



## **THE CHAMBER OF TAX CONSULTANTS**

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai - 400 020  
●Tel.: 2200 1787 / 2209 0423 / 2200 2455 ●E-mail: office@ctconline.org

●Website: [www.ctconline.org](http://www.ctconline.org)

### **STUDY GROUP MEETING**

**Tuesday, 10<sup>th</sup> December, 2019**

**Babubhai Chinai Committee Room, 2<sup>nd</sup> Floor, IMC, Churchgate, Mumbai.**

**CA Dinesh Shah**

### **RECENT DIRECT TAX JUDGEMENTS**

#### **A) GENERAL**

1. Charitable purpose: 12AA Registration

JAT Sewa Singh V/s CIT (Exemption) (2019) 75 ITR Delhi Tribunal 41

Provision making it mandatory to apply electronically with digital signature- Notification of amendment of rule 17A and Form 10A- Application can be filed manually prior to the issue of notification- Assessee has to file application electronically under digital signature

2. Sec.194I- Deduction of tax at source- Rate of deduction

OTM Jewellery (P) Ltd. V/s ITO (2019) 75 ITR (Delhi Tribunal) 3

Payment whether rent or to contractors - Payment for stall at jewellery market exhibition- Space allotted to assessee for carrying out its business activities- No evidence to prove contract between assessee and organisers that property was rented out for limited time to the assessee- Assessee liable to deduct tax at source under Section 194I

3. Charitable Trust: Exemption under Sec.11- Charitable purpose vis-a-vis applicability of proviso to S.2 (15)

Gujarat Cricket Association V/s Jt. CIT (E) (2019) 183 DTR (Ahd) (Tribunal) 367 (216)

Assessee- Cricket association exists and operates solely for the purpose of promoting the game of Cricket which has been all along accepted by the CBDT itself as an object of general public utility and their objects have nothing to do with any trade, commerce or business- Hence, proviso to S. 2(15) is not applicable and, therefore, benefits of S.11 & 12 cannot be denied to the assessee's activity by taking into consideration the

activities of the apex body(BCCI) - Activities of BCCI cannot be reason enough to attract proviso to S.2 (15) in these cases.

4. Deemed Dividend- Sec. 2 (22)(e)

Principal CIT V/s Jewel International Ltd. (2019) 83 DTR (Bombay H C) 411 (219)

The assessee company has taken unsecured loans of Rs.1.51 crores from M/s. NSN Jewellers (P) Ltd and Rs.86.51 lakhs from M/s.KSN Trading (P) Ltd- Common shareholder having a substantial interest in the assessee company as well as in the creditor companies is one SN (P) Ltd- SN (P) Ltd holds 86% of the shareholdings in the assessee company and 99% shareholding in the creditor companies- Assessee company is not the beneficial owner of any shares in the creditor companies and neither has any loan been given by the creditor companies to any concern in which the assessee company has a substantial interest-Sec. 2(22)(e) was not therefore attracted. Ref- CIT V/s Universal Medicare (P) Ltd. (2010) 37 DTR (Bombay H C) 409 and (2011) 237 CTR (Bombay H C) 147

As per para no-

The assessee company is not a beneficial owner of any shares in the creditor companies which have advanced the loans. The common shareholder having a substantial interest in the assessee company as well as in the creditor companies Sunjewels India(P) Ltd. As mentioned earlier, Sunjewels India (P) Ltd holds 86 percent of the shareholding in the Assessee company and 99 percent shareholding in the creditor companies. It is also an admitted fact that the loan given by the creditor companies was not to Sunjewels India (P) Ltd but was to the assessee company. For the Second limb of Sec. 2 (22)(e) of the I.T Act, 1961 to come into play, the condition that has to be fulfilled is that the creditors companies ought to have given monies by way of an advance or loan to a concern in which the assessee- company is a member or partner and in which it has a substantial interest.

Ref:- National Travel Services V/s CIT (2018) 300 CTR (SC) 582 (2018) 162 DTR (SC) 201 (SC)

CIT V/s Ankitech (P) Ltd & Others (2011) 242 CTR (Del) 129 (2012) 340 ITR 14 (Del) has been referred to a Larger Bench.

Conclusion:-Assessee- Company is not the beneficial owner of any shares in the creditors companies and neither has any loan been given by the creditor companies to any concern in which the assessee- company has a substantial interest- S.2(22)(e) was not therefore attracted.

5. Deemed Dividend u/s 2 (22) (e) of I.T Act 1961.

R. Chitra V/s Vice Chairman IT Settlement Commission (2019) 418 ITR 530 (Madras H C)

Loan to shareholders- Loans in ordinary course of business cannot be deemed to be dividend- Loan to another company in which assessee was a shareholder- Debtor company having more than one shareholder- Loan cannot be considered deemed dividend Sec. 2 (22)(e) IT Act 1961

6. Charitable Trust: Registration under Section 12A

CIT(Exemption) V/s Anaesthesia Society (2019) 183 DTR (Rajasthan HC) 221(Issue no. 210)

Assessee society has been constituted to bring the doctors dealing in Anaesthesia i.e. specialists together for the purpose of inter alia development of medical science, publication of research magazine to promote the research and practical work and to organize the seminars, etc. It could not be said that the object of the society is confined to its members practising in Sriganga nagar and Hanumangrah Districts. Tribunal was justified in allowing registration under S.12A. No substantial question of law arises.

7. Income from house Property/ Income from other sources/ Business Income

Meeraj Estate and Developers V/CIT (2019) 418 ITR 681 (All) (A.Y. 2006 – 07 and A.Y. 2007-08)

Business Income or Income from House Property – or Income from other sources: 'Business' definition- firm constituted with object of dealing in real estate from flats on lease. Flats sub- leased with furniture and fittings No commercial activity carried on firm having only one employee- Income from sub- lease assessable as Income from House Property and Income from Other Sources.

Cases referred to Chennai Properties and Investment Ltd (2015) 373 ITR 673 (SC) and CIT V/s Shambhu Investments (P) Ltd (2001) 249 ITR 47 (Cal)

8. Empee Holdings Ltd. v. Deputy CIT (Chennai) . . . 473

Deemed dividend-- Onus on assessee to demonstrate by cogent evidences that receipt of loan or advances is for business purposes--Income-tax Act, 1961, s. 2(22)(e)

9. S.14A--Income-tax Rules, 1962, R.8D

Horizon Infrastructure Ltd. v. Dy. CIT (Mumbai) ... 455 (Volume 14)

Income- Disallowance of expenditure relating to exempt income--Where there is no exempt income, no disallowances can be made in respect of expenditure incurred in relation to exempt income--Only investments which yield exempt income needed to be considered—Recomputation of expenses incurred in relation to exempt income required--Matter remanded.

10. Sec.10A Exemption

Samsung India Electronics P. Ltd. v. Addl. CIT ITR online Page 145 (Delhi) (Volume 14) (02-12-2019)

S. 10A- Exemption- Export- Relocation of unit from one place to another in order to meet shortage of space and to effect expansion of business- Not splitting or reconstruction of existing business- Entitled to exemption

11. Bently Nevada LLC Vs Income Tax Officer (International Taxation) & Anr. (2019) 183 DTR (Del) 257

(Financial year 2019-20)

TDS- Certificate under s.197-Satisfaction of AO vis-a-vis reasoned order- There is both arbitrariness and non-application of mind at various levels which vitiates the impugned certificate- First is respondent No.1 changing his initial decision as contained in the note dt.21<sup>st</sup> May, 2019 directing TDS at 1.5 per cent to 5 per cent by his subsequent note dt.27<sup>th</sup> May, 2019 without any reasons and only because his superior, the CIT asked him to do so- Secondly, when this note went back to the CIT, he simply said 'issue @ 5 percent' after noting that there was a PE in India and 'accounts have not been given' – This was, therefore, done even without asking the assessee for the accounts at that stage- This was not a case of a superior officer 'concurring' with the decision of the subordinate- This was a textbook example of a superior officer dictating to his subordinate what the decision should be – Thirdly, the decision was taken without valid basis and ignoring the relevant material that was called for and available on record- Factors of r.28AA were not kept in view and no reference in fact was made to r.28AA- Respondent No.2 is directed to once again consider the application made by the assessee on 30<sup>th</sup> April, 2019 for issuance of a lower withholding certificate under s.197(1) afresh in accordance with law.

**B) CAPITAL GAINS**

1. Section 50C: Capital Gains: Development Agreement

Voltas Ltd V/s Dy. CIT (2019) 75 ITR (Tribunal) 53 Mumbai Tribunal

Allotment of land by collector to assessee- Condition that Government entitled to half unearned increment in the event of sale or transfer- If burden added then sale consideration received by assessee in aggregate would be more than reckon value- Transaction mere development agreement and not a transaction of outright sale of land- Section 50C had no application.

2. Capital Gains-

ARA Properties (P) Ltd V/s Dy. CIT (2019) 75 ITR Tribunal (Kolkata Tribunal)

Full value of consideration- Adoption of value determined by registering authority- Sale of leasehold property- Section 50C not applicable

3. Sec.54F- Capital Gains

Natta Suryarao V/s ITO (2019) 75 ITR 39 Visakhapatnam

Capital Gains- Exemption on sale of capital assets and purchasing residential house- Construction of house commenced prior to transfer of asset, construction completed within three years from sale of land- Assessee entitled to exemption

4. Section 50C

Smt. Mahinabanu Nainabanu Sipai (Jadeja) v. Deputy CIT (Ahd) ITR online Page 32 (02-12-2019 issue) (Volume 14)

Long-term capital gains--Full value of consideration- Payments of higher stamp duty by vendee not affecting any rights of assessee- Sale consideration disclosed jointly by assessee far more than value adopted for purpose of stamp duty- No addition to be made in hands of assessee on account of long-term capital gains

**C) BUSINESS INCOME**

1. Section 40A(2)(a): Business Expenditure

I DRS Labs P. Ltd V/s Dy. CIT (2019) ITR (A) Bombay 65

Disallowance for excessive or unreasonable payments- Unsecured loan- Fair Market rate of interest at 15.50% reasonable.

2. Business Expenditure: Allowability: Club Membership for ApolloTyres Ltd V/s Asst CIT (2019) 183 DTR (Kerala HC) 163 (207)

Club membership fees having been allowed to assessee for A.Y. 1992-93 and said decision having been accepted by Revenue same was allowable deduction in A.Y. 1993-94 also.

3. Presumptive Income under Section 44AD- AO doubted genuineness of sales validity of invoking Se.68.

Pradip Jain V/s ITO (2019) 170 TR (A) 407 (Del- Tribunal)/ (2019) Tax Pab (DT) 4183 (Del-Tribunal) (25-11-2019) (The Tax reference issue)

Where assessee filed return under Section 44AD there was no necessity for assessee to maintain books of account or bills and vouchers of sales and purchases and therefore, there was no justification to hold that sales made by him were bogus and if there was no creditor of assessee there was no question of considering it to be cash credit.

(Note- At the most A.O. could have doubted quantum of sales and could have enhanced same, but there was no justification to hold that sales were bogus, since copy of balance sheet was provided at assessment stage. If there was no creditor in books of account of assessee and that no books of accounts have been maintained, there was no question of considering it to be cash credit.)

4. Business expenditure - Setting up and commencement of business - Sec. 28

Horizon Infrastructure Ltd. v. Deputy CIT (Mumbai) 455 (ITR online issue 2-12-2019)

Business expenditure- Setting up and commencement of business- Expenditure incurred relating to setting up of inland clearance depot, container freight station and warehousing complex- Projects under construction- Assessee capitalizing all direct and indirect expenses including finance cost incurred for development of project- Business not set up and ready for commencement of business- Expenditure debited to profit and loss account cannot be allowed as deduction--Income-tax Act, 1961.

5. Horizon Infrastructure Ltd. v. Deputy CIT (Mumbai) . . . 455 (ITR online 02-12-2019)

Company- Book profits -Computation under section 115JB(2) to be made without resorting to computation as contemplated under section 14A read with rule 8D- Income-Tax Act, 1961- S. 115JB

6. Scientific Research- Weighted deduction u/s 35 (2AB)

CIT V/s TVS Electronics Ltd. (2019) 419 ITR (Mad) 187

Scientific research- Weighted deduction– Section 35(2AB) does not specify that research and development facility should be approved from a particular date- Approval for prior and post assessment years – Delay by statutory authority in granting approval for relevant assessment year – Assessee entitled to weighted deduction Income- tax Act, 1961.

7. S. 43B – Business Expenditure

Apollo Tyres Ltd. Kerala HC (2019) 419 ITR 100

Deduction only on actual payment – Bonus- Effect of section 43B- Amount allowable in year in which it is actually paid

**D) UNDISCLOSED / UNEXPLAINED INCOME, ASSETS, CREDITS - SECTION 68, 69, etc**

1. Bogus Purchases: Income from Other sources (Sec 68)

CIT V/s Odeon Builders (P) Ltd. (2019) 418 ITR 315 (SC)

Income from undisclosed sources / Disallowance on account of bogus purchases - Set aside by CIT(A) as based solely on third party information (which was not subjected to further scrutiny by A.O.) - Findings of CIT(A) affirmed by Tribunal and High Court holding no substantial question of law arose as concurrent factual findings not shown to be perverse- Supreme Court dismissed the Appeal.

2. Income: Cash credit genuineness of loans

ITO V/s Smt. Pratima Ashar (2019) 183 DTR (Mumbai) Tribunal Page No 137 (207)

Assessee having placed on record copies of the returns of the lender companies, copies of their audited financial statements, Copies of the bank accounts of the lender companies and the affidavits of the principal officers of the lender companies, wherein

they had confirmed the loan transactions, the primary burden cast on assessee under S.68 stood discharged- Hence without bringing on record any contradictory evidence, addition under S.68 made by AO was rightly deleted by CIT (A).

3. Income from undisclosed Sources- Addition under Section 68: Bogus Long Term Capital Gain on sale of shares

Harishkumar HUF V/s ITO (2019) 170 TR(A) 417 Chennai Tribunal/ (2019) Tax Pub (DT) 4221 (Chennai Tribunal) (25-11-2019 - The Tax Referencer)

Assessee has not tendered cogent evidence to explain us as to how the shares in an unknown company had jumped to a higher amount into time when the fantastic sale price was not at all possible as there was no economic or financial basis to justify the price rise. Also, assessee failed to provide details of persons who purchased the shares. Clearly, assessee had indulged in a dubious share transaction, meant to account for undisclosed income in the garb of long-term capital gain. Therefore, such gain had to be assessed as undisclosed credit u/s 68.

Ref- Sanjay Bhimchand Jain V/s Principal CIT

4. Cash Credit Se.68

Smt. Asha Sanghavi v. ITO(Visakhapatnam) ITR online Page 17 (02.12.2019) issue) (Volume 14)

Cash credit --Amounts credited in bank statement not credited in books of account--No cash deposits recorded in books of account of assessee--Transactions outside books of account--Addition in respect of cash deposits in bank account unsustainable--Income-tax Act, 1961

**E) ASSESSMENT, REASSESSMENT, RETURN, REVISION, SEARCH & SURVEY**

1. Notice u/s 143(2)

Rajeev Goel V/s Asst. CIT (2019) 76 ITR 107 (Delhi) (Ass)

Difference between address mentioned in PAN database and that mentioned in return filed by assessee- Notice u/s 143(2) issued by the officer who was neither A.O. of assessee as per the address in PAN application nor A.O. of assessee as per address mentioned in return- Notice issued was held illegal u/s 143(2) of I.T Act 1961.

2. Search and Seizure: Assessment in search cases (Ass)

Dy. CIT V/s Madhyam Housing (P) Ltd. (2019) 76 ITR (Delhi ITAT) 82(1)

Assessment in search cases- Share Application money- No incriminating material or evidence found during course of search to doubt transaction. A.O not referring to any seized material or other material found during course of search. Addition unsustainable- IT Act 1961 S.153A.

3. Change of address- Principal CIT V/s Ven Interactive Ltd (2019) 418 ITR (SC) 662 (Ass)  
Assessment- Limitation- Notice- Assessee must specifically intimate A.O. about the change of address and get PAN database changed- Form18 filed with Registrar of companies not sufficient- Failure by assessee to send specific intimation to A.O.- Issue of notice within time at address shown in PAN database- Sufficient compliance- Assessment valid.
4. Monetary limits for appeals by Department  
S.C. Naregal V/s CIT (2019) 418 ITR 455 (SC)  
Appeal to High Court- Instruction of CBDT- Applicable to pending appeals- subject to caveat laid down by Supreme Court- No possibility of cascading effect and also issue involved not in group of matters- Department's appeal to High Court to be treated as dismissed for law tax effect.
5. Res Judicata  
Meeraj Estate and developers V/s CIT (2019) 418 ITR 681(All)  
Not applicable to income tax proceedings
6. Se 153A- Search and Seizure  
Nitin Johari V/s Asst CIT (2019) 75 ITR (Delhi Tribunal) Page 42  
Assessment in Search Cases- Undisclosed Income- Incriminating material found from residential premises of assessee showing property purchasing at higher value than declared- Assessee not explaining receipt in cash and availability of cash with buyer- Assessee failing to prove genuineness of execution of agreement to sell and purchaser not filing confirmation- Differential amount undisclosed income of assessee.
7. Section 153C- Search and Seizure- Sukhamani Hotels (P) Ltd V/s Asst. CIT (2019) 75 ITR (Tribunal Gauhati) 51  
Assessment in search cases- Assessment of third person- Condition precedent- Provision prior to change of law- Satisfaction of A.O. that seized documents belong to assessee- No satisfaction- Assessment not sustainable.
8. Rule 46A- Appeal to CIT(A)- Power to admit additional evidence- Share Capital and Share Premium  
ITO V/s Dhanganga Realtors (P) Ltd. (2019) 75 ITR (Kolkata Tribunal) 10  
Additional evidence produced by assessee that transaction of issue of shares did not involve any cash and no credit to cash account- Commissioner (Appeals) without giving opportunity to A.O. deleted addition- Violation of principle of natural justice- Matter remanded to A.O to decide issue.



9. Notice after four years - Section 147/148  
State Bank of India V/s Asst. CIT (2019) 418 ITR (Bombay HC) 485  
Scrutiny assessment- No evidence of failure to disclose material facts necessary for assessment- Notice for reassessment not valid
10. Power of High Court- Formulating additional substantial question of law  
CIT V/s Formento Finance and Investment (P) Ltd (2019) 183 DTR (Bombay HC) 215  
Power of High Court in formulating additional substantial question of law- There is no dispute from the record that notice u/s 143(2) was never issued to the assessee before initiating of proceedings u/s 158BC- Records also indicate that this issue was precisely raised by the assessee before the ITAT but not decided- Additional question i.e. Whether non- issuance of notice under S. 143(2) vitiates the assessment proceedings under S.158BC is admitted.
11. Search and Seizure: Assessment under Se.153A  
Computation of undisclosed Income- Dy. CIT V/s Aarti Colonizer Company (2019) 183 DTR (Raipur Tribunal) 345 (215)  
Addition made by A.O. solely on the basis of journal entries obtained from a pen drive in the absence of any corroborative evidence of actual investment made by assessee could not be sustained.
12. Appeal (Tribunal) dismissal in default- Validity  
Smt. Shobha Lakshman V/s CIT (2019) 183 DTR (Karnataka HC) 213 (209)  
Assessee filed appeal before the CIT (A) in manual form and did not e-file the appeal despite being asked by CIT(A) by notice in writing- In appeal against order of CIT(A) assessee neither appeared before ITAT on the date of hearing nor made any arrangements for her representation and also didn't send a letter to Tribunal requesting for adjournment- Looking at the conduct of assessee before the CIT (A) and Tribunal, Tribunal was justified dismissing assessee's appeal in default observing that assessee was not interested in prosecuting the appeal – No substantial question of law arises
13. Appeal CIT (A): Powers of CIT (A)- Dismissal of appeal in default  
Pawan Kumar Singhal V/s Asst. CIT (2019) 183 DTR (Del) Tribunal 161 (208)  
Once an appeal is filed against assessment, CIT (A) is obliged to decide the same on merits as per law- Order of CIT(A) dismissing appeal as not maintainable for failure to file order of assessment, demand notice and challan for payment of appeal fee set aside and matter remanded to CIT(A) for decision afresh in accordance with law.
14. Notice u/s 143(2)  
Nittur Vasanth Kumar Mahesh V/s Asst. CIT (2013) 183 DTR (Karnataka HC) 150 (206)

Notice u/s 143(2) having been served on assessee beyond prescribed time, assessment u/s 144 based on such invalid notice was invalid- Assessee having not co-operated in assessment proceeding, S.292BB cannot come to rescue of the Department

15. Powers of Tribunal: Issue not subject matter of appeal

Daimler India Commercial Vehicles (P) Ltd V/s Dy. CIT (2019) 183 DTR (Madras HC) 92 (205)

Unsettling date on which the business of the assessee was set up was an issue not subject matter of appeal- Tribunal committed an error in venturing into an issue which was never an issue before the A.O and as the Tribunal has no jurisdiction to do so, said finding was necessary to set aside.

16. Recalling of ex-parte order- Absence of assessee's counsel vis-a-vis reasonable cause Principal CIT V/s NRA Iron and Steel (P) Ltd. (2019) 183 DTR (SC) 60 (204)

Assessee having allowed the matter to proceed ex-parte despite the fact that it was duly served through its Authorised Representative who had sufficient opportunities to appear before the court and contest the matter, no credible or cogent ground is made out for recalling the judgement.

17. Notice u/s 143 (2) Assessment Validity

Ajay Sharma V/s Dy. CIT (2019) 170 TR (A) 427 (Del. Tribunal) / (2019) Tax Pub. (DT) 2019 ITAT Delhi Tribunal (25-11-2019)

Assessee challenged validity of assessment order passed by AO under section 153A/143(3) for want of valid notice u/s 143 (2)- Held: As evident return was filed in response to notice u/s 142(1) on 14-03-2013 and notice u/s 143 (2) was issued on very same day i.e. on 14-03-2013 which showed non-application of mind in issuing notice u/s 143(2) and thereafter in framing assessment accordingly all proceedings were nullity.

18. Best Judgement Assessment

Eastern Engineering Venture V/s ITO (2019) 177 ITD4237 (Ctk – Tribunal)/ (2019) 199 TTJ (Ctk Tribunal) 787

Assessee failed to comply with notices issued under Section 142(1)- Whether salary and interest paid to partners would be allowable. As there was part non-compliance by assessee with first notice under Section 142(1) and complete non-compliance with subsequent notice u/s 142 (1), the A.O was right in framing assessment order u/s 144 and in denying allowance of interest and salary paid to partners by taking support of provisions of Section 184 (5).

19. Return of Income

Samir Narain Bhojwani V/s Deputy CIT(2019) Volume 14 (ITROL) (Bombay HC) 560

Mandatory filing return of income electronically- Power to Central Board of Direct Taxes Assessee not able to reflect set off of current year's income against brought forward losses- Writ petition seeking direction to Department to accept return filed in paper form- Procedure for filing return of income cannot bar assessee from raising legitimate claim- Fundamental issue to be addressed by Board- Assessee to file electronically and in paper to Assessing Officer- Stay of any proceedings by Department till disposal of assessee's representation in Board. - IT Act 1961 S. 72, 139 (1), 139 D IT Rule 1962.

20. Notice u/s 143(2)

Dy CIT V/s Cameron Singapore Pvt Ltd (2019) 418 ITR 272 (Rajasthan HC)  
Assessment-Draft assessment order- Limitation- Notice u/s 143(2) not issued within prescribed time- Draft assessment order barred by limitation IT Act 1961 Ref- CIT V/s Hotel Blue Moon (2010) 321 ITR 362 (SC)

21. Search and Seizure: Statement recorded during Search and Survey

Bannalal Jat Construction (P) Ltd V/s Asst. CIT (2019) 418 ITR 291 (Rajasthan)  
Survey- Statement recorded during Search and Survey- Evidentiary value- Retraction without proof effect- Burden of proof on assessee to prove that statement was given under pressure and coercion- A statement can't be discarded merely on ground that assessee retracted it - IT Act 1961- S.131, 132, 132(4), 133A.  
Ref- Pullangode Rubber Produce Co. Ltd V/s State of Kerala (1993)91 ITR 18 (SC)

22. Revision under Section 264: Maintainability- Delay in filing revised return

Sharp Tools Vs. PCIT (2019) 183 DTR (Mad) 289 High Court Of Madras (Assessment year 2013- 14)  
Assessee's rectification return having been rejected, it filed a rectification petition under s.154, which was also rejected being time barred- Revision petition then filed under s.264 also rejected by CIT by observing that the assessee has to file a revised return of income and however, the time for filing the same had already expired – Not justified- Since the CIT is empowered to entertain the revision under s.264, against any order other than the order to which s.263 applies, the revision filed by the assessee within one year from the date of rejection of their rectification return, is certainly maintainable and consequently, the CIT ought to have exercised his power and considered the relief sought for by the assessee and pass the order to that effect, more particularly, when he has found that the assessee had committed the error inadvertently and that the expenditure claimed by the assessee is also supported by the certified copy of "P&L a/c"- Article 265 of the Constitution of India specifically states that no tax shall be levied or collected except by authority of law- Only suo moto power of the CIT under s.264, is restricted against an order passed within one year, whereas no such restriction is imposed on the CIT to exercise his power in respect of an order, which has been

passed more than one year before, if such revisional power is sought to be invoked at the instance of the assessee by making an application under s.264.

## **F) PENALTY**

### **1. Sec 271B**

Vinay Agrawal V/s ITO (2019) 76 ITR (Tribunal) SMC)(Penalty)

Penalty for failure to get account audited- Assessee bonafidely treating commission income as turnover along with other turnover which was below limit for audit- Department treating unaccounted turnover as part of total turnover holding assessee liable for penalty for failure to get account audited penalty liable to be deleted IT Act 1961 S. 271B.

### **2. Revision- Penalty**

Kiri Dyes and Chemicals Ltd V/s Principal CIT (2019) 75 ITR (Ahmedabad) 79 (Tribunal)

Penalty proceedings not depending on assessment order- Assessing Officer choosing not to initiate- Principal Commissioner cannot exercise provisional jurisdiction for purpose of initiation of penalty proceedings.

### **3. Penalty: Concealment of Income Se.271 (1)(c)**

Anil Gupta v. Asst. CIT (Delhi) ITR online Page 22 (02-12-2019) (Volume 14)

Penalty- Concealment of income- Furnishing inaccurate particulars of income- Assessee declaring Long-term capital loss in return and providing all relevant information to Assessing Officer- Department finding assessee's share in property less but claiming higher ratio of sale consideration- Bonafide clerical mistake on part of assessee and explained before Assessing Officer as well--Returned income accepted and no loss to Revenue--Not a case of concealment of income or furnishing inaccurate particulars of income--Penalty not leviable--Income-tax Act, 1961.

### **4. Penalty**

Principal CIT v. Smt. Prabhjot Kaur Chhabra (2019) 419 ITR Page 94 (Madhya Pradesh HC)

Penalty- Concealment of income- Revised return filed prior to issuance of notice under Section 153C showing income on account of sale of land- No satisfaction recorded by Assessing Officer that there was concealment of income or furnishing of inaccurate particulars by assessee- Deletion of penalty by Tribunal- Proper- Income-tax Act, 1961. Ss. 153C, 271 (1) (c)

## **G) RECOVERY**

### **1. Recovery of tax**

Vodafone India Services (P) Ltd V/s Union India

Recovery of penalty- Stay of recovery proceedings- Difference between tax and penalty- Discretion u/s 220(6) must be exercised judiciously- Application for stay of recovery of penalty application rejected without application of mind- Order not valid IT Act 1961- SS 220 / 271(1)(c)

2. Recovery of Tax: Stay of demand

Aarti Sponge and Power Ltd V/s Asst CIT (2019) 418 ITR 257 (Chattisgrah HC)

Stay of demand- Effect of Circular dated 29/02/2016 and 31/07/2017 (See (2017) 396 ITR (St) 55)- Deposit of 20 percent demand not a condition precedent for considering application for stay IT Act, 1961. Refer-

- i) Catholic Syrian Bank Ltd V/s CIT (2012) 343 ITR 270 (S C)
- ii) Coca-Cola India Ltd V/s Addln. CIT (2006) 285 ITR 49 (Bombay)
- iii) KEC International Ltd V/s B.R. Balakrishnan (2001) 251 ITR 158 (Bombay H.C)
- iv) UCO Bank V/s CIT (1999) 237 ITR 889 (SC)
- v) UIT Mutual Fund V/s ITO (2012) 345 ITR 71 (Bombay H C)

3. Recovery of Tax Stay of demand - Sec.220

Zinzuwadia and Sons V/s Dy. CIT (2019) 419 ITR 169 (Gujarat HC)

Recovery of tax- Stay of demand- Discretion to stay demand subject to payment of 20 percent of demand- Discretion to be exercised judiciously- High-pitched demand- Order without application of mind directing payment of 20% of demand- Not justified- Direction to deposit 10% of demand- Income tax Act, 1961.