Part A: Direct Tax Laws

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S. No	QUESTION	CASE PARTIES	JUDGEMENT
CH 01: BASIC CONCEPTS			
1.	Can capital contribution of the individual partners credited to their accounts in the books of the firm be taxed as cash credit in the hands of the firm, where the partners have admitted their capital contribution but failed to explain satisfactorily the source of receipt in their individual hands?	CIT v. M. Venkateswara Rao (2015 T & AP)	The HC, accordingly, held that the view taken by the AO that the partnership firm has to explain the source of income of the partners as regards the amount contributed by them towards capital of the firm, in the absence of which the same would be treated as the income of the firm, was not tenable.
2.	Nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?	CIT v. Saurashtra Cement Ltd. (2010 SC)	The SC affirmed the decision of the HC. Held that: "damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.
CH 02: RESIDENTIAL STATUS & SCOPE OF INCOME			
3.	Can consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi)?	CIT v. Alcatel Lucent Canada (2015 Delhi HC)	The HC concurred with the decision of the Tribunal holding that where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).
CH 03: INCOMES NOT FORMING PART OF TOTAL INCOME			
4.	**In a case where the charitable trust is deemed to be registered under section 12A due to non-disposal of application within the period of 6 months, as stipulated under section 12AA(2), from when would such deemed registration take effect?**	**CIT v. Society for the Promotion of Education (2016 - SC)** **RTP May 2017**	**The Apex Court clarified that deemed registration would commence only after 6 months from the date of application. Therefore, the registration of the application under section 12AA of the Income-tax Act, in the case of the assessee trust shall take effect from August 24, 2003.**
	In Society for the Promotion of Education's case, the Supreme Court has decided that the deemed registration would be effective only after six months from the date of application, in the sense, that it would not have retrospective application. The Supreme Court ruling assumes significance in the current context, since it affirms that nonconsideration of application within the time period of six months from the end of the month in which application is received would tantamount to deemed registration. However, in the light of the current provisions of section 12A(2), the exemption provisions of sections 11 and 12 would apply in relation to the income of the trust from the assessment year immediately following the financial year in which such application is made, even though the effective date of deemed registration would be after expiry of the six month period as per the above Supreme Court ruling. **Consequent to the above Supreme Court judgement** affirming the Allahabad High Court ruling in Society for the Promotion of Education's case, students may ignore the Madras High Court ruling in CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd.'s case.		
5.	**Word imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption under**	**CIT v. St. Peter's Educational Society (2016 - SC)** **RTP May 2017**	**Applying the rationale of the Supreme Court ruling in Queen's Educational Society's case, the Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief**

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	section 10(23C)(vi) ?		**Commissioner of Income-tax refusing exemption under section 10(23C)(vi).** ***Please Go through the note in Italics in Queen's Educational Society Case.***
6.	Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?	Queen's Educational Society v. CIT (2015 SC)	Based on the principles* and tests, the SC upheld the Tribunal's view that the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder.
** The SC, after analyzing the legal provisions and precedents, summed up the law common to section 10(23C)(iiiad)/(vi):* *(a) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;* *(b) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;* *(c) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;* *(d) If after meeting expenditure, surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; and* *(e) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.*			
7.	In a case where properties bequeathed to a trust could not be transferred to it due to ongoing court litigation and pendency of probate proceedings, can violation of the provisions of section 11(5) be attracted?	DIT (Exemption) v. Khetri Trust (2014 Delhi HC)	Based on the factual findings, elucidated and affirmed by the CIT (Appeals) and the Tribunal, the HC held that there was no violation of section 11(5) in this case.
8.	Is the approval of Civil Court mandatory for amendment of trust deed, even in a case where the settler has given power to the trustees to alter the trust deed?	DIT (Exemptions) v. Ramoji Foundation (2014 AP)	Accordingly, in this case, the HC held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under section 12AA.
<u>CH 05: INCOME FROM HP</u>			
9.	Would income from letting out of properties by a company, <u>whose main object as per its memorandum of association</u> is to acquire and let out properties, be taxable as its business income, or as income from house property, considering the fact that the entire income of the company as per its return of income was only from letting out of properties?	Chennai Properties and Investments Ltd. v. CIT (2015) (SC)	The Supreme Court opined that the judgment in Karanpura Development Co. Ltd.'s case squarely applied to the facts of the present case, where letting of the properties is in fact the business of the assessee. The main objective of the company as per its memorandum of association is to acquire and hold properties in Chennai and let out these properties. Therefore, holding of the properties and earning income by letting out these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the AO, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that the assessee had rightly disclosed the income derived from letting out of such properties under the head "Profits and gains of business or profession".
10.	Whether the rental income derived from the unsold flats which are shown as stock-in-	New Delhi Hotels Ltd. v. ACIT (2014 Delhi HC]	In this case, the Delhi HC followed its own decision in the case of CIT vs. Discovery Estates Pvt. Ltd / CIT vs. Discovery Holding Pvt. Ltd.,

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	trade in the books of the assessee would be taxable under the head „Profits and gains from business or profession‟ or under the head „Income from house property‟, in a case where the actual rent receipts formed the basis of computation of income?		wherein it was held that rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be assessed under the head "Income from house property" and not under the head "Profits and gains from business or profession".
11.	Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - "Income from house property" or "profits and gains of business or profession"?	CIT v. NDR Warehousing P Ltd (2015 Madras HC)	The HC observed that the CIT (Appeals) as well as the Tribunal had not only gone into the objects clause of the memorandum of the assessee but also individual aspects of the business to come to the conclusion that it was a case of warehousing business, and, therefore, the income would fall under the head "PGBP".
	Accordingly, the HC held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head "PGBP" and not under "HP Income".		
CH 06: PROFIT AND GAINS OF BUSINESS & PROFESSION			
12.	**Would rental income from the business of leasing out roperties be taxable under the head Income from house property" or "Profits and gains from business or profession"?**	**Rayala Corporation (P) Ltd. v. Asstt. CIT (2016 - SC)** **RTP May 2017**	**The Apex Court held that since the business of the company is to lease out its property and earn rent therefrom, the rental income earned by the company is chargeable to tax as its business income and not income from house property.**
13.	**In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?**	**Shasun Chemicals & Drugs Ltd v. CIT (2016 - SC)** **RTP May 2017**	**The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii). It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was**
	ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii). *In this case, the Supreme Court has held that the bonus was allowable as deduction under section 36(1)(ii), even though it was initially remitted to the trust created for this purpose, from which the payment was ultimately made to the employees before the due date. The Supreme Court has applied the concept of "substance over form" in allowing the deduction of bonus paid under section 36(1)(ii) by considering that the payment of bonus was ultimately made to employees before the stipulated due date. Applying the same concept, the intermittent process of creation of trust for remittance of bonus and subsequent payment therefrom to the employees, which formed the basis of disallowance of bonus by the Assessing Officer on the basis of the provisions of section 40A(9) has been ignored. However, had the payment to employees not been made before the stipulated due date, deduction under section 36(1)(ii) would not be allowable merely because the amount was remitted to the trust before the stipulated due date. It may be noted that as per section 43B(c), actual payment before the due date of filing of return of income under section 139(1) is a pre-requisite for claiming deduction under section 36(1)(ii).*		
14.	Can compensation paid by the assessee-company to its tenants for vacating the premises in order to earn higher rent by re-letting out the same, be allowed as revenue expenditure incurred for the business, if the main object of the assessee-company as per its Memorandum of Association	Shyam Burlap Co Ltd v. CIT (2016 - Calcutta HC)	The HC, held that when income from letting out of premises is treated as income from business based on the facts and circumstances of the case and the rationale of the SC ruling in Chennai Properties' case, the compensation paid to tenants for vacating the premises to facilitate the assessee to derive higher rent by re-letting out the premises, is deductible as revenue expenditure.

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	is to acquire and develop properties and to deal with the same by way of sale, lease, letting out etc.?		
15.	Can interest paid upfront to the debenture holders be allowed as deduction in the first year itself or should the same be spread over the life of the debentures, being five years in this case, when such interest is shown as deferred revenue expenditure in the books of account?	Taparia Tools Ltd v. Joint CIT (2015 - SC)	The SC observed that while examining the allowability of deduction, the Assessing Officer has to consider the genuineness of borrowing. Under section 36(1)(iii), any amount paid on account of interest is an admissible deduction, if the capital was borrowed by the assessee and the borrowing was for the purpose of business or profession. The SC opined that once the genuineness was proved and the conditions of section 36(1)(iii) read with section 43(2) were satisfied, the benefit of deduction in the year in which the amount of interest was actually paid or incurred cannot be denied.The SC also noted that there is no concept of deferred revenue expenditure in the Income-tax Act, 1961 except under specified sections such as section 35D meant for amortization over a period of time. The SC, accordingly, held that the assessee would be entitled to deduction of the entire upfront interest paid in the same year in which the amount was actually paid.
16.	When would the interest income earned on share application money deposited with a bank for a specified period in accordance with the statutory requirement become taxable?	CIT v. Henkel Spic India Ltd (2015 - SC)	The HC noted that the company is required to keep the money in a bank account which yields interest. The interest so earned cannot be regarded as amount which is fully available to the assessee for its own use, since it has accrued on a fund which was held in trust until the allotment of shares gets completed and/or money is returned. The HC also observed that no part of this fund (principal & interest), can be utilized by the company until the allotment process is completed. When the amount is repaid in cases of non-allotment of shares, it has to be repaid with such interest as may be prescribed. It is only after the allotment process is completed and all moneys which are refundable are refunded with interest, wherever interest becomes payable, the balance remaining application money can be regarded as belonging to the company. *The SC, upheld the decision of the HC* holding that the interest income accrues to the company only in the assessment year in which the allotment is completed.
17.	Can section 41(1) be invoked in respect of long standing credit balances of sundry creditors admitted as liability in the Balance Sheet?	Principal CIT v. Matruprasad C.Pandey (2015 Gujrat HC)	The HC held that addition on the ground that the amounts were outstanding for several years cannot be made under section 41(1) unless and until it is found that there was remission or cessation of liability that too during the previous year, relevant to the assessment year in question. Even if the credit balances are outstanding for long time, such balances cannot be subjected to tax by invoking section 41(1), unless there is a remission/cessation of liability in the year under question.
18.	Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of interest and principal, has been offered to tax under section 41(1), can the assesseee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?	CIT v. KLN Agrotechs (P) Ltd (2015 Kar. HC)	The HC concurred with the Tribunal's view that if out of the total sum of ₹ 256.54 lakhs which has been offered and subjected to tax by the assessee in its return, the amount of unpaid interest of ₹ 193.96 lakhs is deducted then the waived principal sum would come to 62.58 lakhs (i.e., ₹441.30 lakhs minus 378.72 lakhs), which is the amount which ought to have been taxed under section 41(1). Based on the above reasoning, the HC held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax, would come to the same.

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19.	Is expenditure incurred for construction of transmission lines by the assessee for supply of power to UPPCL by the assessee deductible as revenue expenditure?	Addtl. CIT v. Dharmpur Sugar Mill (P) Ltd (2015 Allahabad HC)	Following the principle of law laid down by the SC in Empire Jute Mills‟ case, the Allahabad HC, in this case, held that the expenditure which was incurred by the assessee in the laying of transmission lines was clearly on the revenue account. The transmission lines, upon erection, vested absolutely in UPPCL. The expenditure which was incurred by the assessee was for aiding efficient conduct of its business since the assessee had to supply electricity to its sole consumer UPPCL. This was not an advantage of a capital nature.
20.	Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?	CIT v. K and Co. (2014 Delhi HC)	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 margin money requirement was an essential element for obtaining the bank guarantee which was necessary for the contract between the State Government of Sikkim and the assessee. The High Court, accordingly, held that the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".
21.	Under which head is 'franchise fee" received by an assessee in tourism business, against special rights given to franchisees to undertake hotel business in assessee‟s property, taxable?	Tamil Nadu Tourism Dev Corpn Ltd v. Dy. CIT (2014 Madras HC)	The HC, accordingly, held that the income earned by the assessee by way of franchisee fee is in the nature of business income and not income from house property
22.	Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?	CIT v. TVS Motors Ltd (2014 Madras HC)	Applying the rationale of above decisions, the HC held that "moulds & dies" are not independent of plant and machinery but are parts of plant and machinery. Once the dies are worn out, they had to be replaced so that the machine can produce the product according to business specifications. Thus, the expenditure incurred by the assessee towards replacement of parts of machinery to ensure its performance without bringing any new asset or advantage, is eligible for deduction as „current repairs‟ under section 31.
23.	Is guarantee commission paid by a company to its employee directors deductible as its business expenditure, where such guarantee was given by the employee directors to the bank for enabling credit facility to the company?	Controls & Switchgear Contractors Ltd v. Dy.CIT (2014 Delhi HC)	The HC observed that the directors of the company are employees of the company and are entitled to remuneration for the services rendered as employees. The assessee-company passed a resolution resolving that the directors be paid commission for providing their personal guarantees for the financial assistance availed by the assessee-company from the bank. This act of providing personal guarantee was clearly beyond the scope of their services as employees of the company. The assessee-company, in its commercial wisdom, had agreed to pay a commission for furnishing of such guarantees by the director employees, which cannot be faulted. In such a case, the AO only has to determine whether the transactions are real and genuine. It is not within his jurisdiction to impose his views as regards the necessity or the quantum of expenditure undertaken by the assessee. As regards section 36(1)(ii), the recipient directors were not entitled to receive the amount as commission in lieu of bonus or dividend. Dividend is paid to all the shareholders and the recipient directors were not the only shareholders of the company. The payment of commission, hence, cannot be taken as payment of dividend, since payment of dividend would result in payment to all the shareholders and not to select shareholders. The HC, therefore, set aside the Tribunal‟s order and directed rectification of the disallowance of amount paid as commission to directors.
24.	Is interest paid by the holding company as guarantor for the amount borrowed by the	JK Synthetics Ltd v. CIT (2014 Allahabad HC)	Applying the rationale of the SC's ruling to this case, the HC observed that the assessee had deep business interest in the existence of

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	subsidiary company deductible under section 36(1)(iii)?		subsidiary and therefore, repaid installments of loan to financial institutions. Such loans were given for the purpose of business. The HC, thus, held that the claim for deduction of interest by the assessee-holding company is allowable.
25.	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)?	CIT v. Gujarat State Road Transport Corp. (2014 Gujarat HC)	The HC, accordingly, held that the delayed remittance of employees‟ contribution beyond the „due date‟ prescribed in section 36(1)(va), is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1).**
	***Note: A contrary view was expressed by Uttrakhand HC in the case of CIT v. Kichha Sugar Co. Ltd. (2013) 356 ITR 351 holding that the employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing the return for the relevant previous year.*		
26.	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?	CIT v. IBM Global Services India P Ltd (2014 Karnataka HC)	The HC observed that the expenditure incurred for use of customer database did not result in acquisition of any capital asset. The assessee got the right to use the database and the company which provided the database was not precluded from using such database. Therefore, the expenditure incurred was for use of data base and not for acquisition of such data base and, hence, is deductible as revenue expenditure. As regards payment for obtaining trained and skilled employees, it was held that the joint venture company spent a lot of money to give training to employees who were transferred to the assessee-company. They were trained in the field of software. They have opted for employment with the assessee, and for their past services with the joint venture company, expenditure has been incurred. In effect, the payment made by the assessee-company was towards expenditure incurred for their training and recruitment. Such expenditure was in the revenue field, and therefore, the payment made by the assessee-company as per agreement to save such expenditure was also revenue in nature. Therefore, the expenditure incurred for obtaining trained and skilled employees cannot be termed as capital expenditure though the benefit may be of enduring nature. The HC, thus, held that both the expenditures claimed were allowable as revenue expenditure.
	Older Case Laws: • **BSES Yamuna Power**: Eligible rate of depreciation is 60% in respect of computer accessories and peripherals such as printers, scanners and server etc. since they form an integral part of the computer system and they cannot be used without the computer. • **Great City Manufacturing Co**: The remuneration paid to WORKING partners which is within the statutory limits u/s 40(b)(v) CANNOT be taken as Excessive and unreasonable to attract disallowance u/s 40A(2)(a).		
CH 07. CAPITAL GAINS			
27.	**In a case where a depreciable asset held for more than 36 months is transferred, can benefit of exemption under section 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?**	**CIT v. V.S. Dempo Company Ltd (2016 - SC)** **RTP May 2017**	**The Apex Court, concurred with the view of the High Court holding that since the depreciable asset is held for more than 36 months and the capital gains are re-invested in long-term specified assets within the specified period, exemption under section 54EC cannot be denied.**
28.	Can advance given for purchase of land, building, plant and machinery tantamount to	Fibre Boards (P) Ltd v. CIT (2015 SC)	To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial

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	utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?		undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.
	In this case, two issues have been touched upon, namely, whether notification of an area as an urban area under a repealed provision would hold good under the reenacted provision and whether advance given for purchase of an eligible asset would tantamount to utilisation of capital gains for purchase of the said asset for availing exemption under section 54G. The former issue was decided taking support from section 24 of the General Clauses Act, 1897, which provides for uninterrupted subordinate legislation in case of repeal and re-enactment, with or without modification. The latter issue was also decided in favour of the assessee by holding that payment of advance for purchase of eligible asset would tantamount to utilization of capital gains for purchase of the said asset.		
29.	Whether, for the purpose of computing the period of holding of the property, the date of allotment letter issued by the builder of the flat or the date of registration of the property has to be considered for determining the nature of capital asset – long-term or short-term?	CIT v. S.R. Jeyashankar (2015 Madras HC)	In effect, the P&H HC (in a similar case) held that the allottee gets the title to the property on issuance of allotment letter and payment in installments is only a consequential act upon which delivery of possession to the property flows. The Madras HC also noted that the Punjab & Haryana HC had taken a similar view in Vinod Kumar Jain's case. Accordingly, the Madras HC held that the assessee had rightly claimed the benefit of long-term capital gain, since the holding period exceeded 36 months (i.e., from 22.02.2005, being the date of agreement, to 10.04.2008, being the date of sale of property).
30.	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	Gouli Mahadevappa v. ITO (2013 Karnataka HC.)	On the issue of exemption under section 54F, the HC held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of ` 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of ` 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.
31.	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?	CIT v. Manjula J. Shah (2013 Bom.)	The Bombay High Court observed 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 indexd 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.
	Older Case Laws: • **Gita Duggal**: A building, comprising of several floors, developed and re-constructed, would be eligible for exemption under section 54/54F w.r.t the cost of construction of the new residential house (i.e., all independent floors handed over to the assessee); • **Syed Ali Adil**: An assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point. • **Yatish Trading Co. Pvt. Ltd:** 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, it is permissible to convert a portion of his stock-in-trade into investment. the gains arising on sale of those shares held as investments by the dealer-assessee		

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	(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".		
CH 08. INCOME FROM OTHER SOURCES			
32.	Can repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	CIT v. Vir Vikram Vaid (2014 Bombay HC)	The HC, accordingly, held that the repair and renovation expenses in respect of premises occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.
CH 10. SET-OFF AND CARRY FORWARD OF LOSSES			
	Older Case laws: • **Pramod Mittal:** 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. It must be noted that **in Madhukant M. Mehta's case**, the sole proprietor had expired and after his death the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned under section 78(2), i.e., a case of succession by inheritance.		
CH 11. DEDUCTIONS FROM GROSS TOTAL INCOME			
33.	**Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits "derived from" business or undertaking to qualify for deduction under section 80-IB?**	**CIT v. Meghalaya Steels Ltd (2016 - SC)** **RTP May 2017**	**The Supreme Court, accordingly, held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between**
	profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction under section 80-IB.		
34.	Can the CIT reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?	CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust 2015 Guj-HC	Referring to another case law whereIn that case, the Division Bench observed that, while considering the application for the purpose of section 80G, the authority cannot act as an assessing authority and the enquiry should be confined to finding out if the institution satisfies the prescribed conditions.
	The HC, thus, concurred with the decision of the Tribunal setting aside the order passed by the CIT refusing to grant registration under section 80G(5) to the assessee-trust due to the reason that it has not applied 85% of its income for charitable purposes.		
35.	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	CIT v. Orchev Pharma P. Ltd. (2013 SC)	On this issue, the SC, following the decision in case of *Liberty India v. CIT (2009 SC)* held that Duty Drawback receipts cannot be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction under section 80-IB.
CH 13. ASSESSMENT OF VARIOUS ENTITIES:			
36.	**Can income derived by an Indian shipping company from slot charter arrangement in other ships be computed applying the special provisions under Chapter XII-G of the Income-tax Act, 1961, relating to Tonnage Tax**	**CIT v. Trans Asian Shipping Services (P) Ltd (2016 - SC)** **RTP May 2017**	The Apex Court, accordingly, held that the requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter etc. It held that the contention of the assessee is valid and the legal fiction created by section 115VG(4) is to be given

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	Scheme, inspite of nonfulfillment of the condition of holding a valid certificate in respect of such ships indicating its net tonnage in force?		proper meaning. Accordingly, income from slot charter arrangement in other ships can be computed applying the special provisions under Chapter XII-G.
37.	Where land inherited by three brothers is compulsorily acquired by the State Government, whether the resultant capital gain would be assessed in the status of "Association of Persons" (AOP) or in their individual status?	CIT v. Govindbhai Mamaiya (2014 SC)	In this case, the property in question came to the assessees' possession through inheritance i.e., by operation of law. It is not a case where any "association of persons" was formed by volition of the parties. The SC, 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.
38.	Would the ancestral property received by the assessee after the death of his father, be considered as HUF property or as his individual property, where the assessee‟s father had received such property as his share when he went out of the joint family under a release deed?	CIT v. D. L. Nandagopala Reddy (Individual) (2014 Karnataka HC)	The HC held that that when the property came to the hands of the assessee, it was not his self-acquired property; it was property belonging to his HUF. The assessee had given a portion of the property to his wife without a registered document, which is possible only if the property is a HUF property. If such property is treated as a self-acquired property, then assessee would have been able to give the portion of the property to his wife only by registered document.
39.	Would non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 115BBA, and consequently attract the TDS provisions under section 194E in the hands of the payer?	Indcom v. CIT (TDS) (2011 Calcutta HC)	Held That, Although the payments made to non-resident umpires and the match referees are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA and thus, the assessee is not liable to deduct tax under section 194E.
CH 20: INCOME TAX AUTHORITIES:			
40.	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?	Hemant Kumar Sindhi & Another v. CIT (2014 - Allahabad HC)	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.
41.	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?	Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014 - SC)	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 ` 1 lakh.

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			The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority
	Older case laws: • **<u>Sahara Hospitality Ltd</u>.:** 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.		
<u>CH 21. ASSESSMENT PROCEDURE:</u>			
42.	Would the reassessment proceedings initiated under section 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?	Vipin Walia v. ITO (2016 Del HC)	The Assessing Officer initiated proceedings under section 147 against the deceased for the assessment year 2008-09. The time limit for issue of notice was 31.03.2015, since the income escaping assessment exceeded Rs. 1 lakh. On March 27, 2015 when the notice was issued, the assessee was already dead. If the Department intended to proceed under section 147, it could have done so prior to 31.03.2015 by issuing a notice to the legal representatives of the deceased. Beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee. The HC, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.
43.	Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?	Hemant Traders v. ITO (2015 Bombay HC)	The HC, accordingly, held that since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid. Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.
44.	Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?	Godrej Industries Ltd v. Dy.CIT (2015 Bom HC)	The position of law on the date of issue of notice under section 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable. The HC, accordingly, allowed the writ and held that the reason for reopening the assessment cannot get validated by the retrospective amendment of law.
45.	Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on the basis of which the notice was issued	**a) <u>Delhi High Court ruling in Ranbaxy Laboratories Ltd (2011)</u>:** 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.		

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	ceased to exist?	**b) <u>Punjab & Haryana High Court ruling in CIT v. Mehak Finvest P Ltd (2014)</u>** 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. **c) <u>Karnataka High Court ruling in N. Govindaraju v. ITO (2015)</u>** The High Court held that, in effect, once satisfaction of reasons for the notice is found sufficient i.e. if the notice under section 148(2) is found to be valid, then, the 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. *This decision has dissented from the decisions in the case of Jet Airways (I) Ltd (2011); Ranbaxy Laboratories Ltd v. CIT (2011).*	
46.	Is recording of satisfaction and quantification of escaped income a pre-condition for issuing notice under section 148 after 4 years from the end of the relevant assessment year?	Amarnath Agrawal v. CIT (2015 Allahabad HC)	The HC observed that two distinct conditions must be satisfied for assuming jurisdiction to issue a notice under section 148 after a period of 4 years viz. (i) escapement of income; and (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts
		necessary for his assessment. Accordingly, the HC held that, in this case, the issue of notice under section 148 after the four year time period was not valid.	
47.	Does the finding or direction in an appellate order that income relates to a different assessment year empower reopening of assessment for that assessment year, irrespective of the expiry of the six year time limit?	CIT v. PP Engineering Work (2014 Delhi HC)	The HC 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 AO initiated reassessment proceedings under section 147 by issue of notice under section 148 for the year and passed an order dated 29/12/2009 making an addition of Rs.32 lakhs. The HC held that by virtue of section 150 read with Explanation 2 to section 153, the said order was not barred by limitation.
48.	Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and HC ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts?	Allanasons Ltd v. Dy. CIT (2014 Bombay HC)	The HC, accordingly, held that a subsequent decision of Tribunal or HC by itself is not adequate for reopening the assessment completed earlier under section 143(3) unless there is a failure on the part of the assessee to disclose complete facts.
<u>CH 23. ADVANCE RULING</u>			
49.	Can Authority for Advance Ruling (AAR) reject an application for advance ruling on the ground that proceedings are already pending before the Income-tax authority, where notice under section 143(2) in printed format has been served on the applicant-assessee before the date of filing the said application for advance ruling? What would be the position if notice under section 142(1) along with	Hyosung Corporation v. AAR (2016 Del HC)	The HC, accordingly, held that rejection of application filed by the assessee for the assessment years 2008-09 and 2009-10 was not erroneous and did not call for any interference, since the notice under section 142(1) along with questionnaire were issued before the date of making an application for advance ruling. However, notice under section 142(1) issued for the assessment year 2010-11 after the date of filing of application will not result in the proceedings being 'already pending' before an Income-tax authority for the purpose of applying proviso to section 245R(2).

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	detailed questionnaire has also been issued to the applicant assessee before the date of filing of the said application for Advance Ruling?		Thus, the application for the assessment year 2010-11 cannot be rejected by the AAR. However, for the assessment years 2008-09 and 2009-10, the rejection of the application by AAR is tenable in law, since notice under section 142(1) along with detailed questionnaire was issued before the date of filing of such application.
CH 24. APPEALS & REVISION			
50.	**Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?**	**CIT v. Subrata Roy (2016 - SC)** **RTP May 2017**	**The Apex Court noted that the assessee had participated in the hearing of the appeals before High Court which is apparent from the various parts of the order dated 27.08.2013. The Apex Court held that the order passed by the High Court is not an ex-parte order for invoking the provisions of the Code of Civil Procedure, 1908, since the order of the High Court contains the submissions of the counsel of the assessee (though not that of the senior counsel for whose presence a short adjournment was prayed). Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power there under cannot be exercised. Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court.**
51.	**Can revision under section 263 be made on the ground that the order is passed without making inquiries or verification which should have been made?**	**CIT v. Amitabh Bachchan (2016 - SC)** **RTP May 2017**	**The Apex Court noted that to exercise jurisdiction under section 263 the requirement is that the order passed by the assessing authority is erroneous and prejudicial to the interests of the revenue. Section 263 does not require any specific show cause notice to be served on the assessee. What is required is granting of opportunity to the assessee of being heard before making the revision order. Failure to give such an opportunity would render the revisionary order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. In the course of revision, the documents and books of accounts overlooked in the assessment proceedings were considered and at every stage of revisionary proceeding, the authorized representative of the assessee had appeared and had full opportunity to contest the basis on which the revisionary authority was proceeding in the matter. Where the Commissioner had come its conclusions on the basis of the record of the assessment proceedings which was open for scrutiny by the assessee and available to his authorized representative at all times, there is no breach of the requirement to give a reasonable opportunity of being heard as required under section 263.** **The Apex Court, accordingly, held that the order of the Tribunal setting aside the revisionary order on the ground that it went beyond the show cause notice was not sustainable. It further held that the High Court having failed to fully deal with the matter, its order was not tenable.**
52.	Can the original assessment order under section 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263?	CIT v. New Mangalore Port Trust (2016 Karn HC)	The HC took note of the sequence of events and undisputed facts that the assessment order dated 27 December 2009 passed by the Assessing Officer was no longer in existence. The HC concluded that the Tribunal arrived at the conclusion only after considering the factual position that CIT had no jurisdiction to revise the order which was not in existence. The HC, accordingly, held that the order passed by the Commissioner under section 263, revising the non-existing order is void ab initio and is a nullity in the eyes of law.
53.	Does the HC have the inherent power under the Income-tax Act, 1961 to review its own order on merits?	CIT v. Meghalaya Steels Ltd. (2015 SC)	The SC went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application

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			of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the HC's inherent jurisdiction is in any manner affected.
54.	Can mere non-mention or non-discussion of enquiry made by the AO in the assessment order justify invoking revisionary jurisdiction under section 263?	CIT v. Krishna Capbox (P) Ltd (2015 Allahabad HC)	The HC concurred with the decision of the Tribunal and held that since the relevant enquiries and replies are available on 'record' (i.e., the paper book), the CIT cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order. *The Finance Act, 2015 inserted Explanation 2 to section 263(1) to clarify, inter alia, that an order passed by the AO shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if in the opinion of the Principal CIT or CIT, the order is passed without making inquiries or verification which should have been made. The rationale of this ruling would hold good even after insertion of Explanation 2 to section 263(1), since in this case, the Tribunal has recorded a finding of fact that necessary enquiries have been made by the AO even though the same was not specifically mentioned in the assessment order. Mere non-discussion or nonmention about the enquiry made by the AO in the assessment order cannot be a ground for invoking revisionary jurisdiction under section 263.*
55.	Can the CIT invoke revisionary jurisdiction u/s 263, when the subject matter of revision (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 CIT (A) and the same is pending before the Tribunal?	CIT v. Fortaleza Developers (2015 Bombay HC)	When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the CIT is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the Explanation 1 to section 263 debars the same. Accordingly, the HC held that the order passed by the AO got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.
56.	Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the HC in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	Samsung India Electronics P. Ltd. v. DCIT (2014) 362 ITR 460 (Del.)	HC observed the SC ruling in the case of GKN Driveshafts (India) Ltd. v. ITO, wherein, it was laid down that when a notice under section 148 is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitles to file objections to issuance of notice and the AO is bound to dispose of the objections by passing a speaking order. The HC, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the SC in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.
57.	Should time limit under section 263 to be reckoned with reference to the date of assessment order or the date of reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?	CIT v. Lark Chemicals Ltd (2014 Bombay HC)	The HC, thus, held that the jurisdiction under section 263 could not be assumed on issues which were not the subject matter of issues dealt with in the order of reassessment but were part of the original assessment, for which the period of limitation expired long ago.
CH 25: PENALTIES			
58.	Is penalty under section 271D imposable for cash	CIT v. Muthoot Financiers (2015 Delhi HC)	The HC observed that the position that emerges is that there are three different Courts, which

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	loans/deposits received from partners?		have held that section 269SS would not be violative when money is exchanged inter se between the partners and the firm.
	The HC further observed that, in this case, there was no dispute as regards the money brought in by the partners of the assessee-firm. The source of money was also not doubted. The transaction was bona fide and not aimed to avoid any tax liability. The credit worthiness of the partners and genuineness of the transactions coupled with relationship between the „two persons‟ and two different legal interpretations put forward, could constitute a reasonable cause in a given case for not invoking sections 271D /271E read with section 273B.		
	Older Case Laws: • **Amit Jain:** The HC, after considering the observations of the Tribunal and the decision of the SC in CIT v. Reliance Petro Products Pvt. Ltd. held that mere reporting of income under a different head would not characterize the particulars reported as "inaccurate" to attract levy of penalty under section 271(1)(c). • **V. Sivakumar (2013):** The High Court, relying upon the various court decisions, upheld the decision of the Tribunal holding that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. In the present case, the assessee has acted *bona fide* and that there was a reasonable cause within the meaning of section 273B. Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.		
CH 27. MISCELLANEOUS PROVISIONS			
59.	Can the Assessing Officer suo-moto assume jurisdiction to declare sale of property as void under section 281?	Dr. Manoj Kabra v. ITO (2014 - Allahabad HC)	The assessee placed reliance on the decision of Supreme Court in the case of TRO v. Gangadhar Vishwanath Ranade (Decd.) (1998) 234 ITR 188, where it was held that section 281 of the IT-Act
	1961 is only a declaratory provision and not an adjudicatory provision entitling the income-tax authority to declare a document as a void document. The High Court observed that the issue in this case was squarely covered by above Apex Court decision.		
CH 28. DEDUCTION, COLLECTION & RECOVERY OF TAX			
60.	**Whether "tips" received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of "Salaries" to attract tax deduction at source under section 192?**	**ITC Ltd v. CIT (2016 - SC)** **RTP May 2017**	**The Apex Court analysed the provisions of section 192 and noted that "any person responsible" for paying any income chargeable under the head "salaries" is alone brought into the dragnet of deduction of tax at source. The person responsible for paying an employee an amount which is to be regarded as the employee's income is only the employer. However, in the present case, the person who**
	is responsible for paying the employee is not the employer at all, but a third party, namely, the customer. Thus, income from tips would be chargeable in the hands of employees as "Income from Other Sources". Since such tips are being received from customers and not from the employer, section 192 would not get attracted. **The Supreme Court observed that contract of employment is not the proximate cause for the receipt of tips by the employee from a customer hence, it would be outside the dragnet of sections 15 and 17 of the Act. Therefore, it held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.** *Consequent to the above Supreme Court judgement overruling the judgment of the Delhi High Court ruling, students may ignore the Delhi High Court ruling in ITC Ltd's case reported in pages 116-117 of the printed copy of the September 2016 edition of the publication "Select Cases in Direct & Indirect Tax Laws – 2016"*		
61.	Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at	CIT v. Kotak Securities Ltd (2016 SC)	The SC, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore the transaction charges paid to BSE by its members are not for technical services but are in the nature of

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	source under section 194J?		payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.
62.	Is tax is required to be deducted under section 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?	CIT v. V.S. Dempo & Co P Ltd (2016 Bom HC FB)	The HC, accordingly, held that since section 172 dealing with shipping business of non-residents contains a non-obstante clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, there would be no obligation on the payer-assessee to deduct the tax at source under section 195 on payment of demurrage charges to the non-resident shipping company.
63.	Whether chit dividend paid to subscribers of chit fund is in the nature of 'interest' in terms of section 2(28A) to attract deduction of tax at source under section 194A?	CIT v. Avenue Super Chits (P) Ltd (2015 Kar HC)	The HC noted the decision of CIT v. Sahib Chits (Delhi) (P) Ltd (2010) 328 ITR 342 (Del) wherein 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. The HC held that the above judgment squarely applies to the facts of this case. Therefore, auction chit dividend paid to subscribers of the chit is not 'interest' as defined in section 2(28A) of the Income-tax Act, 1961 and therefore, tax deduction in terms of section 194A is not attracted.
64.	Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I?	Japan Airlines Co. Ltd. v. CIT CIT v. Singapore Airlines Ltd. (2015 SC)	The SC opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the full and larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated As "rent" within the meaning of section 194-I. The SC, thus, concurred with the view taken by the Madras HC in Singapore Airlines case and overruled the view taken by the Delhi HC in United Airlines/Japan Airlines case.
65.	Can items of finished products from ship breaking activity which are usable as such be treated as "Scrap" to attract provisions for tax collection at source under section 206C?	CIT v. Priya Blue Industries (P) Ltd (2016 Guj HC)	The Tribunal firstly recorded a list of items sold by the assessee from the ship breaking activity. It found that the assessee collected and paid tax, for seven items, but did not collect tax at source on certain items viz. old and used plates; non-excisable (exempted) goods like wood etc. It observed that the 'waste and scrap' must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not 'waste and scrap' though commercially known as scrap. The HC concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the Explanation to section 206C.
66.	Is levy of interest under section 234B attracted in a case where the assessment order does not contain any specific direction for payment of interest, but is accompanied by form ITNS 150 containing a calculation of interest payable on tax assessed?	CIT v. Bhagat Construction Co (P) Ltd (2016 SC)	The SC observed that the Form I.T.N.S 150 is also a form for determination of tax payable and when it is signed or initialled by the Assessing Officer, it is certainly an order in writing by the Assessing Officer determining the tax payable within the meaning of section 143(3). The said form also contains the calculation of interest payable on the tax assessed. This form must,

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			therefore, be treated as part of the assessment order. The SC *further* observed that the provisions of section 234B are attracted the moment an assessee liable to pay advance tax has failed to pay such tax or the advance tax paid by him is less than 90% of the assessed tax. The assessee, thus, becomes liable to pay simple interest at 1% for every month or part of the month. The SC, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified therein are satisfied and the assessment order is accompanied by the prescribed form containing the calculation of interest payable.
67.	Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise under section 192 or under section 194J?	CIT v. Manipal Health Systems (P) Ltd (2015 Karnataka)	Considering the totality of facts and terms of the agreement, the Court held that in this case, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.
68.	Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of HC?	UCO Bank v. Dy. CIT (2014 Delhi HC)	The HC observed that in the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The expression "payee" under section 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a „payee‟ for the purposes of section 194A. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.
69.	Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?	CIT v. Hindustan Lever Ltd. (2014 Karnataka HC)	The HC observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint CIT to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the HC held that proceedings under section 201 cannot be initiated against the assessee.
70.	Can incentives given to stockists and distributors by a manufacturing company be treated as "commission" to attract – (i) the provisions for tax deduction at source under section 194H; and (ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?	CIT v. Intervet India P Ltd (2014 Bombay HC)	The HC, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the Explanation (i) to section 194H. Accordingly, the HC affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.
71.	Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	Indus Towers Ltd v. CIT (2014 Delhi HC)	The HC held that the submission of the assessee that the transaction is not "renting" is incorrect. Also, the Revenue‟s contention that the transaction is primarily "renting of land" is also incorrect. The underlying object of the arrange--ment was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
72.	Is payment made to an overseas	DIT (International Taxation)	The HC, therefore, affirmed the decision of the

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	agent, who did not perform any service in India, liable for tax deduction at source?	v. Wizcraft International Entertainment (P) Ltd (2014 Bombay HC)	Tribunal and CIT (Appeals) holding that the service rendered by the agent was outside India and hence, was not chargeable to tax in India. Thus, the requirement for deducting tax at source under section 195 on such payment does not arise.

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Part B: Indirect Tax Laws

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S. No	QUESTION	CASE PARTIES	JUDGEMENT
		CENTRAL EXCISE	
EXCISE - Ch 01: Basic Concepts			
1.	**Will the process of crushing of coal amount to manufacture under the Central Excise Act, 1944?**	**Dhunseri Petrochem Ltd. 2016 - AAR** **RTP May 2017**	**AAR observed that in the given case, the applicant would be merely crushing the coal of different sizes. The activity of crushing the coal would not be covered as a 'manufacturing activity' as it is well understood that even after crushing the coal, the coal does not lose its character nor does it become a new product. The AAR held that neither the coal crushing activity would amount to 'manufacturing activity' nor the crushed coal would be a manufactured product.**
2.	Whether the word 'include' used in a statutory definition enlarges the scope of preceding words or restricts their scope?	Ramala Sahkari Chini Mills Ltd. v. CCEx. (2016 SC)	The SC referring to the case of Regional Director, Employees' State Insurance Corporation v. High Land Coffee Works of P.F.X. Saldanha and Sons & Anr. [(1991) 3 SCC 617] held that that the word "include" in a statutory definition is generally used to enlarge the meaning of the preceding words and it is by way of extension, and not with restriction
3.	Does printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amount to manufacture?	CCE v. Fitrite Packers 2015 SC	The SC held that the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. The Court emphasized that there has to be a transformation in the original article and this transformation should bring out a distinctive or different use in the article, in order to cover the process under the definition of manufacture. Since these tests were satisfied in the present case, the Apex Court held that the process amounted to manufacture.
4.	Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty?	Balrampur Chini Mills Ltd. v. UOI (2014, All HC)	The HC concluded that though bagasse is an agricultural waste of sugarcane, it is a marketable product. However, duty cannot be imposed thereon simply by virtue of the explanation added u/s 2(d) of the Central Excise Act, 1944 as it does not involve any manufacturing activity. The HC quashed the CBEC‟s Circular dated 28-10-2009.

Older Case Laws:

1. Osnar Chemical P Ltd. 2012 SC: It is a well settled principle that mere improvement in quality did not amount to manufacture. It is only when the change or a series of changes take the commodity to a point where commercially it could no longer be regarded as the original commodity but was instead recognized as a new and distinct article that manufacture could be said to have taken place. SC, thus, held that since the said process merely resulted in the improvement of quality of bitumen and no distinct commodity emerged, and the process carried out by the assessee had nowhere been specified in the Section notes or Chapter notes of the First Schedule, the process of mixing polymers and additives with bitumen did not amount to manufacture.
2. GTC Industries Ltd. 2011 BomHC: The HC pronounced that cutting and embossing did not transform aluminium foil into distinct and identifiable commodity. It did not change the nature and substance of foil. The said process did not render any marketable value to the foil, but only made it usable for packing. Cut to shape/embossed aluminium foils used for packing cigarettes could not be considered as distinct marketable commodity and hence, it was not liable to excise duty.
3. Grasim Industries Ltd. 2011 SC: The SC held that the generation of metal scrap or waste during the repair of the worn out machineries/parts of cement manufacturing plant did not amount to manufacture.
4. Medley Pharmaceuticals Ltd. 2011 SC: The Court inferred that merely because a product was statutorily prohibited from being sold, would not mean that the product was not capable of being sold. Since physician sample was capable of being sold in open market, the physician samples were excisable goods and were liable to excise duty.
5. Usha Rectifier Corpn. (I) Ltd 2011 SC: On Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture, the Apex Court held that duty was payable on such testing equipments used for testing the final product.
6. Nicholas Piramal India Ltd 2010 SC: The SC ruled that short shelf-life could not be equated with no shelf-life and would not

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ipso facto mean that it could not be marketed. A shelf-life of 2 to 3 days was sufficiently long enough for a product to be commercially marketable. Shelf-life of a product would not be a relevant factor to test the marketability of a product unless it was shown that the product had absolutely no shelf-life or the shelf-life of the product was such that it was not capable of being brought or sold during that shelf-life.

7. Solid & Correct Engineering Works and Ors 2010 SC: The Court observed that as per the assessee, the machine was fixed by nuts and bolts to a foundation not because the intention was to permanently attach it to the earth, but because a foundation was necessary to provide a wobble free operation to the machine. It opined that an attachment without necessary intent of making the same permanent cannot constitute permanent fixing, embedding or attachment in the sense that would make the machine a part and parcel of the earth permanently. Hence, the SC held that the plants in question were not immovable property so as to be immune from the levy of excise duty. Consequently, duty would be levied on them.

8. Tarpaulin International 2010 SC: The Apex Court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of the raw material and end product. The process did not bring into existence a new and distinct product with total transformation in the original commodity. The original material used i.e., the tarpaulin, was still called tarpaulin made-ups even after undergoing the said process. Hence, it could not be said that the process was a manufacturing process. Therefore, there could be no levy of central excise duty on the tarpaulin made-ups.

EXCISE - Ch 02: Classification of Excisable Goods

Older Case Laws:

1. Ciens Laboratories (2013 SC): The SC held that owing to the pharmaceutical constituents present in the cream "Moisturex" and its use for the cure of certain skin diseases, the same would be classifiable as a medicament under Heading 30.03. Prior to adjudicating upon whether a product is a medicament or not, it ought to be seen as to how do the people who actually use the product, understand it to be. If a product's primary function is "care" and not "cure", it is not a medicament. Medicinal products are used to treat or cure some medical condition whereas cosmetic products are used in enhancing or improving a person's appearance or beauty. A product that is used mainly in curing or treating ailments or diseases and contains curative ingredients, even in small quantities, is to be treated as a medicament.

2. Wockhardt Life Sciences Ltd. 2012 SC: In the instant case, it is not in dispute that the product is used by the surgeons for the purpose of cleaning or degerming their hands and scrubbing the surface of the skin of the patient. Therefore, the product is basically and primarily used for prophylactic purposes i.e., to prevent the infection or diseases, even though the same contains very less quantity of the prophylactic ingredient. The Apex Court held that the product in question can be safely classified as a "medicament" which would fall under Chapter Heading 3003, a specific entry and not under Chapter Sub-Heading 3402.90, a residuary entry.

3. Connaught Plaza Restaurant (Pvt) Ltd. 2012 SC: Referring to a trade notice issued by the Mumbai Commissionerate relating to classification of softy ice-cream being sold in restaurant etc. dispensed by vending machine, the Apex Court observed that the said trade notice indicated the commercial understanding of „soft-serve‟ as „softy ice-cream‟.SC‟s Decision: In the light of the aforesaid discussion, the Apex Court held that „soft serve‟ was classifiable under Heading 21.05 as "ice cream" and not under Heading 04.04 as "other dairy produce".

EXCISE - Ch 03: Valuation of Excisable Goods

5.	Can the value of gunny bags, returned by the buyers, be excluded from the assessable value in the absence of any agreement between the seller and the buyer?	Tata Chemicals Ltd v. Collector of Central Excise 2016 SC	The SC held that in the absence of factual foundation in support of the fact that such an arrangement existed between the parties, the value of gunny bags returned by the buyers could not be excluded from the assessable value.
6.	Is the amount of sales tax/VAT collected by the assessee and retained with him in accordance with any State Sales Tax Incentive Scheme, includible in the assessable value for payment of excise duty?	CCEx v. Super Synotex (I) Ltd. 2014 SC *(Similar Issue)* CCE v. Maruti Suzuki India Ltd. 2014 SC	SC further observed that unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty can be given under the concept of "transaction value" u/s 4(3)(d) of Central Excise Act, 1944, for it is not excludible. As is seen from the facts, 25% of the sales tax collected had been paid to the State exchequer by way of deposit and the remaining amount had been retained by the assessee. SC‟s Decision: The Apex Court held that such retained amount has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1.7.2000 and therefore, the assessee is bound to pay excise duty on the said sum.

Older Case Laws:

Tata Motors Ltd 2012 Bom HC: The HC held that Clause No. 7 of Circular dated 1st July, 2002 and Circular dated 12th December, 2002 (where it affirms the earlier circular dated 1st July, 2002) were not in conformity with the provisions of section 4(1)(a) read with section 4(3)(d) of the Central Excise Act, 1944. Further, as per section 4(3)(d), the PDI and free after sales services charges

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	could be included in the transaction value only when they were charged by the assessee to the buyer.		
EXCISE - Ch 04: CENVAT Credit			
7.	**Can the Department deny the claim for refund of CENVAT credit available under rule 5 of the CENVAT Credit Rules, 2004 on the ground that the person claiming the refund is not registered?**	**Commr. of ST v. Tavant Technologies India Pvt Ltd. 2016 - Kar.HC** **RTP May 2017**	**The High Court observed that in the instant case also, Revenue was not able to show any provision under rule 5 of the CENVAT Credit Rules, 2004 which provided for registration with the department as a condition precedent for claiming refund under said rule.The High Court upheld the order of the Tribunal that Department could not deny the claim for refund of CENVAT credit available under rule 5 of the CENVAT Credit Rules, 2004 on the ground that the person claiming the refund was notregistered.**
8.	Is the assessee entitled to avail CENVAT credit of STax paid on outward transportation of goods cleared from factory?	CCE v. Haryana Sheet Glass Ltd. 2015 P&H	The HC relied upon one of its earlier decision in the case of Ambuja Cements Ltd. v. UOI 2009 (236) ELT 431 (P&H) and upheld the decision of the Tribunal. The HC held that outward trans--portation up to the place of removal falls within the expression "input service". The place of removal, in terms of the Circular* of the Board is a question of fact. If a manufacturer is to deliver the goods to the purchaser, the place of removal would not be a factory gate of the manufacturer but that of the purchaser. In the given case, there is no evidence that the property in goods stood transferred to the purchaser at the factory door of the assessee. Therefore, the assessee is entitled to avail CENVAT credit of STax paid on outward transportation of goods cleared from factory. The above case establishes that factory cannot necessarily be the place of removal in all cases. Only if the property in goods is transferred at factory gate, the sale will get complete at the factory gate, and then the factory will be considered as the place of removal. *(2) The circular referred to in the above case law was issued at an earlier point of time on 23.08.2007. However, a recent circular [Circular No. 988/12/2014 CX dated 20.10.2014] issued by the Board clarifies that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930. Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal. The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.
9.	Can a commercial training and coaching institute claim CENVAT credit in respect of the input services of catering, photography and tent services used to encourage the coaching class students, maintenance and repair of its motor vehicle and travelling expenses?	Bansal Classes v. CCE & ST 2015 Raj.	The HC upheld the Tribunal's decision. That the assessee is not eligible for CENVAT credit of the STax paid on catering, photography and tent services, maintenance and repair of its motor vehicle and travelling expenses.
10.	Whether assessee is entitled to claim CENVAT credit of STax paid on house-keeping and landscaping services availed to maintain their factory premises in an eco-friendly manner?	CC.Ex. & S.T. (LTU) v. Rane TRW Steering Systems Ltd. 2015 Mad.	The HC agreeing with and following the ratio laid down in the aforesaid decision held that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products. Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of CENVAT credit on the same.
11.	In case the assessee pays the service tax that he was not liable to pay, can it claim the CENVAT credit of such service tax?	CCEx. & S.T. v. Tamil Nadu Petro Products Ltd. 2015 Mad. HC	The HC held that if upon a misconception of the legal position, the assessee had paid the tax that it was not liable to pay and such assessee also happens to be an assessee entitled to CENVAT credit, the availing of the said benefit cannot be termed as illegal.
12.	Can CENVAT credit availed on inputs (contained in the work-in-progress	CCE v. Fenner India Ltd. 2014 Mad.HC	The HC held that CENVAT credit would need to be reversed only when the payment of excise

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	destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rules, 2004?		duty on final product is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, which deals with the remission of duty. In the present case, the assessee has not claimed any. remission and no final product has been removed, hence, assessee need not reverse the CENVAT credit taken on inputs (contained in the work-in-progress) destroyed in fire.
13.	Is a cellular mobile service provider entitled to avail CENVAT credit on tower parts & pre-fabricated buildings (PFB)?	Bharti Airtel Ltd. v. CCEx. 2014 Bom.HC	The HC rejected the appeals of the appellant and upheld the findings of the Tribunal holding that the mobile towers and parts thereof and shelters / prefabricated buildings are neither capital goods under rule 2(a) nor "inputs‟ under rule 2(k) of the CCR. Hence, CENVAT credit of the duty paid thereon by a cellular mobile service provider was not admissible.
	<u>Other Case Laws:</u> 1. <u>Prag Bosimi Synthetics Ltd. 2013 Gauhati HC</u>: The HC held that merely because CENVAT credit in respect of NCCD can be utilized only for payment of NCCD, it does not lead to the conclusion that credit of any other duty cannot be utilized for payment of NCCD. 2. <u>Flex Engineering Ltd 2012 SC:</u> The Court was, of the opinion that the manufacturing process in the present case got completed on testing of the said machines. Hence, the testing material used for testing the packing machines were inputs used in relation to the manufacture of the final product and would be eligible for CENVAT credit. 3. <u>Tata Advanced Materials Ltd. 2011 Kar.HC:</u> The HC held that merely because the insurance company paid the assessee the value of goods including the excise duty paid, that would not render the availment of the CENVAT credit wrong or irregular. Excise Department cannot demand reversal of credit or payment of the said amount. 4. <u>Ashok Kumar H. Fulwadhya 2010 Bom.HC:</u> The Court held that the petitioners-directors of the company could not be said to be manufacturer availing CENVAT credit and penalty cannot be imposed on them for the wrong CENVAT credit availed by the company. 5. <u>Stelko Strips Ltd. 2010 P&H HC:</u> The HC held that MODVAT credit could be taken on the strength of private challans as the same were not found to be fake and there was a proper certification that duty had been paid.		
EXCISE - Ch 06: Export Procedures			
14.	Whether rule 18 of Central Excise Rules, 2002 (CER) allows export rebate of excise duty paid on both inputs as well as the final product manufactured from such inputs?	Spentex Industries Ltd v. CCE 2015 SC.	The SC held that normally the two words ‘or’ and ‘and’ are to be given their literal meaning. However, wherever use of such a word, viz., ‘and’/’or’ produces unintelligible or absurd results, the Court has power to read the word ‘or’ as ‘and’ and vice versa to give effect to the intention of the Legislature which is otherwise quite clear. The Apex Court held that the exporters/appellants are entitled to both the rebates under rule 18 and not one kind of rebate.
15.	Can rebate under rule 18 of the Central Excise Rules, 2002, be claimed of the excise duty paid on the goods exported when the duty drawback of excise duty paid on inputs and service tax paid on inputs used in manufacture of such export goods has already been availed?	Raghav Industries Ltd v. UOI (2016 Mad. HC)	The HC held that the Department had rightly rejected the rebate claim filed by the petitioner because when the petitioners had availed duty drawback with respect to the exported goods, they were not entitled for the rebate under rule 18 of the Central Excise Rules, 2002 as it would result in double benefit.
	<u>Older Case Laws</u> 1. **<u>UM Cables Ltd. v. UOI 2013 Bom.HC:</u>** The HC, held that a procedure cannot be raised to the level of a mandatory requirement. Rule 18 itself makes a distinction between conditions and limitations subject to which a rebate can be granted and the procedure governing the grant of a rebate. It was held by the HC that while the conditions and limitations for the grant of rebate are mandatory, matters of procedure are directory. The HC ruled that non-production of ARE-1 forms ipso facto cannot invalidate rebate claim. In such a case, exporter can demonstrate by cogent evidence that goods were exported and duty paid and satisfy the requirements of rule 18 of Central Excise Rules, 2002 read with Notification No. 19/2004 CE (NT). 2. **<u>Rajasthan Textile Mills v. UOI 2013 (298) ELT 183 (Raj.):</u>** Under rule 18 of the Central Excise Rules, 2002, grant of rebate of duty paid is available either on excisable goods or on materials used in the manufacture or processing of such goods i.e. on raw material. Thus, it is open to claim the benefit of rebate either on manufactured/finished goods or on raw material, but not on both. Rule 18 of the Central Excise Rules, 2002 provides that where any goods are exported, the Central Government may, by notification, grant rebate of duty paid on such excisable goods OR duty paid on materials used in the manufacture or processing of such goods and the rebate shall be subject to such conditions or limitations, if any, and fulfilment of such procedure, as may be specified in the notification.		

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EXCISE - Ch 08: Demand Adjudication and Offences			
16.	**The adjudicating authority has passed an order for refund under section 11B of the Central Excise Act, 1944 which was alleged as erroneous by the Department. Can Department recover such refund under section 11A of the Central Excise Act, 1944 without review of the refund order in terms of section 35E of the Act?**	**Eveready Industries India Ltd. v. CESTAT, Chennai 2016 - Mad.HC** **RTP May 2017**	**The High Court held that once an application for refund is allowed under section 11B, the expression 'erroneous refund' appearing in sub-section (1) of section 11A cannot be applied. If an order of refund is passed after adjudication, the amount refunded will not fall under the category of erroneous refund so as to enable the order of refund to be revoked under section 11A(1). One authority cannot be allowed to say in a collateral proceeding that what was done by another authority was an erroneous thing. Therefore, the High Court answered the question of law in favour of the appellant/assessee and allowed the appeal.**
17.	In case the revenue authorities themselves have doubts about the dutiability of a product, can extended period of limitation be invoked alleging that assessee has suppressed the facts?	Sanjay Industrial Corporation v. CCE 2015 SC	The SC held that since Revenue authorities themselves had the doubts relating to excisability of process of profile cutting, the bona fides of the appellant could not be doubted. Hence, extended period of limitation could not be invoked and penalty was set aside.
	Other Case Laws: 1. **Balaji Trading Co. 2013 Del.HC:** The Department aggrieved by the said order filed an appeal with HC wherein it contended that clause (c) of rule 25(1) of the Central Excise Rules, 2002 would be applicable in the instant case. However, HC concurred with the view of the Tribunal and concluded that rule 25(1)(c) would have no application in the present case because said clause would also apply only in respect of four categories of persons mentioned in rule 25(1) of said rules. *(** With effect from 01.03.2015, penalty under rule 25(1) can also be imposed on an importer who issues an invoice on which CENVAT credit can be taken.)* 2. **Jay Kumar Lohani 2012 MP.HC:** The HC held that there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty. 3. **Nanumal Glass Works 2012 All.HC:** The HC held that when a decision is pronounced in the open court in the presence of the advocate of the assessee, who is the authorized agent of the assessee within the meaning of section 37C, the date of pronouncement of order would be deemed to be the date of service of order.		
EXCISE - Ch 09: Refund			
18.	Whether filing of refund claim u/s 11B of Central Excise Act, 1944 is required in case of suo motu availment of CENVAT credit which was reversed earlier (i.e., the debit in the CENVAT Account is not made towards any duty payment)?	ICMC Corporation Ltd. v CESTAT 2014 Mad.HC	The HC held that this process involves only an account entry reversal and factually there is no outflow of funds from the assessee by way of payment of duty. Thus, filing of refund claim u/s 11B of the Central Excise Act, 1944 is not required. Further, it held that on a technical adjustment made, the question of unjust enrichment as a concept does not arise.
20.	Does the principle of unjust enrichment apply to State Undertakings?	CCEx v. Superintending Engineer TNEB 2014 Mad.HC	"The doctrine of unjust enrichment is a just and salutory doctrine. No person can seek to collect the duty from both ends. The doctrine of unjust enrichment is, however, inapplicable to the State. State represents the people of the country. No one can speak of the people being unjustly enriched." The HC followed the decision of the Apex Court and held that the concept of unjust enrichment is not applicable as far as State Undertakings are concerned and to the State.
EXCISE - Ch 10: Appeals			
21.	Can an appeal be filed before the SC against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods?	CCE v. Fact Paper Mills Private Ltd. 2014 SC.	The SC held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court u/s 35L of the Central Excise Act, 1944.
22.	In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred,	Khanapur Taluka Co-op. Shipping Mills Ltd. v. CCEx. 2013 Bom.HC)	The HC referred to the case of Raj Chemicals v. UOI 2013 (287) ELT 145 (Bom.) wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the HC in

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	can a writ petition be filed to HC against the order-in-original?		exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case. *(Gujarat HC has taken a contrary view in case of Texcellence Overseas v. UOI 2013 (293) ELT 496 (Guj.) as reported below in the next case).*
23.	Can the HC condone the delay - beyond the statutory period of three months prescribed u/s 35 of the Central Excise Act, 1944 - in filing an appeal before the Commissioner (Appeals)?	Texcellence Overseas v. UOI 2013 Guj.HC)	The HC opined that since the total length of delay was very small and the case had extremely good ground on merits to sustain, its non interference at that stage would cause gross injustice to the petitioner. Thus, the HC, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted. The HC held that such powers are required to be exercised very sparingly and in extraordinary circumstances in appropriate cases, where otherwise the Court would fail in its duty if such powers are not invoked.
	<u>Other Case Laws:</u> 1. **<u>Habib Agro Industries v. CCEx. 2013:</u>** The HC observed that there did not appear to be any deliberate latches or neglect on the part of the authorised representative to file the appeal. It held that the reason for delay in filing appeal to CESTAT, that the person dealing with the case went on a foreign trip and on his return his mother expired, could not be considered as unreasonable for condonation of delay. 2. **<u>Tikitar Industries 2012 SC:</u>** The SC held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it might not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods. 3. **<u>RDC Concrete (India) Pvt. Ltd 2011 SC:</u>** The Apex Court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier. Hence, the Court opined that CESTAT exceeded its powers u/s 35C(2) of the Act. In pursuance of a rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier. (Section 35C(2) reads as follows:- The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it and shall make such amendments if the mistake is brought to its notice by the Commissioner of Central Excise or the other party to the appeal.)		
<u>Excise - Ch 11: Remission Of Duty And Destruction Of Goods</u>			
24.	Can excise duty be remitted for the loss of molasses where the molasses were stored in an open pit instead of being stored in a steel storage tank?	U.P. State Sugar Corporation Ltd. v. CCE 2016 All. HC)	The HC held that the assessee was duty bound to keep the molasses in the three tanks to their fullest capacity. Since assessee had not utilized the three tanks to the fullest capacity, the Tribunal had been justified in granting remission of only part of the quantity of the molasses and refusing to grant remission on the balance quantity which could have been stored in the steel tank.
<u>EXCISE - Ch 13: Exemption Based on Value of Clearances (SSI)</u>			
25.	Should the clearances of two divisions of the assessee having separate central excise registration, be clubbed for determining the turnover for claiming SSI exemption?	Premium Suiting (P) Ltd v. CCEx. 2016 All. HC)	The Court observed that in the instant case, two divisions-chemical and textile- were of one manufacturer was evident from the fact that common balance sheet was being filed. The fact that two factories had separate entrances, managing staff and central excise registration was irrelevant. Therefore, the clearances of two divisions manufacturing an excisable goods had to be clubbed while considering turnover for the SSI exemption. Since the aggregate clearances exceeded the specified turnover limit, the assessee was not entitled for SSI exemption. The HC affirmed the Tribunal's decision of clubbing the clearances of the goods of the two divisions of the assessee and that the assessee could not avail the SSI exemption.
26.	Whether an assessee using a foreign brand name, assigned to it by the brand owner with right to use the same in India exclusively, is eligible for SSI exemption?	CCE v. Otto Bilz (India) Pvt. Ltd 2015 SC	The foreign company had assigned the said brand name in favour of the assessee under an agreement with right to use the said trade mark in India exclusively. The SC held that because of the aforesaid assignment, the assessee was using the trade mark in its own right as its own trade mark and therefore, it could not be said that it was using the trade mark of another person. The assessee was entitled to SSI exemption.

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	Other Case Laws:		
	1. **Australian Foods India (P) Ltd 2013 SC:** The SC held that it is not necessary for goods to be stamped with a trade or brand name to be considered as branded goods for the purpose of SSI exemption. A scrutiny of the surrounding circumstances is not only permissible, but necessary to decipher the same; the most important of these factors being the specific outlet from which the good is sold. However, such factors would carry different hues in different scenarios. There can be no single formula to determine if a good is branded or not; such determination would vary from case to case. 2. **Xenon 2013 (296) ELT 26 (Jhar.):** The HC held that when it had been established that dubious company did not undertake any transactions, penalty could not be levied on the same for the transactions undertaken by the original company. The HC emphasized that penalty could not be imposed upon the company who did not undertake any transaction. 3. **Elex Knitting Machinery 2010 P&H HC:** The Tribunal had held that since the assessee was a partner in the firm of whose brand name it was using, he was the co-owner of such brand name. Hence, he could not be said to have used the brand name of another person, in the manufacture and clearance of goods in his individual capacity. Thus, assessee was eligible for benefit of SSI exemption in the given case. The said decision of the Tribunal was affirmed by the HC in the instant case. The afore-mentioned judgement has been further affirmed by the SC in 2012.		
Excise - Ch 14 Notifications, Departmental Clarifications And Trade Notices			
27.	Can the benefit of exemption notification be granted to assessee where one of the conditions to avail the exemption is not strictly followed?	CCE v. Honda Siel Power Products Ltd. 2015 SC	The Apex Court observed that the assessee was required to fulfill the condition in strict sense viz. to pay the duty either in cash or through account current if it wanted to avail the benefit of exemption notification and not through adjustment of CENVAT credit which was not the mode prescribed in the aforesaid condition. It is trite that exemption notifications are to be construed strictly and even if there is any doubt same is to be given in favour of the Department. The SC held that once it is found that the conditions had not been fulfilled the obvious consequence would be that the assessee was not entitled to the benefit of said notification.
28.	Where a circular issued u/s 37B of the Central Excise Act, 1944 clarifies a classification issue, can a demand alleging misclassification be raised u/s 11A of the Act for a period prior to the date of the said circular?	S & S Power Switch Gear Ltd. v. CCEx. 2013 Mad.HC	The HC, held that once reclassification Notification/Circular is issued, the Revenue cannot invoke section 11A of the Act to make demand for a period prior to the date of said classification notification/circular.
Excise - Ch 18: Settlement Commission			
29.	Where a settlement application filed u/s 32E(1) of the Central Excise Act, is not accompanied with the additional amount of excise duty along with interest due, can SetCom pass a final order u/s 32F(1) rejecting the application and abating the proceedings before it ? Also, In the above case, whether a second application filed u/s 32E(1), after payment of additional excise duty along with interest, would be maintainable?	Vadilal Gases Ltd. v UOI 2014 Guj.HC	HC held that since the earlier application was dismissed on technical defect for non-compliance of the provisions of clause (d) of the proviso to section 32E(1) of the Act and the same was not considered and decided on merits, the second application filed after depositing the additional excise duty and interest would be maintainable.

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SERVICE TAX

S. Tax - Ch 01: Basic Concepts

30.	Does preparation of ready mix concrete (RMC) along with pouring, pumping and laying of concrete amount to provision of service?	Commissioner v. GMK Concrete Mixing Pvt. Ltd. 2015 SC	The SC upheld the decision of the Tribunal wherein it was held that the contract between the parties was to supply RMC and not to provide any taxable services. Therefore, since the Finance Act, 1994 is not a law relating to commodity taxation, the adjudication was made under mistake of fact and law fails. By this judgment, the SC dismissed the appeal filed by the Revenue.
31.	Whether supply of food, edibles and beverages provided to the customers, employees and guests using canteen or guesthouse of the other person, results in outdoor caterer service?	Indian Coffee Workers' Co-op Soc Ltd. v. CCE&ST 2014 All.HC	HC clarified that taxable catering service could not be confused with who had actually consumed the food, edibles and beverages which were supplied by the assessee. Taxability or the charge of tax does not depend on whether and to what extent the person engag--ing the service consumes the edibles and beverages supplied, wholly or in part. What is material is whether the service of an outdoor caterer is provided to another person and once it is, as in the present case, the charge of tax is attracted. Further the HC elaborated that the charge of tax in the cases of VAT is distinct from the charge of tax for STax. The charge of STax is not on the sale of goods but on a taxable service provided. Hence, the fact that the assessee had paid VAT on the sale of goods on the supply of food and beverages to those who consume them at the canteen, would not exclude the liability of the assessee for the payment of STax in respect of the taxable service provided by the assessee as an outdoor caterer. the HC held that the assessee was liable for payment of STax as an outdoor caterer.
32.	Whether the course completion certificate/training offered by approved Flying Training Institute and Aircraft Engineering Institutes is recognized by law (for being eligible for exemption from STax) if the course completion certificate/ training/ is only for the purpose of eligibility for obtaining ultimate licence/approval for certifying repair/maintenance/airworthiness of aircrafts?	CCE&ST v. Garg Aviations Ltd. 2014 All.HC	The HC upheld the decision of the Tribunal and held that the Revenue had not been able to persuade the Court to take a contrary view as taken by the Delhi HC in Indian Institute of Aircraft Engineering. The appeal filed by the Revenue would not give rise to any substantial question of law. Hence, the appeal filed was dismissed and the assessee was held not to be liable to pay STax.
33.	Whether deputation of some staff to subsidiaries/group of companies for stipulated work or for Ltd. period results in supply of manpower service liable to STax, even though the direction/control/supervision remained continuously with the provider of the staff and the actual cost incurred was reimbursed by the subsidiaries/group companies?	Comm.STax v. Arvind Mills Ltd. 2014 Guj.HC	The HC rejected the contention of the Revenue and held that deputation of the employees by the respondent to its group companies was only for and in the interest of the assessee. There is no relation of agency and client. The assessee company was not engaged in providing any services directly or indirectly in any manner for recruitment or supply of manpower temporarily or otherwise to a client. Therefore, they were not liable to pay STax.
34.	Whether section 66E(i) of the Finance Act, 1994 which levies STax on the service portion of activity wherein goods being food or any other article for human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of activity, is ultra vires the Article 366(29A)(f) of the	Hotel East Park v. UOI 2014 (35) STR 433 (Chhatisgarh)	The HC held that section 66E (i) of the Finance Act, 1994 is intra vires the Article 366(29A)(f) of the Constitution of India. Further, the HC held that no VAT can be charged over the amount meant for service and that the amount over which STax has been charged should not be subject to VAT. The HC directed the State Government to frame such rules and issue clarifications to this effect to ensure that the

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	Constitution?		customers are not doubly taxed over the same amount. The rules may be in conformity with the bifurcation as provided under the Finance Act, 1994 or ensure that the Commercial Tax authorities do not charge VAT on that part of the value of the food and drink on which STax is being assessed.
	<u>OTHER CASE LAWS:</u> 1. **<u>Tirumala Tirupati Devasthanams, Tirupati 2013 APHC:</u>** Therefore, the HC held that since the petitioner was running guest houses by whatever name called, whether it was a shelter for pilgrims or any other name, it was providing the taxable services and was thus liable to pay STax. ***This case pertains to the period prior to negative list regime of taxation of services, but would be relevant under the negative list regime as well. Accommodation services provided by guest houses at declared tariff of a unit of accommodation less than 1,000 per day are exempted from services tax by the mega exemption notification.* 2. **<u>Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran 2012 SC:</u>** The SC observed that on reading the agreement between the parties, it could be inferred that service provider (contractor) had accepted the liability to pay STax, since it arose out of discharge of its obligations under the contract. With regard to the submission of shifting of STax liability, the SC held that STax is an indirect tax which may be passed on. Thus, assessee can contract to shift its liability. The Finance Act, 1994 is relevant only between assessee and the tax authorities and is irrelevant in determining rights and liabilities between service provider and service recipient as agreed in a contract between them. There is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them. ***Under present position of law, liability to pay STax does not lie on service recipient under clearing and forwarding agent's services. However, the principle derived in the above judgment that STax liability can be shifted by one party to the other by way of contractual clause still holds good.* 3. **<u>Mayo College General Council 2012 RajHC:</u>** The HC held that when the petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing "franchise service" to the said schools and if the petitioner realized the "franchise" or "collaboration fees" from the franchise schools, the petitioner was duty bound to pay STax to the department.		
<u>S. Tax - Ch 02: POPOS</u>			
35	Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call centre/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of STax paid on such input services?	Wipro Ltd. v. UOI 2013 Del.	The HC, therefore, allowed the rebate claims filed by the appellants and held that the condition of the notification must be capable of being complied with as if it could not be complied with, there would be no purpose behind it.
36	**The applicant proposes to provide payment processing service to a US company which in turn provides name registration, web hosting, designing and other services to customers in India. The questions which arose for consideration before AAR are as follows: (i) Whether the place of provision of payment processing service proposed to be provided by the applicant, is outside India in terms of rule 3 of Place of Provision of Services Rules, 2012? (ii) Whether services proposed to be provided by applicant would qualify as 'export of service'?**	**Universal Services India (P) Ltd., In re 2016 - AAR RTP May 2017**	**Considering the facts of the given case, AAR observed that the applicant's main service is the payment processing service and applicant is not at all concerned with the domain name service provided by WWD. Further, applicant provides payment processing service to WWD on his own account and charges fee for it. Therefore, it cannot be inferred that the applicant provides payment processing service to Indian customers, for the service rendered by WWD to them. Further, the definition of "intermediary" as envisaged under rule 2(f) of PoPS does not include a person who provides the main service on his own account. In the present case, applicant provides main service, i.e., "business support services" to WWD on his own account. Therefore, applicant is not an "intermediary" and thus, the service provided by it is not intermediary service. Thus, AAR ruled that the place of provision of payment processing service to be provided by the applicant, is outside India in terms of rule 3 of PoPS. Further, while deciding the questions as to whether services provided by applicant qualify as export of service, AAR observed that: <u>(i)</u> service provider - applicant, is located in India – the taxable territory and the service recipient – WWD, is located in non-taxable territory - USA; <u>(ii)</u> the place of provision of payment processing service to be provided by the applicant, is outside India in terms of rule 3 of PoPS; <u>(iii)</u> service to be provided by the applicant, i.e., business support services, is not specified in the Negative List of Services; <u>(iv)</u> applicant would receive payment for said services in convertible foreign exchange and <u>(v)</u> applicant and WWD are not merely**

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	establishments of a distinct person in accordance with item (b) of Explanation 3 of clause (44) of section 65B of the Finance Act, 1994.		
S.Tax - Ch 04: Valuation of Taxable Service			
37	**Whether section 66E(i) of the Finance Act, 1994 to the extent it seeks to constitute the service portion in an activity of supply of food or other articles as 'declared service' and rule 2C of the Service Tax (Determination of Value) Rules, 2006, constitutionally valid?**	**Federation of Hotel & Restaurants Association of India v. UOI 2016 - Del. HC)** **RTP May 2017**	**The Parliament has made the legal position explicit by inserting section 66E(i) of the Finance Act, 1994, alongwith sections 65B(22) and 65B(44) of the Finance Act, 1994. The provisions read together stipulate that the service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity is a 'declared' service. The legislative carving out of the service portion of the composite contract of supply of food and drinks has sound constitutional basis. Even if this is viewed as Parliament deploying a legal fiction, it is legally permissible.** **The High Court upheld the constitutional validity of section 66E(i) of the Finance Act, 1994 read with section 65B(22) and 65B(44) thereof and rule 2C of the Service Tax (Determination of Value) Rules, 2006.**
S.Tax - Ch 05: Exemptions and Abatements			
38.	**Whether levy of service tax on construction of complex services and on preferential location charges is constitutionally valid?**	**Suresh Kumar Bansal v. UOI 2016 (43) ST5R 3 (Del.)** **RTP May 2017**	**Service tax is a tax on value addition and charges for preferential location embody the value of the satisfaction derived by a customer from certain additional attributes of the prop- -erty developed. However, such charges cannot be traced directly to the value of any goods or value of land because they are as a result of the development of the complex as a whole and the position of a particular unit in the context of the complex.** **The High Court negated the challenge to levy of service tax on preferential location charges, but held that service tax cannot be levied on such charges as contracts are composite. Further, it accepted the petitioners' contention that no service tax under charging section of the Finance Act, 1994 could be charged in respect of composite contracts for purchase of units in a complex, such as the ones entered into by the petitioners with the builder.**
39.	Is exemption in relation to service provided to the developer of SEZ or units in SEZ available for a period prior to actual manufacture (which is the authorized operation) of final products considering these services as the services used in authorized operations of SEZ?	Comm.STax v. Zydus Technologies Ltd. 2014 Guj.	In the instant case, the HC referring to their previous decision in case of CCEx. v. Cadila Healthcare Ltd. held that the services rendered for a period prior to actual manufacture of final product is commercial activity/production and assessee is entitled to exemption by way of refund claimed.
S.Tax - Ch 06: S.Tax Procedures			
40.	Whether tax is to be deducted at source u/s 194J of the Income-tax Act, 1961 on the amount of STax if it is paid separately and is not included in the fees for professional services/technical services?	CIT v. Rajasthan Urban Infrastructure 2013 Raj.HC	The HC held that if as per the terms of the agreement between the payer and the payee, the amount of STax is to be paid separately and is not included in the fees for professional services or technical services, the STax component would not be subject to TDS u/s 194J of the Income-tax Act, 1961.
S.Tax - Ch 07: Demand Adjudication and Offences			
41	**Whether recovery provisions under section 87 of the Finance Act, 1994 can be invoked without an adjudication proceeding under section 73 of the Act?**	**UOI v. Prashanthi 2016 - (Kar. HC)** **RTP May 2017**	**The High Court held that the submission that the power under section 87 is independent and irrespective of the procedure under section 73, is not viable. The contention that when the power under section 87 is to be invoked, no procedure under section 73 can be undertaken, is not acceptable. Accepting such submissions and contentions would result in a situation that the power under section 87 be without an adjudication mechanism under section 73, which is neither conceived by the legislature nor can be the accepted position.**

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42	**Can the order directing the provisional attachment of property be made without giving any opportunity of being heard to the assessee?**	**Kunj Power Projects v. UOI 2016 (41) STR 3 (All.)**	**The High Court held that the respondents need to be careful while resorting to exercise the powers contemplated under rule 3 of the Service Tax (Provisional Attachment of Property) Rules, 2008. Such exercise of power has to be resorted to with utmost circumspection and with maximum care and caution. In the light of the aforesaid discussion, order for provisional attachment of property was quashed.**
43.	Whether the order served on a member of the family of the assessee, is a proper service of order?	Jyoti Enterprises v. CCEx. & ST 2016 All. HC	The HC observed that if the order is served on a member of the family of the assessee, it is duly served and there is sufficient service of the order. No assertion was made by the assessee that Virendra Yadav was not a family member or that he was not connected with the business. The assessee had nowhere stated that Virendra Yadav was not her nephew. Further, nothing has been stated that the address where the service of the original order was made was incorrect. The HC held that the order in original was duly served upon the assessee.
44.	Can the period of limitation be computed from the date of forwarding of the order where such order has not been received by the assessee?	Enestee Engineering Pvt. Ltd. v. UOI 2016 Bom. HC	The HC noted that the period of limitation prescribed under erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994 to prefer an appeal against order-in-original is 3 months [now 2 months]. The said period begins from the date of receipt of the decision or the order of adjudicating authority. Further, section 37C(2) of the Central Excise Act, 1944 stipulates that every decision/order passed or any summons/notice issued under the said Act is deemed to have been served on the date on which such decision, order or summons is tendered or delivered by post or is affixed in the prescribed manner. The HC observed that neither the order of Commissioner (Appeals) nor the order of Tribunal recorded a finding that the adjudication order was actually tendered to the assessee on a particular date or received by him on a particular date. The HC quashed and set aside both the orders - order of Commissioner (Appeals) and the order of Tribunal, and placed back the matter for fresh consideration before Commissioner (Appeals).
45.	Can STax be demanded by a speaking order without issuing a show cause notice but after issuing a letter and giving the assessee an opportunity to represent his case along with personal hearing?	CCE v. Vijaya Consultants, Engg & Consultants 2015 AP HC.	The HC held that by no stretch of imagination, the said letter could be treated as a show cause notice satisfying the requirement of section 73 of the Act. The HC further held that the procedural requirement of issuance of notice and calling for explanation cannot be dispensed with as otherwise the demand of money in the name of tax would be in violation of the very procedure prescribed under the Act. The HC thus, dismissed the appeal.
46.	Based on the contractual arrangement, can the assessee ask the Department to recover the tax dues from a third party or wait till the assessee recovers the same?	Delhi Transport Corpn v. Comm.STax 2015 Del.HC	The HC held that undoubtedly, the STax burden can be transferred by contractual arrangement to the other party. However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party). *** Referring to the Rashtriya Ispat Nigam Case, There was nothing in law to prevent the appellant from entering into an agreement with the respondent handling contractor that the burden of any tax arising out of obligations of the respondent under the contract would be borne by the respondent.*
47.	Whether best judgment assessment u/s 72 of the Finance Act, 1994 is an ex-parte* assessment procedure	N.B.C. Corporation Ltd. v. Comm.STax 2014 Del.HC	The HC held that section 72 could per se not be considered as an ex parte assessment procedure as ordinarily understood under the Income-tax Act, 1961. Section 72 mandates that the assessee must appear and must furnish books of account, documents and material to the Central Excise Officer before he passes the best judgment assessment order. Thus, said order is not akin to an ex parte order. Such an order will be akin to an ex parte order, when the assessee fails to produce records

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	and the Central Excise Officer has to proceed on other information or data which may be available. **The term ex-parte means of the one part; from one party. This term is applied in law to a proceeding by one party in the absence of, and without notice to, the other*		
48.	Whether the recipient of taxable service having borne the incidence of STax is entitled to claim refund of excess STax paid consequent upon the downward revision of charges already paid, and whether the question of unjust enrichment arises in such situation?	CCus.CEx & STax v. Indian Farmers Fertilizers Coop. Ltd. 2014 All.HC	The HC upheld the decision of the CESTAT that since the burden of tax has been borne by the respondent as a service recipient, question of unjust enrichment will not arise as per section 11B of the Central Excise Act 1944 (as applicable to STax u/s 83 of Finance Act,1994). Further, the HC held that once the finding of the adjudicating authority that the claim for refund was filed within the period of limitation was not challenged by the Revenue before the first appellate authority and CESTAT, Revenue could not assert to contrary and first time urge a point in an appeal before this Court which was not raised in grounds of appeal before authorities below.
49.	Can the expression "suppression of facts" be interpreted to include in its ambit, mere failure to disclose certain facts unintentionally?	Naresh Kumar & Co. Pvt. Ltd v. UOI 2014 Cal.HC	The HC held that willful suppression cannot be assumed and/or presumed merely on failure to declare certain facts unless it is preceded by deliberate non-disclosure to evade the payment of tax. The extended period of limitation can be invoked on clear exposition that there has been a conscious act on the part of the assessee to evade the tax by non-disclosing the fact which, if disclosed, would attract STax u/ss 66 (now section 66B) & 67 of the Finance Act, 1994. The non-disclosure of the fact which, even if, disclosed would not have attracted the charging section cannot be brought within the ambit of suppression of fact for the purpose of extension of limitation period.
50.	Is it justified to recover STax during search without passing appropriate assessment order?	Chitra Builders Private Ltd. v. Addnl. Comm of CEx. & ST 2013 Mad.HC	The Court observed that it is a well settled position in law that no tax can be collected from the assessee, without an appropriate assessmnt order being passed by the authority concerned and without following the procedures established by law. However, in the present case, no such procedures had been followed. The HC held that the amount collected by Department, from the petitioner, during the search conducted, could not be held to be valid in the eye of law, and directed the Department to return to the petitioner the sum of 2 crores, collected from it, during the search conducted.
	<u>OTHER CASE LAWS</u> **<u>Infinity Infotech Parks Ltd. v. UOI 2013 Cal.HC:</u>** Held that mere contravention of provision of Chapter V or rules framed thereunder does not enable the STax authorities to invoke the extended period of limitation. The contravention necessarily has to be with the intent to evade payment of STax. **<u>Ankleshwar Taluka ONGC Land Loosers Travellers Co.OP. v. CCE 2013 Guj.HC:</u>** The HC held that even if the appellants were aware of the levy of STax and were not paying the amount on the ground of dispute with the ONGC, there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful mis-statement or suppression. Moreover, when the entire issue for levying of the tax was debatable, that also would surely provide legitimate ground not to impose the penalty.		
<u>S.Tax - Ch 08: Other Provisions</u>			
51.	Can the Commissioner (Appeals) remand back a case to the adjudicating authority u/s 85 of the Finance Act, 1994?	Commissioner of STax v. Associated Hotels Ltd. 2015 Guj.	The HC, therefore, held that section 85(4) of the Finance Act, 1994 gives ample powers to the Commissioner (Appeals) while hearing and disposing of the appeals and such powers inherently contain the power to remand a proceeding for proper reasons to the adjudicating authority.
52.	Whether the period of limitation or the period within which delay in filing an appeal can be condoned, specified in terms of months in a statute, means a calendar month or number of days?	CCus & CEx. v. Ashok Kumar Tiwari 2015 All.	In the given case, the Commissioner of Central Excise (Appeals) had the jurisdiction to condone the delay in filing of appeal by the assessee as the same had been filed within the stipulated time prescribed for the same.

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53.	Can an appeal filed in time but to the wrong authority be rejected by the appellate authority for being time barred?	Chakiat Agencies v. UOI 2015 Mad.HC	In the light of the above discussion, the HC directed the appellate authority to entertain the appeal of the assessee and to pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard.

CUSTOMS & FTP

CUSTOMS & FTP - Ch 02: Levy of and exemptions from customs duty			
54.	In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?	Mangalore Refinery & Petrochemicals Ltd v. CCus. 2015 SC.	The SC set aside the Tribunal's judgment and declared that the quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.
55.	Would countervailing duty (CVD) on an imported product be exempted if the excise duty on a like article produced or manufactured in India is exempt?	Aidek Tourism Services Pvt. Ltd. v. CCus. 2015 SC	SC held that rate of additional duty leviable u/s 3(1) of the Customs Tariff Act, 1975 would be only that which is payable under the Central Excise Act, 1944 on a like article. Therefore, the importer would be entitled to payment of concessional/ reduced or nil rate of countervailing duty if any notification is issued providing exemption/ remission of excise duty with respect to a like article if produced/ manufactured in India.
CUSTOMS & FTP - Ch 04: Classification of Goods			
56.	Whether the mobile battery charger is classifiable as an accessory of the cell phone or as an integral part of the same?	State of Punjab v. Nokia India Private Ltd. 2015 (315) ELT 162 (SC)	The Apex Court held that mobile battery charger is an accessory to mobile phone and not an integral part of it. Further, battery charger cannot be held to be a composite part of the cell phone, but is an independent product which can be sold separately without selling the cell phone.
CUSTOMS & FTP - Ch 05: Valuation Under The Customs Act, 1962			
57.	Can the value of imported goods be increased if Department fails to provide to the importer, evidence of import of identical goods at higher prices?	Gira Enterprises v. CCus. 2014 SC	The SC held that mere existence of alleged computer printout was not proof of existence of comparable imports. Even if assumed that such printout did exist and content thereof were true, such printout must have been supplied to the appellant and it should have been given reasonable opportunity to establish that the import transactions were not comparable. Thus, in the given case, the value of imported goods could not be enhanced on the basis of value of identical goods as Department was not able to provide evidence of import of identical goods at higher prices.
CUSTOMS & FTP - Ch 07: Importation, Exportation and Transportation of Goods			
58.	Can the time-limit prescribed u/s 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry u/s 46 of the Act?	CCus v. Shreeji Overseas (India) Pvt. Ltd. 2013 Guj.HC	The aforesaid question came up for consideration before the HC. The HC noted that though section 46 does not provide for any time-limit for filing a bill of entry by an importer upon arrival of goods, section 48 permits the authorities to sell the goods after following the specified procedure, provided the same are not cleared for home consumption/ warehoused/ transhipped within 30 days of unloading the same at the customs station. The HC however held that the time-limit prescribed u/s 48 for clearance of the goods within 30 days cannot be read into section 46 and it cannot be inferred that section 46 prescribes any time-limit for filing of bill of entry.

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CUSTOMS & FTP - Ch 09: Demand & Appeals			
59.	Can a writ petition be filed before a HC which does not have territorial jurisdiction over the matter?	Neeraj Jhanji v. CCE & Cus. 2014 SC	The SC observed that the very filing of writ petition by the petitioner in Delhi HC against the order in original passed by the Commissioner of Customs, Kanpur indicated that the petitioner had taken chance in approaching the HC at Delhi which had no territorial jurisdiction in the matter. The filing of the writ petition before Delhi HC was not at all bona fide.
60.	Can customs duty be demanded u/s 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him?	CCus. v. Dinesh Chhajer 2014 Kar.HC	The HC held that Tribunal was justified in holding that no duty is leviable against the assessee as he is neither the importer nor the owner of the goods or was in possession of any goods.
61.	Can a writ petition be filed against an order passed by the CESTAT u/s 9C of the Customs Tariff Act, 1975?	Rishiroop Polymers Pvt. Ltd. v. Designated Authority 2013 Bom.HC	The HC, therefore, held that it would not be appropriate for it to exercise the jurisdiction under Article 226 of the Constitution, since an alternate remedy by way of an appeal was available in accordance with law. The HC thus, dismissed the petition leaving it open to the assessee to take recourse to the appellate remedy.
	Other Case Laws: 1. **Kemtech International Pvt. Ltd. v. CCus. 2013** - SC: The Apex Court held that for the purpose of re-quantification of short-levy of customs duty, the adjudicating authority, following the principles of natural justice, should supply to the assessee all the documents on which it proposed to place reliance. Thereafter the assessee might furnish their explanation thereon and might provide additional evidence, in support of their claim. 2. **Uniworth Textiles Ltd. vs. CCEx. 2013 SC:** The SC held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso. 3. **Margara Industries Ltd. v. Commr. of C. Ex. & Cus. (Appeals) 2013 All.HC:** The HC held that the Tribunal ought to have taken a lenient view in this matter as the appellant was not going to gain anything by not filing the appeal and the reason for delay in filing appeal as given by the appellant was the mistake of its counsel who had also filed his personal affidavit. 4. **Thakker Shipping P. Ltd. v. CCus. (General) 2012 - SC:** The HC ruled that the Tribunal was competent to invoke section 129A(5) where an application u/s 129D(4) had not been made within the prescribed time and condone the delay in making such application if it was satisfied that there was sufficient cause for not presenting it within that period.		
CUSTOMS & FTP - Ch 10: Refund			
62.	Is limitation period of one year applicable for claiming the refund of amount paid on account of wrong classification of the imported goods?	Parimal Ray v. CCus. 2015 Cal.HC	The HC observed that the provisions of section 27 apply only when there is over payment of duty or interest under the Customs Act, 1962. When the petitioners' case is that tunnel boring machines imported by it were not exigible to any duty, any sum paid into the exchequer by them was not duty or excess duty but simply money paid into the Government account. The Government could not have claimed or appropriated any part of this as duty or interest. Therefore, there was no question of refund of any duty by the Government. The money received by Government could more appropriately be called money paid by mistake by one person to another, which the other person is under obligation to repay u/s 72 of the Indian Contract Act, 1872. A person to whom money has been paid by mistake by another person becomes at common law a trustee for that other person with an obligation to repay the sum received. This is the equitable principle on which section 72 of the Contract Act, 1872 has been enacted. Therefore, the person who is entitled to the money is the beneficiary or cesti qui trust*. When the said amount was paid by mistake by the petitioner to the Government of India, the latter instantly became a trustee to repay that amount to the petitioner. The obligation was a continuing obligation. When a wrong is continuing there is no limitation for instituting a suit complaining about it. The HC, therefore, allowed the writ application and directed the respondents (Department) to refund the said sum to the petitioner.
63.	Whether interest is liable to be paid on delayed refund of special CVD arising in pursuance of the exemption granted vide Notification No. 102/2007 Cus dated 14.09.2007?	KSJ Metal Impex (P) Ltd. v. Under Secy (Cus.) M.F. (D.R.) 2013 Mad.HC	The HC, therefore, held that : **(i)** It would be a misconception of the provisions of the Customs Act, 1962 to state that notification issued u/s 25 of the Customs Act, 1962 does not have any specific provision for interest on delayed payment of refund. **(ii)** When section 27 of the Customs Act, 1962 provides for refund of duty and section 27A of the Customs Act, 1962 provides for interest on delayed refunds, the Department cannot override the said provisions by a Circular and deny the right which is granted by the provisions of the Customs Act, 1962 and

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	CETA. **AND (iii)** Paragraph 4.3 of the Circular No. 6/2008 Cus. dated 28.04.2008 being contrary to the statute has to be struck down as bad.		
CUSTOMS & FTP - Ch 12: Provs w.r.t Illegal Import/Export, Confiscation, Penalties & Allied Provisions			
64.	**Whether the expression 'goods in respect of which any prohibition is in force' refers to smuggled goods or prohibited goods?**	**Gopal Saha v. UOI 2016 - Cal. HC** **RTP May 2017**	**the High Court inferred that expression 'goods in respect of which any prohibition is in force' in the context of section 112 implies goods which are prohibited from being imported and not goods which have been smuggled into the country in contravention of the procedure established by law for the import thereof. Consequently, the order imposing penalty on the petitioner was set aside and the matter was remanded for such limited purpose for the imposition of other permissible penalty.**
65.	In case of seizure of goods u/s 110 of the Customs Act, 1962, can the show cause notice [required to be issued u/s 124(a) within six months of seizure] be issued to the Customs House Agent [now Custom Broker] of the importer instead of importer himself?	Santosh Handlooms v. CCus. 2016 Del. HC)	the High Court held that the show cause notice served on CHA [now Custom Broker] is not tenable in law. Finance Act, 2012 had consciously amended section 153 of the Customs Act, 1962 to do away with the service of orders, decisions, summons and notices on the agent. The CHA [now Custom Broker], is an agent, who operates under a special contract with an importer or exporter, and in this context is authorized to perform various functions to clear the goods from customs. It is no part of the general duty cast upon the CHA to accept service of notices, summons, orders or decisions of the customs authorities, unless he has been specially authorized to do so.
66.	Where goods have been ordered to be released provisionally u/s 110A of the Customs Act, 1962, can release of goods be claimed u/s 110(2) of the Customs Act, 1962?	Akanksha Syntex (P) Ltd. v UOI (2014 - P&H)	The remedy of provisional release is independent of remedy of claiming unconditional release in the absence of issuance of any valid show cause notice during the period of limitation or extended limitation prescribed u/s 110(2) of the Customs Act, 1962.
67.	Whether mere dispatch of a notice u/s 124(a) would imply that the notice was "given" within the meaning of section 124(a) and section 110(2) of the said Customs Act, 1962?	Purushottam Jajodia v. Director of Revenue Intelligence 2014 (Del.)	The HC held that since the petitioners did not receive the notice u/s 124(a) within the time stipulated in section 110(2) of the Act, such notice will not considered to be "given" by the Department within the stipulated time, i.e. before the terminal date. Consequently, the Department was directed to release the goods seized.
68.	Can penalty for short-landing of goods be imposed on the steamer agent of a vessel if he files the Import General Manifest, deals with the goods at different stages of shipment and conducts all affairs in compliance with the provisions of the Customs Act, 1962?	Caravel Logistics Pvt. Ltd. v. Joint Secretary (RA) 2013 (Mad.)	The HC held that conjoint reading of sections 2(31), 116 and 148 of Customs Act, 1962 makes it clear that in case of short-landing of goods, if penalty is to be imposed on person-in-charge of conveyance/vessel, it can also be imposed on the agent appointed by him. Hence, duly appointed steamer agent of a vessel, would be liable to penalty. However, steamer agent, if innocent, could work out his remedy against the shipper for short-landing. The HC also clarified that in view of section 42 under which no conveyance can leave without written order, there is an automatic penalty for not accounting of goods which have been shown as loaded on vessel in terms of Import General Manifest. There is no requirement of proving mens rea on part of person-in-charge of conveyance to fall within the mischief of section 116 of the Customs Act.
CUSTOMS & FTP - Ch 13: Settlement Commission			
69.	Is judicial review of the order of the Settlement Commission by the HC or SC under writ petition/special leave	Saurashtra Cement Ltd. v. CCus. 2013 (Guj.)	While examining the scope of judicial review in relation to a decision of Settlement Commission, the HC noted that although the decision of

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	petition, permissible?		Settlement Commission is final, finality clause would not exclude the jurisdiction of the HC under Article 226 of the Constitution (writ petition to a HC) or that of the SC under Articles 32 or 136 of the Constitution (writ petition or special leave petition to SC). The Court would ordinarily interfere if the Settlement Commission has acted without jurisdiction vested in it or its decision is wholly arbitrary or perverse or mala fide or is against the principles of natural justice or when such decision is ultra vires the Act or the same is based on irrelevant considerations. The Court, however, pronounced that the scope of court‟s inquiry against the decision of the Settlement Commission is very narrow, i.e. judicial review is concerned with the decision-making process and not with the decision of the Settlement Commission.
<u>CUSTOMS & FTP - Ch 15: Miscellaneous Provisions</u>			
70.	Whether any interest is payable on delayed refund of sale proceeds of auction of seized goods after adjustment of expenses and charges in terms of section 150 of the Customs Act, 1962?	Vishnu M Harlalka v. UOI 2013 Bom.HC	The HC held that Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission. The HC clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund, the Department can wait for an inordinately long period to grant the refund. The HC directed the Department to pay interest from the date of approval of proposal for sanctioning the refund.
71.	Can a former director of a company be held liable for the recovery of the customs dues of such company?	Anita Grover v. CCEx. 2013 (288) ELT 63 (Del.)	The Court held that since the company was not being wound up, the juristic personality the company and its former director would certainly be separate and the dues recoverable from the former could not, in the absence of a statutory provision, be recovered from the latter. There was no provision in the Customs Act, 1962 corresponding to section 179 of the Income-tax Act, 1961 or section 18 of the Central Sales Tax, 1956 (refer note below) which might enable the Revenue authorities to proceed against directors of companies who were not the defaulters.

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