The Chamber of Tax Consultants
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ज्ञानं परमं बलम्
Mumbai | Delhi



## Recent Decisions

## Study Group Meeting of CTC on August 18, 2022

## Mr. Ajay R. Singh, Advocate

| Sr no | CASE NAME | ISSUE | HELD | References |
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| 1. | **Principal Commissioner of Income-tax, 111, Bangalore vs. Wipro Ltd.** [2022] 140 taxmann.com 223 (SC)[11-07-2022] | Revised return can neither substitute the original return nor convert the original return into a belated return | Revised return u/s 139(5) can only be filed to correct an omission or wrong statement in the original return filed u/s 139(1).But a revised return of income[filed after the due date u/s 139(1)],under Section 139(5),cannot be filed to withdraw the claim for deduction u/s 10B(8) and subsequently claiming the carried forward or set-off of any loss. Filing a revised return under Section 139(5) of the IT Act and taking a contrary stand and/or claiming the exemption, which was specifically not claimed earlier while filing the original return of income is not permissible. By filing the revised return of income, the assessee cannot be permitted to substitute the original return of income filed under section 139(1) of the IT Act. Therefore, claiming benefit under section 10B(8) and furnishing the declaration as required under section 10B(8) in the revised return of income which was much after the due date of | **1. Commissioner of Income Tax, Delhi-III, New Delhi v. Moser Baer India Limited, decided on 14.05.2008 in ITA No. 950/2007** |

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| | | | filing the original return of income under section 139(1) of the IT Act, cannot mean that the assessee has complied with the condition of furnishing the declaration before the due date of filing the original return of income under section 139(1) of the Act. Where the assessee filed its original return under section 139(1) and not under section 139(3),the revised return filed by the assessee under section 139(5)[after the due date u/s 139(1)]can only substitute its original return under Section 139(1) and cannot transform it into a return under Section 139(3),in order to avail the benefit of carrying forward or set-off of any loss under Section 80 of the IT Act. Even the submission on behalf of the assessee that it was not necessary to exercise the option under section 10B (8) of the IT Act and even without filing the revised return of income, the assessee could have submitted the declaration in writing to the assessing officer during the assessment proceedings has no substance and the same cannot be accepted. Even the submission made on behalf of the assessee that filing of the declaration subsequently and may be during the assessment proceedings would have made no difference also has no substance. The significance of filing a declaration under section 10B(8) can be said to be co-terminus with filing of a return under section 139(1),as a check has been put in place by virtue of section 10B(5) to verify the correctness of claim of deduction at the time of filing the return. If an assessee claims an exemption under the Act by virtue of Section 10B, then the correctness of claim has already been verified under section 10B (5). Therefore, if the | |

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| | | | claim is withdrawn post the date of filing of return, the accountant's report under section 10B (5) would become falsified and would stand to be nullified | |
| 2. | **Gian Castings (P.) Ltd. vs. Central Board of Direct Taxes** [2022] 140 taxmann.com 319 (SC)[17-06-2022] SLP dismissed against decision *[Gian Castings (P.) Ltd.* v. *CBDT* [2022] 140 taxmann.com 318 (Punj & Har.) (para 1)] | Section 148, read with section 148A, of the Income-tax Act, 1961 and Article 226 of the Constitution of India, 1950 - Income escaping assessment - Issue of notice for (Writ jurisdiction). | Where reassessment proceeding initiated by issue of a notice under section 148 was at its intermediate stage and was yet to be concluded by statutory authority, there was no reason to warrant interference in same by exercise of jurisdiction under Article 226 of Constitution of India. | *CIT* v. *Chhabil Dass Agarwal* (2014) 1 SCC 603<br>*Gulmuhar Silk (P.) Ltd.* v. *ITO*,<br>Delhi High Court in [W.P.(C) 5787 of 2022, dated 7-4-2022] |
| 3. | **CIT vs. M/s. Super Religare Laboratories Ltd.., [2022] 139 taxmann.com 369 (SC)** | Section 194H of the Act, 1961 - Deduction of tax at source - Commissions, brokerages etc. (Collection centres, discount allowed to) | Notice issued in SLP filed against order of Bombay High Court that where assessee-company engaged in providing laboratory and testing services to customers through third party collection centres had allowed certain discount to such collection centres, since assessee did not perform any act of paying but was only receiving payments from these collection centres, there was no obligation on assessee to deduct tax at source under section 194H on discount so allowed | |
| 4. | **Basant Lal Jain *v.* Union of India [2022] 139 taxmann.com 542 (Andhra Pradesh)** | Section 144B, read with sections 147 and148, of the Act, Faceless Assessment (Opportunity of hearing) - Assessment year 2016-17 - Assessing Officer passed final assessment order without providing any opportunity of hearing to petitioner/assessee on | No standards, procedures and processes have been framed in terms of clause (*xii*) of section 144B(7) and these standards, procedures and processes are required to be framed to guide the Assessing Officer as to whether or not personal hearing, in a given matter, should be granted and that since the statute itself makes the provision for grant of personal hearing, the revenue cannot veer away from the same. Hence ,it is opined that since the petitioner has a vested right to personal | **1. *Bharat Aluminium Company Ltd.* v. *Union of India* [2022] 134 taxmann.com 187 (Delhi)**<br><br>Whether word 'may' in section 144B(viii) should be read as 'must' or 'shall' and requirement of giving an assessee a reasonable opportunity of personal hearing would be |

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| | | ground that **request for personal hearing was made four days after** expiry of compliance date - Whether petitioner had a vested right to personal hearing and same was to be given if request for personal hearing was made - | hearing and the same has to be given, if such a request is made and that the right to personal hearing cannot depend upon the facts of each case. Admittedly, the impugned final assessment order was passed without considering the request for personal hearing through video conference, though made belatedly, even without closing the said request and keeping the status as 'open'. Therefore, since no personal hearing had been granted before passing the impugned assessment order, there is a violation of principles of natural justice as well as mandatory procedure prescribed in 'Faceless Assessment Scheme' as stipulated in section 144B. | mandatory - Held, yes<br><br>**2. CBDT Circular: Circulars and Notifications: Circular F. NO. PR.CCIT/NeAC/SOP/2020-21, dated 23-11-2020** |
| 5. | **Mallelil Industries (P.) Ltd. vs. Additional/Joint / Deputy / Assistant Commissioner of Income-tax/Income-tax Officer**<br>**[2022] 444 ITR 80 (Kerala)** | Section 271(1)(c), read with section 263, of the Income-tax Act, 1961 - Penalty - For concealment of income Revision : | Where initial order of assessment was wholly set aside by Commissioner under section 263 and proceedings were remanded as an open remand conferring power upon Assessing Officer to pass fresh orders of assessment on all issues, initiation of proceedings for imposing penalty and consequent imposition was within jurisdiction and authority of Assessing Officer | ***1. CIT* v. *Super Metal Re-Rollers (P.) Ltd.* [2004] 135 Taxman 407/265 ITR 82 (Delhi)**<br>Section 263 of the Income-tax act, 1961—Revision—Orders prejudicial to revenue—While passing assessment order, ITO failed to take steps to charge interest under sections 139(1) and 217 and also failed to initiate penalty proceedings under sections 271(1)(a) and 273(b)—Additional commissioner, acting under section 263, set aside assessment directing ITO to make fresh assessment considering question of levy of interest and penalty—Whether tribunal correct in holding that |

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| | | | | additional commissioner could not direct ITO about leviability of penalty and consequently modifying additional commissioner's order to that extent.<br><br>***2. CIT* v. *Rakesh Nain Trivedi* [2017] 80 taxmann.com 238 (Punj. & Har.)**<br>Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interest of revenue (Power to order penalty proceedings) - Assessment year 2008-09 - If Assessing Officer had not initiated penalty proceedings, Commissioner in exercise of powers under section 263 cannot direct Assessing Officer to initiate penalty proceedings under section 271(1)(c) |
| 6. | **Greatship (India) Ltd. v. ACIT (Bombay High Court)**<br>Writ Petition No: 1476 OF 2022, dated: 18/07/2022 | S. 245 : Refund-Set off of refunds against tax remaining payable-Adjustment made without prior intimation is held to be bad in law. [Art. 226] | The Assessing Officer adjusted the refund without giving any prior intimation. On writ allowing the petition the Court held that where a party raises objection in response to the intimation, the Assessing Officer exercising powers under section 245 of the Act must record reasons why the objection was not sustainable and also communicate it to the assessee and this would ensure that the power of adjustment under section 245 of the Act is not exercised arbitrarily. On facts of the case the Court held that action of the Assessing Officer making the adjustment | **1. A.N. Shaikh, Sixteen Income-Tax Offcer Vs. Suresh B. Jain**<br>[1987] 165 ITR 86 (Bom.)<br><br>**2. Hindustan Unilever Ltd. Vs. Deputy Commissioner of Income-Tax and Others**<br>2015] 377 ITR 281 (Bom.) |

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| | | | without prior intimation is bad in law and illegal hence quashed. | |
| 7. | **PCIT v. Ram Builders (Bombay High Court)** ITXA/398/2018, dated : 18/07/2022. | S. 69C: Unexplained expenditure-Income from undisclosed sources -Bogus purchases-Civil works-Road construction-Information from Sales Tax Department-Order of Tribunal estimated profit of 12.5% on unexplained and non-genuine purchases is affirmed by High Court. [S. 37(1), 143(3), 260A] | The assessee is involved in the execution of Civil works like road construction etc .under the Public Works Department of the Government of Maharashtra and Municipal Corporation of the Government of Maharashtra. Based on the information received from the Sales Tax Department the Assessing Officer asked the assessee to explain purchases from twelve parties and was asked to produce the parties. The Assessee failed to do so. The Assessing Officer added the entire purchases as non-genuine expenditure. On appeal the CIT(A) restricted the addition by estimating profit of 12.5% on the total purchases. On appeal the Tribunal up held the order of the CIT(A). On further appeal the High Court affirmed the order of the Tribunal. | 1. **Pr. CIT Vs. Allied Blenders and Distillers Pvt. Ltd. ITXA/1404/2017, dtd:22/11/2021, (Bom)(HC)**<br>2. **Pr. CIT Vs. Pinaki D. Panani ITXA/1543/2017, dtd:08/01/2020, (Bom)(HC)**<br>3. **Pr. CIT Vs. M/s. Mohommad Haji Adam & Co. ITXA/1004/2016, dtd:11/02/2019, (Bom)(HC)**<br>4. **Pr. CIT Vs. M/s. Paramshakti Distributors Pvt. Ltd. ITXA/413/2017, dtd:15/07/2019, (Bom)(HC)**<br>5. **Pr. CIT Vs. Vaman International Pvt. Ltd. ITXA/1940/2017, dtd:29/01/2020, (Bom)(HC)** |
| 8. | **PCIT v. Kumar Builders Consortium (Bombay High Court)**<br>INCOME TAX APPEAL NO. 82 OF 2018, dated : 18/07/2022 | S. 80IB(10) : Housing projects-Two flats excess of the prescribed limit of 1500 sq.ft.-**Pro rata deduction in respect of eligible flats not exceeding prescribed limit is eligible**-Interpretation of taxing Statutes-When the language of a statute is unambiguous and admits of only one meaning, no question of construction of | The assessee firm engaged in the business of developing residential projects. The assessee claimed deduction u/s. 80IB (10) of the Act. The Assessing Officer held that two flats were having an area in excess of the prescribed limit of 1500 sq. ft. hence denied the deduction . On appeal the CIT(A) directed to allow the pro rata deduction in respect of eligible flats not exceeding prescribed limit of a covered area of 1500 sq.ft. On appeal by Revenue the Tribunal affirmed the order of the CIT(A). On appeal to High Court by the Revenue, High Court affirmed | ***Devashri Nirman LLP V/s. Assistant Commissioner of Income Tax & Another*** (2020) 429 ITR 597 (Bom).<br>Section 80-IB of the Income-tax Act, 1961 - Deductions - Profits and gains from industrial undertakings other than infrastructure development undertakings (Housing Projects) |

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| | | a statute then arises. [S. 260A] | the order of the Tribunal. Court relying on Nelson Motis v. UOI AIR 1992 SC 1981 held that it is well settled principle of interpretation of statues that when the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises. | |
| 9. | Virbac Animal Health India (P.) Ltd.<br>[2022] 139 taxmann.com 574 (Bombay)[14-06-2022] | Section 37(1), read with section 148, of the Income-tax Act, 1961 - Business expenditure - Allowability of (Sales promotion/freebees) | Where a reopening notice was issued on ground that expenditure incurred by assessee, engaged in marketing of animal health products, towards cost of purchase of samples for distribution under head advertisement and sales promotion was in violation of provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2022 and, thus, same was not admissible under section 37(1) being expenses prohibited by law, since there was no failure on part of assessee to disclose truly and fully all material facts that were necessary for computation of income during original scrutiny assessment, impugned reopening after 4 years was unjustified. | **Ananta Landmark (P.) Ltd. v. Dy. CIT [2021] 131 taxmann.com 52/283 Taxman 462/439 ITR 168 (Bom.)**<br>Section 57, read with section 148, of the Act - Income from other sources - Deductions (Reassessment) - Assessment year 2012-13 - Assessment was sought to reopened in case of assessee after 4 years, by issue of notice under section 148 on ground that assessee being a builder had taken loan for purpose of construction project, hence, interest paid on said loan was related to assessee's business allowable as deduction under section 37(1) and since there was no business income during relevant year its claim of deduction under section 57 could not have been allowed |
| 10. | **Olympus Suppliers (P.) Ltd. v PCIT**<br>**140 taxmann.com 74 (Calcutta)** | Revision :<br>Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Share capital) | Where assessee had preferred an appeal before Tribunal against order passed under section 263 on ground that it was barred by limitation and Tribunal passed order holding that issues raised in appeals were covered by several orders passed by Tribunal but did not touch upon merits of | ***Subhlakshmi Vanijya (P.) Ltd.* v. *CIT* [2015] 60 taxmann.com 60/155 ITD 171 (Kol.- Trib.)** Section 68, read with section 263, of the Income-tax Act, 1961 - Cash credit (Share capital) - Assessment years |

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| | | | assessee's case, matter was to be sent back to Tribunal to take a decision afresh on merits and in accordance with law | 2008-09 to 2010-11 - Assessee filed return offering meagre income and issued share capital at huge premium, while making large investments in new companies at much higher price than their real worth - Upon reassessment, Assessing Officer did not invoke section 68, hence, Commissioner exercising his revisionary power under section 263 set aside assessment orders directing Assessing Officer to make fresh assessment after conducting detailed enquiry and upon satisfying on genuineness of transaction - Whether order of Commissioner was not based on irrelevant considerations and further in present circumstances, he was not obliged to positively indicate deficiencies in assessment order on merits on question of issue of share capital at a huge premium |
| 11. | **Rajendra R. Singh vs. Assistant Commissioner Of Income Tax -9(2)(2),** Writ Petition No. 3590 Of 2019, dated: 26/07/2022 (Bom) (HC) | Section 179 - holding the petitioner liable to pay a demand - section 220(2) - due and payable by the company, | In the present case, it can be seen that the notice undersection 179 of the Act issued by respondent No.1 did not at all inform the petitioner of its intention to treat the company, i.e., CPML as a public company by invoking the principle of 'lifting the corporate veil' much less did it refer to any material or conclusion based upon which it could assume jurisdiction under section 179 of the Act against the directors of a Private Company.<br>Power under section 179 of the Act can be | **Pravinbhai M. Kheni Vs. Assistant Commissioner of Income-tax, Central Circle-2 &** [2012]28 taxmann.com 111 (Gujarat)<br>**Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another** AIR 1996 SC 2005 |

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| | | | exercised against the Directors upon satisfaction of certain conditions only if the tax dues cannot be recovered from the private company. To justify that the tax dues cannot be recovered, the Assessing Officer has to enumerate the steps taken towards recovery of tax dues from the company. | |
| 12. | **L.K.P. Merchant Financing Ltd. v. Dy. CIT (Bombay High Court) [2022] 140 taxmann. com 548 (Bombay)[18-07-2022]** | S. 36(1)(vii) : Bad debt-Pendency of dispute-Lease rental- Depreciation-Once a business decision has taken to write off a debt as a bad debt in books of account should sufficient to allow the claim as bad debt. [S. 36(2)] | The assessee is a non Banking Finance Company engaged in the business of inter alia of lease finance. The lessee defaulted in payment of instalments. The Assessee approached the High court seeking winding up of Orson Electronics Ltd and appointment of Official liquidator too safe guard the interest of the creditor. The assessee wrote off the amount due as bad debt in the books of account. The Assessing Officer disallowed the claim of the assessee on the ground that pendency of dispute. The Order of assessing Officer is affirmed by the Tribunal. On appeal allowing the claim the Court held that once a once a business decision has taken to write off a debt as a bad debt in books of account should sufficient to allow the claim as bad debt . | |
| 13. | **MRF Ltd. vs. DCIT** [2022] 445 ITR 103 (Madras) | Section 144A, read with sections 40(A)(2)(a) and 37, of the Act, - Deputy Commissioner, power of - To issue directions in certain cases (Additions) | Section 144A does not empower Joint Commissioner to give a direction to an Assessing Officer to complete assessment in a particular manner, and hence, where dispute arose as to whether amounts paid by assessee to its subsidiary were inflated and Joint Commissioner by an order directed Assessing Officer to disallow 2.5 per cent of transacted amount under section 40(A)(2)(a) and section 37(1), without granting any hearing to assessee, there was violation of section 144A, therefore, assessment order was to be set aside | ***Vijay Kumar Sharma* v. *Appropriate Authority* [1995] 78 Taxman 187/[1996] 220 ITR 509 (All)**<br>Whether before passing an order under section 269UD(1), sufficient time for compliance of show-cause notice should be given to party who is likely to be effected by order and an order passed without giving sufficient time would be violation of rules of natural justice. |

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| 14. | **PCIT Vs Burdwan Development Authority (Calcutta high court) ITAT/93/2022, dated:01/08/2022** | Section 5 : Whether project completion method followed by the assessee was in accordance with law and thus no interference was called for | The Calcutta High Court refused to interfere when the Principal commissioner challenged the relief granted by the ITAT by holding that the amount of Rs 4.90 crores was taxable on project completion method and not on the basis of accrual. | **1.** |
| 15. | **Nitin Nagarkar v. ITO (Bombay High Court)** WRIT PETITION NO. 3815 OF 2021,dated:19/07/2022 | S. 281 : Certain transfers to be void-Natural justice-Order passed without giving an opportunity of hearing-Bad in law-Tax recovery Officer has no jurisdiction to examine whether the transfer is void-Order was quashed. [S. 222, Rule 11 of the Second Schedule, Art, 226, Transfer of Property Act, 1882, S. 53] | The petitioner challenged the order passed by the Tax Recovery Officer under section 281 of the Act. Allowing the petition the Court held that the order was passed without giving an opportunity of hearing hence the order is bad in law. The Court also held that the Tax Recovery Officer cannot examine whether the transfer is void, the Department being in the position of creditor will have to file a suit for a declaration that the transaction of transfer is void under section 281 of the Act. | **Recovery Officer v. Gangadhar Vishwanath Ranade (1998) 234 ITR 188/100 Taxman 236(SC)** Section 222, read with rule 11 of the Second Schedule, and section 281 (as it stood prior to 1-10-1975 of the Income-tax Act, 1961 - Collection and recovery of tax - Certificate proceedings - Whether in a proceeding under rule 11 of Second Schedule, Tax Recovery Officer could declare a transaction of transfer as void under section 281 - Held, no - Whether TRO cannot declare any transfer made by assessee in favour of a third party as void and if department finds that the property of assessee is transferred by him to a third party with intention to defraud revenue, it will have to file a suit under rule 11(6) to have transfer declared void under section 281 - Held, yes - Whether TRO, if he comes to a conclusion that transferee is in possession in his or her own right, he will have to raise the attachment and if the department desires to have transaction of transfer declared void under section 281, department being in the position of a |

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| | | | | creditor, will have to file a suit for a declaration that the transaction of transfer is void under section 281 - Held, yes<br><br>**Tax Recovery Officer v. Gangadhar Vishwanath Ranade (2007) 294 ITR 614 / (2008) 170 Taxman 289 (Bom)(HC)** |
| 16. | **Dinesh Vazirani vs. Principal Commissioner of Income-tax**<br>**[2022] 445 ITR 110 (Bombay)** | **S. 264 – Revision Application – Re-computation of capital gain due to subsequent event** - Capital gain - Computation of (Full value of consideration) - Whether capital gains had to be calculated on basis of actual consideration received | Where assessee sold shares under a subscription and purchase agreement (SPA) to a company for a consideration of certain amount, out of which certain amount was kept in escrow account which was to be received by assessee if no liability arose within two years from closing date, since subsequent to sale certain statutory and other liabilities arose which was paid directly from escrow account and amount of LTCG received in escrow account was neither received by assessee nor accrued to assessee, same could not be included in full value of consideration in computing capital gains on transfer of shares, thus, assessee was entitled to refund of excess tax paid on such excess capital gains amount in escrow account which was shown earlier for tax. | 1. ***CIT* v. *Shoorji Vallabhdas & Co.*** **[1962] 46 ITR 144 (SC)** |
| 17. | **Ajay Bhandari vs. Union Of India And 3 Others**<br><br>**[WRIT TAX No. - 347 of 2022, order date :- 17.05.2022 ; Allahabad High Court ]** | S. 148A rws 149 – Reopening of assessment – AY 2014-15 – Effect of Supreme Judgement in case of Ashish Agarwal dt 4-5-2022 and Board's Circular dated 11.05.2022 - where the income of an assessee | The Additional Solicitor General of India has made a statement before the Court, that as per Clause-7.1 of the Board's circular dated 11.05.2022, the notices under Section 148 relating to the Assessment Years 2013-14, 2014-15 and 2015-16, shall not attract the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal (supra). | |

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| | | escaping assessment to tax is less than Rs.50,00,000/- - Reopening not justified: | The Court observed that as per Clauses 6.2 and 7.1 of the Board's Circular dated 11.05.2022, if a case does not fall under Clause (b) of sub-Section (i) of Section 149 of the Act, 1961 for the Assessment Years 2013-14, 2014-15 and 2015-16 (where the income of an assessee escaping assessment to tax is less than Rs.50,00,000/-) and notice has not been issued within limitation under the unamended provisions of Section 149, then proceedings under the amended provisions cannot be initiated. | |
| 18. | **Best Buildwell Private Limited Vs. Income Tax Officer, Circle 4 (2), Delhi And Anr.**<br><br>**W.P.(C) 11338/2022, Dated: 01/08/2022 ; Delhi High Court :** | S. 148A(d) – Reopening of assessment - impugned show cause notice as well as the impugned order under Section 148A(d) of the Act are based on distinct and separate grounds – Information referred in SCN not provided to Assessee: | The Court observed that the impugned show cause notice as well as the impugned order under Section 148A(d) of the Act are based on distinct and separate grounds. | |
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| 19. | **Baban G. Kumbharkar v. ITO**<br>ITA No. 2315 & 2316/PUN/2016 ; Bench : A Pune ITAT ; dated 18/6/2022 ; AY 2007-08 & 2008-09 | S. Capital Gains- No Cost of Acquisition - No Capital Gains. | section 49(1)(i) to (iv) prescribing cost; with reference to certain modes of acquisition wherein if it is found that the capital asset in issue has been acquired under the specified mode; gift herein is to be taken for which the previous owner had acquired the same for valuation consideration | 1. **CIT Vs. Sambhaji Nagar Co-op. Hsg. Society Ltd. (2015) 370 ITR 325 (Bom)**<br>Section 55, read with section 45, of the Income-tax Act, 1961 - Capital gains - Cost of acquisition (Assets having no cost of acquisition - Transferable development rights) - Assessment year 2007-08 - Assessee, a co-operative society with promulgation of |

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| | | | | Development Control Rules (DCR), acquired right of putting up additional construction through Transferable Development Rights (TDR) - Whether where assessee society had not incurred any cost to acquire TDR attach to land owned by it and transferred same to a developer for a consideration for construction of a floor space index, transfer of TDR would not give rise to any capital gains chargeable to tax - Held,<br><br>**2. CIT Vs Markapakula Agamma (1987) 165 ITR 386 (AP)**<br>Section 45 of the Income-tax Act, 1961 - Capital gains - Chargeability of - Assessee was a protected tenant in respect of certain land - Pursuant to land acquisition proceedings by State Government, assessee was entitled to 60 per cent of total compensation awarded by State Government for land - Whether no capital gains could be brought to tax as assessee had not paid any cost towards acquisition of protected tenancy rights - Held, |
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| 20. | **Parasmal Champalal Bamboli v. Pr.** | Section 263- Revision by the PCIT- Concluded that no | The assessee is an individual and a partner in some partnership firms. | **Shri Siraj Ahmed Jamalbhai Bora v. ITO** |

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| | **Commissioner of Income Tax-27**<br>[ITA No. 580/Mum/2021 AY 2015-16 dated: 27/1/2022 | inquiry has been made by the Assessing Officer with reference to the applicability of section 56(2)(vii)(b) – Held - Pr. CIT proceeded to disturb the assessment on totally irrelevant consideration and without showing any error in the assessment order per se | The return filed by the assessee for assessment year 2015-16 was assessed u/s Parasmal Champalal Bamboli 143(3) of the Act vide order dated 13.01.2017 whereby the total income of the assessee was assessed at ₹11,56,959/- as against return income of ₹9,58,920/. After the completion of assessment, the Revisional Commissioner/Pr. CIT called for the assessment records and opined that the impugned assessment order so passed is erroneous in so far as prejudicial to the interest of the Revenue. The Pr. CIT accordingly issued showcause notice dated 04.03.2021 to the assessee. | **Ward - 1(3)(1), I.T.A. No.1886/Mum/2019, Dated 29 July, 2021** |
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| 21. | **M/s Arkema Chemicals India P. Ltd. v. ACIT Circle 15(1)(1) Mumbai**<br>ITA No. 1032/Mum/2021 dated 22/4/2022; Bench A AY 2017-18 | S.: Depreciation – Software – SAP- 60% : | Assessee is a company engaged in the business of manufacturing of fertilizer chemicals and paints. It filed its return of income at a loss of Rs. 1,84,26,369/- under normal provisions and at a book profit of Rs. 6,40,71,301/- under section 115JB of the Act. The return of income was selected for scrutiny and assessment order under section 143(3) of the Act was passed determining the total income of the assessee at Rs. 2,44,00,300/-. Assessing officer considered the software as intangible asset depreciable at 25% instead of 60% as claimed by the assessee. The disallowance of depreciation on software ERP SAP is of Rs. 3,84,70,669/-. | 1. **CIT vs. I-Flex Solutions Ltd [2014] 46 taxmann.com 88 (Bombay)**<br>Wherein deprecation on the software was allowed at the rate of 60% and decision of co-ordinate Bench in case of ACIT vs. Indiabulls Venture Ltd. dated 2nd July, 2020, wherein also the depreciation at the rate of 60% was allowed on software.<br>2. **Computer Age Management Services (P.) Ltd. [2019] 109 taxmann.com 134 (Madras)** wherein depreciation held that software lincense acquired by the assessee was in nature of application software and is eligible for deprecation at the rate of 60%. The honourable |

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| 22. | **FIH India (P) Ltd. v. Dy. CIT** ITA No. 1184/Chny/2018 ; Bench B Chennai ; AY 2010-11 ; dated 8/2/2021 | S. 37(1): Disallowance of tax credit/service tax written off—Allowable expenditure | When input service tax credit was carried forward from earlier financial year to the current financial year, it partakes the nature of taxes paid for the current financial year and hence deductible as and when assessee had debited service tax component paid on input services to the profit & amp; loss account. It is well settled principle of law by decision of various courts and Tribunals that input tax credit/CENVAT is deductible under section 37(1), when such input tax credit was reversed or written off in the books of account. | **1. CIT vs. Kaypee Mechanical India (P) Ltd., (2014) 223 taxman 346 (guj.)** |
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| 23. | **Anand Vithal v. PCIT-27 Navi Mumbai**<br>ITA No.1139/Mum/2021 dated 7/4/2022 ; Bench A; A.Y. 2010-11] | Section 263- Revision held invalid when two possible views are possible on merits of a question- the AO has adopted one view | The AO had exercised the quasi-judicial power vested in him in accordance with law and arrived at a conclusion. Such a conclusion could not be termed as erroneous simply because the CIT did not feel satisfied with the conclusion. The Hon'ble Court has also noted that though the words 'prejudicial to the interest of the Revenue' have not been defined, but it must mean that the orders of assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. | **1. CIT Vs. Arvind Jewelers 259 ITR 502 (Gujarat)**<br>**2. CIT Vs. Gabrial India Ltd. 203 ITR 108 (Bombay HC)** |
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| 24. | **The ACIT vs. Shri Sambandam Dorairaj** [ITA No.301/Chny/2020 dated 30/9/2021 ; Bench: C ; AY 2013-14 ] | S. 54: Cost of Improvement claimed – Partial amount allowed considering old flat required renovation to make it habitable: | Where assessee had purchased a flat and incurred expenditure of Rs. 23 lakhs for purpose of renovating house and Assessing Officer, merely, based on enquires made with neighbours, disallowed entire expenditure claimed by assessee and Commissioner (Appeals) | **1. *CIT* v. *Smt. Vimalaben Bhagavandhas Patel* [1979] 118 ITR 134 (Guj.)**<br>**2. *Anraj Narain Dass* v. *CIT* [1951] 20 ITR 562 (Punj.)1** |

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| | | | opining that Assessing Officer should have enquired through a builder who constructed building instead of neighbour, disallowed only an amount of Rs. 5 lakhs for lack of evidence and directed Assessing Officer to allow benefit under section 54 to extent of Rs. 18 lakhs, order of Commissioner (Appeals) being fair and reasonable, required no interference | |
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| 25. | **Meera Devi Kumawat. (Smt.) v. JCIT (2022) 193 ITD 250 (Jaipur)(Trib.)** | S. 271D : Penalty-Takes or accepts any loan or deposit-Amount received from husband-Purchase of plot-Family arrangement-Levy of penalty is not valid. [S. 269SS, 273B] | The assessee offered explanation that payment towards construction expenses like purchase of construction material and payment to labourers were required to be incurred in cash. Further, all transactions including cash transactions were duly documented in registered sale deed. Also pooling of family funds was done by assessee due to her family's requirement and as she didn't have any known sources of funds. Tribunal held that since assessee offered a reasonable explanation justifying said cash transactions, penalty could not be levied under section 271D for violation of section 269SS of the Act. (AY. 2009-10 | **1. Commissioner of Income-tax *v.*Raj Kumar Sharma 294 ITR 131 (Rajasthan)**<br><br>Section 271D of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269T - Where Tribunal was of view that there was a reasonable cause to accept deposit otherwise than through bank draft or through cheque because assessee bona fide believed that cash transactions below Rs. 20,000 were permissible and, in fact, none of transaction had exceeded Rs. 20,000, deletion of penalty by Tribunal was justified |
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| 26. | **Marvel Industries Ltd. Vs Deputy Commissioner of Income-tax, Circle 2(2)(2)** | S. 68 : CIT Appeals, erred in confirming the addition | Whether an appellant appears before the CIT(A) or not, it is the statutory obligation of the CIT(A) to dispose of an appeal on merits. The scheme of section 250 does not visualize any situation in which an appeal can be summarily dismissed disregarding the | |

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| | [2022] 140 taxmann.com 430 (Mumbai - Trib.) | | material on recorder. Section 250 (6) lays down that the CIT(A)'s order "disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision". As for the points of determination, in our considered view, it cannot be open to the learned CIT(A) to disregard what the assessee has placed before him by way of a statement of facts and the grounds of appeal. | |
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| 27. | **Assistant Commissioner of Income-tax, Circle 3(1)(1) v. Bajaj Capital Ventures (P.) Ltd.** [2022] 140 taxmann.com 1 (Mumbai - Trib.) | Disallowance u/s 14A even if no tax-free income, under new *Explanation* inserted by FA 2022, does not apply to AYs prior to 2022-23 | The assessee did not have any tax exempt income during the relevant previous year (Previous year 2016-17/Assessment Year 2017-18) which pertains to the period prior to insertion of *Explanation* to section 14A (by Finance Act, 2022 w.e.f. 1-4-2022).<br>• As the new *Explanation* applies with effect from assessment year 2022-23 and does not even have limited retrospective effect even to proceedings for past assessment years pending on 1-4-2022, no disallowance under section 14A shall apply in the absence of any tax-free income in the relevant assessment year prior to AY 2022-23. | **1. Cheminvest Ltd v. CIT [(2015) 61 taxmann.com 118 (Del)]** Section 14A of the Income-tax Act, 1961 - Expenditure incurred in relation to income not includible in total income (Applicability) - Assessment year 2004-05 - Whether section 14A envisages that there should be an actual receipt of income which is not includible in total income; hence, section 14A will not apply where no exempt income is received or receivable during relevant previous year<br>**Assistant Commissioner of Income-tax, Circle-3, Guwahati *v.***<br>**Williamson Financial Services Ltd.**<br>**[2022] 140 taxmann.com 164 (Guwahati - Trib.) Against** |
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| 28. | **DCIT v Mais India** | Section 56 of the Income- | Where assessee, a joint venture company, | **1. *Cinestaan Entertainment (P.)*** |

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| | **Medical Devices (P.) Ltd.** [2022] 139 taxmann.com 94 (Delhi - Trib.) [2022] 195 ITD 94 (Delhi - Trib.) | tax Act, 1961, read with rule 11A of the Income-tax Rules, 1962 - Income from other sources - Chargeable as (Valuation of shares) | formed by a resident company and a non-resident company, issued shares to non-resident shareholders at higher amount than to resident shareholders, in view of fact that project costs of assessee was to be funded in ratio of 40 per cent by non-resident and 60 per cent by resident entity, such valuation of shares was justified and, thus, order of AO rejecting such valuation of shares by assessee was to be set aside | ***Ltd.* v. *ITO* [2019] 106 taxmann.com 300 / 177 ITD 809 (Delhi - Trib.)** *A*s per section 56(2)(viib) read with rule IIUA assessee has an option to do valuation of shares and determine fair market value either on DCF Method or NAV method, and Assessing Officer cannot examine or substitute his own value in place of value so determined |
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| 29. | **Desmond Savio Theodore Fernandes v. ITO**, [2022] 138 taxmann.com 352 (Mumbai - Trib.) | Section 246A, read with sections 270A and 253, of the Income-tax Act, 1961 - Commissioner (Appeals) - Appealable orders (Scope of) - Section 246A(1)(q) specifically includes | Where order imposing penalty under section 270A was passed by Assessing Officer, same would be appealable before Commissioner (Appeals) and not before Tribunal | |
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| 30. | **ACIT vs Parsons Brinckershoff India (P.) Ltd** [2022] 140 taxmann.com 645 (Delhi - Trib.) | Section 271C, read with section 40(a)(ia), of the Income-tax Act, 1961 - Penalty - For failure to deduct tax (Provision) | Where assessee created provisions for expenses and subsequently, deducted and deposited TDS upon crystallization of liability to pay expenses on receipt of invoices, merely because assessee did not deduct TDS on year end provisions would not automatically justify imposition of penalty under section 271C | **1. *ITO* v. *DLF Southern Homes (P.) Ltd.* 2017 SCC Online ITAT 148**<br>**2. *CIT* v. *Telco Construction Equipment Co. Ltd.* [IT Appeal No. 478 (Bang.) of 2012, dated 7-3-2014]** |
| 31. | **R.S. Diamonds India P. Ltd. v. ACIT (ITAT Mumbai)** ITA: 2017/Mum/2021 dated: 26/07/2022 (Mum-Trib. | S. 68-Cash deposited during demonetisation-addition made by AO. | The Court observed Noting that the source of the deposit made was duly explained as from cash received from customers which were supported by sale bills and duly recorded in the books of accounts, no addition could have been made. It | **1. M/s. Hirapanna Jewellers (ITA No. 253/Viz/2020 dated 12.5.2021)** it was held that when the cash receipts represented the sales which has been duly offered for |

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| | | | was held that when cash deposits have been made from the cash balance available in the books of account, there was no question of treating the said deposits as unexplained cash deposit as opined by the Assessing Officer and confirmed by the CIT (A). Hence, the addition was deleted. | taxation, there is no scope for making any addition under section 68 of the Act in respect of deposits made into the bank account. |
| 32. | **Shanmuga Sundaram Govindaraj vs. Assistant Commissioner of Income-tax, Circle 14** [2022] 141 taxmann.com 119 (Chennai - Trib.)[22-07-2022] | Non-invocation of sec 56(2)(vii)(b) merely because of SDV exceeds consideration, does not make AO's order erroneous prejudicial to revenue | It is highly debatable issue whether section 56(2)(vii)(b) is to be invoked to make addition of excess of Stamp Duty Value over consideration as per sale deed merely because there is some difference between Stamp Duty Value and consideration. Further, it is also highly debatable whether tolerance of 10% of such excess is to be allowed retrospectively. CIT(A) cannot set aside AO's assessment as erroneous and prejudicial issue since, where on a debatable issue, AO has taken a possible view and not made additions. | ***1.*** **Maria Fernandes Cheryl vs. ITO (International Taxation) order dated 15.01.2021, [2021] 85 ITR(T) 674 (Mumbai-Trib).**<br><br>***2.*** **Amrapali Cinema vs. ACIT, [2021] 190 ITD 36 (Delhi-Trib)** |

**Thank You**

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