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I. RECENT SUPREME COURT DECISIONS

1. **Queen's Educational Society v. CIT (2015) 372 ITR 699 / 275 CTR 449 / 117 DTR 1/ 231 Taxman 286 (SC); UOI v. Pinegrove International charitable Trust & Ors. 275 CTR 449 / 117 DTR 1 (SC);**
   Court held that:(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.
   (2) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive.
   (3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.
   (4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.
   (5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons.
   (6) The correct tests which have been culled out in the three Supreme Court judgments, namely, Surat Art Silk Cloth 121 ITR 1 (SC), Aditanar 224 ITR 310 (SC), and American Hotel and Lodging, would all apply to determine whether an educational institution exists solely for educational purposes and not for purposes of profit.
   (7) In addition, we hasten to add that the 13th proviso to Section 10(23C) is of great importance in that assessing authorities must continuously monitor from assessment year to assessment year whether such institutions continue to apply their income and invest or deposit their funds in accordance with the law laid down. Further, it is of great importance that the activities of such institutions be looked at carefully. If they are not genuine, or are not being carried out in accordance with all or any of the conditions subject to which approval has been given, such approval and exemption must forthwith be withdrawn. All these cases are disposed of making it clear that revenue is at liberty to pass fresh orders if such necessity is felt after taking into consideration the various provisions of law contained in Section 10(23C) read with Section 11 of the Income Tax Act.

2. **CIT .v. Bhagat Construction Co. Pvt. Ltd. (2015) 279 CTR 185 (SC); CIT v. M.R.G.Plastic Technologies & Ors. (2015) 279 CTR 185 (SC)**
   Interest u/s 234A/B/C is automatic if conditions are met. Form I.T.N.S. 150 is a part of the assessment order and it is sufficient if the levy of interest is stated there even though the assessment order did not contain any direction to charge interest.

3. **CIT v. Suman Dhamija (SC)** [2015] 60 taxmann.com 460 (SC)
   CBDT Instruction No. 3/2011 dated 9.2.2011 specifying monetary limits for filing appeals by the department applies only to appeals filed after that date and not to pending appeals. However, CBDT has issued a new Circular no. 21/2015 dated 10.12.2015 stating clearly that it shall apply even to pending appeals.

4. **CIT v. Sapthagiri Distilleries Ltd. (2015) 229 Taxman 487 (SC)**
   Prior to insertion of clause (va) of section 28, compensation amount received towards loss of source of income and non-competition fee could only be treated as capital receipt and was not liable to tax. Special leave petition filed against impugned order was to be dismissed.

5. **Mangalore Ganesh Beedi Works .v. CIT (SC) [2015] 62 taxmann.com 400 (SC)**
   Even prior to the insertion of "intangible assets" in s. 32, intellectual property rights such as trademarks, copyrights and know-how constitute "plant" for purposes of depreciation.

6. **ACIT v. Victory Aqua Farm Ltd.(SC) [2015] 61 taxmann.com 166 (SC)**
   The "functional" test has to be applied to determine whether an asset is "plant". Even a pond designed for rearing prawns can be "plant".

7. **Seshasayee Paper & Boards Ltd. v. CIT(2015) 374 ITR 619 (SC); Madras Oxyzen and Acetylene Co. Ltd v. CIT (2015) 374 ITR 619 (SC)**
   The assessee claimed the depreciation allowance insofar as it pertained to the current year. At the same time, it did not want to claim the set off of the unabsorbed depreciation allowance of the previous years. The Supreme Court had to consider whether it is open to the assessee to invoke the provisions of Section 32 of the Act by claiming depreciation of the current year, but at the same time choose not to make a claim of set off of unabsorbed depreciation allowance of the previous years. The SC held that once the unabsorbed carried forward depreciation becomes part of the depreciation of the current year, it is not open to the assessee to bifurcate the two again and exercise its choice to claim the depreciation of the current year under section 32(1) and take a position that since unabsorbed depreciation of the previous years is not claimed, it cannot be thrusted upon the assessee.

8. **Chennai Properties and investment ltd. vs. CIT - 373 ITR 673(SC)**
   Where in terms of memorandum of association, main object of assessee-company was to acquire properties and earn income by letting out same, said income was to be brought to tax as business income and not as income from house property.

9. **Taparia Tools Ltd. v. JCIT – 372 ITR 605 (SC)**
   Assessee company issued debentures for 5 years and as per one of payment options, made one time upfront discounted interest payment instead of making payment of interest periodically, entire amount so paid was to be allowed as deduction in year of payment itself. The SC held that revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure in that year, the IT Department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of 'Matching Concept' is satisfied, which upto now has been restricted to the cases of debentures.

10. **CIT vs. Sarkar Builders - 375 ITR 392 (SC)**
    The definition of “housing project” was amended w.e.f. 1.4.2005 to provide that the benefit of Section 80IB(10) would not be admissible to these assessees/developers in case the area utilised for shops and commercial establishment exceeded 5% of the aggregate built-up area of the housing project or 2000 sq. feet, whichever is less. The question before SC was whether the above amendment applies to housing project approved before 31.3.2005 but completed on or after 1.4.2005. The SC observed that one cannot expect an assessee to comply with a condition that was not a part of the statute when the housing project was approved and accordingly, restriction on

extent of commercial area in “housing project” imposed w.e.f. 1.4.2005 does not apply to housing projects approved before 1.4.2005 even though completed on or after 1.4.2005.

11. **CIT vs. Jai Laxmi Rice Mills - 379 ITR 521 (SC)**
Pursuant to directions issued by Commissioner (Appeals), Assessing Officer passed a fresh assessment order wherein no satisfaction was recorded for initiating penalty proceedings under section 271E, impugned penalty order passed under said section deserved to be set aside

12. **DCIT v. V. Ram Prasad - [2016] 65 taxmann.com 64 (SC)**
SLP granted against High Court's ruling that Tribunal has power to look into a validity of a search for purpose of determining jurisdiction for making a block assessment

13. **Castleton Investment Ltd. v. DIT – 62 taxmann.com 43 (SC)**
Provisions of Minimum Alternate Tax (MAT) would not apply to FIIs and FPIs not having Business/Permanent Establishment in India for period prior to 1-4-2015.

14. **DIT v. Working Women`s Forum – 63 taxmann.com 324 (SC)**
SLP dismissed against High Court's ruling that in case of a trust registered under section 12AA, only such part of income which is violative of section 13(1)(d) can be brought to tax at maximum marginal rate and entirety of income cannot be denied exemption under section 11

15. **CIT v. Henkel Spic India Ltd. - 64 taxmann.com 405 (SC)**
Assessee opened a public issue of shares in financial year 1991-92. Application money received from intending subscribers were kept in bank upon which interest was accrued. Shares were allotted in financial year 1992-93. Assessing Officer taxed interest income in assessment year 1992-93 as money was received in financial year 1991-92. The question is with respect to the year in which the interest is taxable. The SC held that it is only after the allotment process is completed and all moneys payable to those to whom moneys are refundable are refunded together with interest wherever interest becomes payable, the balance remaining out of the interest earned on the application money can be regarded as belonging to the company and therefore, taxable in assessment year 1993-94.

16. **Fibre Boards (P.) Ltd. v. CIT – 62 taxmann.com 135 (SC)**
The assessee, a private limited company, shifted industrial unit from urban area to non-urban area. During the process, it sold its land, building and plant and machinery and earned capital gain. The payment of advances to different persons for purchase of land, plant and machinery, construction of factory building etc. was claimed as deduction under section 54G. The AO and appellate authorities denied exemption as there was no ‘purchase’ and the amounts were paid ‘towards purchase’ in the relevant assessment year. The SC held that section does not require that the machinery etc. has to be acquired in the same Assessment Year in which the transfer takes place. It is sufficient if the capital gain is “utilized” towards purchase of P&M by giving advances to suppliers.

17. **Japan Airlines Co. Ltd. v. CIT – 60 taxmann.com 71 (SC)**
Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I.

II. RECENT HIGH COURT / TRIBUNAL / AAR DECISIONS

BUSINESS INCOME

18. **Thamizh Thai Seva Trust v. DIT (2015) 67 SOT 166 (URO)(Chennai)(Trib.)**
The assessee-trust contemplates to organize milk societies for facilitating sale of milk; the underlying intention is to get good price for the milk sold by the villagers and also to encourage them to rear their own milk animals. The villagers can earn a decent livelihood by engaging themselves in rearing of milk animals and selling of milk without middlemen and exploitation, through the societies formed under the guidance of the assessee trust. This is the same case with other proposed activities like ginning, spinning, fruit processing etc., where labour of the village women-folk can be fruitfully deployed, to keep away exploitation. The Hon'ble Appellate Tribunal held that the economic activities in the above nature cannot be treated as activities in the nature of trade, commerce or business as contemplated in proviso to section 2(15).

19. **Bagmane Constructions (P.) Ltd. .v. CIT (2015) 231 Taxman 260 (Karn.)(HC); CIT .v. Amrik Singh (2015) 231 Taxman 731 (P&H)(HC); Ishwar Chand Jindal v.ACIT (2015) 171 TTJ 436 (Delhi)(Trib.)**
Advance in the course of business is not assessable as deemed dividend. Where an advance is given to a shareholder holding 10% or more voting power or to a concern in which such shareholder has substantial interest which is in the nature of a trade advance to give effect to commercial transactions, such an advance would not fall within the ambit of provisions of S. 2(22)(e).

20. **CIT v. Sportsfield Amusement (2015) 231 Taxman 252 (Bom.)(HC)**
Assessee-club collected non-refundable deposits from its members which was operational for a period of 10 years with a rider that liability attached to pay membership fee was for 10 years. Fee was to be spread over a period of 10 years and whole amount could not be taxed in year of receipt.

21. **Omniglobe Information Tech India Pvt. Ltd. .v. CIT (2015) 115 DTR 265 (Delhi HC).**
The assessee was in the business of voice activation and local number portability, i.e. BPO services, which were made available to M/s Omniglobe International, USA – the holding company. The assessee was incorporated on 19-03-2004 and claimed deduction under section 10B, of the Income-tax Act for a period commencing from 01-04-2004 to 31-05-2004, contending that it had obtained approval as a 100% EOU under the STPI scheme and had commenced operations from 01-04-2004. The AO held that the assessee had commenced its operations only from 01-06-2004, i.e. the date on which the assessee entered into the "service agreement" with its parent company and, therefore, the expenditure incurred between 01-04-2004 to 31-05-2004 should be capitalised. It was held that training, imparting skills to employees recruited, or testing their performance cannot be treated as a pre-setup expenditure. The moment employees were recruited and enrolled, and infrastructure to use their service was in place, setup was complete. It was indicative of the fact that business operations had been set up. In the BPO industry, training of employees is an important, essential and integral element of the business activities and when the assessee has the infrastructure in place, the business can be treated as set-up.

22. **ACIT .v. Steller Developer (P) Ltd. (2015) (Mum.)(Trib)**
Developing malls and business centre on property owned by it, letting out the same also providing various facilities in the said business centre is assessable as business income.

23. **Centrum Broking Ltd. v. ACIT (2015) 39 ITR 23 (Mum.)(Trib.); IDBI Capital Market services Ltd. v. DCIT(2015) 42 ITR 379 (Mum.)(Trib.)**

Mark to market loss on derivatives cannot be treated as contingent liability and is allowed as deduction.

24. **CIT v. Santogen Silk Mills Ltd. (2015) 231 Taxman 525 (Bom.)(HC)**
Waiver or cessation of liability to repay bank loan taken to purchase a capital asset did not result in a revenue receipt and it was not taxable under section 28(iv).

25. **CIT v. Noida Medicare Centre Ltd(2015) 378 ITR 65 (Delhi)(HC)**
Customs duty paid in a later year can be capitalized in the year the obligation to pay the duty arose even though the assets were capitalised in the earlier years.

26. **CIT v. Yum Restaurants (I) Pvt. Ltd. (2015) 371 ITR 139 (Delhi HC)**
The assessee reimbursed the expenses incurred by its employees on purchase of furnishings. Such reimbursements were made by the assessee to the employees only to the extent of their entitlement (determined on the basis of their grade or level in terms of their appointment letters). These expenses could not be, therefore, termed as personal to the assessee's employees but were for its business purposes and was entitled to depreciation.

27. **CIT v. MAC Charles (India) Ltd. (2015) 273 CTR 596 (Karn.)(HC)**
Expenditure incurred for replacing the floor, furniture and carpet area allowable as revenue expenditure as on its incurrence, no new asset has come into existence.

28. **CIT v. Om Metals & Mineral (P) Ltd. (2015) 373 ITR 406 (Raj.)(HC)**
Assessee made a provision for supplies at the rate of 6.5% of the supplies for possible loss due to deduction by the Government for not keeping the supplies to the satisfaction of the Department. The AO disallowed the same stating that it was contingent in nature. It was held that the provision was an allowable expenditure since the liability was ascertained and the Government had in fact deducted at the rate of 10%. Once the entire receipt was shown as income, the corresponding expenditure ought to be allowed.

29. **CIT v. IBM India Ltd. (2015) 230 Taxman 544 (Karn.)(HC)**
Provision for obsolescence in inventory was an allowable deduction. Accounting treatment and presentation in financial statements of transactions should be covered by a substance and not merely by legal form. The Court held that; since accounting treatment given by assessee was in compliance with provisions of AS-2 and assessee was following this mode regularly, provision for obsolescence in inventory was an allowable deduction.

30. **CIT v. Hitachi Koki India Ltd. (2015) 230 Taxman 643 (Karn.)(HC)**
Assessee, alongwith others, secured loan taken by company 'E' by executing bills of exchange which were accepted on behalf of assessee by its managing director. When default was committed, creditors moved High Court for repayment of loans against 'E' and, thus, co-acceptors of bills of exchange. Suit was decreed against assessee and three others and in order to avoid execution of said decree against it by way of attachment, arrest and to protect name of assessee, said amount was paid by assesse. The Court held that there was commercial expediency in payment of such amount and, therefore, it was allowable as expenditure.

31. **CIT v. Yum Restaurants (I) Pvt. Ltd. (2015) 371 ITR 139 (Delhi) HC)**
The assessee, as part of its business expenses, claimed deduction for food tasting and development expenses. The assessee argued that it had continuously developed new flavours and food items to keep its customer base. It claimed that these expenses were incurred for food tasting and trials ; it

also incurred certain expenses for studying demographic trends. The amounts expended towards such development were part of its business. Possibly, some recipes might be viable ; equally possibly, all of them might be unviable. The mere possibility of the result of such exercise being a popular or long lasting recipe would not make the expenditure capital in nature. As such, it could not be held that the food tasting development charges would result in a capital advantage of an enduring nature. Followed, Alembic Chemical Works Co. Ltd. v. CIT [1989] 177 ITR 377 (SC)

32. **Binani Cement Ltd. .v. CIT (2015) 277 CTR 49 (Cal.) (HC)**
Expenditure on an abandoned project is revenue in nature & can be claimed as deduction in year of abandoning the project.

33. **CIT v. Cadbury India Ltd. (2015) 229 Taxman 5 (Bom.)(HC)**
Mere wrongly invoking section 35DDA instead of section 37 in respect of payment to consultant and gift to ex-employees could not disentitle assessee from claiming deduction under section 37(1).

34. **Minda Sai Ltd. v. ITO (Delhi)(Trib.)**
There is a conflict of opinion between the judgement of the ITAT Special Bench in DCIT Vs Times Guaranty Limited (2010) 4 ITR (Trib) 210 Mum (SB) and that of the Gujarat High Court in General Motors India Pvt. Ltd Vs DCIT [(2013) 354 ITR 244 (Guj) on the question whether unabsorbed depreciation for the assessment years prior to the amendment made to s. 32(2) w.e.f. AY 2002-03 can be treated as “current depreciation” and set-off against non-business income and be available for carry forward indefinitely. A judgement of the non-jurisdictional High Court binds the Tribunal benches as held in CIT Vs Godavaridevi Saraf (1978) 113 ITR 589 (Bom) and has to be followed over a judgement of the Special Bench.

35. **DCIT v. Jaipur Vidyut Vitran Nigam Ltd. (2015) 167 TTJ 24 (UO) (Pune)(Trib.)**
Front end fee paid by assessee to HUDCO as a precondition for sanction of loan raised by it is allowable as revenue expenditure in its entirety in the year of payment even though the assessee has written off the amount in its books over a period of years.

36. **T and T Motors Ltd. v. Add. CIT (2015) 37 ITR 682 (Delhi) (Trib.)**
Advocate`s fees for seeking bail in respect of the offence committed by the assessee`s driver were not allowable in terms of the Explanation to section 37(1) of the Act which prohibits deduction of expenditure incurred for a purpose which was an offence or which was prohibited by law.

37. **CIT v. Orient Express (2015) 230 Taxman 602 (Mad.)(HC)**
The assesse was engaged in manufacturing and exporting of leather garments. It entered in to agreement with foreign agents to procure export orders outside India on commission basis. HC held that no limb of activity had taken place in India, services rendered by agents would not fall within definition of “fees for technical services”. Order of Tribunal was affirmed that no tds was required to be deducted on the said commission payment to foreign agents.

38. **CIT v. Ovira Logistics (P) Ltd. (2015) 232 Taxman 240 (Bom.)(HC)**
Where it was found that, before end of the year, the amount on which service tax was payable had not been received from parties to whom services were rendered, no disallowance can be made for such unpaid service tax amount.

CAPITAL GAINS

39. **CIT v. Ram Gopal (2015) 372 ITR 498 (Delhi)(HC)**
The assessee sold his half share in two residential properties. He claimed that he used a sum of Rs. 73,27,000 to acquire another property within the period stipulated in section 54 of the Act, that he had spent a sum of Rs.25,14,700 towards the cost of improvement. AO held that in the absence of an agreement to sell, the rights acquired by the provisional booking of the property did not meet the requirements spelt out under section 54, i.e., acquisition of the new capital asset. He also held that the cost of improvement was not deductible. On appeal, the HC held that in the light of the definitions of "capital asset" under section 2(14) and "transfer" under section 2(47) there was no doubt that the assessee's contentions were acceptable. Even booking rights or rights to purchase or rights to obtain title of property is also capital asset.

40. **CIT vs. Sambhaji Nagar Co-op Hsg Society - 370 ITR 325 (Bom)**
Assessee, a co-operative society with promulgation of Development Control Rules (DCR), acquired right of putting up additional construction through Transferable Development Rights (TDR). Whether where assessee society had not incurred any cost to acquire TDR attached to land owned by it and transferred same to a developer for a consideration for construction of a floor space index, transfer of TDR would not give rise to any capital gains chargeable to tax.

41. **CIT v. S.R. Jeyashankar (2015) 373 ITR 120/ 228 Taxman 289 (Mad.)(HC)**
The assessee had entered into an agreement dated 22-2-2005 for purchase of undivided share of land as well as for construction of home on the said land. Thereafter, the assessee sold the entire unit by a sale deed dated 10-4-2008 and offered LTCG to tax. AO took a view that the undivided share of land was registered on 4-8-2005 and accordingly, the property was purchased in the month of August, 2005 and sold in April, 2008, CG from sale is STCG and not LTCG. The Court and the Tribunal placed reliance on the decision of P & H HC in the case of Mrs. Madhu Kaul v. CIT [2014] 363 ITR 54 wherein the HC has held that the allottee gets the title to the property on issuance of allotment letter and the payment in instalments is only a consequential act upon which delivery of possession to the property flows. Circular No. 471 dated 15-10-1986 speaks about the right of an allottee over a property that has been allotted. The other issues like payment of balance installments, delivery of possession, which takes place after the allotment only, relates back to the original allotment, in the present case, agreement. Accordingly, the Madras HC allowed the claim of assessee.

42. **Bertha T. Almeida v. ITO (2015) 229 Taxman 159 (Bom.)(HC)**
Assessee entered into development agreement with builder and developer for transfer of development rights in respect of land. Developer took possession of that land and started development work. Said transaction was to be treated as transfer of right in property covered under section 2(47)(v) .

43. **CIT v. Usha saboo (Smt)(2015) 374 ITR 695 (P& H) (HC); CIT v. Pallabi Saboo (2015) 374 ITR 695 (P&H)(HC); CIT v. Shri R.K. Saboo(2015) 374 ITR 695 (P&H)(HC)**
Where the agreement between the parties (for sale of shares) indicates that the lump-sum consideration was in respect of two or more promises (i.e. sale of shares & non-compete covenant), it is liable to be bifurcated and apportioned between each of the assets. Assessee is entitled to apportionment towards price of shares and price of restrictive covenants.

44. **ACIT v. Kamlakar Moghe (Bom.)(HC) [2015] 64 taxmann.com 413 (Bombay)**
Amount paid to sisters as per family arrangement for permitting transfer of property is deductible.

45. **Farida A. Dungerpurwala v. ITO (2015) 67 SOT 208 (Mum.)(Trib.); ACIT v. Sagar Nitin Parikh (Mum) (Trib)**
The assessee sold a residential flat in October, 2005 for certain amount and claimed deduction under section 54 in respect of cost of new flat. The Assessing Officer noticed that the assessee had booked a flat in a project in December, 2002 in the joint name of assessee and her relative and she obtained possession of the new flat in December, 2004. The Assessing Officer did not accept the assessee's contention that the date of possession of new house should be taken as the date of purchase and rejected claim for deduction under section 54. Booking of a flat which is going to be constructed by a builder, has to be considered as a case of "construction of flat" and not purchase. In the instant case, the assessee has constructed a house prior to the date of transfer of original house, in which case, the assessee is not entitled to claim deduction under section 54 in respect of the cost of new flat.

46. **ACIT .v. Kamlakar Moghe (Bom.)(HC) [2015] 64 taxmann.com 413 (Bombay)**
If REC Bonds are not available during the prescribed period, time for investment has to be extended-Fact that NHAI Bonds were available is irrelevant.

47. **CIT v. Coromandel Industries Ltd. (2015) 370 ITR 586 (Mad) (HC)**
Investment falling under two financial years- Exemption could not be restricted to Rs 50 lakhs only-Amendment is prospective from AY. 2015-16.

48. **CIT v. Anandraj (2015) 230 Taxman 534 (Karn.)(HC); Pradeep Kumar Chowdhry .v. DCIT (Hyd.)(Trib.); S. Uma Devi v. CIT(2015) 169 TTJ 487 (Hyd.)(Trib.); V.Shailaja v. CIT (2015) 169 TTJ 487 (Hyd)(Trib); Hasmukh N. Gala v. ITO (Mum.)(Trib.)**

Section does not require that the construction of the new residential house has to be completed, and the house be habitable, within 3 years of the transfer of the old asset-It is sufficient if the funds are invested in the new house property within the time limit-Beneficial provision must be interpreted liberally.

HOUSE PROPERTY

49. **CIT vs. Sane and Doshi Enterprises - 377 ITR 165 (Bom. HC)**
Assessee firm engaged in the real estate business and constructed a commercial complex viz. May Fair Tower. Assessee declared rental income from the same and also claimed interest deduction under section 24. The said claim was rejected by the AO as it was of view that the same was in nature of business income, being on account of exploitation of commercial assets. On appeal, CIT(A) and Tribunal allowed the claim of assessee. The HC also ruled in favour of the assessee and held that rental income received from unsold portion of property constructed by assessee a real estate developer, is assessable as income from house property.

50. **Manpreet Singh v. ITO (2015) 67 SOT 426 (Delhi)(Trib.)**
Rent received from mobile phone company for use of terrace to install antenna is taxable as "Income from house property" and not as "Other sources".

14A

51. **CIT .v. I. P. Support Service India (P) Ltd. (Delhi)(HC)**
Rule 8D cannot be automatically invoked. It cannot be invoked if the AO does not record satisfaction as to why the assessee’s voluntary disallowance is not proper.

52. **Cheminvest Ltd. .v. CIT(2015) 378 ITR 33(Delhi)(HC)**
Section 14A will not apply if no exempt income is received or receivable during relevant previous year

53. **Manugraph India Ltd. v. DCIT (Mum.)(Trib.) [2015] 62 taxmann.com 347 (Mumbai - Trib.)**
Growth mutual fund does not yield any dividend/exempt income, therefore, the provisions of section 14A would not apply on the investment in growth mutual funds.

TDS

54. **CIT vs. Delhi Race Club (1940) Ltd - 273 CTR 503 (Del)**
The assessee was engaged in the business of conducting horse races and had made payment to other clubs/centres on account of live telecast of races. AO considered the same as royalty payment and disallowed u/s. 40(a)(ia) as TDS was not deducted. CIT(A) upheld the assessment order however the Tribunal deleted the same. The HC held that even by stretching the meaning, it is difficult to include a live broadcast within 'scientific work'. It further held that revenue contention that the live telecast, in this case, was accompanied by commentary, analysis etc is an issue of fact, which cannot be gone into or raised at this stage. and hence appeal filed is dismissed.

55. **CIT (TDS) .v. Grant Medical Foundation (Ruby Hall Clinic) (2015) 375 ITR 49 (Bom.)(HC)**
Question related to the TDS on payment of salary to doctors.
It was held, (i) that in the case of doctors with fixed pay and tenure there was no dispute. The amount paid to them constituted salaries.
(ii) That in relation to the second category of doctors drawing fixed plus variable pay with written contracts the terms and conditions had been referred to and the Tribunal concluded that neither of the doctors was entitled to provident fund or any terminal benefits. Both were free to carry on their private practice at their own clinic or outside hospitals but beyond the hospital timings. Both doctors treated their private patients from the hospitals premises. All of these could be seen as indicators that they were not employees but independent professionals. The amounts paid to them did not amount to salary.

56. **CIT .v. Sri Marikamba Transport Co. (2015) 231 Taxman 484 (Karn.)(HC)**
Assessee made payments of freight charges to sub-contractors without deducting tax at source. The Assessing Officer finding that assessee did not file prescribed form within prescribed time, disallowed said payments by invoking provisions of section 40(a)(ia). CIT (A) as well as the Tribunal taking a view that non-filing of Form No. 15J was merely a technical defect, deleted said disallowance. On revenue's appeal; dismissing the appeal the court held that, non-filing of Form No. 15I, 15J is only a technical defect and provisions of section 40(a)(ia) are not attracted in such a case.

57. **CIT v. PVS Memorial Hospital Ltd. (Ker.)(HC) [2015] 60 taxmann.com 69 (Kerala)**
Deduction u/s 194C instead of u/s 194J renders the shortfall liable for disallowance u/s. 40(a)(ia).

58. **Thomas Muthoot vs. CIT - 235 TM 246 (Ker)**
The second proviso inserted by Finance Act, 2012 cannot be treated as retrospective in operation. The fact that the payees have already paid tax on the amounts paid does not mean that a disallowance for failure to deduct TDS cannot be made. Section 40(a)(ia) cannot be interpreted to mean that it applies only to amounts "paid" and not to those "payable"

59. **CIT v. Ansal landmark Township P Ltd – 61 taxmann.com 45 (Del)**
Second Proviso to section 40(a)(ia) is declaratory and curative and it has retrospective effect from

1.4.2005.

60. **P.M.S. Diesels v. CIT - 59 taxmann.com 100 (Punjab & Haryana)**
Section 40(a)(ia) also applies to assessees following the cash system i.e. on amounts paid. Judgment of a Division Bench of the Allahabad High Court in CIT v. Vector Shipping Services (P) Ltd., [2013] 357 ITR 642 dissented from. It is true that the Supreme Court by an order dated 02.07.2014, dismissed the department's petition for special leave to appeal. The SLP was, however, dismissed in *limine*. The dismissal of the SLP, therefore, does not confirm the view of the Allahabad High Court.

61. **ACIT v. Red BrickRealtors P. Ltd (2015) 38 ITR 749(Chennai)(Trib.); Devendra Exports P. Ltd. v. ACIT (2015) 38 ITR 744 (Chennai)(Trib.); Sri Narayana Moorthy Travels v. ITO(2015) 38 ITR 592(Chennai)(Trib); Ushodaya Enterprises Ltd. v. Dy. CIT (2015) 38 ITR 148 (Hyd) (Trib); JitendraMansukhlal Shah v. DCIT(Mum.)(Trib.)**
When the amount was paid by the assessee before the end of the accounting year, the expenditure could not be disallowed under section 40(a)(ia) of the Act. Merilyn Shipping 136 ITD 23 (SB) should be followed in view of approval by Allahabad HC and dismissal of SLP by Supreme Court. In any event as two views are possible, view in favour of assessee should be followed. Amounts already paid without TDS cannot be disallowed.

62. **Sai Builders v. ITO (2015) 152 ITD 462(Agra)(Trib); ACIT v. Bhavook Chandraparakas Tripathi (Pune)(Trib.)**
Assessee raised a plea that disallowance u/s. 40(a)(ia) could only be made in respect of sums remaining outstanding at end of year. The Tribunal held that in view of order passed by Gujarat High Court in case of CIT v. Sikandar Khan N. Tanvar [2013] 357 ITR 312, the said contention of assessee could not be accepted in the present case.

LOSS SET OFF / CARRY FORWARD

63. **Raptakos Brett & Co. Ltd. v. DCIT (Mum.)(Trib.) [2015] 58 taxmann.com 115 (Mumbai - Trib.)**
Though the LTCG on sale of equity shares (subject to STT) is exempt from tax u/s 10(38), the long-term capital loss on sale of such shares can be set-off against the taxable LTCG on sale of another asset.

64. **ACIT v. Shri Nadir B. Ajani (Mum.)(Trib.)**
In the ROI, the Assessee claimed short term capital loss from Futures & Options (F&O) transactions. The AO treated the same as business loss as against short term capital loss disclosed by the assessee. Consequently, the assessee claimed that, if at all, the department sought to treat F&O transaction as business income, then loss may be allowed to be adjusted against other income of same year u/s 71(1). The AO rejected the claim on the ground that the Assessee ought to have claimed the same by way of a revised return. The Tribunal held that it was the duty of the AO, while completing the assessment, to compute the income in accordance with the provisions of the Act, and if while computing the income there was a loss, which needs to be set off within the statutory provisions then the same had to be given effect to.

EXEMPTIONS UNDER CHAPTER III & DEDUCTIONS UNDER CHAPTER VI-A

65. **Carborundum Universal Ltd. v. JCIT - 59 taxmann.com 435 (Madras)**
Loss incurred by industrial undertaking claiming deduction under section 80-I which has already been set-off cannot be notionally carried forward and set-off against profit generated by industrial

undertaking during relevant assessment year for determining deduction under section 80-I.

66. **Quepem Urban Co-operative Credit Society Ltd.v. ACIT (2015) 377 ITR 272 (Bom.)(HC)**
Assessee, a co-operative society was registered under Co-operative Society Act and engaged in providing credit facilities to its members. It claimed deduction under section 80P(2)(a)(i), which was disallowed by AO holding that assessee was a primary co-operative bank, therefore hit by provisions of section 80P(4), which excluded benefit of section 80P. It was found that assessee-society was providing credit mainly to its members and its transactions with non-members were insignificant. Moreover, it was undisputed that bye laws of society did not allow any co-operative society to become its member. On this facts, the HC held that the assessee was not a co-operative bank rather it was a co-operative society and, therefore, its claim for deduction under section 80P(2) was to be allowed.

67. **Dy.CIT .v. Vertex Infosoft Solution P. Ltd. (2015) 37 ITR 521 (Chandigarh)(Trib.)**
AO held that in the absence of relevant material, the total turnover was domestic turnover and not eligible for exemption under section 10B of the Act. He disallowed certain expenses and added them to the income of the assessee. CIT (A) held that the Assessing Officer had sufficient material on record and there was no reason for not allowing exemption under section 10B and also observed that if expenses were disallowed, the profits of the assessee would increase which would mean that the assessee would become entitled to enhanced exemption under section 10B of the Act.

68. **Maheshwari Foundation .v. DIT (2015) 231 Taxman 1 (Karn.)(HC)**
It is mandatory that if application for approval under section 80G is not disposed off within six months from date on which application is made, Commissioner has no jurisdiction to pass an order either granting approval or rejecting it.

69. **Herald Publications (P.) Ltd. v. CIT (2015) 229 Taxman 103 (Bom.)(HC)**
Since sweeper, peons, manager, clerk do not participate in manufacturing process, they need to be excluded from number of employees to find out eligibility in terms of section 80-IA. Denial of deduction was held to be justified.

70. **CIT v. Subba Reddy (HUF) (2015) 373 ITR 103/ 278 CTR 252/ 231 Taxman 397 (Mad.)(HC)**
Car park area is not includible in the "built –up area " of the residential unit for the purpose of determining the maximum built up –area under section 80IB(10) (AY. 2004-05)

71. **CIT .v. Hardayal Charitable & Educational Trust (2015) 228 Taxman 330 (Mag.)(All.)(HC)**
Where assessee was a trust and did not carry on any other business save and except conducting education, assessee was entitled to benefit of exemption. An assessee could not be held not to exist solely for educational purposes merely on basis that object clause under which assessee is constituted contains certain generalised objects, so long as assessee had carried on no other activity save and except conducting education. (AY. 2009-10)

72. **ACIT v. Rangareddy District Judicial Employees Mutually Aided Co-operative Credit Society Ltd. (2015) 39 ITR 198(Hyd.)(Trib.)**
Held that the acceptance of deposits from non-members would not prevent a co-operative society from claiming deduction under section 80P(2)(a)(i) of the Act. Deduction not allowable to extent of income from providing credit facilities to non-members.

73. **ACIT v. Shiksha Samiti (2015) 38 ITR 616(Delhi) (Trib)**
Corpus donations not to be treated as part of gross receipts for the purpose of determining

eligibility for exemption under section 10(23C)(iiiad) of the Act.

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

74. **Stock Holding Corporation of India Ltd..v. CIT (2015)373 ITR 282 (Bom.)(HC)**
Assessee filed petition before the Commissioner under section 264 for grant of interest on refund of self-assessment tax paid by the assesse. The petition was rejected by the Commissioner. On writ , allowing the claim of assesse, the Court directed the revenue to pay interest from the date of payment on self-assessment tax i.e. 31-8-1994 till the date of refund i.e. 24-10- 1998 and pay the same within six weeks.

75. **CIT v. Engineers India Ltd. – 55 taxmann.com 1 (Delhi HC)**
Assessee is not entitled to interest under section 244A on refund of excess-self assessment tax deposited by assessee under section 140A voluntarily.

76. **Somerset Place Co-operative Housing Society Ltd vs. ITO - 279 CTR 147(Bom)**
Appeal after five years following favourable decisions by jurisditional High Court. Delay could not be condoned by the HC. The legislative mandate in stipulating a limitation to file an appeal within the prescribed limitation cannot be permitted to be defeated when a litigant has taken a decision not to pursue further proceedings. A new ruling is no ground for reviewing a previous judgment. If this is permitted, the inevitable consequence is confusion, chaos, uncertainty and inconvenience as then no orders can ever attain finality though accepted by parties.

77. **Hindustan Unilever Ltd vs. DCIT – 60 taxmann.com 326 (bom)**
Adjustment of refund against demands due without taking notice of assessee's objections in response to prior intimation would be unsustainable. It is not open to revenue under section 245 to adjust refund due to assessee for recovery of tax demand which has been stayed by orders of stay. Where a stay is granted under section 220(6) in view of pending appeal before Commissioner (Appeals), then such an assessee would not be treated in default till such time its appeal is decided and till then no interest can be charged under section 220(2).

78. **CIT v. Continental Warehousing Corporation (2015) 374 ITR 645 (Bom) (HC)**
No addition can be made in respect of an unabated assessment which has become final if no incriminating material is found during the search.

79. **CIT .v. Paramjit Singh (2015) 231 Taxman 450 (P&H)(HC)**
Assessee, a director of Frontier Cycles Pvt. Ltd. who received certain loan from said company. During relevant year, Assessing Officer downloaded annual return of Frontier Cycles Pvt. Ltd. from website of ROC and found that assessee was holding 38.8 per cent shares in said company. He thus treated amount of loan as deemed dividend. It was found from records that assessee had already gifted 30 percent of its shareholding in Frontier Cycles Pvt. Ltd. to his wife and son in earlier assessment year and it was only on account of mistake on part of concerned employee of Frontier Cycles Pvt. Ltd. ROC could not give effect to share transfer agreement in annual returns. Tribunal held that addition could not be made as deemed dividend. High Court affirmed the view of Tribunal and held that impugned addition made by Assessing Officer was to be deleted.

80. **U. P. Electronics Corporation Ltd. v. DCIT (Luck.)(Trib.)**
If the AO does not deal with the assessee's submissions and merely says "not acceptable" it means he has not recorded proper satisfaction.

81. **Sushiela Natarajan (Ms.) .v. ITO (2015) 153 ITD 534 (Chennai)(Trib.)**
Assessee had sold a property in Chennai and made investment in a residential property in United States of America. Return of income filed for assessment year 2009-10 by claiming exemption u/s. 54F. AO processed return u/s. 143(1)(a) and denied claim for exemption. Capital gain arose in hands of assessee was exempted or not was not a question in nature of mistake apparent from information in return, nor it was possible to say prima facie that claim made by assessee was incorrect. Therefore, the A.O. had overstepped his authority to deny claim of assessee beyond jurisdiction of s. 143(1)(a).

82. **CIT v. Hind Agro Industries (Chd.)(Trib.) – Digest of ITAT Online**
If books are rejected and Gross Profit rate is estimated, separate disallowance of expenses cannot be made.

83. **CIT .v. DRM Enterprises (2015) 230 Taxman 61 (Bom.)(HC)**
Assessing Officer simply followed objections raised by audit party and did not record his independent satisfaction, reopening of assessment was unjustified.

84. **Lal Chand Agarwal v. CIT (2015) 116 DTR 65 (All.)(HC)**
Three notices u/s 148 were issued by the AO, dated 24-03-2005, 28-03-2005 and 17-06-2005. The last date for issuance of notice u/s 148 was 31-03-2005. The HC quashed the reassessment proceedings on the basis that the first notice was invalid because no reasons to believe were recorded nor sanction order was obtained by the AO. The second notice returned unserved and as per provisions of s. 148, service of notice is necessary for an AO to assume jurisdiction. The third notice was issued after the period of limitation and hence was not a valid notice. Reliance by the Tribunal that the notice dt.17-06-2005 was in fact a notice 28-03-2005, which was a curable defect u/s 292B is totally misplaced. S.292B has no application in the instant case. The notice dt.17-06-2005 could not be treated as notice dt.28-03-2005 or a notice in continuation of notice dt.28-03-2005.

85. **SardarBalbir Singh .v. ITO(2015) 39 ITR 574 (Lucknow)(Trib)**
The Assessing Officer obtained sanction for issuance of notice under section 148 of the Income-tax Act, 1961 for reopening of assessment from the Commissioner of Income-tax instead of the Joint Commissioner of Income-tax (JCIT). Since the approval was not obtained from the competent authority, notice issued under section 148 of the Act is void ab-initio and the assessment framed consequent thereto is not a valid assessment. The error is fatal and cannot be saved under section 292BB. The assessment is annulled.

86. **DCIT v. Aakash Arogya Mindir (P) Ltd. (2015) 167 TTJ 578 (Delhi)(Trib.)**
Assessee obtained copies of letters under RTI from various files of assesses whose premises were searched u/s 153A of the Act. It was emerged no satisfaction note was recorded by the AO of the searched person with respect to other entities. The Tribunal quashed the assessment proceedings u/s 153C as AO of the searched person had not recorded the requisite satisfaction.

87. **ITO v. XS Cad India P. Ltd. (2015) 39 ITR 51 (Mum.)(Trib.)**
Even if a claim was not made before the Assessing Officer, it could be made before the appellate authorities. Therefore, the claim made by the assessee before the Commissioner (Appeals) was allowable.

88. **Cheil India Pvt. Ltd. v. ITO (Delhi)(Trib.)**
In an appeal against an order passed by the AO to give effect to the ITAT's order, the CIT(A) has no

jurisdiction to enhance the assessment with respect to a new source of income or disallowance of expenditure.

89. **DIT v. Societe Generale (2015) 122 CTR 57 (Bom.)(HC)**
ITAT's practice of routinely consolidating appeals is "most unfortunate, disturbing and dangerous" and leads to "pile-up" of cases. Such "elementary mistakes" should not be committed in future. ITAT is expected not to sign judgments and decisions unless they are checked thoroughly after transcription. It may be a boring task but it has to be performed by none other than the decision makers.

90. **ITO v. Shubhashri Panicker (Jaipur)(Trib.) – Digest of ITAT Online**
The postal authorities are the agent of the recipient. There is a presumption that handing over notice to the postal department means that it has been served on the assesse.

PENALTIES

91. **Hafeez S. Contractor .v. ACIT (Mum.)(Trib.); Parinee Developers Pvt. Ltd. .v. ACIT (Mum.)(Trib.)**
If the notice does not clearly specify whether the penalty is initiated for "concealment" or for "filing inaccurate particulars", it is invalid. Mere fact that assessee has surrendered income does not justify penalty if his explanation is not found to be false/not bona fide.

92. **S. S. Foods Industries v. A CIT (2015) 38 ITR 90 (Chd.)(Trib.)**
Claim under section 80-IC based on High Court decision. Reversal of High Court by Supreme Court a few days before return was filed. Short gap between publication of decision and filing of return. Not everybody aware of decision. Filing of return on advice of chartered accountants under bona fide belief. Issue debatable at time of making return. Penalty cannot be levied.

93. **Bunge India Pvt. Ltd. v. JCIT (Mum.)(Trib.)**
The assessee claimed depreciation on plant and machinery @ 40% instead of the correct 25%. Similarly, depreciation @ 10% was claimed on land as well. The AO made the adjustments in the assessment order and levied penalty for the same in penalty proceedings.
The assessee explained that a depreciation chart of the current year was prepared through the computer system by adopting the relevant figures from the immediately preceding year. However, the rate of depreciation relating to the plant and machinery was inadvertently omitted to be modified to 25% from 40% and the said error came to be noticed only when the AO pointed out the same. Accordingly it was submitted that the mistake has occurred due to inadvertence. The Tribunal found it to be undisputed that the assessee was eligible to claim higher rate of depreciation @ 40% in the immediately preceding year and that it was quite natural in the computer era to prepare depreciation chart by downloading the relevant figures from the chart of the immediately preceding year. The Tribunal accepted the explanation of the assessee on the ground that it was quite possible that the depreciation rate may escape the attention while preparing the depreciation chart. Hence, penalty on this issue was deleted. However, the Tribunal found that the assessee had given no explanation as regards claim of depreciation on land and that the same was a wrong claim even in the immediately preceding year. Therefore, penalty on this ground was upheld. (AY. 2004-05)

94. **Sujata Trading (P.) Ltd. .v. ITO (2015) 152 ITD 492/118 DTR 372/ 170 TTJ 396 (Mum)(Trib.)**
Assessee company, at time of filing of e-return had wrongly answered a question regarding whether it is liable for audit under section 44AB as 'No' and, consequently, did not furnish details related to auditor. The copy of said e-return had duly furnished all details under 'Part A -OI' of said return of income. The assessee had inadvertently filled relevant column wrongly as 'No' penalty u/s. 271B

would not be leviable.

95. **CIT v. Great Value Food (2015) 228 Taxman 133(Mag.)(P&H)(HC)**
Assessee-firm filed its return of income and had not deposited interest under sections 234B and 234C. AO treated it as an assessee in default and imposed penalty under section 221. In CIT v. P.B. Hathiramani [1994] 207 ITR 483/[1993] 68 Taxman 449 (Bom.), High Court held that penalty under section 221 was leviable only when assessee was in default or is deemed to be in default in making a payment of 'tax'. Since definition of 'tax' under section 2(43) did not include penalty or interest, penalty under section 221(1) could not be levied.

96. **DCIT v. Aanjaneya Life Care Ltd.(2015) 40 ITR 691 (Mum.)(Trib.)**
The Tribunal held that the assessee claimed that it was having meagre cash and current balances and was in financial constraints during the year under consideration. If there is financial hardship to the assessee it has to be considered as sufficient cause in which event penalty cannot be levied. The Revenue was unable to point out as to whether the assessee had sufficient cash/bank balance so as to meet the tax demand and also could not point out as to whether any funds were diverted for non-business purposes at the relevant point of time so as to say that an artificial financial scarcity was created by the assessee. Accordingly, penalty u/s 221(1) could not be levied.

MAT

97. **CIT .v. Forver Diamonds Pvt. Ltd. (Bom.)(HC) – Digest of ITAT Online**
Sale of rights directly taken to balance sheet. Adjustment to book profit cannot be made, if auditors and ROC have not found fault with Accounts.

98. **Shivalik Venture Pvt. Ltd. v. DCIT [2015] 70 SOT 92 (Mum.)(Trib.)**
Transfer of development rights to subsidiary (exempt by virtue of section 47(iv)) - (i) Even if an amount is credited to the P&L Account, the assessee can seek exclusion of that amount for purposes of "book profits" if a note to that effect is inserted in the Accounts. (ii) The exemption conferred by S. 115JB to sums exempt u/s 10 should be extended to all sums which are not chargeable to tax.

TDS

99. **A. Mohiuddin v. ADIT (2015) 67 SOT 251 (Bang.)(Trib.)**
Assessee purchased a property from a non-resident, since assessee was aware of fact that capital gain arising from sale of said property was not taxable in hands of vendor as he had already invested amount in purchase of another residential property within time period prescribed under section 54, assessee was not required to deduct tax at source while making payment of sales consideration to non-resident vendor.

100. **DDIT v. Serum Institute of India Limited(2015) 68 SOT 254 (Pune)(Trib.)**
Even in the absence of PAN, payer not required to deduct TDS at 20% if case covered by DTAA. DTAA overrides the provisions of Income-tax Act.

101. **G. Indhirani (Smt.) v. DCIT (2015) 172 TTJ 239 (Chennai)(Trib.)**
Prior to the amendment to S. 200A w.e.f. 01.06.2015, the fee for default in filing TDS statements cannot be recovered from the assessee-deductor while processing the S. 200A statement. However, prior to 01.06.2015, the Assessing Officer had every authority to pass an order separately levying

fee under Section 234E of the Act. What is not permissible is that levy of fee under Section 234E of the Act while processing the statement of tax deducted at source and making adjustment before 01.06.2015. It does not mean that the Assessing Officer cannot pass a separate order under Section 234E of the Act levying fee for the delay in filing the statement as required under Section 200(3) of the Act.

CASH CREDITS, UNEXPLAINED INVESTMENTS ETC.

102. **CIT v. Shyam R. Pawar (2015) 229 Taxman 256 (Bom.)(HC)**
Assessee declared capital gain on sale of shares of two companies . Assessing Officer, observing that transaction was done through brokers at Calcutta and performance of concerned companies was not such as would justify increase in share prices, held said transaction as bogus and having been done to convert unaccounted money of assessee to accounted income and, therefore, made addition under section 68. On appeal, Tribunal deleted addition observing that DMAT account and contract note showed credit/details of share transactions; and that revenue had stopped inquiry at particular point and did not carry forward it to discharge basic onus. On facts, transactions in shares were rightly held to be genuine and addition made by Assessing Officer was rightly deleted. (AY. 2003-04 to 2006-07)

TRANSFER PRICING

103. **CIT v. Cotton Naturals (I) Pvt. Ltd. (2015) 276 CTR 445 (Delhi)(HC)/CIT v. Tata Autocomp Systems Ltd. (2015) 374 ITR 516 (Bom.)(HC)**
For the purpose of loans given to wholly owned subsidiary in USA, the question before HC was whether the LIBOR or EURIBOR or local currency rate to be considered. The HC held that the interest rate should be the market determined interest rate applicable to the currency concerned in which the loan has to be repaid. Interest rates should not be computed on the basis of interest payable on the currency or legal tender of the place or the country of residence of either party. Interest rates applicable to loans and deposits in the national currency of the borrower or the lender would vary and are dependent upon the fiscal policy of the Central bank, mandate of the Government and several other parameters. Interest rates payable on currency specific loans/ deposits are significantly universal and globally applicable. The currency in which the loan is to be re-paid normally determines the rate of return on the money lent, i.e. the rate of interest.

104. **SKR BPO Services (P.) Ltd. v. ITO (2015)230 Taxman 192 (Bom.)(HC); Equinox Business Parks (P.) Ltd. v. UOI (2015) 230 Taxman 191 (Bom.)(HC); S.G. Asia Holdings (India) (P.)Ltd. v. Dy. CIT (2015) 229 Taxman 452 (Bom.)(HC)**
Where assessee-company had issued shares at a premium to its non-resident holding company, it does not give rise to any income from international transaction and, thus, there is no occasion to apply Chapter X in such a case.

105. **CIT v. Everest Kento Cylinders Ltd. (2015)378 ITR 57/119 DTR 394/ 232 Taxman 307 (Bom.)(HC)**
No comparison can be made between guarantees issued by commercial banks as against a corporate guarantee issued by a holding company for benefit of its AE, for computing ALP of guarantee commission.

MISCELLANEOUS

106. **CIT v. Adamsons Inc. (2015) 230 Taxman 72 (Bom.)(HC)**
Assessee had not shown interest earned on fixed deposit in relevant year on plea that same would be paid to it in near future along with original sum. On reference the Court held that since assessee

consistently followed cash system of accounting, interest on fixed deposit would not be added to its income in relevant assessment year.

107. **Aroon Purie vs. CIT - 375 ITR 188 (Del)**

The HC held that the amount of Rs. 1 lakh received by the assessee as an award from B. D. Goenka Trust for excellence in journalism being purely in the nature of a testimonial would be a capital receipt. The causa causans in the present case was not directly relatable to the carrying on of vocation as a journalist or as a publisher. It was directly connected and linked with the personal achievements and personality of the person, i.e. the assessee. Further, the payment in this case was not of a periodical or repetitive nature. The payment was also not made by an employer ; or by a person associated with the "vocation" being carried on by the assessee ; or by a client of his. The prize money had been paid by a third person, who was not concerned with the activities or associated with the "vocation" of the assessee. It being a payment of a personal nature, it should be treated as capital payment, being akin to or like a gift, which did not have any element of quid pro quo. The prize money was paid to the assessee on a voluntary basis and was purely gratis. The amount would be a capital receipt and, hence, not income taxable.(AY.1991-1992)

108. **CIT vs. Darbhanga Mission CHS Ltd. - 370 ITR 443 (Bom)**

Assessee, a co-operative housing society, received certain sum on account of transfer of flat and garage and credited it to 'general amenities fund' as well as 'repair fund'. Assessee claimed said receipt as non-taxable on account of principal of mutuality. AO treated same as transfer fees and disallowed exemption by holding that principal of mutuality would not apply. CIT(A) as well as Tribunal held that same was covered by principal of mutuality and was not chargeable to tax. On appeal, the HC also held that in the absence of any cogent and satisfactory material being produced by revenue, sum credited could not be assumed to be transfer fee; order of Tribunal was to be upheld.

109. **CIT v. Suresh Nanda (2015) 375 ITR 172 (Delhi) (HC)**

While the executive action of impounding of passport rendered it impossible for the assessee to leave India. He virtually became an unwilling resident on Indian soil without his consent and against his will. His involuntary stay during the period that followed till the passport was restored under the court's directive must be excluded for calculating the period under section 6(1)(a).

110. **CIT v. Pritam Das Narang (2015) 235 Taxman 358 (Delhi)(HC)**

An employment agreement was entered into between assessee and ACEE on 10-1-2007, in terms of which, the assessee was to be employed as Chief Executive Officer ('CEO') of ACEE and the employment was to commence from 1-7-2007. On 1-5-2007, a letter was written by ACEE to the assessee informing him that there being a sudden change in business plan of the company, it could not take assessee on board from 1-7-2007. As a mark of goodwill/gesture, ACEE made certain payment to assessee for non-commencement of employment as proposed, after deduction of TDS therefrom. The assessee did not offer said amount to tax treating same as capital receipt and also claimed refund of TDS. AO held that the receipt by the assessee of a sum from any person prior to his joining with such person was taxable as profit in lieu of salary under section 17(3)(iii). CIT(A) and Tribunal allowed the claim of assessee by holding that the payment was made by the prospective employer as compensation towards breach of promise and not for any services rendered or to be rendered and such payment could not be taxed under section 17(3)(iii). On appeal, the HC observed that the employment did not commence from the date of the employment agreement which is further evident from the fact that ACEE stated in its letter dated 25-8-2007 that it was making the payment of Rs.1.95 crore as 'a one-time payment to assessee for non-commencement of employment as proposed.' Further, section 17(3)(iii)(A) presupposes the existence of an

employment, i.e., a relationship of employee and employer between the assessee and the person who makes the payment of 'any amount' in terms of section 17(3)(iii). This was a case where there was no commencement of the employment and the offer by ACEE to the assessee was withdrawn even prior to the commencement of such employment. The amount received by the assessee was a capital receipt and could not be taxed under the head 'profits in lieu of salary'. (AY 2008-09)

111. **ACIT v. S. Ganesh (2015) 68 SOT 110(URO) (Mum.)(Trib.)**

On the facts the Assessing Officer failed to give effect to directions issued by Commissioner (Appeals), it amounted to gross abuse of process of law and, in such a case, matter was to be brought to notice of Chairman CBDT so that necessary action could be taken for providing training/guidance in this respect to revenue officials.

III. RECENT CIRCULARS ISSUED BY CBDT

1. **Circular No.25/2015 dated 31-12-2015**

From AY 2016-17: Concealment penalty in respect of addition to income computed as per normal provisions shall be leviable even if ultimately there is liability on account of MAT as per Explanation 4 to Sec. 271(1).

Cases prior to 1.4. 2016: Concealment penalty shall not be leviable in respect of such additions, in view of Delhi HC decision in Nalwa Sons Investment Ltd.

The above settled position applicable even in respect of AMT also.

2. **Circular No.24/2015 dated 31-12-2015**

Assessment of income in case of other person - Recording of satisfaction note under section 158BD/153C - Findings of SC in M/s Calcutta Knitwears [2014] 43 taxmann.com 446 (SC)

For the purpose of section 158BD of the Act, recording of a satisfaction note is a pre-requisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "the satisfaction note could be prepared at any of the following stages:

1. at the time of or along with the initiation of proceedings against the searched person under section 158BC of the Act; or
2. in the course of the assessment proceedings under section 158BC of the Act; or
3. immediately after the assessment proceedings are completed under section 158BC of the Act of the searched person. "

The above guidelines are to be followed even in case of Sec. 153A.

It is further clarified that even if the AO of the searched person and the "other person" is one and the same, then also he is required to record his satisfaction as has been held by the Courts.

Thus, pending litigation with regard to recording of satisfaction note under section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court.

3. **Circular No.23/2015 dated 28-12-2015**

TDS under section 194A on interest on fixed deposit made on direction of courts

In view of the case of UCO Bank in Writ Petition No. 3563 of 2012 (2014) 51 Taxmann.com (Delhi), it is clarified that Interest on FDRs made in the name of Registrar General of the Court or the depositor

of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income. Accordingly, Circular No. 8 of 2011 is quashed.

4. **Circular No.21/2015 dated 10-12-2015**
Monetary limits for filing of appeals

Sr. No.	***Appeals in Income-tax matters***	***Monetary Limit (in Rs.) (Revised)***	***Monetary Limit (in Rs.) (Old)***
1.	Before Appellate Tribunal	10,00,000/-	4,00,000/-
2.	Before High Court	20,00,000/-	10,00,000/-
3.	Before Supreme Court	25,00,000/-	25,00,000/-

The instruction to apply retrospectively to pending appeals in case of Appeal to ITAT / High Court.

Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.

5. **Circular No.6 of 2015 dated 9-4-2015**
Capital Gains in respect of units of mutual funds under Fixed Maturity Plans (FMP) on extension of their term

A Fixed Maturity Plan of Mutual Fund (FMP) is a debt oriented scheme. Accordingly, gains arising on redemption of units of such scheme redeemed on or after 10.7.2014 would be treated as short term gains if their period of holding is less than 36 months. However, Mutual Funds may give an option of rollover of the scheme. In such cases, an issue may arise as to whether the rollover would give rise to capital gains.

In this regard, the CBDT has clarified that the roll over in accordance with the relevant SEBI regulation will not amount to 'transfer' as the scheme remains the same. Thus, there shall not be any tax implications in case of rollover. Gains shall arise when the units are ultimately redeemed.

IV. RECENT NOTIFICATIONS / INSTRUCTIONS ISSUED BY CBDT

1. **Notification No. 4/2015 dated 1-12-2015 - Simplification of procedure for Form No. 15G & 15H**
Procedure and format for e-filing of Form 15G / 15H notified.

2. **Notification No.S.O.892(E) dated 31st March, 2015 and Press Release, dated 26-11-2015 Income Computation and Disclosure Standards (ICDS)**
Vide Notification No.S.O.892(E) dated 31st March, 2015, 10 ICDS were notified for the purpose of Sec. 145(1).

However, in the wake of implementation issues, suggestions were invited from stakeholders & general public vide Press Release dated 26.11.2015.

No further Press Release / Circular has till date been issued on the subject.

3. **Notification No.89/2015 dated 2-12-2015 –Insertion of Rule 127 - Service of notice, summons, requisition, order and other communication.**
Notification No.2/2016 dated 3-2-2016 – Procedure, formats and standards for ensuring secured transmission of electronic communication
Rule 127 is notified, specifying the address to which communications may be sent:

   For paper communications:
   a. the address available in the PAN database of the addressee; or
   b. the address available in the income-tax return to which the communication relates; or
   c. the address available in the last income-tax return furnished by the addressee; or
   d. in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs

   However, if addressee furnishes in writing any other address for the purposes of communication, notices **shall** be sent to that specified address only (Primary address).

   For electronic communications:
   a. Email address as per ITR of relevant year
   b. Email address as per ITR latest filed
   c. Email address available on the website of Ministry of Corporate Affairs

   However, if addressee furnishes in writing any other email for the purposes of communication, notices **shall** be sent to that specified address only (primary email address).

   However, in case of non-delivery of email on the primary email address, the notices shall be sent to other non-primary email addresses of the assessee available with the department mentioned earlier.

   "Electronic communication" means electronic mail or electronic mail message or the display of an electronic record on the website of the Income Tax Department as may be specified.

   So, will the display of outstanding tax demand on the income tax website be considered as a service of notice of demand or recovery notice?

   In a case where a notice is not sent by email due to any reason including technical reasons such as email failure or mailbox full etc., but sent by other valid mode of service as prescribed in the IT Act 1961, the same shall constitute valid service. The AO shall record reasons in writing for not serving notice by email.

   Any email, in response to the notice issued by the AO, **received from the primary email address** of the assessee shall be considered as a valid response to the notice. Thus, email made from non-primary email address shall not constitute as a valid response to notice and penal consequences may follow.

   The time and place of dispatch and receipt of electronic record or electronic communication shall have the same meaning as provided in section 13 of the Information Technology Act, 2000 (No.21 of 2000). This would be relevant to check timely service of notice.

This procedure would followed even in case of assessments proceedings in respect of select non-corporate assessees as a part of the pilot project on paperless assessment proceedings and can be extended to other assessees or other proceedings as may be notified by the Board subsequently.

4. **Letter dated 23-12-2015**
Draft guiding issued laying down the principles for determination of Place Of Effective Management (POEM) of a company under section 6(3)

5. **Instruction No.9/2015 dated 2-9-2015, Press Release dated 24.9.2015 and Instruction No.18/2015 dated 23-12-2015**

Applicability of MAT on foreign companies for period prior to 1-4-2015

- Vide Instruction No 9/2015 dt. 2.9.2015, government accepted the proposal of expert committee to amend the Act to provide that for the period prior to 1.4.2015, MAT shall not be leviable on FIIs/ FPIs not having PE / place of business in India.
- Vide Press Release, dt. 24-9-2015, the government clarified its intention of accepting the above position w.e.f. 1.4.2001 in respect of all foreign companies not having PE in India.
- In Sep. 2015, a SLP was filed by ***Castleton Investments Ltd***. against the AAR on the above referred issue. The Attorney General representing the Government of India stated before the SC of the government's intention of not levying MAT on Foreign companies / FPIs / FIIs not having PE / place of business in India, as stated in Instruction No. 9/2015 and Press Release dt. 24.9.2015. On the basis of this statement, the SLP was dismissed.
- Vide Instruction No 18/2015 dt. 2.9.2015, government reiterated its intention and advised the field officers to complete pending assessments on the basis of its intentions clarified on the said issue.

6. **Press Release, dated 29-10-2015**
Taxation of income from Offshore Rupee Denominated Bonds

The Reserve Bank of India has recently permitted Indian corporates to issue rupee denominated bonds outside India.
TDS on interest on Rupee denominated Bonds: 5%
Capital Gains: Capital Gains arising on appreciation of rupee between the date of Issue and the date of redemption would be exempted from capital gains tax. Legislative amendment in this regard will be proposed through the Finance Bill, 2016.

7. **Instruction No.275/29/2014 dated 1-6-2015**
Credit for TDS in case of non-deposit of tax deducted at source by deductor

Section 205 bars direct demand against assessee. Accordingly, CBDT has instructed that if the facts of the case so justify, assessees may not be denied credit of TDS if the deductor deducts the tax but fails to deposit the same into the Central Government Treasury.

8. **Notification no. 95/2015 dated 30.12.2015**

As per CBDT notification, PAN will be required for transactions in cash above Rs. 2,00,000 and certain other specified transactions, regardless of the mode of payment. Any false declaration of PAN could also land an individual behind bars or a company liable to prosecution that includes a jail

term of up to seven years and a fine.

9. **Notification no. 60/2015 dated 24.07.2015**

   Cost Inflation Index (CII) for the FY 2015-16 notified as 1081.

10. **Notification no. 57/2015 dated 01.07.2015**

    Notified the date of 30 September 2015 as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India and the date of 31 December 2015 as the date on or before which a person shall pay the tax and penalty in respect of the undisclosed asset located outside India so declared.

11. **Notification no. 58/2015 dated 02.07.2015**

    CBDT notified the rules dealing with the law of black money i.e. Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.
