Exploring Provisions

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Exploiting the Deductions in the light of citations from Higher Courts – Case Diary 2014

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PREFACE

Tax saving is possible by taking advantage of the various provisions contained in the Income-tax Law. One can go ahead with legal ways of saving income-tax and this is possible only when we screen very carefully the deductions available in the Income-tax Act, 1961 and find out the pointers which are of advantage looking to our facts and circumstances. The interpretation of the sections depends upon the facts of each case. There are various judgments on these deductions and these can be utilized well if citations from higher courts on such sections are available.

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Purpose of this Document

This document throws light on exploiting the higher court citations on ITAT and High Court verdicts under Income tax Law.

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I. Deductions you should not miss

The Central Government has been empowered by Entry 82 of the Union List of Schedule VII of the Constitution of India to levy tax on all income other than agricultural income (subject to Section 10(1)).[1] The Income Tax Law comprises The Income Tax Act 1961, Income Tax Rules 1962, Notifications and Circulars issued by Central Board of Direct Taxes (CBDT), Annual Finance Acts and Judicial pronouncements by Supreme Court and High Courts.

The Income-tax Act is the charging Statute of Income Tax in India. It provides for levy, administration, collection and recovery of Income Tax. Income tax was introduced in 1860, abolished in 1873 and reintroduced in 1886. Income tax levels in India were very high during 1950-1980, in 1970-71 there were 11 tax slabs with highest tax rate being 93.5% including surcharges. In 1973-74 highest rate was 97.75%. But to reduce tax evasion tax rates were reduced later on, by 1992-93 maximum tax rates were reduced to 40%. There are 298, XXIII chapters, XIV schedules and it is very difficult to interpret each section before making a claim in the computation. There are various judgments in lower courts on these deductions and these can be utilized well if the higher court citations on such sections are available.

One such attempt has been made in the following two tables throwing light on the Apex court approvals on High Court verdicts and High Court approvals on Tribunal verdicts separately as 2014 case Diary

II. Apex Court approval to High Court verdicts

Sl. No.	Section	question	High Court View	Apex Court Citation	Impact and Future course

1.	**Ss. 002(13), 115JA**	"Whether the Income-tax Appellate Tribunal was correct in law in allowing the assessee's claim of the alleged profits derived by the assessee from the business of generation of power while computing the book profits under section 115JA of the Income-tax Act, 1961, particularly when the electricity power generated was entirely for captive consumption?"	Against Revenue (322ITR486)	*The Apex Court held that it is possible to apportion profits to different activities by disintegrating the ultimate profits realized from the integrated business operations comprising of several activities including captive activities. DCM Shriram Consolidated Limited* (2014) 368ITR720	*Although this deduction is no longer available in current S. 115JB scheme but the rule that business is not limited to one which is pursued only by engaging with an outside third party is something that the assessee can exploit to his advantage when carrying out both taxable and tax exempt activities.*
2.	S. 166, S. 164- Representative assessee/assessment of trust	Whether on the facts and circumstances of the case, the Tribunal has erred in holding that even if the U. K. settlements are to be treated as discretionary trusts, the assessee shall be liable to be taxed under section 166 of the Income-tax Act for the income not distributed or receivable on his behalf, entire income of the trust having been retained by the trustees ?	Against Revenue (326ITR594)	*Held 1) that having regard to the legal position on discretionary trusts and the fact that the income has been retained and not disbursed to the beneficiaries, income from the trusts shall not be assessable in the hands of the beneficiaries in India, 2) Also merely because the settler and after his death, his son, did not exercise their power to appoint the discretion-exercisers, the character of the subject trusts would not get altered. In view of the facts, the two U. K. trusts continued to be "discretionary trusts" for the*	This position is now settled for all time. Further the identical position will hold good for wealth tax purpose when neither the beneficiary nor the representative assesses would be assessed on the estate of the deceased settler until exercise of discretion by the trustees to distribute income or assets to the beneficiaries. A discretionary trust can thus offer a good tax planning for settler where the trustees can retain incomes and assets and distribute as and when in the future.

				assessment years in question. Lt. HMM Vikramsinhji of Gondal (2014) 363ITR679/ 103DTR211	
3.	**Ss. 72, 72A**	*Whether the benefit of carry forward or set off of losses as envisaged in case of amalgamation /reorganization of companies is available to co-operative societies?*	Against assessee 2002)(260ITR167/178CTR(Raj) 145	*For the purpose of getting carried forward losses adjusted or set off against the profits of subsequent years, there must be some provision in the Income-tax Act, 1961. By virtue of section 72A of the Act there is a specific provision in the Act permitting losses of amalgamating companies to be carried forward upon amalgamation and set off thereof against the profits of the amalgamated company subject to the provisions of the Act. There is no provision under the Act permitting setting off of accumulated losses of amalgamating co-operative societies against the profits of the amalgamated society. Rajasthan Rajya Sahakari Spg. & Ginning Mills Federation (2014) 363ITR564/103DTR (SC) 204*	This position is unchanged except that the benefit is extended to amalgamation in case of cooperative banks under s. 72AB.
4.	**S. 133(6)-survey**	On the interpretation of section 133(6) of	Against assessee vide 260ITR442	*Information of general nature could be called for from any person*	This position is unchanged and holds well in the current times.

		the Act viz ,Whether section 133(6) only provides for power to seek information in case of pending proceedings under the Act and does not contemplate the powers to seek fishing information which is unrelated to any existing proceedings or which may enable the assessing authority to decide upon institution of proceedings under the Act?	(Ker)	*including bank or any officer thereof after obtaining approval of the Principal Commissioner or CIT or the Principal Director of Investigation or DIT even where a proceeding is not pending against the assessee Kathiroor Service Co-operative Bank Ltd. (2014) 360ITR243/95DTR129*	However to the AO cannot use such information gathered without doing his homework viz. how such info is pointing to an instance of concealment of income or concealment of facts.
5.	**Ss. 139, 142, 144, 148, 276CC, 278E**	"(1) Whether an assessee has the liability/duty to file a return under section 139(1) of the Act within the due date prescribed therein ? (2) What is the effect of best judgment assessment under section 144 of the Act and will it nullify the liability of the assessee to file its return under section 139(1) of the Act ? (3) Whether non-filing of return under section 139(1) of the Act, as well as non-compliance with the time prescribed	Against assessee (2007) 290ITR55 Mad	*1. Under section 139 of the Act, it is mandatory on the part of the assessee to file the return on or before the due date. The outer limit is fixed for filing of return as 31st July of the assessment year.* *2. merely because there had been a best judgment assessment under section 144 that would not nullify the liability of the firm to file the return in accordance with section139(1)of the Act* *3. Section 276CC applies to situations where an assessee has failed to file a return of income*	Filing of ITR beyond the assessment year or non compliance to notice for filing of ITR u/s 142 and 148 may invite prosecution.

		under sections 142 and 148 of the Act are grounds for invocation of the provisions of section 276CC of the Act ? (4) Whether the pendency of the appellate proceedings relating to assessment or non-attaining finality of the assessment proceedings is a bar in initiating prosecution proceedings under section 276CC due to non-filing of returns? (5) What is the scope of section 278E of the Act, and at what stage the presumption can be drawn by the court?"		*as required under section 139 of the Act or not complied to notices issued to the assessee under section 142 or section 148 of the Act.* *4. The proviso to section 276CC gives some relief to genuine assessee's. The proviso gives further time till the end of the assessment year to furnish his return to avoid prosecution* *5. the proviso to s. 276CC would however not apply after detection of the failure to file the return and after a notice under section 142(1)(i) or section 148 of the Act is issued calling for filing of the return of income.* *6. Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings* *7. The court in a prosecution for an offence, such as under section 276CC , has to presume the existence of mensrea and it is for*	

				the assessee to prove the contrary and that too beyond reasonable doubt. *8. The assessees were not entitled to claim that since they had in their individual returns indicated that the firm's accounts had not been finalised, and hence no returns were filed, the failure to file return was not willful. Sasi Enterprises (2014) 361ITR163/8DTR (SC)329*	
6.	**Ss. 13 (1) (b)**	Whether Dawoodi Bohra Jamat, respondent-trust is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held that section 13(1)(b) of the Act would be attracted to the respondent-trust and thereby, it would be eligible to claim exemption under section 11 of the Act?	Favoring assessee (2009)317ITR34226DTR289 MP	1. *The phrase "charitable purpose u/s 2(15)" is expansive and inclusive.* 2. *advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose.* 3. *Institutions established to spread religious awareness by means of education though established to promote and further religious*	1. *Whether the nature of the trust is wholly religious or wholly charitable or both charitable and religious under the Act is not a question of fact.* 2. *Now it is settled that if a trust is a composite one (where trust deed collectively indicative both charitable and religious purposes), that is one for both religious and charitable purposes, it would not be covered by exception clause (b) of s. 13(1)*

				thought could not be restricted to religious purposes. *4. A religious purpose would be one relating to a particular religion and broadly would encompass objects relating to observance of rituals and ceremonies, propagation of tenets of the religion and other allied activities of the religious community. Dawoodi Bohra Jamat* (2014) 364ITR31/103DTR (SC) 361	
7.	**S. 2(31)**	Question on status whether individual or AOP	Govindbhai Mamaiya dated 16th Nov 2006 of Guj HC in Tax Appeal No.718	*Interest on Compensation/Income from inherited property by three individuals would not have character of AOP income. Govindbhai Mamaiya & Ors. (2014)109DTR65*	*AOP can be formed by volition and not as a result of act of government*
8.	**Ss. 7,16A& Sch III, rr.3,8 & 20 of Wealth Tax Act/Rules**	Whether the AO is justified in holding that it was not practicable to apply rule 3 in the valuation of residential flat at Worli, Mumbai used as guest house and rightly referred the matter to valuation officer under s. 16A for determination of value of such assets	Against assessee (2002) 177CTR (All) 250	*Whereas the assessee offered the value of flat at mere Rs. 155139/- the AO took the value as determined by DVO under rule 8 read with rule 20 of Sc III at Rs. 2.6 crs. The reason why AO choose to refer to DVO was a) wide variation between market value and rateable value taken by assessee, b) the property was used as a guest house, c) the value of*	*As per this ruling rule 3 method of valuation is not mandatory and the AO has discretion to use rule 8 based on his subjective satisfaction. Merely by fixing low rentals one cannot escape from wealth tax on market value of property.*

		for wealth tax?		*municipal tax/rateable value being very low, d) lot of expenditure has been incurred on improvement which was difficult to ascertain and e) the subsequent transaction f of agreement to sell of said flat at 10.26 crs has been self explanatory. Amrit Banaspati Co. Ltd. (2014) 105DTR(SC) 337*	
9.	**S. 80HHC**	Whether the proceeds generated from Sale of scrap would be included in the total turnover for the purpose of deduction u/s80HHC?	Against Revenue (2007) ITA No. 520 of 2006 dated 19th Jan 2007 (Del)	*Turnover would mean sale proceeds in respect of goods in which the assessee is dealing. Scrap sales is not part of turnover. Punjab Stainless Steel Industries (2014) 103DTR (SC) 49*	*The Apex Court placed reliance on the ICAI guidance note on tax audit and even commented that when all accountants, auditors, businessmen , manufacturers etc. are normally interpreting the term ' turnover' as sale proceeds of the commodity in which the business unit is dealing , there is no reason t take a different view.*
10.	**S. 10B, 32(2)**	Whether unabsorbed depreciation is to be adjusted against income for the purpose of exemption u/s 10B?	Against assessee (2006) 206CTR (Kar) 106	*Exemption u/s 10B cannot be allowed by adjusting only a portion of unabsorbed depreciation against income of export unit and balance against other income. Himatsingka Seide Ltd. (2014) 100DTR (SC) 37*	*This position is settled.*

III. High Court approval to Tribunal Judgments

S. No.	Section	question	ITAT View	High Court Rule	Impact and Future course
1.	S. 14A r.w.rule 8D	Whether, on the facts and in the circumstances of the case, the authorities are correct in law and fact in making a disallowance under section 14A of the Act	Against Assessee[2009] 312 ITR (AT) 1 (Mumbai) [SB]	Rule 8D held to have retrospective application. ITO v. DAGA CAPITAL MANAGEMENT P. LTD. approved – (2014) 363ITR111 (Ker)	Assessee's those who fall within Kerala jurisdiction who have not maintained separate account for exempt incomes are at loss.
2.	S.10(19A)	whether the rental income received by the Ruler from part of the palace, which was declared as his official residence under the Merged States (Taxation Concessions) Order, 1949, or Part B States (Taxation Concessions) Order, 1950, would be exempt from income-tax or the same would be included in the total income of the Ruler as an assessee for the purpose of taxation?	On a point of conflict of opinion expressed by two Division Benches (1986) 160ITR103	*The exclusive occupation of the Ruler in the palace is a necessary pre-condition for claiming exemption. Maharao Bhim Singh of Kota (2014) 365ITR485(Raj) FB*	This decision is to be read for meeting with the essential condition for making claim for HRA exemption, one house exemption under IT and WT Acts.
3.	**Ss. 201(1A), 201(1)**	Whether, on the facts and in the circumstances and in law, an order under section 195 read with section 201 of the Income-tax Act, 1961, is barred by limitation	Against Revenue (313ITR (AT) 263 Mum	*Even though section 201 of the Income-tax Act, 1961, does not prescribe any limitation period for the assessee being declared an assessee in default, the*	The effect of the judgment is overturned by a mid course amendment and providing extended time for order for TDS demand. The section currently entitle revenue to take action for TDS defaults upto 7 years from

		within four years from the end of the relevant financial year in the absence of any express provision in the Income-tax Act, 1961 ?"		*Revenue will have to exercise the powers in that regard within a reasonable time viz., within one year from the end of the financial year in which proceedings under section 201(1)/201 (1A) were initiated. Mahindra and Mahindra (2014) 365ITR560 (Bom)/106DTR337*	the end of FY in which a payment is made or credit is given in the books.
4.	**S. 37**	1. Whether the Tribunal was correct in holding that a sum of Rs. 5,30,00,000 'domestic customer database' should be treated as a revenue expenditure ? 2. Whether the Tribunal was correct in holding that a sum of Rs. 9,38,57,925 'transfer of human skills' should be treated as a revenue expenditure ? 3. Whether the Tribunal was correct in holding that the foreign exchange fluctuation loss of Rs. 8,63,047 should be allowed ? "	Against Revenue (316ITR (AT) 364	1. *The assessee had only got the right to use the database with the other party not precluded to exploit the database the expenditure was held to be revenue.* 2. *In the second case the expense is held to be in the nature of training and recruitment* 3. The year- end foreign exchange fluctuation after the date of purchase will not affect the valuation of stock and would be in the nature of loss. IBM Global Services India P. Ltd. (2014) 366ITR293 (Karn)	There is no change in this position notwithstanding the quantum of expenditure which was unusually high in this case.

5.	S. 195	(i) Whether, on the facts and in the circumstances of the case, the reimbursements made by the petitioner to overseas entities of the actual costs of expenses incurred under the secondment agreement is in nature of income accruing to the overseas entities ? (ii) If the answer to question No. 1 above is affirmative, whether tax is liable to be deducted at source by the petitioner under the pro visions of section 195 of the Income-tax Act, 1961?	Against assessee (348ITR45) AAR	*The provision of technical services through the secondees would be in the nature of the provision of services to the petitioner by the overseas entities. Use of phrase reimbursements or no mark up would not change the character of payment. No application of the principle of* "diversion of income by overriding title" because the real employer of the seconded employees continues to be the overseas entity. In the consequence in such a case s. 195 assume application. Centrica India Offshore Pvt. Ltd. (2014) 364ITR336/104DTR33 DEL	The decision is likely to be used by revenue in all types of secondment arrangement. It is therefore essential to revisit secondment agreements and if necessary to redefine them in order to avoid double taxation.
6.	S. 148	Challenge to notice issued u/s 148 *including the question of jurisdiction*	Against assessee [2014] 3 ITR-OL 225 (Karn)	Once the AO has followed the due procedure (provided copy of reasons, disposing objections etc.) and recorded sufficient reasons for reopening the only remedy for the assessee then would be to file an appeal and not to invoke the jurisdiction of the High Court under article 226 of the	This position is well settled by Apex Court in CIT v. Chhabil Dass Agarwal [2013] 357 ITR 357 and the HC followed the same and even find relevance today.

				Constitution. Jeans Knit P. Ltd. (2014) 367ITR773(2014) 112DTR414 Kar	
7.	S. 195 r.w. Article 12 of India Singapore DTAA	Whether the Tribunal was correct in holding that as technology, experience or skill has not been made available to the assessee as per article 12(4) of the DTAA between India and Singapore, the payments made by the assessee were not liable to be taxed under the head ' Fees for technical services'?	Against revenue(2010) 3ITR (Trib) 808 (Bang)	The Court found the subject as purely a question of fact looking the terms of contract, nature of service undertaken and what was transmitted in the end after rendering technical service and further looked at the finding of the ITAT and held that there is no liability to deduct tax at source on such payments. Sun Microsystems India P. Ltd. (2014) 369ITR63 (Karn)	This interpretation is well settled.
8.	S. 201	Question of interpretation of article 18 (artists and athletes) and 7 of the Double Taxation Avoidance Agreement -Indo-UK DTAA	Against revenue - 8ITR (Trib) 334 Mum	Only artists who perform in India is liable to tax viz a viz their remuneration (excluding air fare and costs) and not the event management company (agent) that brings such artists to perform in India. *The commission paid to the agent is not subject to TDS. Wizcraft International Entertainment (2014) 364ITR227 (Bom)/104DTR68*	There is no change in this position till date
9.	**S. 9(1)(vi) plus Cyprus Treaty**	1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that	Against assessee- (2008) 297ITR (Trib) 202 Chen,	1. *Payment under a time charter agreement is for the use and right to use of the ship*	*After the amendment introduced in the year 2012, with effect from June 1, 1976, irrespective of possession, control with*

		the payment made for taking ship on time chartered basis would constitute 'royalty' as defined under section 9(1)(vi)(b) of the Income-tax Act and tax has to be deducted at source accordingly ?	2ITR (Trib)-OL -1 Chen	*hence royalty u/s 9 (1) (iva) of Explanation 2 to section 9(1)(vi).* 2. *the expression "use or right to use" cannot be read in a narrow compass* and to be read in broader sense to mean employing for any purpose - possession, control or location not significant factors- Explanations 4 and 5 referred to 3. *In the absence of definition of the term equipment one has to look at the inclusive definition of plant u/s 43(3) which includes "all equipment" used by a businessman for carrying on his business. Hence ship would be equipment. Poompuhar Shipping Corporation Ltd.* (2014) 360ITR257 Mad	*the payer or use by the payer or location in India, the consideration in respect of any right, property or information would nevertheless be treated as "royalty". Almost everything other than pure service would come under royalty definition if it results into passing over of a right, property or information. As the treaties do not define terms one would need to read it along side general meaning or definition or explanations in the Income tax Act or else dictionary meaning of words and phrases to take a balanced view. (2014) 361ITR575. (Mad)*
10.	S. 40 (a) (ia) and S. 195	Whether Circular No. 7 dated October 22, 2009 withdrawing earlier Circular 786 dated 7.2.2000 can be considered	Against Revenue (2011) 10ITR (Trib) 147 Jp	By exception export Commission payments to NR before October 22, 2009 are not chargeable to tax in	However if their scope of services fall within FTS definition there would be tax implications in view of Explanation at bottom of s. 9.

		retrospectively to make it applicable for payments made before date?		India on account of beneficial nature of Circulars of the board. Modern Insulators Ltd. (2014) 369ITR138(Raj)	
11.	Ss. 37, 92, 92CA(3)	1. "Is the Tribunal correct in holding that benchmarking was not necessary in respect of the cost reimbursement reported by the assessee that was later subject to disallowance by the Assessing Officer since the Transfer Pricing Officer held that the arm's length price in respect of this component was nil?" 2. Question of jurisdiction of AO and TPO- demarcation	Against assessee (2012)13ITR (Trib) 422 Mum & 19ITR (Trib) 378 Mum	1. Payment of reimbursements must also be subjected to TP study 2. BASIS FOR COSTS INCURRED, ACTIVITIES FOR WHICH INCURRED, BENEFIT ACCRUING TO ASSESSEE MUST BE PROVED TO DETERMINE WHETHER, AND HOW MUCH, OF EXPENDITURE WAS FOR PURPOSE OF BENEFIT OF ASSESSEE AND WHETHER THAT AMOUNT SUBJECTED TO PROPER TRANSFER PRICING ANALYSIS. Cushman & Wakefield (India) Pvt. Ltd. (2014) 367ITR730 (Del)	Merely because reimbursement is at cost it cannot be argued by the assessee/AO that it is at arm's length unless and until confronted before the TPO. All cost sharing agreements, recharge agreements would thus warrant scrutiny by a TPO in every case irrespective of quantum involved.
12.	S.92	Whether the comparables selected in the order of the Transfer Pricing Officer are functionally non-comparable to the	Against revenue (2012) 19ITR (Trib) 42 Del	The services rendered by the assessee to its associated enterprise being in the nature	The position is well settled in the selection of comparables.

		appellant ?"		of marketing support services held to be entirely different to the set of services in the nature of engineering services rendered by the four comparables. Consequently, the adjustment arrived at by the TPO was held not justified. Verizon India Pvt. Ltd. (2014) 360ITR342	
13	**R. 6DD, S.40A(3)**	"(i) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the appellant was not entitled to deduction in respect of lorry charges paid in cash exceeding Rs. 20,000 under section 40A(3) of the Income-tax Act ? (ii) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the amount paid as lorry hire charges to strangers for one-time transportation in cash exceeding the prescribed limit of Rs. 20,000 is outside the ambit of business expediency as provided	Against assessee (2013) 26ITR (Trib) 317 Coch	*Since the assessee transporter was neither the owner of the goods nor the owner of the lorry/vehicle carrying the goods the payments made by it to the lorry drivers cannot be classified as payments to an agent under exception clause (k) of rule 6DD. MRS Roadways (2014) 367ITR62 Ker*	Rule 6DD(K) is absolute and this position is unchanged.

		under the proviso to section 40A(3) of the Act ? (iii) Whether, on the facts, and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the relationship of the drivers of the lorries hired for transportation of goods towards the appellant was not that of an agent for the purpose of rule 6DD(k) of the Income-tax Rules ? (iv) Whether, on the facts, and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in holding that the appellant, while hiring lorries and drivers from the market was bound to pay the lorry hire charges only by way of an account payee cheque or demand draft at all times ?			
14	S. 139(5)	Question of allowance of claim of deduction, loss set off etc. by filing of revised computation without a revised return	Against revenue*(2014) 2ITR (Trib) –OL 40*	*The Delhi High Court held that assessment proceedings are not adversarial in nature so that the assessee is allowed to make a claim during the course of assessment proceedings by filing*	This decision is beneficial to assessee's who may file revised computation of income during assessment proceedings to claim deductions, losses set offs etc, that they omitted while submitting return if the time for revision is over and rely on this

				revised computation. Sam Global Securities Ltd. (2014) 360ITR682	decision.
15	S. 3	(A) Whether the hon'ble Income-tax Appellate Tribunal Special Bench is right in holding that the assessee's business had been set up with effect from February 21, 2001, by flow of drinking water as construction work of canal project was still under progress ?	Against revenue (2012) 19ITR (Trib) 133 Ahm	1. The business can be set up without the same being commenced. 2. It would be wholly wrong to uphold the contention of the Revenue that only on completion of work of the entire canal, the assessee' business can be said to have set up. In a project like Sardar Sarovar, there are bound to be different stages where different activities take place and those activities being integral parts of the business and when they are set up phase vice, the assessee cannot be deprived of benefits of fiscal legislation in disregard to well settled principles on the issue by adopting over-technical approach. Sardar Sarovar Narmada Nigam Ltd. (2014)	The activities mentioned in the objects clause of the memorandum of association do not contemplate a single activity so that one had to view the annual report and directors report to view the progress of project or to know the phases /various category of activities completed and precede *other activities being integral to and inseparable from other activities. Even partial completion would amount to set up of business as in this case one of the object of the company was utilization of water.*

				364ITR477	
16.	Ss. 2(15), 11	"Whether the Appellate Tribunal has substantially erred in holding that the activities of the assessee are in the field of education and that the assessee was eligible for exemption under section 11(1) of the Act?"	Against revenue (2013) 28ITR (Trib) 349 Ahm	1. The proviso to section 2(15) of the Act will not apply in respect of the first three limbs of section 2(15) of the Act, viz, relief to the poor ; education or medical relief. 2. *The activities of the assessee such as continuing education diploma and certificate programme ; management development programme ; public talks and seminars and workshops and conferences, were held as educational activities or activities in the field of education. Ahmedabad Management Association (2014) 366ITR85 (Guj)*	Even where the activities of the assessee are related to education these would be eligible for exemption no matter that the institution may be imparting educational activities without imparting formal education (schooling) and without being affiliated to or accountable to any authority
17.	S. 009(1)(vi), Expln 2	Whether the Tribunal was right on the facts and in law in holding that the payments received by the appellant from the Indian customers for provision of bandwidth/telecom	Against assessee (2014) 2ITR (Trib) –OL 51 Che	1. *Receipts for use of international private leased circuit is royalty u/s 9(1)(vi) read with Explanation 2(iva) as well as under article 12(3) of the DTAA between India and Singapore. Further even if the*	*After the insertion of Explanation 5, since possession, control or location of right, property or information or usage directly by the payer has become insignificant any payment made for use of the connectivity would be royalty*

		services outside India is royalty for the 'use of, or the right to use equipment' under section 9(1)(vi) of the Act ? 2. Whether the Tribunal was right on the facts and in law in holding that the payments received by the appellant from the Indian customers for provision of bandwidth/telecom services outside India is royalty for the 'use of, or the right to use equipment' under article 12(3)(b) of the Tax Treaty ?"		*payment was not treated as one for the use of the equipment, the use of the process was provided by the assessee to render it as in the nature of royalty, whereby through the assured bandwidth the customer was guaranteed the transmission of the data and voice. Verizon Communications Singapore Pte. Ltd. (2014) 361ITR575 Mad*	
18.	**s. 40(a)(ia)**	Whether the amendments made to section 40(a)(ia) of the Act by the Finance Act, 2010, should be given retrospective effect?	Against revenue (2014) 2ITR (Trib) –OL 123 Del	Strict compliance with section 40(a)(ia) may be justified keeping in view the legislative object and purpose behind the provision but a provision of such nature should not be allowed to be converted into an iron rod provision which metes out stern punishment and results in malevolent results, disproportionate to the offending act and aim of the legislation. Legislative purpose and the object is to	1. *The amendments made to section 40(a)(ia) of the Act by the Finance Act, 2010, should be given retrospective effect.* 2. *Section 40(a)(ia) of the Income-tax Act, 1961is not basically a penal provision so that for any disallowance for tds default no penalty can be levied.*

				ensure payment and deposit of TDS with the Government. TDS results in collection of tax. Legislature can and do experiment and intervene from time to time when they feel and notice that the existing provision is causing and creating unintended and excessive hardships to citizens and subjects or have resulted in great inconvenience and uncomfortable results. Obedience to law is mandatory and has to be enforced but the magnitude of punishment must not be disproportionate by what is required and necessary. The consequences and the injury caused, if disproportionate do and can result in amendments which have the effect of streamlining and correcting anomalies. The amendments made in 2010 were a step in the said direction. Naresh Kumar *(2014) 362ITR256 (Del)*	
19.	S.2 (24) vs.	1. "Whether, in the facts	Against revenue	1. "carbon credit is not an offshoot	Carbon credits cannot be business receipt or income

	capital receipt	and in the circumstances of the case and in law, the Income-tax Appellate Tribunal is correct in holding that the sale of carbon credits is to be considered as capital receipt and not liable for tax under any head of income under Income-tax Act, 1961 ? 2. Whether, in the facts and in the circumstances of the case and in law, the Income-tax Appellate Tribunal is correct in holding that there is no cost of acquisition or cost of production to get entitlement for the carbon credits, without appreciating that generation of carbon credits is intricately linked to the machinery and processes employed in the production process by the assessee ?"	(2013) 21ITR (Trib)186	of business but an offshoot of environmental concerns; 2. No asset is generated in the course of business but it is generated due to environmental concerns; 3. On the sale of excess carbon credits the income so received would be capital receipt. My Home Power Ltd. (2014) 365ITR82 AP	receipt is going to lend into a greater controversy sooner or later. Before that the Government gets wiser and take a stand in this budget hopefully it may be better for industry to realize their value before the upcoming budget. DTC 2013 draft version already taxes any consideration accruing or received on transfer of carbon credits as business income.
20.	S.271 (1) (c)	"Whether, on the facts and in the circumstances of the case, the hon'ble Tribunal has erred in law in cancelling the penalty of Rs. 32,67,643 levied under section 271(1)(c) of the Act by the Assessing Officer and confirmed by the	Against revenue (2013) 28ITR (Trib) 523 Ahm	In the absence of any additional materials that come to the notice of the AO no penalty can be imposed merely because the account books of the assessee were rejected and that the profit was estimated	The law explained is where the explanation offered by the assessee is not termed as not bona fide no penalty could be justified. In penalty matters it is always advisable to file detailed explanation alongside documentation, if any.

		learned Commissioner of Income- tax (Appeals) on addition made on account of low gross profit?		on the basis of the fair gross profit ratio. Whitelene Chemicals (2014) 360ITR385	
21.	S. 143(3)- Closing stock valuation	Whether, on the facts and in the circumstances of the case, the hon'ble Income-tax Appellate Tribunal was right in law in deleting the addition of Rs. 75,00,000 made by the Assessing Officer on account of undervaluation of closing stock of the land as the civil suit was filed in the civil court near the end of the financial year, i.e., March 18, 2006, which would have no impact on the value and that the events that took place in the subsequent year would have no bearing on the value of closing stock as on March 31, 2006 ?	(2013) 22ITR (Trib) 349	1. The assessee builder was held justified in reducing the valuation of the closing stock of land on account of depreciation in land value due to legal suit filed against the assessee whereby the assessee was debarred from selling such land 2. As the same value which when taken as opening stock for the assessment year was accepted by the Assessing Officer while framing assessment under section 143(3) of the Act further strengthen case of assessee. Satish Estate P. Ltd. (2014) 361ITR451 Del	Importantly in this case it was explained that by undervaluation of inventory no loss to the Revenue had been caused.
22.	S. 36(1)(viia)	Whether rural branch of a scheduled bank or non-scheduled bank defined under the Explanation to section 36(1)(viia) would include rural branch of a co-operative bank or no?	Against assessee (2013) 1ITR (Trib) –OL 212 Coch	1. Explanation (ia) to section 36(1)(viia) which defines what is a rural branch necessarily with reference to a place with village population less than 10000 likewise find	Not all rural branches of Co-operative banks are entitled to 10% deduction unless it mee the population and area condition.

				application to the case rural branch of co-operative bank who would also fall under the category of non-scheduled bank for the purpose of this section. Kannur District Co-operative Bank Ltd. (2014) 365ITR343 Ker	
23.	S. 37	1. Whether interest paid with reference to return of contribution of share application for non-allotment of shares after 12 years to Central Government will accrue and crystallize in entirety in the year in which it is returned? 2. Whether *the Assessing Officer is correct in refusing the assessee's claim for deduction of the professional fee paid on the ground that the assessee did not earn revenues by utilising the services of consultant?*	Against revenue (2013) 24ITR (Trib) 742 Del	1. Not returning the amount to the Government would have costed the assessee its business prospects and its title over the business by way of withdrawing the joint venture, etc. 2. Once it is found that the assessee has earned substantial revenues in subsequent years the consultancy fee deduction cannot be disallowed only since no consultancy revenue is earned in the relevant year subject however to the fact that business has commenced during the	As the asses see's action in this case is found guarded by business prudence/propriety and expediency it won.

				relevant previous year. Urban Mass Transit Ltd. (2014) 365ITR442 Del	
24.	S. 3	When a real estate development business can be said to have been set up?	Against revenue. 2ITR (Trib)-OL 172 Del	1. The act of depositing earnest money while participating in the tender floated by the official liquidator of the Karnataka High Court for sale of land and the further act of borrowing monies for such purchase are acts which clearly establish that the business is set up. 2. Actual purchase of land is only secondary activity setting course of commencement of business. 3. Tax auditor mention of non commencement in report is not decisive of date of set up. Dhoomketu Builders & Developers Ltd. (2014) 368ITR680 Del	The legal position on two dates is well laid down by Bombay High Court in their age old decision in Western India Vegetable Products Ltd. V. CIT (1954) 26ITR151 and same is valid even today. When a business is set up or commenced would take guidance from facts in each type of business and no universal formula is prescribed under the law.
25.	S. 2(15), 11 and 12	Whether the trust being engaged in the activity of breeding milk cattle ; to improve the quality of	Against revenue 25ITR (Trib) 701 Ahm	Merely because while carrying out the activities for the purpose of achieving the objects of the	As long as profit making is neither the aim nor object of the trust and that income generating activity is not the principal activity

		cows and oxen and other related activities. pursues the activity of business, trade or commerce?		trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business. Sabarmati Ashram Gaushala Trust (2014) 362ITR539 Guj	the trust will maintain its exemption and left untouched by the proviso to s. 2 (15).
26.	S. 271G	Whether the notice under section 92D(3) should specify the information or document, which was required to be submitted and if and when there is a failure or delay in submission of the said documentation or information, penalty can be imposed under section 271G of the Act?	Against revenue (2014) 2ITR (Trib) –OL 29 Del	1. *For imposing penalty the AO/TPO must first mention the document and information, which was required to be furnished but was not furnished by the assessee within the specified time.* 2. The document or information sought should be one specified in rule 10D. 3. *In the absence of the basic details or facts as per above, the order of the penalty under section 271G could not be sustained. Leroy Somer & Controls (India) P. Ltd. (2014) 360ITR 532 Del*	When there is general and substantive compliance with the provisions of rule 10D, it is sufficient. This position is certain. One change is that now TPO can also levy penalty for any failure to maintain/furnish prescribed information or document.
27.	S. 10A	Whether the assessee was engaged in providing ' human resource service' in the	Against revenue (2011) 140TTJ (Del) (UO) 59	*The assessee who maintained database for tracking, short listing, testing conducts (online*	Mere recruitment services are not eligible for exemption as per the

		nature specified in Notification No. 890(E), i.e., information technology service relating to ' human resource'?		*tests), compiling results for shortlisted candidates and process and analyzed the results using IT resources it would tend to qualify for exemption. M L Outsourcing Services (P) Ltd. (2014) 110DTR105*	ruling.
28.	S. 192/194J	Whether on the facts and circumstances of the case, the finding of the Tribunal that there existed no relationship of employer and employee between the assessee and consultant doctors employed in the hospital , can be said to be based on material on record?	Against revenue (2010) 133TTJ(Hyd) (UO) 17	*In the employment agreement there was no provision for payment of any PF or gratuity. In the absence of record of attendance for consultants/ doctors and no administrative control s. 192 is found inapplicable. Yashoda Super Speciality Hospital (2014) 108DTR323 AP*	Mere clause in the agreement that prohibit a consultant to take up other assignment does not imply relationship of employer and employee.
29.	S. 194C/194J	Whether payment for gas transmissions charges is in the nature of sale or contract/technical services?	Against revenue (1013) 154TTJ(Jd)401	*Contract for sale of gas would fall outside the purview of section 194C/194J. Vat charges invoice hence not any service either. Samtel Glass Ltd. (2014) 108DTR353 Raj*	What matters is the predominant purpose which is gas purchase in this case. Vat invoice further justified the transaction as sale and purchase. Further decision of Guj H in CIT v. Krishak Bharat Co-operative Ltd. (2012) 78DTR154 fall in line with Rajasthan High Court decision.
30.	S. 9 (1) (I)- direct and indirect transfer	1. Whether gains arising from sale of shares of a company incorporated overseas, which derive less than 50% of its value	Against revenue (2012) 348ITR205/75DTR(AAR)155	*In the first leg the two Mauritius entities who held direct interest/indirect interest in Indian companies sold their*	Here the companies who transacted (sold) shares had substantial commercial revenues and are not shell companies so

	case	from assets situated in India would not be taxable under s. 9 (1) (i) r/w Expln. 5 thereto? 2. Whether gains arising to Mauritius entities from sale of share held in a company incorporated in India and USA, would not be taxable under section 9 (1) (I) of the Act?		*direct holdings to USA company (Moody's). In the second leg the upstream holding company (Copal) also sold their indirect interest in the two Mauritius entities to Moody's. In the consequence Copal was left with only a fractional interest in Indian companies assets after conclusion of first leg of transaction. Even when the Court exempted the first direct and indirect transfer based on treaty provisions it also held viz a viz second transaction that only a fraction of the value of shares was derived indirectly from the value of the shares of Indian companies hence there can be no recourse to Explanation 5 to section 9 (1). Copal Research Ltd. (2014) 108DTR1 Del*	that the Court did not question the bonafide of the transaction and allowed Mauritius treaty benefit to the two Mauritius entities viz a viz capital gains for direct and indirect transfer of interest in Indian companies as well as exempted Moody's from any tax withholding obligation viz a viz acquisition of indirect interest in downstream Mauritius subsidiaries for lack of application of Expln 5 as it held fractional interest in Indian company assets.
31.	S. 12A	Whether the Tribunal is right in law in allowing registration under section 12AA to the assessee port trust when the purpose of its creation and the activities carried out indicated that it is not	Against revenue (2007) 112TTJ(Panaji) 681	*Assessee being involved in general public utility service with no profit motive it is held entitled to registration u/s 12A. Kandla Port Trust (2014) 107DTR349 Guj*	Even if incidental activity involves profit making, the same would not take the trust out of the expression "charitable purpose". One has to look at the memorandum to know the purpose of creation of

		carrying on charitable activities but commercial activities?			the trust. If that is predominantly charitable in nature then incidental profit making should not torn out the exemption even by the new proviso under section 2 (15). The Delhi High Court in a recent decision in ITPO v DGIT (E) in WP No 1872/2013 dated 22nd January 2015 held that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running fowl of the principle of equality enshrined in Article 14 of the Constitution India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from

					charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an

					institution established for charitable purposes.
32.	S. 133(6)	Whether general notice calling for cash particulars including deposits above a particular amount after prior approval can be issued u/s 133(6)?	Against revenue (2013) WP No. 30451 dated 17th December 2013 of Single Judge of Kerala High Court	*Notice requiring co-operative bank to furnish details of entire cash deposits in savings bank accounts where the aggregate cash deposit in rupees 5 lac and above in a year for the last three years is held a valid exercise under the law. Kodur Service Co-operative Bank Ltd. (2014) 106DTR411 (Ker)*	The law in this regard is settled already by Supreme Court in *(2014) 360ITR243/95DTR129*. Individuals therefore should take caution and not deposit cash in their savings account to prevent an enquiry.
33.	S. 10B	Whether the Tribunal was right in holding that the appellant was not a manufacturer /producer of snack food items such as mathia, chorafali, paratha items therefore was not entitled to s. 10B relief in respect of profits there from?	Against assessee (2013) 88DTR (Ahm) (Trib) 52/155TTJ57	*The assessee purchased finished bulk items of two types from outsourced agencies in bulk packaging and later the assessee undertook sorting and packaging in consumer packets and freezing it to minus 180 degree Celsius in deep storage freezer for increasing shelf life. The Court denied deduction in the absence of any manufacturing. Deepkiran Foods (P) Ltd. (2014) 105DTR29 Guj*	Packing and storing by itself are not manufacturing activities by itself. No raw material was purchased in this case for further processing.
34.	S. 9 (1) (vi)	Whether the payments made by Non-resident to another non-resident for acquisition of cricket telecast/broadcasting right are in the nature of	Against revenue (2010) 43DTR(Mum) (Trib) 311	*As the broadcasting operations were carried out outside India the subject payment was held not chargeable to tax under the Act. Set*	In the absence of any economic connection or link of such payment with the marketing PE of the payer in India the subject transaction for the

		royalty so as o require tax withholding under Income ax Act?		*Satellite (Singapore) Pte Ltd. (2014) 105DTR153 Bom*	purchase of cricket broadcast rights in Singapore is held not subject to tax. The payer maintained television channels for broadcast from Singapore only with rights to broadcast programmes etc. in various territories including India.
35.	Ss. 90,163,172	Profits from operation of ships- who is entitled to treaty benefit whether owner or charterer?	Against assessee (2012) 149TTJ (ban) 641/77DTR (Bang)292	*Charter party agreement providing 100 percent freight from the ship (less 3.5 % commission) payable by Netherlands charterer to Iranian owner. The assessee showing itself as agent of Netherlands charterer in the return filed u/s 172 (3) on behalf of Charterer and attempting to take benefit of article 8A of India Netherlands DTAA during the course of proceedings u/s 172 held not eligible for the same . Marine Limks Shipping Agencies (2014) 102DTR (Kar) 268*	The treaty advantage is only to the substantial beneficiary of freight which in this case is the Iranian owner. There being no tax treaty with Iran tax in such a case shall be payable under the Act vide section 172 scheme.
36.	S. 43B, 36 (1) (va)	Whether employees contribution to PF if paid after due date under respective Act but before filing of the return u/s 139(1) cannot	Against revenue (2013) 89DTR (Kar)274- Single Member	*Amendment enabling deduction for PF contribution paid before return filing u/s 43B has equal application to*	Gujarat High Court has taken contrary view while other Courts have taken a favourable view.

		be disallowed u/s 43B or S. 36(1) (va)?	Bench	*employer and employee contribution. No distinction placed on the two as far as mitigating amendment in s. 43B. Spectrum Consultants India (P) Ltd. (2014)100DTR (Kar) 129*	

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