

**RECENT DIRECT TAXES JUDGEMENTS**

- (1) Additional Evidence:-  
Safty Plus Powers Ltd V/s Asst CIT  
(2019) 74 ITR (T) (Delhi Tribunal) Page 64  
Appeal to CIT (A) –Ex-parte assessment. Assessee filing documents before CIT (A) but without application for admission of additional evidence Technical lapse CIT (A) to admit evidence and decide issue afresh.
- (2) Agricultural Income:-  
Parvinder Singh V/s ITO  
(2019) 74 ITR Delhi Tribunal Page 73/  
Income from Other Sources: Assessee disclosing agricultural Income but not claiming expenses. Assessee not producing sufficient documentary evidence to claim huge agricultural income from small agricultural land holdings. Assessee in earlier year as well as in subsequent years showing meagre (small) agricultural Income. Assessing Officer estimating agricultural Income and treating as Income from other sources. Justify.
- (3) Limited Scrutiny case Effect.  
Sarvajit Bhatia V/s ITO (2019) 74 ITR (Tribunal) Delhi 40.  
Enquiry- A.O cannot go beyond issues for which case selected. Conversion of case selected for limited Scrutiny to full fledged scrutiny, assessment-CBDT guidelines binding on department. Approval from higher authority mandatory- IT Act 1961 CBDT Instruction No 5/2016 dated 14-7-2016.
- (4) Best Judgement Assessment.  
Dolly Sabbarwal V/s ITO (2019) 74 ITR (Delhi Tribunal) 51.  
A.O giving opportunity to assessee- Assessee not appearing before CIT (A) Assessee not proving through documentary Evidence that estimation taken by A.O on higher side. Addition made by A.O just and proper I.T Act 1961 Section 144 of I.T Act 1961.
- (5) Best Judgement Assessment:-  
Shiram Tubes Ltd V/s Dy CIT  
(2019) 74 ITR (Ahmedabad Tribunal) Page 59.  
Assessing Officer must not act dishonestly or vindictively or capriciously – A.O must make what he honestly believe to be a fair estimate of proper figure of assessment-factors to be considered – I.T Act 1961 S.144.
- (6) Bogus Purchase.  
Bhawani Singh Rathore V/s Asst. CIT  
(2019) 74 ITR (Tribunal) 54 (Mumbai Tribunal)  
Business Expenditure: Profit earned by assessee out of such transactions alone taxable. Adoption of profit at 5% percent on disputed purchases would meet ends of justice:-

- (7) Bogus Purchase:-  
Johnson Cables (P) Ltd V/s ITO (2019) 74 ITR Pune (Tribunal) 42  
Income from undisclosed sources: No adhoc addition- Addition should be made of difference between gross profit rate on genuine purchases and gross profit rate on hawala purchases.
- (8) Book- Profits:  
Bata India Ltd V/s Dy CIT (2019) 74 ITR (Kolkata Tribunal) 94  
Company- Computation- Dividend – Dividend exempt and excludible under normal provisions and book profits as well.
- (9) Fees for late filling of statement of tax deducted at sources.  
Sub divisional officer Civil Panipat V/s ITO (TDS)  
(2019) 74 ITR Delhi Tribunal Page 52.  
Penalty- deduction of tax at source- Provision for levy of fee brought with effect from June 1, 2015. The Assessee filing challan and statement much prior to this date Demand liable to be cancelled.
- (10) Revised Return  
Sarvajit Bhatia V/s ITO (2019) 74 ITR (Delhi T) 40  
Assessee filing revised return twenty- one days after date of tax Audit Report-Not a deliberate omission but an inadvertent error- Assessing Officer to consider revised return.
- (11) Set off Loss: Business Loss- Derivative transactions Magic Share Traders Ltd V/s ITO (2019) 74 ITR (Tribunal) Ahd 89. Business Loss Derivative transactions: Losses allowable as ordinary business Loss- Chargeable amount under business Income for exceeding chargeable amount aggregated under others heads share trading loss not entitled to sett off against profits from non speculative business. (i.e. it is deemed speculative Business Losses).
- (12) Loss: Speculation business:- Sett off.  
ITO V/s Shankar Sales Promotion (P) Ltd.  
(2019) 74 ITR Tribunal )Kolkata) 85  
Loss- Speculation business: Exception. Assessee granting loans and advances- Investment- in shares funds deployed in business of share dealing compared with funds deployed in business of Loans and advances. Loss incurred in business of share dealing not speculation Loss - Loss assessable as business Loss and could be set off against business Income including interest derived from business of granting Loans and advances.
- (13) Unexplained Expenditure:- Bogus Purchases:-  
Asst. CIT V/s Kedia Trading Co.  
Bogus Purchases. Documents Seized during Search of third party relating to different assessment year. Seized documents cannot be used against assessee parties presenting themselves before A.O for examination with necessary documents and duly

confirming facts of supply of goods to assessee during relevant period. Entire purchase transactions duly reflected in regular books of account of assessee and payments for purchase made by account payee cheques from disclosed sources. Peak credit theory not applicable. No addition warranted I.T Act 1961 SS 69C. 132

- (14) Appeal to Appellate Tribunal - Condonation of delay in filing:-  
Pradipta Kumar Das V/s Asst CIT  
(2019) 75 ITR (Chennai Tribunal) 85  
Condonation of delay in filing- Assessee diagnosed with cancer in December 2017 – Order of CIT (A) passed after diagnosis- Reasonable cause for delay. Delay condoned I.T Act 1961 S. 254.
- (15) Payments to non resident: Commission paid to non-resident outside India for services rendered outside India. Se. 40 (a) (ia) Se.195  
JLC. Electroment (P) Ltd V/s Asst CIT  
(2019) 75 ITR (Tribunal) Jaipur Page 13.  
Disallowance:- Payments liable to deduction of tax at source. Payments to non resident- Commission paid to non resident outside India for Services rendered outside India- Exhibition expenses paid in respect of participation in various exhibitions held outside India and testing charges paid for testing Services outside India. Not taxable in India. Disallowance not attracted I.T Act 1961 Se 40 (a) (ia) 195.
- (16) Bank Guarantee Commission & T.D.S Provision Se.194H.  
Navjivan Highway Project (P) Ltd V/s Dy CIT  
(2019) 75 ITR (T) Delhi Tribunal - Page 67.  
No Principal agent relationship between assessee and bank- Assessee not liable deduct tax at source- I.T Act 1961 Se.194 H.
- (17) Penalty- Concealment of Income- Se/ 271 (1) ( c)  
Rajendra Kumar and Co V/s Dy CIT  
(2019) 75 ITR (Lucknow Tribunal) 73  
Concealment of Income:- furnishing inaccurate Particulars of Income- Show-cause notice not specifying charges and limb of provision under which penalty proposed to be levied- Notice void ab initio and consequent penalty imposed on basis of such notice illegal I.T Act 1961 Se. 271 (1) ( c)
- (18) Re-assessment: Conditions.  
Hari Steels and General Industries Ltd V/s Dy CIT  
(2019) 75 ITR Delhi Tribunal Page 90  
Condition precedent issue of notice u/s 143 (2) mandatory I.T Act 1961 Se.143 (2).
- (19) Re-assessment Notice:-  
Hari Steels and General Industries Ltd V/s Dy CIT  
(2019) 75 ITR Tribunal (Delhi) 90

Notice: Notice issued on basis of information from Sales Tax Department without enquiry or application of mind. Particularly to subsequent proceedings before Sales Tax Department- Reassessment not valid I.T Act 1961 Sec.147/148.

- (20) Failure to file audit Report – **Sec. 271B**  
P.A. Usman V/s ITO (Banglore Tribunal)  
(2019) 75 ITR Page No.1 Banglore.  
Failure to file Audit report- provisions not automatic- Reasonable cause- Assessee disclosing turnover on basis of books of account and turnover below prescribed limit at time filing return. Bonafides belief that accounts need not be audited. Financial Statements duly supporting assessee's finding credits in other bank accounts not disclosed and assessee accepting addition Assessee's action not deliberate warranting penalty I.T Act 1961. Sec., 271B.
- (21) Cash Credit:- Share Application Money:-  
ITO V/s Paras Surti Products (Pvt) Ltd.  
(2019) 75 ITR (Kolkata Tribunal) 137  
Share application money: Assessee explaining both nature and source of share application received. Assessee discharging its onus to prove identity credit worthiness and genuineness of share applicants, PAN No details, Bank Statements, Audited financial statements and Income tax Acknowledgements place on Assessing Officer's record- onus shifting to A.O to disprove materials Department not discharging onus:- Addition by A.O based on conjectures and surmises not justified. I.T Act 1961 Se.68.
- (22) Unexplained Cash Credit:-  
Asst CIT V/s Sabari Switch Gear (P) Ltd.  
(2019) 75 ITR 119 (Cochin Tribunal)  
Addition on basis of Statement of person who retracted it later. No opportunity of Cross-examination given to assessee- Neither A.O nor Investigating authorities bringing on record any incriminating documents to suggest assessee holding unaccounted Income brought back as loans and advances. No unexplained credits in hands of assessee I.T Act 1961 Sec.68.
- (23) Deduction of tax at source: Credit for tax deducted at source:-  
Mahesh Software Systems (P) Ltd V/s Asst. CIT  
(2019) 75 ITR (Pune Tribunal) PageNo.100  
Assessee recording invoice amount in March 2011 and the party depositing tax in succeeding year- credit for tax deduction at source to be given for Assessment Year in which corresponding Income assessable I.T Act 1961 Sec. 199 (3) rule 37A of Income tax Rule 1962 Rule 37BA.
- (24.1) Business Expenditure: Bogus Purchases (Sec.37)  
C. Shahji V/s ITO (2019) 75 ITR (Tribunal) Cochin 263

Assessee purchasing timber without bills and Vouchers Duty of assessee to produce all bills and Vouchers in Support of purchase entries found in books of account. Addition towards bogus purchases justified.(I.T Act 1961 Sec. 37)

- 24.2 Stock figure given to bank & Actual Stock.  
C. Shahji V/s ITO (2019) 75 ITR (Tribunal) 263 Cochin.  
Income from undisclosed Sources- difference between value of stock shown in Statement given to Bank and that in books of Account of assessee, Assessee bound to explain difference. Assessee not able to reconcile stock difference- Difference chargeable to tax I.T Act 1961.  
Cases discussed:-  
(1) CIT V.s Prem Singh & Co. (1987) 163 ITR 434 Delhi.  
(2) CIT V/s N. Swamy (2000) 241 ITR 363(Madras H.C)  
(3) CIT V/s. Veeerdip Rollers (P) Ltd. (2010) 323 ITR 342 (Guj)  
(4) Coimbatore S & W Co. Ltd V/s CIT (1974) 95 ITR 375 (Madras)
25. Notice & Section 292BB / 143 (2)  
CIT V/s Laxman Das Khandelwal.  
(2019) 417 ITR (SC) 325  
Search and Seizure Assessment in Search cases condition precedent: Issue of notice: Failure to issue notice under Section 143(2). Assessment invalid I.T Act 1961 SS.143 (2), 153A, 292BB. Notice- Deeming fiction that if assessee participates in proceedings notice deemed valid. Even if there were defects- Does not operate to save complete absence of notice I.T Act 1961 SS.292BB.  
Decision of Gwalior Bench of M.P High Court. And Asst CIT V/s Hotel Blue Moon(2010) 321 ITR 362 (S C)
26. Capital Gains:- Transfer- Possession of property pursuant to Part performance of contract:-  
South India Minerals Corp. V/s Asst. CIT  
(2019) 417 ITR (Madras H.C) 306 (A.Y. 1997 – 1998)  
Sec 2 (42A) 47 (v) and 45.  
Possession does not necessarily have to be pursuant to an absolute deed- short or long term Capital gains. Assessee allotted Industrial sheds by Statutory Authority under lease- Cum- Sale agreement in 1988. Assessee in possession of sheds since date of allotment. Assessee paying amounts due under agreement- Sale deed executed on 11-1-1996. Subsequent transfer of sheds in same year- Gains assessable as long term Capital gains- I.T Act 1961 SS 2 (42A) (47) (v) and Section 45.

*Held: that the agreement between the Corporation and the assessee referred to the assessee as the "Lease Agreement". The agreement specifically stated that the price of the sheds had been tentatively fixed by the Corporation and part of this had already been paid by the assessee and the balance amount was agreed to be paid in Instalments . Further, the agreement stated that the Corporation had transferred the property to the assessee by way of lease for the time being with the ultimate object of selling the*

*property to the lessee purchaser, but on the fulfilment of the terms and conditions laid down therein. There was no allegation that the assessee had flouted the terms and conditions laid down by the corporation. Considering the totality of the factual matrix, it was to be held that the assessee had been holding the property ever since the date of allotment i.e. August 11, 1988. It should be treated as a long term capital asset and the gains there from should be assessed at low tax effect.*

28. Income tax Survey: Unexplained Investment.  
Statement made by assessee during survey:-  
C.K. Abdul Azeez V/s CIIT (2019) 417 ITR 363 (Kerala H.C)  
Statement made by assessee during Survey-  
Evidentiary value- Document discovered during search showing payment of advance by assessee for purchase of property. Assessing Officer treating amount unexplained Investment of assessee based on Seized document and Sworn Statement of assessee. Failure by assessee to satisfactorily explain Source and nature of receipts of money. Findings of facts by Tribunal based on material on record. No Interference. I.T Act 1961 Sec.69 & 132 , 133A (3) (iii).
29. Deduction of Tax at source. Sec.195  
Principal CIT V/s Dishman Pharmaceuticals and Chemicals Ltd.  
(2019) 417 ITR 373 (Gujarat H.C)  
Non- resident- Payments to non resident not taxable- Tax not deductible at source on such payments. I.T Act 1961 Se.195.
30. Business Expenditure. Interest on borrowed Capital.  
Mahindra World City Developers Ltd V/s Asst. CIT  
(2019) 417 ITR 241(Madras H.C)  
Interest on borrowed Capital Real Estate Business Method of Accounting- Valuation of Inventory- Amendment to Section 145A. Interest – Capital borrowed for purchase of land-words “Whether Capitalised or not used in proviso to Section 36 (i) (iii) over riding effect. Interest allowable in assessment year when land was put to use. Income Tax Act 1961. SS. 36 (I) (III) 145A.
31. Income Tax Survey – Search and Seizure:-  
A. Thangavel Nadar Stores V/s Income Tax Officer::  
(2019) 417 ITR 50 (Madras H.C)  
Income tax survey Search and Seizure difference between Statements recorded under Section 133A and 132 (4). Statement recorded under Section 132 (4) specifically permitted as evidence but not one under Sec.133A. Held according, that there was no dispute that the survey initiated by the Department had yielded no tangible incriminating material. In fact, the Mahazarnama of Even date revealed as much. Notwithstanding this, the Department had gone ahead with the proceedings for reassessment based solely upon the sworn statement recorded under Section 133A from one of the partners. Which he had retracted later. The notice of reassessment was not valid. Case Pullangode Rubber Produce Co. Ltd. V/s State of Kerala (1973) 91 ITR 18 (S.C)

32. Sec. 271 (1) (c):- Representative Assessee:- Penalty Concealment of Income:-  
CIT V/s Smt. S. Gowri (2019) 417 ITR (Madras H C) 45.  
Liability of legal representative- Penalty proceedings initiated and subsequent death of assessee. Penalty proceedings cannot be continued against his legal representative.
33. Appeal (Tribunal) Additional Ground:- Claim not made in the return.  
Principal CIT V/s. Ankit Metal & Power Ltd.  
(2019) 182 DTR (CI) 333 (195) A.Y. 2010-11  
Additional ground: Claim not made in the return. Tribunal has the power to entertain the claim of deduction not claimed before the A.O by filing revised return. Interest subsidy and power subsidy are Capital receipt and not an “**Income**” and not liable to tax. Tribunal in exercise of its power under section 254 justified in accepting this claim through no revised return under section 139 (5) was filed before the A.O.  
CIT V/s Britannia Industries Ltd. (2017) 396 ITR 677 (Cal) followed: Tribunal has the power to entertain the claim of deduction not claimed before the A.O by filing revised return.
34. Reassessment Full and True disclosure:-  
Napower Renewals (P) Ltd V/s Asst. CIT & Others.  
(2019) 182 DTR (Bombay H C) 344 (195)  
Reassessment: Full and True disclosure: Notice after expiry of four years . Reasons only refer to a simple piece of information supplied to the A.O by the Investigation Wing. Stating that the assessee- Company had received share application money from a Mauritius Company- Information is nothing which the A.O did not have at his command when the assessment was framed reasons do not specify that the information supplied to the A.O by the Investigation Wing, suggested that such Investment was not non-genuine, Investigation into the source of genuineness and creditworthiness of the Investor company would fall within the realm of finishing enquiries, which is wholly impermissible in law in the context of the reopening of the assessment. Reopening was not therefore sustainable.
35. Capital Gains: Capital Loss:- Genuineness of Loss on Sale of Compulsorily convertible debentures.  
Essar Teleholdings Ltd V/s Asst CIT  
(2019) 182 DTR (Mumbai Tribunal) 209 (192)  
On the basis of material available on record it could not be said that the transaction of Sale of CCDS by assessee to its related company resulting in short term Capital Loss was a colourable device with a view to set off long term Capital gains . CIT V/s Essar Teleholding Ltd (2018) 162 DTR (S C) 225- (2018) 300 CTR (S C) 561 (2018) 401 ITR 445 (S C)
36. Firm: Disallowance Under S.40 (b)  
J.C.Bhalla & Co V/s Addln. CIT  
(2019) 182 DTR (Del) (Tribunal) 195

Firm: Disallowance under S.40 (b). Payment of Bonus to partners:- Original Partnership deed of the assessee firm provided that partners may also be entitled to be paid bonus on net profits of the firm. Subsequently a supplementary partnership deeds were executed. In both the supplementary partnership deeds it was specifically mentioned that they apply to the financial year 2010-11. Profit of the partnership firm can only be computed at the end of the year when books of accounts are drawn up and made up. Therefore, the payment of bonus to the partners is in accordance with the Partnership deed, authorised by it and it applies for the full year. Hence the disallowance of said bonus made by the A.O is not sustainable. CIT V/s Vaish Associates (2015) 126 DTR (Del) 102.(2015) 280 CTR (Del) 605 followed.  
Sood Brij & Associate V/s CIT (2011) 15 taxmann.com 76 (Del) distinguished.

37. Fright Charges paid by assessee to shipping Agent of non-resident shipping company. Summit India Water Treatment & Services Ltd V/s Principal CIT (2019) 182 DTR (Ahd) (Tribunal) 185 (191)  
Fright charges paid by assessee to shipping agent of non-resident shipping company attracted S.172 and not Section 194C / 195, hence principal CIT was not justified in exercising revisional jurisdiction for non-deduction of tax at source by assessee. Filing of report in Form 3CEB electronically w.e.f 1<sup>st</sup> April 2013 is mandatory and failure of the assessee to do so made the assessment under Sec. 143 (3) erroneous and prejudicial to interest so Revenue.
38. Exemption under Section 10B:- Manufacture or Production – Conversion of Benzarone crude into Benzarone Pure  
Principal CIT V/s Tonira Pharma Ltd.  
(2019) 182 DTR (Gujarat H C) 185 (190)  
Manufacture or production: Conversion of Benzarone. Crude into Benzarone Pure: Conversion of Benzarone. Crude. Which is not a marketable commodity into Benzarone Pure, which is a marketable commodity and useful for medical purposes and human. Consumption is manufacture or production eligible for relief under 10B. However, assessee having not produced any details about item 13F X.P Order of Tribunal allowing benefit of S.10B in respect of BFX.P could not be sustained.
39. Se. 2 (15) Proviso A.Y. 1997-98 to 2014 – 15.  
AVM Charities V/s ITO (2019) 197 TTJ Chennai Tribunal) 513, (2019) 175 ITD 654 (Chennai Tribunal)  
Applicability of proviso to Section 2 (15)  
Activities of Education and Medical relief. Proviso to Section 2 (15) applies to assessee engaged in advancement of general public utility other than relief to the poor, Education, medical relief, preservation of environment and preservation of monuments. However, all the activities of assessee were either in the field of Education or in the field of medical care and as such exemption under section 11 could not be denied by invoking proviso to Section 2 (15).



40. Sec.2 (22) (e) Dividend: Deemed dividend.  
Under Section 2 (22) (e) Receipt of loan from certain company: Assessee having neither beneficial nor registered shareholding.  
Dy. CIT V.s perfect Engineering Associates (P) Ltd.  
(2019) 169 TR (A) 734 (Mumbai Tribunal)  
Tax Pub (DT) 1119 (Mumbai Tribunal)  
Admittedly, assessee company was neither beneficial nor registered owner of shares in lending company, Therefore, loan received could not be taxed as deemed dividend under Section 2 (22) (e) merely on account of common directors holding substantial shares in lending company.
- Assessee M/s. S (P) Ltd took loan from where two common directors held more than 46% Equity shares. A.O taxed the loan amount as deemed dividend under Section 2 (22) (e). Held Admittedly, assessee- Company was neither beneficial nor registered owner of shares in lending company. Therefore, loan received could not be taxed as deemed dividend under section 2(22) (e).
41. Business disallowance under Section 40 (a) (ia)  
Failure to deposit TDS within due date under Section 139 (1)  
Applicability of Second proviso to Section 41 (a) (ia)  
Whether retrospective in nature  
CIT V/s Bhanot Construction & Housing Ltd.  
(2019) 261 Taxman 262 (Delhi H.C)  
Second proviso to Section 40 (a) (ia) being declaratory and curative in nature had retrospective effect from 1/4/2005. Therefore, was applicable during the assessment under construction also i.e. assessment year 2011-12.
42. Business disallowance under Section 40 (a) (ia)  
Non –deduction of tax at source under Section 194C.  
Payment of truck hire charges – No existence of contract between assessee and transporter.  
Jaydeep Singh V/s ITO (2019) 169 TR (A) 754 (Del Tribunal)  
(2019) Tax Pub (DT) 841 (Del Tribunal)  
Where A.O made addition under Section 40 (a) (ia) by disallowing truck hire charges on the ground that assessee had paid the truck hire charges without deducting TDS under Section 194C, but there was no contract between the assessee and the transporter, therefore, the assessee was not required to deduct TDS under Section 194C, thus, the addition was deleted.
43. Capital gains- Deduction under Section 54B:-  
Sale of agricultural land or urban Land.  
Kedar Arvind Saraswate V/s ITO (2019) 169 TR (A) 759 (Pune Tribunal) 2019- Tax Pub (DT) 970 (Pune Tribunal).  
Where Revenue Authority denied deduction under Sec. 54B on the ground that land sold by assessee was urban land and was not an agricultural land, but in absence of physical

verification could not be denied, thus the matter was remitted back to AO for detailed factual verification and enquiry regarding the nature of the land.

44. Income from undisclosed sources. Addition under Section 68  
**Bogus long term Capital gain on sale of Shares.**  
Meghraj Singh Shekhawat V/s Dy CIT  
(2019) 175 ITD (J P Tribunal) Page No 693, 197 TTJ 278.  
Once assessee produced all relevant evidences to substantiate transaction of purchase, dematerialization and Sale of shares then, in the absence of any contrary material brought on record, the same could not be held as bogus transaction merely on the basis of information emanated from Investigation wing.
45. Income from undisclosed Sources: Addition under Section 69C. Alleged unexplained purchases. Jalan Carbons and Chemicals (P) Ltd Dy CIT  
(2019) 169 TR (A) 769 (Kol-Tribunal), 2019 Tax Pub. (DT) 445 (Kol. Tribunal)  
Neither the A.O nor the learned CIT (A) has tried to cross-verify the alleged transaction by doing Independent enquiry, hence, in the absence of the said enquiry addition should not be made solely on the basis of loose sheets.
46. Search and Seizure: Assessment under Section 153A. Addition not based on incriminating material found during Search:-  
D. Art Furniture Systems (P) Ltd V/s Dy CIT  
(2019) 169 TR(A) 782 (Del Tribunal) 2019 Tax Pub.  
(DT) 955 (Del Tribunal) Date of Order (6.2.2019).  
Where A.O made addition under Section 153A on the basis of materials Seized during course of Search and Seizure operation at business and residential premises of assessee, but assessment had attained finality and no incriminating material was unearthed during the search, Therefore, no addition could have been made to the Income already assessed.
47. Appeal CIT (A) Additional Evidence:- Admission without remand report from Assessing Officer:-  
ITO V/s Vinod Kumar (2019) 169 TR (A) 791 Bang (Tribunal) 2019 Tax Pub (DT) 536 (Bangalore Tribunal)  
[ 14<sup>th</sup> October issue of [The Tax Referencer]  
Where CIT (A) deleted addition made by AO as unexplained cash credits by entertaining additional Evidences first time, matter was remanded to him for fresh decision after obtaining remand report from A.O.
48. Penalty under Section 271 (1) (c) of I.T Act 1961.  
Notice issued by AO without specifying ground of penalty validity:-  
Roots Education (P) Ltd V/s ITO (2019) 169 TR (A) 798 Del Tribunal: (2019) Tax Pub (DT)  
(Reported in The Tax Referencer 14<sup>th</sup> October 2019 issue) Order dated (1-2-2019).  
Where A.O had issued notice of penalty **without specifying the grounds on which the same was imposed.** Imposition of penalty was unjustified, because This being a

mandatory requirement could not be construed as a mere technical error:- [followed CIT V/s M/s SSA's emerald Meadows (2016) 73 Taxmann.com 248 (S.C).

49. Sec. 271D: Penalty under Section 271D.  
Contravention of Section 269SS:- Assessee offered no explanation:-  
Abhal Kachralal Abad V/s Joint CIT  
(2019) 169 TR(A) 798 (Pune Tribunal) 2019  
Tax Pub (DT) 1044 (Pune Tribunal)  
(Tax Referencer 14/10/2019 issue)  
In the absence of any explanation forth coming from the side of assessee, authorities have taken a reasonable view in the given facts in imposing and confirming the penalty u/s 271D.
50. Section 2 (22) (e): Dividend: Deemed dividend u/s 2 (22) (e) Receipt of advances: Commercial Expediency:-  
Asst CIT V/s Roger Industries Ltd (2019) 169 TR (A) 591 (Agra Tribunal) 2019. Tax Pub (DT) 1421 (Agra Tribunal) [Tax Referencer issue 7-10-2019].  
Where assessee received advances out of commercial expediency and concerned agreement was found to be genuine no addition could be made u/s 2(22) (e) (Date of order 9-10-2018).
51. Revision Erroneous and prejudicial order:-  
Meerut Roller flour Mills (P) Ltd V/s CIT  
(2019) 182 DTR (All) 168 (188)  
A.O having passed the order u/s 143 (3) after raising queries which were replied by the assessee along with documentary evidence, the order passed by the CIT u/s 263 remanding back the matter to the A.O to examine the unsecured loans and creditors is unsustainable; more so as the CIT himself partially accepted the reply submitted by the assessee as regards the investment in share capital.
52. Appeal (Tribunal): Additional Ground: Admissibility.  
Anil Kisanlal Marda V/s ITO  
(2019) 182 DTR (Pune Tribunal) 153 (188)  
Additional ground of appeal raised by the assessee questioning the validity of the assessment order on the ground that the A.O failed to issue and serve notice under section 143 (2) upon the assessee within the prescribed time limit and questioning the validity of the impugned appellate order on the ground that it is ante-dated are legal grounds which do not require fresh investigation of facts for their adjudication and therefore, both the additional grounds are admitted **National Thermal Power Company Ltd** V/s CIT. (1999) 157 CTR (SC) 249 (1998) 29 ITR 383 (SC) followed.
53. Capital Gains Chargeability: Amount received for relinquishment of management rights:-  
Dy CIT V/s Dr. Sandeep Dave (2019) 182 DTR Raipur (Tribunal) 109 (186)  
Business Income:- Compensation for termination of management rights under Sec. 28 (ii) (a) Amount received by assessee from company towards professional goodwill. No

case made out by A.O to establish that the assessee was the person who was managing the whole or substantially the whole of the affairs of the company. Hence the amount could not be brought to tax under Sec.28 (ii) (a) Material on record rather established that the management of the company was vested in the Board of Directors- So far as appointment of majority directors is concerned the assessee individually never had any such right- Therefore amount of Rs.1.75 Crores cannot be charged u/s 28 (ii) (a).

54. Dy CIT V/s Dr. Sandeep Dave:-  
Capital Gains: Chargeability - amount received fro relinquishment of management rights u/s 55 (2).  
(2019) 182 DTR (Raipur Tribunal) 109 (186)  
Sec.55 (2) does not specify that cost of acquisition of “management rights” will be taken to be nil’ In other words, there is no deemed cost of acquisition provided in the statute. No case has been made out by the A.O to show as to what was the cost of management right in the hands of assessee- cost of such managerial right being indeterminate provisions relating to computation of Capital gains- are not workable and consequently the amount could not be taxed as capital gain.
55. Failure to file return under Section 139 (4A) cannot be interpreted to mean that Income cannot be computed in case of a charitable trust under Section 11.  
United Educational Society V/s Joint CIT Range 2 Ghaziabad (2019) 178 ITD 716 / 107 Taxmann.com 127 (Delhi Tribunal)  
A new clause (ba) inserted in Section 12A by Finance Act 2017 to put a further condition w.e.f 1.4.2018 of furnishing return within time allowed under Section 139 (4A) has been made applicable from the assessment year 2018 – 19.
56. Losses set off: Head of Income:- Arrears of depreciation:-  
Hirsh Bracelet India (P) Ltd V/s Asst CIT  
(2019) 178 ITD 601 (Banglore Tribunal)  
Sec.71 read with Section 32 of I.T Act 1961. Losses- Set off of from one head against Income from another – Assessment year 2015-16. Whether as per Section 32 (2) unabsorbed depreciation is deemed to be current year’s depreciation and can be set off against Capital gains as per Section 71 Held ‘YES’.
57. Business Income: Sec.28 (i) Letting out shopping mall- business Centre.  
Dy CIT Circle ‘4’ Gauhati V/s ATC Realtors (P) Ltd.  
(2019) 108 Taxmann.com 383 (Gauhati Tribunal).  
Where assessee company developed shopping malls and business Centres on properties owned by it and let out same by providing host of services / facilities / amenities in said Malls – business Centre. Income derived there from was business Income.
58. Conversion of AOP into Limited Liability Company, by shares. Whether Capital Gain Payable (?)  
Asst CIT V/s Escorts Heart Institute & Research Centre.

(2019) 178 ITD 632 (Delhi Tribunal) (7)

Where assessee A O P was converted into a company limited by shares and thus, AO opined that there was transfer of assets owned by assessee to another legal entity within meaning of Section 2 (47). Which would attract capital gain tax under Section 45 (1) in view of fact that as per provisions of section 45 (1) transfer of Capital assets was possible only when there was simultaneous existence of transferor and transferee, however, in instant case assessee and new company never remained in existence simultaneously impugned order passed by A.O was to be set aside.

59. Income from Other Sources: Chargeable as  
Waiver of Loan:-  
Jai Pal Gaba V/s Income tax Officer. WARD III (2) Ludhiana (2019) 108 Taxmann.com 494 (Chandigarh Tribunal)  
Where assessee obtained a loan from bank and subsequently a part of Loan was waived by bank on conditions of depositing immediately remaining part of payable loan and performance of certain. Other formalities waiver of loan could not be said to be without consideration, and thus, provisions of Section 56 (2) (vi) could not be applicable. So as to bring waiver of loan amount to tax as Income from other sources:-
60. Section 150:-  
Income Escaping Assessment: Assessment in pursuance of an order of appeal etc.  
Allahbad Bank Karamchari Cooperative Credit Society Ltd. V/s ITO 4 (1) Kanpur (2019) 108 taxmann.com 539 (Lucknow- Tribunal)  
Where in terms of Section 149 (1) (b), period of limitation for initiating re-assessment proceeding for relevant assessment year had already expired, impugned direction given by CIT (A) under Section 150 to AO to execute certain remedial action under Section 148 was a nonest direction and thus same deserved to be set aside.
61. Deduction of tax at source: Fees for technical or Professional Services. Arbitration Charges:-  
ACIT New Delhi V/s HAL Offshore Ltd (2019) 108 **Taxmann.com 390**  
In case of Payment made to arbitrators, since amount paid is in nature of professional Services rendered by legal professionals involved in profession/ occupation / vocation of arbitration, same is liable to TDS as per provisions of Section 194J.
62. Cash Credit. Share Premium Section 68:-  
**Lalitha Jewellery Mart (P) Ltd V/s Asst CIT Chennai 5. (2019) 178 ITD 503.**  
Where addition was made under Section 68 on account of bogus accommodation entries in respect of share premium received by assessee, since impugned addition was made merely on basis of statement of a person recorded under section 131 by DIT (Investigation) and there was no any other evidence on record, impugned addition was justified.
63. Sale of Scrap: Se.206C

Asst CIT V/s Bansal Ship Breakers (P) Ltd.

(2019) 178 ITD Page No 473 (6) (Ahmedabad Tribunal)

In case of Sale of Scrap arising from dismantling of ships having regard to explanation (b) to section 206C tax cannot be collected at source on those items which are capable of being used as such without any modification.

Explain (b) Scrap means waste and Scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage cutting up, wear and other reasons.

64. Payment on transfer of certain immovable property. Other than Agricultural Land:-

Oxcccia Enterprises (P) Ltd V/s Dy CIT

(2019) 178 ITD (Jodhpur ) 520 (6)

Threshold limit: Where assessee purchased an immovable property from Power of Attorney holders of two Joint owners of said property for consideration of Rs.60.12 lakhs in view of fact that share of each Co. Owner came to Rs.30.06 lakhs which was under threshold limit prescribed under Section 194!A, assessee was not required to deduct tax at source while making payment for said purchase.

65. Method of Accounting: Estimation of Income unaccounted Sales:

Asst. CIT V/s AROMA HIGHTECH LTD.

(2019) 178 ITD Page 489 (6)

Where A.O made addition to assessee's Income on basis of Increase in raw material consumption ratio. In view of fact that accounts of assessee- Company were subject to statutory as well as tax Audit and same were not rejected and, moreover, Assessing Officer had nowhere expressed his inability to deduce true Income from said accounts, impugned addition made on estimate basis was to be set aside.

66. Purchase of flat V/s Construction of flat:

Capital Gains- Exemption of, in case of Investment in Residential House:-

Kapil Kumar Agarwal V/s Dy CIT Circle (1) Gurgaon.

(2019) 108 Taxmann.com 299 (Delhi Tribunal)

Where assessee having sold shares, entered into an agreement with a builder for purchase of new residential flat which was constructed by builder in phased manner and payment of which linked to stage of construction. It was a case of purchase and not construction of new asset, and therefore, assessee was to be allowed deduction under Section 54F.

67. Issue of notice:- Service of notice.

ITO V/s Ajay Raj (2019) 178 ITD page 379 (Delhi) (5)

Where notice under Section 143 (2) was served to assessee to on address which was none of addresses as specified in rule 127 (2) of 1961 Rules assessment order passed on basis of such invalid notice deserved to be set aside.

68. Employees  
Contributions:- Due date:  
Gilco Exports Ltd V/s ACIT Circle 2 (1)  
(2019) 109 Taxmann.com 424 (Chandigarh Tribunal) (9)  
When decision of jurisdictional High Court was available issue of addition under Section 36 (1) (va) Commissioner (Appeals) erred in relying upon decision of non-jurisdictional High Court ignoring binding precedent available.  
(2019) 178 ITD (Chd) 865
69. **Cash Credit: Share:** Long Term Capital Gain)  
Smt. Karuna Garg V/s ITO  
(2019) 178 ITD (Delhi Tribunal) 823  
Where assessee declared long-term Capital gain on sale of shares but A.O made under Section 68 addition in hands of assessee on basis of Investigation Wing report that assessee was beneficiary of accommodation entries, without conducting separate and Independent enquiry, Since shares were dematerialized and sales had been routed from demat account and consideration had been received through banking channels, assessee had successfully discharged onus cast upon him by provisions of Section 68.
- 70.1 Cash Credits – Unsecured Loans:- Share Application Money.  
Income Tax Officer V/s Western Imaginary Transcon (P) Ltd (2019) 75 ITR (Tribunal) 402 (Mumbai) (4) Legal fiction onus on assessee to satisfy Assessing Officer cumulatively about identity and creditworthiness of creditors and ‘ genuineness of transaction – Mere submission of name and address of creditor, Income tax Returns, Balance Sheet of Statement of affairs of Creditor and bank statement of creditors not sufficient. Assessee not discharging primary onus addition justified Se.68.
- 70.2 Income from undisclosed Sources:- Bogus purchases. Assessee not producing parties before authorities for verification, Enquiry and recording of their Statement- Notices issued by A.O to parties for verification returned unserved- Assessee not filing proof of transport and delivery of material- Assessee not filing consumption details of materials. Addition of hundred percent sustained Income tax Act 1961 Se.37.
72. Section 80P (2) (d):- Co. Operative Society:-  
Surendranagar District Co. Operative Milk Producers Union Ltd V/s Dy CIT.  
(2019) 75 ITR (Tribunal) Rajkot 339  
Co. Operative Society- Special deduction, Interest on fixed deposits in nationalized banks and private Banks. Not eligible for deduction under Section 80P (2) (d). Interest earned from deposits with Co. Operative banks- Eligible for deduction under Section 80P (2) (d).
73. Section 145 (3): Rejection of books of Account.  
Shobha Ram Sharma V/s Asst CIT  
(2019) 75 ITR (Tribunal) 394 (Agra)  
Accounting: Rejection of books of Account u/s 145 (3). Estimation of Gross receipts-factors to be considered estimation pure question of fact. Assessee’s turnover growing more than 5 Times compared to last year, reliance on past year’s figures not appropriate

guide-Comparison with other Similar business Application of net profit rate of Eight percent highly excessive. Where books of account not available assessing officer should rely on audit report. Net Profit of Six percent applicable.

74. Revision. Erroneous and prejudicial to Revenue:-  
Win vest Holdings (I) (P) Ltd V/s Asst.CIT  
(2019) 75 ITR (Tribunal 447 (Chennai)  
Revision Erroneous and prejudicial to Revenue. Assessing Officer applying his mind on disputed issue. Commissioner seeking to revise issue not subject matter of revision. No finding how assessment order erroneous and prejudicial to interests of Revenue. No finding what enquiry should have been conducted by AO on issue. Revision not valid. I.T Act 1961 Se.263.
75. Cash Credits: Amount shown as Loan:-  
Swastik Realtors V/s Assistant CIT  
(2019) 418 ITR 1 (Bombay H C)  
Amount shown as loan Creditor admitting loan was not genuine, rejection of admission after more than two years- No evidence adduced by assessee to prove genuineness of loan. Tribunal considering material on record and upholding assessment of amount shown as loan and disallowing interest on loan- Finding of facts . No question of law arose (Se.68)
76. Section 153C. Amendment of Section 153C w.e.f 1.6.2015.  
Anilkumar Gopikishan Agarwal V/s Asst.CIT  
(2019) 418 ITR 25 (Gujarat H C)  
Search and Seizure Assessment of third person.  
Law applicable – Amendment of Section 153C 2.3.r 1-6-2015. Amendment expands scope of Section 153C and affects substantive rights- amendment not retrospective starting point for action under Section 153C is search Section 153C applicable as it existed on date of search. Search prior to 1-6-2015- Section 153C as amended w.ef 1-6-2015 not applicable I.T Act 1961 section 132 & 153C.
77. Penalty: Concealment of Income:-  
Amtex Software Solutions (P) Ltd V/s Asst. CIT  
(2019) 418 ITR 99 (Madras H C)  
Notice validity. Notice in printed format not specifying. Whether there had been concealment of Income or furnishing of inaccurate particulars- defect which could be rectified under Section 292B- Notice not invalid SS 271/2012-13.
78. Re-assessment Notice u/s 147/148.  
Supra Estate India (P) Ltd V/s Income tax Officers.  
(2019) 418 ITR 130 (Bombay H C)  
Notice after four years- Condition precedent- failure on part of assessee to disclose material facts. Assessee furnishing all details in response to notices under Section 143



(2) and 142 (1) . Non –application of mind by Assessing Officer to materials produced by assessee. Notice and reassessment invalid.

79. **Offences and prosecution: Compounding of Offences:-**  
**K.M. Mammen V/s Director General of Income tax (Investigation) and Others.**  
(2019) 418 ITR 157 (Madras H.C)  
Offences and prosecution: Compounding of offences-  
Non Technical offences. Such as wilful attempt to evade tax: Effect of Section 120, 119 and Circular of CBDT dealing with compounding of offences. Application for compounding to be considered by committee specified in Circular, DGIT had no jurisdiction to reject application Sec.119/120.
80. Sanat Kumar V/s ACIT (Delhi Tribunal)  
Sec.10 (38) Bogus Capital Gain from Penny Stocks. 282 X gain 12 Months). The meticulous paper work of routing the transaction through banking channel is futile because the results are altogether beyond human probabilities. Neither in the past nor in the subsequent years has assessee indulged in any such Investment having huge wind fall. Had the assessee been so intelligent qua the intricacies of the share market, he would have definitely undertaken. Such risk taking activities in the past or future by making such Investment in unknown Stock. It is a Sham transaction to convert undisclosed Income into disclosed by evading tax under the garb of LTCG in connivance with entry providers (Pooja Ajmani & Udit Kalra 176 DTR 249 Del followed.
81. Suman Poddar V/s ITO (Delhi H C)  
Sec.10 (38) Bogus LTCG from Penny Stock.  
The analysis of balance sheet and profit and Loss A/c of company shows that astronomical increase in share price which led to return of 491% for assessee was completely unjustified. The EPS & Other financials parameters can not justify price at which assessee claims to have sold shares to obtain Long term Capital gains. It is not explained as to why anyone would purchase said shares at such high price.  
The A.O has worked out the glaring facts, which cannot be ignored and which are clear indicative of the non-genuine nature of transactions. The assessee could not satisfactorily explain how the Investments in the absence of any evidence as to the financials growth and operations of the company could earn profits of 491% over a short period of 5 months from the date of allotment of shares.