# Summary
# of
# Direct & Indirect Tax Case Laws

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***Relevant for CA Final Examination – November, 2017 Attempt***

# ***Author's Note:***

This book is a summarized form of all Case Laws relevant for syllabus of Direct & Indirect Tax – November, 2017 Attempt. This book enables students to learn and revise Case Laws in easiest and quickest possible way to ensure securing maximum of marks in questions based on Case Laws.

Any errors or mistakes noted may be brought to our notice at lsfedudocs@gmail.com which will be rectified in next edition.

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# Introduction

Case Laws in CA Final Examination appears for 16 marks in each of Direct and Indirect Tax Paper. Case Laws are the laws which are established by outcome of former judgments of High Courts or Supreme Court.

## *Name of Case Law is written in following format:*

**"CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)"**

***Interpretation:***

- ***CIT* –** It is Appellant i.e. the Appeal to court was filed by CIT
- ***Saurashtra Cement Ltd.* –** The Appeal was filed against this company. It will be known as Respondent
- ***2010* –** The Year in which the decision was finalized by court
- ***325 ITR 422* –** This decision was published on page no. 422 of 323$^{rd}$ Volume of ITR
- ***SC* –** This decision was of Supreme Court

(2010) 325 ITR 422 (SC)

**-** It is known as citation, it must be written in exam after writing the Name of Appellant and Respondent

# How to write answers of questions based on Case Laws in exams?

1. Write the issue / matter of dispute in the given question

2. Give reference to the Case Law and what was the decision of the court in such matter

3. Link the matter of Case Law with situation in given question

4. Apply the decision of Case Law in given question

**The above can be better understood by going through the below mentioned Extract of a question based on Case Law as appeared in November, 2016 Attempt.**

(a) Mr. Ankit sold a plot during the financial year 2015-16 and invested the sale proceeds in purchase of a new house in the name of his wife by the end of the financial year i.e., by 31st March, 2016. He claimed deduction under section 54F in respect of the new house purchased by him in the name of his wife. The Assessing Officer, while making assessment for the Assessment Year 2016-17, denied such deduction on the ground that in order to avail benefit under section 54F, it is necessary to invest the sale proceeds in the name of the assessee.

Comment on the validity of action taken by the Assessing Officer.

**Answer**

The issue under consideration in this case is whether exemption under section 54F can be denied to Mr. Ankit if sale proceeds of a long term capital asset10 are invested in a new residential house within the stipulated time limit but the said house is purchased in the name of his wife and not in his name.

This issue came up before the Delhi High Court in CIT v. Kamal Wahal (2013) 351 ITR 4, wherein it was observed that section 54F requires purchase or construction of a residential property within the specified period. It does not require purchase of new residential house property in the name of the assessee himself.

The Delhi High Court decided that having regard to the rule of purposive construction and the object of enactment of section 54F, the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of plot of land for investment in residential house property in the name of his wife

In this case, Mr. Ankit had not purchased the new house in the name of a stranger or somebody who is unconnected with him, but had purchased it in the name of his wife. The entire investment for purchase of new residential house had come out of the sale proceeds of the plot belonging to Mr. Ankit and there was no contribution from his wife.

Therefore, applying the rationale of the above Delhi High Court ruling in this case, the action of the Assessing Officer in denying the claim for deduction under section 54F in the hands of Ankit due to the reason that he had invested the sale proceeds in purchasing a new residential house in the name of his wife rather than in his name, is not valid.

# DIRECT TAX LAWS

| Sr.No. | Matter of Dispute | Parties Involved | Decision of the Court | Ratio Decidendi (Logic behind the Judgment) |
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| 1. | Nature of Liquidated Damages received - Capital or Revenue? | CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC) | **Capital Receipt** | Damages were directly and intimately linked with the procurement of a capital asset, 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, is not in the ordinary course of business |
| 2. | Capital Contribution of Partners credited to books of Firm taxed as cash credits in hands of firm where partners were unable to explain the source of income. (Reference Sec No. 68) | CIT v. M. Venkateswara Rao (2015) 370 ITR 212 (T&AP) | **Cannot be taxed in hands of Firm u/s 68, though they may be assessed in hands of individual partners** | As Firm explained that the cash credited in books of Firm were capital contribution by them, therefore it cannot be assessed u/s 68 in hands of Firm. At the most, AO can make enquiry against individual partners. |

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| 3. | Consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi) | CIT<br>v.<br>Alcatel Lucent Canada<br>(2015) 372 ITR 476 (Del) | **No**<br>**It cannot be treated as royalty u/s 9(1)(vi)** | 1. Software did not have independent existence<br>2. Software is an integral part of GSM Mobile Telephone System<br>3. Software is embedded in system and there is no independent use of software<br>4. Facilitates functioning of equipment<br>5. Also, referred to what Apex Court had decided in **Tata Consultancy Services v. State of Andhra Pradesh**, software incorporated on a media would be liable to sales tax |
| 4. | Incidental Profit by Institution engaged in imparting education lead to interference that it ceases to exist solely for educational purposes | Queen's Educational Society<br>v.<br>CIT<br>(2015) 372 ITR 699 (SC) | **No**<br>**Profit was only incidental to the main object of business & hence conditions u/s 10(23C)(iiiad) are satisfied for claiming exemption** | The Apex Court, after analyzing the legal provisions and precedents summed up that,<br>To Function, Institute must need surplus between Receipts and Outgoing. A distinction must be drawn between the making of surplus and an institution being carried on "for profit". 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. |
| 5. | Section 14A – Is it applicable to deductions allowed under chapter VI-A | CIT<br>v.<br>Kribhco<br>(2012) 349 ITR 0618 (Delhi) | **No**<br>**Only applicable to Exempt Income & no disallowance for deduction allowable u/s 80C to 80U** | Observed that it differs from Incomes which are exempted or excluded from part of total income under chapter III and provisions of Section 14A applies only to Chapter III & not to Deductions under Chapter VI-A. |

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| 6. | Deemed to be registered under section 12AA if application for Registration is not disposed off within 6 months as required u/s 12AA(2) | CIT<br>v.<br>Society for the Promotion of Education<br>(2016) 382 ITR 6 (SC) | **No**<br>**It does not amount to "Deemed Registration"** | Time Limit u/s 12AA(2) is only directory in nature. Passing of order within such limit is not mandatory. The Orissa High Court Opined that in the absence of any clear statutory intent where public is to be informed by public authorities, time limit granted by statute is normally directory & not mandatory. |
| 7. | Can Concerned Authority deny application for registration u/s 12A when application made within short span and no activity has been commenced by trust? | DIT (Exemptions)<br>v.<br>Meenakshi Amma Endowment Trust<br>(2013) 354 ITR 219 (Kar.) | **No, Authorities should consider objects referred in Trust Deed and later if trust is not carrying out charitable activity, then authority may withdraw registration u/s 12AA(3)** | Trust cannot be expected to carry out Charitable Activities immediately with the Money available to it & therefore it cannot be concluded that it does not intend to carry out Charitable Activities. |

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| 8. | 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)<br>v.<br>Khetri Trust<br>(2014) 367 ITR 723 (Del) | **No Violation of Section 11(5)** | The Commissioner (Appeals) observed that the validity of the will has been challenged in the probate proceedings; therefore, till the 'will' is probated and affirmed as genuine, the trust would not acquire the legal right on the property for the purpose of Income-tax Act, 1961. In case the probate is denied, the properties would not devolve on the trust. The shares in foreign company were still in the name of the donor, and its acquisition by the trust is dependent upon the adjudication of the probate.<br>Further, with regard to the advance given to the business entity, the Commissioner (Appeals) found that the said amount cannot be treated as an investment which was covered and regulated by section 11(5), since the intent and purpose behind the payment was not investment.<br>The above views were Confirmed by Tribunal & HC |
| 9. | 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)<br>v.<br>Ramoji Foundation<br>(2014) 364 ITR 85 (AP) | **No, it is not mandatory. Trust deed amended by trustees can be relied upon by Revenue Authority for the purpose of granting Registration u/s 12AA** | High Court observed that when power is given to trustees by settler to amend trust deed provided all conditions laid down by settler are satisfied, there is no need to obtain sanction from Civil Court.<br><br>**Even in Kamla Town Trustee's case, nowhere in decision of Supreme Court was specified that trustees have to approach Civil Court to get trust deed rectified in spite of power given to them by settler to amend the Trust Deed.** |

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| 10. | Notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee? | CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom.) | **No, it should not be added** | As per High Court observations the perquisite value has to be computed as per Rule 3 and since the Rule 3 does not require addition of such notional interest, it cannot be added |
| 11. | Is Rs. 1,000 p.m. per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the EE by ER | CIT (TDS) v. Director, Delhi Public School (2011) 202 Taxman 318 (Punj. & Har.) | **No** **Only when it is less than Rs. 1,000 it is to be taken as nil i.e. if it exceeds Rs. 1,000 then entire amount is taxable** | On plain reading of Rule 3(5), P&H HC observed that in case value of perquisite exceeds Rs. 1,000 p.m. per child, the whole shall be taxable in hands of Employee and no standard deduction shall be allowed |
| 12. | Income from letting out of Property by Company whose business as per it's MOA is of letting out and in it's ROI entire income is from letting out, **Taxable as business income or Income from HP?** | Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC) | **Taxable under Head PGBP** | Supreme Court observed a judgment in **Karanpura Development Co. Ltd. v. CIT** (leasing of Coal Mine) case that deciding factor is not ownership but the nature of activity of assesse & nature of operations in relation to them. In both of above cases, main business of assesse was to lease out asset and earn Rental Income on it. |
| 13. | Rental Income from Unsold flats held as Stock in Trade, **taxable as PGBP or HP** | New Delhi Hotels Ltd. v. ACIT (2014) 360 ITR 0187 (Delhi) | **Taxable as House Property irrespective whether it's deemed rent or actual rent** | Based on decisions in: 1. **CIT vs. Ansal Housing Finance & Leasing Co. Ltd.** (Deemed Rent Taxed under HP) And also in 2. **CIT vs. Discovery Estates Pvt. Ltd.** (Actual Rent also Taxed under HP |

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| 14. | Letting out of godowns and provision of warehousing services be subject to tax as **PGBP or HP** | CIT<br>v.<br>NDR Warehousing P Ltd<br>(2015) 372 ITR 690 (Mad) | **Taxable under PGBP** | 1. MOA of company specifies that warehousing & Letting/Renting of Godowns and providing various services was business of assesse.<br>2. Assessee provides renting in very organized manner by providing various services such as Pest Control, Security, Rodent Control, etc. |
| 15. | Benefit of Self Occupied Property denied u/s 23(2) denied to HUF on account of being a fictional entity | CIT<br>v.<br>Hariprasad Bhojnagarwala<br>(2012) 342 ITR 69 (Guj.)<br>(Full Bench) | **No**<br>**HUF is eligible to claim benefit u/s 23(2)** | A Firm is a fictional entity and may consist Artificial persons therefore it cannot take advantage of it.<br>However, HUF is a group of individuals of family and they may reside in the premises unlike Artificial Persons. Also, it is observed that since 'Singular' includes 'plural', 'owner' would include "owners" and 'his own' would include 'their own'. |
| 16. | Notional interest on interest-free deposit received by an assessee in respect of a shop let out on rent be brought to tax as **PGBP or HP?** | CIT<br>v.<br>Asian Hotels Ltd.<br>(2010) 323 ITR 490 (Del.) | **Not Taxable as either** | 1. Section 28(iv) is only applicable if benefit or perquisite is acquired otherwise than by way of cash.<br>Here A.O. added sum constituted **as 18% Simple Interest** therefore 28(iv) is Not Applicable.<br>2. Section 23(1) deals with computation of expected rent which could have been fetched and therefore certainly not deals with interest on Fixed Deposit that could have been placed by Tenant |

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| 17. | Franchise fee received by an assessee in tourism business, against special rights given to franchisees to undertake hotel business in assessee's property, **taxable as PGBP or HP?** | Tamil Nadu Tourism Development Corporation Ltd v. Dy. CIT (2014) 368 ITR 533 (Mad) | **Taxable as PGBP** | HC looked and observed from terms of contract that it contains various conditions ranging from permits, licenses, maintenance, etc. with 33 clauses.<br>Assessee has not only leased Land & Building but also imposed conditions as how business should be conducted.<br>Also, Assessee has stipulated that name of assesse should be indicated on Name Board. Therefore it indicates that the intention of assessee was to carry on it's business through franchisee. |
| 18. | 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) 379 ITR 322 (SC) | **Interest accrues to company only in A.Y. in which the allotment is completed** | Though the interest is accrued but Interest and application money both cannot be made available to assessee for its use unless the shares are allotted.<br>Also, the application money along with interest is payable to those whom shares were not allotted.<br>Therefore, statutorily only after allotment of shares and refund of money to non-allottees, the company can actually make use of application money and interest accrued thereon. |
| 19. | 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) 364 ITR 93 (Del) | **Yes**<br>**Taxable under PGBP** | HC noted interest income on deposits is inextricably related to business of assesse therefore it cannot be taxed as IFOS.<br>Also, deposit was essential requirement to be made by assesse else bank guarantee would not have been obtained and consequently have not got the contract for running the said lottery. |

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| 20. | Expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs? | CIT<br>v.<br>TVS Motors Ltd<br>(2014) 364 ITR 1 (Mad) | **Yes**<br>**Deductible as "Current Repairs" u/s 31** | HC Referred to SC Ruling in **CIT v. Mahalakshmi Textile Mills Ltd.** wherein it was held that since there was no improvement in performance of Plant & Machinery and replaced parts were precisely performing same function, it will be considered as current repairs.<br>In this case moulds and dies are not independent and were parts of Plant & Machinery and once they are worn out they have to be replaced to perform specific business operations and also replacement of it does not bring any new asset or advantage. |

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| 21. | Can depreciation on leased vehicles be available to lessor when they are registered in the name of the lessee? | I.C.D.S. Ltd.<br>v.<br>CIT<br>(2013) 350 ITR 527 (SC) | **Assessee-lessor is entitled to claim depreciation u/s 32** | 1. SC observed that Sec 2(30) of Motor Vehicles Act, 1988 is a deeming provision which creates legal fictional ownership in favor of lessee only for Act and not for law in general.<br>2. U/s 32, two conditions are pre-requisite to claim depreciation:<br>a. “Ownership” of asset<br>b. “Usage” of asset for Business<br>Usage of asset for business does not mean usage by assesse itself and the terms of lease indicated that:<br>➢ Assessee is exclusive owner of vehicles at all point of time<br>➢ Assessee will receive vehicles back at end of period<br>➢ Assessee can inspect vehicles during lease period.<br>Therefore ownership of asset lies with assessee itself.<br>Since both conditions are satisfied therefore eligible for depreciation u/s 32 to assessee-lessor. |
| 22. | Eligible rate of depreciation in respect of computer accessories and peripherals under the IT Act, 1961? | CIT<br>v.<br>BSES Yamuna Powers Ltd<br>(2013) 358 ITR 47 (Delhi) | **60%** | HC observed that computer software and other accessories like printers, scanners form integral part of Computer and they cannot function independently. |

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| 23. | Can business contracts, business information, etc., acquired by way of slump sale and described as 'goodwill' by assessee entitled for depreciation under section 32(1)(ii)? | Areva T and D India Ltd.<br>v.<br>DCIT<br>(2012) 345 ITR 421 (Delhi) | **Yes**<br>**Specified assets acquired by slump sale are classifiable under “other business or commercial rights of similar nature”** | HC observed the principle of ejusdem generis i.e. in case where general words are following specific words, the meaning of latter words are confined to things of same kind. The use of the words “other business or commercial rights of similar nature” added by legislature clearly demonstrates the intent of statute was to provide benefit of depreciation not only to specified intangible assets but also to other categories of Intangible Assets which were neither feasible nor possible to exhaustively enumerate.<br>Also, HC observed that the above assets are required for business and without which the assessee would have taken a long gestation period to set-up. Therefore, above assets can be compared to license to carry the existing business of transferor. |
| 24. | Goodwill eligible for dep. considering it as an asset within the meaning of Explanation 3(b) to Section 32(1)? | CIT<br>v.<br>Smifs Securities Ltd.<br>(2012) 348 ITR 302 (SC) | **Yes**<br>**Depreciation is allowed** | SC observed that ‘Explanation’ provides expression “asset” which included other business or commercial rights of similar nature and Goodwill in process of Amalgamation under it and therefore eligible for depreciation.<br>SC observed goodwill is a capital right acquired in process of amalgamation and it provides benefit in a form that the market worth of amalgamated companies increases. |

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| 25. | Is dep. on EPABX and Mobile Phones entitled for 60% depreciation? | Federal Bank Ltd.<br>v.<br>ACIT<br>(2011) 332 ITR 319<br>(Kerala) | **Not entitled for 60% Depreciation** | No grounds or logical basis available to treat the communication equipment as Computers |
| 26. | Beneficial ownership of assets suffice for claim of depreciation on such assets? | CIT<br>v.<br>Smt. A. Sivakami and Another<br>(2010) 322 ITR 64 (Mad.) | **Entitled to depreciation even though the person is not the legal owner of asset** | 1. HC observed that the object of Act is to tax the income to whom the benefit is accrued, the owner is a person who is entitled to receive income from property in his own right.<br>2. The assessee made available all documents relating to business and proved before authority that she is beneficial owner.<br>3. Also held by SC in **CIT vs. Podar Cement Pvt. Ltd. that** owner need not be lawful owner entitled to pass on title of property to another. |
| 27. | Extended time limit u/s 43B applicable to EE's contribution to PF & ESIC | CIT<br>v.<br>Gujarat State Road Transport Corpn<br>(2014) 366 ITR 170 (Guj) | **No**<br>**Not deductible while computing business income of employer** | HC observed that sec 43B(b) pertaining to Employer's contribution is not applicable to Employee's contribution governed by 36(1)(Va).<br>There is no provision for applying extended Time Limit u/s 43B to Employee's Contribution in PF & ESIC and therefore Employee's Contribution in PF & ESIC would form part of income of Employer and deductible only on remittance within "due date" as per explanation to sec 36(1)(Va) |

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| 28. | Compensation to its tenants for vacating the premises in order to earn higher rent by re-letting out the same, be allowed as revenue expenditure? | Shyam Burlap Co Ltd<br>v.<br>CIT<br>(2016) 380 ITR 151 (Cal) | **Yes** | 1. As per Apex Court decision in **Chennai Properties and Investments Ltd. vs. CIT** where it was laid down that objects of company and head under which Income is taxable must be contended.<br>2. HC accordingly decided where Income from letting out of property is business income and compensation paid to tenants for vacating to facilitate higher rent to assessee by re-letting out the premises **makes it eligible for deduction.** |
| 29. | Upfront interest paid to Debenture Holders, when to be allowed as deduction? | Taparia Tools Ltd<br>v.<br>Joint CIT<br>(2015) 372 ITR 605 (SC) | **SC held it would be eligible for deduction of entire amount of upfront debenture interest in year when it was actually paid** | 1. Combined reading of 36(1)(iii) and 43(2) makes it eligible for deduction.<br>2. No concept of deferred revenue expenditure prevails in IT Act, 1961 except for u/s 35AD & therefore revenue expenditure are deductible in year when it was incurred.<br>3. SC also observed that upfront interest amount is lesser than debenture interest paid over period of 5 Years. Therefore both the methods of interest payment were at par. |

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| 30. | 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<br>v.<br>Dharmpur Sugar Mill (P) Ltd<br>(2015) 370 ITR 194 (All) | **Yes**<br>**Allowed as Revenue Expenditure** | 1. HC made reference to SC decision in **Empire Jute Co. Ltd. vs. CIT** that true test is to consider nature of advantage in commercial sense and only that advantage which is in capital field will be disallowed.<br>2. Expenditure on transmission lines was necessary to be incurred and clearly on account of Revenue Expenditure.<br>3. Transmission lines, upon erection, vested absolutely in UPPCL. Expenditure which was incurred by assessee was for aiding conduct of its business since assessee had to supply electricity to its sole consumer UPPCL. This was not an advantage of Capital Nature. |
| 31. | Amount paid by co. formed on account of a Joint Venture Company (JVC) for use of customer database and transfer of trained personnel be claimed as revenue expenditure? | CIT<br>v.<br>IBM Global Services India P Ltd<br>(2014) 366 ITR 293 (Karn) | **Yes** | 1. HC observed expenditure incurred for use of Customer database does not result in acquisition of capital asset and also the company which provided database was not precluded.<br>2. If trained personnel not acquired, the company would have to incur lot of expenditure in training of personnel which would have been of Revenue Nature.<br>Therefore, expenditure incurred to save such revenue expenses must also be considered as expenditure of Revenue Nature. |

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| 32. | What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue? | CIT<br>v.<br>Orient Ceramics and Industries Ltd.<br>(2013) 358 ITR 49 (Delhi) | **Revenue** | Referred to HC decision in **CIT vs. Liberty Group Marketing Division** wherein it was observed that<br>➢ Expenditure does not bring in existence of asset or advantage of enduring benefit to business.<br>➢ Asset was not of permanent nature i.e. short life<br>➢ Frequent replacement of Board required<br>➢ Purpose is to facilitate business operation and not the object of acquiring asset of enduring nature. |
| 33. | Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure? | CIT<br>v.<br>ITC Hotels Ltd.<br>(2011) 334 ITR 109 (Kar.) | **Revenue** | ***High Court's Decision:***<br>On this issue, the Karnataka High Court held that the expenditure incurred on the issue and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date. |
| 34. | Expenditure incurred on feasibility study conducted for business project, where the project was abandoned without creating a new asset? | CIT<br>v.<br>Priya Village Roadshows Ltd.<br>(2011) 332 ITR 594 (Delhi) | **Yes<br>Expenses was of Revenue Nature** | Creation of New Asset is relevant factor. Since no new asset is created and expenditure was for existing business with common administration expenses and common fund, it would be treated as expenditure of revenue nature |

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| 35. | Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure? | CIT<br>v.<br>Hindustan Zinc Ltd.<br>(2010) 322 ITR 478 (Raj.) | **Yes** | HC observed expenditure incurred by assessee for commercial expediency relates to carrying on of business.<br>Expenditure is in nature which a prudent businessmen may incur for business purpose. Expenditure was solely for furtherance of business and by no means can be treated as of Capital Nature. |
| 36. | Is Circular No. 5/2012 dated 01.08.2012 disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with Explanation to section 37(1), which disallows expenditure which is prohibited by law? | Confederation of Indian Pharmaceutical Industry (SSI)<br>v.<br>CBDT<br>(2013) 353 ITR 388 (H.P.) | **Yes** | As per Explanation to 37(1), it is clear that expenditure incurred for purpose which is prohibited by law would be disallowed.<br>Circular also disallows freebies to Medical Practitioners as it is prohibited as per Indian Medical Council Regulations, 2002. Therefore, it is completely in line with Explanation to 37(I) |
| 37. | Commission paid to doctors for referring patients is allowable as deduction under section 37? | CIT<br>v.<br>Kap Scan and Diagnostic Centre P. Ltd.<br>(2012) 344 ITR 476 (P&H) | **No** | As per Indian Medical Council Regulation, 2002 – No Physician shall give or receive any gift, gratuity, commission or bonus in return for referring patient. Demanding & Paying such commission is bad in law. Therefore, it must be discouraged. |

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| 38. | Expenditure incurred by a company on higher studies of the director's son abroad on contention that he was appointed as a trainee in the company was allowed as deduction? | Echjay Forgings Ltd.<br>v.<br>ACIT<br>(2010) 328 ITR 286 (Bom.) | **No** | 1. No evidence was available to show that director's son was appointed as trainee or sent abroad for higher education.<br>2. Appointment letter nor had any reference no. and nor was backed by application by him.<br>3. Appointment letter referred to "apprentice training scheme" with company in respect of which no details were produced.<br>4. No evidence was available indicating that he was recruited as trainee by some open competitive exam or regular selection process<br>Since there was no nexus between education expenses incurred abroad for Director's son and business of assessee company, the expenditure was disallowed. |
| 39. | Expenditure incurred on heart surgery of a lawyer, allowed as business expenditure under section 31, by treating it as current repairs or under section 37, by considering as general expenditure? | Shanti Bhushan<br>v.<br>CIT<br>(2011) 336 ITR 26 (Delhi) | **No claim shall be admissible u/s 31 or 37** | 1. Though Plant is an inclusive definition, such plant must be a business tool which is not true in case of Heart.<br>2. Expenditure cannot be said to be incurred wholly & exclusively for business purpose. |
| 40. | Payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction? | CIT<br>v.<br>Neelavathi & Others<br>(2010) 322 ITR 643 (Karn) | **No** | Any payments made to police illegally amounts to bribe and also payment to gunda is an illegal payment and therefore no deduction shall be allowed in respect of above payments. |

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| 41. | Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction? | Millennia Developers (P) Ltd.<br>v.<br>DCIT<br>(2010) 322 ITR 401 (Karn.) | **No** | HC observed amount paid for violating provisions of Karnataka Municipal Corporations Act, 1976 is a penalty for compounding of an offence, therefore Disallowed. Mere change in Nomenclature does not change the character of Payment. |
| 42. | Remuneration paid to working partners which is unreasonable and excessive but within Statutory Limits, allowable as deduction? | CIT<br>v.<br>Great City Manufacturing Co.<br>(2013) 351 ITR 156 (All) | **Yes**<br>**Because if 40(b)(v) is satisfied, Provision of 40A(2)(a) cannot be invoked** | HC observed A.O. is only required to check:<br>➢ Payment to working partners<br>➢ Terms & conditions provided for payment<br>➢ Statutory limits of 40(b)(v)<br>If all above 3 are satisfied, Remuneration to be allowable as deduction and A.O. cannot invoke 40A(2)(a) |
| 43. | 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<br>v.<br>KLN Agrotechs (P) Ltd<br>(2015) 375 ITR 301 (Kar.) | **HC held either the interest amount has to be allowed as deduction u/s 43B or sum offered for tax(as waived by bank) has to be reduced by amount of interest Effective amount subject to tax would be same** | **Refer Page No. 53** |
| 44. | Can unpaid electricity charges be treated as "fees" to attract disallowance under section 43B? | CIT<br>v.<br>Andhra Ferro Alloys P. Ltd.<br>(2012) 349 ITR 255 (A.P) | **No** | HC observed provisions of 43B do not incorporate electricity charges.<br>Therefore, non-payment of electricity charges would not attract disallowance u/s 43B since such charges cannot be termed as "fees" |

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| 45. | For the purpose of computing the period of holding of the property, the date of allotment letter or date of registration has to be considered for determining the nature of capital asset – long-term or short-term? | CIT<br>v.<br>S.R.Jeyashankar<br>(2015) 373 ITR 120 (Mad) | **Date of Agreement** | HC observed that Right to the property flows from Date of Agreement with the builder.<br>Accordingly, assessee's claim was held right |
| 46. | Period of Holding - where a leasehold property is subsequently converted into freehold property? | CIT<br>v.<br>Smt. Rama Rani Kalia<br>(2013) 358 ITR 0499 (All.) | **Period of Holding = From date of Purchase of Leasehold Property** | HC Observed that difference between Short Term Capital Asset & Long Term Capital Asset is period over which property has been held by assessee and not the nature of title over which the property was held. The conversion of property from Lease Hold to Free Hold is only by improvement of Rights. It won't affect taxability of gain from such property which is related to period over which the property is held. |
| 47. | In determining the period of holding of a capital asset received by a partner on dissolution of firm, can the period of holding of the capital asset by the firm be taken into account? | P. P. Menon<br>v.<br>CIT<br>(2010) 325 ITR 122 (Ker.) | **No** | HC held benefit of including Period of Holding of previous owner u/s 2(42A) read with Sec 49(I)(iii)(b) can only be availed if dissolution had taken place at any time before 01/04/1987. In other cases, Period of Holding will be reckoned only from date of dissolution of Firm. |
| 48. | Period of Holding in case of CG on renunciation of Right subscribe for additional shares is Short Term or Long Term? | Navin Jindal<br>v.<br>ACIT<br>(2010) 320 ITR 708 (SC) | **Period of Holding = From date on which such right comes into existence upto date of renunciation of such right** | SC observed that Right to Subscribe additional shares comes into existence when Company decides to come out with Rights offer. |

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| 49. | Period of Holding in case of asset is acquired by way of Gift? | CIT<br>v.<br>Manjula J. Shah<br>(2013) 355 ITR 474 (Bom.) | **Period of Holding = From date on which asset was first held by Previous Owner and not from date on which it is acquired by assessee** | Bombay HC observed that by way of 'deemed holding period fiction' created by statute, assessee is deemed to have held capital asset from date asset was first held by previous owner and accordingly Indexed Cost of Acquisition will be calculated by using Cost of Index of year in which asset was first held by Previous Owner. |
| 50. | CG Exemption u/s 54/54F be available in respect of Cost of Construction of -<br>(i) the new residential house (i.e., all independent floors handed over to the assessee); or<br>(ii) a single residential unit (i.e., only one independent floor)? | CIT<br>v.<br>Gita Duggal<br>(2013) 357 ITR 153 (Delhi) | **Exemption will be available for Residential House consisting of several independent residential units** | HC observed expression used in sec 54/54F is "residential house" and not "residential unit"<br>Sections only specify "Residential House" to be Constructed and does not specify Manner of Construction.<br>The purpose is only that it should be used for Residential use and not Commercial use. |
| 51. | Exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point? | CIT<br>v.<br>Syed Ali Adil<br>(2013) 352 ITR 0418 (A.P.) | **Yes, Exemption is available**<br>**Since common meeting point, thus making it a single unit** | HC referred to HC decision in **CIT vs. Ananda Basappa** wherein Flats were situated side by side and builder had affected necessary modification to make it as one unit even when flats were purchased by two separate deeds will qualify for exemption u/s 54 |

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| 52. | Exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed? | CIT<br>v.<br>Gurnam Singh<br>(2010) 327 ITR 278 (P&H) | **No** | Tribunal observed that agricultural land sold belonged to assessee and entire sale proceeds were also utilized by assessee to purchase new agricultural land and therefore it cannot be said that Capital Gains were in any way misused for any purpose contrary to provision of law. Merely because assessee's son was shown in sale deed as co-owner does noes not make any difference |
| 53. | Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife? | CIT<br>v.<br>Kamal Wahal<br>(2013) 351 ITR 4 (Delhi) | **No**<br>**Exemption will be available** | HC observed that sec 54F does not require purchase of new residential house property in name of assessee himself. It only requires assessee to purchase or construct a residential house.<br>Also, assessee had not purchased new property in name of stranger who is unconnected to him but in name of his wife.<br>Also, the entire investment had come out of sale proceeds of Capital Asset and no contribution was made by his wife. |
| 54. | In case of a house property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property? | CIT<br>v.<br>Ravinder Kumar Arora<br>(2012) 342 ITR 38 (Delhi) | **Entire Exemption will be available** | HC held that sec 54 mandates House Property to be purchased by assessee and does not stipulate that house should be purchased in his name only<br>Therefore, mere inclusion of wife's name in sale deed does not make any difference |

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| 55. | Exemption under section 54F be denied if construction was not completed within three years on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc? | CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.) | **No** | 54F specifies Capital Gains realized from sale of Capital Asset to be invested in purchase of new HP or Construction of Flat within 3 yrs. If money is invested in Construction is not completed in all aspects and possession could not be taken would not disentitle the assessee from exemption u/s 54F. In fact, in this case assessee has taken possession and started living there in spite of pending work. |
| 56. | Is exemption under section 54F available where capital gain arising on transfer of depreciable assets held for more than 36 months i.e., a long-term capital asset, though the same is deemed as capital gain arising on transfer of short-term capital asset by virtue of section 50? | CIT v. Rajiv Shukla (2011) 334 ITR 138 (Delhi) | **Yes Exemption will be available** | HC Referred to case of **CIT vs. Ace Builders Pvt. Ltd.,** it was held that deeming fiction created by section 50 on account of Capital Gain arising on transfer of depreciable asset shall be treated as Short Term Capital Gain is relevant for purpose of Sec 48 & Sec 49 only and not for any other sections.<br>54F will not be bound by provisions of sec 50. Depreciable asset held for more than 36 months is Long Term Capital Asset as per of 2(29A). |
| 57. | Stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment 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) 356 ITR 90 (Kar.) | **Yes** | High Court held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs. 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of Rs. 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment. |

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| 58. | Exemption under section 54EC available, if payment for pur of bonds was made within 6 months but bonds were issued after 6 months? | Hindustan Unilever Ltd.<br>v.<br>DCIT<br>(2010) 325 ITR 102 (Bom.) | **Yes** | HC held that for purpose of provision of 54EC, date of investment must be considered as date on which payment is made.<br>Since payment has been made within 6 months and it is reflected in bank and receipt has been obtained then exemption u/s 54EC cannot be merely denied on account of issue of bonds after 6 months. |
| 59. | Advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G? | Fibre Boards (P) Ltd<br>v.<br>CIT<br>(2015) 376 ITR 596 (SC) | **Yes** | The purpose of section was that the entire Capital Gains must be "utilized" by assessee for the purpose of purchase and acquisition of new machinery or plant and building or land. Since entire amount was utilized by assessee by way of advance for purchase and acquisition of new machinery or plant and building or land, the assessee would be entitled to exemption u/s 54G |
| 60. | Tax treatment in case Assessee is dealer in shares has two portfolios "investments" and "stock in trade", conversion of portion of Stock in trade into investment? | CIT<br>v.<br>Yatish Trading Co. Pvt. Ltd.<br>(2013) 359 ITR 320 (Bom.) | **FMV on date of Conversion to be checked.**<br>1. FMV – Cost of Acquisition = Taxable as Business Income<br>2. Sale Consideration – FMV = Taxable as Capital Gains<br>**Both are Taxable in Year of Sale** | |
| 61. | What are the tests for determining "substantial part of business" of lending company for the purpose of application of exclusion provision under section 2(22)? | CIT<br>v.<br>Parle Plastics Ltd.<br>(2011) 332 ITR 63 (Bom.) | **<u>4 Factors to be considered:</u>**<br>1. Turnover<br>2. Profit<br>3. Manpower<br>4. Capital Employed | Once it is proved that lending of money was substantial part of business of Company, loan/advance to assessee could not be regarded as dividend by virtue of specific exclusion in 2(22). |

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| 62. | 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) 367 ITR 365 (Bom) | **No** | HC observed that no money was paid as loan/advance to shareholder. Repairing & Renovation expenses incurred by Company were on Property. That property was held by Company as lessee and there was no dispute regarding it. It cannot be treated as payment by Company on behalf of Shareholder or for individual benefit of Such Shareholder. |
| 63. | Can the loan or advance given to a shareholder by the company, in return for an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder? | Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538 (Cal.) | **No** | HC held that gratuitous loan/advance by Company to Shareholder i.e. loan/advance whereby there is indication of profit distribution and no genuine return advantage was available to Company will be construed as deemed dividend u/s 2(22)(e).<br>In present case, since there was also return advantage to Company by giving loan therefore it won't be construed as deemed dividend. |
| 64. | Attraction of 2(22)(e) in respect of financial transaction entered in normal course of business | CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.) | **No** | HC observed that in case where advances given are entered into normal business transaction as a part of its day-to-day business activities, Sec 2(22)(e) won't be attracted |
| 65. | Prize money on unsold lottery tickets be taxed as business income? | CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala) | **No**<br>**Taxable @ 30% prescribed u/s 115BB** | HC observed that receipt was not on account of actual intellectual effort or physical effort made by him and therefore cannot be said to be "income earned" by him in business |

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| 66. | Can the loss of dissolved firm be carried forward for set-off by succeeding partner as Proprietorship? | Pramod Mittal<br>v.<br>CIT<br>(2013) 356 ITR 456 (Delhi) | **Only to the extent of his share and not entire** | 1. Partnership Firm ceases to exist upon dissolution and Partnership Firm & Proprietor both are distinct persons for the purpose of Assessment.<br>Section 170(1) specifies that firm would be assessed as such from 01/04 of P.Y. to date of dissolution and thereafter the income would be taxable in hands of sole-proprietor.<br>2. Section 78(2) provides that loss must be c/f only by person who has incurred such loss. An exception to it is in case of succession by inheritance. |
| 67. | Can the Commissioner reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes? | CIT<br>v.<br>Shree Govindbhai Jethalal Nathavani Charitable Trust<br>(2015) 373 ITR 619 (Guj) | **No** | HC observed that while considering application for the purpose of 80G, the authority cannot act as an Assessing Authority and the enquiry should be coined to finding out if institution satisfies prescribed conditions. The question of 85% of income application will arise at the time of assessment of income and not at time of grant of Registration |

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| 68. | Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee? | CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.) | **Yes** | HC observed that generally deeming provision of one section cannot override other sections. Therefore deeming provision of 80-IA(5) cannot override sec 70(1).<br>Assessee has incurred loss in eligible business therefore 80-IA becomes insignificant since there is no profit.<br>Now as per 70(1) loss of one business unit can be set-off against profit of other therefore eligible.<br>However subsequently assessee should reduce such amount of loss from profit of income of eligible business while claiming deduction u/s 80-IA to ensure no double benefit should arise |
| 69. | 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) 383 ITR 217 (SC) | **Refund of Excise Duty – Taxable Others – Not Taxable** | HC observed that Transportation and other Interest subsidies had no direct nexus with Profit/Gain derived by assessee from industrial activity and the benefit was only ancillary to industrial activity.<br>However, payment of Excise Duty has direct nexus with manufacturing activity therefore refund also will have direct nexus since payment of Excise Duty would not arise in the absence of any Industrial Activity |
| 70. | 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) 354 ITR 227 (SC) | **No** | HC held transport subsidy was not a profit from business since it was not an operational profit. The source of income was not business of assessee but scheme of Central Government. The words "derived from" are narrower in connotation as compared to words "attributable to" |

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| 71. | Does income derived from sale of export incentive qualify for deduction under section 80-IB? | CIT v. Jaswand Sons (2010) 328 ITR 442 (P&H) | **Not eligible for deduction** | Income derived from export incentive cannot be said to income derived from Industrial Undertaking |
| 72. | Does the period of exemption under section 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production? | CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi) | **From Commercial Production and in second case From Trial Production** | HC observed that with mere trial production, the manufacture for purpose of marketing the goods had not started and it starts only after commercial production i.e. when final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing.<br>However, since in this case sales was affected in march, 1998 (quantum being irrelevant) it had crossed stage of trial production and final saleable production had been manufactured and sold with sale of those products and marketable quality was established therefore conditions in 80-IB were fulfilled |
| 73. | Can an assessee who has not claimed deduction under section 80-IB in the initial years, start claiming deduction thereunder for the remaining years during the period of eligibility, if the conditions are satisfied? | Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi) | **Yes** | HC held that Provisions of 80-IB nowhere stipulated condition that for deduction under this section has to be made from 1st year of qualification of deduction failing of which will not allow deduction in balance years.<br>Therefore deduction u/s 80-IB will be eligible provided the conditions mentioned u/s 80-IB are fulfilled |

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| 74. | Taxability as AOP or Individually where land was acquired by 3 brothers through inheritance and later compulsorily acquired by State Government? | CIT<br>v.<br>Govindbhai Mamaiya<br>(2014) 367 ITR 498 (SC) | **Taxable in their individual hands and not as AOP** | SC observed that AOP means 2 or more persons join in for a common purpose or common action. AOP can be formed only when 2 or more persons voluntarily come for purpose. Since brothers had acquired property by inheritance and even income earned is in form of interest and not because of business by them, but out of compensation received from government, the basic test for taxation as AOP fails. |
| 75. | 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? | Commissioner of Income-tax<br>v.<br>D. L. Nandagopala Reddy (Individual)<br>(2014) 360 ITR 0377 (Kar) | **HUF Property** | HC observed that property belonged to HUF and acquired by assessee's father through release deed. After death of his father when property came to hands of assessee, it was not his individual property but was property of HUF.<br>Also, assessee transferred position of property to his wife which is possible only when property belonged to HUF and if it was self - acquired property then assessee would have needed to transfer his property to wife through a proper registered document. |

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| 76. | Income from Plinths inherited by individual co-owners from ancestors taxability:<br>(i) HP or other sources<br>(ii) Individual Co-owners or AOP | Sudhir Nagpal<br>v.<br>Income-tax Officer<br>(2012) 349 ITR 0636 (P & H) | **(i) IFOS**<br>**(ii) Individually & not AOP** | 1. HC observed that income from building & land appurtenant thereto is taxed u/s 22 and not income from letting out of open land or some kutcha plinth only<br>2. Mere accrual of income to 2 or more persons does not constitute AOP. For taxation as AOP, 2 or more persons must have done some act together to earn such income. In instant case, they had acquired from ancestors and not have conducted any mutual act therefore taxable to individually |
| 77. | Interest earned on surplus funds of a club taxable or not? | Madras Gymkhana Club<br>v.<br>DCIT<br>(2010) 328 ITR 348 (Mad.) | **Taxable** | HC held that interest earned from investment of surplus funds in form of FD does not satisfy principle of Mutuality |
| 78. | Transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality? | Sind Co-operative Housing Society<br>v.<br>ITO<br>(2009) 317 ITR 47 (Bom) | **Exempt on grounds of Principal of Mutuality** | 1. HC observed under bye-laws of society, charging of transfer fees had no element of trading or commerciality. Amounts received were exclusively for benefit of members as a class<br>2. Also sec 28(iii) cannot be attracted, since it attracts income derived by trade, professional or similar association from specific services performed for its members. |

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| 79. | 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. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Cal.) | **Not taxable u/s 115BBA Therefore not liable for TDS u/s 194E** | Umpires & Referees render professional or technical services but they are not sportsmen or sports association or sports institution. Only Sportsmen or sports association or institution are taxable as 115BBA. Further 194J attracts TDS on Professional or technical services but that also in case of Resident Individual which is not in present case. |
| 80. | Partnership deed does not specify the remuneration, but specifying the manner of fixing the remuneration, is it allowed? | CIT v. Anil Hardware Store (2010) 323 ITR 368 (HP) | **Allowed** | HC held in a given year partners may decide to get less remuneration and keep the funds in venture but there is nothing which debars them from claiming maximum amount as permissible in partnership deed<br>Therefore method of remuneration having been laid down, the assessee-firm is entitled to deduct the remuneration paid to partners u/s 40(b)(v) |
| 81. | Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB? | Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470 (SC) | **Yes** | HC observed that there is specific provision in sec 115JB(5) which specifies that all other Income Tax Provisions shall apply to every company. Therefore by virtue of sub-section (5) of 115JB, the company is liable for payment of advance tax and Failing of which would attract Interest u/s 234B & 234C. |

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| 82. | Can long-term capital gain exempted by virtue of section 54EC be included in the book profit computed under section 115JB? | N. J. Jose and Co. (P.) Ltd.<br>v.<br>ACIT<br>(2010) 321 ITR 132 (Ker.) | **Yes** | HC held that once A.O. found that total income as per provision of act is less than 30% of Book Profit, he had to make assessment u/s 115J which did not provide for any deduction u/s 54E.<br>As LTCG was part of P&L a/c prepared in accordance with part II of Schedule III of Companies Act, 2013, It will not be excluded unless provided under explanation to sec 115J(IA) |
| 83. | 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<br>v.<br>CIT<br>(2014) 364 ITR 555 (All) | **No** | HC observed that until the assessment is complete, it cannot be postulated that a liability has been crystalized.<br>Therefore only after completion of assessment demand can be raised and recovery can be initiated. |
| 84. | 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.<br>v.<br>CIT (CIB)<br>(2014) 360 ITR 0243 (SC) | **Yes** | SC held that any A.O. can requisite information which will be useful or relevant to any enquiry or proceeding under IT Act, 1961.<br>However, IT Authority below the rank of Director/Commissioner can exercise it's authority to make enquiry only with prior approval. Since, IT Authority has not erred in it therefore such enquiry u/s 133(6) is valid. |

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| 85. | Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature? | Sahara Hospitality Ltd.<br>v.<br>CIT<br>(2013) 352 ITR 38 (Bom.) | **Yes** | HC held that word "may" shall be used as "shall" and where it is possible to give reasonable opportunity of being heard, A.O. has to give and record reasons for taking action under said section. Where it is not possible for A.O. to give opportunity of being heard, the authority should record its reasons for making such decision. |
| 86. | Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income? | Lodhi Property Company Ltd.<br>v.<br>Under Secretary, (ITA-II), Department of Revenue<br>(2010) 323 ITR 441 (Del.) | **Yes** | HC held CBDT has power to condone where Return of Income is filed late and claim of loss to be c/f was made.<br>In this case, it is observed delay was only of 1 day and sufficient cause for delay was shown by assessee and if it is not condoned, it would cause genuine hardship to petitioner. |
| 87. | Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date? | CIT<br>v.<br>Govind Nagar Sugar Ltd.<br>(2011) 334 ITR 13 (Delhi) | **Yes**<br>**It can be Carried Forward** | 1. HC observed that section 80 & 139(3) requires return of income to be filed within due date to carry forward loss and **not** for carry forward of unabsorbed depreciation<br>2. As per 32(2), unabsorbed depreciation becomes part of next year's depreciation which is eligible for set-off & c/f and it does not mandate any condition like Return of Income must be filed on time. |
| 88. | Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income? | Orissa Rural Housing Development Corpn. Ltd.<br>v.<br>ACIT<br>(2012) 343 ITR 316 (Orissa) | **No** | SC held that A.O. has no power to entertain fresh claim made by assessee after filing of original return except by way of filing Revised Return |

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| 89. | Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A? | Smt. A. Kowsalya Bai<br>v.<br>UOI<br>(2012) 346 ITR 156 (Kar.) | **No** | In order to avoid hardship caused to such persons, HC held that it is not necessary for them to obtain PAN and 206AA is not applicable to such persons. Banking and Financial Institutions need not insist such person while filing declaration u/s 197. But 206AA would continue to be applicable to persons whose income is above maximum amount not chargeable to tax |
| 90. | Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion? | Aventis Pharma Ltd.<br>v.<br>ACIT<br>(2010) 323 ITR 570 (Bom.) | **No** | HC observed that there was no tangible material before AO to hold that income had escaped assessment within meaning of 147.<br>Therefore, it was merely on basis of change of opinion and therefore Reassessment was not valid. |
| 91. | Is it permissible u/s 147 that a mere change in opinion that loss is speculative loss by re-looking at Books of Accounts furnished during 143(3)? | ACIT<br>v.<br>ICICI Securities Primary Dealership Ltd.<br>(2012) 348 ITR 299 (SC) | **No** | SC observed that assessee had disclosed full details in Return of Income in matter of dealing of Stocks & Shares. There was no failure on part of assessee as required u/s 147.<br>Also, nothing new came to notice of A.O. therefore Re-opening is clearly the case of change of opinion and therefore Not Valid |

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| 92. | Can a notice under section 148 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? | Hemant Traders v. ITO (2015) 375 ITR 167 (Bom) | **No** | Neither survey report nor any other material indicated escapement of income chargeable to tax.<br>A.O. had nothing to record his belief that escapement of income had taken place. Therefore, merely because survey is conducted, it cannot be a ground for re-opening assessment without any valid material or evidence at time of issue of notice |
| 93. | 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. B.S. Singh Dy.CIT (2015) 377 ITR 1 (Bom) | **No** | Position of law on date of issue of notice u/s 148 must be looked into and retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and notice for reopening of assessment would become unsustainable |
| 94. | Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original “reason to believe” on the basis of which the notice was issued ceased to exist? | ***Rulings from Three High Courts Refer Page No.55*** | | |
| 95. | Notice u/s 147 against legal heir sent after limitation period, is it validate? | Vipin Walia v. ITO (2016) 382 ITR 19 (Del) | **Not Valid** | Department could have done so prior to 31.03.2015 by issuing notice to legal heirs of deceased. Beyond that date, it could not have proceeded in the matter even by issuing notice to legal representative of assessee. |

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| 96. | 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<br>v.<br>PP Engineering Work<br>(2014) 369 ITR 433 (Del) | ***<u>High Court's Opinion:</u>*** The High Court made reference to section 150 which overrides the time limitation specified in section 149. Also, Explanation 2 to section 153 makes it clear that when an order in appeal, revision or reference is made whereby any income is excluded from the total income of an assessee for an assessment year, an assessment of such income for another assessment year shall be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order for the purposes of section 150 and section 153.<br>***<u>High Court's Decision:</u>*** The High Court observed that in view of the order of the Tribunal that the credit entries related to the earlier assessment year i.e., A.Y.2000-01, the Assessing Officer initiated reassessment proceedings under section 147 by issue of notice under section 148 for the year and passed an order dated 29/12/2009 making an addition of ` 32 lakhs. The High Court held that by virtue of section 150 read with Explanation 2 to section 153, the said order was not barred by limitation. | |
| 97. | Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and High Court ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts? | Allanasons Ltd<br>v.<br>Dy. CIT<br>(2014) 369 ITR 648 (Bom) | **Invalid unless there is failure on part of assessee** | Proviso to sec 147, where any assessment sought to be open beyond period of 4 years, two conditions must be fulfilled:<br>➢ There must be reason to believe that income chargeable to tax escaped assessment and<br>➢ There was failure on part of assessee to disclose material facts |

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| 98. | 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<br>v.<br>CIT<br>(2015) 371 ITR 183 (All) | **Yes** | In instant case, there was no failure on part of assessee and also it did not indicate that quantum of escapement of income exceeds Rs. 1 Lakh |
| 99. | Can Change in opinion of successing A.O. in case of change of incumbent of an office initiate Re-assessment? | H. K. Buildcon Ltd.<br>v.<br>Income-tax Officer<br>(2011) 339 ITR 535 (Guj.) | **No** | Apex Court held in **CIT vs. Kelvinator of India Ltd.** that A.O. has the power only to reassess and not to review. There was nothing on record to show that income escaped assessment and there was merely a change of opinion |
| 100. | Rectification of mistake u/s 154 of intimation u/s 143(1) after issue of Notice u/s 143(2) | CIT<br>v.<br>Haryana State Handloom and Handicrafts Corporation Ltd. (2011) 336 ITR 699 (P&H) | **Not Valid** | HC observed that scope of proceedings u/s 143(2) is wider than power to rectify mistake u/s 154. Once Notice u/s 143(2) is issued, A.O. has to proceed u/s 143(3) and issue an Assessment Order.<br>If issue of notice u/s 154 is permitted to rectify the intimation issued u/s 143(1), then it would lead to duplication of work and wastage of time. |
| 101. | Would the doctrine of merger apply for calculating the period of limitation under section 154(7)? i.e. Time Limit of 4 years u/s 154(7) would apply from date of original assmt. order or order of appellate authority? | CIT<br>v.<br>Tony Electronics Limited<br>(2010) 320 ITR 378 (Del.) | **From Order of Appellate Authority** | HC held that once appeal against order passed by authority is made and decided by Appellate Authority, the order of A.O. merges with order of Appellate Authority. After merger, the order of original authority ceases to exist and order of Appellate Authority prevails |

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| 102. | Rejection of application for Advance Rulings (AAR) where notice u/s 143(2) is already served before filing of application. Also when 142(1) along with detailed questionnaire was sent before filing of application | Hyosung Corporation<br>v.<br>AAR<br>(2016) 382 ITR 371 (Del) | **142(1) along with questionnaire before filing of application than REJECT**<br><br>**And if after filing of application than CAN'T REJECT** | HC observed that mere issue of 143(2) in pre-printed format does not amount to 'already pending' proceedings for the purpose of applying proviso to sec 245R(2). However issue of Notices u/s 142(1) accompanied by questionnaire before filing of applications by assessee with AAR raised the question of supply contracts which were executed overseas would nevertheless make the proceedings pending. |
| 103. | Can mere non-mention or non-discussion of enquiry made by the Assessing Officer in the assessment order justify invoking revisionary jurisdiction under section 263? | CIT<br>v.<br>Krishna Capbox (P) Ltd<br>(2015) 372 ITR 310 (All) | **No** | HC noted in case of **Cellular Ltd vs. DCIT** it was viewed that if a query is raised during the Assessment proceedings and responded to by the assessee, the mere fact that it is not dealt or mentioned in with assessment order would not lead to a conclusion that no mind had been applied to it, therefore commissioner cannot invoke revisionary jurisdiction. |
| 104. | Can the Commissioner invoke section 263, when the subject matter of revision is already decided by the Commissioner (Appeals) and the same is pending before the Tribunal? | CIT<br>v.<br>Fortaleza Developers<br>(2015) 374 ITR 510 (Bom) | **No** | HC held that when order of first appellate auth. is complete and the appeal is pending before tribunal, the commissioner is precluded from invoking sec 263 for revision of very same matter decided by first appellate auth. since clause (c) of Expln. 1 to sec 263 debars the same. Accordingly HC held that order passed by AO got merged with order of First appellate auth. |

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| 105. | Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the High Court in the normal course contending that such reassessment proceedings are apparently unjustified and illegal? | Samsung India Electronics P. Ltd.<br>v.<br>DCIT<br>(2014) 362 ITR 460 (Del.) | **No** | HC referred to Apex Court ruling in **GKN Drive Shafts (India) Ltd. vs. ITO,** that when a Notice u/s 148 is issued, proper action for notice is to file a return and if he so desires, to seek reasons for issuing notices.<br>The A.O. is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and A.O. is bound to dispose off the objections by passing a speaking order.<br>Accordingly, HC held it will not be appropriate and proper in facts of present case to permit and allow petitioner to bypass & forgo procedure above laid down by SC as the said procedure has been universally followed and has helped cut down litigation and crystalize the issues, if and when the question comes up before court. |
| 106. | 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? | ***<u>Rulings from two High Courts</u>***<br>***<u>(Refer page No. 55)</u>*** | | |

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| 107. | 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<br>v.<br>New Mangalore Port Trust<br>(2016) 382 ITR 434 (Karn) | **No** | Because the original Assessment Order dated 27/12/09 was no longer in existence as it was subsequently revised u/s 264 on 27/05/11.<br>Therefore, revision of order which was not even existed is void-ab-initio and nullity in eyes of law. |
| 108. | Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit? | Sanchit Software and Solutions Pvt. Ltd.<br>v.<br>CIT<br>(2012) 349 ITR 404 (Bom.) | **Remedy is rectification application u/s 154** | HC observed the objects of administration of tax are to secure revenue for development of country and also to ensure that assessee need not pay more than what is due to him.<br>It referred to CBDT circular dated 11/04/1955 directing A.O. not to take advantage of assessee's mistake.<br>Accordingly HC set aside order of commissioner and remanded the matter for fresh consideration. HC further directed assigning officer to consider rectification application u/s 154 as a fresh application received on date of service of this order and dispose off the rectification application on its own merits, without awaiting the result of the revision proceedings before commissioner of Income Tax on remand at the earliest |

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| 109. | Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income? | CIT<br>v.<br>Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom.) | **Yes**<br>**But for claim before assessing officer only Revised ROI is admissible** | HC considering various decisions held that an additional claim can be made before appellate authority.<br>The appellate authority have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely at discretion of authorities. |
| 110. | Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)? | CIT<br>v.<br>Earnest Exports Ltd.<br>(2010) 323 ITR 577 (Bom.) | **No** | Power u/s 254(2) is only limited to rectification of mistake apparent on record and therefore tribunal must restrict itself to those parameters. Sec 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. |
| 111. | Can the Tribunal exercise its power of rectification under section 254(2) to recall its order in entirety, where there is a mistake apparent from record? | Lachman Dass Bhatia Hingwala (P) Ltd<br>v.<br>ACIT<br>(2011) 330 ITR 243 (Delhi)(FB) | **Yes** | HC referring to Apex Court decision in **Honda Siel Power Products Ltd.** held that while exercising its power of rectification u/s 254(2), Tribunal can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to Tribunal's mistake, error or omission and error committed is apparent.<br>The entire purpose of power of rectification given to Tribunal is that no prejudice is caused to either of parties appearing before it because of mistake apparent from record |

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| 112. | Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits? | CIT<br>v.<br>Meghalaya Steels Ltd.<br>(2015) 377 ITR 112 (SC) | **Yes** | 1. SC observed that HCs being courts of record under article 215 of Constitution of India, the power of review would inhere in them.<br>2. Also in article 226 of constitution, there is nothing in it to preclude a HC from exercising power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and pulpable errors committed by it<br>3. Also, the Supreme Court went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected. |
| 113. | Is penalty under section 271D imposable for cash loans/deposits received from partners? | CIT<br>v.<br>Muthoot Financiers<br>(2015) 371 ITR 408 (Del) | **No** | HC observed that there were 3 different courts which have concluded that 269SS or 269T would not be violative when money is exchanged inter- se between partners and the firm.<br>Also the source of money was not doubted and transaction was bona fide and not aimed to avoid any tax liability. Also, the credit worthiness of partners was considered |

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| 114. | Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty? | CIT<br>v.<br>V. Sivakumar<br>(2013) 354 ITR 9 (Mad.) | **No** | Tribunal held that Firm is not a juristic person and there is no separate identity for firm and partners.<br>The assessee had withdrawn amount from firms and the transaction between firm & partner cannot be bought within meaning of 269SS. The transaction in present case was bona fide and that there was reasonable cause within meaning of Sec 273B |
| 115. | Where an assessee repays a loan merely by passing adjustment entries in its books of account, can such repayment of loan by the assessee be taken as a contravention of the provisions of section 269T to attract penalty under section 271E? | CIT<br>v.<br>Triumph International Finance (I.) Ltd.<br>(2012) 345 ITR 270 (Bom.) | **Violation is there but no Penalty u/s 271E** | HC observed that in effect, the assessee has violated 269T & penalty u/s 271E is applicable.<br>However, since transaction is bonafide in nature being a normal business transaction & no tax evasion was made, it was held that assessee has shown reasonable cause for failure u/s 269T therefore as per Provisions of 273B, no penalty u/s 271E could be imposed on assessee for contravening provisions of 269T |
| 116. | Would prosecution proceedings u/s 276CC be attracted where the failure to furnish return in time was not fulfilled? | Union of India<br>v.<br>Bhavecha Machinery and Others<br>(2010) 320 ITR 263 (MP) | **No** | For purpose of sec 276CC, there should be a wilful delay in filing return and not merely failure to file return in time.<br>There Should be clear, cogent and reliable evidence that failure to file in time was **'wilful'**. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them. |

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| 117. | Can the Assessing Officer suo moto assume jurisdiction to declare sale of property as void under section 281? | Dr. Manoj Kabra<br>v.<br>ITO<br>(2014) 364 ITR 541 (All) | **No** | HC referred to Apex Court decision whereby it held that legislature had no intention to confer any exclusive power or jurisdiction upon Income Tax Authority to decide any question arising u/s 281.<br>In order to declare a transaction fraudulent u/s 281, an appropriate proceeding in accordance with law was required to be taken u/s 53 of Transfer of Property Act, 1882.<br>A.O. is required to file a suit for declaration to the effect that the transfer of transferor was void u/s 281 of IT Act, but he himself cannot assume jurisdiction to declare the sale deed as void |
| 118. | Whether "Tips" collected by hotel and distributed to EE's constitute salary to attract prov. of TDS u/s 192? | ITC Ltd<br>v.<br>CIT<br>(2016) 384 ITR 14 (SC) | **Liable for TDS bcoz tips would constitute income of EE within meaning of 2(24) & thus taxable u/s 15 for EE** | Since, there was no dishonest intention of assessees, they could not be made liable for penalty u/s 201 but payment of interest u/s 201(1A) will be levied as it is mandatory and therefore no question of waiver arise |
| 119. | Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court? | UCO Bank<br>v.<br>Dy. CIT<br>(2014) 369 ITR 335 (Del) | **Not Applicable** | In normal Course, bank is liable to deduct TDS. However, in instant case HC observed that in absence of payee, machinery provision for deduction of tax to his credit are ineffective. The Registrar General is neither entitled to receipt of amount credited nor of interest accrued therefore cannot be considered as payee for purposes of Sec 194A |

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| 120. | 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<br>v.<br>Avenue Super Chits (P) Ltd<br>(2015) 375 ITR 76 (Kar) | **No** | HC referred to case **CIT vs. Sahib Chits (Delhi) (P) Ltd** wherein it was held that Chit Dividend cannot be treated as interest u/s 2(28A)<br>Therefore, not liable for TDS |
| 121. | Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201? | CIT<br>v.<br>Hindustan Lever Ltd.<br>(2014) 361 ITR 0001 (Kar.) | **No** | ***<u>HC views:</u>***<br>194B says Failure to deduct TDS or Failure to deposit tantamounts to deemed to be assessee in default. Provision in these sections do not cast any duty to deduct TDS in case of winnings wholly in kind.<br>In such a case, only responsibility as cast under 194B is to ensure tax is paid by winner before winnings are released.<br>HC observed if assessee fails in above then JC u/s 271C will be empowered to levy penalty and also u/s 276B such non-payment is an offence attracting imprisonment for minimum 3 months upto 7 yrs. with fine.<br>However, HC held that proceedings u/s 201 in this case cannot be initiated against assessee |

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| 122. | TDS on transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity to the transmission company be liable for TDS u/s 194J or u/s 194C? | Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR) | **Transmission & Wheeling – 194J**<br><br>**SDLC – No TDS** | 1. AAR, considering definition of fees for technical services u/s 9(I)(vii) and process involved in proper transmission of electrical energy held that transmission and wheeling charges are in nature of fees for technical services therefore liable for TDS u/s 194J.<br>2. SLDC Charges are not liable to TDS u/s 194J/194C because main duty of SLDC is to ensure integrated operation of power system and thus SLDC Charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in state as a whole. |
| 123. | Discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract 194H? | CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC) | **No** | SC observed that Stamp Vendors required to purchase stamp papers at price less discount on "principal to principal" basis and No "contract of agency" exists between them and state govt.<br>SC also held that given transaction is a sale and discount to vendors is for purchasing stamps in bulk quantity which is in nature of cash discount and consequently 194H is not applicable |

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| 124. | Can incentives given to stockists and distributors by a manufacturing company be treated as "commission" to attract –<br>(i) the provisions for tax deduction at source under section 194H; and<br>(ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source? | CIT<br>v.<br>Intervet India P Ltd<br>(2014) 364 ITR 238 (Bom) | **No** | 1. Relationship between assessee and stockists/distributors is of "principal to principal" nature and no agency relationship<br>2. Goods were firstly sold to stockists/distributors and then resold by them to Customers. Therefore no service was offered by assessee<br>3. HC accordingly held they were not acting on behalf of assessee and most of the credit was by way of goods on meeting sales target which could not be said to commission within the meaning of Explanation (i) to 194H |
| 125. | Discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H? | Bharti Cellular Ltd.<br>v.<br>ACIT<br>(2013) 354 ITR 507 (Cal.) | **Yes**<br>**194H is attracted because discount is indirect form of commission** | HC held that true relationship between parties has to be gathered from terms and conditions of contract. In this case,<br>➢ Property in start-up pack and pre-paid coupons even after transfer and delivery to franchisee, remained with assessee-telecom company<br>➢ Rate at which franchisee sells to retailers also decided by telecom company<br>➢ Franchisee really acted as facilitator of providing services by assessee-telecom company to ultimate subscriber.<br>Therefore only nomenclature used is franchisee, true relationship among them is Agency Nature |

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| 126. | Can the difference between the published price and the minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline company to attract TDS provisions under section 194H, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents? | CIT<br>v.<br>Qatar Airways<br>(2011) 332 ITR 253 (Bom.) | **No** | Since published price is maximum price at which ticket can be sold and agents can sell tickets at lower price.<br>For attracting TDS, the exact income in hands of agent must be necessarily ascertainable.<br>Since company had no information about Sales Rate, TDS cannot be deducted by it. |
| 127. | 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.<br>v.<br>CIT<br><br>CIT<br>v.<br>Singapore Airlines Ltd.<br>(2015) 377 ITR 372 (SC) | **No**<br>**194C will be attracted** | SC Observed that providing of such services cannot be construed as rent because it does not merely include providing or leasing of property but actually airline co's pays charges for various technical services like landing charges, safety charges, aerodome control, etc. and also such roads are not ordinary but of special technology. Therefore it is more in nature of Contractual Service than in nature of mere Rental Service. |
| 128. | 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<br>v.<br>CIT<br>(2014) 364 ITR 114 (Del) | **Yes**<br>**u/s 194-1(a) @ 2%** | HC observed that the dominant intention was the use of equipment or Plant & Machinery and the use of Premises was only incidental |

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| 129. | For 194-I, where property is co-owned should limit be considered for each co-owner separately or complete amount of rent paid? | CIT<br>v.<br>Senior Manager, SBI<br>(2012) 206 Taxman 607<br>(All.) | **Separately for Each Co-Owner** | 1. Since share of each co-owner is definite and ascertainable, they cannot be assessed as AOP as per sec 26.<br>2. It is not necessary that there shold be physical division to attract sec 26<br>Payment is also made to each co-owner separately. |
| 130. | Payment by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery to attract 194-I? | CIT (TDS)<br>v.<br>Shree Mahalaxmi Transport Co.<br>(2011) 339 ITR 484 (Guj.) | **No**<br>**194C will be Attracted** | HC observed that assessee had given contracts to parties for transportation of goods and had not taken the machinery or equipment on rent.<br>Court observed shifting of goods from one place to other would be covered as works contracts, thereby attracting 194C |
| 131. | Remuneration to doctors varies with respect to no of patients, 192 or 194J? | CIT<br>v.<br>Manipal Health Systems (P) Ltd<br>(2015) 375 ITR 509 (Kar) | **194J** | Considering the Facts of agreement, court held that consultancy charges paid to doctors would be liable for TDS u/s 194J<br>Also, the Terms of agreement were:<br>➢ Remuneration depends upon no. of patients i.e. No Patient – No Remuneration<br>➢ Timing of doctors was fixed<br>➢ Doctors cannot practice independently<br>Considering all of above 3, HC Decided 194J would be appropriate |

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| 132. | Transaction charges paid by the members to stock exchange, constitute fees for technical services to attract 194J? | CIT<br>v.<br>Kotak Securities Ltd<br>(2016) 383 ITR 1 (SC) | **No** | ***SC observations:***<br>1. Services are available to all members and not for specific customer<br>2. Member who need to conduct business in stock exchange has no option but to pay transaction fees<br>3. Technical services like Managerial and consultancy services are in nature of special services made available by service provider to cater special needs of customer user. But here there is no case of exclusivity.<br>Therefore, payments made are in nature of payments for facilities provided by stock exchange |
| 133. | 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<br>v.<br>V.S. Dempo & Co P Ltd<br>(2016) 381 ITR 303 (Bom)<br>(FB) | **Not Deductible** | HC held since that sec 172 dealing with shipping business of non-residents contains a non-obstante clause and applies to both for the purpose of levy and recovery of tax in 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 payer assessee to deduct TDS u/s 195 on payment of demurrage charges to Non Resident Shipping Co. |
| 134. | Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source? | DIT (International Taxation)<br>v.<br>Wizcraft International Entertainment (P) Ltd<br>(2014) 364 ITR 227 (Bom) | **No** | Payment was made to agent did not act as performing artist or entertainer. The services rendered by agent were outside India and therefore requirement for deducting TDS u/s 195 on such payment does not arise. |

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| 135. | 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<br>v.<br>Priya Blue Industries (P) Ltd<br>(2016) 381 ITR 210 (Guj) | **Any material which is usable as such will not fall within ambit of 'scrap' as defined in clause (b) of Explanation to sec 206C** | Tribunal observed that 'waste and scrap' must be from manufacturer or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons.<br>Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such and hence are not 'waste & scrap' though commercially known as scrap |
| 136. | 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<br>v.<br>Bhagat Construction Co (P) Ltd<br>(2016) 383 ITR 9 (SC) | **Yes** | Apex Court held that form ITNS 150 is also a form for determination of tax payable and when it is signed or initialed by A.O., it is certainly an order in writing by A.O. determining tax payable within meaning of 143(3). The said form also contains calculation of Interest<br>Therefore it must be treated as part of Assessment Order. Thus Apex Court held, interest u/s 234B is automatic when conditions specified therein are satisfied and Assessment Order is accompanied by prescribed form containing the calculation of interest payable |

*Case Law No. 43:*

**<u>High Court's Observations & Decision</u> :** The High Court concurred with the Tribunal's view that if out of the total sum of Rs. 256.54 lakhs which has been offered and subjected to tax by the assessee in its return, the amount of unpaid interest of Rs. 193.96 lakhs is deducted then the waived principal sum would come to Rs. 62.58 lakhs (i.e., Rs. 441.30 lakhs *minus* Rs. 378.72 lakhs), which is the amount which ought to have been taxed under section 41(1).

Based on the above reasoning, the High Court held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax, would come to the same.

**<u>Note - The rationale of the Karnataka High Court ruling in the above case can be explained with the help of a simple example:</u>**

The following are particulars of OTS scheme of A Ltd. with ABC Bank –

| | ***Particulars*** | ***Principal*** | ***Interest*** | ***Total*** |
|---|---|---|---|---|
| | | ***Rs. in lakhs*** | | ***Rs. in lakhs*** |
| **(1)** | **Amount Outstanding (Working Capital loan)** | **400** | **150** | **550** |
| **(2)** | **Payment under OTS scheme with bank** | | | 300 |
| | Option 1 | 150 | 150 | |
| | Option 2 | 300 | - | |
| | Option 3 | 200 | 100 | |

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| **(3)** | **Waiver [(1) – (2)]** | | | 250 |
| | Option 1 | 250 | - | |
| | Option 2 | 100 | 150 | |
| | Option 3 | 200 | 50 | |

In all three cases above, let us assume that A Ltd. has offered Rs. 250 lakhs (i.e., Rs. 550 lakhs – Rs. 300 lakhs) as income under section 41(1) and claimed the interest paid/waived as deduction under section 43B.

**In Option 1**, A Ltd. has rightly offered Rs. 250 lakhs, being waiver of principal amount, as income under section 41(1). In this case, the interest of Rs. 150 lakhs actually paid would be deductible under section 43B on payment basis.

**In Option 2**, A Ltd. should have offered only Rs. 100 lakhs, being waiver of principal amount, as income under section 41(1). However, it has offered the entire amount of Rs. 250 lakhs waived, as income under section 41(1). Therefore, A Ltd.'s claim of Rs. 150 lakhs, being interest waiver, as deduction under section 43B would result in effectively bringing to tax the principal waiver of Rs. 100 lakhs.

**In Option 3**, A Ltd. should have offered only Rs. 200 lakhs, being waiver of principal amount, as income under section 41(1) and claimed interest of Rs. 100 lakhs paid as deduction under section 43B. However, A Ltd. has offered the entire amount of Rs. 250 lakhs waived, as income under section 41(1). Therefore, A Ltd. claim for deduction of Rs. 150 lakhs [Rs. 100 lakhs, being interest paid + Rs. 50 lakhs, being interest waived] under section 43B would effectively bring to tax the principal waiver of Rs. 200 lakhs.

This, in effect, is the rationale of the court ruling, i.e., where the entire amount waived has been offered as income under section 41(1), the claim of interest waived and interest paid as deduction under section 43B would effectively bring to tax, the principal amount waived.

*Case Law No. 94:*

**I - Delhi High Court ruling in Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136**

**Decision –** No, A.O. cannot Re-issue
**Ratio Decidendi –** High Court Held that If A.O. feels so, a fresh notice u/s 148 would be necessary

**II - Punjab & Haryana High Court ruling in CIT v. Mehak Finvest P Ltd (2014) 367 ITR 769**

**Decision –** Yes, A.O. can Re-issue

**III - Karnataka High Court ruling in N. Govindaraju v. ITO (2015) 377 ITR 243**

Once, satisfaction of reasons for Notice is found sufficient i.e. if notice u/s 148(2) is found to be valid, then A.O. may do Re-assessment in respect of any other item of income which may have escaped assessment even though the original reason for issue of notice u/s 148 does not survive

***Case Law No. 106:***

**I - Bombay High Court ruling in CIT v. Lark Chemicals Ltd (2014) 368 ITR 655**

**Decision –** Date of Original Assessment Order

**Ratio Decidendi –** HC held that the issues on which commissioner is sought to exercise jurisdiction u/s 263 i.e. other issues were concluded by intimation issued u/s 143(1). Therefore 263 cannot be assumed on issues which were not the subject matter of issues dealt in with the order of Reassessment.

**II - Bombay High Court ruling in CIT v. ICICI Bank Ltd. (2012) 343 ITR 74**

**Decision –**Same Decision

# INDIRECT TAX LAWS

| Sr.No. | Matter of Dispute | Parties Involved | Decision of the Court | Ratio Decidendi (Logic behind the Judgment) |
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| **Customs & Foreign Trade Policy** | | | | |
| 1. | Clearance of goods from DTA to Special Economic Zone chargeable to export duty under the SEZ Act, 2005 or the Customs Act, 1962? | Tirupati Udyog Ltd.<br>v.<br>UOI<br>2011 (272) ELT 209 (AP) | **Not Liable to duty under any Act** | 1. A charging section has to be construed strictly. If a person has not been brought within the ambit of the charging section by clear words, he cannot be taxed at all.<br>2. SEZ Act does not contain any provision for levy and collection of export duty for goods supplied by a DTA unit to a Unit in a Special Economic Zone<br>3. Section 12(1) of Customs Act, 1962 also cannot be attracted. A conjoint reading of section 12(1) with sections 2(18), 2(23) and 2(27) of the Customs Act, 1962 makes it clear that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India. Since DTA & SEZ, both are within territorial waters of India, duty cannot be levied onto them. |

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| 2. | Ocean Loss of Crude Oil while importing from Outside India.<br><br>Is Duty payable on Quantity of Oil as per Bill of Lading or as per Quantity actually received? | Mangalore Refinery & Petrochemicals Ltd<br>v.<br>CCus.<br>2015 (323) ELT 433 (SC) | **Quantity of Crude Oil actually received into Shore Tanks of India should be liable for Customs Duty** | 1. Customs Duty is levied on goods imported into India from Outside India u/s 12. If Goods are pilfered after unloading or lost or destroyed before clearance for Home Consumption or Warehouse, Importer is Not Liable.<br>2. As per section 47, Importer has to pay import duty on goods entered for Home Consumption, therefore Taxable Event is "Import"<br>3. Also, as per section 12 & 23, if imported goods are lost or pilfered or destroyed, no import duty is leviable on them, therefore only the Quantity Received is to be seen. |
| 3. | Countervailing duty (CVD) on imported product be exempted if the excise duty on a like article manufactured in India is exempt? | Aidek Tourism Services Pvt. Ltd.<br>v.<br>CCus.<br>2015 (318) ELT 3 (SC) | **Yes**<br>**Exempted or charegeable at concessional rate if the like product is Exempted/chargeable at concessional rate** | SC held that Additional Duty leviable u/s 3(1) of CTA, 1975 would be only that which is payable on like article manufactured in India and duty is payable on it under Central Excise Act, 1944. |
| 4. | Where a classification (under a Customs Tariff head) is recognized by the Government in a notification at any point of time, can the same be made applicable in a previous classification in the absence of any conscious modification in the Tariff? | Keihin Penalfa Ltd.<br>v.<br>Commissioner of Customs<br>2012 (278) ELT 578 (SC) | **Yes**<br>**Classification is applicable to previous period too** | Apex court observed that Government had issued exemption notification dated 01-03-2002 where it had classified Electronic Automatic Regulators under sub-head 9032.89.<br>Since Revenue itself had classified goods in dispute under Chapter sub-heading 9032.89 from 01-03-2002, the said classification need to be accepted for prior periods too. |

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| 5. | 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<br>v.<br>Nokia India Private Limited<br>2015 (315) ELT 162 (SC) | **Accessory to Phone and Not integral part or composite part of cell phone but independent product** | 1. Cell phones can be operated without charger at time of operation, battery of phone can also be charged by other modes.<br>2. Assessee itself classifies charger as an accessory in its website and it is separately available.<br>3. Mobile charger is compatible for resale with many other models and also mobile can be charged by many other chargers<br>4. Rule 3(b) of general rules for interpretation of First Schedule of Customs Tariff Act, 1975 also cannot be applied as mere composite package does not make it composite goods |
| 6. | (i) Will the description of the goods as per the documents submitted along with the Shipping Bill be a relevant criterion for the purpose of classification?<br>and<br>(ii) Whether a separate notice is required to be issued for payment of interest which is mandatory and automatically applies for recovery of excess drawback? | M/s CPS Textiles P Ltd.<br>v.<br>Joint Secretary<br>2010 (255) ELT 228 (Mad.) | **(i) Yes, it would be relevant criteria, if not otherwise disputed on basis of any technical opinion or test**<br>**and**<br>**(ii) No need for separate Notice** | 1. Petitioner cannot plead that goods should be classified under headings contrary to the description given in invoice and shipping bill which had been assessed and cleared for Export<br>and<br>2. By Interpreting 75A(2) of Customs Act, 1962 where claimant is liable to pay excess amount of drawback, he is also liable for Interest on such drawback and interest is automatically levied |

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| 7. | 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<br>v.<br>CCus.<br>2014 (307) ELT 209 (SC) | **No**<br>**Evidence must be provided by Department** | Revenue did not supply the copy of printout on basis of which it concluded goods imported are undervalued, the appellants therefore could not and did not have any opportunity to demonstrate that transactions relied upon by Revenue were not Comparable Transactions |
| 8. | Can the time-limit prescribed under section 48 of the Customs Act, 1962 for clearance of the goods within 30 days be read as time-limit for filing of bill of entry under section 46 of the Act? | CCus<br>v.<br>Shreeji Overseas (India) Pvt. Ltd.<br>2013 (289) ELT 401 (Guj.) | **No**<br>**It cannot be inferred that sec 46 provides any Time Limit** | Issue came up because sec 46 does not provide any time limit & sec 48 permits authorities to sell goods if not cleared for Home Consumption / Warehoused / Transhipped within 30 days of arrival at customs station |
| 9. | Adjudicating authority required to supply to assessee copies of the documents on which it proposes to place reliance for the purpose of re-quantification of short-levy of customs duty? | Kemtech International Pvt. Ltd. v.<br>CCus.<br>2013 (292) ELT 321 (SC) | **Yes** | SC held that following the principles of natural justice, AA should do so and thereafter the assessee might furnish their Explanation thereon and might provide additional evidence in support of his claim. |
| 10. | Can Tribunal condone the delay in filing of an application consequent to review by the Committee of Chief Commissioners? | Thakker Shipping P. Ltd.<br>v.<br>CCus. (General)<br>2012 (285) ELT 321 (SC) | **Tribunal was competent competent to invoke 129A(5) where appl. u/s129D(4) had not been made on time and condone the delay** | **Refer Page No. 92** |

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| 11. | Whether extended period of limitation for demand of customs duty can be invoked in a case where the assessee had sought a clarification about exemption from a wrong authority? | Uniworth Textiles Ltd.<br>vs.<br>CCEx.<br>2013 (288) ELT 161 (SC) | **Refer Page No. 93** | |
| 12. | Can a writ petition be filed before a High Court which does not have territorial jurisdiction over the matter? | Neeraj Jhanji<br>v.<br>CCE & Cus.<br>2014 (308) ELT 3 (SC) | **No, it is not bona fide** | Assessee had taken chance in approaching the HC at Delhi by filing a writ petition against order in original by commissioner of Customs, Kanpur<br>(The above decision was in order to discourage forum shipping)<br>**Forum Shipping:** It is the practice adopted by litigants to have their legal case heard in the court which would provide most favorable decision. |
| 13. | Can delay in filing appeal to CESTAT due to the mistake of the counsel of the appellant, be condoned? | Margara Industries Ltd.<br>v.<br>Commr. of C. Ex. & Cus. (Appeals)<br>2013 (293) ELT 24 (All.) | **HC Directed that it should be Condoned** | HC held such decision as it observed that appellant was not going to gain anything by not filing appeal and the delay was caused by mistake of Counsel and even Counsel had filed his personal affidavit that the delay was because of his mistake. |
| 14. | Can a writ petition be filed against an order passed by the CESTAT under section 9C of the Customs Tariff Act, 1975? | Rishiroop Polymers Pvt. Ltd.<br>v.<br>Designated Authority<br>2013 (294) ELT 547 (Bom.) | **No, writ petition will be dismissed** | **Refer Page No. 94** |

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| 15. | Can customs duty be demanded under section 28 and/or section 125(2) of the Customs Act, 1962 from a person dealing in smuggled goods when no such goods are seized from him? | CCus.<br>v.<br>Dinesh Chhajer<br>2014 (300) ELT 498 (Kar.) | **No** | Section 28 applies when are imported but duty is not paid in accordance with law. As per records, nothing found which proves assessee was importer.<br>Also, sec 125(2) cannot be enacted because goods were not confiscated.<br>Therefore, the assessee was neither the importer nor the owner of the goods or was in possession of any goods and therefore customs duty couldn't get demanded from assessee |
| 16. | 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 (which says pay duty first and then apply for Refund)? | KSJ Metal Impex (P) Ltd.<br>v.<br>Under Secretary (Cus.) M.F. (D.R.)<br>2013 (294) ELT 211 (Mad.) | **Yes, interest is liable to be paid** | CBEC Circular No. 6/2008 dated 28.4.2008 says said Notification provide only for Refund of duty and does not provide for interest and that this refund is not as per Sec 27.<br>HC held that it is misconception to say that Notification does not provide interest on refund. Sec 27A provides for interest on delayed refunds, the department cannot override said provisions by a circular and deny the right which is granted by provisions of Customs Act, 1962 and CETA |

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| 17. | 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<br>v.<br>CCus.<br>2015 (318) ELT 379 (Cal.) | **No, not applicable** | HC observed that sec 27 is only applicable in case of over payment of duty or interest under Customs Act, 1962.<br>Therefore, in this case there wasn't the question about refund of duty by Government in pursuance of section 27.<br>The money received by Government could more appropriately be called as money paid by mistake by one person to other, which the other person is liable to repay u/s 72 of Indian Contract Act, 1872.<br>When the said amount was paid by mistake by petitioner to Government of India, the latter instantly became a trustee to repay the amount to petitioner |
| 18. | Whether the benefit of exemption meant for imported goods can also be given to the smuggled goods? | CCus. (Prev.), Mumbai<br>v.<br>M. Ambalal & Co.<br>2010 (260) ELT 487 (SC) | **No**<br>**It will be contrary to purpose of issuing exemption notifications in respect of Imported Goods** | SC held that if this is done so then smuggled goods and imported goods were to be treated as same, then there would have been no need for two definitions under Customs Act, 1962.<br>The court observed that one of the principal functions of Customs Act was to curb the ills of smuggling in the economy |
| 19. | Is it mandatory for the Revenue officers to make available the copies of the seized documents to the person from whose custody such documents were seized? | Manish Lalit Kumar Bavishi<br>v.<br>Addl. DIR. General, DRI<br>2011 (272) ELT 42 (Bom.) | **Yes** | HC held that from language of sec 110(4), it was apparent that the customs officers were mandatorily required to make available the copies asked for.<br>It was the party concerned who had the choice of either asking for document or seeking extract, and not the officer |

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| 20. | Whether the smuggled goods can be re-exported from the customs area without formally getting them released from confiscation? | In Re: Hemal K. Shah<br>2012 (275) ELT 266<br>(GOI) | **Not Allowed** | **Revisionary Authority's Decision:**<br>As per sec 80 of CA, 1962, when the baggage of the passenger contains article which is dutiable or prohibited and in respect of which the declaration is made under section 77, the proper officer on request of passenger can detain such article for the purpose of being returned to him on his leaving India. Since passenger neither made true declaration nor requested for detention of goods for re-export, before customs authorities at the time of his arrival at airport, the re-export of said goods could not be allowed u/s 80 of Customs Act |
| 21. | 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.<br>v.<br>Joint Secretary (RA)<br>2013 (293) ELT 342<br>(Mad.) | **Yes**<br>**If penalty is to be imposed on Person-in-Charge of conveyance/vessel, it can also be imposed on agent appointed by him** | Sec 116 of Act imposes penalty on Person-in-Charge of conveyance for short landing of goods at place of destination and if deficiency is not accounted for to the satisfaction of Customs Authorities.<br>Sec 2(31) defines Person-in-Charge in relation to a vessel, the master of vessel 148 provides agent appointed by Person-in-Charge of conveyance and person represents before officer of Customs as agent of Person-in-Charge and also for Penalties and confiscation which may be incurred |

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| 22. | Where goods have been ordered to be released provisionally under section 110A of the Customs Act, 1962, can release of goods be claimed under section 110(2) of the Customs Act, 1962? | Akanksha Syntex (P) Ltd.<br>V<br>Union of India<br>2014 (300) ELT 49 (P&H) | **Yes** | HC opined that a plain and combined reading of Sec 110(2), 124 and 110A spells out that any order for provisional release shall not take away the right of assessee u/s 110(2) read with sec 124 of Act.<br>Where no action is initiated by way of issuance of show cause notice under section 124(a) of the Act within six months or extended period stipulated under section 110(2) of the Act, the person from whose possession the goods were seized becomes entitled to their return. |
| 23. | Whether mere dispatch of a notice under section 124(a) would imply that the notice was "given" within the meaning of section 124(a) and section 110(2) of the said Customs Act, 1962? | Purushottam Jajodia<br>v.<br>Director of Revenue Intelligence<br>2014 (307) ELT 837 (Del.) | **No** | 124(a) uses the expression "given" and not issuance<br>Therefore HC held that since petitioners did not receive the notice u/s 110(2) of Act, such notice will not be considered to be "given" |
| 24. | In case of seizure of goods under section 110 of the Customs Act, 1962, can the show cause notice [required to be issued under section 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<br>v.<br>CCus.<br>2016 (331) ELT 44 (Del.) | **No**<br>**Notice issued to Customs House Agent is not tenable in law** | In ordinary course, Customs Authorities need to follow provisions of sec 153 of Customs Act, 1962 which required the service to be affected on the importer i.e. petitioner in this case<br>HC also observed that even sec 146 & 147 of Customs Act, 1962 are not sustainable grounds to serve Show Cause Notice to Customs House Agent. |

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| 25. | In case of a Settlement Commission's order, can the assessee be permitted to accept what is favourable to them and reject what is not? | Sanghvi Reconditioners Pvt. Ltd.<br>V.<br>UOI<br>2010 (251) ELT 3 (SC) | **No**<br>**Settlement Commission's order is mandatory to be followed** | The assessee itself voluntary discloses concealed additional customs duty and therefore opts for liability to be settled by Settlement Commission, the appellant could not be permitted to dissect the settlement commission's order with a view to accept what is favorable and reject what is not |
| 26. | Is judicial review of the order of the Settlement Commission by the High Court or Supreme Court under writ petition/special leave petition, permissible? | Saurashtra Cement Ltd<br>v.<br>CCus.<br>2013 (292) ELT 486 (Guj.) | **Yes**<br>**But scope is very narrow i.e. judicial review is concerned with decision making process and not with decision of Settlement Commission** | HC observed although decision of Settlement Commission is final, finality clause would not exclude jurisdiction of HC under Article 226 of Constitution or that Supreme Court under Article 32 or 136 of Constitution.<br>Therefore court would interfere if Settlement Commission has acted without jurisdiction vested in it or its decision is malafide or against principles of Natural Justice or such decisions are based on irrelevant considerations or when such decision is ultra vires the act |
| 27. | Does the Settlement Commission have jurisdiction to settle cases relating to the recovery of drawback erroneously paid by the Revenue? | Union of India<br>v.<br>Cus. & C. Ex. Settlement Commission<br>2010 (258) ELT 476 (Bom.) | **Yes** | HC Observed that reasons given by Settlement Commission are in consonance with law laid down by Supreme Court in case of **Liberty India vs. Comm. of Income Tax** wherein SC observed that drawback is nothing but remission of duty on account of statutory provision in Act and scheme framed by Government of India |

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| 28. | 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<br>v.<br>Union of India<br>2013 (294) ELT 5 (Bom) | **Yes**<br>**Department was directed to pay interest from Date of Approval of proposal for sanctioning the Refund** | HC observed that when no specific period is prescribed by Provision of law, all statutory powers must be exercised within a reasonable period and that there was absolutely no reason or justification for delay in payment of sale proceeds.<br>HC also held that department cannot plead that provision of customs act, 1962 provides for payment of interest in respect of duty and not for sale proceeds which were directed to be paid by Settlement Commission |
| 29. | Can a former director of a company be held liable for the recovery of the customs dues of such company? | Anita Grover<br>v.<br>CCEx.<br>2013 (288) ELT 63 (Del.) | **No** | Since company was not being wound up, Company & its directors are separate juristic personality and dues cannot be recoverable from latter in absence of provision under Customs Act, 1962. No provisions in said act are there in corresponding to sec 179 of Income-Tax Act, 1961 or sec 18 of CST,1956 which might enable Revenue Authority to proceed against directors of Company |
| **SERVICE TAX** | | | | |
| 30. | Can the service tax liability created under law be shifted by virtue of a clause in the contract entered into between the service provider and the service recipient? | Rashtriya Ispat Nigam Ltd.<br>v.<br>Dewan Chand Ram Saran<br>2012 (26) STR 289 (SC) | **Yes** | SC observed that service tax is an indirect tax which can very well be passed on. Finance Act, 1994 is relevant only between assessee and Tax Authorities<br>Thus, assessee can contract to shift its liability as there is nothing in law to prevent them from entering into agreement regarding burden of tax arising under the contract between them |

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| 31. | Does preparation of ready mix concrete (RMC) along with pouring, pumping and laying of concrete amount to provision of service? | Commissioner<br>v.<br>GMK Concrete Mixing Pvt. Ltd. 2015 (38) STR J113 (SC) | **No** | SC held that it was contract between parties to supply RMC and not to provide any taxable service.<br>Since FA, 1994 is not a law relating to commodity taxation, the adjudication was made under mistake of fact & law fails. By this judgment, Supreme Court dismissed appeal filed by Revenue. |
| 32. | In case where rooms have been rented out by Municipality, can it pass the burden of service tax to the service receivers i.e. tenants? | Kishore K.S.<br>v.<br>Cherthala Municipality 2011 (24) STR 538 (Ker.) | **Yes** | ***HC observed that:***<br>1. As regards contention that there was no mention of service tax liability in contract, it is the statutory right of the service provider/municipality to pass the burden of service tax on recipient and also service tax is an indirect tax so its burden can very well be shifted<br>2. The word “state” in Article 289 does not embrace Municipality in it. Therefore contention that service tax on property of municipality was unsustainable as its violation of article 289 was also rejected |
| 33. | Whether supply of food, edibles and beverages provided to the customers, employees and guests using canteen or guesthouse of the other person, results in outdoor caterer service? | Indian Coffee Workers' Co-operative Society Ltd.<br>v.<br>CCE&ST<br>2014 (34) STR 546 (All.) | **Yes** | 1. HC observed that assessee cater to persons who use facility of a canteen which is provided by NTPC or LANCO within their own establishments. NTPC & LANCO have engaged services of assessee as caterer and since assessee provides services at a place other than his own, he is an outdoor caterer<br>2. HC further held that charge of tax in case of VAT is distinct from charge of service tax. The fact that assessee has paid VAT on goods doesn’t affect its service tax liability. |

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| 34. | 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 service tax) if the course completion certificate/ training/ is only for the purpose of eligibility for obtaining ultimate license / approval? | CCE & ST<br>v.<br>Garg Aviations Limited<br>2014 (35) STR 441 (All.) | **Not Taxable** | HC referred to case of **Indian Institute of Aircraft Engineering vs. Union of India** where it was observed that the expression used is "recognized by law" which is very wide one and not used expression "conferred by statute". Thus even if the certificate/degree/diploma/qualification is not the product of a statute but has approval of some kind in 'law', it would be exempt. It further held that educational qualification will not be cease to be recognized by law will not cease to be like it merely because a further examination is held by a body for practicing in the field. |
| 35. | Whether section 66E(i) of the Finance Act, 1994 which levies service tax on the service portion of activity wherein goods being food or any other article for human consumption or any drink is supplied in any manner as a part of activity, is ultra vires the Article 366(29A)(f) of the Constitution? | Hotel East Park<br>v.<br>UOI<br>2014 (35) STR 433<br>(Chhatisgarh) | **No**<br>**66E(i) of FA, 1994 is intra vires the Article 366(29A)(f) of Constitution of India** | ***<u>HC observed:</u>***<br>1. States are not legislatively competent to impose tax on service<br>2. Article 366(29A)(F) of constitution does not indicate that service part is subsumed in sale of food, it rather separates sale of food and drinks from service and sec 65B(44) as well as sec 66E(i) charge service tax only on service part and not on sales part<br>3. HC also held that no VAT can be charged over amount of service where service tax has been charged. HC directed State Government to frame such rules whereby it make sure that customers are not taxed twice over same amount |

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| 36. | A society, running renowned schools, allows other schools to use a specific name, its logo and motto and receives a non-refundable amount and annual fee as a consideration. Whether this amounts to a taxable service? | Mayo College General Council v. CCEx. (Appeals) 2012 (28) STR 225 (Raj) | **Yes** | HC held that when petitioner permitted other schools to use their name, logo as also motto, it clearly tantamounted to providing ‘franchise service’ to said schools and if the petitioner received the ‘franchise’ or ‘collaboration fees’ from franchise schools, the petitioner was duty bound to pay service tax to department. |
| 37. | Whether filing of declaration of description, value etc. of input services used in providing IT enabled services (call center/BPO services) exported outside India, after the date of export of services will disentitle an exporter from rebate of service tax paid on such input services? | Wipro Ltd. v. Union of India 2013 (29) S.T.R. 545 (Del.) | **Rebate Claims allowed** | HC observed that due to very nature of business of assessee, the conditions there in notification were not compiled:<br>1. As services were rendered on continuous basis, not possible to determine date of export and file declaration prior to date of export<br>2. Also, it can only specify description of input service but could not describe value and specify amount of service tax payable on input services actually required to be used in providing taxable service to be exported<br>3. Also, one-to-one matching of Import and Export is not possible<br>4. HC held that if particulars of declaration were furnished within reasonable time after export along with documentary evidence, and were found to be correct and authenticated, object / purpose of filing of declaration would be satisfied. |

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| 38. | Is exemption in relation to service provided to the developer of SEZ or units in SEZ available for a period prior to actual manufacture of final products considering these services as the services used in authorised operations of SEZ? | Commissioner of Service Tax v. Zydus Technologies Limited 2014 (35) STR 515 (Guj.) | **Assessee is entitled to exemption by way of refund claim** | HC held that assessee shall be entitled to refund, as though operations of the assessee did not reach to the commercial production stage, the input services of scientific and technical consultancy procured by them were in relation to the manufacture which would take place at later date |
| 39. | TDS u/s 194J on amount of Service Tax if it is paid separately | CIT v. Rajasthan Urban Infrastructure 2013 (31) STR 642 (Raj.) | **No TDS** | HC held if as per terms of agreement, amount of service tax is to be paid separately, the service tax part would not attract TDS u/s 194J |
| 40. | Is it justified to recover service tax during search without passing appropriate assessment order? | Chitra Builders Private Ltd. v. Addnl Comm of CEx. & ST 2013 (31) STR 515 (Mad.) | **Not Valid** | HC observed it is well settled position in law that no tax can be collected without appropriate assessment order being passed by authority concerned and without following the procedures established by law.<br>Also, department said assessee voluntarily paid amount but failed to prove assessee was actually was liable to pay<br>Therefore HC directed department to Return Rs. 2 crores collected by it. |
| 41. | Can extended period of limitation be invoked for mere contravention of statutory provisions without the intent to evade service tax being proved? | Infinity Infotech Parks Ltd. v. UOI 2013 (31) STR 653 (Cal.) | **Extended period of limitation cannot be invoked** | HC observed that as per proviso to sec 73(1), extended period of limitation can be invoked only in case of contravention of provisions with intention to evade tax |

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| 42. | Whether best judgment assessment under section 72 of the Finance Act, 1994 is an ex-parte* assessment procedure? | N.B.C. Corporation Ltd. v. Commissioner of Service Tax 2014 (33) STR 113 (Del.) | **No** | Sec 72 mandates assessee must appear with BOAs, documents before CEO before Best Judgment order. In that case, it can't be termed as ex-parte order. If assessee fails to appear and officer has to pass order with available material then Ex-parte order can be passed |
| 43. | Can an amount paid under the mistaken belief that the service is liable to service tax when the same is actually exempt, be considered as service tax paid? | CCE (A) v. KVR Construction 2012 (26) STR 195 (Kar.) | **Assessee would be entitled to refund without ground of limitation of period u/s 11B of CEA, 1944** | |
| 44. | In a case where the assessee has acted bona fide, can penalty be imposed for the delay in payment of service tax arising on account of confusion regarding tax liability and divergent views due to conflicting court decisions? | Ankleshwar Taluka ONGC Land Loosers Travellers Co. OP. v. CCE Surat-II 2013 (29) STR 352 (Guj.) | **No Penalty** | HC held that there could be no justification in levying the penalty in absence of any fraud, misrepresentation, collusion or wilful mis-statement or suppression. Moreover, the entire issue for levying tax was debatable, that also would surely provide legitimate ground not to impose the penalty |

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| 45. | Whether the recipient of taxable service having borne the incidence of service tax is entitled to claim refund of excess service tax paid consequent upon the downward revision of charges already paid, and whether the question of unjust enrichment arises in such situation? | CCus CEx & ST<br>v.<br>Indian Farmers Fertilizers Coop. Limited<br>2014 (35) STR 492 (All) | HC upheld decision of CESTAT that since service tax was ultimately borne by service recipient and the refund was also seeked by him, question of unjust enrichment will not arise as per 11B of CEA, 1944. Further HC held once the finding of adjudicating authority that the claim for refund was filed within period and was not challenged by Revenue before 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. | |
| 46. | 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<br>v.<br>UOI<br>2014 (35) STR 506 (Cal.) | **No** | HC held wilful suppression cannot be assumed merely on failure to disclose certain facts unless it is preceded by deliberate non-disclosure to evade payment of tax. The extended period of limitation can be invoked on clear exposition that there has been a **conscious act on part of assessee to evade tax by non-disclosing the facts** and if the facts had been disclosed then it would have attracted tax u/s 66B & 67 of FA, 1994 |
| 47. | Can service tax 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<br>v.<br>Vijaya Consultants, Engineers and Consultants<br>2015 (040) STR 0232 (AP) | **No** | HC held that by no stretch of imagination, that letter be treated as Notice satisfying section 73. HC further held procedural requirement under Act of issuance of notice and calling for explanation must be followed |

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| 48. | 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 Corporation v. Commissioner Service Tax 2015 (038) STR 673 (Del.) | **No** | Undoubtedly, service tax burden can be transferred by contractual agreement to other party but assessee cannot ask the Department to recover the tax dues from a third party or wait till the assessee recovers the same. The department will collect Service Tax liability ultimately from assessee. |
| 49. | Whether order served on member of family of assessee is a proper service of order? | Jyoti Enterprises v. CCEx. & ST 2016 (41) STR 0019 (All.) | **Yes** | Since no assertion was made by assessee that Virendra Yadav was not family member or that he was not connected with business, it can be construed that order was served to family and also nowhere was stated that the address where order was served was incorrect. Therefore, order was served properly. |
| 50. | 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 (41) STR 0061 (Bom.) | **HC Quashed and set aside both orders and placed back matter for fresh consideration before Commissioner (Appeals)** | **Refer page no. 95** |
| 51. | Can the Commissioner (Appeals) remand back a case to the adjudicating authority under section 85 of the Finance Act, 1994? | Commissioner of Service Tax v. Associated Hotels Ltd. 2015 (37) STR 723 (Guj.) | **Yes** | HC held that sub section (4) of section 85 itself contains width of power of commissioner (appeals) in hearing proceedings of appeal u/s 85. Such power cannot be curtailed by any reference to sub section (5) of section 85 |

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| 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.<br>v.<br>Ashok Kumar Tiwari<br>2015 (37) STR 727 (All.) | **Yes** | HC observed that expression used "3 months" cannot be substituted as "90 days". Also, the day on which order was received by assessee i.e. 08/10/11 had to be excluded while computing period of limitation in view of sec 9 of act |
| 53. | Can an appeal filed in time but to the wrong authority be rejected by the appellate authority for being time barred? | Chakiat Agencies<br>v.<br>UOI<br>2015 (37) STR 712 (Mad.) | **No** | Dept. should have returned papers to assessee or should have handed over appeal papers to competent authority. Accordingly HC directed appellate authority to entertain appeal and pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard |

| CENTRAL EXCISE | | | | |
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| 54. | 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<br>v.<br>Fitrite Packers<br>2015 (324) ELT 625 (SC) | **Yes** | SC had called out 4 categories to decide whether the person is manufacturer or not in case of **Servo-Med Industries Pvt. Ltd. vs. CCEx.**<br>1. Where goods remain exactly same after process.<br>2. Where Goods remain essentially same after process i.e. original article continues as such after process<br>3. Where Goods are transformed into something else but not marketable<br>4. Goods transformed + Marketable = Manufacture<br>In present case,<br>Black paper could have been used for any kind of product but now after printing of logo and name its use had been got confined to specific product of particular company. Therefore SC held that above process resulted into different product and therefore process amounts to transformation. |
| 55. | Can improvement in quality of base bitumen by adding and mixing polymers and additives to it, amount to manufacture? | CCE<br>v.<br>Osnar Chemical Pvt. Ltd.<br>2012 (276) ELT 162 (SC) | **No** | SC held that it is well settled principle that mere improvement in quality does not amount to manufacture. There must be change in original commodity and it must be recognized as new and distinct article to qualify as manufacture<br>Also, the process carried out by assessee had nowhere been specified in section notes/chapter notes of first schedule. |

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| 56. | Does the process of generation of metal scrap or waste during the repair of worn out machineries/parts of cement manufacturing plant amount to manufacture? | Grasim Industries Ltd.<br>v.<br>UOI<br>2011 (273) ELT 10 (SC) | **No** | The metal scrap and waste were excisable goods u/s 2(d) of the Act. But only those scrap which results from **processing of manufacture of end products** tantamounts to manufacture.<br>Thus by-product of repairing process does not qualify for manufacture |
| 57. | Are the physician samples excisable goods even when they are being statutorily prohibited from being sold? | Medley Pharmaceuticals Ltd.<br>v.<br>CCE & C.<br>2011 (263) ELT 641 (SC) | **Yes** | Sale is not necessary condition for charging duty as excise duty is payable in case of free suppliers also.<br>Merely because a product is statutorily prohibited (as written on cover of medicines, "physician samples – Not to be sold") does not amount to product is not capable of being sold. Since Product was capable of being sold, the same was marketable and thus liable to Excise. |
| 58. | Whether assembling of the testing equipments for testing the final product in the factory amounts to manufacture? | Usha Rectifier Corpn. (I) Ltd.<br>v.<br>CCEx.<br>2011 (263) ELT 655 (SC) | **Yes** | ***SC Observations:***<br>1. Appellant themselves made admission regarding development of equipment in its own balance sheet which was further substantiated by Director's Report<br>2. Assessee's stand that it was developed to avoid imports and save foreign exchange itself indicates that the equipment was saleable and marketable |
| 59. | Can a product with short shelf-life be considered as marketable? | Nicholas Piramal India Ltd.<br>v.<br>CCEx., Mumbai<br>2010 (260) ELT 338 (SC) | **Yes** | SC ruled out that a short shelf life product also amounts to manufacture as short life of 2-3 days was sufficiently long enough for a product to be commercially marketable.<br>Only a product with No Shelf-Life are not considered as marketable. |

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| 60. | Whether the machine which is not assimilated in permanent structure would be considered to be moveable so as to be dutiable under the Central Excise Act? | CCE<br>v.<br>Solid & Correct Engineering Works and Ors<br>2010 (252) ELT 481 (SC) | **Duty will be levied on them** | SC observed and 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 earth permanently.<br>Hence SC held that plants in question were not immovable property so as to be immune from levy of Excise Duty |
| 61. | Does the process of preparation of tarpaulin made-ups after cutting and stitching the tarpaulin fabric and fixing eye-lets in it, amount to manufacture? | CCE<br>v.<br>Tarpaulin International<br>2010 (256) ELT 481 (SC) | **No** | Apex court opined that stitching of tarpaulin sheets and making eyelets did not change basic characteristic of Raw material and end product. No new product came into existence. Tarpaulin was still called as tarpaulin. Therefore, process does not amounts to manufacture. |
| 62. | 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.<br>CCEx.<br>2016 (334) ELT 3 (SC) | **Yes**<br>**It enlarges** | "include" in statutory definition is generally used to enlarge meaning of preceding words by way of extension and not restriction.<br>This is according to SC Decision in case of **Regional Director, ESIC vs. High Land Coffee works of P.F.X. Saldanha & Sons & Anr.** |
| 63. | Does the activity of packing of imported compact discs in a jewel box along with inlay card amount to manufacture? | CCE<br>v.<br>Sony Music Entertainment (I) Pvt. Ltd.<br>2010 (249) ELT 341 (Bom.) | **No** | HC observed that no activity done by assessee involved any process on compact discs that were imported. The activities carried out by the Respondent did not amount to manufacture since the compact disc had been complete and finished when imported by assessee |

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| 64. | Whether bagasse which is a marketable product but not a manufactured product can be subjected to excise duty? | Balrampur Chini Mills Ltd.<br>v.<br>Union of India<br>2014 (300) ELT 372 (All.) | **No**<br>**High Court quashed the CBEC's circular dated 28-10-2009** | HC concluded though bagasse is an agricultutal waste of sugarcane, it is a marketable product. However, duty cannot be levied on it by circular as explanation added u/s 2(d) of CEA, 1944 as it does not involve any manufacturing activity.<br>Also SC held that bagasse is a waste and not a manufactured product |
| 65. | How will a cream which is available across the counters as also on prescription of dermatologists for treating dry skin conditions, be classified if it has subsidiary pharmaceutical contents - as medicament or as cosmetics? | CCEx.<br>v.<br>Ciens Laboratories<br>2013 (295) ELT 3 (SC) | **Classifiable as Medicament under heading 30.03** | SC observations<br>1. Product contains pharmaceutical ingredients<br>2. Mere contention that product is sold without prescription does not hold good to qualify it as non-pharmaceutical product<br>3. Care – cosmetic<br>Cure – medical<br>4. Product used for treating ailments or diseases and contains curative ingredients |
| 66. | Whether a heading classifying goods according to their composition is preferred over a specific heading? | Commissioner of Central Excise, Bhopal<br>v.<br>Minwool Rock Fibres Ltd.<br>2012 (278) ELT 581 (SC) | **Classification beneficial to assessee. Accordingly goods were classified under sub-heading 6807.10 of Tariff** | In case of classification dispute, an entry which was beneficial to assessee was required to be applied.<br>Further tariff heading specifying goods according to its composition should be preferred over specific heading |
| 67. | Whether antiseptic cleansing solution used for cleaning/ degerming or scrubbing the skin of the patient before the operation can be classified as a 'medicament'? | CCE<br>v.<br>Wockhardt Life Sciences Ltd. 2012 (277) ELT 299 (SC) | **Product will be classified as 'medicament' under chapter heading 3003, a specific entry and not under chapter sub-heading 3402.90, a residuary entry** | Usage of product by surgeons was for cleaning or degerming their hands to prevent infection or diseases, even though the same contains very less quantity of prophylactic ingredient.<br>A specific entry under residuary entry would be preferred |

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| 68. | Can the 'soft serve' served at McDonalds India be classified as "ice cream" for the purpose of levying excise duty? | CCEx.<br>v.<br>Connaught Plaza Restaurant (Pvt) Ltd.<br>2012 (286) ELT 321 (SC) | **Classifiable as Ice Cream under heading 21.05 and not under heading 04.04 as "other dairy products"** | SC observed that soft-serve is generally and commercially traded as softy ice-cream by referring to a trade notice issued by Mumbai Commissionerate relating to classification of softy ice-cream being sold in restaurant, etc. is dispensed by vending machine |
| 69. | 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<br>v.<br>Collector of Central Excise<br>2016 (334) ELT 580 (SC) | **Not excluded from assessable value as assessee did not provide documents to support the facts** | SC observed, if there exists **any agreement between buyer and seller to return the bags** then it won't be included in assessable value, in that case even whether actually retuned or not would be irrelevant |
| 70. | 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<br>v.<br>Super Synotex (India) Ltd.<br>2014 (301) ELT 273 (SC) | **Assessee is bound to pay excise duty on them** | As per sec 4 of CEA, 1944 sale tax amount is not includible in Value of Transaction. However position after amendment w.e.f. 01/07/2000 of sec 4 of CEA, 1944, where "actually paid" is significant. Therefore, in instant case since only 25% of sale tax collected has been paid, the rest of 75% Sales Tax which was collected but not paid would be liable for Excise Duty. |

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| 71. | Can the pre-delivery inspection (PDI) and free after sales services charges be included in the transaction value when they are not charged by the assessee to the buyer? | Tata Motors Ltd.<br>v.<br>UOI<br>2012 (286) ELT 161 (Bom.) | **As per sec 4(3)(d), the pre delivery inspection and free after sales service charges could be included only when they were charged by seller to the buyer** | HC held that clause no. 7 of circular dated 1/7/02 (where PDI & after sales service charges were held taxable) and circular dated 12/12/02 (which affirms the circular dated 1/7/02) were not in conformity with provisions of sec 4(1)(a) and 4(3)(d) of CEA, 1944<br>Also<br>1. Revenue claim is not correct as this had no bearing on assessable value<br>2. Assessee claim was accepted that assessee did not charge any separate amount |
| 72. | Whether CENVAT credit of the testing material can be allowed when the testing is critical to ensure the marketability of the product? | Flex Engineering Ltd.<br>v.<br>CCEx.<br>2012 (276) ELT 153 (SC) | **Yes** | SC opined that the manufacturing process in present case got completed on testing of said machines. Hence, the testing material used would be eligible for CCR |
| 73. | Is a cellular mobile service provider entitled to avail CENVAT credit on tower parts & pre-fabricated buildings (PFB)? | Bharti Airtel Ltd.<br>v.<br>CCEx. Pune III<br>2014 (35) STR 865 (Bom.) | **No** | HC observed that findings of Tribunal are correct that holding 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 CCR |

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| 74. | 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<br>v.<br>CCE & ST<br>2015 (039) STR 0967 (Raj.) | **No**<br>**Assessee is not eligible for credit of catering, photography and tent services** | 1. Once students had passed their coaching class, activities of catering, photography and tent services cannot be said to be used for business purpose<br>2. Travelling expenses for business tours also cannot be related to provision of commercial building or coaching<br>3. Also there is no material to show that maintenance and repairs have any nexus to commercial training or coaching |
| 75. | Whether assessee is entitled to claim CENVAT credit of service tax paid on house-keeping and landscaping services availed to maintain their factory premises in an eco-friendly manner? | Commr. of C. Ex., & S.T., LTU<br>v.<br>Rane TRW Steering Systems Ltd.<br>2015 (039) STR 13 (Mad.) | **Yes**<br>**Assessee can claim benefit of CCR** | It was the obligation of assessee to maintain house in eco-friendly manner due to environmental regulations and also concept of CSR was also relevant.<br>Employer spends money to maintain their factory premises in an eco-friendly manner in order to discharge a statutory obligation therefore tax paid on such services would form part of cost of final product |
| 76. | 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.<br>v.<br>Tamil Nadu Petro Products Ltd. 2015 (40) STR 878 (Mad.) | **Yes** | HC held if assessee pays service tax upon misconception of legal position, the assessee can avail CCR in respect of it i.e. claiming CCR won't be considered as illegal |

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| 77. | Is assessee required to reverse the CENVAT credit availed on capital goods destroyed by fire when insurance company reimburses value of such capital goods inclusive of excise duty? | CCE<br>v.<br>Tata Advanced Materials Ltd. 2011 (271) ELT 62 (Kar.) | **No** | Merely because claim of goods destroyed by fire is received from Insurance Company, availment of CCR by assessee would not be considered wrong or irregular<br>Also, HC observed that assessee had paid the premium and covered the risk of Capital Goods and when goods were destroyed in terms of insurance policy, the insurance company had compensated the assessee. It was therefore not a case of double benefit to assessee |
| 78. | Whether penalty can be imposed on the directors of the company for the wrong CENVAT credit availed by the company? | Ashok Kumar H. Fulwadhya<br>v.<br>UOI<br>2010 (251) ELT 336 (Bom.) | **No** | HC observed that words “any person” used in rule 13(1) of CCR Rules, 2002 indicates that person who has availed CCR shall only be the person liable for penalty |
| 79. | Can CENVAT credit be taken on the basis of private challans? | CCEx.<br>v.<br>Stelko Strips Ltd.<br>2010 (255) ELT 397 (P & H) | **Yes** | HC held that once duty payment is not disputed and found that documents are genuine, MODVAT credit could be taken on the strength of private challans as the same were not found to be fake and there was proper certification that duty has been paid |
| 80. | Can CENVAT credit availed on inputs (contained in the work-in-progress destroyed on account of fire) be ordered to be reversed under rule 3(5C) of the CENVAT Credit Rules, 2004? | CCE<br>v.<br>Fenner India Limited<br>2014 (307) ELT 516 (Mad.) | **No need for Reversal** | HC held CCR would need to be reversed only when payment of excise duty on final production is ordered to be remitted under Rule 21 of CER, 2002 which deals with remission of duty. In this case, the assessee has not claimed any remission and no final product has been removed hence assessee need not reverse the CCR taken on inputs destroyed in Fire. |

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| 81. | 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<br>v.<br>CCE<br>2015 (324) ELT 686 (SC) | **Yes** | SC held normally 'and' is read as 'and' and 'or' is used as 'or' but when it produces unintelligible or absurd results, the court has power to read 'and' as 'or' and vice versa.<br>Since the intention of Govt. was also to give rebate for both, the Apex court held that exporters/appellants are entitled to both the rebates under Rule 18 and not one kind of rebate |
| 82. | 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 input services used in manufacture of such export goods has already been availed? | Raghav Industries Ltd<br>v.<br>UOI<br>2016 (334) ELT 584 (Mad.) | **Refer Page No. 96** | |
| 83. | Can export rebate claim be denied merely for non-production of original and duplicate copies of ARE-1 when evidence for export of goods is available? | UM Cables Limited<br>v.<br>Union of India<br>2013 (293) ELT 641 (Bom.) | **No** | HC held that Rule 18 itself makes a distinction between conditions and limitations for rebate and procedure governing grant of rebate.<br>Conditions and limitations are mandatory in nature while procedures are of directory in nature. Assessee can demonstrate cogent evidence that goods were exported and duty paid to satisfy requirement of Rule 18 of CER, 2002 read with Notification 19/2004 CE (NT) |

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| 84. | Whether time-limit under section 11A of the Central Excise Act, 1944 would be applicable to recovery of amounts due under compounded levy scheme? | Hans Steel Rolling Mill<br>v.<br>CCEx. Chandigarh<br>2011 (265) ELT 321 (SC) | **No** | Apex court elucidated that compounded levy scheme is different from normal scheme. Rules under Compounded Levy Scheme stipulate method, time and manner of payment of duty, interest, penalty. Since Compound Levy Scheme is comprehensive in itself, general provisions of CEA and rules are excluded |
| 85. | 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<br>v.<br>CCE<br>2015 (318) ELT 15 (SC) | **No** | Since department. itself has doubts and if appellant also had nurtured the belief that process did not amount to Manufacture and did not pay Excise Duty, his conduct was bona fide conduct and could not be treated as wilful suppression of facts |
| 86. | In a case where the assessee has been issued a show cause notice (SCN) regarding confiscation, is it necessary that only when such SCN is adjudicated, can the SCN regarding recovery of dues and penalty be issued? | Jay Kumar Lohani<br>v.<br>CCEx<br>2012 (28) STR 350 (MP) | ***High Court's Observations:*** The High Court observed that since the subsequent show cause notice only formed prima facie view in regard to allegations, it could not be said to be issued after pre-judging the question involved in the matter. The High Court opined that since it was not a case of show cause notice being issued without jurisdiction, adjudicating authority could not be restrained from proceeding further with the SCN.<br><br>***High Court's Decision:*** The High Court held that there was no legal provision requiring authorities to first adjudicate the notice issued regarding confiscation and, only thereafter, issue show cause notice for recovery of dues and penalty. | |

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| 87. | In a case where the manufacturer clandestinely (in an illicit/covert way) removes the goods and stores them with a firm for further sales, can penalty under rule 25 of the Central Excise Rules, 2002 be imposed on such firm? | CCEx.<br>v.<br>Balaji Trading Co.<br>2013 (290) ELT 200 (Del.) | **No** | HC concurred with tribunal that 25(1)(c) would have no application because said clause would also apply only in respect of 4 categories of persons mentioned in rule 25(1) of said rules:<br>(i) Producer<br>(ii) Manufacturer<br>(iii) Registered person of warehouse<br>(iv) A registered dealer<br>In the instant case, assessee was not producer or manufacturer of Zarda, neither registered person of warehouse and nor was a registered dealer<br>Therefore, penalty under rule 25(1) could not be imposed on respondent. |
| 88. | Can a decision pronounced in the open court in the presence of the advocate of the assessee, be deemed to be the service of the order to the assessee? | Nanumal Glass Works<br>v.<br>CCEx. Kanpur<br>2012 (284) ELT 15 (All.) | **Yes** | HC observed that in terms of section 37c(a) of CEA, 1944, an order is deemed to be served on person if it is intended for the person or his authorized agent i.e. Advocate, it would be deemed to be served to assessee |
| 89. | Whether filing of refund claim under section 11B of Central Excise Act, 1944 is required in case of suo motu availment of CENVAT credit which was reversed earlier (i.e., the debit in the CENVAT Account is not made towards any duty payment)? | ICMC Corporation Ltd.<br>Vs.<br>CESTAT, CHENNAI<br>2014 (302) ELT 45 (Mad.) | **No** | HC held that this process involves only an account entry reversal and factually there is no outflow of funds from assessee by way of payment of duty. Further it held that on a technical adjustment made, the question of unjust enrichment as a concept does not arise |

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| 90. | Does the principle of unjust enrichment apply to State Undertakings? | CCEx<br>v.<br>Superintending Engineer TNEB 2014 (300) ELT 45 (Mad.) | **No** | HC held that power of court is not meant to be exercised for unjustly enriching a person. Doctrine is not applicable to state. State represents people of country. No one can speak of people being unjustly enriched |
| 91. | If Revenue accepts judgment of the Commissioner (Appeals) on an issue for one period, can it be precluded to make an appeal on the same issue for another period? | Commissioner of C. Ex., Mumbai-III<br>v.<br>Tikitar Industries 2012 (277) ELT 149 (SC) | **No** | The Supreme Court held that since the Revenue had not questioned the correctness or otherwise of the findings on the conclusion reached by the first appellate authority, it might not be open for the Revenue to contend this issue further by issuing the impugned show cause notices on the same issue for further periods. |
| 92. | Can re-appreciation of evidence by CESTAT be considered to be rectification of mistake apparent on record under section 35C(2) of the Central Excise Act, 1944? | CCE<br>v.<br>RDC Concrete (India) Pvt. Ltd. 2011 (270) ELT 625 (SC) | **No** | Apex court held that CESTAT had reconsidered its legal view as it concluded differently by accepting the arguments which it had rejected earlier.<br>Hence, court opined that CESTAT exceeded its powers u/s 35(2) of Act. In pursuance of rectification application, it cannot re-appreciate the evidence and reconsider its legal view taken earlier |
| 93. | Can an appeal be filed before the Supreme Court against an order of the CESTAT relating to clandestine removal of manufactured goods and clandestine manufacture of goods? | CCE<br>v.<br>Fact Paper Mills Private Limited 2014 (308) ELT 442 (SC) | **No** | The Supreme Court held that the appeals relating to clandestine removal of manufactured goods and clandestine manufacture of goods are not maintainable before the Apex Court under section 35L of the Central Excise Act, 1944. |

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| 94. | In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original? | Khanapur Taluka Co-op. Shipping Mills Ltd.<br>v.<br>CCEx.<br>2013 (292) ELT 16 (Bom.) | **No** | HC in exercise of writ jurisdiction could neither direct Appellate Authority to condone delay nor interfere with order passed by adjudicating authority |
| 95. | Can the High Court condone the delay - beyond the statutory period of three months prescribed under section 35 of the Central Excise Act, 1944 - in filing an appeal before the Commissioner (Appeals)? | Texcellence Overseas<br>v.<br>Union of India<br>2013 (293) ELT 496 (Guj.) | **Yes** | HC opined that since total length of delay was very small and case had extremely good ground on merits to sustain, its non-interference at that stage would cause gross injustice to petitioner.<br>Thus HC, by invoking its extraordinary jurisdiction, quashed the order which held that refund was erroneously granted.<br>HC held such powers are required to be exercised very sparingly and in extra ordinary and appropriate cases, where otherwise court would fail in its duty if such powers are not invoked |
| 96. | Can delay in filing appeal to CESTAT for the reason that the authorised representative dealing with the case went on a foreign trip and on his return his mother expired, be condoned? | Habib Agro Industries<br>v.<br>CCEx.<br>2013 (291) ELT 321 (Kar.) | **Yes** | HC observed that there did not appear to be any deliberate latches or neglect on part of authorized representative to file the appeal |

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| 97. | 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.<br>v.<br>CCE<br>2016 (334) ELT 434 (All.) | **No** | The High Court 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 stored in tank and refusing to grant remission on the balance quantity which could have been stored in the steel tank but not stored by assessee. |
| 98. | 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<br>v.<br>Otto Bilz (India) Pvt. Ltd<br>2015 (324) ELT 430 (SC) | **Yes** | SC held that because of assignment, the assessee was using trade mark in its own right as its own trade mark and therefore it could not be said that it was using trade mark of another person |
| 99. | Whether the manufacture and sale of specified goods, not physically bearing a brand name, from branded sale outlets would disentitle an assessee to avail the benefit of small scale exemption? | CCEx<br>vs.<br>Australian Foods India (P) Ltd<br>2013 (287) ELT 385 (SC) | **It would vary from case to case** | It depends upon surrounding circumstances most importantly being specific outlet from which goods are sold |
| 100. | 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<br>v.<br>CCEx.<br>2016 (331) ELT 589 (All.) | **Yes** | SSI Exemption notification states if aggregate value of clearances of all excisable goods for Home Consumption from one or more factories of manufacturer or from a factory by one or more manufacturers does not exceed specified Turnover in preceding Financial Year |

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| 101. | Where clearances of a dubious company are clubbed with clearances of the original company, whether penalty can be imposed on such dubious company if all the clearances have been made by the original company? | CCEx<br>V<br>Xenon<br>2013 (296) ELT 26<br>(Jhar.) | **No** | HC held that when it had been established that dubious company did not undertake any transaction, penalty could not be levied on same for transaction undertaken by original company |
| 102. | Can the brand name of another firm in which the assessee is a partner be considered as the brand name belonging to the assessee for the purpose of claiming SSI exemption? | Commissioner<br>v.<br>Elex Knitting Machinery Co. 2010 (258) ELT A48 (P & H) | **No** | Tribunal held that since assessee was a partner in firm of whose brand name it was using, he was co-owner of brand name. Hence, he could not be said to have used the brand name of another person but will be termed as manufacture and clearance of goods in his individual capacity. Thus, assessee was eligible for benefit of SSI exemption |
| 103. | Whether the clearances of two firms with common brand name, common management, accounts etc. and goods being manufactured in the same factory premises, can be clubbed for the purposes of SSI exemption? | CCE<br>v.<br>Deora Engineering Works<br>2010 (255) ELT 184 (P & H) | **Yes** | HC held that indisputably, in the instant case partners of both firms were common and belonged to the same family |
| 104. | Can the benefit of exemption notification be granted to assessee where one of the conditions to avail the exemption is not strictly followed? | CCE<br>v.<br>Honda Siel Power Products Ltd. 2015 (323) E.L.T. 644 (S.C.) | **No** | As per Apex Court observations, it is a trite that exemption notifications are to be construed strictly and conditions therein are to be fulfilled properly and even if there is any doubt same is to be given in favor of department |

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| 105. | Where a circular issued under section 37B of the Central Excise Act, 1944 clarifies a classification issue, can a demand alleging misclassification be raised under section 11A of the Act for a period prior to the date of the said circular? | S & S Power Switch Gear Ltd.<br>v.<br>CCEx. Chennai-II<br>2013 (294) ELT 18 (Mad.) | **No** | HC held once reclassification notice/circular is issued, revenue cannot invoke sec 11A of act to make demand for a period prior to date of said classification notification/circular |
| 106. | (i) Where a settlement application filed under section 32E(1) of the Central Excise Act, 1944 (herein after referred to as 'Act') is not accompanied with the additional amount of excise duty along with interest due, can Settlement Commission pass a final order under section 32F(1) rejecting the application and abating the proceedings before it ?<br><br>(ii) In the above case, whether a second application filed under section 32E(1), after payment of additional excise duty along with interest, would be maintainable? | Vadilal Gases Limited<br>V<br>Union of India<br>2014 (301) ELT 321 (Guj.) | **(i) Not maintainable**<br><br>**(ii) Maintainable** | 1. Clause (d) of first proviso to sub section (1) of 32E clearly indicates that no application u/s 32E(1) shall be made unless the applicant has paid the additional amount of Excise duty accepted by him along with interest due u/s 11B. Therefore, if an application is made without complying with first proviso, it would be defective and not maintainable<br><br>2. SC at its discretion may allow time to applicant to remove defects or may direct that applicants be returned. Moreover second application would not be barred u/s 32-O as no direction had been issued u/s 32L |

**Case Law No. 10**

***Supreme Court's Observations:***

The High Court observed that Parliament intended that entire section 129A, as far as applicable, should be supplemental to section 129D(4). For the sake of brevity, instead of repeating what had been provided in section 129A as regards the appeals to the Tribunal, it had been provided that the applications made by the Commissioner under section 129D(4) should be heard as if they were appeals made against the decision or order of the adjudicating authority and the provisions relating to the appeals to the Tribunal would apply in so far as they might be applicable.

The expression, *"**including the provisions of section 129A(4**)"* was by way of clarification and had been so said expressly to remove any doubt about the applicability of the provision relating to cross objections to the applications made under section 129D(4) otherwise it could have been inferred that provisions relating to appeals to the Tribunal had been made applicable and not the cross objections. The use of expression "***so far as may be***" was to bring general provisions relating to the appeals to Tribunal into section 129D(4).

Consequentially, section 129A(5) also stood incorporated in section 129D(4) by way of legal fiction and must be given effect to. In other words, if the Tribunal was satisfied that there was sufficient cause for not presenting the application under section 129D(4) within prescribed period, it might condone the delay in making such application and hear the same.

## *Case Law No. 11*

***Decision:***

The Supreme Court held that mere non-payment of duties could not be equated with collusion or wilful misstatement or suppression of facts as then there would be no form of non-payment which would amount to ordinary default. The Apex Court opined that something more must be shown to construe the acts of the assessee as fit for the applicability of the proviso.

***Supreme Court's Observations:***

The Apex Court observed that the primary issue under consideration in this case was the applicability of extended period of limitation for issuing a demand notice. The Apex Court noted that section 28 of the Customs Act clearly contemplates two situations, viz. inadvertent non-payment and deliberate default. The former is canvassed in the main body of section 28 and is met with a limitation period of six months, whereas the latter, finds abode in the proviso to the section and faces a limitation period of five years. For the operation of the proviso, the intention to deliberately default is a mandatory prerequisite.

The Supreme Court observed that the assessee had shown bona fide conduct by seeking clarification from the Development Commissioner and in a sense had offered its activities to assessment. Only on receiving a satisfactory reply from the Development Commissioner did the assessee claim the exemption. The Apex Court elaborated that even if the Development Commissioner was not the most suitable repository of the answers sought by the assessee, it did not negate the bona fide conduct of the assessee. It still showed that assessee made efforts to adhere to the law rather than its breach.

The Tribunal's finding that the assessee had not brought anything on record to prove their claim of bona fide conduct did not find favour with the Apex Court. The Supreme Court reiterated that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.

*Case Law No. 14*

***High Court's Observations:***

The High Court observed that section 9A(8) of the Customs Tariff Act, 1975 specifically incorporates all the provisions of the Customs Act, 1962 relating to appeal as far as may be, in their application to the anti-dumping duty chargeable under section 9A. The order of the CESTAT passed in appeal would, therefore, clearly be subject to appeal, either to this Court under section 130 or to the Supreme Court under section 130E of the Customs Act, 1962 if the appeal relates to the rate of duty or to valuation of goods for the purposes of assessment.
The assessee submitted that under section 130(2), an appeal can be filed by the Commissioner of Customs or the other party. However, in case of anti-dumping duty, Commissioner of Customs would have no occasion to file an appeal since proceedings are against the designated authority.

Against this submission, the High Court clarified that since appellate provisions of the Customs Act, 1962 have been incorporated in section 9A(8) of the Customs Tariff Act, 1975, they necessarily apply in a manner that would make the same intelligible and workable.

**_Case Law No. 50_**

**_High Court's Observations:_**

The High Court 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.

Thus, a perusal of section 37C (as supported by erstwhile section 85(3) [now section 85(3A)] of the Finance Act, 1994) shows insistence upon the service of such adjudication order upon the assessee. Hence, the observation in the Tribunal's order that the order-in-original had been forwarded to the assessee on a particular date was not sufficient in the eyes of law to start computing the period of limitation.

**_Case Law No. 82_**

***High Court's Observations:***

The High Court observed that after clearing the goods on payment of duty under claim for rebate, the petitioner should not have claimed drawback for the central excise and service tax portions; or they should have paid back the drawback amount availed before claiming rebate. Since this was not done, availing both the benefits would certainly result in double benefit.

While sanctioning rebate, since the export goods were one and the same, the benefits availed by the petitioner on the said goods under different schemes were required to be taken into account for ensuring that the sanction did not result in undue benefit to the claimant. The 'rebate' of duty paid on excisable goods exported and 'duty drawback' of the duty paid on inputs and service tax paid on input services, used in manufacture of export goods are governed by rule 18 of the Central Excise Rules, 2002 and the Customs, Central Excise Duties and Service Tax Drawback Rules 1995 respectively . Both the rules intend to give relief to the exporters by offsetting the duty paid. When the petitioners had availed duty drawback of customs, central excise and service tax 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.

In the Spentex Industries Ltd. judgment relied upon by the petitioner, the Supreme Court had held that the benefit of rebate on the inputs on one hand as well on the finished goods exported on the other hand would fall within the provisions of rule 18 of Central Excise Rules, 2002 and the exporters were entitled to both the rebates under the said rule. However, in the case on hand, the benefits claimed by the petitioners were covered under two different statutes - one under Customs, Central Excise Duties and Service Tax Drawback Rules 1995 issued under Section 75 of the Customs Act, 1962 and the other under rule 18 of the Central Excise Rules, 2002 issued under the Central Excise Act, 1944. Since the issue involved was covered under two different statutes, the said judgment was not applicable to the facts of the present case.

Further, as per the proviso to rule 3 of the Central Excise Duties and Service Tax Drawback Rules, 1995, the petitioner was not entitled to claim both the benefits.

***<u>High Court's Decision:</u>***

The High Court 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.