

Paper at Mehsana on 15-06-13

Scrutiny Guideline

Index

Sr. No.	Topic	Pages
1	PREAMBLE	1
2	GUIDELINE FOR SELECTION OF CASES FOR SCRUTINY DURING F.Y. 2011-12	1 to 3
3	ISSUANCE OF NOTICE U/S. 143 (2)	3 to 8
4	FIXATION OF PARTICULAR TIME AND DATE IN THE NOTICE	8
5	SERVICE OF NOTICE – Section 282	9
6	SECTION 292BB : (APPLICABLE FROM 01/04/08)	9
7	INQUIRY BEFORE ASSESSMENT : SECTION 142 (2A)	9 to 11
8	REVISED RETURN AND REVISED COMPUTATION	11 to 16
9	REJECTION OF BOOK RESULT	16 to 29
10	BAD DEBT	29 & 30
11	DISALLOWANCE OF EXPS. FOR NOT DEDUCTING TAX. SECTION 40 (A) (IA)	30 to 34
12	CIRCUMSTANCE UNDER WHICH PAYMENT CAN BE MADE BY CASH RULE 6DD	34 to 38
13	CASH CREDIT	39 to 45
14	SECTION 14A & Penalty	45 to 60
15	SECTION 36 (III) DEDUCTION OF INTEREST	60 to 62
16	SECTION 32 DEPRECIATION	62 to 71
17	NATURAL JUSTICE	72 to 79
18	ASSESSMENT OF HUF	79 to 84
19	APPEAL AGAINST AGREED ASSESSMENT	84
20	GRANT OF STAY AGAISNT DISPUTED TAX	84 to 88
21	REASSESSMENT PROCEEDINGS u/s. 147	88

22	REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX SECTION 269SS & 269T	89 to 92
23	OTHER ISSUES	93 & 94
24	CONCLUSION	95

SOME ISSUES RELATING TO SCRUTINY ASSESSMENT

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1. PREAMBLE

In scrutiny assessment, number of issues arises. Some of the issues are dealt in this paper which will be useful to the professional friends. While applying the ratio of any judgment cited in this paper, it should be ensured that the facts of judgment match with the facts of your case. If the facts of the case are different, the ratio of the judgment may not be applicable.

The Honorable Supreme Court in the case of the CIT V/s. Suresh Chandra Mittal reported in 251 ITR Page 9 (judgment delivered on 26 July, 2001) held that if the income is offered to buy peace of mind and avoid litigation, penalty u/s. 271(1)(c) cannot be levied. In this case, the assessee declared meager income. After search he filed revised returns showing higher income to purchase peace and avoid litigation. The Supreme Court relied on its earlier decision in the case of Sir Sadilal Sugar and General Mills Ltd V/s. CIT reported in 168 ITR 705.

Same three judges of the Supreme Court decided the case of K P Madhusudhanan V/s. CIT on 21 August 2001 (within less than 1 month) reported in 251 ITR on page 99 held that, after addition of the explanation to section 271, judgment given in the case of Sir Sadilal Sugar and General Mills Ltd V/s. CIT reported in 168 ITR 705 was not a good law.

2. GUIDELINE FOR SELECTION OF CASES FOR SCRUTINY DURING F.Y. 2011-12

- A.** By this time, scrutiny assessments for A.Y.2011-12 are under process. It is mentioned in the circular that list of cases selected under scrutiny shall be submitted by the assessing officer to their respective

range heads by the 15th of the following month and also displayed on the notice boards of their offices. (Though there are clear instructions, this direction is not followed). It is also mentioned in this circular that, the criteria for selection of cases is not to be disclosed even under the Right to Information Act.

B. Criteria for selection of cases under scrutiny is as under

- i.** Where value of international transaction as defined u/s. 92B exceeds Rs.15 Crore.
- ii.** Cases where there was addition of Rs.10 Lacs or more in earlier assessment year and question of law or fact is confirmed in appeal or pending before appellate authority.
- iii.** Cases in which addition of Rs.10 Crore or more was made in earlier assessment year on the issue of transfer pricing.
- iv.** In case of survey carried out during the financial year. However, this criteria will not apply in the following cases.
 - a. there are no impounding of books or documents
 - b. there is no retraction of disclosure if any made during survey
 - c. the income declared in the return excluding any amount of disclosure made during survey is not less than the declared income of the preceding assessment year.
- v.** Assessment in search and seizure cases
- vi.** Assessments initiated u/s. 147 / 148 (Reassessment cases)
- vii.** Cases of research organizations (in order to examine credibility of research and other activities as provided u/s. 35 of the I T Act).
- viii.** After amendment to definition of “Charitable Purpose u/s. 2(15)” of the I T Act cases in which exemption is claimed u/s. 10 (23C) or u/s. 12AA are claimed.

- ix.** Over and above the above stated criteria, the assessing officer may select maximum 25 cases in mofussil stations with the prior approval of Additional CIT / Joint CIT.

In other areas i.e. metros and bigger cities the assessing officer may select maximum 10 cases after recording reasons for doing so.

It is also directed to the approving authorities to monitor and ensure that, quality assessments are framed in these cases.

- x.** Officer dealing with company cases can select other cases over and above the above mentioned criteria, which are in its initial years of operation and are infusing investment by introducing capital or are taking loan but the return filed shows loss.
- xi.** More or less the same criteria will continue for selection of cases for A.Y.12-13 i.e. (1) Assessment in such cases (2) Reassessment cases (3) Assessment in survey cases subject to certain riders etc.

3. ISSUANCE OF NOTICE U/S. 143 (2) / Time limit
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- A.** After the case is selected for scrutiny, the assessing officer is required to issue notice u/s. 143 (2). The notice is required to be served on the assessee within 6 months from the end of the financial year in which the return is furnished (effective from 01/04/08. Previously this limit was 12 months from the end of the month in which the return was filed). Thus, when the return is filed on 1st April or on 31st of March, the time limit is 6 months from the end of the financial year.

B.

Some of the important case laws
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i. 345 ITR 58 Delhi

Commissioner of Income-tax Vs Mascomptel India Ltd. (Del)

Assessment. Notice not served on correct address mentioned in return. Assessment is not valid.

ii. 330 ITR 43 Delhi

Commissioner of Income-tax Vs CPR Capital Services Ltd. (Del)

It is the duty of the assessing officer to prove that notice u/s. 143 (2) was served on the assessee and in absence of that, the assessment framed is null and void. Service of notice is mandatory.

iii. 328 ITR 173 P & H

Commissioner of Income-tax Vs Kishan Chand (P&H)

Service of notice without trying other modes of service is not valid where there was no evidence that there was any refusal to accept service of notice.

iv. 326 ITR 418 Delhi

Commissioner of Income-tax Vs Silver Streak Trading P. Ltd. (Del)

If the assessee files an affidavit that, mandatory notice u/s. 143 (2) was not received by him within the prescribed time, it is the duty of the revenue to prove that, notice was served in time.

v. a 323 ITR 242 P & H

CIT V/s. AVI-OIL India P. Ltd.

When the notice was served by affixture at the premises of the assessee on the basis of the report of notice server that the factory of the assessee was closed at the time of his visit and another notice dated 30th October was served by register post on November 1st was invalid as there was no proof of avoidance of service by assessee (SLP of the department dismissed 317 ITR Statute 1).

b 139 ITR 73 P & H

Kunj Behari V/s. ITO, Amritsar

Substituted service by affixture. The department has to prove that the assessee was avoiding service of notice or summons by ordinary way.

vi. 319 ITR 151 Delhi

Commissioner of Income-tax Vs Vishnu and Co. P. Ltd. (Del)

When the notice u/s. 143 (2) was served on the last date after office hours when no authorized person was present at the premises to receive the notice and the notice was affixed. It was held that it was not valid service of notice and assessment framed on the basis of such notice was not valid.

vii. 307 ITR 53 P & H

CIT V/S. Sohan Lal Chhajan Mal

Defective return u/s. 139(9). Assessment. Time limit for issue of notice u/s. 143(2). Not from the date when defect rectified but from the date of filing of return. Same view was taken in the case of Nismukh Investment and Trading Ltd V/s. DCIT reported in 213 Taxation 221 Bombay

viii. 136 ITR 108 Delhi

R L Narang V/s. CIT

If the notice is served by post, the word by post implies by register post. If it is served under certificate of posting, it does not amount to proper service.

ix. 132 TTJ 117 Lukhnow

KOHLI BROS. vs. INCOME TAX OFFICER

In the absence of any evidence that any independent person was associated with the identification of assessee's place of business at the time of service of notice under s. 143(2) by affixture or that the Inspectors of IT had personal knowledge of such place of business, service of notice by affixture cannot be treated as valid service; second notice having been served beyond the period of 12 months was otherwise invalid, hence, assessment is annulled.

x. 130 TTJ 696 Delhi

ACIT V/s. Vision Inc.

If the notice is served on the employee who was not authorized and it was not served on any partner of the firm, there was no valid service of notice making the assessment invalid.

xi. Notice after 12 months

a 344 ITR 204 Gujarat

Deputy Commissioner of Income-tax Vs Maxima Systems Ltd.

Assessment. Notice. Limitation. Notice served beyond limitation.

Assessment based on notice. Not valid.

b 331 ITR 521 Kerala

236 CTR 334 Kerala

CIT V/s. Aiswarya Trading Co.

Notice u/s. 143(2) served beyond the statutory period of 12 months, ITAT was correct to hold that the assessment was invalid.

c 250 CTR 0188 P&H

V.R.A. COTTON MILLS (P) LTD. vs. UNION OF INDIA AND ORS.

Notice u/s.143(2). Issue vis-à-vis service of notice before limited period. Expression 'serve' and issue are inter changeable as has been noticed in section 27 of General Clauses Act 1987. Date of receipt of notice is by the assessee is not relevant to determine as to whether the notice has been issued within the prescribed period of limitation. Expression 'serve' means the date of issue of notice. Notice issued on 30/09/10 was thus within limitation period though received after 30/09/10 by the assessee.

xii.a 347 ITR 583 P&H

COMMISSIONER OF INCOME TAX vs. CEBON INDIA LTD.

Notice not served within time. Assessment void. Defect not curable u/s.292BB.

b 229 CTR 188 P & H

CIT V/s. Cebon India Ltd.

Assessment. Notice u/s. 143 (2). Finding by CIT (A) & ITAT that notice u/s. 143 (2) was not served within the stipulated time. Mere giving dispatch number will not render the said finding to be perverse. In absence of service of notice, the A.O. had no jurisdiction to make

assessment. Absence of notice cannot be held to be curable u/s. 292B.

c 222 ITR 632 Calcutta

Gajendra Kumar Bantha V/s. Union of India

If the notice served is illegal or invalid, this defect cannot be cured as per section 292B.

Thus the notice should be served on the proper assessee, otherwise the entire proceedings fails.

C. Notice in case of reassessment

a 166 ITR 163 S.C.

R.K. Upadhyaya V/s. Shanabhai P Patel

212 ITR 650 S.C.

CIT V/s. Major Tikka Khushwant Singh

In case of reassessment, time limit for issuing notice is mentioned in section 149. As per this section, notice u/s.148 is required to be **issued**.....Thus, if the notice was issued within period of limitation but served on the assessee beyond the period, it was a valid service of notice and the assessment was valid assessment.

b 246 ITR 363 MP

Arjun Singh and Another V/s. ACIT

If the notice of reassessment is served on the chartered accountant and through Inspector, it is not a valid service of notice.

c Proper service of notice is the foundation for jurisdiction u/s. 148. If the notice is not served on the proper person, the service is insufficient and the assessing officer does not have the jurisdiction to reassess escaped income. The following authorities are worth noting.

- 1. CIT V/s. Baxiram Rodmal, 2 ITR 438 Nagpur**
- 2. CIT V/s. Dey Brothers, 3 ITR 213 Rang.**
- 3. C N Natraj V/s. Fifth ITO, 55 ITR 250 Mysore**
- 4. Lakshmibai V/s. ITO, 86 ITR 804 Mysore**

5. **C T Raja Gopal V/s. State of Mysore, 86 ITR 814 Mysore**
6. **Thangam Textiles V/s. First ITO, 90 ITR 412 Madras**
7. **P N Sashikumar & Others V/s. CIT, 170 ITR 80 Kerala**
8. **S K Manekia V/s. CST, 39 STC 426 Bombay**
9. **281/1 Delhi**
CIT V/S. Lunar Diamonds Ltd.
10. **304/285 ITAT Delhi**
Bhpe Kinhill Joint Venture V/S. ACIT

Onus is on the revenue to prove valid service of notice. If there is no such proof, assessment framed is not valid.

In the above cases it was held that, there should be a valid service of reassessment notice on the proper person and such notice has to be served in terms of the Civil Procedure Court.

4. FIXATION OF PARTICULAR TIME AND DATE IN THE NOTICE
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Sometime it happens that, when the time is fixed in the notice for hearing and the assessee / his representative is not able to attend at that particular time, the I T Authority says that as you have not complied with timing, the case has been decided on merits without accepting any evidence / papers. This is not correct approach. If this is done, it is against the principal of natural justice. It is futile to fix a particular hour of a day as the outer limit for making any submission. Reasonable time must be granted to the assessee and that is at least before expiry of the working hour. The I T Authority cannot fix an hour, a minute or a second of the day. It will be difficult for such authority to obey such timing for all purposes. There may be instances where the authority may not be able to take up the case on that day due to official pressure or otherwise.

When the opportunity is given to the party who explained its objections, papers, documents, such an opportunity must be realistic and not notional. This was decided in the case of S. Velu Palandar V/S. DCIT, Thanjavur II reported in 83 ITR 683 Madras.

5. SERVICE OF NOTICE – Section 282 Mode of service

As per section 282 of the Act, any notice, summons, requisition, order or any other communication may be made by delivery or transmitting a copy thereof to the person named therein.

For the service of notice, provisions of code of civil procedure 1908 shall be applicable.

- a. Thus the notice can be served by post / courier.
 - b. In the manner as provided under the Civil Procedure Code 1908 for the purpose of summons.
 - c. In the form of electronic record.
 - d. In any other manner as provided by rules by CBDT.
- (i) The service of assessment order and demand notice is very important because the time limit for taking further action starts for the assessee like filing an appeal, application for stay of disputed tax etc.

6. SECTION 292BB : (APPLICABLE FROM 01/04/08)
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In case of assessment / reassessment where the assessee appeared in any proceedings or co-operated in any inquiry relating to assessment or reassessment, then it will be presumed that the notice was served in time on him and he shall be precluded from taking any objection under this act that,

- a. no notice was served upon him or
- b. not served upon him in time or
- c. served upon him in an improper manner.

Unless the assessee has taken objection before the completion of such assessment or reassessment.

7. INQUIRY BEFORE ASSESSMENT : SECTION 142 (2A)
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With effect from 01/06/13 the law has been changed by Finance Act 2013. As per amended act, the assessing officer can direct the assessee to get his books of accounts audited by auditor (C.A.) if looking to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of the accounts, multiplicity of transactions in the accounts or special nature of business, activity of

the assessee and interest of revenue. The auditor shall furnish a report of such audit in prescribed form (Form No.6B) in which he shall furnish such particulars as the assessing officer may require.

With effect from 01/06/07, before giving direction to get the books of account audited under this section, the assessee shall be given a reasonable opportunity of being heard.

Authorities

i. 350 ITR 432 Delhi

DELHI DEVELOPMENT AUTHORITY AND ANOTHER vs. UNION OF INDIA AND ANOTHER

Auditing of accounts. Complexity of accounts and safeguarding interest of revenue. Conditions cumulative. No evidence that a/cs. were complex. Notice on the basis of notes on a/cs. Not valid.

ii. 320 ITR 731 Delhi

Rajesh Kumar V/s. CIT

Notice to be given to the assessee before passing order applies prospectively and it was not open to the assessee to raise question of limitation.

iii. 267 ITR 345 Culcatta

West Bengal State Co. Op. Bank Ltd. V/S. JCIT and Others

Before passing order of compulsory audit of accounts special audit u/s.142 (2A) the assessing officer must examine books of a/cs. and form opinion that a/cs. are complex and require special audit. C.I.T. must apply his mind and not to accord sanction mechanically. Order of compulsory audit was not valid.

iv. 266 ITR page 213 Kerala

DCIT and another V/S. Muthoottu Mini Kuries

Before passing order of compulsory audit of accounts the assessing officer must be satisfied that accounts of the assessee are complex. Before passing order for compulsory audit and fixing remuneration

assessee is entitled to be heard. Post decision hearing does not redress Assessee grievance as no one will repay expenses incurred by Assessee.

v. 245 ITR page 192 Allahabad

U.P. State Handloom Corporation Ltd. V/S. CIT and Another

The audit of accounts u/s.142 (2A) places financial burden on Assessee. Order passed mechanically and without application of mind is not valid.

vi. 239 ITR page 921 Calcutta

I.T.C. Ltd. Vs Joint Commissioner of Income-tax (Cal)

The assessee was having 43 branches all over India. Complexity of A/cs. is the only criteria for deciding whether special auditor should be appointed.

vii. 236 ITR page 671 Calcutta

Peerless General Finance and Investment Co. Ltd. Vs. Deputy CIT

Complexity of a/cs. and interest of revenue both conditions should be fulfilled. Litigation or appointment of auditor was beneficial to revenue was not a reason to appoint auditor u/s. 142 (2A). Appointment of auditor was not valid.

8. REVISED RETURN AND REVISED COMPUTATION
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A. Revised return u/s. 139 (5)

After furnishing return u/s. 139(1) or in pursuance of notice u/s. 142(1), the assessee discovers any omission or any wrong statement in the return, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before completion of the assessment, whichever is earlier.

In the case of GOETZE (INDIA) LTD. Vs. CIT reported in 284 ITR 323 S.C. it is held that if any deduction is required to be claimed after filing of the return, it can be claimed through revised return only.

In this case after filing revised return claim of deduction was put by letter.

It may be noted here that intimation u/s. 143 (1) is not assessment order as held in the case of S.R. Koshti V/S. CIT reported in 276 ITR 165 Gujarat. Revised return can be filed after intimation is received.

B. Revised Computation

At present assessment proceedings for A.Y.11-12 are in progress. Thus revised return can be filed within 1 year for the end of the relevant assessment year i.e. 31-3-13. During the course of assessment proceedings, if the income is required to be enhanced / reduced, what is the remedy as the time for filing the revised return has elapsed.

The assessing officer is required to assess the correct income which has either accrued or received. When any legitimate claim is allowable to the assessee, the assessing officer should allow such claim.

Authorities

i. 339 ITR 643 Gujarat

COMMISSIONER OF INCOME TAX vs. ARVIND PRODUCTS LTD

Appeal to ITAT. Power of Tribunal. CIT(A) directing assessing officer to decide question on merits. Consequence order of assessing officer reversed by Tribunal. Order of Tribunal valid.

It is also necessary to note that the order of the apex Court in the case of Goetza (India) Ltd. 284 ITR Pg. 323 S.C. was only in relation to the power of Assessing Officer to entertain a claim for deduction otherwise than by filing a revised return. The apex Court has made it clear that the issue in this case is limited to the power of the assessing authority and does not impinge on the power of ITAT u/s. 254 of the I.T. Act 1961. In the circumstances, the entire contention based on

application of decision in the case of Goetze (India) Ltd. 284 ITR pg. 323 S.C. is misconceived in law.

ii. 336 ITR 585 Gujarat

Rotary Club of Ahmedabad V/s. ACIT

If the revised computation of income was submitted by the assessee in assessment proceedings and the re-computation was correct and accepted by the assessing officer. Simply because it was submitted beyond time specified in section 139 (5) it cannot be held to be invalid and on this ground reassessment proceedings cannot be initiated.

iii. 276 ITR 165 Gujarat

S. R. Koshti V/s. CIT

If the assessee is in a position to show that he has been over assessed regard less of whether over assessment is a result of assessee's own mistake or otherwise, the commissioner has power to correct such an assessment u/s. 264 (1) of the I T Act.

On page 175 it is held in this case that, the state authorities should not raise technical pleas, if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The state authorities can not adopt the attitude which private litigants might adopt.

While delivery this judgment, decision given by the Supreme Court in the cases of Ramlal V/s. Rewa Coalfields Ltd. AIR 162 S.C.361 State of West Bengal V/s. Administrator, Howaraha Municipality AIR 1972 S.C.749 and Bhabhutmal Raichand Oswal V/s. Laxmibai R Tarte AIR 1975 S.C.1297 were considered.

On page 175 there is mention of unreported decision of Gujarat high Court in the case of Vinay Chandulal Satia V/s. N O Parekh, CIT. Special Civil Application No.622 of 1981 in which it is mentioned that the authorities under the act are under an obligation to act in accordance with law. The tax can be collected only as provided under the act. If an assessee, under a mistake, misconception or on not

being property instructed, is over assessed, the authorities under the act are required to assist him and ensure that only legitimate taxes due are collected.

iv. 336 ITR 434 P & H

CIT V/s. Metalman Auto P Ltd

If there is omission to claim the exemption in the return, the assessing officer can not debar the assessee from claiming the deduction. The judgement of the honorable Supreme Court in Goetze (India) (2006) 284 ITR 323 S.C. was not applicable to such exemption.

v. 332 ITR 306 P & H

V/s. Ramco International 111 ITR 1 S.C.

The claim of deduction u/s. 80IB was not allowed on the ground that assessee had not filed revised return. ITAT allowed deduction on the ground that assessee was not making any fresh claim and duly furnished documents and Form 10CCB during assessment proceedings. There was no requirement for filing any revised return. The judgment of Goetze (India) (2006) 284 ITR 323 S.C. was not applicable.

vi. 303 ITR 256 Delhi High Court

CIT V/s. Bharat Aluminium Co. Ltd.

If any revised claim of expenses incurred is made during assessment proceedings, it is not a new claim but enhancing quantum of expenditure. Assessment based on revised claim was valid.

vii. 152 TTJ 46 BANGLORE

Additional claim could be made before appellate authority and he is duty bound to consider the same notwithstanding the claim was made by filing a revised return which was invalid since original return was filed belatedly.

viii. 141 TTJ 432 Delhi

SONY INDIA (P) LTD. vs. ACIT

Assessee having paid the disputed sales-tax demand within the prescribed time albeit under protest, deduction thereof is allowable even though it was not claimed in the return owing to inadvertence and no revised return was filed for making the claim.

ix. 195 Taxman 30 Mumbai

Franco India Pharmaceuticals Ltd. Vs. ITO.

All India Feb.2011 Page 61

Additional claim of bad debt by the assessee at the time of assessment proceedings. Rejected as the assessee has to file a revised return to make such claim replying on S.C. Decision in case of Goetze India Ltd. Assessee made fresh claim before ITAT for deduction of bad debt and same was admitted as all the facts were on record before Assessing officer. Further decision in the case of Goetze India Ltd. did not in any way affect the power of Tribunal to admit additional claim/ground.

x. Ganga Trading Vs. DCTI (ITAT Mum.)

May 2011 Pg. 65 Sr. No. 92

Set off claim made by way of Letter

Claim made by letter can be allowed by Tribunal if the claim is correct in law and all facts are on record.

xi. Rachna S Taneja V/s. DCIT

546(2012) 43-BCCAJ Feb 2012

Page 26 All India May 12-P-93-94

Revised computation claiming additional deduction of interest during the course of assessment proceedings. Rejected by Assessing Officer and CIT(A) on the basis of Goetze India 284 ITR 323 S.C. ITAT relying on Pradeep Kumar Harlakar V/s. ACIT 47 SOT 204 Mumbai admitted the claim and restored the matter to the Assessing Officer with a direction to consider the claim.

xii. Duty of Assessing Officer

(i) 56 ITR 198 S.C.

Navnitlal C. Zaveri V/s. K K Sent, ACIT Bombay

(ii) 339 ITR 310 Gujarat

CHANDRAKANT J PATEL vs. V.N. SRIVASTAVA

Income offered for taxation by mistake. CIT cannot reject application on this ground. Income exempted u/s. 10(15)(IV)(fa) included in assessable income. Assessee not ordinary resident in India. CIT not justified to reject revision applicable. Duty of Assessing Officer.

(iii) 346 ITR 543 Allahabad

249 CTR 51 Allahabad

RAJ RANI GULATI vs. CIT CENTRAL TILAK

Capital gains. Claim for benefit u/s.112(1) was maintainable raised before CIT(A). Assessing Officer should have corrected the mistake without taking advantage of ignorance of the assessee.

- * Though ignorance of law is no excuse, but it can be expressed in tax matter. If there is mistake of the assessee, but it was expected from the Assessing Officer to know the latest amendment and correct the mistake without taking advantage of ignorance of the assessee.

(iv) 107 ITR 63 Gujarat

Chokshi Metal Refinery V/s. CIT

At the time of original assessment, the assessee did not claim relief though the responsibility or claiming refund and relief rested with the assessee, the income tax officer should have drawn the attention of the assessee to the relief which the assessee was entitled but the assessee had omitted to claim.

9. REJECTION OF BOOK RESULT

- A.** Some times in the business, the assessee purchases goods from 'X' but bill is issued by 'Y' and, some times simply bill is obtained (without goods being purchased) so assessee is the best judge to know, whether the purchases are genuine or not. When inquiry is made by the assessing officer in respect of purchases, some times the letter is returned with a note "Not known" when I.T. inspector is deputed to inquiry regarding details of Seller, the Seller is not available or his where about are nor known, or the Seller on affidavit

states that he has issued simply bill, and goods were not supplied. Under this circumstances following issues to be considered to strongly represent the case of the assessee.

1. Whether quantity account is maintained by the assessee ? If yes, whether the purchases are recorded in stock register ?
2. If the purchases were received by transport, transport receipt, and proof of payment of transport ?
3. Signature of godown keeper regarding receipt of goods ?
4. Payment of such purchases, whether made by Account payee cheque ?
5. Percentage of such purchases, against total purchases ?
6. If goods were purchased through broker, his name, address, I.T No. etc ?
7. Payment of such purchases has not come back to the assessee in any form. The burden of proof is on the department ?
8. If such purchases are not considered, what would be percentage of G.P ?
9. If such purchases are sold to reputed companies, firms, institutions, details of such sales and proof of payment received ?
10. Who has received payments of purchases ?
11. Whether Sales tax /VAT is paid on such sales ?
12. If sales tax / VAT assessment is completed, whether purchases and sales are accepted ?
13. Whether books of A/c. are audited u/s. 44AB of the I.T. Act ?
14. There can not be sales without purchases. Alleged bogus purchases are sold to some one, and if the buyer's are considered to be genuine, our sales can not be rejected ?
15. In case of alleged bogus purchases, whether the commodity is in short supply ? If it is in short supply, generally the same is available by paying premium ?
16. Whether the seller of goods are related with the purchaser ?
17. The goods purchased were used for manufacturing ?
Whether the production is recorded in production register ?

18. If the goods manufacture is subject to excise, whether it is recorded in R.G. 4 register ?
19. Could it be proved that without this goods the production was not possible ?
20. Whether the goods were purchased at market price ?

B. Addition on account of purchases

i. 351 ITR 150 Gujarat

CIT V/s. V Sathyanarayan P Rathi

Business Exps. Purchase of Raw material from undisclosed sources. Estimation of profit element. ITAT applying 12.5% justified.

ii. 339 ITR 281 P & H

CIT V/s. P R Packaging Ltd.

Addition of Rs.5018599/- on a/c. of bogus purchases. Parties assessed to tax, P.A.Nos with the department. Payment by a/c. payee cheques. Addition deleted by appellate authorities after analyzing the evidences and documents. Finding of fact. No question of law arises.

iii. 334 ITR 111 Culcutta

Diagnostics V/s. CIT

If the purchases of goods were paid by account payee cheques and the assessee is not able to produce party after 3 years, the addition for bogus purchases was not justified.

iv. 316 ITR 274 Gujarat

Sanjay Oilcake Industries V/s. CIT

In this case, addition on a/c. of inflated purchases of oilcakes was restricted @ 25% by CIT (A) and confirmed by ITAT. In this case, sellers who issued sale bills were not traceable. The goods were received from the parties other than the persons who had issued bills for such goods. Payment of purchases was made by a/c. payee cheques and there after the entire amounts was withdraw by bearer cheques and there was no trace or identity of the person withdrawing the amount from the bank a/c. Under such circumstances the

likelihood of the purchase price being inflated could not be ruled out and there was no material to dislodge such finding. Thus the addition was confirmed. **The assessee failed in this case to produce material to disprove inflated purchases.**

This was a case of manufacturing assessee and as the assessee could not produce the necessary evidence, the addition was confirmed.

v. 252 ITR 476 GUJARAT

DCIT V/s. ADINATH INDUSTRIES

When the assessee furnished the details of purchases, gate pass, receipt note, laboratory report, sample report, the use of material in production. Simply because the bank account of seller and purchaser was in the same bank and the amount credited in the purchaser account was withdrawn on the same day without proving that the amount had come back to the assessee's hands, the addition on account of bogus purchases cannot be made in the case of the purchaser of goods.

If the A.O. is of the views that the purchases are bogus, he ought to have recorded the statement of Bank Manager, Accountant or cashier or the party who introduced the seller to the bank. When all the facts were considered and decided the matter on appreciation of evidence, no interference was called for in the matter.

vi. 163 ITR 249 (GUJ.)

CIT V/s. M. K. BROS

If the payment of purchases are made by A/c. payee cheque, and the same has not been received back in any form, even if Seller of goods declares, that he has simply issued bill, and he has not sold goods, still nothing can be added in the case of assessee.

vii. 134 TTJ 167 Delhi

CTR Volume 52 Part VI page 39

Purchases can not be disallowed due to non filing of confirmation from suppliers especially when assessee furnished. Certificate from bank stating that cheques were cleared and no defect in the books of a/cs. was pointed out by the assessing officer.

C. Addition on account of sales

i. 326 ITR 410 Gujarat

CIT V/s. Samir Synthetics Mill

In case of suppression of sales, the addition of sales amount can not be made but addition of only profits in respect of such sales can be made.

ii. 320 ITR 116 Allahabad

CIT V/s. Mascot (India) Tools and Forgings (P) Ltd.

The assessing officer cannot estimate the income of the assessee on the basis of suppression of sales and payment of commission when the books of a/cs. were audited by the auditors and verified by excise authority. The auditor gave unqualified report and excise authority had checked and verified periodically the books of a/cs.

iii. 304 ITR 52 M.P.

Man Mohan Sadani Vs Commissioner of Income-Tax (Mp)

Income from undisclosed sources. Assessment. Entire sale proceed can not be added to income. Net profit rate to be adopted. The entire sale proceed cannot be regarded as profit or treated as undisclosed income. Only profit rate has to be adopted in such cases.

Followed President Industries 258 ITR 654 Gujarat

iv. 302 ITR 63 Gujarat

CIT V/S. Gurubachhan Singh J. Juneja

Search and seizure. Unaccounted cash sales. Seizure of loose sheets reflecting sales. Addition on basis of unaccounted sales. There was no proof that assessee made investment for alleged unaccounted sales. Entire amount can not be taxed. Only G.P. on sales can be added.

v. 258 ITR 654 Gujarat

CIT V/s. President Industries

The amount of sales could not represent the income of the assessee who had not disclosed the sales. The excess over cost incurred could be treated as profit.

vi. 126 TTJ 240 (CTK)

R R Carrying Corporation V/s. ACIT

If there is difference in sales as per books of a/c. and as per TDS certificates, only G P on difference is to be added. Followed CIT V/s. President Industries 258 ITR 654 Gujarat.

D. Addition on account of G.P.

i. 326 ITR 223 Delhi

CIT V/s. Smt. Poonam Rani

If there is fall in G.P. and the assessee has not maintained stock Register, only on the ground of non maintenance of stock register alone, the book result cannot be denied and when the explanation of the assessee was accepted by CIT (A) and ITAT.

* In this case, no defects were found in the books of a/c. The G P disclosed was **1.4** in the year under consideration as against **5.91** even in the previous year.

ii. 324 ITR 95 Delhi

CIT V/s. Jas Jack Elegance Exports

Looking to the nature of business, if it is not possible to maintain quantity account but other details are maintained and produced to the assessing officer, then the assessing officer can not reject book result. In this case the assessee was engaged in the business of readymade garment and he was doing **embroidery work, stitching work** etc. It was not possible to maintain quantity account.

iii. 316 ITR 120 Rajasthan

Malani Ramjivan Jagannath V/s. ACIT

When the books of a/c. are maintain regularly and inventories of stock was found to be correct and reasonable explanation was given for reduction in profits in the year under consideration, the book result cannot be rejected. The Gross profit cannot be estimated.

iv. 315 ITR 185 P & H

CIT V/s. Om Overseas

When the books of a/c. are regularly maintained and no specific defect in the books of a/c. is pointed out by the assessing officer, the book result cannot be rejected simply because there is fall in G.P.

v. 137 TTJ 385 TM Jabalpur

DCIT V/s. Vishwanath Prasad Gupta

When assessing officer could not find any mistake in the books of account of the assessee, simply on the ground of fall in G.P. and the stock register was not maintained item-wise. Addition could not be made.

vi. 123 TTJ 289 Agra TM

ITO V/s. Laxmi Narayan Ram Swaroop Shivhare

When all sales of liquor are made in cash without proper vouchers etc. but the books of accounts are audited u/s. 44AB, suppliers of the assessee are verifiable, the payment of goods was made through Government Warehouses; looking to the nature of business of the assessee it was not possible to maintain proper sales bills. Profit rate of liquor business varies from area to area and depends on bid money, and no significant defects are pointed out in the books of accounts, addition for not maintaining cash sales cannot be made.

vii. 191 Taxman 386 Delhi

The assessing officer cannot reject books of accounts without pointing out any defect. Merely because the assessee has declared low gross profit rate compared to earlier years and further assessee could not

produce the persons to whom payments were made by the assessee. The assessing officer failed to issue summons before making addition.

viii. 132 TTJ (JP) 107

Shanker Properties V/s. ACIT

CTR Vol. 51 Part VI Pg. 26

Accounts cannot be rejected merely on the ground that summons issued to parties were either returned unserved or no compliance was made where the assessee has maintained regular books of accounts and they were audited u/s. 44AB and also day to day stock register, production and manufacturing record were maintained and were produced before the A.O. in which no other defect were found. Marginal full in G.P. rate does not justify rejection of books of accounts and disturbing the trading result.

E. Addition on account of Stock

i.a 348 ITR 380 S.C.

CIT V/s. Dynavision Ltd.

Excise duty is not includible in valuing closing stock.

b 327 ITR 369 Guj

ACIT V/s. Narmada Chematur Petrochemicals Ltd.

Liability of excise arises only at the time of removal of the goods and the value is not includible in valuation of closing stock of finished goods at the end of the accounting period.

ii. 330 ITR 214 Delhi

CIT V/s. Vimal Moulders (India) Ltd.

Undisclosed income. Addition on the basis of discrepancy in stock found during survey. No independent enquiry by A.O. or CIT (A). Finding that no discrepancy in stock and deleting addition. Finding of fact.

iii. 241 ITR page 363 Madras

CIT V/S. N. Swamy

Addition due to difference between value of stock as recorded in books and found in declaration to bank for getting overdraft.

Burden of proof on revenue could not be discharged by merely referring to statement of assessee to third party. Addition deleted.

iv. 232 ITR page 421 M.P.

CIT V/S. Hindustan Mills and Electrical Stores

Undisclosed income. Addition made because stock was found less in books than in inventory on date of search by applying gross profit rate. Not justified.

v. 230 CTR 293 Gujarat

35 DTR 280 Gujarat

CIT V/s. Arrow Exim (P) Ltd

When the stock is hypothecated and not pledged with bank and the value of stock is inflated to avail higher credit facilities and supported by vouchers, the books and accounting system is found to be genuine, no addition on account of higher stock to the bank could be made.

F. If sales and purchases both are not recorded in books of a/c.

In such situation, the assessing officer will try to add entire amount of bogus purchases and unrecorded sales. This is not correct approach. If it is proved that the purchases were made out of undisclosed income, amount of purchases shall be added but in case of unrecorded sales, amount of profit involved in such transaction can be added and not the entire sale price.

Looking to the above decisions, it is the duty of the assessing officer to know the nature of business, VAT if at all payable on the commodity in which the assessee is dealing, and after considering all allied evidences / records / profit disclosed by other traders dealing in the same commodity and under same circumstances, addition if at all required should be made. If without application of mind and relevant evidences the additions are made, it may not sustain in appeal.

G. 219 ITR Pg. 721 Gujarat

Zenith Processing Mills Vs. Commissioner of Income-tax

Where the assessing officer is not inclined to accept the return submitted by the assessee and if he wants to modify the assessment from the return, a show-cause notice is required to be given to the assessee.

In many cases we have experienced that, assessing officers without giving show cause notice make huge additions. This approach of the assessing officers is not correct. Even in the open house meetings in the Gujarat Chamber of Commerce and Industries jointly with all Gujarat Federation of tax consultants, it has been assured by the chief commissioners that show cause notice will be given before making addition.

H.A 130 TTJ 636 Mumbai

39 DTR Pg. 240 Mumbai ITAT

MORGAN STANLEY ASSET MANAGEMENT INC. vs. DCIT

Non signing of return by proper person makes the return defective but not invalid.

B i. 191 ITR 634 S.C.

Kalyankumar Ray V/s. CIT

If the assessment order is not signed by the assessing officer, the order served on the assessee without signature is a invalid order.

ii. 219 ITR page 214 S.C.

Smt. Kilasho Devi Burman and Others V/S. CIT

For valid assessment, an order has to be signed by the assessing officer.

I. i. 338 ITR 371 M.P.

NATIONAL TEXTILE CORPORATION LTD. (M.P.) vs. CIT

Appeal of ITAT. Duty of Tribunal. Duty to follow decision of jurisdictional High Court. ITAT cannot hold decision of High Court erroneous because it did not consider relevant. Precedent. ITAT to

follow decision of High Court. No power to declare decision of High Court erroneous.

ii. 327 ITR 26 P & H

Commissioner of Income-tax Vs Haryana Tourism Corporation Ltd. (P&H)

When the Fundamental facts remaining the same, mode of assessment can not be changed without reason. There must be consistency in framing the assessment order.

iii. 336 ITR 287 Bombay

CIT V/s. Gopal Purohit

SLP of Dept Dismissed 334 ITR 308 Statutes

Business income or capital gains. Trading in share or investment. Two separate portfolios. Permissible.

Income Tax. General principles. Consistent practice of treating transactions in shares as investment. Consistency. Different view should not be taken for year under consideration.

Nature of income entries in books of a/c. not conclusive.

iv. 138 TTJ 698 Kolkata 'A'Bench

ADDITIONAL COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) vs. ROYAL BANK OF SCOTLAND N.V.

In the absence of any contrary view, decisions of non-jurisdictional High Court have to be followed by the Tribunal; further, it is not permissible for the authorities below to ignore the decision of the higher forum on the pretext that an appeal is filed in the Supreme Court which is pending or that steps are to be taken to file an appeal.

J. Assessment order as per the direction of commissioner

314 ITR 81 S.C.

CIT V/s. Greenworld Corporation

Assessment order passed by assessing officer at dictates of commissioner is nullity. By no stretch of imagination can a higher authority interfere with the independence which is the basis feature of any statutory scheme involving adjudicatory process.

K. i. 337 ITR 271 Gujarat

Deputy CIT V/s. Surat Electricity Co.

When there is remand of case to the assessing officer by appellate authority, the assessing officer has no power to consider a new issue.

ii. 302 ITR 126 Gujarat

Saheli Synthetics P. Ltd. V/S. CIT

When the matter is sent back by ITAT to the assessing officer with regard to particular items, it is not open to the assessing officers to deal with other issues or new source of income.

L. 231 ITR page 892 Karnataka

T. Govindappa Setty V/S. ITO and Another

Note in the statement which is annexed to the return is part and parcel of the return filed. It can not be ignored.

- * Due to e-filing of return, it is not possible to incorporate any note in the return. In such cases, a separate letter should be addressed to the assessing officer justify in the claim of expenditure, allowance etc.

M. i. 316 ITR 433 A'bad

Shivganga Builders P Ltd V/s. ACIT

Business exps. Interest on borrowed capital. Department not empowered to decide when assessee to borrow. Matter remanded as necessary facts not available on record.

ii. 190 ITR 578 Calcutta

CIT Vs Raja Baldeodas Birla Santatikosh (Cal)

Loan taken from bank and deposited in FDR

ITO can not dictate to an assessee as to how he should carry on his business. I.T. Department can not claim to be a sleeping partner of assessee entitled to question validity of his actions.

N. 174 ITR 672 Calcutta

CIT Vs. Shree Bajrang Electric Steel Co. (P.) Ltd.

When the Tribunal has given direction to the assessing officer to frame fresh assessment, assessee can claim deduction not claimed in the original return.

O General

i. 146 TTJ 476 Pune ITAT 'B' Bench

ASSISTANT COMMISSIONER OF INCOME TAX vs. INTERMEDIA CABLE COMMUNICATION PVT. LTD.

Assessing Officer cannot reject books of assessee u/s.145 unless books suffer from incompleteness or incorrectness. Assessing Officer having nowhere expressly rejected the books of a/cs, estimation of income cannot be sustained.

ii.a 66 DTR 104 Chhattisgarh All India May 12 P 34

ACIT V/s. Roopchand Tharani (2012)

Books of a/cs audited cannot be rejected without pointing out specific defects.

b 48 DTR 349 Delhi

CIT V/s. Paradise Holidays

When specific defect by the Assessing Officer is not pointed out and the books are not rejected. No addition by Assessing Officer could be made and specially when books are audited u/s. 44AB by an independent C.A.

iii. ITO Vs. Naresh H. Shah

Mumbai ITAT "A" Bench F.Y. 05-06 Dt. 15-7-2011

When books of account of the assessee are rejected, no further addition on account of unsecured loans. Disallowance of depreciation expenses etc. can be made.

iv. Tax World Vol. XIV Part 1

May 2011 Pg. 76 / 136

Ad-hoc addition cannot be made simply on the ground of self made vouchers unless some of vouchers are proved as bogus or false.

10. BAD DEBT

As per section 36 (1) (vii), bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee is an allowable expenditure.

There was litigation on this issue for allow ability of bad debt. The law was amended with effect from 01/04/89. As per amendment, for claiming bad debt as an allowable expenditure, the assessee has to establish that debt was written off. After amendment it is not necessary to establish that debt in fact had become irrecoverable.

A.i. 323 ITR 397 S.C.

230 CTR Pg. 14 S.C.

TRF Ltd. Vs. CIT

After 01-04-1989 Assessee only establish that debt was written off. Not necessary to establish that it had become irrecoverable.

ii. 352 ITR 401 MP

CIT V/s. V Makpar Exports P Ltd

After 01-04-89, it is not necessary for assessee to give reasons writing off amount itself is sufficient.

B. 337 ITR 294 Gujarat

ACIT V/s. Pullen Pump Industries

If the amount of bad debt is written off in the same year, the assessing officers still disallow the claim of bad debt. It was held that,

after amendment with effect from 01/04/89, writing off amount is sufficient. Assessee need not prove that debt had been bad.

C. 349 ITR 250 Bombay

Harsad J.Choksi v. CIT

Bad Debt disallowed u/s.36(2). Claim for deduction could be made as business loss.

D. 131 TTJ 641 Mumbai Special Bench

DCIT vs. SHREYAS S. MORAKHIA

Amount receivable by the assessee share broker on account of brokerage is a part of debt receivable by him from his clients against purchase of shares on their behalf and once such brokerage is credited to his P&L a/c and the same is taken into account in computing his income, the condition stipulated in s. 36(2)(i) gets satisfied and, therefore, the write off of the debt representing the irrecoverable amount receivable from the clients against purchase of shares on their behalf is allowable as a bad debt.

11. DISALLOWANCE OF EXPS. FOR NOT DEDUCTING TAX. SECTION 40 (a) (ia)

- A.** As per the amendment made by Finance Act 2012 w.e.f. 01/04/13 this section has been diluted. As per this amended section if the recipient of income has (1) Furnished his return of income u/s.139, (2) has taken into consideration such income in the return of income and (3) has paid the tax due on the income declared by him and certificate of C.A. is furnished in this regard in Form 31ABC, than no disallowance shall be made under this section 40(a)(ia).
- B.** As per this section, any interest, commission, brokerage, rent, royalty, fees for professional services/technical services, amount payable to contractor for sub-contractor on which tax is deductible at source and the same has not been deducted or after deduction not paid on or before the due date specified in section 139, such expenditure will not be allowed as business exps.

If the tax is deducted during the previous year but paid after the dates specified in section 139 (1) or the tax is deducted in subsequent year and paid after the due date specified in section 139 (1) such sum shall be allowed as deduction in the year in which such tax has been deducted.

- C.** This section has under gone frequent amendments. Last amendment was made with effect from A.Y.2010-11. Question arose, whether this amendment is a curative in nature? Whether this amendment is applicable to pending assessments ?
- D.** ITAT B Bench Ahmedabad decided the case on this issue in the case of Kanubhai Ramjibhai Makvana V/s. ITO Ward-1, Anand. After considering various decision of Supreme Court and High Courts, it was held that amendment made in Section 40 (a) (ia) is curative in nature and applicable to previous years also.
- E.** Many appeals were pending or if decided the views of appellate authority were different. Thus the matter was referred to Special Bench in the case of Bharati Shipyard Ltd. V/s. DCIT, circle 3(1) Mumbai. The matter was decided on 09/09/11 by 3 members ITAT B Bench, Mumbai. As held in this case, when any amendment which has not been given retrospective effect by legislature, cannot be construed as retrospective on solitary ground that original provision caused some hardship to assessee. Any provision causing hardship and any subsequent relaxation in it will not be retrospective unless expressly stated. When legislature it self has made the provision prospective, judicial or quasi judicial authorities cannot help situation by holding that the relaxation given has retrospective effect. As per amendment in section 40 (a) (ia), it relaxed the hardship by increasing time available for deposit of tax. Thus amendment by Finance Act 2010 to section 40 (a) (ia) with effect from 01/04/2010 being not remedial and curative in nature cannot be declared as having retrospective effect from date of insertion of provision i.e.01/04/2005.

This judgment has been reversed by the honorable Calcutta High Court in the case of CIT Vs. Virgin Creations dated 23/11/11. While giving this judgment the Calcutta high court relied on the following decisions :

1. 319 ITR 306 S.C.

CIT V/s. Alom Extrusions Ltd.

Business expenditure. Deduction on actual payment. Contribution to Provident Fund. Existing provision creating difficulties. Amendment to remove difficulty. Has retrospective effect. Finance act 2003, making amendment but as if with effect from 1-4-2004 to be read as having retrospective effect from 1-4-88.

Interpretation of statutes. Retrospective operation. Provision intended to remove unintended consequences. To be read retrospective to give effect thereto. Strict construction not preferred where leads to unintended consequences.

2. 82 ITR 570 S.C.

Jodha Mal Kuthiala (R.B.) v. Commissioner of Income-tax

Income from property--Assessee's property vested in Custodian of Evacuee Property in Pakistan--Assessee whether "owner" of property so vested--Whether income from such property could be included in income of assessee--Interpretation of statutes--Taxing statutes—Reasonable interpretation--Indian Income-tax Act, 1922, s. 9—Pakistan (Administration of Evacuee Property) Ordinance, 1949, Ss. 6(1), 9, 12, 14(1), 16(1), 20, 22(1).

- * It is true that equitable considerations are irrelevant in interpreting tax laws. But those laws, like all other laws, are to be interpreted reasonably and in consonance with justice.

3. 156 ITR 323 S.C.

CIT Vs. J.H. GOTLA

EQUITY AND TAXATION

Though equity and taxation are often strangers. Attempts should be made that these do not remain always so and if a construction results in equity rather than in justice. Then such construction should be preferred to the literal construction. Where strict literal constructions leads to injustice or absurd result, equitable construction should be applied.

4. 224 ITR 677 S.C.

Allied Motors (P.) Ltd. v. Commissioner of Income-tax

Business expenditure--Tax, duty, cess or fee--Deduction only on actual payment--Proviso clarifying that sums paid after accounting year but before due date for submission of return deductible--To be treated as retrospective--Income-tax Act, 1961, s. 43B.

Interpretation of statutes--Reasonable construction--Proviso inserted to remedy unintended consequences--To be treated as retrospective.

5. 129 TTJ 57 Hyderabad "A" Bench

TEJA CONSTRUCTIONS vs. ACIT

Once estimation of income is made, further disallowance under s. 40(a)(ia) for non-deduction of TDS is not warranted; that apart, if the assessee has paid the impugned amount and (the amount is) not payable at the end of the year on the date of balance sheet, then the provisions of s. 40(a)(ia) are not applicable.

**6. DCIT Vs. S.K. Tekriwala
(Kolkata ITAT)**

www.itatonline.org

Amount not deductible. Short deduction of tax at source. No disallowance for short deduction of TDS default.

F.i. 151 TTJ 526 CUTTACK Bench

PAREEK ELECTRICALS vs. ASSISTANT COMMISSIONER OF INCOME TAX

Land lady a senior citizen submitted Form 15G to the assessee seeking exemption of TDS from the rent of Rs.192000/- paid to her on

the basis that minimum exemption limit in her case was Rs.195000/-. The rent paid assessee without deduction of TDS could not be disallowed u/s.40(a)(ia) even if there was some mistake in the said form.

ii. 139 TTJ (Abad) 70

Valibhai Khanbhai Mankad V/s. DCIT by ITAT A Bench

Belated filing of 15H (No tax planning)

If the tax is not deductible as the recipient of income furnished Form 15G, 15H etc. but the same is furnished belated, whether provision of section 40 (a) (ia) would be applicable ? It was held in the case that section 40 (a) (ia) would not be applicable in such cases. Any other action under the act may be taken for not furnishing the relevant form to the CIT in time.

12. REASSESSMENT FOR CASH PAYMENT AND RULE 6DD

- i.** As per section 40A (3), if any payment to any person is made otherwise than by an account payee cheque or account payee bank draft exceeding Rs.20000/-, such expenditure shall not be allowed.

Similarly, as per section 40A (3A), if liability of any expenditure is allowed and subsequently assessee makes payment in respect of such liability otherwise than by account payee cheque or account payee bank draft, such payment shall be deemed to be considered as business or profession income and chargeable to income tax as income of subsequent year if such payments exceeds Rs.20000/- in a day by cash.

If the payment was made by cash exceeding Rs.20000/- but if the payment is covered by Rule 6DD, no disallowance should be made.

- ii.** Payments covered in Rule 6DD
- a.** Payments to Reserve bank of India or any banking company
 - b.** Payments to state bank of India or any subsidiary bank
 - c.** Payments to any co-operative bank or land mortgage bank

- d. Payments to any primary agricultural credit society
- e. Payments to LIC of India
- f. Payments to Government and as per rule the same is required to paid by cash
- g. Payments made by,
 - i. any letter of credit arrangement through a bank
 - ii. a mail or telegraphic transfer through a bank
 - iii. book adjustment from any account in a bank or any other account in that or other bank
 - iv. bill of exchange made payable to a bank
 - v. the use of electronic clearing system through a bank account
 - vi. a credit card
 - vii. a debit card
- h. Payment is made by way of adjustment against the amount if any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee
- i. Payment is made for the purpose of,
 - i. Agricultural or forest produce or
 - ii. the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming
 - iii. fish or fish products
 - iv. the products of horticulture or apiculture to the cultivator, grower or producer of such articles, produce or products
- j. Payment for the product in manufacturing process without the AID of power in a cottage industry
- k. Where there is no banking facility on the date of payment
- l. Payment to retiring employee or to the legal heirs of the deceased employee on account of gratuity etc. and the aggregate amount does not exceed Rs.50000/-.

- m. (a) Payment to the employee if he is posted for more than 15 days to the place other than his normal place of duty or on a ship and
- (b) does not maintain any account in any bank at such place or ship
- n. When the payment is made, it is a bank holiday or there is strike in the bank etc.....
- o. Payment for goods of service made by any person to the agent who is required to make such payment by cash.
- p. Where the payment is made by an authorized dealer or a money changer against purchase of foreign currency or travelers cheques in the normal course of his business.

iii.[A] Question arises, if the land stands in the names of family members in the Government record but the bill is issue only in one name or if the agricultural land is given for cultivation purpose on adhoc payment and the bill is issued in the name of the person who has taken the land for cultivation purpose, how to claim such income as agricultural income ?

It is the general practice that, the family member is involved in sale of agricultural produces on behalf of the family and at that time all the family members are not required to remain present but care should be taken to see that the bill is issued in the name of all the owners of the land appearing in 7/12 extract and if the agricultural produce is sold by any other person who is doing agricultural operation on behalf of the owners, it should be ascertain that the bills are issued in the names of the owners and it should be mentioned that this sale is through XYZ...

Because the word mentioned in rule 6DD (e) is payment made to cultivator, grower or producer of such articles, produce or products.

[B] A question is raised by the member that, though during the course of assessment proceedings all the details regarding sale of agricultural produces, 7/12 extract, confirmation of he member that the product was sold through family member etc. was given, still the cases are reopened on the audit objections by audit party.

It may be noted that, reassessment proceedings can be initiated on the ground that income chargeable to tax escaped assessment. If the assessment is framed u/s. 143 (3), and there is failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

320 ITR 561 S.C.

CIT V/s. Kelvinator of India Ltd.

The assessing officer has to record his reasons that the income chargeable to tax has escaped assessment. There must be tangible material for the formation the belief.

CBDT Cir. 549 Dt. 31-10-89 (182 ITR 1)

When the amendment in section 147 was made by Direct Tax Laws (Amendment) Act 1987, it is explained in circular no. 549 dated 31/10/89 on page 29 that, if the assessing officer was of the opinion that income chargeable to tax escaped assessment, it would give arbitrary power to the assessing officer to reopen completed assessment on mere change of opinion, to allay these fears, the amendment in 1989 has again amended section 147 and the words, “has reason to believe” were reintroduced.

Thus looking to the circular issued at the time of introduction of this section as well as, latest decision given in the case of CIT V/s. Kelvinator of India Ltd., according to my view the case can not be reopened.

[C] Reassessment on account of audit objection

The case cannot be reopened on the basis of audit objection. The following decisions are worth noting.

i. 119 ITR 996 S.C.

Indian and Eastern Newspaper Society Vs. CIT

Opinion of an internal party of income tax department on a law point can not be regarded as information u/s. 147 (b).

ii. 154 ITR 378 Madras

CIT Vs. Hackbridge-hewittic and Easun Ltd.

Audit party was not competent to give any advice on points of law.

iii. 156 ITR 608 M.P.

Bhagwandas Jain Vs. Commissioner of Income-tax

Reassessment. Audit party bringing to notice principal of law regarding higher value of S.O. Reopening not justified.

iv. 158 ITR 524 Calcutta

Punjab Produce and Trading Co. Ltd. Vs. CIT

Reassessment. Audit party's opinion is no information. Reassessment not valid.

v. 186 ITR 161 Bombay

Jayraj Madeppa Kadadi Vs CIT (Bom)

Reassessment on the basis of audit note on facts disclosed in original returns. Reassessment not valid.

vi. 284 ITR 593 Gujarat

Rajesh Jhaveri Stock Brokers P. Ltd. V/S. ACIT

Reassessment. Condition precedent. Reason to believe that income had escaped assessment. Audit objection to computation of loss. A.O. not accepting objection. Subsequent reassessment notice based on audit objection. Notice not valid.

vii. 325 ITR 459 Bombay

Purity Techtextile Private Limited V/s. ACIT

Reassessment. Information available with A.O. at the time of original assessment. Can not be a ground to reopen assessment on the basis of audit objection.

13. CASH CREDIT

- A.** As per section 68 of the I T Act, “Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not in the opinion of the assessing officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

With effect from 01-04-13 in case of a private company if the some credited consist of share application money, share capital, share premium etc. it will be required to

- a. Furnish an explanation about the nature and source of such some by the applicant and
- b. Such explanation should be satisfactory in the opinion of the assessing officer

There was no provision corresponding thereto in 1922 Act. When the amount is borrowed by the assessee, it is the duty of the assessee to prove by cogent and proper evidences that, there were genuine borrowings because the facts are exclusively within the knowledge of the assessee.

- B.** In case of cash credit, identity of the person, genuineness of transaction and credit worthiness of depositor is required to be established by the assessee. If this is done, primary duty of the assessee shifts on the assessing officer to prove that the amount credited is not genuine and for which he has to bring cogent evidences for rejecting the explanation of the assessee.
- C.** In case of cash credit when the assessee is not able to trace out the depositor due to laps of time, non co-operation of depositors, etc. the assessee should request the assessing officer to obtain bank details of the assessee by issuing summons to the bank authorities. As per recent KYC norms (Know Your Customer) the bank is collecting all the necessary evidences / proof etc. at the time of opening of the bank a/c. like PANo., Photograph, Address proof, Identity Proof, Certificate

of the bank employee regarding his visit to the business premises of the account opener etc. If the bank furnishes these details to the assessing officer directly, it can reduce the burden of the assessee because as per KYC norms, these details cannot be furnished to the assessee directly by the bank being a secret document.

- D.** In cases of the assesses, who are not maintaining books of account and any credit in the bank account of the assessee is found and explanation of the assessee is rejected, additions are made u/s. 68. This is not correct. As per section 68 the credit must appear in the books of the assessee and passbook is not books of the account of the assessee because it is not maintained by the assessee or maintained under his instruction.

- i. 141 ITR Pg. 67 Bombay High Court
CIT, POONA V/s. BHAICHAND H. GANDHI**

- ii. 306 ITR 392 Delhi ITAT
Vinod Behari Jain Vs. Income-tax Officer
Smt. Sarika Jain Vs. Income-tax Officer
Sanjog Jain Vs. Income-tax Officer**

When books of accounts are not maintained by the assessee, the amount received as gift is credited in his bank a/c. and of there is finding that the gift amount was not genuine and represented assessee's own money introduced as gifts. Such amounts are deemed income of assessee. Additions can be made u/s.69A.

- iii. 295 ITR 352 Jabalpur ITAT
ACIT V/S. Satyapal Wassan**

When the additions are made on basis of loose papers, Loose papers are not books of a/cs hence addition can not be made u/s.68.

- E. Decisions for cash credit**

- i. 346 ITR 60 Rajasthan
Commissioner of Income-tax v. Kamal Trading Company**

Unexplained credit--Tribunal deleting addition on ground Assessing Officer not brought any evidence to disprove any transactions and addition on surmises and conjectures. Affidavits filed were enough and sufficient evidence so as to accept the case of the assessee-- Findings of fact--Income-tax Act, 1961.

ii. 338 ITR 563 Delhi

CIT V/s. Mayavati

Income from undisclosed sources. Burden of proof. Gifts. Proof of identity of donors their creditworthiness and genuineness of gifts. Value of gifts not assessable as income from undisclosed sources.

iii. 330 ITR 298 Delhi

CIT V/s. Dwarkadhish Investment P Ltd

When the identity of the depositor and his PANo. is furnished to the assessing officer and when the amount is received by account payee cheque but the assessee is not able to find out share applicants, it was not sufficient to invoke section 68.

* It was held in this case that, it is the revenue which has all the power and to trace any person.

iv. 327 ITR 560 Delhi

CIT V/s. Orbital Communication (P) Ltd.

If the assessee is able to produce substantial evidence with regards to credit worthiness and genuineness of the transaction in relation to cash credit (for share application money) but he is not able to produce the creditor, addition u/s. 68 could not be made.

v. 301 ITR 384 Delhi

CIT Vs Usha Stud Agricultural Farms Ltd. (Del)

301 ITR 404 Rajasthan

Commissioner of Income-Tax Vs Prameshwar Bohra (Raj)

Cash Credit. Credit not fresh but of previous year. Addition not justified.

vi. 293 ITR 43 Delhi

Commissioner of Income-Tax Vs S. M. Aggarwal (Del)

Income from undisclosed sources. Explanation that amount belonged to assessee's daughter. Assessee daughter stating amount did not belong to her. Addition of amount. Without giving Assessee opportunity to controvert statement or give further evidence. Not valid.

vii. 292 ITR 597 P & H

Commissioner of Income-Tax Vs Jeeta Khan (P&H)

Amounts shown as loans. Identity of creditors proved. Loans through. Bank drafts. Amount not assessable as income.

viii. 276 ITR 38 Allahabad

Bhaiyalal Shyam Behari Vs CIT (All)

Cash credit. Assessee stating that all credits were genuine. Claim for benefit of peak credit can not be made.

ix. 264 ITR 254 Gauhati

Nemi Chand Kothari Vs Commissioner of Income-Tax (Gau)

Cash credit. Assessee establishing identity of creditors and amounts received by him by way of cheques. Assessee must be taken to have proved that creditor had creditworthiness.

x. 257 ITR 115 ITAT Agra

Subash Dall Mill V/S. ACIT (Asstt)

Cash Credits. Assessee obtaining loan by cheque and furnishing confirmation certificate. Assessee deducting tax at source for interest paid to creditor and creditor also assessed to tax. Loan genuine. Disallowance not justified.

xi. 256 ITR page 360 Gujarat

DCIT Vs Rohini Builders (Guj)

Cash Credit. Identity of creditors proved. Amounts received by account payee cheques. Initial Burden proving cash credit discharged. Source of credits need not be proved fact that explanation was not satisfactory would not automatically result in deeming amount as income of Assessee.

xii. 231 ITR page 1 Bombay

Smt. Prabhavati S. Shah Vs CIT (Bom)

Appeal. Cash Credit. ITO treated loans as income from undisclosed sources as summons could not be served on creditors. Assessee wanted to prove loan as repayment of loan was repaid by account payee cheque- The copy of bank account. A.O. should have considered evidence produced by Assessee.

xiii.1 141 ITR Pg. 706 Allahabad

CIT, Allahabad V/s. Jaiswal Motor Finance

Cash credit. Deposit in accounts of partners in books of firm in first year of assessment of firm. Deposits made by partners towards capital. Without the deposit they could not have become partners. Deposits cannot be assessed income of firm, without any material to indicate that they were the profits of the firm. It was explained by the assessee that the deposit was out of agricultural income of the partners which was not accepted by the assessing officer. Under peculiar circumstances, it was held that the amount of credit cannot be assessed as income of the assessee firm.

(2) 134 ITD 437 A'BAD

ACIT vs. MEGH MALHAR DEVELOPERS

Capital contribution made by partners. Addition cannot be made in the assessment of firm.

xiv. 203 ITR Pg. 368 Calcutta

CIT Vs Chandball Rice Mills (Pvt.) Ltd. (Cal)

Cash credits. Confirmations produced by the assessee in the original assessment and accepted by ITO. Subsequent confession by creditor that loan given to assessee was bogus. Reassessment proceedings on the basis creditors confession not valid.

xv. 180 ITR 261 Calcutta

Basantipur Tea Co. (P.) Ltd. Vs. Commissioner of Income-tax

Cash credits. Amount credited on the first day of incorporation of company. Assessable as income from other source.

- * In this case, total cash credit was Rs.419300/- and out of that Rs.150000/- was credited on the first day of its incorporation. As the assessee could not prove that the amount was earned as business income the same was rightly added, as income from other sources.

xvi. 103 ITR page 344 Patna

Sarogi Credit Corporation V/S. CIT

Cash credit. Burden of Proof. Credit entries in the names of third parties. Accepted by third parties. Initial burden shifted on assessee to prove truth of entry. Difference when parties are close relations of assessee and other parties. When burden shifts to department.

(The Assessee is not bound to prove the source of source while explaining the alleged cash credit). It will not therefore, be for the assessee to explain further as to how or in what circumstances the third party obtained the money and how or why he came to make and advance of the money as a loan to the assessee.

xvii. 147 TTJ 378 Delhi

When deposits in bank accounts are made from cash balance available to the assessee in its books of accounts. Addition u/s.68 cannot be made irrespective of time gap between the earlier withdrawal from bank and such deposits.

xviii. 136 TTJ 221 A'bad

ITR Vs. Computer Force

Cash Credit. Assessee made payment to the creditors in the subsequent years which is corroborated by ledger accounts. Addition in respect of such credits can not be made.

xix. 135 TTJ 430 Delhi

ACIT V/s. Anjara India Ltd

53 CTR Part V Page 79

Share application money. Parties did not exist at the given address. Assessee produced bank details of the share applicants which go to indicate and establish that all the share applicants were existing account holders and were operating bank accounts as per norms fixed by the bank, Addition could not be sustained.

xx. 133 TTJ 1 Agra
ITO V/s. Mayur Agrawal
CTR Vol. 52 Pg. 41

Once summons were issued on the creditors, their identity is duly proved and A.O. could not make addition u/s. 68 without enforcing the attendance of the parties.

xxi. CIT Vs. Dataware Pvt. Ltd.
Calcutta High Court

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Assessee's A.O. cannot question creditors. I.T. Return.

14. SECTION 14A

A. Section 14 provides heads of income and section 14A provides expenditure incurred in relation to income not includible in total income. Section 14A was inserted by the Finance Act 2001 with retrospective effect from 01/04/62.

B. Provision of section 14A

I As per section 14A inserted by Finance Act 2006 with effect from 01/04/07, for the purpose of computing income under this chapter, (This provision is inserted in chapter IV and this chapter contains from section 14 to 59) no deduction of expenditure shall be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under this act. Thus the income which is not taxable and exempt u/s.10 and against the exempt income, any expenditure is incurred by the assessee, the expenditure will not be allowed.

II This provision shall be applicable, when the assessing officer is not satisfied with the accounts and correctness of the claim of the assessee. As per section 14A (2), the A.O., shall determine the amount of expenditure in relation to such income as per rule 8D which was prescribed with effect from 24/03/08.

III When the assessee claims that no expenditure has been incurred in relation to income which does not form part of total income, the assessing officer shall work out such expenditure as per rule 8D.

IV As per proviso inserted with effect from 11/05/01, the assessing officer shall be prohibited to enhance income u/s. 147 or to pass an order u/s. 154 to increase the liability of the assessee for any assessment year beginning on or before 01/04/01 (A.Y.2001-02).

C. The expenditure shall be aggregate of the following amount.

I The amount of expenditure directly relating to income which does not form part of total income.

II When the expenditure is incurred by way of interest which is not directly attributable to any particular income or receipt, the following formula shall be applicable.

$$A \times \frac{B}{C}$$

Where A = Amount of interest expenses [Other than interest shown above in C-I]

B = Average value of investment appearing in the balance sheet on the first day and last day of the previous year (accounting year)

C = Average total assets appearing in the balance sheet on the first day and last day of the previous year (accounting year)

- III The amount equal to 1/2 % of the average of the value of investment appearing on the first and last day of the balance sheet of the assessee.

Example :

- A. D-mate charges / bank collection charges in connection with the exempt income 50

- B.
$$\frac{A \times B}{C}$$

A = **Expenditure** on interest 50000

B = **Total investment** from where Exempt

income arises as on 01/04/10 19225

Total investment from where Exempt

income arises as on 31/03/11 19247

For average 38472 / 2 19236

C = **Total assets** as on 01/04/10 1963845

Total assets as on 31/03/11 2174356

For average 4138201/2 2069101

$$\frac{A \ 50000 \times B \ 19236}{C \ 2069101} = \boxed{465}$$

- C. $\frac{1}{2}$ % of average of total investment from where tax free income arises (1/2 % of B Rs.19236) 95

- D. **Total disallowance**

Expenses directly relating to exempt income Rs. 50

Interest expenses as worked out above Rs.465

Other expenses Rs. 95

Total **Rs.611**

- D. 1** Thus the expenditure incurred for earning the income u/s. 14 to 59 relates to expense like rent, taxes, salary, interest etc. Thus section 14A relates to all the five heads of income.

- 2 Section 14A is applicable in case of expenditure and not in the case of return of investment.

- 3 If the expense is allowable under any head of income, like interest u/s. 36 (1) (iii), still disallowance can be made u/s. 14A if it relates to exempt income.
- 4 Direct / Indirect expenses relating to income not forming part of total income is to be considered for disallowance u/s. 14A.
- 5 The burden is on the assessing officer to show that expenditure was incurred against income exempt from tax. Thus if the assessee claims that the expenditure incurred is allowable, he has to show that income forms part of total income.
- 6 The disallowance of expenses may be even more than exempt income. There is nothing in the provision that, the expenditure disallowable should not exceed exempt income.

25 SOT 57 Mumbai Tribunal

Sanchayita Mercantile (P) Ltd V/s. ACIT

Against this judgment, there is judgment of ITAT Chandigarh Bench 'B' in the case of ACIT V/s. M/s. Punjab State Co. Op. and Marketing Fed. Ltd. In this case, dividend received was Rs.400410/- while the disallowance of Rs.1273462/- was made u/s. 14A. It was submitted by the assessee that, investment was made out of reserve and surplus and no expenditure was incurred for earning exempt income. The investment was very old and no new investment was made during the year. On these facts, the disallowance was deleted considering the decision reported in 319 ITR 204 P&H Commissioner of Income-tax V/s Winsome Textile Industries Ltd and 323 ITR 518 P&H CIT V/s Hero Cycles Ltd.

This judgment seems to be sound because, even applying the ratio of human probabilities, no prudent man will spend considerable amount for earning meager income. It is against the principle of human probabilities as held in the case of 214 ITR PG. 801 S.C. Sumati Dayal Vs. CIT

- 7 Section 14A is applicable to expenditure incurred against exempt income and not against loss. Navin Bharat Industries V/s. DCIT 90 ITD page 1 ITAT Mumbai 3rd Member.
- 8 The nature of receipt of income has to be looked in the hands of the recipient and not in the hands of payer.
- 9 The assessing officer cannot add expenses on ad hoc basis after Rule 8D is prescribed.
- 10 If the income of assessee comprise of taxable as well as non taxable income, amount of expenditure relating to non taxable income is to be worked out as per section 14A.
- 11 Even if, there is no exempt income earned or received in the year under consideration, the expenses can be disallowed u/s. 14A.
- 12 On the ground of double taxation of income, Share of profit received from the partnership firm is exempt in the case of partner u/s. 10 (2A), still section 14A would be applicable in case of partner.
- 13 Section 14A is applicable in the case of the assessee engaged in the business of dealing in shares as well as shares held as stock in trade when earning of dividend income is incidental to trading in shares.
- 14 When the investment in shares by the assessee is out of his own funds, no disallowance of interest could be made u/s. 14A merely on the ground that assessee had taken loans on which interest was paid.
- 15 In the case of investment company, dividend earned is exempt u/s. 10 (33) hence expenditure incurred on salary can be disallowed.

CIT V/s. Tata Investment Co.

114 ITD 584 Mumbai ITAT.

- 16 Where the interest paid for acquisition of shares is capitalized, such interest paid is not incurred in relation to exempt income i.e. dividend but as part of acquisition of share and no disallowance u/s. 14A could be made.

S Balan V/s. DCIT

120 TTJ 397 Pune ITAT

- 17a In case of bank, even though the tax free investment are made to maintain SLR, disallowance u/s. 14A could be made.

Punjab National Bank V/s. DCIT

103 TTJ 908 Delhi

- b No disallowance could be made u/s. 14A as it is statutory obligation to maintain SLR ratio.

State Bank of Travankore V/s. ACIT

318 ITR 171 Cochin

- 18 If there are **substantial reserves** in addition to **other reserves** in the books of the assessee and it can be proved that the investment was out of surplus funds, no disallowance on a/c. of interest u/s. 14A could be made.

Harisons Malayalam Ltd V/s. ACIT

19 SOT 363 Cochin

- E** If the matter is pending before CIT (A) or ITAT or heard by these authorities but the order is not passed, in such cases, amended proviso to section 14A has to be applied retrospectively by them.
- II** The assessing officer can not reopen case u/s.147 or pass rectification order u/s.154 for the assessments prior to A.Y.2001-02. Thus section 14A will not be applicable in such cases.
- III** If the assessment for A.Y.2001-02 or earlier years is pending before the assessing officer and the issue relates to allowbility of exps. against exempt income, then he will pass the order as per amended law.
- IV** If the assessing officer is directed by appellate authority to consider expenses against exempt income, then the assessing officer will apply amended provision of section 14A. In such case restriction imposed by section 14A will not come in the way of the assessing officer.

- V If for A.Y.2001-02 or earlier year, the CIT has set aside the case u/s. 263 for fresh adjudication, the assessing officer shall apply amended proviso to section 14A. In such cases it can not be said that the assessment became final or concluded until expiry of the statutory time limit.
- VI If the income is falling under any heads of income but due to deduction under chapter VI-A (section 80A to 80U) the same is not liable to tax, provisions of section 14A will be applicable.
- VII If the assessing officer has rightly reopened the case u/s.147, he will be prohibited to consider issue of disallowance u/s. 14A. As per amendment in section 147 with effect from 01/04/89, the assessing officer is entitled to assess any other income which has escaped assessment but due to special provision in section 14 (3) proviso, the A.O. can not make addition u/s. 14A.
- VIII If the return is processed u/s. 143 (1) or assessment order assessed u/s. 143 (3) or rectification order is passed u/s. 154 in which claim of expenditure against income not forming part of total income is accepted by the assessing officer, the assessing officer cannot initiate any proceedings for A.Y.2001-02 or earlier years.
- IX CIT is not assessing officer, so he is not prohibited to take action as per amended proviso to section 14A.
- X If the assessment could be modified by any higher authority, it cannot be said that the order has become final until expiry of period provided for such order.
- XI After the rule 8D is made applicable, it is binding on the assessing officer and the assessing officer cannot disallow pro- rata expenses but he has to strictly follow rule 8D applicable with effect from 24/03/08.

F **Some important authorities**

1. 326 ITR 1 S.C.

CIT V/s. Walfort Share and Stock Brokers P Ltd

Income. Purchase of securities “cum dividend”. Sale at loss. Claim to set off of loss. Permissible. Loss not expenditure relating to dividend.

2. 352 ITR 583 Gujarat

CIT V/s. Gujarat Power Corp Ltd

Exps. on earning tax free income. Assessee using own funds for investment in shares and borrowed funds for business purposes. No finding of incurring of interest on investments. Disallowance u/s.14A not justified.

3. 339 ITR 632 Bombay

CIT Vs. Reliance Industries

If no expenditure in fact is incurred in earning dividend income. No disallowance is permissible.

4. 339 ITR 319 Calcutta

DHANUKA & SONS vs. COMMISSIONER OF INCOME TAX

Disallowance of expenses. Interest attributable to investment in share. No evidence that loans not utilized for acquisition of shares. No new shares purchased in immediately preceding years. Not relevant. Disallowance of interest justified.

5. 339 ITR 296 Kerala

CIT vs. SMT. LEENA RAMACHANDRAN

Interest on borrowed capital. Expenses in relation to income not forming part of total income. Borrowed funds utilized for acquisition of shares in company of which assessee acquired controlling interest. Acquisition of shares in form of investment and only benefit is dividend income. Assessee not entitled to deduction of interest.

6. 290 ITR 238 Mumbai

D.J. Mehta V/S. ITO

Int. on borrowed funds. No nexus between Income and borrowed Funds. Interest not deductible u/s.14-A.

7. 300 ITR 398 Mumbai

ACIT V/S. Citicorp Finance (India) Ltd.

Provisions of section 14-A. Applicable to pending assessment.

8. 302 ITR 218 P & H

Haryana Land Reclamation and Development Corporation V/s. CIT and Another

Deduction. Expenditure incurred in relation to income not includible in total income. Substantial income generated out of agriculture. Assessee not able to prove that expenditure for business purposes. Section 14A applies.

9. 319 ITR 204 P & H

Commissioner of Income-tax Vs Winsome Textile Industries Ltd.

Deduction. Acquisition of shares using assessee's own funds. No interest expenditure incurred. No claim made for exemption. No disallowance warranted.

10. 319 ITR 299 Delhi

Commissioner of Income-tax Vs Ms. Sushma Kapoor

- A. Interest on borrowed capital. Interest free advances. Finding that advances given before taking of loan. Disallowance not justified.
- B. Section 14A. Borrowed funds utilized only for investment and such investments co-related with borrowed funds. Disallowance on ad hoc basis not justified.

11. 319 ITR 416 Karnataka

Pradeep Kar V/s. ACIT

Exemption. Other sources. Interest on capital borrowed for investment in shares. Deductions. Dividend. Dividend not assessable as income from other sources. Dividend exempt from tax. Expenditure related to exempted income. Not deductible.

12. 323 ITR 518 P & H

CIT V/s. Hero Cycles Ltd.

Deduction. Disallowance of expenditure in relation to income which does not form part of total income. Dividend income. Disallowance not permissible where no nexus between expenditure incurred and income generated.

13. 325 ITR 523 Kerala

CIT V/s. Popular Vehicles And Services Ltd

Interest on borrowed capital. Expenditure in relation to income not forming part of total income. Funds diverted to sister concern of which assessee was a partner. Share income from firm not taxable. Interest not deductible.

14. 301 ITR 359 Mumbai ITAT

Kankhal Investments and Trading Co P Ltd V/s. ACIT

Deduction. Dividend. Disallowance of expenditure on exempt income. Ad hoc disallowance not permissible.

15. 312 ITR 1 Special Bench Bombay

ITO V/s.

1. Daga Capital Management Pvt. Ltd.

2. Zaveri Virjibhai Mandalia and Others

Section 14-A. Deduction. Special provision disallowing expenditure in relation to exempted income. Applicable for all heads of income. Sub sections (2) and (3) are procedural and retrospective in nature.

16.a 317 ITR 86 ITAT Delhi S.B. This is a special bench decision

Cheminvest Ltd. V/s. ITO

ACIT V/s. Cheminvest Ltd.

Deduction. Expenditure in relation to exempted income. Shares purchased out of borrowed funds. Dividend exempted whether shares held as investment or as stock in trade. Interest paid thereon. Not allowable.

b ACIT V/s. President Securities Pvt Ltd (Mumbai Tribunal)

ITA No.5281/M/2011 21-11-12

All India Vol-4 No.1 Jan 2013 P 8

Dividend income earned on shares held as stock in trade. Section 14A has no application.

Assessee always wants the shares to be sold and only unsold shares are the source of such incidental dividend income.

17. 320 ITR 307 Delhi

Commissioner of Income-tax Vs Ms. Sushma Kapoor

Deduction. Expenditure incurred in relation to income not includible in total income. Loss on sale of securities for payment of interest on P.F. section 14A not applicable. To be allowed.

18. 328 ITR 81 Bombay

Godrej and Boyce Mfg. Co. Ltd. Vs Deputy Commissioner of Income-tax

Section 14A applicable to dividend income and income from mutual funds exempted u/s. 10 (33).

Section 14A (2) and 14 (3) are constitutionally valid.

Rule 8D not retrospective. Applicable from A.Y.2008-09. Disallowance to be determined on reasonable basis.

19. 330 ITR 556 Kerala

Catholic Syrian Bank Ltd. Vs Commissioner of Income-tax

Section 14-A. Concluded assessment could not be reopened. What is concluded assessment. Assessment which could be modified by higher authority is not a concluded assessment till expiry of time limit for such modification. Order remanded in appeal. Subsequent revision of order. Permissible.

20. 336 ITR 434 P & H

Catholic Syrian Bank Ltd. Vs Commissioner of Income-tax

Exempted dividend. Omission to claim exemption for dividend. Not relevant. Assessee entitled to exemption. Disallowance u/s. 14A cannot be made on basis of presumption. No evidence that expenditure incurred in earning dividend. No disallowance permissible u/s. 14A.

21.a 149 TTJ 708 Mumbai

STATE BANK OF MAURITIUS LTD. vs. DEPUTY DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION)

14A applicable in case of income which is not at all chargeable to tax. It is not applicable where income is chargeable at a special rate u/s. 114A. Exps. wholly allowable for such income.

b. 144 TTJ 0286 Mumbai

134 ITD 339 Mumbai

VARUN SHIPPING COMPANY LTD. vs. ACIT

When the income of the shipping business is computed in accordance with the provisions of Chapter XII-G no separate disallowance on account of such expenditure under s. 14A can be made.

22. 148 TTJ 73 Mumbai

DEPUTY COMMISSIONER OF INCOME TAX vs. Janak Raj

If assessee had sufficient noninterest bearing funds to make investments on which tax exempted income has been earned, disallowance offered by the assessee has to be accepted as fair and reasonable. No further disallowance could be made applying Rule 8D.

23. 147 TTJ 142 A'bad Special Bench

Vishnu Anant Mahajan V/s. ACIT

Depreciation not being an expenditure cannot be disallowed u/s. 14A in respect of share income of partner exempted u/s. 10 (2A).

24. 252 CTR 113 Orissa

SRI PUSPA RANJAN SAHOO vs. ACIT (INV)

Deductions allowable under chapter VI-A do not result in exclusion of the income from charging section; No disallowance could be made against the income which was entitled to deduction u/s.80P(2)(d).

25. 132 ITD 549 Mumbai

BUNGE AGRIBUSINESS (INDIA) (P) LTD. vs. DEPUTY CIT

If there were funds available, both interest-free and interest-bearing, then a presumption would arise that interest-free funds have been generated for investments and no disallowance of interest could be made under s. 14A.

26. Pawankumar Parmeshwarlal V/s.ACIT

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All India Journal Feb 2011 page 37

Disallowance u/s.14A cannot be made on PPF interest / RBI Bond interest and dividend income. Exempted interest was on personal investment.

27. ACIT Vs. Punjab State Co.Op.& Market

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Disallowance u/s. 14-A. No nexus between investment in tax free securities & borrowed funds. No disallowance to be made when no investment were made during the year. Investments made in earlier years out of reserves & surplus and there was no expenditure incurred during the year to earn dividend. Disallowance cannot exceed exempted income.

28. All India Federation Journal Nov. 2009 Pg. 17 A.Y. 2001-02

ITAT (Mumbai) Bench “H” ITA No. 1534/M/04

Charimasingh Popat Vs. ACIT

Share of profit is exempted in the case of partner, section 14A is applicable.

G. Penalty u/s. 271 (1) (C) when addition is made u/s. 14A

1. a Hindustan Steel Ltd. V/S. State of Orissa Reported In 83 ITR 26

Penalty. When to be levied. General principles. Failure to register as “Dealer” under sales tax act. Bona Fide belief that assessee was not a “Dealer”. Levy of penalty. Whether justified ?

As held in this case, “An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the act or where the breach flows from a bonafide belief” that the offender is not liable to act in the manner prescribed by the statute.

b Cement Marketing Co. V/S. Comm. of Sales Tax 124 ITR 15 S.C.

Sales Tax. Penalty. “False” return. Omission to include in return of turnover freight included in price of bona fide belief that it was not taxable. Return not “False”. No penalty leviable.

- * If any act is done under bonafide belief, no penalty is leviable.
This judgment was given in relation to central S. tax Act 1956.

2. 291 ITR PG. 519

Dilip N. Shroff V/S. Jt. CIT

It was held in this case that assessing office has to be fair and objective in the matter of imposition of penalty. It was held that in this case that penalty u/s. 271(1)[c] is leviable for the default of concealment of income or furnishing inaccurate particulars thereof. But by reason of such concealment or furnishing inaccurate particulars alone, the assessee does not ipso facto become liable to penalty. Imposition of penalty is not automatic. Penalty proceedings are not to be initiated merely to harass the assessee. The approach of

the A.O. in this behalf must be fair and objective. In the penalty proceedings the authority must consider the matter afresh as the question has to be considered from a different angle.

3. 293 ITR 524 Madras

CIT Vs Caplin Point Laboratories Ltd. (Mad)

Penalty u/s. 271(1)(C). When disallowances were made on the basis of different interpretations it can not be said that the assessee concealed particulars of income or furnished inaccurate particulars of income. In this case the Assessee adopted a particular view on the basis of certain case law or some bonafide belief.

4. 301 ITR 13 Delhi

CIT V/S. Phi Seeds India Ltd.

Penalty. Concealment of income. Claim for deduction found to be erroneous. No concealment of income penalty could not be imposed. 271(1)(C) is attracted only in those instances where Assessee Concealed the particulars of income or has furnished inaccurate particulars of such income with an intent to mislead the revenue. I.T. Act does not envisage or explicitly provide that in every case where return is not accepted as correct and assessment is framed at an income higher than that presented and offered for taxation by an Assessee in the form of its return.

Penalty proceedings must be initiated. This proposition must logically follow from the word “may” in contradiction to “shall” in section 234.

5. 317 ITR 1 SC

CIT V/s. Atul Mohan Bindal (2009)

The Supreme Court pointed out that Union of India & Others V/s. Dharmendra Textile Processors & Others (2008) 306 ITR 277's case has been explained in Union of India v/s. Rajasthan Spinning and Weaving Mills (2010) 1 GSTR 66 (SC) / 224 CTR (SC) 1 and concluded in line with this decision that penalty u/s.11AC of the Central Excise

Act could not be levied in every case of non-payment or short payment of duty and that penalty in respect of section 271 (1)(C) of the Income Tax Act would be leviable, subject only to the conditions there under. It required the matter to be considered not solely with the decision of Rajasthan Spinning and Weaving Mills' case (supra).

6. 322 ITR 158 S.C.

CIT V/s. Reliance Petroproducts

[230 CTR 210 S.C.]

Penalty. Concealment of particulars of income. No information given in return found to be incorrect. Making incorrect claim. Does not amount to concealment of particulars.

15. SECTION 36 (III) DEDUCTION OF INTEREST

A.1. As per this section, interest paid on capital borrowed for the purpose of business or profession is allowable as deduction against business or professional income.

2. With effect from 01/04/04, interest on capital borrowed for acquisition of asset, for extension of existing business or profession from the date of capital borrowed till the date of such asset was first put to use shall not be allowed as deduction.

B. Some important authorities

1. 274 ITR 448 Allahabad

CIT V/s. Abbas Wazir (P.) Ltd.

Income. Accrual of income. Interest on amount advanced.

Recovery of even principal amount doubtful. Decision not to charge interest. Interest does not accrue.

2.a 288 ITR 1 S.C.

S.C. S.A. Builders Ltd. V/s. CIT (Appeals) and Another

Interest on borrowed capital. Interest on money borrowed from bank and lent to sister concern without charging interest when allowable. Test same as that for allowance of business expenditure. Viz "For the

purpose of business”. Allowable as a measure of commercial expediency.

b ACIT V/s. Tulip Hotels Ltd.

www.itatonline.org

Business exps. Interest. Loan to subsidiary. Decision given in the case of S.A. Builders Ltd V/s. CIT. 288 ITR 1 S.C. needs reconsideration.

3. 293 ITR 237 Madras

CIT V/s. South India Corporation (Agencies) Ltd.

Income. Loans advanced to sister concern and subsidiary without interest. No fresh loans in relevant account year. No evidence that loans were from borrowed funds. Notional interest on advanced not includible in total income.

4.a 319 ITR 299 Delhi

CIT V/s. Ms. Sushma Kapoor

Interest on borrowed capital. Interest free advances. Finding that advances given before **taking of loan**. Disallowance not justified.

b 325 ITR 316 Delhi S.A. Builders followed

CIT V/s. H B Stock Holdings Ltd. (No.1)

Interest on borrowed capital. Interest free loans given to sister concern prior to borrowed amount. Not relevant. Interest deductible.

5. 324 ITR 426 Delhi

CIT V/s. Lalsons Enterprises

Interest on borrowed capital. Disallowance on ground of diversion of funds to sister concern. Finding of mutual advances between assessee and sister concern in course of business and no interest charged by either party. Interest paid to bank not to be disallowed.

6. 326 ITR 286 P & H

CIT V/s. Pankaj Munjal Family Trust

Interest on borrowed capital. Amount borrowed at 16% interest and invested in 4%. Non cumulative preference shares. **No evidence that transaction not genuine.** No part of interest could be disallowed u/s. 36 (1) (iii).

7. 331 ITR 401 P & H

CIT V/s. Rockman Cycle Industries Pvt Ltd

Interest on borrowed capital. Borrowings from sister concern at higher rate of interest and investment in shares of another sister concern carrying dividend at lower rate. Taxing authorities and court entitled to determine true legal relation resulting from transaction. Must look at the matter from the view point of prudent businessman. Not entitled to hold roving inquiry.

8.a 331 ITR 502 Delhi

CIT V/s. Bharti Televenture Ltd.

Interest on borrowed capital loans granted interest free to subsidiaries. No direct nexus between borrowed funds and advances. Sources of advances explained and assessee having adequate non interest bearing funds at relevant time. Advances to subsidiaries found to be made for business considerations. Onus to prove commercial expediency discharged. Deduction of interest allowable.

b 146 TTJ 543 Mumbai

PRANIK SHIPPING & SERVICES LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX

Interest free funds available in excess of interest free loans advanced by assessee to the sister concern. No disallowance of interest can be made.

16. SECTION 32 DEPRECIATION

- A.1.** Depreciation is allowable on tangible assets like building, machinery, plant or furniture and on intangible assets like know-how, patents, copy rights, trade marks, licenses, franchises or any other business or commercial rights of similar nature.

2. Depreciation is allowable on **assets owned wholly or partly** by the assessee and **used for the purposes of the business** or profession.
3. In the case of block of assets, depreciation is allowed on WDV as per percentage which may be prescribed.
4. If the asset is put to use for less than 180 days, depreciation shall be allowed at 50%.
5. From 01/04/1988 if the building in which the business or profession is carried out is not owned by the assessee but the assessee hold lease rights or other right of occupancy, any capital expenditure incurred by the assessee on construction of any structure or by way of renovation, for extension or improvement to the building, the assessee shall be presumed to be the owner of such property and the depreciation will be allowed accordingly.
6. From 01/04/2002 as per explanation 5 of this section, whether or not the assessee has claimed deduction in respect of depreciation, it will be presumed that depreciation was claimed and allowed to the assessee.

B. Some important authorities

1. 350 ITR 527 S.C.

I.C.D.S. Ltd. vs. Commissioner of Income Tax

Depreciation—Vehicle leased out—Lessee registered as owner—Claim for depreciation at higher rate—Allowability—Assessee claimed depreciation at a higher rate on vehicles leased out by him as a part of his business on ground that vehicles were used in business of running on hire—AO disallowed claim—Held, Section 32 requires use of asset for the "purposes of business", it does not mandate usage of asset by assessee itself—Assessee was a leasing company which leases out trucks that it purchases—Thus as long as asset was utilized for purpose of business of assessee, requirement of Section stood satisfied—Motor Vehicles Act mandates that during period of lease, vehicle be registered, in certificate of registration, in name of lessee

and on conclusion of lease period, vehicle be registered in name of lessor as owner—Section 2(30) leaves no choice to lessor but to allow vehicle to be registered in name of lessee, thus, no inference could be drawn from registration certificate as to ownership of legal title of vehicle—Further if lessee was in fact owner, he would have claimed depreciation on vehicles, which, as specifically recorded in order of Tribunal, was not done—As assessee was hiring trucks for purpose of business, therefore, it fulfilled requirements for a claim of a higher rate of depreciation, and hence was entitled to the same.

2.a 327 ITR 323 S.C.

Techno shares and stock Ltd. V/s. CIT

On BSC membership card, depreciation is allowable being an intangible asset.

b 252 CTR 233 S.C.

COMMISSIONER OF INCOME TAX vs. SMIFS SECURITIES LTD

Stock Exchange Membership Cards are assets eligible for depreciation u/s. 32.

Goodwill' is an asset eligible for depreciation.

c 318 ITR 268 Bombay

Kotak Securities Ltd. V/s. Additional CIT

Stock exchange membership card is a capital asset. Intangible asset. Entitled to depreciation.

3. 147 TTJ 297 TM (Chennai)

Regularization fee paid for violations of the provisions of CMDA in construction of hospital building formed cost of const and assessee was entitled to depreciation.

4. 141 TTJ 432 Delhi

SONY INDIA (P) LTD. vs. ACIT

Licence for use of computer software being an intangible asset as per Part B of Appendix I to IT Rules is eligible for depreciation @ 25 per cent.

5. 141 TTJ 248 Delhi

DCIT vs. HOTEL EXCELSIOR LTD.

Landscaping done by assessee in its hotel is to be treated as 'building' and thus, depreciation is allowable on landscaping expenses, more so when the Revenue has accepted the order of the CIT(A) for the preceding assessment year allowing similar claim.

6. 141 TTJ 183 Mumbai

RAJESH KESHAV PILLAI vs. INCOME TAX OFFICER

When entire plant and machinery of one division is transferred and new machinery with same rate of depreciation is purchased section 50 is not applicable.

7. 140 TTJ 446 Delhi

HAWORTH (INDIA) (P) LTD. vs. DCIT

Printers and UPS fall within the class of computer peripherals and hence eligible for depreciation @ 60 per cent.

8.a 140 TTJ 100 Chennai

ACIT vs. CHETTINAD CEMENT CORPORATION LTD.

Depreciation on the increased cost of the assets arising out of foreign exchange fluctuation as on the last day of the previous year was allowable.

b 175 ITR 220 Karnataka

Hindustan Machine Tools Ltd. V/s. CIT

Increased cost due to exchange fluctuations. Depreciation allowable on such increased value of asset.

9. 139 TTJ 718 A'bad

GUJARAT ROAD & INFRASTRUCTURE CO. LTD. vs. CIT

Assessee was entitled to depreciation on toll road which is constructed on 'build-own-operate-transfer' basis.

10. 132 TTJ 233 A'bad ITAT

MADHU INDUSTRIES LTD. vs. INCOME TAX OFFICER

As electrical installation consisting of electrical wires, switches, plugs, cables, MCB box and electrical items cannot function independently, but being a part of plant and machinery, it cannot be classified under furniture and fittings; accordingly, the assessee is eligible for depreciation @ 25 per cent and not @ 15 per cent.

11. 76 DTR 342 Bombay

CIT V/s. Birla Global Asset Fin Co Ltd

Vehicles used by the assessee in his business were commercial vehicles and deprecation @ 50% was allowable.

12. 193 ITR 483 Madras

Crompton Engineering Co. Ltd. V/s. CIT

Jeeps are motor cars.

13. 244 ITR 192 S.C.

CIT V/S. Anand Theatres

Hotel / Cinema Theater is not a plant as it is specifically equipped for the purpose of business. It is a building.

14. a 341 ITR 467 Delhi

Commissioner of Income-tax Vs Oswal Agro Mills Ltd. (Del)

Depreciation. Block of assets. Asset forming part of block of assets. To be allowed depreciation even if not used in relevant year.

b 187 Taxman 111 Delhi

CIT Vs Bharat Aluminium Co. Ltd.

Depreciation is allowed on block of assets. Individual assets lose their identity after becoming inseparable part of block of assets. It is not necessary that each asset of block should be used.

c 251 CTR 427 Gujarat

ACIT vs. S.K. PATEL FAMILY TRUST

Depreciation on certain assets which had been allowed could not be disallowed on the ground that such assets were not actually put to use during the year under consideration.

15. Asset ready to use

a. View in favour of the assessee

i. 123 ITR 404 Delhi

Capital Bus Service (P) Ltd V/s. CIT

Asset ready to use but not actually used is entitled to depreciation.

ii. 221 ITR 857 Gauhati

CIT V/s. India Tea and Timber Trading Co.

Even a passive use includes actual use for the purpose of depreciation.

iii. a 251 ITR page 133 Gujarat

Assistant CIT Vs. Ashima Syntex Ltd.

Depreciation. Machinery purchased for expansion of business. Trial run of machinery. Assessee entitled to depreciation.

b 326 ITR 297 Allahabad

CIT V/s. Mentha and Allied products

Trial run of plant constitutes use of assets and depreciation is allowable.

iv. a 292 ITR 362 Madras

CIT V/s. Southan Petro Chemicals Ltd.

Stand by asset (Machine parts) is entitled to depreciation.

- b 301 ITR 255 Madras**
CIT Vs Southern Petrochemical Industries Corporation
 Depreciation. Asset kept as standby. Entitled to depreciation.

- c 311 ITR 202 Madras**
CIT V/s. Southern Petrochemical Industries Corporation Ltd.
 Depreciation. Stand by asset not put to use during accounting year.
 Entitled to depreciation.

- v. 306 ITR 114 Madras A.Y.93-94**
Siv Industries Ltd. V/S. Deputy CIT
 Depreciation. Meaning of put to use. Machinery used or kept ready to use for 180 days. Full depreciation allowable.

- b. User test other view**
- i. 267 ITR 768 Bombay**
Dineshkumar Gulabchand Agrawal V/s. CIT
 The word used for the purpose of business denotes actually used and not merely ready for use.

- ii. 290 ITR 353 Karnataka**
DCIT V/s. Yellamba Dasappa Hospital
 For claiming depreciation asset has to be actually used. Asset kept ready theory is not available to the assessee.

- iii. 133 ITR 884 Gujarat**
CIT V/s. Suhrud Geigy Ltd

- 16. 98 ITR Pg. 167 S.C.**
Challapalli Sugars Ltd. Vs Commissioner of Income-tax (SC)
 Depreciation. Interest paid for installing machinery for the period prior to commencement of production is part of asset and depreciation is allowable on combined cost.

17. 191 ITR 156 Karnataka

CIT Vs Mangalore Chemicals and Fertilizers Ltd. (Kar)

Business income. Depreciation. Unabsorbed depreciation. Deduction u/s.37 (2A) (Entertainment exps.) to be allowed first. Loss carried forward from earlier years to be deducted next and unabsorbed depreciation deduction from balance.

18. 202 ITR 291 Bombay

CIT V/s. Mirza Ataullah Baig

Truck purchased on installment is entitled to depreciation though not registered in the name of the transporter.

19.a 214 ITR Pg. 516 Madras

Commissioner of Income-tax Vs. Sekar Offset Press

Depreciation. Revaluation of asset due to disputes among partners and transfer to partner. Not for purpose of tax evasion. Explanation 3 to section 43 (1) not applicable. Depreciation allowable on market value of assets.

b 253 ITR page 100 Madras

CIT V/s Alagappa Cotton Mills (Mad)

Depreciation. Change in firm's constitution by retirement and introduction of new partners. Value of assets enhanced. Depreciation allowable at W.D.V.

c 258 ITR page 390 Madras

Nagammal Cotton Mills (Pvt.) Ltd. Vs CIT (Mad)

Depreciation. Firm of two partners forming new company with 2 Directors. Firm dissolved after 13 months. Assets of firm taken over by Co. Value of assets shown at much higher value than its market value. A.O. justified in taken WDV of the asset Section 32 & 43 (1).

20. 216 ITR 535 Madras

CIT V/s. Tamilnadu Dairy Development Corporation

Transfer of asset by Government does not require registration.
Depreciation allowable.

21. a 216 ITR page 607 S.C.

CIT V/S. Virmani Industries Pvt. Ltd. And Others

Depreciation. Unabsorbed depreciation. Carry forward and set off "Profits and Gains" in section 32(2). Meaning of Profits and gains include income from other heads. Not necessary that business in respect of which depreciation was granted should be carried on in the following year. Asset which earned depreciation need not exist in the following year.

b 260 ITR 207 Gujarat

Commissioner of Income-Tax Vs Fabriquip P. Ltd. (Guj)

Depreciation. Unabsorbed depreciation. Carry forward and set off. Condition for availing of benefit. Assessee need not carry on any business or profession in subsequent year. Assessee entitled to carry forward and set off unabsorbed depreciation.

22. 217 ITR Pg. 250 Bombay

Commissioner of Income-tax Vs. Agrawal (G.N.) (Individual)

Depreciation. Truck used in business. Truck under repairs. Entitled to depreciations.

23. 231 ITR - 285 S.C.

CIT V/S. Tata Iron and Steel Co. Ltd.

Actual cost. Depends on the amount paid by assessee to acquire asset. Loan taken to acquire asset. Manner of repayment of loan or non payment of loan will not alter cost of asset. Fluctuation in rate of foreign exchange result in gain or loss while repaying installments of foreign loan will not alter cost incurred for purchase of asset for computing depreciation.

24. 233 ITR 389 Delhi

CIT V/s. Nagpur Golden Transport Co.

Vehicle taken on the higher purchase agreement. Depreciation allowable to the user.

25. 239 ITR 775 S.C.

Mysore Minerals Ltd. V/S. CIT

Depreciation. Building. Condition precedent for claiming depreciation. Ownership of building. Meaning of ownership in section 32. Wide meaning must be given. Assessee in possession of building on part payment of price. Building not registered in name of assessee. Assessee was owner of building for purpose of section 32. Entitled to depreciation on it. Interpretation beneficial to assessee.

26. 243 ITR - 2 S.C.

CIT V/S. Karnal Co-Operative Sugar Mills Ltd.

Amount deposited to open letter of credit for purchase of machinery required for setting up plant. Interest is directly connected and incidental to construction of plant. Interest is a capital receipt, which will go to reduce the cost of asset.

27. 258 ITR 23 Delhi

Escorts Electronics Ltd. Vs CIT (No.1) (Del)

Depreciation. Other sources. Unabsorbed depreciation of earlier years can be set off against income from other sources of current year (Section 32 & 56).

28. 263 ITR 345 Bombay

CIT V/S. Taxspin Engineering and Manufacturing Works

If firm is converted in to Co. Depreciation to the firm is allowable till it was a firm.

29. 149 CTR 219 Allahabad

CIT V/s. Navdurga Transport Co.

When asset registered in the name of the partner is introduced in the partnership firm, depreciation is allowable even though the vehicle continued to remain in the name of the partner.

17. NATURAL JUSTICE

In assessment proceedings, principle of natural justice has to be applied. If any evidence / material is collected behind the back of the assessee, such evidence / material has to be given to the assessee. Opportunity of cross examination to be provided to the assessee. Without furnishing such evidence to the assessee, if the assessment is framed, it's a breach of principle of natural justice and such assessment can not sustain in appellate proceedings. The following decisions are worth noting.

a. 3 S.C. Page 410 (1998)

CBI V/s. V. C. Shukla [Vidhyacharan]

The loose papers and documents found from the possession of the third party even if such documents contain narration, the revenue cannot be justified in resting its conclusion on it.

b. 30 ITR 181 S.C.

Mehta Parikh & Co. V/S. CIT

High Denomination notes of Rs.1000/- in possession of assessee. Assessment as undisclosed profits. Finding based on mere surmise. Affidavits. Rejection without cross examination. Legality.

c. 45 ITR 206 S.C.

C. Vasantlal & Co. V/S. CIT, Bombay

Income Tax enquiries. Evidence. Income Tax authorities whether bound by technical rules of evidence. Rules of natural justice. Examination of witnesses in the absence of assessee. Duty to give opportunity to assessee to cross examine.

d. 68 ITR 796 Kerala

Joseph Thomas & Bros. V/S. CIT

When income is estimated without furnishing details of such cases to the assessee the assessment is illegal.

e. 96 ITR 96-97 Allahabad

Gargi Din Jwala Prasad V/S. CIT Up

Assessment. Principles of natural justice. Addition of amount of income. Opportunity to assessee to be heard and inspect record. Permission to cross examine witnesses given but names of witnesses and substance of statements made by them not given. Assessment whether valid ?

Held that the assessment was vitiated by violation of the principles of natural justice as the permission given for cross examination of witnesses was illusory.

f. 101 ITR 721 (J & K)

International Forest Co. V/S. CIT

111 ITR 923 Orissa

Orissa Fisheries Development Corp. Ltd. V/S. CIT

Assessment. Income from forest coupe. Additions made by ITO to amount returned. Validity. Mere low yield of outturn. Lesser outturn in accounting year than in earlier years. Ignoring report of forest officer about extent of rot without good grounds or examining forest officer. Non acceptance of sale of timber referred to by assessee. Use of schedule adopted by forest department for working out of yield of sawn timber. Reliance on Ayyangar commission report. Opportunity to assessee to meet remarks in that report. Arbitrary addition to income based on guess work. Whether justified ?

g. 125 ITR 713 Supreme Court of India

Kishinchand Chellaram V/S. C.I.T.

Income-tax Proceedings. Evidence to be Used against Assessee. Letter from Manager of bank through which money remitted. Not shown to assessee. Not admissible. Opportunity to controvert should be given to assessee.

h. 238 ITR page 282 Madras

Vijay Hemant Finance and Estates Ltd. V/S. Ito and Another

TDS. Declaration in form no.15-H filed along with return of TDS. Minor defects in form no.15-H. Opportunity to rectify must be given.

Natural justice. Opportunity to be heard. Obligatory where adverse consequences to party likely. Even where statute does not specifically provide for it.

i. 242 ITR page 501 Gujarat

Kusumben M. Parikh Vs. Central Board of Direct Taxes

Refund u/s.119. Refund exceeding Rs.10000/-. Application to CBDT for condonation of delay to CBDT. Rejection of application without giving reasons. Not justified. Power u/s.119 are quasi-judicial power must be exercised in conformity with principles of natural justice.

j. 249 ITR 216 S.C.

Tin Box Company V/S. CIT

Income tax proceedings. Opportunity of being heard. Assessment. Appellate Tribunal finding that assessee was not given proper opportunity of being heard. Appellate tribunal holding assessee had opportunity before commissioner (appeals). Deciding claim of assessee as not having merit and not remanding matter to assessing officer. High court. On reference confirming order of tribunal. Supreme Court. Appeal.

Orders of High court, Tribunal and Commissioner (Appeals) set aside and matter remanded to assessing officer for fresh consideration after giving assessee proper opportunity of being heard.

k. 262 ITR 269 Delhi

J.T. (India) Exports Vs Union of India (Del)

Natural justice. Personal hearing before exercising discretion is necessary. Unless specifically excluded. Even if statute is silent requirements to follow a fair procedure before taking a decision.

l. 284 ITR 557 Kerala

CIT V/S. C.F. Thomas

Order passed without giving assessee opportunity to rebut statement collected behind his back. Failure of natural justice. Effect. Order quashed and matter restored to stage where illegality intervened.

m. 295 ITR 105 Delhi

CIT V/S. Dharmpal Premchand Ltd.

Natural Justice. Refusal despite request by assessee to permit cross examination of analyst. Violation of natural justice.

n. 295 ITR 303 Madras

V. Selladurai V/S. Chief CIT

Order by CIT passed u/s.263 without granting personal hearing to Assessee. Violation of natural justice.

o. 301 ITR 134 M.P.

Prakash Chand Nahta V/S. CIT

Assessment. Statement of third party relied on by revenue. Third party retracted statement subsequently. Assessee not allowed to cross examine third party. Power of A.O. to summon third party. Violation of principles of natural justice.

Assessment order not valid.

p. 302 ITR 40 Madras

M. Pirai Choodi Vs Income-Tax Officer (Mad)

Violation of principles of natural justice. Documentary evidence tendered by Assessee not considered. Assessee not given opportunity to disprove statement by third party relied on by A.O. Writ maintainable.

q. 306 ITR 27 Delhi

Commissioner of Income-Tax Vs Rajesh Kumar (Del)

Unexplained investment. Addition on a/c. of purchase of house property based on statements recorded during inquiry. Neither copies of statements nor material collected during enquiry disclosed to assessee. ITAT finding that principles of natural justice had not been followed. Justified.

r. 1977 CTR (SC) 260

State of Kerala Vs. K.T. Suaduli Grocery Dealer Etc.

Opportunity. Cross examination. Interpretation of statutes. Kerala ST Act, 1963, section 17(3), proviso. Kerala General ST Rules, r. 15- Interpretation of section 17(3) of the Act alongwith proviso thereto. Provisions for the opportunity of being heard under the Act. Whether include the right of cross examination by assessee of a third party whose accounts formed the basis of best judgment assessment by STO. Entries in one Haji P.K. Usmankutty's books constituting the ground for the best judgment assessment. Refusal to grant right to cross examine Usmankutty. Whether such a right is inherent in the Kerala Act. The legal position.

s. 34 ITR 123 Ker.

Swamy Bros. V/s. CIT (1958)

Indian Income-tax Act (XI of 1922), sections 22(4), 23(4). Travancore Income-tax Act, 1121, sections 29(4), 30(4). Best judgment assessment. Production of accounts. Rejection of profits returned. Profits determined on estimate on turnover. Material taken from comparable cases. Opportunity to assessee to explain. Necessity of.

t. 56 ITR 182 Mys.

K. Baliah & Anr. V/s. CIT (1965)

Best judgment assessment. Reassessment based on comparable Cases. Duty to give opportunity to assessee to explain such cases. Indian Income-tax Act, 1922, s. 23(4).

u. 144 ITR 452 Mad.

Dhanlakshmi Pictures V/s. CIT (1983)

Best Judgment assessment. Nature of. Not different in kind from assessment u/s.143(3). Revenue bound to give opportunity to assessee to state his objections to the materials to be used in completing the assessment. Income-tax Act, 1961, Ss.143 (3), 144.

v. 5 ITR 170 PC

CIT V/s. Laxminarain Badridas (1937)

Best judgment assessment. Guiding principles. How far discretionary. Nature and finality of such assessment. Local inquiry, whether necessary. Cancellation. Sufficiency of cause. Reference. Question of Fact. Adjournment. Respective duties of assessee and Income Tax Officers. Indian Income Tax Act (XI of 1922), Ss. 23(4), 27, 33, 66(2).

w. 77 ITR 539 SC

CIT V/s. Segu Buchiah Setty (1970)

Best judgment assessment. Failure to submit return and to produce accounts. Sufficient cause shown only for not producing accounts. Whether assessment liable to be cancelled and fresh assessment to be made. Indian Income-tax Act, 1922, Ss. 22(2), (4), 23(4), 27.

x. 59 ITR 197 Cal

Prabhat Mills Stores Co. Ltd. V/s. CIT (1966)

Firm. Registration. Renewal of registration. Non-compliance with notices under section 22(2) & 22(4). Best judgment assessment. Refusal to renew registration. Appeals against best judgment assessment and refusal to renew registration. Best judgment assessment upheld. Order refusing to renew registration cancelled. Action of Appellate Assistant Commissioner whether proper. Indian Income-tax Act, 1922, Ss. 22(2), (4), 27, 30, 31 (3) (c).

y. 317 ITR 66 Bombay

Star Television News Ltd. Vs Union of India (Bom)

Settlement of cases. Change of law. Provision of cut off date for settlement commission to complete proceedings. Impossible to comply provision for abatement where no order passed by that date. Discrimination likely among applicants for factor not under their contract. Automatic abatement of proceedings likely to prejudice applicant by making available confidential information to assessing authority. Provision arbitrary. To be read down so that proceedings

treated as abated only where failure owing to reasons attributable to applicant.

z. 318 ITR 24 Delhi ITAT

Centurion Investment and International Trading Co. Pvt Ltd V/s. ITO

Cash Credit. Reassessment on the basis of statement made by entry operator, assessee not given opportunity to cross examine entry operator. Violation of principals of natural justice, Defective proceedings. Defect procedural in nature. Order irregular but not void on illegal. Matter remanded to be continued from stage at which irregularity supervened.

aa. 122 TTJ 902

Jindal Stainless Steel Ltd. V/s. ACIT

Opportunity of being heard. Assessee not given opportunity to cross examine the person on the basis of whose sole statement addition was made and when assessee denied under billing. No addition could be made.

ab. 330 ITR 104 Calcutta

Bangodaya Cotton Mills Ltd. Vs Commissioner of Income-tax (Cal)

When there was no evidence of receipt of enhanced consideration by the assessee failure to summon persons concerned or providing cross-examination to the assessee, addition in not proper.

ac. 231 CTR 308 Madras

CTR Vol. 50 Part V, Pg. 45 / 46

Dr. N Rajkumar V/s. DCIT

Natural Justice. Appeal Transfer. Assessee had sought for transfer of his cases to another bench and also approached the president of Tribunal who sought for report in this regard and therefore orders passed by Tribunal. Only on the basis of written submission of

assesses counsel set aside with a view to comply with the principal of natural justice.

18. ASSESSMENT OF HUF

340 ITR 1 S.C.

Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana

Transfer of property--Immovable property--Registered deed of conveyance only mode of legal transfer--General power of attorney sales or sale agreement/general power of attorney/will transfers--Not valid mode of transfer and not to create title to or interest in property--Genuine powers of attorney not affected--Transfer of Property Act, 1882, ss. 5, 53A, 54--Indian Stamp Act, 1899, s. 27--Registration Act, 1908, s. 17.

A. In the income tax act, definition of HUF is not given but definition of person is given in section 2(31) and as per this section, person includes

- i. an Individual
- ii. a Hindu Undivided Family
- iii. a Company
- iv. a Firm etc.

B. Gift can be given to HUF consisting of husband and wife. Intention of the donor for giving the gift is important. If there is a specific statement / intention that gift was given for the benefit of donee / his wife and children it is a valid gift. The income from such gift will be assessable under the status of HUF.

C. 182 ITR 117 Madras High Court Full Bench

CIT V/s. M. Balasubramanian

In this case, gift was given by father for the benefit of son's wife and children. The son was unmarried at the time of receipt of gift. It was held in this case that, the income was assessable in the case of HUF and not individual.

D. 223 ITR 45 Gauhati High Court

CIT V/s. Arunkumar Jhunjhunwala

A HUF can consist of sole coparcener and his wife. In order to constitute, a joint family, it is not always necessary that there should be two male coparceners. After marriage of the assessee, he could form a Hindu Undivided family and be assessed in the status of HUF.

E. Salary to partner who is partner on behalf of HUF

The partnership act recognizes only partner and not his status.

From A.Y. 1993-94 there has been a radical change in the assessment of partnership firm. Salary to working partner is allowable as per section 40(b). As per explanation of this section, "working partner" means an individual who is actively engaged in conducting affairs of the business or profession of the firm of which he is a partner.

A contract of partnership has no concern with the obligation of partners to others in respect of their share of profit in the partnership. It only regulates the rights and liabilities of the partners. A partner may be the karta of HUF or trustee of a trust or benami for another etc. In all such cases, he occupies a dual position. Qua he partners, the functions in his personal capacity : Qua the third parties, in his representative capacity. **(CIT V/S. BAGYALAKSHMI & CO. 55 ITR Pg. 660 SUPREME COURT)**

As per rule 234 a Karta or manager acting on behalf of the family can enter into a partnership with a stranger. This partnership is exclusively between the contracting members and the partner other than Karta or Manager is not accountable to the members of the family.

Issue regarding partner who is actively engaged in the conduct of the business is decided by Gujarat High Court in the case of **CIT V/s. NATWARLAL TRIBHOVANDAS 87 ITR Pg. 703**

As per this judgment, this words 'actively engaged in the conduct of the business' should be given a liberal meaning. It does not signify active and continuous participation in actual transaction of the day-to-day business of the firm. In this case, the partner in a construction business was sent abroad to obtain higher educational qualification in

civil engineering and the assessee was away from India. It was held by the Gujarat High Court that his stay abroad would ultimately benefit the firm and help it in arraying its business more efficiently and also to expand its business. The partner was considered to be actively engaged in the conduct of the business of the firm.

In the partnership firm, if the partner is representing his HUF and drawing salary as a working partner, the attempt of the Department will be to disallow such salary and specially after radical change in the assessment of partnership firm with effect from 1993-94. On the basis of facts of each case taxability of salary will depend. The Income should be taxed in the hands of the real owner as per the Principle of "REAL INCOME" The ratio laid down by the Honorable Supreme Court and other Courts should be born in mind to decide the taxability of income in the case of Individual or HUF. The cases are discussed hereunder.

**1. 37 ITR Pg. 123 SUPREME COURT
CIT V/S. KALU BABU LAL CHAND**

In this case, the HUF was one of the promoters of a company to be floated. The articles of association of the company provided the remuneration of the member. The shares were acquired with funds belonging to the joint family. The family enjoyed the dividend paid on these shares. There was no contribution by the member in his individual capacity. The company was all along financed by the family. The Managing Director's remuneration received was credited in the books of the family. For the first time it was pleaded that the remuneration of M.D. should be assessed as personal income and should not be added in the income of the family.

The Supreme Court held that looking to the facts of the case it was the income of the family.

**2. 68 ITR Pg. 221 SUPREME COURT
PALANIAPPA CHETTIAR V/S. CIT**

In this case out of 300 shares of the company 90 shares were acquired with the funds of the family. After some time the member become M.D. of the company. The only qualification of M.D. was holding of not less than 25 shares in the company. The question was whether the remuneration and commission and sitting fees received by the Karta were assessable as income of the family?

It was held by the Supreme Court that the shares were not acquired by the family not with the object that the karta should become M.D. There was no real connection between the investment of the family and appointment as karta and M.D. The remuneration of the M.D. was not earned by any detriment to the joint family assets. The remuneration, commission and sitting fees were not assessable as income of the family.

3. 68 ITR Pg. 365 SUPREME COURT

V.D. DHANWARTEY V/S. CIT [M.P.]

The karta was a partner. The contribution to the capital of the firm belonged to the family. Interest was payable on the capital contributed by each partner. In the partnership deed the general management and supervision of the partnership was in the hands of the karta.

It was held by the Supreme Court that the karta became partner on account of investments of the joint family assets. There was real and sufficient connection between the investment and the remuneration to karta. The salary paid to the karta was assessable as income of the HUF.

4. 72 ITR Pg. 192 SUPREME COURT

CIT V/S. GURUNATH V. DHAKAPPA

In this case Rs.6000/- per annum was paid to the karta as salary over and above the share of profit as he was a partner in the firm representing the family.

It was held by the Supreme Court that there was no finding that the salary received by the karta was directly related to any assets of the family utilized by the firm. The salary income could not be treated as income of the family.

5. 78 ITR Pg. 33 S.C.

RAJ KUMAR SINGH HUKAM CHANDAJI V/S. CIT

This is a very important judgement regarding assessment of remuneration received whether individual income or income of family. The test has been laid down in this case. The test is :-

- i.** Whether the remuneration received by the coparcener in substance though not in form is one of the modes of return made to the family because of the family fund in the business? If the reply is in yes, it is the income of the family.
- ii.** Whether it was compensation made for the services rendered by the individual coparcener? If the reply is in yes, it is the income of the individual coparcener.
- iii.** If the income was essentially earned as a result of the fund invested, the fact that a coparcener has rendered some services would not change the character of the receipt.
- iv.** If it is essentially a remuneration for the services rendered by a coparcener the circumstances that his services were availed of because of the reason that he was a member of the family which had invested funds in the business for that he had obtained the qualification shares from out of the family funds would not make the receipt, the income of the HUF.

In this case the M.D.'s were appointed by a resolution of the board of directors of the company and they were subject to removal at any time. The appointment as Managing Directors was not a result of detriment of the family property. Thus the remuneration received by the karta was assessable as individual income.

F. Amendment in Hindu Succession Act, 2005

With effect from 05/09/05 radical changes are made in Hindu Succession Act. As per amended section 6 of the Hindu Succession Act, a daughter-

- i. is consider to be a coparcener in the same manner as the son,
- ii. has same rights as if she would have been a son in coparcenary property,
- iii. will be subject to same liability in coparcenary liability as of a son,

19. APPEAL AGAINST AGREED ASSESSMENT

Whether appeal against agreed assessment can be filed ?

- A.** Appeal against agreed assessment is permissible as held in the case of **Chhat Mull Aggarwal V/s. CIT reported in 116 ITR 694 P & H High court.** As held in this case, there is no provision in the I T Act whereby the remedy of appeal against the order of the ITO or against the order of the AAC is bared if the impugned order mentioned that they had been passed on the admission of the assessee. The provision of section 246 (1) (c) of the I T Act 1961 entitles an assessee to file an appeal against the order of the ITO before the AAC.
- B.** As per section 96 (3) of the code of Civil Procedure 1908 which forbids an appeal from a consent order. Thus only against consent decree, there is no provision of appeal but as per section 246 (1) (c) of the Income Tax Act if the assessee denies his liability to be assessed under this act, he can file an appeal.

20. GRANT OF STAY AGAISNT DISPUTED TAX

When the assessed income is more than twice of the returned income, Instruction no. 96 is clear in such cases, when the assessed income is more than double of the returned income, the assessee should not be treated as assessee in default for not making payment of such disputed tax.

The following Courts have also directed the concern officers to follow this instruction.

- a. **Raja Nair v/s. ITO**
165 ITR 650, Date of order: 04/02/87
- b. **S.M.Ajbani v/s. Recovery Office**
182 ITR 413, Dated of order: 15/09/89
- c. **Mrs. R Mani Goyal v/s. CIT**
217 ITR 641, Date of order: 27/07/95
- d. **Maharana Shri Bhagwat Singhji of Mewar v/s. ITAT**
223 ITR 192 Rajasthan, Date of order: 26/04/96
- e. **I.V.R. Construction Ltd. Vs. ACIT**
231 ITR 519 A.P. Date of order : 11/09/97
- f. **251 ITR 158 Bombay**
KEC International Ltd V/s. B R Balakrishnan

In this case the court laid down the parameters to be complied with by the authorities while passing order on stay application filed, pending appeals to the first appellate authority.

1. The authority has to set out the case of the assessee briefly.
2. If the assessed income is higher than returned income, the authority has to consider whether the assessee has made out a case for unconditional stay. If part of the amount is required to be deposited, the reasons should be given.
3. If the authority wants to deposit the amount, it is to be briefly indicated in the order whether the assessee is financial sound and viable to deposit the amount.
4. No coercive action should be taken till the time to prefer appeal has expired. If the assessee is likely to defeat, the demand it has recourse to coercive action for which brief reasons may be indicated in the order.

The court clarified that the above parameters have only recommendatory and not exotic.

- g. **Jain Cycle Spares & Co. v/s. CIT**
267 ITR 60, Date of order: 12/03/04
- h. **Volvo line Cummins Ltd. V/s. Deputy CIT & Ors. (2008)**
Date of order : 20/05/08
217 CTR (Del) 292 and 307 ITR 103 Delhi Date of order : 20/05/08

i. Soul V/s. Deputy Commissioner of the Income Tax
Writ Petition no.5665 of 2008 & CM No.10823 of 2008
323 ITR 305 Delhi

j. 329 ITR 278 Calcutta

Purnima Das V/s. Union of India

Recovery of tax. Garnishee proceedings. Attachment. Condition president. Notice to assessee prior to attachment. Mandatory. Appropriation of sums in bank a/c. without notice to assessee and without considering application for stay pending appeal against assessment. Not proper.

k. 246 CTR 176 Delhi

MARUTI SUZUKI INDIA LTD. vs. DCIT

If an order for "stay of recovery" is passed, the AO should not pass an order of adjustment under s. 245 to recover the demand; if the same addition/disallowance/issue has already been decided in favour of the assessee by the appellate authority. The Revenue should not be permitted to adjust and recover the demand on the same ground in subsequent years, except in exceptional cases; Revenue having not made out a good cause or reason as to why adjustment under s. 245 should be allowed to recover demand on issues that have been decided in favour of the petitioner in other years, respondent was not justified in recovering the disputed tax in respect of similar additions.

l. Taneja Developers & Infrastructure Ltd. Vs. CIT

222 CTR 521 Delhi

In this case after considering instruction no 96 dtd.21-08-1969 & instruction no. 1914 dtd. 02-12-1993 were considered and after considering both the instructions the stay was granted.

m. Maheshwari Agro Industries V/s. Union of India & Ors

246 CTR 113 Rajasthan Date of order 15/12/11

It was held in this case that, the tendency of making high-pitched assessments by the AOs is not unknown and it may result in serious

prejudice to the assessee and miscarriage of justice and sometimes may even result into insolvency or closure of the business if such power was to be exercised only in a pro revenue manner. It may be like execution of death sentence, whereas the accused may get even acquittal from higher appellate forums or courts. Therefore such powers under sub-s (6) of s.220 also have to be exercised in accordance with the letter and spirit of instruction no.95, dt. 21st August 1969, which even now holds the field and its spirit survives in all subsequent CBDT circulars and undoubtedly the same is binding on all the assessing authorities created under the act.

CBDT was urged to issue appropriate guideline for grant of stay in spirit of instruction no.95 dt 21st August 1969 to all the subordinate authorities and to clarify for uniform application all over the country at department level that first appellate authority shall have power to entertain and decide stay application during pendency of appeal before it upon relevant considerations for grant of stay against recovery of disputed demand of tax.

CIT (A) also has inherent and implied powers to grant stay, the assessee-petitioner may also file stay application before the CIT (A), who may also consider such stay application on its own merits upon the relevant factors viz. prima facie case, balance of convenience, irreparable injury, nature of demand and hardship likely to be caused to the assessee, liquidity available to the assessee etc. It is directed that all the first appellate authorities in the cases of other appellant assesseees within the State of Rajasthan also would entertain stay applications filed before them during the pendency of appeals and would decide the same on their own merits in future also.

As the assessed income in this case was 47 times of the returned income, the recovery of entire amount was stayed by the honorable court.

n. View of Shri T. N. Pandey Ex. Chairman CBDT

In the article of stay of demand of disputed assessments by respected Shri T. N. Pandey Ex. Chairman CBDT (published in 297 ITR page 1

journal on page 6) it is mentioned that income assessed is twice the income return or more the demand to such high-pitched assessments, on applications made by the assesses, has to be stayed till the disposal of appeals by the commissioners of appeals. There is no escape from the situation and assessing officers, could not adhere to this instruction and compel the assesses to pay the demand, which is more than the income returned, on the basis of the criterion in instruction no.96 could be held to be guilty of not following the decision of a committee of parliament and could be said to be committing contempt of parliament. The central board of direct taxes cannot unilaterally issue circulars which are contrary to instruction no.96 dated 21/08/1969 issued with the approval of the informal consultative committee of parliament and the then deputy prime minister / finance minister.

21. REASSESSMENT PROCEEDINGS u/s. 147
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In reassessment proceedings, the assessing officer can reassess the income which has escaped assessment and also add other income any other income chargeable to tax which escaped assessment. Question arises if during reassessment proceedings if there is finding that the particular item on which reassessment proceedings were initiated has not escaped assessment, but other income found to have escaped assessment, such other income cannot be added.

- a. **CIT V/s. Dr Devendra Gupta Rajasthan High Court
336 ITR 59**
- b. **same issue decided in CIT V/s. Jet Airway Pvt Ltd.
331 ITR 236 Bombay**
- c. **246 CTR 255 Chhattisgarh
ACIT vs. MAJOR DEEPAK MEHTA**

There was no escapement of assessment or no assessment in respect of the income which formed the reason to believe in the notice; in respect of other incomes no notice was issued and the assessee had no opportunity to put forward his case under s. 152(2) to avail benefit of the said section for dropping the proceedings and the Revenue cannot take advantage of the Expln. 3 to s. 147.

**REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR
REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX
SECTION 269SS & 269T**

A. Section 269SS

1. As per this section, no person can take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft if the amount exceeds Rs.20000/- or more. Thus loan or deposit upto Rs.19999/- can be accepted by cash but if it exceed Rs.20000/- or more, it's a breach of this section.

For considering amount of Rs.20000/-, any deposit taken earlier shall be taken into account.

As per exception of this section, if the loan or deposit is taken from

- a. Government
- b. Any banking company, post office saving bank or co-operative bank
- c. Any corporation establish by a Central or State provincial act
- d. Any Government company

The provision of this section shall not apply.

As per provision of this section, if the loan or deposit is given/taken by the parties and neither of them is having taxable income, provision of this section shall not apply.

2. This section was introduced with the intention to counteract evasion of tax. Thus in the transaction where there is no evasion of tax, this section should not be applied.

3. Some important Authorities

i. 255 ITR 258 S.C.

Asst. Director of Inspection (Investigation) Vs Kum. A.B. Shanthi

The object of introducing section 269SS is to ensure that a tax payer is not allowed to give false explanation for his unaccounted money or

if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizure, unaccounted money is unearthed and the tax payer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for so-called lender also to manipulated his records to suit the plea of the tax payer. The main object of section 269SS was to curb this menace of making false entries in the accounts books and later giving an explanation for the same.

ii. 283 ITR 329 Madras

Cit V/S. Kundrathur Finance And Chit Co.

Receipt of cash exceeding Rs.20000/-. Depositors not have bank a/cs. and transactions were genuine. Penalty can not be imposed. Section 269SS, 271D.

iii. 285 ITR 221 Madras

Commissioner of Income-tax Vs. Idhayam Publications Ltd.

Amount received by private co. from director is not a loan or deposit.

iv. 294 ITR 599 Jarkhand

Omec Engineers V/S. Cit

If transaction is genuine, and return is accepted by A.O. When transaction was not with the object to conceal money. Penalty can not be imposed on technical mistake when there is no loss of revenue.

v. 60 TTJ 199 (Digest page 20)

Amount paid by firm to partner or by partner to firm is payment to self and not a loan or deposit.

vi. 134 TTJ Pg. 708 Delhi "H" Bench

CTR Vol. 53 Part II Pg. 79

Assessee discharged outstanding liability towards purchase price of land by crediting the same as share application money in the account

of the vendor, there was no loan or deposit within the meaning of section 269-SS and penalty u/s. 271-D was not leviable.

vii. 41 DTR 305 Hyderabad

Directors and members of co. operative society are not covered by the expression “any other person” occurring in section 269SS when transaction was accepted as genuine and the assessee was under bon fide belief that provisions of section 269SS are not applicable.

viii. Vol 56 part V page 88 Hyderabad ITAT

If the assessee is able to show that not only there was reasonable cause for taking the money in cash but the amount did not also represent unaccounted money either of the assessee or of the persons from whom it was taken, no penalty u/s.271D can be levied for accepting the cash loan in contravention of section 269SS.

ix. Vol 56 part V page 89 Pune ITAT

If under bona fide belief that section 269SS is not applicable in the transaction between Ind & HUF of the same assessee and there was no intention to avoid or evade taxes, it is a reasonable cause and no penalty u/s.271D is sustainable.

B. Section 269T

1. Any loan or deposit accepted by any banking company, co-operative bank, company, co-operative society, firm or other person shall not be repaid by cash if the amount of loan or deposit with interest exceed Rs.20000/-.

As per exception of this section, if the loan or deposit is repaid to

- a. Government
- b. Any banking company, post office saving bank or co-operative bank
- c. Any corporation establish by a Central or State provincial act
- d. Any Government company

This section will not be applicable.

As per provision of this section, if the loan or deposit is given/taken by the parties and both are having agricultural income and neither of them having agricultural income. This section will not be applicable.

2. Some important Authorities

i. 248/525 Bombay

CIT V/S. Eetachi Agencies

269-T. Assessee acted under a genuine belief that section 269-T was not applicable to deposits but only applied to loans. Tribunal was justified in deleting Penalty.

ii. 304/417 Madras

Cit V/S. Rugmini Ram Ragav Spinners P. Ltd.

Repayment of advance towards share application money. Neither deposits nor loan. No interest paid on any advance. Bona fide belief that receipt of advance towards allotment of shares not loan or deposit. Sufficient to drop penalty.

iii. 127 TTJ 446 Bangalore

CTR Vol. 49 Part 47 Issue no. 4 pg. 48

Transactions between sister concern being in the nature of current account and belief of the assessee that transactions with sister concern does not hit section 269-T is a reasonable cause and no penalty is leviable.

Conclusion u/s. 269SS

Thus if the transaction is genuine, identity of the borrower and lender is proved, it is not with intention to take any illegal or wrong benefit or if the transaction is carried out under bonafide belief, generally the penalty should not be levied.

23. OTHER ISSUES

1. 351 ITR 472 S.C.**Girish Ramchandra Despande V/s. CIT (SC)**

RTI. Return of income. Information found in return. Personal and exempted. No case of public interest in disclosure made out. Information not to be disclosed as per section 8(1)(j). Thus if it is not in larger public interest, details cannot be disclosed.

2. 350 ITR 327 HP**COMMISSIONER OF INCOME TAX vs. NIPSO POLYFABRIKS LTD.**

PF & ESI contribution of employee. PF & ESI contribution made before filing return. Allowable.

- * There is no distinction between the contribution of the employer and employee. If such payment is made before due date of filing return 139 (1) it should be allowed.

3. 350 ITR 227 P&H**COMMISSIONER OF INCOME TAX vs. SMT. SHELLY PASSI**

Assessing purchasing goods and depositing amount in bank account of seller. No disallowance in hands of assessee.

4. 344 ITR 407 Allahabad**Commissioner of Income-tax Vs Modi Xerox Limited (No. 1)**

Payment of membership of club. Allowable as business exps.

5. 149 TTJ 533 Cochin**T T Kuruvilla V/s. DCIT**

Penalty for violation of traffic rules by transporter of goods is not allowable as business exps.

6. 145 TTJ 537 (TM) (Delhi)

CA of assessee filed on affidavit that due to wrong recording of date in his diary and also furnishing photo copy of the diary showing the wrong date it was considered to be as sufficiently cause for non appearance on the date of hearing. Ex party order of ITAT re called

7. 140 TTJ 58 Rajkot

VINEETKUMAR RAGHAVJIBHAI BHALODIA vs. ITO

Term "relative" explained in Explanation to s. 56(2)(vi) includes "relatives"; an HUF is a 'group of relatives' and, therefore, gift received by a member of HUF, from the HUF is gift received from relatives and it is not taxable under s. 56(2)(vi); even otherwise, gift received by a member of HUF out of the income of the family of any year is exempt under s. 10(2).

- * Amendment has been made in 56(e)(ii) with effect from 01/10/09 by the Finance Act 2012 that which explains term, "relative". As per this amendment in case of HUF any member thereof. Thus any amount received by HUF from its member is not taxable.

8. 129 TTJ Pg. 81 Delhi

DCIt vs. MESSEE DUSSELDORF INDIA (P) LTD.

Interest paid on delayed payment of service tax is compensatory and it like service tax. It is allowable.

9. 251 CTR 150 Karnataka

346 ITR 156 Karnataka

A. KOWSALYA BAI vs. UNION OF INDIA & ORS

Section 206AA imposes a condition on every person who wish to have transaction with a bank or financial institution including small investors / depositors invariably to have a PAN is contrary to section 139A.

10. CIT V/s. DSL Software Ltd

www.itatonline.org

All India May 12 Page 52

Cost of Rs.1 Lac awarded to the assessee for filing frivolous appeal in High Court u/s.260A the only way to prevent dept from filing such appeals, for wasting precious time of the court and tax payer's money.

24. CONCLUSION

In this article, I have tried to cover some of the issues which we face in our day-to-day practice. Other view against the judgments given in this article may be there. I have tried to cover decision reported in 352 ITR 595 and other publications. The issues which are in favour of the assesses and which seems to be sound decision as per my view. I have also covered some landmark decisions of the Hon'ble Supreme Court in this article. I hope that the issues covered in this paper may be helpful to my professional friends.