

<u>S.No</u>	<u>Name of the case</u>	<u>SC observations</u>	<u>Underlying High Court order</u>
1	Karnataka Power Corp Limited	<p>SC while issuing notice on revenue's SLP has interalia observed as under:</p> <p><i>"Issue notice on the question of capitalization of income generated during the Trial Run. Whether Trial Run is part of pre-production activity?"</i></p> <p><i>Dasti granted."</i></p> <p>Related ITAT order may be referred at 67 ITD391.</p>	<p>In underlying unreported Kar HC order, on basis of "consistency" (as in subsequent years, assessee's claim of Trial run income is capital receipt has been accepted in regular asst and same has attained finality), allowed assessee's appeal and reversed ITAT order.</p> <p>Respectfully speaking, it seems that SC in issuing notice has not given any importance to "consistency" aspect. Further, similar treatment has been meted to Delhi High Court order following consistency in Realist Builders 216 CTR 345, order of Supreme Court.</p>
2	Himgiri Agencies	<p>SC while issuing notice on revenue's SLP has interalia observed as under:</p> <p><i>"In this case absence of show cause notice was the ground taken by the assessee for the first time only before the Tribunal. Even if the Tribunal came to the conclusion that notice was not served it ought to have remitted the matter back to the Assessing Officer. The</i></p>	<p>Observations in underlying DHC order:</p> <p>"This appeal pertains to the block period 01.04.1990 to 21.11.2000. The only issue is with regard to non service of the notice under Section 143 (2) and 142 (1) of the Income Tax Act, 1961. The tribunal has examined the material on</p>

		<p><i>Tribunal has failed to do so, hence issue notice. Dasti granted."</i></p> <p>This seems to be landmark development as Delhi High Court in series of cases has reserved its verdict on implications of non issuance and/or service of 143(2) notice in specified time limit in block assessment proceedings (in Tulak Mishra and Others). Refer Gau HC in Bandana Gogoi.</p>	<p><u>record and has concluded that the service of notice was not effected upon the assessee. This is a finding of fact.</u></p> <p>No substantial question of law arises for our consideration. The appeal stands dismissed."</p>
3	Eicher Limited	<p>While dismissing revenue's SLP against DHC order wherein reopening after 4 years was held to be bad in law, following Delhi High Court Full Bench in Kelvinator and KLM case, concluding if AO asked queries on subject issue and assessee gave its application, even if there is no discussion in assessment order, AO shall be deemed to have applied his mind:</p> <p><i>"The Special Leave Petition is dismissed on facts. The question of law is kept open"</i></p> <p>From above, it is apparent that SC is</p>	<p>Observations in underlying DHC order:</p> <p>"The Revenue is aggrieved by an order dated 14th July, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench C , New Delhi (the Tribunal) in ITA No. 3967/Del/2002 relevant for the Assessment Year 1994-1995. In view of our decision in Commissioner of Income Tax v. M/s Eicher Ltd. (ITA No. 309/2006 decided on 22nd May, 2007), - REPORTED AT 294 ITR 310 no substantial question of law</p>

		still open to adjudication on deemed application of mind under regular/143(3) assessment proposition as canvassed in DHC ruling in Kelvinator case.	arises." Dismissed
4	Bombay High Court in Qatar Airways	<p>In this case, where airline company has agreed with its agents to sell the tickets at a minimum stipulated price (which was lower than published price) and further discretion was given to agents to increase the price over and above minimum price (subject to maximum of published price), rejecting the revenue's contention that said difference in agreed minimum price and price at which tickets is finally sold is "commission" u/s 194H in hands of agent and assessee/airline company is required to withhold tax u/s 194H, it is concluded that:</p> <p>a) In order to deduct tax at source, income being paid out must necessarily be <u>ascertainable</u> in the hands of the assessee (payee). In the facts of the present case, it is seen that airlines would have no information about the exact rates at which tickets were ultimately sold by their agents,....and it would be unreasonable and impracticable to expect the assessee to get a feedback from their numerous agents, in respect of each ticket sold.</p> <p>b) Further, if the airlines have given discretion to sell the tickets at the price lower than published price, then the permission granted to the agent to sell it at a lower price, according to us, can neither amount to commission or brokerage in the hands of the agent.</p>	