



THE CHAMBER OF TAX CONSULTANTS

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020

●Tel.: 2200 1787 / 2209 0423 / 2200 2455 ●E-mail: office@ctconline.org

●Website: www.ctconline.org

STUDY GROUP MEETING

Tuesday, 18th December, 2018

Kilachand Hall, 2nd Floor, IMC, Churchgate, Mumbai.

CA Dinesh Shah

Recent Direct Taxes Judgements.

Dt: 18/12/2018.

(1) OTHERS (A)

1. Deemed Dividend:-

Lailabi Khalid V/s CIT (2018) 408 ITR 385 (Kerala H.C)

Assessee shareholder of company – Loans received from company claim that assessee's shareholding in company less than 10 percent on account of transfer of shares. Regards of register of companies showing shareholding over 10 percent. Revised return filed before Registrar of Companies subsequent to notice under Section 148. Assessee liable to tax on Loans received as deemed dividend I.T Act 1961. SS.2(22) (e) 148.

2. Dividend: Deemed Dividend.

**LAILABI KHALID V/s COMMISSIONER OF INCOME- TAX
(2018) 408 ITR 385 (Ker)**

Dividend – Deemed dividend- Assessee shareholder of company- Loans received from company- Claim that assessee's shareholding in company less than 10 per cent,. On account of transfer of shares- Records of Registrar of Companies showing shareholding over 10 per cent. – Revised return filed before Registrar of Companies subsequent to notice under section 148- Assessee liable to Tax on loans received as deemed dividend Income tax Act, 1961, ss. 2 (22) (e), 148.

3. **Valuation of Property by D.V.O / Approved Valuers- which factors should be considered:**

IN THE ITAT CHENNAI BENCH 'B' SMT.KALAVATHY SUNDRAM v Income-tax Officer, Non-Corporate Ward 3 (4), Chennai.

(2018) 172 ITD 597/97 taxmann.com640 (Chennai- Trib)

Where factors such as location of property, potential development in near future, availability and accessibility to infrastructure facility such as road, airport, educational institutions, etc were not properly considered either by Approved Valuer or by Departmental Valuation Officer, while valuing property sold by assessee under section 50C, such valuations made by them were to be rejected.

Where assessee sold an immovable property and invested a part of sale consideration in reconstruction of another property belonging to assessee's husband where she was residing with her husband and children, assessee was eligible for exemption under section 54F in respect of investment made.

4. **Reference to the Valuation Officer.**

Asst. CIT V/s Tarun Agarwal (2018) 173 ITD 107 (2)

Where assessee claims that value adopted or assessed or assessable by stamp duty valuation Authority exceeds fair market value of property as on date of transfer and assessee raised specific dispute and claim before A.O that Stamp valuation of property sold was not its "Fair Market it is bourdon duty of A.O to have refund matter to valuation officer.

5. Income from other sources- Clause (viib)

Vaani Estates (P) Ltd V/s ITO Corporate Ward 3(4) Chennai (2018) 98 taxmann.com 92., (Chennai Tribunal) Clause (viib): Provisions of Section 56(2) (viib) cannot be invoked in case of assessee- company because by virtue of cash being brought into assessee- company by 'S' or allotment of equity shares with unrealistic premium- benefit had only passed on to her daughter V and there is no scope in Act to tax. When cash or asset is transferred by a mother to her daughter.

6. Annual value Vacancy allowance:-

Sona Realtors (P) Ltd V/s Dy CIT (Mumbai)

(2018) 173 ITD 82 (2)

Though term property is let used in Section 23 (1) (1) is solely with intent to avoid misuse of determination of annual value of Self – occupied properties by assessee by taking recourse to section 23 (1) (1) however same cannot be stretched beyond that and thus "annual Value of a property which is let but thereafter remains vacant for whole year under consideration, subject to consideration that same is not put under self occupation of assessee and is held for purpose of letting out of same; would continue to be determined under section 23 (1) (1).

7. Settlement Commission:-
Devdip Malls Developers (P) Ltd V/s Secretary & another.
(2018) 408 ITR 145 (Fujarat H.C)
Settlement of cases. Settlement-Commission- Jurisdiction. Application for settlement- Duty of assessee to disclose Income truly and fully at time of filing application for settlement determination of higher Income during pendency of proceedings Interest for default is mandatory- Levy of interest by commission- Justified Se 234B (2A) 245 C (1) 245 D (4).

8. Se 14A disallowance”- Where there is no Exempt Income.
Asst CIT V/s GINI and Jancy Ltd.
(2018) 67 ITR Tribunal (S.N) 45 Mumbai (3)
Income Expenditure incurred in Earning Exempt Income. **Assessee not Earning and exempt income during** instant year No disallowance warranted- IT Act 1961/14A I.T Rule 8D.

9. Exemption Under Se 10A: Allowability:
Principal CIT & Ans V/s Arowana Consulting Ltd.
Once the goods manufactured by the Assessee are exported out of India either by the assessee itself or by another STP Unit and foreign exchange is directly attributable to such export, assessee is entitled to benefit of S.10A.

10. **CHARITABLE TRUST (B)**
 1. Charitable trust Registration under 12A Validity of trust- Vis-a-vis non resident trustees.
Global Academy of Emergency Medicine V/s CIT (Exemption)
(2018) 171 DTR (Del. Tribunal) 73 (206)
Indian Trusts Act no where **provides that a trust can be declared as Invalid if the trustee is not a proper person** and, therefore, it can not be held that the assessee trust is not a valid trust simply because **four of its five trustees are non- resident;** Since the CIT (Exemptions) has not examined the objects and the genuineness of the activities of the assessee- trust the matter is restored to the CIT (Exemption) to examine the objects of the trust as well as genuineness of its activities and grant registration under 12AA if the assessee- trust’s objects are Charitable and it is actually carrying out Charitable, activities for the benefits of public at large.

 2. Section 12A and 12AA(3) cancellation of Registration.
CIT (Exemption) V/s Sadguru Narendra Maharaj Sansthan.
407 ITR 12 (Bombay H.C)
Charitable Purpose. Registration of trust cancellation of registration- grounds for Difference between objects of trust and management of trust. No change in objects

of trust. Amendment in respect of appointment of Chief trustee and manner of managing the trust Not ground for cancelling registration of trust.

- 3 Charitable Purposes:- Se.12AA. A.Y. 2011-12.
CIT (Exemptions) V/s Maria Social Service Society.
(2018) 408 ITR 462 (KarnatakaH...C)
Charitable Purposes. Registration cancellation of Registration. Condition precedent Burden on Revenue to prove fulfilment of conditions Transfer of funds to another Charitable Institutions- Not a ground for cancellation of Registration.

- 4 Charitable Purposes.
CIT Exemptions) Ohio univers Christ College
(2018) 408 ITR 352 (Karnataka)
Exemption Condition precedent Application of Income for Charitable purposes in India. Charitable Institution employing foreign personnel for impartinng Education in India amount paid to foreign personnel is application for charitable purposes in India- Amount set apart for payment in previous year and paid in subsequent years amounts to application of Income. Expenditure of Earlier years adjusted against Income of current year amounts to application of Income I.T Act 1961.

5. **Foreign Trustees - Whether Registration of Trust can be cancelled**
COMMISSIONER OF INCOME-TAX (EXEMPTIONS) AND ANOTHER v. OHIO UNIVERSITY CHRIST COLLEGE. (2018) 408 ITR 352 (Karn)
Charitable purposes- Exemption-Condition precedent- Application of income for charitable purposes in India- Charitable institution employing foreign personnel for imparting education in India- amount paid to foreign personnel is application for charitable purposes in India- Amount set apart for payment in previous year and paid in subsequent year amounts to application of income- Expenditure of earlier years adjusted against income of current year amounts to application of income- Income tax Act, 1961,s.11.

Charitable purposes- Exemption-Accumulation of income Objects of institution charitable Purposes of accumulation mentioned in form 10 charitable- Failure to give details- Exemption cannot be denied- Income tax Act, 1961, s.10.

6. **Meaning of Education Explained u/s 2 (15)**
Shree Ahmedabad Lohana Vidyarthi Bhavan v. Income-tax Officer (Exemptions) Ward-2, Ahmedabad.
[2018] 172 ITD 11/96taxmann.com 251 (Ahmedabad- Trib).
Where providing hostel facility to students is an essential component of educational institution and also an aid for attaining educational object, said activity would fall under purview of 'education' as provided under section 2 (15).

7. When the Charitable Trust is not registered u/s 12AA – How it will be taxed (?)
 Basil Mendes Memorial Education & Charitable Trust. V/s ITO Ward 1 (1)
 Exemption Mangalore,.
 (2018) 173 ITD 390 (5)
 Se 164 of I.T Act 1961 trust/ trustees- Charge of tax. Where shares of beneficiaries unknown- A.Y. 2011-12 for the relevant year, assessee trust filed return of Income. Claiming Status of A.O.P in course of assessment. A.O opined that since status of Assessee was A.O.P. Its Income would be brought to tax at Maximum Marginal Rate by applying provisions of Section 164 (1) - Subsequently , assessee filed a rectification application under Section 154 contending that it was a Public Charitable **Trust and not a Private Trust and thus rate applicable was normal rates with basic exemption.** A.O rejected rectification application. It was noted that assessee was not a trust registered under 12A. Moreover trustees of assessee trust were filling their own returns and were having taxable Income. Whether in aforesaid Circumstances. A.O on the basis of original return filed by assessee, rightly treated it as an AOP and consequently impugned order applying provision of Section 164 (1) did not require any interference. Held 'YES' (In favour of Revenue) Se.167 B.
8. Charitable Purposes: Exemptions.
 KPMG Foundation V/s ITO (Exemption)
 (2018) 68 ITR (Tribunal) 113 Delhi.
 No. Prohibition under law on donation (out of current year receipt to other trust) or on donations in kind or to Institutions carrying Charitable activities. Tree Plantation distribution of prize contribution for participation in marathon and purchase of drawing material for students for painting activities among children advancement of object of general public utility Administrative Expenses for running trust without such expenditure no charitable trust can carry on charitable trust cum carry out charitable activities entitled to exemption I.T Act 1961 Se.11 (1) (d)

3. **BUSINESS INCOME** (C)

- (1) Business Expenditure: Disallowance u/s 40A (2)
 Excessive or unreasonable payment.
 NatSteel Equipment (P) Ltd. V/s Dy CIT.
 (2018) 171 DTR (Mumbai Tribunal) 49 (205)
 Lower Authorities having made disallowance u/s 40A (2) (a) on adhoc basis without placing on record any material would prove to the him that the payments were excessive or unreasonable having regard to the fair market value of the services for which the same were made or keeping in view the legitimate needs of the business of the assessee or the benefit derived by or accruing to the assessee there form the disallowance cannot be sustained.

2. **Non- Compete Fee.**

Geojit Investment Services Ltd. V/s Jt. CIT
(2018) 172 ITD 279 ()

Where assessee Company received compensation for discontinuing commodity trading business in view of fact that assessee's commodity trading was transferred entirely to its groups concern, without there being any impairment to business/ profit making apparatus of assessee- company said compensation would be taxable as business Income.

3. *Business Expenditure Allowability. Construction of houses for weaker Section of the Society:-*

*CIT V/s Malayala Manorama Co. Ltd.
(2018) 171 DTR (Kerala H C) 254 (211)*

Expenditure for construction of houses for weaker and poor sections of the Society in connection with the centenary celebrations of the assessee- Company can not be termed as expenditure incurred wholly and exclusively for the business of the assessee allowable under section 37 (1).

4. When was the business set up

Pine bridge India (P) Ltd V/s Asst.CIT
(2018) 67 ITR (Tribunal) (S.N) 74 Mumbai.

Assessee Incorporated to manage Assets of mutual funds Assessee taking steps to commence. Its business such as hiring people, application to SEBI organising for space, amounting to setting up Business. Entire expenses allowable Se.37 read with Section 3 previous year.]

5. **Business Decision who should take A.O or the Businessman.**

Elem Investments (P) Ltd. v. Assistant Commissioner of Income-tax, Central Circle-1, Hyerabad.

(2018) 172 ITD 58/96 Taxmann.com 272 (Hyderabad- Trib)

There being no dispute that services was rendered to assessee, Assessing Officer cannot step into shoes of assessee to re-fix amount that should have been paid; section 37 (1) does not have any restriction to amount paid so long expenditure is incurred for business.

6. Accrual: Interest on Loan:

Smt Sonu Khandelwal V/s ITO
(2018) 172 DTR (JP) Tribunal 42 (223)

Income Accrual – Interest on Loan- Admittedly, assessee is following mercantile system of accounting – Therefore it is not permitted to follow the cash system of accounting only for a particular Income when all other Incomes are recognised by following the mercantile system of Account. Hence interest on unsecured Loan given by the assessee. Which has been duly recognised by the debtor and has

become due to the assessee has to be considered as Income of the year under consideration.

7. Income. Remission or cessation of Liability.
CIT V/s. Indo Wodecom International Ltd.
(2018) 409 ITR 144 (All)

Section 41 of I.T Act 1961 principally applies to transactions. Where the liability lying to credit of another company for long time adjusted against amounts due on the sales made to such company Se.41 not applicable.

During the A.Y. 2000 – 01 (1999-2000) the assessee had received Rs. One Crores by way of 'Share Application Money' from its holding company W. Admittedly that money continued to remain available to the assessee during subsequent years without allotment of any share being made by it. Subsequently the assessee made sales to W. Then, on April 1 2005 the assessee adjusted the amount of Rs. One Crores against the sales made by it to W. And made book entries to transfer that amount of Rs,. One Crores to the General Account under a narration. Share Application Money transfer and thus adjusted the Share Application money to sale price realisable from W. The A.O proceeded to make an addition of Rs. One Crores u/s 41 for the A.Y. 2007 -08. The addition was deleted by the CIT (A) and this was upheld by the Tribunal on appeal.

8. Business Expenditure Disallowance:-

Principal CIT V/s Jadau Jewellers and Manufactures (P) Ltd.
(2018) 409 ITR 85 (Rajsthan H.C)

Disallowance- Payments in Cash in excess of specified limit- Disallowance not attracted where Incoem computed applying gross profit rate.

4. CAPITAL GAIN (D)

- (1) Capital gains- Vis-a-vis business Income. (Issue No.207)

Second Leasing (P) Ltd V/s Ass.CIT (2018) 171 DTR (Del.Tri) 97

Assessee having all along treated its shareholdings as Investments in its books of account and all the share transactions made by the assessee being delivery based the Income arising from the sale of such Investment is to treated as capital gain and not as business Income. Circular No.6 of 2016 dated 29th Feb 2017.

CIT V/s Gopal Purohit (2010) 228 CTR (Bombay H.C) 582.
(2011) 336 ITR 287 (Bombay H.C)

- 2..a) Exemption under Se.54:- Claim made by filing revised return, before CIT (A)

Mahesh H. Hinduja V/s ITO

(2018)(171 DTR (Mumbai Tribunal) 12 (202)

Decision of the CIT (A) in refusing to examine assessee's claim of deduction under S.54 cannot be appreciated; when the assessee has made a claim of deduction u/s 54 it is incumbent on the part of the Departmental Authorities to examine whether

assessee is eligible to avail the deduction claimed under the said provision, department authorities are not expected to deny assessee's legitimate claim by raising technical objection.

2.b) **Mahesh H. Hinduja V/s ITO (2018) 171 DTR (Mumbai) (T) 12. (202)**

There is no restriction in the provisions of S.139 (5) that the assessee cannot file a revised return after issuance of notice under Se.143 (2). Since both the conditions of Se. 139 (5) stood complied in the case of the revised return filed by the assessee, same cannot be held to be inlaid. Simply because it was filed after issuance of notice u/s 143 (2) issue is resorted to the A.O for examining and allowing assessee's claim of deduction under Se.54 Subject to fulfilment of the conditions of that section.

3. *Capital Gains: Computation Applicability of proviso to Se. 50C (1) (issue No 202)*
Rahul G. Patel V/s Dy CIT - (2018) 171 DTR (Ahd) Tribunal – I proviso to S. 50C (1) inserted w.e.f. 1stApril 2017 is clarificatory in nature and therefore it can be applied in pending matters assessee having contended that the actual consideration received by him on the sale of immovable property is more than the valuation of the property for the purpose of stamp duty as on the date of agreement to sell but nowhere pointed out the specific rate on that date the matter is set aside to the A.O to call for circle rate for the purpose of stamp duty valuation of the property as on the date of agreement and thereafter compute for long term Capital gains.

In view of the clarification issued by the CBDT Vide Circular No 359 dated 10th May 1983 Investment made from the advance received on sale of Capital asset will qualify for exemption under Se., 54 EC.

4. Section 54F benefit available. When 263 proceedings are initiated and claim made in such set aside case (?)
Manohar Reddy Basani V/s ITO (2018) 195 TTJ 630 Hyderabad Tribunal (A.Y. 2010-11 ITA No 1307/Hyd/ 2017. 30/5/2017.
Section 54F- A.O having accepted the returned Income despite the fact that the assessee neither admitted capital gains on sale of property not claimed exemption under any of the provisions and the CIT having given direction to the A.O in his revisional order to verify the facts and to redo the assessment as per law, the claim for exemption u/s54F could not be denied in the fresh assessment
5. Capital Gains: Computation of Capital Gains:-
Jaidayal Prannath Kapur V/s ITO (2018) 408 ITR 315 (Madras)
Computation of Capital gains- Sale of land with building demolition of building. Land alone subject to Development consideration only for land- Section 50 not applicable.

6. **Indexed Cost of acquisition.**

ITO V/s Smt. *Nita Narendra Malani* (2018) 172 ITD 169 (Mumbai) for purpose of computing long term Capital gains in hands of an assessee who has acquired an assets under a gift. Indexed cost of acquisition of such Capital asset has to be computed with reference to year in which previous owner first held asset.

7. **Computation of Capital gain on sale of Land & Building.**

JAYDAYAL PRANNATH KAPUR v. INCOME TAX OFFICER,

(2018) 408 ITR 315 (Mad)

Capital gains- Computation of Capital gains- Sale of land with building- Demolition of building- Land alone subject to development- Consideration only for Land- Section 50 not applicable- Income tax Act, 1961, ss. 45, 50..

Loss- Set-off of losses- Speculative losses- Transactions in shares- Information gathered under section 133 (6) by Assessing Officer – No evidence produced by assessee to show that purchase and sale of shares were on its behalf- Concurrent findings recorded by appellate authorities- Loss cannot be set off- Income tax Act, 1961, ss. 73 (1), 133 (6).

8. **Sale of Immovable Property – with furniture.**

IN THE ITAT DELHI BENCH ‘SMC’

Devinder Kumar V/s. Income tax Officer, Ward-68(2), New Delhi.

(2018) 172 ITD 103/96 taxmann.com 169 (Delhi-Trib)

Where assessee sold a house property including furniture in house and purchased another residential house, and it was found that cost of furniture sold was of much lesser amount against amount shown by assessee and main purpose of agreement for sale of furniture was to evade stamp duty involved in sale transaction, addition in respect of excess amount shown on sale of furniture under section 68 was justified.

9. **Section 50C Valuation of Property with reference to Agreement to sale.**

IN THE ITAT AHMEDABAD BENCH ‘B’

Rahul G. Patel V/s. Deputy Commissioner of Income tax, Circle 1 (2), Baroda.

(2018) 173 ITD 1/97 taxmann.com 598 (Ahmedabad-Trib)

In view of proviso to section 50C, stamp duty valuation of property for purpose of stamp duty payment on date of agreement can be deemed as full consideration of capital asset.

Investment made from advance received on sale of capital asset before date of transfer of asset will qualify for exemption under section 54EC.

10. **Section 50 C not applicable if assessee Invested entire sale consideration in new house property under Section 54F.**

Anant Chetan Agarwal v. Deputy Commissioner of Income tax, Circle-I, Bareilly.

[2018] 172 ITD 525/97 taxmann.com 621 (Lucknow- Trib)

Section 54F, read with sections 48 and 50C, of the Income-tax Act, 1961 – Capital gains- Exemption of, in case of investment in residential house (Condition precedent) – Assessment year 2013-14 – Assessee sold agricultural land for

Rs.27.46 lakh and invested entire sale consideration in a house property - He claimed deduction under section 54F – Value of land as per circle rate was Rs.58.06 lakh and DVO determined fair market value at Rs.40.64 lakh – Assessing Officer sought to treat value of property at Rs.40.64 lakh for charging capital gains - Whether deeming fiction created in section 50C is limited only to extent and for purpose of section 48 and this deeming fiction cannot be extended or interpreted as meant for purpose of other provisions of Act including section 54F – Held, yes- Whether for purpose of section 54F what is relevant is investment of net consideration- Held, yes - Whether net consideration as determined under section 50C based on stamp duty authority valuation is not a consideration which has been received by or has accrued to assessee- Held, yes – Whether since entire net consideration (whatever had physically received and accrued to assessee) had been invested, provisions of section 54F (1) (a) were complied with by assessee and, therefore, assessee became eligible for deduction in respect of whole of capital gains to be computed under section 45, read with sections 48 and 54F (1) (a) – Held, yes [Para 7] [Infavour of assessee]

11. **Under Development Agreement consideration is in land- when Capital Gain is Payable (?)**

Mrs. Aarti Sanjay Kadam v. Income-tax Officer, Thane.
[2018] 172 ITD 362/97 taxmann.com 284 (Mumbai – Trib)

Where as per terms of development agreement entered into between assessee, owner of land, and developer for construction of a housing project, assessee would not be paid any monetary consideration but would receive built-up residential area on completion of project, it could not be said that capital gain had accrued in year of agreement.

12. Capital gains- Transfer when takes place.
Principal CIT V/s Talwalkars fitness Club.
(2018) 409 ITR 37 (Bombay H.C)

Agreement between assessee and purchaser that subject to timely observance and performance of terms and conditions within time stipulated by assessee, balance consideration to be paid on or before date mentioned. Agreement not complete on date of execution and not a conveyance or deed.

That agreement registered as required by law prevailing not material- Vendor in possession till total consideration paid transfer not complete and gains did not arise in assessment year in question I.T Act 1961 SS 45, 254

13. Section 54 relief : New House Purchased out of housing loans HANSA SHAH V/s Income tax Officer Ward 21(1) (4) Mumbai
(2018) 173 ITD 260(4)

Se 54 of IT Act 1961 Capital gain profit on sale of properties used for residence (purchase) A.Y. 2011-12 whether if assessee purchases a new house property one year before or two years after date of transfer of original asset, he is entitled to claim

deduction under se. 54 irrespective of fact whether money invested in purchases of new house property is out of sale consideration received from transfer of original asset or not – Held YES whether where assessee had purchased new house property within stipulated period of two years from date of transfer of original asset deduction under section 54 could not be disallowed on ground that assessee had utilized housing loan taken for purchase of said house.

14. Section 54F and Section 50:

Capital gains exemption of in case of investment in residential house (Long Term Capital Gains) A.Y. 2012-13

During year assessee had sold a property which was used by him for commercial purposes and on which depreciation was also claimed said property was held by assessee for a period of more than thirty six months before being sold further assessee had purchased a residential flat from consideration received from a sale of property. He claimed deduction u/s 54F on capital gain arising from sale of aforesaid property AO treated above property as short term capital assets within deeming provisions of Se. 50 and held that assessee was not entitled for deduction u/s 54F with respect to short term capital gain arising on sale of such short term capital assets as deduction u/s 54F was available only on long term capital gains arising from transfer of long term capital assets. Whether assessee was entitled for deduction U/s 54F on capital gains arising from sale of above property – Held YES
Cases relied on

CIT V/s ACE Builders (P) Ltd (2005) 144 Taxman 855

15 *Capital Gains Vis-a-vis Business Income.*

Transactions in Shares.

Second Leasing (P) Ltd. V/s Asst. CIT (2018) 171 DTR (Del) 97

*Assessee having all along treated its shareholding **as investments in its books of Account** and all the shares the Income arising from the sale of such Investment is to be treated as capital gain and not as business Income.*

5. **SECTION 68/69 UNEXPLAINED CASH CREDIT & INVESTMENT (E)**

1. Income from undisclosed Sources Bogus Purchases.

Dy CIT V/s Padmini VNA Mechatronics (P) Ltd.

(2018) 171 DTR (Del Tribunal) 83 (206)

Voluminous documents evidence in support of genuineness of purchases produced by assessee having not been rebutted by A.O addition towards bogus purchases made by A.O solely on the basis of statement of one VP who did not appear for Cross-examination by assessee, was rightly deleted by CIT (A).

2.. **Share Application Money & Se.68.**

PRIYATAM PLASCHEM PVT. LTD. V/S INCOME TAX OFFICER

[2018] 67 ITR (Trib) 649 (Delhi) A.Y. 2014 – 15.

Cash Credit- Burden of proof- Share application money – No obligation to prove source of source of credit- Assessee producing sufficient documentary evidence before Assessing Officer to prove ingredients of section 68- Failure by Assessing Officer to conduct scrutiny of documents at assessment stage and merely suspecting transactions on irrelevant reasons- Assessee proving identity of investor, its creditworthiness and genuineness of transaction. No adverse material on record to rebut explanation of assessee. Additions to be deleted Income tax Act, 1961, S. 68.

3. **Share Application Money & Section 68 of I.T Act 1961.**

DEPUTY COMMISSIONER OF INCOME-TAX v. SUTLEJ AGRO PRODUCTS LTD.

(2018) 67 ITR (Trib) 678 (Delhi)

Cash credit- Unexplained cash credit- Share application money- Assessee filing details and furnishing detailed explanation before Assessing Officer about nature and source of share application money received from different companies- No defects in documents to doubt explanation of assessee and no enquiry conducted by Assessing Officer about authenticity of documents. Dissatisfaction of Assessing Officer could not be sustained only on basis of suspicion. Income or losses declared by investor companies not a sole criterion to examine creditworthiness of shareholders. No addition could be made on account of share application money – Income tax Act, 1961,s.68.

4. **How to prove unsecured Loan (Se.68)**

ITO V/s Iraisaa Hotels (P) Ltd.

(2018) 173 ITD 30.

Where assessee had furnished several documentary Evidences to prove genuineness of unsecured loans and Share Capital Investment and creditworthiness of parties, no additions under Se.68 was to be made in respect of such loan and share Capital relying upon order of SEBI that same of shareholders of assessee were par of several entities who were linked to money laundering.

5.. *Addition under Se.68:-*

Shreenath Heritage Liquior (P) Ltd V/s Princ. CIT.

(2018) 408 ITR 198 Rajsthan.

Appeal to High Court- Cash Credit –Company- Amount shown as share Capital- Validity of order of Appellate Tribunal on issue of addition made under Se.68 – Metre re-appreciation of Evidence. No question of law arose in appeal. Appeal dismissed Se.68, 260A. (against Assessee)

6. *Income from undisclosed sources:- Addition Bogus Purchases.*

Dy.CIT V/s Padmini VNA Mechatonics (P) Ltd.

(2018) 171 DTR (Del) (Tribunal) 83 (206)

*Voluminous documentary Evidence in support of genuineness of purchases produced by assessee having not been rebutted by A.O addition towards bogus purchases made by AO . **Solely on the basis of Statement of one UP who did not appear for Cross-examination by assessee was rightly deleted by CIT (A).** (following Andaman Timber Industries V/s CCE (2015) 127. DTR (SC) 241.*

7. **Whether Section 115BE has retrospective effect (?)**

Assistant Commissioner of Income-tax, Central Circle-1, Jaipur v. Satish Kumar Agarwal.

[2018] 172 ITD 143/96 taxmann.com373 (Jaipur- Trib)

Where AO made addition to assessee's income in respect of excess stock by invoking of provisions of sec. 115BBE, in view of fact that amended provisions of sec. 115BBE were applicable with effect from 1-4-2017 and not prior to that, impugned addition was to be set aside.

8. CASH Credit Accommodation Entries. Loan transaction:-

Asst. CIT V/s Shree Ganesh Developers.

(2018) 68 ITR (Tribunal) (SN. 47) Mumbai (3)

Assessee receiving Loans by Account Payees Cheques and repaying Loan in Account Payee's Cheques. Loan creditors confirming Loan- transaction- finding of CIT (A) that assessee discharged burden of proof with regard to identity of Loan creditors genuineness of transaction and credit worthiness of Loan creditors- facts not controverted by Department – Loan transaction not accommodation entries I.T Act 1961 Se.68.

Dy CIT V/s Rohini Builder (2002) 256 ITR 360 Gujarat H.C.

9. CIT V/s. Jay Dee Securities & Finance Ltd.

(2013) 32 taxmann.com 91 Allahbad.

ITA No 328 of 2010 Date of order 11/8/2011.

Where assessee had produced return of Income. PAN and Confirmation of Shareholders. Share Application money would be treated as genuine.

Relied on the CIT V/s. Lovely Exports (P) Ltd.

CIT V/s Divine Leasing & Finance Ltd (2007)

158 Taxman 440 (Delhi H.C)

4. K.L.R Industries Ltd V/s Dy CIT Hyderabad Tribunal. (1)

(2015) 125 DTR 33 (Hyd. Tribunal) (2015) 173 TTJ 32 Hyderabad)

Where assessee had proved the credits by establishing the identity of the creditors, genuineness of the transaction and creditworthiness of the creditors through proper documentary evidence then no addition u/s 68 was warranted.

5. Dy CIT V/s Alcon Biosciences (P) Ltd.

(2018) 164 DTR 193 (Mumbai)(2018) 193 TTJ 0001 (Mumbai)

A.O could not make addition towards Share Application money if names and addresses and PAN of Creditors had been furnished to A.O.

6. Krishna Yarns Industries V/s Asst CIT Gujarat H.C.
(2015) 376 ITR 561

When Assessee himself disclosed fact that in his books of Account he had shown less stock and had not completely disclosed stock in books of Account. CIT (A) as well as ITAT Committed error in refusing giving set off to Assessee u/s 71.

7. CIT V/s Shilpa Dyeing and Printing Mills (P) Ltd.

(2014) 100 DTR Gujarat H.C 381 (2013) 219 Taxman 279 Gujarat H.C. Loss: Set off of Loss from one head against Income from another Respondent assessee was company engaged in business of dying and printing- During Scrutiny for A.Y. 2008 – 09. A.O noticed that in Survey action conducted at business premises of assessee, it had declared sum of Rs. X lacs on account of Excess Stock- AO had that Income from **unlisted source would not full under** any of heads of Income' same had to be taxed separately, Current losses could not be set off against such Income CIT (A) as well as Tribunal allowed assessee's appeal. Held Section 71 permits assessee to set off loss other than that of Capital gains against Income from other held. Thus Statutory provisions contained in Section 71 was applicable in present case. Revenue's appeal dismissed.

Conclusion:- Section 71 permits assessee to set off other than that of Capital gains against Income from other head.

8. Unexplained Money: Surrender of Income during survey KIM Pharma (P) Ltd V/s CIT (2013) 258 CTR\$ 454 Se.69A.

Unexplained Money- Deemed Income- Surrender of Income during Survey . Survey was conducted u/s 133A at business premises of assessee and books of Accounts were not found to be complete- Assessee surrendered additional Income- AO assessed surrendered Income as an Income u/s 69A. CIT (A) and Tribunal affirmed findings of A.O. Held, amount surrendered during survey was not reflected in books of account and no source from where it was derived was declared by assessee- Same assessable as deemed Income of assessee u/s 69 A and cannot be assessed as business Income. Consequences: No Business Losses can be set off and now the provision of Se.115BBE will be applicable i.e. tax Rate will be 60 percent 15 surcharge plus 4 percent less and 10%penalty]

9. Krishnamegh Yarn Industries V/s Asst. CIT
(2015) 376 ITR 561 Gujarat H.C.

Where Assessee himself disclosed fact that in his books of Account, he had shown less Stock and had not completely disclosed stock in books of Account. CIT (A) as well as ITAT committed error in refusing giving set off to assessee u/s 71.

6. SURVEY SEARCH AND SEIZURE (F)

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

- (1) Refund- Set off under Se.245 against tax Payable.
Na-Tech Corporate Services Ltd.
(2018) 171 DTR (Bombay) 201 (208)
Though the Department claims that the demand of Rs.62 lakhs for the A.Y. 2003 – 04 is raised on the Assessee and for the A.Y.2009 – 10 the demand of Rs.90,92,528/- is raised, there is no proof in the official records of service of such demand on the Assessee, **respondent is directed to grant the refund together with applicable interest within three months from the date** of communication of this order, while allowing the writ petition costs is imposed on the respondents which are qualified in the sum of Rs.1.50 lakhs and the same is to be deducted from the salaries of two officers associated with this case.
- (2) Revision- Erroneous and prejudicial order, Lack of proper enquiry- AO having not made disallowance u/s 14A.
Lally Motors India (P) Ltd V/s Principal
(2018) 171 DTR (Amritsar Bench) Tribunal 106 (208)
A.O having not made disallowance under 14A agreeing with Assessee's plea that no exempt income was earned in the relevant year without applying his mind to Circular No 5 of 2014 on the issue. The order was erroneous and prejudicial to interests of revenue in terms of explanation 2 to Se 263.
- (3) Revision Jurisdiction of CIT:-
Principal CIT V/s Kochi Refineries (2018) 171 DTRE (Bom) 217 (209)
Tribunal had allowed assessee's claim of deduction under 80I in respect of its captive power plant and restored the matter to the A.O for the limited purpose of computation in terms of legal provisions hence CIT exceeded his Jurisdiction under Se.263 in passing the revisional order in as much as **he has attempted to demonstrate that the deduction under Se 80I** itself could not have been claimed by the assessee.
- (4) Reassessment Notice u/s 148: Reason to believe and limitation.
Dayanidhi Maran V/s Asst. CIT
(2018) 171 DTR (MadrasH.C) 161 (207)
Non quoting of the reason by the A.O in the notice will not vitiate the entire proceedings Reasons can be provided on asking by assessee- Responding to the letter sent by the assessee, the A.O communicated the reasons to the assessee, and the objections were rejected and therefore the assessee has not been prejudiced in respect of the proceedings communicated by the A.O. Further, date of communication of the reason cannot be the point for reckoning period of limitation writ petition was not maintainable.
- (5). Section 143 (2) and Section 147.

Sudhir Memon V/s ACIT (ITA No 1744/ Mum / 2016.

Date of order 3-10-2018. A.Y. 2010-11. Reported in BCAH. Nov. 2018.

A Notice u/s 143 (2) issued by the A.O before the Assessee files a return of Income has no meaning. If no fresh notice is issued after the assessee files a return, the A.O has no jurisdiction to pass the re-assessment order and the same has to be quashed.

6. Waiver of Interest u/s 234A, 234B & 234C by Chief Commissioner of Income tax.
R. Mani V/s CCIT (2018) 406 ITR 450 (Madras H.C)
Se.133A 119(2) (a)- Waiver of Interest u/s 234A, 234B & 234C. Delay in furnishing return and in paying advance tax. Discretion of Chief Commissioner to waive. Interest Return submitted voluntarily. Assessee genuinely believing that he had no taxable Income. Interest to be waived.

7. Section 153A: Abatement of Assessment”
The Pr.CIT V/s Jignesh P. Shah
(ITA Appeal No 555 of 2016. Date of order 26/9/2018. (Bombay H.C) (Jignesh P. Shah V/s DCIT dated 13/02/2015 ITA No 1553 & 3173/ Mum/ ITAT) Reported in BCAJ November 2018 issue) Section 153 A Assessment. Search or requisition No addition can be made in respect of an unabated assessment which has become final if no incriminating material is found during the search (Se.132& 143 (3)).

8. Power of Tribunal: Power to admit additional grounds of Appeal
Ultratech Cements Ltd. V/s Addln CIT (2018) 408 ITR 500 (Bombay)
Appeal to appellate Tribunal – Powers of Tribunal. Power to admit additional grounds of appeal- Additional Grounds can be admitted if it raises a pure question of law arising from facts already on record- No claim for deduction under Section 80IA made before Lower Authorities and Form 10CCB not on record question involving investigation of facts.

Question Involving Investigation of facts. No Evidence that issue could not be raised earlier. Additional Ground relating to claim for deduction under Section 80IA cannot be raised I.T Act 1961 Se.80IA.

9. Appeal to Appellate Tribunal:
Principal CIT V/s Sun Pharmaceutical Industries Ltd.
(2018) 408 ITR 517 (Gujarat H.C)
Appeal to Appellate Tribunal – Assessee’s appeal allowed by CIT (A) on merits through re-opening of assessment held valid. Assessee not filing Independent appeal or Cross-objection. Scope of rule 27 of I.T (Appellate Tribunal) Rules. Assessee entitled to defend order of CIT (A) on all grounds. Including on grounds held against it. Income Tax Act 1961. Se. 253 (4) I.T (Appellate Tribunal Rules 1963 Rule 27.)

10. **Whether Revised Return is possible after issue of notice u/s 143 (2).**

MAHESH H. HINDUJA vs. INCOME TAX OFFICER.

(2018) 171 DTR (Mumbai) (Trib) 12.

Conclusion:

There is no restriction in the provisions of s.139 (5) that the assessee cannot file a revised return after issuance of notice under s.143 (2); since both the conditions of s.139 (5) stood complied in the case of the revised return filed by the assessee, same cannot be held to be invalid simply because it was filed after issuance of notice under s.143 (2); issue is restored to the A.O for examining and allowing assessee's claim of deduction under s. 54 subject to fulfilment of the conditions of that section.

11. **Condonation in delay in filing Appeal:-**

Nitesh Agarwal V/s Asst. CIT (2018) 173 ITD 14 (1)

Where explanation offered by assessee that cause of delay in filing appeal was due to turbulent time in family as well as with his earlier CA who had mischievously prepared accounts and also filed return of Income in his own signature without assessee's knowledge was found to be bonafide delay of 387 days in filing appeal was to be condoned.

12. Setoff Loss of one unit against Income of other unit and claim of 80IC relief.

ELIN Appliances (P) Ltd. V/s Dy CIT. Parwanoo.

(2018) 173 ITD 122 (2)

Where assessee had two manufacturing units both of which were eligible for deduction under Se 80IC. In view of fact that one of said unit earned profit whereas other unit incurred loss, while computing amount of deduction, revenue. Authorities were justified in setting of said negative income of one eligible unit.

13. Collection and Recovery of Tax – Stay of proceedings in pursuance of Certificates etc.

Bidar Nirmitti Kendra V/s Principal CIT Kalabargi.

(2018) 98 taxmann.com 217 (IKarnataka)

High handed recovery where prior to taking matter in appeal by assessee, bank account was attached for the recovery in excess of prescribed minimum limit which was required to be deposited by petitioner, same was to be treated as high handed collection by Revenue.

14. Search and Seizure- Assessment under Se 153A.

Pri. CIT V/s Dharampal Premchand Ltd.

(2018) 408 ITR 170 Delhi (2)

Search during accounting year relevant to assessment year 2010-11 Rejection of claims for deduction under Se.80-IB and 80 C- *Tribunal finding that **no incriminating material discovered during Search-** Additions under Se 153A for A.Y. year 2005 – 06 , 2006 – 27 and A.Y. 2007 – 08 **not valid.***

15. *Writ- Reassessment- Notice- Validity:-
Mumtaz Haji Mohmad Memon V/s ITO (2018) 408 ITR 268 (Gujarat).
Notice on ground that return not filed and on issue of amount of capital gains-
Possibility of Application of Section 50C mentioned in affidavit- **in reply not recorded in reasons for reopening- Notice on incorrect reasons-Invalid** Income tax Act 1961 SS 50C, 139 147/148 constitution of India Art 226.*

The reasons cited were that the assessee filed no return and that the one third shares of assessee from actual sale consideration of Rs.1,18,95,000/- therefore was not brought to tax. Both the reasons were factually incorrect- The notice issued under Section 148 for reopening the assessment was to be quashed.

16. *Reassessment- Notice- Reason to believe that Income has escaped Assessment :-
FIS Global Business Solutions (I) (P) Ltd V/s Asst. CIT.
(2018) 408 ITR 75 Delhi.
Reason to believe that Income has escaped Assessment- **audit objections Is mere information,** change of opinion based on mere information impermissible I.T Act 1961 SS.147/148. It was barred by the provisions of Section 147/148.*

17. *Search and Seizure: Retention of Seized Assets.
Rajesh Vachhani V/s Pri. CIT (2018) 408 ITR 94 (Gujarat H.C)
Seizure of cash- tax dues appropriated from seized cash balance to be returned with interest i.e. after the order of assessment year 2011-12. **December 31, 2012.**
There was no justification at all to retain the balance amount of Rs.13,51,714/-. The assessee was entitled to a refund of the amount. He was also entitled to interest as per the I.T Act **1961 from April First 2013 i.e. after three months from the date of order of Assessment for the A.Y. 2011-12.***

18. *Appeal (Tribunal) Additional Ground:- Admissibility.
Max New Life Insurance CompanyLtd V/s Dy CIT
(2018) 171 DTR (Del) 209 (212)
Additional ground admissibility- It is a fact on record that the assessee has earned dividend income- whether the assessee is entitled to deduction u/s 10 (34) is a legal ground., Therefore additional ground of appeal raised by the assessee claiming exemption u/s 10 (34) is admitted.,
(National Thermal Power Co. Ltd V/s CIT 229 ITR 383 (SC)*

19. *Issue of notice u/s 143 (2): Whether mandatory.
Principal CIT V/s Oberoi Hotels (P) Ltd.
(2018) 409 ITR 132 (Cal)
Reassessment- Validity- Issuance of notice under Section 143 (2)
Mandatory- Failure to issue notice- Not procedural irregularity Reassessment proceedings quashed I.T Act 1961 Se. 143 (2) 147 Se 292 BB.*

CIT (Asst) V/s Hotel Blue Moon (2010) 321 ITR 362 (S C)

CIT V/s Palaniappan 161 (2006) 284 ITR 257 (Madras)

Sapthagiri Finance & Investments V/s ITO

(2012) 210 Taxman 78 (Madras H.C) Areva (T & D) (I) Ltd V/s Asst CIT (2007) 294 ITR 233.

(Note. Section 292BB does not dispense with the issuance of any notice that is mandated to be issued under the Act but merely **cures the defect of service of such notices if an objection** in such regard is not taken before the completion of the assessment or reassessment.

20. Revision: Erroneous and prejudicial order: Lack of proper Enquiry:-

Colour Publication (P) Ltd V/s Principal CIT

(2018) 172 DTR (Mumbai) Tribunal Page No 1 (221)

Revision- Erroneous and prejudicial order- Lack of proper enquiry- Order of the AO in question must not only be erroneous but also it must be prejudicial to the interest of the Revenue- Each and every erroneous order cannot be subject-matter of revision because the second requirement also must be fulfilled- There must be some prima facie material on record to show that tax which was lawfully exigible has not been imposed or that by the application of the relevant statute on an incorrect or incomplete interpretation, a lesser tax than what was just, has been imposed –Where the AO has made enquiries in regard to the nature of expenditure incurred by the assessee who has given detailed explanation in that regard by a letter in writing and all these are part of record of his case and the claim has been allowed by the AO on being satisfied with the explanation of the assessee, such decision of the AO cannot be held to be erroneous simply because the A.O has not made an elaborate discussion in this regard – Once the AO has called for necessary enquiries and applied his mind to a particular provision and chose to allow the claim of the assessee then there is no reason for the Principal CIT to assume jurisdiction under s.263 on the ground that the AO has not conducted required enquiries and also not applied his mind – Inadequate enquiry by itself, would not be a ground for the Principal CIT to revise assessment order passed by the AO unless the Principal CIT specifically points out that the AO has grossly overlooked the issue during the assessment proceedings- Principal CIT was incorrect in setting aside the assessment order passed by the AO under s. 263.

21. **Recovery of Tax.**

SAMS Juke Box V/s Asst. CIT

(2018) 409 ITR 33 (Madras)

Stay of demand- discretion to grant stay- CBDT

Office Memorandum cannot Oust Jurisdiction to grant- Stay- Prima facie case showing high pitched Assessment and financial burden on assessee. Stay on condition of deposit of 20 percent of amount demanded – **Not justified I.T Act 1961.**

8. **TAX DEDUCTED AT SOURCE SE 195 ETC. (H)**

1. Commission paid to Non resident Agent.
Evov Clothing Co (P) Ltd. Of CIT
(2018) 407 ITR 72 (Madras H.C)
Section 9 and Section 195- Non Resident . Income deemed to accrue or arise in India. TDS Effect of Section 9 and 195. Non-resident liable to tax only on Incomes attributable to operations in India. Commission paid for procuring abroad. Non – resident not liable to tax on commission. Tax not deductible at source on commission.

2. **Whether TPA Agency is liable to TDS (?)**
Whether TPA Agency liable to deduct tax under Se 194 J on medical services – to Hospital (?) Vipul Medcorp TPA (P) Ltd V/s Asst CIT 51 (c). New Delhi. (2018) 172 ITD 610 (9).
Third Party administrator (TPA) who was responsibility for making payments to hospital for rendering medical services to policy holders under various medical Insurance Policies issued by several Insurers was liable to deduct tax at source under Section 194J from payments made to hospitals.

3. **Credit Card Facilities Charges whether Se.194H is applicable (?)**
Velankani Information Systems Ltd V/s Dy CIT 7 (1) (2)
Bangalore (2018) 173 ITD 19 (1)
(a) Payments to banks on account of utilisation of credit facilities would be in nature of bank charges and not in nature of commission within meaning of Section 194H
(b) Se.54.
Gautam Jhunjhunwala V/s ITO Ward 25 (4) Kokata.
(2018) 173 ITD 93 (2)
Where assessee had purchased a new residential property within one year prior to date of execution of agreement to sell residential property owned by him, assessee's claim for deduction under Section 54 was to be allowed.

4. *Business Expenditure: Disallowance.*
CIT V/s Dedicated Health Care Services (TPA) India (P) Ltd.
(2018) 408 ITR 36 (Bombay H.C)
Payments liable to deduct of tax at source-Thirty party administrator for insurance companies payments merely routed through assessee- disallowance under Section 40 (a) (ia) not warranted I.T Act 21961 40 (a) (ia) .
Section 194 J.

5. *Compulsory acquisition of land:- TDS Provision-*
CIT (TDS) V/s M.M.R.DA (2018) 408 ITR 111 (Bombay H.C) deduction of tax at source- Compulsory acquisition of land. State MDA – acquisition of land for projects paying sums to illegal squatters for their rehabilitation Not a case of compulsory acquisition from owners of land for which compensation paid. No

liability to deduct tax at source on payment to illegal squatters I.T Act 1961 Se 194L, and 194LA.

6. *TDS Certificate under Section 197: (issue No 212)
UPJ Trading (P) Ltd V/s ITO (2018) 171 DTR (Guj) 265
For grant of certificate under section 197. **Satisfaction of AO, and not higher authorities is necessary**, in the peculiar facts, and available time schedule for TDS and filing of return by assessee; instead of remanding the matter to AO for reconsideration petition is dismissed.*
7. T.D.S Provisions: Payments to contractors / Sub-contractors: Clearing and forwarding charges.
Asst. CIT V/s Best India Tobacco Suppliers (P) Ltd.
2018) 173 ITD PageNo 222 (issue No 3)
Where assessee had not deducted TDS on payments made to C & F agents towards reimbursement of Expenses incurred by C & F agent on behalf assessee. Since assessee had not furnished C & F Agreement and material with regard to said reimbursement matter was to be remanded back for necessary verification.
9. **PENALTY AND PROSECUTION - (I)**
 - (1) Prosecution- Compound of offence:- Compounding fees for offence under S.276C. Supernova System (P) Ltd V/s Chief CIT (2018) 171 DTR (Gujarat H.C) 65 (203)
In respect of concealment of Income of at Rs.8,70,000/- tax payable was worked out at Rs.2,71,000/- and on that basis compounding fees would be Rs.2,71,000/- and not Rs. 8,70,000/-, in the prescription of punishment under S. 276CC. When there is a reference to amount sought to be evaded, it must be seen in light of the wilful attempt on the part of the concerned person to evade tax penalty or interest.
 2. Penalty under Section 271 AAA when Possible (?)
DCIT V/s Velji Rupshi Faria (2018) 97 Taxmann.com. 460 (Mumbai) [ITA No 1849/Mum/2017/A.Y. 2008-09 (31.8.2018)
If Penalty proceedings u/s 271 AAA are initiated against a person who is not subjected to search action u/s 132 (1) of the Act, the provision itself becomes unworkable as no declaration u/s 132 (4) of the Act is possible from any person other than the person against whom search and seizure action u/s 132 (1) is carried out.
 3. **Prosecution/ fees Payable Equal to Amount of Income / or TaxPayable.**
SUPERNOVA SYSTEM (P) LTD. V/s CHIEF COMMISSIONER OF INCOME TAX & ANR. (2018) 171 DTR (Guj) 65
Prosecution – Compounding of offence- Compounding fees for offence under s. 276C- In respect of concealment of income at Rs.8,70,000, tax payable was worked

out at Rs.2,71,000 and on that basis compounding fees was computed at Rs.8,70,000 on the basis of circular dt. 23rd December, 2014- Not justified- Compounding fees would be Rs.2,71,000 – In the prescription of punishment under s. 276C, when there is a reference to amount sought to be evaded, it must be seen in light of the wilful attempt on the part of the concerned person to evade tax, penalty or interest – This provision thus, links the severity of punishment on the amount sought to be evaded and thus, in turn has relation to the attempt at evasion of tax, penalty or interest- when the CBDT circular refers to the amount sought to be evaded, it must be seen and understood in light of the provisions contained in s.276C(1) and in turn must be seen as amount sought to be evaded- 100 per cent of tax sought to be evaded would be the basic compounding fees which in the present case would be Rs.2,71,000 and not Rs.8,70,000 as computed by the Departmental authorities..

4. **Concealment of Income.**

**Dr. Geeta Shroff V/s Deputy Commissioner of Income- Tax,
(2018) 67 ITR (Trib) 711 (Delhi)**

Penalty Concealment of Income- Furnishing inaccurate particulars of income. Mistake in claiming depreciation on land not intentional and bona fide and inadvertent error. Assessee voluntarily computing and surrendering depreciation claimed on land and giving complete working to arrive at cost of land,. No finding that details furnished by assessee in return found to be incorrect or erroneous or false- Penalty not imposable – Income – tax Act, 1961, S. 271 (1) (c).

5. *Concealment of Income .*

Principal CIT V/s Dhariwal Industries Ltd.

(2018) 408 ITR 102 (Bombay H.C)

Penalty-Concealment of Income or furnishing inaccurate particulars of income. Industrial undertaking- special deduction claim to deduction made on basis of decision of Tribunal- Sales tax. Incentive adequate information furnished in return filed by assessee. Claim for 100 percent depreciation on items not eligible due to mistake made by assessee found to be bonafide by Tribunal. Does not amount to concealment of particulars – Appeal admitted on questions arising from order of Tribunal in quantum Appeal – Debatable issue/ questions- cancellation of penalty justified. Se. 80-IA, 260A, 271 (1) (c).

6 **When Section 271AAA declared invalid.**

Deputy Commissioner of Income tax, Central Circle 4 (4) Mumbai v. Velji Rupshi Faria.

[2018] 172 ITD 445/97 taxmann.com460 (Mumbai-Trib).

Where no search and seizure operation under section 132 (1) was carried out in assessee's case, initiation of penalty proceeding under section 271AAA by Assessing Officer was invalid.

7. **S. 271(1) (c): PENALTY- FURNISHING INACCURTE PARTICULARS-BOGUS PURCHASES- PENALTY NOT JUSTIFIED.**

Ajay Lokhnath Lohia V/s. ITO 25 (2) (1), Mumbai, ITA No.2998/Mum/2017, DOH: 05/10/2018 (Mum.) (Trib.)

The Tribunal found that the AO has estimated 25% gross profit on alleged bogus purchases, however it never made any observations with regard to the incorrectness in details filed by the assessee to prove such purchases. The A.O never disbelieved information filed by the assessee, but he proceeded on the basis of information received from sales-tax department to make additions. The AO has made such addition on ad hoc basis by estimating gross profit on alleged bogus purchases. From these facts, it is very clear that the AO failed to make a case of deliberate attempt by the assessee to furnish inaccurate particulars of income. Therefore, mere disallowance of purchases on ad hoc basis does not tantamount to wilful furnishing inaccurate particulars of income within the meaning of section 271 (1) (c) of the Act. Hence, the AO erred in levying penalty u/s 271 (1) (c) of the Act. Accordingly penalty levied u/s 271 (1) (c) of the Act is deleted.

8. **Penalty: Concealment of Income:- Book Profits.**

ITO V/s Sitashri Trading and Finance (P) Ld.

(2018) 68 ITR (Tribunal) 260 (Delhi Tribunal)

Assessing Officer accepting Income computed in P & L A/c and Revised Computation filed by assessee difference in computation of book profits not concealment of Income. Penalty imposed not justified Se 271 (1) (c) A.Y. 2011 – 12.

9. **Prosecution: Offence under Se.276C: Quashing of proceedings: Se 278E.**

Arun Arya V/s Income tax Officer.

(2018) 171 DTR (J & K) 441 (220)

Se. 278E places the burden of providing the absence of mens-rea upon the accused and also provides that such absence needs to be proved not only to the basic there hold of preponderance of probability but beyond reasonable doubt in the present case as is evident from complaint, there is definite finding that accused assessee had Rs.20,20,420/- income in the A.Y. 2000-01. Even appeal preferred by assessee has been dismissed- Complaint lodged by respondent and process issued. There on against assessee does not suffer from any infirmity of law.