Case Laws for May, 19/ Nov., 19

index

Person Doesn't Have the Right to Receive the Income

1. Henkel Spic India Ltd (SC)	
Facts	The assessee had come out with public issue on 29/01/1992 and received the application money which was deposited in bank A/c in accordance with statutory requirement. In June 1992, the assessee refunded the money along with interest to persons who could not be allotted the shares. **Contention of A.O is to tax the entire interest in the year of public issue i.e. AY 1992-1993**
Issue Raised	Whether interest income earned on share application money deposited with a bank for a specified period in accordance with statutory requirement becomes taxable in A.Y. in which allotment is completed or in the year of accrual?
Provision	U/s 56 of the Income tax Act, 1961, the interest income shall form part of income from other sources in the year when it is actually ACCRUED TO THE ASSESSEE.
Analysis	**Timing of Recognition:** The interest earned on deposits cannot be regarded as an amount available to the assessee for its own use, until the allotment of shares got completed & moneys are returned to those whom shares are not allotted. **Right to Receive:** No part of this fund i.e. principal and interest can be utilized by the company until the allotment process is completed. The interest along with allotment money needs to be repaid to the persons to whom shares could not be allotted & it is only after allotment process, the balance remaining application money along with interest on it can be regarded as belonging to company.
Conclusion	As the amount of interest in the bank A/c includes interest payable to the applicants to whom the shares are not allotted, **the trust would terminate only after allotment**. The interest on application money (on shares allotted) would accrue to the company only after allotment is completed.

2. UCO Bank (HC)	
Facts	1) The assessee bank accepted fixed deposit in the name of Registrar General Of HC and issued a receipt of such deposit in compliance with a direction passed by the court in relation to certain proceedings. 2) The assessee had not deducted tax at source on interest accrued on FD since the FDRs were in the name of Registrar who is a custodian because the actual beneficiary was unknown. 3) Subsequently the ACIT issued a show cause notice to the bank for non deducting tax at source on the interest accrued for treated the assessee as assessee-in-default u/s201(1)/201(1A)
Issue Raised	Is section 194A applicable in respect of interest on Fixed deposits in the name of Registrar General of HC?
Provision	TDS on interest other than interest on securities u/s 194A will be deducted by any person (other than individual or HUF) at the time of credit or payment to a resident payee.
Analysis	**1) Credit of interest:** As per sec194A of the Act, the bank is obliged to deduct tax at source in respect of any credit or payment of interest on deposits made. The expression "payee" u/s 194A would mean the recipient of income whose account is maintained by the person paying interest **2) Actual payee is not ascertainable**

	The Registrar General is neither recipient of the amount nor interest is accruing to him thereon. The person to whom the fund would be paid would be ultimately determined by the order of court.
Conclusion	The HC observed that in the absence of a payee, the provision for deduction of tax to his (Registrar General) credit is **ineffective and therefore not liable to tax.**

Classification of Income

3. Chennai Properties and Investment Ltd (SC)

Facts	As, per the object clause of the assessee company in the MOA, its main objective was to acquire and let out properties. The entire income of company comprised of income from letting out of such properties. The assessee accordingly offered this income under head PGBP.
Issue Raised	Would income from letting out of properties by a company, whose main object as per its MOA is to acquire and let out properties, be taxable as its business income or income from house property, considering the fact that the entire income of the company was only from letting out of properties?
Provision	As per Section 22, Rental income from house property is taxable under the head house property, only if the house property is not used by the assessee for its business and profession.
Analysis	**Object of the company needs to be looked**: 1) The deciding factor as to the head under which the income was to be assessed is not the ownership of land or leases but the **nature of the activity** of the assessee and the nature of the **operations** in relation to them. 2) **The objects of the company must also be kept in view to interpret the activities** 3) The main objective of the company as per its memorandum of association is **to acquire and hold properties and earning income there from**.
Conclusion	Rental income from properties of company shall be taxable under head PGBP, if the main object of the company is to let out the property. The charge U/s 22 is not applicable as it is established that the house property is used by the assessee for the purpose of its own business and profession.

4. Rayala Corporation (P) Ltd. (SC)

Facts	The assessee was in the business of leasing its properties and received rent which it claimed as its business income. It had no other income. The Revenue contended it to be income from house property.
Issue Raised	Rental income from the business of leasing out properties would be taxable under the head "Profits and gains from business or profession" or "Income from house property"?
Provision	Section 22 provides that income from property would be taxable under the head income from house property, if the house property is not used for the purpose of business and profession. Section 28 provides that profits and gains from business carried on by the assessee shall be chargeable under the head PGBP.
Analysis	**Object of the business to be looked upon** 1) It made reference to law laid down by it in Chennai Properties & Investments Ltd v. CIT (2015) 373 ITR 673 (SC) that if an assessee is engaged in the business of letting out house property on rent, then, the income from such property, even though in the nature of rent,

	should be treated as business income. 2) The Apex Court held that the judgment in **Chennai Properties & Investment Ltd.'s** case would squarely apply in this case also, since the company is **engaged in** the business of **letting out properties** and earning rental income there from.
Conclusion	The Apex Court, thus, held that since the business of the company is to lease out its property and earn rent there from, the rental income earned by the company is chargeable to tax as its business income and not income from house property.

5. Raj Dadarkar and Associates v. Assistant Commissioner of Income Tax [2017] – SC

Facts	1. The assessee had acquired the right to conduct a market on certain land from Municipal Corporation, Greater Bombay under an auction on May 28, 1993. 2. The premises allotted to the appellant was a bare structure and it was for the appellant to make the premises fit to be used as a market. 3. The appellant spent substantial sums to construct 95 shops and 30 stalls. 4. From the years 1999 to 2004, the assessee treated income from sub-letting of such shops and stalls as business income. 5. The return of the assessee for assessment year 2000-2001 was reopened by Assessing Officer by issuing notice under section 148.
Issue Raised	**Issue Raised:** Whether the income earned by the appellant is to be taxed under the head 'Income from house property' or 'Profits and gains from the business or profession'?
Provision	**Provision:** 1. Sec. 27(iiib) [**Deemed Owner]** provides that a **person who acquires any rights** (excluding any rights by way of a lease from month to month or for a period not exceeding one year) **in or with respect to any building or part thereof, by virtue of any such transaction as is referred to in Sec. 269UA(f), shall be deemed to be the owner of that building or part thereof** 2. Sec. 269UA(f) defines transfer as "in relation to any immovable property means transfer of such property by way of sale or exchange or **lease for a term of not less than twelve years**, and includes allowing the possession of such property to be taken or retained in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882
Analysis	1. **When rental Income is chargeable under IFHP/PGBP?** The Supreme Court held that wherever there is an income from leasing out of premises, it is to be treated as income from house property. However, it can be treated as business income if letting out of the premises itself is the business of the assessee. The question has to be decided based on the facts of each case. **2. Assessee was deemed owner u/s 27(iiib) r.w.S.269UA(f) as it had a leasehold right for more than 12 years** In the given facts, it was an undisputed fact that the assessee would be considered to be a deemed owner under section 27(iiib) read with section 269UA(f) as it had a leasehold right for more than 12 years. 3. **Object clause in partnership deed not conclusive factor** SC noted the assessee's contention that object clause of the partnership deed provided that letting out and earning rents is the main business activity of the appellant. The clause provided that "The Partnership shall take the premises on rent to sub-let or do any other business as may be mutually agreed by the parties from time to time." The Supreme Court held the clause to be inconclusive and observed that the assessee had failed to produce sufficient material to show that its entire or substantial income was

	from letting out of the property. 4. **Distinguishes assessee's reliance on co-ordinate bench rulings in Chennai Properties and Rayala Corporation** to argue that lease rentals were assessable as business income, observes that in those rulings assessees were in the business of letting out of properties and derived entire income from letting out of properties and in the instant case assessee could not substantiate that its entire income or substantial income was from letting out of the property which was its principal business activity
Conclusion	**The Supreme Court, accordingly, held that, in this case, the income is to be assessed as "Income from house property" and not as business income, on account of lack of sufficient material to prove that the substantial income of the assessee was from letting out of the property.**

DS Comment:

In Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673, the Supreme Court observed that holding of the properties and earning income by letting out of these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the Assessing Officer, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that such income was taxable as business income. Likewise, in Rayala Corporation (P) Ltd. v. Asst. CIT (2016) 386 ITR 500, the Supreme Court noted that the assessee was engaged only in the business of renting its properties and earning rental income therefrom and accordingly, held that such income was taxable as business income. In this case, however, on account of lack of sufficient material to prove that substantial income of the assessee was from letting out of property, the Supreme Court held that the rental income has to be assessed as "Income from house property".

If the substantial income is from renting of properties and letting out is the main objective of the company, the income would be taxable under the head PGBP. However, if the assessee does not carry on any systematic or organized activity of letting out premises, the income from letting out would be charged to tax under the head IFHP.

6. Tamil Nadu Tourism Development Corporation Ltd. (HC)

Facts	(i) The assessee-company, engaged in the business of development tourism, leased some of its loss making hotel units to various franchisees for a consideration. (ii) The franchisee agreement envisaged leasing of hotels with certain conditions to be complied with as to how the franchisees should conduct the business which inter alia included display of assessee's company name above the name of the franchisee in the name board. (iii) The assessee offered franchise fee as "Income from house property" and claimed deduction at 30% of Net Annual Value (NAV) under section 24. The Revenue treated the income under the head PGBP and disallowed the claim of deduction of 30% by the assessee on the ground that the assessee had not withdrawn from the business of carrying on tourism activities and that it was only to earn more profits from its loss making units that it had let out the properties including business to franchisee.
Issue Raised	Whether franchise fee received by an assessee in tourism business, against special rights given to franchisees to undertake hotel business in assessee's property is taxable under the head PGBP or IFHP?
Provision	As per Section 22, the annual value of house property owned by the assessee shall be chargeable under the head house property only if the said house property is not used by the assessee for the purpose of its own business or profession.
Analysis	**1) Contract looked upon** The HC looked into the contract between the assessee and the franchisees which contained

	various conditions to suggest that the assessee had not simply leased the land and building but had imposed further conditions as to how the business of franchisees should be conducted with regard to the hotels given on lease. **2) Conditions imposed** The special conditions stipulated in the contract clearly indicated that: a) the name of the assessee should be prominently indicated in the name board above the name of the franchisee. b) The franchisee needs to maintain certain standard facilities to do the operations, thereby, making it clear that the assessee continued to operate the business of tourism through the franchisees and received income as franchisee fee.
Conclusion	The HC held that the income earned by the assessee by way of franchisee fee is in the nature of business income and not income from house property since the assessee received franchisee fee for giving a special right or privilege to the franchisees to undertake tourism business in the property. This was in furtherance to its own business objective.

7. CIT v. Asian Hotels Ltd. (HC)

Facts	The assessee has received interest free deposit in respect of shops given on rent. The Assessing Officer added to the assessee's income notional interest on the interest free deposit at the rate of 18% simple interest per annum on the ground that by accepting the interest free deposit, a benefit had accrued to the assessee which was chargeable to tax under section 28(iv).
Issue Raised	Can notional interest on interest free deposit received by an assessee in respect of a shop let out on rent be brought to tax as business income or income from house property?
Provision	Section 28(iv) is concerned with business income and brings to tax the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.
Analysis	Section 28(iv) can be invoked only where the benefit or amenity or perquisite is otherwise that by way of cash. In the instant case, the A.O. has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18% simple interest on the deposit. Hence, **Section 28(iv) is not applicable.** **Section 23(1)** deals with the determination of the expected rent of a let out property for computing the income from house property. It provides that the expected rent is deemed to be the sum for which the property might reasonably be expected to be let out from year to year. This contemplates the possible rent that the property might fetch and certainly not the interest on fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property.
Conclusion	Hence, High Court decided that the notional interest is neither assessable as business income nor as income from house property.

8. Movaliya Bhikhubhai Balabhai v. ITO (TDS) (2016) – HC

Facts	1. The petitioner's agricultural lands were compulsorily acquired for undertaking an irrigation project. 2. The petitioner challenged the compensation awarded by the Collector which led to award of additional compensation of Rs.5,01,846 and interest amounting to Rs.20.74 lakhs under section 28 of the Land Acquisition Act, 1894. 3. The petitioner filed an application in the prescribed form to the Assessing Officer for issuance of a certificate with 'nil' tax deduction at source. 4. The application was rejected by the Assessing Officer on the ground that the interest

	amount is taxable as per section 57(iv) read with sections 56(2)(viii) and 145A(b). 5. Aggrieved with the rejection of application, the assessee filed a writ before the High Court.
Issue Raised	Is interest on enhanced compensation under section 28 of the Land Acquisition Act, 1894 assessable as capital gains or as income from other sources?
Provision	1. Sec 56(2)(viii) provides that income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of Sec 145A is chargeable to income tax under the head "Income from other sources". 2. Sec.145A provides that interest received by assessee on compensation or on enhanced compensation shall be deemed to be the income of the year in which it is received. 3. Sec. 45(5) deals with capital gains arising from transfer of a capital asset, being a transfer by way of compulsory acquisition.
Analysis	1. **Interest u/s 28 of the Land Acquisition Act is an accretion to compensation and forms part of the compensation and, therefore, exigible to tax u/s 45(5)** The High Court observed that the assessee has received interest under section 28 of the Land Acquisition Act, 1894 which represents enhanced value of land and **thus, partakes the character of compensation and not interest**. **Hence, the interest under section 28 is liable to be taxed under the head of 'Capital Gains' and not under 'Income from Other Sources'.** 2. **On the other hand, interest under section 34 of the Land Acquisition Act, 1894 is for the delay in making payment after the compensation amount is determined. Such amount is liable to be taxed under the head 'Income from Other Sources'**. 3. HC held that interest received under section 28 of the Act of 1894 would not fall within the ambit of the expression "interest" as envisaged under section 145A(b) of the I.T. Act. HC held that assessee was entitled to refund of the amount wrongly deducted u/s 194A since amount paid u/s 28 of the Land Acquisition Act formed part of the compensation and not interest.
Conclusion	**The High Court held that the interest awarded under section 28 of the Land Acquisition Act, 1894 was not liable to tax under the head of 'Income from other sources' and thus, tax was not deductible at source. The Revenue authority had erred in refusing to grant a certificate under section 197 to the petitioner for non-deduction of tax at source.**

9. Manipal Health System (P) Ltd.(SC)

Facts	**1**. The assessee- Company is an institution providing health services **2.** As per the terms of contract entered into between the assessee- company and the doctors ● The remuneration paid to the doctors depends on the number of patient and treatment given to them. ● Timing of doctors is fixed ● They cannot have private practice or attend any hospital ● Provision of non competence clause is present in the agreement ● Doctors are not entitled to gratuity, provident fund. **3.** Doctors have filed their return of income showing income received from assessee-company as **professional income** and the same is accepted by the department.
Issue Raised	Where remuneration paid to the doctors is variable based on the number of patients and treatment given to them, then would the liability to deduct tax at source arise u/s 192 or u/s 194J?
Provision	• Tax u/s 192 would be deducted on remuneration payable only if employer employee

	relationship exists. • Section 194J requires deduction of TDS on fees paid for professional and technical services.
Analysis	**1."Contract for service "or "Contract of Service"** The HC observed that the terms of contract has to be seen to decide whether employer-employee relation exist or not. **2. NON competition clause** Mere provision of such clause in the agreement shall not change the nature of contract **3.Condition of bar to private practice** Imposing of such condition is to make use of expertise skill of doctor exclusively for the assesee –company. This again does not render the services of doctors in the capacity of being an employee to the hospital.
Conclusion	The HC held that consultancy charges paid to the doctors rendering professional service would be subject to tax deduction u/s 194J and not u/s 192

10. Avenue Super Chits (P) Ltd (HC)

Facts	1. The assessee-company engaged in Chit fund business had several chit groups which consisted of 25-40 customers each. 2. Each subscriber has to subscribe an equal amount based on the value of chit. 3. Under the auction system, during each installment of the chit, the highest bidder i.e. person who offers the highest discount got the chit amount. The unsuccessful members would earn dividend.
Issue Raised	Whether chit dividend paid to subscribers of chit fund is in the nature of interest in terms of section 2(28A) to attract deduction of tax at source u/s 194A
Provision	As per sec 2(28A) Interest means : Interest payable in any manner in respect of any moneys borrowed or debt incurred and includes any service fee or in respect of any credit facility which has not been utilized As per section 194A: person paying to a resident interest other than income by way of interest on securities, shall deduct income-tax thereon.
Analysis	**1.** The amount paid by the way of chit dividend could not be called as interest in terms of sec 2(28A) of the Income Tax Act,1961 as it is not a payment in respect of any money borrowed or debt incurred. **2.** Further sec 194A has no application to such (chit) dividend
Conclusion	The HC held that chit dividend paid to the subscriber of Chit is not 'interest' as defined u/s 2(28A) of the Income Tax Act, 1961.

11. Kotak Securities Ltd. (SC)

Facts	The assessee company made payment to the Stock Exchange by way of transaction charges in respect of **fully automated online trading facility** and other facilities. These services are available to all the members of the stock exchange in respect of every transaction that is entered into and not in the nature of any specialized service of professional or technical nature which is otherwise chargeable to tax deduction at source.
Issue Raised	Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?
Provision	Provisions for deduction of tax at source under section 194J are attracted in respect of

	payment of fees for technical services, if the amount of such fees exceeds Rs. 30,000 in the relevant financial year.
Analysis	**1) Technical services are in nature of specialized services:** Technical services like managerial and consultancy service are in the nature of specialized services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. The transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. **2) Services rendered by stock exchange are not special, exclusive or customized in nature:** The services provided by the stock exchange are available to all members. A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. However, there is nothing special, exclusive or customized in the services rendered by the stock exchange and each and every member has to avail such services in the normal course of trading in securities in the stock exchange.
Conclusion	The Apex Court, accordingly, held that the services provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

12. Ajmer Vidyut Vitran Nigam Ltd (AAR)

Facts	(i) The applicant is a government company engaged in the business of supply of electricity to customers. (ii) The production is by the generating company, which is another entity and transmission to the applicant is through the transmission system. (iii) The transmission of electricity from the point of generation to the point of distribution of the applicant is termed as "wheeling". The transmission company also functions as a State Load Dispatch Centre (SLDC). (iv) The applicant pays to the transmission company, wheeling and SLDC charges which it claims as statutory in nature. **The applicant contended that the transmission does not involve rendering of any technical services nor were technically qualified staff of the transmission company involved in the transmission of electrical energy. The SLDC charges were also mere statutory charges and does not involve rendering of technical services.** (v) The Revenue, on the other hand, was of the view that the transmission of electrical energy from the point of generation to the point of distribution of the applicant involves rendering of technical services and consequently, the applicant was bound to withhold tax.
Issue Raised	Will Transmission, wheeling charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J and also SDLC charges paid will attract TDS u/s 194J or 194C?
Provision	As per section 9(1)(vii), fees for technical services means any consideration for rendering of any managerial, technical and consultancy services but does not include consideration for construction, assembly, mining and salaries.
Analysis	**1) Transmission and wheeling charges constitute fees for technical services:** The AAR did not agree with the applicant's contention regarding transmission and wheeling charges not constituting fees for technical services on the ground that no rendering of technical services was involved for maintaining proper and regular transmission of electrical

	energy. It was also not in agreement with the applicant's argument that the services of technical personnel were not needed for ensuring due and proper transmission of electrical energy from the generation point to the distribution point. The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J. **2) SDLC charges are not in nature of technical services** As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS provisions under section 194J or under section 194C.
Conclusion	Transmission and wheeling charges attract TDS Provision u/s 194J whereas SDLC charges does not attract TDS provisions under section 194J or under section 194C.

13. Director, Prasar Bharati (SC)

Facts	1) The assessee, Prasar Bharati Doordarshan Kendra, runs the television channel called Doordarshan. 2) For the purpose of telecasting advertisements of consumer companies on its channel, the assessee entered into agreements with advertising agencies. The agencies were required to make an application to the assessee to get the "accredited status" for their Agency so as to enable them to do business with the assessee. 3) The agencies were to give minimum annual business of Rs.6 lakhs to the assessee in a financial year. The agreement provided that the accredited agencies would retain 15% by way of commission out of the amount collected from customers and paid to the assessee. The agencies were not allowed to part commission with an person. 4) The AO was of the view that such retention by the agencies were in the nature of "commission" u/s 194H, and the assessee was in default u/s 201(1) as it had failed to deduct tax at source on such commission retained. 5) The assessee, however, contended that its relationship with agencies were on "principal-to-principal" basis since the agencies purchased airtime from the assessee and then sold it in the market for advertisement to their customer after retaining 15% of the said sum.
Issue Raised	Whether the amount retained by the accredited agencies is in the nature of commission to attract the provisions of section 194H.?
Provision	1) Sec.194H provides that deduction of tax at source @ 5% on commission paid. 2) Explanation (i) to Sec. 194H defines Commission as "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset.
Analysis	**1) Inclusive definition of 'commission' u/s 194H** SC observed that the definition of "commission or brokerage" u/s 194H is inclusive and covers any payment received or receivable directly or indirectly by a person acting on behalf of another person for the services rendered. **2) Agreement itself used word 'commission'**

	The agreement itself uses the expression "commission" in all relevant clauses. The payment clause is free of ambiguity and the terms of the agreement indicate that both parties intended that the amount to be paid/retained is in the nature of commission. It is for this reason that the parties used the expression "commission" in the agreement. Keeping in view the tenure and the nature of transaction, SC held that it is clear that the assessee was paying 15% to the agencies by way of "commission" but not under any other head **3) It was agency arrangement for securing advertising business from the agencies.** SC noted that it was also clear that payment of 15% was being made by the assessee to the agencies after collecting money from them and it was for securing more advertisements for them and to earn more business from the advertisement agencies. The relationship in question was a pure agency arrangement because the agency acted on behalf of the assessee and the actions of the agency were binding on the assessee. The agreement also contained a specific clause for deduction of tax at source on trade discount, which is in the nature of commission
Conclusion	The Supreme Court, thus, held that the amount retained by the accredited advertising agencies is commission and consequently, the provisions of tax deduction at source u/s 194H are attracted. Consequently, for failure to deduct tax at source u/s 194H, the assessee would be treated as an assessee-in-default.

Note - It may be noted that the CBDT has, vide Circular No.5/2016 dated 29.2.2016, clarified that TDS under section 194H is not attracted on retentions by an advertising agency (for booking or procuring of or canvassing for advertisements) from payments remitted to television channels/newspaper companies. The CBDT has issued this clarification on the basis of the Allahabad High Court ruling in Jagran Prakashan Ltd.'s case and Delhi High Court ruling in Living Media Ltd.'s case that the relationship between the media company and advertising agency is that of a "principal to principal".However, the Supreme Court, in this case, has distinguished from the Allahabad High Court ruling, on the basis of the fact that an agreement has been entered into by Doordarshan with the accredited agencies specifically appointing them as agents; and the agreement also contains a specific clause for deduction of tax at source on trade discount, which is in the nature of commission.Accordingly, the Supreme Court held that the relationship between Doordarshan and its accredited agencies is that of a principal and agent, consequent to which TDS provisions u/s 194H would get attracted in respect of retentions by accredited advertising agencies from payments remitted to Doordarshan. Therefore, the applicability or otherwise of the CBDT Circular will depend on the facts of the
specific case.

14. Director of Income-Tax (International Taxation) v. A.P. Moller Maersk [2017] – SC

Facts	1. The assessee was a foreign company engaged in shipping business and was a tax resident of Denmark. 2. The assessee had agents working for it across the globe, who booked cargo and acted as clearing agents. 3. In India, the assessee had three agents. 4. The assessee had set up and maintained a vertically integrated communication system called Maersk net system in order to help all its agents. 5. The agents paid for the system on a pro rata basis. 6. The Assessing Officer contended that the amounts paid by the Indian agents were fees for technical services taxable under Article 13(4) of the India and Denmark DTAA. 7. The assessee argued that the arrangement was merely a cost sharing system and the payments were only a reimbursement of expenses.
Issue Raised	Whether payments made by the agents, to use a centralized communication system maintained by the assessee-company, can be treated as fees for technical services?

Provision	Sec. 9(1)(vii) provides that income by way of fees for technical services payable by a person who is a resident in India is deemed to accrue or arise in India.
Analysis	**1. <u>Centralised communication system was an integral part of the international shipping business of the assessee</u>** The Supreme Court observed that, for the sake of convenience of its agents, the assessee had set up a centralised communication system which was an integral part of the international shipping business of the assessee and common facility was provided to all the agents. 2. **<u>Sharing of Expenditure Towards Common Facilities:</u>** The expenditure incurred for running this system was **<u>shared by all the agents</u>** and payments to assessee were **<u>merely as reimbursement</u>** of expenses incurred. The payments could not be treated as fees for technical services. 3. **<u>Transaction at ARM's Length:</u>** <u>No profit element was embedded in the payments, also the TPO had accepted that the payments were in the nature of reimbursement</u> (in assessee's hands at arm's length) 4. **<u>DTAA applied:</u>** Moreover, the Revenue authorities had accepted that assessee's freight income in the relevant assessment years was not chargeable to tax as it arose from the operation of ships in international waters in terms of Article 9 of the India and Denmark DTAA ***(DS Comment: as per Article 9, shipping profits are taxable in the country where POEM is established)***. 5. **<u>Business Profit v/s Technical Services:</u>** Once that was accepted and it was found that the communication system was an integral part of the shipping business, payments received from agents could not be treated as in lieu of any technical services. **6. <u>It was only a facility that was allowed to be shared by the agents and it can not be treated as any technical services</u>** SC relied on Kotak Securities Ltd. ruling wherein it was held that "use of facility does not amount to technical services, as technical services denote services catering to the special needs of the person using them and not a facility provided to all"; Thus, <u>SC ruled that "it is only a facility that was allowed to be shared by the agents and by no stretch of imagination it can be treated as any technical services provided to the agents"</u>
Conclusion	**The Supreme Court, accordingly, held that amounts paid by Indian agents to the non-resident company would not be liable to tax as fee for technical services under Article 13(4) of the India and Denmark DTAA.**

<u>Issues on Waiver</u>

15. KLN Agrotechs (P) Ltd. (HC)

Facts	The assessee had obtained the loan from bank and the outstanding loan amount was Rs. 635.26 Lakhs. The assessee made default in repayment of loan. Interest amount was Rs. 193.96 Lakhs. It entered into one-time settlement (OTS) with the bank and paid the lump sum amount of Rs. 378.72 Lakhs without any bifurcation into principal and interest. In the return filled, the assessee offered as income Rs. 256.54 Lakhs being the difference between the amount outstanding (Rs. 635.26 Lakhs) and the actual amount paid (Rs. 378.72 Lakhs). The assessee also claimed the interest of Rs. 193.96 Lakhs as deduction under section 43B. The revenue disallowed the deduction of interest and charged to tax the entire amount of Rs. 256.54 Lakhs considering the actual amount paid as the amount adjusted towards the principal outstanding amount.

Issue Raised	Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of Interest and Principal, has been offered to tax under section 41(1), can the assessee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?
Provision	As per section 41(1) where in any P.Y. any deduction of any expenses or trading liability was claimed and subsequently, benefit is obtained by way of recovery/remission/ cessation of such liability then such benefit would be taxed as business profits in the year when benefit is received. As per section 43B, interest on any loan or advance from a scheduled bank is allowed as a deduction, if they are actually paid by the assessee before the due date of filing ROI.
Analysis	NO DOUBLE JEOPARDY: The assessee cannot be subjected to double jeopardy i.e., it could not be subjected to tax on the entire waived amount as well as subjected to disallowance of interest under section 43B, as the said two effects are mutually exclusive and cannot co-exist. Accordingly, the High Court held that where the entire sum waived (Rs. 256.54 Lakhs) was offered to tax then the interest amount of Rs. 193.96 Lakhs would be allowed as deduction U/s 43B. Therefore, the effective amount that would be chargeable to tax would be Rs. 62.58 Lakhs (Rs. 256.54 lakhs – Rs. 193.96 Lakhs).
Conclusion	Based on the above reasoning, the HC held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax would come to the same.
 **DS Comment**	*This, in effect, is the rationale of the court ruling, i.e. where the entire amount waived has been offered as income under section 41(1), interest waived and interest paid would be allowed as deduction under section 43B and that would effectively bring to tax, the principal amount waived.*

16. Mahindra and Mahindra Ltd.(SC)

Facts	1) The assessee, Mahindra and Mahindra, decided to expand its jeep product line and entered into an agreement with K, an American company, wherein K agreed to sell the dies, welding equipments and die models to the assessee. For the procurement of the said toolings and other equipments, K agreed to provide a loan to the assessee at the rate of 6% interest repayable after 10 years in instalments. 2) Later on, AMC took over K and agreed to waive the principal amount of loan advanced by K to the assessee-company and to cancel the promissory notes as and when they matured. 3) The assessee claimed the waiver to be capital receipt. While, the AO concluded that the waiver of the loan amount represented income and was taxable u/s 28(iv) as a perquisite. The alternate argument of the revenue authorities was that the sum would be taxable u/s 41(1) as a waiver of a trading liability.
Issue Raised	Whether the sum due by the assessee-company to K, which has been waived off later on by AMC (which took over K), constitutes taxable income in the hands of the company u/s 28(iv) or u/s 41(1).
Provision	• Sec.28(iv) provides that the value of **ANY BENEFIT OR PERQUISITE, WHETHER CONVERTIBLE INTO MONEY OR NOT**, arising from business or the exercise of a profession shall be chargeable under the head PGBP. • Sec.41(1) provides that where an allowance or deduction has been made in the assessment for any year **IN RESPECT OF LOSS, EXPENDITURE OR TRADING LIABILITY**

	incurred by the assessee and subsequently during any previous year, assessee has obtained, some benefit by way of remission or cessation thereof, the amount obtained by assessee or the value of benefit accruing to him shall be deemed to be PGBP
Analysis	1) Sec.28(iv) applies only when benefit is non-cash in nature Supreme Court observed that for applicability of section 28(iv), income must arise from business or profession and the benefit received has to be in in some other form rather than in the shape of money. SC held that waived amount represented a cash receipt due to waiver and therefore, provisions of Sec 28(iv) would not apply. 2) In order to attract provisions of Sec.41(1) it is the sine qua non that there should be an allowance or deduction claimed by the assessee in any assessment year in respect of loss, expenditure or trading liability incurred by the assessee, however, here loan was for procurement of capital asset. For being covered under section 41(1), the assessee-company should have claimed an allowance or deduction in any assessment for any year in respect of a trading liability incurred by the assessee. Subsequently, during any previous year, if the creditor waives such liability, the assessee-company would be liable to pay tax under section 41. In this case, the loan was taken for procurement of capital assets, namely, plant, machinery and tooling equipment. The purchase amount had not been debited to the trading account or to the profit and loss account in any of the assessment years. SC further noted that the assessee had been paying interest at 6 % per annum to K as per the contract but had never claimed a deduction for payment of interest u/s 36(1)(iii). Further, SC noted that the deduction claimed by assessee in earlier years was on account of depreciation of machine and not on account of interest payment. Hence, waiver of such loan would not tantamount to cessation of a trading liability.
Conclusion	The Supreme Court, accordingly, held that the amount of loan waived would not be taxable either under section 41(1) or under section 28(iv).

Note- As per section 2(24)(xviii), assistance in the form of waiver by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee would be included in the definition of "income". In this case, the waiver is by a foreign company, and hence, is not included within the scope of definition of "income" under section 2(24).

Further, it may be noted that as per Explanation 10 to section 43(1), deduction on account of, subsidy or grant or reimbursement, by whatever name called, received from any person has to be made while computing actual cost. Since waiver has not been expressly included in the said Explanation, it is possible to take a view that the same is not deductible while computing the actual cost. However, if a view is taken that "waiver" is included within the scope of the phrase "by whatever name called" in the said Explanation, then, the same has to be deducted while computing actual cost.

17. Mcdowell & Company Ltd. v. CIT [2017] (SC)

Facts	**1)** HPL (sick industrial company) had amalgamated with the assessee-company vide order of High Court. **2)** The HPL had claimed deduction of accrued interest expenses on the loans given to it by financial companies. The benefit of deduction of interest expenses was given in the assessment orders. **3)** The assessee-company pursuant to amalgamation had claimed set off of accumulated losses of HPL as per the provisions of Section 72A. **4)** Under the scheme of amalgamation that was approved by the high court, the secured creditors as well the banks which had advanced loans to HPL, agreed to waive of the interest. **Since the interest was claimed as expenditure by HPL, on waiver of said interest, it became income in terms of section 41(1).**

	5) The assessee filed its return claiming set off of the accumulated losses which it had taken over from HPL by virtue of the provisions contained in Section 72A of the Act. The assessing officer however held that while allowing the benefit of set off of accumulated losses u/s 72A to the assessee, the income which had accrued under section 41(1), had not been set off against the accumulated losses. **The assessing officer, therefore, treated the aforesaid income in the hands of the assessee and adjusted the same from the accumulated losses.**
Issue Raised	**1)** Where at the time of amalgamation, the interest expenditure claimed by HPL was waived by the creditors, whether such waiver of interest would be income of the assessee – company u/s 41(1). **2)** Where the assessee was allowed benefit of set off of accumulated loss in terms of section 72A, while computing those losses, whether waiver of interest income accrued u/s 41(1) had to be adjusted and only thereafter net losses could have been allowed to be set off by the assessee company.
Provision	As per section 41(1), where any deduction has been allowed of an expenditure or loss or trading liability incurred by the assessee and subsequently during any P.Y. the assessee or its successor has obtained benefit by way of remission or cessation of such trading liability, the value of benefit accruing to the assessee or its successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year. As per section 72A, under certain circumstances and on fulfilment of conditions laid down therein, the company which takes over the sick company is allowed to set off losses of the amalgamated company as its own losses.
Analysis	**1) The Benefit of waiver of interest had occurred after HPL entity ceased to exist as an entity.** The Court took note of the fact that the assessee had taken over the sick company i.e. HPL through the scheme of amalgamation and that the HPL ceased to have any identity as it did not remain a 'person' either in fact or in law after amalgamation. However, rights are determined in terms of the scheme of amalgamation and since the benefit of interest had accrued after the company had ceased to exist, it was, in fact, availed of by the assessee company. Hence, the benefit of waiver of interest claimed by the HPL would accrue in the hands of the assessee company. **2) The assessee-company was allowed to set off the accumulated losses of HPL.** What is more important is that the assessee company was allowed to set off the accumulated losses of the company amalgamated with it, i.e., HPL. This was the benefit which accrued to the assessee under the provisions of section 72A of the Act. When the assessee is allowed the benefit of the accumulated losses, while computing those losses, the income (in the form of waiver of interest expense) which had accrued to HPL had to be adjusted and only thereafter net losses could have been allowed to be set off by the assessee company.
Conclusion	As per the provisions of section 72A, losses suffered by HPL were deemed to be treated as losses of the assessee company. Accordingly, in a case like this, it cannot be said that the assessee would be entitled to take advantage of the accumulated losses but while calculating those accumulated losses at the hands of HPL, the income accrued under section 41(1) at the hands of HPL would not be accounted for. That had to be necessarily adjusted in order to see what are the actual accumulated losses, the benefit whereof is to be extended to the assessee.

18. Sind Co-operative Housing Society v. ITO (HC)

Issue Raised	Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?
Analysis	On this issue, the HC observed that under the bye-laws of the society, charging of transfer fees had no element of trading or commerciality. Both the incoming and outgoing members have to contribute to the common funds of the assessee. The amount paid was to be exclusively used for the benefit of the members as a class.
Conclusion	The HC held that transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on the ground of principle of mutuality since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business. Further, Section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.

19. Venkatesh Premises Co-operative Society Ltd(SC)

Issue Raised	Whether certain receipts by co-operative societies from its members (non-occupancy charges, transfer charges, common amenity fund charges) are exempt based on the doctrine of mutuality?
Provision	1) The income of a co-operative society from business is taxable under section 2(24)(vii) and will stand excluded based on the principle of mutuality. 2) The essence of the principle of mutuality lies in the commonality of the contributors and participants who are the beneficiaries i.e. a person cannot make profit from himself.
Analysis	1) **Transfer charges paid by transferee would not partake the nature of profit or commerciality as the amount is appropriated only after the transferee is inducted as a member.** Transfer charges are payable by the outgoing member. If for convenience, part of the transfer charges were paid by the transferee, they would not partake of the nature of profit as the amount is appropriated only after the transferee was inducted as a member. In the event of non-admission, the amount was returned. The moment the transferee was inducted as a member the principles of mutuality would apply. 2) **Non-occupancy charges are levied by the society on members who did not himself occupy the premises but let them out to a third person.** The charges were utilised only for common benefit of facilities and amenities to the members. **3) Contribution to the common amenity fund is also for the benefit of members** Contribution to the common amenity fund taken from a member disposing property was utilized for meeting heavy repairs to ensure hazard-free maintenance of the properties of the society which ultimately benefitted the members. **4) If a society had surplus floor space index available, it was entitled to utilise it by making fresh construction in accordance with law.** Naturally, such additional construction would entail extra maintenance charges. If the society first inducted new members who were required to contribute to the common fund for availing of the common facilities, and then granted only occupancy rights to them by draw of lots, the receipts could not be bifurcated into two segments of receipt and costs, so as to hold the former to be outside the

	purview of mutuality classifying it as income of the society with commerciality.
Conclusion	The doctrine of mutuality, is based on the common law principle that a person cannot make a profit from himself. Accordingly, the transfer charges, non-occupancy charges common amenity fund charges and other charges are exempt owing to application of the doctrine of mutuality.

Issue Arising on Raising Finance

20. CIT vs ITC Hotels Ltd. (HC)

Issue Raised	**Convertible debentures – Cost of issue** Would the expenditure incurred for issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?
Conclusion	Held that the expenditure incurred on the issue and collection of debentures shall be treated as and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.

21. Berger Paints India Ltd v. CIT [2017] – SC

Facts	1. The assessee is a company engaged in the manufacture of paints. 2. For the relevant assessment years, the assessee claimed deduction under section 35D of a sum representing share premium as being a part of the capital employed. 3. The said deduction was disallowed by the Assessing Officer.
Issue Raised	Whether "premium" on subscribed share capital is "capital employed in the business of the company" under section 35D to be eligible for a deduction?
Provision	Sec. 35D allows 1/5th of pre-commencement preliminary expenditure to an Indian company. The deduction is allowed for higher of 5% of cost of project or 5% of capital employed. The deduction shall not exceed actual expenditure incurred. The term capital employed is defined to mean aggregate of the issued share capital, debentures and long term borrowings as on the **last day** of the P.Y. in which the business of the company commences.
Analysis	1. **Share premium not part of the "capital employed"** The Supreme Court observed that the share premium collected by the assessee on its subscribed issued share capital could not be part of "capital employed in the business of the company" for the purpose of section 35D(3)(b). If it were the intention of the legislature to treat share premium as being "capital employed in the business of the company", it would have been explicitly mentioned. 2. **In the Annual Return filed under Companies Act the break-up of issued share capital does not include share premium** Moreover, in the form of the annual return under Companies Act, capital structure of the company provides the break-up of "issued share capital" which does not include share premium at the time of subscription. Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed. **Note –** Under the Companies Act, 2013, Serial No. IV of Form MGT-7 (Annual Return) read with section 92 relates to the capital structure of a company, including break-up of issued share capital and section 52 deals with securities premium. Thus, the rationale of the Supreme Court ruling in the above case would hold good in the Companies Act, 2013 regime. 3. Also, section 78 of the Companies Act, 1956 requires a company to transfer the premium amount to be kept in a separate account called "securities premium account".

Conclusion	**The Supreme Court held that the assessee is not entitled to claim deduction in relation to the premium amount received from shareholders at the time of share subscription.**

22. Sree Rama Multi Tech Ltd (SC)

Facts	1) The assessee-company came out with an initial public issue of shares during the relevant assessment years and deposited the share application money received in banks. 2) The interest earned on the deposits was shown in the return of income originally filed under the head 'Income from Other Sources'. 3) Subsequently, the assessee-company raised an additional ground before the Tribunal for allowing the set off of such interest against the public issue expenses.
Issue Raised	Interest income from share application money can the same be set-off against public issue expenses or is taxable under the head 'Income from Other Sources'.
Provision	Sec. 37(1) provides that any expenditure not being in the nature of capital expenditure laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession"
Analysis	**1)Interest earned on surplus application money deposited in bank was inextricably linked with requirement of company to raise share capital** The Supreme Court observed that the assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Therefore, the interest earned was inextricably linked with the requirement of raising share capital. **2) Surplus money deposited for earning interest vis-a-viz incidental accrual of income** SC referred to its ruling in Bokaro Steel Ltd. and noted that common rationale that was followed in all these judgment was that "if there is any surplus money which is lying idle and it has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources." SC further added that "but if the income accrued is merely incidental and not the prime purpose of doing the act in question which resulted into accrual of some additional income then the income is not liable to be assessed and is eligible to be claimed as deduction". **3) Sree Rama Multi Tech Ltd (SC)** 'Incidental' FD interest on share application proceeds, non-taxable ; Deductible against IPO expenses **3) Share application money was deposited as statutory mandate and not for earning interest** SC held that if the share application money that was received was deposited in the bank in light of the statutory mandatory requirement then the accrued interest was not liable to be taxed and was eligible for deduction against the public issue expenses. SC elaborated that the purpose of such deposit was not to make some additional income but to comply with the statutory requirement, and interest accrued on such deposit was merely incidental. **4) Share issue expenses are in capital field** SC clarified that the issue of share related to capital structure of the company and hence expenses incurred in connection with the issue of shares were to be capitalized. Any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources". **5)** SC rejected the Revenue's contention that part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share

	application money would not ultimately be appropriated by the company on the ground that this factor would make any significant difference.
Conclusion	Interest accrued on deposit of share application money with bank is eligible for set off against the public issue expenses; such interest is, hence, not taxable as "Income from Other Sources".

Deductions

23. CIT vs. IBM Global Service Indian (P) Ltd. [2017] (SC)

Facts	i) The assessee-company came into existence on the bifurcation of a joint venture company floated earlier by two other companies. ii) The assessee-company paid amount to JVC for use of domestic customer database, which gave information about various past customers and also paid for obtaining certain skilled and trained employees of the JVC. iii) **The assessee claimed both the payments as revenue expenditure.** iv) The AO contended that domestic customer database is a capital asset which provides an enduring benefits to assessee, since by utilizing the same, the assessee can successfully run its business activity over considerable point of time and hence treated the same as capital expenditure. v) On similar line A.O also contended that compensation paid by assessee to JVC for transfer of human skills is capital expenditure.
Issue Raised	Can the amount paid by the assessee- company (which came into existence on bifurcation of JVC) to the JVC for use of customer database and for obtaining trained personnel of JVC, be claimed as revenue expenditure?
Provision	As per section 37(1), any expenditure not being capital in nature shall be allowed as deductions provided it is incurred wholly and exclusively for the purpose of business & profession
Analysis	**1) Payment for right to use database:** The expenditure incurred for use of customer database did not result in acquisition of any capital asset. The assessee got the right to use the database and the company which provided the database was not precluded from using such database. Therefore, the expenditure incurred was for use of data base and not for acquisition of such data base and, hence, is deductible as revenue expenditure. **2) Payment for obtaining trained and skilled employees:** As regards payment for obtaining trained and skilled employees, it was held that the JVC spent a lot of money to give training to employees who were transferred to the assessee-company. In effect, the payment made by the assessee-company was towards expenditure incurred for their training and recruitment with the JVC in past. Such expenditure was in the revenue field, and therefore, the payment made was also revenue in nature.
Conclusion	The Apex Court held that expenditure towards right to use customer database and for obtaining trained and skilled employees was revenue expenditure and cannot be termed as capital expenditure. Therefore the contention of the AO is not correct.

24. Shyam Burlap Co. Ltd. (HC)

Facts	i) The assessee-company was deriving 85% of its income from rent and lease rentals

	and its object clause of MOA permitted the assessee to carry on the business of letting out premises. ii) The assessee had leased its certain property and had decided to revise the lease rent on the higher scale. iii) However, the lessee refused to increase the lease rent and offered to vacate the premises provided the assessee paid adequate compensation. iv) The assessee claimed such compensation as its business expenditure treating it as revenue in nature. v) The AO disallowed the claim of the assessee by treating the amount of compensation as capital expenditure on the ground that such payment was made for acquiring a benefit of enduring nature.
Issue Raised	Whether Compensation paid by the assessee-company to its tenants for vacating the premises in order to earn higher rent by re-letting out the same should be considered as revenue expenditure for business purpose?
Provision	As per Section 37(1), any expenditure not being capital in nature and for the purpose of Business and Profession shall be allowed as deduction
Analysis	**Object clause in MOA needs to be looked:** 1) Apex Court in the case of **Chennai Properties and Investments Ltd**. v. CIT had laid down the ratio that the objects of the company must also be kept in mind while interpreting the nature of rental income and the head under which the same is taxable 2) If the main object of the company was to earn rental income by letting out of properties, such income constituted its business income and not income from house property. **Payment of compensation was on account of business expediency:** 3) The assessee, being the owner of the property, was carrying on business by letting out of properties and the compensation paid to the existing tenants was for deriving higher rent by re-letting out the properties which was in line with the MOA of the company 4) The said compensation paid is arising out of **business necessity** and **commercial expediency.** **Expenditure not capital in nature:** 5) As the compensation was not for acquiring a property, it cannot be said that the payment made was for having a benefit of enduring nature
Conclusion	The HC based on the rational of the SC ruling in Chennai Properties' case, held that when income from letting out of property is treated as income from business, the compensation paid to tenants for vacating the premises to facilitate the assessee to derive the higher rent by re-letting out the premises, is deductible as revenue expenditure.

25. Honda Seil Cars India Ltd. vs CIT (2017) (SC)

Facts	**1.** HMCL, Japan entered into a joint venture with SEIL Ltd., Indian Company. After getting necessary approval from the Government of India, a Joint venture company was incorporated in the name of the assessee to establish a unit for manufacture of automobiles and part thereof. **2.** Thereafter, an agreement between HMCL and the assessee was entered into, known as Technical Collaboration Agreement (TCA). As per the TCA, HMCL (which was engaged in the business of development, manufacture and sale of automobiles and their parts) agreed to give licence and technical assistance to the assessee for establishment of plant, machinery etc. so as to bring in existence manufacturing unit for the products. **3.** The TCA also stipulated different kinds of technical know-how and technical

	information which were to be provided by HMCL (licensor) to the assessee (licensee). **4.** For providing the said facilities, it was agreed that a consideration/lump sum fee would be paid by the assessee to HMCL in five continuous equal instalments and payment thereof was to commence from third year after commencement of commercial production. Besides, the assessee was also liable to pay royalty. **5.** The assessee claimed the lump sum fee and royalty paid as revenue expenditure. **6.** The AO contended that it was capital expenditure.
Issue Raised	Whether the lump sum consideration and royalty paid towards acquiring technical know-how and technical assistance would be capital/revenue expenditure.
Provision	As per section 37(1), any expenditure <u>not being capital in nature</u> shall be allowed as deductions provided it is incurred wholly and exclusively for the purpose of business & profession.
Analysis	**a) <u>New business had come into existence:</u>** The very purpose of agreement between the two companies was to set up a joint venture company with aim and objective to establish a unit for manufacture of automobiles and part thereof. The <u>agreement provided for technical know-how for establishment of plant, machinery etc. so as to bring in existence manufacturing unit for the products.</u> Thus, a new business was set up with the technical know-how provided by HMCL, Japan. <u>The TCA was for setting up of new plant for the first time to manufacture cars.</u> **b) <u>The termination of agreement would mean termination of joint venture:</u>** Though the technical know-how was for the limited period, i.e., for the tenure of the agreement. However, <u>in case of termination of the agreement, joint venture itself would come to an end and there would not be any further continuation of manufacture of product without technical know-how of foreign collaborators</u>. **c) <u>Agreement was for enduring benefit though it was for limited period:</u>** Since, the life of manufacture of product in the plant and machinery, was established with assistance of foreign company, in co-extensive with the agreement, <u>the agreement was for enduring benefit</u>.
Conclusion	Since, it is found that the agreement in question was crucial for setting up of the plant project in question for manufacturing of the goods, the expenditure in the form of royalty paid would be in the nature of capital expenditure and not revenue expenditure.

26. TVS Motors Ltd. (HC)

Facts	The assessee-company claimed deduction u/s 31 for expenditure incurred on replacements of dies and moulds in the place of worn out dies and moulds since the dies and moulds are not plant and machinery but are attachments to make plant and machinery function. The claim was rejected by the A.O on the ground that assessee had claimed depreciation on machinery in earlier years
Issue Raised	Whether Expenditure on replacement of dies and moulds, being parts of plant and machinery, are deductible as current repairs u/s 31?
Provision	Under section 31 of the Act repairs, rent and taxes of machinery is allowed as deduction. However the deduction on account of repair is allowed only if it is in the nature of "Current Repair". Current repair is an expenditure which is not capital in nature,
Analysis	1) "Moulds & dies" are <u>not independent</u> of plant and machinery but are parts of plant and machinery and once they are worn out, they need to be replaced to enable the machinery to **perform the same functions.**

	2) As long as there was **no change in the performance** of the machinery and the parts that were replaced were performing precisely the same function, the expenditure has to be considered as **current repairs** of plant and machinery. 3) When the object of the expenditure was not: a) for bringing into existence a new asset; or b) to obtain a new advantage, the said expenditure qualifies as 'current repairs' under section 31. 4) The assessee-company claimed deduction under section 31 since the dies and moulds are not plant and machinery but are attachments to make plant & machinery function.
Conclusion	The HC held that the expenditure incurred by the assessee towards **replacement of parts** of machinery to ensure its performance **without bringing any new asset** or advantage, is eligible for deduction as 'current repairs' u/s 31

Issues in Profit Linked Deductions

27. HCL Technologies Limited (SC)	
Facts	1) The assessee-company was engaged in the business of development and export of computer software and rendering technical services. 2) While computing the deduction u/s. 10A, assessee deducted the software development charges from total turnover as well as export turnover on the ground that such charges are relatable towards expenses incurred on providing technical services outside India, in terms of Explanation 2(iv) of Section 10A. 3) AO denied deduction from total turnover for such software charges.
Issue Raised	Whether software development charges incurred in foreign exchange attributable to the delivery of technical services outside India, deductible from export turnover, be excluded from total turnover also for computing deduction under section 10AA?
Provision	1) Sec.10AA provides deduction to SEZ-unit from profits and gains derived from the export of articles or things manufactured or produced. **2)** Explanation 1 (i) defines the term 'export turnover' means the consideration in respect of export by the undertaking, being the Unit of articles or things or services received in, or brought into, India by the assessee **BUT DOES NOT INCLUDE FREIGHT, TELECOMMUNICATION CHARGES OR INSURANCE ATTRIBUTABLE TO THE DELIVERY OF THE ARTICLES OR THINGS OUTSIDE INDIA OR EXPENSES, IF ANY, INCURRED IN FOREIGN EXCHANGE IN RENDERING OF SERVICES (INCLUDING COMPUTER SOFTWARE) OUTSIDE INDIA**
Analysis	**1) The term "total turnover" has not been defined in section 10AA under which the deduction is sought.** The Court observed that when a particular word such as "total turnover" is not defined by the legislature, ordinary meaning is to be attributed in conformity with the context in which it is used. **2) Clause (i) of Explanation 1 to section 10AA defines "export turnover"** to mean the consideration that has been received for export of articles/things/services received. Normally the consideration will include the freight/telecommunication charges/insurance which had been incurred to deliver the article/things or expenses incurred in rendering of services outside India. **However, clause (i) of Explanation 1 specifically seeks to exclude these three categories of expenditure for delivering the export of articles/things or expenses incurred in foreign exchange in rendering of services outside India.**

	3) Clause (i) of Explanation 1 to section 10AA exclude from the definition of "export turnover" freight, telecommunication charges, insurance or expenses, if any, incurred in foreign exchange in rendering of services outside India. 4) **One of the component of "total turnover" is export turnover and therefore, what is excluded from export turnover should be excluded from total turnover as well otherwise it would lead to inadvertent results.** Expenses incurred in foreign exchange for providing the technical services outside are thus, to be excluded from total turnover also. **5) If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction under section 10AA, then, it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature.**
Conclusion	Expenditure incurred in foreign exchange for providing technical services outside India are deductible from export as well as total turnover.
Note- **Further, CBDT in line with SC ruling has also clarified vide issued Circular No.4/2018 dated 14.8.2018 that freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" as well as "total turnover" while working out the admissible deduction u/s 10A to the extent they are attributable to the delivery of articles/things/computer software outside India.** **Though the above decision of the Supreme Court is in relation to erstwhile section 10A, the same is also relevant in the context of section 10AA. Accordingly, the reference to section 10A and the relevant sub- section and Explanation number thereto have been modified.**	

28. Container Corporation of India Limited (SC)

Facts	1) M/s. Container Corporation of India Ltd. (CONCOR) is a Government company engaged in the business of handling and transportation of containerized cargo. 2) Its operating activities are mainly carried out at its Inland Container Depots (ICDs), Container Freight Stations and Port Side Container Terminals. 3) CONCOR filed its income-tax returns for the relevant assessment years and claimed deduction under various heads including deduction under section 80-IA for profits derived from inland container depots. 4) The claim for deduction on the profits earned from inland container depots was, however, rejected by the AO on the ground that ICDs cannot be said to fall within Explanation (d) of Sec.80-IA(4) defining the term infrastructure facility.
Issue Raised	Whether profits derived from inland container depots can be treated as an infrastructure facility eligible for deduction under section 80-IA.?
Provision	1) Section 80-IA provides for a deduction of profits derived from operation of an infrastructure facility. 2) The Finance Act, 2001 substituted section 80-IA(4), consequent to which the definition of "infrastructure facility" in Explanation to section 80-IA(4)(i) included an inland port.
Analysis	**1) ICDs act as facilitators for custom clearances** SC stated that the term port in commercial terms, is a place where vessels are in a habit of loading and unloading goods and the term as also used in the Explanation attached to Sec.80-IA(4) seemed to have maritime connotation. SC stated that the purpose of introducing ICDs was to promote the export and import in the country as these depots acts as a facilitator for person having place of business situated in a land locked area i.e., away

	from the sea. SC noted that ICDs reduced the bottlenecks that are arising out of handling and customs formalities that are required to be done at the sea ports by allowing the same to be done at these depots only that are situated near to them. SC stated that though the nature of work that is performed at ICDs disentitled them to be termed as Ports , the fact that a part of activities that are carried out at ICDs such as custom clearance, the claim of the assessee herein can be considered within the term 'Inland port' as is used in the Explanation. **2) Inland Port defined by CBEC Notification includes ICDs** SC stated that the term 'Inland Port' has not been defined anywhere but the Notification issued by CBEC on April 24, 2007 held that considering the nature of work carried out at these ICDs they can be termed as Inland Ports. Further SC held that the communication dated May 25, 2009 issued on behalf of the Ministry of Commerce and Industry confirm that the ICDs are Inland Ports fortified the claim of the assessee. SC thus remarked that, "Unless shown otherwise, it cannot be held that the term 'Inland Ports' is used differently under Section 80-IA of the IT Act." **3)Considering the nature of work such as custom clearance carried out at inland container depots, it can be considered as an inland port within the meaning of section 80- IA(4).** Thus, deduction under section 80-IA can be claimed in respect of income earned there from.
Conclusion	CONCOR can claim for deduction under Section 80-IA in respect of profits derived from Inland Container Depots.

Trust Taxation

29. U.P. Distillers Association (UPDA) (Delhi HC)	
Facts	1) A search and seizure operation took place in the premises of the Secretary General of the assessee, that is, Uttar Pradesh Distillers Association. 2) During the search, the Secretary General's statement was recorded u/s 132(4). The statement was retracted after two years. 3) In the meanwhile, the Commissioner of Income- tax (CIT) cancelled the assessee's registration u/s 12AA(3) on the basis of the search operation and the statement made. The order was upheld by the Appellate Tribunal. 4) The assessee contended that Secretary General's statement was made in the course of search in respect of his premises and not those of the assessee. Hence, the Secretary General's statement was not attributable to the assessee nor could the materials indicated by him be the basis for cancellation of registration of the trust u/s 12AA
Issue Raised	Whether the cancellation of registration under section 12AA as a charitable trust on the basis of search conducted in the premises of the Secretary General of the assessee- trust and the statement recorded by him under section 132(4) is valid?
Provision	Sec.12AA(3) provides that where a trust or an institution has been granted registration u/s 12AA(1) and subsequently where the CIT is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, he shall pass an order in writing cancelling the registration of such trust or institution
Analysis	1) The Court dismissed the appeal to hold that although the premises, in which the search u/s 132 took place, belonged to the Secretary General, he virtually ran the assessee-trust's activities from the same premises.

	2) The information which he provided in the course of the search pointed out to the activities of the assessee-trust and not to his own activities.
Conclusion	The Delhi High Court, accordingly, held that cancellation of the trust's registration u/s 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded u/s 132(4) from him, is valid. The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.

30. Queen's Educational Society (SC)

Facts	The assessee, an educational institution, showed a net surplus of 6.59 lakhs and 7.83 lakhs, respectively, for the assessment years 2000-01 and 2001-02 and claimed exemption under section 10(23C)(iiiad). The Assessing Officer rejected the claim of exemption on the ground that the assessee has made profits and did not exist solely for educational purposes which was also affirmed by HC.
Issue Raised	Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purpose?
Provision	As per Sec. 10(23C)(iiiad) exemption is available if 3 requirements are fulfilled, "any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed 1 crore rupees.
Analysis	**1) Profit is incidental to the main objects of spreading education** The profit is only incidental to the main object of spreading education. The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive. **2) making of surplus does not lead to conclusion that educational institution becomes an entity for profit** (i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit. (ii) If after meeting expenditure, surplus arises incidentally, it will not cease to be one existing solely for educational purposes. (iii) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit.
Conclusion	The Apex Court held that the assesse was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C) (iiiad) for claim of exemption there under.

31. St. Peter's Educational Society (SC)

Facts	The CIT refused application for grant of exemption u/s 10(23C)(vi) on the ground that society does not exist solely for education purpose and provides coaching/training courses on the behalf of industry, trade and commercial organizations and also provides general public utility services.
Issue Raised	Whether words imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption under section 10(23C)(vi)?

Provision	As per Sec. 10(23C)(iiiad) exemption is available if 3 requirements are fulfilled, "any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed 1 cr. rupees.
Analysis	**1) Institutions engaged in providing specialised training need not to impart education in formalized manner** Institutions engaged in providing specialized training in certain fields and awarding diplomas and certificates are also eligible for tax exemption in terms of section 10(23C) (vi). It is not mandatory for such institutions to impart education in formalized manner or conduct only recognized educational courses. Further, when corporates depute employees for gaining specialized knowledge, such imparting of knowledge by the institution would not mean that the institution is engaged in the activity of general public. **2) Making of surplus does not lead to conclusion that educational institution becomes an entity for profit** The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive. A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit.
Conclusion	The Apex Court held that the institution is established for the sole purpose of imparting education in a specialized field and thus **set aside** the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).

Exemptions

a) Section 10(37)

32. Balakrishnan v. Union of India & Others (2017) – SC

Facts	1. The assessee owned vast area of agricultural land. 2. The State Government acquired the property for development of a techno park. 3. The assessee was awarded compensation of Rs.14.37 lakhs. 4. Aggrieved by the amount, the assessee initiated negotiations with the Collector, further to which compensation was increased to Rs.38.42 lakhs. 5. The assessee claimed exemption from capital gains under section 10(37)(iii) stating that the transfer of agricultural land was on account of compulsory acquisition. 6. The Revenue authorities contended that the exemption should be denied as it was not a compulsory acquisition but a voluntary sale.
Issue Raised	Whether receipt of higher compensation on account of negotiations transforms the character of compulsory acquisition into a voluntary sale, so as to deny exemption under section 10(37)(iii)?
Provision	Sec.10(37)(iii) exempts any income chargeable under the head "Capital gains" arising from the transfer of agricultural land where such transfer is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined or approved by the Central Government or the Reserve Bank of India.
Analysis	1. The Supreme Court observed that the acquisition process was initiated under the Land Acquisition Act, 1894. The assessee entered into **negotiations only for securing the**

	market value of the land without having to go to the Court. Merely because the compensation amount is agreed upon, the character of acquisition will not change from compulsory acquisition to a voluntary sale. 2. The Court also drew attention to a recently enacted legislation titled, **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which empowers the Collector to pass an award with the consent of the parties**. **Despite the provision for consent, the acquisition would continue to be compulsory.**
Conclusion	**The Supreme Court held that when proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition. The claim of exemption from capital gains under section 10(37)(iii) is, therefore, tenable in law.**

b) TDS

33. Canara Bank (SC)

Facts	1) The assessee, New Okhla Industrial Development Authority (NOIDA), was constituted by a notification issued under Uttar Pradesh Industrial Development Act, 1976. 2) Canara Bank, made payment of interest on deposits to the assessee (NOIDA) without deducting tax u/s 194A. 3) The Commissioner of Income-tax (TDS) issued notices to Canara Bank, asking for information pertaining to interest paid without deducting tax at source u/s 194A.
Issue Raised	Whether NOIDA is a corporation by or under the Uttar Pradesh Industrial Area Development Act, 1976, consequent to which it is eligible for exemption from requirement of tax deduction at source in respect of payment of interest made to it by Canara Bank?
Provision	1) Section 194A requires deduction of tax at source while making interest payments. 2) Sec. 194A(3)(iii)(f) provides that sub-section (1) shall not apply to income credited or paid to institutions, associations notified by Central Govt. 3) A notification dated October 22,1970 is issued by CG u/s 194A(3)(iii)(f) exempting payments made to "any corporation established by a Central , State or Provincial Act" from the requirement of tax deduction at source.
Analysis	**1)Assessee should be 'corporation' being a separate legal entity** The Supreme Court explained a 'corporation' as an artificial being created by law having a legal entity entirely separate and distinct from the individuals. There was no dispute about NOIDA being a corporation and a statutory corporation. **2) Corporation should be 'established by or under' Statute** SC rejected Revenue's submission that the assessee-Authority was not established by 1976 Act rather it was established under the 1976 Act. SC held that words "by and under" were interchangeably used in the IT Act, 1961 and there was no difference between them. SC held that the emphasize should be on the word "established" in addition to the words "by or under". SC held that that the phrase "established by or under" is used to denote a statutory corporation established or brought into existence by or under a statute. SC noted that the establishment of Corporation is by a notification issued by State Government. In the present case, notification has been issued by the State Government in exercise of power under the Act and the Authority has been constituted. **3) Preamble to Act provided for constitution of Authority** SC observed that very preamble of that Act read as "an Act to provide for the Constitution of an Authority for the development of certain areas in the State into industrial and urban township and for masses connected through with". Thus, SC analysed that the Act itself

	provided for constitution of an authority. **4)** Thus, SC held that NOIDA has, thus, been established by the 1976 Act and is clearly covered under the Notification issued u/s 194A(3)(iii)(f). Hence, it is eligible for exemption from tax deduction at source provided under section 194A(3)(iii)(f).
Conclusion	SC holds that NOIDA is constituted 'by' the State Act and is covered by the notification dated October 22, 1970, is therefore, entitled to TDS exemption u/s. 194A(3)(iii)(f)

Status of the Assessee

34. Mega Trends Inc. v. CIT (2016) – HC

Facts	1. The assessee partnership firm consisted of thirteen individuals and two firms. 2. The return of income was selected for scrutiny which led to disallowance of certain deductions to the tune of Rs.262.50 lakhs. 3. The CIT (A) invoked section 251 and issued a show cause notice proposing to change the assessee's status to AOP on the reasoning that a partnership firm cannot be a partner in another firm. 4. The assessee filed writ of certiorari to quash the show cause notice. Note: 'Certiorari' is "a writ issued by a superior court calling up the record of a proceeding in a lower court for review".
Issue Raised	Does the CIT (Appeals) have the power to change the status of assessee?
Provision	Sec. 251(1) provides that in disposing of an appeal, the Commissioner (Appeals) shall have the following powers— (a)in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment….
Analysis	1. **HC took note of Revenue's submission that CIT(A) has power to modify assessee's status**, since a partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by them. The **term "Persons" only connotes natural persons. Since some of the partners are other firms, the assessment cannot be carried out as a firm**. 2. The **High Court observed that, u/s 251(1), the powers of the first appellate authority are coterminous with those of the Assessing Officer i.e. the appellate authority can do what the Assessing Officer ought to have done and also direct him to do what he had failed to do**. 3. **If the Assessing Officer had erred in concluding the status of the assessee as a firm, it could not be said that the Commissioner (Appeals) had no jurisdiction to go into the issue**. The appeal was in continuation of the original proceedings and unless fetters were placed upon the powers of the appellate authority by express words, the appellate authority could exercise all the powers of the original authority.
Conclusion	**The High Court held that the power to change the status of the assessee is available to the assessing authority and when it is not used by him, the appellate authority is empowered to use such power and change the status.**
DS Comment: ***This Single Bench ruling is overruled by the later ruling of Division Bench of HC which held that "There is no law, which says that a firm cannot be a partner in another firm"***	

35. Govindbhai Mamaiya (SC)

Facts	3 brothers inherited a property consequent to demise of their father. A part of it was acquired by the state government and compensation was paid for it. On appeal,

	compensation was enhanced.
Issue Raised	Whether the capital gains arising on transfer of property would be assessed in their respective status of **"Individuals" or as an "AOP".**
Provision	As per Hindu Succession Act, 1956 income from the asset inherited by a son from his father has o be **assessed as income of the son individually.**
Analysis	1) An AOP could be formed only when too or more persons voluntarily combined together **for certain purposes.** 2) In this case, the property in question came to the assessee's possession through inheritance, i.e. by operation of law. It is not a case where any "AOP" was formed by volition of the parties.
Conclusion	The Apex Court, accordingly held that the income from asset inherited by the legal heirs is taxable in their individual hands and not in the status of AOP.

Assessment Proceedings & Powers of Income Tax Authorities

36. SV Gopala and Others (SC)

Facts	The CBDT had issued a Circular invoking the powers under Section 119 of the Income-tax Act, 1961. The Circular amended the provisions contained in Rule 68B of the Second Schedule to the Income-tax Act, 1961 relating to time limit for sale of attached immovable property.
Issue Raised	Does the CBDT have the power to amend legislative provisions through a Circular?
Provision	Sec. 119 provides that the Board may issue orders, instructions and directions to other income-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board
Conclusion	The Supreme Court observed that the CBDT does not have the power to amend legislative provisions in exercise of its powers under section 119 by issuing a Circular. **The power of CBDT to issue orders & instructions is strictly for proper administration of the Act which should not be construed as power to legislate, which is vested only to Parliament.**

37. A. Kowasalya Bai (HC)

Facts	1) The assessee had income below taxable limit and was not holding PAN. It earned interest on bank deposits. 2) For seeking exemption from deduction of tax, PAN is required to be furnished to the bank despite filing 15G u/s 197A otherwise tax would be deducted at higher rate u/s 206AA
Issue Raised	Person having income below taxable limit required to furnish his PAN to the deductor as per the provisions of sec 206AA even though he is not required to hold PAN as per the provisions of sec 139A
Provision	i) As per the provisions of section 139A, inter alia, a person whose total income does not exceed the maximum amount not chargeable to income tax is not required to apply to the Assessing Officer for the allotment of PAN. ii) As per sec 206AA notwithstanding, anything contained in any other provisions of the Act, any person who is entitled to receive any sum or income or amount on which tax is deductible under Chapter XVII-B, i.e., the deductee, shall furnish his PAN to the deductor, otherwise tax shall be deducted as per the provisions section 206AA, which is normally higher. iii) As per section 139A, it shall not be necessary for a person to obtain a PAN if its income

	does not exceeds the maximum amount not chargeable to tax.
Analysis	1. The provisions of section 139A are contradictory- to section 197A: The assessee whose income was below taxable limit, were not required to hold PAN, and whereas their declaration furnished under section 197A was not accepted by the bank or financial institution unless PAN was communicated as per the provisions of section 206AA. 2. Undue hardship due to provisions of section 206AA: The provisions of section 206AA creates inconvenience to small investors, who invest their savings from earnings as security for their future, since, in the absence of PAN, tax was deducted at source at a higher rate
Conclusion	In order to avoid undue hardship caused to such persons, the Court held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax

38. Deputy Commissioner of Income Tax v Raghuvir Synthetics Ltd. [2017] – SC

Facts	1. The assessee is a public limited company. For the relevant assessment year, it had filed its return claiming revenue expenditure of Rs.65,47,448 on advertisement and public issue. 2. The company claimed that if the sum cannot be considered as revenue expenditure, then, alternatively, the said expenditure may be allowed under section 35D by way treating such expenditure as preliminary expenses. 3. The Assessing Officer issued an intimation under section 143(1)(a) disallowing a sum of Rs.58,92,700 incurred on public issue.
Issue Raised	Whether the nature of an expenditure can be considered debatable for not invoking prima facie adjustment under section 143(1)(a), where the jurisdictional High Court has taken a view that the expenditure is capital in nature even though some other High Courts have held that the same is revenue in nature?
Provision	Sec. 143(1)(a) provides for processing of return by making adjustments in the total income for an incorrect claim, if such incorrect claim is apparent from any information in the return
Analysis	**Supreme Court's Observations:** The Supreme Court noted that there was divergence of opinion amongst the various High Courts on the nature of the expenses incurred on raising share capital. However, SC noted that Gujarat HC in Ahmedabad Mfg. & Calico (P) Ltd. held that share issue expenses are capital in nature;
Conclusion	**The Supreme Court held that, in the case of the assessee, the issue was not debatable. Since the registered office of the assessee is in Gujarat, the law laid down by the Gujarat High Court is binding on the assessee and the prima facie adjustment can be made by the AO u/s 143(1)(a).**

39. Principal CIT v. Ravjibhai Nagjibhai Thesia (2016) – HC

Facts	1. The assessee sold his property for Rs.16 lakhs. 2. The State stamp valuation authority valued the property at Rs.233.71 lakhs. 3. During the course of assessment proceedings, at the request of the assessee, the Assessing Officer referred the matter of valuation to the DVO who valued the property

	at Rs.24.15 lakhs. 4. The Assessing Officer passed the order before the receipt of the report of the DVO by treating Rs.217.71 lakhs (difference between Rs.233.71 lakhs and Rs.16 lakhs) as undisclosed income. 5. The report of the DVO was received by the Assessing Officer after the date of assessment order but before the order was received by the assessee.
Issue Raised	Whether the Assessing Officer having made reference to the DVO must consider the report of the DVO for the purpose of assessment?
Provision	Sec.50C(2) provides that where the assessee claims before any Assessing Officer that the value adopted by the stamp valuation authority under sub-section (1) exceeds the fair market value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer.
Analysis	The High Court observed that when the Assessing Officer has referred the matter to DVO, the assessment has to be completed in conformity with the estimate given by the DVO. As the DVO has estimated the value of the capital asset at an amount lower than the value assessed by the stamp valuation authority, as per 50C(2), it is such valuation which is required to be taken into consideration for the purposes of assessment.
Conclusion	**The High Court held that capital gains has to be computed in conformity with the value so determined by the DVO.**

40. Sky Light Hospitality LLP (Delhi HC)

Facts	1) Sky Light Hospitality Pvt. Ltd. (SHPL) was converted into a limited liability partnership i.e., Sky Light Hospitality LLP (SH LLP) (assessee). 2) The return for the relevant assessment year filed by SHPL was processed under section 143(1) and was not subjected to scrutiny assessment. 3) However, upon receipt of a tax evasion report received from the Investigation Unit of the Income Tax Department, a reassessment notice was issued u/s 148 in the name of erstwhile Pvt. Ltd. Co. 4) The assessee-LLP has filed a writ petition to quash the notice and the reassessment proceedings on the ground that impugned notice issued to a dead juristic person was invalid and void in the eyes of law. Assessee argued that Sec. 292B was not applicable, since this was not a case of error, mistake or omission on the part of AO who intentionally issued notice u/s 147/148 to M/s Sky Light Hospitality Pvt. Ltd. and not in the name of Sky Light Hospitality LLP.
Issue Raised	Whether a notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department can be treated as valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP? Whether this error and mistake is fatal or protected and shielded u/s 292B?
Provision	1) Sec.147 provides that if the A.O has reasons to believe that the income has escaped assessment, he shall assess or re-assess such income or any other income which comes to his notice subsequently during the course of assessment u/s. 147 2) Sec. 292B provides that no assessment, notice, or other proceeding, made or issued in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice or other proceeding if such assessment, notice or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.
Analysis	1) Reason to believe established a live link with the inference drawn that income had escaped assessment. HC noted that the "reasons to believe" established a live link

	with the inference drawn that income had escaped assessment. HC remarked that "as long as, there is honest and reasonable opinion formed by the AO and the "reasons to believe" are not mere "reasons to suspect", the courts should not interject to stop the adjudication process and scrutiny on merits." HC noted that in the notice for reassessment, reference was made to the tax evasion report received from the Investigation unit of the Income-tax department which stated that the assessee had not been able to satisfactorily explain source of Rs.35 crores. Hence, HC held that there was evidence and material on record to justify issue of notice under section 148 of the Act. 2) Error in mentioning name of erst-while company did not cause any prejudice and would not invalidate assessment proceedings HC noted that there was clear evidence that the notice was erroneously addressed to SHPL instead of SH LLP. HC noted that conversion of the private limited company into a LLP was noticed and mentioned in the tax evasion report, reasons to believe recorded by AO, approval obtained from Pr. CIT and order u/s. 127, however, only the mistake was made in addressing the notice. It noted that when the assessee-LLP received the notice, it filed a letter, without prejudice, objecting to the notice being issued in the name of erst-while SHPL. 3) Terming the serving of notice on a dissolved co. was an irregularity and procedural/technical lapse which can be cured u/s. 292B HC held that Section 292B was enacted to ensure that technical pleas (such as mistake, defect or omission) or procedural irregularities do not invalidate assessment proceedings. Courts have not proceeded on technical trivialities. HC clarified that the notice was addressed to Sky Light Hospitality Pvt. Ltd., a company which was dissolved, was an error and technical lapse on the part of the Revenue and no prejudice was caused. 4) **Mere human errors cannot nullify assessment proceedings.** HC acknowledged the lapses in the litigation but observes that mere human errors cannot nullify assessment proceedings.
Conclusion	The Delhi High Court held that the notice issued under section 148 on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid, since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP.
Note: The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.	

41. Travancore Diagnostics (P) Ltd v. Asstt. CIT (2017) – HC

Facts	1. The assessee had a diagnostic laboratory in Kollam and a branch at Kottarakara. 2. A survey under Section 133A was conducted, consequent to which the assessee filed its return of income. 3. On the basis of certain incriminating documents and materials unearthed during the survey, a notice under section 148 was issued. Subsequently, the incomes were assessed for assessment years 2009-10 and 2010-11 under section 143(3) read with section 147. 4. The assessee raised additional jurisdictional grounds before the Appellate Tribunal. The assessee contended that for the assessment year 2009-10, the assessment was completed under section 143(3) read with section 147. However, a notice under section 143(2) was not issued. 5. The Tribunal held that in view of section 292BB, the assessee's participation in the reassessment proceedings would condone the omission to issue a notice.

Issue Raised	Whether failure to issue notice under section 143(2) would vitiate the assessment under section 147, notwithstanding the assessee's participation in the proceedings? Would section 292BB come to the rescue of the Revenue authority if they omit to issue notice under section 143(2)?
Provision	Sec.292BB provides that where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him under this Act. Further, u/s 147, the AO is duty bound to assess the income which has escaped assessment.
Analysis	**1. Without the statutory notice under section 143(2), the Assessing Officer could not assume jurisdiction.** **2. Non-issuance of notice u/s 143(2) is not a procedural defect** Here, Assessing Officer recorded his inability to generate a notice as the return was not filed electronically. Such defect cannot be cured subsequently, since it is not procedural but one that goes to the root of the jurisdiction. 3. **Sec.292BB would not apply in absence of mandatory issuance of notice u/s 143(2)** Even though the assessee had participated in the proceedings, in the absence of mandatory notice, section 292BB cannot help the Revenue officers who have no jurisdiction. Section 292BB helps Revenue in countering claims of assessees who have participated in proceedings once a due notice has been issued.
Conclusion	**HC thus held that Sec. 292BB would not apply where no notice was issued u/s 143(2)**

42. Mehak Finvest (P) Ltd. (HC)

Facts	In the present case during the reassessment proceedings, the AO made additions on some different grounds other than on the basis of the original reason for which reassessment Proceedings were initiated.
Issue Raised	Can additions be made in reassessment when the **ORIGINAL REASONS** to believe on the basis of which the notice u/s 148 was issued ceased to exist?
Provision	Section 147 provides that the A.O having reasons to believe that the income has escaped assessment shall assess **such income or any other income** which comes to his notice subsequently during the course of assessment u/s. 147 Also, as per **Explanation 3 to Sec. 147** the A.O can assess or reassess such additional income even if reasons for such issue haven't been recorded in the notice issued u/s. 147.
Analysis	**1) Explanation 3 to sec. 147 nowhere contemplates that A.O cannot make additions on any other different grounds** The section empowers the A.O who has initiated the proceedings u/s. 147 to reassess any other income which comes to his notice during the course of assessment. **2) If original assessment u/s.147 is valid, reassessment proceedings even on a different ground are also valid** If original assessment u/s. 147 has been initiated in a valid manner, then the proceedings doesn't become invalid only on the basis that the A.O has made an addition on some other ground without making additions on the original ground.
Conclusion	The HC held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the order passed by the A.O considering only different ground is **VALID.**

43. Govindaraju (HC)

Facts	1) The assessee derived income from HP, transport business, CG and other sources and agricultural income 2) Notice issued u/s 148 on the grounds of excessive indexation benefit taken stating agricultural land was converted for non-agricultural purposes but indexation benefit was taken upto the date of sale instead of date of conversion, as per sec 45(2). 3) AO adopted FMV which was less than the assessee and disallowed 50% of expenditure on transfer and hence original grounds were dropped
Issue Raised	Whether order can be passed only on the basis of income found during assessment under sec 147?
Provision	As per section 147, if AO has reasons to believe that the income has escaped assessment, he may assess such income and any other income which comes to his notice subsequently during pendency of assessment under sec 147
Analysis	**1) The proceedings is valid, if notice is valid :** the notice is valid under following two grounds: a) notice is challenged and found valid; or b) where it is not challenged, its deemed to be valid **2) Power of AO** : Once proceedings have been in initiated on the basis of valid notice, AO can assess all the income which comes under his notice during the assessment u/s 148.
Conclusion	HC held that assessment can be made on the basis of fresh ground even if the original reasons to believe could not sustain.

44. Ranbaxy (HC)

Facts	1) The AO accepted the return but initiated reassessment u/s 147 and issued notice u/s 148. 2) After sufficient enquiries, the AO did not make additions on account of items mentioned in the notice. 3) However, the AO made few additions on issues which were not the "original reasons to believe", in line with Explanation 3 to Section 147.
Issue Raised	Can the AO reassess the issues other than the issues in respect of which proceedings were initiated u/s 147 when the original "reasons to believe" on the basis of which the notice was issued ceased to exist?
Provision	As per section 147, if AO has reasons to believe that the income has escaped assessment, he shall assess such income and any other income which comes to his notice subsequently during pendency of assessment under sec 147. Explanation 3 to Section 147 provides that AO may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded u/s 148(2).
Analysis	Income chargeable e to tax which has escaped assessment which forms "reasons to believe for reopening assessment" AND ALSO any other income which comes to notice of the AO 1) The assessment or reassessment must be in respect of the income, in respect of which the Assessing Officer has formed a reason to believe that the same has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. 2) Accordingly both should be cumulatively present.

	3) If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.
Conclusion	The HC accordingly, held that the order of AO was invalid.

45. P.P. Engineering Works (HC)

Facts	The Tribunal gave a finding that the cash credit u/s 68 was assessable in a different assessment year (A.Y. 2000-01) than the assessment year in respect of which it heard the appeal (A.Y. 2001-02). This prompted the AO to issue a notice u/s 148 for that assessment year for reopening the proceedings for the A.Y. 2000-01.
Issue Raised	Does the findings or direction in an appellate order that income relates to a different A.Y. empower re-opening of assessment for that A.Y. irrespective of the expiry of the 6 years time limit?
Provision	(i) As per Section 150(1), notice u/s 148 **may be issued at any time notwithstanding anything contained u/s 149**, if assessment/ reassessment are in consequence of or to give effect to any direction or findings contained in the appellate order, court or revisionary order. (ii) *Explanation* 2 to section 153 provides that where by any appellate/revisionary order, any income is excluded from total income of the assessee for an A.Y., then assessment of such income for another A.Y. shall for the purpose of section 150 and 153 be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.
Analysis	**Section 150 overrides the time limit of 6 years u/s 149 to give effect to order of the Tribunal.** The HC observed that in view of the Tribunal's order that credit entries related to earlier A.Y., the AO reopened the assessment of that earlier A.Y. and passed an order.
Conclusion	The HC held that by virtue of sec 150 read with Explanation 2 to sec 153, the said order passed was not time barred by limitation.

46. Hemant Kumar Sindhi & Another (HC)

Facts	Assessee made an application to the AO for sale of gold bars seized during search u/s 132 and adjustment of tax liability on undisclosed income surrendered during search. The AO rejected the application of the assessee on the ground that only when the assessment is completed and tax demand is crystallized, recovery can be initiated.
Issue Raised	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?
Provision	Section 132B(1)(i) provides for application of asset seized u/s 132 or requisitioned u/s 132A towards meeting up of any existing tax liability under this Act, and the amount of liability determined on completion of assessment u/s 153A.
Analysis	The HC observed that: **Section 132B(1)(i)** uses the expression "the amount of any existing liability" and "the amount of the liability determined". Until the assessment is complete, it cannot be postulated that a liability has been determined.
Conclusion	The HC, accordingly, held that the A.O. was justified in his conclusion that the liability is determined only on the completion of assessment and in pursuance of which a demand can

	be raised and recovery can be initiated.

Revision

47. Amitabh Bachchan (SC)	
Facts	1) The assessee in the revised ROI claimed cash expenses incurred towards his personal security. Since the assessee was unable to substantiate the expenditure, the AO treated it as unexplained expenditure u/s 69C. However, the assessee submitted to the AO that since the expenses were not allowable the revised return may be taken to be withdrawn. After considering the assessee's reply, the AO did not make addition u/s 69C. 2) After finalization of the assessment, the CIT issued show cause notice u/s 263 on the ground that requisite and due enquiries were not made by the AO and accordingly, the assessment order passed by the AO was erroneous and prejudicial to the interests of the Revenue warranting exercise of power u/s 263. The CIT in his order included certain issues which were not mentioned at the time of serving SCN U/s 263.
Issue Raised	1) Did the AO made sufficient enquiries about the assessee claim made in the revised return? 2) Can order u/s 263 be passed in respect of issues not recorded in the show cause notice issued by the CIT?
Provision	As per Section 263, the PCIT/CIT (i) If on examination of assessment order considers that any order passed by the AO is <u>erroneous and prejudicial to the interests of the revenue,</u> (ii) he may, after giving the assessee an <u>opportunity of being heard</u> and after making inquiry, (iii) may pass an order enhancing or modifying, or cancelling the assessment and directing a fresh assessment. (iv) As per Explanation 2 to Section 263, <u>*an order passed by the AO shall be deemed to be erroneous*</u> in so far as it is prejudicial to the interest of the revenue, if in the opinion of the PCIT/CIT, <u>*the order is passed without making inquiries or verification which should have been made.*</u>
Analysis	1) Section 263 <u>does not</u> require issuance of any SPECIFIC show cause notice to the assessee. 2) Proceedings u/s 263 to be valid requires opportunity of being heard to be given to the assessee before passing the revision order. 3) During the course of the revision proceedings CIT has only raised the <u>additional issue on the basis of the record of the assessment proceedings</u> which was open for scrutiny by the assessee. 4) Further, the assessee was afforded opportunity to contest before CIT in respect of this additional issue raised by the CIT and accordingly, there was no denial of opportunity of being heard. 5) It further observed that the assessee had incurred expenditure in cash and later on withdrew the revised return. Since he was not able to substantiate the claim, the AO should not have dropped proceedings u/s 69C and accordingly, assessment order was passed without proper enquiry/verification.
Conclusion	The order passed by the AO was erroneous and prejudicial to the interests of the revenue and accordingly, the action of CIT was justified.

48. New Mangalore Port Trust (HC)

Facts	1) The assessment order u/s 143(3) was passed by the AO on 27th December, 2009. The assessee filed a revision petition u/s 264 which was allowed and the matter was remanded to AO to compute the income of the assessee in terms of the order of revision u/s 264. 2) The AO gave effect to the revision order by revising the original order passed on 27th December, 2009. 3) Thereafter original order passed on 27th December, 2009 was revised by CIT u/s 263. 4) The revision order u/s 263 passed by Commissioner was challenged by the asseessee before the Tribunal. The Tribunal set aside the revision order of the Commissioner passed u/s 263.
Issue Raised	Can the original assessment order u/s 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263?
Provision	As per **Section 263** Commissioner can invoke revisionary power to rectify the order passed by the AO which is erroneous and prejudicial to the interest of the Revenue. As per **Section 264** Commissioner can revise the order of the AO after application has been filed by the assessee.
Analysis	1) The order passed by A.O u/s 143(3) on original assessment does not exist after the order of revision is passed by Commissioner u/s 264. (Doctrine of Merger) 2) The said order which no longer subsists was revised by Commissioner u/s 263. 3) Invoking suo moto revision by Commissioner u/s 263 is not justifiable in this case.
Conclusion	Therefore the order which is revised by the Commissioner u/s 264 cannot be revised u/s 263. The HC held that the order passed by the Commissioner u/s 263 revising the non-existing order is void-ab-initio and is a nullity in the eyes of the law.

49. Fortaleza Developers (HC)

Facts	The assesse (an AOP) claimed deduction u/s 80-IB (10). The assessment was completed u/s 143(3) disallowing fully the deduction u/s 80- IB (10). The assesse filed an appeal before CIT (A) who held that the assesse had fulfilled all the conditions u/s 80-IB (10) and directed the AO to allow the deduction. The order of CIT (A) was challenged before the Tribunal by the Revenue. During the pendency of the appeal before the Tribunal, the CIT issued a notice u/s 263 asking the assesse to show cause as to why the assessment order should not be set aside on the ground that excess deduction u/s 80-IB (10) was granted to the assessee by the Revenue.
Issue Raised	Can the CIT invoke revision u/s 263, when the subject matter of revision has been decided by the CIT(A) and the same is **pending before the Tribunal**?
Provision	(i) As per Section 263 the PCIT/CIT can invoke revisionary power to rectify the order passed by the A.O which is erroneous and prejudicial to the interest of the Revenue. (ii) Explanation 1(c) to Section 263 provides that when the order of CIT(A) is complete and the appeal is pending before the Tribunal, CIT is precluded from invoking Section 263 for revision.
Analysis	CIT cannot exercise jurisdiction u/s 263 in respect of deduction u/s 80-IB (10) which was subject matter of appeal before the Tribunal and was decided earlier by the CIT (A). The jurisdiction of revision u/s 263 is restricted only in respect of revision of order passed by the

	AO. where the CIT(A) passes its order, the order of the AO cease to be in existence as it gets merged with the order of CIT(A).
Conclusion	The HC held that <u>when the order of the first appellate authority is complete</u> and the **appeal is pending** before the Tribunal, the <u>CIT cannot invoke revision u/s 263</u> for the **matter which is decided by the first appellate authority**.

50. Lark Chemicals Ltd.(HC)

Facts	The assessee's ROI was processed u/s 143(1). Subsequently, it was reopened by issue of notice under section 148 and the order of reassessment was passed in June, 2006. The Commissioner assumed jurisdiction for revision of order by invoking Section 263 in March, 2009. **The subject matter of revision, however, was not related to any of the issues dealt with in the reassessment**.
Issue Raised	Whether the <u>time limit u/s 263</u> is to be reckoned with reference to the date of assessment order or the date of reassessment order, **where the revision is in relation to an item which was not the subject matter of reassessment?**
Provision	(i) As per Section 263 the PCIT/CIT can invoke revisionary power to rectify the order passed by the AO which is erroneous and prejudicial to the interest of the Revenue. (ii) The time limit for revision u/s 263 is <u>two years from the end of the financial year in which the order "sought to be revised was passed."</u>
Analysis	**<u>Time limit for passing order u/s 263 in respect of issues which are not subject matter of re-assessment be reckoned from the date of passing of original assessment order.</u>** (i) Since the re-assessment order had not dealt with issues covered by the original assessment order, doctrine of merger shall apply only in relation to those issue dealt in the reassessment proceedings. (ii) In the present case, the revision proposed u/s 263 was in respect of issues, <u>other than the issues dealt with in the order of reassessment</u>. (iii) The issues on which the <u>Commissioner sought to exercise jurisdiction u/s 263</u> **<u>were concluded</u>** by virtue of intimation issued u/s 143(1). The time limit of 2 years from the end of FY when intimation u/s 143(1) was issued had expired long back.
Conclusion	The HC held that the jurisdiction of CIT u/s 263 **could not be assumed on the issues which were not the subject matter of issues dealt with in the order of reassessment but were part of the original assessment**, for which the period of limitation expired long ago.

<u>Appeals</u>

51. Spinacom India (P.) Ltd. (SC)

Facts	1) The appellants have approached the Supreme Court under a special leave petition. 2) There has been a delay of 439 days in filing the appeal u/s 260A for which reason the appellants requested for a condonation of delay under section 14 of Limitation Act, 1963. 3) The appellants submitted that the delay was on account of pursuing an alternate remedy of filing a miscellaneous application before the Income-tax Appellate Tribunal (ITAT) under section 254(2).
Issue Raised	Whether delay in filing appeal under section 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record?
Provision	1) Sec.260A provides that an appeal shall lie to the High Court from every order passed in appeal by ITAT if case involves a substantial question of law.

	2) Sec.254(2) provides that ITAT with a view to rectifying any mistake apparent from the record, amend any order passed by it with a view to rectifying any mistake apparent from the record, amend any order passed by it
Analysis	1) SC rejected the question of invoking section 14 of the Limitation Act 1963 which allows condonation of delay on demonstration of sufficient cause. 2) Rectification Application before the ITAT u/s 254(2) not an alternate remedy to filing of the appeal before HC u/s 260A SC refused to accept the submission of the assessee that the application before the ITAT u/s 254(2) was an alternate remedy to filing of the appeal before HC u/s 260A. 3) SC held that application before ITAT u/s 254(2) is for rectifying a 'mistake apparent from the record' which is much narrower in scope than appeal before HC u/s 260A. SC held that u/s 260A, an order of the ITAT can be challenged on substantial questions of law. 4) SC stated that the appellant had the option of filing an appeal u/s 260A while also mentioning in the Memorandum of Appeal that its application u/s 254(2) was pending before the ITAT. 5) Therefore, SC held that the time period for filing an appeal u/s 260A does not get suspended on account of the pendency of an application before the ITAT u/s 254(2).
Conclusion	Since no satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in filing the appeal, the Supreme Court dismissed the application for condonation of delay.

Recall & Review

52. Subrata Roy (SC)	
Facts	1) The assessee prayed before the HC to adjourn the case for a day since its senior counsel was not available. The assessee however, made the submission through its junior counsel. 2) However, the HC passed the adverse order. 3) Later, the HC recalled its order as per provisions of Section 260A(7) on the ground that appellant could not argue.
Issue Raised	Can HC recall its order even if the order is not ex-parte?
Provision	Section 260A(7) read with relevant rule of Civil Procedure Code, 1908 provides that order can be recalled by HC and appeal shall be reheard in following circumstances: **1) where an appeal is heard ex-parte and the judgment is pronounced against the respondent** **2)** where the notice is not served **3)** where the defendant was prevented by sufficient cause from appearing.
Analysis	The Apex court held that the order passed by the HC is not an ex-parte order since the order of the HC contains the submissions of the counsel of the assessee (though not that of the senior counsel for whose presence a short adjournment was prayed).
Conclusion	Therefore, the Apex Court held that the HC did not have the jurisdiction to recall the order passed by it previously.

53. Meghalaya Steels Ltd. (SC)	
Facts	The assessee filed a review petition whereupon the Division bench of HC recalled its order

<table>
<tr><td></td><td>passed for adjudication on the ground that it had not formulated the substantial questions of law before hearing the appeal and the parties to the hearing were not given opportunity of being heard.</td></tr>
<tr><td>Issue Raised</td><td>Does HC have power to review its order passed under Income tax act, 1961?</td></tr>
<tr><td>Provision</td><td>Section 260A(7) states that provisions of Civil Procedure Code (CPC) relating to HC appeals shall apply. Under CPC, HC can review its order.</td></tr>
<tr><td>Analysis</td><td>1) Review can be made to prevent miscarriage of justice or to correct grave errors committed by it.
2) HC have inherent power to review its own order as per Section 260A.
DS COMMENT – Comparison between Recall, Review, Rectification
<table>
<tr><th>Particulars</th><th>Recall</th><th>Review</th><th>Rectification</th></tr>
<tr><td>When</td><td>i) When-exparte assessment order is passed.
ii) A notice is not served.
iii) Assessee is prevented from sufficient cause to attend the proceedings.</td><td>To prevent miscarriage of justice, or
When a grave mistake is committed</td><td>When mistake is apparent from records</td></tr>
<tr><td>Who</td><td>ITAT/HC/SC (CPC)</td><td>HC/SC (CPC)</td><td>ITA/ITAT</td></tr>
<tr><td>Case Laws</td><td>Subrata Roy (SC)</td><td>Meghalaya Steels (SC)</td><td></td></tr>
</table></td></tr>
<tr><td>Conclusion</td><td>The Apex Court held that the HC have inherent power to review its own order as per Section 260A.</td></tr>
</table>

Settlement Commission

<table>
<tr><th colspan="2">54. Sandeep Singh v Union of India [2017] – SC</th></tr>
<tr><td>Facts</td><td>1. The petitioner is a dealer in real estate at Amritsar.
2. A search was conducted on August 21, 2009 at his business and residential premises under section 132(1) subsequent to which the assessee filed an application before the Settlement Commission under section 245C(1).
3. The case was settled before the Settlement Commission on December 12, 2014.
4. Pursuant to the assessment after settlement, the petitioner was unable to pay the amount due by the stipulated date. He sought an extension for 14 months but was only given time until July 31, 2015.
5. The assessee filed a writ petition before the High Court seeking quashing / modification of the Settlement Commission's order granting partial extension of time.
6. By the time the matter was heard by the Supreme Court, he had paid off all pending amounts.</td></tr>
<tr><td>Issue Raised</td><td>Whether payment of sums due, after the deadline stipulated by the Settlement Commission, would save the petitioner from withdrawal of immunity from prosecution?</td></tr>
<tr><td>Provision</td><td>Sec. 245H(1A) provides that an immunity granted to a person shall stand withdrawn if;
• such person fails to pay any sum specified in the order of settlement passed within the time specified in such order or within such <u>further time as may be allowed by the Settlement Commission,</u> or
• fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.</td></tr>
<tr><td>Analysis</td><td>1. <u>The Supreme Court explained that in case payments are not made within the time granted by the Settlement Commission or in case the person fails to comply with any</u></td></tr>
</table>

	other condition, subject to which the immunity was granted, the immunity shall stand withdrawn. **2.** All sums having been paid before approaching Supreme Court, Supreme Court observed that there is no need to relegate the assessee to the Settlement Commission. Settlement Commission has the power to extend the timelines. Hence, in the instant case, it shall be taken that the assessee has made the payments within the time granted under section 245H(1A).
Conclusion	**The Supreme Court held that the assessee having cleared all taxes due vide order of Settlement Commission, albeit after stipulated deadline, is immune from prosecution.**

55. K. Lakshmansa and Co. (SC)

Facts	1) The assessee's assessment was completed u/s 143(3) and interest u/s 234A, 234B and 234C was levied. 2) Aggrieved by the levy of interest under the above provisions, the assessee filed an application before the Settlement Commission requesting the Settlement Commission to waive off the interest on the ground it causes hardship to him. 3) The Settlement Commission waived the interest levied by the AO in order to mitigate the hardship as pleaded by the assessee. 4) Pursuant to the order of the Settlement Commission, the Dy. CIT gave effect to the order and passed an order to refund the interest collected u/s. 234A, 234B and 234C. 5) While passing the order of refund, the Dy. CIT held that the assessee cannot claim interest u/s. 244A of as the interest refunded is by waiving it the levy of interest on account of the request made by the assessee pleading hardship. 6) The High Court held that since waiver of interest was at the discretion of the Settlement Commission, no right flowed to the assessee to claim refund as a matter of right under law.
Issue Raised	When refund is awarded by the Settlement Commission at its discretion under section 244A, is there a right to receive interest on the same?
Provision	Sec. 244A(1) provides that where refund of any amount becomes due to the assessee under this Act, the assessee shall be entitled to receive, in addition to the said amount, simple interest thereon at the rate of one-half per cent for every month or part of a month from the date of payment of the tax to the date on which the refund is granted.
Analysis	**1) Right to refund is automatic along with the right to interest** The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. **2) Section 244A is clear and plain – it grants a "substantive right" of interest and is not procedural.** Under section 244A, it is enough if the refund becomes due under the Income-tax Act, 1961 in which case the assessee shall, subject to the provisions of that section, be entitled to receive simple interest. **3) The expression "due" may include interest waived at discretion of Settlement Commission which would give rise to interest on refund.** The expression "due" only means that a refund becomes due pursuant to an order under the Act which either reduces or waives tax or interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a concomitant (natural) right to claim interest springs into being in favour of the assessee.
Conclusion	The Supreme Court, thus, did not agree with the High Court opinion that when

	discretionary power has been exercised, no concomitant right to claim interest on refund arises in favour of the assessee. Overruling the High Court Decision, the Supreme Court held that the assessee has a right to interest on refund under section 244A.

Surrogate Taxes

56. Trans Asian Shipping Services Pvt. Ltd (SC)	
Issue Raised	Can income derived by an Indian shipping Co. from slot charter arrangement in other ship be computed applying the special provisions under chapter XII-G of the Income Tax Act, 1961, relating to Tonnage Tax Scheme, in spite of non-fulfillment of the condition of holding of valid certificate in respect of such other ships indicating?
Provision	As per section 115VG(4), for the purpose of Chapter XII-G, the tonnage shall mean— a) The tonnage of a ship indicating in the certificate referred to in section 115VX; and includes b) The **deemed tonnage** computed in the **manner prescribed:** Further, the Explanation to section 115VG(4) provides that for the purpose of this sub-section, 'deemed tonnage' shall be the tonnage in respect of: 1) An arrangement of purchase of slots, 2) Slot charter, and An arrangement of sharing of break-bulk vessel.
Analysis	Section 115VG(4) are in two parts in so far as computation of tonnage is concerned. a) When it comes to tonnage of a ship, a valid certificate is to be produced. The second part of this provision talks about "deemed tonnage" in contradistinction to the "actual tonnage" mentioned in this certificate. Explanation to section 115VG(4), *inter alia*, mentions that in so far as slot charter arrangements are concerned, purchase of such slot charter shall be considered as deemed tonnage. b) The requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots or sharing a big bulk vessel. c) This portion becomes abundantly clear by reading Rule 11Q(1) which specifies the formula of computing deemed tonnage in respect of arrangement of slot chartering.
Conclusion	The Apex Court, accordingly, held that the requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slot, slot charter etc. **Accordingly, income from slot charter arrangement in other ships can be computed applying the special provisions under Chapter XII-G.**

57. Tata Tea Co. Ltd. (2017) (SC)	
Facts	1. The assessee was a tea company which cultivated tea in gardens and processed it in its own factory/plants for marketing the same. Although, the cultivation of tea was an agricultural process, the processing of tea in the factory was an industrial process. 2. Agricultural income is covered in the State List and not Union List and therefore, only State can impose taxes on the agricultural income. 3. Therefore, the assessee challenged constitutional validity of Section 115-O which imposed tax on the dividend distributed by the company contending that income out of which dividend is declared, distributed or paid is an agricultural income to the extent of

	60 per cent, the tax on which can only be imposed by State legislature. Therefore, the assessee contended that DDT could not be levied on the agricultural income of the assessee. 4. The assessee contended that the Parliament has no competence to levy income tax on agricultural income.
Issue Raised	a) <u>Whether the provisions of Section 115-O which contains a provision for imposing additional tax on the dividends which are declared, distributed or paid by a company are within the fold of legislative field covered by Entry 82 of List I (Union List) or it relates to legislative field assigned to State legislature under Entry 46 List II (State List) that is tax on agricultural income</u>? b) <u>Whether the DDT leviable u/s 115-O, is to be levied only on the 40% of the dividend declared and 60%, being the agricultural income would be exempt</u>?
Provision	1. Entry 82 of List I (Union List) reads as "Taxes on income other than agricultural income" 2. List II that is State List contains Entry 46 which reads "Taxes on agricultural income". 3. Section 2(24) of the Act defines income to include dividend. 4. Section 115-O states that in addition to the income-tax chargeable in respect of the total income of a domestic for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise), whether out of current or accumulated profits shall be charged to additional income-tax @ 15%.
Analysis	1. **<u>Power of Parliament to tax income other than agricultural income as per List I:</u>** As per Article 246(1), Parliament has the exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Entry 82 of List I reads as "Taxes on income other than agricultural income" 2. **<u>Power of State to tax agricultural income as per List II</u>** As per Article 246(3), the State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule. List II that is State List contains Entry 46 which reads "Taxes on agricultural income". 3. **<u>Income is defined under the Act to include dividend</u>** a) As noted above Entry 82 of List I (Union List) embraces entire field of "tax on income". What is excluded is only tax on agricultural income which is contained in Entry 46 of List II (State List). b) Income as defined in Section 2(24) of the Act is the inclusive definition specifically including "dividend". c) Dividend is statutorily regulated and under the article of association of companies is required to be paid as per the Rules of the companies to the shareholders. d) <u>Section 115-O pertains to declaration, distribution or payment of dividend by domestic company and imposition of additional tax on dividend is thus clearly covered by subject as embraced by Entry 82 (Union List).</u> <u>The provisions of Section 115-O cannot be said to be directly included in the field of tax on agricultural income.</u> e) Even if for the sake of argument it is considered that the provision trenches the field covered by Entry 46 of List II (State List), the effect is only incidental and the legislation cannot be annulled on the ground of such incidental trenching in the field of the State legislature. Looking to the nature of the provision of Section 115-O and its consequences, the pith and substance of the legislation is clearly covered by Entry 82 of List I (Union List). 4. **<u>The Court held for an income to be an agricultural income, there should be direct association of the revenue which should be derived from the land used for</u>**

	agricultural purposes The Court held that it is true that the agricultural process renders 60% of the profits exempt from tax in the hands of the company but it cannot be said that when such company decides to distribute its profits to the shareholders and declares the dividends, such dividends in the hands of the shareholders also partake of the character of revenue derived from land which is used for agricultural purposes as such interpretation would extend the scope of the vital words 'revenue derived from land' beyond its legitimate limits. 5. **Source of dividends would be investment made in the shares of the company** In fact and in truth, dividends is derived from the investment made in the shares of the company and the foundation of it rests on the contractual relations between the company and the shareholder. Dividend is not derived by a shareholder by his direct relationship with the land. Therefore, SC held that the scope of DDT would not be restricted to 40% of the dividend declared and distributed as the source of the dividend declared, distributed and paid to company's shareholder is not directly derived from the land but the dividend is derived from the investment made in the shares of the company.
Conclusion	Therefore, SC held that provisions of Section 115-O are well within the competence of Parliament. To put any limitation in the said provision that additional tax can be levied only on the 40% of the dividend income shall be altering the provision of Section 115-O for which there is no warrant.