CA FINAL DIRECT TAX

JUDGMENTS

(Applicable for Nov 20 Exam)

By CA Vijay Gaurav

COVERAGE

There are total 155 Judgment compiled in very simple way in just 33 pages covering the Latest Study Module and Judgment reported in legal updates for Nov 2020 exam by ICAI.

HOW TO LEARN

Fix a day, – just read with understanding with full confidence and determination (Dil se), focus on crux and not to put more emphasis on case law. It will take not more than 4 Hours. Now take break of 30 Minutes. Now, Revise crux with focusing on name of case law as much as possible. It will take not more than 2 Hours. Now revise it before you go to sleep for next two days atleast.

ABOUT CA VIJAY GAURAV

CA VIJAY GAURAV is graduated from "University of Delhi" and a fellow member of "The Institute of Chartered Accountants of India" qualified in 2002. He is a reputed tax consultant practicing in the field of Direct & Indirect Taxes. Teaching is passion for him. He is providing specialized classes for Direct Tax, International Taxation and Indirect Tax at CA Final Level and Taxation and Law at CA–Inter Level. He is having vast teaching experience of more than 15 years. He is a prominent educationist with great experience of teaching both theoretically and practically.

He guides his students not only for his subject but also for other subjects at CA-Inter & Final level. He also teaches them the better ways of presentation in exams so that students can score better marks.

He is the First in CA Education who made CA Final Direct Tax & Indirect Tax and CA Inter Taxation so simple & concise and completed in Just 15 Classes each.

More than 10000 students have got success in Chartered Accountancy Course under the guidance of CA Vijay Gaurav.

The mission of CA VIJAY GAURAV is to provide individualized education that address students' unique learning styles, cultivates independent thought, and promotes the building of character, enabling them to contribute to their communities in meaningful and positive ways.

He gives counseling to each individual student and provide a unique set of Solution for them.

He organizes test series for all paper of CA Exam (CA-Inter and CA-Final) since 2002.

CA Vijay Gaurav is a Reiki Master and a Certified Clinical Hypnotherapist (Wonderful Technique to cope up with stress, depression and phobia presently very common in Students Community) To manage multiple issues such as stress, phobia, depression, he helps students with Scientific proven Yoga & Meditation Techniques.

He strongly believes that discipline in life is success Mantra, Under his Guidance students learn to live Life in discipline, he encourages students to live their dreams again and get success not only in CA profession but for throughout the Life.

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CA FINAL

PAPER - 7 DIRECT TAX

(Judgments applicable for Nov 2020 Exam)

Seshasayee Steels P. Ltd. v. ACIT [2020] 421 ITR 46 (SC)	
Can any transaction which enables the enjoyment of immovable property be considered as enjoyment as a purported owner thereof for being treated as a "transfer" of a capital asset u/s 2(47)(vi) and levy of tax on capital gains arising therefrom?	The Supreme Court held that, in this case, the assessee's rights in the said immovable property were extinguished on the receipt of the last cheque, as also that the compromise deed could be stated to be a transaction which had the effect of transferring the immovable property. Accordingly, the transaction fell under section 2(47)(ii) and (vi) of the Income-tax Act, 1961. Hence, it is a transfer in relation to the capital asset and capital gains tax liability would be attracted.
Pr. CIT v. Aarham Softronics [2019] 412 ITR 623 (SC)	
Can an assessee who has set up a new industrial undertaking and availed deduction @ 100% of profits under section 80-IC(3) for the first 5 years, be eligible to claim deduction @ 100% of profits once again on having undertaken "substantial expansion" thereof, for the period remaining out of 10 years? Section 80-IC(2)(b)(ii) requires that the undertaking or enterprise should begin to manufacture or produce or commence operation specified in that Schedule and undertake substantial expansion during the period between 7th January, 2003 and 31st March, 2012 in Himachal Pradesh. Substantial expansion" means increase in the investment in the plant and machinery by at least 50% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken.	The Apex Court held that an undertaking or an enterprise which had set up a new unit of the nature mentioned in section 80-IC(2)(a)(ii), would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the "initial assessment year". For the next five years, the admissible deduction would be 25% or 30%, as the case may be, of the profits and gains. However, in case substantial expansion is carried out as defined in section 80-IC(8)(ix) by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become "initial assessment year", and from that assessment year the assessee shall be entitled to 100% deductions of the profits and gains. Such deduction, however, would be for the period remaining out of 10 years, as provided in section 80-IC(6).

EXAMPLE

If the substantial expansion is carried out immediately, on the completion of first 5 years, the assessee would be entitled to deduction @100% of profits and gains again for the next 5 years. On the other hand, if substantial expansion is undertaken, say, in the 8th year, deduction would be 100% for the first 5 years, deduction at 25% for the next 2 years and at 100% again from the 8th year as this year becomes "initial assessment year" once again. This 100% deduction would be for the remaining 3 years only, i.e., 8th, 9th and 10th assessment years. However, only if the substantial expansion has been undertaken before 1.4.2012, would the benefit of deduction @100% of profits and gains for a fresh period (remaining period) be available. This benefit of deduction@100% of profits and gains for a fresh period (remaining period) would not be available, if the substantial expansion is undertaken on or after 1.4.2012.

CIT v. Chetak Enterprises Pvt. Ltd. [2020] 423 ITR 267 (SC)

Can an agreement entered into by a firm with a State Government and work done in pursuance thereof survive upon its conversion into a company and be considered compliant with sub-clauses (a) and (b) of section 80-IA(4)(i) , to qualify for deduction thereunder?	The Supreme Court held that Tribunal, as well as the High Court have justly affirmed the view taken by the first appellate authority, holding that the assessee-company qualified for the deduction under section 80-IA being an enterprise carrying on the stated business pertaining to infrastructure facility and owned by a company registered in India on the basis of the agreement executed with the State Government to which the assessee-company has succeeded in law after conversion of the partnership firm into a company.

CIT v. Metal and Chromium Plater (P) Ltd. [2019] 415 ITR 123 (Mad)

Should capital gains exempt under section 54EC, which forms part of the net profit in the statement of profit and loss of the assessee-company, be taken into account for calculation of tax on book profits as per section 115JB?	The High Court affirmed the decision of the Tribunal holding that capital gains which forms part of the net profit in the statement of profit and loss of the assessee-company, in respect of which exemption under section 54EC is available while computing total income under the regular provisions of the Income-tax Act, 1961, should not be taken into account for calculation of minimum alternate tax on book profits under section 115JB.

Analysis

CIT v. Metal and Chromium Plater (P) Ltd. [2019] 415 ITR 123 (Mad)
N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)

Sub-section (5) of section 115JB allows for application of all other provisions contained in Income-tax Act, 1961 except if specifically barred by that section itself. Thus, the "book profit" would be further eligible to the benefits set out in the other provisions of the Act. However, in an assessment in terms of section 115JB, the book profit would be further subjected to the effect of other provisions of the Act that are specifically brought into play by virtue of sub-section (5) of section 115JB.

The Madras High Court has, however, in this case interpreted sub-section (5) of section 115JB to also permit adjustment for exemption under section 54EC while computing MAT, even though the same is not expressly provided for in the Explanations to section 115JB.

Pr. CIT v. Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC)	
Is initiation of assessment by issue of notices under sections 143(2) and 142(1) in the name of the erstwhile amalgamating company, after approval of the scheme of amalgamation by the High Court and intimation of such amalgamation to the Assessing Officer, void ab initio?	In the present case, despite the fact that the Assessing Officer was informed of the amalgamating-company (S) having ceased to exist as a result of the approved scheme of amalgamation, the jurisdictional notice was issued in the name of S, the amalgamating company. The basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation. The Supreme Court, accordingly, held that the initiation of assessment proceedings on a non-existent entity (S, in this case) was void-ab-initio and participation in the proceedings by the appellant-amalgamated company (M, in this case) in the circumstances cannot operate as an estoppel against law.
Dalmia Power Ltd. & Anr. v. ACIT [2020] 420 ITR 339 (SC)	
Can delay in submitting the revised return of the amalgamated company after receiving approval from NCLT, but beyond the time stipulated u/s 139(5) of the Act, be permitted otherwise than by way of CBDT's condonation u/s 119(2)(b)?	The Supreme Court held that, in view of section 170(1), the Department was required to receive the revised returns of income for A.Y. 2016-17 and assess the income of the assessees taking into account the schemes of arrangement and amalgamation as sanctioned by the NCLT for the following reasons: (a) Section139 (5) would not apply since the revised returns were not filed by the assessee on account of any omission or wrong statement in the original return. The delay was due to the time taken to obtain sanction of the schemes from NCLT. It was an impossibility for the assessee-companies to have filed the revised returns for A.Y.2016-17 before the due date of March 31, 2018, since NCLT passed the last orders sanctioning the schemes only on April 22, 2018 and May 1, 2018; (b) Section 119(2)(b) would not be applicable where the assessee had restructured its business, and filed a revised return of income with the prior approval and sanction of the NCLT, without any objection from the Department.

Valsad District Central Co-operative Bank Ltd. v. ACIT [2019] 414 ITR 616 (Guj)	
Can the assessee's failure to produce Commissioner's order of approval dating back to the year 1976 for employees Gratuity Scheme, tantamount to non-disclosure of material facts to justify re-opening of assessment under section 148, where he has produced the agreement between LIC and the trustees of the Gratuity Scheme, on the basis of which claim for deduction under section 36(1)(v) was being allowed in the earlier years?	The High Court, held that merely because the assessee is unable to produce a copy of the order of approval of the Gratuity Scheme by the Commissioner after long gap of time, it cannot tantamount to failure on the part of the assessee to disclose truly and fully all material facts. Therefore, in the absence of failure on the part of the assessee to disclose truly and fully all material facts, reopening of assessment by issue of notice under section 148 is not valid.
Genpact India Pvt. Ltd. v. DCIT & Ors [2019] 419 ITR 440 (SC)	
Is appellate remedy by way of appeal before Commissioner (Appeals) under section 246A available to a company denying its liability to pay additional income-tax at the rate of 20% on the distributed income under section 115QA? Extract of 246A(1)(a), any assessee aggrieved against a "An order against the assessee, <u>where the assessee denies his liability to be assessed under this Act</u>" ,may appeal to Commissioner (Appeals)	The Supreme Court held that any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit 246A(1)(a). Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability under section 115QA.
CIT (Exemptions) v. Reham Foundation [2019] 418 ITR 205 (All)	
Can the Appellate Tribunal, while hearing an appeal under section 254(1), in a matter where registration under section 12AA has been denied by the Commissioner, itself pass an order directing the Commissioner to grant registration?	The High Court held that the Appellate Tribunal while hearing an appeal under section 254(1) in a matter where registration under section 12AA has been denied by the CIT, can itself pass an order directing the CIT to grant registration, only in case the Tribunal disagrees with the opinion of the CIT as regards the genuineness of the activities and object(s) of the trust, on the basis of material already on record before the CIT. However, the said power is not to be exercised by the Appellate Tribunal as a matter of course and remand to the CIT is to be made where the Appellate Tribunal records a divergent view on the basis of the material which has been filed before the Appellate Tribunal for the first time.
Smt. Ritha Sabapathy v. DCIT [2019] 416 ITR 191 (Mad)	
Can the Appellate Tribunal dismiss an appeal, without deciding the case on its merits, solely on the ground that the assessee had not appeared on the appointed date of hearing?	The High Court set aside the impugned order of the Tribunal dismissing the assessee's appeal due to non-appearance and directed it to decide the appeal on merits afresh in accordance with law.

CIT v. A. A. Estate Pvt. Ltd. [2019] 413 ITR 438 (SC)	
While deciding an appeal, is it mandatory for the High Court to frame a substantial question of law or can it decide the case on the basis of the question of law urged by the appellant under section 260A(2)(c)?	The Apex Court noted that there lies a distinction between the questions proposed by the appellant and the questions framed by the High Court. The questions, which are proposed by the appellant, fall under section 260A(2)(c) whereas the questions framed by the High Court fall under section 260A(3). Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A(3). The Supreme Court held it to be just and proper to remand the case to the High Court for deciding the appeal afresh, on merits of the case in accordance with procedure prescribed in section 260A.
Sunil Vasudeva & Others v. Sundar Gupta & Others [2019] 415 ITR 281 (SC)	
Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record? **Facts and Issue** Section 293 puts a complete bar on filing suit in any civil court against an income-tax authority in respect of any proceeding under the Income-tax Act, 1961. The issue for consideration is whether the High Court is justified in recalling and reviewing its order to correct an apparent error, i.e., overlooking the provisions of section 293 of the Income-tax Act, 1961 and directing a civil suit to be pursued.	The effect of section 293 had been mistakenly omitted by the High Court while passing an order directing pursuance of a civil suit. Accordingly, the said order was recalled for review and error apparent was corrected. The SC held that section 293 puts a complete bar on filing suit in any civil court against the Income-tax authority. If the civil suit was not maintainable in view of section 293 of the Act and this was the purported defence of the respondents and of the Department, there was no error committed by the High Court in its judgment rendered in exercise of its review jurisdiction calling for interference.
CIT (TDS) v. Eurotech Maritime Academy Pvt. Ltd. [2019] 415 ITR 463 (Ker)	
Can penalty under section 271C be levied for the non-remittance of the tax deducted at source under Chapter XVII-B to the credit of the Central Government?	High Court held that, assessee is liable to pay penalty under section 271C for both non-deduction of tax at source and non-remittance of tax deducted at source.
CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)	
Is non-issuance of notice under section 143(2) by the Assessing Officer a defect not curable under section 292BB inspite of participation by the assessee in assessment proceedings?	The Supreme Court held that non-issuance of notice under section 143(2) is not a curable defect under section 292BB inspite of participation by the assessee in assessment proceedings.
Honda Siel Cars India Ltd. v. CIT [2017] 395 ITR 713 (SC)	
Facts Whether technical fee paid under a technical collaboration agreement (TCA) for setting up a joint venture (JV) company in India is to be treated as revenue or capital expenditure, upon termination of agreement, the JV would come to an end?	**Decision** The Supreme Court held that, in this case, technical fee is capital in nature since upon termination of TCA; the joint venture itself would come to an end. it would be an intangible asset eligible for depreciation@25%.

CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)	
Facts What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?	**Decision** The Apex Court held that it is not in the ordinary course of business; hence it is a capital receipt in the hands of the assessee.
CIT v. M. Venkateswara Rao (2015) 370 ITR 212 (T & AP)	
Facts Can capital contribution of the individual partners credited to their accounts in the books of the firm be taxed as cash credit in the hands of the firm, where the partners have admitted their capital contribution but failed to explain satisfactorily the source of receipt in their individual hands?	**Decision** The Court held that the view taken by the Assessing Officer that the partnership firm has to explain the source of income of the partners as regards the amount contributed by them towards capital of the firm, in the absence of which the same would be treated as the income of the firm, was not tenable.
CIT v. HCL Technologies Limited [2018] 404 ITR 719 (SC)	
Facts Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction under section 10AA?	**Decision** The Apex Court held that the expenditure incurred in foreign exchange for providing technical services outside India is deductible from total turnover also.
CIT v. Kribhco (2012) 349 ITR 618 (Delhi)	
Facts Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	**Decision** Delhi High Court, therefore, held that no disallowance can be made under section 14A in respect of income included in total income in respect of which deduction is allowable under section 80C to 80U.
CIT v. Shankar Krishnan (2012) 349 ITR 685 (Bom.)	
Facts Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee?	**Decision** The Court held that the AO is not right in adding the notional interest on security deposit given by the employer to landlord in value the perquisite of rent-free accommodation. Thus, the perquisite value of accommodation provided by employer would be the actual amount of lease rental paid by the employer, since the same was lower than 10% (now 15%) of salary.
CIT (TDS) v. Director, Delhi Public School (2011) 202 Taxman 318 (P & H)	
Facts Can the limit of Rs. 1,000 per month per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the employee by the employer?	**Decision** The Punjab and Haryana High Court held that reading of Rule 3(5), it flows that, in case the value of perquisite for free/ concessional educational facility arising to an employee exceeds Rs. 1,000 per month per child, the whole perquisite shall be taxable in the hands of the employee.

Raj Dadarkar and Associates v. ACIT [2017] 394 ITR 592 (SC)	
Whether rental income earned from letting out of premises is to be treated as business income or as income from house property?	The Supreme Court held that wherever there is an income from leasing out of premises, it is to be treated as income from house property. However, it can be treated as business income if letting out of the premises itself is the business of the assessee. In the given facts, it was an undisputed fact that the assessee would be considered to be a deemed owner under section 27 as it had a leasehold right for more than 12 years. Hence, in this case, the income is to be assessed as "Income from house property" and not as business income, on account of lack of sufficient material to prove that the substantial income of the assessee was from letting out of the property.
Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC)	
Would income from letting out of properties by a company, whose main object as per its memorandum of association is to acquire and let out properties, be taxable as its business income or income from house property, considering the fact that the entire income of the company as per its return of income was only from letting out of properties?	The Supreme Court, accordingly, held that the assessee had rightly disclosed the income derived from letting out of such properties under the head "Profits and gains of business or profession".
Rayala Corporation (P) Ltd. v. Asst. CIT (2016) 386 ITR 500	
Would rental income from the business of leasing out properties be taxable under the head "Income from house property" or "Profits and gains from business or profession"?	The Apex Court, thus, held that since the business of the company is to lease out its property and earn rent there from, the rental income earned by the company is chargeable to tax as its business income and not income from house property.

ANALYSIS

Raj Dadarkar and Associates v. ACIT [2017] 394 ITR 592 (SC)
Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC)
Rayala Corporation (P) Ltd. v. Asst. CIT (2016) 386 ITR 500

In Chennai Properties and Investments Ltd. case the Apex Court observed that holding of the properties and earning income and letting out is the main objective of the company. Further, in the return of income filed by the company and accepted by the Assessing Officer, the entire income of the company comprised of income from letting out of such properties. The SC, accordingly, held that such income was taxable as business income. Likewise, in Rayala Corporation (P) Ltd. v. Asst. CIT (2016) 386 ITR 500, the Supreme Court noted that the assessee was engaged only in the business of renting its properties and earning rental income there from and accordingly, held that such income was taxable as business income. In Raj Dadarkar and Associates v. ACIT [2017] 394 ITR 592 (SC), however, on account of lack of sufficient material to prove that substantial income of the assessee was from letting out of property, the Supreme Court held that the rental income has to be assessed as "Income from house property".

New Delhi Hotels Ltd. v. ACIT (2014) 360 ITR 0187 (Delhi]	
Whether the rental income derived from the unsold flats which are shown as stock-in-trade in the books of the assessee would be taxable under the head 'Profits and gains from business or profession' or under the head 'Income from house property', in a case where the actual rent receipts formed the basis of computation of income?	The Delhi High Court followed its own decision in the case of CIT vs. Discovery Estates Pvt. Ltd / CIT vs. Discovery Holding Pvt. Ltd., wherein it was held that rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be assessed under the head "Income from house property" and not under the head "Profits and gains from business or profession".
CIT v. NDR Warehousing P Ltd (2015) 372 ITR 690 (Mad)	
Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax- "Income from house property" or "profit sand gains of business or profession"?	The High Court held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property".
CIT v. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.) (Full Bench)	
Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?	The Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2).
CIT v. Asian Hotels Ltd. (2010) 323 ITR 490 (Del.)	
Can notional interest on interest-free deposit received by an assessee in respect of a shop let out on rent be brought to tax as business income or income from house property?	The High Court observed that section 28 is concerned with business income and brings to tax the value of any benefit, whether convertible into money or not, arising from business or profession. Section 28 can be invoked only where the benefit is otherwise than by way of cash. In this case, the AO has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18% simple interest on the deposit. Hence, section 28 is not applicable.
CIT v. K and Co. (2014) 364 ITR 93 (Del)	
Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?	High Court, accordingly, held that the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".
I.C.D.S. Ltd. v. CIT (2013) 350 ITR 527 (SC)	
Can depreciation on leased vehicles be denied to the lessor on the ground that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?	The Supreme Court, therefore, held that assessee was entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business.

CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi)	
What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	The High Court observed that computer accessories and peripherals such as printers, scanners etc. form an integral part of computer system and they cannot be used without computer. The High Court held that since they are part of the computer system, they would be eligible for depreciation at the higher rate of 60% (Presently 40%) applicable to computers including computer software.
Areva T and D India Ltd. v. DCIT (2012) 345 ITR 421 (Delhi)	
Can business contracts, business information, etc., acquired by the assessee as part of the slump sale and described as 'goodwill', be classified as an intangible asset to be entitled for depreciation under section 32(1)(ii)?	The High Court, therefore, held that the specified intangible assets acquired under the slump sale agreement by the assessee are in the nature of intangible asset under the category "other business or commercial rights of similar nature" and are accordingly eligible for depreciation under section 32(1)(ii).
CIT v. Smifs Securities Ltd. (2012) 348 ITR 302 (SC)	
Is the assessee entitled to depreciation on the value of goodwill considering it as an asset within the meaning of *Explanation 3(b)* to Section 32(1	A reading of the words 'any other business or commercial rights of similar nature' in Explanation 3(b) indicates that goodwill would fall under the said expression. Therefore, it was held that 'Goodwill' is an asset under Explanation 3(b) to section 32(1) and depreciation thereon is allowable under the said section.
Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)	
Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation?	The High Court held that the rate of depreciation of 60% (Presently 40%) is available to computers and there is no ground to treat the communication equipment as computers. Hence, EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation at 60% (Presently 40%).
CIT v. Smt. A. Sivakami and Another (2010) 322 ITR 64 (Mad.)	
Would beneficial ownership of assets suffice for claim of depreciation on such assets?	Since, in this case, the assessee has made available all the documents relating to the business and also established that she is the beneficial owner, the High Court held that she was entitled to claim depreciation even though she was not the legal owner of the buses.

CIT v. Ceebros Hotels Private Limited [2018] 409 ITR 423 (Mad)	
Can an assessee setting up a hotel claim deduction under section 35AD for the relevant previous year, on the basis that it had commenced its operations and made an application for three-star category classification in beginning of the said previous year, even though the same was granted by the authority only in the next year due to the requirement of completion of inspection?	The Department had not disputed the operation of the new hotel from the relevant previous year as it had accepted the income, which was offered to tax. Under section 35AD, deduction is available from the previous year in which the assessee commences operation of the specified business i.e., hotel business, in this case. Section 35AD does not mandate that the date of the certificate has to be with effect from a particular date. The High Court held that the assessee is entitled to claim the deduction under section 35AD for the relevant previous year.
Berger Paints India Ltd v. CIT [2017] 393 ITR 113 (SC)	
Whether "premium" on subscribed share capital is "capital employed in the business of the company" under section 35D to be eligible for a deduction?	The Supreme Court held that the assessee is not entitled to claim deduction in relation to the premium amount received from shareholders at the time of share subscription
Principal CIT v. Reebok India Company [2018] 409 ITR 587 (Del)	
Can part of the interest paid by the assessee on unsecured loans taken be disallowed due to the reason that, out of the said loans, the assessee had advanced certain sum of money to third parties without charging any interest?	The High Court, accordingly, held that deduction for interest paid on unsecured loans has to be allowed under section 36, where the commercial expediency test is satisfied, even though part of the unsecured loan was advanced to third parties without charging interest.
CIT v. Gujarat State Road Transport Corpn (2014) 366 ITR 170 (Guj)	
Can employees contribution to Provident Fund and Employee's State Insurance be allowed as deduction where the assessee-employer had not remitted the same on or before the "due date" under the relevant Act but remitted the same on or before the due date for filing of ROI u/s 139(1)	The High Court held that the delayed remittance of employees' contribution beyond the 'due date', is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1).
Contrary View Uttrakhand High Court in the case of CIT v. Kichha Sugar Co. Ltd. (2013) 356 ITR 351 holding that the employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing the return for the relevant previous year.	
Shasun Chemicals & Drugs Ltd v. CIT (2016) 388 ITR 1 (SC)	
In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?	The Supreme Court has held that the bonus was allowable as deduction under section 36(1)(ii), even though it was initially remitted to the trust created for this purpose, from which the payment was ultimately made to the employees before the due date.

CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 (Delhi)	
What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	The Delhi High Court held that such expenditure on glow sign boards displayed at dealer outlets was revenue in nature.
CIT v. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)	
Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	The Karnataka High Court held that the expenditure incurred on the issue and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.
CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)	
Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?	The High Court held that, since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.
CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.)	
Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure?	The High Court observed that the expenditure incurred by the assessee for commercial expediency relates to carrying on of business. The expenditure is of such nature which a prudent businessman may incur for the purpose of his business. The operational expenses incurred by the assessee solely intended for the furtherance of the enterprise can by no means be treated as expenditure of capital nature.
Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) 353 ITR 388 (H.P.)	
Is Circular No. 5/2012 dated 01.08.2012 disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with Explanation to section 37(1), which disallows expenditure which is prohibited by law?	The High Court opined that contention of the assessee that the above mentioned Circular goes beyond section 37(1) was not acceptable. it is clear that any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. Therefore, the circular is totally in line with the *Explanation* to section 37(1).
CIT v. Kap Scan and Diagnostic Centre P. Ltd. (2012) 344 ITR 476 (P&H)	
Can the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance?	The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.

Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286 (Bom.)	
Can expenditure incurred by a company on higher studies of the director's son abroad be claimed as business expenditure under section 37 on the contention that he was appointed as a trainee in the company under "apprentice training scheme", where there was no proof of existence of such scheme?	The High Court, thus, held that there was no nexus between the education expenditure incurred abroad for the director's son and the business of the assessee company. Therefore, the aforesaid expenditure was not deductible.
Shanti Bhushan v. CIT (2011) 336 ITR 26 (Delhi)	
Can the expenditure incurred on heart surgery of an assessee, being a lawyer by profession, be allowed as business expenditure under section 31, by treating it as current repairs considering heart as plant and machinery, or under section 37, by treating it as expenditure incurred wholly and exclusively for the purpose of business or profession?	There is, therefore, no **direct nexus** between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Therefore, the claim for allowing the said expenditure under section 37 is also not tenable. Hence, the heart surgery expenses shall not be allowed as a business expenditure of the assessee under the Income-tax Act, 1961
CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn)	
Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	In the instant case, since the payment has been made to the police and gundas to keep them away from the business premises, such a payment is illegal and hence, not allowable as deduction.
Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.)	
Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	The High Court observed that as per the provisions of the Karnataka Municipal Corporations Act, 1976, the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction under section 37.
Palam Gas Service v. CIT [2017] 394 ITR 300 (SC)	
Whether section 40(a)(ia) is attracted when amount is not 'payable' to a sub-contractor but has been actually paid?	The Supreme Court agreed with the observations of the majority High Courts and held that section 40(a)(ia) covers not only those cases where the amount is payable but also when it is paid.
CIT v. Maruti Suzuki India Limited [2018] 407 ITR 165 (Del)	
Can payments made by an assessee to a non-resident agent who does not have any income assessable in India be disallowed under section 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee under section 195(2) for making deduction of tax at source at nil rate?	The High Court, accordingly, held that where the assessee has made payment to a non-resident agent where such income is not chargeable to tax in India, section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source, while computing the business income of the assessee.

CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)	
Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?	High Court, held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2)(a).
CIT v. Aditya Kumar Jajodia [2018] 407 ITR 107 (Cal)	
Can the amount incurred by the assessee towards perfecting title of property acquired through will, for making further sale, be included in the cost of acquisition for computing capital gains?	The High Court, held that, the assessee is entitled to deduction of amount incurred towards perfecting title of property acquired under will and the amount incurred towards making payments to the trust and the third party in whose favour rights were created, as cost of acquisition under section 55.
Balakrishnan v. Union of India & Others (2017) 391 ITR 178 (SC)	
Whether receipt of higher compensation after notification of compulsory acquisition would change the character of transaction into a voluntary sale?	The Supreme Court held that when proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition. The claim of exemption from capital gains under section 10(37) is, therefore, tenable in law.
Principal CIT v. Ravjibhai Nagjibhai Thesia (2016) 388 ITR 358 (Guj)	
Whether the Assessing Officer is bound to consider the report of Departmental Valuation Officer (DVO) when it is available on record?	The High Court held that capital gains has to be computed in conformity with the value so determined by the DVO.
CIT v. Manjula J. Shah (2013) 355 ITR 474 (Bom.)	
Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?	The indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset.
C Aryama Sundaram v. CIT [2018] 407 ITR 1 (Mad)	
Would the cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned residential house property, qualify for exemption under section 54?	The High Court, accordingly, held that, in this case, the cost of land and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for the purpose of capital gains exemption under section 54.

CIT v. Gita Duggal (2013) 357 ITR 153 (Delhi)	
Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/ 54F be available in respect of the cost of construction of – • The new residential house (i.e., all independent floors handed over to the assessee); or • A single residential unit (i.e., only one independent floor)?	The High Court held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.
CIT v. Syed Ali Adil (2013) 352 ITR 0418 (A.P.)	
Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?	The High Court, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit.
CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)	
Can exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	High Court held merely because the assessee's son was shown in the sale deed as co-owner, it did not make any difference. It was not the case of the Revenue that the land in question was exclusively used by the son. Therefore, the assessee was entitled to deduction under section 54B.
CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi)	
Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	High Court, having regard to the rule of purposive construction and the object of enactment of section 54F, held that the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.
CIT v. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi)	
In case of a house property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?	High Court held that the assessee was the real owner of the residential house in question and mere inclusion of his wife's name in the sale deed would not make any difference. The High Court also observed that section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee. Therefore, the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)	
Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?	The Court held that in this case the assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.
CIT v. V.S. Dempo Company Ltd (2016) 387 ITR 354 (SC)	
In a case where a depreciable asset held for more than 36 months is transferred, can benefit of exemption under section 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?	The Apex Court, held that since the depreciable asset is held for more than 36 months and the capital gains are re-invested in long-term specified assets within the specified period, exemption under section 54EC cannot be denied.
Gouli Mahadevappa v. ITO (2013) 356 ITR 90 (Kar.)	
Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment? The assessee sold a plot of land for Rs. 20 lakhs (SDV 36 Lac) and reinvested the sale consideration of Rs. 20 lakhs together with agricultural income of Rs. 4 lakhs, in construction of a residential house.	The Assessing Officer allowed exemption under section 54F, taking into consideration investment in construction of residential house, to the extent of actual net consideration of Rs. 20 lakhs. High Court held that when capital gain is assessed on notional basis as per section 50C, and the higher value i.e. 36 lakhs has been adopted as the full value of consideration, the entire amount of Rs. 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.
Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)	
Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?	For the purpose of section 54EC, the date of investment by the assessee must be the date on which payment is made. The High Court held that if such payment is within 6 months the assessee would be eligible to claim exemption under section 54EC.
Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC)	
Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?	In respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets

Principal CIT v. Gujarat State Fertilizers and Chemicals Limited [2018] 409 ITR 378 (Guj)	
Would sale of fertilizer bonds (issued in lieu of government subsidy) at loss be treated as a business loss or a loss under the head "Capital gains"?	The High Court, held that since the subsidy would have been treated as business income, loss on sale of fertilizer bonds issued is to be allowed as business loss.
CIT v. Sree Rama Multi Tech Ltd. [2018] 403 ITR 426 (SC)	
Is interest income from share application money deposited in bank eligible for set-off against public issue expenses or should such interest be subject to tax under the head 'Income from Other Sources'?	The Supreme Court held that the interest accrued on deposit of share application money with bank is eligible for set off against the public issue expenses; such interest is, hence, not taxable as "Income from Other Sources".
Gopal & Sons (HUF) v. CIT (2017) 391 ITR 1 (SC)	
Is loan to HUF who is a shareholder in a closely held company chargeable to tax as deemed dividend?	The Supreme Court, accordingly, held that the loan amount is to be assessed as deemed dividend under section 2(22)(e)
Movaliya Bhikhubhai Balabhai v. ITO (TDS) (2016) 388 ITR 343 (Guj)	
Is interest on enhanced compensation under section 28 of the Land Acquisition Act, 1894 assessable as capital gains or as income from other sources?	The High Court held that the interest awarded under section 28 of the Land Acquisition Act, 1894 was not liable to tax under the head of 'Income from other sources'
CIT v. Parle Plastics Ltd. (2011) 332 ITR 63 (Bom.)	
What are the tests for determining "substantial part of business" of lending company for the purpose of application of exclusion provision under section 2(22)? In this case, 42% of the total assets of the lending company were deployed by it by way of loans and advances.	High Court held that since lending of money was a substantial part of the business of the lending company, the money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it had to be excluded from the definition of "dividend" by virtue of section 2(22).
CIT v. Vir Vikram Vaid (2014) 367 ITR 365 (Bom)	
Can repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	The High Court, accordingly, held that the repair and renovation expenses in respect of premises owned by the assessee and occupied by the company cannot be treated as deemed dividend.
Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538 (Cal.)	
Can the loan or advance given to a shareholder by the company, in return for an advantage conferred on the company by the shareholder (i.e. permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan) be deemed as dividend u/s 2(22)(e)?	The High Court held that the advance given to the assessee by the company was not in the nature of a gratuitous advance; instead it was given to protect the interest of the company. Therefore, the said advance cannot be treated as deemed dividend under section 2(22)(e).
CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)	
Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	The High Court, held that financial transactions cannot be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).

CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)	
Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?	The High Court, therefore, held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.
Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi)	
Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	The Court held that the loss suffered by the erstwhile partnership firm before dissolution of the firm cannot be carried forward by the successor sole-proprietor, since it is not a case of succession by inheritance.
CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015) 373 ITR 619 (Guj)	
Can the Commissioner reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?	The High Court, confirmed the decision of the Tribunal setting aside the order passed by the Commissioner refusing to grant registration u/s 80G(5) to the assessee-trust due to the reason that it has not applied 85% of its income for charitable purposes.
CIT v. Container Corporation of India Limited [2018] 404 ITR 397 (SC)	
Can Inland Container Depots (ICDs) be treated as infrastructure facility, for profits derived therefrom to be eligible for deduction under section 80-IA?	The Supreme Court held that CONCOR can claim for deduction under Section 80-IA in respect of profits derived from Inland Container Depots.
CIT v. Ranjit Projects Private Limited [2018] 408 ITR 274 (Guj)	
Would an assessee who enters into an agreement with the Gujarat State Road Development Corporation for an infrastructure development project be entitled to deduction under section 80-IA(4), even though as per the requirement contained therein, the agreement has to be entered into with the CG or SG or a local authority or any other statutory body?	The High Court held that since the assessee has entered into an agreement with GSRDC, a government agency constituted by the State Government for the purposes of executing road development projects, it is entitled to deduction under Section 80-IA.
CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.)	
Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee? The Assessing Officer contended that depreciation relating to a business eligible for deduction under section 80-IA cannot be set off against non-eligible business income.	The Court held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction u/s 80-IA in subsequent year.

CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630 (Bom)	
Is the increase in gross total income consequent to disallowance under section 40(a)(ia) eligible for profit-linked deduction under Chapter VI-A?	High Court held that the assessee is entitled to claim deduction u/s 80-IB(10) in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).
CIT v. Meghalaya Steels Ltd (2016) 383 ITR 217 (SC)	
Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits "derived from" business or undertaking to qualify for deduction under section 80-IB?	The Supreme Court held that there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction under section 80-IB.
CIT v. Orchev Pharma P. Ltd. (2013) 354 ITR 227 (SC)	
Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	Supreme Court, following the decision in case of Liberty India (SC) held that Duty Drawback receipts cannot be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction under section 80-IB.
CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi)	
Does the period of exemption under section 80-IB commence from the year of trial production (FY 97-98) but there was in fact sale of one water cooler and air-conditioner in the month of March 1998 or year of commercial production (FY 98-99)? Would it make a difference if sale was effected from out of the trial production?	The Court held that conditions stipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.
Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)	
Can an assessee who has not claimed deduction under section 80-IB in the initial years, start claiming deduction thereunder for the remaining years during the period of eligibility, if the conditions are satisfied?	Delhi High Court held that the provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled

Union of India v. Tata Tea and Others [2017] 398 ITR 260 (SC)	
Can dividend distribution tax under Section 115-O of Income-tax Act, 1961 be levied in respect of the dividend declared out of agricultural income?	When dividend is declared to be distributed and paid to a company's shareholders, it is not impressed with character of the source of its income. Section 115-O is within the competence of the Union Parliament and therefore dividend distribution tax can be levied in respect of the entire dividend declared and distributed by a tea company.
Income-tax Officer v. Venkatesh Premises Co-operative Society Ltd. [2018] 402 ITR 670 (SC)	
Whether certain receipts by co-operative societies from its members (non-occupancy charges, transfer charges, common amenity fund charges) are exempt based on the doctrine of mutuality?	The doctrine of mutuality, is based on the common law principle that a person cannot make a profit from himself. Accordingly, the transfer charges, non-occupancy charges common amenity fund charges and other charges are exempt owing to application of the doctrine of mutuality.
CIT v. Govindbhai Mamaiya (2014) 367 ITR 498 (SC)	
Where land inherited by three brothers is compulsorily acquired by the State Government, whether the resultant capital gain would be assessed in the status of "Association of Persons" (AOP) or in their individual status?	The Apex Court, accordingly, held that the income from asset inherited by the legal heirs is taxable in their individual hands and not in the status of AOP.
Commissioner of Income-tax v. D. L. Nandagopala Reddy (Individual) (2014) 360 ITR 0377 (Kar)	
Would the ancestral property received by the assessee after the death of his father, be considered as HUF property or as his individual property, where the assessee's father had received such property as his share when he went out of the joint family under a release deed?	The High Court held that that when the property came to the hands of the assessee, it was not his self-acquired property; it was property belonging to his HUF.
Sudhir Nagpal v. Income-tax Officer (2012) 349 ITR 0636 (P & H)	
Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable - "Income from house property" or "Income from other sources"? Further, would such income be assessable in the hands of the individual co-owners or in the hands of the Association of Persons?	The Court held that the income from letting out the plinths is assessable under section 56 as "Income from other sources" and not under the head "Income from house property". Further, the co-owners had inherited the property from their ancestors and there was nothing to show that they had acted as an association of persons. Thus, HC held that the rental income from the plinths has to be assessed in the status of individual and not association of persons
Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.)	
Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?	The High Court held that interest earned from investment of surplus funds with institutional members does not satisfy the principle of mutuality and hence interest earned is taxable.

Sind Co-operative Housing Society v. ITO (2009) 317 ITR 47 (Bom)	
Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?	The High Court observed that under the bye-laws of the society, charging of transfer fees had no element of trading or commerciality. Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.
CIT v. Anil Hardware Store (2010) 323 ITR 368 (HP)	
In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?	The High Court held that the manner of fixing the remuneration has been specified in the deed. In a given year, the partners may decide to invest certain amounts of the profits into other ventures and receive less remuneration than is permissible under the deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the deed. The method of remuneration having been laid down, the assessee-firm is entitled to deduct the remuneration paid to the partners under section 40(b)(v).
Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470 (SC)	
Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB?	The Supreme Court, therefore, held that interest under sections 234B and 234C shall be payable on failure of the company to pay advance tax in respect of tax payable under section 115JB.
N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)	
Can long-term capital gain exempted by virtue of section 54EC be included in the book profit computed under section 115JB?	High Court held that long-term capital gains so exempt would be taken into account for computing book profits under section 115JB for levy of MAT.
CIT v. Trans Asian Shipping Services (P) Ltd (2016) 385 ITR 637 (SC)	
Can income derived by an Indian shipping company from slot charter arrangement in other ships be computed applying the special provisions under Chapter XII-G of the Income-tax Act, 1961, relating to Tonnage Tax Scheme, inspite of non-fulfillment of the condition of holding a valid certificate in respect of such ships indicating its net tonnage in force?	The Apex Court, held that the requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter etc. It held that the contention of the assessee is valid and the legal fiction created by section 115VG(4) is to be given proper meaning. Accordingly, income from slot charter arrangement in other ships can be computed applying the special provisions under Chapter XII-G.

Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC)	
Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?	Apex Court upheld the Tribunal's view that the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder.
CIT v. St. Peter's Educational Society (2016) 385 ITR 66 (SC)	
Would imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption under section 10(23C)(vi)?	Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).
CIT v. Society for the Promotion of Education (2016) 382 ITR 6 (SC)	
In a case where the charitable trust is deemed to be registered under section 12A due to non-disposal of application within the period of 6 months, as stipulated under section 12AA(2), from when would such deemed registration take effect?	The Apex Court clarified that deemed registration would commence only after 6 months from the date of application. However, in the light of the current provisions of section 12A(2), the exemption provisions of sections 11 and 12 would apply in relation to the income of the trust from the assessment year immediately following the financial year in which such application is made, even though the effective date of deemed registration would be after expiry of the six month period as per the above Supreme Court ruling.
DIT (E) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219 (Kar.)	
Where a charitable trust applied for issuance of registration under section 12A within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?	The High Court observed that, with the money available with the trust, it cannot be expected to carry out activity of charity immediately. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity.
DIT (Exemption) v. Khetri Trust (2014) 367 ITR 723 (Del)	
In a case where properties bequeathed to a trust could not be transferred to it due to ongoing court litigation and pendency of probate proceedings, can violation of the provisions of section 11(5) be attracted?	The High Court held that there was no violation of section 11(5) in this case.
U.P. Distillers Association (UPDA) v. CIT [2017] 399 ITR 143 (Del)	
Is the cancellation of registration of a trust under section 12AA, on the basis of search conducted in the premises of its Secretary General and the statement recorded by him under section 132(4), valid?	The Delhi High Court, accordingly, held that cancellation of the trust's registration under section 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded under section 132(4) from him, is valid.

DIT (Exemptions) v. Ramoji Foundation (2014) 364 ITR 85 (AP)	
Is the approval of Civil Court mandatory for amendment of trust deed, even in a case where the settler has given power to the trustees to alter the trust deed?	High Court held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under section 12AA.
ITC Ltd v. CIT (2016) 384 ITR 14 (SC)	
Whether "tips" received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of "Salaries" to attract tax deduction at source under section 192?	It held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.
UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)	
Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?	The High Court observed that Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a 'payee' for the purposes of section 194A. Thus, not attract the provisions of section 194A.
CIT (TDS) and Anr v. Canara Bank [2018] 406 ITR 161 (SC)	
Can payment of interest by Canara Bank to NOIDA be exempted from the requirement of tax deduction at source under section 194A on the ground that the same is a corporation established by or under the Uttar Pradesh Industrial Area Development Act, 1976?	The Supreme Court observed that the Preamble to the 1976 Act itself provides for constitution of an authority. NOIDA has, thus, been established by the 1976 Act and is clearly covered. Hence, it is eligible for exemption from tax deduction at source provided under section 194A(3)(iii)(f).
CIT v. Hindustan Lever Ltd. (2014) 361 ITR 0001 (Kar.)	
Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?	Where the winnings are wholly in kind the question of deduction of any sum therefrom does not arise, the only responsibility, as cast under section 194B, is to ensure that tax is paid by the winner of the prize before the prize released in his favour. The High Court observed that if the assessee fails to ensure that tax is paid before the winnings are released then, section 271C empowers the JC to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the High Court held that proceedings under section 201 cannot be initiated against the assessee.

Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR)	
Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?	The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that **transmission and wheeling charges** paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to **withhold tax thereon under section 194J.** As regards **SLDC charges,** the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were **not in the nature of technical service** to the applicant; Resultantly, it **does not attract TDS provisions under section 194J or under section 194C.**
CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)	
Can discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract the provisions for tax deduction under section 194H?	The Supreme Court held that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.
CIT v. Intervet India P Ltd (2014) 364 ITR 238 (Bom)	
Can incentives given to stockists and distributors by a manufacturing company be treated as "commission" to attract – **(i)** the provisions for tax deduction at source under section 194H; and **(ii)** Consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?	The High Court held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of section 194H. High Court held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.
Bharti Cellular Ltd. v. ACIT (2013) 354 ITR 507 (Cal.)	
Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H?	The High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H.

CIT v. Qatar Airways (2011) 332 ITR 253 (Bom.)	
Can the difference between the published price and the minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline company to attract TDS provisions under section 194H, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents?	Thus, tax at source was not deductible on the difference between the actual sale price and the minimum fixed commercial price, even though the amount earned by the agent over and above minimum fixed commercial price would be taxable as income in his hands.
Director, Prasar Bharati v. CIT [2018] 403 ITR 161 (SC)	
Are the provisions of tax deduction at source under section 194H attracted in respect of amount retained by accredited advertising agencies out of remittance of sale proceeds of "airtime" purchased from Doordarshan and sold to customers?	The Supreme Court, held that the amount retained by the accredited advertising agencies is commission and consequently, the provisions of TDS u/s 194H are attracted. Consequently, for failure to TDS, the assessee would be treated as an assessee-in-default.

Analysis

It may be noted that the CBDT has, vide Circular No.5/2016 dated 29.2.2016, clarified that TDS under section 194H is not attracted on retentions by an advertising agency (for booking or procuring of or canvassing for advertisements) from payments remitted to television channels/newspaper companies. The CBDT has issued this clarification on the basis of the **Allahabad High Court ruling in Jagran Prakashan Ltd.'s case** that the relationship between the media company and advertising agency is that of a **"principal to principal"**. However, the Supreme Court, in this case, has distinguished from the Allahabad High Court ruling, on the basis of the fact that an agreement has been entered into by Doordarshan with the accredited agencies specifically appointing them as agents; and the agreement also contains a specific clause for deduction of tax at source on trade discount, which is in the nature of commission. Accordingly, the Supreme Court held that the relationship between Doordarshan and its accredited agencies is that of a principal and agent, consequent to which TDS provisions under section 194H would get attracted in respect of retentions by accredited advertising agencies from payments remitted to Doordarshan. **Therefore, the applicability or otherwise of the CBDT Circular will depend on the facts of the specific case.**

Japan Airlines Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)	
Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I?	The Supreme Court held that it cannot be treated as "rent" within the meaning of section 194-I.

Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del)	
Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	The High Court held that the submission of the assessee that the transaction is not "renting" is incorrect. Also, the Revenue's contention that the transaction is primarily "renting of land" is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that **tax deduction be made at 2% as per section 194-I(a),** the rate applicable for payment made for use of plant and machinery.
CIT v. Indian Oil Corporation [2019] 410 ITR 106 (Uttarakhand)	
Is the assessee-company engaged in refining, distribution and sale of petroleum products, liable to deduct tax under section 194C or under section 194-I, in respect of payment made to the carrier engaged for road transport of bulk petroleum products?	The High Court held that, even after amendment to the Explanation under section 194-I to include within its scope, payment for use of plant, the case could not fall within its ambit. The contract is one for transportation of goods and, therefore, is a contract of work within the meaning of section 194C and not section 194-I.
CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)	
In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?	It was held that, in the present case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same.
CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)	
Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?	High Court held that Since the assessee had given sub-contracts for transportation of goods and not for the renting out of machinery or equipment, such payments could not be termed as rent paid for the use of machinery and the provisions of section 194-I would, therefore, not be applicable.
CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC)	
Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?	The Apex Court held the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom)	
Is tax is required to be deducted under section 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?	The High Court, held that section 172 dealing with shipping business of non-residents and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, there would be no obligation on the payer-assessee to deduct the tax at source under section 195 on payment of demurrage charges to the non-resident shipping company.
DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014) 364 ITR 227 (Bom)	
Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?	The High Court held that the service rendered by the agent was outside India and hence, was not chargeable to tax in India. Thus, section 195 is not applicable.
Sun Outsourcing Solutions (P) Ltd v. CIT (Appeals) [2018] 407 ITR 480 (T&AP)	
Is interest under section 201(1A) attracted even in a case where non-deduction of tax at source was under a bona fide belief that tax was not deductible and the default was not willful?	The High Court held that since the company had failed to deduct tax on the payments made to its employees, being Indian residents deputed to work in the U.K., section 201(1A) is automatically attracted; even if such non-deduction was due to the bona fide belief that tax is not deductible in such case, the company is liable to pay interest under section 201(1A).
CIT v. Priya Blue Industries (P) Ltd (2016) 381 ITR 210 (Guj)	
Can items of finished products from ship breaking activity which are usable as such be treated as "Scrap" to attract provisions for tax collection at source under section 206C?	The High Court held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the Explanation to section 206C.
CIT v. Bhagat Construction Co (P) Ltd (2016) 383 ITR 9 (SC)	
Is levy of interest under section 234B attracted in a case where the assessment order does not contain any specific direction for payment of interest, but is accompanied by form ITNS 150 containing a calculation of interest payable on tax assessed?	The Apex Court, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified therein are satisfied and the assessment order is accompanied by the prescribed form containing the calculation of interest payable.
CIT v. SV Gopala and Others [2017] 396 ITR 694 (SC)	
Does the Central Board of Direct Taxes (CBDT) have the power to amend legislative provisions through a Circular?	The SC observed that the CBDT does not have the power to amend legislative provisions in exercise of its powers under section 119 by issuing a Circular.

Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)	
Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?	The High Court held that the Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated.
U.P. Distillers Association (UPDA) v. CIT [2017] 399 ITR 143 (Del)	
Is the cancellation of registration of a trust under section 12AA, on the basis of search conducted in the premises of its Secretary General and the statement recorded by him under section 132(4), valid?	The Delhi High Court, accordingly, held that cancellation of the trust's registration under section 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded under section 132(4) from him is valid.
Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014) 360 ITR 0243 (SC)	
Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?	The Supreme Court held that information of general nature could be called for from banks. In this case, since notices have been issued after obtaining approval of the Commissioner, The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority.
Note The Finance Act, 2017 has amended the second proviso to section 133 to provide that the power in respect of an inquiry, in a case where no proceeding is pending, can be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner.	
Sahara Hospitality Ltd. v. CIT (2013) 352 ITR 38 (Bom.)	
Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1) (i.e. income tax authority mentioned therein **may** give an opportunity of being heard to the assessee, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or officers subordinate to him.) mandatory in nature?	High Court held that the word "may" used in this section should be read as "shall" and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section. "Reasonable opportunity" can only be dispensed with in a case where it is not possible to provide such opportunity. In such a case also, the authority should record its reasons for making the transfer, even though no opportunity was given to the assessee. The discretion of the authority is only to consider as to what is a reasonable opportunity in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.

Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 441 (Del.)	
Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?	The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner.
Regen Powertech (P) Ltd. v. CBDT and Another [2019] 410 ITR 483 (Mad)	
Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?	The High Court held that application for condonation of delay could not have been rejected by the CBDT as the circumstances causing delay were beyond the control of the assessee. The High Court opined that the CBDT should have exercised its discretion in a proper manner and condoned the delay.
Mega Trends Inc. v. CIT (2016) 388 ITR 16 (Mad).	
Does the CIT (Appeals) have the power to change the status of assessee?	The High Court held that the power to change the status of the assessee is available to the assessing authority and when it is not used by him, the appellate authority is empowered to use such power and change the status.
CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom.)	
Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	Bombay High Court, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.
CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)	
Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?	High Court observed that **Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance.** It is held that in this case, the Tribunal, while dealing with the application under section 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappreciation of the correctness of the earlier decision on merits, which is **beyond the scope of the power conferred under section 254(2).**

Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)	
Can the Tribunal exercise its power of rectification under section 254(2) to recall its order in entirety, where there is a mistake apparent from record?	Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.
CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)	
Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits? **Observation** The Supreme Court concurred with the assessee's submission that High Courts being courts of record under article 215 of the Constitution of India, the power of review would inhere in them. The Supreme Court had observed that there is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court. Therefore, keeping in mind the requirement of the principles of natural justice, the High Court had exercised its inherent power of review.	The Supreme Court went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.
Spinacom India (P.) Ltd. v. CIT [2018] 258 Taxman 128 (SC)	
Whether delay in filing appeal under section 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record?	The Apex Court held that since no satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in filing the appeal, the Supreme Court dismissed the application for condonation of delay.
CIT v. Subrata Roy (2016) 385 ITR 570 (SC)	
Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?	The Apex Court held that the order passed by the High Court is not an ex-parte order for invoking the provisions of the Code of Civil Procedure, 1908. Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power thereunder cannot be exercised. Accordingly, the Supreme Court set aside the order of the High Court

CIT v. Amitabh Bachchan (2016) 384 ITR 200 (SC)	
Can revision under section 263 be made on the ground that the order is passed without making inquiries or verification which should have been made?	The Apex Court, held that the order of the Tribunal setting aside the revisional order on the ground that it went beyond the show cause notice was not sustainable. It further held that the High Court having failed to fully deal with the matter, its order was not tenable.
Note The Apex Court noted that to exercise jurisdiction under section 263 the requirement is that the order passed by the assessing authority is erroneous and prejudicial to the interests of the revenue. **Section 263 does not require any specific show cause notice to be served on the assessee.** **As per Explanation 2 to section 263(1),** with effect from 01.06.2015, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of the Principal Commissioner or Commissioner, the order is passed without making inquiries or verification which should have been made. The rationale of the above court ruling is, thus, also in line with Explanation 2 to Section 263(1).	
CIT v. Krishna Capbox (P) Ltd (2015) 372 ITR 310 (All)	
Can mere non-mention or non-discussion of enquiry made by the Assessing Officer in the assessment order justify invoking revisionary jurisdiction under section 263?	The High Court concurred with the decision of the Tribunal and held that since the relevant enquiries and replies are available on 'record' (i.e., the paper book), the Commissioner cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.
CIT v. Fortaleza Developers (2015) 374 ITR 510 (Bom)	
Can the Commissioner invoke revisionary jurisdiction under section 263, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction under section 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?	When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since section 263 debars the same. Accordingly, the High Court held that very same issue cannot be revised by invoking revisionary jurisdiction under section 263.
Samsung India Electronics P. Ltd. v. DCIT (2014) 362 ITR 460 (Del.)	
Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the High Court in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	The High Court, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.

Bombay High Court ruling in CIT v. Lark Chemicals Ltd (2014) 368 ITR 655 **Bombay High Court ruling in CIT v. ICICI Bank Ltd. (2012) 343 ITR 74**	
Should time limit under section 263 to be reckoned with reference to the date of assessment order or the date of reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?	High Court held that the period of limitation in respect of the order of the Commissioner under section 263 with regard to a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order under section 143(3) and not from the date of the reassessment order under section 147.
CIT v. New Mangalore Port Trust (2016) 382 ITR 434 (Karn)	
Can the original assessment order under section 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263? **Facts** • An assessment order was passed by the Assessing Officer under section 143(3) • Assessee filed a revision petition under section 264 which was allowed and the matter was remanded to the Assessing Officer to compute the income of the assessee in terms of the order of revision under section 264. • The Assessing Officer gave effect to the revision order • Thereafter, the original order passed under section 143(3), was revised by the Commissioner under section 263	The High Court took note of the sequence of events and undisputed facts that the assessment order passed by the Assessing Officer u/s 143(3) was no longer in existence. The High Court concluded that the Tribunal arrived at the conclusion only after considering the factual position that Commissioner had no jurisdiction to revise the order which was not in existence. The High Court, accordingly, held that the order passed by the Commissioner under section 263, revising the non-existing order is void ab initio and is a nullity in the eyes of law
Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.)	
Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit? **Facts** • The assessee-company had filed its return of income. • It committed a mistake by including dividend income [exempt under section 10(34)] in its return of income, though the same was correctly disclosed in the Schedule containing details of exempt income. • The return was processed under section 143(1) denying the exemption under section 10 and therefore, intimation under section 143(1) was served on the	The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee. In this context, the High Court referred to the CBDT Circular issued as far back as 11th April, 1955 directing the Assessing Officer not to take advantage of the assessee's mistake. The High Court opined that the said Circular should always be borne in mind by the officers of the Revenue while administering the Act. The High Court observed that, in this case, the CIT had committed a fundamental error in proceeding on the basis that no deduction on account of dividend income was claimed from the total income, without considering that the assessee had

assessee raising a demand of tax. • The assessee, on receiving the intimation, noticed the error and filed a revised return rectifying the error. • However, the revised return was not sustainable as the same was filed beyond the period of limitation u/s 139(5). • Later, the assessee filed an application for rectification under section 154 and also a revision petition under section 264. • The CIT, contended that the intimation under section 143(1) was based on the return of the assessee, in which the claims under section 10(34) were not made by the assessee. Hence, it cannot be said that the intimation under section 143(1) was erroneous. The revision petition under section 264 was rejected by the Commissioner on the above grounds.	specifically sought to exclude the same as is evident from the entries in the relevant Schedule. Therefore, this was an error on the face of the order and hence, the same was not sustainable. The High Court, accordingly, set aside the order of Commissioner and remanded the matter for fresh consideration. The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest.
K. Lakshmansa and Co. v. CIT and Anr [2017] 399 ITR 657(SC)	
Is an assessee receiving refund consequent to waiver of interest under sections 234A to 234C of the Income-tax Act, 1961 by the Settlement Commission, also entitled to interest on such refund u/s 244A?	The Supreme Court held that the assessee has a right to interest on refund under section 244A.
CIT v. Muthoot Financiers (2015) 371 ITR 408 (Del)	
Is penalty under section 271D imposable for cash loans/deposits received from partners?	Held that a partnership firm not being a juristic person, the inter se transaction between the firm and partners are not governed by the provisions of sections 269SS and 269T. The High Court held that the issue being a debatable one, there was reasonable cause for not levying penalty.
CIT v. V. Sivakumar (2013) 354 ITR 9 (Mad.)	
Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	The HC held that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.
CIT v. Triumph International Finance (I.) Ltd. (2012) 345 ITR 270 (Bom.)	
Where an assessee repays a loan merely by passing adjustment entries in its books of account, can such repayment of loan by the assessee be taken as a contravention of the provisions of section 269T to attract penalty under section 271E?	High Court held that the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries and therefore, penalty under section 271E is applicable. However, since the transaction is bona fide in nature being a normal business transaction and has not been made with a view to avoid tax, it was held that the assessee has

	shown reasonable cause for the failure under section 269T, and therefore, as per the provisions of section 273B, no penalty under section 271E could be imposed on the assessee for contravening the provisions of section 269T.
Sandeep Singh v Union of India [2017] 393 ITR 77 (SC)	
Whether payment of sums due, after the deadline stipulated by the Settlement Commission, would save the petitioner from withdrawal of immunity from prosecution?	The Supreme Court held that the assessee having cleared all taxes due vide order of Settlement Commission, albeit after stipulated deadline, is immune from prosecution.
Union of India v. Bhavecha Machinery and Others (2010) 320 ITR 263 (MP)	
Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	High Court observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.
Travancore Diagnostics (P) Ltd v. Asstt. CIT (2017) 390 ITR 167 (Ker)	
Whether omission to issue notice under section 143(2) is a defect not curable in spite of section 292BB?	High Court held that Even though the assessee had participated in the proceedings, in the absence of mandatory notice, section 292BB cannot help the Revenue officers who have no jurisdiction, to begin with. Section 292BB helps Revenue in countering claims of assessees who have participated in proceedings once a due notice has been issued.
Dr. Manoj Kabra v. ITO (2014) 364 ITR 541 (All)	
Can the Assessing Officer suo moto assume jurisdiction to declare sale of property as void under section 281?	The High Court held that the Assessing Officer has no jurisdiction under section 281 to suo moto declare the sale as void.