

Summarized Case Laws Applicable for May & Nov 2016 Exams of CA Final DT Paper

DIRECT TAX CASE LAWS FOR MAY 2016 & NOV 2016			
CASE LAWS - INCOME TAX - FROM SELECT CASES BOOK			
BASIC CONCEPT			
S.N.	PARTIES & COURT	MATTER	OBSERVATION & DECISION
1	CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)	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?	The Apex Court affirmed the decision of the High Court holding 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 <u>capital receipt</u> in the hands of the assessee.
2	CIT v. M.Venkateswara Rao (2015) 370 ITR 212 (T & AP)	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?	The High Court made reference to decision in the case of <i>CIT v. Anupam Udyog</i> where it was held if there are cash credits in the books of the firm in the accounts of the individual partners and it is found as a fact 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 <u>assessed in the hands of individual partners</u> . The High Court, accordingly, held that the view taken by the Assessing Officer was not tenable.
INCOME WHICH DO NOT FORM PART OF TOTAL INCOME			
1	CIT v. Kribhco (2012) 209 Taxman 252 (Delhi)	Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	The Delhi High Court, therefore, held that <u>no disallowance</u> 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.

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2	CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013) 354 ITR 483 (Mad)	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?	The Madras High Court held that the time frame mentioned in section 12AA(2) is only directory in nature and non-consideration of the registration application within the said time frame of six months would <u>not amount to "deemed registration"</u> .
3	DIT (Exemptions) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219 (Kar.)	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?	The High Court observed that, with the money available with the trust, it cannot be expected to carry out activity of charity immediately. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity. In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it. Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdraw the registration granted or cancel the registration as per the provisions of section 12AA(3).
4	DIT (Exemption) v. Bagri Foundation (2012) 344 ITR 193 (Delhi)	Can Explanation to section 11(2) be applied in respect of the accumulation up to 15% referred to in section 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation up to 15%, as income of the trust?	The Explanation to section 11(2), therefore, cannot be applied to the accumulations under section 11(1) (a) i.e. accumulations up to 15%, unless it is expressly mention in the Act for the same. Consequently, if the donations by the assessee to another charitable trust were out of past accumulations under section 11(1) (a) i.e. up to 15%, the same would not be liable to be included in the total income as assessed by the Assessing Officer.
INCOME FROM SALARIES			
1	CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom.)	Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer	On appeal by the Revenue, the Bombay High Court held that the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accommodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest. Thus, the

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		and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee	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.
2	CIT (TDS) v. Director, Delhi Public School (2011) 202 Taxman 318 (Punj. & Har.)	Is the limit of Rs. 1,000 per month per child to be mandatorily deducted, while computing the perquisite value of the free or concessional education facility provided to the employee by the employer?	The Punjab and Haryana High Court, in the above case, held that 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 in the hands of the employee and no standard deduction of Rs. 1,000 per month per child can be provided from the same. It is only in case the perquisite value is less than Rs. 1,000 per month per child, the perquisite value shall be nil. Therefore, Rs. 1,000 per month per child is not a standard deduction to be provided while calculating such a perquisite.
INCOME FROM HOUSE PROPERTY			
1	New Delhi Hotels Ltd. V. ACIT (2014) 360 ITR 0187 (Delhi)	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 'Profit 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?	The Delhi High Court followed its own decision in the case of <i>CIT vs. Discovery Estates Pvt. Ltd/ CIT vs. Discover Holding Pvt. Ltd.</i> , 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 'Profit and gains from business or profession'.
2	Azimganj Estate (P.) Ltd. v. CIT (2012) 206 Taxman 308 (Cal.)	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	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. The fact that the said flats have been claimed as not chargeable to wealth-tax, treating the same as stock-in-trade, will not affect the computation of

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		were stock-in-trade of its business	income under the Income-tax Act, 1961
3	CIT v. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.) (Full Bench)	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?	The Gujarat High Court observed that a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an individual owner who can actually occupy the house. However, the HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity. Also, it was observed that since singular includes plural, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own". Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2).
4	Joseph George and Co. v. ITO (2010) 328 ITR 161 (Kerala)	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?	On the above issue, it was decided that while lodging is a business, however, letting out of building to the bank on long-term lease could not be treated as business. Therefore, the rental income from bank has to be assessed as income from house property.
5	CIT v. Asian Hotels Ltd. (2010) 323 ITR 490 (Del.)	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"?	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. Section 28(iv) can be invoked only where the benefit or amenity or perquisite is otherwise than by way of cash. In the instant case, the Assessing Officer has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18 per cent simple interest on the deposit. Hence, section 28(iv) is not applicable.
PROFITS AND GAINS OF BUSINESS OR PROFESSION			
1	Tamil Nadu Tourism Development Corporation Ltd v. Dy. CIT (2014) 368 ITR 533 (Mad)	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?	The High Court looked into the contract between the assessee and the franchisees which contained various conditions ranging from obtaining of permits and licences, maintenance of rooms, common area, garden maintenance, catering, Bar etc with 33 clauses. The assessee had not simply leased the land and building but had imposed further conditions as to how the business of franchisees should be conducted with regard to the hotels given on lease. 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

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			be below the name of the assessee, thereby, making it clear that the assessee continued to operate the business through the franchisees. 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. The assessee received franchisee fee for giving a special right or privilege to the franchisees to undertake tourism business in the property. The High Court, 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.
2	CIT v. K and Co. (2014) 364 ITR 93 (Del)	Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?	The High Court noted 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 High Court, accordingly, held that the interest would be taxable under the head "Profits and gains of business or profession".
3	CIT v. TVS Motors Ltd (2014) 364 ITR 1 (Mad)	Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?	The High Court referred to the Supreme Court ruling in CITv. Mahalakshmi Textile Mills Ltd. (1967) 66 ITR 710 and observed 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. The High Court also referred to its decision in the case of CIT v. Machado Sons (2014) holding 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' under section 31. High Court's Decision: Applying the rationale of above decisions, the High Court held that "moulds & dies" are not independent of plant and machinery but are parts of plant and machinery. Once the dies are worn out, they had to be replaced so that the machine can produce the product according to business specifications. Thus, the expenditure incurred by the assessee towards replacement of parts of machinery to ensure its performance without bringing any new asset or advantage, is eligible for deduction as 'current repairs' u/s 31.
4	I.C.D.S. Ltd. v. CIT (2013) 350 ITR 527 (SC)	Can depreciation on leased vehicles be denied to the lessor on the grounds that the vehicles are registered in the name of the lessee and that the lessor is not	The Supreme Court, therefore, held that 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.

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		the actual user of the vehicles?	
5	CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi)	What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	The High Court 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 High Court held that since they are part of the computer system, they would be eligible for depreciation at the higher rate of 60% applicable to computers including computer software.
6	M.M. Forgings Ltd. v. ACIT (2012) 349 ITR 0673 (Mad.)	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	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 under section 32(1) (iia) had to be necessarily assessed by applying the second proviso to section 32(1). Since there is a statutory stipulation restricting the allowability of depreciation to 50% of the amount computed under section 32(1)(iia), where the asset is put to use for less than 180 days, the amount of depreciation allowable has to be restricted to 50% of the amount computed under section 32(1)(iia). The High Court, accordingly, affirmed the order of the Tribunal.
7	Areva T and D India Ltd. v. DCIT (2012) 345 ITR 421 (Delhi)	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)	The High Court, therefore, held that the specified intangible assets acquired under the slump sale agreement by the assessee are in the nature of intangible asset under the category "other business or commercial rights of similar nature" specified in section 32(1)(ii) and are accordingly eligible for depreciation under section 32(1)(ii).
8	CIT v. Smifs Securities Ltd. (2012) 348 ITR 302 (SC)	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)?	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 the process of amalgamation, the amalgamated company had acquired a capital right in the form of goodwill because of which the market worth of the amalgamated company stood increased. Therefore, it was held that 'Goodwill' is an asset under Explanation 3(b) to section 32(1) and depreciation thereon is allowable under the said section.

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9	B. Raveendran Pillai v. CIT (2011) 332 ITR 531 (Kerala)	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?	When goodwill paid was for ensuring retention and continued business in the hospital, it was for acquiring a business and commercial right and it was comparable with trade mark, franchise, copyright etc., referred to in the first part of clause (ii) of section 32(1) and so, goodwill was covered by the above provision of the Act entitling the assessee for depreciation.
10	Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)	Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation at 60%?	On this issue, 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%.
11	CIT v. Smt. A. Sivakami and Another (2010) 322 ITR 64	Would beneficial ownership of assets suffice for claim of depreciation on such assets?	The High Court observed 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) 226 ITR 625, observed that the owner need not necessarily be the lawful owner entitled to pass on the title of the property to another. Since, in this case, the assessee has made available all the documents relating to the business and also established before the authorities that she is the beneficial owner, she is entitled to claim depreciation even though she is not the legal owner of the buses.
12	Controls & Switchgear Contractors Ltd v. Dy.CIT (2014) 365 ITR 312 (Del)	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?	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. In such a case, the Assessing Officer only has to determine whether the transactions are real and genuine. It is not within his jurisdiction to impose his views as regards the necessity or the quantum of expenditure undertaken by the assessee. As regards section 36(1)(ii) the recipient directors were not entitled to receive the amount as commission in lieu of bonus or dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders. The High Court, therefore, set aside the Tribunal's order and directed rectification of the disallowance of amount paid as commission to directors.

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13	JK Synthetics Ltd v. CIT (2014) 369 ITR 310 (All)	Is interest paid by the holding company as guarantor for the amount borrowed by the subsidiary company deductible under section 36(1)(iii)?	The High Court made reference to the Apex Court ruling in Madhav Prasad Jatia v. CIT where the expression 'for the purpose of business' occurring in section 36(1)(iii) was held as wider in scope than the expression 'for the purpose of earning income, profits or gains'. The Apex Court observed that where a holding company has a deep interest in its subsidiary and advances money to the subsidiary and the same is used by the subsidiary for its business purposes, the lending-holding company would be entitled to deduction of interest on its borrowed loans. Applying the rationale of the above Apex Court ruling to this case, the High Court 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 High Court, thus, held that the claim for deduction of interest by the assessee-holding company is allowable.
14	CIT v. Gujarat State Road Transport Corpn (2014) 366 ITR 170 (Guj)	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)?	The High Court, accordingly, held that the delayed remittance of employees' contribution beyond the 'due date' prescribed in section 36(1)(va), is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1). (Note: A contrary view was expressed by Uttarakhand High Court 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.)
15	Addtl. CIT v. Dharmpur Sugar Mill (P) Ltd (2015) 370 ITR 194 (All)	Is expenditure incurred for construction of transmission lines by the assessee for supply of power to UPPCL by the assessee deductible as revenue expenditure?	The High Court made reference to Empire Jute Co Ltd v. CIT where the Supreme Court held that the true test is to consider the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowed. If the advantage consists in merely facilitating its trading operations or conducting its business, the expenditure would be on revenue account. A similar precedent in CIT v. Gujarat Mineral Development Corpn. Ltd was also cited to hold that the expenditure incurred in the laying of transmission lines was on revenue account. The Allahabad High Court also made reference to the Rajasthan High Court ruling in CIT v. Hindustan Zinc Ltd. wherein it was observed that the erection of power lines by the assessee was for facilitating its routine operations and for smooth functioning of its business. The power lines remained the property of the Electricity Board. The

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			High Court, therefore, held that the assessee had not acquired a capital asset or any enduring benefit or advantage. <i>Following the principle of law laid down by the Supreme Court in Empire Jute Mills' case, the Allahabad High Court, 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.</i> <i>The expenditure which was incurred by the assessee was for aiding efficient conduct of its business and not an advantage of a capital nature.</i>
16	CIT v. IBM Global Services India P Ltd (2014) 366 ITR 293 (Karn)	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?	The High Court observed that the expenditure incurred for use of customer database did not result in acquisition of any capital asset. The assessee got the right to use the database and the company which provided the database was not precluded from using such database. Therefore, the expenditure incurred was for use of data base and not for acquisition of such data base and, hence, is deductible as revenue expenditure. As regards payment for obtaining trained and skilled employees, it was held that the joint venture company spent a lot of money to give training to employees who were transferred to the assessee-company. They were trained in the field of software. They have opted for employment with the assessee, and for their past services with the joint venture company, expenditure has been incurred. In effect, the payment made by the assessee-company was towards expenditure incurred for their training and recruitment. Such expenditure was in the revenue field, and therefore, the payment made by the assessee-company as per agreement to save such expenditure was also revenue in nature. Therefore, the expenditure incurred for obtaining trained and skilled employees cannot be termed as capital expenditure though the benefit may be of enduring nature. The High Court, thus, held that both the expenditures claimed were allowable as revenue expenditure.
17	CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 (Delhi)	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	On this issue, the Delhi High Court noted the following observations of the Punjab and Haryana High Court in CIT v. Liberty Group Marketing Division [2009] 315 ITR 125, while holding that such expenditure was revenue in nature - (i) The expenditure incurred by the assessee on glow sign boards does not bring into existence an asset or advantage for the enduring benefit of the business, which is attributable to the capital. (ii) The glow sign board is not an asset of permanent nature. It has a short life. (iii) 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

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			glow sign boards regularly in almost each year. (iv) 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. The Delhi High Court concurred with the above observations of the P & H High Court and held that such expenditure on glow sign boards displayed at dealer outlets was revenue in nature.
18	CIT v. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)	Would the expenditure incurred for issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	On this issue, 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.
19	CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)	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?	On this issue, the High Court observed 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. In this case, 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.
20	CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.)	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?	The High Court observed 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.

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21	Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) 353 ITR 388 (H.P.)	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?	The High Court opined that the contention of the assessee that the above mentioned Circular goes beyond section 37(1) was not acceptable. 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 of the Medical Council Regulations.
22	CIT v. Kap Scan and Diagnostic Centre P. Ltd. (2012) 344 ITR 476 (P&H)	Is the commission paid to doctors by a diagnostic center 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?	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, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure
23	Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286 (Bom.)	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?	On this issue, it was observed 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 to the director's son, neither had any reference number nor was it backed by any previous application by him. The appointment letter referred to "apprentice training scheme" with the company in respect of which no details were produced. There was no evidence that he was recruited as trainee by some open competitive exam or regular selection process. Hence, there was no nexus between the education expenditure incurred abroad for the director's son and the business of the assessee company. Therefore, the aforesaid expenditure was not deductible.

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24	Shanti Bhushan v. CIT (2011) 336 ITR 26 (Delhi)	Can the expenditure incurred on the assessee-lawyer's heart surgery 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?	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. Therefore, the expenditure on heart surgery is not allowable as repairs to plant under section 31. There is, therefore, no direct nexus between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Therefore, the claim for allowing the said expenditure under section 37 is also not tenable.
25	CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn)	Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	On this issue, the High Court observed 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. However, the amount claimed by the assessee, in the instant case, was towards payment made to the police and gundas. 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 for which no deduction is allowable under the Act.
26	Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.)	Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	The High Court observed that as per the provisions of the Karnataka Municipal Corporations Act, 1976 , the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction under section 37. Merely describing the payment as a compounding fee would not alter the character of the payment.
27	CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)	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	The Allahabad High Court, 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 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).

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		though the same is within the statutory limit prescribed under section 40(b)(v)?	
28	CIT v. Andhra Ferro Alloys P. Ltd. (2012) 349 ITR 255 (A.P)	Can unpaid electricity charges be treated as "fees" to attract disallowance under section 43B?	The Andhra Pradesh High Court observed 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". The Court, therefore, held that deduction is allowable in respect of such electricity charges.
CAPITAL GAIN			
1	PVS Raju v. ACIT (2012) 340 ITR 75 (AP.)	What are the factors determining the nature of income arising on sale of shares i.e. whether the income is taxable as capital gains or business income?	The character of a transaction cannot be determined solely on the application of any abstract rule, principle or test but must depend upon all the facts and circumstances of the case. 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.
2	CIT v. Smt. Rama Rani Kalia (2013) 358 ITR 0499 (All.)	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 from determining whether the resultant capital gains is short-term or long-term?	The High Court, therefore, concurred with the views of the tribunal that 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 related to the period over which the property is held. Since, in this case, the period of holding is more than 36 months, the resultant capital gains would be long-term.
3	P. P. Menon v. CIT (2010) 325 ITR 122 (Ker.)	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?	The period of holding of the asset received by the assessee-partner on dissolution of the firm has to be reckoned only from the date of dissolution of the firm. Since the assessee-partner has sold the property within three days of acquiring the same, the gains have to be treated as short-term capital gain.

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4	Navin Jindal v. ACIT (2010) 320 ITR 708 (SC)	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?	Held that 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 up to the date of renunciation of such right.
5	CIT v. Manjula J. Shah 16 Taxman 42 (Bom.)	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?	The Bombay High Court held that 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 and accordingly the asset is a long term capital asset in the hands of the assessee. 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.
6	CIT v. Gita Duggal (2013) 357 ITR 153 (Delhi)	Where a building, comprising of several floors, has been developed and reconstructed, 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)?	The High Court 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
7	CIT v. Syed Ali Adil (2013) 352 ITR 0418 (A.P.)	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	The Andhra Pradesh High Court, on the basis of the rulings of the Karnataka High Court, 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. (It appears that even after amendment by the Finance (No. 2) Act, 2014, the above rulings will continue to hold good, since the restriction is regarding investment being

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		point?	<i>made in one residential house, and not in one unit of a residential house.)</i>
8	<i>CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)</i>	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?	In this case, the High Court concurred with the Tribunal's view that 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.
9	<i>CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi)</i>	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?	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.
10	<i>CIT v. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi)</i>	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?	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. The High Court also observed that section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee. In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally. Therefore, the conditions stipulated in section 54F stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

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11	<i>CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)</i>	Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc.?	The Karnataka High 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 under section 54F. In fact, in this case, the assessee has taken the possession of the residential building and is living in the said premises despite the pendency of flooring work, electricity work, fitting of door and window shutters.
12	<i>CIT v. Rajiv Shukla (2011) 334 ITR 138 (Delhi)</i>	Can the assessee claim exemption under section 54F, on account of capital gain arising on transfer of depreciable assets held for more than 36 months i.e. a long-term capital asset, though the same is deemed as capital gain arising on transfer of short-term capital asset by virtue of section 50?	The Delhi High Court, in the present case, relying on the decision of the Bombay High Court in the case of <i>CIT v. Ace Builders P. Ltd. (2006) 281 ITR 210</i> and the decision pronounced by Gauhati High Court in <i>CIT v. Assam Petroleum Industries P. Ltd. [2003] 262 ITR 587</i> , in relation to erstwhile section 54E, 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 the purpose of any other section. Section 54F being an independent section will not be bound by the provisions of section 50. The depreciable asset if held for more than 36 months shall be a long-term capital asset as per the provisions of section 2(29A). Therefore, the exemption under section 54F on transfer of depreciable asset held for more than 36 months cannot be denied on account of fiction created by section 50.

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13	Gouli Mahadevappa v. ITO (2013) 356 ITR 90 (Kar.)	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?	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.
14	Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)	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?	For the purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made. The High Court, therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.
15	CIT v. Yatish rading Co. Pvt. Ltd. (2013) 359 ITR 320 (Bom.)	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?	The High Court 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".

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INCOME FROM OTHER SOURCES			
1	CIT v. Parle Plastics Ltd. (2011) 332 ITR 63 (Bom.)	What are the tests to determine "substantial part of business" of lending company for the purpose of application of exclusion provision under section 2(22)?	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).
2	CIT v. Vir Vikram Vaid (2014) 367 ITR 365 (Bom)	Does repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	The challenge before the High Court by the Revenue was only with regard to applicability of section 2(22)(e) in this case. The High Court observed that no money had been paid by way of advance or loan to the shareholder who has substantial interest in the company. Further, the amount spent was towards repairs and renovation of the premises owned by the assessee but occupied by the company as lessee. There is no dispute that the company had taken on rent the aforesaid premises. The High Court observed that the expenditure incurred by virtue of repairs and renovation on the premises cannot be brought within the definition of advance or loan. It cannot be treated as payment by the company on behalf of the shareholder or for the individual benefit of such shareholder. The High Court, accordingly, held that the repair and renovation expenses in respect of premises occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.
3	Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538 (Cal.)	Can the loan or advance given to a shareholder by the company, in return of an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder?	In the present case, 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).
4	CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)	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	The assessee, a travel agency, has regular business dealings with two concerns in the tourism industry dealing with holiday resorts. The High Court observed that the assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The High Court held that such financial transactions cannot under any circumstances be treated as loans or advances received by the

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		business?	assessee from these concerns for the purpose of application of section 2(22)(e).
5	CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)	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?	The High Court held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.
SET-OFF AND CARRY FORWARD OF LOSSES			
1	Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi)	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?	The High Court held that the loss suffered by the erstwhile partnership firm before dissolution of the firm cannot be carried forward by the successor sole-proprietor, since it is not a case of succession by inheritance. The assessee sole-proprietor is, therefore, not entitled to set off the loss of the erstwhile partnership firm against his income.
DEDUCTIONS FROM GROSS TOTAL INCOME			
1	CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.)	Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?	The High Court observed that it is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1). The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. The Court, therefore, held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while

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			computing profits eligible for deduction under section 80-IA in the subsequent year.
2	CIT v. Kiran Enterprises (2010) 327 ITR 520 (HP)	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?	On appeal, the High Court held that the transport subsidy received by the assessee was not a profit derived from business since it was not an operational profit. The source was not the business of the assessee but the scheme of Central Government. The words "derived from" are narrower in connotation as compared to the words "attributable to". Therefore, the freight subsidy cannot be treated as profits derived from the business for the purposes of section 80-IA.
3	CIT v. Orchev Pharma P. Ltd. (2013) 354 ITR 227 (SC)	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	The Supreme Court, following the decision in case of Liberty India v. CIT (2009) 317 ITR 218 (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.
4	CIT v. Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gauhati)	Would grant of transport subsidy, interest subsidy and refund of excise duty qualify for deduction under section 80-IB?	The payment of Central excise duty had a direct nexus with the manufacturing activity and similarly, the refund of the Central excise duty also had a direct nexus with the manufacturing activity, being a profit-linked incentive, since payment of the Central excise duty would not arise in the absence of any industrial activity. Therefore, the refund of excise duty had to be taken into account for purposes of section 80-IB.
5	CIT v. Jaswand Sons (2010) 328 ITR 442 (P&H)	Does income derived from sale of export incentive qualify for deduction under section 80-IB?	The High Court held that income derived from sale of export incentive cannot be said to be income "derived from" the industrial undertaking and therefore, such income is not eligible for deduction under section 80-IB.
6	CIT v. Chiranjeevi Wind Energy Ltd. (2011) 333 ITR 192 (Mad.)	Would the procurements of parts and assembling them to make windmill fall within the meaning of "manufacture" and "production" to be entitled to deduction under section 80-IB?	The Madras High Court, applying the above rulings of the Apex Court, observed that the different parts procured by the assessee could not be treated as a windmill individually. Those different parts had distinctive names and only when assembled together, they got transformed into an ultimate product which was commercially known as a "windmill". Thus, such an activity carried on by the assessee would amount to "manufacture" as well as "production" of a thing or article to qualify for deduction under section 80-IB.

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7	CIT v. Jyoti Plastic Works Private Limited (2011) 339 ITR 491 (Bom.)	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?	The expression "worker" is neither defined under section 2 of the Income-tax Act, 1961, nor under section 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. The High Court, therefore, held that the Tribunal was justified in holding that the condition of section 80-IB(2)(iv) had been fulfilled and therefore, the deduction under section 80-IB is allowable.
8	CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi)	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?	The High Court observed 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 the manufacturer has been brought into existence and is fit for marketing. However, in this case, since the assessee had effected sale in March 1998, it had crossed the stage of trial production and the final saleable product had been manufactured and sold. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material. With the sale of those articles, marketable quality was established. Therefore, the conditions stipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.
9	Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)	Can an assessee not claiming deduction under section 80-IB in the initial years claim the said deduction for the remaining years during the period of eligibility, if the conditions are satisfied?	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.
ASSESSMENT OF VARIOUS ENTITIES			

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1	CIT v. Govindbhai Mamaiya (2014) 367 ITR 498 (SC)	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?	The Supreme Court referred to its earlier decision in the case of Meera & Co v. CIT (1997) 224 ITR 635 in which the earlier precedent in the case of CIT v. Indira Balakrishna (1960) 39 ITR 546 (SC) was followed. The Apex Court noted that "Association of Persons" means an association in which two or more persons join in a common purpose or common action. The Supreme Court also referred to its judgment in G. Murugesan & Bros. v. CIT (1973) 4 SCC 211 . In that case, it was 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 assesseees, but is the result of the act of the Government in compulsorily acquiring the said land. Thus, the basic test to be satisfied for making an assessment in the status of AOP is absent in this case. 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.
2	Commissioner of Income-tax v. D. L. Nandagopala Reddy (Individual) (2014) 360 ITR 0377 (Kar)	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?	The High Court 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.
3	Sudhir Nagpal v. Income-tax Officer (2012) 349 ITR 0636 (P & H)	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	The Court held that the income from letting out the plinths is assessable under section 56 as "Income from other sources" and not under the head "Income from house property". 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 High Court held that 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 in this case.

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		individual co-owners or in the hands of the Association of Persons?	
4	Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.)	Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?	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. The interest earned is, therefore, taxable.
5	Sind Co-operative Housing Society v. ITO (2009) 317 ITR 47 (Bom)	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?	The High Court held that 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.
6	Indcom v. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Calcutta)	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?	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.
7	CIT v. Anil Hardware Store (2010) 323 ITR 368 (HP)	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?	The High Court held that the manner of fixing the remuneration of the partners has been specified in the partnership deed. In a given year, the partners may decide to invest certain amounts of the profits into other ventures and receive less remuneration than that which is permissible under the partnership deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the partnership deed. The method of remuneration having been laid down, the assessee-firm is entitled to deduct the remuneration paid to the partners under section 40(b)(v).

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8	Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470 (SC)	Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB?	The Supreme Court observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. 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.
9	N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)	Can long-term capital gain exempted by virtue of section 54EC be included in the book profit computed under section 115JB?	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 provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (now, Statement of Profit and Loss prepared in accordance with Part II of Schedule III to the Companies Act, 2013), capital gains cannot be excluded unless provided under the Explanation to section 115J(1A).
INCOME-TAX AUTHORITIES			
1	Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained, where assessment has not been completed?	The High Court observed 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. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. The High Court, accordingly, held that the Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted. The High Court, thus, dismissed the writ petition

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2	Kathiroor Services Co-operative Bank Ltd. V. CIT (CIB) (2014) 360 ITR 0243 (SC)	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?	The Supreme Court held that 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 lakhs. The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority.
3	Sahara Hospitality Ltd. v. CIT (2012) 211 Taxman 15 (Bom.)	Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?	The Bombay High Court held that the word "may" used in this section should be read as "shall" and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section. "Reasonable opportunity" can only be dispensed with in a case where it is not possible to provide such opportunity. In such a case also, the authority should record its reasons for making the transfer, even though no opportunity was given to the assessee. The discretion of the authority is only to consider as to what a reasonable opportunity is in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.
4	Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 441 (Del.)	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?	The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return has to be condoned.
ASSESSMENT PROCEDURE			
1	CIT v. Govind Nagar Sugar Ltd. (2011) 334 ITR 13 (Delhi)	Can the unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?	The High Court held that the unabsorbed depreciation will be allowed to be carried forward to subsequent year even though the return of income of the current assessment year was not filed within the due date.

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2	Orissa Rural Housing Development Corpn. Ltd. v. ACIT (2012) 343 ITR 316 (Orissa)	Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?	The High Court, relying on the judgment of the Supreme Court in Goetze (India) Ltd. v. CIT (2006) ITR 323 , held that 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.
3	Smt. A. Kowsalya Bai v. UOI (2012) 346 ITR 156 (Kar.)	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?	In order to avoid undue hardship caused to such persons, the Karnataka High Court, in the present case, held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.
4	Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 570 (Bom.)	Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?	In this case, the High Court observed that 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.
5	ACIT v. ICICI Securities Primary Dealership Ltd. (2012) 348 ITR 299 (SC)	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)?	The Supreme Court observed 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. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.

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6	Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Delhi)	Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?	If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.
	CIT v. Mehak Finvest P Ltd (2014) 367 ITR 769 (P&H)		The High Court noted that <i>Explanation 3 to section 147</i> 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's case by the Supreme Court on 19.08.2011 as the binding precedent. The High Court, accordingly, held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the Assessing Officer is empowered to make additions on another ground for which reassessment notice might not have been issued but which came to his notice subsequently during the course of proceedings for reassessment.
7	CIT v. PP Engineering Work (2014) 369 ITR 433 (Del)	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 6 year time limit?	The CIT(A) held that the reassessment is barred by time limitation and the Tribunal also upheld the order of the CIT(A) without making reference to section 150 read with Explanation 2 to section 153. The High Court made reference to section 150 which overrides the time limitation specified in section 149. Also, Explanation 2 to section 153 makes it clear that when an order in appeal, revision or reference is made whereby any income is excluded from the total income of an assessee for an assessment year, an assessment of such income for another assessment year shall be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order for the purposes of section 150 and section 153. The High Court made reference to the Delhi High Court ruling in the case of Rural Electrification Corporation Ltd v. CIT (2013) and opined that the findings of CIT (A) and Tribunal on the question of limitation as legally untenable and incorrect. The High Court observed that 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 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 High Court held that by virtue of section 150 read with Explanation 2 to section 153, the said order was not barred by limitation.

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8	Allanasons Ltd v. Dy. CIT (2014) 369 ITR 648 (Bom)	. 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?	The High Court observed that the escapement of income prompting reopening of assessment beyond the period of 4 years from the end of the assessment year is not possible unless it is due to the failure of the assessee to disclose fully and truly all material facts necessary for assessment. Even a subsequent change of law cannot be taken as income escaping assessment for triggering reassessment provisions beyond 4 years from the end of the assessment year unless there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The High Court observed that in this case, the reasons recorded, when read as a whole did not indicate even remotely any failure on the part of the assessee to disclose fully and truly any material fact necessary for assessment. The High Court, accordingly, held that a subsequent decision of Tribunal or High Court by itself is not adequate for reopening the assessment completed earlier u/s 143(3) unless there is a failure on the part of the assessee to disclose complete facts.
9	Amarnath Agrawal v. CIT (2015) 371 ITR 183 (All)	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?	The High Court observed that if the condition precedent to substantiate the satisfaction of escapement of income is not made, the issuance of notice would be invalid. In this case, since no reasons were recorded that the escaped income is likely to be Rs. 1 lakh or more so that the Chief Commissioner or Commissioner may record his satisfaction under section 151, the initiation of reassessment proceedings after 4 years was barred by time. The property was held for more than 3 years and the conversion from leasehold to freehold being an improvement of the title did not have any effect on the taxability of profits. 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. Accordingly, the High Court held that, in this case, the issue of notice under section 148 after the 4 year time period was not valid.
10	H. K. Buildcon Ltd. v. Income-tax Officer (2011) 339 ITR 535 (Guj.)	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	The Gujarat High Court, applying the rationale of the Apex Court ruling, observed that in the entire reasons recorded in this case, there was nothing on record to show that income had escaped assessment in respect of which the successor Assessing Officer received information subsequently, from an external source. The reasons recorded themselves indicated that the successor Assessing Officer had merely recorded a different opinion in relation to an issue to which the Assessing Officer, who had framed the original assessment, had already applied his

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		predecessor Assessing Officer, who had framed the original assessment, had already applied his mind and come to a conclusion?	mind and come to a conclusion. The notice of reassessment was, therefore, not valid.
11	CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. (2011) 336 ITR 699 (P&H)	Can the Assessing Officer issue notice under section 154 to rectify a mistake apparent from record in the intimation under section 143(1), after issue of a valid notice under section 143(2)?	It was concluded that proceedings under section 154 for rectification of intimation under section 143(1) cannot be initiated after issuance of notice under section 143(2) by the Assessing Officer to the assessee.
12	CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.)	Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?	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.
APPEALS AND REVISION			
1	Peterplast Synthetics P Ltd v. Asstt. CIT (2014) 364 ITR 16 (Guj)	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?	The High Court referred to the Bombay High Court ruling in Petlad Bulakhidas Mills Co Ltd v. Raj Singh (1959) 37 ITR 264 , in which it was observed 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. The Gujarat High Court held that the period of limitation has to be reckoned from the date of receipt of order by the assessee and not from the date of order.
2	Samsung India Electronics P. Ltd. v. DCIT (2014) 362 ITR 460 (Del.)	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	The High Court, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd.(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.

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		illegal?	
3	CIT v. Lark Chemicals Ltd (2014) 368 ITR 655 (Bom)	Is time limit under section 263 to be reckoned with reference to the date of assessment order or reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?	The High Court observed that in this case, the revision proposed under section 263 was in respect of issues that were concluded by virtue of intimation issued u/s 143(1), and were not dealt with in the order of reassessment. The time period for revision under section 263 would be 2 years from the end of the financial year in which the intimation was issued under section 143(1) and not from passing of reassessment order. The High Court, thus, held that the jurisdiction under section 263 could not be assumed on issues which were part of the original assessment, for which the period of limitation expired long ago.
4	CIT v. ICICI Bank Ltd. (2012) 343 ITR 74 (Bom.)	Would the period of limitation for an order passed under section 263 be reckoned from the original order passed by the Assessing Officer under section 143(3) or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147?	The Bombay High Court held that the order of assessment under section 143(3) allowed deduction under section 36(1)(vii), 36(1)(viia) and in respect of foreign exchange rate difference. The order of reassessment, however, had not dealt with these issues. Therefore, the doctrine of merger cannot be applied in this case. The order under section 143(3) cannot stand merged with the order of reassessment in respect of those issues which did not form the subject matter of the reassessment. Therefore, the period of limitation in respect of the order of the Commissioner under section 263 with regard to a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order under section 143(3) and not from the date of the reassessment order under section 147.
5	Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.)	Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit?	The High Court observed that, in this case, 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 under section 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 the relevant Schedule. Therefore, this was an error on the face of the order and hence, the same was not sustainable. Accordingly, the High Court set aside the order of Commissioner and remanded the matter for fresh consideration. The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest.

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6	CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom.)	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?	The Bombay High Court, considering the above mentioned decisions, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.
7	CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?	The High Court observed 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.
8	Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi) (FB)	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?	The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.
9	Deepak Kumar Garg v. CIT (2010) 327 ITR 448 (MP)	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	It was observed that, keeping in view the provisions of section 260A(7), the power of re-admission/restoration of the appeal is always enjoyed by the High Court. However, such power to restore the appeal cannot be treated to be a power to review the earlier order passed on merits. [Refer Meghalaya Steels Ltd. Case of RTP May 2016 (17 No. case) on Last Page]
PENALTIES			
1	MAK Data P. Ltd. V. CIT (2013) 358 ITR 593 (SC)	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	The Apex Court was, therefore, of the view that surrender of income in this case is not voluntary, in the sense, that the offer of surrender was made in view of detection made by the Assessing Officer in the survey conducted in the sister concern of the assessee. The Apex Court, therefore, concurred with the view of the High Court that levy of penalty is correct in law.

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		271(1)(c) for concealment of income?	
2	CIT v. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)	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?	The Apex Court, therefore, held that where there is no finding that any details supplied by the assessee in its return are incorrect or erroneous or false, there is no question of imposing penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee.
3	CIT v. Amit Jain (2013) 351 ITR 74 (Delhi)	Can reporting of income under a different head be considered as tantamount to furnishing of inaccurate particulars or suppression of facts to attract penalty under section 271(1)(c)?	The High Court, after considering the observations of the Tribunal and the decision of the Supreme Court in CIT v. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 , 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).
4	CIT v. Celetronix Power India P. Ltd. (2013) 352 ITR 70 (Bom.)	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?	The Bombay High Court affirmed the decision of Appellate Tribunal deleting the penalty under section 271(1)(c) on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assessee to furnish accurate particulars nor on account of furnishing inaccurate particulars.
5	CIT v. Indersons Leather P. Ltd. (2010) 328 ITR 167 (P&H)	Can penalty under section 271(1)(c) for concealment of income be imposed in a case where the assessee has raised a debatable issue?	The High Court observed that, mere raising of a debatable issue would not amount to concealment of income or furnishing inaccurate particulars and therefore, penalty under section 271(1)(c) cannot be imposed.

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6	CIT v. Nayan Builders & Developers (2014) 368 ITR 722 (Bom)	Is concealment penalty leviable when the High Court admits the quantum appeal as involving substantial question of law?	The High Court observed 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. In such circumstances, penalty cannot be levied under section 271(1)(c). Thus, the High Court held that when the quantum proceeding is admitted by the High Court, it amounts to a debatable issue and hence, concealment penalty is not leviable.
7	CIT v. Muthoot Financiers (2015) 371 ITR 408 (Del)	Is penalty under section 271D imposable for cash loans/deposits received from partners?	The High Court referred to the case CIT v. R.M. Chidambaram Pillai, where the Apex Court was of the view that the firm is not a legal person even though it has some of the attributes of a personality. In CIT v. Lokhpat Film Exchange, it was 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 High Court also noted the different view expressed by the Supreme Court in CIT v. A.W. Figgies & Co. (1953), where it was held that the partners of the firm are distinct as civil entities while the firm as such is a separate and distinct unit for the purpose of assessment. The High Court observed that the position that emerges is that there are various high Courts, which have held that section 269SS would not be violative when money is exchanged inter se between the partners and the firm. The High Court 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. The High Court held that the issue being a debatable one, there was reasonable cause for not levying penalty.
8	CIT v. Triumph International Finance (I.) Ltd. (2012) 345 ITR 270 (Bom.)	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	Held that the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries and therefore, penalty under section 271E is applicable. However, since the transaction is bona fide in nature being a normal business transaction and has not been made with a view to avoid tax, it was held that the assessee has shown reasonable cause for the failure under section 269T, and therefore, as per the provisions of section 273B, no penalty under section 271E could be imposed on the assessee for contravening the provisions of section 269T.

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		attract penalty under section 271E?	
OFFENCES AND PROSECUTION			
1	Union of India v. Bhavcha Machinery and Others (2010) 320 ITR 263 (MP)	Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.
MISCELLANEOUS PROVISIONS			
1	Dr. Manoj Kabra v. ITO (2014) 364 ITR 541 (All)	Can the Assessing Officer suo-moto assume jurisdiction to declare sale of property as void under section 281?	The High Court observed that the issue in this case was squarely covered by above Apex Court decision which held that the legislature had no intention to confer any exclusive power or jurisdiction upon the income-tax authority to decide any question arising under section 281. 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 under section 281, an appropriate proceeding in accordance with law was required to be taken under section 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 under section 281 of the Income-tax Act; but he himself cannot assume jurisdiction to declare the sale deed as void. Applying the rationale of the Apex Court ruling, the High Court held that the Assessing Officer has no jurisdiction under section 281 to suo-moto declare the sale as void
2	CIT v. V. Sivakumar (2013) 354 ITR 9 (Mad.)	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?	The High Court, relying upon the various court decisions, upheld the decision of the Tribunal holding that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. In the present case, the assessee has acted <i>bona fide</i> and that there was a reasonable cause within the meaning of section 273B. Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.
DEDUCTION, COLLECTION AND RECOVERY OF TAX			

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1	CIT (TDS) v. ITC Ltd. [2011] 338 ITR 598 (Del.)	Do the tips collected by hotel and disbursed to employees constitute salary to attract the provisions for tax deduction at source under section 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. The High Court held that 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. The High Court, however, observed that payment of interest under section 201(1A) is mandatory. The payment of interest under that provision is not penal. There was, therefore, no question of waiver of such interest on the basis that the default was not intentional or on any other basis.
2	UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)	12. Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?	The High Court opined 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 actual payee is not ascertainable and the person in whose name the interest is credited is not a person liable to pay tax under the Act. The deposits kept with the bank under the orders of the court were, essentially, funds which were in legal custody of the court. The interest on that account – although credited in the name of the Registrar General – was also part of funds under the custody of the Court. The Registrar General is not the recipient of the income represented by interest that accrues on the deposits made in his name. The credit of interest is not a credit to the account of a person who is liable to be assessed to tax. The High Court 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. The High Court allowed the writ and set aside the orders passed by the tax authorities.
3	CIT v. Hindustan Lever Ltd. (2014) 361 ITR 0001 (Kar.)	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	The High Court observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint Commissioner to levy penalty equivalent to the amount tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the High Court held that proceedings under section 201 cannot be initiated against the assessee.

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4	Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR)	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?	The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J. As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS provisions under section 194J or under section 194C.
5	CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)	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?	The Supreme Court held that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.
6	CIT v. Intervet India P Ltd (2014) 364 ITR 238 (Bom)	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?	The High Court observed that the assessee had undertaken sales promotion by way of product discount scheme under which it offered incentive to the stockists / distributors and dealers. The relationship between the assessee and the distributors / stockists was that of principal to principal. The products were firstly sold to distributors / stockists who in turn resold the goods in the market. 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 High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the Explanation (i) to section 194H. Accordingly, the High Court affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.

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7	Bharti Cellular Ltd. v. ACIT (2013) 354 ITR 507 (Cal.)	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?	The High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H.
8	C IT v. Mother Dairy India Ltd. (2013) 358 ITR 218 (Delhi)	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?	The High Court opined that the issue had to be decided on the basis of the fact as to when and what point of time the property in the goods passed to the concessionaire. In this case, the concessionaire became the owner of the milk and products on taking delivery of the same from the assessee-dairy. Therefore the relationship between the assessee and the concessionaire is a Principal to Principal relationship. The High Court, therefore, held that the difference between the purchase price (price paid to the Dairy) and the MRP is the concessionaire's income from business and cannot be categorized as commission to attract the provisions of section 194H.
9	CIT v. Qatar Airways (2011) 332 ITR 253 (Bom.)	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?	Held that 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 – It may be noted that in the case of CIT v. Singapore Airlines Ltd. (2009) 319 ITR 29, 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 the deal code. Therefore, in that case, the Delhi High Court, held that the supplementary commission in the hands of the agent was ascertainable by the airline company and hence the airline company liable to deduct tax at source on the same under section 194H

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10	Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del)	Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	The High Court observed that it was the intention of the parties to use the technical and specialized equipment maintained by the assessee. The infrastructure was given for the use of mobile operators. 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 High Court held that the submission of the assessee that the transaction is not "renting" is incorrect. Also, the Revenue's contention that the transaction is primarily "renting of land" is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
11	CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)	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?	The Allahabad High Court held that, since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26.
12	CIT v. Japan Airlines Co. Ltd. (2010) 325 ITR 298 (Del.)	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?	The Delhi High Court referred to the case of United Airlines v. CIT (2006) 287 ITR 281, wherein the issue arose as to whether landing and parking charges could be deemed as rent under section 194-I. The Court observed that rent as defined in the said provision had a wider meaning than "rent" in common parlance. It included any agreement or arrangement for use of land. [Refer Japan Airlines/ Singapore Airlines Ltd case from RTP of May 2016 at last (16 No. case)]
13	CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)	Can the payment made by an assessee engaged in transportation of building material and goods to	The High Court observed that the assessee had given contracts to the parties for the transportation of goods and had not taken machinery and equipment on rent. The Court observed that 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

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		contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?	section 194C and the provisions of section 194-I would, therefore, not be applicable..
14	DIT (International Taxation) v. Delta Air Lines Inc. (2013) 358 ITR 0367 (Bom.)	Are the provisions of section 234D levying interest on excess refund attracted in a case where the refund granted to the assessee in pursuance of the order of Commissioner (Appeals) was reversed on account of setting aside of such order by the Tribunal?	The High Court observed that interest under section 234D is chargeable only where the refund has been granted to the assessee while processing the return of income under section 143(1) and thereafter, such refund is found to be excessive under the regular assessment. Consequently, the High Court concurred with the Tribunal's view that the provisions of section 234D were not attracted in this case.
15	Uttar Pradesh Carbon & Chemicals Ltd v. TRO (2014) 368 ITR 384 (All.)	Can 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)?	The High Court referred to Apex Court decision in <i>Beharilal Ramcharan v. ITO (1981) 131 ITR 129</i> 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 High Court 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.
RTP MAY 2016 – CASE LAWS			
1	CIT Vs. ALCATEL LUCENT CANADA (2015) 372 ITR 476 (Del)	Can consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi)?	The High Court held that - The software that was loaded on the hardware did not have any independent existence; - The software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers; - The software is embedded in the system and there could not be any independent use of such software; - This software merely facilitates the functioning of the equipment and is an integral part of the hardware.

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			Therefore, 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' in terms for of section 9(1)(vi).
2	QUEEN'S EDUCATIONAL SOCIETY (2015): 372 ITR 699 (SC)	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?	The Supreme Court observed that – ➤ The provisions of section 10(23C)(iiia-d) provide for three requirements, namely, i) The education institution must exist solely for educational purposes; ii) It should not be for purposes of profit; and iii) The aggregate annual receipts of such institution should not exceed the amount as may be prescribed. Such monetary limit is Rs. 1 crore as per Rule 2BC. ➤ After analyzing the legal provisions, the law common to section 10(23C)(iiia-d) / (vi) are summed up as follows : 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 purpose and becomes an institution for 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 result in making profit, it cannot be inferred that it becomes an activity for profit; d) If after meeting expenditure, surplus arises incidentally from activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; 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. The Apex Court held that – Based on the above principles and tests, 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)(iiia-d) for claim of exemption thereunder.

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3	CIT Vs. NDR Warehousing (P) Ltd. (2015) 372 ITR 690 (Mad)	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 "profit and gains of business or profession"?	The High Court held that – - The objects clause of the memorandum of association of the company shows that assessee company was incorporated with the object of carrying on business of warehousing and letting /renting of godowns and providing facilities for storage of articles or things and descriptions. - The profit and loss account of the assessee-company shows that its main source of income is storage charges and maintenance or user charges. . - Therefore, the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head "Profit and gains of business or profession" and not under head "Income from house property".
4	Principal CIT Vs. MATRUPRASAD C. PANDEY (2015) 377 ITR 363 (GUJ)	Can section 41(1) be invoked in respect of long standing credit balances of sundry creditors admitted as liability in the Balance Sheet?	The High Court referring to the case of CIT v. Nitin S Garg (2012) 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.
5	CIT Vs. KLN AGROTECHS (P) LTD. (2015) 375 ITR 301 (KAR)	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 assessee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?	The High Court 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.

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6	Fibre Boards (P) Ltd. Vs. CIT (2015) 376 ITR 596 (SC)	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?	The Apex Court held that – - Section 54G gives a time limit of 3 years after the date of transfer of capital asset in the case of shifting of industrial undertaking from urban area to any area other than urban area. - The expression used in section 54G (2) is that the amount which is not utilized by him for all or any of the purposes aforesaid has to be deposited in the capital gain account scheme. - To availing exemption, all that was required for the assessee is to “utilise” the gain for purchase and acquisition of new machinery or plant and building or land. - Therefore, 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.
7	CIT Vs. S.R. JEYASHANKAR (2015) 373 ITR 120 (MAD)	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?	The Madras High Court held that – - The Punjab and Haryana High Court, in the cases of Mrs. Madhu Kaul v. CIT (2014) and Vinod Kumar Jain v. CIT (2012), held that – The date of allotment of the flat has to be adopted as date of acquisition of the immovable property when it comes to acquiring a flat from the promoter of the flat by way of executing construction agreement and not the date of the sale deed for purchase of the undivided share in land. - In this case, the right to the property flows from the date of agreement with the builder i.e., from February, 2005. Over a period of time, payments were made and the transaction was concluded in accordance with the terms of the agreement by registering the undivided share in land and handing over of the flat subsequently. - Therefore, 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).

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8	CIT Vs. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015) 373 ITR 619 (GUJ):	Can the Commissioner 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?	The High Court held that – - The Punjab and Haryana High Court in CIT v. O.P. Jindal Global University (2013) held that – At the time of granting approval of exemption under section 80G, only the objects of the trust are required to be examined and the aspect of application of funds can be examined by the Assessing Officer at the time of framing the assessment. - Section 80G does not relate to assessment of the trust or the institution whose income is not liable to be included in the computation of taxable income under various provisions of the Act. - Primarily, section 80G is related to giving deduction in respect of donations made by a person to such trusts and institutions. - Therefore, the commissioner has erred in refusing to grant recognition to the trust under section 80G(5).
9	Hemant Traders Vs. ITO (2015) 375 ITR 167 (Bom)	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?	The High Court held that – - Merely because survey had taken place cannot be a ground for reopening the assessment without valid material or evidence at the time of issue of notice. Something more was required in law for the Assessing Officer to exercise his powers. - 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.
10	Godrej Industries Ltd. Vs. DCIT (2015) 377 ITR 1 (Bom)	Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?	The High Court held that – - 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. - Therefore, the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

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11	N. GOVINDARAJU Vs. ITO (2015) 377 ITR 243 (Kar)	Can the Assessing Officer make a reassessment on fresh grounds when the original reasons recorded for reopening the assessment does not survive?	The High Court held that – - Para 47.3 reads as under: “Therefore, to articulate the legislative intention clearly Explanation 3 has been inserted to section 147 to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under section 148(2)”. - It is true that if the foundation goes, then, the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. However, this can be verified at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then, in either case, it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can continue. - 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 Assessing Officer 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. [Note – This decision has dissented from the decisions in the case of CIT v. Jet Airways (I) Ltd (2011) (Bom); Ranbaxy Laboratories Ltd v. CIT (2011) (Del).]
12	CIT Vs. Krishna Capbox (P) Ltd. (2015) 372 ITR 310 (All)	Can mere non-mention or non-discussion of enquiry made by the Assessing Officer in the assessment order justify invoking revisionary jurisdiction under section 263?	The High Court held that – - The Bombay's in High Court Cellular Ltd. v. DCIT(2008) held that – If a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it. - Therefore, since the relevant enquiries and re book), the Commissioner cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.

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13	CIT Vs. Fortaleza Developers (2015) 374 ITR 510 (Bom)	Can the Commissioner invoke revisionary jurisdiction u/s 263, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction under section 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?	The High Court held that – - The contract between the two parties was self-explanatory and the interpretation placed by the assessee on clause (7) and claiming deduction under section 80-IB(10) is in order. - When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner 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 order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.
14	CIT Vs. Avenue Super Chits (P) Ltd. (2015) 375 ITR 76 (Kar)	Whether chit dividend paid to subscribers of chit fund is in terms of section 2(28A) to attract deduction of tax at source under section 194A?	The High Court held that – - The Delhi High Court in CIT v. Sahib Chits (Delhi) (P) Ltd (2010) held that – - Section 2(28A) was referred to decide that chit dividend cannot be treated as interest. Further, section 194A has no application to such (chit) dividend and therefore, there is no obligation on the part of the assessee to make any deduction under section 194A before such dividend is paid to the subscribers of the chit. - Therefore, auction chit dividend paid to subscribers of the chit is not 'interest' as defined section 2(28A) of the Income-tax Act, 1961 and thus, tax deduction in terms of section 194A is not attracted. [Meaning of certain terms – a) Dividend [2(h) of Chit Fund Act, 1982]: The share of the subscriber in the amount of discount available under the chit agreement for rate able distribution among the subscribers at each installment of the chit. b) Discount [2(g) of the Chit Fund Act, 1982]: The sum of money or the quantity of grain which a prized subscriber is, under the terms of the chit agreement, required foregoing and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscriber or for both. c) Interest [2(28A) of the Income Tax Act, 1961]: Interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or

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			<i>obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.]</i>
15	CIT Vs. Manipal Health Systems (P) Ltd. (2015) 375 ITR 509 (Kar)	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 u/s 192 or 194J?	The High Court held that – - To decide whether the relationship of employer-employee existed or not, the contract entered into between the parties has to be seen - whether the same is a “contract for sale” or a “contract of service”. In order to ascertain the nature of contract, multiple-factor tests have to be applied. The independence test, control test, intention test are some of the tests adopted. - Also, the doctors have filed their returns of income for the relevant assessment years showing the income received from the assessee-company as professional income and the same is said to have been accepted by the Department. - The Gujarat High Court in CIT (TDS) v. Apollo Hospitals International Ltd. (2013) held that – Consultant doctors were not getting salary but payment to them was in the nature of professional fees liable to tax deduction at source under section 194J. - Therefore, considering the totality of facts and terms of the agreement, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.
16	Japan Airlines CO. LTD. V. CIT/ CIT V. Singapore Airlines LTD. [2015] 377 ITR 372 (SC)	Are landing and parking charges paid by Airline company to Airport Authority of India in the nature of rent to attract tax deduct at source u/s 194-I?	The Supreme Court held as under: (1) In the instant case, the Airlines are allowed to land and take-off their Aircrafts at Indira Gandhi International Airport ('IGIA') for which landing fee is charged. Likewise, they are allowed to park their Aircrafts at IGIA for which parking fee is charged. It is done under an agreement and/or arrangement with Airport Authority of India ('AAI'). The moot question is as to whether landing and take-off facilities on the one hand and parking facility on the other hand, would mean to 'use of land'. (2) We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the 'use of land'. That would be too simplistic an approach, ignoring other relevant details which would amply demonstrate that these charges are for services and facilities offered in connection with the aircraft operation at the airport. These services include providing of air traffic services, found safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

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			(3) Therefore, it is not mere use of land. On the contrary, it is the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol, which is the primary focus. For example, runways are not constructed like any ordinary roads. Special technology of different type is required for the construction of these runways for smooth landing and take-off of the aircrafts. Specialized kind of orientation and dimensions are needed for these runways which are prescribed with precision and those standards are to be adhered to. Further, there has to be proper runway lighting, runway safety are, runway markings etc. (4) Technological aspects of runways were emphasized to highlight the precision with which designing and engineering goes into making these runways to be fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of and aircraft and in this while process, 'use of the land' pails into insignificance. What is important is that the charges payable are for providing of these facilities. (5) Thus, it becomes very clear that the charges are not for use of land per se and, therefore, it cannot be treated as 'rent' within meaning of Section 194-I of the Act. However, TDS shall be deducted under section 194C.
17	CIT v. Meghalaya Steels LTD. (2015) 377 ITR 112 (SC)	Does high court have the inherent power under income tax act, 1961 to review its own order on merit?	The Supreme Court observe and held that- - Assessee's submission that High Court being courts of record under article 215 of the Constitution of India, the power of review would inhere in them. - Further, it noted that in another case (<i>Shivdeo Singh v. State of Punjab AIR 1963 SC 1909</i>), in a slightly different context while dealing with power of review of writ petitions filed under article 226, The Supreme Court had observed that there is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. - In that case, the High Court had entertained the second petition since the interested parties were not given an effective opportunity of being heard, before passing the judgment; - Therefore, keeping in mind the requirement of the principles of natural justice, the High Court had exercised its inherent power of review. - Hence it is clear on a cursory reading of sec. 260A(7), that it does not purport in any

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			manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Sec. 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedures would apply to appeals under sec. 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 High Court's inherent jurisdiction is in any manner affected.
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===All the Best to all readers ===
And Thanks for appreciating.....