



No	Issue / Questions	Assessee	Held
CHAPTER:1 BASIC CONCEPTS			
1	What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time a capital receipt or a revenue receipt?	Saurashtra Cement Ltd (Supreme Court)	The damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.
2	Can waiver of loan or advance taken for the purpose of relocation of office premises be treated as a revenue receipt liable to tax?	Softworks Computers P. Ltd (Bombay High Court)	The advance taken by the assessee-company was utilized by it for the purpose of relocating its office premises i.e., for acquisition of a capital asset, namely, a new office, the waiver of the same cannot be said to be waiver or remission of trading liability to attract taxability under the Act. Waiver of such advance, being capital in nature, is not taxable under the Act.
3	What is the nature of grant received by a subsidiary company from its holding company to recoup the losses incurred year after year and to enable it to meet its liabilities -Capital or Revenue?	Handicrafts and Handlooms Export Corporation of India Ltd. (High Court)	The High Court, observed that in all the years, it was the case of a 100% holding company coming to the rescue of its subsidiary.(SC), which requires the nature of subsidy to be decided on the basis for which the subsidy was given, the High Court held that grant given by the holding company in this case is in the nature of capital receipt since its purpose is to secure and protect the capital investment made in the subsidiary company.
4	Can power subsidy received by the assessee from the State Government, year after year, on the basis of actual power consumption be treated as a capital receipt?	Rassi Cement Ltd. (Andra Pradesh High Court)	The power subsidy received by the assessee from the State Government on the basis of actual power consumption has to be treated as a trading receipt and not as a capital receipt.
5	In case the share capital is raised in a foreign country and repatriated to India on need basis from time to time for approved uses, can the gain arising on the Balance Sheet date due to fluctuation in foreign exchange, in respect of that part of share capital which is to be used as working capital, be treated as a revenue receipt?	Jagatjit Industries Ltd (Delhi High Court)	The capital raised, whether in India or outside, can be utilized both for the purpose of acquiring fixed assets and to meet other expenses of the organization i.e. as working capital. For determining the nature of receipts, due consideration should be given to the source of funds and not to the ultimate use of the funds. The High Court, therefore, held that the entire gain has to be treated as capital receipt as the source of fund in this case is capital in nature.
6	Can subsidy received by the assessee from the Government of West Bengal under the scheme of industrial promotion for expansion of its capacities, modernization and improving its marketing capabilities be treated as a capital receipt?	Rasoi Ltd (Calcutta High Court)	The object of the subsidy is to enable the assessee to run the business more profitably, the receipt is a revenue receipt. On the other hand, if the object of the assistance is to enable the assessee to set up a new unit or to expand an existing unit, the receipt would be a capital receipt. Therefore, the object for which subsidy is given determines the nature of the subsidy and not the form of the mechanism through which the subsidy is given.

7	What is the nature of incentive received under the scheme formulated by the Central Government for recoupment of capital employed and repayment of loans taken for setting up/expansion of a sugar factory – Capital or Revenue?	Kisan Sahkari Chini Mills Ltd. (High Court)	In that case, the apex court held that the main eligibility condition for the scheme was that the incentive had to be utilized for the repayment of loans taken by the assessee to set up a new unit or substantial expansion of an existing unit. The subsidy receipt by the assessee was, therefore, not in the course of a trade and hence, was of capital nature.
*	What is the nature of subsidy given to enable the assessee to set up new unit – a capital receipt or revenue receipt?	<i>Kirloskar Oil Engines Ltd (2014) RTP MAY-15</i>	The point of time at which the subsidy is given is immaterial. The source is also immaterial. The purpose test is to be applied. If the object of the subsidy is to enable the assessee to run the business more profitably, then the receipt is on the revenue account. If the object was to enable the assessee to set up a new unit, then, the receipt of subsidy is on capital account. Accordingly, in this case, the High Court held that the subsidy received by the assessee-company for setting up a new unit is a capital receipt not chargeable to tax.
CHAPTER 2: INCOME WHICH DO NOT FORM PART OF TOTAL INCOME			
8	Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	Kribhco (Delhi High Court)	No disallowance can be made under section 14A in respect of income included in total income in respect of which deduction is allowable under section 80C to 80U.
9	In a case where the application for registration of a charitable trust is not disposed of within the period of 6 months as required under section 12AA(2), can the trust be deemed to have been registered as per provisions of section 12AA?	Karimangalam Onriya Pengal Semipu Amaipu Ltd. (Madras High Court)	In that case, the Madras High Court held that the time frame mentioned in section 12AA(2) is only directory in nature and non-consideration of the registration application within the said time frame of six months would not amount to “deemed registration”
10	Where a charitable trust applied for issuance of registration under section 12A within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?	Meenakshi Amma Endowment Trust (Karnataka High Court)	The money available with the trust, it cannot be expected to carry out activity of charity immediately. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity. In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it. Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdraw the registration granted or cancel the registration as per the provisions of section 12AA(3).
11	Can <i>Explanation</i> to section 11(2) be applied in respect of the accumulation up to 15% referred to in section 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation upto 15%, as income of the trust?	Bagri Foundation (Delhi High Court)	The <i>Explanation</i> to section 11(2), therefore, cannot be applied to the accumulations under section 11(1)(a) i.e. accumulations upto 15%, unless it is expressly mention in the Act for the same. Consequently, if the donations by the assessee to another charitable trust were out of past accumulations under section 11(1)(a) i.e. upto 15%, the same would not be liable to be included in the total income as assessed by the Assessing Officer.

*	In a case where properties bequeathed to a trust could not be transferred to it due to ongoing court litigation and pendency of probate proceedings, can violation of the provisions of section 11(5) be attracted?	<i>Khetri Trust (2014) RTP MAY-14</i>	the advance given to the business entity, the Commissioner(Appeals) found that the said amount cannot be treated as an investment which was covered and regulated by section 11(5), since the intent and purpose behind the payment was not investment. These views of the Commissioner (Appeals) were confirmed by the Tribunal. Based on the above factual findings, elucidated and affirmed by the Commissioner (Appeals) and the Tribunal, the High Court held that there was no violation of section 11(5) in this case.
*	Is the approval of Civil Court mandatory for amendment of trust deed, even in a case where the settler has given power to the trustees to alter the trust deed?	<i>Ramoji Foundation (2014) RTP MAY-14</i>	Accordingly, in this case, the High Court held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under Sec. 12AA.
CHAPTER 3: INCOME FROM SALARY			
12	Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee?	Shankar Krishnan (Bombay High Court)	That the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accommodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 10% (now 15%) of salary.
13	Can the limit of Rs. 1,000 per month per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the employee by the employer?	Delhi Public School (Punjab and Haryana High Court)	The value of perquisite for free/concessional educational facility arising to an employee exceeds Rs. 1,000 per month per child, the whole perquisite shall be taxable in the hands of the employee and no standard deduction of Rs. 1,000 per month per child can be provided from the same. It is only in case the perquisite value is less than Rs. 1,000 per month per child, the perquisite value shall be nil. Therefore, Rs. 1,000 per month per child is not a standard deduction to be provided while calculating such a perquisite.
CHAPTER 4: INCOME FROM HOUSE PROPERTY			
14	Whether the rental income derived from the unsold flats which are shown as stock-in-trade in the books of the assessee would be taxable under the head 'Profits and gains from business or profession' or under the head 'Income from house property', in a case where the actual rent receipts formed the basis of computation of income?	New Delhi Hotels Ltd. (Delhi High Court)	Rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be assessed under the head "Income from house property" and not under the head "Profits and gains from business or profession.
15	Can the rental income from the unsold flats of a builder be treated as its business income merely because the assessee has, in its wealth tax return, claimed that the unsold flats were stock-in-trade of its business?	Azimganj Estate (P.) Ltd (Calcutta High Court)	The rental income from the unsold flats of a builder shall be taxable as "Income from house property" as provided under section 22 and since it specifically falls under this head, it cannot be taxed under the head "Profit and gains from business or profession. Therefore, the assessee would be entitled to claim statutory deduction of 30% from such rental income as per section 24. The fact that the said flats have been claimed as not chargeable to wealth-tax, treating the same as stock-in-trade, will not affect the computation of income under the Income-tax Act, 1961.

16	Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?	Hariprasad Bhojnagarwala (Gujarat High Court)	On the above mentioned issue, the Gujarat High Court observed that a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an individual owner who can actually occupy the house. However, the HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity. Also, it was observed that since singular includes plural, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own". Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2).
17	Can an assessee engaged in letting out of rooms in a lodging house also treat the income from renting of a building to bank on long term lease as business income?	Joseph George and Co. (High Court)	While lodging is a business, however, letting out of building to the bank on long-term lease could not be treated as business. Therefore, the rental income from bank has to be assessed as income from house property.
18	Can notional interest on interest-free deposit received by an assessee in respect of a shop let out on rent be brought to tax as business income or income from house property?	Asian Hotels Ltd. (High Court)	The High Court observed that section 28(iv) is concerned with business income and brings to tax the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. Section 28(iv) can be invoked only where the benefit or amenity or perquisite is otherwise than by way of cash. In the instant case, the Assessing Officer has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18 per cent simple interest on the deposit. Hence, section 28(iv) is not applicable. Section 23(1) deals with the determination of the expected rent of a let out property for computing the income from house property. It provides that the expected rent is deemed to be the sum for which the property might reasonably be expected to be let out from year to year. This contemplates the possible rent that the property might fetch and certainly not the interest on fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property. Thus, the notional interest is neither assessable as business income nor as income from house property.
CHAPTER 5: PROFITS AND GAINS OF BUSINESS OR PROFESSION			
20	Can depreciation on leased vehicles be denied to the lessor on the ground that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?	I.C.D.S. Ltd (Supreme Court)	Assessee was entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business
21	What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	BSES Yamuna Powers Ltd (Delhi High Court)	Computer accessories and peripherals such as printers, scanners and server etc. form an integral part of the computer system and they cannot be used without the computer. Consequently, the High Court held that since they are part of the computer system, they would be eligible for depreciation at the higher rate of 60% applicable to computers including computer software.

22	Can waiver of loan given to the assessee by the Government of India from Steel Development Fund (SDF) to meet the capital cost of asset be reduced to arrive at the actual cost as per section 43(1) for computing depreciation under section 32?	Steel Authority of India Ltd. (Delhi High Court)	The waiver of the loan, in this case, is not a mere quantification of a subsidy granted generally for industrial growth. It was granted specifically to the assessee, who had reduced the amount waived from the cost of the assets in its books of account. This accounting treatment reflects the analogous understanding by the assessee regarding the purpose of the grant of loan. The High Court, therefore, held that, by applying the main provision of section 43(1), the amount of loan waived by the Government is to be reduced from the cost of assets to arrive at the "actual cost" for computing depreciation.
22	Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(iia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?	M.M. Forgings Ltd. v. ACIT (Madras High Court)	If an asset is acquired on or after 1.04.2003, it was mandatory that the claim of the assessee made under section 32(1)(iia) had to be necessarily assessed by applying the second proviso to section 32(1). Since there is a statutory stipulation restricting the allowability of depreciation to 50% of the amount computed under section 32(1)(iia), where the asset is put to use for less than 180 days, the amount of depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia). The High Court, accordingly, affirmed the order of the Tribunal.
24	Can business contracts, business information, etc., acquired by the assessee as part of the slump sale and described as 'goodwill', be classified as an intangible asset to be entitled for depreciation under section 32(1)(ii)?	Areva T and D India Ltd. (Delhi High Court)	The specified intangible assets acquired under the slump sale agreement by the assessee are in the nature of intangible asset under the category "other business or commercial rights of similar nature" specified in section 32(1)(i) and are accordingly eligible for depreciation under section 32(1)(ii).
25	Is the assessee entitled to depreciation on the value of goodwill considering it as an asset within the meaning of <i>Explanation 3(b)</i> to Section 32(1)?	Smifs Securities Ltd. (Supreme Court)	A reading of the words 'any other business or commercial rights of similar nature' in <i>Explanation 3(b)</i> indicates that goodwill would fall under the said expression. In the process of amalgamation, the amalgamated company had acquired a capital right in the form of goodwill because of which the market worth of the amalgamated company stood increased. Therefore, it was held that 'Goodwill' is an asset under <i>Explanation 3(b)</i> to section 32(1) and depreciation thereon is allowable under the said section.
26	Is the assessee entitled to depreciation on value of goodwill considering it as "other business or commercial rights of similar nature" within the meaning of an intangible asset?	B. Raveendran Pillai (Kerala)	When goodwill paid was for ensuring retention and continued business in the hospital, it was for acquiring a business and commercial right and it was comparable with trade mark, franchise, copyright etc., referred to in the first part of clause (ii) of section 32(1) and so, goodwill was covered by the above provision of the Act entitling the assessee for depreciation.
27	Would the phrase "used for purpose of business" in respect of discarded machine include use of such asset in the earlier years for claim of depreciation under section 32?	Yamaha Motor India Pvt. Ltd. (Delhi High Court)	The discarded machinery may not be actually used in the relevant previous year but depreciation can be claimed as long as it was used for the purposes of business in the earlier years provided the block continues to exist in the relevant previous year. Therefore, the condition for claiming depreciation in respect of the discarded machine would be satisfied if it is used in the earlier previous years for the business.

28	Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation at 60%?	Federal Bank Ltd (Kerala High Court)	The rate of depreciation of 60% is available to computers and there is no ground to treat the communication equipment as computers. Hence, EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation at 60%.
29	Would beneficial ownership of assets suffice for claim of depreciation on such assets?	Smt. A. Sivakami and Another (Mad. High Court)	The assessee has made available all the documents relating to the business and also established before the authorities that she is the beneficial owner, the High Court held that she was entitled to claim depreciation even though she was not the legal owner of the buses.
30	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	Orient Ceramics and Industries Ltd. (Delhi High Court)	Such expenditure on glow sign boards displayed at dealer outlets was revenue in nature.
31	What is the nature of expenditure incurred on demolition and re-erection of a cell room and expenditure incurred on purchase of pumping set, mono block pump and two transformers, which were parts of a bigger plant – revenue or capital?	Modi Industries Ltd. (Delhi High Court)	After completely demolishing the old cell room, an entire new cell room was erected. The money spent was not merely on repairs of the cell room, but for constructing a new cell room. Even the nomenclature of the entry, as given by the assessee, was "fabrication and erection charges of cell room. Thus, it was nothing but a complete demolition of the old cell room and construction/erection of a new cell room in its place. The expenditure incurred on the cell room was capital expenditure. However, so far as purchase of pumping set, mono block pump with HP motors and two transformers were concerned, they were not stand alone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts and the expenditure would be eligible for deduction under section 37(1).
32	Can share issue expenses incurred by a company be treated as capital in nature, if the public issue could not ultimately materialize on account of non-clearance by SEBI?	Mascon Technical Services Ltd (Mad. High Court)	The assessee-company had taken steps to go in for a public issue and incurred share issue expenses for the same. However, it could not go in for the public issue by reason of the orders issued by the SEBI just before the proposed issue. Though the efforts were aborted, the fact remains that the expenditure incurred was only for the purpose of expansion of the capital base. The capital nature of the expenditure would not be lost on account of the abortive efforts. The expenditure, therefore, constitutes a capital expenditure, hence disallowed.
33	Is the expenditure incurred on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation on closure of one of the textile manufacturing units of the assessee-company, revenue in nature?	DCM Ltd. (Delhi High court)	Deduction was allowable in respect of expenditure on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation.

34	What would be the nature of the repair and reconditioning expenditure incurred on a machine which broke down years ago – Revenue or Capital?	Bharat Gears Ltd (Delhi High court)	The machinery which was repaired had outlived its utility and huge expenditure was incurred in replacing many vital parts in order to make the same functional. The expenditure was of such nature that it brought into existence a new machinery altogether and consequently, there was a benefit of enduring nature to the assessee even though technically no new asset came into existence. Therefore, the Delhi High Court observed that it is in the nature of capital expenditure on which depreciation can be claimed.
35	Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	ITC Hotels Ltd (Karnataka High Court)	The expenditure incurred on the issue and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e. the debentures which had to be converted into shares at a later date.
36	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?	Priya Village Roadshows Ltd (Delhi High court)	Since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.
37	Can the expenditure incurred for purchase of second hand medical equipment for use as spare parts for existing equipment be claimed as revenue expenditure?	Dr. Aswath N. Rao (Karnataka High Court)	Since the second hand machinery purchased by the assessee is for use as spare parts for the existing old machinery, the same had to be allowed as revenue expenditure. Since the entire sale consideration was paid on 31st March of the relevant previous year and the machinery was also dispatched by the vendor from USA, the sale transaction was complete on that date. The title to the goods had passed on to him on that date and he became the owner of the machinery even though the goods reached India only in August next year. Therefore, the assessee was eligible to claim deduction of expenditure in the relevant previous year ended 31st March.
38	Can the amount incurred by the assessee for replacing the old mono sound system in its cinema theatre with a new Dolby stereo system be treated as revenue expenditure?	Sagar Talkies (Karnataka High Court)	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.
39	Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure?	Hindustan Zinc Ltd (Raj. High court)	The expenditure incurred by the assessee for commercial expediency relates to carrying on of business. The expenditure is of such nature which a prudent businessman may incur for the purpose of his business. The operational expenses incurred by the assessee solely intended for the furtherance of the enterprise can by no means be treated as expenditure of capital nature.

40	Is <i>Circular No. 5/2012 dated 01.08.2012</i> disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with <i>Explanation</i> to section 37(1), which disallows expenditure which is prohibited by law?	Confederation of Indian Pharmaceutical Industry (SSI) (H.P)	Any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. Therefore, the circular is totally in line with the Explanation to section 37(1). However, if the assessee satisfies the assessing authority that the expenditure incurred is not in violation of the regulations framed by the Medical Council then it may legitimately claim a deduction, but it is for the assessee to satisfy the Assessing Officer that the expense is not in violation of the Medical Council Regulations.
41	Can the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance?	Kap Scan and Diagnostic Centre P. Ltd. (P&H)	Commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.
42	Can expenditure incurred by a company on higher studies of the director's son abroad be claimed as business expenditure under section 37 on the contention that he was appointed as a trainee in the company under "apprentice training", where there was no proof of existence of such scheme?	Echjay Forgings Ltd (Bombay High Court)	There was no nexus between the education expenditure incurred abroad for the director's son and the business of the assessee company. Therefore, the aforesaid expenditure was not deductible
43	Can the expenditure incurred on heart surgery of an assessee, being a lawyer by profession, be allowed as business expenditure under section 31, by treating it as current repairs considering heart as plant and machinery, or under section 37, by treating it as expenditure incurred wholly and exclusively for the purpose of business or profession?	Shanti Bhushan (Delhi High Court)	No direct nexus between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Therefore, the claim for allowing the said expenditure under section 37 is also not tenable. Hence, the heart surgery expenses shall not be allowed as a business expenditure of the assessee under the Income-tax Act, 1961.
44	Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	Neelavathi & Others (Karnataka High Court)	If the assessee had incurred expenditure for the purpose of security, the same would have been allowed as deduction. However, in the instant case, since the payment has been made to the police and gundas to keep them away from the business premises, such a payment is illegal and hence, not allowable as deduction.
45	Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	Millennia Developers (P) Ltd (Karnataka High Court)	The amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction under section 37. Merely describing the payment as a compounding fee would not alter the character of the payment.

46	Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?	Great City Manufacturing Co (All. High Court)	The question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since the Tribunal has found that all the three conditions mentioned above have been satisfied. Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2)(a).
47	Can the waiver of principal amount of loan taken for purchase of capital asset by the bank be treated as “benefit arising out of business” or “a remission of trading liability” for taxability as business income of the company?	Iskraemeco Regent Ltd (Mad.High Court)	The provisions of section 41(1) are attracted only in case of remission of a trading liability. Since the loan was taken for purchase of capital assets, waiver of a portion of principal would not amount to remission of a trading liability to attract the provisions of section 41(1). Further, such waiver cannot be treated as a benefit arising out of business and consequently, section 28(iv) will not apply in respect of such loan transaction.
48	Can the provisions of section 41(1) be invoked both in respect of waiver of working capital loan utilized for day-to-day business operations and in respect of waiver of term loan taken for purchasing a capital asset?	Rollatainers Ltd. (Delhi High Court)	Term loan for purchase of capital assets, is not a trading liability. Therefore, the provisions of section 41(1) are not attracted in this case since the waiver was in respect of a term loan taken for a capital asset and hence, cannot be treated as remission or cessation of a trading liability. Thus, the waiver of such term loans cannot be treated as income of the assessee. However, in case loan is written off in the cash credit account, the benefit is in the revenue field as the money had been borrowed for day-to-day affairs and not for the purchase of capital asset. These loans were for circulating capital and not fixed capital. Therefore, the writing off of these loans on the cash credit account which was received for carrying out the day-to-day operations of the assessee amounted to remission of a trading liability and hence, has to be treated as income in the hands of the assessee by virtue of section 41(1).
49	Can the amount of employees' contribution towards provident fund, deducted and credited to the employee's PF account by the employer-assessee after the “due date” under the EPF & Miscellaneous Provisions Act, 1952, but before the due date of filing return of income under the Income-tax Act, 1961, be allowed as deduction while computing business income of the employer-assessee?	Kichha Sugar Co. Ltd. (Uttarakhand High Court)	The employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing the return for the previous year
50	Can unpaid electricity charges be treated as “fees” to attract disallowance under section 43B?	Andhra Ferro Alloys P. Ltd. (A.P High Court)	The provisions of section 43B do not incorporate electricity charges. Therefore, non-payment of electricity charges would not attract disallowance under section 43B since such charges cannot be termed as “fees”.
*	Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?	TVS Motors Ltd (2014) RTP MAY-14	Applying the rationale of above decisions, the High Court held that “moulds & dies” are not independent of plant and machinery but are parts of plant and machinery. Once the dies are worn out, they had to be replaced so that the machine can produce the product according to business specifications. Thus, the expenditure incurred by the assessee towards replacement of parts of machinery to

			ensure its performance without bringing any new asset or advantage, is eligible for deduction as 'current repairs' under section 31.
*	Is guarantee commission paid by a company to its employee directors deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company?	<i>Controls & Switchgear Contractors Ltd (2014), RTP MAY-14</i>	The High Court observed that the directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. The assessee-company passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company. The assessee-company, in its commercial wisdom, had agreed to pay a commission for furnishing of such guarantees by the director employees, which cannot be faulted. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine. It is not within his jurisdiction to impose his views as regards the necessity or the quantum of expenditure undertaken by the assessee. As regards section 36(1)(ii) the recipient directors were not entitled to receive the amount as commission in lieu of bonus or dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders. The High Court, therefore, set aside the tribunal's order and directed rectification of the disallowance of amount paid as commission to directors.
*	Can employees contribution to Provident Fund and Employee's State Insurance be allowed as deduction where the assessee-employer had not remitted the same on or before the "due date" under the relevant Act but remitted the same on or before the due date for filing of return of income under section 139(1)?	<i>Gujarat State Road Transport Corpn (2014) RTP MAY 2014</i>	The High Court, accordingly, held that the delayed remittance of employees' contribution beyond the 'due date' prescribed in section 36(1)(va), is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1).
*	Where the assessee-company came into existence on bifurcation of a Joint Venture Company (JVC), can the amount paid by it to the JVC for use of customer database and transfer of trained personnel be claimed as revenue expenditure?	<i>IBM Global Services India P Ltd (2014) RTP-MAY-14</i>	The High Court observed that the expenditure incurred for use of customer database did not result in acquisition of any capital asset. The assessee got the right to use the database and the company which provided the database was not precluded from using such database. Therefore, the expenditure incurred was for use of data base and not for acquisition of such data base and, hence, is deductible as revenue expenditure. As regards payment for obtaining trained and skilled employees, it was held that the joint venture company spent a lot of money to give training to employees who were transferred to the assessee-company. They were trained in the field of software. They have opted for employment with the assessee, and for their past services with the joint venture company, expenditure has been incurred. In effect, the payment made by the assessee-company was towards expenditure incurred for their training and recruitment. Such

			expenditure was in the revenue field, and therefore, the payment made by the assessee-company as per agreement to save such expenditure was also revenue in nature. Therefore, the expenditure incurred for obtaining trained and skilled employees cannot be termed as capital expenditure though the benefit may be of enduring nature. The High Court, thus, held that both the expenditures claimed were allowable as revenue expenditure.
*	Is release of retention money to the assessee-contractor on the basis of furnishing bank guarantee taxable as income of the assessee, where the assessee's right to receive retention money is subject to certain conditions including certification by the engineer in-charge?	<i>Amarshiv Construction P Ltd (2014) RTP MAY-2014</i>	The High Court, therefore, held that the release of retention money against furnishing of bank guarantee was a receipt not chargeable to tax.
*	Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?	<i>K and Co. (2014) RTP MAY-2014</i>	The High Court, accordingly, held that the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".
CHAPTER 6: CAPITAL GAINS			
51	What are the factors determining the nature of income arising on sale of shares i.e. whether the income is taxable as capital gains or business income?	PVS Raju (AP. High Court)	The question whether the shares were held as an investment to give rise to capital gain on its sale or as a trading asset to give rise to business income is not a pure question of law but essentially one of fact
52	Where a leasehold property is purchased and subsequently converted into freehold property and then sold, should the period of holding be reckoned from the date of purchase or from the date of conversion for determining whether the resultant capital gains is short-term or long-term?	Smt. Rama Rani Kalia (All. High Court)	Conversion of the rights of the lessee from leasehold to freehold is only by way of improvement of her rights over the property, which she enjoyed. It would not have any effect on the taxability of gain from such property, which is related to the period over which the property is held. Since, in this case, the period of holding is more than 36 months, the resultant capital gains would be long-term.
53	In determining the period of holding of a capital asset received by a partner on dissolution of firm, can the period of holding of the capital asset by the firm be taken into account?	P. P. Menon (Ker. High Court)	The benefit of including the period of holding of the previous owner under section 2(42A) read with section 49(1)(iii)(b) can be availed only if the dissolution of the firm had taken place at any time before April 1, 1987. In this case, the firm was dissolved on April 15, 2001 and therefore the benefit of these sections would not be available to the assessee. Therefore, in this case, the period of holding of the asset received by the assessee-partner on dissolution of the firm has to be reckoned only from the date of dissolution of the firm. Since the assessee-partner has sold the property within three days of acquiring the same, the gains have to be treated as short-term capital gain.
54	What would be the period of holding to determine whether the capital gains on renunciation of right to subscribe for additional shares is short-term or long-term?	Navin Jindal (SC)	The capital gains on renunciation of right to subscribe for additional shares is short-term or long-term, the period of holding would be from the date on which such right to subscribe for additional shares comes into existence upto the date of renunciation of such right.

55	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?	Manjula J. Shah (Bombay High Court)	The indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.
56	Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of the cost of construction of - (i) the new residential house (i.e., all independent floors handed over to the assessee); or (ii) a single residential unit (i.e., only one independent floor)?	Gita Duggal (Delhi High Court)	The fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.
57	Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?	Syed Ali Adil (A.P. High Court)	The assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit.
58	Can exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	Gurnam Singh (P&H High Court)	Merely because the assessee's son was shown in the sale deed as co-owner, it did not make any difference. It was not the case of the Revenue that the land in question was exclusively used by the son. Therefore, the assessee was entitled to deduction under section 54B.
59	Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	Kamal Wahal (Delhi High Court)	That the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.
60	In case of a house property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?	Ravinder Kumar Arora (Delhi High Court)	The assessee was the real owner of the residential house in question and mere inclusion of his wife's name in the sale deed would not make any difference. The High Court also observed that section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee. In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally. Therefore, the conditions stipulated in section 54F stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

61	Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?	Sambandam Udaykumar (Karnataka High Court)	The assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.
62	Can the assessee claim exemption under section 54F, on account of capital gain arising on transfer of depreciable assets held for more than 36 months i.e. a long-term capital asset, though the same is deemed as capital gain arising on transfer of short-term capital asset by virtue of section 50?	Rajiv Shukla (Delhi High Court)	The deeming fiction created by section 50 that the capital gain arising on transfer of a depreciable asset shall be treated as capital gain arising on transfer of short-term capital asset is only for the purpose of sections 48 and 49 and not for the purpose of any other section. Section 54F being an independent section will not be bound by the provisions of section 50. The depreciable asset if held for more than 36 months shall be a long-term capital asset as per the provisions of section 2(29A). Therefore, the exemption under section 54F on transfer of depreciable asset held for more than 36 months cannot be denied on account of fiction created by section 50.
63	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	Gouli Mahadevappa (Karnataka High Court)	When capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs.36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of Rs. 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.
64	Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?	Hindustan Unilever Ltd (Bombay High Court)	The purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made. The High Court, therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.
65	In the case of an assessee, being a dealer in shares and securities, whose portfolio comprises of shares held as stock-in-trade as well as shares held as investment, is it permissible under law to convert a portion of his stock-in-trade into investment and if so, what would be the tax treatment on subsequent sale of such investment?	Yatish Trading Co. Pvt. Ltd. (Bombay High Court)	The gains arising on sale of those shares held as investments by the dealer-assessee (i.e., the difference between the sale price and the fair market value on the date of conversion) were to be assessed under the head "Capital gains" and not under the head "Profits and gains of business or profession"

66	Where transfer of shares in a company has been effected, fulfilling all the requirements for claim of exemption under section 10(38), can such exemption be denied on the ground that the transaction is a colorable device, since the underlying asset transferred is, in effect, land, which is a short-term capital asset, on sale of which capital gains tax liability would have been attracted?	Bhoruka Engineering Inds. Ltd. (Karnataka High Court)	The assessee-company was holding shares in BFSL from 1st October, 1984. Therefore, the shares represent a long-term capital asset. The transaction had taken place subsequent to 28th September, 2004. Hence, the second condition for claim of exemption is fulfilled. The transaction had taken place through the Magadh Stock Exchange and securities transaction tax has been paid on such sale. Where all the three conditions have been fulfilled, the assessee is entitled to exemption under section 10(38) in respect of long-term capital gains arising from such transfer. Merely because capital gains tax liability would have been attracted had a registered sale deed been executed by BFSL for selling land to DLFCDL, it cannot be concluded that the shareholders of BFSL transferring their shares after complying with the legal requirements would not be entitled to the benefit of exemption. The High Court further noted that the companies involved in the transaction were existing companies. Thus, neither of the companies came into existence as a part of the scheme for purchase of immovable property or transfer of shares for the purpose of evading payment of tax. The event of transfer of shares happened in ordinary course of business and is legal. The transaction is, therefore, real, valuable consideration is paid, all legal formalities are complied with, and what is transferred is shares and not immovable property. Hence, it is a valid legal transaction and cannot be termed as a colorable device or sham transaction or an unreal transaction.
CHAPTER 7: INCOME FROM OTHER SOURCES			
67	What are the tests for determining "substantial part of business" of lending company for the purpose of application of exclusion provision under section 2(22)?	Parle Plastics Ltd. (Bombay High Court)	Since lending of money was a substantial part of the business of the lending company, the money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in section 2(22).
68	Can the loan or advance given to a shareholder by the company, in return of an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder?	Pradip Kumar Malhotra (Cal. High Court)	The advance given to the assessee by the company was not in the nature of a gratuitous advance; instead it was given to protect the interest of the company. Therefore, the said advance cannot be treated as deemed dividend in the hands of the shareholder under section 2(22)(e).
70	Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	Ambassador Travels (P) Ltd. (Delhi High Court)	the assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The High Court, therefore, held that such financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).
71	Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?	Manjoo and Co (Kerala High Court)	The rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.

*	Does repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	<i>Vir Vikram Vaid (2014) RT MAY-14</i>	The High Court, accordingly, held that the repair and renovation expenses in respect of premises occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.
CHAPTER 8: SET OFF AND CARRY FORWARD OF LOSSES			
72	Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	Pramod Mittal (Delhi High Court)	The loss suffered by the erstwhile partnership firm before dissolution of the firm cannot be carried forward by the successor sole-proprietor, since it is not a case of succession by inheritance. The assessee sole-proprietor is, therefore, not entitled to set-off the loss of the erstwhile partnership firm against his income.
CHAPTER 9: DEDUCTIONS FROM GROSS TOTAL INCOME			
73	Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?	Swarnagiri Wire Insulations Pvt. Ltd. (Karnataka High Court)	It is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1). The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. The Court, therefore, held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year.
74	Can freight subsidy arising out of the scheme of Central Government be treated as a "profit derived from the business" for the purposes of section 80-IA?	Kiran Enterprises (HP High Court)	On appeal, the High Court held that the transport subsidy received by the assessee was not a profit derived from business since it was not an operational profit. The source was not the business of the assessee but the scheme of Central Government. The words "derived from" are narrower in connotation as compared to the words "attributable to". Therefore, the freight subsidy cannot be treated as profits derived from the business for the purposes of section 80-IA.
75	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	Orchev Pharma P. Ltd. (SC)	Duty Drawback receipts cannot be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction under section 80-IB

76	Would grant of transport subsidy, interest subsidy and refund of excise duty qualify for deduction under section 80-IB?	Meghalaya Steels Ltd. (Gauhati High Court)	The payment of Central excise duty had a direct nexus with the manufacturing activity and similarly, the refund of the Central excise duty also had a direct nexus with the manufacturing activity, being a profit-linked incentive, since payment of the Central excise duty would not arise in the absence of any industrial activity. Therefore, the refund of excise duty had to be taken into account for purposes of section 80-IB.
77	Does income derived from sale of export incentive qualify for deduction under section 80-IB?	Jaswand Sons (P&H High Court)	Income derived from sale of export incentive cannot be said to be income "derived from" the industrial undertaking and therefore, such income is not eligible for deduction under section 80-IB.
78	Whether the process of bottling of gas into gas cylinders amounts to production of gas cylinders for the purpose of deduction under section 80-IB?	Puttur Petro Products P. Ltd. (Karnataka High Court)	The process of bottling of gas into gas cylinders, which requires a very specialised process and independent plant and machinery, amounts to production of "gas cylinders" containing gas for the purpose of claiming deduction under section 80-IB.
79	Would the procurements of parts and assembling them to make windmill fall within the meaning of "manufacture" and "production" to be entitled to deduction under section 80-IB?	Chiranjeevi Wind Energy Ltd. (Madras High Court)	The different parts procured by the assessee could not be treated as a windmill individually. Those different parts had distinctive names and only when assembled together, they got transformed into an ultimate product which was commercially known as a "windmill". Thus, such an activity carried on by the assessee would amount to "manufacture" as well as "production" of a thing or article to qualify for deduction under section 80-IB.
80	Can an industrial undertaking engaged in manufacturing or producing articles or things treat the persons employed by it through agency (including contractors) as "workers" to qualify for claim of deduction under section 80-IB?	Jyoti Plastic Works Private Limited (Bombay High Court)	The Tribunal was justified in holding that the condition of section 80-IB(2)(iv) had been fulfilled and therefore, the deduction under section 80-IB is allowable.
81	Does the period of exemption under section 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. (Delhi High Court)	The manufacture for the purpose of marketing the goods had not started which starts only with commercial production, namely, when the final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing. However, in this case, since the assessee had effected sale in March 1998, it had crossed the stage of trial production and the final saleable product had been manufactured and sold. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material. With the sale of those articles, marketable quality was established. Therefore, the conditions stipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.

82	Can an assessee who has not claimed deduction under section 80-IB in the initial years, start claiming deduction thereunder for the remaining years during the period of eligibility, if the conditions are satisfied?	Praveen Soni (Delhi High Court)	The provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled.
CHAPTER 10: ASSESSMENT OF VARIOUS ENTITIES			
83	Would the ancestral property received by the assessee after the death of his father, be considered as HUF property or as his individual property, where the assessee's father had received such property as his share when he went out of the joint family under a release deed?	D. L. Nandagopala Reddy (Individual) (Karnataka High Court)	The High Court held that when the property came to the hands of the assessee, it was not his self-acquired property; it was property belonging to his HUF. The assessee had given a portion of the property to his wife without a registered document, which is possible only if the property is a HUF property. If such property is treated as a self-acquired property, then assessee would have been able to give the portion of the property to his wife only by registered document.
84	Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable - "Income from house property" or "Income from other sources"? Further, would such income be assessable in the hands of the individual co-owners or in the hands of the Association of Persons?	Shudir Nagpal (P & H High Court)	That the income from letting out the plinths is assessable under section 56 as "Income from other sources" and not under the head "Income from house property".
85	Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?	Madras Gymkhana Club (Madras High Court)	Interest earned from investment of surplus funds in the form of fixed deposits with institutional members does not satisfy the principle of mutuality and hence cannot be claimed as exempt on this ground. The interest earned is, therefore, taxable.
86	Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?	Sind Co-operative Housing Society (Bombay High Court)	Transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on the ground of principle of mutuality since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business. Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.
87	Would non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 115BBA, and consequently attract the TDS provisions under section 194E in the hands of the payer?	Indcom (Cal High Court)	The payments made to non-resident umpires and the match referees are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA and thus, the assessee is not liable to deduct tax under section 194E.

88	In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?	Anil Hardware Store (HP High court)	The manner of fixing the remuneration of the partners has been specified in the partnership deed. In a given year, the partners may decide to invest certain amounts of the profits into other ventures and receive less remuneration than that which is permissible under the partnership deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the partnership deed. The method of remuneration having been laid down, the assessee-firm is entitled to deduct the remuneration paid to the partners under section 40(b)(v).
89	Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB?	Rolta India Ltd. (SC)	Interest under sections 234B and 234C shall be payable on failure of the company to pay advance tax in respect of tax payable under section 115JB.
90	Can long-term capital gain exempted by virtue of section 54EC be included in the book profit computed under section 115JB?	N. J. Jose and Co. (P.) Ltd Kerela High Court)	Once the Assessing Officer found that total income as computed under the provisions of the Act was less than 30 per cent of the book profit, he had to make the assessment under section 115J which does not provide for any deduction in terms of section 54E. As long as long-term capital gains are part of the profits included in the profit and loss account prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (now, Statement of Profit and Loss prepared in accordance with Part II of Schedule III to the Companies Act, 2013), capital gains cannot be excluded unless provided under the Explanation to section 115J(1A).
	Where land inherited by three brothers is compulsorily acquired by the State Govt, whether the resultant capital gain would be assessed in the status of "Association of Persons" (AOP) or in their individual status?	Govindbhai Mamaiya (2014) RTP MAY-14	The Apex Court, accordingly, held that the income from asset inherited by the legal heirs is taxable in their individual hands and not in the status of AOP.
CHAPTER 11: INCOME-TAX AUTHORITIES			
91	Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?	Kathiroom Service Co-operative Bank Ltd (SC)	Information of general nature could be called for from banks. In this case, since notices have been issued after obtaining approval of the Commissioner, the assessing authority had not erred in issuing the notices to assessee requiring them to furnish information regarding account holders with cash transactions or deposits of more than Rs. 1 lakh. The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority.

92	Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?	Sahara Hospitality Ltd. (Bombay High Court)	The word “may” used in this section should be read as “shall” and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section “Reasonable opportunity” can only be dispensed with in a case where it is not possible to provide such opportunity. In such a case also, the authority should record its reasons for making the transfer, even though no opportunity was given to the assessee. The discretion of the authority is only to consider as to what is a reasonable opportunity in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.
93	Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?	Lodhi Property Company Ltd (Delhi High Court)	The Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return has to be condoned.
*	Can the assessee’s application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained, where assessment has not been completed?	Hemant Kumar Sindhi & Another(2014) RTP MAY-2014	The High Court, accordingly, held that the Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted. The High Court, thus, dismissed the writ petition.
CHAPTER 12: ASSESSMENT PROCEDURE			
94	Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?	Govind Nagar Sugar Ltd (Delhi High Court)	That the unabsorbed depreciation will be allowed to be carried forward to subsequent year even though the return of income of the current assessment year was not filed within the due date.
95	Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?	Orissa Rural Housing Development Corpn. Ltd. (Orissa High Court)	The assessee can make a fresh claim before the Assessing Officer or make a change in the originally filed return of income only by filing revised return of income under section 139(5). There is no provision under the Income-tax Act, 1961 to enable an assessee to revise his income by filling a revised statement of income. Therefore, filling of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes.
96	Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A?	Smt. A. Kowsalya Bai (Karnataka High Court)	That it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A., section 206AA would continue to be applicable to persons whose income is the maximum amount not chargeable to income-tax.

97	Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?	Aventis Pharma Ltd (Bombay High Court)	There was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.
98	Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?	ICICI Securities Primary Dealership Ltd. (SC)	The assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. There was no failure on the part of assessee to disclose material facts as mentioned in proviso to section 147. Further, there is nothing new which has come to the notice of the Assessing Officer. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.
99	Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?	Ranbaxy Laboratories Ltd (Delhi High Court)	If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.
100	In case of change of incumbent of an office, can the successor Assessing Officer initiate reassessment proceedings on the ground of change of opinion in relation to an issue, which the predecessor Assessing Officer who framed the original assessment had already applied his mind and come to a conclusion?	H. K. Buildcon Ltd (Gujarat High Court)	The Gujarat High Court, applying the rationale of the Apex Court ruling, observed that in the entire reasons recorded in this case, there was nothing on record to show that income had escaped assessment in respect of which the successor Assessing Officer received information subsequently, from an external source. The reasons recorded themselves indicated that the successor Assessing Officer had merely recorded a different opinion in relation to an issue to which the Assessing Officer, who had framed the original assessment, had already applied his mind and come to a conclusion. The notice of reassessment was, therefore, not valid.
101	Can the Assessing Officer issue notice under section 154 to rectify a mistake apparent from record in the intimation under section 143(1), after issue of a valid notice under section 143(2)?	State Handloom and Handicrafts Corporation Ltd. (P&H High Court)	The Punjab and Haryana High Court relying, inter alia, on the said decision held that the scope of proceedings under section 143(2) is wider than the power of rectification of mistake apparent from record under section 154. The notice under section 143(2) is issued to ensure that the assessee has not understated the income or has not computed excessive loss or underpaid the tax. It is only on consideration of the matter and on being satisfied that it is necessary or expedient to do so that the Assessing Officer issues the notice under section 143(2). Therefore, the Assessing Officer has to proceed under section 143(3) and issue an assessment order. If issue of notice under section 154 is permitted to rectify the intimation issued under section 143(1), then it would lead to duplication of work and wastage of time. Therefore, it was concluded that proceedings under section 154 for rectification of intimation under section 143(1) cannot be initiated after issuance of notice under section 143(2) by the Assessing Officer to the assessee.

102	Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?	Tony Electronics Limited (Delhi High Court)	The High Court held that once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. After merger, the order of the original authority ceases to exist and the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted from the date of the order of the Appellate Authority.
*	Can the Assessing Officer reassess the issues other than the issues in respect of which proceedings were initiated under section 147, when the original "reasons to believe" on the basis of which the notice was issued ceased to exist?	<i>Mehak Finvest P Ltd (2014)RTP MAY-2014</i>	The High Court, accordingly, held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the Assessing Officer is empowered to make additions on another ground for which reassessment notice might not have been issued but which came to his notice subsequently during the course of proceedings for reassessment.
CHAPTER 13: APPEALS AND REVISION			
103	Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the High Court in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	Samsung India Electronics P. Ltd. (Delhi High Court)	The High Court, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. by directly approaching to the High Court, since the procedure of assessment under section 147 has been almost universally followed and has helped cut down litigation and crystallise the issues thus assessee should first respond to the Assessing Officer by filing return of income and thereafter if the AO does not provide reason to believe he may approach to the court.
104	Would the period of limitation for an order passed under section 263 be reckoned from the original order passed by the Assessing Officer under section 143(3) or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147?	ICICI Bank Ltd. (Bombay High Court)	The order of assessment under section 143(3) allowed deduction under section 36(1)(vii), 36(1)(viia) and in respect of foreign exchange rate difference. The order of reassessment, however, had not dealt with these issues. Therefore, the doctrine of merger cannot be applied in this case. The order under section 143(3) cannot stand merged with the order of reassessment in respect of those issues which did not form the subject matter of the reassessment. Therefore, the period of limitation in respect of the order of the Commissioner under section 263 with regard to a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order under section 143(3) and not from the date of the reassessment order under section 147.
105	Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit?	Sanchit Software and Solutions Pvt. Ltd (Bombay High Court)	The High Court, accordingly, set aside the order of Commissioner and remanded the matter for fresh consideration. The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest

106	Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	Pruthvi Brokers & Shareholders (Bombay High Court)	The Bombay High Court, considering the above mentioned decisions, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.
107	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?	Earnest Exports Ltd. (Bombay High Court)	In this case, the Tribunal, while dealing with the application under section 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a re-appreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred under section 254(2).
108	Can the Tribunal exercise its power of rectification under section 254(2) to recall its order in entirety, where there is a mistake apparent from record?	Lachman Dass Bhatia Hingwala (P) Ltd. (Delhi High Court)	The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.
109	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	Deepak Kumar Garg (MP High Court)	In that case it was observed that, keeping in view the provisions of section 260A(7), the power of re-admission/restoration of the appeal is always enjoyed by the High Court. However, such power to restore the appeal cannot be treated to be a power to review the earlier order passed on merits.
*	Should the four year time limit for rectification of order by the Tribunal under section 254(2) be reckoned from the date of its order or from the date of receipt of order by the assessee?	<i>Peterplast Synthetics P Ltd (2014) RTP MAY-14</i>	Applying the rationale of the above Bombay High Court ruling pronounced in relation to an application for revision, to the issue on hand pertaining to the date of reckoning the period of limitation for rectification under section 254(2), the Gujarat High Court held that the period of limitation has to be reckoned from the date of receipt of order by the assessee and not from the date of order. Therefore, the Tribunal had erred in dismissing the rectification application on the ground that it was barred by limitation by computing the time limit from the date of order instead of from the date of receipt of order by the assessee.
CHAPTER 14: PENALTIES			
110	Can an assessee who has surrendered his income in response to the specific information sought by the Assessing Officer in the course of survey, be absolved from the penal provisions under section 271(1)(c) for concealment of income?	MAK Data P. Ltd (SC)	The Apex Court was, therefore, of the view that surrender of income in this case is not voluntary, in the sense, that the offer of surrender was made in view of detection made by the Assessing Officer in the survey conducted in the sister concern of the assessee. The Apex Court, therefore, concurred/agreed with the view of the High Court that levy of penalty is correct in law.

111	Where an assessee repays a loan merely by passing adjustment entries in its books of account, can such repayment of loan by the assessee be taken as a contravention of the provisions of section 269T to attract penalty under section 271E?	Triumph International Finance (I.) Ltd. (Bombay High Court)	In effect, the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries and therefore, penalty under section 271E is applicable. However, since the transaction is bona fide in nature being a normal business transaction and has not been made with a view to avoid tax, it was held that the assessee has shown reasonable cause for the failure under section 269T, and therefore, as per the provisions of section 273B, no penalty under section 271E could be imposed on the assessee for contravening the provisions of section 269T.
112	Would making an incorrect claim in the return of income <i>per se</i> amount to concealment of particulars or furnishing inaccurate particulars for attracting the penal provisions under section 271(1)(c), when no information given in the return is found to be incorrect?	Reliance Petro Products Pvt. Ltd (SC)	The Apex Court, therefore, held that where there is no finding that any details supplied by the assessee in its return are incorrect or erroneous or false, there is no question of imposing penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.
113	Can reporting of income under a different head tantamount to furnishing of inaccurate particulars or suppression of facts to attract penalty under section 271(1)(c)?	Amit Jain (Delhi High Court)	The High Court, after considering the above observations of the Tribunal and the decision of the Supreme Court in <i>CIT v. Reliance Petro Products Pvt.Ltd. (2010) 322 ITR 158</i> , held that mere reporting of income under a different head would not characterize the particulars reported as “inaccurate” to attract levy of penalty under section 271(1)(c).
114	Can penalty under section 271(1)(c) be imposed on the ground of disallowance of a certain deduction under Chapter VI-A owing to the subsequent decision of the Supreme Court?	Celetronix Power India P. Ltd. (Bombay High Court)	The Bombay High Court affirmed the decision of Appellate Tribunal deleting the penalty under section 271(1)(c) on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assessee to furnish accurate particulars nor on account of furnishing inaccurate particulars.
115	Can penalty under section 271(1)(c) for concealment of income be imposed in a case where the assessee has raised a debatable issue?	Indersons Leather P. Ltd. (P&H High Court)	The High Court observed that, mere raising of a debatable issue would not amount to concealment of income or furnishing inaccurate particulars and therefore, penalty under section 271(1)(c) cannot be imposed.
116	Can the penalty under section 271(1)(c) be imposed where the assessment is made by estimating the net profit at a higher percentage applying the provisions of section 145?	Vijay Kumar Jain (Chhattisgarh High Court)	The High Court held that the particulars furnished by the assessee regarding receipts in the relevant financial year had not been found inaccurate and it was also not the case of revenue that the assessee concealed any income in his return. Thus, penalty could not be imposed. The High Court placed reliance on the ruling of the Supreme Court in <i>CIT v. Reliance Petroproducts P. Ltd. (2010) 322 ITR 158</i> , while considering the applicability of section 271(1)(c). In that case, the Apex Court had held that in order to impose a penalty under the section, there has to be concealment of particulars of income of the assessee or the assessee must have furnished inaccurate particulars of his income. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars.
CHAPTER 15: OFFENCES AND PROSECUTION			

117	Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	Union of India v. Bhavecha Machinery and Others (MP High Court)	The High Court observed that for the provisions of section 276CC to get attracted, there should be a willful delay in filing return and not merely a failure to file return in time. There should be clear, cogent and reliable evidence that the failure to file return in time was 'willful' and there should be no possible doubt of its being 'willful'. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them. In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.
CHAPTER 16: MISCELLANEOUS PROVISIONS			
119	Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	Sivakumar (Mad High Court)	The High Court, relying upon the various court decisions, upheld the decision of the Tribunal holding that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. In the present case, the assessee has acted bona fide and that there was a reasonable cause within the meaning of section 273B. Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.
*	Can the Assessing Officer <i>suo moto</i> assume jurisdiction to declare sale of property as void under section 281?	Dr. Manoj Kabra (2014), RTP – MAY -2014	Applying the rationale of the Apex Court ruling, the High Court held that the Assessing Officer has no jurisdiction under section 281 to <i>suo moto</i> declare the sale as void.
CHAPTER 17: DEDUCTION, COLLECTION AND RECOVERY OF TAX			
120	Do the tips collected by hotel and disbursed to employees constitute salary to attract the provisions for tax deduction at source under section 192?	ITC Ltd. (Delhi High Court)	The High Court, therefore, held that the tips would constitute income within the meaning of section 2(24) and thus, taxable under section 15. It was obligatory upon the company to deduct tax at source from such payments under section 192. In this case, the assessee-company had not deducted tax at source on tips under a <i>bona fide</i> belief that tax was not deductible. This practice had been accepted by the Revenue by accepting the assessments in the form of annual returns of the assessee in the past. The High Court held that since no dishonest intention could be attributed to the assessee, they could not be made liable for levy of penalty as envisaged under section 201.
121	Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?	Hindustan Lever Ltd. (Karnataka High Court)	The High Court observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint Commissioner to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the High Court held that proceedings under section 201 cannot be initiated against the assessee.
122	Can the transmission, wheeling and State Load Despatch Centre (SLDC) charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission	Ajmer Vidyut Vitran Nigam Ltd (AAR)	The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to

	company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?		withhold tax thereon under section 194J. As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS provisions under section 194J or under section 194C.
123	Can discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract the provisions for tax deduction under section 194H?	Ahmedabad Stamp Vendors Association (SC)	The Supreme Court affirmed the above decision of the High Court holding that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case
124	Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H?	Bharti Cellular Ltd (Cal. High Court)	The High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H
125	Are TDS provisions under section 194H attracted in a case where an assessee, a dairy, makes an outright sale of milk to its concessionaires at a certain price (which is lower than the MRP fixed by the assessee-dairy) and the concessionaires make full payment for the purchases on delivery and bear all the risks of loss, damage, pilferage and wastage?	Mother Dairy India Ltd. (Delhi High Court)	The High Court opined that the issue had to be decided on the basis of the fact as to when and what point of time the property in the goods passed to the concessionaire. In this case, the concessionaire became the owner of the milk and products on taking delivery of the same from the assessee-dairy. Therefore the relationship between the assessee and the concessionaire is a Principal to Principal relationship. The High Court, therefore, held that the difference between the purchase price (price paid to the Dairy) and the MRP is the concessionaire's income from business and cannot be categorized as commission to attract the provisions of section 194H.
126	Can the difference between the published price and the minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline company to attract TDS provisions under section 194H, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents?	Qatar Airways (Bombay High Court)	Tax at source was not deductible on the difference between the actual sale price and the minimum fixed commercial price, even though the amount earned by the agent over and above minimum fixed commercial price would be taxable as income in his hands
127	In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?	Senior Manager, SBI (All. High Court)	The Allahabad High Court held that, since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26. Therefore, in the present case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold

			limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.
128	What is the nature of landing and parking charges paid by an airline company to the Airports Authority of India and is tax required to be deducted at source in respect thereof?	Japan Airlines Co. Ltd. Delhi High Court)	The landing and parking fee were definitely “rent” within the meaning of the provisions of section 194-I as they were payments for the use of the land of the airport.
129	Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?	Shree Mahalaxmi Transport Co. (Gujrat High Court)	Since the assessee had given sub-contracts for transportation of goods and not for the renting out of machinery or equipment, such payments could not be termed as rent paid for the use of machinery and the provisions of section 194-I would, therefore, not be applicable.
130	Are the provisions of section 234D levying interest on excess refund attracted in a case where the refund granted to the assessee in pursuance of the order of Commissioner (Appeals) was reversed on account of setting aside of such order by the Tribunal?	Delta Air Lines Inc. (Bombay High Court)	The High Court observed that interest under section 234D is chargeable only where the refund has been granted to the assessee while processing the return of income under section 143(1) and thereafter, such refund is found to be excessive under the regular assessment. In the present case, the refund was not granted under section 143(1). The refund was not granted even by way of an assessment order passed under section 143(3) read with section 147. The same was granted pursuant to the order passed by the Commissioner (Appeals). Consequently, the High Court concurred with the Tribunal’s view that the provisions of section 234D were not attracted in this case.
131	Can refund of tax due to the assessee for a particular assessment year be adjusted, against sums due from the assessee in respect of another assessment year, under section 245, without giving prior intimation to the assessee of the proposed adjustment?	<i>Jeans Knit P. Ltd. (Karnataka High Court)</i>	The Karnataka High Court, in this case, held that the communication informing the adjustment of refund, without prior intimation to the assessee, is illegal and contrary to law. Therefore, the High Court set aside the order in so far as it relates to adjustment of refund against tax due.
*	Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	<i>Indus Towers Ltd (2014) RTP- MAY-14</i>	The High Court held that the submission of the assessee that the transaction is not “renting” is incorrect. Also, the Revenue’s contention that the transaction is primarily “renting of land” is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
*	Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?	<i>Wizcraft International Entertainment (P) Ltd (2014) RTP MAY-2014</i>	The High Court, therefore, affirmed the decision of the Tribunal and Commissioner (Appeals) holding that the service rendered by the agent was outside India and hence, was not chargeable to tax in India. Thus, the requirement for deducting tax at source under section 195 on such payment does not arise.

*	Can incentives given to stockists and distributors by a manufacturing company be treated as “commission” to attract (i) the provisions for tax deduction at source under section 194H; and (ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?	<i>Intervet India P Ltd (2014) RTP- MAY-2014</i>	The High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the <i>Explanation (i)</i> to section 194H. Accordingly, the High Court affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.
CHAPTER 18: WEALTH TAX			
132	Is wealth-tax leviable on the value of house under construction, where the construction was still incomplete on the relevant valuation date?	Smt. Neena Jain (P & H High Court)	The Delhi High Court held that, as per section 16(5) the Assessing Officer can resort to making best judgment assessment, after giving an opportunity of being heard to the assessee by issue of notice, in case – (a) where a person fails to make the return under section 14(1) or under section 15, or (b) where he fails to comply with all the terms of notice issued under section 16(2) or section 16(4). Further, according to the second proviso to section 16(5), no notice or opportunity of being heard is required where a notice under section 16(4) has been issued prior to the making of the best judgment assessment. In the present case, since the Assessing Officer has duly served the notice under section 16(4) on the assessee upon failure of the assessee to file the wealth-tax return, no separate notice under section 16(5) giving opportunity of being heard is required to be issued before making a best judgment assessment.
133	Whether the best judgment assessment order passed without giving the assessee an opportunity of being heard is valid in a case where the notice under section 16(4) has already been given?	Motor and General Finance Limited (Delhi High Court)	On the above issue The Delhi High Court held that, as per section 16(5) the Assessing Officer can resort to making best judgment assessment, after giving an opportunity of being heard to the assessee by issue of notice, in case – (a) where a person fails to make the return under section 14(1) or under section 15, or (b) where he fails to comply with all the terms of notice issued under section 16(2) or section 16(4). Further, according to the second proviso to section 16(5), no notice or opportunity of being heard is required where a notice under section 16(4) has been issued prior to the making of the best judgment assessment. In the present case, since the Assessing Officer has duly served the notice under section 16(4) on the assessee upon failure of the assessee to file the wealth-tax return, no separate notice under section 16(5) giving opportunity of being heard is required to be issued before making a best judgment assessment.

Summary of Imp Case Laws including RTP Case Law on Indirect Taxes for May/Nov. 2015 Attempt

No.	Matter	Parties & Court	Decision
EXCISE - BASIC CONCEPT			
1	Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?	Balrampur Chini Mills Ltd. v. Union of India 2014 (300) ELT 372 (All.)	The High Court concluded that though bagasse is an agricultural waste of sugarcane, it is a marketable product. However, duty cannot be imposed thereon simply by virtue of the explanation added under section 2(d) of the Central Excise Act, 1944 as it does not involve any manufacturing activity. The High Court quashed the CBEC's Circular dated 28-10-2009.
2	Whether the addition and mixing of polymers and additives to base bitumen with a view to improve its quality, amounts to manufacture?	CCE v. Osnar Chemical Pvt. Ltd. 2012 (276) E.L.T. 162 (S.C.)	The Supreme Court held that since (i) the said process merely resulted in the improvement of quality of bitumen and no distinct commodity emerged, and (ii) the process carried out by the assessee had nowhere been specified in the Section notes or Chapter notes of the First Schedule, the process of mixing polymers and additives with bitumen did not amount to manufacture.
3	Whether the process of Generation of metal scrap or waste during the repair of worn out machineries/parts of cement manufacturing plant amounts to manufacture?	Grasim Industries Ltd. v. UOI 2011 (273) E.L.T. 10 (S.C.)	The Supreme Court held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant did not amount to manufacture.
4	Are the physician samples excisable goods in view of the fact that they are statutorily prohibited from being sold?	Medley Pharmaceuticals Ltd. v. CCE & C., Daman 2011 (263) E.L.T. 641 (S.C.)	The Court inferred that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Since physician sample was capable of being sold in open market, the physician samples were excisable goods and were liable to excise duty.
5	Whether assembling of the testing equipment's for testing the final product in the factory amounts to manufacture?	Usha Rectifier Corpn. (I) Ltd. v. CCE., New Delhi 2011 (263) E.L.T. 655 (S.C.)	The Supreme Court observed that once the appellant had themselves made admission regarding the development of testing equipment's in their own Balance Sheet, which was further substantiated in the Director's report, it could not make contrary submissions later on. Moreover, assesses stand that testing equipment's were developed in the factory to avoid importing of such equipment's with a view to save foreign exchange, confirmed that such equipment's were saleable and marketable. Hence, the Apex Court held that duty was payable on such testing equipment's.
6	Can a product with short shelf-life be marketable?	Nicholas Piramal India Ltd. v. CCE., Mumbai 2010 (260) E.L.T. 338 (S.C.)	The Supreme Court ruled that short shelf-life could not be Equated with no shelf-life and would not ipso facto mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketable. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.

7	Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act?	CCE v. Solid & Correct Engineering Works and Ors 2010 (252) ELT 481 (SC)	The Court observed that as per the assessee, the machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine. It opined that an attachment without necessary intent of making the same permanent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. Hence, the Supreme Court held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.
8	Does the process of preparation of tarpaulin made-ups after cutting and stitching the tarpaulin fabric and fixing the eye-lets amount to manufacture?	CCE v. Tarpaulin International 2010 (256) E.L.T. 481 (S.C.)	The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of central excise duty on the tarpaulin made-ups.
9	Does the process of cutting and embossing aluminum foil for packing the cigarettes amount to manufacture?	CCE v. GTC Industries Ltd. 2011 (266) E.L.T. 160 (Bom.)	The High Court pronounced that cutting and embossing did not transform aluminum foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value to the foil, but only made it usable for packing. There were no records to suggest that cut to shape/embossed aluminum foils used for packing cigarettes were distinct marketable commodity. Hence, the High Court held that the process did not amount to manufacture as per section 2(f) of the Central Excise Act, 1944. Only the process which produces distinct and identifiable commodity with marketable value can be called manufacture.
10	Does the activity of packing of imported compact discs in a jewel box along with inlay card amount to manufacture?	CCE v. Sony Music Entertainment (I) Pvt. Ltd. 2010 (249) E.L.T. 341 (Bom.)	The High Court observed that none of the activity that the assessee undertook involved any process on the compact discs that were imported. It held that the Tribunal rightly concluded that the activities carried out by the respondent did not amount to manufacture since the compact disc had been complete and finished when imported by the assessee. They had been imported in finished and completed form.
*	Whether contaminated, under or Over filled bottles or badly crowned bottles amount to manufactured finished goods which are required to be entered under R.G.-1 register, and which are eligible to payment of excise duty?	Amrit Bottlers Private Limited v. CCE 2014 (306) E.L.T. 207 (All.) RTP MAY 15	The Court held that in the instant case, contaminated, under filled, and over filled and badly crowned bottles found at the stage of production was not marketable goods. Thus, they were not required to be entered under R.G.-1 register and consequently, no excise duty was payable on them.

CLASSIFICATION OF EXCISABLE GOODS

11	R.G.-1 register, and which are eligible to payment of excise duty?	CCEx. v. Ciens Laboratories 2013 (295) ELT 3 (SC)	The Supreme Court held that owing to the pharmaceutical constituents present in the cream 'Moisturex' and its use for the cure of certain skin diseases; the same would be classifiable as a medicament under Heading 30.03.
12	Whether a heading classifying goods according to their composition is preferred over a specific heading?	Commissioner of Central Excise, Bhopal v. Minwool Rock Fibres Ltd. 2012 (278) E.L.T. 581 (S.C.)	The Supreme Court held that there was a specific entry which speaks of Slagwool and Rockwool under sub-heading 6803.00 chargeable at 18%, but there was yet another entry which was consciously introduced by the Legislature under sub-heading 6807.10 chargeable at 8%, which speaks of goods in which Rockwool, Slag wool and products thereof were manufactured by use of more than 25% by weight of blast furnace slag. It was not in dispute that the goods in question were those goods in which more than 25% by weight of one or more of red mud, press mud or blast furnace slag was used. If that be the case, then, in a classification dispute, an entry which was beneficial to the assessee was required to be applied. Further, tariff heading specifying goods according to its composition should be preferred over the specific heading. Sub-heading 6807.10 was specific to the goods in which more than 25% by weight, red mud, press mud or blast furnace slag was used as it was based entirely on material used or composition of goods. Therefore, the Court opined that the goods in issue were appropriately classifiable under Sub-heading 6807.10 of the Tariff.
13	Whether antiseptic cleansing solution used for cleaning/degerming or scrubbing the skin of the patient before the operation can be classified as a 'Medicament'?	CCE v. Wockhardt Life Sciences Ltd. 2012 (277) E.L.T. 299 (S.C.)	The Supreme Court observed that the factors to be considered for the purpose of the classification of the goods are the composition, the product literature, the label, the character of the product and the use to which the product is put to. In the instant case, it is not in dispute that the product is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient. The Apex Court, therefore, stated that the product is basically and primarily used for prophylactic purposes i.e., to prevent the infection or diseases, even though the same contains very less quantity of the prophylactic ingredient. The Apex Court held that the product in question can be safely classified as a "medicament" which would fall under Chapter Heading 3003, a specific entry and not under Chapter Sub-Heading 3402.90, a residuary entry.
14	Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty?	CCEx. v. Connaught Plaza Restaurant (Pvt) Ltd. 2012 (286) E.L.T. 321 (S.C.)	The Apex Court held that 'soft serve' was classifiable under Heading 21.05 as "ice cream" and not under Heading 04.04 as "other dairy produce".

VALUATION OF EXCISABLE GOODS			
15	Is the amount of sales tax/VAT Collected by the assessee and retained with him in accordance with any State Sales Tax Incentive Scheme, includible in the assessable value for payment of excise duty?	CCEx v. Super Synotex (India) Ltd. 2014 (301) E.L.T. 273 (S.C.)	The Apex Court held that such retained amount has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1.7.2000 and therefore, the assessee is bound to pay excise duty on the said sum.
16	Can the pre-delivery inspection (PDI) and free after sales services charges be included in the transaction value when they are not charged by the assessee to the buyer?	Tata Motors Ltd. v. UOI 2012 (286) E.L.T. 161 (Bom.)	The High Court held that Clause No. 7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002 (where it confirms the earlier circular dated 1st July, 2002) were not in conformity with the provisions of section 4(1)(a) read with section 4(3)(d) of the Central Excise Act, 1944. Further, as per section 4(3)(d), the PDI and free after sales services charges could be included in the transaction value only when they were charged by the assessee to the buyer.
*	Should a part of sales tax retained by the manufacturer from its customers under a tax concession granted to it, be included in the transaction value of such goods under section 4(3)(d) of the Central Excise Act, 1944?	CCE v. Maruti Suzuki India Limited 2014 (307) E.L.T. 625 (S.C.) RTP-MAY-15	The Apex Court, overruling the Tribunal's decision, held that since assessee retained 50% of the sales tax collected from customers which was neither actually paid to the exchequer nor actually payable to the exchequer, transaction value under section 4(3)(d) of the Central Excise Act, 1944, would include the amount of such sales tax.
CENVAT CREDIT			
17	Can CENVAT credit of duties, other than National Calamity Contingent Duty (NCCD), be used to pay NCCD?	CCEx. v. Prag Bosimi Synthetics Ltd. 2013 (295) ELT 682 (Gau.)	The High Court held that merely because CENVAT credit in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD.
18	Can CENVAT credit be availed on machineries purchased for being used in setting up a sugar plant in foreign country when (i) the same are not used in the factory premises and (ii) no duty is paid on final product viz., the sugar plant?	KCP Ltd. v. CCEx. 2013 (295) ELT 353 (SC)	The Supreme Court held that CENVAT credit could not be allowed to the assessee as no duty was paid on sugar plant set up in a foreign country. Further, since the bought-out machinery was not used in the assessee's factory premises, the necessary condition for availing CENVAT credit on capital goods could not be fulfilled.
19	Whether wrongful availment of 100% CENVAT credit on capital goods in the year of purchase be upheld if wrongly availed credit of 50% is not utilized in the said year?	CCE v. Satish Industries 2013 (298) E.L.T. 188 (Bom.)	The High Court held that if 50% CENVAT credit on capital goods pertaining to subsequent financial year which had been wrongly availed in the first year had not been not utilized till the commencement of the subsequent financial year, no prejudice was caused to the Revenue and thus, the same could be upheld.
20	Whether CENVAT credit of the testing material can be allowed when the testing is critical to ensure the marketability of the product?	Flex Engineering Ltd. v. Commissioner of Central Excise, U.P. 2012 (276) E.L.T. 153 (S.C.)	The Court was of the opinion that the manufacturing process in the present case gets completed on testing of the said machines. Hence, the afore-stated goods viz. the flexible plastic films used for testing the F&S machines are inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit.

21	The assessee claimed the CENVAT credit on the duty paid on capital goods which were later destroyed by fire. The Insurance Company reimbursed the amount inclusive of excise duty. Is the CENVAT credit availed by the assessee required to be reversed?	CCE v. Tata Advanced Materials Ltd. 2011 (271) E.L.T. 62 (Kar.)	The High Court observed that merely because the Insurance Company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the CENVAT credit wrong or irregular. At the same time, it did not provide a reason to the Excise Department to demand reversal of credit or default to pay the said amount. The assessee had paid the premium and covered the risk of this capital goods and when the goods were destroyed in terms of the Insurance policy, the Insurance Company had compensated the assessee. It was not a case of double payment as contended by the Department. The High Court, therefore, answered the substantial question of law in favour of the assessee.
22	Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company?	Ashok Kumar H. Fulwadhyia v. UOI 2010 (251) E.L.T. 336 (Bom.)	The Court held that the petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit and penalty cannot be imposed on them for the wrong CENVAT credit availed by the company.
23	Can CENVAT credit be taken on the basis of private challans?	CCEx. v. Stelko Strips Ltd. 2010 (255) ELT 397 (P & H)	The High Court held that MODVAT credit could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.
24	Whether (i) technical testing and analysis services availed by the assessee for testing of clinical samples prior to commencement of commercial production and (ii) services of commission agent are eligible input services for claiming CENVAT?	CCEx v. Cadila Healthcare Ltd. 2013 (30) S.T.R. 3 (Guj.)	The High Court held that technical testing and analysis services availed for testing of clinical samples prior to commencement of commercial production were directly related to the manufacture of the final product and hence, were input services eligible for CENVAT credit. With respect to the services provided by foreign commission agents, the High Court held that since the agents were directly concerned with sales rather than sales promotion, the services provided by them were not covered in main or inclusive part of definition of input service as provided in rule 2(I) of the CENVAT Credit Rules, 2004.
25	Will two units of a manufacturer surrounded by a common boundary wall be considered as one factory for the purpose of CENVAT credit, if they have separate central excise registrations?	Sintex Industries Ltd. vs. CCEx 2013 (287) ELT 261 (Guj.)	The High Court held that credit could be availed on eligible inputs utilized in the generation of electricity only to the extent the same were used to produce electricity within the factory registered for that purpose (textile division). However, credit on inputs utilized to produce electricity which was supplied to a factory registered as a different unit (plastic division) would not be allowed. The High Court rejected the contention of the assessee that separate registration of two units situated within a common boundary wall would not make them two different factories.
*	Whether CENVAT credit can be availed of service tax paid on customs house agents' (CHA) services, shipping agents' and container services and services of overseas commission agents used by the manufacturer of final product for the purpose of export, when the export is on FOB basis?	Commissioner v. Dynamic Industries Limited 2014 (35) S.T.R. 674 (Guj.)RTP- MAY-15	The High Court held that CENVAT credit in respect of (i) customs house agents services, (ii) shipping agents and container services and (iii) cargo handling services is admissible, but the CENVAT credit availed for the services of overseas commission agent is not allowed.

*	Will rule 6 of the CENVAT Credit Rules, 2004 apply, if the assessee clears an exempted by-product and a dutiable final product?	UOI v Hindustan Zinc Limited. 2014 (303) E.L.T. 321 (S.C.)RTP-MAY-15	The Supreme Court held that since in rule 57CC of the erstwhile Central Excise Rules, 1944 [now rule 6 of the CENVAT Credit Rules, 2004], the term used is 'final product' and not 'by-product', said rule cannot be applied in case of 'by-product' when such by-product emerged as a technological necessity. If the Revenue's argument is accepted, it would amount to equating by-product with final product thereby obliterating the difference, though recognized by the legislation itself.
*	Can CENVAT credit availed on inputs (contained in the work-in-progress destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rules, 2004?	CCE v. Fenner India Limited 2014 (307) E.L.T.516 (Mad.)RTP-MAY-15	The High Court held that CENVAT credit would need to be reversed only when the payment of excise duty on final product is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, which deals with the remission of duty. In the present case, the assessee has not claimed any remission and no final product has been removed, hence, assessee need not reverse the CENVAT credit taken on inputs (contained in the work-in-progress) destroyed in fire.

EXPORT PROCEDURE

26	Can export rebate claim be denied merely for non-production of original and duplicate copies of ARE-1 when evidence for export of goods is available?	UM Cables Limited v. Union of India 2013 (293) ELT 641 (Bom.)	The High Court held that the procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations subject to which a rebate can be granted and the procedure governing the grant of a rebate. It was held by the High Court that while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory. The High Court ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT).
27	In case of export of goods under rule 18 of the Central Excise Rules, 2002, is it possible to claim rebate of duty paid on excisable goods as well rebate of duty paid on materials used in the manufacture or processing of such goods?	Rajasthan Textile Mills v. UOI 2013 (298) E.L.T. 183 (Raj.)	Under rule 18 of the Central Excise Rules, 2002, grant of rebate of duty paid is available either on excisable goods or on materials used in the manufacture or processing of such goods i.e. on raw material. Thus, it is open to claim the benefit of rebate either on manufactured/finished goods or on raw material, but not on both.

DEMAND, ADJUDICATION AND OFFENCES

28	Can penalty under section 11AC of the Central Excise Act, 1944 be imposed in a case where there are divergent judicial pronouncements on an issue and the assessee chooses to follow one of those pronouncements?	CCEx. v. Delphi Automotive Systems Ltd. 2013 (292) E.L.T. 189 (All.)	The High Court elucidated that mens rea (guilty mind) is an essential part for levy of penalty under section 11AC of the Central Excise Act, 1944. Where a provision of statute is not clear and there are divergent judicial pronouncements, it cannot be said that there is mens rea on the part of the assessee if he chooses to follow his course of action in the light of one of the judicial pronouncements.
----	---	--	---

29	Whether time-limit under section 11A of the Central Excise Act, 1944 is applicable to recovery of dues under compounded levy scheme?	Hans Steel Rolling Mill v. CCEx., Chandigarh 2011 (265) E.L.T. 321 (S.C.)	The Supreme Court held that the time-limit under section 11A of the Central Excise Act, 1944 is not applicable to recovery of dues under compounded levy scheme.
30	In a case where the assessee has been issued a show cause notice regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN regarding recovery of dues and penalty be issued?	Jay Kumar Lohani v. CCEx 2012 (28) S.T.R. 350 (M.P.)	The High Court held that there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty.
31	Can Appellate Authorities or Courts permit the assessee to pay reduced penalty of 25% beyond the time prescribed under section 11AC?	CCEx. v. Castrol India Ltd. 2012 (286) E.L.T. 194 (Bom.)	The High Court held that Tribunal could not permit the assessee to pay 25% penalty beyond the time prescribed under the first and second proviso to erstwhile section 11AC [now section 11AC(1)(c)].
32	In a case where the manufacturer clandestinely removes the goods and stores them with a firm for further sales, can penalty under rule 25 of the Central Excise Rules, 2002 be imposed on such firm?	CCEx. v. Balaji Trading Co. 2013 (290) E.L.T. 200 (Del.)	The Department aggrieved by the said order filed an appeal with High Court wherein it contended that rule 25(1)(c) of the Central Excise Rules, 2002 would be applicable in the instant case. However, High Court concurred with the view of the Tribunal and concluded that rule 25(1)(c) would have no application in the present case.
33	Can a decision pronounced in the open court in the presence of the advocate of the assessee, be deemed to be the service of the order to the assessee?	Nanumal Glass Works v. CCEx. Kanpur, 2012 (284) E.L.T. 15 (All.)	The High Court held that when a decision is pronounced in the open court in the presence of the advocate of the assessee, who is the authorized agent of the assessee within the meaning of section 37C, the date of pronouncement of order would be deemed to be the date of service of order.
REFUND			
34	Whether filing of refund claim under section 11B of Central Excise Act, 1944 is required in case of suo motu availment of CENVAT credit which was reversed earlier (i.e., the debit in the CENVAT Account is not made towards any duty payment)?	ICMC Corporation Ltd.v CESTAT, CHENNAI 2014 (302) E.L.T. 45 (Mad.)	The High Court held that this process involves only an account entry reversal and factually there is no outflow of funds from the assessee by way of payment of duty. Thus, filing of refund claim under section 11B of the Central Excise Act, 1944 is not required. Further, it held that on a technical adjustment made, the question of unjust enrichment as a concept does not arise.
35	Does the principle of unjust enrichment apply to State Undertakings?	CCEx v. Superintending Engineer TNEB 2014 (300) E.L.T. 45 (Mad.)	The High Court held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State.
APPEALS			
36	In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original?	Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 (292) E.L.T. 16 (Bom.)	The High Court referred to the case of Raj Chemicals v. UOI 2013 (Bom.) wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case

37	Can the High Court condone the delay - beyond the statutory period of three months prescribed under section 35 of the Central Excise Act, 1944 - in filing an appeal before the Commissioner (Appeals)?	Texcellence Overseas v. Union of India 2013 (293) ELT 496 (Guj.)	The High Court opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non interference at that stage would cause gross injustice to the petitioner. Thus, the High Court, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The High Court held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.
38	Can delay in filing appeal to CESTAT for the reason that the person dealing with the case went on a foreign trip and on his return his mother expired, be condoned?	Habib Agro Industries v. CCEx. 2013 (291) E.L.T. 321 (Kar.)	The High Court observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay.
39	If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period?	Commissioner of C. Ex., Mumbai-III v. Tikitar Industries, 2012 (277) E.L.T. 149 (S.C.)	The Supreme Court held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it might not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods.
40	Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944?	CCE v. RDC Concrete (India) Pvt. Ltd. 2011 (270) E.L.T. 625 (S.C.)	The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the Court opined that CESTAT exceeded its powers under section 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier.
*	Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?	CCE v. Fact Paper Mills Private Limited 2014 (308) E.L.T. 442 (SC)RTP-MAY-15	The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944.

EXEMPTION BASED ON VALUE OF CLEARANCES (SSI)

41	Where clearances of a dubious company are clubbed with clearances of the original company, whether penalty can be imposed on such dubious company if all the clearances have been made by the original company?	CCEx v Xenon 2013 (296) ELT 26 (Jhar.)	The High Court held that when it had been established that dubious company did not undertake any transactions, penalty could not be levied on the same for the transactions undertaken by the original company. The High Court emphasized that penalty could not be imposed upon the company who did not undertake any transaction.
----	---	--	---

42	Can the brand name of another firm in which the assessee is a partner, be considered as the brand name belonging to the assessee for the purpose of claiming SSI exemption?	Commissioner v. Elex Knitting Machinery Co. 2010 (258) E.L.T. A48 (P & H)	The Tribunal, when the matter was brought before it, decided the case in favour of assessee and against the Revenue. It held that the appellant was eligible to claim benefit of the SSI exemption as the proprietor of Elex Knitting Machinery Co. was one of the partners in Elex Engineering Works. Thus, being the co-owner of the brand name of "ELEX", he could not be said to have used the brand name of another person, in the manufacture and clearance of the goods in his individual capacity. The said decision of the Tribunal has been affirmed by the High Court in the instant case.
43	Whether the clearances of two firms having common brand name, goods being manufactured in the same factory premises, having common management and accounts etc. can be clubbed for the purposes of SSI exemption?	CCE v. Deora Engineering Works 2010 (255) ELT 184 (P & H)	The High Court held that indisputably, in the instant case, the partners of both the firms were common and belonged to same family. They were manufacturing and clearing the goods by the common brand name, manufactured in the same factory premises, having common management and accounts etc. Therefore, High Court was of the considered view that the clearance of the common goods under the same brand name manufactured by both the firms had been rightly clubbed.
44	Whether the manufacture and sale of specified goods, not physically bearing a brand name, from branded sale outlets would disentitle an assessee to avail the benefit of small scale exemption?	CCEx vs. Australian Foods India (P) Ltd 2013 (287) ELT 385 (SC)	The Supreme Court held that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the same; the most important of these factors being the specific outlet from which the good is sold. However, such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not; such determination would vary from case to case.
NOTIFICATION, DEPARTMENTAL CLARIFICATION AND TRADE NOTICE			
45	Where a circular issued under section 37B of the Central Excise Act, 1944 clarifies a classification issue, can a demand alleging misclassification be raised under section 11A of the Act for a period prior to the date of the said circular?	S & S Power Switch Gear Ltd. v. CCEx. Chennai-II 2013 (294) ELT 18 (Mad.)	The High Court, thus, held that once reclassification Notification/Circular is issued, the Revenue cannot invoke section 11A of the Act to make demand for a period prior to the date of said classification notification/circular.
SETTLEMENT COMMISSION			
46	(i) Where a settlement application filed under section 32E(1) of the Central Excise Act, 1944 (herein after referred to as 'Act') is not accompanied with the additional amount of excise duty along with interest due, can Settlement Commission pass a final order under section 32F(1) rejecting the application and abating the proceedings before it ? (ii) In the above case, whether a second application filed under section 32E(1), after payment of additional excise duty along with interest, would be maintainable?	Vadilal Gases Limited v Union of India 2014 (301) E.L.T. 321 (Guj.)	High Court held that since the earlier application was dismissed on technical defect for non-compliance of the provisions of clause (d) of the proviso to section 32E(1) of the Act and the same was not considered and decided on merits, the second application filed after depositing the additional excise duty and interest would be maintainable.

47	Whether a consolidated return filed by the assessee after obtaining registration, but for the period prior to obtaining registration, could be treated as a return under clause (a) of first proviso to section 32E(1)?	Icon Industries v. UOI 2011 (273) E.L.T. 487 (Del.)	The High Court rejected the submission of the petitioner that filing of consolidated return covering all the past periods would serve the purpose. Hence, it held that the order passed by the Settlement Commission was absolutely justifiable.
----	---	---	--

No.	Matter	Parties & Court	Decision
SERVICE TAX - BASIC CONCEPT			
1	Can service tax be levied on the services rendered in connection with a chit fund business?	Delhi Chit Fund Association v. UOI 2013 (30) S.T.R. 347 (Del.)	The High Court inferred that since in a chit fund business, the subscription is tendered in any one forms of money as defined under section 65B(33), it would be a transaction in money and would fall in the exclusionary part of the definition. Otherwise also, in view of Explanation 2 read along with the exclusionary part, the services rendered by the foreman of the chit business for which a separate consideration is charged would be out of the clutches of the definition. Thus, either way, the services of a foreman of a chit business do not constitute a taxable service. Consequently, the High Court quashed Notification No. 26/2012-S.T. dated 20.06.2012 to the extent of the entry in serial No. 8 thereof.
2	Can the service tax liability created under law be shifted by virtue of a clause in the contract entered into between the service provider and the service recipient?	Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 (26) S.T.R. 289 (S.C.)	The Supreme Court observed that on reading the agreement between the parties, it could be inferred that service provider (contractor) had accepted the liability to pay service tax, since it arose out of discharge of its obligations under the contract. With regard to the submission of shifting of service tax liability, the Supreme Court held that service tax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability. The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them.
3	In case where rooms have been rented out by Municipality, can it pass the burden of service tax to the service receivers i.e. tenants?	Kishore K.S. v. Cherthala Municipality 2011 (24) S.T.R. 538 (Ker.)	The High Court rejected the contentions of the assessee and observed as under :- (a) As regards the contention that there was no mention of the service tax liability in the contract, the Court held that this is a statutory right of the service provider/Municipality by virtue of the provisions under law to pass it on to the tenants. It is another matter that they may decide not to pass it on fully or partly. It is not open to the petitioners to challenge the validity of the demand for service tax, in view of the fact that service tax is an indirect tax and the law provides that it can be passed on to the beneficiary. Hence, the service tax can be

			passed on by the service provider i.e., Municipality. (b) The word "State" in Article 289 does not embrace within its scope the Municipalities. Hence, when service tax is levied on the Municipality there is no violation of Article 289. Moreover, Municipality has also not raised the contention that there was a violation of Article 289. The High Court held that Municipality can pass on the burden of service tax to the tenants.
4	Whether the activity of running guest houses for the pilgrims is liable to service tax?	Tirumala Tirupati Devasthanams, Tirupati v. Superintendent of Customs, Central Excise, Service Tax 2013 (30) S.T.R. 27 (A.P.)	The High Court observed that as per erstwhile section 65(105)(zzzzw) of the Finance Act, 1994, service provided to any person by a hotel, inn, guest house, club or camp-site, by whatever name called, for providing of accommodation for a continuous period of less than three months is a taxable service. Therefore, the High Court held that since the petitioner was running guest houses by whatever name called, whether it was a shelter for pilgrims or any other name, it was providing the taxable services and was thus liable to pay service tax.
5	Can a software be treated as goods and if so, whether its supply to a customer as per an "End User Licence Agreement" (EULA) would be treated as sale or service?	Infotech Software Dealers Association (ISODA) v. Union of India 2010 (20) STR 289 (Mad.)	The High Court held that though software is goods, the transaction may not amount to sale in all cases and it may vary depending upon the terms of EULA.
6	Whether service tax is chargeable on the buffer subsidy provided by the Government for storage of free sale sugar by the assessee?	CCE v. Nahar Industrial Enterprises Ltd. 2010 (19) STR 166 (P & H)	The High Court noted that apparently, service tax could be levied only if service of storage and warehousing was provided. Nobody can provide service to himself. In the instant case, the assessee stored the goods owned by him. After the expiry of storage period, he was free to sell them to the buyers of its own choice. He had stored goods in compliance with the directions of the Government of India issued under the Sugar Development Fund Act, 1982. He had received subsidy not on account of services rendered to Government of India, but had received compensation on account of loss of interest, cost of insurance etc. incurred on account of maintenance of stock. Hence, the High Court held the act of assessee could not be called as rendering of services.
7	A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service?	Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj)	The High Court held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing 'franchise service' to the said schools and if the petitioner realized the 'franchise' or 'collaboration fees' from the franchise schools, the petitioner was duty bound to pay service tax to the department.
*	Whether supply of food, edibles and beverages provided to the customers, employees and guests using canteen or guesthouse of the other person, results in outdoor caterer service?	Indian Coffee Workers' Co-operative Society Limited v. CCE & ST 2014 (34) STR 546 (All.)RTP-MAY-15	Based on the observation made above, the High Court held that the assessee was liable for payment of service tax as an outdoor caterer.
*	Whether the course completion certificate/training offered by approved Flying Training Institute	CCE & ST v. Garg Aviations Limited 2014 (35) STR 441	The High Court upheld the decision of the Tribunal and held that the Revenue had not been able to persuade the Court to take a contrary view as taken by the Delhi High

	and Aircraft Engineering Institutes is recognized by law (for being eligible for exemption from service tax) if the course completion certificate/ training/ is only for the purpose of eligibility for obtaining ultimate licence/approval for certifying repair/maintenance/airworthiness of aircrafts?	(All.)RTP-MAY-15	Court in Indian Institute of Aircraft Engineering. The appeal filed by the Revenue would not give rise to any substantial question of law. Hence, the appeal filed was dismissed and the assessee was held not to be liable to pay service tax.
*	Whether deputation of some staff to subsidiaries/group of companies for stipulated work or for limited period results in supply of manpower service liable to service tax, even though the rection/control/supervision remained continuously with the provider of the staff and the actual cost incurred was reimbursed by the subsidiaries/group companies?	Commissioner of Service Tax v. Arvind Mills Limited 2014 (35) S.T.R. 496 (Guj.)RTP-MAY-15	The High Court rejected the contention of the Revenue and held that deputation of the employees by the respondent to its group companies was only for and in the interest of the assessee. There is no relation of agency and client. The assessee company was not engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client. Therefore, they were not liable to pay service tax.
*	Whether section 66E(i) of the Finance Act, 1994 which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is ultra vires the Article 366(29A)(f) of the Constitution?	Hotel East Park v. UOI 2014 (35) STR 433 (Chhatisgarh)RTP-MAY-15	The High court held that section 66E (i) of the Finance Act, 1994 is intra vires the Article 366(29A)(f) of the Constitution of India. Further, the High Court held that no VAT can be charged over the amount meant for service and that the amount over which service tax has been charged should not be subject to VAT. The High Court directed the State Government to frame such rules and issue clarifications to this effect to ensure that the customers are not doubly taxed over the same amount. The rules may be in conformity with the bifurcation as provided under the Finance Act, 1994 or ensure that the Commercial Tax authorities do not charge VAT on that part of the value of the food and drink on which service tax is being assessed.
PLACE OF PROVISION OF SERVICES			
8	Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services?	Wipro Ltd. v. Union of India 2013 (29) S.T.R. 545 (Del.)	The High Court noted that the appellant was also required to describe, value and specify the amount of service tax payable on input services actually required to be used in providing taxable service to be exported. The High Court opined that except the description of the input services, the appellant could not provide the value and amount of service tax payable as any estimation was ruled out by the use of the word "actually required" and the bill/invoice for the input services were received by the appellant only after the calls were attended to. Further, the High Court also observed that one-to-one matching of input services with exported services was impossible since every phone call was export of taxable service but the invoices in respect of the input-services were received only at regular intervals, viz. monthly or fortnightly etc. Thus, the High Court was of the view that in the very nature of things, and considering the peculiar features of the appellant's

			business, it was difficult to comply with the requirement “prior” to the date of the export. Furthermore, the High Court elaborated that if particulars in declaration were furnished to service tax authorities within a reasonable time after export, along with necessary documentary evidence, and were found to be correct and authenticated, object/purpose of filing of declaration would be satisfied. The High Court, therefore, allowed the rebate claims filed by the appellants and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.
VALUATION OF TAXABLE SERVICE			
9	Whether expenditure like travel, hotel stay, transportation and the like incurred by service provider in course of providing taxable service should be treated as consideration for taxable service and included in value for charging service tax?	Intercontinental Consultants & Technocrats Pvt. Ltd. v. Union of India 2013 (29) S.T.R. 9 (Del.)	The High Court further observed that rule 5(1) may also result in double taxation, if expenses like air travel tickets, had already been subjected to service tax. The High Court was of the view that double taxation can be imposed only when it is clearly provided for and intended. It can never be enforced by implication. The High Court, therefore, held that rule 5(1) of the Rules runs counter and is repugnant to sections 66 and 67 of the Act and to that extent it is ultra vires the Finance Act, 1994.
*	Is rule 5(1) of the Service Tax (Determination of Value) Rules, 2006 ultra vires the Finance Act, 1994? Can the expression ‘suppression of facts’ be interpreted to include in its ambit, mere failure to disclose certain facts unintentionally?	Naresh Kumar & Co. Pvt. Ltd v. UOI 2014 (35) STR 506 (Cal.)RTP-MAY-15	The High Court held that in view of the clear exposition of law that the value of the diesel supplied free of cost by the service recipient cannot constitute taxable event, the authorities cannot place a contrary stand by placing reliance upon the provision which has been declared ultra vires (i.e. rule 5(1) of the Valuation Rules). The High Court held that non-disclosure of free supply of HSD did not constitute willful suppression as same was not a taxable event and thus, the invocation of extended period of limitation by the Revenue is unsustainable.
SERVICE TAX PROCEDURES			
10	Whether tax is to be deducted at source under section 194J of the Income-tax Act, 1961 on the amount of service tax if it is paid separately and is not included in the fees for professional services/technical services?	CIT v. Rajasthan Urban Infrastructure 2013 (31) STR 642 (Raj.)	The High Court held that if as per the terms of the agreement between the payer and the payee, the amount of service tax is to be paid separately and is not included in the fees for professional services or technical services, the service tax component would not be subject to TDS under section 194J of the Income-tax Act, 1961.
11	Is rule 5A(2) of the Service Tax Rules, 1994 ultra vires the Finance Act, 1994?	A.C.L. Education Centre (P) Ltd. v. UOI 2014 (33) S.T.R. 609 (All.)	the High Court held that section 5A(2) is not ultra vires. It is in consonance with section 72A of the Finance Act, 1994.
EXEMPTION AND ABATEMENT			
*	Is exemption in relation to service provided to the developer of SEZ or units in SEZ available for a period prior to actual manufacture (which is the authorized operation) of final products considering these services as the services used in authorised operations of SEZ?	Commissioner of Service Tax v. Zyduz Technologies Limited 2014 (35) S.T.R. 515 (Guj.)RTP-MAY-15	In the instant case, the High Court referring to their previous decision in case of CCEx. v. Cadila Healthcare Ltd. held that the services rendered for a period prior to actual manufacture of final product is commercial activity/production and assessee is entitled to exemption by way of refund claimed.

DEMAND, ADJUDICATION AND OFFENCES

12	Is it justified to recover service tax during search without passing appropriate assessment order?	Chitra Builders Private Ltd. v. Addl. Commr. of CCE & ST 2013 (Mad.)	The Court observed that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessment order being passed by the authority concerned and by following the procedures established by law. However, in the present case, no such procedures had been followed. Further, although Department had stated that the said amount had been paid voluntarily by the petitioner in respect of its service tax liability; it had failed to show that the petitioner was actually liable to pay service tax. Thus, the High Court elucidated that the amount collected by Department, from the petitioner, during the search conducted, could not be held to be valid in the eye of law, and directed the Department to return to the petitioner the sum of ` 2 crores, collected from it, during the search conducted.
13	Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved?	Infinity Infotech Parks Ltd. v. UOI 2013 (31) STR 653 (Cal.)	The High Court held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the service tax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of service tax.
14	Would service tax collected but not deposited prior to 10.05.2013 be taken into consideration while calculating the amount of `50 lakh as contemplated by clause (ii) of section 89(1) of the Finance Act, 1994?	Kandra Rameshbabu Naidu v. Superintendent (A.E.), S.T., Mumbai-II 2014 (34) S.T.R. 16 (Bom.)	The High Court held that since the said offence is a continuing offence, entire amount of service tax outstanding [which is required to be deposited with the Central Government] as on 10.05.2013, would be taken into consideration while calculating the amount of ` 50 lakh as contemplated by section 89(1)(ii) of the Finance Act, 1994.
15	Whether best judgment assessment under section 72 of the Finance Act, 1994 is an ex-parte assessment procedure?	N.B.C. Corporation Ltd. v. Commissioner of Service Tax 2014 (33) S.T.R. 113 (Del.)	The High Court held that section 72 could per se not be considered as an ex parte assessment procedure as ordinarily understood under the Income-tax Act, 1961. Section 72 mandates that the assessee must appear and must furnish books of account, documents and material to the Central Excise Officer before he passes the best judgment assessment order. Thus, said order is not akin to an ex parte order. Such an order will be akin to an ex parte order, when the assessee fails to produce records and the Central Excise Officer has to proceed on other information or data which may be available.
16	Whether penalty is payable even if service tax and interest has been paid before issue of the show cause notice?	CCE & ST v. Adecco Flexione Workforce Solutions Ltd. 2012 (26) S.T.R 3 (Kar)	The Karnataka High Court held that the authorities had no authority to initiate proceedings for recovery of penalty under section 76 when the tax payer paid service tax along with interest for delayed payments promptly. As per section 73(3), no notice shall be served against persons who had paid tax with interest; the authorities can initiate proceedings against defaulters who had not paid tax and not to harass persons who had paid tax with interest on their own. If the notices were issued contrary to this section, the person who had issued notice should be punishable and not the person to whom it was issued.

17	Can an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid?	CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.)	The High Court of Karnataka, distinguishing the landmark judgment by Supreme Court in the case of Mafatlal Industries v. UOI 1997 (89) E.L.T. 247 (S.C.) relating to refund of duty/tax, held that service tax paid mistakenly under construction service although actually exempt, is payment made without authority of law. Therefore, mere payment of amount would not make it 'service tax' payable by the assessee. The High Court opined that once there was lack of authority to collect such service tax from the assessee, it would not give authority to the Department to retain such amount and validate it. Further, provisions of section 11B of the Central Excise Act, 1944 apply to a claim of refund of excise duty/service tax only, and could not be extended to any other amounts collected without authority of law. In view of the above, the High Court held that refund of an amount mistakenly paid as service tax could not be rejected on ground of limitation under section 11B of the Central Excise Act, 1944.
18	In a case where the assessee has acted bona fide, can penalty be imposed for the delay in payment of service tax arising on account of confusion regarding tax liability and divergent views due to conflicting court decisions?	Ankleshwar Taluka ONGC Land Losers Travellers Co. OP. v. C.C.E., Surat-II 2013 (29) STR 352 (Guj.)	The High Court held that even if the appellants were aware of the levy of service tax and were not paying the amount on the ground of dispute with the ONGC, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful misstatement or suppression. Moreover, when the entire issue for levying of the tax was debatable, that also would surely provide legitimate ground not to impose the penalty.
*	Whether the recipient of taxable service having borne the incidence of service tax is entitled to claim refund of excess service tax paid consequent upon the downward revision of charges already paid, and whether the question of unjust enrichment arises in such situation?	CCus CEx & ST v. Indian Farmers Fertilizers Coop. Limited 2014 (35) STR 492 (All)	The High Court upheld the decision of the CESTAT that since the burden of tax has been borne by the respondent as a service recipient, question of unjust enrichment will not arise as per section 11B of the Central Excise Act 1944 (as applicable to service tax under section 83 of Finance Act, 1994). Further, the High Court held that once the finding of the adjudicating authority that the claim for refund was filed within the period of limitation was not challenged by the Revenue before the first appellate authority and CESTAT, Revenue could not assert to contrary and first time urge a point in an appeal before this Court which was not raised in grounds of appeal before authorities below.
OTHER PROVISION			
19	Can the Committee of Commissioners review its decision taken earlier under section 86(2A) of the Finance Act, 1994, at the instance of Chief Commissioner?	C.C.E. & S.T. (LTU), Bangalore v. Dell Intl. Services India P. Ltd. 2014 (33) S.T.R. 362 (Kar.)	The Karnataka High Court held that once the Committee of Commissioners, on a careful examination of the order of the Commissioner (Appeals), did not differ in their opinion against the said order of the Commissioner (Appeals) and decide to accept the said order, the matter ends there. The said decision is final and binding on the Chief Commissioner also. The Chief Commissioner is not vested with any power to call upon the Committee of Commissioners to review its order so that he could take decision to prefer an appeal. Such a procedure is not contemplated under law and is without jurisdiction.

*	Whether sales commission services are eligible input services for availment of CENVAT credit? If there is any conflict between the decision of the jurisdictional High Court and the CBEC circular, then which decision would be binding on the Department? Also, if there is a contradiction between the decision passed by jurisdiction High Court and another High Court, which decision will prevail?	Astik Dyestuff Private Limited v. CCEx. & Cus. 2014 (34) S.T.R. 814 (Guj.)	The High Court held that – (i) if there is any conflict between the decision of the jurisdictional High Court and the CBEC Circular, then decision of the jurisdictional High Court will be binding to the Department rather than CBEC Circular. Therefore, the assessee would not be entitled to CENVAT credit on sales commission services obtained by them. (ii) merely because there might be a contrary decision of another High Court is no ground to refer the matter to the Larger Bench. (iii) when there are two contrary decisions, one of jurisdictional High Court and another of the other High Court, then the decision of the jurisdictional High Court would be binding to the Department and not the decision of another High Court.
---	---	--	---

No.	Matter	Parties & Court	Decision
CUSTOM- BASIC CONCEPT			
1	Are the clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962?	Tirupati Udyog Ltd. v. UOI 2011 (272) E.L.T. 209 (A.P.)	The High Court, on the basis of the following observations, inferred that the clearance of goods from DTA to Special Economic Zone is not liable to export duty either under the SEZ Act, 2005 or under the Customs Act, 1962:- • A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all. • SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. In the absence of a charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier by implication. • With regard to the Customs Act, 1962, a conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since both the SEZ unit and the DTA unit are located within the territorial waters of India, Section 12(1) of the Customs Act 1962 (which is the charging section for levy of customs duty) is not attracted for supplies made by a DTA unit to a unit located within the Special Economic Zone.
LEVY OF AND EXEMPTION FROM CUSTOMS DUTY			
2	Whether remission of duty is permissible under section 23 of the Customs Act, 1962 when the remission application is filed after the expiry of the warehousing period (including extended warehousing period)?	CCE v. Decorative Laminates (I) Pvt. Ltd. 2010 (257) E.L.T. 61 (Kar.)	The High Court held that the circumstances made out under section 23 were not applicable to the present case since the destruction of the goods or loss of the goods had not occurred before the clearance for home consumption within the meaning of that section. When the goods are not cleared within the period or extended period as given by the authorities, their continuance in the warehouse will not permit the remission of duty under section 23 of the Act.

CLASSIFICATION OF GOODS			
3	Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff?	Keihin Penalfa Ltd. v. Commissioner of Customs 2012 (278) E.L.T. 578 (S.C.)	The Apex Court observed that the Central Government had issued an exemption notification dated 1-3-2002 and in the said notification it had classified the Electronic Automatic Regulators under Chapter sub-heading 9032.89. Since the Revenue itself had classified the goods in dispute under Chapter sub-heading 9032.89 from 1-3-2002, the said classification needs to be accepted for the period prior to it.
4	(i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test? (ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback?	M/s CPS Textiles P Ltd. v. Joint Secretary 2010 (255) ELT 228 (Mad.)	The High Court held that the description of the goods as per the documents submitted along with the Shipping Bill would be a relevant criterion for the purpose of classification, if not otherwise disputed on the basis of any technical opinion or test. The petitioner could not plead that the exported goods should be classified under different headings contrary to the description given in the invoice and the Shipping Bill which had been assessed and cleared for export. Further, the Court, while interpreting section 75A(2) of the Customs Act, 1962, noted that when the claimant is liable to pay the excess amount of drawback, he is liable to pay interest as well. The section provides for payment of interest automatically along with excess drawback. No notice for the payment of interest need be issued separately as the payment of interest becomes automatic, once it is held that excess drawback has to be repaid.
VALUATION UNDER CUSTOM ACT			
*	Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	Gira Enterprises v. CCus. 2014 (307) E.L.T.209 (SC)	The Supreme Court held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.
IMPORTATION, EXPORTATION AND TRANSPORTATION OF GOODS			
5	Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act?	CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 (289) E.L.T. 401 (Guj.)	The High Court however held that the time-limit prescribed under section 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of bill of entry.
WAREHOUSING			

6	Whether the issue of the imported goods warehoused in the premises of 100% EOU for manufacture/production/processing in 100% EOU would amount to clearance for home consumption?	Paras Fab International v. CCE 2010 (256) E.L.T. 556 (Tri. – LB)	The Tribunal held that the entire premises of a 100% EOU has to be treated as a warehouse if the licence granted under to the unit is in respect of the entire premises. Imported goods warehoused in the premises of a 100% EOU (which is licensed as a Customs bonded warehouse) and used for the purpose of manufacturing in bond as authorized under section 65 of the Customs Act, 1962, cannot be treated to have been removed for home consumption.
DEMAND & APPEALS			
7	Is the adjudicating authority required to supply to the assessee copies of the documents on which it proposes to place reliance for the purpose of requantification of short-levy of customs duty?	Kemtech International Pvt. Ltd. v. CCus. 2013 (292) E.L.T. 321 (S.C.)	The Apex Court elucidated that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim.
8	Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned?	Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 (293) E.L.T. 24 (All.)	The High Court held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit.
9	Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975?	Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 (294) E.L.T. 547 (Bom.)	The High Court held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The High Court thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.
10	Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?	CCus. v Dinesh Chhajjer 2014 (300) E.L.T. 498 (Kar.)	The High Court held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.
12	Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners if it is satisfied that there was sufficient cause for not presenting the application within the prescribed period?	Thakker Shipping P. Ltd. v. Commissioner of Customs (General) 2012 (285) E.L.T. 321 (S.C.)	The High Court ruled that the Tribunal was competent to invoke section 129A(5) where an application under section 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.

13	Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority?	Uniworth Textiles Ltd. vs. CCEx. 2013 (288) ELT 161 (SC)	The Supreme Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso.
*	Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter?	Neeraj Jhanji v. CCE & Cus. 2014 (308) E.L.T. 3 (S.C.)	The Supreme Court observed that the very filing of writ petition by the petitioner in Delhi High Court against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the High Court at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi High Court was not at all bona fide.
REFUND			
14	Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007?	KSJ Metal Impex (P) Ltd. v. Under Secretary (Cus.) M.F. (D.R.) 2013 (294) ELT 211 (Mad.)	The High Court held that : (i) It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued under section 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund. (ii) When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and CETA. (iii) Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.
PROVISION RELATING TO ILLEGAL IMPORT, EXPORT CONFISCATION, PENALTY AND ALLIED PROVISION			
15	Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?	Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) 2013 (293) ELT 342 (Mad.)	The High Court held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. The High Court also clarified that in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving mens rea on part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.

16	Where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962, can release of goods be claimed under section 110(2) of the Customs Act, 1962?	Akanksha Syntex (P) Ltd. v Union of India 2014 (300) E.L.T. 49 (P & H)	The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed under section 110(2) of the Customs Act, 1962.
18	Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods?	CCus. (Prev.), Mumbai v. M. Ambalal & Co. 2010 (260) E.L.T. 487 (SC)	The Apex Court held that it would be contrary to the purpose of exemption notifications to give the benefit meant for imported goods to smuggled goods.
19	Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized?	Manish Lalit Kumar Bavishi v. Addl. DIR. General, DRI 2011 (272) E.L.T. 42 (Bom.)	The High Court held that from the language of section 110(4), it was apparent that the Customs officers were mandatorily required to make available the copies asked for. It was the party concerned who had the choice of either asking for the document or seeking extract, and not the officer. If any document was seized during the course of any action by an officer and relatable to the provisions of the Customs Act, that officer was bound to make available copies of those documents. The denial by the Revenue to make the documents available was clearly an act without jurisdiction. The High Court directed the Revenue to make available the copies of the documents asked for by the assessee which were seized during the course of the seizure action.
20	Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation?	In Re: Hemal K. Shah 2012 (275) ELT 266 (GOI)	The Government noted that the passenger had grossly mis-declared the goods with intention to evade duty and to smuggle the goods into India. As per the provisions of section 80 of the Customs Act, 1962 when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed under section 80 of the Customs Act.
*	Whether mere dispatch of a notice under section 124(a) would imply that the notice was “given” within the meaning of section 124(a) and section 110(2) of the said Customs Act, 1962?	Purushottam Jajodia v. Director of Revenue Intelligence 2014 (307) E.L.T. 837 (Del.) RTP- MAY-15	The High Court held that since the petitioners did not receive the notice under section 124(a) within the time stipulated in section 110(2) of the Act, such notice will not considered to be “given” by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.
SETTLEMENT COMMISSION			

21	Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible?	Saurashtra Cement Ltd. v. CCus. 2013 (292) E.L.T. 486 (Guj.)	The Court pronounced that the scope of court's inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.
22	In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not?	Sanghvi Reconditioners Pvt. Ltd. V. UOI 2010 (251) ELT 3 (SC)	The Apex Court held that the application under section 127B of the Customs Act, 1962 is maintainable only if the duty liability is disclosed. The disclosure contemplated is in the nature of voluntary disclosure of concealed additional customs duty. The Court further opined that having opted to get their customs duty liability settled by the Settlement Commission, the appellant could not be permitted to dissect the Settlement Commission's order with a view to accept what is favourable to them and reject what is not.
23	Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue?	Union of India v. Cus. & C. Ex. Settlement Commission 2010 (258) ELT 476 (Bom.)	The High Court concluded that the duty drawback or claim for duty drawback is nothing but a claim for refund of duty as per the statutory scheme framed by the Government of India or in exercise of statutory powers under the provisions of the Act. Thus, the High Court held that the Settlement Commission has jurisdiction to deal with the question relating to the recovery of drawback erroneously paid by the Revenue.
MISCELLANEOUS PROVISIONS			
24	Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?	Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom)	The High Court held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission. The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund, the Department can wait for an inordinately long period to grant the refund. The High Court directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.
25	Can a former director of a company be held liable for the recovery of the customs dues of such company?	Anita Grover v. CCEx. 2013 (288) E.L.T. 63 (Del.)	The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.