideration of the waiver of interest in respect of Sections 234A and 234B - matter is remitted for fresh consideration, taking into account the unavoidable circumstances explained by the petitioner

410 2009 TMI - 33665 - CALCUTTA HIGH COURT

Commissioner of Income Tax, West Bengal – II, Calcutta Versus M/s. Jenson & Nicholson India Ltd.

Dated: 27-02-2009

Sections - 080I, 043B, 145, 143,

New unit - Tribunal decided matter in favour of assessee holding that it was not required in case of the company in terms of Section 80-I(7) that the audit report has to be filed along with the return and such defect also could be cured – in respect of apportionment of expenses it was found by the Tribunal that the basis adopted by the assessee was more scientific and AO was not justified in apportioning all the expenses on the basis of the percentage of the turnover - Tribunal after assessing the facts and documents placed before it came to the said conclusion and the said facts cannot be questioned at this stage by the High Court and in fact has to be treated as conclusive

411 2009 TMI - 33661 - CALCUTTA HIGH COURT

COMMISSIONER OF INCOME TAX, CENTRAL-III Versus SRI SURESH CHAND BANSAL, KOLKATA

Dated: 13-03-2009

Sections - 271,

Imposition of penalty u/s 271(1)(c) - by reason of concealment or furnishing of inaccurate particulars alone, the assessee does not ipso facto become liable for penalty - Imposition of penalty is not automatic - not only is the levy of penalty discretionary in nature but the discretion is also required to be exercised on the part of the Assessing Officer keeping the relevant factors in mind - revenue appeal dismissed - application for condonation of delay is also dismissed as no sufficient cause has been shown for delay of 202 days

412 2009 TMI - 33660 - ALLAHABAD HIGH COURT

Rana Rohit Singh & Smt. Poonam Singh Versus Commissioner Of Income Tax Civil Lines Faizabad

Dated: 27-05-2009

Sections - 264, 148,

Commissioner could not have refused to entertain the revision on the ground that it is not a substitute of appeal, though there may be many more reasons, on which exercise of the discretionary jurisdiction can be refused but such reasons have to be germane to the issue and valid – CIT committed manifest error of law in refusing to entertain the revision on the ground that petitioner should have availed the remedy of appeal, particularly when for some assessment years appeals were filed – CIT is directed to reconsider the revisions u/s 264 and pass fresh orders, as per his own discretion, in accordance with law

413 2009 TMI - 33633 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Gift-tax Versus Ripan Kumar

Dated: 09-01-2009

Sections - -

Gift-tax – Whether Tribunal was right in holding that in valuing the unquoted shares for the purposes of working out the value of the deemed gift on March 20, 1979, and March 31, 1979, reference should be made to the balance-sheet of the said company as on March 31, 1978 - Revenue, has made an attempt to attack the order of the Tribunal by asserting that the Gift-tax Officer had rightly assessed the gift-tax by applying the break up method – finding of tribunal is justified - in terms of the view taken by the Division Bench in Shakuntala Devi's case reference is answered in favour of the assessee

414 2009 TMI - 33620 - DELHI HIGH COURT

ATS INFRASTRUCTURE LTD. Versus CIT

Dated: 27-05-2009

Sections - 127, 124,

Transfer of case from Delhi to Meerut - Show cause notice u/s 127 - even if the notice in question erroneously mentions the pendency of a case in Meerut, since the decision to transfer it there is in large measure influenced by the convenience of the Petitioners, it becomes impervious to challenge – Meerut is undoubtedly of closest proximity both to Delhi as well as to the Noida and hence the impugned decision is neither capriciousness, malafide nor arbitrary - Petitions lack merit and are dismissed

415 2009 TMI - 33619 - AUTHORITY FOR ADVANCE RULINGS

M/s K.T. Corporation, In re

Dated: 29-05-2009

Sections - 005, 009,

Draft Reciprocal Carrier Services Agreement between K.T. Corporation, Korea and Vodafone Essar South Limited - Whether the Liaison Office of K.T. Corporation in New Delhi constitute a Permanent Establishment - L.O. was set up to act only as a communication channel and it became functional within the restrictions imposed by R.B.I - L.O. is, no doubt, a fixed place of business (i.e. an office) maintained exclusively for the purpose of collecting information for the applicant which is in the nature of preparatory and auxiliary character for the enterprise. Facts being so, L.O. cannot be regarded as PE of the applicant as per the exclusionary provision of Article 5(4) of the Treaty

416 2009 TMI - 33618 - DELHI HIGH COURT

S.R. BATLIBOI & CO. Versus DEPARTMENT OF INCOME TAX (INVESTIGATION)

Dated: 27-05-2009

Sections - 132, 132A,

While audit of EMAAR, laptops were seized – Petitioner on request of Deputy Director, Income Tax (DDIT) provided the electronic data relating to three companies of the EMAAR Group together with the print copies of the data. Nevertheless, the DDIT insisted on securing total and unrestricted access to the laptops obviously in order to gain information and data of all the other clients of the Petitioner – held that Revenue is not empowered to make use of material stumbled in a Search against a third party - impugned summons are set aside, and Respondents are directed to return the laptops to Petitioner

417 2009 TMI - 33617 - AUTHORITY FOR ADVANCE RULINGS

Sri Ramachandra Educational and Health Trust (SREHT), In re

Dated: 29-05-2009

Sections - 195, 009,

Agreement with HMI, USA for transfer of knowledge and experience - Whether Tax is to be deducted by SREHT, India at source U/s. 195 on the payments made on account of annual contract fee and additional fee to HMI, USA, when both the parties are exempt from tax in their respective countries - a clear picture of the activity and payments does not emerge from the facts available - As the applicant makes lump sum payment for various services rendered by HMI, it is not possible for us to say what amount relates to which particular service - we cannot give ruling that the applicant is not at all liable to deduct any tax at source

418 2009 TMI - 33616 - MADRAS HIGH COURT

Commissioner of Income Tax-III, Coimbatore Versus M/s Mani Spinning Mills P. Ltd.

Dated: 30-04-2009

Sections - 234B, 234C, 115JAA, 208, 211,

Whether ITAT was right in holding that for purposes of computation of interest under Section 234B and 234C, tax credit u/s 115JAA has to be first set off against the tax payable and the interest under the said sections have to be computed after taking into consideration the tax credit carried forward u/s 115JAA even though there is no legal sanction for such adjustment u/s 208 to 211, u/s 234B or 234C or under any other provisions of the Act - question of law is answered against the revenue to the effect that the interest under the said two provisions have to be calculated after giving effect to the MAT credit

419 2009 TMI - 33615 - MADRAS HIGH COURT

Commissioner of Income Tax Central I, Chennai Versus M/s. Jumbo Bag Ltd.

Dated: 30-04-2009

Sections - 115J, 263, 80HHC, 115JB,

Whether ITAT was right in cancelling the order CIT u/s 263 on the ground that deduction u/s 80HHC was allowable on the basis of book profits and not on the basis of eligible profits u/s 80HHC as per computation under the normal provisions of the Income Tax Act, while computing the books profits u/s 115JB - Assessing Officer is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit under Section 115J and the book profit so arrived at should be the basis for taxation and

therefore, the computation under Section 80HHC should be limited to the case of profits of eligible category only - question of law is answered against the revenue and the appeals are dismissed

420 2009 TMI - 33606 - MADRAS HIGH COURT

Commissioner of Income Tax Versus The Tiruttani Co-operative Sugar Mills Limited

Dated: 28-04-2009

Sections - -

Assessability of receipts on account of higher free sale of sugar and receipt of excise duty rebate - held that subsidy received by the assessee was not in the course of a trade so it was of a capital nature – in respect of “Receipt from concession in the rate of excise duty rebate” held that the incentives given by the Government in the form of higher free sugar were given exclusively for the purpose of repayment of loan borrowed for the purpose of meeting part of the capital cost from financial institutions and therefore were not revenue receipts - Both these receipts are capital in nature and therefore not to be treated as income liable to tax

421 2009 TMI - 33605 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus M/s. Anusha Investments Ltd.

Dated: 30-04-2009

Sections - 234B, 234C, 115JAA, R012, 234A,

Whether Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the tax deducted at source and advance tax paid - Whether the MAT credit can be given priority of set off against tax payable, contrary to the Scheme of Schedule G of Form 1 - Whether the interest u/s 234B and 234C had to be calculated after giving the MAT credit against the tax payable on the basis of normal computation - questions of law answered in favour of the assessee

422 2009 TMI - 33604 - MADRAS HIGH COURT

M/s. Royal Stitches (P) Ltd. Versus The Chief Commissioner of Income Tax, Chennai

Dated: 19-05-2009

Sections - 234B, 080HHC, 080IA,

Chief Commissioner dismissing the respondent's petition for waiver of interest u/s 234-B – AO did not accept the claim of the assessee that the interest income from bank deposits should be assessed under the head 'business' - petitioner contend that respondent declined to exercise his power of discretion to grant waiver of interest arbitrarily by applying an irrelevant decision - notification 400/234/IT(B) dated 23.05.1996 issued by the CBDT u/s 119 empowers the Board to issue instructions and directions with regard to waiver of interest as claimed by assessee – there is no scope of interference in the order of the respondent, in respect of assessment years, 1993-94, 1994-95 and 1995-96 – but for A.Y. 1996-97 order of respondent is set aside

423 2009 TMI - 33603 - MADHYA PRADESH HIGH COURT

Commissioner of Income Tax Bhopal Versus M/s Garg Trading Co.

Dated: 15-05-2009

Sections - 044AC, 206C,

Assessee offered income in respect of tendu patta business on the basis of provisions of S. 44AC – activity like collection of tendu leaves, pruning, prevention of diseases,

plucking, arrangements of pudas at collection centres, drying, gradation of bid leaves, putting them in the bags and thereafter their transportation do not amount to “processing” of tendu leaves within the meaning of S. 206C - activity undertaken by the assessee is neither a manufacturing activity nor a processing activity – Tribunal was justified in law in the holding that case of assessee clearly falls within preview of S. 44-AC

424 2009 TMI - 33602 - GAUHATI HIGH COURT

Commissioner of Income Tax, Guwahati Versus M/s. Peerchand Ratanlal Baid (HUF)

Dated: 15-05-2009

Sections - 153, 148, 147, 158BC, 158BE, 158BA, 158BB, 004, 158BH, 132, 132A,

Addition of undisclosed income made for the block period - since the Assessing Officer had failed to initiate proceedings in terms of Section 153 read with Explanation 3 necessarily follows a conclusion that notice under Section 148 was necessary and no such notice having been given to the assessee the provisions of Section 153 did not authorise such notice to be issued any further - while dismissing the appeal of the Revenue we deem it proper to conclude that the provisions of Section 147/148 will apply to an assessment for a block period made under Chapter XIV-B

425 2009 TMI - 33591 - DELHI HIGH COURT

SURAJMAL MEMORIAL EDUCATION SOCIETY, NEW DELHI Versus DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS) and ANR.

Dated: 11-05-2009

Sections - 010(23C),

Denial of exemption under section 10(23C)(vi) and no renewal of exemption on the ground that the petitioner had not applied its income wholly and exclusively to objects for which it was set up - Petitioner claims that it had withdrawn amounts, credited to its principal, and thereafter paid sums to these two schools in cash – but there was no documentary proof - The Director General ordered to produce the books of account of the two schools - The petitioner failed to produce the books of accounts of those two schools and instead requested for issuance of summons under Section 131 - This request was turned down by the Director General. – Held that, this would indeed be a very dangerous precedent fraught with possibilities of harassment at the behest of the assessee, if, without any foundation the Department insists on a third party to produce its books of accounts – Petition dismissed

426 2009 TMI - 33590 - SUPREME COURT

Commissioner of Income Tax, Udaipur Rajasthan Versus Mcdowell & Co. Ltd.

Dated: 08-05-2009

Sections - 037, 032, 035, 043B,

Whether in the facts and in the circumstances of the case, the Division Bench of the High Court was justified in affirming the findings of ITAT deleting the disallowance of Rs.14,51,100/- holding that the technical service charges (royalty) payment under consideration is allowable based on subsequent agreement dated 10.4.1992 at higher rate than that based on earlier agreement entered into in December, 1990 even though earlier agreement entered into in December, 1990 was to be effective upto 2000 and had neither been substituted nor rescinded? – Held yes - The Tribunal and the High Court recorded a finding that the new agreement in April, 1992 was not a subterfuge or clandestine device to reduce the tax liability but was an expenditure incurred on business expediency and the decision of the parties to enter into an agreement was

based on commercial consideration

427 2009 TMI - 33589 - SUPREME COURT

Commissioner of Income Tax, Udaipur Rajasthan Versus Mcdowell & Co. Ltd.

Dated: 08-05-2009

Sections - 032, 043B,

Whether on the facts and in the circumstances of the case, the ITAT was justified in allowing the depreciation on research and development assets which related to the closest business of fast food division/unit of the assessee company as such not used during the previous year? - Stand of the revenue is that machinery in respect of R & D centre related to the fast food unit which was closed and therefore the assessee was not entitled to any depreciation because there was no actual user of the machinery - Stand of the assessee on the other hand is that the machinery was used in respect of both the fast food and the liquor units. This aspect needs to be factually examined – matter remanded

428 2009 TMI - 33588 - SUPREME COURT

Commissioner of Income Tax, Udaipur Rajasthan Versus Mcdowell & Co. Ltd.

Dated: 08-05-2009

Sections - 043B, 035,

Section 43B - Furnishing of bank guarantee cannot be equated with actual payment which requires that money must flow from the assessee to the public exchequer as required under Section 43B. By no stretch of imagination it can be said that furnishing of bank guarantee is actual payment of tax or duty in cash – further - the expression now used in Section 43B (i)(a) is “Tax, Duty, Cess or fee or by whatever name called”. It denotes that items enumerated constitute species of the same genus and the expression ‘by whatever name called’ which follows preceding words ‘Tax’, ‘Duty’, ‘Cess’ or ‘fee’ has been used ejusdem generis to confine the application of the provisions not on the basis of mere nomenclatures, but notwithstanding name, they must fall within the genus ‘taxation’ to which expression ‘Tax’, ‘Duty’, ‘Cess’ or ‘Fee’ as a group of its specie belong vis. - bottling fees chargeable from the assessee under the Rules framed under the Rajasthan Excise Act, 1950 and interest chargeable on late payment of bottling fees not covered by provisions of section 43B.

429 2009 TMI - 33587 - SUPREME COURT

Commissioner of Income Tax, Udaipur Rajasthan Versus Mcdowell & Co. Ltd.

Dated: 08-05-2009

Sections - 037, 032, 043B,

Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in deleting the addition of Rs.2,77,887/- being made treating the expenditure incurred in purchase of new transformer as capital expenditure even when the old transformer still exists in the blocks of asset and not sold, discarded or demolished or destroyed? - Since neither the Tribunal nor the High Court dealt with the factual aspect in detail, we remit the matter to the Assessing Officer to consider the respective stands in the background of what has been stated by this Court in Saravana [2007 TMI - 1775] and Ramaraju [2007 TMI - 2064] cases

430 2009 TMI - 33586 - UTTARAKHAND HIGH COURT

Commissioner of Income Tax, Haldwani, Nainital Versus M/s. Kisan Sahkari Chini Mill

Dated: 15-05-2009

Sections - -

Assessee, a public sector co-operative sugar mill involved in mfg. and sale of sugar - Amount received by assessee being incentive as levy sugar released for free sale, claimed by the assessee as capital receipt but the AO has treated it to be revenue receipt - Order of the ITAT sustained in with tribunal held that the subsidy in question should be treated as capital receipt – revenue appeal dismissed

431 2009 TMI - 33585 - UTTARAKHAND HIGH COURT

Commissioner of Income-tax, Dehradun Versus M/s RBF Rig Corporation

Dated: 22-05-2009

Sections - 044BB,

Presumptive tax - non-resident - Whether, the ITAT has erred in law in holding that reimbursement of expenses on account of catering charges and fuel etc. to the assessee were not part of the gross receipts for the purposes of S. 44BB – words used in the section, include the amount received by the assessee on account of catering charges and fuel etc. to the non-resident assessee involved in the business of oil exploration, as the catering charges do form part of 'services and facilities' in connection with the extraction or production of the mineral oil - catering charges and fuel expenses reimbursed cannot be excluded from the 'amount' defined in sub-section (2) of Section 44BB – tribunal's order set aside

432 2009 TMI - 33584 - DELHI HIGH COURT

JAL HOTELS CO. LTD. Versus ASSTT. DIR. OF INCOME TAX

Dated: 25-05-2009

Sections - 148, 147,

Legal propriety of notices issued u/s 148 - once the basic or primary facts have been disclosed, the burden to prove that amounts represents undisclosed income of the assessee is on the Revenue – there was no new material in the hands of the Revenue leading to the view that there was reason to believe that income had escaped assessment. Instead, the case is a classic instance of a change of opinion. Consequently, the Writ Petitions are allowed and the impugned Notice u/s 148 is quashed

433 2009 TMI - 33530 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus S. I. PROPERTY DEVELOPMENT LTD.

Dated: 27-01-2009

Sections - 037,

Assessee-company engaged construction business was converted into a public limited company – AO disallowed a sum out of head office expenses and made an addition of 10 % of the amount as estimated profit on contract receipt on ground that some expenditure of the Madras head office should be allocated for the project work for determining the profit – CIT (A) deleted the disallowance made out of HO expenses and addition made of 10 % towards estimated profit on ground that it was another form of depreciation which has already been considered once – ITAT rightly upheld CIT's order

434 2009 TMI - 33527 - DELHI HIGH COURT

CIT Versus CONCORDE CAPITAL MANAGEMENT COMPANY LTD. and THREE-N PRODUCTS PVT. LTD.

Dated: 20-05-2009

Sections - 069A, 133A, 132, 158BB,

Undisclosed income – additions made u/s 69A - Revenue had taken into consideration a Statement made by a third party independent of the Search and since nothing was discovered in the course of the Search, the action of revenue was contrary to law – held that income not disclosed or unearthed as a result of the Search or Requisition cannot be brought to tax under Chapter-XIVB - undisclosed income not determined on the basis of material gathered in a Search cannot justify the ordering of a Block Assessment

435 2009 TMI - 33526 - ALLAHABAD HIGH COURT

Sri Lakshmi Narain Khetan Versus Commissioner of Income Tax (Appeal) Ghaziabad and another

Dated: 13-05-2009

Sections - 080HHC, 037,

In ascertaining the question of interest income from other sources, the vital point is to be considered whether the amount is in circulation with the business or the same is kept in the Fixed Deposit of the Bank to earn interest - Difference of opinion of the two High Courts - having different opinion, we require reconsideration of the case - So far as non-service of notice is concerned, revenue send notice on the same address on which notice was issued by CIT (A) in other appeal and assessee appeared - Therefore, the ground of non-service of notice upon the assessee is fictitious in nature

436 2009 TMI - 33523 - DELHI HIGH COURT

CIT Versus AMARJEET SINGH CHADHA

Dated: 12-05-2009

Sections - 158BB, 132, 132A, 158BC,

Tribunal has held the part of the additions of cash and jewellery found at the time of the Search to be valid and have deleted rest of the heads from the additions made by the Assessing Officer on the ground that no incriminating material was found in the Search and thus resort could not be taken under Chapter XIV-B - Finding of Tribunal that the undisclosed income was not computed on the basis of search material but on the basis of change in opinion of the Assessing Officer, is concurrent - no substantial question of law arises – revenue's appeal dismissed

437 2009 TMI - 33454 - DELHI HIGH COURT

THE COMMISSIONER OF INCOME TAX-XIII Versus SHRI ASHISH RAJPAL

Dated: 14-05-2009

Sections - 263,

Opportunity of being heard - Order-in-Revision refers to issues and discrepancies which did not find mention in the initial notice - Therefore, to suggest that it would be sufficient compliance of the provisions of Section 263, if an opportunity to respond to the discrepancies mentioned in the Order-in-Revision is given to the assessee in reassessment proceedings before the Assessing Officer, is according to us is completely untenable - It is the requirement of Section 263 that the assessee must have an opportunity of being heard in respect of those errors which the Commissioner proposes to revise. To accord an opportunity after setting aside the assessment order, would in our view not meet the mandate the Section 263

438 2009 TMI - 33453 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus SHRI RAJ KUMAR

Dated: 14-05-2009

Sections - 002(22),

Whether trade advances given to the assessee (shareholder) by Company can be treated as deemed dividend under Section 2(22)(e) - word 'advance' which appears in the company of the word 'loan' could only mean such advance which carries with it an obligation of repayment. Trade advance which are in the nature of money transacted to give effect to a commercial transactions would not, in our view, fall within the ambit of the provisions of Section 2(22)(e) - hold that trade advance does not fall within the ambit of the provisions of Section 2(22)(e) – additions were rightly deleted by tribunal

439 2009 TMI - 33420 - SUPREME COURT OF INDIA

M/s. Rotork Controls India (P) Ltd. Versus Commissioner of Income Tax, Chennai

Dated: 12-05-2009

Sections - 037,

Provision for Warranty - Appellant-company sells Valve Actuators. Bulk of the sales is to BHEL. At the time of sale appellant (assessee) provides a Standard Warranty whereby in the event of any Beacon Rotork Actuator or part thereof becoming defective within certain period, the company undertakes to rectify or replace the defective part free of charge. For the AY1991-92, the assessee made a net provision for warranty at Rs.5,18,554/-. In this matter, honorable Apex Court allowed the claim of provision for warranty stating that, "with making of provision on the basis of estimated present value of contingent liability holds good during the assessment years in question qua warranty claims".

440 2009 TMI - 33418 - SUPREME COURT OF INDIA

CIT, SHIMLA Versus M/S GREENWORLD CORPORATION and M/s THE GREEN WORLD CORPORATION Versus ITO, PARWANOO & ANR.

Dated: 06-05-2009

Sections - 148, 263, 80IA, 80IB, 127, 150, 116, 118, 119, 120, 133A,

Income Form setting up units in Exemption Area (u/s 80IA) - Huge profit of about 49% to 66% of sales - AO conducted survey u/s 133A and after verification accepted the return submitted by the assessee - as per the order of the AO it appears that he has passed the order on the direction of CIT - in the meantime CIT and transferred - new CIT has passed an order u/s 263 as, "I am left with no alternative but to decide the proceedings on the basis of material on record. In the assessment year under review, I estimate the assessee's income from Units at Parwanoo at 5% of the declared turnover. The income shown in excess of 5% amount is treated as undisclosed income from undisclosed sources. As the assessee does not fulfill many of the conditions for being entitled to deduction u/s 80IA/IB, no part of the total income, not even the one estimated @ 5% of the turnover at Parwanoo, would be entitled for deduction u/s 80IA/IB" - Further notice u/s 148 issued for previous assessment years - in this matter honorable SC ordered to reopen the assessment.

441 2009 TMI - 33410 - BOMBAY HIGH COURT

Messrs Indus Engineering Co., Versus Asstt. Commissioner of Income Tax

Dated: 13-04-2009

Sections - 271,

Penalty u/s 271(1)(c) - neither in the original return nor in the revised return the petitioner had disclosed the income - clear case of concealment of income - petitioner did not disclose the manner in which such income had been derived, therefore, case is

not covered by explanation 5 of Section 271 - immunity available under Explanation 5 is not available to the assessee - Commissioner has recorded a finding of fact that the transactions were disclosed in the course of search – no merit in petition

442 2009 TMI - 33365 - BOMBAY HIGH COURT

Petron Engineering Construction Ltd. Versus Commissioner of Income Tax

Dated: 07-05-2009

Sections - 080HBB,

Petitioner sought extension of time to bring in foreign exchange - non-remittance of the amount to India – if extension of work was part of the same project, which the petitioner was to complete as per original contract and not separate and independent contract, the reasons given by the petitioner for non-remittance of complete amount of foreign exchange within six months, there could be considered as circumstances due to which it was beyond control of the petitioner to bring the foreign exchange within time – CIT order of rejecting the prayer for extension of time u/s 80HBB(3) is set aside

443 2009 TMI - 33363 - MADRAS HIGH COURT

The Commissioner of Income Tax-III Coimbatore Versus M/s Shivraj Spinning Mills Ltd.

Dated: 24-04-2009

Sections - 037,

Whether Tribunal was right in holding that expenditure on replacement of old machinery by purchase and installation of new machinery was allowable as revenue expenditure - there are a number of tests which are required to be considered while deciding whether the expenditure was revenue or capital in nature. In the absence of the requisite details regarding the production capacity remaining constant even after replacement, the matter could not be decided on merits and require to be remitted back to the Commissioner (Appeals)

444 2009 TMI - 33362 - BOMBAY HIGH COURT

Genom Biotech Private Limited Versus Director of Income Tax

Dated: 07-05-2009

Sections - 281B, 132,

Petitioner No.2 (NRI) is the Chairman and Managing Director of the petitioner No.1 company - provisional attachment u/s 281B - tax fraud - shares held by the petitioner No.2 in demat account are not trading assets but are investments made out of funds brought to India which prima facie appears to be the amounts remitted by the petitioner No.1 as marketing and advertisement expenses to Cyprus / UK based companies – therefore, attachment of the shares of the petitioner No.2 in demat account on the ground that they represent undisclosed income of the petitioner No.2, cannot be faulted - search and seizure u/s 132(1) is in accordance with law

445 2009 TMI - 33361 - BOMBAY HIGH COURT

Sudhakar T. Pendse Versus Income Tax Officer

Dated: 22-04-2009

Sections - 158BC, 145,

Additions as undisclosed income – accrual of income - M/s. Nalini Properties Pvt. Ltd. is a closely held company of the appellant - appellant was a party to the board resolution and in implementation of the board resolution, the account of the appellant was credited by the amount of Rs.3.17 crores - appellant agreed before the CIT (A) that

it is difficult for him to prove that he has changed the method of accounting from mercantile system to cash -therefore, the amount of Rs.3.17 crores is to be taxed as undisclosed income in the block period

446 2009 TMI - 33360 - BOMBAY HIGH COURT

Commissioner of Income Tax Versus M/s. Ajanta Pharma Ltd.

Dated: 07-05-2009

Sections - 115JB, 80HHC,

Whether for calculating book profit u/s 115 JB under Explanation 1 sub clause (iv) the export profits to be excluded from the book profits would be the export profits allowed as a deduction u/s. 80 HHC after restricting the deduction u/s 80 HHC(1B) OR the export profits calculated as per s.s. 3 and 3A of section 80 HHC before applying the restriction - questions of law as framed will have to be answered in the negative in favour of the revenue and against the assessee – held that the MAT company are entitled to the same deduction of export profits u/s 80HHC as any other company involved in export in terms of section 80 HHC (1B)

447 2009 TMI - 33359 - ALLAHABAD HIGH COURT

The Pradeshia Industrial and Investment Corpn. U.P. Ltd. Versus The Chief Commissioner of Income-tax and others

Dated: 04-05-2009

Sections - -

Attachment orders - appeal against the assessment orders is pending before the CIT (Appeals)-I, in which the petitioner has moved an application for interim relief which is also pending for consideration. It is the settled law that during the pendency of appeal, the orders having civil consequence should be suspended – therefore, attachment orders shall remain stayed till the next date of listing - As far as the grievance of the petitioner for the refund is concerned, the petitioner shall make a detailed representation before the Chief CIT

448 2009 TMI - 33357 - MADRAS HIGH COURT

M/s. Pyramid Saimira Theatre Limited Versus The Commissioner of Income Tax

Dated: 30-04-2009

Sections - 226, 139, 140A, 143,

Whether the revised return effaces and substitutes the original return and whether the petitioner could be termed as an assessee in default, on the basis of the original return - Revenue treated the petitioner as an assessee in default and attached the bank accounts and issued garnishee notices – HELD that assessment should be completed within a time frame - In the meantime, the order of attachment of the receivables and the garnishee notices may continue to remain in force, in respect of all the debtors, except the banks - petitioner is permitted to operate the bank accounts and utilise the overdraft facility subject to the condition that there will be a first charge for the Department

449 2009 TMI - 33348 - KERALA HIGH COURT

KERALA RURAL EMPLOYMENT AND WELFARE SOCIETY Versus ASSISTANT DIRECTOR OF INCOME-TAX AND ANOTHER

Dated: 19-01-2009

Sections - 011, 139, R017,

Delay in filing the notice (in Form. No. 10) for accumulation of income by assessee-

charitable trust, on account of delay of Chartered accountant to finalize the accounts – time limit prescribed u/s 139(4) for giving notice – petitioner had invoked clause of the CBDT Circular which stated that the failure to give notice to ITO u/s 11(2) and investment of the money in prescribed securities was due to “oversight” – therefore, it could not be said that there was no explanation given by petitioner – order of commissioner rejecting the application for condonation of delay, is quashed

450 2009 TMI - 33343 - KERALA HIGH COURT

S. SHAFFI MUSALIAR AND OTHERS Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 10-02-2009

Sections - 090, 091, 154, 220,

Assessee though given the benefit of the KVSS corrected the settlement amount by including interest which ought to have been included by the petitioner in the declaration - mistake happened due to the wrong declaration filed by the petitioner - but, the learned judge found that the amount has to be corrected in terms of the KVSS taking into consideration that arrears included tax also - no appeal was filed by the Department against that direction – no interference required in the impugned judgment – appeal of assessee dismissed

451 2009 TMI - 33340 - DELHI HIGH COURT

GEO ENPRO PETROLEUM LTD. Versus DY. COMMISSIONER OF INCOME TAX

Dated: 04-05-2009

Sections - 080IB,

Deduction u/s 80-IB(9) – determining the initial assessment year – petitioner seek the matter be remanded to the Tribunal to decide the matter de novo to determine as a matter of fact as to when commercial production commenced for the purposes of fixing the “initial assessment year” - documents have been specifically considered by the Tribunal whereupon it has returned a categorical finding of fact that commercial production commenced in A.Y 1996-97 – appeal dismissed – deduction not available in AYs 2003-04 and 2004-05 - remand is not called for

452 2009 TMI - 33339 - DELHI HIGH COURT

PRAKASH TUBES LTD. Versus UNION OF INDIA & ORS.

Dated: 01-05-2009

Sections - 220, 156,

Interest under Section 220(2A) - whether interest can be levied without the service of a specific order raising the demand -whether the impugned Order is liable to be set aside since the Assessee was not afforded any opportunity of personal hearing- argument of revenue that a hearing was found unnecessary by the Authority since the provision sought to be invoked by the Petitioner, namely Section 220(2A), was not in force at the relevant time, is acceptable – personal hearing would have been an imperative wherever and whenever discretion has to be exercised. Since this was not the case, no violation of natural justice has, therefore, occurred - Writ Petition is dismissed

453 2009 TMI - 33337 - DELHI HIGH COURT

CIT, DELHI-IV, NEW DELHI Versus D.S. PROMOTERS & DEVELOPERS PVT. LTD.

Dated: 01-05-2009

Sections - 022, 028,

Rental income received in respect of its property – tribunal has rightly in holding that

such income is the business income of assessee and not "Income from Other Sources", as contended by revenue – in respect of amount received from another property, in view of various clauses in the Franchise Agreement, tribunal rightly held that the income/commission received by the Assessee was also its business income - fact that the minimum guarantee amount was stipulated in the agreement to ensure the minimum returns of the investment made by the Assessee could as well be a business decision as it could be a lease agreement – therefore income should be treated as Business income

454 2009 TMI - 33333 - UTTARAKHAND HIGH COURT

Commissioner of Income-tax, Dehradun Versus R & B Falcon Drilling Co.

Dated: 24-04-2009

Sections - 044BB, 044AA,

Assessee, a non-resident company received mobilization/ demobilization fee – such payment is not the actual reimbursement, rather, it includes the expenditure incurred by the company - it makes no difference whether the amount was paid or payable in or outside India - section does not exclude the mobilization/demobilization charges paid for transportation of the plant and machinery from the place out of India to the locations in India or its territorial waters - amount received are liable to be included in the 'gross receipts and form part of the amount mentioned in s.s. (2) of Section 44BB

455 2009 TMI - 33332 - UTTARAKHAND HIGH COURT

Commissioner of Income-tax, Dehradun. Versus Ensco Maritime Ltd.

Dated: 24-04-2009

Sections - 044BB,

Reimbursement of the catering charges to assessee-non-resident company - AO took the view that the aforesaid amount received by the assessee as catering charges is part of the amount on which ten per cent deemed profit is to be calculated u/s 44BB - ITAT and CIT(A) have erred in law in holding that the catering charges are liable to be excluded - held that catering charges cannot be excluded from the 'amount' defined in sub-section (2) of Section 44BB - order of Assessing Officer is restored

456 2009 TMI - 33331 - BOMBAY HIGH COURT

Commissioner of Income Tax Versus Kotak Mahindra Finance Ltd.

Dated: 25-03-2009

Sections - 032, 032A,

Depreciation - Business of leasing – Leased equipment - contention of the assessee that the breakers were given on lease before the end of previous year and therefore, the same should be considered as "used" for the purpose of business - Assessee, admittedly had supplied the machinery before the end of the financial year and the assessee had received the lease rentals for the same. The fact whether the lessee had put to use the leased equipment would be irrelevant – revenue's appeal dismissed – Tribunal is right in allowing the assesses claim of deprecation

457 2009 TMI - 33330 - BOMBAY HIGH COURT

Titanor Components Ltd. Versus Commissioner of Income Tax

Dated: 29-04-2009

Sections - 158A, 254, 032,

Depreciation - Tribunal holding that the appellant was entitled to depreciation on the assets acquired based on the value placed in the surveyors report and not on the

actual cost incurred for acquisition(as contended by assessee) – no reason given by tribunal - it appropriate to remand the matter to the ITAT, before whom declaration u/s 158A was filed by the appellant with direction to admit the claim of assessee in the said declaration and to proceed further as per section 158A(5) after the Hon'ble Delhi HC adjudicates the appeals pending before it - orders of ITAT are quashed

458 2009 TMI - 33297 - HIGH COURT OF KERALA

COMMISSIONER OF INCOME TAX Versus M/S.KERALA STATE FINANCIAL ENTERPRISES

Dated: 04-03-2009

Sections - 154,

The demand of interest tax paid on finance charges was allowed in I.T. assessment by way of rectification of original assessment, when the assessee in fact paid the interest tax on finance charges. However, the assessee successfully contested the interest tax assessment on finance charges and got it deleted. Thereafter income tax assessment was again rectified by the assessing officer withdrawing the deduction granted on interest tax on finance charges which the assessee ceased to be entitled by virtue of the order of the Tribunal in the interest tax appeals filed by the assessee. - ITAT held that the provisions of section 154 is not applicable to this case - honorable HC upheld the decision of ITAT on technical ground of double taxation (without going into merits)

459 2009 TMI - 33295 - MADRAS HIGH COURT

Commissioner of Income Tax, Chennai Versus Chemplast Sanmar Limited

Dated: 09-04-2009

Sections - 115JAA, 234B, 234C,

Q. 1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that the carry forward MAT credit available to the assessee was to be adjusted first before charging interest under Sections 234B and 234C? - "Held Yes" - Q. 2. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that Rule 12(1)(a) which lays down that every company has to furnish a return of income in Form No.1 and schedule G to the said form clearly lays down the manner of computation of the total income and also the order in which TDS, Advance Tax and Tax credit under Section 115JAA should be given effect to, is against the intention of the legislation and hence not applicable? - "Held Yes" - Q. 3. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in not considering the fact that Form 1 had been substituted by the Income Tax (19th amendment) Rules 2001 with effect from 17.08.2001 and as such interest chargeable under Section 234B or 234C should be first deducted and thereafter tax credit under Section 115JAA should be given? - "Held Yes"

460 2009 TMI - 33292 - CALCUTTA HIGH COURT

MINTRI TEA CO. PRIVATE LIMITED Versus COMMISSIONER OF INCOME TAX, JALPAIGURI

Dated: 17-03-2009

Sections - 154, 143, 043B,

Jurisdiction of AO to pass an order u/s 154 amending the intimation u/s 143(1)(a) and to make a prima facie adjustment in an intimation issued – held that Tribunal was not justified in holding that disallowance u/s 43B in respect of provident fund contribution, could be made as a prima facie adjustment u/s 143 (1) (a) – Tribunal was not justified in law in not deciding the contention of assessee that the order under Section 154 and

revised intimation both were barred by limitation - assessee's appeal allowed

461 2009 TMI - 33291 - CALCUTTA HIGH COURT

BANGODAYA COTTON MILLS LTD. Versus COMMISSIONER OF INCOME TAX, KOLKATA – IV

Dated: 17-03-2009

Sections - -

Additions on basis of materials seized from third party - genuineness and veracity of the materials (letters) seized from a third party - On the basis of the said three letters, AO held that in the assessment order, the consideration for the sale of the moveable assets were raised from Rs.1 crore to Rs.1.50 crore by the parties – CIT (A) rightly accepted the assessee's alternative contention that even assuming the money had changed hands but, neither the assessee nor the Special Officer appointed by HC have received the same - Therefore, addition on that account was required to be considered in the hands of the beneficial owner but it appears that without any reason the Tribunal dismissed the said contention - assessee must get a chance to prove the facts - matter remanded to AO

462 2009 TMI - 33289 - BOMBAY HIGH COURT

Shri Sandeep M. Shah and M/s. Sun and Deep Jewellers Versus V.D. Wakharkar & Anr.

Dated: 20-04-2009

Sections - 139, 217,

Whether the CIT was justified in refusing waiver of interest under Section 139(8) and Section 217 of the Income-tax Act, while for the same reasons the penalty was waived - held that if the reasons given by the petitioners for delay in filing the income tax returns were sufficient for waiver of penalty, the said reasons should also be sufficient for waiver of interest under Sections 217 and 139(8) of the I.T.Act. Therefore, we hold that the Income-tax Commissioner was not justified in refusing the waiver of interest

463 2009 TMI - 33277 - KERALA HIGH COURT

NOORUL ISLAM EDUCATIONAL TRUST Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 21-04-2009

Sections - 158BC,

Coercive proceedings for recovery of the disputed tax, during pendency of the stay petition — dispute regarding assessment of income tax (of assessee- Charitable Trust) under Section 158 BC for the block period – held that , it is unjust to recover the disputed tax coercively from the petitioner before at least the stay petition is considered by the Appellate Authority

464 2009 TMI - 33275 - KERALA HIGH COURT

K.S. NMANDAKUMAR Versus INCOME TAX OFFICER

Dated: 07-04-2009

Sections - 271,

During appeal before tribunal against assessment order, penalty proceedings u/s 271 (1)(C) has been initiated – notice for imposing penalty is on the same date as the date on which the assessment order is passed - in the interest of justice, held that the penalty appeal (statutory appeal preferred before the CIT (A)) is disposed of after the disposal of the appeal filed before the Income Tax Appellate Tribunal – Commissioner

(A) is directed to dispose of the same only after a decision is taken by the Income Tax Appellate Tribunal in assessment appeal

465 2009 TMI - 33274 - KERALA HIGH COURT

COCHIN INTERNATIONAL AIRPORT LIMITED Versus DEPUTY COMMISSIONER OF INCOME

Dated: 01-04-2009

Sections - 197,

Withdrawal of Certificate issued under section 197 retrospectively i.e. from date of issue of certificate – jurisdiction to issue/withdraw the certificate - jurisdiction for issuance of certificate u/s 197(1) is rest with the CIT (TDS) whereas the certificates were issued by the Deputy CIT - petitioner points out that he has filed an application before the assessing officer and under the Act, the Deputy Commissioner is the assessing officer – held that, when the notification is issued by the CBDT conferring the power on the CIT (TDS), Deputy CIT did not have power to issue certificate - since the order was issued initially without the authority of law, CIT (TDS) has power to withdraw it – but it is not fair to allow the retrospective cancellation of the certificates - Writ petition is partially allowed

466 2009 TMI - 33273 - MADRAS HIGH COURT

Commissioner of Income Tax I Chennai Versus M/s. Five Star Marine Exports (P) Limited

Dated: 20-04-2009

Sections - 80HHC,

Whether tribunal can decide appeal on merits against order of Commissioner (A)(who rejected the condonation application) - held that refusal to condone delay would tantamount to confirming the order of assessment, therefore appeal against it lies to the Appellate Tribunal and the Tribunal can well go into the merits of the case – amendment in Section 80HHC has been challenged before various High Courts which are pending – therefore, Tribunal was right in remitting the matter to AO to await the outcome of the writ petition, without deciding whether the delay in filing the first appeal was condonable

467 2009 TMI - 33272 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus M/s. Three Bags India (P) Ltd.

Dated: 17-04-2009

Sections - 80HHC, 115JA,

Basis for computation of deduction u/s 80HHC – Section 80HHC is clear about this aspect that profit only is to be taken into account but not income and sub-section (3) of Section 115JA itself took care of the provisions relating to the adjustment of loss or depreciation and carry forward of the income – therefore, Tribunal rightly held that the computation of deduction u/s 80HHC is to be worked out on the basis of the adjusted book profits u/s 115JA only, and not in the profit arrived at in regular basis

468 2009 TMI - 33271 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus M/s Aban Llyod Chiles Offshore Ltd.

Dated: 21-04-2009

Sections - 234A, 234B, 115JAA, R012,

Whether MAT credit is to be set off against from the tax payable before setting off the

TDS and advance tax paid - Whether MAT Credit can be given priority of set off against tax payable - Whether the interest u/s 234B and 234C had to be calculated after giving the MAT credit against the tax payable on the basis of normal computation – held that Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act - held that the credit u/s 115JAA should be given effect to before charging of interest u/s 234A, 234B and 234C - held that revenue cannot rely on the Form-I to say that the MAT credit should be given only after tax and interest

469 2009 TMI - 33270 - MADRAS HIGH COURT

Commissioner of Income Tax, Central III, Madras Versus Shri. P.N. Mallikarjuna Rao

Dated: 21-04-2009

Sections - 113, 158BB,

Levy of surcharge under Section 113 in respect of the block assessment prior to 01.06.2002 - one has to read section 158BB with section 4 - Once section 158BB is to be read with section 4 then the relevant Finance Act of the concerned year would automatically stand attracted to the computation under Chapter XIV-B - Section 158BB looks to section 113 - proviso inserted in section 113 w.e.f. June 1, 2002 indicate that the Finance Act of the year in which the search was initiated would apply – this proviso is only clarificatory in nature not retrospective – revenue is justified in levying surcharge

470 2009 TMI - 33269 - MADRAS HIGH COURT

The Commissioner of Income Tax Chennai Versus Rane Brake Linings Ltd.

Dated: 21-04-2009

Sections - -

Whether Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery as revenue expenditure- Whether replacement of independent complete machinery can be treated as revenue expenditure - Whether Tribunal was right in deciding the issue without going into the concept of Block of asset – there are a number of tests which are required to be considered while deciding whether the expenditure was revenue or capital in nature. In the absence of the requisite details regarding the production capacity remaining constant even after replacement, the matter could not be decided on merits and require to be remitted back to the Commissioner (Appeals)

471 2009 TMI - 33268 - MADRAS HIGH COURT

Commissioner of Income Tax Coimbatore Versus Rajashree Sugars & Chemicals Ltd.

Dated: 20-04-2009

Sections - 234B, 234C, 115JAA,

Whether Tribunal was right in law in holding that MAT credit has to be considered on payment of advance tax, therefore, such a payment or credit has to be taken into account while computing the interest under Section 234-B and 234-C – intention of the legislature is to give tax credit to tax and not to the tax and interest – Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act – revenue appeal dismissed

472 2009 TMI - 33243 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus PAWAN GUPTA and others

Dated: 15-04-2009

Sections - 143, 158BC,

Procedure for making a block assessment – held that where the AO is not inclined to accept the return of undisclosed assessment filed by the assessee issuance of a notice u/s 143(2) is a prerequisite for framing the block assessment order under chapter XIV B of the Income Tax Act, 1961 - completion of the block assessment u/s 158 BC without allowing any opportunity u/s 143 (2) is in violation of the principles of natural justice and is therefore null and void ab initio - section 143 (2) has been specifically incorporated in the scheme of block assessment proceedings and that cannot be ignored – revenue's appeal dismissed

473 2009 TMI - 33242 - ALLAHABAD HIGH COURT

Smita Agrawal (Ind) .Versus Commissioner of Income Tax, Kanpur & others

Dated: 08-04-2009

Sections - -

Failure of appellant authority in disposing the stay applications expeditiously in reasonable time - callousness on the part of the revenue authorities in sitting tight over the stay application compelling the assessee to run to the High Court by filing writ petition simply to get an order for expeditious disposal of the application for interim order - assessing authority, if it has received the information that the assessee has approached the appellate authority by filing appeal along with the stay application which is pending, must await the recovery till the decision is taken by the appellate authority on such stay application - Let a copy of this order be supplied to the Chairman, Central Board of Direct Taxes, New Delhi for information and necessary action.

474 2009 TMI - 33235 - MADRAS HIGH COURT

Commissioner of Income Tax Versus M/s Panasonic Home Appliances

Dated: 23-03-2009

Sections - 115JA,

Provision for doubtful debts and the provision for leave encashment – revenue contend that the liability was only a contingent liability and not an ascertained/determined liability, so it is not allowable - issue involved in this appeal is squarely covered by the judgment of the Supreme Court in the case of BHARAT EARTH MOVERS VS. CIT, which is decided in favour of the assessee. Therefore, we are of the view that the Tribunal is correct in following the judgment of the Supreme Court and allowing the assessee's appeal

475 2009 TMI - 33233 - MADRAS HIGH COURT

The Commissioner of Income Tax VIII Chennai Versus International Clearing and Shipping Agency

Dated: 16-04-2009

Sections - -

Assessing Officer held that clearing and forwarding activities is not a profession, but a business, and brought the assessee's income to tax accordingly - Division Bench in identical case, held that "The assistance rendered by the clearing and shipping agent to those who import or export by attending to the documentation and ensuring the clearance of goods, cannot be regarded as profession" – action of AO is justified - In view of the Judgment of the SC in the case of Cochin Shipping Co. vs. ESI Corporation and the Division Bench Judgement of this Court in the case of "International Clearing and Shipping Agency" question of law framed has to be answered in favour of the

revenue

476 2009 TMI - 33222 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus East Coast Constructions Limited

Dated: 16-04-2009

Sections - 234B, 234C, 115JA, 115JAA, R012,

MAT credit - Whether the interest under Section 234 B and 234 C had to be calculated after giving the MAT credit against the tax payable on the basis of normal computation – held that assessee is entitled to adjust the MAT credit before charging interest u/s 234B and 234C – Whether the MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1 AND Whether Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the Tax deducted at Source and Advance tax paid – held that Rule 12(1)(a) and Form-I cannot go beyond the provisions of the Act. Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act – appeal of revenue is dismissed

477 2009 TMI - 33221 - MADRAS HIGH COURT

The Commissioner of Income Tax Versus M/s Magna Electro Castings Ltd.

Dated: 15-04-2009

Sections - 115J, 115JA, 80HHC,

Assessing Officer is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit u/s 115J and the book profit so arrived at should be the basis for taxation and therefore, the computation u/s 80HHC should be limited to the case of profits of eligible category only – therefore, Tribunal was right in law in holding that deduction u/s 80HHC in a case of MAT assessment is to be worked out on the basis of the adjusted books profits u/s 115JA – revenue appeal dismissed

478 2009 TMI - 33220 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus M/s Vanavil Dyes and Chemicals Ltd.

Dated: 16-04-2009

Sections - 234B, 234C, 115JA, 115JAA,

MAT credit - Whether the interest under Section 234 B and 234 C had to be calculated after giving the MAT credit against the tax payable on the basis of normal computation – by applying ratio of decision of Division Bench in the case of M/S. CHEMPLAST SANMAR LIMITED, held that assessee is entitled to adjust the MAT credit before charging interest u/s 234B and 234C – Whether the MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1 AND Whether Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the Tax deducted at Source and Advance tax paid – held that Rule 12(1)(a) and Form-I cannot go beyond the provisions of the Act. Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act – appeal of revenue is dismissed

479 2009 TMI - 33219 - MADRAS HIGH COURT

Commissioner of Income Tax Chennai Versus M/s Rane TRW Steering Systems Ltd.

Dated: 16-04-2009

Sections - 234B, 234C, 115JAA, 115JA,

Whether the Tribunal was right in holding that MAT credit is to be set off from the tax payable before setting off the Tax deducted at Source and Advance tax paid - Whether the MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1 - Whether the interest under Section 234 B and 234 C had to be calculated after giving the MAT credit against the tax payable on the basis of normal computation – held that all the questions are answered against the revenue and in favour of assessee

480 2009 TMI - 33218 - MADRAS HIGH COURT

[CIT Versus M/s Futura Polyester Limited \(Formerly known as M/s Futura Polymers\)](#)

Dated: 16-04-2009

Sections - 80HHC, 115JA, 115J,

Assessing Officer held that the assessee is not entitled to any deduction under section 80HHC while determining the taxable income on the basis of the book profit under Section 115JA since the computation of business income under the regular provisions resulted in nil figure for each of the assessment years – held that, AO is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit under Section 115J and the book profit so arrived at should be the basis for taxation and therefore, the computation under Section 80HHC should be limited to the case of profits of eligible category only

481 2009 TMI - 33217 - MADRAS HIGH COURT

[M/s Indbank Merchant Banking Services Ltd. Versus The Assistant Commissioner of Income Tax](#)

Dated: 16-04-2009

Sections - 035D, 143,

While completing the re-assessment, the Assessing Officer disallowed the provisions made for bad debts and Non-Performing Assets and preliminary expenses of under Section 35(D) - Following the Judgments by High Court in the case of T.N.Power Finance, held that Tribunal is right in law in holding that the appellant is not entitled to deduction of the provision made in respect of bad debts and Non Performing Assets which are considered irrecoverable – Following the Judgments by a Division Bench of this Court in the case of Commissioner of Income Tax vs. Sakthi Finance Ltd., held that, Tribunal was right in holding that the appellant is not entitled to amortisation of preliminary expenses u/s 35D towards share issue expenses

482 2009 TMI - 33216 - MADRAS HIGH COURT

[Commissioner of Income-tax-I Chennai Versus M/s. Chakiat Agencies Pvt. Ltd.](#)

Dated: 24-03-2009

Sections - 148, 147, 080O,

Rendering of the commercial service and receiving commission in foreign exchange – during reassessment, claim for benefit u/s 80O was denied by AO - Tribunal allowed the appeal of the assessee for A.Y. 1994-95 and 1995-96 on the ground that the re-assessment was not in accordance with Section 147 and was made on change of opinion - In respect of the other two assessment years also, the Tribunal allowed the assessee's appeal on the ground that the activity of the assessee comes within the purview of Section 80-O as decided by the Delhi Bench in CAPTAIN K.C.SAIGAL and

the receipt of commission in foreign exchange in India itself cannot deny the benefit to the assessee in view of the judgment of SC in the case of J.B.BODA AND CO. PVT. LTD. – held that there is no infirmity in order of tribunal

483 2009 TMI - 33214 - MADRAS HIGH COURT

Commissioner of Income Tax, Coimbatore Versus M/s. P.Sekar Trust and M/s. Peegee Trust

Dated: 15-04-2009

Sections - 164, 041,

Whether Tribunal was right in holding that in the case of the assessee-Trust, the beneficiaries and their shares are determinate and, therefore, the trustees could not be assessed for tax and the provisions of section 164 of the Income Tax Act are not attracted – Having regard to the terms contained in the trust deed that shares of the beneficiaries in a given particular accounting year are specific and determinable in the ratio, as provided, it could not be said that the beneficiaries are not identifiable on the date of the Trust deed and the share of the beneficiaries were unknown, there is no infirmity in decision of Tribunal – above question of law has necessarily to be answered in favour of the assessee and against the revenue

484 2009 TMI - 33213 - PUNJAB AND HARYANA HIGH COURT

Ludhiana Improvement Trust Versus Commissioner of Income tax-III, Ludhiana

Dated: 26-03-2009

Sections - 142,

SCN issued proposing to hold special audit u/s 142(2A) – petitioner- trust has approached this Court under Article 226 of the Constitution with a prayer for quashing SCN - petitioner-Trust has also challenged the order referring the matter to Special Auditor, being totally arbitrary and contrary to Article 14 of the Constitution – records reveals that there are discrepancies in book of account of petitioner – neither petitioner appeared before AO nor any information was sent despite the fact that it was duly informed that time barring assessment is involved - argument of petitioner that special audit has been ordered to gain more time, is not impressive - writ petition is wholly misconceived and the same is dismissed

485 2009 TMI - 33212 - MADRAS HIGH COURT

M/s Universal Cold Storage Limited Versus The Deputy Commissioner of Income Tax

Dated: 06-04-2009

Sections - 80HHC,

Eligibility for deduction u/s 80HHC in case of export of both self manufactured goods and trading goods - A plain reading of section 80HHC makes it clear that, in such cases the profits and losses in both trades have to be taken into consideration. If after such adjustments there is a positive profit the assessee would be entitled to deduction under Section 80HHC(1). If there is a loss the assessee would not be entitled to deduction

486 2009 TMI - 33211 - MADRAS HIGH COURT

The Chairman Central Board of Direct Taxes Versus Umayal Ramanathan

Dated: 06-04-2009

Sections - 279,

Compounding of offence – plea of the respondent for compounding u/s 279 (2) rejected

by CBDT without any valid reasons – in similar case CBDT accepted the plea of the said assessee and ultimately compounded the offence - while so, adopting a different yardstick in the case of the respondent and refusing to compound the offence on the sole ground that she was convicted by the trial court, is discriminatory - single Judge considered the above said facts and rightly set aside the order passed by the third appellant(CBDT) - Court is of the considered view that pending appeal, the appellants can very well compound the offence sought for by the respondent

487 2009 TMI - 33210 - MADRAS HIGH COURT

[The Commissioner of Income Tax III Coimbatore Versus M/s K.G. Denim Ltd.](#)

Dated: 16-04-2009

Sections - 80HHC, 115JA, 115J, 263,

Assessing Officer is not entitled to touch the profit and loss account prepared by the assessee as per the provisions contained in the Companies Act, while arriving at the book profit u/s 115J and the book profit so arrived at should be the basis for taxation and therefore, the computation u/s 80HHC should be limited to the case of profits of eligible category only – therefore, Tribunal was right in law in holding that deduction u/s 80HHC in a case of MAT assessment is to be worked out on the basis of the adjusted books profits u/s 115JA – revenue appeal dismissed

488 2009 TMI - 33209 - MADRAS HIGH COURT

[The Commissioner of Income Tax Madurai Versus M/s Ramco Industries Ltd.](#)

Dated: 16-04-2009

Sections - 80HHC, 037,

Whether Tribunal was right in holding that expenditure on renting and maintaining a guest house is allowable as business expenditure – in view of decision of Supreme Court in the case of Britannai Industries Ltd., this question is answered in favour of the revenue - Whether Tribunal was right in excluding sales tax and excise duty from the “total turnover” for the purpose of calculation of benefit u/s 80HHC – Held, yes - Whether Tribunal was right in allowing a deduction of the amounts spent on replacement of machinery and purchase of templates as revenue expenditure – replacement of assets without increasing the production capacity would amount to revenue expenditure – but as there is no material regarding the production capacity remaining constant even after replacement, matter require to be remitted back to the Commissioner of Appeals

489 2009 TMI - 33208 - MADRAS HIGH COURT

[The Commissioner of Income Tax-I Chennai Versus M/s Tagros Chemicals of India Ltd.](#)

Dated: 13-04-2009

Sections - 80HHC, 234B, 234C, 115JAA, R012,

Whether Tribunal was right in holding that, Sales tax and Excise Duty do not form part of “turnover” for the purpose of calculation of deduction u/s 80HHC - Whether Tribunal was right in holding that MAT credit is to be set off from the tax payable before levying interest under section 234B and 234C - first question of law is covered against the revenue by the decision of the SC in the case of CIT vs. Lakshmi Machine, wherein it has been held that excise duty and sales tax cannot form part of the 'total turnover' under section 80HHC(3) - With regard to the second question of law, held that intention of the legislature is to give tax credit to tax and not to the tax and interest, Once the intention is clear, the revenue cannot rely on the Form-I to say that the MAT credit under Section 115JAA should be given only after tax and interest – both the questions

of law has to be necessarily answered in affirmative in favour of the assessee

490 2009 TMI - 33206 - MADRAS HIGH COURT

Commissioner of Income Tax Madurai Versus M/s Raju Spinning Mills P. Ltd.

Dated: 15-04-2009

Sections - 234B, 234C, 115JAA, R012,

MAT credit - Assessing Officer has calculated the interest payable u/s 234B and 234C without considering the MAT credit u/s 115JAA paid in the earlier years - held that assessee is entitled to adjust the MAT credit before charging interest u/s 234B and 234C - Whether the MAT credit can be given priority of set off against tax payable, contrary to the scheme of Schedule G of Form 1 – held that Rule 12(1)(a) and Form-I cannot go beyond the provisions of the Act. Form-I cannot lay down the order of priority of adjustment of TDS, advance Tax, MAT credit under Section 115JAA which is contrary to the provisions of the Act – appeal of revenue is dismissed

491 2009 TMI - 33201 - MADRAS HIGH COURT

CIT Versus SPEL Semiconductor Limited, Irbaz Leather P.Ltd. & M/s. Rane Brake Linings Limited

Dated: 13-04-2009

Sections - 80HHC, 115JA,

Whether Tribunal was right in law in holding that the deduction u/s 80HHC in a case of MAT assessment is to be worked out on the basis of the profit computed under the regular provision of law applicable to the computation of profits and gains of the business or profession - held that the assessing officer was not entitled to alter the profit and loss account prepared by the assessee under the provisions contained in the Companies Act while arriving at the book profit under Section 115JA and the book profit so arrived at should be the basis for taxation and, therefore, the computation under section 80HHC should be limited to the case of profits of eligible category only

492 2009 TMI - 33200 - MADRAS HIGH COURT

Commissioner of Income Tax Madurai Versus Mrs. Kulandai Theresa

Dated: 15-04-2009

Sections - -

Tribunal upheld the order of the CIT (Appeals) on the ground that the assessee had suppressed not only his non-agricultural income, but also his agricultural income. Therefore, when the undisclosed part of the non-agricultural income is worked out, it is incumbent upon the Commissioner of Income Tax (Appeals) to give credit for the undisclosed part of the agricultural income and dismissed the appeal filed by the revenue - Whether Tribunal was right in confirming the CIT(A) order – Held, yes

493 2009 TMI - 33198 - BOMBAY HIGH COURT

Molly Trading Company Pvt. Ltd. Versus Union of India

Dated: 09-04-2009

Sections - 226,

Tax Recovery Officer in his order noted that Shri Subhash Arora as a Director of M/s.Subhash Arora Investment P. Ltd., has taken the loan of Rs.1.25 crores from Amit Jhaveri. Shri Subhash Arora is also a Director of the petitioner company – Petitioner company stood as a guarantor of Amit Jhaveri and M/s Subhash Arora Investment Pvt. Ltd. – Recovery of tax from petitioner company upheld

494 2009 TMI - 33197 - GUJARAT HIGH COURT

JYOTI LIMITED Versus THE COMMISSIONER OF INCOME TAX

Dated: 25-03-2009

Sections - -

Commission Agent agreements with foreign company was in Individual names of the MD – commission was booked in the books of account of the company – an investigation revealed that entire exercise has been undertaken by the Company to absolve Shri Amin (MD) from violation of Foreign Exchange Regulation Act - receipt of the payment having been acknowledged by authorized person of the assessee Company – held that entire amount of commission is taxable in the hands of company.

495 2009 TMI - 33195 - GUJARAT HIGH COURT

ALIDHARA TEXPRO ENGINEERING PVT. LTD. Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 17-03-2009

Sections - 142, 143,

AO ordered special audit u/s 142(2A) – All the four Assesseees allowed the said audit to be completed – on the basis of audit report AO made addition u/s 143 - the present petition has been filed which is clearly an after thought – On scrutiny of the records it was found that AO has granted opportunity of being heard to two assessee company only – held that audit u/s 142(2A) is valid in case of two company only and not valid in case of other two companies where no opportunity of being heard granted.

496 2009 TMI - 33194 - GUJARAT HIGH COURT

DY. COMMISSIONER OF I.T. (ASST) Versus ARVIND MILLS LTD.

Dated: 13-04-2009

Sections - 115J, 043B,

The profit and loss account which was prepared subsequently was in accordance with Parts II & III of Schedule VI, but was different from the profit and loss account approved at the Annual General Meeting - whether such an exercise was permissible? - Applying the ratio of the SC decision, only requirement of Sec.115J is that the accounts has to be prepared in accordance with Schedule VI of the Companies Act and certified by the Chartered Accountants – revised accounts are acceptable

497 2009 TMI - 33193 - GUJARAT HIGH COURT

THE DY.COMMISSIONER OF INCOME-TAX Versus SURAT TEXTILE MILLS LTD.

Dated: 13-04-2009

Sections - 115J,

Assessee claimed depreciation on the basis of WDV (Written down method) while calculating book profit u/s 115J and prepared book of account as certified by the Chartered Accountant – whereas in the books of accounts as adopted by the AGM of the company for the 15 months, depreciation was claimed on the basis of SLM (straight line method) – AO denied deprecation on WDV method and calculated depreciation on SLM method – Held that action of AO is wrong – answers in favor of assessee

498 2009 TMI - 33191 - GUJARAT HIGH COURT

DY. COMMISSIONER OF INCOME TAX Versus RADHE DEVELOPERS INDIA LTD.

Dated: 01-04-2009

Sections - 069B, 069C, 037, 132, 040A, 028,

Search - block period - Addition made as undisclosed investment for acquiring development rights - onus of proving that such payment had not been made was on Revenue, which had not been discharged – tribunal is justified in holding that amount paid has to be deducted even if provisions of section 69C are attracted – in respect of addition on account of cash credits, these were based on entries recorded in Regular Books of Account so they can be considered only in regular assessment

499 2009 TMI - 33190 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus ALFA LAMINATION

Dated: 30-03-2009

Sections - 80IB,

Manufacture - business of making transformer core from CRGO/CRNO Coils - findings of facts, by Tribunal are that after completion of all the processes, CRGO/CRNO coils get converted into transformer core which is the end product which can be used in mfg. of transformer - Tribunal, while recording majority opinion & giving due credence to the opinion of the technical experts of the field, is right in holding that assessee is engaged in manufacturing article and is entitled to deduction u/s 80IB

500 2009 TMI - 33187 - GUJARAT HIGH COURT

ASSTT C. I. T. Versus NORMA DETERGENT PVT. LTD.

Dated: 23-03-2009

Sections - 80HH,

Claim for deduction u/s 80HH was disallowed by AO holding that the assessee carried on manufacturing activity in Kalol Taluka which is excluded from the list of 'backward area' by Not. 89/165 dated 19.12.1986- Tribunal had recorded a finding of fact that the assessee had commenced production prior to October, 1986 and the evidence in support of the said finding was not disputed by Revenue in earlier A.Y – following the same, Tribunal is right in allowing the claim of assessee for deduction

501 2009 TMI - 33186 - GUJARAT HIGH COURT

DY.COMMISSIONER OF INCOME TAX Versus SUN PHARMACEUTICAL IND. LTD.

Dated: 23-03-2009

Sections - 037,

Lease rent paid by assessee for use of land - land in question was not acquired by the assessee - merely because the deed was registered the transaction in question would not assume a different character - lease rent was very nominal - by obtaining the land on lease the capital structure of the assessee did not undergo any change - assessee only acquired a facility to carry on business profitably by paying nominal lease rent - such lease rent paid is allowable as revenue expenditure

502 2009 TMI - 33185 - GUJARAT HIGH COURT

INCOME TAX OFFICER Versus BHAGUBHAI S. PATEL

Dated: 18-03-2009

Sections - 171,

In assessee's own case revenue's appeal stand dismissed by tribunal, HC and by SC - in absence of any independent reasoning in the impugned order of the Tribunal, the earlier orders of High Court are required to be followed and applied - Tribunal is right concluding that share income from the firm of the 2 smaller HUFs cannot be clubbed in the hands of the bigger HUF – therefore revenue's appeal is dismissed

503 2009 TMI - 33184 - GUJARAT HIGH COURT

DY. COMMISSIONER OF INCOME TAX Versus ARAT ELECTRO CHEMICALS LTD.

Dated: 18-03-2009

Sections - 80I,

Whether Tribunal is right in holding that the assessee is entitled to deduction u/s 80I in respect of the interest income earned on the securities as well as the interest income earned on FDRs – Held, no - Whether Tribunal is right in directing not to exclude trading profit while computing deduction u/s 80I – in absence of any finding by the Tribunal that there is any trading profit, this question is not required to be answered as not arising out of the impugned order of Tribunal

504 2009 TMI - 33183 - GUJARAT HIGH COURT

LALITABEN HARIPRASAD Versus COMMISSIONER OF INCOME-TAX

Dated: 18-03-2009

Sections - 048, 049,

Sale of property - partition of HUF - capital gains – amount paid by each of the assesseees (mother and father) to the other two members (their sons) of the HUF for acquisition of their share in the immovable property - amount paid would be termed to be the cost of acquisition to the assesseees u/s 48, being cost of acquisition of the additional interest or additional share – while computing capital gains on sale of their respective share, deduction of amount paid is admissible
Sale of property - partition of HUF - capital gains – amount paid by each of the assesseees (mother and father) to the other two members (their sons) of the HUF for acquisition of their share in the immovable property - amount paid would be termed to be the cost of acquisition to the assesseees u/s 48, being cost of acquisition of the additional interest or additional share – while computing capital gains on sale of their respective share, deduction of amount paid is admissible
Sale of property - partition of HUF - capital gains – amount paid by each of the assesseees (mother and father) to the other two members (their sons) of the HUF for acquisition of their share in the immovable property - amount paid would be termed to be the cost of acquisition to the assesseees u/s 48, being cost of acquisition of the additional interest or additional share – while computing capital gains on sale of their respective share, deduction of amount paid is admissible

505 2009 TMI - 33182 - GUJARAT HIGH COURT

DY. COMM. OF I.T. (ASSESSMENT) Versus GARDEN SILK MILLS LTD.

Dated: 18-03-2009

Sections - 043B,

Assessee-company took over the assets & liabilities of another company – AO made addition on basis that claim of deduction of duty paid by said company had been disallowed - assessee company claiming deduction of the purchase price paid for the stock acquired on amalgamation - Tribunal was justified in deleting additions by holding that an amount allowed as deduction u/s 43B to the amalgamating sister concern would not be liable to be included in hands of successor amalgamating company

506 2009 TMI - 33181 - GUJARAT HIGH COURT

M/S MGM EXPORTS Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 17-03-2009

Sections - 148, 143,

Reassessment order – notice u/s 148 - it is apparent that the action of the respondent authority in framing the reassessment order, without first disposing of the preliminary objections raised by the petitioner, cannot be sustained - Accordingly, the

reassessment order is hereby quashed and set aside and the respondent authority is directed to first dispose of preliminary objections by passing a speaking order and only thereafter proceed with the reassessment proceedings in accordance with law

507 2009 TMI - 33178 - GUJARAT HIGH COURT

CORONATION FLOUR MILLS Versus ASSTT. C.I.T.

Dated: 04-03-2009

Sections - 040A,

Expenditures – allowability - Amount paid towards job work charges for repairs and maintenance – assessee failed to furnish evidence regarding regular services rendered by one for maintenance of machinery – expenditure are not allowable u/s 40A(2) - in relation to Legal and Professional charges, on ground that expenditure is excessive and unreasonable, all the three authorities are correct in holding that such services were hit by provisions of Section 40A(12) – assessee's appeal dismissed

508 2009 TMI - 33177 - GUJARAT HIGH COURT

THE INCOME TAX OFFICER Versus SACHINAM TRUST

Dated: 04-03-2009

Sections - 271B, 044AB,

Non filing of audit report as required u/s 44AB – business of financing - AO submit that, total amount of advances constitute the “Turnover” of the assessee which exceeded the stipulated limit of Rs.40 lacs – assessee submit that provisions of S. 44AB are not applicable because the “Gross Receipts” did not exceed the sum of Rs.40 lacs – assessee had bona fide believe that “Gross Receipts” would constitute the basis for ascertaining the limit of Rs.40 lacs – penalty not leviable u/s 271B

509 2009 TMI - 33176 - GUJARAT HIGH COURT

LMP PRECISION ENGG. CO. LTD. Versus THE DY.CIT (ASSTT.)

Dated: 03-03-2009

Sections - 271,

Penalty u/s 271(1)(c) - factum of concealment stands established on the facts and circumstance and the evidence on record - fact that assessee not having challenged any of the assessment orders for the 3 years, is indicative of acceptance that there was concealment of income - conduct of the assessee does not indicate that revised returns were filed voluntarily and in good faith - Tribunal finding that revised returns were not voluntary and thereafter upholding the penalties is finding of fact

510 2009 TMI - 33175 - GUJARAT HIGH COURT

VAHID K. RAVJI Versus CENTRAL BOARD OF DIRECT TAXES

Dated: 02-03-2009

Sections - 132, 119,

Application for condonation of delay in filing the return of income – petitioner challenging the order of respondent-authority rejecting the application - contention of assessee that the impugned order does not contain any reasons, does not merit acceptance because the order categorically states that the reasons offered by the assessee for delay, have not been found fit to warrant condonation of delay – respondent-authority is right in rejecting Condonation application – petition is dismissed

511 2009 TMI - 33174 - GUJARAT HIGH COURT

C.I.T. Versus SANTRAM C. SHETH

Dated: 02-03-2009

Sections - -

Compensatory service charges – taxable under head “Income from Property” or “Income from Other Sources” - two of the four co-owners having been assessed separately under two different heads, accordingly, in case of respondent-assessee, revenue can't club the incomes under the head “Income from Property” - Tribunal rightly hold that compensatory service charges cannot be included in the annual letting value

512 2009 TMI - 33173 - GUJARAT HIGH COURT

MANJUSHA ESTATE PVT. LTD. Versus THE INCOME TAX OFFICER

Dated: 24-02-2009

Sections - 139, 143, 148, 142A,

Reopening of assessment – matter referred to the Departmental Valuation Officer for valuation of cost of construction – matter can be referred to DVO only when the proceedings of assessment/reassessment are pending before the AO - when no such proceedings are pending, AO has no jurisdiction to refer to DVO - reasons recorded do not indicate that AO was in possession of any material which would permit him to form an opinion, or have ‘reason to believe’ that any income has escaped assessment

513 2009 TMI - 33172 - GUJARAT HIGH COURT

GUJ. MINERAL DEVELOPMENT CORPN. LTD. Versus INCOME TAX APPELLATE TRIBUNAL

Dated: 19-02-2009

Sections - 252, 253, 254, 255,

Whether ITAT has the powers to make an order as regards admissibility of an appeal filed in the Tribunal - Tribunal is constituted u/s 252(1) of IT Act by the Central Govt. - Tribunal, cannot exercise powers or discharge functions which are not conferred by the Act - Tribunal has lost sight of the fact that, both the assessee and the revenue, are statutorily vested with a right to file an appeal or cross-objections under the Act - Tribunal committed serious error in not admitting the appeals

514 2009 TMI - 33171 - GUJARAT HIGH COURT

JT. COMM. OF INCOME TAX Versus GARDEN SILK MILLS LTD.

Dated: 18-02-2009

Sections - 254,

Application for rectification filed by revenue before Tribunal for deciding the issue regarding surplus received by assessee on cancellation of foreign exchange contract - Tribunal in impugned order rejected the applications holding that the Tribunal has no powers of review and no error apparent on record existed - impugned order of Tribunal cannot be faulted with – no question of law arise – not a fit case to admit the Appeal

515 2009 TMI - 33170 - GUJARAT HIGH COURT

DY. COMMISSIONER OF INCOME TAX (ASSTT.) Versus THE GARDEN SILK MILLS LTD.

Dated: 18-02-2009

Sections - 263, 002(47), 028,

Surplus received on cancellation of forward foreign exchange contract - AO has treated the surplus as not liable to tax – CIT plea is that order of AO is erroneous – held that mere cancellation of the contract does not result in any transfer of any asset - held that the surplus received was a capital receipt not liable to tax - since AO made necessary inquiries and applied his mind while concluding that the receipt was on capital account, CIT could not exercise jurisdiction u/s 263

516 2009 TMI - 33169 - GUJARAT HIGH COURT

THE DY. COMMISSIONER OF I.T. Versus G.I.I.C. LTD.

Dated: 17-02-2009

Sections - 036, 080M,

Deduction under section 80M - assessee is a financial institution who is entitled to deduction u/s 36(i)(viii) - held that the Tribunal was justified in holding that deduction under Section 80M of the Act was allowable on gross amount of dividend without deducting the proportionate deduction available under Section 36(i)(viii)

517 2009 TMI - 33168 - GUJARAT HIGH COURT

INCOME TAX OFFICER Versus NEO TRUST

Dated: 17-02-2009

Sections - 045, 041, 052,

Transfer of business - undoubtedly transactions took place at book value and there is no evidence that the assessee received anything more than the stated consideration – Finding that the transfer was at the book value, there would not be any balancing charge unless the book value was more than the written down value of the assets as per Income Tax records, is the finding of fact – held that that neither capital gains was chargeable u/s 45 nor balancing charge was taxable u/s 41(2)

518 2009 TMI - 33167 - GUJARAT HIGH COURT

ACIT Versus PATEL SPECIFIC FAMILY TRUST

Dated: 16-02-2009

Sections - 041, 260A,

In case of sale of the entire business, as a going concern, it is not possible to bifurcate the consideration received on account of said transfer – Tribunal is right in holding that the amount received by the assessee was by way of transfer of its goodwill and not profit on stock as well as fixed assets – preliminary objection submitted by assessee-respondent that second question doesn't arise out of the Tribunal's order, as it has not been dealt with by the Tribunal at all, is accepted

519 2009 TMI - 33166 - BOMBAY HIGH COURT

The Satpuda Tapi Parisar Sahakari Sakhar Karkhana Ltd. Versus Commissioner of Income-Tax Naasik

Dated: 13-04-2009

Sections - 206C,

Seller of alcoholic liquor and other goods liable to collect from the buyer a sum equal to the percentages set out u/s 206C – interim relief granted by this Court whereby the petitioner herein was restrained from collecting the tax from the purchasers - even though it can be said that, a duty had been cast on persons like the petitioner to collect the tax, by virtue of the interim relief he could not collect the tax for the relevant period – therefore, Section 206C would not be attracted

520 2009 TMI - 33165 - BOMBAY HIGH COURT

CIT-IV Versus Solapur Dist. Co-op. Milk Producers and Process Union Ltd. & Kolhapur Zilla Sahakari Dudh Utpadak Sangh Ltd.

Dated: 04-04-2009

Sections - 037, 028,

Amount paid by milk societies to members and non-members - A.O. refused to exclude the final rate difference paid - commercial expediency for payment of this price are the market conditions, and the need to procure more milk from the members and non-members - therefore, the amount paid can not be said to be dividend to the members or shareholders or payment in the form of bonus – but it is not a case of distribution of profits – additions on basis of difference in price is not justified

521 2009 TMI - 33164 - AUTHORITY FOR ADVANCE RULINGS

Canoro Resources Limited, In re

Dated: 23-04-2009

Sections - 184, 010(2A), 045, 002(31), 092, 092F, 245R,

Can a partnership firm formed between the applicant and an entity in Canada be granted status of 'firm' if it satisfies conditions u/s 184 – Held, yes - tax liability of the partnership in India, shall be @ 30 per cent plus applicable surcharge and cess in accordance with Finance Act – residential status of the firm is a question of fact, which can be determined by the AO at the relevant point of time - share of the partners in firm shall not be included in the total income of such partners

522 2009 TMI - 33162 - AUTHORITY FOR ADVANCE RULINGS

Worley Parsons Services Pty. Ltd., In re

Dated: 23-04-2009

Sections - 009,

Professional services to the energy and resource industries including engineering, procurement and project management services - six separate contracts with ONGC - After hearing the matter, AAR has decided that in certain cases there is no royalty which is taxable in India and No PE in India and in certain other cases, appellant is liable to pay Income Tax on Royalties in India and Royalties are taxable irrespective there is PE in India or not.

523 2009 TMI - 33116 - GUJARAT HIGH COURT

AFFECTION INVESTMENTS LTD. Versus A.C.I.T.

Dated: 16-02-2009

Sections - 255,

Whether Tribunal should have referred the matter to special bench - once the Tribunal had come to the conclusion that the fact situation was identical, to the one obtaining in a decided matter, no coordinate bench of Tribunal has any right to record a contrary decision – The only course, that is open to the subsequent coordinate bench, would be to make a Reference to the President of the Tribunal as as per S. 255(3) of IT Act, 1961 to constitute a Special Bench to resolve the controversy

524 2009 TMI - 33115 - GUJARAT HIGH COURT

ASSTT. CIT Versus ACROPOLISH INVESTMENTS LTD.

Dated: 16-02-2009

Sections - 045, 046, 047, 048,

Sale of right of fully convertible debentures – held that in working out capital gain/loss, the principles that have to be applied are those which are a part of the commercial practice or which an ordinary business man resort to while computing for his business purposes – to determine cost of right shares, decision of SC in Miss Dhun Dadabhoy Kapadia, applicable - short term capital loss claimed by assessee on the transaction relating to renunciation of rights to receive debentures, is allowed

525 2009 TMI - 33114 - GUJARAT HIGH COURT

HARISIDDH SPECIFIC FAMILY TRUST Versus CIT

Dated: 11-02-2009

Sections - 032AB, 080I,

Whether Tribunal was justified in rejecting the Appellant's claim that for the purposes of calculation of deduction u/s. 80I of I.T. Act, the profits derived from the Industrial Undertaking should be reduced by the claim of Investment Deposit u/s. 32AB, in view of the decision of Hon'ble Supreme Court in the case of CIT vs Kotagiri Industrial Co-op. Tea Factory Ltd. - question is answered in the affirmative i.e. in favour of the revenue and against the assessee

526 2009 TMI - 33113 - GUJARAT HIGH COURT

MEHSANA DIST. CENTRAL CO.OP BANK LTD. Versus C.I.T.

Dated: 11-02-2009

Sections - 080P,

Whether ITAT was right in holding that the interest income on certain investments of statutory Reserve Fund of the applicant bank can not be considered as the income of the applicant Bank, from its banking business and therefore the same is not eligible for deduction u/s 80P(2)(a)(i) – question is answered in the negative i.e. in favour of the assessee and against the revenue

527 2009 TMI - 33112 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus SONAL GUM INDUSTRIES

Dated: 11-02-2009

Sections - -

Depreciation disallowed on ground that entire factory building and all the items included in the block of plant & machinery were not actually put to use – by amended provisions individual items included in the block are not to be considered separately – Once the factory building or block of assets are put to use for business, it is not possible to restrict the depreciation by stating that only a portion thereof has been put to use – Tribunal is right in granting depreciation

528 2009 TMI - 33111 - GUJARAT HIGH COURT

DARSHAN CHEM INVENTA PVT LTD. Versus COMMISSIONER OF INCOME TAX GUJARAT

Dated: 11-02-2009

Sections - -

Wrong computation of tax - KAR VIVAD SAMADHAN SCHEME - petitioner contend that the designated authority has wrongly worked out the figure of amount payable under the said Scheme - petitioner has placed on record details of tax computation inclusive of income tax, interest charged/chargeable u/s 234A & 234B, as also the set-off to which the petitioner is entitled - respondent authority is directed to recompute and recalculate the tax and interest in accordance with law

529 2009 TMI - 33110 - GUJARAT HIGH COURT

ASSTT. C.I.T. Versus ELECON ENGINEERING CO. LTD.

Dated: 11-02-2009

Sections - 037,

Whether Tribunal was right in law in directing to allow 50% of messing expenses in respect of employees inspite of the fact that provisions of section 37(4) and 37(5) of the Act clearly prohibit allowance of such expenditure- issue stands concluded by the judgment of the Apex Court in the case of Britannia Industries Ltd. – in view of that, question is therefore answered in the Negative

530 2009 TMI - 33109 - GUJARAT HIGH COURT

ACIT Versus BARODA POWER ELECTRONICS

Dated: 10-02-2009

Sections - 271,

Whether penalty u/s 271(1)(c) can be levied in case of actually assessed loss, by taking recourse to Explanation 4 to the said section - Larger Bench decision of the Apex Court in case of GOLD COIN HEALTH FOOD P.LTD, has stated that amendment brought about by Finance Act 2002 is only clarificatory in nature and applies even to Assessment Years prior to 1st April 2003 – applying this ratio held that Tribunal was not right in deleting penalty levied under Section 271 (1)(c)

531 2009 TMI - 33108 - GUJARAT HIGH COURT

DY. CIT Versus PROMACT PLASTICS (P) LTD.

Dated: 10-02-2009

Sections - 80HH, 80I,

Separate relief under section 80HH and 80I – since decision of HC in various cases given in favour of assessee has not been challenged by revenue – those decision have been upheld by the SC – therefore, department is not permitted to take a contrary view involving the same controversy - Tribunal is right in law and on facts in directing to allow separate relief under section 80HH and 80I

532 2009 TMI - 33107 - GUJARAT HIGH COURT

EDY. CIT(A) Versus A'BAD STEEL CRAFT & ROLLING MILLS LTD.

Dated: 10-02-2009

Sections - 032AB, 036,

Interest income – SC in the case of APOLLO TYRES LTD has held that merely because the income from dividend is shown under a different head of income, would not deprive the assessee of benefit u/s 32AB, so long as it is found that the investment made by the assessee is in the course of its Eligible Business – in instant case interest earned by the assessee is part & parcel of the business income, therefore, deduction under Section 32AB of the Act in respect of interest income is granted

533 2009 TMI - 33106 - GUJARAT HIGH COURT

DY. CIT. Versus DINESH MILLS LTD.

Dated: 10-02-2009

Sections - 043B,

Whether Tribunal has substantially erred in law in directing to delete the disallowance in respect of interest payment on excise duty refund on the ground that the same does not

fall within the purview of Section 43-B - question is answered in the negative – revenue's appeal dismissed

534 2009 TMI - 33102 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PUNJAB FINANCIAL CORPORATION

Dated: 02-02-2009

Sections - 199,

Credit for tax deduction at source - benefit of deduction on account of tax deducted at source in respect of income from preference shares and equity dividend – in view of mandate of the second proviso to Section 199, it is held that the apportionment of tax deducted at source, is to be in the same proportion, as the income earned by the parties (sharing the fruits of the common investment)

535 2009 TMI - 33095 - DELHI HIGH COURT

M/s JAY BHARAT MARUTI LTD. Versus COMMISSIONER OF INCOME TAX

Dated: 20-04-2009

Sections - 147, 148, 143,

Reassessment proceedings - scope of the expression "reason to believe" in S. 147 - no reasonable person could have come to a conclusion that there was relevant material available with the AO to have reason to believe that assessee's income chargeable to tax had escaped assessment - proceedings are held as bad in law – further, assessment order which dealt with items other than those which formed the basis of a notice u/s 148(1), are bad in law - impugned re-assessment order is set aside

536 2009 TMI - 33053 - GUJARAT HIGH COURT

SHATRUSHALYA SINHJI DIG VIJAY SINHJI JADEJA Versus COMMISSIONER OF INCOME TAX

Dated: 09-02-2009

Sections - -

Tax recovery - Legality of the Auction Sale – attachment of property – the 'Proclamation' and the public notice following the Proclamation do not comply with the statutory requirements - variation in the details mentioned in the Sale Proclamation and Public notice have caused prejudice to petitioner - revenue's contention that such a variation would have no effect on petitioner, and it would only effect prospective bidder, can not be accepted - auction sale is quashed and set aside

537 2009 TMI - 33049 - GUJARAT HIGH COURT

SHRI SIRMAD BUDDHISAGAR SURI JAIN SAMADHI MANDIR Versus ASSISTANT COMMISSIONER OF INCOME TAX

Dated: 09-02-2009

Sections - 148, 143, 292B,

Notice u/s 148 – jurisdiction - impugned notice was issued by Income Tax Officer, whereas the Assessment Order has been framed by Assistant Commissioner of Income Tax – petitioner contention that the Income Tax Officer had no jurisdiction to issue notice under Section 148 of the Act has not been controverted - impugned notice is quashed and set aside, as having been issued by an authority who did not have jurisdiction to issue the notice – consequently, Assessment Order framed is also quashed

538 2009 TMI - 33040 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus NIRAJAN K. ZAVERI

Dated: 09-02-2009

Sections - 254,

Assessee's Misc. Application praying for recalling of the order and fresh adjudication came to be allowed by the Tribunal – held that If the Tribunal has committed an inadvertent error which results in injustice to one or the other side, the Tribunal is entitled to recall the order in given set of facts and circumstances of the case and decide the matter in accordance with law – held that, by entertaining and allowing the Misc. application the Tribunal can not be said to have reviewed its order

539 2009 TMI - 33039 - GUJARAT HIGH COURT

RAJATH LEASING AND FINANCE LTD. Versus DY. COMMISSIONER OF INCOME-TAX

Dated: 09-02-2009

Sections - 035D, 148,

Notices issued under Section 148 as regards applicability of provisions of Section 35D, on the basis of assessment framed for A.Y. 1995-96 – for Assessment Year 1995-96, petitioner company's claim for deduction under section 35D, has been held to be inadmissible by tribunal – appellant's request not to press the petitions in light of the aforesaid order of Tribunal, is accepted - petitions stand rejected as not pressed in the circumstances

540 2009 TMI - 33038 - GUJARAT HIGH COURT

SHANKARLAL NAGJI & CO. Versus INCOME TAX OFFICER

Dated: 09-02-2009

Sections - 148,

Reopening of assessment – contention that income which has already been declared under Voluntary Disclosure of Income Scheme (VDIS) cannot be subjected to tax in any further proceedings – contention that reasons recorded for reopening do not disclose any income which has escaped assessment – since there is no material which can lead the AO to believe that any income has escaped assessment, impugned notices u/s 148 are quashed - A completed assessment cannot be reopened merely to make inquiries

541 2009 TMI - 33036 - GUJARAT HIGH COURT

GUJARAT NARMADA VALLEY FERTILIZERS CO. LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 04-02-2009

Sections - 148, 147, 143, 139,

AO states that income to the extent of amount of discount given has escaped assessment, hence, discount given is income of the assessee which is chargeable to tax - as could be seen from the reasons recorded the respondent authority was not sure as to which income has escaped assessment and what was the quantum thereof – in absence of valid assumption of jurisdiction the proposed reopening is bad in law and therefore, notice issued u/s 148 are quashed

542 2009 TMI - 33035 - GUJARAT HIGH COURT

SENDHAJI AMRAJI THAKORE Versus CHIEF COMMISSIONER OF INCOME TAX-IV

Dated: 03-02-2009

Sections - 234A, 234B, 148,

Petitioner and other co-owners became entitled to compensation along with interest on land acquisition – whether such interest received with compensation is liable to be apportioned amongst various co-owners or liable to be taxed in only petitioner hands – matter is restored to file of AO to ascertain, whether the petitioner is co-owner of the land, as claimed by the petitioner after appreciation of evidence produced by petitioner – interest liability u/s 234A & 234B will be settled accordingly

543 2009 TMI - 33034 - GUJARAT HIGH COURT

CIT Versus SUMAN PAPER & BOARDS LTD.

Dated: 03-02-2009

Sections - 80I, 80IA, 158BB, 158BH,

Deduction claimed under Sections 80I or 80IA in relation to the “total undisclosed income” of the block period - in light of the amended provisions of S. 158BB which have been made retrospectively applicable from 01.07.1995, no fault can be found with the impugned order of the Tribunal holding that the assessee is entitled to claim deduction under Section 80I or 80-IA

544 2009 TMI - 33030 - GUJARAT HIGH COURT

CIT Versus PETER MAX WASHYLIK

Dated: 03-02-2009

Sections - -

Tribunal by relying on its earlier order, uphold the Dy. CIT (A) order that the relief under the agreement for the avoidance of double taxation of income was available to the assessee and the assessee's income was not taxable under the IT Act, 1961, in India - relief granted by the appellate authority is based on fresh assessment order and is in compliance with directions of the Tribunal made in order for earlier assessment year - no legal infirmity in the impugned order of the Tribunal

545 2009 TMI - 33029 - GUJARAT HIGH COURT

C.I.T. Versus NALIN C. DOSHI

Dated: 03-02-2009

Sections - 254, 249,

Tribunal in impugned order rejected the Rectification Application - applicability of Section 249(4)(a) - while passing the impugned order, the Tribunal has categorically recorded that ground was not raised by revenue before us at the time of hearing of the stay petition, therefore, there is no mistake apparent from record and on the short ground itself, the department's petition u/s. 254(2) can be dismissed – held that there is no legal infirmity in the impugned order of Tribunal

546 2009 TMI - 33028 - GUJARAT HIGH COURT

C.I.T. Versus BHAGUBHAI S. PATEL

Dated: 03-02-2009

Sections - -

Whether Tribunal was right in coming to the conclusion that share income from the firm to the two smaller HUFs cannot be clubbed in the hands of the bigger HUFs - without entering into merits of issue, the question is left unanswered leaving it open to the Tribunal, to modify its decision in accordance with law, in the event the earlier order of Tribunal in assessee's own case has undergone any modification by virtue of any

subsequent pronouncements either by this HC or by the Apex Court

547 2009 TMI - 33027 - GUJARAT HIGH COURT

CIT Versus CHEMICOAT LIMITED

Dated: 02-02-2009

Sections - -

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the expenses incurred by the assessee for setting up a new unit was allowable as revenue expenditure - question referred for the opinion of the Court is answered in the affirmative, i.e. In favour of assessee and against Revenue

548 2009 TMI - 33026 - GUJARAT HIGH COURT

C.I.T. Versus NITIN SHANTILAL PARIKH

Dated: 02-02-2009

Sections - 002(22),

AO made addition treating the benefits taken from the company as deemed dividend by invoking provisions of Section 2(22)(e) - Tribunal found that AO had not recorded any finding that there were accumulated profits within the meaning of said term u/s 2(22)(e) - Tribunal is right in deleting the additions observing that the conditions prescribed under Sec.2(22)(e) were not satisfied

549 2009 TMI - 33025 - MADRAS HIGH COURT

Director of Income Tax (Exemption) Chennai Versus M/s. Govindu Naicker Estate Chennai

Dated: 27-01-2009

Sections - 011,

Charitable trust – exemption u/s 11 - Property of the Trust was in a dilapidated condition and therefore fresh construction had to be undertaken by obtaining loan from Bank - . The subsequent letting out of the property was connected with the carrying out of the objects of the Trust – hence, repayment of loan taken from the Bank was application of income for charitable purposes and, therefore, the assessee trust was eligible for exemption under Section 11

550 2009 TMI - 33024 - MADRAS HIGH COURT

Commissioner of Income Tax Tiruchirapalli Versus P. Madhavan

Dated: 18-03-2009

Sections - 010(10C), 089,

Whether the amount paid to assessee-employee under the Voluntary Retirement Scheme is entitled for deduction - assessee has filed a return of income claiming exemption under Section 10(10C) and also relief under Section 89(1) – question is answered in affirmative in favour of assessee – revenue appeal is dismissed

551 2009 TMI - 33023 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX NEW DELHI Versus SINGAPORE AIRLINES LTD. and others

Dated: 13-04-2009

Sections - 194H, 201,

Whether supplementary commission received by travel agents of assessee-airlines is a

“commission” within the meaning of Section 194H - Held, yes – thus assessee-airlines were obliged to deduct tax at source - assessee-airline having not deducted the tax at source, they are liable to pay interest u/s 201(1A) – held that difference between the full value of the ticket and tickets issued by assessee to travel agents at a concessional price for their personal use is not an ‘income’ u/s 194H

552 2009 TMI - 33017 - CALCUTTA HIGH COURT

(1) SAHARA INDIA COMMERCIAL CORPORATION LTD. & GORA PROJECTS LIMITED Versus CIT

Dated: 30-01-2009

Sections - 127,

Orders of transfer of case passed under section 127 – assessee was given opportunity of hearing – reasons were also duly recorded for transfer i.e. for the purpose of co-ordinated investigation - as evidently facts have gone uncontroverted and unchallenged and as the twin requirements under section 127 have been complied with, order of transfer can not be faulted

553 2009 TMI - 33014 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus TIRUPATTUR CO-OP. SUGAR MILLS LTD.

Dated: 16-02-2009

Sections - 80P, 032AB,

Co-operative society - whether assessee was entitled to exemption u/s 80P(2)(a)(i) of interest received from the members of the society – to decide this question, Tribunal was required to examine the details such as memorandum & articles of association, return of income, the status of business etc. so matter is remanded - Tribunal was right in holding that the receipt not attributable to the business of the assessee should be included in the business income for computing the allowance u/s 32AB

554 2009 TMI - 33013 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus INDUSTRIAL CABLES (INDIA) LIMITED

Dated: 27-01-2009

Sections - 140A, 154, 234B,

Non-payment of advance tax – held that interest had to be levied u/s 234B – while computing the amount recoverable from assessee, the Assessing Officer did not comply with the mandate of section 140A – such mistake can be rectified so order of rectification was valid – further it is held that order of rectification was not barred by limitation because period of four years envisaged u/s 154(7) had not elapsed - AO had rightly invoked the authority vested in him under section 154

555 2009 TMI - 33008 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus M. N. CHARI

Dated: 22-01-2009

Sections - 036, 002(24), 043B,

Whether the appellate authorities were correct in holding that the belated payment of the employer's contribution to provident fund beyond the stipulated period, cannot be treated as the income of the assessee under section 36(1) (va) read with section 2(24)(x) as held by the Assessing Officer in view of the amendment to section 43B – question is answered in favour of assessee and against revenue

556 2009 TMI - 33005 - GUJARAT HIGH COURT

ASSISTANT COMMISSIONER OF INCOME TAX Versus AKRUTI DYEING & PRINTING MILLS PVT. LTD.

Dated: 27-01-2009

Sections - -

Additions on account of bogus purchases - no material on record to show that the purchases shown by the assessee from the parties were not genuine - disallowance made by the Revenue mere on the basis of surmises and conjectures without any positive material on record - no material on the basis of which it can be alleged that the parties admitted that the bills raised by them against the assessee were merely accommodation bills – tribunal is justified in deleting additions

557 2009 TMI - 32997 - GUJARAT HIGH COURT

ASSISTANT COMMISSIONER OF INCOME TAX Versus TULSIDHARAN BHASKARAN

Dated: 20-01-2009

Sections - 044AD,

Whether Tribunal is right in concluding that AO has committed a mistake in rejecting the books of account and estimating the net profit @ 8% u/s 44AD - Whether Tribunal is justified in confirming the order CIT (A) though the assessee has failed to discharge the onus of burden of proof by proving various claims made by the him in his return of income as well as books of account - What should be the rate of net profit is question of fact - findings of Tribunal are factual require not interference

558 2009 TMI - 32996 - GUJARAT HIGH COURT

THE INCOME TAX OFFICER Versus J.J. CORPORATION

Dated: 20-01-2009

Sections - 147, 148, 032AB, 143,

Addition, in respect of withdrawal of IDBI deposit u/s 32AB – income escaping assessment - AO initiated proceedings u/s 147 for the second time in respect of the same income - Tribunal is justified in holding that as the amount has already been taxed in the hands of the partners, same is not taxable in the hands of the assessee-firm, which stood dissolved – AO not giving reasons for reopening of assessment - Tribunal is justified in holding that the second assessment was impermissible

559 2009 TMI - 32995 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX -II Versus GEOTECH DATAMATICS PVT. LTD.

Dated: 19-01-2009

Sections - 271, 143,

Tribunal upholding order of CIT (A) of canceling penalty u/s 271(1)(c) - whether the Tribunal could have proceeded to decide the appeal in penalty proceedings despite pendency of appeal in quantum proceedings - no attempt made by tribunal to ascertain whether an appeal regarding quantum was filed, or pending - As the Tribunal has restored the matter back to the file of the AO for fresh decision in the quantum appeal, the present matter is also restored to the file of the AO

560 2009 TMI - 32994 - GUJARAT HIGH COURT

RAMJIBHAI HIRJIBHAI & SONS Versus INCOME TAX OFFICER

Dated: 19-01-2009

Sections - 037,

Loss shown under the head "Stock-in-Trade" – difference in value of stock - assessee's explanation that the stock had deteriorated within one accounting year to the extent of Rs.8,00,000/-, is not acceptable - finding of the Assessing Officer is that there was no evidence for the sudden drop in the value during the accounting period in question, is justified - since loss was on capital account, authorities were justified in coming to the conclusion that the said loss was not an allowable loss

561 2009 TMI - 32993 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX-III Versus INDIRABEN MOHINDERSINGH WALIA

Dated: 19-01-2009

Sections - 080IB,

Whether duty drawback is 'income derived' from industrial undertaking - deduction u/s 80IB – held that that the duty drawback is specifically granted to reduce the cost of manufacturing and hence, as customs duty and excise duty are admittedly an integral part of cost of production, any receipt by way of reimbursement of such duty is inexplicably linked with the cost of production - therefore, duty draw back was directly derived from the industrial undertaking and eligible for deduction

562 2009 TMI - 32992 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus KRISHNAKUMAR R. PARMAR

Dated: 19-01-2009

Sections - 132, 158B, 158BC,

Assessee, a developer had agreement with owner for development of land - additions of undisclosed initial investment - revenue contend that tribunal wrongly deleted the additions because addition was made on the basis of some loose papers seized during the search and these papers contained notings suggesting amount to be received and the balance - Tribunal finding that there is nothing on record to show that the assessee paid any amount in excess to owner – additions rightly deleted by tribunal

563 2009 TMI - 32990 - GUJARAT HIGH COURT

THE COMMISSIONER OF INCOME TAX-I Versus DEEPAK NITRITE LIMITED

Dated: 13-01-2009

Sections - 115JAA, 234B, 234C, 154,

Tax credit u/s 115JAA - whether provisions of Section 154 of the Act can be invoked for withdrawing credit of MAT originally granted, or whether interest under Sections 234B and 234C of the Act can be charged after giving credit for MAT payment - without expressing any opinion on the merits, impugned order is quashed and set aside and restored to file of the Tribunal

564 2009 TMI - 32989 - GUJARAT HIGH COURT

NILESH J. PATEL Versus ASSISTANT COMMISSIONER OF INCOME TAX

Dated: 12-01-2009

Sections - -

Whether Tribunal was right in law in disallowing the purchase expenditure by treating the same as bogus when admittedly corresponding sales against these very purchases have been offered and accepted for tax - Whether Tribunal was right in law in not granting deduction for purchase expenditure at all when material is purchased from one and bill is obtained from another - in view of decision in the case of Niriksha N Patel,

this appeal by assessee is also dismissed.

565 2009 TMI - 32988 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-II Versus PAWAN KUMAR GARG

Dated: 16-01-2009

Sections - 132,

Power to issue warrant for search - Mere empowering certain specified Deputy Directors of Income-tax (Investigation) and Deputy Commissioners by virtue of the mere re-designation of Deputy Directors of Income-tax as Joint Directors of Income-tax, would not, itself mean that a Joint Director of Income-tax is also empowered – held that there is no notification issued by the CBDT specifically empowering any Joint Director of Income-tax (Investigation) to authorize action under Section 132(1)

566 2009 TMI - 32987 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI Versus M/s ABHINANDAN INVESTMENT LTD.

Dated: 06-02-2009

Sections - 080, 139,

Whether the loss determined by the Assessing Officer, being different from the loss as claimed by the assessee in the return, can be carried forward in view of the provisions of Section 80 r.w.s. 139(3) - Whether the tribunal has erred in law in holding that the AO had exceeded its jurisdiction in not allowing the carrying forward of the loss after the tribunal had issued directions in the earlier round - Both questions of law are answered in favour of the assessee and against the Revenue

567 2009 TMI - 32986 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus JINDAL EXPORTS LIMITED and others

Dated: 06-02-2009

Sections - 234B, 234C, 115JAA, 154,

Held that that interest under sections 234B and 234C is to be charged after the tax credit (MAT credit) available under section 115JAA is set off against tax payable on the total income - Tribunal was correct in law in holding that rectification could not be made by the Assessing Officer under Section 154 of the Income Tax Act, 1961 as the issue regarding charging of interest under Section 234-B of the Act without giving set off of MAT credit available to the Assessee was highly debatable

568 2009 TMI - 32984 - DELHI HIGH COURT

UAE EXCHANGE CENTRE LTD. Versus U.O.I. & ANR.

Dated: 13-02-2009

Sections - 009, 090, 245R,

Challenge to ruling of AAR – while the Authority has returned a finding of fact that none of the activities mentioned in Ex. (2) to S. 9(1)(1) is carried on by the petitioner in India, Authority then went on to apply the ratio of SC decision in case of R.D.Aggarwal to hold that activity of liaison offices of the petitioner constituted a 'business connection' in India and hence, income shall be deemed to accrue/arise in India - AAR has erred in applying the ratio of the decision of Supreme Court

569 2009 TMI - 32983 - BOMBAY HIGH COURT

Supreme Treves Pvt. Ltd. Versus Deputy Commissioner of Income-tax

Dated: 17-02-2009

Sections - 032, 147, 148,

Whether reopening of the assessment beyond four years is justified – reassessment order on ground that goodwill is not an intangible asset and, therefore, not eligible for depreciation u/s 32(3)(b) – since there was no failure on the part of the petitioner to disclose all facts, the reopening of the assessment after the expiry of 4 years cannot be sustained - ingredients of section 147 are not fulfilled by revenue - notice issued u/s 148 after the expiry of four years is quashed and set aside

570 2009 TMI - 32982 - BOMBAY HIGH COURT

Sinhgad Technical Education Versus Asstt. Commissioner of Income-tax

Dated: 30-01-2009

Sections - 012A, 013,

Trust – huge demands - Whether C.I.T. (A) is justified in declining to grant absolute stay of demands during pendency of appeals – CIT (A) directed the petitioner to pay 10% of the demands i.e. 1.5 crore now and remaining till disposal of appeal - fact that the undisclosed income on account of donation been taxed in the hands of trust as well as the principle trustee, order of C.I.T. (A) is modified - stay of recovery shall be subjected to furnishing of bank guarantee in sum of 1.50 crore

571 2009 TMI - 32981 - DELHI HIGH COURT

THE COMMISSIONER OF INCOME TAX DELHI (CENTRAL) -II Versus CAPITAL POWER SYSTEMS LIMITED

Dated: 16-01-2009

Sections - 132,

Power to issue warrant for search - Mere empowering certain specified Deputy Directors of Income-tax (Investigation) and Deputy Commissioners by virtue of the mere re-designation of Deputy Directors of Income-tax as Joint Directors of Income-tax, would not, itself mean that a Joint Director of Income-tax is also empowered – held that there is no notification issued by the CBDT specifically empowering any Joint Director of Income-tax (Investigation) to authorize action under Section 132(1)

572 2009 TMI - 32938 - BOMBAY HIGH COURT

Ingersoll-Rand (India) Ltd. Versus Commissioner of Income-tax Bombay

Dated: 04-04-2009

Sections - 037,

Whether the provisions for set-on liability (to meet a future shortfall) u/s 15 of the Payment of Bonus Act was allowable deduction - shortfall and extent of the liability cannot be estimated with reasonable certainty - deduction claimed is not an accrued liability but only a provision u/s 15(1) of the Payment of Bonus Act to meet a future liability, if any – therefore, amount is not allowable as a deduction – further, sur-tax payment is also not an allowable deduction u/s 37

573 2009 TMI - 32937 - BOMBAY HIGH COURT

Director of Income Tax (International Taxation) Versus M/s. Oman International Bank SAOG

Dated: 09-02-2009

Sections - 036,

Expression “bad debt” in Section 36(1)(vii) - Whether as per the existing provisions even after the amendment w.e.f. 1-4-1989, is it obligatory on assessee to prove that the debt written off by him is indeed a Bad Debt for the purpose of allowance u/s36(1)(vii) – held that after the amendment, it is neither obligatory nor is the burden on the assessee to prove that the debt written off by him is indeed a bad debt as long as it is bona fide and based on commercial wisdom or expediency

574 2009 TMI - 32936 - BOMBAY HIGH COURT

Commissioner of Wealth Tax Versus Shri A.M. Bhiwandiwalla

Dated: 13-02-2009

Sections - 127,

Jurisdiction of AO under wealth tax assessment – in the instant case once a Notification is issued under Section 127 of Income Tax Act, 1961 the Officer for the purpose of section 8 of Wealth Tax Act, 1957 would be the same officer who would exercise the jurisdiction under the Income Tax Act - therefore, the Tribunal clearly committed an error of jurisdiction in holding that a separate Notification u/s 8AA was required – decision of Madras HC in case of B. Nathmal Vaid, not applicable

575 2009 TMI - 32933 - BOMBAY HIGH COURT

Shri. Surendra M. Khandhar Versus Asst. Commissioner of Income Tax

Dated: 27-01-2009

Sections - 069, 292C, 132,

AO on basis of seized document made additions u/s 69 as un-identified investment – there was sufficient material before the A.O. to have made additions – I.T.A.T. by elaborate reasoning has also held that the presumption created by the document had not been rebutted nor had the assessee denied the loan amount - no infirmity in tribunal's order – contention raised at the appellate stage was merely an attempt to create doubts in the mind of court – no violation of principle of natural justice

576 2009 TMI - 32906 - SUPREME COURT

CIT Versus M/s Woodward Governor India P. Ltd. & M/s Honda Siel Power Products Ltd.

Dated: 08-04-2009

Sections - 037, 028, 029, 145, 043, 043A, 032,

Fluctuation in rate of exchange - Increased liability in respect of loans taken - in which year, loss incurred on “revenue account” should be deducted u/s 37(1) - held that loss suffered as on the date of balance sheet is an item of expenditure u/s 37(1) - increase in liability on “capital account” - scope of S. 43A (unamended) prior to 1.4.03 – assessee entitled to adjust the actual cost of imported assets at each balance sheet date - held that amended section is amendatory, not clarificatory

577 2009 TMI - 32905 - BOMBAY HIGH COURT

The Commissioner of Income-Tax Versus M/s. Beirsdorf (India) Ltd.

Dated: 06-01-2009

Sections - 043B, 041,

ITAT deleting the additions in respect of Sales Tax refund - Tribunal has not decided whether on merits such addition was justified or not- ITAT was not justified in concluding that since question of refund is subjudice, the income received by the assessee towards the refund could not have been added in the total income – findings of the ITAT that Sales Tax refund should not be assessed as income till the litigation

reaches finality is contrary to the provisions of S. 43 B - matter remitted

578 2009 TMI - 32904 - BOMBAY HIGH COURT

Commissioner of Income-Tax Versus M/s. Sociedade de Fomento Industrial Ltd.

Dated: 13-02-2009

Sections - -

The Tribunal found that no material was placed before it to suggest that there is an error in the order of CIT(A). It has also been found by the Tribunal that the contention made before the Tribunal was not part of the ground of appeal raised before the Tribunal. It is also found that no additional ground has been raised in this appeal. The same ground was also not raised before the CIT(A) – Writ petition by revenue rejected

579 2009 TMI - 32903 - BOMBAY HIGH COURT

Salgaocar Mining Industries Pvt. Ltd. Versus Commissioner of Income Tax (Appeals)

Dated: 21-03-2009

Sections - -

Against the demand, an appeal has been preferred by assessee before CIT(A). The Assessee had applied for stay before the AO which has been rejected – Now, Assessee is directed to deposit a sum of Rs.1 crore with the AO within 4 days of the accounts of the Assessee petitioner being defreezed - CIT(A) is directed to hear the appeal pending before it expeditiously, after giving due opportunity to the appellant - balance demand is stayed till the disposal and final hearing by CIT(A)

580 2009 TMI - 32902 - MADRAS HIGH COURT

ANSALDO ENERGIA SPA VERSUS ITAT, CHENNAI BENCH "A" AND OTHERS

Dated: 12-01-2009

Sections - 009,

Agreement between assessee, a non-resident co. and Indian statutory corporation - contract was divided into four contracts - offshore supply of equipments, offshore services of erection, testing and commissioning, civil construction and the commissioning – all responsibility rested on the assessee – held that activity under the contracts are inextricably linked and it was a composite contract - "business connection" existed – part of profits from offshore supply deemed to arise in India

581 2009 TMI - 32899 - PUNJAB AND HARYANA HIGH COURT

SMT.TRISHLA JAIN and others VERSUS INCOME TAX COMMISSIONER

Dated: 06-01-2009

Sections - 005,

Interpretation of S. 5 (2) – liability to assessment - Assessee, non-residents had subscribed to debentures issued by M/s O – claim of the assessee is that the income of interest on debentures should be assessed on receipt basis, and not on accrual basis - Tribunal was right to hold that income from interest on debentures which was a "foreign exchange asset" was assessable on accrual basis and not on receipt basis – held that non-resident is assessable on income which has accrued to him

582 2009 TMI - 32893 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX VERSUS D. VENKATESH

Dated: 05-01-2009

Sections - -

Additions during block assessment – AO made additions of agricultural income as undisclosed income for block period – assessee plea is that entire amount of agricultural income has been disclosed to the Department through regular returns, well before the search – no valid material produced by revenue to prove the contrary – moreover, additions are not relatable to any material found during search – hence, amount cannot be treated as undisclosed income for the purpose of making block assessment

583 2009 TMI - 32892 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX VERSUS JEYABHARATH TEXTILES P. LTD.

Dated: 19-01-2009

Sections - 037,

Replacement cost of machinery – AO held that capacity of the machinery had increased and provided an enduring benefit and advantage in the production and disallowed the claim of assessee for deduction as revenue expenditure – Commissioner held that addition should be deleted and treated as revenue expenditure – issue involved is covered by the SC's decision in the case of CIT v. Ramaraju Surgical Cotton Mills - matter to the CIT (Appeals) with a direction to consider the matter again afresh

584 2009 TMI - 32867 - DELHI HIGH COURT

M/S THE PRINTER HOUSE PVT. LTD. and R.N. SAHNI & ORS. Versus NISHI SINGH

Dated: 23-03-2009

Sections - 276C, 277, 277E, 271,

Offences and prosecution - categorical finding given by Tribunal that claim of depreciation by the petitioners was genuine – therefore, it does not arise for consideration that there was any evasion of tax by the petitioners – subsequently, there could be no presumption of the culpable mental state or any intention of tax evasion – prosecution quashed – HC while exercising its inherent powers u/s 482 of Cr.P.C. is competent to do substantial justice by quashing the complaint & summoning order

585 2009 TMI - 32866 - DELHI HIGH COURT

YUM! RESTAURANTS (MARKETING) PRIVATE LIMITED Versus COMMISSIONER OF INCOME TAX

Dated: 01-04-2009

Sections - -

Taxability of surplus (excess of income over expenditure) which arose on account of advertisement contributions received from the holding company – Tribunal noted that principle of mutuality was not applicable on ground that apart from contributions from various franchisees, amount had also been received from companies, who were neither franchisees nor beneficiaries – Tribunal rightly held that the principles of mutuality being not applicable, surplus was required to be taxed

586 2009 TMI - 32865 - DELHI HIGH COURT

CIT, CENTRAL-II, NEW DELHI Versus M/S. K.J. BUSINESS CENTRE

Dated: 02-04-2009

Sections - -

Receipt of commission for letting-out of property – whether it was legally permissible for

Assessee to stagger its income over a period of six years by showing the commission received as advance payments in Accounts Books - applying the principle of consistency, HC decline to interfere in the facts & circumstances of the present case - in the absence of a written covenant, oral statement that commission would be refundable if the Lease was terminated before stipulated tenure, cannot be accepted

587 2009 TMI - 32864 - DELHI HIGH COURT

[YUM! RESTAURANTS \(INDIA\) PRIVATE LIMITED Versus COMMISSIONER OF INCOME TAX](#)

Dated: 01-04-2009

Sections - 037,

Assessee-company develop/manage franchisees for running restaurants – assessee created an intermediary in the form of a wholly owned subsidiary, to carry on a “co-operative advertising” on the behalf of its franchisees - claim on account of accrued marketing expenditure and on account of contributions towards advertising, marketing and promotional activities towards wholly owned subsidiary – not proved that expenditure were on account of commercial expediency so rightly disallowed by tribunal

588 2009 TMI - 32862 - BOMBAY HIGH COURT

[M/s. Richardson Hindustan Ltd. Versus The Commissioner of Income-tax Bombay](#)

Dated: 18-03-2009

Sections - 035C,

Claim for weighted deduction u/s.35C on Expenses incurred on provision of Distillation services; Expenses on transportation services provided to farmers; Depreciation on assets used for Agricultural Research Centre, Fertilizer subsidy to farmers as cash subsidy – Tribunal is justified in disallowing the claim of assessee for weighted deduction on above expenses and depreciation

589 2009 TMI - 32861 - BOMBAY HIGH COURT

[M/s. Procter & Gamble India Ltd. Versus The Commissioner of Income-tax Bombay](#)

Dated: 18-03-2009

Sections - 035C,

Whether Tribunal was justified in rejecting the claim of assessee-company for weighted deduction u/s 35C on Expenses incurred on provision of Distillation services, Expenses on transportation services provided to farmers, Expenses incurred on Mentha Administration Services, Expenses on distillation services including depreciation on assets used for distillation services and on assets used for Mentha Research Centre – questions are answered in the affirmative and against the assessee

590 2009 TMI - 32860 - BOMBAY HIGH COURT

[Richardson Hindustan Ltd. Versus The Commissioner of Income-tax Bombay](#)

Dated: 18-03-2009

Sections - 035C,

Claim for weighted deduction u/s 35C in respect of expenses on research in mentha research centre, expenses on distillation services provided to the cultivators; expenses on scientific farming – tribunal is justified in disallowing assessee's claim for weighted deduction on above expenses - Tribunal was justified in holding that the claim of

deduction of sur-tax payable under the Companies (Profits) Sur-tax Act, in working out the business income was not admissible

591 2009 TMI - 32859 - BOMBAY HIGH COURT

**M/s. Procter & Gamble India Ltd. Versus The Commissioner of Income-tax
Bombay**

Dated: 18-03-2009

Sections - 035C,

Tribunal rejected claim for weighted deduction u/s 35C on Expenses incurred on distillation services of farmers, transportation services provided to farmers and Depreciation on Distillation Assets - held that deduction u/s 35C not admissible on expenses on distillation services and depreciation on distillation asset – transportation services were in respect of transporting of crops and had no relation to any goods, services or facilities as outlined u/s 35C – tribunal rightly rejected the claim

592 2009 TMI - 32858 - BOMBAY HIGH COURT

**M/s. Procter & Gamble India Ltd. Versus The Commissioner of Income-tax
Bombay**

Dated: 18-03-2009

Sections - 035C,

Whether Tribunal was justified in rejecting the claim of assessee-company for weighted deduction u/s 35C on Expenses incurred on provision of Distillation services, Expenses on transportation services provided to farmers, Expenses incurred on Mentha Administration Services, Expenses on distillation services including depreciation on assets used for distillation services and on assets used for Mentha Research Centre – questions are answered in the affirmative and against the assessee

593 2009 TMI - 32857 - BOMBAY HIGH COURT

**M/s. Procter & Gamble India Ltd. Versus The Commissioner of Income-tax
Bombay**

Dated: 18-03-2009

Sections - 035C, R006,

Whether Tribunal was justified in rejecting the claim of the assessee company for weighted deduction u/s 35C on expenses incurred under the head provision of tools and implements for use by farmers, expenses under the head transportation services provided of farmers and depreciation on Distillation assets – question is answered in the affirmative and against the assessee

594 2009 TMI - 32837 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME –TAX Versus SANJEEV KUMAR JAIN

Dated: 16-01-2009

Sections - 143, 147,

Assessing Officer had failed to afford an opportunity to the respondent-assessee to cross-examine the persons whose statements were recorded by him, before passing the assessment order under section 143/147 - action of the Assessing Officer was unacceptable in law - naturally, there was nothing wrong up to the stage of recording the statements of the four persons - proceedings conducted by the AO after recording the statements of the aforesaid individuals are liable to be set aside

595 2009 TMI - 32835 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus AJMER SINGH

Dated: 16-01-2009

Sections - 148, 143, 260A,

Pursuant to notice issued u/s 148, the assessment u/s 143 was completed – Tribunal set aside the assessment order on the ground that the notice issued u/s 148, was defective inasmuch as the notice did not disclose the status of assessee – since AO cured the defect and passed a fresh assessment order which was the subject matter of appeal before the tribunal, appeal to HC is infructuous - precious court time should not be wasted for determining the academic issues

596 2009 TMI - 32832 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DR. S. K. OHRI, PROP. OHRI MATERNITY HOSPITAL

Dated: 04-02-2009

Sections - 032A,

Whether Tribunal was right in law in holding that the assessee, who is a doctor in medical profession, was entitled to investment allowance under section 32A of the Income-tax Act, 1961, on scanning machine – held that purchase of a scanner machine at the hands of a doctor in the medical profession is entitled to be treated as plant for deduction of investment allowance under section 32A - reference is accordingly, answered against the Revenue and in favour of the assessee

597 2009 TMI - 32805 - UTTARAKHAND HIGH COURT

Commissioner of Income Tax Dehradun & another Versus Sundowner Offshore International (Burmuda) Ltd.

Dated: 16-02-2009

Sections - 044BB,

Assessee, non-resident company had contract with ONGC for charter hire of one light modular work over rig - Whether receipts on account of mobilization of the rig from outside India should be included in the gross revenue u/s 44BB - mobilization fee is not the reimbursement of expenditure - ONGC was liable to pay a fixed sum as stipulated in the contract regardless of actual expenditure - Assessing Officer rightly added the said amount as per provisions of S. 44BB and imposed the tax thereon

598 2009 TMI - 32804 - UTTARAKHAND HIGH COURT

Commissioner of Income Tax Versus M/s Iqbalpur Cooperative Cane Development Union Ltd.

Dated: 12-02-2009

Sections - 044AB, 271B, 080P,

Failure to get account audited as required u/s 44AB - penalties imposed u/s 271 B – assessee (co-operative society) pleaded that it was under the bona fide belief that it was not required to get the audit report submitted, as the income of the assessee unit was exempted u/s 80 P - no any sufficient reason to interfere with the satisfaction recorded by the tribunal as to the finding of fact that the assessee had no intention to cause any loss to Revenue and as such, the penalty was not imposable

599 2009 TMI - 32803 - RAJASTHAN HIGH COURT

Commissioner of Income-tax, Jaipur Versus Mahindra & Co. Ltd., Jaipur

Dated: 05-03-2009

Sections - 041,

Claim for loss on sale of shares which had come to Assessee on amalgamation of two companies with it – Tribunal was not right in concluding that the value of the assets taken over on amalgamation should be taken at book value as was existing in the hands of the amalgamated company for working out the cost of the shares – assessee cannot blow hot and cold at the same time adopting a lower value for the purpose of calculating purchase consideration and a higher value for showing loss in its books

600 2009 TMI - 32800 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX-V, NEW DELHI Versus M/s NALWA INVESTMENT LTD.

Dated: 06-02-2009

Sections - 139, 080, 143,

Loss on sale of debentures - whether the loss determined by the AO, being different from the loss as claimed by the assessee in the return, can be carried forward in view of the provisions of Section 80 r.w.s. 139(3) - Whether tribunal has erred in law in holding that the AO had exceeded its jurisdiction in not allowing the carrying forward of the loss after the tribunal had issued directions in the earlier round - both the questions are answered in favour of the assessee and against the Revenue

601 2009 TMI - 32794 - AUTHORITY FOR ADVANCE RULINGS

Worley Parsons Services Pty. Ltd., In re

Dated: 30-03-2009

Sections - 115A, 009, 004, 005, 002(b),

Agreement between applicant (Foreign Co.) & Reliance industry for providing services got terminated in mid-way - Held that Engineering and Procurement services rendered fall within scope of "royalties" as defined in the DTAA and receipts are taxable in India by virtue of Art. XII(2). Under the Act too, they are taxable - However, receipts from Project & Management Services, shall be treated as business income & be taxable only to the extent they are attributable to the operations of PE in India

602 2009 TMI - 32793 - AUTHORITY FOR ADVANCE RULINGS

M/s Four Star Oil & Gas Co., In re

Dated: 31-03-2009

Sections - 112, 055, 048, 049,

Long-term capital gains arising to applicant (non-resident) from transfer of shares held in Indian listed company – revenue seek to deny indexation benefit provided u/s 112(1) on ground that 2nd proviso to s. 48 is not applicable to a non-resident – revenue plea rejected – applicant can avail relief of lower rate of tax of 10% u/s 112(1) – hold that as per S. 55(2)(b)(i), FMV prevailing on April 1, 1981 ought to be taken as cost of acquisition when bonus shares held by applicant on April 1, 1981

603 2009 TMI - 32792 - AUTHORITY FOR ADVANCE RULINGS

M/s Rural Electrification Corporation Ltd., In re

Dated: 31-03-2009

Sections - 036, 041,

Claim for requisite deduction u/s 36(1)(viii) on the profits derived from the business of long-term finance for rural electrification - applicant has created Special Reserve out of the current year's profit chargeable to tax for a specific purpose of availing allowance

u/s 36(1)(viii), so assessee's claim for deduction is acceptable – since assessee has made reserve for the bad and doubtful debts, deduction claimed u/s 36(1)(viii)(c)) cannot be denied mere for debit in the appropriation account

604 2009 TMI - 32791 - AUTHORITY FOR ADVANCE RULINGS

Worley Parsons Services Pty. Ltd., In re

Dated: 30-03-2009

Sections - 009, 115A,

Applicant (Foreign Co.) had contract with Indian Company for providing engineering services but were not provided completely because of termination of agreement in mid-way - applicant submission that services provided were performed mostly outside India are in the nature of 'royalty' & he did not have PE in India, is acceptable – but entire receipts representing royalty income are liable to be taxed in India, both under the IT Act, 1961 as well as DTAA - splitting up of income not permissible

605 2009 TMI - 32772 - JAMMU AND KASHMIR HIGH COURT

Qazi Shabir Ahmed Versus Income tax Officer and ors.

Dated: 11-02-2009

Sections - R046A, 260A, 271, 148,

Income from un-disclosed sources – submission that agreement to sell produced before first Appellate Authority has not been considered while sustaining additions - finding of CIT (A) that the amount received allegedly for sale of land cannot be correlated with the dates of deposits in the bank account, is based on valid reasons – CIT (A) has held that the agreement to sell being an additional evidence is not covered by exceptions of Rule 46A(1) – no question of law arise – appeal dismissed

606 2009 TMI - 32771 - JAMMU & KASHMIR HIGH COURT

H. S. Raina Versus Income Tax Officer

Dated: 03-03-2009

Sections - 069C, 274,

Addition u/s 69C - construction of house - assessee failed to establish source of expenditure - whether such expenditure be deemed to be the income of assessee – explanation by the appellant was repayment of loans– since there was nothing to suggest receipt of loans and utilization thereof for construction, they cannot be accepted as withdrawn for construction of house - claim that calendar year 1991 had two financial years and as such the deemed income should be bifurcated, is not acceptable

607 2009 TMI - 32754 - BOMBAY HIGH COURT

M/s. Prasad Agents Private Ltd. Versus Income Tax Officer

Dated: 20-03-2009

Sections - 073, 028,

Losses suffered on account of book valuation – explanation to S. 73 will cover both shares which are stock in trade and shares which are traded in the F.Y. for purpose of considering the loss and profit for that year – there can be no difference between the losses suffered in the course of trading by delivery and losses in terms of the book value - Tribunal rightly hold that the loss of profit on account of valuation amounts to revenue losses or revenue receipt – assessee's appeal dismissed

608 2009 TMI - 32752 - SUPREME COURT

Commissioner of Income-tax, New Delhi Versus Eli Lilly & Company (India) Pvt. Ltd.

Dated: 25-03-2009

Sections - 192, 009, 201, 271C, 273B, 195, 002(37A), 040, 190, 191,

TDS on salary paid in foreign country by foreign company to its employees working in India - S. 192(1) has to be read with S. 9(1)(ii) read with the Explanation. Therefore, if any payment of income chargeable under the head "Salaries" falls within S. 9(1)(ii) then TDS provisions would stand attracted, on account of services rendered in India - however SC gave relief where tax has been paid in India on such foreign income. Since issue is a nascent, penalty waived – 104 civil appeals disposed

609 2009 TMI - 32746 - BOMBAY HIGH COURT

Cartini India Limited Versus Additional Commissioner of Income Tax

Dated: 25-03-2009

Sections - 147, 148, 143,

Validity of notice issued u/s 148 to reopen the assessment – AO rejecting the objections raised by the petitioner regarding the reopening of assessment - assessment is sought to be reopened on the basis of the material based on which a final decision has already been taken, and therefore, the reopening of the assessment based on the very same materials to take a contrary view constitutes reopening on account of change of opinion which is not permissible u/s 147 - notice is quashed and set aside

610 2009 TMI - 32743 - BOMBAY HIGH COURT

Hindustan Foods Ltd. Versus The Deputy Commissioner of Income-tax

Dated: 13-02-2009

Sections - -

Assessee borrowed money through redeemable debentures – redemption of redeemable debentures, issued in 1988 was due in 1995 - certain repayments were not claimed by the public by way of redemption and an amount of Rs.49.06 lakhs remained unpaid without being claimed by the Debenture holders till the AY 1999-2000 – assessee transferred amount of unclaimed debentures to the General Reserve Account and utilized in its business - sum of Rs.49.06 lakhs was taxable as income of the Appellant

611 2009 TMI - 32742 - BOMBAY HIGH COURT

The Commissioner of Income-Tax Versus M/s. Polycott Corporation

Dated: 23-01-2009

Sections - 80HHC, 268A,

Whether I.T.A.T. is right in directing A.O. to compute the deduction u/s 80HHC after the books of accounts having been made up with the total export turnover ascertained, holding that the reduction in the invoice amount having been approved by R.B.I., the original sales price stands modified to this extent and such modified price only should be included as part of export turnover – Held, yes – Revenue plea that, that adjusted export value should be excluded from the export turnover, is rejected

612 2009 TMI - 32709 - SUPREME COURT

COMMR.OF INCOME TAX-XVII,DELHI Versus NHK JAPAN BROADCASTING CORPORATION

Dated: 16-03-2009

Sections - -

Assessee, a Japanese Organization set up for transmission of news/broadcasting – whether subjected to deduction of tax - controversy is that Citizens Tax is a statutory levy in Japan on the Japanese Citizens constituting an overriding charge - emoluments paid by the assessee was subject to deduction of tax as per applicable laws -CIT (A) ought to have examined the provisions of Citizens Individual Inhabitant Tax Act which is a Japanese - no opinion on the merits – matter remanded to tribunal

613 2009 TMI - 32696 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus N.P. GARODIA

Dated: 13-01-2009

Sections - 131, 068,

Unexplained credit - assessee had moved an application u/s 131, requiring the AO to summon the loanees (creditors) - since the Assessing Officer had taken no action, the assessee had not been afforded an adequate opportunity of discharging the onus placed on his shoulder u/s 68 - it was imperative for the AO to summon the loanees, and to record their statements u/s 131 – Tribunal is justified in remanding the matter and requiring the AO to issue notices to loanees u/s 131

614 2009 TMI - 32695 - KARNATAKA HIGH COURT

ONAM AGARBATHI CO. Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 07-01-2009

Sections - 040B,

Deduction claimed for commission paid to agents (M/s. O. M. C.). - payment of commission by one firm to another firm – payment made to M/s. O. M. C. is nothing but payment made to partners - When the partners in both the firms are the same and there is nothing on record to indicate regarding any other services rendered by M/s. O. M. C. except to the appellant, in our view, section 40(b) is rightly invoked - formation of M/s. O. M. C. is to avoid tax – deduction not allowed

615 2009 TMI - 32692 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus HARJINDER KAUR.

Dated: 12-01-2009

Sections - 139, 292B, 140,

Defect in return – validity - return does not even bear assessee's signatures and had not even been verified by her - Section 292B of the 1961 Act, do not authorize the Assessing Officer to ignore a defect of a substantive nature – impugned return was an absolutely invalid return as it had a glaring inherent defect which could not be cured inspite of the deeming effect of Section 292B – tribunal is justified in setting aside assessment made on such return

616 2009 TMI - 32688 - PUNJAB AND HARYANA HIGH COURT

YASH PAL GOEL Versus COMMISSIONER OF INCOME-TAX (APPEALS)

Dated: 20-01-2009

Sections - 068,

Gift received – genuineness of the gift - burden is on the assessee who has to prove the genuineness - assessee has failed to prove the genuineness of the gift, capacity of the donor to make the gift, the source from where the gift is made and the relation between the donor and the donee – transaction was nothing but a subterfuge to avoid

income-tax - no benefit can be derived by the assessee – transaction is held as sham, not genuine

617 2009 TMI - 32686 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MAJESTIC AUTO LTD.

Dated: 20-01-2009

Sections - 035D,

Assessee made payments to M/s. Coopers for a study and report on reorganization of core business of assessee company – tribunal has given finding of fact that study was in relation of existing business and not for producing any new parts, no technical know-how was received in respect of any manufacturing, and report affected manufacturing/selling of existing items – so impugned expenses should be treated as revenue in nature – these expenses are not covered u/s 35D(2), as contended by revenue

618 2009 TMI - 32685 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus STEEL STRIPS LTD.

Dated: 14-01-2009

Sections - 036,

Deduction claimed on account of a bad debt u/s 36(1)(vii)- condition precedent for allowance - it is for the assessee to demonstrate that the deduction he desires to seek is on account of a bad debt, secondly, that the debt was written off as irrecoverable, and thirdly, it should have been written off as an irrecoverable debt in the previous year – since there is no evidence that transaction was the same as to earlier one, principle of res judicata cannot be applied

619 2009 TMI - 32682 - BOMBAY HIGH COURT

CIT, BCV Bombay Versus M/s. Rim Textiles Pvt. Ltd.

Dated: 18-03-2009

Sections - 115J,

Revenue contend that “loss” did not include depreciation debited in books and by ignoring the figure of depreciation in the books, there was no loss, then nothing was to be deducted - held that the word loss in proviso to S. 205(1) (b) of the Companies Act signifies the amount arrived at after taking into account amount of depreciation and it has to be so read in the context of S. 115 J – so, tribunal rightly allowed further deduction on account of unabsorbed depreciation, from the book profit

620 2009 TMI - 32681 - BOMBAY HIGH COURT

Commissioner of Income Tax Versus Smt. Sushila Devi khadaria

Dated: 16-03-2009

Sections - 068, 057,

Loans borrowed - scope of Sec.68 - After analysing the entire evidence regarding grant of impugned loans, there is a concurrent finding of fact of CIT(A) as well as ITAT that the loans were genuine loans - Tribunal is right in deleting the addition being the disallowance consisting of fresh loans & interest on old loans - Assessee had claimed deduction u/s 57 (iii) - scope of Sec.57 - Tribunal is right in deleting the disallowance being the interest and finance charges paid on impugned loans

621 2009 TMI - 32680 - BOMBAY HIGH COURT

Bang Securities Pvt. Ltd. Versus Assistant CIT, CIT (Central – IV) & UOI

Dated: 18-03-2009

Sections - 148, 143, 147,

Reopening of assessment u/s 148 – income escaping assessment – speculation profit - from the reasons recorded, it is seen that there is no material to hold that any income chargeable to tax has escaped assessment - entire case of the revenue is based only on conjectures - it is not evident that there is any failure on the part of the assessee to disclose fully and truly all material facts - impugned notice being beyond four years from the end of the relevant assessment year, is quashed

622 2009 TMI - 32657 - DELHI HIGH COURT

INDIAN OIL PANIPAT POWER CONSORTIUM LIMITED, NEW DELHI Versus INCOME TAX OFFICER

Dated: 26-02-2009

Sections - -

Interest earned on monies received as share capital by the assessee which were temporarily put in a fixed deposit awaiting acquisition of land - assessee claim that the interest was in the nature of capital receipt which was liable to be set off against pre-operative expenses, is acceptable - funds infused in the assessee by the joint venture partner were inextricably linked with the setting up of the plant, so the interest earned could not be treated as income from other sources

623 2009 TMI - 32656 - DELHI HIGH COURT

ESTER INDUSTRIES LIMITED Versus COMMISSIONER OF INCOME TAX, DELHI-IV

Dated: 06-03-2009

Sections - -

Tribunal has once again failed to apply its mind to the issues raised and the submissions made before it – before tribunal submission of assessee was that AO had made certain additions and disallowances mechanically while computing the income without issuing a SCN or providing an opportunity of hearing - observations made in the Tax Audit Report could not have formed the basis of additions/disallowances – impugned judgment of the Tribunal is set aside - Tribunal will re-hear the parties

624 2009 TMI - 32655 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX-IV, NEW DELHI Versus INSILCO LIMITED

Dated: 27-02-2009

Sections - 032, 037, 028,

Allowance of provision for “Long Service Award” payable by assessee to employees - if a liability arises within the accounting period, the deduction should be allowed though it may be quantified & discharged at a future date - fact that the provision was estimated based on actuarial calculations, deduction claimed is allowed – in respect of capitalization of cost of emergency/insurance spares, since spares are emergency spares required for plant & machinery, depreciation can be claimed thereon

625 2009 TMI - 32654 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI-II Versus ANAND PRAKASH

Dated: 27-02-2009

Sections - 234B, 234A, 234C,

Levy of interest u/s 234B - Revenue's submission that levy u/s 234B is compensatory and not penal in nature, is acceptable – although, no money belonging to the Government was withheld by the assessee in the years in question - interest payable on account of enhanced compensation was not even known to the assessee till much latter - assessee can't be expected to have paid advance tax on something which had not been received - Revenue has not suffered any loss, so interest u/s 234B not leviable

626 2009 TMI - 32653 - BOMBAY HIGH COURT

Commissioner of Income Tax Versus Bajaj Auto Ltd.

Dated: 02-03-2009

Sections - R006D, 080G, 037, 032,

Disallowance u/r 6D should be recomputed by aggregating the expenditure of all tours - Addition on account of duty drawback & cash assistance on accrual basis was not justified - Canteen located in factory is part and parcel of factory building, so entitled to higher rate of depreciation - Assessee entitled to deduction u/s 80G of Rs.2,50,000 instead of 5,00,000 - expenditure incurred on advertisement for appointment/termination of dealers is not recruitment of personnel hence allowable u/s 37

627 2009 TMI - 32652 - BOMBAY HIGH COURT

Grasim Industries Ltd. Versus Commissioner of Income-tax Central-I, Bombay

Dated: 05-03-2009

Sections - 154,

Rectification u/s 154 (2) (b) – ITO passed order adding profits u/r 3(6) but suo moto increasing liabilities u/s 3(4) - ITO was required to calculate the benefits grantable to assessee u/s 15-C of IT Act 1922 and this calculation was required to be done as per rule-3 of Indian Income Tax (Computation of Capital of Industrial Undertakings) Rules 1949 - No distinction was made by ITO to categorise the debts into “debts due” and “debts owed” - held that mistake rectified was not mistake apparent

628 2009 TMI - 32651 - BOMBAY HIGH COURT

The East India Hotels Ltd. & Jaswant Singh Bhatia Versus CBDT and UOI

Dated: 06-03-2009

Sections - 194C, 194I,

Validity of the CBDT circular No.681 dated 8/3/94 - said circular provides that all service contracts are covered u/s 194C – petitioner, a hotel - whether the services rendered by the petitioner to its customers is covered u/s 194C – as facilities/amenities made available by petitioner do not constitute 'work' within the meaning of section 194C, consequently, the circular No.681 to the extent it holds that the services made available by a hotel are covered u/s 194C must be held to be bad in law

629 2009 TMI - 32594 - PUNJAB AND HARYANA HIGH COURT

M/s New Diwan Oil Mills, Chandigarh Versus The Commissioner of Income Tax, Patiala

Dated: 24-02-2009

Sections - -

Assessee claimed a set off on account of loss by fire – whether the aforesaid set off of loss, could be claimed by the assessee in A.Y. 1983-84 – revenue contend that the instant loss had taken place during the A.Y 1978-79 - applicant-assessee, did not

accept the same as his own loss till the dismissal of the civil suit on 31.5.1982 - held that loss must be accepted to have incurred during the F.Y 1982-83 (A.Y. 1983-84)- revenue should have allowed the deduction of the loss in the A.Y. 1983-84

630 2009 TMI - 32593 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Chandigarh-II. Versus M/s. Oscar Laboratories Pvt. Ltd.

Dated: 26-02-2009

Sections - 268A,

Veracity of appeal by revenue - monetary limits for regulating the filing of appeals - insertion of Section 268-A - even though, the instant appeal was filed when S. 268-A had not been inserted, yet since S. 268-A was inserted therein with retrospective effect from 1.4.999, by a deeming fiction of law, the same must be deemed to have been filed when S. 268-A was already a part of the 1961 Act - instant appeal deserves to be dismissed on the basis of the instruction dated 27.3.2000, r.w.s. 268A

631 2009 TMI - 32554 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus MOVING PICTURE COMPANY (INDIA) LTD.

Dated: 05-03-2009

Sections - 194J, 201, 009, 194H,

Allegation that assessee had failed to deduct tax u/s 194J in respect of payments made to its subsidiary - order passed by AO u/s 201(1) and 201(1A) has been set aside by ITAT - As found by the Tribunal, the assessee had only acquired rights in the TV serial & there is nothing to suggest that the payments made by the assessee to subsidiary was a fee for technical services within the meaning of Section 194J - Tribunal rightly set aside the orders concluding that Section 194J was not applicable

632 2009 TMI - 32553 - DELHI HIGH COURT

RAJIV KUMAR GUPTA Versus COMMISSIONER OF INCOME TAX, DELHI

Dated: 03-03-2009

Sections - -

Cash found during search – source of the cash - explanation of the assessee - there are concurrent findings against the Appellant that the explanation tendered by him that the cash belonged to Cain Technology India Pvt. Ltd. was an afterthought - there is no perversity in the findings of the fact arrived at in the impugned Judgment - No substantial question of law arises for our consideration

633 2009 TMI - 32552 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX DELHI Versus SHAKUNTALA DEVI

Dated: 02-03-2009

Sections - 158BC,

Unexplained deposits – sale of properties - ITAT has noted that declaration for purpose of capital account, in Form 2-B, has been made by assessee - since the transaction was through banking channels, ITAT deleted the additions - ITAT opined that the investments shown by the Assessee stand fully corroborated by documentary evidence - onus whether the Assessee had received more consideration than what was stated in the documents of transfer rested on the Revenue –additions were rightly deleted

634 2009 TMI - 32551 - SUPREME COURT

Commr. of Income Tax-IV, Tamil Nadu Versus B. Suresh

Dated: 03-03-2009

Sections - R009A, R009B, 080HHC,

Whether the foreign exchange earned by transferring the right of exploitation of the films outside India by way of lease is admissible for deduction u/s 80HHC – Department submit that movies/films are not goods/merchandise - held that such "rights" would fall in the category of articles of trade and commerce, hence, merchandise – further, there is merit in the contention of assessee that u/r 9A & 9B, the word "lease" is included in the word "sale" hence subject transaction will fall u/s 80HHC

635 2009 TMI - 32547 - ALLAHABAD HIGH COURT

Dr. Deepak Agrawal Versus Assistant Commissioner Of Income Tax Alld. And Another

Dated: 27-02-2009

Sections - 148, 147, 143, 150,

Notice u/s 148 - petitioner contend that he had disclosed all material facts necessary for assessment and, therefore, there was no reason to believe that the income relating to gift had escaped assessment - Tribunal gave a categorical finding that the gift cannot be treated to be genuine – tribunal was justified in holding that impugned gift was a matter for consideration in the Regular Assessment and not in Block Assessment and, therefore, notice issued u/s 148 is valid – petition is dismissed

636 2009 TMI - 32495 - AUTHORITY FOR ADVANCE RULINGS

MOL Corporation, In re

Dated: 27-02-2009

Sections - 245Q, 245R,

Discretion of AAR to admit application for ruling - It is not in dispute that the same questions raised in this application are pending before the Appellate Tribunal in the appeals of Gracemac. Gracemac, after the merger has lost its legal identity and the applicant has stepped into the shoes of Gracemac. The issue is the same which is pending before ITAT. Application rejected.

637 2009 TMI - 32494 - AUTHORITY FOR ADVANCE RULINGS

Microsoft Operations Pte. Ltd., In re

Dated: 27-02-2009

Sections - 245Q, 245R,

The proceedings against the applicant were initiated in 2003. By the date of entering fresh agreement in the year 2006, even the assessments were concluded. All these years the applicant kept quiet, perhaps watching the outcome of the assessment and appellate proceedings. Now, after the adverse order was passed by the C(A) the appeal was filed before ITAT and application was filed in 2008 before AAR. In view of this AAR refused to give ruling and rejected the application.

638 2009 TMI - 32476 - MADHYA PRADESH HIGH COURT

HARVINDER SINGH Versus DEPUTY COMMISSIONER OF INCOME-TAX (ASSESSMENT)

Dated: 09-01-2009

Sections - 254,

Representative of party withdraws from the case without informing the party – power of tribunal - if the representative of a party or a counsel for the party withdraws from the case without informing the assessee or the appellant or a party whom he represents then the court ordinarily should not proceed to decide the matter on the merits - Tribunal was unjustified in proceeding ex parte in the matter – tribunal should ordinarily recall the order

639 2009 TMI - 32471 - DELHI HIGH COURT

DEV KUMAR JAIN Versus INCOME TAX OFFICER AND ANOTHER

Dated: 19-01-2009

Sections - 045, 048, 055A,

Computation of capital gains – sale of assets – actual sale consideration – there is nothing on record to show that the assessee received consideration for the sale in excess of that which was shown in the agreement to sell – therefore, Tribunal was not correct in holding that the actual sale consideration recorded in the agreement to sell of the asset and received by the assessee could be substituted by the value as adopted by the District Valuation Officer

640 2009 TMI - 32451 - DELHI HIGH COURT

MAYAWATI Versus CIT, DELHI (CENTRAL-I) and ORS.

Dated: 13-02-2009

Sections - 148, 142, 147, 149, 139,

Petitioner prays are for quashing the notice issued u/s 148 & 142(1) – service of notice – receipt of notice - notice was duly addressed and stamped - notice was not barred by limitation and retained its legal efficacy - Petitioner has failed to disclose any grounds justifying the exercise of extraordinary jurisdiction vested in this Court by virtue of Article 226 of the Constitution of India – therefore, petition is dismissed

641 2009 TMI - 32450 - DELHI HIGH COURT

VIJAY JAIN Versus C.I.T

Dated: 16-02-2009

Sections - 069B,

Addition made on account of undisclosed rental income - whether the Tribunal was justified in law in sustaining addition to the extent of Rs.36,918/- out of the total addition by holding that 1/11th of the total rental income is assessable in the hands of the appellant despite the fact the appellant was not owning any property – held that ITAT correctly applied the law

642 2009 TMI - 32444 - BOMBAY HIGH COURT

CIT Versus Income-tax Appellate Tribunal & Madhusudan Leasing & Finance Ltd.

Dated: 19-01-2009

Sections - 036,

Rectification of mistake - allowance of bad debt of lease rentals - revenue submitted that once an order is passed, the Tribunal becomes functus officio and the Tribunal has no jurisdiction to modify its own order in the garb of rectification – in view of circumstances of the case, held that the Tribunal was justified in rectifying the apparent error on the face of the record - rectification carried out by tribunal cannot be said to be in the nature of review - revenue's petition is dismissed

643 2009 TMI - 32443 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI III Versus SAMTEL INDIA LTD.

Dated: 19-02-2009

Sections - 154,

Whether the Tribunal misdirected itself in law in cancelling the rectification order of the AO passed u/s 154 on the ground that it was based on the subsequent judgment of the SC in the case of Shirke Construction Equipments Limited – since order of AO does not reflect that it has been passed on the basis of Shirke Construction Equipment Ltd. decision of tribunal appears unjustified - impugned judgment is set aside and matter is restored to the order of AO

644 2009 TMI - 32442 - BOMBAY HIGH COURT

Mr. Pallonji M. Mistry (Decd.) Versus Commissioner of Income Tax, Bombay

Dated: 11-02-2009

Sections - 022, 056,

Whether ITAT erred in holding that the property would stand transferred only w.e.f. the date of registration of Deeds of Conveyance of flats - SC in the case of Poddar Cement held that there is no requirement that there has to be a registered Deed of conveyance for a person to be treated as an owner for the purpose of Section 22 of IT Act - since relevant sale documents are not available, matter is remanded to tribunal to answer the issue in context of the law laid down in Poddar Cement case

645 2009 TMI - 32441 - BOMBAY HIGH COURT

CIT Versus M/s. Geoffrey Manners & Co. Ltd. (Now known as Wyeth Limited)

Dated: 09-02-2009

Sections - 037,

Expenses incurred on film production by way of advertisement for marketing of products manufactured by them - if the expenditure is in respect of business which is yet to commence then the same cannot be treated as revenue expenditure but if the expenditure is in respect of an ongoing business and there is no enduring benefit it can be treated as revenue expenditure - Since expenditure was in respect of promoting ongoing products of the assessee, they are held as by way of revenue expenditure

646 2009 TMI - 32440 - SUPREME COURT

Commnr. of Income Tax, Jalandhar-I Versus Shri Rajiv Bhatara

Dated: 19-02-2009

Sections - 113, 004, 158BB, 158BC,

Leviability of surcharge – relevant time/date - search took place on 6.4.2000 which was prior to the date of amendment made in Section 113 - Whether ITAT was right in law in confirming the CIT (A)'s order directing not to levy surcharge on the tax worked out on the undisclosed income as the case pertains to a search conducted prior to 1.6.2002 – held that search surcharge was leviable in present case – HC was not justified in dismissing revenue's appeal against tribunal's decision

647 2009 TMI - 32438 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX, DELHI-IV Versus FENA PVT. LTD.

Dated: 16-02-2009

Sections - -

Additions made by AO on account of purchase of acid slurry by the assessee from one

Utkarsh Udyog Samiti by treating the transaction as a bogus purchase - Both the CIT(A) and ITAT accepted the explanation of the assessee that the transaction was a bonafide business transaction - despite being given an opportunity, revenue has not been able to bring anything to the contrary – there is no perversity in the conclusions arrived at by the authorities below – revenue's appeal dismissed

648 2009 TMI - 32437 - SUPREME COURT

Commr. of Income Tax, Dibrugarh versus Doom Dooma India Ltd. & Assam Co. Ltd.

Dated: 18-02-2009

Sections - 043, R008, 010(1),

Meaning of expression "depreciation actually allowed" in S. 43(6)(b) is that "limited to depreciation actually taken into account i.e. debited by the ITO against the incomings of the business in computing the taxable income" - for computing depreciation in cases falling u/r 8 of ITR, the income which is brought to tax as "business income" is only 40 % of the composite income & consequently proportionate depreciation should be taken into account because that is the depreciation "actually allowed"

649 2009 TMI - 32435 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus ESCORTS AUTOMOTIVES LTD.

Dated: 04-02-2009

Sections - 014A, 010

Tribunal has expressed an apprehension that disallowance u/s 14A which the AO is required to ascertain will be quantified keeping in mind only the dividend income arising from shares held as investment and not in respect of the dividend on shares which are part of stock-in-trade – held that apprehension is misconceived as dividend both on shares which form part of investment as well as those which are part of stock-in-trade is exempt u/s 10(33) - no question of law arise – appeals dismissed

650 2009 TMI - 32434 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus KALINDI INVESTMENT LTD.

Dated: 09-02-2009

Sections - 036, 057,

Interest claimed by the assessee as deduction u/s 36(1)(iii) - no fault can be found with the impugned judgment of Tribunal having confirmed finding of fact that assessee was genuinely in the business of trading in shares - Revenue had not produced any material to discharge its onus that the borrowed funds on which interest has been claimed as deduction u/s 36(1)(iii) was utilized for the purposes of investment in shares - No substantial question of law arises – revenue's appeal is dismissed

651 2009 TMI - 32430 - SUPREME COURT

MCorp Global Pvt. Ltd. versus Commissioner of Income-tax, Ghaziabad

Dated: 12-02-2009

Sections - 032, 254,

Depreciation under Section 32 (1)(ii) – nature of transaction - whether transaction was a financial transaction and not a lease– held that transaction which has not been proved by assessee cannot be entitled to depreciation – appeal filed by the assessee is partly allowed

652 2009 TMI - 32354 - BOMBAY HIGH COURT

M/s. Jayant Vegoils & Chemicals Pvt. Ltd. Versus The Commissioner of Income-tax Bombay

Dated: 05-02-2009

Sections - 271,

Penalty u/s 271 (1) (c) was imposed on 3 items - Disallowance of claim of liability on account of L/C opened with Andhra Bank - Disallowance of claim of liability on account of L/C opened with UBI - Disallowance of fine in lieu of confiscation - held that the liability in respect of first two item had infact being incurred, no penalty can be imposed - in respect of third item accepting the contention of the assessee that the lapse was not deliberate, no penalty ought to have been imposed

653 2009 TMI - 32274 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX (TDS) versus M/S IKEA TRADING HONG KONG LTD.

Dated: 16-01-2009

Sections - 271C, 275, 192, 133A, 201,

Failure to deduct the taxes - penalty proceeding which was initiated by the issuance of the SCN on 26.06.1999 was not in the course of any other proceeding but, was independent of any proceeding - Tribunal was correct in deleting the penalty imposed by the AO u/s 271C on the ground that the penalty order dated 16.03.2000 was passed beyond the time prescribed by section 275(1)(c), the same having been passed after the lapse of six months from the end of the month in which the SCN were issued

654 2009 TMI - 32273 - AUTHORITY FOR ADVANCE RULINGS

Compagnie Financiere Hamon, In re

Dated: 04-02-2009

Sections - 112, 048,

Non-resident company - long-term capital gains on sale of originally purchased shares of the Indian Company - Held that tax payable on these long-term capital gains will be 10% as per proviso to section 112(1) - Revenue's contention that proviso to S. 112(1) is not applicable to non-residents & applicant cannot avail of the lower rate of 10 %, is rejected - further in computing capital gains, deduction is admissible us/ 48 on account of legal expenses incurred in relation to transfer of shares

655 2009 TMI - 32264 - DELHI HIGH COURT

DIRECTOR OF INCOME TAX, NEW DELHI Versus SHERATON INTERNATIONAL INC., NEW DELHI

Dated: 30-01-2009

Sections - 009, 004, 005, 234B, 209,

Assessee under agreement provided advertisement services to its client-hotels - use of trademark/trade name were incidental - payments received were neither in the nature of royalty nor in the nature of fee for technical services - payments received were held by Tribunal as "business income" - no evidence brought by the Revenue to prove that the agreement was a fake - these are findings of fact - findings of the Tribunal are not perverse – no question of law arise – revenue's appeal fails

656 2009 TMI - 32263 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SAMTEL COLOR LIMITED

Dated: 30-01-2009

Sections - 037,

First issue is related to allowance of depreciation on the enhanced cost of the asset on account of fluctuation in the rate of exchange on the last date of the accounting year - second issue pertains to allowance of deduction in respect of money paid towards admission fee of clubs - admission fee paid towards corporate membership of the clubs is an expenditure incurred wholly and exclusively for the purposes of business and not towards capital account so it is an allowable expenditure u/s 37

657 2009 TMI - 32262 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus GANGOUR INVESTMENT LTD.

Dated: 30-01-2009

Sections - 068,

Share application money – assessee has explained the credits and the identity, genuineness and credit worthiness of the subscribers – assessee has been able to discharge its onus in respect of the veracity of the transactions - revenue make addition under Section 68 of the Act only if the assessee is unable to explain the credits appearing in its books of accounts - no question of law arise, much less, a substantial question of law has arisen for our consideration - Revenue's appeal fails

658 2009 TMI - 32258 - BOMBAY HIGH COURT

Dorr-Oliver (India) Ltd. Versus Commissioner of Income-tax Bombay & vice a versa

Dated: 20-01-2009

Sections - 032, 037, 040, 040A,

Transfer of business by assessee - Government of India informed the assessee to get the valuation of the asset done and transfer them as per the book value - transfer took place at the book value which was lesser than the market price of the said asset – whether such loss is a terminal loss or a capital loss - Tribunal was justified in holding that the loss has to be allowed as a terminal loss u/s 32(1) (iii) because the consideration was relatable to the value of the asset transferred

659 2009 TMI - 32257 - BOMBAY HIGH COURT

Commissioner of Income Tax, Thane-II Versus M/s. S.C. Thakur & Bros.

Dated: 27-01-2009

Sections - 032,

Revenue allege that Tribunal erred in allowing higher depreciation @ 50%/40% on the value of trucks/dumpers owned by the assessee – revenue contend that assessee was only a civil contractor & was not engaged in the business of, wisely out asset i.e. trucks/dumpers transportation - In view of Circular No. 609, higher rate of depreciation is also admissible when the motor lorry is used by the assessee in his own business of transportation of goods on hire – no infirmity in tribunal's order

660 2009 TMI - 32254 - AUTHORITY FOR ADVANCE RULINGS

Cholamandalam MS General Insurance Co. Ltd., In re

Dated: 29-01-2009

Sections - 195, 009,

Secondment Agreement between applicant (Indian Company) & HMFICL (Korean Company) - an employee of HMFICL, were kept at the disposal of the applicant for a period of two years in order to assist the applicant in matters relating to Korean

insurance business - Whether the amount paid or payable by the applicant to HMFICL under the agreement is in the nature of income accruing to M/s. HMFICL in respect of which, tax is liable to be deducted at source by the applicant u/s 195 – Held, no

661 2009 TMI - 32231 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX versus GUJARAT GUARDIAN LIMITED

Dated: 23-01-2009

Sections - 037, 036, 043B, 002(28A), 040A,

Tribunal allowing deduction of “export commission” to the assessee u/s 37(1), allowing depreciation to the assessee on “training fee”, allowing deduction of lump sum “prepayment premium” paid by the assessee to IDBI - once it is held that services had been rendered by the agent the quantum of commission that has to be paid is purely the discretion of the assessee over which the Revenue cannot sit on judgment – in all aspects, Tribunal has returned pure findings of fact which are not perverse

662 2009 TMI - 32230 - AUTHORITY FOR ADVANCE RULINGS

Shri Ramit Kumar Sharma, In re

Dated: 27-01-2009

Sections - 080IC, 080IA, 080IB,

Eligibility for deduction u/s 80 IC(2) - raw castings have to pass a detailed description of process to acquire a different name ‘machined castings’ – new product ‘machined casting’ has been utilized as an essential part of a tractor - raw casting not retained substantial identity - applicant’s enterprise can be said to have undertaken business activities which amount to manufacture/production of an article different from the raw casting and therefore merits requisite deduction u/s 80-IC(2)

663 2009 TMI - 32229 - SUPREME COURT

COMMISSIONER OF INCOME TAX & ANR. VERSUS 1. M/S. LARSEN & TOUBRO LTD. 2. ASEA BROWN BOVERI LTD.

Dated: 21-01-2009

Sections - 192, 010(5),

Whether the assessee was under statutory obligation under Income Tax Act or the Rules to collect evidence to show that its employee had actually utilized the amount paid towards Leave Travel Concession(s)/Conveyance Allowance - It may be noted that the beneficiary of exemption u/s 10(5) is an individual employee - there is no circular of CBDT requiring the employer u/s 192 to collect & examine the supporting evidence to the Declaration to be submitted by an employee- Revenue’s appeal dismissed

664 2009 TMI - 32228 - SUPREME COURT

COMMNR. OF INCOME TAX & ANR.VERSUS I.T.I. LTD.

Dated: 21-01-2009

Sections - 192, 010(5),

Whether the assessee was under statutory obligation under Income Tax Act or the Rules to collect evidence to show that its employee had actually utilized the amount paid towards Leave Travel Concession(s)/Conveyance Allowance - It may be noted that the beneficiary of exemption u/s 10(5) is an individual employee - there is no circular of CBDT requiring the employer u/s 192 to collect & examine the supporting evidence to the Declaration to be submitted by an employee- Revenue’s appeal dismissed

665 2009 TMI - 32226 - SUPREME COURT

E.K. Lingamurthy & Anr. Versus Settlement Commissioner (IT&WT) & Anr'

Dated: 22-01-2009

Sections - 158BB, 032,

Scope of S. 158BB(4) - Computation of undisclosed income of block period - Settlement Commission had erred in disallowing assessee's application for set off of inter se losses and depreciation accruing in any of the previous year in the block period against the income returned/assessed in any other previous year in the block period - impugned judgment of HC & decision of the Settlement Commission are set aside - matter remitted to Commission for fresh computation of undisclosed income u/s 158BB

666 2009 TMI - 32225 - HIGH COURT DELHI

CIT versus TRIVENI ENGINEERING and INDUSTRIES LTD.

Dated: 23-01-2009

Sections - 037,

Expenses on modernization of units - administrative expenses – tribunal hold that though the expenses had been capitalized in the books of accounts, this would not be conclusive of the nature as to whether the expenditure was of a capital nature or revenue nature – tribunal's decision that as the new unit was part of the existing business and there was unity of control and interlacing of the units, the expenses incurred for the setting up of a new unit, would be of a revenue nature, is correct

667 2009 TMI - 32209 - BOMBAY HIGH COURT

Snowcem India Ltd. Versus Deputy Commissioner of Income-Tax

Dated: 05-01-2009

Sections - 115JA, 234B, 234C, 115J,

Whether Tribunal was right in holding that interest under Section 234B and 234C was leviable in case of computation of income under the provisions of Section 115JA - assessee contend that in a case of computation of income u/s 115JA, Section 234B and 234C are not leviable – book profit - question is answered in the negative against the Revenue and in favour of the assessee

668 2009 TMI - 32208 - BOMBAY HIGH COURT

M/s. KEC International Ltd. Versus Commissioner of Income Tax

Dated: 13-01-2009

Sections - 035B,

Packing credit - loan or advance for the purpose of purchase, processing and packing of goods - weighted deduction u/s 35B - Section 35B(1)(b)(viii) operates only when there is a performance of services outside India - Mere obtaining of a packing credit loan or payment of interest thereon in India cannot be said to entail the performance of any service outside India - weighted deduction under Section 35B(1)(b)(viii) on interest paid on export packing credit loans will not be deductible

669 2009 TMI - 32150 - HIGH COURT BOMBAY

The Commissioner of Income Tax Versus Reliance Utilities & Power Ltd.

Dated: 09-01-2009

Sections - 036,

Interest on borrowed funds - disallowance of interest - Revenue contend that the

shareholders funds were utilised for the purpose of fixed assets (investments) - C.I.T. (A) & ITAT have given a clear finding that the assessee had interest free funds of its own - Apart from that in terms of the balance sheet there was a further availability of Rs.398.19 crores including Rs.180 crores of share capital - finding of fact recorded by C.I.T. (A) and I.T.A.T. cannot be faulted – additions not justified

670 2009 TMI - 32126 - HIGH COURT DELHI

C.I.T. versus D.C.M. LTD.

Dated: 13-01-2009

Sections - 037, 014A, 010(25),

Whether closure of the DCM mill unit would amount to closure of business as contended by the Revenue – tribunal finding that as the assessee continued business in the three remaining units there was no closure of business, even after the closure of the DCM Mill Unit, is correct – therefore tribunal was right in allowing deduction of retrenchment compensation incurred by the assessee, interest on money borrowed in respect of that DCM unit, legal expenses incurred on closure of that DCM Unit etc.

671 2009 TMI - 32125 - HIGH COURT DELHI

M/S HINDUSTAN INDUSTRIAL RESOURCES LTD. versus THE ASSISTANT COMMISSIONER OF INCOME TAX

Dated: 09-01-2009

Sections - 002(14),

Agricultural land - on the date of the purchase and as also on the date of acquisition, the land was agricultural land – fact that the assessee intended to use the land for industrial purposes did not in any way alter the nature of the land – mere fact that the assessee did not carry out any agricultural operation did not alter the nature and character of the land – Tribunal was not justified in holding that the land acquired from the ownership of the appellant was not agricultural land