S. No	QUESTION	CASE PARTIES	JUDGEMENT
Ch 01: Basic Concepts			
1.	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?	CIT v. M. Venkateswara Rao (2015 T & AP)	The HC, accordingly, held that the view taken by the AO that the partnership firm has to explain the source of income of the partners as regards the amount contributed by them towards capital of the firm, in the absence of which the same would be treated as the income of the firm, was not tenable.
2.	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?	CIT v. Saurashtra Cement Ltd. (2010 SC)	The Apex Court affirmed the decision of the HC. Held that: "damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.
Ch 02: Residential Status & Scope of Income			
3.	**Can consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi)?**	**CIT v. Alcatel Lucent Canada (2015 Delhi HC)** **RTP - May 16**	The HC concurred with the decision of the Tribunal holding that where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).
Ch 03: Incomes not forming part of Total Income			
4.	**Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?**	**Queen's Educational Society v. CIT (2015 SC)** **RTP - May 16**	Based on the principles* and tests, the Apex Court upheld the Tribunal's view that the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder.

** The Apex Court, after analyzing the legal provisions and precedents, summed up the law common to section 10(23C)(iiiad)/(vi):*
(a) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;
(b) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;
(c) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;
(d) If after meeting expenditure, surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; and
(e) ***The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.***

5.	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?	DIT (Exemption) v. Khetri Trust (2014 Delhi HC)	Based on the factual findings, elucidated and affirmed by the CIT (Appeals) and the Tribunal, the HC held that there was no violation of section 11(5) in this case.
6.	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?	DIT (Exemptions) v. Ramoji Foundation (2014 AP)	Accordingly, in this case, the HC held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under section 12AA.
<u>Ch 05: Income from HP</u>			
7.	Whether the rental income derived from the unsold flats which are shown as stock-in-trade in the books of the assessee would be taxable under the head „Profits and gains from business or profession‟ or under the head „Income from house property‟, in a case where the actual rent receipts formed the basis of computation of income?	New Delhi Hotels Ltd. v. ACIT (2014 Delhi HC]	In this case, the Delhi HC followed its own decision in the case of CIT vs. Discovery Estates Pvt. Ltd / CIT vs. Discovery Holding Pvt. Ltd., wherein it was 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".
<u>Ch 06: PGBP</u>			
8.	**Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - "Income from house property" or "profits and gains of business or profession"?**	**CIT v. NDR Warehousing P Ltd (2015 Madras HC)** **RTP - May 16**	**The HC observed that the CIT (Appeals) as well as the Tribunal had not only gone into the objects clause of the memorandum of the assessee but also individual aspects of the business to come to the conclusion that it was a case of warehousing business, and, therefore, the income would fall under the head "PGBP".** **Accordingly, the HC held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head "PGBP" and not under "HP Income".**
9.	**Can section 41(1) be invoked in respect of long standing credit balances of sundry creditors admitted as liability in the Balance Sheet?**	**Principal CIT v. Matruprasad C.Pandey (2015 Gujrat HC)** **RTP - May 16**	**The HC held that addition on the ground that the amounts were outstanding for several years cannot be made under section 41(1) unless and until it is found that there was remission or cessation of liability that too during the previous year, relevant to the assessment year in question. Even if the credit balances are outstanding for long time, such balances cannot be subjected to tax by invoking section 41(1), unless there is a remission/cessation of liability in the year under question.**

10.	**Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of interest and principal, has been offered to tax under section 41(1), can the assesseee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?**	**CIT v. KLN Agrotechs (P) Ltd (2015) 375 ITR 301 (Kar.)** **RTP - May 16**	**The HC concurred with the Tribunal's view that if out of the total sum of ` 256.54 lakhs which has been offered and subjected to tax by the assessee in its return, the amount of unpaid interest of ` 193.96 lakhs is deducted then the waived principal sum would come to 62.58 lakhs (i.e., `441.30 lakhs minus 378.72 lakhs), which is the amount which ought to have been taxed under section 41(1).** **Based on the above reasoning, the HC held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax, would come to the same.**
11.	Is expenditure incurred for construction of transmission lines by the assessee for supply of power to UPPCL by the assessee deductible as revenue expenditure?	Addtl. CIT v. Dharmpur Sugar Mill (P) Ltd (2015 Allahabad HC)	Following the principle of law laid down by the SC in Empire Jute Mills‟ case, the Allahabad HC, in this case, held that the expenditure which was incurred by the assessee in the laying of transmission lines was clearly on the revenue account. 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.
12.	Under which head 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?	Tamil Nadu Tourism Dev Corpn Ltd v. Dy. CIT (2014 Madras HC)	The HC, accordingly, held that the income earned by the assessee by way of franchisee fee is in the nature of business income and not income from house property
13.	Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?	CIT v. TVS Motors Ltd (2014 Madras HC)	Applying the rationale of above decisions, the HC held that "moulds & dies" are not independent of plant and machinery but are parts of plant and machinery. Once the dies are worn out, they had to be replaced so that the machine can produce the product according to business specifications. Thus, the expenditure incurred by the assessee towards replacement of parts of machinery to ensure its performance without bringing any new asset or advantage, is eligible for deduction as „current repairs‟ under section 31.
14.	Is guarantee commission paid by a company to its employee directors deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company?	Controls & Switchgear Contractors Ltd v. Dy.CIT (2014 Delhi HC)	The HC observed that the directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. The assessee-company passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company. The assessee-company, in its commercial wisdom, had agreed to pay a commission for furnishing of such guarantees by the director employees, which cannot be faulted. In such a case, the AO only has to determine whether the transactions are real and genuine. It is not within his jurisdiction to impose his views as regards the necessity or the quantum of expenditure undertaken by the assessee. As regards section 36(1)(ii), the

	recipient directors were not entitled to receive the amount as commission in lieu of bonus or dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders. The HC, therefore, set aside the Tribunal‟s order and directed rectification of the disallowance of amount paid as commission to directors.		
15.	Is interest paid by the holding company as guarantor for the amount borrowed by the subsidiary company deductible under section 36(1)(iii)?	JK Synthetics Ltd v. CIT (2014 Allahabad HC)	Applying the rationale of the Apex Court's ruling to this case, the HC observed that 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 the purpose of business. The HC, thus, held that the claim for deduction of interest by the assessee-holding company is allowable.
16.	Can employees contribution to Provident Fund and Employee‟s State Insurance be allowed as deduction where the assesssee-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)?	CIT v. Gujarat State Road Transport Corp. (2014 Gujarat HC)	The HC, accordingly, held that the delayed remittance of employees‟ contribution beyond the „due date‟ prescribed in section 36(1)(va), is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1).
	Note: A contrary view was expressed by Uttrakhand HC in the case of CIT v. Kichha Sugar Co. Ltd. (2013) 356 ITR 351 holding 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.		
17.	What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	CIT v. BSES Yamuna Powers Ltd (2013 Delhi HC)	The HC observed 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, the HC held that since they are part of the computer system, they would be eligible for depreciation at the higher rate of 60% applicable to computers including computer software.
18.	Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(iia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?	M.M. Forgings Ltd. v. ACIT (2012 Madras HC)	The Madras HC held that if an asset is acquired on or after 1.04.2003, it was mandatory that the claim of the assessee made under section 32(1)(iia) had to be necessarily assessed by applying the second proviso to section 32(1). Since there is a statutory stipulation restricting the allowability of depreciation to 50% of the amount computed under section 32(1)(iia), where the asset is put to use for less than 180 days, the amount of additional depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia). The HC, accordingly, affirmed the order of the Tribunal.
19.	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	CIT v. IBM Global Services India P Ltd (2014 Karnataka HC)	The HC observed that the expenditure incurred for use of customer database did not result in acquisition of any capital asset. The assessee got the right to use the database and the company which provided the database was not precluded from using such database. Therefore, the expenditure incurred was for use of data base and not for acquisition of

	of trained personnel be claimed as revenue expenditure?		such data base and, hence, is deductible as revenue expenditure. As regards payment for obtaining trained and skilled employees, it was held that the joint venture company spent a lot of money to give training to employees who were transferred to the assessee-company. They were trained in the field of software. They have opted for employment with the assessee, and for their past services with the joint venture company, expenditure has been incurred. In effect, the payment made by the assessee-company was towards expenditure incurred for their training and recruitment. Such expenditure was in the revenue field, and therefore, the payment made by the assessee-company as per agreement to save such expenditure was also revenue in nature. Therefore, the expenditure incurred for obtaining trained and skilled employees cannot be termed as capital expenditure though the benefit may be of enduring nature. The HC, thus, held that both the expenditures claimed were allowable as revenue expenditure.
20.	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)?	CIT v. Great City Manufacturing Co. (2013 Allahabad HC)	HC observed 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. If the remuneration paid is within the ceiling limit provided under section 40(b)(v), then, recourse to provisions of section 40A(2)(a) cannot be taken. The AO is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the T&C 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 AO cannot disallow any part of the remuneration on the ground that it is excessive. therefore, held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since the Tribunal has found that all the three conditions mentioned above have been satisfied.
<u>**Ch 07. Capital Gains**</u>			
21.	**Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?**	**Fibre Boards (P) Ltd v. CIT (2015 SC)** **RTP - May 16**	**To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.**
	In this case, two issues have been touched upon, namely, whether notification of an area as an urban area under a repealed provision would hold good under the reenacted provision and whether advance given for purchase of an eligible asset would tantamount to utilisation of capital gains for purchase of the said asset for availing exemption under section 54G. The former issue was decided taking support from section 24 of the General Clauses Act, 1897, which provides for uninterrupted subordinate legislation in case of repeal and re-enactment, with or without modification. The latter issue was also decided in favour of the assessee by holding that payment of advance for purchase of eligible asset would tantamount to utilisation of capital gains for purchase of the said asset.		
22.	**Whether, for the purpose of computing the period of holding of the property, the date of allotment letter issued by the builder of the flat or the date of registration of the property has to be considered for determining the nature of capital asset – long-term or short-term?**	**CIT v. S.R.Jeyashankar (2015 Madras HC)** **RTP May 16**	**In effect, the P&H HC (in a smilar case) held that the allottee gets the title to the property on issuance of allotment letter and payment in instalments is only a consequential act upon which delivery of possession to the property flows. The Madras HC also noted that the Punjab & Haryana HC had taken a similar view in Vinod Kumar Jain's case. Accordingly, the Madras HC held that the assessee had rightly claimed the benefit of long-term capital gain, since the holding period exceeded 36 months (i.e., from 22.02.2005, being the date**

			of agreement, to 10.04.2008, being the date of sale of property)
23.	Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of the cost of construction of - (i) the new residential house (i.e., all independent floors handed over to the assessee); or (ii) a single residential unit (i.e., only one independent floor)?	CIT v. Gita Duggal (2013 Delhi HC)	The HC held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.
24.	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?	CIT v. Syed Ali Adil (2013 Andhra Pradesh HC)	The Andhra Pradesh HC, on the basis of the above rulings of the Karnataka HC, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit.
25.	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	Gouli Mahadevappa v. ITO (2013 Karnataka HC.)	On the issue of exemption under section 54F, the HC held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of ` 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of ` 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.
26.	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?	CIT v. Yatish Trading Co. Pvt. Ltd. (2013 Bombay HC)	The HC concurred with the Tribunal‟s ruling that the gains arising on sale of those shares held as investments by the dealer-assessee (i.e., the difference between the sale price and the fair market value on the date of conversion) were to be assessed under the head "Capital gains" and not under the head "Profits and gains of business or profession".
<u>Ch 08. Income from other sources</u>			
27.	Can repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	CIT v. Vir Vikram Vaid (2014 Bombay HC)	The HC, accordingly, held that the repair and renovation expenses in respect of premises occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.

Ch 11. Deductions from Gross Total Income			
28.	**Can the CIT reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?**	**CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015 Gujarat HC)** **RTP - May 16**	**Referring to another case law whereIn that case, the Division Bench observed that, while considering the application for the purpose of section 80G, the authority cannot act as an assessing authority and the enquiry should be confined to finding out if the institution satisfies the prescribed conditions.** **The HC, thus, concurred with the decision of the Tribunal setting aside the order passed by the CIT refusing to grant registration under section 80G(5) to the assessee-trust due to the reason that it has not applied 85% of its income for charitable purposes.**
29.	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	CIT v. Orchev Pharma P. Ltd. (2013 SC)	On this issue, the SC, following the decision in case of *Liberty India v. CIT (2009 SC)* held that Duty Drawback receipts cannot be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction under section 80-IB.
Ch 13. Assessment of Various Entities:			
30.	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?	CIT v. Govindbhai Mamaiya (2014 SC)	In this case, the property in question came to the assessees' 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. The Apex Court, accordingly, held that the income from asset inherited by the legal heirs is taxable in their individual hands and not in the status of AOP.
31.	Would the ancestral property received by the assessee after the death of his father, be considered as HUF property or as his individual property, where the assessee‟s father had received such property as his share when he went out of the joint family under a release deed?	CIT v. D. L. Nandagopala Reddy (Individual) (2014 Karnataka HC)	The HC held that that when the property came to the hands of the assessee, it was not his self-acquired property; it was property belonging to his HUF. The assessee had given a portion of the property to his wife without a registered document, which is possible only if the property is a HUF property. If such property is treated as a self-acquired property, then assessee would have been able to give the portion of the property to his wife only by registered document.
32.	Would non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 115BBA, and consequently attract the TDS provisions under section 194E in the hands of the payer?	Indcom v. CIT (TDS) (2011 Calcutta HC)	Held That, 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 under section 194E.

Ch 21. Assessment Procedure			
33.	**Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?**	**Hemant Traders v. ITO (2015 Bombay HC)** **RTP May 16**	**The HC, accordingly, held that since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid. Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.**
34.	**Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?**	**Godrej Industries Ltd v. Dy.CIT (2015 Bombay HC)** **RTP May 16**	**The position of law on the date of issue of notice under section 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable.** **The HC, accordingly, allowed the writ and held that the reason for reopening the assessment cannot get validated by the retrospective amendment of law.**
35.	**Can the AO make a reassessment on fresh grounds when the original reasons recorded for reopening the assessment does not survive?**	**N. Govindaraju v. ITO (2015 Karnataka HC)** **RTP May 16**	**The HC held that, in effect, once satisfaction of reasons for the notice is found sufficient i.e. if the notice under section 148(2) is found to be valid, then, the AO may do reassessment in respect of any other item of income which may have escaped assessment, even though the original reason for issue of notice under section 148 does not survive.** **This decision has dissented from the decisions in the case of CIT v. Jet Airways (I) Ltd (2011 Bombay HC); Ranbaxy Laboratories Ltd v. CIT (2011 Delhi HC).**
36.	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?	Amarnath Agrawal v. CIT (2015 Allahabad HC)	The HC observed that two distinct conditions must be satisfied for assuming jurisdiction to issue a notice under section 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. Accordingly, the HC held that, in this case, the issue of notice under section 148 after the four year time period was not valid.
37.	Can the AO 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?	CIT v. Mehak Finvest P Ltd (2014 P&H HC)	The HC, accordingly, held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the AO 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.
38.	Does the finding or direction in	CIT v. PP Engineering Work	The HC observed that in view of the order of the

	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?**	(2014 Delhi HC)	Tribunal that the credit entries related to the earlier assessment year i.e., A.Y.2000-01, the AO initiated reassessment proceedings under section 147 by issue of notice under section 148 for the year and passed an order dated 29/12/2009 making an addition of Rs.32 lakhs. The HC held that by virtue of section 150 read with Explanation 2 to section 153, the said order was not barred by limitation.
39.	Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and HC ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts?	Allanasons Ltd v. Dy. CIT (2014 Bombay HC)	The HC, accordingly, held that a subsequent decision of Tribunal or HC 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.
<u>Ch 24. Appeals & Revision</u>			
<u>40.</u>	**Does the HC have the inherent power under the Income-tax Act, 1961 to review its own order on merits?**	**CIT v. Meghalaya Steels Ltd. (2015 SC)** **RTP Addendum May 16**	**The SC went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application**
		of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the HC's inherent jurisdiction is in any manner affected.	
41.	**Can mere non-mention or non-discussion of enquiry made by the AO in the assessment order justify invoking revisionary jurisdiction under section 263?**	**CIT v. Krishna Capbox (P) Ltd (2015 Allahabad HC)** **RTP May 16**	**The HC concurred with the decision of the Tribunal and held that since the relevant enquiries and replies are available on 'record' (i.e., the paper book), the CIT cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.**
	The Finance Act, 2015 inserted Explanation 2 to section 263(1) to clarify, inter alia, that an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal CIT or CIT, the order is passed without making inquiries or verification which should have been made. The rationale of this ruling would hold good even after insertion of Explanation 2 to section 263(1), since in this case, the Tribunal has recorded a finding of fact that necessary enquiries have been made by the AO even though the same was not specifically mentioned in the assessment order. Mere non-discussion or nonmention about the enquiry made by the AO in the assessment order cannot be a ground for invoking revisionary jurisdiction under section 263.		
42.	**CIT invoke revisionary jurisdiction section 263, when the subject of revision (i.e., whether the of allocation of revenue amongst mbers of AOP would affect the ility and/or quantum of deduction ection 80-IB) has been decided by (Appeals) and the same is pending he Tribunal?**	**CIT v. Fortaleza Developers (2015 Bombay HC)** **RTP May 16**	**When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the CIT is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the Explanation 1 to section 263 debars the same.** **Accordingly, the HC held that the order passed by the AO got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.**

43.	Should the four year time limit for rectification of order by the Tribunal under section 254(2) be reckoned from the date of its order or from the date of receipt of order by the assessee?	Peterplast Synthetics P Ltd v. ACIT (2014 Gujarat HC)	Applying the rationale of the above Bombay HC ruling pronounced in relation to an application for revision, to the issue on hand pertaining to the date of reckoning the period of limitation for rectification under section 254(2), the Gujarat HC held that the period of limitation has to be reckoned from the date of receipt of order by the assessee and not from the date of order. Therefore, the Tribunal had erred in dismissing the rectification application on the ground that it was barred by limitation by computing the time limit from the date of order instead of from the date of receipt of order by the assessee.
44.	Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the HC in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	Samsung India Electronics P. Ltd. v. DCIT (2014) 362 ITR 460 (Del.)	HC observed the Apex court ruling in the case of GKN Driveshafts (India) Ltd. v. ITO, wherein, it was laid down 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 AO is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitles to file objections to issuance of notice and the AO is bound to dispose of the objections by passing a speaking order. The HC, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the SC 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.
45.	Should time limit under section 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?	CIT v. Lark Chemicals Ltd (2014 Bombay HC)	The HC, thus, held that 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.
Ch 25: Penalties			
46.	Is penalty under section 271D imposable for cash loans/deposits received from partners?	CIT v. Muthoot Financiers (2015 Delhi HC)	The HC observed that the position that emerges is that there are three different Courts, which have held that section 269SS would not be violative when money is exchanged inter se between the partners and the firm.
	The HC further observed that, 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.		
47.	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)?	CIT v. Amit Jain (2013 Delhi HC)	The HC, after considering the above observations of the Tribunal and the decision of the SC in CIT v. Reliance Petro Products Pvt. Ltd. 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).

48.	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 SC ?	CIT v. Celetronix Power India P. Ltd. (2013 Bombay HC)	The Bombay HC affirmed the decision of Appellate Tribunal deleting the penalty under section 271(1)(c) on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assessee to furnish accurate particulars nor on account of furnishing inaccurate particulars.
49.	Is concealment penalty leviable when the HC admits the quantum appeal as involving substantial question of law?	CIT v. Nayan Builders & Developers (2014 Bombay HC)	The HC observed that the issue of quantum addition was admitted by the HC since it involved substantial question of law. When the HC admits substantial question of law on an .. .. addition, it becomes apparent that the addition is certainly debatable. In such circumstances, penalty cannot be levied under section 271(1)(c). Thus, the HC held that when the quantum proceeding is admitted by the HC, it amounts to a debatable issue and hence, concealment penalty is not leviable.
Ch 28. Deduction, Collection & Recovery of Tax			
50.	**Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I?**	**Japan Airlines Co. Ltd. v. CIT** **CIT v. Singapore Airlines Ltd. (2015 SC)** **RTP Addendum May 16**	**The SC opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the full and larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The SC, thus, concurred with the view taken by the Madras HC in Singapore Airlines case and overruled the view taken by the Delhi HC in United Airlines/Japan Airlines case.**
51.	**Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise under section 192 or under section 194J?**	**CIT v. Manipal Health Systems (P) Ltd (2015 Karnataka)** **RTP May 16**	**Considering the totality of facts and terms of the agreement, the Court held that in this case, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.**
52.	Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of HC?	UCO Bank v. Dy. CIT (2014 Delhi HC)	The HC observed that 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. Therefore, he cannot be considered as a „payee‟ for the purposes of section 194A. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.
53.	Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?	CIT v. Hindustan Lever Ltd. (2014 Karnataka HC)	The HC observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint CIT to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years

			and with fine. However, the HC held that proceedings under section 201 cannot be initiated against the assessee.
54.	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?	CIT v. Intervet India P Ltd (2014 Bombay HC)	The HC, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the Explanation (i) to section 194H. Accordingly, the HC affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.
55.	Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	Indus Towers Ltd v. CIT (2014 Delhi HC)	The HC held that the submission of the assessee that the transaction is not "renting" is incorrect. Also, the Revenue‟s contention that the transaction is primarily "renting of land" is also incorrect. The underlying object of the arrange- -ment was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
56.	Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?	DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014 Bombay HC)	The HC, therefore, affirmed the decision of the Tribunal and CIT (Appeals) holding that the service rendered by the agent was outside India and hence, was not chargeable to tax in India. Thus, the requirement for deducting tax at source under section 195 on such payment does not arise.
57.	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)?	Uttar Pradesh Carbon & Chemicals Ltd v. TRO (2014) 368 ITR 384 (All.)	The HC referred to Apex Court decision in Beharilal Ramcharan v. ITO (1981) 131 ITR 129 to hold 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 HC directed that 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.