

**Case Laws to be discussed in the Study Group meeting on 1<sup>st</sup> November 2020**

**By Ajay R. Singh, Advocate**

Sr no	CASE NAME	ISSUE	HELD	References
1.	<b>Nagaraj and Co.(P) Ltd. v ACIT Circle-IV (4)</b> <b>[2020] 274 Taxman 38 (Mad) (HC)</b> <b>[AY 2003-04 &amp; 2004-05</b> <b>Chennai Tribunal order dt 11/10/12]</b>	<b>Rectification of Mistake apparent on record :</b> Section 43B, rws. 139 and 154 of the Act, - Business disallowance - Certain deductions to be allowed only on actual payment – Omission to claim deduction in return – Not a mistake apparent on record u/s. 154	Where assessee-company omitted to claim deduction under section 43B on account of interest paid on loan to IDBI . Assessee filed rectification application , since allowability of deduction under section 43B on account of interest payment was a debatable issue and it required further investigation, said omission to claim deduction in original return was not a mistake coming within purview of section 154 and in case of such omission only remedy available was under section 139(5).	<b>Cases relied by the court:</b> <b>CIT v. Lakshmi Vilas Bank [2010] 329 ITR 591 para 14 (Mad )</b> <b>Anchor Pressings (P). Ltd. v. CIT [1986] 161 ITR 159 (SC) para 15</b> <b>Circular no 14(XL-35) dt 11/4/1955;</b> <b>Alternate Remedy : Application u/s. 264 or 119</b>  <b>Hitech Analytical Services v. CIT (2018) 402 ITR 479 (Guj) (HC)</b> it was held that the non - filing of the revised return by the firm could not have been a ground for rejection of the claim. Even if the powers of the Assessing Officer could have been restricted in the absence of a revised return, the Commissioner u/s. 264 could have examined the issue and made further inquiries, if it was needed. <b>Ramdev Exports v. CIT, (2001) 251 ITR 873, 875 (Guj)</b>

2.	<p><b>CIT v Neyveli Legnite Corporation Ltd., [2020] 273 Taxman 322, (Mad) (HC) AY 2008-09 Tribunal order dt 23/9/2015</b></p>	<p><b>Reopening of assessment- within 4 years</b> - Section 32, rws. 147 of the Act,- excess claim of Depreciation – Original assessment completed u/s. 143(3) – Query raised and accepted by AO –Same reason notice u/s. 263 issued and thereafter considering reply dropped .- Reopening on change of opinion</p>	<p>Original assessment completed u/s. 143(3) of the Act dt 28/12/2010 . Where Assessing Officer initiated reassessment proceedings vide notice dt 28/3/2013 on ground that assessee had raised excess claim of depreciation in respect of water supply and drainage system, in view of fact that said reason for reopening of assessment was subject matter of proceedings under section 143(3) and thereupon proceedings under section 263 vide notice dt 31/10/2012 and dropped by order dt 21/2/2013, once again, for <b>VERY SAME REASON</b>, power under section 147 could not be invoked and, thus, reassessment proceedings were to be set aside.</p>	<p><b>Relied on CIT v. Kelivinator of India Ltd . [2002] 256 ITR 1 FB. Del.</b>  <b>Refer :</b>  <b>Homes Private Limited vs. ITO, ITA No. 237/JP/2019, 23/12/2019 (ITAT Jaipur)</b></p> <p>If the AO has incorrectly or erroneously applied law and income chargeable to tax has escaped assessment, the Revenue should resort to s. 263 and revise the assessment and not reopen u/s 147. When matter was referred to the CIT for seeking approval, instead of holding that the matter falls u/s 263 and not u/s 148, has given approval u/s 151 which shows non-application of mind and mechanical grant of approval. Therefore, the assumption of jurisdiction u/s 147 cannot be sustained and is held as invalid in eyes of law</p>
3.	<p><b>Ravinder Kumar v I.T.O. [2020] 273 Taxman 369, (Del) (HC) [Tribunal order dt</b></p>	<p>Section 68 of the Act, 1961 - Cash credit [Bank deposit].</p>	<p>Case of non filing of ITR – Cash of 15.86 lacs deposited during the period – Notice u/s. 148 issued – Assessee filed ROI however chose to stay away in whole proceeding –</p>	<p><b>In Keshrabhai Chamarbhai Chudhary v. ITO ( 2011) 141 TTJ (Ahd) (UO) 94 ,(95)</b> where the income is estimated by rejecting the book results the</p>

	2/9/2019 ITA no 196/Del/2019 ] AY 2010-11		Assessment completed 144 – Before CIT(A) assessee contended that ROI was filed u/s. 44AD and declared income @8% . Further funds were generated from Kirana business- CIT(A) rejected explanation due to lack of evidence.- Where assessee had failed to produce any material to authenticate his contention that cash deposits in his account were on account of sales being made by him from Kirana business, tax authorities were justified in making addition of unexplained cash entries in bank account in hands of assessee.	income should be estimated as per formula prescribed under section 44AE.
4.	CIT v. Sant Lal [2020] 273 Taxman 551, (Del) (HC) [Tribunal order dt 15/6/2017 ITA no 4730/Del/2009] AY 2002 -2003	Section 69A, rws, 132 and 147, of the Act, 1961 - Unexplained moneys (Hundi transaction)- Loose paper – Third party	Where in search of premises of third party, diary was seized allegedly containing entries of hundi transactions on behalf of parties including assessee whose names were written in abbreviated/code words, since diary was neither found from premises of assessee nor was it in hand writing of assessee and Revenue failed to produce cogent material to link assessee to dairy, no addition could be made.	Merely on basis of entries on <b>loose paper</b> found from <b>third party</b> without any other corroborative evidence, addition cannot be made . Shri Vinit Ranawat V/s. ACIT ITA nos 1105 & 1106/PN/2013 Dt 12/06/2015. Shri Kirti Chandulal Oswal (2009) 317 ITR 285 (AT) (Pune) Pradeep A. Runwal vs. TRO (2014) 149 ITD 548 (Pune)(Trib.) <b>Common Cause (A Registered Society) v. UOI (2017) 394 ITR 220 (SC)</b> S. 2 (12A) : Books of accounts - Entries in

				loose papers/sheets are irrelevant and inadmissible as evidence - Offences and prosecution - Settlement commission. [S. 132, 143 (3), 245D, Evidence Act, S.34]
5	<b>Salem Ramavilas Company (P) Ltd. v Dy. CIT [2020] 273 Taxman (Mad)(HC) AY 2017-18</b>	<b>Sree Chit</b>	Section 69A, rws. 153, of the Act, 1961 - Unexplained moneys (Demonetization Cash deposits). E proceeding – AO should come to definite conclusion on facts – Assessee need to clearly explain the stand as human interaction is done away with new e proceeding . para 15 - 18 . In writ Matter remanded	Without calling for an explanation in writing from assessee, Assessing Officer should not have concluded that assessee had not properly explained deposit of cash collected during demonetization into their account and treated same as unaccounted money in hands of assessee.
6.	<b>I.C.D.S. Ltd. v CIT [2020] 273 Taxman 723, (SC)</b>		Natural justice - cross-examine witnesses relied upon by Assessing Officer	Where issue involved was about not extending opportunity to appellant to cross-examine witnesses relied upon by Assessing Officer, entire matter would be considered by First Appellate Authority afresh by giving fair opportunity to both sides to espouse their claim.
				<b>M/s Andaman Timber Industries V/s CCE (2015) 127 DTR 241/ 281 CTR 241 (SC)</b> <b>R. W. Promotions P. Ltd vs. ACIT (2015) 376 ITR 342 (Bom.)(HC)</b> <b>Ayaaubkhan Noorkhan Pathan vs. State</b>

				of Maharashtra & Ors AIR 2013 SC 58 / (2013) 4 SCC 465
7.	<b>Paiva Manufacturing Co. v. ITO [2020] 274 Taxman 158, (Ker.) (HC)</b>	Recovery - During pendency of Rectification application u/s. 154, of the Act, - for Carry forward and set off of business losses is not disposed off- recovery stayed .	Where during pendency of rectification application filed by assessee seeking set off of brought forward loss against taxable profits computed for relevant years, department raised tax demand, revenue authorities was directed to dispose of rectification application first and till then impugned tax demand would remain in abeyance.	In case of <b>Sultan Leather Finishers P. Ltd. vs. ACIT 191 ITR 179 (All)</b> , it has been held that no recovery proceedings are possible during pendency of a rectification application.
8.	<b>CIT v Sadiq Sheikh ITXA NO. 18 OF 2014 Dtd. 14/10/2020 (Bom – Goa ) (HC) ITAT order dt 31/7/2013</b>	S. 68 Bogus Cash Credits – Search - source of the source - explanation has to be plausible and backed by reliable evidence- Assessee has failed to establish capacity of source	Evidence on record that firm/partners advancing the loan amount were virtually persons of straws . The firm was not registered and dissolved within one year of alleged incorporation. The firm didn't had any bank account nor PAN no was issued . No return filed . One of the partner owned up making such payment. Circumstances emanate from record listed in para 40 of the order The Revenue can examine the source of the source. Merely	1. The onus of the Assessee was duly discharged after furnishing all the primary evidences to prove the genuineness of the loan transaction. Dy. CIT vs. Rohini Builders (2002) 256 ITR 360 (369, 370) (Guj)(HC) [SLP dismissed by SC (2002) 254 ITR (St.) 275] 2. CIT v. Jai Kumar Bakliwal (2014) 366 ITR 217 (Raj.)(HC) . 3. CIT v. Varinder Rawlley (2014) 366 ITR 232 (P&H) (HC)

			<p>pointing out to a source and the source admitting that it has made the payments is not sufficient to discharge the burden placed on the assessee by s. 68. Otherwise, it would be sufficient for assessee to simply persuade some credit-less person to own up having made such huge payments and thereby evade payment of tax on the specious plea that the Revenue can always recover the tax from such credit-less source. The explanation has to be plausible and backed by reliable evidence. 'Fantastic or unacceptable' explanations are not acceptable</p>	<p>4. Golden Remedies (P.) Ltd. v. ITO , Ward 12(2) [2007] 18 SOT 260 (Delhi)(Trib)</p> <p>5. CIT v. (Smt.) Sanghamitra Bharali (2014) 361 ITR 481 (Gau)(HC) Cash credits–Identity and creditworthiness was proved-Assessee need not prove source of funds of creditor</p> <p>6. In the case of <b>Orient Trading Co. Ltd. vs. CIT (1963) 49 ITR 723 (Bom)(HC)</b> held that where entry stands in name of third party and assessee satisfies A.O. as to identity of third party and also supplies such other evidence which prima facie show that entry is not fictitious, initial burden of proof lies on assessee can be said to have been discharged by him.</p> <p>7. Failure by Creditors to participate in inquiry and furnish accounts. Does not mean that creditors lacked identity. <b>CIT vs. Chandela Trading Co. P. Ltd. (2015) 372 ITR 232 (Cal.)(HC)</b></p> <p>8. Balance sheet is sufficient to prove creditworthiness. Addition was not justified. <b>ACIT v. Sanjay M. Jhaveri</b></p>
--	--	--	---	---

				<b>(2015) 168 TTJ 751(Mum.)(Trib.)</b>
9.	<b>Pr.CIT Central-3 vs. VVF Ltd.</b> <b>[2020] 273 Taxman 503, (Bom.) (HC)</b> <b>AY 2007- 08 [ITA no 1671 of 2017 dt 4/3/2020]</b>	Section 37(1) of the Act, 1961 - Business expenditure - Allowability of (Director's remuneration) - expression 'wholly and exclusively' appearing in section 37(1) does not mean 'necessarily' and ordinarily.	Mr FJ was director since 1972 – In a statement recorded during search he admitted he was not aware who looked after assessee company day to day affair as for last 6 years he was not attending the office as he was involved only consultation Remuneration paid to promoter- Held it was assessee to decide whether any expenditure should be incurred or not - Director would be allowable even if he did not attend office for six years and was unaware who actually looked after day to day activity of assessee-company and was only involved in consultation.	Necessity of expenditure is not a valid test for allowance of expenditure. Sassoon J David & Co P Ltd . v. CIT [1979] 1 Taxman 485 /118 ITR 261 SC  Shahzad – a – Nand & Sons vs. CIT (1972) 108 ITR 358 (SC)  CIT vs. Consulting Engineering Group Ltd. (2014) 365 ITR 284 (Raj.)(HC)  CIT v. Sales Magnetite (P) Ltd (1995) 214 ITR 1 (Bom.)(HC)  Dalhousine Public School Education Society vs. CCIT (2011) 196 Taxman 558 (P&H) (HC)
10.	<b>Pazhayidom Food Ventures (P.) Ltd. vs. Superintendent Commercial Taxes</b> <b>[2020] 118 taxmann.com 139 (Ker.)(HC)</b>	Payment of tax - Interest, penalty and other amounts - Assessee, registered under GST Act, admitted its liability to pay tax for Assessment year2018-19 - However, in view of financial difficulties	In view of financial difficulties faced by assessee due to Covid pandemic situation, request for payment of admitted tax liability in instalments was accepted and assessee was directed to pay said amount in EMIs. Revenue authorities, taking a view	

		<p>faced by it due to Covid pandemic situation, assessee sought instalment facility to pay admitted tax along with interest</p>	<p>that provisions of Act did not provide for payment of admitted amount shown in return in instalments, rejected assessee's request - Hence, instant petition was filed - It was noted that assessee had established its bonafide by making payment of Rs. 4 lakhs towards its tax liability - It was also found that there was no other demand pending against assessee for unpaid tax amount till date - in view of aforesaid, it was appropriate to allow assessee to pay its balance tax liability inclusive of interest in equal successive monthly instalments.</p>	
11.	<p><b>State Bank of India vs. Vineet Agrawal [2020] 119 taxmann.com 322 (Bom.)(HC)</b> Writ Petition for AY 1990-91</p>	<p>Reopening of assessment u/s. 148 to disallow exemption u/s. 10(15) after 4 years – Full and true disclosure of material fact <b>para 18</b></p>	<p>Where assessee-bank offered to tax entire interest receipt from money advanced as credit without claiming any exemption under section 10(15) as details were not fully collected. A note was made in the return to the effect- and when said details were received from other branches, same were submitted during assessment but AO denied said exemption to assessee and, it approached Commissioner (Appeals) who gave</p>	<p>Refer Article on <a href="http://www.itatonline.org">www.itatonline.org</a></p>



			direction to Assessing Officer to allow exemption which was allowed accordingly, issuance of section 148 notice to disallow said exemption after 4 years of completion of assessment was without jurisdiction and illegal, particularly when assessee bank had made full and true disclosure.	
12	<b>Sri Ram Samaj vs. Joint Director of Income Tax [2020] 119 taxmann.com 334 (Mad.) (HC) AY 2010-11 &amp; 2011-12</b>	Section 11 exemption – letting out of community hall and utilising the surplus from letting out for object of trust .	Where assessee-trust engaged in running educational institutions,- Approved under 12AA- earned income from letting out of community hall, Kalyana Mandapam and Gnanvapi and utilized surplus income from letting out for objects of trust i.e. running educational institution and providing medical relief to poor, assessee-trust is entitled to exemption under section 11.	DIT(E) v. Gujarat Cricket Association (Guj.)(HC) (2019) 419 ITR 561 DIT(E) v. Baroda Cricket Association (2019) 419 ITR 561 (Guj.)(HC), DIT(E) v. Saurashtra Cricket Association (2019) 419 ITR 561 (Guj.)(HC), Orders of Tribunal reported in 202 TTJ 409/ 183 DTR 367 (Ahd.)(Trib.) is affirmed. The Tribunal held that while determining income available for application under section 11, income of a trust should be computed under commercial principles without resorting to computation mechanism as provided under respective head of income. Accordingly standard deduction u/s. 24(a) at 30 percent is not allowable. Tribunal held that deduction as to repairs and maintenance expenses

				incurred on trust property being meant for objects of charitable trust, was to be allowed in computing income available for application. (AY. 2012-13) <b>Nandlal Tolani Charitable Trust. (2019) 176 ITD 769 (Mum.)(Trib.)</b>
13	<b>CIT vs, Padmavathi [2020] 120 taxmann.com 187 (Mad.) (HC) [ Appellate Tribunal, 'C' Bench, Chennai in ITA No.1306/Chny/2019 dated 02.12.2019 for the AY: 2014-2015 ]</b>	Revision - limited scrutiny case- CIT cannot exercise the power of revision u/s. 263 of the Act to look in to any other issue which the Assessing officer himself could not look :	Where in limited scrutiny with regard to purchase of property by assessee, AO after hearing assessee and verifying source of funds made addition – CIT revised said order on the ground that guideline value of said property at relevant time was higher than sale consideration reflected in registered document, The PCIT further held that though the AO verified the source of funds, he failed to apply the said provision, namely, Sec 56(2)(vii)(b)(ii) of the Act. Held since guideline value is only an indicator and same is fixed by State Govt for purposes of calculating stamp duty on a deal of conveyance, invoking of sec. 263 not sustainable. The PCIT while invoking his power u/s. 263 faults the AO on the ground that he did not make proper enquiry. It is not clear	CBDT instruction no 20/2015 dt : 29/12/2015 – AO can convert limited scrutiny in to complete scrutiny <b>Narayan Tatu Rane v. ITO (Mum.)(Trib.) (70 Taxmann.com 227)( ITA No. 2690, 2691/Mum/2016,dt. 06.05.2016) :</b> The new Explanation does not override the law that the CIT cannot fault an assessment order without conducting his own inquiry or verification to establish that the assessment order is not sustainable in law (AY. 2008-09). Revision cannot be for carrying out fishing or roving enquiry.  <b>Amira Pure Foods Pvt. Ltd v. PCIT (2018) 63 ITR (Trib) 355 (Delhi) (Trib)</b> CIT cannot treat the AO's order as being erroneous and prejudicial to the interest of revenue without conducting an enquiry and recording a finding- <b>Explanation 2 to s. 263 inserted w.e.f. 01.06.2015 does not override the law</b>

			as to what in the opinion of the PCIT is 'proper enquiry' .By using such expression, it presupposes that the AO did conduct an enquiry. However, in the opinion of the PCIT, the enquiry was not proper. In absence of not clearly stating as to why in the opinion of PCIT, the enquiry was not proper, the court held that the invocation of the power u/s 263 of the Act was not justified.	<b>as interpreted by the various High Courts .</b>
14	<b>CIT v. Vummudi Amarendran [2020] 120 taxmann.com 171 (Mad) (HC) AY 2014-15 Tribunal order dt 27/2/2020</b>	Amendment by insertion of proviso to section 50C(1) introduced with effect from 1-4-2017 – Effective retrospectively Guideline value is only prima facie rate prevailing in an area – sec 47(A) of Indian Stamp Act – Guideline value not the last word	Agreement to sale dt 4/8/2012 and registered on 2/5/2013 . Not parted with possession and received part consideration as advance. Guideline value shown as 19 crores and 27crores on respective dates. Amendment by insertion of proviso to section 50C(1) introduced with effect from 1-4-2017 which provides that where date of agreement, fixing amount of consideration and date of registration for transfer of capital assets are not same, value adopted or assessed or assessable by stamp valuation authority on date of agreement may be taken for	Circular no 3/2017 dated 20/1/2017 para 29 CIT v. Calcutta Export Company [2018] 404 ITR 654 (SC) – Amendment curative in nature to resolves anomalies – undue hardship – Held to be retrospective CIT v. Alom Enterprises (2009) 319 ITR 306 Allied Motors Pvt Ltd v. CIT (1997) 224 ITR 677 (SC) Whirlpool of India Ltd. v. CIT (200) 245 ITR 3(SC) Cit v. Amrid Banaspati Company Ltd (2002) ITR 114 (SC) AIFTP book on Interpretation can be looked into .

			purpose of computing full value of consideration for such transfer seeks to relieve assessee from undue hardship and, thus, should be taken to be retrospectively effective.	
15.	<b>Vijaykumar Satramdas Lakhani vs. Central Board of Direct Taxes [2020] 120 taxmann.com 56 (Bom.) (HC)</b>	Order under 119 dt 3/4/2020 as well as for quashing the decision dt 8/6/2020 rejecting the application for certificate u/s. 197 of the Act  Time limit extended by Taxation and other laws( Relaxation of certain provisions ) Ordinance 2020 – Any time limit specified from 20/3/2020 to 29/6/2020 extended to 30/6/2020 or such other date as specified by central govt -	Assessee partner in M/s. Lakhani Realty LLP . Where assessee-petitioner filed an application before competent authority to issue a certificate for non-deduction of tax u/s. 197 on interest income received from the partnership firm in which he was a partner which was pending consideration during lock down period and said application was rejected by competent authority being barred by limitation, since Government of India issued an ordinance called 'Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020' extending time limits specified in specified Acts till 30-6-2020, which had the effect of an Act of Parliament and the extension of limitation period as provided by the Ordinance would have an overriding effect over the	Taxation and other laws( Relaxation of certain provisions ) Ordinance 2020  Other Decision on Limitation during covid : <b>IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION (SC) Order dated 23.03.2020</b> The Court ordered that a period of Limitation in filing their petitions/ applications/suits/ appeals/all other proceedings irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.  <b>Order dated 06.05.2020</b> All periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 extended with effect from 15.03.2020

			<p>limitation provision contained in the Income-tax Act for the financial year relevant to the AY 2020-21 and having regard to the extraordinary situation faced by the country in view of the pandemic and the lockdown for which the Ordinance had to be promulgated, simplicitor rejection of the application of the petitioner as having been rendered infructuous and unsustainable in law as well as on facts was not justified and matter remanded for consideration afresh.</p>	
16.	<p><b>Valencia Nutrition Ltd. vs. Dy. CIT [2020] 120 taxmann.com 238 (Bang.) (Trib) AY: 2015-16 &amp; 2016-17</b></p>	<p>Addition of excess share premium made u/s. 56(2)(viib) of the Act – Premium at Rs 622 – As per NAV Rs. 75:</p>	<p>Assessee company engaged in business of manufacturing of energy drinks had issued shares at a share premium – Initial years of formation – incurred losses- AO took view that share valuation under DCF method had been carried out on basis of projections and estimations given by management and that value of share should be based on net Asset Method mentioned in rule 11UA . Assessing Officer should scrutinize valuation report prepared under DCF method and if necessary, he can</p>	<p><b>-Vodafone M Pesa Ltd. v. PCIT 164 DTR 257 Bom</b>  - Valuation-start-up-Shares issued at premium-DCF method-Commercial expediency has to be seen from point of view of businessman- The assessee has an option to do the valuation and determine the fair market value either on DCF Method or NAV Method.  <b>Cinestaan Entertainment (P) Ltd. v. ITO (2019) 177 ITD 809 (Delhi)(Trib.)</b>  <b>-The assessee has the option to determine the fair market value of shares either under the Discounted</b></p>

			<p>carry out fresh valuation either by himself or by calling a final determination from an independent valuer to confront assessee; he cannot change method of valuation and he has to follow DCF method only.</p>	<p><b>cash flow (DCF) method or the Net Asset Valuation (NAV) method.</b>  The assessee's choice is binding on the AO.  <b>Narag Access Pvt. Ltd. v. DCIT (Mum.)(Trib.), <a href="http://www.itatonline.org">www.itatonline.org</a></b>  <b>-The DCF method is a recognised method though it is not an exact science &amp; can never be done with arithmetic precision.</b>  The fact that future projections of various factors made by applying hindsight view cannot be matched with actual performance does not mean that the DCF method is not correct.  <b>India Today Online Pvt. Ltd. v. ITO (2019) 176 ITD 459 (Delhi)(Trib.),</b></p>
17.	<b>Pr.CIT v. Yash Associates, [2020] 274 Taxman 284, (SC)</b>	Section 80-IB of the Act, - Deductions - Profits and gains from industrial taking other than infrastructure development undertakings (Housing projects).	Where High Court upheld Tribunal's order holding that since assessee had undertaken development and construction of housing project on a piece of land which was different from land on which erstwhile promoters had completed construction of houses, - and, thus, its claim for deduction under section 80-IB was to be allowed, SLP filed against said order was to be dismissed.	

