

IMPORTANT PRONOUNCEMENTS IN INCOME TAX IN 2013

- By C.A. Devendra Jain

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Material compiled with the help of untiring efforts of CA Ashwini Oak

I. **RECENT SUPREME COURT DECISIONS**

1. **MAK Data (P.) Ltd. v. CIT [2013] 358 ITR 593 (SC)**

Assessee has only stated that he had surrendered the additional sum with a view **to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement** with the income tax department. **Statute does not recognize those types of defences under the *Explanation 1 to section 271(1)(c)***. It is trite law that the voluntary disclosure does not release the assessee from the mischief of penal proceedings under section 271(1)(c). The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty.

2. **CIT v. Reliance Energy Ltd. [2013] 220 Taxman 89 (SC)**

Interest on excess refund (Section 234D) is not leviable in case of assessments completed prior to 1-6-2003.

3. **Kathiroor Service Cooperative Bank Ltd. v. CIT [2013] 263 CTR 129 (SC)**

In view of provisions of section 133(6) as amended by Finance Act, 1995, assessing authority is empowered to issue notice calling for general information for purpose of any enquiry even in a case where proceeding is not pending against assessee.

4. **CIT v. Mastek Ltd [2013] 32 taxmann.com 380 (SC)**

High Court has power to frame substantial questions of law other than questions on which appeal has been admitted.

5. **CIT vs Birlasoft Ltd. (SC - Taxsutra)**

The issue was related to depreciation on computer peripherals like CD writer, Printer, Network Cables, Switches, isolators etc @ 60% i.e. the depreciation rate applicable to computers. When the matter reached the Delhi HC, it was observed that the issue was squarely covered by co-ordinate bench ruling in CIT vs BSEC Rajdhani Powers Ltd wherein it was categorically held that depreciation on computer accessories and peripherals would be admissible at the rate of 60%. The SLP filed by the revenue was dismissed.

6. **CIT vs Gujarat Fluoro Chemicals (SC - Taxsutra)**

SC ruling in Sandvik Asia Ltd. vs. CIT [(2006) 2 SCC 508] was reconsidered. The SC held that Sandvik Asia's ruling was misquoted and misinterpreted by the assesseees and also by

the Revenue. Assessee and Revenue interpreted the Sandvik Asia ruling in a way that the Revenue is obliged to pay an interest on interest in the event of its failure to refund the interest payable within the statutory period. However, in the case of Sandvik Asia, on account of inordinate delay on the part of the Revenue to refund certain amount which included the statutory interest, Revenue was directed to pay compensation for the same and not an interest on interest. Thus, SC clarified that only such interest, which is provided for under the statute, is to be claimed by an assessee from the Revenue and not any other interest on such statutory interest.

II. RECENT HIGH COURT / TRIBUNAL / AAR DECISIONS

BUSINESS INCOME

7. CIT v. Gujarat State Road Transport Corporation [2014] 41 taxmann.com 100 (Gujarat)

Due date of filing return of income under section 43B is not applicable under section 36(1)(va) to employees' contributions to PF/ESI etc. If it is not paid by the due date under PF Act, the same is not allowable.

8. CIT v. Mark Auto Industries Ltd. 220 Taxman 75 (P&H)

Where assessee deposited employer and employee's contribution to ESI and Provident Fund prior to filing of return under section 139(1), it was entitled to deduction of amount so deposited.

Disallowance u/s 40(a)(ia) is not attracted in case of capital expenditure.

9. Sonic Biochem Extractions (P.) Ltd. v. ITO [59 SOT 4(Mum.)]

Depreciation could not be disallowed u/s 40(a)(ia) for TDS defaults. Only revenue expenditure can be disallowed u/s 40(a)(ia).

10. CIT vs. Vijay Shree Ltd (Calcutta High Court) (Taxsutra)

Employees' PF/ ESI Contribution is also covered by s. 43B & allowable as a deduction if paid by "due date" of filing ROI.

a. ITC Ltd 112 ITD 57 (Kol) (SB) impliedly reversed.

b. Sabari Enterprises 298 ITR 141 (Kar) and P.M. Electronics Ltd 220 CTR 635 (Del) followed.

c. CIT vs. Alom Extrusion Ltd 390 ITR 306 (SC) relied on.

11. K. Kannan v. Asst. CIT [2013] 220 Taxman 250 (Madras)

Assessee, a civil contractor, did not maintain proper books of account and, thus, Commissioner (Appeals) having regard to profit margin of earlier years, adopted profit rate of 5 per cent of contractual receipts. Tribunal enhanced the same to 8% of gross turnover invoking provisions of Section 44AD. The court held that in absence of any discussion on merits, Tribunal could not enhance said profit rate to 8 per cent of gross turnover by invoking provisions of section 44AD, as the turnover was more than the limit specified in section 44AD.

12. CIT v. Naresh Kumar [2013] 39 taxmann.com 182 (Delhi)

Amendment made in section 40(a)(ia) by Finance Act, 2010 is retrospective in nature.

13. CIT v. Nasa Finelease (P.) Ltd. [2013] 358 ITR 305 (Delhi)

Derivative transactions carried on through National Stock Exchange even prior to recognition of NSE as recognised Stock exchange vide Notification No. 2/2006, dated 25-1-2006 are entitled to benefit under proviso (d) to section 43(5) i.e. considered as non speculative..

14. CIT v. Innvol Medical India Ltd. [2013] 219 Taxman 123 (Madras)

Amount waived off in furtherance of one time settlement of assessee's due, would not be added to assessee's income under section 41(1) as revenue receipt

Iskraemeco Regent Ltd. v. CIT (2011) 331 ITR 317 (Mad) followed.

15. CIT v. Great City Manufacturing Co. [2013] 351 ITR 156 (Allahabad)

Provisions of Sec. 40A(2) are not applicable to working partners' remuneration. Amount calculated as per Section 40(b) can not be disallowed u/s. 40A(2) on the ground of excessiveness.

16. CIT v. BSES Yamuna Powers Ltd. [2013] 358 ITR 47 (Delhi)

Computer accessories and peripherals being an integral part of computer systems are eligible for depreciation at higher rate of 60 per cent.

17. Banwari Sitaram Pasari HUF v. Asst. CIT [2013] 140 ITD 320 (Pune - Trib.)

Where assessee was engaged in online trading of commodities, as a speculative activity, there is no 'turnover' and hence there is no liability of assessee to get its accounts audited under section 44AB.

Recently Mumbai Tribunal has given a contrary ruling in Anahaita Nalin Shah vs. DCIT (Taxsutra).

18. Salil Shah Family (P.) Trust v. Asst. CIT [2013] 144 ITD 390 (Mumbai - Trib.)

Where assessee-trust invested its corpus fund in purchase of shares/securities through Portfolio Management Services, gain on sale of such shares/securities would be assessed as capital gains and not as business income.

19. Biocon Ltd. v. Dy. CIT [2013] 155 TTJ 649 (Bangalore - Trib.) (SB)

Discount on ESOP is an allowable deduction under section 37(1) during years of vesting on basis of percentage of vesting during such period, subject to adjustment at time of exercise of option.

20. S.P. Jaiswal Estates (P.) Ltd. v. Asst. CIT [2013] 147 TTJ 649 (Kolkata - Trib.) (TM)

Where profit earned by assessee before depreciation was more than total interest free advance given to its subsidiary and group companies, it would not be said that same were given out of interest bearing funds available to it, and interest on borrowings would not be disallowed on account of said interest free advances made.

CIT v. Reliance Utilities & Power Ltd. (2009) 313 ITR 340 (Bom) followed.

21. CIT v. J.J. Industries [2013] 358 ITR 531 (Gujarat)

Interest from fixed deposit of spare fund cannot be excluded from book profit for purpose of determining allowable deduction of remuneration paid to partners.

22. CIT v. Shiv Kumar [2013] 354 ITR 19 (Delhi)

Issue of expenses being excessive or not in terms of section 40A(2) is not a question of law but is a question of fact. Appeal not maintainable in HC.

23. CIT v. Sikandarkhan N. Tunvar [2013] 357 ITR 312 (Gujarat)

Section 40(a)(ia) would cover not only amounts which are payable as on 31st March of a particular year but also which are payable at any time during year. **Special Bench Ruling in Merilyn Shipping overruled.**

24. CIT vs Crescent Export Syndicate 216 Taxman 258 (Cal)

The provisions of section 40(a)(ia) of the Income Tax Act, 1961, are applicable not only to the amount which is shown as payable on the date of balance-sheet, but it is applicable to such expenditure, which become payable at any time during the relevant previous year and was actually paid within the previous year.

25. Pentasoft Technologies Ltd.vs. DCIT (Madras HC - Taxsutra)

Non-compete fees are entitled to depreciation u/s 32.

26. Mula Pravara Electric Co-op. Society Ltd. v. Dy. CIT [2013] 156 TTJ 517 (Pune - Trib.)

If assessee claims expenditure but ultimately if there is a loss and such loss cannot be set off under section 72, in such a situation section 41(1) cannot be invoked on subsequent realisation from that loss.

27. CIT v. DLF Commercial Developers Ltd. [2013] 261 CTR 127 (Delhi)

In case of certain types or classes of companies to whom Expl. to Sec. 73 applies, loss in trading of derivatives is speculative loss.

TDS (INCLUDING INTEREST FOR DEFAULTS)

28. CIT v. I.T.C. Ltd. [2013] 263 CTR 241 (Allahabad)

Where action of assessee for not deducting tax at source on conveyance allowance paid to its employees was based on bona fide belief, assessee could not be treated as assessee in default liable to interest under section 201(1A).

29. Gujarat Pipavav Port Ltd. v. Dy. CIT [2013] 40 taxmann.com 174 (Rajkot - Trib.)

First proviso to section 201(1) is inserted w.e.f. 1.7.2012 to give relief to assessee in case of failure to deduct tax. On fulfilment of certain conditions, the assessee is not treated as assessee-in-default for failure to deduct tax. The Tribunal has held that the said proviso could be applied retrospectively.

LOSS SET OFF / C FD

30. CIT v. Pursarth Trading Co. (P.) Ltd. [2013] 217 Taxman 113 (Bombay)

Long-term capital loss can be set off against short-term capital gain calculated under section 50 on long-term capital asset. Also see **CIT v. Manali Investment [2013] 219 Taxman 113 (Bombay)**

CAPITAL GAINS

31. CIT v. Bharti Mishra [2014] 41 taxmann.com 50 (Delhi)

Deduction u/s 54F cannot be denied for commencing construction of new house before the sale of 'original asset'.

32. Cairn UK Holdings Ltd. v. DIT [2013] 259 ITR 268 (Delhi)

As per proviso to Sec. 112(1), an assessee is entitled to pay tax on LTCG arising on sale of listed securities / units / zero-coupon bonds @ 10% without giving effect to the provisions of 2nd proviso to Sec. 48 (indexation benefit), instead of paying tax on the same LTCG @ 20% after indexation. The Delhi HC held that a non-resident assessee would be entitled to benefit of proviso to section 112(1).

Timken France SAS, In re (2007) 294 ITR 513(AAR) affirmed.

33. CIT v. Smt. Najoo Dara Deboo [2013] 218 Taxman 473 (Allahabad)

Capital gains would be charged only on receipt of sale consideration after development of land; and not when agreement was signed for development of land.

34. CIT v. Dynamic Enterprises [2013] 359 ITR 83 (Karnataka) (FB)

Where retiring partner took cash towards value of his share in partnership firm and there was no distribution of capital assets among partners, there was no transfer of capital asset and, therefore, no profits or gains chargeable to tax under section 45(4) arose in hands of assessee-firm.

35. Accra Investments (P.) Ltd. v. ITO (2013) 359 ITR 116 (Bom)

Where assessee by purchasing shares of company also acquired a right to manage it and, moreover, it kept those shares for a period of 31 months before selling them, it was to be concluded that entire transaction was on capital account and, thus, income arising from sale of shares was to be taxed as 'capital gains'.

36. CIT v. Gautam Manubhai Amin [2013] 218 Taxman 319 (Gujarat)

In computing long term capital gains on sale of inherited asset, indexed cost of acquisition is to be computed with reference to year first held by previous owner.

CIT v. Manjula J. Shah (2012) 204 Taxman 691 (Bom.) followed.

37. CIT v. Chandra Narain Chaudhri [2013] 219 Taxman 60 (Allahabad)

Where assessee objects before Assessing Officer that value adopted by stamp valuation authority under section 50C(1) exceeds fair market value of property on date of transfer, Assessing Officer may either accept valuation of property on basis of report of approved valuer filed by assessee or he may refer question of valuation of capital asset to DVO in accordance with section 55A.

38. CIT v. Kamal Wahal [2013] 351 ITR 4 (Delhi)

For claiming deduction of capital gains under section 54F, new residential house need not be purchased by assessee in his own name.

CIT v. Ravinder Kumar Arora (2012) 342 ITR 38 followed.

39. CIT v. Syed Ali Adil [2013] 352 ITR 418 (Andhra Pradesh)

Exemption under section 54 cannot be denied, where residential house property purchased by assessee consists of several independent units, even if such independent units are separated by a strong wall, or were purchased under separate sale deeds.

CIT v. D. Ananda Basappa (2009) 309 ITR 329 (Kar.), Prem Prakash Bhutani v. Asstt. CIT (2009) 31 SOT 38 (Del) (URO) followed.

40. CIT v. Gita Duggal [2013] 357 ITR 153 (Delhi)

Merely because a residential house consists of several independent residential units situated on different floors, it would not take away deduction under section 54/54F.

CIT v. D. Ananda Basappa (2009) 309 ITR 329 (Kar.) and CIT v. Smt. K.G. Rukminiamma (2011) 196 taxman 87 followed.

41. CIT v. Jagtar Singh Chawla [2013] 359 CTR 388 (Punjab & Haryana)

Where assessee paid substantial amount of sale consideration of a residential house for purchase of another residential property within extended period of limitation of filing of return under section 139(4), his claim for deduction under section 54F was to be allowed.

42. Coromandel Industries (P.) Ltd. v. Asst. CIT [2013] 145 ITD 171 (Chennai - Trib.)

Where assessee within six months from date of transfer of capital asset was able to place investment of Rs. 50 lakhs each in specified assets in two different financial years, restrictive proviso to section 54EC would not limit claim to Rs. 50 lakhs only.

Smt. Sriram Indubal v. ITO (2013) 32 Taxmann.com 118 (Chennai) followed.

Areva T & D India Ltd. v. Asstt. CIT (2010) 326 ITR 540 (Mad.) distinguished.

Also refer Shri Vivek Jairabhoy vs. DCIT (Bang. Trib - Taxsutra) & Shri Aspi Ginwala Vs CIT (Ahd .Trib - Taxsutra).

However, a contradictory decision was given in ACIT Vs Shri Raj Kumar Jain & Sons. (Jaipur –Trib.)

43. ITO v. Zinger Investments (P.) Ltd. [2013] 38 taxmann.com 388 (Hyderabad - Trib.)

Where no monetary consideration was involved in transfer of manufacturing division with all its assets and liabilities under scheme of amalgamation approved by High Court, same could not be considered to be a slump sale within meaning ascribed under section 2(42C) so as to attract liability of capital gain under section 50B.

44. CIT v. R. Nagaraja Rao [2012] 352 ITR 565 (Kar.)

Where assessee, under a family arrangement had transferred his share in profit / loss held in a firm in favour of a family member, it was held that there was no transfer.

45. Land Breez Co. Operative Hosing Society Ltd. v. ITO [2013] 55 SOT 103 (Mum.)

Though transfer of 'transferable development rights' is a transfer of capital asset, since there can be no cost of acquisition of such rights, capital gain arising therefrom cannot be computed and, therefore, the capital gain tax is not chargeable.

46. Smita Conductors Ltd. vs. DCIT (Mum. Trib. - Taxsutra)

The assessee sold an immovable property which was treated as business asset and was forming part of block of assets. It was held that only gain arising on sale of the said property would be deemed to be short term; if the property is held for more than 36 months, gain arising therefrom would be chargeable at the rate specified u/s 112 for LTCG.

47. CIT v. Raman Kumar Suri (2013) 81 DTR 33 (Bom.)

S. 50C of IT Act 1961 does not apply to transfer of immovable property held through company.

48. Irfan Abdul Kader Faziani Vs ACIT [56 SOT 12 (Mum)] & ITO Vs Prem Ratan Gupta (Mum)

Sec. 50C does not apply to transfer of FSI & TDR .

49. Bharat Bijilee Ltd. v. Addl. CIT [2012] 54 SOT 571 (Mum.)

In view of provisions of section 2(42C), it is only a transfer as a result of sale (and not exchange) that can be construed as a slump sale.

EXEMPTIONS UNDER CHAPTER III & DEDUCTIONS UNDER CHAPTER VI-A

50. CIT v. EHPT India (P.) Ltd. [2011] 350 ITR 41 (Delhi)

Merely because there can be more than one method of apportioning common expenses between STP and domestic units, method of head count followed by assessee cannot be discarded, that too mid-way, even though it was not questioned at any time in past.

51. ITO v. Keval Construction [2013] 354 ITR 13 (Gujarat)

Addition to income on account of disallowance u/s 40(a)(ia) also qualifies for deduction u/s 80-IB.

52. DIT (Exemptions) v. Meenakshi Amma Endowment Trust [2013] 354 ITR 219 (Karnataka)

Where trust had approached authority for registration under section 12A within a span of eight months of its formation, only objects of trust for which it was formed, and not its activities, would have to be examined for one to be satisfied about its genuineness.

53. DIT (Exemption) v. Panna Lalbhai Foundation [2013] 216 Taxman 148 (Gujarat)

Only because trust has not commenced activities, Commissioner would have no authority to ipso facto reject application for registration under section 12AA

54. CIT v. Sheela Christian Charitable Trust [2013] 354 ITR 478 (Madras)

Period of six months provided in section 12AA(2) for disposal of application seeking registration is only directory and, therefore, not passing an order within said period would not automatically result in granting registration to trust.

55. CIT v. Technovate E Solutions (P.) Ltd [2013] 32 taxmann.com 290 (Delhi)

Approval granted by Director of STPI is sufficient approval so as to satisfy conditions relating to approvals under section 10A.

FILING OF RETURN, ASSESSMENT, SEARCH, SURVEY, SETTLEMENT etc.

56. Shahbad Cooperative Sugar Mills Ltd. v. Dy. CIT [2013] 218 Taxman 352 (Punjab & Haryana)

Where revenue dispatched notices under section 143(2) for two assessment years together in same envelope through post, and assessee accepted to have received one, while denied receipt of other one, presumption of service to assessee was to be accepted.

57. Xerox Modicorp Ltd. v. Dy. CIT [2013] 350 ITR 308 (Delhi)

Where during original assessment, assessee furnished all details regarding royalty payment made to a foreign concern in lieu of taking technical assistance, mere audit objection that royalty payment resulted in a capital benefit would not constitute tangible material on basis of which assessment could be reopened.

58. Rural Electrification Corporation Ltd. v. CIT [2013] 355 ITR 345 (Delhi)

To re-open an assessment beyond prescribed time-limit, section 153 requires that income which is excluded from total income of one person must be held to be income of another person and such other person should be given an opportunity of being heard.

In absence of opportunity of hearing given to assessee, deeming provision provided in Explanation 3 to section 153 did not get attracted and, thus, bar of limitation prescribed under section 149 would not be lifted.

59. CIT v. Shardaben K. Modi [2013] 217 Taxman 89 (Gujarat)

In the absence of any independent material, statement of assessee's son recorded during survey would not form a valid basis for reopening assessment of assessee.

60. Pawan Kumar Aggrawal v. Asst CIT [2013] 40 taxmann.com 489 (Delhi - Trib.)

Mistake committed by assessee in return of income cannot be rectified by Assessing Officer under section 154.

APPEALS & REVISION

61. CIT v. Amtrex Ambience Ltd. [2013] 40 taxmann.com 308 (Gujarat)

While considering tax effect for purpose of preferring appeal by revenue, Tribunal was required to consider notional tax effect in case of negative income of assessee.

62. CIT v. Sam Global Securities Ltd. [2013] 38 taxmann.com 129 (Delhi)

IT department is not expected to raise revenue from an ignorant assessee; AO obliged to extend relief to such an assessee.

In this case, decision in Goetze (India) Ltd. was distinguished on the ground that the said case was limited to the power of the assessing authority and did not impinge upon the power of the Tribunal. Observing that the Tribunal's jurisdiction is comprehensive and assimilates issues in the appeal from the order of the CIT (Appeals) and the tribunal has the discretion to allow a new ground to be raised.

Circulars and Notifications : Circular No. 114 XL-35 of 1955, dated 11-4-1955 relied upon.

63. CIT v. Anand Food Products [2013] 39 taxmann.com 187 (Andhra Pradesh)

Where Assessing Officer had taken into accounts all details and made addition wherever required, same could not be said to be prejudicial to interest of revenue, merely because no detailed discussion was made.

64. CIT v. Smt. Vijaya V. Kavekar [2013] 350 ITR 237 (Bombay)

Instruction No. 3 of 2011, dated 9-2-2011, specifying monetary limit of Rs. 10 lakhs for maintainability of appeal before High Court is applicable on pending appeals as well.

65. CIT v. Smt. B. Sumangaladevi [2012] 352 ITR 143 (Kar.)

Instruction No. 3/2011, dated 9-2-2011 fixing monetary limit for filing of appeal by income-tax department has no retrospective effect and it will be applicable to cases filed on or after 9-2-2011.

66. Dy. CIT v. Atul Auto Ltd. [2013] 144 ITD 1 (Rajkot - Trib.) (TM)

In case of unreported judgment, which was neither cited by parties nor that was brought to notice of Bench nor to notice of Member proposing order, it should not be used by another Member for passing appellate order, without allowing any opportunity in this behalf to parties.

PENALTIES

67. CIT v. Makino Asia (P.) Ltd. [2013] 264 CTR 172 (Karnataka)

Where Assessing Officer did not reject assessee's claim of set off of brought forward loss (AY 1998-99) specifically by passing an assessment order, similar claim raised by the assessee for set-off of loss of the same year (AY 1998-99) by assessee in subsequent assessment year would not amount to furnishing of inaccurate particulars of income so as to pass a penalty order under section 271(1)(c).

68. CIT v. DCM Ltd. [2013] 262 CTR 295 (Delhi)

If a claim made by the assessee was rejected in view of legal position, which was against assessee and not because of statement of incorrect or wrong facts, penalty u/s 271(1)(c) could not be levied.

69. CIT v. Leroy Somer & Controls (India) (P.) Ltd. [2013] 261 CTR 561 (Delhi)

Where order under section 271G did not mention which document or information mentioned in notice under section 92D(3) was not furnished by assessee, penalty under section 271G could not be sustained.

70. CIT v. Smt. M. Yesodha [2013] 351 ITR 265 (Madras)

Where owing to urgent need of money, father-in-law of assessee paid purchase price of property directly to seller on assessee's behalf, transaction did not attract provisions of section 269SS and therefore, penalty u/s 271D was not leviable.

71. CIT v. U.P. Rajya Sahkari Evam Bhoomi Vikas Bank Ltd. [2013] 353 ITR 152 (Allahabad)

Delay on part of auditors to audit the books of accounts is a reasonable cause for delay as per Sec. 273B. Therefore, penalty u/s 271B is not leviable.

72. CIT v. HCIL Kalindee Arsspl [2013] 37 taxmann.com 347 (Delhi)

Merely because assessee complied with statutory procedural requirement of filing prescribed form and certificate of Chartered Accountant as required for claiming deduction under section 80-IA, it could not be absolved of its liability to pay penalty under section 271(1)(c), if act or attempt in claiming such deduction was not bona fide.

73. CIT(TDS) v. DHTC Logistics Ltd. [2014] 41 taxmann.com 439 (Delhi)

Penalty under section 272B cannot be imposed by calculating number of defective entries in each return and by multiplying them with Rs. 10,000

Circulars and Notifications : CBDT's letter No. 275/24/2007 - IT (B), dated 5-8-2008.

Asstt. CIT v. DHTC Logistics Ltd. [2014] 41 taxmann.com 438 affirmed.

INTEREST PAYABLE / RECEIVABLE BY THE ASSESSEE

74. CIT v. SAB Industries, Chandigarh [2013] 40 taxmann.com 175 (Punjab & Haryana)

Interest u/s 234B would not be applicable in case of retrospective withdrawal of deduction.

75. CIT v. Sahara India Savings & Investment Corpn. Ltd. [2013] 218 Taxman 363 (All)

Where refund is pending before authorities, failure to apply for refund cannot be treated as delay attributable to assessee for denial of interest on refund since no application is required for this purpose in view of the mandatory provision under section 244A(1)(b) of the Act as observed in the case of National Horticulture Board v. Union of India (2002) 253 ITR 12 (P&H).

CASH CREDITS, UNEXPLAINED INVESTMENTS ETC.

76. CIT v. Riddhi Steel and Tubes (P.) Ltd. [2013] 220 Taxman 148 (Gujarat)

Inflation in the value of stock for the purpose of fulfilling margin requirements in case of bank loan is not a ground to make addition u/s 69B.

77. CIT v. Sathyanarayan P. Rathi [2013] 351 ITR 150 (Gujarat)

Where though purchase of raw material was not made from party from whom assessee claimed but such material was purchased from open market incurring cash payment, only profit element of such purchases and not entire purchases was to be added to income of assessee.

78. Gold Star Finvest (P.) Ltd v. ITO [2013] 33 taxmann.com 129 (Mumbai - Trib.)

Where assessee, a share broker, earned commission on providing accommodation entries to its customers, it was only the commission which could be added to assessee's taxable income and not entire amount representing value of transaction.

79. Dulari Digital Photo Services (P.) Ltd. v. CIT [2013] 219 Taxman 126 (Punjab & Haryana)

Assessee had shown commodity income under the head 'Income from other sources', after set-off of loss from the same source. However, during assessment, it was found that the same was earned from a sham transaction, not relatable to business of assessee. It was held that income can be taxed under a specific head of income as enumerated in section 14 only when it is possible to peg the same to a known source/head of income. Chapter IV contemplates computation of income arising from known sources/heads of income whereas Chapter VI, on the other hand, contemplates aggregation of the entire sum, the nature and sources of which are not known. The aforesaid two Chapters are completely different in their nature, scope and effect. Though the incomes assessable under them are part of total income as defined in sections 2(45)/4/5 of the IT Act yet that does not mean that the income assessable under section 68 has to be assessed u/s 56. Thus, the said income would be assessed u/s 68 and not under the head 'Income from other sources'.

80. CIT v. A.L. Lalpuria Construction (P.) Ltd [2013] 215 Taxman 12 (Rajasthan)

Oral statement of third party recorded by search authorities which was never placed to be confronted by assessee and no documentary evidence was supplied to assessee could not be considered in making addition on account of alleged accommodation entries.

MISCELLANEOUS

81. Azimganj Estate (P.) Ltd. v. CIT [2012] 352 ITR 82 (Cal.)

Where assessee (builder) constructed some flats for sale and disclosed rental income derived from letting out of unsold flats as 'Income from house property', rental income could not be treated as business income merely because assessee in wealth tax proceedings claimed that unsold flats were stock-in-trade of its business.

82. CIT v. Ansal Housing Finance & Leasing Co. Ltd.* [2013] 354 ITR 180 (Delhi)

Annual Lettable Value of unsold flats, built by assessee engaged in construction business, is assessable as income from house property.

83. CIT v. Tripti Menthol Industries [2013] 217 Taxman 102 (Gujarat)

Excise duty was refunded for creation of industrial atmosphere and environment, which would provide additional source of employment, such incentive designed to achieve public purpose could not be construed as production or operational incentive, and, therefore, it was a capital receipt not chargeable to tax.

84. Bhoruka Engineering Inds. Ltd. v. Dy. CIT [2013] 356 ITR 25 (Karnataka)

Where arrangement of assessee to avoid payment of tax did not contravene any statutory provision and was achieved within four corners of law, it cannot be found fault with.

85. REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404 (Kolkata - Trib.)

Disallowance under rule 8D with respect to income not includible in total income cannot be computed by taking into consideration entire value of investment from which such income has been earned.

86. D.H. Securities (P.) Ltd. v. Dy. CIT [2014] 41 taxmann.com 352 (Mumbai - Trib.) (TM)

Disallowance under section 14A can be made even in cases where dividend income has been earned on shares held as stock-in-trade.

87. CIT v. Madhav Enterprise (P.) Ltd. [2013] 356 ITR 588 (Gujarat)

'Earnest Money' not a loan or deposit; its repayment in cash does not violate section 269T provisions.

88. B.R.K. Finance & Inv. Company Ltd. v. ITO [2013] 220 Taxman 145 (All)

Assessee-company had admitted certain tax liability under section 115JB which was to be paid on or before 31-10-2007. However, the same was not deposited. An intimation u/s 143(1) was passed creating tax liability on assessee and thereafter an order was passed u/s 226(3) attaching bank account of assessee. The assessee filed a Writ petition praying for direction to quash notice under section 226(3), to refund unadjusted balance and to allow it to make payment of demanded tax in 4 quarterly instalments, on the basis that since the assessee paid tax on MAT, it was entitled to credit of tax to be paid upto next seven years (as per the law then prevalent).

It was held by the Allahabad HC that since liability was admitted, there was no question of giving time to pay tax by giving instalments for which there is no provision under Act or Rules. Further, there is no provision under Act to refund amount which has been admitted and which has been paid by assessee as MAT company and, therefore, no relief could be granted to assessee.

III. RECENT CIRCULARS BY CBDT

1. CIRCULAR NO. 7/DV/2013 [FILE NO.279/MISC./M-116/2012-ITJ], DATED 16-7-2013

Applicability of Chapter IV of the Act and set off and carry forward of business losses in case of units eligible for tax holiday u/s 10AA& Sec. 10B.

2. CIRCULAR NO. 3/2013 [F NO. 500/139/2012], DATED 26-3-2013 (Relevant for Transfer Pricing Provisions)

Clarifications on functional profile of development centres engaged in contract R&D services with insignificant risk - Conditions relevant to identify such development centres.

[See also amendment made by Circular No. 6/2013, DATED 29-6-2013]

3. CIRCULAR NO. 1/2013 [F. NO. 178/84/2012-ITA.I], DATED 17-1-2013

Clarification on issues relating to on site development of computer software whether treated as export.

4. CIRCULAR NO. 1/2014 [F.NO.275/59/2012-IT(B)], DATED 13-1-2014

Clarification regarding no TDS on service tax component comprised of payments made to residents.

5. CIRCULAR NO.5/2014 [F.NO.225/182/2013-ITA.II], DATED 11-2-2014

Clarification on disallowance of expenses under section 14A in cases where corresponding exempt income has not been earned during the financial year.

6. CIRCULAR NO. 4/2014 [F.NO.225/198/2013-ITA.II], DATED 10-2-2014

Extension of time limit for filing ITR-V form (with refund claims) for AY 2009-10, AY 2010-11 & AY 2011-12 till 31.3.2014.

IV. RECENT NOTIFICATIONS BY CBDT

1. NOTIFICATION NO.96/2013 [F.NO.142/15/2013-TPL]/SO 3794(E), DATED 23-12-2013

Amendment is made to Rule 114 regarding application for allotment of PAN.

2. NOTIFICATION NO. 92/2013 [F.NO.142/31/2013-TPL]/SO 3539(E), DATED 29-11-2013

Multi Commodity Exchange of India Limited, Mumbai is recognised for the purpose of clause (iii) of the Explanation 2 of clause (e) of the proviso to clause (5) of section 43.

3. NOTIFICATION NO. 91/2013 [F.NO. 142/31/2013-TPL(PT.-II)]/SO 3514(E), DATED 27-11-2013

Universal Commodity Exchange Limited, Mumbai is recognised for the purpose of clause (iii) of the Explanation 2 of clause (e) of the proviso to clause (5) of section 43.

4. NOTIFICATION NO. 90/2013 [F.NO. 142/31/2013-TPL(PT.-I)]/SO 3513(E), DATED 27-11-2013

National Commodity and Derivatives Exchange Limited, Mumbai is recognised for the purpose of clause (iii) of the Explanation 2 of clause (e) of the proviso to clause (5) of section 43.

5. NOTIFICATION NO. 79/2013 [F.NO.149/54/2013-TPL]/SO 3034(E), DATED 7-10-2013

Amendment made to Reverse Mortgage Scheme, 2008.

6. NOTIFICATION NO. 73/2013 [F.NO.142/28/2013-TPL]/SO 2810(E), DATED 18-9-2013

Safe Harbor Rules notified.

7. NOTIFICATION NO. 67/2013 [F. NO. 149/119/2012-SO (TPL)]/SO 2659(E), DATED 2-9-2013

Substitution of Rule 37BB (*Furnishing of information by deductor making payment to to a non-resident*) and Form Nos. 15CA AND 15CB

8. NOTIFICATION NO. 57/2013 [F.NO.142/16/2013-TPL]/SO 2331(E), DATED 1-8-2013

Amendment In Rule 21AB (Certificate for claiming relief under an agreement referred to in sections 90 and 90A) and insertion of Form 10F

- 9. NOTIFICATION NO. 54/2013 [F.NO.142/29/2012-SO(TPL)/SO 2166(E), DATED 15-7-2013**
Guidelines for approval of skill development project under section 35CCD notified.
- 10. NOTIFICATION NO. 47/2013 [F.NO. 142/12/2013-TPL]/SO 1856(E), DATED 26-6-2013**
Insertion of Rule 21AC and Form No. 10FC - Furnishing of authorisation and maintenance of documents etc. for the purposes of section 94A (Transactions with persons located in notified jurisdictional area)
- 11. NOTIFICATION NO.GSR 402(E) [F.NO.4/2/2013-NS-II], DATED 25-6-2013**
Amendment to Senior Citizens Savings Scheme Rules, 2004.
- 12. NOTIFICATION NO.41/2013 [F.NO.142/42/2012-TPL]/SO 1491(E), DATED 10-6-2013**
Amendment in Rules 10A, 10AB, 10B, 10C, 10D & 10E and substitution of Form No. 3CEB.
- 13. NOTIFICATION NO. 39/2013 [F.NO.133/23/2013-SO(TPL)(Pt.)]/SO 1404(E), DATED 31-5-2013**
Amendment in Rules 30, 31 & 31A and insertion of Form Nos. 16B & 26QB and substitution of Form No. 24Q (for TDS on immovable property u/s 194-IA).
- 14. NOTIFICATION NO. 38/2013[F.NO.142/30/2012-SO(TPL)]/SO 1393(E), DATED 30-5-2013**
Insertion of Rules 6AAD & 6AAE AND FORM NOS.3C-O & 3CP - Guidelines for approval of agricultural extension project under section 35CCC notified.
- 15. NOTIFICATION NO. 30/2013/[F.NO.500/185/2011-FTD-I]/SO 962(E), DATED 15-4-2013**
Tolerable limit for determination of ALP under second proviso to 92C(2) notified.
- 16. NOTIFICATION NO. 9/2014 [F.No.173/10/2014-(ITA-I)]/SO 199(E), DATED 22-1-2014**
Foreign Portfolio Investors registered under the new SEBI (FPI) Regulations, 2014 are specified as Foreign Institutional Investors for the purposes of clause (a) of the Explanation to section 115 AD.
- 17. NOTIFICATION NO. 5/2014 [F.NO.142/32/2013-TPL]/SO 108(E), DATED 15-1-2014**
Amendment in Rule 44CA - Disclosure of information in the application for settlement of cases.

"It is better to travel well than to arrive."

~ Lord Buddha