SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	124	**CIT & JDIT Vs. M/s SHETRON LIMITED, ITA No.79/2006, Dated: 22nd November 2010, HIGH COURT OF KARNATAKA** **Whether when rectification order u/ 154 is passed, interest is to be computed only up to the date of regular assessment.** **The assessee was not expected to guess, imagine or presume such an alteration in the years to come which is almost seven years later than the return of income filed by the assessee. Therefore the Tribunal was justified in saying that as on the date of return of income filed on 29.12.1992, there was neither delayed payment of tax nor short fall of tax payable as income tax. Therefore, the tax payable by him on the return income as on 29.12.1992 was paid on time. Therefore, question of levy of interest would not arise in view of compliance of sub-section (4) of section 34-A.**	**154**	**HIGH COURT OF KARNATAKA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
5-Jul-11	**125**	**M/s PCBL INDUSTRIAL LTD Vs. COMMISSIONER OF INCOME TAX, ITA No.428 of 2004, Dated: 16th June 2011, HIGH COURT AT CALCUTTA** **Whether when the principal business of the assessee is to grant loans and advances, the loss suffered by the assessee is not covered under explanation to section 73 as it is covered under the exception to the said explanation.** **In respect of the assessment of the appellant in respect of preceding years, the Tribunal held that the principal business of the appellant was granting of loan as would appear from the profit and loss account produced by the appellant. The Tribunal in those matters specifically held that the principal business of the appellant being grant of loans, the appellant comes within the exceptions to the Explanation under Section 73 of the Act and thus, it was a fit case where the AO should be directed to allow the set off loss incurred in the purchase and sale of shares treating the same as business loss. While passing such orders, the Tribunal also took into consideration the balance sheet of the appellant for the impugned Assessment Year. These orders of Tribunal attained finality as either the appeal preferred against such order in this High Court has been dismissed or the application for condonation of delay in preferring such appeal has been d Assessing Officer to treat the assessee as coming within the exception to the Explanation added to Section 73 of the Act.**	**73**	**HIGH COURT AT CALCUTTA**
	126	**RAM JETHMALANI & ORS. Vs. UNION OF INDIA & ORS., WRIT PETITION (CIVIL) NO(s). 176 OF 2009, Dated : 4th July 2011, SUPREME COURT OF INDIA** **Pursuant to a Writ Petition alleging inaction by the Government on the unearthing of unaccounted money, the Supreme Court set up a High Level Committee to act as a Special Investigation Team to supervise the investigation by the Government into black money. In the course of the ruling, the Court considered the impact of the Double taxation Avoidance Agreements, the Vienna Convention and the judgment in UOI vs. Azadi Bachao Andolan 263 ITR 706 (SC). The Court strongly disapproved of the stand taken by the Government that the names of the tax evaders was a "secret" and could not be revealed under the India-Germany DTAA**	**NA**	**SUPREME COURT OF INDIA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
7-Jul-11	127	Commissioner of Income Tax Vs. Goyal M.G. Gases Pvt. Ltd, I.T.A. No.335/2011, Date of Decision: 23.02.2011, High Court of Delhi This Court categorically held that even if there is no period of limitation prescribed u/s153 (3)(ii) to give effect to s. 263 orders, the AO is required to pass the order within a "reasonable period". Non-specification of period of limitation does not mean that the AO can wait for indefinite period before passing the consequential order. On facts, the period of 3 years & 8 months that had elapsed since the passing of the s. 263 order was "certainly much beyond the reasonable period that can be allowed to the AO to pass the consequential order". As the s. 263 order was rightly held to be infructuous, the effect order passed thereafter is not valid.	263	High Court of Delhi
9-Jul-11	128	COMMISSIONER OF INCOME TAX-II Vs PRIYANK GEM, Tax Appeal No. 2343 of 2010, Dated: May 09, 2011, HIGH COURT OF GUJARAT Whether when there are two possible views, the one which favours the assessee should be accepted. The entire issue is based on appreciation of evidence on record. The Tribunal has given cogent reasons to come to the conclusion that several facts pointed to the seized diamonds being those shown by the assessee in the books of account. The declaration by the assessee, even before the search, in the course of return previously filed and the valuation of the closing stock and the valuation of the seized diamonds as per the Department were same. All these factors persuaded the Tribunal to come to the conclusion that the seized diamonds did not form part of undisclosed source of the assessee. The Tribunal's finding cannot be said to be perverse. At best, the view taken by the AO, as confirmed by the CIT [A] could also be one of the plausible views. Nevertheless, when the Tribunal, on the basis of evidence on record, has come to a certain factual findings, simply because the Tribunal's view was different from the one held by the AO, this would not permit the Court to interfere with the order under challenge.	S.143(3)	HIGH COURT OF GUJARAT

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	129	**COMMISSIONER OF INCOME TAX-2, MUMBAI Vs TATA SSL LTD, Income Tax Appeal No. 1321 OF 2010, Dated: June 08, 2011, HIGH COURT OF BOMBAY** **Whether expenditure incurred for CNG connection is revenue expenditure.** **In the present case, the finding recorded by the Tribunal is that the assets remained the property of Mahanagar Gas Ltd. and that the sole object of payment was to get gas to facilitate the manufacturing activity carried on by the assessee. In these circumstances, no fault can be found with the decision of the Tribunal that the expenditure was incurred as an integral part of the profit earning process and not for acquisition of an asset of a permanent character.**	**37**	**HIGH COURT OF BOMBAY**
	130	**COMMISSIONER OF INCOME TAX Vs. SHRI PREM GANDHI, IT(SS)A.No. 267/Del/2002, Block Period : 1990-91 to 2000-01, Dated: May 5, 2011 HIGH COURT OF DELHI** **Held that in view of the amendment to Section 132(1) of the Income Tax Act which has retrospective effect from 1.6.1994, Additional Director of Income Tax (Investigation) is duly authorized to issue warrants of search.** **Further held that notice under Section 143(2) was not served has not been taken by inadvertence though it was taken before the CIT(A) and the assessee should be allowed to make such a request before the ITAT and it will be for the ITAT to decide as to whether this plea is to be allowed or not.**	**143(2)**	**HIGH COURT OF DELHI**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
12-Jul-11	**131**	**M/s SUSI SEA FOODS PVT LTD Vs. ASST COMMISSIONER OF INCOME TAX, ITA No.280/Vizag/2010, Assessment Year: 2000-2001, Dated: May 9, 2011 ITAT - VISAKHAPATNAM** **Whether AO cannot apply sections 70 to 79 of the Income tax Act while computing the amount deductible under clause (iii) for the purpose of book profit as it nowhere prescribes the manner of set off or modalities of carry forward and set off of loss to be followed for book purposes, even though there is no method of computation of brought forward losses and unabsorbed depreciation and its set off is given under the Companies Act.** **The provisions of sec. 115JA are a complete code by itself and it, subject to sub. sec. (4), over rides all other provisions of the Income tax for the matters provided in that section. Under the companies Act, for accounting purposes, the loss of any year is not segregated into "Business loss" and "Depreciation loss". Only under the Income tax Act, the loss computed under the head "Profits and Gains of Business" is segregated into "Business Loss" and "Depreciation Loss". Since it is specifically provided in section 115JA that the lo bifurcate the brought forward loss as per books of account into "Unabsorbed business loss" and "Unabsorbed depreciation"; The Income tax Act no where prescribes the manner of set off or modalities of carry forward and set off of loss to be followed for book purposes. Hence sub. sec (4) of sec. 115JA cannot have application for the said purpose;it would not be correct on the part of the AO to apply the principles prescribed in sec. 70 – 79 of the Act for accumulated losses shown in the books of account.**	**115JA(4)**	**ITAT - VISAKHAPATNAM**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
14-Jul-11	**132**	**M/S. SIVA INDUSTRIES & HOLDINGS LTD. Vs. ACIT, I.T.A. NO. 2148/MDS/2010, ASSESSMENT YEAR : 2006-07, DATE OF ORDER : 20TH MAY 2011, ITAT – CHENNAI** **For the applicability of s. 14A there must be (a) taxable income and (b) tax-free income. If either one is absent, s. 14A has no applicability. If it is assumed that s. 14A would apply even when the assessee does not have tax-free income, the expenditure would get disallowed year after year so long as the assessee held the shares and if he sold them and made a capital gain that would be taxed as well. This is not contemplated by s. 14A. If there is no claim for tax-free income, there cannot be any disallowance u/s 14A.** **(ii) If the transaction of lending monies between the assessee and the AE is in foreign currency and the transaction is an international transaction, it has to be evaluated by applying the commercial principles applicable to international transaction. So, the PLR would have no applicability and the international rate being LIBOR has to be considered while determining the arm's length interest rate in respect of the transaction between the a**	**14A**	**ITAT – CHENNAI**
	133	**COMMISSIONER OF INCOME TAX, BHOPAL Vs. KEWALCHAND PRATAPCHAND, ITR No.38/98, Dated: 24th February, 2011, HIGH COURT OF MADHYA PRADESH** **Whether Board Circular fixing tax effect limit for filing appeals in High Court applies even to old references made.** **The Board Circular dt.27.3.2000 was applicable even to the old references which are still pending and are undecided. By circular dated 27.3.2000 financial limit to the extent of tax liability of Rs.2 lakh was fixed, which is applicable in this case. In view of the aforesaid settled position of the law by the Division Bench, the question need not be answered in the light of the aforesaid circular of the CBDT and the judgment of this Court in Ashok Kumar Manibhai Patel & Co.**	**Instruction No.5 of 2008, dt.15th May, 2008**	**HIGH COURT OF MADHYA PRADESH**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	134	**DHEERAJ CONSTRUCTION AND INDUSTRIES LTD Vs. COMMISSIONER OF INCOME TAX, ITA No. 218 of 2001, Dated : 1st July 2011, HIGH COURT OF CALCUTTA** **Whether when no incriminating document is found during the search, no addition can be made in respect of the transactions reflected in the regular books in the block assessment even if they are found to be fictitious and can only be considered under regular assessment** **Held - Yes** **Whether surcharge is applicable to the Income tax payable even though the search and seizure took place before insertion of the proviso to Section 113 of the Act. The proviso to Section 113 of the Act is curative in nature as is held by the Supreme Court, in the case of CIT vs. Suresh N. Gupta. Therefore, it is held that surcharge is applicable to the Income tax fixed under Section 113 of the Act even though the search and seizure took place before insertion of the proviso to Section 113 of the Act.**	**113**	**HIGH COURT OF CALCUTTA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
19-Jul-11	**135**	**MRG DEVELOPERS (P) LTD Vs INCOME TAX OFFICER, ITA No. 1642/Del/2009 Assessment Year: 2004-2005, Dated: 20th May 2011 ITAT – New Delhi** **Whether when no information regarding the assessment records of alleged entry operators is considered by the AO due to non completion of assessment in those cases, the assessment is rightly set aside to the AO.** **Most important information will come from the assessment records of alleged king pins of entry operators whose names have been mentioned in assessment order and ADI reports. There is no reference to any action taken on record. Since search & survey operations were made and systematic operations were going on, department must have proceeded against all of them and framed assessments. It is alleged by the department itself that they were operating with network of fictitious and brief case companies whose existence on paper was there but physical operations were managed and the capital was created by transfer of money from one account to other. Proper ascertainments of facts cannot be made in such type of cases unless the action taken in parallel king pin cases is referred to. A responded to the notice or summons and is found to be non-existent. AO and CIT(A) ought to have verified the record of parallel proceedings/ search proceedings in the case of kingpins of entry operators and their network entities, which has not been referred.**	**68**	**ITAT – New Delhi**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
21-Jul-11	**136**	**M/s EARTH CASTLE Vs. DEPUTY COMMISSIONER OF INCOME TAX, ITA No. 3064/Mum/2008, Assessment Year: 2006-2007, Dated: 17th June 2011 ITAT–Mumbai** **Whether when assessee fails to rebut the addition made by the AO in respect of undisclosed income found during the search and also chooses not to file appeal against the huge quantum addition, penalty is warranted in such circumstances.** **No assessee would accept such huge additions running into crores in case no sale had taken place and there was no income. It is not a case of addition of few thousands which the assessee may not pursue in appeal as it may not be cost effective but not disputing additions running into crores which the assessee thinks that there was no income at all, does not conform to normal human conduct. Considering the entirety of the facts and circumstances and applying the test of human probability, the explanation of the assessee that the sales had not materialized which is not supported by any reliable evidence cannot be considered as bonafide. Thus, the case of the assessee is covered by the provisions of Explanation 1 to section 271(1)(c) and the penalty has been rightly levied**	**271(1)(C.)**	**ITAT–Mumbai**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	137	**M/s COSMIC KITCHEN PVT LTD Vs. ASST COMMISSIONER OF INCOME TAX ITA No. 5549/Del/2010, Assessment Year: 2006-2007, Dated: 13th May 2011 ITAT–New Delhi** **Whether the depreciation on preoperative expenses allocated to fixed assets is to be allowed u/s 32 as the expenses incurred were for setting up the fixed assets and were incurred during the running trail.** **Section 43(1) defines "actual cost" to mean actual cost of the asset to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. The expenses incurred by the assessee are required to be capitalized as the expenditure of test runs was a capital expenditure. The expenses involved in determining that the factory was in proper working condition and making adjustment does not seem to be anything more than steps in setting up and finalization of the factory, which is the capital asset. Accepted accountancy rule for determining cost of fixed assets is to include of expenditure necessary to bring such assets into existence and to put them in working condition. Thus, the expenses incurred** **on kitchenware and consumption of material during trial run is to be capitalized towards the cost of plant and machinery.**	**32**	**ITAT–New Delhi**
	138	**ITO Vs. Audyogik Tantra Shikshan, ITA No. 106/PN/2010, Date of Order : 30/06/2011, Asstt. Year : 2004-05, ITAT – Pune** **The AO levied penalty u/s 271(1)(c) which was deleted by the CIT(A). The AO filed an appeal before the Tribunal. The assessee filed a CO in which it was inter alia argued that in the assessment order which had been supplied to the assessee, there was no direction for initiating penalty though in the assessment order filed by the department with the memo of the appeal, there was a reference to the issue of notice u/s 271(1)(c). The assessee demanded costs u/s 254(2B). HELD by the Tribunal upholding the assessee's plea:** **A.O should have confined himself in making just and proper assessment only, as per the provisions of the law and harassment of the assessee which is not permitted under the Statute should have been avoided at all cost.**	**271(1)(C.)**	**ITAT – Pune**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
23-Jul-11	**139**	**M/s PYRAMID INFRASTRUCTURE PVT LTD Vs. DEPUTY COMMISSIONER OF INCOME TAX, ITA No. 793/Hyd/2010, Dated: 18/02/2011, Assessment Year: 2005-2006, ITAT – Hyderabad** **The issues taken up by the CIT for revision of assessment u/s 263, namely, work-in-progress & closing stock, opening stock, and disallowance of expenditure on account of various heads, have already been considered by the AO in the assessment proceedings u/s 143(3). Therefore, the CIT is not justified in making these issues as a subject matter of revision. The assessee has furnished all the details in respect of the expenditure claimed by the assessee against various over heads and the AO after considering the same and after considering the explanations with regard to the issues in dispute, allowed the claim of the assessee. The CIT has wrongly directed the AO to reconsider the disallowances made by the AO. The CIT was only substituting his views as to how the assessment should have been done in place of the assessment has already made by the AO. There is no error point out in the revision order, which is prejudicial to the interests of the revenue. The reas appreciation of the accounts and statement, therefore, the order of the CIT is not correct either on the matter of jurisdiction or on merits.**	**263 read with 143(3)**	**ITAT – Hyderabad**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	140	**Ashok Chaddha Vs. Income Tax Officer, ITA no. 274/2011, Judgment Delivered On: 5th July 2011, Delhi High Court** **During the course of search, jewellery weighing 906.900 grams of the value amounting to ` 6,93,582/- was found. The appellant's explanation was that he was married about 25 years back and the jewellery comprised "stree dhan" of Smt. Jyoti Chadha, his wife and other small items jewellery subsequently purchased and accumulated over the years.** **Held that the assessee was married for more than 25-30 years. The jewellery in question is not very substantial. The learned counsel for the appellant/assessee is correct in her submission that it is a normal custom for woman to receive jewellery in the form of "stree dhan" or on other occasions such as birth of a child etc. Collecting jewellery of 906.900 grams by a woman in a married life of 25-30 years is not abnormal. Furthermore, there was no valid and/or proper yardstick adopted by the Assessing Officer to treat only 400 grams as "reasonable allowance" and treat the other as "unexplained". Matter would have been different if the quantum and value of** **the jewellery found was substantial.**	**69**	**Delhi High Court**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
26-Jul-11	**141**	**The Director of Income Tax (International Taxation) II, Mumbai, Vs. Gartner Ireland Limited, Mumbai, INCOME TAX APPEAL (L) NO. 368 OF 2011, DATE : 20th July 2011, Bombay High Court** **The assessee filed return of income and claimed refund of tax on the ground that the amount of royalty received by the assessee was covered under Article 7 of the Double Taxation Avoidance Agreement between India and Ireland. The Assessing Officer disagreed with the contention of the assessee and taxed the royalty income at Rs.62.21 lakhs and levied penalty under Section 271(1)(c) of the Income Tax Act, 1961. Counsel for the Revenue informs the Court that the Revenue has filed an appeal against the decision of the Tribunal deleting the quantum addition in the present case and the same is pending. In our opinion, the fact that the appeal against the deletion of the quantum addition is pending before this Court, cannot be a ground to sustain the penalty imposed under Section 271(1)(c) of the Income Tax Act, 1961 because the quantum addition itself was made on the basis of the return filed by the assessee which is found to be correct. Merely because the assessee's contention that the royalty income is exempt was not acceptable to the Assessing Officer cannot be a ground to impose penalty under Section 271(1)(c) of the Income Tax Act, 1961**	**271(1)(C.)**	**Bombay High Court**
28-Jul-11	**142**	**CREDIT LYONNAIS, MUMBAI Vs. DEPUTY DIRECTOR OF INCOME TAX, ITA No: 1546/Mum/2010, Assessment Year: 2004-05, Dated: 8th July 2011, ITAT – Mumbai** **The issue involves interpretation of the two entries in the depreciation schedule read with foot note 6. of the schedule which also refers to section 2 of the Motor Vehicles Act, 1988. That the issue is debatable is also seen from the order of the Mumbai Bench of the Tribunal in Daleep S Chandnani vs. ACIT as also that of the Hyderabad Bench in Avanti Feeds Ltd. vs. DCIT. The discussion in these orders shows that the issue as to which of the two entries will apply is not free from doubt and therefore is not a case for rectification u/s 154. <u>It is well settled that u/s 154, any issue which requires a long drawn argument cannot be considered as a mistake apparent from the record.</u>**	**154**	**ITAT – Mumbai**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	143	**BEEJAY SECURITY & FINANCE LTD Vs. ASST COMMISSIONER OF INCOME TAX, ITA No.4859/Mum/2009 : A.Y. 2001-2002 to A.Y. 2007-2008, Dated: 24th June 2011, ITAT – Mumbai** **The satisfaction required for proceedings under section 153C cannot be reduced to a mere formality of forwarding the documents found in the course of search which did not belong to the person searched and which belonged to the person against whom proceedings under section 153C are sought to be initiated. Thus there was no satisfaction regarding existence of any undisclosed income which warrants proceedings u/s 153 of the Act. On this ground the assessment is annulled.**	153C	ITAT – Mumbai
30-Jul-11	144	**COMMISSIONER OF INCOME TAX Vs. HARSH TALWAR, Dated: 23rd May 2011, ITA No. 1579 of 2010, Delhi High Court** **Delhi High Court held apart from what is recorded by the CIT (A), another additional aspect which the Tribunal has pointed out is that even in the case of the partnership firm of M/s Gallaria, wherein the assessee is a partner; similar penalty under identical circumstances imposed by the Revenue had been deleted by the ITAT. The said order in respect of the partnership firm has been accepted by the Revenue and no appeal preferred there against. For all these reasons, the question of law answered in favour of the assessee and against the Revenue.**	271(1)(C.)	Delhi High Court
	145	**ALL GROW FINANCE AND INVESTMENT PVT. LTD. Vs. COMMISSIONER OF INCOME TAX, ITA No. 682/2011, Dated: 3rd June 2011, Delhi High Court** **In the present case there is no dispute that the amounts of debts in question were advanced by the assessee in the ordinary course of money lending; the only condition laid down in second part of sub-section 2 of Section 36 is that the amount should be advanced in the ordinary course of business which by itself proves its revenue nature and no further conditions are required to be satisfied which are only applicable with regard to debt qualifying as bad debt in the first part of sub-section 2, the authorities below are not justified in holding that the amount of Rs.34,95,000/- was not allowable as bad debt u/s 36(1)(vii) r/w Sec 36(2).**	36(1) read with 36(2)	Delhi High Court

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	146	**KANUBHAI M PATEL HUF Vs. HIREN BHATT OR HIS SUCCESSORS TO OFFICE & 4, SPECIAL CIVIL APPLICATION No. 5295 of 2010, Date: 13/07/2010, HIGH COURT OF GUJARAT** **For purposes of s. 149, the expression "notice shall be issued" means that the notice should go out of the hands of the AO. On facts, though the notice was signed on 31.3.2010, it was sent to the speed post center for booking only on 7.4.2010. Considering the definition of the word "issue", merely signing the notices on 31.3.2010 cannot be equated with "issuance of notice" as contemplated u/s 149. The date of issue would be the date on which the same was handed over for service to the proper officer, which in the present case would be the date on which the notices was actually handed over to the post office for the purpose of booking for the purpose of effecting service on the assessee. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. As the notice was sent for booking to the Speed Post Center on 7.4.2010,** **the date of "issue" of the notice would be 7.4.2010 and not 31.3.2010, which is beyond the limitation period. Consequently, the reassessment cannot be sustained.**	**149**	**HIGH COURT OF GUJARAT**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
2-Aug-11	**147**	**Hyundai Heavy Industries Ltd Vs. The Union of India and others, Civil Writ Petition No. 1778 of 2010 (M/S), HIGH COURT OF UTTARAKHAND, Dated 21st July, 2011** **Pursuant to s. 147 reopening and a draft assessment order u/s 144C, the assessee filed objections before the Dispute Resolution Panel (DRP). As the Director of Income Tax (International Taxation)-II (DIT-IT) who had granted approval to the reopening and had supervised the passing of the draft assessment order was a member of the DRP, the assessee requested him to recuse himself from the panel on the ground that there was a "conflict of interest". As the DIT-IT declined to do so and participated in the proceedings and finalized the draft assessment order, the assessee filed a Writ Petition contending that the jurisdictional CIT should not be a part of the DRP.** **Held : As the DIT-II was exercising supervisory functions over the AO, the real likelihood of "official bias" cannot be ruled out. Even if the officer is impartial and there is no personal bias or malice, nonetheless, a right minded person would think that in the circumstances, there could be a likelihood of bias on his part. In that event, the officer should not sit and adjudicate upon the matter. He should recuse himself. This follows from the principle that justice must not only be done but seen to be done. In order to ensure that no person should think that there is a real likelihood of bias on the part of the officer concerned, the CBDT is directed to ensure that a jurisdictional Commissioner is not nominated as a member of the DRP under Rule 3 (2) of the Rules. By doing this, the principle that justice must not only be done but seen to be done would be ensured.**	**144C**	**HIGH COURT OF UTTARAKHAND**
	148	**ASHOK CHADDHA Vs. INCOME TAX OFFICER, ITA No. 271/2011, HIGH COURT OF DELHI, Dated : July 27, 2011** **The law laid down in Hotel Blue Moon, is thus not applicable to the facts of the present case. The issue of requirement of notice under section 143(2) for an assessment under section 147 came up for consideration before this court recently in CIT v. Madhya Bharat Energy Corpn., ITA No. 950/08 decided on 11-07-2011. In that case also, this court has held that in the absence of any specific provision under Section 147 of the Act, the issuance of notice under Section 143 (2) cannot be held to be a mandatory requirement.**	**143(2)**	**HIGH COURT OF DELHI**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
4-Aug-11	**149**	**The Commissioner of Income Tax Vs. Shri Madeshwaran M. Vannier, ITA No. 456 OF 2011, HIGH COURT OF BOMBAY, Dated : 27TH JULY, 201 In the present case, the assessee with a view to purchase a house obtained loan totaling to Rs.25,22,000/- from the close relatives such as Father, Mother, Sister-in-law, Mother's Brother etc. In the affidavit filed by these relatives, it was stated that they had income from agricultural operations and that loan was advanced to the assessee out of the agricultural income received by them. The Tribunal considered that failure to accept such loans in violation of section 269SS of the Act constituted reasonable cause and therefore it was not a fit case for imposition of penalty under section 271D of the Income Tax Act, 1961. 3. In our opinion, the decision of the ITAT cannot be said to be perverse.**	**271D**	**HIGH COURT OF BOMBAY**
	150	**Idea Mobile Communication Ltd. v. C.C.E. & C. Cochin:,(SC), CIVIL APPEAL NO. 6319 OF 2011, Arising out of SLP(C) No. 24690 of 2009 in the Supreme Court of India** **SIM Card has no intrinsic sale value and it is supplied to the customers for providing telephone service to the customers. The charges paid by the subscribers for procuring a SIM Card are generally processing charges for activating the cellular phone and consequently the same would necessarily be included in the value of the SIM Card for levy of service tax.** **Thus, the value of SIM cards forms part of the activation charges as no activation is possible without a valid functioning of SIM card and the value of the taxable service is calculated on the gross total amount received by the operator from the subscribers.**	**Section 65 (105) zzzx of the Finance Act, 1994,**	**Supreme Court of India**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
6-Aug-11	**151**	**Ms. MAYAWATI Vs. COMMISSIONER OF INCOME TAX, ITA No. 438/2008, HIGH COURT OF DELHI, Dated : 03rd August, 2011** **In context of taxation of unexplained gifts u/s 68 of the Act, Delhi High Court has held that while clarifying the term "capacity" and "relationship" and habitual donor and non habitual donor: That: The capacity does not mean what you are earning monthly or annually. The capacity includes how much total assets a person own. Sometimes a person does not have to be related to a particular trust or a charitable institution, but in their view that trust or institution is doing a great service to the particular section of the society. Therefore, we do not find any force in the arguments advanced by the learned counsel for the Revenue. Further, it is also not necessary that a person should be a habitual donor. It depends from person to person, thinking to thinking and situation to situation. Sometimes a person keeps donating throughout their life and sometimes he donates once and sometimes during the last stage of his life. All the donors have admitted that they are great admirer of the assessee as she is working for the upliftment of poor people.**	**68**	**HIGH COURT OF DELHI**
	152	**HONDA SIEL POWER PRODUCTS LTD. Vs. DY.COMMR.OF I.T & ANR, Appeal (Civil) No(s). 19085/2011, SUPREME COURT OF INDIA, Dated : 29/07/2011** **Re-opening of assessment is fully justified on the facts and circumstances of the case. However, on the merits of the case, it would be open to the assessee to raise all contentions with regard to the amount of Rs.98.46 lakhs being offered for tax as well as it's contention on Section 14A of the Income Tax Act, 1961.**	**14A**	**SUPREME COURT OF INDIA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	153	**Tulsi Developers Versus Deputy Commissioner Of Income Tax Nand Circle, Special Civil Application No. 14455 Of 2010, Date : 15/04/2011, Gujrat High Court** **The entire facts regarding FDR bank interest were furnished to the then Assessing Officer who appears to have been of the opinion that the entire investment and income pertains to business only and accordingly net income was worked out and salary paid to partners under section 40(b) of the Act came to be computed. Considering the material placed before the Assessing Officer, it would appear that the Assessing Officer must have applied his mind in taking into consideration the interest income while computing book profit under section 40(b) of the Act. In the circumstances in the light of the decision of the Supreme Court in the case of Commissioner of Income-Tax vs. Kelvinator of India Ltd. (supra) wherein it has been held that one needs to give a schematic interpretation to the words "reason to believe" failing which, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", whic reopening of assessment is bad in law.**	**147**	**Gujrat High Court**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
9-Aug-11	**154**	**Hotel Oasis (Surat) Pvt Ltd Versus Dy. Commissioner Of Income - Tax, Circle 1, Special Civil Application No. 10657 Of 2009, Date : 05/05/2011, High Court Of Gujarat** **The Assessing Officer has merely placed reliance upon an order passed in relation to assessment year 2006-07 without indicating any connection between the assessments of the present year and the said year. Moreover, the frame of the reasons indicates that according to the Assessing Officer, the same is required to be considered for assessment year 2002-03 after due investigation…On a plain reading of the reasons recorded, it is apparent that insofar as the second ground is concerned, the Assessing Officer has reopened the assessment merely to make inquiries. Nothing is stated in the reasons recorded to indicate that any income chargeable to tax has actually escaped assessment in relation to the said ground.. Another aspect to be noted is that the petitioner has submitted objections against the detailed reasons recorded by the Assessing Officer, raising all contentions raised in the present petition before the Assessing Officer. The Asse simply brushed aside the objections raised by the petitioner without dealing with the same by making reference to various judicial decisions. The requirement of dealing with objections is not an empty formality and the Assessing Officer while deciding the same is required to meet with the contentions raised by the assessee if he is of the opinion that the objections are not justified.**	**147**	**High Court Of Gujarat**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	155	**S. K. Bothra & Sons, HUF Vs. Income-tax Officer, I.T.A. No.175 of 2003, Judgment on: August 2, 2011 IN THE HIGH COURT AT CALCUTTA** **The law is equally settled that if the initial burden is discharged by the assessee by producing sufficient materials in support of the loan transaction, the onus shifts upon the Assessing Officer and after verification, he can call for further explanation from the assessee and in the process, the onus may again shift from the Assessing Officer to assessee. In the case before us, the appellant by producing the loan- confirmation certificates signed by the creditors, disclosing their permanent account numbers and address and further indicating that the loan was taken by account payee cheques, no doubt, prima facie, discharged the initial burden and those materials disclosed by the assessee prompted the Assessing Officer to enquire through the Inspector to verify the statements. The Assessing Officer could not straightway arrive at the conclusion that the transactions were not genuine without giving further opportunity to the appellant to**	**131 read with 143(3)**	**HIGH COURT AT CALCUTTA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
11-Aug-11	**156**	**Pradip Kumar Malhotra Vs. Commissioner of Income-tax, I.T.A. No.219 of 2003, Judgment on: August 2, 2011 IN THE HIGH COURT AT CALCUTTA** **The phrase "by way of advance or loan" appearing in sub-section (e) must be construed to mean those advances or loans which a share holder enjoys for simply on account of being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power; but if such loan or advance is given to such share holder as a consequence of any further consideration which is beneficial to the company received from such a share holder, in such case, such advance or loan cannot be said to a deemed dividend within the meaning of the Act. Thus, for gratuitous loan or advance given by a company to those classes of share holders would come within the purview of Section 2(22) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such share holder. Te assessee permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan**	**2(22)(e)**	**HIGH COURT AT CALCUTTA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
17-Aug-11	**157**	**COMMISSIONER OF INCOME TAX - II – Vs. M/S LUBI SUBMERSIBLES LTD., TAX APPEAL NO. 868 OF 2010, DATE OF ORDER 25/07/2011, HIGH COURT OF GUJARAT** **Where it is concluded that the funds of the assessee-respondent were mix funds in as much as investment was made in the preceding years and there was no fresh investment during the year under consideration. It also did not agree with the findings of the Assessing Officer that the investment was made by the assessee out of borrowed funds. Thus, from the entire gamut of facts, the Tribunal held that there was sufficient surplus funds available with the assessee to invest and there was no nexus that could be established with the expenditure incurred by the assessee for earning the dividend income. HELD: Logic given for conclusion requires no interference. It was on the basis of evidence which was presented before the Tribunal that the conclusion had been arrived at with regard to availability of the free-funds for investment, and therefore, this Appeal merits no consideration. Accordingly, the present Tax Appeal is dismissed with no order as to costs.**	**14A**	**HIGH COURT OF GUJARAT**
	158	**AGRICULTURAL PRODUCE MARKET COMMITTEE Vs. INCOME TAX OFFICER, WARD – 2, SPECIAL CIVIL APPLICATION No. 16234 of 2010, Date 24/01/2011, HIGH COURT OF GUJARAT** **The sole ground for reopening the assessment appears to be the observations of the Revenue Audit Party that the assessee is not eligible for exemption to the tune of Rs.77,40,212/- for the year under reference since, the Assessing Officer has not disallowed the exemption while finalizing the assessment under section 143(3) of the Act. Thus, it appears that the belief that income chargeable to tax escaped assessment is that of the Revenue Audit Party and not of the Assessing Officer. In the circumstances, the condition precedent for exercise of powers under section 147 of the Act, namely, that the Assessing Officer should have reason to believe that income chargeable to tax has escaped assessment, does not appear to be fulfilled in the present case.**	**147**	**HIGH COURT OF GUJARAT**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
19-Aug-11	**159**	**The Commissioner of Income Tax–7, Mumbai Vs. Dinesh Megji Toprani HUF, ITA No. 3404 OF 2010, Date of Order : 04/08/2011, High Court of Mumbai** **The assessee HUF had sold certain immovable properties and out of the sale proceeds received, purchased immovable properties and claimed benefit of deduction under Section 54F of the Income Tax Act, 1961. The assessing officer was of the opinion that the property was purchased in the name of the individuals namely Dr.Dinesh Megji Toprani and Mrs.Jyoti Dinesh Toprani and not in the name of the HUF and, therefore, the assesseewas not entitled to the deduction under Section 54F of the Income Tax Act, 1961. No fault can be found with the decision of the Income Tax Appellate Tribunal in allowing the benefit of deduction under Section 54F of the Income Tax Act, 1961 on the ground that the property purchased in the name of the members of the HUF, in fact belongs to the HUF.**	**54F**	**High Court of Mumbai**
	160	**The Commissioner of Income Tax, Central II, Mumbai Vs. K. Raheja Corporation P. Limited, ITA No. 1260 of 2009, Date of Order : 08/08/2011, High Court of Mumbai** **No s. 14A disallowance of interest on borrowed funds if AO does not show nexus between borrowed funds & tax-free investment**	**14A**	**High Court of Mumbai**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
22-Aug-11	**161**	**Dr. (Ms) Avimay S. Hakim Vs. The Income Tax Officer 12(3)(2) Mumbai, ITA No. 2923 of 2010, DATED : 10TH AUGUST, 2011, Mumbai High Court** **Whether on the facts and in law, the Tribunal was right in holding that the amount of Rs.8,42,000/- received as a compensation for damage caused to the land, a capital asset of the appellant, was a revenue receipt taxable in the hands of the appellant ? "In these circumstances, in our opinion, the amount of Rs. 8,42,000/- received by the assessee towards the damage to the land belonging to the assessee cannot be said to be revenue receipt. The fact that the land has remained with the assessee and that the assessee in future may earn profits from the said land cannot be a ground to hold that the compensation received by the assessee in lieu of damage caused to the land was revenue receipt. Accordingly, we answer the question in favour of the assessee and against the revenue.**	**S.45**	**Mumbai High Court**
	162	**Commissioner of Income Tax, Hisar Vs. Ram Narain Bansal, Income Tax Appeal No. 814 of 2010, Date of decision: 13.7.2011, Punjab & Haryana High Court** **Whether in the facts and circumstances non-issuance of notice under Section 143(2) of the Act would render the proceedings for re-assessment null and void? is not disputed that the assessee had appeared before the assessing officer on various dates and participated in the reassessment proceedings before the finalization and no objection regarding issuance and service of notice under Section 143(2) of the Act was raised before the assessing officer. The CIT(A) and the Tribunal were, thus, in error in nullifying the re-assessment proceedings and declaring the re-assessment order to be invalid. 13. In view of the above, the substantial question of law is answered in favour of the Revenue and against the assessee. Consequently, the matter is remanded to the Tribunal for decision afresh on merits in accordance with law.**	**143(2)**	**Punjab & Haryana High Court**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
24-Aug-11	**163**	**M/S GRASIM INDUSTRIES LTD. Vs. COMMISSIONER OF CENTRAL EXCISE, BHOPAL, CIVIL APPEAL NOS. 5268 OF 2003, DATE OF ORDER : 18/08/2011, SUPREME COURT OF INDIA** **The credit note was issued only on 07.08.1991 although the duty was paid on 19.07.1989 and, therefore, the credit note was issued after two years of the payment of the duty and the clearance of the goods. In this connection, Section 12 of the Central Excise Act becomes relevant which indicates that the party who is liable to pay excise duty on any goods, has to file the sales invoice and other documents relating to assessment at the time of clearance of the goods itself. Therefore, when at the time of clearance no such document was filed and what is sought to be relied upon is a document issued after two years, the same raises a doubt and cannot be accepted as a reliable document.**	**12 of Central Excise Act**	**SUPREME COURT OF INDIA**
	164	**COMMISSIONER OF INCOME TAX,AGRA Vs. M/S AMBIKA SHEET GRAH(P) LTD.,NUNIHAI,AGRA, INCOME TAX APPEAL NO. 385 OF 2008, ORDER DATE : 10.8.2011, ALLAHABAD HIGH COURT** **The business of cold storage alone, without any transportation facility with refrigeration back to back upto consumption and, linking farmer and market also qualifies for deduction in terms of provisions of Section 80-1B (11) of the Act. The word "or" in the context here means and should be interpreted as disjunctive particle. The statute should be read in its ordinary, natural, and grammatical sense.**	**80-IB(11)**	**ALLAHABAD HIGH COURT**
	165	**M/s PEICO ELECTRONICS & ELECTRICALS LTD (NOW KNOWN AS PHILIPS INDIA LTD) Vs. COMMISSIONER OF INCOME TAX, WEST BENGAL-IV & ANR, ITA No. 353 of 2004, Dated: August 12, 2011 High Court of Calcutta** **Once loss is held to be arrived at after taking into account depreciation, the amount of depreciation under the Companies Act of Rs. 13,85,66,473/- is to be set off in terms of clause (iv) of the Explanation to Section 115 J of the Act. Thus, it was the duty of the AO to set off the said amount as the said duty falls within the purview of the limited power of making increases and reductions as provided for in the Explanation to the said section.**	**115J**	**High Court of Calcutta**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
26-Aug-11	**166**	**TRIUMPH INTERNATIONAL FINANCE INDIA LTD. Vs. ASST COMMISSIONER OF INCOME TAX, IT(SS)A No. 160/Mum/2007, Block Period: 1.4.90 to 3.3.2001, Dated: June 30, 2011 ITAT – Tribunal** **It is an undisputed proposition of law that, though the levy of penalty u/s 158BFA(2) is not automatic and mandatory; but the Assessing Officer has to take into consideration all relevant facts and circumstances and particularly whether the undisclosed income computed in the block assessment is based on the evidences/material found as a result of search or requisition of books of account or other documents and material or information available with the Assessing Officer and relatable to such evidences. It has to be taken into consideration whether the undisclosed income computed in the block assessment represents the income, which would not have been offered by the assessee or detected by the authorities, if the same was not detected in the search action or a result of evidence found in the search or consequent investigation on the basis of the material found during the course of search ++ since the assessee's case does not even fall in the first proviso as the assessee disclosed nil undisclosed income in the return of income and therefore, exception provided in the first proviso would not be attracted in the case of the assessee. Once the case does not fall in the proviso to sub section 2 of section 158 BFA then, the Assessing Officer or the CIT(A), as the case may be is empowered to impose penalty on the person when the undisclosed income determined under clause (c) of sec. 158BC is in excess of the undisclosed income returned by the assessee in pursuant to the notice u/s 158BC/BD**	**158BFA(2)**	**ITAT – Mumbai**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
30-Aug-11	**167**	**THE COMMISSIONER OF GIFT TAX, MUMBAI VS SHRI AJAY BAJAJ, GIFT TAX APPEAL NO. 2929 OF 2009, DATED: AUGUST 18, 2011, BOMBAY HIGH COURT** **The Tribunal has held that in the absence of any material evidence brought on record to suggest that the partnership between the assessee and her son relating to as back as to the year 1946, the addition in the hands of the assessee on mere suspicion that there was deemed gift cannot be sustained. The Tribunal has held that the sale transaction was at arm's length. There is nothing on record to suggest that the above findings recorded in the income tax proceedings have been reversed or varied; once in the income-tax proceedings, it is accepted that the transactions are genuine and bona fide, the additions made in the proceedings under the Gift Tax Act on the footing that the transaction was a colourable device cannot be accepted. Therefore, the payments made to the son being in his capacity as a partner of the firm, the said amount could not be treated as deemed gift given by the assessee to her son.**	**Gift Tax Act**	**BOMBAY HIGH COURT**
	168	**DY COMMISSIONER OF INCOME TAX-(A) Vs PRADIP N DESAI (HUF), Tax Appeal No. 311 of 2001, Dated: July 6, 2011, HIGH COURT OF GUJARAT** **The issue is squarely covered by the decision of the Division Bench of this Court in Tax Appeal No.100 of 2000. Where the court held that on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant was not entitled to depreciation allowance under Entry No. III(2)(ii) of Appendix-I of the IT Rules, 1962, in respect of vehicles given on lease;**	**32**	**HIGH COURT OF GUJARAT**
	169	**NOTIFICATION NO. 43/2011 – SERVICE TAX DATED 25/08/2011-ISSUED BY CENTRAL GOVT. - Service Tax half yearly Return mandatorily required to be file electronically** **The CG, in exercise of power u/s 94(2) of Finance Act, 1994, has issued above mentioned notification to make it mandatory to file the half year service tax return electronically. This amendment shall be effective from 1st October, 2011.**	**NOTIFICATION NO. 43/2011 – SERVICE TAX**	**CENTRAL GOVT.**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
1-Sep-11	**170**	**INCOME TAX OFFICER Vs. THE SPECIAL LAND ACQUISITION OFFICER ITA No. 4174/Mum/2009, Dated: 29th April 2011, ITAT – Mumbai** **Definition u/s 2(14) of the Act is for the purpose of taxing the capital gain on transfer of the land. Whereas the term used u/s 194LA is only for the limited purposes of deduction of TDS in compulsory acquisition, therefore, as held by the Kerala High Court the definition is given in section 2(14) cannot be imported for the purpose of section 194LA;it is not a decisive factor when the land itself is agricultural land though may not be used for agricultural purposes but unless and until the same is used for non agricultural purposes it cannot be said that the land cannot be treated as agricultural land for the purposes of section 194LA.**	**2(14) read with 194LA**	**ITAT – Mumbai**
	171	**INCOME TAX OFFICER Vs. RAJESH KR GARG, ITA No. 532/Kol/2011, Dated: 5th August 2011, ITAT – Kolkata** **Whether when the assessee has received Form 15I from the payee and no deduction is made on that basis, no disallowance can be made u/s 194C only for the reason that the forms were not submitted in time before the jurisdictional CIT.** **Even if the assessee has delayed the filing of the declarations with the office of the CIT/CCIT (TDS) within the time limit specified in subsection (2) of section 197A, that is a distinct omission or default for which a penalty is prescribed. The assessee's claim is accepted that since he had the declarations of the payees in the prescribed form before him at the time when the interest was paid, he was not liable to deduct tax therefrom under section 194A.**	**197A(2)**	**ITAT – Kolkata**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
3-Sep-11	**172**	**M/s EXPO INDUSTRIES AND OTHERS Vs. INCOME TAX OFFICER, Crl. Misc. No. M-37034 of 2001 Dated: 8th August 2011, HIGH COURT OF PUNJAB AND HARYANA Once the penalty is deleted, the basis for criminal proceedings goes and the continuation of the criminal proceedings on the basis of the said penalty would be nothing but an abuse of process of law. Amnesty scheme was introduced and the petitioners availed benefit of the same and had surrendered the amount of Rs. 3,15,000/- by furnishing revised return and had paid the tax accordingly on the said amount. The addition of Rs. 35,000/- made in the assessment order was made on the basis of levy of penalty and since the penalty had been deleted, the said addition was also liable to be ignored. Thus, the criminal proceedings against the petitioners are liable to be quashed as the penalty imposed by the Assessment Officer has since been deleted**	**271(1)(C.) read with 276C**	**HIGH COURT OF PUNJAB AND HARYANA**
	173	**ASSTT DIRECTOR OF INCOME TAX Vs. SHRI RANJAY GULATI, ITA No. 1678 (Del) of 2011, Dated: 17th June 2011, ITAT – Delhi Where there was nothing with the AO to suggest that the assessee had received more than what was stated in the sale deed and, therefore, full value of consideration could not be adopted as per the DVO's report which represented fair market value of industrial plot sold. Adoption of DVO's report without providing opportunity of being heard was also against the principles of natural justice. There was thus no infirmity in the CIT(A) order, deleting the addition made by the AO.**	**50C**	**ITAT – Delhi**
	174	**ASSISTANT COMMISSIONER OF INCOME TAX & ANR VERSUS M/S. HOTEL BLUE MOON, CIVIL APPEAL NO.1198 OF 2010, DATE OF JUDGMENT: FEBRUARY 2, 2010, SUPREME COURT OF INDIA If an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with.**	**143(2)**	**SUPREME COURT OF INDIA**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
5-Sep-11	**175**	**MOD CREATIONS PVT. LTD VS INCOME TAX OFFICER, ITA NO. 1158/2007, JUDGMENT DELIVERED ON: 29.08.2011, THE HIGH COURT OF DELHI AT NEW DELHI** **A bald assertion by the A.O. that the credits were a circular route adopted by the assessee to plough back its own undisclosed income into its accounts, can be of no avail. The revenue was required to prove this allegation. An allegation by itself which is based on assumption will not pass muster in law. The revenue would be required to bridge the gap between the suspicions and proof in order to bring home this allegation. The ITAT, in our view, without adverting to the aforementioned principle laid stress on the fact that despite opportunities, the assessee and/or the creditors had not proved the genuineness of the transaction. Based on this the ITAT construed the intentions of the assessee as being malafide. In our view the ITAT ought to have analyzed the material rather than be burdened by the fact that some of the creditors had chosen not to make a personal appearance before the A.O. If the A.O. had any doubt about the material placed on record, which was largely bank statements of the creditors and their income tax returns, it could gather the necessary information from the sources to which the said information was attributable to. No such exercise had been conducted by the A.O. In any event what both the A.O. and the ITAT lost track of was that it was dealing with the assessment of the company, i.e., the recipient of the loan and not that of its directors and shareholders or that of the sub-creditors. If it had any doubts with regard to their credit worthiness, the revenue could always bring it to tax in the hands of the creditors and/or sub-creditors.**	**68**	**THE HIGH COURT OF DELHI AT NEW DELHI**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
7-Sep-11	**176**	**DCIT, Kolkata Vs M/s Haldiram Bhujiawala Limited (Dated: 28th July 2011), ITA Nos. 554 & 555/Kol/2011, ITAT - Kolkatta Bench** **Held: that when the books of account of the assessee are rejected and assessee has not appealed against the same, the GP rate is to be estimated only on reasonable basis.** **Whether the foreign travelling expenses incurred on director of the company for setting up a subsidiary abroad is allowable as it has a direct nexus with business –** **Held : that the visit of the director to U.K. cannot be called a visit for non business purposes merely on the suspicion that a visit after two years of conception of the plan to start a subsidiary company may not be for the same purpose. Therefore, the visit of the director of appellant company to London is for business purpose in absence of any evidence contrary to the claim of appellant.** **Whether the commission paid to 'K' can be disallowed u/s 40A(2)(a) without considering whether it was excessive or unreasonable having regard to the fair market value of the services rendered by the person.** **Held : AO has wrongly referred to Section 40A(2)(a) because u/s. 40A(2)(a), disallowance can be made if the expenditure is considered to be excessive and unreasonable having regard to the fair market value of the services rendered by the person. Thus, the order of CIT (A) is confirmed.**	**40A(2)(a)**	**ITAT - Kolkatta**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	177	**CIT Vs M/s Bonanza Portfolio Ltd. (Dated: 10th August 2011), ITA No. 833 of 2011, Delhi High Court** **That the appellant being engaged in the business of stock broking and share transactions, the expenditure incurred on ad films by way of advertisements for promotion and marketing of its products, being on the ongoing business, would be of revenue in nature and thus allowable as revenue expenditure.** **In the similar way, the expenditure incurred on website & advertisement would also be of revenue in nature and thus allowable as revenue expenditure. If, however, and if it is in respect of business which is yet to commence then the same cannot be treated as revenue expenditure as expenditure is on a product yet to be marketed.** **Further, the computer peripherals like printers, scanners etc are entitled to depreciation @ 60%.- Revenue's appeal dismissed.**	**32 & 37**	**Delhi High Court**
	178	**MOD Creations Pvt. Ltd. Vs. ITO, ITA No. 1158/2007 (Dated: August 29, 2011), Delhi High Court** **Section 68 of the I.T. Act only sets up a presumption against the assessee whenever unexplained credits are found in the books of accounts of the assessee In refuting the presumption raised, the initial burden is on the assessee. This burden, which is placed on the assessee, shifts as soon as the assessee establishes the authenticity of transactions as executed between the assessee and its creditors. It is no part of the assessee's burden to prove either the genuineness of the transactions executed between the creditors and the sub-creditors nor is it the burden of the assessee to prove the credit worthiness of the sub-creditors;**	**68**	**Delhi High Court**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
9-Sep-11	**179**	**CIT, Bangalore Vs. Dr. T K Dayalu, ITA No. 3209 of 2005 (Dated: June 20, 2011), KARNATAKA HIGH COURT** **Held:** **that the assessee had received capital gain in the year 1997-98 and having regard to the finding of fact that the possession of the property has been handed over on 30.5.1996, the appropriate A.Y in which the capital gain is to be taxed is 1997-98. There is no merit in the contention of the assessee Counsel that since the entire project has been completed in the year 2003-04, the tax on capital gain has to be made in that year. It is now well settled that the date on which possession was handed over to the developer is relevant and in the present case, it is no disputed that assessee has already received a sum of Rs.45 lakhs in addition to the structures which would enable to put up construction.The capital gain is to be taxed in the year 1997-98 and not in the year 2003-04.**	**2(47)**	**KARNATAKA HIGH COURT**
	180	**DCIT, New Delhi Vs. M/s CTI Shipbrokers India Pvt Ltd (Dated: July 14, 2011), ITA No. 84(Del)2011, ITAT-Delhi** **Section 36(1)(ii) - Whether the remuneration paid to the director as salary for services rendered, including bonus and commission are not allowable under the provisions of section 36(1)(ii).** **Held:** **No material or evidence has been brought by the AO to the effect that the commission would have been paid as dividend to the shareholders. It is the Companies Act, 1956, which governs the payment of dividend, containing the limitation and restrictions with regard thereto. The AO cannot user the discretion of the company regarding payment or otherwise of dividend. There is no warrant for the AO to presumption that had the commission being not paid, it would necessarily have been paid as dividend to the shareholders. As such, there is no applicability of section 36(1)(ii).**	**36(1)(ii)**	**ITAT-Delhi**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
12-Sep-11	**181**	**Shri Jagtar Singh Chawla Vs. ACIT, Rewari (Dated: June 30, 2011), ITA No. 4923/Del./2010, Delhi ITAT** **Issue: Whether for the purpose of investing the amount in another house property for claiming exemption u/s 54F, the due date of filing of return is to be considered as per sub-section (4) of section 139.** **Held:** **Only s. 139 is mentioned in s. 54(2) - Sec. 139 cannot mean only s. 139(1) but means all subsections of s. 139 - Therefore, assessee can fulfil the requirement of s. 54 of depositing the unutilized portion of the capital gain on sale of residential property in notified scheme upto the expiry of time-limit for filing return under s. 139(4).” Thus, the assessee was entitled to exemption of the entire investment upto the date of filing the return u/s 139(4) of the Act.**	**54F**	**Delhi ITAT**
	182	**ITO, New Delhi Vs. M/s Madhav Tech (India) Pvt Ltd (Dated: May 12, 2011), ITA No. 1312/Del/2011, Delhi ITAT** **Where the assessee has submitted the confirmations and the salary slip of the applicant of share capital, The addition made in this regard is not to be sustained.**	**68**	**Delhi ITAT**
14-Sep-11	**183**	**M/s. Bharati Shipyard Limited Vs. DCIT, ITA No. 2404/Mum/2009 :Asst Year 2005-2006, Date of Pronouncement : 09.09.2011, ITAT – Mumbai** **The amendment to s. 40(a)(ia) by the FA 2010 was made retrospectively applicable only from AY 2010-11 and not earlier. It is nowhere stated that the amendment is curative or declaratory in nature nor is such an intention discernible. Ordinarily, a substantive provision is prospective in operation and courts cannot give it retrospective effect except in limited circumstances where, say, the amendment makes explicit what was earlier implicit or where the amendment was to remove unintended consequences in the existing provision and to make it workable. A provision giving relief cannot be regarded as retrospective only because the original provision caused hardship to the assessee. S. 40(a)(i) caused intended difficulty with the object of discouraging non-compliance with the TDS provisions. A partial relaxation in its rigor, inserted with prospective effect, cannot be treated as retrospective.**	**40(a)(ia)**	**ITAT – Mumbai**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	184	**Arijit Ghosh Vs. Asstt. Commissioner of I.T., ITA No. 01 (Kol) of 2011, Assessment Year 2005-06, Date : 26.08.2011, ITAT – Kol** **In view of above sworn statement before the A.O., in our considered opinion, without bringing on record any contradictory material against the above deposition of Sri Pal, the revenue authorities were not justified to consider the said bank account as belonging to the assessee, when once it is established beyond doubt that all transactions in the said bank account are reflected by Sri Pal. Therefore, we are of the view that the addition made by the A.O. and further sustained by the ld. C.I.T(A) to the extent of peak credit are not in accordance with law and the same is deleted. Therefore, the grounds raised by the assessee in this respect are allowed and that of the department is dismissed**	**68**	**ITAT – Kol**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
16-Sep-11	**185**	**CIT, Delhi Vs Kinetic Capital Finance Ltd (Dated: September 2, 2011), ITA No. 87/2007, Delhi High Court** **Held:** **that while making an addition under Section 68 of the Income Tax Act, 1961 the A.O. has to advert to each and every entry and not pick up a couple of entries, as in the present case, and label the entire set of deposits made during the assessment year as undisclosed income of the assessee.** **Merely because certain application forms of depositors did not contain their PAN and GIR numbers, cheque numbers and draft numbers would not make the forms invalid so as to make addition u/s 68.** **Merely because of the reason that some investors had chosen not to respond to the notices, or the assessee had not been able to produce the investors, would not render the addition u/s 68 as undisclosed income in the hands of the assessee when an unexplained credit is found in the books of account of an assessee the initial onus is placed on the assessee. The assessee is required to discharge this initial onus. Once that onus is discharged, it is for the revenue to prove that the credit found in the books of accounts of the assessee is the undisclosed income of the assessee. In the circumstances obtaining in the present case, the assessee has discharged that initial onus. The assessee is not required thereafter to prove the genuineness of the transactions as between its creditors and that of the creditors' source of income, i.e., the sub-creditors**	**68**	**Delhi High Court**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	186	**Gates India Ltd Vs DCIT, New Delhi (Dated: July 29, 2011) , ITA Nos.2534 & 2535/Del/2011, Delhi-ITAT** **The expenditure incurred in respect of support charges is obviously revenue in nature. The TDS software is not used in the process of manufacture. Therefore, it can be said on functional basis that the expenditure is revenue in nature. Further, anti software virus is purchased to protect other softwares and, therefore, the expenditure is of revenue nature. The burden to prove that expenditure is revenue in nature, is on the assessee, which has to be discharged by filing relevant facts.** **Expenses incurred on purchase of backup software is an expenditure on intangible asset particularly when the assessee cannot provide any details regarding its life span, nature and utility. In absence of facts, it cannot be said that the expenditure is revenue in nature.**	**37**	**Delhi-ITAT**
	187	**ASSISTANT DIRECTOR OF INCOME TAX Vs. HOLOGRAM MANUFACTURERS ASSOCIATION, ITA No. 3383/Del/2009, Assessment Year: 2005-06, Dated: 9th September 2011, ITAT – Delhi** **Income Tax - Section 2(24)(iia), 4, 28(iii) and - Whether once principle of mutuality is governed, voluntary contribution cannot be added as income of mutual association, under section2 (24)(iia) which is meant for association possessing 12A, whether provision of section 28(iii) are not applicable to the cases where an association could not provide any specific services to its members, whether provision of section 44A are applicable where there is deficit of income to meet the expenses of the mutual association. Held - Appeal of the revenue is dismissed.**	**44A**	**Delhi-ITAT**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
20-Sep-11	**188**	**SAGAR DRUGS & PHARMACEUTICALS (P) LTD VS ADDL COMMISSIONER OF INCOME TAX, ITA NO.3179/AHD/2009, ASSESSMENT YEAR: 2006-2007, DATED: JUNE 03, 2011, ITAT – AHEMDABAD** **The position of law in relation to disallowance of administrative expenses is now clear. Such disallowance cannot be made prior to A.Y 2007-08 unless there is a direct nexus established by the AO. It has been held that rule 8D is not retrospective and would be applicable for and from A.Y 2007-08 and, therefore, it cannot be applied in A.Y 2006-07 which is before us and, therefore, calculation as per rule 8D cannot be done for disallowance of administrative expenses, unless of course a direct nexus is established.**	**14A**	**ITAT – AHEMDABAD**
	189	**DCIT VS SUNDERDEEP INFRASTRUCTURE PVT LTD, ITA NO.2051/AHD/2009, ASSESSMENT YEAR: 2006-07, DATED: JUNE 17, 2011 ITAT – AHEMDABAD** **It is admitted fact that the assessee is a purchaser of the land in question. ITAT Ahmedabad Bench in the case of ITO Vs Venu Proteins Industries considering its earlier decision held that "the provisions of section 50C are not applicable in the case of the purchaser. Departmental appeal was accordingly dismissed." On consideration of the facts of the case, we find that there is no foundation in making the addition against the assessee. The AO has not brought any evidence on record to show that the assessee made excess payment over and above the sale consideration shown in the registered documents. The AO merely on the basis of circle rate presumed higher value of the property. The above provisions were applicable in capital gains only. In the absence of any evidence or material on record to justify the findings of the AO, the learned CIT(A) on proper appreciation of the facts rightly deleted the addition. In the absence of any evidence or material before us and further that the findings of the learned CIT(A) have not been rebutted through any material on record, we do not find any justification to interfere with the order of the learned CIT(A).**	**50C**	**ITAT – AHEMDABAD**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
22-Sep-11	**190**	**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA Vs. THE DIRECTOR GENERAL OF INCOME TAX (EXEMPTIONS), DELHI & ORS., WRIT PETITON (CIVIL) NO. 1927 OF 2010, DATE OF DECISION : 19TH SEPTEMBER 2011, DELHI HIGH COURT** **The most material and relevant words in the proviso are "trade, business or commerce". The activities which are undertaken by the institute/person should be in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. The three words "trade", "commerce" or "businesses" have been interpreted by the Supreme Court and other courts in various decisions.** **"Trade", as per the Webster"s New Twentieth Centuary Dictionary (2nd edition), means amongst others, "a means of earning one"s living, occupation or work. In Black"s ,Law Dictionary, trade means a business which a person has learnt or he carries on for procuring subsistence or profit; occupation or employment, etc.** **The meaning of "commerce" as given by the Concise Oxford Dictionary is "exchange of merchandise, specially on large scale". In ordinary parlance, trade, and commerce carry with them the idea of purchase and sale with a view to make profit. If a person buys goods with a view to sell them for profit, it is an ordinary case of trade. If the transactions are on a large scale it is called commerce. Nobody can define the volume, which would convert a trade into commerce.** **For the purpose of the first proviso to section 2(15), trade is sufficient, therefore this aspect is not required to be examined in detail.** **While construing the term business for the said Section, the object and purpose of the Section has to be kept in mind. We do not think that a very broad and extended definition of the term „business is intended for the purpose of interpreting and applying the first proviso to Section 2(15) of the Act to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not**	**2(15)**	**DELHI HIGH COURT**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	191	**DIRECTOR OF INCOME TAX (EXEMPTIONS) Vs. THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA, I.T.A. NO. 869/2011, DATE OF DECISION : 19TH SEPTEMBER, 2011. DELHI HIGH COURT** **The purpose and object to do business is normally to earn and is carried out with a profit motive; in some cases the absence of profit motive may not be determinative. The appellant has given no such finding as far as the activities of the institute are concerned. The CIT-appellant without examining the concept of business has held that the institute was carrying on business as coaching and programmes were held by them and a fee is being charged for the same. On the basis of the findings recorded in the order dated 29th March 2010, under section 263 of the Act, it is not sufficient to hold that the institute is carrying on business. In these circumstances, we do not think that the order passed by the appellant under Section 263 of the 1961 Act can be sustained and was, therefore, rightly upset and set aside by the Tribunal.**	**263**	**DELHI HIGH COURT**
24-Sep-11	192	**COMMISSIONER OF INCOME TAX (CENTRAL) Vs. PADMINI TECHNOLOGIES LTD., ITA No. 1265/2007, Dated: 14th September 2011, DELHI HIGH COURT** **That in so far as the two businesses were concerned, they were carried on in two separate undertakings. The assessee maintained separate books of accounts and also prepared separate profit and loss accounts and balance sheets; in the judgment of Madras Motors Ltd., the rationale given is that the word 'business' which follows the expression 'total turnover' would have to be confined to only those goods to which the section applies. Therefore, by necessary implication, the total turnover of business would only mean total turnover of business of goods to which the section applies. Inclusion of turnover of goods to which the section does not apply, would be doing violence to the language of sub-section (3)(b). Sub-section (3) is inserted only to determine the deductible profits out of the total profits of business which can be attributed to the export business**	**80-HHC**	**DELHI HIGH COURT**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
24-Sep-11	193	**NICHOLAS PIRAMAL INDIA LTD Vs. JOINT COMMISSIONER OF INCOME TAX, ITA No. 4379/Mum/2005, Assessment Year: 1997-98, Dated: 29th April 2011, ITAT - Mumbai** **The purpose of acquiring such information was to avoid spending on a recurring basis, time, money and efforts in carrying out market surveys, appointing professionals and/or expert staff for working out marketing and sales strategies and forecasts and thereby reducing the learning period and augment the company's profits from the very first year. Thus, the expenditure incurred on acquisition of the information was out of commercial expediency and as a substitute for a series of other revenue expenses that would have to be incurred on appointing experts/professionals and conducting market surveys etc. on pharmaceutical products which is the existing line of business of the assessee. We also find force in the submission of the ld. Counsel for the assessee that the non-competition clause in case of the assessee is one of the routine clauses** **which is normally put in such agreements and cannot be interpreted to make the said payment made by the assessee to Max India as capital expenditure**	**10(2)**	**ITAT - Mumbai**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
27-Sep-11	**194**	**S MUTHURAJAN Vs. DEPUTY COMMISSIONER OF INCOME TAX, TC(A) No.188 of 2005, Dated: 10th August 2011, HIGH COURT OF MADRAS** **The use of the phrase 'business of export undertaking' in Section 10B is meant to identify industry or undertaking which qualifies for tax holiday exemption. Thus going by the above, on the expiry of the period mentioned u/s 10B, the block of assets viz., plant and machineries, of the industry, are available for working out the relief u/s 50(2). So long as the assets are found to fall under the same depreciation, they fit in into the concept of block of assets for the purpose of Section 50(2) of the Act. On the mere score that the assessee was once 100% export undertaking, the assessee could not be denied of the benefit otherwise available to the assessee on the block of assets on the expiry of tax holiday period for the purpose of the working of capital gains u/s 50(2). Thus on facts, contrary to the assertion of the Revenue that even though the export unit has to be treated as an independent unit for the purpose of Section 10B, when the export unit formed part of the business of the assessee, on the expiry of tax holiday period, there is no logic in treating the assets as independent of business of the assessee that they do not form part of block of assets for the purpose of working out the relief on capital gains**	**50(2)**	**HIGH COURT OF MADRAS**
	195	**COMMISSIONER OF INCOME TAX, DELHI Vs. MAHESH KUMAR, ITA NO. 2070/2010, Dated: 20th September 2011, HIGH COURT OF DELHI** **On search some cash and jewellery were seized. The assessee submitted explanation about the jewellery. However, during post-search enquiry he admitted that there was some excess jewellery which was unexplained investment and thus surrendered the amount. AO made additions u/s 69. But, before the CIT(A), the assessee tried to explain the source of the excess jewellery and relied upon the CBDT Instruction No 288 of 1994 and argued that jewellery of such low value was not to be seized. The CIT(A) accepted the plea and deleted the addition which was later confirmed by the Tribunal.**	**69**	**HIGH COURT OF DELHI**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
	196	**Shri Hardarshan Singh Vs. DCIT New Delhi , ITA No. 1447(Del)/2011 (Dated: August 26, 2011) - DELHI ITAT** **Held: that assessee arranges trucks of other transport companies for carriage of goods for which he receives commission from them which is credited to profit and loss account. In respect of this income, the assessee does not undertake the business of carriage of goods and no work is performed by him. The assessee acted as intermediary between the client and the other transport company.** **The company carried the goods and the advance received from the customer was handed over to the driver of the company. In the bill, the advance and the commission of the assessee were deducted from the bill amount and the assessee had to receive commission from the company. Thus, it cannot be said that assessee really entered into the contract of transportation of goods. He merely acted as an intermediary. The bills are prepared in a manner that net commission income becomes payable by the actual transporter to the assessee. Thus, there was no liability on assessee for deduction of tax at source. Hence, no addition could have been made u/s 40(ia).**	**40(ia)**	**DELHI ITAT**

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS FOR THE PERIOD JULY TO SEPTEMBER 2011				
DATE	**S.NO.**	**TOPIC**	**RELEVANT SEC. (IF ANY)**	**JUDGMENT PASSED BY**
29-Sep-11	**197**	**CIT, Chennai Vs. M/s Madras Fertilizers Ltd , Tax Case (Appeal) No. 333 of 2005 (Dated: August 3, 2011)- MADRAS HIGH COURT** **Held: "the accounts of the assessee showed NIL as regards the carry forward of loss and unabsorbed depreciation, rightly, the Commissioner of Income Tax revised the order of the officer to take the entire book profit of Rs.11,22,65,758/-, without any further adjustments for the purpose of working out 30% profit under Section 115J of the Income Tax Act, 1961. Thus, even though the assessee contended that mere adjustment as against the general reserve by itself would not defeat the claim of the assessee for considering the unabsorbed declaration in computation of the profit for the next year in terms of Section 205(1) (b), yet, the fact remains that when the accounts were made up for the assessment year 1989-1990, the loss and unabsorbed depreciation remained NIL. On the factual position that the assessee had no unabsorbed loss or unabsorbed depreciation to be carried forward for any consideration in the year under consideration, rightly, the Commissioner of Income Tax gave the direction which is in accordance with the provisions the Income Tax Act, 1961."**	**115JB**	**MADRAS HIGH COURT**