



THE CHAMBER OF TAX CONSULTANTS

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STUDY GROUP MEETING

Tuesday, 20th March, 2018

SNDT, Committee Room, Churchgate, Mumbai.

CA Dinesh Shah

20th March, 2018.

RECENT DIRECT TAXES JUDGEMENTS.

(1) **OTHERS** **(A)**

National Travel Services v. Commissioner of Income-tax, Delhi VIII [2018] 89 taxmann.com 332 (SC).

DEEMED DIVIDEND.

After amendment of year 1988 carried out in section 2 (22) (e), in order to invoke provisions of said section, 'shareholder' has only to be a person who is beneficial owner of shares. One cannot be a registered owner and beneficial owner in sense of a beneficiary of a trust or otherwise at same time. It clear therefore that moment there is a shareholder, who need not necessarily be a member of company on its register, who is beneficial owner of shares, section gets attracted without anything more. To state, therefore, that two conditions have to be satisfied, namely, that shareholder must first be a registered shareholder and thereafter, also be a beneficial owner is not only mutually contradictory but is plainly incorrect. Also, what is important is addition, by way of amendment, of such beneficial owner holding not less than 10 per cent of voting power. This is another indicator that amendment speaks only of a beneficial shareholder who can compel registered owner to vote in a particular way –

2. **Sanjay Bimalchand Jain v. Principal Commissioner of Income-tax-1, Nagpur [2018] 89 taxmann.com 196 (Bombay)**

Illustrations: Where assessee had purchased shares of penny stocks companies at lesser amount and within a year sold such shares at much higher amount and assessee had not tendered cogent evidence to explain as to how shares in an unknown company had jumped to such higher amount to no time and also failed to provide details of person who purchased said shares, said transactions were attempt to hedge undisclosed income as Long term Capital gain.

3. **Kamat Hotels (India) Ltd. V. Deputy Commissionr of Income-tax (OSD)-8 (2), Mumbai [2018] 89 taxmann.com 225 (Mumbai – Trib.)**

Applicability of: Section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.

Mrs. Nawaz Singhania v. Dy. CIT (Mum) 478

4. **UNEXPLAINED MONEYS.**

Where gross weight of jewellery disclosed in regular returns was in excess of gross weight of jewellery found in search, no seizure/ addition was permissible.

5. Deemed Dividend Se 2 (22) (e)

Sunrise Broking (P) Ltd. V/s ITO (2018) 400 ITR 447 (Gujarat H.C)

Thus Deemed dividend is inferred in a loan or advance given by the company with Reserves to a shareholder or a concern in which he is interested. Where dividend was inferred in the case of a loan to a concern in which the shareholder was interested the assessee sought to resist the liability under Section 2 (22) (e) on the ground that the Section is applicable only for loan or advance directly given to a shareholder as was **decided in CIT V/s Ankitech (P) Ltd. (2012) 340 ITR 14 Delhi and CIT V/s Daisy Packers P. Ltd (2013) ITR OL 80 Gujarat H.C.**

But these decisions were found to be no longer good law in the light of the Supreme Court decision in Gopal and Sons HUF V/s CIT (2017) 391 ITR 1 (S C).

In the Instant case, the payment in question is made to the assessee which is a HUF shares are held by Shri Gopal Kumar Saneo who is Karta of this HUF. The said Karta is undoubtedly the member of HUF.

In view of the aforesaid position the Provisions of Se 2(22) (e) of the Act get attracted and it is not even necessary to determine as to whether HUF can, in law be beneficial shareholder or registered share holder in a company.

Even as has been pointed out in Gujarat flour Chemicals Ltd V/s. Asst. CIT (2013) 353 ITR 398 Gujarat H.C.

Further the Delhi H.C decision in Ankitech (P) Ltd 340 ITR 14 Delhi case is in Challenge before Supreme Court.

It was further pointed that the decision of the Supreme Court has opened a new dimension to the controversy. So that the assessee's appeal questioning the levy of tax under Se 2 (22) (e) was dismissed in the case of Sunrise Broking (P) Ltd V/s ITO 400 ITR 337 Gujarat H.C.

6. Legal Representatives Duties.

Mrs. S. Savithri V/s. ITO (2018) 400 TR 513 (Karnataka H C)

When notice was issued in the name of the deceased calling for certain information u/s 133(6) Notice calling for particulars of Bank Account of Assessee- that notices (i.e. the notice was issued to the dead person) Since deceased not within knowledge of Assessing Authority- Legal representatives can not deny obligation to furnish information including Bank details writ jurisdiction cannot be invoked to stall inquiry I.T Act 1961.

Dismissing the writ petition the court held that even if the notice was deceased the legal representative or the persons who inherited the – estate of the deceased person would have to comply with the notice for furnishing the requisite information. The very purpose of the provisions of section 133(6) was to elicit the requisite information and details from the person concerned. There was nothing on record to show that the Income tax officer had the knowledge of the death of the assessee when the notice was issued. The legal representatives including the wife of the deceased assessee could not protest or deny the obligation to furnish such information, including the Bank details and relevant vouchers to be obtained from the concerned bank of the deceased assessee. The wife of a person could not plead ignorance about huge cash credits in her husbands bank Account.

7. **Deemed Dividend u/s 2 (22) (e) matter referred to the larger Bench.**

NATIONAL TRAVEL SERVICES VS. COMMISSIONER OF INCOME TAX
SUPREME COURT OF INDIA.

(2018) 162 DTR (SC) 201 (issue No 33) Income-tax Act, 1961, s.2(22) (e)

Dividend- Deemed dividend under s. 2(22) (e)- Registered or beneficial shareholder- Amended definition of "dividend" in s.2(22) (e) would indicate that, after 31st May, 1997,

a “shareholder” is now a person who is the beneficial owner of shares holding not less than 10 per cent of the voting power of the company- Thus, post-amendment the “shareholder” has only to be a person who is the beneficial owner of shares- Moment there is a shareholder, who need not necessarily be a member of the company on its register, who is the beneficial owner of shares, the section gets attracted without more- To state, therefore, that two conditions have to be satisfied, namely, that the shareholder must first be a registered shareholder and thereafter, also be a beneficial owner is not only mutually contradictory but is plainly incorrect-
Matter referred to Larger Bench.

8. **Income- tax Act, 1961, s.2 (22) (e) : Principal V/s. Rangta Properties (P) Ltd.**
(2018) 162 DTR 1 (Cal) 64 (issue No.23)
Assessment Year 2004 – 05
Dividend – Deemed dividend under s.2 (22) (e) – Assessee not a shareholder – SN being a common shareholder in both borrower and lender companies having more than 10 per cent shares in each of them, and borrower company not being shareholder in lender company, amount of loan could be treated as deemed dividend in the hands of SN and not borrower company – No substantial question of law arises.

9. **MAT & Waiver of Loan.**
Mumbai ITAT: Loan waiver credited to P & L as ‘exceptional item’ not ‘book profit’ under MAT
JSW Steel Limited [TS- 76 – ITAT – 2017 (Mum)]
Mumbai ITAT rules that loan waiver of Rs.314 crore, being on capital account, be reduced while computing book profits for the purposes of MAT calculation under Sec 115JB for A.Y. 2004-05’ ITAT remarks that “ a mere disclosure of an extraordinary item in the P & L account statement does not mean that the said item represents the ‘working result’ of the company”; **Further ,ITAT holds that even if company credited the amount to its P & L account, such P & L account needs to be adjusted with he amount of remission so as to arrive at the net profit in accordance with Schedule VI of the Companies Act; Taking note of the legislative intent, ITAT holds that “It was never the intention of the legislature that any receipts which is not taxable per se within the income tax provision or not reckoned as part of**

net profit as per the profit & loss account as per Companies Act can be brought to tax as a book profit.” , relies on Kolkata ITAT SB ruling in Sotlej Cotton Mills Ltd/, Cochin ITAT ruling in Nilgiri Tea Estate Ltd.

10. *Deemed Dividend u/s 2 (22) (e)*

Supreme Courts Approves Delhi H.C verdict on deemed Dividend: Confirm no taxability for Loan Receipt. Madhur Housing and Development Co. Ankitech (P) Ltd & Other CTS- 462-Sc – 2017].

SC confirms Delhi HC ruling in Ankitech Pvt. Ltd.; HC had approved Mumbai ITAT Special Bench ruling in Bhaumik Color P. Ltd. And had held that deemed dividend is not taxable in the hands of recipient concern, if such concern is not a shareholder of lender company; SC opines that the HC judgement “ is a detailed judgement going into sec 2 (22) (e) of the Income Tax Act which arise at the correct construction of the said Section.” SC remarks that “ We do not wish to add anything to the judgement except to say that we agree therewith”.

2. **CHARITABLE TRUST (B)**

(1) Charities.

Exemption is available for years prior to Registration

Punjab Education Society V/s ITO (2018) 61 ITR (Trib) 622. (Amritsar).

First proviso to Section 12A (2) Inserted by Finance (No2) Act 2014 with effect from October 1,2014 recognising exemption for years earlier to registration being a beneficial provision intended to mitigate hardship for genuine charitable institution has to be understood to be retrospective in effect. So as to be applicable for all years in pending assessments earlier to the amendment.

2. The basis for permissible limit for accumulation

Whether gross Receipt or net Receipt (?)

Dy CIT V/s B.S and G foundation (2018) 61 ITR (Tribunal) 475 Bangalore.

The Assessee is eligible for exemption on condition that he utilises the Income of the Charitable purposes to the extent of 85%. So as to permit only 15 percent for accumulation. The manner of reckoning 15% permitted to accumulation was the subject matter. While the AO reckoned 15 percent on net receipts. It was

concurrently found by the CIT (A) and the Tribunal that the limit was 15 percent of Gross Receipt. Following Marg Immaculate Society V/s Dy CIT (Exemption) (ITA Nos 240 and 241 Bangalore/ 2015 dated 23/6/2015.

3. Treatment of tied up grants.
Touching Hearts Ministries V/s ITO
(2017) 60 ITR (Tribunal) (SN) 140 Visakhapatnam.
Tied up grants do not constitute Income of assessee as it is received for a specific purpose.

[following ITO V/s Vokalgara Sangha (2015) 44CCH 506 Bangalore)

4. **Charities.** Every Service against fees need not be business.
Principal CIT (Exemption) V/s Institute of Development & Research in Banking Technology (2018) 400 ITR 66 (T & AP) Society created by RBI to Assist banks and financial Institutions finding by Tribunal that assessee carried out an object of general Public utility and not engaged in trade. Assessee entitled to exemption for A.Y. 2010-11 & A.Y. 2011-12. Se 2 (15) & 11.

Held dismissing the appeal of the Income tax Department the High Court held that the assessee was created by the RBI for improvement of the performance of banks and the financial Sector of the country ultimately to have a bearing upon the economy of the country. Hence it was an Institution established for an object of Public Utility. The Tribunal had found that it was not carrying on any activity in the nature of trade. It was therefore entitled to exemption u/s 11 for the A.Y. 2010- 11 & A.Y. 2011-12.

5. Inference of business not to be lightly made
CIT (Exemption) V/s Fertilizers Associations of India.
(2017) 399 ITR 209 (Delhi)
Fees from members for Service like training and conduct of seminars cannot be treated as business income. So as to be hit by the amendment to Section 2 (15) by the Finance Act 2008.

3. **BUSINESS INCOME** (C)

- C. Rental Income being passive Income is not business income.

ITO (E) Kalinga Cultural trust (2018) 61 ITR (Tribunal) 24 Hyderabad.

Mere letting out a functional hall belonging to a trust cannot be treated as commercial activity being a passive Income and that too not in consistent with the dominant objects

of the trust. So that there can be no denial of exemption, Since the rental Income does not have business character. It was in this view, it was found that there could be no disallowance of security charges for failure to deduct tax at source purportedly under Section 40 (a) (ia). Since the proviso to Se 2 (15) would have no application to the facts of the case.

2. When Commission can be claimed as Expenses.

Dy CIT V/s Associated Ltd (2018) 61 ITR Tribunal 553. Kolkatta.

Business Expenditure- Commission to Managing Director. Profits for Earlier financial year determined only in subsequent year. Commission amount crystallised in Instant year. Claim allowable u/s 37.

3. P.F and ESI Contributions.

Kiranbhai Amin V/s Asst. CIT
(2018) 61 ITR (Tribunal) 471 Jabalpur (4)

Held that the assessee took registration during year under the Provident Fund Act and the Employee's State Insurance Act it did not deduct any amount from the employee's account. The total sum of Rs.1,03,964/- was on account of contribution towards P.F and ESI. Which was deposited by the Assessee before the due date of filing the return. Such type of statutory payments on account of the employer's contribution were allowed as deduction if they were paid before the due date of filing the return as provided in se.43B. there was no dispute about the actual date of payment of the amount was before the due date of filing the return. Therefore the amount of Rs.1,03,694/- was wrongly disallowed under Section 36 (1) (va) read with Section 2 (24) (x)

4. Hoardings for Advertisements.

Dy CIT V/s Vantage Advertising (P) Ltd.
(2018) 61 ITR (Tribunal) 564 Kolkata.

Hording are usually made out of materials having a life of less than a year as they are exposed to sun rain, and other adverse whether conditions requiring treatment as temporary structures so as to merit deductions of **depreciation at 100 percent.**

5. Year of disallowance of unproved Expenditure Purchases: (Kolkata Tribunal)

Umika Agency V/s ITO (2017) 60 ITR Tribunal) (SN) 124

Where the sellers' (suppliers of goods) addresses were not available and they were also not found traceable in respect of purchases made by the assessee; the inference is that the purchases are out of undisclosed Income in the year of purchase and not three years later in the year. When the liability was squared up after being carried forward.

6. Valuation of Stock:-

Veera Exports V/s Asst.CIT

ITROL Volume II. Page 142 Gujarat H.C

Substitution of method of valuing closing Stock by Revenue. Same method should be applied for opening stock also.

7. **Unabsorbed depreciation carry forward and set off. Effect of amendment & Re-amendment.**

PRINCIPAL COMMISSIONER OF INCOME TAX vs. BRITISH MOTOR CAR CO. (1934) LTD.

HIGH COURT OF DELHI. (2018) 162 DTR (Del) 1 (issue No 21)

Income-tax Act, 1961, s. 32 (2) Assessment Year 2010 – 11.

Depreciation (unabsorbed)- Carry forward and set off- Effect of amendment of s.32(2) w.e.f 1st April,2002- Rationale for the amendment appears to be that the restriction against set off and carry forward limited to 8 years, beyond which the benefit could not be claimed under provisions of the IT Act, was for the reasons deemed appropriate by the Parliament- Limit was imposed in 1996 through Finance (No.2) Ac, 1996- Had the intention of Parliament being really to restrict the benefit (of unlimited carry forward prospectively), there were more decisive ways of doing so, such as, an expressed provision or an exception or proviso etc. – Absence of any such legislative device meant that provisions had to be construed in its own term and not so as to restrict the benefit or advantage, it sought to confirm- Assessee was therefore entitled to carry forward unabsorbed depreciation of earlier years starting from 1998-99 and set it off against depreciation of 2010-11.

8.. **Disallowance u/s 40 A (3)**

COMMISSIONER OF INCOME TAX vs. ACE INDIA ABODES LTD.

HIGH COURT OF RAJASTHAN: JAIPUR BENCH.

(2018) 162 DTR (Raj) 118 (issue No. 25)

Income – tax Act, 1961, s. 40A (3); Income – tax Rules, 1962, r. 6DD(h)

Business expenditure- **Disallowance under s. 40A(3)** – Exceptional and unavoidable circumstances – Assessee engaged in the business of purchase, sale and development of land and colonies purchased land from villagers- As per Tribunal no expenditure has been claimed in the year under consideration in the P & L a/c – Further, when a vast extent of agricultural land is purchased in the P & L a/c- Further, when a vast extent of agricultural land is purchased from several persons in villages, it is not possible to expect the villagers to accept the sale consideration by way of crossed account payee cheque or bank draft- Tribunal was therefore justified in deleting disallowance made by AO.

9. Method of Accounting rejection of Accounts. Absence of Vouchers of Payments.

Dr. Prabhu Dayal Yadav V/s CIT

(2018) 89 taxmann.com 126 (Allahbad)

Where in case of assessee a practising doctor there was no evidence to doubt correctness of entries made in OPD register as also Indoor Patient Register mere fact that books of account were not supported by vouchers of payments received from patients. Same could not be a ground to reject assessee's books of Account and made addition on estimate basis.

10. Assessment : Issue of notice:-

CIT II Cochin V/s V.V. Devassy (2018) 89 Taxmann.com 22 (Kerala H.C)

Limitation Period:- Even though revenue authorities issued notice under Section 143 (2) within period of limitation as prescribed in proviso to section 143 (2) yet same was served on assessee after limitation period it was to be regarded as invalid notice.

11. General Principles Rule of Consistency.

CIT V/s Modipan Ltd (2018) 400 ITR 1 (S.C)

Rule of consistency is not to be blindly followed, where the Department has been accepting a vulnerable accounting practice in the past. As long as the issue involves a question of law or public interest or has potential of recurrence in future, the departure from the rule of consistency is justified.

That having regard to the object behind the enactment of Se.43B.-

The advance deposit of Central Excise duty Constituted actual payment of duty within the meaning of Section 43B and therefore the Assessee was entitled to the benefit of deduction of amount .

12. Business Expenditure. Disallowance Payment in Cash in Excess of specified limit:-

Royal Wood Industries V/s Joint CIT

(2018) 62 ITR (Tribunal) 321 Amitsar.

Payments in cash in Excess of specified limit. Payments made to truck driver who generally insist on cash payments- genuineness of Expenses not doubted. Disallowance not to be made- IT Act 1961. Se.40A (3) Circular No 220 dated 31-5-1977. See (1977) 108 ITR. (St.) 8.

13. Business Expenditure Builder and Developer. Advertisement Expenses. Which year allowable(?)

Dy CIT V/s Ramkav Wavoo Developers (P) Ltd.

(2018) 62 ITR Tribunal 376 (Chennai)

Advertisement Expenditure Assessee in real Estate Business making several advertisements to promote its business. Cost of Expenses not related to promote its business cost Expenditure not related to particular project in a particular years relatable to the year in which advertisement made expenditure on advertisement made Instant year not no Income declared in particular year in respect of project to which advertisement related – Not permissible I.T Act 1961 Se.37.

4. **CAPITAL GAIN.** (D)

1. Capital gains.

Time of accrual of Liability under development Agreement. Year in which taxable (?)

ITO v/s. Dr. Arvind Goverdhan (2018) 61 ITR (Tribunal) 159 Bangalore.

Transfer: Development Agreement entered into and free and vacant possession of Land handed over to Developer in 27/11/2008. Agreement duly registered and stamp duty paid gains taxable in year in which possession handed over to developer and not year in which possession handed over to developer and not year in which project completed- Allowability of deduction to be decided by commissioner (A)

2. Capital Gains:-

CIT V/s Dr. Arvind S. Phake (2018) 401 ITR 96 (Bombay H.C)

Long Term Capital Gains:- Exemption- Sale of Residential property and Investment of gains in Residential Property and Bonds. Time of Six months from date of transfer for Investment- transfer effected only on transfer of physical possession of property not on date of execution of development agreement- Investment made by assessee falling within time specified under Section 54EC.

- 3.. MRS. PARAMJIT KAUR vs. INCOME TAX OFFICER
ITAT, CHANDIGARH BENCH(2018) 162 DTR (Chd) (Trib) 1 (issue No.21)
Income- tax Act, 1961, S.54;

Capital gains- Exemption under s.54- Construction of new house before sale and investments in capital gains accounts scheme- Investments made by the assessee in the construction of the new house prior to the sale of the original asset is also eligible for deduction under s.54- As regards the amount invested in the capital gains accounts scheme, the amount was deposited after the due date of filing of the return under s. 139 (1) but before the due date for filing the return under s.139 (4) - Therefore, assessee is entitled to deduction under s.54.

4. **Capital Gain V/s. Business Income**

PRINCIPAL COMMISSIONER OF INCOME TAX vs. RUNGTA PROPERTIES (P) LTD. HIGH COURT OF CALCUTTA.
(2018) 162 DTR (Cal) 64 (issue No.23)
Income- tax Act, 1961, ss. 28 (i), 45 & 260A Assessment years 2003-04, 2004-05 & 2006-07.

Capital gains- Vis-a-vis business income- Profit from sale of flats received from developer of assessee's land- No material brought on record by Revenue to show that assessee had carried on business of property development- In the absence of such evidence, object clause in assessee company's memorandum could not be determinative- CIT(A) as well as the Tribunal have concurrently found that gain of the assessee from the transactions of sale of flats did not constitute adventure in the nature of trade- There is no perversity in such findings which findings do not suffer from any perversity- No substantial question of law arises.

5. Capital Gain Long term Capital gains.

Rajat B. Mehta V/s ITO (International Taxation).

(2018) 62 ITR (Tribunal) 334 Ahmedabad A.Y. 2011-12.

Investments of gain in residential house within time. Prescribed- Cost of Residential house purchased. Not confined to cost of Civil Construction alone Agreement for sale of house property and furniture and fixtures to be considered as composite contract I.T Act 1961. Section 54.

5. **UNEXPLAINED INVESTMENTS (E)**

1. **Cash Credits: Section 68**

Principal CIT V/s Oriental International Co. **(P) Ltd.**

(2018) 401 ITR (Delhi H.) 83

Share application money- Burden of proof- Assessee providing all necessary document A.O giving more importance to statement given by directors of share investing companies than examine details so provided by assessee. Existence of company and audited accounts not in dispute failure by Assessing Officer to examine bank Statements- Addition can not be made under Section 68.

2. **Cash Credit: Applicability of Peak Credit.**

COMMISSIONER OF INCOME TAX vs. D.K. GARG.

HIGH COURT OF DELHI (2018) 162 DTR (Del) 17

Income- tax Act, 1961, s.68 Assessment Year 1995-96

Income- Cash credit- Applicability of principle of peak credit- Deposits remaining unexplained, benefit of peak credit could not be allowed for making addition under s. 68- Tribunal went wrong in reducing addition of Rs.72.08 Lacs made by AO/ CIT (A) to Rs.5.87 lacs on the basis of principles of accountancy overlooking the settled legal position that peak credit is not applicable where deposits remain unexplained under s.68-Assessee had failed to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off.

3. **Cash Credit. Share Application Money.**

PRINCIPAL COMMISSIONER OF INCOME TAX vs. ORIENTAL INTERNATIONAL CO. (P) LTD. HIGH COURT OF DELHI

(2018) 162 DTR (Del) 170 Income – tax Act, 1961, s.68 **1 (issue No.31)**

Income- Cash credit – Share application money- Assessee provided details relating to the share application money provided by each of the entities, confirmation letters,

board resolutions from each company, PAN details, copies of the memorandum and articles of association, Forms 18 and 32 and audited financial statements, copies of pay orders which were used for the share application money, etc.- In addition, affidavits of directors and share investors were also furnished- Lone circumstance of a director disowning the document per se could not have constituted a fresh material to reject the documentary evidence- In the absence of any further enquiry by AO, the Court is of the opinion that the findings holding that the assessee had discharged the onus placed upon it by law cannot be considered unreasonable- No question of law arises.

6. **ASSESSMENT REASSESSMENT APPEAL RECOVERY (F)**

1. Admission made during Survey 133A Income tax Officer V/s Praveen Ramchandra Gorane. (2017) 60 ITR (Tribunal) (S N) 38 Pune.

Confession made during Survey is not conclusive as was found in respect of a profit margin admitted during survey but was found to be higher after payment of interest and depreciation statement during survey is therefore not binding.

2. Physical form of return when admissible (?)

Principal CIT V/s National Informatics Central Services Inc.
(2018) 400 ITR 387 Delhi H.C.

In Short: Return:- Validity Return filed Electronically filing of hard copy of Form V (i.e. acknowledgement form. Where no digital signature is required] furnished through post within stipulated extended period. Originally filed return valid I.T Act 1961 SS 139C 139D, 295B. I.T Rules 1962 rule 12 (3) (III) CBDT Circular No.3 of 2009 (See (2009) 313 ITR (St.)15] and circular dated 1-9-2010.

3. Recovery of Tax Stay of demand conditions therefore
Ladhabhai Damjibhai Panara V/s. Principal CIT
(2017) 399 ITR 539 Gujarat High Court.

Board Circular F.No. 404/72/93 – ITCC dated Feb-29 2016 gives guidelines for stay of disputed demand permitting stay of 85 percent of demand if 15 percent of disputed demand is paid pending appeal., Insistence of payment of a larger amount, it was pointed out could be justified only in exceptional cases and not otherwise. The prescribed requirement of 15 percent of disputed demand has since been enhanced to 20 percent vide Board Circular office Memorandum (F No 404/72/93 ITCC) dated July 31, 2017.

4. **Reassessment Validity.**

ORACLE INDIA (P) LTD. Vs. ASSISTANT COMMISSIONER OF INCOME TAX
ITAT, NEW DELHI '1-1' BENCH. (2018) 162 DTR (Del) (Trib) 188 (issue No 33)
Income-tax Act, 1961, s. 143 (2) & 147;

Reassessment- Validity- absence of notice under s.143(2) – Use of the word 'shall' in the proviso to s.143 (2) MAKES IT MANDATORY- In the present case, the return in response to notice under s.143 was filed by the assessee on 28th April, 2011 and thus, the financial year in which the return was furnished ended on 31st March, 2012 – Therefore, the notice under s.143 (2) should have been issued on or before 30th Sept., 2012 – Notice under s.143 (2) issued by the AO on 17th Dec., 2012 was barred by limitation and consequently the reassessment framed on the basis of said notice is void ab initio.

5. **Reassessment Validity – Absence of notice u/s 143 (2)**

LOK MITTAL vs. DEPUTY COMMISSIONER OF INCOME TAX
ITAT, KOLKATA 'SMC' BENCH (issue No.21)
(2018) 162 DTR (Kol) (Trib) 13
Income – tax Act, 1961, ss. 143 (2), 147 & 292B

Reassessment- Validity- absence of notice under s. 143(2) – Assessment made by the A O under s. 147 without issuance of the statutory notice under s.143 (2) is bad in law and the same is liable to be cancelled - AO cannot claim the benefit of s.292B in a case where notice under s. 143(2) was not issued.

6. **Recovery- Stay- Appeal pending before CIT (A)**

S. ARPUTHARAJ vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS.
HIGH COURT OF MADRAS. (2018) 162 DTR (Mad) 25 (issue No.22)
Income-tax Act, 1961, s.220 (6) Assessment years 2009-10 to 2015 – 16.

Recovery- Stay- Appeal pending before CIT (A) – When the stay petitions are pending before the AO, the assessee has to pursue the same by appearing before him and make a request for stay of the demand as assessed by him – A O has to consider the case on merits and then take a decision in the matter and not mechanically go by the guidelines issued by the CBDT, as the guidelines themselves provide for contingencies, which may vary from case to case – Writ petition is disposed of by

directing the assessee to raise additional grounds before the first respondent in support of their stay petitions- Till such time, the respondents shall not initiate any coercive action against the assessee.

7.. **Recovery – Stay – when can not be granted.**

SINHGAD TECHNICAL EDUCATION SOCIETY vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. HIGH COURT OF BOMBAY.

(2018) 162 DTR (Bom) 185 1 (issue No.32)

Constitution of India, Art. 226; Income-tax Act, 1961, ss.220, 222 & 226 (3)

Assessment Years 2009-10 to 2014 – 15.

Recovery- Stay- Maintainability of writ vis-a-vis fraudulent withdrawal from attached bank account- No order was passed by the Court on 19th Dec., 2017 and on ly the petition was adjourned at the instance of the parties. All that happened on 19th Dec. 2017 was that the counsel for the Revenue had after hearing the assessee's counsel stated that he would instruct his officers not to withdraw the amount of Rs.9.27 crores which is likely to come into the assessee's attached bank accounts from the State Government – There was no mention by the advocate for the Revenue, that the assessee would be allowed to withdraw the amounts- Thus, the communication dt.20th Dec., 2017 to the TRO as also the communication dt. 21st Dec., 2017 of the assessee to the bank, misrepresent that on 19th Dec., 2017 the Court had given oral directions for withdrawal of the money- Conduct of the assessee during the pendency of the petition disentitles it to any relief under Art. 226 of the Constitution of India.

8. Collection of tax at source:-

Principal CIT (TDS) V/s Safari Fine Clothing (P) Ltd.

(2018) 89 Taxmann.com 129 (Gujarat H.C)

Scrap:- Where assessee having imported garments, cut them into small pieces and sold to different parties in view of fact that waste generated in said process such as raga, wipers or chindi were used by buyers in manufacturing other items like blankets, pillows etc. Waste so manufactured would not fall within ambit of expression 'Scrap' as envisaged in clause (b) of explanation to Section 206C.

9. Best Judgement Assessment.

Jint CIT Range 2. Ghaziabad V/s System Controls & Transformers (P) Ltd. (2018) 89 taxmann.com 96 (Delhi Tribunal). Scope of when there are sufficient grounds for

making best judgement assessment and there is a reasonable basis for estimate made appellate authorities will be without any jurisdiction to interfere with quantum of addition made by A.O in best Judgement.

10. Validity of Notice:-
Principal CIT V/s Mohd Rizwan prop M/s. M.R Garments.
ITROL Volume II 149 (Allahbad H.C)

Validity- Condition precedent- Valid notice- Notice issued by Assessing Officer who had no jurisdiction. Notice void ab initio- Not a defect curable under Section 292BB Income tax Act 1961. SS 147 SS148, 292 BB.

7. **TAX DEDUCTED AT SOURCESD. TAX COLLECTED AT SOURCES.(G)**

1. TDS: Short deduction is not non-deduction Se 194C/194I.
Dy CIT V/s Vantage Advertising (P) Ltd (2018) 61 ITR (Tribunal) 564.

Where there was wrong deduction at a lower rate from payments for advertisements for products for which it was distributor under Se.194C instead of under Section 194I resulting short deduction. The payment could not be disallowed u/s 40 (a) (ia) is disallowance

8. **SECTION 195 AND INTERNATIONAL TAXATION (H)**

9. **PENALTIES PROSECUTION (I)**

1. **Penalty under Section 271 (1) (c) & Alleged Bogus Purchase:-**
Balaji Motion Pictures Ltd V/s Dy CIT (2018) 61 ITR Tribunal 421 (Mumbai Tribunal) (Part 4)

Penalty concealment of Income. Bogus Purchases Department to show by Positive material, that assessee furnished inaccurate particulars of Income or concealed particulars of Income. Addition on basis of third party Statement. Neither copy of third party statement produced to assessee. Disclosure by third party statement produced to assessee- nor cross-examination of third party allowed to assessee- Disclosure by third party. Assessee not choosing to litigate quantum addition before higher forum- Penalty not liable automatically.

(Case referred to Andaman Timber Industries V/s CCE 38 GSTR 117 (SC) applied.

2. Penalty under Se.271 (1) (c) not exigible.
Gopalratanam Santha Mosure V/s ITO (IT)
(2017) 399 ITR 155 Madras.
The condition precedent for penalty is either concealment or furnishing of inaccurate particulars. A mere addition where it did not tantamount to concealment unless accompanied by inaccurate particulars, did not justify penalty- A wrong claim, Voluntarily withdrawn through pursuant to assessment proceedings does not attract penalty.

Other Case Law

3. Prabhat Gupta V/s ITO Circle 27 (2) (5)
ITA No 277/M/2017 797/M/2017
A.Y. 2009-10 & A.Y.2010 – 11
& Co. ITA 7574/M/2011 & 531/M/20917
A.Y. 2009 – 10 & A.Y. 2010 – 11
Mumbai Tribunal F Bench. Dae of order 21-12-2017
Issue Bogus Purchases.
(1) 12.50% addition confirmed by the CIT (A) 38 was deleted by the Income tax Tribunal.
The Assessee has submitted MVAT challan. Copies of Purchase Bills and Sales Bills and delivery challans proof of transporting of purchase & Sales, payment by payees A/c Cheques.
Following CIT V/s Nikunj Exim Enterprises(P) Ltd.
Taxmann.com 171 gave 100% relied.
4. Allowance Expenses:- Advertisement of achievement of M. Director of Company.
MKJ Tradex Ltd V/s Dy CIT (2018) 62 ITR (Tribunal) 632 Kolkata Tribunal.
Expenditure on advertisement-Expenses incurred in Publishing achievement of managing director of assessee. Commercial Expendiency to promote business.
Allowable Se 37 (1).
5. **Club Member ship fees**. Whether allowable as Revenue Exp(?)
(2018) 62 ITR (Tribunal) 632 (MKJ Tradex Ltd V/s Dy CIT.
Admission fee paid towards corporate membership Expenditure incurred wholly and exclusively for purpose of business and not towards capital Account. Revenue in nature (Se.37)
6. Charitable Registration: CIT's duty to Examine- Vidyadayani Shiksha Samiti V/s CIT (Exemptions)
(2018) 62 ITR (Tribunal) Delhi 487.
Registration, Commissioner required to examine objects of trust and not to examine application of Income. Commissioner to allow. Registration of Charitable Trust under Se 12A/12AA of I.T Act 1961.
7. **Cash Credit**. Share Application Money Se.68
Asst.CIT V/s TRN Energy (P) Ltd.
(2018) 62 ITR (Tribunal) Delhi Page 499.
Assessee filing confirmation of Investor company along with its particulars bank statement and copy of Income tax Return filed with Department. Balance sheet of

- Investor company showing that it had a total capital more than enough to make Investment in share application money with Assessee. No adverse material found during course of search to prove share application money received by assessee bogus. No addition on account of share application money.
8. Cash Credit Share Application Money:
Asst. CIT V/s Shyam Indus Power Solutions (P) Ltd.
(2018) 62 ITR (Tribunal) Delhi 512.
Share Application Money. No report of Investigation Wing against assessee. No allegation that assessee a beneficiary of bogus transactions. Assessee giving complete details with respect to addition. Assessing Officer failing to make application money I.T Act 1961.
 9. Capital Gain benefit of Se 54 (Exemption)
Vikas Kumar V/s Dy CIT (2018) 62 ITR (Tribunal) 478 Hyderabad.
Assessee making Investment in residential property. Entering into a Joint Development Agreement and demolition taking place in years. Subsequent to purchase of new residential house- Exemption cannot be denied for events occurring in subsequent assessment years. Assessee eligible to claim exemption (Note he has invested consideration in purchase of new residential house only).
 10. Long Term Capital Gains Se.54.
Rajat B. Mehta V/s ITO (I.T) (2018) 62 ITR (Tribunal) 334 (Ahmedabad)
Exemption- Investments of gain in residential house within time prescribed cost of residential house purchased- Not confined to cost of Civil Construction- Agreement for sale of house property and furniture and fixtures to be considered as composite contract.
 11. Business Expenditure.
Principal CIT V/s Samwon precision Mould Mfg. India (P) Ltd.
(2018) 401 ITR 486 (Delhi H.C)
Disallowance Payments in Cash in Excess of prescribed limit amount small and genuineness of payment not doubted- concurrent finding of Tribunal- Disallowance not warranted- Se 40A (3).
 12. Charitable Purposes- Charitable Trust Registration.
CIT V/s. Chaudhary Son Pal Singh (Se 12AA)
(2018) 401 ITR (Allahbad H.C) 509
Powers of Commissioner .Commissioner must find out it trust is genuine. Alleged misuse of funds- Not a ground for refusing registration,
 13. Deemed Dividend:-
Pri CIT V/s Gladder Ceramics Ltd (2018) 401 ITR 205 (Gujarat H.C)
Amount received as a loan from other companies in which it was not a shareholder. It was held can not be taxable as deemed dividend under Section 2 (22) (e). It is true that the lending companies may be interested in the borrowing company but Section 2 (22) (e) is attracted only where the borrowing company had a substantial interest in the lending company.
 14. CIT V/s Kedia Castle Dellion Industries Ltd.
(2018) 401 ITR 334 (Cal)
Audited accounts by Chartered Accountant in regular course is not binding either on the assessee or the Department. It was therefore open to the Tribunal to discredit the

same but it has to be based upon materials. So that where the materials cited require more detailed consideration the matter was remanded to the A.O for further excise in the light of facts.

15. Reassessment Notice Not valid.
Ms. Jayanthi Natarajan V/s Asst CIT (2018) 401 ITR 215 Madras H.C.
Where objections were raised against the validity of re-assessment notice but not dealt with in a speaking order before proceeding with the notice. The assessment made would be invalid in the light of the decisions of the Supreme Court in GKN Drive shafts (India) Ltd V/s ITO (2003) 259 ITR 19 (SC).
16. Reassessment where the sanctions from CIT or Chief CIT is necessary. CIT V/s Gee Kay Finance & Leasing Co. Ltd. (2018) 401 ITR 472 Delhi.
Where the Sanctions necessary from Commissioner of Chief Commissioner was failed to be obtained, reassessment notice issued by the Deputy Commissioner was held to be without jurisdiction.
17. **Search and Seizure:** Presumption of Income & Expenses.
CIT V/s Damac Holding (P) Ltd (2018) 401 ITR 495 (Kerala).
It is not merely the Income which can be presumed from the documents found during search. Expenditure is equally to be presumed/s 132 (4A) as regards contents of books of Account and other document in control or possession of any other person in the course of search is not limited to Income but applies for expenditures as well.
18. Appeal (CIT (A))Additional Evidence:-
Principal CIT V/s Safari Fine Clothing (P) Ltd.
(2018) 163 DTR (Gujarat H.A) 219 (issue No 219)
Opportunity of being heard to A.O where additional Evidence is obtained by the first appellate authority on its own motion there is no requirement in law that he should invariably consult/ Confront the A.O with such additional Evidence.
19. TDS Payment to non Resident. Se. 206AA.
Danisco India (P) Ltd V/s Union of India.
(2018) 163 DTR (Del) 212 (48)
Amendment to Se 206AA w.e.f 1/6/2016. – In view of the corrective amendment made by parliament by substituting. Sub Section (7) of Se 206AA by Finance Act 2016 i.e.w.e.f 1st June 2016 the issue has largely become academic. However sub Se 7 of Se 206AA as it stood prior to amendment w.e. 1-6-2016 went beyond the provisions of DTAA mandating 10 percent cap of TDS as regards payment of Royalty/ fee for technical. Services to non- resident assesses who did not possess PAN, therefore, has to be read down to mean that where the deductee i.e. the overseas resident business concern conducts its operations from a territory whose Government has entered into a DTAA with India. The rate of taxation would be as dictated by the provisions of the treaty DTAA acquires primacy in such cases.
20. Tax Collection at source under Se 206C. Meaning and Scope of Scrap:-
Principal CIT V/s Safari Fine Clothing (P) Ltd.
(2018) 163 DTR Gujarat H.C 219 (48)
Assessee used to import garments cut them into smaller pieces to create rags wipers or chindi and sell them in India. In the facts of the present case the rags wipers or chindies are actually products manufactured by the assessee and are used such by the buyers for the purpose of manufacturing other items and are not products. Which

cannot be used as such because of breakage cutting up wear and other reasons. Articles manufactured by the assessee; therefore would not fall within the ambit of the expression '**Scrap**' as envisaged in Cl (b) of the Explanation to Se 206C.

21. Business Income: Benefit or perquisite under Section. 28 (iv) gift of watch received:- Ms. Priyanka Chopra V/s Dy CIT (2018) 163 DTR (Mumbai) Tribunal 97 (48) gift of watch received from a company for undertaking its advertisement and promotional Activities. Assessee having received gift of watch worth Rs.40lakhs from a company as per the agreement where under the assessee acted as model for its advertisements and promotional activities for an agreed remuneration same is taxable u/s 28 (iv).
22. Company Applicability of Section 115JB: Foreign company AB Mauritius in re (2018) 163 DTR (AAR) 170 (47) Provisions of Se 115JB are not applicable to foreign companies as per the retrospective amendment to section 115JB by Finance Act 2016 and the clarification issued by the CBDT dt.24th Sept. 2015.
23. Appeal (High Court) Maintainability.
Smt. Vasantha Anirudhan HR of Late G. Anirudhan.
(2018) 163 DTR (Kerala H C) 88 (44)
Small tax effect CBDT Circular can be department from in cases where there is a cascading effect and it is for the Department to urge before court that a decision on the principle would be expedient. There was no reason to non-suit the Revenue on the litigation policy as seen from the circular.
24. Recovery- Stay.
Asst CIT V/s Epson India (P) Ltd. (2018) 163 DTR (Kerala) 81 (44)
Entire demand raised by the authorities below prima facie was not even sustainable. When once the controversy was apparently covered by the decision of the Delhi H.C and also the Bench of the Tribunal. Itself at Bengaluru in favour of assessee filing of writ petition by Revenue Shows a non application of mind on the part of the principal CIT while sanctioning the filling of this writ petition before this court Writ petition dismissed with exemplary costs quantified at Rs.50,000 to be paid by each of the three officials associated with filing writ petition.
25. Charitable Trust Registration under Se.12A (2018) 163 DTR issue no.44
Industrial Infrastructure Development Corp.(Gwalior) M.P Ltd. V/s CIT.
Registration under 12A cancellation. There was no express provision in the Act vesting the CIT with power of cancellation of registration under Se 12A till 1st October 2004 and therefore CIT had no jurisdiction to cancel the registration certificate. Once granted by him under Se.12A till power was expressly conferred in the CIT by Se 12AA(3) w.e.f 1st October 2004. Section 21 of the general clauses Act has no application to the order passed by the CIT under Se.12A as such order is quasi Judicial in nature.
26. Search and Seizure Block Assessment
Validity vis-a vis absence of Service of notice u/s143(2)
(2018) 163 DTR (Kerala H.C) 76 (43)
Notice u/s 143 (2) Served after three days of limitation period was not valid. No further proceedings under Se,158 BC could be taken.
27. Business Expenditure Disallowance u/s 40A (3)
Ellora Papers Mills Ltd. V/s CIT (2018) 163 DTR (Bom) 42 (42)
Assessee was not able to satisfy the A.O with regard to the genuineness of the payment made to the transport contractors etc in as much as the evidence in the form

- of bills etc was not produced; consequently the claim of the Assessee was rightly demined u/s 40A (3) read with rule 6DD (j)
28. Assessment Notice u/s 143 (2)
ITO V/s Dharam Narain (SC) 41 (42)
Validity of Service of notice on Authorised Representative of the Assessee. Non-availability of the assessee to receive the notice u/s 143 (2) sent by Registered Post on two occasions and services of notice on the A.R of the assessee whom the assessee now disowns is sufficient to draw an inference of deemed service of notice on the assessee and sufficient compliance of the requirement of Sec. 143 (2).
29. Exemption Under Se 54F purchase of House property in foreign country.
Leena Jugal Kishore Shah V/s Asst. CIT.
(2018) 163 DTR (Gujarat H.C) 4 (41)
Before amendment of Se. 54F by Finance (No.2) Act 2014 w.e.f 1st April 2015, assessee was entitled to exemption under Se.54F if Capital gains from sale plot in India were invested in purchase of residential house abroad.
30. Re-assessment Validity- Absence of valid notice u/s 143 (2)
Orient Clearing Agencies V/s Dy CIT ITAT Pune B. Bench.
(2018) 163 DTR (Pune) Tribunal Page (41)
A.O issued notice u/s 143 (2) only one day after issuing notices u/s 148 and passed the assessment orders within one week thereafter hence assessee had absolutely no opportunity to demand the reasons for issuing the notice u/s 148 and to file objections further assessee having merely communicated to the A.O through a letter that it has already filed a revised return the A.O was not correct in treating the same as a consent of the assessee to treat the said return as are return filed in response to notice u/s148 even otherwise the notice u/s 143 (2) having been issued prior to the date of said letter. It was not valid and therefore the subsequent assessment proceedings are vitiated
31. CASH CREDITS: Share Capital
Konark Structural Engineering (P) Ltd V/s Dy CIT 9 (2)
(2018) 90 Taxmann.com 56 (Bombay H.C)
Where assessee company received certain amount as Share Capital from various Share holder. In view of fact that summons served to shareholder u/s 131 were unserved with remarks that addresses were not available, and moreover those shareholders were first time assesses and were not earning enough Income to make deposits in question impugned addition made by A.O under Se.68 was to be confirmed.
32. Unexplained Investment.
Regency Mahavir Properties V/s Asst.CIT
Search not being conducted at place of business of assessee no assessment can be made by issuing notice u/.s 153A.
No addition u/s 69 can be made in case of assessee on basis of documents being found from premises of third party where neither name of assessee was mentioned nor any document was found evidencing fact that assessee had paid any cash as on Money to said party for purchase of any property.