Landmark Judgements - Pronounced in 2013

01. Section 2(15): {In re Bureau of Indian Standards (2013)(Del)}

The activities of Bureau of Indian Standards (BIS) in prescribing standards of goods/articles and enforcing those standards through accreditation and continuing supervision through inspection, etc., cannot be considered as trade, business or commercial activity merely because testing procedures involves charging of fees. Exemption certificate u/s 10(23C) valid as per law.

02. Section 2(15): {In re Sabarmati Ashram Gaushala Trust (2013)(ITAT)}

Profit earned by sale of milk, fodder and other items by gaushala established by Mahatma Gandhi to breed and keep cows, to improve quality of cows and oxen, to produce and sell cow's milk and its various preparations was entitled to exemption u/s 10(23C).

03. Section 2(22)(e): {In re Vikas Oberoi (2013)(ITAT)}

The assessee was a beneficial shareholder of three companies named Kingston Properties P Ltd (KP), New Dimensions Consultants P Ltd (NDC) and R. S. Estate Developers P Ltd (RSED). NDC & RSED advanced various sums of money to KP towards "share application money". However, some of the advances were returned by KP while some were adjusted towards allotment of shares. Although share application money is one kind of advance given with the intention to obtain the allotment of shares or equity or preference shares etc., such advances are different from the normal loan or advances specified both u/s 269SS or 2(22)(e) of the Act. Therefore, the share application money may be an advance but they are not advances as per section 2(22)(e) of the Act. Such advances, when returned without any allotment or part allotment of shares to the subscriber, will not take a nature of the loan merely because the same is repaid or returned or refunded in the same year or later years after keeping the money for some time with the company. So long as the original intention of payment of share application money is towards the allotment of shares of any kind, the same cannot be deemed as 'loan or advance'.

04. Section 2(22)(e): {In re IFB Agro Industries Ltd (2013)(ITAT)}*

The assessee received an inter-corporate deposit of ₹ 11.20 crores from IFB Automotive P Ltd, a company in which it held 18% of the shares. As per section 2(22)(e) refers to **"loans and advances"** and **does not refer** to a 'deposit'. The fact that the term 'deposit'does not mean a 'loan' and that the two terms are two different & distinct terms is evident from the explanation to section 269T and section 269SS of the Act, where both the terms are used. Further, the second proviso to Section 269SS recognises the term 'loan' taken or 'deposit' accepted. Once it is accepted that the terms 'loan' and 'deposit' are two distinct terms which have distinct meaning then if only the term 'loan' is used in a particular section the 'deposit' received by an assessee cannot be treated as a 'loan' for that section. The Companies Act, 1956 also makes a distinction between a "loan" and a "deposit" in section 58A, 269 & 370. The distinction between a "loan" and a "deposit" is that in the case of a "loan", the needy person approaches the lender for obtaining the loan. The loan is lent at the terms stated by the lender. In the case of a "deposit", the depositor goes to the depositee for investing his money primarily with the intention of earning interest. It has to be interpreted strictly. Hence, an inter-corporate deposit is similar to a loan is not correct as per law.

05. Section 2(24): {In re Essar Power Ltd (2013)(ITAT)}

The assessee company was engaged in the generation and distribution of power. It supplied power to GEB & ESC, under an agreement that tax payable by assessee company was to be reimbursed by both companies. The Tribunal held that such guise of payment of tax was actually the part of tariff charges receivable to the assessee and hence without any deduction, the same is liable for taxation.

06. Section 2(47): {In re Smt. Sandhyaben A. Purohit (2013)(ITAT)}

The Capital Gains was assessable in the year of execution of sale deed and not in the year of registration of same deed with appropriate authority.

"*" **Indicates the judgement is applicable for November & December, 2014 examinations.**

07. Section 4: {In re Tripti Menthol Industries (2013)(Guj)}

The excise duty was refunded for creation of industrial atmosphere and environment, which would provide additional source of employment, such incentive designed to achieve public purpose could not be construed as production or operational incentive, but was a capital receipt.

08. Section 4: {In re Birla VXL Ltd (2013)(Guj)}

Sales tax waiver or deferment was not meant to give any benefit on day-to-day functioning of business or to make it more profitable; but was principally aimed to cover capital outlay of assessee for undertaking modernization of existing industry, it was capital in nature.

09. Section 4: {In re Khanna and Annadhanam (2013)(Del)}

The assessee, a firm of Chartered Accountants, was one of the "associate members" of Deloitte Haskins. Deloitte desired to merge all the associate members into one firm. As this was not acceptable to the assessee, it withdrew from the membership and received consideration of ₹ 1.15 crores from Deloitte. The said amount was credited to the partner's capital accounts and claimed to be a non-taxable capital receipt by the assessee. The High Court held that there is a distinction between the compensation received for injury to trading operations arising from breach of contract **and** compensation received for loss of source of income. The compensation received for loss of an asset of enduring value would be regarded as capital. If the receipt represents compensation for the loss of a source of income, it would be capital and it matters little that the assessee continues to be in receipt of income from its other similar operations (referral work). When the source was unexpectedly terminated, it amounted to the impairment of the profit making structure or apparatus of the assessee. It is for that loss of the source of income that the compensation was calculated and paid to the assessee. The compensation was thus a substitute for the source hence treating as non-taxable capital receipts are in order.

10. Section 4: {In re Ford India (P) Ltd (2013)(ITAT)}

Subsidy received under a scheme clearly mentioning that it was given as special incentive for boosting mega investments in the state was a capital receipt.

11. Section 5: {In re Dresdner Bank AG (2013)(ITAT)}

The interest received by a non-resident banking company from its head office and overseas branches was not taxable on the ground that these were receipts from self.

12. Section 10A: {In re Electronic Controls & Discharge Systems (P) Ltd (2013)(ITAT)}

An excess sale proceeds received by assessee due to exchange rate fluctuation in foreign currency is income from export activity and is eligible for exemption under section 10A.

13. Section 11: {In re Institute of Chartered Accountants of India (2013)(Del)}*

The assessee institute was constituted under the ICAI Act, to regulate the profession of Chartered Accountants in India. Its activities included imparting education in the field of accountancy and conducting coaching classes. Assessee also charged fees for holding interviews with respect to campus placements. The assessee applied for registration u/s10(23C), which was rejected by the DGIT (Exemption) on ground that assessee was charging fees for holding coaching classes and campus placements, which amounted to carrying on business and the AO denied assessee's claim u/s 11 of the Act. The High Court it was inter-alia held that **(a)** Indisputably, substantial activity of the assessee revolves around providing education to students for the purposes of feeding the profession of Chartered Accountancy in India, **(b)** The conduct of the courses by the assessee cannot be equated or categorized as coaching classes conducted by private institutions for students to appear examinations being conducted by universities and other Institutions, **(c)** The reasoning of the DGIT (Exemption) that holding interviews for a fee for the purposes of campus placement of its students amount to carrying on a business, is not acceptable, **(d)** It is not essential that an activity be carried on for profit motive in order to be considered as business, but **existence of profit motive** would be a vital indicator in determining whether an organisation is carrying on business or not. The functions performed by the assessee institute are in the nature of public welfare and not for any private gain or profit and in this view, it cannot be said that the assessee is involved in carrying on any business, trade or commerce. Accordingly, the High Court directed the DGIT(Exemption) to recognize the assessee as eligible u/s 10(23C) as an institution established for charitable purposes having regard to its object.

14. Section 11: {In re Sunder Deep Educational Society (2013)(ITAT)}*

The assessee, a charitable institution, received donations of ₹ 3.55 crore. It maintained a record indicating the name and address of the donors. The AO conducted a test check by sending letters to the donors. To the extent of donations aggregating ₹ 1.96 crore, the letters came back undelivered or were not replied to. As per section 115BBC which assesses "anonymous donations" does not apply because the assessee has maintained a record of the identity indicating the name and address of the person making the contribution. Section 68 seeks to assess cash credits as income. However, when the non corpus voluntary donations are already disclosed as income and applied for charitable purposes, s. 68 has no application. As per section 12(1) voluntary donations received without a direction that they shall form part of the corpus are deemed to be income derived from property held for charitable purposes and have to be applied towards the objects of the trust to the extent of 85%. If that is done, the donations are not assessable as income.

15. Section 12A: {In re Meenakshi Amma Endowment Trust (2013)(Kar)}

The assessee filed its application for registration u/s 12A within nine months after it was formed. Since the trust did not carry on any activity, the registration was not granted. The tribunal held that the income-tax authority must look into the objects and activities of the trust for grant of registration u/s 12A to grant recognition if the trust had fulfilled the requisite conditions. It held that one cannot expect the trust to do activity of charity immediately and the objects have to be taken into consideration and not the activity which has not yet commenced. If subsequently, the trust has not conducted any charitable activities, it is always open to the authorities to cancel the registration. The court accordingly held that rejection of application based on the activity, as not tenable in law.

16. Section 12AA: {In re Tamil Nadu Cricket Association (2013)(ITAT)}

Arranging international matches, IPL matches, etc. in such a way that maximum advertisement revenue was derived from any type of match, its activities did not come within conceptual framework of charity vs. activity of general public utility envisaged in section 2(15).Cancellation of registration was justified.

17. Section 32(1): {In re Sree Jayajothi & Co Ltd (2013)(Mad)}

The assessee owned two units located in different places with separate staff, management, funds and accounts. The assessee decided to hive-off one unit by forming a subsidiary company. The assessee when sold an undertaking to its subsidiary company formed for the purpose, it is a case of succession and not an outright sale. The transferor company and the transferee company can claim depreciation in terms of the fifth proviso to section 32(1) and the proviso is meant to limit the total allowance of depreciation claim in the ratio of the number of days, the assets were used by the predecessor and the successor company.

18. Section 32: {In re State Bank of India (2013)(ITAT)}*

The assessee, a Bank, entered into a sale and lease back transaction with Konkan Railway Corporation pursuant to which it bought assets like railway tracks, rails, sleepers etc for a consideration of ₹ 25 crore and leased it back for a period of 84 months for a monthly lease rental.

The real object of the entering into the sale and lease back transaction so far as Konkan Railway is concerned is to raise funds. The transaction of sale of the asset to the assessee bank and its lease back to Konkan Railway cannot be separated. It was not possible for Konkan Railway to sell out the railway system. Thus, the sale transaction was merely on paper and to facilitate the financial arrangement by the assessee to Konkan Railway without involving any real intention of transfer of the assets. The terms of the lease agreement are only to secure the interest of the bank till the recovery of the full amount along with the interest. The assessee cannot exercise the real and actual ownership over the asset keeping in view the facts and circumstances and nature of the asset in question. Further, under the Banking Regulation Act, 1949 banking companies can undertake the activities of equipment leasing but these are required to be treated on par with loans and advances. Therefore, the activity of equipment leasing permitted by the RBI is only in the nature of finance lease.

19. Section 14A: {In re D. H. Securities Pvt. Ltd (2013)(ITAT)}*

The assessee claimed that as it was engaged in the business of trading in shares, its main object is to earn profit on purchase and sale of shares and not to earn dividend income from such shares. It claimed that the accrual of tax-free dividend on such shares was merely incidental to the holding of shares as stock-in-trade and that no disallowance could be made u/s 14A and Rule 8D.

Held by the Tribunal that, It is accepted that the assessee is a dealer in shares and that the shares were held by it as stock-in-trade. Section 14A/ Rule 8D applies to shares held as stock-in-trade. Accordingly, disallowance u/s 14A can be made in conformity with law even where dividend income has been earned on shares held as stock-in-trade.

20. Section 32(1)(ii): {In re Tirumala Music Centre (P) Ltd (2013)(ITAT)}*

Section 32(1)(ii) allows depreciation on "business or commercial rights". The expression "business or commercial rights" means rights obtained for effectively carrying on business or commerce. Commerce is a wider term which encompasses business in its fold. Therefore, any right which is obtained for carrying on business effectively and profitably has to fall within the meaning of the term "intangible asset" eligible for depreciation.

21. Section 36(1)(va): {In re Onward Technologies Ltd (2013)(ITAT)}

Any sum received both the employer's and employee's contributions to the EPF and ESI within the grace period or before the due date of filing the return u/s 139(1) of the Act are allowable.

22. Section 36(1)(vii): {In re U.P. Rajkiya Nirman Nigam Ltd (2013)(All)}

The assessee had originally filed its return of income u/s 139(1), but subsequently filed a revised return by indicating certain debts were claimed as bad debts. Section 36(1)(vii) mandates that the assessee must write-off the bad debt in the accounts **'for'** the previous year. The mandate is not that the write-off itself must happen **'in'** the previous year. The law requires the assessee to write-off the bad debt in its accounts for the relevant year. There is no condition that the writing off itself should be done before the end of the financial year. Hence, Bad debts could be written off even after closure of the accounting period.

23. Section 37(1): {In re Muthoot Finance Corporation (2013)(Ker)}

The assessee made interest payments to depositors and the rate of interest was more than the limit prescribed under the Kerala Money Lenders Act. The Revenue disallowed the amount of expenditure beyond the limit prescribed in the Money Lenders Act by applying the Explanation to section 37(1). The court held that the claim of deduction of expenditure will depend upon the express provisions of the Act. Even though incurring of expenditure may not lead to commission of an offence, it is in excess of the limit prescribed under a statue. Thus the expenditure beyond the prescribed rate of 14 percent per annum is in the teeth of the Explanation to section 37(1), attracting disallowance of the same.

24. Section 37(1): {In re FL Smith Minerals Pvt. Ltd (2013)(Mad)}

TThe provision for non-performance guarantee is allowable since it was in the nature of warranty, which was made on scientific basis after considering earlier experience.

25. Section 37(1): {In re Dalmia Cement (Bharat) Ltd (2013)(Del)}

Amount paid by assessee to sales/field organisers who rendered specific services under sales agreements after sale of cement was decontrolled **(and)** Expenditure incurred by assessee on Pooja performed at temple located inside factory premises was to be allowed as business expenditure u/s 37(1).

26 Section 37(3): {In re Deccan Cements Ltd (2013)(AP)}

The expenditure on maintenance of a transit house was not deductible.

27. Section 40(a)(ia): {In re Anil Kumar & Co (2013)(Kar)}

The claim of expenditure was disallowed due to non-deduction of tax at source by applying section 40(a)(ia) of the Act. During the course of appeal before the Commissioner (Appeals), there was an amendment to section 40(a)(ia) with retrospective effect from 01.04.2005 extending the time limit for remitting the deducted tax amounts up to the due date specified in section 139(1) of the Act. The court decided in the affirmative and held that the assessing authority was justified in making the disallowance but on the date the appeal was filed, the section was amended, giving retrospective benefit. The retrospective amendment could aid all pending proceedings.

28. Section 40(a)(ia): {In re Theekathir Press (2013)(ITAT)}*

The assessee paid an amount without deducting TDS. There is a judicial controversy on whether section 40(a)(ia) applies to amounts that have already been "paid" or it is confined to amounts that are "payable" as at the end of the year. The Special Bench In Merilyn Shipping and Transports have taken the view that section 40(a)(ia) applies only to amounts remaining "payable" at the end of the previous year. However, In Crescent Export Syndicates have taken a contrary view that even amounts already "paid" have to be disallowed u/s 40(a)(ia). In such circumstances, the rule of Judicial Precedence demands that the view favourable to the assessee must be adopted and it has to be held that disallowance u/s 40(a)(ia) applies only to amounts "payable" and not to amounts "paid".

29. Section 40(a)(i): {In re Metro & Metro (2013)(ITAT)}*

The assessee paid ₹ 52 lakhs towards **"leather testing charges"** to TUV Product Umwelt GmbH, a tax resident of Germany, **without** deduction of tax at source. The Tribunal held that

(a) The argument that as Article 12(1) of the India-German DTAA provides that the source State ("India") "may" (and not "shall") tax 'fees for technical services', the income is not chargeable to tax in India is not acceptable because the DTAA does not provide for taxation of any income. It allocates the right to tax income amongst the Contracting States. Once it enables the Contracting State to levy tax (by the use of the word "may"), the domestic law of the State come into play. Article 12 of the DTAA permits India to levy tax on fees for technical services and royalty though the rate of tax cannot exceed 10%; **(b)** the argument that as the services have been rendered outside India, the fees thereof cannot be assessed u/s 9(1)(vii) is not acceptable in view of the retrospective amendment to section 9(1) by the Finance Act 2010; **(c)** the argument that section 9(1)(vii) does not apply because the entire testing process is automated and does not involve human skills and interplay is not acceptable. While in principle it is correct that if there is no human intervention in a technical service, it cannot be treated as a technical service u/s 9(1)(vii), there is nothing on record to demonstrate the precise process of leather testing adopted by the German company; **(d)** the argument that as the assessee is a 100% EOU, the fees should be considered to have been used for a source of income outside India and therefore not taxable u/s 9(1)(vii)(b) is not acceptable because even though the business is a 100% EOU, it is still a business carried on in India. Even if the entire products are sold outside India, the fact of such export sales by itself does not make the business having been carried outside India. A customer is not the source of income. But if the manufacturing facilities are outside India and the customers are also outside India, the source will be outside India and the exception in section 9(1)(vii)(b) will apply; **(e)** the argument that section 40(a)(i) applies only to amounts "payable" as at the end of the year and not to amounts already "paid" is not acceptable because that was in the context of section 40(a)(ia) and not section 40(a)(i); **(f)** However, the argument that disallowance u/s 40(a)(i) cannot be made as the amount has been made taxable by the retrospective amendment to section 9 is acceptable.

An assessee cannot be penalized for not performing the impossible task of deducting TDS in accordance with the law which was brought in subsequently.

30. Section 41(1): {In re Rayala Corporation (P) Ltd (2013)(Mad)}

The word **"assessment"** in section 41(1) contemplates a passing of an order by the Assessing Officer determining the income of the assessee. The provisions of section 41(1) are deeming provisions and can operate only within the scope created by the deeming and not more. It prescribes a pre-condition that a deduction for expenditure must have been obtained by an assessee in an assessment. In absence of such assessment, the deeming provisions do not come into play. There was no 'assessment' because the returns filed by assessee were treated as 'non-existence". The remission received by the assessee has therefore held as not taxable u\s 41(1) because the deeming provisions failed to operate in absence of an assessment.

31. Section 43(5): {In re London Star Diamond Company (I) P. Ltd (2013)(ITAT)}*

The forward contracts constituted a "speculative transaction" u/s 43(5) and that the loss suffered thereon was a "speculation loss" which could not be set-off against the other income. The Tribunal held that, though a forward contract for purchase or sale of foreign currency falls in the definition of "speculation transaction" u/s 43(5) as it is settled otherwise than by the actual delivery or transfer of the commodity, it cannot be regarded as constituting a "speculation business" under Explanation 2 to section 28. A forward contract, entered into with banks for hedging losses due to foreign exchange fluctuations on the export proceeds, is in the nature of a "hedging contract" and is integral or incidental to the export activity of the assessee and cannot be considered as an independent business activity. Therefore, the losses or gains constitute business loss or gains and do not arise from speculation activities. The fact that there is a premature cancellation of the forward contract does not alter the nature of the transaction. There is also no requirement in the law that there should be a 1:1 correlation between the forward contracts and the export invoices. So long as the total value of the forward contracts does not exceed the value of the invoices, the loss has to be treated as a business loss.

32. Section 50B: {In re Zinger Investments (P) Ltd (2013)(ITAT)}*

The assessee transferred its manufacturing division to Novapan Industries Ltd under a scheme of amalgamation pursuant to which Novapan transferred investments worth ₹ 25.24 crore to the assessee and allotted shares worth ₹ 6.81 crore to the assessee's shareholders. There was no monetary consideration.

A plain reading of section 2(42C) makes it clear that to qualify as a slump sale, two conditions have to be satisfied viz., **(i)** there must be transfer of one or more undertakings as a result of sale and **(ii)** the sale should be for a lump sum consideration without values being assigned to the individual assets and liabilities. The presence of **money consideration** is an essential element to a transaction of sale. If the consideration is not money but some other valuable consideration it may be an exchange or barter but not a sale. In the present case, as no monetary consideration was received by the assessee for transfer of the assets and liabilities of the manufacturing division to Novapan Industries Ltd, the transaction is not a "slump sale" and does not attract section 50B.

33. Section 45: {In re Riyaz A. Sheikh (2013)(Bom)}*

The assessee, a partner in a firm, received ₹ 66 lakh over and above his capital contribution on his retirement from the firm. When a partner retires from the firm and receives his share of an amount calculated on the value of the net partnership assets including goodwill of the firm, there is no transfer of interest of the partner in the goodwill, and no part of the amount received is assessable as capital gain u/s 45 of the Act.

34. Section 45(4): {In re Dynamic Enterprises (2013)(Kar)}*

Section 45(4) deals with a distribution of capital assets on the dissolution of a firm or other AOP or BOI or otherwise and provides that if in the course of such distribution of capital asset there is a transfer of a capital asset by the firm, the firm shall be chargeable to tax on capital gains. In order to attract section 45(4), the conditions precedent are **(a)** there should be a distribution of capital assets of a firm; **(b)** such distribution should result in transfer of a capital asset by firm in favour of the partner; **(c)** on account of the transfer there should be a profit or gain derived by the firm and **(d)** such distribution should be on dissolution of the firm or otherwise. In other words, the capital asset of the firm should be transferred in favour of a partner, resulting in firm ceasing to have any interest in the capital asset transferred and the partners should acquire exclusive interest in the capital asset.

On facts, the partnership firm purchased the property and it was not in the name of any partner. No partner brought that capital asset as capital contribution into the firm. Also, there was no dissolution of the firm because the firm continued to exist even after the retirement of some partners. What was given to the retiring partners is cash representing the value of their share in the partnership. No capital asset was transferred on the date of retirement. In the absence of distribution of a capital asset and in the absence of transfer of capital asset in favour of the retiring partners, no profit or gain arose in the hands of the partnership firm and so the question of the firm being assessed u/s 45(4) would not arise.

35. Section 90: {In re Genesis Indian Investment Co. Ltd (2013)(ITAT)}

The assessee (Genesis) was resident in Mauritius. Its capital gains were therefore not taxable under the DTAA. British Petroleum {BP}, as part of its global takeover of Castrol group companies, approached SEBI to make a public offer to buy shares of Castrol India. The price fixed by SEBI was not acceptable to BP and it disputed the same before the Securities Appellate Tribunal, which upheld the SEBI order. BP preferred an appeal to the High Court. In the meantime, SEBI passed an order directing BP to pay interest @ 15 % p.a. for delaying the offer. The High Court also dismissed BP's appeal on the price dispute. BP appealed to the Securities Appellate Tribunal against the levy of interest by SEBI, which appeal was dismissed. In further appeal, the High Court also upheld the levy of interest by specifying **the interest received was compensation for delaying executing the offer process and not compensation for delay in tendering the offer price.** The interest paid was thus not in nature of 'interest' as understood in the sense of compensation for delay in payment of money. The same was held to be chargeable under head 'capital gains'.

36. Section 90(1): {In re Infrasoft Ltd (2013)(Del)}*

The assessee, a USA company, set up a branch office in India for the supply of software called “MX”. The software was customized for the requirements of the customer (not “shrink wrap”). The Indian branch imported the software package in the form of floppy disks or CDs and delivered it to the customer. It also installed the software and trained the customers. In order to qualify as a royalty payment under Article 12(3) of the India-USA DTAA, it is necessary to establish that there is a transfer of all or any rights (including the granting of any licence) in respect of a copyright of a literary, artistic or scientific work. **There is a clear distinction between royalty paid on transfer of copyright and consideration for transfer of copyrighted articles.** Right to use a copyrighted article or product with the owner retaining his copyright, is not the same thing as transferring or assigning rights in relation to the copyright. The enjoyment of some or all the rights which the copyright owner has, is necessary to invoke the royalty definition.

37. Section 132: {In re Dr. A. K. Bansal (2013)(All)}

The satisfaction to be reached by the authority issuing a warrant of authorisation is an administrative function. Assessing Officer or Tribunal cannot consider validity of search by calling for the warrant of authorization and examining the records authorizing search for the purpose of an enquiry whether the Search was valid.

38. Section 132: {In re MDLR Resorts Pvt. Ltd (2013)(Del)}*

Copy of search warrant should be given to the searched person. Defects in the panchnama do not invalidate the search or the section 153A assessment proceedings. As regards the argument that the time limit u/s 153B is calculated with reference to the date of the last panchnama, a panchnama was drawn up on the occasion of the search and it referred to documents belonging to the assessee though it did not refer to the assessee by name. The panchnama also does not refer to the conclusion of the search. Held by the High Court dismissing the petition.

39. Section 133A: {In re P.Balasubramanian (2013)(Mad)}

Consequent to a survey conducted u/s 133A, the Assessing Officer made an assessment based on the statement recorded at the time of survey. The court held that statement recorded u/s 133A was not recorded on oath and hence does not have any evidentiary value. A power to examine a person on oath is conferred on the authorities only u/s 132(4) in the course of any search or seizure. However, section 133A does not empower the tax authorities to examine any person on oath. The addition made by the Assessing Officer solely based on the statement of the assessee, is not tenable in law.

40. Section 153C: {In re Vijaybhai N. Chandrani (2013)(SC)}

The apex court held that, it is well settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the remedies available to him/it under the Act, 1961 before approaching the writ court.

41. Section 154: {In re Classic Share & Stock Broking Services Ltd (2013)(Bom)}

Once the Assessing Officer had given effect to order of Tribunal, his successor in office had no jurisdiction to pass a fresh order.

42. Section 194C: {In re Silver Oak Laboratories P. Ltd (2013)(SC)}

The assessee, a manufacturer of pharmaceutical products, entered into agreements with various manufacturers **who manufactured** the said items according to the specifications provided by the assessee. As per section 194C the term **"work" includes** manufacturing or supplying a product according to the requirement or specification of a customer by using material **purchased from such customer**. It is clarified that the definition of the word "work" will not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased **from a person other than** such customer. Hence, section 194C is not attracted.

43. Section 194C: {In re Hindustan Lever Ltd (2013)(Del)}

Clearing and forwarding agents to manage godowns fall u/s 194C and not treated as warehousing charges as per section 194-I.

44. Section 194C: {In re Delhi Public School (2013)(ITAT)}

Payment made by assessee to bus owners for hire of vehicles to provide pick-up and drop facility to school students was not a case of hire of machinery but of service rendered by bus owners to assessee and hence liable to TDS u/s 194C and not in section 194-I.

45. Section 194C: {In re Associated Roadways P. Ltd (2013)(ITAT)}

Filing of Form 15J belatedly could not be a reason to deny the deduction claimed by the assessee. If these forms were duly filled with basic details, such as, full address, permanent account number, father's name, whether **assessed to tax** and the jurisdiction, date and place of verification, they should be considered, as filing of these forms was only procedural in nature. Since the assessee furnished these forms before the Commissioner (Appeals), benefit was to be given.

46. Section 194J: {In re Rajasthan Urban Infrastructure Development Project (2013)(Raj)}

If the parties to a contract for provision of technical or professional services agree service tax was to be paid separately, then tax was not deductible on service tax. On the other hand, if the contracted amount includes the amount of service tax, then tax ought to be deducted at source on the service tax portion as well.

47. Section 194J: {In re Kodak India (P) Ltd (2013)(ITAT)}

The assessee is a subsidiary company engaged in manufacturing cameras, trading in cameras and dealing in photographic films in and out of India. Taxable receipts u/s **194J are services specific** and not person specific. Payments made for services of modelling are covered u/s 194C.

48. Section 195: {In re M. Far Hotels Ltd (2013)(ITAT)}

The assessee made a remittance of management fee and interest to a resident of France by deducting TDS u/s 195 **without considering** surcharge and education cess. The India-France DTAA does not say anything about inclusion of surcharge and education cess for the purpose of deduction of tax at source. The Tribunal held that, there is an apparent conflict between the Income-tax Act and the DTAA between the two sovereign countries with regard treatment of surcharge and education cess. As per section 90(2) if the provisions of the DTAA are more beneficial to the taxpayer, the DTAA prevails over the Act. Hence, the taxpayer may take advantage of that provision in the DTAA for deduction of tax.

49. Section 234A: {In re V.N. Devadoss (2013)(ITAT)}

Interest u/s 234A is to be charged from the date of expiry of notice period given in the notice u/s 153A to date of completing assessment u/s 143(3).

50. Section 234C: {In re Hotel & Allied Trades P. Ltd (2013)(ITAT)}

Assessee is liable for interest u/s 234C on short payment of advance tax even on the income computed under section 115JB.

51. Section 244A: {In re Gujarat Flouro Chemicals (2013)(SC)}*

The Apex Court was considering the issue whether an assessee who is made to wait for refund of interest for decades be compensated for the great prejudice caused to it due to the delay in its payment after the lapse of statutory period. In the facts of that case, this Court came to the conclusion that there was an inordinate delay on the part of the Revenue in refunding certain amount which included the statutory interest and therefore, directed the Revenue **to pay compensation** for the same but not an interest on interest.

52. Section 245D: {In re Supreme Agro Foods Private Ltd (2013)(P&H)}

The Settlement Commission has to consider the material brought on record before it. "Consideration" means independent examination of the evidence and the material on record. Since the material was available before the Commission and such material had been taken into consideration for returning a finding which was relevant for determining the undisclosed income of the assessee, the order of the Commission could not be interfered with.

53. Section 245F: {In re Smt. Diksha Singh (2013)(All}

Order of the Settlement Commission is conclusive. No power vests in income-tax authorities to initiate proceedings in respect of period and income covered by such order. Settlement Commission cannot direct income-tax authorities to reopen case in respect of period dealt with in its order.

54. Section 254(1): {In re LG Electronics India P. Ltd (2013)(ITAT)}

The fact that an appeal against order of Tribunal was pending in High Court was no ground to disregard order of the Tribunal and the same must be adhered to.

55. Section 254(1): {In re Leo Meridian Infrastructure Projects and Hotels Ltd (2013)(ITAT)}

If the assessee has not challenged a particular issue before the Commissioner in proceedings u/s 263, he cannot raise that contention before the Tribunal.

56. Section 254(2): {In re Smt. M. Pochamma (2013)(ITAT)}

If two views are possible on a point of law and one of the alternatives is adopted in its previous order, it cannot be held that there is a mistake apparent from record on account of non-adoption of the other possible view. Unless there are manifest errors which are obvious, clear and self-evident, the Tribunal cannot recall its previous order, in an attempt to rewrite the order.

57. Section 260A: {In re IGATE Global Solutions Ltd (2013)(Kar)}

Where the value of subject matter of appeal preferred u/s 260A is less than ₹ 10 lakhs, such appeal is not maintainable.

58. Section 260A: {In re Indo Gulf Fertilizers Ltd (2103)(All)}

Proviso of sub-section (4) to section 260A empowers High Court to frame new or additional substantial question of law during the course of hearing, if it is satisfied on its own or on being pointed by either of the parties. Framing of another substantial question of law does not amount to review of an earlier order or reopening of the issue.

59. Section 260A: {In re Smt. B. Sumangaladevi (2013)(Kar)}

Instruction has no retrospective effect. Hence, is not applicable to pending cases. Applicability of instruction to pending cases is against public interest and the public policy.

60. Section 281B: {In re Nirmal Singh (2013)(P&H)}

Once the assessment had been completed, the Revenue would be justified to attach the account to the extent of the demand raised against the assessee and not the entire amount standing to the credit of the all the bank accounts balances of the assessee. Attachment over and above demand raised was held to be not justified and illegal.

61. Section 260A(4): {In re Mastek Limited (2013)(SC)}*

As per section 260A(4), "The appeal shall be heard only on the question so formulated shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question". The High Court's power to frame substantial question(s) of law at the time of hearing of the appeal other than the questions on appeal has been admitted remains under Section 260A(4). This power is subject, however, to two conditions, (1) the Court must be satisfied that appeal involves such questions, and (2) the Court has to record reasons therefor.

62. Section 271(1)(c): {In re Madan Theatres Ltd (2013)(Cal)}

The assessee sold property for a consideration of ₹ 2.50 crore. However, for the purpose of stamp duty, the property was valued at ₹ 5.19 crore and stamp duty was paid on that value. The assessee offered capital gains on the sale consideration of ₹ 2.50 crore. The AO invoked Section 50C and held that the sale consideration had to be taken at ₹ 5.19 crore and capital gains computed on that basis. The AO imposed penalty u/s 271(1)(c).Though the assessee could have disputed the valuation on the basis of the deemed value and chose not to do so, the fact remains that the actual amount received was offered for taxation. Hence, Concealment penalty cannot be levied.

63. Section 271(1)(c): {In re Bhagwan Agarwal (2013)(ITAT)}

The assessee bought and sold shares and claimed that he had earned capital gains which were exempt u/s 54F. When the AO alleged that the transactions were bogus and entered into for converting black money into white, the assessee surrendered the claim for exemption u/s 54F and offered the capital gains to tax. The AO levied penalty u/s 271(1)(c) on the ground that the surrender of income was not voluntary. There after the Tribunal and High Court dismissed the assessees application. Then, the assessee filed a Miscellaneous Application (MA) before the Tribunal on the ground that as the AO had not specified whether the penalty was for concealment or for furnishing inaccurate particulars. The Tribunal allowed the MA and deleted the penalty. On facts, observed that, the decision of the High Court dismissing the application while moving the MA and by not doing so, they did not come to the ITAT with clean hands. The assessee and his CA are guilty of fraud for deliberately suppressing the facts. The MA order is thus a nullity and non-existence in the eyes of law. The CA's conduct amounts to professional misconduct and requires disciplinary action by the ICAI.

64. Section 271(1)(c): {In re Gem Granites (Karnataka) (2013)(Mad)}*

Pursuant to a search conducted u/s 132 it was revealed that the assessee had "on-money" transactions in real estate dealings. The assessee accepted the "on-money" but claimed that it was taxable only on completion of the projects under the 'completed contract method'.

When the initial onus placed by the Explanation has been discharged by the assessee u/s 271(1)(c), the onus shifts on the Revenue to show that the amount in question constituted undisclosed income. Such onus has not been discharged by the department. Hence, penalty u/s 271(1)(c) cannot be initiated.

65. Section 271(1)(c): {In re Gope M. Rochlani (2013)(ITAT)}*

Explanation 5A to section 271(1)(c) provides that if during the course of search, the assessee is found to be the owner of any asset or income which has not been shown in the return of income which has been furnished before the date of search and the "due date" for filing the return of income has expired, the assessee is deemed to have concealed the particulars of his income or furnish inaccurate particulars of income and liable for penalty u/s 271(1)(c). The "due date" can be very well inferred as due date of filing of return of income u/s 139(4) because wherever the legislature has provided the consequences of filing of the return of income u/s 139(4), then the same has also been specifically provided. Even a belated return filed u/s 139(4) will be entitled to the benefit of immunity from penalty.

66. Section 271B: {In re V.Sivakumar (2013)(Mad)}

The assessee is a partner in four firms took loan in cash for which penalty of ₹ 18 lakh being the equivalent amount of loan, was slapped by applying section 271B of the Act. Transactions between the partner and firm are not governed by section 269SS and 269T of the Act. However, it made reference to the binding precedent in **Laxmi Trust Co (2008)(Mad)** where it was held that genuine bona fide transaction could be spared from penalty as the authority having the right to impose penalty also has a discretion not to levy penalty. It accordingly held that as the assessee had acted bona fide and there was reasonable cause within the meaning of section 273B of the Act, he could be spared from penal consequence.