SUMMARY OF DIRECT TAX CASE LAWS FOR MAY 2014 & NOV 2014

2013			
	Issue	**Case Law**	**Decision**
1	Can **power subsidy** recd. by the assessee from the state Govt., year after year, on the basis of actual power consumption be treated as a capital receipt?	**Rassi Cement Ltd. [RTP May 2014]**	The high court held that the power subsidy recd. by the assessee from the SG on the basis of actual power consumption **has to be treated as a trading receipt** & not as a capital receipt.
2	Can **depreciation on leased vehicle** be denied to the lessor on the ground that the vehicles are registered in the name of the lessee & that the lessor is not the actual user of the vehicle?	**I.C.D.S. Ltd.**	The SC therefore held that **assessee was entitled to claim depreciation** in respect of vehicle leased out since it has satisfied both the requirement of section 32, namely ownership of the vehicle & its usage in the course of business.
3	What would be the nature of **corporate membership fee** paid to the golf club, considering that the membership was for a limited period of 6 year – Revenue or capital exp.?	**Groz Beckert Asia Ltd.**	The high court held that by subscribing to the membership of a club for a limited period, **no capital asset** is created or **comes into existence** & consequently, the corporate membership fee **CANNOT be treated as capital in nature**.
4	Can **remuneration** paid **to working partner** as per the partnership deed be considered as unreasonable & excessive for attracting disallowance u/s 40A (2) (a) even though the same is within the statutory limits prescribed u/s 40 (b) (v)?	**Great city mfg. co.**	The high court held that remuneration paid to working partners within the limits specified u/s 40(b)(v) **CANNOT be disallowed** by invoking the provision of sec.40A(2)(a).
5	Would an assessee be entitled to exemption u/s 54 in respect of **purchase of two flats**, adjacent to each other & having common meeting points?	**Syed Ali Adil**	The Andhra high court, on the basis of ruling of Karnataka high court in case of CIT v. **Ananda Basappa** (2009) 309 ITR 329, held that in this case, the **assessee was entitled to investment in both the flats** purchased by him, since they were adjacent to each other & had a common meeting point.
6	Can exemption u/s 54F be denied solely on the ground that the **new residential house is purchased** by the assessee exclusively **in the name of** his **wife**?	**Kamal wahal**	The Delhi high court, having regards to the rule of purposive construction & the object of enactment of sec. 54F, held that the **assessee is entitled to claim exemption** u/s 54F in respect of utilization of sale proceeds of c/asset for investment in residential H/property in the name of his wife.
7	Can **reporting of income under a different head** be considered as tantamount to furnishing of inaccurate particular or suppression of facts to attract penalty u/s 271(1) (c)?	**Amit Jain**	The high court in light of case of SC in CIT v. **Reliance Petro Product Pvt. Ltd**. (2010), held that mere reporting of income under a different head **would not** characterize the particular reported as "inaccurate" to **attract levy of penalty u/s 271(1) (c).**
8	Can penalty u/s 271(1) (c) be imposed on the ground of **disallowance of a certain deduction** under chapter VI-A **owing to** the **subsequent decision of** the **SC**?	**Celetronix Power India Pvt. Ltd.**	The Bombay **high court** affirmed the decision of appellate tribunal **deleting the penalty** u/s 271(1) (c) on the ground that the additions made on account of disallowance were **neither** due to the failure on the part of the assessee to furnish accurate particulars **nor** on account of furnishing inaccurate particulars.
9	In the case of an assessee liable to pay **MAT** u/s 115JB, can penalty u/s 271(1) (c) be imposed on account of addition made in respect of certain **capital exp, treated by the assessee as revenue exp**, if, even after such addition to total income, the assessee is still assessable u/s 115JB?	**Amtek Auto Ltd.**	The high court held that merely for the reason that the **assessee** co. had claimed the exp. to be revenue **will not** render it **liable to penal proceeding**, when there has been no concealment of income.
10	Can an assessee carrying on comm. agency business (i.e. **business of arranging transportation of goods through lorries** owned by other transporters) be made liable to deduct tax u/s 194C, in respect of amount recd. from clients & passed on to the lorry owner/transporter (after retaining his booking comm.)?	**Hardarshan Singh**	The high court, applying the rationale of the above ruling to the case on hand, held that, in this case also, the **assessee mainly acted as an intermediary or facilitator** for which he recd. commission, **& hence, he was not the "person responsible for merely the payment" in terms of sec. 194C.**

11	Can waiver of loan or advance taken for the purpose of **relocation of office premises** be treated as a revenue receipt liable to tax?	**Softworks Computers P. Ltd.**	On appeal, the Bombay High Court held that since the advance taken by the assessee company was utilized by it for the purpose of relocating its office premises i.e., for acquisition of a capital asset, namely, a new office, the waiver of the same cannot be said to be waiver or remission of trading liability to attract taxability under the Act. Waiver of such advance, being **capital in nature,** is **not taxable** under the Act.
12	In a case where the **application for registration of a charitable trust is not disposed of within the period of 6 months** as required under section 12AA(2), can the trust be deemed to have been registered as per provisions of section 12AA?	**Karimangalam Onriya Pengal Semipu Amaipu Ltd.**	The Madras HC held that the time frame mentioned in section 12AA(2) is only directory in nature and non-consideration of the registration application within the said time frame of 6 months **would not amount to "deemed registration"**. **Note** -Similar ruling was pronounced by the Madras HC in the case of CIT v. **Sheela Christian Charitable Trust** (2013) , holding that there is no automatic or deemed registration if the application filed u/s 12AA was not disposed of within the stipulated period of 6 months.
13	Where a charitable trust **applied for** issuance of **registration** under section 12A within a short time span (**nine months**, in this case) **after its formation**, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?	**Meenakshi Amma Endowment Trust**	The High Court observed that, with the money available with the trust, it cannot be expected to carry out activity of charity immediately. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity. In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying them - selves about the genuineness of the trust and not the activities carried on by it. Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, **it would be open to the concerned authorities to withdraw the registration granted or cancel the registration** as per the provisions of section 12AA(3).
14	Is Circular No. 5/2012 dated 01.08.2012disallowing the expenditure incurred on **freebies provided by pharmaceutical companies to medical practitioners**, in line with Explanation to section 37(1), which disallows expenditure which is prohibited by law?	**Confederation of Indian Pharmaceutic al Industry (SSI)**	The HC opined that **the contention of the assessee** that the above mentioned Circular goes beyond section 37(1) **was not acceptable**. As per Explanation to section 37(1), it is clear that any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. Therefore, the circular is totally in line with the Explanation to section 37(1). **However**, if the assessee satisfies the assessing authority that the expenditure incurred is not in violation of the regulations framed by the Medical Council then it may legitimately claim a deduction, but it is for the assessee to satisfy the Assessing Officer that the expense is not in violation of the Medical Council Regulations.
15	Where **goods** have been **confiscated by custom authorities in a foreign country due to certain statutory violation**, can the same be treated as a loss of stock-in-trade, and claimed as deduction?	**T. C. Reddy**	The HC concurred (i.e agreed) with the view of the Tribunal treating the loss arising on confiscation of pharmaceutical drugs as a business loss, based on the Supreme Court's decision in Dr. Quereshi's case. Note -**In Dr. T. A. Quereshi** v. CIT (2006) (SC), the assessee was manufacturing and selling heroin. When a raid was conducted on his premises, the equipments as well as the heroin was seized. The assessee then claimed deduction of the value of heroin seized from his income. The deptt, however, denied the deduction. The SC held that Explanation to section 37 had no relevance as it was not a case of business expenditure but was one of b/loss. B/loss is allowable on ordinary commercial principles in computing the profits. Once it was found that the heroin seized formed part of the S.I.T of the assessee, it followed that the seizure and confiscation of such S.I.T **had to be allowed as a B/loss**.

16	Can the amount of **employees' contribution towards PF**, deducted and credited to the employee's PF A/c by the employer- assessee after the "due date" under the EPF & Misc. Prov. Act,1952, but before the due date of filing ROI under the I.tax Act, 1961, be allowed as deduction while computing business income of the employer-assessee?	**Kichha Sugar Co. Ltd.**	The employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, **shall be allowed as deduction** from the income of the employer assessee, **if the same is deposited** by the employer- assessee with the provident fund authority **on or before the due date of filing the return** for the previous year.
17	Whether **conversion of sales tax liability into a loan pursuant to a Government order** would entitle the assessee to ded. in the year of conversion, being the year in which the Government order is issued, inspite of the fact that the said order was communicated to the assessee only in the next year?	**Minda Wirelinks Pvt. Ltd.**	The HC held that sales tax liability shall be allowed in the year in which it was converted into a loan on the basis of the Government order issued, **irrespective of the fact that** the Govt order was not communicated to assessee within the relevant AY.
18	Can deduction for interest on **borrowed funds** be disallowed on the ground that such funds **have been diverted as advances to directors**, where there has been a consistent increase in the amount of advances given to directors, without corresponding return and without any increase in the performance of the co.?	**A. Murali and Co. P. Ltd.**	The HC further observed that except for stating that the assessee had made borrowals in the immediate preceding accounting year, no materials were placed before the court or before any other authority to show that the borrowed funds were not diverted for any purpose other than business. The mere contention that the borrowed funds were utilised for the purchase of masoor dal from Sri Saravana Agency per-se could not be taken as a good ground to accept the plea of the assessee, considering the fact that the advances given to the directors had consistently increased from Rs. 3.23 crores to Rs. 3.91 crores without corresponding return and with no better performance in the business of the assessee. Hence, **the HC held that the amount of interest on borrowed capital was not deductible.**
19	What is the nature of expenditure incurred on **glow-sign boards** displayed at dealer outlets - capital or revenue?	**Orient Ceramics and Industries Ltd.**	The Delhi HC concurred with the above observations of the P & H High Court and held that such expenditure on glow sign boards displayed at dealer outlets was **revenue in nature**.
20	What is the **eligible rate of dep. i.r.o computer accessories & peripherals** under the I.tax Act, 1961?	**BSES Yamuna Powers Ltd**	The HC observed that computer accessories & peripherals such as printers, scanners & server etc. form an integral part of the computer system and they cannot be used without the computer. Consequently, the HC held that since they are part of the computer system, **they would be eligible for dep. at the higher rate of 60%** applicable to computers including computer s/w. **Note** - The Delhi HC, in CIT v. **Orient Ceramics and Industries Ltd.** [2013] , following its own judgment in the above case, held that dep. on UPS is allowable @ 60%, being the eligible rate of depreciation on computers including computer software, and not at the general rate of 15% applicable to P&M.
21	Where the **stamp duty value u/s 50C** has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption u/s 54F, irrespective of the source of funds for such reinvestment?	**Gouli Mahadevappa**	On the issue of exemption u/s 54F, the HC held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs.36 lakhs u/s 50C has been adopted as the full value of consideration, the entire amount of Rs.24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption u/s 54F, irrespective of the source of funds for such reinvestment.
22	Where transfer of shares in a co. has been effected, fulfilling all the requirements for claim of exemption u/s 10(38), can such exemption be denied on the ground that the **transaction is a colorable device**, since the underlying asset transferred is, in effect,	**Bhoruka Engineering Inds. Ltd.**	The Karnataka HC observed that, in this case: (i) the assessee-company was holding shares in BFSL from 1st Oct., 1984. Therefore, the shares represent a longterm capital asset. **1st condition** for claimimg ded u/s 10(38) is fulfilled. (ii) The transaction had taken place subsequent to 28th

	land, which is a short-term capital asset, on sale of which capital gains tax liability would have been attracted?		September, 2004. Hence, the 2nd **condition** for claim of exemption is fulfilled. (iii) The transaction had taken place through the Magadh Stock Exchange and securities transaction tax has been paid on such sale. 3rd **condition** is also fulfilled. Where all the three conditions have been fulfilled, the assessee is entitled to exemption u/s 10(38) in respect of long-term capital gains arising from such transfer. Merely because capital gains tax liability would have been attracted had a registered sale deed been executed by BFSL for selling land to DLFCDL, it cannot be concluded that the shareholders of BFSL transferring their shares after complying with the legal requirements would not be entitled to the benefit of exemption. **The High Court further noted that** the companies involved in the transaction were existing companies. Thus, neither of the companies came into existence as a part of the scheme for purchase of immovable property or transfer of shares for the purpose of evading payment of tax. The event of transfer of shares happened in ordinary course of business and is legal. The transaction is, therefore, real, valuable consideration is paid, all legal formalities are complied with, and what is transferred is shares and not immovable property. Hence, it is a valid legal transaction and cannot be termed as a colorable device or sham transaction or an unreal transaction.
23	Where **a building, comprising of several floors, has been developed and reconstructed**, would exemption under section 54/54F be available in respect of the cost of construction of - (i) the new residential house (i.e., all independent floors handed over to the assessee); or (ii) a single residential unit (i.e., only one independent floor)?	**Gita Duggal**	The HC held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the ded u/s 54 or section 54F. It is neither expressly nor by necessary implication prohibited. **Therefore**, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.
24	Can the **loss suffered by an erstwhile partnership firm**, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	**Pramod Mittal**	The **loss suffered by the erstwhile partnership firm** before dissolution of the firm **cannot be C/F by the successor sole-proprietor**, since it is not a case of succession by inheritance. The assessee sole-proprietor is, therefore, not entitled to set-off the loss of the erstwhile partnership firm against his income. **Note - In Madhukant M. Mehta's case**, the sole proprietor had expired and after his death the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned u/s 78(2), i.e., a case of succession by inheritance. **Also, in Saroj Aggarwal's case**, upon death of a partner, his legal heirs were inducted as partners in the partnership firm. The partnership firm was not dissolved on the death of the partner. The partnership firm which suffered the losses continued with induction of the legal heirs of the deceased partner. This, being a case of succession by inheritance, the benefit of C/F of losses was given to the re-constituted partnership firm. **In the present case**, however, the partnership firm was dissolved and the take over of the running business of the firm by the erstwhile partner as a sole proprietor was **not a case of succession by inheritance**. Hence, the C/F of losses of the firm by the sole proprietor was not allowed in this case.

25	Can **Duty Drawback** be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	**Orchev Pharma P. Ltd.**	On this issue, the SC, following the decision in case of Liberty India v. CIT (2009) (SC) held that DDB receipts cannot be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction u/s 80-IB. **Note** -**In the case of Liberty India** v. CIT, the SC observed that DEPB / DDB are incentives which flow from the schemes framed by the CG or from section 75 of the Customs Act, 1962. Section 80-IB provides for the allowing of ded. in respect of profits & gains derived from eligible business. However, incentive profits are not profits derived from eligible business U/s 80-IB. They belong to the category of ancillary profits of such undertaking. **Profits derived by way of incentives such as DEPB/DDB cannot be credited against the cost of manufacture of goods debited in the P & L A/c** and they do not fall within the expression "profits derived from industrial undertaking" u/s 80-IB. Hence, DDB receipts and DEPB benefits do not form part of the profits derived from the eligible business for the purpose of the deduction under section 80-IB.
26	Where the **Commissioner sets aside the assessment order u/s 263** on issues relating to a particular business of an assessee **and the matter was restored to the AO**, can the AO make inquiries relating to another business of the assessee, in respect of which the original order passed by the AO had attained finality?	**Smt. Shobha Govil**	The HC, held that since the objections raised by the Commissioner in his show-cause pertained only to the cattle feed and green vegetable business, the AO's queries should also be confined to the said business and cannot extend to mentha business. The HC, however, clarified that it is open to the AO to raise all relevant queries to determine the income of the assessee with regard to the cattle feed and green vegetable business.
27	Can the **conversion of land held as stock-in -trade into investment just before the sale of property**, for the purpose of availing the benefit of concessional rate of tax as well as indexation benefit on LTCG, be treated as furnishing of inaccurate particulars of income to attract levy of penalty?	**Splender Construction**	The HC, held that the issue was not a debatable one, considering that – • the order of AO was sustained by all successive authorities and • it had also dismissed the appeal at the admission stage itself, there and then, after hearing the arguments. Accordingly, it set aside the order of the Tribunal and restored the penalty order of the AO.
28	Can **loan, exceeding the specified limit, advanced by a partnership firm to the sole proprietorship concern of its partner** be viewed as a violation of section 269SS to attract levy of penalty?	**Sivakumar**	The HC, relying upon the various court decisions, upheld the decision of the Tribunal holding that **there is no separate identity for the partnership firm and** that **the partner** is entitled to use the funds of the firm. In the present case, the **assessee has acted bonafide** and that there was a reasonable cause within the meaning of section 273B. Therefore, the **transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case**.
29	Can the **transmission, wheeling and SLDC charges** paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, u/s 194C?	**Ajmer Vidyut Vitran Nigam Ltd.**	The AAR, considering the definition of fees for technical services u/s 9(1)(vii) and the process involved in proper transmission of electrical energy, held that **transmission and wheeling charges** paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon **u/s 194J**. **As regards SLDC charges**, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, **it does not attract TDS prov. u/s 194J or u/s 194C**.

30	Can **discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee** be treated as commission to attract the TDS provisions u/s 194H?	**Bharti Cellular Ltd.**	The HC held that there is an indirect payment of comm., in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H. **Note** - Similar ruling was pronounced in **Vodafone Essar Cellular Ltd.** (2011), wherein it was held that there was no sale of goods involved as claimed by the assessee-telecom company and the entire charges collected by the assessee from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. The assessee was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, **the distributor only acted as a middleman on behalf of the assessee** for procuring and retaining customers and consequently, the discount given to him was within the meaning of comm. on which tax was deductible under section 194H.
31	Would **commission payment remitted outside India to a non-resident** (who is not liable to pay tax in India) for procuring export orders outside India attract disallowance u/s 40(a)(i) for non-deduction of tax at source under section 195?	**Model Exims**	The HC observed that there was no obligation to deduct tax at source u/s 195 on comm. paid to a non-resident, who was not liable to pay tax in India. The payment of commission to foreign agents also did not entitle such foreign agents to pay tax in India. Thus, there was no obligation to deduct tax at source u/s 195 on the comm. paid to a non-resident recipient, who was not liable to pay tax in India. Further, there was also nothing on record to demonstrate that the non- resident agents had been appointed as selling agents, designers or technical advisers.
	2012		
1	Can the amount collected by an **NBFC** from its customer on ad-hoc basis towards possible sales tax liability which is disputed by it, be treated as its income, if such sum is not kept in a separate interest bearing accounts?	**Sundaram finance Ltd.**	The SC held that such amount collected is **treated as income**, after applying the **"substance over form" test**. As such income was formed part of the assessee turnover, & was collected from customer towards sales tax liability.
2	Whether **sec. 14A** is applicable in respect of deduction, which are permissible & allowed u/chapter VI A?	**Kribhco**	Therefore, the Delhi high court held that **NO disallowance can be made u/s 14A** in respect of income included in total income **in respect of which deduction is allowable u/s 80C to 80U.**
3	Can the assessee, being a charitable inst. Claim dep. u/s 32 in respect of an asset, where the **cost of** such **asset has been treated as application of income** for charitable purpose u/s 11(1)(a)?	**Lissie Medical Institutions**	The court held that once the exp. on acquisition of asset has been treated as application of income, the full value of asset stand w/off. Therefore the **trust is NOT eligible to claim dep**. on such capital exp.
4	Can explanation to sec.11(2) be applied in respect of the **accumulation up to 15%** referred to in sec.11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation up to 15% as income of the trust?	**Bagri foundation**	The court held that even if **the donation** by the assessee to another charitable trust were out of part accumulation u/s 11(1) (a) i.e. up to 15%, the same **would NOT be liable to be included in the total income** as assessed by the AO.
5	Can **notional intt. on security deposit given to the landlord** in respect of residential premises taken on rent by the employer & provided to the employee, be included in the perquisites value of rent free accommodation given to the employee?	**Shankar Krishnan**	The Bombay high court held that the **AO is not right in adding the notional intt. on the security deposit** given by the employer to the landlord **in valuing the perquisites** of rent free accommodation, **since the perquisite value has to be computed as per Rule 3 of the IT rules, 1962** & there is no concept of determination of fair rental value for purpose of ascertaining the value of perk.
6	Can **service charges recd. along with rent** i.r.o a property, be brought to tax under the head "I/H/P", if the service agreement is dependent upon the rental agreement?	**J. K. Investor (Bom.) Ltd.**	The Bombay high court held the amount recd. as service charges have to be considered as a part of the rent recd. & **subjected to tax under the head "I/H/P"**.

7	Can the **benefit of self-occupation of H/P** u/s 23(2) be denied **to a HUF** on the ground that it cannot occupy a H/P, being a fictional entity?	**Hariprased Bhojnagarwala [RTP May 2014]**	The court held that the **HUF is entitled to claim benefit of self-occupation of H/P** u/s 23(2).
8	Can the **rental income from the unsold flat** of a builder be treated as its B/Income merely bcoz the assessee has, in its w/tax return, claimed that the unsold flats were SIT of its business?	**Azimgnaj estate (P) Ltd.**	The Calcutta high court held that rental income from the unsold flats of a builder shall be **taxable as "I/H/P"** as provided u/s 22 & since it specially falls under this head, it CANNOT be treated under the "PGBP".
9	Can **waiver of loan** given to the assessee by the GOI from steel development fund (SDF) **to meet the capital cost of asset** be reduced to arrive at the actual cost as per sec. 43(1) for computing depreciation u/s 32?	**Steel Authority of India Ltd.(SAIL)**	The high court; therefore held that by applying the main provision of sec. 43(1), the **amount of loan waived** by the govt. **is to be reduced from the cost of asset** to arrive at the "actual cost" for computing depreciation.
10	Can the second prov. to sec. 32(1) be applied to restrict the **additional depreciation** u/s 32(1) (iia) to 50%, if the new P&M was put to use for less than 180 days during the P/Y?	**M. M. Forgings Ltd.**	The Madras high court held that the claim of the assessee made u/s 32(1) (iia) had to be necessarily assessed by applying the second prov. to sec 32(1).Therefore **depreciation allowable has to be restricted to 50%** of the amount computed u/s 32(1) (iia).
11	Can **business Contracts, business. Info**. etc, acquired by the assessee **as part of slump sale** be described as G/W, be classified as an intangible asset to be entitled for dep. 32(1)(ii)?	**Areva T & D India Ltd**	The high court held that the specified intangible asset under the slump sale agreement by the assessee are in the nature of intangible asset under the category **"other business or commercial right of similar nature"** specified in sec. 32(1)(ii) & are accordingly **eligible for dep. u/s 32(1)(ii).**
12	Is the assessee entitled to **dep. on** the value of **G/w** considering it as an asset within the meaning of explanation 3(b) to sec. 32(1)?	**Smifs Securities Ltd.**	Therefore, it was held that **"G/W" is an asset** under explanation 3(b) to sec. 32(1) **& Dep. thereon is allowable** under the said section.
13	What would be the nature of exp. incurred by the assessee by way of **severance cost** paid to the employee **in respect of suspension of one of the activities**, in a case where he continues to carry on other business. Activities – capital or revenue?	**KJS India Pvt. Ltd.**	The court held that said exp. will be **allowed as revenue exp.** though it was related to manufacturing activity which was suspended.
14	Can the **exp**. incurred by assessee **on** the **education & traveling of an employee**, for acquiring knowledge relating to assessee business., be disallowed merely on the ground that the employee is the son of an ex-director of the assessee co.?	**Naidunia news & networking (P) Ltd**	The MP high court held that exp. **CANNOT be disallowed** merely bcoz it was incurred in respect of an employee, who was son of ex-director of the assessee co.
15	Is the commission paid to doctors by a **diagnostic centre** for referring patients for diagnosis be allowed as a bus. exp. u/s 37 or would it be treated as illegal & against public policy to attract disallowance?	**Kap scan & Diagnosis centre P. Ltd.**	The demanding as well as paying of such comm. is bad in law. **It is NOT a fair practice**. Thus, the high court held that comm. paid to doctor for referring patients for diagnosis is **NOT allowable as a business exp.**
16	Can an assessee, engaged in **money lending business**, claim interest paid on money borrowed as business exp.?	**Rajendra kumar Dabriwala**	The Calcutta high court held that AO is NOT right in his contention, the **assessee is lawfully entitled to deduct interest paid on the funds borrowed as business exp.**
17	Can **advances given to employees and security deposit paid to the landlord** by the amalgamating co., which becomes irrecoverable, be allowed as a business loss in the hand of the amalgamated co.?	**Triveni Engg. & Industries Ltd.**	The court held that **such advances** given to person who had been employed by the assessee co. which have become irrecoverable **would be treated as business loss** & as regards the allowability of **non-recoverable security deposit** given to the landlord for obtaining lease of premises for purpose of business, the high court observed that the security deposit were refundable & therefore, were not in the form of rent. Therefore, it **is NOT allowable as B/loss.**
18	Can **unpaid electricity charges** be treated as "fees" to attract disallowance u/s 43B?	**Andhra ferro Alloys (P) Ltd.**	The AP high court observed that the prov. of sec. 43B do not incorporate electricity charges. Therefore, **non-payment of electricity charges would not attract disallowance u/s 43B** since such charges CANNOT be treated as "Fees". The court therefore held that deduction is allowable in respect of such electricity charges.

19	Is the income or exp. of an **AMC** liable to be assessed on the basis of the maximum limit mentioned in the SEBI regulation or should the assessment be made on the basis of actual income or exp. charged?	**Templeton Asset Mgmt (I) Pvt. Ltd.**	The court held that, the **disallowance** made by the AO in the present case **is NOT justified** since the transaction was genuine in nature.
20	What are the factors determining the nature of **income** arising **on sale of shares** i.e. whether the income is taxable as c/gain or b/income?	**PVS Raju**	The high court held that **the facts that may be considered** while determining the same **are** the magnitude & freq. of buying & selling of shares by the assessee, the POH of shares, ratio of sales to purchase & the total holding, etc.
21	Would an **asset** which is **sold the very next day after the period of 12/36 month** is over, be treated as LTCA by incl. both the date on which the asset is acquired & the date on which the asset is transferred for computing POH?	**Bharti Gupta Ramola**	The court held that if an asset is sold the very next day & proviso to sec. 2(42A) applies; **it would be treated as a LTCG.**
22	Can **non-cumulative Pref. shares** carrying a fixed rate of dividend with a fixed holding period be said to be equated with bonds or debenture so as to deny the indexation benefit while computing c/gain on its t/f, applying the third proviso to sec. 48?	**Enam securities P. Ltd**	Therefore the court held that the **indexation benefit** on the transfer of LTCA, being 4% non-cumulative p/shares **CANNOT be denied** applying the prov. Of the third prov. to sec. 48.
23	In case of a **HP registered in joint names**, whether the exemption u/s 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the HP or will it be restricted to his share in HP.	**Ravindra kumar Arora**	The court held that the condition Stipulated in sec. 54F stand fulfilled & the entire **exemption** claimed in respect of the purchase price of the house property **shall be allowed to the assessee.**
24	Can the exemption u/s 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the **constructio**n was **not completed within 3 years** after the date on which trf. took place, an account of pendency of certain finishing work like flooring, electrical fitting, fitting of door shutter?	**Sambandam udaykumar**	The court held that in this case the assessee would be **entitled to exemption u/s 54F** in respect of the amount invested in construction within the prescribed period.
25	Can an assessee be deprived of claiming exemption u/s 54EC, if **bonds of assessee's choice are not available** or available only for a broken period within the period of 6 month after the date of trf. of c/asset & the bonds are purchased shortly after it becomes available next time after the expiry of the said 6 month?	**Cello Plast**	The high court held that since **the assessee** invested in the bonds on 31.01.2007 i.e. within 9 days of their being available once again from 22.01.2007, he **CANNOT be deprived of exemption u/s 54EC**. the time to invest in the bonds get automatically extended till the bonds are available in the mkt.
26	In order to determine whether **explanation to sec. 73** is applicable in a particular case, is it necessary to first determine the gross total income of the assessee computed as per normal prov. of the act?	**Darshan securities (P) Ltd**	On this issue, the Bombay high court observed that, **in order to apply the exemption**, **the GTI** of a co. **is to be first computed as per the normal prov. of the act.**
27	Can **unabsorbed depreciation** of a business. of an industrial undertaking eligible for deduction u/s 80IA be set off against income of another non eligible business of the assessee?	**Swarnagiri wire insulation Pvt. Ltd.**	The court therefore held that the **assessee was entitled to the benefit of set-off of loss** of eligible business against the profit of non-eligible business. **However**, **once set-off is allowed** u/s 70(1) against income from another source under the same head, a **deduction to such extent is not possible in any subsequent A/Y.**
28	Can an assessee, engaged in the business of developing a **housing project,** be denied ded. u/s 80-IB (10) on the ground that the ownership of land has NOT yet been trf. to the assessee & the approval to build the project has been taken in the name of the land owner, though the assessee assumes the entire risks & rewards of the project?	**Radhe Developers**	In the present case, as per prov. of sec. 80-IB (10), **deduction shall be provided to the assessee** engaged in the business of developing & building housing project even though the ownership of the land has NOT yet been transferred to the assessee & the approval for such project is obtained in the name of the original land owner.

29	In case where an additional building was constructed on a plot of land & approval for the same is obtained in the year 2002, can ded u/s 80-IB (10) be denied i.r.o said building on the contention that it was an **extension of an earlier project** for construction of four building, i.r.o which approval was obtained before 01.10.98?	**Vandana Properties**	The high court observing the facts of case held that the assessee was **entitled to deduction u/s 80-IB (10)** in respect of that building.
30	Does standing charges paid by the client for **failure to purchase** the **minimum agreed Qty**, Qualify for deduction u/s 80-IC?	**Pine Packaging (P) Ltd.**	The Delhi high court held that charges were paid to compensate the assessee for failure to produce & mkt its product.Therefore,such standing charges are **NOT eligible for deduction u/s 80-IC.**
31	Under which head of income is **rental income from plinths inherited by individual co-owners from their ancestors** taxable –"income from H/P" or "I/O/S"? **Further**, would such income be assessable in the hands of the individual co-owners or in the the hands of AOP?	**Sudhir nagpal**	The court held that the co-owner had inherited the property from their ancestor & there was nothing to show that they had acted as an association of persons. Thus, the court held that the **rental incom**e from the plinths **has to be assessed in the status of individual under the head of "income from O/S" u/s 56.**
32	Would **interest** earned **on fixed deposit made by a social club** with its corporate members satisfy the principal of mutuality to escape taxability?	**Secunderabad Club Picket**	The court held that social relationship & activities of the club have nothing to do with its deposit with corporate members. Therefore, the **said interest income is NOT exempt on the principal of mutuality.**
33	Is the requirement to grant a **reasonable opportunity of being heard**, stipulated u/s 127(1), mandatory in nature?	**Sahara Hospitality Ltd.**	The Bombay high court held that the **word "May"** used in this section **should be read as "shall"** & such I/tax authority has to **mandatorily** ***give a reasonable opportunity of being heard*** to the assessee, whenever possible to do so, & therefore record the reasons for taking any action under the said section.
34	Can an assessee revise the particular filled in the original ROI by filling a **revised statement of income**?	**Orissa Rural Housing Development Corp. Ltd.**	The HC relying on the judgment of **Goetze (I) Pvt. Ltd**., held that the **AO has NO power to entertain a fresh claim** made by the assessee **after filling of** the **original return** ***except by way of filling a revised return***.
35	Is a person having **income below taxable limit**, required to furnish his PAN to the detector as per prov. of sec. 206AA even though he is not acquired to hold PAN as per prov. of sec. 139A?	**Smt. A. Kowsalya Bai [RTP May 2014]**	In order to avoid undue hardship caused to such person, Karnataka high court , held that **it is NOT necessary for such person to obtain PAN** & in view of specific prov. of sec. 139A, sec. 206AA is NOT applicable to such person.
36	Is it permissible u/s 147 to reopen the assessment of the assessee on the ground that income has **escaped assessment**, after a change of opinion as to a loss being a speculation loss & not a normal business loss, consequent to mere re-look of a/c which were earlier furnished by the assessee during assessment u/s 143(3)?	**ICICI securities Primary Dealership Ltd.**	The supreme court observed that re-opening of the assessment by the AO is clearly a change of opinion & therefore, the **order of re-opening the assessment is NOT valid.**
37	Can an assessee file a **revision petition u/s 264**, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified u/s 139(5) on account of the error carrying to the notice of the assessee after the specified time limit?	**Sanchit Software & Solution Pvt. Ltd.**	The **high cour**t further **directed the AO to consider the rectification application** filed by the assessee u/s 154 as a fresh application recd. on the date of service of this order & dispose of the rectification application. on its own merits, **without awaiting the result of the revision** proceeding before the CIT on remand, at the earliest.
38	Would the **period of limitation for an order passed u/s 263** be reckoned from the original order passed by the AO u/s 143(3) or from the order of re-assessment passed u/s 147, **where the subject matter of revision is different from the subject matter of reassessment u/s 147**?	**ICICI Bank Ltd.**	The court held that, **period of limitation** in respect of the order of comm. u/s 263 in respect of a matter which does NOT form the subject matter of reassessment **shall be reckoned from the date of the original order u/s 143(3)** & NOT from the date of reassessment order u/s 147.
39	Can an assessee make an **additional/new claim before an appellate authority** which was not claimed by him in the ROI (though he was legally entitled to), other -wise then by way of filing a revised ROI?	**Pruthvi Brokers & Shareholders**	The Bombay high court held that **additional/new grounds can be raised** before the appellate authority even otherwise than by way of filing ROI.

40	Can the **repayment of loan by passing mere adjusting book entries** by the assessee be taken to be in contravention of prov. of sec. 269T to attract penalty u/s 271E?	**Triumph International Finance (I) Ltd.**	Since the **transaction is bonafide** in nature being a normal business. transaction **& has NOT been made with a view to avoid tax**, it was held that assessee has shown reasonable cause for the failure u/s 269T, & therefore, as per the prov. of sec. 273B, **NO penalty u/s 271E could be imposed** on the assessee for contravening the prov. of sec. 29T.
41	Can penalty u/s 271(1)(c) be imposed if an **assessee** had **wrongly claimed ded** of prov. made **for payment of gratuity** in its ROI, though the same was shown as disallowed u/s 40A (7) in the statement of particulars filed along with tax audit report u/s 44AB?	**Price waterhouse Cooper Pvt. Ltd.**	The apex court held that the assessee had committed an **inadvertent & bona fide error** and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Therefore, the apex court held that imposition of **penalty** on the assessee **was not justified** & it reversed the decision of the high court
42	Can **discount given to stamp vendor** on purchase of stamp papers be treated as "commission or brokerage" to attract the prov. for TDS u/s 194H?	**Ahmedabad stamp vendors association**	The SC affirmed the above decision of the high court holding that the **given transaction is a sale** & the discount given to stamp vendors for purchasing stamp in bulk qty is in the nature of cash discount & consequently **sec. 194H has no application in this case**.
43	In respect of a **co-owned property**, would the threshold limit mentioned in sec.194 I for non-deduction of tax at source apply for each co-owner separately or it is to be considered for the complete amt. of rent paid to attract liability to deduct TDS?	**Senior Manager, SBI**	Since payment of rent is made to each co-owner by way of **separate cheque** & their share is definite, the threshold limit mentioned, in sec.194I has to be seen separately for each co-owner. Hence, the assessee would **NOT** be **liable to deduct tax** on the same & **NO interest u/s 201 is leviable.**
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1	In case **sh. capital** is **raised in a foreign country** & repatriated to India as Need basis from time to time for approved uses, can the gain arising on the b/sheet date due to fluctuation in forex, i.r.o that part of sh. cap which is to be used as working capital, be treated as a revenue receipt?	**Jagatjit Industries Ltd**	The High court held that for determining the nature of receipt, **due consideration should be given to the source of fund & NOT to the ultimate use of the funds.** Therefore, the entire gain has to be treated as <u>capital receipt</u> as the source of fund in this case is capital in nature.
2	Can **subsidy** received by the assessee from GoWB under the scheme of industrial promotion **for expansion of its capacities** modernization & improving its marketing capabilities be treated as a capital receipt?	**Rasoi Ltd [RTP May 2014]**	The high court held that, in the present case, the subsidy received has to be treated as a **capital receipt** & NOT as a revenue receipt.
3	Is the limit of `1000/month per child to be mandatorily deducted, while computing the perquisite value of the **free or concessional education facility** provided to the employee by the employer?	**Delhi Public School**	The P&H high court held that only in case of the perquisite value is less than `1000/month per child, the perquisite value shall be NIL. Therefore, **`1000/month per child is NOT a std deduction** to be provided while calculating such a perquisite.
4	Is the assessee entitled to **depreciation on** the value of **Goodwill** considering it as "other business or commercial right or similar nature" within the meaning of an intangible asset?	**B. Raveendran Pillai**	It was held that G/w paid was for ensuring retention & continued business in the hospital, it was for acquiring a business & commercial right and it was comparable with trade mark, franchise etc referred to in the first part of clause (ii) of sec. 32(1) and so, **G/w was covered by the above prov. of the Act entitling the assessee for dep**.
5	Can **EPABX & Mobile phones** be treated as computers to be entitled to higher depreciation at 60%?	**Federal Bank Ltd. [May 2012]**	On the issue, the High court held that the rate of dep of 60% is available to computers & **there is no ground to treat the communication equipment as computers**. Hence EPABX & Mobile phones are NOT computers and therefore, are NOT entitled to higher dep of 60%.
6	Is **abkari license** covered u/s 32(1)(ii) & eligible for dep. @ 25% of WDV?	**S. Ambika**	The court held that the abkari license squarely falls u/s 32(1)(ii); on which the **assessee is entitled to dep.** @ 25% of WDV as provided u/s 32(1).
7	What is the nature of exp. incurred on demolition & re-erection of a **cell room** & exp. incurred on purchase of pumping set, **mono block pump** & two transformers, which were parts of a bigger plant – revenue or capital?	**Modi Industries Ltd**	It was held that purchase of pumping set, mono block pump with HP motors & two transformers were concerned, **they were NOT standalone equipment, but were part of the bigger plant.** Therefore, it would be treated as replacement of those parts & **exp. would be eligible for deduction u/s 37(1)-Revenue.**

8	Can a co. engaged in the **business of owning, running & managing hotels** claim int. on borrowed funds, used by it for investing in the equity s/capital of a wholly owned Subsidiary co., as deduction where the subsidiary Co. was formed for exercising effective control of new hotels acquired by the parent co. under its mgmt.?	**Tulip Star Hotels Ltd.**	The High court held that Exp. incurred was for business Purpose & was thus **allowable u/s 36(1)(iii)**.
9	What would be the nature of repair & reconditioning exp. incurred on a **machine** which **broke down years ago** – revenue or capital?	**Bharat Gears Ltd.**	The Delhi high court observed that it is in nature of **capital exp**.; on which dep. can be claimed.
10	Would the **exp. incurred for issue & collection of convertible debenture** be treated as revenue or capital Exp.?	**ITC Hotels Ltd.**	The Karnataka High court held that the exp. incurred on the issue & collection of deb. Shall be treated as **revenue exp**. even in case of convertible debenture.
11	Can the exp. incurred on the assessee lawyer's **heart surgery** be allowed as business exp. u/s 31 by treating it as current repairs considering heart as P&M or u/s 37 by treating it as exp. incurred wholly & exclusively for the purpose of business Or Profession?	**Shanti Bhushan [Nov 2012]**	The High court held that the <u>heart CANNOT be said to be P&M</u> for the business Or Prof. of the assessee. Therefore, the exp. on heart surgery is **NOT allowable** as repair to plant u/s 31. Accordingly to the prov. of sec. 37 the claim for allowing the said exp. u/s 37 is also NOT tenable. Hence, heart surgery exp. shall NOT be allowed as business Exp.
12	Would expenditure incurred on **feasibility study** conducted for examining proposals for technological advancement **related to** the **existing business** be classified as revenue expenditure, where the project was abandoned without creating a new asset?	**Priya Village Roadshow Ltd. [May 2012]**	The High court observed that, <u>in such cases</u>, "whether or not a new business asset comes into existence" <u>would be a relevant factor</u>. **<u>If</u>** <u>there is no creation of a new asset</u>, **then** <u>the expenditure incurred would be a revenue nature</u>.
13	Can the **waiver of** principal amount of **loan taken for purchase of capital asset** by the bank be treated as "benefit arises out of business" or "a remission of trading liability" for taxability as business income of the Co.?	**Iskraemees Regent Ltd.**	Since the loan was taken for purchase of cap. asset, <u>waiver of a portion of principal</u> **would NOT amt. to remission of trading liability** to attract the prov. of sec. 41(1). <u>Further</u>, <u>such waiver</u> **cannot be treated as a benefit arising out of business** & consequently Sec.28(iv) will not apply i.r.o such loan transaction.
14	Can the prov. of sec. 41(1) be invoked both in respect of **waiver of working capital loan** utilized for day to day business operation & in respect of **waiver of term loan** taken for purchase a capital asset?	**Rollatainers Ltd.**	The high court's held that loan were for circulating capital & not for fixed capital. Therefore, **W/off of these loans on the cash credit account** which was received for carrying out the day to day operation **amounts to remission of a trading liability** & <u>hence</u>, <u>has to be treated as</u> ***<u>income</u>*** in the hands of the assessee by virtue of sec. 41(1).
15	Can **"Money payable" i.r.o a building sold** by the assessee (which has to be reduced from the op. WDV of the block of asset for calculating dep) be construed as the FMV of asset instead of actual S.P?	**Cable Corporation of India Ltd.**	On this issue, the High court held that WDV of asset falling within that <u>block</u> of asset <u>at</u> the <u>beginning</u> of P/Y <u>has to be adjusted by the amount</u> <u>for which</u> <u>the asset is actually sold</u> & NOT by its FMV.
16	Would the special provision for computing profit <u>u/s 44BB</u> be applicable to a **Non-resident carrying on business of seismic data** acquisition & processing under contract with Indian concern?	**Global Geophysical Service Ltd.**	In this case, AAR ruled that the **said activities & service**s of applicant **clearly fell within the description of sec. 44BB** and the income derived by the applicant under the contract with Indian concern for seismic data acquisition & processing were to be computed under the provision of sec. 44BB.
17	Can the AO bring to tax the actual profit as per books of accounts, if the same is higher than 10% of receipt which are deemed to be the profit **u/s 44BBB in case of a foreign co. engaged in turnkey project**?	**DSD Noel Gmbh**	The Delhi High court held that **if an assessee fulfills all the condition mentioned in sec. 44BBB(1)**; then a sum equal to 10% of amount paid or payable to such foreign co. would be deemed as its business income. Further u/s 44BBB (2) **revenue CANNOT take recourse of this sub- section to claim that the profit earned by the assessee were more than 10%.**
18	Whether **indexation benefit in respect of** the **gifted asset** shall apply from the year in which the asset was first held by the assessee or from the year the same was first acquired by the previous owner?	**Manjula J. Shah**	The High court held that <u>indexed COA</u> in case of gifted asset <u>has to be computed</u> <u>w.r.t the year</u> <u>in which</u> <u>the previous owner first held the asset</u> & NOT from the year in which the assessee become the owner of the asset.

19	Can exemption u/s 54 be claimed in respect of more than 1 residential flat acquired by the assessee under a **joint development agreement with a builder**, where in the property owned by the assessee was developed by the builder who constructed 8 residential flats in the said Property, 4 of which were given to the assessee?	**Smt. K G. Rukminiamma**	The Karnataka High court, **applying the decision of Anand Basappa** (2009) to the present case, held that all the 4 flats are situated in the same residential building & hence, will constitute "a residential house" for the purpose of sec. 54. Therefore, **assessee would be entitled to deduction u/s 54** in respect of all 4 flats.
20	Can the assessee claim exemption u/s 54F, on account of capital gain arising on transfer of **depreciable asset held for more than 36 months** i.e a LTCA, though the same is deemed as capital gain arising on transfer of STCA by virtue of sec. 50?	**Rajiv Shukla**	The High court held that sec. 54F being an independent section will NOT be bounded by the prov. of sec. 50. Therefore, the **exemption u/s 54F** on transfer of depreciable asset held for more than 36 month **cannot be denied** on account of fiction created by sec. 50.
21	What can be the tests to determine **"substantial part of business" of lending Co.** for the purpose of application of exclusion provision under sec. 2(22)?	**Parle Plastics Ltd.**	In this case, 42% of the assets of lending Co. were deployed by it by way of loan & advance. Further if interest income is excluded, the other business had resulted in a Net loss. These factors were considered in concluding that lending of money was a substantial part of business of the co. hence **money given by way of loan & advance to the assessee could NOT be regarded as a dividend**, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in sec. 2(22)
22	Can the **loan or adv. given to a shareholder** by the co., **in return of an advantage** conferred on the co. by the shareholder, be deemed as dividend u/s 2(22)(e) in the hands of the shareholder?	**Pradip kumar Malhotra**	In present case, the **adv**. given to the assessee by the co. **was NOT in the nature of a gratuitous advance** given, instead it was given to protect the interest of the co. **therefore**, the said adv. **cannot be treated as deemed dividend** in the hands of the shareholder u/s 2(22) (e).
23	Can **winning of prize money on unsold lottery ticket held by the distributor** of lottery be assessed as business income & be subject to normal rates of tax instead of the rates prescribed u/s 115BB?	**Manjoo & Co.**	The receipt of the prize Money **is NOT in his capacity as a lottery ticket distributor but as a holder of the lottery ticket** which won the prize. Therefore, the High court held that the rate of 30% prescribed u/s 115BB is applicable in respect of winnings from lottery received by the distributor.
24	Can an **industrial undertaking** engaged in manufacturing or producing articles or thing **treat the persons employed by it** through agency (incl. contractors) **as "workers"** to qualify for claim of deduction u/s 80IB?	**Jyoti Plastics Works (P) Ltd.**	The **employment of 10 or more workers is** what is **relevant** & NOT the mode and the manner in which the workers are employed by the assessee. The High court, therefore, held that the tribunal was justified in holding that the condition of sec 80IB(2)(iv) had been fulfilled & therefore **deduction u/s 80IB is allowed**.
25	Can an assessee **NOT claiming deduction u/s 80-IB in the initial years** claim the said deduction for the remaining years during the period of eligibility, if the condition are satisfied?	**Praveen Soni**	The Delhi High court held that the provision of sec. 80-IB does NOT stipulate any condition for claiming the deduction. Therefore, the **deduction u/s 80-IB should be allowed to the assessee for the remaining years** during the period of eligibility, provided condition u/s 80-IB are fulfilled.
26	Would the procurements of parts & assembling them to make **wind Mill** falls within the meaning of "Manufacturing" & "Production" to be entitled for deduction u/s 80-IB?	**Chiranjjeevi Wind Energy Ltd.**	The Madras High court held that different parts procured by assessee could NOT be treated as a "wind mill" individually, but when assembled & got transformed into an ultimate product which was commercially known as "wind mill", such activity amounts to "Manufacture" as well as "Production" to qualify for deduction u/s 80-IB.
27	Would grant of **transport subsidy**, **interest subsidy** & **refund of excise duty** qualify for deduction under sec. 80-IB?	**Meghalaya Steels Ltd.**	The High court held that there should be a direct nexus **b/w** the generation of profits & gains **AND** source of profit & gains, the latter being directly relatable to the business of the assessee. **In this case**, subsidy had NO direct nexus with profit derived by assessee from its industrial activity, so the subsidies could NOT be taken into account for purpose of deduction u/s 80-IB. But refund of the excise had a direct nexus with mfg activity, being a profit linked incentives. Therefore, the refund of excise duty had to be taken into account for purpose of deduction u/s 80-IB.

28	Would **non-resident match referees & umpires** in the games played in India fall within the meaning of sportsmen to attract taxability u/s 115BBA, and consequently attract the TDS u/s 194E in the hands of the payer?	**Indcom [Nov 2012]**	The High court held that the payment made to non - resident match referees & umpires are "income" which has accrued & arises in India, the same are **NOT taxable u/s 115BBA and thus, the assessee is NOT liable to deduct TDS u/s 194E**. **Further,** they render professional services but sec. 194J CANNOT be imposed as on a non-resident. **Note:-** It may be noted that since income has accrued & arisen in India to the non resident match referees & umpires, the TDS provisions u/s 195 would be attracted and tax would be deductible at the rate in force.
29	Can **interest u/s 234B & 234C** be levied where a co. is assessed on the basis of book profits u/s 115JB (MAT)?	**Rolta India Ltd.**	The Apex court observed that there is a specific prov. in sec.115JB(5) providing that all other prov. of IT Act, 1961 shall apply to every assessee, being a Co. Therefore, **int. u/s 234B & 234C shall be payable on failure to pay adv. tax i.r.o tax payable u/s 115JB.**
30	Can the unabsorbed depreciation be allowed to be c/f in case the ROI is not filed within the due date?	**Govind Nagar Sugar Ltd**	The High court held that unabsorbed depreciation will be **allowed to be c/f** to subsequent year even though the ROI of current A/Y was NOT filled within the due date.
31	Can the AO reassess **issue other than issues in respect of which proceeding were initiated u/s 147** when the original "reasons to believe" on basis of which the notice was issued ceased to exist?	**Ranbaxy Lab. Ltd.**	The High court held that if the income, the escapement of which was the basis of the "reasons to believe" is NOT assessed or reassessed, it would NOT be open to the AO to independently assess only that income which comes to his notice subsequently **if he intends to do so, a fresh notice u/s 148 would be necessary**.
32	In case of **change of incumbent of office**, can the successor AO initiate reassessment proceeding on the grounds of change of opinion in relation to an issue which the predecessor AO, who had framed the original assessment, had already applied his mind & came to a conclusion?	**H.K. Buildcon Ltd**	The Gujrat High court observed that there was nothing on records to show that income had escaped assessment in respect of which the successor AO received info. **Notice of reassessment was**, therefore **NOT Valid**.
33	Would the word "shall be issued" used in sec. 149 means "mere signing of notice by the AO" **or** "handing over of the said notice in hands of the proper officer for serving it to the assessee" to constitute a valid notice issued within the prescribed time limit?	**Kanubhai M. Patel (HUF) V. Hiren Bhatt**	The Gujrat High court observed that **the expression "shall be issued"** means the date of issue on which the same were handed over for service to the proper officer/post officer, NOT the date on which such notice was signed by the AO.
34	Can the AO issue notice u/s 154 to rectify a mistake apparent from records in the intimation u/s 143(1), after issue of a valid notice u/s 143(2)?	**Haryana State Handloom & Handicraft Corpn. Ltd.**	On the issue, the P & H High court concluded that proceeding u/s 154 for rectification of intimation u/s 143(1) CANNOT be initiated after issuance of notice u/s 143(2) by the AO to the assessee.
35	Can the CIT initiate revision proceeding u/s 263 on the grounds that the **AO's order** NOT initiating penal proceeding **was erroneous and prejudicial to the interest of the revenue**, in case where non initiation of penal proceeding was a pre-condition for surrender of income by the assessee?	**Subhash kumar Jain**	The High court observed that, as perusal of the office note issued by the AO, it was clear that the assessee had made surrender of income with a clear condition that no penal action u/s 271(1)(c) would be initiated. Once that was so, the CIT CANNOT take a different view & levy penalty.
36	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety?	**Lachman Dass Bhatia Hing Wala (P) Ltd. [RTP May 2014]**	The Tribunal does NOT have inherent power to review its order on merit; it can recall its order for the purpose of correcting a mistake apparent from the records. While applying the decision of Apex court **in case of Honda Siel Power Products Ltd.** in this case the high court held that **the tribunal**, while exercising the power of rectification u/s 254(2), **can recall its order in entirety** if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake or error and error committed is apparent.
37	Do the **tips collected by hotel & disbursed to employee** constitute salary to attract TDS u/s 192?	**ITC Ltd. [Nov 2012]**	The High court held that when tips were charged to the bill & was subsequently disbursed to the employees, then tips would constitute income within the meaning of sec. 2(24) & it was obligatory upon the co. to deduct TDS from such payments u/s 192.

38	Can **discount** given **on** supply of **SIM cards & recharge coupons** by a telecom co. to its distributors under a prepaid scheme be treated as commission to attract TDS provision u/s 194H?	**Vodafone Essar cellular Ltd.**	The High court held that the distributor only acted as a middleman on behalf of the assessee for procuring & retaining customer. Therefore, the discount given to him was within the meaning of commission u/s 194H on which **TDS was deductible**.
39	Can difference b/w Published Price & Minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline co. to attract TDS provision u/s 194?	**Qatar Airways [May 2012**]	The High court held that **TDS** was **NOT deductible on** the **diff. b/w** the **actual sale price &** the **minimum fixed commercial price**, even though the amount earned by the agent over & above minimum fixed commercial price would be taxable as income in his hand.
40	Can the payment made to contractors for hiring **dumpers** by an assessee engaged in transportation of building material, be treated as Rent for M/C or equipment to attract TDS u/s 194 I?	**Shree Mahalaxmi Transport Co.**	The High court observed that the assessee had given contract to the parties for the transportation of goods & had NOT taken M/C & equipment on rent. **Such payment could NOT be termed as rent** paid for the use of M/C & Prov. of sec. 194 I would, therefore, NOT be applicable.
41	Whether the **Best judgment assessment** order passed without giving the assessee an opportunity of being heard is valid in a case where the notice u/s 16(4) has already been given?	**Motor General Finance Ltd.**	It was held that second prov. to sec. 16(5) comes into operation & **NO further notice or opportunity to be heard is req. to be given to the assessee**.