

CASE LAWS (INCOME-TAX)

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?

❖ **Relevant Case –**

- CIT v. Saurashtra Cement Ltd. (2010) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - 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.

2) Can capital contribution of the individual partners credited to their accounts in the books of the firm be taxed as cash credit in the hands of the firm, where the partners have admitted their capital contribution but failed to explain satisfactorily the source of receipt in their individual hands?

OR

Issue under consideration: The issue before the High Court was whether the Assessing Officer was justified in treating the capital contribution of partners as income of the firm by invoking section 68?

❖ **Relevant Case –**

- CIT v. M.Venkateswara Rao (2015) (T & AP)
- CIT v. Anupam Udyog (Patna)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 68 directs that if an assessee fails to explain the nature and source of credit entered in the books of account of any previous year, the same can be treated as income.
 - Where the firm explains that the partners have contributed capital, section 68 cannot be pressed into service.
 - Therefore, if there are cash credits in the books of the firm in the accounts of the individual partners and that cash was received by the firm from its partner, then, in the absence of any material to indicate that they are the profits of the firm, the cash credits cannot be assessed in the hands of the firm, though they may be assessed in the hands of individual partners.

3) Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?

❖ **Relevant Case –**

- CIT v. Kribhco (2012) (Delhi)

❖ High Court's Decision –

- The Delhi High Court held that –
 - Section 14A is not applicable for deductions, which are permissible and allowed under Chapter VIA. Section 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Income-tax Act, 1961.
 - The words “do not form part of the total income under this Act” used in section 14A are significant and important. As per section 14A, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to such income which does not form part of the total income.
 - Therefore, 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.

4) 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?

❖ Relevant Case –

- CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013) (Mad)
- CIT v. Sheela Christian Charitable Trust (2013)

❖ High Court's Decision –

- The Madras High Court held that –
 - As per provisions of section 12AA (2), every order granting or refusing registration u/s 12AA (1) (b), **shall** be passed by the registering authority before the expiry of six months from the end of the month in which the application was received u/s 12A (1) (a) or 12A (1) (aa).
 - The period of six months as provided u/s 12AA (2) is not mandatory. In order to ascertain whether a provision is mandatory or not, the expression 'shall' is not always decisive.
 - The nature of the statutory provision, whether mandatory or directory, has to be ascertained not only from the wording of the statute, but also from the nature and design of the statute and the purpose sought to be achieved.
 - Also, since the consequence for non-adherence of time limit of six months is not spelt out in the statute, it cannot be said that passing the order within time limit is mandatory in nature.
 - Therefore, the time frame mentioned in section 12AA (2) is only directory in nature and thus, there is no automatic or deemed registration if the application filed under section 12AA was not disposed of within the stipulated period of six months.

5) 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? OR

Issue: The issue under consideration is whether registration under section 12AA can be denied on the ground of non-commencement of charitable activity, where an application for registration has been made within a short-time span after the formation of the trust.

❖ **Relevant Case –**

- DIT (Exemptions) v. Meenakshi Amma Endowment Trust (2013) (Kar.)

❖ **High Court's Decision –**

- The High Court observed that –
 - With the money available with the trust, it cannot be expected to carry out activity of charity immediately. Consequently, 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).
 - Therefore, registration under section 12AA cannot be denied on the ground of non-commencement of charitable activity.

6) 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?

❖ **Relevant Case –**

- DIT (Exemption) v. Khetri Trust (2014) (Del)

❖ **High Court's Decision –**

- The High Court held that –
 - The validity of the will has been challenged in the probate proceedings; so, till the 'will' is probated and affirmed as genuine, the trust would not acquire the legal right on the property
 - The shares in foreign company were still in the name of the donor, Late Raja Bahadur Sardar Singh, and its acquisition by the trust is dependent upon the adjudication of the probate.
 - Further, with regard to the advance given to the business entity, 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.
 - Therefore, there was no violation of section 11(5) in this case.

7) 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?

❖ **Relevant Case –**

- DIT (Exemptions) v. Ramoji Foundation (2014) (AP)

❖ **High Court's Decision –**

- The High Court held that
 - The power has been given to the trustees by the settler to amend the trust deed without approaching the Civil Court, provided all the conditions laid down by the settler are fulfilled.

- The sanction of Civil Court is required only when there is no such power.
- Therefore, when the power has been specifically given to the trustees by the settler, no further power from the Civil Court is required.

8) 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?

❖ **Relevant Case –**

- CIT v. Shankar Krishnan (2012) (Bom.)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - As per Rule 3 of the Income-tax Rules, 1962, the perquisite value of the residential accommodation provided by the employer shall be the **actual** amount of lease rent paid or payable by the employer or 15% of salary, whichever is lower, as reduced by the rent, if any, actually paid by the employee.
 - The Assessing Officer is not right in adding the notional interest on security deposit given by the employer to the landlord in valuing the perquisite value, 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.

9) 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?

❖ **Relevant Case –**

- CIT (TDS) v. Director, Delhi Public School (2011) (Punj. & Har.)

❖ **High Court's Decision –**

- The Punjab and Haryana High Court held that –
 - According to Rule 3(5) of the Income-tax Rules, 1962, in case an educational institution is maintained and owned by the employer and free/ concessional education facility is provided to the employees' household, then, the cost of education in a similar institution in or near the locality shall be taken to be the value of perquisite. In case the cost of such education does not exceed Rs. 1,000 per month per child, the perquisite value shall be taken to be Nil.
 - On a plain reading of Rule 3(5), it flows that, in case 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 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.

10) 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?

❖ **Relevant Case –**

- New Delhi Hotels Ltd. v. ACIT (2014) (Delhi)
- CIT v. Discovery Estates Pvt. Ltd. (2013) (Delhi)
- CIT v. Discovery Holding Pvt. Ltd. (2013) (Delhi)

❖ **High Court's Decision –**

- The Delhi High Court held that –
 - 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".

11) 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?

❖ **Relevant Case –**

- Azimganj Estate (P.) Ltd. v. CIT (2013) (Cal.)

❖ **High Court's Decision –**

- The Calcutta High Court held that –
 - 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. Also, the said flats have been claimed as stock-in-trade in wealth tax return, will not affect the computation of income under Income-tax Act, 1961.

12) 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?

❖ **Relevant Case –**

- CIT v. Hariprasad Bhojnagarwala (2012) (Guj.) (Full Bench)

❖ **High Court's Decision –**

- The Gujarat High Court held that –
 - 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, 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 HUF is entitled to claim benefit of self-occupation of house property u/s 23(2).

13) 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?

❖ **Relevant Case –**

- Joseph George and Co. v. ITO (2010) (Kerala)

❖ **High Court's Decision –**

- The High Court held that –
 - While lodging is a business, 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.

14) 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?

❖ **Relevant Case –**

- CIT v. Asian Hotels Ltd. (2010) (Del.)

❖ **High Court's Decision –**

- The High Court held 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. 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) 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 and certainly not the interest on fixed deposit that may be placed by the tenant with the landlord.
 - Thus, the notional interest is neither assessable as business income nor as income from house property.

15) Under which head of income is franchise fee received by an assessee in tourism business, against special rights given to franchisees to undertake hotel business in assessee's property, taxable?

❖ **Relevant Case –**

- Tamil Nadu Tourism Development Corporation Ltd v. Dy. CIT (2014) (Mad)

❖ **High Court's Decision –**

- The High Court held that –
 - The assessee had not simply leased the land & building but had imposed further conditions as to how the business of franchisees should be conducted with regard to the hotels.
 - The special conditions stipulated in the contract clearly indicated that the name of the assessee should be prominently indicated in the name board and that the name of the franchisee should be below the name of the assessee.

- Thus, these special conditions were a clear indicator that the assessee continued to be in the business of tourism activities, though not directly but through the franchisees, and received income as franchisee fee.
- Therefore, the income earned by the assessee by way of franchisee fee is in the nature of business income and not income from house property.

16) Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?

❖ **Relevant Case –**

- CIT v. K and Co. (2014) (Del)

❖ **High Court Decision –**

- The High Court held that –
 - The interest income from the deposits made by the assessee is inextricably linked to the business of the assessee and such income, therefore, cannot be treated as income under the head ‘Income from other sources’.
 - The margin money requirement was an essential element for obtaining the bank guarantee which was necessary for the contract between the State Government of Sikkim and the assessee. If the assessee had not furnished bank guarantee, it would not have got the contract for running the said lottery
 - Thus, 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”.

17) Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?

❖ **Relevant Case –**

- CIT v. TVS Motors Ltd (2014) (Mad)

❖ **High Court’s Decision –**

- The High Court held that –
 - The Supreme Court in **CIT v. Mahalakshmi Textile Mills Ltd. (1967)** held that
 - As long as there was no change in the performance of the machinery and the parts that were replaced were performing precisely the same function, the expenditure has to be considered as current repairs of plant and machinery.
 - In the case of **CIT v. Machado Sons (2014)**, it was held that
 - When the object of the expenditure was not for bringing into existence a new asset or to obtain a new advantage, the said expenditure qualifies as current repairs u/s 31.
 - “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’ u/s 31.

18) 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 vehicles?

❖ **Relevant Case –**

- I.C.D.S. Ltd. v. CIT (2013) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - Section 32 imposes a twin requirement of “ownership” and “usage for business” as conditions for claim of depreciation thereunder. As far as usage of the asset is concerned, the section requires that the asset must be used in the course of business. It does not mandate actual usage by the assessee itself.
 - Section 2(30) of the Motor Vehicle Act, 1988, is a deeming provision which creates a legal fiction of ownership in favour of lessee only for that Act, not for the purpose of law in general
 - So, as long as the assessee-lessor has a right to retain the legal title against the rest of the world, he would be the owner of the asset in the eyes of law.
 - Therefore, the 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.

19) What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?

❖ **Relevant Case –**

- CIT v. BSES Yamuna Powers Ltd (2013) (Delhi)
- CIT v. Orient Ceramics and Industries Ltd. (2013) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - 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, 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.

20) Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(ia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?

❖ **Relevant Case –**

- M.M. Forgings Ltd. v. ACIT (2012) (Mad.)

❖ **High Court's Decision –**

- The Madras High Court held that –
 - If an asset is acquired on or after 1.04.2003, it was mandatory that the claim of the assessee made u/s 32(1)(ia) had to be assessed by applying the second proviso to section 32(1).
 - As per second proviso to Section 32(1), the allowability of depreciation is restricted to 50% of the amount computed u/s 32(1)(ia), where the asset is put to use for less than 180 days.

- Therefore, the amount of additional depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia).

21) 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)?

❖ **Relevant Case –**

- Areva T and D India Ltd. v. DCIT (2012) (Delhi)

❖ **High Court's Decision –**

- The Delhi High Court held that –
 - The use of general words after the specified intangible assets in section 32(1)(ii) clearly demonstrates that the Legislature did not intend to provide for depreciation only in respect of specified intangible assets but also to other categories of intangible assets, which were neither feasible nor possible to exhaustively enumerate.
 - Further, the intangible assets are invaluable assets, which are required for carrying on the business acquired by the assessee without any interruption. In the absence of the aforesaid intangible assets, the assessee would have had to commence business from scratch and go through the gestation period whereas by acquiring the aforesaid business rights along with the tangible assets, the assessee has got a running business.
 - Therefore, the specified intangible assets acquired under the slump sale agreement by the assessee are in the nature of intangible asset under category "other business or commercial rights of similar nature" specified in sec. 32(1)(ii) and are eligible for depreciation u/s 32(1)(ii)

22) Is the assessee entitled to depreciation on the value of goodwill considering it as an asset within the meaning of Explanation 3(b) to Section 32(1)?

❖ **Relevant Case –**

- CIT v. Smifs Securities Ltd. (2012) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - Explanation 3 to section 32(1) states that the expression 'asset' shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.
 - A reading of the words 'any other business or commercial rights of similar nature' in Explanation 3(b) indicates that goodwill would fall under the said expression.
 - In process of amalgamation, the amalgamated company had acquired a capital right in form of goodwill because of which the market worth of amalgamated company stood increased.
 - Therefore, 'Goodwill' is an asset under Explanation 3(b) to section 32(1) and depreciation thereon is allowable under the said section.

23) 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?

❖ **Relevant Case –**

- B. Raveendran Pillai v. CIT (2011) (Kerala)

❖ **High Court's Decision –**

- The High Court held that –
 - Under section 32(1)(ii), depreciation is allowable on intangible assets, being know-how, patents, copyrights, trademarks, license, franchise, or any other business or commercial rights of similar nature.
 - 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 section 32(1)(ii).
 - Thus, goodwill was covered by above provision of the Act entitling assessee for depreciation.

24) Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation at 60%?

❖ **Relevant Case –**

- Federal Bank Ltd. v. ACIT (2011) (Kerala)

❖ **High Court's Decision –**

- The High Court held that –
 - 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%.

25) Would beneficial ownership of assets suffice for claim of depreciation on such assets?

❖ **Relevant Case –**

- CIT v. Smt. A. Sivakami and Another (2010) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - In the context of the Income-tax Act, 1961, having regard to the ground realities and further having regard to the object of the Act i.e., to tax the income, the owner is a person who is entitled to receive income from the property in his own right.
 - The Supreme Court, in **CIT v. Podar Cement P Ltd. (1997)** held that
 - The owner need not necessarily be the lawful owner entitled to pass on the title of the property to another.
 - Since, the assessee has made available all the documents relating to the business and also established before the authorities that she is the beneficial owner. Therefore, she was entitled to claim depreciation even though she was not the legal owner of the buses.

26) Is guarantee commission paid by a company to its employee director's deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company?

❖ **Relevant Case –**

- Controls & Switchgear Contractors Ltd v. Dy.CIT (2014) (Del)

❖ **High Court's Decision**

- The High Court held that –
 - 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 transactions are real and genuine.
 - As regards section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of bonus or dividend. Hence, the payment of commission cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders.
 - Therefore, rectification of the disallowance of amount paid as commission to directors has been directed.

27) Is interest paid by the holding company as guarantor for the amount borrowed by the subsidiary company deductible under section 36(1)(iii)?

❖ **Relevant Case –**

- JK Synthetics Ltd v. CIT (2014) (All)

❖ **High Court's Decision –**

- The High Court held that –
 - To claim deduction under section 36(1)(iii) the following conditions are to be satisfied viz., (i) interest should have been payable; (ii) there should be a borrowing; and (iii) capital must have been borrowed or taken for business purposes.
 - The assessee had deep business interest in the existence of subsidiary and therefore, repaid installments of loan to financial institutions. Such loans were given for purpose of business.
 - Thus, the claim for deduction of interest by the assessee-holding company is allowable.

28) 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)?

OR

Issue: The issue under consideration is whether extended time limit upto the due date of filing the return contained in section 43B would be available in respect of remittances which are governed by section 36(1)(va).

❖ **Relevant Case –**

- CIT v. Gujarat State Road Transport Corpn (2014) (Guj)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 43B (b) pertaining to employer's contribution cannot be applied with respect to employees' contribution which is governed by section 36(1)(va). Employees' contribution recovered by the employer is not eligible for extended time limit upto the due date of filing of return, which is available under section 43B in the case of employer's own contribution.
 - Thus, 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 u/s 139(1).

❖ **Note –**

- Uttarakhand High Court in the case of **CIT v. Kichha Sugar Co. Ltd. (2013)** held that –
 - 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 relevant previous year.

29) Is expenditure incurred for construction of transmission lines by the assessee for supply of power to UPPCL by the assessee deductible as revenue expenditure?

❖ **Relevant Case –**

- Addtl. CIT v. Dharmpur Sugar Mill (P) Ltd (2015) (All)
- CIT v. Hindustan Zinc Ltd. (2009) (Raj)
- CIT v. Gujarat Mineral Development Corpn. Ltd (1981)

❖ **High Court's Decision –**

- The Allahabad High Court held that –
 - The Supreme Court in the case of **Empire Jute Co Ltd v. CIT (1980) (SC)** held that –
 - The true test is to consider the nature of the advantage in a commercial sense and it is only where advantage is in the capital field that the expenditure would be disallowed.
 - If the advantage consists in merely facilitating its trading operations while leaving the capital field untouched, the expenditure would be of revenue nature.
 - Therefore, the expenditure which was incurred by the assessee in the laying of transmission lines was clearly on the revenue account.
 - Since, the transmission lines, upon erection, vested absolutely in UPPCL. The expenditure which was incurred by the assessee was for aiding efficient conduct of its business since the assessee had to supply electricity to its sole consumer UPPCL. This was not an advantage of a capital nature.

30) 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?

❖ **Relevant Case –**

- CIT v. IBM Global Services India P Ltd (2014) (Karn)

❖ **High Court's Decision –**

- The High Court held that –
 - i). 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.
 - ii). The joint venture company spent a lot of money to give training to employees who were transferred to the assessee-company. So, 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.

31) What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?

❖ **Relevant Case –**

- CIT v. Orient Ceramics and Industries Ltd. (2013) (Delhi)

❖ **High Court's Decision –**

- The Delhi High Court held that –
 - The expenditure incurred by the assessee on glow sign boards does not bring into existence an asset or advantage for enduring benefit of business, which is attributable to the capital.
 - The glow sign board is not an asset of permanent nature. It has a short life. The materials used in the glow sign boards decay with the effect of weather. Therefore, it requires frequent replacement. Consequently, the assessee has to incur expenditure on glow sign boards regularly in almost each year.
 - The assessee incurred expenditure on the glow sign boards with the object of facilitating the business operation and not with the object of acquiring asset of enduring nature.
 - Thus, such expenditure on glow sign board displayed at dealer outlets was revenue in nature.

32) Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?

❖ **Relevant Case –**

- CIT v. ITC Hotels Ltd. (2011) (Kar.)

❖ **High Court's Decision –**

- The Karnataka High Court held that
 - 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.

33) 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?

❖ **Relevant Case –**

- CIT v. Priya Village Roadshows Ltd. (2011) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - In such cases, whether or not a new business/asset comes into existence would become a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature.
 - 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.

34) 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?

❖ **Relevant Case –**

- CIT v. Hindustan Zinc Ltd. (2010) (Raj.)

❖ **High Court's Decision –**

- The High Court held that –
 - 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.

35) Is Circular No. 5/2012 dated 01.08.2012 disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with Explanation to section 37(1), which disallows expenditure which is prohibited by law?

❖ **Relevant Case –**

- Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) (H.P.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, every medical practitioner and his or her professional associate is prohibited from accepting any gift, travel facility, hospitality, cash or monetary grant from any pharmaceutical and allied health sector industries.
 - The claim of any expense incurred in providing freebies to medical practitioners is in violation of the provisions of Indian Medical Council, has, vide Circular No.5/2012 dated 1.8.2012, clarified that the expenditure so incurred shall be inadmissible under section 37(1).
 - As per Explanation to section 37(1), it is clear that any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. Therefore, the circular is totally in line with the Explanation to section 37(1).

- However, if the assessee satisfies the assessing authority that the expenditure incurred is not in violation of the regulations framed by the Medical Council then it may legitimately claim a deduction, but it is for the assessee to satisfy the Assessing Officer that the expense is not in violation.

36) 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?

❖ **Relevant Case –**

- CIT v. Kap Scan and Diagnostic Centre P. Ltd. (2012) (P&H)

❖ **High Court's Decision –**

- The High Court held that –
 - As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive, or offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration of a return for referring any patient for medical treatment.
 - The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged.
 - Thus, commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.

37) 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 scheme", where there was no proof of existence of such scheme?

❖ **Relevant Case –**

- Echjay Forgings Ltd. v. ACIT (2010) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - There was no evidence on record to show that any other person at any point of time was appointed as trainee or sent abroad for higher education. Further, the appointment letter, neither had any reference number nor was it backed by any previous application by him. No details were produced regarding the apprentice training scheme. There was no evidence that he was recruited as trainee by some open competitive exam or regular selection process.
 - Thus, there was no nexus between the education expenditure incurred abroad for the director's son and the business of the company. Therefore, the aforesaid expenditure was not deductible.

38) 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?

❖ **Relevant Case –**

- Shanti Bhushan v. CIT (2011) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - A healthy and functional human heart is necessary for a human being irrespective of the vocation or profession he is attached with. Thus, expenses incurred to repair an impaired heart would add to the longevity and efficiency of a human being which would be reflected in every activity he does, including professional activity.
 - To allow the heart surgery expenditure as repair expenses to plant, the heart should have been first included in the assessee's balance sheet as an asset in the previous year and in the earlier years. Also, a value needs to be assigned for the same.
 - Though the definition of "plant" as per the provisions of section 43(3) is inclusive in nature, such plant must have been used as a business tool which is not true in case of heart. Therefore, the heart cannot be said to be plant for the business or profession of the assessee.
 - As per section 37, the expenditure must be incurred wholly and exclusively for the purposes of the profession. While a healthy heart will increase the efficiency of human being in every field including its professional work.
 - Therefore, there is no direct nexus between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Hence, the heart surgery expenses shall not be allowed as a business expenditure of the assessee under Income-tax Act, 1961.

39) Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?

❖ **Relevant Case –**

- CIT v. Neelavathi & Others (2010) (Karn)

❖ **High Court's Decision –**

- The High Court held that –
 - If any payment is made towards the security of the business of the assessee, such amount is allowable as deduction, as the amount is spent for maintenance of peace and law and order in the business premises of the assessee i.e., cinema theatres in this case.
 - Any payment made to the police illegally amounts to bribe and such illegal gratification cannot be considered as an allowable deduction. Similarly, any payment to a gunda as a precautionary measure so that he shall not cause any disturbance in the theatre run by the assessee is an illegal payment.
 - Thus, 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.

40) Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?

❖ **Relevant Case –**

- Millennia Developers (P) Ltd. v. DCIT (2010) (Karn.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per the provisions of Karnataka Municipal Corporations Act, 1976, the amount paid to compound an offence is obviously a penalty and thus, does not qualify for deduction u/s 37.
 - Therefore, merely describing the payment as a compounding fee would not alter the character of the payment.

41) 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)?

❖ **Relevant Case –**

- CIT v. Great City Manufacturing Co. (2013) (All)

❖ **High Court's Decision –**

- The Allahabad High Court held that –
 - Section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income.
 - The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and the remuneration is within the limits prescribed under section 40(b)(v). If these conditions are complied with, then the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive.
 - The question of disallowance of remuneration under section 40A(2)(a) does not arise, since 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).

42) Can unpaid electricity charges be treated as 'fees' to attract disallowance u/s 43B?

❖ **Relevant Case –**

- CIT v. Andhra Ferro Alloys P. Ltd. (2012) (A.P)

❖ **High Court's Decision –**

- The Andhra Pradesh High Court held that –
 - 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".

43) 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 as business income?

❖ **Relevant Case –**

- PVS Raju v. ACIT (2012) (AP.)

❖ **High Court's Decision –**

- The Andhra Pradesh High Court held that –
 - 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.
 - The facts that may be considered while determining the same are the magnitude and frequency of buying and selling of shares by the assessee; the period of holding of shares, ratio of sales to purchases and the total holdings, etc.
 - Mere classification of shares in the books of accounts of the assessee is not relevant for determining the nature of income for income-tax purposes.

44) 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?

❖ **Relevant Case –**

- CIT v. Smt. Rama Rani Kalia (2013) (All.)

❖ **High Court's Decision –**

- The High Court held –
 - The difference between 'short-term capital asset' & 'long-term capital asset' is the period over which the property has been held by assessee and not the nature of title over property.
 - The conversion of leasehold property into freehold property was nothing but improvement of the title over the property, as the assessee was the owner prior to conversion.
 - Therefore, the 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, the period of holding is more than 36 months, the resultant capital gains would be long-term.

45) 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?

❖ **Relevant Case –**

- P. P. Menon v. CIT (2010) (Ker.)

❖ **High Court's Decision –**

- The High Court held that –
 - 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 15.04.2001 and thus, the benefit of these sections would not be available to the assessee. Thus, 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.

- Therefore, 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.

46) 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?

❖ **Relevant Case –**

- Navin Jindal v. ACIT (2010) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - The right to subscribe for additional offer of shares on rights basis, on the strength of existing shareholding in a company, comes into existence when the company decides to come out with the rights offer. Prior to that date, the right, though embedded in the original shareholding, remains inchoate.
 - Therefore, for determining whether 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.

47) 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?

❖ **Relevant Case –**

- CIT v. Manjula J. Shah (2013) (Bom.)
- Arun Shungloo Trust v. CIT (2012) (Delhi)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - As per Explanation 1 to section 2(42A), in case the capital asset becomes the property of the assessee by way of gift by the previous owner, then for determining the nature of the capital asset, the aggregate period for which the capital asset is held by the assessee and the previous owner shall be considered.
 - According to section 48, the profit and gains arising on transfer of a long-term capital asset shall be computed by reducing indexed cost of acquisition from the net sale consideration.
 - By way of 'deemed holding period fiction' created by the statute, the assessee is deemed to have held the capital asset from the year the asset was held by the previous owner.
 - Therefore, for determining the indexed cost of acquisition under Section 48, the assessee must be treated to have held the asset from the year the asset was first held by the previous owner and accordingly the CII for the year the asset was first held by the previous owner would be considered for determining the indexed cost of acquisition.
 - Hence, 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.

48) Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of 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)?

❖ **Relevant Case –**

- CIT v. Gita Duggal (2013) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - Sections 54 and 54F require the assessee to acquire a "residential house" and which may be constructed in such a manner as to consist of several units which can be conveniently and independently used as an independent residence, the requirement of the section should be taken to have been satisfied. There is nothing in these sections which requires the residential house to be constructed in a particular manner.
 - 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 assessee.

49) 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?

❖ **Relevant Case –**

- CIT v. Syed Ali Adil (2013) (A.P.)

❖ **High Court's Decision –**

- The Andhra Pradesh High Court held that –
 - The Karnataka High Court in **CIT v. Ananda Basappa (2009)** held that –
 - Where the flats are situated side by side and the builder had effected the necessary modification to make it as one unit, the assessee would be entitled to exemption under section 54 in respect of investment in both the flats, despite the fact that they were purchased by separate sale deeds.
 - The Karnataka High Court in **CIT v. K.G. Rukminiamma (2011)** held that
 - Where a residential house was transferred and four flats in a single residential complex were purchased by the assessee, all the four residential flats constituted "a residential house" for the purpose of section 54.
 - Therefore, 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.

50) 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?

❖ **Relevant Case –**

- CIT v. Gurnam Singh (2010) (P&H)

❖ **High Court's Decision –**

- The High Court held that –
 - The agricultural land sold belonged to the assessee and the sale proceeds were also used for purchasing agricultural land. The possession of the said land was also taken by the assessee.
 - So, 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.

51) 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?

❖ **Relevant Case –**

- CIT v. Kamal Wahal (2013) (Delhi)

❖ **High Court's Decision –**

- The Delhi High Court, having regard to the rule of purposive construction and the object of enactment of section 54F, held 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.
 - The Delhi High Court in **CIT v. Ravinder Kumar Arora (2012)**, where the new residential house was acquired in the joint names of the assessee and his wife and the Court had held that –
 - The assessee was entitled for 100% exemption under section 54F.
 - Section 54F does not require purchase of new residential house property in the name of assessee himself. It requires the assessee to purchase or construct a residential house.

52) 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?

❖ **Relevant Case –**

- CIT v. Ravinder Kumar Arora (2012) (Delhi)
- DIT (IT) v. Mrs. Jennifer Bhide (2011) (Karnataka)

❖ **High Court's Decision –**

- The Delhi High Court held that –
 - 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.
 - Also, 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.

- Thus, the conditions stipulated in section 54F stand fulfilled and entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

53) Can exemption u/s 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the 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?

❖ **Relevant Case –**

- CIT v. Sambandam Udaykumar (2012) (Kar.)

❖ **High Court's Decision –**

- The Court held that –
 - The condition precedent for claiming the benefit under section 54F is that capital gains realized from sale of capital asset should have been invested either in purchasing a residential house or in constructing a residential house within the stipulated period.
 - If he has invested the money in the construction of a residential house, merely because the construction was not completed in all respects and possession could not be taken within the stipulated period, would not disentitle the assessee from claiming exemption u/s 54F. In fact, the assessee has taken the possession of the residential building and is living in the premises despite the pendency of flooring work, electricity work, fitting of door and window shutters.
 - Therefore, the assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.

54) Can the assessee claim exemption u/s 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?

❖ **Relevant Case –**

- CIT v. Rajiv Shukla (2011) (Delhi)

❖ **High Court's Decision –**

- The Delhi High Court, relying on the decision of Bombay High Court in **CIT v. Ace Builders P. Ltd. (2006)** and Gauhati High Court in **CIT v. Assam Petroleum Industries P. Ltd. (2003)**, held that –
 - 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 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.

55) 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?

❖ **Relevant Case –**

- Gouli Mahadevappa v. ITO (2013) (Kar.)

❖ **High Court's Decision –**

- On the issue of exemption under section 54F, the High Court held that –
 - When capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs. 36 lakhs 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.

56) 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?

❖ **Relevant Case –**

- Hindustan Unilever Ltd. v. DCIT (2010) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - In order to avail the exemption under section 54EC, the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer.
 - The date of investment by the assessee must be regarded as the date on which payment is made.
 - Therefore, 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.
 - So, the exemption under section 54EC cannot be denied merely because the bond was issued after the expiry of the six month period.

57) 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?

❖ **Relevant Case –**

- CIT v. Yatish Trading Co. Pvt. Ltd. (2013) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - The Department had accepted conversion of stock-in-trade into investment while assessing the income of A.Y.2003-04 and A.Y.2005-06. Further, the books of account of the assessee showed such shares (on which the assessee offered income as capital gains) as investment.

- Also, the mere fact that the assessee-company was trading in the shares and securities cannot stop it from holding certain shares as investment and offering the gains on sale of such shares to tax under the head "Capital gains". It is open for a trader in shares to have a trading as well as an investment portfolio of shares and securities.
- Therefore, the gains arising on sale of those shares held as investments by the dealer-assessee were to be assessed under the head "Capital gains" and not under the head "Profits and gains of business or profession".

58) 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)?

❖ **Relevant Case –**

- CIT v. Parle Plastics Ltd. (2011) (Bom.)

❖ **High Court’s Decision –**

- The High Court held that –
 - Under section 2(22), “dividend” does not include, inter alia, any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company.
 - The expression used in the exclusion provision of section 2(22) is "substantial part of the business". Percentage of turnover in relation to the whole as also the percentage of the profit in relation to the whole would be taken into consideration for determining the substantial part of business.
 - In this case, 42% of the total assets of the lending company were deployed by it by way of loans and advances. Further, if the income earned by way of interest is excluded, the other business had resulted in a net loss. These factors were considered in concluding that lending of money was a substantial part of the business of the company.
 - 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).

59) Can repair and renovation expenses incurred by a company in respect of premises leased out by shareholder having substantial interest in company, be treated as deemed dividend?

❖ **Relevant Case –**

- CIT v. Vir Vikram Vaid (2014) (Bom)

❖ **High Court’s Decision –**

- The High Court held that –
 - No money had been paid by way of advance or loan to the shareholder who has substantial interest in the company. The expenditure incurred by virtue of repairs and renovation on the premises occupied by the company cannot be brought within the definition of advance or loan given to the shareholder having substantial interest in the company, though he is the owner of the premises.

- It cannot be treated as payment by the company on behalf of the shareholder or for the individual benefit of such shareholder.
- Thus, repair and renovation expenses in respect of premise occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.

60) Can the loan or advance given to a shareholder by the company, in return for an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder?

OR

The issue under consideration is whether the advance given by the company to assessee-shareholder by way of security deposit for keeping his property as mortgage on behalf of company to reap the benefit of loan, can be treated as deemed dividend within the meaning of section 2(22)(e).

❖ **Relevant Case –**

- Pradip Kumar Malhotra v. CIT (2011) (Cal.)

❖ **High Court's Decision –**

- The High Court held that –
 - Gratuitous loan or advance given by a company to a shareholder, who is the beneficial owner of shares holding not less than 10% of the voting power, would come within the purview of section 2(22)(e) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder.
 - 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).

61) 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?

❖ **Relevant Case –**

- CIT v. Ambassador Travels (P) Ltd. (2009) (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - Under section 2(22)(e), loans and advances made out of accumulated profits of a company in which public are not substantially interested to a beneficial owner of shares holding not less than 10% of the voting power or to a concern in which such shareholder has substantial interest is deemed as dividend. However, this provision would not apply in the case of advance made in the course of the assessee's business as a trading transaction.
 - 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.
 - Thus, 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).

62) 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?

❖ **Relevant Case –**

- CIT v. Manjoo and Co. (2011) (Kerala)

❖ **High Court's Decision –**

- The High Court held that –
 - The receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and thus, cannot be said to be "income earned" in business.
 - The receipt of the prize money is not in his capacity as a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source.
 - Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls.
 - Therefore, the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.

63) 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?

❖ **Relevant Case –**

- Pramod Mittal v. CIT (2013) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - Upon dissolution, the partnership firm ceased to exist. As per section 170(1), the partnership firm shall be assessed as such from 1st April of the previous year till the date of dissolution (i.e., 18th September, 2004). Thereafter, the income of the sole-proprietorship shall be taxable in the hands of the assessee as an individual.
 - Section 78(2) provides that only the person who has incurred the losses, and no one else, would be entitled to carry forward the same and set it off. An exception provided thereunder is in the case of succession by inheritance.
 - The exception given in section 78(2) is not applicable in the present case since the partnership firm was dissolved and ceased to continue. Taking over of business by a partner cannot be considered as a case of inheritance due to death as per the law of succession.
 - Therefore, 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. Hence, the assessee sole-proprietor is not entitled to set-off the loss of the erstwhile partnership firm against his income.

64) Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction u/s 80-IA be set off against income of another non-eligible business of assessee?

❖ **Relevant Case –**

- CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) (Kar.)

❖ **High Court's Decision –**

- The High Court held that –
 - It is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Thus, 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. Thereafter, section 70(1) comes into play, whereby assessee is entitled to set off the losses from one source against income from another source under same head of income.
 - Therefore, 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.

65) 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?

❖ **Relevant Case –**

- CIT v. Kiran Enterprises (2010) (HP)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 80-IA provides for deduction in respect of profit & gain derived from eligible business
 - 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.

66) Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?

❖ **Relevant Case –**

- CIT v. Orchev Pharma P. Ltd. (2013) (SC)
- Liberty India v. CIT (2009) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - DEPB / Duty drawback are incentives which flow from the schemes framed by the Central Government or from section 75 of the Customs Act, 1962. Section 80-IB provides for the allowing of deduction in respect of profits and gains derived from eligible business.
 - However, incentive profits are not profits derived from eligible business under section 80-IB. They belong to the category of ancillary profits of such undertaking.
 - Hence, Duty drawback receipts and DEPB benefits do not form part of the profits derived from the eligible business for the purpose of the deduction under section 80-IB.

67) Would grant of transport subsidy, interest subsidy and refund of excise duty qualify for deduction under section 80-IB?

❖ **Relevant Case –**

- CIT v. Meghalaya Steels Ltd. (2011) (Gauhati)
- CIT v. Gheria Oil Gramudiyog Workers Welfare Association (2011) (H.P)

❖ **High Court's Decision –**

- The Supreme Court, in **Liberty India v. CIT (2009)**, observed that –
 - Section 80-IB provides for deduction in respect of profits and gains “derived from the business” of the assessee. There should be a direct nexus between the generation of profits and gains and the source of profits and gains. Any other source, not falling within the first degree, can only be considered as ancillary to the business of the assessee.
 - The transport and interest subsidies were revenue receipts which were granted after setting up of the new industries and after commencement of production. The transport subsidy would have the effect of reducing the inward and outward transport costs. However, the subsidy had no direct nexus with the profits or gains derived by the assessee from its industrial activity and the benefit to the assessee was only ancillary to its industrial activity.
 - The subsidies were not directly relatable to the industrial activity of the assessee, and hence they did not fall within the first degree contemplated by the Act. Therefore, the subsidies could not be taken into account for purposes of deduction under section 80-IB.
 - However, 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. Therefore, the refund of excise duty had to be taken into account for purposes of section 80-IB.

68) Does income derived from sale of export incentive qualify for deduction u/s 80-IB?

❖ **Relevant Case –**

- CIT v. Jaswand Sons (2010) (P&H)

❖ **High Court's Decision –**

- The High Court held that –
 - The 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 u/s 80-IB.

69) Would the procurements of parts and assembling them to make windmill fall within the meaning of “manufacture” and “production” to be entitled to deduction u/s 80-IB?

❖ **Relevant Case –**

- CIT v. Chiranjeevi Wind Energy Ltd. (2011) (Mad.)

❖ **High Court’s Decision –**

- The Madras High Court held that –
 - The Supreme Court in the case of **India Cine Agencies v. CIT (2009)** held that –
 - The test to determine whether a particular activity amounts to "manufacture" or not is whether new and different goods emerge having distinctive name, use and character.
 - The Supreme Court in the case of **CIT v. Sesa Goa Ltd. (2004)** held that –
 - The word "production" or "produce" when used in comparison with the word "manufacture" means bringing into existence new goods by a process, which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products, which emerge in the course of manufacture of goods.
 - Therefore, 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 "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.

70) 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?

❖ **Relevant Case –**

- CIT v. Jyoti Plastic Works Private Limited (2011) (Bom.)

❖ **High Court’s Decision –**

- The High Court held that –
 - The expression "worker" is neither defined u/s 2 of the Income-tax Act, 1961, nor u/s 80-IB(2)(iv). Therefore, it would be reasonable to hold that the expression "worker" in section 80-IB(2)(iv) is referable to the persons employed by the assessee directly or by or through any agency (including a contractor) in the manufacturing activity carried on by the assessee.
 - The employment of ten or more workers is what is relevant and not the mode and the manner in which the workers are employed by the assessee.
 - Since, the condition of section 80-IB(2)(iv) had been fulfilled and therefore, the deduction under section 80-IB is allowable.

71) 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?

❖ **Relevant Case –**

- CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) (Delhi)

❖ High Court's Decision –

- The High Court held that –
 - With mere trial production, 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 manufacturer has been brought into existence and is fit for marketing.
 - 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 (i.e, to obtain registration of excise / sales-tax) is not material. With the sale of those articles, marketable quality was established.
 - As, the conditions stipulated in section 80-IB were fulfilled with the commercial sale of items in that assessment year and hence the five year period has to be reckoned from A.Y.1998-99

72) 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?

❖ Relevant Case –

- Praveen Soni v. CIT (2011) (Delhi)

❖ High Court's Decision –

- The Delhi High Court held that –
 - 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.

73) Where land inherited by three brothers is compulsorily acquired by the State Government, whether the resultant capital gain would be assessed in the status of "Association of Persons" (AOP) or in their individual status?

❖ Relevant Case –

- CIT v. Govindbhai Mamaiya (2014) (SC)

❖ Apex Court's Decision –

- The Apex Court held that –
 - As per section 4 of the Hindu Succession Act, 1956, income from the asset inherited by a son from his father has to be assessed as income of the son individually.
 - The Supreme Court in the case of **Meera & Co v. CIT (1997)** held that –
 - "Association of Persons" means an association in which two or more persons join in a common purpose or common action.
 - The Supreme Court in the case of **G. Murugesan & Bros. v. CIT (1973)** held that –
 - An association of persons could be formed only when two or more persons voluntarily combined together for certain purposes.

- In this case, the property in question came to the assessee's possession through inheritance i.e., by operation of law. It is not a case where any "association of persons" was formed by volition of the parties. Further, even the income earned in the form of interest is not because of any business venture of the three assessee's, but is the result of the act of the Government in compulsorily acquiring the said land. The basic test to be satisfied for making an assessment in the status of AOP is absent in this case.
- Therefore, the income from asset inherited by the legal heirs is taxable in their individual hands and not in the status of AOP.

74) 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 joint family under a release deed?

❖ **Relevant Case –**

- Commissioner of Income-tax v. D. L. Nandagopala Reddy (Individual) (2014) (Kar)

❖ **High Court's Decision –**

- The High Court held that –
 - The property originally belonged to Hindu Undivided Family (HUF). One of the members of the family (i.e., the assessee's father) went out of the joint family under a release deed and the remaining members continued to be the members of HUF. After the death of assessee's father & mother, the assessee, being adopted son, became the sole surviving co-parcener.
 - Therefore, 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 transfer would have been made to wife only by registered document.

75) 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?

❖ **Relevant Case –**

- Sudhir Nagpal v. Income-tax Officer (2012) (P & H)

❖ **High Court's Decision –**

- The High Court held that –
 - i). As regards the head of income under which rental income from plinths is assessable,
 - It is the income from property consisting of any building or land appurtenant thereto which is assessed under section 22 and not the income from renting out of open land or some kutchra plinth only.
 - Therefore, 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".

ii). As regards whether such rental income is assessable in the hands of the individual co-owners or in the hands of the Association of Persons,

- In order to assess individuals as “association of persons”, the individual co-owners should have joined their resources and thereafter, acquired property in the name of association of persons and the property should have been commonly managed.
- In this case, the co-owners had inherited the property from their ancestors and there was nothing to show that they had acted as an association of persons.
- Thus, the rental income from the plinths has to be assessed in the status of individual and not association of persons and consequently, section 167B would not be attracted.

76) Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?

❖ **Relevant Case –**

- Madras Gymkhana Club v. DCIT (2010) (Mad.)

❖ **High Court’s Decision –**

- The High Court held that –
 - 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.
 - Therefore, the interest earned is taxable.

77) 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?

❖ **Relevant Case –**

- Sind Co-operative Housing Society v. ITO (2009) (Bom)

❖ **High Court’s Decision –**

- The High Court held that –
 - The 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.

78) 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?

❖ **Relevant Case –**

- Indcom v. Commissioner of Income-tax (TDS) (2011) (Cal.)

❖ **High Court’s Decision –**

- The High Court held that –
 - In order to attract the provisions of the section 194E, the person should be a non-resident sportsperson or non-resident sports association or institution whose income is taxable as per the provisions of section 115BBA.
 - The umpires and the match referees can be described as professionals or technical persons, but they cannot be said to be either non-resident sportsmen or non-resident sports association or institution so as to attract the provisions of section 115BBA.
 - Though for the purpose of section 194J, match referees and umpires are considered as professionals, the tax deduction provisions thereunder are attracted only in case where the deductee is a resident individual, which is not so in the present case.
 - Therefore, although 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 u/s 194E.

79) 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?

❖ **Relevant Case –**

- CIT v. Anil Hardware Store (2010) (HP)

❖ **High Court’s Decision –**

- The High Court held that –
 - Payment of remuneration to working partners is allowed as deduction if it is authorized by the partnership deed and is subject to the overall ceiling limits specified in section 40(b)(v). On the first Rs. 3 lakh of book profit or in case of loss, the limit would be the higher of Rs. 150000 or 90% of book profit and on the balance of book profit, the limit would be 60%.
 - The CBDT had vide Circular No. 739 dated 25-03-1996 clarified that no deduction u/s 40(b)(v) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual partner or lays down manner of quantifying such remuneration.
 - Thus, since the partnership deed lays down the manner of quantifying such remuneration, the same would be allowed as deduction subject to the limits specified in section 40(b)(v).

80) Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB?

❖ **Relevant Case –**

- Joint CIT v. Rolta India Ltd. (2011) (SC)

❖ **Supreme Court’s Decision –**

- The Supreme Court held that –
 - Section 115JB is a self-contained code pertaining to MAT, and by virtue of sub-section (5) thereof, the liability for payment of advance tax would be attracted.
 - Therefore, if a company defaults in payment of advance tax in respect of tax payable under section 115JB, it would be liable to pay interest under sections 234B and 234C.

81) Can long-term capital gain exempted by virtue of section 54EC be included in the book profit computed under section 115JB?

❖ **Relevant Case –**

- N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) (Ker.)

❖ **High Court's Decision –**

- The High Court held that –
 - 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 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).

82) Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bar be entertained where assessment has not been completed?

❖ **Relevant Case –**

- Hemant Kumar Sindhi & Another v. CIT (2014) (All)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 132B(1)(i) uses the expression 'the amount of any existing liability' and 'the amount of the liability determined'. The words "existing liability" postulates a liability that is crystallized by adjudication; likewise, "a liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.
 - As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. He has to explain the nature and source of acquisition of the asset. It is not the ipse dixit of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material.
 - Thus, it is only when the liability is determined on the completion of assessment that it would stand crystallized and thereafter, 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. Thus, the writ petition was dismissed.

83) 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?

❖ **Relevant Case –**

- Kathiroom Service Co-operative Bank Ltd. v. CIT (CIB) (2014) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - The Assessing Officer has been empowered to requisition information which will be useful for or relevant to any enquiry or proceeding under the Income-tax Act, 1961 in the case of any person, only with the prior approval of the Director or the Commissioner.
 - 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 assessees requiring them to furnish information regarding account holders with cash transactions or deposits of more than Rs. 1 lakh.
 - Therefore, for enquiry u/s 133(6), the notices could be validly issued by assessing authority.

84) Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?

❖ **Relevant Case –**

- Sahara Hospitality Ltd. v. CIT (2013) (Bom.)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - The word “may” used in section 127(1) 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.
 - “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 a reasonable opportunity is in a given case and whether it is possible to give such an opportunity to the assessee or not.
 - Therefore, the authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.

85) 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?

❖ **Relevant Case –**

- Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act** after the expiry of the period specified under the Act, to avoid genuine hardship in any case.
 - Therefore, 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. So, the delay of one day in filing of the return has to be condoned.

86) Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?

❖ **Relevant Case –**

- CIT v. Govind Nagar Sugar Ltd. (2011) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - The provisions of section 80 and section 139(3), requiring the return of income claiming loss to be filed within the due date, applies to, inter alia, carry forward of business loss.
 - According to section 32(2), the unabsorbed depreciation becomes part of next year's depreciation allowance and is allowed to be set-off as per the provisions of the Income-tax Act, 1961, irrespective of whether the return of earlier year was filed within due date or not.
 - Therefore, 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.

87) Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?

❖ **Relevant Case –**

- Orissa Rural Housing Development Corpn. Ltd. v. ACIT (2012) (Orissa)

❖ **High Court's Decision –**

- The Orissa High Court held that –
 - 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. Further, the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.

88) 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?

❖ **Relevant Case –**

- Smt. A. Kowsalya Bai v. UOI (2012) (Kar.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per the provisions of section 139A, inter alia, a person whose total income does not exceed the maximum amount not chargeable to income-tax is not required to apply to the Assessing Officer for the allotment of a permanent account number (PAN).

- The provisions of section 139A are contradictory to section 197A, since assessee whose income was less than the maximum amount not chargeable to income-tax were not required to hold PAN, whereas their declaration furnished u/s 197A was not accepted by the bank or financial institution unless PAN was communicated as per the provisions of section 206AA.
- In order to avoid undue hardship caused to such persons, 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 u/s 197A. Section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.

89) Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?

❖ Relevant Case –

- Aventis Pharma Ltd. v. ACIT (2010) (Bom.)

❖ High Court's Decision –

- The High Court held that –
 - The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment.
 - The existence of tangible material is essential to safeguard against an arbitrary exercise of this power.
 - In the given case, 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.

90) 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)?

❖ Relevant Case –

- ACIT v. ICICI Securities Primary Dealership Ltd. (2012) (SC)

❖ Supreme Court's Decision –

- The Supreme Court held that –
 - 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.
 - Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and thus, the order of re-opening the assessment is not valid.

91) 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 the basis of which the notice was issued ceased to exist?

❖ **Relevant Case –**

- Delhi High Court ruling in *Ranbaxy Laboratories Ltd. v. CIT* (2011)

❖ **Issue –** Whether the Assessing Officer can make an assessment on the basis of an issue which came to his notice during the course of assessment, where the issues, which originally formed the basis of issue of notice u/s 148, were dropped in its entirety.

❖ **High Court’s Decision –**

- The High Court held that –
 - As per section 147, the Assessing Officer may assess or reassess such income **and also** any other income chargeable to tax which has escaped assessment and which comes to his notice in the course of proceedings. The word “and also” used in section 147 are of wide amplitude.
 - The correct interpretation of the Parliament would be to regard the words '**and also**' as being “conjunctive and cumulative with” and not “in alternative to” the first part of the sentence, namely, “the Assessing Officer may assess and reassess such income”. Hence, the language is indicative of the position that the assessment or reassessment must be in respect of the income, in respect of which the Assessing Officer has formed a reason to believe that the same has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment.
 - Therefore, 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 as having escaped assessment. If he intends to do so, a fresh notice u/s 148 would be necessary.

❖ **Relevant Case –**

- Punjab & Haryana High Court ruling in *CIT v. Mehak Finvest P Ltd* (2014)

❖ **Issue –** Whether an addition can be made in reassessment when the original reasons on the basis of which notice for reassessment was issued did not survive.

❖ **High Court’s Decision –**

- The High Court held that –
 - Explanation 3 to section 147 nowhere postulates or contemplates that the Assessing Officer cannot make any additions on any other ground unless some addition is made on the basis of the original ground for which reassessment proceeding was initiated.
 - It cited the dismissal of special leave petition (SLP) against the High Court ruling in **Majinder Singh Kang v. CIT (2012)** by the Supreme Court on 19.08.2011 as the binding precedent. In which, the High Court held that reassessment can be made on the basis of additional grounds, even though the original reason forming the basis of issue of notice did not survive.

- Therefore, 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.

92) Does the finding or direction in an appellate order that income relates to a different assessment year empower reopening of assessment for that assessment year, irrespective of the expiry of the six year time limit?

❖ **Relevant Case –**

- CIT v. PP Engineering Work (2014) (Del)

❖ **High Court's Decision –**

- The High Court held that –
 - Under section 149(1)(b), the time limit for issue for notice under section 148 is six years from the end of the relevant assessment year, where the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs.1 lakh or more for that year.
 - Section 150(1) states that notwithstanding anything contained in section 149, notice u/s 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation or to give effect to any finding contained in an appellate or revisionary order.
 - Explanation 2 to section 153 provides that where by an order referred to in section 250, 254, 260, 262, 263 or 264, any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.
 - Therefore, in view of the order of the Tribunal that the credit entries related to the earlier assessment year i.e., A.Y.2000-01, the Assessing Officer initiated reassessment proceedings u/s 147 by issue of notice u/s 148 for the year and passed an order dated 29/12/2009 making an addition of Rs.32 lakhs. Thus, by virtue of section 150 read with Explanation 2 to section 153, the said order was not barred by limitation.

93) Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and High Court ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts?

❖ **Relevant Case –**

- Allanasons Ltd v. Dy. CIT (2014) (Bom)

❖ **High Court's Decision –**

- The High Court held that –
 - It is well settled in terms of the proviso to section 147, that where any assessment is sought to be opened beyond a period of four years from the end of the relevant assessment year, two conditions have to be fulfilled cumulatively.
 - i). There must be reason to believe that income chargeable to tax has escaped assessment.
 - ii). Such escapement of income should have arisen due to failure on the assessee's part to fully and truly disclose all material facts required for the assessment.

- Therefore, a subsequent decision of Tribunal or High Court by itself is not adequate for reopening the assessment completed earlier under section 143(3) unless there is a failure on the part of the assessee to disclose complete facts.

94) Is recording of satisfaction and quantification of escaped income a pre-condition for issuing notice under section 148 after 4 years from the end of the relevant assessment year?

❖ **Relevant Case –**

- Amarnath Agrawal v. CIT (2015) (All)

❖ **High Court's Decision –**

- The High Court observed that –
 - Two distinct conditions must be satisfied for assuming jurisdiction to issue a notice u/s 148 after a period of 4 years viz. (i) escapement of income; and (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.
 - U/s 149(1)(b), it is imperative for the Assessing Officer, in his reasons, to state that escaped income is likely to be Rs.1 lakh or more. This is an essential ingredient for seeking approval and the basis on which satisfaction is to be recorded by the competent authority u/s 151.
 - Since, the reasons recorded by the Assessing Officer did not indicate any failure on the part of the assessee to disclose fully and truly all material facts at the time of assessment; it also did not indicate that the quantum of escapement of income exceeds Rs. 1 lakh. Therefore, the issue of notice under section 148 after the four year time period was not valid.

95) 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?

❖ **Relevant Case –**

- H. K. Buildcon Ltd. v. Income-tax Officer (2011) (Guj.)

❖ **High Court's Decision –**

- The Gujarat High Court held that –
 - The Apex Court in **CIT v. Kelvinator of India Ltd. (2010)** held that –
 - The Assessing Officer has the power only to reassess and not to review. Reassessment has to be based on fulfillment of certain precondition and if the concept of change of opinion is removed, then, in the garb of reopening the assessment, review would take place. Further, one must treat the concept of change of opinion as an in-built test to check abuse of power by the Assessing Officer.
 - Since, 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.
 - Therefore, the notice of reassessment was not valid.

96) 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 u/s 143(2)?

❖ **Relevant Case –**

- CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. (2011) (P&H)

❖ **High Court's Decision –**

- The Punjab and Haryana High Court held that –
 - The Delhi High Court in **CIT v. Punjab National Bank (2001)** held that –
 - Rectification of an intimation cannot be made after issuance of notice u/s 143(2) and during the pendency of proceedings u/s 143(3).
 - If any change was permitted to be effected, the same can be done in the assessment u/s 143(3) and not by exercising the power u/s 154 to rectify the intimation issued u/s 143(1)
 - The scope of proceedings under section 143(2) is wider than the power of rectification of mistake apparent from record under section 154.
 - Hence, 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, proceedings u/s 154 for rectification of intimation u/s 143(1) cannot be initiated after issuance of notice u/s 143(2) by the Assessing Officer to the assessee.

97) Would the doctrine of merger apply for calculating the period of limitation u/s 154(7)?

OR

The issue under consideration is whether the time limit of 4 years as per section 154(7) would apply from the date of original assessment order or the order of the Appellate Authority.

❖ **Relevant Case –**

- CIT v. Tony Electronics Limited (2010) (Del.)
- Hind Wire Industries v. CIT (1995) (SC)

❖ **High Court's Decision-**

- 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.

98) Should the four year time limit for rectification of order by the Tribunal u/s 254(2) be reckoned from the date of its order or from the date of receipt of order by the assessee?

❖ **Relevant Case –**

- Peterplast Synthetics P Ltd v. Asstt. CIT (2014) (Guj)

❖ **High Court's Decision –**

- The Gujarat High Court held that –
 - The Bombay High Court in **Petlad Bulakhidas Mills Co Ltd v. Raj Singh (1959)** held that –
 - The expression ‘order’ means an order, of which the affected party has actual or constructive notice. The right to make an application for revision is given to an assessee against an order, and that right can only be effectively exercised if the party affected had knowledge, either actual or constructive, of that order.
 - Thus, the right of appeal could be exercised only when the party affected by such order has knowledge of the order and hence, the limitation would start only from that date.
 - Therefore, 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.

99) 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?

❖ **Relevant Case –**

- Samsung India Electronics P. Ltd. v. DCIT (2014) (Del.)

❖ **High Court’s Decision –**

- The High Court held that –
 - The Apex court in the case of **GKN Driveshafts (India) Ltd. v. ITO (2003) (SC)**, held that –
 - When a notice under section 148 is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitled to file objections to issuance of notice and Assessing Officer is bound to dispose of the objections by passing a speaking order.
 - Thus, it will not be appropriate and proper to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.

100) Should time limit u/s 263 to be reckoned with reference to the date of assessment order or the date of reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?

Or

The issue before the High Court was whether the revision under section 263 is barred by limitation in view of the fact that the issues dealt with therein were not the subject matter of reassessment.

❖ **Relevant Case –**

- CIT v. Lark Chemicals Ltd (2014) (Bom)

❖ **High Court’s Decision –**

- The High Court held that –
 - The Apex Court in the case of **CIT v. Alagendran Finance Ltd. (2007)** held that –
 - In such cases, the doctrine of merger would not apply and the period of limitation would commence from the date of original assessment and not from the date of reassessment.
 - In this case, the revision proposed under section 263 was in respect of issues, other than the issues dealt with in the order of reassessment. The time period for revision u/s 263 is two years from the end of the financial year in which order sought to be revised was passed.
 - Therefore, the jurisdiction under section 263 could not be assumed on issues which were not the subject matter of issues dealt with in the order of reassessment but were part of the original assessment, for which the period of limitation expired long ago.

101) Would the period of limitation for an order passed u/s 263 be reckoned from the original order passed by Assessing Officer u/s 143(3) or from order of reassessment passed u/s 147, where subject matter of revision is different from subject matter of reassessment u/s 147?

❖ **Relevant Case –**

- CIT v. ICICI Bank Ltd. (2012) (Bom.)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - The order of assessment u/s 143(3) allowed deduction u/s 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 u/s 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.
 - Thus, the period of limitation in respect of the order of the Commissioner u/s 263 with regard to a matter which does not form the subject matter of reassessment shall be reckoned from the date of original order u/s 143(3) and not from the date of reassessment order u/s 147.

102) Can an assessee file a revision petition u/s 264, if revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified u/s 139(5) on account of the error coming to notice of assessee after the specified time limit?

❖ **Relevant Case –**

- Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) (Bom.)

❖ **High Court's Decision:**

- The High Court held that –
 - The entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable.
 - The Commissioner of income-tax had committed a fundamental error in proceeding on the basis that no deduction on account of dividend income and long-term capital gains u/s 10 was claimed from the total income, without considering that the assessee had specifically sought to exclude the same as is evident from the entries in relevant Schedule. Therefore, this was an error on the face of the order and hence, the same was not sustainable.

- Thus, the order of Commissioner has been set aside and remanded the matter for fresh consideration.
- Further directed the Assessing Officer to consider the rectification application filed by assessee u/s 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.

103) 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?

❖ **Relevant Case –**

- CIT v. Pruthvi Brokers & Shareholders (2012) (Bom.)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - The Supreme Court, in the case of **Jute Corporation of India Ltd. v. CIT (1991)** and **National Thermal Power Corporation. Ltd v. CIT (1998)** held that –
 - An assessee is entitled to raise additional claims before the appellate authorities. The appellate authorities have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion.
 - The Apex Court in the case of **Addl. CIT v. Gurjargravures (P.) Ltd. (1978)** held that –
 - In case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same.
 - Therefore, 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.

104) Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?

❖ **Relevant Case –**

- CIT v. Earnest Exports Ltd. (2010) (Bom.)

❖ **High Court's Decision –**

- The High Court held that –
 - The power under section 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters.
 - Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection.

- Therefore, the Tribunal, while dealing with the application u/s 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred u/s 254(2).

105) 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?

❖ Relevant Case –

- Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) (Delhi)(FB)

❖ High Court's Decision –

- The Delhi High Court held that –
 - The Apex Court in **Honda Sael Power Products Ltd. v. CIT (2007)** held that-
 - The Tribunal's u/s 254(2) recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review.
 - One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of Tribunal to set it right.
 - Therefore, the Tribunal, while exercising the power of rectification u/s 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

106) Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?

❖ Relevant Case –

- Deepak Kumar Garg v. CIT (2010) (MP)

❖ High Court's Decision –

- The High Court held that –
 - The power to review is not an inherent power and must be conferred by law specifically by express provision or by necessary implication. The appellate jurisdiction of the High Court carries with it statutory limitations under the statute, unlike the extraordinary powers which are enjoyed by the Court under article 226 of the Constitution of India.
 - Therefore, as per 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.

107) 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?

❖ **Relevant Case –**

- MAK Data P. Ltd. v. CIT (2013) (SC)

❖ **Apex Court's Decision –**

- The Apex Court held that –
 - The assessee had stated that the surrender of the additional sum was with a view to avoid litigation, to buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Income-tax Department. These types of defenses are not recognized under the statute.
 - Further, it is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year.
 - Since, surrender of income in this case is not voluntary, as 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. Therefore, levy of penalty is correct in law.

108) Would making an incorrect claim in the return of income per se 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?

❖ **Relevant Case –**

- CIT v. Reliance Petro Products Pvt. Ltd. (2010) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - In order to attract the penal provisions of section 271(1)(c), there has to be concealment of the particulars of income or furnishing inaccurate particulars of income.
 - Therefore, 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 u/s 271(1)(c).
 - Further, 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.

109) 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)?

❖ **Relevant Case –**

- CIT v. Amit Jain (2013) (Delhi)
- CIT v. Reliance Petro Products Pvt. Ltd. (2010) (SC)

❖ **High Court's Decision –**

- The High Court 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).

110) 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?

❖ **Relevant Case –**

- CIT v. Celetronix Power India P. Ltd. (2013) (Bom.)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - For imposing penalty under section 271(1)(c), there should be concealment of income or furnishing of inaccurate particulars of income, which were missing in this case.
 - Therefore, no penalty under section 271(1)(c) should be levied, since 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.

111) Can penalty under section 271(1)(c) for concealment of income be imposed in a case where the assessee has raised a debatable issue?

❖ **Relevant Case –**

- CIT v. Indersons Leather P. Ltd. (2010) (P&H)

❖ **High Court's Decision –**

- The High Court held 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.

112) Is concealment penalty leviable when the High Court admits the quantum appeal as involving substantial question of law?

❖ **Relevant Case –**

- CIT v. Nayan Builders & Developers (2014) (Bom)

❖ **High Court's Decision –**

- The High Court held that –
 - The issue of quantum addition was admitted by the High Court since it involved substantial question of law. When the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable.
 - Thus, when the quantum proceeding is admitted by the High Court, it amounts to a debatable issue and hence, concealment penalty is not leviable u/s 271(1)(c).

113) Is penalty under section 271D imposable for cash loans/deposits received from partners?

❖ **Relevant Case –**

- CIT v. Muthoot Financiers (2015) (Del)

❖ **High Court's Decision –**

- The High Court held that –
 - The Apex Court in the case **CIT v. R.M. Chidambaram Pillai (1977)** held that –
 - The firm is not a legal person even though it has some of the attributes of a personality. 'Firm' is a collective noun, a compendious expression to designate an entity not a person.

- The Madras High Court in case of **CIT v. Sivakumar. V (2013)** held that –
 - There is no separate legal entity for the partnership firm and the partner is entitled to use the funds of the firm.
- The Rajasthan High Court In **CIT v. Lokhpat Film Exchange (Cinema) (2008) (Raj)**, held that –
 - A partnership firm not being a juristic person, the inter se transaction between the firm and partners are not governed by the provisions of sections 269SS and 269T.
- The position that emerges is that section 269SS would not be violative when money is exchanged inter se between the partners and the firm.
- In this case, there was no dispute as regards the money brought in by the partners of the assessee-firm. The source of money was also not doubted. The transaction was bona fide and not aimed to avoid any tax liability. The credit worthiness of the partners and genuineness of the transactions coupled with relationship between the ‘two persons’ and two different legal interpretations put forward, could constitute a reasonable cause in a given case for not invoking sections 271D /271E read with section 273B.
- Thus, the issue being debatable one, but there was reasonable cause for not levying penalty.

114) 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?

❖ **Relevant Case –**

- CIT v. Triumph International Finance (I.) Ltd. (2012) (Bom.)

❖ **High Court’s Decision:**

- The High Court held that –
 - The obligation to repay the loan or deposit by account payee cheque/bank draft as specified in section 269T is mandatory in nature. The contravention of the said section will attract penalty under section 271E. Since section 269T does not make a distinction between a bonafide or a non-bonafide transaction. It merely puts a condition that in case a loan or deposit is repaid, it should be by way of an account payee cheque/draft.
 - However, the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan was received by the assessee. Also, neither the genuineness of the receipt of loan nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. Therefore, it cannot be said that the whole transaction was entered into to avoid tax. This is accepted as a reasonable cause under section 273B.
 - Since, the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries and therefore, penalty u/s 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, therefore, the assessee has shown reasonable cause for the failure u/s 269T, and thus, as per the provisions of section 273B, no penalty u/s 271E could be imposed on the assessee for contravening the provisions of section 269T.

115) Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?

❖ **Relevant Case –**

- Union of India v. Bhavcha Machinery and Others (2010) (MP)

❖ **High Court's Decision –**

- The High Court held 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. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them.
 - Since, there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings u/s 276CC are not attracted in such case.

116) Can the Assessing Officer suo moto assume jurisdiction to declare sale of property as void under section 281?

❖ **Relevant Case –**

- Dr. Manoj Kabra v. ITO (2014) (All)

❖ **High Court's Decision –**

- The High Court held that –
 - The Supreme Court in **TRO v. Gangadhar Vishwanath Ranade (Decd.) (1998)** held that –
 - Section 281 of Income-tax Act 1961 is only a declaratory provision and not an adjudicatory provision entitling the income-tax authority to declare a document as a void document.
 - The Income-tax Act, 1961, does not prescribe any adjudicatory machinery for deciding any question which may arise under section 281.
 - In order to declare a transfer as fraudulent u/s 281, an appropriate proceeding in accordance with law was required to be taken u/s 53 of the Transfer of Property Act, 1882. The Assessing Officer is required to file a suit for declaration to the effect that the transaction of transfer was void u/s 281 of the Income-tax Act; but he himself cannot assume jurisdiction to declare the sale deed as void.
 - Thus, the Assessing Officer has no jurisdiction u/s 281 to suo moto declare the sale as void.

117) 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?

❖ **Relevant Case –**

- CIT v. V. Sivakumar (2013) (Mad.)

❖ **High Court's Decision –**

- The High Court held that –
 - There is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm.

- Being a partner, the assessee had withdrawn amounts from the firms and there were no reasons to doubt the genuineness of the transactions. So, the assessee has acted bona fide and that 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.

118) Do the tips collected by hotel and disbursed to employees constitute salary to attract the provisions for tax deduction at source under section 192?

❖ **Relevant Case –**

- CIT (TDS) v. ITC Ltd. [2011] (Del.)

❖ **High Court's Decision –**

- The High Court held that –
 - The tips would constitute income within the meaning of section 2(24) and thus, taxable u/s 15. It was obligatory upon the company to deduct tax at source from such payments u/s 192.
 - In this case, the assessee-company had not deducted tax at source on tips under a bona fide 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 assessees in the past.
 - Therefore, since no dishonest intention could be attributed to the assessees, they could not be made liable for levy of penalty as envisaged under section 201.
 - However, payment of interest under section 201(1A) is mandatory. The payment of interest under that provision is not penal. Therefore, there was no question of waiver of such interest on the basis that the default was not intentional or on any other basis.

119) Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?

❖ **Relevant Case –**

- UCO Bank v. Dy. CIT (2014) (Del)

❖ **High Court's Decision –**

- The High Court held that –
 - In the normal course, the bank is obliged to deduct tax at source in respect of any credit or payment of interest on deposits made with it. However, in this case, the deposits kept with the bank under the orders of the court were, funds which were in the custody of the court.
 - In the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The expression “payee” under section 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon.
 - Thus, he cannot be considered as a ‘payee’ for the purposes of section 194A. The credit by bank in the name of the Registrar General would not attract the provisions of section 194A.

120) Where the assessee fails to deduct tax at source u/s 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?

❖ **Relevant Case –**

- CIT v. Hindustan Lever Ltd. (2014) (Kar.)

❖ **High Court's Decision –**

- The High Court held that –
 - As per section 194B, the person responsible for paying to any person any income by way of winnings from any lottery in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.
 - A combined reading of sections 194B and 201 shows that if any such person fails to "deduct" the whole or any part of the tax or after deducting, fails to pay the tax, then such person shall be deemed to be an assessee in default in respect of such tax.
 - The provisions contained in these sections do not cast any duty to deduct tax at source where the winnings are wholly in kind. If the winnings are wholly in kind, there cannot be any deduction of tax at source. The word 'deduction' postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter.
 - 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 u/s 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but extend upto seven year and with fine. Thus, proceedings u/s 201 cannot be initiated against the assessee.

121) Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?

❖ **Relevant Case –**

- Ajmer Vidyut Vitran Nigam Ltd., In re (2013) (AAR)

❖ **AAR's Decision –**

- The AAR held that –
 - Considering the definition of fees for technical services u/s 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon u/s 194J.
 - As regards SLDC charges, the 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.

122) 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?

OR

Issue: The principal issue in this case is whether stamp vendors are agents of the State Government who are being paid commission or brokerage or whether the sale of stamp papers by the Government to the licensed vendors is on “principal-to-principal” basis involving a “contract of sale”.

❖ **Relevant Case –**

- CIT v. Ahmedabad Stamp Vendors Association (2012) (SC)

❖ **Supreme Court’s Decision –**

- The Supreme Court held that –
 - The Gujarat Stamp Supply and Sales Rules, 1987 contemplates that the licensed vendor, while taking delivery of stamp papers from the Govt. offices, is purchasing the stamp papers.
 - Entry 84 in Schedule I to the Gujarat Sales Tax Act, 1969 specifically exempts sale of stamp papers by the licensed vendors from sales-tax. The question of levy of sales tax arises only because the licensed vendors themselves sell the stamp papers on their own and not as agents of the State Government.
 - Therefore, although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on “principal to principal” basis and there is no “contract of agency” at any point of time.
 - When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities can be termed as service in the course of buying and selling of goods. Therefore, discount on purchase of stamp papers does not fall within the expression “commission or brokerage” to attract the provisions of tax deduction at source u/s 194H.
 - 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.

123) 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?

❖ **Relevant Case –**

- CIT v. Intervet India P Ltd (2014) (Bom)

❖ **High Court’s Decision –**

- The High Court held that –
 - The relationship between the assessee and the distributors / stockists was that of principal to principal. No service was offered by the assessee to them except a discount under the product discount scheme/product campaign scheme to buy the assessee’s product.

- 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 Explanation (i) to section 194H.
- Therefore, such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.

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?

❖ **Relevant Case –**

- Bharti Cellular Ltd. v. ACIT (2013) (Cal.)
- Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011)

❖ **High Court's Decision –**

- The High Court held that –
 - The franchisee acted on behalf of the assessee-telecom company for selling start-up pack, prepaid recharge coupons to the customer.
 - Therefore, the relationship between the assessee and the franchisee is essentially that of principal and agent, though the nomenclature used is “franchisee”. The franchisees were, agents of the assessee, getting a fixed percentage of commission, in the form of discount.
 - 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?

❖ **Relevant Case –**

- CIT v. Mother Dairy India Ltd. (2013) (Delhi)

❖ **High Court's Decision –**

- The High Court held that –
 - The terms of the agreement clearly indicated that the relationship between the assessee and the concessionaire was on a principal to principal basis.
 - The issue had to be decided on the basis 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. Thus, the relationship between the assessee and concessionaire is a Principal to Principal relationship.
 - Therefore, 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?

❖ **Relevant Case –**

- CIT v. Qatar Airways (2011) (Bom.)

❖ **High Court's Decision –**

- The Bombay High Court held that –
 - The difference between the published price and minimum fixed commercial price cannot be taken as additional special commission in the hands of the agents, since the published price was the maximum price and Airline Company had granted permission to the agents to sell the tickets at a price lower than the published price.
 - In order to deduct tax at source, the exact income in the hands of the agents must necessarily be ascertainable by Airline Company. It would be impracticable and unreasonable to expect the airline company to get feedback from its numerous agents in respect of each ticket sold.
 - Thus, 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.

❖ **Note –**

- The Delhi High Court in case of **CIT v. Singapore Airlines Ltd. (2009) (Delhi)**, held that –
 - The billing analysis statement clearly indicated the extra commission in the form of special or supplementary commission that was paid to the travel agent with reference to deal code.
 - Therefore, in that case, the supplementary commission in the hands of the agent was ascertainable by the airline company and hence the airline company was liable to deduct tax at source on the same under section 194H.

127) Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?

❖ **Relevant Case –**

- Indus Towers Ltd v. CIT (2014) (Del)

❖ **High Court's Decision –**

- The High Court held that –
 - It was the intention of the parties to use the technical and specialized equipment maintained by the assessee. The towers were the neutral platform without which the mobile operators could not operate. Each mobile operator has to carry out this activity, by necessarily renting premises and installing the same equipment. The dominant intention was the use of equipment or plant or machinery and the use of premises was only incidental.
 - 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.

- Therefore, 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.
- Thus, tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.

128) 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?

❖ **Relevant Case –**

- CIT v. Senior Manager, SBI (2012) (All.)

❖ **High Court's Decision –**

- 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 provisions of section 26.
 - Therefore, 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.

129) 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?

❖ **Relevant Case –**

- CIT v. Japan Airlines Co. Ltd. (2010) (Del.)
- United Airlines v. CIT (2006)

❖ **High Court's Decision –**

- The Delhi High Court held that –
 - Rent as defined u/s 194 I had a wider meaning than “rent” in common parlance. It included any agreement or arrangement for use of land.
 - Thus, when the wheels of the aircraft coming into an airport touch the surface of the airfield, use of the land of the airport immediately begins.
 - Similarly, for parking the aircraft in that airport, again, there is use of the land.
 - Therefore, 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.

❖ **Note –**

- The Madras High Court in **CIT v. Singapore Airlines Ltd. (2012)**, expressed a contrary view and held that –
 - The payment made for the use of any land or building and the land appurtenant thereto under lease or sub-lease or tenancy or under any agreement or arrangement with reference to the use of the land, would be "rent" as per Explanation to section 194-I. Therefore, only if the agreement or arrangement has the characteristics of lease or sub-lease or tenancy for systematic use of land, the charges levied would fall under the definition of 'rent' u/s 194-I.
 - The charges are governed by various considerations on offering facilities to meet the requirement of passenger's safety and on safe landing and parking of the aircraft. Depending on traffic, there is a shared use of the airfield by airlines. Thus, the charges levied are in the nature of fee for the services offered rather than in the nature of rent for the use of the land.
 - The use of the runway by an aircraft cannot be different from the analogy of a road used by any vehicle or any other form of transport. If the use of tarmac of airport could be characterized as use of land, the use of a road too would be a use of land.
 - Thus, going by the nature of services offered by the Airport Authority in respect of landing and parking charges, collected from the assessee, there is no ground to accept that the payment would fit in with the definition of "rent" as given under section 194-I.
 - Therefore, the charges would get attracted under the provisions of section 194C.

130) 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?

❖ **Relevant Case –**

- CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) (Guj.)
- CIT (TDS) v. Swayam Shipping Services (P) Ltd. (2011) (Guj.)

❖ **High Court's Decision –**

- The High Court held that –
 - The assessee had given contracts to the parties for the transportation of goods and had not taken machinery and equipment on rent. The transactions being in the nature of contracts for shifting of goods from one place to another would be covered as works contracts, thereby attracting the provisions of section 194C.
 - Therefore, 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 not be applicable.

131) Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?

❖ **Relevant Case –**

- DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014) (Bom)

❖ **High court's Decision –**

- The High Court held that –
 - In so far as reimbursement of expenses is concerned, it has been verified with supporting documents that it was towards their air travel on which no tax was required to be deducted. The income of the agent did not arise from the personal activities in the contracting status of an entertainer or artist. He only contacted the artistes and negotiated with them for performance in India. He was concerned only with the services rendered outside India.
 - Therefore, as 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.

132) Can the Tax Recovery Officer (TRO) adjudicate disputes regarding quantum of liability between the garnishee (Petitioner Company, in this case) and the defaulting company, by exercising his powers under section 226(3)?

❖ **Relevant Case –**

- Uttar Pradesh Carbon & Chemicals Ltd v. TRO (2014) (All.)

❖ **High Court's Decision –**

- The High Court held that –
 - The powers under section 226(3) could not be invoked for effecting a recovery of a claim which is disputed. The condition precedent for exercising the power under section 226(3) is that the money is due and payable by the person concerned to the assessee.
 - Section 226(3) does not give any power to the Assessing Officer or the TRO to adjudicate disputes relating to the quantum of liability between the garnishee and the defaulting company, which is a matter within the purview of the Civil Courts.
 - The Apex Court in **Beharilal Ramcharan v. ITO (1981)** held that –
 - Under section 226(3)(vi), a limited enquiry could only be conducted by the TRO and that too, by following the principles of natural justice. When the claim of amount is disputed by the debtor, the TRO cannot proceed to adjudicate the dispute between the parties i.e., the defaulting company and its debtor, for recovery of tax.
 - Thus, the order of the TRO treating the petitioner as an assessee in default for the amount alleged to be owed by it to the defaulting company, cannot be sustained.