



## **THE CHAMBER OF TAX CONSULTANTS**

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### **STUDY GROUP MEETING**

**Thursday, 11<sup>th</sup> January, 2018**

**SNDT, Committee Room, Churchgate, Mumbai.**

**CA Dinesh Shah**

**11<sup>th</sup> January, 2018.**

### **RECENT DIRECT TAXES JUDGEMENTS.**

**PLACE: M/s. A.J. SHAH & CO.**

#### **(1) OTHERS. A.**

##### **(1) Interpretation of taxing States.**

Google India (P) Ltd V/s Addln CIT (2017) 60 ITR (T) (Bangalore) 40  
Intention of Legislature to be seen and not literal rule.

Precedent: Appellate Tribunal:-

Dy CIT v/s Rane Holdings Ltd (2017) 60 ITR (T) Chennai 101

Appeal before High Court against decision of Tribunal.

High Court not staying operation of Tribunal decision- order of CIT(A) following Tribunal Justified.

##### **2. Undertaking or Enterprise in Special Category State.**

CIT V/s. Natural Fragrances:- Se.80-IC (Uttarakhand)

ITR- online Volume 10 Page 670

Special deduction- Assessee engaged in manufacture of fragrances from Oils extracted from flowers- Raw Material i.e. flowers procured and oils extracted there from by job workers in another state and extract thereafter sent to factory of assessee in Uttarkhand for manufacture of essence. Does not mean manufacturing done outside State. Assessee entitled to deduction I.T Act 1961.

##### **3. Income tax Officer V/s Kandalika Nagri Sahakari**

Patsanrishtha Maradit.

(2016) 178 TTJ 381 (Pune) (2016) 137 DTR 210 Pune Tribunal. 80P(i) (a)

80P (i) (a) 80P(2) (i) (d) In favour of the Assessee.

4. Interest on Self Assessment tax paid V/s 244A Engineers India Ltd V/s CIT (2017) 397 ITR 16 (SC)  
As per case of CIT V/s Sutej Industries Ltd (2010) 325 ITR 331 (De3lhi) Assessee would be entitled to interest under Se.244A of the I.T Act on refund of Self Assessment tax .
  
5. Manufacturing Activities V/s 80HH, 80I & 80IA  
CIT V/s Hindustan Petroleum Corp. Ltd.  
(2017) 396 ITR 696 (SC) 250 Taxman 1 (S.C)  
  
Activity of filing of Cylinder with compressed Gas amounted to production or manufacture for purposes of Se.80HH , 80I and 80IA.
  
6. *M/s. Sea Grean Co-operative H.S. Ltd. ITA No 1343/Mum/2017 A.Y. 2013 – 14*  
Date of order. 31/3/2017. The issue before ITAT.  
The issue facts and circumstances of case and in law the Hon'ble CIT (A) has erred in upholding that the Assessee- is not eligible for deduction u/s 80P (2) (d) at Rs.27,41,747 relying on the decision of the Hon'ble ITAT Ahmadabad in the case of SBI Employees Co-operative Credit Society (2015) 57 taxmann.com 367 and the Hon ITAT Mumbai Bench in case of Shri Saidata Co-operative Credit Society Ltd. V/s ITO in ITA 2379/Mum/2015 without appreciating that the Hon'ble ITAT of Bench in Mumbai in the case of Lands end Co-operative H.S. Ltd. ITA No 3566 / M/2014 where in on an identical issue i.e. claim of deduction u/s 80P (2) (d) of the Act in respect of interest on fixed Deposit with Co-operative Banks was involved has held that the assessee is entitled to the deduction for interest derived by it on deposits with Co-operative Banks.
  
9. Thus it is amply clear that a co. Operative society can only avail deduction u/s 80P (2) (a) (i) in respect of Income assessable as Business Income and not as Income from other sources if it carries on business of banking.
  
10. **Small tax effect**:- Retrospective applicability of instruction No 3 of 2011 dt. 9-2-2011. Director of I.T V/s SR. MB Dairy Farming (P) Ltd (S C) (2017) 160 DTR (S .C) 129 (230)  
Instruction No 3 of 2011 dt. 9-2-2011 is applicable even to pending matters subject to the caveats that this circular should not be applied by the High Courts ipso facto when the matter has cascading effect and where common principles may be involved in subsequent group of matters or a large number of matters.
  
- 12. Condonation of delay**:- Reasonable cause vis-a-vis legal advice- Vijay Vishin Meghani v/s Dy CIT (2017) 160 DTR (Bombay) 33 (227)  
Assessee acted on the advice of his Chartered Accountant and he explanation placed on affidavit was not contested nor from such explanation the conclusion can be arrived that the Assessee was at fault he intentionally and deliberately delayed the matter and has no bonafide or reasonable explanation for the delay in filing the proceedings, the

delay of 2984 days in filing the appeals is condoned but on the condition of payment of costs **qualified totally at Rs.50,000/-**.

- 13.** Payment of gratuity from fund granted by government (Scooters India Ltd V/s CIT )(2017) 399 ITR 559 (All).  
Business Expenditure gratuity- Payment of gratuity from fund granted by Government. Objective of fund achieved Assessee entitled to deduction u/s 36 (1) (v) held that the **grant or subsidy was forwarded** by the Government of India to help the assessee in its revival by making payment to employees towards voluntary retirement scheme . It was a voluntary remittance fund by the Government of India to the Assessee. **The Department failed to show anything so as to bring 'grant' or subsidy it within any particular clause of Section 2 (24) of the Act. The amount of grant received by the assessee from the Government of India could not be treated as 'Income'**. The payment to employees towards voluntary retirement scheme was to be allowed.

**14. Co operative Society deduction u/s 80P**

The Citizen Cooperative Society Ltd v/s ACIT  
(2017) 397 ITR 1 (Sc)

If the income of a society is falling within any one head of exemption it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied – of deduction would however not be admissible to a Cooperative bank also where the activities of the society are in valuation of the Co-operative society Act deduction cannot be allowed.

**15. Closing stock valuation:-**

CIT v/s Kwality Steel Suppliers Complex  
(2017) 395 ITR 1 (Sc)

With dissolution of the firm if the business comes to an end. The cost method of valuing closing stock is not permissible and has to be valued at the market rate but where the dissolution is by operation of law and the business does not come to an end, it is not necessary to value the stock in trade at market prices and could be valued at cost method of valuation.

Revision – Erroneous and prejudicial to revenue – if the view taken by the Assessing Officer is plausible view, the CIT cannot exercise his power u/s 263.

**2. CHARITABLE TRUST (B)**

**1. Registration of Trust.**

CIT V/s Ameliorating India (2017) 399 ITR 196 (P & H)  
Charitable Purposes- Charitable trust- Registration of Trust Effect of Se.12AA.  
Commissioner must consider application for registration. Commissioner can not

delegate his power . Proceeding u/s 12AA conducted by Deputy Director (Systems) and Commissioner merely signing order. Order not valid Se.12AA.

2. **Charitable Purpose: Exemption.**

CIT (Exemption) V/s Fertilizers Association of India.

(2017) 399 ITR (Delhi H C) 209

Mere Charging of fee from members or non- members for rendering services like training. Conducting Seminars can not by itself lead to denial of exemption I.T Act 1961 Se. 2 (15) 11, 12,

3. CIT III Pune V/s **Rajsthan and Gujarat Charitable** Foundation Poona. Date of Order 13/12/2017.

Civil appeal No 7186/ of 20`14 (Supreme Court)

Issue: Charitable Institution Cost of acquisition Double benefits- Depreciation on Assets. Write off.

Held whether if a Charitable body applies its Income on acquisition of Capital assets allowance of depreciation on such asset would amount to double benefits No

**Supreme Courts. .**

The following cases Judgements upheld.

(I) Bombay H.C CIT V/s Institutes of Banking personnel selection (IBPS) (2003) 131 Taxman 386 Bombay. (when it was held that normal depreciation can be considered as a legitimate deduction in computing the real Income of the assessee on general principle or under u/s 11 (1) (a) of I.T Act 1961,.

However the Income the Trust is required to be computed u/s 11 on Commercial principles after providing for allowance for normal depreciation and deduction there from gross Income of the Trust.

4. The Practice of Yoga or Education.

CIT (Exemption) V.s Patanjali Yogpeeth (Nyas)

(2017) 159 DTR (Delhi H.C) 377 (224)

Se. 2 (15) 260A. A.Y. 2009-10.

(Spread) Dissemination of Yoga or Vedic Philosophy or the practice of Yoga or Education with respect to Yoga was well within the larger term "Medical relief" no substantial question of laws arises.

5. **Educational Institution:-** Cancellation of Registration not valid.

Addln CIT (Exemption) V.s Eklavya foundation.

(2017) 60 ITR (Tribunal) 571 (Delhi) (6)

The CIT (A) had rightly concluded that the assessee was engaged in social cause without any profit motive and allegation of the A.O that it was not a educational Institution and was carrying out business activities and it was not maintaining separate books of Account was misconceived. The CIT (A) rightly allowed the appeal of the assessee after taking into consideration the order, case law cited Paper book filed

there was no infirmity in the order. Which accepted the contention of the assessee that the assessee was engaged in Charitable purpose as defined u/s 2 (15).

6. **Charitable Purpose.** Receipt of donations for specific purpose for acquiring fixed Assets:-

Touching Heart Ministries V/s ITO

(2017) 60 ITR (Tribunal) (S N 140) (6) Vishakapatnam funds not freely available to assessee for utilising towards its objectives other than acquiring specified Assets- Entire amount received for acquiring fixed Assets utilised by assessee and no surplus funds available to Assessee. Donations received for specific purpose of acquiring Capital Assets tied up grants and not Income of assessee I.T Act 1961 2 (24) (iia)

7. [2017] 87 taxmann.com 113 (Amritsar- Tribunal) Punjab Educational Society V/s ITO  
ITA No. 459/ Asr / 2016.

A.Y. 2011-12. Date of Order: 20<sup>th</sup> November, 2017.

**Section 12A (2) - First proviso to section 12A(2) inserted by the Finance Act, 2014, with effect from 1.10.2014, being a beneficial provision intended to mitigate hardships in case of genuine charitable institutions, has to be applied retrospectively.**

3. **BUSINESS INCOME. (C)**

(1) Additional Depreciation:

Dy CIT V/s Bengal Beverages (P) Ltd.

(2017) 60 ITR (Kolkata Tribunal) 49

Condition precedent- use for the purpose of business- No condition that user should be all assessee's own premises Manufacture and Sale of Cold drinks Machine Placed at distributors premises to keep soft drinks in a cool condition Assessee entitled to additional depreciation.

**Business Income.**

(2) Bogus Purchases:- Cash Credit.

Umbika Agency V/s ITO (2017) 60 ITR (Tribunal) (S.N) 124 (Kolkata)

Bogus Purchases- Unnumbered bills inform of computer printout without sales tax Registration number- Relevant details like delivery challan number, made of transport etc not furnished. Creditors not found at given address- Existence of properly not established un explained credit rightly treated as Income. Se.68.

(3) **Business Expenditure: Commission** When allowable (?)

Umbika Agency V/s ITO (2017) 60 ITR (SN 124) (Kolkata)

Parties not produced for confirmation- failure to establish Services rendered- Expenditure on Commission not incurred wholly and exclusively for purpose of assessee's business- Not allowable Se.37

- (4). Se.41 (1):  
Gujtron Electronics (P) Ltd V/s ITO  
(2017) 397 ITR 462 Gujarat (H.C) (2017) 249 Taxman 3443 Gujarat H.C) decided against Assessee 41 (1) treated as Income.  
When no movement in A/cs between the Company & Members. The Appeal was dismissed CIT (A) & Tribunal order against the Assessee was confirmed.
- (5) **Public Sector undertaking:-** Business Income or Income from House Property.  
Asst. CIT V/s Chhattisgarh State Warehousing Corporation (2017) 399 ITR Chhattisgarh Page 239.  
**Public Sector undertaking-** Business Income or Income from House Property- Rent or warehousing charges Distinction- Warehouse- Letting of Property Activity in course of its business Income from business.
- (6) Business Expenditure Interest on borrowed Capital:-  
Dy CIT V/s Kali BMH Systems (P) Ltd.  
(2017) 160 DTR Chennai (Tribunal) 65 (231)  
Erstwhile firm having re valued its land, crediting the incremental value equally to each of its partners and paid huge amounts to them by overdrawing on its bank account and the assessee- Company which has been formed on conversion of the firm having issued debentures to the said partners who had become directors of the company in lieu or repayment of the said amounts by these directions, the inflow of funds was sums any business purpose and therefore, proportionate interest on debentures relatable to the amount credited on the revaluation of land by the **firm is not allowable as deduction under Se. 36 (i) (iii).**
- (7) Business Expenditure: Disallowance under Se.43B.  
Excise duty paid in advance in the personal Ledger A/c  
CIT V/s Modipon Ltd., Supreme Court.  
(2017) 160 DTR (SC) 73 (228)  
**Conclusion:** Advance deposit of Central Excise duty in PLA constitutes actual payment of duty within the meaning of Se.43B and therefore the assessee is entitled to the benefit of deduction of the said amount

#### 4. CAPITAL GAINS (D)

##### 1. **Capital Gain:-**

Saras Metals (P) Ltd V/s CIT (2017) 399 ITR (Delhi H. C) 270

Business- Capital gains or business Income. Company carrying on manufacturing activities- Purchase and sale of land finding that lands did not constitute stock-in trade

of assessee gain on sale assess able as short term capital gain I.T Act 1961 Se.28 & 45.

2. Capital gains vis-a-vis Income from undisclosed Sources.  
CIT V/s Smt. Pooja Agarwal.  
(2017) 160 DTR (Rajsthan) 198 (231)  
Assessee having produced relevant details vis copy of contract note regarding purchases and sales of shares, account with the share broker and copy of demat account and shown the receipts/ payments through account payee cheques and there being no evidence that cash has gone back to the assessee, the share transactions cannot be treated as non-genuine. A.O was rightly directed to accept the short term-Capital gain as shown by the assessee.
3. Short term Capital gain V/s Business Income.  
Nemish Jaikishor Mehta V/s Asst. CIT  
(2017) 60 ITR (Tribunal) 67  
Tests to determine whether assessee carrying on business. Assessee maintaining two separate accounts- One for Investment and other for trading in shares- Status of assessee as Investor not disputed in earlier year and in earlier year and in subsequent year - No utilisation of borrowed funds- for purchasing shares- Purchasing shares purchasing shares on delivery basis,. Mere volume of transaction not criteria to doubt treatment given by assessee about his Investment in books. Assessee is Investor and his Investment assessable as Short term Capital gains- I.T Act 1961.
- 4.. **Long Term Capital Gain:** Sale of Development Right.  
(2017) 60 ITR (Tribunal) (S.N) 145 Mumbai.  
Gordhandas S. Garodia V/s Dy. CIT (1.11.2017)  
Capital Gains: Long Term Capital Gains: Sale of Development Rights. Specific clause in Agreement imposing condition for payment of Rs.50 Crores on happening of certain Events. Assessee not receiving full sale consideration. Assessee is not liable to be assessed to entire sales consideration. The following case law followed.  
CIT V/s Mr. Hemal Raju Shete (2016) 68 taxmann.com 319 (Bombay).
5. Voltas Ltd. V/s. ITO 7 (3) (4) Mumbai  
(2016) 74 Taxmann.com 99 Mumbai or 161 ITD 199  
Mumbai Tribunal or 183 TTJ 788 (Mumbai Tribunal)  
Se.50C of the I.T Act 1961. Capital Gains Special provision for full value of consideration in certain cases. (Sale of development rights) A.Y.2005-06. Whether provisions of Se 50C could not be applied to sale of development rights of Land owned by assessee. Held YES.

**The Capital Asset transferred by the Assessee was Development Rights in the Land and not the Land itself.** If we go through few other similar provisions of the Act,

We find that the legislature has used this expression consciously and carefully and keeping in view its need and objectives of legislating Section 50C.

For Example in Se 269A. The Expression immovable property has been defined. [Which includes any rights of nature referred to in clause (b) of sub-Section (1) of Section 269A]

(II) Similarly in Section 269 UA also identical definition has been given. In these cases 'rights' in land and building have been specifically included as per requirement of these sections.

In other words term land and building and rights therein ' have been clearly understand and treated as Independent from each other. Thus the perusal of the definition given in these Sections. When compared with Section 50C shows that legislature was conscious about the proper expression to be used as per its intention scope and purpose of the Section 50C. Wherein it has been expressly mentioned that Capital asset should be land or building or both. It has not been mentioned that any types of 'rights' shall also be included in the definition of Capital assets to be transferred by an assessee.

The provisions of section 50C are deeming provisions. It is settled law and well accepted rule of interpretation that deeming provisions are to be construed strictly. Thus, while interpreting deeming provisions neither any words can be added nor deleted from language used expressly. We should apply the 'Rule of Strict Interpretation' as well as 'Rule of Literal Construction' while understanding the meaning and scope of deeming provisions. In our opinion, under the given facts and circumstances, Ld, Counsel has rightly contended that since the impugned capital asset transferred by the assessee upon which long term capital gain has been computed by the AO is on account of transfer of Development Rights in the land of the assessee. The land itself has not been transferred by the assessee. Thus, in our opinion provisions of section 50C? have been wrongly applied upon the impugned transaction. **Thus, we reverse the action of lower authorities in applying the provisions of section 50C and in substituting any value other than the amount of actual sales consideration received by the assessee. It is also noted by us that for the assessment year under consideration there is no other provisions on the statute which permit the AO to substitute any other value with the full amount of consideration actually received by the assessee, while computing income under the head of capital gains,**. Under these circumstances, ground No.1.2 of the main grounds of the assessee is allowed.

6. ITO V/s Ayisha Fathima (Smt)  
(2016) 160 ITD 377 / 182 TTJ 437 Chennai  
Joint Development Agreement in the year of handing over of physical possession of property to builder is liable to be assessable to Capital gains and not in later assessment year sale deed was registered 2 (47) (vi)



7. ACIT V/s Jawaharlal L. Agicha (2011) 161 ITD 429  
183 TTJ 176 (Mumbai ) Tribunal.  
Joint Development Agreement- Possession was not parted with development agreement was not registered, there was no intention to transfer, Capital gain cannot be taxed (2(47) (v). Transfer of Property S.53 A Registration Act 1908 S 17 (1A)
8. Accrual:- Transfer – Joint Development Agreement entering into a Joint Development Agreement with an irrevocable power of attorney – in favour of the developer does not results in a 'transfer' for purposes of capital gains:- Not liable to pay capital gain tax- For the purposes of taxability the Income is not hypothetical pay capital gain tax- For the purposes of liability the Income is not hypothetical and it has really accrued to the Assessee (2 (47) (v) 2 (47) (vi) 48  
  
Transfer of Property Act 1882 S.53A.  
C.S Atwal V/s CIT (2015) 378 ITR 244  
279 CTR 330 / 234 Taxman 69 P & H (H C)
9. Capital Gains:- Transfer Possession- Registration- Transfer takes place in year of execution of sale deed, handing over possession & Receipt of sale consideration it is not deferred to year of registration verdict in Suraj Lamp and Industries. 340 ITR 1 (SC) Explained Se 2 (4) transfer.  
Amritkumar Ambalal Shah V/s ITO (Ahd) Tribunal. [www.itatonline.org](http://www.itatonline.org)
10. Capital Gains:- Transfer No transfer merely. Because development agreement is entered into (Se.2(47) (v)  
ACIT V/s P. Ventakakumar Rao Hyderabad Tribunal. [www.itatonline.org](http://www.itatonline.org).
11. Capital gains:- Year of taxability- Capital gains will not be chargeable in the year of Development Agreement signed chargeable in the year of receipt of sale consideration:-  
CIT V/s Najoo Dara Daboo (Smt) (2013)  
218 Taxman 473 All (High Court)  
The order of the Tribunal was upheld (A.Y. 1995-96)  
Not e Agreement was executed in 1994.
12. **Capital Gain. Transfer of Land:- Joint Development agreement. Neither possession was given nor consideration was received only advance was received Capital gains cannot be assessed.**  
**CIT V/s Eastern Ceramics Ltd (2013) 219 Taxman 66 Bombay H.C.**
13. Capital gains:- No transfer of possession of land during previous year only receipt of advance amount received in advance is not taxable.  
CIT V/s Delhi apartments (Pvt) Ltd.  
(2013) 352 ITR 322/ 215 taxman 113 / 91 DTR 33 Delhi H.C.
14. Capital Gains:- Transfer Joint Venture-Land liable to pay, Capital gain tax in year in which said Joint development agreement was signed (Section 2 (47) of I.T Act 1961.  
Hussan Lal Puri V/s ITO (2013) 60 SOT 132 (URO) Chd Tribunal.

15. Capital Gains Business Income- Development Agreement- Sale of Flat allotted Market value of land transferred to developer together with additional FSI if any would be deemed cost of construction while taxing capital gains on sale of two flats Income attributable to land would be long term and Income from sale of building will be short term Capital gains.  
DCIT V/s Jai Trikanand Rao (2013) 60 SOT 189 (Mum Tribunal)
16. G. Sreenivasan V/s Dy CIT (2013)  
140 ITD 235 / 153 TTJ 640/ 86 DTR 34 Cochin.
17. Dy CIT V/s Global Mercantiles (P) Ltd. (Kolkata)  
157 ITD 924 or (2016) 67 taxmann.com 161.
18. **Provisions of Section 50C could not be applied to sale of development rights of land owned by assessee. (A.Y. 2005-06) in favour of Assessee.**  
**Voltas Ltd V/s ITO (2016) 74 taxmann.com 99 Mumbai Tribunal.**
19. Dharamshibhai Sonani V/s Asst CIT (2016) 75 taxmann.com 141  
181 TTJ 721 / 161 ITD 627 (Mumbai)  
Agreement to Sell – (applicable in retrospective effect)
20. ITO V/s Bhrat Raojibhai Patel  
159 ITD 473 (Mumbai) 70 taxmann.com 401  
Where assessee land owner transferred development rights inland and building for which he received money and Carpet area in kind, total value of agreement was to be accepted as consideration (A.Y. 2007-08)/ contribution of sale & Exchange.
21. Smt. Rukmani Santhanam V/s ITO  
160 ITO 338/ 182 TTJ 388 Chennai)  
Where assessee entered into a development agreement and said development agreement clearly showed that the assessee transferred a residential house along with land.
22. ITO V/s N.S Nagraj (2015) 152 ITD 262  
118 DTR 163 / 170 TTJ 699 Bangalore.  
(Se 48 - 45)
23. 50C Capital gain fall value of consideration stamp duty valuation Development agreement. Development Agreement provision of Se.50C is applicable. C. L. Khanna V/s ITO (2012) 66 DTR 260 - / 144 TTJ 607  
132 ITD 474 Mumbai Tribunal.
24. ACIT V/s Upper India Paper Mills Co. (P) Ltd.  
Lucknow Bench. Tribunal [www.itatonline.org](http://www.itatonline.org)
25. Deeraj Amin V/s ACIT (2015) 172 TTJ  
228 \_\_\_\_ 123 DTR 8 Bangalore.
26. Se.50C:- Capital Gains. Full Value of consideration.  
Stamp duty valuation FSI / TDR Se 50C does not apply to transfer of FSI/ & TDR (Se.45)  
ITO V/s Prem Ratan gupata (2012) 31 CCH 384 Mumbai or [www.itatonline.org](http://www.itatonline.org).
27. Capital Gains. Full Value of Consideration. Stamp Valuation. Development Rights.
28. ARIF AKHTAR HUSSAIN V/s ITO (2011)  
59 DTR 307 / 140 TTJ 413 / 45 SOT 257 Mumbai
29. Capital Gains:- Exemption under Se 54 F

CIT V/s Gunanmal Jain (2017) 160 DTR (Madras H C) 221 (232)

Acquisition of Nine flats in a multi-storeyed building- assessee and his two sons contributed land under a Joint development agreement with developer. In consideration thereof assessee and his two sons Jointly got 15 flats in the building, through in different blocks. Flat being completely based on Co-ownership being proportionate un dividend share in land for the same piece of land what the assessee got was **“a residential house”** “eligible for exemption under Se 54F (A.Y. 2012-13)

Assessee and his two sons jointly entering into joint development agreement with developer and consideration getting 15 flats jointly in the building though in different block, exemption under Se./54F was rightly allowed.

30 Capital Gains:- Vis-a-vis Income from undisclosed Sources.

CIT V/s Smt. Pooja Agarwla (2017) 160 DTR (Raj) 198 /232)

**Conclusion:**

Assessee having produced relevant details Viz Copy of contract note regarding purchases and sales of shares account with the share broker and Copy of demat account and shown the receipts / Payments through account payee's cheques and there being no evidence that cash has gone back to the assessee the share transactions can not be treated as non genuine- AO was rightly directed to accept the short-term Capital gain as shown by the assessee.

2. Capital Gains: Applicability of Se.45 (2)

CIT V/s Essorpe Holdings (P) Ltd,  
(2017) 159 DTR (Madras H C) 403 (225)

Profits on sale of land originally held as Investment and thereafter converted into Stock-in-trade by demerged company which came to beheld by assessee as a result of demerger will first have to be treated as capital gains as on the date of conversions, and assessment as business profits on the date of sale in terms of Se.45 (2)

3. Capital Gains. Transfer of Land used for agricultural purposes:- Condition precedent:-

Ass.CIT C.C Aurangabad V/s Govardhan S. Pawar.

(2017) 87 taxmann.com 151 Pune Tribunal

Reported 167 ITD (issue No 7)

Where assessee had provided relevant material which indicated growing of **dry Crops** **in** two assessment years prior to sale of land exemption u/s 54B was to be granted

4. Benefit of Se.54 & Investment.

Anita Ajay Shad v/s ITO Ahmedabad.

(2017) 167 ITD 613 (8)

Capital Gains:- Profit on Sale of Property used for residence [ Capital gain Account Scheme] A.Y. 2011-12. Whether in order to claim deduction u/s 54 . Capital gains is required to be appropriated by assessee towards purchase of new asset before furnishing of return of Income u/s 139 (1) Held YES.

Thus when assessee seeks to claim benefit of deduction of Se 54 in respect of payments made for purchase of asset subsequent to furnishing of return of Income. u/s 139 (1) but before last date available to file return of Income u/s 139 (4) such subsequent payments **are required to be routed out of deposits made in Capital gain Account Scheme.**

5. Capital Gain Se 50C & 45 (3)

CIT V/s Carton Hotel (P) Ltd (2017) 399 ITR 611 (All) (4)

Capital Gains:- Computation of Capital gains- Effect of Section 50C- understatement of consideration- stamp duty on transfer whether payable not relevant- contribution of Immovable property as a capital of partner- facts showing that transaction was not genuine. Se.50C applicable.

Income tax General Principles- Colourable device- Court should consider whether it could approve it .

Note. Tribunal order According to the High Court . The Tribunal had erred in law in holding that the full value of consideration shall be determined in terms section 45 (3) and not under Section 50C of the Act. (The Supreme Court has dismissed special leave petition filed by the assessee against this judgement.

Even according to the book value the cost of land determined and share of profit determined between the parties and their capital contribution was negligible as it did not conform to any normal business transaction entered in to by a person of ordinary prudence and therefore . there existed all the facts and circumstances to show prima facie that the entire transaction of contribution to partnership was a sham and fictitious transaction and an attempt to avoid tax.

5. **SE.68/69. UNEXPLAINED , CASH CREDIT AND INVESTMENT. (E)**

1. **Unexplained Money:** - Se 69 A

Ashokbhai H. Jariwala V/s Asst CIT

(2017) 399 ITR (Gujarat H.A) 181

Discovery of cash during search Seizure of part of cash Remaining cash returned on submission that it belonged to assessee's visiting sister. Material contradictions in Statements of assessee and affidavit filed by siser. Ownership of cash not proved entire amount of cash discovered assessable in hands of assessee I.T Act 1961 Se.132, 69A, 133A,153A.

2. **Section68:**

Section 68: Onus on Assessee to establish its claim with evidence .

Goutam Ganeshmalji Jain ITO

(2017) 60 ITR (Tribunal) 76 Hyderabad.

Assessee not maintaining books of Account- Assessee Except for filing confirmation letter from failing to fulfil other requirements under Se.68. Assessee not producing even a Single Party for examination before Assessing Officer. Assessee's contention

that parties his sundry debtors from earlier assessment years incorrect. Additional justified I.T Act Se.68.

3. Se.68: Peak Credit. ITO V/s P. Ramesh.  
(2017) 60 ITR (Tribunal) Chennai 105.  
Peak Credit: Assessing Officer cannot choose Peak Credit only taking some months for addition and ignoring total receipts. Nothing to show assessee was trader and not commission agent in grapes. Estimation of Commission- Five percent on total receipts of assessee high average rate of Four percent to be applied I.T Act 1961 Se.68..
4. Share Application Money: Se. 68  
ITO V/s Zaver Tower (P) Ltd. (2017) 60 ITR (T) Delhi 3  
Unexplained Cash Credit- Assessee receiving money through banking channels and all details and confirmations of parties submitted before A.O. A.O ought not to have made addition selectively.
5. **Cash Credits: Se.68.**  
Principal CIT V/s Bikram Singh (2017) 399 ITR (Delhi H.C) 362.  
\Barden on assessee to prove genuineness of credits genuineness of credits not established. Additions to Income justified I.T act 1961 Se.68.
6. Sarika Jain V./s CIT  
(2017) 249 Taxman 625 (Se 69A Addition)  
When Income in question cannot be added u/s 68 of the Act. The Tribunal was not competent to make said under Se.69A of the Act 1961
7. Se.68: Sale of Share in the later year.  
Principal CIT V/s Ramniwas R, Kasat.  
(2017) 248 Taxman 484 Gujrat H.C.,  
The shares were purchased in the Earlier Assessment year i.e. A.Y. 2005-06 and same year case was a scrutiny case the Investment was not disturbed by the A.O. Shares were sold in the A.Y. 2006-07 and sale of shares were treated as bogus sale. The A.O made addition u/s 68 on basis that during the year (A.Y. 2006-07) Assessee has sold certain shares very purchase were found to be bogus . CIT (A) upheld the same and dismissed appeal,. Tribunal therefore was of opinion that no addition could be made with the aid of Section 68. when such shares were in the later year sold (i.e. A.Y. 2006-07) Challenged said order revenue filed present Appeal. Held as facts recorded by Tribunal would suggest shares were purchased by assessee during period relevant to A.Y. 2005-06. Return for said year was scrutinized by Revenue. A.O did not disturb Investment. It would therefore later on not to be open to A.O to make addition with Aid of Se.68. when such shares were sold on premises (basis) that purchases themselves were bogus Revenue's Appeal dismissed.
8. CIT V/s Gangadeep Infrastructure (P) Ltd.  
(2017) 394 ITR 680 Bombay H.C 1 / 2017 - 247 taxmen 245

CIT V/s Lovely Exports (P) Ltd. 317 ITR 218 followed.

When once Assessee established the identity genuineness and capacity of the shareholder who had subscribed to its shares. The identity was established by the very fact that the details names, address of the shareholder, PAN No. bank details and confirmatory letters were filed. The genuineness of the transaction was established by filing a copy of Share application form, the form filed with the Registrar of companies and as also bank details of the shareholders and their confirmations which would indicate both the genuineness as also the capacity of the shareholders to subscribe to the shares. Further, the Tribunal while upholding the finding of CIT (A) also that amount received on the issue of share Capital along with the premium received thereon, would be on Capital Receipt and not in the Revenue filed. Further reliance was also placed upon the Apex Court in Lovely Exports.

The Apex Court in Lovely Export (P) Ltd in the context to the pre amended Se.68 of the Act has held that the revenue urges that the amount of share application money has been received from Bogus shareholders then it is for the Income tax Officer to proceed by reopening the Assessment of such shareholder and Assessing them to tax in accordance with law. It does not entitle the revenue to add the same to the Assessee's Income as unexplained cash credit.

9. **Cash Credits: Share Application Money.**  
Asst. CIT New Delhi Adamine Construction (P) Ltd.  
(2017) 87 taxmann.com 216 Delhi Tribunal.  
Where in order to prove genuineness of share transaction and credit worthiness of Investors companies assessee company furnished Investor companies confirmations tax return acknowledgements etc. Additions under Se.68 was to be deleted.
10. **Section 69C: Unexplained Expenditure Bogus Purchases.**  
ITO V/s Ashok V. Viradia (2017) 87 taxmann.com 156 (Mumbai Tribunal)  
Where addition was made to assessee's Income under Section 69C in respect of accommodation entry received from R. Since assessee failed to prove genuineness of purchase transaction entire amount of purchase was to be added to assessee's Income and not only profit element thereon.
11. **Bogus Purchases:**  
Fancy Wear V/s Income tax Officer Ward 24 (3) (1) Mumbai.  
87 taxmann,.com 183 Mumbai Tribunal.  
Where in order to prove genuineness of purchases assessee had furnished copies of purchase bills delivery challans confirmation of ledger accounts of suppliers sales tax returns and sales tax challans of suppliers and their Income tax Returns merely returning of notices undr Section 133 (6) sent to those suppliers could not be sufficient to made additions under Section 69C.
12. **Bogus Purchase.**  
Income tax Officer, Mumbai V/s Ashok V. Viradia.

(2017) 87 Taxmann.com 156 (Mumbai Tribunal)

ITA No 646 (Mumbai) of 2016. A.Y. 2007-08. Date of order 25/9/2017.

**There is no basis on the part of the Learned CIT (A) of estimating the profit rate by adopting the gross profit rate @ 7.86 percentage in the case of a transaction in which the genuineness is not proved by the assessee.**

In view of the above we set aside the order of Ld CIT (A) and restore the matter to the file of the AO to make a fresh assessment in the light of our observation hereinbefore after giving opportunity to the assessee to Cross-examine the concerned parties. We also direct the Assessee to file the relevant documents/ Evidence before the AO. Needless to say The AO would give reasonable opportunity of being heard to the assessee before finalising the Assessment order.

13.. **Fancy Wear V/s ITO 24 (3) (1) Mumbai.**

**(2017) 87 taxmann.com 183 (Mumbai Tribunal)**

Section 69C of the Income tax Act 1961. Unexplained Expenditure. (Bogus purchases) A.Y. 2010-11 & A.Y. 2011-12. Assessee was engaged in business of while sale trading in ready made garments. A.O received information from Sales tax Department and from D.G. of I.T. Mumbai that assessee has received accommodation entries from Several parties from whom he made purchases of certain amount. He issued notices u/s 133(6) of such parties. Which were returned by postal authorities with remarks 'not known' unclaimed etc. Thus he (AO) treated expenditure on purchases as unexplained expenditure under Se.69C and made additions to assessee's Income. **It was noted that all payments to suppliers were made through banking channels Cross examination of suppliers was not allowed-** Assessee had furnished copies of purchase bills. Recovery challans- bank Statements showing payments made by parties confirmations of Ledger accounts suppliers sales tax returns and sales tax challans of suppliers and their Income tax returns- Whether on facts assessee had discharged onus of proving genuineness of transactions and **merely returning back of notices u/s 133 (6) was not sufficient to hold that purchase made were bogus** thus impugned addition was to be deleted. Held YES.

6. **SURVEY + SEARCH (F)**

1. **Search and Seizure:-** Assessment in Search cases.

CIT V/s Renu Constructions (P) Ltd.

(2017) 399 ITR (Delhi H C) 262

Assessment in Search cases: Assessment of Third person- condition precedent- Document Seized should belong to 'third person'. Amendment w.e.f 1/6/2015 that Seized document need only "pertain to " third party- Does not apply to prior searches seized document not belonging to assessee- Assumption of jurisdiction under Se. 153 C erroneous- I.T Act 1961 Se.132, 153A, 153.

2. Search and Seizure:- Assessment under S. 153C.  
Nova Iron and Steel Ltd V/s Dy CIT (2017) 160 DTR (Del E) 142 (235)  
Validity- Vis-a-vis absence of incriminating material- No Evidence was found during the course of search that any money (Cash Credit) belongs to the assessee – company or to prove that assessee had received any accommodation entry or that cash was given by assessee company to take any loan or credits. Condition precedent for issuing notice under Se.153C was not satisfied hence consequent assessment and addition made under Se.68 were liable to be quashed.
  
3. Search and Seizure:-  
Asst. CIT V/s Ms Katrina Rosemary Turcotte  
(2017) 160 DTR (Mumbai Tribunal) 113 (234)  
In the absence of any corroborative evidence to demonstrate that M has made any cash payment to the assessee. Impugned addition made by the A.O by simply relying upon the printout taken from the digital data back up of the laptop of s an employee of M is not sustainable.
  
3. Income tax Survey:- Income from undisclosed Sources:-  
**ITO V.s Praveen Ramchandra Gorane** (SN 38) (Part I).  
(2017) 60 ITR (Tribunal) Page No 38 Pune Tribunal.  
Confession by assessee not conclusive and open to assessee to establish confession not true and correct by filing cogent evidence:  
Assessee consistently disclosing same profit margin of 5 percent and above after taking into account interest or depreciation Department not pointing out any fallacy (mistake) -Addition only on basis of assessee recorded during Survey not justified.  
**133A**
  
4. Munjit Singh V/s Asst. CIT  
ITAT Amritsar Tribunal  
(2016) 180 TTJ 423 Asr. (2016) 139 DTR 154 (AP)Se  
Department is not having any material to make additions to the tune of Rs.2,40,00,000/- whereas the material is available was only for Rs.1,94,28,618/- thus calculations made by CIT (A) to arrive at the turnover made by assessee and thus profits estimated by him are not based upon any material and are based upon only on surmise as conjectures.
  
- 5.. Undisclosed Income.  
Sahil Study Circle (P) Ltd. V/s Dy. CIT  
(2016) 179 TTJ 1 (Del) (40) (2016) 46 ITR (T) 182 Delhi.  
Se 69 & 133A.



Se 133A does not empower any ITO to examine any person on oath, so Statement recorded/s 133A has no evidentiary value and any admission made during such Statement could not be made basis of addition.

## 7. **ASSESSMENT REASSESSMENT APPEAL STAY. (G)**

### **Appeals.**

- (1) Vodafone Mobile Services Ltd V/s Dy CIT  
(2017) 60 ITR (Tribunal) Hydrabd Page 22.  
Judicial discipline. Tribunal bound to follow order passed by Jurisdictional High Court on merits I.T Act 1961,
- (2) Appeal to Commissioner of (Appeals) Additional Evidence ITO V/. Kailash Chand  
(2017) 60 ITR (Tribunal Delhi) 82.  
Commissioner (A) must allow Assessing Officer reasonable opportunity to examine CIT (A) admitting additional **Evidence without allowing A.O opportunity to furnish his** comments and without verification CIT (A) not complying with statutory provision- CIT (A) to comply with rule and decide issue on merits Rule 46A (3)
- (3) Long Term Capital Gains. Cost of acquisition of Property.  
Asst CIT V/s Devendra Kumar Gupta (2017) 60 ITR (T) Delhi 11  
No sufficient opportunity given to assessee to produce documents at assessment stage: Additional Evidence in form of purchase documents Commissioner (A) ought to have admitted additional Evidence since it goes to root of matter and affets quantum of taxable Income of assessee.
- (4) Power to consider new claim:- by the CIT (A)  
Hill Life Care Ltd V/s Asst. CIT (2017) 60 IYR (T) Cochin 142.  
Power to consider new claim- to be entertained only when assessee demonstrates it was unable to make claim through revised return due to factors beyond its control- AO to verify whether failure to make claim through revised Return within time allowed under Section 139 (5) due to factors beyond its control I.T Act 1961 SS 35 Se 139 (5)
- (5) Powers of CIT (A) Co-terminus with powers of AO  
ITO V/s V.M. Construction (2017) 60 ITR (Tribunal Mumbai) 129 Commissioner of (Appeals) finding Assessing Officer not following proper procedure and enquiry during Assessment proceedings Commissioner (A) is duty bound to conduct proper enquiries.
- (6) Assessment: Estimate of Profits:  
Asst CIT V/s Jagson construction Ltd (2017) 60 ITR (T) Amritsar Page 83  
Rejection of books of Account. Determination of net profit Estimate of net profit at Five percent after reducing cost of material supplied by Government Department from Gross Receipts- previous history showing similar result Reduction of twelve percent to five percent justified I.T Act 1961 Se. 145 (3)
- (7) **Valuation of Closing Stock:-** Average cost Method.

A.P Refinery (P) Ltd V/s ITO

(2017) 60 ITR Tribunal Chandigarh. Page No 44 (issue No.1)

Valuation of husk- Under Valuation, Assessee **consistently following average cost Method**. Details with regard to valuation for relevant years filed before Assessing Officer. No fault found in method of valuation vis-a-vis determination of true and correct profits of assessee- No change in Method of valuation warranted- No Stock under valued deliberately by assessee.

**(8) Reassessment Notice u/s 143 (2) Assessment not completed.**

Karamchand Appliance (P) Ltd V/s Dy CIT

(2017) 399 ITR (Delhi H.A) Page 323.

Notice for re.opening assessment non a unsustainable.

Se.143 (2) 147

That for the A.Y. 2005-06 the Department had issued a notice u/s 143 (2) but had failed to complete the assessment. The notice in respect off A.Y. 2005-06 was unsustainable on the ground that notice u/s 143 (2). Assessment not completed and hence notice for reopening Assessment.

**(9) CIT V/s B.P Sherafudin (2017) 399 ITR 524(Kerala H.C)**

.The payment to employees towards voluntary retirement scheme was to be allowed.

Appeal to CIT (A) Powers of CIT (A) Scope of Se.251 IT (A) can enhance an assessment but not assess a new source of Income (Se.251)

**(10) Accounts: CIT V/s Sita Ram Sopra.**

(2017) 399 ITR 463 (Rajsthan H C)

Accounts – rejection of Accounts gross Profit rate . Assessee not maintaining day to day Stock Register. Specific defects pointed out by A.O in books of Accounts- Section 145 (3) rightly applied Gross Profit rate of 11.5 percent rightly applied on the basis history of Assessee I.T Act 1961 Se 145 (3)

K. Ravindranathan Nair V/s Dy CIT (Assessment)

(2003) 262 ITR 669 (Kerala H C)

**(11) Powers of CIT (A)**

ITO V/s V.M. Construction.

(2017) 60 ITR Tribunal Page 120 Mumbai.

Powers of CIT (A) Co-terminous with powers of Assessing Officer- CIT (A) finding Assessing Officer not following proper procedure and enquiry during Assessment proceeding CIT (A) is duty bound to conduct proper enquiries I.T Act 1961

**(12) Reassessment on the basis of DVO's Report.**

Akshar Infrastructure (P) Ltd V/s ITO

(2017) 160 DTR (Gujarat H C) 147 (233)

**Conclusion:-** Reopening of Scrutiny assessment Solely on the basis of DVO's report is not permissible more so. When in assessee's appeal against said assessment

request of A.O for enhancement of assessment on the basis of said DVO's report stood rejected by CIT (A).

**Other Case laws:-**

*Smt. Kamala Ojha V/s ITO (2017) 160 DTR Chattisgarh ) 265.*

- (13) Notice Non – issuance of notice u/s 143 (2)  
Pri CIT V/s Ravnet Solutions (P) Ltd.  
(2017) 399 ITR 567 (Delhi H C)  
Finding of fact based on records- concurrent findings of fact by Appellate Authorities- order of ITAT does not call for interference I.T Act 143 (2)/ (3) held that so far as the finding with respect to the notices u/s 143 (2) were concerned. The Tribunal had considered the entire record a fresh and rendered a finding that the assessment nowhere reflected that notice u/s 143 (2) was issued. The findings of the appellate Authorities were concurrent in respect of the deletion of additions . The order of the Tribunal did not call for interference. No question of law arose (Asst. CIT V.s Hotel Blue Moon) (2010) 321 ITR 362 (SC) relied on.

**8. TAX DEDUCTED AT SOURCES & SE.195. (H)**

1. Interest under Se.234C:- Computation:- Assessed Income V/s Returned Income.  
Morgan Stanley Investment Management (P) Ltd. V/s Dy CIT  
(2017) 160 DTR (Mumbai) Tribunal 19 (227)

**Interest under Se 234C is to be charged on the tax due on the returned Income. In this case, there is no tax due on the returned Income. Hence No Interest can be levied under Se.234C.**

2. Ladhahbai Damjibhai Panara V/s Principal CIT  
(2017) 399 ITR 539 (Gujarat H C)  
Recovery of Tax: Stay of demand pending Appeal: Conditions for Stay- effect of CBDT Circular dated 29/2/2016. Circular gives guidelines Demand for deposit of more than 15 percent of amount in dispute only in exceptional cases I.T Act 1961. (CBDT never intended to completely eliminate the discretion of the authority in insisting on collecting higher [or lower as the case may be) percentage of the disputed demand than the prescribed 15% Para 3 itself uses the word guidelines which under normal circumstances can be understood as directions for general application. Sub-clause (a) of Clause (B) of Para 4 leaves sufficient discretionary powers. A fair reading of the circular which aims to bring in a certain standardisation in the process of collecting disputed tax pending appeal would show that the increase of 15% outside of the examples cited in sub-clause (a) should be in special or exceptional cases after recording reasons.
3. Disallowance under Se.40(a) (ia): Short-deduction of tax at source:-  
Dish T.V India Ltd V/s Ass. CIT (2017) 159 DTR (Mumbai) Tribunal 257 (225)

Assessee has deducted TDS in respect of Expenditure on customer support services u/s 194C by applying a rate of 2 percent. Similarly it deducted TDS. Under S. 194C from the payments made towards CAs. Middleware and SMS charges.

A.O was of the view that tax was to be deducted. Se.194J @ 10% percent and disallowed both the expenditure by applying the provisions of Se.,40 (a) (ia) Not justified provision of Se. 40 (a) (ia) are not applicable in the case of the assessee as there is nothing in the **Section to treat the assessee as defaulter where there is shortfall in deduction of TDS.**

## 9. PENALTIES PROSECUTION N (I)

1. Undisclosed Income:- Penalty- Search and Seizure.  
Asst CIT V/s J. Karthikeyan (2017) 60 ITR (T) (Chennai) 119 (5)  
Assessee admitting undisclosed Income during course of search and seizure on basis of statement. Assessee filing affidavit and explaining manner in which Income derived Assessee paying taxes in respect of undisclosed Income. Conditions complied with penalty not leviable- (Section 271 AAA(2) (ii).
2. Penalty u/s 271 (1) (c)  
Jaskaran Singh V/s ITO (2017) 160 DTR (Chd) (Tribunal) 184  
Concealment Addition to Income vis-a vis bonafide belief of assessee,. Assessee being under bonafide belief that amount advanced to him by company in which he had substantial interest for purchase of land on behalf of company. Which amount was refunded to the company on failure to purchase land did not constitute Income of assessee could not be visited with penalty under u/s 271 (1) (c) for the reason that said amount was assessed as deemed Income in assessee's hand under Se 2 (22) (e). All Particulars in respect of said transaction were disclosed by assessee and there was no intention to avoid tax.
3. Penalty under Se. 271 (1)(c) Concealment: **Debatable issue vis-avis addition to Income:-**  
**Pr. CIT V/s Hemalatha Rajan.**  
(2017) 160 DTR (Madras H.C) 120 (229)  
On the date of filing return issue whether the receipt in dispute was capital or Revenue receipt was pending before the court and being clearly debatable and assessee having taken a position favourable to her – it could not be said to be case of concealment or deliberate non disclosure . further the questions proposed are not substantial question of law
4. Penalty under Se.271B read with Se 44AB.  
Off. Shore India Ltd. V/s Dy CIT Circle & Kolkata.  
(2017) 167 ITD 635 Kolkata Tribunal)  
Where securities held by assessee were disclosed on Investment in books of account whereas profit arising on sale of those securities was reflected as business income ,said method being accepted by ICAC. Plea raised by assessee that it was under bonafide belief that provision of Section 44AB did not apply to its case, deserved to be accepted.