



THE CHAMBER OF TAX CONSULTANTS

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STUDY GROUP MEETING

Tuesday, 7th August, 2018

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

CA Dinesh Shah

THE RECENT DIRECT TAXES JUDGEMENTS

A. OTHERS.

- (1) Service tax collected by Assessee: Se 44BB
Swiwar Offshore Pte Ltd V/s Addln. directors of IT (IT) Mumbai L. Bench.
(2018) 167 DTR (Mumbai Tribunal) 341 (*137)
Amount of service tax being in the nature of a statutory payment cannot be included in the gross receipts for the purpose of computing the presumptive income of the assessee u/s44BB.
- (2) Se. 292 BB. Reassessment Validity:-
Ardent Steel Ltd V/s Asst. CIT
(2018) 405 ITR Chattishgrah) 422.
Reassessment validity- Condition precedent issue of notice within limitation- Effect of Section 292BB. Notice issued to wrong address: Objection raised by assessee before competition of assessment proceedings Reassessment not valid.
- (4). Notice concurrent jurisdiction of Assessing Officer of area.
Abhishek Jain V/s ITO
(2018) 405 ITR Delhi H.C 1 (Delhi High Court)
Notice can not be quashed on ground of lack of jurisdiction. Transfer of Pending proceedings on request by assessee, provisions of Section 127 cannot be invoked I.T Act 1961.
- (5). Income from House Property. Annual Value:-
Owais M.Husain V/s ITO (2018) 167 DTR (Mumbai D) 49
Municipal rateable value vis-a-vis market rent . A.O is directed to compute the deemed rent of the house property as per the Municipal rateable value and

assessee the Income from House Property accordingly instead of estimating the lettable value on the basis of the prevailing rate of rent of the building situated in the surrounding areas.

- (6) Agricultural Land:- (Capital Assets.)
Girdharilal V/s IOTO (2018) 171 ITD 176 (3)
Where assessee sold a piece of land claiming it to be in nature of agricultural land. In view of fact that no agricultural activity was carried out on said land during relevant year and, moreover, land in question was situated within 8 Km of Local municipal limits. A.O was justified in making addition to assessee's Income under "Capital Gains by invoking provision of Se.50C.
- (7). Deemed Dividend:-
CIT Kolkata V/s Gayatri Chakraborty.
(2018) 94 taxmann.com 244 Calcutta H.C)
Loan and advances to shareholders: where transactions between shareholder and company were in nature of CURRENT ACCOUNT Provisions of Section 2 (22) (e) would not be applicable.
- (8) Exemption under Section 10B: Allowability:- Export through a third party:-
Principal CIT V/s International Stones (P) Ltd.
(2018) 168 DTR (Karnataka High Court) Page No 21. (141)
Explanation 2 to Section 10B defining turnover' does not make any distinction between **"direct Export' and deemed Export'** and therefore, assessee is entitled to deduction under Se.10B in respect of Export of goods made through a third party.
- (9) Civil Appeal No 3327 of 2007
CIT Custom (Import) Mumbai V/s M/s. Dilipkumar & Co (S.C)
It is the law that any ambiguity in a taxing statute should ensure to the benefit of subject/assessee but any ambiguity in the **exemption clause of exemption notification must be conferred in favour of Revenue and** such exemption should be allowed to be availed only to those subjects/ assessee who demonstrates that a case for exemption squarely falls within the parameters enumerated in the notification and that the claimants satisfy all the conditions precedent for availing exemption.
Para 52

To sum up we answer the reference holding as under.

- (1) Exemption notification should be interpreted strictly the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.
- (2) When there is ambiguity in exemption notification which is subject to strict interpretation. The benefit of such ambiguity can not be claimed by the subject/ assessee and it must be interpreted in favour of Revenue.

(3) The ratio in SUN Export case (1997) 69CC 564 (supra) is not correct and all the decisions which took similar view as in Sun Export case. Stands overruled.

B. CHARITABLE TRUST.

- (1) Charitable Purpose- Exemptions:-
ITO (Exemption) V/s Times Centre for Media and Management.
ITAT online (Short Notes Cases) Volume 12.
Volume 65 Part I
Exemption- Investments and deposits in violation of provision- Exemption cannot be denied on entire Income only Income from Investments made in violation of provisions would attract maximum marginal rate of tax. I.T 1961. SS11, 13 (1) (d)
- (2). Charitable Purpose:- Hospital discarding of equipment.
CIT (Exemptions) V/s Bhatia General Hospital.
(2018) 405 ITR (Bombay H.C) 24.
Equipment which had outlived its useful life. Depreciation Government Rules Prohibiting sale of Scrap. Additional depreciation allowable. Allowable on Business expenditure computation of Income on Commercial principles. I.T Act 1961. Se. 11 32 (i) (iii) 37 (allowable as expenses under Se.37)
Income of the trust is required to be computed on commercial principles as held by this court.(Bombay H.C)in CIT V/s Institute of Banking (2003) 264 ITR 110 (Bombay H.C)
- (3). Charitable Trust Registration under Se.12A.
Shahbad Foundation V/s CIT (Exemptions) Del C.
(2018) 167 DTR (Del C) 381 (139)
Assessee a religious and Educational trust formed with the main object to promote awareness of universal teachings of Shri Guru Granth Sahib and other religious granths among the general public having established that it is carrying on genuine charitable activities to achieve its object the impugned order by the CIT refusing registration to the assessee.
- (4). Mutuality:- ITO V/s. Gymkhana Club
(2018) 167 DTR Chd A) 113.
However Interest from fixed deposits will not be exempt on the principle of mutuality.
- (5) Charitable or Religious Trust. Exemption of Income from Property held under Corpus donation. CIT (Exemption) Kochi V/s Mata Amrithanandamayi Math Amritapuri
(2018) 94 taxmann.com 82 (S C)
Corpus donation SLP filed against High Court's order that where assessee received corpus donation on which it earned interest. In view of specific direction of donors that said interest would also form part of corpus assessee's claim for

exemption under Se.11 in respect of interest so earned was to be allowed; was to be dismissed.

(6). Charitable Trust Exemption under Section 11.

Bar of ss 13(1) (1) and 13 (1) (d)

Puran Chand Dharamarth Trust V/s Income tax Officer.

(2018) 168 DTR (Del) Tribunal Page No.1 (141)

It is only the Income from such Investment or deposit which has been made in violation of Se.11(5) that is liable to be taxed. Similarly it is only the income or value of the property misused by a trustee that is liable to be taxed violation under Se.13 (1) (1) or Se.13 (1) (d) does not result in denial of exemption. Under Section 11 to the total Income of the trust assessee trust having given the impugned amount as a loan to another charitable trust and not by way of Investment Se.11 (5) is not applicable to the facts of the case and therefore there was no violation of Section 13 (1) (d) and consequently benefit of exemption under Section 11 could not be denied to the Assessee- trust.

(7). Charitable Trust: Exemption under Se.11 BAR of Se.13 (1) (d) vis-a-vis denial of exemption to entire income.

Income tax Officer (Exemption) V/s The Times Centre for Media and Management studies A.Y. 2010- 11.

It is only the Income from such Investment or deposit which has been made in violation of section 11(5) that is liable to be taxed; Violation of Se,13 (1) (d) does not result in the denial of exemption under Se, 11 to the total Income of the assessee- trust.

Cases referred to

(I) CIT V/s Fr. Mellers Charitable Institution (2014)

102 DTR (Karnataka) 386 (2014) 363 ITR 230 (Karnataka H.C)

(II) Director of I.T (Exemption) V/s Sheth Mafal Gagalbhai Foundation Trust (2001)

168 CTR (Bombay) 501 (2001) 249 ITR. 533 (Bombay H. C)

DT (E) Pariwar Sewa Sasthan (2002) 268 (Del).

(8). Deduction under Se.80G. Recognition of Institute etc under

Maharaja Aggarsain Charitable Trust V/s CIT Exemption.

(2018) 168 DTR (Chd) Tribunal 18 (142) .

Religious trust via-a-vis benefit of a particular community propagating and inculcating religious feeling brotherhood and nationalism among Aggarwal community only aim at bringing together members of the Aggarwal community and developing feelings of nationalism amongst them which benefits the society at large

and cannot be said to be either benefiting Aggarwal community only nor being in the nature of religious purpose CIT (E) was not justified in refusing approval under Se 80G (5) for the reasons that assessee's objects were of religious nature for the benefit of a particular community and that assessee had spent meagre amount on charitable objects.

(C) BUSINESS INCOME

- (1) Inclusion of Excise duty in value of closing stock.

Principal

CIT V/s Bridges tone India (P) Ltd.

(2018) 167 DTR (M.P) 327 (137)

No substantial question of law regarding applicability of se 145 A arises since the Tribunal in expressed terms has held that the provisions of s.145A have overriding effect on the section 145 and has further held that the said provisions are applicable not only on closing stock of Inventory i.e. opening and closing stock both and even on purchases and sales.

- (2) Business Income under section 44AD. Addition to Income.

Simrapal Singh V/s ITO (ITAT Chandigarh B. Bench)

(2018) 167 DTR (Chd Tribunal) 337 (137)

Additions in respect of notional interest on advances to sister concern and VAT can not be made to Income of the assessee computed under Se.44AD having regard to the Non-obstante clause which precludes applicability of provisions contained in SS.28 to 43C.

Cases Refer to Balaji Construction V/s Asst.CIT (2000) 66 TTJ Pune. 718 and Gopal Singh Rajpurohit V/s Asst. CIT (2005) 94 TTJ (Ahd) 865 Followed.

- (3) Business Income. Remission or Cessation of trading liability.

CIT V/s Vishal Transformers and switchgears (Pvt) Ltd.

(2018) 405 ITR (Allahbad H.C) 266

Amounts remaining unrecoverable as creditors untraceable. Not ground to conclude that there was cessation of liability Cessation has to be in law- Provision of section 41 (1) cannot be invoked.

- (4) Business Expenditure:- Disallowance: Se.40A (3) read with rule 6DD:-

CIT V/s Keerthi Agro Mills (P) Ltd (2008) 405 ITR 192 (Kerala H.C)

Payment in excess of prescribed limit otherwise than by crossed cheque or crossed Bank draft. Exclusion from disallowance Effect of Rule 6DD. Amounts paid by Rice Mills to cultivate of paddy- No evidence that payments were not genuine. Amounts paid in cash cannot be disallowed I.T Act 1961. Se 40A (3) I.T Rules 1962 6DD.

- (5). Illegal Payment Se.37 Explanation.

Dy CIT V/s Anil Dhirajlal Ambani.

(2018) 171 ITD 144.

Where SEBI initiated enforcement action against assessee and to avoid long drawn litigation, assessee paid consent settlement charges to DEBI under SEBI's guide lines regarding consent terms without admitting guilt it would be an business Expenditure.

(6). Project Completion Method:

CIT V/s Surat V/s Happy Home Corporation

(2018) 94 taxmann.com 292 [Gujarat H C]

Where assessee engaged in construction business was following project completion method its income could be brought to tax only in year when sale deeds of units sold were registered even though sale consideration might have been received earlier year from buyer.

(7) Income from Other Sources:- Business Income.

Principal CIT V/s Sangam Power generation Co. Ltd.

(2018) 405 ITR 390 (Allahabad H.C)

Amount borrowed for setting up business- Interest on fixed deposits of unutilised amount- Assessable as Income from other source. I.T Act 1961.

D. CAPITAL GAINS

(1) Transfer:- Part Performance of contract:-

Dy CIT V/s Shailender Kumar Gautom

(2018) 65 ITR (Tribunal) S. No. 14 Delhi.

Cancellation of agreement after close of assessment year. Agreement must be registered in order to qualify as "Transfer" under section 2 (47) (v) Agreement relied upon by Department unregistered agreement- addition not sustainable I.T Act 1961 Se.2(47) (v) Transfer of property Act 1882. S.53A.

(2) Capital gains:- Firm- Dissolution of firm:- Law Applicable.

Ahmedkutty V/s ITO (2018) 405 ITR 236 (Kerala H.C)

Effect of amendment of section 45 in 1987). Land brought in as capital of one of the partners- Sale of land prior to dissolution of firm. Capital gains assessable in hands of firm I.T Act 1961 Se.45.

(3). Income. Accrual: Sale or transfer of land under development Agreement.

ITO V/s Vilas Balanrao Rukari (HUF)

(2018) 167 DTR (Pune ITAT B) 353 (138)

Sale or transfer of land under development agreement. Assessee having agreed to receive 18% percent of profit of the development as consideration for transfer to developer of land held as stock in trade advance received by assessee from developer, which the developer received by assessee from prospective customers could not be brought to tax in the year of receipt by assessee but were taxable

when, after completion of project tenements were handed over by developer to such customers.

- (4). Capital gains Chargeability:-
Principal CIT V/s R.F Nangrani (HUF)
(2018) 167 DTR (Bombay H.C) 28.
Amount received by retiring partner as goodwill Amount received by retiring partner as good will cannot be subjected to tax as Capital gains in his hands.
- (5). Exemption under Se 54F:-
Smt. Basaribanu Mohd Rafiq Latiwala V/s ITO
(2018) 167 DTR (Mumbai H) 298
Purchase of house within the specified period vis-a vis non deposit of sale consideration in the specified Bank Account out of long-term Capital gains of Rs.92,66,395/-. Assessee having inverted a sum of Rs.52,47,251/- only for purchase of residential property and balance having neither been inverted in said property nor deposited with bank in specified capital gains account CIT (A) was justified in restricting benefit of Se.54F to the extent of Rs.52,47,251/- only.
- (6). Full Valuation of consideration:- Capital Gain.
Computation Pri. CIT V/s. Lalitaben Govindbhai Patel.
(2018) 94 Taxmann.com 396 (Gujarat H.C)
In case of sale of Property, assessee is required to offer capital gain only in respect of amount actually received by him as per sale deed even though a part of sale consideration is also received by confirming party.
- (7). Port folio fees whether deductible while computing Capital gain.
Mateen Pjarali Dholkia V/s Dy CIT 19 (3) Mumbai.
(2018) 171 ITD 294 (Mumbai Tribunal)
While computing Capital gain on sale of shares kept under portfolio Management scheme (PMS) assessee could not claim deduction of PMS fee as some neither fell under category of transfer fee nor cost of acquisition improvement.
Claim of 54F is must in the return of Income (?)
- (8). Manohar Reddy Basani V/s ITO Ward 9 (1) Hyderabad.
(2018) 171 ITD 279 (Hyderabad Tribunal)
Where assessee utilised sale consideration of property in construction of another residential property within prescribed time period its claim for deduction of section 54F could not be denied merely on account of fact that assessee had not claimed exemption in return of income.
- (9). 50C V/s 54F.
ITO V/s. Rajkumar Prarashar (ITAT Jaipur)
ITA No 11/JP/2016 A.Y. 2011-12. Date of order 28/09/2017.

Se50C / 54F. If the assessee has invested the entire sale consideration in new house property the Capital gains are exempt u/s 54F. The A.O cannot apply Se.50C

and treat the stamp duty valuation as the consideration and assess the difference between the stamp duty valuation and the actual valuation to capital gains.

E. SE.68/69 UNEXPLAINED CASH CREDIT AND INVESTMENT.

- (1) Income from undisclosed Sources:- Deposit of Cash in Bank.
Jagdish Narayan Sharma V/s ITO (2018) 65 ITR (Jaipur) 194
Assessee explaining advances received towards sale of land deposited in bank but sale transactions cancelled and sum refunded explanation supported by affidavits of persons with sources of cash available with them. No further enquiry conducted by A.O sums not to be taxed.
- (2). Income- Addition- Discrepancy in stock/ assets shown to bank and in books:-
Binod Kumar Agarwala V/s CIT
(2018) 167 DTR (Cal) 433 (138)
Assessee having presented a window-dressed balance sheet to the bank along with a certificate in Form 3CB issued by a firm of Chartered Accountants with the intentions to obtain credit facilities and later presented a difference balance sheet before the A.O, it could not resile from the earlier balance sheet and the I.T Authorities were justified in Assessing the assessee on the basis of its representation in that Balance sheet. Assessee's appeal are dismissed with costs assessed at Rs.10,000 to be paid to the Department.
- (3). Bogus Purchases:
ACG Arts and Properties (P) Ltd V/s Dy CIT Mumbai.
(2018) 171 ITD 184 (3) Mumbai Tribunal.
Where addition under Section 69C was made on account of bogus purchases in respect of paintings since existence of transaction between assessee and suppliers/ Sellers could not be doubted and payments were made to supplies through banking channels and painting were in possession of assessee and were duly reflected as a part of closing stock- impugned addition was unjustified.
- (4). Bogus Purchases:
Principal CIT Surat I V/s Tejaa Rohitkumar Kapadia
(2018) 94 taxmann.com 325 (S.C)
Where purchases made by assessee- trader were duly supported by bills and payments were made by account payee's A/c cheque sellers also confirmed transaction and there was no evidence to show that amount was recycled back to assessee. Assessing Officer was justified in treating said purchases as bogus under Se.69C SLP dismissed.
- (5) CASH CREDIT SHARE CAPITAL SLP GRANT AGAINST H.C Order:

SLP granted against impugned order of High Court that Section 68 addition was not called for on basis of statement of accommodation entry provider that assessee had received share capital through accommodation entry, recorded at back of assessee.

(8) Penny Stock.

Navneet Agarwal V/s. ITO ITAT Kolkata. **(ITA No 2281/Kol/2017) A.Y. 2014 - 15**
Bogus Capital gains from Penny Stocks. In order to treat the Capital gain from Penny Stock on Bogus the department has to show that there is a scam and that the assessee is part of the scam. The chain of events and the live link of the assessee's action giving her involvement in the scam should be established., The Department cannot rely on alleged modus operandi & human behaviours and disregard the evidence produced by the assessee. All Important Judgement referred. **(Date of order 20/7/2018)**

F. SURVEY + SEARCHH AND SEIZURE

G. ASSESSMENT REASSESSMENT- APPEAL STAY.

(1) Appeal CIT (A) Condonation of delay: Reasonable cause:-

Yadhava Kodvi Nithi V/s ITO (Exemptions) Madras
(2018) 167 DTR (Madras) 422 (137)

In view of the facts that the assessee society running a college which has been enjoying exemption u/s 10 (23C) (iiiab) as well as Se.11and could not file any appeal against the demand raised by the ITO owing to internal disputes in Management of the society and the Department has recovered huge amount from Bank Account of the Society pursuant to a garnishee order which has financially crippled the college. Permission is granted to the person named as secretary of the society to present a belated appeal and the Department is directed to deal only with that person and to decide the appeal on merits within a period of three months thereafter.

(2) Reassessment Reason to believe:- (Communication of reasons to the assessee.

Principal CIT V/s. Shodiman Investments (P) Ltd (Bombay H.C)
(2018) 167 DTR (Bombay H.C) 290 (133)

Non furnishing of reasons would make an assessment order bad further. AO has merely issued notice on the basis of information received from the Directors (Inv) about a particular entity, entering into suspicious transactions without applying his mind re-opening was not therefore sustainable. This is clearly in bread of the settled position in law that reopening notice has to be issued by the AO on his own satisfaction and not on borrowed satisfaction.

(3) Appeal (Tribunal) Additional ground:- (issue No 133)

Client Ltd V/s Dy CIT (2018) 167 DTR (Hydrabd) Tribunal 281. Validity of the assessment can be challenged by way of additional ground of appeal as it goes to the root of the matter and is a legal issue.

- (4) Appeal to CIT (A) Letter Evidencing existence of books of Account in possession of A.O. Rule 46A.
Asst. CIT V/s Mahesh Bhagwat Chaudhary.
(2018) 65 ITR (Tribunal) 343 (Pune)

Letter Evidencing Existence of books of Account in possession of A.O . Not a case of admission of Additional Evidence. A.O cannot allege books of Account not furnished by Assessee. Department not demonstrating crucial document going to the root of matter admitted by CIT(A) without calling for remand Report. No Contravention of Rule (46A). IT Rule 1962.

- (5) Appeal to CIT(A) Powers of CIT (A)Jagdish Narayan Sharma V/s ITO (2018) 65 ITR (Trib)) Jaipur 194 Limited to matters arising out of assessment proceedings CIT (A) in appeal for assessment year 2006-07 not entitled to bring gains from transaction to tax in assessment year 2007-08 I.T Act 1961 Se 251 (1) (a).

- (6) S.144 Reassessment. Best Judgement Assessment.
Sanjay Swaroop V/s Asst CIT (2018) 65 ITR Tribunal 18 (Delhi)
Addition merely on basis of statement of third party and some nothings found from Laptop of third party- Statement of third party not provided to assessee rebuttal and assessee unable to make his case properly- Assessee furnishing complete details during assessment proceedings disallowance on basis of statement of third party not provided to assessee unsustainable. I.T act 1961 SS 144- 147.

- (7). Re-assessment Validity:- Reassessment on ground not mentioned in reasons recorded.
Vijay H. Patel V/s ITO (2018) 167 DTR (Gujarat H.C) 475 (139)
Reassessment on ground not mentioned in reasons recorded. A.O on being shown that reasons reorded for issuing notice u/s 148 were factually incorrect could not have continued with reassessment proceeding on a grounds not specified in reasons recorded.

- (8). Reassessment Reason to believe Communication of reasons to the assessee.
Principal CIT V/s Shodiman Investments (P) Ltd.
(2018) 167 DTR (Bombay H.C) 290
Non- furnishing of reasons would make an assessment order bad:- Further A.O has merely issued notice on the basis of information received from the Directors of I.T (Inv) about a particular entity entering into suspicious transactions- without applying his mind- Reopening was not therefore sustainable.

- (9) Revised Return:-

Amit Basu V/s Dy CIT (2018) 167 DTR (Rajsthan H.C) 110
Assessee having taken benefits of provisions of Se 139 (5) by filing a revised return could not be allowed to withdraw the same by filing another revised return.

- (10) General SLP dismissed against High Court's order that non-compliance of direction of Supreme Court in GKN Drive Shafts (I) Ltd V/s ITO (2002) 125 Taxman 963.
Home Finders Housing Ltd V/s ITO Corporate WARD 2 (3)
(2018) 94 taxmann.com 84 (SC)
That on receipt of objection given by assessee to notice under Se.148 A.O is bound to dispose of objections by passing a speaking order would not make reassessment order void ab initio.
- (11) **Stay of disputed demand.**
P CIT V/s LG Electronics India (P) Ltd (S.C) **Civil Appeal No 6850 of 2018.**
Se 220(6) CBDT 'OMS dated 29-02-2016 & 31-07-2017 by which A.O's have been directed to grant stay of disputed demand on payments of 20% to 15% does not fetter the power of A.O. CIT to grant stay on payments of **amounts lesser than 15% to 20%**. The A.O / CIT have to deal with the prima facie merits and give reasons for rejection of the stay petition. **(20-07-2018)**
- (12). Re-assessment: Fall and True disclosure: Notice after Expiry of four years:-
Asst CIT V/s Adhunik Cement Ltd.
(2018) 168 DTR (Kol) (Tribunal) 25.
Deponents of the incriminating statements, which formed the basis of reopening of assessment having denied the contents of the same alleging that the statements were recorded by the Investigation wing under coercion and treat the very basis of reopening did not exist, reopening is bad in law also for the reason that there was total non application of mind by the A.O in as much as he recorded the reasons on the same day when he received the reasons letter from Dy Director of I.T (Inv) without making any enquiry or verification.
(Ref Andaman Timber Industries V/s CCO (2015) 281 CTR (SC) 241 or (2015) 127 DTR (SC) 241.

H. TAX DEDUCTED AT SOURCE AND SE.195.

- (1). TDS Fees under Se.234E.
Sonalac Paints & Coating Ltd V/s Dy CIT
(2018) 167 DTR (Chd B) 83
Levy of fees by way of intimation under Se 200A.
Fees levied under Se 234E prior to 1st June 2015 in the intimations made under Se 200A was without authority of law and the same is therefore directed to be deleted.
- (2). Requirement to furnish PAN Double Taxation Relief Emmersons International Ltd V/s.
Dy CIT

(2018) 171 ITD 140 (2)

Section 206AA does not override provisions of Section 90 (2) and in cases of payments made to non residents, assessee correctly applied rate of tax prescribed under DTAAS and not as per section 206AA because provisions of DTAA's are more beneficial.

- (3). Rent: Se 194C:- Accord Advertising (P) Ltd V/s ITO
(2018) 171 ITD 111 (Mumbai Tribunal)
As per CBDT Circular 715 dated 8-8-1999 a contract for putting up a boarding is in nature of advertising contract and provisions of section 194C would be applicable. However if a person has taken a particular space on rent and thereafter sub-lets same fully or in part for putting up a boarding such payments would be liable for tax deduction at source under Section 194I and not under Se.194C.
- (4). Perquisites and deduction of tax at source:-
National Dairy Research Institute V/s Asst CIT TDS Circle 18 (1)
(2018) 171 ITD 271 Bengaluru Tribunal
Where assessee society failed to deduct tax at source on perquisite value of rent free residential accommodation provided to its employees. Employees of society can not be equated with employees of central government and therefore- TDS Officer was right in applying clause (ii) of Sub rule (11) of rule 3 of I.T Rules and treating assessee as assessee in default under se 201 (1).
- (5) Foreign Agent Commission Payments.
Evolv Clothing Company (P) Ltd V/s Asst. CIT
(2018) 168 DTR (Madras H.C) Page No 1 (141)
Commission paid by an exporter to a non-resident agent for Service provided outside India for procuring orders was not taxable in India; there was no TDS liability under Se.195 of I.T Act 1961 and Section 40 (a) (i) was not attracted.

I. PENALTIES AND PROSECUTION.

- (1) Penalty concealment of Income:-
Asst. CIT V/s Eagle Theatres (2018) 65 ITR Tribunal)_____)
Assessment based on estimate basis. Estimation reduced at appellate stage. Not a case of concealment of Income. Penalty cannot be levied. I.T Act 1961 Se 271(1) (c)
- (2) Offence and Prosecution:-
Kalanithi Maran V/s Union of India.
(2018) 405 ITR (Madras H.C) 356
Deduction of tax at source failure to pay tax deducted at source to Revenue Company Principal Officer, non- Executive, Chairman not involved in day to day affairs of company Managing director admitting liability- and entering into

negotiations with revenue. Prosecution of non-executive Chairman not valid I.T Act 1961.

- (3) Income from undisclosed Sources:- Deposit of Cash in Bank.
Jagdish Narayan Sharma V/s ITO (2018) 65 ITR (Jaipur) 194
Assessee explaining advances received towards sale of land deposited in bank but sale transactions cancelled and sum refunded explanation supported by affidavits of persons with sources of cash available with them. No further enquiry conducted by A.O sums not to be taxed.
- (4) Penalty under Se.271 AAB: Condition precedent income from other sources vis a vis Income found recorded in other documents maintained in normal course:-
Dy CIT V/s Manish Agarwala. (2018) 167 DTR (Kol. ITAT) 369 (139) once the A.O has accepted the assessee's statement of total Income and the return where in the assessee has shown the Income out of speculative business from sale of commodities under the head income from other source' be can not treat the same as Income from business in the penalty proceedings since the Income in question was in fact entered in the other documents maintained in the normal course which was retrieved during the search the amount of Rs.3 Crores offered by the assessee dos not fall in the ken of undisclosed income defined in Se271 AAB and therefore penalty u/s 271AAB can not be levied.
- (5). Penalty u/s 271 (1) (c) question of entertaining an appeal from an order imposing/ deleting would have to be decided on a case basis:- Shri Gopal Housing and Plantation Corp. (2018) 167 DTR (Bombay H.C) 236 (140)
There can be no universal rule to the effect that no penalty can be imposed. If quantum appeal is admitted on a sub sequential question of law:-
- (6). Penalty u/s 271 (1) (c) concealment Disclosure of additional Income after survey:-
Khandelwal Steel & Tube Traders V/s ITO
(2018) 167 DTR (Madras H.C) 249
Revised returns filed by the assessee cannot be termed to be voluntary as it was done by the assessee after the Revenue deduced non- disclosure inflation of purchases and concealment of Income during the survey proceedings order passed by the Tribunal upholding penalty was perfectly correct.
- (7) Penalty under Se 271 AAA (2):- Manner in which Income was earned.
Asst CIT V/s SSA International Ltd.
(2018) 171 ITD 287 (Delhi Tribunal)
In order to avail benefit of section 271 AAA(2) assessee has to specify and substantiate manner in which income has been derived in its statement recorded under Se. 132 (4) and not thereafter.

(8). Penalty u/s 271 (1) (c) charge must be specific Gayathri Exports V/s Asst. CIT (Karnataka H.C) ITAT online.

Volume 12 (Reported in 405 ITR Part- I.

Concealment of Income or furnishing of inaccurate particulars thereof Notice should specify whether it is for concealment of Income or furnishing inaccurate particulars then of Notice without such specification not valid.

(9) 269SS/271D Penalties.

Deepak Sales and properties (P) Ltd V/s ACIT (ITAT Mumbai) (Special Bench) ITA No 6304/Mum/2012/ (A.Y. 2008-09) Date of Order 13-06-2018. Se. 269ss/ 271D Penalty. It is not enough for the assessee to show that the transaction of taking loan deposit by cash is genuine or bonafide. It has also to be shown that there was reasonable cause u/s 273B for the assessee being unable to take the loan/ deposit by account payee's cheque or account payee bank draft.