Selected Cases – BY ICAI at a Glance – For May/ Nov. 2015

S.No.	Name	Summary
	~~~~ EXEMPT INCOME ~~~~	
1.	CIT vs Kribhco (2012) 209 Taxman 252 (Del.)	Assessee-society claimed deduction u/s. 80P. AO wanted to make disallowance u/s. 14A. It was held that section 14A applies in respect to incomes which do not form part of total income, i.e. incomes which are covered under chapter III (Exempt Income); and not for chapter VIA (deductions). Thus, no disallowance can be made.
	~~~~ INCOME FROM SALARIES ~~~~	
2.	CIT(TDS) vs Director, Delhi Public School (2011) 202 Taxman 318 (P & H)	As per Rule 3(5) of the IT Rules, in case of concessional or free education to children is a perquisite, and cost to employer shall be the value of perquisite. However, if the cost does not exceeds ` 1,000 per month per child, the perquisite value shall be taken at NIL. Employer gave perquisite, the value of which was more than ` 1,000 per month per child. Assessee claimed a deduction of ` 1,000 per month per child. AO denied the same. Held that the perquisite is not taxable if the value of same does not exceed ` 1,000 per month per child. However, if the perquisite value exceeds, ` 1,000 per month per child, the entire amount is taxable.
3.	CIT vs Shankar Krishnan (2012) 349 ITR 685 (Bom.)	Rent free accommodation provided by Employer to Assessee. The accommodation was taken on rent by the employer. For obtaining the accommodation, employer made a payment of security deposit of ` 30 lacs. AO held that notional interest on the security deposit @ 12% shall be added and treated as a perquisite. Held, as per Rule 3, there is no concept of adding this notional interest, while calculating the Fair Rental Value of Rent Free/ Concessional accommodation. Notional interest shall not be added.
	~~~~ INCOME FROM HOUSE PROPERTY ~~~~	
4.	Azimganj Estate P Ltd (2012) 206 Taxman 308 (Cal.)	Assessee was a builder. He constructed a building and some flats of the building were unsold. Assessee gave them on rent. Assessee contended that the rental income is taxable under House Property. AO treated the same as business income holding that the flats were stock in trade. High Court held that the rental income was taxable under House Property head even though the property was a stock-in-trade.
5.	New Delhi Hotels Ltd. (2014)(Del.)	Assessee was a builder. He constructed a building and some flats of the building were unsold. Assessee gave them on rent. Assessee contended that the rental income is taxable under House Property. AO treated the same as business income holding that the flats were stock in trade. High Court held that the rental income was taxable under House Property head even though the property was a stock-in-trade. Interestingly in ***CIT vs Ansal Housing Finance and Leasing Co. Ltd (2013) (Del.)***, it was held that even if the house is not let out the notional rental income is chargable under the head House Property.

		This case is contrary to the earlier Supreme Court judgment in ***Karanpura Development co. Ltd. (1962)(SC)(FB)***
6.	Joseph George and Co. (2011) 328 ITR 161 (Ker.)	If the building of bank has been let out for a long term, income from such letting out is to be treated as House Property income and not business income. Earlier decision of Universal Plast (SC) applied.
7.	CIT vs Asian Hotels Ltd. (2012) 323 ITR 490 (Del.)	Tenant made deposits with landlord. Notional interest therefrom cannot be taken as house property income. Decision confirmed in *CIT vs Moni Kumar Subha (Del.)(FB)*
8.	CIT vs Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj)(FB)	AO held that assessee was an HUF. HUF cannot hold property as Self Occupied Property (SOP) as only an individual person can hold property as SOP. Held, a firm, which is a fictional entity and can have artificial persons as its members, cannot hold property for SOP purpose. However, HUF comprises of groups of individuals. The family can reside in the house, which belongs to HUF. Therefore HUF can hold property as SOP and its value can be taken at NIL.
~~~~ INCOME UNDER HEAD BUSINESS/ PROFESSION ~~~~		
9.	CIT vs Jagatjit Industries (2011) 337 ITR 21 (Del.)	Assessee received share capital in foreign currency. Due to foreign exchange fluctuation, there arose a gain. Assessee contended that the gain shall be treated as a capital receipt. Tribunal held that if the share capital was used for acquiring fixed asset, the gain shall be treated as capital receipt, otherwise, it shall be treated as a revenue receipt. On appeal, High Court held that it is not the "utilization of fund" but the "source of fund", that is important. Since the amount has been raised by way of share capital, the entire receipt is capital receipt.
10.	CIT vs Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)	Liquidated damages received by assessee from supplier for delay in supply of plant were directly and intimately linked with procurement of capital asset and therefore same was capital receipt.
11.	CIT vs Handicrafts and Handlooms Export Corporation of India (2014)(Del.)	Assessee was subsidiary of State Trading Corporation of India (STC). Assessee was in losses. In order to protect the capital investment, STC provided a grant to the assessee company (Being subsidiary company). AO treated the grant as a revenue receipt. Held, the grant received was a Capital receipt, as the grant was not received during the course of trade or performance of trade.
12.	CIT vs Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)	Subsidy received for repayment/ recoupment of loan and capital employed. Whether revenue receipt or capital receipt? Following Ponney Sugar (SC), it was held that the receipt was capital receipt.
13.	CIT vs Rasoi Ltd. (2011) 335 ITR 438 (Cal.)	Assessee received subsidy by way of financial assistance in the period of crisis for promotion of the industries. AO held that since subsidy was 90% of sales-tax paid i.e. it was a sales-tax refund, therefore, same is revenue receipt. High Court held that if the object ofthe subsidy is to be enable the assessee to run a business more profitably, the receipt is revenue receipt.

		However, if the object of the subsidy is to set-up a unit or expand existing unit, same is capital receipt. in present case, it was held that subsidy was capital receipt.
14.	CIT vs Rassi Cement Ltd. (2013) 351 ITR 169 (A.P.)	Power subsidy received from State Government, year after year. The same was based on actual power consumption and has nothing to do with investment subsidy given for establishment of industries in backword area or expanding industries. Same was held to be revenue receipt.
15.	Bharat Gears Ltd. (2011) 337 ITR 370 (Del.)	A machinery had outlived its utility; had broken down many years back nad was no in use. It was repaired for which huge expenditure eas incurred by replacing vital parts in order to make it functional. Assessee claimed same as revenue expenditure. It was held that the expenditure was of such nature that it brought into existence a new machinery altogether and consequently, and therefore it was capital expenditure, on which only depreciation can be allowed.
16.	CIT vs Modi Industries Ltd. (2011) 339 ITR 467 (Del.)	Assessee re-erected the cell room, by completely demolishing the old cell room. It was held that the same is capital expendture, in terms of *CIT vs Saravana Spinning Mills (SC)*. However, assessee purchased pumping set, mono block pump with HP motors and two transformers. It was held that they were not stand alone equipments, but were part of the bigger plant. Therefore, they were replacement of parts of machinery, and were allowable.
17.	CIT vs Sagar Talkies (2010) 325 ITR 133 (Karn.)	Expenditure for replacing mono sound system in a cinema theatre with a new dolby digital system, did not result in any increase incapacity or revenue. Same is allowable as revenue expenditure.
18.	Shanti Bhushan (2011) 336 ITR 26 (Del.)	Assessee an advocate incurred a heart operation. The expenses on the operation were claimed either as a revenue expenditure or as a "plant". Assessee contended that after the operation, the revenue had increased substantially. It was held that same is neither a revenue expenditure nor a "plant" (as it cannot be treated as tools of trade). Therefore, the expenditure was not allowable.
19.	CIT vs Smt. A. Sivakami and Another (2010) 322 ITR 64 (Mad.)	Beneficial ownership of an asset is sufficient for claim of depreciation. *CIT vs Podar Cement P Ltd. 226 ITR 625 (SC)* applied.
20.	I.C.D.S. Ltd. (2013) 350 ITR 527 (SC)	Assessee was an NBFC, engaged in the business of leasing and hire purchase. Assessee purchased vehicles, and leased the vehicles to its customers, after which the physical possessions of the vehicles was with the lessee. Further, the registration was done in the name of lessee. Assessee claimed depreciation on such vehicles, at a higher rate contending that it was engaged in the business of leasing. Held, section 32 imposes two conditions "ownership" and "usage for business" as conditions for claim of depreciation. (i) So far as the usage of the asset is concerned, section does

		contemplate that asset shall be used by the assessee itself. Asset was used for the purposes of business of leasing. (ii) Also u/s. 2(30) of the Motor Vehicle Act, 1988 provides a legal fiction of ownership in favour of the lessee. The legal fiction is relevant for only that Act, and cannot be extended to the Income-tax Act, 1961. Merely if the name of the lessee was written on Registration Certificate, that does not make them owner for Income-tax purposes. If the lessee was legal owner, he would have claimed depreciation on the vehicles which was not the case. Assessee has rights of lessor, like exclusive ownership, right of repossession etc. Depreciation allowable to assesse.
21.	Steel Authority of India Ltd. (2012) 348 ITR 150 (Del.)	Assessee was a Public Sector Undertaking. Assessee took loan from Government of India from the Steel Development Funds toward Fixed Assets. Due to financial crisis, Government waived repayment of loan. Assessee reduced the cost of assets, by the waiver of loan, in the books of accounts, but in the return, assessee claimed depreciation on the entire cost. Assessee contended that Explanation 10 to section 43(1) deals with subsidy and not with waiver of loan. Held, Explanation 10 to section 43(1) deals with subsidy and not with waiver of loan. However, the main section 43(1) states that the “Actual cost” shall be “reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority”. Thus, the cost shall be reduced by the amount of waiver of loan.
22.	M.M. Forgings Ltd. (2012) 349 ITR 673 (Mad.)	If asset is acquired and put to use for not more than 180 days during the P.Y., shall additional depreciation also be allowed only 50%? Held, yes additional depreciation shall be allowed only 50%.
23.	Dr. Aswath N. Rao (2010) 326 ITR 188 (Karn.)	Assessee, a Doctor, acquired second hand medical equipment from USA. Assessee was following cash system. Payment for acquisition was made on 31st March, but the equipment was received in August (next year). Assessee claimed the expenditure as revenue expenditure on the plea that it was to be used as SPARE PART. HELD, since it was to be used as SPARE PART, same was revenue expenditure; and therefore also, date of its put to use was irrelevant. Since assessee was following cash system and payment was made, expenditure was allowable. Had the machinery being used on standalone basis, expenditure would have been treated as capital and date of its put to use would have become important.
24.	CIT vs Yamaha Motor India Pvt Ltd. (2010) 328 ITR 297 (Del.)	If some of the items in the block have become obsolete, still depreciation shall be allowable on the block. The reasons for the same are as under: - - Depreciation is allowable on block. Once asset merges into the block, it looses its identity.- Depreciation is allowable if asset is “used” for business. Even if it is used in earlier years, depreciation is allowable.

25.	Federal Bank Ltd. (2011) 332 ITR 319 (Ker.)	EPBAX and mobile phones shall not be treated as computers and shall not be eligible for deduction @ 60%. Same shall be eligible for depreciation as a plant @ 15%.
26.	CIT vs BSES Yamuna Powers Ltd. (2013)(Del.)	Rate of depreciation on computer accessories and peripherals [such as printer, scanners and server] was held to be 60% as they were integral part of computer. Similarly for UPS rate is 60%. ***CIT vs Orient Ceramics and Industries (2013)(Del.)***
27.	B. Raveendran Pillai (2011) 332 ITR 531 (Ker.)	A hospital was run several years prior to purchase by the assessee. By transferring the right to use the name of the hospital itself, the previous owner had transferred the goodwill to the assessee and the benefit derived by the assessee was retention of continued trust. It was held that the payment was in the nature of "any other business or commercial right of similar nature".
28.	Areva T and D India Ltd. (2012) 345 ITR 421 (Del.)	Under slump sale, ongoing business was transferred. Consideration paid by assessee had two parts - for tangible assets and for intangibles like business claims, business informations, records, contracts, skilled employees, know-how, called as "goodwill". AO denied the claim of depreciation, holding that goodwill is not eligible for depreciation. HELD, "goodwill" in the present case falls under "any other business or commercial right of similar nature" on the doctrine of ejusdem generis, and is eligible for depreciation.
29.	CIT vs Smifs Securities Ltd. (2012) 348 ITR 302 (SC)	During amalgamation, assessee paid excess consideration and treated same as "goodwill" for retaining existing clientele. It was held that "any other business or commercial rights of similar nature" covers "goodwill" and therefore assessee is entitled to depreciation @ 25%.
30.	CIT vs DCM Ltd. (2010) 320 ITR 307 (Del.)	Expenditure incurred on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation on closure of one of the textile units, to do the entire textile business more profitably is a revenue expenditure and allowable u/s. 37.
31.	CIT vs KJS India P Ltd. (2012) 340 ITR 380 (Del.)	Expenditure incurred on suspension of one of the units, to carry on other business more profitably is a revenue expenditure and allowable u/s. 37.
32.	CIT vs Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.)	Assessee company owned a super smelter plant which required large quantity of water for its operation. Assessee therefore incurred expenditure for alternation of the dam (constructed and belonging to State Government). AO held that the expenditure had enduring benefit, and therefore treated the same as capital expenditure. High Court held that the expenditure was incurred by assessee for commercial expediency. The expenditure was an operational expenditure intended for furtherance of the enterprise, and therefore it was revenue expenditure and allowable u/s. 37(1).
33.	CIT vs Orient Ceramics and Industries Ltd. (2013)(Del.)	Expenditure on glow-sign boards was revenue expenditure, as it did not bring into existence an asset or advantage for the enduring benefit of the business. Also the glow sign board was

		not an asset of permanent nature. [***CIT vs Liberty Group Marketing Division (2009)(P & H)*** followed]
34.	CIT vs Priya Village Roadshow (2011) 332 ITR 594 (Del.)	Expenditure incurred for conducting feasability study was initially a capital expenditure. However, subsequently, the project was found not feasable. It was held that the expenditure was revenue expenditure.
35.	Echjay Forgings Ltd. (2010) 328 ITR 286 (Bom.)	The question was whether foreign education of Director's son be treated as "Wholly and exclusively for business". It was held in the facts of the present case, that the foreign education of Director's son was not backed by any evidence showing that earlier the Director's son was in employment. The evidences produced, to prove that Director's son was an apprentice are not reliable.
36.	CIT vs Kap Scan and Diagnostic Centre P Ltd. (2012) 344 ITR 476 (P & H)	Commission paid to doctors by diagnostic centre fore referring patients is illegal expenditure. As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive or offer to give, solicity or receive any gift, etc in consideration of a return for referring any patient for medical treatment. Therefore same is not allowable.
37.	Millennia Developers P Ltd. (2010) 322 ITR 401 (Karn.)	Assessee was a builder. He got the map approved, but deviations were found in the constructed structure. Assessee paid regularisation fees. AO disallowed the regularisation fees holding that the payment was for violating the sanctioned plan, which was an offence under Karnataka Municipal Corporations Act; and therefore was not allowable. High Court affirmed the stand of AO.
38.	Confederation of Indian Pharmaceutical Indian Pharmaceutical Industry (2013)(H.P.)	Commission paid to doctors by diagnostic centre for referring patients is illegal expenditure. As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive or offer to give, solicity or receive any gift, etc in consideration of a return for referring any patient for medical treatment. Therefore same is not allowable. ***[Similar cases CIT vs Kap Scan and Diagnostic Centre P Ltd. (2012)(P & H); Similar view given in Circular No. 5/ 2012 dated 01.08.2012]***
39.	CIT vs Neelavathi & Others (2010) 322 ITR 643 (Karn.)	Assessee was running cinema theatres. Payment was made to police personnel and gundas for ensuring security of business. It was held that same is illegal gratification and amounts to bribe. Such expenditure is not allowable being illegal.
40.	CIT vs ITC Hotels Ltd (2011) 334 ITR 109 (Kar.)	Expenditure incurred for issue and collection of convertible debentures shall be treated as a revenue expenditure; even if the debentures will be converted into shares at a later date. Contrary judgment is available in case of *Banco Products (India) Ltd. (1999) 63 Taxman 370 (Guj.)* where it has been held that since convertible debentures have characteristics of equity shares, such debentures cannot be termed as debt and therefore proportionate issue expenses of such debentures that relates to the equity base of the company has to be

		treated as capital expenditure.
41.	Mascon Technical Services Ltd. (2013)(Mad.)	Assessee incurred public issue expenses for public issue. The public issue could not be effected, as clearance by SEBI was not given. The expenditure was claimed as revenue, as capital was to be raised for working capital. AO treated the claim as capital expenditure. Held, the fact remains that by public issue the assessee wanted to increase its capital base; thus the expenditure was capital in nature. Further, the nature would not be lost, merely, because the public issue could not materialize. The expenditure was a capital expenditure.
42.	CIT vs Kichha Sugar Co. Ltd. (2013)(Utt.)	The employees' contribution becomes an employer's contribution at the time when the employee remits the same to his employer. Therefore, section 43B applies even for employer's contribution. Thus, even if employees contribution is paid after due date under relevant Act, but before due date of filing of return u/s. 139(1), same is allowable. ***Contrary CIT vs Gujarat State Road Transport Corporation (2013)(Guj)***
43.	CIT vs Andhra Ferro Alloys P LTd. (2012) 349 ITR 255 (A.P.)	Assessee did not pay electricity bills. AO treated that assessee has not paid "Fees" u/s. 43B and therefore expenditure is not allowable. Held, Electricity charges cannot be treated as "fees". No disallowance is called for.
44.	CIT vs. Softworks Computers P Ltd. (2013)(Bom.)	Assessee took a loan for relocation of office. There was waiver of principal loan. AO treated the same as liable to tax u/s. 41(1) or alternatively u/s. 28. Following the judgment of ***Mahindra & Mahindra (Bom.)***, it was held that the waiver of such loan was to be treated as a capital receipt. Same cannot be made liable u/s. 41(1), as no deduction was claimed earlier. Also, it cannot be taxed u/s. 28, as it was not a revenue receipt.
45.	Rollatainers Ltd. (2011) 339 ITR 54 (Del.)	Waiver of Principal portion of term loan for purchase of capital assets. Same is not taxable u/s. 41(1) as there was no expenditure allowed earlier while taking loan. Also, same is not taxable u/s. 28(i) as same is on capital account and not "profit and gains from business or profession". However, waiver of principal portion of the working capital loan is taxable as a business income. T. V. Sundaram Iyenger LTD (SC) and Mahindra and Mahindra (Bom.) applied.
46.	Iskrameco Regent Ltd. (2011) 331 ITR 317 (Mad.)	Waiver of principal amount of loan taken for purchase of capital asset cannot be treated as deemed business income u/s. 41 or u/s. 28.
47.	Madras Gymkhana Club (2010) 328 ITR 348 (Mad.)	In Madras Gymkhana Club (2010)(Mad.), assessee club accepted deposits from members. Assessee deposited the same with its own members. It was held that interest on FDR was not exempt as it did not satisfy the test of mutuality. However, in Delhi Gymkhana Club (2011)(Del.), same was deposited in Bank FDR, it was held to be taxable.
48.	Sind Co-operative Housing Society (2009) 317 ITR 47 (Bom.)	Tranfer fees received by co-operative housing society from its incoming and outgoing members is exempt on the principle of mutuality.

~~ INCOME FROM CAPITAL GAINS ~~~~		
49.	PVS Raju (2012) 340 ITR 75 (AP)	Question whether profit on sale of shares is capital gains or business income is not a question of law but a question of fact. The characted of transaction cannot be determined solely on the application of any abstract rule, or there cannot be a straight jacket formula for same. It depends upon all the facts and circumstances of the case. The factors to be considered are magnitude and frequency of transactions, period of holding, ration of sales to purchases to total holdings etc. Mere classification of shares in books is not relevant for determining the nature of income.
49.	CIT vs Yatish Trading Co. Pvt. Ltd. (2013)(Bom.)	Assessee was a dealer in shares. He had two portfolios being stock-in-trade and capital gains. Assessee converted part of his shares, which were held as stock-in-trade into capital assets. The profit upto the date of conversion was offered as business income; and the profit thereafter was offered as capital gains. AO treated the entire income as business income. Held, in the earlier years also, the conversion of stock-in-trader to capital assets has been accepted. Merely if assessee is in the business of share trading, it cannot estop him from holding certain shares as investments. Therefore, the approach of assessee is proper.
50.	CIT vs Smt. Rama Rani Kalia (2013)(All.)	Assessee purchased a leasehold property, and subsequently converted it into a freehold property. Subsequently, the property was sold. Whether holding period of only freehold property shall be taken or entire holding period shall be taken. Held, entire holding period shall be taken, as the conversion of leasehold property into freehold was nothing but only improvement of the title over the property.
51.	P.P. Menon (2010) 325 ITR 122 (Ker.)	Firm dissolved. Partner received asset and sold it subsequently. Holding period of partner to be of partner only.
52.	Navin Jindal (2010) 320 ITR 708 (SC)	In case of renunciation of rights issue, holding period begins only from the date when right is announced by company. Prior to that, the right is not embedded.
53.	CIT vs Manjula J. Shah 16 Taxmann.com 42 (Bom.)	Indexation shall be done from the period previous owner Assessee acquired the asset, in cases where the earlier transaction was not liable to tax due to section 47. Indexation to be done from the period of holding by previous owner.Also, Arun Shungloo Trust (2012)(Del.HC)
54.	Gouli Mahadevappa (2013)(Kar.)	The peculiar facts of the case were as under: - 1. Assessee sold a land at ` 20 lakhs. The Guideline value of same was ` 36 lakhs. Value u/s. 50C was adopted as ` 36 lakhs. 2. Assessee invested ` 20 lakhs in purchase of new house. Also, agricultural income of ` 4 lakhs was invested. 3. Assessee contended before the tribunal, that since the entire amount of capital gains was invested. Therefore, the deeming fiction of section 50C shall not be extended to section 54F. Entire capital gain shall be exempt. ITAT decided in favour of assessee.

		4. However, assessee filed appeal to High Court to challenge the Stamp Value. Also, assessee contended that the agricultural income shall be eligible for investment u/s. 54F. The High Court held: 1. The challenge of assessee to the stamp value is improper and belated. Assessee cannot challenge the same at this stage. 2. The capital gains is at the sale consideration of ` 36 lakhs. However, of this ` 20 lakhs and also ` 4 lakhs (being the agricultural income) shall be eligible for investment u/s. 54F.
55.	CIT vs Gita Duggal (2013)(Del.)	Where the deduction was allowed, stating that deduction is allowed only for "one" house, however, since more than one house constituted a single unit, deduction was allowable. [Earlier judgments of ***CIT vs D. Ananda Basappa (2009)(Kar.); CIT vs Smt. K.G. Rukminiamma (2011) (Ker.); CIT vs Syed Ali Adil (2013)(A.P.)*** followed]
56.	CIT vs Syed Ali Adil (2013) 352 ITR 418 (A.P.)	Assessee would be entitled to exemption u/s. 54 in respect of two flats, adjacent to each other having a common meeting point.
57.	CIT vs Ravinder Kumar Arora (2012) 342 ITR 38 (Del.)	Exemption u/s. 54F cannot be denied on the ground that wife was made co-owner, moreover when the entire investment was made by husband.
58.	CIT vs Gurnam Singh (2010) 327 ITR 278 (P & H)	Exemption u/s. 54F cannot be denied on the ground that investment was in the name of son, or that son was co-owner.
59.	CIT vs Kamal Wahal (2013) 351 ITR 4 (Del.)	Exemption u/s. 54F cannot be denied merely on the ground that investment was made exclusively in the name of wife. It was held that assessee had not purchased the new house in the name of a stranger or somebody who is unconnected with assessee.
60.	CIT vs Rajiv Shukla (2011) 334 ITR 138 (Del.)	Assessee sold depreciable asset, which was held for more than 36 months. Assessee contended that although the capital gains was short-term, however, the assessee would get exemption u/s. 54F. This is so as the asset is still "long term capital asset", only the capital gains is short-term. Following the judgment of *CIT vs Ace Builders P Ltd. (2006)(Bom.)*, it was held that the assessee is eligible for deduction u/s. 54F.
61.	CIT vs Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)	For claiming exemption u/s. 54, assessee should have invested in purchase or construction of residential house. Exemption u/s. 54 cannot be denied me.rely because construction is not completed in all respects and possession could not be taken. Of course in this case, assessee had taken possession and was living in the house, but still some flooring, electricity, door and window fitting work was left. Assessee was held to be eligible for deduction.

62.	Hindustan Unilever Ltd. (2010) 325 ITR 102 (Bom.)	Assessee purchased bonds u/s. 54EC by issuing cheque. Cheque issued within 6 months but cleared after 6 months. Assessee is still entitled to exemption.
	~~~~ INCOME FROM OTHER SOURCES ~~~~	
63.	CIT vs Manjoo and Co. (2011) 335 ITR 527 (Ker.)	Assessee was a lottery ticket seller. Assessee won lottery from unsold tickets. Assesse contended that it was professional income and therefore income was taxable at normal rate and not 30% u/s. 115BB. Held, the head in which the income is assessed is irrelevant. Although the income may be professional income, same is taxable @ 30%. Earlier decisions distinguished on the ground that earlier decisions were given when section 115BB was not introduced.
64.	CIT vs Parle Plastics (2011) 332 ITR 63 (Bom.)	U/s. 2(22)(e), loan by company to shareholders holding more than 10% of the holdings is treated as dividend. However, if the substantial part of business of assessee is money lending, loan shall not be dividend. It has been held in this case that "Substantial part of business" is not limited to "major part" of turnover, but even to a reasonable part of profit, manpower, capital, asset base etc.
65.	CIT vs Ambassador Travels P Ltd. (2009) 318 ITR 376 (Del.)	Assessee, a travel agency, had regular business dealings with two concerns in the tourism industry dealing with holiday resorts. High Court observed that the assessee was engaged in booking of resorts for the customers of these companies. Therefore, assessee had given loan u/s. 2(22)(e). It was held that the transaction was in the ordinary course of business and therefore section 2(22)(e) was not attracted.
66.	Pradip Kumar Malhotra (2011) 338 ITR 538 (Cal.)	Assessee has a substantial voting right in the company. He permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan. The shareholder requested the company to release the property from the mortgage. On failing to do so, and for retaining the benefit of loan availaed from Bank, the company gave advance to the assessee, which was authorised by a resolution passed by its Board of Directors. AO treated the advance as deemed dividend u/s. 2(22)(e). It was held that "advance" covers only those advances which a shareholder enjoys simply on account of being a shareholder. In the present case, advance has been given to protect the interest of the company. Same is not covered by section 2(22)(e).
	~~~~ SET-OFF AND CARRY FORWARD OF LOSSES ~~~~	
67.	Pramod Mittal (2013)(Del.)	As per section 78(2), loss of one assessee cannot be carried forward, except in the case of inheritance. Loss of partnership firm cannot be carried by a sole proprietor who carried on the business after dissolution. Same cannot be said to be a case of inheritance.
	~~~~ DEDUCTIONS (U/C. VIA) ~~~~	
68.	CIT vs Puttur Petro Products P Ltd (2014)(Kar.)	Bottling of gas into gas cylinders requires a very specialized process and independent plant and machinery. Therefore bottling of gas amounts to production and is eligible for

		deduction u/s. 80IB.
69.	CIT vs Chiranjeevi Wind Energy Ltd. (2011) 333 ITR 192 (Mad.)	Assembling of parts of windmill into windmill would amount to "manufacture" or "production" and shall be eligible for deduction u/s. 80IB. This is so, as new and distinct commodity emerges from the process of assembling. Even under the definition of manufacture given in I-T Act u/s. 2(29BA), assembling of parts of windmill into windmill would amount to manufacture.
70.	CIT vs Jaswand sons (2010) 328 ITR 442 (P & H)	The words "Derived from" are narrow words and shall cover only those profits, which are directly having nexus with the industrial undertaking. It has been held that Sale of export incentive was not "derived from" industrial undertaking and therefore not eligible for deduction. Also refer Liberty India (2009) 317 ITR 218 (SC), where it has been held that Profit on sale of DEPB is not income "derived" from industrial undertaking. Same is not eligible for deduction. In CIT Vs Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gau.), it has been held: - Transport Subsidy – Not eligible. Interest Subsidy – Not eligible. Also refer CIT vs Gheria Oil Gram udyog (2011)(HP) Refund of Excise Duty - Eligible.
71.	CIT vs Kiran Enterprises (2010) 327 ITR 520 (HP)	Frieght subsidy is not income "derived" from industrial undertaking. Same is not eligible for deduction.
72.	CIT vs Orchev Pharma(2013)(SC)]	Profit on sale of DEPB balance, is not derived from industrial undertaking. ***[Liberty India(2010)(SC)]***
73.	CIT Vs Jyoti Plastic Works Pvt Ltd. (2011) 339 ITR 491 (Bom.)	For claiming deduction u/s. 80IB in backword area, there should have been atleast a particular number of employees. The question was whether persons employed through agency (including contractors) as "workers" would qualify for deduction. It was held that persons employed through agency as "Workers" would be treated as workers of assessee and assessee would be eligible for deduction.
74.	Praveen Soni (2011) 333 ITR 324 (Del.)	An assessee not claiming deduction u/s. 80IB in the initial years can claim deduction in the subsequent years. There is no requirement that the assessee shall claim deduction in the initial years.
75.	CIT vs Nestor Pharmaceuticals Ltd. (2010) 322 ITR 631 (Del.)	Assessee started trial run in March 1998, but commercial production in April 1998. Limit of 5 A.Y. for deduction u/s. 80IB is to be taken not from year of trial run, but from the year of commercial production. However, since in the present case, sale had been started in the month of March 1998 itself, the stage of trial run had crossed, and therefore 5 years shall be counted from F.Y. 1997-98 (March 1998).
76.	CIT vs Swarnagiri Wire Insulations Pvt Ltd. (2012) 349 ITR 245 (Kar.)	Unabsorbed depreciation related to windmill business, which was eligible for deduction u/s. 80IA. Assessee claimed set-off of this unabsorbed depreciation with profits from manufacturing of wires, being non-eligible business. AO held

		that u/s. 80IA(5), profit of eligible business has to be calculated separately. Therefore, loss of eligible business shall not be allowed to be set-off from income from non-eligible business. Held, section 80IA is a beneficial provision. A provision granting tax incentive for economic growth should be construed liberally and any restriction placed should also be construed in a reasonable and purposive manner to advance the objects of the provision. Set-off is governed by section 70(1). Therefore, set-off of loss of eligible business is allowable from non-eligible business. However, if such set-off is done, a deduction to such extent is not possible in any subsequent A.Y.
	~~~~ ASSESSMENT OF FIRM ~~~~	
77.	CIT vs Anil Hardware Store (2010) 323 ITR 368 (HP)	Deed provided for manner of fixing the remuneration. The deed provided that the remuneration shall be paid as per section 40(b) and the definition of book profit shall be as per section 40(b). Same is allowable. P.S. Although CBDT Circular no. 739 of 25.03.1996 states that same is not allowable.
78.	CIT vs Great City Manufacturing Co. (2013) 351 ITR 156 (All.)	Remuneration paid to partners within limit u/s. 40(b). AO made disallowance u/s. 40A(2) holding that the payment is excessive or unreasonable. Held, if the remuneration falls within 40(b), no disallowance u/s. 40A(2) is called for.
	~~~~ ASSESSMENT OF AOP~~~~	
79.	Sudhir Nagpal (2012) 349 ITR 636 (P & H)	Assessee was co-owner of a house property inherited. Originally land was inherited, but the co-owners executed a Power of Attorney in favour f assessee, who constructed a house property. The following questions arose: - (a) Whether the rental income was assessable as “House Property” income or “Other Sources”? (b) Whether income was assessable in hands of individual co-owners or in the hands of AOP? Held, (a) The income from property was “House Property” income. (b) The co-owners did not purchase the property with a common intention, but the same was inherited. They were owners not in their joint capacity but in their individual capacity with a definite/ defined portion. The rental income was assessable in Individual hands and not in hands of AOP.
	~~~~ ASSESSMENT OF COMPANY ~~~~	
80.	JCIT vs Rolta India Ltd. (2011)330 ITR 470 (SC)	Advance tax is payable even in case of MAT. If advance-tax is not so paid, interest u/s. 234B and 234C shall apply.
81.	N.J. Jose & Co. P Ltd. (2010) 321 ITR 132 (Ker.)	If the income is eligible u/s. 54E or section 80IA-IE, no deduction for same is allowable, while computing book profits u/s. 115JB.
	~~~~ ASSESSMENT OF TRUST ~~~~	
82.	DIT (E) vs Bagri Foundation (2012) 344 ITR 193 (Del.)	Assessee-trust made automatic accumulation of 15% of its income. Out of this accumul2.ated fund, assessee made donation in the subsequent years. AO held that if any donation is made out of accumulated funds, same is not treated as

		application (u/s. 11(2) Explanation). AO therefore disallowed the donation and made addition. Held, Explanation to 11(2) applies in respect of accumulation above 15%. There is no restriction on the use of the funds accumulated upto 15%. No disallowance is called for.
83.	CIT vs Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013)(Mad.)	In the present case, it was held that although the words "shall" are used, but the condition is directory and not mandatory. The order u/s. 12AA may be passed even beyond 6 months. [Similar ***CIT vs Seela Christian Charitable Trust (2013)(Mad.)***] Contrary, judgment is given in ***Society for the promotion of Education Adventure Sport & Conservation of environment (2008)(All.)***. In this case, it was held that if registration was not granted within 6 months, registration shall be presumed as per decision in.
84.	DIT(E) vs Meenakshi Amma Endowment Trust (2013)(Kar.)	A charitable trust applied for registration within 9 months after its formation. CIT held that since no charitable activities had started, as such, the application for registration was premature. However, the High Court held that since the assessee did not have sufficient funds to do charitable activities presently, it cannot be said that no activities were carried on. Also, at the time of registration, the CIT shall be concerned with the object of the trust and not the application of income.
	~~~~ Assessment of HUF ~~~~	
85.	CIT vs D. L. Nandagopala Reddy (Indl.) (2014)(Kar.)	<u>FACTS</u> Assessee was adopted son on "LR". "LR" was son of "V". A property belonged to "V", which was HUF property. On death of "V", "LR" executed a release deed, and took his share in the property. This share of "LR" was bequeathed in favour of assessee, who distributed the same between himself, wife and children. Assessee entered into an agreement with the builder for development of property. AO treated the income from same as individual income of assessee and wife, whereas the assessee contended that the income should be HUF income. <u>HELD</u> One of the members of the HUF ("LR") went out of the HUF, still the HUF continued. On the death of "LR", assessee became the sole surviving coparcener of HUF. Assessee transferred the property to his wife without a registered deed, which could have been possible, only if the property was HUF property. It was not a self-acquired property. Hence, the property belonged to HUF, and same had to be treated as income of HUF.
	~~~~ ASSESSMENT PROCEDURE ~~~~	
86.	Sahara Hospitality Ltd. (2012) 211 Taxman 15 (Bom.)	Before transfer of case, ***"the CIT may give an opportunity of being heard, wherever it is possible to do so"*** is required u/s. 127. The question is whether the opportunity shall be mandatorily required. Held, the word "may" shall be read as

		"shall". The CIT shall mandatorily provide opportunity before transfer of case. Opportunity of being heard, can be dispensed with in a case where it is not possible to provide such opportunity.
87.	Kathiroor Service Co-operative Bank Ltd (2014)(SC)	AO can call for information u/s. 133(6) even if no assessment is pending against any person.
88.	Lodhi Property Co. Ltd. (2010) 323 ITR 441 (Del.)	U/s. 119, CBDT can condone the delay in filing the return if there is a reasonable cause. In present case, High Court held that CBDT should have condoned the delay on the plea that on the last day when the return was presented it was informed that it is already 6 pm and office is closed. Next day return was filed. CBDT shall condone such delay.
89.	CIT vs Govind Nagar Sugar Ltd. (2011) 334 ITR 13 (Del.)	Unabsorbed depreciation can be carried forward even if the return is not filed by the due date.
90.	Orissa Rural Housing Development Corpn Ltd. (2012) 343 ITR 316 (Orissa)	Assessee can make a fresh claim before the AO or make a change in the originally filed return of income only by filing revised return of income u/s. 139(5). There is no provision under the Act to enable the assessee to revise his income by filing a revised statement of income. Therefore, filing of revised statement of income is not valid and will not be considered by the AO for assessment purposes. In doing so, the High Court relied on *Goetze (India) Ltd (SC)*. However, one may note that there is a contrary judgment of the Supreme Court in *MR(P) Firm*, where it has been held that it is the duty of the AO to compute the true income of the assessee. And therefore, where the assessee makes a claim by filing a revised computation, same shall be acceptable.
91.	CIT vs Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom.)	Assessee can made a fresh claim before the appellate authority, which was not claimed in the return; otherwise than by filing revised return. *Goetz India (SC)* prohits assessee to make a fresh claim before AO. However, there is no prohibition to make fresh claim before CIT(A)/ ITAT. If fresh claim is made before CIT(A)/ ITAT, *National Thermal Power Company (SC)(1998)* would apply which permits the assessee to raise additional grounds.
92.	CIT vs Haryana State Electricity and Handicrafts Corporation Ltd. (2011) 336 ITR 699 (P & H)	Once notice u/s. 143(2) is issued and scrutiny has been initiated, can AO make rectification u/s. 154 of the intimation u/s. 143(1). It was held that once notice u/s. 143(2) is issued, any adjustment can be made only u/s. 143(3). AO cannot make adjustments u/s. 143(1). Since no adjustment can be made u/s. 143(1), no adjustment should be permitted u/s. 154/143(1), once a notice u/s. 143(2) is served. Earlier law of CIT vs Punjab National Bank (2001) 249 ITR 763 (Del.) applied. P.S. : Similar has been made in the Act itself, by the Finance Act, 2012.
93.	Ranbaxy Laboratories	AO made reopening u/s. 147 for certain grounds. On inquiry, it was felt that no addition is called for on those grounds.

	(2011) 336 ITR 136 (Del.)	However, AO made addition on grounds for which reopening was not made. It was held that if reopening is done on certain grounds and addition is made on other grounds, without making addition on grounds on which reopening was done, reopening was liable to be set-aside. This is so, as the Act uses the words, "AO can assess or reassess such income and also other income". Since the words, "and also" are used, this shows a cumulative condition and without making addition on points for which reopening is done, addition cannot be made on other points. Also refer Jet Airways (Bom.)
94.	ACIT vs ICICI Securities Primary Dealership Ltd. (2012) 348 ITR 299 (SC)	AO completed the assessment u/s. 143(3) holding that loss was non-speculation. After 4 years, AO reopened the assessment recording the reasons that on a mere re-look at accounts, it is noticed that loss in share trading is speculative; which cannot be set-off with non-speculative income. Held by the Supreme Court that reopening cannot be done as there was no failure on the part of assessee to disclose "full and correct" information.
95.	H.K. Buildcon Ltd. (2011) 339 ITR 535 (Guj.)	AO completed the assessment. There was change in the incumbent of office. New officer proposed to initiate reassessment. It was held that old officer had already applied his mind, and therefore reopening cannot be done on a mere change of opinion.
96.	Aventis Pharma Ltd. (2010) 323 ITR 570 (Bom.)	On basis of "Change of opinion", reopening cannot be done. *CIT vs Kelvinator of India (2010)(SC)(FB)* applied.
97.	Samsung India Electronics P Ltd. (2014)(Del.)	In case of reassessment, assessee can obtain reasons for reopening the assessment u/s. 148. Thereafter, after obtaining the reasons, assessee made, if so desire, object to reassessment by filing objections to the AO. In the present case, without filing objections to the AO, assessee directly approached to the High Court by way of a Writ challenging the reopening. The contention of the assessee was that Delhi High Court in ***Techspan India P Ltd. (2006)(Del.)***, it was held that in exceptional cases, where the exercise of the powers u/s. 148 was mala-fide or was so arbitrary, that the alternative remedy of filing objections becomes ineffective, the Court may entertain the Writ. Held, the assessee was required to file the objections before the AO before approaching the High Court. The judgment in Techspan India (supra), was an exception, but was not a general rule. In present case, no exception is made out. Therefore, the assessee may, if felt proper, approach the AO.
98.	CIT vs Tony Electronics Ltd. (2010) 320 ITR 378 (Del.)	AO passed assessment order on 01.03.2006. CIT (A) passed order of 10.06.2007. CIT(A) passed rectification order on 04.05.2010. Whether same is valid. HELD, limitation shall be taken from CIT(A) order. Doctrine of merger applied.
99.	CIT vs ICICI Bank Ltd. (2012) 343 ITR 74 (Bom.)	AO made assessment u/s. 143(3). He did reassessment u/s. 147. No discussion was made u/s. 147 for deduction u/s. 36(1)(vii), 36(1)(viia) and foreign exchange rate difference. CIT

		wanted to revision u/s. 263. The question was whether time limit shall be counted from AO's order u/s. 143(3) [in which case, revision would be barred by limitation] or from order u/s. 147 [in which case revision would be valid]. It was held that the time limit shall be counted from date from where the error has effectuated i.e. from the order u/s. 143(3). Revision was therefore held to be invalid, being barred by limitation. .
100.	Sanchit Software and Solutions Pvt Ltd. (2012) 349 ITR 404 (Bom.)	Assessee filed return showing income from dividend and LTCG as exempt income in the respective columns. However, while offering the income, the exemption for these were not claimed and the return was filed. AO processed the return u/s. 143(1) and denied the exemption u/s. 10 for these incomes. Assessee filed revision before CIT u/s. 264 requesting to allow the exemption u/s. 10. CIT rejected the revision petition. Bombay High Court held that the assessee was eligible for exemption. The amount was claimed as exempt in respective Schedule, although the exemption was taken in the computation. Department shall not take the advantage of the ignorance of assessee.
101.	CIT vs Earnest Exports Ltd. (2010) 323 ITR 577(Bom)	ITAT has not power to review. It cannot recall its own order in the grab of rectification.
102.	Lachman Das Bhatia Hingwala P Ltd. (2011) 330 ITR 243 (Del.)(FB)	If the entire order of ITAT is wrong, ITAT can recall its full order. Thus in entirety, the position of ITAT is as under: - (a) Rectification – ITAT has power (b) Review – ITAT has no power. (c) Recall – Generally, while doing rectification, part of order is recalled. In this case, it was held that if the entire order of ITAT was erroneous, then ITAT can recall the entire order. Earlier decision of Honda Siel (SC) applied.
103.	Deepak Kumar Garg (2010) 327 ITR 448 (MP)	High Court has no power of review. Such power is not provided u/s. 260A. However, one may note that this decision has been overruled by Patna High Court Full Bench in Singh, D.N. 235 CTR 177 (Pat.)(FB)
104.	CIT vs Triumph International Finance (I) Ltd. (2012) 345 ITR 270 (Bom.)	Decision relates to section 269T r/w section 271E. Loan exceeding ` 20,000 was repaid by making adjustment book entries. AO held that it was non-compliance of section 269T. He levied penalty u/s. 271E. It was held there is non-compliance of section 269T, and it was irrelevant for section 269T that the transaction was bona-fide. However, penalty cannot be levied as u/s. 273B, if there is a reasonable cause, penalty cannot be levied. Since the transaction is bona-fide and was in the normal course of business, penalty would not be leviable.
105.	CIT vs V. Sivakumar (2013)(Mad.)	For non-compliance of section 269SS, if there is a reasonable cause, no penalty shall be levied. [*Section 273B*] Firm had given a loan to proprietary concern of the partner exceeding the limits u/s. 269SS. Assessee contended that the firm and partners were same legal entity and also the partner

		was entitled to use the funds of the firm. Also, the assessee acted *bona-fide* and there was a reasonable cause for non-compliance therefore. It was held that penalty cannot be levied.
106.	MAK Data P Ltd. (2013)(SC)	During survey at premises of sister concern, certain documents were found. During assessment of assessee u/s. 143(3), AO conducted inquiry on the share application money, which was found during survey. In reply to the notice u/s. 142(1) seeking information, assessee made a surrender by way of voluntary disclosure without admittitng any concealment, but subject to non-levy of penalty. AO made addition, but levied penalty. Assessee contended that the surrender during assessment was with a view to avoid litigation, to buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Department. Held, such defenses are not recognised under the statute. Survey was conducted 10 months prior to the return. Had the intention been to offer full disclosure, the income would have been offered in the return. Since the assessee has not been able to give Explanation regarding the surrendered income, there is deemed concealment under Explanation 1 to section 271(1)(c).
107.	CIT vs Reliance Petroproducts (2010) 322 ITR 158 (SC)	Mere rejection of claim does not mean "furnishing of inaccurate particulars". Penalty cannot be levied.
108.	CIT vs Indersons Leather P Ltd. (2010) 328 ITR 167 (P & H)	Assessee treated income as business income. AO treated the same as House Property income. It was held that contention of AO was correct. AO levied penalty. It was held that issue was debatable and therefore penalty cannot be levied as there was no concealment. Earlier decisions of Rajasthan Spinning and Weaving Mills (SC) and Reliance Petroproducts Ltd. (SC) applied.
109.	CIT vs Amit Jain (2013) 351 ITR 74 (Del.)	Assessee offered income as short-term capital gains. AO treated same as business income. AO levied penalty. Held, merely because AO was of the opinion that income fell under some different head, does not mean that assessee concealed its income. Penalty cannot be levied.
110.	CIT vs Celetronix Power India P Ltd. (2013) 352 ITR 70 (Bom.)	Assessee claimed deduction u/c. VIA relying on Bombay High Court judgment. Subsequently, the judgment was reversed by Supreme Court and the deduction was disallowed. Held, penalty cannot be levied, as there is no concealment.
111.	CIT vs Vijay Kumar Jain (2010) 325 ITR 378 (Chhattis)	Can penalty be levied when the books are rejected u/s. 145 and profit rate is estimated. HELD, penalty cannot be levied on estimated addition.
112.	UOI vs Bhavecha Machinery & Others (2010) 320 ITR 263 (MP)	Assessee firm did not file return upto due date. AO initiated prosecution on partners, for failure to file return u/s. 276CC. Partners contended that the munim was an old man and was sick and therefore return could not be filed in time. High Court held that the failure in not filing the return was not wilful and therefore prosecution was quashed.
TAX PLANNING, TAX AVOIDANCE, TAX EVASION		

113.	Bhoruka Engineering Indus(2013)(Kar.)	Assessee sold shares of a Listed company through stock exchange. Assessee claimed the capital gain as exempt u/s. 10(38). However, AO noted that the underlying asset with the company was a Land and therefore there was a transfer of Land. The transfer of shares was a colourable devise. However, the High Court, in the facts of the case noted that the shares were purchased as early as in 1984. Also, the companies were real companies and the transaction was in the ordinary course. Therefore, the same was to be treated only as a transaction of shares. Capital gains was therefore exempt.
	~~~~ INTERNATIONAL TAXATION ~~~~	
114.	Indcom (2011) 335 ITR 485 (Cal.)	Income of match refree was not covered by section 115BBA. He is not a sportsman or athlete. It was therefore liable for tax as per normal provisions. TDS was therefore to be deducted u/s. 195 and not 194E.
	~~~~ TAX COLLECTION AND RECOVERY ~~~~	
115.	A. Kowsalya Bai (2012) 346 ITR 156 (Kar.)	It was held that section 206AA is invalid to the extent it requires a person whose income is below basic exemption limit to obtain a PAN and quote it.
116.	CIT vs Senior Manager, SBI (2012) 206 Taxman 607 (All.)	Assessee had taken premises on lease. Rent was paid to the co-owners separately. The share of each co-owner did not exceed the threshold limit u/s. 194I. Held, that no TDS was deductible as the payment did not exceed the threshold limit. Also, income is assessable in the individual hands of the co-owners and not as AOP of members. No TDS was therefore deductible.
117.	CIT vs Japan Airlines Co. Ltd.(2010)(Del.)	The definition of "rent" is very wide and covers landing and parking charges for use of land by Airport authorities charged from Airlines companies. However, a contrary judgment has been given in ***CIT vs Singapore Airlines (2012) (Kar.)***, where it has been held that merely touching the surface of land would not mean that there is an agreement in the nature of "lease". Thus, no TDS was required to be deducted.
118.	CIT (TDS) vs Shree Mahalaxmi Transport CO. (2011) 339 ITR 484 (Guj.)	Assessee was engaged in the business of transportation of building material, salt, black trap etc. Assessee made payment for hiring of dumpers and deducted TDS u/s. 194C. AO held that TDS should have been deducted u/s. 194I, as hiring of dumpers amounted to payment of rent. High Court held that the assessee had given contracts to the parties for transportation of goods and had not taken machinery on hire. Therefore assessee was right in deducting TDS u/s. 194C.
119.	CIT (TDS) vs ITC Ltd. (2011) 338 ITR 598 (Del.)	Assessee was running a hotel. If the tips are given directly by the customers to the employees, assessee hotel is not required to deduct TDS. However, if the tips are added in the bill and collected by the hotel, and thereafter given to the employees, same amounted to payment made by the employer (in other terms salary); and therefore liable for TDS.
120.	CIT vs Ahmedabad Stamp Vendor Association (2012) 348 ITR 378	Discount given to stamp vendors on purchase of stamp. Whether the margin on the stamp vendor was "Commission or brokerage". Held, the stamp vendors act on principal to

		principal basis. They purchase the stamp. Payment is not "commission or brokerage".
121.	CIT vs Qatar Airways (2011) 332 ITR 253 (Bom.)	Assessee-airlines company sold tickets to agent at a price below MRP quoted in tickets. However, agents were allowed to sell the tickets at the price fixed by them, which was to be below MRP. Whether the difference between the MRP and the price at which tickets were sold to agents was to be treated as additional commission? It was held that same cannot be treated as additional commission as airlines company was not aware about the exact price at which the tickets would be sold by the agent.
122.	Ajmer Vidyut Vitran Nigam Ltd. (2013)(AAR)	Assessee was a Power generation company. Assessee paid transmission, wheeling and SLDC charges. Whether it can be treated as fees for technical services. Held, so far as transmission and wheeling charges are concerned, they relate to personal services, and therefore they are fees for technical services. However, SLDC charges are paid to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. These charges are more of a supervisory charges and therefore it is not a payment of fees for technical services.
123.	Bharti Cellular Ltd. (2013)(Cal.)	At the time SIM was available with the distributors, the ownership of the same was with the assessee (Vodafone). Thus, there was a principal and agent relationship between the assessee and distributors. Thus, in the facts of case, the margin of distributor was commission; and TDS was required to be deducted u/s. 194H. [Similar ***Vodafone Essar Ltd. (2011)(Ker.)***]
124.	CIT vs Mother Dairy India Ltd. (2013)(Del.)	Assessee sold milk to concessionaries at a certain price (price less than MRP); whereas the concessionaries further sold the milk to customers at MRP. AO held that the margin of the concessionaries was their margin and therefore TDS ought to be deducted. Held, the agreement between concessionaries and the assessee would show that the transaction was on principal to principal basis. The assessee sold the milk at a discount. Although the assessee could inspect the booth of the confessionaries, it was in the ordinary course of trade practice, as the assessee had given space, machinery and equipment. TDS was not required to be deducted.
125.	CIT vs Hindustan Lever Ltd. (2014)(Kar.)	Assessee conducted sales promotion schemes. Certain coupons were given alongwith their products and on purchase of the packs containing the coupons, the persons would get prizes. Assessee did not deduct TDS on the said prices, which were in kind. AO treated the assessee as in default. Held, prior to A.Y. 2002-03, the amount cannot be treated as lottery, as although there was an element of chance, but the participants did not contribute any amount for taking participation in the lottery. However, from A.Y. 2002-03, by amendment in section 2(24), the definition of lottery etc was amended. From A.Y. 2002-03,

		said amount could be regarded as lottery. In any case, however, u/s. 194B, no TDS could be deducted if the prize is in kind. The word "deduction" would postulate reduction of the amount from the gross amount and payment of net amount. Assessee cannot be treated as assessee is default.
126.	DIT (International Taxation) vs Delta Airlines Inc. (2013)(Bom.)	AO made addition during assessment u/s. 143(3). CIT(A) deleted the addition and refund was granted. In appeal, ITAT restored the order of AO. AO gave appeal effect. While giving appeal effect, AO levied interest u/s. 234D on the amount refunded by CIT(A). Held, interest u/s. 234D could be levied only in respect of the refund arising out of the processing u/s. 143(1), which is subsequently reduced.
127.	Jeans Knit P Ltd. (2013)(Kar.)	U/s. 245, a refund of one year can be adjusted with the demand of another year. However, before doing so, a prior intimation to the assessee was required. AO did the adjustment without giving prior intimation. It was held that such an action of the AO was illegal and the adjustment shall be treated as void-ab-initio.
	~~~~ WEALTH TAX ~~~~	
128.	CWT vs Motor and General Finance Ltd (2011) 332 ITR 1 (Del.)	No return u/s. 14(1) was filed [139(1)]. AO issued notice u/s. 16(4) [142(1)]. On failure of the assessee to comply with the notice, AO made assessment u/s. 16(5) [144]. Assessee contended that no opportunity of being heard was granted. It was held that AO can resort to best judgment assessment for failure to comply with notice u/s. 16(4), and no opportuinty shall be granted before making such an assessment. Assessment is valid.
129.	CIT vs Smt. Neena Jain (2011) 330 ITR 157 (P & H)	Building under construction would avoid taxation both as land/ building. Also refer Apollo Tyres Ltd. (2010)(Ker.)