UPDATE for May, 2014 Exam. of CA (Final)

Summary of Update

This update for May, 2014 has following parts:

(1) **Part A -- Amendments made through *Finance Act, 2003*:**
These amendments are reported in our book for AY 2014-15. Hence they are not repeated here. Please refer our book. However, if you want to have a copy, please download from our website.

(2) **Part B -- Circulars / Notifications / Case laws reported in our *Update for Nov.2013* exam:** They are not repeated here. Please refer the Update provided by us to the students who have appeared in Nov. 2013 exam. However, if you want to have a copy of that Update, please download from our website.

(3) **Part C -- Additional Circulars / Notifications / Case laws:**
There are reported below.

Part C -- Additional Circulars / Notifications / Case laws

Circular No. 7 / DV / 2013 dated 16.07.2013:
Section 10AA is placed in Chapter III of Income-tax Act, 1961. The general impression of any section coming under Chapter III is that the section grants exemption. However, the wording of section 10AA is -- "deduction shall be allowed in computing total income". This has caused a difference of opinion among the assessees, authorities and courts regarding exact nature of section i.e. whether section 10AA is an exemption-section or deduction-section **[We know that the implications of exemption-section and deduction-section are different particularly in the matter of set off of losses etc.]**. Now, the CBDT has clarified following important points with respect to the nature and implications of section 10AA:

- Section 10AA is a deduction-section and not an exemption-section (although it is placed in Chapter III).

- Before giving effect to section 10AA, the income of various heads (computed in accordance with the provisions of Chapter IV of the IT Act) shall be aggregated. This means that first the income / loss from various sources i.e. eligible units u/s 10AA and ineligible units u/s 10AA, under the same head shall be aggregated u/s 70. Thereafter, the income from one head shall be aggregated with the income or loss of the other head in accordance with the section 71. If after giving effect to the provisions of sections 70 and 71, there is any income (where there is no brought forward loss to be set off in accordance with section 72) and the same is eligible for deduction in accordance with section 10AA, the deduction shall be computed u/s 10AA and allowed in computing the total income of the assessee.

- However, if after aggregation of income in accordance with the provisions of sections 70 and 71, the resultant amount is a loss from eligible unit, it shall be eligible for carry forward and set off in accordance with the provisions of section 72. Similarly, if there is a loss from an ineligible unit, it shall be carried forward and may be set off against the profits of eligible unit or ineligible unit, as the case may be, in accordance with section 72.

Notification No. 86/2013 dated 01.11.2013:
Cyprus has been notified as a non-cooperative jurisdiction (NCJ) for the purposes of section 94A.
[Guidance Note: Please read section 94A carefully for examination purpose].

Notification No. 39/2013 dated 31.05.2013:

This notification has amended Rule 30, 31 and 31A for the purpose of newly inserted section 194-IA. The precise effect of amendment is as under:

(1) There shall be a single consolidate form (i.e. Form No. 26QB) for payment of TDS as well as furnishing of Return of TDS. This form is known as challan-cum-statement. The tax payment + submission of Return shall be done through this single form within 7 days from end of the month in which deduction is made.

(2) The deductor shall furnish Certificate of TDS in Form No. 16B to the payee within 15 days from the due date of furnishing Form No. 26QB.

[Guidance Note: Please note that TAN u/s 203A is not required in case of TDS u/s 194-IA].

CIT Vs. Softworks Computers (P) Ltd (2013) 354 ITR 16 (Bom):

In this case, the assessee took a loan for relocation of his office. The relocation process involved acquisition of fixed assets. Subsequently, the loan was waived by the lender. The question arose whether the waiver of loan would be taxable as deemed income u/s 41(1). The Court held that section 41(1) is applicable only if there is a remission of trading liability. Hence if the loan would have been used for working capital purpose, section 41(1) would have been applicable. But since the loan had been used for acquisition of fixed assets, section 41(1) shall not apply.

CIT Vs. Karimangalam Onriya Pengal Semipu Amaipu Ltd (2013) 354 ITR 483 (Mad):

The assessee, a public charitable trust, filed an application to CIT for grant of registration u/s 12AA. Section 12AA prescribes that every order granting or refusing registration u/s 12AA **shall** be passed by CIT within 6 months from end of the month in which application is received by him. However, the CIT did not dispose off application within 6 months. The assessee claimed that since the CIT has neither granted nor refused to grant registration and the time-limit of 6 months had already expired, there is an automatic or deemed registration. On appeal, the High Court held that the word "shall" used in section 12AA is to be interpreted as "may". Hence the provision is not mandatory. The provision is directory only. In effect the Court held that even if the CIT has not passed order within 6 months, the assesee cannot claim that there is automatic or deemed registration.

[Note: With due respect to the Court, it is submitted that the view of Court is not very good].

DIT (Exemptions) Vs. Meenakashi Amma Endowment Trust (2013) 354 ITR 219 (Kar):

The assessee, a public charitable trust, filed application u/s 12AA to CIT within a very short span of time after its formation. By that time, the trust had not commenced any charitable activity. The CIT refused registration on the ground that there was no activity done by the trust. The Trust argued following aspects:

- Section 12AA does not contain any restriction that the application cannot be filed within short span of time.
- The fact that the settlers / trustees have made initial contribution to the trust for charitable activities, itself indicates that there is a real intention of trust to carry out charitable activities.
- In absence of any activity, the department should look into the objects of trust. If the objects are charitable, registration has to be granted.
- Even if registration is granted, there is no loss to the department because if subsequent to grant of registration, the CIT finds that the activities are not genuine, he may cancel registration by exercising power u/s 12AA(3).

On the basis of these arguments, the trust claimed that it was entitled to registration. The Court accepted.

Vijay Rameshbhai Gupta Vs. ACIT (Guj):

The assessee declared lease income as business income. The AO accepted business head during the court of scrutiny. Subsequently, the audit team of department made an observation that the lease income was income from other sources. The AO wrote a letter to audit team that the lease income was business income and his assessment order was correct. However, the audit team insisted upon the AO to make assessment as business income. This way the AO had to take action u/s 147 under the force of audit team only. The Court held that in such forced circumstances the action u/s 147 is not valid.

[Guidance note: It is a settled judicial view that the AO can validly make assessment u/s 147 on the basis of observation of audit team provided the AO himself is satisfied that the case is fit for section 147. If the AO takes action u/s 147 on mere dictations of audit team, the action u/s 147 is not valid].

<u>CIT Vs. Kicha Sugar Ltd. (2013) 356 ITR 351 (Uttrakhand):</u>

In this case, the issue arose as to whether employees' contribution to PF etc. paid by an employer to the PF authorities shall be covered u/s 43B i.e. whether the deduction shall be allowed if the employer pays to the relevant fund after the end of the previous year but upto due date u/s 139(1). The Court held in favour of assessee i.e. the deduction is allowed.

[Guidance note: If we read Income-tax Act, 1961, any contribution received by an employer from his employees is treated as income of employer u/s 2(24)(ix). Thereafter, section 36(1)(va) grants deduction to the employer to the extent of payment made by employer to the relevant fund upto the due date under the rules of relevant fund. In other words, any payment made by employer to the relevant fund after due date under the rules of relevant fund is not deductible. However, the Court has held that employees' contributions are covered u/s 43B. It may be noted that till now the authors are not applying this view in computing practical questions].

<u>Gouli Mahadevappa Vs. ITO (2013) 356 ITR 90 (Kar):</u>

The assessee sold a plot for Rs. 20 lakh. The Stamp Authority Valuation was Rs. 36 lakh. The assessee invested a sum of Rs. 24 lakh (the investment of 24 lakh was financed from sale consideration of plot Rs. 20 lakh + agricultural income of Rs. 4 lakh) in a residential house property and claimed proportionate exemption as under:

$$\frac{\text{Capital gain of plot} \times 24}{36}$$

The AO allowed exemption as under:

$$\frac{\text{Capital gain} \times 20}{36}$$

The Court held that the assessee is correct in computing exemption on the basis of 24 lakh irrespective of the source of investment.

<u>CIT Vs. Sikandarkhan N. Tunvar (Guj) / CIT Vs. Cresent Export Syndicate (Cal):</u>

The question before these Courts was -- Whether section 40(a)(ia) would apply only in those cases where the relevant amount (i.e. interest, commission etc.) remains payable to the payee at the end of the previous year or the section would apply in all cases irrespective of whether the relevant amount has been paid to the payee during the previous year or it remains payable at the end of the previous year?

In **Merilyn Shipping & Transports Vs. ACIT,** the Special Bench of ITAT took a view in favour of assessee. The Bench held that section 40(a)(ia) is applicable only in those cases where the relevant amount remains payable to the payee at end of the year. In other words, if the relevant amount has been paid to the payee during the year, the disallowance of section 40(a)(ia) is not attracted.

However, the Hon'ble Gujrat High Court and Calcultta High Court have made a detailed analysis of section 40(a)(ia) and held that there is nothing in section 40(a)(ia) to suggest such interpretation. In short, the Hon'ble Courts have held that section 40(a)(ia) shall apply irrespective of whether the relevant amount has been paid to the payee or it remains outstanding at the year end.

<u>CIT Vs. Madan Theatres Ltd. (Cal):</u>

The assessee sold an immovable property. While submitting return, the assessee computed capital gain on the basis of sale consideration declared by him in the registery. In short, although the Stamps Authority Valuation was much higher than the declared sale consideration, the assessee did not compute capital gain on the basis of Stamps Authority Valuation, as required u/s 50C(1). During assessment proceedings, the AO took Stamps Authority Valuation as sale consideration and computed capital gain u/s 50C(1). Finally, the AO imposed penalty u/s 271(1)(c). The assessee contested that section 50C(2) confers a right upon him to claim that the value adopted by Stamps Valuation Authority is not correct. Being so, it cannot be said that the assessee has concealed any particulars of income or furnished inaccurate particular of income. Hence penalty is not imposable u/s 271(1)(c).

<u>CIT Vs. Praveen B. Gada (HUF) (2011) 211 Taxman 166 (MP):</u>

The assessee treated a certain amount as a business loss in return. While passing order, the AO treated the same as a capital loss. The AO imposed penalty u/s 271(1)(c). On appeal, the Court held that there is no deliberate mistake of assessee. Merely because the assessee has treated the loss as a business loss instead of capital loss, it cannot be said that the assessee has concealed particulars of income or furnished inaccurate particulars of income. Thus, no penalty can be imposed u/s 271(1)(c).

<u>Eruditus Education (P) Ltd. (AAR decision):</u>

This is a judgement of Authority for Advance Ruling. In this case, one Eruditus Education Pvt. Ltd. (EEPL) is a company registered in India and INSEAD is tax resident company of Singapore. INSEAD is engaged in providing high quality education programmes including in-class and on-line teaching. Under an agreement, EEPL shall market, organize, manage and facilitate conduct of programmes of INSEAD in India. The EEPL shall collect fee from participants in India and pay agreed share to INSEAD. What shall be implications of payment made by EEPL to INSEAD?

The AAR held that the service provided by INSEAD to EEPL involved expertise, skill and knowledge possessed by INSTEAD. Hence the payment made by EEPL to INSEAD would fall within the definition of "fee for technical service" u/s 9 of Income-tax Act, 1961.

However, the assessee gets benefit of tax treaty entered into between Govt. of India and Govt. of Singapore. There is a specific exclusion in tax treaty whereby education service shall be excluded from the purview of "fee for technical service". The Court further held it is a settled law that that the normal provisions of Income-tax Act, 1961 or tax treaty whichever is more beneficial shall apply. Hence in the present case, the assessee gets benefit of treaty.

On this basis, it was held that the payment made by EEPL to INSEAD shall not fall within "fee for technical service".

<u>CIT Vs. Friends and Friends Shipping (P) Ltd (Guj) / Panchmahal Steel Ltd. (Guj):</u>

The assessee is an exporter. It entered into forward contracts with a bank to hedge against foreign currency fluctuations. However, the assesee cancelled some of the forwards contracts and paid cancellation charges to bank. The assessee claimed deduction of charges paid to the bank as business expenditure. The AO disallowed on the ground that those charges were in the nature of speculative loss. On appeal, the Court held that the cancellation charges do not fall within the ambit of "speculative transaction" u/s 43(5). Held that the claim of assessee is correct.

<u>Mahesh Kumar Gupta Vs. CIT (All):</u>

The AO re-opened assessment u/s 147 within 6 years (but after expiry of 4 years). However, in the reasons recorded u/s 149, the AO did not mention the quantum of escaped income at all. The Court found that section 149 prescribes that the extended time period of 6 years is available only if the escaped income is likely to exceed Rs. 1 lakh. If AO has not mentioned the quantum of escaped income in the reasons, how can he conclude that it was a fit case for the extended period of 6 years. Hence the AO was wrong in issuing notice within the extended period of 6 years. Consequently, the entire proceeding of section 147 is invalid.

<u>*CIT Vs. Syed Ali Adil (2013) 352 ITR 418 (AP) / CIT Vs. SMT. K.G. RUKMINIAMMA (2011) 331 ITR 211 (KAR) / CIT Vs. D. Anand Basapa (2009) 223 CTR (Kar) 186 /* CIT Vs. Smt. JYOTI K. MEHTA 201 TAXMAN 79 (KAR) (HC) / CIT Vs. Gita Duggal (Del)]:</u>

The exemption u/s 54 is allowed if investment is made in 'a residential house property'. Here the word 'a' does not mean 'one'. Hence, if the assessee makes investment in more than one houses, the exemption would be allowable in respect of investment made in all those houses. [***Contrary decision is available in*** **ITO Vs. Ms. Sushila M. Jhaveri (2007) 109 TTJ (Mumbai) (SB) 299 in which the court held that the word 'a' would mean 'one' and therefore the exemption shall be restricted to one house only].**

<u>CIT Vs. KAMAL WAHAL (2013) 351 ITR 4 (DEL) (2013) 351 ITR 4 (DELHI):</u>

The assessee made investment in a residential house solely in the name of his wife and claimed exemption u/s 54. On appeal, the Court allowed. (The Court held that the purpose of section 54 is to grant benefit. Further held that the assessee has not made investment in a strange name but in the name of wife which is quite natural in practical life).

<u>CIT Vs. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi):</u>

The assessee made investment in a residential property in joint names of himself and his wife and claimed exemption u/s 54F. The entire investment was made by assessee from his pocket and there was no investment of wife. The assessee claimed 100% exemption but the AO restricted exemption to 50%. On appeal, the Court allowed 100% exemption.

Part B -- *Update for Nov.2013* examinations

Notification No. 11/2013 dated 19.02.2013:
Rule 31A has been inserted to provide that the deductor can claim refund of excess TDS paid by him, by filing Form No. 26B.

Notification No. 56/2012 dated 31.12.2012:
In terms of authority conferred u/s 197A(1F), the Central Government has notified that TDS shall **not** be deducted from the payments of the nature specified below, in case such payment is made by any person to a **bank** listed in the Second Schedule to the Reserve Bank of India Act, 1934 **(excluding a foreign bank)** –

(i) Bank guarantee commission,
(ii) Cash management service charges,
(iii) Depository charges on maintenance of DEMAT accounts ,
(iv) Charges for warehousing services for commodities,
(v) Underwriting service charges,
(vi) Clearing charges (MICR charges) and
(vii) Credit card or debit card commission for transaction between the merchant establishment and acquirer bank.

Notification No. 52/2012 dated 29.11.2012:
Students may please recapitulate that through Finance Act, 2012, a new section 56(2)(viib) has been introduced. Hence, there arises a need of prescribing rules for determination of FMV for the purpose of section 56(2)(viib).

The existing Rule 11UA contains the manner for determination of FMV of unquoted equity shares for the purposes of section 56(2)(vii)/(viia) only. Hence, the existing Rule 11UA has been re-drafted. Now, Rule 11UA shall be in two parts, viz. (i) Rule 11UA(1), and (ii) Rule 11UA(2).

For a better understanding, the entire gamut of Rule 11UA(1) and 11UA(2), as applicable for valuation of unquoted equity shares, is given below:

Rule 11UA(1):
This Rule shall apply in relation to section 56(2)(vii)/(viia). According to this, the FMV of unquoted equity shares shall be determined in the following manner:

$$\text{The FMV of unquoted equity shares} = \frac{(A - L) \times (PV)}{(PE)}$$

Where --

A = Book value of the assets in Balance-Sheet but not including the following amounts:

(i) any amount of tax paid as TDS, TCS and Advance-tax (as reduced by the amount of tax claimed as refund under the Income-tax Act, 1961); and
(ii) any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset.

L = Book value of liabilities in the Balance-Sheet but not including the following amounts:—

(i) the paid-up capital of equity shares;
(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment (as reduced by the amount of tax claimed as refund under the Income-tax Act) to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV = Paid up value of one equity share.

PE = Total amount of paid up equity share capital as shown in Balance-Sheet.

Thus, the students would notice that this method is "**Intrinsic Value Method"**.

Rule 11UA(2):

This Rule shall apply in relation to section 56(2)(viib). The FMV of unquoted equity shares shall be determined in the following manner under clause (a) or clause (b), ***at the option*** of the assessee:—

(a) The FMV as determined by applying the method prescribed in Rule 11UA(1) as discussed above, or

(b) The FMV determined by a merchant banker / CA as per the **Discounted Free Cash Flow Method.**

Notification No. 42/2012 dated 4.10.2012:

Students may please recapitulate that the Finance Act, 2012 has amended sections 153A and 153C to provide that the Central Government may notify the class or classes of cases (except the cases where any assessment or reassessment has abated) in which the AO shall not be required to issue notice for initiation of assessment or reassessment of the total income of PSAY (i.e. preceeding six assessment years).

Now, the Govt. has notified new Rule 112F which provides that the AO shall not issue notices of PSAY in a case where both of the following conditions are satisfied:

(i) Where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, (whether or not he is the actual owner of the same), **and**

(ii) Such search is conducted or requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under section 30 read with section 56 of the Representation of the People Act, 1951, or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.

However, this Rule is not applicable to a case where search u/s 132 or requisition u/s 132A has taken place after polling hours.

The purpose of this rule is to reduce infructuous and unnecessary proceedings under the Income-tax Act, 1961 in cases where a search is conducted u/s 132 or requisition is made u/s 132A and assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation is required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

Notification No. 40/2012 dated 20.09.2012:

Investment in debt instruments issued by any infrastructure finance company registered with the Reserve Bank of India shall be a permissible mode for the purpose of section 11(5).

Notification No. 36/2012 dated 30-8-2012:

Students may recapitulate that section 92CC has been inserted by the Finance Act, 2012. This section empowers the CBDT to enter into an advance pricing agreement (APA) with any person for determining the ALP or specifying the manner in which ALP is to be determined, in relation to an international transaction to be entered into by such person. Sub-section (9) of section 92CC further empowers the CBDT to prescribe a scheme (specifying the manner, form, procedure etc.) in respect of APA.

Now, the CBDT has prescribed scheme. Some important provisions of scheme are as under:

(1) Persons eligible to apply:

Any person who has undertaken an international transaction or is contemplating to undertake an international transaction.

(2) Pre-filing Consultation:

Every person proposing to enter into APA shall, by an application in writing, make a request for a pre-filing consultation in the prescribed form to the Director General of Income-tax (International Taxation).

The pre-filing consultation shall, among other things,-

(i) determine the scope of the agreement;

(ii) identify transfer pricing issues;

(iii) determine the suitability of international transaction for the agreement;

(iv) discuss the broad terms of the agreement.

The pre-filing consultation shall not bind the CBDT or the person to enter into APA or initiate the agreement process. Further it shall not be deemed to mean that the person has applied for entering into APA.

(3) Application for advance pricing agreement:

(a) Any person, who has entered into a pre-filing consultation may, if desires to enter into an agreement, shall furnish an application in the prescribed form along with proof of payment of requisite fee.

(b) The application may be filed at any time -

 (i) before the first day of the previous year relevant to the first assessment year for which the application is made, in respect of transactions which are of a continuing nature from dealings that are already occurring; or

 (ii) before undertaking the transaction in respect of remaining transactions.

(c) The applicant may withdraw the application for agreement at any time before the finalisation of the terms of the agreement.

(4) Approval from Central Govt:

The agreement shall be entered into by the CBDT after its approval by the Central Government.

(5) Terms of the agreement:

An agreement may among other things, include -

(i) the international transactions covered by the agreement;

(ii) the agreed transfer pricing methodology, if any;

(iii) determination of arm's length price, if any;

(iv) definition of any relevant term to be used in item (ii) or (iii);

(v) critical assumptions i.e. the factors and assumptions that are so critical and significant that neither party entering into an agreement will continue to be bound by the agreement, if any of the factors or assumptions is changed ;

(vi) the conditions, if any, other than provided in the Act or these rules.

(vii) Alert-clauses to the effect that –

 (a) the agreement shall not be binding on the Board or the assessee if there is any change in any of critical assumptions or failure to meet conditions subject to which the agreement has been entered into.

 (b) The binding effect of agreement shall cease only if any party has given due notice of the concerned other party or parties.

 (c) In case there is any change in any of the critical assumptions or failure to meet the conditions subject to which the agreement has been entered into, the agreement can be revised or cancelled, as the case may be.

(6) Furnishing of Annual Compliance Report:

The assessee shall furnish an annual compliance report to Director General of Income-tax (International Taxation) for each year covered in the agreement, within 30 days of the due date of filing income-tax return for that year, or within 90 days of entering into an agreement, whichever is later.

(7) Compliance Audit of the agreement:

(a) The Transfer Pricing Officer having the jurisdiction over the assessee shall carry out the compliance audit of the agreement for each of the year covered in the agreement. For this purpose, the Transfer Pricing Officer may require -

(i) the assessee to substantiate compliance with the terms of the agreement, including satisfaction of the critical assumptions, correctness of the supporting data or information and consistency of the application of the transfer pricing method;

(ii) the assessee to submit any information, or document, to establish that the terms of the agreement has been complied with.

(b) The compliance audit report shall be furnished by the Transfer Pricing Officer within six months from the end of the month in which the Annual Compliance Report is received by the Transfer Pricing Officer.

(8) Revision of an agreement:

(a) An agreement, after being entered, may be revised by the Board either *suo moto* or on request of the assessee or the competent authority in India or the Director General of Income-tax (International Taxation), if:-

(i) there is a change in critical assumptions or failure to meet a condition subject to which the agreement has been entered into;

(ii) there is a change in law that modifies any matter covered by the agreement but is not of the nature which renders the agreement to be non-binding ; or (iii) there is a request from competent authority in the other country requesting revision of agreement, in case of bilateral or multilateral agreement.

(b) Except when the agreement is proposed to be revised on the request of the assessee, the agreement shall not be revised unless an opportunity of being heard has been provided to the assessee and the assessee is in agreement with the proposed revision.

(c) The revised agreement shall include the date till which the original agreement is to apply and the date from which the revised agreement is to apply.

(9) Cancellation of an agreement:

(a) An agreement shall be cancelled by the Board for any of the following reasons:

(i) the compliance audit has resulted in the finding of failure on the part of the assessee to comply with the terms of the agreement;

(ii) the assessee has failed to file the annual compliance report in time;

(iii) the annual compliance report furnished by the assessee contains material errors; or

(iv) the assessee is not in agreement with the revision proposed in the agreement.

(b) The Board shall give an opportunity of being heard to the assessee, before proceeding to cancel an application.

(c) The order of cancellation of the agreement shall be in writing and shall provide reasons for cancellation and for non-acceptance of assessee's submission, if any.

(d) The order of cancellation shall also specify the effective date of cancellation of the agreement, where applicable.

(e) The order under the Act, declaring the agreement as void ab initio, on account of fraud or misrepresentation of facts, shall be in writing and shall provide reason for such declaration and for non-acceptance of assessee's submission, if any.

(10) Mere filing of a application for an agreement under these rules shall not prevent the operation of Chapter X of the Act for determination of arms' length price under that Chapter till the agreement is entered into.

Notification No. 18/2012 - Dated 23.05.2012:

Section 92C prescribes that the ALP shall be determined by using the most appropriate method to be selected out of any of the following six methods:

(1) CUP Method
(2) CPM
(3) RPM
(4) PSM
(5) TNMM
(6) Any other prescribed method.

It may be noted that the last method is "any other prescribed method".

Now Rule 10AB has been inserted to prescribe that any other prescribed method shall be any method which takes into account the price which has been charged or paid, or would have been charged or paid, for the same or similar uncontrolled transaction, with or between non-associated enterprises, under similar circumstances, considering all the relevant facts.

CIRCULAR No. 3/2013 dated 26.03.2013:

There have been disputes with regard to the functional profit of development centres engaged in contract R&D services for the purposes of transfer pricing. While the assessee argues that they are contract R&D service providers with insignificant risk, the TPOs treat them as full or significant risk-bearing entities and making transfer pricing adjustments accordingly. Now, the CBDT has clarified that the development centre in India may be treated as a contract R&D service provider with insignificant risk if following conditions are cumulatively satisfied:

(i) Foreign principal performs most of the economically significant functions involved in research or product development cycle whereas Indian development centre would largely be involved in economically insignificant functions;

(ii) The principal provides funds / capital and other economically significant assets including intangibles for research or product development and Indian development centre would not use any other economically significant assets including intangibles in research or product development;

(iii) Indian development centre works under direct supervision of foreign principal who controls or supervises research or product development through its strategic decisions to perform core functions as well as monitor activities on regular basis;

(iv) Indian development centre does not assume or has no economically significant realized risks. (In the case of foreign principal being located in a country / territory widely perceived as a low or no tax jurisdiction, it will be presumed that the foreign principal is not controlling the risk. However, the Indian development centre may rebut this presumption to the satisfaction of the revenue authorities); and

(v) Indian development centre has no ownership right (legal or economic) on outcome of research which vests with foreign principal (it must be evident from conduct of the parties).

Circular No. 1/2013, dated 17.01.2013:

Section 10AA provides exemption to SEZ undertakings. The exemption is allowable in respect of income from export of articles or things or services (including computer software). *Explanation 2* to section 10AA clarifies that the income derived from on-site development of computer software (including services for development of software) outside India shall be deemed to be the income from export of computer software outside India. Thus, the income derived from on-site development of computer software (including services for development of software) outside India is also eligible for exemption.

This circular provides clarifications in respect of certain issues as under:

(a) Whether receipts from deputation of technical manpower for such "On-site" software development abroad at the client's place be eligible for exemption u/s 10AA?

Answer: Yes. Because the language of Explanation to section 10AA uses the words "Profits and gains derived from on-site development of computer software (**including services for development of software**)".

(b) Would tax benefit u/s 10AA be available to the buyer in case of a slump sale of a unit?

Answer: It would depend on the facts of each case, such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. It is, however, clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of by the new owner for the unexpired period at the rates as applicable for the remaining years, subject to fulfillment of prescribed conditions (in short the exemption is attached to the undertaking and not to the owner).

(c) Can tax benefits u/s 10AA be enjoyed by an eligible SEZ unit consequent upon its transfer to another SEZ?

Answer: It is clarified that the tax holiday should not be denied merely on the ground of physical relocation of an eligible SEZ unit from one SEZ to another. It is however clarified that the unit so relocated will be eligible to avail of the tax benefit for the unexpired period at the rates applicable to such years.

(d) Whether new units set up in the same location where there is an existing eligible unit would amount to expansion of the existing unit?

Answer: This issue is a matter of fact requiring examination and verification. However, it has been clarified that setting up of such a fresh unit in itself would not make the unit ineligible for tax benefits, provided the unit has not been formed by splitting or reconstruction of an existing business and all other conditions of section 10AA are satisfied.

CIRCULAR No. 9/2012 dated 17.10.2012:

The owner / seller of natural gas is charging two types of amounts from the purchaser of natural gas, viz. (i) one part for sale of natural gas, and (ii) other part for transportation of gas to the point of delivery. Now the CBDT has clarified that the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately in the bill) does not alter the basic nature of the contract. The contract remains a **'contract for sale of goods'** and does not become a **'contract for work'.** Hence in such a case, there would be no requirement of TDS in relation to transportation charges. Further, the use of different modes of transportation by the owner / seller will not alter the position.

However, it has also been clarified that the transportation charges paid to the transporter either by the owner / seller of gas or by the purchaser of gas shall attract TDS u/s 194C.

CIRCULAR No. 5/2012 dated 01.08.2012:

The CBDT has clarified that:

(a) The expenditure incurred by a pharma company on providing freebees to medical practitioners is in violation of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. Hence such expenditure is illegal and therefore not allowable as a deduction in the assessment of pharma company, due to Explanation in section 37(1).

(b) However, the value of such freebees shall be taxable as income in the hands of medical practitioner.

(B) CASE LAWS ON INCOME-TAX

CIT Vs. Rassi Cement Ltd (2013) 351 ITR 169 (AP):

The assessee received power subsidy from Govt. (i.e. the subsidy of power expenditure incurred by the assessee) after commencement of production. Held that the subsidy is revenue in nature because it has been given to meet a revenue expenditure incurred by the assessee. Hence the subsidy shall be taxable.

CIT Vs. GREAT CITY MFG. CO. (2013) 351 ITR 156 (ALL):

The Court held that if the firm has paid remuneration to partners in accordance with section 40(b), the department cannot apply section 40A(2) to make further disallowance on the ground of unreasonable.

ICDS Ltd. Vs. CIT (2013) 350 ITR 527 (SC):

The assessee is engaged in the business of leasing activity. It purchased vehicles and leased out to various lessees. The registration of vehicle was in the name of lessees. The assessee claimed depreciation u/s 32 on the following grounds:

(a) That the registration of vehicles in the names of lessees was only to meet the requirement of Motor Vehicles Act, 1988. But the ownership continued with the assessee as per lease-agreement entered into with the lessees. Hence ownership condition is satisfied.

(b) That the vehicles are being used for the purpose of leasing business of assessee. The assessee argued that section 32 simply requires that the asset must be used for the purpose of business of assessee. It does not require that the asset must be used by assessee.

The Supreme Court accepted both of the grounds.

CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom):

The assessee (a salaried employee) was provided housing facility by the employer. The employer made an interest-free refundable security deposit of Rs. 30 lacs to the landlord from whom the property was taken on rent. The AO contended that since the employer had given interest-free deposit to the landlord, notional interest on deposit should be included in calculating the taxable value of housing facility. The assessee argued that the perquisite of housing facility is taxable as per valuation rules prescribed by the department. Those valuation rules permit only 15% of salary or rent paid by employer, whichever is less. Those rules do not allow the AO to enhance valuation by way of notional interest on interest-free deposit. The Court accepted.

CIT v. J.K. Investors (Bom.) Ltd. (2012) 211 Taxman 383 (Bom):

The assessee has let out his property. There were two agreements, viz. (i) rent-agreement and (ii) service-agreement. Under rent-agreement, the assessee received rent of house-property and under service-agreement, the assessee received service charges for providing various services such as lift, common entrance, main road leading to the building through the compound, drainage facilities, air conditioning facility, open space in / around the building etc. The dispute arose as to whether the service-charges shall be taxable under the head income from house-property or income from other sources. The High Court held that the first step is to determine whether the service-agreement could stand independently from the rent-agreement or not. In the present case, the service-agreement is dependent upon the rent-agreement and in the absence of the rent-agreement, there could not be service-agreement. In short, the tenant cannot accept services without there being a letting out of house-property. Hence, the service charges shall also be a part of house property head only.

STEEL AUTHORITY OF INDIA LTD Vs. CIT (2012) 348 ITR 150 (DEL):

The assessee took loan and utilized for purchase of fixed assets. Subsequently, the loans were waived. The AO reduced cost of asset by the amount of waived-loan by applying the wording of section 43(1) which reads as under:

“actual cost” means the actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority”.

The Court held in favour of department.

CIT Vs. SUNDARAM FINANCE LTD Vs. ACIT (2012) 349 ITR 356 (SC):

The assessee collected certain sums from its customers and credited the same to “contingent deposit” in its books of account. The assessee did not include these receipts in computation of taxable income on the ground that these receipts were in the nature of deposits to protect itself against the liability of sales-tax which may arise or may not arise in future. The assessee further submitted that if the liability of sales-tax would not arise, it would refund those amounts to customers. The department argued that the assessee has not kept those receipts in a separate interest-bearing bank account. This demonstrates that the receipts belonged to the assessee only. The Court accepted arguments of department and held that those receipts were part of taxable income.

CIT Vs. KAMAL WAHAL (2013) 351 ITR 4 (DEL) (2013) 351 ITR 4 (DELHI):
The assessee made investment in a residential house solely in the name of his wife and claimed exemption u/s 54. On appeal, the Court allowed. (The Court held that the purpose of section 54 is to grant benefit. Further held that the assessee has not made investment in a strange name but in the name of wife which is quite natural in practical life).

CIT Vs. PVP VENTURES LTD (MAD):
The company allotted ESOP to its employees. The company debited the difference of issue price (i.e. the price at which the ESOP were allotted) and the fair market value of ESOP to the P&L A/c under the heading "Staff Welfare Expenses" and claimed deduction u/s 37(1). On appeal, the Court allowed.

CIT Vs. REGALIA APPARELS (P) LTD (BOM) (2013) 352 ITR 71 (Bom):
The assessee is engaged in manufacture and export of garments. The Apparel Export Promotion Council (APEC) granted the assessee entitlement for export of garments. The assessee furnished bank guarantee to APEC for grant of entitlement. However, subsequently, the assessee did not utilize the entitlement and therefore APEC encashed bank guarantee. The assessee debited to P&L A/c and claimed deduction. However, the AO disallowed on the ground that the amount was in the nature of penalty. The assessee argued that there was no contravention of any law or offence under any law. The High Court accepted and allowed deduction.

CIT v. Andhra Ferro Alloys P. Ltd. (2012) 349 ITR 255 (A.P.):
Outstanding electricity charges are not covered u/s 43B. Hence the deduction is allowed on due basis.

CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.):
A Ltd. is having two units, Unit A and Unit B. Unit A is eligible for deduction u/s 80-IA but Unit B is non-eligible.

Position of AY 2013-14 was as under:
Unit A has a profit of Rs. 100 before claiming depreciation of Rs. 120. Thus, Unit A had a net loss of Rs. 20.
Unit B has a profit of Rs. 70. Hence loss of Unit A is set off against profit of unit B. The net profit of unit B, after set off, remains only Rs. 50.
The Gross Total Income comes to Rs. 50, deduction u/s 80-IA Rs. Nil and the total income comes to Rs. 50.

Position of AY 2014-15 was as under:
Unit A has a profit of Rs. 200 and Unit B has a profit of Rs. 80. Now, the assessee wanted to claim deduction of Rs. 200 u/s 80-IA.

The Court held that in view of single-source presumption prescribed in section 80-IA(5), the deduction shall be only Rs. 180. (Profit of Unit A Rs. 200 minus the unabsorbed depreciation of Rs. 20 of AY 2013-14 on the basis of single-source presumption).

Sudhir Nagpal v. Income-tax Officer (2012) 349 ITR 0636 (P&H):
In this case, the legal heirs (For example – 2 sons) inherited property from their father. The property consisted only of plinths and there was no building. Thereafter they earned rental income from letting out of plinths. The Court held as under:
(1) The rental income of mere plinths without building shall be taxable under the head Income from Other Sources.
(2) The legal heirs had definite share in the property. They had acquired property by way of operation of law. They have not associated together to earn rental income. Further there is nothing to demonstrate that they have acted as AOP. Hence there is no AOP. The income shall be taxable in their individual assessments in the proportion of their individual rights in the property.

Sahara Hospitality Ltd. v. CIT (2012) 211 Taxman 15 (Bom):
Section 127 prescribes that the DGIT / CCIT / CIT **may**, after giving the assessee a reasonable opportunity of hearing, transfer case from AO to another AO. Now, the dispute is whether the opportunity to assessee is mandatory or not. The Court held that the word "may" used in section 127 must be interpreted as "shall" because there is a duty cast upon the DGIT / CCIT / CIT. Hence, it is mandatory to give opportunity of hearing to the assessee.

Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.):

The assessee earned exempted income but did not claim exemption in original return. In short, the assessee paid tax on exempted income. The department processed intimation u/s 143(1). Subsequently, the assessee submitted application u/s 264 to CIT for revision [because the time-limit u/s 139(5) for submission of revised return had expired]. The CIT rejected application u/s 264 on the ground that there was no mistake in the intimation issued by department u/s 143(1) since the assessee has himself not claimed exemption in the Return. On appeal, the Court held that the power of CIT u/s 264 is wide enough to accept the claim of assessee. The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee. In this context, the High Court referred to the CBDT Circular dated 11.04.1955 and held that the departmental officers should not take advantage of the assessee's mistake. Finally, held in favour of assessee.

Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306 (SC):

The assessee is engaged in providing consultancy services. It claimed deduction of provision made for payment of gratuity which was disallowable u/s 40A(9). The case of assessee was audited and in Form 3CD, the auditor had reported that the provision for gratuity was disallowable u/s 40A(7). The AO took action u/s 147. At that stage, the assessee realized mistake and admitted disallowance. The assessee also informed the AO by way of a letter that the mistake was un-intended. However, the AO imposed penalty u/s 271(1)(c). The SC held that this is a case of inadvertent mistake only and there is no concealment of income. Hence penalty is not imposable.

CIT Vs. AMIT JAIN (2013) 351 ITR 74 (Del):

The assessee declared income under the head Capital Gain but the AO treated the same as income from Business. Thereafter the AO levied penalty u/s 271(1)(c). The Court held that mere change in head does not mean that the assessee has concealed income or furnished inaccurate particulars. Hence, penalty is not leviable.

CIT v. Celetronix Power India P. Ltd. (2013) 352 ITR 70 (Bom.):

The assessee claimed a particular deduction under Chapter VI-A relying on a judgment of the Bombay High Court. Subsequent to filing of return, the judgment of High Court was reversed by the Supreme Court and accordingly, the deduction was not allowed at the time of assessment. The AO also imposed penalty under section 271(1)(c). The Court held that for imposition of penalty u/s 271(1)(c), there should be concealment of income or furnishing of inaccurate particulars of income. In this case there is neither concealment of income nor furnishing of inaccurate particulars of income. Hence penalty cannot be imposed.

CIT v. Amtek Auto Ltd. (2013) 352 ITR 394:

The AO levied penalty under section 271(1)(c), in respect of additions made on account of loss on sale of fixed asset, loss on sale of shares and expenses paid towards placement of preference shares. On appeal by the assessee, the Tribunal observed that the additions were based on a difference of opinion as to whether such expenses and losses were revenue or capital in nature, and not on account of any false claim made by the assessee. Further, even after such additions, the tax on total income was lower than the minimum alternate tax on book profit, consequent to which there was no change in the tax payable. Hence penalty cannot be imposed.

CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC):

The dispute is -- Whether the stamp vendors are agents of the State Government or whether the sale of stamp papers by the State Government to the stamp vendors is on "principal-to-principal" basis involving a "contract of sale". The Court observed that the crucial question is whether the ownership in the stamp papers passes on to the stamp vendors when the State Govt. delivers stamp papers on payment of discounted price. The Court examined Gujarat Stamp Supply and Sales Rules, 1987 and found that the stamp vendors, while taking delivery of the stamp papers from the Government offices, are purchasing the stamp papers. Finally, the Court held that the provisions of section 194H shall not apply.

CIT v. Hardarshan Singh (2013) 350 ITR 0427 (Delhi):

The assessee has four trucks and is in the business of transporting goods (hereinafter referred to as "own business"). He also carries on the business of a booking agent in the sense he makes arrangement for transportation of goods through other transporters / lorry owners (hereinafter referred to as "lorry booking business"). In the course of lorry booking business, he collects freight from different customers, retains his own charges and pays balance amount to other transporters / lorry owners. The issue under consideration is whether the assessee is liable to deduct TDS u/s 194C out of amounts paid to other transporters / lorry owners.

The assessee contended that, as far as the lorry booking business is concerned, he has no contract of carriage with any other person. The contract is between the clients and the lorry owners/transporters, in which the assessee only acts as a facilitator or as an intermediary. His income is only the booking commission, which he retains out of the amount collected from the clients. The remaining amount is passed on entirely to the lorry owners/transporters. In short, the assessee submitted that he is merely acting as a facilitator or intermediary. Therefore, he was not liable to deduct tax at source, and accordingly disallowance under section 40(a)(ia) was not attracted.

The Court accepted arguments of assessee.

KHANNA AND ANNADHANAM Vs. CIT (DEL):

The assesses is a CA firm engaged in the profession of Chartered accountancy. It had an agreement with a foreign CA firm (named DHS). The DHS referred professional work to the assessee for about 13 years. Thereafter DHS terminated agreement. The assessee received compensation from DHS.The assessee argued that the compensation is a capital receipt and therefore not taxable. But the AO argued that it was revenue in nature. On appeal, the High Court found that the compensation was for loss of a source of income. The department argued that the assessee continued professional work even after termination of agreement and hence there was no loss of source of income. But the Court accepted that the assessee had agreement with DHS for about 13 years and therefore DHS was a kind of permanent source of income for the assessee. Finally the Court accepted that the compensation was a capital receipt and therefore not taxable.

CIT Vs. GROZ BECKERT ASIA LIMITED (P&H) (2013) 351 ITR 196 (P&H) (FB):

The assessee paid a fee of Rs. 6 lakh to obtain corporate membership fee for a period of 5 years. The Court accepted that the membership is for a limited period only which is very short-term. Hence the expenditure is revenue in nature.

COURT ON ITS OWN MOTION Vs. CIT (DEL):

In a Public Interest Litigation (PIL), the applicant has raised several practical problems faced by different taxpayers. While delivering judgement, the Hon'ble Delhi High Court has given following directions to the department:

(a) The department shall maintain a separate register for recording of rectification applications u/s 154.

(b) The CPC Bangalore shall not automatically adjust the refund against demand. It must follow the two-stage procedure prescribed in section 245 before adjusting any refund against any demand. The two-stage procedure is (1) First stage - The department shall give an advance-intimation to the assessee before making adjustment, and (2) Second stage – The assessee can file reply to AO. If the assessee submits any reply, such reply shall be considered. Only thereafter, the refund shall be adjusted against demand.

(c) The department shall not deny interest u/s 244A if the delay in refund is not attributable to the assessee.

(d) If the deductor has submitted incorrect particulars in Quarterly Return of TDS and therefore the credit of TDS does not appear in 26AS, the deductee cannot suffer. In such cases, the department must take action against the deductor. The department cannot deny credit to the deductee.

CIT Vs. JAGJIT INDUSTRIES LTD (2011) 337 ITR 21 (DEL):

The assessee raised share capital outside India and repatriated proceeds to India. At the time of repatriation, the assessee earned profit due to fluctuations in foreign exchange rates. The share capital was used partly for acquiring fixed asset and partly for meeting working capital need. The dispute arose as to whether the gain on account of fluctuations shall be capital or revenue.

The assessee argued that the entire gain was capital in nature because the source of funds (i.e. share capital) is capital in nature. The department argued that the gain should be divided in two parts, viz. (i) that part which is relatable to fixed assets shall be capital, and (ii) that part which is relatable to working capital shall be revenue.

The High Court held in favour of assessee i.e. the entire gain shall be capital in nature. The High Court held that use of money is not to be seen. Once the source (i.e. share capital) itself is capital in nature, the fluctuation-profit shall also be capital in nature.

DIT Vs. Brahamputra Capital Financial Services ltd (2011) 335 ITR 182 (DEL):

The assessee is a non-banking financial company (NBFC) engaged in granting loans. It classified certain loans as non-performing asset (NPA) as per RBI guidelines and accounted for interest income on such NPA loans on receipt basis. The department argued that since the assessee followed mercantile method, it must record interest income on accrual basis even if the loans had become NPA. The assessee argued that since the loans have become doubtful of recovery, the interest income cannot be said to have accrued. There is no **real accrual**. Hence, it is not liable to pay tax. The Court accepted.

Decisions regarding capital or revenue nature of subsidy:

Long back in the case of **Sahney Steels**, the Supreme Court held that the subsidy received from Govt. can be of capital nature or revenue nature depending upon the purpose for which it is given by Govt. We know that the **subsidy of capital nature** has the character of capital receipt and therefore not taxable but the **subsidy of revenue nature** has the character of income and therefore taxable. Some recent cases on nature of subsidy are as under:

CIT Vs. Udupi Builders P. Ltd. (2009) 319 ITR 440 (Kar)	The assessee received capital investment subsidy from Govt. in connection with **setting up a hotel**. The purpose of subsidy was to encourage tourism industry. Hence the subsidy is capital.
SHREE BALAJI ALLOYS Vs. CIT (2011) 333 ITR 335 (J&K)	The assessee received refund of **excise duty and interest** subsidy under an incentive scheme formulated by the Central Government for the public interest (i.e. to accelerate industrial development, generate employment and create opportunities for self-employment in the State of Jammu & Kashmir). The Court held that the subsidy was capital in nature (**Note: Contrary view has also been expressed in other cases**).
CIT Vs. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All)	The assessee received incentive under the Scheme formulated by the Central Government for **recoupment of capital** employed and **repayment of loans** taken from a financial institution for setting up / expansion of a new sugar factory. The assessee claimed this as a capital receipt. The Court accepted.
CIT Vs. Rasoi Ltd (2011) 335 ITR 438 (Cal)	The assessee received subsidy from Govt. of West Bengal. The subsidy was received as a financial assistance for expansion of capacity, and modernisastion of marketing capability. The calculation of subsidy was 90% of sales-tax paid by the assessee. The department argued that since the subsidy was calculated as 90% of sales-tax paid by assessee, the nature of subsidy was revenue in nature. The assessee argued that the calculation of subsidy is not to be seen. What we have to see is the object of subsidy. Since the object of subsidy was expansion of business, the nature of subsidy is capital in nature. The High Court held in favour of assessee.
CIT Vs. Rassi Cement Ltd (2013) 351 ITR 169 (AP)	The assessee received power subsidy from Govt. (i.e. the subsidy of power expenditure incurred by the assessee). Held that the subsidy is revenue in nature and therefore taxable.

CIT Vs. Kribhco (2012) 209 Taxman 252 (Del):

The question before court was whether section 14A is applicable in relation to expenses incurred for earning any income eligible for deduction under chapter VI-A? The Court held that section 14A is applicable only in respect of expenses incurred for earning "incomes which do not form part of total income". Such incomes are prescribed in chapter III of the Income-tax Act, 1961 and not in Chapter VI-A. Hence, section 14A does not apply to expenses incurred for earning any income eligible for deduction under chapter VI-A.

DIT Vs. BAGRI FOUNDATION (2012) 344 ITR 193 (DEL):

The assessee is a charitable trust eligible for exemption u/s 11 / 12. During the current year, it made donations to other trusts and the amount of donations exceeded the gross receipts of the current year. Obviously, the assessee made donations out of income of earlier years. The AO took a view that the assessee cannot make donations out of

15% standard accumulations of earlier year. Hence, he took a fantastic view in a reverse mode i.e. such donations shall amount to taxable income of assessee. On appeal the Court did not accept the view of AO. ***[Note: Please note that there is no condition with regard to standard accumulation of 15%. The prohibition of not giving donations is with respect to deemed application and extra-accumulation only).***

CIT Vs. DELHI PUBLIC SCHOOL (2011) 202 TAXMAN 318 (P&H):

In this case, the employer provided education facility to the children of employee in its own school and the value of facility exceeded Rs. 1,000/- per month (for example – the value was Rs. 1,200/- per month). The assessee argued that only 200/- per month shall be taxable, whereas the department argued that entire 1,200/- shall be taxable.

The High Court held that on a plain reading of language of Rule 3 of Income-tax Rules, 1962, if the value of education facility does not exceed Rs. 1,000/- per month, it is fully exempted. But if the value of facility exceeds Rs. 1,000/-, the whole value (Rs. 1,200/- in the present example) shall be taxable.

CIT Vs. HARIPRASAD BHOJNAGARWALA (2012) 342 ITR 69 (GUJ):

The assessee is a HUF. It claimed the benefit of section 23(2) i.e. Nil annual value of a self-occupied house-property. The AO concluded that the benefit of section 23(2) is available only to an individual and not to HUF because HUF is a notional entity and it cannot occupy property for self-residence. The assessee argued that HUF is a body consisting of natural persons (i.e. members) and the property owned by HUF can be occupied by its members for self-occupation. The Court accepted arguments of assessee.

CIT Vs. AZIMGANJ ESTATE (P) LTD Vs. CIT (2012) 206 TAXMAN 308 (CAL):

The assessee was a property developer and builder. It constructed a building, held the same as stock-in-trade but let it out and earned rental income. The assessee declared rental income under the head House Property and claimed standard deduction of 30% u/s 24(a). The AO held that the property was stock-in-trade and hence rental income was taxable under the head Income from BPV. The Court accepted that the rental income was taxable under the head Income from HP ***(Note: Long back, the Supreme Court also held that under the scheme of Income-tax Act law, Income from HP is a specific head and therefore the rental income of a house-property shall always be taxable under the head Income from HP irrespective of whether the property is residential or non-residential; whether the property is held by the assessee as a fixed asset or stock-in-trade; whether the assessee has a few number of properties or a large number of properties).***

JOSEPH GEORGE AND CO. Vs. ITO (2010) 328 ITR 161 (KERALA):

The assessee was engaged in lodging business. It let out a building to a bank on long-term lease. The Court held that the rental income derived from bank shall not be taxable as business income even though the assessee was engaged in lodging business. It would be taxable as Income from House-Property.

CIT v. Asian Hotels Ltd. (2010) 323 ITR 0490 (Del.):

The assessee received interest-free deposit from tenant to whom property has been let out. The AO computed notional interest income on the interest-free deposit at the rate of 18% per annum with the reasoning that by accepting the interest-free deposit, a benefit had accrued to the assessee which was chargeable to tax under the section 28(iv) or under section 23(1).

The High Court held that section 28(iv) is concerned with business income and brings to tax the value of any benefit or perquisite arising from business or profession. That section cannot apply to the present situation.

Regarding section 23(1), the court accepted that section 23(1) deals with the determination of the annual letting value of a house-property for computing taxable income from house property. Even that section is not sufficient enough to include notional interest.

Thus, the notional interest is assessable neither as business income nor as income from house property.

CIT Vs. SMT. A SHIVAKAMI AND ANOTHER (2010) 322 ITR 64:

The assessee purchased three buses, owned them and used them in a hiring business. However, those buses were not registered in the name of assessee. The assessee claimed depreciation but the AO disallowed. On appeal, the Court has allowed depreciation on the ground that for the purpose of section 32, what is required is ownership of asset and not the registration of ownership ***(Note: Long-back in Podar Cement case as well as in Mysore Minerals case, the Hon'ble Supreme Court also allowed depreciation in such a case).***

CIT Vs. SMIFS SECURITIES LTD (2012) 348 ITR 302 (SC):
In these cases, the assessee purchased a running business and bifurcated part of the purchase consideration towards tangible assets and the balance amount (i.e. excess) as cost of "goodwill". Thereafter, the assessee claimed depreciation u/s 32 on the cost of goodwill. But the AO disallowed on the ground that there is no specific mention of goodwill in the list of intangible assets prescribed in section 32. The assessee argued that in section 32, intangible asset means know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature. On this basis, the assesse submitted that the goodwill falls under "any business or commercial right of similar nature" and hence depreciation is allowed. The Court has accepted ***(Note: Please note that this decision has been given by Hon'ble Supreme Court and therefore the long-standing controversy has come to an end).***

CIT Vs. YAMAHA MOTOR INDIA (P) LTD (2010) 328 ITR 297 (DEL):
The block-system has a special procedure. Once an asset is included in block, it will remain included even if it is not used in subsequent year for the purpose of business. Hence, even if the asset is not used for business in subsequent year, the assessee shall be entitled to claim depreciation.

FEDERAL BANK LTD. Vs. ACIT (2011) 332 ITR 319 (KERALA):
EPABX and mobile phones cannot be treated as 'computers'. Hence 60% depreciation is not allowed.

S. AMBIKA Vs. DCIT (2011) 203 TAXMAN 2 (KER):
"Abkari licence" is an intangible asset eligible for depreciation u/s 32.

LISSIE MEDICAL INSTITUTIONS Vs. CIT (2012) 348 ITR 344 (KER):
It has been held that once a charitable trust has claimed cost of a capital asset as application u/s 11, it cannot claim depreciation on the same cost either in the year of acquisition or in any subsequent year.

CIT Vs. KJS INDIA (P) LTD (2012) 340 ITR 380 (DEL) / CIT v. DCM Ltd. (2010) 320 ITR 307 (Delhi):
The assessee carried on two types of activities, viz (i) manufacture of soft drink, and (ii) trading of soft drink. The assessee discontinued manufacture activity but continued trading activity. The assessee paid retrenchment-compensation to the employees of manufacture activity and claimed deduction u/s 37(1). The AO disallowed deduction on the ground that under section 37(1), the deduction is allowed only if the expenditure is incurred for the purpose of carrying on business. According to AO, the retrenchment-compensation was paid to discontinue business and not to continue business. Hence, the AO did not allow deduction. But the assessee argued that it discontinued manufacture activity in order to continue trading activity in a profitable manner. The assessee further argued that this is not a case of discontinuity of entire business; this is a case of discontinuity of one activity of business. The Court accepted arguments of assessee and allowed deduction.
(Note: It is a consistent judicial view that if the expenditure is incurred for discontinuity of entire business, the same is not allowable. But if the expenditure is incurred for discontinuity of a part of activity or one unit / division but the remaining part of the activity / unit / division is carried on, the expenditure is allowed).

CIT Vs. NAIDUNIA NEWS AND NETWORKING (P) LTD (2012) 210 TAXMAN 73 (MP)
The assessee-company is engaged in publication of newspapers etc. It incurred expenditure on foreign travel and education of an employee. The employee was sent to foreign country for higher studies in printing technology, which was necessary for the business of assessee. The employee happened to be a son of Ex-director of assessee-company. The AO disallowed expenditure on the mere ground that the employee was son of Ex-director of assessee-company. On appeal, the Court allowed.

CIT Vs. TRIVENI ENGG & INDUSTRIES LTD (2012) 343 ITR 245 (DEL):
The court held that:
- Advance given to employees, which subsequently becomes irrecoverable, is allowable as a business loss u/s 28.
- Security deposit made with the landlord to obtain lease of premises is a capital loss and therefore not allowable u/s 28.

<u>TRF Ltd. Vs. CIT (2010) (SC):</u>
Under section 36(1)(vii) there is no need to prove that the debt has become bad. Simple writing off of debt by the assessee in his books of account is sufficient for claiming deduction.

<u>CIT Vs. KAP SCAN AND DIAGNOSTIC CENTRE (P) LTD Vs. (2012) 344 ITR 476 (P&H):</u>
The assessee, engaged in running a diagnostic laboratory, paid commission to doctors for referring patients for investigations and claimed deduction u/s 37(1) on the ground that it was necessary in this type of business. The AO disallowed the expenditure on the ground that it is an illegal expenditure. On appeal, the Court analysed the Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002 and found that the expenditure is illegal. Finally, the Court disallowed deduction. ***(Note: Attention is also invited to the recent <u>CIRCULAR No. 5/2012 dated 01.08.2012 in which the</u> CBDT has clarified as under –***

(a) The expenditure incurred by a pharma company on providing freebees to medical practitioners is in violation of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002. Hence such expenditure is illegal and therefore not allowable as a deduction in the assessment of pharma company due to restriction imposed in Explanation to section 37(1).
(b) However, the value of such freebees shall be taxable as income in the hands of medical practitioner.

<u>CIT Vs. MODI INDUSTRIES LTD (2011) 339 ITR 467 (DEL):</u>
The Court has taken following important conclusions:

- If an **entire asset** is replaced by a new asset, it would be a **capital expenditure.**
- If a **part of asset** is replaced by a new part, it would be a **revenue expenditure**. However, if a **part of a building** is demolished and a new part is erected on that place, the expenditure shall be **capital**.

In this case, the assessee incurred following expenses:

(1) Expenditure on purchase of pumping set, mono-block pump and transformers which were part of a bigger plant – the court accepted revenue expenditure.
(2) Expenditure on demolition and re-erection of a new cell room – the court accepted capital expenditure.

<u>CIT VS. TULIP STAR HOTELS LTD (2011) 338 ITR 482 (DEL):</u>
The assessee (holding company) was engaged in hotel business. It borrowed money for the purpose of making investment in equity shares of subsidiary company. The subsidiary company was formed to manage the hotels run by assessee company. The assessee claimed that the subsidiary company has been formed to carry on the business of holding company in a more effective manner and therefore the interest on money borrowed by assessee for making investment in subsidiary company should be allowed as business expenditure. The court allowed.

<u>CIT Vs. ITC Hotels Ltd (2011) 334 ITR 109 (Kar):</u>
The Court accepted that the expenditure incurred on issue of convertible debentures is a revenue expenditure because the conversion of debentures into equity shares is a mere redemption of debentures. Hence, the Court allowed deduction. **(Contrary view has been taken by Gujrat High Court in case of Banco Products Ltd).**

<u>CIT Vs. PRIYA VILLAGE ROADSHOWS LTD (2011) 332 ITR 594 (DEL):</u>
The assessee wanted to extend existing business. For this purpose, feasibility study was conducted. However, the expansion project was abandoned and no asset was created. Held that the expenditure on feasibility study is revenue in nature.

<u>Dr. Aswath N. Rao v. ACIT (2010) 326 ITR 188 (Karn)</u>
The assessee, a doctor, purchased second-hand medical equipment from USA, dismantled such equipment and used parts thereof as spare parts of an existing machinery. The dispute arose whether the expenditure incurred on purchase of second-hand medical equipment was capital or revenue. The Court allowed as revenue expenditure.

<u>CIT v. Sagar Talkies (2010) 325 ITR 133 (Karn.):</u>
The assessee incurred expenditure on installation of dolby system and claimed deduction as revenue. The Court observed held that the assessee had provided certain amenities to its customers by replacing the old system with a better sound system and by introducing such system, the assessee had not increased its income in any way. The assessee installed dolby stereo system instead of repairing the existing old stereo system. This had not benefited the

assessee in any way with regard to the total income since there was no change in the seating capacity of the theatre or increase in the tariff rate of the ticket. In such a case, the expenditure on such change of sound system could not be considered capital in nature.

CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn):

The assessee running cinema theatres claimed deduction of the sum paid to the local police and local gundas and claimed deduction. The Court held that –

- the payment to local police is illegal gratification and therefore not allowable as deduction.
- the payment to gundas as a precautionary measure so that they will not cause any disturbance in the theatre is also illegal expenditure and therefore not allowable as a deduction.

CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.):

The assessee owned a plant which required large quantity of water. The plant does not work without water. The assessee, therefore, incurred expenditure for alteration of the dam (constructed by the State Government) to ensure sharing of the water with the State Government without having any right or ownership in the dam. The assessee's share of water is determined by the State Government. The assessee claimed the expenditure as a deduction u/s 37. The Court has allowed.

Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.):

The assessee is engaged in the business of construction and developer. It paid amount to municipal corporation for violation of sanctioned plans of buildings and deviation. The payment was named as 'regularisation fee'. The assessee claimed deduction. The Court disallowed deduction with the reasoning that the expenditure was in the nature of penalty eventhough it is named as 'regularisation fee'.

ISKRAEMECO REGENT LTD VS. CIT (2011) 331 ITR 317 (MAD) / ROLLATAINERS LTD VS. CIT (2011) 339 ITR 54 (DEL):

The assessee took two (2) loans from a bank, viz (1) one for purchase of fixed assets, and (2) other for working capital requirement. Subsequently, the bank waived both of those loans. The Court held that the waiver of loan taken for fixed assets was not revenue in nature and therefore not taxable. But the waiver of loan taken for working capital was revenue in nature and therefore taxable.

CIT Vs. CABLE CORPORATION OF INDIA LTD (2011) 336 ITR 56 (BOM):

The High Court held that while computing WDV of block of asset, the "money receivable" in respect of asset sold shall be deducted and not the fair market value of asset sold.***(Note: Please note that this decision is applicable only if the asset has been sold. However, if the asset has been scraped, the fair market value of asset shall be deducted in arriving at WDV of Block).***

GLOBAL GEOPHYSICAL SERVICES LTD, Advance Ruling (2011) 332 ITR 418:

The assessee (a non-resident) provided service to ONGC with regard to seismic data (means the images of earth's sub-surface which is used for exploration and production of mineral oil). Held that the activity of assessee was covered u/s 44BB.

DIT Vs. DSD NOELL GMBH (2011) 333 ITR 304 (DEL):

The assessee was covered u/s 44BBB. Hence it declared 10% income as prescribed in section. However, the AO computed more than 10% income on the basis of books of account. Held that such action of AO is not valid. The Court accepted that the section prescribes flat 10% income. However, the assessee can claim less than 10% income by maintaining books of account. It does not mean that the AO can compute more than 10% on the basis of books of account.

CIT Vs. TEMPLETION ASSET MANAGEMENT (INDIA) (P) LTD (2012) 340 ITR 279 (B0M):

The assessee company is engaged in the business of asset management of mutual funds. The AO made following additions to the taxable income of assessee:

- The commission recovered by the assessee from the mutual funds managed by it was much lesser than the rate of commission prescribed by SEBI. Hence the AO made addition of difference amount of commission.
- The assessee did not recover some of the expenses incurred by it for mutual funds from those mutual funds. Such expenses had been claimed by the assessee in its own P&L A/c. The AO disallowed those expenses.

On appeal the Court held:

- Regarding commission, the SEBI has prescribed maximum ceiling limit of commission and not fixed rate. Hence if the assessee has charged lesser amount of commission, there is nothing wrong.

- Regarding expenses, the assessee has not recovered those expenses from mutual funds as a matter of commercial expediency and business necessity. The AO cannot interfere with the decision of assessee.

Thus, both of the additions made by AO, were deleted by the Court.

DIT Vs. SCHLUMBERGER ASIA SERVICES LTD (2009) 317 ITR 156 (UTTRAKHAND):

The assessee (a non-resident) provided machinery to an Indian concern on hire and accordingly liable to tax on presumptive basis u/s 44BB [i.e. net profit is presumed to be 10% of turnover].The Indian concern brought machinery to India and paid / reimburshed custom duty on import. The AO carried a view that the custom duty was a part of turnover for the purpose of computation of presumptive income. But the non-resident assessee did not include custom duty in the amount of turnover. Hence a dispute arose. On appeal, the court held that the custom duty was basically an expenditure fastened to the Indian concern (because the Indian concern was the importer) and it is nothing to do with the turnover of non-resident. Finally, the Court held that custom duty cannot be included in turnover.

CIT Vs. MIHIR TEXTILES LTD (2009) 316 ITR 403 (GUJ):

The assessee incurred expenditure by way of commitment charges on issue of debentures and claimed the same as revenue expenditure. The court allowed. **(Earlier the Supreme Court has held in the case of India Cement Ltd and Core Health Care Ltd that the expenditure incurred on issue of debentures is a revenue expenditure).**

PVS RAJU Vs. ACIT (2012) 340 ITR 75 (AP):

The Court held that the question whether the shares are held by assessee as an investment (and therefore taxable under the head Capital Gain) or as stock-in-trade (and therefore taxable under the head BPV) is a not a pure question of law. It is a question of facts. It was further held that no single rule or test can be applied in order to determine the nature and character of transaction. Various factors have to be applied for determining true nature of transaction. Some of those factors are:

- Magnitude of activity
- Frequency of activity
- The holding period
- Ratio of sales to purchase
- Total volume of holding

BHARTI GUPTA RAMOLA VS. CIT (2012) 207 TAXMAN 178 (DEL):

Under section 2(42A) / 2(29A), a capital asset is treated as long-term if the holding period exceeds 12 months / 36 months. In this case, the assessee acquired asset (i.e. mutual fund) on 29.09.2004 and sold on 29.09.2005. The department argued that the asset is short-term because the date of transfer shall be excluded in computing holding period and once that is done, the holding period remains only 29.09.2004 to 28.09.2005 i.e. exact 12 months. But the assessee argued that the date of transfer shall not be excluded and if that is done, the holding period shall be 29.09.2004 to 29.09.2005 i.e. more than 12 months. The Court accepted assessee's arguments.

P. P. Menon v. CIT (2010) 325 ITR 122 (Ker.):

The assessee was a partner in a firm. The firm owned building. The firm was dissolved and the assessee received building. Subsequently, the assessee sold building and claimed that in computing holding period of building, the holding period of previous owner (i.e. the firm) should also be included. The Court held that there is no such provision in section 2(42A).

Navin Jindal v. ACIT (2010) 320 ITR 708 (SC):

The court has held that in the case of renunciation of right to subscribe for additional shares, the holding period shall start from the date of offer by the company **(Note: This is already prescribed in section 2(42A). The assessee has unnecessarily gone in appeal before Courts).**

CIT Vs. MANJULA J. SHAH 16 TAXMAN 42 (BOM):

The effect of this case is explained by way of following example—
Mr. A purchased a land on 10.01.2007. He gifted this land to Mr. B on 15.12.2009. B sold this land on 25.09.2011. Mr. A was not liable to tax since the transaction is excluded from transfer u/s 47. However, Mr. B is liable to capital gain tax.

In the hands of Mr. B the holding period shall be taken from 10.01.2007 (i.e. the date on which the previous owner acquired asset) to 25.09.2011 by virtue of explanation to section 2(42A). Hence the asset is long-term and therefore the resultant capital gain is also long-term. There is no dispute about it. But the question is whether the benefit of indexation shall start from 10.01.2007 (i.e. the date on which the previous owner acquired asset) or from 15.12.2009 (i.e. the date on which the assessee became owner)?

The Court accepted that the indexation shall start from 10.01.2007. ***(Note: This is an important judgement).***

CIT Vs. Enam Securities (P) Ltd (2012) 345 ITR 64 (Bom):

Under the provision of section 48, the benefit of indexation is not allowed in case of bonds or debentures except capital indexed bonds issued by the Govt. In this case, the issue arose as to whether non-cumulative preference shares are eligible for indexation or not. The Court held that indexation is denied only in case of debentures and bonds and not in case of preference shares (whether cumulative or non-cumulative). Hence the benefit of indexation shall be allowed.

CIT Vs. Kan Construction and Colonizers (P) Ltd 208 Taxman 478 (All):

Section 50C is applicable only if the land or building is held as a capital asset. That section does not apply if the land or building is held as stock-in-trade. The reason is that section 50C has been prescribed in Capital Gain chapter only and not in BPV chapter.

CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H):

The assessee claimed exemption u/s 54B in respect of the land purchased by him. However, the same was denied by the Assessing Officer on the ground that the land was registered in the joint name of assessee and his son. The Court allowed exemption.

DIT VS. MS. JENNIFER BHIDE (2011) 203 Taxman 208:

The assessee made investment in a residential property and bonds. However, the investment was made in the joint names of assessee and his wife. Hence, the AO denied exemption u/s 54 and 54EC. In appeal, the Court allowed.

CIT Vs. RAJIV SHUKLA (2011) 334 ITR 138 (DEL):

The assessee sold depreciable asset and earned short-term capital gain. Thereafter the assessee made investment in a residential house and claimed exemption u/s 54F. The assessee argued that the presumption created in section 50 that the capital gain on sale of depreciable asset shall be short-term is for a limited purpose i.e. for the purpose of section 48 and not for the purpose of section 54F. The court accepted and therefore allowed exemption. **(Note: Earlier in Assam Petroleum Industries Ltd case, the Gauhati High Court has also allowed exemption u/s 54EC in a similar situation).**

KOMAC INVESTMENT & FINANCE (P) LTD 132 ITD 290 (MUM):

The assessee earned capital gain on sale of depreciable assets. Before sale, those assets were held by the assessee for more than 36 months. The assessee was having brought forward long-term capital loss. The assessee claimed set-off of brought forward long-term loss against capital gain of depreciable asset on the ground that although the gain of depreciable asset was in the nature of short-term gain u/s 50 yet the transferred asset was long-term. The court accepted.

CIT Vs. Cello Plast (2012) 209 Taxman 617 (BOM):

The assessee sold a capital asset and was ready to make investment in REC bonds in order to claim exemption u/s 54EC. However, the bonds were not open for subscription during the period of 6 months prescribed in section 54EC. Hence, the assesee made investment as soon as the bonds were open for subscription but the date of subscription was beyond 6 months. The Court allowed exemption.

Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.):
In this case, the assessee made investment in bonds within 6 months. However, the bonds were issued / allotted to the assessee after expiry of 6 months. The court allowed exemption u/s 54EC.

CIT Vs. PARLE PLASTICS LTD (2011) 332 ITR 63:
Under section 2(22)(e), if a closely-held company gives any loan or advance to a shareholder holding minimum 10% voting power, such loan or advance is deemed to be dividend. However, there is one exception. It is specifically prescribed that if any loan or advance is given by the company in its ordinary course of business where the lending of money is a substantial part of the business of the company, the loan or advance shall not be treated as dividend. The facts of this case were such that the loan / advance constituted 42% of total assets of company. Further, if the interest is excluded from net profit of the company, the company would have loss only. On these facts, the Court held that the lending of money was a substantial part of the business of the company and section 2(22)(e) would not apply.

CIT Vs. Pradeep Kumar Malhotra Vs. CIT (2011) 338 ITR 538 (Cal):
In this case, the assessee, a shareholder of closely-held company permitted the company to mortgage his property to a bank for enabling the company to take a loan. Subsequently, the shareholder requested the company to release mortgage over his asset. But the bank did not release the mortgage. Then, the shareholder required the company to make an advance if the company wanted to continue mortgage over his asset. The company made an advance to the shareholder. Now the issue arose as to whether the advance given by company to the shareholder would be treated as dividend u/s 2(22)(e) or not. The Court held that the purpose of section 2(22)(e) is to treat only gratituous loans or advances as dividend. Hence, if the loan or advance is given by a company for the advantage / benefit of shareholder, it can be deemed as dividend. But if the loan or advance is given by the company for its own advantage, the same cannot be treated as dividend.

CIT Vs. MANJOO AND CO. (2011) 335 ITR 527 (KERALA):
The assessee, a lottery agent, was having stock of unsold lottery tickets. The assessee won prize on unsold ticket. The assessee argued that the special rate of 30% u/s 115BB shall not apply. The Court did not accept.

CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del):
It has been held that section 2(22)(e) would not apply in the case of advance made in the course of the assessee's business as a trading transaction. In this case, the assessee, a travel agency, has regular business dealings with two concerns engaged in holiday resorts. The assessee was involved in booking of resorts for the customers of those two companies and received advance. The Court held that such financial transactions were not in the nature of loans or advances received by the assessee from those concerns and hence section 2(22)(e) shall not apply.

CIT Vs. RADHEY DEVELOPERS (2012) 341 ITR 403 (GUJ):
The assessee is a developer. It developed housing project on the land belonging to a different person (i.e. land owner). The assessee claimed deduction u/s 80-IB. The AO denied deduction. On appeal, the Court allowed. The Court accepted that in section 80-IB, it is not necessary that the assessee must be owner of land.

CIT VS. JYOTI PLASTIC WORKS (P) LTD 203 TAXMAN 546 (BOM):
The assessee claimed deduction u/s 80-IB. The AO refused deduction on two grounds, viz. (i) the assessee was not a manufacturer because the goods was got manufactured through job work, and (ii) the total number of permanent employees was less than 10. In appeal, the Court has accepted–

- The manufacture of goods with the help of outside agency also amounts to manufacture by the assessee, and
- The workers employed by outside agency should also be considered as the workers of assessee.

PRAVEEN SONI Vs. CIT (2011) 333 ITR 324 (DEL):
In this case the assessee forgot to claim deduction u/s 80-IB in some initial years. However, in later years the assessee claim deduction (of course within the permissible time-period of section 80-IB). The AO disallowed deduction on the ground that the assessee has not claimed in earlier years. The Court held that even if the assessee has not claimed deduction in earlier years, it cannot be said that the right of assessee has come to an end forever.

CIT Vs. CHIRANJEEVI WIND ENERGY LTD (2011) 333 ITR 192 (MAD):

The business of assessee is such that it purchases different parts and assembles them to make a wind mill. The assessee claimed that its activity amounted to manufacture because the material which it purchased (i.e. the parts) and the material which it produced (i.e. the wind mill) are two different commodities. On this basis, the assessee claimed that it is engaged in manufacture / production activity and therefore eligible for deduction u/s 80IB. The court accepted.

Decisions regarding section 80-IA and 80-IB:

Under section 80-IA / 80-IB, **"the profit derived from eligible business"** is eligible for deduction. Some recent cases on interpretation are as under:

Liberty India Vs. CIT (2009) 317 ITR 218 (SC)	DEPB / Duty drawback receipts flow from the incentive schemes framed by the Central Govt. under Customs Act. They are not covered within "the profits derived from eligible business" and therefore not eligible for deduction.
CIT v. Kiran Enterprises (2010) 327 ITR 520 (HP)	Freight subsidy (transport subsidy) flows from the incentive scheme framed by the Central Govt. That is not covered within "the profit derived from eligible business" and therefore not eligible for deduction.
CIT Vs. Meghalaya Steels (2011) 332 ITR 91 (Gauhati)	Transport subsidy and interest subsidy are received from Govt. under the incentive schemes framed by the Govt. They are not covered within "the profit derived from eligible business" and therefore not eligible for deduction. **However, refund of excise duty is eligible for deduction.**
CIT v. Jagdishprasad Joshi (2009) 318 ITR 420 (Bom.)	Interest income on fixed deposits with bank and other interest income are part of business profit for the purpose of granting deduction.

JOINT CIT Vs. ROLTA INDIA LTD (2011) 330 ITR 470 (SC):

A company paying MAT is liable to pay advance-tax u/s 207. Hence if there is any default in payment of advance-tax, the company shall be liable to pay interest u/s 234B and 234C.

MADRAS GYMKHANA CLUB Vs. DCIT (2010) 328 ITR 348 (MAD):

The assessee club is a mutual concern engaged in providing facilities like gym, library etc. to its members. It was not liable to income-tax on the ground of mutuality. The assessee made fixed deposits with corporate members and earned interest income. It argued that the interest income is not taxable due to mutuality concept. The court did not accept. According to Court, the interest income was earned from corporate members only and that too as a matter of deposit and not as a mutual concern. Hence, the interest income does not satisfy the mutuality character.

SIND CO-OPERATIVE HOUSING SOCIETY Vs. ITO (2009) 317 ITR 47 (BOM):

The assessee, a society, charged transfer fee from both incoming members and outgoing members. The dispute arose as to whether such receipt is eligible for benefit of mutuality concept. The Court held that the members, whether incoming or outgoing, have contributed to the common fund of society. Those contributions shall be used for the benefit of members as a class. The society does not have any commercial object. On this basis, the court accepted mutual character of charges recovered by the society.

CIT v. Anil Hardware Store (2010) 323 ITR 0368 (HP):

The partnership deed of the assessee firm included the exact language of section 40(b) for the purpose of payment of remuneration to partners. The AO disallowed remuneration. However, on appeal the court allowed accepting that it was sufficient for the purpose of allowability of remuneration u/s 40(b).

N.J. JOSE AND CO (P) LTD Vs. ACIT (2010) 321 ITR 132 (KER):

The assessee-company earned capital gain and claimed exemption u/s 54EC in normal computation of taxable income. Further, in the computation of book-profit for the purpose of MAT u/s 115JB, the assesee excluded capital gain. In short, the claim of assesses was that the capital gain exempted u/s 54EC is not a part of book-profit. This way the assessee did not pay MAT on the capital gain which was exempted due to section 54EC. The department did not accept. On appeal, the court rejected the claim of assessee.

CIT Vs. T. GEORGE AND M. SYED ALAVI (2009) 316 ITR 333 (KER):
The department carried out a search at the places of two assessees. During the court of search, some evidences were found which indicated that both of those assessees jointly carried out a commercial activity. The department assessed income of such activity in the status of AOP. However, those assessees declared income in their individual status. The assessees claimed that the action of department in treating AOP was wrong since no written agreement of AOP was found by department. On appeal, the court held that it is not necessary to have a written agreement for the purpose of status of AOP. In other words, there can be an AOP without a written agreement.

Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441 (Del.):
The assessee committed delay of 1 day in filing return. It filed an application to CBDT u/s 119 for condonation of delay so that it can claim carry forward of losses. The court held that the section 119(2)(b) empowers the CBDT to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, to avoid genuine hardship. The court accepted that the claim for carry forward of loss falls under the category of '**any other relief under the Act'**. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

ORISSA RURAL DEVELOPMENT CORP LTD (2012) 343 ITR 316 (ORISSA):
The assessee submitted original return. Subsequently, it filed a revised statement of income but did not submit any revised return. But the AO ignored revised statement of income. The Court held that revised statement of income does not have any existence in the eyes of law. Hence the AO was justified in ignoring the revised statement. Further held that a fresh claim before Assessing Officer can be made only by filing a revised return and not by mere filing of revised statement of income. ***(Note: Earlier the Supreme Court has also given similar ruling in Goetze India Ltd. case).***

SMT.KAUSHALYA BAI vs. UOI (2012) 346 ITR 156 (KER):
In this case, the total income of assessee was less than MANCT. Hence, the assessee was not having PAN. The assessee was getting interest on FDR from a bank. The assessee submitted declaration in Form No. 15G / 15H to the bank for non-deduction of TDS. However, the bank did not accept declaration because under section 206AA, a declaration in Form No. 15G / 15H is not valid unless it contains PAN. Now, the Court has held that the requirement to obtain compulsory PAN u/s 139A arises only in case of a person having total income exceeding MANCT. In other words, section 139A does not require obtaining of PAN if the total income is less than MANCT. The Court further accepted that section 206AA cannot travel against section 139A. On this basis, the court held that the declaration in Form 15G /15H is valid.

SUBHA AND PRABHA BUILDERS (P) LTD Vs. ITO (2009) 318 ITR 29:
Under section 131, the AO can impound books of account for a period of 15 days. However, the higher authority can extend such time. In this case, the higher authority extended time for 2 years. The assessee challenged the action of higher authority. The department argued that the law does not prescribe any maximum time-limit for extension. Hence the action of higher authority was legal. The assessee argued that even in absence of the maximum time-limit, the higher authority can extend time for a reasonable period only. Interestingly, the assessee also argued that because the basic time-limit is expressed in terms of days (15 days), the extension could also be in terms of days only and not in terms of months or years. The Court accepted arguments of assessee. Cheers !!!

H.K. BUILDCOM LTD. Vs. ITO (2011) 339 ITR 535 (GUJ) / AVENTIS PHARMA LTD. Vs. ACIT (2010) 323 ITR 570:
Section 147 is meant for re-assessment and not for review. Hence the department cannot take action u/s 147 on the basis of change in opinion.

ACIT Vs. ICICI SECURITIES PRIMARY DELAERSHIP LTD (2012) 348 ITR 299 (SC):
In this case, the AO completed assessment u/s 143(3) after examining the books of accounts. Subsequently, after expiry of 4 years, the AO took action 147 on the ground that it has been noticed that the assessee had incurred loss in trading in shares and such loss was speculative in nature u/s 73, which cannot be set off against non-speculative income. The assessee argued that proviso in section 147 prohibits re-assessment after 4 years because there was no failure on the part of assessee in disclosing material facts necessary for his assessment. The assessee claimed that it has produced all books of account during the course of original assessment u/s 143(3) and nothing new has been identified by the AO. On that basis, the assessee claimed support of Proviso in section 147. The Court accepted.

CIT Vs. HARAYANA STATE HANDLOOM AND HANDICRAFTS CORPORATION LTD (2011) 336 ITR 699 (P&H):

The Assessing Officer issued intimation u/s 143(1). Subsequently the case was selected for security and for this purpose a notice was issued u/s 143(2). Thereafter the AO issued a notice u/s 154 for rectification of intimation u/s 143(1). Held that since the proceedings for assessment were already pending u/s 143(2), the rectification notice u/s 154 is not valid. In short, the court has accepted that the multiplicity of proceedings should be avoided.

RANBAXY LABORATORIES LTD Vs. CIT (2011) 336 ITR 136 (Delhi) / PRIYA LIMITED Vs. ITO 133 ITD 38 (MUM):

The conclusion of court is as under:

- If the assessment is re-opened u/s 147 on one or more points and any **one or all** of such points is finally taken into account in completing assessment u/s 147 r/w 143(3), the assessment shall be valid. In such a case the AO can assess not only that income for which notice u/s 148 was issued but also any other income which comes to his notice during the course of proceedings of section 147.
- However, if the assessment is re-opened u/s 147 on one or more points but **none** of such points is finally taken into account in completing assessment u/s 147 r/w 143(3), the assessment shall not be valid.

KANUBHAI M. PATEL Vs. HIREN BHATT (2011) 334 ITR 25 (GUJ):

In this case, the relevant AY was 2003-04 and the notice u/s 148 must have been issued within 6 years i.e. upto 31.03.2010. The AO signed notice on 31.03.2010 but delivered to post office on 07.04.2010. The assessee argued that the notice has been issued on 07.04.2010 and therefore invalid. The Court referred to Black's Law Dictionary wherein 'issue' has been defined to mean 'delivery to the proper person for service'. On this basis, the Court accepted argument of assessee that the notice has been issued on 07.04.2010 and hence the same was invalid.

CIT Vs. Tony Electronics Ltd (2010) 320 ITR 328 (Del):

There was an appeal against the assessment order passed by the AO. Thereafter, there was a need of rectifying assessment order u/s 154. The question arose whether the time-limit of 4 years shall be applicable with reference to the date of original assessment order or the date of appeal-order. The Court held that once an assessment order is carried in appeal, it merges with the order of appellate authority and thus, the original order ceases to exist. Hence, the time-limit of 4 years shall be computed with reference to the date of appeal order.

CIT Vs. ICICI Bank Ltd (2012) 343 ITR 74 (BOM):

In this case, the original order of assessment was passed u/s 143(3). Subsequently, there was re-assessment u/s 147 on some grounds. Thereafter, the CIT took action u/s 263. The dispute arose as to whether the limitation period of 2 years for the purpose of section 263, shall run from the end of financial year in which order u/s 143(3) was passed or order u/s 147 was passed? The department argued that the original assessment-order has merged with the re-assessment order and hence the time-limit of 2 years shall apply from the end of the financial year in which the re-assessment order was passed. However, the assessee argued that the CIT wanted to make revision u/s 263 in relation to those points which were subject-matter of original assessment only. Those points were not at all a part of re-assessment u/s 147. Hence, the original assessment-order has not merged with the re-assessment order. Therefore the time-limit shall run from the original order of assessment u/s 143(3) and not from the order of re-assessment u/s 147. The Court accepted ***(Note: Earlier contrary decisions have also been given by the Courts)***.

CIT Vs. SUBHASH KUMAR JAIN (2011) 335 ITR 364 (P&H):

The assessee declared agricultural income in return. During the course of scrutiny before AO, the assessee accepted agricultural income as non-agricultural income with the condition that no penal action shall be taken against him. The AO accepted conditional offer of assessee. Hence the AO did not initiate penalty proceedings in the assessment order. The CIT treated the assessment order as prejudicial to the interest of Revenue and took action u/s 263. Held that the action of CIT is not valid because the AO has applied his mind and thereafter not initiated penalty proceeding. Being so, the order of AO was not erroneous.

Deepak Kumar Garg v. CIT (2010) 327 ITR 448 (MP):

The High Court does not have power to review its own order.

CIT Vs. EARNEST EXPORTS LTD (2010) 323 ITR 577 (BOM) / LACHMAN DASS BHATIA HINGWALA (P) LTD VS. ACIT (2011) 330 ITR 243 (DELHI):

The ITAT has power to recall (i.e. withdraw) its order, if the order suffers from an apparent error, mistake or omission. However, the ITAT does not have power to review its own order. The Court held that power to recall is different from power to review.

CIT Vs. INDERSONS LEATHER (P) LTD (2010) 328 ITR 167 (P&H):

The assessee earned rental income and declared the same as business income. The AO treated rental income as income from "House-Property". The AO imposed penalty u/s 271(1)(c). The Court held that mere raising a debatable issue would not amount to concealment of income or furnishing inaccurate particulars. Hence section 271(1)(c) is not applicable.

CIT Vs. VIJAY KUMAR JAIN (2010) 325 ITR 378 (CHHATISGARH):

The AO did not accept the profit declared by the assessee in the return on the basis of books of account maintained by the assessee. He made assessment by applying a higher rate of net profit. This resulted in increase in taxable income. Thereafter the AO took action u/s 271(1)(c). Held that the penalty u/s 271(1)(c) cannot be levied if there is increase in income on the basis of application of estimated rate of net profit because the AO has merely made an estimate. He does not have any material or evidence to prove that the assessee has concealed income or furnished inaccurate particulars of income.

CIT Vs. Reliance Petro Product (P) Ltd (SC):

The assessee claimed some expenditure which the AO did not allow. Merely because the AO did not accept and allow an expenditure claimed by the assessee, it cannot be said there was any concealment or furnishing of inaccurate particulars. The assessee has furnished all figures of expenses with the return of income which the department has not found to be wrong or incorrect. Non-acceptability of the claim of any expenditure does not attract section 271(1)(c).

CIT Vs. TRIUMPH INTERNATIONAL FINANCE (I) LTD (2012) 345 ITR 270 (BOM):

The assessee had taken a loan from another person (i.e. the lender). During the year, the assessee sold shares to the lender. The sale-price of shares was adjusted against the outstanding loan. In short, the assessee repaid loan by way of sale of shares and not through A/c payee cheque. The AO took a view that it amounted to contravention of section 269T and therefore imposed penalty u/s 271E. The assessee proved the bonafides of transaction and further claimed that it was done in order to avoid the circular-transfer of funds.

On appeal, the High Court held that technically there was a contravention of section 271E (because the assessee has not repaid through A/c payee cheque), yet penalty is not imposable u/s 271E because the assessee gets benefit of section 273B (reasonable cause). The Court accepted.

UOI Vs. BHAVECHA MACHINERY AND OTHERS (2010) 320 ITR 263 (MP):

There was delay in filing of return of income. The department launched prosecution u/s 276CC. The language of section 276CC provides that the prosecution can be launched in a case where there is a willful delay in filing of return. In this case, the department was not able to prove that there was any willful attempt of assessee. Hence the court held that the prosecution cannot be launced.

CIT (TDS) Vs. SHREE MAHALAXMI TRANSPORT CO. (2011) 339 ITR 484 (GUJ):

The assessee made payments for hiring of dumpers and deducted tax u/s 194C. The department took a view that tax was deductible u/s 194-I.The assessee argued that it did not take any plant, machinery etc. on rent. The assessee further argued that the nature of agreement between him and payee was for shifting of materials from place to another and not of renting of dumpers. On this basis, the assessee claimed that it has deducted proper tax u/s 194C. The Court accepted.

BHARTI CELLULAR LTD Vs. ACIT (2011) 244 CTR (CAL) 185 / VODAFONE ESSAR CELLULAR LTD (2011) 141 TTJ (CHENNAI) 461:

The franchisees selling recharge coupons are agents of Bharti Ltd. The relationship between Bharti Ltd and its franchisees is not in the nature of principal-to-principal. The relationship is in the nature of principal-to-agent. The franchisees are merely acting as middlemen. Hence, the discount given by Bharti Cellular to its franchisees in respect of recharge coupons is in the nature of commission and section 194H is applicable **[Contrary view in <u>ACIT Vs. Idea Cellular Ltd. (29) DTR 237 (Hyd)</u>].**

<u>CIT VS. QATAR AIRWAYS (2011) 332 ITR 253 (BOM):</u>
In this case, the airline company sold tickets to its agents at a minimum fixed price. The agents were permitted to sell those tickets at a higher price, subject to maximum upto the published price. The airline company also paid fixed commission @ 9% to the agents, on which it deducted TDS. Now, the dispute was whether the difference of minimum fixed price and published price can be said to be additional commission and TDS would be deductible u/s 194H. The Court held that the published price was the maximum price. The agents were allowed to sell tickets at any price below the published price. The airline company would not be in a position to know the exact price for which the tickets shall be sold by the agents. Hence the difference between minimum fixed price and published price cannot be said to be commission. Hence, the TDS would not be deductible. [**Note: In CIT Vs. Singapore Airlines Ltd (2009) 319 ITR 29, the billing analysis statement clearly indicated the extra-commission in the form of special commission that was paid to travel agent with reference to the deal code. Hence, the Court held that the extra-commission was ascertainable by the airlines company and therefore tax was deductible on extra-commission].**

<u>CIT v. Japan Airlines Co. Ltd. (2010) 325 ITR 298 (Del.):</u>
Landing and parking fee paid by an airlines company to the Airport Authority of India is within the meaning of "rent" u/s 194-I and it requires TDS ***(Note: In Singapore Airlines Ltd. 209 Taxman 581, Madras High Court held that in such a case, section 194-I shall not apply but section 194C shall apply because the assessee was not paying any rent for use of land etc. According to Court, the assessee was paying charges for work done by the Airport Authority and the use of land etc. was merely a part of the work done by Airport Authority).***

<u>CIT v. Director, Prasar Bharti (2010) 325 ITR 205 (Ker):</u>
Prasar Bharti is engaged in telecast of news, sports, entertainment, cinema and other programmes. The major source of its revenue is from advertisements, which were canvassed through agents. The agents collected advertisement charges from customers and retained 15% thereof as their share and remit balance 85% to Prasar Bharti. Whether Prasar Bharti is required to deduct TDS on15% share of agents u/s 194H. Held – Yes because it is in the nature of commission or brokerage paid by Prasar Bharti to their agents.

<u>East India Hotels Ltd. v. CBDT (2010) 320 ITR 0526 (Bom.):</u>
Facilities or amenities made available by a hotel to its customers (like house keeping, bank counter, beauty saloon, car rental, health club etc.) do not fall within the meaning of "work" under section 194C and therefore provisions of TDS u/s 194C are not attracted.

<u>CIT v. Assam Mineral Development Corporation Ltd. (2010) 320 ITR 149 (Gau):</u>
The AO determined the total income of the assessee and issued assessment-order. The AO did not mention in the assessment-order for levy of interest u/s 234B and 234C. However, he computed interest in the computation-sheet annexed to the order. The assessee argued that the action of AO was wrong. The Court held that the action of AO was valid due to following reasons:
- Charge of interest u/s 234B and 234C is mandatory, and
- The computation-sheet is a part of assessment-order.

<u>ADDL. CIT Vs. COSMO FILM LTD (2012) 13 ITR 340 (DEL):</u>
The assessee was entitled to additional depreciation u/s 32(1)(iia) @ 20%. However, the new plant and machinery was used for less than 180 days during the year. Hence, in the year of acquisition, the assessee got additional depreciation @ 10%. The assessee further claimed balance 10% depreciation in subsequent previous year. The Court has allowed.

<u>H. GOUTHAMCHAND Vs. ADDL CIT (2011) 8 ITR (TRIB) 269 BANGLORE:</u>
The AO issued notice u/s 148. Thereafter, he made assessment u/s 143(3) without issuing notice u/s 143(2). Held, the assessment was invalid.

<u>CIT Vs. ILPEA PARAMOUNT (P) LTD (2011) 336 ITR 54 (DEL):</u>
Following points have been decided in relation to MAT provision:

- The provision for doubtful debts and provision for doubtful advances is a provision for diminution in the value of asset. Hence such provision shall be added in computing book-profit u/s 115JB.
- However, provision for gratuity is not a provision for diminution in the value of asset. Further, such provision cannot be said to be a provision for unascertained liability because gratuity is an ascertained liability. Hence the provision for gratuity cannot be added in computing book-profit u/s 115JB.

CIT Vs. DYNAMIC VERTICAL SOFTWARE INDIA (P) LTD (2011) 332 ITR 222 (DEL):

The assessee purchased software from Microsoft and sold in Indian market. The assessee acted as a dealer. The assessee did not deduct TDS out of payments made to Microsoft. The department argued that the payment made by the assessee was royalty and tax was deductible. As against this, the assessee argued that the payment made by it was in the nature of purchase price and not royalty. The Court accepted arguments of assessee.

CIT Vs. KHEMCHAND MOTILAL JAIN (The Chartered Accountant – Page No. 680):

The assessee, a company, paid ransom to a dacoit gang who has kidnapped its director. The company claimed deduction of ransom. The Court accepted that the ransom has been paid for saving life. It is not illegal. Hence deduction is allowed.

ST. Lawrence Educational Society Vs, CIT (DEL) – The Chartered Accountant Page No. 1477:

While preparing annual P&L A/c, the assessee (an educational institution) had net profit. The assessee claimed exemption u/s 10(23C). The AO denied exemption on the ground that the assessee earned net profit which demonstrated that the assessee was engaged in profit-making activity and not in spreading education as required u/s 10(23C). The Court held that simply because the assessee had quantitative surplus, it cannot be said that the object of the assessee was profit-making. Hence the exemption is allowable.

CIT Vs. WOODWARD GOVERNOR INDIA (P) LTD (2009) 223 CTR (SC) 1:

The loss suffered by the assessee in respect of a revenue liability on account of exchange difference as on the date of Balance-Sheet is an allowable deduction u/s 37(1).

TECHNO SHARES & STOCKS LTD. & ORS. Vs. CIT (2010) CTR 105 (SC):

Membership card of a stock-exchange is a “business or commercial right” and therefore depreciation @ 25% is allowable u/s 32.

ONGC Vs. CIT (2010) 230 CTR 313 (SC):

The assessee took a loan in foreign currency for revenue purpose. As on the date of balance-sheet, there was loss due to foreign exchange fluctuations. The assessee maintained books of account according to mercantile method and claimed deduction of loss in the year of fluctuation although the additional liability arising due to fluctuation was not discharged in such year. Held that section 43A applies to specific cases only **(Students may please read section 43A)**. Section 43A does not apply if the loan is taken for revenue purpose. does not apply and therefore the deduction was allowable.

VIJAYA BANK Vs. CIT (2010) 231 CTR 209 (SC):

The assessee debited “Bad debt” to P&L A/c and reduced the amount of such bad-debt from total amount of debtors in the Balance-Sheet. The assessee claimed deduction of such bad-debt u/s 36(1)(vii). The AO disallowed deduction on the ground that the treatment given by the assessee is in the nature of creation of “Bad-debt Provision” or “Bad-debt Reserve” and section 36(1)(vii) does not permit deduction in such a situation. The AO further argued that section 36(1)(vii) requires writing-off of bad-debt in order to be eligible for deduction. According to AO, the treatment given by the assessee does not satisfy the requirement of section 36(1)(vii). But the assessee argued that the treatment given by it satisfies the requirement. The assessee further argued that the law does not require that the amount of bad-debt should be deducted from the amount of relevant debtor or square-off the individual account of debtor. The court accepted.

CIT Vs. Oracle Software India Ltd (2010) (SC):

The activity of commercial duplication by which a blank CD is transformed into a software loaded marketable CD constitutes “manufacture or production” and therefore eligible for deduction.

Kanchanganga Sea Foods Ltd. v. CIT & ITO (2010) 325 ITR 540 (SC):
An Indian company engaged in the sale and export of sea foods entered into an agreement with a non-resident for chartering two fishing vessels for an all-inclusive charter fee of US $ 6,00,000 per vessel per annum. The charter fee was paid by way of 85% of fish-catch. Whether the payment in kind requires TDS u/s 195? Held – Yes, tax is deductible even if payment in made in kind.

CIT v. Sundaram Clayton Ltd. (2010) 321 ITR 69 (Mad):
In this case, the High Court has allowed cost of software as a revenue expenditure allowable u/s 37(1). ***(Please note that it depends upon facts and circumstances as to whether the cost of software is capital or revenue. There cannot be any single rule to determine this issue).***

CIT v. Samtel Color Ltd. (2010) 326 ITR 425 (Delhi):
The issue in this case relates to the allowability of corporate membership fee paid to a club. The Court has accepted expenditure as revenue as well as for the purpose of business of assessee. Hence deduction is allowed.

Lalitaben Hariprasad v. CIT (2010) 320 ITR 698 (Guj):
A residential property was divided as part and parcel of total partition of a HUF comprising of four members i.e., father, mother and two sons. The father and mother took one-half share each of the property. The father made payment of Rs.14,33,000 to one son for acquisition of one-fourth share of the property. The mother made similar payment to the other son for the same purpose. The father and mother claimed Rs.14,33,000 each as cost of acquisition of one-fourth share of the property from their sons. This claim was disallowed by the Assessing Officer holding that since the property was of the HUF, the only cost of acquisition which could be allowed was under the provisions of section 49 i.e. the cost of acquisition in the hands of the original owner (namely, the HUF) from whom the property had been received on partition.
On this issue, the High Court observed that the cost of acquisition of one-fourth share of the house property, being the proportion which each member is entitled to, would be governed by the provisions of section 49(1)(i) i.e., the cost of acquisition to the HUF would be the cost to the member for computation of capital gains on subsequent sale of the property. However, in respect of the additional share acquired by the members at the time of partition from other members, the amount of Rs.14,33,000 paid would be the cost of acquisition in each case. Therefore, Rs.14,33,000 can be claimed as additional cost of acquisition of the property for computation of capital gains in the hands of each of the assessees on subsequent sale of their share of the property.

CASE LAWS ON WEALTH-TAX

CIT Vs. MOTOR AND GENERAL FINANCE LIMITED (2011) 332 ITR 1 (DEL):
The AO issued notice u/s 16(4) requiring the assessee to submit return of wealth-tax. However, the assessee did not submit return and hence there was non-compliance of notice u/s 16(4). The AO made best-judgement assessment u/s 16(5) without issuing a further notice giving opportunity to the assessee. The assessee argued that the best-judgement assessment in invalid since it has been made without a further opportunity of hearing. The Court did not accept the arguments of assessee because there is a specific provision in section 16(5) which clearly provides that no notice shall be necessary for the purpose of making best-judgement assessment in the case of non-compliance of section 16(4) (**Note: Same is the position in Income-tax Act, 1961. The students may recapitulate that under the scheme of Income-tax Act, 1961, best judgement assessment is made u/s 144 wherein it is specifically provided that in the case of non-compliance of notice u/s 142(1), the department can straightaway make best judgement assessment without providing a further opportunity of hearing to the assessee).**

CIT Vs. NEENA JAIN (2011) 330 ITR 157 (P&H):
The assessee was having urban land on which it has started construction of building. However, the construction was going on i.e. it was not complete. Held that once construction has started, the land ceases to remain land. Further, the incomplete structure cannot be said to be a building. Thus, there is ***neither land nor building***. Hence, there is no asset u/s 2(ea). Being so, the assessee is not taxable. **Cheers!!!**

Best of luck – For any query, you may call cell # 9414130248 or send your query through Text-SMS / Whatsapp

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